

**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 53**  
**(Nos. 9237-9376)**

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<u><b>DOCUMENT DESCRIPTION</b></u>		<u><b>LOCATION</b></u>
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Minutes of August 10, 2017 hearing on Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP, and Opposition to Motion for Sanctions (filed 08/11/2017)		Vol. 11, 1741–1742
Recommendation for Order RE: <i>Defendants’ Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP</i> , filed on July 18, 2017 (filed 08/17/2017)		Vol. 11, 1743–1753
Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1754–1796
Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1797–1825
<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 NRCp 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff's First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

CODE

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Attorneys for Edward Bayuk

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

oOo

Case No. CV13-02663

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

Dept. No. 4

Plaintiff,

OBJECTION TO PLAINTIFF'S  
PROPOSED ORDER DENYING CLAIM  
OF EXEMPTION AND THIRD PARTY  
CLAIM

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,

Defendant.

\_\_\_\_\_  
Edward Bayuk, in his capacity as an individual and in his capacity as the Trustee of the  
Edward William Bayuk Living Trust files the following Objection to Plaintiff's order denying  
claim of exemption and third party claim

1 Attached as Exhibit "1" is a copy of the Plaintiff's proposed order. In order for the  
2 record to be complete, the Defendant is requesting certain findings of fact also appear in the  
3 order. A list of the comments that reflect these proposed findings of fact have been attached as  
4 Exhibit "2".

5 Finally, the Defendant's proposed order denying claim of exemption and third party  
6 claim has been attached as Exhibit "3".

7 Wherefore, the Defendant respectfully requests that this Court adopt the Defendant's  
8 version of the proposed order.

9 **Affirmation**

**Pursuant to NRS 239B.030**

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

12 Dated: This 1 day of August, 2019


13  
14 By: 

15 Michael Lehnert, Esq.  
16 429 Marsh Ave.  
17 Reno, Nevada 89509  
18 Nevada Bar Number 003331  
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Frank C. Gilmore, Esq.  
Robison, Sharp et. al.  
71 Washington Street  
Reno, NV 89503

Teresa M. Pilatowicz, Esq.  
Gabrielle A. Hamm, Esq.  
Garman Turner Gordon  
650 White Drive, Suite 100  
Las Vegas, NV 89119

  
Dolores Stigall

## **Exhibit List**

Exhibit 1	Plaintiff's Proposed Order
Exhibit 2	Defendant's Comments on Findings of Fact
Exhibit 3	Defendant's Proposed Order



# Exhibit

# 1

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Clerk of the Court  
Transaction # 7407464 : yvilorla

# Exhibit 1

1 2840  
2 GARMAN TURNER GORDON LLP  
3 GERALD M. GORDON, ESQ.  
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5 E-mail: ggordon@gtg.legal  
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7 Nevada Bar No. 6454  
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10 Nevada Bar No. 9605  
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13 Nevada Bar No. 11588  
14 E-mail: ghamm@gtg.legal  
15 650 White Drive, Ste. 100  
16 Las Vegas, Nevada 89119  
17 Telephone 725-777-3000  
18 Counsel to Plaintiff

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: CV13-02663

DEPT. NO.: 4

**ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM**

Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of Exemption") filed on June 28, 2019 by Edward Bayuk ("Bayuk"), individually and as trustee of the Edward William Bayuk Living Trust (the "Bayuk Trust"), and the *Third Party Claim to*

1 *Property Levied Upon [NRS 31.070]* (the “Third Party Claim”) filed on July 3, 2019 by the  
2 Bayuk Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration*  
3 *of Edward Bayuk Claiming Exemption from Execution* (the “Bayuk Declaration”), filed on July  
4 2, 2019. *Plaintiff’s Objection to (1) Declaration of Edward Bayuk Claiming Exemption From*  
5 *Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing*  
6 *Pursuant to NRS 21.112 and 31.070(5)* (the “Objection”) was filed on July 11, 2019, and Bayuk  
7 and the Bayuk Trust’s *Reply to Objection to Claim of Exemption and Third Party Claim to*  
8 *Property Levied Upon* (the “Reply”) was filed on July 17, 2019.

9         The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,  
10 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnerns and  
11 Jeffrey L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M.  
12 Gordon, and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

13         The Court has reviewed and considered the arguments made in the Claim of Exemption  
14 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to  
15 all of the foregoing, the papers and pleadings on file with the Court in this action, the testimony  
16 and exhibits admitted during the trial, the Court’s Findings of Fact, Conclusions of Law, and  
17 Judgment, entered on March 29, 2019 (the “Judgment”), and the arguments of counsel made at  
18 the hearing. The Court, persuaded by the argument and authorities in Plaintiff’s Objection and  
19 the arguments of Plaintiff’s counsel at the hearing, along with the pleadings and papers on file,  
20 the trial record, and the findings and conclusions set forth in the Judgment, finds as follows:

21             1.       The court has subject matter jurisdiction over the claims asserted against Bayuk,  
22 as trustee of the Bayuk Trust.

23             2.       Bayuk has transferred all of his personal assets to the Bayuk Trust since the  
24 Bayuk Trust was established in 1998. Inclusive, the Bayuk Trust received fraudulently  
25 transferred property which, as further set forth in the Judgment, was established by clear and  
26 convincing evidence.

27             3.       The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not  
28 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in

1 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced  
2 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of  
3 Exemption, the Bayuk Trust clarifies that that there is, and has been, only one trust with the  
4 name "the Edward William Bayuk Living Trust" and that is the Bayuk Trust.

5 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada  
6 spendthrift trust under NRS 166.015 because Bayuk is the settler and beneficiary during his  
7 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of  
8 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to  
9 California in September 2010.

10 5. Contrary to assertions by Bayuk, there was no credible evidence presented that  
11 the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the  
12 ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS 166.015.

13 6. Even if the claims asserted against the Bayuk Trust were subject to the time  
14 periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought  
15 (1) within two years of the fraudulent transfers and (2) also within six months of discovery of the  
16 existence of the purported spendthrift trust. The subject fraudulent transfers occurred in  
17 September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30,  
18 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the  
19 Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the  
20 Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a  
21 spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption.  
22 Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of  
23 Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

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Based upon review of the entire file, the foregoing, and good cause appearing:  
IT IS HEREBY ORDERED that the Claim of Exemption is denied.  
IT IS FURTHER ORDERED that the Third Party Claim is denied.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
DISTRICT JUDGE

# Exhibit 2

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Clerk of the Court  
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# Exhibit 2

**Comments on Changes to the Garman Turner Gordon LLP**  
**Order Denying Claim of Exemption and Third Party Claim**  
**Case No. CV13-02663**

---

1. ¶ 2: Barry L. Breslow, Esq., in a supplement to NRCP 16.1 disclosures dated March 1, 2011 provided Plaintiffs with copies of the Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (RBSL 001868-001906) which stated that this **revocable** trust was established on February 14, 2006; and of the Spendthrift Trust Agreement for the Arcadia Living Trust established on October 14, 2005 (RBSL 001907-001942) revoking the August 25, 1998 Arcadia Living Trust revocable trust established in Miami Beach, Florida (CG000043-CG000099) on August 25, 1998. Separately Plaintiffs were as well as the revocable California Arcadia Living Trust of January 6, 2005 which was supplied to Plaintiffs in July, 2019.
2. ¶ 3: Plaintiff's deposed Paul Morabito on Thursday, March 3, 2011 with John P. Desmond, Esq., and Brian R. Irvine, Esq., present with Mr. Breslow wherein Mr. Morabito detailed all of the exchanges by exempt assets in Mr. Morabito's self-settled spendthrift trusts ("SSST") of which he was a Trustee but not a beneficiary to Edward Bayuk's SSST Edward William Bayuk Living Trust of which Mr. Bayuk was the Trustee but not a beneficiary. Mr. Morabito went into detail the existence of the SSST Arcadia Living Trust as well as the revocable Arcadia Living Trust that was in California (2005), Florida (1998) and Nevada (2006) each spending trusts used for administrative convenience.
3. ¶ 4: Mr. Bayuk was the Settlor (not Settler) and Trustee of the SSST Edward William Bayuk Living Trust and **not** a beneficiary. Both Mr. Bayuk and Mr. Morabito were Nevada residents on the execution dates of their respective Nevada irrevocable SSST.
4. ¶ 5: Michael Lehnert, Esq. on July 22, 2019 stated (pg. 55, lines 23-24) that "*I can swear Mr. Bayuk and ask him the question and there is the evidence*" regarding the Edward William Bayuk Living Trust SSST burial plot. Mr. Bayuk had evidence in his possession during the hearing of the ownership of a gravesite burial plot in Reno owned by his SSST Edward William Bayuk Living Trust. When offered Mr. Bayuk's personal knowledge as Trustee for live testimony, Judge Steinheimer commented: "*He would be qualified if he told the truth.*" Present in the courtroom was former Nevada Governor Jim Gibbons, who was prepared to testify regarding the Bayuk Trust.
5. ¶ 6: Gabrielle A. Hamm, Esq., counsel for Plaintiffs, had sworn in Plaintiff's objections to exhibits of public records of property conveyances made from the SSST Arcadia Living Trust to the Edward William Bayuk Living Trust SSST, either directly or through administrative revocable trusts, most dated on October 1, 2010.

# Exhibit

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Transaction # 7407464 : yvilorla

# Exhibit 3



1 **2840**

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8 Fax: (775) 324-1818

9 MICHAEL LEHNERS, ESQ.  
10 429 Marsh Ave.  
11 Reno, Nevada 89509  
12 Nevada Bar Number 003331  
13 (775) 786-1695

14 Attorneys for Edward Bayuk

15 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
16 **THE STATE OF NEVADA, 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  
22 corporation; EDWARD BAYUK, individually  
23 and as Trustee of the EDWARD WILLIAM  
24 BAYUK LIVING TRUST; SALVATORE  
25 MORABITO, and individual; and  
26 SNOWSHOE PETROLEUM, INC., a New  
27 York corporation,

28 Defendants.

**ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY**  
**CLAIM**

Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of Exemption") filed on June 28, 2019 by Edward Bayuk ("Bayuk"), individually and as trustee of the Edward William Bayuk Living Trust (the "Bayuk Trust"), and the *Third Party Claim to Property Levied Upon [NRS 31.070]* (the "Third Party Claim") filed on July 3, 2019 by the Bayuk Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward Bayuk Claiming Exemption from Execution* (the "Bayuk Declaration"), filed on July

1 2, 2019. *Plaintiff's Objection to (1) Declaration of Edward Bayuk Claiming Exemption From*  
2 *Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing*  
3 *Pursuant to NRS 21.112 and 31.070(5)* (the "Objection") was filed on July 11, 2019, and  
4 Bayuk and the Bayuk Trust's *Reply to Objection to Claim of Exemption and Third Party Claim*  
5 *to Property Levied Upon* (the "Reply") was filed on July 17, 2019.

6 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,  
7 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnert and  
8 Jeffrey L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M.  
9 Gordon, and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

10 The Court has reviewed and considered the arguments made in the Claim of Exemption  
11 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to  
12 all of the foregoing, the papers and pleadings on file with the Court in this action, the testimony  
13 and exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law, and  
14 Judgment, entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made at  
15 the hearing. The Court, persuaded by the argument and authorities in Plaintiff's Objection and  
16 the arguments of Plaintiff's counsel at the hearing, along with the pleadings and papers on file,  
17 the trial record, and the findings and conclusions set forth in the Judgment, finds as follows:

18 1. The court has subject matter jurisdiction over the claims asserted against Bayuk,  
19 as trustee of the Bayuk Trust.

20 2. The Bayuk Trust was established in 1998, and through amendment on  
21 November 12, 2005 became a Nevada irrevocable self-settled spendthrift trust. As set forth in  
22 the Judgment, the Bayuk Trust received fraudulently transferred property which was established  
23 by clear and convincing evidence.

24 3. On March 3, 2011 the Plaintiff deposed Paul Morabito. In that deposition, Mr.  
25 Morabito disclosed the existence of the Edward Bayuk Living Trust and the fact that real  
26 property had been transferred to it. In response to discovery requests propounded after the  
27 instant lawsuit was commenced on December 17, 2013, Bayuk and the Bayuk Trust produced  
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1 evidence regarding the date and the purpose of the Bayuk Trust as well as revocable spending  
2 trusts. With the Claim of Exemption, the Bayuk Trust confirmed that that there is, and has been,  
3 only one self-settled spendthrift trust with the name "the Edward William Bayuk Living Trust"  
4 and that is the Bayuk Trust.

5 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada  
6 spendthrift trust under NRS 166.015 because Bayuk is the settlor, and neither Bayuk as Trustee  
7 nor Paul Morabito, who was a co-trustee in 2005 are presently domiciled in Nevada. NRS  
8 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved their residency  
9 to California in September 2010.

10 5. Contrary to the evidence contained within the Claim of Exemption from  
11 Execution, and without allowing Bayuk to introduce additional evidence in the form of  
12 documents and testimony at the hearing, the Court finds that there was no evidence presented  
13 that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the  
14 ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter  
15 166.

16 6. Even if the claims asserted against the Bayuk Trust were subject to the time  
17 periods under NRS 166.170, they were timely because the fraudulent transfer claim was  
18 brought (1) within two years after the transfers were made and (2) also within six months of  
19 Plaintiff's discovery of the existence of the 2005 spendthrift trust. The subject fraudulent  
20 transfers occurred in September 2010 and thereafter as evidenced by Plaintiff's exhibits of 2010  
21 public record of the transfers. The Bayuk Trust executed a tolling agreement on November 30,  
22 2011 to thereafter toll any statute of limitations applicable to the fraudulent transfer of property  
23 to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013  
24 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a  
25 spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption.  
26 Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of  
27 Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.  
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Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the Claim of Exemption is denied.

IT IS FURTHER ORDERED that the Third Party Claim is denied.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
DISTRICT JUDGE

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**

**APPEARANCES-HEARING**

**CONT'D TO**

7/22/19

**HEARING ON OBJECTION TO CLAIM FOR EXEMPTION**

HONORABLE  
CONNIE

Erika Turner, Esq., and Teresa Pilatowicz, Esq., represented Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito.

STEINHEIMER

Defendant Edward Bayuk present individually and as trustee for the Edward

DEPT. NO.4

William Bayuk Living Trust, with counsel, Jeffrey Hartman, Esq., and

M. Stone/T.

Michael Lehnert Esq., who also represented Salvatore Morabito.

Adrian

Objection to Claim for Exemption by counsel Turner; presented argument; objection and argument by counsel Lehnert.

(Clerk)

J. Schonlau

3:12 p.m. Court recessed for counsel Lehnert to consult with co-counsel and his client.

(Reporter)

3:25 p.m. Court reconvened with respective counsel and Defendant Bayuk present.

Reply argument by counsel Turner.

The Court found that there are not sufficient factors in this case to create trust protections based on fact that neither a trustee or beneficiary of the Edward William Bayuk Living Trust live in the State of Nevada, that this Court does have the necessary jurisdiction to rule in this case, and that the objection was waived by the Defendants as it was not raised during the course of the trial. Therefore, **COURT ENTERED ORDER** denying the claim for exemption.

Counsel for the Plaintiff to prepare order in accordance with the above ruling.

Motion for Stay of Proceedings Pending Appeal by counsel Lehnert; presented argument; objection and argument by counsel Turner.

Motion for Leave to Supplement Record as to the burial plot by counsel Lehnert; presented argument; objection and argument by counsel Turner.

**COURT ENTERED ORDER** denying the request to supplement the record with testimony by Edward Bayuk regarding the burial plot; and denying the Motion for Stay of Proceedings with leave to renew once written decision is entered regarding the request for exemption.

**COURT ENTERED ORDER** denying the Edward William Bayuk Living Trust's third-party claim.

Court recessed.

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

8  
9 WILLIAM A. LEONARD, Trustee for the  
10 Bankruptcy Estate of Paul Anthony  
11 Morabito,

CASE NO.: CV13-02663

DEPT. NO.: 4

12 Plaintiff,

13 vs.

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

21 Defendants.

22 **ORDER DENYING CLAIM OF EXEMPTION**

23 Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of  
24 Exemption") filed on July 2, 2019 by Defendant Salvatore Morabito ("Morabito"). The Claim of  
25 Exemption is supported by the *Declaration of Salvatore Morabito Claiming Exemption from*  
26 *Execution* (the "Morabito Declaration"), also filed on July 2, 2019. *Plaintiff's Objection to Notice*  
27 *of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing* (the  
28 "Objection") was filed on July 16, 2019, and *Morabito's Reply to Plaintiff's Objection to Notice*  
of Claim of Exemption from Execution (the "Reply") was filed on July 18, 2019.

The Court held a hearing on the Claim of Exemption on July 22, 2019. Morabito appeared  
by and through counsel, Michael Lehnert. Plaintiff appeared by and through counsel, Erika Pike  
Turner, Gerald M. Gordon and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

1 The Court has reviewed and considered the arguments made in the Claim of Exemption,  
2 the Objection, and the Reply, the papers and pleadings on file with the Court in this action, the  
3 testimony and exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law,  
4 and Judgment, entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made  
5 at the hearing. The Court is persuaded by the argument and authorities in Plaintiff's Objection and  
6 the arguments of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the  
7 trial record, and the findings and conclusions set forth in the Judgment. As such, the Court finds  
8 that Sam Morabito failed to meet his burden to show that there are assets in Nevada subject to  
9 exemption from execution.

10 Based on the foregoing, and good cause appearing:

11 IT IS HEREBY ORDERED that the Claim of Exemption filed by Salvatore Morabito is  
12 denied.

13 Dated this 2 day of August, 2019.

14 Connie J. Steinheimer  
15 DISTRICT JUDGE  
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1 JEFFREY L. HARTMAN  
2 Hartman & Hartman  
3 510 W. Plumb Ln.,  
4 Suite B  
5 Reno, Nevada 89509  
6 Tel: (775) 324-2800  
7 Fax: (775) 324-1818

8 MICHAEL LEHNERS, ESQ.  
9 429 Marsh Ave.  
10 Reno, Nevada 89509  
11 Nevada Bar Number 003331  
12 (775) 786-1695

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

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

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

**CASE NO.: CV13-02663**

**DEPT. NO.: 4**

16 Plaintiffs,

17 vs.

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

24 Defendants. /

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**CASE APPEAL STATEMENT**

1. Name of appellants filing this case appeal statement:

A. Edward Bayuk individually and as the Trustee of the Edward William  
Bayuk Living Trust.

2. Identify the judge issuing the decision, judgment, or order appealed from:

A. Hon. Connie J. Steinheimer.



1 3. Identify each appellant and the name and address of counsel for each appellant:

2 A. Edward Bayuk individually: Jeffrey L. Hartman, Esq., 510 W. Plumb  
3 Ln., Suite B Reno, Nevada 89509, Tel: (775) 324-2800. Michael Lehnars,  
4 Esq. 429 Marsh Ave., Reno, Nevada 89509, Tel (775) 786-1695;

5 B. Edward Bayuk in his capacity as the Trustee of the Edward William Bayuk  
6 Living Trust: Jeffrey L. Hartman, Esq., 510 W. Plumb Ln., Suite B Reno,  
7 Nevada 89509, Tel: (775) 324-2800. Michael Lehnars, Esq. 429 Marsh  
8 Ave., Reno, Nevada 89509, Tel (775) 786-1695;

9 C. Salvatore Morabito, Frank C. Gilmore, Esq., Robison, Sharp, Sullivan &  
10 Brust, 71 Washington Street, Reno, Nevada 89503; Tel (775) 329-3151;

11 D. Snowshoe Petroleum, Inc., Frank C. Gilmore, Esq., Robison, Sharp,  
12 Sullivan & Brust, 71 Washington Street, Reno, Nevada 89503; Tel (775)  
13 329-3151;

14 E. Superpumper, Inc., Frank C. Gilmore, Esq., Robison, Sharp, Sullivan &  
15 Brust, 71 Washington Street, Reno, Nevada 89503; Tel (775) 329-3151;

16 4. Identify each respondent and the name and address of appellate counsel, if known,  
17 for each respondent:

18 A. William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony  
19 Morabito, Garman Turner Gordon, LLP., Gerald M. Gordon, Esq., Erika  
20 Pike Turner, Esq., Teresa M. Pilatowicz, Esq., Gabrielle A. Hamm, Esq.,  
21 650 White Drive, Suite 100, Las Vegas, Nevada 89119.

22 5. Indicate whether any attorney identified above in response to question 3 or 4 is not  
23 licensed to practice law in Nevada and, if so, whether the district court granted that attorney  
24 permission to appear under SCR 42.

25 A. All counsel are licensed to practice law in the State of Nevada.

26 6. Indicate whether appellant was represented by appointed or retained counsel in the  
27 district court:  
28

1 A. The appellant was represented by retained counsel in the district court.

2 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

3 A. The appellant is represented by retained counsel on appeal.

4 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the  
5 date of entry of the district court order granting such leave:

6 A. The appellant did not seek leave to proceed in forma pauperis.

7 9. Indicate the date the proceedings commenced in the district court:

8 A. The complaint was filed on December 17, 2013.

9 10. Provide a brief description of the nature of the action and result in the district court,  
10 including the type of judgment or order being appealed and the relief granted by the district  
11 court:

12 A. This was an action to recover alleged fraudulent conveyances. The action was  
13 commenced by JH, Inc.; Jerry Herbst and Berry-Hinckley Industries, Inc. on December 17,  
14 2013. On June 20, 2013, JH, Inc.; Jerry Herbst and Berry-Hinckley Industries, Inc. filed a  
15 petition for an involuntary bankruptcy against Paul Morabito in the United States Bankruptcy  
16 Court for the District of Nevada, Case No. BK-N 13-51237.

17 B. On December 22, 2014 the Bankruptcy Court entered an order for relief under  
18 Chapter Seven, ECF 168). The Order for relief signifies that the requirements of 11 U.S.C.  
19 §303 have been met and that the bankruptcy may proceed under Chapter Seven.

20 C. William A. Leonard was appointed as the Chapter Seven Trustee in the  
21 involuntary bankruptcy.

22 D. On June 16, 2015 the District Court entered an order substituting William A.  
23 Leonard as the Plaintiff in the place of JH, Inc.; Jerry Herbst and Berry-Hinckley Industries,  
24 Inc. pursuant to NRCF 17(a).

25 E. On March 29, 2019 the District Court entered judgment against each of the  
26 Defendants as follows:

27 I. Against Ed Bayuk and the Bayuk Trust, as follows: 1. Avoiding the  
28 transfer of the El Camino Property and the Los Olivos Property, and

1 awarding Plaintiff damages in the amount of \$884,999.95, with offset for  
2 amounts collected on account of the El Camino Property and the Los  
3 Olivos Property; 2. Avoiding the transfer of Baruk LLC and awarding  
4 Plaintiff damages in the amount of \$1,654,550 with offset for amounts  
5 collected on account of Baruk LLC; Avoiding the transfer of \$420,250 and  
6 awarding Plaintiff damages in the amount of \$420,250 with offset for  
7 amounts collected on account of the \$420,250; and Avoiding the  
8 Superpumper Transfer and awarding Plaintiff damages in the amount of  
9 \$4,949,000 with offset for amounts collected on account of the  
10 Superpumper Transfer.

11 II. Against Sam Morabito as follows: 1. Avoiding the transfer of \$355,000  
12 and awarding Plaintiff damages in the amount of \$355,000 with offset for  
13 amounts collected on account of the \$355,000; and 2. Avoiding  
14 the Superpumper Transfer and awarding Plaintiff damages in the amount of  
15 \$4,949,000 with offset for amounts collected on account of the  
16 Superpumper Transfer.

17 III. Against Snowshoe, avoiding the Superpumper Transfer and awarding  
18 Plaintiff damages in the amount of \$9,898,000 with offset for amounts  
19 collected on account of the Superpumper Transfer.

20 11. Indicate whether the case has previously been the subject of an appeal to or original  
21 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number  
22 of the prior proceeding:

23 A. There have been no prior appeals in this matter.

24 12. Indicate whether this appeal involves child custody or visitation:

25 A. This appeal does not involve child custody or visitation.

26 13. If this is a civil case, indicate whether this appeal involves the possibility of  
27 settlement:

28 A. The Appellant is willing to attend mediation and attempt to resolve the  
issues with Mr. Leonard.

**Affirmation**

**Pursuant to NRS 239B.030**

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

Dated: This 5 day of August, 2019

By: 

Michael Lehnert, Esq.

429 Marsh Ave.

Reno, Nevada 89509

Nevada Bar Number 003331

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**CERTIFICATE OF SERVICE**

Pursuant to NRCF 5(b), I certify that I am an employee of Michael C. Lehnars, Esq.,  
and that on this date I caused to be served a true copy of the CASE APPEAL STATEMENT  
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:

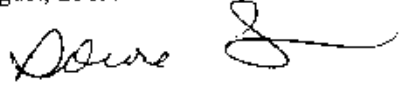
\_\_\_\_\_ by using the Court's CM/ECF Electronic Notification System addressed to:

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

Frank C. Gilmore, Esq.  
Email: fgilmore@rbsllaw.com

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

DATED: This 5 day of August, 2019.

  
\_\_\_\_\_  
EMPLOYEE

1 **CODE: \$2515**  
2 **JEFFREY L. HARTMAN**  
3 Hartman & Hartman  
4 510 W. Plumb Ln.,  
5 Suite B  
6 Reno, Nevada 89509  
7 Tel: (775) 324-2800  
8 Fax: (775) 324-1818

9 **MICHAEL LEHNERS, ESQ.**  
10 429 Marsh Ave.  
11 Reno, Nevada 89509  
12 Nevada Bar Number 003331  
13 (775) 786-1695

14 Attorneys for Edward Bayuk individually  
15 and as the Trustee of the Edward William  
16 Bayuk Living Trust

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

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

**CASE NO.: CV13-02663**

**DEPT. NO.: 4**

23 Plaintiffs,

24 vs.

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

Defendants. /

**NOTICE OF APPEAL**

Notice is hereby given that Defendants Edward Bayuk individually and as the Trustee of the Edward William Bayuk Living Trust, by and through their attorneys of record, hereby appeal to the Supreme Court of the State of Nevada the following:

1. Order denying Defendants motion to Dismiss entered on July 17, 2014;

1           2.       Order Regarding Discovery Commissioner's Recommendation for Order Dated  
2 August 17, 2017 entered on December 17, 2017;

3           3.       Oral Order made on October 29, 2018 on first day of trial, denying Defendants'  
4 Motion in Limine; Minutes filed with the Court on November 11, 2018;

5           4.       Oral Order made on October 29, 2018 on first day of trial, holding Plaintiff's  
6 Motion in Limine in abeyance; Minutes filed with the Court on November 11, 2018;

7           5.       Findings of Fact, Conclusions of Law, and Judgment entered by this Court on  
8 March 29, 2019;

9           6.       Order Denying Defendants' Motions for New Trial and/or Alter or Amend  
10 Judgment entered by this Court on July 10, 2019;

11           7.       Order Granting in Part and Denying in Part Motion to Retax Costs entered by  
12 this Court on July 10, 2019; and

13           8.       Order Granting Plaintiff's Application for an Award of Attorney's Fees and  
14 Costs Pursuant to NRCF 68 entered by this Court on July 20, 2019.

15                               **Affirmation**

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

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

19                               Dated: This 5 day of August, 2019

20  
21                               By: 

22                               Michael Lehnert, Esq.

23                               429 Marsh Ave.

24                               Reno, Nevada 89509

25                               Nevada Bar Number 003331

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Michael C. Lehnern, Esq., and that on this date I caused to be served a true copy of the **NOTICE OF APPEAL** 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)

Frank C. Gilmore, Esq.  
Email: [fgilmore@rbsllaw.com](mailto:fgilmore@rbsllaw.com)

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

DATED: This 5 day of August, 2019.

  
\_\_\_\_\_  
EMPLOYEE

MARQUIS AURBACH COFFING  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1310  
**Marquis Aurbach Coffing**  
Micah S. Echols, Esq.  
Nevada Bar No. 8437  
Kathleen A. Wilde, Esq.  
Nevada Bar No. 12522  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
mechols@maclaw.com  
kwilde@maclaw.com  
*Attorneys for Defendants*

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

**IN AND FOR THE COUNTY OF WASHOE**

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

Plaintiff,

vs.

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,

Defendants.

Case No.: CV13-02663  
Dept. No.: 4

**CASE APPEAL STATEMENT**

Defendants, Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the  
Edward Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc., by and through  
their attorneys of record, Marquis Aurbach Coffing, hereby file this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

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



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2. Identify the Judge issuing the decision, judgment, or order appealed from:

Honorable Connie J. Steinheimer, District Court Judge

3. Identify each appellant and the name and address of counsel for each appellant:

**Superpumper, Inc. and Snowshoe Petroleum, Inc.**

Frank Gilmore, Esq.  
Robison, Sharp, Sullivan & Brust  
71 Washington Street  
Reno, Nevada 89503

Micah S. Echols, Esq.  
Kathleen A. Wilde, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, Nevada 89145

**Salvatore Morabito**

Frank Gilmore, Esq.  
Robison, Sharp, Sullivan & Brust  
71 Washington Street  
Reno, Nevada 89503

Micah S. Echols, Esq.  
Kathleen A. Wilde, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, Nevada 89145

**Edward Bayuk, individually and as Trustee of the Edward Bayuk Living Trust**

Jeffrey Hartman, Esq.  
Hartman & Hartman  
510 W. Plumb Lane, Ste. B  
Reno, Nevada 89509

Micah S. Echols, Esq.  
Kathleen A. Wilde, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, Nevada 89145

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as much and provide the name and address of that respondent's trial counsel):

**William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito**

Gerald M. Gordon, Esq.  
Erica Pike Turner, Esq.  
Teresa M. Pilatowicz, Esq.  
Gabrielle A. Hamm, Esq.  
Mark M. Weisenmiller, Esq.  
Garman Turner Gordon LLP  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicated whether appellant was represented by appointed or retained counsel in the district court:

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

The complaint was filed on December 17, 2013.

1           10.     Provide a brief description of the nature of the action and result in the district  
2 court, including the type of judgment or order being appealed and the relief granted by the  
3 district court:

4           This is an action to recover alleged fraudulent conveyances. The action was commenced  
5 by JH, Inc.; Jerry Herbst; and Berry-Hinckley Industries, Inc. on December 17, 2013. On  
6 June 20, 2013, JH, Inc.; Jerry Herbst; and Berry-Hinckley Industries, Inc. filed a petition for an  
7 involuntary bankruptcy against Paul Morabito in the United States Bankruptcy Court for the  
8 District of Nevada, Case No. BK-N 13-51237. On December 22, 2014, the Bankruptcy Court  
9 entered an order for relief under Chapter 7. The order for relief signifies that the requirements of  
10 11 U.S.C. § 303 have been met and that the bankruptcy may proceed under Chapter 7. William  
11 A. Leonard was appointed as the Chapter 7 Trustee in the involuntary bankruptcy. On June 16,  
12 2015, the District Court entered an order substituting William A. Leonard as the Plaintiff in the  
13 place of JH, Inc.; Jerry Herbst; and Berry-Hinckley Industries, Inc. pursuant to NRCP 17(a).

14           On March 29, 2019 the District Court entered judgment against each of the Defendants as  
15 follows:

16           Against Ed Bayuk and the Bayuk Trust, as follows: 1. Avoiding the transfer of the El  
17 Camino Property and the Los Olivos Property, and awarding Plaintiff damages in the amount of  
18 \$884,999.95, with offset for amounts collected on account of the El Camino Property and the  
19 Los Olivos Property; 2. Avoiding the transfer of Baruk LLC and awarding Plaintiff damages in  
20 the amount of \$1,654,550 with offset for amounts collected on account of Baruk LLC;  
21 3. Avoiding the transfer of \$420,250 and awarding Plaintiff damages in the amount of \$420,250  
22 with offset for amounts collected on account of the \$420,250; and 4. Avoiding the Superpumper  
23 Transfer and awarding Plaintiff damages in the amount of \$4,949,000 with offset for amounts  
24 collected on account of the Superpumper Transfer.

25           Against Sam Morabito as follows: 1. Avoiding the transfer of \$355,000 and awarding  
26 Plaintiff damages in the amount of \$355,000 with offset for amounts collected on account on  
27 account of the \$355,000; and 2. Avoiding the Superpumper Transfer and awarding Plaintiff  
28

1 damages in the amount of \$4,949,000 with offset for amounts collected on account of the  
2 Superpumper Transfer.

3 Against Snowshoe, avoiding the Superpumper Transfer and awarding Plaintiff damages  
4 in the amount of \$9,898,000 with offset for amounts collected on account of the Superpumper  
5 Transfer. In post-trial proceedings, the District Court denied a motion for new trial, and awarded  
6 Plaintiff attorney fees and costs.

7 11. Indicate whether the case has previously been the subject of an appeal to or  
8 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket  
9 number of the prior proceeding:

10 This case has not been the subject of appeal or writ proceeding before the Nevada  
11 Supreme Court.

12 12. Indicate whether this appeal involves child custody or visitation:

13 N/A

14 13. If this is a civil case, indicate whether this appeal involves the possibility of  
15 settlement:

16 Defendants/Appellants believe that settlement is a possibility in this case.

17 **AFFIRMATION PURSUANT TO NRS 239B.030**

18 The undersigned affirms that the pleading or document now being present to the Court in  
19 the above-entitled action does **not** contain any Personal Information (as defined in  
20 NRS 603A.040).

21 Dated this 5th day of August, 2019.

22 MARQUIS AURBACH COFFING

23  
24 By /s/ Micah S. Echols  
25 Micah S. Echols, Esq.  
26 Nevada Bar No. 8437  
27 Kathleen A. Wilde, Esq.  
28 Nevada Bar No. 12522  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Second Judicial District Court on the 5th day of August, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

ERIKA TURNER, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ.  
for SALVATORE R. MORABITO, SNOWSHOE PETROLEUM, INC.,  
and SUPERPUMPER, INC.

MARK WEISENMILLER, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

JEFFREY HARTMAN, ESQ.  
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK

TERESA PILATOWICZ, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

MICHAEL LEHNERS, ESQ.  
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK and  
SALVATORE R. MORABITO

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

GERALD M. GORDON, ESQ.  
Garman Turner Gordon LLP  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
SPECIAL COUNSEL TO TRUSTEE

/s/ Leah Dell  
Leah Dell, an employee of  
Marquis Aurbach Coffing

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1 **\$2515**  
2 **Marquis Aurbach Coffing**  
3 Micah S. Echols, Esq.  
Nevada Bar No. 8437  
4 Kathleen A. Wilde, Esq.  
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10001 Park Run Drive  
Las Vegas, Nevada 89145  
5 Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
6 mechols@maclaw.com  
kwilde@maclaw.com  
7 *Attorneys for Defendants*

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

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

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

11  
12 Plaintiff,

13 vs.  
14

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

19 Defendants.  
20

Case No.: CV13-02663  
Dept. No.: 4

21 **NOTICE OF APPEAL**

22 Defendants, Superpumper, Inc.; Edward Bayuk, individually and as Trustee of the  
23 Edward Bayuk Living Trust; Salvatore Morabito; and Snowshoe Petroleum, Inc., by and through  
24 their attorneys of record, Marquis Aurbach Coffing, hereby appeal to the Supreme Court of  
25 Nevada from: (1) the Findings of Fact, Conclusions of Law, and Judgment, which was filed on  
26 March 29, 2019 and is attached as **Exhibit 1**; (2) the Order Denying Defendants' Motions for  
27 New Trial and/or to Alter or Amend Judgment, which was filed on July 10, 2019 and is attached  
28 as **Exhibit 2**; (3) the Order Granting in Part and Denying in Part Motion to Retax Costs, which

1 was filed on July 10, 2019 and is attached as **Exhibit 3**; and (4) the Order Granting Plaintiff's  
2 Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68, which was filed  
3 on July 10, 2019 and is attached as **Exhibit 4**.

4 **AFFIRMATION PURSUANT TO NRS 239B.030**

5 The undersigned affirms that the pleading or document now being present to the Court in  
6 the above-entitled action does **not** contain any Personal Information (as defined in  
7 NRS 603A.040).

8 Dated this 5th day of August, 2019.

9  
10 MARQUIS AURBACH COFFING

11 By /s/ Micah S. Echols  
12 Micah S. Echols, Esq.  
13 Nevada Bar No. 8437  
14 Kathleen A. Wilde, Esq.  
15 Nevada Bar No. 12522  
16 10001 Park Run Drive  
17 Las Vegas, Nevada 89145  
18 *Attorneys for Defendants Defendants*  
19  
20  
21  
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23  
24  
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28

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Second Judicial District Court on the 5th day of August, 2019. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

ERIKA TURNER, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ.  
for SALVATORE R. MORABITO, SNOWSHOE PETROLEUM, INC.,  
and SUPERPUMPER, INC.

MARK WEISENMILLER, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

JEFFREY HARTMAN, ESQ.  
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK

TERESA PILATOWICZ, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ.  
for WILLIAM A. LEONARD, JR, TRUSTEE OF ESTATE OF PAUL A. MORABITO

MICHAEL LEHNERS, ESQ.  
for EDWARD WILLIAM BAYUK LIVING TRUST, and EDWARD BAYUK and  
SALVATORE R. MORABITO

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

GERALD M. GORDON, ESQ.  
Garman Turner Gordon LLP  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
SPECIAL COUNSEL TO TRUSTEE

/s/ Leah Dell  
Leah Dell, an employee of  
Marquis Aurbach Coffing



**MARQUIS AURBACH COFFING**

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**INDEX OF EXHIBITS**

<b>Exhibit No.</b>	<b>Document Description</b>	<b>No. of Pages</b>
1	Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/19)	65
2	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/19)	3
3	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/19)	4
4	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/19)	4

# Exhibit 1

1750

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,

CASE NO.: CV13-02663

DEPT. NO. 4

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.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

Trial on this matter commenced on October 29, 2018. Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito ("Plaintiff"), appeared by and through counsel, Erika Pike Turner, Teresa Pilatowicz, and Gabrielle Hamm of the law firm of Garman Turner Gordon LLP. Defendants, Superpumper, Inc., an Arizona corporation ("Superpumper"); Edward Bayuk ("Bayuk"), individually and as Trustee of the Edward William Bayuk Living Trust (the "Bayuk Trust"); Salvatore Morabito, an individual ("Sam Morabito"); and Snowshoe Petroleum, Inc., a New York corporation ("Snowshoe," and together with Superpumper, Bayuk, the Bayuk Trust, and Sam Morabito, the "Defendants," and together with Plaintiff, the "Parties"), appeared by and through counsel, Frank Gilmore of the law firm of Robison, Sharp, Sullivan & Brust ("Robison"). On February 7, 2019, after notice and arguments heard by the parties, the Court

1 granted Plaintiff's motion to reopened evidence under NRCP 59(a) and admitted additional trial  
2 exhibits 305, 306, 307, 308, and 309 on February 8, 2019, to which Defendants waived rebuttal.  
3 After hearing the evidence and arguments of the parties, based thereon, the Court hereby finds,  
4 concludes, and enters the following Findings of Fact, Conclusions of Law, and Judgment.

5 Insofar as any conclusion of law is deemed to have been or include a finding of fact, such  
6 a finding of fact is hereby included as a factual finding. Insofar as any finding of fact is deemed  
7 to have been or to include a conclusion of law such is included as a conclusion of law herein.

8 **I.**  
**FINDINGS OF FACT**

9  
10 **A. The Judgment Against Paul Morabito.**

11 1. On December 3, 2007, Paul Morabito and Consolidated Nevada Corporation  
12 ("CNC") filed a lawsuit against JH, Inc., Jerry Herbst, and Berry-Hinckley Industries (together,  
13 the "Herbst Parties") captioned *Consolidated Nevada Corp., et al. v. JH, et al.* in the Second  
14 Judicial District Court (the "State Court"), Case No. CV07-02764, Department 6 (presiding, the  
15 Hon. Brent Adams) (the "Herbst Litigation").<sup>1</sup> The Herbst Parties filed counterclaims against Paul  
16 Morabito and CNC as well as a claim against Bayuk and Sam Morabito.<sup>2</sup>

17 2. On September 13, 2010, the State Court entered its oral ruling on the liability and  
18 damages portion of the trial, finding the Herbst Parties were fraudulently induced by Paul  
19 Morabito, justifying an award of \$85,871,364.75 in actual damages in favor of the Herbst Parties  
20 against Paul Morabito and CNC, and dismissing Bayuk and Sam Morabito from liability (the  
21 "Oral Ruling").<sup>3</sup> Bayuk and Sam Morabito were present at the Oral Ruling.<sup>4</sup>

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24  
25 <sup>1</sup> Stipulated Facts ("SF"), ¶ 1.

26 <sup>2</sup> *Id.*; Trial Transcript ("Trans").

27 <sup>3</sup> SF, ¶ 2; Trial Exhibit ("Exh.") 1, p. 22, l. 22 – p. 23, l. 24.

28 <sup>4</sup> SF, ¶ 2.

1           3.     On October 12, 2010, the State Court entered its written findings of fact,  
2 conclusions of law and judgment reflecting the Oral Ruling (the "FF&CL").<sup>5</sup> On August 23, 2011,  
3 following the punitive damages phase of the trial, the State Court entered final judgment, awarding  
4 the Herbst Parties total damages against Paul Morabito and CNC in the amount of  
5 \$149,444,777.80, including both compensatory and punitive damages for Paul Morabito's fraud  
6 (the "Final Judgment").<sup>6</sup> After entry of the Final Judgment, Paul Morabito and CNC filed  
7 numerous appeals with the Nevada Supreme Court (together with cross-appeals, the "Appeals").<sup>7</sup>

8           4.     The Herbst Parties, Paul Morabito, and CNC agreed to settle the Herbst Litigation  
9 and the Appeals and, on November 30, 2011, executed a Settlement Agreement and Mutual  
10 Release (the "Settlement Agreement").<sup>8</sup> Pursuant to the terms of the Settlement Agreement, the  
11 Appeals were withdrawn and vacated, as were the FF&CL and Final Judgment, and Paul Morabito  
12 executed a Confession of Judgment for a compromised \$85 million based upon the same findings  
13 of facts and conclusions of law, inclusive of those grounded in fraud, as set forth in the FF&CL.<sup>9</sup>

14           5.     Paul Morabito and CNC defaulted under the terms of the Settlement Agreement.<sup>10</sup>  
15 By the time of the Settlement Agreement, the Herbst Parties had already experienced difficulty in  
16 collecting on the Final Judgment, as assets had been moved out of Paul Morabito's name.<sup>11</sup>  
17 Wanting to try to resolve the matter as opposed to engage in more collection actions, the Herbst  
18 Parties agreed to give Paul Morabito more time, and the Herbst Parties, Paul Morabito and CNC  
19 entered into a Forbearance Agreement dated March 1, 2013.<sup>12</sup> However, Paul Morabito and CNC  
20  
21

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22     <sup>5</sup> SF, □ 3; Exh. 2.

23     <sup>6</sup> SF, □ 4; Exh. 6.

24     <sup>7</sup> SF, □ 5.

25     <sup>8</sup> SF □ 6; Exh. 5.

26     <sup>9</sup> SF □□ 6-7; Exh. 4, p. 10, § 2(k), and pp. 13-15, and Exh. 5.

27     <sup>10</sup> SF, □ 8.

28     <sup>11</sup> Exh. 5, p. 2, Sect. I-J; Trans. 10/29/18, p. 65, ll. 16-24.

<sup>12</sup> SF, □ 9; Exh. 6; Trans. 10/29/18, p. 12, ll. 12-17.

1 also defaulted under the terms of the Forbearance Agreement, making none of the due payment  
2 obligations.<sup>13</sup>

3 6. On June 18, 2013, the Herbst Parties filed the Confession of Judgment and the  
4 Stipulation of Nondischargeability (the “Confessed Judgment”) and the Confessed Judgment was  
5 thereafter entered on the judgment roll of the Clerk of the State Court.<sup>14</sup>

6 **B. The Bankruptcy.**

7 7. On June 20, 2013, following Paul Morabito’s defaults of the Settlement Agreement  
8 and Forbearance Agreement,<sup>15</sup> the Herbst Parties commenced an involuntary bankruptcy against  
9 Paul Morabito and CNC in the U.S. Bankruptcy Court for the District of Nevada (the “Bankruptcy  
10 Court”).<sup>16</sup>

11 8. On December 17, 2014, the Bankruptcy Court entered an order adjudicating Paul  
12 Morabito a chapter 7 debtor.<sup>17</sup>

13 9. Multiple parties have filed claims in the Bankruptcy Court,<sup>18</sup> inclusive of the Herbst  
14 Parties’ \$77 million claim based on the unsatisfied Confessed Judgment.<sup>19</sup> There is currently no  
15 bar date for Paul Morabito’s creditors to file their claims with the Bankruptcy Court.<sup>20</sup>

16 10. On April 30, 2018, the Bankruptcy Court entered judgment in favor of the Herbst  
17 Parties, determining that their claim evidenced by the Settlement Agreement and Confessed  
18 Judgment was nondischargeable under 11 U.S.C. § 523(a)(2), as the factual basis for the Confessed  
19 Judgment met each of the elements of fraudulent inducement under Nevada law and  
20

21  
22 <sup>13</sup> SF, ¶ 10; Exh. 6, p. WL003105; Trans. 10/29/18, p. 69, ll. 2-9.

23 <sup>14</sup> SF, ¶ 11; Exh. 4.

24 <sup>15</sup> Trans. 10/29/18, p. 73, ll. 3-4.

25 <sup>16</sup> SF, ¶ 12.

26 <sup>17</sup> SF, ¶¶ 13-14.

27 <sup>18</sup> Exh. 303 (identifying five claims, including a \$4,232,980.52 claim from the Franchise Tax Board).

28 <sup>19</sup> See Exh. 303; Trans. 10/29/18, p. 74, ll. 7-13, and p. 78, l. 19 – p. 79, l. 9.

<sup>20</sup> Trans. 11/2/18, p. 114, ll. 15-18.

1 nondischargeability under bankruptcy law.<sup>21</sup> Paul Morabito appealed the nondischargeability  
2 judgment, which appeal is pending.<sup>22</sup>

3 **C. The Parties.**

4 11. The Herbst Parties have spent nearly \$10 million in fees and costs in their attempt  
5 to collect from Paul Morabito.<sup>23</sup> Still, approximately \$80 million of the Confessed Judgment  
6 remains unsatisfied.<sup>24</sup>

7 12. As part of their collection effort, on December 17, 2013, the Herbst Parties  
8 commenced this action under NRS Chapter 112 (the “UFTA”) for fraudulent transfer against  
9 transferor Paul Morabito, individually and as Trustee of his Arcadia Living Trust (“Arcadia  
10 Trust”), as well as transferees Superpumper, Bayuk, individually and as trustee of his Bayuk Trust,  
11 Sam Morabito, and Snowshoe.<sup>25</sup>

12 13. Sam Morabito is Paul Morabito’s brother.<sup>26</sup> Sam Morabito resides in Canada, and  
13 is a former resident of Reno.<sup>27</sup>

14 14. Superpumper is an Arizona corporation that owns and operates gas stations and  
15 convenience stores in Arizona.<sup>28</sup> Consolidated Western Corporation, Inc., a Nevada corporation  
16 (“CWC”) was the sole shareholder of Superpumper through September 28, 2010 when Sam  
17 Morabito executed a Plan of Merger and Articles of Merger upon Bayuk’s consent on behalf of  
18 CWC, and filed Articles of Merger of CWC into Superpumper with the States of Arizona and  
19  
20  
21

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22 <sup>21</sup> SF, ¶ 14; Exhs. 22 and 23, p. 11, ll. 14-18.

23 <sup>22</sup> *Id.*

24 <sup>23</sup> Trans. 10/29/18, p. 78, ll. 16-17; p. 78, l. 22 – p. 79, l. 1; p. 102, ll. 11-23; p. 103, ll. 2-3.

25 <sup>24</sup> Trans. 10/29/18, p. 79, ll. 2-9.

26 <sup>25</sup> SF, ¶ 15.

27 <sup>26</sup> SF, ¶ 18.

28 <sup>27</sup> Trans. 10/31/18, p. 142, l. 5; 145, ll. 305; p. 164, ll. 16-19.

<sup>28</sup> SF, ¶ 36.

1 Nevada on September 29, 2010, thereby effectuating CWC's merger into Superpumper (the  
2 "Merger").<sup>29</sup>

3 15. Prior to the Merger, CWC's ownership was Paul Morabito -80%, Sam Morabito -  
4 10% and Bayuk -10%,<sup>30</sup> and Paul Morabito, Bayuk and Sam Morabito each had a role as director  
5 and officer of Superpumper and CWC.<sup>31</sup> After the Merger of CWC into Superpumper, both Bayuk  
6 and Sam Morabito were directors and officers of Superpumper.<sup>32</sup>

7 16. On September 29, 2010, Dennis Vacco, ("Vacco"), joint counsel to Paul Morabito  
8 and the Defendants,<sup>33</sup> formed Snowshoe, a New York corporation,<sup>34</sup> for the purpose of acquiring  
9 Paul Morabito's interest in CWC.<sup>35</sup> Upon formation, Bayuk and Sam Morabito each owned 50%  
10 of the equity in Snowshoe and were designated as directors.<sup>36</sup> Snowshoe never had any other  
11 business operations or investments other than as a holding company for Superpumper's equity.<sup>37</sup>

12 17. From 1997 through at least the Oral Ruling date, Bayuk could be characterized as  
13 Paul Morabito's long-time boyfriend or companion.<sup>38</sup> The Bayuk Trust is Bayuk's self-settled  
14 trust formed and existing for estate-planning purposes.<sup>39</sup> While Bayuk and Paul Morabito were  
15 not registered as "domestic partners," Bayuk intimated that was only the case because they could  
16 not be married under Nevada or California law at that time.<sup>40</sup> Although Bayuk indicated that he  
17  
18

---

19 <sup>29</sup> SF, ¶ 17; Exhs. 81-86.

20 <sup>30</sup> SF, ¶ 36.

21 <sup>31</sup> Trans. 10/29/18, p. 123, ll. 20-22; p. 125, l. 19 – p. 126, l. 6.

22 <sup>32</sup> SF, ¶¶ 16-19, 37.

23 <sup>33</sup> Trans. 10/31/18, p. 90, l. 19 – p. 91, l. 18.

24 <sup>34</sup> SF, ¶ 40; Exh. 87.

25 <sup>35</sup> Trans. 10/29/18, p. 148, ll. 21-24, p. 149, ll. 1-7; Trans. 11/6/18, p. 159, ll. 1-3.

26 <sup>36</sup> SF, ¶¶ 20, 40; Exh. 87, p. 1.

27 <sup>37</sup> Trans. 10/29/18, p. 185, l. 14 – p. 186, l. 1.

28 <sup>38</sup> SF, ¶ 19; Trans. 10/29/18, p. 110, ll. 5-9.

<sup>39</sup> Trans. 10/29/18, p. 143, ll. 13-18.

<sup>40</sup> Trans. 10/29/18, p. 120, ll. 18-24.



1 and Paul Morabito separated in 2010,<sup>41</sup> substantial evidence supports that there was a special close  
2 personal relationship between Bayuk and Paul Morabito at the time of the Oral Ruling and  
3 continuing thereafter even through the time of trial.

4 a. Vacco testified that as far as he knew, Bayuk and Paul Morabito had an  
5 ongoing relationship even after the subject transfers.<sup>42</sup>

6 b. On September 18, 2010, Paul Morabito emailed Vacco regarding judgment  
7 enforcement statutes and stated, "I should declare my residence with [Bayuk] in Laguna Beach  
8 asap..."<sup>43</sup> Consistent therewith, Paul Morabito and Bayuk moved from Reno to California.<sup>44</sup>

9 c. On September 23, 2010, Bayuk was added as a co-tenant on a West  
10 Hollywood, California residence leased in the name of Paul Morabito, rendering Bayuk and Paul  
11 Morabito jointly and severally liable for the lease obligations.<sup>45</sup>

12 d. On September 30, 2010, Paul Morabito executed an amendment and  
13 restatement of the Trust Agreement for his self-settled Arcadia Trust, which described Bayuk as  
14 Paul Morabito's "boyfriend and longtime companion," which Bayuk testified was true as of that  
15 date.<sup>46</sup> Bayuk was named the 70% beneficiary of the Arcadia Trust.<sup>47</sup>

16 e. On April 13, 2012, Paul Morabito represented that "[Bayuk] is my former  
17 long-time companion but we have a very strong personal relationship and he is my family and will  
18 be the central person in my life for the rest of my life."<sup>48</sup>

19 f. Paul Morabito currently resides in a home located at 370 Los Olivos,  
20 Laguna Beach, California (the "Los Olivos Property") along with his new boyfriend. The Los  
21

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22 <sup>41</sup> Trans. 10/29/18, p. 109, ll. 15-17.

23 <sup>42</sup> Trans. 11/6/18, p. 212, l. 23 – p. 213, l. 15.

24 <sup>43</sup> Exh. 26; *see also* Exh. 29 (same, September 20, 2010); Exh. 32 (same, September 23, 2010).

25 <sup>44</sup> Trans. 10/29/18, p. 106, ll. 14-21.

26 <sup>45</sup> Exh. 35, p. 1, Sect. 1.

27 <sup>46</sup> Trans. 10/29/18, p. 147, ll. 14 – 23.

28 <sup>47</sup> Exh. 39, pp. RBSL001877-1878, 1903, 1906.

<sup>48</sup> Exh. 134, p. LMWF SUPP 068536.

1 Olivos Property is located adjacent to Bayuk's current residence at 371 El Camino del Mar, Laguna  
2 Beach, California (the "El Camino Property").<sup>49</sup> The Bayuk Trust owns both the Los Olivos  
3 Property and the El Camino Property as Paul Morabito transferred his interests in both the Los  
4 Olivos Property and the El Camino Property (along with all of the personal property in the Los  
5 Olivos and El Camino Properties) to the Bayuk Trust following the Oral Ruling.

6 g. Paul Morabito has been, and continues to be, financially supported by his  
7 brother, Sam Morabito, as well as by Bayuk.<sup>50</sup> Paul Morabito has possessed and used Bayuk's  
8 credit card with Bayuk paying the bills,<sup>51</sup> In addition, Bayuk pays Paul Morabito's attorneys' fees,  
9 and other amounts as directed by Paul Morabito.<sup>52</sup>

10 h. During the Herbst Litigation and through the time of trial in this case, Paul  
11 Morabito, Sam Morabito and Bayuk have had concurrent representation by the same counsel.<sup>53</sup>

12 18. In addition to their close personal relationship hallmarked by Bayuk's seemingly  
13 unwavering support of Paul Morabito,<sup>54</sup> Bayuk and Paul Morabito are also long-time business  
14 partners.<sup>55</sup> They co-owned multiple businesses before the Oral Ruling. Moreover, despite the  
15 alleged purpose of the subject transfers being to "separate" their financial interests, they co-owned  
16 a business after the Oral Ruling.<sup>56</sup>

17 19. On January 22, 2015, the Bankruptcy Court appointed Plaintiff as the trustee for  
18 the bankruptcy estates of Morabito and CNC.<sup>57</sup> On May 15, 2015, Plaintiff was substituted in  
19

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21 <sup>49</sup> Trans. 10/29/18, p. 107, l. 10 – p. 108, l. 10.

22 <sup>50</sup> See Testimony of Paul Morabito, Deposition Trans. p. 27, ll. 10-16; p. 28, ll. 1-2; p. 31, l. 7- p. 33, l. 24.

23 <sup>51</sup> *Id.* at p. 34, ll. 14-20.

24 <sup>52</sup> Trans. 10/29/18, p. 188, ll. 19-23; p. 189, l. 7-9; 10/30/18, p. 98, l. 19 – p. 99, l. 7.

25 <sup>53</sup> Trans. 10/30/18, p. 5, l. 16 – p. 6, l. 8.

26 <sup>54</sup> Trans. 10/30/18, p. 98, l. 4 – p. 99, l. 7.

27 <sup>55</sup> SF, ¶ 19.

28 <sup>56</sup> See, e.g., Testimony of Paul Morabito, Deposition Trans. p. 48, l. 16-p. 49, l. 24; Exh. 134, p. LMWF SUPP, p. 068536 (discussing Bayuk's co-ownership of Virsenet, a company formed in 2011 or 2012).

<sup>57</sup> SF, ¶ 21; Exh. 19.

1 place of the Herbst Parties in this case, and Paul Morabito and his revocable Arcadia Trust were  
2 dismissed from the action with only transferees of Paul Morabito's assets remaining in the case.<sup>58</sup>

3 **D. Immediately After the State Court's Oral Ruling, Paul Morabito Implemented a**  
4 **Plan to Delay, Hinder and Prevent Collection by the Herbst Parties.**

5 20. Within two days after the Oral Ruling, Paul Morabito had engaged at least two out-  
6 of-state law firms, Hodgson Russ LLP (attorneys-Garry Graber ("Graber") and Sujata  
7 Yalamanchili) and Lippes Mathias Wexler & Friedman ("LMWF") (attorneys-Vacco and  
8 Christian Lovelace), for advice on how to evade the Herbst Parties' judgment and to protect his  
9 assets.<sup>59</sup> In his email communications with lawyers from these firms,<sup>60</sup> Paul Morabito made clear  
10 his intent to thwart the Herbst Parties' enforcement of the judgment by cutting his (and Bayuk's)  
11 ties with Nevada and moving to California, while also converting and moving the majority of his  
12 assets that could be used to satisfy the Herbst Parties' judgment outside of Nevada.<sup>61</sup>

13 21. Graber of Hodgson Russ testified that he was engaged by Morabito to "protect his  
14 assets and/or escape liability on account of the judgment."<sup>62</sup> When asked which assets, Graber  
15 indicated "well, I think he was seeking to protect them all" and further specified that "I believe  
16 one of his principal assets which he expressed concern was his stock and his equity interest in an  
17 entity that was in the auto service business, I believe, and I believe that was this Superpumper  
18 entity."<sup>63</sup> When questioned regarding Paul Morabito's intent, Graber testified "I think he had an  
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20 <sup>58</sup> SF, ¶ 22; Exh. 20.

21 <sup>59</sup> See Exh. 25 (Hodgson Ross indicating they had a number of ideas, "including a possible marital split  
22 between Paul [Morabito] and [Bayuk] pursuant to which [Bayuk] could retain some of Paul [Morabito's]  
23 assets" and Vacco of LMWF following with discussion of Paul Morabito selling his interest in CWC to  
Bayuk and Sam Morabito).

24 <sup>60</sup> Any attorney-client privilege was waived by Plaintiff. In addition, the privilege was deemed waived by  
25 the crime/fraud exception. See this Court's order of 7/6/16 (approving a Report & Recommendations of the  
Discovery Commissioner of 6/13/16).

26 <sup>61</sup> See Exhs. 26 (discussing moving to California) and 32 ("[Bayuk] and I plan on changing our primary  
residence from Reno to Laguna Beach.").

27 <sup>62</sup> Trans. 11/1/18, p. 29, ll. 13-18 and p. 30, ll. 21-22.

28 <sup>63</sup> Trans. 11/1/18, p. 33, ll. 1-6.

1 intent to avoid paying the judgment, whether that's by winning on appeal or divesting himself of  
2 his assets."<sup>64</sup> Ultimately, after Hodgson Russ attorneys advised Paul Morabito that he could not  
3 simply transfer his assets for value, Paul Morabito terminated them, as he did not like the advice  
4 that he was being provided.<sup>65</sup>

5 22. Paul Morabito utilized LMWF to complete the subject transfers. The same firm also  
6 concurrently represented Defendants.<sup>66</sup>

7 23. There is no evidence indicating that the subject transfers were contemplated before  
8 the Oral Ruling. The subject transfers were substantially completed in a short window of  
9 September 14, 2010 (the day after the Oral Ruling) to October 1, 2010, before any written order  
10 on the Oral Ruling was entered.<sup>67</sup>

11 24. At no time prior to, or at the time of, the subject transfers did Paul Morabito or any  
12 of the Defendants advise the Herbst Parties that Paul Morabito's assets were being converted or  
13 transferred, or any of the details of the subject transfers.<sup>68</sup>

14 25. Paul Morabito's email communications to his counsel contemporaneous with the  
15 subject transfers were inconsistent with the proffered explanation for the subject transfers that his  
16 goal was solely to separate out his interests from Sam Morabito and Bayuk once they were relieved  
17 from liability in the Herbst Litigation.<sup>69</sup> For example, in an email to counsel dated September 20,  
18 2010, Paul Morabito recognized that the transfers would be challenged in court at the same time  
19 he described his intention to deprive the Herbst Parties of what he perceived to be the Herbst  
20 Parties' "home court, good old boy advantage."<sup>70</sup> In an email dated September 21, 2010, Paul  
21

22  
23 <sup>64</sup> Trans. 11/1/18, p. 46, ll. 13-15.

24 <sup>65</sup> Trans. 11/1/18, p. 35, ll. 6-14.

25 <sup>66</sup> Trans. 10/29/18, p. 140, l. 8 – p. 141, l. 9.

26 <sup>67</sup> Exhs. 45, 46, 61, 80.

27 <sup>68</sup> Trans. 10/29/18, p. 62, ll. 15-20 (on line 20, first sentence only); p. 63, ll. 4-12.

28 <sup>69</sup> Deposition Testimony of Paul Morabito, Trans. p. 69, ll. 8-16.

<sup>70</sup> Exh. 29.

1 Morabito discussed his intention to continue to be active in the business of Superpumper, save and  
2 except as only an “advisor” with ownership to be in the name of Sam Morabito and Bayuk.<sup>71</sup>

3 **1. The \$6,000,000 Cash Transfer.**

4 26. Immediately after the Oral Ruling, on September 14, 2010, Paul Morabito  
5 transferred \$6 million out of his bank account.<sup>72</sup> While this transfer is not the subject of Plaintiff’s  
6 claims here, the pattern of Paul Morabito’s conduct in the same timeframe as the subject transfers  
7 is still relevant as evidence of Paul Morabito’s intent. The story that Paul Morabito was merely  
8 separating his assets from Bayuk and Sam Morabito in September 2010 is belied by the transfer  
9 of Paul Morabito’s \$6 million from his account immediately following the Oral Ruling.

10 **2. The CWC/Superpumper Transfers.**

11 27. Prior to the Oral Ruling, Paul Morabito communicated his opinion of the value of  
12 Superpumper to the company’s auditors,<sup>73</sup> as well as third-party potential business partners.<sup>74</sup>

13 28. Subsequent to the Oral Ruling, at the same time that the subject transfers were being  
14 contemplated, significant value was intentionally stripped out of CWC by Paul Morabito in  
15 conjunction with Sam Morabito and Bayuk.

16 a. On August 13, 2010, which was just prior to the Oral Ruling but while the  
17 Herbst Litigation was pending, CWC had \$3 million in loan proceeds from a term loan obtained  
18  
19

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20 <sup>71</sup> Exh. 30.

21 <sup>72</sup> Exh. 37, p. 4, MORABITO (341).005352.

22 <sup>73</sup> Exh. 42 (May 5, 2009- \$20 million value for 100% of equity in CWC); Exh. 43 (Mach 10, 2010- “nothing  
23 has materially changed” with respect to Paul Morabito’s identified assets, including value).

24 <sup>74</sup> Exhs. 76, 77, 79. It is notable that in addition to both the State Court and the Bankruptcy Court finding  
25 that Paul Morabito had intentionally defrauded the Herbst Parties as the basis for their respective judgments  
26 against Paul Morabito, Bayuk, Paul Morabito’s closest ally, admitted that Paul Morabito is not honest in  
27 his dealings with third parties and is not trustworthy. (Trans. 10/31/18, p. 28, l. 24 – p. 31, l. 2). Sam  
28 Morabito also confirmed that Paul Morabito is not honest in his communications with third parties (Trans.  
10/31/18, p. 236, l. 6 – p. 237, l. 34). The Court is in the untenable position of being asked by Defendants  
to believe Paul Morabito (and his agent, Vacco) with regard to his intentions with respect to the subject  
transfers at the same time Defendants are asking the Court to disregard Paul Morabito’s representations that  
there was significant value of the equity in Superpumper.

1 from Compass Bank (the "Compass Loan").<sup>75</sup> On September 14, 2010, Paul Morabito, Sam  
2 Morabito and Bayuk each took a \$939,000 distribution from CWC,<sup>76</sup> which together totaled almost  
3 all of the \$3 million in loan proceeds. On September 30, 2010, Sam Morabito and Bayuk each  
4 contributed \$659,000 of their distribution monies back into Superpumper; however, Paul Morabito  
5 did not contribute any portion of his \$939,000 distribution.<sup>77</sup> Instead, Paul Morabito executed a  
6 Term Note dated September 1, 2010, documenting a loan obligation from Paul Morabito to CWC  
7 for \$939,000 (the "\$939,000 Note").<sup>78</sup>

8           b. Prior to the Oral Ruling, Raffles, an insurance captive, was certificated in  
9 CWC's name (the "Raffles Asset"). The Raffles Asset was valued on September 30, 2010 at  
10 \$2,234,175.<sup>79</sup> On September 21, 2010, Paul Morabito paid Sam Morabito \$355,000.00 and paid  
11 Bayuk \$420,250.<sup>80</sup> Sam Morabito and Bayuk testified that the purpose of these payments was for  
12 Paul Morabito to purchase Sam Morabito and Bayuk's interests in the Raffles Asset. There is no  
13 documentation whatsoever reflecting the purpose of these September 2010 payments to Sam  
14 Morabito and Bayuk. Further, it is undisputed that the title of the Raffles Asset was never  
15 transferred out of the CWC name to Paul Morabito,<sup>81</sup> and no one advised the Herbsts that any  
16 distributions of the Raffles proceeds they received would be payable to Paul Morabito,<sup>82</sup>

17           c. Then, CWC was merged into Superpumper.<sup>83</sup> The effect of the Merger was  
18 that amounts due to Superpumper from Paul Morabito and his affiliates were cancelled.<sup>84</sup>

19  
20  
21 <sup>75</sup> SF, ¶ 38.

22 <sup>76</sup> SF, ¶ 38.

23 <sup>77</sup> Trans. 10/31/18, p. 126, l. 22 – p. 127, l. 2.

24 <sup>78</sup> Exh. 110.

25 <sup>79</sup> Exh. 256; *see also* Exh. 44, WL004539 (identifying Raffles Asset value of \$2,352,017).

26 <sup>80</sup> Exh. 37, p. 4, MORABITO (341).005352.

27 <sup>81</sup> Trans. 10/31/18, p. 96, ll. 6-21.

28 <sup>82</sup> Trans. 10/31/18, p. 101, ll. 3-10.

<sup>83</sup> SF, ¶ 39.

<sup>84</sup> Exh. 144, p. 1, SPI NO PAM 00000018.



1 Inclusive, the \$939,000 Note was cancelled. Paul Morabito had taken distributions over the years  
2 from Superpumper and those distributions were booked as loan receivables on the audited books  
3 of Superpumper.<sup>85</sup>

4 29. The ability to quickly manipulate Superpumper's financials in order to make it  
5 appear as if the company had little value is consistent with Bayuk's representation that Paul  
6 Morabito is a "financial genius when it comes to understanding financing."<sup>86</sup>

7 30. On September 30, 2010, after the distribution of the Compass Loan proceeds,  
8 transfer of CWC's right to distributions from the Raffles Asset, and the cancellation of Paul  
9 Morabito's loan receivables due to Superpumper, Paul Morabito sold his 80% equity interest in  
10 the merged CWC/Superpumper to Snowshoe pursuant to a Shareholder Interest Purchase  
11 Agreement (the "Superpumper Agreement").<sup>87</sup> As a result of this transfer (the "Superpumper  
12 Transfer"), Sam Morabito and Bayuk each received 50% of Paul Morabito's 80% equity interest  
13 in Superpumper. On January 1, 2011, Bayuk and Sam Morabito transferred their respective 10%  
14 interests in Superpumper to Snowshoe.<sup>88</sup>

15 31. While Sam Morabito and Bayuk contend that the purpose of the Superpumper  
16 Transfer, and related transactions, was for their exclusive benefit in order to separate their assets  
17 from Paul,<sup>89</sup> the billing records from LMWF show that the entirety of the transactions was billed  
18 to, and for the benefit, of Paul Morabito.<sup>90</sup> There was no bill to Sam Morabito or Bayuk. Further,  
19 Sam Morabito and Bayuk's contention on the purpose of the transactions provides no rational  
20 explanation for the Merger and the creation of a new company, Snowshoe, a New York  
21 corporation, to be the transferee of Paul Morabito's interest.

22  
23 <sup>85</sup> Trans. 11/1/18, p. 249, l. 8 – p. 250, l. 7.

24 <sup>86</sup> Trans. 10/29/18, p. 225, ll. 6-17.

25 <sup>87</sup> SF, ¶ 41.

26 <sup>88</sup> SF, ¶ 42.

27 <sup>89</sup> Trans. 10/29/18, p. 130, ll. 9-24; 10/31/18, p. 31, ll. 8-11.

28 <sup>90</sup> Exh. 294; Trans. 11/1/18, p. 10, l. 3 – p. 11, l. 22.

1           32. The Court finds the testimony and report of James McGovern, CPA/CCF, CVA, a  
2 CPA and forensic accountant for over 35 years ("McGovern"),<sup>91</sup> credible and accepts his valuation  
3 of the 100% equity interest in Superpumper as of September 30, 2010 at \$13,050,000, placing Paul  
4 Morabito's 80% interest as of September 30, 2010 at \$10,440,000.<sup>92</sup>

5           33. Through their joint counsel, Vacco, Paul Morabito, together with Bayuk, Sam  
6 Morabito, and Superpumper, ordered an appraisal to support the transfer of Paul Morabito's 80%  
7 interest—consistent with Paul Morabito's plan<sup>93</sup> to obtain appraisals to justify transfers intended  
8 to divest himself of any interest the Herbst Parties could attach. On October 13, 2010 (two weeks  
9 *after* the Superpumper Agreement), Spencer Cavalier of Matrix Capital Markets Group, Inc.  
10 ("Matrix") completed a valuation of Superpumper in which he opined that the value of 100% of  
11 the equity interest in Superpumper as of August 31, 2010 (one month before the Superpumper  
12 Transfer date) was \$6,484,514, which equates to \$5,187,611.20 for Paul Morabito's 80% interest  
13 (the "Matrix Valuation").

14           34. The Matrix Valuation is nearly identical to McGovern's valuation,<sup>94</sup> save and  
15 expect that Matrix inexplicably adjusted accounts receivables due to Superpumper from Paul  
16 Morabito and his affiliates (the "Insider Receivables") to zero<sup>95</sup> while McGovern included the  
17 Insider Receivables in his valuation.

18           35. The decision on whether to include the Insider Receivables in the valuation of  
19 Superpumper's equity requires inquiry into whether the Insider Receivables can be repaid.<sup>96</sup>  
20 McGovern relied on Superpumper's audited financial statements for 2009 to confirm his opinion

21  
22 <sup>91</sup> Trans. 11/1/18, p. 111, ll. 17-20.

23 <sup>92</sup> Exh. 91; Trans. 11/1/18, p. 123, ll. 2-3.

24 <sup>93</sup> Exh. 29 (Paul Morabito's September 20, 2010 email to Vacco and Yalamanchili: "selling for value" will  
be allowed").

25 <sup>94</sup> Excluding the Insider Receivables (*i.e.*, non-operating assets) from his valuation, McGovern's valuation  
26 of the Superpumper equity was \$6,550,000. *See* Exh. 91, pp. 8, 11 and 19 of the McGovern report,  
MCGOVERN 00009, 12, and 20; *see also* Trans. 11/1/18, p. 137, ll. 3-10.

27 <sup>95</sup> Exh. 235, at Exhibit 7 of 14.

28 <sup>96</sup> Trans. 11/1/18, p. 125, ll. 5-24.



1 that the Insider Receivables should be included in the valuation of Superpumper's equity, wherein  
2 the auditors concluded the Insider Receivables were valid and collectible.<sup>97</sup> Defendants take issue  
3 with the recognition of the Insider Receivables in determining the value of the Superpumper equity  
4 in light of the fact that there were no notes introduced relative to a majority of the Insider  
5 Receivables and the Merger wiped out the Insider Receivables in any event; however, the Court  
6 finds that McGovern's determination that the debt underlying the Insider Receivables was valid  
7 and collectible is corroborated by the fact that before the end of 2010, new written notes were  
8 executed by Sam Morabito and Bayuk, without any new consideration, and placed on the  
9 Superpumper books, and Sam Morabito and Bayuk certified that they had sufficient assets to pay  
10 the Insider Receivables obligations.<sup>98</sup>

11 36. To get to a lower value, LMWF, counsel (and therefore the agent) for Paul Morabito  
12 and Defendants, reduced the Matrix Valuation<sup>99</sup> by (1) \$1,682,000 for the "Compass Term Loan"  
13 (the "Compass Reduction"), despite the fact that the outstanding amounts of the Compass Term  
14 Loan loaned to Superpumper's members were supposed to be repaid and indeed \$1,318,000 had  
15 been returned by Sam Morabito and Bayuk by September 30, 2010<sup>100</sup> and Paul Morabito executed  
16 the \$939,000 Note with a promise to repay his distributed \$939,000,<sup>101</sup> and (2) \$1,680,880 for a  
17 35% "risk reduction" (the "Risk Reduction," and together with the Compass Reduction, the  
18 "Additional LMWF Reductions"). This resulted in an ultimate "acquisition value" for the  
19 Superpumper Transfer of \$2,497,307. There was no attempt to show how anyone at LMWF, a law  
20 firm, was in any way qualified to determine or quantify the LMWF Reductions. The Risk  
21

22 <sup>97</sup> *Id.*; see also Exh. 42 (auditor's notes verifying Paul Morabito had sufficient net assets to satisfy Compass  
23 liquidity obligation and to support \$7.2 million of receivables on Superpumper's books); Exh. 118, at  
24 GURSEY004850 (verifying the Inside Receivables were fully collectible); Trans. 11/1/18, p. 168, l. 9 – p.  
25 169, l. 3 (the Insider Receivables were on current (due on demand) on the books and had not been written  
26 off or otherwise indicated as uncollectible).

27 <sup>98</sup> Exhs. 105, 122-123, 126.

28 <sup>99</sup> Exh. 236

<sup>100</sup> Trans. 10/31/18, p. 75, ll. 1-5; Trans. 11/1/18, p. 120, ll. 15-22.

<sup>101</sup> Exh. 244.

1 Reduction was based, at least in part, on (1) the defaults under the Compass Term Loan and under  
2 Superpumper's real estate leases that are the result of the voluntary distributions of the Compass  
3 Term Loan proceeds to Paul Morabito, Bayuk, and Sam Morabito on September 14, 2010 and the  
4 Merger<sup>102</sup> and (2) the risk that Bayuk and Sam Morabito would be sued for the fraudulent  
5 transfers.<sup>103</sup> Defendants fail to explain how defaults and fraudulent transfers they engineered  
6 support a 35% "risk reduction," particularly where purported defaults would not exist in an arms-  
7 length sale to a third party. Furthermore, both McGovern and Mr. Cavalier testified that they had  
8 already considered risk when valuing the equity in Superpumper, which is reflected in their  
9 discount rate.<sup>104</sup> Finally, whether or not there were actual defaults of Superpumper obligations as  
10 a result of the Compass Loan distributions, the Oral Ruling, the Merger or otherwise, they did not  
11 prove to be so material that they were not ultimately resolved.<sup>105</sup> Superpumper's auditors  
12 confirmed that Compass was even prepared to refinance the existing obligation upon receipt of the  
13 2010 audited financials.<sup>106</sup>

14 37. The Court reviewed the testimony of Michele Salazar ("Salazar"). Salazar did not  
15 perform a valuation of Superpumper,<sup>107</sup> but rather she criticized the Matrix Valuation and  
16 McGovern's report as purportedly incorrect. Ultimately, Salazar has two primary criticisms of the  
17 reports, neither of which is supported. First, Salazar disagreed with Mr. Cavalier's capitalization  
18 rate in the Matrix Valuation and McGovern's discount rate because, according the Salazar, they  
19 failed to take into account company specific risks.<sup>108</sup> However, both Cavalier<sup>109</sup> and McGovern<sup>110</sup>

20  
21 <sup>102</sup> Trans. 11/6/18, p. 253, l. 21 – p. 255, l. 21.

22 <sup>103</sup> Trans. 11/6/18, p. 173, ll. 5-8.

23 <sup>104</sup> Trans. 11/1/18, p. 120, 12– p. 122, l. 23 (14.2% discount rate- McGovern); Trans. 11/6/18, p. 282, ll. 13  
24 – p. 284, l. 5 (13.25% to 13.4% capitalization rate- Matrix).

25 <sup>105</sup> Exhs. 27 and 33; Trans. 10/31/18, p. 122, ll. 16-22.

26 <sup>106</sup> Trans. 11/1/18, p. 253, l. 16 – p. 254, l. 9.

27 <sup>107</sup> Trans. 11/5/18, p. 101, l. 17 – p. 102, l. 2.

28 <sup>108</sup> Trans. 11/5/18, p. 60, l. 16 – p. 63, l. 18; p. 93, l. 24 – p. 94, l. 13.

<sup>109</sup> Trans. 11/6/18, p. 282, l. 19 – p. 286, l. 17.

<sup>110</sup> Trans. 11/1/18, p. 122, ll. 6-23; Exh. 91, McGovern 000018 and McGovern 000053-75.

1 testified as to the company specific risks they applied and tellingly, both came up with similar  
2 rates. Second, Salazar criticized McGovern for including the Insider Receivables in his valuation  
3 because, according to Salazar, there were no written notes and, as a result, the Insider Receivables  
4 could not be found to be valid and collectible.<sup>111</sup> Salazar's conclusion is directly contradicted by  
5 the testimony of Gary Kraus, Superpumper's auditor, who confirmed the Insider Receivables were  
6 valid and collectible obligations.<sup>112</sup>

7 38. Immediately following the 2016 deposition of Jan Friederich, a witness designated  
8 by Defendants as a rebuttal expert on the value of Superpumper's equity, Snowshoe transferred its  
9 equity to Supermesa Fuel & Merc, LLC ("Supermesa"), an entity affiliated with Mr. Friederich.<sup>113</sup>  
10 As Mr. Friederich stood to benefit from a lower valuation, his testimony is not helpful to the Court  
11 in determining the value of Superpumper's equity and his related testimony was accordingly given  
12 no weight by the Court.

13 39. The ultimate \$2.5 million valuation for Paul Morabito's 80% interest is further  
14 belied by Sam Morabito's and Bayuk's own financial statements that they provided to  
15 Superpumper's auditors on February 1, 2011, just four months after the transfer, that represent  
16 their respective 50% equity interests as valued at \$4,514,869, for a total combined value of  
17 Superpumper as of February 1, 2011 of \$9,029,738.<sup>114</sup> Bayuk testified that this was his good faith  
18 statement of what the value of his 50% interest was as of February 1, 2011.<sup>115</sup>

19 40. As of the September 30, 2010 date of transfer of Paul Morabito's 80% equity  
20 interest in Superpumper to Snowshoe, pursuant to the Superpumper Agreement, Snowshoe was  
21 required to pay Paul Morabito \$1,035,094 in cash. While Paul Morabito received \$1,035,068 wire  
22 on October 1, 2018, there is no proof that such payment reflects the cash payment for the

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23  
24 <sup>111</sup> Trans. 11/5/18, p. 48, l. 22 – p. 49, l. 18.

25 <sup>112</sup> Trans. 11/1/18, p. 222, l. 23 – p. 225, l. 18; see also Exh. 118, p. GURSEY004850 (auditor confirmation  
that they were fully collectible).

26 <sup>113</sup> Trans. 11/5/18, p. 37, l. 9 – p. 38, l. 9.

27 <sup>114</sup> Exh. 126.

28 <sup>115</sup> Trans. 10/29/18, p. 236, ll. 8-11.

1 Superpumper equity and such evidence would be inconsistent with Paul Morabito's sworn  
2 testimony to the Bankruptcy Court that he only received \$542,000 for his equity in  
3 Superpumper.<sup>116</sup> In any event, under any opinion of value, even if the \$1,035,094 were received,  
4 that is not reasonably equivalent value for Paul Morabito's interest.

5 41. Subsequent to the execution of the Superpumper Agreement, Snowshoe became  
6 obligated for an additional \$1,462,213 to Paul Morabito, as set forth in a \$1,462,213 term note  
7 from Snowshoe to Paul Morabito (the "\$1,462,213 Note") dated November 1, 2010.<sup>117</sup> The  
8 \$1,462,213 Note required Snowshoe to make monthly payments commencing on December 1,  
9 2010 in the amount of \$19,986.71 for 84 months, with interest accruing at 4.0% per annum.<sup>118</sup>  
10 There were no payments made on the \$1,462,213 Note, and on February 1, 2011, the Snowshoe  
11 obligation to Paul Morabito under the \$1,462,213 Note was cancelled and a successor note from  
12 Snowshoe to Paul Morabito in the amount of \$492,937 was executed (the "\$492,937 Successor  
13 Note")<sup>119</sup> at the same time a successor note from Snowshoe to Superpumper (purportedly reflecting  
14 the amount of the \$939,000 Note that had been cancelled at the time of the Merger) in the amount  
15 of \$939,000 was executed (the "939,000 Successor Note").<sup>120</sup>

16 42. There is no record of payment from Snowshoe to Paul Morabito due under the terms  
17 of the Superpumper Agreement, the \$1,462,213 Note or the \$492,937 Successor Note. Likewise,  
18 there is no record of payment of the \$939,000 Successor Note from Snowshoe to Superpumper.  
19 Sam Morabito conceded that, post-merger, it would not matter if there were papered obligations  
20 between Snowshoe and Superpumper because Snowshoe has no funds other than what  
21 Superpumper generated.<sup>121</sup> Finally, other than \$542,000 Paul Morabito reported to have received,  
22

23 <sup>116</sup> Exh. 233.

24 <sup>117</sup> SF, ¶ 43.

25 <sup>118</sup> SF, ¶ 44.

26 <sup>119</sup> Ex. 104; Trans. 10/31/18, p. 217, ll. 6-16.

27 <sup>120</sup> Ex. 105.

28 <sup>121</sup> Trans. 10/31/18, p. 109, ll. 7-11.



1 the details of which are unknown, any remainder due to him on account of notes was unequivocally  
2 “cancelled.”<sup>122</sup>

3 43. Contrary to Paul Morabito’s representation to the Bankruptcy Court, Sam Morabito  
4 testified that he paid the \$492,937 Successor Note obligation when he transferred \$560,000 to  
5 LMWF on November 28, 2011 at the direction of Paul Morabito.<sup>123</sup> Not only does the amount  
6 paid by Sam Morabito not correspond with the \$492,937 Successor Note or any identifiable  
7 obligation from Sam Morabito, there is no record of any satisfaction of the \$492,937 Successor  
8 Note obligation in the Snowshoe books and records, including on Snowshoe’s tax returns or  
9 amended tax returns.<sup>124</sup> There is no evidence of a capital contribution by Sam Morabito to  
10 Snowshoe for the payment, nor is there a corresponding capital contribution by Bayuk.<sup>125</sup>  
11 Furthermore, Sam Morabito’s testimony that Vacco contacted him and told him the amount was  
12 due is contradicted by the communication from Paul Morabito instructing Sam Morabito to transfer  
13 funds<sup>126</sup> and also Vacco’s testimony that he had no knowledge as to whether the amounts due  
14 under the \$492,937 Successor Note were paid.<sup>127</sup>

15 44. In light of the evidence presented, inclusive of no corresponding payments, the  
16 Court finds that the \$1,462,213 Note and the \$492,937 and \$939,000 Successor Note obligations  
17 were contrived in order to give the appearance of an arms-length exchange of value.

18 **3. Paul Morabito’s Equity in the Real Properties.**

19 45. Immediately prior to the Oral Ruling, Paul Morabito and Bayuk, through their  
20 respective trusts, owned three real properties improved with homes as tenants in common:<sup>128</sup>

21  
22  
23 <sup>122</sup> Ex. 107, ¶ 10.

24 <sup>123</sup> Trans. 10/31/18, p. 13, l. 21 – p. 115, l. 5.

25 <sup>124</sup> Trans. 10/31/18, p. 246, l. 18– p. 249, l. 11.

26 <sup>125</sup> Trans. 10/31/18, p. 131, l. 18 – p. 132, l. 19.

27 <sup>126</sup> Exh. 140.

28 <sup>127</sup> Trans. 11/6/18, p. 181, l. 22 – p. 182, l. 8.

<sup>128</sup> SF, ¶ 23.

1 a. Paul Morabito owned 75% of the El Camino Property and Bayuk owned 25%.<sup>129</sup>  
2 b. Paul Morabito and Bayuk each owned 50% of the Los Olivos Property.<sup>130</sup>  
3 c. 8355 Panorama Drive, Reno, Nevada (the "Panorama Property," and together  
4 with the El Camino Property and the Los Olivos Property (the "Laguna Properties"), the "Real  
5 Properties"). Paul Morabito owned 70% and Bayuk owned 30% of the Panorama Property.<sup>131</sup>

6 46. On September 27, 2010, Paul Morabito and Bayuk executed a Purchase and Sale  
7 Agreement, which was amended September 28, 2010 (as amended, the "Real Properties  
8 Agreement"), for the transfer of their respective interests in the Real Properties, as well as all of  
9 their personal property located at the Real Properties, which all went to Bayuk.<sup>132</sup> The Real  
10 Properties Agreement was prepared by one lawyer on behalf of both Bayuk and Paul Morabito.<sup>133</sup>  
11 Pursuant to the Real Properties Agreement, Paul Morabito sold his interests in the Laguna  
12 Properties to Bayuk in exchange for Bayuk's 30% interest in the Panorama Property and a payment  
13 of \$60,117.00.<sup>134</sup>

14 47. According to Paul Morabito and Bayuk, the equity in the Laguna Properties at the  
15 time of the transfers on October 1, 2010 was \$1,933,595: the equity in the Los Olivos Property  
16 was valued at \$854,954 and the equity in the El Camino Property was valued at \$1,078,641.<sup>135</sup>  
17 Paul Morabito's interests in the Laguna Properties therefore had an aggregate value of  
18 approximately \$1,236,457.75, and Bayuk's interests in the Laguna Properties had an aggregate  
19 value of approximately \$697,137.25.<sup>136</sup> Plaintiff did not dispute these values.<sup>137</sup>

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21 <sup>129</sup> *Id.*

22 <sup>130</sup> *Id.*

23 <sup>131</sup> *Id.*

24 <sup>132</sup> SF, □ 24; Exhs. 45-46.

25 <sup>133</sup> Trans. 10/30/18, p. 89, ll. 21-23.

26 <sup>134</sup> Exhs. 45, 26, 233.

27 <sup>135</sup> SF, □□ 25-26.

28 <sup>136</sup> *Id.*

<sup>137</sup> *Id.*

1           48. Paul Morabito and Bayuk obtained an appraisal of the Panorama Property from  
2 Darryl Noble, who is not an MAI.<sup>138</sup> Mr. Noble opined that the Panorama Property had a purported  
3 fair market value as of October 1, 2010 (the approximate date of the transfer) of \$4.3 million. Mr.  
4 Noble relied heavily on the cost approach, focusing on the cost of the home and its significant  
5 improvements.<sup>139</sup> Mr. Noble's conclusion of value was within the range of values suggested to  
6 him by Paul Morabito.<sup>140</sup>

7           49. As of the date of transfer, there had never been a sale of a home in excess of \$4  
8 million in Reno, and there was no sale for more than \$3.35 million in the year preceding the  
9 transfer.<sup>141</sup> Whereas the transfer of the Panorama Property occurred on October 1, 2010, the \$3.35  
10 million sale which Mr. Noble used in his sales comparison approach occurred in September 2009,  
11 before the residential real estate market significantly worsened.<sup>142</sup> The sale prices of other  
12 properties on which Mr. Noble relied as comparables were not adjusted to account for significant  
13 differences, such as finished basements, or the significant deterioration in the residential real estate  
14 market throughout late 2009 and 2010. The sale price of one comparable was incorrectly reported  
15 in the appraisal.<sup>143</sup> Accordingly, the comparables on which Mr. Noble relied in his sales  
16 comparison approach do not support the concluded value. These errors were the result, at least in  
17 part, of the haste with which Mr. Noble was required to conduct the appraisal at the insistence of  
18 Paul Morabito.<sup>144</sup>

19  
20  
21 <sup>138</sup> Exh. 276. Although another appraiser from Mr. Noble who is an MAI signed off on the appraisal report,  
no evidence was presented of his involvement in the assignment beyond reviewing and signing the report.

22 <sup>139</sup> Exh. 276, Trans. 11/6/18, p. 32, ll. 3-13; p. 83, l. 23 – p. 84, l. 2; see Trans. 11/2/18, p. 16, l. 14-p. 18,  
23 l. 2 (Mr. Kimmel testifying that the cost approach is used to determine replacement cost by valuing the  
property and deducting depreciation, including physical depreciation, functional depreciation, and  
externalities such as economic factors.).

24 <sup>140</sup> Exh. 276, Trans. 11/6/18, p. 65, l. 2 – p. 65, l. 14.

25 <sup>141</sup> Trans. 11/6/18, p. 79, l. 18 – p. 80, l. 8.

26 <sup>142</sup> *Id.*; Trans. 11/6/18, p. 79, ll. 16-21.

27 <sup>143</sup> Trans. 11/6/18, p. 77, l. 3 – p. 78, l. 14; Ex. 277 at Superpumper 001124.

28 <sup>144</sup> Trans. 11/6/18, p. 83, l. 9 – p. 83, l. 8.

1           50.     Moreover, the Court finds that Mr. Noble was focused on the undisputed significant  
2 cost of improvements to the Panorama Property, without regard to the devastated real estate market  
3 in October 2010. Indeed, in the cost approach, Mr. Noble's appraisal made no downward  
4 adjustment at all for functional obsolescence resulting from overimprovement or for external  
5 obsolescence, including the realities of the depressed real estate market at that time. Rather, Mr.  
6 Noble increased his conclusion of value by at least 25% more than the amount suggested by a  
7 calculation of replacement costs under the cost approach in order to arrive at a valuation of \$4.3  
8 million, an amount consistent with the value suggested to him by Paul Morabito.<sup>145</sup>

9           51.     Consistent with the opinion of long-time Reno appraiser William Kimmel, MAI,<sup>146</sup>  
10 SREA,<sup>147</sup> the Court finds that the devastated local real estate market<sup>148</sup> had a greater impact on the  
11 valuation of real property in October 2010 than the cost of a home or its improvements.<sup>149</sup> The  
12 Court therefore agrees with Mr. Kimmel's appraisal of the Panorama Property, which relied  
13 primarily on the sales comparison approach,<sup>150</sup> determining a fair market value of \$2,000,000 as  
14 of September 30, 2010, before deducting \$1,028,864 in secured debt. The Court's finding is not  
15 based on, but is supported by, the subsequent sale of the Panorama Property for \$2,584,000 to a  
16 third-party purchaser in December 2012.<sup>151</sup>

17           52.     As part of the Real Property Agreement, Paul Morabito provided a credit to Bayuk  
18 in the amount of \$45,000 for certain water rights associated with the Panorama Property and  
19  
20

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21 <sup>145</sup> Trans. 11/6/18, p. 70, l. 18 – p. 71, l. 2.

22 <sup>146</sup> Trans. 11/2/18, p. 7, ll. 5-6 (since 1968).

23 <sup>147</sup> Trans. 11/2/18, p. 7, ll. 8-9, 18 (Senior Residential Real Estate Analyst/Appraiser).

24 <sup>148</sup> Trans. 11/2/18, p. 17, ll. 14-15, and p. 21, l. 19- p. 22, l. 1.

25 <sup>149</sup> Trans. 11/2/18, p. 18, ll. 11-15; *see also* Trans. 11/2/18, p. 20, l. 1- p. 21, l. 6 (explaining that there were  
26 reported issues with the home in 2016; however, those did not change Mr. Kimmel's opinion of value  
because the reported condition of the improvements was communicated years after the October 1, 2010  
retrospective date of valuation).

27 <sup>150</sup> Exh. 53; Trans. 11/2/18, p. 15, l. 16 – p. 19, l. 13; p. 85, ll. 5-8.

28 <sup>151</sup> Trans. 11/2/18, p. 22, ll. 8-15



1 \$150,000 for theatre equipment purportedly located in the Panorama Property,<sup>152</sup> though neither  
2 Paul Morabito nor Bayuk obtained a valuation of the alleged water rights<sup>153</sup> or theatre  
3 equipment.<sup>154</sup>

4 53. Thus, Paul Morabito transferred his interests in the Laguna Properties worth  
5 \$1,236,457.75 in exchange for Bayuk's interests in the Panorama Property worth only  
6 \$291,340.80, plus \$60,117.00,<sup>155</sup> resulting in a difference of \$884,999.95.

7 **4. Paul Morabito's 50% Equity Interest in Baruk Properties, LLC.**

8 54. Prior to the Oral Ruling, Paul Morabito and Bayuk each owned 50% of a real estate  
9 holding company called Baruk Properties, LLC, a Nevada limited liability company ("Baruk  
10 LLC").<sup>156</sup> Baruk LLC owned four real properties (the "Baruk Properties"):

11 a. 1461 Glenneyre, Laguna Beach, CA ("1461 Glenneyre"), a commercial  
12 property with a stipulated appraised value of \$1.4 million as of September 30, 2010;<sup>157</sup>

13 b. 570 Glenneyre, Laguna Beach, CA ("570 Glenneyre"), a commercial  
14 property with an appraised value of \$2.5 million as of September 30, 2010, or \$1,129,021 after  
15 deduction for the mortgage on property;<sup>158</sup>

16 c. 1254 Mary Fleming, Palm Springs, CA (the "Palm Springs Property"), a  
17 home with an appraised value of approximately \$1,050,000 as of September 30, 2010, or \$705,079  
18 after deduction for the mortgage;<sup>159</sup> and  
19  
20  
21

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22 <sup>152</sup> Ex. 247.

23 <sup>153</sup> Trans. 10/30/18, p. 158, ll. 2-19.

24 <sup>154</sup> Trans. 10/30/18, p. 158, l. 20 – p. 159, l. 7.

25 <sup>155</sup> Exhs. 46, 233.

26 <sup>156</sup> SF, ¶¶ 27, 29.

27 <sup>157</sup> SF, ¶¶ 27-28.

28 <sup>158</sup> *Id.*

<sup>159</sup> *Id.*

1 d. 49 Clayton Place, Sparks, NV (the “Clayton Property”), a vacant property  
2 with an appraised value of approximately \$75,000 as of September 30, 2010.<sup>160</sup>

3 55. Accordingly, Paul Morabito’s 50% interest in the Baruk Properties had a value of  
4 at least \$1,654,550.

5 56. On October 1, 2010, Paul Morabito transferred his 50% membership interest in  
6 Baruk LLC to Bayuk pursuant to a Membership Interest Transfer Agreement (the “Baruk  
7 Transfer”).<sup>161</sup>

8 57. Immediately after the Baruk Transfer, on October 4, 2010, Baruk LLC, a Nevada  
9 entity, was merged into a newly formed entity owned 100% by the Bayuk Trust called Snowshoe  
10 Properties, LLC, a California limited liability company (“Snowshoe Properties”),<sup>162</sup> thereby  
11 transferring the assets owned by Baruk Properties to Snowshoe Properties.

12 58. Snowshoe Properties is solely owned by the Bayuk Trust. Bayuk, through the  
13 Bayuk Trust, converted Snowshoe Properties from a California limited liability company to a  
14 Delaware limited liability company during the pendency of this litigation.<sup>163</sup>

15 59. On November 2, 2010, Bayuk transferred the Palm Springs Property from  
16 Snowshoe Properties to the Bayuk Trust.<sup>164</sup>

17 60. Following this series of transfers, the Bayuk Trust owned 100% of 1461 Glenneyre,  
18 570 Glenneyre, and the Clayton Property indirectly through Snowshoe Properties, and directly  
19 owned 100% of the Palm Springs Property.<sup>165</sup>

20 61. The Membership Interest Transfer Agreement required that in exchange for Paul  
21 Morabito’s 50% interest in Bayuk LLC, Bayuk deliver a promissory note in the principal amount  
22

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23 <sup>160</sup> *Id.*

24 <sup>161</sup> SF, ¶ 30.

25 <sup>162</sup> SF, ¶¶ 31-32.

26 <sup>163</sup> Trans. 10/31/18, p. 26, ll. 1-14; p. 27, ll. 16-19.

27 <sup>164</sup> SF, ¶ 33.

28 <sup>165</sup> SF, ¶ 34.

1 of \$1,617,050 to Paul Morabito (the “Baruk Note”).<sup>166</sup> The terms of the Baruk Note required  
2 principal and interest payments in equal monthly installments of \$7,720.04 over 360 months,  
3 accruing interest at 4.0%.<sup>167</sup>

4 62. There was no evidence of any payments corresponding with the terms of the Baruk  
5 Note. Bayuk’s own records don’t support alleged repayment. Specifically, Bayuk produced  
6 “ledgers” purporting to show payments to Paul Morabito under the Baruk Note.<sup>168</sup> These ledgers  
7 and supporting documents<sup>169</sup> are not credible as showing repayment of the Baruk Note for several  
8 reasons, including: (i) they include payments to Kim’s Marble, Doheny Builder Supplier, Geo  
9 Technical, American Vector, Mark Paul Designs, Bead Painting, and Atlas Sheet Metal that were  
10 made for construction on Los Olivos after Paul Morabito’s interests in the Real Properties were  
11 transferred,<sup>170</sup> (ii) \$341,952.69 was credited for payment of the Chase mortgage on the Palm  
12 Springs Property, which was already taken into account in the valuation of the Palm Springs  
13 Property;<sup>171</sup> (iii) certain payments occurred or were applicable to expenses incurred prior to the  
14 date of the \$1,617,050 Note;<sup>172</sup> (iv) Bayuk had no knowledge as to the purpose of \$105,084.09 of  
15 payments for “Comerica” and believed it was on the ledger in error;<sup>173</sup> and (v) they include a  
16 \$50,000 credit for the Clayton Property that was purportedly applied on October 4, 2010,<sup>174</sup> despite  
17 Bayuk’s testimony that he did not recognize that the Clayton Property was owned by Baruk LLC  
18 until years later when it was used to settle a lawsuit from Desi Morcno against Paul Morabito.<sup>175</sup>  
19

20 <sup>166</sup> SF, ¶ 35.

21 <sup>167</sup> *Id.*

22 <sup>168</sup> Exhs. 71 and 73.

23 <sup>169</sup> Exh. 271.

24 <sup>170</sup> Trans. 10/31/18, p. 50, l. 20 – p. 52, l. 20; p. 56, l. 19 – p. 58, l. 2.

25 <sup>171</sup> Trans. 10/31/18, p. 52, l. 21 – p. 55, l. 19.

26 <sup>172</sup> Trans. 10/31/18, p. 56, l. 22 – p. 57, l. 15;

27 <sup>173</sup> Trans. 10/31/18, p. 58, l. 10 – p. 59, l. 7.

28 <sup>174</sup> Exh. 73.

<sup>175</sup> Trans. 10/31/18, p. 64, l. 19 – p. 65, l. 1; p. 65, l. 14 – p. 66, l. 8.

63. On October 31, 2010, with an effective date of October 1, 2010, Paul Morabito assigned the Baruk Note to Woodland Heights, Ltd., a Canadian entity, and executed an allonge, purportedly in exchange for a 20% ownership interest in Woodland Heights, Ltd. (the “Woodland Assignment”).<sup>176</sup> Bayuk purported to not even know of the Woodland Assignment, and testified he never paid payments pursuant to the Woodland Assignment.<sup>177</sup> Thus, it appears that the Woodland Assignment was a sham designed to further hinder the Herbst Parties from enforcing their judgment against Paul Morabito’s interest in the \$1,617,050 Note.

**5. Watchmyblock.**

64. On October 1, 2010, Paul Morabito also transferred his 90% interest in Watchmyblock LLC, a Nevada limited liability company, to Bayuk, the other 10% owner.<sup>178</sup>

65. Watchmyblock, LLC was a Nevada limited liability company at the time of transfer, but Bayuk changed it to a New York entity at the time of the transfer.<sup>179</sup>

66. Paul Morabito valued his equity in Watchmyblock, LLC at \$2,250,000,<sup>180</sup> yet transferred that same equity to Bayuk in exchange for \$1,000. Although Plaintiff is not seeking to avoid the Watchmyblock transfer in this case, the transfer is further evidence of Paul Morabito’s motive and intent to move his assets out of the Herbst Parties’ reach.

**E. Paul Morabito Continued to Control the Transferred Interests After the Transfers.**

67. Contrary to Defendants’ denial of Paul Morabito’s continuing interest and control over Superpumper and Snowshoe following the Superpumper Transfer, substantial evidence establishes that Paul Morabito retained control and continued to receive benefits. Beginning in October of 2015—over five years after Defendants allege Paul Morabito ceased to have any involvement or financial interest in Superpumper—and continuing through March 2018,

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<sup>176</sup> Exh. 68; *see also* Exh. 44, WL004540 (Salazar describes the assignment and purported value provided to Paul Morabito by Woodland Heights, Ltd. in return).

<sup>177</sup> Trans. 10/30/18, p. 81, ll. 1-8; p. 82, ll. 11-14.

<sup>178</sup> Trans. 10/31/18, p. 64, l. 24 – p. 65, l. 2; Exh. 163.

<sup>179</sup> Exh. 164; Trans. 10/31/18, p. 65, l. 3 – 4.

<sup>180</sup> Exhs. 42, 43.

1 Snowshoe paid more than \$126,000 of Paul Morabito's personal legal expenses to the law firm of  
2 Robison, Sharp, Sullivan & Brust ("RSSB"), joint counsel to Paul Morabito and Defendants.<sup>181</sup>  
3 Indeed, the majority of Paul Morabito's legal fees in his personal bankruptcy case between May  
4 of 2017 and March of 2018 were paid by Snowshoe.<sup>182</sup>

5 68. Defendants attempted to conceal these payments. The centerpiece of Defendants'  
6 case-in-chief was Defendants' contention that the subject transfers were a "good faith" attempt to  
7 maintain separateness of Sam Morabito's and Bayuk's assets from those of Paul Morabito. As  
8 part and parcel of this defense, Defendants sought to minimize Paul Morabito's continued direction  
9 of Superpumper's business as mere "whiteboarding"<sup>183</sup> or an altruistic attempt to help Bayuk and  
10 Sam Morabito in their new endeavor. To maintain this fiction, Defendants failed to disclose the  
11 payments by Snowshoe during discovery or in trial, and Defendants' counsel actively avoided  
12 disclosing the payments until after the close of evidence.<sup>184</sup> During trial, Defendants testified that  
13 Paul Morabito had no interest or economic stake in Snowshoe, and Bayuk expressly denied that  
14 Snowshoe gave any money to Paul Morabito<sup>185</sup> or that Snowshoe paid any of Paul Morabito's  
15 attorneys' fees.<sup>186</sup>

16 69. Defendants Snowshoe, Superpumper, and Sam Morabito, along with their joint  
17 counsel, knew Bayuk's testimony was false both when it was offered<sup>187</sup> and when Defendants  
18

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19  
20 <sup>181</sup> Exhs. 308 (Detail Payment Transaction File List at RSSB\_000001–RSSB\_000002) and 309 (Declaration  
of Frank C. Gilmore).

21 <sup>182</sup> Exh. 308 at RSSB\_000002.

22 <sup>183</sup> Trans. 10/31/18, p. 236, l. 21 – p. 237, l. 1; Trans. 11/1/18, p. 21, ll. 4-14; Trans., 11/6/18, p. 199, l. 3 –  
p. 200, l. 21.

23 <sup>184</sup> RSSB's billing records were the subject of a pending subpoena in Paul Morabito's bankruptcy case.  
24 Exh. 305 (Aug. 27, 2018 Subpoena to RSSB). RSSB failed to comply with the subpoena until an order  
compelling compliance was entered by the Bankruptcy Court. Exhs. 306 (Aug. 30, 2018 letter from F.  
25 Gilmore to M. Weisenmiller), 307 (Bankruptcy Court's order compelling RSSB's compliance).

26 <sup>185</sup> Trans. 10/29/18, p. 206, l. 3 – p. 207, l. 1.

27 <sup>186</sup> Trans. 10/29/18, p. 189, ll. 14-17;

28 <sup>187</sup> Snowshoe made the payments to RSSB for Paul Morabito's attorneys' fees, and RSSB, joint counsel to  
Defendants and Paul Morabito, accepted and applied the payments. Exh. 308, 309.



1 relied upon it in closing argument and post-trial submissions<sup>188</sup> in support of their contention that  
2 Paul Morabito had no interest or involvement in Snowshoe. Defendants offered no explanation  
3 for their false testimony after Plaintiff introduced evidence of the Snowshoe payments.

4 70. In addition to receiving concrete financial benefits from Snowshoe in the years  
5 following the Superpumper Transfer, substantial evidence established that prior to the subject  
6 transfers, Paul Morabito developed a scheme to continue to control the transferred assets and use  
7 them for his benefit while concealing his interest by having his brother and Bayuk hold title, and  
8 that following the transfers, he in fact retained significant control of the transferred assets  
9 (including Superpumper, the Baruk Properties, and Los Olivos) and used them for his benefit as if  
10 he still owned them.

11 71. Prior to the Superpumper Transfer, on September 21, 2010, Paul Morabito emailed  
12 his counsel, Vacco, and a third party potential business partner, Kevin Cross of Cerberus  
13 California, LLC, to advise that he “would no longer be actively seeking to accumulate assets in  
14 companies that [he was] a shareholder in, and instead would be acting as an advisor to amongst  
15 other entities, Snowshoe Petroleum LLC, a company to be owned and operated by [his] brother,  
16 Sam; Edward Bayuk, and Dennis Vacco...”<sup>189</sup>

17 72. Consistent with Paul Morabito’s plan, following the Superpumper Transfer, Paul  
18 Morabito continued to utilize the transferred assets as if he still owned them. Paul Morabito  
19 remained active and involved with respect to the Superpumper business by, among other things,  
20 (1) providing advice; (2) directing Superpumper and Snowshoe’s auditors and accountants with  
21 respect to handling questions related to Superpumper’s financials, and (3) remaining a guarantor  
22 for the Spirit leases.<sup>190</sup>

24 <sup>188</sup> Trans. 11/26/18, p. 132, ll. 5-15 (arguing that Paul Morabito received no payments following the  
25 Merger); [Defendants’ Proposed] Findings of Fact, Conclusions of Law, and Judgment (submitted Nov. 26,  
26 2018), at para. 101 (“After the merger and acquisition, Paul had no control, management, or economic stake  
in Snowshoe.”).

27 <sup>189</sup> Exh. 30.

28 <sup>190</sup> Exh. 144; Trans. 10/29/18, p. 192, ll. 5-22; p. 202, ll. 2-10; p. 224, l. 24 – p. 225, l. 17.

1           73.     On April 11, 2011, Paul Morabito sought to negotiate a sale on behalf of Snowshoe.  
2 Specifically, Snowshoe sought to acquire Nella Oil Company, LLC and Flyers LLC (the “Nella  
3 Deal”).<sup>191</sup> Paul Morabito had commenced discussions with Nella prior to the Superpumper  
4 Transfer.<sup>192</sup> The April 11, 2011 proposal included the contribution of Snowshoe’s 100% interest  
5 in Superpumper, “valued at \$10,000,000.” Despite having no ownership interest in Snowshoe,  
6 Paul Morabito negotiated on behalf of Snowshoe without the involvement of Bayuk or Sam  
7 Morabito, and admitted that he had simply changed the name on a loan required for the deal from  
8 CWC to Snowshoe.<sup>193</sup>

9           74.     In August 2011, Paul Morabito retained Tim Haves, a real estate broker, on behalf  
10 of Superpumper Properties, LLC (“Superpumper Properties”), a company apparently owned by  
11 Paul Morabito which is distinct from Superpumper.<sup>194</sup> However, Vacco instructed Morabito,  
12 without copying Bayuk or Salvatore, to simply use Superpumper to make payment to conceal the  
13 payment from the Herbst Parties.<sup>195</sup>

14           75.     In November 2011, despite previously transferring his interest in Baruk LLC to  
15 Bayuk, Paul Morabito sought to use the assets of Snowshoe Properties (the successor to Baruk  
16 LLC) to settle a lawsuit against him.<sup>196</sup>

17           76.     When the sham of the sale to Bayuk became inconvenient, Paul Morabito advised  
18 Vacco to just undo it—to cancel the Baruk Note, convert it back into a 50% share interest in  
19 Snowshoe Properties, and to give Paul Morabito the right to trigger an option to split the assets so  
20 that Morabito would own 1461 Glenneyre and Bayuk would own 570 Glenneyre.<sup>197</sup>

21  
22  
23 <sup>191</sup> Exhs. 131-133, 135

24 <sup>192</sup> See Exh. 30.

25 <sup>193</sup> Exh. 132.

26 <sup>194</sup> Trans. 10/31/18, p. 239, l. 17 – p. 240, l. 17.

27 <sup>195</sup> Exhs. 136, 137.

28 <sup>196</sup> Exhs 145, 146.

<sup>197</sup> Exh. 70

1           77. In February 2012, Paul Morabito, through Vacco and Timothy Haves, sought to  
2 negotiate a third-party sale of 1461 Glenneyre<sup>198</sup> and to prepare a master lease with the new buyer  
3 for Snowshoe Capital, a company owned by Paul Morabito, for the property,<sup>199</sup> without any  
4 involvement by Bayuk.

5           78. Later, in September 2012, in connection with a settlement of Paul Morabito's  
6 lawsuit with Bank of America, which had nothing to do with Bayuk, Paul Morabito caused a deed  
7 of trust to be placed on 1461 Glenneyre. Vacco simply instructed Bayuk when and where to sign  
8 for Paul Morabito, which Bayuk did.<sup>200</sup>

9           79. Similarly, in September of 2012, Bayuk instructed his and Paul Morabito's counsel  
10 that he would sign a second deed of trust Paul Morabito wanted to put on the Mary Fleming  
11 House<sup>201</sup> in connection with funding for Virsenet, an entity in which Bayuk and Paul Morabito  
12 held joint interests.<sup>202</sup>

13           80. On October 3, 2012, Morabito instructed Vacco and Christian Lovelace, another  
14 lawyer at LMWF, regarding negotiation of a \$5 million loan to Snowshoe Properties—in which  
15 Morabito supposedly held no interest—without including Bayuk.<sup>203</sup>

16           81. Ultimately, Paul Morabito and Bayuk finalized the \$5 million loan and a first deed  
17 of trust was placed on 1461 Glenneyre and a Second Deed of Trust was placed on 570  
18 Glenneyre.<sup>204</sup>

19  
20  
21  
22  
23 <sup>198</sup> Exh. 142.

24 <sup>199</sup> Exh. 142; Trans. 10/30/18, p. 28, l. 9 – p. 29, l. 1.

25 <sup>200</sup> Exhs. 145-148, 225.

26 <sup>201</sup> Exh. 150.

27 <sup>202</sup> Trans. 10/31/18, p. 35, ll. 2-9.

28 <sup>203</sup> Exh. 151.

<sup>204</sup> Exh. 151; Trans. 10/30/18, p. 35, l. 5 – p. 38, l. 16.



1           82.     The funds loaned, and secured by the Glenneyre Properties, were used, in part, to  
2 pay for Paul Morabito's obligations including over \$700,000 to satisfy Paul Morabito's obligation  
3 to Bank of America.<sup>205</sup>

4           83.     In March 2013, nearly three years after the Superpumper Transfer, Paul Morabito  
5 was still bargaining with Superpumper. For example, Paul Morabito proposed a settlement with  
6 the Herbst Parties whereby he would transfer Superpumper to the Herbst Parties in partial  
7 satisfaction of the judgment. Though Bayuk and Sam Morabito supposedly owned Superpumper  
8 at that point through Snowshoe, neither was included in these discussions.<sup>206</sup>

9           84.     In March 2014, Paul Morabito caused Bayuk to transfer the Clayton Property to  
10 Desi Moreno without any value to Bayuk.<sup>207</sup>

11           85.     Paul Morabito's continued control makes clear that the intent of the transfers was  
12 not to separate Sam Morabito's and Bayuk's interests from Paul Morabito's interests, as Bayuk  
13 and Sam Morabito now contend. There was never any separation that one would expect in an  
14 arms-length transaction; rather, the Parties remained very much intertwined, and the only  
15 difference following the transfers was that the transferred assets were now out of the Herbst  
16 Parties' reach.

17 **F.     Paul Morabito Rendered Himself Judgment-Proof.**

18           86.     By the transfers at issue in this action, along with other transfers, Paul Morabito  
19 effectively transferred all or substantially all of his assets prior to any enforceable judgment even  
20 being entered against him, which is confirmed by Michele Salazar's net worth report submitted in  
21 the punitive damages phase of the Herbst Litigation,<sup>208</sup> the subject transfers rendered Paul  
22 Morabito insolvent, unable to satisfy his obligation to the Herbst Parties.

23  
24 <sup>205</sup> Trans. 10/21/18, p. 68, ll. 13-15.

25 <sup>206</sup> Exh. 153.

26 <sup>207</sup> Trans. 10/30/18, p. 66, ll. 1-12.

27 <sup>208</sup> Exh. 44. Notably, the report was from March 2011, well after the subject transfers had been finalized.  
28 There is no evidence presented of any disclosure of Paul Morabito's holdings or the detail of the transfer  
prior to, or at the time of, the subject transfers.

87. Although there was testimony presented from Bayuk<sup>209</sup> and attorney Vacco<sup>210</sup> that the transfers of Paul Morabito's interests to Bayuk after the Oral Ruling were for the purpose of separating Bayuk's interests from Paul Morabito, that testimony is belied by the fact that Bayuk and Paul Morabito co-owned new companies subsequent to the Oral Ruling. For instance, as of April 2012, Bayuk was co-owner of a company with Paul Morabito called Virsenet.<sup>211</sup>

## II. CONCLUSIONS OF LAW

**A. Plaintiff has standing to assert a claim for fraudulent transfer under NRS Ch. 112.**

1. Paul Morabito became a “debtor” no later than December 3, 2007<sup>212</sup> and remains a debtor under NRS 112.150(6).<sup>213</sup>

2. The Herbst Parties were “creditors” under NRS 112.150(4) no later than December 3, 2007, and they were entitled to assert claims under NRS Chapter 112, the Uniform Fraudulent Transfer Act (“UFTA”), pursuant to NRS 112.210 when this action was commenced.

3. 11 U.S.C. § 544(a)(1) provides that a trustee has “the rights and powers of ... a creditor” as of the commencement of the bankruptcy case. Thus, Plaintiff has standing to sue to avoid and recover transfers under NRS 112.210 and is the proper party in interest under NRCP 17. Plaintiff stands in the shoes of the bankrupt debtor, Paul Morabito, under the Bankruptcy Code, including under 11 U.S.C. § 541, and at the same time stands in the shoes of Paul Morabito’s creditors, inclusive of the Herbst Parties, in the pursuit of fraudulently transferred assets under 11

<sup>209</sup> Trans. 10/29/18, p. 130, l. 9-24.

<sup>210</sup> Trans. 11/6/18, p. 105, l. 17 – p. 106, l. 23.

<sup>211</sup> Exh. 134, p. LMWF SUPP, p. 068536.

<sup>212</sup> A “debtor” under NRS 112.150(6) is “a person who is liable on a claim,” and a “claim” means “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured” under NRS 112.150(3), which is derived from § 101(5) of the Bankruptcy Code. See UFTA, § 1, cmt. 3. A creditor has a “claim” if the injury giving rise to the right to payment manifests itself to the party holding the potential claim, even if both liability and damages are contested and unresolved. In re Flynn, 238 B.R. 742, 746 (Bankr. N.D. Ohio 1999) (citing Grady v. A.H. Robins Co., 839 F.2d 198, 202–03 (4th Cir. 1988), cert. dismissed 487 U.S. 1260, 109 S.Ct. 201, 101 L.Ed.2d 972 (1988)). Thus, the Herbst Parties’ claim against Paul Morabito and CNC arose prior to the date they commenced the State Court Action, or December 3, 2007.

<sup>213</sup> Exhs. 4, 21-23, 303.

1 U.S.C. § 544(b). See In re MortgageAmerica Corp., 714 F.2d 1266, 1275 (5th Cir. 1983) (section  
2 544(b) “allows the bankruptcy trustee to step into the shoes of a creditor for the purpose of  
3 asserting causes of action under state fraudulent conveyance acts for the benefit of all creditors,  
4 not just those who win a race to judgment”).

5 4. This court retains concurrent jurisdiction over claims by a trustee pursuant to 11  
6 U.S.C. § 544(b) under 28 U.S.C. § 1334(b). See In re Rosenblum, 545 B.R. 846, 855-56 (Bankr.  
7 E.D. Pa. 2016); Hopkins v. Plant Insulation Co., 349 B.R. 805, 812 (N.D. Cal. 2006); In re  
8 Kaufman & Roberts, Inc., 188 B.R. 309, 314 (Bankr. S.D. Fla. 1995) (“[b]ecause of this Court’s  
9 concurrent jurisdiction with the state court, the Trustee may intervene in the state court action”);  
10 In re CitX Corp., 302 B.R. 144, 161 n. 10 (Bankr. E.D. Pa. 2003) (citing Quality Tooling, Inc. v.  
11 United States, 47 F.3d 1569, 1573 (Fed. Cir. 1995)) (observing that, under 28 U.S.C. § 1334(b),  
12 “bankruptcy courts do not have exclusive jurisdiction over adversary proceedings, and such  
13 matters may be heard in a non-bankruptcy forum”).

14 **B. The Court Has Jurisdiction Over the Defendants.**

15 5. Jurisdiction over a nonresident defendant is proper when the plaintiff shows that  
16 the existence of jurisdiction satisfies Nevada’s long-arm statute and does not offend the principles  
17 of due process. Viega GmbH v. Eighth Jud. Dist. Ct., 130 Nev. 368, 374-75 (2014); Trump v.  
18 Eighth Judicial Dist. Court, 109 Nev. 687, 698 (1993); see also NRS 14.065(1).

19 6. “Due process requires that “minimum contacts” exist “between the defendant and  
20 the forum state ‘such that the maintenance of the suit does not offend traditional notions of fair  
21 play and substantial justice’”. Consipio Holding, BV v. Carlberg, 128 Nev. 454, 458 (2012)  
22 (quoting Trump, 109 Nev. at 698). The defendant should “reasonably anticipate being haled into  
23 court” in the forum state due to its conduct and connection there. Id. at 458 (quoting World-Wide  
24 Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). Ultimately, the Court applies a three  
25 part-inquiry to determine whether specific personal jurisdiction exists, which consists of: (1)  
26 whether the defendant purposely availed itself to the privilege of conducting business in the state,  
27 or purposefully directed its actions towards the state, (2) whether the cause of action arises out of  
28

1 the defendant's forum-related activities, and (3) whether the exercise of jurisdiction over the  
2 defendant is reasonable. See Consipio, 128 Nev. at 458-459.

3 7. "A defendant's contacts with a state are sufficient to meet the due process  
4 requirement if either general personal jurisdiction or specific personal jurisdiction exists." Arbella  
5 Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark, 122 Nev. 509, 512 (2006)  
6 The Court has specific personal jurisdiction over any defendant when that defendant  
7 "purposefully enters the forum's market or establishes contacts in the forum and affirmatively  
8 directs conduct there, and the claims arise from that purposeful contact or conduct." Viega GmbH,  
9 130 Nev. at 375.

10 8. In Nevada, a defendant who assists with fraudulent transfers or other efforts to  
11 impede satisfaction of a judgment is subject to personal jurisdiction. See Casentini v. Ninth  
12 Judicial Dist. Court of State In & For County of Douglas, 110 Nev. 721, 727 (1994). Further,  
13 intentional conduct occurring outside the forum state, but designed to cause harm in the forum  
14 state, may be a basis for finding minimum contacts. Calder v. Jones, 465 U.S. 783, 787-90 (1984)  
15 (holding that defendants must "reasonably anticipate[] being haled into court [in the forum state]"  
16 because "their intentional, and allegedly tortious, actions were expressly aimed at" the forum  
17 state, even though they occurred outside the forum state, and "they knew that the brunt of th[e]  
18 injury would be felt "in the forum state."").

19 9. The Court finds that based on Defendants' connections to Nevada, including that  
20 Bayuk and Sam Morabito are former residents of Reno, each Defendants' acceptance of  
21 fraudulent transfers of Nevada assets following a Nevada judgment, and Superpumper's merger  
22 with CWC, articles for which were filed in Nevada, it has jurisdiction over all Defendants.

23 10. With specific reference to Snowshoe, Paul Morabito held shares of CWC, a  
24 Nevada entity, which he fraudulently transferred to Snowshoe. Snowshoe is operated by Bayuk  
25 and Sam Morabito who are former Nevada residents. Snowshoe was formed with the specific  
26 purpose to accept a fraudulent transfer of the CWC shares. Defendants conceded that the Oral  
27 Judgment, announced in a Nevada court while Bayuk and Sam Morabito were present, was the  
28 impetus for the transfer to Snowshoe. Snowshoe, Bayuk, and Sam Morabito engaged in a business



1 transactions for the purpose of defrauding Nevada residents of a judgment won in a Nevada state  
2 court. Therefore, Snowshoe purposefully availed itself of Nevada jurisdiction and it could, along  
3 with the other Defendants, expect to be haled into court in Nevada. Snowshoe's contacts with  
4 Nevada were not the result of a unilateral act of a third party, nor were they random or fortuitous;  
5 they are the direct and intended consequence of the transfers in September 2010.

6 **C. Nevada Has Adopted and Codified the UFTA in NRS Chapter 112.**

7 11. The UFTA is designed to prevent a debtor from defrauding creditors by placing the  
8 subject property beyond the creditors' reach. Herup v. First Boston Fin., LLC, 123 Nev. 228  
9 (2007); NRS Ch. 112. The underlying policy of both the fraudulent transfer provisions of the  
10 Bankruptcy Code and the UFTA are the same – “to preserve a debtor’s assets *for the benefit of*  
11 *creditors.*” Id. at 235 (emphasis added).<sup>214</sup>

12 12. NRS 112.250 directs Nevada courts to apply and construe the UFTA “to effectuate  
13 its general purposes to make uniform the law with respect to the subject of this chapter among  
14 states enacting it.” Herup, 123 Nev. at 237 (quoting NRS 112.250).<sup>215</sup> Fundamentally, the  
15 application of the UFTA should be consistent with its purpose of preventing and suppressing fraud.  
16 See Donell v. Kowell, 533 F.3d 762, 774 (9th Cir. 2008) (finding the terms of the UFTA are

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18 <sup>214</sup> The Nevada Supreme Court noted that it is appropriate to rely on cases interpreting 11 U.S.C. § 548 in  
19 light of the similarity of the underlying policy of both UFTA and the Bankruptcy Code of preserving the  
20 debtor’s assets for the benefit of creditors and the similarity of the language of § 548 and the UFTA. Id.,  
21 123 Nev. at 235, 162 P.3d at 874, n. 15 (citing In re Tiger Petroleum Co., 319 B.R. 225, 232 (Bankr. N.D.  
22 Okla. 2004) (citing In re Grandote Country Club Company, Ltd., 252 F.3d 1146, 1152 (10th Cir. 2001); In  
23 re United Energy Corp., 944 F.2d 589, 594 (9th Cir. 1991); In re First Commercial Management Group  
24 Inc., 279 B.R. 230, 240 (Bankr. N.D. Ill. 2002) (“Except for different statutes of limitations, the [Illinois]  
25 and federal statutes are functional equivalents, and the analysis applicable [under federal law] is also  
26 applicable [under Illinois law].”); In re Spatz, 222 B.R. 157, 164 (N.D. Ill. 1998) (“Because the provisions  
of the UFTA parallel § 548 of the Bankruptcy Code, findings made under the Bankruptcy Code are  
applicable to actions under the UFTA.”)); see also Warfield v. Byron, 436 F.3d 551, 558 (5th Cir. 2006)  
(appropriate to rely on cases interpreting 11 U.S.C. § 548 where provision of UFTA at issue (which mirrored  
NRS 112.180(1)(a)) was “virtually identical” to 11 U.S.C. § 548 actual intent fraudulent transfer provision)  
(citing Ramirez Rodriguez v. Dunson (In re Ramirez Rodriguez), 209 B.R. 424 (Bankr. S.D. Tex. 1997);  
Cuthill v. Greenmark, LLC (In re World Vision Entm’t Inc.), 275 B.R. 641, 658 (Bankr. M.D. Fla. 2002);  
In re Carrozzella & Richardson, 286 B.R. 480, 485–86 (D. Conn. 2002)).

27 <sup>215</sup> Accordingly, it is appropriate for the Court to look to the application and construction of the UFTA by  
28 other courts. See, e.g., Sportsco Enters., 112 Nev. 625, 917 P.2d at 938 (citing to cases from other  
jurisdictions to support interpretation of Nevada’s UFTA).

1 abstract in order to protect defrauded creditors, no matter what form a financial fraud might take)  
2 (citations omitted).

3 13. Further, the UFTA “is remedial and as such should be liberally construed.” Cortez  
4 v. Vogt, 52 Cal.App.4th 917, 937, 60 Cal.Rptr.2d 841, 853 (Cal. App. 1997) (citing Lind v. O.N.  
5 Johnson Co., 204 Minn. 30, 40 (1938)); see also Landmark Community Bank, N.A. v. Klingelhutz,  
6 874 N.W.2d 446 (Minn. Ct. App. 2016), review denied, (Apr. 27, 2016) (stating that the UFTA is  
7 remedial and meant to be construed broadly, applying Minnesota’s enactment of the UFTA);  
8 Sigmon v. Goldman Sachs Mortg. Co., 539 B.R. 221 (S.D. N.Y. 2015) (same, applying Utah’s  
9 enactment of the UFTA). The objective of UFTA “is to enhance and not to impair the remedies  
10 of the creditor.” Id. at 937.

11 14. The UFTA provides that three types of transfers may be set aside: (1) transfers  
12 made with actual intent to hinder, delay, or defraud; (2) constructive fraudulent transfers; and (3)  
13 certain transfers by insolvent debtors. NRS 112.180(1)(a) (actual intent); NRS 112.180(1)(b)  
14 (constructive fraud); NRS 112.190 (transfers by an insolvent); Herup, 123 Nev. at 233. At issue  
15 here are NRS 112.180(1)(a) and NRS 112.180(1)(b).

16 15. Defendants contend that the subject transfers are not fraudulent under the UFTA  
17 because Bayuk and Sam Morabito had been “exonerated” by Judge Adams in the Herbst Litigation.  
18 But even if Judge Adam’s ruling that Defendants were not liable to the Herbst Parties on the claims  
19 at issue in the Herbst Litigation was pertinent to Defendants’ intent with respect to their receipt of  
20 transfers after the Oral Ruling, Defendants’ intent is not relevant to the analysis of whether the  
21 transfers were made with actual intent to hinder, delay, or defraud, or were constructively  
22 fraudulent. Both the actual and constructive fraud provisions of the statute address the nature of

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1 the transfer and the intent of the *debtor*, rather than the transferee. Specifically, NRS 112.180(1)(a)  
2 provides:

3 A transfer made or obligation incurred by a debtor is fraudulent as to a  
4 creditor . . . if *the debtor* made the transfer or incurred the obligation . .  
5 . [w]ith actual intent to hinder, delay or defraud any creditor of the  
6 debtor;

(Emphasis added.) NRS 112.180(1)(b) provides:

7 A transfer made or obligation incurred by a debtor is fraudulent as to a  
8 creditor . . . if *the debtor* made the transfer or incurred the obligation . .  
9 . [w]ithout receiving a reasonably equivalent value . . . and *the debtor*:  
10 (1) [w]as engaged or was about to engage in a business or a transaction  
for which the remaining assets of the debtor were unreasonably small in  
relation to the business or transaction; or (2) [i]ntended to incur, or  
believed or reasonably should have believed that the debtor would incur,  
debts beyond his or her ability to pay as they became due.

(Emphasis added.) Thus, it is the debtor's intent, rather than the transferee's intent, which is  
relevant to whether a transfer is actually or constructively fraudulent under the UFTA. See Herup,  
123 Nev. at 234 (NRS 112.180(1)(a) plainly provides that, for the district court to enter judgment  
in favor of a creditor under that statute, it must first determine whether the debtor "*actual[ly]*  
*inten[ded]* to hinder, delay or defraud any creditor of the debtor.") (emphasis in Herup); see also  
In re Nat'l Audit Def. Network, 367 B.R. 207, 221 (Bankr. D. Nev. 2007) ("It is key in this analysis  
that the required intent to hinder, delay or defraud is the debtor's; no collusion with the transferee  
is necessary.").

16. The transferee's knowledge becomes relevant under the good faith defense, which  
the transferee must prove. Herup, 123 Nev. at 236–37. Under Nevada law, determination of  
whether a transfer is fraudulent under NRS 112.180 is a prerequisite, but is separate and distinct,  
from remedies available to the creditor and whether the transferee is entitled to a good faith  
defense. Id. at 232, 237 (concluding that determination of whether a fraudulent transfer occurred  
under NRS 112.180(1)(a) is a prerequisite to setting aside the transfer or imposing damages and  
analysis of good faith defense, and instructing district court on remand to determine 1) whether  
the debtor made a fraudulent transfer under the UFTA, 2) whether the transferee acted in objective  
good faith in purchasing the business from the transferor, and 3) whether the transferee paid

1 reasonably equivalent value for the business for purposes of the good faith defense under NRS  
2 112.220(1)).

3 **D. The Transfers Were Made with Intent to Hinder, Delay, or Defraud the Herbst**  
4 **Parties.**

5 17. The UFTA provides that a transfer made or obligation incurred by a debtor may be  
6 set aside if it is made or incurred by a debtor “with actual intent to hinder, delay or defraud any  
7 creditor of the debtor.” NRS 112.180(1)(a); Herup, 123 Nev. at 231. “Traditionally, the intent  
8 required for actual fraudulent transfers is established by circumstantial evidence, since it will be  
9 the rare case in which the debtor testifies under oath that he or she intended to defraud creditors.”  
10 See In re Nat’l Audit Def. Network, 367 B.R. at 219–20 (applying NUFTA) (citing Dahar v.  
11 Jackson (In re Jackson), 318 B.R. 5, 13 (Bankr. D. N.H. 2004). Intent may be established by  
12 circumstantial evidence or inferences drawn from the debtor’s course of conduct. Id., 367 B.R. at  
13 219 (citing Mazer v. Jones (In re Jones), 184 B.R. 377, 385 (Bankr. D. N.M. 1995)).

14 18. Moreover, the debtor’s intent does not necessarily have to be to defraud a creditor.  
15 Rather, the “intent” element is satisfied if the debtor intends to hinder or delay or defraud a creditor.  
16 In re Nat’l Audit Def. Network, 367 B.R. at 221–22 (“Given the alternative phrasing of the requisite  
17 intent—a fraudulent transfer exists if there is an intent to hinder, delay *or* defraud—such transfers  
18 are also made with the requisite intent under Section 548(a)(1) and [NRS] 112.180.1(a)) (citations  
19 omitted). The debtor’s knowledge that a transaction will operate to the detriment of creditors is  
20 sufficient to establish actual intent to defraud a creditor. Hayes v. Palm Seedlings Partners–A (In  
21 re Agric. Research & Tech. Group, Inc.), 916 F.2d 528, 535 (9th Cir. 1990) (quoting Coleman Am.  
22 Mov. Servs., Inc. v. First Nat’l Bank and Trust Co. (In re Am. Prop., Inc.), 14 B.R. 637, 643  
23 (Bankr. D. Kan. 1981)). If the debtor has a motive of effecting the transaction to hinder a creditor,  
24 then the transaction is intentionally fraudulent even if the debtor also has non-fraudulent motives.  
25 See Bertram v. WFL Stadium, Inc., 41 A.3d 1239, 1247, 2012 WL 1427788 (D.C. 2012) (even if  
26 a debtor has at least one non-fraudulent motive for a transaction, the additional motive of effecting  
27 the transaction to hinder a creditor is a sufficient ground for an unassailable conclusion of  
28 fraudulent intent). Further, where the moving party proves fraudulent intent, the transfer is deemed



1 fraudulent, even if it is in exchange for valuable or full consideration. See In re Zeigler, 320 B.R.  
2 362, 373 (Bankr. N.D. Ill. 2005) (applying Illinois enactment of UFTA).

3 19. NRS 112.180(2) sets forth the following non-exclusive list of factors (generally  
4 known as the “badges of fraud”)<sup>216</sup> to be considered in determining actual intent:

- 5 a. the transfer or obligation was to an insider;
- 6 b. the debtor retained possession or control of the property transferred after the  
7 transfer;
- 8 c. the transfer or obligation was disclosed or concealed;
- 9 d. before the transfer was made or obligation was incurred, the debtor had been  
10 sued or threatened with suit;
- 11 e. the transfer was of substantially all the debtor's assets;
- 12 f. the debtor absconded;
- 13 g. the debtor removed or concealed assets;
- 14 h. the value of the consideration received by the debtor was reasonably equivalent  
15 to the value of the asset transferred or the amount of the obligation incurred;
- 16 i. the debtor was insolvent or became insolvent shortly after the transfer was  
17 made or the obligation was incurred;
- 18 j. the transfer occurred shortly before or shortly after a substantial debt was  
19 incurred; and
- 20 k. the debtor transferred the essential assets of the business to a lienor who  
21 transferred the assets to an insider of the debtor.

22 This list is illustrative, not exhaustive, and none of the badges standing alone are necessary or  
23 sufficient as “the range of activities that fraudsters may use to commit fraud cannot and should not  
24 be definitively cataloged.” In re Nat'l Audit Def. Network, 367 B.R. at 220.

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27 <sup>216</sup> See Nat'l Audit Def. Network, 367 B.R. at 220 (noting that the “badges of fraud” developed by the  
28 courts are recurring actions that historically have been associated with the actual intent to hinder, delay or  
defraud creditors) (citing Twyne's Case, 3 Coke 80b, 76 Eng. Rep. 809 (Star Chamber 1601) (developing  
early list of badges of fraud); Cuthill v. Greenmark, LLC (In re World Vision Entm't, Inc.), 275 B.R. 641,  
656 (Bankr. M.D. Fla. 2002); Indianapolis Indiana Aamco Dealers Advertising Pool v. Anderson, 746  
N.E.2d 383, 390 (Ind. App. Ct. 2001)).

1           20.     The Nevada Supreme Court has also recognized the following indicia of fraud that  
2 will support a determination of actual fraudulent intent:

3                   lack of consideration for the conveyance, the transfer of the debtor's  
4                   entire estate, relationship between transferor and transferee, the  
5                   pendency or threat of litigation, secrecy or hurried transaction,  
6                   insolvency or indebtedness of the transferor, departure from the usual  
7                   method of business, the retention by the debtor of possession of the  
8                   property, and the reservation of benefit to the transferor.

9           Sportsco Enters. v. Morris, 112 Nev. 625, 632 (1996) (citations omitted).

10           21.     The UFTA list of "badges of fraud" provides neither a counting rule, nor a  
11 mathematical formula, and no minimum number of factors tips the scales toward actual intent. In  
12 re Beverly, 374 B.R. 221, 236 (B.A.P. 9th Cir. 2007), aff'd in part, dismissed in part, 551 F.3d  
13 1092 (9th Cir. 2008) (applying the California enacted UFTA). The Ninth Circuit has explained  
14 that "[t]he presence of a single badge of fraud may spur mere suspicion; the confluence of several  
15 can constitute conclusive evidence of actual intent to defraud, absent 'significantly clear' evidence  
16 of a legitimate supervening purpose." In re Acequia, Inc., 34 F.3d 800 (9th Cir. 1994) (emphasis  
17 added); see also S. New England Tel. Co. v. Sahara & Arden, Inc., No. 2:09-CV-00534-RCJ-PAL,  
18 2010 WL 2035330, at \*4 (D. Nev. May 24, 2010) ("[a]lthough the 'presence of a single factor, i.e.  
19 a badge of fraud, may cast suspicion on the transferor's intent, the confluence of several in one  
20 transaction generally provides conclusive evidence of an actual intent to defraud.'") (quoting  
21 Gilchinsky v. Nat'l Westminster Bank, 159 N.J. 463, 732 A.2d 482, 490 (N.J. 1999)); In re Nat'l  
22 Audit Def., 367 B.R. at 220 ("Although none of the badges standing alone will establish fraud, the  
23 existence of several of them will raise a presumption of fraud."). In Nevada, as few as three badges  
24 have been found to establish clear and convincing evidence of actual fraudulent intent. See  
25 Sportsco Enters., 112 Nev. at 632.

26           22.     Where the plaintiff establishes the existence of "indicia of badges of fraud, the  
27 burden shifts to the defendant to come forward with rebuttal evidence that a transfer was not made  
28 to defraud the creditor." See Sportsco Enters., 112 Nev. at 632 (citing Territorial Sav. & Loan  
Ass'n v. Baird, 781 P.2d 452, 462 n. 18 (Utah Ct. App. 1989); see also Southern New England  
Telephone Co. v. Sahara & Arden, Inc., 2010 WL 2035330, \*4-12 (D. Nev. May 24, 2010)

(applying the burden-shifting analysis under NRS 112.180(1)(a) and granting summary judgment to creditor).

23. The evidence relative to a confluence of at least a majority of the badges of fraud identified by Nevada statute and the Sportsco case amounts to clear and convincing evidence of Paul Morabito's actual intent to delay, hinder or defraud the Herbst Parties. See Lubbe v. Barba, 91 Nev. 596, 598 (1975) (establishing a requirement for proving contentions of fraud by clear and convincing evidence).

1. **Paul Morabito's Actual Intent Is Apparent from His Own Statements and Actions.**

24. The debtor made his intent clear through his actions and his own statements.

25. Immediately following the Oral Ruling, Paul Morabito transferred \$6 million in cash off-shore.<sup>217</sup> Within two days of the Oral Ruling, he hired counsel for advice on how to evade the Herbst Parties' judgment and protect his assets from the Herbst Parties.<sup>218</sup> Recognizing that the transfers would be challenged, he explained his motive as depriving the Herbst Parties of a perceived "home court, good old boy advantage."<sup>219</sup> When he was advised by Gary Graber that the contemplated transfers may constitute fraudulent transfers, he terminated Mr. Graber's firm.<sup>220</sup> Paul Morabito then used his long-time counsel, Vacco, to implement a series of transactions that resulted in him being divested of most of his assets within a two-week period, before the FF&CL was even entered.

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<sup>217</sup> Exh. 37, p. 4, MORABITO (341).005352.

<sup>218</sup> See Exh. 25 (Hodgson Ross indicating they had a number of ideas, "including a possible marital split between Paul [Morabito] and [Bayuk] pursuant to which [Bayuk] could retain some of Paul [Morabito's] assets" and Vacco of LMWF following with discussion of Paul Morabito selling his interest in CWC to Bayuk and Sam Morabito); see also Trans. 11/1/18, p. 29, ll. 13-18 and p. 30, ll. 21-22; 11/1/18, p. 33, ll. 1-6; 11/1/18, p. 46, ll. 13-15; Exhs. 26 discussing moving to California) and 32 ("[Bayuk] and I plan on changing our primary residence from Reno to Laguna Beach.").

<sup>219</sup> Exh. 29.

<sup>220</sup> Trans. 11/1/18, p. 35, ll. 6-14.

1           26.     Subsequent to the transfers, Paul Morabito acknowledged that he had stripped  
2 himself of any assets other than the Panorama Property and had effectively limited the Herbst  
3 Parties' collection attempts to the Panorama Property, telling Vacco:

4                     With the sale of the Reno house closing December 31st our friends  
5 in Las Vegas get a nice gift. They also acknowledge the change of  
6 ownership to just me. \$1.5 million is [their] bounty. If we go past  
7 December 31st the only material asset that they can lay their hands  
8 on through me is access to Edward Bayuk and Virsenet - and that is  
now valued at \$2.12 billion. After dilution Edward owns 72%. \$85  
million is 4% of the overall value. If they want to go after me and  
think that they can make a claim on him, then that's [their] value  
proposition. . . .<sup>221</sup>

9           27.     On April 24, 2013, on the eve of Paul Morabito's default under the Forbearance  
10 Agreement with the Herbst Parties, he asked Vacco "How do you do this so that Herbst cannot  
11 ever access it?"<sup>222</sup>

12           28.     Paul Morabito's communications with his counsel both before and after the  
13 transfers leave no doubt of his knowledge that the transactions would operate to the detriment of  
14 the Herbst Parties. The evidence presented at trial established the actual intent to hinder, delay, or  
15 defraud a creditor by clear and convincing evidence without any further consideration of the  
16 statutory or common-law badges of fraud. See Hayes, 916 F.2d at 535 (debtor's knowledge that a  
17 transaction will operate to the detriment of creditors is sufficient to establish actual intent).

18           29.     Even if the court were to accept the story offered by Paul Morabito and Defendants  
19 (which this Court does not find credible) that the parties were seeking to separate their assets as a  
20 result of the Oral Ruling, a non-fraudulent motive will not "cure" a transaction effectuated with  
21 actual intent.<sup>223</sup> See Bertram, 41 A.3d at 1247 (transaction is intentionally fraudulent if debtor has  
22 a motive of effecting a transaction to hinder a creditor, even if the debtor also has non-fraudulent  
23 motives).

24  
25 <sup>221</sup> Exh. 161 (December 18, 2012 email from Paul Morabito to Dennis Vacco).

26 <sup>222</sup> Exh. 162.

27 <sup>223</sup> As noted above, the story that Paul Morabito was merely separating his assets from Bayuk and Sam  
28 Morabito in September 2010 is belied by the transfer of \$6 million from Paul Morabito's account  
immediately following the Oral Ruling, along with Paul Morabito's continued involvement in their  
businesses as an "advisor."



1                   2.     **The Presence of Multiple Badges of Fraud Compel a Determination of**  
2                   **Paul Morabito's Intent to Hinder, Delay, or Defraud the Herbst Parties.**

3             30.     Even if Paul Morabito had not admitted his intent to hinder and delay the Herbst  
4     Parties, consideration of the badges of fraud compel the conclusion that Paul Morabito intended to  
5     hinder, delay, or defraud his creditors, the Herbst Parties.

6                   a.     **The transfers were to insiders – NRS 112.180(2)(a).**

7             31.     The transfers at issue in this case were made to insiders. Under NUFTA, a relative  
8     of the debtor is an insider. NRS 112.150(7)(a)(1). Here, Sam Morabito is Paul Morabito's brother  
9     and, therefore, a relative of the debtor.

10            32.     NRS 112.150(7)(d) further provides that a statutory insider includes an affiliate, or  
11     an insider of an affiliate as if the affiliate were the debtor. "Affiliate" is defined as:

12                   (b) A corporation 20 percent or more of whose outstanding voting securities are  
13                   directly or indirectly owned, controlled or held with power to vote, by the debtor  
14                   or a person who directly or indirectly owns, controls or holds with power to vote,  
15                   20 percent or more of the outstanding voting securities of the debtor, other than a  
                  person who holds the securities: (1) As a fiduciary or agent without sole power to  
                  vote the securities; or (2) Solely to secure a debt, if the person has not in fact  
                  exercised the power to vote...

16     NRS 112.150(1)(b). Paul Morabito directly and indirectly owned and controlled 20% more of the  
17     outstanding voting securities of CWC, Superpumper, and Baruk LLC and therefore, they all  
18     constitute Paul Morabito's affiliates. If the affiliate is a corporation, an insider includes (1) a  
19     director of the affiliate, (2) an officer of the affiliate, or (3) a person in control of the affiliate.  
20     Here, Bayuk was a director and officer of CWC and Superpumper along with Paul Morabito and  
21     owned 50% of Baruk Properties with Paul Morabito. Therefore, Bayuk was therefore an insider  
22     of Paul Morabito's affiliates and, by extension, a statutory insider of Paul Morabito.

23            33.     Furthermore, the "UFTA's definition of 'insider' is not intended to limit an insider  
24     to the ...listed subjects. Instead, the drafters provided the list for purposes of exemplification."  
25     See In re Holloway, 955 F.2d 1008, 110 (5th Cir. 1992) (analyzing identical provision under  
26     Texas' adopted UFTA)); Landmark Cmty. Bank, N.A. v. Klingelutz, 874 N.W.2d 446, 452, 2016  
27     WL 363521 (Minn. Ct. App. 2016), review denied (Apr. 27, 2016) (finding that single-member  
28     LLC of spouse was an insider because the definition of "insider" is not limiting) (citing Citizens

1 State Bank Norwood Young Am. v. Brown, 849 N.W.2d 55, 62–63 (Minn. 2014) (finding that  
2 former spouse was an insider). When determining whether a transferee is a non-statutory insider  
3 two factors must be considered: (1) the closeness of the relationship between the transferee and  
4 the debtor, and (2) whether the transactions between them were conducted at arm's length. In re  
5 Emerson, supra at 707 (citing to In re Holloway, 955 F.2d 1008, 1011 (5th Cir. 1992)); In re Village  
6 at Lakeridge, LLC, 814 F.3d 993, 996 (9th Cir. 2016). "The true test of 'insider' status is whether  
7 one's dealings with the debtor cannot accurately be characterized as arm's-length." In re Craig  
8 Systems Corp., 244 B.R. 529, 539 (Bankr. D. Mass. 2000).

9 34. Paul Morabito and Bayuk were long-time companions and business partners who  
10 cohabitated for over a decade prior to the subject transfers, owned several properties together as  
11 tenants in common, and co-owned several businesses. Domestic partners, same-sex or otherwise,  
12 are, like spouses, insiders for the purposes of an avoidance analysis.<sup>224</sup> Given the nature of their  
13 relationship, and the nature of the subject transactions, the subject transactions between Paul  
14 Morabito and Bayuk were not entered arm's length with one another.

15 **b. The debtor retained possession or control of the property transferred**  
16 **after the transfer – NRS 112.180(2)(b).**

17 35. It was Paul Morabito's intent that he would continue to be involved in his  
18 businesses behind the scenes, but that he would not have assets titled in his name and his businesses  
19 would be titled in the names of Bayuk, Sam Morabito, and Dennis Vacco.<sup>225</sup>

20  
21 <sup>224</sup>See Bloom v. Camp, 336 Ga. App. 891, 895, 785 S.E.2d 573, 578, adopted, (Ga. Super. May 24, 2016) (finding  
22 same-sex partner to be an insider though same-sex marriages were not recognized in Georgia at the time of the  
23 transfer); In re Fisher, 296 F. App'x 494, 502, 2008 WL 4569946, at \*5 (6th Cir. 2008) (though finding no fraudulent  
24 transfer occurred, finding that opposite-sex domestic partner was an insider); In re Tanner, 145 B.R. 672, 678 (Bankr.  
25 W.D. Wash. 1992) (same-sex partner who had cohabitated with debtor was an insider) (citing Matter of Montano,  
15 B.R. 307 (Bankr. D. N.J. 1981) (parents of debtor's live-in fiancé were insiders); In re Ribcke, 64 B.R. 663 (Bankr.  
D. Md. 1986) (parents of a debtor's deceased wife were insiders); In re O'Connell, 119 B.R. 311 (Bankr. M.D. Fla.  
1990) (a good friend who had made numerous informal loans to a debtor was an insider); In re Standard Stores, Inc.,  
124 B.R. 318 (Bankr. C.D. Cal. 1991) (a corporate debtor's president's ex-brother-in-law was an insider with respect  
to a transfer five years after divorce from debtor's president's sister).

26 <sup>225</sup>Exh. 30 (9/21/2010 email to joint counsel, Vacco, and a third party representing that he "would no longer  
27 be actively seeking to accumulate assets in companies that [he was] a shareholder in, and instead would be  
28 acting as an advisor to amongst other entities, Snowshoe Petroleum LLC, a company to be owned and  
operated by [his] brother, Sam; Edward Bayuk, and Dennis Vacco...").

1           36. Consistent with his plan, following the transfers, Paul Morabito, Bayuk, and Sam  
2 Morabito maintained the *status quo*, with Paul Morabito retaining significant control of and  
3 continuing to use the transferred assets as if he still owned them. After the transfers, Bayuk and  
4 Sam Morabito funded Paul Morabito's lifestyle and Bayuk supplied Paul Morabito with money,  
5 credit card, a Mercedes, and a luxurious home. Paul Morabito continued to receive financial  
6 remuneration from Snowshoe, which paid \$126,000 in Paul Morabito's personal legal expenses  
7 between October of 2015 and March of 2018—years after his financial interests were supposedly  
8 separated from those of his brother and Bayuk.<sup>226</sup>

9           37. Paul Morabito continued to negotiate deals using Superpumper as if he still owned  
10 it, and had general authority to speak on behalf of Snowshoe.<sup>227</sup> Among other examples of his  
11 continued control, in April 11, 2011, without any involvement by Bayuk or Sam Morabito, Paul  
12 Morabito proposed contributing Snowshoe's 100% interest in Superpumper in connection with the  
13 proposed Nella Deal, for which negotiations had commenced prior to the transfers.<sup>228</sup> In August  
14 2011, Paul Morabito's and Defendants' joint counsel advised Paul Morabito (without copying  
15 Bayuk or Sam Morabito) to simply use Superpumper to make a payment to real estate broker Tim  
16 Haves in order to conceal the payment from the Herbst Parties.<sup>229</sup> In April of 2012, in response to  
17 inquiries by Superpumper's auditors regarding affiliate loans, Paul Morabito instructed Vacco  
18 "MY POSITION IS BELOW - PLEASE MAKE IT HAPPEN".<sup>230</sup> In March 2013, nearly three  
19 years after the Superpumper Transfer, Paul Morabito was still bargaining with Superpumper,  
20 proposing a settlement with the Herbst Parties whereby he would transfer Superpumper to the  
21 Herbst Parties in partial satisfaction of the judgment.<sup>231</sup> Though Bayuk and Sam Morabito  
22  
23

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24 <sup>226</sup> Exhs. 308, 309.

25 <sup>227</sup> Trans. 10/29/18, p. 224, l. 3 – p. 226, l. 20.

26 <sup>228</sup> Exhs. 131, 132 133; Trans. 11/2/18, p. 12, l. 23 – p. 16, l. 3; p. 16, l. 4 – p. 17, l. 19.

27 <sup>229</sup> Exhs. 136 and 137.

28 <sup>230</sup> Exh. 144.

<sup>231</sup> Exh. 153.

1 supposedly owned Superpumper at that point through Snowshoe, neither was included in these  
2 discussions.

3 38. Paul Morabito also continued to use Superpumper Properties, the successor to  
4 Baruk LLC, and its assets as if he still owned them. In November of 2011, Paul Morabito sought  
5 to use the assets of Snowshoe Properties (the successor to Baruk LLC) to settle a lawsuit against  
6 him. In February 2012, he sought to negotiate a third-party sale of 1461 Glenneyre and a master  
7 lease with the new buyer for Snowshoe Capital, a company owned by Paul Morabito, for the  
8 property, without any involvement by Bayuk.<sup>232</sup> Later, he caused a second deed of trust to be  
9 placed on 1461 Glenneyre in connection with a settlement of his lawsuit with Bank of America,  
10 which had nothing to do with Bayuk—Vacco simply instructed Bayuk when and where to sign for  
11 Paul Morabito.<sup>233</sup> Similarly, in September of 2012, Bayuk instructed their counsel that he would  
12 sign a second deed of trust on the Mary Fleming House in Palm Springs that Paul Morabito wanted  
13 in connection with funding for Virsenet, an entity in which Bayuk and Paul Morabito held joint  
14 interests.<sup>234</sup> When the sham of the sale of the Baruk LLC interest to Bayuk became inconvenient,  
15 Paul Morabito instructed Vacco to just undo it.<sup>235</sup> On October 3, 2012, Paul Morabito instructed  
16 Vacco and Lovelace regarding negotiation of a \$5 million loan to Snowshoe Properties—in which  
17 Paul Morabito supposedly held no interest—without including Bayuk.<sup>236</sup> In March 2014, Paul  
18 Morabito caused Bayuk to transfer the Clayton Property to Desi Moreno without any value to  
19 Bayuk.<sup>237</sup>

20 39. Paul Morabito's continued control makes clear that the intent of the transfers was  
21 not to separate Sam Morabito's and Bayuk's interests from Paul Morabito's interests, as Bayuk  
22

23 <sup>232</sup> Exh. 142; Trans. 10/30/18, p. 28, l. 9 – p. 29, l. 1.  
24

25 <sup>233</sup> Exhs. 145, 147, 148, 152.

26 <sup>234</sup> Exh. 150; *see also* Exhs. 159 and 160.

27 <sup>235</sup> Exh. 70.

28 <sup>236</sup> Exh. 151.

<sup>237</sup> Trans. 10/30/18, p. 66, ll. 1-12.



1 and Sam Morabito now contend. There was never any separation one would expect in an arms'  
2 length transaction; rather, Paul Morabito viewed the transferred assets as if he still owned them.  
3 The only difference following the transfers was that the assets were out of the Herbst Parties'  
4 reach. While Bayuk and Sam Morabito often attempted to characterize Paul Morabito's  
5 representations regarding the assets and his continued use of the assets as mere "whiteboarding,"  
6 neither of them ever repudiated Paul Morabito's representations regarding the assets or his  
7 attempts to sell, lien, or otherwise leverage them in connection with a transaction,<sup>238</sup> and,  
8 consistent with their unwavering support for Paul Morabito,<sup>239</sup> testified that they believed in his  
9 ability to put together a favorable transaction and would have agreed to a transaction negotiated  
10 by him.<sup>240</sup>

11 **c. The transfers were concealed (NRS 112.180(2)(c)) and the debtor**  
12 **removed or concealed assets – NRS 112.180(2)(g).<sup>241</sup>**

13 40. Judge Adams announced the Oral Ruling on September 13, 2010. By October 1,  
14 2010, the transfers were largely complete. Neither Paul Morabito, his counsel, nor Defendants  
15 informed the Herbst Parties that the transfers were occurring, despite the fact that Paul Morabito  
16 and the Herbst Parties were in the midst of preparing for the punitive damages phase of the trial.

17 41. The Herbst Parties were not informed of the Baruk Transfer or the subsequent  
18 transfers of the Baruk Properties. Both the name and location of the entity owning the Baruk  
19 Properties was changed to Snowshoe Properties. By October 1, 2010, Bayuk had transferred the  
20 Palm Springs Property again, this time to the Bayuk Trust. Thereafter, the \$1,617,500 Note was  
21 assigned to Woodland Heights, Ltd. so the Herbst Parties could not simply attach the proceeds to  
22 satisfy the Confessed Judgment.

23 42. The Herbst Parties were not informed of the Compass Loan, the distributions by  
24 Superpumper, the Matrix Valuation, or the Superpumper Agreement. Further, Paul Morabito

25  
26 <sup>238</sup> Nor did their counsel, Vacco.

27 <sup>239</sup> See Trans. 10/30/18, p. 98, l. 4 – p. 99, l. 7; p. 233, l. 15 – 235, l. 9

28 <sup>240</sup> Trans. 10/30/18, p. 239, l. 1-13.

<sup>241</sup> These badges of fraud are overlapping, and therefore are discussed together.

1 removed his assets from Nevada when he transferred his interest to Snowshoe, a new company  
2 incorporated in New York.

3 43. As Paul Morabito made clear in his communications with his counsel, removing  
4 and concealing assets in different jurisdictions was an intentional measure to ensure that the  
5 assets were out of the reach of the Nevada courts and to strip the Herbst Parties of a perceived  
6 “home court, good old boy” advantage in their collection efforts.

7 **d. Before the transfer was made or obligation was incurred, the debtor had**  
8 **been sued or threatened with suit – NRS 112.180(2)(d), the transfer**  
9 **occurred shortly before or shortly after a substantial debt was incurred –**  
10 **NRS 112.180(2)(i), and the transfers were hurried – Sportsco Enterprises.**

11 44. The presence of these related badges of fraud are the most obvious and compelling.  
12 Not only had Paul Morabito been sued by the Herbst Parties, but Judge Adams had announced an  
13 \$85 million Oral Ruling against him on September 13, 2010.

14 45. The transfers were largely completed within the next two weeks, when the punitive  
15 damages phase of the litigation was just commencing. See Sportsco Enters., 112 Nev. at 632  
16 (secrecy or a hurried transaction as indicative of fraud). By the time of Judge Adams’ FF&CL, let  
17 alone entry of the Final Judgment on August 23, 2011, Paul Morabito’s attachable assets were  
18 gone. It is not even necessary to infer that the Oral Ruling prompted the transfers, because Paul  
19 Morabito, Bayuk and Sam Morabito all admitted it.<sup>242</sup>

20 **e. The transfer was of substantially all the debtor’s assets – NRS**  
21 **112.180(2)(e).**

22 46. Within days after Judge Adams announced the Oral Ruling, Paul Morabito divested  
23 himself of almost all, if not all, of his assets: approximately \$7 million in funds were transferred  
24 from his bank account, Paul Morabito’s interest in the Laguna Properties was transferred, the 50%  
25 interest in Baruk LLC, and the 80% interests in Superpumper. He even transferred his furnishings  
26

27 <sup>242</sup> Trans. 10/29/18, p. 132, ll. 6-16; *see also id.*, p. 132, ll. 17-19 (stipulating that Oral Ruling was the  
28 impetus for the transfers); Trans. 10/31/18, p. 150, l. 20 – p. 151, l. 3.



1 and personal property (including those he continued to use), to Bayuk. Paul Morabito was left  
2 with minimal tangible assets subject to execution by his creditors.

3 **f. The value of the consideration received by the debtor was not reasonably**  
4 **equivalent to the value of the asset transferred – NRS 112.180(2)(h), and**  
5 **there was lack of consideration for the transfers.**<sup>243</sup>

6 47. Whether a debtor receives reasonably equivalent value is determined from the  
7 perspective of creditors. In *Herup*, the Nevada Supreme Court found that the underlying public  
8 policy of the Bankruptcy Code and the UFTA is the same: “to preserve a debtor’s assets *for the*  
9 *benefit of creditors.*” *Herup*, 123 Nev. at 235 (emphasis added). Because the language of the  
10 UFTA and § 548 of the Bankruptcy Code are nearly identical and the purposes of the different  
11 laws are the same, cases applying § 548 of the Bankruptcy Code are persuasive authority. See *id.*  
12 (citing cases) (synthesizing authority for the conclusion that the bankruptcy code dictates “the  
appropriate standard to apply under Nevada’s version of the UFTA.”).

13 48. Likewise, the comments to the UFTA expressly state that the definition of “value”  
14 within the uniform act “is adapted from § 548(d)(2)(A) of the Bankruptcy Code.... The definition  
15 [ ] is not exclusive [and] is to be determined in light of the purpose of the Act to protect a debtor’s  
16 estate from being depleted to the prejudice of the debtor’s unsecured creditors.” UFTA § 3, cmt.  
17 2. “*Consideration having no utility from a creditor’s viewpoint does not satisfy the statutory*  
18 *definition.*” *Id.* (emphasis added).<sup>244</sup>

19 49. To constitute a cognizable benefit under the UFTA, (1) the benefit must be received  
20 by the debtor, such that the debtor’s net worth is preserved *to the exception of the interests of the*  
21 *creditors*; (2) such benefits must be for a cognizable value, including “property” and “satisfaction  
22

23 <sup>243</sup> The lack of reasonably equivalent value is both a badge of fraud under NRS 112.180(2)(h) and an  
24 element of a constructive fraudulent transfer under NRS 112.180(1)(b).

25 <sup>244</sup> Other jurisdictions have reached the same conclusion. See *In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.*,  
26 No. 211ML02265MRPMANX, 2013 WL 12148482, at \*6 (C.D. Cal. June 7, 2013); *Janvey v. Golf Channel, Inc.*,  
27 792 F.3d 539, 544 (5th Cir. 2015), certified question answered, 487 S.W.3d 560 (Tex. 2016). California’s UFTA, for  
28 example, “requires ‘reasonably equivalent value’ to be determined from the standpoint of the creditors,” as  
contemplated under section 548. *In re Prejean*, 994 F.2d 706, 708 (9th Cir. 1993) (emphasis added); see *In re Bay*  
*Plastics, Inc.*, 187 B.R. 315, 329 (Bankr. C.D. Cal. 1995) (noting that “under California law, reasonable equivalence  
must be determined from the standpoint of creditors”); see also *In re Blixseth*, 489 B.R. 154, 184 (Bankr. D. Mont.  
2013), *aff’d*, 514 B.R. 871 (D. Mont. 2014), *aff’d in part, rev’d in part*, 679 F. App’x 611 (9th Cir. 2017).

1 or securing of a present or antecedent debt of the debtor;" and (3) the benefit must have been  
2 received by the debtor in exchange for the transfer or obligation.<sup>245</sup> The reasonably equivalent  
3 value of a given transfer under the UFTA is not determined relative to the transferee or the  
4 transferor, but relative to assets available for the benefit of creditors. Consideration is "reasonably  
5 equivalent" if it leaves *creditors* in the substantially the same position as before the transfers.

6 50. Here, Paul Morabito did not receive reasonably equivalent value in exchange for  
7 the assets he transferred.

8 a. Prior to the subject transfers, Paul Morabito owned (1) a 70% interest in the  
9 Panorama Property, a 75% interest in the El Camino Property, and a 50% interest in the Los Olivos  
10 Property, with a collective value of approximately \$1,916,250; (2) a 50% interest in Baruk LLC,  
11 with a value of approximately \$1,654,550, and (3) 80% of the equity of CWC, which held an 100%  
12 interest in Superpumper, with a value of \$10,440,000. In addition, he owned personal property at  
13 the El Camino, Los Olivos, Panorama, and Mary Fleming Properties which he valued at  
14 \$2,000,000.

15 b. After the transfers, Paul Morabito owned the Panorama Property, which had  
16 an equity value of only \$971,136 (further reduced by credits for the theatre equipment and water  
17 rights that Bayuk retained), \$60,000 in cash and nominal payments for the personal property, the  
18 \$1,617,050 Note, the \$492,937.30 Note, and a slew of payments as directed to the LMWF firm  
19 (who represented Paul Morabito and Defendants) and other third parties to support his lifestyle.

20 51. The evidence establishes because the bulk of the "value" received—the \$1,617,050  
21 and \$492,937.30--Notes by Paul Morabito were illusory, and certainly did not result in tangible  
22 assets available for Paul Morabito's creditors. A promise is illusory when it appears "so  
23 insubstantial as to impose no obligation at all on the promisor – who says, in effect, 'I will if I  
24 want to.'" See Sateriale v. R.J. Reynolds Tobacco Co., 687 F.3d 1132, 1146 (9th Cir. 2012). Paul  
25

26 <sup>245</sup> See In re Blixseth, 489 B.R. at 184; see also SE Prop. Holdings, LLC v. Braswell, 255 F. Supp. 3d 1187, 1198  
27 (S.D. Ala. 2017) (citing UFTA and synthesizing similar bankruptcy authority for the conclusion that "reasonably  
28 equivalent value" is measured from the net effect of the transfer on the debtor's estate and the value of the transfer to  
the creditors at-issue).

1 Morabito's relationships with Bayuk and Sam Morabito were such that Bayuk's and Sam  
2 Morabito's obligations on the Notes were nothing more than "I will if I want to." Defendants have  
3 been unable to credibly account for payments on the Notes, the terms of which were never enforced  
4 and meaningless to the parties. While Paul Morabito transferred executable assets to the  
5 Defendants, he received only a fraction of the value in cash, illusory notes, and promises to  
6 maintain his lifestyle without regard for the terms of the notes or the agreements documenting the  
7 transfers.

8 **A. The Transfers Were Constructively Fraudulent as to Creditors.**

9 52. The evidence presented, the chronology of events and transfer of assets, and the  
10 other surrounding circumstances lead to the inescapable conclusion that the transfers to the  
11 Defendants were intentionally, willfully and fraudulently designed to evade collection by the  
12 Herbst Parties. But even if actual intent had not been established, the transfers would be avoidable  
13 as constructively fraudulent. Under Nevada's constructive fraud provision:

14 [a] transfer made... by a debtor is fraudulent as to a creditor, whether  
15 the creditor's claim arose before or after the transfer was made., if  
16 the debtor made the transfer... [w]ithout receiving a reasonably  
equivalent value in exchange for the transfer..., and the debtor:

17 (1) Was engaged or was about to engage in a business or a  
18 transaction for which the remaining assets of the debtor were  
unreasonably small in relation to the business or transaction; or

19 (2) Intended to incur, or believed or reasonably should have  
20 believed that the debtor would incur, debts beyond his or her  
ability to pay as they became due."

21 NRS 112.180(1)(b).

22 53. While the creditor generally bears the burden of proof both with respect to the  
23 insolvency of the debtor and the inadequacy of consideration, as with the actual fraudulent transfer  
24 statute, "under [the] constructively fraudulent transfer statute, where the creditor establishes the  
25 existence of certain indicia or badges of fraud, the **burden shifts to the defendant** to come forward  
26 with rebuttal evidence that a transfer was not made to hinder, delay, or defraud the creditor. See  
27 Sportsco Enters., 112 Nev. at 632 (citing Territorial Sav. & Loan Ass'n v. Baird, 781 P.2d 452,  
28 462 n. 18 (Utah Ct. App. 1989); Erjavec v. Herrick, 827 P.2d 615, 617 (Colo. Ct. App. 1992)); In

1 re Nat'l Audit Defense Network, 367 B.R. 207, 226 (Bankr. D. Nev. 2007) (applying burden  
2 shifting analysis to constructive fraud). While "[i]t may appear contradictory to consider facts  
3 used to infer actual intent to defraud in order to determine 'constructive' fraud," the "[f]actors  
4 relevant to determining actual intent to defraud, a higher culpability standard, should be equally  
5 probative where something less than actual intent will suffice." In re Soza, 542 F.3d 1060, 1066-  
6 67 (5th Cir. 2008).

7 54. To rebut an inference of fraud, the defendant must show either that the debtor was  
8 solvent at the time of the transfer and not rendered insolvent thereby or that the transfer was  
9 supported by fair consideration.<sup>246</sup> Sportsco Enters., 112 Nev. at 632 (citing Kirkland v. Riso, 98  
10 Cal.App.3d 971, 159 Cal.Rptr. 798, 802 (Ct. App. 1980)).

11 55. A number of the badges of fraud are present in this case, giving rise to a  
12 presumption that the transfers were constructively fraudulent, thereby shifting the burden to  
13 Defendants to establish the transfers were not constructively fraudulent. Defendants have not  
14 offered evidence sufficient to overcome the presumption. As discussed in the context of actual  
15 intent under NRS 112.180(a)(1), Paul Morabito did not receive reasonably equivalent value in  
16 exchange for the subject transfers. Moreover, after the transfers, Paul Morabito was left with  
17 insufficient assets to even meet his basic expenses, relying on Bayuk and Sam Morabito to pay his  
18 living expenses. The transfers were made immediately following Judge Adams' Oral Ruling, but  
19 before entry of the Final Judgment. As of the Oral Ruling, Paul Morabito knew, or at the very  
20 least, should have known, that he would incur a debt to the Herbst Parties beyond his ability to pay  
21 as it came due. That insolvency was imminent upon entry of the final judgment was confirmed by  
22 Michele Salazar in her net worth expert report submitted in the Herbst Litigation.<sup>247</sup>

23 ///

24 ///

26 <sup>246</sup> The term "fair consideration" derives from the Uniform Fraudulent Conveyance Act, 7A U.L.A. 427,  
27 428 (1985), the predecessor to the UFTA. In re Bay Plastics, Inc., 187 B.R. 315, 322, 329 (Bankr. C.D.  
Cal. 1995). The UFTA replaced "fair consideration" with "reasonably equivalent value." Id. at 329.

28 <sup>247</sup> Exh. 44.



1 **B. Plaintiff Is Entitled to Avoidance of the Transfers and Return of the Property or the**  
2 **Value Thereof.**

3 56. Having determined that the transfers were actually or constructively fraudulent  
4 under NRS 112.180(a)(1) or (a)(2), the Court must evaluate the Defendants' good faith defense  
5 and the equitable remedies under NRS 112.210 and NRS 112.220. See Herup, 123 Nev. at 232;  
6 Cadle Co. v. Woods & Erickson, LLP, 131 Nev 114, 119 (2015) (finding that Nevada's fraudulent  
7 transfer statute creates equitable remedies including avoidance, attachment, and, subject to  
8 principles of equity and the rules of civil procedure, injunction, receivership, or other relief  
9 under NRS 112.210 or payment for value under NRS 112.220).

10 57. Nevada law provides a complete defense to avoidance to a good faith transferee  
11 who pays reasonably equivalent value as follows:

12 A transfer or obligation is not voidable under paragraph (a) of  
13 subsection 1 of NRS 112.180<sup>248</sup> against a person who took in good  
14 faith and for a reasonably equivalent value or against any subsequent  
transferee or obligee.

15 NRS 112.220(1). A partial defense is afforded to a good faith transferee under NRS 112.220(4),  
16 which provides:

17 Notwithstanding voidability of a transfer or an obligation under this  
18 chapter, a transferee or obligee who took in good faith is entitled, to  
19 the extent of the value given the debtor for the transfer or obligation,  
to:

20 (a) A lien on or a right to retain any interest in the asset  
transferred;

21 (b) Enforcement of any obligation incurred; or

22 (c) A reduction in the amount of the liability on the judgment.

23 Thus, under Nevada law, if the complete defense under subsection (1) of NRS 112.220 does not  
24 apply to a transfer made with actual intent because less than "reasonably equivalent value" was  
25 given, a good faith transferee may receive a lien, enforcement of any obligation incurred, and/or  
26

27  
28 <sup>248</sup> Transfers which are made with actual intent to hinder, delay, or defraud.

1 “a reduction in the amount of the liability on the judgment” to the extent of the value provided.  
2 See In re Nat’l Audit Def. Network, 367 B.R. at 223 (describing good faith defense).

3 58. Under either NRS 112.220(1) or (4), however, the transferee bears the burden of  
4 proof to establish that the transferee received the transfer in good faith. Herup, 123 Nev. at 236-  
5 237. Good faith is an indispensable element of the defense, and as such, even if a transferee gives  
6 reasonably equivalent value in exchange for the transfer avoided, the transferee may not recover  
7 such value if the exchange was not in good faith. In re Agric. Research & Tech. Group, Inc., 89-  
8 15416, 1990 WL 149820 (9th Cir. 1990) (applying Haw.Rev.Stat. § 651C-8 with Bankruptcy  
9 Code § 548(c) as persuasive authority) (citing In re Candor Diamond Corp., 76 B.R. 342, 351  
10 (Bankr. S.D.N.Y. 1987); Dean v. Davis, 242 U.S. 438, 37 S.Ct. 130, 61 L.Ed. 419  
11 (1917); In re Roco Corp., 701 F.2d 978, 984 (1st Cir. 1983); In re Health Gourmet, Inc., 29 B.R.  
12 673, 677 (Bankr. D. Mass. 1983)).

13 59. “A majority of courts applying the UFTA hold that a transferee must prove that he  
14 received the transfer in *objective* good faith. That is, good faith must be determined on a case-by-  
15 case basis by examining whether the facts would have caused a reasonable transferee to inquire  
16 into whether the transferor’s purpose in effectuating the transfer was to delay, hinder, or defraud  
17 the transferor’s creditors.” Herup, 123 Nev. at 236-237 (emphasis added) (adopting the objective  
18 standard of good faith applicable under the Bankruptcy Code and other states’ adoption of UFTA  
19 and collecting cases). “[T]o establish a good faith defense to a fraudulent transfer claim, the  
20 transferee must show objectively that he or she did not know or had no reason to know of the  
21 transferor’s fraudulent purpose to delay, hinder, or defraud the transferor’s creditors.” Id. at 237.

22 60. Under this objective, inquiry notice standard, transferees “have a duty to investigate  
23 if there is sufficient information to put the transferee on notice that something is wrong.” Leonard  
24 v. Woods & Erickson, LLP (In re AVI, Inc.), 389 B.R. 721, 736 (B.A.P. 9th Cir. 2008) (applying  
25 objective standard of good faith under Bankruptcy Code § 550 that is similar to UFTA) (citing  
26 Bonded Fin. Servs., Inc. v. Eur. Am. Bank, 838 F.2d 890, 897-98 (7th Cir. 1988)).

27 61. Defendants contend that because they were, in their words, “exonerated” by Judge  
28 Adams in the Herbst Litigation, they are absolved of liability. However, whether Bayuk or Sam



1 Morabito were participants in the original fraud that resulted in the judgment does not mean they  
2 had no reason to know that Paul Morabito intended to hinder or delay enforcement of the Herbst  
3 Parties' judgment. Bayuk and Sam Morabito were present at the Oral Ruling when Judge Adams  
4 awarded the Herbst Parties \$85 million in damages against Paul Morabito on the basis of actual  
5 fraud. In the Oral Ruling, Judge Adams not only awarded the Herbst Parties \$85 million, but he  
6 expressly found by clear and convincing evidence that Paul Morabito knowingly and intentionally  
7 made material misrepresentations which "had no basis in reality."<sup>249</sup> Within the next two weeks,  
8 the Defendants received substantially all of Paul Morabito's assets. This alone put Defendants on  
9 notice that something was wrong.

10 62. Bayuk and Sam Morabito cannot demonstrate that they did not know or have reason  
11 to know of Paul Morabito's intent to hinder, delay, or defraud the Herbst Parties. They were aware  
12 of the Oral Ruling and Paul Morabito's obligations to the Herbst Parties at the time of the transfers.  
13 They utilized the same counsel to orchestrate the transfers. They participated in the actions to strip  
14 the value from Superpumper prior to Paul Morabito's transfer of the equity. They allowed Paul  
15 Morabito to continue using and controlling the assets transferred. They assisted in ensuring that  
16 the Notes were not paid in accordance with their terms, thereby hindering collection by the Herbst  
17 Parties. They continued to fund Paul Morabito's lifestyle to ensure that, after the assets were  
18 transferred, the Herbst Parties could not collect their judgment but Paul Morabito's high-flying  
19 lifestyle would not change. They did not receive the transfers in objective good faith. They were  
20 complicit in all respects.

21 63. Even if good faith could have been established, the transferee must still demonstrate  
22 that it has provided value in exchange for the transfer. A complete defense to a fraudulent transfer  
23 arises in favor of a good faith transferee only if reasonably equivalent value is provided in  
24 exchange. NRS 112.220(1). If the value provided is not "reasonably equivalent," the value  
25

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26 <sup>249</sup> Exh. 1 (Sept. 13, 2010 Transcript of Judge Adams' Oral Ruling) at LMWF SUPP 23106, l. 14 – LMWF  
27 SUPP 23107, l. 6; LMWF SUPP 23117, ll. 11-22 (finding that Paul Morabito "knew firsthand from his own  
28 employees and from his own accountant that [the working capital estimate] was incorrect," that it  
"materially inflated and false inflated the value of the company," and that it had "no basis in reality, but it  
was contrary to what he knew firsthand to be the truth.")

1 provided a good faith transferee entitles the transferee to a lien or reduction in liability to the extent  
2 of the value given. NRS 112.220(4)

3 64. Prior to the transfers, Morabito owned interests in the Laguna Properties and  
4 Panorama Property with an aggregate value of approximately \$1,916,250; (2) a 50% interest in  
5 Baruk, with a value of approximately \$1,654,550, and (3) an indirect 80% interest in Superpumper,  
6 with a value of at least \$10,440,000. After the transfers, Paul Morabito owned the Panorama  
7 Property, with a net value of only \$971,136 and the sham Notes, and received no more than  
8 \$60,000 in cash in connection with the Real Properties transfers and \$1,035,068 in cash in  
9 connection with Superpumper. For the reasons discussed above, the total amounts received by  
10 Morabito are not reasonably equivalent to the more than \$14 million in value transferred.

11 65. Because the Defendants did not take the transfers in good faith, the Court does not  
12 find they have established a good faith defense.

13 **C. Plaintiff is Entitled to Avoidance of the Transfers and Return of the Property**  
14 **Transferred Under NRS 112.210(a) and 11 U.S.C. § 541(a), and Judgment Under**  
15 **NRS 112.220**

16 **1. Remedies Available to Plaintiff Under Chapter 112.**

17 66. The equitable remedies under UFTA are found in NRS 112.210 and 112.220(2).  
18 NRS 112.210 provides:

19 1. In an action for relief against a transfer or obligation under this chapter,  
20 a creditor, subject to the limitations in NRS 112.220, may obtain:

21 (a) Avoidance of the transfer or obligation to the extent necessary to  
22 satisfy the creditor's claim;

23 (b) An attachment or garnishment against the asset transferred or other  
24 property of the transferee pursuant to NRS 31.010 to 31.460, inclusive;  
25 and

26 (c) Subject to applicable principles of equity and in accordance with  
27 applicable rules of civil procedure:

28 (1) An injunction against further disposition by the debtor or a  
transferee, or both, of the asset transferred or of other property;

(2) Appointment of a receiver to take charge of the asset transferred  
or of other property of the transferee; or

(3) Any other relief the circumstances may require.

1 2. If a creditor has obtained a judgment on a claim against the debtor, the  
2 creditor, if the court so orders, may levy execution on the asset transferred  
or its proceeds.

3 NRS 112.210. Subsection (2) of NRS 112.220 provides:

4 Except as otherwise provided in this section, to the extent a transfer is  
5 voidable in an action by a creditor under paragraph (a) of subsection 1 of  
6 NRS 112.210, the creditor may recover judgment for the value of the asset  
transferred, as adjusted under subsection 3 of this section, or the amount  
7 necessary to satisfy the creditor's claim, whichever is less. The judgment  
may be entered against:

8 (a) The first transferee of the asset or the person for whose benefit the  
transfer was made; or

9 (b) Any subsequent transferee other than a transferee who took in good  
10 faith for value or from any subsequent transferee.

11 67. Thus, under NRS 112.210(1)(a), the first remedy is actual avoidance of the  
12 transfers—undoing the transfer sued upon. NRS 112.150 expressly advises Nevada courts  
13 construing the UFTA to harmonize its ruling with other states' courts construing the UFTA. Courts  
14 in other states interpreting UFTA have found that avoidance operates as a reconveyance of the  
15 property to the transferor. See In re Sexton, 166 B.R. 421, 426 (Bankr. N.D. Cal. 1994) (applying  
16 California law, "... a creditor that succeeds in causing a fraudulent transfer to be avoided merely  
17 causes the property to be reconveyed to the transferor.") (citing Wagner v. Trout, 124 Cal.App.2d  
18 248, 254, 268 P.2d 537 (1954); Wright v. Salzberger, 121 Cal.App. 639, 9 P.2d 860 (1932));  
19 United States v. Ultra Dimensions, 803 F. Supp. 2d 596, 601 (E.D. Tex. 2011) (under the Texas  
20 UFTA, "a conveyance which is found to be fraudulent as to creditors is wholly null and void as to  
21 such creditors, and the legal as well as the equitable title remains in the debtor for the purpose of  
22 satisfying debts.") (citing California Pipe Recycling, Inc. v. Southwest Holdings, Inc., 2010 WL  
23 56053, at \*5 (S.D. Tex. 2010).

24 68. Further, under NRS 112.210(1)(c), this Court has authority to issue an injunction  
25 "against further disposition by the debtor or a transferee, or both, of the asset transferred or of other  
26 property." In addition to the power to grant injunctive relief under NRS 112.210(1)(c), the court  
27 is also vested with the power to issue injunctive relief pursuant to NRCP 65 and NRS 33.010.  
28 NRS 33.010(3) provides for injunctive relief when a party acts in "violation of the plaintiff's rights

1 respecting the subject of the action, and tending to render the judgment ineffectual.” NRS  
2 33.010(3). The Nevada Supreme Court has long held that “if the injury is likely to be irreparable,  
3 or if the defendant be insolvent, equity will always interpose its powers to protect a person from a  
4 threatened injury.” Champion v. Sessions, 1 Nev. 478, 483 (1865) (emphasis added). Injunctive  
5 relief may be of either a mandatory or prohibitive nature, and is properly issued where “it is  
6 essential to preserve a business or property interests.” Guion v. Terra Marketing of Nevada, Inc.,  
7 90 Nev. 237, 240; City of Reno v. Matley, 79 Nev. 49, 60 (1963).

8         69. In addition, NRS 112.220(2) allows a creditor to recover judgment for the value of  
9 the asset transferred,” subject to adjustment as equities may require. Moreover, NRS 112.220  
10 permits the plaintiff to recover judgment against the initial transferee or the person for whose  
11 benefit the transfer was made—in this case, Bayuk and Sam Morabito.

12         70. Finally, NRS 112.210(1)(c)(3) broadly permits the court to award “[a]ny other  
13 relief the circumstances may require” subject to principles of equity and the applicable rules of  
14 civil procedure.

15         71. The breadth and flexibility of these remedies is reflected in Altus Brands II, LLC  
16 v. Alexander, a Texas appellate decision discussing provisions of Texas’s UFTA which are  
17 substantively identical to NRS 112.210 and 112.220. 435 S.W.3d 432 (Tex.App.--Dallas 2014,  
18 no pet.) (applying Chapter 24 of the Texas Business & Commerce Code and specifically, Tex.  
19 Bus. & Com. Code Ann., §§ 24.008 and 24.009). The Altus court described the purpose and  
20 remedial provisions of UFTA as follows:

21                 UFTA is intended to prevent debtors from defrauding creditors by moving  
22                 assets out of reach. “[T]he focus of an UFTA claim is to ensure the satisfaction  
                    of a creditor’s claim when the elements of a fraudulent transfer are proven.”

23 Id. at 441.

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27 ///

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1 As to a particular remedy, the court stated:

2           However, UFTA does not specify how a remedy is to be selected in a particular  
3 case. To the extent appellees contend UFTA limits a creditor who has obtained  
4 a judgment against the debtor to the remedy described in Subsection 24.008(b),  
i.e. execution on the asset transferred or its proceeds, the language of UFTA  
does not, on its face, state such a limitation. Further, appellees cite no case law  
supporting such a limitation, and we have found none.

5 Id. at 444 (internal citations omitted).<sup>250</sup>

6  
7           72. The remedial provisions of UFTA are equitable in nature and intended to restore  
8 the creditor to the position he would have had if the fraudulent transfer had not occurred. The  
9 court has the equitable power to fashion a remedy that fully restores the creditor—in this case, the  
10 bankruptcy estate—to the position it would have held had the transfers not occurred.

11           73. Plaintiff is therefore entitled to avoidance of the transfers to the extent necessary to  
12 satisfy the claims of creditors against Paul Morabito's estate pursuant to NRS 112.210(a) and 11  
13 U.S.C. § 544(b). It is undisputed that the combined value of the property transferred from  
14 September 13, 2010 to October 10, 2010 is less than the amount of the claims, inclusive of the  
15 Herbst Parties' claim arising from the Confessed Judgment. Therefore, Plaintiff is entitled to  
16 avoidance of the transfers in their entirety, such that all of the transferred assets are returned to the  
17 bankruptcy estate.<sup>251</sup>

18  
19  
20  
21 <sup>250</sup> See also Arriaga v. Cartmill, 407 S.W.3d 927, 933 (Tex.App.--Houston [14th Dist.] 2013, no pet.)  
22 (reversing trial court's award of judgment instead of execution on transferred property in light of debtor's  
23 evasion of prior judgment, finding that "the trial court's award of a money judgment effectively denies  
24 [plaintiff], the prevailing party, the equitable relief she sought—a result that is contrary to the purpose of  
25 the UFTA."); Matter of Galaz, 850 F.3d 800, 806 (5th Cir. 2017) (given the evidence of actual intent to  
26 defraud and the broad remedial authority conferred by authority to grant "any other relief the circumstances  
may require" and to make "adjustment as the equities may require" of UFTA, the trial court properly  
awarded creditor amount which would restore her to the position she would have had if the fraudulent  
transfer had not occurred, which included percentage of gross income after the date of the transfer, over  
transferee's objection the district court should have limited compensatory damages to the value of the  
royalty rights at the time of the transfer).

27 <sup>251</sup> Here, because Paul Morabito is a debtor under Chapter 7 of the Bankruptcy Code, all legal and  
28 equitable interests of Paul Morabito as of June 20, 2013 are property of the bankruptcy estate. 11  
U.S.C. § 541(a). Reconveyance of the property to the transferor—Paul Morabito—therefore requires  
conveyance of the property to the bankruptcy estate.



1                   2.     **Plaintiff Is Entitled to Avoid the Real Property Transfers and Recover**  
2                   **Paul Morabito's Interest in the Laguna Properties, as well as Monetary**  
3                   **Judgment Against Bayuk and the Bayuk Trust Based on the Real**  
4                   **Property Transfers in the Amount of \$1,236,458.**

5           74.     Bayuk and the Bayuk Trust continue to own the Laguna Properties. Therefore,  
6           under NRS 112.210(1)(a) and 11 U.S.C. § 541(a), the bankruptcy estate is entitled to a return of  
7           Paul Morabito's 75% interest in the El Camino Property and his 50% interest in the Los Olivos  
8           Property.

9           75.     Plaintiff is also entitled to a monetary judgment equal to the value of the transferred  
10          asset as of the date of transfer. Paul Morabito's 75% interest in El Camino Property was valued  
11          at \$808,981 at the time of the transfers, and his 50% interest in Los Olivos Property had a value of  
12          \$427,477 at the time of the transfers, for a total interest in the Laguna Properties at the time of the  
13          transfers of \$1,236,458.

14                   3.     **Plaintiff Is Entitled to Avoid the Baruk Transfer and Recover the Equity**  
15                   **Interest in Baruk LLC, and Monetary Judgment Against Bayuk and the**  
16                   **Bayuk Trust Based on the Baruk Transfer in the Amount of \$1,654,550.**

17          76.     Paul Morabito indirectly owned 50% of the Baruk Properties prior to the transfers  
18          through Baruk LLC. Bayuk testified that he transferred the interest in Baruk LLC acquired from  
19          Paul Morabito to Snowshoe Properties and the Bayuk Trust. Bayuk still owns and controls the  
20          transferred properties (except the Clayton Property)—the Bayuk Trust owns 100% of the  
21          Glenneyre Properties indirectly through Snowshoe Properties, and directly owns the Mary Fleming  
22          Property. While litigation has been pending, Bayuk converted Snowshoe Properties from a  
23          California company to a Delaware company.

24          77.     Plaintiff is entitled to avoidance of the Baruk Transfer, thereby restoring Paul  
25          Morabito's 50% equity interest in the remaining Baruk Properties. However, as a result of the  
26          subsequent transfers, Plaintiff is not remedied with avoidance alone.

27          78.     Plaintiff is entitled to a monetary judgment against Bayuk and the Bayuk Trust  
28          based on the Baruk Transfer in the amount of \$1,654,550 under NRS 112.220(2). As evidenced  
29          by the valuations obtained by Paul Morabito and Defendants, and the appraisal of the Clayton  
30          Property which was not valued by Defendants at the time of the transfers, the total value of Baruk

1 LLC on September 30, 2010 was \$3,309,100. Morabito's 50% interest, therefore, had a value of  
2 \$1,654,550. As a result, the Trustee is entitled to judgment against Bayuk and the Bayuk Trust in  
3 the amount of \$1,654,550.

4 **4. Plaintiff Is Entitled to Monetary Judgments Against Bayuk, Sam**  
5 **Morabito, and Snowshoe Based on the Superpumper Transfers.**

6 79. While this action was pending, Defendants sold Superpumper and therefore,  
7 avoidance of the Superpumper Transfer is an inadequate remedy. Under NRS 112.220(2), Plaintiff  
8 is entitled to a judgment against the Defendants in the amount of the value of Morabito's interest  
9 at the time of the transfers.

10 80. Between September 21 and 23, 2010, Morabito transferred \$355,000 to Salvatore  
11 and \$420,250 to Bayuk, purportedly in exchange for their interests in Raffles. However, the  
12 Raffles assets remained an asset of CWC and Snowshoe, demonstrating that the alleged transfer  
13 was intended solely to strip CWC of one of its two assets and thereby reduce the valuation of  
14 Superpumper. Plaintiff is entitled to judgment in the amount of \$355,000 against Salvatore and  
15 \$420,250 against Baruk for the fraudulently-transferred cash.

16 81. Furthermore, Morabito's 80% interest in Superpumper had a value of \$10,440,000  
17 (exclusive of Raffles). In exchange for his interest in Superpumper, Morabito received only  
18 \$1,035,068 and the Superpumper Note, which was illusory and provided no benefit to Morabito's  
19 creditors. Snowshoe was the initial transferee of the Superpumper Transfer. Bayuk and Salvatore  
20 were the ultimate recipients of the equity interests in Superpumper and therefore, the persons for  
21 whose benefit the transfers were made. Accordingly, Plaintiff is entitled to a judgment against  
22 Snowshoe in the amount of \$9,404,932, and judgments against each of Bayuk and Salvatore for  
23 \$4,702,466.

24 **5. Plaintiff Is Entitled to Injunctive Relief.**

25 82. During the pendency of this action, Defendants sold Superpumper to a third party,  
26 and Bayuk converted Snowshoe Properties from a California company to a Delaware company.  
27 Defendants have demonstrated both the ability and the willingness to engage in shell games to  
28 prevent Paul Morabito's creditors and Plaintiff from recovering assets to satisfy their claims.

1 Absent injunctive relief, Defendants are likely to transfer assets in an attempt to evade the court's  
2 judgment in favor of the Plaintiff.

3 **III.**  
4 **JUDGMENT**

5 Based upon the foregoing and good cause appearing,

6 IT IS HEREBY ORDERED that judgment is entered in favor of Plaintiff and against Bayuk  
7 and the Bayuk Trust, as follows:

- 8 1. Avoiding the transfer of the El Camino Property and the Los Olivos Property, and  
9 awarding Plaintiff damages in the amount of \$884,999.95, with offset for amounts  
10 collected on account of the El Camino Property and the Los Olivos Property;
- 11 2. Avoiding the transfer of Baruk LLC and awarding Plaintiff damages in the amount  
12 of \$1,654,550 with offset for amounts collected on account of Baruk LLC;
- 13 3. Avoiding the transfer of \$420,250 and awarding Plaintiff damages in the amount  
14 of \$420,250 with offset for amounts collected on account of the \$420,250; and
- 15 4. Avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount  
16 of \$4,949,000 with offset for amounts collected on account of the Superpumper  
17 Transfer.

18 IT IS HEREBY FURTHER ORDERED that judgment is entered in favor of Plaintiff and  
19 against Sam Morabito as follows:

- 20 1. Avoiding the transfer of \$355,000 and awarding Plaintiff damages in the amount  
21 of \$355,000 with offset for amounts collected on account on account of the  
22 \$355,000; and
- 23 2. Avoiding the Superpumper Transfer and awarding Plaintiff damages in the amount  
24 of \$4,949,000 with offset for amounts collected on account of the Superpumper  
25 Transfer.

26 IT IS HEREBY FURTHER ORDERED that judgment is entered in favor of Plaintiff and  
27 against Snowshoe, avoiding the Superpumper Transfer and awarding Plaintiff damages in the  
28 amount of \$9,898,000 with offset for amounts collected on account of the Superpumper Transfer.



1 IT IS HEREBY FURTHER ORDERED that Plaintiff is awarded pre-judgment interest on  
2 the amounts set forth above at the Nevada statutory rate from date of service of the summonses  
3 and complaint to the date of entry of this judgment.

4 IT IS HEREBY FURTHER ORDERED that Plaintiff is awarded post-judgment interest on  
5 the amounts set forth above at the Nevada statutory rate until the judgment is paid in full.

6 IT IS HEREBY FURTHER ORDERED that under NRCp 65, NRS 33.010, and NRS  
7 112.210(1)(c), the Court hereby enjoins and restrains Defendants, and each of them, as well as  
8 their officers, directors, agents, servants, and attorneys, and those persons or entities in concern  
9 with them who receive actual notice of this Judgment, whether acting directly or indirectly, or  
10 through any third party, from concealing, transferring, disposing of, or encumbering the El Camino  
11 Property, the Los Olivos Property, the Baruk Properties (or their proceeds), Snowshoe Properties  
12 or any successor thereto, or any assets held for the benefit of Paul Morabito.

13 Dated this 28 day of March, 2019.

14  
15 Connie J. Steinheimer  
16 DISTRICT JUDGE  
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28

**CERTIFICATE OF SERVICE**

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 29 day of March, 2019, I filed the **FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT** with the Clerk of the Court.

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

       Personal delivery to the following: [NONE]

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

GABRIELLE HAMM, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

MARK WEISENMILLER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ. for SNOWSHOE PETROLEUM, INC. et al

TERESA PILATOWICZ, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

ERIKA TURNER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

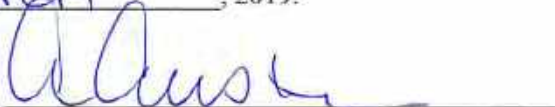
       Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service [NONE]

DATED this 29 day of March, 2019.



## Exhibit 2

2700

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,

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

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.

**ORDER DENYING DEFENDANTS' MOTIONS FOR NEW TRIAL AND/OR TO  
ALTER OR AMEND JUDGMENT**

Defendants Superpumper, Inc. ("Superpumper"), Salvatore Morabito ("Morabito"), and  
Snowshoe Petroleum, Inc. ("Snowshoe") filed a *Motion for New Trial and/or to Alter or Amend  
Judgment Pursuant to NRC P 52, 59, and 50* on April 25, 2019 (the "Snowshoe Motion"), and  
Defendant Edward Bayuk, individually and as Trustee of the Edward William Bayuk Living Trust  
("Bayuk," and collectively with Superpumper, Morabito, and Snowshoe, "Defendants") filed a  
*Motion for New Trial and/or to Alter or Amend Judgment* filed on April 26, 2019 (the "Bayuk  
Motion" and together with the Snowshoe Motion, the "Motions"). Plaintiff William A. Leonard,  
chapter 7 trustee for the bankruptcy estate of Paul A. Morabito ("Plaintiff") filed *Plaintiff's  
Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment* (the  
"Opposition") on May 7, 2019, and Superpumper, Snowshoe, and Morabito filed *Defendants'  
Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRC P  
52, 59, and 60* (the "Snowshoe Reply") on May 14, 2019. The Snowshoe Motion was submitted  
for decision on May 14, 2019. Bayuk did not file a reply in support of the Bayuk Motion, and  
Plaintiff submitted the Bayuk Motion for decision on May 21, 2019.

1 The Court has reviewed and considered the arguments made in the Motions, the  
2 Opposition, and the Snowshoe Reply, the papers and pleadings on file with the Court in this action,  
3 the testimony and exhibits admitted during the trial, and the Court's Findings of Fact, Conclusions  
4 of Law, and Judgment, entered on March 29, 2019 (the "Judgment"). The Court, persuaded by  
5 the argument and authorities in Plaintiff's Opposition, along with the pleadings and papers on file,  
6 the trial record, and the findings and conclusions set forth in the Judgment, finds as follows:

7 1. Defendants' Motions identify no clerical mistakes, oversights, newly-discovered  
8 evidence, or any other grounds for relief from the Judgment under Rule 60 of the Nevada Rules of  
9 Civil Procedure ("NRCP"). See NRCP 60(a) and (b).

10 2. Defendants' Motions do not set forth grounds for relief under NRCP 52. The Court  
11 made specific findings of fact substantiated by the actual trial record and separately stated its  
12 conclusions of law, and the Court's findings and conclusions were set forth in a memorandum in  
13 the Judgment. See NRCP 52(a)(1). Defendants failed to set forth any basis for the Court to make  
14 additional findings or amend its findings. See NRCP 52(b).

15 3. Relief from a judgment or order under NRCP 59 is an extraordinary remedy  
16 available only upon a finding that an error occurred which materially affected the substantial rights  
17 of the movant. See NRCP 59(a)(1); see also Khoury v. Seastrand, 132 Nev. Adv. Op. 52, 377 P.3d  
18 81, 94 (2016); Gunderson v. D.R. Horton, Inc., 130 Nev. 67, 74, 319 P.3d 606, 611 (2014). Here,  
19 there was no irregularity that denied Defendants a fair trial, nor an error in law over Defendants'  
20 objection that would justify a new trial or altering or amending the Judgment. Further, in light of  
21 the volume of evidence supporting the Court's findings regarding the multiple badges of fraud and  
22 Defendants' lack of good faith, Defendants cannot demonstrate that any error, if one occurred, was  
23 one that affected the outcome of the trial or materially affected their substantial rights.

24 Based on the foregoing, and good cause appearing,

25 IT IS HEREBY ORDERED that Defendants' Motions for New Trial and/or to Alter or  
26 Amend Judgment are DENIED.

27 Dated this 9 day of July, 2019.

28 Connie J. Steinhauser  
DISTRICT JUDGE

## Exhibit 3

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 ///

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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

# Exhibit 4

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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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Las Vegas, Nevada 89119  
Telephone 725-777-3000  
*Special Counsel to Trustee*

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

PLAINTIFF'S REPLY TO DEFENDANTS'  
OBJECTION TO PLAINTIFF'S PROPOSED  
ORDER DENYING CLAIM OF  
EXEMPTION AND THIRD-PARTY CLAIM

Plaintiff, William A Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito's, replies (the "Reply") to the five arguments raised in Exhibit "2" to the *Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim* (the "Objection") filed by Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust (collectively, "Bayuk").

Each dispute is addressed in the order in which it is listed in the Objection by first listing the Defendants' proposed changes to Plaintiff's proposed language, then restating Bayuk's

position set forth in Exhibit “2” to the Objection, and finally presenting Plaintiff’s response:

**A. Disputed Language in Paragraph 2:** ~~Bayuk has transferred all of his personal assets to the Bayuk Trust since the~~ The Bayuk Trust was established in 1998. ~~Inclusive, and through amendment on November 12, 2005 became a Nevada irrevocable self-settled spendthrift trust. As set forth in the Judgment,~~ the Bayuk Trust received fraudulently transferred property which, ~~as further set forth in the Judgment,~~ was established by clear and convincing evidence.

**1. Defendants’ Position:** - ¶2: *Barry L. Breslow, Esq., in a supplement to NRCP 16.1 disclosures dated March 1, 2011 provided Plaintiffs with copies of the Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (RBSL 001868-001906) which stated that this **revocable** trust was established on February 14, 2006; and of the Spendthrift Trust Agreement for the Arcadia Living Trust established on October 14, 2005 (RBSL 001907- 001942) revoking the August 25, 1998 Arcadia Living Trust revocable trust established in Miami Beach, Florida (CG000043-CG000099) on August 25, 1998. Separately Plaintiffs were as well as the revocable California Arcadia Living Trust of January 6, 2005 which was supplied to Plaintiffs in July, 2019.*

**2. Plaintiff’s Response:** There is no evidence before the Court that the Bayuk Trust was properly established as a self-settled spendthrift trust and no evidence that the alleged nature of the Bayuk Trust as a self-settled spendthrift trust was disclosed prior to June 2019. The Arcadia Living Trust, which is Paul Morabito’s trust, and disclosure or non-disclosure of the same is irrelevant to the disclosures and non-disclosures related to the Bayuk Trust.

**B. Disputed Language in Paragraph 3:** ~~The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not~~ On March 3, 2011 the Plaintiff deposed Paul Morabito. In that deposition, Mr. Morabito disclosed ~~prior to the Claim of Exemption, the existence of the Edward Bayuk Living Trust and the fact that real property had been transferred to it.~~ In response to discovery requests, ~~in deposition, in subject deeds, and at trial prior to~~ propounded after the Judgment ~~instant lawsuit was commenced on December 17, 2013,~~ Bayuk and the Bayuk Trust produced ~~contradictory~~ evidence regarding the date and the purpose of the Bayuk Trust. ~~as well~~

1 as revocable spending trusts. With the Claim of Exemption, the Bayuk Trust ~~clarifies that~~  
2 confirmed that there is, and has been, only one self-settled spendthrift trust with the name “the  
3 Edward William Bayuk Living Trust” and that is the Bayuk Trust.

4 1. Bayuk’s Position: ¶ 3: *Plaintiff’s deposed Paul Morabito on Thursday, March 3,*  
5 *2011 with John P. Desmond, Esq., and Brian R. Irvine, Esq., present with Mr. Breslow wherein*  
6 *Mr. Morabito detailed all of the exchanges by exempt assets in Mr. Morabito’s self-settled*  
7 *spendthrift trusts (“SSST”) of which he was a Trustee but **not** a beneficiary to Edward Bayuk’s*  
8 *SSST Edward William Bayuk Living Trust of which Mr. Bayuk was the Trustee but not a*  
9 *beneficiary. Mr. Morabito went into detail the existence of the SSST Arcadia Living Trust as well*  
10 *as the revocable Arcadia Living Trust that was in California (2005), Florida (1998) and Nevada*  
11 *(2006) each spending trusts used for administrative convenience.*

12 2. Plaintiff’s Position: The proposed language is intentionally misleading. The  
13 Arcadia Living Trust, which is Paul Morabito’s trust, and disclosure or non-disclosure of the same  
14 is irrelevant to the disclosures and non-disclosures related to the Bayuk Trust. Instead, there is  
15 ample evidence before the Court that Bayuk repeatedly produced contradictory evidence regarding  
16 his alleged trusts. Notably, at no point during all of the contradictory evidence produced, and not  
17 until June 2019, did Bayuk disclose the nature of his trust as a purported self-settled spendthrift  
18 trust.

19 C. Disputed Language in Paragraph 4: The Bayuk Trust does not meet the  
20 requirements for enforcement as a Nevada spendthrift trust under NRS 166.015 because Bayuk is  
21 the ~~settlor and beneficiary during his lifetime of the Bayuk Trust~~settlor, and neither Bayuk as  
22 Trustee nor ~~his co-trustee~~ Paul Morabito, who was a co-trustee in 2005 are ~~domiciles of~~presently  
23 domiciled in Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito  
24 moved their residency to California in September 2010.

25 1. Bayuk’s Position: ¶4: *Mr. Bayuk was the Settlor (not Settler) and Trustee of the*  
26 *SSST Edward William Bayuk Living Trust and not a beneficiary. Both Mr. Bayuk and Mr.*  
27 *Morabito were Nevada residents on the execution dates of their respective Nevada irrevocable*  
28



1 SSST.

2 2. Plaintiff's Position: Pursuant to Section 3 of the Bayuk Trust submitted with the  
3 *Declaration of Edward Bayuk Claiming Exemption from Execution* dated June 27, 2019, Mr.  
4 Bayuk is a beneficiary of his trust. Specifically, the Bayuk Trust states:

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

19 Furthermore, Plaintiff's proposed language regarding Mr. Morabito and Mr. Bayuk's domicile and  
20 relocating to California is 2010 is factually accurate.

21 **D. Disputed Language in Paragraph 5:** ~~Contrary to assertions by Bayuk, there was~~  
22 ~~no credible~~ Contrary to the evidence contained within the Claim of Exemption from Execution,  
23 and without allowing Bayuk to introduce additional evidence in the form of documents and  
24 testimony at the hearing, the Court finds that there was no evidence presented that the Bayuk Trust  
25 owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot  
26 in Nevada is insufficient to invoke the protections of NRS Chapter 166-015.

27 1. Bayuk's Position: ¶ 5: *Michael Lehnert, Esq. on July 22, 2019 stated (pg. 55, lines*  
28 *23-24) that "I can swear Mr. Bayuk and ask him the question and there is the evidence" regarding*  
*the Edward William Bayuk Living Trust SSST burial plot. Mr. Bayuk had evidence in his*  
*possession during the hearing of the ownership of a gravesite burial plot in Reno owned by his*  
*SSST Edward William Bayuk Living Trust. When offered Mr. Bayuk's personal knowledge as*  
*Trustee for live testimony, Judge Steinheimer commented: "He would be qualified if he told the*  
*truth." Present in the courtroom was former Nevada Governor Jim Gibbons, who was prepared*

1 to testify regarding the Bayuk Trust.

2        2. Plaintiff's Position: It is misleading to claim that the Court denied the Objection  
3 "without allowing Bayuk to introduce additional evidence in the form of documents and testimony  
4 at the hearing." Bayuk never disclosed the existence of any documents related to the purported  
5 burial plot during or before the hearing on the Claim of Exemption from Execution. While this  
6 Court rejected Bayuk's last minute attempts to supplement the record with testimony from Mr.  
7 Bayuk, it did not prohibit Bayuk from introducing documents. Instead, no such documents had  
8 ever been disclosed. Furthermore, it is wrong to contend that this Court's decision on the Objection  
9 was made "contrary to the evidence contained in the Claim of Exemption from Execution." This  
10 Court specifically found, as it has done in the past, that Mr. Bayuk is not credible.

11        E. Disputed Language in Paragraph 5: The subject fraudulent transfers occurred in  
12 September 2010 and thereafter: as evidenced by Plaintiff's exhibits of 2010 public record of the  
13 transfers.

14        1. Bayuk's Position: ¶ 6: *Gabrielle A. Hamm, Esq., counsel for Plaintiffs, had sworn*  
15 *in Plaintiff's objections to exhibits of public records of property conveyances made from the SSST*  
16 *Arcadia Living Trust to the Edward William Bayuk Living Trust SSST, either directly or through*  
17 *administrative revocable trusts, most dated on October 1, 2010.*

18        2. Plaintiff's Position: Plaintiff does not dispute that Ms. Hamm swore in public  
19 records of property conveyances. However, the language as proposed by Bayuk is misleading, as  
20 further confirmed by Bayuk's argument in the Objection. There is no indication anywhere in the  
21 public records regarding the purported self-settled nature of the Bayuk Trust or that property was  
22 transferred to a self-settled spendthrift trust.

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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 5<sup>th</sup> day of August, 2019.

GARMAN TURNER GORDON LLP

/s/ Teresa M. Pilatowicz  
ERIKA PIKE TURNER, ESQ.  
TERESA M. PILATOWICZ, ESQ.  
GABRIELLE A. HAMM, ESQ.  
650 White Drive, Ste. 100  
Las Vegas, Nevada 89119  
Telephone 725-777-3000  
*Special Counsel for Trustee*

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this  
3 date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **PLAINTIFF'S**  
4 **REPLY TO DEFENDANTS' OBJECTION TO PLAINTIFF'S PROPOSED ORDER**  
5 **DENYING CLAIM OF EXEMPTION AND THIRD-PARTY CLAIM** on the parties as set  
6 forth below:  
7

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

10 ☐ Certified Mail, Return Receipt Requested

11 ☐ Via Facsimile (Fax)

12 ☐ Via E-Mail

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

15 ☐ Federal Express (or other overnight delivery)

16 ☒ By using the Court's CM/ECF Electronic Notification System addressed to:

17 Michael Lehnert, Esq.  
18 E-mail: mcl3303@aol.com

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

21 Dated this 5th day of August, 2019.

22 /s/ Teresa Pilatowicz  
23 An Employee of GARMAN TURNER  
24 GORDON LLP  
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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  
WILLIAM BAYUK LIVING TRUST;  
15 SALVATORE MORABITO, and individual;  
and SNOWSHOE PETROLEUM, INC., a  
New York corporation,

16 Defendants.

17 **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM**

18 Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of  
19 Exemption") filed on June 28, 2019 by Edward Bayuk ("Bayuk"), individually and as trustee of  
20 the Edward William Bayuk Living Trust (the "Bayuk Trust"), and the *Third Party Claim to*  
21 *Property Levied Upon [NRS 31.070]* (the "Third Party Claim") filed on July 3, 2019 by the Bayuk  
22 Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward*  
23 *Bayuk Claiming Exemption from Execution* (the "Bayuk Declaration"). filed on July 2, 2019.  
24 *Plaintiff's Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*  
25 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*  
26 *21.112 and 31.070(5)* (the "Objection") was filed on July 11, 2019, and Bayuk and the Bayuk  
27 Trust's *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*  
28 (the "Reply") was filed on July 17, 2019.

1 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,  
2 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnert and Jeffrey  
3 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,  
4 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

5 The Court has reviewed and considered the arguments made in the Claim of Exemption  
6 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all  
7 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and  
8 exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law, and Judgment,  
9 entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made at the hearing.  
10 The Court, persuaded by the argument and authorities in Plaintiff's Objection and the arguments  
11 of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the trial record,  
12 and the findings and conclusions set forth in the Judgment, finds as follows:

13 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as  
14 trustee of the Bayuk Trust.

15 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk  
16 Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently  
17 transferred property which was established by clear and convincing evidence.

18 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not  
19 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in  
20 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced  
21 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of  
22 Exemption, the Bayuk Trust clarifies that there is, and has been, only one trust with the name  
23 "the Edward William Bayuk Living Trust" and that is the Bayuk Trust.

24 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada  
25 spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his  
26 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of  
27 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to  
28 California in September 2010.

5. Contrary to assertions by Bayuk, there was no credible evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years after the fraudulent transfers were made and (2) also within six months of discovery of, or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the June 28, 2019 Claim of Exemption filed by Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust is DENIED.

IT IS HEREBY FURTHER ORDERED that the July 3, 2019 Third Party Claim to Property Levied Upon [NRS 31.070] filed by the Bayuk Trust is DENIED.

Dated this 9 day of August, 2019.

Connie J. Steinheimer  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of August, 2019, I filed the **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM** with the Clerk of the Court.

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

       **Personal delivery to the following: [NONE]**

  *f*   **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

ERIKA TURNER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

MICAH ECHOLS, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST et al

JEFFREY HARTMAN, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

MARK WEISENMILLER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ. for SNOWSHOE PETROLEUM, INC., SALVATORE R. MORABITO, SUPERPUMPER, INC.

MICHAEL LEHNERS, ESQ. for SALVATORE R. MORABITO

TERESA PILATOWICZ, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

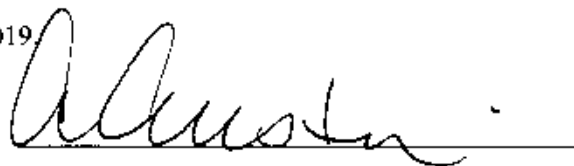
       **Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

       **Placed a true copy in a sealed envelope for service via:**

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service [NONE]

DATED this 9 day of August, 2019





1 GARMAN TURNER GORDON LLP  
2 GERALD M. GORDON  
3 Nevada Bar No. 229  
4 E-mail: ggordon@gtg.legal  
5 ERIKA PIKE TURNER  
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15 Las Vegas, Nevada 89119  
16 Telephone 725-777-3000  
17 *Counsel to Plaintiff*

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

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

16 Plaintiff,

17 vs.

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

22 Defendants.

**CASE NO.: CV13-02663**

**DEPT. NO.: 4**

24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that an *Order Denying Claim of Exemption and Third Party*  
26 *Claim*, a copy of which is attached hereto as **Exhibit 1**, was entered in this matter on the 9<sup>th</sup> day  
27 of August, 2019.

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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 9th day of August, 2019.

GARMAN TURNER GORDON LLP

By: /s/ Erika Pike Turner

GERALD M. GORDON

Nevada Bar No. 229

ERIKA PIKE TURNER

Nevada Bar No. 6454

TERESA M. PILATOWICZ

Nevada Bar No. 9605

GABRIELLE A. HAMM

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*Counsel to Plaintiff*

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**INDEX OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Pages<sup>1</sup></b>
<b>1</b>	Order Denying Claim of Exemption and Third Party Claim	4

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<sup>1</sup> Exhibit pagination includes exhibit slip sheets.

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **NOTICE OF ORDER** on the parties as set forth below:

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

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

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

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

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

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

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

Michael Lehnert, Esq.  
E-mail: mcl3303@aol.com

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

Dated this 9th day of August, 2019.

\_\_\_\_\_  
/s/  
An Employee of  
GARMAN TURNER  
GORDON LLP

# EXHIBIT 1

# EXHIBIT 1

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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  
WILLIAM BAYUK LIVING TRUST;  
15 SALVATORE MORABITO, and individual;  
and SNOWSHOE PETROLEUM, INC., a  
New York corporation,

16 Defendants.

17 **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM**

18 Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of  
19 Exemption") filed on June 28, 2019 by Edward Bayuk ("Bayuk"), individually and as trustee of  
20 the Edward William Bayuk Living Trust (the "Bayuk Trust"), and the *Third Party Claim to*  
21 *Property Levied Upon [NRS 31.070]* (the "Third Party Claim") filed on July 3, 2019 by the Bayuk  
22 Trust. The Claim of Exemption and Third Party Claim are supported by the *Declaration of Edward*  
23 *Bayuk Claiming Exemption from Execution* (the "Bayuk Declaration"). filed on July 2, 2019.  
24 *Plaintiff's Objection to (1) Declaration of Edward Bayuk Claiming Exemption From Execution*  
25 *and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS*  
26 *21.112 and 31.070(5)* (the "Objection") was filed on July 11, 2019, and Bayuk and the Bayuk  
27 Trust's *Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon*  
28 (the "Reply") was filed on July 17, 2019.

1 The Court held a hearing on the Claim of Exemption and Third Party Claim on July 22,  
2 2019. Bayuk and the Bayuk Trust appeared by and through counsel, Michael Lehnert and Jeffrey  
3 L. Hartman. Plaintiff appeared by and through counsel, Erika Pike Turner, Gerald M. Gordon,  
4 and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

5 The Court has reviewed and considered the arguments made in the Claim of Exemption  
6 and the Third Party Claim, the Objection, and the Reply, the Bayuk Declaration, the exhibits to all  
7 of the foregoing, the papers and pleadings on file with the Court in this action, the testimony and  
8 exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law, and Judgment,  
9 entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made at the hearing.  
10 The Court, persuaded by the argument and authorities in Plaintiff's Objection and the arguments  
11 of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the trial record,  
12 and the findings and conclusions set forth in the Judgment, finds as follows:

13 1. The court has subject matter jurisdiction over the claims asserted against Bayuk, as  
14 trustee of the Bayuk Trust.

15 2. Bayuk has transferred all of his personal assets to the Bayuk Trust since the Bayuk  
16 Trust was established in 1998. As set forth in the Judgment, the Bayuk Trust received fraudulently  
17 transferred property which was established by clear and convincing evidence.

18 3. The purported nature of the Bayuk Trust as a Nevada spendthrift trust was not  
19 disclosed prior to the Claim of Exemption. In response to discovery requests, in deposition, in  
20 subject deeds, and at trial prior to the Judgment, Bayuk and the Bayuk Trust produced  
21 contradictory evidence regarding the date and the purpose of the Bayuk Trust. With the Claim of  
22 Exemption, the Bayuk Trust clarifies that there is, and has been, only one trust with the name  
23 "the Edward William Bayuk Living Trust" and that is the Bayuk Trust.

24 4. The Bayuk Trust does not meet the requirements for enforcement as a Nevada  
25 spendthrift trust under NRS 166.015 because Bayuk is the settlor and beneficiary during his  
26 lifetime of the Bayuk Trust, and neither Bayuk nor his co-trustee Paul Morabito are domiciles of  
27 Nevada. NRS 166.015(2). As established in the Judgment, Bayuk and Paul Morabito moved to  
28 California in September 2010.

5. Contrary to assertions by Bayuk, there was no credible evidence presented that the Bayuk Trust owns a burial plot in Nevada; but, even if such fact were established, the ownership of a burial plot in Nevada is insufficient to invoke the protections of NRS Chapter 166.

6. Even if the claims asserted against the Bayuk Trust were subject to the time periods under NRS 166.170, they were timely because the fraudulent transfer claim was brought (1) within two years after the fraudulent transfers were made and (2) also within six months of discovery of, or when Plaintiff reasonably should have discovered, the existence of the purported spendthrift trust. The subject fraudulent transfers occurred in September 2010 and thereafter. The Bayuk Trust executed a tolling agreement on November 30, 2011 to toll any statute of limitations applicable to the fraudulent transfer of property to the Bayuk Trust, which tolling agreement tolled the time period to file until June 18, 2013 and the Complaint was filed in December 2013. The purported nature of the Bayuk Trust as a spendthrift trust subject to NRS 166.170 was not disclosed until the Claim of Exemption. Moreover, any defenses based on NRS 166.170 have been waived as a result of the failure of Bayuk or the Bayuk Trust to raise such defenses prior to the Claim of Exemption.

Based upon review of the entire file, the foregoing, and good cause appearing:

IT IS HEREBY ORDERED that the June 28, 2019 Claim of Exemption filed by Edward Bayuk, individually and as trustee of the Edward William Bayuk Living Trust is DENIED.

IT IS HEREBY FURTHER ORDERED that the July 3, 2019 Third Party Claim to Property Levied Upon [NRS 31.070] filed by the Bayuk Trust is DENIED.

Dated this 9 day of August, 2019.

Connie J. Steinheimer  
DISTRICT JUDGE



**CERTIFICATE OF SERVICE**

CASE NO. CV13-02663

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of August, 2019, I filed the **ORDER DENYING CLAIM OF EXEMPTION AND THIRD PARTY CLAIM** with the Clerk of the Court.

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

       Personal delivery to the following: [NONE]

  *f*   Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

ERIKA TURNER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

MICAH ECHOLS, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST et al

JEFFREY HARTMAN, ESQ. for EDWARD WILLIAM BAYUK LIVING TRUST, EDWARD BAYUK

MARK WEISENMILLER, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

FRANK GILMORE, ESQ. for SNOWSHOE PETROLEUM, INC., SALVATORE R. MORABITO, SUPERPUMPER, INC.

MICHAEL LEHNERS, ESQ. for SALVATORE R. MORABITO

TERESA PILATOWICZ, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

GABRIELLE HAMM, ESQ. for WILLIAM A. LEONARD, JR, TRSTEE OF ESTATE OF PAUL A. MORABITO

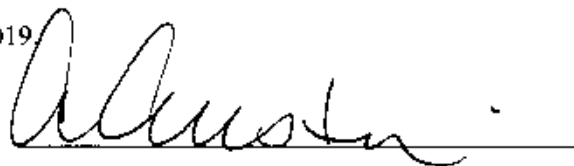
       Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service - [NONE]

       Federal Express or other overnight delivery service [NONE]

DATED this 9 day of August, 2019



1 GARMAN TURNER GORDON LLP  
2 GERALD M. GORDON  
3 Nevada Bar No. 229  
4 E-mail: ggordon@gtg.legal  
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15 Las Vegas, Nevada 89119  
16 Telephone 725-777-3000  
17 *Counsel to Plaintiff*

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

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

16 Plaintiff,

17 vs.

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

22 Defendants.

**CASE NO.: CV13-02663**

**DEPT. NO.: 4**

24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that an *Order Denying Claim of Exemption*, a copy of which is  
26 attached hereto as **Exhibit 1**, was entered in this matter on the 2nd day of August, 2019.

27 ///

28 **AFFIRMATION**

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**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 12th day of August, 2019.

GARMAN TURNER GORDON LLP

By: /s/ Teresa M. Pilatowicz, Esq.  
GERALD M. GORDON  
Nevada Bar No. 229  
ERIKA PIKE TURNER  
Nevada Bar No. 6454  
TERESA M. PILATOWICZ  
Nevada Bar No. 9605  
GABRIELLE A. HAMM  
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Telephone 725-777-3000  
*Counsel to Plaintiff*

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**INDEX OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>	<b>Pages<sup>1</sup></b>
<b>1</b>	Order Denying Claim of Exemption	3

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<sup>1</sup> Exhibit pagination includes exhibit slip sheets.

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of GARMAN TURNER GORDON LLP, and that on this date, pursuant to NRCP 5(b), I am serving a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** on the parties as set forth below:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, Reno, Nevada, postage prepaid, following ordinary business practices addressed as follows:
- ☐ Certified Mail, Return Receipt Requested
- ☐ Via Facsimile (Fax)
- ☐ Via E-Mail
- ☐ Placing an original or true copy thereof in a sealed envelope and causing the same to be personally Hand Delivered
- ☐ Federal Express (or other overnight delivery)
- ☒ By using the Court's CM/ECF Electronic Notification System addressed to:

Michael Lehnerts, Esq.  
E-mail: mcl3303@aol.com

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

Dated this 12th day of August, 2019.

/s/ Dekova Huckaby  
An Employee of  
GARMAN TURNER  
GORDON LLP

# Exhibit 1

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

8  
9 WILLIAM A. LEONARD, Trustee for the  
10 Bankruptcy Estate of Paul Anthony  
Morabito,

CASE NO.: CV13-02663

DEPT. NO.: 4

11 Plaintiff,

12 vs.

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

16 Defendants.

17 **ORDER DENYING CLAIM OF EXEMPTION**

18 Before the Court is the *Notice of Claim of Exemption from Execution* (the "Claim of  
19 Exemption") filed on July 2, 2019 by Defendant Salvatore Morabito ("Morabito"). The Claim of  
20 Exemption is supported by the *Declaration of Salvatore Morabito Claiming Exemption from*  
21 *Execution* (the "Morabito Declaration"), also filed on July 2, 2019. *Plaintiff's Objection to Notice*  
22 *of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing* (the  
23 "Objection") was filed on July 16, 2019, and *Morabito's Reply to Plaintiff's Objection to Notice*  
24 *of Claim of Exemption from Execution* (the "Reply") was filed on July 18, 2019.

25 The Court held a hearing on the Claim of Exemption on July 22, 2019. Morabito appeared  
26 by and through counsel, Michael Lehnert. Plaintiff appeared by and through counsel, Erika Pike  
27 Turner, Gerald M. Gordon and Teresa Pilatowicz of the law firm of Garman Turner Gordon LLP.

1 The Court has reviewed and considered the arguments made in the Claim of Exemption,  
2 the Objection, and the Reply, the papers and pleadings on file with the Court in this action, the  
3 testimony and exhibits admitted during the trial, the Court's Findings of Fact, Conclusions of Law,  
4 and Judgment, entered on March 29, 2019 (the "Judgment"), and the arguments of counsel made  
5 at the hearing. The Court is persuaded by the argument and authorities in Plaintiff's Objection and  
6 the arguments of Plaintiff's counsel at the hearing, along with the pleadings and papers on file, the  
7 trial record, and the findings and conclusions set forth in the Judgment. As such, the Court finds  
8 that Sam Morabito failed to meet his burden to show that there are assets in Nevada subject to  
9 exemption from execution.

10 Based on the foregoing, and good cause appearing:

11 IT IS HEREBY ORDERED that the Claim of Exemption filed by Salvatore Morabito is  
12 denied.

13 Dated this 2 day of August, 2019.

14 Connie J. Steinheimer  
15 DISTRICT JUDGE  
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