

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 50

(Nos. 8658–8835)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Clerk's Trial Exhibit List (cont.)		
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
103	Superpumper Note in the amount of \$1,462,213.00 (dated 11/01/2010)	Vol. 25, 4192–4193
104	Superpumper Successor Note in the amount of \$492,937.30 (dated 02/01/2011)	Vol. 25, 4194–4195
105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197
106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<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

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

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

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

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

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

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

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

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Exhibits to Clerk's Trial Exhibit List (cont.)		
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
269	October 1, 2010 Check #2357 from Bayuk to P. Morabito for \$31,284 for 371 El Camino Del Mar Funding	Vol. 30, 5161–5162
270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
271	Bayuk Superpumper Contributions	Vol. 31, 5353–5358
272	May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase	Vol. 31, 5359–5363
276	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	Vol. 32, 5364–5400
277	Assessor's Map/Home 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2120
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Attorneys for Edward Bayuk

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

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

CASE NO.: CV13-02663

DEPT. NO.: 4

Plaintiffs,

vs.

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

Defendants. /

MOTION FOR NEW TRIAL AND/OR TO ALTER OR AMEND JUDGMENT

Defendant EDWARD BAYUK, individually and as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST ("Bayuk") moves for a new trial, pursuant to Rule 59(a) of the Nevada Rules of Civil Procedures, and/or to Alter or Amend the Judgment pursuant to Rules 52, 59, and 60, and seek reversal of the judgment entered against him. This motion is made and based upon pleadings and other papers on file, the evidence and argument presented at trial, the following Memorandum of Points and Authorities, the Declaration of Frank C. Gilmore, Esq., as well as the arguments and evidence presented at any hearing convened to consider this motion.

Bayuk further joins the Motion for New Trial filed by Defendants Salvatore Morabito,

Snowshoe Petroleum, Inc., and Superpumper, Inc., filed concurrently herewith and incorporates each of the arguments herein each of the arguments presented in the Memorandum of Points and Authorities.

DATED this 25th day of April, 2019.

Hartman & Hartman
510 W. Plumb Ln., Suite B
Reno, Nevada 89509
Tel: (775) 324-2800 / Fax: (775) 324-1818
/s/ Jeffrey Hartman
JEFFREY HARTMAN, ESQ.
Attorneys for Edward Bayuk, individually, and as
Trustee of the Edward William Bayuk Living Trust

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Edward Bayuk, individually, and as Trustee of the Edward William Bayuk Living Trust, did not obtain a fair trial due to legal error, compounded by abuse of discretion. Bayuk seeks a new trial, or alternatively, amendment or alteration of the Findings of Fact, Conclusions of Law and Judgment (“Judgment”). The specific errors that entitle Bayuk to a new trial and/or amended Judgment include:

A. The Court abused its discretion in denying Defendants’ request to continue the supplemental evidentiary hearing. After the Court granted Plaintiff’s Motion to Reopen Evidence, the Court abused its discretion in denying Defendants’ Motion to Continue the Hearing due to Edward Bayuk’s serious medical condition, thereby depriving Defendants of the opportunity for a fair trial. The abuse of discretion was extremely prejudicial in that it provided the basis for the Court’s conclusion that Paul Morabito was in control of Snowshoe after the merger.

B. The Court erred in concluding that Defendants owed the Herbst Parties a Duty to disclose the existence of the transfers. The Court committed legal error in concluding that Defendants’ owed a duty to notify the Herbst Parties of the transfers. Substantial evidence did not support the finding that the transfers were concealed pursuant to NRS 112.180(2).

C. Substantial Evidence Did Not Support the Court’s Findings that Darryl Noble Focused on the Cost Approach to the Valuation of the Panorama Property. Darryl Noble’s

1 appraisal of the Panorama Property did not rely on the cost approach; his conclusion was based on
2 the market approach and was supported by substantial evidence.

3 D. The Court Erred in rejecting Darryl Noble's appraised value of the Panorama
4 Property because the Judgment contained no findings that the appraised value "shocked the
5 conscience" or could not be supportable. In order for the Court to reject the Noble appraisal of the
6 Panorama Property, the Court must find that the valuation "shocks the conscience." The Court
7 made no such findings and therefore erred in rejecting the appraisal.

8 E. Substantial evidence did not support the Court's conclusion that Bayuk knowingly
9 offered false testimony. The Court's conclusion that Bayuk offered false testimony as to
10 Snowshoe's payment of attorneys' fees was not supported by any evidence establishing that Bayuk
11 had any knowledge that Snowshoe had paid any fees on Paul Morabito's behalf.

12 These errors deprived Bayuk of his right to a fair trial under NRCP 59(a). A new trial is
13 warranted to permit admission of evidence in conformity with Nevada law.

14 II. LAW

15 In actions tried without a jury, the district court is required to make specific findings of fact,
16 which must be sufficient to indicate the factual basis for the court's ultimate conclusions. See *Bing*
17 *Constr. v. Vasey-Scott Eng'r*, 100 Nev. 72,674 P.2d 1107-08 (1984); See also *Robison v. Robison*,
18 100 Nev. 668, 691 P.2d 451 (1984). A motion to amend the trial court's findings invests the Court
19 with discretion to review and amend its findings where they do not hold up to that standard. Such a
20 motion is appropriate to remedy plain error and avoid manifest injustice. See NRCP 52(b); see also
21 *Kroeger Properties & Dev., Inc. v. Silver State Title Co.*, 102 Nev. 112, 715 P.2d 1328 (1986).

22 Similarly, a motion to alter or amend a judgment pursuant to NRCP 52 is the appropriate
23 vehicle by which a party can seek review of the Court's findings and question the sufficiency of the
24 factual bases on which the Court's ultimate conclusion rests. See *Bing Constr.*, 100 Nev. at 73,674
25 P.2d at 1108; NRCP 52(a). Rule 52(b) specifically provides that:

26 When findings of fact are made in actions tried without a jury, the
27 sufficiency of the evidence supporting the findings may later be
28 questioned whether or not in the district court the party raising the
questions objected to the findings[or] moved to amend them.

1 The Nevada Supreme Court has held that "[a] motion to alter or amend a judgment
2 "provides an opportunity, within a severely limited time, to seek correction at the trial level of an
3 erroneous order or judgment, thereby initially avoiding the time and expense of appeal." *Chiara v.*
4 *Belaustegui*, 86 Nev. 856, 859,477 P.2d 857 (1970); NRCP 52(b). Rule 52(b) provides the basis for
5 this Court to re-examine its findings and conclusions. Careful review of the Trial Transcript and the
6 resulting Findings of Fact, Conclusions of Law, and Judgment ("Judgment") demonstrates here that
7 the Court committed legal error and abuse of discretion which substantially prejudiced the
8 Defendants and prevented them from obtaining a fair trial. Accordingly, Defendants move this
9 Court for a new trial.

10 NRCP 59(a)(1) provides for a new trial where:

11 (A) irregularity in the proceedings of the court, jury, master, or adverse
12 party or in any order of the court or master, or any abuse of discretion by
13 which either party was prevented from having a fair trial; and

14 (G) error in law occurring at the trial and objected to by the party making
the motion.

15 Pursuant to NRCP 59(a), "[o]n motion for a new trial in an action tried without a jury, the
16 court may open the judgment if one has been entered, take additional testimony, amend findings of
17 fact and conclusions of law or make new findings and conclusions, and direct the entry of a new
18 judgment."

19 **III. ARGUMENT**

20 **A. The Court Abused its Discretion in Denying Defendants' Request to Continue** 21 **the Supplemental Evidentiary Hearing.**

22 After the close of evidence, Plaintiff filed a Motion to Reopen Evidence on January 30,
23 2019. On February 7, 2019, after notice and arguments heard by the parties, the Court granted
24 Plaintiff's motion to reopened evidence under NRCP 59(a) and admitted additional trial exhibits
25 305, 306, 307, 308, and 309 on February 8, 2019. (Judgment, pp.1-2). On February 8, 2019, the
26 Court set the March 1, 2019, hearing date for Defendants' rebuttal to the newly admitted evidence.

27 On February 19, 2019, Defendants sought to continue the March 1, hearing date on the
28 basis that Bayuk had undergone serious surgery and was unable to travel. On February 26, 2019,

1 the Court denied the Motion to Continue, but provided Bayuk the option of appearing via video
2 feed.

3 Then, on February 26, 2019, after the Court denied the Motion to Continue, Plaintiff
4 provided Defendants with additional documents they indicated were intended to be used at the
5 March 1, 2019, hearing which had not been included in the Motion to Reopen Evidence. See
6 **EXHIBIT 1**. In response, Defendants' counsel objected to the attempt to offer the exhibits, two of
7 which were statements of Defendants' counsel unrelated to the instant case, and explained that
8 Defendants' counsel may be called as a witness in the hearing. (See Declaration of Frank C.
9 Gilmore, ¶8, attached hereto as **EXHIBIT 2**). After counsel argued over the issue of calling
10 Defendants' counsel as a witness in a trial in which he was the Defendants' advocate, Defendants'
11 counsel sought emergency relief from the Court. (**EXHIBIT 3**). The Court explained that it did
12 not have time to address the issue prior to the hearing, which was three days away. *Id.* Without
13 Bayuk's ability to be present in the courtroom, and without any guidance as to whether the
14 Defendants were facing the distinct possibility that Plaintiff would call Defendants' counsel in sur-
15 rebuttal to testify against Defendants, they reluctantly declined to participate in the March 1, 2019,
16 hearing, and notified Defendant's counsel in an email who then passed that email on to Plaintiff's
17 counsel. (**EXHIBIT 2**, Gilmore Decl., ¶10) (**EXHIBIT 4**).

18 The Court gave particular treatment in the Judgment to the exhibits that were admitted
19 pursuant to the Motion to Reopen Evidence, to which Defendants were not given a genuine and fair
20 opportunity to rebut. See Judgment, ¶¶67-70 (Exhibits 305, 306, 308, 309). The Court referred to
21 the exhibits for the proposition that (a) Bayuk gave knowingly false testimony regarding
22 Snowshoe's payment of legal bills (Judgment ¶69), and (b) that the bills evidenced Paul Morabito's
23 control of Snowshoe long after the sale and merger (Judgment ¶¶36, 70). Equity and fairness
24 required that Bayuk be given a chance to appear in Court, with conflict counsel, if need be, and
25 explain the context and appropriate inferences from the newly admitted evidence. The Court's
26 refusal to continue the hearing and to address the critical issue of Plaintiff's threat to call
27 Defendants' counsel as a witness against Defendants no more than 3 days before the trial prevented
28 Bayuk from obtaining a fair trial.

1 Defendants' Motion to Continue the hearing sought a continuance of only 38 days. In light
2 of the fact that this case was filed in 2013, and trial had been continued multiple times – including
3 once due to Plaintiff's counsel's unreadiness – a 38-day delay to accommodate Bayuk, and the
4 delicate issues surrounding the potential that his lawyer would be called in the trial to testify
5 against him, was not unreasonable. The Court abused its discretion in refusing to grant Defendants
6 the continuation, and Bayuk suffered extreme prejudice. A new trial or amendment of the
7 Judgment is warranted to remedy the injustice.

8 **B. The Court Committed Legal Error in Concluding that Defendants Owed the**
9 **Herbst Parties a Duty to Disclose the Existence of the Transfers.**

10 In the Judgment, the Court concluded that “the transfers were concealed” pursuant to NRS
11 112.180(2)(c) and (g). (Judgment, §II.D.2.c). This was legal error because the Court concluded
12 that Defendants owed duties to notify the Herbst Parties of the transfers. Further, substantial
13 evidence did not support the conclusion that the transfers were concealed.

14 **1. *NRS 112.180 Does Not Contain a Duty of the Debtor to Notify the Creditor***
15 ***of Asset Transfers.***

16 The Judgment reflects the Court's conclusion that the asset transfers were concealed, and
17 the Judgment reflects the Court's reliance on that finding to support the larger conclusion that the
18 “badges of fraud” supported a finding of actual fraud. (Judgment, §II.D.2.c). However, the
19 Court's conclusions were based solely on the fact that neither the Defendants nor the Debtor
20 “informed” the Herbst Parties of the transfers. (Judgment, ¶¶41-43). The Court's identification of
21 a duty to notify the creditor under NRS 112.180 has no support in the law. There is not a single
22 case that Defendants could locate where the badge of “concealment” was met when the debtor
23 failed to affirmatively notify the creditor of a transaction absent a clear duty that arose due to the
24 parties' prior existing relationship (through contract or fiduciary duties).

25 **2. *Substantial Evidence Did Not Support the Finding that the Transfers Were***
26 ***Concealed.***

27 Substantial evidence did not support the Court's conclusion that the transfers were
28 concealed or removed. To the contrary, each of the real property transfers that Plaintiff complains

1 were concealed were each transferred by way of recorded deed. (Trial Transcript, 10/30/2018, pp.
2 165-66). Both Washoe County and Orange County, California, provide for electronic searching of
3 real property records from any computer in the world with access to the internet. Recording a deed
4 is the last thing a transferor would do if he wished to conceal a transfer. Indeed, when it comes to
5 real property, recording a deed is, as a matter of law, notice to the world of the transfer. *Dick v.*
6 *Balch*, 33 U.S. 30, 32, 8 L. Ed. 856 (1834)(recording a deed “is considered in law, as notice to all
7 the world”).

8 Further, the failure to disclose the Compass Loan, the Superpumper Agreement, and the
9 Matrix Valuation cannot be properly classified as “concealing” the transfer. Although NRS
10 112.180 does not define the term “conceal,” the Nevada Supreme Court has defined the term in
11 other contexts, and in each of them, the term requires an affirmative act associated with the attempt
12 to prevent from disclosure, contrary to the manner in which the Court applied it at Plaintiff’s
13 urging. In *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 254–55, 277 P.3d 458, 464 (2012),
14 the Court explained that:

15 use of the term “concealed” carries with it a specific connotation. While
16 different legal authorities define concealment in slightly varying ways,
17 these definitions generally include two specific elements: (1) an
18 intentional act by one party that (2) prevents or hinders another party from
19 learning something. See, e.g., BLACK’S LAW DICTIONARY 327 (9th ed.
20 2009) (defining concealment as “an act by which one prevents or hinders ”
21 another party from realizing something (emphases added)); Restatement
22 (Second) of Contracts § 160 (1981) (defining concealment as “an
23 affirmative act intended or known to be likely to keep another from
24 learning of a fact” (emphases added)). Thus, by using the term
25 “concealed” in subsection 3, it is evident that the Legislature intended for
26 subsection 3’s tolling provision to apply only in situations when these two
27 elements are present. *State v. State, Employees Assoc.*, 102 Nev. 287, 289,
28 720 P.2d 697, 699 (1986)(“When a statute uses words which have a
definite and plain meaning, the words will retain that meaning unless it
clearly appears that such meaning was not so intended.”).

24 Plaintiff did not produce any evidence, and the Court did not make any findings, that
25 Defendants or the Debtor affirmatively acted in some way so as to prevent the Herbst Parties from
26 discovering the transfers. Thus, substantial evidence does not support the conclusion that the
27 transfers were concealed.

28 Lastly, it was established at trial that the paramount reason the Herbst Parties failed to

1 identify the recorded deed transfers and the other exchanges was because they sat on their rights as
2 creditors for more than a year after the judgment was entered in 2010. (Trial Transcript,
3 10/29/2018, pp.84-87)(Exhibit 278). Moreover, Plaintiff's witness Timothy Herbst admitted under
4 cross-examination that the Herbst Parties attempted no collection efforts that he was aware of
5 within one year of the entry of the judgment. *Id.* Herbst admitted that his lawyers were aware of
6 the transfers in early 2011 and did nothing to protect their rights against the alleged "removal and
7 concealment" of assets. *Id.* at p.87. Thus, not only did the Herbst come to learn of the transfers
8 only weeks after they occurred, they did nothing to assert their rights, did nothing to mitigate their
9 damages, and did not attempt to commence collection efforts or enforcement of their judgment. *Id.*

10 **C. The Court Erred by Failing to Apply the Proper Application of "Reasonably**
11 **Equivalent Value."; Substantial Evidence Did Not Support the Court's**
12 **Conclusion of Value of the Panorama Property;**

13 The Court rejected Defendants' valuation of the Panorama Property, and accepted the
14 appraisal of William Kimmel. (Judgment, ¶¶48-53). The Court committed legal error by failing to
15 support the valuation conclusion with findings that Defendants' valuation "shocked the
16 conscience." The Court then compounded that legal error by abusing its discretion by accepting
17 Kimmel's appraisal despite clear failings in his report and testimony.

18 **1. *In Applying "Reasonable Equivalency" Under NRS 112.180 and 112.220,***
19 ***the Court Must Conclude the Defendants' Valuation "Shocked The***
20 ***Conscience."***

21 Nevada law is clear that the test to determine whether a debtor received reasonably fair
22 consideration for a transfer is "whether the disparity between the true value of the property
23 transferred and the price paid is so great as to shock the conscience and strike the understanding at
24 once with the conviction that such transfer could never have been made in good faith." *Matusik v.*
25 *Large*, 85 Nev. 202, 208, 452 P.2d 457, 460 (1969) (emphasis added).

26 The Court never made such a finding. Rather, the Court compared the valuation evidence
27 presented by Defendants to the valuation evidence presented by Plaintiff and arbitrarily selected
28 Plaintiff's valuation proposal. This was legal error. As set forth in *Matusik*, the objective in
determining whether Paul Morabito obtained reasonably equivalent value is not whether the Court
ultimately believes that the creditor's value conclusion was higher than the transferors, but whether

1 the disparity between the values was so great that the inescapable conclusion was that the transfer
2 was not done in good faith. “This equivalence need not be precise. By its terms and application,
3 the concept of ‘reasonably equivalent value’ does not demand a precise dollar-for-dollar
4 exchange.” *In re Pringle*, 495 B.R. 447, 464 (B.A.P. 9th Cir. 2013)(applying bankruptcy law on
5 fraudulent transfers); see also *BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 559 (1994). (“[S]ome
6 disparity between the value of the collateral and the value of debt does not necessarily lead to a
7 finding of lack of reasonably equivalent value”).

8 The Court never made any findings that the value Bayuk exchanged for his interest in the
9 Panorama Property “shocked the conscience.” Accordingly, the Court’s conclusion that
10 Defendants’ value conclusion was not “reasonably equivalent value” was error.

11 **2. Substantial Evidence Did Not Support the Court’s Valuation Conclusion**
12 **of the Panorama Property.**

13 The Court found that Defendant’s appraiser Darryl Noble, “relied heavily on the cost
14 approach, focusing on the cost of the home and its significant improvements.” (Judgment, ¶48).
15 No evidence in the record supports this finding. Indeed, this finding is directly contradicted by the
16 only evidence on the subject, Exhibit 276. In his report, Noble performed a cost approach analysis,
17 but that analysis did not factor in his ultimate conclusion of value. Exhibit 276, p. 21. His report
18 concluded:

19 Based on this market value study, it is indicated to the appraisers
20 that the subject property containing a 6,331± square foot luxury single
21 family residence, as of the date of inspection, September 21, 2010, has a:
22 "As-Is" Market Value Indicated to Subject Property as of September 21,
23 2010 is: \$4,300,000.

24 *Id.* His sales comparison approach resulted in an appraisal of \$4.3 million, which was identical to
25 his ultimate conclusion of value. Accordingly, no substantial evidence supported the Court’s
26 findings that Noble’s cost-approach was flawed (Judgment, ¶48, 50).

27 **3. The Court Abused its Discretion By Accepting Kimmel’s Appraisal Which**
28 **Relied on Irrelevant and Inappropriate Post-Date-of-Valuation-Factors.**

Kimmel’s appraisal of the Panorama Property occurred more than five years after the
transfer of Bayuk’s interest in the property to Paul Morabito. Kimmel’s appraisal was therefore

1 retroactive more than five years to the date of valuation, which was October 1, 2010. The Court
2 accepted each of Kimmel's conclusions of value and opinions, despite the fact that Kimmel's report
3 violated well-established standards applicable to retro-active appraisals. Further, the Court abused
4 its discretion in considering the sales price of the Panorama Property that occurred more than two-
5 years after the date of valuation, where it was established that the sale was compulsory and not
6 voluntary. (Judgment, ¶51, p. 22) (the Court's finding is supported by "the subsequent sale of the
7 Panorama Property for \$2,584,000 to a third-party purchaser in December 2012.")

8 Under cross-examination, Kimmel admitted that he could not identify any "authorities,
9 guidelines, opinions, appendices" which guided the standards of his retroactive appraisal. (Trial
10 Transcript, 11/2/18, p.37-38). Kimmel admitted he had not read and was not familiar with the
11 treatise on residential real estate appraising by the authors Fishman, Pratt and Morrison. *Id.* at 38.
12 However, Kimmel agreed with the proposition posited by Fishman, Pratt and Morrison that "Since
13 valuation is as of a particular point in time, practitioners are required to reach their conclusion
14 based on information that is known or knowable (or reasonably foreseeable) at the valuation date."
15 *Id.* Kimmel further agreed that "Subsequent events that were foreseeable at the valuation date may
16 be considered in valuation. However, if an event was completely unforeseen at the time of
17 valuation, it is generally not considered." *Id.* at 40.

18 Despite his agreement with the general principles of retroactive appraisals, Kimmel then
19 admitted that he violated nearly every one of them in the methods he utilized to achieve his opinion
20 of value:

- 21 1. Kimmel considered the condition of the Property as described to him more
22 than 2 years after the date of valuation. *Id.* at 40.

23 "Q: And your opinion is informed by a conversation that you had
24 with Skip Avansino in 2015 or '16, right?

25 A: Correct"

- 26 2. Kimmel considered the sales data of real property events that occurred after
27 the date of valuation, that Bayuk would not have had when he accepted the
28 value of his interest in the Property. *Id.*

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“Q: In fact, in your appraisal, you relied on post valuation information, didn't you?

A. Two of my sales were after the date of value, correct.”

3. Kimmel admitted that he never viewed the property in 2010, and he was never given access to the Property in 2012 when he did his appraisal. *Id.* at p. 13. Kimmel had no ability to determine the relative quality of the Property, so he simply determined that the comparable properties were more favorable to the Panorama Property because according to his third-party witness, “This indicates that the home was not in good condition at the time it was purchased.” Exhibit 53, p. 57.

The Court abused its discretion in adopting the opinions and conclusions of Kimmel because Kimmel’s report and opinions were not in keeping with the standards applicable to retroactive appraisals, relied heavily on biased and irrelevant opinions of a third-party as to the condition of the property more than 4 years after the valuation date, and utilized sales data that was not available at the date of valuation.

E. Substantial Evidence Did Not Support the Court’s Conclusion that Bayuk Offered Knowingly False Testimony.

This Court concluded that Bayuk offered false testimony related to the alleged payment of Paul Morabito’s attorneys’ fees by Snowshoe Petroleum. (Judgment, ¶69, p. 27). Substantial evidence did not support this finding. At trial, Bayuk testified:

Q: So you have Superpumper, pardon me, Snowshoe Petroleum. You don’t know whether they have paid Paul Morabito’s attorney's fees?

A: No, they have not.

(Trial Transcript. 10/29/18, p. 189)

Q: Now subsequent to Paul Morabito selling his interest to you and Sam and really Snowshoe Petroleum, he had input on Snowshoe's financials for the time period subsequent to the sale, correct?

A: You are referring to Paul?

Q: Paul?

1 A: Input on what?

2 Q: On the Snowshoe financials?

3 A: I said earlier Sam was in Arizona running the business, and we had
4 accounting people there doing the accounting stuff. Paul was looking for
5 opportunities for himself, and if he thought a big opportunity was coming
6 along he would say, hey, would you be interested in participating? But
7 Sam was very focused on running the business in Arizona, Superpumper,
8 and so Paul would give his opinions and his advice. Like I said earlier, the
e-mail on 137 between Dennis and Paul I know nothing about it. I don't
even know – It makes no sense, the e-mail. So Paul, you know, he did
things. He wrote things. And sometimes it made no sense, but did he -- did
he say he was the owner of Snowshoe Petroleum or the owner of
Superpumper? No. Did he get money out of Snowshoe Petroleum or
Superpumper? No. So did he look for all kinds of opportunities? Yes.

9 (*Id.*, p. 206).

10 It was never established that Bayuk was ever aware of any fee payments made to Paul
11 Morabito's law firm by Snowshoe. Without some showing that Bayuk was aware of checks
12 Snowshoe was writing, there is no evidence that Bayuk knowingly gave false testimony. Indeed,
13 his testimony established that Sam was running the company and that the company had accounting
14 people that handled the money. It was never sufficiently established that Edward was ever aware
15 of any fee payments by Snowshoe, and concluding that Bayuk gave knowingly false testimony was
16 not supported by the evidence.

17 Second, Plaintiff was aware, prior to the Judgment, that Snowshoe did not send checks to
18 Paul Morabito's lawyers with the intention of paying Paul's personal legal bills. As established in
19 the February 19, 2019 attachment to the email sent by Plaintiff's counsel in anticipation of the
20 March 1, 2019, supplemental hearing (**EXHIBIT 1**), a full explanation had been given clarifying
21 Plaintiff's confusion as to the Robison Sharp Sullivan and Brust ("Robison") payment ledger that
22 Plaintiff had obtained (Exhibit 308).

23 Bayuk's counsel, David Shemano, explained to Plaintiff that:

24 1. Snowshoe Petroleum is a RSSB client.

25 2. At some point in 2015, Snowshoe and Robison entered in an agreement in
26 which Snowshoe paid a fixed monthly amount (plus expenses) to Robison in
27 exchange for services that benefitted Snowshoe. Snowshoe believed that
28 certain work Robison was performing in its capacity as counsel for

1 Morabito, such as the investigation and prosecution of fraud on the court
2 claims against the Herbsts, would benefit Snowshoe and, therefore, wanted
3 to make sure that work beneficial to Snowshoe continued.

- 4 3. While Snowshoe understands that Robison internally allocated a portion of
5 the monthly payments to Morabito's account, Snowshoe never sent any
6 check to Robison for the benefit of Morabito – all checks were sent to
7 benefit Snowshoe. Any allocation of a check by Robison to Morabito's
8 account is an internal Robison matter. Snowshoe takes no current position on
9 whether Robison's internal allocation was proper or not, although it is the
10 position of Snowshoe that all payments were made for the benefit of
11 Snowshoe and not Morabito.

12 (See EXHIBIT 1).

13
14 E. **The Court Abused Its Discretion In Admitting Hearsay Exhibits Which The**
15 **Court Relied On To Conclude That The Baruk Properties Exchange Was A**
Sham Sale.

16 The Court relied on Exhibit 145 to support the conclusion that the transfer of the Baruk
17 properties was a sham. (Judgment ¶76). Exhibit 145 was a hearsay email with no foundation that
18 should not have been admitted. Exhibit 145 was an email from Dennis Vacco to Edward Bayuk.
19 Plaintiff offered the email first as a “statement against interest from his counsel to him.” (Trial
20 Transcript, 10/30/2018, p. 46). The Court overruled the objection and admitted the document. *Id.*
21 at p.47. The Court appeared to admit the Exhibit on three grounds, first that Defendants’
22 foundation argument was wrong, second that the statement – made by Mr. Vacco -- was against
23 Bayuk’s interest and therefore an exception to hearsay (*Id.*), and third that the exhibit should be
24 admitted as an admission of a party opponent. *Id.* at p.48. Each ruling was erroneous.

25 First, the foundation objection should have been sustained. A federal court confronting
26 almost this identical issue excluded hearsay statements like the ones in question here. *See Adams v.*
27 *United States*, No. CIV. 03-0049-E-BLW, 2009 WL 2207690 (D. Idaho July 15, 2009). In *Adams*,
28 the witness testified in his deposition that he had reviewed “inspection reports” prior to giving his

1 deposition. *Id.* at *1. However, those inspection reports, like the documents in this case, were
2 neither identified nor marked as an exhibit during the deposition. At trial, the party who took the
3 deposition tried to introduce the four inspection reports through the deponent who, like Mr.
4 Morabito and Mr. Vacco, was unavailable. *Id.* The court first determined that there was no
5 foundation to admit the documents because the exhibits were not shown to the deponent or
6 opposing counsel during the deposition, even though the party claimed the deponent authored the
7 reports. *Id.* Next, the court explained that even if the exhibits could overcome the issues
8 concerning foundation, the exhibits may be barred as hearsay. *Id.* Finally, the court determined
9 that “another party’s inability to cross-examine a witness about a particular document is not only
10 potentially unfair, but also may very well contribute to jury confusion under FRE 403¹ without the
11 benefit of a complete exchange of contextual questions, independent of the exhibits’ separate
12 admission.” *Id.*

13 Second, the Court erroneously applied the “statement against interest” exception to hearsay
14 under NRS 51.345. The exception applies only where “A statement which at the time of its
15 making: (a) Was so far contrary to the pecuniary or proprietary **interest of the declarant.**” NRS
16 51.345 (emphasis added). In other words, a statement can only be against interest when the
17 statement was made by the declarant. In Exhibit 144, the declarant was Dennis Vacco, not Edward
18 Bayuk. The Court admitted the Exhibit as a statement against Bayuk’s interest. This was clear
19 error. Moreover, even if the email was against Vacco and Bayuk’s interest (which it is not), the
20 statute provides that, “[t]his section does not make admissible a statement or confession offered
21 against the accused made by a codefendant or other person implicating both himself or herself and
22 the accused.” NRS 51.345(2).

23 Third, the Court erroneously concluded that a statement by Vacco – as Bayuk’s attorney –
24 was not hearsay as an admission of a party opponent, because Vacco is Bayuk’s agent:

25 MR. GILMORE: Might I have a ruling on the hearsay objection?

26 THE COURT: Overruled.

27
28 ¹FRE 403 is the federal version of NRS 48.035, which provides that “[a]lthough relevant, evidence
is not admissible if its probative value is substantially outweighed by the danger of unfair
prejudice, of confusion of the issues or of misleading the jury.”

1 MR. GILMORE: Okay. It is a statement made by a party opponent that is adverse to
2 the position they are taking in this case. I am confused at the ruling.
3 This is a statement by Mr. Vacco who is not a party.
4 MS. TURNER: He's an agent.
5 THE COURT: He's an agent.
6 MR. GILMORE: He's not speaking to a third party. He's speaking to Mr. Bayuk.
7 THE COURT: Doesn't that make it even more important for Mr. Bayuk to say hold
8 on in a return e-mail perhaps, that you probably might have where he
9 told Mr. Vacco no, this is wrong?
10 MR. GILMORE: All I am arguing is the APO objection.
11 THE COURT: I ruled on it. You're wrong. It is admitted.

12 (Trial Transcript, 10/30/2018, p. 48).

13 This ruling is clearly erroneous for several reasons. First, it is clear that the only
14 participants to the communication were Vacco (as the declarant), his assistant Stefanie Canastro,
15 and Vacco's clients, Morabito and Bayuk. NRS 51.035 provides the definition (and exclusions) of
16 hearsay. A statement is not hearsay if, "[t]he statement is offered against a party and is: (a) The
17 party's own statement, in either the party's individual or a representative capacity; (b) A statement
18 of which the party has manifested adoption or belief in its truth; (c) A statement by a person
19 authorized by the party to make a statement concerning the subject; (d) A statement by the party's
20 agent or servant concerning a matter within the scope of the party's agency or employment, made
21 before the termination of the relationship; or (e) A statement by a coconspirator of a party during
22 the course and in furtherance of the conspiracy." None of these apply.

23 There was no evidence that Bayuk "manifested adoption" of Vacco's statement. The
24 burden to establish manifestation is on the party that offers the evidence. *Bourjaily v. United*
25 *States*, 483 U.S. 171, 171 (1987)(interpreting FRE 801(d)). Plaintiff supplied no argument or
26 evidence the Bayuk adopted Vacco's statement. Just because Vacco was Bayuk's counsel does not
27 necessarily follow that everything Vacco says qualifies as an adoptive statement under NRS
28 51.035(2)(b) or (c). Indeed, courts applying this rule have found just the opposite. "Although an

1 attorney does not have authority to make an out-of-court admission for his client in all instances, he
2 does have authority to make admissions which are directly related to the management of litigation.”
3 *Hanson v. Waller*, 888 F.2d 806, 814 (11th Cir. 1989). These admissions are, by their nature, made
4 to third persons on the client’s behalf, and not admissions made to the client by the attorney.

5 Nor does it make sense that Bayuk would adopt Vacco’s statement, *because Vacco was*
6 *speaking directly to Bayuk*. There are no Nevada cases interpreting the breadth of the statute to
7 include statements made directly to the principal by the agent, but California’s version of the same
8 provision of the evidence code requires that “the statement was made by a person authorized by the
9 party to make a statement or statements *for him* concerning the subject matter of the statement.”
10 Cal. Evid. Code § 1222 (West). If a statement is to be made *for* the principal, it cannot be a
11 statement made *to* him.

12 Further, the implication from the Court’s evidentiary ruling that Bayuk was under some
13 duty to respond to Vacco and establish the fact that he did not “adopt” his counsel’s statements to
14 him has no support in Nevada jurisprudence. There are myriad reasons why a client may not wish
15 to expressly disclaim a statement by his lawyer, the first of which is the common sense approach
16 that when only the lawyer and the client are speaking, there is no reason why the client would be
17 inclined to manifest a position on the statement either way. A client speaking directly with his
18 lawyer could have no basis to reject a position – or manifest adoption of it – when there is no
19 danger that a third party might accept the admission on behalf of the client. “Silence, in the
20 absence of a duty to speak, is not an admission.” *Jackson v. United States*, 250 F.2d 897, 900 (5th
21 Cir. 1958) (applying FRE 801).

22 **IV. CONCLUSION**

23 For the reasons set forth above, the Defendants respectfully request this Court grant the
24 Motion for New Trial, or, in the alternative, enter its amended Judgment conforming to the
25 substantial evidence.

26 **AFFIRMATION** 27 **Pursuant to NRS 239B.030**

28 The undersigned does hereby affirm that this document does not contain the social security

1 number of any person.

2 DATED this 25th day of April, 2019.

3 Hartman & Hartman
4 510 W. Plumb Ln., Suite B
5 Reno, Nevada 89509
6 Tel: (775) 324-2800 / Fax: (775) 324-1818
7 /s/ Jeffrey Hartman
8 JEFFREY HARTMAN, ESQ.
9 Attorneys for Edward Bayuk, individually, and as
10 Trustee of the Edward William Bayuk Living Trust
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HARTMAN & HARTMAN, and
3 that on this date I caused to be served a true copy of the **Motion for New Trial** all parties to this
4 action by the method(s) indicated below:

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

7
8 X by using the Court's CM/ECF Electronic Notification System addressed to:

9 Gerald Gordon, Esq.
Email: ggordon@Gtg.legal
10 Mark M. Weisenmiller, Esq.
Email: mweisenmiller@Gtg.legal
11 Teresa M. Pilatowicz, Esq.
Email: tpilatowicz@Gtg.legal
12 Erika Pike Turner, Esq.
Email: eturner@gtg.legal

13 Frank C. Gilmore, Esq.
14 fgilmore@rssblaw.com

15 DATED: This 26th day of April, 2019.

16
17 /s/ Angie Gerbig
18 ANGIE GERBIG

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LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>
1	Email dated February 27, 2019, with attachments	91
2	Declaration of Frank C. Gilmore	2
3	February 27, 2019 email from Marcy Trabert	2
4	February 27, 2019 email	1

EXHIBIT 1

EXHIBIT 1

From: Frank Gilmore
Sent: Wednesday, February 27, 2019 10:16 AM
To: 'Erika Turner' <eturner@Gtg.legal>; Gabby Hamm <ghamm@Gtg.legal>
Cc: Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Mary Carroll Davis <MDavis@rssblaw.com>
Subject: RE: March 1 - exhibits

Erika,

I will not be testifying in a trial in which I am litigation counsel. The Rules of Professional Conduct expressly prohibit it (Rule 3.7). If you persist in your intention to call me as a witness, I will seek an emergency conference with the Court to obtain instruction from the court and continuation of the hearing so my clients can obtain alternate trial counsel. Please make your intentions known so I can commence the emergency call to the Court.

Frank

From: Erika Turner <eturner@Gtg.legal>
Sent: Wednesday, February 27, 2019 10:09 AM
To: Frank Gilmore <FGilmore@rssblaw.com>; Gabby Hamm <ghamm@Gtg.legal>
Cc: Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Mary Carroll Davis <MDavis@rssblaw.com>
Subject: RE: March 1 - exhibits

Frank,

The purpose of these additional documents is to refresh recollection as needed or to follow up on testimony in sur-rebuttal. We don't know what these witnesses will be saying in their rebuttal. Also, depending on your clients' testimony, you very well may be a necessary sur-rebuttal witness. We reserve all rights.

Erika Pike Turner

Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

From: Frank Gilmore <FGilmore@rssblaw.com>
Sent: Wednesday, February 27, 2019 10:06 AM

To: Gabby Hamm <gghamm@Gtg.legal>

Cc: Erika Turner <eturner@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Mary Carroll Davis <MDavis@rssblaw.com>

Subject: RE: March 1 - exhibits

Gabby,

Defendants object to the attempt to offer any additional exhibits which were not included in the Motion to Reopen Evidence. Moreover, attempting to offer my declaration and letter makes me a witness. Those letters were sent on behalf of my law firm, and not on behalf of the Defendants. They are irrelevant to this case. I cannot be simultaneously a witness and an advocate in the same case, and since I will not be testifying at the hearing, the statements are hearsay.

Further, the exhibits related to the subpoena and communications associated therewith are irrelevant and outside the scope of the order granting the motion to reopen evidence. Defendants object to their offering.

Frank

From: Gabby Hamm <gghamm@Gtg.legal>

Sent: Tuesday, February 26, 2019 6:15 PM

To: Frank Gilmore <FGilmore@rssblaw.com>

Cc: Erika Turner <eturner@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>

Subject: March 1 - exhibits

Frank,

Please provide the attached documents to your clients in advance of the March 1 trial date.

The documents are comprised of the five exhibits admitted at the February 8th hearing, along with the following additional documents:

- 10/29/2018 trial transcript at p. 189
- Trial exhibit 87 (in evidence)
- Trial exhibit 131 (in evidence)
- 2/19/2019 email from David Shemano with attachment
- 2/26/2019 email from David Shemano with attachments

Gabrielle A. Hamm

Attorney

Phone: 725 777 3000

Direct: 725 244 4596

Fax: 725 777 3112

GARMAN | TURNER | GORDON
650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

Visit us online at www.gtg.legal

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

In re:

PAUL A. MORABITO,

Debtor.

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

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

Plaintiffs,

v.

PAUL A. MORABITO,

Defendant.

Adv. Pro. No. 15-05019-GWZ

SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

TO: ROBISON SHARP SULLIVAN BRUST
c/o FRANK C. GILMORE, ESQ.
71 WASHINGTON STREET
RENO, NEVADA 89503
LAS VEGAS, NEVADA 89147

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above-captioned case.

PLACE	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the documents requested on **Exhibit A** hereto.

PLACE	DATE AND TIME
Woodburn & Wedge ¹ Attn: John F. Murtha, Esq. 6100 Neil Road, Ste. 500 Reno, Nevada 89511-1149	September 03, 2018 3:00 p.m.

¹ Responsive documents may be produced *via* email to ggordon@gtg.legal and mweisenmiller@gtg.legal.

Any subpoenaed organization not a party to this proceeding shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Fed. R. Civ. P. 30(b)(6) made applicable to this proceeding by Rules 7030 and 7069, Fed. R. Bankr. P. See Rules 1018 and 9014, FED. R. BANKR. P.

ISSUING OFFICER SIGNATURE AND TITLE		DATE
/s/ <u>Gerald M. Gordon</u> Counsel for JH Inc., Jerry Herbst, and Berry-Hinckley Industries		August 27, 2018
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER		
GERALD M. GORDON, ESQ. GARMAN TURNER GORDON LLP 650 White Drive, Suite 100 Las Vegas, Nevada 89119 Telephone: (725) 777-3000 Email: ggordon@gtg.legal		
PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
(Date)

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction--which may include lost earnings and reasonable attorney's fees--on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises--or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person--except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

Federal Rules of Civil Procedure Rule 45.

EXHIBIT A

DEFINITIONS

1. “Affiliate” shall have the meaning set forth in 11 U.S.C. § 101(2).
2. “Asset” includes, but is not limited to, any:
 - a. Cash or cash equivalent;
 - b. Personal property, including but not limited to art, furniture, video, music and literary copyrighted work, clothing valued at over \$100.00 per item, internet domain name, jewelry, and/ or car, boat, plane or other vehicle;
 - c. Intellectual property (including but not limited to all patents, registered or unregistered copyrights, trademarks, trade secrets, licenses or any rights thereto);
 - d. Real property;
 - e. Fixtures;
 - f. Mineral, gas and oil leases or related rights;
 - g. Purchase options, leases, any other right relating to land or other real property,
 - h. Right to payment or distribution (primary or contingent) including but not limited to royalties, beneficiary rights, liens, mortgages, promissory notes and other chattel paper,
 - i. Account;
 - j. Insurance policy;
 - k. Stock, bond, and/or derivative;
 - l. Note, check, order to pay or any other negotiable instrument;
 - m. Receivable;
 - n. Pre-paid expenses; or
 - o. Any other current or prospective tangible or intangible property.

3. “Communication” means any oral or written statement transmitted from one Person to another by any means, including, but not limited to, any contract, agreement, document, or understanding in proposed, draft, or final form related to any such oral or written statement, and including without limitation all methods of communication, including electronic mail.

4. “Date” means the exact day, month, and year, if known, or if not known, your best approximation thereof. Exact dates shall be given in all answers except where it is explicitly indicated that an approximate date may be given.

5. “Document” is intended to be as broad as it is used in Federal Rules of Civil Procedure (“FRCP”) 26 and 34, and includes, without limitation:

a. the original (or an identical duplicate if the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any kind of physical media;²

b. any printed, typewritten, handwritten, electronic, or otherwise recorded matter of whatever character of communications, letters, correspondence, electronic mail, memoranda, notes, Post-Its, media releases or articles, photographs, tape or sound recordings, contracts, agreements, telephone records, diaries, desk calendars, appointment calendar, group scheduler calendars, statements, reports, journal, minutes, working paper, financial report, accounting report, work papers, facsimile, facsimile transmission, drafts, logs, chart, graph, index, directory, scheduling data, databases, spreadsheets, presentations, word processed documents, bulletins, design schedules, supplemental instructions, time cards, drawings, shop drawings, progress payments, progress

² Physical media includes, but is not limited to, paper media, photographic media (including pictures, films, slides and microfilm), phonographic media, magnetic media (including, but not limited to hard drives, floppy disks, compact disks, and magnetic tapes of any kind), computer memory, optical media, magneto-optical media, and other physical media on which notations or marking of any kind can be affixed.

schedules, estimates, equipment time cards, design calculations, design meeting minutes, coordination meeting minutes, and material similar to any of the foregoing, however denominated and to whomever addressed, computer directory, computer disk, computer tape, or any written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced. Documents also include the file, folder tabs, and labels appended to or containing any documents.

c. For the avoidance of doubt, electronically-stored information with all metadata intact shall be produced whenever available in the format described below.

6. “Insider” shall have the meaning set forth in 11 U.S.C. § 101(31).

7. “Judgment Debtor” or “Morabito” means Paul A. Morabito as the Judgment Debtor in Adv. Pro. No. 15-13-51237-GWZ together with any aliases or other names by which he is known or has used including, but not limited to, Paul Anthony, Paul Anthony Morabito, Paul Morabito, Paul Anthony Georges, and Paul-Anthony Georges Morabito

8. “Morabito Associate” means any Person, corporation, limited liability company, general or limited partnership, joint-venture, or other entity, Affiliate, Insider, insurance policy, or irrevocable or revocable trust or similar device in which Morabito is a grantor, trustee, co-trustee, trust protector, or beneficiary (primary or contingent), that has: (a) received any Assets from Morabito or any third party Person, entity, or trust on Morabito’s behalf or for Morabito’s pecuniary benefit; (b) distributed, remitted, transferred, assigned, gifted, quitclaimed, sold, or otherwise disposed of any Asset to Morabito or to any third party Person, entity, or trust on Morabito’s behalf or for Morabito’s pecuniary benefit; or (c) holds (outright or in trust), possesses, controls, maintains a right or obligation to distribute, any Assets in which Morabito has any primary or contingent pecuniary interest from January 1, 2013 to present.

9. “Person” means the plural as well as the singular and includes without limitation any natural person, as well as any firm, corporation, unincorporated association, partnership, or other form of legal entity.

10. “Relate” or “relating to” means constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, concerning, or referring to directly or indirectly.

11. “You” or “Your,” means Robison, Sharp, Sullivan & Brust (formerly Robison, Belaustegui, Sharp & Low), and each of its owners, managers, agents, servants, employees, attorneys, and representatives, or any other person which any of the foregoing control or have the right to compel to do an act or produce an item.

INSTRUCTIONS

1. Pursuant to FRCP 34, 45, and 69, as adopted in Federal Rule of Bankruptcy Procedure (“FRBP”) 7034, 7069, 9014 and 9016, any documents, electronically stored information (“ESI”) or other tangible information shall be copied and produced to the undersigned counsel by web-based email, share file, or drop box. Responsive information should be organized and labeled to correspond to the categories in the Request. ESI should be produced in native format with all metadata attached, or if any native files cannot be rendered in readable format, native format linked to a single-page tagged image file format (“TIFF”). ESI in TIFF format should be identified by an Opticon cross-reference file, and all metadata that describes the electronic files associated with ESI (e.g., “date last modified”) should be produced in text format linked to the associated files.

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

3. As used in these Requests, the term “and” as well as “or” shall be construed either disjunctively or conjunctively, as necessary, to bring within the scope of these Requests any information which might otherwise be construed to be outside their scope.

4. The term “identify”, when used in reference to a document, means to:

a) State the date of preparation, author, title (if any), subject matter, number of pages, and type of documents (e.g., contract, letter, report, etc.) or some other means of distinguishing the document or writing;

- b) Identify each and every person who prepared or participated in the preparation of the document or writing;
- c) Identify each and every person who received a copy of the document;
- d) State the present location of the document or writing;
- e) Identify each and every person having custody or control of the document or writing;
- f) State whether any copy of the document or writing is not identical to the original by reason of shorthand or other written notes, initials, or other modifications;
- g) State, if the document or writing has been destroyed, the circumstances surrounding and the reasons for the destruction; and
- h) Identify, if the document or writing has been destroyed, each and every person who destroyed or participated in, or ordered or suggested the destruction of it.

5. If any document is held under claim of privilege, please identify the document for which there is a claim of privilege by providing a full description thereof, including without limitation:

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

6. You are Requested to provide all documents within your possession, custody or control. In the event that you provide only a portion of the documents called for by any particular Request, please state the reason(s) for your inability to provide the remainder of the documents requested and the identity of the document(s).

7. If any document requested to be produced was but is no longer in your possession or control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed, (3)

transferred voluntarily or involuntarily to others and if so to whom, or (4) otherwise disposed of; and in each instance explain the circumstances surrounding an authorization of such disposition thereof and state the approximate date thereof.

8. In answering these Requests, you are requested to furnish all information available at the time the responses are made, including information in the possession of its attorneys or investigators for your attorneys, not merely information known to your officers, directors, agents and employees.

9. Unless otherwise stated, each Request shall be deemed to request documents generated, created, or obtained from January 1, 2013 through the present.

10. These Requests shall be deemed continuing and as additional information concerning the answers is secured, such additional information should be promptly supplemented.

DOCUMENTS TO BE PRODUCED

1. All documents and communications Relating to any Person's, including the Judgment Debtor or any Morabito Associate, payments or transfers of an Asset to You (including the form and source of any payments) in payment of Your fees and costs incurred in representing Morabito since January 1, 2013 to the present.



Robison | Sharp | Sullivan | Brust

Kent R. Robison
Thomas L. Belaustegui
(Co-Founder Of Counsel)
F. DeArmond Sharp
Michael E. Sullivan
Clayton P. Brust
Stefanie T. Sharp
Frank C. Gilmore
Michael A. Burke
Therese M. Shanks
Lindsay L. Liddell

August 30, 2018

VIA E-MAIL: mweisenmiller@gtg.legal

Mark M. Weisenmiller, Esq.
Garman Turner Gordon
650 White Drive, Suite 100
Las Vegas, Nevada 89119

Re: *Subpoena to Robison, Sharp, Sullivan & Brust*

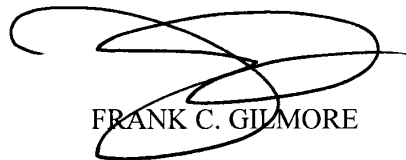
Dear Mark:

I am in receipt of the Subpoena served upon RSSB seeking certain records with respect to this firm's representation of Mr. Morabito.

Pursuant to Federal Rule of Civil Procedure 45(d)(2)(B), please accept this correspondence as an objection to the request to produce documents. First, the request is unduly burdensome, and no accommodation has been made for the time and cost of compiling and producing the requested records. Second, I interpret the Subpoena as an attempt to execute upon a money judgment obtained in the Second Judicial District Court of the State of Nevada. Accordingly, we take the position that the Subpoena you have issued, under the auspices of the "523" Adversary, is the incorrect forum for your collection activities. Third, the time frame requested in the Subpoena does not comport with Rule 45, and does not provide my office sufficient time to compile and produce the documents, even if we were inclined to do so.

Please contact me if you would like to discuss this objection further.

Sincerely,



FRANK C. GILMORE

71 Washington St
Reno, Nevada 89503


RSSBLAW.COM

P: 775.329.3151

F: 775.329.7941

FCG/mcd
cc: Client
David Shemano, Esq.

J:\WPData\FCG\23245.001 Morabito adv. JH, Inc. and Herbst\Morabito Invol Bankruptcy 2013\Herbst 523 Adversary Action 15-05019\L-Weisenmiller 8-29-18.docx


Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
January 03, 2019

GARMAN TURNER GORDON LLP
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MARK M. WEISENMILLER
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Las Vegas, Nevada 89119
Tel: (725)-777-3000
Fax: (725)-777-3112
Attorneys for the Herbst Parties

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

In re:

PAUL A. MORABITO,

Debtor.

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

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

Plaintiffs,

v.

PAUL A. MORABITO,

Defendant.

Adv. Pro. No. 15-05019-GWZ

Hearing Date: September 13, 2018
Hearing Time: 2:00 p.m.

Oral Ruling Date: December 20, 2018
Oral Ruling Time: 3:00 p.m.

**ORDER GRANTING MOTION TO COMPEL COMPLIANCE WITH THE
SUBPOENA TO ROBISON SHARP SULLIVAN BRUST**

Garman Turner Gordon
650 White Dr., Suite 100
Las Vegas, Nevada 89119
(725) 777-3000

4824-0978-6756, v. 1

1 The *Motion to Compel Compliance With the Subpoena to Robison Sharp Sullivan Brust*
 2 [ECF No. 191] (the “Motion”)¹, filed by judgment creditors JH, Inc. (“JH”), Jerry Herbst
 3 (“Herbst”), and Berry-Hinckley Industries (“BHI” and collectively with JH and Herbst, the
 4 “Herbst Parties”), by and through their counsel, the law firm of Garman Turner Gordon LLP,
 5 came on for hearing before the above-captioned Court on September 13, 2018, at 2:00 p.m. (the
 6 “Hearing”). Gerald M. Gordon, Esq. appeared on behalf of the Herbst Parties and Lindsay
 7 Liddell, Esq. appeared on behalf of Robison Sharp Sullivan Brust (“Robison”).

8 The Court, having reviewed and considered the Motion, Robison’s objection to the
 9 Motion stated at the Hearing, and all documents and exhibits submitted therewith, as well as the
 10 supplemental briefing submitted by the parties [ECF Nos. 199 & 201]; all notice and service
 11 having been proper under the Bankruptcy Code and Bankruptcy Rules; the Court having entered
 12 its findings of fact and conclusions of law on the record at the Hearing and the hearing held on
 13 December 20, 2018, at 3:00 p.m., which are hereby incorporated pursuant to Bankruptcy Rule
 14 7052; and good cause appearing:

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

- 16 1. The Motion is granted as set forth herein.
- 17 2. Robison shall comply with the Subpoena on or before January 18, 2019.

18 **IT IS SO ORDERED.**

19 PREPARED AND SUBMITTED BY:

20 GARMAN TURNER GORDON LLP

21
 22 /s/ Mark M. Weisenmiller
 23 GERALD M. GORDON, ESQ.
 24 MARK M. WEISENMILLER, ESQ.
 25 Attorneys for the Herbst Parties

26
 27
 28 ¹ All capitalized undefined terms used herein shall be ascribed the definitions in the Motion.

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 below:

David Shemano, counsel for Paul A. Morabito and Edward Bayuk – approves form of this proposed order subject to full reservation of rights to appeal or otherwise seek relief with respect to the order

- ☐ 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.

###

1 Frank C. Gilmore, Esq. (SBN 10052)
fgilmore@rssblaw.com
2 Lindsay L. Liddell, Esq. (SBN 14079)
lliddell@rssblaw.com
3 ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
4 Reno, Nevada 89503
Telephone: (775) 329-3151
5

6 Attorneys for Paul A. Morabito

7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF NEVADA**

9 In re:

10 PAUL A. MORABITO,

11 Debtor.

12 JH, INC., JERRY HERBST, and BERRY-
HINCKLEY INDUSTRIES,

13 Plaintiffs.

14 vs.

15 PAUL A. MORABITO,

16 Defendant.

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

Adv. No. 15-05019

**RESPONSE OF ROBISON, SHARP,
SULLIVAN & BRUST'S TO SUBPOENA**

Hearing Date: September 13, 2018
Hearing Time: 2:00 p.m.

Oral Ruling Date: December 20, 2018
Oral Ruling Time: 3:00 p.m.

18 Pursuant to the Court's Order [Doc. 229], Robison, Sharp, Sullivan & Brust ("RSSB")
19 hereby produces the following documents in response to the Subpoena served upon it:

RSSB_000001- RSSB_000005	2/4/2013- 3/27/18	Detailed Payment Transaction File -- Robison, Sharp, Sullivan & Brust
RSSB_000006	6/11/13	Email
RSSB_000007	7/8/13	Email
RSSB_000008	7/31/13	Email
RSSB_000009	8/30/13	Email
RSSB_000010	9/3/13	Email
RSSB_000011	10/02/13	Email
RSSB_000012	10/29/13	Email
RSSB_000013	12/3/13	Email
RSSB_000014	2/3/14	Email
RSSB_000015	5/4/14	Email
RSSB_000016	7/31/14	Email
RSSB_000017	9/2/14	Email
RSSB_000018	11/3/14	Email
RSSB_000019	12/2/14	Email

RSSB 000020	1/8/15	Email
RSSB 000021	5/5/15	Email
RSSB 000030	6/22/16	Email
RSSB 000031	2/17/16	Email

RSSB also provides a privilege log for documents RSSB_000022-RSSB_000029.

Dated this 18th day of January, 2019.

ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151

By: /s/ Frank C. Gilmore
Frank C. Gilmore, Esq. (SBN 10052)
Lindsay L. Liddell, Esq. (SBN 14079)
Attorneys for Paul A. Morabito

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.001 Morabito and Consolidated Nevada Corp./Paul							
23245.001	02/04/2013		A	31		9,225.00 Fee payment.	ARCH
23245.001	03/20/2013		A	31		8,505.00 Fee payment.	ARCH
23245.001	04/18/2013		A	31		3,656.25 Fee payment.	ARCH
23245.001	05/13/2013		A	31		1,290.00 Fee payment.	ARCH
23245.001	06/17/2013		A	31		1,635.00 Fee payment.	ARCH
23245.001	07/19/2013		A	31		1,687.50 Fee payment.	ARCH
23245.001	07/31/2013		A	41		6,986.80 Trust Fee Payment.	ARCH
23245.001	07/31/2013		A	42		453.01 Trust Cost payment.	ARCH
23245.001	08/07/2013		A	41		5,718.20 Trust Fee Payment.	ARCH
23245.001	08/30/2013		A	41		1,423.84 Trust Fee Payment.	ARCH
23245.001	08/30/2013		A	42		162.20 Trust Cost payment.	ARCH
23245.001	09/06/2013		A	31		12,484.91 Fee payment.	ARCH
23245.001	09/20/2013		A	32		2,760.66 Cost payment.	ARCH
23245.001	10/07/2013		A	32		399.52 Cost payment.	ARCH
23245.001	10/07/2013		A	31		13,220.48 Fee payment.	ARCH
23245.001	11/07/2013		A	32		204.15 Cost payment.	ARCH
23245.001	11/07/2013		A	31		19,093.30 Fee payment.	ARCH
23245.001	12/06/2013		A	31		5,861.22 Fee payment.	ARCH
23245.001	01/03/2014		A	41		291.68 Trust Fee Payment.	ARCH
23245.001	01/03/2014		A	42		34.60 Trust Cost payment.	ARCH
23245.001	01/14/2014		A	31		2,250.82 Fee payment.	ARCH
23245.001	01/31/2014		A	41		96.68 Trust Fee Payment.	ARCH
23245.001	02/05/2014		A	31		2,479.57 Fee payment.	ARCH
23245.001	02/05/2014		A	32		3,591.90 Cost payment.	ARCH
23245.001	03/11/2014		A	32		78.00 Cost payment.	ARCH
23245.001	03/11/2014		A	31		1,507.50 Fee payment.	ARCH
23245.001	04/07/2014		A	32		8.50 Cost payment.	ARCH
23245.001	04/07/2014		A	31		4,655.00 Fee payment.	ARCH
23245.001	04/21/2014		A	32		1,458.53 Cost payment.	ARCH
23245.001	05/09/2014		A	32		178.66 Cost payment.	ARCH
23245.001	05/09/2014		A	31		5,201.52 Fee payment.	ARCH
23245.001	06/09/2014		A	32		351.50 Cost payment.	ARCH
23245.001	06/09/2014		A	31		10,848.48 Fee payment.	ARCH
23245.001	07/14/2014		A	32		135.95 Cost payment.	ARCH
23245.001	07/14/2014		A	31		3,867.50 Fee payment.	ARCH
23245.001	08/13/2014		A	31		9,372.50 Fee payment.	ARCH
23245.001	09/05/2014		A	32		765.50 Cost payment.	ARCH
23245.001	09/05/2014		A	31		4,907.50 Fee payment.	ARCH
23245.001	10/05/2014		A	32		79.52 Cost payment.	ARCH
23245.001	10/05/2014		A	31		5,165.00 Fee payment.	ARCH
23245.001	11/07/2014		A	31		7,620.00 Fee payment.	ARCH
23245.001	11/07/2014		A	32		5,899.18 Cost payment.	ARCH
23245.001	12/05/2014		A	32		374.96 Cost payment.	ARCH
23245.001	12/05/2014		A	31		5,932.50 Fee payment.	ARCH
23245.001	01/06/2015		A	32		411.63 Cost payment.	ARCH
23245.001	01/06/2015		A	31		11,910.00 Fee payment.	ARCH
23245.001	02/04/2015		A	32		18,631.29 Cost payment.	ARCH
23245.001	03/04/2015		A	32		14,094.20 Cost payment.	ARCH
23245.001	03/10/2015		A	41		12,500.00 Trust Fee Payment.	ARCH
23245.001	04/13/2015		A	42		995.29 Trust Cost payment.	ARCH
23245.001	04/20/2015		A	31		6,615.64 Fee payment.	ARCH
23245.001	04/29/2015		A	42		819.15 Trust Cost payment.	ARCH
23245.001	05/08/2015		A	32		17,000.00 Cost payment.	ARCH
23245.001	05/08/2015		A	31		1,062.74 Fee payment.	ARCH
23245.001	06/05/2015		A	32		814.76 Cost payment - JAMS.	ARCH
23245.001	06/24/2015		A	32		486.04 Cost payment.	ARCH
23245.001	06/24/2015		A	32		14,013.96 Cost payment.	ARCH
23245.001	07/29/2015		A	32		2,324.40 Cost payment.	ARCH
23245.001	10/09/2015		A	41		19,999.35 Trust Fee Payment.	ARCH
23245.001	10/16/2015		A	32		1,661.90 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	10/16/2015		A	31		13,210.10 Fee payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	11/17/2015		A	41		10,223.68 Trust Fee Payment.	ARCH
23245.001	11/17/2015		A	42		3,296.82 Trust Cost payment.	ARCH
23245.001	12/17/2015		A	41		12,500.00 Trust Fee Payment.	ARCH

Client	Trans Date	H Tcode/ Tmkr P Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.001 Morabito and Consolidated Nevada Corp./Paul					
23245.001	12/17/2015	A 42		3,348.00 Trust Cost payment.	ARCH
23245.001	01/22/2016	A 32		1,360.24 Cost payment.	ARCH
23245.001	01/22/2016	A 32		10,000.00 Cost payment.	ARCH
23245.001	01/22/2016	A 31		13,125.20 Fee payment.	ARCH
23245.001	02/17/2016	A 32		10,586.47 Cost payment.	ARCH
23245.001	02/17/2016	A 31		13,073.63 Fee payment.	ARCH
23245.001	03/10/2016	A 32		10,803.50 Cost payment.	ARCH
23245.001	03/10/2016	A 31		8,086.47 Fee payment.	ARCH
23245.001	04/22/2016	A 32		13,448.32 Cost payment.	ARCH
23245.001	04/22/2016	A 31		12,499.68 Fee payment.	ARCH
23245.001	05/23/2016	A 32		1,863.00 Cost payment.	ARCH
23245.001	05/23/2016	A 31		12,500.00 Fee payment.	ARCH
23245.001	05/23/2016	A 32		7,554.93 Cost payment.	ARCH
23245.001	06/17/2016	A 32		7,617.00 Cost payment.	ARCH
23245.001	06/17/2016	A 31		12,500.00 Fee payment.	ARCH
23245.001	07/13/2016	A 32		1,642.44 Cost payment.	ARCH
23245.001	07/13/2016	A 31		12,499.56 Fee payment.	ARCH
23245.001	08/12/2016	A 32		21.00 Cost payment - Access Transcripts, LLC (Refund for overestimate on pages)	ARCH
23245.001	08/26/2016	A 32		1,349.88 Cost payment.	ARCH
23245.001	08/26/2016	A 31		13,650.12 Fee payment.	ARCH
23245.001	10/04/2016	A 32		91.25 Cost payment - Access Transcripts, LLC (Refund).	ARCH
23245.001	10/05/2016	A 32		239.83 Cost payment.	ARCH
23245.001	10/05/2016	A 31		14,760.17 Fee payment.	ARCH
23245.001	10/31/2016	A 32		1,999.77 Cost payment.	ARCH
23245.001	10/31/2016	A 31		13,000.23 Fee payment.	ARCH
23245.001	11/28/2016	A 32		640.30 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	11/28/2016	A 31		14,359.70 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	12/15/2016	A 32		3,769.48 Cost payment.	ARCH
23245.001	12/15/2016	A 31		12,499.52 Fee payment.	ARCH
23245.001	01/18/2017	A 32		2,529.09 Cost payment - Snowshoe Petroleum, Inc.	ARCH
23245.001	01/18/2017	A 31		12,500.00 Fee payment.	ARCH
23245.001	02/21/2017	A 32		1,466.82 Cost payment.	ARCH
23245.001	02/21/2017	A 31		12,500.00 Fee payment.	ARCH
23245.001	03/24/2017	A 32		3,011.34 Cost payment.	ARCH
23245.001	03/24/2017	A 31		12,552.00 Fee payment.	ARCH
23245.001	04/24/2017	P 32		809.80 Cost payment.	134
23245.001	04/24/2017	P 31		12,500.00 Fee payment.	135
23245.001	05/18/2017	P 32		1,738.41 Cost payment - Snowshoe Petroleum, Inc.	136
23245.001	05/18/2017	P 31		15,000.00 Fee payment - Snowshoe Petroleum, Inc.	137
23245.001	06/19/2017	P 32		1,900.53 Cost payment - Snowshoe Petroleum, Inc.	138
23245.001	06/19/2017	P 31		12,500.00 Fee payment - Snowshoe Petroleum, Inc.	139
23245.001	06/26/2017	P 31		9,199.40 Fee payment - Edward Bayuk.	140
23245.001	07/31/2017	P 31		12,500.00 Fee payment.	141
23245.001	08/28/2017	P 32		1,204.09 Cost payment - Snowshoe Petroleum, Inc.	142
23245.001	08/28/2017	P 31		12,553.29 Fee payment - Snowshoe Petroleum, Inc.	143
23245.001	09/26/2017	P 32		500.00 Cost payment.	144
23245.001	09/26/2017	P 31		12,500.00 Fee payment.	145
23245.001	10/23/2017	P 32		854.00 Cost payment - Snowshoe Petroleum, Inc.	146
23245.001	11/16/2017	P 31		12,500.00 Fee payment - Snowshoe Petroleum, Inc.	147
23245.001	12/21/2017	P 31		12,500.00 Fee payment.	149
23245.001	12/21/2017	P 32		3,094.69 Cost payment.	153
23245.001	12/26/2017	P 32		3,343.59 Cost payment.	150
23245.001	02/01/2018	P 31		12,500.00 Fee payment - Snowshoe Petroleum, Inc.	151
23245.001	02/01/2018	P 32		89.00 Cost payment - Snowshoe Petroleum, Inc.	152
23245.001	02/15/2018	P 31		10,000.00 Fee payment - Snowshoe Petroleum, Inc.	154
23245.001	03/27/2018	P 32		5,048.55 Cost payment - Snowshoe Petroleum, Inc.	155
23245.001	03/27/2018	P 31		7,712.45 Fee payment - Snowshoe Petroleum, Inc.	156

Total for Client ID 23245.001 Payments: 768,487.78 Morabito and Consolidated Nevada Corp./Paul
V. JH, Inc and Herbst

Client ID 23245.003 Morabito/Paul

23245.003 08/07/2013 A 41 337.50 Trust Fee Payment.

ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.003 Morabito/Paul							
23245.003	09/06/2013		A	31		450.00 Fee payment.	ARCH
23245.003	10/07/2013		A	31		427.50 Fee payment.	ARCH
23245.003	11/07/2013		A	31		101.25 Fee payment.	ARCH
23245.003	12/06/2013		A	31		562.50 Fee payment.	ARCH
23245.003	01/14/2014		A	31		1,260.00 Fee payment.	ARCH
23245.003	02/05/2014		A	31		700.00 Fee payment.	ARCH
23245.003	03/11/2014		A	32		223.52 Cost payment.	ARCH
23245.003	06/09/2014		A	31		120.00 Fee payment.	ARCH
23245.003	10/05/2014		A	32		35.00 Cost payment.	ARCH
23245.003	11/07/2014		A	32		500.00 Cost payment.	ARCH
23245.003	05/08/2015		A	31		100.00 Fee payment.	ARCH
Total for Client ID 23245.003						Payments 4,817.27 Morabito/Paul General	
Client ID 23245.004 Morabito/Paul							
23245.004	02/04/2013		A	31		90.00 Fee payment.	ARCH
23245.004	05/13/2013		A	31		4,248.75 Fee payment.	ARCH
23245.004	06/17/2013		A	32		320.00 Cost payment.	ARCH
23245.004	06/17/2013		A	31		7,995.00 Fee payment.	ARCH
23245.004	07/31/2013		A	41		1,106.25 Trust Fee Payment.	ARCH
23245.004	09/06/2013		A	31	26	1,035.00 Fee payment.	ARCH
23245.004	09/06/2013		A	32	26	159.00 Cost payment.	ARCH
23245.004	10/07/2013		A	31		442.50 Fee payment.	ARCH
23245.004	11/07/2013		A	32		404.55 Cost payment.	ARCH
23245.004	11/07/2013		A	31		3,101.25 Fee payment.	ARCH
23245.004	12/06/2013		A	31		4,597.50 Fee payment.	ARCH
23245.004	01/14/2014		A	31		4,638.75 Fee payment.	ARCH
23245.004	02/05/2014		A	31		4,332.50 Fee payment.	ARCH
23245.004	03/11/2014		A	32		325.80 Cost payment.	ARCH
23245.004	03/11/2014		A	31		5,557.50 Fee payment.	ARCH
23245.004	04/07/2014		A	32		137.00 Cost payment.	ARCH
23245.004	04/07/2014		A	31		6,367.26 Fee payment.	ARCH
23245.004	04/28/2014		A	31		320.00 Fee payment - Second Judicial District Court (Refund).	ARCH
23245.004	05/09/2014		A	32		143.08 Cost payment.	ARCH
23245.004	05/09/2014		A	31		5,227.74 Fee payment.	ARCH
Total for Client ID 23245.004						Payments 50,549.43 Morabito/Paul Berry-Hincley Industries, et al., adv. Morabito	
Client ID 23245.005 Morabito/Paul							
23245.005	02/04/2013		A	31		60.00 Fee payment.	ARCH
Total for Client ID 23245.005						Payments 60.00 Morabito/Paul Bank of America v. Morabito/Arcadia Living Trust	
Client ID 23245.007 Morabito/Paul							
23245.007	07/31/2013		A	41		1,275.00 Trust Fee Payment.	ARCH
23245.007	07/31/2013		A	42		243.49 Trust Cost payment.	ARCH
23245.007	09/06/2013		A	31	4	416.25 Fee payment.	ARCH
23245.007	10/07/2013		A	31		453.75 Fee payment.	ARCH
23245.007	11/07/2013		A	32		213.00 Cost payment.	ARCH
23245.007	11/07/2013		A	31		1,125.00 Fee payment.	ARCH
23245.007	12/06/2013		A	31		607.50 Fee payment.	ARCH
23245.007	01/14/2014		A	31		472.50 Fee payment.	ARCH
23245.007	02/05/2014		A	31		537.50 Fee payment.	ARCH
23245.007	03/11/2014		A	31		2,450.00 Fee payment.	ARCH
23245.007	04/07/2014		A	32		213.00 Cost payment.	ARCH
23245.007	04/07/2014		A	31		685.00 Fee payment.	ARCH
23245.007	05/09/2014		A	31		2,982.50 Fee payment.	ARCH
23245.007	06/09/2014		A	32		70.00 Cost payment.	ARCH
23245.007	06/09/2014		A	31		2,165.00 Fee payment.	ARCH
23245.007	07/14/2014		A	32		152.99 Cost payment.	ARCH
23245.007	07/14/2014		A	31		5,442.50 Fee payment.	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Stmt # Rate	Amount	Ref #
Client ID 23245.007 Morabito/Paul							
23245.007	08/13/2014		A	31		1,335.00 Fee payment.	ARCH
23245.007	09/05/2014		A	32		1,189.50 Cost payment.	ARCH
23245.007	09/05/2014		A	31		8,185.00 Fee payment.	ARCH
23245.007	10/05/2014		A	31		505.00 Fee payment.	ARCH
23245.007	10/05/2014		A	32		0.00 Cost payment.	ARCH
23245.007	10/05/2014		A	32		1,640.88 Cost payment.	ARCH
23245.007	11/07/2014		A	32		26.63 Cost payment.	ARCH
23245.007	12/05/2014		A	32		26.38 Cost payment.	ARCH
Total for Client ID 23245.007					Payments	32,413.37 Morabito/Paul v. Consolidated Nevada Corp. et al. adv. The Hartford	
Client ID 23245.008 Morabito/Paul							
23245.008	08/07/2013		A	41		900.00 Trust Fee Payment.	ARCH
23245.008	09/06/2013		A	31		210.00 Fee payment.	ARCH
23245.008	10/07/2013		A	31		56.25 Fee payment.	ARCH
23245.008	12/06/2013		A	31		45.00 Fee payment.	ARCH
23245.008	01/14/2014		A	31		281.25 Fee payment.	ARCH
23245.008	02/05/2014		A	31		125.00 Fee payment.	ARCH
23245.008	03/11/2014		A	31		375.00 Fee payment.	ARCH
23245.008	04/07/2014		A	32		436.74 Cost payment.	ARCH
23245.008	05/09/2014		A	32		131.50 Cost payment.	ARCH
23245.008	05/09/2014		A	31		7,247.50 Fee payment.	ARCH
23245.008	06/09/2014		A	31		200.00 Fee payment.	ARCH
23245.008	07/14/2014		A	32		1.19 Cost payment.	ARCH
23245.008	07/14/2014		A	31		125.00 Fee payment.	ARCH
23245.008	08/13/2014		A	31		125.00 Fee payment.	ARCH
23245.008	11/07/2014		A	31		250.00 Fee payment.	ARCH
23245.008	12/05/2014		A	31		350.00 Fee payment.	ARCH
23245.008	01/06/2015		A	32		1,358.33 Cost payment.	ARCH
23245.008	01/06/2015		A	31		325.00 Fee payment.	ARCH
23245.008	04/20/2015		A	32		451.43 Cost payment.	ARCH
23245.008	05/08/2015		A	32		600.91 Cost payment.	ARCH
23245.008	05/08/2015		A	31		4,021.35 Fee payment.	ARCH
Total for Client ID 23245.008					Payments	17,616.45 Morabito/Paul v. Eclectic Properties v. Morabito et al.	
Client ID 23245.009 Morabito/Paul							
23245.009	03/11/2014		A	31		997.50 Fee payment.	ARCH
23245.009	04/07/2014		A	31		497.50 Fee payment.	ARCH
23245.009	05/09/2014		A	31		887.50 Fee payment.	ARCH
23245.009	06/09/2014		A	31		587.50 Fee payment.	ARCH
23245.009	07/14/2014		A	31		962.50 Fee payment.	ARCH
23245.009	09/05/2014		A	31		1,152.50 Fee payment.	ARCH
23245.009	10/05/2014		A	31		1,212.50 Fee payment.	ARCH
23245.009	11/07/2014		A	32		1,250.00 Cost payment.	ARCH
23245.009	11/07/2014		A	31		1,000.00 Fee payment.	ARCH
23245.009	12/05/2014		A	31		662.50 Fee payment.	ARCH
23245.009	01/06/2015		A	31		532.50 Fee payment.	ARCH
23245.009	02/04/2015		A	32		1,625.00 Cost payment.	ARCH
23245.009	03/04/2015		A	32		7,500.00 Cost payment.	ARCH
23245.009	04/20/2015		A	32		513.78 Cost payment.	ARCH
23245.009	05/08/2015		A	31		4,215.00 Fee payment.	ARCH
Total for Client ID 23245.009					Payments	23,596.28 Morabito/Paul v. adv. Barbieri, Carl and Ilda	
Client ID 23245.010 Virsenet, LLC							
23245.010	06/19/2015		A	31		19,999.35 Fee payment - Virsenet LLC	ARCH
Total for Client ID 23245.010					Payments	19,999.35 Virsenet, LLC Document production pursuant to Subpoena	

Date: 01/10/2019

Detail Payment Transaction File List
Robison, Sharp, Sullivan & Brust

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<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H Tcode/ P Task Code</u>	<u>Stmt # Rate</u>	<u>Amount</u>	<u>Ref #</u>
Client ID 23245.011 Morabito and Consolidated Nevada Corp./Paul						
23245.011	02/21/2017		A 32		1,800.00 Cost payment.	ARCH
23245.011	06/26/2017		P 32		151.69 Cost payment - Edward Bayuk.	3
Total for Client ID 23245.011				Payments	1,951.69 Morabito and Consolidated Nevada Corp./Paul Morabito/CNC v. JH Inc., Berry Hinckley Industries	
<hr/> GRAND TOTALS <hr/>						
				Payments	919,491.62	

Frank Gilmore

From: Barry Breslow
Sent: Tuesday, June 11, 2013 9:15 PM
To: Heidi Cohen
Cc: Debbie Moberly; Frank Gilmore
Subject: Paul Morabito bills

Totalling \$9950, client approved AmEx payment; please process.
Thank you,
Barry

Sent from my iPhone

Frank Gilmore

From: Barry Breslow
Sent: Monday, July 08, 2013 3:38 PM
To: Heidi Cohen
Cc: Debbie Moberly
Subject: Please process an AmEx payment from Paul Morabito

For all bills, in the amount of \$ 11,702.05.

Thank you

Frank Gilmore

From: Frank Gilmore
Sent: Wednesday, July 31, 2013 8:56 PM
To: Heidi Cohen
Cc: Barry Breslow
Subject: Morabito

Paul authorized an \$8,000 charge to his card to pay this months bills. Please run it. Thanks.

Frank C. Gilmore, Esq.
Robison Belaustegui Sharp & Low
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

Sent from my iPhone

Frank Gilmore

From: Barry Breslow
Sent: Friday, August 30, 2013 2:47 PM
To: Heidi Cohen
Cc: Frank Gilmore; Mary Carroll Davis; Jennifer Jacobsen
Subject: RE: Morabito Due \$15,512.66

Thank you Heidi. That is the amount to please charge Paul's Amex on Tuesday.

Frank, please forward the bills (on your chair) to Paul via email on Tuesday. Please let him know the total amount above that we charged his Amex.

thanks

From: Heidi Cohen
Sent: Friday, August 30, 2013 2:38 PM
To: Barry Breslow
Subject: Morabito Due \$15,512.66

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, September 03, 2013 3:37 PM
To: morabito.pa@gmail.com
Cc: Heidi Cohen; Debbie Moberly
Subject: August Bills
Attachments: 20130903130320702.pdf

Paul,

As we discussed last week, here are the August bills for all the cases we are working on. We will process the payment of \$15,512 this evening.

Thanks.

Frank

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Jennifer Jacobsen
Sent: Wednesday, October 02, 2013 9:05 AM
To: 'morabito.pa@gmail.com' (morabito.pa@gmail.com)
Cc: Barry Breslow; Frank Gilmore
Subject: Statements for Services Rendered for the period ending September 25, 2013
Attachments: Billing Statements 8-26 to 9-25.pdf

Dictated by Barry Breslow:

Paul:

Attached are our statements for the period August 26 through September 25. The total for this month is just north of \$19,000.

I am aware that Frank previously received your authorization to process and AMEX charge of \$15,000. I apologize that it was processed for the full amount of these bills. I have today instructed our bookkeeper to refund the card the amount charged, in excess of \$15,000. The balance will be carried over to next month. The error is completely my fault, as I miscalculated the total, before providing it to Frank.

If you have any questions, please advise.

Sorry again for the mistake.

Sincerely,

Barry

Sent by:

Jennifer Jacobsen
Assistant to Barry L. Breslow, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
(775) 329-3151
jjacobsen@rbsllaw.com

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Frank Gilmore

From: Barry Breslow
Sent: Tuesday, October 29, 2013 7:06 AM
To: Frank Gilmore
Cc: Heidi Cohen; Barry Breslow
Subject: Re: Morabito

Heidi this includes the amounts we held in abeyance. Please charge on Nov 4, \$25,000 or actual total amount owed, whichever is lower. Frank will review and return Morabito pre- bills this week. As we discussed you do not need to wait for me.

Thank you.

Sent from my iPhone

On Oct 28, 2013, at 10:51 PM, "Frank Gilmore" <FGilmore@rbsllaw.com> wrote:

> On November 4, We have the client's permission to charge up to \$25,000 for all his accounts.
>
> The charge cannot be processed before next Monday. Please wait a week and then process the charge. Thanks.
>
> Frank C. Gilmore, Esq.
> Robison Belaustegui Sharp & Low
> 71 Washington St.
> Reno, Nevada 89503
> W: 775-329-3151
> C: 775-240-6387
>
>
> Sent from my iPhone

Frank Gilmore

From: Frank Gilmore.
Sent: Tuesday, December 03, 2013 4:04 PM
To: Barry Breslow; Heidi Cohen; Debbie Moberly
Subject: Morabito

I have authorization from the client to charge \$12,000 to the Amex for November's bills.

Frank C. Gilmore, Esq.
Robison Belaustegui Sharp & Low
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

Sent from my iPhone

Frank Gilmore

From: Frank Gilmore
Sent: Monday, February 03, 2014 2:43 PM
To: Heidi Cohen
Cc: Barry Breslow
Subject: FW: Invoice
Attachments: Morabito Invoice.pdf

Heidi,
Approval from the client to please charge the Morabito card for the January bills, and for this Hartman invoice. Then cut a check to Hartman for his bill.

Thanks.

From: Jeff Hartman [mailto:jlh@bankruptcyreno.com]
Sent: Wednesday, November 20, 2013 6:55 AM
To: 'Paul Morabito'
Cc: Frank Gilmore
Subject: Invoice

Paul:



Jeff Hartman

Jeffrey L. Hartman, Esq.
HARTMAN & HARTMAN
510 West Plumb Lane, Suite B
Reno, NV 89509
Telephone: (775) 324-2800
Facsimile: (775) 324-1818
Email: jlh@bankruptcyreno.com

Confidentiality Note: Please note that the information in this email is confidential and may be privileged and is intended only for the use of the named addressee(s). Nothing in this email is intended by the attorney or the client to constitute a waiver of the confidentiality of this information. If the recipient of this email is not the intended recipient, please be advised that any duplication or distribution of this information is unauthorized. If you have received this information in error, please immediately notify us by return email, and please destroy this transmission, all attachments to it, and any copies that have been made. Thank you for your cooperation.

Frank Gilmore

From: Frank Gilmore
Sent: Monday, May 05, 2014 1:35 PM
To: Barry Breslow; Heidi Cohen
Cc: Jennifer Jacobsen
Subject: RE: Morabito bills

Morabito approved a payment of \$22,000 toward the existing bills.

From: Barry Breslow
Sent: Thursday, May 01, 2014 3:14 PM
To: Heidi Cohen
Cc: Jennifer Jacobsen; Frank Gilmore
Subject: Morabito bills

Heidi, even if you don't get to the remainder of my pre-bills tonight, can you please finalize the Morabito bills and leave on Jen's chair?

If so, Jen, please scan and email them to Frank with a bcc to me. Frank will then forward to client and make contact with him.

Heidi if tonight is not possible, then Friday sometime would be great too.

Thank you,
Barry

Frank Gilmore

From: Frank Gilmore
Sent: Thursday, July 31, 2014 1:18 PM
To: Mary Carroll Davis; Barry Breslow; Heidi Cohen
Subject: Morabito

I got Permission to charge his card for the outstanding bills next Wednesday.

Frank C. Gilmore, Esq.
Robison Belaustegui Sharp & Low
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

Sent from my iPhone

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, September 02, 2014 10:59 AM
To: Barry Breslow; Heidi Cohen
Subject: Morabito

I have authorization to charge the Morabito card for the August Bills plus \$12,000 to be paid out in settlement. Please advise as soon as the charge posts. Thanks.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Barry Breslow
Sent: Monday, November 03, 2014 3:31 PM
To: Frank Gilmore; Heidi Cohen; Debbie Moberly
Cc: Mary Carroll Davis; Jennifer Jacobsen
Subject: RE: Morabito billings

HC, our total bills are \$10,147.

Please add the other \$2500, plus the amount of Jeff Hartman's bill, all toward this month's Am Ex charge.

If you need Jeff's bill amount again, please advise.

MCD and/or Jen will oversee getting the \$2000 to Hartford and \$500 to Spencer, once you confirm that the funds are available.

Thank you.

From: Frank Gilmore
Sent: Monday, November 03, 2014 3:22 PM
To: Heidi Cohen; Debbie Moberly
Cc: Barry Breslow
Subject: Morabito billings

Please charge the card for our fees, the Hartford \$2,000, the Hartman bill I forwarded earlier this month, and the \$500 to Spencer Investigations. I obtained client approval.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, December 02, 2014 2:34 PM
To: Heidi Cohen; Debbie Moberly
Cc: Barry Breslow
Subject: Morabito

I received authority to charge the client's card for November bills.

Thanks.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Frank Gilmore
Sent: Wednesday, January 28, 2015 5:21 PM
To: Heidi Cohen; Barry Breslow; Mary Carroll Davis
Subject: Morabito Bills

Here are the instructions for this coming Monday on Morabito:

Charge Morabito's card \$20,256.29

Make the following payments once it has cleared:

Lee & High : \$16,225.29

Hartman & Hartman: \$931

Harris Weinberg: \$1,625

Remainder (\$1,475) to RBSL to apply to costs.

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Frank Gilmore
Sent: Tuesday, May 05, 2015 8:00 AM
To: morabito.pa@gmail.com
Cc: Barry Breslow
Subject: Emailing: M-Memo on Morabito Bills and Payments.5.4.15.pdf
Attachments: M-Memo on Morabito Bills and Payments.5.4.15.pdf

Paul,

Attached is a short memo setting forth the billing and payments for the 3 sets of lawyers working for you on your matters. Please call to discuss.

Frank

FRANK C. GILMORE, ESQ.
ROBISON, BELAUSTEGUI, SHARP AND LOW, P.C.
71 WASHINGTON STREET
RENO, NV 89503
PH: (775) 329-3151
FAX: (775) 329-7169
fgilmore@rbsllaw.com

Frank Gilmore

From: Barry Breslow
Sent: Friday, January 22, 2016 10:32 AM
To: Jeffrey L. Hartman; CeciliaLee-DGS (cecilia.lee@dgsllaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: Morabito matters

Hi Jeff and Cissy:

Happy to confirm receipt moments ago of \$10,000 to be distributed \$5000 each towards your bills.
Once cleared, checks will be cut next week.

Thank you,
Barry

Frank Gilmore

From: Barry Breslow
Sent: Wednesday, February 17, 2016 11:22 AM
To: Jeffrey L. Hartman; CeciliaLee-DGS (cecilia.lee@dgsilaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: RE: Morabito matters

Hello Cissy and Jeff:
Funds received today. Once protocol for deposit and clearing have been met, we will fund \$5000 to each of you, likely at the end of next week.
Thank you,
Barry

From: Barry Breslow
Sent: Tuesday, January 26, 2016 3:12 PM
To: 'Jeffrey L. Hartman'; CeciliaLee-DGS (cecilia.lee@dgsilaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: RE: Morabito matters

All:
Checks should be delivered this Friday.
Thank you,
Barry

From: Barry Breslow
Sent: Friday, January 22, 2016 10:32 AM
To: 'Jeffrey L. Hartman'; CeciliaLee-DGS (cecilia.lee@dgsilaw.com)
Cc: Frank Gilmore; Mary Carroll Davis
Subject: Morabito matters

Hi Jeff and Cissy:
Happy to confirm receipt moments ago of \$10,000 to be distributed \$5000 each towards your bills.
Once cleared, checks will be cut next week.
Thank you,
Barry

Page 1 of 1 - Privilege Log
IN RE MORABITO, Debtor
13-41237

JH, INC., et al. v. Morabito,
ADV 15-05019

PRIVILEGE/REDACTION LOG

Privilege/Redaction Key:

1. Attorney/Client Privileged Documents
2. Work Product
3. Proprietary Information; not relevant, nor reasonably calculated to lead to discovery of admissible evidence
4. Patient Name/Information
5. Social Security Numbers

Bates #	Date	Document	Author	Recipient	Privilege
RSSB_000022- RSSB_000025	5/1/15	Memorandum	Frank Gilmore	P. Morabito	1
RSSB_000026- RSSB_000029	6/4/15	Email	Paul Morabito	B. Breslow F. Gilmore	1

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON,
4 SHARP, SULLIVAN & BRUST, that I am over the age of 18 and not a party to the above-
5 referenced case, and that on the date below I caused to be served a true copy of the **RESPONSE**
6 **OF ROBISON, SHARP, SULLIVAN & BRUST'S TO SUBPOENA** on all parties to this
7 action by the method(s) indicated below:

8 I hereby certify that on the date below, I electronically filed the foregoing with the
9 Clerk of the Court by using the ECF system which served the following parties electronically:

10 Gerald M. Gordon, Esq.
11 ggordon@gtg.legal
12 Mark M. Weisenmiller, Esq.
13 mweisenmiller@gtg.legal, bknotices@gtg.legal
14 *Attorneys for Creditor Berry-Hinckley*
15 Industries, Creditor JH, Inc., Creditor Jerry
16 Herbst

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

19 Gerald M. Gordon, Esq.
20 Mark M. Weisenmiller, Esq.
21 Garman Turner Gordon LLP
22 650 White Drive, Suite 100
23 Las Vegas, Nevada 89119
24 *Attorneys for Creditor Berry-Hinckley*
25 Industries, Creditor JH, Inc., Creditor Jerry
26 Herbst

27 DATED: This 18th day of January, 2019.

28 /s/ Mary Carroll Davis
Employee of Robison, Sharp, Sullivan & Brust

1 Frank C. Gilmore, Esq. (SBN 10052)
2 ROBISON, SHARP, SULLIVAN & BRUST
3 71 Washington Street
4 Reno, Nevada 89503
5 Tel: (775) 329-3151 / Fax: (775) 329-7941

6 Counsel for Paul A. Morabito

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

10 In re

11 PAUL A. MORABITO, an individual,
12 Debtor.

13 JH, INC., JERRY HERBST, and BERRY-
14 HINCKLEY INDUSTRIES,

15 Plaintiffs.

16 vs.

17 PAUL A. MORABITO,

18 Defendant.

Case No. BK-N-13-51237

Chapter No. 7

Adv. No. 15-05019-GWZ

DECLARATION OF FRANK C.
GILMORE IN SUPPORT OF
ROBISON, SHARP, SULLIVAN &
BRUST'S OPPOSITION TO MOTION
FOR ORDER HOLDING ROBISON
IN CONTEMPT

Hearing Date: OST Pending
Hearing Time: OST Pending

19
20 I, Frank C. Gilmore, Esq., hereby declare under penalty of perjury as follows:

21 1. I am a shareholder at Robison, Sharp, Sullivan & Brust ("RSSB"), counsel of
22 record for Defendant, Paul A. Morabito, in the above referenced Chapter 7 adversary bankruptcy
23 matter.

24 2. This Motion represents the third time the Herbst Parties have brought a motion
25 against RSSB seeking an order compelling RSSB to performance, seeking sanctions and/or
26 requesting contempt findings. The first instance involved a March 3, 2014, motion by the Herbst
27 Parties to Department 6 of the Second Judicial District Court, seeking an award of attorney's fees
28 against RSSB related to the scheduling of a deposition. Judge Adams denied request for sanction

1 against RSSB in the form of attorney's fees.

2 3. On March 23, 2015, the Herbst Parties sought an order against RSSB compelling
3 the production of documents related to its pre-petition representation of Paul Morabito. [ECF 269
4 & 286 in the Chapter 7 Bankruptcy, BK-N-13-51237], contending that RSSB failed to comply
5 with a subpoena served on January 8, 2015. At the hearing held on May 13, 2015, the Herbst
6 Parties admitted that there was no basis for proceeding with the Motion to Compel against RSSB
7 and admitted that the motion against RSSB should be denied as moot.

8 4. Attached hereto as Exhibit 1, is a true and accurate copy of the March 13, 2014
9 Order entered by the Second Judicial District Court in Case Number CV07-02764 denying
10 sanctions against RSSB.

11 5. Attached hereto as Exhibit 2, is a true and accurate copy of an email January 24,
12 2019 email string between me and counsel Mark Weisenmiller.

13 6. RSSB has represented Paul A. Morabito and various of his entities since prior to
14 January 1, 2013. The client numbers associated with Mr. Morabito and his various entities'
15 matters is identified as "23245". Each matter has its own assigned matter number: 23245.001
16 through 23245.011. Of all the Morabito matters that RSSB has opened, only the Chapter 7
17 bankruptcy matter (23245.001) remains active.

18 7. Prior to October 2015, RSSB maintained an hourly-fee arrangement with
19 Morabito, plus reimbursement for out-of-pocket costs. Morabito's bills occasionally were paid
20 by personal check from Morabito, but most often his bill was paid by processing his credit card.
21 These payments are reflected on RSSB_000001-000005, attached as Exhibit 1 to the Motion.

22 8. The Herbst Parties have copies of all of Morabito's credit card statements and
23 bank statements from at least 2010 until at least March 2015 to verify this information. These
24 records were produced at the request of the Trustee.

25 9. Starting in October 2015, Morabito agreed to a flat monthly attorney fee, plus
26 costs. Each month, RSSB would receive a check or credit card to process the payment. These
27 payments are reflected on RSSB_000001-000005, attached as Exhibit 1 to the Motion. Where
28 the identity of the payor was someone other than Paul Morabito, a notation to the Detail Payment

1 Transaction ledger was made.

2 10. On information and belief, each of the payments made on any of Morabito's files
3 since October 2015 were made by paper check, and not by wire transfer or credit card, or any
4 other source of payment.

5 11. No payment has been received by any person related to RSSB's representation of
6 Morabito (on any of his matters) since March 27, 2018.

7 12. RSSB has never accepted or received any tangible or intangible asset in lieu of
8 payment of any fee or cost.

9 13. The Detail Payment Transaction Ledger (RSSB_000001-000002), attached to the
10 Motion as Exhibit 1, is a true and correct compilation of all payments received for all of the
11 matters in which RSSB has represented Paul Morabito or his entities since January 1, 2013.

12 14. In response to the subpoena, I reviewed my files and emails and produced all non-
13 privileged communications related to "payments or transfers of an Asset" to RSSB "(including
14 the form and source of payments) in payment of [RSSB] fees and costs incurred in representing
15 Morabito since January 1, 2013."

16 15. All responsive documents in RSSB's care, custody, and control were produced.
17 Those privileged communications were withheld and a privilege log was produced reflecting the
18 withheld documents.

19 16. On January 19, 2019, I received an email from Herbst Parties' counsel which
20 asked only, "Do you contend that the documents attached to Robison's response are all the
21 documents and communications in Robison's possession, custody, or control responsive of the
22 Subpoena for the applicable period (from 2013 to the present)?" On January 22, 2019, I
23 responded, "Yes, we do contend as much."

24 17. On January 24, 2019, Herbst Parties' counsel responded by accusing RSSB of
25 misinterpreting the subpoena and suggesting the contention that the response to the subpoena is
26 not credible. Herbst Parties' counsel then notified me that a motion seeking to hold RSSB in
27 contempt would be filed on order shortening time. No attempt was made to explain the basis for
28 the request for shortened time, as required by Local Rule 9006.

Frank C. Gilmore, Esq.

EXHIBIT 1

EXHIBIT 1

FILED
Electronically
2014-03-13 09:01:10 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4341478

1 Code 3370

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
5

6 CONSOLIDATED NEVADA CORP., et al.,

Case No. CV07-02764

7 Plaintiffs,

Dept. No. 6

8 v.

9 JH, INC., et al.,

10 Defendants.
11 _____/

12 JH, INC., et al.,

13 Counter-Claimants,

14 v.
15

16 CONSOLIDATED NEVADA CORP., et al.,

17 Counter-Defendants.
18 _____/

19 ORDER

20 On March 3, 2014, Defendants/Counter-Claimants, JH, INC. and BERRY-
21 HINCKLEY INDUSTRIES (hereinafter "Herbst Parties"), filed a motion to compel the
22 deposition of Plaintiff/Counter-Defendant, PAUL A. MORABITO (hereinafter "Mr.
23 Morabito"), and for monetary sanctions. Mr. Morabito opposed this motion on March 7,
24 2014 on the ground a deposition under this case number is improper as the underlying case
25 was dismissed with prejudice and the confession of judgment improperly paced upon the
26 judgment roll of the clerk of the Second Judicial District Court.

27 After carefully considering the Herbst Parties' motion and good cause appearing, it
28 is hereby ordered the Herbst Parties' motion to compel is GRANTED. The Court does not

There is no evidence the Herbst Parties failed to abide by N.R.S. 17.110.

Additionally, the Court does not find Mr. Morabito's argument that even though his counsel agreed to a date and location of the deposition, there was never an understanding that Mr. Morabito would attend said deposition persuasive. If this had been the case, Mr. Morabito's counsel should have informed the Herbst Parties' counsel that Mr. Morabito might not attend.

The Court does not find the Herbst Parties' are entitled to fees and costs of bringing this motion. Accordingly, the Herbst Parties' motion for costs and fees is DENIED.

Accordingly, the Herbst Parties' motion is granted in part and denied in part. The parties shall conduct the deposition of Paul A. Morabito within thirty (30) days of the entry of this order. If counsel cannot agree as to the time and place of the deposition they shall notify the Judicial Assistant of this department and the Court will designate the time and place of the deposition.

DATED: This 13th day of March, 2014.

2

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 13th day of March, 2014, I electronically filed the foregoing with the clerk of
the Court:

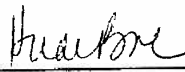
JOHN DESMOND, ESQ.

BRIAN IRVINE, ESQ.

BARRY BRESLOW, ESQ.

FRANK GILMORE, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:



Judicial Assistant

EXHIBIT 2

EXHIBIT 2

From: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Sent: Thursday, January 24, 2019 3:00 PM
To: Frank Gilmore <FGilmore@rssblaw.com>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: RE: Adversary Action 15-05019;

Frank,

The Herbst Parties are filing a motion for contempt of the order compelling compliance [ECF No. 229]. Moreover, you stated unequivocally that Robison produced all documents and communications in its possession, custody, and/or control responsive of the subpoena. I disagree. We need Judge Zive to resolve this.

As to the order shortening time, it is appropriate because this is a discrete dispute, and necessary because of the Herbst Parties' need for responsive documents and to avoid the undue delay caused by the coordinated effort of Robison, Morabito, and Bayuk to delay the Herbst Parties' legitimate collection efforts. Requiring the Herbst Parties to wait a month for the motion to be heard is not appropriate considering the undue delay already caused by Robison's refusal to comply with the subpoena for which a motion to compel was required and Morabito's history of transferring and concealing his assets following entry of an adverse judgment.

Thanks,

Mark

From: Frank Gilmore <FGilmore@rssblaw.com>
Sent: Thursday, January 24, 2019 12:12 PM
To: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: RE: Adversary Action 15-05019;

Mark,

Can I assume that you are dispensing with the requirement to meet and confer as to the specifics of your allegations before you proceed to motion practice?

And no, I do not consent to OST. According to the Rules, you are required to explain the basis for the OST, which, frankly, you never do. Can you explain the basis for OST?

Frank

From: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Sent: Thursday, January 24, 2019 11:52 AM
To: Frank Gilmore <FGilmore@rssblaw.com>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: RE: Adversary Action 15-05019;

Frank,

The contention that the documents and communications attached to the Robison response are all that need to be produced pursuant to the subpoena is a misinterpretation of the subpoena and order compelling Robison's compliance. Alternatively, the contention that Robison does not have documents and/or communications in its possession, custody, and/or control with identifying information as to each payment by wire transfer, money order, check, cash, or credit card is not credible.

Consequently, the Herbst Parties intend to file a motion to hold Robison in contempt, award the Herbst Parties monetary sanctions, and compel Robison's compliance, and request that the motion be heard on shortened time as soon as the Court's calendar permits.

Please inform me whether Robison consents to the requested order shortening time.

Thanks,

Mark

From: Frank Gilmore <FGilmore@rssblaw.com>
Sent: Tuesday, January 22, 2019 8:28 AM
To: Mark Weisenmiller <mweisenmiller@Gtg.legal>
Cc: Gerald Gordon <ggordon@Gtg.legal>; Caitlin Halm <CHalm@Gtg.legal>
Subject: Re: Adversary Action 15-05019;

Yes, we do contend as much.

Frank C. Gilmore, Esq.
Robison Sharp Sullivan & Brust
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

On Jan 19, 2019, at 1:54 PM, Mark Weisenmiller <mweisenmiller@gtg.legal> wrote:

Frank,

Do you contend that the documents attached to Robison's response are all the documents and communications in Robison's possession, custody, or control responsive of the Subpoena for the applicable period (from 2013 to the present)?

Thanks,

Mark

From: Mary Carroll Davis <mdavis@rssblaw.com>

Sent: Friday, January 18, 2019 11:31 AM

To: Gerald Gordon; Mark Weisenmiller

Cc: Frank Gilmore

Subject: Adversary Action 15-05019;

Pursuant to Mr. Gilmore's instruction, attached please find a courtesy copy of the Response of Robison, Sharp, Sullivan & Brust to Subpoena. A hard copy is being served by mail.

Sincerely,

Mary Carroll Davis

Legal Assistant to Frank C. Gilmore and

F. DeArmond Sharp

<[image001.jpg](#)>

71 Washington Street

Reno, NV 89503

Phone - 775.329.3151

Fax - 775.329.7941

www.rssblaw.com

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and assistance.

IRS CIRCULAR 230 DISCLAIMER: Any tax advice contained in this email is not intended to be used, and cannot be used by any taxpayer, for the purpose of avoiding Federal tax penalties that may be imposed on the taxpayer. Further, to the extent any tax advice contained in this email may have been written to support the promotion or marketing of the transactions or matters discussed in this email, every taxpayer should seek advice based on such taxpayer's particular circumstances from an independent tax advisor.

CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, that I am over the age of 18 and not a party to the above-referenced case, and that on the date below I caused to be served a true copy of **DECLARATION OF FRANK C. GILMORE IN SUPPORT OF ROBISON, SHARP, SULLIVAN & BRUST'S OPPOSITION TO MOTION FOR ORDER HOLDING ROBISON IN CONTEMPT** on all parties to this action by the method(s) indicated below:

X I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Gerald M. Gordon, Esq.
ggordon@gtg.legal
Mark M. Weisenmiller, Esq.
mweisenmiller@gtg.legal, bknotices@gtg.legal
Attorneys for Creditor Berry-Hinckley
Industries, Creditor JH, Inc., Creditor Jerry
Herbst

_____ 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 M. Gordon, Esq.
Mark M. Weisenmiller, Esq.
Garman Turner Gordon LLP
650 White Drive, Suite 100
Las Vegas, Nevada 89119

Attorneys for Creditor Berry-Hinckley
Industries, Creditor JH, Inc., Creditor Jerry
Herbst

DATED: This 30TH day of January, 2019.

/s/ Mary Carroll Davis
Employee of Robison, Sharp, Sullivan & Brust

Gabby Hamm

From: Gerald Gordon
Sent: Thursday, February 21, 2019 4:35 PM
To: Erika Turner; Gabby Hamm
Subject: FW: Snowshoe checks
Attachments: Snowshoe checks limited to Morabito.pdf

From: David Shemano <dshemano@shemanolaw.com>
Sent: Tuesday, February 19, 2019 4:37 PM
To: Gerald Gordon <ggordon@Gtg.legal>; Mark Weisenmiller <mweisenmiller@Gtg.legal>
Subject: Snowshoe checks

After further review, I can represent the following:

1. Snowshoe is a Robison client.
2. At some point in 2015, Snowshoe and Robison entered in an agreement in which Snowshoe paid a fixed monthly amount (plus expenses) to Robison in exchange for services that benefitted Snowshoe. Snowshoe believed that certain work Robison was performing in its capacity as counsel for Morabito, such as the investigation and prosecution of fraud on the court claims against the Herbsts, would benefit Snowshoe and, therefore, wanted to make sure that work beneficial to Snowshoe continued.
3. While Snowshoe understands that Robison internally allocated a portion of the monthly payments to Morabito's account, Snowshoe never sent any check to Robison for the benefit of Morabito – all checks were sent to benefit Snowshoe. Any allocation of a check by Robison to Morabito's account is an internal Robison matter. Snowshoe takes no current position on whether Robison's internal allocation was proper or not, although it is the position of Snowshoe that all payments were made for the benefit of Snowshoe and not Morabito.
4. Attached are three (3) Snowshoe checks that correspond to the Robison ledger as Morabito payments. They are being produced as a courtesy – Snowshoe did not send the checks to Robison for the benefit of Morabito -- they were sent for the benefit of Snowshoe.
5. All other amounts reflected in the Robison ledger are internal allocations of checks in a larger amount that Robison allocated in part to Snowshoe services and in part to Morabito services. The Order does not require the production of checks paid for services to Snowshoe. We have no way of redacting the checks to reflect Robison's internal allocation (and to reemphasize, it is the position of Snowshoe that all payments were for the benefit of Snowshoe and not Morabito). Herbst's legitimate need, if any, is satisfied by Robison's internal allocation. Therefore, Snowshoe is not producing the additional checks.

David B. Shemano
ShemanoLaw
1801 Century Park East, Suite 1600
Los Angeles, CA 90067
Tel: (310) 492-5033
Email: dshemano@shemanolaw.com

From: David Shemano
Sent: Tuesday, February 19, 2019 10:38 AM
To: 'Gerald Gordon' <ggordon@Gtg.legal>; Mark Weisenmiller <mweisenmiller@Gtg.legal>
Subject: RE: Additional Bayuk documents

Fine. It will take a little time to sort the checks based on the Robison ledger.

From: Gerald Gordon <ggordon@Gtg.legal>
Sent: Tuesday, February 19, 2019 9:36 AM
To: David Shemano <dshemano@shemanolaw.com>; Mark Weisenmiller <mweisenmiller@Gtg.legal>
Subject: RE: Additional Bayuk documents

Nothing to discuss. Produce the checks as required by the order.

From: David Shemano <dshemano@shemanolaw.com>
Sent: Monday, February 18, 2019 6:31 PM
To: Gerald Gordon <ggordon@Gtg.legal>; Mark Weisenmiller <mweisenmiller@Gtg.legal>
Subject: Additional Bayuk documents

Edward forwarded to me copies of several dozen checks from Snowshoe to Robison. The checks do not identify the purpose of the checks (i.e., whether payment was for Snowshoe services or Morabito services). Frank Gilmore has confirmed to me that all Snowshoe payments credited toward Morabito services are identified in the ledger produced by Robison. This means that the checks Edward forwarded to me by definition are either (1) non-responsive, because they are for payments for Snowshoe services, or (2) duplicative of what you already have from Robison. Please let me know if you would like to discuss.

David B. Shemano
ShemanoLaw
1801 Century Park East, Suite 1600
Los Angeles, CA 90067
Tel: (310) 492-5033
Email: dshemano@shemanolaw.com

From: David Shemano
Sent: Thursday, February 14, 2019 4:45 PM
To: 'Gerald Gordon' <ggordon@Gtg.legal>; 'Mark Weisenmiller' <mweisenmiller@Gtg.legal>
Subject: Additional Morabito documents

Attached are additional responsive documents Paul has located and/or been able to obtain.

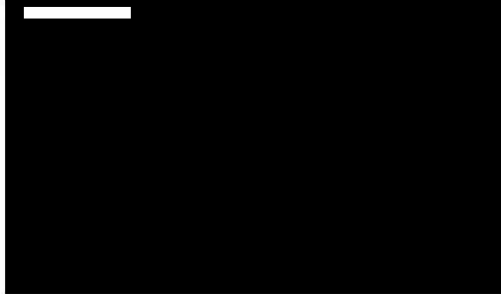
David B. Shemano
ShemanoLaw
1801 Century Park East, Suite 1600
Los Angeles, CA 90067
Tel: (310) 492-5033
Email: dshemano@shemanolaw.com

Bank of America

SNOWSHOE PETROLEUM, INC | Account # [REDACTED] 151 | February 1, 2018 to February 28, 2018

Check images:

Account number: [REDACTED] 1451



Check number: 1208 | Amount: \$10,000.00



Morabito 6659

8740

Check images

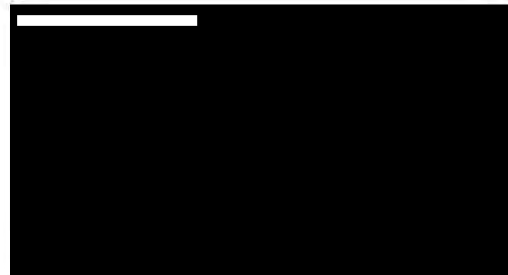
Account number: [REDACTED] 8451

✓

Check number: 1192 | Amount: \$854.00

SNOWSHOE PETROLEUM, INC
1192
DATE Oct 17 2017
PAY TO THE ORDER OF Roberta Sienas Super Center \$ 854.00
Eight hundred and fifty-four & 00/100
Bank of America
FROM 2326 S. 1st

✓



✓

Bank of America

SNOWSHOE PETROLEUM, INC | Account # [REDACTED] 8451 | November 1, 2017 to November 30, 2017

Check images

Account number: [REDACTED] 451

Check number: 1196 | Amount: \$12,500.00

SNOWSHOE PETROLEUM, INC		1196
DATE Nov. 15, 2017		
Pay to the order of <u>Robbin Petroleum Storage LLC</u>		\$ 12,500.00
Payable through <u>Bank of America</u>		12500.00
FOR <u>Debra Loria (Sgt)</u>		

Gabby Hamm

From: Erika Turner
Sent: Tuesday, February 26, 2019 3:03 PM
To: Gabby Hamm
Subject: FW: Morabito production
Attachments: Song Kovel Agreement Gilmore.pdf; Speier Kovel Agreement Gilmore.pdf; Snowshoe checks identified by Gilmore.pdf

From: David Shemano <dshemano@shemanolaw.com>
Sent: Tuesday, February 26, 2019 10:44 AM
To: Gerald Gordon <ggordon@Gtg.legal>; Mark Weisenmiller <mweisenmiller@Gtg.legal>
Subject: Morabito production

An update:

1. Frank Gilmore went through the Snowshoe checks and compared them against the Robison ledger. A number of checks allocated by Robison to Morabito did not match up because the ledger was broken down into fees and expenses. Frank asked that those checks be produced by Morabito, so they are attached.
2. Paul found the Kovel agreements between Song/Speier that were entered into with Robison. Those agreements are attached. Paul is double-checking, but he does not believe he has any documents relating to payments to those experts (who were also engaged by Edward and Sam).
3. Paul has asked Sam to obtain the credit card statements for Sam's account in which Paul was authorized to use the card. Sam is in the Caribbean and expects to be back in Canada by March 15. He will get the statements when he returns to Canada.

David B. Shemano
ShemanoLaw
1801 Century Park East, Suite 1600
Los Angeles, CA 90067
Tel: (310) 492-5033
Email: dshemano@shemanolaw.com

LITIGATION CONSULTANT RETAINER AND NON-DISCLOSURE AGREEMENT

This Litigation Consultant Retainer and Non-Disclosure Agreement ("Agreement") is entered into this 24 day of July 2017, between Frank C. Gilmore, Esq., and the firm of ROBISON BELAUSTEGUI SHARP & LOW, ("FIRM"), on behalf of PAUL A. MORABITO, EDWARD BAYUK, and SALVATORE MORABITO (hereinafter "Clients"), and Victor S. O. Song ("Litigation Consultant"), Managing Member, Victor Song Consulting, whose address is 46 Landford Lane, Ladera Ranch, California, 92694, and whose phone number and email addresses are #949 444-9767; victor@victorsongconsulting.com; victor.so.song@gmail.com.

Firm seeks the Litigation Consultant's assistance in providing strategy, contacts, assistance in drafting and preparing correspondence, and other relevant assistance for the purpose of assisting Clients with on-going and/or anticipated litigation.

Litigation Consultant shall charge Clients \$400.00 per hour when working on tasks assigned by Clients or their legal counsel. Litigation Consultant will keep detailed time records of all time spent and costs incurred and will bill Clients monthly. All invoices will be paid by Clients within 30 days of receipt. Firm has no obligation to pay invoices of the Litigation Consultant.

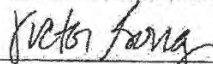
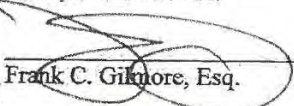

Litigation Consultant avers that he is not of any situation which, in his view, would constitute a conflict of interest or would inhibit his ability to provide assistance in the above matter. If possible, conflicts arise during the course of the engagement, Litigation Consultant will promptly notify the Firm as they come to his attention. Litigation Consultant reserves the right to resign from this engagement at any time if, in his sole determination, conflicts arise or become known which, in his judgment, would impair his ability to perform.

The Parties understand and agree that all communications between and among them, as well as any materials or information developed or received by Litigation Consultant pursuant to this agreement, whether oral or written, is intended to be protected by applicable attorney-client and work-product privileges pursuant to applicable law and will be treated as strictly confidential. Accordingly, Litigation Consultant agrees, except as required by court order, not to disclose any communications, memorandum, drafts, or other documents obtained in the performance of his duties, to any third party, except to such persons or entities as Clients or Firm may designate. If access to any of the materials in Litigation Consultant's possession relating to this arrangement are sought by a third party, he will promptly notify Firm of such action, and do everything reasonably required to maintain the confidentiality of the information as intended herein.

This Agreement may be terminated by either party at any time, and for any reason. The Confidentiality provisions of this Agreement shall survive the termination of this Agreement in perpetuity. Upon termination of the engagement, Litigation Consultant agrees to return to Firm all documents received in the course of the engagement and to delete and/or destroy all electronic information related to the engagement.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGE]

DATED: This 24th JULY day of ~~May~~, 2017.

LITIGATION CONSULTANT  Victor Song Consulting, Managing Member	ROBISON BELAUSTEGUI SHARP & LOW 71 Washington St. Reno, Nevada 89503  Frank C. Gilmore, Esq.
	 PAUL A. MORABITO, On behalf of Clients

LITIGATION CONSULTANT RETAINER AND NON-DISCLOSURE AGREEMENT

This Litigation Consultant Retainer and Non-Disclosure Agreement ("Agreement") is entered into this 24th day of May 2017, between Frank C. Gilmore, Esq., and the firm of ROBISON BELAUSTEGUI SHARP & LOW, ("FIRM"), on behalf of PAUL A. MORABITO, EDWARD BAYUK, and SALVATORE MORABITO (hereinafter "Clients"), and Richard Speier & Associates ("Litigation Consultant"), whose address is 2058 N. Mills Avenue #108, Claremont, CA 91711, and whose phone number and email address are #(909) 912-2864; r.speier@verizon.net.

Firm seeks the Litigation Consultant's assistance in providing strategy, contacts, assistance in drafting and preparing correspondence, and other relevant assistance for the purpose of assisting Clients with on-going and/or anticipated litigation.

Litigation Consultant shall charge Clients \$250.00 per hour when working on tasks assigned by Clients or their legal counsel. Litigation Consultant will keep detailed time records of all time spent and costs incurred and will bill Clients monthly. All invoices will be paid by Clients within 30 days of receipt. Firm has no obligation to pay invoices of the Litigation Consultant.

Litigation Consultant avers that he is not of any situation which, in his view, would constitute a conflict of interest or would inhibit his ability to provide assistance in the above matter. If possible conflicts arise during the course of the engagement, Litigation Consultant will promptly notify the Firm as they come to his attention. Litigation Consultant reserves the right to resign from this engagement at any time if, in his sole determination, conflicts arise or become known which, in his judgment, would impair his ability to perform.

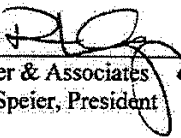
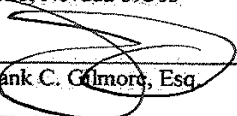
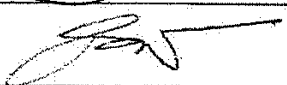
The Parties understand and agree that all communications between and among them, as well as any materials or information developed or received by Litigation Consultant pursuant to this agreement, whether oral or written, is intended to be protected by applicable attorney-client and work-product privileges pursuant to applicable law and will be treated as strictly confidential. Accordingly, Litigation Consultant agrees, except as required by court order, not to disclose any communications, memorandum, drafts, or other documents obtained in the performance of his duties, to any third party, except to such persons or entities as Clients or Firm may designate. If access to any of the materials in Litigation Consultant's possession relating to this arrangement are sought by a third party, he will promptly notify Firm of such action, and do everything reasonably required to maintain the confidentiality of the information as intended herein.

This Agreement may be terminated by either party at any time, and for any reason. The Confidentiality provisions of this Agreement shall survive the termination of this Agreement in perpetuity. Upon termination of the engagement, Litigation Consultant agrees to return to Firm all documents received in the course of the engagement and to delete and/or destroy all electronic information related to the engagement.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGE]

MORABITO 6670

27th JUL
DATED: This _____ day of April, 2017.

LITIGATION CONSULTANT  Richard Speier & Associates By: Richard Speier, President	ROBISON BELAUSTEGUI SHARP & LOW 71 Washington St. Reno, Nevada 89503  Frank C. Gilmore, Esq.
	 PAUL A. MORABITO, On behalf of Clients

MORABITO 6671

Bank of America

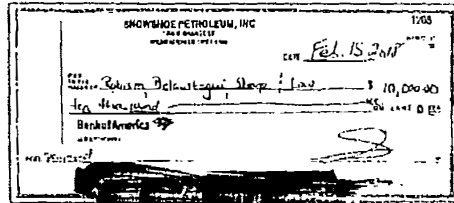
SNOWSHOE PETROLEUM, INC | Account # [REDACTED] 151 | February 1, 2018 to February 28, 2018

Check images

Account number: [REDACTED]
Check number: 1207 | Amount: \$12,589.00



Check number: 1208 | Amount: \$10,000.00

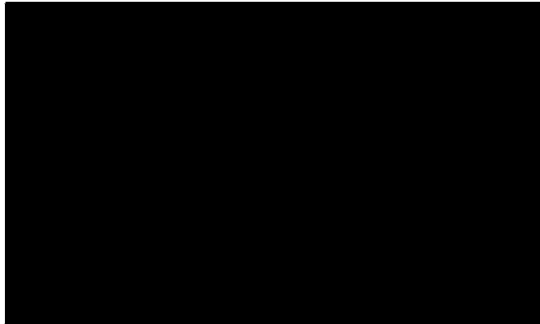


MORABITO 6662

8748

SNOWSHOE PETROLEUM, INC | Account [REDACTED] 8451 | March 1, 2018 to March 31, 2018

Account number: [REDACTED] 8451
Check number: 1211 | Amount: 5969.67



Check number: 1216 | Amount: 512,761.00

SNOWSHOE PETROLEUM, INC
1216

Pay to the order of: Robison, Shap. Sullivan & Co. \$ 512,761.00
Five hundred twelve thousand seven hundred sixty one and 00/100
Bank of America

March 14, 2018

[REDACTED]

MORABITO 6663

8749



SNOWSHOE PETROLEUM, INC. | Account # [REDACTED] 451 | June 1, 2011 / to June 30, 2011

Check images

Account number [REDACTED] 8451

Check number: 1148 | Amount: \$20,888.06

SNOWSHOE PETROLEUM, INC.		1148
CHECK NUMBER 11		1148
DATE <u>June 15 2014</u>		
Pay to the order of <u>Robbie Belustigni Superfund</u>		
<u>Twenty thousand eight hundred eighty-eight</u>		
Bank of America		
May/legals		

Page 1 of 1

MORABITO 6664

8750



SNOWSHOE PETROLEUM, INC | Account # [REDACTED] 8451 | July 1, 2017 to July 31, 2017

Check images

Account number: [REDACTED] 8451

Check number: 1172 | Amount: \$13,074.17

SNOWSHOE PETROLEUM, INC 11400 CHASE ST BETHLEHEM, PA 18015		1172
DATE <u>July 23, 2017</u>		
PAY TO THE ORDER OF <u>Robison Petroleum Chapter -</u>		
<u>Thirteen Thousand and Seventy-four</u>		\$ <u>13,074.17</u>
Bank of America		
FOR <u>Steve Lytle</u>		

2.

— — — —

STANDARD PETROLEUM, INC.
NEW YORK
MEMPHIS, TENN.

DATE Sept. 27 '11

TO: - Robert Sims Ship & Boat - 18 1/2 Ave W
- Thirteen Housack - Duane St N.Y.

Cheek of America
August Loyals

Check images

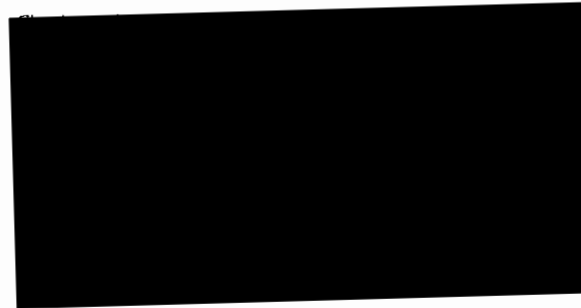
Account number: [REDACTED] 8451

Check number: 1192 | Amount: \$854.00

✓

SNOWSHOE PETROLEUM, INC		1192
1000 W. WALLACE ST.		PHOTO COPY
NEW HAVEN, CT 06510		
DATE <u>Oct. 17, 2017</u>		
PAY TO THE ORDER OF	<u>Robison Simon Stuart Grant</u>	\$ <u>854.00</u>
<u>Eight hundred and fifty-four</u>		<u>00</u> DOLLARS & 00/100
Bank of America		
MEMO <u>2339 C. IN.</u>		

[REDACTED]

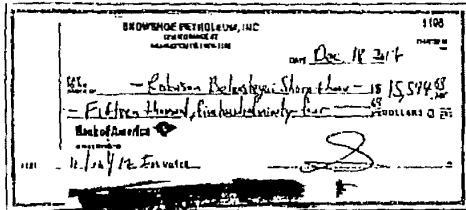


SNOWSHOE PETROLEUM, INC | Account # [REDACTED] 8451 | December 1, 2017 to December 31, 2017

Check images

Account number: [REDACTED] 451

Check number: 1198 | Amount: \$15,594.69



Check images

Account number: [REDACTED] 8451

Check number: 1066 | Amount: \$16,269.00

SNOWSHOE PETROLEUM, INC
1000 N. CHURCH ST.
WILMINGTON DE 19801-1000

DATE Dec 8 2016

Pay to the order of Robison Beland Gregory Shephard \$ 16,269.00
Sixteen thousand, two hundred and sixty-nine and 00/100 DOLLARS & 00/100

Bank of America

FOR DEPOSIT ONLY | MICR LINE: 14683 701 - 16



ORGANIZATION CERTIFICATE

OF

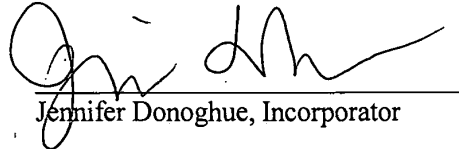
SNOWSHOE PETROLEUM, INC.

I, Jennifer Donoghue, do hereby certify that I am the Incorporator of Snowshoe Petroleum, Inc. (the "Corporation") and do further certify as follows:

1. The Certificate of Incorporation of the Corporation, a copy of which is hereto attached as Exhibit A, was filed in the Office of the Secretary of State of New York on September 29, 2010.
2. This Organization Certificate is made in lieu of an organizational meeting of the Incorporator.
3. The By-Laws relating to the business of the Corporation, the conduct of its affairs and the rights and powers of the Corporation, its shareholders, directors and officers, a copy of which is hereto attached as Exhibit B, are adopted as and for the By-Laws of the Corporation.
4. The following persons are designated as Directors of the Corporation to serve until the first annual meeting of shareholders and until their successors are elected and qualified:

Edward Bayuk
Salvatore Morabito

IN WITNESS WHEREOF, I have executed this Certificate as of the 29th day of September, 2010.


Jennifer Donoghue, Incorporator

SPI PROD0000283

8756

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
October 12, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

100929000007

CERTIFICATE OF INCORPORATION

OF

SNOWSHOE PETROLEUM, INC.

Under Section 402 of the Business Corporation Law

The undersigned, being over the age of eighteen, for the purpose of forming a corporation pursuant to Section 402 of the New York Business Corporation Law, hereby certifies:

1. The name of the corporation is: Snowshoe Petroleum, Inc. (hereinafter the "Corporation").
2. The purpose for which the Corporation is formed is to engage in any lawful act or activity for which corporations may be organized under the New York Business Corporation Law; provided that, the Corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.
3. The office of the Corporation is to be located in Erie County, New York.
4. The aggregate number of shares which the Corporation shall have the authority to issue is two hundred (200) shares without any par value per share.
5. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any such process against it served upon him is:

Dennis C. Vacco, Esq.
Lippes Mathias Wexler Friedman LLP
665 Main Street, Suite 300
Buffalo, NY 14203

6. (a) To the fullest extent that the New York Business Corporation Law, as now in effect or as may hereafter be amended, permits elimination or limitation of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for damages for any breach of duty in such capacity. Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any elimination or limitation of the personal liability of a Director of the Corporation for acts or omissions occurring prior to the effective date of such repeal or modification.

(b) The Corporation shall indemnify and hold harmless each person (and the heirs, executors, or administrators of such person) who was or is a party or is threatened

100929000007

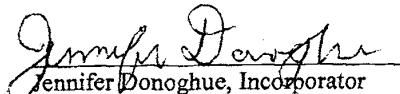
to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, to the fullest extent permitted by the New York Business Corporation Law, as the same exists or may hereafter be amended; provided however, that except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any Director or officer (or his or her heirs, executors or administrators) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

(c) Expenses (including attorneys' fees) incurred by an officer or Director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article.

(d) To the extent authorized from time to time by the Board of Directors, the Corporation may provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation who are not Directors or officers similar to those conferred in this Article to Directors and officers of the Corporation.

(e) The rights to indemnification and to the advancement of expenses conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate of Incorporation, the By-laws, any statute, agreement, vote of shareholders or otherwise.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 28 day of September, 2010.


Jennifer Donoghue, Incorporator
665 Main Street, Suite 300
Buffalo, New York 14203

100929000000

UNI-37

RECEIVED

2010 SEP 28 PM 4:10

CERTIFICATE OF INCORPORATION

OF

SNOWSHOE PETROLEUM, INC.

Under Section 402 of the Business Corporation
Law of the State of New York

1 CC
STATE OF NEW YORK
DEPARTMENT OF STATE

SEP 29 2010

FILED

TAXS 15

BY: m)

Eric

FILED

2010 SEP 29 AM 7:37

Lippes Mathias Wexler Friedman LLP
665 Main St., Suite 300
Buffalo, NY 14203-1425

Customer Reference # SNOWS20766

DRAWDOWN

007

SNOWSHOE PETROLEUM, INC.

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

Thursday, April 21st, 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.

Lippes.PAM0001457

8761

SNOWSHOE PETROLEUM, INC.

Walt Dwell
Nella Oil Company and Affiliates
Thursday, April 21st, 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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SNOWSHOE PETROLEUM, INC.

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Nella Oil Company and Affiliates
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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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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 1st, 2011 and closing the purchase and sale of the Assets the week of Monday, August 1st, 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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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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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 28th, 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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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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1 which I'm sure you are going to get to.

2 Q So far all we have talked about are the notes and
3 the Successor Notes that were executed by you relative to
4 Superpumper, and that was an obligation from Snowshoe
5 Petroleum. Not you personally, you understand that?

6 A Yes.

7 Q You personally have paid Paul Morabito's attorney's
8 fees?

9 A Yes. But I owed him money, too.

10 Q And the Trust, the William Bayuk or Edward William
11 Bayuk Trust has paid Paul Morabito's attorney's fees?

12 A My checking account, yes. Not everything is in the
13 Trust.

14 Q So you have Superpumper, pardon me, Snowshoe
15 Petroleum. You don't know whether they have paid Paul
16 Morabito's attorney's fees?

17 A No, they have not.

18 Q But you and your Trust have paid Paul Morabito's
19 attorney's fees?

20 A Yeah, because I owed him money. I owed him money,
21 probably.

22 Q And that was subsequent to September 2010?

23 A I owed him money, so I just deducted it from the
24 money I owed him.

EXHIBIT 2

EXHIBIT 2

**DECLARATION OF FRANK C. GILMORE IN SUPPORT OF EDWARD BAYUK's
MOTION FOR NEW TRIAL**

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

1. I am a shareholder at Robison, Sharp, Sullivan & Brust ("RSSB"), and was previously counsel of record for Edward Bayuk in this matter.

2. Unbeknownst to me at the time, in late November 2018, and through December 2018, Bayuk was dealing with a significant and potentially life-threatening medical condition.

3. On January 14, 2019, Bayuk notified me, *for the first time*, that he had been unwell for most of 2018, and that he underwent a serious surgery on December 26, 2018.

4. On February 12, 2019, Bayuk emailed me with letter from his physician dated February 11, 2019, indicating that Bayuk "cannot travel to Reno, Nevada for the hearing on March 1, 2019;" this was the first time I was aware that Bayuk could not travel to Reno for the hearing on March 1, 2019.

5. On February 13, 2019, I emailed Plaintiff's counsel and attached the February 11, 2019, letter from Bayuk's physician, and seeks agreement to continue hearing; in responding to Plaintiff's counsel's questions, I confirm: (A) "I didn't know anything about the substance of the surgery until yesterday when I received the letter from Bayuk. I knew only a surgery had occurred on 12/26, but I was unaware of any of the issues it presented; (B) Both Bayuk and Morabito have a right to be present for any supplemental proceedings", and (C) "I am advised that any date available for the Court and counsel after April 8 is acceptable."

6. On February 14, 2019, Plaintiff's counsel responded to the request to continue the March 1, 2019, hearing by stating, "You are going to need to explain your position to the court with sworn statements from your clients and a doctor to say why they are unavailable until after April 8. We just can't agree to stipulate under the present circumstances. This is an inordinate delay, and I am told that Bayuk is arguing to another court that he cannot leave California until July. The bottom line is frankly we do not trust anything Bayuk says/does."

7. On February 14, 2019, despite having filed a Motion to Withdraw – which has not yet been granted – I continued to assist Bayuk in this case.

8. Attached to the Motion as Exhibit 1 is a true and accurate copy of the February 26, 2019, email in which Plaintiff's counsel provided me with additional documents they indicated were intended to be used at the March 1, 2019, hearing which had not been included in the Motion to Reopen Evidence. I objected to the attempt to offer the exhibits, two of which were statements of mine unrelated to the instant case.

9. Attached to the Motion as Exhibit 3 is a true and accurate copy of an email exchange between me, the Court Clerk, and Plaintiff's counsel dated February 27, 2019.

10. Attached to the Motion as Exhibit 4 is a true and accurate copy of an email exchange with Plaintiff's counsel on February 27, 2019. Without Bayuk's ability to be present in the courtroom, and without any guidance as to whether the Defendants were facing the distinct possibility that Plaintiff would call me in sur-rebuttal to testify against Defendants, they reluctantly declined to participate in the March 1, 2019, hearing.

Dated this 25th day of February, 2019.

/s/ Frank C. Gilmore
FRANK C. GILMORE

EXHIBIT 3

EXHIBIT 3

Frank Gilmore

From: Trabert, Marci <Marci.Trabert@washocourts.us>
Sent: Wednesday, February 27, 2019 12:05 PM
To: 'Erika Turner'; Frank Gilmore; Austin, Audrey
Cc: Gabby Hamm; Teresa Pilatowicz; Mary Carroll Davis
Subject: RE: Leonard v. Superpumper -- Emergency Conference Required

Good Afternoon –

Unfortunately, the Court does not have any time between now and Friday's hearing to resolve the below issues.

Mr. Gilmore will need to handle the situation as he sees best.

Thank you.

Marci ☺

From: Erika Turner [mailto:eturner@Gtg.legal]
Sent: Wednesday, February 27, 2019 11:00 AM
To: Frank Gilmore <FGilmore@rssblaw.com>; Trabert, Marci <Marci.Trabert@washocourts.us>; Austin, Audrey <Audrey.Austin@washocourts.us>
Cc: Gabby Hamm <ghamm@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Mary Carroll Davis <MDavis@rssblaw.com>
Subject: RE: Leonard v. Superpumper -- Emergency Conference Required

The below is an unfortunate mischaracterization of my communication to Mr. Gilmore. I actually advised Mr. Gilmore that I did not know whether he would have to testify as a sur-rebuttal witness and it really depended on what his clients testify to in rebuttal. My exact words sent to Mr. Gilmore at 10:31 am this morning on the topic are as follows:

As I clearly set forth below, we have no idea what your clients are going to testify to in rebuttal of the exhibits admitted on Feb 8, which include your declaration, correspondence in response to the subpoena and billing ledger. We have no idea whether we will be required to go through the admitted exhibits with them on cross. And we have no idea what sur-rebuttal will be needed. As the anticipated testimony relates to payment of Paul Morabito's bills in satisfaction of your time invoiced, certainly we can anticipate you may have to testify in sur-rebuttal. Notwithstanding, it is certainly not my intention to waste the court's time if unnecessary.

If you want to engage in motion practice on the rules of ethics as they relate to you, we certainly can. You may want to read the entire Rule 3.7 first, though. There is no absolute prohibition on advocating counsel testifying at trial. NRCP 37(a)(2) clearly provides that a lawyer may advocate at a trial if the testimony relates to the ***nature and value of legal services rendered in the case.***

We are happy to participate in a conference but believe a better use of Court time is to wait determine if it is even necessary following the rebuttal presentation to be presented to have Mr. Gilmore testify regarding "the nature and value of legal services rendered in the case."

Thank you,

Erika

Erika Pike Turner

Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573

E eturner@gtg.legal

From: Frank Gilmore <FGilmore@rssblaw.com>

Sent: Wednesday, February 27, 2019 10:52 AM

To: Trabert, Marci <Marci.Trabert@washoecourts.us>; Austin, Audrey <Audrey.Austin@washoecourts.us>

Cc: Erika Turner <eturner@Gtg.legal>; Gabby Hamm <gghamm@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>;

Mary Carroll Davis <MDavis@rssblaw.com>

Subject: Leonard v. Superpumper -- Emergency Conference Required

Marci and Audrey,

I apologize for the interruption of your workday, but I was notified this morning that Counsel for the Plaintiff intends to call me as a witness at the Friday hearing. I have objected on the grounds that I cannot be trial counsel and a witness in the same proceeding (NRPC 3.7). We have attempted to resolve the matter between us, but were unable to do so. We need an emergency conference with the Court to obtain direction. I am available at any time today before 4:00 pm (when I am to appear in Department 4 on another matter), and any time tomorrow except 2:00-3:30.

Please advise us as to the Court's instruction.

FRANK C. GILMORE, ESQ.

SHAREHOLDER

ROBISON, SHARP, SULLIVAN & BRUST, LTD.

71 WASHINGTON STREET

RENO, NV 89503

PH: (775) 329-3151

FAX: (775) 329-7169

fgilmore@rssblaw.com



Robison | Sharp | Sullivan | Brust

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EXHIBIT 4

EXHIBIT 4

Frank Gilmore

From: Frank Gilmore
Sent: Wednesday, February 27, 2019 5:59 PM
To: eturner@Gtg.legal
Cc: Mary Carroll Davis
Subject: Fwd: Friday Trial

Erika,

I received the email below from my clients. I have spoken to them and they do not intend to appear on Friday to address the evidence offered through the Motion to Reopen Evidence. I propose that we stipulate that the exhibits attached to your motion be admitted without rebuttal. That should obviate the need for a hearing on Friday.

Please advise with your thoughts on the form of a stipulation.

Frank C. Gilmore, Esq.
Robison Sharp Sullivan & Brust
71 Washington St.
Reno, Nevada 89503
W: 775-329-3151
C: 775-240-6387

Sent from my iPhone

Begin forwarded message:

From: Sam Morabito
Date: February 27, 2019 at 5:38:59 PM PST
Subject: Friday Trial

Frank, Edward and I spoke earlier today. Edward is still not feeling well enough to go through a court proceeding. I also feel uncomfortable because of this situation. We want to make this clear to you now so that the Court knows as soon as possible. Please notify the Court, with our regrets, that we cannot attend the Friday trial. It is unfortunate that our Continuation Request was denied, and we will not be able to testify.

Sam Morabito

1 **3795**

2 GARMAN TURNER GORDON LLP

3 ERIKA PIKE TURNER, ESQ.

4 Nevada Bar No. 6454

5 E-mail: eturner@gtg.legal

6 TERESA M. PILATOWICZ, ESQ.

7 Nevada Bar No. 9605

8 E-mail: tpilatowicz@gtg.legal

9 GABRIELLE A. HAMM, ESQ.

10 Nevada Bar No. 11588

11 E-mail: ghamm@gtg.legal

12 ANDREW P. DUNNING, ESQ.

13 Nevada Bar No. 13864

14 E-mail: adunning@gtg.legal

15 650 White Drive, Ste. 100

16 Las Vegas, Nevada 89119

17 Telephone 725-777-3000

18 *Counsel to Plaintiff*

19
20 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
21
22 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

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

26 Plaintiff,

27 vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

**PLAINTIFF'S REPLY IN SUPPORT OF
APPLICATION FOR ATTORNEYS' FEES
AND COSTS PURSUANT TO NRCP 68**

Plaintiff William A. Leonard, by and through counsel, the law firm of Garman Turner Gordon LLP ("GTG"), files his reply (the "Reply") in support of his *Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68* (the "Application") based on the rejection of the Plaintiff's May 31, 2016 \$3,000,000 Offer by Defendants Superpumper, Inc. ("Superpumper")

1 Salvatore Morabito (“Sam Morabito”), and Snowshoe Petroleum, Inc. (“Snowshoe, and
2 collectively with Superpumper and Sam Morabito, the “Defendants”) ¹ .²

3 This Reply is made and based on the following Memorandum of Points and Authorities
4 and supporting exhibits, Plaintiff’s Memorandum of Costs, a copy of which was filed with the
5 court on April 11, 2019, Plaintiff’s Application, the other papers and pleadings already on file
6 herein, and any oral argument of counsel that may be permitted at the hearing of this matter.

7 Dated this 30th day of April, 2019.

8 GARMAN TURNER GORDON LLP

9
10 /s/ Teresa M. Pilatowicz
11 ERIKA PIKE TURNER, ESQ.
12 TERESA M. PILATOWICZ, ESQ.
13 GABRIELLE A. HAMM, ESQ.
14 ANDREW P. DUNNING, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Special Counsel for Trustee

15 **I.**
16 **INTRODUCTION**

17 Defendants had the opportunity to resolve this matter in May 2016 at less than 25% of their
18 ultimate liability but chose not to do so. Apparently, Defendants’ decision to avoid settlement was
19 grounded in their hopes that Plaintiff would not uncover the relevant factual information proving
20 their liability and their misplaced reliance on caselaw governing unapportioned offers of judgment.
21 Now, after Plaintiff has incurred nearly a million dollars in fees and costs since the Offer
22 uncovering the truth, Defendants try to argue that their willful refusal to resolve this matter was
23 somehow justified. Defendants’ argument does not go far: at the time of the Offer, Defendants
24 not only had all of the relevant information that Plaintiff had yet to discover, but also all of
25 Plaintiff’s valuations, which this Court ultimately confirmed were correct. Candidly, had Plaintiff

26
27 ¹ Edward Bayuk and the Edward William Bayuk Living Trust (collectively, “Bayuk”) did not file an opposition to the
Application and therefore, the Application should be granted in its entirety as to Bayuk.

28 ² Capitalized terms bear the same definitions as ascribed to them in Plaintiff’s Application.

1 had all of the information he had discovered by the trial at the time he made the Offer, his Offer
2 would have been significantly higher. There can be no question that Plaintiff's Offer was
3 reasonable and Defendants' refusal to accept it was unreasonable.

4 Failing to rebut the validity and reasonableness of the Offer, Defendants launch unfounded
5 and unsupported attacks, including personal attacks, on Plaintiff's counsel and their fees.
6 Defendants' attempts to argue that Plaintiff's counsel incurred too many fees and costs in
7 successfully pursuing a \$13,000,000 claim against Defendants fall flat. Plaintiff's hourly rates
8 were approved, without objection, by the Bankruptcy Court. Plaintiff utilized different levels of
9 associates, of counsel, and partners, at appropriate rates, to perform tasks according to level of
10 expertise. Defendants have submitted detailed billing entries and costs demonstrating the exact
11 work performed and supporting the necessity thereof.

12 Plaintiff prevailed against Defendants in a long and drawn out battle that required
13 Plaintiff's counsel's constant diligence and effort to uncover the information needed to prevail in
14 his case. Defendants cannot be rewarded for their hopes that their attempts to assist Paul Morabito
15 in hiding assets from collection would go unanswered. Defendants had the opportunity to resolve
16 this matter at a fraction of the ultimate judgment and refused to do so. NRCP 68 demands that
17 they pay Plaintiff's fees and costs incurred since the Offer as result.

18
19 **II.**
LEGAL ARGUMENT

20 **A. Defendants Misapply NRCP 68 in an Attempt to Avoid Offer of Judgment Penalties.**

21 As Defendants acknowledge in their Opposition, NRCP 68 has specific provisions
22 regarding apportioned, conditional offers of judgment made against multiple parties. *See* NRCP
23 68(a)-(b). Specifically, NRCP 68(b) expressly allows a party to make an apportioned offer of
24 judgment to more than one party which is "conditioned upon the acceptance by all parties to whom
25 the offer is directed." NRCP 68(b). Plaintiff's Offer, as discussed in the Application, is an
26 apportioned conditional offer within the meaning of that rule: a \$3,000,000 offer allocated equally
27 among the Defendants. Indeed, Defendants concede in the Opposition that there "is no dispute
28 that Plaintiff's Offer is an apportioned conditional offer under NRCP 68(b)." *See* Opp. at p. 3.

1 Despite conceding that Plaintiff's Offer was apportioned and conditional, and that NRCP
2 68(b) is the applicable rule, Defendants confusingly contest the reasonableness of the Offer based
3 upon the provisions of NRCP 68(c)(2), which apply to joint *unapportioned* offers. *See* Opp. at §
4 II(A). As a result of their incorrect reliance of the standards for joint *unapportioned* offers, the
5 cases on which Defendants rely do nothing to support Defendants' arguments in opposition to
6 Plaintiff's properly apportioned conditional offer under NRCP 68(b). *See* Opp. at p. 6 (citing
7 *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022 (2006); *Yada v. Simpson*, 112
8 Nev. 254, 258, 913 P.2d 1261, 1263 (1996) (noting that a single plaintiff's joint unapportioned
9 offer to multiple defendants under NRCP 68(c) does not encourage settlement where "the
10 individual defendants are unable to determine their share of a joint offer and make a meaningful
11 choice between accepting the offer or continuing to litigate")). Critically, in *Albios*, the Nevada
12 Supreme Court analyzed an *unapportioned defense offer made to multiple plaintiffs* (invoking
13 yet another provision of NRCP 68), and ultimately held that the offers were valid. *See Albios*, 122
14 Nev. at 423, 132 P.3d at 1031. Defendants' authority is distinguishable from the instance case,
15 and only serves to reinforce the propriety of Plaintiff's Offer.

16 As NRCP 68(c)(2) is inapplicable to the apportioned, conditional Offer in this case,
17 Defendants next proffer the broad argument that *all offers of judgment made to multiple parties*
18 are inherently unreasonable where "the same entity, person, or group is [not] authorized to decide
19 whether to settle claims against the offerees." *See* Opp. at § II(A). Defendants expand upon this
20 position by contesting Plaintiff's apportionment of the total Offer among the individual
21 Defendants, but fail to demonstrate how, exactly, the apportionment is inconsistent with the
22 mandates of NRCP 68(b). *See id.* at pp. 6-7. In effect, Defendants ask the Court to invalidate
23 Plaintiff's apportionment because Defendants' opinions differ as to their respective liabilities and
24 exposures in this litigation, notwithstanding Plaintiff's overwhelming success against every
25 transferee. Defendants do not provide any legal authority which supports their position, and
26 Plaintiff has been unable to locate any.

27 Using Defendants' example of Sam Morabito, it is clear that rejection of the Offer was
28 grossly unreasonable. Defendants contend, "[Sam], individually has been accused only in

1 receiving a \$355,000 payment from Paul Morabito. Aside from his interest in Snowshoe, Sam had
2 no other liability exposure to Plaintiff.” *See* Opp. at 5. While Defendants try to gloss over that
3 “interest in Snowshoe,” there is no question that Paul Morabito’s 80% interest in Superpumper has
4 always been the largest transfer at issue in the case. Ultimately, that transfer alone resulted in a
5 judgment against Sam Morabito in the amount of \$4,949,000. *See* Judgment at § III. Sam’s
6 rejection of the \$600,000 apportioned offer, in light of his liability for the transfer of Paul
7 Morabito’s 80% interest in Superpumper valued at \$10,440,000, was grossly unreasonable. *See*
8 Judgment at ¶ 32.

9 Furthermore, assuming, *arguendo*, that there is a requirement that the same entity, person,
10 or group be authorized to decide whether to settle claims against the offerees for apportioned
11 offers, that standard is still met here. Defendants were ultimately controlled by Edward Bayuk
12 and Sam Morabito (and Paul Morabito). Each of the Defendants had the same counsel in this
13 matter. There were never any factors in the defense suggesting that the Defendants were operating
14 as anything *other* than a single collective unit, or that the same persons were not ultimately
15 authorized to settle the claims against them. As such, even if Defendants could apply the standard
16 for joint unapportioned offers to conditional apportioned offers (which they cannot), their
17 argument still fails.

18 Defendants’ position is inconsistent with the specific language of NRCP 68(b), undermines
19 basic statutory interpretation principles, and seeks to supplant an established fee-shifting
20 framework with Defendants’ opinions regarding reasonableness. Plaintiff’s undisputedly
21 apportioned Offer must be enforced under NRCP 68(f), and consistent with the factors delineated
22 in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

23 **B. Plaintiff’s Offer, Fees, and Costs Are Reasonable and Justified.**

24 Defendants further contest the propriety of Plaintiff’s offer because: (1) discovery occurred
25 following the Offer; (2) Defendants made inaccurate presumptions regarding their trial witnesses’
26 availability; (3) Defendants disagree with this Court’s conclusions regarding valuation; and (4)
27 Plaintiff’s attorneys’ fees were excessive. Not only are the factual averments Defendants make
28

1 in support of these positions spurious, at best, the arguments themselves are devoid of legal
2 support.

3 **1. The Amount of Discovery Following Defendants' Rejection is Immaterial.**

4 Defendants argue that their rejection of the Offer was reasonable because the majority of
5 discovery occurred after the Offer date. *See Opp.* at pp. 7-8. Defendants fail to demonstrate,
6 however, that their rejection was reasonable based upon their actual knowledge and the actual
7 discovery completed as of May 31, 2016.

8 This was a fraudulent transfer case. By its very nature, Plaintiff was required to obtain all
9 of the information from Defendants and their insiders and agents. And in this case, that was no
10 easy task. As this Court is well aware, even after the trial concluded, Plaintiff was still discovering
11 that relevant information had been withheld. The obvious point is that Defendants always had the
12 information about the fraudulent transfers within their possession, whereas Plaintiff was a stranger
13 to the transactions. The factual discovery conducted in the case (nearly all of which was conducted
14 by Plaintiff), including the discovery conducted after May 31, 2016, did not reveal any new
15 information to Defendants but instead unearthed the information that Defendants had continually
16 shielded from Plaintiff.

17 Nonetheless, in order to avoid the inevitable conclusion that Defendants are the victims of
18 their own dishonesty and argue that discovery was somehow revealing to Defendants, Defendants
19 contend they could not have anticipated what witnesses Yalamanchili, Graber, Lovelace, and
20 Vacco would say during their depositions following the Offer. *See id.* at p. 9. Defendants also
21 argue that they had no ability to predict which documents those witnesses “might have produced
22 which could have impacted the trial.” *See id.* However, Defendants’ arguments are disingenuous,
23 as these witnesses’ testimony only provided Plaintiff information that was already available to
24 Defendants, whether from their own agents or their insider, Paul Morabito, regarding the
25 transactions or Paul Morabito’s intent with respect to the transfers. For example, Lovelace and
26 Vacco both continually represented Defendants since before the fraudulent transfers through
27 today, and Defendants referenced Lovelace and Vacco as their two key supporting witnesses. The
28

1 discovery following the Offer has no bearing on Defendants' respective knowledge of the transfers
2 at issue at the time the Offer was made.

3 Defendants further speciously argue that their rejection was reasonable because they "had
4 no ability to predict the breadth and content of the post-Offer discovery that Plaintiff would acquire
5 that would ultimately be used at trial." *See id.* at p. 8. Again, however, most of the information
6 acquired by Plaintiff was always in Defendants' possession or available to them, they just never
7 properly produced it. For example, Sam Morabito and/or Edward Bayuk were parties to many of
8 the e-mails introduced at trial. However, neither ever produced them in discovery. Defendants'
9 mistaken belief that discoverable information and documents would remain concealed does not
10 render their rejection reasonable.

11 Ultimately, the *Beattie* factors ask this Court to analyze whether a decision to reject an
12 offer and proceed to trial was grossly unreasonable or in bad faith. *See Beattie v. Thomas*, 99 Nev.
13 579, 668 P.2d 268 (1983). Here, Defendants *always* had knowledge of the facts relevant to their
14 wrongdoing and the fraudulent transfers at issue because they were complicit. Defendants *always*
15 had knowledge of their own transactions and communications, the amounts of the transfers
16 themselves, and the extent of Plaintiff's damages. Defendants *always* had the majority of the
17 exhibits in their possession (notwithstanding their failure to produce them). Defendants cannot
18 argue that their rejection of the Offer was reasonable because they were not clairvoyant as to
19 Plaintiff's final presentation at trial; that is not the mandate of *Beattie*, and is patently inconsistent
20 with the policy underlying NRCP 68.

21 **2. Dennis Vacco's Availability Has No Bearing on Plaintiff's Offer.**

22 Defendants' argument that their rejection of the Offer was based, in part, on their
23 expectation that Dennis Vacco and his partner Christian Lovelace would be available for trial,
24 defies belief. Defendants flatly state that "Mr. Vacco's participation at trial would have resulted
25 in a decidedly different trial, if not an entirely different result," but fail to identify what different
26 evidence Mr. Vacco would have provided or what the different result would be. *See Opp.* at pp.
27 9-10. Defendants first ignore that Mr. Vacco and Mr. Lovelace's testimony was offered at trial
28 through their deposition designations, and Defendants made their own initial designations of Mr.

1 Vacco and Mr. Lovelace's deposition testimony in support of their case. Defendants do not explain
2 how this testimony would have been different if the witnesses testified live (and what impact the
3 changed testimony would have had on credibility). Furthermore, and as mentioned above, Vacco
4 and Lovelace *still* represented Defendants at the time of trial. Defendants, rather than Plaintiff,
5 had the ability to direct their attendance. Defendants offer no explanation for why their own
6 witnesses declined to attend, nor have Defendants demonstrated that they or their counsel did not
7 direct Vacco and Lovelace not to attend. In any event, the fact that Defendants witnesses did not
8 appear for trial is not a basis for ignoring the Rule 68 fee-shifting mandates for offers of judgment.
9 Defendants' reliance on Vacco and Lovelace giving new or changed testimony at trial does not
10 render their rejection of the Offer reasonable, and has no bearing on the *Beattie* factors.

11 **3. Defendants' Opposition is Not the Proper Forum to Challenge the Court's**
12 **Valuation Conclusions.**

13 Defendants further argue that their rejection was based upon a reasonable reliance on pre-
14 litigation valuations, specifically including the Cavalier valuation of Superpumper, appraisals of
15 the real properties at issue, and the testimony of Jan Friederich, which Defendants contend were
16 sufficient grounds for their wholesale rejection of the Offer. *See Opp.* at p. 9.

17 In doing so, Defendants disregard the Court's findings and conclusions regarding this
18 evidence, as well as the Court's final judgment. As to Jan Friederich, the Court specifically noted
19 that he was a percipient witness who stood to benefit from a low valuation, and weighed his
20 testimony accordingly. *See Judgment* at ¶ 38. As to the property appraisals, the Court found that
21 Mr. Noble was not an MAI, and that his conclusions were within ranges provided to him (and
22 rushed) by Paul Morabito. *See id.* at ¶¶ 48-49. The Court agreed with Mr. Kimmel's appraisals
23 of the Panorama Property. *See id.* at ¶ 51. With respect to the Superpumper valuation, the Court
24 noted that the Cavalier valuation was obtained by Defendants in furtherance of Paul Morabito's
25 plan, and went on to note discrepancies relating to insider receivables. *See id.* at ¶¶ 33-36. In sum,
26 Defendants ask the Court to find their rejection of the Offer reasonable because of their alleged
27 reliance on valuations the Court found unreliable. Defendants' attack on the Judgment is a matter
28 for appellate review, not a basis for finding rejection of the Offer to be reasonable.

1 4. **Plaintiff's Attorney's Fees are Reasonable and Consistent with the Brunzell**
2 **Court's Mandates.**

3 Defendants contest the amount of Plaintiff's fees on two primary fronts. First, Defendants
4 argue that Plaintiff's counsel's hourly rates are *per se* unreasonable. Second, Defendants challenge
5 the number of attorneys who worked on Plaintiff's case. Neither argument establishes that
6 Plaintiff's fees and costs were unreasonable.

7 First, Defendants argue that counsel's rates are too high. For example, Defendants argue
8 that Gerald Gordon's \$775 hourly rate is inappropriate, regardless of his expertise. *See* Opp. at p.
9 11. However, GTG's rates were approved in the application for employment as special counsel in
10 this matter, without objection,³ by the Honorable Judge Zive in Paul Morabito's bankruptcy case
11 (the "Bankruptcy Case").⁴ *See* Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321,
12 attached as **Exhibit 1**. Furthermore, Mr. Gordon's role was limited in this matter to bankruptcy
13 issues with respect to the case, and he did not act as trial counsel. Therefore, his higher rate,
14 consistent with what Mr. Gordon charges in all cases and consistently approved by the Nevada
15 Bankruptcy Court, is appropriate.

16 The rates of other attorneys who worked on this matter, including Erika Pike Turner (\$495
17 per hour), Gabrielle Hamm (\$385 per hour), and Teresa Pilatowicz (\$365 per hour), fall squarely
18 within that same, previously-approved range. *See id.* Furthermore, they are reasonable in light of
19 the work performed and time expended. Ms. Turner's role was limited to trial matters. Ms.
20 Hamm's role was, likewise, limited to particular aspects of the case and participation in pre-trial
21 matters and trial, where she handled evidentiary issues, documentary evidence, and conducted the
22 direct and cross of real property appraisal experts. Ms. Pilatowicz, who performed the majority of
23 the work and billed at the lowest rate, handled most discovery and pre-trial matters and participated
24 in the trial, where she conducted the direct and cross of Timothy Herbst and the majority of the
25 valuation witnesses, and was closely involved in developing most of the direct and cross-

26
27 ³ Mr. Gilmore has, until recently, represented both Paul Morabito and Bayuk in the Bankruptcy Case.

28 ⁴ Mr. Gordon's current rate, effective January 1, 2019, is \$785 per hour, but Plaintiff's counsel billed Mr. Gordon at the lower rate.

1 examination. In any event, with the exception of declaring that Plaintiff's counsels' rates "are
2 excessive in this market," Defendants fail to offer any evidence to support their position, the
3 market rate, or to otherwise support a blanket reduction in hourly fees.

4 Second, Defendants argue rhetorically that Plaintiff paid multiple attorneys to try a case
5 which "could have been adequately handled by one lawyer." *See Opp.* at p. 12. Defendants stretch
6 this argument so far as to claim that "Plaintiff paid as many as 6 lawyers to simultaneously attend
7 trial." *See id.* at p. 11. Again, this assertion is unsupported. Mr. Gordon only worked on this
8 matter in a limited capacity by providing bankruptcy input, and was not actively involved in the
9 trial. *See Application* at Exh. 4. Similarly, Mr. Murtha was not present for the trial, nor is any of
10 his time accounted for in the Application. Finally, there are no billings in the Application for "the
11 lawyer billing to read deposition transcripts onto the record." *See Opp.* at p. 12.

12 Moreover, Defendants' position regarding the remaining attorneys contests an imagined
13 redundancy in billing. However, as outlined in Plaintiff's Application, different attorneys handled
14 discrete components of this years-long litigation up to trial. *See Application* at Exh. 4. Even then,
15 Plaintiff's trial team did not bill to perform the same tasks for trial, but handled different aspects
16 of the trial. That Defendants' counsel elected not to employ any assistance at trial does not render
17 Plaintiff's reliance on a competent trial team unreasonable.

18 With respect to the specific items highlighted on the billing entries, Defendants indicate
19 that billing entries are either: (1) duplicative; (2) excessively high; or (3) inapplicable to this case.
20 *See Opp.* at Exh. 1. First, Defendants' argument that travel time, trial preparation, and trial
21 attendance are almost exhaustively duplicative does not explain how those entries are duplicative
22 or what other entries they duplicate. cursory review of the entries reflects the reason for this
23 omission: there is no duplication. Counsel who necessarily prepared for, traveled for, and attended
24 trial each maintained timekeeping for their specific tasks. Second, Defendants mark as purportedly
25 excessive multiple entries related to the same topic: Plaintiff's successful, and essential, motion to
26 reopen evidence. Indeed, Defendants contest, without explanation, nearly all entries related to
27 Plaintiff's meritorious motion to reopen evidence, despite the necessary amount of work and
28 review of the extensive trial record required, and despite Plaintiff's successful result. Third, and

1 finally, Plaintiff argues that 8.9 hours of billing, predominantly from support staff, should be
2 relegated to a different matter involving Mr. Morabito. Such time was time associated with the
3 prosecution in of the case because special counsel retained by a bankruptcy estate is required to
4 submit its time to the Bankruptcy Court for approval, which is what the billing entries reflect.

5 Ultimately, as a result of their flawed arguments, Defendants ask the Court to impose a
6 blended rate for Plaintiff's post-Offer fees, but fails to provide a compelling reason for doing so.
7 GTG's rates, which have been approved by the Bankruptcy Court, are fair and reasonable. *See*
8 *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005); *see*
9 *also Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Plaintiff's
10 reliance on a diverse team during litigation and trial on this matter does not render all billing
11 duplicative.

12 **C. Plaintiff Incorporates His Opposition to the Motion to Retax Costs.**

13 Plaintiff expressly incorporates the arguments set forth in his *Opposition to Motion to Retax*
14 *Costs*, filed April 17, 2019, as if fully restated herein.

15
16 **III.**
CONCLUSION

17 Based on the foregoing, Plaintiff respectfully requests that Defendants be ordered to pay
18 Plaintiff's attorneys' fees in the amount of \$773,116 (excluding \$8,128.67 in sanctions already
19 paid) and costs in the amount of \$111,512.54, totaling \$884,628.54, pursuant to NRCP 68 and
20 NRS 18.005. Likewise, as Bayuk has failed to oppose the Application, Bayuk should be ordered
21 to pay his portion of Plaintiff's attorneys' fees in the amount of \$773,116 and costs in the amount
22 of \$111,512.54, totaling \$884,628.54, pursuant to NRCP 68 and NRS 18.005.

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AFFIRMATION

Pursuant to NRS 239B.030

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

Respectfully submitted this 30th day of April, 2019.

GARMAN TURNER GORDON LLP

/s/ Teresa Pilatowicz

ERIKA PIKE TURNER, ESQ.
TERESA M. PILATOWICZ, ESQ.
GABRIELLE A. HAMM, ESQ.
ANDREW DUNNING, ESQ.
650 White Drive, Ste. 100
Las Vegas, Nevada 89119
Telephone 725-777-3000
Counsel for Plaintiff

INDEX OF EXHIBITS

Exhibit	Description	Pages⁵
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	44

⁵ Exhibit pagination excludes exhibit slip sheets.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **PLAINTIFF'S**
4 **REPLY IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS**
5 **PURSUANT TO NRCP 68** on the parties as set forth below:

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

8 addressed as follows:

9 Frank Gilmore, Esq.
10 ROBISON, SHARP, SULLIVAN & BRUST
11 71 Washington Street
12 Reno, NV 89503

Jeffrey L. Hartman, Esq.
Hartman & Hartman
510 W. Plumb Lane, Suite B
Reno, NV 89509

12 _____ Certified Mail, Return Receipt Requested

13 _____ Via Facsimile (Fax)

14 _____ Via E-Mail

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

16 _____ Federal Express (or other overnight delivery)

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

18 Frank C. Gilmore, Esq.
19 E-mail: fgilmore@rssblaw.com

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

DATED this 30th day of April, 2019.

23 /s/ Kelli Wightman

24 An Employee of GARMAN TURNER
25 GORDON LLP

Exhibit 1

1 JOHN F. MURTHA, ESQ.
Nevada Bar No. 835
2 SETH J. ADAMS, ESQ.
Nevada Bar No. 11034
3 WOODBURN AND WEDGE
4 Sierra Plaza
6100 Neil Road, Ste. 500
5 Post Office Box 2311
Reno, Nevada 89505
6 Telephone: 775-688-3000
7 Facsimile : 775-688-3088
8 jmurtha@woodburnandwedge.com
sadams@woodburnandwedge.com

9 Attorneys for Trustee,
William A. Leonard

11 UNITED STATES BANKRUPTCY COURT

12 DISTRICT OF NEVADA

13 * * *

14 In re:
15 PAUL A. MORABITO,
16 Debtor.

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

17 APPLICATION FOR ORDER AUTHORIZING
THE EMPLOYMENT OF GORDON SILVER AS
SPECIAL COUNSEL FOR LITIGATION FOR
CHAPTER 7 TRUSTEE

18
19 Hearing Date: 04/28/2015
Hearing Time: 2:00 p.m.
20 Est. Time : 10 Minutes
Set By : David Lindersmith

21 _____ /
22 TO: THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

23 The Application of the Trustee, William A. Leonard, respectfully represents the
24 following in support of permitting the employment of Gordon Silver as Special Litigation
25 Counsel for the Trustee.

26
27 ///

28 ///

1 William A. Leonard, Chapter¹ 7 Trustee ("Trustee"), by and through his counsel
 2 Woodburn and Wedge, hereby submits this *Application For an Order Authorizing the*
 3 *Employment of Gordon Silver as Special Litigation Counsel to the Chapter 7 Trustee*
 4 (the "Application") to provide legal services with regard to certain pending litigation.

5 This Application is made and based upon 11 U.S.C. § 327 and 328 and Federal
 6 Rule of Bankruptcy Procedure 2014, the memorandum of points and authorities
 7 provided herein, the Declaration of Gerald M. Gordon, Esq. in Support of Application
 8 for Order Authorizing the Employment of Gordon Silver as Special Litigation Counsel
 9 for Chapter 7 Trustee (the "Gordon Declaration"), the Declaration of William A.
 10 Leonard, Jr. in support of the same (the "Leonard Declaration") filed concurrently
 11 herewith, the papers and pleadings on file herein, judicial notice which is respectfully
 12 requested, and any argument of counsel entertained by the Court at the time of the
 13 hearing of the Application.
 14

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I 17 INTRODUCTION

18 1. On June 20, 2013 (the "Petition Date"), JH, Inc. ("JH"), Jerry Herbst
 19 ("Herbst"), and Berry-Hinckley Industries ("BHI") and collectively with JH and Herbst,
 20 the "Petitioning Creditors") filed an involuntary petition for relief under Chapter 7 of
 21 the Bankruptcy Code (*Docket No. 1*) (the "Involuntary Petition"), commencing the
 22 above-captioned proceeding (the "Chapter 7 Case") against Paul A. Morabito
 23 ("Debtor"). On December 17, 2014, the Court entered its *Order for Relief Under*
 24
 25
 26
 27

¹ Unless otherwise stated, all Chapter and Section references are to Title 11 of the U.S. Code (the "Bankruptcy Code"), all Bankruptcy Rule references are to the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and all references to LR are to the Local Rules of Bankruptcy Practice for the U.S. District Court for the District of Nevada (the "Local Rules").

1 Chapter 7, as later amended (*Docket Nos. 162 & 168*) (the "Order For Relief")².

2 2. On January 23, 2015, the Office of the United States Trustee filed a
3 *Notice of Selection of Trustee and Setting of Bond Amount* naming William A. Leonard
4 as Chapter 7 Trustee in this case. (*Docket No. 221*).

5 3. On January 29, 2015, the Trustee filed a *Notice of Acceptance of*
6 *Appointment of Chapter 7 Trustee* (*Docket No. 225*).

7 4. On February 3, 2015, John F. Murtha, Esq. of Woodburn and Wedge filed
8 an Application to Employ Woodburn and Wedge as Attorney for the Trustee (*Docket*
9 *No. 228*). The Application to Employ Woodburn and Wedge was granted by the Court
10 on March 4, 2015. (Order Forthcoming).

11 5. Between the Petition Date and the entry of the Order for Relief the
12 Petitioning Creditors commenced a civil action against Debtor, among other parties, in
13 the Second Judicial District Court of the State of Nevada, Washoe County, styled as
14 *JH, Inc. et al. v. Paul A. Morabito et. al.*, having case number CV13-02663 (the "State
15 Court Action"). See *Gordon Declaration*. ¶ 3. In the State Court Action, the Petitioning
16 Creditors allege, *inter alia*, that Debtor and the other defendants engaged in a series
17 of fraudulent transfers pursuant to *Nevada Revised Statute §112 et. seq.* (the
18 "Fraudulent Transfer Claims").
19

20 6. Upon the entry of the Order for Relief and the appointment of a trustee,
21 the Trustee is the party entitled to pursue the Fraudulent Transfer Claims pursuant to
22 *Sections 544, 548 and 550*. As a result, though the Petitioning Creditors were the
23 parties that commenced the State Court Action the Trustee now is the only party with
24 standing to continue the prosecution of the Fraudulent Transfer Claims.
25
26
27

² The Debtor has appealed the Amended Order for Relief; Appeal Reference # 14-82 BAP # 14-1593.

1 7. The Trustee has determined that the bankruptcy estate requires the
 2 employment of Special Litigation Counsel to assist the Trustee and his counsel
 3 Woodburn and Wedge with the State Court Action which may result in the recovery of
 4 assets of the bankruptcy estate. After review and consideration, the Trustee on behalf
 5 of the estate intends to pursue the Fraudulent Transfer Claims against the named
 6 defendants, and thereby requires counsel to represent the interests of the estate. See
 7 *Leonard Declaration* ¶ 3. In connection therewith, the Trustee desires to enter into that
 8 certain proposed Legal Representation Agreement (the "Engagement Agreement")
 9 with Gordon Silver, a copy of which is attached as **Exhibit "2" to the Leonard**
 10 **Declaration**. The Engagement Agreement is incorporated herein by reference. The
 11 scope of the proposed retention is limited to the representation of the estate in the
 12 prosecution of the Fraudulent Transfer Claims. *Id.*

14 8. Gordon Silver has represented the Petitioning Creditors as plaintiffs in
 15 the State Court Action since its commencement, and, thus, is deeply familiar with the
 16 State Court Action proceedings. See *Gordon Decl.* ¶ 4. If approved by this Court,
 17 Gordon Silver would be willing to serve as the Trustee's special counsel to perform
 18 legal services relating to the Fraudulent Transfer Claims and pursuant to the terms of
 19 the Engagement Agreement.³ *Id.*

21 9. Gordon Silver possesses an understanding not only of the strategy and
 22 history of the State Court Litigation, but also of those assets and claims of the Debtor
 23 which may be property of the bankruptcy estate and this expertise cannot be duplicated
 24 without considerable, and unnecessary, time and expense to the bankruptcy estate.
 25 See *id.* at ¶ 7.

27
 28

 3 As set forth in the Gordon Declaration, the representation of the Trustee would be concurrent with the representation of the Petitioning Creditors in the Bankruptcy Case. See *Gordon Decl.* ¶ 4.

II
JURISDICTION

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

11. The statutory basis for the relief sought herein arises from 11 U.S.C. §§ 327(a) and 328(a) and Federal Rule of Bankruptcy Procedure 2014 and Local Rule 2014.

III
REQUESTED RELIEF

12. By this Application, the Trustee requests, pursuant to 11 U.S.C. §§ 327(a), 327(c), 328(a), and 330, Federal Rule of Bankruptcy Procedure 2014 and Local Rule 2014, to employ Gordon Silver as special litigation counsel for the Trustee.

13. Sections 327(a) and (c) of the Bankruptcy Code serve as the basis to employ counsel who may also represent a creditor by the trustee provided the attorney is "disinterested," "do[es] not hold or represent an interest adverse to the estate," and, if an objection is made, does not have an "actual conflict of interest."

14. The Trustee has selected Gordon Silver as its special litigation counsel because of Gordon Silver's extensive experience and widely recognized reputation for excellence. Gordon Silver is properly situated to serve as special counsel because of the firm's prior work on behalf of certain creditors and the firm's experience and specialized knowledge in the fields of the State Court Action, civil litigation and related law. See *Leonard Declaration* at ¶ 5.

15. It is in the best interests of the bankruptcy estate to employ Gordon Silver as special litigation counsel post-petition to perform the services set forth below. Given Gordon Silver's background and expertise, the Trustee believes Gordon Silver is both well-qualified and uniquely able to counsel and represent the Trustee on the foregoing

1 matters in an effective, cost-effective, and timely manner. Gordon Silver's employment
 2 will be pursuant to the terms and conditions set forth in the Engagement Agreement,
 3 with compensation being paid from the Debtor's estate in such amounts as the Court
 4 may hereafter allow. The services to be provided by Gordon Silver will not be
 5 duplicative of the services provided by other professionals retained by the Trustee,
 6 including Woodburn and Wedge, attorneys for the Trustee. *See id. at ¶ 6.*

8 16. As a result of Gordon Silver having provided substantially similar services
 9 to the Petitioning Creditors in the State Court Action since 2013, Gordon Silver
 10 possesses an understanding of the Pending Action as well as the Debtor's financial
 11 assets and interests that cannot be duplicated without considerable time and expense
 12 to the bankruptcy estate. *See id. at ¶ 7.*

14 17. Based on the foregoing, the Trustee has determined that Gordon Silver
 15 is well-qualified to serve as special litigation counsel to the Trustee in this bankruptcy
 16 case and to provide the services described herein. *See id. at ¶ 14.*

17 IV 18 SCOPE OF SERVICES

19 18. The Trustee anticipates Gordon Silver will provide the following non-
 20 duplicative services as special counsel ("Litigation Counsel Services") in the Chapter
 21 7 Case:

22 a. Complete any necessary litigation to liquidate the amount of any claims
 23 associated with the State Court Action;

24 b. Prosecute any claims, counterclaims or third party claims of the Trustee
 25 that are associated with the State Court Action;

26 *See id. at ¶ 8.*

27 19. As more fully set forth in the Engagement Agreement, the scope of
 28 Gordon Silver's services may be modified from time to time, provided that (i) Gordon

1 Silver and the Trustee mutually agree in writing to any such modification any
 2 corresponding change in the fee structure, (ii) such additional services are for a
 3 specified special purpose not related to the conduct of the Chapter 7 Case or the
 4 pending appeal #14-82 BAP # 14-1593, and (iii) such additional services will not be
 5 duplicative of the services provided by the Trustee's other professionals. *See id. at ¶*
 6 9.

8 20. Gordon Silver will use reasonable efforts to coordinate with the Trustee's
 9 other retained professionals to avoid unnecessary duplication of services. In particular,
 10 Gordon Silver will not duplicate those services performed by Woodburn and Wedge,
 11 counsel for the Trustee. *See id. at ¶ 10.*

12 21. Subject to this Court's approval of the Application, Gordon Silver is willing
 13 to serve as the Trustee's litigation counsel as described above. *See Gordon*
 14 *Declaration at ¶ 4.*

16
 17 **V**
EMPLOYMENT PERMISSIBLE UNDER § 327

18 22. Section 327 of the Bankruptcy Code governs a trustee's employment of
 19 professionals providing, in pertinent part, as follows:

20 (a) Except as otherwise provided in this section, the trustee, with the court's
 21 approval, may employ one or more attorneys . . . that do not hold or represent
 22 an interest adverse to the estate, and that are disinterested persons, to
 represent or assist the trustee in carrying out the trustee's duties under this title.

23 [. . .]

24 (c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified
 25 for employment under this section solely because of such person's employment
 26 by or representation of a creditor, unless there is objection by another creditor
 or the United States trustee, in which case the court shall disapprove such
 employment is there is an actual conflict of interest.

27 23. Thus, in order for a creditor's attorney to be employed by a trustee, the
 28 attorney must 1) not have an adverse interest to the estate, 2) be disinterested, and 3)

1 not have an actual conflict of interest. Each requisite is met in this case as is individually
2 described below.

3 a.

4 **No Adverse Interest**

5 24. The foregoing provisions of *Section 327* when read together permit a
6 trustee to employ a professional with no adverse interest to the estate as "special
7 counsel" for a specific matter even where counsel represents another estate creditor,
8 unless such representation creates an "actual conflict of interest." See *Stoumbos v.*
9 *Kilimnik*, 988 F.2d 949, 964 (9th Cir. 1993) (citing *Fondiller v. Robertson (In re*
10 *Fondiller)*, 15 B.R. 890, 892 (B.A.P. 9th Cir. 1981), *appeal dismissed*, 707 F.2d 441
11 (9th Cir. 1983); *Altenberg v. Schiffer (In re Sally Shops, Inc.)*, 50 B.R. 264, 266 (Bankr.
12 E.D.Pa. 1985)); see also *In re Maximus Computers, Inc.*, 278 B.R. 189 (B.A.P. 9th Cir.
13 2002). The very fact of concurrent representation of the estate and an estate creditor
14 does not amount to a conflict of interest. See *Stoumbos*, 988 F.2d at 964; see also *In*
15 *re Adam Furniture Industries, Inc.*, 191 B.R. 249, 259 ("There is no conflict where the
16 interests represented by special counsel are parallel, rather than adverse.")
17

18 25. Section 327(a) requires that special counsel not *hold* or *represent* an
19 interest *adverse* to the estate. To hold an interest adverse to the estate has been
20 defined as "(1) to possess or assert any economic interest that would tend to lessen
21 the value of the bankrupt estate or that would create either an actual or potential dispute
22 in which the estate is a rival claimant; or (2) to possess a predisposition under
23 circumstances that render such a bias against the estate." *In re Tevis*, 347 B.R. 679,
24 688 (9th Cir. 2006). To represent an adverse interest means to serve as an attorney
25 for an entity holding such an adverse interest. *Id.* However, when dealing with
26 prospective counsel to be retained for a very specific purpose, "the attorney must not
27
28

1 represent an adverse interest relating to the services which are to be performed by that
 2 attorney." *Fondiller*, 15 B.R. at 892.

3 26. An "adverse interest" exists only where: 1) counsel possesses or asserts
 4 any pecuniary interest that would either: (a) tend to reduce the estate's value; or (b)
 5 create an actual or potential controversy with the estate as a rival claimant; or 2)
 6 counsel possesses any predisposition created a bias against the estate. *In re Am. Int'l*
 7 *Refinery Inc.*, 676 F.3d 455, 461 (5th Cir. 2012) (*Internal citations omitted*).

9 27. Applied here, Gordon Silver and its attorneys do not have any connection
 10 with, or any interest adverse to, the bankruptcy estate, the Trustee, or any person
 11 employed in the office of the United State Trustee with respect to the matters on which
 12 Gordon Silver is to be retained or employed in this bankruptcy case. See *Gordon*
 13 *Declaration* at ¶ 11-12.

14 28. Gordon Silver currently represents the plaintiffs in the State Court Action
 15 who are also the Petitioning Creditors in this bankruptcy and such representation, upon
 16 approval of the instant application will continue concurrently. See *id.* at ¶ 4. However,
 17 no conflict of interest exists in Gordon Silver also representing the interests of the
 18 Trustee herein as special litigation counsel since the interests of the Trustee and of the
 19 Petitioning Creditors are aligned. See *id.* at ¶ 12. See also, *Stoumbos*, 988 F.2d at 964.

21 29. In *Stoumbos*, the Chapter 7 trustee brought an adversary proceeding
 22 seeking to recover estate assets. See 988 F.2d. at 953-54. The trustee retained, as
 23 special counsel to perform legal services relating to the adversary proceeding, the
 24 professional that had been employed by one of the petitioning creditors commencing
 25 the involuntary bankruptcy proceedings. See *id.* at 953. The debtor argued that the
 26 appointment of such counsel was improper contending that his representation of one
 27 of the petitioning creditors created a conflict of interest. See *id.* at 964. The court
 28

1 concluded that the appointment of counsel was not “adverse” since the interests of the
 2 petitioning creditor and the trustee coincided in as much as money recovered for the
 3 estate would result in a greater pro rata recovery for the petitioning creditor. *See id.*

4 30. Several years after the Ninth Circuit issued the *Stoumbos* opinion, the
 5 Bankruptcy Appellate Panel for the Ninth Circuit also considered the issues of
 6 concurrent representation of trustee and estate creditor. *See In re Maximus*
 7 *Computers, Inc.*, 278 B.R. 189 (B.A.P. 9th Cir. 2002). There, the Panel affirmed the
 8 propriety of concurrent representation of the trustee and an estate creditor so long as
 9 “it is within the § 327(c) safe harbor, which requires that other creditors and the U.S.
 10 trustee have the opportunity to object[,] . . . which necessitates disclosure of
 11 appropriate information be available to those who are entitled to object.” *See id.* at
 12 194. The court elaborated that an employment application “must include full disclosure
 13 of, among other things, ‘all person’s connections with’ creditors and that the application
 14 be accompanied by a verified statement of the person to be employed setting forth the
 15 connection with, among other, creditors[.]” in accordance with *Bankruptcy Rule*
 16 *2014(a)*. *See id.* at 195. The court deemed specifically that facts such as whether the
 17 creditor was paying for the special counsel’s fees or that the special counsel was
 18 continuing its representation of the creditor were “connections” that must be disclosed
 19 in the employment application to be dealt with in advance of the employment. *See id.*
 20 at 196.

21 31. Gordon Silver does not hold any interest adverse to the bankruptcy estate
 22 with respect to the Pending Actions. *See Gordon Declaration at ¶ 11.*

23 32. Gordon Silver does not have any connection with the United States
 24 Trustee or any person employed in the office of the United States Trustee. *See id.* at
 25 ¶ 13.

33. Therefore, to the best of the Trustee's knowledge, Gordon Silver does not hold or represent any interest that would impair Gordon Silver's ability to objectively perform the services contemplated herein, nor will Gordon Silver hold or represent any interest that will impair Gordon Silver's ability to objectively perform the services contemplated herein. *See Leonard Declaration at 12.*

b.
Disinterestedness

34. An attorney must be a disinterested person to be employed as special counsel by the trustee. 11 U.S.C. § 327(a). "Disinterested Person" is a defined term under § 101(14).

35. Section 327(c), in no uncertain terms, indicates that counsel who represents a creditor is not automatically disqualified, but rather must indicate that no actual conflict of interest exists. *See also, In re Kobra Props.*, 406 B.R. 396, 403 (Bankr.E.D.Cal. 2009) (citing § 327(c)) (distinguishing between a creditor and creditor's counsel).

36. Gordon Silver is not a creditor in this case, and therefore does not qualify as disinterested on that basis alone. See § 101(14)(A). (Creditors are not disinterested persons themselves). Gordon Silver does not have a claim enforceable against the estate directly. As such, Gordon Silver is disinterested for purposes of § 327(a).

C.
No Actual Conflict of Interest

37. Under § 327(c), should a creditor or the U.S. Trustee object to the employment of counsel, such employment will be disapproved only if an actual conflict of interest exists.

39. No conflict exists in the present case as the interests of the Trustee and of the Petitioning Creditors align with respect to the specific task of pursuing the fraudulent conveyances of the Debtor via the State Court Litigation. *See Gordon Declaration at ¶ 12.*

40. Section 328 of the Bankruptcy Code provides, in relevant part, that the Trustee, "with the court's approval, may employ or authorize the employment of a professional person under Section 327...on any reasonable terms and conditions of employment, including on a retainer, on an hourly, on a fixed or percentage fee basis, or on a contingent fee basis..." 11 U.S.C. § 328(a).

42. If approved, Gordon Silver has agreed to provide its services as special litigation counsel for the Trustee on an hourly basis and according to the terms in the Engagement Agreement. ***See Exhibit 2 to the Gordon Declaration.*** Gordon Silver

1 will also seek reimbursement for necessary expenses incurred, which shall include
2 travel, photocopying, delivery service, postage, telephone, vendor charges and other
3 out-of-pocket expenses incurred in providing professional services. *Id.*

4 43. Gordon Silver's current rates for its attorneys range from \$210.00 per
5 hour to \$775.00 per hour. Gerald M. Gordon, Esq. will be the attorney in charge of the
6 relationship with the Trustee, and his hourly rate is \$775.00, however, the attorneys
7 primarily assigned to the Pending Action will include John Desmond and Brian Irving,
8 whose rates are \$485.00 and \$385.00, respectively. In any event, Gordon Silver will
9 allocate and assign work among its partners, associates and legal assistants in a
10 manner which they believe to be most efficient. Time devoted by law clerks,
11 paralegals, project assistants and investigators that are employees of Gordon Silver
12 are charged at billing rates ranging from \$55 to \$195 per hour. *Id.*

13 44. Gordon Silver intends to apply to the Court for the allowance of
14 compensation for professional services rendered and reimbursement of expenses
15 incurred in accordance with the applicable provisions of the Bankruptcy Code, the
16 Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and applicable
17 orders by the Court. Gordon Silver understands that interim and final fee awards are
18 subject to approval by this Court. *See Gordon Declaration at ¶¶ 16-17.*

19 45. No previous request for the relief sought herein has been made to this or
20 any other Court.

21
22
23
24 **VII**
CONCLUSION

25 WHEREFORE, it is respectfully requested that the Trustee be authorized to
26 enter into the Contract attached hereto as *Exhibit 1 to the Gordon Declaration* and
27 employ Gordon Silver as special litigation counsel in accordance with the provisions of
28

1 11 USC §327. The Trustee respectfully requests that the Court enter an Order
2 substantially in the form attached hereto authorizing the Trustee to employ Gordon
3 Silver as special litigation as described above, with compensation and with
4 reimbursement of expenses to be paid as an administrative expense in such amounts
5 as may be allowed by the Court pursuant to the provisions of Sections 328, 330 and
6 331 of the Bankruptcy Code. The Trustee also requests such other and further relief
7 as is just and proper.
8

9 DATED this 1st day of April, 2015.

10 WOODBURN AND WEDGE

11
12 By 

13 John F. Murtha, Esq.,
14 Seth J. Adams, Esq.,
15 Attorneys for the Trustee
16 William A. Leonard, Jr.
17
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26
27
28

1 JOHN F. MURTHA, ESQ.
2 **Nevada Bar No. 835**
3 SETH J. ADAMS, ESQ.
4 **Nevada Bar No. 11034**
5 WOODBURN AND WEDGE
6 Sierra Plaza
7 6100 Neil Road, Ste. 500
8 Post Office Box 2311
9 Reno, Nevada 89505
10 Telephone: 775-688-3000
11 Facsimile : 775-688-3088
12 jmurtha@woodburnandwedge.com
13 sadams@woodburnandwedge.com

14 Attorneys for Trustee
15 William A. Leonard

16 UNITED STATES BANKRUPTCY COURT

17 DISTRICT OF NEVADA

18 * * *

19 In re:

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

22 PAUL A. MORABITO,

23 **DECLARATION OF GERALD M. GORDON,**
24 **ESQ. IN SUPPORT OF APPLICATION FOR**
25 **ORDER TO EMPLOY GORDON SILVER AS**
26 **SPECIAL LITIGATION COUNSEL FOR**
27 **CHAPTER 7 TRUSTEE**

28 Debtor.

Hearing Date: 04/28/2015
Hearing Time: 2:00 p.m.
Est. Time : 10 Minutes
Set By : David Lindersmith

_____/

23 I, Gerald M. Gordon, Esq., hereby declare as follows:

24 1. I am over the age of 18 and mentally competent. I have personal
25 knowledge of the facts in this matter and if called upon to testify, could and would do
26 so. I make this declaration in support of the *Application for Order Approving*
27
28

1 *Employment of the Law Firm of Gordon Silver as Special Counsel for the Debtor (the*
2 *"Application").*¹
3

4 2. I am an attorney licensed to practice law in the State of Nevada, Nevada
5 Bar No. 229. I am a shareholder with the law firm of Gordon Silver. Gordon Silver
6 maintains offices in Nevada at 3960 Howard Hughes Parkway, Ninth Floor, Las Vegas,
7 Nevada 89169 as well as 100 West Liberty St., Suite 940, Reno, Nevada 89501.

8 3. Between the Petition Date and the entry of the Order for Relief, Gordon
9 Silver represented the Petitioning Creditors² in commencing a civil action against the
10 Debtor and other parties, in the Second Judicial District Court of the State of Nevada,
11 Washoe County, styled as *JH, Inc. et al. v. Paul A. Morabito et. al.*, having case number
12 CV13-02663 (the "State Court Action"). A true and correct copy of the Complaint filed
13 in the State Court Action is attached hereto as **Exhibit "1."**
14

15 4. Gordon Silver has represented the Petitioning Creditors, as Plaintiffs in
16 the State Court Action since its commencement, and, thus, is deeply familiar with the
17 State Court Action proceedings. If approved by this Court, Gordon Silver would be
18 willing to serve as the Trustee's special counsel to perform legal services relating to
19 the Fraudulent Transfer Claims and pursuant to the terms of the Engagement
20 Agreement, attached hereto as **Exhibit "2"**. The representation of the Trustee would
21 be concurrent with the representation of the Petitioning Creditors in the Bankruptcy
22 Case.
23

24 5. Members of Gordon Silver have practices emphasizing insolvency and
25 reorganization matters, as well as commercial litigation, and have been actively
26

27 ¹ All capitalized undefined terms used herein shall have the meanings ascribed to them in the Application.

28 ² The Petitioning Creditors, whom are also the Plaintiffs in the State Court Action, are JH, Inc., Jerry Herbst and Berry-Hinckley Industries.

1 involved in many of the largest bankruptcy cases filed in this District during the last
2 several decades.

3
4 6. Having represented debtors, various committees and trustees in
5 bankruptcy cases of national significance, Gordon Silver has the depth of experience
6 necessary to litigate bankruptcy-related matters, and specifically the Fraudulent
7 Transfer Claims asserted in the State Court Action.

8
9 7. Moreover, by virtue of its representation of the Petitioning Creditors in
10 the State Court Action since its commencement, Gordon Silver is deeply familiar with
11 the State Court Action. Thus, Gordon Silver is well-qualified to act as special counsel
12 for the Trustee with respect to the Fraudulent Transfer Claims and this knowledge
13 cannot be duplicated without considerable time and expense to the bankruptcy estate.

14 8. Gordon Silver anticipates that it will provide the following non-duplicative
15 services ("Litigation Counsel Services") as special litigation counsel to the Trustee:

- 16 a. Complete any necessary litigation to liquidate the amount of any
17 claims associated with the State Court Action;
- 18 b. Prosecute any claims, counterclaims or third party claims of the
19 Trustee that are associated with the State Court Action;

20 9. As more fully set forth in the Engagement Agreement, the scope of
21 Gordon Silver's services may be modified from time to time, provided that: (i) Gordon
22 Silver and the Trustee mutually agree in writing to any such modification any
23 corresponding change in the fee structure; (ii) such additional services are for a
24 specified special purpose not related to the conduct of the Chapter 7 Case or the
25 representation of the Trustee in the pending appeal #14-82 BAP # 14-1593; and (iii)
26 such additional services will not be duplicative of the services provided by the Trustee's
27
28

1 other professionals.

2 10. Gordon Silver will use reasonable efforts to coordinate with the Trustee's
3 other retained professionals to avoid unnecessary duplication of services. In particular,
4 Gordon Silver will not duplicate those services performed by Woodburn and Wedge,
5 which has applied for employment as counsel for the Trustee.
6

7 11. Gordon Silver and its attorneys do not hold or represent any interest
8 adverse to Debtor's estate, or hold or represent any interest that would impair Gordon
9 Silver's ability to objectively perform the services contemplated in the Application.
10

11 12. The interests of the Petitioning Creditors are aligned with the interests of
12 the estate in as much as all parties seek to recover assets belonging to the estate to
13 maximize its value for greater distributions to all parties in interest.

14 13. Gordon Silver does not have any connection with the United States
15 Trustee or any persons employed in the Office of the United States Trustee.

16 14. Additionally, Gordon Silver does not seek to unlawfully give preference/s
17 not otherwise afforded to the Petitioning Creditors by way of Gordon Silver's
18 employment in this case.
19

20 15. Gordon Silver's current rates for its attorneys range from \$210.00 per
21 hour to \$775.00 per hour. Gerald M. Gordon, Esq. will be the attorney in charge of the
22 relationship with the Trustee, and his hourly rate is \$775.00, however, the attorneys
23 primarily assigned to the Pending Action will include John Desmond and Brian Irving,
24 whose rates are \$485.00 and \$385.00, respectively. In any event, Gordon Silver will
25 allocate and assign work among its partners, associates and legal assistants in a
26 manner which they believe to be most efficient. Time devoted by law clerks,
27
28

1 paralegals, project assistants and investigators that are employees of Gordon Silver
2 are charged at billing rates ranging from \$55 to \$195 per hour
3

4 16. Approved compensation and expenses shall be paid by the Trustee as
5 an administrative expense. Payment of Court approved fees and expenses will not be
6 sourced from the Petitioning Creditors, but from the estate.

7 17. Gordon Silver intends to apply to the Court for the allowance of
8 compensation for professional services rendered and reimbursement of expenses
9 incurred in accordance with the applicable provisions of the Bankruptcy Code, the
10 Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules and applicable
11 orders by the Court. Gordon Silver understands that interim and final fee awards are
12 subject to approval by this Court.
13

14 I declare under penalty of perjury of the laws of the United States that these
15 facts are true to the best of my knowledge and belief.

16 DATED this 23rd day of March, 2015.
17

18 /s/ Gerald M. Gordon, Esq.
19 GERALD M. GORDON, ESQ.
20
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EXHIBIT 1

FILED
Electronically
12-17-2013:03:33:50 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4204874

1 **\$1425**
2 **GORDON SILVER**
3 **GERALD M. GORDON, ESQ.**
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12 100 West Liberty Street
13 Suite 940
14 Reno, Nevada 89501
15 Tel: (775) 343-7500
16 Fax: (775) 786-0131

17 *Attorneys for Plaintiffs*

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

20 **JH, INC., a Nevada corporation; JERRY**
21 **HERBST, an individual; and BERRY-**
22 **HINCKLEY INDUSTRIES, a Nevada**
23 **corporation,**

24 **Plaintiffs,**

25 **vs.**

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

Defendants.

CASE NO.:

DEPT. NO.:

COMPLAINT

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

Plaintiffs JH, Inc. ("**JH**"), a Nevada corporation, Jerry Herbst ("**Herbst**"), an individual,
and Berry-Hinckley Industries ("**BHI**," together with JH and Herbst, the "**Plaintiffs**"), a Nevada
corporation, hereby allege the following:

///

Gordon Silver
Attorneys At Law
Suite 940
100 West Liberty Street
Reno, Nevada 89501
(775)343-7500

I.

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff JH is a Nevada corporation with its principal place of business in Washoe County, Nevada. JH is the owner of BHL.

2. Plaintiff Herbst is a resident of Nevada and the owner of JH.

3. Plaintiff BHI is a Nevada corporation with its principal place of business in Washoe County, Nevada.

4. Upon information and belief, Defendant Paul Morabito ("Paul Morabito") is and was at all times relevant hereto, a resident of both Washoe County, Nevada and Los Angeles County, California.

5. Upon information and belief, Paul Morabito is also the Trustee of the Arcadia Living Trust and the settlor of that trust.

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

7. Upon information and belief, Defendant Edward Bayuk ("Bayuk") is and was at all times relevant hereto a resident of both Washoe County Nevada and Los Angeles County, California and is the domestic partner of Paul Morabito. Bayuk is also the President of Superpumper.

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

9. Upon information and belief, Defendant Salvatore Morabito ("Salvatore Morabito") is and was at all times relevant hereto a resident of Washoe County, Nevada and Maricopa County, Arizona and the Secretary and Vice President of Superpumper. Salvatore Morabito is the brother of Paul Morabito. Salvatore Morabito was the recipient of certain fraudulent transfers originating in Washoe County, Nevada.

1 16. On December 3, 2007, Paul Morabito and CNC filed a lawsuit against the
2 Plaintiffs, captioned Consolidated Nevada Corp., et al. v. JH, et al., (the "State Court"), Case
3 No. CV07-02764 (together with all claims and counterclaims, the "State Court Action").

4 17. Plaintiff's filed numerous counterclaims in the State Court Action against Paul
5 Morabito and CNC, including, but not limited to, fraud in the inducement, misrepresentation,
6 and breach of contract relating to the ARSPA.

7 18. On September 13, 2010, the State Court entered an oral judgment against Paul
8 Morabito and CNC in favor of Plaintiffs. Specifically, the State Court found that Paul Morabito
9 and CNC fraudulently induced JH and Herbst to enter into the ARSPA and ruled in favor of JH
10 and Herbst against Morabito on other fraud-based claims.

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

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

18 **THE SETTLEMENT AGREEMENT AND FORBEARANCE AGREEMENT**

19 21. While Paul Morabito and CNC's appeal of the State Court Judgment (the
20 "Appeal") was pending before the Nevada Supreme Court, Paul Morabito, CNC, and Plaintiffs
21 entered into a Settlement Agreement and Mutual Release dated November 30, 2011 (the
22 "Settlement Agreement"). Pursuant to the terms of the Settlement Agreement:

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

26 (b) The parties agreed to execute a *Confession of Judgment and Stipulation*
27 *to Confess Judgment in the Amount of \$85,000,000.00* (referred to collectively as the
28 "Confessed Judgment"), which, in the event that the Settlement Agreement was

1 breached and not cured, Plaintiffs would be permitted to file *ex parte* and without notice
2 in Department 6 of the Second Judicial District Court in and for the County of Washoe;

3 (c) Paul Morabito and CNC agreed to comply with the timely payment of
4 numerous financial obligations set forth therein; and

5 (d) Paul Morabito and CNC agreed to submit themselves to the jurisdiction
6 of the court of Washoe County, Nevada for any dispute relating to the Settlement
7 Agreement.

8 22. Consistent with the terms of the Settlement Agreement, the State Court Action
9 was dismissed with prejudice and Paul Morabito, CNC, and the Plaintiffs executed the
10 Confessed Judgment.

11 23. Unbeknownst to Plaintiffs, at the time the parties began negotiating and
12 subsequently executed the Settlement Agreement, Paul Morabito and CNC had no intention of
13 complying with its terms. Instead, Paul Morabito and CNC induced Plaintiffs to execute the
14 Settlement Agreement as a delay tactic to avoid execution and collection efforts on the State
15 Court Judgment and in an effort to obtain more time to transfer and dissipate assets in
16 furtherance of their attempts to thwart Plaintiffs' collection of the State Court Judgment.

17 24. Shortly after execution, Paul Morabito and CNC defaulted under the terms of the
18 Settlement Agreement by failing to comply with several of their financial obligations, including
19 complying with obligations under the related Moreno settlement agreement (the "Moreno
20 Default"), failing to pay amounts due and owing under the Hinckley Note (the "Hinckley Note
21 Default"), and failing to make the cash payment of Four Million and No/100ths Dollars
22 (\$4,000,000.00) due to Plaintiffs on or before March 1, 2013 (the "Cash Payment Default")
23 (collectively, the "Continuing Defaults").

24 25. After defaulting under the terms of the Settlement Agreement, Paul Morabito and
25 CNC requested that Plaintiffs forbear from exercising their rights and remedies set forth in the
26 Settlement Agreement, until December 1, 2013.

27 26. Accordingly, Paul Morabito, CNC and Plaintiffs entered into that certain
28 Forbearance Agreement dated March 1, 2013 (the "Forbearance Agreement").

1 27. Pursuant to the Forbearance Agreement, Morabito and CNC made the following
2 acknowledgments:

3 (i) The Continuing Defaults have occurred and are continuing; (ii)
4 [Paul Morabito and CNC] are unable to cure the Cash Payment Default;
5 (iii) [Paul Morabito and CNC] are unable to cure the Hinckley Note
6 Default; (iv) pursuant to the terms of the Settlement Agreement, as a result
7 of the occurrence of the Continuing Defaults, [Plaintiffs] currently have
8 the right to immediately exercise any one or more of the rights and
9 remedies under the Settlement Agreement, at law or in equity, as they, in
10 their sole discretion, deem necessary or desirable; and (v) [Paul Morabito
11 and CNC] do not have any defenses, legal or equitable, to the Continuing
12 Defaults, and/or any other events of Default that may exist under the
13 Settlement Agreement or the exercise by [Plaintiffs] of anyone or more of
14 their rights and remedies under the Settlement Agreement.

15 28. In exchange for Plaintiffs' agreement to grant a forbearance, Paul Morabito and
16 CNC agreed to (1) by no later than March 15, 2013, provide Plaintiffs with a fully executed
17 forbearance agreement between Paul Morabito, CNC, and the holders of the Hinckley Note; (2)
18 to make certain payments of deferred principal on the payment due on March 1, 2013 under the
19 Settlement Agreement; and (3) to make certain additional payments to Plaintiffs commencing
20 with a payment of \$68,437 on or before May 21, 2013.

21 29. In the event of a default under the terms of the Forbearance Agreement or the
22 Settlement Agreement, other than the Continuing Defaults, Plaintiffs were entitled under the
23 Forbearance Agreement to "immediately, and without expiration of any notice and cure period,
24 exercise and enforce their rights and remedies under the Settlement Agreement or at law."

25 30. Upon information and belief, as with the Settlement Agreement, at the time the
26 parties began negotiating and subsequently executed the Forbearance Agreement, Paul Morabito
27 and CNC had no intention of complying with its terms. Instead, Paul Morabito and CNC
28 induced Plaintiffs to execute the Forbearance Agreement as a delay tactic to avoid execution and
collection efforts on the State Court Judgment and in an effort to obtain more time to transfer and
dissipate assets in furtherance of their attempts to thwart Plaintiffs' collection of the State Court
Judgment.

1 31. Paul Morabito and CNC failed to comply with the terms of the Forbearance
2 Agreement by, among other things, failing to pay the required April, May, or June payments and
3 failing to obtain or deliver the Hinckley Forbearance Agreement.

4 32. Based on the express terms of the Settlement Agreement, on June 18, 2013,
5 Plaintiffs filed the Confessed Judgment with the Second Judicial District Court in and for the
6 State of Nevada. Pursuant to the Confessed Judgment, Paul Morabito and CNC are jointly and
7 severally indebted to Plaintiffs in the amount of \$85,000,000.00, less any credits or offsets for
8 any payments made under the Settlement Agreement.

9 33. Despite the oral findings of fact and conclusions of law, State Court Judgment,
10 Settlement Agreement, Forbearance Agreement, and Confessed Judgment, Morabito and CNC
11 have failed to make the required payments to Plaintiffs in satisfaction of the amounts due and
12 owing them.

13 THE FRAUDULENT TRANSFERS

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

21 (a) On or about September 15, 2010, a mere two days after the State Court
22 issued its oral findings of fact and conclusions of law, Paul Morabito transferred
23 \$6,000,000 out of his account with Bank of Montreal in Canada to an entity identified as
24 Sefton Trustees in New Zealand.

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

27 (c) Although Paul Morabito claimed this \$6,000,000 transfer was made as a
28 settlement relating to his obligation on a guaranty, no documentation supporting said

1 guaranty obligation was ever provided to Plaintiffs and Paul Morabito subsequently
2 denied under oath that the transfer was made to satisfy an obligation under a guaranty.

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

6 (e) Upon information and belief, prior to September 28, 2010, Paul Morabito
7 resided at 8355 Panorama Drive in Reno, Nevada (the "Reno Property"). Paul Morabito
8 owned a two-thirds interest in the Property and Bayuk owned the remaining one-third of
9 the Reno Property.

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

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

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

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

23 (j) On September 30, 2010, despite Paul Morabito's 2009 \$5,588,661 stock
24 basis, Paul Morabito sold his interest in Superpumper to Snowshoe Petroleum for
25 approximately \$2,500,000. Snowshoe Petroleum was incorporated on September 29,
26 2010 for the sole purpose of receiving the transfer from Paul Morabito.

27 (k) Upon information and belief, prior to October 1, 2010, the Arcadia Living
28 Trust and Bayuk held a joint interest in Baruk Properties. On October 1, 2010, Paul

1 Morabito transferred the Arcadia Living Trust's 50% interest in Baruk Properties to
 2 Bayuk as Trustee of the Edward William Bayuk Living Trust for a promissory note with a
 3 principal amount of \$1,617,050, which was then assigned to the principals of Woodland
 4 Heights Ltd. for a 20% interest in a joint venture.

5 (l) Upon information and belief, the appraised value of Baruk Properties at the
 6 time of the transfer was \$9,266,600 less a mortgage of \$1,440,000, for a net equity value
 7 of \$7,826,600, making Paul Morabito's 50% worth \$3,913,000, exceeding the value of
 8 the promissory note received in exchange by \$2,295,950.

9 (m) Upon information and belief, in or around September 2010, Paul Morabito
 10 as Trustee of the Arcadia Living Trust, and Bayuk, held joint ownership of a property
 11 located at 1254 Mary Flemming Circle in Palm Springs, California (the "Palm Springs
 12 Property").

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

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

25 (p) Lastly, upon information and belief, at some point subsequent to the State
 26 Court's oral judgment, Paul Morabito executed a promissory note in favor of Bayuk in
 27 the amount of \$600,000. Paul Morabito has refused to produce any evidence relating to
 28 the underlying obligation to Bayuk or payments made on said obligation and Bayuk

1 claims that the note is in good standing despite the fact that Paul Morabito purportedly
2 failed to make any payments on the note to Bayuk.

3 35. Upon information and belief, these transfers were done in an effort to avoid
4 Plaintiffs' efforts to collect on the State Court Judgment and the subsequently executed
5 Confession of Judgment.

6 **III.**

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **[FRAUDULENT TRANSFERS NRS § 112.140 – ALL DEFENDANTS]**

10 36. Plaintiffs repeat, reallege and incorporate each and every allegation contained in
11 the preceding paragraphs of this Complaint as though fully set forth herein.

12 37. At all times relevant herein, Plaintiffs have been a creditor of Paul Morabito, and
13 Paul Morabito is a debtor, within the definitions set forth in NRS § 112.150.

14 38. Upon information and belief, between August 29, 2009 and October 1, 2010, Paul
15 Morabito engaged in a transfer or series of transfers whereby several of his assets were
16 transferred to the remaining Defendants or on behalf of the remaining Defendants.

17 39. Upon information and belief, the transfers by Paul Morabito to the remaining
18 Defendants were made with the actual intent to hinder, delay, or defraud Plaintiffs as a creditor of
19 Paul Morabito, pursuant to NRS § 112.180.

20 40. Before the transfers were made, Plaintiffs had obtained an oral judgment against
21 Paul Morabito on claims for fraud and fraud in the inducement.

22 41. Upon information and belief, the transfers were made to insiders.

23 42. Upon further information and belief, Paul Morabito retained possession or control
24 of at least some of the property transferred after the transfer and continued to control the actions
25 of Bayuk and Salvatore Morabito and continues to presently control their actions.

26 43. Upon further information and belief, said transfers were made without Paul
27 Morabito receiving reasonably equivalent value from the remaining Defendants, and left Paul
28

1 Morabito with debts which he lacked the means to pay, including the State Court Judgment owed
2 to Plaintiffs.

3 44. Upon information and belief, at the time of the transfers to the remaining
4 Defendants, Paul Morabito was engaged or was about to engage in a business or a transaction for
5 which his remaining assets were unreasonably small in relation to his business or transaction.

6 45. Upon information and belief, at the time of the transfers to the remaining
7 Defendants, Paul Morabito intended to incur, or believed or reasonably should have believed that
8 he would incur debts beyond his ability to pay as they became due.

9 46. Upon further information and belief, at the time of the transfers to Defendants,
10 Paul Morabito was insolvent or was rendered insolvent by the transfers.

11 47. As a direct, natural, and foreseeable consequence of Defendants' actions,
12 Plaintiffs have been damaged in an amount to be proven at trial.

13 48. Plaintiffs are entitled to the remedies provided in NRS § 112.210, including, but
14 not limited to:

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

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

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

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

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

25 49. It has been necessary for Plaintiffs to retain the services of counsel to prosecute
26 this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

27 ///

28 ///

SECOND CLAIM FOR RELIEF
[BREACH OF CONTRACT -- AGAINST PAUL MORABITO]

50. Plaintiffs repeat, reallege and incorporate each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

51. Plaintiffs and Paul Morabito entered into valid and existing contracts, specifically the Settlement Agreement and Forbearance Agreement.

52. Plaintiffs have fully performed under the terms of the Settlement Agreement, by, among other things, executing the voluntary dismissal of the State Court Action.

53. Paul Morabito has failed and/or refused to comply with his obligations under the Settlement Agreement by, among other things, failing to comply with several of the financial obligations set forth therein, including complying with the related Moreno settlement agreement, failing to pay amounts due and owing pursuant to the lease for 425 Maestro, failing to pay amounts due and owing under the Hinckley Note, and failing to make the cash payment of Four Million and No/100ths Dollars (\$4,000,000.00) due to Plaintiffs on or before March 1, 2013.

54. Plaintiffs have also fully performed under the terms of the Forbearance Agreement by agreeing to forbear from exercising their rights and remedies set forth in the Settlement Agreement.

55. Paul Morabito has failed and/or refused to comply with his obligations under the Forbearance Agreement by, among other things, failing to, by no later than March 15, 2013, provide Plaintiffs with the Hinckley Forbearance Agreement, failing to make the required payments of deferred principal on the payment due on March 1, 2013 under the Settlement Agreement, and failing to make certain additional payments to Plaintiffs commencing with a payment of \$68,437 on or before May 21, 2013.

56. As a direct and proximate cause of Paul Morabito's breach of the Settlement Agreement and Forbearance Agreement, Plaintiffs have suffered damages in an amount in excess of \$10,000.

57. It has been necessary for Plaintiffs to retain the services of counsel to prosecute this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

THIRD CLAIM FOR RELIEF
[BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING -
AGAINST PAUL MORABITO]

58. Plaintiffs repeat, reallege and incorporate each and every allegation the preceding paragraphs of this Complaint as though fully set forth herein.

59. Plaintiffs and Paul Morabito entered into a contract, specifically the Settlement Agreement and Forbearance Agreement.

60. Implied in the Settlement Agreement and Forbearance Agreements between the parties was the obligation of good faith and fair dealing.

61. Paul Morabito breached the implied covenant of good faith and fair dealing by, among other things, misrepresenting his intention to comply with either the Settlement Agreement or Forbearance Agreement, and by engaging in fraudulent transfers in an attempt to prevent Plaintiffs from collecting on the State Court Judgment or the subsequently filed Confessed Judgment.

62. As a direct and proximate cause of Paul Morabito's breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered damages in an amount in excess of \$10,000.

63. It has been necessary for Plaintiffs to retain the services of counsel to prosecute this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

FOURTH CLAIM FOR RELIEF
[FRAUDULENT INDUCEMENT/MISREPRESENTATION - PAUL MORABITO]

64. Plaintiffs repeat, reallege and incorporate each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

65. In connection with the execution of the Settlement Agreement and Forbearance Agreement, Paul Morabito made representations to Plaintiffs that he intended to comply with the terms of said agreements and would not take any actions to thwart Plaintiffs' ability to collect on the State Court Judgment or Confessed Judgment in the event that Paul Morabito failed to comply with the terms of the Settlement Agreement and/or Forbearance Agreement.

1 66. Those representations were false, as Paul Morabito had no intention of complying
2 with the terms of the Settlement Agreement and Forbearance Agreement and took overt steps to
3 prevent Plaintiffs' from collecting the amounts due and owing pursuant to the State Court
4 Judgment or Confessed Judgment, by, among other things, fraudulently transferring his assets to
5 the remaining Defendants.

6 67. Paul Morabito knew or believed that his representations were false or that he had
7 an insufficient basis of information for making his representations.

8 68. Paul Morabito made these representations with the intent to induce Plaintiffs to
9 act or refrain from acting upon his misrepresentation, including executing the Settlement
10 Agreement, Forbearance Agreement, and refraining from executing upon or continuing
11 collection efforts on the State Court Judgment.

12 69. Plaintiffs justifiably relied upon Paul Morabito's false misrepresentation that he
13 intended to comply with the terms of the Settlement Agreement and/or Forbearance Agreement
14 when entering into the Settlement Agreement and Forbearance Agreement and when delaying
15 their efforts to collect under the State Court Judgment and/or Confessed Judgment.

16 70. Plaintiffs have been damaged as a result of relying on Paul Morabito's
17 misrepresentations in an amount in excess of \$10,000.

18 71. In committing the acts herein above alleged, Paul Morabito is guilty of
19 oppression, fraud, and malice toward Plaintiffs. Therefore, in addition to general damages,
20 Plaintiffs are entitled to recover punitive damages from Paul Morabito for the purpose of
21 deterring him and others similarly situated from engaging in like conduct in the future.

22 72. It has been necessary for Plaintiffs to retain the services of counsel to prosecute
23 this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

24 **FIFTH CLAIM FOR RELIEF**
25 **(CIVIL CONSPIRACY – AGAINST ALL DEFENDANTS)**

26 73. Plaintiffs repeat, reallege and incorporate each and every allegation contained in
27 the preceding paragraphs of this Complaint as though fully set forth herein.
28

1 74. Plaintiffs and Paul Morabito entered into the Settlement Agreement and Forbearance
2 Agreement in order to settle their dispute pending in State Court and to allow the parties to reach an
3 amicable settlement regarding the State Court Judgment and to provide Plaintiffs an expeditious
4 remedy in the event that Paul Morabito breached the Settlement Agreement and/or Forbearance
5 Agreement.

6 75. Despite Paul Morabito's representations that he intended to comply with the terms of
7 the Settlement Agreement and Forbearance Agreement, and that he would not take any steps to
8 prevent Plaintiffs from collecting on the State Court Judgment and/or Confessed Judgment in the
9 event that Paul Morabito breached said agreements, Paul Morabito had no intention of complying and
10 instead went to great lengths to fraudulently transfer his assets so as to prevent Plaintiffs' ability to
11 collect.

12 76. Defendants acted in concert with the intention to fraudulently induce Plaintiffs into
13 executing the Settlement Agreement and Forbearance Agreement in order to give Paul Morabito
14 additional time to dilute his assets and prevent Plaintiffs from collecting on the State Court Judgment
15 and/or Confessed Judgment.

16 77. Defendants also acted in concert to fraudulently transfer Paul Morabito's assets
17 without fair consideration and with an intent to hinder, delay, or defraud Plaintiffs as a creditor of
18 Paul Morabito.

19 78. All of these activities by the Defendants were done with the unlawful objective of
20 defrauding Plaintiffs and fraudulently transferring assets that should be utilized to satisfy the State Court
21 Judgment and/or Confessed Judgment.

22 79. As a direct and proximate result of Defendants' misconduct as set forth herein,
23 Plaintiffs have been damaged in an amount in excess of \$10,000.

24 80. As a further direct and proximate result of Defendants' conspiracy to accomplish an
25 unlawful objective as set forth herein, Plaintiffs are entitled to an award of punitive damages sufficient
26 to deter these Defendants' misconduct.

27 81. It has been necessary for Plaintiffs to retain the services of counsel to prosecute
28 this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

SIXTH CLAIM FOR RELIEF
(AIDING AND ABETTING FRAUDULENT MISREPRESENTATION -- AGAINST BAYUK, SALVATORE MORABITO, SNOWSHOE PETROLEUM, AND SUPERPUMPER)

82. Plaintiffs repeat, reallege and incorporate each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

83. Bayuk, Salvatore Morabito, Snowshoe Petroleum, and Superpumper substantially assisted or encouraged Paul Morabito's conduct in breaching his duties and obligations to Plaintiffs as addressed above.

84. Plaintiffs have sustained damage resulting from Bayuk, Salvatore Morabito, Snowshoe Petroleum, and Superpumper's acts.

85. It has been necessary for Plaintiffs to retain the services of counsel to prosecute this action, and Plaintiffs are entitled to recover the attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For an award of compensatory damages against Defendants in an amount to be proven at trial;
2. For an award of punitive damages against Defendants in an amount to be proven at trial;
3. For an award to Plaintiffs of reasonable attorneys' fees and costs;
4. For garnishment against Defendants, the recipients of the fraudulent obligation.
5. For avoidance of the transfer or obligation to the extent necessary to satisfy Plaintiffs' claim.
6. For attachment or other provisional remedy against the asset transferred or other property of Defendants in accordance with the procedure prescribed by law in obtaining such remedy.
7. For such other and further relief as this Court deems appropriate.

///

///

///

AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 17th day of December, 2013.

GORDON SILVER

By: /s/ John P. Desmond

GERALD M. GORDON, ESQ.

Nevada Bar No. 229

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Attorneys for Plaintiffs

EXHIBIT 2

March 5, 2015

Gerald M. Gordon, Esq.
ggordon@gordonsilver.com
Direct line: 702-796-5555

VIA EMAIL & U.S. MAIL: biffer@bktte.com

William A. Leonard, Jr.
Chapter 7 Trustee
6625 S. Valley View Blvd., Bldg. B #224
Las Vegas, NV 89118

Re: Engagement of Gordon Silver

Dear Mr. Leonard:

Thank you for selecting Gordon Silver ("we," "us," "our," or the "Firm") to provide legal services regarding the Matter described below. The terms in this letter ("Engagement Letter") together with the Standard Terms of Representation attached hereto as **Exhibit "A"** will describe the basis on which the Firm will provide the legal services. As we have discussed, you ("you," "your," or the "Client"), in your dual capacities as the duly appointed Chapter 7 trustee of each of the bankruptcy estates of Paul A. Morabito and Consolidated Nevada Corporation ("Bankruptcy Estates"), are the Firm's client in this Matter.

Subject to the approval of the Firm's engagement on the Matter by the Firm's Executive Committee and approval by the U.S. Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") as special counsel pursuant 11 U.S.C. § 327, the Firm will be engaged to advise and represent you in connection with that certain civil action pending before the Second Judicial District Court of the State of Nevada, Washoe County, styled as *JH, Inc., et al. v. Paul A. Morabito, et al.*, having case number CV13-02663 (the "Matter").

You have agreed that the Firm's representation is limited to the performance of services related to this Matter only. We may agree with you to further limit or, subject to the approval of the Bankruptcy Court, expand the scope of the Firm's representation from time-to-time, but only if a change is confirmed in a writing signed by a Shareholder of the Firm or other person authorized by the Firm's Executive Committee that expressly refers to this letter (a "Supplement").

You have agreed that our representation of the Client in this Matter does not give rise to a lawyer-client relationship between the Firm and any of the Client's affiliates; the representation

Gordon Silver

Attorneys and Counselors at Law

March 5, 2015

Page 2

being provided pursuant to this Engagement Letter is solely for you and we assume and will rely upon the assumption that all affiliates or other persons or entities will seek their own legal representation with regard to the Matter. Accordingly, representation of the Client in this Matter will not give rise to any conflict of interest in the event other clients of the Firm are adverse to any of the Client's affiliates.

No retainer is required for the engagement. It is expressly understood that the Client's obligation to pay the Firm's fees, costs and expenses is subject to approval by the Bankruptcy Court and is in no way contingent on the ultimate outcome of the Matter. All approved attorneys' fees and costs shall be paid as an administrative expense of the Bankruptcy Estates. Unless otherwise agreed with you in writing, we reserve the right to deliver all billing statements to you via email.

The principal basis for computing our fees will be the amount of time spent on the Matter by various lawyers and legal assistants multiplied by their hourly billing rates. Our current rates for attorneys range from \$210.00 per hour to \$775.00 per hour. Gerald M. Gordon, Esq. will be the attorney in charge of the relationship with you, and my/his/her hourly rate is \$775.00, however, the attorneys assigned to the Matter will include John Desmond and Brian Irving, whose rates are \$485.00 and \$385.00, respectively. In any event, the Firm will allocate and assign work among our partners, associates and legal assistants in a manner which we believe to be most efficient. Time devoted by law clerks, paralegals, project assistants and investigators that are employees of the Firm are charged at billing rates ranging from \$55 to \$195 per hour. These billing rates are subject to change annually and you will be notified of any changes to those billing rates whether directly or by invoice. These applicable hourly rates are the Firm's prevailing rates for attorneys, law clerks and other professional and non-professional assistants.

Additional information regarding fees and other important matters appear in the attached Standard Terms of Representation, which is incorporated as part of this Engagement Letter and which you should review carefully before agreeing to our engagement on the Matter. This Engagement Letter is a binding legal document with significant consequences. You are encouraged to have it reviewed by other counsel of your choice prior to execution by you. Please indicate your acceptance of the terms of this representation letter and the Standard Terms of Representation by signing and returning a copy of this Engagement Letter to me. Please call me if you have any questions. We look forward to working with you.

Gordon Silver

Attorneys and Counselors at Law

March 5, 2015

Page 3

Sincerely,

GORDON SILVER

GERALD M. GORDON, ESQ.

AGREED TO AND ACCEPTED:

WILLIAM A. LEONARD, JR.

By: _____

Title: Chapter 7 Trustee

Date: _____

GMG/adh

Enclosure

Gregg W. Zive

Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
May 05, 2015

JOHN F. MURTHA, ESQ.
Nevada Bar No. 835
SETH J. ADAMS, ESQ.
Nevada Bar No. 11034
WOODBURN AND WEDGE
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Reno, Nevada 89505
Telephone: 775-688-3000
Facsimile : 775-688-3088
jmurtha@woodburnandwedge.com
sadams@woodburnandwedge.com

Attorneys for Trustee
William A. Leonard

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

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

PAUL A. MORABITO,

**ORDER AUTHORIZING THE EMPLOYMENT
OF GORDON SILVER AS SPECIAL
COUNSEL FOR LITIGATION FOR
CHAPTER 7 TRUSTEE**

Debtor.

Hearing Date: 04/28/2015
Hearing Time: 2:00 p.m.

WOODBURN AND WEDGE
6100 Neil Road, Ste. 500
Reno, Nevada 89511
Tel: (775) 688-3000

1 The Chapter 7 Trustee, William A. Leonard ("Trustee"), by and through his
 2 counsel Woodburn and Wedge, filed his *Application for Order Authorizing the*
 3 *Employment of Gordon Silver as Special Litigation Counsel for Chapter 7 Trustee* (the
 4 "Application"), which came on for hearing before the above captioned Court on April 28,
 5 2015 at 2:00 p.m. All appearances were duly noted on the record at the hearing on the
 6 Application.

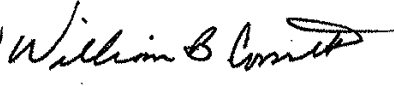
7
 8 The Court having reviewed the Application and all matters submitted therewith;
 9 notice of the Application having been proper; and good cause appearing therefore, IT
 10 IS HEREBY ORDERED that:

11 1. The Application is granted.

12 2. The Trustee is authorized to retain Gordon Silver pursuant to Sections
 13 327, 328 and 330 of the Bankruptcy Code, and subject to the terms of the Engagement
 14 Agreement, as its special litigation counsel to perform the services set forth in the
 15 Application, which is hereby approved.

16
 17 3. Gordon Silver shall be compensated for the services described in the
 18 Application in accordance with the procedures set for in Sections 328, 330 and 331 of
 19 the Bankruptcy Code, any other applicable procedures and orders of the Court.

20
 21
 22 **Prepared and Submitted by:**
 23 JOHN F. MURTHA, ESQ.
 24 SETH J. ADAMS, ESQ.
 25 WOODBURN AND WEDGE
 26 Post Office Box 2311
 27 Reno, Nevada 89505
 28 Attorneys for Trustee
 William A. Leonard

Approved: 
 William B. Cossitt, Esq., #3484
 Trial Attorney for United States Trustee
 Tracy Hope Davis
 OFFICE OF THE U.S. TRUSTEE
 William Cossitt, Esq.

ALTERNATIVE METHOD RE: RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:
(check one):

 The Court waived the requirements of approval under LR 9021.

 This is a chapter 7 or 13 case, and either with the motion, or at the hearing, I have delivered a copy of the proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Counsel who approved the order: _____

Counsel who disapproved the order: _____

Counsel who did not respond: _____


 This is a chapter 9, 11 or 15 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Counsel who approved the order: _____

Counsel who disapproved the order: _____

Counsel who did not respond: _____

 X I certify that there were no oppositions or appearances at the hearing.


 John F. Murtha, Esq.
 Seth J. Adams, Esq.

###