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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Elizabeth A. Brown
Clerk of Supreme Court

PETITIONERS' APPENDIX, VOLUME 9
(Nos. 1353– 1460)

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INDEX TO PETITIONERS' APPENDIX

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Opposition to Motion to Dismiss (cont.)</td><td></td></tr>
<tr><td>8</td><td>May 21, 2014 printout from New York Secretary of State</td><td>Vol. 1, 154–156</td></tr>
<tr><td>9</td><td>May 9, 2008 Letter from Garrett Gordon to John Desmond</td><td>Vol. 1, 157–158</td></tr>
<tr><td>10</td><td>Shareholder Interest Purchase Agreement (dated 09/30/2010)</td><td>Vol. 1, 159–164</td></tr>
<tr><td>11</td><td>Relevant portions of the January 22, 2010 Deposition of Edward Bayuk</td><td>Vol. 1, 165–176</td></tr>
<tr><td>13</td><td>Relevant portions of the January 11, 2010 Deposition of Salvatore Morabito</td><td>Vol. 1, 177–180</td></tr>
<tr><td>14</td><td>October 1, 2010 Grant, Bargain and Sale Deed</td><td>Vol. 1, 181–187</td></tr>
<tr><td>15</td><td>Order admitting Dennis Vacco (filed 02/16/2011)</td><td>Vol. 1, 188–190</td></tr>
<tr><td colspan="2">JH, Inc., Jerry Herbst, and Berry Hinckley Industries, Errata to Opposition to Motion to Dismiss (filed 05/30/2014)</td><td>Vol. 2, 191–194</td></tr>
<tr><td colspan="2">Exhibit to Errata to Opposition to Motion to Dismiss</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>12</td><td>Grant, Bargain and Sale Deed for APN: 040-620-09, dated November 10, 2005</td><td>Vol. 2, 195–198</td></tr>
<tr><td colspan="2">Answer to Complaint of P. Morabito, individually and as trustee of the Arcadia Living Trust (filed 06/02/2014)</td><td>Vol. 2, 199–208</td></tr>
<tr><td colspan="2">Defendant, Snowshow Petroleum, Inc.’s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 06/06/2014)</td><td>Vol. 2, 209–216</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibit to Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2)</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Salvatore Morabito in Support of Snowshow Petroleum, Inc.’s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction (filed 06/06/2014)</td><td>Vol. 2, 217–219</td></tr>
<tr><td colspan="2">Defendant, Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 06/19/2014)</td><td>Vol. 2, 220–231</td></tr>
<tr><td colspan="2">Exhibit to Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2)</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Salvatore Morabito in Support of Superpumper, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction (filed 06/19/2014)</td><td>Vol. 2, 232–234</td></tr>
<tr><td colspan="2">JH, Inc., Jerry Herbst, and Berry Hinckley Industries, Opposition to Motion to Dismiss (filed 07/07/2014)</td><td>Vol. 2, 235–247</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Motion to Dismiss</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Affidavit of Brian R. Irvine (filed 07/07/2014)</td><td>Vol. 2, 248–252</td></tr>
<tr><td>2</td><td>Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)</td><td>Vol. 2, 253–292</td></tr>
<tr><td>3</td><td>BHI Electronic Funds Transfers, January 1, 2006 to December 31, 2006</td><td>Vol. 2, 293–294</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Opposition to Motion to Dismiss (cont.)		
4	Legal and accounting fees paid by BHI on behalf of Superpumper; JH78636-JH78639; JH78653-JH78662; JH78703-JH78719	Vol. 2, 295–328
5	Unanimous Written Consent of the Directors and Shareholders of CWC (dated 09/28/2010)	Vol. 2, 329–332
6	Unanimous Written Consent of the Board of Directors and Sole Shareholders of Superpumper (dated 09/28/2010)	Vol. 2, 333–336
7	Plan of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 2, 337–341
8	Articles of Merger of Consolidated Western Corporation with and into Superpumper, Inc. (dated 09/29/2010)	Vol. 2, 342–344
9	2009 Federal Income Tax Return for P. Morabito	Vol. 2, 345–388
10	Relevant portions of the January 22, 2010 Deposition of Edward Bayuk	Vol. 2, 389–400
11	Grant, Bargain and Sale Deed for APN: 040-620-09, dated November 10, 2005	Vol. 2, 401–404
12	Relevant portions of the January 11, 2010 Deposition of Salvatore Morabito	Vol. 2, 405–408
13	Printout of Arizona Corporation Commission corporate listing for Superpumper, Inc.	Vol. 2, 409–414
Defendant, Superpumper, Inc.'s Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/15/2014)		Vol. 3, 415–421
Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.'s (filed 07/17/2014)		Vol. 3, 422–431

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.’s (filed 07/17/2014)</td><td>Vol. 3, 432–435</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.’s</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Motion to Dismiss as to Snowshoe Petroleum, Inc.’s</td><td>Vol. 3, 436–446</td></tr>
<tr><td colspan="2">Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)</td><td>Vol. 3, 447–457</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)</td><td>Vol. 3, 458–461</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Superpumper, Inc.’s Motion to Dismiss Complaint for Lack of Personal Jurisdiction NRCP 12(b)(2) (filed 07/22/2014)</td><td>Vol. 3, 462–473</td></tr>
<tr><td colspan="2">Answer to Complaint of Superpumper, Inc., and Snowshoe Petroleum, Inc. (filed 07/28/2014)</td><td>Vol. 3, 474–483</td></tr>
<tr><td colspan="2">Answer to Complaint of Defendants, Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito (filed 09/29/2014)</td><td>Vol. 3, 484–494</td></tr>
<tr><td colspan="2">Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito (filed 2/11/2015)</td><td>Vol. 3, 495–498</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Supplemental Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito (filed 02/17/2015)</td><td>Vol. 3, 499–502</td></tr>
<tr><td colspan="2">Exhibits to Supplemental Notice of Bankruptcy of Consolidated Nevada Corporation and P. Morabito</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Involuntary Petition; Case No. BK-N-13-51236 (filed 06/20/2013)</td><td>Vol. 3, 503–534</td></tr>
<tr><td>2</td><td>Involuntary Petition; Case No. BK-N-13-51237 (06/20/2013)</td><td>Vol. 3, 535–566</td></tr>
<tr><td>3</td><td>Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/17/2014)</td><td>Vol. 3, 567–570</td></tr>
<tr><td>4</td><td>Order for Relief Under Chapter 7; Case No. BK-N-13-51237 (filed 12/17/2014)</td><td>Vol. 3, 571–574</td></tr>
<tr><td colspan="2">Stipulation and Order to File Amended Complaint (filed 05/15/2015)</td><td>Vol. 4, 575–579</td></tr>
<tr><td colspan="2">Exhibit to Stipulation and Order to File Amended Complaint</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>First Amended Complaint</td><td>Vol. 4, 580–593</td></tr>
<tr><td colspan="2">William A. Leonard, Trustee for the Bankruptcy Estate of P. Morabito, First Amended Complaint (filed 05/15/2015)</td><td>Vol. 4, 594–607</td></tr>
<tr><td colspan="2">Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a) (filed 05/15/2015)</td><td>Vol. 4, 608–611</td></tr>
<tr><td colspan="2">Substitution of Counsel (filed 05/26/2015)</td><td>Vol. 4, 612–615</td></tr>
<tr><td colspan="2">Defendants’ Answer to First Amended Complaint (filed 06/02/2015)</td><td>Vol. 4, 616–623</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Amended Stipulation and Order to Substitute a Party Pursuant to NRCP 17(a) (filed 06/16/2015)</td><td>Vol. 4, 624–627</td></tr>
<tr><td colspan="2">Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege (filed 03/10/2016)</td><td>Vol. 4, 628–635</td></tr>
<tr><td colspan="2">Exhibits to Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>March 9, 2016 Letter from Lippes</td><td>Vol. 4, 636–638</td></tr>
<tr><td>2</td><td>Affidavit of Frank C. Gilmore, Esq., (dated 03/10/2016)</td><td>Vol. 4, 639–641</td></tr>
<tr><td>3</td><td>Notice of Issuance of Subpoena to Dennis Vacco (dated 01/29/2015)</td><td>Vol. 4, 642–656</td></tr>
<tr><td>4</td><td>March 10, 2016 email chain</td><td>Vol. 4, 657–659</td></tr>
<tr><td colspan="2">Minutes of February 24, 2016 Pre-trial Conference (filed 03/17/2016)</td><td>Vol. 4, 660–661</td></tr>
<tr><td colspan="2">Transcript of February 24, 2016 Pre-trial Conference</td><td>Vol. 4, 662–725</td></tr>
<tr><td colspan="2">Plaintiff’s (Leonard) Opposition to Defendants’ Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege (filed 03/25/2016)</td><td>Vol. 5, 726–746</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Motion to Partially Quash or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege</td><td></td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
Exhibit	**Document Description**	
1	Declaration of Teresa M. Pilatowicz in Support of Plaintiff's Opposition to Defendants' Motion to Partially Quash (filed 03/25/2016)	Vol. 5, 747–750
2	Application for Commission to take Deposition of Dennis Vacco (filed 09/17/2015)	Vol. 5, 751–759
3	Commission to take Deposition of Dennis Vacco (filed 09/21/2015)	Vol. 5, 760–763
4	Subpoena/Subpoena Duces Tecum to Dennis Vacco (09/29/2015)	Vol. 5, 764–776
5	Notice of Issuance of Subpoena to Dennis Vacco (dated 09/29/2015)	Vol. 5, 777–791
6	Dennis C. Vacco and Lippes Mathias Wexler Friedman LLP, Response to Subpoena (dated 10/15/2015)	Vol. 5, 792–801
7	Condensed Transcript of October 21, 2015 Deposition of Dennis Vacco	Vol. 5, 802–851
8	Transcript of the Bankruptcy Court's December 22, 2015, oral ruling; Case No. BK-N-13-51237	Vol. 5, 852–897
9	Order Granting Motion to Compel Responses to Deposition Questions; Case No. BK-N-13-51237 (filed 02/03/2016)	Vol. 5, 898–903
10	Notice of Continued Deposition of Dennis Vacco (filed 02/18/2016)	Vol. 5, 904–907
11	Debtor's Objection to Proposed Order Granting Motion to Compel Responses to Deposition Questions; Case No. BK-N-13-51237 (filed 01/22/2016)	Vol. 5, 908–925

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Reply in Support of Motion to Modify Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery Protected by the Attorney-Client Privilege (filed 04/06/2016)</td><td>Vol. 6, 926–932</td></tr>
<tr><td colspan="2">Plaintiff's Motion to Compel Production of Documents (filed 04/08/2016)</td><td>Vol. 6, 933–944</td></tr>
<tr><td colspan="2">Exhibits to Plaintiff's Motion to Compel Production of Documents</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Teresa M. Pilatowicz in Support of Plaintiff's Motion to Compel (filed 04/08/2016)</td><td>Vol. 6, 945–948</td></tr>
<tr><td>2</td><td>Bill of Sale – 1254 Mary Fleming Circle (dated 10/01/2010)</td><td>Vol. 6, 949–953</td></tr>
<tr><td>3</td><td>Bill of Sale – 371 El Camino Del Mar (dated 10/01/2010)</td><td>Vol. 6, 954–958</td></tr>
<tr><td>4</td><td>Bill of Sale – 370 Los Olivos (dated 10/01/2010)</td><td>Vol. 6, 959–963</td></tr>
<tr><td>5</td><td>Personal financial statement of P. Morabito as of May 5, 2009</td><td>Vol. 6, 964–965</td></tr>
<tr><td>6</td><td>Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk (dated 08/14/2015)</td><td>Vol. 6, 966–977</td></tr>
<tr><td>7</td><td>Edward Bayuk's Responses to Plaintiff's First Set of Requests for Production (dated 09/23/2014)</td><td>Vol. 6, 978–987</td></tr>
<tr><td>8</td><td>Plaintiff's First Set of Requests for Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living Trust (dated 08/14/2015)</td><td>Vol. 6, 988–997</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Plaintiff's Motion to Compel Production of Documents (cont.)		
9	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Responses to Plaintiff's First Set of Requests for Production (dated 09/23/2014)	Vol. 6, 998–1007
10	Plaintiff's Second Set of Requests for Production of Documents to Edward Bayuk (dated 01/29/2016)	Vol. 6, 1008–1015
11	Edward Bayuk's Responses to Plaintiff's Second Set of Requests for Production (dated 03/08/2016)	Vol. 6, 1016–1020
12	Plaintiff's Second Set of Requests for Production of Documents to Edward Bayuk, as trustee of the Edward William Bayuk Living Trust (dated 01/29/2016)	Vol. 6, 1021–1028
13	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Responses to Plaintiff's Second Set of Requests for Production (dated 03/08/2016)	Vol. 6, 1029–1033
14	Correspondences between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq. (dated 03/25/2016)	Vol. 6, 1034–1037
Opposition to Plaintiff's Motion to Compel Production of Documents (filed 04/25/2016)		Vol. 7, 1038–1044
Reply in Support of Plaintiff's Motion to Compel Production of Documents (filed 05/09/2016)		Vol. 7, 1045–1057
Exhibits to Reply in Support of Plaintiff's Motion to Compel Production of Documents		

DOCUMENT DESCRIPTION		**LOCATION**
Exhibit	**Document Description**	
1	Declaration of Gabrielle A. Hamm, Esq., in Support of Reply in Support of Plaintiff's Motion to Compel (filed 05/09/2016)	Vol. 7, 1058–1060
2	Amended Findings, of Fact and Conclusion of Law in Support of Order Granting Motion for Summary Judgment; Case No. BK-N-13-51237 (filed 12/22/2014)	Vol. 7, 1061–1070
3	Order Compelling Deposition of P. Morabito dated March 13, 2014, in *Consolidated Nevada Corp., et al v. JH. et al*.; Case No. CV07-02764 (filed 03/13/2014)	Vol. 7, 1071–1074
4	Emergency Motion Under NRCP 27(e); Petition for Writ of Prohibition, *P. Morabito v. The Second Judicial District Court of the State of Nevada in and for the County of Washoe*; Case No. 65319 (filed 04/01/2014)	Vol. 7, 1075–1104
5	Order Denying Petition for Writ of Prohibition; Case No. 65319 (filed 04/18/2014)	Vol. 7, 1105–1108
6	Order Granting Summary Judgment; Case No. BK-N-13-51237 (filed 12/17/2014)	Vol. 7, 1109–1112
Recommendation for Order RE: *Defendants' Motion to Partially Quash,* filed on March 10, 2016 (filed 06/13/2016)		Vol. 7, 1113–1124
Confirming Recommendation Order from June 13, 2016 (filed 07/06/2016)		Vol. 7, 1125–1126
Recommendation for Order RE: *Plaintiff's Motion to Compel Production of Documents*, filed on April 8, 2016 (filed 09/01/2016)		Vol. 7, 1127–1133

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)</td><td>Vol. 7, 1134–1135</td></tr>
<tr><td colspan="2">Plaintiff's Application for Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 11/21/2016)</td><td>Vol. 8, 1136–1145</td></tr>
<tr><td colspan="2">Exhibits to Plaintiff's Application for Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 11/21/2016)</td><td>Vol. 8, 1146–1148</td></tr>
<tr><td>2</td><td>Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)</td><td>Vol. 8, 1149–1151</td></tr>
<tr><td>3</td><td>Recommendation for Order RE: Plaintiff's Motion to Compel Production of Documents, filed on April 8, 2016 (filed 09/01/2016)</td><td>Vol. 8, 1152–1159</td></tr>
<tr><td>4</td><td>Plaintiff's Motion to Compel Production of Documents (filed 04/08/2016)</td><td>Vol. 8, 1160–1265</td></tr>
<tr><td>5</td><td>Opposition to Plaintiff's Motion to Compel Production of Documents (filed 04/25/2016)</td><td>Vol. 8, 1266–1273</td></tr>
<tr><td>6</td><td>Reply in Support of Plaintiff's Motion to Compel Production of Documents (filed 05/09/2016)</td><td>Vol. 8, 1274–1342</td></tr>
<tr><td>7</td><td>Correspondences between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq. (dated 09/22/2016)</td><td>Vol. 8, 1343–1346</td></tr>
<tr><td>8</td><td>Edward Bayuk's Supplemental Responses to Plaintiff's Second Set of Requests for Production (dated 10/25/2016)</td><td>Vol. 8, 1347–1352</td></tr>
</table>

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order (filed 12/19/2016</td><td>Vol. 9, 1353–1363</td></tr>
<tr><td colspan="2">Exhibits to Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Declaration of Edward Bayuk in Support of Opposition to Plaintiff's Application for Order to Show Cause (filed 12/19/2016)</td><td>Vol. 9, 1364–1367</td></tr>
<tr><td>2</td><td>Declaration of Frank C. Gilmore, Esq., in Support of Opposition to Plaintiff's Application for Order to Show Cause (filed 12/19/2016)</td><td>Vol. 9, 1368–1370</td></tr>
<tr><td>3</td><td>Redacted copy of the September 6, 2016, correspondence of Frank C. Gilmore, Esq.</td><td>Vol. 9, 1371–1372</td></tr>
<tr><td colspan="2">Order to Show Cause Why Defendant, Edward Bayuk Should Not Be Held in Contempt of Court Order (filed 12/23/2016)</td><td>Vol. 9, 1373–1375</td></tr>
<tr><td colspan="2">Response: (1) to Opposition to Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order and (2) in Support of Order to Show Cause (filed 12/30/2016)</td><td>Vol. 9, 1376–1387</td></tr>
<tr><td colspan="2">Minutes of January 19, 2017 Deposition of Edward Bayuk in RE: insurance policies (filed 01/19/2017)</td><td>Vol. 9, 1388</td></tr>
<tr><td colspan="2">Minutes of January 19, 2017 hearing on Order to Show Cause (filed 01/30/2017)</td><td>Vol. 9, 1389</td></tr>
<tr><td colspan="2">Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP (filed 07/18/2017)</td><td>Vol. 9, 1390–1404</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP		
Exhibit	**Document Description**	
1	Correspondence between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq., dated March 8, 2016	Vol. 9, 1405–1406
2	Correspondence between Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq., dated March 8, 2016, with attached redlined discovery extension stipulation	Vol. 9, 1407–1414
3	Jan. 3 – Jan. 4, 2017, email chain from Teresa M. Pilatowicz, Esq., and Frank Gilmore, Esq.	Vol. 9, 1415–1416
4	Declaration of Frank C. Gilmore, Esq., in Support of Motion to Quash (filed 07/18/2017)	Vol. 9, 1417–1420
5	January 24, 2017 email from Teresa M. Pilatowicz, Esq.,	Vol. 9, 1421–1422
6	Jones Vargas letter to HR and P. Morabito, dated August 16, 2010	Vol. 9, 1423–1425
7	Excerpted Transcript of July 26, 2011 Deposition of Sujata Yalamanchili, Esq.	Vol. 9, 1426–1431
8	Letter dated June 17, 2011, from Hodgson Russ ("HR") to John Desmond and Brian Irvine on Morabito related issues	Vol. 9, 1432–1434
9	August 9, 2013, transmitted letter to HR	Vol. 9, 1435–1436
10	Excerpted Transcript of July 23, 2014 Deposition of P. Morabito	Vol. 9, 1437–1441
11	Lippes Mathias Wexler Friedman LLP, April 3, 2015 letter	Vol. 9, 1442–1444

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Motion to Quash Subpoena (cont.)		
12	Lippes Mathias Wexler Friedman LLP, October 20, 2010 letter RE: Balance forward as of bill dated 09/19/2010 and 09/16/2010	Vol. 9, 1445–1454
13	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 9, 1455–1460
(1) Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP; and (2) Countermotion for Sanctions and to Compel Resetting of 30(b)(3) Deposition of Hodgson Russ LLP (filed 07/24/2017)		Vol. 10, 1461–1485
Exhibits to (1) Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP; and (2) Countermotion for Sanctions and to Compel Resetting of 30(b)(3) Deposition of Hodgson Russ LLP		
Exhibit	**Document Description**	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of (1) Opposition to Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP (filed 07/24/2017)	Vol. 10, 1486–1494
A-1	Defendants' NRCP Disclosure of Witnesses and Documents (dated 12/01/2014)	Vol. 10, 1495–1598
A-2	Order Granting Motion to Compel Responses to Deposition Questions; Case No. BK-N-13-51237 (filed 02/03/2016)	Vol. 10, 1599–1604

	DOCUMENT DESCRIPTION	LOCATION
Exhibits to (1) Opposition to Motion to Quash Subpoena; and (2) Countermotion for Sanctions (cont.)		
A-3	Recommendation for Order RE: *Defendants' Motion to Partially Quash,* filed on March 10, 2016 (filed 06/13/2016)	Vol. 10, 1605–1617
A-4	Confirming Recommendation Order from September 1, 2016 (filed 09/16/2016)	Vol. 10, 1618–1620
A-5	Subpoena – Civil (dated 01/03/2017)	Vol. 10, 1621–1634
A-6	Notice of Deposition of Person Most Knowledgeable of Hodgson Russ LLP (filed 01/03/2017)	Vol. 10, 1635–1639
A-7	January 25, 2017 Letter to Hodgson Russ LLP	Vol. 10, 1640–1649
A-8	Stipulation Regarding Continued Discovery Dates (Sixth Request) (filed 01/30/2017)	Vol. 10, 1650–1659
A-9	Stipulation Regarding Continued Discovery Dates (Seventh Request) (filed 05/25/2017)	Vol. 10, 1660–1669
A-10	Defendants' Sixteenth Supplement to NRCP Disclosure of Witnesses and Documents (dated 05/03/2017)	Vol. 10, 1670–1682
A-11	Rough Draft Transcript of Garry M. Graber, Dated July 12, 2017 (Job Number 394849)	Vol. 10, 1683–1719
A-12	Sept. 15-Sept. 23, 2010 emails by and between Hodgson Russ LLP and Other Parties	Vol. 10, 1720–1723
Reply in Support of 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 08/03/2017)		Vol. 11, 1724–1734

DOCUMENT DESCRIPTION		LOCATION
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: *Defendants' Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP*, 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 *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 10/12/2010)	Vol. 12, 1830–1846
3	Judgment in *Consolidated Nevada Corp., et al v. JH. et al.;* Case No. CV07-02764 (filed 08/23/2011)	Vol. 12, 1847–1849

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)</td><td>Vol. 18, 2737–2748</td></tr>
<tr><td colspan="2">Exhibit to Opposition to Objection to Recommendation for Order</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>A</td><td>Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)</td><td>Vol. 18, 2749–2752</td></tr>
<tr><td colspan="2">Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)</td><td>Vol. 18, 2753–2758</td></tr>
<tr><td colspan="2">Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2759–2774</td></tr>
<tr><td colspan="2">Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)</td><td>Vol. 18, 2775–2790</td></tr>
<tr><td colspan="2">Exhibits to Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Judgment in Consolidated Nevada Corp., et al v. JH. et al.; Case No. CV07-02764 (filed 08/23/2011)</td><td>Vol. 18, 2791–2793</td></tr>
<tr><td>2</td><td>Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco</td><td>Vol. 18, 2794–2810</td></tr>
<tr><td>3</td><td>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)</td><td>Vol. 18, 2811–2814</td></tr>
</table>

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibit to Defendants' Reply in Support of Motions in Limine</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Chapter 7 Trustee, William A. Leonard's Responses to Defendants' First Set of Interrogatories (dated 05/28/2015)</td><td>Vol. 20, 3218–3236</td></tr>
<tr><td colspan="2">Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich (filed 10/08/2018)</td><td>Vol. 20, 3237–3250</td></tr>
<tr><td colspan="2">Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Excerpt of Matrix Report (dated 10/13/2010)</td><td>Vol. 20, 3251–3255</td></tr>
<tr><td>2</td><td>Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)</td><td>Vol. 20, 3256–3270</td></tr>
<tr><td>3</td><td>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</td><td>Vol. 20, 3271–3272</td></tr>
<tr><td>4</td><td>Excerpted Transcript of March 29, 2016 Deposition of Jan Friederich</td><td>Vol. 20, 3273–3296</td></tr>
<tr><td colspan="2">Defendants' Objections to Plaintiff's Pretrial Disclosures (filed 10/12/2018)</td><td>Vol. 20, 3297–3299</td></tr>
<tr><td colspan="2">Objections to Defendants' Pretrial Disclosures (filed 10/12/2018)</td><td>Vol. 20, 3300–3303</td></tr>
<tr><td colspan="2">Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude the Testimony of Jan Friederich (filed 10/12/2018)</td><td>Vol. 20, 3304–3311</td></tr>
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<tr><th colspan="2">DOCUMENT DESCRIPTION</th><th>LOCATION</th></tr>
<tr><td colspan="2">Minutes of September 11, 2018, Pre-trial Conference (filed 10/19/2018)</td><td>Vol. 20, 3312</td></tr>
<tr><td colspan="2">Stipulated Facts (filed 10/29/2018)</td><td>Vol. 20, 3313–3321</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 20, 3322–3325</td></tr>
<tr><td colspan="2">Plaintiff's Points and Authorities Regarding Authenticity and Hearsay Issues (filed 10/31/2018)</td><td>Vol. 20, 3326–3334</td></tr>
<tr><td colspan="2">Clerk's Trial Exhibit List (filed 02/28/2019)</td><td>Vol. 21, 3335–3413</td></tr>
<tr><td colspan="2">Exhibits to Clerk's Trial Exhibit List</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Certified copy of the Transcript of September 13, 2010 Judge's Ruling; Case No. CV07-02764</td><td>Vol. 21, 3414–3438</td></tr>
<tr><td>2</td><td>Findings of Fact, Conclusions of Law, and Judgment; Case No. CV07-02764 (filed 10/12/2010)</td><td>Vol. 21, 3439–3454</td></tr>
<tr><td>3</td><td>Judgment; Case No. CV07-0767 (filed 08/23/2011)</td><td>Vol. 21, 3455–3456</td></tr>
<tr><td>4</td><td>Confession of Judgment; Case No. CV07-02764 (filed 06/18/2013)</td><td>Vol. 21, 3457–3481</td></tr>
<tr><td>5</td><td>November 30, 2011 Settlement Agreement and Mutual Release</td><td>Vol. 22, 3482–3613</td></tr>
<tr><td>6</td><td>March 1, 2013 Forbearance Agreement</td><td>Vol. 22, 3614–3622</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
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 NRCP 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff's First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

	DOCUMENT DESCRIPTION	LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

	DOCUMENT DESCRIPTION	LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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	*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)	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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

	DOCUMENT DESCRIPTION	LOCATION
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

	DOCUMENT DESCRIPTION	LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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 Caparisons 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

DOCUMENT DESCRIPTION		LOCATION
Exhibits to Clerk's Trial Exhibit List (cont.)		
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

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

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

<table>
<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)</td><td>Vol. 51, 8836–8858</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 51, 8859–8864</td></tr>
<tr><td colspan="2">Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8865–8870</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Copy of June 22, 2019 Notice of Execution and two Write of Executions</td><td>Vol. 51, 8871–8896</td></tr>
<tr><td>2</td><td>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)</td><td>Vol. 51, 8897–8942</td></tr>
<tr><td colspan="2">Notice of Claim of Exemption from Execution (filed 06/28/2019)</td><td>Vol. 51, 8943–8949</td></tr>
<tr><td colspan="2">Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)</td><td>Vol. 51, 8950–8954</td></tr>
<tr><td colspan="2">Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Las Vegas June 22, 2019 letter</td><td>Vol. 51, 8955–8956</td></tr>
<tr><td>2</td><td>Writs of execution and the notice of execution</td><td>Vol. 51, 8957–8970</td></tr>
</table>

DOCUMENT DESCRIPTION		**LOCATION**
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

DOCUMENT DESCRIPTION		LOCATION
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

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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)</td><td>Vol. 52, 9125–9127</td></tr>
<tr><td colspan="2">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)</td><td>Vol. 52, 9128–9130</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)</td><td>Vol. 52, 9131–9134</td></tr>
<tr><td colspan="2">Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)</td><td>Vol. 52, 9135–9137</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)</td><td>Vol. 52, 9138–9141</td></tr>
<tr><td colspan="2">Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019)</td><td>Vol. 52, 9142–9146</td></tr>
<tr><td colspan="2">Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019)</td><td>Vol. 52, 9147–9162</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>March 3, 2011 Deposition Transcript of P. Morabito</td><td>Vol. 52, 9163–9174</td></tr>
<tr><td>2</td><td>Mr. Bayuk’s September 23, 2014 responses to Plaintiff’s first set of requests for production</td><td>Vol. 52, 9175–9180</td></tr>
<tr><td>3</td><td>September 28, 2015 Deposition Transcript of Edward Bayuk</td><td>Vol. 52, 9181–9190</td></tr>
<tr><td colspan="2">Reply to Plaintiff’s Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019)</td><td>Vol. 52, 9191–9194</td></tr>
<tr><td colspan="2">Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019)</td><td>Vol. 52, 9195</td></tr>
<tr><td colspan="2">Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)</td><td>Vol. 52, 9196–9199</td></tr>
<tr><td colspan="2">Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Plaintiff’s Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 52, 9200–9204</td></tr>
<tr><td>2</td><td>Bayuk and the Bayuk Trust’s proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 52, 9205–9210</td></tr>
<tr><td>3</td><td>July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.</td><td>Vol. 52, 9211–9212</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
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

<table>
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<tr><td colspan="2">Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)</td><td>Vol. 53, 9253</td></tr>
<tr><td colspan="2">Order Denying Claim of Exemption (filed 08/02/2019)</td><td>Vol. 53, 9254–9255</td></tr>
<tr><td colspan="2">Bayuk's Case Appeal Statement (filed 08/05/2019)</td><td>Vol. 53, 9256–9260</td></tr>
<tr><td colspan="2">Bayuk's Notice of Appeal (filed 08/05/2019)</td><td>Vol. 53, 9261–9263</td></tr>
<tr><td colspan="2">Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Case Appeal Statement (filed 08/05/2019)</td><td>Vol. 53, 9264–9269</td></tr>
<tr><td colspan="2">Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal (filed 08/05/2019)</td><td>Vol. 53, 9270–9273</td></tr>
<tr><td colspan="2">Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)</td><td>Vol. 53, 9274–9338</td></tr>
<tr><td>2</td><td>Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)</td><td>Vol. 53, 9339–9341</td></tr>
<tr><td>3</td><td>Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)</td><td>Vol. 53, 9342–9345</td></tr>
<tr><td>4</td><td>Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)</td><td>Vol. 53, 9346–9349</td></tr>
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<tr><th colspan="2"><u>DOCUMENT DESCRIPTION</u></th><th><u>LOCATION</u></th></tr>
<tr><td colspan="2">Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</td><td>Vol. 53, 9350–9356</td></tr>
<tr><td colspan="2">Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)</td><td>Vol. 53, 9357–9360</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)</td><td>Vol. 53, 9361–9364</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)</td><td>Vol. 53, 9365–9369</td></tr>
<tr><td colspan="2">Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)</td><td>Vol. 53, 9370–9373</td></tr>
<tr><td colspan="2">Exhibit to Notice of Entry of Order Denying Claim of Exemption</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Claim of Exemption (08/02/2019)</td><td>Vol. 53, 9374–9376</td></tr>
<tr><td colspan="2">Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)</td><td>Vol. 54, 9377–9401</td></tr>
<tr><td colspan="2">Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration</td><td></td></tr>
<tr><td>Exhibit</td><td>Document Description</td><td></td></tr>
<tr><td>1</td><td>Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)</td><td>Vol. 54, 9402–9406</td></tr>
</table>

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

DOCUMENT DESCRIPTION		LOCATION
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

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

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Jacqueline Bryant
Clerk of the Court
Transaction # 5861151 : tbritton

2645
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Attorneys for Defendants Snowshoe Petroleum, Inc., Superpumper, Inc., Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito.

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

vs.

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

Defendants.
_____/

CASE NO.: CV13-02663

DEPT. NO.: B1

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

Defendant EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST (collectively, "Bayuk") hereby opposes Plaintiff's Motion for Order to Show Cause Why Defendant Bayuk Should Not Be Held in Contempt of Court Order. This Opposition is made and supported by the following Memorandum of Points and Authorities, the

Declaration of Frank C. Gilmore, Esq., the Declaration of Edward Bayuk, and the pleadings and papers on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION

I. INTRODUCTION

Plaintiff filed the instant Motion knowing full well that Bayuk does not have the documents Plaintiff has requested. Bayuk's counsel explained to Plaintiff's counsel, as plainly as can be explained – in writing and over the telephone -- that no responsive documents exist, and precisely why Defendants opposed the Motion to Compel.

The instant Motion presents no evidence that Bayuk (or his counsel) knowingly, willfully, or intentionally violated a Court Order. Instead, the Motion complains that it was required to brief the Motion to Compel, only to be told afterward that Bayuk possesses no responsive documents. An Order to Show Cause cannot issue unless Plaintiff has met his burden with credible and admissible proof that this issue was caused by something other than Bayuk's misunderstanding of the scope of Plaintiff's original request for insurance documents. Bayuk and his counsel attach their own respective declarations repeating, again, why no responsive documents can be produced pursuant to the Order. The reason no documents can be produced is because no responsive documents exist in Bayuk's care, custody, or control, and no responsive documents have existed in Bayuk's possession for some years prior to the request. The Motion never had any basis in law or fact, and Plaintiff knew that before he filed it. This Motion exacerbates the precise problem Plaintiff complains of. It should be denied without a hearing.

II. STATEMENT OF RELEVANT FACTS

This case is an off-shoot from a dispute between the original Plaintiffs to this case, JH, INC., JERRY HERBST, and BERRY-HINCKLEY INDUSTRIES ("Herbst"), and their long-time adversary, PAUL MORABITO ("Morabito"). That original dispute centered around disagreement as to the post-closing obligations related to the purchase and sale of BERRY-HINCKLEY INDUSTRIES, which owned and managed several gas stations and convenience stores in Northern Nevada. That original dispute – which is commonly referred to as the Herbst Litigation – was commenced in 2007, and tried to Department 6 in the summer of 2009. Edward Bayuk ("Bayuk")

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and Salvatore Morabito ("Salvatore") were counter-defendants in the Herbst Litigation, ***but were exonerated and dismissed*** from the case at trial. See Declaration of Edward Bayuk, **EXHIBIT 1** hereto, at ¶ 3.

After the trial resulted in a substantial judgment against Paul Morabito, both Bayuk and Salvatore, who were found to have no liability to Herbst whatsoever, undertook to separate their businesses and jointly-owned properties from Paul Morabito so as to avoid the post-trial entanglements with the Herbsts that were sure to occur. Exhibit 1, at ¶ 4.

In furtherance of their effort to separate their business lives from Paul Morabito, Bayuk and Salvatore hired Dennis Vacco, Esq., an attorney of unimpeachable credentials[1], to facilitate the business division. Exhibit 1, at ¶ 5. Using certified appraisers and business valuators, Mr. Vacco assisted Bayuk and Salvatore with valuing their respective interests in the jointly-held entities and interests, and dividing them equitably and transparently. Paul Morabito took title to some property and Bayuk and Salvatore took title to others. Exhibit 1, at ¶ 6.

As Mr. Vacco and his partners have testified under oath, the process was done with an eye toward separating Bayuk and Salvatore from the now 9-year old dispute between Paul Morabito and the Herbsts, and with the goal of ensuring that the transfers were done fair, commercially reasonable, and not subject to subsequent challenge. Unfortunately, neither Mr. Vacco nor Bayuk or Salvatore understood the lengths the Herbsts would be willing to go in order to destroy Paul Morabito and his erst-while business partners. The Herbst promptly used their judgment in Department 6[2] to obtain a Confession of Judgment from Paul Morabito in settlement – in which neither Bayuk nor Salvatore were involved – which they then used to direct Paul Morabito into Involuntary Bankruptcy, a move quite obviously designed to use the power of the United States Trustee to collect their debts.

After the bankruptcy was initiated, Herbst sued Bayuk and Salvatore in *this* action, contending that the property division was fraudulent, and was done for less than equivalent value.

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

[2] Which was on appeal based on numerous evidentiary and legal infirmities.

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Exhibit 1, at ¶ 7. Herbst has challenged each and every division of assets that Mr. Vacco facilitated, even those where Herbst own expert witnesses have concluded that exchange was for fair value. Herbst then convinced the bankruptcy trustee to sue Dennis Vacco and his firm. Herbst served demands and subpoenas on Bayuk and Salvatore's lawyers (including the undersigned) to turn over their entire files, without regard for any work-product or attorney-client privilege. In other words, this case, and the dispute from which it stems, is a scorched-earth, no-holds-barred, "grind him into the dirt," battle to the death. A cursory review of the Herbst conduct in this case reveals that these superlatives are not over-dramatization of the dispute. Bayuk and Salvatore are the collateral damage, caught in the middle.

The present Motion arises from a simple dispute. William Leonard, as the bankruptcy trustee (who substituted into this case as Plaintiff for Herbst), served a Request for Production on January 29, 2016, which sought production of all insurance policies held by Bayuk and the Bayuk Living Trust, for a 7-year time period (2005-2011), without limitation in scope.

In February 2016, Bayuk, Salvatore Morabito, and their counsel met in Los Angeles. Among other things, the three of them discussed four sets of requests for production that had been served by Plaintiff and were pending. During the meeting, the issue of the request for "all documents" related to "all insurance policies" was discussed. The scope of the request (2005-2011) was not discussed. However, as the other RFP's served on Bayuk and Salvatore Morabito that were discussed in that meeting consistently requested for documents from various years "to the present," it was mistakenly assumed by Bayuk that the request for insurance documents was from 2005 to the present. The meeting contained discussion about the overly broad scope of the request; it was decided at that meeting, that the requests would be objected to on that basis and that a Court order compelling the request would be necessary before any documents would be produced. Exhibit 1, at ¶8; see also **EXHIBIT 2**, Declaration of Frank C. Gilmore at ¶2.

At no time during the discussion was Bayuk ever questioned if he possessed responsive documents to the scope of the actual request – 2005-2011 – instead of the scope he had assumed, which was 2005 to the present. Bayuk's counsel assumed, without inquiring, that Bayuk had responsive documents. Otherwise, there would have been no cause for the discussion at all; the

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response would have simply indicated that no responsive documents were available. Exhibit 1, at ¶ 9; see also Exhibit 2, at ¶ 4.

Ultimately, Bayuk objected to the request because the demand sought confidential and personal information, was overbroad, was not narrowly tailored, and the bulk of the information that Leonard sought was not reasonably calculated to lead to the discovery of admissible evidence. See Exhibit 1, at ¶ 10; see also Exhibit 2, at ¶ 4. Moreover, the information Leonard sought - "the value ascribed to that property by Bayuk" (Motion to Compel, p. 9:16-18) is available from other sources without resort to invading Bayuk's personal and confidential information to obtain it. Bayuk urged the Commissioner to agree that this trial is not a debtor's exam, and to prevent the disclosure of personal and confidential information. Exhibit 1, at ¶11; see also, Exhibit 2, at ¶ 14.

On September 1, 2016, the Commissioner issued his decision. He agreed with Bayuk that the requests were objectionably overbroad. However, he ultimately agreed with Leonard's post-request limitation as to the scope of the insurance documents, and recommended that documents be produced by September 16. After Bayuk's counsel returned from out of the country following Labor Day weekend, he sent the recommendation to Bayuk and Salvatore Morabito, explaining the recommendation and the timing requirement. (A redacted copy of the Septembe6 6, 2016, email is attached hereto as **EXHIBIT 3**; see also Exhibit 2, at ¶ 5). About a week later, Bayuk and his counsel spoke about the Recommendation; it was during that conversation that Bayuk realized, for the first time, that the scope of the request was 2005-2011. Bayuk immediately and candidly explained to counsel that he thought the request was from 2005 to the present and that while he was sure he had the last few years of insurance documents, he was absolutely positive that he had nothing as old as 2011. It was then that counsel realized that Bayuk had misapprehended the scope of the original request. At no time was there any desire for gamesmanship, unnecessary expense, or wasting of the Court's time. This was a misunderstanding, and nothing more. Exhibit 1, at ¶ 12; see also Exhibit 2, at ¶ 6.

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III. ARGUMENT

A. The Undisputed Proof Establishes That Neither Defendants Nor Their Counsel Intentionally or Knowingly Violated Any Court Order.

Where a party commits a violation of a Decree which is not "in the immediate view and presence of the court or judge," then the appropriate remedy is to seek an Order compelling the violator to appear and show cause why a contempt order should not issue. NRS 22.040. This Court has authority to issue a civil contempt order for displayed disobedience of an order or decree that spells out clear and specific requirements to be met. See Southwest Gas v. Flintkote, 99 Nev. 127 (1983). However, "An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him." Div. of Child & Family Services v. Eighth Judicial Dist. Court, 120 Nev. 445, 454-55. Moreover, the violation must be a knowing and willful disregard for that party's obligations under the Order. The burden of proof with regard to civil contempt is clear and convincing evidence. "To establish civil contempt, a movant must show by clear and convincing evidence that a specific order of court has been violated." Toussaint v. McCarthy, 597 F. Supp. 1427, 1430 (N.D. Cal. 1984). No such violation occurred here, and no Order to Show Cause is warranted.

Bayuk has shown, as evidenced in his attached Declaration, that he did not willfully engage in gamesmanship. He genuinely believed that the scope of the request included documents which he possesses, and he rightfully instructed his counsel to object. Bayuk has also declared, under oath, that he does not possess responsive documents. No violation of any Court Order occurred. Exhibit 1, at ¶ 13; see also Exhibit 2 at ¶ 7.

B. The Objection to the Motion to Compel Was Not Wasteful, as the Request for Production of "Any and All Insurance Policies" from January 2005 to December 2011 was Overbroad and Clearly Sought Irrelevant Information and Is Pertinent to the Trustee's Current Discovery Requests.

Plaintiff contends that Motion to Compel briefing and Recommendation was wasteful in light of the fact that Bayuk should have known he did not possess responsive documents. First,

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Bayuk has declared he did not realize he had no responsive documents when he requested the objection. Second, as set forth in Plaintiff's Motion, the determination of the appropriate scope of Plaintiff's request for tax and insurance information was not a redundant determination. The fact is that Plaintiff sought documents which were clearly overbroad and clearly not relevant. The Chapter 7 Trustee continues to seek such documents from non-party Paul Morabito, and, as of the date of this filing, from third-party insurance providers and brokers.[3] Determination of the appropriate scope of those requests was accomplished by way of the Motion and briefing. Plaintiff initially believed he was entitled to "all documents" regarding "all insurance policies" held by Bayuk, irrespective of whether the policies had any bearing on the property at issue. The Motion and resulting Recommendation solidified the appropriate scope to be used for all current and future requests for insurance documents. Although it is not relevant to Bayuk, as he does not possess responsive documents, the clear guidance given by the Commissioner in the Recommendation will guide the parties in the pending and future requests by Plaintiff on the subject.

C. Plaintiff Has Not Made An Adequate Showing To Obtain a Spoliation Instruction.

Plaintiff requests the Court enter, as a sanction, a spoliation instruction to the extent that an "inference" can be reached by the Court that the information contained in the requested documents contained information unfavorable to the opponent.

Myriad issues preclude this Court from issuing such an instruction here. First, there is no credible evidence suggesting that the Defendants, or their counsel, engaged in any intentional or willful conduct to destroy or lose the documents. Plaintiff's insinuation that the passage of time from the request to the Recommendation provided Defendants extra time to dispose of the documents is a non-sense accusation. If Defendants were inclined to destroy or negligently lose documents, they could have done so before the initial objection letter was sent to the Plaintiffs.

[3] On December 13, 2016, the Plaintiff petitioned the United States Bankruptcy Court for permission to depose and subpoena insurance documents from *AIG PROPERTY CASUALTY COMPANY and BENCHMARK CAPITAL REALTY, LLC,* who Plaintiff believes to have provided policies of insurance to Bayuk and Paul Morabito at relevant times.

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Indeed, had Defendants desired to make the documents disappear, they would have done so immediately, and then simply indicated that they did not possess the records. The fact that they instructed counsel to oppose the request, and then oppose the Motion, indicates just the opposite – that they believed they had responsive documents which they wished to protect from disclosure.

Second, there is only marginal relevance between the insurance documents and the claims asserted. Even if Plaintiff could convince the Court what they suspect they will find on old insurance policies was even remotely possible, Plaintiff could not adequately tie that information to any probative evidence that could be used to support their allegations. Presumably, Plaintiff expects to see insurance policies which identify policy limits for various real and personal property that was owned by Bayuk at the time just prior to the property exchange in 2010. Plaintiff no doubt will suggest that the policy limits for these insurance policies is somehow competent evidence of the "fair market value" of the assets which Plaintiff complains were improperly transferred. (See NRS112.170). The very basis of this presumption is flawed. There is no showing, here in this Motion, or in anything else that has occurred in this case, that a policy limit of insurance is *probative and relevant evidence of the fair value of anything*. Plaintiffs do not even attempt to make that connection here; nor could they, because there is no such reasonable and logical conclusion, making the request for the insurance policies of dubious sincerity.

Third, Plaintiff has not explained why he thinks it is so unreasonable that Defendants would not have insurance records more than 11 years old. Regular human beings, who do not live their life in anticipation of litigation, have absolutely no practical reason to maintain insurance documents well past the policy period. This is particularly true when there are several properties and several policies over that time period. It is not reasonable to conclude, without a more definite showing, why this Court should simple infer that Bayuk has 11years worth of insurance records, and that he is simply refusing to provide them. The more reasonable and rational conclusion is that normal people do not keep insurance records for more than 5 years, and that they are simply not in Bayuk's possession to produce them.

Lastly, the inference Plaintiff seeks is reserved for those instances when it is shown to the satisfaction of the Court that evidence was negligently lost or destroyed. Bass-Davis v. Davis, 122

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Nev. 442, 448–49, 134 P.3d 103, 106–07 (2006 "An inference has been defined as "[a] logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, a trier of fact may conclude exists from the established facts." Id. No such evidence exists here.

III. CONCLUSION

For the reasons set forth above, Bayuk respectfully requests this Court enter its Order denying the Motion for Order to Show Cause in its entirety without a hearing.

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 19th day of December, 2016.

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

/s/ Frank C. Gilmore
BARRY L. 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 **OPPOSITION TO PLAINTIFF'S APPLICATION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT ORDER** 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 19th day of December, 2016.

Mary Carroll Davis

Robison, Belaustegui, Sharp & Low
71 Washington St.
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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	Declaration of Edward Bayuk in Support of Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order	3
2	Declaration of Frank C. Gilmore, Esq. in Support of Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court Order	2
3	Redacted copy of the Septembe6 6, 2016, email	1

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EXHIBIT 1

EXHIBIT 1

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

I, EDWARD BAYUK, being first duly sworn under penalty of perjury, depose and say:

1. I am an individual above the age of 18 and make the following statements on my own personal knowledge, except where stated to be on my information and belief.

2. I am one of the Defendants and am represented by Frank C. Gilmore, Esq. and Robison, Belaustegui, Sharp & Low in this action.

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

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

5. In furtherance of my effort to separate my business life from Paul Morabito, I hired Dennis Vacco, Esq., to facilitate the business division.

6. Using certified appraisers and business valuators, Mr. Vacco assisted me and Salvatore Morabito with valuing our respective interests in the jointly-held entities and interests, and dividing them equitably and transparently. Paul Morabito took title to some property and Salvatore Morabito and I took title to others.

7. After the bankruptcy was initiated, Herbst sued Salvatore Morabito and I in *this*

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action, contending that the property division with Paul Morabito was fraudulent, and was done for less than equivalent value.

8. In February 2016, Salvatore Morabito and I met with our lawyer, Frank Gilmore, in Los Angeles. Among other things, the three of us discussed four sets of requests for production that had been served by Herbst and were pending. During the meeting, the issue of the request for "all documents" related to "all insurance policies" was discussed. The scope of the request (2005-2011) was not discussed. However, as the other RFP's served on Salvatore Morabito and I that were discussed in that meeting consistently requested for documents from various years "to the present," I assumed that the request for all my insurance documents was from 2005 to the present. I believed the request was overreaching and not fair. In our meeting, we discussed with our lawyer the overly broad scope of the request. I decided at that meeting, after consult with my lawyer, that the requests should be objected to and that a Court order compelling the request would be necessary before any documents would be produced. I instructed my lawyer to make the objection.

9. At no time during the discussion with my lawyer was I ever questioned if I possessed responsive documents to the scope of the actual request – 2005-2011 – instead of the scope I had assumed, which was 2005 to the present. I can only conclude that my counsel assumed, without inquiring, that I had responsive documents from 2005-2011. Otherwise, there would have been no cause for the discussion at all; I would have simply told him that I did not have any responsive documents from those dates.

10. Ultimately, I decided to object to the request because the demand sought confidential and personal information.

11. Moreover, I agree that the information Leonard sought - "the value ascribed to that property by Bayuk" (Motion to Compel, p.9:16-18) is available from other sources without resort to invading my personal and confidential information to obtain it. I urged my lawyer to argue that this trial is not a debtor's exam, and to work to prevent the disclosure of personal and confidential information.

12. About a week after receiving the recommendation and order sent by my counsel,

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my counsel and I spoke about the Recommendation; it was during that conversation that I realized, for the first time, that the scope of the request was 2005-2011. I immediately and candidly explained to counsel that I thought the request was from 2005 to the present and that while I was sure I had the last few years of insurance documents, I was absolutely positive that I had nothing as old as 2011. It was then that counsel realized that I had misapprehended the scope of the original request. At no time was there any desire on my part for gamesmanship, unnecessary expense, or wasting of the Court's time. This was a misunderstanding, and nothing more.

13. I did not, and never have, willfully engage in litigation gamesmanship. I genuinely believed that the scope of the request included documents which I possessed, and I rightfully instructed my counsel to object. I also declare, under oath, that I do not possess responsive documents. No violation of any Court Order occurred.

Dated this 19 day of December, 2016.

EDWARD BAYUK

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Clerk of the Court
Transaction # 5861151 : tbritton

EXHIBIT 2

EXHIBIT 2

DECLARATION OF FRANK C. GILMORE, ESQ. IN SUPPORT OF OPPOSITION TO PLAINTIFF'S APPLICATION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT ORDER

I, Frank C. Gilmore, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in all courts in the State of Nevada, and am counsel of record for the Defendants in this action. I am a shareholder in the law firm of Robison, Belaustegui, Sharp & Low, and have been licensed to practice law in this State since2006.

2. In February 2016, Bayuk, Salvatore Morabito, and I met in Los Angeles. Among other things, the three of us discussed four sets of requests for production that had been served by Plaintiff and were pending. During the meeting, the issue of the request for "all documents" related to "all insurance policies" was discussed. The scope of the request (2005-2011) was not discussed. However, as the other RFP's served on Bayuk and Salvatore Morabito that were discussed in that meeting consistently requested for documents from various years "to the present," I can only conclude that Bayuk had read the request carefully and that he was aware that the request for insurance documents was from 2005 to the present. The meeting contained discussion about the overly broad scope of the request; it was decided at that meeting that the requests would be objected to on that basis and that a Court order compelling the request would be necessary before any documents would be produced.

3. At no time during the discussion was Bayuk did I ever question if he possessed documents from 2005-2011. I assumed, without inquiring, that Bayuk had responsive documents and was aware of the actual scope of the request. Otherwise, there would have been no cause for the discussion at all; the response would have simply indicated that no responsive documents were available.

4. Ultimately, Bayuk instructed me to object to the request because the demand sought confidential and personal information, was overbroad, was not narrowly tailored, and the bulk of the information that Leonard sought was not reasonably calculated to lead to the discovery of admissible evidence.

5. On September 1, 2016, the Commissioner issued his decision. He agreed with

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Bayuk that the requests were objectionably overbroad. However, he ultimately agreed with Leonard's post-request limitation as to the scope of the insurance documents, and recommended that documents be produced by September 16. After I returned from out of the country following Labor Day weekend, I sent the recommendation to Bayuk and Salvatore Morabito, explaining the recommendation and the timing requirement. A true and accurate copy of the redacted copy of the September 6, 2016, email is attached to this Motion as Exhibit 3.

6. About a week later, Bayuk and I spoke about the Recommendation; it was during that conversation that Bayuk realized, for the first time, that the scope of the request was 2005-2011. Bayuk immediately and candidly explained to me that he thought the request was from 2005 to the present and that while he was sure he had the last few years of insurance documents, he told me he was absolutely positive that he had nothing as old as 2011. It was then that I realized that Bayuk had misapprehended the scope of the original request.

7. At no time did I or my client discuss a desire for gamesmanship, unnecessary expense, or wasting of the Court's time. This was a misunderstanding, and nothing more.

8. I would not, and have not, ever willfully engage in a wasteful practice or engage in gamesmanship like I am being accused of in the instant Motion. I objected to the request because I genuinely believed that it was objectionable under the Rules, and I believed that Bayuk had responsive documents. Only when the Recommendation was received was I made aware of the misconception, and I explained this precise scenario to Plaintiff's counsel.

Dated this 16th day of December, 2016.

FRANK C. GILMORE

Robison, Belaustegui, Sharp & Low
71 Washington St.
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Jacqueline Bryant
Clerk of the Court
Transaction # 5861151 : tbritton

EXHIBIT 3

EXHIBIT 3

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, September 06, 2016 10:10 AM
To: Sam Morabito; Sam Morabito <smorabito@superpumper.com> (smorabito@superpumper.com); EWB Bayuk (edwardbayuk@gmail.com)
Cc: Mary Carroll Davis
Subject: Superpumper: Masters Recommendation Re: Insurance
Attachments: 117 Masters Recommendation LEONARD REC 9-1-16.pdf

Gents,

The Discovery Judge entered a recommendation for order on the Motion to Compel the production of the insurance policies related to the houses. The Court agreed that their initial request was overbroad, but has agreed that the limitation on the request -- that Edward provide only those insurance policies that deal with the three houses (El Camino, Los Olivos, and Mary Fleming), and that it be done by the end of next week, Sept 16.

Edward, I will call you in a minute to discuss the ruling and how we need to respond.

Frank

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Transaction # 5870729

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Attorneys for William A. Leonard

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**

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

The Court having reviewed *Plaintiff's Application for Order to Show Cause Why Defendant Edward Bayuk Should Not Be Held in Contempt of Court Order* (the "Application") and exhibits thereto, and good cause appearing therefore, the Application is GRANTED.

Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

IT IS THEREFORE HEREBY ORDERED that on the 19th of January, ~~2016~~ 2017, at the hour of 3:00 o'clock p.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 December 28, 2016.

IT IS HEREBY ORDERED this 19th day of December, 2016.

DISTRICT COURT JUDGE

Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 23 day of December, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

VIA ECF
MARK WEISENMILLER, ESQ.
BARRY BRESLOW, ESQ.
TERESA PILATOWICZ, ESQ.
FRANK GILMORE, ESQ.

JUDICIAL ASSISTANT

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Clerk of the Court
Transaction # 5878327 : tbritton

2582
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Special Counsel to Trustee

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

Date: January 19, 2017
Time: 3:00 p.m.

RESPONSE: (1) TO OPPOSITION TO APPLICATION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF THE COURT ORDER AND (2) IN SUPPORT OF ORDER TO SHOW CAUSE

William Leonard, Chapter 7 Trustee (the "Trustee"), by and through his counsel, the law firm of Garman Turner Gordon LLP, hereby submits this response (the "Response") to the *Opposition to Plaintiff's Application for Order to Show Cause Why Defendant Should Not be*

Held in Contempt of Court Order (the "OSC Opposition"), filed by Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust (collectively, "Bayuk") on December 19, 2016, and in support of the *Order to Show Cause Why Defendant Should Not be Held in Contempt of Court Order* (the "OSC") issued by this Court on December 19, 2016, filed on December 23, 2016, and set for hearing on January 19, 2017 (the "Hearing").

This Response is made and based on *Plaintiff's Application for Order to Show Cause Why Defendant Edward Bayuk Should Not Be Held in Contempt of Court Order* (the "Application"),[1] the memorandum of points and authorities set forth below, the pleadings, papers, and other records on file with the clerk of the above-captioned Court, judicial notice of which is hereby respectfully requested, and any oral argument this Court entertains at the Hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT[2]

Bayuk's argument in opposition to the OSC can be summed up quite easily: Bayuk apparently never bothered to closely review the Requests (1) when he refused to respond to the Requests, (2) when he prepared his objections to the Requests, (3) after an alleged "good faith" meet and confer to narrow the Requests, and (4) after full briefing and submission for nearly five months of the Motion to Compel. Bayuk now argues that, after all that, he simply never had the responsive documents (the "Insurance Documents") that he fought so hard against turning over. Bayuk further contends, "No harm, no foul." Bayuk's position is at worst, unbelievable, or at best, highlights the complete disregard that Bayuk has for this case and this Court's processes and authority. The OSC and requested sanctions are abundantly reasonable in light of Bayuk's

[1] Capitalized terms not otherwise defined herein shall have those meanings ascribed to them in the Application.

[2] Bayuk spends the majority of the Opposition on the "Statement of Relevant Facts" which does little more than recite his disputed position regarding the merits of this case and the case against Paul Morabito giving rise to this case. As it is not relevant to the merits of the Application, Plaintiff has not addressed each allegation and reserves his rights with respect thereto. However, for the avoidance of doubt, Plaintiff disagrees with Bayuk's recitation of the "relevant facts."

actions in this matter.

A. Bayuk's Argument That He Simply Did Not Know What Was Requested Lacks Credibility.

Bayuk suggests in his OSC Opposition that he viewed the Requests when they were initially propounded, believed they included requests from 2005 through the present and therefore, instructed his attorney to object and not produce anything. See OSC Opposition at p. 4, ll. 21-24, p. 6, ll. 18-22. Bayuk's contention ignores Bayuk's duties in responding to the Requests and the multiple times the Requests were addressed even after they were initially propounded.

1. Nevada Rules require that Bayuk identify those documents to which he objects and the reasons therefore before refusing to respond to the Requests and certainly before opposing the Motion to Compel.

As Plaintiff initially pointed out in his Reply in support of the Motion to Compel, when responding to requests for production, Nevada Rule of Civil Procedure ("Rule") 34(b)(2)(C) requires that Bayuk identify responsive documents that are not produced pursuant to an objection. Specifically, Rule 34(b)(2)(C) provides:

> (C) Objections. ***An objection must state whether any responsive materials are being withheld on the basis of that objection***. An objection to part of a request must specify the part and permit inspection of the rest.

Nev. R. Civ. P. 34(b)(2)(C)(emphasis added). Interpreting the parallel Federal Rule, Wright & Miller states:

> The producing party does not need to provide a detailed description or log of all documents withheld, but does need to alert other parties to the fact that documents have been withheld and thereby facilitate an informed discussion of the objection.

8B Fed. Prac. & Proc. Civ. § 2213 (3d ed.) (citing Committee Note to 2015 Amendment to Fed. R. Civ. P. 34).

Thus, in order to maintain his initial objection, Bayuk was required to first conduct an analysis of what documents he had that were responsive to the Requests. Presumably, Bayuk conducted such a search as required by the Nevada Rules. Even if Bayuk's contentions are true –

that he misunderstood the Requests as being from 2005-present instead of 2005-2011 – he must have determined that responsive documents from 2005 to the present existed. Otherwise, Bayuk's response would have been something to the effect that Bayuk only had responsive documents from 2014 to the present and was objecting to the production of those documents. As Bayuk is no doubt aware of his obligations under the Nevada Rules, it is not credible that he did not conduct a search and locate responsive documents prior to objecting to the Requests.

2. Bayuk's position that he failed to understand the Requests is further illogical given the multiple occasions on which the Requests were specifically addressed.

Bayuk contends that because he only quickly reviewed the Requests once in Los Angeles, he was justified in maintaining his forceful opposition to production of the Insurance Documents. Bayuk's argument has no merit when the facts of the entire proceeding are considered.

First, Bayuk contends that his initial confusion was justified, "as the other RFP's served on Salvatore Morabito and I that were discussed in the meeting consistently requested for [sic] documents from various years 'to present,' I assumed the request for all my insurance documents was from 2005 to the present." See Bayuk Decl., ¶ 8, Exhibit "1" to OSC Application. Bayuk's argument crumbles entirely when one views the RFP's mentioned, all of which cover the same time-period, 2005-2011 or 2005-2012. See Application, Exs. 10-13 of Exhibit "4." It is unclear what requests Bayuk refers to that requested documents "to present."

Furthermore, Bayuk ignores the multiple times the Requests were addressed. This again, at best, shows a complete disregard for the discovery process, and at worst, an intentional decision to suppress and withhold documents ordered to be produced. Specifically:

a. On January 29, 2016, the Requests were served requesting all Insurance Documents from January 1, 2005 through December 31, 2011. See Application, Exs. 10, 12 to Exhibit "4."

b. On March 9, 2016, Bayuk responded to the Requests, objecting to production of the Insurance Documents. See id., Exs. 11, 13 to Exhibit "4."

c. On or about March 25, 2016, counsel for Plaintiff and counsel for Bayuk held a meet and confer and, around that time, exchanged multiple correspondence where the requests were further discussed, with specific emphasis on the relevant time periods for the Insurance Documents. See id., Ex. 14 to Exhibit "4."

d. On April 8, 2016, Plaintiff filed the Motion to Compel identifying the need for the Insurance Documents as they specifically related to the time-period of the transfers. See id., Exhibit "4."

e. On April 25, 2016, Bayuk filed the Opposition, noting that the Requests covered the time-period of 2005-2011. See id., Exhibit "5."

f. On May 9, 2016, Plaintiff filed the Reply in support of the Motion to Compel, again identifying the relevant time-period of the Requests. See id., Exhibit "6."

Bayuk wants this Court to believe that, at no time when he was refusing to respond to the Requests, actively opposing the Requests, and causing all parties to incur significant costs relating to the Motion to Compel, did Bayuk ever actually review the Requests that were being made. This position is simply illogical.

3. If Bayuk's contentions are true, his conduct raises significant cause for concern as to all other discovery responses.

Bayuk's allegations, if true, raise concern beyond the instant OSC. If Bayuk is indicating, in the best-case scenario, that he simply failed to carefully read the Requests (1) after the Requests were propounded; (2) after drafting objections to the Requests; (3) after an alleged "good-faith" meet and confer, and (4) after a Motion to Compel, Plaintiff and the Court must wonder how he has treated the other requests made in this case. Of concern, Plaintiff has been entrenched in a more than year-long battle following the production of only approximately 400 pages of documents after a subpoena to Dennis Vacco, Morabito's attorney. In December of this year, Vacco finally turned over tens of thousands of pages of previously wrongfully withheld documents containing, among other things, thousands of e-mails on which Bayuk was copied. Bayuk has never turned over a single such communication despite the fact that they certainly would have been responsive to previous requests.[3] Plaintiff's concern is heightened by the nonchalant statement by Bayuk's counsel that Bayuk cannot be found to have destroyed the Insurance Documents after the Confirming Order because, "[i]f Defendants were inclined to destroy or negligently lose documents, they could have done so before the initial objection letter was sent to the Plaintiffs. Indeed, had Defendants desired to make the documents disappear, they

[3] Plaintiff is still in the process of reviewing the additional production and determining how best to address Bayuk's apparent failure to produce those additional documents.

would have done so immediately, and then simply indicated that they did not possess the records." See OSC Opposition, at p. 7, l. 24 – p.8, l. 4. Bayuk must be forced to explain to this Court his cavalier attitude about responding the Requests so Plaintiff and this Court can further understand how Bayuk has treated all discovery in this case.

B. Bayuk's Tortured Attempt to Justify the Motion to Compel as Some Sort of Appropriate Advisory Opinion Is Unconvincing.

Attempting to divert attention from the fact that Bayuk has willfully failed to either (1) review the Requests to adequately respond thereto or (2) produce Insurance Documents in his possession, Bayuk argues that no sanctions are appropriate because the Motion to Compel was justified as a useful exercise in setting ground rules for future disputes. See OSC Opposition at p. 6, l. 26 – p. 7, l.14. This is nonsense. Motions to Compel are not meant to be motions seeking advisory opinions but rather, are reserved for those cases where, among other things, ". . . a party . . .in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested . . ." Nev. R. Civ. P. 37(a)(2). There is simply no support, nor has Bayuk provided any, that would suggest that a party may appropriately force a motion to compel, and oppose the same, for the sole purpose of determining whether discovery requests are, in theory, proper.

Furthermore, Bayuk's argument that the Motion to Compel was nonetheless a prudent use of resources in light of Bayuk's new found position that Insurance Document do not exist is unavailing. Specifically, Bayuk focuses on the alleged overbreadth of the Requests for "any and all insurance policies" to contend that the Motion to Compel was necessary to limit the scope. The Requests, however, and as addressed by the Discovery Commissioner in his Recommendation for Order, had properly been limited in scope ***prior*** to Plaintiff filing the Motion to Compel. Therefore, Bayuk was not seeking a ruling as to whether "any and all insurance policies" was appropriate. The issue in the Motion to Compel was whether Bayuk was required to produce Insurance Documents from 2005-2011 relating to the real and personal property transferred following the announcement of a significant judgment against Morabito. Through the Recommendation for Order and Confirming Order both by the Discovery

Commission and this Court found the answer to that question to be an unequivocal "yes."

C. Plaintiff Is Entitled to an Adverse Inference Because of Bayuk's Conduct.

As a result of Bayuk's failure to produce Insurance Documents after months of contested proceedings relating to the Requests and entry of the Confirming Order requiring production of the same, Plaintiff has requested an adverse inference as to what the Insurance Documents would show if produced. This is because, considering Bayuk's conduct, there is no other explanation as to why the Insurance Documents have not been produced other than they were intentionally or willfully suppressed, or have otherwise been negligently lost or destroyed. Bayuk makes several arguments in opposition, each of which must fail.

Rule 37(b)(2) allows for sanctions:

> if a party…fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others, the following . . .(A) An order that the matters regarding which the order was made or any other designated facts shall be taken as established for the purpose of the action in accordance with the claim of the party obtaining the order.

Nev. R. Civ. P. 37(b)(2)(A). Here, this is exactly what Bayuk has done; he has failed to obey the Confirming Order requiring the production of Insurance Documents and as such, the requested adverse inference is proper and appropriate.

Bayuk contends that "there is only marginal relevance between the insurance documents and the claims asserted." See OSC Opposition at p. 8, ll. 5-6. This ignores the findings by the Discovery Commissioner in ordering the Insurance Documents be produced. To be sure, the Discovery Commissioner found:

> The Court agrees with Plaintiff that the value ascribed to that property by Defendant Bayuk, and the amount of coverage he sought and obtained, are relevant to his beliefs about the value of that property. When compared with the value of consideration actually exchanged for that property, it may constitute evidence about whether the transfers of that property to Defendant Bayuk were made in good faith, or whether they were fraudulent. Therefore, Plaintiff is entitled to the insurance policies he seeks.

See Recommendation for Order at p. 6, ll. 6-11. As noted by the Discovery Commissioner, this

case addresses the transfer of property from Morabito to, among others, Bayuk following the announcement of a judgment in excess of $88 million dollars. Despite Morabito and Bayuk repeatedly listing the value of personal property on personal financial statements at well over a million dollars (See Application, Ex. 5 to Exhibit "4."), Morabito transferred an apparent majority of his personal property to Bayuk for approximately $87,000. See id., Exs. 2-4 to Exhibit "4." There are, and remain, significant questions as to the value of the property transferred, as well as the consideration provided therefor, which goes to the very heart of Plaintiff's Complaint

Bayuk also argues that a spoliation "instruction"[4] is not appropriate because it is not unreasonable for a party not to have insurance records that are eleven years old. See OSC Opposition at p. 8, ll. 18-26. Bayuk ignores that it was he who initially represented when the Requests were first propounded that he did have the Insurance Documents. Then, Bayuk embarked on a lengthy battle to protect against production thereof. Furthermore, while Bayuk argues "Regular human beings, who do not live their life in anticipate of litigation, have absolutely no practical reason to maintain insurance documents well past the policy period," Bayuk was not a person who was not living in anticipation of litigation. See OSC Opposition at pg. 8, ll. 19-21. In fact, shortly after the transfer of assets, Bayuk was aware of the allegations made by the Herbst parties that that the transfers were fraudulent. The transfers were referenced in letters and other documents in 2011 and 2012. Indeed, the Complaint was filed in 2013, just three years after the transfers and at a time when Bayuk was likely unquestionably still in possession of the Insurance Documents (Bayuk has indicated he does have insurance documents from at least 2014, indicating a habit of keeping insurance documents for a period of at least two years following the end of the policy period).

Finally, Bayuk argues that an inference is not appropriate here. In support, Bayuk relies on Bass-Davis v. Davis, 122 Nev. 442, 134 P.3d 104 (2006), which he quotes: "[a]n inference

[4] Bayuk repeatedly references and discusses a spoliation "instruction." This matter is set for a bench trial in October 2017 and, as there will not be a jury, Plaintiff is not seeking an "instruction."

has been defined as '[a] logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, a trier of fact may conclude exists from the established facts." See OSC Opposition at p. 9, ll. 1-3. As Bass-Davis further makes clear, and as Bayuk points out, an inference is appropriate where evidence has been negligently lost or destroyed. See Bass-Davis v. Davis, 122 Nev. at 448-49, 134 P.3d at 106-07. Bass-Davis further instructs that, "when evidence is willfully suppressed, NRS 47.250(3) creates a rebuttable presumption that the evidence would be adverse if produced." See id. at 448. 134 P.3d at 106.

Here, relying only on self-surviving declarations, Bayuk contends that despite vehemently opposing the Requests in the first instance, again after the alleged "good-faith" meet and confer, and finally throughout the Motion to Compel, he has determined that, only after the Confirming Order was entered, the Insurance Documents never existed. Bayuk's contentions, for the reasons set forth in Section A herein, are simply not credible and can lead only to the conclusion that the Insurance Documents are being willfully suppressed and a rebuttable presumption is warranted. Regardless, the Court must find that, at a minimum, the Insurance Documents were negligently lost or destroyed and a negative inference is appropriate.

D. The Additional Requested Sanctions Are Appropriate.

If a party fails to permit inspection pursuant to a Rule 34 request, after being served with a proper notice, the court in which the action is pending on motion may make such orders regarding the failure as are just. See Nev. R. Civ. P. 37(d). In the Application, Plaintiff requested that the Court require (1) that Bayuk pay all fees and costs incurred in connection with the dispute over the Requests, including those arising out of the Motion to Compel and this Application, (2) that Bayuk's counsel provide a sworn statement under the penalty of perjury as offered in the e-mail Exchange, (3) that Bayuk provide a sworn statement under the penalty of perjury that no responsive documents exist, and (4) that Bayuk provide all documents that would otherwise be responsive under the Confirming Order for the date range of 2011 through 2015 so that Plaintiff may attempt to determine the scope of insurance coverage during the relevant time-period. See Application at p. 7, ll. 18-26. Through the OSC Opposition, Bayuk has provided items two and three, the requested declarations. However, Bayuk has refused the remaining

requests, both of which are entirely appropriate under these circumstances.

As to attorney's fees, if a party fails to permit inspection pursuant to a Rule 34 request, after being served with a proper notice, the court in which the action is pending on motion may make such orders regarding the failure as are just. 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. See Nev. R. Civ. P. 37(d)(emphasis added). Bayuk has failed to present any evidence that would suggest his failure to respond is substantially justified or any other circumstances that might make an award unjust.

Furthermore, Bayuk has indicated that he has documents from 2014 to the present. See E-Mail Exchange, Ex. 7 to Application. Considering Bayuk's failure to produce the Insurance Documents from 2005-2011, Bayuk should be required to produce the insurance documents that he does have so that Plaintiff may attempt to determine what information could have been included in the missing Insurance Documents. Bayuk has failed to state any reason as to why this request should not be granted in his OSC Opposition and, therefore, the Court should order Bayuk to produce the 2014-present insurance documents.

II.
CONCLUSION

Plaintiff respectfully requests that this Court issue the appropriate sanctions, as requested in the Application following its hearing on the OSC. Plaintiff requests such other relief as this Court deems just a proper.

Dated this the 30th day of December, 2016.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz
GERALD E. GORDON, ESQ.
TERESA M. PILATOWICZ, ESQ.

Special Counsel for Trustee

AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 30th day of December, 2016.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz

GERALD M. GORDON, ESQ.
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TERESA M. PILATOWICZ, ESQ.
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Las Vegas, Nevada 89119
Tel: (735) 777-3000
Attorneys for Plaintiff William A. Leonard

CERTIFICATE OF SERVICE

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **RESPONSE: (1) TO OPPOSITION TO APPLICATION FOR ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF THE COURT ORDER AND (2) IN SUPPORT OF ORDER TO SHOW CAUSE** on the parties as set forth below:

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)

addressed as follows:

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

DATED this 30th day of December, 2016.

*/s/ Ricky Ayala*_____
An Employee of GARMAN TURNER GORDON LLP

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2017-01-19 05:49:53 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5907005

CASE NO. CV13-02663
JH, INC. et al. vs. PAUL MORABITO

01/19/2017
DISCOVERY COMMISSIONER
WESLEY AYRES
(Heard for Department 1)
M. Conway (Clerk)
RECORDED - JAVS

HEARING:
01/19/2017: Deposition of Edward Bayuk in re: insurance policies.

APPEARANCES:
Frank C. Gilmore, Esq. was present in Court on behalf of Edward Bayuk.
Teresa M Pilatowicz, Esq. was present in Court on behalf of Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Morabito.

4:58 p.m. - Court convened.

Edward Bayuk was sworn; Counsel Pilatowicz conducted the deposition/examination of Edward Bayuk.
Frank Gilmore conducted examination of Edward Bayuk.

5:40 p.m. - Court stood in recess.

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Clerk of the Court
Transaction # 5922905

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
01/19/17 HONORABLE JANET J. BERRY DEPT. NO. 1 M. Schuck (Clerk) L. Clarkson (Reporter) Deputy Stewart (Bailiff)	**ORDER TO SHOW CAUSE** Plaintiff, William Leonard, Jr., Trustee Of Estate Of Paul A. Morabito, not present and represented by Teresa Pilatowicz, Esq. Defendant, Edward Bayuk, present and represented by Frank Gilmore, Esq. Court convened at 3:49 p.m. Court referenced her latest order and the Discovery Commissioner's order. Counsel Gilmore denied all allegations, explained what happened to Plaintiff's Counsel and also filed a declaration with the Court. He explained his side of the situation. Court questioned if Defendant Bayuk had been deposed since the order; Counsel Gilmore indicated Counsel Murtha had done so back in October. He believed it was a witch hunt as it related to Mr. Morabito. Court addressed Commissioner's Ayres' ruling. Counsel Pilatowicz also addressed said ruling. She indicated it was a limited request following an appropriate ruling. She requested attorney fees for both the Motion to Compel and the Order to Show Cause hearings. Court was not inclined to grant any notion of spoliation of evidence. She referenced the Plaintiff's pleadings. Counsel Gilmore referenced depositions regarding the insurance issue and addressed the contempt fine. Court understood the miscommunication and addressed the situation. **COURT ORDERED:** Defendant Bayuk will not be held in contempt, but will be sanctioned attorney's cost and fees as it relates to the Order to Show Cause hearing only. All parties to report to Commissioner Ayres' office to answer motions, and for Defendant Bayuk to be deposed immediately at the conclusion of the instant hearing. Further the Motion to Compel was **denied**. Matter concluded at 4:31 p.m. ***Subsequent to the hearing Court directed court reporter, Lesly Clarkson to report to Commissioner Ayres' office in order for her to report the hearing taking place in the matter. The Court did not want to rely on JAVS.***	6/29/17 at 1:30 p.m. for PTC 10/09/17 at 9:30 a.m. for Non-Jury Trial

FILED
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CV13-02663
2017-07-18 04:05:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

2165
FRANK C. GILMORE, ESQ. - NSB #10052
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Attorneys for Defendants Snowshoe Petroleum, Inc., Superpumper, Inc., Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust, and Salvatore Morabito.

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

vs.

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

Defendants.
_____/

CASE NO.: CV13-02663

DEPT. NO.: B1

MOTION TO QUASH SUBPOENA, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING DISCOVERY FROM HODGSON RUSS LLP

Defendants SUPERPUMPER, INC., EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST, SALVATORE MORABITO, and SNOWSHOE PETROLEUM, INC. (collectively, "Defendants") hereby move this Court to quash the subpoena, or, in the alternative, enter a protective order regarding the subpoena issued to non-party HODGSON RUSS LLP ("HR") by plaintiff WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito ("Trustee"). This motion is made pursuant to NRCP

26, and is based upon the attached memorandum of points and authorities, exhibits and affidavits, and the pleadings and papers on file herein.

DATED this 18th day of July, 2017.

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

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.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants seek an order from this Court quashing the subpoena issued to non-party law firm Hodgson Russ LLP, on the basis that the subpoena was issued more than eight months after the close of discovery, and the Trustee cannot show good cause for extension of the close of discovery to obtain the discovery that could have obtained during discovery. Discovery was open for more than two years, and the Trustee knew, or should have known, of the role HR attorneys played in the facts giving rise to this case. Alternatively, Defendants request that this Court enter a protective order precluding the Trustee from seeking from Hodgson Russ more than was expressly agreed to in the meet and confer with counsel that occurred in January 2017, provided the Trustee reimburse Defendants the costs and fees associated with another deposition.[1]

Notwithstanding counsel's meet and confer on the HR subpoena which resulted in an agreement to limit the scope of the HR deposition, the Trustee sandbagged the Defendants by disavowing the meet and confer agreement and attempting to expand the scope of the deposition.

[1] Defendants properly seek this alternative relief from this Court in this motion. *See* WDCR 10(9) (permitting motions to be filed in the same document if the motions are "pleaded in the alternative").

The Trustee attempted to expand the limitation agreement to include topic areas which the Trustee could have explored during discovery but which he inexcusably failed to do so. Because the Trustee now departs from the agreement reached at the meet and confer, and seeks discovery which could have been obtained during discovery, an order quashing the HR subpoena is appropriate.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND.

This dispute arises from the Trustee's contention that certain conveyances made by non-party Paul Morabito to Defendants were fraudulent transfers intended to hide assets from the creditors of Mr. Morabito's bankruptcy estate. The case was originally filed by the law firm of Gordon Silver, on behalf of JH, INC., JERRY HERBST, and BERRY HINCKLEY INDUSTRIES. (See Complaint, filed December 17, 2013). Then, after a Chapter 7 trustee was appointed in the Morabito bankruptcy case, the Trustee was substituted in as the Plaintiff, and the Gordon Silver law firm was retained to represent the Trustee. (See Stipulation and Order, filed May 15, 2015).

After the substitution of the Plaintiff, the Gordon Silver firm, of which current Trustee's counsel was a member, was dissolved and the file was transitioned to the newly created firm of Garman Turner and Gordon, which was formed with former members of Gordon Silver, including its named partner, Jerry Gordon. Along with Mr. Gordon, Mark Weisenmiller, and Teresa Pilatowicz (who were each members of Gordon Silver before it dissolved) were substituted in as Trustee's counsel by way of a Substitution filed on May 26, 2015. The trial was then continued and the original discovery deadlines were reset by Stipulation and Order on June 12, 2015. Ms. Pilatowicz signed the Stipulation on behalf of the Trustee, and has been lead trial counsel ever since. At the time the Stipulation was entered, discovery had been open since the Joint Case Conference Report was filed on November 6, 2014. In other words, prior to the first extension of the close of discovery, discovery had already been open and ongoing for nearly seven months. In the Stipulation, the parties agreed to a close of discovery of *March 31, 2016*.

Prior to March 8, 2016, counsel discussed a limited extension of the close of discovery in order to facilitate the calendars of a few witnesses that the Trustee wished to depose, and to permit some discovery disputes that had arisen in the bankruptcy court to be resolved. Undersigned

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counsel explained in an email, "I believe we need to reach a stipulation that if any statements are made, or documents produced, which require additional discovery **that could not have been reasonably known or knowable prior to the disclosure**, a limited purpose extension of discovery should be given." See **EXHIBIT 1** (emphasis added). This email resulted in a follow-up discussion with counsel about a limited extension to the close of discovery. Based on those conversations, Trustee's counsel circulated a draft stipulation.

On March 23, 2016, undersigned counsel provided redline changes to the Trustee's counsel's proposed stipulation, with the explanation that "I intended my changes to make it explicit that the discovery cut-off is not extended for general purposes but only for the Vacco documents and deposition. Please advise if you are willing to accept the changes." See **EXHIBIT 2**. The proposed changes are reflected in the attachment to the Exhibit 2 email, and reflect that the stipulation to extend the close of discovery was intended to address only the Vacco[2] deposition and to follow-up on those items which could not have been discovered during the course of discovery. The Trustee's counsel accepted the proposed changes and on March 24, 2016, the Stipulation was filed.

For reasons that are not germane to this Motion, throughout the remainder of 2016, Dennis Vacco and his law firm Lippes made several rolling productions of documents to the Trustee. The final production occurred in December 2016 or January 2017. Vacco was not deposed in 2016. The parties entered several stipulations to permit the limited extension of the close of discovery to permit the Vacco deposition to occur when the documents were produced and the calendars permitted.

On January 3, 2017, the Trustee filed a Notice of Deposition and Notice of Issuance of Subpoena on Hodgson Russ, LLP ("HR"). HR had been Mr. Paul Morabito's long-time New York-based counsel. HR was not covered by the agreement to a limited extension of the close of discovery. The same day, undersigned counsel sent an email to Trustee's counsel which asked,

[2] Dennis Vacco and his New York law firm of Lippes Mathias Wexler Friedman ("Lippes") represented Defendants at times relevant to this action. Vacco was being pursued for documents and a deposition by the Trustee's counsel in the bankruptcy action and in this action throughout 2016.

"Please explain why this deposition is being noticed in violation of the close of discovery? I request a meet and confer on the subject." See **EXHIBIT 3**. Trustee's counsel responded that "As you may recall, the discovery period remained open for information discovered from the Vacco production. In the e-mails just disclosed in January, it was made clear that, although not previously disclosed as a party with discoverable information, Hodgson Russ was very much involved in coordinating the transfers." *Id.*

Thereafter, counsel convened a meet and confer. During the meet and confer, counsel reiterated their respective positions as set forth in Exhibit 3. As a compromise of the dispute, and in an effort to avoid motion practice on the subject, the Trustee's counsel promised to provide Defendants' counsel with the emails that she intended to use in the anticipated deposition of the HR attorneys. See Declaration of Frank C. Gilmore, Esq., ¶ 6, attached hereto as **EXHIBIT 4** (hereinafter "Gilmore Decl."). Defendants' counsel agreed to await receipt of the emails before deciding if a formal motion to quash the subpoena was appropriate.

As discussed and promised at the meet and confer, on January 24, 2017, Trustee's counsel provided Defendants' counsel with an email which said:

> Attached please find the e-mails that I intend to discuss at the deposition of Hodgson Russ. I intend to provide Hodgson Russ with the notice of waiver of privilege tomorrow. If you have any questions, please let me know.

See **EXHIBIT 5**. Attached to the email were 16 documents that had been produced by Vacco in December 2016. Defendants and counsel reviewed the emails and determined that based on the representation of Trustee's counsel that the intended scope of the HR deposition was to be limited to the 16 emails provided, Defendants' counsel agreed to not object to the HR deposition notice and subpoena. Defendants agreed they would not oppose a HR deposition during the same trip to New York in which Vacco would be deposed. Nothing further was ever discussed between counsel about the HR deposition or subpoena. Gilmore Decl., ¶ 7. As far as Defendants' counsel was concerned, the representation from Trustee's counsel about the emails that she "intended to discuss as the deposition of Hodgson Russ" was a confirmation that the subpoena and deposition notice had been voluntarily limited and that any deposition would be proceeding on that basis. *Id.*

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at ¶ 8.

On July 10-11, 2017, the parties and their counsel participated in the deposition of Vacco and his partner in Buffalo, New York. The parties had agreed for the HR deposition to occur the following day, on July 12, 2017. Defendants' counsel arrived prior to the deposition and observed Trustee's counsel reviewing a substantial stack of documents which were obviously potential deposition exhibits. Gilmore Decl., ¶ 9. Defendants' counsel immediately inquired of Trustee's counsel as to the stack of proposed exhibits and asked why the stack was significantly larger than the 16 emails which Defendants' counsel had brought with him to the deposition pursuant to the limitation counsel had agreed to. *Id.* at ¶ 10. Trustee's counsel then explained that she disagreed that she had limited the scope of the HR deposition, and that she intended to use documents which had not been provided to Defendants' counsel during the meet and confer. *Id.* Trustee's counsel also explained that she intended to inquire as to all of the topic areas identified in the original deposition notice and subpoena. *Id.* at ¶ 11.

However, rather than suspend the deposition, Defendants' counsel elected to wait until Trustee's counsel had identified the scope of her deposition before taking additional action. Trustee's counsel then reviewed with the first HR witness the scope of the original HR subpoena and deposition notice. Once it became clear that the Trustee was intending to inquire as to all the topic areas in the subpoena, and to ignore the agreement reached in the meet and confer, Defendants' counsel interjected the Defendants' objections to the scope of the deposition, including an objection to being "sandbagged" by Trustee's counsel having agreed to limit the scope of the deposition and then ignoring the agreement. After Trustee's counsel responded to Defendants' objection, a recess was taken whereon Defendants' counsel was instructed by his client to suspend the deposition and to seek a protective order. The deposition was suspended and this Motion shortly followed.

III. RELIEF REQUESTED

Defendants seek an Order quashing the HR deposition notice and subpoena. The Trustee has known about HR and their role in the alleged transfers since before this lawsuit was filed. The Trustee could have easily subpoenaed and deposed HR during the course of discovery, but failed

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to do so. The Trustee cannot show good cause to obtain discovery from HR after the close of discovery. An Order quashing the subpoena and notice of deposition should be entered.

Alternatively, a protective order should be entered limiting the scope of the HR deposition(s) to only those emails which were agreed to in January when counsel met and conferred. Although this option was acceptable in January in order to avoid motion practice, now that Trustee's counsel has broken her agreement with Defendants' counsel, and the parties incurred the cost of an extra day in Buffalo, this alternative should not be ordered unless appropriate reimbursements are made to Defendants to cover the costs of returning to Buffalo for the limited purpose of deposing HR on the 16 emails.

Lastly, Defendants seek attorney's fees and costs incurred in the suspended HR deposition as a result of Trustee's counsel's sand-bagging Defendants with proposed HR deposition exhibits and questions which exceeded the limited scope counsel had agreed to. This Motion would not have been necessary but for the conduct of Trustee's counsel in breaching her agreement with Defendants' counsel.

IV. LAW

NRCP 26(c) provides that a party, or a person from whom discovery is sought, may file a motion, asking that the Court make any Order the Court determines is just, in order to save a party or other witness from "annoyance, embarrassment, oppression, or undue burden, or expense." Upon that motion, the court may enter an order that, among other things, the discovery not be had, or that discovery be limited in scope. Rule 26(b) provides the scope and limits of discovery. Parties may obtain discovery "subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii)," which provide, among other things, that "the discovery methods otherwise permitted under these rules and by any local rule shall be limited by the court if it determines that: (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought." NRCP 26(b)(2)(ii).

The close of discovery should not be ignored. See *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 594 (D. Nev. 2011)(applying Federal Counterpart, FRCP 26). The parties are obligated to conduct the discovery they desire prior to the expiration of the time period

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afforded them under the Rules. See *Freemon v. Fischer*, 281 P.3d 1173 (Nev. 2009).

District courts in Nevada may sanction abusive litigation practices through their inherent powers. *Young v, Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). A court's inherent power to sanction is designed "to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction or dismiss an action for litigation abuses." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007).

V. ARGUMENT

A. The Trustee Had Ample Time and Opportunity To Conduct the HR Discovery But Inexcusably Failed to Do So Prior to the Close of Discovery.

The Trustee cannot deny that the HR subpoena was issued well after the close of discovery. Discovery closed on March 31, 2016, and the HR subpoena was filed on January 3, 2016. More than three years lapsed between the filing of the Complaint and the HR subpoena. The Trustee cannot show good cause for why the HR subpoena could not have been served, and the deposition taken, prior to the close of discovery.

The Trustee will not dispute that HR was transactional counsel for Paul Morabito during the Berry Hinckley Industries sale to the Jerry Herbst entities back in 2007, and related post-closing issues. See, e.g., Jones Vargas letter to HR and Paul Morabito, dated August 16, 2010, attached as **EXHIBIT 6**. The law firm of Jones Vargas (Brian Irvine and John Desmond) were Herbst counsel during the litigation that led to the 2010 Herbst multi-million dollar judgment against Paul Morabito, and in the post-judgment related issues. *Id.* Jones Vargas dealt directly with the HR lawyers during that lengthy litigation.

By March 2013, John Desmond and Brian Irvine had left Jones Vargas and had joined the Gordon Silver law firm. They noticed their appearances on behalf of the Herbst. See, e.g. Notices of Appearance, CV07-02764, filed March 22, 2012. From that time until Gordon Silver was dissolved in approximately June 2015, Gerry Gordon, John Desmond, and Brian Irvine represented the Herbst entities in the Morabito matters, including this one. Gordon, and his current firm, Garman Turner Gordon, continued to represent the Herbsts after Gordon Silver was dissolved. Thus, although the names of the law firms have changed, the Herbst's (who filed this action) have

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been consistently represented by Gerry Gordon since as early as 2013.

Gordon and his partners have known that the HR firm represented Paul Morabito since before 2007. Gordon's partner Brian Irvine was present during a deposition of Sujata Yalamanchili, an HR partner, on July 26, 2011. Ms. Yalamanchili testified that she represented Paul Morabito. See Yalamanchili Depo Transcript, p. 7:9-10, attached hereto as **EXHIBIT 7.** Throughout 2011, HR engaged in communications with John Desmond and Brian Irvine on Morabito related issues. See **EXHIBIT 8**. On August 9, 2013, Defendants' counsel transmitted a letter to HR explaining that it represents Paul Morabito, and acknowledging that HR also represented Paul Morabito. See **EXHIBIT 9**. Gordon Silver was copied on that email. *Id.* Put simply, the Trustee's counsel has known since before this lawsuit was filed that HR represented Morabito during the times relevant to this lawsuit.

Trustee's counsel is likely to contend that while they were aware that the HR lawyers represented Paul Morabito in September 2010 when the alleged fraudulent transfers were made, they were unaware that HR was involved in any way with the transfers. This contention is demonstrably false.

First, during a July 23, 2014, deposition of Paul Morabito which was taken pursuant to the bankruptcy action, the Gordon Silver lawyers – Desmond and Gordon – asked Morabito if the HR lawyers and Ms. Yalamanchili had represented Morabito. He replied in the affirmative. See Morabito Deposition Transcript, p. 113, attached hereto as **EXHIBIT 10**.

Second, on February 13, 2015, the Trustee's counsel sent a letter to Vacco and Lippes demanding turnover of the firm's trust records and billing records related to Paul Morabito. On April 3, 2015, Lippes responded with a letter to the Trustee's counsel and provided heavily redacted copies of the Lippes trust records and billing records to Gordon Silver and the Trustee. See **EXHIBIT 11**. On July 10, 2015, the billing records were re-produced to the Trustee with limited redactions approved by the bankruptcy court. See **EXHIBIT 12**; Gilmore Decl., ¶ 18. These billing records, which the Trustee has had since July 2015, plainly and clearly provided the Trustee with proof that the HR lawyers had represented Paul Morabito in the allegedly fraudulent transfers and that they worked side-by-side with Vacco and Lippes in advising, directing, and

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facilitating the alleged fraudulent transfers. See **EXHIBIT 12** (LMWF 000533-535, 540). These billing records, which the Trustee received more than eight months prior to the close of discovery, placed the Trustee on notice to commence investigation into HR's role in the transfers. However, despite this information, the Trustee did nothing to pursue the discovery for another 18 months, on January 3, 2017. The Trustee's lack of diligence, and nothing more, led to its untimely subpoena and deposition notice to HR. Had the Trustee wished to take discovery from HR, it could have done so, and would have had ample time to commence the discovery process prior to the close of discovery. Moreover, just as with Vacco, even if the HR discovery could not have been *completed* prior to the close of discovery, had the Trustee even commenced the effort before the close of discovery, the limited extension of discovery would have applied to HR just like it did for Vacco and others. The Trustee cannot show good cause for not commencing the HR discovery prior to the close of discovery.

Third, the Trustee took Morabito's deposition (formally a Section 341 meeting of creditors) on June 25, 2015, in the bankruptcy case. There, Trustee's counsel asked Morabito which attorneys he had previously used. Morabito identified Ms. Yalamanchili as the attorney in Buffalo, New York, "who I used as a personal attorney, corporate attorney, prior to hiring Mr. Vacco's firm." See 341 Meeting Transcript, p. 150:10-12, attached as **EXHIBIT 13**. The Trustee was on notice that HR was Morabito's attorneys during the times relevant to this action. It is clear that the Trustee's counsel asked the question specifically so the Trustee could know which of Morabito's attorneys might possess information related to the case. The Trustee could have exercised diligence in following up on that answer during discovery. The Trustee neglected to do so.

It is demonstrably clear that the Trustee was in possession of sufficient information to know that HR was involved in the transfers, and the Trustee was in possession of sufficient information to have performed discovery on HR prior to the close of discovery had they been diligent about it. The Trustee neglected to do so. Only after the close of discovery did the Trustee decide to pursue HR for discovery. The stipulation for a limited extension of discovery was only for those things which "**could not have been reasonably known or knowable prior to the close**

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of discovery." See **EXHIBIT 1.** HR's involvement and role in the alleged fraudulent transfers was not only knowable, but known by the Trustee months before the close of discovery. The Trustee should not be rewarded for his lack of diligence in performing the discovery that he could have done during the allocated timeframe. An Order quashing the HR subpoena should be entered.

B. Trustee's Counsel Attempted To Sandbag the Defendants, Leaving Defendants No Choice But to Suspend the Deposition Pending a Decision on this Motion.

The day the HR subpoena was filed, Defendants' counsel demanded a meet and confer, because the subpoena was issued after the close of discovery. During the meet and confer, both counsel considered the other's position. For sake of economy and timing, Defendants' counsel agreed to consider the Trustee's anticipated scope of the HR deposition before deciding whether or not to seek a protective order. Once the Trustee's counsel confirmed in writing that the scope of the HR deposition would be limited to the 16 exhibits in the email (Exhibit 5), Defendants agreed not to object to the HR deposition. It was exclusively in reliance on this meet and confer agreement that Defendants agreed to participate in the HR deposition. Had the Trustee's counsel not provided the agreement as to the limited scope, or had provided other documents intended to be used, Defendants would have *immediately* filed a Motion for Protective Order and raised the contentions that have been briefed in this Motion. However, based on the Trustee's agreement to limit the scope of the HR deposition(s), and the Defendants impressions as to the general irrelevance of the content of the 16 HR documents the Trustee intended to inquire about, Defendants decided not to incur the time and expense of seeking a protective order.

Accordingly, Defendants and their counsel were shocked when the Trustee's counsel explained moments before commencing the HR deposition that she did not believe she was bound by the meet and confer agreement and that she intended to explore the entire realm of issues set forth in the original subpoena which prompted the meet and confer. Once Trustee's counsel opened the HR deposition record and confirmed to the witness that she intended to explore a full-scope deposition, Defendants were left with no choice but to suspend the deposition and seek Court relief.

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The Trustee cannot be rewarded for sandbagging the Defendants. Defendants are entitled to *strict reliance* on an agreement among counsel as to the limitations of a deposition after a meet and confer. Indeed, the precise reason why a meet and confer is required under the Rules of Civil Procedure prior to filing a discovery motion is to facilitate voluntary discovery agreements and limitations so as to avoid motion practice and Court involvement. On this precise issue, counsel met and conferred and then reached an agreement. Defendants relied on that agreement in participating in the HR deposition. Defendants forbore their right to seek a protective order only because the Trustee's counsel confirmed the precise limited scope of the HR deposition. The Trustee should not be rewarded for its conduct. Defendants seek an order reimbursing them the cost of an extra day in Buffalo and a morning of wasted attorneys' fees as a result of the Trustee's sandbagging.

Further, if the Court is inclined to permit the Trustee to explore those 16 documents to which Defendants had previously agreed in the meet and confer, then that Order should be accompanied by a requirement that the Trustee bear the cost and fees associated with another trip to Buffalo to participate in a limited scope deposition of the HR attorneys.

V. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court enter an order quashing the HR subpoena, or in the alternative, enter a protective order, limiting the scope of the HR deposition pursuant to the meet and confer, along with an award of costs and fees to Defendants associated with another trip to Buffalo to complete the HR depositions.

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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 18th day of July, 2017.

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71 Washington Street
Reno, Nevada 89503

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.

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 **MOTION TO QUASH SUBPOENA, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING DISCOVERY FROM HODGSON RUSS LLP** 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 18th day of July, 2017.

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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	email from Trustee's counsel to me dated March 8, 2016	1
2	email dated March 23, 2016 with attached redlined discovery extension stipulation	7
3	email string dated January 3-4, 2017	1
4	Declaration Of Frank C. Gilmore In Support of Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP	3
5	Trustee's counsel's email of January 24, 2017	1
6	Jones Vargas letter to HR and Paul Morabito, dated August 16, 2010	2
7	Copy of a portion of Yalamanchili Depo Transcript	5
8	The 2011, Hodgson Russ ("HR") communications with John Desmond and Brian Irvine on Morabito related issues	2
9	August 9, 2013, transmitted a letter to HR	1
10	Copy of a portion of the Morabito Deposition Transcript	4
11	The Lippes April 3, 2015 letter	2
12	Copies of the July 10, 2015	9
13	Copy of a portion of the 341 Meeting Transcript	5

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Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

EXHIBIT 1

EXHIBIT 1

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, March 08, 2016 12:49 PM
To: Teresa Pilatowicz
Cc: Mary Carroll Davis
Subject: Gursey and Stan Depos

Teresa,

Can you please confirm that we have altered the dates for the deposition of Stan Bernstein and Gursey Schneider? I understand the plan is to renotice Stan for March 30, and Gursey for March 16? That vacates March 15 entirely.

If Stan is deposed on March 30, I believe we need to reach a stipulation that if any statements are made, or documents produced, which require additional discovery that could not have been reasonably known or knowable prior to the disclosure, a limited purpose extension of discovery should be given. Please advise if you disagree.

Also please serve notices of the depositions so I can confirm my travel plans.

Frank C. Gilmore, Esq.
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C: 775-240-6387

F I L E D
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CV13-02663
2017-07-18 04:05:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

EXHIBIT 2

EXHIBIT 2

Frank Gilmore

From:	Frank Gilmore
Sent:	Wednesday, March 23, 2016 2:18 PM
To:	Teresa Pilatowicz (tpilatowicz@Gtg.legal); Gabby Hamm (ghamm@Gtg.legal)
Cc:	Mary Carroll Davis
Subject:	Stipulation Re Discovery Dates.doc
Attachments:	Stipulation Re Discovery Dates.doc

Please see my redlined changes to the Discovery extension stipulation. I intended my changes to make it explicit that the discovery cut-off is not extended for general purposes but only for the Vacco documents and deposition. Please advise if you are willing to accept the changes.

3980
GARMAN TURNER GORDON LLP
GERALD M. GORDON, ESQ.
Nevada Bar No. 229
E-mail: ggordon@gtg.legal
TERESA M. PILATOWICZ, ESQ.
Nevada Bar No. 9605
E-mail: tpilatowicz@gtg.legal
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000

Attorneys for William A. Leonard

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

STIPULATION REGARDING CONTINUED DISCOVERY DATES (SECOND REQUEST)

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, William A. Leonard ("Trustee"), by and through his counsel, Garman Turner Gordon LLP, and Defendants Superpumper, Inc., Edward Bayuk, individually and as trustee of Edward William Bayuk Living Trust, Salvatore Morabito, and Snowshoe Petroleum, Inc. (collectively, "Defendants," and together with Trustee, the "Parties"), by and through their counsel, Robison Belaustegui Sharp &

Low, through this *Stipulation and Order Regarding Continued Discovery Dates (Second Request)* (the "Stipulation") as follows:

1. WHEREAS on September 29, 2015, Trustee caused a subpoena (the "Subpoena") to be issued to Dennis Vacco ("Vacco") requesting the production of documents on or before October 13, 2015, and scheduling the deposition of Vacco for October 20, 2015.

2. WHEREAS on or about October 15, 2015, Vacco produced approximately 200 pages of documents in response to the Subpoena.

3. WHEREAS on October 20, 2015, the deposition of Vacco was held at which time Paul Morabito ("Debtor"), debtor in a pending bankruptcy case in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"), asserted the attorney-client privilege as to various questions.

4. WHEREAS Trustee filed a *Motion to Compel Responses to Deposition Questions* (the "Motion to Compel") in the Bankruptcy Court seeking an order determining the scope of Debtor's privilege, which Motion to Compel was heard on December 22, 2015 and granted on or about February 2, 2016.

5. WHEREAS on February 18, 2016, after consultation with Vacco and the Defendants' counsel, Trustee filed the *Notice of Continued Deposition of Dennis Vacco* (the "Vacco Deposition Notice") and demanded the production of any documents that had been withheld based on the attorney-client privilege. As set forth in the Vacco Deposition Notice, the Vacco Deposition was continued to March 18, 2016 (the "Continued Vacco Deposition").

6. WHEREAS on or about February 23, 2016, Trustee's counsel was informed there were as many as thirteen banker's boxes of potentially responsive documents in Vacco's possession that had not been previously produced (the "Additional Documents").

7. WHEREAS on March 10, 2016, Defendants' counsel demanded that the Additional Documents not be produced pending resolution of a dispute regarding attorney-client privilege issues.

8. WHEREAS on March 10, 2016, Defendants' counsel filed the *Motion to Partially Quash, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery*

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650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Protected by the Attorney-Client Privilege (the "Motion to Quash") in the above-captioned case, to which Trustee will file an opposition.

9. WHEREAS discovery closes in this case on March 31, 2016 (the "Discovery Cut-Off")

10. WHEREAS as a result of the dispute over the Additional Documents including the pending Motion to Quash, Trustee's counsel cannot proceed with the Continued Vacco Deposition as scheduled and does not anticipate being able to conduct the Continued Vacco Deposition prior to the Discovery Cut-Off

NOW THEREFORE, the Parties hereby stipulate and agree as follows:

1. The Discovery Cut-Off shall be extended to April 29, 2016 for the limited and sole purpose of Vacco producing the Additional Documents and conducting the Continued Vacco Deposition.

2. If additional discovery is required based on new information contained in or discovered from the Additional Documents or Continued Vacco Deposition, the Discovery Cut-Off shall be again extended to up to and including May 13, 2016 for the sole and limited purposes of conducting discovery on those additional items discovered in the Additional Document or in the Continued Vacco Deposition.

3. This Stipulation shall be without prejudice to seeking an additional extension of time for good cause.

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 23~~1~~rd day of March, 2016.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz
GERALD E. GORDON, ESQ.
TERESA M. PILATOWICZ, ESQ.
650 White Drive, Ste. 100

ROBISON BELAUSTEGUI SHARP & LOW

BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
71 Washington Street

Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

Las Vegas, Nevada 89119
Telephone 725-777-3000
Attorneys for William A. Leonard

Reno, Nevada 89503
Telephone 775-329-3151
Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **STIPULATION REGARDING CONTINUED DISCOVERY DATES (SECOND REQUEST)** on the parties as set forth below:

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)

addressed as follows:

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

DATED 21st day of March, 2016.

_____
An Employee of GARMAN TURNER GORDON

Garman Turner Gordon LLP
650 White Drive, Ste. 100
Las Vegas, NV 89119
725-777-3000

INDEX OF EXHIBITS

Exhibit	Description	Pages[1]
1	Proposed Order Approving Stipulation Regarding Continued Discovery Dates (Second Request)	2

[1] Exhibit page counts are exclusive of exhibit slip sheets.

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Las Vegas, NV 89119
725-777-3000

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EXHIBIT 3

EXHIBIT 3

Frank Gilmore

From: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Sent: Wednesday, January 04, 2017 9:34 AM
To: Frank Gilmore
Cc: Mary Carroll Davis; Ricky Ayala
Subject: RE: Hodgson Russ

Frank,

I am available any time tomorrow for a meet and confer. As you may recall, the discovery period remained open for information discovered from the Vacco production. In the e-mails just disclosed in January, it was made clear that, although not previously disclosed as a party with discoverable information, Hodgson Russ was very much involved in coordinating the transfers.

As for dates, I understand from John Murtha that Kevin Burke informed him that Dennis Vacco is not in town at the end of January and will be requesting the deposition and 2004 exam be rescheduled. My intention was to have everything completed in one trip to Buffalo so that may change timing. We can discuss tomorrow.

Let me know what time works best for you.

Thanks,

Teresa

From: Frank Gilmore [mailto:FGilmore@rbsllaw.com]
Sent: Tuesday, January 3, 2017 2:15 PM
To: Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Cc: Mary Carroll Davis <MDavis@rbsllaw.com>
Subject: Hodgson Russ

Teresa,

I see the notice of depo on Hodgson Russ. Please explain why this deposition is being noticed in violation of the close of discovery? I request a meet and confer on the subject.

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

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EXHIBIT 4

EXHIBIT 4

DECLARATION OF FRANK C. GILMORE IN SUPPORT OF MOTION TO QUASH SUBPOENA, OR, IN THE ALTERNATIVE, FOR A PROTECTIVE ORDER PRECLUDING TRUSTEE FROM SEEKING DISCOVERY FROM HODGSON RUSS LLP

I, Frank C. Gilmore, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in all courts in the State of Nevada, and am counsel of record for the Defendants in this action. I am a shareholder in the law firm of Robison, Belaustegui, Sharp & Low, and have been licensed to practice law in this State since 2006.

2. Attached to the Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP ("Motion") as Exhibit 1 is a true and accurate copy of is an email from Trustee's counsel to me dated March 8, 2016.

3. Attached to the Motion as Exhibit 2 is a true and accurate copy of my email dated March 23, 2016 with attached redlined discovery extension stipulation.

4. Attached to the Motion as Exhibit 3 is a true and accurate copy of an email string dated January 3-4, 2017.

5. Attached to the Motion as Exhibit 5 is a true and accurate copy of Trustee's counsel's email of January 24, 2017.

6. During the meet and confer, counsel reiterated their respective positions as they explained to each other in Exhibit 3. As a compromise of the dispute, and in an effort to avoid motion practice on the subject, Trustee's counsel promised to provide me with the emails that she intended to use in the anticipated deposition of HR attorneys.

7. Attached to Exhibit 5 were 16 documents that had been produced Vacco in December. I reviewed the emails and determined that based on the representation of Trustee's counsel that the intended scope of the HR deposition was to be limited to the 16 emails provided, I agreed to not object to the HR deposition notice and subpoena, and that Defendants would not oppose a HR deposition during the same trip to New York in which Vacco would be deposed. Nothing further was ever discussed between counsel about the HR deposition or subpoena.

8. As far as I was concerned, the representation from Trustee's counsel about the emails that she "intended to discuss as the deposition of Hodgson Russ" was a confirmation that

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the subpoena and deposition notice had been voluntarily limited and that any deposition would be proceeding on that basis.

9. On July 10-11, 2017, the parties and their counsel participated in the deposition of Vacco and his partner in Buffalo, New York. The parties had agreed to the HR deposition to occur the following day, on July 12, 2017 pursuant to an amended Notice of Deposition that was filed and served. I arrived prior to the deposition and observed Trustee's counsel reviewing a substantial stack of documents which were obviously potential deposition exhibits.

10. I immediately inquired of Trustee's counsel as to the stack of proposed exhibits and asked why the stack was significantly larger than the 16 emails which I had brought with me to the deposition.

11. Trustee's counsel then explained that she disagreed that she had limited the scope of the HR deposition, and that she intended to use documents which had not been provided to me during the meet and confer. Trustee's counsel also explained that notwithstanding the limitation on the scope of the deposition that counsel had agreed to, she intended to inquire as to all of the topic areas identified in the original deposition notice and subpoena.

12. Attached to the Motion as Exhibit 6 is a true and accurate copy of the Jones Vargas letter to HR and Paul Morabito, dated August 16, 2010.

13. Attached to the Motion as Exhibit 7 is a true and accurate copy of a portion of Yalamanchili Depo Transcript.

14. Attached to the Motion as Exhibit 8 are true and accurate copies of the 2011, Hodgson Russ ("HR") communications with John Desmond and Brian Irvine on Morabito related issues.

15. Attached to the Motion as Exhibit 9 is a true and accurate copy of my August 9, 2013, transmitted a letter to HR explaining that we represent Paul Morabito, and acknowledging that HR also represented Paul Morabito.

16. Attached to the Motion as Exhibit 10 is a true and accurate copy of a portion of the Morabito Deposition Transcript.

17. Attached to the Motion as Exhibit 11 is a true and accurate copy of the Lippes April

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3, 2015 letter.

18. Attached to the Motion as Exhibit 12 are true and accurate copies of the July 10, 2015, the billing records that were re-produced to the Trustee with limited redactions approved by the bankruptcy court.

19. Attached to the Motion as Exhibit 13 is a true and accurate copy of a portion of the 341 Meeting Transcript.

20. After January 3, 2017, counsel met and conferred, which resulted in an agreement. When Trustee's Counsel breached that agreement, a subsequent meet and confer occurred, in which counsel were not able to resolve the issues and this Motion followed.

DATED this 18th day of July, 2017.

FRANK C. GILMORE

J:\WPData\FCG\23246.001 Snowshoe adv. Herbst\P-Dec iso Mtn For Protective Order Hodgson Russ.7.18.17.doc

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EXHIBIT 5

EXHIBIT 5

Frank Gilmore

From:	Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Sent:	Tuesday, January 24, 2017 8:09 AM
To:	Frank Gilmore
Cc:	Ricky Ayala
Subject:	Leonard v. Superpumper - Hodgson Russ Correspondence
Attachments:	Re++Follow+Up+Thoughts.msg (1).pdf; Re++Follow+Up+Thoughts.msg (2).pdf; RE++Follow+Up+Thoughts.msg (3).pdf; RE++Follow+Up+Thoughts.msg (4).pdf; RE++Follow+Up+Thoughts.msg (5).pdf; RE++Follow+Up+Thoughts.msg (6).pdf; RE++Follow+Up+Thoughts.msg (7).pdf; RE++Follow+Up+Thoughts.msg (8).pdf; RE++Follow+Up+Thoughts.msg (9).pdf; RE++Follow+Up+Thoughts.msg (10).pdf; RE++Follow+Up+Thoughts.msg (11).pdf; Attorney+Client+Privileged+Communication 2.msg.pdf; Follow+Up+Thoughts.msg (1).pdf; FW++.msg (1).pdf; RE+.msg.pdf; Re++Checking+in.msg.pdf

Frank,

Attached please find the e-mails that I intend to discuss at the deposition of Hodgson Russ. I intend to provide Hodgson Russ with the notice of waiver of privilege tomorrow.

If you have any questions, please let me know.

Thanks,

Teresa M. Pilatowicz
Attorney

Phone: 702 478 0559 | Fax: 725 777 3112

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

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EXHIBIT 6

EXHIBIT 6

JONES VARGAS

ATTORNEYS AT LAW
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100 WEST LIBERTY STREET
PO BOX 281
RENO, NEVADA 89504-0281
TEL (775) 786-5000 FAX (775) 786-1177

WWW.JONESVARGAS.COM

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JOHN P. SANDE, III
WILLIAM J. RAGGIO
GARY R. GOODHEART
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RICHARD F. JOST
JANET L. CHUBB
DOUGLAS M. COHEN
KEVIN R. STOLWORTHY
JAMES L. WADHAMS
JODI R. GOODHEART
PAUL A. LEMCKE
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LOUIS M. BUBALA III
JUSTIN J. BUSTOS
DANIEL S. CEREGHINO
KENNETH K. CHING
TRACY A. DIFILLIPPO
BENJAMIN W. KENNEDY
WAYNE O. KLOMP
RICHARD A. RAWSON
JOHN P. SANDE, IV
BRADLEY SCOTT SCHRAGER
STEVEN G. SHEVORSKI
*TODD M. SMITH
JESSE A. WADHAMS
GORDON H. WARREN

MELVIN D. CLOSE, JR.
RICHARD O. BARRIER
AMANDA J. COWLEY
BRIAN E. SANDOVAL
OF COUNSEL

CLIFFORD A. JONES (1912 - 2001)
HERBERT M. JONES (1914 - 2008)
GEORGE L. VARGAS (1909 - 1985)
JOHN C. BARTLETT (1910 - 1982)
LOUIS MEAD DIXON (1919 - 1993)
GARY T. FOREMASTER (1953 - 1998)

August 16, 2010

BRIAN J. MATTER, CLM
EXECUTIVE DIRECTOR

E-Mail Address
cglinstead@jonesvargas.com

Attn: Paul A. Morabito
P.A. Morabito & Co., Limited
6451 South Virginia Street, Suite 306
Reno, NV 89511

Sent Via Certified Mail – 7005 1160 0003 5274 8904

Attn: Sujata Yalamanchili, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203

Sent Via Certified Mail – 7008 1140 0002 2388 6967

Re: Desi Moreno v. Berry-Hinckley Industries
Case No. CV10-02329

Dear Mr. Morabito and Ms. Yalamanchili:

Pursuant to Article 9 of the Amended and Restated Stock Purchase Agreement ("ARSPA") dated June 28, 2007, JH, Inc. ("JH") hereby gives notice to Consolidated Nevada Corporation that a third-party claim has been filed against Berry-Hinckley Industries ("BHI") for which JH is entitled to indemnification from CNC under the express terms of the ARSPA. Specifically, pursuant to Article 9.1(b) of the ARSPA, CNC agreed to "defend, indemnify and hold harmless [JH] and its shareholders, directors, officers, employees, affiliates and successors" from certain "Losses suffered or incurred by any of them."

On August 4, 2010, BHI, a wholly-owned subsidiary of JH, was served with a Complaint filed by Plaintiffs, Desi Moreno, Trustee of the Desi Moreno 2001 Trust, Mill Ohm Pasada, LLC, and 788 Mallory, LLC (collectively, "Plaintiffs"), a copy of which is attached hereto as **Exhibit 1**. Plaintiffs allege that BHI is the Lessee under a written Lease Agreement, which was amended in December of 2006 by written Amendment to Lease Agreement, for certain real property located at 8995 La Posada Drive, Sparks, Nevada. Plaintiffs further allege that Section 6 of the Lease Amendment obligates BHI to construct a sports bar and restaurant on the leased premises. Because BHI has not constructed a sports bar and restaurant, Plaintiffs allege that BHI has breached the lease. Plaintiffs are seeking, among other things, specific performance under the lease, special damages in excess of $17,000 and costs and attorney's fees.

This letter shall serve as notice, pursuant to Section 9.1(d), of the commencement of the action referenced in **Exhibit 1.** This letter shall further serve as notice to CNC that a claim for indemnification will be made by JH pursuant to the ARSPA.

Pursuant to Article 9.1(d)(ii), CNC is entitled to participate in the defense of the action described herein. CNC further has the right, subject to certain conditions, to assume the defense of the third-party claim with counsel satisfactory to JH. If CNC does not, within ten days after the date of this letter, give JH notice of its election to assume the defense of BHI, CNC "will be bound by any determination made in such third-party claim or any compromise or settlement effected by [JH]."

Please feel free to contact me should you have any questions.

Sincerely,

JONES VARGAS

John P. Desmond

JPD/csg
Enclosures

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EXHIBIT 7

EXHIBIT 7

STATE OF NEVADA

SUPREME COURT : COUNTY OF WASHOE

DESI MORENO, TRUSTEE of the DESI MORENO 2001 TRUST, MILL OHM PASADA, LLC and 788 MALLORY LLC,

Plaintiffs,

-vs-

BERRY-HINCKLEY INDUSTRIES, a NEVADA CORPORATION, JERRY HERBST, DOE DEFENDANTS I-X, and DOE ENTITIES I-X, inclusive,

Defendants,

CONSOLIDATED NEVADA CORPORATION, a NEVADA CORPORATION and PAUL A. MORABITO,

Third-Party Defendant.

Examination before trial of **SUJATA YALAMANCHILI, ESQ.**, held before Louis S. Capadano, Notary Public, at HODGSON RUSS, LLP, The Guaranty Building, 140 Pearl Street, Buffalo, New York, 14022 on July 26th, 2011 at 1:00 p.m., pursuant to notice.

APPEARANCES:

PARSONS, BEHLE & LATIMER
BY: MICHAEL KEALY, ESQ.,
50 West Liberty Street,
Suite 750
Reno, NV 89501
(775) 323-1601
Attorneys for the Plaintiffs

JONES & VARGAS
BY: BRIAN R. IRVINE, ESQ.,
300 East Second Street,
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(775) 786-5000
Attorneys for the Defendants

LIPPES MATHIAS WEXLER
FRIEDMAN LLP
BY: RICHARD M. SCHERER, ESQ.,
665 Main Street, Suite 300
Buffalo,NY 14203
(716) 853-5100
Attorneys for the Third-Party
Defendants

HODGSON RUSS LLP
BY: ROBERT CONKLIN, ESQ.,
Guaranty Building, 140 Pearl
Street, Suite 100
Buffalo, NY 14202
(716) 848-1306
Attorneys for Sujata
Yalamanchili, Esq.

A. Yes.
Q. Have you ever had your deposition taken before?
A. Yes.
Q. On how many occasions?
A. Two.
Q. And tell me what those occasions were.
A. One was in a transaction involving Mr. Irvine's client and my client, Mr. Morabito, and another was in an unrelated matter in which I'm a plaintiff.
Q. And who's Mr. Irvine?
A. He's the attorney with Jones Vargas, who I understand is representing BHI.
Q. And that deposition, when was that taken?
A. September of 2009.
Q. And in that deposition, did that involved litigation pending in Nevada?
A. Yes.
Q. And in that deposition, did you ever discuss a lease amendment amended to the lease we're about to discuss today?
A. I don't recall.

STATE OF NEW YORK)

) ss

COUNTY OF ERIE)

I, Louis S. Capadano, Notary Public, in and for the County of Monroe, State of New York, do hereby certify:

That the witness whose testimony appears hereinbefore was, before the commencement of their testimony, duly sworn to testify the truth, the whole truth and nothing but the truth; that said testimony was taken pursuant to notice at the time and place as herein set forth; that said testimony was taken down by me and thereafter transcribed into typewriting, and I hereby certify the foregoing testimony is a full, true and correct transcription of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action, nor in anyway interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this 15th day of August, 2011.

Louis S. Capadano
Notary Public-State of New York

JONES VARGAS

ATTORNEYS AT LAW
300 EAST SECOND STREET
SUITE 1510
PO BOX 281
RENO, NEVADA 89504-0281
TEL (775) 786-5000 FAX (775) 786-1177
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OF COUNSEL
CLIFFORD A. JONES (1912 - 2001)
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GEORGE L. VARGAS (1909 - 1986)
JOHN C. BARTLETT (1910 - 1987)
LOUIS MEAD DIXON (1918 - 1993)
GARY T. FOREMASTER (1953 - 1998)
CATHERINE A. SOURK
EXECUTIVE DIRECTOR
E-Mail Address
cgrinstead@joneswargas.com

July 21, 2011

Sujata Yalamanchili, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203

Via Federal Express – 7949 9915 3948

Re: Desi Moreno v. Berry-Hinckley Industries
Case No. CV10-02329

Dear Ms. Yalamanchili:

With this letter is a binder that contains the documents you previously provided us. They are now Bate-Stamped HR00001-HR00575. These are the documents that will be referred to during the video conference of your deposition on Tuesday, July 26, 2011 at 1:00 p.m. (EDT) at Hodgson Russ, LLP.

Should you have any questions, please do not hesitate to call our office. Thank you.

Sincerely,

JONES VARGAS

Cindy S. Grinstead

Cindy S. Grinstead
Legal Assistant *to*
John P. Desmond

/csg
Enclosure

LAS VEGAS OFFICE
3773 HOWARD HUGHES PARKWAY, THIRD FLOOR SOUTH, LAS VEGAS, NEVADA 89169 TEL (702) 862-3300 FAX (702) 737-7705
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EXHIBIT 8

EXHIBIT 8

Sujata Yalamanchili
Direct Dial: 716.848.1657
Direct Facsimile: 716.819.4620
syalaman@hodgsonruss.com

Hodgson Russ ATTORNEYS

June 17, 2011

Federal Express

John Desmond
Jones Vargas
300 East Second Street
Suite 1510
Reno, NV 89501

Dear John:

Re: BHI – Moreno File -8995 La Posada, Sparks

As you requested, enclosed is a CD containing Hodgson Russ' documents pertaining to the BHI – Desi Moreno closing. We have retained copies for our files.

Please feel free to contact me with any questions your may have.

Very truly yours,

Sujata Yalamanchili

SY/tms
Enclosure

Sujata Yalamanchili
Direct Dial: 716.848.1657
Direct Facsimile: 716.819.4620
syalaman@hodgsonruss.com

RECEIVED
SEP
Hodgson Russ ATTORNEYS

August 31, 2011

John Desmond
Jones Vargas
300 East Second Street
Suite 1510
Reno, NV 89501

Dear John:

Re: Moreno v. BHI

Enclosed please find an invoice for copying charges related to the various Moreno documents we sent to you this Spring. If you recall, we copied all of our records at the request of your client.

Will you please arrange to have this invoice paid to our firm at your earliest convenience? I would be happy to discuss this with you at your convenience.

Very truly yours,

Sujata Yalamanchili /tms

Sujata Yalamanchili

SY/tms
Enclosure

F I L E D
Electronically
CV13-02663
2017-07-18 04:05:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

EXHIBIT 9

EXHIBIT 9

LAW OFFICES OF
ROBISON, BELAUSTEGUI, SHARP & LOW
A PROFESSIONAL CORPORATION

KENT R. ROBISON
THOMAS L. BELAUSTEGUI
F. DEARMOND SHARP
KEEGAN G. LOW
BARRY L. BRESLOW
MARK G. SIMONS
MICHAEL E. SULLIVAN

71 WASHINGTON STREET
RENO, NEVADA 89503
TELEPHONE (775) 329-3151
FACSIMILE (775) 329-7169
(775) 329-7941

CLAYTON P. BRUST
STEFANIE T. SHARP

FRANK C. GILMORE
MICHAEL A. BURKE
KRISTEN L. MARTINI

August 9, 2013

HODGSON RUSS
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, New York 14202

Re: Morabito

Dear Sir or Madam:

This office represents Paul A. Morabito. I am in receipt of a copy of a Subpoena that was allegedly served upon you in a case proceeding in the United States Bankruptcy Court District of Nevada, Case No. BK-N-13-51237. It is our position that this Subpoena was not properly noticed and served upon my office as required by Federal Rule of Civil Procedure 45, as well as applicable Bankruptcy Rules. Moreover, this Subpoena was served pursuant to an Involuntary Petition for Bankruptcy which was filed by a client of the law firm that provided you with the improperly noticed Subpoena. Mr. Morabito has moved the Bankruptcy Court to dismiss the Involuntary Petition as being in violation of applicable Bankruptcy Codes and Rules, and because the Involuntary Petition is meant as a vehicle to harass, annoy, and cause unnecessary expense to Mr. Morabito.

My office intends to prepare and file a Motion for Protective Order forthwith, seeking an Order from the Bankruptcy Court preventing disclosure of the information which is being sought by this Subpoena. We intend to obtain a Protective Order on the basis that the Subpoena violates Rule 45 of the Federal Rules of Civil Procedure, as well as Rule 26 of the Federal Rules of Bankruptcy Procedure. We therefore request, on behalf of our client Mr. Morabito, that you assert your right under Rule 45 of the Federal Rules of Civil Procedure and object to the request for production of documents as set forth in the Subpoena.

We will provide you a copy of the Motion for Protective Order once it has been lodged with the Court.

Please contact me if you would like to discuss further.

Sincerely,

FRANK C. GILMORE

FCG/mcd
cc: Client
Gordon & Silver
Brian Irvine, Esq.
Barry L. Breslow, Esq.

j:\wpdata\blb\14283.001 morabito adv. jh, inc. and herbst\morabito involl bankruptcy 2013\l-letter on subpoenas (hodgson russ) 8-8-13.docxx

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2017-07-18 04:05:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

EXHIBIT 10

EXHIBIT 10

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re: Case No. BK-N-13-51237

PAUL A. MORABITO, an individual, Chapter 7

Alleged Debtor.
_____/

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re: Case No. BK-N-13-51236

CONSOLIDATED NEVADA CORPORATION, a Nevada corporation, Chapter 7

Alleged Debtor.
_____/

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

CONSOLIDATED NEVADA CORP., et al.,

Plaintiffs, Case No. CV07-02764

vs. Dept. No. 6

JH, INC., et al.,

Defendants.
_____/

Pages 1 to 216, inclusive.

VIDEO DEPOSITION OF PAUL A. MORABITO

Wednesday, July 23, 2014

Reno, Nevada

REPORTED BY: Romona Malnerich
Nevada CCR #269
California CSR #7526

A P P E A R A N C E S

FOR JH, INC., JERRY HERBST, and BERRY-HINCKLEY INDUSTRIES:

Gordon Silver
BY: JOHN P. DESMOND, ESQ.
BRIAN R. IRVINE, ESQ.
100 West Liberty Street, Suite 940
Reno, Nevada 89501

Gordon Silver
BY: GERALD M. GORDON, ESQ.
3960 Howard Hughes Parkway, 9th Floor
Las Vegas, Nevada 89169

FOR PAUL A. MORABITO and CONSOLIDATED NEVADA CORPORATION:

Robison, Belaustegui, Sharp & Low
BY: BARRY L. BRESLOW, ESQ.
FRANK C. GILMORE, ESQ.
71 Washington Street
Reno, Nevada 89503

THE VIDEOGRAPHER:

DEJON DURIO
A. Corrao Video
5375 Kietzke Lane
Reno, Nevada 89511

current on your obligations owed to the Robison firm?

A Yeah, I believe so.

Q What about with respect to the Hodgson Russ firm? They've also represented you on legal matters from time to time. Correct? Hodgson Russ is Sujata Yalamanchili's firm.

A Yeah, they've represented us in the past corporately.

Q Is that firm currently doing any work for you?

A No.

Q Is that firm currently doing any work for any of your entities?

MR. BRESLOW: Object to the form of the question.

THE WITNESS: I don't have any entities for them to do work for.

BY MR. DESMOND:

Q When was the last time, to the best of your recollection, that Hodgson Russ performed any legal services on your behalf?

A Several years ago.

Q In the course of the litigation, we've seen that in the past, certain obligations -- in particular, the ones related to Maestro Drive and the Hinckley

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, ROMONA MALNERICH, a Notary Public in and for the County of Washoe, State of Nevada, do hereby certify:

That on Wednesday, the 23rd day of July, 2014, at the hour of 9:00 a.m. of said day, at the offices of Gordon Silver, 100 West Liberty Street, Suite 940, Reno, Nevada, personally appeared PAUL A. MORABITO, who was duly sworn by me, and thereupon was deposed in the matter entitled herein;

That said video deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 214, is a full, true and correct transcript of my stenotype notes of said video deposition to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 31st day of July, 2014.

_____

ROMONA MALNERICH, CCR #269

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CV13-02663
2017-07-18 04:05:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

EXHIBIT 11

EXHIBIT 11

Lippes Mathias Wexler Friedman LLP

Dennis C. Vacco
Partner
dvacco@lippes.com

April 3, 2015

VIA UPS OVERNIGHT MAIL

Gordon Silver
Attn: Brian Irvine, Esq.
100 W. Liberty Street, Suite 940
Reno, NV89501

Re: *In re PAUL A. MORABITO*, an individual Alleged Debtor--Response to Subpoena dated Jan. 8, 2015

Dear Brian,

Enclosed please find Lippes Mathias Wexler Friedman LLP's ("LMWF's") responses to the Subpoena issued on behalf of your clients Jerry Herbst, JH, Inc., and Berry-Hinckley Industries (collectively the "Petitioning Creditors"). Written responses and objections to your Subpoena are included as **Enclosure A**. Responsive documents are included on the enclosed CD-R disk (**Enclosure B**).

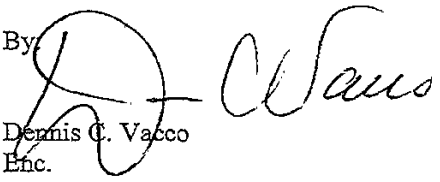
With regard to the letter dated February 13, 2015 to LMWF from John Murtha, counsel for Chapter 7 Trustee William Leonard (**Enclosure C**), it is LMWF's position that Mr. Leonard does *not* possess the power to waive the attorney-client privilege relating to communications between LMWF and Mr. Morabito in his individual capacity. Similarly, to the extent Mr. Murtha purports to waive Mr. Morabito's attorney-client privilege in an email dated April 1, 2015 (**Enclosure D**), such waiver is also ineffectual. *See eg In re Eddy*, 304 B.R. 591, 598, 2004 Bankr. LEXIS 169, 15-17 (Bankr. D. Mass. 2004). Finally, it is LMWF's position that Mr. Leonard does not hold the privilege for communications that occurred between LMWF and corporate client-entities that are not a party to these proceedings.

Because confidential communications between LMWF and Mr. Morabito are subject to the attorney-client privilege, and because Mr. Morabito has not waived that privilege, LMWF has redacted sensitive information subject to the attorney-client privilege or attorney work product doctrine in the enclosed CD-R disk. Furthermore, even if Mr. Leonard had the power to waive Mr. Morabito's privilege or the privilege of certain corporate client-entities not a party to these proceedings, which he does not, the redactions are still valid because they conceal confidential information which is not relevant here.

Our investigation is ongoing and has required obtaining information from offsite storage. As our document review identifies more responsive documents, they will be provided at that time. Given that LMWF has now complied with the subpoena via this letter and its enclosures, Gordon Silver should immediately withdraw its motion to compel as moot. Although LMWF does not concede that its delay in production has been prejudicial to any party, I apologize for any inconvenience that may have been caused by our delay in

production. As intimated in a previous email, LMWF's production was delayed because my colleague, Stacey Moar, went on maternity leave earlier than expected.

Very truly yours,
LIPPES MATHIAS WEXLER FRIEDMAN LLP

By: 

Dennis C. Vacco
Enc.

cc: Frank Gilmore
Barry R. Breslow
Michael E. Sullivan
ROBISON, BELAUSTEGUI, SHARP & LOW
Attorneys for Alleged Debtor
71 Washington Street
Reno, NV 89503

John F. Murtha
WOODBURN AND WEDGE
Attorney for Chapter 7 Trustee
P.O. Box 2311
Reno, NV 89505

F I L E D
Electronically
CV13-02663
2017-07-18 04:05:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

EXHIBIT 12

EXHIBIT 12

Lippes Mathias Wexler Friedman LLP

Dennis C. Vacco
Partner
dvacco@lippes.com

October 20, 2010

VIA ELECTRONIC MAIL
Mr. Paul Morabito
8581 Santa Monica Blvd., Ste. 708
West Hollywood, CA 90069

Re: Paul Morabito General; Our File No.: 3540.0001
Barbieri CA Litigation; Our File No.: 3540.0003
Herbst NV Litigation; Our File No.: 3540.0004
Eclectic CA Litigation; Our File No.: 3540.0005
Oppio NV Litigation; Our File No.: 3540.0008
Big Wheel Properties, LLC; Our File No.: 3540.0011
Superpumper Texas; Our File No.: 3540.0012
Superpumper; Our File No.: 3540.0013

Dear Paul:

Very truly yours,

LIPPES MATHIAS WEXLER FRIEDMAN LLP

By: Dennis C. Vacco/sjc
Dennis C. Vacco

DCV/sjc
Enc.

Lippes Mathias Wexler Friedman LLP

Fed. I.D. 16-1021918

DISBURSEMENTS INCURRED OR PAID BY US FOR YOUR ACCOUNT NOT INCLUDED IN AMOUNT SHOWN HERE WILL BE BILLED AT A LATER DATE

October 05, 2010

Billed through 09/30/2010

PAUL MORABITO
8581 SANTA MONICA BLVD SUITE 708
WEST HOLLYWOOD, CA 90069

Invoice 39113 DCV
Client-Matter 3540-00001

PAID

Balance forward as of bill dated 09/19/10	$2,798.78
Payments received since last bill	$2,798.78
Net balance forward	**$0.00**

BILLING SUMMARY

CHRISTOPHER J BERARDI	4.20 hrs	100.00 /hr	$420.00
KEVIN J. CROSS	17.70 hrs	265.00 /hr	$4,690.50
CHERYL A GREEN	6.70 hrs	350.00 /hr	$2,345.00
GREGORY T IVANCIC	4.80 hrs	275.00 /hr	$1,320.00
BRENDAN H LITTLE	1.80 hrs	180.00 /hr	$324.00
CHRISTIAN M LOVELACE	18.90 hrs	175.00 /hr	$3,307.50
PAUL A. MITCHELL	0.70 hrs	300.00 /hr	$210.00
RICHARD M SCHERER	5.80 hrs	100.00 /hr	$580.00
DENNIS C VACCO	21.50 hrs	400.00 /hr	$8,600.00
TOTAL FEES	82.10 hrs		$21,797.00
TOTAL DISBURSEMENTS			$35,551.62
TOTAL CHARGES FOR THIS BILL			$57,348.62

GENERAL

FOR PROFESSIONAL SERVICES RENDERED

09/10/10	RMS	Reviewed Non Discolusre Agreement and recommend certain changes.	0.40 hrs	$40.00
09/12/10	DCV	Call from Eric Schindler re: viability of malpractice case v. Mission Hospital; email to Edward Bayuk.	0.75 hrs	$300.00
09/13/10	KJC	Reviewed emails on Mission Hospital issues.	0.30 hrs	$79.50
09/13/10	RMS	Amended non disclosure agreement.	0.40 hrs	$40.00

	3540	MORABITO, PAUL	Bill #	39113 Page	2
09/14/10	BHL	Conference with Attorney Vacco re: Herbst verdict	0.20 hrs	$36.00	
09/15/10	CML	Analyzed assignment to document transaction for note and option. Reviewed option language ofr DCV; Drafted trigger language for default in the note.	1.50 hrs	$262.50	
09/15/10	CAG	Mission Hospital - review of medical records forwarded by Eric Schindler.	0.90 hrs	$315.00	
09/16/10	KJC	Reviewed Subpoena in POMA matter. Follow-up on same.	0.40 hrs	$106.00	
09/16/10	KJC	Emails on handling of retainer from Paul Morabito. Attention to transfer and judgment issues. Follow-up with Attorney Vacco re: same.	0.80 hrs	$212.00	
09/16/10	BHL	Review subpoena served on P. Morabito in POMA Distributing Case. Research and review court records in said case. Draft email to D. Vacco re: status. Draft email to D. Lemieux re: service of subpoena.	0.40 hrs	$72.00	
09/16/10	CML	Drafted non-payment language for note.	0.60 hrs	$105.00	
09/16/10	RMS	Conducted research regarding [redacted]	1.40 hrs	$140.00	
09/16/10	CAG	Mission Hospital: continue review of medical records related to potential med-mal claim; lengthy telephone conversation Eric Schindler related to same; inner-office communication with Dennis Vacco re: same.	5.30 hrs	$1,855.00	
09/17/10	CML	Analyzed form stock option agreements for PAM transaction	0.80 hrs	$140.00	
09/17/10	DCV	Meeting with client and Mark Lehman.	1.50 hrs	$600.00	
09/17/10	RMS	Conference with BHL regarding transfers.	0.30 hrs	$30.00	
09/19/10	BHL	Perform legal research re: judgment enforcement in NV.	0.50 hrs	$90.00	
09/20/10	BHL	Draft email to Attorney Vacco re: [redacted]	0.20 hrs	$36.00	
09/20/10	CML	Reviewed Compass documents for specific provisions regarding default; Correspondence re: same.	0.40 hrs	$70.00	
09/20/10	DCV	Calls to Dave Hopkins re: appraisals; conference S. Yalamanchili; conference with client.	1.75 hrs	$700.00	

3540 MORABITO, PAUL Bill # 39113 Page 3

09/20/10	DCV	Conference with Graber; S. Yalamanchili and KJC.	1.00 hrs	$400.00
09/21/10	KJC	Reviewed information from Paul Morabito on [redacted] other transactions. Reviewed breakdown of Morabito [redacted] Reviewed research on [redacted] Conferences with Dennis Vacco re: same. Multiple emails and calls re: same. Conferences with Attorney Schulz and Ivancic on Morabito issues.	4.70 hrs	$1,245.50
09/21/10	PAM	Meeting regarding corporate ownership restructuring.	0.70 hrs	$210.00
09/21/10	CML	Conference with DCV and KJC re: corporate structure and miscellaneous corporate; Follow up briefing of matters with PJS.	4.00 hrs	$700.00
09/21/10	DCV	Conference with Stan Bernstein; several calls to client. Received and reviewed emails.	1.50 hrs	$600.00
09/22/10	KJC	Lengthy conference call with Dennis Vacco, Gary Graber and Sujata Yalamanchili to discuss [redacted] Reviewed emails re: same. Call with Leif Reid on status of Nevada judgment and appeal issues.	3.00 hrs	$795.00
09/22/10	CML	Conference with Greg re: compass bank defaults and mechanisms. Phone conference with DCV and KJC with Lief and conference following re: planning.	1.80 hrs	$315.00
09/22/10	DCV	Conference with Yalamanchili, Graber and KJC; follow up to client.	2.50 hrs	$1,000.00
09/22/10	RMS	Conducted research regarding [redacted]	1.30 hrs	$130.00
09/22/10	CJB	Fact Gathering for Morabito entity structure	2.50 hrs	$250.00
09/22/10	CJB	Meeting with Kevin Cross RE: Findings from Morabito entities fact gathering	0.70 hrs	$70.00
09/22/10	CJB	Organize and compile Morabito emails, statements, personal state tax return 2007 /2007 Baruk, LLC tax return. Fact gathering on tax returns.	1.00 hrs	$100.00

3540 MORABITO, PAUL Bill # 39113 Page 4

09/24/10	DCV	Conference with Craig Hoskins and Shawn Hollenback; follow up email; several calls to client.	3.00 hrs	$1,200.00
09/24/10	KJC	Attention to strategy on Morabito [redacted]. Reviewed [redacted]. Reviewed numerous emails on open issues. Scheduled meeting with Hodgson Russ counsel for Morabito.	2.50 hrs	$662.50
09/24/10	DCV	Several conference calls re: valuation and strategy. Begin drafting documents.	3.00 hrs	$1,200.00
09/24/10	CAG	Mission Hospital - Review draft summons and complaint against Mission Hospital prepared by Eric Schindler.	0.50 hrs	$175.00
09/26/10	DCV	Conference calls with client to discuss strategy.	1.50 hrs	$600.00
09/27/10	GTI	Review of latest draft of contract; discuss changes with CL; attend meeting with G. Graber, DCV and CL to discuss current strategy; follow up meeting with DCV and CL; review options and conference with accountant on [redacted]; review e-mail from M. Jones on comments.	4.80 hrs	$1,320.00
09/27/10	KJC	Strategy meeting with Dennis Vacco, Christian Lovelace, Greg Ivancic, Gary Grader and Sujata Yalamanchili to discuss Morabito [redacted]. Reviewed research of [redacted]. Reviewed findings of Fact and Conclusion of Law from NV matter.	5.00 hrs	$1,325.00
09/27/10	BHL	Conference with Attorney Cross: [redacted]. Perform legal research re: same.	0.50 hrs	$90.00
09/27/10	CML	General review of all correspondence from past week to catch up on situation and documents we have or do not have. Phone conference client. Afternoon conference with DCV, G. Graber, Sujata, Greg Ivancic and K. Cross.	8.80 hrs	$1,540.00
09/27/10	DCV	Review and implement strategy.	5.00 hrs	$2,000.00
09/27/10	RMS	Investigation of law regarding automatic stays and judgments; Investigation of law regarding [redacted].	2.00 hrs	$200.00

3540 MORABITO, PAUL Bill # 39113 Page 5

09/28/10	KJC	Conferences with Dennis Vacco and others on Morabito asset issues.	1.00 hrs	$265.00
09/29/10	CML	Conference with DCV re structure of entities moving forward	1.00 hrs	$175.00
			82.10	$21,797.00

DISBURSEMENTS

09/22/10	Appraisal - Alves Appraisal Assoc.	$2,500.00
09/27/10	Mark E. Lehman Retainer	$25,000.00
09/27/10	JUSTMANN & ASSOCIATES INVOICE	$4,000.00
09/30/10	JUSTMANN & ASSOCIATES	$4,000.00
09/30/10	United Parcel Service	$23.82
09/30/10	Telephone Charges	$27.80
		$35,551.62

Lippes Mathias Wexler Friedman LLP

Fed. I.D. 16-1021918
DISBURSEMENTS INCURRED OR PAID BY US FOR YOUR ACCOUNT NOT INCLUDED IN AMOUNT SHOWN HERE WILL BE BILLED AT A LATER DATE

October 05, 2010
Billed through 09/30/2010

PAUL MORABITO
8581 SANTA MONICA BLVD SUITE 708
WEST HOLLYWOOD, CA 90069

Invoice 39115 DCV
Client-Matter 3540-00004

PAID

Balance forward as of bill dated 09/16/10	$24,480.75
Payments received since last bill	$24,583.25
Net balance forward	**-$102.50**

BILLING SUMMARY

CHERYL A GREEN	2.00 hrs	350.00 /hr	$700.00
BRENDAN H LITTLE	0.60 hrs	180.00 /hr	$108.00
DENNIS C VACCO	27.75 hrs	400.00 /hr	$11,100.00
TOTAL FEES	30.35 hrs		$11,908.00
TOTAL CHARGES FOR THIS BILL			$11,908.00
NET BALANCE FORWARD			-$102.50
TOTAL BALANCE NOW DUE			**$11,805.50**

HERBST NV LITIGATION

FOR PROFESSIONAL SERVICES RENDERED

09/13/10	DCV	Conference with PAM and Leif Reid re: verdict in case.	1.25 hrs	$500.00
09/14/10	DCV	Conference with client re: verdict and meeting with S. Yalamanchili at Hodgson Russ to debrief her on verdict.	4.00 hrs	$1,600.00
09/14/10	CAG	Conference with Dennis Vacco, Sujata Yalamanchili, Gary Graber and Paul Morabito to discuss strategy [redacted]	2.00 hrs	$700.00
09/15/10	DCV	Conference with PAM re: verdict.	1.00 hrs	$400.00
09/15/10	DCV	Conference with S. Yalamanchili and several calls with PAM re: verdict.	0.75 hrs	$300.00
09/16/10	DCV	Conference with client to discuss post verdict motion and strategy; conference	6.00 hrs	$2,400.00

		with Stan Bernstein.		
09/16/10	DCV	Travel to California.	7.00 hrs	$2,800.00
09/17/10	BHL	Perform legal research re: [redacted]	0.60 hrs	$108.00
09/17/10	DCV	Return travel to Buffalo.	6.50 hrs	$2,600.00
09/22/10	DCV	Conference with Leif Reid re: [redacted]	1.25 hrs	$500.00
			30.35	$11,908.00

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CV13-02663
2017-07-18 04:05:07 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6202149 : csulezic

EXHIBIT 13

EXHIBIT 13

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE:	)
PAUL A. MORABITO, an individual,	)
Alleged Debtor.	)
	) Chapter 7
	) Case No.
	) BK-N-13-51237-GWZ
	) VOLUME II

341 MEETING OF CREDITORS

LAS VEGAS, NEVADA

THURSDAY, JUNE 25, 2015

REPORTED BY: KATHERINE M. SILVA, CCR #203
JOB NO: 254087

341 MEETING OF CREDITORS, taken at 650 White Drive, Las Vegas, Nevada on THURSDAY, JUNE 25, 2015 at 1:01 o'clock p.m., before Katherine M. Silva, Certified Reporter, in and for the State of Nevada.

APPEARANCES:

For the Trustee:

WOODBURN AND WEDGE
BY: JOHN MURTHA, ESQ.
6100 Neil Road
Suite 500
Reno, Nevada 89511

For the Debtor:

ROBISON, BELAUSTEGUI, SHARP & LAW
BY: FRANK GILMORE, ESQ.
71 Washington Street
Reno, Nevada 89503

-and-

HARTMAN & HARTMAN
BY: JEFFREY L. HARTMAN, ESQ.
510 West Plum Lane
Suite B
Reno, Nevada 89509

For the Creditors:

GARMAN TURNER GORDON
BY: GERALD M. GORDON, ESQ.
650 White Drive
Suite 100
Las Vegas, Nevada 89119

what with Roberta.

MR. MURTHA: Pardon me?

MR. MORABITO: I haven't seen her for years so I don't remember.

MR. MURTHA: Could she have prepared the Arcadia Living Trust or any of the four missing amendments?

MR. MORABITO: She could have prepared the trust. She wouldn't have done the amendments but she is not completely competent so I didn't use her for very much and I don't even know in the end if she did the Arcadia Living Trust.

MR. MURTHA: I'm trying to find out the names of any attorneys that you've used in the last seven or ten years or so.

MR. MORABITO: Yes, sir.

MR. MURTHA: And I know that you've used Mr. Hartman.

MR. MORABITO: Yes.

MR. MURTHA: And Holland and Hart.

MR. MORABITO: I've never used Holland and Hart.

MR. MURTHA: Okay. They were the Bank of America. Okay. I'm sorry.

You used Mr. Jeff Langin (phonetic)?

MR. MORABITO: As general counsel and provide me personal advice and Mr. Vacco and before that Sujata Yalamanchila.

MR. MURTHA: Who?

MR. MORABITO: Sujata Yalamanchila.

MR. MURTHA: You are going to have to spell that one.

MR. GILMORE: S-u-j-a-t-a Y-a-l-a-m-a-n-c-h-i-l-a.

MR. MORABITO: She's the woman in Buffalo, New York who I used as a personal attorney, corporate attorney, prior to hiring Mr. Vacco's firm and her name is Sujata Yalamanchila, it's a T.

MR. MURTHA: Okay. And you are using Robberson Bielecki?

MR. MORABITO: Yes.

MR. MURTHA: And you've mentioned John Richmond and Robert Burke.

MR. MORABITO: Yes.

MR. MURTHA: I saw references to a Lewis and Roca trust deposit being made.

MR. MORABITO: Yeah, Reid.

MR. MURTHA: What did Mr. Reid do for you?

CERTIFICATE OF REPORTER

STATE OF NEVADA)
SS:
COUNTY OF CLARK)

I, Katherine M. Silva, a certified court reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the 341 Creditors meeting, commencing on THURSDAY, JUNE 25, 2015, at 1:01 o'clock p.m.

That prior to being examined the witness was by me duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 8th day of Jul

Katherine M. Silva, CCR #203