

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

vs.

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

Respondents,

and

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

Real Party in Interest.

Case No.

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**PETITIONERS' APPENDIX,**

**VOLUME 17**

**(Nos. 2510–2726)**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

# Exhibit 57

## Frank Gilmore

---

**From:** Sam Morabito <smorabito@superpumper.com>  
**Sent:** Wednesday, June 18, 2014 4:19 PM  
**To:** Michael.Vanek@wellsfargo.com  
**Subject:** FW: SPI Analysis  
**Attachments:** image001.png

Michael, here is an analysis of the Superpumper transaction in 2010, from our attorney. As discussed Edward and I ( through Snowshoe ) also assumed a large obligation on the LOC at Compass ( some 2.5 million dollars ). Note that we already owned 20% of the company, hence the 80% acquisition value.

Sam

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### Analysis of Superpumper Acquisition

Matrix Appraised Value:	\$6,484,515
Compass Term Loan:	\$1,682,000
Net Value:	\$4,802,514
Risk Discount (35%)	\$1,680,880
Discounted Net Value:	\$3,121,634
80% Acquisition Value <sup>(i)</sup> :	\$2,497,307
Less Cash Paid:	\$1,035,094
Balance Due:	\$1,462,213

Christian M. Lovelace  
*Partner*



Lippes Mathias Wexler Friedman LLP

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E-Mail: [clovelace@lippes.com](mailto:clovelace@lippes.com)  
Web: <http://www.lippes.com>

Circular 230 Disclosure. Any federal tax advice included in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding U.S. federal tax-related penalties or (ii) promoting or recommending to another party any tax-related matter addressed herein.

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# Exhibit 58

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Counsel for Paul A. Morabito

**UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF NEVADA**

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

Case No. BK-N-13-51237

Chapter No. 7

**DECLARATION OF PAUL A. 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**

Date: July 2, 2013  
 Time: 10:00 am  
 Place:

Judge: Hon. Gregg Zive

I, Paul A. Morabito, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called as a witness, I  
 could and would competently testify thereto.



2. I have prepared this declaration in connection with Paul A. Morabito's Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (collectively, "Herbst") 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 (the "Motion").

3. I hired the law firm of Peitzman Weg LLP to represent me in this action. The firm is in Los Angeles, California, where I have maintained my exclusive residence since September, 2010.

4. I have a long history of public service in the State of California, having served as a gubernatorial appointee in California as Chairman of the State Coastal Conservancy from 2001-2005; as an appointee of the President pro Tempore of the California State Senate as a Director of the State Coastal Conservancy; and on the California High Speed Rail Authority in 2000; and as the Senior Policy Advisor to the Los Angeles County Sheriff's Department from 2000 to 2005.

5. Aside from utilities, rent, car lease and credit cards for living expenses, which are paid each month as they come due, I have no other significant creditors except Herbst and the affiliated entities stemming from the Settlement Agreement.<sup>1</sup>

6. I have done everything reasonably possible over the past three years to maximize and liquidate my assets and, other than payment for ordinary living expenses, pay the proceeds over to Herbst, or to others on his behalf, which payments to date total approximately \$8 million.

7. These payments to Herbst include:

- a. \$5 million, in two payments of \$2.5 million each that I was able to recover, at Herbst's urging, from payments of \$6 million that were made on an obligation that I personally guaranteed;
- b. Approximately \$1.5 million from the proceeds of a residential property located in Reno, Nevada;
- c. lease, tax and utility payments to Spirit REIT of approximately \$840,254 on Herbst's behalf;

<sup>1</sup> To the extent that I use capitalized terms that are not defined herein, I intend those terms to have the definition ascribed to them in the Motion.

- d. Approximately \$214,981 in interest payments to Art Hinckley/BHI Trust on Herbst's behalf; and,
- e. Approximately \$30,000 to Mr. Moreno on Herbst's behalf.

8. In order to facilitate the sale of the Reno residential property referred to above, it was necessary for me to trade my interests as a tenant in common in several residential and commercial properties which interests were appraised and valued at approximately \$2.5 million, for the interests of the other tenant in common of the Reno property which interests were appraised and valued at approximately \$1.65 million. To account for the difference in value, in addition to the interests in the Reno property, I received a note in the amount of approximately \$1.5 million and I have received full value of that note.

9. It is worth noting that, at Herbst's insistence, the Reno residential property was sold at the worst possible time in the Nevada housing market and at a price that was almost half of its appraised value.

10. As well, I sold my interest in a company, Consolidated Western Corporation, for cash payments of approximately \$542,000 and a note of approximately \$933,694, which I had received partial payments on and the principal balance has been subsequently cancelled based on a post closing reevaluation of the significant decrease in the fair market value of the business.

11. The cash from these transactions and notes has been used to pay my living expenses and make the payments to Herbst, and on his behalf, as set forth above.

12. My sole remaining assets consist of the following: (i) cash of less than \$10,000; (ii) approximately \$10,000 in two bank accounts; (iii) ownership of Consolidated Nevada Corporation (value of less than \$0); (iv) ownership of a commercial property through a Nevada LLC (value of approximately \$150,000); and (v) personal effects (i.e. clothing and home furnishings).

13. I have not hidden my assets or financial affairs from Herbst or fraudulently transferred any assets for less than fair market or reasonably equivalent value.

14. I have never failed to provide or withheld necessary financial information from Herbst. In fact, through my counsel, has provided multiple boxes of financial records to Herbst including but not limited to all bank records, tax returns and credit card statements.





# Exhibit 59

201027310002



**State of California**  
**Secretary of State**

LLC-1

File #

**FILED**In the Office of the Secretary of State  
of the State of California

SEP 29 2010

**Limited Liability Company**  
**Articles of Organization**

A \$70.00 filing fee must accompany this form.

Important - Read instructions before completing this form.

This Space For Filing Use Only

**Entity Name** (End the name with the words "Limited Liability Company," or the abbreviations "LLC" or "L.L.C." The words "Limited" and "Company" may be abbreviated to "Ltd." and "Co.," respectively.)

## 1. NAME OF LIMITED LIABILITY COMPANY

Snowshoe Properties, LLC

**Purpose** (The following statement is required by statute and should not be altered.)

2. THE PURPOSE OF THE LIMITED LIABILITY COMPANY IS TO ENGAGE IN ANY LAWFUL ACT OR ACTIVITY FOR WHICH A LIMITED LIABILITY COMPANY MAY BE ORGANIZED UNDER THE BEVERLY-KILLEA LIMITED LIABILITY COMPANY ACT.

**Initial Agent for Service of Process** (If the agent is an individual, the agent must reside in California and both items 3 and 4 must be completed. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 3 must be completed (leave Item 4 blank).)

## 3. NAME OF INITIAL AGENT FOR SERVICE OF PROCESS

Mark E. Lehman

## 4. IF AN INDIVIDUAL, ADDRESS OF INITIAL AGENT FOR SERVICE OF PROCESS IN CALIFORNIA CITY STATE ZIP CODE

9200 Sunset Boulevard, PH2

West Hollywood CA 90069

**Management** (Check only one)

## 5. THE LIMITED LIABILITY COMPANY WILL BE MANAGED BY:



ONE MANAGER



MORE THAN ONE MANAGER



ALL LIMITED LIABILITY COMPANY MEMBER(S)

**Additional Information**

6. ADDITIONAL INFORMATION SET FORTH ON THE ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE A PART OF THIS CERTIFICATE.

**Execution**

7. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

September 29, 2010

DATE

SIGNATURE OF ORGANIZER

Edward William Bayuk

TYPE OR PRINT NAME OF ORGANIZER

LLC-1 (REV 04/2010)

APPROVED BY SECRETARY OF STATE

# Exhibit 60

## PROMISSORY NOTE

\$1,462,213.00

Scottsdale, Arizona  
November 1, 2010

FOR VALUE RECEIVED, the undersigned, Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale Arizona 85254 ("Maker") promises to pay to Paul A. Morabito, an individual, with an address at 8581 Santa Monica Blvd., Suite 708, West Hollywood, CA 90069 ("Holder"), pursuant to a certain Shareholder Interest Purchase Agreement dated as of September 30, 2010, the principal sum of One Million Four Hundred Sixty Two Thousand Two Hundred Thirteen Dollars and 00/100 (\$1,462,213.00), together with interest thereon as follows:

The principal balance of this Note shall accrue interest at a rate of four percent (4 %) per annum, compounded annually, and be payable on the original principal balance of this Note. The principal balance of this Note, with interest thereon, shall be repaid by Maker in eighty four (84) monthly installments of Nineteen Thousand Nine Hundred Eighty Six Dollars and 71/100 (\$19,986.71) commencing on December 1, 2010, and on the same day of each month thereafter for the immediately following eighty three (83) months.

Maker shall make all of its payments to Holder at the address of Holder first mentioned above or at such other place as Holder may designate to Maker.

The Maker shall have the right to prepay, in whole or in part, the unpaid interest and principal on this note at any time without premium or penalty. Any prepayments shall be applied first to accrued and unpaid interest and late fees, if any, and then to the principal amount hereof.

Maker waives presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and consent to the terms hereof and to any extension or postponement of the time for payment or any other indulgence and shall remain fully liable hereunder in the event of any such extension, postponement or other indulgence.

Neither this Note nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at the

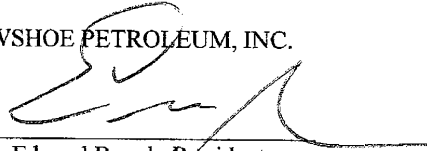
Superpumper 000001

address for such party set forth above or to such other address as a party hereto may designate in writing to the other parties.

This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

SNOWSHOE PETROLEUM, INC.

By:

  
Edward Bayuk, President



**SUCCESSOR PROMISSORY NOTE**

\$492,937.30

Scottsdale, Arizona  
February 1, 2011

FOR VALUE RECEIVED, the undersigned, Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 ("Maker") promises to pay to Paul A. Morabito, an individual, with an address at 8581 Santa Monica Blvd., Suite 708, West Hollywood, CA 90069 ("Holder"), the principal sum of Four Hundred Ninety Two Thousand Nine Hundred Thirty Seven Dollars and 30/100 (\$492,937.30), together with interest thereon as follows:

The principal balance of this Note shall accrue interest at a rate of four percent (4%) per annum, compounded annually, and be payable on the original principal balance of this Note. The principal balance of this Note, with interest thereon, shall be repaid by Maker in eighty four (84) monthly installments of Six Thousand Seven Hundred Thirty Seven Dollars and 86/100 (\$6,737.86), commencing on March 1, 2011, and on the same day of each month thereafter for the immediately following eighty three (83) months.

Maker shall make all of its payments to Holder at the address of Holder first mentioned above or at such other place as Holder may designate to Maker.

The Maker shall have the right to prepay, in whole or in part, the unpaid interest and principal on this note at any time without premium or penalty. Any prepayments shall be applied first to accrued and unpaid interest and late fees, if any, and then to the principal amount hereof.

Maker waives presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and consent to the terms hereof and to any extension or postponement of the time for payment or any other indulgence and shall remain fully liable hereunder in the event of any such extension, postponement or other indulgence.

Neither this Note nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at the address for such party set forth above or to such other address as a party hereto may designate in writing to the other parties.

Superpumper 000003

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This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

SNOWSHOE PETROLEUM, INC.

By: 

Edward Bayuk, President

## SUCCESSOR PROMISSORY NOTE

\$939,000.00

Scottsdale, Arizona  
February 1, 2011

FOR VALUE RECEIVED, the undersigned, Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 ("Maker") promises to pay to Superpumper, Inc., an Arizona corporation with offices at 14631 N. Scottsdale Road, Suite 125, Scottsdale, Arizona 85254 ("Holder"), the principal sum of Nine Hundred Thirty Nine Thousand Dollars and 00/100 (\$939,000.00), together with interest thereon as follows:

The principal balance of this Note shall accrue interest at a rate of four and 00/100 percent (4 %) per annum, compounded annually, and be payable on the original principal balance of this Note. The principal balance of this Note, with interest thereon, shall be repaid by Maker in eighty four (84) monthly installments of Twelve Thousand Eight Hundred Thirty Five Dollars and 01/100 (\$12,835.01), commencing on March 1, 2011, and on the same day of each month thereafter for the immediately following eighty three (83) months.

Maker shall make all of its payments to Holder at the address of Holder first mentioned above or at such other place as Holder may designate to Maker.

The Maker shall have the right to prepay, in whole or in part, the unpaid interest and principal on this note at any time without premium or penalty. Any prepayments shall be applied first to accrued and unpaid interest and late fees, if any, and then to the principal amount hereof.

Maker waives presentment for payment, demand, notice of nonpayment, protest, and notice of protest, and consent to the terms hereof and to any extension or postponement of the time for payment or any other indulgence and shall remain fully liable hereunder in the event of any such extension, postponement or other indulgence.

Neither this Note nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at the address for such party set forth above or to such other address as a party hereto may designate in writing to the other parties.

Superpumper 000005

This Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof.

SNOWSHOE PETROLEUM, INC.

By: 

Edward Bayuk, President

## **ASSIGNMENT AGREEMENT**

This Assignment Agreement (the "Agreement") is entered into as of the 1<sup>st</sup> day of February, 2011, by and between Superpumper, Inc., an Arizona corporation ("Assignee"), Paul A. Morabito, an individual ("Assignor") and Snowshoe Petroleum, Inc., a New York corporation, with an address at 14631 N. Scottsdale Road, Suite 125, Scottsdale Arizona 85254 ("SnowPet").

### **WITNESSETH:**

WHEREAS, the parties hereto are parties to a certain term note dated September 1, 2010 in the principal amount of \$939,000.00 in which the Assignor is the Maker and the Assignee is the successor corporation following a merger with the original Holder, Consolidated Western Corporation, the merger having been consummated September 29, 2010 (the "PM Note"); and

WHEREAS, the Assignor is a Holder under a certain promissory note dated November 1, 2010 in the principal amount of \$1,462,213.00, in which SnowPet is the Maker (the "SnowPet Note"); and

WHEREAS, the Assignor wishes to assign and the Assignee desires to assume payments in the principal amount of \$939,000 from SnowPet (the "Assigned Payments"); and

WHEREAS, upon the assignment herein, Assignee shall forgive all amounts due to Assignee by Assignor under the PM Note.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The above recitals are hereby incorporated herein and made a part of this Agreement.
2. Assignment. As of the date hereof, the Assignor assigns, transfers, conveys and delivers over to the Assignee, and the Assignee accepts delivery of, the Assigned Payments.
3. Assumption. The Assignee fully and completely succeeds to, assumes the Assigned Payments from SnowPet under a Successor Note (as hereafter defined) and further agrees to discharge and forgive all obligations of Assignor under the PM Note.
4. Successor Notes. On the date hereof, successor notes to the SnowPet Note shall be delivered to Assignee and Assignor by SnowPet in the principal amounts of \$939,000 and \$492,937.30 (being the remaining principal balance on the SnowPet Note as of the date hereof and following the assignment herein), respectively, along substantially the same terms and conditions of the SnowPet Note (each, a "Successor Note").

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5. Further Assurances. Each party agrees to perform such further acts and deliver such further documents as may be reasonably necessary to carry out the terms and intent of this Agreement.

6. Benefits; Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any other person other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

7. Governing Law. This Agreement shall be governed by, and shall be construed and interpreted in accordance with, the laws of the State of New York, without regard to conflicts of laws provisions thereof.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute a single agreement.

*[Remainder of page intentionally blank; Signature page follows]*

*[Signature page to Assignment Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first written above.

ASSIGNOR:



\_\_\_\_\_  
Paul A. Morabito

ASSIGNEE:

SUPERPUMPER, INC.

By: 

Name: Edward Bayuk

Title: President

SNOWPET:

SNOWSHOE PETROLEUM INC.

By: 

Name: Edward Bayuk

Title: President

Superpumper 000009

## TERM NOTE

\$939,000.00

West Hollywood, California  
As of September 1, 2010

FOR VALUE RECEIVED, intending to be legally bound, the undersigned PAUL A. MORABITO, an individual, ("Borrower"), promises to pay to the order of Consolidated Western Corporation, a Nevada corporation, ("Lender") on the dates set forth below, the principal sum of Nine Hundred and Thirty Nine Thousand Dollars and 00/100 (\$939,000.00) (the "Principal") plus interest as agreed below and all fees and costs (including without limitation attorneys' fees and disbursements) the Lender incurs in order to collect any amount due under this Note ("Expenses").

The unpaid Principal of this Note shall earn interest calculated on the basis of a 360-day year for the actual number of days of each year (365 or 366) from and including the date the proceeds of this Note were disbursed to, but not including, the date all amounts hereunder are paid in full, at a rate per year which shall on each day be Four Percent (4%). It is the intent of the Lender and Borrower that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "Maximum Legal Rate"). Solely to the extent necessary to prevent interest under this Note from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Lender, shall be refunded to Borrower.

The Maturity Date of this Note is September 1, 2016. Borrower shall pay interest only in forty-seven (47) consecutive monthly installments commencing on January 1, 2012 and on the first day of each month thereafter and ONE (1) FINAL INSTALLMENT on the Maturity Date in an amount equal to the outstanding Principal together with all other amounts outstanding hereunder including, without limitation, accrued interest, costs and Expenses. Payments shall be made in immediately available United States funds.

Borrower shall have the right to prepay the outstanding balance of this Note in whole, at any time, or in part, from time to time, without premium or penalty, but with accrued interest on the principal being paid to the date of prepayment.

This Note shall be governed by the law of the State of California without regard to principals of conflicts of laws.



PAUL A. MORABITO

Superpumper 000010



# Exhibit 61

**PROMISSORY NOTE**  
**(secured)**

\$3,000,000.00

Phoenix, Arizona  
August 13, 2010

FOR VALUE RECEIVED, the undersigned, **SUPERPUMPER, INC.**, an Arizona corporation, whose address is 14631 North Scottsdale Road #125, Scottsdale, AZ 85254, Attention: Paul A. Morabito ("Maker"), unconditionally promises and agrees to pay to the order of COMPASS BANK, an Alabama banking corporation (the "Bank") (Bank and each subsequent transferee and/or owner of this Promissory Note (this "Note"), whether taking by endorsement or otherwise, are herein successively called "Holder"), at 2850 E. Camelback Road, Suite 140, Phoenix, Arizona 85016, or at such other place as Holder may from time to time designate in writing, the principal sum of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00), plus interest calculated on a daily basis (based on a 360-day year) from the date hereof on the principal balance from time to time outstanding as hereinafter provided. If a Swap Agreement (as defined on Exhibit A attached hereto and incorporated herein by this reference) is in effect, payments of principal and interest are subject to the provisions set forth herein and on Exhibit A. Payments of principal, interest and all other sums payable hereunder are to be paid in lawful money of the United States of America as follows:

Certain Definitions

This Note is issued pursuant to the Loan Agreement and evidences Maker's obligation to repay amounts disbursed under the Loan. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement of even date herewith (hereinafter called "Loan Agreement") by and between Maker and Holder. In addition to terms defined in the Loan Agreement, the following terms will have the following meanings when used herein.

"Interest Period" means a period equal to the duration of the Reference Period; provided, however, if the last day of the Interest Period would not fall on a Business Day, the Interest Period will end on the next following Business Day. The initial Interest Period will commence on the date of this Note, and each succeeding Interest Period will commence on the day immediately following the expiration of the preceding Interest Period.

"LIBOR" means the London Interbank Offered Rate for the applicable Reference Period stated on Reuter's Monitor Money Rates Service two (2) days before the beginning of each Interest Period (or in the event no such rate is stated on that date, the rate stated on the day most immediately preceding the date of determination on which a rate was stated), as adjusted from time to time, in Holder's sole discretion, for then-applicable reserve requirements, deposit insurance assessment rates and other regulatory costs. If Reuter's becomes unavailable, Holder may use another source to determine LIBOR. If Reuter's

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states more than one rate for the applicable Reference Period, the applicable rate shall be the arithmetic mean of all stated rates for that Reference Period.

"Reference Period" and the corresponding Interest Period means one (1) month. The Reference Period is for reference purposes only, and the actual Interest Periods under this Note may be for periods of more than or less than one (1) month, depending on whether or not the final day of the Interest Period falls on a Business Day.

#### Interest Rate

A. Interest on the unpaid principal balance of this Note shall accrue at a fluctuating annual rate (the "Interest Rate") equal to the sum of: (i) two and 75/100 percent (2.75%) per annum, and (ii) LIBOR.

B. The Interest Rate is subject to fluctuation based upon LIBOR in effect from time to time. Each change in the Interest Rate shall become effective without notice on the commencement of each Interest Period, based upon LIBOR then in effect.

#### Payment Schedule; Maturity

Installments of principal plus interest in an amount set forth on the amortization schedule attached hereto as Exhibit "B" shall be due and payable monthly as set forth on Exhibit "B", and continuing regularly and monthly thereafter on the first (1st) day of each month, until August 13, 2013 (the "Maturity Date"), when all accrued and unpaid interest and all unpaid principal shall be due and payable in full.

#### General Terms

All amounts paid to Holder will be applied first to the indebtedness owing hereunder in such order and manner as Holder may from time to time determine in its sole discretion. All sums payable hereunder shall be paid in lawful money of the United States of America.

Holder may lend to its customers at rates that are at, above or below the Interest Rate and LIBOR, neither of which is necessarily the best or lowest rate offered by Holder.

#### Additional LIBOR Provisions.

If Holder at any time shall determine that for any reason adequate and reasonable means do not exist for ascertaining LIBOR, then Holder shall promptly give notice thereof to Maker. If such notice is given and until such notice has been withdrawn by Holder, then (A) no new LIBOR option may be selected by Maker, and (B) any portion of the outstanding principal balance hereof which bears interest determined in relation to LIBOR, subsequent to the end of the Interest Period applicable thereto, shall bear interest determined in relation to the Prime Rate. The Prime Rate is defined as the interest rate per annum designated by Holder as its "Prime Rate," as publicly announced by Holder from time to time.

If any law, treaty, rule, regulation or determination of a court or governmental authority or any change therein or in the interpretation or application thereof (each, a "Change in Law") shall make it unlawful for Holder (A) to make LIBOR options available hereunder, or (B) to maintain interest rates based on LIBOR, then in the former event, any obligation of Holder to make available such unlawful LIBOR options shall immediately be cancelled, and in the latter event, any such unlawful LIBOR-based interest rates then outstanding shall be converted, at Holder's option, so that interest on the portion of the outstanding principal balance subject thereto is determined in relation to the Prime Rate; provided however, that if any such Change in Law shall permit any LIBOR-based interest rates to remain in effect until the expiration of the Interest Period applicable thereto, then such permitted LIBOR-based interest rates shall continue in effect until the expiration of such Interest Period. Upon the occurrence of any of the foregoing events, Maker shall pay to Holder immediately upon demand such amounts as may be necessary to compensate Holder for any fines, fees, charges, penalties or other costs incurred or payable by Holder as a result thereof and which are attributable to any LIBOR options made available to Maker hereunder, and any reasonable allocation made by Holder among its operations shall be conclusive and binding upon Maker.

If any Change in Law or compliance by Holder with any request or directive (whether or not having the force of law) from any central bank or other governmental authority shall:

(A) subject Holder to any tax, duty or other charge with respect to any LIBOR options, or change the basis of taxation of payments to Holder of principal, interest, fees or any other amount payable hereunder (except for changes in the rate of tax on the overall net income of Holder); or

(B) impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by any office of Holder; or

(C) impose on Holder any other condition;

and the result of any of the foregoing is to increase the cost to Holder of making, renewing or maintaining any LIBOR options hereunder and/or to reduce any amount receivable by Holder in connection therewith, then in any such case, Maker shall pay to Holder immediately upon demand such amounts as may be necessary to compensate Holder for any additional costs incurred by Holder and/or reductions in amounts received by Holder which are attributable to such LIBOR options. In determining which costs incurred by Holder and/or reductions in amounts received by Holder are attributable to any LIBOR options made available to Maker hereunder, any reasonable allocation made by Holder among its operations shall be conclusive and binding upon Maker.

#### Miscellaneous

It is hereby expressly agreed that (i) if Maker fails to make any payment of principal or interest when due on this Note, or (ii) if there is a failure to perform or observe any of the covenants, promises or undertakings in this Note or in any of the Loan Documents or Swap Agreements after any applicable notice and cure periods, or any default hereunder or thereunder, then and in such event the whole of the principal sum and interest shall, at the option of the Holder, become immediately due and payable.

If (i) any payment of principal or interest is not made when such payment is due hereunder, and (ii) Holder declares such delinquency to be an Event of Default, interest will accrue on the amount of such installment, from and after the due date thereof, at the rate (the "Default Rate") that is the greater of: (a) five percent (5.0%) above the interest rate otherwise applicable thereto hereunder, or (b) eighteen percent (18.0%) per annum. In addition, Maker will pay to Holder, at Holder's option, a late charge for any payment due hereunder that is not made to Holder within ten (10) days after its due date, which charge will be in an amount equal to five percent (5.0%) of the amount of the overdue payment. The interest accruing on each such overdue installment is payable on demand; provided, however, such interest will be paid no later than the day on which the overdue installment is paid.

Maker agrees that the interest rate contracted for in connection with the credit accommodation evidenced by this Note includes the interest rate set forth herein and any other charges, costs, fees and expenses incident to this transaction paid by Maker to the extent the same are deemed interest under applicable law.

If this Note is placed in the hands of an attorney for collection, or if Holder should at any time incur any costs or attorneys' fees in any proceeding to collect or enforce payment hereof, whether or not suit is brought, or any proceeding under the Federal Bankruptcy Code, Title 11 of the United States Code, in order to collect any indebtedness hereunder or to preserve, protect or realize upon any security for such indebtedness, then Maker and any endorsers or guarantors hereof agree to pay, in addition to the principal and interest due hereon, costs and reasonable attorneys' fees incurred by Holder.

Failure of Holder to exercise any option hereunder shall not constitute a waiver of the right to exercise the same in the event of any subsequent default, or in the event of continuance of any existing default after demand for strict performance hereof.

Maker and all sureties, guarantors and/or endorsers hereof (or of any obligation hereunder) and accommodation parties hereon (each and all of the foregoing hereinafter severally called a "Surety") each: (a) agree that the liability under this Note of all parties hereto is joint and several; (b) severally waive any homestead or exemption laws and right thereunder affecting the full collection of this Note; (c) severally waive any and all formalities in connection with this Note to the maximum extent allowed by law, including (but not limited to) demand, diligence, presentment for payment, protest and demand, and notice of extension, dishonor, protest, demand and nonpayment of this Note; and (d) consent that Holder may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the debt evidenced by this Note, at the request of any other person liable hereon, and such consent shall not alter or diminish the liability of any person hereon.



In addition, each Surety waives and agrees not to assert: (a) any right to require Holder to proceed against Maker or any other Surety, to proceed against or exhaust any security for the Note, to pursue any other remedy available to Holder, or to pursue any remedy in any particular order or manner; (b) the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof; (c) the benefits of any legal or equitable doctrine or principle of marshalling; (d) notice of the existence, creation or incurring of new or additional indebtedness of Maker to Holder; (e) the benefits of any statutory provision limiting the liability of a surety, including without limitation the provisions of Arizona Revised Statutes Sections 12-1641, *et seq.*, and 44-142, and Rule 17f of the Arizona Revised Statutes Rules of Civil Procedure; (f) any defense arising by reason of any disability or other defense of Maker or by reason of the cessation from any cause whatsoever (other than payment in full) of the liability of Maker for payment of this Note; and (g) the benefits of any statutory provision limiting the right of Holder to recover a deficiency judgment, or to otherwise proceed against any person or entity obligated for payment of this Note, after any foreclosure or trustee's sale of any security for this Note. Until payment in full of this Note and the termination of Holder's obligation to make further advances of the proceeds of the Line, no Surety shall have any right of subrogation and each hereby waives any right to enforce any remedy which Holder now has, or may hereafter have, against Maker or any other Surety, and waives any benefit of, and any right to participate in, any security now or hereafter held by Holder.

Maker agrees that all Loan fees and other prepaid charges are earned fully as of the date of this Note and will not be subject to refund, except as required by law. Subject to the conditions provided herein, Maker may pay all or a portion of the amount owed before it is due. Prepayment in full shall consist of payment of the remaining unpaid principal balance together with all accrued and unpaid interest and all other amounts, costs and expenses for which Maker is responsible under this Note or any other agreement with Holder pertaining to the Loan before such amounts are due, whether such prepayment arises from a voluntary or involuntary prepayment, acceleration of maturity, or any other cause or reason. Prepayment in part shall consist of payment or any portion of the unpaid principal balance before it is due, whether such prepayment arises from a voluntary or involuntary prepayment, acceleration of maturity, or any other cause or reason. Unless otherwise agreed by Holder in writing and provided that Maker is current on all amounts due, payments applied to the Loan before Holder's creation of a billing statement for the next payment due will be applied entirely to principal, and payments applied to the Loan after the creation of such billing statement will be applied according to that billing statement. Unless otherwise agreed by Holder in writing and provided that Maker is current on all amounts due, payment applied to the Loan before Holder's creation of a billing statement for the next payment due shall not relieve Maker of Maker's obligation to continue making, uninterrupted, payments under this Note.

Maker agrees not to send Holder payments marked "paid in full," without recourse," or similar language. If Maker sends such a payment, Holder may accept it without losing any of Holder's rights under this Note, and Maker will remain obligated to pay any further amounts owed or that may become owed to Holder. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount, must be mailed or delivered to: Compass Bank, PO Box 3096, Birmingham, AL 35202.

Maker agrees that to the extent Maker or any Surety makes any payment to Holder in connection with the indebtedness evidenced by this Note, and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Holder or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (any such payment is hereinafter referred to as a "Preferential Payment"), then the indebtedness of Maker under this Note shall continue or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by Holder, the indebtedness evidenced by this Note or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if said Preferential Payment had not been made.

Without limiting the right of the holder hereof to bring any action or proceeding against Maker or any Surety or against any property of Maker or any Surety (an "Action") arising out of or relating to this Note or any indebtedness evidenced hereby in the courts of other jurisdictions, Maker and each Surety hereby jointly, severally and irrevocably submit to the jurisdiction, process and venue of any Arizona State or Federal court sitting in Phoenix, Arizona, and hereby jointly, severally and irrevocably agree that any Action may be heard and determined in such Arizona State court or in such Federal court. Maker and all Sureties each hereby jointly, severally and irrevocably waive, to the fullest extent it may effectively do so, the defenses of lack of jurisdiction over any person, inconvenient forum or improper venue, to the maintenance of any Action in any jurisdiction.

This Note shall be binding upon Maker and its successors and assigns and shall inure to the benefit of Holder and its successors and assigns.

All notices required or permitted in connection with this Note shall be given at the place and in the manner provided in the Loan Agreement for the giving of notices.

This Note is issued pursuant to the Loan Agreement and is secured by, among other things, a Security Agreement dated as of even date herewith, executed by Maker for the benefit of Bank.

Collateral securing other loans with Holder may also secure the Loan and this Note. To the extent collateral previously has been given to Holder by any person that may secure the Loan and this Note, whether directly or indirectly, it is specifically agreed that, to the extent prohibited by law, all such collateral consisting of household goods will not secure this loan. In addition, if any collateral requires the giving of a right of rescission under the Truth-in-Lending Act for this loan, such collateral also will not secure the Loan and this Note unless and until all required notices of that right have been given.

This Note shall be construed according to the laws of the State of Arizona, without giving effect to any conflict of laws principles.

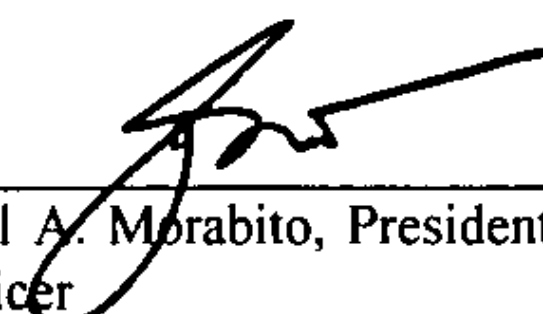
Time is of the essence hereof.

**[SIGNATURES ON FOLLOWING PAGE.]**

IN WITNESS WHEREOF, Maker executes this Note on August 13, 2010.

**SUPERPUMPER, INC.**, an Arizona corporation

By:

  
Paul A. Morabito, President & Chief Executive  
Officer

MAKER



## EXHIBIT A

1. ISDA Master Agreement. Holder and Maker may become parties to an ISDA Master Agreement, the schedule attached thereto and one or more confirmations issued in connection therewith (collectively, the "Swap Agreement"), under the terms of which Holder and Maker may have entered into one or more of the following types of transactions: interest rate swap, cap, floor, collar or option.
2. SWAP Payment Amount. Maker acknowledges that under the terms of a Swap Agreement, Maker will pay to Holder on a periodic basis the Swap Payment Amount (as that term is defined under and calculated in accordance with the terms of the Swap Agreement). Maker hereby agrees and acknowledges that if Maker makes payments on this Note on any date, or in any principal amount, different than the dates and principal amounts set forth in the foregoing Note, there may be discrepancies in the amount of Maker's payment on this Note which is attributable to interest and any Swap Payment Amount for the corresponding period.
3. Basis of Swap Determination. Maker may request Holder to enter into a Swap Agreement on or before the Maturity Date. On the date Maker requests Holder enter into a Swap Agreement, the payment terms under the Swap Agreement shall be determined by Holder.

## Exhibit 62

SALVATORE R. MORABITO

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

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

Plaintiff,

- vs - Case No. CV13-02663

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

Defendants.  
-----

Examination before trial of SALVATORE R.  
MORABITO, Defendant, taken pursuant to Notice, at  
Regus Business Center, 50 Fountain Plaza, Suite  
1400, Buffalo, New York, on October 21, 2015,  
commencing at 9:29 a.m., before MARY E. BLACK,  
Notary Public.

1           **Q.    Okay.**

2           A.    And the term loan -- the line of credit  
3 has been there for at least two years. It's  
4 ongoing working capital for the company. The term  
5 loan was initiated in August of 2010.

6           The reason for that term loan is that it was  
7 guarantied by the Superpumper. Edward, Paul and I  
8 decided we were going to take that money, pre what  
9 happened in the judgment, and go invest it in  
10 another entity and use that money for equity for us  
11 to buy another business, probably in the same  
12 field, the convenience store area.

13          Because we had been looking at -- I don't  
14 remember specifically, but we were looking at a  
15 couple of opportunities. We were going to use that  
16 money for to buy -- we were going to have equal  
17 shares in a new company.

18          **Q.    Had you looked at what companies to**  
19 **purchase?**

20          A.    Yes. And I don't recall. There was  
21 one -- like I said before, we were looking at  
22 companies in Chicago, companies in I believe it was  
23 west Texas and possibly actually in Nevada.

24          **Q.    And did you ultimately use that money**  
25 **to purchase another company?**

## Exhibit 63

**Page intentionally left blank**

# Exhibit 64

1 **DISCOVERY**

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

3 bbreslow@rbsllaw.com

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

5 fgilmore@rbsllaw.com

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

7 A Professional Corporation

8 71 Washington Street

9 Reno, Nevada 89503

Telephone: (775) 329-3151

Facsimile: (775) 329-7169

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

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

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

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

**CASE NO.: CV13-02663**

**DEPT. NO.: B1**

16 **Plaintiffs,**

17 **vs.**

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

24 **Defendants.**

25 **EDWARD BAYUK'S ANSWERS TO PLAINTIFF'S FIRST SET OF**  
26 **INTERROGATORIES**

27 Defendant Edward Bayuk, by and through his attorneys Robison, Belaustegui, Sharp &  
28 Low, pursuant to NRCP 33 hereby answers Plaintiff's First Set of Interrogatories to Edward Bayuk  
as follows:

///



1 **INTERROGATORY NO. 1:**

2 State your full name and current mailing and mailing address(es).

3 **ANSWER TO INTERROGATORY NO. 1:**

4 EDWARD WILLIAM BAYUK

5 668 N. Pacific Coast Highway, #517

6 Laguna Beach, California 92651

7 **INTERROGATORY NO. 2:**

8 Identify all names that You have used between January 1, 2006 and the date of Your  
9 responses to these Interrogatories.

10 **ANSWER TO INTERROGATORY NO. 2:**

11 Edward William Bayuk; Edward Bayuk

12 **INTERROGATORY NO. 3:**

13 Identify all persons with whom You currently reside.

14 **ANSWER TO INTERROGATORY NO. 3:**

15 Objection. This request is not reasonably calculated to lead to the discovery of admissible  
16 evidence. Notwithstanding the objection, no other persons reside with me.

17 **INTERROGATORY NO. 4:**

18 Identify the transfer of property of any type from Morabito, either directly or through an  
19 entity or trust owned or controlled by Morabito, to You between December 1, 2007 and the date of  
20 Your response to these Interrogatories. Include in Your response:

- 21 a. The type of property transferred;  
22 b. The date of the transfer;  
23 c. The reason for the transfer;  
24 d. Any consideration provided by You to Morabito in exchange for the transfer; and  
25 e. The current location of the property transferred.

26 **ANSWER TO INTERROGATORY NO. 4:**

27 Objection. This interrogatory is overbroad. Moreover, the information sought is in the  
28 possession of the Plaintiff and can be obtained from review of the documents provided. See

MORABITO (341).00001-00004; 000110-000111; 002362-002544. These documents reflect the exchange between Morabito and Bayuk and the consideration received therefrom. See responses to Requests 5-15, below.

**INTERROGATORY NO. 5:**

Identify all business ventures in which You and Morabito have both held any ownership or managerial interests between December 3, 2007 and the date of Your response to these Interrogatories. Include in Your response:

- a. The name of the business;
- b. The nature of the business;
- c. Your present interest in the business. If you no longer have an interest in the business, identify the interest you previously had and when such interest was transferred or otherwise disposed of;
- d. Morabito's present interest in the business. If you no longer have an interest in the business, identify the interest you previously had and when such interest was transferred or otherwise disposed of.

**ANSWER TO INTERROGATORY NO. 5:**

Objection. This interrogatory is overbroad, and not limited in scope to the relevant time periods. Notwithstanding the objection:

1. a. Superpumper Properties, LLC
- b. Owned and managed real property
- c. The company is dissolved.
- d. Edward Bayuk owned 25%, Salvatore Morabito owned 25% and Morabito owed 50% until approximately when the assets were sold in 2011 and the company was dissolved.
2. a. Superpumper Inc.
- b. Owned and managed gas stations in Scottsdale, Arizona.
- c. Snowshoe Petroleum presently owns 100%; Prior to Snowshoe's acquisition; Bayuk owned 10%, which was transferred to Snowshoe on January 2, 2011.
- d. Morabito owned 80% of the shares of Consolidated Western Corporation, which

1 held 100% of the shares in Superpumper. Pursuant to the merger, Morabito sold his 80%  
2 interest in the CWC to Snowshoe Petroleum in September/October 2010.

3 3. a. Big Wheel Lodging, LLC; Big Wheel Gaming, LLC; Big Wheel Hospitality, LLC.

4 b. Developed and owned a truck stop and casino in Fernley, Nevada

5 c. All Big Wheel entities are defunct as of 2011, when the secured lender and partner  
6 in the development foreclosed on the loan and took over the project and property. The new  
7 owner, after the foreclosure, was the Herbst entities.

8 d. Prior to becoming defunct, Bayuk owned, on information and belief, 10% of each  
9 of the entities.

10 4. a. Watchmyblock, LLC

11 b. Developed a neighborhood watch program

12 c. Bayuk owns 100% of the interest in the company; prior to acquiring Morabito's  
13 interest in September 2010, he held 10%.

14 d. In September 2010, Morabito held 90%, and Bayuk owned 10%. Morabito sold his  
15 interest to Bayuk for \$1,000.

16 5. There may have been other entities formed by Bayuk and Morabito which were formed  
17 prior to December 2007, but which were defunct and/or never held any assets or liabilities after  
18 December 2007. The full extent of those entities cannot be entirely recalled and are not likely  
19 to lead to the discovery of admissible evidence. Additionally, in late 2007, Bayuk and  
20 Morabito jointly sold their respective interests in entities that held certain oil lube locations.

21 **INTERROGATORY NO. 6:**

22 With respect to the approximately \$420,250 transferred by Morabito to You on or about  
23 September 21, 2010, state:

24 a. The reason for the transfer;

25 b. Any consideration provided by You to Morabito in exchange for the transfer.

26 **ANSWER TO INTERROGATORY NO. 6:**

27 The response to this request is being researched. This response will be supplemented when  
28 the answer has been identified.

1 **INTERROGATORY NO. 7:**

2 Identify Your ownership interest in 8355 Panorama Drive in Reno, Nevada between  
3 December 3, 2007 and the date of Your response to these Interrogatories, including the date(s)  
4 such ownership was obtained and the consideration provide by You in return for the interest and, if  
5 applicable, the date(s) such ownership was disposed of and any consideration received by You in  
6 return.

7 **ANSWER TO INTERROGATORY NO. 7:**

8 Bayuk held 1/3 interest in Panorama from the date it was acquired on November 10, 2005;  
9 Morabito held 2/3 interest in the property. Bayuk provided 1/3<sup>rd</sup> of the purchase price. On  
10 October 1, 2010, Bayuk transferred his 1/3 interest in Panorama to the Arcadia Living Trust, in  
11 exchange for Morabito's respective interest in the Los Olivos, and El Camino Properties (See  
12 MORABITO (341).002362), plus other consideration.

13 **INTERROGATORY NO. 8:**

14 Identify the reasons for any transfer of interests you held in 8355 Panorama Drive in Reno,  
15 Nevada at any time between December 3, 200y[sic] and the date of Your response to these  
16 Interrogatories.

17 **ANSWER TO INTERROGATORY NO. 8:**

18 In September 2010, it became apparent to Bayuk that Morabito was going to be subject to a  
19 judgment against him, and in favor of the Herbst plaintiffs. Bayuk held properties and entities in  
20 common ownership with Morabito. In light of the impending judgment, Bayuk considered the  
21 continued joint ownership of the properties and entities to be a bad idea, because Morabito's  
22 judgment was likely to impact Bayuk's title and interest to these entities and properties.  
23 Accordingly, in an effort to separate and consolidate ownership of the entities and the properties,  
24 Bayuk and Morabito appraised their respective properties and entities and divided their respective  
25 interests in a way that would separate Bayuk's interests from Morabito's, and in doing so make it  
26 easier for Morabito's assets to be executed upon by his creditors. Bayuk and Morabito then  
27 prepared a reconciliation document which trued-up the property and entity exchange, which  
28 resulted in a note payable from Bayuk to Morabito as set forth in MORABITO (341).002362).

1 The Note is also being produced as Morabito (341).006918-20.

2 **INTERROGATORY NO. 9:**

3 Identify Your ownership interest in 1254 Mary Fleming Circle, Palm Springs, California,  
4 between December 3, 2007 and the date of Your response to these Interrogatories, including the  
5 date(s) such ownership was obtained and the consideration provide by You in return for the  
6 interest and, if applicable, the date(s) such ownership was disposed of and any consideration  
7 received by You in return.

8 **ANSWER TO INTERROGATORY NO. 9:**

9 None.

10 **INTERROGATORY NO. 10:**

11 Identify the reasons for any transfer of interests you held in 1254 Mary Fleming Circle,  
12 Palm Springs, California, at any time between December 3, 200y[sic] and the date of Your  
13 response to these Interrogatories.

14 **ANSWER TO INTERROGATORY NO. 10:**

15 Objection, not applicable. Edward Bayuk never held an interest in the 1254 Mary Fleming  
16 Circle property. Notwithstanding the objection, in September 2010, it became apparent to Bayuk  
17 that Morabito was going to be subject to a judgment against him, and in favor of the Herbst  
18 plaintiffs. Bayuk and the Bayuk Trust held properties and entities in common ownership with  
19 Morabito. In light of the impending judgment, Bayuk considered the continued joint ownership of  
20 the properties and entities to be a bad idea, because Morabito's judgment was likely to impact  
21 Bayuk's (or the Trust's) title and interest to these entities and properties. Accordingly, in an effort  
22 to separate and consolidate ownership of the entities and the properties, Bayuk and Morabito  
23 appraised their respective properties and entities and divided their respective interests in a way that  
24 would separate Bayuk's interests from being attached by Morabito's creditors, and at the same  
25 time, make it easier for Morabito's assets to be executed upon by his creditors. Bayuk and  
26 Morabito then prepared a reconciliation document which trued-up the property and entity  
27 exchange, which resulted in a note payable from Bayuk to Morabito as set forth in MORABITO  
28 (341).002362).



1 **INTERROGATORY NO. 11:**

2 Identify Your ownership interest in 371 El Camino Del Mar, Laguna Beach, California  
3 (Parcel No. 644-032-01) between December 3, 2007 and the date of Your response to these  
4 Interrogatories, including the date(s) such ownership was obtained and the consideration provide  
5 by You in return for the interest and, if applicable, the date(s) such ownership was disposed of and  
6 any consideration received by You in return.

7 **ANSWER TO INTERROGATORY NO. 11:**

8 When the property was originally purchased, Bayuk held 25% and Morabito held 75%.  
9 Bayuk then transferred his interest to his Trust. In October 2010, Bayuk Trust acquired Morabito's  
10 share as set forth in MORABITO (341).002362.

11 **INTERROGATORY NO. 12:**

12 Identify the reasons for any transfer of interests you held in 371 El Camino Del Mar,  
13 Laguna Beach, California (Parcel No. 644-032-01), at any time between December 3, 200y[sic]  
14 and the date of Your response to these Interrogatories..

15 **ANSWER TO INTERROGATORY NO. 12:**

16 Objection, not applicable. Edward Bayuk never held an interest in the El Camino property.  
17 Notwithstanding the objection, in September 2010, it became apparent to Bayuk that Morabito  
18 was going to be subject to a judgment against him, and in favor of the Herbst plaintiffs. Bayuk  
19 and the Bayuk Trust held properties and entities in common ownership with Morabito. In light of  
20 the impending judgment, Bayuk considered the continued joint ownership of the properties and  
21 entities to be a bad idea, because Morabito's judgment was likcly to impact Bayuk's (or the  
22 Trust's) title and interest to these entities and properties. Accordingly, in an effort to separate and  
23 consolidate ownership of the entities and the properties, Bayuk and Morabito appraised their  
24 respective properties and entities and divided their respective interests in a way that would  
25 separate Bayuk's interests from being attached by Morabito's creditors, and at the same time,  
26 make it easier for Morabito's assets to be executed upon by his creditors. Bayuk and Morabito  
27 then prepared a reconciliation document which trued-up the property and entity exchange, which  
28 resulted in a note payable from Bayuk to Morabito as set forth in MORABITO (341).002362).

1 **INTERROGATORY NO. 13:**

2 Identify your ownership interest in Baruk Properties between December 3, 2007 and the  
3 date of Your response to these Interrogatories, including the date(s) such ownership was obtained  
4 and the consideration provide by You in return for the interest and, if applicable, the date(s) such  
5 ownership was disposed of and any consideration received by You in return.

6 **ANSWER TO INTERROGATORY NO.13:**

7 See responses to Bayuk Trust Interrogatories.

8 **INTERROGATORY NO. 14:**

9 Identify the reasons for any transfer of interests you held in Baruk Properties at any time  
10 between December 3, 200y (sic) and the date of Your response to these Interrogatories.

11 **ANSWER TO INTERROGATORY NO. 14:**

12 See responses to Bayuk Trust Interrogatories.

13 **INTERROGATORY NO. 15:**

14 With respect to the promissory note from Morabito to You with a principal amount of  
15 \$600,000 in or about 2010, identify:

- 16 a. The date of the promissory note;  
17 b. The purpose of the promissory note;  
18 c. Any consideration provided by You in return for the promissory note;  
19 d. Any payments received by You on account of the promissory note.

20 **ANSWER TO INTERROGATORY NO. 15:**

- 21 a. To Bayuk's memory, no written promissory note was executed.  
22 b. Bayuk agreed to accept an oral promise from Morabito to repay loans and other  
23 advances Bayuk had provided to Morabito from September 2010 until the present.  
24 c. Bayuk provided Morabito with well in excess of \$600,000 in cash, credit card  
25 payments, or other means between September 2010 and the present.  
26 d. As a result of the property exchange in September 2010, Bayuk owed Morabito an  
27 equalization note of approximately \$1,617,050. From that point, each dollar that Bayuk provided  
28 to Morabito (or to a third party on Morabito's behalf) constituted a loan to Morabito from Bayuk.

1 **INTERROGATORY NO. 16:**

2 Explain the nature of Your relationship with Morabito.

3 **ANSWER TO INTERROGATORY NO. 16:**

4 Objection. This request is vague, ambiguous, and not reasonably calculated to lead to the  
5 discovery of admissible evidence.

6 **INTERROGATORY NO. 17:**

7 Explain the nature of Your relationship with Salvatore Morabito.

8 **ANSWER TO INTERROGATORY NO. 17:**

9 Objection. This request is vague, ambiguous, and not reasonably calculated to lead to the  
10 discovery of admissible evidence.

11 **INTERROGATORY NO. 18:**

12 Identify each person who participated in preparing Your responses to these Interrogatories,  
13 identifying the particular Interrogatory(ies) with which the person assisted?

14 **ANSWER TO INTERROGATORY NO. 18:**

15 Edward Bayuk

16 Frank Gilmore

17  
18 **AFFIRMATION**  
19 **Pursuant to NRS 239B.030**

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

22 DATED this 14th day of September, 2014.

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

27   
28 **BARRY L. BRESLOW, ESQ.**  
**FRANK C. GILMORE, ESQ.**

Attorneys for Defendants Snowshoe Petroleum,



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

J:\WPData\BLB\14359.001 Snowshoe adv. Herbst\P-Answer to Interrogs (1st set) by Baruk Trustee.doc

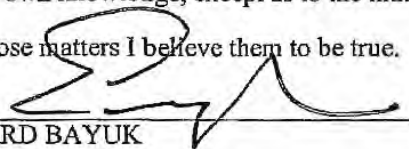
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28

**VERIFICATION**

STATE OF California )  
COUNTY OF Orange ) ss.

EDWARD BAYUK, being first duly sworn, deposes and says under penalty of perjury:

That I am one of the Defendants in this; that I have read the attached **EDWARD BAYUK, 'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** and know the contents thereof and that the same are true of my own knowledge, except as to the matters stated therein on information and belief, and as to those matters I believe them to be true.

  
EDWARD BAYUK

State of California )  
COUNTY OF Orange ) ss.



Subscribed and sworn to before me  
this 15 day of September, 2015 by  
Edward Bayuk

  
NOTARY PUBLIC

CERTIFICATE OF SERVICE

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

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

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

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

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

by personal delivery/hand delivery addressed to:

by facsimile (fax) addressed to:

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

DATED: This 15<sup>th</sup> day of September, 2015.





FROM... FRANK C. GILMORE, ESQ.

LAW OFFICES OF  
**ROBISON, BELAUSTEGUI, SHARP & LOW**  
A PROFESSIONAL CORPORATION  
71 Washington Street  
Reno, Nevada 89503

TO...

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

# Exhibit 65

Stan Bernstein

**From:** Stan Bernstein [stan@bernstein-cpabiz.com]  
**Sent:** Friday, October 12, 2012 9:33 AM  
**To:** 'Paul Morabito'  
**Cc:** 'Stan Bernstein'  
**Subject:** 2011 return

Paul,

Hope all is well with you. I have a few questions that I need answered in order to finalize your 2011 return:

1. There was a note between you and Edward in the amount of \$1,617,050 that bears interest at 4%. I do not see any payments being made by Edward to you. Is this correct, that there is no income to be reflected in 2011 from this note? *Interest Accrued*
2. There was a note between you and Snowshoe Petroleum Inc. in the amount of \$1,462,213.00 that bears interest at 4%. I do not see any payments being made by Snowshoe Petroleum Inc to you. Is this correct, that there is no income to be reflected in 2011 from this note? *Interest Accrued*
3. On the income statement provided by Virginia, there was \$100,000 received from Sam. I assumed that this was a repayment of a loan from you to him, is this correct? *I Am Correct*
4. The Rosemont Solebury K-1 is marked final for 2011. What happened to your remaining equity in this fund?

*no Balance of note*  
Currently, I expect that you will owe approximately \$63,000 in federal income taxes. Of this amount, I was expecting the social security amount due of approximately \$29,000, from the distribution of funds from Snowshoe, but I was not expecting there to be income from CNC, from the write off of Ed's & Sam's notes as instructed by Dennis' office. This put you in alternative minimum tax (AMT) by approximately \$32,000, of which you will be able to take a credit for AMT taxes paid in future years.

Once I have the above answered, I can complete your return.

Regards,

Stanton R. Bernstein An Accountancy Corporation

Mailing address: 6320 Canoga Ave., 15th Floor, Woodland Hills, CA 91367

phone: (818) 596-2139 & fax: (818) 222-5180

\* e-mail: [stan@bernstein-cpabiz.com](mailto:stan@bernstein-cpabiz.com)

website: [bernstein-cpabiz.com](http://bernstein-cpabiz.com)

To ensure compliance with the requirements imposed by the Treasury Department Regulations (Internal Revenue Service), Stanton R. Bernstein, An Accountancy Corporation, informs you that any tax advice in this written or electronic communication was not intended or written to be used, and it cannot be used, by a client or any other person or entity for the purpose of avoiding penalties that may be imposed on any taxpayer.

# Exhibit 66

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# Exhibit 67

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

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

Plaintiff,

- vs - Case No. CV13-02663

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

Defendants.  
-----

Examination before trial of DENNIS C.  
VACCO, taken pursuant to Notice, at Regus Business  
Center, 50 Fountain Plaza, Suite 1400, Buffalo,  
New York, on October 20, 2015, commencing at  
2:03 p.m., before MARY SCHULZE, RPR, RMR,  
Notary Public.  
JOB NUMBER: 262502-B

1 judgment proof, notwithstanding his guarantee.

2 So all of this was designed to normalize the  
3 relationships that -- the relationship that  
4 Superpumper had with Compass.

5 **Q. Do you know if this \$492,000 was paid**  
6 **from Snowshoe to Paul Morabito?**

7 A. So when we went down your list, there  
8 were, you know -- I'm sorry. Let's go way back  
9 here.

10 So looking at Exhibit 11, when you asked,  
11 you know, whether I'm the person of -- most  
12 knowledgeable regarding bullet point 5 and 6, I  
13 said no.

14 So I don't know. Since my separation, I  
15 don't know what happened to the debt, how -- how  
16 much of it's been paid, whether it's been paid in  
17 total or whether it's in default. I don't know.

18 **Q. So when you say your separation, are**  
19 **you referring to your separation from Paul**  
20 **Morabito?**

21 A. From Paul, correct. But I have no role  
22 or responsibility around the finances of  
23 Superpumper or Snowshoe.

24 I couldn't as I sit here -- I couldn't tell  
25 you where they are today in their relationship with

# Exhibit 68

**SNOWSHOE PETROLEUM, INC.**

P. O. Box 158, Buffalo, New York 14205  
telephone: (949) 607-7625 • fax: (480) 222-1063

Thursday, April 21<sup>st</sup>, 2011

Walt Dwelle  
c/o Nella Oil Company and Affiliates  
9301 Airport Road  
Visalia, California  
93277

re: Proposed Acquisition of Nella Oil Company, Nella Oil Company, LLC,  
Flyers, LLC, including its wholly-owned subsidiary, Flyers Beacon, LLC  
Flyers Transportation, LLC & Western Energetix, LLC  
*(The combination of the above entities is collectively referred to as "Nella Oil Company and  
Affiliates" or "the Company").*

Dear Walt:

This letter of intent ("Letter") is intended to set out the framework of the contemplated transaction between:

**Snowshoe Petroleum, Inc.** ("SPI" or the "Purchaser") a New York corporation, or its assignee in whole or in part;

AND David Dwelle, LP, Eclipse Investments, LP, Speedy Investments, LP, and TAD Limited Partnership (collectively referred to as the "Seller"), each having equal ownership interests. The partnerships are owned by the family trusts of four individuals; Stephen B. Dwelle, Walter and Lynn Dwelle, Thomas A. Dwelle, and David W. Dwelle (collectively referred to as the "Principals") with regard to the acquisition of all of the real property, transportation, retail and wholesale assets of the Seller (the "Purchased Business").

SPI is a New York Corporation whose principal business through its subsidiary Superpumper Inc., is the ownership and operation of eleven Shell branded retail gas stations in Arizona.

Save and except for Sections 9, 10, 11 and 12, which will be legally binding on the parties, it is understood that this Letter is not intended by the parties to create any legally binding obligations between them. No party will have any liability to any other party based upon, arising from, or relating to this Letter, including any termination hereof, except in respect of a breach of any of the enumerated Sections. A binding agreement, other than with respect to the enumerated Sections, is subject to the execution of the Purchase Agreement (as defined below).

While the parties anticipate that the matters set forth in this Letter will form the basis of definitive agreements relating to the proposed transaction (collectively, the "**Purchase Agreement**"), the parties acknowledge that further negotiations and the conduct of due diligence may result in issues being raised that require the following matters to be supplemented, amended or qualified.

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**SNOWSHOE PETROLEUM, INC.**

Walt Dwelle  
Nella Oil Company and Affiliates  
Thursday, April 21<sup>st</sup>, 2011  
Page 2 of 7

The framework contemplated by the parties to date is as follows:

**1. Transaction Terms Summary**

It is proposed that SPI would acquire substantially all of the assets of Seller (the "Assets"), including without limitation, 22 fee Real Property included within the 35 service stations (defined below), the entire wholesale fuel business, assume all leases, and ground leases, acquire the Real Property at the aforementioned 22 fee sites as well as the office building in Auburn, California and terminal facility in Reno, Nevada, and all other assets of the company including but not limited to the card lock operations and transportation assets. [The ethanol and solar operations of Seller are specifically excluded from this transaction.]

**Purchase Price:** Based on the available information on the Purchased Business that we have reviewed to date, the purchase price (the "**Purchase Price**") for the Assets would be \$160,000,000 payable as follows:

- Coming in?*
- (a) **\$100,000,000** cash at Closing.
  - (b) Assumption and pay-off at Closing of approximately **\$35,000,000** in term debt and **\$10,000,000** in short term debt.
  - (c) a Promissory Note of **\$5,000,000** would be entered into by SPI and Seller, as to interest at seven per cent (7%) and a term and amortization of seven years, with payments of Principal and Interest beginning at the first month after Closing. The note will be wholly subordinate to the bank and other financing outlined herein.
  - (d) A thirty per cent (30%) equity interest in the limited liability corporation ("NewCo LLC") set up by Purchaser to acquire Seller and SPI's subsidiary Superpumper, Inc, valued at **\$10,000,000**.
  - (e) The Purchaser will assume the Seller's bond and/or Letter of Credit with the States of California and Nevada and/or local counties to collect and remit State and/or County fuel taxes and fees.

The Purchase Price allocation as between different groups of assets is subject to further review and discussion between the parties. The Purchase Price amount assumes that all of the assets are free and clear of all encumbrances other than the aforementioned term and short term debt of \$45,000,000, and that the Seller delivers free and clear title to all Property;

**2. Employees**

SPI intends to offer employment or cause, as the case may be, to offer continued employment to substantially all key employees of the Purchased Business. Terms of employment will be negotiated between the parties. The Seller will endeavor to retain for SPI all employees of the Purchased Business that SPI wishes to retain, and Seller will prior to the closing terminate the employment of all other employees of the Purchased Business and be responsible for all severance pay and other liabilities to or in respect of any person whose employment is so terminated.

Rick Teske will enter into a mutually agreeable three (3) year employment contract with Purchaser to serve as it's President and Chief Operating Officer. All key executives identified

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**Lippes.PAM0001458**

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**SNOWSHOE PETROLEUM, INC.**

Walt Dwelle  
Nella Oil Company and Affiliates  
Thursday, April 21<sup>st</sup>, 2011  
Page 3 of 7

by Seller, and with the approval of Purchaser, will enter into like mutually agreeable employment agreements of at least one (1) year in term.

**3. Non-Competition/Non-Solicitation**

The Seller and such shareholders and employees of Seller as may be reasonably requested by SPI, will enter into non-competition and non-solicitation agreements in a form satisfactory to SPI. Such agreements would be for the longer of: (i) 5 years calculated from the Closing Date; or (ii) twenty-four (24) months from the date the person ceases to be in the employ of the Seller or acting as a consultant for the Seller, and would be for the Northern California and Nevada trading area.

**4. Due Diligence**

SPI has a \$65 million proposal from Cerberus California LLC to finance it's short and long term debt, and anticipates that a bank will partner with them to service the line of credit. Getty Realty Inc. has an expression of interest to acquire the retail and cardlock Real Property of the Seller for approximately \$70 million. All three parties will participate with Purchaser in the Due Diligence process and require full access to whatever information is normally required in transactions of this nature.

SPI's proposal to acquire the Assets is conditional, among other things, on its being satisfied with the results of full financial, business, legal, environmental and other due diligence investigations. The Seller will:

- (a) grant to SPI, and to its officers, employees, legal counsel, accountants and other authorized representatives including but not limited to Cerberus California LLC, Getty Realty, Inc., BMO Harris Bank and BBVA Compass Bank (collectively, the "**SPI Representatives**") the right to inspect the assets, properties, books and records of the Seller relating to the Purchased Business and to consult with the officers, employees, legal counsel, accountants and other authorized representatives (collectively, the "**Seller Representatives**") of the Seller concerning the Assets and the Purchased Business;
- (b) The Seller will immediately provide to SPI documentary evidence from the banks and/or lenders, satisfactory to the Purchaser in it's sole opinion, that the obligations outlined in section 1(b), as well as any and all third party ground, property and other leases as referenced in section 1, as well as supplier, utility and/or vendor contracts etc., can be assumed by the Purchaser on terms consistent with section 1 and elsewhere in this Letter.
- (c) use every effort to allow SPI and the SPI Representatives to consult with the Seller's suppliers, customers, creditors, agents, banks, trustees and those third parties with which the Seller has material contracts;
- (d) direct the Seller Representatives to provide information to SPI as reasonably requested.

SPI will be under no obligation to continue with its due diligence investigations or with negotiations regarding the Purchase Agreement, or to enter into a Purchase Agreement if, at any time, the results of its diligence investigations are not satisfactory to it in its sole discretion.

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**SNOWSHOE PETROLEUM, INC.**

Walt Dwelle  
Nella Oil Company and Affiliates  
Thursday, April 21<sup>st</sup>, 2011  
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**5. Closing Date**

Subject to the provisions of Sections 1, 2, 3, 4, 6, 7, 8 and 9, the parties agree to work in good faith towards signing a Purchase Agreement no later than Wednesday, June 1<sup>st</sup>, 2011 and closing the purchase and sale of the Assets the week of Monday, August 1<sup>st</sup>, 2011 or such other date as mutually agreed upon by the parties (the "**Closing Date**"). The parties agree that SPI shall be responsible for preparing the first draft of the Purchase Agreement.

**6. The Purchase Agreement**

Subject to the provisions of Sections 1, 3, 4, 5, 7 and 9, the parties will proceed in good faith with the negotiation of the terms and conditions of the Purchase Agreement and related agreements. The Purchase Agreement will contain such terms, conditions precedent, agreements, covenants, warranties, and representations as are customarily included in agreements involving transactions similar to that contemplated hereby so as to reflect the matters set forth in this letter of intent and/or such other matters as may be subsequently negotiated between the parties.

**7. Conditions**

The parties acknowledge that the execution of a Purchase Agreement is subject to the following conditions:

- (a) SPI arranging financing satisfactory to it;
- (b) SPI being satisfied with the results of its due diligence referred to in Section 4;
- (c) the obtaining of all necessary governmental, vendor, supplier, bank, lender, landlord, ground landlord and third party consents, board approvals, shareholder approvals and regulatory approvals in all applicable jurisdictions;
- (d) SPI conducting Phase 1 environmental reports on any of the 35 stations and 110 cardlocks upon which Seller believes such reports are reasonable and necessary, and, in the event of any findings of contamination at or above California and/or Nevada established action levels, entering into a mutually agreeable remediation plan, fully funded by the Seller and/or the States of California and Nevada, which addresses any and all issues raised in the reports. The Purchaser shall be solely responsible to settle the matter with Chartis Insurance regarding the Truckee card lock site.

**8. Publicity**

Except to the extent required by law, no press release, public statement or announcement or other public disclosure with respect to the proposed business relationship, this letter of intent, the existence of discussions regarding this Letter or the transactions contemplated hereby may be made except with the prior written consent and joint approval of the Seller and SPI. Where such disclosure is required by law, the party required to make the disclosure will use its best efforts to obtain the approval of the other party as to the form, nature and extent of the disclosure.

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**Lippes.PAM0001460**

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**SNOWSHOE PETROLEUM, INC.**

Walt Dwelle  
Nella Oil Company and Affiliates  
Thursday, April 21<sup>st</sup>, 2011  
Page 5 of 7

**9. Exclusive Negotiations**

For a period of one hundred and twenty (120) days from the date of acceptance of this Letter, the Seller will not, directly or indirectly,

- (a) solicit, initiate or entertain inquiries or proposals from, or provide non-public information to, any person with respect to, or
- (b) participate in any negotiations or discussions, directly or indirectly, regarding, or otherwise cooperate in any way with or assist or participate in or take any steps to bring about the direct or indirect acquisition of the Assets and/or the Purchased Business by any person other than SPI, including, without limitation, by way of the acquisition of the outstanding shares of the Seller or any of its affiliates.

**10. Confidentiality of Negotiations**

Except (a) for disclosure to employees, officers and directors of SPI and Seller, as necessary; (b) for disclosure to accountants, investment bankers, legal counsel, consultants, agents or financing sources as contemplated herein, (c) as required by law, or (d) as the parties agree in writing in connection with ongoing due diligence, all information and documents provided by either party to the other and all matters pertaining to this letter of intent will be kept strictly confidential, and neither SPI nor the Seller shall disclose the negotiations regarding the proposed transaction or any of the terms and conditions thereof.

To the extent that disclosure becomes legally required, SPI or Seller, as the case may be, will be given a reasonable opportunity to review such proposed disclosure and the other party will maintain confidentiality to the greatest extent permissible under such law.

**11. Transaction Costs**

Each of the parties will bear its own costs in connection with the transactions contemplated by this letter of intent, including, without limitation, all legal, accounting, auditing, and other professional fees and no such costs will be reflected in the financial statements or position of the Purchased Business.

**12. Governing Law & Notices**

This Letter is governed by and will be construed in accordance with the laws of the State of New York and the federal laws of the United States of America applicable therein, with jurisdiction in the City of Buffalo and Erie County. All notices and other communications hereunder shall be in writing and shall be furnished by FedEx Priority Next Day Delivery, with signature required for delivery to the intended party, with an original executed copy sent by United States First Class Mail to the parties at the addresses set forth below.

Any such notice shall be duly given upon the date it is delivered to the addresses shown below, addressed as follows:

If to SPI: Hon. Dennis C. Vacco, Esq.  
Lippes Mathias Wexler Friedman LLP

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**Lippes.PAM0001461**

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**SNOWSHOE PETROLEUM, INC.**

Walt Dwelle  
Nella Oil Company and Affiliates  
Thursday, April 21<sup>st</sup>, 2011  
Page 6 of 7

665 Main Street, Suite 300  
Buffalo, New York 14203  
716-853-5100 fax: 716-853-5199  
e-mail: dvacco@lippes.com

and a copy to: Edward Bayuk  
President  
Snowshoe Petroleum, Inc.  
P. O. Box 158,  
Buffalo, New York 14205  
(949) 607-7625 • fax: (480) 222-1063  
e-mail: edwardbayuk@gmail.com

If to Seller: Walt Dwelle  
c/o Nella Oil Company and Affiliates  
9301 Airport Road  
Visalia, California  
93277  
(559) 651-0210, ext. 8415; fax (530) 885-5851  
e-mail: wdwelle@nellaoil.com

and a copy to: Seller's attorney

**13. Equity Interest**

The Sellers will have a thirty per cent (30%) equity interest in Purchaser. Rick Teske shall serve as the senior operating executive of Purchaser, reporting to a Board of Directors led by Walt Dwelle, as Chairman, and two nominees of Purchaser's controlling shareholders. Teske and his management team will submit an annual plan and budget for the operating companies, and upon approval of the Board, will operate the day to day business of Purchaser.

**Expiry**

If you agree to the foregoing, please return a signed copy of this letter to the undersigned by facsimile to (480) 222-1063, (per §12, above) no later than 12:00PM noon (Pacific Time), **Thursday, April 28<sup>th</sup>, 2011** which time this letter will expire if not so accepted. Then, please send a fully executed original the next day by the delivery mechanisms provided under the Notice provision herein.

**Snowshoe Petroleum Florida, Inc.**

By: Edward Bayuk  
Edward W. Bayuk  
President

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**Lippes.PAM0001462**

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**SNOWSHOE PETROLEUM, INC.**

Walt Dwelle  
Nella Oil Company and Affiliates  
Thursday, April 21<sup>st</sup>, 2011  
Page 7 of 7

**ACKNOWLEDGEMENT & SIGNATURE PAGE TO FOLLOW**

**ACKNOWLEDGED AND AGREED in Visalia, California on this \_\_\_\_ day of April, 2011**

**Nella Oil Company**

By: \_\_\_\_\_

It's President

**Flyers, LLC**

By: \_\_\_\_\_

It's President

**Flyers Transportation, LLC**

By: \_\_\_\_\_

It's President

**David Dwelle, LP**

By: \_\_\_\_\_

David Dwelle  
Managing Partner

**Speedy Investments, LP**

By: \_\_\_\_\_

It's Managing Partner

**Nella Oil Company, LLC**

By: \_\_\_\_\_

It's President

**Flyers Beacon, LLC**

By: \_\_\_\_\_

It's President

**Western Energetix, LLC**

By: \_\_\_\_\_

It's President

**Eclipse Investments, LP**

By: \_\_\_\_\_

It's Managing Partner

**TAD Limited Partnership**

By: \_\_\_\_\_

Thomas A. Dwelle  
Managing Partner

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**Lippes.PAM0001463**

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# Exhibit 69

**DENNIS C. VACCO**  
**VOLUME 2**

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

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

Plaintiff,

- vs - Case No. CV13-02663  
Dept. No. 1

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.  
-----

Continued examination before trial of  
**DENNIS C. VACCO**, taken pursuant to Subpoena, in the  
law offices of LIPPES MATHIAS WEXLER FRIEDMAN LLP,  
50 Fountain Plaza, Suite 1700, Buffalo, New York,  
on July 10, 2017, commencing at 9:16 a.m., before  
MARY SCHULZE, RPR, RMR, Notary Public.

**JACK W. HUNT & ASSOCIATES, INC.**  
1120 Liberty Building  
Buffalo, New York 14202 - (716) 853-5600

1 A. I don't.

2 Q. And the next entry is 9/27/10, for the  
3 retainer for Mark Lehman?

4 A. Right.

5 Q. Is that the attorney that you  
6 represented before you believe may have been  
7 represented Ed Bayuk?

8 A. Same person. Right.

9 Q. Okay. Do you know why there's a  
10 \$25,000 retainer being paid through your firm to  
11 Mr. Lehman?

12 A. I don't recall.

13 Q. And the next entry is 9/27/10, to  
14 Justmann & Associates. Do you know who  
15 Justmann & Associates are?

16 A. I don't. I -- I don't. I'm -- I'm  
17 thinking that they're appraisers as well. I just  
18 don't -- I don't know.

19 Q. Do you know why Justmann & Associates  
20 would be paid through your firm?

21 A. I don't recall.

22 Q. If you look back at Exhibit 4, which  
23 was the amended and restated --

24 A. Right.

25 Q. -- amended and restated agreement,

10:15:34 1           **A.**    Yes.

10:15:34 2           **Q.**    Do you know if a marital split was ever  
10:15:36 3 completed?

10:15:36 4           **A.**    No, I -- I don't believe so, because I  
10:15:40 5 don't believe -- so we're talking about 2010. I  
10:15:47 6 don't believe that under California -- well, look  
10:15:57 7 it. I just don't remember the precise status of  
10:15:59 8 the New York -- I'm sorry, the California Domestic  
10:16:02 9 Partner Law at the time. But what I can tell you  
10:16:05 10 is that there was not, at least not engineered or  
10:16:09 11 directed by this law firm, a -- a split of assets  
10:16:14 12 based upon the California domestic relations law.

10:16:18 13           **Q.**    Do you know if Edward and Paul were  
10:16:20 14 together in September of 2000 -- on September 15th,  
10:16:24 15 2010? And by together, I mean in a romantic  
10:16:27 16 relationship.

10:16:27 17           **A.**    Well, I'm not -- I don't think I can  
10:16:30 18 answer that question. They were partners. They  
10:16:34 19 were, you know, business partners; they were  
10:16:36 20 partners. I'm not going to define their romantic  
10:16:38 21 relationship.

10:16:41 22           **Q.**    Okay. You're aware that at some point  
10:16:42 23 they were romantic partners?

**JACK W. HUNT & ASSOCIATES, INC.**

**1120 Liberty Building**

**Buffalo, New York 14202 - (716) 853-5600**

10:16:48 1           **A.**    They were business partners, and they  
10:16:51 2           were partners in -- in the sense that they were a  
10:16:54 3           couple.

10:16:54 4           **Q.**    Okay.

10:16:55 5           **A.**    Whether it was romantic or not, what  
10:16:58 6           the -- the sex was, I have no idea.

10:17:00 7           **Q.**    Fair enough.

10:17:00 8           **A.**    But they -- they were partners  
10:17:03 9           domestically and from a business perspective.

10:17:05 10          **Q.**    Fair enough.

10:17:06 11          Do you know when they ceased being a couple?

10:17:10 12          **A.**    I don't.

10:17:10 13          **Q.**    Okay. Moving up to the next --

10:17:13 14          **A.**    Not -- not prior to this date.

10:17:16 15          **Q.**    Not prior to this date they --

10:17:18 16          **A.**    But --

10:17:19 17          **Q.**    I just want to understand that. They  
10:17:22 18           did not cease being a couple prior to  
10:17:25 19           September 15th, 2010?

10:17:26 20          **A.**    They did not.

10:17:27 21          **Q.**    Okay.

10:17:28 22          **A.**    They -- so put it another way, they  
10:17:31 23           were domestic partners at this -- small D, small P,

**JACK W. HUNT & ASSOCIATES, INC.**

**1120 Liberty Building**

**Buffalo, New York 14202 - (716) 853-5600**



10:17:35 1 because I don't know the precise definitions under  
10:17:39 2 California law, but they were domestic partners as  
10:17:42 3 of this date and for a long time after this date,  
10:17:46 4 meaning September 15th of 2010.

10:17:47 5 **Q.** Do you have any idea how long?

10:17:50 6 **A.** Frankly, I don't know -- I mean, it's  
10:17:53 7 possible that they are still domestic partners  
10:17:55 8 today.

10:17:57 9 **Q.** Okay. Moving up to the next email,  
10:18:01 10 which appears to be an email from you back to  
10:18:04 11 Sujata and Paul Morabito, it says in there, the  
10:18:09 12 greatest -- it would be of great assistance if you  
10:18:11 13 would consider a transaction whereby PAM -- I  
10:18:14 14 assume Paul Morabito --

10:18:15 15 **A.** Correct.

10:18:15 16 **Q.** -- sells his interest in CoWestco to  
10:18:19 17 Edward and Sam as you proposed. Paul will sell his  
10:18:23 18 interest in exchange for a promissory note.

10:18:25 19 Do you know why it was a promissory note  
10:18:26 20 that was contemplated?

10:18:27 21 **A.** I don't believe he had the cash.

10:18:29 22 **Q.** But if Paul was selling his interest,  
10:18:31 23 he would be receiving funds. Correct?

**JACK W. HUNT & ASSOCIATES, INC.**

**1120 Liberty Building**

**Buffalo, New York 14202 - (716) 853-5600**

10:18:33 1           **A.**    I'm sorry. Right. No. I don't know  
10:18:41 2 why he was -- he was looking for a promissory note  
10:18:43 3 as opposed to cash.

10:18:46 4           **MR. GILMORE:** That's asked and answered in  
10:18:47 5 the previous deposition anyway.

10:18:50 6           **BY MS. PILATOWICZ:**

10:18:53 7           **Q.**    Moving on to the first page of  
10:18:56 8 Exhibit 6, which is Bates number LMWF SUPP 044162,  
10:19:05 9 the first full email from the bottom up is an email  
10:19:10 10 from Sujata to looks like you, Dennis Vacco, and  
10:19:15 11 Paul Morabito, and in there it says, I think the  
10:19:19 12 fair market value of the company will factor in the  
10:19:21 13 note owed by Paul to the company as an asset of the  
10:19:24 14 company. So when Sam and Edward buy the company,  
10:19:27 15 the amount they pay Paul will reflect the amount  
10:19:29 16 owed to the company. If Sam and Edward offset  
10:19:32 17 against what the amount they owe Paul, the amount  
10:19:35 18 that Paul owes the company, it should net out to  
10:19:38 19 the value of the company, not accounting for the  
10:19:41 20 debt.

10:19:41 21           Do you see that?

10:19:42 22           **A.**    Yes.

10:19:42 23           **Q.**    Do you know what that's referring to?

**JACK W. HUNT & ASSOCIATES, INC.**

*1120 Liberty Building*

*Buffalo, New York 14202 - (716) 853-5600*

# Exhibit 70

**Christian Lovelace**

---

**From:** Paul Morabito [pagm88@gmail.com]  
**Sent:** Friday, April 15, 2011 1:30 PM  
**To:** Christian Lovelace; Gregory Ivancic; Dennis Vacco  
**Cc:** Gerald Lippes  
**Subject:** Fwd: Nella Oil financing proposal  
**Follow Up Flag:** Follow up  
**Flag Status:** Red  
**Attachments:** Nella Corp 12-31-06.pdf; ATT172018.htm; CalCo AZCo RATIOS.pdf; ATT172019.htm; Nella Proposal Letter April 2011.docx; ATT172020.htm

Gentlemen

Attached is an initial \$65 million loan offer from Cerberus - they made it out to CWC but I am having it changed to Snowshoe Petroleum Inc. This loan, coupled with a \$72.7 million sale lease back from Getty Realty REIT, would allow SPI to acquire Nella Oil Co. (there 2006 audit, pre-acquiring Berry-Hinckley Industries wholesale division, is attached). The transaction requires (a) SPI to contribute Superpumper, Inc., and get 40% of NewCo LLC; (b) Nella to contribute \$10 million of their \$160 million purchase to equity (30%) and hold a \$5 million subordinate note; (c) \$10 million in NEW cash equity, which will get 30% of NewCo LLC - the cash on cash ROE (based on flat 2010 sales results) is 52%. I anticipate having all \$10 million raised shortly - it hasn't been all that hard to do with this historic ROE.

Because Cerberus is asking for a 75% cash sweep, the loan would be paid off in less than three years. I have reduced their interest rate from 13% to 12%, and their fees from 4% to 3%. I would also stagger their cash sweep to year 1 25%, year 2 50% and year 3 and thereafter 75%. We would also have to be allowed minimum executive salaries and a distribution. The company would have "free cashflow" of \$17 million annually.

I am expecting a letter of interest from Getty Realty on the real estate by Tuesday. My goal would be to submit a Letter of Intent to Nella Oil by Wednesday or Thursday. I will circulate the first draft.

4/18/2011

Lippes.PAM0001465

2581

**Christian Lovelace**

---

**From:** Paul Morabito [pagm88@gmail.com]  
**Sent:** Tuesday, April 05, 2011 12:09 PM  
**To:** Dennis Vacco  
**Cc:** Christian Lovelace; Kevin Cross  
**Subject:** Attorney Client Privileged Communication  
**Follow Up Flag:** Follow up  
**Flag Status:** Red  
**Attachments:** CalCo AZCo RATIOS.pdf; ATT330500.htm

Dennis

I had a conversation with Chris Hebble at Cerberus on Friday, and am following up with him today. Kevin Shea from Getty Realty is seeing me in Laguna for dinner on Wednesday night. It would appear that both pieces of finance will be offered to Snowshoe by late this week in term sheet form - so that a credible \$150 million offer can be made. Management would retain 24% of the company.

4/14/2011

Lippes.PAM0001466  
2582

# Exhibit 71

**From:** Dennis Vacco  
**Sent:** Sunday, August 07, 2011 8:56 AM  
**To:** Paul Morabito  
**Subject:** Re: Attorney Client Privileged Communication

Happy birthday to Sam. Sounds like you are having a good time. I am in Washington again to pick up Alex. Campus tours tomorrow. Nella made minor changes to agreement. Plan is to go to escrow tomorrow.

Sent from my Verizon Wireless BlackBerry

---

**From:** Paul Morabito <morabito.pa@gmail.com>  
**Date:** Sat, 6 Aug 2011 08:07:21 -0700  
**To:** Dennis Vacco <dvacco@lippes.com>  
**Subject:** Attorney Client Privileged Communication

I am just north of Algeria today (Saturday) at sea. Tomorrow (my brother Sam's birthday - he turns 50) we are in Tunis. Monday in Naples. Tuesday in Sardinia. Wednesday in Rome and then Thursday fly back to LAX from Rome.

I'm hoping things are lining up with Nella without any issues. I would like to put a \$2 million second mortgage on the Reno house - I will CALL YOU WITH DETAILS on Monday.

Plan on being in Toronto on the 23rd, 24th or 25th to meet the Chairman of Canada Post.

## Exhibit 72



**From:** Dennis Vacco  
**Sent:** Wednesday, August 24, 2011 12:02 PM  
**To:** Paul Morabito  
**Subject:** Tim Haves

In order to protect TH from being reached in an enforcement action by the Herbst, I recommend that his agreement be with Superpumper Inc. SPI will need to pay him \$58,000 without any corresponding reimbursement from SPPLLC. If he is paid from Flyer's proceeds, H will go after that money and the fact he is not broker in NV will be revealed. He has consulted for SPI so it is logical that he be under contract with that entity.

Please advise.

DENNIS C. VACCO, Esq.  
Lippes Mathias Wexler Friedman LLP  
665 Main Street, Suite 300  
Buffalo, New York 14203  
716-853-5100 (office)  
716-853-5199 (fax)  
716-713-1679 (cell)  
[DVacco@Lippes.com](mailto:DVacco@Lippes.com)

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# Exhibit 73

**SETTLEMENT AGREEMENT, LOAN AGREEMENT  
MODIFICATION & RELEASE**

THIS SETTLEMENT AGREEMENT, LOAN AGREEMENT MODIFICATION & RELEASE (the "Settlement Agreement"), dated as of September 7, 2012 (the "Settlement Date"), is entered into by and among Bank of America, N.A. ("BOA"), and Paul Morabito, individually and in his capacity as Trustee of The Arcadia Living Trust (collectively referred to as "Morabito").

WITNESSETH

This Settlement Agreement is entered into with reference to the following facts:

A. In December 2009, BOA and Morabito entered into a Loan Agreement (the "Loan Agreement") under which BOA agreed to provide Morabito with a \$2 million line of credit (the "Line of Credit").

B. On the same day that he entered the Loan Agreement with BOA, Morabito, in his capacity as trustee of The Arcadia Living Trust, agreed to have The Arcadia Living Trust guarantee repayment of the Line of Credit by executing a Continuing and Unconditional Guaranty (the "Guaranty").

C. Thereafter, and in order to provide additional security for the Line of Credit, BOA entered into a Pledge Agreement (the "Pledge Agreement") with The Arcadia Living Trust. Under the Pledge Agreement, Arcadia Living Trust irrevocably and unconditionally granted BOA a security interest in, a lien on, and the right of set-off against certain property (the "Collateral"), which the Arcadia Living Trust also assigned as security to BOA.

D. In addition to the foregoing, BOA extended a letter of credit for the account of another Morabito controlled entity, Consolidated Nevada Corp., letter of credit number 3077485( the "Letter of Credit") in the original amount of \$1,134,685.00.

E. On March 22, 2011, BOA declared certain events of default under the Loan Agreement, Guaranty and Pledge Agreement (collectively referred to as the "Agreements") and demanded Morabito pay all outstanding amounts due. BOA ultimately filed a lawsuit in the Second Judicial District Court CV11-01121 seeking to enforce its rights and remedies pursuant to the foregoing agreements (the "Lawsuit"). After the parties stipulated to set aside an initial default judgment, Morabito filed his answer on November 15, 2011.

F. BOA subsequently moved for summary judgment on several of its claims for relief. The District Court entered its order granting summary judgment in favor of BOA and against Morabito on April 20, 2012.

G. On May 17, 2012, with the consent and cooperation of Morabito and related entities, BOA applied \$1,123,247.99 of the Collateral to principal on the Line of



Credit, leaving an outstanding principal balance of \$876,752.01. Additional amounts owed pursuant to the terms of the Loan Agreement include accrued interest in the amount of \$148,286.77 to September 7, 2012, and unreimbursed attorney's fees in the amount of \$142,398.80 and costs in the amount of \$6,744.25.

H. The parties hereto wish to resolve and fully and finally settle amicably, on the following terms and conditions, the Lawsuit and all related allegations and claims regarding the Loan Agreement and by this Settlement Agreement the modification of the Loan Agreement, without resorting to the time, effort, and expense of additional litigation.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION,** the receipt and sufficiency of which are hereby acknowledged by all of the undersigned, and in exchange for the mutual covenants set forth in this Settlement Agreement, the parties hereto agree as follows:

1. Consideration and Modification of the Agreements.

- a. Upon the execution of this Settlement Agreement, Morabito agrees to pay BOA the current remaining principal balance of the Line of Credit of \$876,752.01 (the "Settlement Amount") plus accrued interest as of July 6, 2012 of \$148,286.77 for a total of \$1,025,038.78. Morabito agrees to make principal payments of fifty thousand dollars (\$50,000.00) per month commencing on September 7, 2012 and monthly thereafter on the last day of each month commencing on September 30, 2012 for a period of eighteen (18) months, with the final principal payment due on January 31, 2014. In addition to principal payments of \$50,000.00 per month, interest on the Settlement Amount from July 6, 2012 will be modified from the current default rate of LIBOR + 8.4% to a non-default rate of LIBOR + 5.50% and will be paid monthly at this non-default rate. Morabito may pay the total outstanding amount of the Settlement Amount at any time before the expiration of the 18-month term without any prepayment penalty. Any remaining principal plus accrued interest on the Settlement Amount will be all due and payable on January 31, 2014.
- b. Morabito will provide BOA collateral to secure the Settlement Amount and understands and agrees that said collateral must be acceptable to BOA. Accordingly, and in addition to the existing Collateral under the Agreements, as modified, Morabito will cause a third party to provide a guaranty secured by a second Deed of Trust on 570 Glenneyre, Laguna Beach, CA to secure the Settlement Amount.
- c. The payment of the accrued interest of \$148,286.77, the attorney's fees of \$142,398.80 and costs in the amount of \$6,744.25, and the



provision of collateral pursuant to 1(b) above, are to be performed contemporaneously with the execution of the Settlement Agreement and are a condition precedent to settlement.

- d. As consideration for this Settlement Agreement, BOA agrees to extend the expiration date of the Letter of Credit (number 3077485) in its present amount of \$81,010.00 for one year from its present September 30, 2012 maturity date to September 30, 2013.
- e. Except as modified herein, the Agreements remain in full force and effect.

2. Attorneys' Fees and Costs. Morabito agrees to pay BOA's attorneys' fees and costs, resulting from or related to the Lawsuit, and the negotiation and execution of this Settlement Agreement pursuant to the memorandum of fees and costs attached hereto as **Exhibit A**. Morabito hereby waives and releases any claim for fees and expenses, including but not limited to attorneys' fees, with respect to the Agreements, the Lawsuit, and the negotiation and execution of this Settlement Agreement.

3. Confession of Judgment. Morabito shall execute a Confession of Judgment in connection with the execution of this Settlement Agreement, a form of which is attached hereto as **Exhibit B**. BOA acknowledges, understands, and agrees that the Confession of Judgment shall be held by its counsel in escrow, but not filed in the Second Judicial District Court in and for the County of Washoe, State of Nevada, unless and until and only if Morabito defaults under this Settlement Agreement and all conditions precedent set forth herein have occurred.

In the event Morabito fails to make any payment as set forth in paragraph 1 above, then Morabito shall be deemed to have defaulted under this Settlement Agreement, and Morabito acknowledges and agrees that: 1) the total amount of the Settlement Amount shall be immediately due and payable to BOA, minus any payments that have already been made, if any, plus all attorneys' fees and costs BOA incurred prior to the entry of this Settlement Agreement and those reasonable attorneys' fees and costs that arise after Morabito's default under this Settlement Agreement; and 2) BOA has the absolute and unconditional right to immediately file the Confession of Judgment with the Second Judicial District Court in and for the County of Washoe, State of Nevada. Should Morabito pay the required monthly payments to BOA in a timely manner pursuant to paragraph 1 of this Settlement Agreement, and only in the event that BOA has received the full amount of the Settlement Amount, then BOA's counsel shall return the original and unfiled Confession of Judgment to Morabito.

a. Notice and Right to Cure.

(i) Notice: Before BOA may file the Confession of Judgment referenced in paragraph 3 of this Settlement Agreement or proceed with collection of the accelerated amount due under the Confession



of Judgment, BOA shall provide Morabito with written notice ("Notice") of its intent to file the Confession of Judgment because of the default in the receipt of payment. This Notice shall be sent by BOA to Morabito via overnight courier to:

Paul Morabito

8581 Santa Monica Blvd., Suite 708

West Hollywood, California 90069

with a copy to his counsel:

Mr. Dennis C. Vacco

Lippes Mathias Wexler Friedman

665 Main Street, Suite 300

Buffalo, New York 14203

(ii) Right to Cure: Morabito shall be allowed three (3) business days (which excludes weekend days and legal holidays) from the date the Notice is mailed to deliver to BOA at Bank of America, AZ1-200-20-30, 201 E. Washington St., 20th Flr, Phoenix AZ 85004, the amount of the payment due at that time, together with a late payment fee of five percent (5%) of the amount of that payment. Upon receipt by BOA of the late payment and the five percent late payment fee, Morabito shall be deemed to have "cured" the default, and the payment schedule outlined in paragraph 1 above shall be reinstated without acceleration of the amount under the Confession of Judgment and BOA shall not cause the Confession of Judgment to be filed or execution thereon to be commenced. Upon the expiration of the fifth (5th) business day following the mailing of the Notice without the payment and the late fee having been received by BOA, the provisions of paragraph 3 shall be in full force and BOA shall be allowed to undertake all actions it deems necessary to file and execute upon the Confession of Judgment

4. Dismissal of the Lawsuit. Upon the execution of this Settlement Agreement and the satisfaction of the conditions precedent under paragraph 1(c), the parties shall file in the Lawsuit, within two business days thereof, a stipulation of dismissal, dismissing the Lawsuit with prejudice.



5. Compromise; No Acknowledgment of Liability. It is expressly understood that this Settlement Agreement is a compromise of a disputed claim with respect to the Agreement, and it is not to be construed as an admission of liability or responsibility on the part or parts of (i) BOA, or any individual, person, corporate parent or affiliate, or agent, servant, employer or representative thereof, herein released, by each of whom all wrongdoing, liability or responsibility is expressly denied, and (ii) Morabito and any agent, servant, employer or representative thereof, herein released, by each of whom all wrongdoing, liability or responsibility is expressly denied.

6. Release.

As a material part of the consideration for BOA entering into this Settlement Agreement, Morabito and, if any, each guarantor or owner of collateral signing this Settlement Agreement (collectively "Releasor") agree as follows (the "Release Provision"):

6.1 Releasor hereby releases and forever discharges BOA and BOA's predecessors, successors, assigns, officers, managers, directors, shareholders, employees, agents, attorneys, representatives, parent corporations, subsidiaries, and affiliates (hereinafter all of the above collectively referred to as "BOA Group") jointly and severally from any and all claims, counterclaims, demands, damages, debts, agreements, covenants, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions, and causes of action of any nature whatsoever arising out of the Lawsuit and the Agreements, including, without limitation, all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity, whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether or not heretofore asserted, which Releasor may have or claim to have against any of BOA Group; provided, however, that BOA shall not be released hereby from any obligation to pay to Releasor any amounts that Releasor may have on deposit with BOA, in accordance with applicable law and the terms of the documents establishing any such deposit relationship.

6.2 Releasor agrees not to sue any of BOA Group or in any way assist any other person or entity in suing BOA Group with respect to any claim released herein. The Release Provision may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of the release contained herein.

6.3 Releasor acknowledges, warrants, and represents to BOA Group that:

6.3.1 Releasor has read and understands the effect of the Release Provision. Releasor has had the assistance of independent counsel of its own choice, or has had the opportunity to retain such independent counsel, in reviewing, discussing, and considering all the terms of the Release Provision; and if counsel was retained, counsel for Releasor has read and considered the Release Provision and advised Releasor to execute the same. Before execution of this



Agreement, Releasor has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of the Release Provision.

6.3.2 Releasor is not acting in reliance on any representation, understanding, or agreement not expressly set forth herein. Releasor acknowledges that BOA Group has not made any representation with respect to the Release Provision except as expressly set forth herein.

6.3.3 Releasor has executed this Agreement and the Release Provision thereof as its free and voluntary act, without any duress, coercion, or undue influence exerted by or on behalf of any person.

6.3.4 Releasor is the sole owner of the claims released by the Release Provision, and Releasor has not heretofore conveyed or assigned any interest in any such claims to any other person or entity.

6.4 Releasor understands that the Release Provision was a material consideration in the agreement of BOA to enter into this Agreement.

6.5 It is the express intent of Releasor that the release and discharge set forth in the Release Provision be construed as broadly as possible in favor of BOA Group so as to foreclose forever the assertion by Releasor of any claims released hereby against BOA Group.

6.6 If any term, provision, covenant, or condition of the Release Provision is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of the provisions shall remain in full force and effect.

7. Representations and Warranties.

(a) BOA represents and warrants that this Settlement Agreement has been duly authorized by all necessary corporate or organization action on the part of BOA and that this Settlement Agreement constitutes a legal, valid, and binding obligation of BOA enforceable against BOA in accordance with its terms.

(b) Morabito represents and warrants that this Settlement Agreement constitutes a legal, valid, and binding obligation enforceable against him in accordance with its terms. Morabito further represents and warrants that he is authorized and has the authority to execute in full the release in Paragraph 6(b) of this Settlement Agreement and to bind the entities covered by such release to the terms thereof.

8. General Provisions.

(a) The parties acknowledge and agree that they have entered into this Settlement Agreement voluntarily, without duress or coercion, and have done so with the full advice of their respective legal counsel.



(b) This Settlement Agreement is binding upon and inures to the benefit of all successors-in-interest and assigns of the parties hereto.

(c) If any legal action, arbitration, or other proceeding is brought for the enforcement of this Settlement Agreement (including any cross-complaint, counterclaims, or third-party claim), or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Settlement Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding (including all such costs incurred on appeal or in the enforcement of any judgment or settlement), in addition to any other relief to which it or they may be entitled.

(d) No course of dealing and no delay on the part of the parties in exercising any right, power, or remedy under this Settlement Agreement shall operate as a waiver thereof or otherwise prejudice the parties' rights, powers, and remedies conferred under this Settlement Agreement. No right, power, or remedy conferred by this Settlement Agreement shall be exclusive of any other right, power, or remedy now or hereafter available at law, in equity, by statute, or otherwise.

Notwithstanding the foregoing, BOA may disclose the terms and conditions of this Settlement Agreement to:

(1) BOA's affiliates and its and their respective employees, officers, directors, agents, legal counsel, accountants, auditors and other representatives and advisors (collectively, its "Representatives") it being understood that the Representatives to whom such disclosure is made will be informed of the confidential nature of such Settlement Agreement and instructed to keep such terms and conditions confidential; and

(2) any bank, financial institution or other entity to which BOA has sold or desires to sell, transfer or assign all, or any interest or participation in the Agreements and this Settlement Agreement, provided that any such recipient of such information agrees to keep such information confidential as specified in this Settlement Agreement.

Furthermore, In the event that BOA or any of its Representatives is requested or required (orally or in writing, by law, regulation or interrogatory, request for information or documents, court order, subpoena, deposition, administrative proceeding, inspection, audit, civil investigative demand or other legal, governmental or regulatory process) to disclose any terms and conditions of this Settlement Agreement, the Bank or such Representative may disclose the same.

(e) The parties agree that the terms of the Settlement Agreement are and shall remain confidential and that such terms shall not be disclosed by the parties to any other person unless otherwise agreed in writing; provided, however, that each of the parties may disclose the terms of the Settlement Agreement to its/his attorneys,



accountants, or other professionals retained by each of the parties for the purpose of rendering advice to one of the parties so long as such persons are informed by such party as to the confidential nature of such information and are directed by such party to treat such information confidentially and to use it only in connection with their representation of such party.

(e) This Settlement Agreement may be executed in any number of counterparts, and all such counterparts executed by all of the parties hereto, each as an original, shall constitute one and the same instrument. Facsimile signatures shall be sufficient to make this Settlement Agreement binding, with original signatures to be delivered promptly after the Settlement Date.

(f) The headings in this Settlement Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Settlement Agreement.

(g) This Settlement Agreement may not be altered, amended, or modified except in writing signed by all of the parties hereto.

(h) This Settlement Agreement constitutes the entire understanding of the parties hereto. There are no representations, warranties, covenants, promises, or undertakings except those expressly provided herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Settlement Agreement as of the Settlement Date.

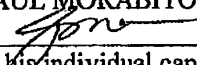
BANK OF AMERICA, N.A.

By: \_\_\_\_\_

Name: David Maiorella

Title: Senior Vice President

PAUL MORABITO

  
In his individual capacity

THE ARCADIA LIVING TRUST

By:  \_\_\_\_\_

Name: Paul Morabito

Title: Trustee



# Exhibit 74

**Page intentionally left blank**

# Exhibit 75

**From:** Dennis Vacco  
**Sent:** Friday, February 10, 2012 2:51 PM  
**To:** Paul Wells; Haves, Timothy  
**CC:** Stephanie Canastraro; Paul Morabito; Marcia Zgoda  
**Subject:** RE: 1461 Glenneyre St Laguna Beach- Sale

Please let Stephanie know when on Monday you are available so we can schedule a call with Tim. Thanks.

---

**From:** Paul Wells  
**Sent:** Friday, February 10, 2012 1:30 PM  
**To:** Haves, Timothy  
**Cc:** Dennis Vacco; Stephanie Canastraro; Paul Morabito; Marcia Zgoda  
**Subject:** Re: 1461 Glenneyre St Laguna Beach- Sale

I am out of the office but will circle back with Paul and/or Tim to discuss this transaction on Monday.

Best,

Paul

Paul F. Wells

Sent from my iPhone

On Feb 10, 2012, at 1:25 PM, "Haves, Timothy" <[Timothy.K.Haves@Grubb-Ellis.com](mailto:Timothy.K.Haves@Grubb-Ellis.com)> wrote:

Dennis

Please note that there a desire from Snowshoe Properties LLC to sell the property with a buy back provision after 10 years.

We can discuss the details of this at a later date. It may or may not be something a buyer would be interested in.

Regards

**Timothy.K.Haves**  
Director, Vice President  
Petroleum Services Group  
Grubb & Ellis Company  
License # 00812184  
4675 MacArthur Court, Suite 1600, Newport Beach, CA 92660  
Direct: 949.608.2027 • Fax: 949.608.2003 • Cell: 949.636.3961 • Skype ID [GasManUSA.com](http://GasManUSA.com)  
CA Salesperson License # 01233336  
[Click here to visit available properties](#)

[!\[\]\(aab88c0d099e5d18d6533a97b13ec28d\_img.jpg\) !\[\]\(30511f8b621e91d2a09037fa36f8d30d\_img.jpg\) !\[\]\(96ad08d878e2a593ad5eef40b7dbe02c\_img.jpg\) !\[\]\(0e808561fc3ae7a33fc8654e568cb60a\_img.jpg\) !\[\]\(8a88de5eb79012c59e429503123fd600\_img.jpg\)](#)

---

**From:** Paul Morabito [<mailto:morabito.pa@gmail.com>]  
**Sent:** Friday, February 10, 2012 10:02 AM  
**To:** Paul Wells; Dennis Vacco  
**Cc:** Haves, Timothy; Stephanie Canastraro  
**Subject:** Fwd: 1461 Glenneyre St Laguna Beach

Paul Morabito  
Chairman  
Snowshoe Capital LP  
8581 Santa Monica Blvd., Ste. 708  
Los Angeles, California 90069-4120  
tel/text: (310) 339-0475 - fax: (480) 222-1062 - UK: 0-777-0 385385

Begin forwarded message:

**From:** "Haves, Timothy" <[Timothy.K.Haves@Grubb-Ellis.com](mailto:Timothy.K.Haves@Grubb-Ellis.com)>  
**Date:** February 10, 2012 9:51:27 AM PST  
**To:** "Dennis Vacco" <[dvacco@lippes.com](mailto:dvacco@lippes.com)>  
**Cc:** "Christian Lovelace" <[clovelace@lippes.com](mailto:clovelace@lippes.com)>, "Paul Morabito" <[morabito.pa@gmail.com](mailto:morabito.pa@gmail.com)>  
**Subject:** 1461 Glenneyre St Laguna Beach

Dennis

As you are aware we are gearing up to sell the above property for Snowshoe Properties LLC.

Currently they own the property and lease two units out to Barry Didato and Blip Toys.

Please could you prepare a draft master lease for Snowshoe Capital LP to be given to a new buyer. I have attached some indicative terms that we might expect to help the drafting process.

Also, we will have to amend the current leases to Didato and Blip to make them sub leases. The remainder of the building will be occupied by Snowshoe Capital LP.

Regards

**Timothy.K.Haves**  
Director, Vice President  
Petroleum Services Group  
Grubb & Ellis Company  
License # 00812184  
4675 MacArthur Court, Suite 1600, Newport Beach, CA 92660  
Direct: 949.608.2027 • Fax: 949.608.2003 • Cell: 949.636.3961 • Skype ID [GasManUSA.com](http://GasManUSA.com)  
CA Salesperson License # 01233336  
[Click here to visit available properties](#)

<(null)><(null)> <(null)> <(null)> <(null)>

---

**From:** Dennis Vacco [<mailto:dvacco@lippes.com>]  
**Sent:** Thursday, February 09, 2012 4:26 PM  
**To:** Haves, Timothy  
**Cc:** Christian Lovelace; Paul Morabito  
**Subject:** RE: NDA-AZ Portfolio

Tim,

Regarding the Laguna property, I will put one of our real estate lawyers on this tomorrow. We will reach out to you with any questions.

Thanks.

---

**From:** Haves, Timothy [<mailto:Timothy.K.Haves@Grubb-Ellis.com>]  
**Sent:** Tuesday, February 07, 2012 3:39 PM  
**To:** Dennis Vacco  
**Cc:** Christian Lovelace; Paul Morabito  
**Subject:** FW: NDA-AZ Portfolio

Dennis

We sent 7-Eleven an NDA, here are the comments please advise

Regards

**Timothy.K.Haves**

Director, Vice President  
Petroleum Services Group  
Grubb & Ellis Company  
License # 00812184  
4675 MacArthur Court, Suite 1600, Newport Beach, CA 92660  
Direct: 949.608.2027 • Fax: 949.608.2003 • Cell: 949.636.3961 • Skype ID  
[GasManUSA.com](http://GasManUSA.com)  
CA Salesperson License # 01233336  
[Click here to visit available properties](#)

[<\(null\)><\(null\)> <\(null\)> <\(null\)> <\(null\)>](#)

---

**From:** Oliver, Stephen [<mailto:Stephen.Oliver@7-11.com>]  
**Sent:** Tuesday, February 07, 2012 11:46 AM  
**To:** Haves, Timothy  
**Cc:** Barrow, Edward  
**Subject:** FW: NDA-AZ Portfolio

Tim

Good to hear from you. I hope all is all.

Attached is redline version of the NDA and the executed clean copy of the redline.

I look forward to working with you.

**Stephen Oliver**  
**Regional Development Director**

5600 S Quebec  
Suite 200C  
Greenwood Village, CO 80111

Cell: 303 808-5636  
Office: 972 828-4257  
Fax: 303 740-7262



**Note: New Office Phone number**

---

**From:** Haves, Timothy [\[mailto:Timothy.K.Haves@Grubb-Ellis.com\]](mailto:Timothy.K.Haves@Grubb-Ellis.com)  
**Sent:** Friday, February 03, 2012 11:43 AM  
**To:** Barrow, Edward  
**Subject:** NDA-AZ Portfolio

Edward

Please sign and return

**Timothy.K.Haves**

Director, Vice President

Petroleum Services Group

Grubb & Ellis Company

License # 00812184

4675 MacArthur Court, Suite 1600, Newport Beach, CA 92660

Direct: 949.608.2027 • Fax: 949.608.2003 • Cell: 949.636.3961 • Skype ID

[GasManUSA.com](http://GasManUSA.com)

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# Exhibit 76

## Dennis Vacco

---

**From:** Paul Morabito [morabito.pa@gmail.com]  
**Sent:** Tuesday, May 08, 2012 5:27 PM  
**To:** Dennis Vacco  
**Cc:** raymond whiteman; Edward Bayuk; Stan Bernstein; Bob Burke; cookmercer; reneegluck@gmail.com; Mark Frederick; Kevin J. Malone; Rob McLean; Cathleen Sodos  
**Subject:** LEGAL MATTERS - HIGH PRIORITY

Dennis

We need to proceed with the corporate set-up with Ray, Edward and myself:

- set up SNOWSHOE CAPITAL LLC jointly owned by PM/EB (50%) and RW (50%) - Delaware Corp
- finalize partnership agreement in USHFCC as written. JJ, Crumpton and Meeker each get 2%. Balance is 60% myself; 20% Edward and 20% Ray. All voting is me. 2
- Ray needs to get credit for the \$500,000 he has in Virsenet. 2
- set up Bermuda Company called PARADERAS SPECIALTY RISK, 50/50 PM/RW ✓ 1
- set up Canada Company PARADERAS SPECIALTY UNDERWRITERS, owned by PSR ✓ 2
- set up USA Insurance Company called PARADERAS CORPORATION, Delaware, owned by PSU ✓ 3
- set up USA MGA called PARADERAS MANAGING GENERAL AGENTS INC., Delaware, owned by PSU
- Ray and I will capitalize PSR with \$1 million each
- US Trust is giving us a \$10 million line of credit and the \$2.5 million LC line which RW will pledge Carlyle public stock and any balance of liquidity against - this should go in SCLLC and be joint and severally guaranteed. Warren Cohn is arranging a term sheet for us on this stat
- bank accounts need to be set up asap at BMO and UST
- existing California insurance entity (see Mark Lehman) should be transferred here asap
- agreement should be prepared giving MERCER COOK a \$600,000 a year two year employment agreement as President of PC, and a signing bonus of a \$1 million line of credit at US Trust, joint and several guaranteed by PM/RW; MC also gets 5% in PC
- the Glenneyre Street property should be in PARADERAS PROPERTIES LLC, Delaware, jointly owned by PM/RW, and sold at \$2.75 million ... \$1.75 million mortgage we are getting through Pacific Bank and \$1 million in cash equity
- I want an DMBE set up as PARADERAS INSURANCE PARTNERS owned 51% by Karl Davidowski, and 49% by PC
- Renee Frederick, Mark Frederick's wife, gets 5% ownership in PSU
- Bob Burke will be getting a 5% ownership in PC - Ray and I will be diluted equally by MC and BB
- all my 50% units should be in an Irrevocable Trust set up with Mark Frederick's assistance, with Cathleen Sodos as Trustee
- I will speak with Edward is he wants 20% (10%) of each of my 50% interests

PLEASE PROCEED ON THIS ASAP. We will be funding the \$500,000 payment to Globe Wireless through this entity. We will also be entering into a deal with Ambassador Henry Crumpton to set up CRUMPTON SPECIALTY RISK in Arlington VA, owned 50% by Hank et al and 50% by Ray, myself, Edward, Ross and Alan

--  
Paul A. Morabito

## Exhibit 77

**From:** Dennis Vacco  
**Sent:** Tuesday, September 04, 2012 7:01 PM  
**To:** 'Edward Bayuk'  
**CC:** 'Paul Morabito'; Stephanie Canastraro  
**Subject:** SECOND DEED OF TRUST DOCUMENTS  
**Attachment(s):** "Second Deed of Trust (8-24-12).pdf", "Third Modification Agreement (8-30-12).pdf", "Limited Guaranty (8-30-12).pdf", "Certificate of LLC (Authorization to Pledge Assets) (8-24-12).pdf"

Edward,

Attached please find various documents which need to be executed by you to fulfill the collateral for the note Paul agreed to in order to settle the BOA litigation. I have reviewed and approved all documents. Please execute these documents and return them to me via PDF before Friday and then over night the originals to me. Please sign in blue ink.

Thanks.

Dennis

DENNIS C. VACCO, Esq.  
Lippes Mathias Wexler Friedman LLP  
665 Main Street, Suite 300  
Buffalo, New York 14203  
716-853-5100 (office)  
716-853-5199 (fax)  
716-713-1679 (cell)  
[DVacco@Lippes.com](mailto:DVacco@Lippes.com)

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# Exhibit 78

**From:** Paul Morabito [morabito.pa@gmail.com]  
**Sent:** Tuesday, September 18, 2012 6:01 PM  
**To:** Edward Bayuk  
**CC:** Dennis Vacco; Mark Lehman; Christian Lovelace  
**Subject:** Re: Deed of Trust

Correct

Paul Morabito  
Chairman  
US HF Cellular Communications  
tel/text: (310) 339-0475  
email: paul.morabito@ushfcc.com

On Sep 18, 2012, at 4:05 PM, Edward Bayuk <ebayuk@superpumper.com> wrote:

Dennis Mark

Please do not involve Snowshoe Properties with Mary Fleming.

The house is not owned by a LLC. It is owned by an individual.

Thank you  
Edward

From: dvacco@lippes.com [mailto:dvacco@lippes.com]  
Sent: Tuesday, September 18, 2012 3:54 PM  
To: Edward Bayuk; Mark Lehman; Paul Morabito  
Cc: Christian Lovelace  
Subject: Re: Deed of Trust

Mark, the SDT on Mary Fleming Drive is to secure a note from a company which EWB is a member.  
Sent from my Verizon Wireless BlackBerry

---

From: Edward Bayuk <ebayuk@superpumper.com<mailto:ebayuk@superpumper.com>>  
Date: Tue, 18 Sep 2012 22:19:12 +0000  
To:  
'Mark@MarkLehmanEsq.com'<Mark@MarkLehmanEsq.com<mailto:Mark@MarkLehmanEsq.com>>;  
Paul Morabito<morabito.pa@gmail.com<mailto:morabito.pa@gmail.com>>  
Cc: 'clovelace@lippes.com'<clovelace@lippes.com<mailto:clovelace@lippes.com>>;  
'dvacco@lippes.com'<dvacco@lippes.com<mailto:dvacco@lippes.com>>  
Subject: Re: Deed of Trust

Let's just make this simple, I think Paul wants to put a second trust deed in place on Mary Fleming house if so, than just let me sign for the second trust deed.

Edward

From: Mark Lehman [mailto:mark@marklehmanesq.com]  
Sent: Tuesday, September 18, 2012 03:09 PM  
To: Paul Morabito  
Cc: Christian Lovelace <clovelace@lippes.com<mailto:clovelace@lippes.com>>; Edward Bayuk; Dennis Carmen Vacco <DVAcCo@lippes.com<mailto:DVAcCo@lippes.com>>  
Subject: Re: Deed of Trust

Paul:

I stand corrected. Attached is the last deed recorded against Mary Fleming with Edward's trust as the title holder.

Virsenet, LLC is then owned by Edward as well?

Mark E. Lehman  
Law Offices of Mark E. Lehman  
9200 Sunset Blvd., PH 2  
West Hollywood, CA 90069  
Phone: (310) 276-2670  
Fax: (310) 276-2513  
E-mail: [Mark@MarkLehmanEsq.com](mailto:Mark@MarkLehmanEsq.com)<<mailto:Mark@MarkLehmanEsq.com>>  
[www.MarkLehmanEsq.com](http://www.MarkLehmanEsq.com)<<http://www.marklehmanesq.com/>>

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On Tue, Sep 18, 2012 at 3:04 PM, Paul Morabito  
<[morabito.pa@gmail.com](mailto:morabito.pa@gmail.com)<<mailto:morabito.pa@gmail.com>>> wrote:  
Edward said the property is in EDWARD WILLIAM BAYUK LIVING TRUST  
On Tue, Sep 18, 2012 at 3:00 PM, Mark Lehman  
<[mark@marklehmanesq.com](mailto:mark@marklehmanesq.com)<<mailto:mark@marklehmanesq.com>>> wrote:  
Christian and Dennis:

So I understand, the deed of trust will be on the Mary Fleming property in Palm Springs; however title to that property is with Snowshoe Properties, LLC (not Virsenet the borrower). How is that disconnect being handled?

As per my records, the only member of Snowshoe Properties, LLC is Edward in his capacity as trustee of his trust.

Sorry for this question but I'm late to this game.

Mark

Mark E. Lehman  
Law Offices of Mark E. Lehman  
9200 Sunset Blvd., PH 2  
West Hollywood, CA 90069  
Phone: (310) 276-2670<[tel:\(310\)276-2670](tel:(310)276-2670)>  
Fax: (310) 276-2513<[tel:\(310\)276-2513](tel:(310)276-2513)>  
E-mail: [Mark@MarkLehmanEsq.com](mailto:Mark@MarkLehmanEsq.com)<<mailto:Mark@MarkLehmanEsq.com>>



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On Tue, Sep 18, 2012 at 2:40 PM, Christian Lovelace  
<clovelace@lippes.com<mailto:clovelace@lippes.com>> wrote:  
Mark,

I am attaching the note where Ray is lending Virsenet roughly \$2.4M that the second deed of trust will secure. A condition of the loan is that the Palm Springs property be mortgaged as security in an amount of \$800,000 that the Deed of Trust will secure even though the principal amount of the note is much higher. Other than basic terms, the Deed of Trust automatically defaults if the First Deed of Trust gets foreclosed upon. Mark give me a call if you have any questions. My cell is 716-998-0979<tel:716-998-0979>.

Thanks,

Christian M. Lovelace  
Lippes Mathias Wexler Friedman LLP  
665 Main Street, Suite 300  
Buffalo, New York 14203  
P: (716) 853-5100<tel:%28716%29%20853-5100>  
F: (716) 853-5199<tel:%28716%29%20853-5199>  
clovelace@lippes.com<mailto:clovelace@lippes.com>  
www.lippes.com<http://www.lippes.com/>

\*\*\*\*\*

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Paul Morabito  
Chairman

US HF Cellular Communications LLC / ShipCom LLC / Snowshoe Capital LLC  
USA cell/text: 310.339.0475<tel:310.339.0475> - efax: 480.222.1062<tel:480.222.1062> - UK  
cell: 0.777.0.385385  
e-mail: paul.morabito@ushfcc.com<mailto:paul.morabito@ushfcc.com>

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<winmail.dat>

# Exhibit 79

**From:** Dennis Vacco  
**Sent:** Wednesday, October 03, 2012 6:01 PM  
**To:** Paul Morabito  
**CC:** Christian Lovelace; Stephanie Canastraro  
**Subject:** RE: Snowshoe Properties, LLC

I just concluded a call with Karla MacCary at Nossaman. She wants a term sheet on both the real estate deal and the option. She will accept same via email.

I know you are busy but if you could answer the questions in red below, I can send her a term sheet so she has it first thing in the morning.

As I understand your instructions below, Snowshoe Properties, LLC, will borrow \$5MM. Snowshoe will provide a FDT on 1461 Glenneyre and a SDT on 570 Glenneyre. The term will be for 36 months with no prepayment penalty. **Are the monthly payments interest only or interest and principal? If interest and principal what is the amortization period, 3 years, 10, 15? What interest rate do you want to offer?**

**As to the option, please remind me what terms you propose. Is the option for Virsenet or USHF? How does dilution work at Virsenet level/ USHF level? In other words if the equity interest is in Virsenet is Ray and EWB diluted along with you or only you? If in USHF, is only Virsenet diluted (same impact as a distribution from Virsenet or is JJCD diluted as well. What triggers the option? How long is option period for? What is the valuation of the option? What consideration does BB pay for option?**

Thanks.

---

**From:** Paul Morabito [mailto:morabito.pa@gmail.com]  
**Sent:** Monday, October 01, 2012 7:08 PM  
**To:** Dennis Vacco  
**Cc:** Christian Lovelace  
**Subject:** Re: Snowshoe Properties, LLC

\$5 million.  
Nominal interest.  
1st on 1461 G and 2nd on 570 G  
36 month term or prepay with no penalty

Paul Morabito  
Chairman  
US HF Cellular Communications  
tel/text: (310) 339-0475  
email: [paul.morabito@ushfcc.com](mailto:paul.morabito@ushfcc.com)

On Oct 1, 2012, at 4:04 PM, "Dennis Vacco" <[dvacco@lippes.com](mailto:dvacco@lippes.com)> wrote:

I received an email from Alan Skobin. Please send me a bullet point email with your proposed terms so I can have an informed conversation with Karla Mac Cary at Nossman. Thanks.

---

**From:** Alan Skobin [mailto:[askobin@galpin.com](mailto:askobin@galpin.com)]  
**Sent:** Monday, October 01, 2012 7:01 PM  
**To:** Dennis Vacco  
**Cc:** [KMacCary@Nossaman.com](mailto:KMacCary@Nossaman.com)  
**Subject:** RE: Snowshoe Properties, LLC

Dennis,

Our attorney is Karla MacCary, who is with Nossman. Her contact info is:

Telephone: 213 612-7862  
Email: [KMacCary@Nossaman.com](mailto:KMacCary@Nossaman.com)

Could you please send both Carla and I an email with what you understand the terms to be of the transactions. Also, it is important that Karla speak with whoever you propose does drafting so that there is a mutual comfort with the approach. That will hopefully save time and money for your client, who will be responsible for our legal costs.

Sorry for the brevity, but I wanted to get back to you before my knee replacement in the morning. Look forward to meeting you one day.

Thanks much, and all the best,

Alan Skobin

---

**From:** Dennis Vacco [<mailto:dvacco@lippes.com>]  
**Sent:** Monday, October 01, 2012 8:33 AM  
**To:** [ASkobin@galpin.com](mailto:ASkobin@galpin.com)  
**Cc:** Edward Bayuk; Paul Morabito; Stephanie Canastraro  
**Subject:** Snowshoe Properties, LLC

Alan,

I represent Snowshoe Properties, LLC and its sole member, Edward Bayuk. Edward and Paul have asked me to reach out to you to open a line of discussion concerning a First Deed of Trust for 1461 Glenneyre, and a Second Deed of Trust for 570 Glenneyre, both properties are located in Laguna Beach, CA. Can we schedule a call for today to initiate conversations about these mortgages? If you are not available is there another attorney who you would want me to discuss these matters with?

I am generally available all day today.

Thanks.

DENNIS C. VACCO, Esq.  
Lippes Mathias Wexler Friedman LLP  
665 Main Street, Suite 300  
Buffalo, New York 14203  
716-853-5100 (office)  
716-853-5199 (fax)  
716-713-1679 (cell)  
[DVacco@Lippes.com](mailto:DVacco@Lippes.com)

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# Exhibit 80

**From:** Paul Morabito [morabito.pa@gmail.com]  
**Sent:** Thursday, March 14, 2013 12:17 AM  
**To:** Dennis Vacco  
**Subject:** Re: BHI Hinckley

We would transfer ownership to them lock, stock and barrel ... \$2 million in store level cashflow and no debt or PGs.

On Wed, Mar 13, 2013 at 12:58 PM, Dennis Vacco <[dvacco@lippes.com](mailto:dvacco@lippes.com)> wrote:

Until I receive draft of agreement from Desmond, I am not going to further engage BHI Trust. Similarly, you owe \$8,800 in back taxes for Q4 2012 but I am not pressing you to pay until I see final agreement even though Desmond has demanded payment pursuant to our agreement. Having said that, Spirit sued JH claiming default over the past due payment (which you made on March 1st) and the back taxes. Desmond promised me yesterday, a draft of the agreement, but I still have not received one.

As to your proposal, do you mean you would transfer ownership of Superpumper to BHI or to use it as "collateral" in exchange for a longer forbearance.

-----Original Message-----

From: Paul Morabito [mailto:[morabito.pa@gmail.com](mailto:morabito.pa@gmail.com)]  
Sent: Wednesday, March 13, 2013 3:39 PM  
To: Dennis Vacco  
Subject: BHI Hinckley

Status ?

Why not offer them Superpumper - they would make \$2 million a year and could borrow \$3 million against it c

Paul Morabito  
tel/text: [\(310\) 339-0475](tel:3103390475)

--

**Paul Morabito**  
USA cell/text: 310.339.0475 - fax: 480.222.1062 - UK cell: 0.777.0.385385  
e-mail: [morabito.pa@gmail.com](mailto:morabito.pa@gmail.com)

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# Exhibit 81



**Page intentionally left blank**

# Exhibit 82

**From:** Dennis Vacco  
**Sent:** Friday, November 11, 2011 9:06 AM  
**To:** Paul Morabito  
**Subject:** Re: ATTORNEY CLIENT PRIVILEGED COMMUNICATION

Ok.

-----Original Message-----

From: Paul Morabito  
To: DCV Vacco  
Subject: ATTORNEY CLIENT PRIVILEGED COMMUNICATION  
Sent: Nov 10, 2011 11:40 PM

Dennis

Tell Sam he has to wire you \$1 million by the 21st.

Please get Trevor's commitment to sign - call Edward tomorrow and tell him to HOLD any payments to him until he signs. I will guaranty you that he will delay this process. Edward will absolutely cut him off if he does but requiring him to sign is a huge risk. Speak to Edward and plan on personally driving over to Niagara to get a signature.

Sent from my Verizon Wireless BlackBerry

## Exhibit 83

**From:** Dennis Vacco  
**Sent:** Monday, November 28, 2011 6:56 PM  
**To:** Sam Morabito; 'morabito.pa@gmail.com'  
**CC:** Stephanie Canastraro  
**Subject:** RE: IMPORTANT

ok

-----Original Message-----

From: Sam Morabito [mailto:smorabito@superpumper.com]  
Sent: Monday, November 28, 2011 6:58 PM  
To: Dennis Vacco; 'morabito.pa@gmail.com'  
Cc: Stephanie Canastraro  
Subject: Re: IMPORTANT

Please confirm to me when it hits your bank.

Sam

----- Original Message -----

From: Dennis Vacco [mailto:dvacco@lippes.com]  
Sent: Monday, November 28, 2011 04:49 PM  
To: Sam Morabito; morabito.pa@gmail.com <morabito.pa@gmail.com>  
Cc: Stephanie Canastraro <SCanastraro@lippes.com>  
Subject: RE: IMPORTANT

Great, thanks.

-----Original Message-----

From: Sam Morabito [mailto:smorabito@superpumper.com]  
Sent: Monday, November 28, 2011 6:51 PM  
To: Dennis Vacco; 'morabito.pa@gmail.com'  
Cc: Stephanie Canastraro  
Subject: Re: IMPORTANT

Yes I sent it out today

----- Original Message -----

From: Dennis Vacco [mailto:dvacco@lippes.com]  
Sent: Monday, November 28, 2011 04:46 PM  
To: Sam Morabito; morabito.pa@gmail.com <morabito.pa@gmail.com>  
Cc: Stephanie Canastraro <SCanastraro@lippes.com>  
Subject: RE: IMPORTANT

Sam,

Thanks for your prompt attention to this request. Can you confirm that the wire transfer has been initiated?

Dennis

-----Original Message-----

From: Sam Morabito [mailto:smorabito@superpumper.com]

Sent: Monday, November 28, 2011 2:16 PM  
To: 'morabito.pa@gmail.com'  
Cc: Dennis Vacco; Stephanie Canastraro  
Subject: Re: IMPORTANT

Ok  
Wire instructions?

----- Original Message -----

From: Paul Morabito [mailto:morabito.pa@gmail.com]  
Sent: Monday, November 28, 2011 12:13 PM  
To: Sam Morabito  
Cc: DCV Vacco <dvacco@lippes.com>; Stephanie Canastraro  
<SCanastraro@lippes.com>  
Subject: IMPORTANT

Sam  
Please wire \$560,000 to Lippes Mathias TODAY

# Exhibit 84

**Page intentionally left blank**



# Exhibit 85

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# Exhibit 86

*Gregg W. Zive*

Honorable Gregg W. Zive  
United States Bankruptcy Judge



Entered on Docket  
December 22, 2014

GORDON SILVER  
GERALD M. GORDON, ESQ., Nevada Bar No. 229  
E-mail: ggordon@gordonsilver.com  
BRIAN R. IRVINE, ESQ., Nevada Bar No. 7758  
E-mail: birvine@gordonsilver.com  
MARK M. WEISENMILLER, ESQ., Nevada Bar No. 12128  
E-mail: mweisenmiller@gordonsilver.com  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
Telephone (702) 796-5555  
Facsimile (702) 369-2666  
*Attorneys for Petitioning Creditors*  
*JH, Inc., Jerry Herbst, and Berry-Hinckley Industries*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:  
CONSOLIDATED NEVADA CORPORATION,  
  
Alleged Debtor.

Case No.: BK-N-13-51236 gwz  
Chapter 7

Date: November 21, 2014  
Time: 10:00 a.m.

**AMENDED<sup>1</sup> ORDER FOR RELIEF UNDER CHAPTER 7**

JH, Inc. ("JH"), Jerry Herbst ("Herbst"), and Berry-Hinckley Industries ("BHI") and together with JH and Herbst, the "Petitioning Creditors"), by and through their counsel, the law firm of Gordon Silver, submitted their *Motion for Summary Judgment* [ECF No. 35] (the "Motion") on August 14, 2014. On October 3, 2014, Consolidated Nevada Corporation

<sup>1</sup> Amended to correct the petition date to June 20, 2013.

(“CNC”), by and through its counsel, Robinson, Belaustegui, Sharp & Low and Hartman & Hartman, filed its *Non-Opposition to Motion for Summary Judgment* [ECF No. 48] (the “Non-Opposition”). The Court held a hearing on the Motion on November 21, 2014 (the “Hearing”). Gerald M. Gordon, Esq. and Brian R. Irvine, Esq., of the law firm of Gordon Silver, appeared on behalf of the Petitioning Creditors. Frank C. Gilmore, Esq. and Jeffrey L. Hartman, Esq. appeared for the alleged debtor, CNC.

Based upon the *Order Granting Summary Judgment and Judgment*, entered concurrently herewith, it having been determined after the Hearing on notice that the requirements for entering an order for relief under 11 U.S.C. § 303 have been satisfied, and good cause appearing;

**IT IS HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. This Order constitutes an “Order for Relief” against CNC under Section 303(h), Chapter 11, Title 11, United States Code.

2. The date of the filing of the petition and the commencement of this case is June 20, 2013.

3. All pretrial hearings and other hearings related to a trial on the Involuntary Petition shall be vacated.

**IT IS SO ORDERED.**

PREPARED AND SUBMITTED BY:

GORDON SILVER

By: /s/ Mark M. Weisenmiller  
GERALD M. GORDON, ESQ.  
BRIAN R. IRVINE, ESQ.  
MARK M. WEISENMILLER, ESQ.  
100 W. Liberty Street  
Reno, Nevada 89501  
*Attorneys for Petitioning Creditors*

**APPROVED/DISAPPROVED**

ROBISON, BELAUSTEGUI, SHARP & LOW

By: /s/ Frank C. Gilmore  
FRANK C. GILMORE, ESQ.  
BARRY L. BRESLOW, ESQ.  
71 Washington Street  
Reno, Nevada 89503  
*Attorneys for Consolidated Nevada Corporation*

**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

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

FRANK C. GILMORE, ESQ. and JEFFREY L. HARTMAN, ESQ.

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

###

*Gregg W. Zive*

Honorable Gregg W. Zive  
United States Bankruptcy Judge



Entered on Docket  
December 17, 2014

GORDON SILVER  
GERALD M. GORDON, ESQ., Nevada Bar No. 229  
E-mail: ggordon@gordonsilver.com  
BRIAN R. IRVINE, ESQ., Nevada Bar No. 7758  
E-mail: birvine@gordonsilver.com  
MARK M. WEISENMILLER, ESQ., Nevada Bar No. 12128  
E-mail: mweisenmiller@gordonsilver.com  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
Telephone (702) 796-5555  
Facsimile (702) 369-2666  
*Attorneys for Petitioning Creditors*  
*JH, Inc., Jerry Herbst, and Berry-Hinckley Industries*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA**

In re:  
CONSOLIDATED NEVADA CORPORATION,  
  
Alleged Debtor.

Case No.: BK-N-13-51236 GWZ  
Chapter 7

Date: November 21, 2014  
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Hartman, filed its *Non-Opposition to Motion for Summary Judgment* [ECF No. 48] (the “Non-Opposition”). The Court held a hearing on the Motion on November 21, 2014 (the “Hearing”). Gerald M. Gordon, Esq. and Brian R. Irvine, Esq., of the law firm of Gordon Silver, appeared on behalf of the Petitioning Creditors. Frank C. Gilmore, Esq. and Jeffrey L. Hartman, Esq. appeared for the alleged debtor, CNC.

Based upon the *Order Granting Summary Judgment and Judgment*, entered concurrently herewith, it having been determined after the Hearing on notice that the requirements for entering an order for relief under 11 U.S.C. § 303 have been satisfied, and good cause appearing;

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1. This Order constitutes an “Order for Relief” against CNC under Section 303(h), Chapter 11, Title 11, United States Code.

2. The date of the filing of the petition and the commencement of this case is June 20, 2014.

3. All pretrial hearings and other hearings related to a trial on the Involuntary Petition shall be vacated.

**IT IS SO ORDERED.**

PREPARED AND SUBMITTED BY:

GORDON SILVER

By: /s/ Mark M. Weisenmiller  
 GERALD M. GORDON, ESQ.  
 BRIAN R. IRVINE, ESQ.  
 MARK M. WEISENMILLER, ESQ.  
 100 W. Liberty Street  
 Reno, Nevada 89501  
*Attorneys for Petitioning Creditors*

**APPROVED/~~DISAPPROVED~~**

ROBISON, BELAUSTEGUI, SHARP &  
 LOW

By: /s/ Frank C. Gilmore  
 FRANK C. GILMORE, ESQ.  
 BARRY L. BRESLOW, ESQ.  
 71 Washington Street  
 Reno, Nevada 89503  
*Attorneys for Consolidated Nevada Corporation*



**LR 9021 CERTIFICATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

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

FRANK C. GILMORE, ESQ. and JEFFREY L. HARTMAN, ESQ.

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

###

## Exhibit 87

NICHOLAS STROZZA, ASSISTANT U.S. TRUSTEE  
 State Bar #CA 117234  
 WILLIAM B. COSSITT, #3484  
 Office of the United States trustee  
 300 Booth Street, Room 3009  
 Reno NV 89509  
 Telephone: (775) 784-5335  
 Fax: (775) 784-5531

Attorneys for United States Trustee  
 Tracy Hope Davis

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re	)	Case No. 13-51237-GWZ
	)	
PAUL A. MORABITO,	)	
	)	
Debtor,	)	
	)	
	)	
	)	
	)	

**REPORT OF UNDISPUTED ELECTION**  
 (11 U.S.C. § 702)

Tracy Hope Davis, the United States Trustee for Region 17 (“the United States Trustee”), hereby submits her report of an undisputed election held under 11 U.S.C. § 702 and Fed. R. Bankr. P. 2003(d)(1).

Meeting called. On January 22, 2015, at approximately 11:30 a.m., the United States Trustee, through the undersigned counsel, called the meeting of creditors in the above-captioned case. The following appearances were made: William M. Noall, Esq., and Brian R. Irvine, Esq., Counsel for JH, Inc., Jerry Herbst, and Berry-Hinckley Industries.

Request for Election. JH, Inc., Jerry Herbst, and Berry-Hinckley Industries, through counsel, requested that an election be held. There was no objection to the request by JH, Inc., Jerry Herbst, and Berry-Hinckley Industries. The following documents were acknowledged and

incorporated into the record: the filing of a proof of claim by JH, Inc., Jerry Herbst, and Berry-Hinckley Industries in the amount of \$77,000,000 (Claim 2-1) and the furnishing of a Special Power of Attorney by Counsel for JH, Inc., Jerry Herbst, and Berry-Hinckley Industries. The Debtor listed a total of \$77,668,710.00 in Schedule F ("Creditors Holding Unsecured Nonpriority Claims"). *See* PACER Doc. No. 211. pg. 15.

Votes Cast. JH, Inc., Jerry Herbst, and Berry-Hinckley Industries cast the sole ballot in the election in the amount of its claim of \$77 million for nominee William A. Leonard, Jr. No other party cast a vote in the election. No party objected to the eligibility of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries to vote. There was no dispute about the outcome of the election. Therefore, William A. Leonard, Jr., received the majority in amount of the votes cast.

Name and Address of Elected Trustee. There being no dispute to the eligibility of the requestor, its claim, or the election, the duly elected trustee is:

William A. Leonard, Jr.  
6625 Valley View, Bldg. B #224  
Las Vegas, NV 89118

Qualification of Trustee. The trustee qualifies if before seven days of selection, and before beginning official duties, the elected trustee has complied with 11 U.S.C. § 322.

Amount of Bond. The United States Trustee has set the amount of bond at \$67,263,634.

Meeting of Creditors. As stated on the record, the meeting was adjourned to February 27, 2015, at 10:00 a.m. and is subject to being adjourned again should the elected trustee qualify in accordance with 11 U.S.C. § 322.

Dated: January 23, 2015

Tracy Hope Davis,  
United States Trustee

By: /s/ Nicholas Strozza  
Assistant United States Trustee

# Exhibit 88

1 **3980**

2 GARMAN TURNER GORDON LLP  
3 GERALD M. GORDON, ESQ.  
4 Nevada Bar No. 229  
5 E-mail: ggordon@gtg.legal  
6 ERIKA PIKE TURNER, ESQ.  
7 Nevada Bar No. 6454  
8 E-mail: eturner@gtg.legal  
9 TERESA M. PILATOWICZ, ESQ.  
10 Nevada Bar No. 9605  
11 E-mail: tpilatowicz@gtg.legal  
12 650 White Drive, Ste. 100  
13 Las Vegas, Nevada 89119  
14 Telephone 725-777-3000  
15

16 *Proposed Attorneys to Trustee*

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

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

22 Plaintiff,

23 vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 1

**AMENDED STIPULATION AND ORDER TO SUBSTITUTE A PARTY PURSUANT TO  
NRCP17(a)**

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

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

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

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

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

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

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


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

15 DATED this 1 day of June, 2015.

16 GARMAN TURNER GORDON LLP

ROBISON BELAUSTEGUI SHARP & LOW

17  
18 /s/ Teresa M. Pilatowicz  
19 GERALD E. GORDON, ESQ.  
20 ERIKA PIKE TURNER, ESQ.  
21 TERESA M. PILATOWICZ, ESQ.  
22 650 White Drive, Ste. 100  
23 Las Vegas, Nevada 89119  
24 Telephone 725-777-3000

  
BARRY L. BRESLOW, ESQ.  
FRANK C. GILMORE, ESQ.  
71 Washington Street  
Reno, Nevada 89503  
Telephone 775-329-3151

25 *Proposed Attorneys for Trustee*

*Attorneys for Defendants*

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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the attached **STIPULATION AND ORDER REGARDING MOTION TO CONTINUE TRIAL AND REOPEN DISCOVERY ON SHORTENED TIME** 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 11 day of June, 2015.

  
An Employee of GORDON SILVER



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# INDEX OF EXHIBITS

Exhibit	Description	Pages
1	Order Approving Amended Stipulation To Substitutue A Party Pursuant To NRCP 17(a)	1

<sup>2</sup> Exhibit page counts are exclusive of exhibit slip sheets.

# Exhibit 89

CONFIDENTIAL

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (the "Agreement"), is made and entered into as of October 6, 2010, by and among **PAUL A. MORABITO**, an individual residing at 8581 Santa Monica Blvd., Suite 708, W. Hollywood, CA 90069 (the "Seller") and **EDWARD BAYUK**, an individual residing at 668 North Pacific Coast Hwy #517, Laguna Beach, CA 92651 (the "Purchaser").

WHEREAS, the Seller and the Purchaser are both Members of watchmyblock LLC, a Nevada limited-liability company (the "Company"); and

WHEREAS, the Seller wishes to sell to the Purchaser and the Purchaser wishes to purchase from the Seller, all of Seller's membership interests of the Company on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

ARTICLE I.  
THE PURCHASED INTERESTS

Section 1.1 Sale of the Purchased Interests.

(a) On the Closing Date (as hereinafter defined), subject to the terms and conditions of this Agreement, Seller hereby agrees to sell, assign and otherwise transfer to Purchaser ninety-five percent (95%) of the common equity membership interest of the Company, which interest is represented by nine million five hundred thousand (9,500,000) units, not represented by certificates, owned by Seller (the "Purchased Interests") and Purchaser agrees to purchase from Seller the Purchased Interests.

(b) As payment in full for the Purchased Interests and against delivery of this Agreement therefor, on the Closing Date, the Purchaser shall deliver to the Seller, One Thousand Dollars (\$1,000.00) in immediately available funds (the "Purchase Price").

Section 1.2 Closing Date; Delivery.

(a) The closing of the purchase and sale of the Purchased Shares hereunder (the "Closing") shall be held at the offices of Lippes Mathias Wexler Friedman LLP on October 6, 2010, or at such other place or on such other date as the Purchaser and the Seller may agree (the "Closing Date").

(b) At the Closing, each of the Sellers shall deliver to the Purchaser any documents necessary to register the Purchased Interests in the name of Purchaser on the membership records of the Company.

CONFIDENTIAL

MORABITO (341).007100

CONFIDENTIAL

ARTICLE II.  
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Seller represents and warrants to the Purchaser that:

Section 2.1 Power and Authority. Seller has full power and authority to enter into and perform this Agreement and each of the other documents and instruments to be executed and delivered by him pursuant to this Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement is the valid and binding obligation of Seller, enforceable against him in accordance with its terms. Seller shall effectively transfer to the Purchaser good and marketable title to the Purchased Interest, free and clear of all liabilities, liens, encumbrances and other restrictions.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Purchaser represents and warrants to the Seller that:

Section 3.1 Information. Purchaser is a Member of the Company and as such is familiar with the operations of the Company and has had the opportunity to review any other information necessary to make an informed decision to purchase the Purchased Interest from the Seller.

Section 3.2 Power and Authority. Purchaser has full power and authority to enter into and perform this Agreement and each of the other documents and instruments to be executed and delivered by Purchaser pursuant to this Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement is the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

ARTICLE IV  
CONDITIONS TO THE OBLIGATIONS OF THE PARTIES

Section 4.1 Conditions to the Obligations of the Purchasers on the Closing Date. The obligation of the Purchaser to purchase and pay for the Purchased Interests is, at his option, subject to the satisfaction, on or before the Closing Date, of the following conditions:

(a) Representations and Warranties to be True and Correct. The representations and warranties contained in Article II shall be true, complete and correct on and as of the Closing Date.

(b) Performance. The Seller shall have performed and complied with all agreements contained herein required to be performed or complied with by them prior to or on the Closing Date.

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Section 4.2 Conditions to the Obligations of the Seller on the Closing Date. The obligation of the Seller to sell the Purchased Interests to the Purchaser on the Closing Date is, at his option, subject to the satisfaction, on or before the Closing Date, of the following conditions:

(a) Representations and Warranties to be True and Correct. The representations and warranties contained in Article III shall be true, complete and correct on and as of the Closing Date.

(b) Performance. The Purchaser shall have performed and complied with all agreements contained herein required to be performed or complied with by him prior to or on the Closing Date, including the delivery of the Purchase Price.

#### ARTICLE V. MISCELLANEOUS

Section 5.1 Survival of Agreements. All covenants and agreements in this Agreement or any certificate or instrument delivered to the Purchaser pursuant to or contemplated by this Agreement shall survive the Closing.

Section 5.2 Parties in Interest. All representations, covenants and agreements contained in this Agreement by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not. Without limiting the generality of the foregoing, all representations, covenants and agreements benefiting the Purchaser shall inure to the benefit of any and all subsequent holders from time to time of the Purchased Interests.

Section 5.3 Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be delivered in person or mailed by certified or registered mail, return receipt requested, addressed as follows:

(a) if to the Purchaser:

**Edward Bayuk**  
668 North Pacific Coast Hwy # 517  
Laguna Beach, CA 92651

and

(b) if to the Seller:

**Paul A. Morabito**  
8581 Santa Monica Blvd.  
Suite 708  
W. Hollywood, CA 90069

CONFIDENTIAL

CONFIDENTIAL

or, in any such case, at such other address or addresses as shall have been furnished in writing by such party to the others.

Section 5.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflicts of laws.

Section 5.5 Entire Agreement. This Agreement, including the Exhibits hereto, constitutes the sole and entire agreement of the parties with respect to the subject matter hereof. All Exhibits are hereby incorporated herein by reference.

Section 5.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 5.7 Amendments. This Agreement may not be amended or modified, and no provisions hereof may be waived, without the written consent of the parties.

Section 5.8 Severability. If any provision of this Agreement shall be declared void or unenforceable by any judicial or administrative authority, the validity of any other provision and of the entire Agreement shall not be affected thereby.

Section 5.9 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting any term or provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

PURCHASER:

Edward Bayuk

SELLER:

Paul A. Morabito

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CONFIDENTIAL


RESIGNATION

October 6, 2010

watchmyblock LLC  
668 North Pacific Coast Hwy # 517  
Laguna Beach, CA 92651

The undersigned hereby resigns, effective as of October 6, 2010 from all Officer, Director, Committee Member and/or other positions with watchmyblock LLC and any of their respective subsidiaries and affiliates.

Very truly yours,

  
\_\_\_\_\_  
Paul Morabito

C:\Documents and Settings\pmorabito\Local Settings\Temporary Internet Files\Content.IE5\JW5J2X\Morabito Resignation watchmyblock\1.doc

CONFIDENTIAL

MORABITO (341).007104

# Exhibit 90



Attorneys for Trustee  
William A. Leonard, Jr.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \*

In re:  
PAUL ANTHONY MORABITO,  
Debtor.

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

WILLIAM A. LEONARD, JR.  
Chapter 7 Trustee for the Estate of  
Paul Anthony Morabito,

Adv. No. \_\_\_\_\_

Plaintiff,

## COMPLAINT

vs.

**(INJUNCTIVE RELIEF SOUGHT)**

PAUL ANTHONY MORABITO, an individual; MEADOW FARMS TRUST, a Delaware trust; EDWARD BAYUK, an individual and grantor and trustee of the Meadow Farms Trust; VIRSETNET,

1 LLC, a Delaware limited liability company;  
 2 USHF CELLULAR COMMUNICATIONS,  
 3 LLC, a Delaware limited liability company,  
 4 and LIPPES MATHIAS WEXLER FRIEDMAN  
 5 LLP, a New York limited liability partnership,

6 Defendants /

7 Plaintiff WILLIAM A. LEONARD, JR. as Chapter 7 Trustee of the Paul A. Morabito  
 8 bankruptcy estate ("Trustee" or "Plaintiff"), by and through his counsel Woodburn and Wedge,  
 9 complains against Defendants and alleges as follows:

### 10 JURISDICTION, VENUE and PARTIES

11 1. This Chapter 7 case (the "Case") for Paul A. Morabito ("Debtor" or "Morabito"), an  
 12 individual, was commenced before the United States Bankruptcy Court for the District of Nevada  
 13 (the "Court") on June 20, 2013 (the "Petition Date" or "Commencement Date"), by way of an  
 14 *Involuntary Petition* (Docket No. 1) filed by JH, Inc., Jerry Herbst, and Berry-Hinckley Industries  
 15 ("Petitioners").

16 2. On December 17, 2014, the Court entered an *Order Granting Motion for Summary*  
 17 *Judgment* (Docket No. 161) and an *Order for Relief* against the Debtor (Docket No. 162). An  
 18 Amended Order for Relief was entered on December 22, 2014 (Docket No. 168).

19 3. On December 18, 2014, Christina Lovato was appointed Trustee of the Debtor's  
 20 Estate (defined below) (Docket No. 163). At the first Section 341<sup>1</sup> meeting of creditors held on  
 21 January 23, 2015, however, an uncontested election of a replacement trustee took place and  
 22 William A. Leonard, Jr. was elected and appointed as the trustee in the Case. *See, Docket Nos. 220*  
 23 *and 221.*

24 ///

25 ///

26 <sup>1</sup> Unless otherwise stated, all references to "Sections" herein shall be to the Bankruptcy Code appearing in  
 27 Title 11 of the U.S. Code; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy  
 28 Procedure; and all references to a "Local Rule" shall refer to the Local Rules of Bankruptcy Practice of the U.S.  
 District Court for the District of Nevada.

1  
2 4. Pursuant to the provisions of Bankruptcy Rule 7008, the Trustee advises the Court  
3 that this Adversary Proceeding relates to the Case. The Trustee has standing to assert the claims  
4 herein pursuant to Sections 323, 544, 548 and 704(a).

5 5. By this Adversary Proceeding, the Trustee seeks (a) to recover a sixty percent  
6 membership interest in, or the right to acquire a sixty percent membership interest in, Defendant  
7 VIRSENET, LLC ("Virsenet") (the "Property") which Property<sup>2</sup> was the Debtor's property on the  
8 Petition Date and was not disclosed by the Debtor. Alternatively, the Property was the Debtor's  
9 property within one year before the Petition Date, but the Debtor transferred it, which transfer is  
10 avoidable by the Trustee. As such, the Trustee is seeking by way of this Adversary Proceeding: (i)  
11 a declaratory judgment of the Court determining that the Property now held by Edward Bayuk  
12 ("Bayuk") and/or the Meadow Farms Trust ("Meadow Farms") was property of the Debtor's  
13 bankruptcy estate pursuant to Section 541 (the "Estate") on the Petition Date and the imposition of  
14 a constructive trust for the Property, (ii) a judgment that the Property was property of the Debtor  
15 prior to the Petition Date and was conveyed by Debtor either with the actual intent to defraud  
16 existing creditors of the Debtor or without receiving reasonable equivalent value at a time when the  
17 Debtor was insolvent or as a result of which the Debtor was rendered insolvent, or the Debtor was  
18 about to engage in business or a transaction for which any remaining property of the Debtor was  
19 unreasonably small capital, which transfer (the "Transfer") the Trustee believes occurred in  
20 December 2012; (b) pending final judgment in this Adversary Proceeding, for the entry of a  
21 preliminary injunction (i) prohibiting, enjoining and restraining the Debtor, Meadow Farms, and  
22 Bayuk from further transferring the Property; and (ii) prohibiting, enjoining and restraining  
23 Meadow Farms, Bayuk, Virsenet, US HF Cellular Communications, LLC ("USHF") and Lippes  
24 Mathias Wexler Friedman, LLP ("LMWF") from distributing any moneys or other consideration to

25 <sup>2</sup> The definition of "Property" as used in this Adversary Proceeding, is intended to include Debtor's  
26 description of his interests in the "FCC Licenses" and/or Virsenet as described in the Debtor's SOFA (as  
27 defined herein) and Amended SOFA (as defined herein) and as he has testified to under oath, in whatever  
28 form those interests may be, or have been.

1  
2 or for the benefit of the Debtor without prior approval of the Court; (c) pre-judgment and post-  
3 judgment interest, attorneys' fees, and costs; and (d) such other and further relief as the Court  
4 deems just and equitable under the circumstances.

5 6. The claims asserted herein arise under Bankruptcy Rules 7001 and 7065, Sections  
6 105(a), 323, 541, 542, 544, 548(a)(1), 550(a), and 551, Nevada Revised Statutes ("NRS") §§  
7 112.180(1), 112.190, and 112.210, and, if the Court should determine that this action is governed  
8 by the laws of other states, the laws of such other states.

9 7. The Court has jurisdiction over this Adversary Proceeding pursuant to 28 USC §§  
10 157, 1334(b), and 2201(a).

11 8. The claims alleged herein are core proceedings under the provisions of 28 USC §  
12 157(b)(2)(E), (H) and (O). The Trustee consents to the entry of final orders or judgment by the  
13 Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or  
14 judgment consistent with Article III of the United States Constitution.

15 9. The Court is a proper venue for this case under the provisions of 28 USC §§ 1408  
16 and 1409(a).

17 10. Defendant Morabito is the individual Debtor in the Case and resides and does  
18 business in the State of California with a principal place of business at 8581 Santa Monica  
19 Boulevard, #708, West Hollywood, California 90069. Debtor is named as a Defendant in this  
20 Adversary Proceeding because this Complaint seeks (a) declaratory judgment that the Property is  
21 property of the Estate in that Debtor had legal and equitable title to the Property on the Petition  
22 Date and the imposition of a constructive trust over the Property, and (b) the entry of a preliminary  
23 injunction (i) prohibiting, enjoining and restraining the Debtor, Meadow Farms and Bayuk from  
24 further transferring the Property.

25 11. Defendant Bayuk is an individual who resides and does business in the State of  
26 California. Bayuk is named as an individual Defendant in this Adversary Proceeding because he  
27 may claim an interest in the Property that is the subject of this Adversary Proceeding and he, or  
28

1  
2 Affiliates (as defined in Section 101(2)) in which he may have an interest or may control, are  
3 alleged to have been the recipients of fraudulent transfers by the Debtor. On information and  
4 belief, the Trustee alleges Bayuk is an “insider” of the Debtor (as defined in 11 USC §101 (31)  
5 and/or NRS 112.150(7)).

6 12. Defendant Meadow Farms is a Delaware trust that conducts business in the State of  
7 California with a principal place of business at 8581 Santa Monica Boulevard, West Hollywood,  
8 California 90069. The Trustee is informed and believes that Bayuk is both a grantor and trustee of  
9 Meadow Farms. Meadow Farms and Bayuk, in his capacity as trustee of Meadow Farms, are  
10 named Defendants in this Adversary Proceeding because the Trustee is seeking a judgment against  
11 Meadow Farms for two forms of alternative relief: (a) that Meadow Farms’ interest in the Property  
12 was obtained as a result of a fraudulent transfer by the Debtor; or (b) declaratory relief that any  
13 interest Meadow Farms holds in the Property is solely legal title to the Property, that the Debtor and  
14 the Estate hold the equitable title to the Property, and that the Court impose a constructive trust for  
15 the Property in favor of the Trustee and the Estate. In addition, the Trustee seeks against Meadow  
16 Farms and Bayuk: (a) temporary injunctive relief prohibiting, enjoining and restraining each of  
17 them, together with any other grantor, trustee, trust protector, and agent of Meadow Farms, from  
18 transferring or otherwise disposing or encumbering the Property; and (b) a temporary and  
19 permanent injunction from distributing, paying, or advancing any money or other consideration to  
20 or for the benefit of or on the account of the Debtor from the Property. On information and belief,  
21 the Trustee alleges Meadow Farms is an “insider” of the Debtor (as defined in Section 101 (31)  
22 and/or NRS 112.150(7)).

23 13. Defendant Virsenet is a Delaware limited liability company that conducts business  
24 in the State of California with a principal place of business at 8581 Santa Monica Boulevard, West  
25 Hollywood, California 90069. Virsenet was previously known as VTS COMMUNICATIONS  
26 (“VTS”). Virsenet is named as a Defendant in this matter because it may claim an interest in the  
27 Property. Additionally, this Complaint seeks temporary and permanent injunctive relief  
28

1 prohibiting, enjoining, and restraining Virsenet, together with its members, officers, managers,  
2 employees, and agents, from distributing, paying, or advancing any money or other consideration to  
3 or for the benefit of or on the account of the Debtor on account of his ownership, or former  
4 ownership, of the Property that is the subject of this Adversary Proceeding. On information and  
5 belief, the Trustee alleges Virsenet is an "insider" of the Debtor (as defined in 11 USC §101 (31)  
6 and/or NRS 112.150(7)).  
7

8 14. Defendant USHF is a Delaware limited liability company that conducts business in  
9 the State of California with a principal place of business at 8581 Santa Monica Boulevard, West  
10 Hollywood, California 90069. USHF was previously known as USHF COMMUNICATIONS  
11 COMPANY, LLC. USHF is named as a Defendant in this Adversary Proceeding with regard to the  
12 claim for relief seeking injunctive relief prohibiting, enjoining, and restraining it and its members,  
13 managers, officers, directors, and agents from distributing, paying, or advancing any money or  
14 other consideration to or for the benefit or on the account of the Debtor on account of his  
15 ownership, or former ownership, of the Property that is the subject of this Adversary Proceeding.

16 15. LMWF is a law firm located in Buffalo, New York which at all times pertinent to  
17 this Complaint represented the Debtor, Bayuk, USHF, Virsenet, Meadow Farms, and other  
18 affiliates and insiders of the Debtor. In addition, Dennis Vacco ("Vacco"), an attorney with  
19 LMWF, at various times pertinent to this Complaint, acted as a director, officer, and/or agent of the  
20 other Defendants and other affiliates and insiders of the Debtor. Upon information and belief, the  
21 Trustee alleges that LMWF represented the Defendants with regard to the Transfer and both  
22 provided legal services with regard to the Transfer and also facilitated the distribution of moneys  
23 related to the Transfer through the use of its trust accounts. LMWF is named as a Defendant in this  
24 matter with regard to the claim for relief seeking injunctive relief prohibiting, enjoining, and  
25 restraining it, and its principals, attorneys, employees, and agents from distributing, paying, or  
26 advancing any money or other consideration to or for the benefit or on the account of the Debtor on

27 ///



1  
2 account of his ownership, or former ownership, of the Property that is the subject of this  
3 proceeding.

#### 4 **GENERAL ALLEGATIONS**

5 16. The Trustee repeats and realleges each and every allegation contained in Paragraphs  
6 1 through 15, above, and incorporates them herein the same as if they were set forth in their  
7 entirety.

#### 8 **A. The Events Leading to the Filing of the Involuntary Petition.**

9 17. The Debtor and other entities in which he had interests (the "Morabito Parties") and  
10 the Petitioners entered into a transaction involving a sale of stock to the Petitioners. A dispute  
11 related to the stock sale arose and the Morabito Parties filed a lawsuit against Petitioners on  
12 December 3, 2007. The lawsuit was captioned *Consolidated Nevada Corp., et al. v. JH et al.*, and  
13 was filed in Department 6 of the Second Judicial District Court in and for the County of Washoe  
14 (the "State Court"), Case No. CV07-02764 (together with all claims and counterclaims, the "State  
15 Court Action"). The Petitioners filed numerous counterclaims against the Morabito Parties  
16 including, but not limited to, claims for fraud in the inducement, misrepresentation, and breach of  
17 contract.

18 18. The State Court ultimately awarded judgment in favor of the Petitioners and against  
19 the Morabito Parties (including the Debtor) in the amount of \$149,444,777.80, representing both  
20 compensatory and punitive damages (the "State Court Judgment"). The State Court Judgment was  
21 entered by the Court on August 23, 2011.

22 19. The Morabito Parties filed an appeal of the State Court Judgment (the "Appeal").  
23 While the Appeal was pending, the Petitioners and the Morabito Parties entered into a Settlement  
24 Agreement and Mutual Release dated November 30, 2011 (the "Settlement Agreement"). The  
25 Settlement Agreement provided, among other things, that the Morabito Parties were to execute a  
26 Confession of Judgment and a Stipulation to Confession of Judgment in the amount of \$85,000,000  
27 (referred to collectively as the "Confessed Judgment") in lieu of the State Court Judgment. The  
28

1  
2 Settlement Agreement provided that, upon breach of the Settlement Agreement, the Petitioners  
3 could file, *ex parte* and without notice, the Confessed Judgment with the State Court.

4 20. The Petitioners alleged the Morabito Parties breached the terms of the Settlement  
5 Agreement. The Trustee is informed and believes, and on that basis alleges, the Morabito Parties  
6 requested that Petitioners forbear from exercising their rights and remedies under the Settlement  
7 Agreement. The parties entered into a Forbearance Agreement dated March 1, 2013.

8 21. The Forbearance Agreement provided that if the Morabito Parties defaulted under  
9 the terms thereof the Petitioners would be entitled to deem the Forbearance Agreement null and  
10 void ab initio and they could then enforce any rights or remedies they had under the Settlement  
11 Agreement. The Petitioners alleged the Morabito Parties breached their obligations under the  
12 Forbearance Agreement. The Petitioners filed the Confessed Judgment that indebted the Morabito  
13 Parties, jointly and severally, to the Petitioners in the amount of \$85,000,000.00. The Confessed  
14 Judgment was filed on June 18, 2013 and entered onto the judgment roll.

15 22. On June 20, 2013, the Petitioners filed the Involuntary Petition commencing the  
16 Case.

17 **B. Initial Formation of Certain Defendants.**

18 23. On October 14, 2011, a Limited Liability Company Agreement for USHF (then  
19 known as USHF Communications Company, LLC), was executed by Virsenet (then known as VTS  
20 Communications, LLC), with Bayuk and the Debtor as Managers of USHF. Virsenet was listed on  
21 Schedule A of the agreement as owning one hundred percent of the membership interests for an  
22 initial capital contribution of one hundred dollars. The officers of USHF as listed on Schedule B of  
23 the agreement included the Debtor as Chief Executive Officer, Vacco as Secretary and Treasurer,  
24 and Bayuk as President. A true and correct copy of the Limited Liability Company Agreement is  
25 attached hereto as **Exhibit 1**.

26 24. Subsequently, on November 3, 2011, a Limited Liability Company Agreement for  
27 Virsenet (then known as VTS) was entered into by Bayuk as the holder of one hundred percent of  
28



1 the membership interests of Virsenet with an initial capital contribution of one hundred dollars.  
2 The officers listed on Schedule B included the Debtor as CEO, Vacco as Secretary and Treasurer,  
3 and Bayuk as President. A true and correct copy of the Limited Liability Company Agreement is  
4 attached hereto as **Exhibit 2**. Notwithstanding this claim of one hundred percent ownership by  
5 Bayuk, the Trustee is informed and believes based upon the Debtor's conduct, the conduct of the  
6 other Defendants and filings with the Federal Communications Commission (the "FCC"), all as  
7 detailed hereinafter, and on that basis alleges, that at all times going forward until the Transfer the  
8 Debtor managed, controlled and owned the Property, either directly or indirectly.

9  
10 25. The Trustee is informed and believes that Meadow Farms was formed sometime  
11 between October 2011 and December 2012.

12 **C. The "Property" That is the Subject of This Adversary Proceeding.**

13 26. Prior to October 2011, an entity known as SHIPCOM, LLC, an Alabama limited  
14 liability company ("ShipCom"), is reported by the Debtor to have been the United States' only  
15 provider of high frequency SSB radiotelephone ship-to-shore services through a network of public  
16 coast stations utilizing certain licenses issued by the FCC (the "FCC Licenses"), U.S. patents, and  
17 patents pending and other valuable support assets.

18 27. Prior to October 2011, the membership interests of ShipCom were owned or  
19 controlled one hundred percent by Robert S. Block (either in his individual name or through his  
20 family trust) ("Block"), Rene Stiegler, III ("Stiegler"), and Tim McEvoy ("McEvoy").

21 28. On October 14, 2011, a Letter Agreement (the "Letter Agreement") was entered into  
22 by USHF as "Purchaser" and Block and Stiegler as "Sellers" for eighty percent of the membership  
23 interests of ShipCom. The Letter Agreement provided for an assigned enterprise value of  
24 \$31,228,000 for ShipCom with Stiegler and Block receiving total consideration of \$6,228,000  
25 comprised of (i) \$750,000 in cash, (ii) a \$5,478,000 note less assumption of Related Party loans of  
26 \$3,478,000, (iii) \$800,000 cash to Stiegler, (iv) \$1,000,000 cash to Interoperability Technical  
27 Corporation, and (v) \$200,000 to an entity known as Spindel. The Letter Agreement contemplated  
28

1  
2 a capital raise of no less than \$30,000,000 for twenty percent of the membership interests of  
3 ShipCom from "Investors", and a lease with ShipCom Nevada, LLC for real property in Mobile,  
4 Alabama, where transmitter equipment was located at \$6,000 per month for 36 months with an  
5 option to purchase for \$1,000,000. A true and correct copy of the Letter Agreement is attached  
6 hereto as **Exhibit 3**.

7 29. On November 1, 2011, an Amendment to Letter Agreement (the "Amendment") was  
8 entered into by USHF and Block and Stiegler. (The Letter Agreement and the Amendment to  
9 Letter Agreement are defined collectively as "Letter Agreement" in the Purchase Agreement  
10 referenced below). The Letter Agreement provided for pre-closing payments of \$36,000 to  
11 ShipCom by USHF following successful completion of a Beta Test to assist in financing  
12 ShipCom's operations between the effective date of the Letter Agreement and the closing of the  
13 transaction with it increasing to a minimum of \$40,000 from and after February 1, 2012 (which  
14 includes \$4,000 as a payment to Stiegler as salary). A true and correct copy of the Amendment is  
15 attached hereto as **Exhibit 4**.

16 30. On November 12, 2011, a Pledge Agreement and an Escrow Agreement (the  
17 "Pledge/Escrow Agreements") were entered into by USHF and Stiegler and Block under which  
18 Stiegler and Block pledged and placed in escrow with LMWF the eighty percent membership  
19 interests in ShipCom, the subject of the Letter Agreement. The Pledge/Escrow Agreements  
20 provided security for performance by Block and Stiegler and in exchange for the consideration  
21 provided under the Letter Agreement, including the monthly payments referenced above. True and  
22 correct copies of the Pledge/Escrow Agreements are attached hereto as **Exhibits 5 and 6**.

23 31. On February 6, 2012, USHF, Block, and Stiegler executed a Confidential Summary  
24 of Proposed Principal Terms Between Purchaser and Sellers (the "Term Sheet").

25 32. On February 23, 2012, USHF, ShipCom, Block, and Stiegler executed the ShipCom  
26 Membership Interest Purchase Agreement (the "Purchase Agreement") amending, restating, and  
27  
28

1 replacing the Letter Agreement and the Term Sheet. A true and correct copy of the Purchase  
2 Agreement is attached hereto as **Exhibit 7**.

3  
4 33. Upon information and belief, sometime after February 23, 2012, but on or before  
5 June 1, 2013, the transaction provided for in the Purchase Agreement closed and USHF acquired  
6 eighty percent of the membership interests in ShipCom. As of the date of the Purchase Agreement,  
7 USHF was wholly owned by Virsenet. Sometime after the date of the Purchase Agreement and  
8 before closing, VTS changed its name to Virsenet

9 **C. The Debtor's Acquisition, Control and Ownership of the Property.**

10 34. Although USHF was the acquiring party under the Letter Agreement and Purchase  
11 Agreement and the entity obligated to pay the \$36,000/\$40,000 monthly overhead fees to  
12 ShipCom, on December 1, 2011, the Debtor wire transferred \$36,016 from his personal bank  
13 account ending in 620 with BMO Harris Bank to ShipCom as and for the December 2011 monthly  
14 overhead fee due under the terms of the Letter Agreement. A copy of a wire transfer memo is  
15 attached hereto as **Exhibit 8**.

16 35. On January 1, 2012, the Debtor wire transferred \$36,000 from his personal bank  
17 account ending in 9217 with Wells Fargo to ShipCom as and for the January 2012 monthly  
18 overhead fee due under the terms of the Letter Agreement. A true and correct copy of a wire  
19 transfer memo is attached hereto as **Exhibit 9**.

20 36. On January 9, 2012, Virsenet filed a Transfer of Control application with the FCC  
21 in which it reported:

22 In the description of the transaction attached to the application as filed, it  
23 was stated that VTS Communications, LLC ("VTS"), the transferee, will own an 80  
24 percent membership interest in ShipCom, LLC ("ShipCom"), the licensee, and that  
25 VTS is 100 percent owned by Edward Bayuk.

26 VTS has decided to alter its ownership structure. Edward Bayuk will  
27 continue to own 100 percent of the voting interest in VTS and will control VTS.  
28 He will now own 20 percent of the equity in VTS. **Paul Morabito and Raymond  
Whiteman will now own sixty percent and 20 percent respectively of the  
equity in VTS.** The interests held by Mr. Morabito and Mr. Whiteman will,

1           however, be non-voting in nature. Thus, Mr. Bayuk will still control VTS.  
2           (Emphasis added.)

3           A true and correct copy of a portion of an FCC report on the January 9, 2012, Transfer of Control  
4           application containing the information quoted above is attached hereto as **Exhibit 10**.

5           37.     On January 13, 2012, RAYMOND WHITEMAN (referenced in the January 9, 2012,  
6           Transfer of Control application) ("Whiteman") deposited \$200,000 into the Debtor's client trust  
7           account maintained by LMWF, the Debtor's lawyers, (the "LMWF/Morabito Trust Account"). A  
8           true and correct copy of the LMWF ledger for the LMWF/Morabito Trust Account is attached  
9           hereto as **Exhibit 11**.

10           38.    On February 2, 2012, LMWF paid \$36,000 from the LMWF/Morabito Trust  
11           Account to ShipCom as and for the February 2012 monthly overhead fee due under the terms of the  
12           Letter Agreement. LMWF paid another \$4,000 to ShipCom from the LMWF/Morabito Trust  
13           Account on February 8, 2012.

14           39.    On February 14, 2012, LMWF paid \$15,552.32 from the LMWF/Morabito Trust  
15           Account to Holland & Knight, LLP ("Holland & Knight") as counsel for USHF and Virsenet,  
16           which was the law firm that filed the Transfer of Control application with the FCC that provided  
17           that the Debtor owned a sixty percent interest in Virsenet (then VTS).

18           40.    Pursuant to the Purchase Agreement entered on or about February 23, 2012, USHF  
19           was still obligated to pay \$36,000 to ShipCom for its monthly overhead costs and an additional  
20           \$4,000 per month to cover Stiegler's salary pending closing of the transaction contemplated by the  
21           Purchase Agreement. *See, Exhibit 7, p. 1.*

22           41.    Although USHF was the acquiring party under the Purchase Agreement obligated to  
23           pay \$40,000 to ShipCom for its monthly overhead fees and Stiegler's salary, on March 5, 2012,  
24

1 LMWF paid \$40,000 from the LMWF/Morabito Trust Account to ShipCom as and for the March  
2 2012 monthly overhead fee due under the terms of the Purchase Agreement.

3  
4 42. On April 2, 2012, LMWF paid \$40,000 from the LMWF/Morabito Trust Account to  
5 ShipCom as and for the April 2012 monthly overhead fee due under the terms of the Purchase  
6 Agreement.

7 43. On April 6, 2012, Holland & Knight, on behalf of Virsenet, filed another Transfer  
8 of Control application with the FCC in which it reported:

9  
10 It was previously proposed that control of ShipCom, LLC ("ShipCom") and  
11 associated radio station will be transferred to VTS Communications, LLC ("VTS"),  
12 a Delaware limited liability company. VTS's name has been changed to Virsenet,  
13 LLC ("Virsenet").

14 Virsenet's wholly owned subsidiary, USHF Communications Company,  
15 LLC, also a Delaware limited liability company, will own an 80 percent  
16 membership interest in ShipCom. Virsenet is now owned as follows: **Sixty**  
17 **percent of its one class membership interests, and control, is held by Paul**  
18 **Morabito.** Twenty percent each of its membership interests is held by Raymond  
19 Whiteman and Edward Bayuk. A 12 percent interest in ShipCom will be held by  
20 Robert Block and an 8 percent interest will be held by Rene Stiegler, III. Mr. Block  
21 and Mr. Stiegler presently hold interests in ShipCom. (Emphasis added.)

22 A true and correct copy of a portion of an FCC report of the April 6, 2012, Transfer of Control  
23 application containing the information quoted above is attached hereto as **Exhibit 12**.

24 ///

25 ///

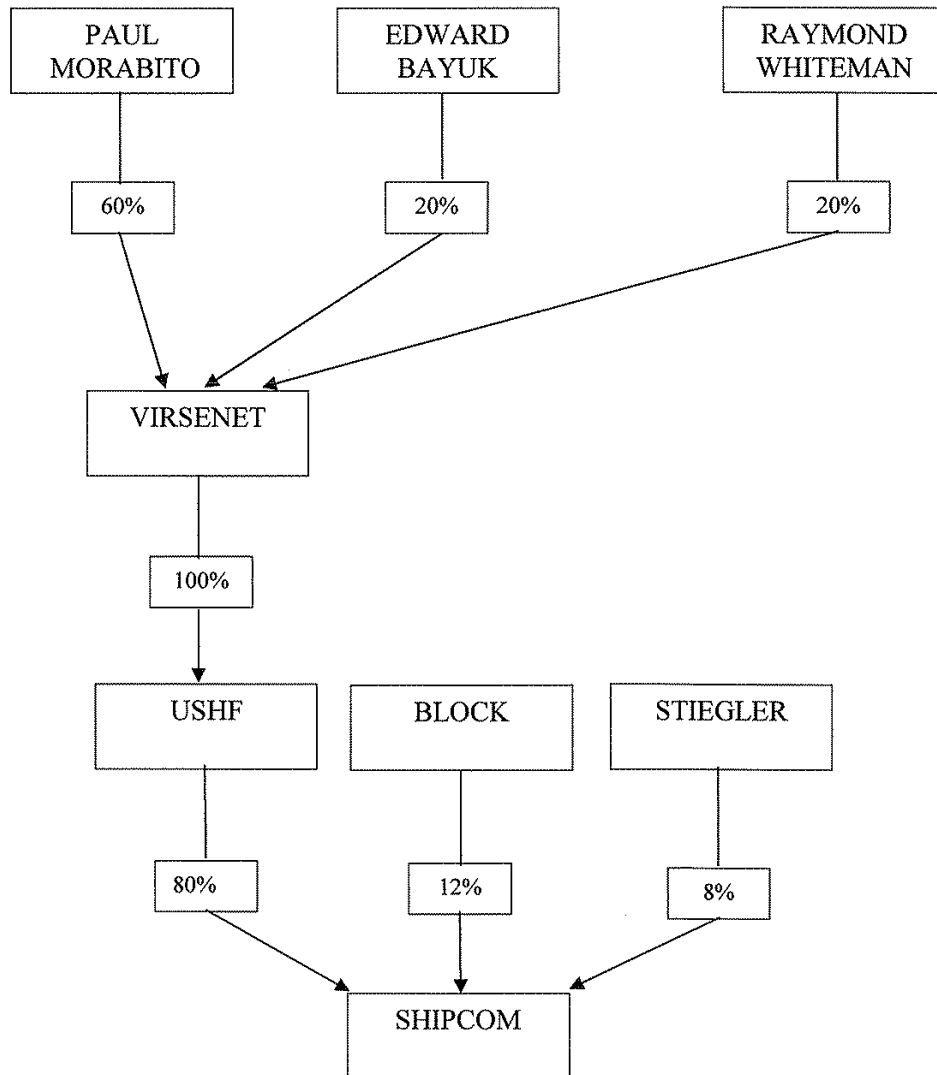
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27 ///

28 ///

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44. As of April 6, 2012, the ownership interests and affiliations between VTS/Virsenet, USHF, and ShipCom can be illustrated as follows:



45. On April 11, 2012, LMWF, as counsel for Debtor, submitted a personal financial statement to Bank of America (the “BofA Financial Statement”) in an attempt to convince Bank of America to settle a lawsuit Bank of America had filed against him. A true and correct copy of the  
 ///

BofA Financial Statement forwarded by Vacco to counsel for Bank of America is attached hereto as **Exhibit 13**. On page 4 of the BofA Financial Statement, the Debtor represented:

Location, Description, Type of Interest & Source of Valuation	%	Year Acquired	Date of Valuation	Present Valuation
FCC Licenses in LMWF Pledged Escrow. <sup>3</sup> FMV based on sale of 2% to P/E Firm 4/12 <sup>4</sup>	60	2011	2012	\$80,850,000

46. The eighty percent membership interests in ShipCom being purchased by USHF under the Purchase Agreement were placed in the Pledged Escrow. In the BofA Financial Statement, the Debtor was representing to Bank of America that his sixty percent interest in Virsenet had a value of \$80,850,000.

47. On April 16, 2012, LMWF established a trust account for USHF (the "LMWF/USHF Trust Account"). On that same day, Jacobs Holdings, LLC ("Jacobs") and CD Holding Co., LLC ("CD Holdings", and collectively with Jacobs, "JJ/CD") each deposited \$1,367,500 into the LMWF/USHF Trust Account. A true and correct copy of the LMWF ledger for the LMWF/USHF Trust Account is attached hereto as **Exhibit 14**. The Trustee is informed and believes that this represented the consideration to Virsenet for a two percent purchase of the USHF membership interests by JJ/CD.

48. On April 20, 2012, \$2,000,000 of the moneys deposited into the LMWF/USHF Trust Account by JJ/CD was transferred by LMWF to the Debtor's Bank of Montreal account ending in 620. Between April 27, 2012 and August 14, 2012, the Debtor wire transferred at least \$1,312,000 from his Bank of Montreal account to his Wells Fargo account ending in 5330.

49. The \$80,850,000 value for the asset described in the BofA Financial Statement represents a sixty percent interest in Virsenet, which interest corresponds to an imputed forty-eight

<sup>3</sup> The "Pledged Escrow" referenced in the BofA Financial Statement is that established pursuant to the Pledge/Escrow Agreements.

<sup>4</sup> Another form of the BofA Financial Statement has been provided to the Trustee by the Debtor which claims a value of the sixty percent of \$120,000,000 predicated upon a FCC auction analysis. The Trustee is relying upon the BofA Financial Statement because it was produced by Vacco and LMWF pursuant to a document request as being the document provided to Bank of America in the settlement negotiations.



1 percent interest in USHF (60 percent of 80 percent). The sale of two percent of USHF in April  
 2 2012 to JJ/CD for \$2,735,000 corresponds to an enterprise value of USHF of \$136,750,000. Given  
 3 the value of two percent, the ninety-eight percent value of the Virsenet interest in USHF would  
 4 have been worth \$134,015,000. The reference to a sale in the BofA Financial Statement (Exhibit  
 5 13) in April 2012 is to the two percent sale to JJ/CD. In the April 2012 BofA Financial Statement,  
 6 the Debtor represents that he held a sixty percent interest in Virsenet in escrow with LMWF, which  
 7 based upon the sale to JJ/CD, would have been worth \$80,409,000, nearly identical to the value  
 8 claimed in the BofA Financial Statement.

9  
 10 50. On April 30, 2012, LMWF paid \$40,000 from the LMWF/USHF Trust Account to  
 11 ShipCom as and for the May 2012 monthly overhead fee due under the terms of the Purchase  
 12 Agreement. All future monthly overhead fees due ShipCom were paid by LMWF from the  
 13 LMWF/USHF Trust Account.

14 51. On October 22, 2012, the Debtor sent a letter to the FCC in which he identified  
 15 himself as the Chairman of USHF ("FCC Letter"). A true and correct copy of the FCC Letter is  
 16 attached hereto as **Exhibit 15**. The FCC letter indicates USHF's address is 8581 Santa Monica  
 17 Blvd., Suite 708, Los Angeles, California 90069. The Debtor's address as reflected in the  
 18 Bankruptcy Docket is 8581 Santa Monica Blvd., #708, West Hollywood, California 90069.

19 52. On November 30, 2012, Holland & Knight, as counsel to several of the Defendants,  
 20 including Meadow Farms, filed a Transfer of Control application with the FCC in which it  
 21 reported:

22 It is proposed that control of ShipCom, LLC ("ShipCom") and its  
 23 associated HF radio stations will be transferred to the Meadow Farms Trust, a  
 24 Delaware Trust (the "Trust").

25 ...

26 ShipCom is now owned as follows. An eighty percent interest in ShipCom  
 27 is held by Virsenet, LLC ("Virsenet"), a Delaware limited liability company  
 28 through Virsenet's wholly owned subsidiary, USHF Communications Company,  
 LLC, also a Delaware limited liability company. **Sixty percent of Virsenet's one  
 class of membership interests, and control, is held by Paul Morabito.** Twenty



1 percent each of its membership interests and held by Raymond Whiteman and  
2 Edward Bayuk. A twelve percent interest in ShipCom is held by Robert Block and  
3 an 8 percent interest is held by Rene Stiegler, III.

4 **It is proposed that Paul Morabito will sell his sixty percent interest in**  
5 **Virsenet to the Trust.** Edward Bayuk will also assigning his twenty percent  
6 interest in Virsenet to the Trust. Thus, the final ownership interests in Virsenet will  
7 be eighty percent held by the Trust and twenty percent held by Whitman [sic]. All  
other ownership interests in ShipCom are unchanged. (Emphasis added.)

8 A true and correct copy of a portion of an FCC report of the November 30, 2012, Transfer of  
9 Control application containing the information quoted above is attached hereto as **Exhibit 16.**

10 53. According to the November 30, 2012, Transfer of Control application, Meadow  
11 Farms' address is 8581 Santa Monica Blvd., #708, West Hollywood, California 90069, the same  
12 address used for USHF in the FCC Letter and the same address identified in the Case docket as the  
13 Debtor's business address.

14 54. In 2013, the year immediately following the Debtor's purported transfer of his  
15 interests in Virsenet to Meadow Farms, Virsenet reported paying the Debtor \$1,610,378 in  
16 nonemployee compensation, and USHF reported paying the Debtor \$325,175 in nonemployee  
17 compensation. True and correct copies of the 2013 Misc. Inc. 1099's are attached hereto as  
18 **Exhibits 17 and 18.**

19 55. In 2014, USHF reported paying the Debtor \$430,707.92 in nonemployee  
20 compensation. A true and correct copy of the 2014 Misc. Inc. 1099 is attached hereto as **Exhibit**  
21 **19.**

22 56. Notwithstanding what was reported in the November 30, 2012, Transfer of Control  
23 application, according to the FCC, as of June 25, 2015, Virsenet is still owned by Bayuk (20  
24 percent), Whiteman (20 percent), and the Debtor (60 percent). A true and correct copy of an FCC  
25  
26  
27  
28

1 Ownership Statement for Virsenet dated as of June 25, 2015, evidencing these ownership  
2 percentages, is attached hereto as **Exhibit 20**.

3  
4 57. Purportedly, sometime in May 2013, an Amended and Restated Limited Liability  
5 Company Agreement of US HF Cellular Communications ("USHF Restated Operating  
6 Agreement") was entered into by and among USHF, Virsenet, and an entity known as JJ/CD  
7 CAPITAL, LLC ("JJ/CD Capital"). A true and correct copy of the USHF Restated Operating  
8 Agreement is attached hereto as **Exhibit 21**.<sup>5</sup> It is believed that JJ/CD Capital is the successor to  
9 JD/CD. According to Exhibit B to the USHF Restated Operating Agreement, JJ/CD Capital  
10 obtained a thirty percent membership interest in USHF for a total capital contribution of  
11 \$10,976,452 and Virsenet retained a seventy percent interest in USHF.  
12

13 58. Pursuant to ¶ 2.13 of the USHF Restated Operating Agreement, Virsenet, the  
14 Debtor, and Bayuk agreed as follows:

15 Investment Opportunities. Each of Virsenet, **Paul A. Morabito**, Edward Bayuk  
16 and all Affiliates of each of the foregoing agrees to submit each opportunity that  
17 would be reasonably related to the Business, including all investments or  
18 investment opportunities of any kind that involve or include high frequency radio  
19 communications or related opportunities (each, an "**Investment Opportunity**")  
20 that it/he/she becomes aware of to the Company on an exclusive right of first  
21 refusal basis and except as provided herein shall not have the right to hold any such  
22 Investment Opportunity for their own account or to recommend such Investment  
23 Opportunity to persons other than the Company. (Emphasis added.)

24 *See, Exhibit 21, p. 12.* There is no indication in the USHF Restated Operating Agreement why the  
25 Debtor would agree to pass up investment opportunities or what consideration he may have  
26 received for the pledge even though he claims to have transferred his interest in Virsenet (or USHF)

27 ///

1 in December 2012, approximately 5 months prior to the execution of the USHF Restated Operating  
2 Agreement.

3  
4 59. On June 25, 2013, two days after the Petition Date, JJ/CD Capital filed a Transfer of  
5 Control application with the FCC, a true and correct copy of an FCC report of which is attached  
6 hereto as **Exhibit 22**. The application states that “the purpose of this transaction is to capitalize US  
7 HF Cellular Communications,” but it does not explain how and when JJ/CD Capital would  
8 capitalize USHF.

9  
10 60. In the Debtor’s Statement of Financial Affairs (Docket No. 211) (the “SOFA”) filed  
11 on January 14, 2015, in response to question 10(b) (list all property transferred by the debtor in the  
12 last 10 years to a self-settled trust or similar device), the Debtor reported:

Name of Trust or Other Device	Date of Transfer	Amount of Money or Description
Edward Bayuk	December, 2012	Paul Morabito, an individual, transferred his 60% membership interest in Virsenet, LLC to Edward Bayuk, as Grantor of the Meadow Farms Irrevocable Trust for \$600.00

13  
14  
15  
16  
17 A true and correct copy of the Debtor’s response to question 10(b) is attached hereto as **Exhibit**  
18 **23**.

19  
20 61. The Debtor declared under penalty of perjury that he read the answers contained in  
21 his SOFA and any attachments thereto and that they were true and correct.

22 62. On February 24, 2015, the Debtor filed an Amended Statement of Financial Affairs  
23 (Docket No. 238) (“Amended SOFA”). In response to question 10(b), the Debtor reported:

24 ///

25  
26  
27 <sup>5</sup> The Amended and Restated Limited Liability Company Agreement attached hereto as Exhibit 21 is  
28 unsigned. The Trustee is informed and believes the agreement has, in fact, been fully executed by the parties. The  
Trustee, however, does not admit the agreement was signed in May of 2013.

Name of Trust or Other Device	Date of Transfer	Amount of Money or Description
Edward Bayuk	December, 2012	Paul Morabito, an individual, failed to perform on his agreement to acquire and capitalize an entity for a 60% interest [sic] in VTS Communications LLC from Meadow Farms Irrevocable Trust, accepting \$600 as consideration for his original \$60 undertaking.

A true and correct copy of the Debtor's response to question 10(b) is attached hereto as **Exhibit 24**.

63. As set forth in both the SOFA and the Amended SOFA, the Debtor claims that he never exercised the option to purchase the sixty percent interest in Virsenet and in December 2012 effectuated the Transfer of his interest, either directly to or indirectly through Bayuk, to Meadow Farms for \$600, being ten times his original \$60 investment.

64. On Debtor's Schedule I, the Debtor stated that he receives \$31,250 a month as income, salary, and commissions as a "Consultant-Advisor" and that his employer's address is 8501 Santa Monica Boulevard, #517, West Hollywood, CA 90069.

65. At Debtor's 341 examination on June 25, 2015, under questioning by Trustee's Counsel regarding the Pledge/Escrow Agreements and the April 2012 BofA Financial Statement, the Debtor testified as follows:

MR. MURTHA: And you don't have a 60-percent interest in something worth either 120 million dollars or \$80,850,000?

MR. MORABITO: Today or at this time?

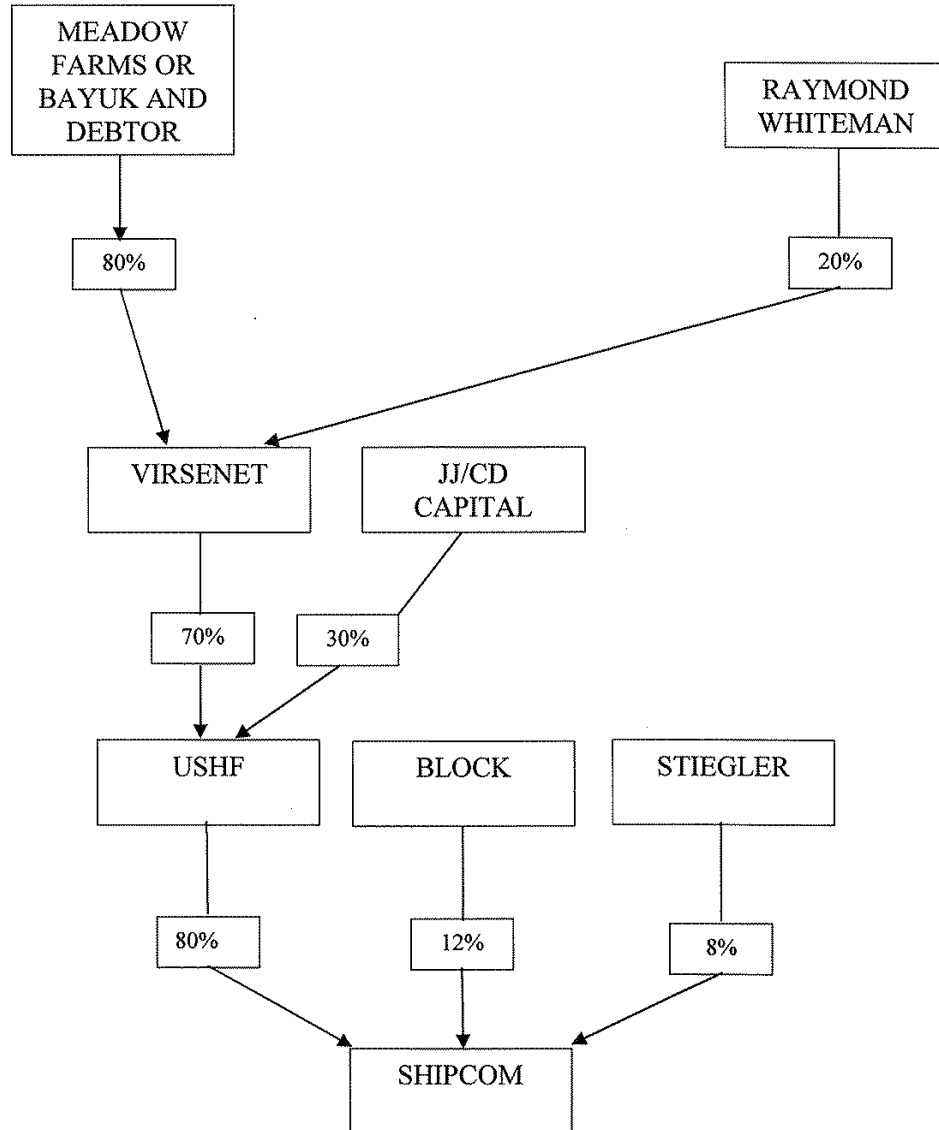
MR. MURTHA: When these were prepared?

MR. MORABITO: I believe at the time the prospective value of the option I had was worth that.

A true and correct copy of p. 124, Ins. 3-10 of the 341 Transcript is attached hereto as **Exhibit 25**.

66. The Debtor has yet to file his 2014 tax return or produce all of his 2015 bank statements, so it is unknown what distributions or compensation the Debtor has received in 2014 or 2015 on account of his ownership interest in the Property in 2014 or 2015.

67. As of the Petition Date, the purported ownership interests and affiliations between VTS/Virsenet, USHF, and ShipCom can be illustrated as follows:



1       **D.     The Property had Significant Value at the Time it was Purportedly Transferred to**  
2       **Meadow Farms.**

3           68.     The October 2011 Letter Agreement, which was ultimately amended, restated, and  
4       replaced by the Purchase Agreement in February 2012, indicated that ShipCom had an enterprise  
5       value of \$31,228,000.

6           69.     In the BofA Financial Statement LMWF submitted to counsel for Bank of America  
7       on behalf of its client, the Debtor represented his sixty percent interest in Virsenet (VTS) was worth  
8       \$80,850,000.

9           70.     At Debtor's 341 examination, Debtor testified to a value for his interest in the sixty  
10      percent membership interest in Virsenet (VTS) in April 2012 of from \$80,850,000 to  
11      \$120,000,000, yet less than 8 months later Debtor claims to have transferred the interest for \$600.  
12      \$120,000,000, yet less than 8 months later Debtor claims to have transferred the interest for \$600.

13           71.     The USHF Restated Operating Agreement with a purported effective date of May  
14      2013, indicates JJ/CD Capital made a total capital contribution by that date of \$10,976,452 to  
15      USHF in exchange for its thirty percent interest in USHF. This implies an enterprise value of  
16      \$36,588,173, of which a sixty percent membership interest in Virsenet would have an implied value  
17      of \$15,367,033.  
18      of \$15,367,033.

19           72.     In June 2014, USHF either issued or proposed to issue a Private Offering  
20      Memorandum in which it offered to sell up to ten percent of its membership interests for  
21      \$50,000,000 in unit increments of \$500,000 each. A true and correct copy of the draft cover page  
22      and a summary of the offering are attached hereto as **Exhibit 26**.  
23      and a summary of the offering are attached hereto as **Exhibit 26**.

24           73.     At all times material hereto, there was and is at least one or more creditors who held  
25      unsecured claims against the Debtor as of the Transfer and/or as of the Petition Date, including the  
26      following creditors: Petitioning Creditors, Hartford Fire Insurance Company and Bank of America.  
27      following creditors: Petitioning Creditors, Hartford Fire Insurance Company and Bank of America.

**FIRST CLAIM FOR RELIEF**

**Declaratory Relief; Determination of Estate's Interests in Property;  
Turnover of Property- Sections 105, 323, 541, and 542 Against  
Defendants Morabito, Bayuk, Virsenet, and Meadow Farms**

74. The Trustee repeats and realleges each and every allegation contained in Paragraphs 1 through 73, above, and incorporates them herein the same as if they were set forth in their entirety.

75. 28 USC § 2201(a) provides that in a case of actual controversy within its jurisdiction, any court of the United States may declare the rights and other legal relations of any interested party seeking such declaration.

76. Bankruptcy Rule 7001 provides that the following are adversary proceedings:

- (1) a proceeding to recover money or property, . . .
- (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, . .
- (3) – (8) . . .
- (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing, . . .

77. Section 541(a) provides that the commencement of a case under Sections 301, 302, or 303 creates an estate, and such estate is comprised of property, wherever located and by whomever held, including all legal or equitable interests of the debtor in property as of the commencement of the case.

78. By this First Claim for Relief, the Trustee requests that this Court declare that as of the Petition Date: (a) the Debtor owned both legal and equitable title to the Property; or (b) Meadow Farms and/or Bayuk, as the case may be, held only legal title to the Property, and that the equitable title to the Property was held by the Debtor, and, as such, the Estate.



1           79.     At the time of the purported Transfer, the Debtor was engaged in litigation with the  
2           Petitioners as well as other litigation and the Debtor, as well as Bayuk and Meadow Farms, knew  
3           the Debtor's interest in Virsenet and indirect ownership of USHF and the FCC Licenses via  
4           Virsenet was a very valuable asset.  
5

6           80.     The purported Transfer to Bayuk and/or Meadow Farms, was a sham intended by  
7           Debtor and Bayuk to hinder, delay, and defraud creditors. The Transfer was not intended to  
8           transfer both the legal and equitable title to the Property to Bayuk and/or Meadow Farms.  
9

10          81.     After the Transfer, Debtor continued to exercise dominion and control over Virsenet  
11          and USHF and continued to receive the benefits of ownership of the sixty percent membership  
12          interest in Virsenet, the same as if the Transfer had not occurred.

13          82.     On April 20, 2012, \$2,000,000 of the moneys deposited into the LMWF/USHF  
14          Trust Account by JJ/CD was transferred by LMWF to the Debtor's Bank of Montreal account  
15          ending in 620. Between April 27, 2012 and August 14, 2012, the Debtor wire transferred at least  
16          \$1,312,000 from his Bank of Montreal account to his Wells Fargo account ending in 5330.  
17

18          83.     An additional \$122,000 of the monies deposited into the LMWF/USHF Trust  
19          Account by JJ/CD was transferred by LMWF to the Debtor's Bank of Montreal account on May 3,  
20          2012.

21          84.     On Debtor's Schedule I, Debtor stated under oath that he receives \$31,250 a month  
22          as income, salary, and commissions as a "Consultant-Advisor."  
23

24          85.     In 2013, the year immediately following the Debtor's purported transfer of his  
25          interests in Virsenet to Bayuk and Meadow Farms, Virsenet reported paying the Debtor \$1,610,378  
26          in nonemployee compensation, and USHF reported paying the Debtor \$325,175 in nonemployee  
27          compensation. On Debtor's 2013 Federal Tax Return, a true and correct copy of which is attached  
28



1 hereto as **Exhibit 27**, only a portion of this compensation is offset by non-reimbursed business  
2 expenses. At least a portion of the compensation was paid to Debtor after the Petition Date.

3  
4 86. In 2014, USHF reported paying the Debtor \$430,707.92 in nonemployee  
5 compensation. All of these funds were paid to Debtor after the Petition Date.

6 87. The Debtor has yet to file his 2014 tax return or produce all of his 2015 bank  
7 statements, so it is unknown what distributions or compensation the Debtor has received in 2014 or  
8 2015 on account of his ownership interest in the Property in 2014 or 2015.

9  
10 88. The moneys and other consideration paid to Debtor by USHF and Virsenet as  
11 nonemployee compensation are distributions in consideration for and indicative of the continued  
12 ownership of the Property by Debtor and the equitable interests and right of the Trustee and Estate  
13 in the Property.

14 89. The Property is a trust res.

15  
16 90. Defendants Bayuk and Meadow Farms gained the Property fraudulently and  
17 wrongfully.

18 91. The Trustee is entitled to a judgment declaring that as of the Petition Date, the  
19 Debtor and the Estate held, and continues to hold, equitable title to the Property. As such, the  
20 Trustee is entitled to turnover of the Property from Defendants Bayuk and/or Meadow Farms.

21 For the reasons set forth above, the Trustee prays that this Court enter a judgment, pursuant  
22 to Sections 105(a), 323, 541, and 542: (1) declaring that, as of the Petition Date, the Debtor and the  
23 Estate held, and continue to hold, the equitable interests in the Property, being the sixty percent  
24 interest in Virsenet; (2) imposing a constructive trust for the Property; (3) recovering pre-judgment  
25 and post-judgment interest, attorneys' fees, and costs; and (4) granting such other and further relief  
26 as to the Court deems just and equitable under the circumstances.  
27

**SECOND CLAIM FOR RELIEF**

**Actual Fraud Pursuant to Sections 323, 542, 548(a)(1)(A), and 550(a)  
Against Defendants Bayuk, Virsenet, and Meadow Farms**

92. The Trustee repeats and realleges each and every allegation contained in Paragraphs 1 through 91, above, and incorporates them herein the same as if they were set forth in their entirety.

93. Section 548(a)(1)(A) provides that a trustee may avoid any transfer of an interest of the debtor in property within 2 years of the filing of the petition if the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was indebted.

94. The Transfer to Bayuk/Meadow Farms in or about December 2012 was made with an actual intent to hinder, delay, and defraud creditors of the Debtor.

95. At that time of the Transfer, in addition to moneys owed to other creditors, the Debtor was heavily indebted to the Petitioners by reason of the State Court Judgment, the Settlement Agreement, and the ability of the Petitioners to file the Confessed Judgment if the Debtor did not fulfill his obligations under the Settlement Agreement.

96. The Debtor was fully aware of his obligations to the Petitioners and he was fully aware of the fact that the Property had substantial value and that it would be lost if the Petitioners were able to locate and execute a judgment against it.

97. Evidence of the Debtor's intention to hinder, delay, and defraud his creditors includes, but is not limited to, the facts: (a) the Transfer was made to an insider as defined in Section 101(31); (b) the Debtor retained dominion and control over the Property after it was purportedly transferred to Bayuk/Meadow Farms; (c) the Transfer was of a very significant portion of the Debtor's assets at the time; (d) the consideration the Debtor received for the Property was not

1 reasonably equivalent to the value of the Property; (e) the Debtor's claimed transfer of the  
2 Property is contradicted by filings with the FCC; (f) Debtor remained as the owner of the Property  
3 on the records of the FCC; (g) the Debtor listed the ownership interest on the BofA Financial  
4 Statement; and (h) the Debtor received proceeds from the sale of an interest in USHF.  
5

6 For the reasons set forth above, the Trustee prays that this Court enter a judgment, pursuant  
7 to Sections 323, 548(a)(1)(A), and 550(a), and if the Court should determine that this action is  
8 governed by the laws of other states, the laws of such other states: (1) finding and concluding that  
9 the Transfer of the Property to Bayuk and/or Meadow Farms was a fraudulent transfer under the  
10 provisions of 11 USC § 548(a)(1)(A); (2) avoiding and preserving the Property free and clear from  
11 any claim of interest of the Bayuk and Meadow Farms and providing that the Trustee shall recover  
12 from Defendants Virsenet, Bayuk, and Meadow Farms, for the benefit of the Estate, the Property,  
13 or alternatively, if this Court so orders, the value of the Property; (3) directing that the Transfer be  
14 set aside; (4) recovering pre-judgment and post-judgment interest, attorneys' fees, and costs; and  
15 (5) granting such other and further relief as to the Court deems just and equitable under the  
16 circumstances.  
17  
18

### 19 **THIRD CLAIM FOR RELIEF**

#### 20 **Constructive Fraudulent Transfer Pursuant to Sections 323, 542,** 21 **548(a)(1)(B) and 550(a) against Bayuk, Virsenet, and Meadow Farms**

22 98. The Trustee repeats and realleges each and every allegation contained in Paragraphs  
23 1 through 97, above, and incorporates them herein the same as if they were set forth in their  
24 entirety.

25 99. 11 USC §548(a)(1)(B) provides that a trustee may avoid any transfer of an interest  
26 of the debtor in property within 2 years of the filing of the petition if the debtor received less than  
27

1 reasonably equivalent value in exchange for the transfer and the debtor was insolvent at the time of  
2 the transfer or was rendered insolvent as a result of the transfer or was engaged in business or a  
3 transaction, or was about to engage in business or a transaction, for which any property remaining  
4 with the debtor was unreasonably small.  
5

6 100. The \$600 Debtor received from insiders Meadow Farms and/or Bayuk for the  
7 Property was not reasonably equivalent to the value of the Property.  
8

9 101. The Property was worth multitudes more than the \$600 Debtor purportedly received  
10 from Meadow Farms and/or Bayuk. In October 2011, USHF placed a value of \$31,228,000 on  
11 ShipCom. On this basis, the value of the Property was about \$18,736,000. In the BofA Financial  
12 Statement the Debtor submitted to Bank of America in April 2012, he indicated his sixty percent  
13 interest in VTS was worth \$120,000,000. Debtor testified at his 341 Examination that at the time  
14 he signed the BofA Financial Statement, he believed the "option" he held for the sixty percent  
15 membership interest in Virsenet was worth between \$80,850,000 and \$120,000,000. In the USHF  
16 Restated Operating Agreement purportedly entered into in May 2013, only 6 months after the  
17 Debtor's transfer of his sixty percent interest in Virsenet to Meadow Farms, JJ/CD purportedly paid  
18 \$10,976,452 for its 30% interest in USHF, which implies a value of \$15,367,033 for sixty percent  
19 of the Virsenet membership interests.  
20

21 102. The Debtor was insolvent at the time of the Transfer or was rendered insolvent as a  
22 result of the Transfer.  
23

24 103. At the time of the Transfer the Debtor was engaged in business or a transaction, or  
25 was about to engage in business or a transaction for which any property remaining with the Debtor  
26 was unreasonably small capital.  
27

28 ///

For the reasons set forth above, the Trustee prays that this Court enter a judgment, pursuant to Sections 323, 548(a)(1)(B), and 550(a): (1) finding and concluding that the Transfer of the Property to Bayuk and/or Meadow Farms was a fraudulent transfer under the provisions of 11 USC § 548(a)(1)(B); (2) avoiding and preserving the Property free and clear from any claim of interest of Bayuk and Meadow Farms and providing that the Trustee shall recover from Defendants Virsenet, Bayuk, and Meadow Farms, for the benefit of the Estate, the Property, or alternatively, if this Court so orders, the value of the Property; (3) directing that the Transfer be set aside; (4) recovering pre-judgment and post-judgment interest, attorneys' fees, and costs; and (5) granting such other and further relief as to the Court deems just and equitable under the circumstances.

#### FOURTH CLAIM FOR RELIEF

##### **Constructive Fraudulent Transfer Pursuant to Sections 323, 542, 548(a)(1)(B) (Transfer to Insider) and 550(a) against Bayuk, Virsenet, and Meadow Farms**

104. The Trustee repeats and realleges each and every allegation contained in Paragraphs 1 through 103, above, and incorporates them herein the same as if they were set forth in their entirety.

105. Section 548(a)(1)(B) provides that a trustee may avoid any transfer of an interest of the debtor in property within 2 years of the filing of the petition if the debtor received less than reasonably equivalent value in exchange for the transfer and the transfer was made to an insider.

106. For the reasons set forth in Paragraph 101, of the Third Claim for Relief, the Debtor did not receive reasonably equivalent value from Meadow Farms and/or Bayuk in exchange for the Property.

107. The Trustee is informed and believes, and on that basis alleges, that Meadow Farms and/or Bayuk (the purported grantor of the Meadow Farms) were either insiders as defined in

1 Section 101(31) or non-statutory insiders of the Debtor at the time of the Transfer.

2 For the reasons set forth above, the Trustee prays that this Court enter a judgment, pursuant  
 3 to Sections 323, 548(a)(1)(B) (Transfer to Insider) and 550(a): (1) finding and concluding that the  
 4 Transfer of the Property to Bayuk and/or Meadow Farms was a fraudulent transfer under the  
 5 provisions of 11 USC § 548(a)(1)(B); (2) avoiding and preserving the Property free and clear from  
 6 any claim of interest of Bayuk, and Meadow Farms and providing that the Trustee shall recover  
 7 from Defendants Virsenet, Bayuk and Meadow Farms, for the benefit of the Estate, the Property, or  
 8 alternatively, if this Court so orders, the value of the Property; (3) directing that the Transfer be set  
 9 aside; (4) recovering pre-judgment and post-judgment interest, attorneys' fees, and costs; and (5)  
 10 granting such other and further relief as to the Court deems just and equitable under the  
 11 circumstances.  
 12  
 13

#### 14 **FIFTH CLAIM FOR RELIEF**

#### 15 **Intentional Fraudulent Transfer Pursuant to Sections 323, 542,** 16 **544, and 550(a) and NRS §§ 112.180.1(a) and 112.210** 17 **Against Bayuk, Virsenet, and Meadows Farms**

18 108. The Trustee repeats and realleges each and every allegation contained in Paragraphs  
 19 1 through 107, above, and incorporates them herein the same as if they were set forth in their  
 20 entirety.

21 109. Pursuant to Section 544, a trustee may avoid any transfer of property of a debtor that  
 22 may be avoided by a creditor of the debtor under applicable state law. The Trustee may use the  
 23 provisions of Nevada's Fraudulent Transfer Act (NRS Ch. 112) to avoid the Transfer.  
 24

25 110. NRS § 112.180(1) provides that a transfer made with actual intent to hinder, delay,  
 26 or defraud any creditor of the debtor may be avoided.

27 ///

1           111. The Transfer of the Property in December 2012, was made with an actual intent to  
2 hinder, delay, and defraud his creditors, including the Petitioners.

3  
4           112. At the time the Debtor transferred the Property to Meadow Farms, he was heavily  
5 indebted to the Petitioners by reason of the State Court Judgment, the Settlement Agreement, and  
6 the ability of the Petitioners to file the Confessed Judgment if the Debtor did not fulfill his  
7 obligations under the Settlement Agreement.

8           113. The Debtor was fully aware of his obligations to the Petitioners and he was fully  
9 aware of the fact the Property had substantial value that would be lost if the Petitioners were able to  
10 locate and execute a judgment against it.

11  
12           114. Evidence of the Debtor's intention to hinder, delay and defraud his creditors  
13 includes, but is not limited to, the facts: (a) the Transfer was made to an insider as defined in  
14 Section 101(31); (b) the Debtor retained dominion and control over the Property after it was  
15 purportedly transferred to Bayuk and/or Meadow Farms; (c) the Transfer was of a very significant  
16 portion of the Debtor's assets at the time; (d) the consideration the Debtor received for the Property  
17 was not reasonably equivalent to the value of the Property; (e) the Debtor's claimed transfer of the  
18 Property is contradicted by filings with the FCC; (f) Debtor remained as the owner of the Property  
19 on the records of the FCC; (g) the Debtor listed the ownership interest on the BofA Financial  
20 Statement; and (h) the Debtor received proceeds from the sale of an interest in USHF.

21  
22           For the reasons set forth above, the Trustee prays that this Court enter a judgment, pursuant  
23 to Sections 323, 542, 544, and 550(a) and NRS §§ 112.180.1(a) and 112.210, and if the Court  
24 should determine that this action is governed by the laws of other states, the laws of such other  
25 states: (1) finding and concluding that the Transfer of the Property to Bayuk and/or Meadow Farms  
26 was a fraudulent transfer under the provisions of 11 USC §§ 544 and 550(a) and NRS §§  
27  
28



112.180(1) and 112.210; (2) avoiding and preserving the Property free and clear from any claim of interest of the Debtor, Bayuk, and Meadow Farms and providing that the Trustee shall recover from Defendants, Morabito, Bayuk, and Meadow Farms, for the benefit of the Debtor's Estate, the Property, or alternatively, if this Court so orders, the value of the Property; (3) directing that the Transfer be set aside; (4) recovering pre-judgment and post-judgment interest, attorneys' fees, and costs; and (5) granting such other and further relief as to the Court deems just and equitable under the circumstances.

#### SIXTH CLAIM FOR RELIEF

**Constructive Fraudulent Transfer Pursuant to Sections 323, 542,  
544 and 550(a) and NRS §§ 112.160, 112.180.1(b), 112.190 and 112.210  
Against Defendants Bayuk, Meadows Farms and Virsenet**

115. The Trustee repeats and realleges each and every allegation contained in Paragraphs 1 through 114, above, and incorporates them herein the same as if they were set forth in their entirety.

116. Pursuant to Section 544, a trustee may avoid any transfer of property of a debtor that may be avoided by a creditor of the debtor under applicable state law. The Trustee may use the provisions of Nevada's Fraudulent Transfer Act (NRS Ch. 112), and if the Court should determine that this action is governed by the laws of other states, the laws of such other states to avoid the Transfer.

117. NRS. 112.190 provides that a trustee may avoid any transfer of an interest of the debtor in property if the action is commenced within 4 years of a transfer if the debtor received less than reasonably equivalent value in exchange for the transfer and the debtor was insolvent at the time of the transfer or the obligation or the debtor became insolvent as a result of the transfer or

///



1 obligation or was about to engage in business or a transaction for which any property remaining  
2 with the debtor was an unreasonably small capital.

3  
4 118. This Adversary Proceedings is being commenced within 4 years of the Transfer.

5 119. The \$600 Debtor received from insiders Meadow Farms and/or Bayuk for the  
6 Property was not reasonably equivalent to the value of the Property.

7 120. The Property was worth multitudes more than the \$600 Debtor purportedly received  
8 from Meadow Farms and/or Bayuk. In October 2011, USHF placed a value of \$31,228,000 on  
9 ShipCom. On this basis, the value of the Property was about \$18,736,000. In the BofA Financial  
10 Statement the Debtor submitted to Bank of America in April 2012, he indicated his sixty percent  
11 interest in VTS was worth \$120,000,000. Debtor testified at his 314 Examination that at the time  
12 he signed the BofA Financial Statement, he believed the "option" he held for the sixty percent  
13 membership interest in Virsenet was worth between \$80,850,000 and \$120,000,000. In the USHF  
14 Restated Operating Agreement purportedly entered into in May 2013, only 6 months after the  
15 Debtor's transfer of his sixty percent interest in Virsenet to Meadow Farms, JJ/CD purportedly paid  
16 \$10,976,452 for its 30% interest in USHF, which implies a value of \$15,367,033 for sixty percent  
17 of the Virsenet membership interests.

18  
19  
20 121. The Debtor was insolvent at the time of the Transfer or was rendered insolvent as a  
21 result of the Transfer.

22 122. At the time of the Transfer the Debtor was engaged in business or a transaction, or  
23 was about to engage in business or a transaction for which any property remaining with the Debtor  
24 was unreasonably small capital

25  
26 For the reasons set forth above, the Trustee prays that this Court enter a judgment, pursuant  
27 to Sections 323, 542, 544, and 550(a) and NRS §§ 112.160, 112.180.1(b), 112.190 and 112.210,

28  

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1 and if the Court should determine that this action is governed by the laws of other states, the laws  
 2 of such other states: (1) finding and concluding that the Transfer of the Property to Bayuk and/or  
 3 Meadow Farms was a fraudulent transfer under the provisions of 11 USC § 544 and NRS §§  
 4 112.160, 112.180.1(b), 112,190 and 112.210; (2) avoiding and preserving the Property free and  
 5 clear from any claim of interest of Bayuk and Meadow Farms and providing that the Trustee shall  
 6 recover from Defendants, Virsenet, Bayuk, and Meadow Farms, for the benefit of the Estate, the  
 7 Property, or alternatively, if this Court so orders, the value of the Property; (3) directing that the  
 8 Transfer be set aside; (4) recovering pre-judgment and post-judgment interest, attorneys' fees, and  
 9 costs; and (5) granting such other and further relief as to the Court deems just and equitable under  
 10 the circumstances.  
 11  
 12

### 13 SEVENTH CLAIM FOR RELIEF

#### 14 **Injunctive Relief Pursuant to Section 105(a) and Bankruptcy Rule 7065** 15 **Against Defendants Virsenet, Bayuk, USHF, Meadow Farms, and LMWF**

16 123. The Trustee repeats and realleges each and every allegation contained in Paragraphs  
 17 1 through 122, above, and incorporates them herein the same as if they were set forth in their  
 18 entirety.  
 19

20 124. Section 105(a) allows the Court to "issue any order, process, or judgment that is  
 21 necessary or appropriate to carry of the provisions of this title." The Court may enjoin actions by  
 22 both debtors and non-debtors where such actions would have an adverse effect on the debtor's  
 23 assets or estate.  
 24

25 125. For the reasons set forth herein, the Trustee has a high likelihood of success on the  
 26 merits of this Adversary Proceeding with regard either of the alternative reliefs being sought, i.e.  
 27

28 ///

1 that the Property is property of the Estate pursuant to Section 541, or the Transfer was a fraudulent  
2 transfer under both bankruptcy law and Nevada state law.

3  
4 126. The Trustee and the Estate will suffer irreparable harm if an injunction is not entered  
5 as nothing will prevent the Defendants from continuing to distribute monies to the Debtor on  
6 account of his ownership interest in Virsenet and, indirectly, USHF, in an effort to hinder, delay,  
7 and defraud the legitimate creditors of the Estate.

8  
9 127. The Property has significant value, it is the most valuable asset of the Estate, and the  
10 Defendants have already distributed more than \$3,000,000 to the Debtor through USHF and  
11 Virsenet to the detriment of the Estate and Debtor's creditors.

12 128. On April 20, 2012, \$2,000,000 of the moneys deposited into the LMWF/USHF  
13 Trust Account by JJ/CD was transferred by LMWF to the Debtor's bank account with Bank of  
14 Montreal. Between April 27, 2012 and August 14, 2012, the Debtor wire transferred at least  
15 \$1,312,000 from his Bank of Montreal account to his Wells Fargo bank account and used those  
16 monies for personal expenses, including monthly lease payments for the Debtor's Bentley.

17  
18 129. An additional \$122,000 of the monies deposited into the LMWF/USHF Trust  
19 Account by JJ/CD was transferred by LMWF to the Debtor's Bank of Montreal account on May 3,  
20 2012.

21 130. On Debtor's Schedule I, Debtor stated that he receives \$31,250 a month as income,  
22 salary, and commissions as a "Consultant-Advisor." Yet, in 2013, the year immediately following  
23 the Debtor's purported transfer of his interests in Virsenet to Bayuk and Meadow Farms, Virsenet  
24 reported paying the Debtor \$1,610,378 in nonemployee compensation, and USHF reported paying  
25 the Debtor \$325,175 in nonemployee compensation.

26  
27 ///

1           131. In 2014, USHF reported paying the Debtor \$430,707.92 in nonemployee  
2 compensation.

3           132. At least a portion of the non-employee compensation has been paid to Debtor since  
4 the Petition Date.  
5

6           133. The Debtor has yet to file his 2014 tax return or produce all of his 2015 bank  
7 statements, so it is unknown what distributions or compensation the Debtor has received in 2014 or  
8 2015 on account of his ownership interest in the Property in 2014 or 2015.  
9

10           134. Thus, justice requires, to prevent further harm to the Estate and Debtor's creditors,  
11 that this Court enter an injunction prohibiting, enjoining, and restraining Virsenet, Bayuk, Meadow  
12 Farms, USHF, and LMWF, together with their members, managers, directors, officers, employees,  
13 and agents, from distributing any moneys or other consideration to or for the benefit of the Debtor  
14 without prior determination by the Court that all such proposed distributions are wages and  
15 commissions to Debtor exempt from property of the Estate.  
16

17           135. The balance of hardships is in favor of the Trustee and the granting of injunctive  
18 relief. Any alleged harm to the Debtor is not cognizable as (a) the Property became Estate property  
19 as of the Petition Date, and (b) it is not the intention of the injunction to deny Debtor payment of  
20 post-Petition Date earned wages and commissions.

21           136. Granting an injunction is in the public interest because it will preserve the value of  
22 the Property for the benefit of the Estate and its legitimate creditors and is consistent with the  
23 purpose and intent of the Bankruptcy Code.  
24

25           For the reasons set forth above, the Trustee is entitled, under Section 105 and Bankruptcy  
26 Rule 7065, to an injunction prohibiting, enjoining, and restraining Virsenet, Bayuk, Meadow  
27 Farms, USHF, and LMWF from distributing any moneys or other consideration to or for the benefit  
28

1 of the Debtor without prior approval of the Court. Furthermore, the Trustee prays for an award of  
2 attorneys' fees and costs incurred in obtaining the equitable relief sought herein and for such other  
3 and further relief as to the Court deems just and equitable under the circumstances.  
4

5 WHEREFORE, the Trustee prays for:

- 6 1. The specific relief requested in each Claim for Relief set forth above;  
7 2. For costs and attorneys' fees as may be allowed by law; and  
8 3. For such other and further relief as the Court deems just and equitable under  
9 the circumstances.  
10

11 DATED this 15<sup>th</sup> day of October, 2015.

12 WOODBURN AND WEDGE

13  
14 By

15 John F. Murtha, Esq.  
16 Dane W. Anderson, Esq.  
17 Seth J. Adams, Esq.  
18 Attorneys for Trustee  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit 91

**CONFIDENTIAL**

**FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST AGREEMENT FOR THE ARCADIA  
LIVING TRUST**

**CONFIDENTIAL**

**RBSL 001868**

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**FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST AGREEMENT FOR THE ARCADIA  
SPENDTHRIFT TRUST HENCEFORTH TO BE KNOWN AS THE  
ARCADIA LIVING TRUST**

I, PAUL A. MORABITO, as Grantor and Trustee, declare that I have entered into this FIFTH Amendment and Restatement of the Trust Agreement for the ARCADIA LIVING TRUST on Thursday, September 30<sup>th</sup>, 2010.

I established the ARCADIA LIVING TRUST on February 14, 2006 and amended and restated it its entirety – and changed its name to the Arcadia Spendthrift Trust – on November 17, 2009. In January, 2010, under Article 2 of the Trust Agreement, I reserved the right to amend, modify, or revoke the Trust Agreement or any of its provisions, in whole or in part, at any time by a writing signed by me. Exercising that right, I completely amended and restated the Trust Agreement in its entirety as set forth below in this document, so that none of the previous provisions shall continue to be in effect, and changed its name back to the ARCADIA LIVING TRUST. This complete amendment and restatement, and any subsequent amendments, shall constitute the entire and exclusive statement of the terms of the ARCADIA LIVING TRUST.

The property I have transferred to myself as Trustee and all property subsequently transferred to the Trustee shall be administered as provided in this FIFTH Amendment and Restatement and any subsequent amendments. The revocable trust established under this Trust Agreement shall now be known as the ARCADIA LIVING TRUST. Successor trusts established under this Trust Agreement shall be known by the names designated below in this Trust Agreement or as named by the Trustee. The Trustee may refer to these trusts by reference to the name of the income beneficiaries of these trusts or the tax elections made with respect to these trusts.

**ARTICLE 1  
DECLARATIONS**

**1.1 Family Information**

I am not married, and am a resident of the City of West Hollywood, California. I live part time with my boyfriend and longtime companion EDWARD WILLIAM BAYUK. I have no living or deceased children. My father is SALVATORE ROBERT MORABITO, SR, of St. Catharines, Ontario. My mother Mary Dora Lorraine Morabito is now deceased. I have one brother, SALVATORE ROBERT MORABITO, JR., also known as Sam Morabito, of St. Catharines, Ontario, Canada; SALVATORE is in a committed relationship with my brother's longtime companion DR. ANNA KOBYLECKY, of St. Catharines, Ontario, Canada. I have two sisters, KATHARINE LYNN FAZZARI of St. Catharines, Ontario, Canada, and GLORIA JEAN MORABITO, also known as Goldie Morabito, of Belmont, California. I have two nephews, the sons of my sister KATHARINE LYNN FAZZARI, SAMUEL FAZZARI and VINCENT FAZZARI, both of St. Catharines, Ontario, Canada.

**1.2 Property Information**

. At this time, all my property is my separate property.

**ARTICLE 2  
RIGHTS RESERVED BY ME**

As Grantor, I reserve the following rights under this Trust Agreement.

**2.1 Right to Add Property to the Trust Estate**

. I reserve the right to transfer additional property to the Trustee during my lifetime and at my death. All such property transferred to the Trustee shall be added to the trust estate and administered as provided in this Trust Agreement. The Trustee is authorized and directed to accept the additions to the trust estate. Any other person may transfer property to the Trustee to be added to the trust estate, provided the property is acceptable to me (if living) and the Trustee.

**2.2 Right to Withdraw Property from the Trust Estate**

. I reserve the right to withdraw at any time all or any portion of my property held in the trust estate.

The property described in any notice of withdrawal shall be delivered immediately to me. Upon any withdrawal, the property shall be transferred to me as if the trust had not been created.

**2.3 Right to Amend the Trust Agreement**

. I reserve the right to amend at any time all or any part of this Trust Agreement, without obtaining the consent of or giving notice to any beneficiary.

**2.4 Right to Revoke the Trust Agreement**

. I reserve the right to revoke at any time all or any part of this Trust Agreement, without obtaining the consent of or giving notice to any beneficiary. If this Trust Agreement is revoked in whole or in part during my lifetime, the Trustee shall immediately deliver to me the entire trust estate or the portion of the trust estate subject to revocation. Upon any such revocation, the property shall be transferred to me as if the trust had not been created. Upon my death, this Trust Agreement, and all trusts established under this Trust Agreement, shall become irrevocable and not subject to amendment.

**2.5 Right to Appoint and Remove Trustees**

. I reserve the right to appoint, designate, and remove trustees.

**2.6 Right to Direct and Approve the Trustee's Actions**

. I reserve the right to direct and approve the Trustee's actions, including the Trustee's investment decisions and the use of trust property as collateral for any personal obligations of mine. My approval of the Trustee's actions shall be binding upon all other beneficiaries.

**2.7 Exercise of My Reserved Rights by Others**

. The rights reserved to me as described above are personal to me and shall not be exercisable on my behalf by any other person.

**2.8 Manner of Exercise of My Reserved Rights**

. I may exercise the rights reserved to me only by a signed writing delivered to the Trustee. This Trust Agreement may not, however, be revoked or amended by me in my Will.

**ARTICLE 3  
THE GRANTOR'S TRUST**

The following provisions shall apply to the distribution of the trust estate during my lifetime.

**3.1 Distributions of Income and Principal**

. During my lifetime, the Trustee shall distribute to me that amount of net income and principal as I direct. Further, if I become incapacitated, the Trustee is authorized to distribute to any person whom I am then legally obligated to support or who has been receiving support from me that amount of net income and principal as the Trustee deems appropriate in his or her discretion to continue this support. Also, the Trustee is authorized to distribute to me that amount of net income and principal, up to the whole of the trust estate, as the Trustee deems appropriate in the exercise of his or her discretion, using my accustomed manner of living as a guide and without regard to my other sources of support. The Trustee shall exercise this discretion in a liberal manner, and the rights of remainder beneficiaries shall be of no importance. The Trustee shall accumulate and add any undistributed net income to principal.

**3.2 Gifts**

. The Trustee is authorized to make distributions directly to persons designated by me. Furthermore, the Trustee is authorized to make gifts to continue any gift program I start, including gifts made to use my available federal gift tax annual exclusion amounts or lifetime exemption or exclusion amounts, at the same level and to the same persons as I made gifts. The Trustee may fulfill any charitable pledges made by me. Gifts may be made outright or in trust. In making the gifts authorized under this section, the Trustee may follow the directions given him or her by any agent acting for me under a durable power of attorney that expressly grants to the agent the power to continue my plan of giving. Also, the Trustee may distribute income or principal to an agent acting under a durable power of attorney executed by me to enable the agent to make gifts as provided under the durable power of attorney, including gifts to charitable organizations.

**3.3 Qualification for Government Benefits**

I authorize the Trustee to take any actions that the Trustee determines to be appropriate or necessary in connection with my qualification for or receipt of government benefits, including benefits (whether income, medical, disability, or otherwise) from any agency (whether state, federal, or otherwise), such as Social Security, Medicare, or supplemental security income/state supplemental programs.

**ARTICLE 4**

**ALLOCATION AND DISPOSITION OF THE TRUST ESTATE**

Upon my death, subject to the payment of, or satisfactory provision being made for, all debts and taxes (including Estate taxes), the following allocations and dispositions of the trust estate shall be made by the Trustee.

**4.1 Disposition Upon My Death**

Upon my death, the Trustee shall allocate the entire trust estate, including the property held in the trust estate at the date of my death and the property transferred to the trust estate by reason of my death, as follows:

- (a) **Gifts of Tangible Personal Property**  
The Trustee shall make distributions of my tangible personal property as provided in Article 5.
- (b) **Gifts of Real Property**  
The Trustee shall make distributions of my real property as provided in Article 6.
- (c) **Gifts of Money and Other Property**  
The Trustee shall make distributions of money and other property as provided in Article 7.
- (d) **Balance of the Trust Estate**  
The balance of the trust estate shall be held in trust and administered as the Residuary Trust in accordance with the provisions of Article 8 below until the date ten (10) years following my death. On the tenth anniversary of my death, any remaining balance of the trust estate shall be distributed as follows:
  - (i) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK, provided he survives me. If EDWARD does not survive me, the gift shall be distributed to my brother SALVATORE ROBERT MORABITO, JR., if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SALVATORE FAZZARI and VINCENT FAZZARI.
  - (ii) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR., provided he survives me. If SALVATORE does not survive me, the gift shall be distributed to my partner EDWARD WILLIAM BAYUK, if he is then living, and if he is not this distribution shall be made in equal shares to my nephews SAMUEL FAZZARI and VINCENT FAZZARI.

In selecting assets to satisfy gifts and fund shares, property that would produce income recognition if allocated to fund a pecuniary amount shall, if possible, be allocated to fund non-pecuniary shares. These assets should be allocated on a non-pro rata basis when funding fractional shares. These assets include: items of income in respect of a decedent (particularly interests in pension plans or contracts of deferred compensation paid in installments); installment sale contracts; and life insurance contracts to which the transfer for value rule under I.R.C. §101 may apply.

**ARTICLE 5**

**GIFTS OF TANGIBLE PERSONAL PROPERTY**

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), the following distributions shall be made by the Trustee from the



trust estate.

All my interest in my tangible personal property, together with any insurance on such property, shall be distributed by the Trustee outright to my longtime companion EDWARD WILLIAM BAYUK, if he is then living, and if he is not said tangible personal property shall be distributed to my brother SALVATORE ROBERT MORABITO, JR.

**ARTICLE 6  
GIFTS OF REAL PROPERTY**

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), no distributions shall be made by the Trustee.

**ARTICLE 7  
GIFTS OF MONEY AND OTHER PROPERTY**

Upon my death, subject to the payment of, or satisfactory provision being made for, all my debts and taxes (including all Estate taxes), the following distributions shall be made by the Trustee.

**7.1 Gifts of Money**

& Publicly Traded Securities

None.

**ARTICLE 8  
THE RESIDUARY TRUST**

All trust property allocated to the RESIDUARY TRUST shall be held by the Trustee in trust and shall be administered according to the terms of this Trust Agreement, specifically including the following provisions, until the date ten (10) years following my death. On the date ten (10) years after my death, all trust assets remaining in the Residuary Trust shall be distributed in accordance with the provisions of Section 4.1(d) above. All references in this Trust Agreement to the "RESIDUARY TRUST" shall be to the trust established under this article.

**8.1 Maintenance of Real Property**

None

**8.2 Distribution of Net Income**

After providing for the expenses outlined in Sections 8.1 and 8.2 above, the Trustee shall distribute the remaining net income in monthly or other convenient installments, but at least annually, to the following beneficiaries in the percentages indicated until the trust terminates on the tenth anniversary of my death:

- (a) Seventy percent (70%) to my longtime companion EDWARD WILLIAM BAYUK.
- (b) Thirty percent (30%) to my brother SALVATORE ROBERT MORABITO, JR.

If a beneficiary under this Section 8.3 dies before the trust terminates on the tenth anniversary of my death, the deceased beneficiary's share of net income shall be reallocated on an ongoing basis to the other beneficiary named in this section if then living.

**8.3 Final Distribution of Trust Estate**

On the tenth anniversary of my death, or upon the earlier death of the last to survive of the beneficiaries named in Section 8.3, the Residuary Trust shall terminate and the Trustee shall distribute the remaining assets of the trust estate in accordance with the provisions of Section 4.1(d) above.

**ARTICLE 9  
GENERATION-SKIPPING PROVISIONS**

#### 9.1 Generation-Skipping Transfer Tax

. I intend to use effectively all available generation-skipping transfer tax exemptions, including the exemption available under the election authorized in I.R.C. §2652(a)(3). All provisions of my Will and this Trust Agreement shall be construed in a manner consistent with that objective, and to the extent possible, so as to create and maintain trusts or shares of the trust estate that have inclusion ratios of either zero or one and are entirely exempt or nonexempt from GST tax.

#### 9.2 Allocation of GST Exemption

. In allocating my GST exemption, the Trustee may include or exclude from that allocation any property as to which I am the transferor for GST tax purposes, including property transferred prior to my death. The Trustee's decisions may be based on my estate tax return, gift tax returns, and other information known to the Trustee. The Trustee shall allocate the exemption in good faith, but shall not be required to allocate the exemption to benefit the various transferees or beneficiaries of the property equally, proportionally, or in any other particular manner.

#### 9.3 Division of Trusts

. The Trustee (other than issue of mine) may divide any trust into two or more separate trusts to create one or more trusts with assets completely exempt from any application of any GST tax or to create trusts so that the federal generation-skipping tax inclusion ratio for each such trust shall be either zero or one. Divisions shall be made based on the fair market value of the assets at the time of the division. If permitted by the regulations under the GST tax, the allocation of property between or among separate trusts created from a single trust or trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. All trusts so established shall be administered under the same terms as would have applied to the undivided trust or trust share. The Trustee is directed to divide any trust that may be subject to the GST tax into two separate sub-trusts of equal or unequal value, but with the same terms and with the same beneficiaries, so that the transferor's exemption under I.R.C. §2631 may be allocated to one sub-trust to the exclusion of the other or disproportionately between them.

#### 9.4 Allocation of Assets

. The Trustee may allocate any property payable or distributable to the trust or any of its sub-trusts so that all trusts or property with an inclusion ratio of zero shall be allocated to a trust with an inclusion ratio of zero and all trusts or property with an inclusion ratio of other than zero shall be allocated to a trust with an inclusion ratio of other than zero. The Trustee may allocate any property that may become payable or distributable to the trust to one of its sub-trusts to the exclusion of the other trusts or disproportionately between the sub-trusts.

#### 9.5 General Power of Appointment Granted to Beneficiary

. If upon the death of an issue of mine who is a beneficiary of an irrevocable trust created under this Trust Agreement, the trust estate of his or her trust would pass to or in trust for the beneficiary's issue (whether directly or by the beneficiary's failure to exercise a power of appointment), then the beneficiary shall have the power to appoint to the beneficiary's estate by his or her Will (whether or not admitted to probate) expressly referring to and exercising this power, the smallest fractional share of the trust that would be necessary to reduce to the minimum the aggregate Estate taxes and GST taxes payable upon the beneficiary's death.

#### 9.6 General Power of Appointment Conferred by Trustees

. The Trustee may grant a beneficiary a general power of appointment, as that term is defined in I.R.C. §2041, over that beneficiary's share of the trust estate, pursuant to which that beneficiary may appoint the principal and or undistributed income of that share to one or more persons and entities, including his or her own estate, and on those terms and conditions, either outright or in trust, as he or she may appoint by a Will (whether or not admitted to probate) or other written instrument expressly referring to and exercising this general power of appointment. A grant of power may limit the amount subject to any general power of appointment, require that it be exercised jointly with another person or persons, or otherwise impose limits or conditions on its exercise. The Trustee may also eliminate or modify, at any time and for any reason, a general power of appointment granted by the Trustee. The Trustee shall

promptly notify the beneficiary in writing that they have granted a general power of appointment to the beneficiary over trust assets.

The foregoing provisions shall not apply to a beneficiary who is serving as a Trustee or Co-Trustee, except that a Co-Trustee or successor Trustee may exercise the foregoing power to grant a general power of appointment in favor of the beneficiary who is a Trustee. No beneficiary shall have the power under this Section 9.6 to amend his or her share of the trust estate in a manner that would increase his or her benefits, or to grant himself or herself a general power of appointment.

**9.7 No Trustee Liability**

The Trustee shall not be liable for any exercise or nonexercise of any of the powers granted under this article.

**ARTICLE 10  
DISCLAIMERS**

**10.1 Disclaimers Allowed**

In addition to any rights granted by law, any person granted any right, title, interest, benefit, privilege, or power under this Trust Agreement may at any time renounce, release, or disclaim all or any part of that right, title, interest, benefit, privilege, or power, including his or her right, title, and interest in and to trust income or principal. The natural or legal guardians of a minor shall have the authority and power to disclaim the interests of the minor; the conservator of the estate of the person shall have the authority and power to disclaim the interests of the conservatee; the fiduciary of a trust or estate shall have the authority and power to disclaim the interests of the trust or estate; and the youngest adult ancestor of any unborn, unknown, or unascertained issue shall have the power to disclaim the interests of those issue.

**10.2 Disclaimers of Property Interests**

In general, a disclaimer or renunciation of a property interest shall accelerate the succeeding interest. Except as otherwise expressly provided in this Trust Agreement, any interest in property so disclaimed shall be allocated or distributed as if the beneficiary had predeceased the person from whom the interest in the property would have been received. Further, except as otherwise expressly provided in this Trust Agreement, if a beneficiary disclaims his or her entire interest in one or more specific assets held in any trust, the assets shall be distributed from the trust as if the beneficiary predeceased the person from whom the interest in the assets would have been received. If all living current and contingent beneficiaries disclaim their interests in the trust, any contingent remainder interest shall be destroyed and the remaining trust property shall pass as provided in Section 4.2.

**10.3 Disclaimers by Trustee**

Any person granted any fiduciary power, authority, right, privilege, or discretion ("Fiduciary Power") under this Trust Agreement or under the law applicable to this trust may at any time renounce, release, or disclaim all or any part of such Fiduciary Power. Unless otherwise expressly provided in the disclaimer, if any Fiduciary Power shall be disclaimed, the power shall cease to exist and shall not pass to any successor fiduciary. The disclaimer may expressly provide that the Fiduciary Power shall be exercisable by the remaining Trustees, if any, or any successor Trustees.

**10.4 Effective Disclaimers**

To be effective, disclaimers must be in writing, signed by the disclaiming person, and irrevocable. Disclaimers shall be effective only upon delivery to the Trustee or to a court having jurisdiction over the administration of the trust.

**ARTICLE 11  
PAYMENT OF DEBTS AND EXPENSES**

The following provisions shall apply upon my death to the payment of my debts and expenses.

**11.1 Payment of Debts and Expenses**

Upon my death, the Trustee may pay on my behalf, in the manner and at the time the Trustee

determines, any and all of my outstanding unsecured debts (including unpaid tax liabilities arising prior to my death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of my estate.

#### 11.2 Payment from Trust

The Trustee is authorized to pay from the assets of the trust my debts and expenses that my Executor may request. If there are insufficient assets in my probate estate to make any gifts provided under my Will or to pay my debts and expenses, or if there are sufficient assets in my probate estate but, in the sole judgment of the Trustee, it would be to the advantage of the estate that those gifts or payments be made from the assets in the trust, the Trustee may pay from the assets of the trust all of those gifts, debts, and expenses. If the assets of my probate estate (exclusive of residential real property and tangible personal property) are insufficient to pay all unsecured debts, funeral expenses, and expenses of administration, the Trustee may pay to my estate from the principal of the trust estate that amount that my Executor may request for those purposes. The Trustee shall not be under any duty to take part in determining the amount of those debts or expenses, and may rely upon the written certification of my Executor for the amount to be paid as authorized by these provisions. The Trustee shall be under no duty to see to the application of any such payment. The Trustee shall not require any reimbursement for payments made to my Executor.

### ARTICLE 12

#### PAYMENT OF ESTATE TAXES AND GENERATION-SKIPPING TRANSFER TAXES

##### 12.1 Payment of Estate Taxes

All Estate taxes and charges imposed upon any property by reason of my death, whether passing under the Will or not, shall be paid (1) first, by my Executor out of the residue of my probate estate, to the extent funds are sufficient, and (2) second, by the Trustee out of the residue of the trust estate. All Estate taxes shall be paid without proration or reimbursement from any other property or person.

##### 12.2 Payment of Generation-Skipping Transfer Taxes

All GST taxes attributable to a direct skip occurring upon my death, and with respect to which I was the transferor, shall be paid by the Trustee from and charged against property constituting the transfer, as provided in I.R.C. §2603(a)(3) and §2603(b). All GST taxes attributable to a taxable distribution occurring with respect to any trust established under this Trust Agreement shall be paid by the transferee, as provided in I.R.C. §2603(a)(1) and §2603(b). All GST taxes attributable to a taxable termination occurring with respect to any trust established under this Trust Agreement shall be paid by the Trustee and charged against the property transferee, as provided in I.R.C. §2603(a)(2) and §2603(b).

##### 12.3 No Proration

No portion of the Estate taxes or GST taxes payable under these provisions shall be charged against, prorated among, or recovered from any person entitled to benefits under this instrument.

##### 12.4 Reserves

The Trustee may establish reserves from trust income and principal that he or she considers necessary for the payment of Estate taxes.

##### 12.5 Tax Elections

The Trustee shall have the power, in his or her discretion, to take any action and to make any election to minimize the tax liabilities of my probate estate, any trust, and the beneficiaries. The Trustee may make those elections and allocations under the tax laws as he or she deems advisable. The Trustee may, but shall not be required to, allocate the benefits of an election among the various beneficiaries or make adjustments in the rights of any beneficiaries or between the income and principal accounts to compensate for the consequences of any tax election or any investment or administrative decision made by the Trustee that may have had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over another.

ARTICLE 13  
THE APPOINTMENT OF TRUSTEES

The following provisions shall apply to the appointment, designation, and removal of the Trustee.

13.1 My Powers of Appointment, Designation, and Removal

. During my lifetime, I shall have the power to appoint, designate, and remove, with or without cause, Trustees and Co-Trustees. I may appoint or designate individuals or entities to serve as Trustee. I may appoint or designate Trustees to serve alone, to serve with me, or to serve with other persons and to serve currently or in the future. I may also prescribe the conditions and terms governing the actions, authority, and duties of the Trustees I appoint or designate. Further, I may designate a series of persons to serve as Trustees following my death or following the death, resignation, or inability, failure, or refusal to serve of any Trustee. There shall be no limit on the number of times I may exercise the foregoing powers. The appointments and designations shall be in writing and shall be filed with the current Trustee of the trust. All my appointments and designations shall be revocable and amendable by me unless I provide otherwise. All my appointments and designations shall continue to be effective after my death and shall take precedence over the appointments made under any other provisions of this article.

13.2 Initial Trustee

. Pursuant to my powers to appoint Trustees, I appoint myself as the initial Trustee under this Trust Agreement.

13.3 Successor Trustees

. Upon my death or incapacity, I appoint ROBERT BERTRAM BURKE to serve as Trustee. If ROBERT BERTRAM BURKE should fail or become unable or unwilling to serve as Trustee, I appoint JAMES RAVENSCROFT to serve as Trustee.

13.4 Filling Vacancies

. If a vacancy in a Trustee position is not filled as otherwise provided in this Trust Agreement, the California court having jurisdiction over the trust shall appoint one or more Trustees upon the application of any former Trustee or any trust beneficiary, current or contingent.

13.5 Temporary Incapacity of a Trustee

. If, due to illness or other cause, an individual Trustee is temporarily, but not permanently, unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trusts for which he or she serves as Trustee, the other Trustees may, during such temporary incapacity, make any and all decisions regarding the trust estate as though the incapacitated Trustee were not then serving. In determining the temporary incapacity of an individual Trustee, the other Trustees may rely on a certificate or other written statement from a licensed physician who has examined the incapacitated individual Trustee. The other Trustees shall incur no liability whatsoever to any beneficiary as a result of any action taken under this section.

13.6 Removal of Trustees

. Following my death EDWARD WILLIAM BAYUK may remove any Trustee of the trust and appoint a Trustee or Trustees other than himself to succeed the removed Trustee, provided at least one adult income beneficiary and one adult presumptive remainder beneficiary join in the exercise of this power.

13.7 Effective Dates

. Any and all appointments, designations, removals, or revocations affecting a Trustee position shall be made by a written instrument executed by the person entitled to make the appointment, designation, removal, or revocation. The written instrument shall be effective upon its delivery to the current Trustee; provided, however, that the appointment of a successor Trustee or Co-Trustee shall become effective only upon the new Trustee's written acceptance of the appointment and the delivery of this written acceptance to the person who appointed him or her, the other Trustees, or the current beneficiaries.

13.8 No Bond

. No bond or other security shall be required of any Trustee named in this Trust Agreement or of any

Trustee appointed or designated in the manner provided under this Trust Agreement unless the terms of the appointment or designation require a bond. The foregoing provisions shall apply whether the Trustee serves alone or together with one or more other Trustees.

13.9 Administrator. The Administrator shall provide such services to the Trustee by way of accounting, tax and planning purposes, and advise the Trustee and the Beneficiaries as to the intent and implementation of each and every provision of this Trust. The Administrator shall be reimbursed based on his normal hourly rate, as well as receive an annual base stipend of one dollar (\$1.00).

#### ARTICLE 14 THE PROTECTION PROVIDED THE TRUSTEES

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

14.1 Resignation

Each Trustee shall have the right to resign his or her position at any time without the consent of any beneficiary or the approval of any court. A Trustee may resign for any reason by delivering a written resignation signed by him or her to the successor Trustees. The resignation shall be effective according to its terms. But, if the resigning Trustee is the sole Trustee, the resigning Trustee shall continue to be responsible for the trust property until it is delivered to the successor Trustee and shall continue to hold title and custody to the trust assets and administer the trust assets and perform the actions that are reasonably necessary to preserve the trust property and to complete the Trustee's administration of the trust, until a successor Trustee has been appointed and has accepted the position of Trustee.

14.2 Compensation

The Trustee shall be entitled to pay himself an annual fee of one hundred and twenty thousand dollars (\$120,000) for the performance of his or her duties and services rendered as Trustee. A Trustee that is a corporation or partnership shall be entitled to compensation for its services in the amount and at the time specified in its Schedule of Fees and Charges established from time to time by it for the administration of trust accounts of a character similar to this one and in effect when services are rendered. This compensation may be paid without prior court approval. The Trustee shall be reimbursed for reasonable expenses actually and properly incurred by him or her in the administration of the trust.

The Trustee also is authorized to pay to the attorneys and accountants retained by the Trustee to advise him or her in the administration of the trust those amounts for fees and costs as the Trustee shall determine in his or her discretion. The Trustee is authorized to pay these fees and costs without first obtaining approval of the trust beneficiaries or the court having jurisdiction over the trust. These fees and costs shall not be offset against the compensation payable to the Trustee.

A Trustee may waive his or her right to compensation for his or her services to be rendered to the trust estate. The waiver must be in writing and signed by the person in advance of rendering the services for which compensation is being waived. A waiver may be limited in duration or limited to specific services.

14.3 Dual Compensation

A Trustee serving as a director, officer, partner, or employee of any corporation, partnership, or other business in which the trust owns an interest shall also be entitled to receive reasonable compensation for his or her services rendered as Trustee in addition to the compensation being paid to him or her by such business. The compensation paid to the Trustee in either capacity shall not be offset against the other. A Trustee who is an investment advisor, attorney, accountant, or other professional shall not be disqualified from rendering professional services to the trust and being compensated on a reasonable basis therefore in addition to any compensation that he or she otherwise is entitled to receive as Trustee. Neither shall a firm with which a Trustee is associated as a partner, officer, or employee be disqualified from dealing with, rendering services to, or discharging duties for the trust and being compensated therefore on a reasonable basis. A Trustee is authorized to retain himself or herself or any firm with which he or she is associated to render investment, legal, accounting, or other professional services.

14.4 Right of Indemnification and Reimbursement

. A Trustee shall be entitled to indemnification and reimbursement for any expense, loss, damage, liability, costs, or claim (including, without limitation, attorney's fees and costs of litigation) incurred by the Trustee by reason of any act performed or omitted to be performed by the Trustee, acting in good faith, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of any breaches of trust, by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries.

**14.5 Notice to the Trustee**

. Until the Trustee receives written notice of any birth, marriage, death, or other event affecting the rights of beneficiaries to payments or distributions from the trust, the Trustee shall incur no liability to any persons whose interests may have been affected by that event for payments or distributions made by the Trustee in good faith as though the event had not occurred.

**14.6 Confidentiality of Trust Agreement**

. Except as otherwise provided in this Trust Agreement, the Trustee shall not disclose the contents of this Trust Agreement, or the fact of its existence unless required to do so by law or applicable regulation, regulatory authorities, or legal process, without my prior written consent. The Trustee may, however, disclose the terms of this Trust Agreement where necessary to carry out his or her powers, to enforce the rights and remedies belonging to the trust, or as required by a court in its supervision of the trust. The Trustee may also disclose the contents of this Trust Agreement to persons employed by him or her to advise or assist him or her in the administration of the trusts, including attorneys and accountants, provided these professionals agree to keep the disclosed information confidential on the same terms as provided in this section.

**14.7 Disclosure to the Beneficiaries**

. During my lifetime, the Trustee shall have no duty to provide any information regarding the trust to anyone other than me.

**14.8 Reports and Accounts**

. I hereby waive all statutory requirements, that the Trustee render a report or account to the beneficiaries of the trust. The Trustee shall not be required to make any current reports or render any annual or other periodic accounts to any trust beneficiary or to any court, whether or not required by statute, except pursuant to court order. The Trustee may take action for the approval of his or her accounts at the times and before the courts, or without court proceedings, as he or she determines in the exercise of his or her discretion. The Trustee shall pay the costs and expenses of such action, including the compensation and expenses of accountants, attorneys, and guardians, from the principal or income, or both, of the trust as he or she determines.

**14.9 My Right to Release Trustee**

. I reserve the right to execute a release, with or without an account, approving the administration of the trust by the Trustee. A release shall discharge the Trustee from any accountability and liability to me or my estate or to any other persons interested or claiming to be interested in the trust as to all matters covered by the release or in the account, if any, with the same effect as if an account of the Trustee for the period concerned had been judicially settled and allowed in a proceeding to which these other persons (including all interested persons) were parties. No beneficiary other than me or my Executor shall have the right to question or assert any liability by the Trustee for the Trustee's acts or omissions during my lifetime.

**14.10 Right of Trustee to Secure Releases**

. The Trustee is authorized to secure from any beneficiary a full and complete release from any and all liabilities arising from the Trustee's administration of the trust and the beneficiary's written approval of any account or report of the Trustee. The release or approval shall be binding and conclusive upon the beneficiary and upon all of the beneficiary's issue (including then unborn, unknown, and unascertained

issue) and other successors in interest who may then have or later acquire any interest in the separate trust. All written instruments to be delivered to or executed by a beneficiary may be delivered to or executed by the legally appointed conservator of any incompetent beneficiary or a parent or legal guardian of a minor beneficiary. When so delivered or executed, the written instrument shall be binding upon the beneficiary and shall be of the same force and effect as if delivered to or executed by a beneficiary acting under no legal disability. The foregoing provisions shall apply to all reports, statements, accounts, releases, and notices, as well as documents appointing, removing, or designating Trustees. However, the Trustee may not condition the performance of his or her duties on the delivery of such a release.

#### 14.11 Consultation with Legal Counsel

The Trustee may retain and consult with California based legal counsel on any matters related to the administration of the trust or the construction or interpretation of this Trust Agreement, and I encourage the Trustee to do so. The Trustee may select the legal counsel to advise or represent him or her, and the Trustee is expressly authorized to pay the fees and costs of the legal counsel from the trust estate. The time, place, subject matter, and content of any such consultation with legal counsel, all communication (written or oral) between the Trustee and legal counsel, and all work product of legal counsel shall be privileged and confidential and shall be absolutely protected and free from any duty or right of disclosure to any successor Trustee or any beneficiary and any duty to account. The Trustee shall, however, include the amount of any disbursement for the legal counsel fees and costs in any report or account prepared by the Trustee for the period during which the expenses were paid.

#### 14.12 Reliance on Experts and Others

The Trustee shall be entitled to rely on the information, opinions, reports, or statements (including financial statements and other financial data) prepared by his or her managers, attorneys, accountants, brokers, investments counselors, and other experts, even if they are associated with a Trustee, prepared by such persons as to matters which the Trustee reasonably believes to be within that person's profession or expert competence, and shall not be liable for losses resulting therefrom. The Trustee may act without independent investigation upon the recommendations of any attorneys, auditors, accountants, investment advisers, appraisers, or other qualified experts retained by the Trustee, even if they are associated or affiliated with the Trustee. The written opinion of any such expert submitted to the Trustee shall be a full and complete authorization and protection with respect to any action taken or not taken by the Trustee in good faith.

#### 14.13 Extent of Liability

I do not want the Trustee to be personally liable for his or her good faith efforts in administering the trust estate.

##### (a) In general

A Trustee shall not be personally liable to the trust or its beneficiaries, and shall be held harmless, for any loss, expense, damage, or claim incurred by the Trustee by reason of any act performed or omitted to be performed by the Trustee, acting in good faith, in the administration of the trust. The Trustee shall be deemed to have acted in good faith on behalf of the trust if the Trustee acted in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of the trust and its beneficiaries. Further, a Trustee shall not be personally liable for obligations arising from the Trustee's ownership or control of trust property or for torts committed in the course of the Trustee's administration of the trust unless the Trustee is personally at fault. Notwithstanding the foregoing, a Trustee shall be personally liable for his or her breach of trust by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries, and as to any profit that the Trustee derives from any breach of trust.

##### (b) While trust is revocable

During my lifetime, the Trustee shall follow all written directions given from time to time to him or her by me or by the person or persons to whom I delegate the right to direct the Trustee. In consenting to and carrying out those directions, the Trustee shall not be liable to any person having a vested or contingent interest in the trust for any act performed or omitted pursuant to those directions. Moreover,



the Trustee may follow those directions regardless of any fiduciary obligations to which the directing party may also be subject.

(c) As to other Trustees

The liability of the Trustee is further limited as follows.

(i) As to prior Trustees

No successor Trustee shall be responsible or liable for any acts, omissions, or default of any prior Trustee. Unless requested in writing by a beneficiary within 60 days of the appointment of the successor Trustee, no successor Trustee shall be required or have any duty to review or investigate the actions or omissions of a prior Trustee. A successor Trustee shall not be required or have any duty or obligation to review, audit, or examine the transactions, accounts, or records of any prior Trustee, or any allocation of the trust estate made by any prior Trustee. No successor Trustee shall have any obligation to take any action to obtain redress for any breach of trust by any prior Trustee unless instructed by a court to do so. Each Trustee is responsible only for those assets that are actually delivered to the Trustee's custody or control.

(ii) As to Co-Trustees

A Trustee shall be liable to the beneficiaries for the acts or omissions of a Co-Trustee only as provided required by law.

(d) As to agents and investment managers

I want the Trustee to be able to rely on the advice of professionals hired to advise him or her. Accordingly, the Trustee's liability is further limited as follows.

(i) As to agents

A Trustee shall be liable to the beneficiaries for the acts or omissions of an agent only as provided by applicable law.

(ii) As to investment managers

A Trustee shall not be liable for the acts or omissions of any investment manager, or be under an obligation to invest or otherwise manage any asset that is subject to the management of an investment manager.

(e) As to taxes

I want the Trustee to be aggressive in minimizing the taxes, including estate and income taxes, imposed on the trust estate. Accordingly, the Trustee shall not be liable for any accuracy-related penalty, such as is currently imposed under I.R.C. §6662, arising from the preparation and filing of any income tax or estate tax return.

(f) Liability insurance

Individual Trustees may carry errors and omissions or fiduciary liability insurance and may charge the premiums to trust income or principal, or both, as a cost of administration.

ARTICLE 15

THE AUTHORITY OF THE TRUSTEES

The following provisions shall apply to each of the Trustees serving under this Trust Agreement. A successor Trustee shall be vested with all the rights, powers, and authority of an original Trustee.

15.1 Trustee Authority

Except as otherwise expressly provided, a successor Trustee upon commencing to serve as Trustee shall immediately become vested with all the rights, titles, powers (including discretionary powers), and obligations, with like effect as if named as an initial Trustee. Where this Trust Agreement states that the Trustee "shall" perform an act, the Trustee is required to perform that act. Where this Trust Agreement states that the Trustee "may" do an act or Trustee is "authorized" to act, the Trustee is expressly permitted or authorized to do the act described, and his or her decision to do or not to do the act shall be made in the Trustee's sole and absolute discretion in the exercise of his or her fiduciary powers and duties. The decision of the Trustee as to all discretionary actions and decisions shall be conclusive and binding on all persons.

15.2 Trustee Discretion

The discretionary powers granted to the Trustee under this Trust Agreement shall be absolute. This means that the Trustee can act arbitrarily, so long as he or she does not act in bad faith, and that no requirement of reasonableness shall apply to the exercise of his or her absolute discretion. This does not mean that the Trustee may do as he or she pleases, but rather that I want the Trustee to use his or her own personal, subjective best judgment. For this purpose, I waive the requirement that the Trustee's conduct at all times must satisfy the standard of judgment and care exercised by a reasonable, prudent person. In particular, the decision of the Trustee as to the distributions to be made to beneficiaries under the distribution standards provided in this Trust Agreement shall be conclusive on all persons.

#### **15.3 Release of Power or Authority by a Trustee**

The Trustee may at any time release, surrender, disclaim, relinquish, either in whole or in part, or may reduce or restrict in scope, any of the powers, rights, authority, or discretion granted to the Trustee under this Trust Agreement, either expressly or implied. Such action shall be taken by means of a written notice filed in the records of the trust, signed and dated by the releasing Trustee, and mailed to all of the adult current beneficiaries. Unless otherwise specified by the releasing Trustee, any such action as it affects that Trustee shall be irrevocable. Such action shall be effective only as to the Trustee giving such written notice and shall in no way affect the rights, powers, authority, and discretion of successor Trustees. The powers, rights, authority, or discretion released or restricted shall continue to exist as to all Trustees and successor Trustees other than the releasing Trustee.

#### **15.4 Trustee's Consideration of Beneficiary's Other Assets**

Except as otherwise provided in this Trust Agreement, in exercising his or her discretion to distribute trust funds to any beneficiary, the Trustee may, but shall not be required or have any duty to, consider all income and assets, including other sources of income or financial support, reasonably available to the beneficiary, as are actually known to the Trustee. The Trustee shall have no duty of inquiry as to the property owned by or held for the benefit of the beneficiary. In making discretionary distributions from any trust created under this Trust Agreement, the Trustee may rely absolutely upon a declaration executed under penalty of perjury by the beneficiary describing his or her expenses and financial needs and any other financial resources available to him or her, without further investigation. The Trustee may continue to rely upon a declaration until otherwise advised in another declaration from the beneficiary.

#### **15.5 Limitation on Discretion of a Beneficiary Serving as Trustee**

Notwithstanding any other provisions of this Trust Agreement, a Trustee (other than me) who is also a beneficiary of the trust shall not have, and shall not participate in the exercise of, the power to use, apply, or distribute trust principal for his or her own benefit, except as necessary to provide for his or her health, education, maintenance, and support in his or her accustomed manner of living. Further, a Trustee who is also a beneficiary of the trust shall not participate in the exercise of any power to advance or loan funds to himself or herself or to guarantee or secure any debt of such beneficiary/Trustee.

#### **15.6 Voting**

While more than two Trustees are serving, the decision of the majority of the Trustees shall prevail and be binding with respect to all matters affecting the trust estate. If one or more Trustees are excluded or precluded from participating in making a decision with respect to a particular matter, the remaining Trustees acting by majority vote shall make the decision. Any act by or instrument executed by the majority of the Trustees shall constitute the action of the Trustees as if done by all Trustees. Any dissenting or nonconcurring Trustee shall not be liable to any person for the action or failure to act of the other Trustees acting by majority vote.

#### **15.7 Delegation by One Trustee**

Each Trustee may at any time, by a signed revocable instrument, delegate to another Trustee the exercise of all or less than all of the powers conferred on a Trustee. Nonetheless, the delegating Trustee shall be liable for the proper exercise of the delegated powers by the other Trustee.

#### **15.8 Delegation by All Trustees**

The Trustees may delegate their powers to one or more of the Trustees in a writing signed by all of them. The writing must state the powers delegated to the particular Trustees and provide a date when

the delegation will terminate automatically if not previously terminated. Any delegation shall be revocable by any one Trustee in a writing delivered to the delegate. A Trustee acting pursuant to a delegation shall have the authority to bind the trust and third persons may rely on his or her authority to act for the trust. Any act by or instrument executed by a Trustee acting pursuant to this delegation shall constitute the action of the Trustees as if done by all Trustees.

#### 15.9 Delegation of Power to Expend

The Trustees may delegate to one or more of the Trustees, for any period, the power to bind the trust in any transaction obligating the trust to expend up to or less than a certain sum of money as specified by the delegating Trustees. The Trustee to whom the power is delegated may be the sole signatory of all checks necessary to accomplish the expenditure. The Trustees may also delegate to a property management company authority to be the sole signatory of all checks written on behalf of the trust relating to real estate owned by the trust or on checks written on behalf of the trust in an amount less than the amount specified by the Trustees.

#### 15.10 Delegation of Investment Authority

The Trustees, acting by majority vote, may delegate to one or more Trustees or to agents (including independent investment advisors, investment counsel or managers, banks, or trust companies) the power and authority to act for the Trustees in the investment and reinvestment of trust assets. The Trustees, acting by majority vote, may also authorize the payment of compensation for investment advisory or management services. The Trustees may delegate to the retained investment counsel the power to instruct the custodian of trust property with respect to all matters affecting the property, and the custodian shall comply with those instructions.

#### 15.11 Agents

The Trustee may act under this Trust Agreement through an agent or attorney-in-fact acting under a power of attorney duly executed by the Trustee.

#### 15.12 Dealing with the Trustees

If a third person dealing with the Trustee or assisting him or her in the conduct of a transaction acts in good faith and for a valuable consideration and without actual knowledge that the Trustee is exceeding the Trustee's powers or improperly exercising them, the third person is not bound to inquire whether the Trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise. That third person shall be fully protected in dealing with or assisting the Trustee just as if the Trustee has and is properly exercising the powers the Trustee purports to exercise. In addition, that person has no duty to see to the application of any money paid or property transferred to or upon the order of one or more Trustees.

#### 15.13 Reliance on Representations by the Trustees

A third person dealing with the Trustee also shall be fully protected in relying on written statements of fact, certified or declared under penalty of perjury by any one or more of the persons who appear from the original or certified copy of this Trust Agreement (or documents of appointment) to be a Trustee or successor Trustee, regarding the Trustee's authority to act under this Trust Agreement, the calling of any meeting of the Trustees, the giving of any notice of a meeting, the action taken at a meeting, and other facts concerning the trusts established under this Trust Agreement. Anyone may rely on a copy of this Trust Agreement certified by a Trustee, by the Trustee's legal counsel, or by a Notary Public, to be a counterpart or true copy of this Trust Agreement.

#### 15.14 Reliance on the Authority of Trustees

No persons or organizations employed by the Trustee or retained by the Trustee as provided in this article shall be required to oversee or supervise the activities of the Trustee or to inquire into the Trustee's powers, authority, or discretion. Each person or organization so employed or retained may rely implicitly upon the written instructions of the Trustee with respect to the property and business of the trust, including instructions of the Trustee to deal directly with investment counsel employed by the Trustee. In no event shall any person or organization so employed or retained be liable for any act or omission of any Trustee in which that person or organization may also have participated.

## ARTICLE 16 THE POWERS OF THE TRUSTEE

Subject in all instances to his or her fiduciary duties and the limitations set forth elsewhere in this Trust Agreement, with regard to the entire trust estate and all trusts established under this Trust Agreement, the Trustee shall have all the powers described below, all powers granted by law, and all powers reasonably necessary to carry out his or her duties as Trustee to administer, manage, protect, and invest the trust estate. The Trustee in his or her discretion, without court approval, authorization, or supervision, may exercise these powers except as expressly required in this Trust Agreement.

### 16.1 To Accept Property

. The Trustee may accept or receive additions and contributions to the trust estate from me or any other person and hold the property in trust under the provisions of this Trust Agreement. If the Trustee receives property from another fiduciary and if the Trustee believes the action to be in the best interests of the trust estate, the Trustee is authorized to waive an accounting from the fiduciary, to approve his or her actions, to consent to his or her proposed actions, and to consent to his or her discharge.

### 16.2 To Disclaim or Reject Property

. The Trustee may renounce or otherwise disclaim all or any part of any interest in property passing to the trust, by gift or bequest, and any right, power, privilege, or discretion granted the Trustee under this Trust Agreement. The Trustee may reject any property or interest in property passing to the trust, including property that by reason of hazardous materials or substance the Trustee determines (after investigation at the expense of the trust) would be detrimental to the trust purpose.

### 16.3 To Retain Property

. The Trustee may retain trust property received at the inception of the trust or at any other time, from me or any other person until, in the judgment of the Trustee, disposition or distribution of the property should be made. The property may be retained even though the property is unproductive, is property in which a Trustee is personally interested or in which the Trustee owns an undivided interest personally or as trustee of another trust, or there is known or later discovered to be hazardous materials or substances requiring remedial action pursuant to environmental laws. The Trustee shall have no duty to dispose of any part of the trust property included in the trust at the time of its creation, or later added to the trust by me or another person, that would not be a proper investment for the Trustee to make. The Trustee may, without liability, continue to hold that property. The Trustee may hold trust property in bearer form so that title may pass by delivery, or in the name of any one Trustee or a nominee without indication of any fiduciary capacity by the nominee. The Trustee may keep all or part of the trust property at any place within the United States or abroad.

### 16.4 To Operate a Business

. The Trustee may continue or participate in the operation of any business or other enterprise (including a partnership as a general or limited partner) that is part of the trust property for as long as the Trustee deems advisable, at the risk of the trust estate and not at the risk of the Trustee. The Trustee may incorporate, dissolve, or change the form of the organization of the business or enterprise, or operate it as a partnership or in any other form. The profits and losses from any business or other enterprise shall be chargeable to and borne by the trust, and not the Trustee. A Trustee, as an individual, may continue to be a shareholder, director, officer, employee, or partner of any business or enterprise in which the trust holds any interest.

### 16.5 To Invest and Reinvest Trust Property

. The Trustee may invest and reinvest trust property (including income and principal) in any kind of property, whether real, personal, or mixed, including (1) real property (including leaseholds; royalty interests; interests in mines, oil and gas wells, timberlands, and other wasting assets), (2) intangible personal property (including common and preferred stock and all other kinds of securities (on margin or otherwise); investment company shares, mutual funds, index funds, common trust funds (including any common trust fund under the management of a corporate trustee) and other collective investment

vehicles; interests in partnerships (whether as a general or limited partner); commodities; governmental obligations of every kind; obligations of corporations or unincorporated associations; and patents, copyrights, trademarks, and other intangible rights), and (3) tangible personal property (including precious metals, works of art, and other collectibles). The Trustee is authorized to establish and maintain brokerage accounts, including margin accounts, for the purpose of purchasing, acquiring, possessing, pledging, hypothecating, selling and otherwise disposing of, and generally dealing in and with any of the foregoing types of investments.

#### 16.6 To Administer Securities

. The Trustee may purchase, exchange, or sell stocks, bonds, futures contracts, and other securities, and puts, calls, straddles, and other options. The Trustee may maintain brokerage accounts, including margin and commodity accounts, and in connection with such accounts, may borrow, pledge securities, make short sales, and sell on margin or otherwise. With respect to all securities held by in the trust estate, the Trustee may exercise the rights, powers, and privileges, and responsibilities of an owner, including the right to vote; to give general or limited proxies; to pay calls, assessments, and other sums; to participate in voting trusts, pooling arrangements, foreclosures, reorganizations, consolidations, mergers, and liquidations; to deposit securities with and transfer title to any protective or other committee; and to exchange, exercise, or sell stock subscription or conversion rights. The Trustee may also accept and retain as an investment any securities received through the exercise of any of the foregoing powers.

#### 16.7 To Conduct Banking Activities

. The Trustee may establish financial accounts of any kind, including checking, money market, and savings accounts, with any bank, savings and loan association, credit union, brokerage firm, or other financial institution (including such accounts in the banking department of a Trustee that is a corporation or partnership). The Trustee may deposit trust funds into such accounts, withdraw funds from such accounts, and transfer funds among such accounts. The Trustee may designate in writing the persons, whether or not Trustees, who may conduct such banking activities, and the financial institutions may rely, without liability, on such designations.

#### 16.8 To Purchase and Sell Trust Property

. The Trustee may buy, purchase, acquire, sell, convey, dispose of, exchange, or otherwise transfer any trust property, or any interest in property, for cash or on credit, at public or private sale, with or without notice, and for the prices and upon the terms as the Trustee determines. The Trustee may grant or acquire options and rights of first refusal involving the acquisition or disposition of any trust property. The Trustee may also subdivide or develop land; create restrictions, easements, and other servitudes, with or without consideration; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate real property to public use with or without consideration.

#### 16.9 To Manage Trust Property

. The Trustee may manage, control, divide, develop, improve, repair, exchange, partition, change the character of, or abandon trust property or any interest in trust property. The Trustee may enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust. The Trustee may amend or extend existing leases. The Trustee may also demolish or remove buildings or other improvements on trust property.

#### 16.10 To Borrow Money and Encumber Trust Property

. The Trustee may borrow money for any trust purpose from any person upon such terms and conditions as may be determined by the Trustee, and obligate the trust to make repayment from trust property. I or the Trustee may loan or advance funds to the trust, and the loans or advances together with the interest charged shall be treated as a first lien on the trust estate until repaid. The Trustee may also encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the Trustee, or to create restrictions, easements, or other servitudes on trust property.

#### 16.11 Providing Guarantees

. The Trustee may guarantee any indebtedness incurred by me, or by any entity owned directly or indirectly by me or by the trust, as I may direct.

**16.12 To Make Loans**

. The Trustee may loan or advance trust property of any kind (including money) for any trust purpose to any person on terms and conditions as determined by the Trustee, subject to limitations stated in this Trust Agreement. The Trustee may make loans out of trust property to the current beneficiary on terms and conditions that the Trustee determines are fair and reasonable under the circumstances, and guarantee loans to the current beneficiary by encumbrances on trust property.

**16.13 To Purchase Liability Insurance**

. The Trustee may purchase and pay the premiums on policies to insure the property of the trust estate against damage or loss and to insure the Trustee against liability with respect to third persons. The Trustee shall not be liable for any omission to purchase any type or amount of insurance. The premiums shall be a proper expense to be charged against the trust.

**16.14 To Purchase and Administer Life Insurance**

. The Trustee may purchase, own, and pay the premiums on life insurance on my life, and collect the proceeds of life insurance policies payable to the trust. The Trustee shall have the power to compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any policy payable to the trust and shall have authority to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's discretion to collect the proceeds of any policy. The Trustee's receipt to any insurer shall be a sufficient release of the insurer. The insurer shall not be under any duty to inquire concerning the Trustee's application of the policy proceeds.

**16.15 To Pay, Contest, and Settle Claims**

. The Trustee may pay or contest any claim; settle a claim by or against the trust by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the trust.

**16.16 To Litigate**

. In accordance with his or her duties to enforce claims and defend actions, the Trustee may prosecute or defend actions, claims, or proceedings for the protection of the trust estate and the Trustee in the performance of his or her duties.

**16.17 To Deal with Environmental Hazards**

. The Trustee may deal with matters involving the actual or threatened contamination of trust assets (whether real or personal) by hazardous substances, or involving compliance with environmental laws and regulations, including conducting environmental assessments, audits, and site monitoring, and taking remedial action (whether or not required by governmental authorities) to contain, clean up, or remove any environmental hazard.

**16.18 To Pay and Allocate Trust Expenses**

. The Trustee may pay taxes and other assessments imposed on the trust estate or trust income; reasonable compensation of the Trustee and of the employees and agents of the trust; and other expenses incurred in the collection, care, management, administration, and protection of the trust estate. In allocating the payment of expenses, the Trustee shall have the power to determine which expenses are chargeable to income or principal or partly to each. The Trustee is authorized, but not directed, to allocate and charge post-death expenses incurred in the administration of the trusts or sub-trusts to post-death income. In particular, all expenses of administration claimed as income tax deductions may be entirely allocated to and charged against post-death income. In making these determinations, the Trustee shall be guided by the principles set forth in the Uniform Principal and Income Act, but his or her final determination shall be binding.

**16.19 To Hire and Employ Persons**

. The Trustee may hire and employ persons (including individuals, corporations, partnerships, associations, and other companies), including accountants, attorneys, auditors, investment advisers, appraisers, or other agents or experts, even if they are associated or affiliated with a Trustee, to advise or assist the Trustee in the performance of his or her duties and obligations. The Trustee may grant

discretionary authority to such persons, but may not delegate either the administration of the trust or acts that are not delegable except as expressly provided in this Trust Agreement.

**16.20 To Maintain Custody**

The Trustee may keep any or all of the trust property at any place in California or elsewhere, within the United States or abroad, or with a depository or custodian at those places. If no bank or trust company is acting as sole or a Co-Trustee hereunder, the Trustee is authorized to appoint a bank or trust company as custodian for securities and any other trust assets. Any appointment shall terminate when a bank or trust company begins to serve as sole or as a Co-Trustee under this Trust Agreement. The custodian shall keep the deposited property; collect and receive the income and principal; and hold, invest, disburse, or otherwise dispose of the property or its proceeds (specifically including selling and purchasing securities and delivering securities sold and receiving securities purchased) upon the order of the Trustee. The custodian shall not be liable to any person interested in the trust for any action taken pursuant to the order or instructions of the Trustee or his or her authorized agents.

**16.21 To Use a Nominee**

The Trustee may hold securities or other property of the trust estate in the name of the Trustee, in the name of a nominee, or in street name accounts with brokers, or in the name of a custodian (or its nominees) selected by the Trustee, with or without disclosure of this Trust Agreement. The Trustee shall be responsible for the acts of such custodian, broker, or nominee affecting such property. The Trustee may also acquire and retain securities in unregistered form so that ownership passes by delivery.

**16.22 To Execute and Deliver Instruments**

The Trustee may execute and deliver all documents and instruments (including checks withdrawing or disbursing trust funds, stock powers, deeds and other conveyances, receipts, releases, contracts, and other agreements and transfer documents) which are needed to accomplish or facilitate the exercise of the powers vested in the Trustee, and to disclose the provisions of this Trust Agreement whenever in the Trustee's discretion disclosure is appropriate.

**16.23 Other Powers**

- (a) The Trustee may invest in obligations of the United States Government.
- (b) The Trustee may deposit trust funds at reasonable interest in accounts, whether or not the account is insured by a government agency or collateralized. The accounts may be maintained in the name of any one of the Trustees or in the name of a nominee.
- (c) The Trustee may make repairs, alterations, and improvements, and perform the other acts affecting trust property.
- (d) The Trustee may develop land.
- (e) The Trustee may enter into leases and other arrangements regarding minerals.
- (f) The Trustee may grant or take options.
- (g) The Trustee may exercise the powers of voting rights, payment of calls and assessments, stock subscriptions and conversions, and consent to change in form of business and participation in voting trusts.
- (h) The Trustee may hold securities and deposit securities in a securities depository.

**ARTICLE 17**

**SPECIAL DISCRETIONARY POWERS OF THE TRUSTEE**

The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

**17.1 To Deal with My Estate**

The Trustee may loan money to and borrow money from, sell property to and buy property from, exchange property with, and otherwise deal with, on reasonable, arm's-length terms (including adequate security, fair market prices, and market rates of interest), my estate or the Trustees of other trusts created by me, for the purpose of providing liquidity to the estate or trusts or for any other purpose. The Trustee shall not be obligated to make any such loans or purchases.

**17.2 To Make Payments and Distributions**

The Trustee shall have the discretion to make any payments or transfers of income or principal or other sums distributable to a beneficiary in any one or more of the following ways. The Trustee shall not be required to supervise or inquire into the application of any funds so paid or applied, and the receipt of the payee shall be full acquittance and discharge of the Trustee. The Trustee may withhold from distribution all or any part of any trust property, so long as the Trustee, exercising its discretion, determines that such property may be subject to conflicting claims, tax deficiencies, or liabilities (contingent or otherwise) properly incurred in the administration of the trust.

- (a) By payment directly to the beneficiary or by deposit in any bank or similar account designated by the beneficiary even if the beneficiary is a minor or under a legal disability, without the intervention of a custodian, guardian, or conservator. Payments may be made directly to minor beneficiaries who, in the Trustee's judgment, have attained sufficient age and discretion to manage their own funds.
- (b) By payment to the legally appointed guardian or conservator of the beneficiary's person or estate or by payment for the benefit of the beneficiary to any person with whom the beneficiary resides or to any person who has custody of the beneficiary, without the intervention of a guardian or conservator.
- (c) If the beneficiary entitled to distribution is a minor, by transferring the trust property to a custodian for the beneficiary under the California Uniform Transfers to Minors Act or a similar law of any other state in which the beneficiary or custodian resides. The custodian shall be named by the Trustee, and may, but need not be, the beneficiary's parent or legal guardian or person already serving as custodian for other property. The Trustee shall provide that the trust property shall be held under the custodianship until the minor reaches a certain age selected by the Trustee, but not past age 25 or the maximum age then allowed under the applicable Uniform Transfers to Minors Act. Alternatively, the Trustee may deposit the payment for the beneficiary in a savings or similar account in the minor's name payable to the minor when he or she reaches age 18, or the Trustee may distribute the share to the Trustee of any other trust maintained for the minor, provided no other person will become entitled to any interest in the funds, and all the accumulated income and principal of the funds will be distributed to the minor when he or she reaches age 18 or, upon the minor's death, to his or her estate.
- (d) By payment to any person or organization furnishing health care, education, maintenance, or support of the beneficiary.
- (e) By making expenditures directly for the benefit of the beneficiary or for the reasonable health, education, maintenance, and support of persons whom the



beneficiary has a legal obligation to support.

- (f) By purchasing an annuity contract or other property for the benefit of a beneficiary entitled to receive a distribution.

#### 17.3 To Sell Trust Assets

The Trustee may sell trust assets to obtain cash with which to pay my debts, income taxes, Estate taxes, expenses of administration, and other liabilities of the trust, or to satisfy pecuniary gifts provided for under this Trust Agreement. The Trustee's selection of assets to be sold for these purposes, and the tax effects of that selection, shall not be subject to question by any beneficiary. Property, assets, or funds otherwise excludable from my gross estate for federal estate tax purposes shall not be used to make any of these payments.

#### 17.4 To Postpone Distributions

Notwithstanding other provisions of this Trust Agreement, the Trustee shall have the power to postpone the distribution of any fractional portion or part of the principal of any trust estate or of an entire trust estate of any trust created under this Trust Agreement for any person other than me if the Trustee determines that there is a compelling reason to postpone the distribution. Compelling reasons shall include, but are not limited to, a serious disability, drug addiction or dependency, a pending divorce, a potential financial difficulty, pending or threatened litigation, a serious tax disadvantage, or similar substantial cause affecting the beneficiary who otherwise would be entitled to the distribution. In that event, the distribution from or termination of any trust may be postponed, and any postponement may be continued from time to time, up to and including the entire lifetime of the beneficiary. During the postponement, the retained portion or part of the trust estate shall be administered under the same terms as applied immediately prior to the postponement.

#### 17.5 To Determine Values and Allocate Property

The Trustee, in his or her discretion, shall determine the valuations of trust property for purposes of divisions, allocations, and distributions, and those valuations, reasonably determined, shall be final and binding on all beneficiaries and other persons having an interest in the trust. The Trustee may adjust any valuations retroactively if a different valuation is finally determined for federal estate tax purposes. The Trustee is authorized to effect the division, allocation, or distribution of trust property in divided or undivided interests, in cash or in kind or partly in both, pro rata or non-pro rata, as the Trustee shall determine, and to sell any property in connection with the division, allocation, or distribution if the Trustee deems that action necessary or appropriate. A distribution in kind may be made pro rata or non-pro rata, and a beneficiary may receive all or a portion of any asset as part of a distribution or allocation in kind. The Trustee may allocate or distribute property (or the right to receive property) which is subject to estate tax and federal income tax as income in respect of a decedent ("IRD") to any one or more of the trusts created under this Trust Agreement or the beneficiaries of any trust. The Trustee shall not be under any obligation to equalize any disproportionate allocation or distribution of items of IRD to any one or more trusts or beneficiaries. In making such divisions, allocations, and distributions, the Trustee is not required to consider the income taxes bases of such assets or the potential income tax consequences to the beneficiaries receiving the assets.

#### 17.6 To Make Allocations between Principal and Income

The Trustee shall determine what is principal or income of the trust estate, and what items shall be charged or credited to principal or income, or both. For example, Trustee fees, attorney's fees, accounting fees, and custodian fees shall be charged against income or principal, or both, in such proportions (or all against either income or principal) as the Trustee determines. In exercising such discretion, the Trustee may use the Uniform Principal and Income Act as a guide.

The Trustee shall not be required to establish any reserves. The Trustee may, however, establish reserves for depreciation, depletion, amortization, obsolescence, or repair and improvement of capital assets; for operating capital; or to amortize loans from income. If the Trustee determines to establish a reserve, he or she may fund the reserve by appropriate charges against the income of the trust estate, in

such amounts as the Trustee determines. If any security is purchased for a premium or at a discount, such premium or discount may be amortized in a reasonable manner. In addition, the Trustee may establish such reserves as he or she considers necessary for the payment of all taxes.

**17.7 To Retain or Purchase Unproductive or Under-productive Property**

The Trustee may retain, purchase, or otherwise acquire property that is unproductive or under-productive of current income. Because of the substantial potential for appreciation presented by unproductive assets such as unimproved real estate and growth stocks, I want the Trustee to have broad discretion to acquire those assets. The Trustee shall have a duty to make the trust property productive, but property may be made productive by appreciation in value as well as by the production of income. The Trustee may acquire and retain assets for appreciation as part of a portfolio that produces a reasonable level of current income.

**17.8 To Invest Trust Assets Together**

Each of the trusts and trust shares created under this Trust Agreement shall be a separate trust for trust, accounting, tax, and all other purposes. The Trustee shall keep an account for each trust and may, but shall not be required to, segregate trust assets. Rather, the Trustee may invest together the property of the separate trusts, allotting to each separate trust its proportionate undivided interest in the collective fund. The undivided interest always shall be equal to that trust's proportionate contribution to the mingled assets.

**17.9 To Consolidate Trusts**

If a trust is to be established or exists under this Trust Agreement for a beneficiary for whom another trust has been established under this Trust Agreement, the Trustee may allocate the property for the one trust to the other trust. Similarly, if I have established a trust for a beneficiary for whom a trust is to be established or exists under this Trust Agreement, and the dispositive provisions of that trust are substantially the same as the dispositive provisions of the trust to be established or existing under this Trust Agreement, the Trustee may transfer the property for the trust to be established or existing under this Trust Agreement to the Trustee of the other trust, to be held on the terms of that other trust. Further, where the dispositive provisions of each trust or trust share are substantially similar, the Trustee shall have the discretion to combine any trusts or trust shares into one trust because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for such a combination. A combination must not materially impair the interests of any beneficiaries. Trusts may be combined or consolidated whether created inter vivos or by will, by the same or different trust instruments, whether the Trustee is the same, and regardless of where the trusts were created or administered. When combining trusts, however, the Trustee shall only combine Exempt Trusts with other Exempt Trusts.

**17.10 To Divide Trusts**

With respect to all trusts established under this Trust Agreement, the Trustee shall have the discretionary power, exercisable without need of court approval, to divide the trust into two or more separate trusts for any purpose, including, without limitation, any of the following purposes.

- (a) To create one or more separate trusts that qualify as a qualified S corporation shareholder or as any other type of special trust provided for under the I.R.C.
- (b) To create one or more separate trusts with assets completely exempt from any application of any generation-skipping transfer tax. If the Trustee exercises the election provided by I.R.C. §2652(a)(3) as to any trust, the Trustee is authorized in his or her discretion to hold the property of the trust in two separate fractional share trusts, one in an amount equal to my GST exemption allocated to the trust and one in an amount equal to the balance of the property of the trust.
- (c) To create one or more separate trusts to accomplish other proper tax planning purposes.

- (d) To create a separate trust as to any share or portion of a trust disclaimed by a beneficiary, and to sever the disclaimed portion to be administered as a separate trust.
- (e) To create a separate trust for each current income beneficiary of a trust or trust share, and to divide any trust along family lines to be administered as separate trusts.
- (f) To create one or more separate trusts because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for a division.

The allocation of property between or among separate trusts created from a single trust or trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. The fair market values of the trust property at the date or dates of allocation shall be used in making the allocations. All trusts so established shall be designated and named by the Trustee and the property allocated to the divided trusts shall be held and administered under the same terms and provisions as would have applied to the undivided trust or trust share. With regard to planning for the S corporation election, the GST tax inclusion ratio, or other tax purposes, this power to divide trusts shall be exercised in a manner that complies with the I.R.C. and applicable Treasury regulations.

#### 17.11 To Terminate Trusts

I recognize that circumstances may change so that continuation of a trust provided for in this Trust Agreement may not be in the best interests of its current beneficiary, taking into account all relevant factors, including the costs of administration and tax consequences. Accordingly, after my death, the Trustee may for any reason terminate any trust created under this Trust Agreement and distribute any remaining trust estate, including principal and undistributed income, to any one or more of the current beneficiaries or the presumptive remainder beneficiaries of the trust in those proportions as the Trustee determines, in a manner that conforms as nearly as possible to my intention. In exercising his or her discretion to terminate a trust, the Trustee may, but shall have no obligation to, consider the interests of any person other than the current income beneficiary, including any remainder beneficiaries.

#### 17.12 To Permit Use of Personal Residence

The Trustee is authorized to permit me and, following my death, the current beneficiary of a trust to occupy rent-free any residence held in the trust and to use the furnishings in the residence. The Trustee shall pay from the trust all taxes, insurance premiums, assessments, costs of repairs, and maintenance for these residences. The Trustee may sell the residence and, in his or her discretion, acquire other residences from trust property. The Trustee may also permit the guardian of a minor current beneficiary of the trust, along with the guardian's family, to reside rent free with the minor beneficiary in the residence so long as the minor beneficiary is entitled to reside there.

#### 17.13 To Hold Personal Articles in Trust

If the Trustee of any trust receives furniture or furnishings, household items, clothing and other personal effects, or vehicles or accessories to vehicles, the Trustee may distribute that property to the current beneficiary or beneficiaries of the trust, at the times and in the manner the Trustee, in his or her discretion, determines to be proper. In addition, the Trustee may allow the current beneficiaries to use this property. Neither the Trustee nor any beneficiary who uses this property shall be liable to other beneficiaries for permitting the use of this property or for the loss or damage of this property.

#### 17.14 To Make Distributions from Qualified S Trusts

The Trustee is authorized to distribute to the beneficiary of any trust that has made a qualified S Corporation election under I.R.C. §1361 et seq. from income or principal, or both, funds sufficient to pay the federal and state income taxes imposed on the beneficiaries for the income or gain passing to the beneficiary from the S Corporation. No such distribution is required.

**ARTICLE 18  
DISINHERITANCE AND NO CONTEST**

**18.1 Disinheritance Clause**

I have intentionally omitted from this Trust Agreement any provision for any of my heirs, issue, relatives, or other persons who are not named, mentioned, designated, or described in this Trust Agreement. I have intentionally omitted any person who would be a pre-termitted heir under applicable law. Except as specifically provided in this Trust Agreement, I have intentionally omitted any provision for any of my children now alive or hereafter born or adopted, or for the issue of any of my children who may predecease me. After-born children shall have no rights in my trust estate other than those expressly given my children in my Will or this Trust Agreement. I also intentionally do not provide for any stepchildren or foster children that I now have or may later acquire. I generally and expressly disinherit each and every person whomsoever claiming to be and who may be determined to be my heirs at law, except as they are otherwise expressly provided for in this Trust Agreement.

**18.2 No Contest Clause**

I want the greatest deterrence against interference with my estate plan that the law allows. If any heir, issue, relative, legatee, devisee, beneficiary, or other interested person; or any person who is provided for under this Trust Agreement, my Will, any beneficiary designation, or any Will substitute; or any person who would be entitled to any of my property under the laws of succession or otherwise, alone or in conjunction with any other person or persons, directly or indirectly (1) institutes any legal proceeding that attacks or contests this Trust Agreement or my Will (or any amendment or codicil to this Trust Agreement or my Will), or seeks to impair, nullify, void, or invalidate such documents or any of their provisions; (2) asserts or pursues in any manner any claim, including any creditor's claim, against my estate or property other than as permitted in this Trust Agreement and my Will; (3) attacks or contests or seeks to change any beneficiary designation under an insurance policy, employee benefit plan, deferred compensation plan, retirement plan, annuity, or other Will substitute of mine; or (4) conspires with or voluntarily assists any person or persons attempting to do any of these things, I direct that that person (the "Contestant") and all persons conspiring with or assisting him or her shall take none of my property and nothing from my estate. All these persons are expressly disinherited. Any and all gifts or property that otherwise would have gone to these persons shall be forfeited and shall pass as if these persons had predeceased me without leaving living issue. The foregoing provisions shall apply to any persons who claim that I entered into an oral agreement providing for the disposition or transfer of property to those persons or others in any way inconsistent with the provisions of this Trust Agreement or my Will. The foregoing provisions shall also apply to any action or proceeding brought by any person, other than me (or my authorized agents) during my lifetime, to change the ownership title of my property already characterized in a document signed by me (excluding any action by my Executor or Trustee to confirm ownership of my property in the trust or my estate) and any challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document providing for or directing the disposition of my property.

The foregoing provisions shall not be violated by (1) the disclaimer of any right or interest in trust property; (2) the assertion or submission of any creditors' claims, supported by consideration, by any person to my Executor or the Trustee that are believed by such person, in good faith, to be owed by me to that person or the prosecution of an action based upon any such creditor's claims; (3) the participation in a mediation or settlement discussions or the filing of a petition for settlement or compromise affecting the terms of this Trust Agreement, my Will, or other documents governing the disposition of my estate or property, (4) the filing of any petition or the taking of other action by the Trustee or my Executor seeking judicial construction or interpretation of this Trust Agreement or my Will, or of any amendment or codicil to this Trust Agreement or my Will, or (5) the commencement of any proceeding for declaratory relief to determine whether any action by any person would constitute a contest under these provisions.

**18.3 Expenses of Contest**

. My Executor and the Trustee serving under this Trust Agreement are expressly authorized to defend against any and all of the actions described in Section 18.2, including any contest or attack of any nature upon this Trust Agreement, my Will, or any of their provisions. All expenses incurred in the defense of any of the actions or matters described in Section 18.2 shall be paid, as the Trustee determines, from either my probate estate or the trust estate as expenses of administration. If, however, a Contestant is or becomes entitled to receive any property or property interests included in my probate estate or the trust estate, whether under this Trust Agreement, my Will, or any other instrument, then all expenses incurred by the Trustee or my Executor in the defense of the actions undertaken by the Contestant shall be charged against and paid from the property or property interests that the Contestant otherwise would be entitled to receive, whether or not the Trustee or my Executor was successful in the defense of the Contestant's actions.

## ARTICLE 19 GENERAL TRUST PROVISIONS

The following provisions shall apply in all matters of construction and interpretation of this Trust Agreement.

### 19.1 Rules of Construction

. Unless the specific provision or term being construed or the context of the provision or term otherwise requires, and except as otherwise expressly provided in this Trust Agreement, the general provisions and rules of construction and interpretation set forth in applicable law and in this article and the definitions set forth in Article 20 (Definitions) shall govern the construction and interpretation of this Trust Agreement. Where the provisions and rules of construction or definitions set forth in applicable law and in this article and Article 20 conflict, the provisions and rules and definitions set forth in this article and Article 20 shall govern.

### 19.2 Governing Law

. This Trust Agreement has been executed in California, and its validity and construction, including the determination of all rights of the beneficiaries, shall be governed by the laws of California regardless of where the trusts are administered. Further, except as otherwise provided in this section, the trusts established under this Trust Agreement shall be administered in California regardless of where the Trustee or beneficiaries reside, and all matters and questions related to their administration shall be governed by the laws of California. Notwithstanding the foregoing, with the consent of a majority in percentage interest of all the beneficiaries of the trust then entitled to trust income (whether discretionary or not), the Trustee may transfer the situs of a trust established under this Trust Agreement to another state of the United States as he or she determines to be in the best interests of the trust beneficiaries. After any change of situs for a trust, the laws of the state of the new situs shall govern the administration of the transferred trust, but the validity of this Trust Agreement and its construction shall continue to be governed by the laws of California.

### 19.3 Successors in Interest

. This Trust Agreement shall be binding upon my heirs, executors, successors, and assigns, the Trustee and the successor Trustee, and all the beneficiaries and interested persons under this Trust Agreement.

### 19.4 Court Supervision

. Under California law the California courts have jurisdiction to consider petitions concerning each trust created by this Trust Agreement.

### 19.5 References to Statutes

. Whenever a reference is made to any portion of the Internal Revenue Code or to any other law, the statutory reference shall be construed to refer to the statutory section mentioned, related successor or substitute sections, and corresponding provisions of any subsequent law, including all amendments and additions.

### 19.6 Gender, Tense, and Numbers

. Unless the context clearly requires another construction, the masculine, feminine, and neuter genders

shall each include the others as appropriate; the present tense shall include the past and future tenses, and the future tense shall include the present tense; and the singular number shall include the plural, and the plural shall include the singular.

**19.7 Effect of Headings**

. Article, section, and paragraph numbers and headings, as well as titles, used in this Trust Agreement are used for convenience of reference only and shall not be considered in the construction or interpretation of this Trust Agreement. They are not intended to have any legal effect or to affect the scope, meaning, or intent of the provisions of this Trust Agreement.

**19.8 Severability**

. If any part, clause, or provision of this Trust Agreement, or the application of any part, clause, or provision of this Trust Agreement to any person or circumstances, is held to be void, invalid, unenforceable, or inoperative, this invalidity shall not affect any other parts, clauses, or provisions or applications of this Trust Agreement that can be given effect without the invalid provision or application. The remaining provisions of this Trust Agreement shall be effective and fully operative as though the part, clause, or provision had not been contained in this Trust Agreement. To this end, the provisions of this Trust Agreement are severable.

**ARTICLE 20  
DEFINITIONS**

The following definitions shall apply in all matters of construction and interpretation of this Trust Agreement.

**20.1 Administer**

. The term "administer" means to hold, manage, administer, allocate, and distribute.

**20.2 Agent**

. The term "agent" means (1) an individual's attorney-in-fact acting under a power of attorney, to the extent the power of attorney specifically authorizes the attorney-in-fact to take the proposed actions, or (2) an individual's court-appointed conservator or guardian, to the extent the conservator or guardian has obtained, from the court that appointed the agent as conservator or guardian, approval of its proposed actions at a hearing for which the Trustee received timely notice.

**20.3 Beneficiary**

. The terms "beneficiary" or "beneficiaries" mean a person to whom a donative transfer of property or a distribution from a trust is or could be made or that person's successor in interest, and shall include an heir, devisee, legatee, a person with any interest in a trust, and any person entitled to enforce a charitable trust.

**20.4 Charitable Organization**

. The term "charitable organization" means an organization or trust described in I.R.C. §170(c), §2055(a), and §2522(a) to which contributions or bequests are deductible for both federal income and estate tax purposes.

**20.5 Child, Parent, and Issue**

. The term "child" means any individual entitled to take as a child by intestate succession from the parent whose relationship is involved. References to "child" or "children" mean descendants in the first degree of the parent designated. A child of mine shall include a child born or adopted after the execution of my Will and this Trust Agreement. The term "parent" means any individual entitled to take as a parent by intestate succession from the child whose relation is involved. The terms "issue" or "descendants" of a person means all the person's lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of parent and child. The term "grandchild" includes only a child of a child of the person referred to.

**(a) Limitations as to Adopted Children**

. The terms "child," "children," "issue," and "descendant" shall include "adopted children." The term "adopted children" means all persons adopted by someone other than me only if the person was adopted

before reaching the age of eighteen (18), or lived in the home of the adopting parent before reaching the age of eighteen (18) if not actually adopted before that time. Anyone that I adopt shall be included as a child of mine regardless of the adopted person's age at the time of the adoption. An adopted child and the adopted child's issue shall be considered issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents.

**(b) Limitations as to Stepchildren and Foster Children**

The terms "child," "children," "issue," and "descendants" shall not include a foster child or a stepchild, even if a parent-child relationship existed between the foster parent and the foster child or between the stepparent and the stepchild.

**20.6 Distribute**

The term "distribute" means to pay directly to, or apply for the benefit of, the designated beneficiary, donee, or transferee or that person's agent.

**20.7 Education**

The term "education" shall include, but not be limited to, elementary, primary, secondary, college, graduate, postgraduate, and professional study or schooling, and vocational training, as well as instruction in drama, music, art, science, computers, and other subjects taught before or after a regular school day. Payments for education shall include tuition, books, supplies, tutors, and the beneficiary's reasonable related living and travel expenses, including clothing, room and board, and a reasonable living allowance.

**20.8 Estate Taxes**

The term "Estate taxes" means all estate, inheritance, transfer, succession, legacy, death, and other similar taxes, including any interest or penalties on these taxes, that may be imposed by reason of my death. "Estate taxes" excludes any income tax, generation-skipping transfer tax, excise tax, and other similar taxes.

**20.9 Executor**

The term "Executor" means an executor, administrator, administrator with the will annexed, special administrator, personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status, including all successors or persons holding the office temporarily. If, however, there is no Executor serving within the United States, the term means the Trustee of this trust for purposes of the property held in the trust estate, as provided in I.R.C. §2203. The terms "Executor" and "Executors" each include both the singular and the plural.

**20.10 Expenses of Estate Administration**

The term "expenses of estate administration" means those expenses incurred following my death by my estate or by the Trustee of the trust that are deductible (whether or not so deducted) for estate tax purposes pursuant to I.R.C. §2053. Such expenses shall include attorney's, appraiser's, and accountant's fees and all expenses incurred in determining the amount of any Estate tax.

**20.11 Federal Estate Tax Value**

The term "federal estate tax value" means the value of property included in my gross estate, valued either as of my date of death or the alternate valuation date, as finally determined for federal estate tax purposes. The federal estate tax value of any property acquired after my death shall be deemed to be its adjusted basis at the time of its acquisition as finally determined for federal income tax purposes. References to "adjusted gross estate" shall mean my gross estate as finally determined for federal estate tax purposes, but excluding property includible in my gross estate pursuant to I.R.C. §2044 and subtracting allowable deductions under I.R.C. §2053 and §2054.

**20.12 Generation-Skipping Transfer Tax**

The terms "generation-skipping transfer tax" or "GST tax" refer to the federal generation-skipping transfer tax imposed by Chapter 13 of the I.R.C. The term "GST exemption" refers to the exemption provided in I.R.C. §2631(a). "Unused GST exemption" means the amount of a person's GST exemption that is then remaining available for allocation to property or a trust as to which the person is the transferor. A "GST exempt trust" is a trust that has an inclusion ratio of zero for purposes of the GST tax.

A "GST nonexempt trust" is a trust that has an inclusion ratio of greater than zero for purposes of the GST tax. The terms "GST reverse QTIP election" or "reverse QTIP election" refer to the election provided for qualified terminable interest property under I.R.C. §2652(a)(3) to treat all of a QTIP trust as if, for purposes of the GST tax, the QTIP election had not been made.

#### 20.13 Gifts

. The term "gifts" mean devises, legacies, bequests, and all other types of donative transfers, inter vivos and testamentary.

#### 20.14 Guardian

. The term "guardian" means the court-appointed guardian of the person or estate of a minor person. The term "natural guardian" means the child's parents.

#### 20.15 Health

. The term "health" refers to all matters related to the health of the designated person, including medical, dental, hospital, and nursing expenses and expenses of home care and therapy incurred for the person's benefit.

#### 20.16 Heirs at Law

. The terms "heirs at law" or "heirs" mean the persons determined according to the California laws of intestate succession then in effect relating to separate property not acquired from a previously deceased spouse.

#### 20.17 Incapacity

. The term "incapacity" when used with respect to any person appointed to serve or serving as Trustee shall have the following meaning. A person shall be considered to be incapacitated, and unable to serve or continue to serve as a Trustee, if the person is under a legal disability or by reason of illness or mental or physical disability is or would be unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trust or trusts for which he or she serves as Trustee. The determination of a person's inability at any time shall be made by either (1) the person's primary physician, or (2) an order of a court appointing a conservator for that person.

#### 20.18 Interested Person

. The term "interested person" includes (1) an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against the trust estate; (2) any person having priority for appointment as a fiduciary under this Trust Agreement; and (3) a fiduciary representing an interested person.

#### 20.19 Internal Revenue Code

. The term "Internal Revenue Code" or "I.R.C." means the United States Internal Revenue Code of 1986, as amended from time to time, and corresponding provisions of any subsequent federal internal revenue law.

#### 20.20 Investment Counsel

. The term "investment counsel" means reputable, professional, independent, and disinterested investment counsel that is (1) currently managing at least five other accounts of equal or larger size, (2) compensated for services on a fee basis, but not on any percentage of the price of assets purchased or sold, and (3) not personally or financially interested in the sale or purchase of assets to or by the trust. The term "discretionary investment counsel" means investment counsel that has been given the authority to manage the investment of all or any portion of the trust estate with full discretion to act without seeking the approval of the Trustee as to individual transactions.

#### 20.21 May and Shall

. Wherever used in this Trust Agreement, the term "may" is discretionary and means the Executor or Trustee is authorized, at his or her option, to take or not take an action as he or she determines, in his or her sole and absolute discretion. The term "shall" is mandatory and means that the Executor or Trustee must take the designated action.

#### 20.22 Property

. The term "property" means anything that may be the subject of ownership and includes real and



personal property, tangible and intangible property, and any interest in such property.

- (a) The term "real property" (including any residence) includes the land (including all easements appurtenant to the land), all buildings and improvements on the land, all policies of insurance on the land and buildings and improvements on the land, and all oil, gas, mineral, and similar interests. A gift of real property, including any gift of a residence, shall be made subject to any and all liens, mortgages, deeds of trust, or other encumbrances on the property or secured by the property, whether or not recorded in the official county records, unless otherwise provided in this Trust Agreement.
- (b) The term "tangible personal property" includes clothing, jewelry, and other personal effects; household furniture, furnishings, equipment, and appliances (including rugs, linen, and other household decorations); china, silverware, glassware, crystal, and other household items of use and decoration; books, pictures, works of art (including paintings, sculptures, and works on paper), antiques, stamp and coin collections, wine, and other collectibles; automobiles, boats, other vehicles, and accessories to vehicles; and other items of domestic, household, or personal use. "Tangible personal property" shall not include ordinary currency, cash, or bullion or property primarily held for investment purposes, such as investment funds, or any property held for use in a trade or business.
- (c) The term "intangible property" includes rights in literary or musical properties, rights in works of art, contract rights, copyrights, publishing rights, and rights to a deceased personality's name, voice, signature, photograph, or likeness.

#### 20.23 Residence

The term "residence" means that dwelling or dwellings, as the case may be, in which I normally lived prior to my death. The term "residence" includes the fixtures, exterior planting, built-in appliances, and other items that in the ordinary course of the sale and purchase of the dwellings would remain in or be regarded as part of the dwellings.

#### 20.24 Residue

The term "residue" means the property remaining after the payment of all expenses of administration and debts and the distribution of all specific gifts and tangible personal property, and before the payment of Estate taxes. Estate taxes shall be handled separately, and shall be paid and charged as specifically provided in this Trust Agreement.

#### 20.25 Share

The term "share" means a beneficiary's proportional interest as determined by the provisions of this Trust Agreement in the principal and accumulated income of the trusts established under this Trust Agreement.

#### 20.26 Survivorship

The term "survive" or "survivorship" means to live for at least thirty (30) days past the designated event. No beneficiary shall be considered to have survived my death, the death of a prior beneficiary, or the event terminating any trust (and be entitled to any trust funds) unless the beneficiary survives for at least thirty (30) days after the event. Any beneficiary required to survive any other person, who fails to survive the other person by thirty (30) days, shall be deemed to have predeceased that person. If it cannot be established whether a beneficiary has survived by thirty (30) days, the beneficiary shall be deemed to have failed to survive for the required time. Except as otherwise expressly provided, any gift or bequest to any person made contingent upon the survivorship of that person shall lapse and shall not be made if the conditions of survivorship stated in this section or elsewhere in this Trust Agreement are not met. The lapsed gifts or bequests shall pass instead as part of the residue of the trust.

20.27 Trust Estate

The term "trust estate" means property transferred to the Trustee, in trust, to be administered under the terms of this Trust Agreement, including the property transferred to the Trustee following my death, and all the income from and appreciation in the property transferred to the Trustee. As a matter of convenience, all property at any time subject to this Trust Agreement is collectively referred to as the "trust estate."

20.28 Trustee

The terms "Trustee" or "Trustees" mean the persons who are serving from time to time as the Trustees or Co-Trustees under this Trust Agreement, including each initial, additional, or successor Trustee, whether or not appointed or confirmed by any court. Unless otherwise expressly provided, all references in this Trust Agreement to the "Trustees" shall include all Trustees. The terms "Trustee" and "Trustees" each include both the singular and the plural. The term "corporate Trustee" means a corporation, a bank, a trust company, or other entity that is authorized by law to serve as a professional Trustee. The term "Independent Trustee" means a Trustee who is not any of the following: (1) a beneficiary of the trust for which he or she is serving as Trustee, (2) a person who has transferred property to such trust or joined in any such transfer; or (3) a person who is a related or subordinate party as to any such beneficiary or grantor. In addition, if a General Power of Appointment held by a beneficiary of a trust may only be exercised with the consent of an Independent Trustee, the term "Independent Trustee" also means a person who does not have a substantial interest in the property subject to the power which interest is adverse to the exercise of the power in favor of the beneficiary, his or her estate, his or her creditors, or the creditors of his or her estate.

ARTICLE 21  
RELIANCE ON CERTIFIED COPIES

To the same effect as if it were the original, anyone may rely upon a copy of this Trust Agreement, or any part of this Trust Agreement, certified by a Grantor or Trustee or their legal counsel to be a true and correct copy of all or any part of this Trust Agreement, or of any document required to be filed with or maintained at the office of the Trustee. Anyone may rely upon any statements of fact concerning this trust certified by anyone who appears from an original document, or a certified copy, to be serving as a Trustee under this Trust Agreement.

I have executed this Trust Agreement on September 30<sup>th</sup>, 2010 in West Hollywood, California.

  
\_\_\_\_\_  
PAUL A. MORABITO  
Grantor and Trustee

WITNESS:

I attest that Paul Morabito signed this document in my presence, and that he appears to be of sound mind, total competence, and that he has affirmed to me that the contents of this document fully and absolutely represent his intentions and desires, and further that he attests that he is under no outside or third party influence in having written this document, determined its contents, or now signing it before me and \_\_\_\_\_, the Notary.

name: \_\_\_\_\_

NOTARY:

State of California

County of Los Angeles }

On September 30<sup>th</sup>, 2010, before me, \_\_\_\_\_, personally appeared Paul Morabito, who

CONFIDENTIAL

proved to me on the basis of satisfactory evidence to be the person whose name subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

SEE Attached

CONFIDENTIAL

**CONFIDENTIAL**

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**CONFIDENTIAL**

**RBSL 001905**

**2725**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles

On September 30, 2010 before me, M. NASON Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared PAUL MORABITO  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature M. Nason  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: FIFTH AMENDMENT AND RESTATEMENT OF THE TRUST

Document Date: N/A Number of Pages: 30

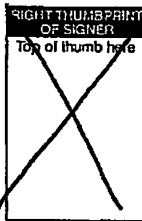
Signer(s) Other Than Named Above: N/A

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: PAUL MORABITO

- ☒ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: Self



Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

