

**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 51**

**(Nos. 8836–8988)**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

22 vs.

23 SUPERPUMPER, INC., an Arizona  
24 corporation; EDWARD BAYUK, individually  
25 and as Trustee of the EDWARD WILLIAM  
26 BAYUK LIVING TRUST; SALVATORE  
27 MORABITO, and individual; and SNOWSHOE  
28 PETROLEUM, INC., a New York corporation,  
29  
30 Defendants.

CASE NO.: CV13-02663  
DEPT. NO. 4

31 **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTIONS**  
32 **FOR NEW TRIAL AND/OR TO ALTER OR AMEND JUDGMENT**

33 Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito  
34 ("Plaintiff"), by and through counsel, Erika Pike Turner, Teresa Pilatowicz, and Gabrielle Hamm of  
35 the law firm of Garman Turner Gordon LLP, hereby files his Opposition to the *Motion for New Trial*  
36 *and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 50* filed by Defendants  
37 Superpumper, Inc. ("Superpumper"), Salvatore Morabito ("Morabito"), and Snowshoe Petroleum,  
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1 Inc. (“Snowshoe”), on April 25, 2019 (the “4/25 Motion”), and the *Motion for New Trial and/or to*  
2 *Alter or Amend Judgment* filed by Defendant Edward Bayuk (“Bayuk,” and collectively with  
3 Superpumper, Morabito, and Snowshoe, “Defendants”) on April 26, 2019 (the “4/26 Motion”).

4 This Opposition is made and based on the following Memorandum of Points and Authorities,  
5 inclusive of Rules 52, 59, and 60 of Nevada’s Rules of Civil Procedure (“NRCP”) cited by  
6 Defendants, the papers and pleadings on file in the case, including Plaintiff’s *Opposition to*  
7 *Defendants’ Motions in Limine* filed on September 28, 2018, Plaintiff’s *Motion in Limine to Exclude*  
8 *the Testimony of Jan Friederich* and *Reply to Defendants’ Opposition to Plaintiff’s Motion in Limine*  
9 *to Exclude the Testimony of Jan Friederich* filed on September 20, 2018 and October 12, 2018,  
10 respectively, *Plaintiff’s Points and Authorities Regarding Authenticity and Hearsay Issues* filed on  
11 October 31, 2018, *Plaintiff’s Opposition to Defendants’ Motion to Continue Hearing* filed on  
12 February 22, 2019, the extensive evidentiary record from trial, including the trial transcript and  
13 exhibits, and the *Findings of Fact, Conclusions of Law, and Judgment* entered on March 29, 2019  
14 (the “Judgment”), as well as oral argument the Court may permit at any hearing.

#### 15 MEMORANDUM OF POINTS AND AUTHORITIES

##### 16 **A. NRCP 52 and 60 Are Inapplicable.**

17 Defendants cite to NRCP 60 in the title of their motions as a basis for amending the  
18 Judgment, but never again refer to the rule. There is no citation explaining which grounds delineated  
19 in NRCP 60 provide the basis for their arguments. Further, there are no clerical mistakes, oversights  
20 or newly discovered evidence or any other reason set forth in the Defendants’ motions that would  
21 justify relief from the Judgment pursuant to NRCP 60.

22 Defendants also cite to an old version of NRCP 52 as the basis for their motions, and ***not the***  
23 ***applicable NRCP 52 as amended on March 1, 2019.*** (See 4/25 Motion, p. 3, ll. 25-28; 4/26 Motion,  
24 p. 3, ll. 25-28.) Notwithstanding that Defendants cite to the wrong version of the rule, NRCP 52  
25 does not provide a valid basis for amending the Judgment as argued by Defendants here, as the focus  
26 of the clarified Rule 52 is whether the Court supported its Judgment with findings and conclusions  
27 stated or written in the record. Here, there can be no doubt that the findings of the Court outlined in  
28 30+ pages of the Judgment and the conclusions thereon constituting another approximately 30 pages

1 are more than sufficient to satisfy the NRCP 52 requirement that the Court substantiate its  
2 determinations with the actual record.

3 **B. Rule 59 Relief is an Extraordinary Remedy Available Only When an Error**  
4 **Materially Affected Substantial Rights.**

5 Rule 59 relief is an “extraordinary remedy, to be used sparingly in the interests of finality  
6 and conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003); *AA*  
7 *Primo Builders v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1192-93 (2010) (holding that  
8 NRCP 59(e) echoes Fed.R.Civ.P. 59(e), and courts may consult federal law); *see also Exec. Mgmt.,*  
9 *Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (“Federal cases interpreting the  
10 Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil  
11 Procedure are based in large part upon their federal counterparts.”).

12 Among the specifically-delineated causes or grounds for a new trial or altering or amending  
13 a judgment set forth in NRCP 59(a), Defendants allege the following causes or grounds:  
14 1) irregularity in the proceedings of the court or adverse party or any order of the court or abuse of  
15 discretion by which either party was prevented from having a fair trial, NRCP 59(a)(1)(A), and  
16 2) error in law occurring at the trial and objected to by the party making the motion, NRCP  
17 59(a)(1)(G). (4/25 Motion, p. 4; 4/26 Motion, p. 4 (citing NRCP 59(a)(1)(A) and (G)).

18 Even if Defendants could show such causes or grounds, however, NRCP 59 authorizes a  
19 court to grant a new trial or amend a judgment only upon a finding that the delineated causes or  
20 grounds “materially affect[ed] the substantial rights” of the moving party. NRCP 59(a)(1). A motion  
21 that “rehashes matters already addressed by the district court [does] not meet the standards required  
22 for relief under NRCP 59.” *Oliver v. Bank of America*, 2012 WL 425728 (2012) (table op.) (citing  
23 *AA Primo Builders v. Washington*, 245 P.3d 1190, 1193 (2010)). Nor may a Rule 59 motion be used  
24 to relitigate old matters. *See* 11 Charles Alan Wright, et al., *FED. PRAC. & PROC.*, § 2810.1 (2d ed.  
25 1995).<sup>1</sup> A motion to alter or amend a judgment should also be denied where it would serve no useful  
26 purpose, as the outcome would not change. *See id.*; NRCP 61 (“At every stage of the proceeding,

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27  
28 <sup>1</sup> The district court’s decision whether to grant a new trial or to alter or amend a judgment is reviewed for an abuse of  
discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. —, —, 319 P.3d 606, 611 (2014).

1 the court must disregard all errors and defects that do not affect any party's substantial rights.");  
2 *Khoury v. Seastrand*, 132 Nev. Adv. Op. 52, 377 P.3d 81, 94 (2016) (to show error is not harmless,  
3 a party "must show that the error affects the party's substantial rights so that, but for the alleged error,  
4 a different result might reasonably have been reached.") (quoting *Wyeth v. Rowatt*, 126 Nev. 446,  
5 465, 244 P.3d 765, 778 (2010)); *Stevo Design, Inc., v. SBR Mktg. Ltd.*, 919 F.Supp.2d 1112, 1117  
6 (D. Nev. 2013) ("Finally, a judgment will not be amended or altered if to do so would serve no useful  
7 purpose.").

8 Here, there was no irregularity that denied Defendants a fair trial nor an error in law over  
9 Defendants' objection that would justify a new trial or altering or amending the Judgment. But even  
10 if Defendants could demonstrate that some irregularity or error occurred, they cannot demonstrate  
11 that it was one "materially affecting substantial rights" because Defendants cannot show that the  
12 outcome would have changed in light of the voluminous evidence of pervasive fraud.

13 The Judgment followed a lengthy trial to the bench on the merits of Plaintiff's fraudulent  
14 transfer claims and Defendants' affirmative defenses. The Judgment consists of 63 pages, at least  
15 half of which consists of factual findings with citations to the trial record. At trial, there was  
16 extensive evidence presented: the live testimony of 10 witnesses (Tim Herbst, Bayuk, Morabito,  
17 Plaintiff, James McGovern, Jan Friederich, William Kimmel, Darryl Noble, Dennis Banks, and  
18 Michele Salazar), the recorded deposition testimony of 9 witnesses (Paul Morabito, Dennis Vacco,  
19 (individually and as the person most knowledgeable of Snowshoe Petroleum, Inc.), Christian  
20 Lovelace, Stan Bernstein, Spencer Cavalier, Gary Graber, Sujata Yalamanchili, Gary Krausz, and  
21 Michael Sewitz), as well as more than 200 exhibits entered in evidence to be considered by the Court  
22 prior to entry of the Judgment.

23 Throughout the trial to the bench, Defendants argued against admissibility of relevant<sup>2</sup>  
24 evidence. These arguments carry over to the post-trial motions. The Court exercises broad discretion  
25 on the admission of evidence, and the Court's evidentiary rulings will not be overturned absent a  
26 showing that it was manifestly wrong or a palpable abuse of discretion. *See Abid v. Abid*, 406 P.3d

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28 <sup>2</sup> Unless a specific statute prohibits the admission of relevant evidence, it is presumed admissible. NRS 48.025(1).



1 476, 480 (2017); *Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 491, 117 P.3d 219,  
2 226 (2005); *see also Young v. Nev. Title Co.*, 103 Nev. 436, 441, 744 P.2d 902, 904–05 (1987)  
3 (district court also has wide discretion in the conduct of trial, including limitations on the presentation  
4 of evidence). As discussed below, there was no abuse of discretion or error here.

5 In light of the volume of evidence supporting the Court’s findings regarding the multiple  
6 badges of fraud and Defendants’ lack of good faith, Defendants cannot demonstrate that any error  
7 materially affected substantial rights or affected the outcome of the trial.

8 **C. Defendants Were Afforded a Fair Trial.**

9 Defendants cannot demonstrate that they were denied a fair trial based on the alleged errors  
10 set forth in the Motions. *See Hannam v. Brown*, 114 Nev. 350, 363, 956 P.2d 794 (1998) (rejecting  
11 argument of procedural irregularities when a court refused to allow a party to call a witness and  
12 prevent factual evidence as the complaining party could not show his inability to do so prejudiced  
13 his right to a fair trial). Generally, excluding evidence in a bench trial as more prejudicial than  
14 probative is unnecessary and improper. *See Wright v. Watkins & Shepard Trucking, Inc.*, No.  
15 211CV01575LRHGWf, 2016 WL 10749220, at \*7 (D. Nev. Jan. 19, 2016) (discussing Fed.R.Evid.  
16 403, the federal equivalent of NRS 48.035) (*quoting United States v. Kienlen*, 349 Fed.Appx. 349,  
17 351 (10th Cir. 2009) (unpublished) (*quoting Gulf States Utils. Co. v. Ecodyne Corp.*, 635 F.2d 517,  
18 519 (5th Cir. 1981)). In contrast to a jury, the court “can hear relevant evidence, weigh its probative  
19 value and reject any improper inferences.” *Id.* (*citing Coffey v. United States*, No. CIV 08-0588  
20 JB/LFG, 2012 WL 1698289, at \*3-4 (D. N.M. May 8, 2012)).

21 **1. Defendants Had the Opportunity to Depose Every Witness.**

22 As a threshold matter, Defendants had every opportunity to call witnesses they designated  
23 during trial. Defendants also had the opportunity to depose every witness designated, and if they did  
24 not control a witness sufficient to compel them to trial, then they had deposition testimony that they  
25 presented in lieu of live testimony. Defendants participated in the depositions of the witnesses and  
26 even presented designations at trial without any exclusions.

1                   **2. Denial of the Continuance Motion Did Not Deprive Defendants of a Fair Trial,**  
2                   **and Defendants Waived Rebuttal.**

3                   Further, Bayuk's contention that the Court's denial of Defendants' Motion to Continue  
4                   Hearing (the "Continuance Motion") denied him a fair trial should be rejected. Not only was the  
5                   Court's decision correct, but Bayuk fails to show that he was prejudiced by the Court's decision.  
6                   Whether to grant or deny a continuance was within the Court's discretion. *S. Pac. Transp. Co. v.*  
7                   *Fitzgerald*, 94 Nev. 241, 243, 577 P.2d 1234, 1235 (1978); *Neven v. Neven*, 38 Nev. 541, 546, 148  
8                   P. 354, 356 (1915). In denying the Continuance Motion, the Court questioned the credibility of  
9                   Bayuk's claim that his health precluded travel, but nevertheless accommodated him by permitting  
10                  him to testify by way of simultaneous audio-visual transmission pursuant to NRCp 43(a) and Part  
11                  IX-B(B) of the Nevada Supreme Court Rules, and also permitted Sam Morabito to testify from  
12                  another location. Defendants were never denied an opportunity to be heard.

13                  As a result, Bayuk had the opportunity to rebut Plaintiff's evidence that he provided false  
14                  testimony and offer the February 19, 2019 email by attorney David Shemano (bankruptcy counsel  
15                  for both Paul Morabito and Bayuk) purporting to "explain" the payments by Snowshoe that were the  
16                  subject of the Motion to Reopen, despite his earlier contention that Plaintiff's designation of that  
17                  same email as a potential exhibit in advance of the March 1, 2019 hearing was prejudicial. (*See* 4/26  
18                  Motion, p. 12, l. 17 – p. 13, l. 12; Exhibit 1; *id.*, p. 5, ll. 3-17.) Not only is the subject email hearsay,  
19                  but Bayuk had the opportunity to explain the payments twice—during trial and on March 1, 2019.  
20                  Instead, both Bayuk and Morabito refused to attend the March 1, 2019 hearing either in person or by  
21                  way of audio-visual transmission, expressly "waive[d] any rebuttal to the evidence admitted on  
22                  February 8, 2019 at Trial Exhibits 305, 306, 307, 308, and 309," and agreed to vacate the hearing.  
23                  (*See* February 28, 2019 Amended Stipulation to Vacate March 1, 2019 Hearing.)

24                  **D. There Was No Error at Law Over Defendants' Objection.**

25                  In order to overturn a judgment on an alleged error of law, it is axiomatic that the alleged  
26                  error must have been objected to at the time of trial, particularly with regard to alleged errors of law  
27                  occurring during trial involving the admission of evidence. NRCp 59(a)(1)(G); *Bass-Davis v. Davis*,  
28                  122 Nev. 442, 453, 134 P.3d 103, 110 (2006).

1 Many of Defendants' arguments arise from evidentiary disputes in which Defendants sought  
2 to suppress evidence of the truth. The trial was to the bench, where it is an appropriate exercise of  
3 discretion to admit evidence and give it the weight it deserves, if any. *See Wright v. Watkins &*  
4 *Shepard Trucking, Inc.*, No. 211CV01575LRHGWF, 2016 WL 10749220, at \*3 (D. Nev. Jan. 19,  
5 2016) (unpublished) (it is presumed that in a bench trial, the judge will disregard inadmissible  
6 evidence and rely only on competent evidence, so the more prudent course is to resolve evidentiary  
7 doubts in favor of admissibility) (citing *Commerce Funding Corp. v. Comprehensive Habilitation*  
8 *Servs., Inc.*, No. 01 CIV. 3796 (PKL), 2004 WL 1970144, at \*4 (S.D.N.Y. Sept. 3, 2004)  
9 (unpublished) (once court makes a preliminary determination of admissibility, "it will, as the trier of  
10 fact, consider the weight and sufficiency of the evidence presented at trial.") (other citations omitted).

11 **1. The Court did not err in its denial of the Motion in Limine on damages.**

12 On September 12, 2018, Defendants filed a motion in limine to exclude Plaintiff's evidence  
13 of damages based on their criticism of Plaintiff's NRCP 16.1 disclosures; however, Defendants fail  
14 to demonstrate that evidence of Plaintiff's damages was not disclosed prior to trial in compliance  
15 with NRCP requirements, with Defendants having more than sufficient opportunity to rebut the  
16 evidence at trial.

17 In their arguments, Defendants ignore the nature of Plaintiff's damages in this case. Plaintiff  
18 had but one claim—a claim was for fraudulent transfer under NRS Chapter 112. In Plaintiff's NRCP  
19 16.1 disclosures, Plaintiff explained that it would be seeking recovery of assets transferred OR the  
20 value thereof in excess of \$8.5 million. (4/25 Motion, p. 5, ll. 11-12.) As acknowledged by  
21 Defendants, the purpose of providing a computation of damages is not to pinpoint an exact dollar  
22 figure, but to enable the defendants to understand the contours of their potential exposure and make  
23 informed decisions regarding settlement and discovery. (4/25 Motion, p. 5, ll. 25-28.)

24 First, Defendants, as transferees of the subject assets, were at all times in possession of the  
25 information necessary to value the assets.

26 Second, there can be no question that Defendants understood their potential exposure from  
27 Plaintiff's NRCP 16.1 and 26 disclosures. Plaintiff timely disclosed all of the evidence of value that  
28 would be presented at trial sufficient for Defendants to conduct discovery and designate rebuttal

1 evidence. (See Exhs. A-1 through A-3 to Plaintiff's *Opposition to Defendants' Motions in Limine*,  
2 consisting of Plaintiff's Rule 16.1 and Expert Witness Disclosures to Defendants.) There is also no  
3 question that Plaintiff and Defendants exchanged the disclosed experts' reports related to the value  
4 of the subject properties and equity interests.

5 Third, in addition to their disclosures under Rule 16.1 and expert disclosures, Plaintiff made  
6 specific damages assertions supported by citation to the previously disclosed evidence in Plaintiff's  
7 August 17, 2017 *Motion for Partial Summary Judgment* filed over a year prior to trial. (See Exh. A-  
8 5 to Plaintiff's *Opposition to Defendants' Motions in Limine*.)

9 Defendants failed to acknowledge Plaintiff's other disclosures regarding valuation in their  
10 Motion in Limine, and they similarly failed to acknowledge the fact of the other disclosures of  
11 valuation in the post-trial motions. It is then no surprise that Defendants misstate the Court's ruling  
12 in denying Defendants' motion in limine in the 4/25 Motion, and merely cite to one portion of the  
13 Court's ruling. (4/25 Motion, p. 4, ll. 27-28 (alleging the denial of the motion was that the issue  
14 "could have been raised sooner".)) Defendants never previously moved to compel Plaintiff to  
15 supplement its calculation of damages or did anything otherwise to object to Plaintiff's damages  
16 calculation, and instead waited until trial to argue that Plaintiff's disclosure was deficient and that  
17 no evidence of Plaintiff's damages should be admitted at trial as a result. The Court outlined her  
18 concern about Defendants waiting to raise their objection and seek the strenuous sanction of  
19 exclusion of all evidence of damages until the motion in limine; however, the Court was also careful  
20 to state the following:

21 If, as we go, if something specific hits you, the defense, and you say wait a  
22 minute, Judge, there is no discovery on this before, please bring that to my  
attention and I will consider excluding the testimony on a case by case basis.

23 (10/29/18 Trans., p. 22, ll. 2-6.)

24 Dispositive of Defendants' arguments that the Court erred when denying Defendants' motion  
25 in limine, at no time during the presentation of evidence did Defendants ever argue that evidence  
26 being admitted at the request of Plaintiff was not previously disclosed or the subject of discovery to  
27 Defendants' detriment. In fact, a review of the record shows that the evidence of value underlying  
28 the Court's Judgment was either stipulated or the subject of competing testimony of experts. (See

Judgment, pp. 14-23.)

Defendants do not want to acknowledge they received fair notice of the evidence to be presented at trial, which is the purpose of NRCP 16.1. Rather, they focus on technical procedural arguments. However, Defendants cite no case that would support their argument that despite receiving substantial discovery on the evidence presented at trial in support of Plaintiff's damages, the Court should have denied the admission of the evidence at trial on nothing more than a procedural argument relating to the form of Plaintiff's disclosures, thereby elevating form over substance. Thus, the Court did not err in its denial of Defendants' motion in limine.

**2. The Court did not err in any ruling on Jan Friedrich's live testimony.**

The Court considered the testimony of Jan Friederich presented at trial in rebuttal to Plaintiff's evidence of the value of Superpumper. The Court rejected that testimony given Mr. Friedrich's standing to benefit from a lower valuation of the Superpumper asset by virtue of his admitted involvement as a subsequent transferee. (Judgment, p. 17, ll. 7-12.) This was a credibility determination well within the Court's discretion. *See Douglas Spencer & Associates v. Las Vegas Sun, Inc.*, 84 Nev. 279, 281-82, 439 P.2d 473, 475 (1968) (trier of fact is the exclusive judge of the credit and weight to be given to a witness's testimony).

Further, Jan Friederich was not being offered as an expert on valuation. (11/5/18 Trans., p. 21, ll. 13-15; p. 27, ll. 9-10.) Without Jan Friederich being offered, let alone established, as an expert witness on valuation of the Superpumper assets (inclusive of gas stations), it was not relevant whether he bought and sold gas stations previously. (11/5/18 Trans., p. 29, ll. 12-19.) Mr. Friedrich's anecdotal testimony on what he looked for when he is acquiring gas station assets would not be helpful to the Court in resolving whether to exclude or include receivables in the valuation of Superpumper.

**3. The Court did not err in the admission of emails into evidence.**

Defendants argue that emails should have been excluded from evidence on the basis that they were not authenticated by an in-court witness and/or that the emails constituted "hearsay" of a witness who did not appear at trial.

In arguing against the admission of the emails, Defendants ignore the procedural history of

1 the case that resulted in orders compelling production of the subject emails from the lawyers  
2 (primarily from Lippe Mathias Wexler Friedman LLP (“LMWF”), joint counsel for the Defendants  
3 and Paul Morabito) and overruling claimed privilege objections. Paul Morabito’s communications  
4 with his counsel were compelled to be produced and could not be withheld on the basis of privilege  
5 under the crime-fraud exception to privilege as well as Plaintiff’s voluntary waiver of any privilege  
6 between Paul Morabito and his counsel. (11/2/18 Trans., p. 97, ll. 4-11; Exh. 175.) This Court then  
7 adopted the bankruptcy court’s order and incorporated it in its order compelling production. (*See*  
8 Recommendation for Order entered on June 13, 2016 and Order Confirming Master  
9 Recommendation entered on July 6, 2016.)

10 By the time the emails were finally produced by LMWF in response to the order that  
11 overruled the privilege objection, Plaintiff, as trustee of the Paul Morabito bankruptcy estate, had  
12 taken custody and control of all assets of Paul Morabito, the chapter 7 debtor, as of the bankruptcy  
13 petition date. (*See* Exhs. 19, 175.) The bankruptcy estate became the owner of Paul Morabito’s  
14 assets under § 541 of the Bankruptcy Code, including his client files and communications with his  
15 lawyers. (*See* 11/2/18 Trans., p. 86, ll. 15-17; p. 91, ll. 21-24 (“I stand in the shoes of the debtor...and  
16 I own the debtor’s records from his accountants to his attorneys. I own them...”); p. 94, ll. 12-14.)

17 **a. Authentication**

18 During trial, Defendants stated on the record that they were not objecting on the grounds of  
19 authentication. (10/30/18 Trans., p. 59, l. 1.) Now, despite that waiver, Defendants are squarely  
20 challenging authentication. (4/25 Motion, p. 13, ll. 19-20.)

21 Defendants new stated reason for the authentication challenge is that the emails were  
22 produced after discovery had been completed. However, Defendants fail to identify any point in  
23 time where they requested additional discovery relating to the compelled production of emails that  
24 were produced after the authors’ depositions. Moreover, Defendants fail to demonstrate how  
25 discovery was required to establish foundation. The only cases cited by Defendants in support of  
26 their position, *Mishler v. McNally*, 102 Nev. 625, 628, 730 P.2d 431, 435 (1986) and *Adams v. United*  
27 *States*, CIV. 03-0049-E-BLW, 2009 WL 2207690, at \*2 (D. Idaho July 15, 2009) (unpublished), are  
28 inapposite. *Mishler* dealt with a memo that was not an original, was unsigned, and the purported

1 author was unavailable to authenticate it. *Adams* involved unexplained scientific reports emailed to  
2 counsel and nothing in the court’s order indicates that the producing party was an agent of the party  
3 against whom the exhibits were offered.

4 Authentication of a document can be done with any showing sufficient to support a finding  
5 that the matter in question is what the proponent claims. *See* NRS 52.015. Here, the testimony of  
6 the author of the emails (Paul Morabito) was not required to authenticate them. Authenticity of the  
7 emails was established at trial through Plaintiff who described how he obtained Paul Morabito’s  
8 communications with his counsel through requests at the 341 examination of Paul Morabito<sup>3</sup> and  
9 follow up subpoenas and orders compelling production. (*See* 11/2/18 Trans., p. 94, l. 2- p. 97, l. 8;  
10 p. 106, ll. 6-12.) Specifically, Plaintiff submitted evidence regarding how the emails were obtained  
11 from the attorneys for Paul Morabito and how Plaintiff became the custodian of those records by  
12 virtue of his appointment as trustee of the Paul Morabito bankruptcy estate, allowing the Court to  
13 reasonably conclude that the documents represented a true and authentic copy of emails from the  
14 attorneys’ files and thereby satisfying Plaintiff’s burden to show the documents are what Plaintiff  
15 claims they are. (11/2/18 Trans., p. 107, l. 4 - p. 109); *see also In re Int’l Mgmt. Assoc., LLC*, 781  
16 F.3d 1262, 1267 (11th Cir. 2015) (authentication of debtor records by bankruptcy trustee); *Sec. Inv.*  
17 *Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 2018 WL 3617813, at \*7 (Bankr. S.D.N.Y. July 27,  
18 2018) (trustee properly authenticated debtor’s business records, noting that “the Court is not required  
19 to hear the testimony of the document’s author to demonstrate its authenticity”).

20 Following Plaintiff’s testimony, there can be no question that the emails were what they  
21 purported to be—communications from Paul Morabito that were in his counsel’s custody and control  
22 until obtained by Plaintiff standing in the shoes of Paul Morabito, as a bankrupt debtor.

23 Further, it is disingenuous of Defendants to argue that there was a lack of foundation because  
24 the emails were compelled and produced after depositions were completed. Defendants did not seek  
25 to have any further deposition of Paul Morabito following production for the purpose of exploring  
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27 <sup>3</sup> Defendants initially objected to the email at Trial Exhibit 37 coming into evidence and then changed course during  
28 Plaintiff’s testimony at trial, agreeing that so long as a document was stamped “341” it could be admitted. (Trial  
Trans, 11/2/18, p. 106).

1 the supplemental production from Paul Morabito's counsel; therefore, Defendants were not "denied"  
2 discovery relating to the subject emails of Paul Morabito.

3 **b. Hearsay**

4 None of the unquestionably relevant emails admitted by the Court here constituted  
5 inadmissible hearsay. They either were excluded from hearsay under NRS 51.035 as not offered for  
6 the truth of the matter or fell under a recognized exception under NRS 51.075, NRS 51.105(1), NRS  
7 51.135, NRS 51.315 or NRS 51.345(1). (Plaintiff's 10/31/18 brief; 11/2/18 Trans., p. 110.)

8 Defendants focus on Exhibit 29 specifically in the 4/25 Motion (p. 9, l. 24) – the "home court  
9 advantage" email – as an example of inadmissible hearsay. This is a fraudulent transfer case where  
10 the transferor's intent to defraud, delay, or hinder creditors is at the heart of the Court's inquiry.  
11 There could be no better example of Paul Morabito's existing state of mind and motive to transfer  
12 assets out of Nevada than Exhibit 29 describing Paul Morabito's mindset at the time of transfer as  
13 wanting to avoid the Herbst family's perceived "home court advantage" in Nevada. Under NRS  
14 51.105(1) relating to "intent, plan or motive," Exhibit 29 is not excluded by the hearsay rule.  
15 (11/1/18, Trans., p. 48, l. 2.) In addition, the statement is admissible under NRS 51.345 as a  
16 statement against interest of the declarant, Paul Morabito.

17 Furthermore, as discussed above, NRS 51.135 is applicable to ALL the emails admitted upon  
18 the testimony of Plaintiff in his capacity as custodian of the records owned by Paul Morabito. In his  
19 capacity as trustee standing in the shoes of Paul Morabito, Plaintiff established that the method or  
20 circumstances of the preparation of the files of Paul Morabito's counsel for production pursuant to  
21 NRCP 16.1 with detailed indicia of trustworthiness (e.g., they were produced to him by Paul  
22 Morabito's counsel as a result of Plaintiff's 341 requests, subpoenas, or through orders compelling  
23 production). Further, Plaintiff established his experience as a trustee and how he compiled the files  
24 in the course of his regularly conducted activity. (11/2/18 Trans., pp. 94-107.)

25 **4. Craig Greene's expert report is inadmissible hearsay.**

26 Craig Greene was not called as a witness at trial. Defendants attempted to admit Mr.  
27 Greene's expert report during cross-examination of Tim Herbst, a representative of the judgment  
28 creditors and non-party to the instant case.



1 Absent stipulation, a report prepared by an expert is generally inadmissible hearsay.  
2 *See Ramirez v. State*, 114 Nev. 550, 559, 958 P.2d 724, 730-31 (1998). There was no stipulation  
3 with respect to the Craig Green report.

4 Defendants argued at trial (10/29/18 Trans., p. 92, l. 14), and argue again in the 4/25 Motion  
5 (p. 11), that the expert report of Craig Greene constitutes a statement of a **former** party opponent (the  
6 Herbst Parties) because it was relied upon in the determination of punitive damages by Judge Adams  
7 in the Herbst Litigation, and that the expert's report is therefore excluded from the hearsay rule. NRS  
8 51.035(3) is inapplicable here because 1) the statement was being offered against a former party, not  
9 Plaintiff; 2) Craig Greene was not a representative, agent or servant of any party, but rather was an  
10 expert witness; and 3) Plaintiff did not manifest adoption or belief in the truth of the matters outlined  
11 in the report. The Court ruled that regardless of whether the expert's report was disclosed by Plaintiff  
12 or the Herbst Parties, an expert's report is not an "adopted admission" of a party.

13 Nor, contrary to Defendants' allegations, did the Court accept the Craig Greene report  
14 disclosed by the Herbst Parties to Judge Adams; rather, the parties to the Herbst Litigation stipulated  
15 to a punitive damages amount following discovery and the exchange of expert reports. (10/29/18  
16 Trans., p. 102, ll. 4-10.)

17 Further, a chapter 7 trustee is generally not bound by another party's pre-petition conduct.  
18 *See, e.g., Reed v. City of Arlington*, 650 F.3d 571, 575, 576 (5th Cir. 2011) (holding that judicial  
19 estoppel does not estop trustee with respect to cause of action not disclosed by debtor and stating  
20 "[j]udicial estoppel is an equitable doctrine, and using it to land another blow on the victims of  
21 bankruptcy fraud is not an equitable application") (*quoting Biesek v. Soo Line R.R. Co.*, 440 F.3d  
22 410, 413 (7th Cir. 2006)). Even if submission of the Craig Green report in the Herbst Litigation  
23 would bind the Herbst Parties in a later proceeding, Plaintiff's standing derives from Section 544 of  
24 the Bankruptcy Code, where he acts on behalf of all creditors, not just the Herbst Parties.

25 **5. The Court did not err in the admission of the testimony of Tim Herbst and**  
26 **William Leonard.**

27 Defendants fail to show the Court's admission of the purported "character" testimony of Tim  
28 Herbst and William Leonard was improper or prejudicial. NRS 48.045(c) expressly permits

evidence of the character of a witness, offered to attack or support the witness's credibility within the limits of NRS 50.085, which permits opinion evidence regarding a witness's truthfulness. Second, and particular apposite here, evidence of specific crimes, wrongs or acts is admissible for purposes other than showing a person acted in conformity therewith, including motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *See Ledbetter v. State*, 122 Nev. 252, 260–61, 129 P.3d 671, 677–78 (2006) (the common scheme or plan exception of NRS 48.045(2) is applicable when the prior act evidence and the crime charged constitute an “integral part of an overarching plan explicitly conceived and executed by the defendant” and the test is not whether the other offense has certain elements in common with the crime charged, but whether it tends to establish a *preconceived plan* which resulted in the commission of that crime.”) (internal quotes and citations omitted). Here, Paul Morabito's original fraud against the Herbst Parties (the subject of Tim Herbst's testimony) and his refusal to comply with his duties of disclosure to Plaintiff under the Bankruptcy Code (the subject of William Leonard's testimony) are part and parcel of a plan to defraud his creditors, falling squarely within the exceptions under NRS 45.045.

However, even if admission of the testimony was an error, it did not prejudice Defendants because the Court did not rely on it in the Judgment.

**6. The Court did not err in its finding that the transfers were concealed.**

Bayuk's argument that the Court erred in finding that transfers were concealed (only one of the many badges of fraud found by the Court) must be rejected. (*See* 4/26 Motion at pp. 6-7.)

Initially, Bayuk's argument again conflates Defendants' intent and conduct with that of the transferor, Paul Morabito. The required intent to hinder, delay or defraud is the debtor's. *In re Nat'l Audit Def. Network*, 367 B.R. 207, 221 (Bankr. D. Nev. 2007).

Further, Bayuk fails to cite any authority for the proposition that the Nevada Supreme Court's interpretation of the term “concealed” in *Winn v. Sunrise Hospital & Medical Center*, 128 Nev. 246, 277 P.2d 458 (2012), has any bearing on fraudulent transfer law, or that a duty to disclose is a prerequisite to a finding that “the transfer or obligation was disclosed or concealed” under NRS

1 112.180(2).<sup>4</sup> Indeed, that the statute lists as indicia of fraud that the transfer was “disclosed or  
2 concealed” establishes that failure to disclose the transfers to the Herbst Parties, whether or not  
3 characterized as “concealment,” is relevant evidence of intent. At least one court has rejected a  
4 transferee’s attempt to graft onto fraudulent transfer law the prerequisite of a duty to disclose  
5 applicable to fraudulent concealment cases. *In re Int’l Mfg. Grp., Inc.*, 538 B.R. 22, 30 (Bankr. E.D.  
6 Cal. 2015) (duty to disclose applicable to fraud claim “has nothing to do with fraudulent conveyance  
7 law” and is not an element of a fraudulent conveyance claim; there is no requirement that the plaintiff  
8 plead or prove the transferee had any sort of duty of disclosure).

9 Substantial evidence supports the Court’s finding that the transfers were concealed. Within  
10 approximately two weeks of the Court’s September 13, 2010 Oral Ruling in the Herbst Litigation,  
11 the name of the entity owning the Baruk Properties was changed to Snowshoe Properties, and the  
12 domicile of the entity was changed from Nevada to California, and within another month, the Palm  
13 Springs Property was transferred again, from Snowshoe Properties to the Bayuk Trust, and the  
14 \$1,617,500 Note was assigned to Woodland Heights, Ltd. (*See* Judgment, p. 24, ll. 5-16; p. 26, ll.  
15 1-7.) While litigation was pending, Bayuk converted Snowshoe Properties from a California  
16 company to a Delaware company. (*See* Judgment, p. 24, ll. 12-14.)

17 While Bayuk contends that recorded deeds would have revealed the transfers, no deed search  
18 could have revealed the Membership Interest Transfer Agreement pursuant to which Paul Morabito  
19 transferred his interest in Baruk LLC to Bayuk, the \$1,617,500 Note, or the assignment of the  
20 \$1,617,500 Note to Woodland Heights, Ltd. Likewise, no public records search would have revealed  
21 the payments purportedly made for Raffles, the draw-down on the Compass Loan, the distributions  
22 made by Superpumper, the Matrix Valuation, or the Shareholder Interest Purchase Agreement, all  
23 of which occurred immediately before or after the Oral Ruling. (*See* Judgment, p. 11, l. 13 – p. 12,  
24 l. 16, p. 13, ll. 7-11, p. 14, ll. 5-13.) Even if the transfers had been discoverable through public  
25

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26 <sup>4</sup> Whether a transfer was disclosed or concealed is only one of eleven non-exclusive badges of fraud identified in  
27 NRS 112.180(2), and therefore, even if the Court erred, which it did not, it would have no impact on the outcome of  
28 the case. *See, e.g., In re Gen. Agents Ins. Co. of Am., Inc.*, 224 S.W.3d 806, 820 (Tex. App. 2007) (finding under  
Texas UFTA that “[a]lthough concealment of the transfer is one factor that may be considered in determining whether  
a transaction is deemed fraudulent under the statute, it is not a required element of the cause of action.”).

1 records, however, Bayuk’s argument that the Herbst Parties “sat on their rights” elides the fact that  
2 by the time Judge Adams entered the first judgment in the Herbst Litigation on October 12, 2010,  
3 the bulk of the transactions constituting the transfers had already occurred. (*See* Judgment, p. 3, ll.  
4 1-2; p. 41, ll. 11-19.)

5 Additional evidence of concealment is that transactions were conducted through the accounts  
6 of Defendants’ and Paul Morabito’s joint counsel, the advice by Paul Morabito’s counsel to use  
7 another company as a strawman to conceal a payment to a real estate broker, and Paul Morabito’s  
8 plan to remove assets to other jurisdictions to ensure that the assets were out of the reach of the  
9 Nevada courts. (*See* Judgment, p. 7, ll. 6-8; p. 10, ll. 14-20; p. 19, ll. 3-9; p. 29, ll. 9-13; Exhs. 26,  
10 32.) *See, e.g., Carey v. Soucy*, 245 Ariz. 547, 431 P.3d 1200, 1205 (Ct. App. 2018), review denied  
11 (Apr. 22, 2019) (evidence of concealment where the judgment debtor assigned funds to an entity of  
12 which his attorney was the sole member and but for a garnishment proceeding, there was no evidence  
13 that the assignment would have been disclosed, and the judgment debtor removed or concealed assets  
14 when he instructed his attorney to wire payments to another entity rather than the judgment debtor  
15 himself).

16 **7. The Court did not err in its interpretation of “reasonably equivalent value.”**

17 As a threshold matter, Bayuk’s argument that the Court must find that the disparity between  
18 the assets transferred and the value received was “so great as to shock the conscience and strike the  
19 understanding at once with the conviction that such transfer could never have been made in good  
20 faith” in order to find the existence of a fraudulent transfer is a blatant misstatement of applicable  
21 law. *Matusik v. Large*, cited by Bayuk, was decided under the former Uniform Fraudulent  
22 Conveyances Act, which was replaced by the Uniform Fraudulent Transfers Act in 1987. *See*  
23 *Matusik v. Large*, 85 Nev. 202, 207, 452 P.2d 457, 460 (1969) (*citing* NRS 112.040); *see generally*  
24 NRS 112.140, *et. seq.*; *see also In re Bay Plastics, Inc.*, 187 B.R. 315, 322, 329 (Bankr. C.D. Cal.  
25 1995) (The term “fair consideration” derives from the Uniform Fraudulent Conveyance Act, 7A  
26 U.L.A. 427, 428 (1985), the predecessor to the UFTA, which replaced “fair consideration” with  
27  
28

1 “reasonably equivalent value.”); Unif. Fraudulent Transfer Act, § 4, cmt 2).<sup>5</sup>

2 In a recent unpublished decision, the Nevada Supreme Court confirmed that, consistent with  
3 other cases interpreting UFTA and § 548 of the Bankruptcy Code, “reasonably equivalent” ordinarily  
4 means “fair market value.” *MOH Mgmt., LLC v. Michelangelo Leasing, Inc.*, 437 P.3d 1054 (Nev.  
5 2019) (table op.) (finding purchaser paid fair market value for assets after months of diligence and  
6 negotiations and “therefore satisfied the definition of reasonably equivalent value.”) (*citing BFP v.*  
7 *Resolution Trust Corp.*, 511 U.S. at 545) (explaining that outside the foreclosure context “reasonably  
8 equivalent value” ordinarily means “fair market value”).

9 Cases under § 548 of the Bankruptcy Code and other states’ enactment of UFTA, which are  
10 relevant to an analysis under UFTA in Nevada, *Herup v. First Bos. Fin., LLC*, 123 Nev. 228, 235,  
11 162 P.3d 870, 874 (2007), agree that while dollar-for-dollar equivalence is not required, “reasonably  
12 equivalent value” requires at least a rough equivalency, generally measured by fair market value and  
13 considering the totality of the circumstances of the transaction. *See, e.g., In re Floyd*, 540 B.R. 747  
14 (Bankr. D. Idaho 2015) (“reasonable equivalence” requires that what was given and received were  
15 approximately or roughly equivalent; it is fundamentally a question of common sense); *In re Crystal*,  
16 513 B.R. 413 (Bankr. D. Idaho 2014) (“If debtor gets roughly the value it gave, it has received  
17 ‘reasonably equivalent value’”); *In re Pringle*, 495 B.R. 447 (B.A.P. 9th Cir. 2013) (finding that  
18 “reasonably equivalent value” is not an esoteric concept, rather, a party receives “reasonably  
19 equivalent value” if it gets roughly the value it gave) (*citing Advanced Telecomm. Network, Inc. v.*  
20 *Allen (In re Advanced Telecomm. Network, Inc.)*, 490 F.3d 1325, 1336 (11th Cir. 2007) (while a  
21 precise dollar-for-exchange is not required, value received must be reasonably equivalent to value  
22 given up) (citation omitted)).<sup>6</sup>

23  
24 <sup>5</sup> The “shocks the conscience” standard is still used with respect to a limited type of “transfer” – a foreclosure sale  
conducted in strict compliance with state law. *See BFP v. Resolution Trust Corp.*, 511 U.S. 531, 545 (1994).

25 <sup>6</sup> *See also Allstate Ins. Co. v. Countrywide Fin. Corp.*, 842 F. Supp. 2d 1216, 1224 (C.D. Cal. 2012) (under Illinois  
26 UFTA, factors include (i) whether the value of what was transferred is equal to the value of what was received; (ii)  
market value of what was transferred and received; (iii) whether the transaction took place at an arm’s length; and (iv)  
27 the good faith of the transferee.) (citations omitted); *In re Brobeck, Phleger & Harrison LLP*, 408 B.R. 318 (Bankr.  
N.D. Cal. 2009) (approximately or roughly equivalent); *In re 3dfx Interactive, Inc.*, 389 B.R. 842 (Bankr. N.D. Cal.  
28 2008) (comparing the fair market value of the property transferred to what was received in exchange); *Barber v.*

1 Reasonable equivalence under UFTA or § 548 of the Bankruptcy Code is “markedly  
2 different” than the question of sufficiency of consideration to support a contract. *In re Pringle*, 495  
3 B.R. at 464. Moreover, whether value is “reasonably equivalent” must be measured not based on  
4 the value given by the transferee, but the consideration received by the debtor from the creditors’  
5 standpoint, as the purpose of fraudulent transfer law is to preserve the debtor’s estate for the benefit  
6 of creditors. *See, e.g., In re Jeffrey Bigelow Design Grp., Inc.*, 956 F.2d 479, 484 (4th Cir. 1992).  
7 Thus, if unsecured creditors are no worse off because the debtor has received an amount reasonably  
8 equivalent to what it paid, reasonably equivalent value has been paid. *Id.*

9 Moreover, a single transfer among a series of transactions should not be viewed in isolation,  
10 but in the context of the overall scheme. In *In re GGW Brands, LLC*, the bankruptcy court found  
11 that while the chapter 11 debtors’ payment of \$274,250.52 to an affiliated entity for a three-month  
12 license to use trademarks necessary to the effective operation of their business might, if viewed in  
13 isolation, be regarded as supported by reasonably equivalent value, the payment had to be viewed as  
14 part of integrated series of transactions which were used by the debtors’ principal to effectively strip  
15 the debtors of assets that otherwise might have been accessed by their creditors—by causing the  
16 debtors to assign the trademarks for no consideration to an affiliated entity, and then causing the  
17 entity to cancel the debtors’ license to use trademarks, so that a re-licensing agreement could be  
18 signed that depleted debtors of capital by imposing this three-month, \$274,250.52 licensing fee. *In*  
19 *re GGW Brands, LLC*, 504 B.R. 577 (Bankr. C.D. Cal. 2013). Viewed as whole, the court concluded  
20 that the revocation/re-licensing transaction was not supported by reasonably equivalent value to the  
21 debtors. *Id.*; *see also In re Intelligent Direct Marketing*, 518 B.R. 579 (E.D. Cal. 2014) (transfer of  
22 debtor corporation’s good will and income stream to other company created by sole shareholder of  
23 debtor and another individual was a fraudulent transfer under the Bankruptcy Code and California  
24 law, where e-mails between shareholder and individual demonstrated that the company was created  
25 with the understanding it would benefit from debtor’s connections and income stream while being  
26

27 *Golden Seed Co.*, 129 F.3d 382, 387 (7th Cir. 1997) (“ . . . the standard for ‘[r]easonable equivalence should depend  
28 on all the facts of each case,’ an important element of which is fair market value” and “whether the sale was ‘an arm’s  
length transaction between a willing buyer and a willing seller.’”) (citations omitted)).

1 distinguished from debtor to prevent debtor's creditors from going after company).

2 That some value is given by the transferee to the debtor is also insufficient to show reasonably  
3 equivalent value was given in exchange for the transfer. *See In re Pacific Thomas Corp.*, 543 B.R.  
4 7 (Bankr. N.D. Cal. 2015) (transferee failed to demonstrate that debtor received reasonably  
5 equivalent value in exchange for each transfer, because while transferee provided evidence that it  
6 performed work for debtor and charged debtor for its services, there was no documentary evidence  
7 indicating work was performed by transferee for debtor's benefit during the fraudulent transfer  
8 period, and there was no evidence that the funds transferred by debtor to transferee correlated to the  
9 work performed, as opposed to the funds needed by transferee, or that any other company provided  
10 a proportionate share of support to debtor).

11 **8. The Court did not err in its conclusion of value on the Panorama Property.**

12 The Court's conclusion of value with respect to the Panorama Property was amply-supported  
13 by the evidence and well within the Court's discretion. First, the Court was free to reject Daryl  
14 Noble's conclusion of value, along with his statement that he primarily relied on the sale comparison  
15 method, rather than the cost approach, in his valuation of the Panorama Property. As it was clear  
16 from his testimony and his report that the sales upon which he relied in his sales comparison approach  
17 did not support the concluded value, market conditions were largely disregarded, and his concluded  
18 value was arbitrarily increased by at least 25% to account for the quality and cost of the  
19 improvements to the property (thereby resulting in a value conclusion consistent with the value  
20 suggested to him by Paul Morabito), the Court was more than justified in doing so. (*See* Exh. 276;  
21 11/6/18 Trans., p. 32, ll. 3-13; p. 65, ll. 2-14; p. 70, l. 18 – p. 71, l. 2; p. 77, l. 3 – p. 78, l. 14; p. 79,  
22 ll. 16-21; p. 79, l. 18 – p. 80, l. 8; p. 83, l. 23 – p. 84, l. 2.)

23 Second, Bayuk's contention that "Kimmel's report violated well-established standards  
24 applicable to retro-active appraisals" is incorrect. (4/26 Motion, p. 10.) Under the Uniform  
25 Standards of Professional Appraisal Practice, where data subsequent to the effective date is  
26 consistent with and confirms market expectations as of the effective date, data subsequent to the  
27 effective date may be considered in developing a retrospective value as a confirmation of trends that  
28 would reasonably be considered by a buyer or seller as of that date. See USPAP, Statement on

1 Appraisal Standards No. 3 (SMT-3) (2005). Consistent with these standards, Mr. Kimmel agreed  
2 that subsequent events should be considered if they are foreseeable, that the recession and the lack  
3 of available financing was well known on the effective date of the appraisal, and subsequent sales  
4 on which he relied occurred during the same period of downturn in the market. (See 11/2/18 Trans.,  
5 p. 40, ll. 14-19; p. 83, l. 2 – p. 84, l. 4; p. 76, l. 11 – p. 77, l. 11.)

6 Third, Bayuk fails to cite any authority stating that looking to comparable sales subsequent  
7 to the effective date of valuation is improper or that Mr. Kimmel’s methodology was rendered  
8 unreliable by reference to sales following the effective date or his inability to inspect the property on  
9 the effective date. Rather, these factors go to the weight of the evidence and the credibility  
10 determinations made by the trier of fact. In *Aycrigg v. United States*, the court stated:

11 It is not necessary that an expert witness show that he has inspected the property  
12 at the date as of which evaluation is to be made, in order to qualify him to express  
13 an opinion. More frequently than not, an appraisal contemporaneous with the  
14 valuation date cannot be had, and retrospective appraisals are of necessity  
admitted. The weight to be given the opinion of the witness was a matter for the  
argument of counsel and the determination of the jury, but clearly, we think, the  
witness was qualified to express an opinion.

15 136 F. Supp. 244, 249 (N.D. Cal. 1954) (*quoting Brill v. Mushinsky*, 194 F.2d 158, 158 (D.C. Cir.  
16 1952) and *citing Mayers v. Alexander*, 73 Cal. App. 2d 752, 760, 167 P.2d 818, 823 (1946) (“The  
17 fact that the witness did not actually see the property in August, 1943, might affect the weight, but  
18 not the admissibility, of his testimony.”) (citations omitted)).

19 More recent authorities confirm that use of retrospective valuations and subsequent sales data  
20 are a matter of weight rather than admissibility. See, e.g., *Oreo Corp. v. Nielsen*, No. 2:10-CV-  
21 00352-PMP, 2013 WL 6384535, at \*3 (D. Nev. Dec. 5, 2013), *aff’d sub nom. Oreo Corp. v.*  
22 *Winnerman*, 642 F. App’x 751 (9th Cir. 2016) (in deficiency action under Nevada law, according  
23 both sides’ appraisal experts marginal weight and relying instead on a third appraiser’s reports, which  
24 was further supported by a subsequent arms-length sale four months later); *In re MyFord Touch*  
25 *Consumer Litig.*, 291 F. Supp. 3d 936, 973 (N.D. Cal. 2018) (in determining historic market value,  
26 retrospective simulation not inherently unreliable, and manufacturer’s argument that better evidence  
27 in the form of actual used car data goes to the weight of the analysis, not its admissibility under  
28



1 federal *Daubert* standard, and it is the province of the jury to decide whether the estimates of past  
2 market value are more or less credible than estimates based on used car sales); *In re Gutierrez*, 503  
3 B.R. 458, 465 (Bankr. C.D. Cal. 2013) (in determining proper date of valuation, noting that while  
4 appraisers may be reluctant to opine as to historical value because it is difficult not to look back with  
5 “20/20 hindsight,” these are not insurmountable concerns and bankruptcy courts deal with similar  
6 issues all the time).

7 Fourth, Bayuk’s contention that the Court abused its discretion in considering the sales price  
8 of the Panorama Property to a third-party purchaser in December 2012 because it was a “compulsory  
9 sale” is completely unsubstantiated. Defendants offered no evidence that the sale in December 2012  
10 was compulsory, obligatory, or otherwise forced. Paul Morabito had an economic incentive to sell  
11 the Panorama Property and agreed to do so after a substantial marketing period. (See Exh. 5  
12 (Settlement Agreement and Mutual Release) at pp. 7-8.) Bayuk cites no authority suggesting that  
13 an agreement to sell a property to fund a settlement constitutes a compulsory sale, and Defendants  
14 offered no expert testimony from an appraiser that the sale was not evidence of value on the basis  
15 that it was sold under “compulsion” within the meaning of USPAP.

16 **III.**  
17 **CONCLUSION**

18 Based upon the foregoing, Plaintiff respectfully requests the Court deny Defendants’ motions  
19 for new trial and/or to alter or amend the Judgment in their entirety, and enter such other and further  
20 relief as the Court deems just and appropriate.

21 Dated this 6th day of May, 2019.

22 GARMAN TURNER GORDON LLP

23 /s/ Gabrielle A. Hamm

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**AFFIRMATION**

**Pursuant to NRS 239B.030**

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

Dated this 6th day of May, 2019.

GARMAN TURNER GORDON LLP

/s/ Gabrielle A. Hamm

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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this  
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **PLAINTIFF'S**  
4 **OPPOSITION TO DEFENDANTS' MOTIONS FOR NEW TRIAL AND/OR TO ALTER**  
5 **OR AMEND JUDGMENT**, on the parties as set forth below:

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

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

9 \_\_\_\_\_ Via Facsimile (Fax)

10 \_\_\_\_\_ Via E-Mail

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

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

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

15 Frank C. Gilmore, Esq.  
16 E-mail: fgilmore@rssblaw.com

17 Jeffrey L. Hartman, Esq.  
18 E-mail: jlh@bankruptcyreno.com

19 Dated this 6th day of May, 2019.

20 /s/ Gabrielle A. Hamm  
21 An Employee of  
22 GARMAN TURNER GORDON LLP

23 4816-0894-6582, v. 3  
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9  
10 Attorneys for Defendants Salvatore Morabito,  
11 Snowshoe Petroleum, Inc.,  
12 Superpumper, Inc.

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

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

**CASE NO.: CV13-02663**

19 Plaintiffs,

**DEPT. NO.: 4**

20 vs.

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

27 Defendants. /

28 **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR NEW TRIAL AND/OR TO**  
**ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52, 59, AND 60**

29 Defendants SUPERPUMPER, INC., SALVATORE MORABITO, and SNOWSHOE  
30 PETROLEUM, INC. (collectively, "Defendants") hereby Reply in support of their motion for a  
31 new trial, pursuant to Rule 59(a) of the Nevada Rules of Civil Procedures, and/or to Alter or  
32 Amend the Judgment pursuant to Rules 52, 59, and 60, and seek reversal of the judgment entered  
33 against them. This Reply is made and based upon pleadings and other papers on file, the evidence

1 and argument presented at trial, and the following Memorandum of Points and Authorities.

2 **MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY**

3 **I. ARGUMENT**

4 **A. Defendants' Motion Seeks Relief under Rules 52, 59, and 60.**

5 Plaintiff contends that NRCP 52 and 60 are inapplicable to Defendants' Motion.  
6 (Opposition, p. 2). This is incorrect. Rule 52(b) provides that "On a party's motion filed no later  
7 than 28 days after service of written notice of entry of judgment, the court may amend its findings  
8 — or make additional findings — and may amend the judgment accordingly." Defendants sought,  
9 among other things, a revised Judgment more in conformity with the evidence. Accordingly, Rule  
10 52 is applicable.

11 Rule 60(b) provides that a party can be granted relief from an order of this Court for  
12 mistake. Defendants have contended that the Court made mistakes in considering certain evidence  
13 and those mistakes impacted the final Judgment. Accordingly, Rule 60 is applicable to the Motion,  
14 as are Rules 52 and 59.

15 **B. Denying the Defendants' Motion to Continue the Supplemental Hearing**  
16 **Effectively Deprived Defendants of their Ability to Explain Plaintiff's Incorrect**  
**Conclusions on the RSSB Billings.**

17 A significant finding relied upon by this Court in the Judgment was the factual finding that  
18 the Robison Sharp billing statements and attached documents supported the finding that Paul  
19 Morabito was in control of Snowshoe. Defendants had a right to present those arguments and  
20 testimony to the Court in an evidentiary hearing. Bayuk's medical condition prevented that from  
21 occurring on the date set by the court. Bayuk proposes a month delay so that he could be present  
22 and explain why he did not offer false testimony. The Court denied the request, effectively  
23 preventing Defendants from being able to effectively rebut the Plaintiff's contentions. Defendants  
24 waived rebuttal only because the Court had denied them the fair opportunity to present their  
25 rebuttal case. This deprived Defendants of their right to a fair trial.

26 **C. Plaintiff Obtained a Judgment for Damages Which Were Not Disclosed Under**  
27 **16.1.**

28 Plaintiff contends that he "had but one claim," that of fraudulent transfer. (Opposition, p.

1 7). While Plaintiff had but one *theory of recovery*, he maintained and tried several *claims*,  
2 including Superpumper, Snowshoe Properties, Panorama Drive, Raffles, among others. The Court  
3 voided the transfers and entered money judgment against the Defendants in specific amounts as to  
4 each of those claims. Because those amounts were calculable prior to trial, Plaintiff could have –  
5 and should have – disclosed those computations prior to trial. Because they did not, the proper  
6 remedy was to exclude evidence of damages which were not properly disclosed before trial.

7 It was never Defendants’ affirmative obligation to “move to compel Plaintiff to supplement  
8 its [sic] calculation of damages.” (Opposition, p. 8) The 16.1 obligations were always Plaintiff’s  
9 obligations and he failed in complying.

10 **D. Defendants Were No Under an Obligation to Conduct Additional Discovery on**  
11 **Exhibits that Plaintiff Alone Was Offering.**

12 Plaintiff makes the untenable argument that although the hundreds of email exhibits he  
13 proffered in trial had never been authenticated nor provided foundation by a testifying witness, that  
14 Defendants had the duty to conduct further depositions to address authenticity and foundation  
15 issues associated with the emails. (Opposition, p. 11-12).

16 It was Plaintiff who obtained the bulk of the email exhibits after discovery closed, and it  
17 was Plaintiff who declined to provide the emails to a deposition witness to obtain authenticity and  
18 foundation of each of them. It was Plaintiff, and not Defendants, who maintained the burden to  
19 establish foundation for each of his proposed exhibits. Defendants maintained the duty to  
20 authenticate and provide foundation for the exhibits Defendants sought to admit.

21 Plaintiff offered – and the Court admitted – hundreds of emails that had no proper  
22 foundation. Plaintiff bore the duty to lay the foundation, which he could not do. Admitting the  
23 exhibits unfairly prejudiced Defendants and prevented them from obtaining a fair trial.

24 **E. Nevada Has Not Adopted the Bankruptcy Code §544 Definitions of**  
25 **“Reasonably Equivalent Value.”**

26 Plaintiff, a bankruptcy trustee, relies almost exclusively on federal bankruptcy authorities to  
27 support his argument that the Court applied the proper standard of value in arriving in its  
28 conclusion that the Defendants did not exchange reasonably equivalent value. (Opposition, pp. 16-

1 19).

2 Nevada has never adopted the definitions and specifics associated with Sections 544 and  
3 548 of the Bankruptcy Code. Thus, each of those cases are inapposite. Second, the *Matusik* case,  
4 providing that the difference in value must not be merely dollar-for-dollar, but must “shock the  
5 conscience,” has never been overruled or given negative treatment in this state. *Matusik* is still  
6 good law. Plaintiff ignores it, and asks the Court to ignore it.

7 **F. Plaintiff Supports His Valuation of the Panorama Property with Evidence Not**  
8 **Offered At Trial Nor Considered by His Expert.**

9 Plaintiff now asks the Court to consider evidence not offered at trial, and not considered by  
10 his expert to support of the valuation of the Panorama Property. Plaintiff defends William  
11 Kimmel’s indefensible use of data he obtained in some cases more than 5 years after the valuation  
12 date by citing to valuation authorities which were not discussed at trial and were not utilized to  
13 form the basis of Kimmel’s opinions. (See Opposition, p. 19). The evidence at trial established  
14 that Kimmel was not aware of the authorities on retroactive appraisals. This was evident in the fact  
15 that he supported his valuation not with personal investigation of the condition of the property, but  
16 by post-hoc opinions of the condition of the property that were, at best, about two years after the  
17 valuation date. Thus, Kimmel’s opinions in differentiating the Panorama property from the other  
18 comparable he selected were unsupportable.

19 **II. CONCLUSION**

20 For the reasons set forth above, the Defendants respectfully request this Court grant the  
21 motion for a new trial or amend the judgment to conform to the evidence.

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

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

DATED this 14th day of May, 2019.

ROBISON, SHARP, SULLIVAN & BRUST  
71 Washington Street  
Reno, Nevada 89503

/s/ Frank C. Gilmore  
FRANK C. GILMORE, ESQ.  
Attorneys for Attorneys for Defendants Salvatore  
Morabito, Snowshoe Petroleum, Inc., Superpumper,  
Inc.



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Robison, Sharp, Sullivan & Brust, and that on this date I caused to be served a true copy of the **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR NEW TRIAL AND/OR TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 52, 59, AND 60** all parties to this action by the method(s) indicated below:

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

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

Gerald Gordon, Esq.  
Email: [ggordon@Gtg.legal](mailto:ggordon@Gtg.legal)  
Mark M. Weisenmiller, Esq.  
Email: [mweisenmiller@Gtg.legal](mailto:mweisenmiller@Gtg.legal)  
Teresa M. Pilatowicz, Esq.  
Email: [tpilatowicz@Gtg.legal](mailto:tpilatowicz@Gtg.legal)  
Erika Pike Turner, Esq.  
Email: [eturner@gtg.legal](mailto:eturner@gtg.legal)  
Gabrielle Hamm, Esq.  
Email: [ghamm@gtg.legal](mailto:ghamm@gtg.legal)

Jeffrey Hartman, Esq.  
Email: [jlh@bankruptcyreno.com](mailto:jlh@bankruptcyreno.com)

\_\_\_\_\_ by email addressed to:

DATED: This 14th day of May, 2019.



1 **1520**

2 Jeffrey L. Hartman, Esq.  
3 Hartman & Hartman  
4 510 W. Plumb Ln., Suite B  
5 Reno, Nevada 89509  
6 Nevada Bar Number 001607  
7 Tel: (775) 324-2800

8 Michael Lehnern, Esq.  
9 429 Marsh Ave.  
10 Reno, Nevada 89509  
11 Nevada Bar Number 003331  
12 Tel: (775) 786-1695

13 Attorneys for Edward Bayuk, individually, and  
14 as Trustee of the Edward William Bayuk Living Trust

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

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

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

CASE NO.: CV13-02663

DEPT. NO.: 4

19 Plaintiff,

20 vs.

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

27 Defendants. /

28 **DECLARATION OF EDWARD BAYUK CLAIMING EXEMPTION FROM EXECUTION**

I, Edward William Bayuk, in my capacity as an individual and in my capacity as the Trustee of the Edward William Bayuk Living Trust as amended on November 12, 2005, declare under penalty of perjury under the law of the State of Nevada and Nevada Revised Statute ("NRS") 53.045(2), that the following is true and correct:

///

1           1)       On or about June 27, 2019 I received received an email from my attorney Jeffrey L.  
2 Hartman that attached the June 22, 2019 Notice of Execution After Judgment. A copy of the June 22,  
3 2019 Notice of Execution and the two writs of execution are attached as **Exhibit "1"**.

4           2)       I have reviewed the writs that are attached in Exhibit "1". The Writs do not identify  
5 the specific property that is to be the subject of the execution. For that reason, I had my attorney  
6 contact the Las Vegas Constable. It is my understanding that the property to be executed upon by the  
7 writs are (1) Any money held in bank accounts with respect to me or as Trustee of the Edward  
8 William Bayuk Living Trust; (2) Any unearned money remaining upon the retainer I paid to Richard  
9 Holly, Esq. and (3) Any unearned money remaining upon the retainer I paid to Jeffrey Hartman, Esq.

10          3)       It is my direct knowledge that on August 23, 1998 I created the Edward William  
11 Bayuk Living Trust as a Florida Living Trust. I was a resident of Miami Beach, Florida at that time.  
12 I subsequently moved to California and then to Nevada in 2005.

13          4)       It is my direct knowledge that on November 12, 2005, as a resident of Nevada I  
14 executed, in Reno, Nevada, a Self-Settled Spendthrift Trust ("SSST") Amendment to the Edward  
15 William Bayuk Living Trust (the "Bayuk Trust Amendment"). That November 12, 2005 amendment  
16 was attested and witnessed by then Nevada U.S. House of Representatives Member Jim Gibbons  
17 who has sworn a 2019 declaration as such (attached as "**Exhibit "2"**"), confirming this and now, as  
18 the former Governor of Nevada and an attorney, provided a summary of relevant Nevada Statutes  
19 and a Nevada Supreme Court ruling regarding SSST. A copy of the Bayuk Trust Amendment is  
20 included with the Gibbons Declaration,

21          5)       It is my direct knowledge that the Bayuk Trust Amendment in Recital D states that it  
22 "*shall constitute the entire and exclusive statement of the terms of the Nevada Irrevocable Bayuk*  
23 *Spendthrift Trust, nullifying all prior and subsuming all future versions of the Bayuk Trust.*" The  
24 prior Florida living trust was **revoked** and any future trust nullified and subsumed by the Bayuk Trust  
25 Amendment.

26          6)       It is my direct knowledge that Recital "E" of the Bayuk Trust Amendment provides  
27 that the SSST can be referred to as the "Nevada Trust" or as the "Edward William Bayuk Living  
28 Trust."

7) It is my direct knowledge that the Edward William Bayuk Living Trust has held all of my assets and property assigned prior to 2005 and since the Edward William Bayuk Living Trust was executed in November of 2005. All the property, all or part of the lands, rents, issues, profits, personal property, interest of money, dividends upon stock and other produce thereof, partly in Nevada, previously in the Edward William Bayuk Living Trust up until November 12, 2005 was in the Edward William Bayuk Living Trust SSST Amendment. All assets from November 12, 2005 onwards to this day are property of the Edward William Bayuk Living Trust.

8) All business and personal assets associated with me, whether prior or current holdings, are the property of the Edward William Bayuk Living Trust.

9) All money that is in any financial institution has come from the Edward William Bayuk Living Trust and can be traced to it.

10) All money that paid to Jeffrey Hartman, Esq. and Richard Holly, Esq. came from my Edward William Bayuk Living Trust, and can be traced to it.

11) The SSST Edward William Bayuk Living Trust was created in compliance with the provisions of NRS Chapter 166 on November 14, 2005 more than two (2) years before the existence of any claims by any creditors let alone that of the Writs of Execution in Exhibit 1.

12) All assets transferred to or from the Edward William Bayuk Living Trust were done under my discretion as the Trustee. Per Edward William Bayuk Living Trust Amendment Section 55, I have a revocable instrument signed by the Co-Trustee delegating the exercise of all powers conferred on a Trustee other than the Distribution Trustee. Such transfers are not subject to garnishment pursuant to NRS 166.120(2).

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

Signed at Laguna Beach, California on this 27th day of June 2019.

Edward William Bayuk, Individually

Edward William Bayuk, Trustee  
Edward William Bayuk Living Trust as Amended  
on November 12, 2005

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

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

DATED this 28th day of June, 2019.

Hartman & Hartman

/s/ Jeffrey Hartman  
Jeffrey Hartman, Esq.  
Attorneys for Edward Bayuk, individually, and as  
Trustee of the Edward William Bayuk Living Trust

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 **DECLARATION OF EDWARD BAYUK**  
4 **CLAIMING EXEMPTION FROM EXECUTION** all parties to this action by the method(s)  
5 indicated below:

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

8 Gerald M. Gordon, Esq.  
9 GARMAN TURNER GORDON LLP  
650 White Drive, Ste. 100  
10 Las Vegas, Nevada 89119

11 Richard F. Holley, Esq.  
12 HOLLEY DRIGGS WALCH FINE  
PUZEY STEIN & THOMPSON  
400 South Fourth Street  
Suite 300  
13 Las Vegas, Nevada 89101

14 Ex-Officio Constable  
15 301 E. Clark Avenue, Suite 100  
Las Vegas, Nevada 89101

16 Washoe County Sheriff's Office  
17 911 Parr Blvd.  
Reno, Nevada 89512

18  
19 X by using the Court's CM/ECF Electronic Notification System addressed to:

20 Gerald Gordon, Esq.  
Email: [ggordon@Gtg.legal](mailto:ggordon@Gtg.legal)  
21 Mark M. Weisenmiller, Esq.  
Email: [mweisenmiller@Gtg.legal](mailto:mweisenmiller@Gtg.legal)  
22 Teresa M. Pilatowicz, Esq.  
Email: [tpilatowicz@Gtg.legal](mailto:tpilatowicz@Gtg.legal)  
23 Erika Pike Turner, Esq.  
Email: [eturner@gtg.legal](mailto:eturner@gtg.legal)

24 Frank C. Gilmore, Esq.  
25 [fgilmore@rssblaw.com](mailto:fgilmore@rssblaw.com)

26 DATED: This 28<sup>th</sup> day of June, 2019.

27 /s/ Angie Gerbig  
28 ANGIE GERBIG

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**LIST OF EXHIBITS**

<b><u>EXHIBIT NO.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>NO. OF PAGES</u></b>
1	Copy of June 22, 2019 Notice of Execution and the two writs of execution	25
2	Declaration of James Arthur Gibbons	45

# EXHIBIT 1

# EXHIBIT 1



The Office of the  
**EX-OFFICIO CONSTABLE**

June 14, 2019

RECEIVED JUN 19 2019

EDWARD BAYUK  
C/O JEFFREY L HARTMAN  
510 W PLUMB LN STE B  
RENO, NV 89509

**RE: Court Case Number CV1302663**

In accordance with NRS 21.075, we are sending you a copy of the *Notice of Execution after Judgment* and the *Writ of Execution* on your case. If this office can be of any further service, please do not hesitate to call.

Sincerely,

LH

Office of the Ex-Officio Constable

2 enclosures

301 E. Clark Avenue Suite 100  
Las Vegas, NV 89101  
Ofc: 702) 455-4099 / Fax: 702) 385-2436

# NOTICE OF EXECUTION AFTER JUDGMENT

(Per NRS 21.075)

## **READ THIS NOTICE CAREFULLY**

**It provides information on how the law may allow you to protect your property or money from being attached to pay the judgment against you.**

### **YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED**

A court has determined that you owe money to the person or company (the "judgment creditor") listed on the Writ of Execution included with this Notice of Execution. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$550,000 unless:
  - (a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.
  - (b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.
10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.
11. A vehicle, if your equity in the vehicle is less than \$15,000.
12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.
13. Money, not to exceed \$1,000,000 in present value, held in:
  - (a) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

**ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES** in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website: [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



(b) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(c) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 259, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$10,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

---

**ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES** in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpecenter.org](http://www.civillawselfhelpecenter.org).



These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure of a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through:

*Legal Aid Center of Southern Nevada*  
725 E. Charleston Blvd.  
Las Vegas, NV 89104  
(702) 386-1070  
<http://www.lacsn.org>

*Senior Law Project* (60 years or older only)  
530 Las Vegas Blvd. S. #310  
Las Vegas, NV 89101  
(702) 229-6596  
<http://www.snslp.org>

*Nevada Legal Services*  
530 S. 6th Street  
Las Vegas, NV 89101  
(702) 386-0404  
<http://www.nlslaw.net>

If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption free of charge at the *Civil Law Self-Help Center*, 200 Lewis Avenue, on the first floor of the Regional Justice Center, downtown Las Vegas, Nevada, or on the Civil Law Self-Help Center's website at <http://www.civillawselfhelpcenter.org>.

### **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt.

The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed by the judgment creditor within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed.

You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payments, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

### **IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.**

---

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



## **CHECKLIST FOR FILING A "CLAIM OF EXEMPTION"**

- ☐ 1. Read the list of exemptions in this notice to determine whether any of your property or money is exempt from execution (in other words, protected from being taken to pay the judgment against you).
- ☐ 2. Obtain a "Claim of Exemption" form from the clerk at the court where the judgment against you was issued or from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).
- ☐ 3. Fill out the Claim of Exemption form in blue or black ink. If you have documentation that proves the exemptions you are claiming, attach the documentation to the Claim of Exemption form (but be sure to black out any personal information, such as Social Security numbers, bank account numbers, etc.).
- ☐ 4. Make three copies of the completed Claim of Exemption form.
- ☐ 5. Take the completed Claim of Exemption form and all copies to the court where the judgment against you was issued, and file the Claim of Exemption with the court clerk.

NOTE: You must file your Claim of Exemption with the court within ten days after the Sheriff or Constable serves the Writ of Execution or Writ of Garnishment on you by mail, identifying the specific property that is subject to execution or garnishment, or within ten days after your wages are withheld if you are being garnished.

NOTE: If you are filing your Claim of Exemption in the Las Vegas Justice Court, you must have an e-mail address because the court now electronically files all documents. If you do not have an e-mail address, you can obtain assistance in getting one at the Clark County Law Library, 309 South Third Street, Suite #400, Las Vegas, Nevada.

- ☐ 6. After your Claim of Exemption has been filed with the court, mail a copy of your Claim of Exemption to the following three parties:
  - ☐ The Constable or Sheriff who mailed you the Writ of Execution or served your bank or employer;
  - ☐ The judgment creditor's attorney (or the judgment creditor directly if no attorney is involved);
  - ☐ Any garnishee (likely your employer, if your wages are being garnished; your bank, if your bank account has been attached; or some other third-party, if money or assets in the third-party's possession have been executed against).
- ☐ 7. Watch your mail. After receiving your Claim of Exemption, the judgment creditor has eight days to file an objection. If an objection is filed, a hearing will be set. You will receive a copy of the objection and a notice of the hearing in the mail.
- ☐ 8. Attend the court hearing if one is set. Before the hearing, collect whatever documentation you need to show that you are entitled to the exemptions you have claimed. Take your documentation to the hearing, along with a proposed order for the judge to sign. (You can obtain a form order from the clerk of the court or on the Civil Law Self-Help Center's website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org). At the hearing, it will be your responsibility to prove to the judge that your claimed exemptions are appropriate. If the judge approves your exemptions, ask the judge to sign your order, which you will then file with the court and serve on the Constable or Sheriff and any garnishee.

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



1 GARMAN TURNER GORDON LLP  
2 ERIKA PIKE TURNER  
Nevada Bar No. 6454  
Email: eturner@gtg.legal  
3 TERESA M. PILATOWICZ, ESQ.  
Nevada Bar No. 9605  
4 E-mail: tpilatowicz@gtg.legal  
5 GABRIELLE A HAMM, ESQ.  
Nevada Bar No. 11588  
6 E-mail: ghamm@gtg.legal  
7 MICHAEL R. ESPOSITO, ESQ.  
Nevada Bar No. 13482  
8 E-mail: mesposito@gtg.legal  
9 650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

10 *Attorneys for Plaintiff William A. Leonard*

11 **DISTRICT COURT**

12 **WASHOE COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

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

20 Defendants.

CASE NO. CV13-02663  
DEPT. IV

**WRIT OF EXECUTION**

[ ] Earnings [X] Other Property  
[ ] Earnings, Order of Support

21  
22 THE STATE OF NEVADA TO THE CONSTABLE OF CLARK COUNTY, GREETINGS:

23 On March 29, 2019, Findings of Fact, Conclusions of Law, and Judgment, upon which  
24 there is due in United States Currency the following amounts, was entered in this action in favor  
25 of PLAINTIFF, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony  
26 Morabito, as judgment creditor, and against Defendant, **EDWARD BAYUK, as Trustee of the**  
27 **EDWARD BAYUK LIVING TRUST**, as judgment debtor. Interest and costs have accrued in  
28 the amounts shown. Any satisfaction has been credited first against total accrued interest and

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I hereby certify that I have this date returned the foregoing  
Writ of Execution with the results of the levy endorsed  
thereon.

CONSTABLE, LAS VEGAS TOWNSHIP

By: \_\_\_\_\_  
Deputy \_\_\_\_\_ Date \_\_\_\_\_

RETURN

_____	not satisfied	\$ _____
_____	satisfied in sum of	\$ _____
_____	costs retained	\$ _____
_____	commission retained	\$ _____
_____	costs incurred	\$ _____
_____	commission incurred	\$ _____
_____	costs received	\$ _____
_____	Remitted to Judgment Creditor	\$ _____

4846-2326-0569, v. 1



# NOTICE OF EXECUTION AFTER JUDGMENT

(Per NRS 21.075)

## **READ THIS NOTICE CAREFULLY**

**It provides information on how the law may allow you to protect your property or money from being attached to pay the judgment against you.**

### **YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED**

A court has determined that you owe money to the person or company (the "judgment creditor") listed on the Writ of Execution included with this Notice of Execution. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$550,000 unless:
  - (a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.
  - (b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.
10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.
11. A vehicle, if your equity in the vehicle is less than \$15,000.
12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.
13. Money, not to exceed \$1,000,000 in present value, held in:
  - (a) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

**ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES** in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



(b) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(c) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 259, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$10,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

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**ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES** in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure of a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through:

*Legal Aid Center of Southern Nevada*  
725 E. Charleston Blvd.  
Las Vegas, NV 89104  
(702) 386-1070  
<http://www.lacsn.org>

*Senior Law Project* (60 years or older only)  
530 Las Vegas Blvd. S. #310  
Las Vegas, NV 89101  
(702) 229-6596  
<http://www.snsllp.org>

*Nevada Legal Services*  
530 S. 6th Street  
Las Vegas, NV 89101  
(702) 386-0404  
<http://www.nlsllaw.net>

If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption free of charge at the *Civil Law Self-Help Center*, 200 Lewis Avenue, on the first floor of the Regional Justice Center, downtown Las Vegas, Nevada, or on the Civil Law Self-Help Center's website at <http://www.civillawselfhelpcenter.org>.

### **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt.

The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed by the judgment creditor within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed.

You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payments, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

### **IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.**

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ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



## **CHECKLIST FOR FILING A "CLAIM OF EXEMPTION"**

- ☐ 1. Read the list of exemptions in this notice to determine whether any of your property or money is exempt from execution (in other words, protected from being taken to pay the judgment against you).
- ☐ 2. Obtain a "Claim of Exemption" form from the clerk at the court where the judgment against you was issued or from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).
- ☐ 3. Fill out the Claim of Exemption form in blue or black ink. If you have documentation that proves the exemptions you are claiming, attach the documentation to the Claim of Exemption form (but be sure to black out any personal information, such as Social Security numbers, bank account numbers, etc.).
- ☐ 4. Make three copies of the completed Claim of Exemption form.
- ☐ 5. Take the completed Claim of Exemption form and all copies to the court where the judgment against you was issued, and file the Claim of Exemption with the court clerk.

**NOTE:** You must file your Claim of Exemption with the court within ten days after the Sheriff or Constable serves the Writ of Execution or Writ of Garnishment on you by mail, identifying the specific property that is subject to execution or garnishment, or within ten days after your wages are withheld if you are being garnished.

**NOTE:** If you are filing your Claim of Exemption in the Las Vegas Justice Court, you must have an e-mail address because the court now electronically files all documents. If you do not have an e-mail address, you can obtain assistance in getting one at the Clark County Law Library, 309 South Third Street, Suite #400, Las Vegas, Nevada.

- ☐ 6. After your Claim of Exemption has been filed with the court, mail a copy of your Claim of Exemption to the following three parties:
  - ☐ The Constable or Sheriff who mailed you the Writ of Execution or served your bank or employer;
  - ☐ The judgment creditor's attorney (or the judgment creditor directly if no attorney is involved);
  - ☐ Any garnishee (likely your employer, if your wages are being garnished; your bank, if your bank account has been attached; or some other third-party, if money or assets in the third-party's possession have been executed against).
- ☐ 7. Watch your mail. After receiving your Claim of Exemption, the judgment creditor has eight days to file an objection. If an objection is filed, a hearing will be set. You will receive a copy of the objection and a notice of the hearing in the mail.
- ☐ 8. Attend the court hearing if one is set. Before the hearing, collect whatever documentation you need to show that you are entitled to the exemptions you have claimed. Take your documentation to the hearing, along with a proposed order for the judge to sign. (You can obtain a form order from the clerk of the court or on the Civil Law Self-Help Center's website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org). At the hearing, it will be your responsibility to prove to the judge that your claimed exemptions are appropriate. If the judge approves your exemptions, ask the judge to sign your order, which you will then file with the court and serve on the Constable or Sheriff and any garnishee.

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



FILED  
2019 JUN -7 PM 3:18  
JUDICIAL DEPARTMENT  
CLERK OF THE COURT  
B. Blough

GARMAN TURNER GORDON LLP  
ERIKA PIKE TURNER  
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TERESA M. PILATOWICZ, ESQ.  
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E-mail: mesposito@gtg.legal  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000  
*Attorneys for Plaintiff William A. Leonard*

DISTRICT COURT  
WASHOE COUNTY, NEVADA

WILLIAM A. LEONARD, Trustee for the  
Bankruptcy Estate of Paul Anthony Morabito,  
  
Plaintiff,  
  
vs.  
  
SUPERPUMPER, INC., an Arizona Corporation;  
EDWARD BAYUK, individually and as Trustee  
of the EDWARD WILLIAM BAYUK LIVING  
TRUST; SALVATORE MORABITO, an  
individual; and SNOWSHOE PETROLEUM,  
INC., a New York corporation,  
  
Defendants.

CASE NO. CV13-02663  
DEPT. IV

WRIT OF EXECUTION  
☐ Earnings ☒ Other Property  
☐ Earnings, Order of Support

THE STATE OF NEVADA TO THE CONSTABLE OF CLARK COUNTY, GREETINGS:

On March 29, 2019, Findings of Fact, Conclusions of Law, and Judgment, upon which  
there is due in United States Currency the following amounts, was entered in this action in favor  
of PLAINTIFF, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony  
Morabito, as judgment creditor, and against Defendant, **EDWARD BAYUK**, as judgment debtor.  
Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first  
against total accrued interest and costs, leaving the following net balance from issuance of this

1 Writ to date of levy and to which sum must be added all commissions and costs of executing this  
2 Writ.

<u>JUDGMENT BALANCE</u>		<u>AMOUNT TO BE COLLECTED BY LEVY</u>	
Principal	\$7,908,799.95	NET BALANCE	\$10,712,090.63
Pre-Judgment Interest	\$2,689,533.68	Fee this Writ	
Attorney's Fee	\$0.00	Garnishment Fee	\$ 5.00
Costs	\$0.00	Mileage	\$ 2.00
JUDGMENT TOTAL	\$10,598,333.63	Levy Fee	\$ 30.00
Accrued Costs	\$0.00	Advertising	
Accrued Interest	\$113,757.00	Storage	
Less Satisfaction	\$0.00	Interest From	
NET BALANCE	\$10,712,090.63	Date of Issuance	
		SUB- TOTAL	\$ 10712127.63
		Commission	\$ 53613.14
		TOTAL LEVY	\$ 10765740.77

3 NOW, THEREFORE, SHERIFF OF CLARK COUNTY, you are hereby commanded  
4 to satisfy this judgment with interest and costs as provided by law, out of the personal property of  
5 the judgment debtor, except that for any workweek, 82 percent of the disposable earnings of the  
6 debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent  
7 writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of the  
8 debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent  
9 writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed  
10 by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.,  
11 and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of  
12 execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the  
13 real property belonging to the debtor in the aforesaid county, and make return to this writ within  
14 not less than 10 days or more than 60 days endorsed thereon with what you have done.

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# EXEMPTIONS WHICH APPLY TO THIS LEVY

(Check appropriate paragraph and complete as necessary)

☒ Property Other Than Wages. The exemption set forth in NRS 21.090 or on other applicable Federal Statutes may apply. Consult an attorney.

☐ Earnings

The amount subject to garnishment and this writ shall not exceed for any one period the lesser of:

A. 18% of the disposable earnings due the judgment debtor for the pay period if the gross weekly salary or wage of the judgment debtor on the date of the most recent writ of garnishment was issued was \$770 or less,

B. 25% percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or

C. the difference between the disposable earnings of the period and 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable.

☐ Earnings (Judgment or Order for Support)

A Judgment was entered for amounts due under a decree or order entered on \_\_\_\_\_, 200\_\_, by the \_\_\_\_\_ for the support of \_\_\_\_\_, for the period from \_\_\_\_\_, 200\_\_, through \_\_\_\_\_, 200\_\_, in \_\_\_\_\_ installments of \$\_\_\_\_\_.

The amount of disposable earnings subject to garnishment and this writ shall not exceed for any on pay period: (check appropriate box)

☐ a maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or dependent child other than the dependent named above;

☐ a maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse or dependent child other than the dependent named above;

☐ plus an additional 5 percent of the disposable earnings of such judgment debtor if and to extent that the judgment is for support due for a period of time more than 12 weeks prior to the beginning of work period of the judgment debtor during which the levy is made upon the disposable earnings.

**NOTE:** Disposable earnings are defined as gross earnings less deductions for Federal Income Tax Withholdings, Federal Social Security Tax and Withholding of any State, County and City Taxes.

You are requested to return this Writ from date of issuance not less than 10 days or more than 60 days with the results of your levy endorsed thereon.

Submitted by:

**JACQUELINE BRYANT**

Clerk of Court

By /s/ Gabrielle A. Hamm

ERIKA PIKE TURNER, ESQ.  
TERESA M. PILATOWICZ, ESQ.  
GABRIELLE A. HAMM, ESQ.  
MICHAEL R. ESPOSITO, ESQ.  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

*Special Counsel for Plaintiff*

By

**B. Blough**

Deputy Clerk

**JUN 07 2019**

Date

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I hereby certify that I have this date returned the foregoing  
Writ of Execution with the results of the levy endorsed  
thereon.

CONSTABLE, LAS VEGAS TOWNSHIP

By: \_\_\_\_\_  
Deputy Date

RETURN

_____	not satisfied	\$ _____
_____	satisfied in sum of	\$ _____
_____	costs retained	\$ _____
_____	commission retained	\$ _____
_____	costs incurred	\$ _____
_____	commission incurred	\$ _____
_____	costs received	\$ _____
_____	Remitted to Judgment Creditor	\$ _____

4830-9522-3193, v. 1

costs, leaving the following net balance from issuance of this Writ to date of levy and to which sum must be added all commissions and costs of executing this Writ.

<u>JUDGMENT BALANCE</u>		<u>AMOUNT TO BE COLLECTED BY LEVY</u>	
Principal	\$7,908,799.95	NET BALANCE	\$10,712,090.63
Pre-Judgment Interest	\$2,689,533.68	Fee this Writ	
Attorney's Fee	\$0.00	Garnishment Fee	\$ 5.00
Costs	\$0.00	Mileage	\$ 2.00
JUDGMENT TOTAL	\$10,598,333.63	Levy Fee	\$ 30.00
Accrued Costs	\$0.00	Advertising	
Accrued Interest	\$113,757.00	Storage	
Less Satisfaction	\$0.00	Interest From	
NET BALANCE	\$10,712,090.63	Date of Issuance	
		SUB- TOTAL	\$ 10712127.63
		Commission	\$ 53613.14
		TOTAL LEVY	\$ 10765740.77

NOW, THEREFORE, SHERIFF OF CLARK COUNTY, you are hereby commanded to satisfy this judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what you have done.

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1 **EXEMPTIONS WHICH APPLY TO THIS LEVY**

2 (Check appropriate paragraph and complete as necessary)

3 ☒ Property Other Than Wages. The exemption set forth in NRS 21.090 or on other applicable Federal Statutes  
4 may apply. Consult an attorney.

5 ☐ Earnings

6 The amount subject to garnishment and this writ shall not exceed for any one period the lesser of:

7 A. 18% of the disposable earnings due the judgment debtor for the pay period if the gross weekly salary or  
8 wage of the judgment debtor on the date of the most recent writ of garnishment was issued was \$770 or  
9 less,

10 B. 25% percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary  
11 or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded  
12 \$770, or

13 C. the difference between the disposable earnings of the period and 50 times the minimum hourly wage  
14 prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.,  
15 and in effect at the time the earnings are payable.

16 ☐ Earnings (Judgment or Order for Support)

17 A Judgment was entered for amounts due under a decree or order entered on \_\_\_\_\_, 200\_\_, by  
18 the \_\_\_\_\_ for the support of \_\_\_\_\_, for the period from  
19 \_\_\_\_\_, 200\_\_, through \_\_\_\_\_, 200\_\_, in \_\_\_\_\_  
20 installments of \$ \_\_\_\_\_.

21 The amount of disposable earnings subject to garnishment and this writ shall not exceed for any on pay period: (check  
22 appropriate box)

23 ☐ a maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or  
24 dependent child other than the dependent named above;

25 ☐ a maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse  
26 or dependent child other than the dependent named above;

27 ☐ plus an additional 5 percent of the disposable earnings of such judgment debtor if and to extent that the  
28 judgment is for support due for a period of time more than 12 weeks prior to the beginning of work period of the  
judgment debtor during which the levy is made upon the disposable earnings.

**NOTE:** Disposable earnings are defined as gross earnings less deductions for Federal Income Tax  
Withholdings, Federal Social Security Tax and Withholding of any State, County and City Taxes.

You are requested to return this Writ from date of issuance not less than 10 days or more than 60 days with the results  
of your levy endorsed thereon.

Submitted by:

**JACQUELINE BRYANT**  
Clerk of Court

By /s/ Gabrielle A. Hamm  
ERIKA PIKE TURNER, ESQ.  
TERESA M. PILATOWICZ, ESQ.  
GABRIELLE A. HAMM, ESQ.  
MICHAEL R. ESPOSITO, ESQ.  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000  
*Special Counsel for Plaintiff*

By B. Blough JUN 07 2019  
Deputy Clerk Date

///

///

The Office of the  
**EX-OFFICIO CONSTABLE**

RECEIVED JUN 26 2019

June 22, 2019

EDWARD BAYUK  
C/O JEFFREY L HARTMAN, ESQ  
510 W PLUMB LN STE B  
RENO, NV 89509

**RE: Court Case Number CV1302663**

In accordance with NRS 21.075, we are sending you a copy of the *Notice of Execution after Judgment* and the *Writ of Execution* on your case. If this office can be of any further service, please do not hesitate to call.

Sincerely,

**LH**

Office of the Ex-Officio Constable

2 enclosures

301 E. Clark Avenue Suite 100  
Las Vegas, NV 89101  
Ofc: 702) 455-4099 / Fax: 702) 385-2436



# NOTICE OF EXECUTION AFTER JUDGMENT

(Per NRS 21.075)

## **READ THIS NOTICE CAREFULLY**

**It provides information on how the law may allow you to protect your property or money from being attached to pay the judgment against you.**

### **YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED**

A court has determined that you owe money to the person or company (the "judgment creditor") listed on the Writ of Execution included with this Notice of Execution. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$550,000 unless:
  - (a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.
  - (b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.
10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.
11. A vehicle, if your equity in the vehicle is less than \$15,000.
12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.
13. Money, not to exceed \$1,000,000 in present value, held in:
  - (a) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure of a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through:

*Legal Aid Center of Southern Nevada*  
725 E. Charleston Blvd.  
Las Vegas, NV 89104  
(702) 386-1070  
<http://www.lacsnn.org>

*Senior Law Project* (60 years or older only)  
530 Las Vegas Blvd. S. #310  
Las Vegas, NV 89101  
(702) 229-6596  
<http://www.snsnp.org>

*Nevada Legal Services*  
530 S. 6th Street  
Las Vegas, NV 89101  
(702) 386-0404  
<http://www.nlsnv.net>

If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption free of charge at the *Civil Law Self-Help Center*, 200 Lewis Avenue, on the first floor of the Regional Justice Center, downtown Las Vegas, Nevada, or on the Civil Law Self-Help Center's website at <http://www.civillawselfhelpcenter.org>.

### **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt.

The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed by the judgment creditor within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed.

You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payments, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

### **IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.**

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ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).



## **CHECKLIST FOR FILING A "CLAIM OF EXEMPTION"**

- ☐ 1. Read the list of exemptions in this notice to determine whether any of your property or money is exempt from execution (in other words, protected from being taken to pay the judgment against you).
- ☐ 2. Obtain a "Claim of Exemption" form from the clerk at the court where the judgment against you was issued or from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).
- ☐ 3. Fill out the Claim of Exemption form in blue or black ink. If you have documentation that proves the exemptions you are claiming, attach the documentation to the Claim of Exemption form (but be sure to black out any personal information, such as Social Security numbers, bank account numbers, etc.).
- ☐ 4. Make three copies of the completed Claim of Exemption form.
- ☐ 5. Take the completed Claim of Exemption form and all copies to the court where the judgment against you was issued, and file the Claim of Exemption with the court clerk.

**NOTE:** You must file your Claim of Exemption with the court within ten days after the Sheriff or Constable serves the Writ of Execution or Writ of Garnishment on you by mail, identifying the specific property that is subject to execution or garnishment, or within ten days after your wages are withheld if you are being garnished.

**NOTE:** If you are filing your Claim of Exemption in the Las Vegas Justice Court, you must have an e-mail address because the court now electronically files all documents. If you do not have an e-mail address, you can obtain assistance in getting one at the Clark County Law Library, 309 South Third Street, Suite #400, Las Vegas, Nevada.

- ☐ 6. After your Claim of Exemption has been filed with the court, mail a copy of your Claim of Exemption to the following three parties:
  - ☐ The Constable or Sheriff who mailed you the Writ of Execution or served your bank or employer;
  - ☐ The judgment creditor's attorney (or the judgment creditor directly if no attorney is involved);
  - ☐ Any garnishee (likely your employer, if your wages are being garnished; your bank, if your bank account has been attached; or some other third-party, if money or assets in the third-party's possession have been executed against).
- ☐ 7. Watch your mail. After receiving your Claim of Exemption, the judgment creditor has eight days to file an objection. If an objection is filed, a hearing will be set. You will receive a copy of the objection and a notice of the hearing in the mail.
- ☐ 8. Attend the court hearing if one is set. Before the hearing, collect whatever documentation you need to show that you are entitled to the exemptions you have claimed. Take your documentation to the hearing, along with a proposed order for the judge to sign. (You can obtain a form order from the clerk of the court or on the Civil Law Self-Help Center's website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org). At the hearing, it will be your responsibility to prove to the judge that your claimed exemptions are appropriate. If the judge approves your exemptions, ask the judge to sign your order, which you will then file with the court and serve on the Constable or Sheriff and any garnishee.

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).

FILED

2019 JUN -7 PM 3:34

JANUARY 10, 2019  
CLERK OF THE COURT  
B. VITAY

GARMAN TURNER GORDON LLP  
ERIKA PIKE TURNER  
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650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

*Attorneys for Plaintiff William A. Leonard*

**DISTRICT COURT**

**WASHOE COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

CASE NO. CV13-02663  
DEPT. IV

**WRIT OF EXECUTION**

☐ Earnings ☒ Other Property  
☐ Earnings, Order of Support

THE STATE OF NEVADA TO THE CONSTABLE OF CLARK COUNTY, GREETINGS:

On March 29, 2019 a Findings of Fact, Conclusions of Law, and Judgment, upon which  
there is due in United States Currency the following amounts, was entered in this action in favor  
of PLAINTIFF, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony  
Morabito, as judgment creditor and against Defendants, EDWARD BAYUK, individually and  
EDWARD BAYUK as Trustee of the EDWARD WILLIAM BAYUK LIVING TRUST DATED



06/18/2008 a/k/a the EDWARD WILLIAM BAYUK LIVING TRUST DATED 08/13/2009; as judgment debtors. Interest and costs have accrued in the amounts shown. Any satisfaction has been credited first against total accrued interest and costs, leaving the following net balance from issuance of this Writ to date of levy and to which sum must be added all commissions and costs of executing this Writ.

JUDGMENT BALANCE		AMOUNT TO BE COLLECTED BY LEVY	
Principal	\$7,908,799.95	NET BALANCE	\$10,697,464.48
Pre-Judgment Interest	\$2,689,533.68	Fee this Writ	\$ 5.00
Attorney's Fee	\$0.00	Garnishment Fee	\$ 24.00
Costs	\$0.00	Mileage	\$ 30.00
JUDGMENT TOTAL	\$10,598,333.63	Levy Fee	
Accrued Costs	\$0.00	Advertising	
Accrued Interest	\$99,130.85	Storage	
Less Satisfaction	\$0.00	Interest From	
NET BALANCE	\$10,697,464.48	Date of Issuance	
		SUB- TOTAL	\$ 10,697,523.48
		Commission	\$ 63,540.12
		TOTAL LEVY	\$ 10,751,063.60

**NOW, THEREFORE, SHERIFF OF CLARK COUNTY**, you are hereby commanded to satisfy this judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what you have done.

1 **EXEMPTIONS WHICH APPLY TO THIS LEVY**

2 (Check appropriate paragraph and complete as necessary)

- 3 ☒ Property Other Than Wages. The exemption set forth in NRS 21.090 or on other applicable Federal  
4 Statutes may apply. Consult an attorney.

5 ☐ Earnings

6 The amount subject to garnishment and this writ shall not exceed for any one period the lesser of:

- 7 A. 18% of the disposable earnings due the judgment debtor for the pay period if the gross weekly salary or  
8 wage of the judgment debtor on the date of the most recent writ of garnishment was issued was \$770  
9 or less,  
10 B. 25% percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or  
11 wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded  
12 \$770, or  
13 C. the difference between the disposable earnings of the period and 50 times the minimum hourly wage  
14 prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq.,  
15 and in effect at the time the earnings are payable.

16 ☐ Earnings (Judgment or Order for Support)

17 A Judgment was entered for amounts due under a decree or order entered on \_\_\_\_\_, 200\_\_, by  
18 the \_\_\_\_\_ for the support of \_\_\_\_\_, for the period from  
19 \_\_\_\_\_, 200\_\_, through \_\_\_\_\_, 200\_\_, in \_\_\_\_\_  
20 installments of \$\_\_\_\_\_.

21 The amount of disposable earnings subject to garnishment and this writ shall not exceed for any on pay period:  
22 (check appropriate box)

- 23 ☐ a maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or  
24 dependent child other than the dependent named above;  
25 ☐ a maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a  
26 spouse or dependent child other than the dependent named above;  
27 ☐ plus an additional 5 percent of the disposable earnings of such judgment debtor if and to extent that the  
28 judgment is for support due for a period of time more than 12 weeks prior to the beginning of work period of the  
judgment debtor during which the levy is made upon the disposable earnings.

**NOTE:** Disposable earnings are defined as gross earnings less deductions for Federal Income Tax  
Withholdings, Federal Social Security Tax and Withholding of any State, County and City Taxes.

You are requested to return this Writ from date of issuance not less than 10 days or more than 60 days with the  
results of your levy endorsed thereon.

Submitted by:

Clerk of Court

JUN 07 2019

By /s/ Michael R. Esposito

By B. Vito

Deputy Clerk

Date

ERIKA PIKE TURNER, ESQ.  
TERESA M. PILATOWICZ, ESQ.  
GABRIELLE A. HAMM, ESQ.  
MICHAEL R. ESPOSITO, ESQ.  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

*Special Counsel for Plaintiff*



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I hereby certify that I have this date returned the foregoing  
Writ of Execution with the results of the levy endorsed  
thereon.

CONSTABLE, LAS VEGAS TOWNSHIP

By: \_\_\_\_\_  
Deputy \_\_\_\_\_ Date \_\_\_\_\_

RETURN

not satisfied	\$	_____
satisfied in sum of	\$	_____
costs retained	\$	_____
commission retained	\$	_____
costs incurred	\$	_____
commission incurred	\$	_____
costs received	\$	_____
Remitted to Judgment Creditor	\$	_____

# EXHIBIT 2

# EXHIBIT 2

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1 16. It is my direct knowledge that NRS §166.120(4) states: "*The trustee of a spendthrift*  
2 *trust is required to disregard and defeat every assignment or other act, voluntary or involuntary,*  
3 *that is attempted contrary to the provisions of this chapter.*"

4 17. It is my direct knowledge that NRS §166.120(1) states "*A spendthrift trust as defined*  
5 *in this chapter restrains and prohibits generally the assignment, alienation, acceleration and*  
6 *anticipation of any interest of the beneficiary under the trust by the voluntary or involuntary act of*  
7 *the beneficiary, or by operation of law or any process or at all. The trust estate, or corpus or capital*  
8 *thereof, shall never be assigned, aliened, diminished or impaired by any alienation, transfer or*  
9 *seizure so as to cut off or diminish the payments, or the rents, profits, earnings or income of the*  
10 *trust estate that would otherwise be currently available for the benefit of the beneficiary.*"

11 18. It is my direct knowledge that NRS §166.120(3) states: "*The beneficiary shall have*  
12 *no power or capacity to make any disposition whatever of any of the income by his or her order,*  
13 *voluntary or involuntary, and whether made upon the order or direction of any court or courts,*  
14 *whether of bankruptcy or otherwise; nor shall the interest of the beneficiary be subject to any*  
15 *process of attachment issued against the beneficiary, or to be taken in execution under any form of*  
16 *legal process directed against the beneficiary or against the trustee, or the trust estate, or any part*  
17 *of the income thereof, but the whole of the trust estate and the income of the trust estate shall go to*  
18 *and be applied by the trustee solely for the benefit of the beneficiary, free, clear, and discharged of*  
19 *and from any and all obligations of the beneficiary whatsoever and of all responsibility therefor.*"

20 19. It is my direct knowledge that NRS 53.045 entitled "*Use of unsworn declaration in*  
21 *lieu of affidavit or other sworn declaration*" states that "*Any matter whose existence or truth may*  
22 *be established by an affidavit or other sworn declaration may be established with the same effect*  
23 *by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury,*  
24 *and dated, in substantially the following form.*"

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

27 Signed at Lamoille, Elko County, Nevada on this 25th day of June 2019.

28   
JAMES ARTHUR GIBBONS

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**SPENDTHRIFT TRUST AMENDMENT TO THE  
EDWARD WILLIAM BAYUK LIVING TRUST**

This **FIRST AMENDMENT TO THE EDWARD BAYUK LIVING TRUST** (this "**Amendment**"). is made and entered into effective as of November 12, 2005 (the "**Effective Date**"). between and among **EDWARD W. BAYUK** individually and in his capacity as **TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST** (the "**Bayuk Trust**") and **EDWARD WILLIAM BAYUK** ("**Bayuk**") individually shall become by way of this Amendment a qualified *Irrevocable Nevada Spendthrift Trust* now to be known as the **EDWARD BAYUK LIVING TRUST** (referred to herein as the "**Nevada Trust**" or the "**Trust Agreement**" or the "**Nevada Trust**"). Each of those parties is sometimes referred to herein as a "**Party**" and collectively as the "**Parties**" to this Agreement.

**RECITALS**

- A.** The Bayuk Trust was executed in Miami Beach, Florida on August 23, 1998 as a Florida Living Trust. Bayuk was a resident of Miami Beach, Florida in 1998.
- B.** Bayuk is now a resident of Reno, Nevada. It is Bayuk's manifest intention to amend the Bayuk Trust to establish it as a qualified Irrevocable Nevada Spendthrift Trust ("**Nevada Trust**").
- C.** Bayuk as Settlor/Grantor and Co-Trustee of the Nevada Trust declares that Bayuk has executed this Amendment to the Bayuk Trust to become the Nevada Trust effective as of the date first written above.
- D.** This Amendment shall constitute the entire and exclusive statement of the terms of the Nevada Trust, nullifying all prior and subsuming all future versions of the Bayuk Trust.
- E.** This Amendment establishes an Irrevocable Spendthrift Nevada Trust and as the Settlor/Grantor Bayuk understand that by executing this Nevada Trust, all of the assets that Bayuk has contributed to the Bayuk Trust today, *and will contribute in the future*, are all the irrevocable property of the Nevada Trust. The property transferred and all property subsequently transferred into the Nevada Trust shall be administered in this Trust Agreement, which shall be known as the Nevada Trust and can also be referred to as the **Edward William Bayuk Living Trust** so as to eliminate any confusion and consolidate all assets of the Bayuk Trust into the Nevada Trust.
- F.** Successor trusts ("**Successor Trusts**") established under this Amendment shall be known by the names designated in this Amendment or as named by the Co-Trustees. Any Successor Trusts, whether created as an affiliate of the Nevada Trust or by further amendment or restatement of the Nevada Trust, or independent of the Nevada Trust, shall be revocable, be of no force or



effect, be subsumed by the Nevada Trust upon execution, and shall not in any way supersede or replace the provisions of the Nevada Trust.

**G.** As Co-Trustee of the Nevada Trust, Bayuk names Paul A. Morabito ("Morabito"), also a resident of Reno, Nevada. Morabito is not a beneficiary of the Nevada Trust.

**H.** The Nevada Trust restrains and prohibits generally the assignment, alienation, acceleration and anticipation of any interest of the beneficiary as named herein or by operation of law or any process at all. The Nevada Trust estate, or corpus or capital thereof, shall never be assigned, aliened, diminished or impaired by any alienation, transfer or seizure so as to cut off or diminish the payments, or the rents, profits, earnings or income of the Nevada Trust estate that would otherwise be currently available for the benefit of the beneficiary as named herein.

**NOW, THEREFORE,** in consideration of the terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby specifically acknowledged, the Parties agree to the following:

1. **DECLARATIONS** Bayuk is not married and is a resident of Reno, Nevada.
2. **RIGHTS RESERVED BY ME & RESTRICTIONS** As Settlor/Grantor, Bayuk reserve the rights under this Amendment to:
  - (a) add property to the Nevada Trust estate Bayuk reserves the right to transfer additional property into the Trust during Bayuk's lifetime and at Bayuk's death. All such property transferred to the Trustees shall be added to the Nevada Trust estate and administered as provided in this Trust Agreement. The Trustees are authorized and directed to accept the additions to the Nevada Trust estate. Any other person may transfer property to the Trustees to be added to the Nevada Trust estate, provided the property is acceptable to me (if living) and the majority of the Trustees.
  - (b) The right to exchange property from the Nevada Trust for property of like kind The Trustees may withdraw at any time all or any portion of the property held in the Nevada Trust estate in exchange for property of like kind value. The property described in any notice of withdrawal shall be delivered immediately.
  - (c) The right to amend the Nevada Trust without giving any notice or consent to any beneficiary with the restriction that no amendment may modify, alter, rescind, replace

or change in any way directly or indirectly the provisions of this Amendment as the Nevada Trust that qualify it as a Nevada Spendthrift Trust.

(d) **No Right to Revoke the Trust Agreement.** This Trust Agreement, and all trusts established under this Trust Agreement, upon execution herein, below, shall become irrevocable and not subject to or bound by any amendment. The Trust have nor creates no right to revoke the Nevada Trust agreement (Amendment) which is upon execution irrevocable and not subject to or bound by any amendment.

(e) Reserve the right to appoint and designate trustees.

(f) The rights reserved by me as described herein are personal to me and shall not be exercisable on Bayuk's behalf to any other person.

(g) Bayuk reserves the right to appoint, designate and terminate Trustees.

(h) Bayuk may exercise the rights reserved to me directly as Co-Trustee, or in accordance with applicable law. This Irrevocable Spendthrift Trust Agreement, the Nevada Trust, established by this Amendment, may not, however, be revoked or amended by me in Bayuk's Last Will and Testament in any way.

3. **GRANTOR'S TRUST** The following provisions shall apply to the distribution of the Nevada Trust estate during Bayuk's lifetime. During Bayuk's lifetime at Bayuk's sole discretion the Trustee may distribute to Bayuk, or Bayuk may distribute other than to Bayuk, such amount of net income and principal as deemed appropriate, if at all. No distribution is required other than at the discretion of the Trustee. Further, if Bayuk becomes incapacitated, the Trustee is authorized to distribute to any person that Bayuk is legally obligated to support or who has been receiving support from me that amount of net income and principal as the Trustee deems appropriate in his discretion to continue to support. The Trustee shall exercise this discretion in a liberal manner, and the rights of the remainder beneficiaries shall be of no importance. The Trustee shall accumulate and add any undistributed net income to principal.

4. **GIFTS** The Trustee is authorized to make distributions directly to persons designated by me. Furthermore, the Trustee is authorized to make gifts to continue any gift program that Bayuk may have started, including gifts made to use any federal gift tax



annual exclusion amounts or lifetime exemptions or exclusion amounts at the same level and to the same persons as Bayuk made gifts to.

5. **QUALIFICATION FOR GOVERNMENT BENEFITS** Bayuk authorizes the Trustee to take any actions that the Trustee determines to be appropriate or necessary in connection with Bayuk's qualification for or receipt of government benefits, including benefits (whether income, medical, disability, or otherwise) from any government agency such as Social Security, Medicare or supplemental security income/state supplement programs.

6. **ALLOCATION AND DISPOSITION OF THE TRUST ESTATE** It is Bayuk's irrevocable intention as the Settlor/Grantor that the Nevada Trust upon Bayuk's demise have as its beneficiaries, irrelevant of any future amendment or restatement the following beneficiaries: Bayuk's mother, Gail Bayuk Knowles; and Bayuk's step-mother, Elizabeth Bayuk, in amounts as Bayuk will determine in a direction ("Direction") attached to this Amendment as instructions to Bayuk's Last Will and Testament. No gifts will be made other than as described herein.

7. **RESIDUARY TRUST** All Nevada Trust property allocated to the Residuary Trust shall be held by the Trustee in Nevada Trust and shall be administered according to the terms of the Nevada Trust, specifically including the following provisions, until the date ten (10) years following Bayuk's death. On the date ten (10) years after Bayuk's death, all Nevada Trust assets remaining in the Residuary Trust shall be distributed in accordance with the provisions of Section 6 above. All references in this Nevada Trust Amendment to the "Residuary Trust" shall be to the Nevada Trust established under this article.

8. **TRUST & ALLOCATIONS PROVISIONS** General Power of Appointment Conferred by Trustees: The Trustees may grant a beneficiary a general power of appointment, as that term is defined in the Internal Revenue Code, over that beneficiary's share of the Nevada Trust estate, pursuant to which that beneficiary may appoint the principal and or undistributed income of that share to one or more persons and entities, including his or her own estate, and on those terms and conditions, either outright or in Nevada Trust, as he or she may appoint by a Will (whether or not admitted to probate) or other written instrument expressly referring to and exercising this general power of appointment. A grant of power may limit the amount subject to any general power of appointment, require that it

be exercised jointly with another person or persons, or otherwise impose limits or conditions on its exercise. The Trustees may also eliminate or modify, at any time and for any reason, a general power of appointment granted by the Trustees. The Trustees shall promptly notify the beneficiary in writing that they have granted a general power of appointment to the beneficiary over Nevada Trust assets. The foregoing provisions shall not apply to a beneficiary who is serving as a Trustees or Co-Trustees except that a Co-Trustees or successor Trustees may exercise the foregoing power to grant a general power of appointment in favor of the beneficiary who is a Trustees. No beneficiary shall have the power under this Section to amend his or her share of the Nevada Trust estate in a manner that would increase his or her benefits, or to grant himself or herself a general power of appointment.

9. **GIFTS OF TANGIBLE PERSONAL PROPERTY:** Upon Bayuk's death, subject to the payment of, or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including all Estate taxes) , the following distributions shall be made by the Trustees from the Nevada Trust estate: All Bayuk's interest in Bayuk's tangible personal property, together with any insurance on such property, shall be distributed by the Trustees outright to Bayuk's step-mother, Elizabeth Bayuk. If Elizabeth Bayuk dies, all of the proceeds of the Trust Agreement shall be donated to the U.S. Humane Society to support programs that fund no-kill animal shelters in Nevada and California.
10. **GIFTS OF MONEY AND OTHER PROPERTY** Upon Bayuk's death, subject to the payment of or satisfactory provision being made for, all debts incurred in the ordinary course of the maintenance and protection of the Trust's assets, and taxes (including all Estate taxes), the following distributions shall be made by the Trustees: All Bayuk's interest in Bayuk's tangible personal property, together with any insurance on such property, shall be distributed by the Trustees outright to Bayuk's step-mother, Elizabeth Bayuk.
11. **DISCLAIMERS ALLOWED** In addition to any rights granted by law, any person granted any right, title , interest, benefit, privilege, or power under this Trust Agreement may at any time renounce , release, or disclaim all or any part of that right, title, interest, benefit, privilege, or power, including his or her right, title, and interest in and to Nevada Trust income or principal. The natural or legal guardians of a minor shall have the authority and power to disclaim the interests of the minor; the



conservator of the estate of the person shall have the authority and power to disclaim the interests of the conservatee; the fiduciary of a Nevada Trust or estate shall have the authority and power to disclaim the interests of the Nevada Trust or estate; and the youngest adult ancestor of any unborn, unknown, or unascertained issue shall have the power to disclaim the interests of those issue.

12. **DISCLAIMERS OF PROPERTY INTERESTS** In general, a disclaimer or renunciation of a property interest shall accelerate the succeeding interest. Except as otherwise expressly provided in this Trust Agreement, any interest in property so disclaimed shall be allocated or distributed as if the beneficiary had predeceased the person from whom the interest in the property would have been received. Further, except as otherwise expressly provided in this Trust Agreement, if a beneficiary disclaims his or her entire interest in one or more specific assets held in any Nevada Trust, the assets shall be distributed from the Nevada Trust as if the beneficiary predeceased the person from whom the interest in the assets would have been received. If all living current and contingent beneficiaries disclaim their interests in the Nevada Trust, any contingent remainder interest shall be destroyed and the remaining Nevada Trust property shall pass as provided for herein.
13. **DISCLAIMERS BY TRUSTEES** Any person granted any fiduciary power, authority, right, privilege, or discretion ("Fiduciary Power") under this Trust Agreement or under the law applicable to this Nevada Trust may at any time renounce, release, or disclaim all or any part of such Fiduciary Power. Unless otherwise expressly provided in the disclaimer, if any Fiduciary Power shall be disclaimed, the power shall cease to exist and shall not pass to any successor fiduciary. The disclaimer may expressly provide that the Fiduciary Power shall be exercisable by the remaining Trustees, if any, or any successor Trustees.
14. **EFFECTIVE DISCLAIMERS** To be effective, disclaimers must be in writing, signed by the disclaiming person, and irrevocable. Disclaimers shall be effective only upon delivery to the Trustees or to a court having jurisdiction over the administration of the Nevada Trust.
15. **PAYMENT OF DEBTS AND EXPENSES** The following provisions shall apply upon Bayuk's death to the payment of Bayuk's debts and expenses. Upon death, the Trustees may pay on Bayuk's behalf, in the manner and at the time the Trustees determines, any and all of outstanding unsecured debts incurred in the ordinary course

of the maintenance and protection of the Trust's assets (including unpaid tax liabilities arising prior to death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of estate.

16. **PAYMENT FROM TRUST** The Trustees are authorized to pay from the assets of the Nevada Trust debts and expenses that Morabito as the Executor may request. If there are insufficient assets in probate estate to make any gifts provided under Will or to pay debts and expenses, or if there are sufficient assets in probate estate but, in the sole judgment of the Trustees, it would be to the advantage of the estate that those gifts or payments be made from the assets in the Nevada Trust, the Trustees may pay from the assets of the Nevada Trust all of those gifts, debts, and expenses. If the assets of probate estate (exclusive of residential real property and tangible personal property) are insufficient to pay all unsecured debts, funeral expenses, and expenses of administration, the Trustees may pay to estate from the principal of the Nevada Trust estate that amount that Executor may request for those purposes. The Trustees shall not be under any duty to take part in determining the amount of those debts or expenses and may rely upon the written certification of Executor for the amount to be paid as authorized by these provisions. The Trustees shall be under no duty to see to the application of any such payment. The Trustees shall not require any reimbursement for payments made to Executor.
17. **PAYMENT OF ESTATE TAXES** All Estate taxes and charges imposed upon any property by reason of death, whether passing under the Will or not, shall be paid (1) first, by Executor out of the residue of probate estate, to the extent funds are sufficient, and (2) second, by the Trustees out of the residue of the Nevada Trust estate. All Estate taxes shall be paid without proration or reimbursement from any other property or person.
18. **NO PRORATION** No portion of the Estate taxes payable under these provisions shall be charged against, prorated among, or recovered from any person entitled to benefits under this instrument.
19. **RESERVES** The Trustees may establish reserves from Nevada Trust income and principal that he or she considers necessary for the payment of Estate taxes.



20. **TAX ELECTIONS** The Trustees shall have the power, in his or her discretion, to take any action and to make any election to minimize the tax liabilities of probate estate, any Nevada Trust, and the beneficiaries. The Trustees may make those elections and allocations under the tax laws as he or she deems advisable. The Trustees may, but shall not be required to, allocate the benefits of an election among the various beneficiaries or make adjustments in the rights of any beneficiaries or between the income and principal accounts to compensate for the consequences of any tax election or any investment or administrative decision made by the Trustees that may have had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over another.
21. **THE APPOINTMENT OF TRUSTEES** The following provisions shall apply to the appointment, designation, and removal of the Trustees. Pursuant to powers to appoint Trustees, Bayuk appoints himself along with Morabito as the Co-Trustee & Morabito as the Executor under this Trust Agreement. Morabito shall serve as the Distribution Trustee with additional power to prepare income tax returns and maintain records for the Nevada Trust.
22. **SUCCESSOR TRUSTEES** Upon death or incapacity, or that of Morabito, Bayuk shall appoint Robert Bertram Burke, Esq., to serve as Co-Trustee & Executor. If Bayuk ceases to make his principal residence in Nevada, Bayuk shall then appoint an additional Co-Trustee that is a full-time resident of Nevada.
23. **FILLING VACANCIES** If after death a vacancy in a Trustee's position is not filled as otherwise provided in this Trust Agreement, the Nevada court having jurisdiction over the Nevada Trust shall appoint one or more Trustees upon the application, advice and direction of the Distribution Trustee, Morabito.
24. **REMOVAL OF TRUSTEES** During Bayuk's lifetime, Bayuk may remove and replace a Trustee. Following Bayuk's death Morabito may remove any Trustees of the Trust and appoint a Trustee or Trustees other than himself to succeed the removed Trustee(s).
25. **TEMPORARY INCAPACITY OF A TRUSTEE** If, due to illness or other cause, an individual Trustee is temporarily, but not permanently, unable to give prompt and intelligent consideration to the financial and administrative matters affecting the trusts for which he or she serves as Trustees, the other Trustees may, during such



temporary incapacity, make any and all decisions regarding the Nevada Trust estate as though the incapacitated Trustees were not then serving. In determining the temporary incapacity of an individual Trustee, the other Trustees may rely on a certificate or other "Written statement from a licensed physician who has examined the incapacitated individual Trustees. The other Trustees shall incur no liability whatsoever to any beneficiary as a result of any action taken under this section.

26. **EFFECTIVE DATES** Any and all appointments, designations, removals, or revocations affecting a Trustees position shall be made by a written instrument executed by the person entitled to make the appointment, designation, removal, or revocation. The written instrument shall be effective upon its delivery to the current Trustees; provided, however, that the appointment of a successor Trustees or Co-Trustees shall become effective only upon the new Trustee's acceptance of the appointment and the delivery of this **written** acceptance to the person who appointed him or her, the other Trustees, or the current beneficiaries.
27. **NO BOND** No bond or other security shall be required of any Trustees named in this Trust Agreement or of any Trustees appointed or designated in the manner provided under this Trust Agreement unless the terms of the appointment or designation require a bond. The foregoing provisions shall apply whether the Trustees serves alone or together with one or more other Trustees.
28. **ADMINISTRATOR** The Administrator shall provide such services to the Trustees by way of accounting, tax and planning purposes, and advise the Trustees and the Beneficiaries as to the intent and implementation of each and every provision of this Trust. The Administrator shall be reimbursed based on his normal hourly rate, as well as receive an annual base stipend of one dollar (\$1.00).
29. **THE PROTECTION PROVIDED THE TRUSTEES** The following provisions shall apply to each of the Trustees serving under this Trust Agreement:
30. **RESIGNATION** Each Trustee shall have the right to resign his or her position at any time without the consent of any beneficiary or the approval of any court. A Trustee may resign for any reason by delivering a written resignation signed by him or her to the successor Trustees. The resignation shall be effective according to its terms. But, if the resigning Trustees is the sole Trustees, the resigning Trustees shall continue to be responsible for the Nevada Trust property until it is delivered to the

successor Trustees and shall continue to hold title and custody to the Nevada Trust assets and administer the Nevada Trust assets and perform the actions that are reasonably necessary to preserve the Nevada Trust property and to complete the Trustee's administration of the Nevada Trust, until a successor Trustees has been appointed and has accepted the position of Trustees.

31. **COMPENSATION** Upon Bayuk's death, Morabito as the Executor and Co-Trustee shall be entitled to be paid an annual fee of three hundred and sixty thousand dollars (\$360,000) in 2005 U.S. dollar value for the performance of his duties and services rendered as Executor and as Co-Trustee. This compensation may be paid without prior court approval. The Trustees shall be reimbursed for reasonable expenses actually and properly incurred by him or her in the administration of the Nevada Trust. The Trustee also is authorized to pay to the attorneys and accountants retained by the Trustees to advise him or her in the administration of the Nevada Trust those amounts for fees and costs as the Trustees shall determine in his or her discretion. The Trustees is authorized to pay these fees and costs without first obtaining approval of the Nevada Trust beneficiaries or the court having jurisdiction over the Nevada Trust. These fees and costs shall not be offset against the compensation payable to the Trustees. A Trustee may waive his or her right to compensation for his or her services to be rendered to the Nevada Trust estate. The waiver must be in writing and signed by the person in advance of rendering the services for which compensation is being waived. A waiver may be limited in duration or limited to specific services.

32. **DUAL COMPENSATION** A Trustee serving as a director, officer, partner, or employee of any corporation, partnership, or other business in which the Nevada Trust owns or has an interest in shall also be entitled to receive reasonable compensation for his or her services rendered as Trustee in addition to the compensation being paid to him or her by such business. The compensation paid to the Trustee in either capacity shall not be offset against the other. A Trustee who is an investment advisor, attorney, accountant, or other professional shall not be disqualified from rendering professional services to the Nevada Trust and being compensated on a reasonable basis therefore in addition to any compensation that he or she otherwise is entitled to receive as Trustee. Neither shall a firm with which a Trustee is associated as a partner, officer, or employee be disqualified from dealing with, rendering services to, or discharging duties for the Nevada Trust and being compensated therefore on a reasonable basis. A



Trustee is authorized to retain himself or herself or any firm with which he or she is associated to render investment, legal, accounting, or other professional services.

33. **RIGHT OF INDEMNIFICATION AND REIMBURSEMENT** A Trustee shall be entitled to indemnification and reimbursement for any expense, loss, damage, liability, costs, or claim (including, without limitation, attorney's fees and costs of litigation) incurred by the Trustees by reason of any act performed or omitted to be performed by the Trustees, acting in good faith, in the administration of the Nevada Trust. The Trustee shall be deemed to have acted in good faith on behalf of the Nevada Trust if the Trustee acted in a manner reasonably believed by the Trustees to be within the scope of his or her authority and in the best interest of the Nevada Trust and its beneficiaries. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of any breaches of Nevada Trust, by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries.
34. **NOTICE TO THE TRUSTEES** Until the Trustees receives written notice of any birth, marriage, death, or other event affecting the rights of beneficiaries to payments or distributions from the Nevada Trust, the Trustees shall incur no liability to any persons whose interests may have been affected by that event for payments or distributions made by the Trustees in good faith as though the event had not occurred.
35. **CONFIDENTIALITY OF TRUST AGREEMENT** Except as otherwise provided in this Trust Agreement, the Trustees shall not disclose the contents of this Trust Agreement, or the fact of its existence unless required to do so by law or applicable regulation, regulatory authorities, or legal process, without prior written consent. The Trustees may, however, disclose the terms of this Trust Agreement where necessary to carry out his or her powers, to enforce the rights and remedies belonging to the Nevada Trust, or as required by a court in its supervision of the Nevada Trust. The Trustees may also disclose the contents of this Trust Agreement to persons employed by him or her to advise or assist him or her in the administration of the trusts, including attorneys and accountants, provided these professionals agree to keep the disclosed information confidential on the same terms as provided in this section.

36. **DISCLOSURE TO THE BENEFICIARIES** During Bayuk's lifetime, the Trustees shall have no duty to provide any information regarding the Nevada Trust to anyone other than me.
37. **REPORTS AND ACCOUNTS** Bayuk hereby waive all statutory requirements, that the Trustees render a report or account to the beneficiaries of the Nevada Trust. The Trustees shall not be required to make any current reports or to render any annual or other periodic accounts to any Nevada Trust beneficiary or to any court, whether or not required by statute, except pursuant to court order. The Trustees may take action for the approval of his or her accounts at the times and before the courts, or without court proceedings, as he or she determines in the exercise of his or her discretion. The Trustees shall pay the costs and expenses of such action, including the compensation and expenses of accountants, attorneys, and guardians, from the principal or income, or both, of the Nevada Trust as he or she determines.
38. **RIGHT TO RELEASE TRUSTEES** Bayuk reserves the right to execute a release, with or without an account, approving the administration of the Nevada Trust by the Trustees. A release shall discharge the Trustees from any accountability and liability to me or estate or to any other persons interested or claiming to be interested in the Nevada Trust as to all matters covered by the release or in the account, if any, with the same effect as if an account of the Trustees for the period concerned had been judicially settled and allowed in a proceeding to which these other persons (including all interested persons) were parties. No beneficiary other than me or the Executor shall have the right to question or assert any liability by the Trustees for the Trustee's acts or omissions during Bayuk's lifetime.
39. **RIGHT OF TRUSTEES TO SECURE RELEASES** The Trustees are authorized to secure from any beneficiary a full and complete release from any and all liabilities arising from the Trustee's administration of the Trust and the beneficiary's written approval of any account or report of the Trustees. The release or approval shall be binding and (inclusive upon the beneficiary and upon all of the beneficiary's issue (including then unborn, unknown, and unascertained issue) and other successors in interest who may then have or later acquire any interest in the separate Nevada Trust. All written instruments to be delivered to or executed by a beneficiary may be delivered to or executed by the legally appointed



conservator of any incompetent beneficiary or a parent or legal guardian of a minor beneficiary. When so delivered or executed, the written instrument shall be binding upon the beneficiary and shall be of the same force and effect as if delivered to or executed by a beneficiary acting under no legal disability. The foregoing provisions shall apply to all reports, statements, accounts, releases, and notices, as well as documents appointing, removing, or designating Trustees. However, the Trustees may not condition the performance of his or her duties on the delivery of such a release.

40. **CONSULTATION WITH LEGAL COUNSEL** The Trustees may retain and consult with Nevada and/or California based legal counsel on any matters related to the administration of the Nevada Trust or the construction or interpretation of this Trust Agreement, and Bayuk encourages the Trustees to do so. The Trustees may select the legal counsel to advise or represent him or her, and the Trustees is expressly authorized to pay the fees and costs of the legal counsel from the Nevada Trust estate. The time, place, subject matter, and content of any such consultation with legal counsel, all communication (written or oral) between the Trustees and legal counsel, and all work product of legal counsel shall be privileged and confidential and shall be absolutely protected and free from any duty or right of disclosure to any successor Trustees or any beneficiary and any duty to account. The Trustees shall, however, include the amount of any disbursement for the legal counsel fees and costs in any report or account prepared by the Trustees for the period during which the expenses were paid.

41. **RELIANCE ON EXPERTS AND OTHERS** The Trustees shall be entitled to rely on the information, opinions, reports, or statements (including financial statements and other financial data) prepared by his or her managers, attorneys, accountants, brokers, investments counselors, and other experts, even if they are associated with a Trustees, prepared by such persons as to matters which the Trustees reasonably believes to be within that person's profession or expert competence, and shall not be liable for losses resulting there from. The Trustees may act without independent investigation upon the recommendations of any attorneys, auditors, accountants, investment advisers, appraisers, or other qualified experts retained by the Trustees, even if they are associated or affiliated -with the Trustees. The written opinion of any such expert submitted to the Trustees shall be a full and complete authorization and protection with respect to any action taken or not taken by the Trustees in good faith.



42. **EXTENT OF LIABILITY** Bayuk does not want the Trustees to be personally liable for his or her good faith efforts in administering the Nevada Trust estate.
43. **LIABILITY** In general a Trustee shall not be personally liable to the Nevada Trust or its beneficiaries, and shall be held harmless, for any loss, expense, damage, or claim incurred by the Trustees by reason of any act performed or omitted to be performed by the Trustees, acting in good faith, in the administration of the Nevada Trust. The Trustees shall be deemed to have acted in good faith on behalf of the Nevada Trust if the Trustees acted in a manner reasonably believed by the Trustees to be within the scope of his or her authority and in the best interest of the Nevada Trust and its beneficiaries. Further, a Trustee shall not be personally liable for obligations arising from the Trustee's ownership or control of Nevada Trust property or for torts committed in the course of the Trustee's administration of the Nevada Trust unless the Trustees is personally at fault. Notwithstanding the foregoing, a Trustees shall be personally liable for his or her breach of Nevada Trust by acts or omissions, committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of the beneficiaries, and as to any profit that the Trustees derives from any breach of Nevada Trust.
44. **TRUST IS IRREVOCABLE** During Bayuk's lifetime, the Trustees shall follow all written directions given from time to time to him or her by me or by the person or persons to whom Bayuk delegates the right to direct the Trustees. In consenting to and carrying out those directions, the Trustees shall not be liable to any person having a vested or contingent interest in the Nevada Trust for any act performed or omitted pursuant to those directions. Moreover, the Trustees may follow those directions regardless of any fiduciary obligations to which the directing party may also be subject.
45. **AS TO OTHER TRUSTEES** The liability of the Trustees is further limited as follows. (i) As to prior Trustees: No successor Trustees shall be responsible or liable for any acts, omissions, or default of any prior Trustees. Unless requested in writing by a beneficiary within 60 days of the appointment of the successor Trustees, no successor Trustees shall be required or have any duty to review or investigate the actions or omissions of a prior Trustees. A successor Trustees shall not be required or have any duty or obligation to review, audit, or examine the transactions, accounts, or records of any prior Trustees, or any allocation of the Nevada Trust estate made by any prior Trustees. (ii) No successor Trustees shall have any obligation to take any action



to obtain redress for any breach of Nevada Trust by any prior Trustees unless instructed by a court to do so. Each Trustee is responsible only for those assets that are actually delivered to the Trustee's custody or control. (iii) As to Co-Trustees: A Trustee shall be liable to the beneficiaries for the acts or omissions of a Co-Trustee only as provided required by law. (iv) As to agents and investment managers: Bayuk wants the Trustees to be able to rely on the advice of professionals hired to advise him or her. Accordingly, the Trustee's liability is further limited as follows: As to agents, a Trustee shall be liable to the beneficiaries for the acts or omissions of an agent only as provided by applicable law. As to investment managers, a Trustee shall not be liable for the acts or omissions of any investment manager or be under an obligation to invest or otherwise manage any asset that is subject to the management of an investment manager. As to taxes, Bayuk wants the Trustees to be aggressive in minimizing the taxes, including estate and income taxes, imposed on the Nevada Trust estate. Accordingly, the Trustees shall not be liable for any accuracy- related penalty, such as is currently imposed under Internal Revenue Code, arising from the preparation and filing of any income tax or estate tax return.

46. **LIABILITY INSURANCE** Individual Trustees may carry errors and omissions or fiduciary liability insurance and may charge the premiums to Nevada Trust income or principal, or both, as a cost of administration.
47. **THE AUTHORITY OF THE TRUSTEES** The following provisions shall apply to each of the Trustees serving under this Trust Agreement. A successor Trustees shall be vested with all the rights, powers, and authority of an original Trustees
48. **TRUSTEES AUTHORITY** Except as otherwise expressly provided, a successor Trustees upon commencing to serve as Trustees shall immediately become vested with all the rights, titles, Powers (including discretionary powers), and obligations, with like effect as if named as an initial Trustees. Where this Trust Agreement states that the Trustees "shall" perform an act, the Trustees are required to perform that act. Where this Trust Agreement states that the Trustees "may" do an act or Trustees is "authorized" to act, the Trustees is expressly permitted or authorized to do the act described, and his or her decision to do or not to do the act shall be made in the Trustee's sole and absolute discretion in the exercise of his or her fiduciary powers and duties. The decision of the Trustees as to all discretionary actions and decisions shall be conclusive and binding on all persons.

49. **NEVADA SPENDTHRIFT ACT** The Trustees are **required** to disregard and defeat every assignment or other act, voluntary or involuntary, intended or unintended, that is attempted by any Party or anyone contrary to the provisions of the Nevada Spendthrift Act upon which the Nevada Trust is based.
50. **TRUSTEES DISCRETION** The discretionary powers granted to the Trustees under this Trust Agreement shall be absolute. This means that the Trustees can act arbitrarily, so long as he or she does not act in bad faith, and that no requirement of reasonableness shall apply to the exercise of his or her absolute discretion. This does not mean that the Trustees may do as he or she pleases, but rather that Bayuk wants the Trustees to use his or her own personal, subjective best judgment. For this purpose, Bayuk waives the requirement that the Trustee's conduct at all times must satisfy the standard of judgment and care exercised by a reasonable, prudent person. In particular, the decision of the Trustees as to the distributions to be made to beneficiaries under the distribution standards provided in this Trust Agreement shall be conclusive on all persons.
51. **RELEASE OF POWER OR AUTHORITY BY A TRUSTEES** The Trustees may at any time release, surrender, disclaim, relinquish, either in whole or in part, or may reduce or restrict in scope, any of the powers, rights, authority, or discretion granted to the Trustees under this Trust Agreement, either expressly or implied. Such action shall be taken by means of a written notice filed in the records of the Nevada Trust, signed and dated by the releasing Trustees, and mailed to all of the current beneficiaries. Unless otherwise specified by the releasing Trustees, any such action as it affects the Trustees shall be irrevocable. Such action shall be effective only as to the Trustees giving such written notice and shall in no way affect the rights, powers, authority, and discretion of successor Trustees. The powers, rights, authority, or discretion released or restricted shall continue to exist as to all Trustees and successor Trustees other than the releasing Trustees.
52. **TRUSTEE'S CONSIDERATION OF BENEFICIARY'S OTHER ASSETS** Except as otherwise provided in this Trust Agreement, in exercising his or her discretion to distribute Nevada Trust funds to any beneficiary, the Trustees may, but shall not be required or have any duty to, consider all income and assets, including other sources of income or financial support, reasonably available to the beneficiary, as are actually known to the Trustees. The Trustees shall have no duty of inquiry as to



the property owned by or held for the benefit of the beneficiary. In making discretionary distributions from any Nevada Trust created under this Trust Agreement, the Trustees may rely absolutely upon a declaration executed under penalty of perjury by the beneficiary describing his or her expenses and financial needs and any other financial resources available to him or her, without further investigation. The Trustees may continue to rely upon a declaration until otherwise advised in another declaration from the beneficiary.

53. **LIMITATION ON DISCRETION OF A BENEFICIARY SERVING AS TRUSTEES** Notwithstanding any other provisions of this Trust Agreement, a Trustee (other than Bayuk or the Distribution Trustee) who is also a beneficiary of the Nevada Trust shall not have, and shall not participate in the exercise of, the power to use, apply, or distribute Nevada Trust principal for his or her own benefit, except as necessary to provide for his or her health, education, maintenance, and support in his or her accustomed manner of living. Further, a Trustee who is also a beneficiary of the Nevada Trust shall not participate in the exercise of any power to advance or loan funds to himself or herself or to guarantee or secure any debt of such beneficiary/Trustees.
54. **VOTING** While more than two Trustees are serving, the decision of the majority of the Trustees shall prevail and be binding with respect to all matters affecting the Nevada Trust estate. If one or more Trustees are excluded or precluded from participating in making a decision with respect to a particular matter, the remaining Trustees acting by majority vote shall make the decision. Any act by or instrument executed by the majority of the Trustees shall constitute the action of the Trustees as if done by all Trustees. Any dissenting or non-concurring Trustees shall not be liable to any person for the action or failure to act of the other Trustees acting by majority vote.
55. **DELEGATION BY ONE TRUSTEE** Each Trustee may at any time, by a signed revocable instrument, delegate to another Trustee the exercise of all or less than all of the powers conferred on a Trustee - other than the Distribution Trustee. Nonetheless, the delegating Trustees shall be liable for the proper exercise of the delegated powers by the other Trustees.
56. **DELEGATION BY ALL TRUSTEES** The Trustees may delegate their powers to one or more of the Trustees in a writing signed by all of them. The writing

must state the powers delegated to the particular Trustees and provide a date when the delegation will terminate automatically if not previously terminated. Any delegation shall be revocable by any one Trustees in a writing delivered to the delegate. A Trustees acting pursuant to a delegation shall have the authority to bind the Nevada Trust and third persons may rely on his or her authority to act for the Nevada Trust. Any act by or instrument executed by a Trustees acting pursuant to this delegation shall constitute the action of the Trustees as if done by all Trustees.

57. **DELEGATION OF POWER TO EXPEND** The Trustees may delegate to one or more of the Trustees, for any period, the power to bind the Nevada Trust in any transaction obligating the Nevada Trust to expend up to or less than a certain sum of money as specified by the delegating Trustees. The Trustees to whom the power is delegated may be the sole signor of all checks necessary to accomplish the expenditure. The Trustees may also delegate to a property management company authority to be the sole signatory of all checks written on behalf of the Nevada Trust relating to real estate owned by the Nevada Trust or on checks written on behalf of the Nevada Trust in an amount less than the amount specified by the Trustees.
58. **DELEGATION OF INVESTMENT AUTHORITY** The Trustees, acting by majority vote, may delegate to one or more Trustees or to agents (including independent investment advisors, investment counsel or managers, banks, or Nevada Trust companies) the power and authority to act for the Trustees in the investment and reinvestment of Nevada Trust assets. The Trustees, acting by majority vote, may also authorize the payment of compensation for investment advisory or management services. The Trustees may delegate to the retained investment counsel the power to instruct the custodian of Nevada Trust property with respect to all matters affecting the property, and the custodian shall comply with those instructions.
59. **AGENTS** The Trustees may act under this Trust Agreement through an agent or attorney-in-fact acting under a power of attorney duly executed by the Trustees.
60. **DEALING WITH THE TRUSTEES** If a third person dealing with the Trustees or assisting him or her in the conduct of a transaction acts in good faith and for a valuable consideration and without actual knowledge that the Trustees is exceeding the Trustee's powers or improperly exercising them, the third person is not bound to inquire whether the Trustees has power to act or is properly exercising a power and may assume without inquiry the existence of a Nevada Trust power



and its proper exercise. That third person shall be fully protected in dealing with or assisting the Trustees just as if the Trustees has and is properly exercising the powers the Trustees purports to exercise. In addition, that person has no duty to see to the application of any money paid or property transferred to or upon the order of one or more Trustees.

61. **RELIANCE ON REPRESENTATIONS BY THE TRUSTEES** A third person dealing with the Trustees also shall be fully protected in relying on written statements of fact, certified or declared under penalty of perjury by any one or more of the persons who appear from the original or certified copy of this Trust Agreement (or documents of appointment) to be a Trustees or successor Trustees, regarding the Trustee's authority to act under this Trust Agreement, the calling of any meeting of the Trustees, the giving of any notice of a meeting, the action taken at a meeting, and other facts concerning the trusts established under this Trust Agreement. Anyone may rely on a copy of this Trust Agreement certified by a Trustee, by the Trustee's legal counsel, or by a Notary Public, to be a counterpart or true copy of this Trust Agreement
62. **RELIANCE ON THE AUTHORITY OF TRUSTEES** No persons or organizations employed by the Trustees or retained by the Trustees as provided in this article shall be required to oversee or supervise the activities of the Trustees or to inquire into the Trustee's powers, authority, or discretion. Each person or organization so employed or retained may rely implicitly upon the written instructions of the Trustees with respect to the property and business of the Nevada Trust, including instructions of the Trustees to deal directly with investment counsel employed by the Trustees. In no event shall any person or organization so employed or retained be liable for any act or omission of any Trustees in which that person or organization may also have participated.
63. **THE POWERS OF THE TRUSTEES** Subject in all instances to his or her fiduciary duties and the limitations set forth elsewhere in this Trust Agreement, with regard to the entire Nevada Trust estate and all trusts established under this Trust Agreement, the Trustees shall have all the powers described below, all powers granted by law, and all powers reasonably necessary to carry out his or her duties as Trustees to administer, manage, protect, and invest the Nevada Trust estate. The

Trustees in his or her discretion, without court approval, authorization, or supervision, may exercise these powers except as expressly required in this Trust Agreement.

64. **TO ACCEPT PROPERTY** The Trustees may accept or receive additions and contributions to the Nevada Trust estate from me or any other person and hold the property in Nevada Trust under the provisions of this Trust Agreement. If the Trustees receives property from another fiduciary and if the Trustees believes the action to be in the best interests of the Nevada Trust estate, the Trustees is authorized to waive an accounting from the fiduciary, to approve his or her actions, to consent to his or her proposed actions, and to consent to his or her discharge. Specifically, any Property bought by me in any capacity, under any legal title, is deemed and understood to be the Property of the Nevada Trust unless such Property is specifically disclaimed or rejected by the Trustees in writing to me.
65. **TO DISCLAIM OR REJECT PROPERTY** The Trustees may renounce or otherwise disclaim all or any part of any interest in property passing to the Nevada Trust, by gift or bequest, and any right, power, privilege, or discretion granted the Trustees under this Trust Agreement. The Trustees may reject any property or interest in property passing to the Nevada Trust, including property that by reason of hazardous materials or substance the Trustees determines (after investigation at the expense of the Nevada Trust) would be detrimental to the Nevada Trust purpose.
66. **TO RETAIN PROPERTY** The Trustees may retain Nevada Trust property received at the inception of the Nevada Trust or at any other time, from me or any other person, or any future corporate entity, partnership, limited liability company interest, revocable Nevada Trust or any form of corporate, legal and/or personal basis until, in the judgment of the Trustees, disposition or distribution of the property should be made. The property may be retained even though the property is unproductive, is property in which a Trustees is personally interested or in which the Trustees owns an undivided interest personally or as Trustees of another Nevada Trust, or there is known or later discovered to be hazardous materials or substances requiring remedial action pursuant to environmental laws. The Trustees shall have no duty to dispose of any part of the Nevada Trust property included in the Nevada Trust at the time of its creation, or later added to the Nevada Trust by me or another person, that would not be a proper investment for the Trustees to make. The Trustees may, without liability, continue to hold that property. The Trustees may hold Nevada Trust property in bearer form so



that title may pass by delivery, or in the name of any one Trustees or a nominee without indication of any fiduciary capacity by the nominee. The Trustees may keep all or part of the Nevada Trust property at any place within the United States or abroad.

67. **TO OPERATE A BUSINESS** The Trustees may continue or participate in the operation of any business or other enterprise (including a partnership as a general or limited partner) that is part of the Nevada Trust property for as long as the Trustees deems advisable, at the risk of the Nevada Trust estate and not at the risk of the Trustees. The Trustees may incorporate, dissolve, or change the form of the organization of the business or enterprise, or operate it as a partnership or in any other form. The profits and losses from any business or other enterprise shall be chargeable to and borne by the Nevada Trust, and not the Trustees. A Trustee, as an individual, may continue to be a shareholder, director, officer, employee, or partner of any business or enterprise in which the Nevada Trust holds any interest.

68. **TO INVEST AND REINVEST TRUST PROPERTY** The Trustees may invest and reinvest Nevada Trust property (including income and principal) in any kind of property, whether real, personal, or mixed, including (1) real property (including leaseholds; royalty interests; interests in mines, oil and gas wells, timberlands, and other wasting assets), (2) intangible personal property (including common and preferred stock and all other kinds of securities (on margin or otherwise); investment company shares, mutual funds, index funds, common Nevada Trust funds (including any common Nevada Trust fund under the management of a corporate Trustees) and other collective investment vehicles; interests in partnerships (whether as a general or limited partner); commodities; governmental obligations of every kind; obligations of corporations or unincorporated associations; and patents, copyrights, trademarks, and other intangible rights), and (3) tangible personal property (including precious metals, works of art, and other collectibles). The Trustees is authorized to establish and maintain brokerage accounts, including margin accounts, for the purpose of purchasing, acquiring, possessing, pledging, hypothecating, selling and otherwise disposing of, and generally dealing in and with any of the foregoing types of investments.

69. **TO ADMINISTER SECURITIES** The Trustees may purchase, exchange, or sell stocks, bonds, futures contracts, and other securities, and puts, calls, straddles, and other options. The Trustees may maintain brokerage accounts, including



margin and commodity accounts, and in connection with such accounts, may borrow, pledge securities, make short sales, and sell on margin or otherwise. With respect to all securities held by in the Nevada Trust estate, the Trustees may exercise the rights, powers, and privileges, and responsibilities of an owner, including the right to vote; to give general or limited proxies; to pay calls, assessments, and other sums; to participate in voting trusts, pooling arrangements, foreclosures, reorganizations, consolidations, mergers, and liquidations; to deposit securities with and transfer title to any protective or other committee; and to exchange, exercise, or sell stock subscription or conversion rights. The Trustees may also accept and retain as an investment any securities received through the exercise of any of the foregoing powers.

70. **TO CONDUCT ALL BANKING ACTIVITIES** The Trustees shall and may establish financial accounts of any kind, including checking, money market, and savings accounts, with any bank, savings and loan association, credit union, brokerage firm, or other financial institution (including such accounts in the banking department of a Trustees that is a corporation or partnership). The Trustees may deposit Nevada Trust funds into such accounts, withdraw funds from such accounts, and transfer funds among such accounts. The Trustees may designate in writing the persons, whether or not Trustees, who may conduct such banking activities, and the financial institutions may rely, without liability, on such designations.
71. **TO PURCHASE AND SELL TRUST PROPERTY** The Trustees or me authorized by the Trustees may buy, purchase, acquire, sell, convey, dispose of, exchange, or otherwise transfer any Nevada Trust property, or any interest in property, for cash or on credit, at public or private sale, with or without notice, and for the prices and upon the terms as the Trustees determines. The Trustees may grant or acquire options and rights of first refusal involving the acquisition or disposition of any Nevada Trust property. The Trustees may also subdivide or develop land; create restrictions, easements, and other servitudes, with or without consideration; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate real property to public use with or without consideration.
72. **TO MANAGE TRUST PROPERTY** The Trustees may manage, control, divide, develop, improve, repair, exchange, partition, change the character of, or abandon Nevada Trust property or any interest in Nevada Trust property. The Trustees

may enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the Nevada Trust. The Trustees may amend or extend existing leases. The Trustees may also demolish or remove buildings or other improvements on Nevada Trust property.

73. **TO BORROW MONEY AND ENCUMBER TRUST PROPERTY** The Trustees may borrow money for any Nevada Trust purpose from any person upon such terms and conditions as may be determined by the Trustees, and obligate the Nevada Trust to make repayment from Nevada Trust property. Bayuk or the Trustees may loan or advance funds to the Nevada Trust, and the loans or advances together with the interest charged shall be treated as a first lien on the Nevada Trust estate until repaid. The Trustees may also encumber, mortgage, or pledge Nevada Trust property for a term within or extending beyond the term of the Nevada Trust in connection with the exercise of any power vested in the Trustees, or to create restrictions, easements, or other servitudes on Nevada Trust property.
74. **PROVIDING GUARANTEES** The Trustees other than me may NOT guarantee any indebtedness incurred by me, or by any entity owned directly or indirectly by me or by the Nevada Trust.
75. **TO MAKE LOANS** The Trustees may loan or advance Nevada Trust property of any kind (including money) for any Nevada Trust purpose to any person on terms and conditions as determined by the Trustees, subject to limitations stated in this Trust Agreement. The Trustees may make loans out of Nevada Trust property to the current beneficiary on terms and conditions that the Trustees determines are fair and reasonable under the circumstances, and guarantee loans to the current beneficiary by encumbrances on Nevada Trust property.
76. **TO PURCHASE LIABILITY INSURANCE** The Trustees may purchase and pay the premiums on policies to insure the property of the Nevada Trust estate against damage or loss and to insure the Trustees against liability with respect to third persons. The Trustees shall not be liable for any omission to purchase any type or amount of insurance. The premiums shall be a proper expense to be charged against the Nevada Trust.
77. **TO PURCHASE AND ADMINISTER LIFE INSURANCE** The Trustees may purchase, own, and pay the premiums on life insurance on life, and collect the



proceeds of life insurance policies payable to the Nevada Trust. The Trustees shall have the power to compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any policy payable to the Nevada Trust and shall have authority to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's discretion to collect the proceeds of any policy. The Trustee's receipt to any insurer shall be a sufficient release of the insurer. The insurer shall not be under any duty to inquire concerning the Trustee's application of the policy proceeds.

78. **TO PAY, CONTEST, AND SETTLE CLAIMS** The Trustees may pay or contest any claim; settle a claim by or against the Nevada Trust by compromise, arbitration, or otherwise; and release, in whole or in part, any claim belonging to the Nevada Trust.

79. **TO LITIGATE** In accordance with his or her duties to enforce claims and defend actions, the Trustees may prosecute or defend actions, claims, or proceedings for the protection of the Nevada Trust estate and the Trustees in the performance of his or her duties.

80. **TO DEAL WITH ENVIRONMENTAL HAZARDS** The Trustees may deal with matters involving the actual or threatened contamination of Nevada Trust assets (whether real or personal) by hazardous substances, or involving compliance with environmental laws and regulations, including conducting environmental assessments, audits, and site monitoring, and taking remedial action (whether or not required by governmental authorities) to contain, clean up, or remove any environmental hazard.

81. **TO PAY AND ALLOCATE TRUST EXPENSES** The Trustees may pay taxes and other assessments imposed on the Nevada Trust estate or Nevada Trust income; reasonable compensation of the Trustees and of the employees and agents of the Nevada Trust; and other expenses incurred in the collection, care, management, administration, and protection of the Nevada Trust estate. In allocating the payment of expenses, the Trustees shall have the power to determine which expenses are chargeable to income or principal or partly to each. The Trustees is authorized, but not directed, to allocate and charge post-death expenses incurred in the administration of the trusts or sub-trusts to post-death income. In particular, all expenses of administration claimed as income tax deductions may be entirely allocated to and charged against post-death income. In making these determinations, the Trustees shall

be guided by the principles set forth in the Uniform Principal and Income Act, but his or her final determination shall be binding.

82. **TO HIRE AND EMPLOY PERSONS** The Trustees may hire and employ persons (including individuals, corporations, partnerships, associations, and other companies), including accountants, attorneys, auditors, investment advisers, appraisers, or other agents or experts, even if they are associated or affiliated with a Trustees, to advise or assist the Trustees in the performance of his or her duties and obligations. The Trustees may grant discretionary authority to such persons, but may not delegate either the administration of the Nevada Trust or acts that are not delegable except as expressly provided in this Trust Agreement.

83. **TO MAINTAIN CUSTODY** The Trustees may keep any or all of the Nevada Trust property at any place in Nevada or California or elsewhere, within the United States or abroad, or with a depository or custodian at those places. If no bank or Nevada Trust company is acting as sole or a Co-Trustees hereunder, the Trustees are authorized to appoint a bank or Nevada Trust company as custodian for securities and any other Nevada Trust assets. Any appointment shall terminate when a bank or Nevada Trust company begins to serve as sole or as a Co-Trustees under this Trust Agreement. The custodian shall keep the deposited property; collect and receive the income and principal; and hold, invest, disburse, or otherwise dispose of the property or its proceeds (specifically including selling and purchasing securities and delivering securities sold and receiving securities purchased) upon the order of the Trustees. The custodian shall not be liable to any person interested in the Nevada Trust for any action taken pursuant to the order or instructions of the Trustees or his or her authorized agents.

84. **TO USE A NOMINEE** The Trustees may hold securities or other property of the Nevada Trust estate in the name of the Trustees, in the name of a nominee, or in street name accounts with brokers, or in the name of a custodian (or its nominees) selected by the Trustees, with or without disclosure of this Trust Agreement. The Trustees shall be responsible for the acts of such custodian, broker, or nominee affecting such property. The Trustees may also acquire and retain securities in unregistered form so that ownership passes by delivery.

85. **TO EXECUTE AND DELIVER INSTRUMENTS** The Trustees may execute and deliver all documents and instruments (including checks withdrawing or



disbursing Nevada Trust funds, stock powers, deeds and other conveyances, receipts, releases, contracts, and other agreements and transfer documents) which are needed to accomplish or facilitate the exercise of the powers vested in the Trustees, and to disclose the provisions of this Trust Agreement whenever in the Trustee's discretion disclosure is appropriate.

86. **OTHER POWERS** The Trustees may invest in obligations of the United States Government. The Trustees may deposit Nevada Trust funds at reasonable interest in accounts, whether or not the account is insured by a government agency or collateralized. The accounts may be maintained in the name of any one of the Trustees or in the name of a nominee. The Trustees may make repairs, alterations, and improvements, and perform the other acts affecting Nevada Trust property. The Trustees may develop land. The Trustees may enter into leases and other arrangements regarding minerals. The Trustees may grant or take options. The Trustees may exercise the powers of voting rights, payment of calls and assessments, stock subscriptions and conversions, and consent to change in form of business and participation in voting trusts. The Trustees may hold securities and deposit securities in a securities depository.

87. **SPECIAL DISCRETIONARY POWERS OF THE TRUSTEES** The following provisions shall apply to each of the Trustees serving under this Trust Agreement.

88. **TO DEAL WITH ESTATE** The Trustees may loan money to and borrow money from, sell property to and buy property from, exchange property with, and otherwise deal with, on reasonable, arm's-length terms (including adequate security, fair market prices, and market rates of interest), estate or the Trustees of other trusts created by me, for the purpose of providing liquidity to the estate or trusts or for any other purpose. The Trustees shall not be obligated to make any such loans or purchases.

89. **TO MAKE PAYMENTS AND DISTRIBUTIONS** The Distribution Trustee shall have the sole discretion to make any payments or transfers of income or principal or other sums distributable to a beneficiary in any one or more of the following ways. The Trustees shall not be required to supervise or inquire into the application of any funds so paid or applied, and the receipt of the payee shall be full acquittance and discharge of the Trustees. The Distribution Trustee may withhold from distribution all or any part of any Nevada Trust property, so long as the Trustees, exercising its

discretion, determines that such property may be subject to conflicting claims, tax deficiencies, or liabilities (contingent or otherwise) properly incurred in the administration of the Nevada Trust. By payment directly to the beneficiary or by deposit in any bank or similar account designated by the beneficiary even if the beneficiary is a minor or under a legal disability, without the intervention of a custodian, guardian, or conservator. Payments may be made directly to minor beneficiaries who, in the Trustee's judgment, have attained sufficient age and discretion to manage their own funds. By payment to the legally appointed guardian or conservator of the beneficiary's person or estate or by payment for the benefit of the beneficiary to any person with whom the beneficiary resides or to any person who has custody of the beneficiary, without the intervention of a guardian or conservator. By payment to any person or organization furnishing health care, education, maintenance, or support of the beneficiary. By making expenditures directly for the benefit of the beneficiary or for the reasonable health, education, maintenance, and support of persons whom the beneficiary has a legal obligation to support. By purchasing an annuity contract or other property for the benefit of a beneficiary entitled to receive a distribution.

90. **TO SELL TRUST ASSETS** The Trustees may sell Nevada Trust assets to obtain cash with which to pay debts incurred in the ordinary course of the maintenance and protection of the Trust's assets (including unpaid tax liabilities arising prior to death and interest and penalties imposed on those tax liabilities), expenses of last illness, burial and funeral claims, expenses of estate administration, any allowances by court order for those persons dependent upon me, and any other proper expenses of estate, income taxes, Estate taxes, expenses of administration, and other liabilities of the Nevada Trust, or to satisfy pecuniary gifts provided for under this Trust Agreement. The Trustee's selection of assets to be sold for these purposes, and the tax effects of that selection, shall not be subject to question by any beneficiary. Property, assets, or funds otherwise excludable from gross estate for federal estate tax purposes shall not be used to make any of these payments.

91. **TO POSTPONE DISTRIBUTIONS** Notwithstanding other provisions of this Trust Agreement, the Distribution Trustee shall have the power to postpone the distribution of any fractional portion or part of the principal of any Nevada Trust estate or of an entire Nevada Trust estate of any Nevada Trust created under this Trust Agreement for any person other than me if the Trustees determines that there is a



compelling reason in his sole discretion to postpone the distribution. Compelling reasons shall include, but are not limited to, a serious disability, drug addiction or dependency, a pending divorce, a potential financial difficulty, pending or threatened litigation, a serious tax disadvantage, or similar substantial cause affecting the beneficiary who otherwise would be entitled to the distribution. In that event, the distribution from or termination of any Nevada Trust may be postponed, and any postponement may be continued from time to time, up to and including the entire Lifetime of the beneficiary. During the postponement, the retained portion or part of the Nevada Trust estate shall be administered under the same terms as applied immediately prior to the postponement.

92. **TO DETERMINE VALUES AND ALLOCATE PROPERTY** The Trustees, in their sole discretion and at any time, shall determine the valuations of Nevada Trust property for purposes of divisions, allocations, and distributions, and those valuations, reasonably determined, shall be final and binding on all beneficiaries and other persons having an interest in the Nevada Trust. The Trustees may adjust any valuations retroactively if a different valuation is finally determined for federal estate tax purposes. The Trustees are authorized to effect the division, allocation, or distribution of Nevada Trust property in divided or undivided interests, in cash or in kind or partly in both, pro rata or non-pro rata, as the Trustees shall determine, and to sell any property in connection with the division, allocation, or distribution if the Trustees deems that action necessary or appropriate. A distribution in kind may be made pro rata or non-pro rata, and a beneficiary may receive all or a portion of any asset as part of a distribution or allocation in kind. The Trustees may allocate or distribute property (or the right to receive property) which is subject to estate tax and federal income tax as income in respect of a decedent to any one or more of the trusts created under this Trust Agreement or the beneficiaries of any Nevada Trust. The Trustees shall not be under any obligation to equalize any disproportionate allocation or distribution of items of decedent to any one or more trusts or beneficiaries. In making such divisions, allocations, and distributions, the Trustees is not required to consider the income taxes bases of such assets or the potential income tax consequences to the beneficiaries receiving the assets.

93. **TO MAKE ALLOCATIONS BETWEEN PRINCIPAL AND INCOME**  
The Trustees shall determine what is principal or income of the Nevada Trust estate, and what items shall be charged or credited to principal or income, or



both. For example, Trustees fees, attorney's fees, accounting fees, and custodian fees shall be charged against income or principal, or both, in such proportions (or all against either income or principal) as the Trustees determines. In exercising such discretion, the Trustees may use the Uniform Principal and Income Act as a guide. The Trustees shall not be required to establish any reserves. The Trustees may, however, establish reserves for depreciation, depletion, amortization, obsolescence, or repair and improvement of capital assets; for operating capital; or to amortize loans from income. If the Trustees determines to establish a reserve, he or she may fund the reserve by appropriate charges against the income of the Nevada Trust estate, in such amounts as the Trustees determines. If any security is purchased for a premium or at a discount, such premium or discount may be amortized in a reasonable manner. In addition, the Trustees may establish such reserves as he or she considers necessary for the payment of all taxes.

94. **TO RETAIN OR PURCHASE UNPRODUCTIVE OR UNDER-PRODUCTIVE PROPERTY** The Trustees may retain, purchase, or otherwise acquire property that is unproductive or under-productive of current income. Because of the substantial potential for appreciation presented by unproductive assets such as unimproved real estate and growth stocks, Bayuk want the Trustees to have broad discretion to acquire those assets. The Trustees shall have a duty to make the Nevada Trust property productive, but property may be made productive by appreciation in value as well as by the production of income. The Trustees may acquire and retain assets for appreciation as part of a portfolio that produces a reasonable level of current income.
95. **TO INVEST TRUST ASSETS TOGETHER** Each of the trusts and Nevada Trust shares created under this Trust Agreement shall be a separate Nevada Trust for Nevada Trust, accounting, tax, and all other purposes. The Trustees shall keep an account for each Nevada Trust and may, but shall not be required to, segregate Nevada Trust assets. Rather, the Trustees may invest together the property of the separate trusts, allotting to each separate Nevada Trust its proportionate undivided interest in the collective fund. The undivided interest always shall be equal to that Nevada Trust's proportionate contribution to the mingled assets.
96. **TO CONSOLIDATE TRUSTS** If a Nevada Trust is established or exists under this Trust Agreement for a beneficiary for whom another Nevada Trust has been



established under this Trust Agreement, the Trustees must allocate the property from the one Nevada Trust to the Nevada Trust. Similarly, if Bayuk have established a Nevada Trust for a beneficiary for whom a Nevada Trust is to be established or exists under this Trust Agreement, and the dispositive provisions of that Nevada Trust are substantially the same as the dispositive provisions of the Nevada Trust to be established or existing under this Trust Agreement, the Trustees may transfer the property for the Nevada Trust to be established or existing under this Trust Agreement to the Trustees of the other Nevada Trust, to be held on the terms of that other Nevada Trust. Further, where the dispositive provisions of each Nevada Trust or Nevada Trust share are substantially similar, the Trustees shall have the discretion to combine any trusts or Nevada Trust shares into one Nevada Trust because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for such a combination. A combination Nevada Trust not materially impair the interests of any beneficiaries. Trusts may be combined or consolidated whether created inter vivos or by will, by the same or different Nevada Trust instruments, whether the Trustees is the same, and regardless of where the trusts were created or administered. When combining trusts, however, the Trustees shall only combine Exempt Trusts with other Exempt Trusts.

97. **TO DIVIDE TRUSTS** With respect to all trusts established under this Trust Agreement, the Trustees shall have the discretionary power, exercisable without need of court approval, to divide the Nevada Trust into two or more separate trusts for any purpose, including, without limitation, any of the following purposes. To create one or more separate trusts that qualify as a qualified S corporation shareholder or as any other type of special Nevada Trust provided for under the Internal Revenue Code. To create one or more separate trusts to accomplish other proper tax planning purposes. To create a separate Nevada Trust as to any share or portion of a Nevada Trust disclaimed by a beneficiary, and to sever the disclaimed portion to be administered as a separate Nevada Trust. To create a separate Nevada Trust for each current income beneficiary of a Nevada Trust or Nevada Trust share, and to divide any Nevada Trust along family lines to be administered as separate trusts. To create one or more separate trusts because of changed circumstances, litigation among beneficiaries, administrative difficulties, or other reasons suggesting a need for a division. The allocation of property between or among separate trusts created from a single Nevada Trust or Nevada Trust share may be unequal in amount and in the type of assets, and the division may be non-pro rata. The fair market values of the Nevada Trust property



at the date or dates of allocation shall be used in making the allocations. All trusts so established shall be designated and named by the Trustees and the property allocated to the divided trusts shall be held and administered under the same terms and provisions as would have applied to the undivided Nevada Trust or Nevada Trust share. With regard to planning for the S corporation election, or other tax purposes, this power to divide trusts shall be exercised in a manner that complies with the Internal Revenue Code and applicable Treasury regulations.

98. **TO PERMIT USE OF PERSONAL RESIDENCE** The Trustee is authorized to permit Bayuk and, following Bayuk's death, the current beneficiary of the Nevada Trust to occupy rent-free any residence held in the Nevada Trust and to use the furnishings in the residence. The Trustees shall pay from the Nevada Trust all taxes, insurance premiums, assessments, costs of repairs, and maintenance for these residences. The Trustees may sell the residence and, in his or her discretion, acquire other residences from Nevada Trust property.
99. **TO HOLD PERSONAL ARTICLES IN TRUST** If the Trustees of any Nevada Trust receives furniture or furnishings, household items, clothing and other personal effects, or vehicles or accessories to vehicles, the Trustees may distribute that property to the current beneficiary or beneficiaries of the Nevada Trust, at the times and in the manner the Trustees, in his or her discretion, determines to be proper. In addition, the Trustees may allow the current beneficiaries to use this property. Neither the Trustees nor any beneficiary who uses this property shall be liable to other beneficiaries for permitting the use of this property or for the loss or damage of this property.
100. **TO MAKE DISTRIBUTIONS FROM QUALIFIED S TRUSTS** The Trustees is authorized to distribute to the beneficiary of any Nevada Trust that has made a qualified S Corporation election from income or principal, or both, funds sufficient to pay the federal and state income taxes imposed on the beneficiaries for the income or gain passing to the beneficiary from the S Corporation. No such distribution is required and is at the sole discretion of the Distribution Trustee.
101. **DISINHERITANCE AND NO CONTEST** Bayuk has intentionally omitted from this Trust Agreement any provision for any of heirs, issue, relatives, or other persons who are not named, mentioned, designated, or described in this Trust Agreement. Bayuk have intentionally omitted any person who would be a pre-



permitted heir under applicable law. Bayuk generally and expressly disinherit each and every person whomsoever claiming to be and who may be determined to be heirs at law, except as they are otherwise expressly provided for in this Trust Agreement.

102. **NO CONTEST CLAUSE** Bayuk wants the greatest deterrence against interference with estate plan that the law allows. If any heir, issue, relative, legatee, devisee, beneficiary, or other interested person; or any person who is provided for under this Trust Agreement, Will, any beneficiary designation, or any Will substitute; or any person who would be entitled to any of property under the laws of succession or otherwise, alone or in conjunction with any other person or persons, directly or indirectly (1) institutes any legal proceeding that attacks or contests this Trust Agreement or Will (or any amendment or codicil to this Trust Agreement or Will), or seeks to impair, nullify, void, or invalidate such documents or any of their provisions; (2) asserts or pursues in any manner any claim, including any creditor's claim, against estate or property other than as permitted in this Trust Agreement and Will; (3) attacks or contests or seeks to change any beneficiary designation under an insurance policy, employee benefit plan, deferred compensation plan, retirement plan, annuity, or other Will substitute of mine; or (4) conspires with or voluntarily assists any person or persons attempting to do any of these things, Bayuk direct that that person (the "Contestant") and all persons conspiring with or assisting him or her shall take none of property and nothing from estate. All these persons are expressly disinherited. Any and all gifts or property that otherwise would have gone to these persons shall be forfeited and shall pass as if these persons had predeceased me without leaving living issue. The foregoing provisions shall apply to any persons who claim that Bayuk entered into an oral agreement providing for the disposition or transfer of property to those persons or others in any way inconsistent with the provisions of this Trust Agreement or Will. The foregoing provisions shall Bayuk also apply to any action or proceeding brought by any person, other than me (or authorized agents) during lifetime, to change the ownership title of property already characterized in a document signed by me (excluding any action by Executor or Trustees to confirm ownership of property in the Nevada Trust or estate) and any challenge to the validity of an instrument, contract, agreement, beneficiary designation, or other document providing for or directing the disposition of property. The foregoing provisions shall not be violated by (Bayuk) the disclaimer of any right or interest



in Nevada Trust property; (2) the assertion or submission of any creditors' claims, supported by consideration, by any person to Executor or the Trustees that are believed by such person, in good faith, to be owed by me to that person or the prosecution of an action based upon any such creditor's claims; (3) the participation in a mediation or settlement discussions or the filing of a petition for settlement or compromise affecting the terms of this Trust Agreement, Will, or other documents governing the disposition of estate or property, (4) the filing of any petition or the taking of other action by the Trustees or Executor seeking judicial construction or interpretation of this Trust Agreement or Will, or of any amendment or codicil to this Trust Agreement or Will, or (5) the commencement of any proceeding for declaratory relief to determine whether any action by any person would constitute a contest under these provisions.

103. **EXPENSES OF CONTEST** Executor and the Trustees serving under this Trust Agreement are expressly authorized to defend against any and all of the actions described in Section 18, including any contest or attack of any nature upon this Trust Agreement, Will, or any of their provisions. All expenses incurred in the defense of any of the actions or matters described herein shall be paid, as the Trustees determines, from either probate estate or the Nevada Trust estate as expenses of administration. If, however, a Contestant is or becomes entitled to receive any property or property interests included in probate estate or the Nevada Trust estate, whether under this Trust Agreement, Will, or any other instrument, then all expenses incurred by the Trustees or Executor in the defense of the actions undertaken by the Contestant shall be charged against and paid from the property or property interests that the Contestant otherwise would be entitled to receive, whether or not the Trustees or Executor was successful in the defense of the Contestant's actions.

104. **GENERAL TRUST PROVISIONS** The following provisions shall apply in all matters of construction and interpretation of this Trust Agreement.

105. **RULES OF CONSTRUCTION** Unless the specific provision or term being construed or the context of the provision or term otherwise requires, and except as otherwise expressly provided in this Trust Agreement, the general provisions and rules of construction and interpretation set forth in applicable law and in this article and the definitions set forth in Article 20 (Definitions) shall govern the construction and interpretation of this Trust Agreement. Where the provisions and

rules of construction or definitions set forth in applicable law and in this article and Article 20 conflict, the provisions and rules and definitions set forth in this article and Article 20 shall govern.

106. **GOVERNING LAW COURT SUPERVISION & JURISDICTION** This Trust Agreement has been executed in Nevada, and its validity and construction, including the determination of all rights of the beneficiaries, shall be governed by the laws of Nevada or if the Trustees determine it is more advantageous, in the State of Delaware regardless of where the trusts are administered. Further, except as otherwise provided in this section, the Trust(s) established under this Trust Agreement shall be administered in Nevada or Delaware regardless of where the Trustees or beneficiaries reside, and all matters and questions related to their administration shall be governed by the laws of Nevada or Delaware. The applicable court jurisdiction for the Trust shall be in that county where Bayuk reside in at the time of any suit, action, writ or other matter, whether that be in Nevada, Delaware, California or otherwise.
107. **SUCCESSORS IN INTEREST** This Trust Agreement shall be binding upon heirs, executors, successors, and assigns, the Trustees and the successor Trustees, and all the beneficiaries and interested persons under this Trust Agreement.
108. **REFERENCES TO STATUTES** Whenever a reference is made to any portion of the Internal Revenue Code or to any other law, the statutory reference shall be construed to refer to the statutory section mentioned, related successor or substitute sections, and corresponding provisions of any subsequent law, including all amendments and additions.
109. **GENDER, TENSE, AND NUMBERS** Unless the context clearly requires another construction, the masculine, feminine, and neuter genders shall each include the others as appropriate; the present tense shall include the past and future tenses, and the future tense shall include the present tense; and the singular number shall include the plural, and the plural shall include the singular.
110. **EFFECT OF HEADINGS** Article, section, and paragraph numbers and headings, as well as titles, used in this Trust Agreement are used for convenience of reference only and shall not be considered in the construction or interpretation of this



Trust Agreement. They are not intended to have any legal effect or to affect the scope, meaning, or intent of the provisions of this Trust Agreement.

111. **SEVERABILITY** If any part, clause, or provision of this Trust Agreement, or the application of any part, clause, or provision of this Trust Agreement to any person or circumstances, is held to be void, invalid, unenforceable, or inoperative, this invalidity shall not affect any other parts, clauses, or provisions or applications of this Trust Agreement that can be given effect without the invalid provision or application. The remaining provisions of this Trust Agreement shall be effective and fully operative as though the part, clause, or provision had not been contained in this Trust Agreement. To this end, the provisions of this Trust Agreement are severable.

112. **DEFINITIONS** The following definitions shall apply in all matters of construction and interpretation of this Trust Agreement.

**Administer** The term "administer" means to hold, manage, administer, allocate, and distribute.

**Agent** The term "agent" means (1) an individual's attorney-in-fact acting under a power of attorney, to the extent the power of attorney specifically authorizes the attorney-in-fact to take the proposed actions, or (2) an individual's court-appointed conservator or guardian, to the extent the conservator or guardian has obtained, from the court that appointed the agent as conservator or guardian, approval of its proposed actions at a hearing for which the Trustees received timely notice.

**Beneficiary** The terms "beneficiary" or "beneficiaries" mean a person to whom a donative transfer of property or a distribution from a Nevada Trust is or could be made or that person's successor in interest, and shall include an heir, devisee, legatee, a person with any interest in a Nevada Trust, and any person entitled to enforce a charitable Nevada Trust.

**Charitable Organization** The term "charitable organization" means an organization or Nevada Trust to which contributions or bequests are deductible for both federal income and estate tax purposes.

**Estate Taxes** The term "Estate taxes" means all estate, inheritance, transfer, succession, legacy, death, and other similar taxes, including any interest or penalties on



these taxes, that may be imposed by reason of death. "Estate taxes" excludes any income tax, generation-skipping transfer tax, excise tax, and other similar taxes.

**Executor** The term "Executor" means an executor, administrator, administrator with the will annexed, special administrator, personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status, including all successors or persons holding the office temporarily. If, however, there is no Executor serving within the United States, the term means the Trustees of this Nevada Trust for purposes of the property held in the Nevada Trust estate. The terms "Executor" and "Executors" each include both the singular and the plural.

**Expenses of Estate Administration** The term "expenses of estate administration" means those expenses incurred following death by estate or by the Trustees of the Nevada Trust that are deductible (whether or not so deducted) for estate tax purposes pursuant to Internal Revenue Code. Such expenses shall include attorney's, appraiser's, and accountant's fees and all expenses incurred in determining the amount of any Estate tax.

**Federal Estate Tax Value** The term "federal estate tax value" means the value of property included in gross estate, valued either as of date of death or the alternate valuation date, as finally determined for federal estate tax purposes. The federal estate tax value of any property acquired after death shall be deemed to be its adjusted basis at the time of its acquisition as finally determined for federal income tax purposes. References to "adjusted gross estate" shall mean gross estate as finally determined for federal estate tax purposes, but excluding property includible in gross estate pursuant to Internal Revenue Code, and subtracting allowable deductions

**Gifts** The term "gifts" mean devises, legacies, bequests, and all other types of donative transfers, inter vivos and testamentary.

**Guardian** The term "guardian" means the court-appointed guardian of the person or estate of a minor person. The term "natural guardian" means the child's parents.

**Health** The term "health" refers to all matters related to the health of the designated person, including medical, dental, hospital, and nursing expenses and expenses of home care and therapy incurred for the person's benefit.

**Incapacity** The term "incapacity" when used with respect to any person appointed to serve or serving as Trustees shall have the following meaning. A person shall be considered to be incapacitated, and unable to serve or continue to serve as a Trustees, if the person is under a legal disability or by reason of illness or mental or physical disability is or would be unable to give prompt and intelligent consideration to the financial and administrative matters affecting the Nevada Trust or trusts for which he or she serves as Trustees. The determination of a person's inability at any time shall be made by either (1) the person's primary physician, or (2) an order of a court appointing a conservator for that person.

**Interested Person** The term "interested person" includes (1) an heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against the Nevada Trust estate; (2) any person having priority for appointment as a fiduciary under this Trust Agreement; and (3) a fiduciary representing an interested person.

**Internal Revenue Code** The term "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and corresponding provisions of any subsequent federal internal revenue law.

**Investment Counsel** The term "investment counsel" means reputable, professional, independent, and disinterested investment counsel that is (1) currently managing at least five other accounts of equal or larger size, (2) compensated for services on a fee basis, but not on any percentage of the price of assets purchased or sold, and (3) not personally or financially interested in the sale or purchase of assets to or by the Nevada Trust. The term "discretionary investment counsel" means investment counsel that has been given the authority to manage the investment of all or any portion of the Nevada Trust estate with full discretion to act without seeking the approval of the Trustees as to individual transactions.

**May and Shall** Wherever used in this Trust Agreement, the term "may" is discretionary and means the Executor or Trustees is authorized, at his or her option, to take or not take an action as he or she determines, in his or her sole and absolute discretion. The term "shall" is mandatory and means that the Executor or Trustees must take the designated action.



**Property** The term "property" means anything that may be the subject of ownership and includes real and personal property, tangible and intangible property, and any interest in such property. (a) The term "real property" (including any residence) includes the land (including all easements appurtenant to the land), all buildings and improvements on the land, all policies of insurance on the land and buildings and improvements on the land, and all oil, gas, mineral, and similar interests. A gift of real property, including any gift of a residence, shall be made subject to any and all liens, mortgages, deeds of Nevada Trust, or other encumbrances on the property or secured by the property, whether or not recorded in the official county records, unless otherwise provided in this Trust Agreement. (b) The term "tangible personal property" includes clothing, jewelry, and other personal effects; household furniture, furnishings, equipment, and appliances (including rugs, linen, and other household decorations); china, silverware, glassware, crystal, and other household items of use and decoration; books, pictures, works of art (including paintings, sculptures, and works on paper), antiques, stamp and coin collections, wine, and other collectibles; automobiles, boats, other vehicles, and accessories to vehicles; and other items of domestic, household, or personal use. "Tangible personal property" shall not include ordinary currency, cash, or bullion or property primarily held for investment purposes, such as investment funds, or any property held for use in a trade or business. (c) The term "intangible property" includes rights in literary or musical properties, rights in works of art, contract rights, copyrights, publishing rights, and rights to a deceased personality's name, voice, signature, photograph, or likeness.

**Residence** The term "residence" means that dwelling or dwellings, as the case may be, in which Bayuk normally lived prior to death. The term "residence" includes the fixtures, exterior planting, built-in appliances, and other items that in the ordinary course of the sale and purchase of the dwellings would remain in or be regarded as part of the dwellings.

**Residue** The term "residue" means the property remaining after the payment of all expenses of administration and debts and the distribution of all specific gifts and tangible personal property, and before the payment of Estate taxes. Estate taxes shall be handled separately and shall be paid and charged as specifically provided in this Trust Agreement.

**Share** The term "share" means a beneficiary's proportional interest as determined by the provisions of this Trust Agreement in the principal and accumulated income of the trusts established under this Trust Agreement.

**Survivorship** The term "survive" or "survivorship" means to live for at least thirty (30) days past the designated event. No beneficiary shall be considered to have survived death, the death of a prior beneficiary, or the event terminating any Nevada Trust (and be entitled to any Nevada Trust funds) unless the beneficiary survives for at least thirty (30) days after the event. Any beneficiary required to survive any other person, who fails to survive the other person by thirty (30) days, shall be deemed to have predeceased that person. If it cannot be established whether a beneficiary has survived by thirty (30) days, the beneficiary shall be deemed to have failed to survive for the required time. Except as otherwise expressly provided, any gift or bequest to any person made contingent upon the survivorship of that person shall lapse and shall not be made if the conditions of survivorship stated in this section or elsewhere in this Trust Agreement are not met. The lapsed gifts or bequests shall pass instead as part of the residue of the Nevada Trust.

**Trust Estate** The term "Nevada Trust estate" means property transferred to the Trustees, in Nevada Trust, to be administered under the terms of this Trust Agreement, including the property transferred to the Trustees following death, and all the income from and appreciation in the property transferred to the Trustees. As a matter of convenience, all property at any time subject to this Trust Agreement is collectively referred to as the "Nevada Trust estate."

**Trustees** The terms "Trustees" or "Trustees" mean the persons who are serving from time to time as the Trustees or Co-Trustees under this Trust Agreement, including each initial, additional, or successor Trustees, whether or not appointed or confirmed by any court. Unless otherwise expressly provided, all references in this Trust Agreement to the "Trustees" shall include all Trustees. The terms "Trustees" and "Trustees" each include both the singular and the plural. The term "corporate Trustees" means a corporation, a bank, a Nevada Trust company, or other entity that is authorized by law to serve as a professional Trustee.

#### **RELIANCE ON CERTIFIED COPIES**



To the same effect as if it were the original, anyone may rely upon a copy of this Trust Agreement, or any part of this Trust Agreement, certified by a Settlor, Grantor or Trustees or their legal counsel to be a true and correct copy of all or any part of this Trust Agreement, or of any document required to be filed with or maintained at the office of the Trustees. Anyone may rely upon any statements of fact concerning this Nevada Trust certified by anyone who appears from an original document, or a certified copy, to be serving as a Trustee under this Trust Agreement.

Bayuk has executed this Trust Agreement on November 12<sup>th</sup>, 2005 at Reno, Nevada.



---

**EDWARD WILLIAM BAYUK**

Settlor, Grantor and Co-Trustee

*I JAMES A. GIBBONS HEREBY attest, witness and certify that the Settlor/Grant and Co-Trustee, Edward William Bayuk, is of sound mind, good health, and by advice and the execution of this Trust Agreement, acknowledges and understands that he is creating an Irrevocable Nevada Spendthrift Trust which may not be cancelled or revoked, and may only be amended in a way with the restriction that no amendment may modify, alter, rescind or change in any way, directly or indirectly, the provisions of this Trust Agreement that qualifies it as a Nevada Spendthrift Trust.*

*Executed at Reno, Nevada on this 12<sup>th</sup> day of November 2005:*



---

**JAMES A. GIBBONS**

1 **1520**

2 Jeffrey L. Hartman, Esq.  
3 Hartman & Hartman  
4 510 W. Plumb Ln., Suite B  
5 Reno, Nevada 89509  
6 Nevada Bar Number 001607  
7 Tel: (775) 324-2800

8 Michael Lehnerns, Esq.  
9 429 Marsh Ave.  
10 Reno, Nevada 89509  
11 Nevada Bar Number 003331  
12 Tel: (775) 786-1695

13 Attorneys for Edward Bayuk, individually, and  
14 as Trustee of the Edward William Bayuk Living Trust

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

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

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

CASE NO.: CV13-02663

19 Plaintiff,

DEPT. NO.: 4

20 vs.

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

27 Defendants. /

28 **NOTICE OF CLAIM OF EXEMPTION FROM EXECUTION**

29 This Claim of Exemption from Execution is made on behalf of Edward Bayuk, individually  
30 and as Trustee of the Edward William Bayuk Living Trust ("Bayuk"), and is supported by the  
31 separately filed Declaration of Edward Bayuk. Bayuk is a Defendant in this case and has received a  
32 Notice of Execution regarding the attachment or garnishment of his wages, money, benefits, or  
33 property. Bayuk's wages, money, benefits, or property are exempt by law from execution as indicated

1 below. If the judgment creditor does not file an Objection to Claim of Exemption from Execution  
2 and Notice of Hearing in response to this Claim of Exemption from Execution within eight judicial  
3 days after this Claim of Exemption from Execution has been served, any person who has control or  
4 possession over my wages, money, benefits, or property (such as my employer or bank, for example)  
5 must release them to Bayuk within nine judicial days after this Claim of Exemption from Execution  
6 has been served.

7 **1. Preliminary Statement**

8 Filed with this claim of exemption is Bayuk's Declaration Claiming Exemption From  
9 Execution executed under penalty of perjury pursuant to NRS 53.045(2). The Writs do not identify  
10 the specific property that is to be the subject of the execution. For that reason, Bayuk had his attorney  
11 contact the Las Vegas Constable and was advised that the property to be executed upon by the writs  
12 are (1) Any money held in bank accounts with respect to Bayuk or the Edward William Bayuk Living  
13 Trust; (2) Any unearned money remaining upon the retainer paid to Richard Holly, Esq. and (3) Any  
14 unearned money remaining upon the retainer paid to Jeffrey Hartman, Esq.

15 These properties are exempt for the reasons set forth below.

16 **2. Background**

17 On August 23, 1998 Edward Bayuk created the Edward William Bayuk Living Trust as a  
18 Florida Living Trust. He was a resident of Miami Beach, Florida at that time. He subsequently moved  
19 to California and then to Nevada in 2005.

20 On November 12, 2005 Mr. Bayuk executed in Reno, Nevada, a Self-Settled Spendthrift  
21 Trust ("SSST") Amendment to the Edward William Bayuk Living Trust (the "Bayuk Trust  
22 Amendment"). This November 12, 2005 amendment was attested and witnessed by then Nevada U.S.  
23 House of Representatives Member Jim Gibbons.

24 The Bayuk Trust Amendment in Recital D states that it "*shall constitute the entire and*  
25 *exclusive statement of the terms of the Nevada Irrevocable Bayuk Spendthrift Trust, nullifying all*  
26 *prior and subsuming all future versions of the Bayuk Trust.*" The prior Florida living trust was  
27 **revoked** and any future trust nullified and subsumed by the Bayuk Trust Amendment. The Bayuk  
28 Trust Amendment in Recital "E" of the Bayuk Trust Amendment provides that the SSST can be

1 referred to as the “Nevada Trust” or as the “Edward William Bayuk Living Trust.” A copy of the  
2 Bayuk Trust Amendment has been attached to Edward Bayuk’s Declaration Claiming Exemption of  
3 Execution.

4 From the time the Edward William Bayuk Living Trust was formed in August 23, 1998,  
5 through the 2005 Bayuk Trust Amendment, and to the present time, the Trust has owned all assets,  
6 both real and personal. Paragraph 2 of the Bayuk Trust Amendment gives Bayuk the right to  
7 continually place property into the trust during his lifetime up until the time of his death, and all  
8 assets he has acquired from August of 1998 forward have been placed into the Trust.

9 Paragraph 3 of the Bayuk Trust Amendment authorizes the Trustee to distribute to Bayuk  
10 amounts of income and principal that may be appropriate. It is from these distributions that Bayuk  
11 pays his personal expenses. All personal expenses paid by Bayuk are directly traceable to the Trust.

12 All funds that are in bank accounts under the name of Ed Bayuk, individually are traceable  
13 to the Trust’s res. All funds that have been paid to Mr. Hartman, Esq. are traceable to the Trust’s res.  
14 All funds that have been paid to Richard Holly, Esq. are traceable to the Trust’s res.

### 15 **3. Argument**

16 NRS 21.112 provides that

17 In order to claim exemption of any property levied on pursuant to this section, the  
18 judgment debtor must, within 10 days after the notice of a writ of execution or  
19 garnishment is served on the judgment debtor by mail pursuant to NRS 21.076 which  
20 identifies the specific property that is being levied on, serve on the sheriff, the garnishee  
21 and the judgment creditor and file with the clerk of the court issuing the writ of  
22 execution the judgment debtor’s claim of exemption which is executed in the manner  
23 set forth in NRS 53.045. If the property that is levied on is the earnings of the judgment  
debtor, the judgment debtor must file the claim of exemption pursuant to this  
subsection within 10 days after the date of each withholding of the judgment debtor’s  
earnings.

24 In this case, the notice was served upon Bayuk’s attorney on June 20, 2019. This Claim  
25 of Exemption is timely.

26 In 1999, the State of Nevada enacted the Spendthrift Trust Act. This has been codified under  
27 Chapter 166 of the Nevada Revised Statutes. Spendthrift trusts are exempt from execution.

28 ///



Specifically, NRS 21.080(2) states:

2. This chapter does not authorize the seizure of, or other interference with, any money, thing in action, lands or other property held in spendthrift trust or in a discretionary or support trust governed by chapter 163 of NRS for a judgment debtor, or held in such trust for any beneficiary, pursuant to any judgment, order or process of any bankruptcy or other court directed against any such beneficiary or trustee of the beneficiary. This subsection does not apply to the interest of the beneficiary of a trust where the fund so held in trust has proceeded<sup>1</sup> from the beneficiary unless:

(a) The beneficiary is the settlor of the trust; and

(b) The trust is a spendthrift trust that was created in compliance with the provisions of chapter 166 of NRS.

The conditional language in subsections 2(a) and (b) exclude spendthrift trusts created under Chapter 166 unless the beneficiary is also the settlor of the trust and that the trust is in compliance with the requirements of Chapter 166. These requirements are straightforward.

No specific language is necessary for the creation of an Irrevocable Spendthrift Trust under Chapter 166. It is sufficient if by the terms of the writing (construed in the light of this chapter if necessary) the creator manifests an intention to create such a trust. See NRS 166.050.

To determine the validity of a trust, one must first look to the words of the trust agreement to determine if the settlor had the intent to create a spendthrift trust. Accordingly, courts look first and foremost to the language in the trust and interpret that language to effectuate the intent of the settlors. If a trust's language is plain and unambiguous, then courts determine intent from this language alone. *Klabacka v. Nelson*, 394 P.3d 940, 947–48 (Nev. 2017), citing 76 Am. Jur. 2d *Trusts* (2016).

In the *Klabacka* case, the Court examined NRS 166.050 and found that the settlor had manifested a plain and unambiguous intent to create a spendthrift trust, in accordance with the statute. The Bayuk Trust Amendment contains the same manifestation that is required by NRS 166.050.

There can be no doubt that all property held by the Nevada Trust is exempt. Not only is it exempt under NRS 21.080, but it is also exempt under NRS 166.120. NRS 166.120(1) prohibits the alienation of any interest of the beneficiary under the trust by operation of law or any process or at all.

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<sup>1</sup> "to begin and carry on an action, process, or movement" Merriam-Webster Dictionary

1 NRS 166.120(2) concerns payments by the trustee of the spendthrift trust to the beneficiary.  
2 It provides that whether the payments are mandatory or discretionary, they may only be made for the  
3 benefit of the beneficiary. No payment from the spendthrift trust may be made by virtue of any legal  
4 process in judgment, execution, attachment, garnishment, bankruptcy or otherwise.

5 *Klabacka v. Nelson*, supra, held that a constructive trust could not be imposed upon a  
6 spendthrift trust. It was alleged that the Settlor had breached trust formalities. Notwithstanding the  
7 alleged breach, the Court found that the district court erred in placing constructive trusts over the  
8 Russell Road and Lindell properties because the imposition of a constructive trust violates the  
9 statutory protections shielding spendthrift trusts from court order, citing NRS 166.120. *Id* 394 P.3d  
10 at 953. Both the statutes and the case law cannot be more clear that the assets held by a spendthrift  
11 trust are exempt, and neither the res nor distributions are subject to attachment, garnishment or court  
12 order.

13 *In re Christensen*, 122 Nev. 1309, 149 P.3d 40 (2006) held that the former wage garnishment  
14 exemption statute extended to property identified as direct proceeds of earnings. The Court found  
15 that money in a bank account (which is not subject to any statutory exemption other than the  
16 wildcard) is still exempt so long as the proceeds can be traced to an exempt source. The exemption  
17 is only lost when the funds cannot be traced to an exempt source or another asset is purchased with  
18 the exempt funds which is not exempt.

19 In this case the funds sought to be attached are money in Bayuk's individual bank accounts  
20 and the surplus funds, if any, being held in Bayuk's attorneys' trust accounts. As the funds are located  
21 in bank accounts, and because they are traceable to the Trust, they are exempt and may not be  
22 attached.

23 For those reasons, Bayuk is requesting that all attached funds be released.

24 DATED this 28th day of June, 2019.

25 Hartman & Hartman

26 /s/ Jeffrey Hartman  
27 Jeffrey Hartman, Esq.  
28 Attorneys for Edward Bayuk, individually, and as  
Trustee of the Edward William Bayuk Living Trust

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

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

DATED this 28th day of June, 2019.

Hartman & Hartman

/s/ Jeffrey Hartman  
Jeffrey Hartman, Esq.  
Attorneys for Edward Bayuk, individually, and as  
Trustee of the Edward William Bayuk Living Trust

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 **NOTICE OF CLAIM OF EXEMPTION**  
4 **FROM EXECUTION** on all parties to this action by the method(s) indicated below:

5   X   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 Gerald M. Gordon, Esq.  
8 GARMAN TURNER GORDON LLP  
9 650 White Drive, Ste. 100  
Las Vegas, Nevada 89119

10 Richard F. Holley, Esq.  
11 HOLLEY DRIGGS WALCH FINE  
12 PUZEY STEIN & THOMPSON  
400 South Fourth Street  
Suite 300  
Las Vegas, Nevada 89101

13 Ex-Officio Constable  
14 301 E. Clark Avenue, Suite 100  
Las Vegas, Nevada 89101

15 Washoe County Sheriff's Office  
16 911 Parr Blvd.  
Reno, Nevada 89512

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

18 Gerald Gordon, Esq.  
19 Email: [ggordon@Gtg.legal](mailto:ggordon@Gtg.legal)  
20 Mark M. Weisenmiller, Esq.  
Email: [mweisenmiller@Gtg.legal](mailto:mweisenmiller@Gtg.legal)  
21 Teresa M. Pilatowicz, Esq.  
Email: [tpilatowicz@Gtg.legal](mailto:tpilatowicz@Gtg.legal)  
22 Erika Pike Turner, Esq.  
Email: [eturner@gtg.legal](mailto:eturner@gtg.legal)

23 Frank C. Gilmore, Esq.  
24 [fgilmore@rssblaw.com](mailto:fgilmore@rssblaw.com)

25 DATED: This 28<sup>th</sup> day of June, 2019.

26  
27   /s/ Angie Gerbig    
28 ANGIE GERBIG



1 CODE: 1520  
2 MICHAEL LEHNERS, ESQ.  
3 429 Marsh Ave.  
4 Reno, Nevada 89509  
5 Nevada Bar Number 003331  
6 (775) 786-1695

7 Attorney for Salvatore Morabito

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

oOo

10 Case No. CV13-02663

11 WILLIAM A. LEONARD, Trustee Judge Connie Steinheimer  
12 for the Bankruptcy Estate of Paul Dept. No. 4  
13 Anthony Morabito,

14 Plaintiff,

15 vs.

16 **DECLARATION OF**

17 **SALVATORE MORABITO**

18 **CLAIMING EXEMPTION FROM**

19 **EXECUTION**

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

28 Defendant.

\_\_\_\_\_/

29 I, Salvatore Morabito, declare under penalty of perjury under the  
30 law of the State of Nevada that the foregoing is true and correct, and  
31 that I am physically located outside the geographic boundaries of the  
32 United States, Puerto Rico, the United States Virgin Islands and any

1 territory, or insular possession subject to the jurisdiction of the United  
2 States. This Declaration is made pursuant to NRS 53.370, as I am a  
3 resident of Ontario Canada.

4 1. On June 22, 2019 the Las Vegas Constable sent my attorney a  
5 notice of execution and two writs of execution. A copy of the June 22,  
6 2019 letter is attached as Exhibit "1".

7 2. On or about June 27, 2019 I received received from my  
8 attorney a copy of the two writs of execution and the notice of execution.  
9 A copy has been attached as Exhibit "2".

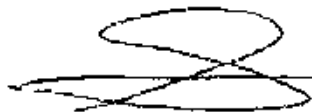
10 3. I am a resident of Ontario, Canada.

11 4. I hold no assets in the State of Nevada. I have no bank  
12 account in this state or other property, real or personal.

13 5. I am filing this declaration and notice of claim of exemption  
14 in the event that any financial institution freezes assets on a branch  
15 outside the State of Nevada or the United States.

16 I declare under penalty of perjury under the law of the State of  
17 Nevada that the foregoing is true and correct, and that I am physically  
18 located outside the geographic boundaries of the United States, Puerto  
19 Rico, the United States Virgin Islands and any territory or insular  
20 possession subject to the jurisdiction of the United States.

21 Signed at St. Catharines, Ontario, Canada on this 2nd day of  
22 July 2019.

23 

24 Salvatore Morabito  
25  
26  
27  
28

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

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

/s/ Michael Lehnert, Esq.

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## **Exhibit List**

- |           |  |
|-----------|--|
| Exhibit 1 | Las Vegas Constable June 22, 2019 letter.      |
| Exhibit 2 | Writs of execution and the notice of execution |

# Exhibit

# 1

FILED  
Electronically  
CV13-02663  
2019-07-02 04:07:47 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7353184 : yvilorla

# Exhibit 1

The Office of the  
**EX-OFFICIO CONSTABLE**

June 22, 2019

SALVATORE MORABITO  
FRANK C GILMORE, ESQ  
71 WASHINGTON ST  
RENO, NV 89503

**RE: Court Case Number CV1302663**

In accordance with NRS 21.075, we are sending you a copy of the *Notice of Execution after Judgment* and the *Writ of Execution* on your case. If this office can be of any further service, please do not hesitate to call.

Sincerely,

LH

Office of the Ex-Officio Constable

2 enclosures

301 E. Clark Avenue Suite 100  
Las Vegas, NV 89101  
Ofc: 702) 455-4099 / Fax: 702) 385-2436

Exhibit 2

Exhibit 2



1 GARMAN TURNER GORDON LLP  
2 ERIKA PIKE TURNER  
Nevada Bar No. 6454  
Email: [eturner@gtg.legal](mailto:eturner@gtg.legal)  
3 TERESA M. PILATOWICZ, ESQ.  
Nevada Bar No. 9605  
4 E-mail: [tpilatowicz@gtg.legal](mailto:tpilatowicz@gtg.legal)  
5 GABRIELLE A HAMM, ESQ.  
Nevada Bar No. 11588  
6 E-mail: [ghamm@gtg.legal](mailto:ghamm@gtg.legal)  
MICHAEL R. ESPOSITO  
7 Nevada Bar No. 13482  
E-Mail: [mesposito@gtg.legal](mailto:mesposito@gtg.legal)  
8 650 White Drive, Ste. 100  
9 Las Vegas, Nevada 89119  
Telephone 725-777-3000  
10 *Attorneys for Plaintiff William A. Leonard*

FILED

2019 MAY 28 PM 1:47

CLERK OF THE COURT

B. V. V. V.

11 IN THE SECOND JUDICIAL DISTRICT COURT OF

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

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

CASE NO. CV13-02663  
DEPT. IV

15 Plaintiff,

16 vs.

WRIT OF EXECUTION - NRS 21.025

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

☐ Earnings ☒ Other Property  
☐ Earnings, Order of Support

20 Defendants.

21 THE PEOPLE OF THE STATE OF NEVADA TO THE SHERIFF OF CLARK COUNTY,  
22 GREETINGS:

23 On March 29, 2019 a Findings of Fact, Conclusions of Law, and Judgment, upon which  
24 there is due in United States Currency the following amounts, was entered in this action in favor  
25 of PLAINTIFF, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony  
26 Morabito, as judgment creditor and against Defendant, SALVATORE MORABITO; as judgment  
27 debtor. Interest and costs have accrued in the amounts shown. Interest and costs have accrued in  
28

1           **NOW, THEREFORE**, you are commanded to satisfy the judgment for the total amount  
2 due out of the following described personal property:

3           Any and all monies belonging to or held in the name of Salvatore Morabito D.O.B:  
4 08/XX/1961, including but not limited to money held in any bank accounts, including but not  
5 limited to, checking accounts, savings accounts, money market accounts and certificate of deposits.

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

# EXEMPTIONS WHICH APPLY TO THIS LEVY

(Check appropriate paragraph and complete as necessary)

☒ Property Other Than Wages. The exemption set forth in NRS 21.090 or on other applicable Federal Statutes may apply. Consult an attorney.

☒ Earnings

The amount subject to garnishment and this writ shall not exceed for any one period the lesser of:

- A. 18% of the disposable earnings due the judgment debtor for the pay period if the gross weekly salary or wage of the judgment debtor on the date of the most recent writ of garnishment was issued was \$770 or less,
- B. 25% percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or
- C. the difference between the disposable earnings of the period and 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable.

☐ Earnings (Judgment or Order for Support)

A Judgment was entered for amounts due under a decree or order entered on \_\_\_\_\_, 200\_\_, by the \_\_\_\_\_ for the support of \_\_\_\_\_, for the period from \_\_\_\_\_, 200\_\_, through \_\_\_\_\_, 200\_\_, in \_\_\_\_\_ installments of \$\_\_\_\_\_.

The amount of disposable earnings subject to garnishment and this writ shall not exceed for any one pay period: (check appropriate box)

- ☐ a maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or dependent child other than the dependent named above;
- ☐ a maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse or dependent child other than the dependent named above;
- ☐ plus an additional 5 percent of the disposable earnings of such judgment debtor if and to extent that the judgment is for support due for a period of time more than 12 weeks prior to the beginning of work period of the judgment debtor during which the levy is made upon the disposable earnings.

**NOTE:** Disposable earnings are defined as gross earnings less deductions for Federal Income Tax Withholdings, Federal Social Security Tax and Withholding of any State, County and City Taxes.

You are requested to return this Writ from date of issuance not less than 10 days or more than 60 days with the results of your levy endorsed thereon.

Submitted by:

JACQUELINE BRYANT  
Clerk of Court

By /s/ Michael R. Esposito

By S. J. J. J. MAY 28 2019  
Deputy Clerk Date

ERIKA PIKE TURNER, ESQ.  
TERESA M. PILATOWICZ, ESQ.  
GABRIELLE A. HAMM, ESQ.  
MICHAEL R. ESPOSITO, ESQ.  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

*Special Counsel for Plaintiff*

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I hereby certify that I have this date returned the foregoing  
Writ of Execution with the results of the levy endorsed  
thereon.

CONSTABLE, LAS VEGAS TOWNSHIP

By: \_\_\_\_\_  
Deputy Date

RETURN	
_____ not satisfied	\$ _____
_____ satisfied in sum of	\$ _____
_____ costs retained	\$ _____
_____ commission retained	\$ _____
_____ costs incurred	\$ _____
_____ commission incurred	\$ _____
_____ costs received	\$ _____
Remitted to Judgment Creditor	\$ _____

1 GARMAN TURNER GORDON LLP  
2 ERIKA PIKE TURNER  
Nevada Bar No. 6454  
Email: [eturner@gtg.legal](mailto:eturner@gtg.legal)  
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4 E-mail: [tpilatowicz@gtg.legal](mailto:tpilatowicz@gtg.legal)  
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Nevada Bar No. 11588  
6 E-mail: [ghamm@gtg.legal](mailto:ghamm@gtg.legal)  
7 MICHAEL R. ESPOSITO  
Nevada Bar No. 13482  
8 E-Mail: [mesposito@gtg.legal](mailto:mesposito@gtg.legal)  
650 White Drive, Ste. 100  
9 Las Vegas, Nevada 89119  
Telephone 725-777-3000

10 *Attorneys for Plaintiff William A. Leonard*

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF**

12 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

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

15 Plaintiff,

16 vs.

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

20 Defendants.

CASE NO. CV13-02663  
DEPT. IV

**WRIT OF EXECUTION – NRS 21.025**

☐ Earnings ☒ Other Property  
☐ Earnings, Order of Support

21 THE PEOPLE OF THE STATE OF NEVADA TO THE SHERIFF OF CLARK COUNTY,  
22 GREETINGS:

23 On March 29, 2019 a Findings of Fact, Conclusions of Law, and Judgment, upon which  
24 there is due in United States Currency the following amounts, was entered in this action in favor  
25 of PLAINTIFF, WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony  
26 Morabito, as judgment creditor and against Defendant, SALVATORE MORABITO; as judgment  
27 debtor. Interest and costs have accrued in the amounts shown. Interest and costs have accrued in  
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FILED

2019 MAY 28 PM 1:49

JANICE M. MONT  
CLERK OF THE COURT

B. Virrey



1 the amounts shown. Any satisfaction has been credited first against total accrued interest and  
2 costs, leaving the following net balance from issuance of this Writ to date of levy and to which  
3 sum must be added all commissions and costs of executing this Writ.

JUDGMENT BALANCE		AMOUNT TO BE COLLECTED BY LEVY	
Principal	\$5,304,000.00	NET BALANCE	\$7,149,138.08
Pre-Judgment Interest	\$1,803,723.29	Fee this Writ	
Attorney's Fee	\$0.00	Garnishment Fee	\$ 5.00
Costs	\$0.00	Mileage	\$ 14.00
JUDGMENT TOTAL	\$7,107,723.29	Levy Fee	\$ 30.00
Accrued Costs	\$0.00	Advertising	
Accrued Interest	\$41,414.79	Storage	
Less Satisfaction	\$0.00	Interest From	
NET BALANCE	\$7,149,138.08	Date of Issuance	
		SUB- TOTAL	\$ 7,149,187.08
		Commission	\$ 35,798.44
		TOTAL LEVY	\$ 7,184,985.52

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12 NOW, THEREFORE, SHERIFF OF CLARK COUNTY, you are hereby commanded  
13 to satisfy this judgment with interest and costs as provided by law, out of the personal property  
14 of the judgment debtor, except that for any workweek, 82 percent of the disposable earnings of  
15 the debtor during that week if the gross weekly salary or wage of the debtor on the date the most  
16 recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of  
17 the debtor during that week if the gross weekly salary or wage of the debtor on the date the most  
18 recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage  
19 prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§  
20 201 et seq., and in effect at the time the earnings are payable, whichever is greater, is exempt  
21 from any levy of execution pursuant to this writ, and if sufficient personal property cannot be  
22 found, then out of the real property belonging to the debtor in the aforesaid county, and make  
23 return to this writ within not less than 10 days or more than 60 days endorsed thereon with what  
24 you have done.

25 ...  
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28 ...

1           **NOW, THEREFORE**, you are commanded to satisfy the judgment for the total amount  
2 due out of the following described personal property:

3           Any and all monies belonging to or held in the name of Salvatore Morabito D.O.B:  
4 08/XX/1961, including but not limited to money held in any bank accounts, including but not  
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German Turner Gordon  
650 White Dr., Suite 100  
Las Vegas, Nevada 89118  
(725) 777-3000

EXEMPTIONS WHICH APPLY TO THIS LEVY

(Check appropriate paragraph and complete as necessary)

☒ Property Other Than Wages. The exemption set forth in NRS 21.090 or on other applicable Federal Statutes may apply. Consult an attorney.

☒ Earnings

The amount subject to garnishment and this writ shall not exceed for any one period the lesser of:

A. 18% of the disposable earnings due the judgment debtor for the pay period if the gross weekly salary or wage of the judgment debtor on the date of the most recent writ of garnishment was issued was \$770 or less,

B. 25% percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or

C. the difference between the disposable earnings of the period and 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable.

☐ Earnings (Judgment or Order for Support)

A judgment was entered for amounts due under a decree or order entered on \_\_\_\_\_, 200\_\_, by the \_\_\_\_\_ for the support of \_\_\_\_\_, for the period from \_\_\_\_\_, 200\_\_, through \_\_\_\_\_, 200\_\_, in \_\_\_\_\_ installments of \$\_\_\_\_\_.

The amount of disposable earnings subject to garnishment and this writ shall not exceed for any on pay period: (check appropriate box)

☐ a maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or dependent child other than the dependent named above;

☐ a maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse or dependent child other than the dependent named above;

☐ plus an additional 5 percent of the disposable earnings of such judgment debtor if and to extent that the judgment is for support due for a period of time more than 12 weeks prior to the beginning of work period of the judgment debtor during which the levy is made upon the disposable earnings.

NOTE: Disposable earnings are defined as gross earnings less deductions for Federal Income Tax Withholdings, Federal Social Security Tax and Withholding of any State, County and City Taxes.

You are requested to return this Writ from date of issuance not less than 10 days or more than 60 days with the results of your levy endorsed thereon.

Submitted by:

JACQUELINE BRYANT  
Clerk of Court

By /s/ Michael R. Esposito

By 3 Viter  
Deputy Clerk

MAY 8 2019

Date

ERIKA PIKE TURNER, ESQ.  
TERESA M. PILATOWICZ, ESQ.  
GABRIELLE A. HAMM, ESQ.  
MICHAEL R. ESPOSITO, ESQ.  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000

Special Counsel for Plaintiff

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I hereby certify that I have this date returned the foregoing  
Writ of Execution with the results of the levy endorsed  
thereon.

CONSTABLE, LAS VEGAS TOWNSHIP

By: \_\_\_\_\_ Date \_\_\_\_\_  
Deputy

RETURN		
_____	not satisfied	\$ _____
_____	satisfied in sum of	\$ _____
_____	costs retained	\$ _____
_____	commission retained	\$ _____
_____	costs incurred	\$ _____
_____	commission incurred	\$ _____
_____	costs received	\$ _____
_____	Remitted to Judgment Creditor	\$ _____

# NOTICE OF EXECUTION AFTER JUDGMENT

(Per NRS 21.075)

## **READ THIS NOTICE CAREFULLY**

**It provides information on how the law may allow you to protect your property or money from being attached to pay the judgment against you.**

### **YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED**

A court has determined that you owe money to the person or company (the "judgment creditor") listed on the Writ of Execution included with this Notice of Execution. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$550,000 unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$1,000,000 in present value, held in:

(a) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement.

**ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES** in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civilawselfhelpcenter.org](http://www.civilawselfhelpcenter.org).



(b) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(c) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$10,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

---

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).

These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure of a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through:

*Legal Aid Center of Southern Nevada*  
725 E. Charleston Blvd.  
Las Vegas, NV 89104  
(702) 386-1070  
<http://www.lacsn.org>

*Senior Law Project (60 years or older only)*  
530 Las Vegas Blvd. S. #310  
Las Vegas, NV 89101  
(702) 229-6596  
<http://www.spslp.org>

*Nevada Legal Services*  
530 S. 6th Street  
Las Vegas, NV 89101  
(702) 386-0404  
<http://www.nlslaw.net>

If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption free of charge at the *Civil Law Self-Help Center*, 200 Lewis Avenue, on the first floor of the Regional Justice Center, downtown Las Vegas, Nevada, or on the Civil Law Self-Help Center's website at <http://www.civillawselfhelpcenter.org>.

### **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt.

The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed by the judgment creditor within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed.

You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payments, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

### **IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.**

---

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civillawselfhelpcenter.org](http://www.civillawselfhelpcenter.org).

## **CHECKLIST FOR FILING A "CLAIM OF EXEMPTION"**

- ☐ 1. Read the list of exemptions in this notice to determine whether any of your property or money is exempt from execution (in other words, protected from being taken to pay the judgment against you).
- ☐ 2. Obtain a "Claim of Exemption" form from the clerk at the court where the judgment against you was issued or from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, [www.civilawselfhelpcenter.org](http://www.civilawselfhelpcenter.org).
- ☐ 3. Fill out the Claim of Exemption form in blue or black ink. If you have documentation that proves the exemptions you are claiming, attach the documentation to the Claim of Exemption form (but be sure to black out any personal information, such as Social Security numbers, bank account numbers, etc.).
- ☐ 4. Make three copies of the completed Claim of Exemption form.
- ☐ 5. Take the completed Claim of Exemption form and all copies to the court where the judgment against you was issued, and file the Claim of Exemption with the court clerk.

**NOTE:** You must file your Claim of Exemption with the court within ten days after the Sheriff or Constable serves the Writ of Execution or Writ of Garnishment on you by mail, identifying the specific property that is subject to execution or garnishment, or within ten days after your wages are withheld if you are being garnished.

**NOTE:** If you are filing your Claim of Exemption in the Las Vegas Justice Court, you must have an e-mail address because the court now electronically files all documents. If you do not have an e-mail address, you can obtain assistance in getting one at the Clark County Law Library, 309 South Third Street, Suite #400, Las Vegas, Nevada.

- ☐ 6. After your Claim of Exemption has been filed with the court, mail a copy of your Claim of Exemption to the following three parties:
  - ☐ The Constable or Sheriff who mailed you the Writ of Execution or served your bank or employer;
  - ☐ The judgment creditor's attorney (or the judgment creditor directly if no attorney is involved);
  - ☐ Any garnishee (likely your employer, if your wages are being garnished; your bank, if your bank account has been attached; or some other third-party, if money or assets in the third-party's possession have been executed against).
- ☐ 7. Watch your mail. After receiving your Claim of Exemption, the judgment creditor has eight days to file an objection. If an objection is filed, a hearing will be set. You will receive a copy of the objection and a notice of the hearing in the mail.
- ☐ 8. Attend the court hearing if one is set. Before the hearing, collect whatever documentation you need to show that you are entitled to the exemptions you have claimed. Take your documentation to the hearing, along with a proposed order for the judge to sign. (You can obtain a form order from the clerk of the court or on the Civil Law Self-Help Center's website, [www.civilawselfhelpcenter.org](http://www.civilawselfhelpcenter.org). At the hearing, it will be your responsibility to prove to the judge that your claimed exemptions are appropriate. If the judge approves your exemptions, ask the judge to sign your order, which you will then file with the court and serve on the Constable or Sheriff and any garnishee.

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CASE NO. CV13-02663

**TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy  
Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC.,  
EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST,  
SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

PAGE ONE

APPEARANCES-HEARING

CONT'D TO

6/24/19

**DECISION ON SUBMITTED MOTIONS (TELEPHONIC)**

HONORABLE  
CONNIE  
STEINHEIMER  
DEPT. NO.4  
M. Stone  
(Clerk)  
J. Schonlau  
(Reporter)

Erika Turner, Esq., Teresa Pilatowicz, Esq., and Gabrielle Hamm, Esq., represented Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito. Jeffrey Hartman, Esq., represented Defendant Edward Bayuk, individually and as representative for Edward William Bayuk Living Trust. Frank Gilmore, Esq., represented Salvatore Morabito, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc. Court convened.

The Court having reviewed all the pleadings filed related to the Motion to Retax Costs, the entire file and having presided over the trial in this matter is persuaded by a majority of the arguments of the Plaintiff. Therefore, **COURT ENTERED ORDER** granting in part/denying in part the Motion to Retax Costs as follows: Granting Plaintiff's request to extend the 5-day deadline to file the memorandum of costs through April 11, 2019 and excuse the 4-day delay as it did not cause any prejudice to the Defendant and good cause was presented by the Plaintiff; granting the Motion to Retax Costs in that reasonable costs were incurred in the amount of \$152,856.84; reducing expert fees to \$75,505.90; reducing photocopy fees to \$17,772.17; and denying request for Odyssey fees as they do not apply in the Second Judicial District Court and e-filing is free in the Second Judicial District Court.

The Court finds that the above fees were reasonably and necessarily incurred. Plaintiff's counsel shall prepare a proposed Order, provide it to Defendant's counsel for review and submit to the Court within 2 weeks of the date of this hearing.

The Court having reviewed all the pleadings filed related to the Application for Attorney's Fees and Cost Pursuant to NRCP 68, the entire file and having presided over the trial, the Memorandum of Costs, Motion to Retax Costs and Decision on the Motion to Retax Costs, finds that Plaintiff is entitled to attorneys' fees and costs, that Plaintiff served a valid offer of judgment on Defendants, that the Plaintiff obtained a higher verdict after a trial on the merits, that Plaintiff's offer was a good faith offer, premised on sound factual and legal basis, reasonable in timing and amount; that Plaintiff's Offer was an apportioned offer and must be enforced under NRCP 68(f) and consistent under the factors in

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

PAGE TWO

APPEARANCES-HEARING

CONT'D TO

6/24/19

**DECISION ON SUBMITTED MOTIONS (TELEPHONIC)**

J. Schonlau  
(Reporter)

Beattie v. Thomas; and that the Defendants' rejection of the offer was unreasonable. Therefore, **COURT ENTERED ORDER** granting costs incurred from June 1, 2016 which have not been reduced by the decision in the Motion to Retax Costs; that Defendants are to pay Plaintiff's attorney's fees in the amount of \$773,116.00, less \$8,128.87 for sanctions previously paid; and that the amount of attorney's fees ordered applies to Defendant Bayuk as well and that he must pay his portion.

Plaintiff's counsel shall prepare a proposed Order, provide it to Defendant's counsel for review and submit to the Court within 2 weeks of the date of this hearing.

The Court having reviewed all the pleadings filed related to the Motion for New Trial and/or Alter or Amend Judgment Pursuant to NRCP 52, 59 and 60 filed by Defendants Salvatore Morabito, Superpumper Inc., and Snowshoe Petroleum, Inc., the entire file and having presided over the trial in this matter is persuaded by a majority of the arguments of the Plaintiff, finds there are no clerical mistakes, oversights or newly discovery evidence or any other reason to justify relief from the Judgment pursuant to NRCP 60; that NRCP 52, as incorrectly cited by Defendant, does not support modification of the Judgment as written; that there are no irregularities that denied the Defendants a fair trial nor any error in law over Defendant objections that would justify a new trial and/or altering the Judgment pursuant to NRS 59; and that in light of the evidence supporting the Court's finding regarding multiple badges of fraud and lack of good faith by the Defendants, Defendants cannot demonstrate that any error materially affected their substantial rights or affected the outcome of the trial. Therefore, **COURT ENTERED ORDER** denying Defendants' Motion for New Trial and/or Alter or Amend Judgment Pursuant to NRCP 52, 59 ad 60.

Plaintiff's counsel shall prepare a proposed Order, provide it to Defendant's counsel for review and submit to the Court within 2 weeks of the date of this hearing.

Court adjourned.



1 CODE: 2610  
2 MICHAEL LEHNERS, ESQ.  
3 429 Marsh Ave.  
4 Reno, Nevada 89509  
Nevada Bar Number 003331  
(775) 786-1695

5 Attorney for Salvatore Morabito

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 o0o

10  
11 WILLIAM A. LEONARD, Trustee Case No. CV13-02663  
12 for the Bankruptcy Estate of Paul Judge Connie Steinheimer  
Anthony Morabito, Dept. No. 4

13 Plaintiff,

14 **NOTICE OF CLAIM OF**  
15 **EXEMPTION FROM**  
16 **EXECUTION**

15 vs.

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

22 Defendant.  
23 \_\_\_\_\_/

24  
25 This Claim of Exemption from Execution is made on behalf of  
26 Salvatore Morabito, and is supported by the separately filed Declaration  
27 of Salvatore Morabito. Mr. Morabito is a Defendant in this case and has  
28 received a Notice of Execution regarding the attachment or garnishment

1 of his wages, money, benefits, or property. Mr. Morabito holds no assets  
2 in the State of Nevada. He has no bank account in this state or other  
3 property, real or personal. Please see the declaration of Salvatore  
4 Morabito.

5 Mr. Morabito is filing this notice of claim of exemption from  
6 execution and supporting declaration in the event that any financial  
7 institution freezes assets an a branch outside the State of Nevada or the  
8 United States. To the extent that it does, then Mr. Morabito's wages,  
9 money, benefits, or property are exempt by law from execution as  
10 indicated below.

11 If the judgment creditor does not file an Objection to Claim of  
12 Exemption from Execution and Notice of Hearing in response to this  
13 Claim of Exemption from Execution within eight judicial days after this  
14 Claim of Exemption from Execution has been served, any person who has  
15 control or possession over Mr. Morabito's wages, money, benefits, or  
16 property (such as an employer or bank, for example) must release them  
17 to Mr. Morabito within nine judicial days after this Claim of Exemption  
18 from Execution has been served.

19 **2. Argument**

20 **A. NO PROPERTY OUTSIDE NEVADA MAY BE ATTACHED**

21 A Nevada judgment may be enforced with respect to any non-  
22 exempt property owned by the judgment debtor in this state. All assets  
23 that are located in other states or other countries must be attached  
24 according to the procedures in that state or country. Typically, this will  
25 be a foreign judgment action. The point being there can be no extra-  
26 territorial enforcement of this judgment unless the Plaintiff domesticates  
27 the judgment in the state or country where assets may be located.  
28

1 As noted in Mr. Morabito's declaration, it is possible that execution  
2 on a Nevada branch of a national or international bank may cause funds  
3 at other branches in other states or countries to be frozen. If this is the  
4 case, then any foreign frozen funds must be released.

5 **B. THE EXEMPTIONS**

6 To the extent that any other funds are frozen as described above,  
7 Salvatore Morabito asserts the exemption under NRS 21.090(1)(g) for  
8 wages and the exemption under NRS 21.090(1)(z) for any personal  
9 property not otherwise exempt from execution pursuant to this  
10 subsection belonging to the judgment debtor, including, without  
11 limitation, the judgment debtor's equity in any property, money, stocks,  
12 bonds or other funds on deposit with a financial institution, not to  
13 exceed \$10,000 in total value, to be selected by the judgment debtor.

14 For those reasons, Mr. Morabito is requesting that all attached  
15 funds be released.

16 **Affirmation**

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

18 The Undersigned does hereby affirm that the preceding document filed in the case herein  
19 does not contain the social security number of any person.

20 Dated: This 2 day of July, 2019

21  
22 By: 

23 Michael Lehnner, Esq.  
24 429 Marsh Ave.  
25 Reno, Nevada 89509  
26 Nevada Bar Number 003331  
27  
28

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Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that on the 2  
day of July, 2016 I deposited for mailing in the United States Post Office in  
Reno, Nevada, with postage thereon fully prepaid, a true copy of the within  
**NOTICE OF CLAIM OF EXEMPTION FROM EXECUTION** addressed as  
follows:

9 The Office of the  
Ex-Officio Constable  
10 301 E. Clark Ave. Suite 100  
Las Vegas, NV 89101  
11  
12 Erika Pike Turner, Esq.  
Teresa M. Pilatowicz, Esq.  
13 Gabrielle A. Hamm, Esq.  
Michael R. Esposito  
14 Garman Turner Gordon, LLP  
650 White Drive, Suite 100  
15 Las Vegas, NV 89119

16           The Law Firm of Garman, Turner Gordon, LLP and its attorneys were also  
17 notified through the court electronically EFLEX system.

21 Dolores  
22 Dolores Stigall

1 CODE: 1400  
2 Jeffrey L. Hartman, Esq.  
3 Hartman & Hartman  
4 510 W. Plumb Ln., Suite B  
5 Reno, Nevada 89509  
6 Nevada Bar Number 001607  
7 Tel: (775) 324-2800

8 Michael Lehnars, Esq.  
9 429 Marsh Ave.  
10 Reno, Nevada 89509  
11 Nevada Bar Number 003331  
12 Tel: (775) 786-1695

13 Attorneys for Edward Bayuk as Trustee  
14 of the Edward William Bayuk Living Trust

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

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

CASE NO.: CV13-02663  
DEPT. NO.: 4

20 vs.

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

27 Defendants. /

28 **THIRD PARTY CLAIM TO PROPERTY LEVIED UPON**

**NRS 31.070**

Edward Bayuk, in his capacity as Trustee of the Edward William Bayuk Living Trust files the following Third Party Claim to Property Levied Upon.

**1. Summary of Relief Sought**

Edward Bayuk, in his capacity as Trustee of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust ("Bayuk Living Trust") as amended on November 12, 2005, is a



1 judgment debtor. However, he is only the trustee of the Bayuk Living Trust. A trustee is a separate  
2 legal entity from the person. See *Mona v. Eighth Judicial Dist. Court of State in & for Cty. of Clark*,  
3 132 Nev. Adv. Op. 72, 380 P.3d 836, 842 (2016). A trustee owes a fiduciary duty to the beneficiaries,  
4 and he does not own the property in the res. In fact the trustee must treat the beneficiaries equally,  
5 and a trustee may not advocate for either side in a dispute between the beneficiaries. *Matter of W.N.*  
6 *Connell and Majorie T. Connell Living Trust*, 393 P.3d 1090, 1094 (Nev. 2017).

7 Plaintiff is attempting to attach assets that belong to the Bayuk Living Trust by joining the  
8 trustee as a judgment debtor. This is not allowed because NRS 164.010(1) confers in rem jurisdiction  
9 on the district court over trust property in all trust administration actions. Moreover, since Mr. Bayuk  
10 in his capacity as trustee holds no ownership interest in the res, there is nothing that can be attached.

11 For these reasons none of the assets belonging to the Bayuk Living Trust may be attached.

## 12 **2. Background**

13 On June 28, 2019 Mr. Bayuk, in his individual capacity and as the trustee of the Bayuk Living  
14 Trust, filed a Notice Of Claim of Exemption and supporting Declaration. Those papers are  
15 incorporated herein by reference.

16 To summarize, on August 23, 1998 Mr. Bayuk created the revocable Edward William Bayuk  
17 Living Trust as a Florida Living Trust. He was a resident of Miami Beach, Florida at that time. He  
18 subsequently moved to California and then to Nevada in 2005.

19 On November 12, 2005, Mr. Bayuk executed, in Reno, Nevada, an irrevocable Self-Settled  
20 Spendthrift Trust ("SSST") Amendment to the Edward William Bayuk Living Trust (the "Bayuk  
21 Trust Amendment"). Since the creation of the Bayuk Living Trust in 1998, the Bayuk Living Trust  
22 has owned all of Mr. Bayuk's assets. After the irrevocable Self-Settled Spendthrift Trust amendment  
23 was executed November 12, 2005, the Bayuk Living Trust continues to own all of Mr. Bayuk's assets.  
24 Under Section 31 of the Bayuk Living Trust, Mr. Bayuk is entitled to reasonable compensation from  
25 the Bayuk Living Trust as well as compensation and/or expenses paid from the Bayuk Living Trust's  
26 businesses.

27 On or about June 27, 2019, Mr. Bayuk received an email from his attorney, Jeffrey L.  
28 Hartman, that attached the June 22, 2019 Notice of Execution After Judgment. Mr. Bayuk

1 subsequently learned the property to be executed upon by the writs are (1) Any money held in bank  
2 accounts with respect to Mr. Bayuk individually or as Trustee of the Bayuk Living Trust; (2) Any  
3 unearned money remaining upon the retainer paid to Richard Holly, Esq. and (3) Any unearned  
4 money remaining upon the retainer paid to Jeffrey Hartman, Esq.

5 This Claim is being filed on behalf of the Bayuk Living Trust as amended by the November  
6 12, 2005 SSST Bayuk Trust Amendment.

### 7 **3. Argument**

8 Only property owned by the judgment debtor is subject to garnishment, and questions  
9 regarding title to that property as between the judgment creditor and a third party are properly  
10 determined by the court having jurisdiction under NRS 31.070. *Brooksby v. Nev. State Bank*, 129  
11 Nev. 771, 773, 312 P.3d 501, 502–03 (2013), citing NRS 31.249(2); *Kulik v. Albers, Inc.*, 91 Nev.  
12 134, 137, 532 P.2d 603, 605–06 (1975); and NRS 21.120 (referring third-party claims concerning  
13 writs of garnishment in aid of execution to the NRS 31.070 process). In line with this ownership rule,  
14 a majority of courts, under a variety of theories, have held that a judgment creditor is not entitled to  
15 joint bank account funds that truly belong to someone other than the judgment debtor. Id

16 Like all other states, Nevada has a procedure where a third party's property is attached when  
17 that party is not a judgment debtor. Nevada has codified this procedure in NRS 31.070(1) which  
18 provides:

19 1. If the property levied on is claimed by a third person as the person's property by a  
20 written claim verified by the person's oath or that of the person's agent, setting out  
21 the person's right to the possession thereof, and served upon the sheriff, the sheriff  
22 must release the property if the plaintiff, or the person in whose favor the writ of  
23 attachment runs, fails within 7 days after written demand to give the sheriff an  
24 undertaking executed by at least two good and sufficient sureties in a sum equal to  
25 double the value of the property levied on. If such undertaking be given, the sheriff  
shall hold the property. The sheriff, however, shall not be liable for damages to any  
such third person for the taking or keeping of such property if no claim is filed by  
any such third person.

26 In *Mona v. Eighth Judicial Dist. Court of State in & for Cty. of Clark*, supra, the Court noted  
27 that the Nevada Legislature has recognized in NRS 163.140(4) that a trustee may be held personally  
28 liable for a tort only if the trustee is personally at fault. The Court also cited NRS 163.120(3), which

1 provides that a trustee is generally not personally liable on a contract entered into in a representative  
2 capacity. For that reason, the Court held that Rhonda, in her individual capacity, was a distinct legal  
3 person and is a stranger to Rhonda, in her representative capacity as a trustee, of the Mona Family  
4 Trust.

5 Mr. Bayuk, in his capacity as Trustee of the Bayuk Living Trust, only manages the funds of  
6 the trust. The res cannot be attached through him, even though he individually is a judgment debtor.

7 NRS 166.120(2) concerns payments by the trustee of the spendthrift trust to the beneficiary.  
8 It provides that, whether the payments are mandatory or discretionary, they may only be made for  
9 the benefit of the beneficiary. No payment from the spendthrift trust may be made by virtue of any  
10 legal process in judgment, execution, attachment, garnishment, bankruptcy or otherwise.

11 Any action to determine if the beneficiary's rights are subject to execution, to levy an  
12 attachment or for any other remedy must be made only in a proceeding commenced pursuant to NRS  
13 164.010. Subsection one of that statute provides as follows:

14 Upon petition of any person appointed as trustee of an express trust by any written  
15 instrument other than a will, or upon petition of a settlor or beneficiary of the trust,  
16 the district court of the county in which any trustee resides or conducts business at  
17 the time of the filing of the petition or in which the trust has been domiciled as of the  
18 time of the filing of the petition shall assume jurisdiction of the trust as a proceeding  
19 in rem unless another court has properly assumed continuing jurisdiction in rem in  
accordance with the laws of that jurisdiction and the district court determines that it  
is not appropriate for the district court to assume jurisdiction under the  
circumstances.

20 When NRS 166.120(2) and NRS 164.010 are read together, it is clear that the jurisdiction of  
21 the Nevada courts is exclusive with respect to any challenge by a creditor seeking to attach spendthrift  
22 trust assets. It is an in rem action which can only be brought under NRS 164.010. It cannot be brought  
23 in a supplementary proceeding against the trustee in a different action.

24 *In re Aboud Inter Vivos Tr.*, 129 Nev. 915, Nev.922, 314 P.3d 941, 945–46 (2013) confirms  
25 this where it said that NRS 164.010(1) confers in rem jurisdiction on the district court over trust  
26 property in all trust administration actions. In addition, NRS 164.015(6) provides that a district court's  
27 order in a trust administration action is “binding in rem upon the trust estate and upon the interests  
28 of all beneficiaries.

Simply put, there is no jurisdiction for this Court to attach any assets owned by the Bayuk Living Trust. Mr. Bayuk is the trustee, but he does not own the assets. If a creditor wishes to pursue the res of a trust, it must be by an in rem action as described in the *Aboud* case. It used the phrase "*in all trust administration actions*", so there are no exceptions.

## 4. Conclusion

Mr. Bayuk, the Trustee, is a separate legal entity. As the Trustee he only manages the assets in the trust's res. He does not own them. To assert ownership would be a breach of his fiduciary duties as the Trustee of an SSST. The Trust owns them. While creditors may attempt to attach the assets in a trust res, they must do so pursuant to the statutes of Nevada, and they require an independent in rem action. It cannot be accomplished by supplemental proceedings where the individual acting as a trustee also happens to be a judgment debtor.

For that reason, all property owned by the trust must be released.

DATED this 3rd day of July, 2019.

Hartman &amp; Hartman

/s/ Jeffrey Hartman  
 Jeffrey Hartman, Esq.  
 Attorneys for Edward Bayuk as Trustee  
 of the Edward William Bayuk Living Trust

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

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

DATED this 3rd day of July, 2019.

Hartman &amp; Hartman

/s/ Jeffrey Hartman  
Jeffrey Hartman, Esq.  
Attorneys for Edward Bayuk as Trustee  
of the Edward William Bayuk Living Trust

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HARTMAN & HARTMAN, and that on this date I caused to be served a true copy of the **THIRD PARTY CLAIM TO PROPERTY LEVIED UPON NRS 31.070** on all parties to this action by the method(s) indicated below:

  X   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.  
GARMAN TURNER GORDON LLP  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119

Richard F. Holley, Esq.  
HOLLEY DRIGGS WALCH FINE  
PUZEY STEIN & THOMPSON  
400 South Fourth Street  
Suite 300  
Las Vegas, Nevada 89101

The Office of the Ex-Officio Constable  
301 E. Clark Avenue, Suite 100  
Las Vegas, Nevada 89101

Washoe County Sheriff's Office  
911 Parr Blvd.  
Reno, Nevada 89512

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

Mark M. Weisenmiller, Esq.  
Email: mweisenmiller@Gtg.legal  
Teresa M. Pilatowicz, Esq.  
Email: tpilatowicz@Gtg.legal  
Erika Pike Turner, Esq.  
Email: eturner@gtg.legal

Frank C. Gilmore, Esq.  
Email: fgilmore@rssblaw.com

DATED: This 3rd day of July, 2019.

/s/ Angie Gerbig  
ANGIE GERBIG



2777

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

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

Plaintiff,

vs.

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

CASE NO.: CV13-02663

DEPT. NO.: 4

**ORDER GRANTING PLAINTIFF'S APPLICATION FOR AN AWARD  
OF ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 68**

Plaintiff William A. Leonard, chapter 7 trustee for the bankruptcy estate of Paul A. Morabito and judgment creditor in the above-entitled action (the "Plaintiff") filed an *Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68* (the "Application") on April 12, 2019. Superpumper, Inc., Salvatore Morabito, and Snowshoe Petroleum, Inc. (collectively, the "Responding Defendants") filed an *Opposition to the Application for Attorneys' Fees and Costs* (the "Opposition") on April 25, 2019. Plaintiff filed a *Reply in Support of the Application for Attorneys' Fees and Costs pursuant to NRCP 68* (the "Reply") on April 30, 2019. Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust ("Bayuk," and together with the Responding Defendants, the "Defendants") did not oppose the Application. The Application was submitted for decision on May 1, 2019.

The Court has reviewed and considered the arguments made in the Application, the Opposition, and the Reply, the papers and pleadings on file with the Court in this action, including

1 the Memorandum of Costs filed by Trustee on April 11, 2019, the *Motion to Retax* (the "Motion  
2 to Retax") filed on May 1, 2019, the testimony and exhibits admitted during the trial, and the  
3 Court's Findings of Fact, Conclusions of Law, and Judgment, entered on March 29, 2019 (the  
4 "Judgment"). The Court, persuaded by the argument and authorities in Plaintiff's Application,  
5 along with the pleadings and papers on file, the trial record, and the findings and conclusions set  
6 forth in the Judgment, finds as follows:

7 1. Plaintiff served a valid apportioned offer of judgment in the amount of \$3,000,000  
8 on Defendants on May 31, 2016 (the "Offer of Judgment").

9 2. Defendants rejected the Offer of Judgment.

10 3. Plaintiff obtained a verdict in an amount greater than the Offer of Judgment after a  
11 trial on the merits.

12 4. Plaintiff's Offer of Judgment must be enforced under NRS 68(f) and consistent  
13 with the factors delineated in *Beattie vs. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983):

14 a. Plaintiff's Offer of Judgment was a good faith offer premised on sound factual  
15 and legal bases.

16 b. Plaintiff's Offer of Judgment was reasonable and in good faith in timing and  
17 amount.

18 c. Defendants' rejection of the Offer of Judgment was unreasonable.

19 5. Plaintiff's attorney's fees are fair and reasonable and enforceable under the  
20 standards set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33  
21 (1969):

22 a. The work required in connection with the case was difficult and time consuming  
23 and performed by skilled counsel.

24 b. The character of the work, time, and skill required justifies the fees requested.

25 c. The attorneys were successful in obtaining a favorable result for the Plaintiff

26 ///

27 ///

28 ///

6. The Offer of Judgment justifies the award of fees and costs.

Based upon the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 is GRANTED.

IT IS HEREBY FURTHER ORDERED that the Plaintiff is awarded attorneys' fees incurred from June 1, 2016 through the date of the Judgment in the amount of \$773,116.00.

IT IS HEREBY FURTHER ORDERED that the Plaintiff is awarded costs incurred from June 1, 2016 through the date of Judgment, which have not been otherwise reduced already by the *Order Granting in Part and Denying in Part Motion to Retax*, in the amount of \$109,427.

IT IS HEREBY FURTHER ORDERED that the Defendants are ordered to pay Plaintiff's attorneys' fees in the amount of \$773,116.00, less the \$8,128.67 in sanctions already paid, for a total amount of \$764,987.33 in attorneys' fees and \$109,427 in costs.

IT IS HEREBY FURTHER ORDERED that this award of attorneys' fees and costs shall be added to the amount of the Judgment.

Dated this 9 day of July, 2019.

Connie J. Steinheimer  
DISTRICT JUDGE

1 3025

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

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

CASE NO.: CV13-02663

DEPT. NO.: 4

10 Plaintiff,

11 vs.

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

Defendants.

17  
18 **ORDER GRANTING IN PART AND DENYING IN PART MOTION**  
19 **TO RETAX COSTS**

20 Defendants Salvatore Morabito, Superpumper, Inc., and Snowshoe Petroleum, Inc.  
21 (collectively, the "Defendants") filed their *Motion to Retax Costs* ("Motion to Retax") on April  
22 15, 2019. Plaintiff William A. Leonard, chapter 7 trustee for the bankruptcy estate of Paul A.  
23 Morabito and judgment creditor in the above-entitled action (the "Plaintiff") filed his *Opposition*  
24 *to Motion to Retax Costs* (the "Opposition") on April 18, 2019. Defendants filed their *Reply in*  
25 *Support of Motion to Retax Costs* (the "Reply") on April 22, 2018. The Motion to Retax was  
26 submitted for decision on May 1, 2019.

27 The Court has reviewed and considered the arguments made in the Motion, the Opposition,  
28 and the Reply, the papers and pleadings on file with the Court in this action, the testimony and

1 exhibits admitted during the trial, and the Court's Findings of Fact, Conclusions of Law, and  
2 Judgment, entered on March 29, 2019 (the "Judgment"). The Court, persuaded by the argument  
3 and authorities in Plaintiff's Opposition, along with the pleadings and papers on file, the trial  
4 record, and the findings and conclusions set forth in the Judgment, finds as follows:

5 1. Plaintiff filed his Memorandum of Costs and Disbursements (the "Memorandum")  
6 on April 11, 2019.

7 2. The four-day delay in filing the Memorandum is for good cause based on the  
8 Plaintiff's confusion regarding the application of NRCP Rule 68 and NRS 18.110.

9 3. The four-day delay in filing the Memorandum has not caused any prejudice to the  
10 Defendants.

11 4. The following reductions in the costs requested in the Memorandum are  
12 appropriate:

13 a. The costs of experts should be reduced from \$77,201.80 to \$75,505.90;

14 b. The costs of photocopies should be reduced from \$17,961.67 to \$17,772.17;

15 c. The costs for use of Odyssey in the amount of \$200 are reduced to \$0.00.

16 5. The remaining costs incurred for Plaintiff's experts were reasonably incurred and  
17 are reasonable under the circumstances of this case as modified from the Memorandum.

18 6. The remaining charges for photocopying were reasonably incurred and are  
19 reasonable under the circumstances of this case as modified from the Memorandum.

20 7. Plaintiff had no obligation to only retain local counsel and the costs associated with  
21 Plaintiff's chosen counsels' representation were reasonable and necessary.

22 8. There was no objection to the remaining costs in the Memorandum and they were  
23 authorized, reasonable, and actually incurred.

24 Based upon review of the entire file, the foregoing, and good cause appearing:

25 IT IS HEREBY ORDERED that the Motion to Retax is granted in part and denied in part.

26 IT IS HEREBY FURTHER ORDERED that the five-day deadline to file the Memorandum  
27 is extended up to and including April 11, 2019 and the Memorandum is therefore timely.  
28



1 IT IS HEREBY FURTHER ORDERED that the costs listed in the Memorandum, as  
2 modified herein, in the amount of \$152,856.84 are reasonable costs incurred in this matter pursuant  
3 to NRS § 18.110 and are awarded in Plaintiff's favor and against Defendants and Edward Bayuk,  
4 individually and as trustee of the Edward William Bayuk Living Trust.

5 IT IS HEREBY FURTHER ORDERED that this award of costs shall be added to the  
6 amount of the Judgment.

7 Dated this 9 day of July, 2019.

8 Connie J. Steinheimer  
9 DISTRICT JUDGE  
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