

**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.                      Electronically Filed  
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**PETITIONERS' APPENDIX,**  
**VOLUME 56**  
**(Nos. 9766–9890)**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

<u><b>DOCUMENT DESCRIPTION</b></u>		<u><b>LOCATION</b></u>
<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 NRCF 68 (filed 07/10/2019)	Vol. 53, 9346–9349

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

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



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

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

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

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

# Exhibit 7

FATCOLA/RESALE

RECORDING REQUESTED BY:  
FIRST AMERICAN TITLE COMPANY

AND WHEN RECORDED MAIL TO:  
Edward William Bayuk Living Trust  
668 North Pacific Coast Highway, Suite 517  
Laguna Beach, CA 92651

Order No.: 3600729  
Escrow No.: SS-26777-AL  
A.P.N.: 644-032-04

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder

2010000491888 08:00am 10/01/10

6.00

2010000491888 08:00am 10/01/10

217 405 G02 1 Non-dis

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

Recording Requested By: DPS  
On Behalf Of:

"DPS"

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE  
GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ CITY TRANSFER TAX IS \$

[ < - > ] computed on full value of property conveyed, or

[ < - > ] computed on full value less value of liens or encumbrances remaining at time of sale.

[ < - > ] unincorporated area [ x ] City of Laguna Beach AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Paul A. Morabito, Trustee of the Arcadia Living Trust as to an undivided 50% interest who acquired title as Paul A. Morabito, Trustee of the Arcadia Living Trust dated 2/14/2006, as to an undivided 50% interest

hereby GRANT(S) to

Edward William Bayuk, Trustee of Edward William Bayuk Living Trust

the following described real property in the County of Orange, State of California:

Lot 17 of Tract 870, in the City of Laguna Beach, County of Orange, State of California as per Map recorded in Book 27, Page(s) 30, 31, and 32, of Miscellaneous Maps in the Office of the County of said County.

AKA: 370 Los Olivos, Laguna Beach, CA 92651

Dated: September 28, 2010

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

} ss.

On September 28, 2010 before me

M. MASON

Notary Public, personally appeared

PAUL A. MORABITO

Arcadia Living Trust

By: Paul A. Morabito, Trustee

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature M. Mason

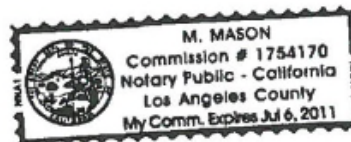
Signature of Notary

Commission Expiration Date: 7/6/2011

(This area for official notarial seal)

MAIL TAX STATEMENTS TO: Edward William Bayuk Living Trust

Document Number: 2010000491888 Page: 1 of 2



FATCOLA/RESALE

RECORDING REQUESTED BY:  
FIRST AMERICAN TITLE COMPANY

AND WHEN RECORDED MAIL TO:  
Edward William Bayuk Living Trust  
668 North Pacific Coast Highway, Suite 517  
Laguna Beach, CA 92651

Order No.: 3600727  
Escrow No.: SS-26776-AL  
A.P.N.: 644-031-01

Recording Requested By: DPS  
On Behalf Of:

"DPS"

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder



6.00

2010000491887 08:00am 10/01/10

217 405 G02 1 Non-dis

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SPACE ABOVE THIS LINE IS FOR RECORDER'S USE  
**GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S)  
DOCUMENTARY TRANSFER TAX IS \$ CITY TRANSFER TAX IS \$

[ < - > ] computed on full value of property conveyed, or  
[ < - > ] computed on full value less value of liens or encumbrances remaining at time of sale.  
[ < - > ] unincorporated area [ X ] City of **Laguna Beach** AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

**Paul A. Morabito, Trustee of Arcadia Living Trust as to an undivided 75.00% interest who acquired title as Paul A. Morabito, Trustee of the Arcadia Living Trust dated 2/14/2006 as to an undivided 75.00% interest**

hereby GRANT(S) to

**Edward William Bayuk, Trustee of Edward William Bayuk Living Trust**

the following described real property in the County of **Orange**, State of California:

**Lot 20 of Tract No. 870, in the City of Laguna Beach, County of Orange, State of California, as per Map recorded in Book 27 Page(s) 30, 31, and 32 of Miscellaneous Maps, in the Office of the County Recorder of said County.**

**AKA: 371 El Camino Del Mar, Laguna Beach, CA 92651**

Dated: **September 28, 2010**

STATE OF CALIFORNIA

COUNTY OF **LOS ANGELES**

} ss.

On **September 28, 2010** before me

**M. MASON**

Notary Public, personally appeared

**PAUL A. MORABITO**

**Arcadia Living Trust**

By: **Paul A. Morabito, Trustee**

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

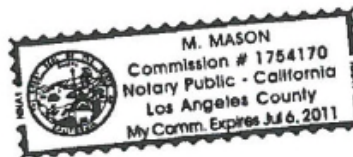
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature **M. Mason**

Signature of Notary

Commission Expiration Date: **7/6/2011**



(This area for official notarial seal)

MAIL TAX STATEMENTS TO: **Edward William Bayuk Living Trust**  
Document Number: 2010000491887 Page: 1 of 2

## MEMBERSHIP INTEREST TRANSFER AGREEMENT

This **MEMBERSHIP INTEREST TRANSFER AGREEMENT** (this "Agreement") is entered into and effective as of October 1, 2010 (the "Effective Date"), between and among, **PAUL A. MORABITO** in his capacity as Trustee of the **ARCADIA LIVING TRUST** ("Arcadia Trust"), **EDWARD WILLIAM. BAYUK** in his capacity as Trustee of the **EDWARD WILLIAM BAYUK LIVING TRUST** ("Bayuk Trust") and **BARUK PROPERTIES, LLC**, a Nevada limited liability company (the "Company"). Paul Morabito and Edward Bayuk are also signatories to this Agreement in their respective capacities as Managers of the Company.

Defined terms used and not otherwise defined herein shall have the meanings ascribed to such terms in that certain Operating Agreement of Baruk Properties LLC dated as of April 17, 1999 (the "Operating Agreement"). Each of the parties hereto is sometimes individually referred to as a "party" or cumulatively as the "parties".

WHEREAS, Arcadia Trust currently holds a 50.00% Membership Interest in Company; and Bayuk Trust currently holds a 50.00% Membership Interest in Company; and

WHEREAS, Bayuk Trust desires to acquire, and Arcadia Trust desires to assign and transfer to Bayuk Trust, Arcadia Trust's 50.00% Membership Interest in the Company (the "Transferred Interest"), subject to the terms and conditions set forth herein; and

WHEREAS, the Company is the owner in fee simple of two commercial real properties and all improvements furniture, machinery, equipment and trade fixtures located thereon commonly known as 1461 Glenneyre, Laguna Beach, CA ("1461 Glenneyre") and 570 Glenneyre, Laguna Beach, CA ("570 Glenneyre") and a residential property commonly known as 1254 Mary Fleming Circle, Palm Springs, CA (1254 Mary Fleming") (collectively the "Properties"). The personal property, including all household furnishings, artwork, window coverings and non-affixed improvements in 1254 Mary Fleming Circle are not owned by the Company, but instead were purchased and are owned individually by the Members of the LLC.

WHEREAS, in accordance with the terms of this Agreement, effective as of the Closing Date, Paul Morabito shall tender his resignation as Manager of the Company. As such, as of the Closing Date and immediately following Arcadia Trust's receipt of all consideration due on the Closing Date, Bayuk Trust will be the only Member and Edward Bayuk the sole Manager of the Company.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

### 1.1 Transfer of Transferred Interest; Promissory Note; Resignation as Manager.

On the terms and subject to the conditions hereof and in consideration of Bayuk Trust's delivery to Arcadia Trust of its promissory note in the principal amount of \$1,617,050.00 (the "Promissory Note"), at the Closing (as defined in Section 1.3, below) Arcadia Trust will transfer



**PROMISSORY NOTE**

Laguna Beach, California

**Effective Date of Note:** October 1, 2010

**Borrower:** EDWARD WILLIAM BAYUK LIVING TRUST  
Edward William Bayuk, Trustee

**Lender:** ARCADIA LIVING TRUST  
Paul A. Morabito, Trustee

**Principal Amount:** \$1,617,050.00

**Payments:** Three Hundred and Sixty (360) consecutive equal monthly installment payments of principal and interest in the amount of \$7,720.04 each, due and payable monthly on the first day of each month commencing November 1, 2010.

**Applicable Interest Rate:** Four percent (4.0%) per annum

**Maturity Date:** September 30, 2040

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, the undersigned EDWARD WILLIAM BAYUK LIVING TRUST, Edward William Bayuk, Trustee promises to pay to ARCADIA LIVING TRUST, Paul A. Morabito, Trustee, ("Lender"), at such place as Lender may from time to time designate in writing, the Principal Amount stated above with interest on the unpaid principal from time to time outstanding at the Applicable Interest Rate stated above (the "Loan") as set forth in this Promissory Note (this "Note").

1. **Principal; Applicable Interest Rate; Installment Payments and Maturity.** This Note has a term of thirty (30) years and shall accrue interest at the rate of four percent (4.0%) per annum ("Applicable Interest Rate") from October 1, 2010. Principal and interest payments on this Note shall be fully amortized over the term and payable in three hundred and sixty (360) consecutive equal monthly installment payments in the amount of \$7,720.04 each, due on the first day of each month commencing November 1, 2010, with all principal plus interest accrued but unpaid, along with any unpaid late payment fees and other unpaid fees under the terms hereof, due and payable on September 30, 2040. All payments shall be made by check drawn on lawful funds in U.S. dollars, without right of offset. By his execution hereof, the Borrower represents and warrants to the Lender that this Note is the valid and binding obligation of the Borrower, enforceable in accordance with its terms.
2. **Prepayment.** Borrower may prepay all amounts due hereunder in part or in full, with interest to the date of payment, without penalty, premium or discount. Borrower hereby waives the provisions of Section 2966 of the Civil Code which provides that the holder of this Note shall give written notice to the Borrower, or his successor in interest, of prescribed information at least 90 days and not more than 150 days before any balloon payment, if any, is due.
3. **Late Payment.** If any installment of the principal or interest is not paid on or before ten (10) business days from the date such payment first became due and payable, a late payment fee of

TO: **Edward Bayuk and Bayuk Trust:**

668 North Pacific Coast Highway, Suite 517  
Laguna Beach, California 92651  
e-fax: (480) 222-1063

Notice by mail shall be by airmail if posted outside of the continental United States. Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

**8. TERMINATION, AMENDMENT AND WAIVER.**

**8.1 Termination.** In addition to the termination provisions set forth herein, this Agreement may be terminated and the transactions contemplated hereby may be abandoned:

**8.1.1** By mutual written consent of all of the parties, or in accordance with this Section 8; or

**8.1.2** By any of the parties if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or shall have taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable.

IN WITNESS WHEREOF, each of the Parties have executed this Agreement this 1<sup>st</sup> day of October, 2010


**ARCADIA LIVING TRUST**

By: 

**Paul A. Morabito, Trustee**

**EDWARD WILLIAM BAYUK**

**LIVING TRUST**

By: 

**Edward William. Bayuk, Trustee**

**BARUK PROPERTIES, LLC**

By: 

**Paul Morabito, Manager**

**BARUK PROPERTIES, LLC**

By: 

**Edward Bayuk, Manager**



four (4%) percent of the payment owed shall be due, it being agreed between Borrower and Lender that such amount represents the parties' reasonable estimate of the damage suffered by Lender as a result of any such late payment. Such late payment fee shall be paid without prejudice to the right of Lender to collect interest on said unpaid amount or to collect any other amounts provided to be paid or to declare an Event of Default under this Note or from exercising any of the other rights and remedies available to Lender.

4. **Guaranty of Payment.** This Note is guaranteed by Baruk Properties, LLC as set forth in Section 2.1 of that certain Membership Interest Transfer Agreement dated September 29, 2010 between the parties.

5. **Cure Period.** Borrower shall have ten (10) business days to cure any Event of Default commencing on the date Lender gives Borrower written notice of such Event of Default; provided, however, that Lender shall be entitled to exercise any and all of its default remedies in the event Borrower fails to cure within the prescribed ten (10) business day period.

6. **Attorneys' Fees.** In the event that suit be brought under or in connection with this Note to compel payment of this Note or any portion of the indebtedness evidenced hereby, the prevailing party in any such suit shall be entitled to recover all reasonable attorneys' and expert consultants' fees incurred in addition to all other recoverable costs and damages.

7. **Place of Payment.** Borrower shall pay all amounts to Lender at:

ARCADIA LIVING TRUST  
Paul A. Morabito, Trustee  
8581 Santa Monica Blvd., #708  
West Hollywood, California 90069

or at such other location as is designated in writing by the legal holder of this Note.

8. **Governing Law.** This Note shall be governed and construed in accordance with the laws of the State of California. Venue shall be proper in Los Angeles County, State of California.

9. **Notices.** All notices, requests, demands and other communications required or permitted under this Note shall be in writing and delivered by U.S. certified mail, postage prepaid, return receipt requested and signed by the party to whom it is addressed, addressed as set forth below and shall be deemed to have been duly given, made and received three (3) days after the date when signed return receipt is received by the sending party:

TO: **Lender:**  
ARCADIA LIVING TRUST  
Paul A. Morabito, Trustee  
8581 Santa Monica Blvd., #708  
West Hollywood, California 90069

TO: **Borrower:**  
EDWARD WILLIAM BAYUK LIVING TRUST  
Edward William Bayuk, Trustee  
668 North Pacific Coast Highway, Suite 517  
Laguna Beach, California 92651

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

10. **Assignment.** Lender shall have the right to sell, assign, or otherwise transfer, either in part or in its entirety, this Note, without the consent of the Borrower. Borrower shall not have the right to sell, assign, or otherwise transfer, either in part or in its entirety, this Note without the consent of Lender, which consent may be withheld at Lender's sole and absolute discretion. Borrower shall have no right to delegate its duties under this Note without the prior written consent of Lender, which consent may be withheld at Lender's sole and absolute discretion. This Note and all of the covenants, promises and agreements contained in it shall be binding on and inure to the benefit of the respective legal and personal representatives, devisees, heirs, successors and assigns of Borrower and Lender.

11. **Entire Agreement.** This Note (a) is the final, complete and exclusive statement of the parties' agreement with respect to the subject matter hereof; and is binding upon the successors and assigns of the Borrower; (b) except for written agreements expressly referred to herein, replaces and supersedes any prior or contemporaneous agreements, understandings, negotiations or statements of any kind, oral or written, between the parties. Any agreement hereafter made shall be ineffective to modify, supplement or discharge the terms of this Note, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification, supplement or is sought.

12. **Severability.** If any term or provision of this Note or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid, illegal or unenforceable, then the remaining part of this Note, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, which can be separated from the invalid, illegal or unenforceable term(s) and provision(s), shall not be affected thereby and shall continue in full force and effect to the fullest extent provided by law, and the invalid, illegal or unenforceable term(s) and provision(s) shall be construed as if they had never been incorporated into this Note.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date and year first written above and has delivered it to Lender.

BORROWER:

EDWARD WILLIAM BAYUK LIVING TRUST

By:

Edward William Bayuk, Trustee



DOC # 2010-0531071

11/04/2010 12:48P Fee:15.00

Page 1 of 1

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk &amp; Recorder

RECORDING REQUESTED BY:  
FIRST AMERICAN TITLEAND WHEN RECORDED MAIL TO:  
Edward William Bayuk, Trustee et al.  
668 N. Pacific Coast Highway #517  
Laguna Beach, CA 92651

Order No.: 3005461-3

Escrow No.:

A.P.N.: 507-520-015

TRA-011-021

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## GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ ~~06~~ CITY TRANSFER TAX IS \$ ~~06~~ *\* NO Consideration*

"The Grantors and the Grantees in this Conveyance are comprised of the same parties who continue to hold the same proportionate interest in the property, R &amp; T 11923(d)."

- ☐ computed on full value of property conveyed, or  
☐ computed on full value less value of liens or encumbrances remaining at time of sale.  
☐ unincorporated area ☐ City of Palm Springs AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

hereby GRANT(S) to

EDWARD WILLIAM BAYUK, TRUSTEE OF THE EDWARD WILLIAM BAYUK LIVING TRUST

the following described real property in the County of Riverside, State of California:

Lot 6 of Tract 29075 as shown by Map on file in Book 284 Page 12 to 15 of Maps in the office  
of the County Recorder of Riverside County, California.

AKA: 1254 Mary Fleming Circle, Palm Springs, CA 92262

Dated: October 29, 2010

STATE OF CALIFORNIA

COUNTY OF Los Angeles

} ss.

On November 1, 2010 before meM. Mason

Notary Public, personally appeared

Edward BayukSNOWSHOE PROPERTIES, LLC, A CALIFORNIA LIMITED  
LIABILITY COMPANYBy: Edward Bayuk, Manager

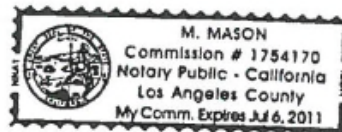
who proved to me on the basis of satisfactory evidence  
to be the person(s) whose name(s) is/are subscribed to  
the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their  
authorized capacity(ies) and that by his/her/their  
signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s), acted,  
executed the instrument.

I certify under PENALTY OF PERJURY under the laws  
of the State of California that the foregoing paragraph is  
true and correct.

WITNESS my hand and official seal.

Signature M. Mason

Signature of Notary

Commission Expiration Date: 7/6/2011

(This area for official notarial seal)

MAIL TAX STATEMENTS TO: Edward William Bayuk, Trustee et al., 668 N. Pacific Coast Highway #517

9774

# Exhibit 8

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JUDITH ANN SCHONLAU

CCR #18

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

WILLIAM LEONARD, JR. TRUSTEE, )

)

Plaintiff, )

)

vs. )

CASE NO. CV13-02663

)

DEPARTMENT NO. 4

EDWARD WILLIAM BAYUL Living )

)

Trust, ET AL,

)

Defendants. )

---

TRANSCRIPT OF PROCEEDINGS

HEARING

MONDAY, JULY 22, 2019, 2:00 P.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18  
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:            GARMAN TURNER GORDON

                                 BY:   ERIKA PIKE TURNER, ESQ.

                                 TERESA M. PILATOWICZ, ESQ.

                                 JERRY GORDON, ESQ.

                                 650 WHITE DRIVE, SUITE 100

                                 LAS VEGAS, NEVADA 89119

FOR THE DEFENDANTS:        MICHAEL C. LEHNERS, ESQ.

                                 ATTORNEY AT LAW

                                 429 MARSH AVENUE

                                 RENO, NEVADA, 89509

                                 HARTMAN & HARTMAN

                                 BY:   JEFFREY L. HARTMAN, ESQ.

                                 510 W. PLUMB LANE, SUITE B

                                 RENO, NEVADA 89509



1                   RENO, NEVADA; MONDAY, JULY 22, 2019; 2:00 P.M.

2                                   -oOo-

3                   THE COURT: Thank you, please be seated. So this is

4 the time for a hearing on an objection to claim an exemption.

5 Counsel, are you ready to proceed?

6                   MS. TURNER: Yes, Your Honor.

7                   THE COURT: Have you had an opportunity to review

8 the Reply?

9                   MS. TURNER: Yes.

10                  THE COURT: Go ahead.

11                  MS. TURNER: So, Your Honorer, Erika Pike Turner and

12 Teresa Pilatowicz and Jerry Gordon of Garman Turner and Gordon

13 on behalf of the Plaintiff Trustee. And do you want to make

14 your appearances?

15                  MR. LEHNERS: Sure. Good afternoon, Judge

16 Steinheimer. We meet again. I am Mike Lehnern. I just filed a

17 Notice of Association. I am appearing with Jeffrey Hartman.

18 I am representing Ed Bayuk and the Bayuk Living Trust.

19                  MR. HARTMAN: Good afternoon, Your Honor, Jeff

20 Hartman.

21                  MS. TURNER: So, Your Honor, I think I can make

22 brief arguments. I understand you are in trial but -- no?

23                  THE COURT: I was last week.

24                  MS. TURNER: We talked to the clerk and she

1 indicated you were in the middle of trial, but that was last  
2 week. So just starting with the Claim of Exemption and the  
3 Amendment to the Edward William Bayuk Living Trust Agreement  
4 that is attached as an exhibit. We have it Recital 3 of the  
5 Amendment to the Edward William Bayuk Living Trust Agreement  
6 provides that the Trust is to be referred to as the Edward  
7 William Bayuk Living Trust. That's it. That is how you refer  
8 to the Trust. And then we have the Declaration of Edward  
9 William Bayuk who says and clarifies the evidence that came in  
10 at trial that there is but one Trust from 1998 through the  
11 time of the 2005 Amendment to the Edward William Bayuk Living  
12 Trust to the present time, and thereafter the intention and  
13 the reality is that all assets have been in the Edward William  
14 Bayuk Living Trust. All assets that were transferred to the  
15 Edward William Bayuk Living Trust. Even though the Deeds or  
16 the testimony may indicate there was a 2008-2009 Trust, there  
17 is but one. There is the Edward William Bayuk Living Trust  
18 which is a judgment debtor which is a judgment debtor. This  
19 is a judgment debtor. We are not dealing with a claim of  
20 exemption by a beneficiary of a trust. This is where the  
21 Trust, itself, is a judgment debtor.

22 So then we go to the allegation that is if the  
23 Edward William Bayuk Living Trust is a judgment debtor as is  
24 the case here, is there protection under NRS Chapter 166 as a

1 Spendthrift Trust was intended by the 2005 Amendment. That is  
2 the allegation, and Your Honor there is no such protection  
3 here. There is no such protection here because, one, the  
4 Trust, itself, is a judgment debtor. Two, NRS 166.170 provides  
5 that assets cannot be fraudulently transferred to a  
6 Spendthrift Trust and provide the protections under the  
7 statutory scheme. And I will address that in a little more  
8 detail in just a moment.

9 But the third and most dispositive fact that is  
10 really indisputable, as a result of the Amendment that is from  
11 2005 that has been attached to the Claim of Exemption and the  
12 Declaration of Mr. Bayuk is under NRS 166.015. Your Honor, in  
13 the Findings of Fact and Conclusions of Law in this case, the  
14 Court found Paragraph 17b of the Findings of Fact, Conclusions  
15 of Law that Edward Bayuk and Paul Morabito moved to California  
16 in September 2010. By virtue of that move, the protections  
17 under NRS Chapter 166, if they ever existed, they were lost at  
18 that point in time. The Amendment to the Edward William Bayuk  
19 Living Trust that is attached as an exhibit has at Recital B,  
20 Edward Bayuk is a Reno resident. At Recital G, the only  
21 co-trustee of the Edward William Bayuk Living Trust, Paul  
22 Morabito, is a resident of Reno. Well, under NRS 166.015 in a  
23 self-settled Spendthrift Trust, any Trustee, there must be at  
24 least one who resides in the State of Nevada. Spendthrift

1 Trusts are against public policy unless abrogated by statute,  
2 and there is no protection of the assets of the Edward William  
3 Bayuk Living Trust except under NRS Chapter 166. Those were  
4 lost in September 2010 if they were ever had.

5 And, Your Honor, in the Reply, counsel for Edward  
6 Bayuk and the Edward William Bayuk Living Trust make the  
7 argument the assets are still protected by virtue of  
8 NRS Chapter 166 without regard to whether or not they are a  
9 resident, without regard to whether or not the Trust, itself  
10 is a judgment debtor here. They say but there is a Statute of  
11 Limitation under NRS Chapter 166 that required that the action  
12 be brought within six months of discovery of the Spendthrift  
13 Trust, a transfer to the Spendthrift Trust or within two years  
14 of the transfer. NRS 166.170 is the statute, and we have shown  
15 in our Opposition that it is an "or", either within two years  
16 of the transfer, or it is within six months of discovery that  
17 the Complaint was actually brought within two years of the  
18 transfer. The transfers were between September and November  
19 2010. There was a tolling agreement from November 30, 2011  
20 through June 17, 2013, and the Complaint was filed December 17  
21 2017. To the extent that there was any statute of limitation  
22 issue, it was waived because that was something that was never  
23 addressed at the time of trial. But even if it was preserved  
24 for some reason or this was a statute opposed to limitation,

1       it was certainly satisfied.

2               In addition, with the six years of discovery, I mean  
3       six months of discovery prong of that statute, again it is an  
4       "or". The first time that the Amendment from 2005 that  
5       purportedly created and irrevocable or Spendthrift Trust under  
6       never law, the first time it was produced was in conjunction  
7       with the Claim of Exemption that brings us here today.

8               There were requests, and we provided the detailed  
9       request for production of Trust Agreement during the  
10      litigation, and Mr. Bayuk chose not to produce this Amendment  
11      for some reason. There was no testimony, there was no document  
12      that was produced at any point in discovery or in trial that  
13      disclosed that Mr. Bayuk claimed or would claim this was an  
14      irrevocable or Spendthrift Trust. At the end of the day, it  
15      is Mr. Bayuk, individually, and as Trustee of the Edward  
16      William Bayuk Living Trust, it is his burden to show that the  
17      assets that are the subject of Writs are subject to exemption.  
18      He's failed to do that under NRS Chapter 166. He's failed to  
19      do that under NRS Chapter 21. And, Your Honor, the elephant  
20      in the room really with respect to both Mr. Morabito and to  
21      Mr. Bayuk is how can you have a successful claim of exemption  
22      without identifying the actual asset you're claiming the  
23      exemption for? Both gentlemen, Mr. Morabito and Mr. Bayuk are  
24      claiming a general exemption for all assets.

1 THE COURT: Do you need some water?

2 MS. TURNER: I know. I am going to try to make it  
3 through.

4 THE COURT: Okay.

5 MS. TURNER: I apologize. I am getting a little bit  
6 scratchy. But, Your Honor, there is no evidence that was  
7 presented by Mr. Bayuk, he's here today, maybe he intends to  
8 today, but there has been no evidence of a particular account  
9 that is the subject of his claim of exemption. It is not  
10 enough to say all accounts and all sums within those accounts  
11 are the subject of my Claim of Exemption. It must be an  
12 account with assets in Nevada or that is otherwise subject to  
13 Nevada law. That would be something that we can analyze a  
14 particular sum and determine whether or not there is an  
15 exemption under Nevada statutes that is available to Mr. Bayuk  
16 or Mr. Morabito. NRS 21.270 provides that the Court can  
17 require a judgment debtor to come and testify before her and  
18 describe the particular assets that they have and have failed  
19 to disclose. Not only that they are claiming an exemption for  
20 but which can be used to pay the judgment. We would ask that,  
21 if the Court thinks there is any colorable claim of exemption,  
22 we don't believe there is, there be that requirement that  
23 there be testimony presented to Your Honor subject to  
24 cross-examination over a particular asset that we can then do

1 the analysis of whether or not a particular statute for  
2 exemption applies.

3 The example that Mr. Morabito provides in the most  
4 general sense is he says there is a wage exemption that  
5 applies under Nevada law. At the same time, he says he's a  
6 citizen of Canada. He doesn't identify any asset in Nevada or  
7 account in Nevada that we could then analyze to see, one, what  
8 are the wages that could possibly be deposited there, how is  
9 it subject to Nevada exemption statutes.

10 I am happy to answer any questions, but I think our  
11 position is very clear, there is no exemption that applies  
12 under any statute.

13 THE COURT: Okay. Thank you.

14 MR. LEHNERS: Good afternoon, Your Honor. Thank you  
15 for allowing me to appear in your courtroom today. I feel  
16 somewhat like a Ph.D student would feel on giving an oral  
17 dissertation. I have been doing exemption law for probably  
18 thirty-two years. We get a lot of it in bankruptcy court.  
19 This is probably one the more complex legal issues I have  
20 seen. I have taken the liberty of making an outline to try to  
21 make it flow how the law works at least in my mind. I would  
22 like to take you through that if I may.

23 I would like to start with the Klabacka versus  
24 Nelson case. I think that case is important because it sets

1     forth the legislative history behind the Nevada self-settled  
2     Spendthrift Trust Act. And Klabacka is a somewhat lengthy  
3     opinion. It does go into the policy behind the Spendthrift  
4     Trusts. In there our Supreme Court said despite the public  
5     policy rationale used in other jurisdictions, Nevada statutes  
6     explicitly protects Spendthrift Trust assets from the personal  
7     obligations of beneficiaries. The legislative History in  
8     Nevada supports this conclusion.

9             It appears that the legislature enacted the  
10     statutory framework allowing Spendthrift Trusts to make Nevada  
11     an attractive place for wealthy individuals to invest their  
12     assets which in turn provides Nevada with the increased estate  
13     and inheritance tax revenues.

14            Now when crafting the language to allow the  
15     Spendthrift Trust statutes the legislature did contemplate the  
16     statutory framework that protected Trust assets from unknown  
17     future creditors as opposed to debts that existed at the time.  
18     The legislative history expressly mentions child support as an  
19     example of a debt that would not be free from an attachment if  
20     known at the time that the Trust was created. However, Trust  
21     assets wouldn't be protected from attachment as to debts  
22     unknown at the time the Trust was created. Presumably this  
23     protection extended to child support and spousal support  
24     obligation unknown at the time. Now this is very important



1 because we know that Nevada exemptions do not hold up to  
2 claims for child support and spousal support. And in 2013 our  
3 legislature proposed changes to Chapter 166 that would have  
4 allowed a spouse or child to collect spousal support and child  
5 support from Trust assets. It was defeated. It did not pass.  
6 As a result, the Spendthrift Trust statutes were not amended.  
7 The rigid scheme makes Nevada self-settled Spendthrift Trust  
8 framework unique. The key difference between Nevada  
9 self-settled Trusts and those of other states is Nevada has  
10 the interest of the child and child support creditors as well  
11 as involuntary tort creditors seemingly in an effort to  
12 attract trust business of those individuals seeking maximum  
13 asset protection.

14 Now with that, there has been a lot of talk about  
15 well, it is kind of like, you know, the three shell monty,  
16 where is the Trust? Mr. Bayuk did form the Trust by an  
17 Amendment in 2005. That is attached as an exhibit to his  
18 Affidavit. And we also know that the Edward Bayuk Living  
19 Trust was created originally in 1998 in Miami, Florida, and  
20 this was a revocable Trust. It was amended by the 2005 Trust  
21 Amendment that I have attached to Mr. Bayuk's Affidavit. And  
22 what it says on Page 1, Item D, this Amendment shall  
23 constitute the entire and exclusive statement of the terms of  
24 the Nevada Trust nullifying all prior and subsuming all

1 versions of the Bayuk Trust. In other words, Judge, what we  
2 have in 2005 is a novation. There was a Trust, identical  
3 name. In the 2005 Amendment a new self-settled Spendthrift  
4 Trust that is irrevocable was created. Like the Phoenix that  
5 arises out of the ashes, this is the Trust.

6 Now I hated Wills and Trusts in law school. I did  
7 everything I could to try to get out of that. But one of the  
8 things that I understand on how these trusts work, you have  
9 got a Spendthrift Trust which will hold all the assets.  
10 Mr. Bayuk signed an Affidavit saying that is what holds all  
11 the assets, the 2005 version of the Trust. But Mr. Bayuk has  
12 to pay bills. He has expenses as the Trustee. He has to  
13 defend the Trust in the litigation. The Trust has been sued,  
14 at least he was been sued as a Trustee. How do we pay these  
15 bills? The answer is simple. You form, spendthrift trusts.  
16 These are revocable Trusts. What happens is let's say because  
17 Mr. Bayuk as a Trustee gets sued, he has to pay a retainer to  
18 say Richard Hollingsworth. Where does that money come from?  
19 It comes out of the 2005 irrevocable self-settled Spendthrift  
20 Trust, and it can go into another Trust, and then that Trust  
21 goes ahead and pays the bill on behalf of the Trustee.

22 And one of the things that I noticed in opposing  
23 counsel's oral argument and written argument is, hey, how come  
24 you're keeping us in the dark on this? Well, I would like to

1 refer Your Honor to Paragraph 35 of the 2005 Amendment which  
2 is attached. And what it says is confidentially of the Trust  
3 Agreement except as otherwise provided in this Trust  
4 Agreement, the Trustee shall not disclose the contents of this  
5 Trust Agreement or the fact of its existence unless required  
6 to do so by law, regulation, legal process, etcetera,  
7 etcetera. In other words, Mr. Bayuk was doing what he was  
8 ordered to do as the Trustee.

9 And in the deposition of Paul Morabito which took  
10 place -- I am getting a little bit ahead of myself. I  
11 apologize. Mr. Morabito was deposed in 2011, March 3rd. He  
12 disclosed not only the existence of this Trust, the Edward  
13 Bayuk Trust, but also a lot of the assets that went into it.  
14 So at the very latest, as of March of 2011 they knew, and that  
15 is relevant because I am going to be discussing the Statute of  
16 Limitation requirement next. They knew. And that was either  
17 the date of the transfer, six months of when you knew. They  
18 knew at that time.

19 THE COURT: But you are arguing that, if I  
20 understand you correctly, Mr. Lehnert, that there is a Trust  
21 that has one name. We amend it and keep the exact same name.  
22 We change the circumstances of it and the requirements of it  
23 drastically, and we say we can't tell anyone that.

24 MR. LEHNERS: Correct.

1           THE COURT: Isn't that just setting up to defraud  
2 your creditors? How can you say in the later testimony at a  
3 deposition, he didn't say this is a Spendthrift Trust, he just  
4 used the exact same name, and the only documents proving the  
5 Trust that were disclosed were of a Living Trust that is  
6 revocable.

7           MR. LEHNERS: Your Honor, what happened, the Living  
8 Trust ceased to exist.

9           THE COURT: I understand your argument. But what  
10 your argument is, is that you in fact could have a Living  
11 Trust --

12          MR. LEHNERS: Yes.

13          THE COURT: -- in secret, change it to a Spendthrift  
14 Trust and not tell your creditors that you have changed it to  
15 a Spendthrift Trust until after the Statute of Limitations may  
16 have run and a full-blown litigation that took five years  
17 could take place.

18          MR. LEHNERS: Your Honor, that is a very good point  
19 and I would like to address. As you know, I am not making an  
20 excuse, but I did come in late to the case. And it's my  
21 understanding that this Trust, from reading it, did act as a  
22 novation. And I also know, after reading Mr. Morabito's March  
23 3, 2011 deposition, he talked about the Bayuk Trust. Now I  
24 wasn't there in 2011, but when I read that, I scratched my

1 head. I thought why didn't those guys serve a subpoena on  
2 him. Why didn't they do a request for production for all of  
3 it? Why didn't they depose him? Why didn't they --

4 THE COURT: They did.

5 MR. LEHNERS: The specific 2005 Trust, I mean it was  
6 there. And he was also under an obligation not --

7 THE COURT: But there was discovery in the case I  
8 tried for it to be disclosed.

9 MR. LEHNERS: Well, Your Honor, I don't know how to  
10 respond to that. But let's assume for the sake of argument  
11 that the Trust was here. Does that kill the exemption? The  
12 answer is no it doesn't. And I can tell you why. In the event  
13 that I have hidden something, let's say somebody has a  
14 \$100,000 judgment against me for fraud, fraud of the worst  
15 kind. And they go to me and say Mr. Lehnerns, do you have a  
16 car? No, sir, I don't. I do not have a car. And I lie. I  
17 do have a car, and that car is worth \$15,000. If they find  
18 the car and try to attach it, can I still claim it as exempt?  
19 The answer is yes. And the reason why is the Mackey vs. Chong  
20 case. The answer is yes.

21 THE COURT: But that isn't the case here. Here the  
22 car was specifically taken and placed into a trust that you're  
23 now saying is not executable against. So you have, by fraud,  
24 taken assets and put it into -- transferred it into an asset

1       you're now claiming is not executable upon.

2               MR. LEHNERS: Your Honor, there is a provision, this  
3 actually gets to the next section of the argument I wanted to  
4 make, is Spendthrift Trusts are not exempt from fraudulent  
5 transfers. They are not. We just have a shorter limitation  
6 period for them. It is two years.

7               THE COURT: She just argued that the two-year period  
8 in fact was met because of the tolling.

9               MR. LEHNERS: No, it couldn't have been, and the  
10 reason why is that it is two years from the date of the  
11 transfer the stuff got put in the Trust, 2005, or thereafter  
12 it was and became in the Trust. All the stuff has been in the  
13 2005 Spendthrift Trust. In 2010 there were assets, I believe  
14 property, the Del Mar property, there was certain properties  
15 transferred in. And it is in Mr. Morabito's testimony, and  
16 that stuff got stuck into the Trust in 2010. But, hey, they  
17 didn't know about it allegedly. Then in March of 2011, oh,  
18 there is a Bayuk Trust? What went in it? There is a lot of  
19 copied deposition testimony that shows that stuff went in as  
20 of that time.

21               Now let's talk about the tolling Agreement. I am  
22 very glad that you brought that up, when was the tolling  
23 Agreement exercised or signed? It was signed on November 30,  
24 2011, more than six months after discovery. And one of the

1 most important arguments that I wish to make to this Court,  
2 and it is very important indeed, is how the Statute of  
3 Limitation works under 166.170. You have got two sections  
4 under that statute. You have got Subsection 1. That is our  
5 two year or six month rule; and then you have Subsection 8.  
6 Subsection 8 I found to be very interesting. Notwithstanding  
7 any other provision of law, no action of any kind, including  
8 without limitation an action to enforce a judgment entered by  
9 a court or other body having adjudicative authority may be  
10 brought at law against the trustee of the Spendthrift Trust,,  
11 as of the date an action was brought, an action by a creditor  
12 with respect to the spendthrift trust would be barred pursuant  
13 to this section.

14 So the way I duped this is statute of limitation  
15 plus. In other words, here's what this means. I cited the  
16 statutory construction principles in my brief. All of the  
17 provisions are considered together and nothing is rendered  
18 superfluous. Well, if we had a statute of limitation say  
19 pursuant to a written contract which we know is six years, if  
20 I sue on one year seven, does the court have subject matter  
21 jurisdiction? Of course it does, because affirmative defenses  
22 are exactly that, use them or lose them.

23 But here we have something else. That's why I call  
24 statute of limitation plus. Not only does it give us this two-

1 year six month statute of limitation, the legislature added to  
2 that saying no action can be brought against the trustee  
3 unless it is within the time frame. That is subject matter  
4 jurisdiction. Otherwise, why would it be there? If it says  
5 no action can be brought, then no action can be brought. Our  
6 legislature is the one entity that sets the limits of what the  
7 courts can and can't hear. For example, if I ever elected to  
8 divorce my wife which I pray I never do or she me, we couldn't  
9 file the action in small claims court. It would have to be  
10 filed in the Family Division. So here, if you are going to  
11 sue somebody or try to get an asset of the spendthrift trust  
12 you have to do it within the time period in 166.170, Sub 1.

13 THE COURT: What if you had an interlocutory appeal.  
14 Are you saying that interlocutory appeal automatically tolls  
15 the time to bring an action? Would it toll it?

16 MR. LEHNERS: Your Honor, I am not sure I understand  
17 that question.

18 THE COURT: Let's say it wasn't a voluntary waiver  
19 of time. In other words, you have got voluntarily entering  
20 into an Agreement to toll the time running. You're arguing  
21 that voluntary Agreement is abrogated by legislature you can't  
22 enter into it?

23 MR. LEHNERS: Yes. I will tell you why. Because if  
24 you accept the premise that we have a two year or six month



1 look back, then we have -- You can't bring this action, then a  
2 month or two after the passage of the six months, he goes and  
3 signs a tolling Agreement, you can't consent to subject matter  
4 jurisdiction even if he wanted to. Even if it is unfair, and  
5 inequitable to Trustee Leonard, you can't consent to it. It is  
6 impossible to do.

7 THE COURT: Isn't this language, doesn't it parrot  
8 the language in the five-year rule?

9 MR. LEHNERS: Ae you talking about 41e?

10 THE COURT: Yes.

11 MR. LEHNERS: No, Your Honor, I don't think it does,  
12 because 41e says you have to bring a matter to trial within  
13 five years or else the Court shall dismiss it. It can do  
14 whatever terms it wants. But what it also says is you can  
15 move to extend it. I know I have done that before Your Honor  
16 in one of the cases if I took the case over. I said eek, I  
17 can't get it in before five years. I filed a motion with our  
18 trial starting on one day then it is going to get continued.  
19 But here it is absolute. NRS 41e, you can file a motion to  
20 extend it before it expires. There is no such provision in  
21 166.170. So I don't believe, with all due respect, the  
22 analogy would apply. On account of the fact it says no action  
23 can be brought against the Trustee unless it is within the  
24 time period. The absolute phrasing of that language is

1       mandatory which is why I do believe it is subject matter  
2       jurisdiction.

3               Now, Your Honor, that is not the only jurisdictional  
4       argument that we have here.

5               THE COURT: Okay. I have a question though. In  
6       this case, the Trust was sued. It is a party.

7               MR. LEHNERS: It was not. That is where I was  
8       getting to. And the reason why, Your Honor, Mr. Bayuk was  
9       sued as the Trustee. That is not how you sue one of these  
10      things. And if I may skip ahead, I will quickly try to  
11      explain it unless you have questions of me first.

12              THE COURT: No, that is fine. Okay, explain to me  
13      why the Trust is not a party.

14              MR. LEHNERS: Okay. If I could just beg your  
15      indulgence. I even tabbed it. I should be able to find this.  
16      Found it. Your Honor, I would like to go talk now about  
17      NRS 166.120. What this is is it talks about the restraint on  
18      alienation and exclusive jurisdiction of the court. This  
19      basically says that Subsection 1 of 120, it says that the  
20      assets, any interest of the beneficiary under the Trust may  
21      not be assigned by operation of law or process. Shall never  
22      be assigned, alienated, diminished or impaired by any  
23      alienation, transfer or seizure so as to cut off or diminish  
24      the right of payment by the Trustee to the beneficiary may

1     only be made to and for the benefit of the beneficiary. And  
2     here is what is important: Any action -- because remember  
3     this Trust has beneficiaries. It is his stepmother who is a  
4     beneficiary of the Trust and the Humane Society as an  
5     alternative beneficiary. But it says any action to determine  
6     if the beneficiary rights are subject to execution to levy or  
7     attachment. And, Your Honor, I am reading from Subsection 2  
8     of 166.120. Must be made only in a proceeding commenced  
9     pursuant to 153 of the NRS if it is a testamentary Trust or  
10    NRS 164.010 if it is a non-testamentary Trust. The court has  
11    exclusive jurisdiction over any proceeding to this action. So  
12    Klabacka recognized this. The ultimate holding in Klabacka  
13    was one of the parties said you can't do this in Family Court.  
14    You can't come in here in Family Court and mess with the Trust  
15    You have to do an in rem action under 164.010 in probate  
16    court. And the Family Court says this isn't about trusts, it  
17    is about divorce, and we do have jurisdiction over it.  
18    Klabacka is distinguishable from that aspect. If you want to  
19    sue a Trustee, you better be a beneficiary and allege a breach  
20    of some sort of fiduciary duty. We don't have that here  
21    today. To sue Mr. Bayuk, as Trustee of the Trust does not  
22    bring in the Trust at all. Any time the execution--

23           THE COURT: That would have been a defense to if you  
24    think that the Plaintiff in the underlining action did not

1     have jurisdiction to bring the action against the Trust by  
2     suing Mr. Bayuk, you had to raise that in that litigation.  
3     You can't sit on your rights, as we know, the Supreme Court  
4     has told us and wait until a judgment is entered to raise that  
5     objection.

6             MR. LEHNERS: It has, Your Honor. And again, you  
7     make absolute perfect sense. It didn't get raised. Sat on  
8     their rights. 164.010 is jurisdictional. I mean --

9             THE COURT: Why would it be anymore jurisdictional  
10    than the Family Court? Family Court had jurisdiction over the  
11    divorce. This court had jurisdiction over the fraud.

12            MR. LEHNERS: Well, on account of the fact nobody  
13    had in rem jurisdiction over the Trust, itself. This was a  
14    divorce that had to do with both parties. You know, the  
15    execution and attachment of Trust assets I do not believe was  
16    at issue with Klabacka. I even have a crib note to make sure  
17    I don't misspeak on the record. Oh, yes. We conclude that  
18    this case was not initiated for the purpose of enforcing or  
19    determining a spendthrift beneficiary's rights under NRS  
20    164.120 sub 2, that's the statute I just mentioned, or  
21    determining the internal affairs of a a non-testamentary Trust  
22    under 164.015. But rather the case was initiated as a divorce  
23    proceeding.

24            THE COURT: So why is it any different? The action

1       wasn't brought to determine the rights of the beneficiary to  
2       the Trust assets. It was brought in fraud.

3               MR. LEHNERS: Well, Your Honor, maybe not directly,  
4       but clearly, if the assets of the spendthrift trust are  
5       gobbled up, it is going to affect the rights of the  
6       beneficiary. And Mr. Bayuk, under the Trust, has a duty to  
7       stop that. And again, the Trust is a thing, so it is an in  
8       rem action not an in personam action. You don't bring the  
9       Trust in by suing the Trustee. You bring the Trust in by  
10      filing an action to determine whether or not there has been a  
11      fraud. If there has, the Court can do something about it.  
12      But it is restricted procedurally. I understand and it is very  
13      difficult for me to argue to you. You were the trial Judge.  
14      I was not. I have never even had a jury trial. But I went  
15      through a lot of history on this, and I am somewhat of a  
16      Johnny come lately, and it is difficult for me to argue why  
17      they didn't you raise it then, Mr. Lehnrs. Well, because it  
18      is jurisdictional. The law states I get to raise it at any  
19      time, and I will raise it now because I was brought in on this  
20      case to represent Mr. Bayuk, and I have to make that argument.  
21      And I also believe in the argument. So again --

22               THE COURT: Well it doesn't exempt Mr. Bayuk.

23               MR. LEHNERS: Well, Mr. Bayuk is a judgment debtor.

24               THE COURT: Yes.

1           MR. LEHNERS: He is. And to the extent his assets  
2 are held by the Spendthrift Trust, they can't get it. He's  
3 the settlor. You cannot get the assets in the Spendthrift  
4 Trust. Now Mr. Bayuk, as a Trustee, and there is provision in  
5 the Trust that he has the right to compensate himself.  
6 Paragraph 31, the Trustee shall be reimbursed a reasonable  
7 expenses actually and properly incurred by him or her in the  
8 administration of the Trust. Even if the Trustee serves as  
9 director, officer, partner of a partnership in which the  
10 Nevada Trust has as an interest in he still gets paid. And on  
11 top of that the Trustee fees get to be paid. That is in  
12 Paragraph 95. There is provision in here where he can go hire  
13 attorneys, which he has done, to represent and defend the  
14 Trust's interests. Those are the assets that Trustee Leonard  
15 seeks to attach.

16           THE COURT: He's hired lawyers using the Trust  
17 assets to represent his personal interests.

18           MR. LEHNERS: Well, Your Honor, personal interests  
19 or the Trust's interests, I don't think they are divisible.

20           THE COURT: They have to be if the Trust is a  
21 separate entity. If they are not separate entities, the Trust  
22 isn't even in existence.

23           MR. LEHNERS: Well, Your Honor, that may be true.  
24 If Mr. Bayuk has a bank account in his name, and that is one

1 of the very important things I will get to in a minute,  
2 mentioning of the assets. Let's say for the sake of argument  
3 Mr. Bayuk has an bank account. It is his bank account, and  
4 they want to go attach it. Well, fine, they can go do that.  
5 And maybe he could claim, well what is the source of the  
6 money, Mr. Bayuk. Oh, well, it came from the Spendthrift  
7 Trust. Well maybe we can use in re Christenson which says if  
8 you trace an exempt asset to a bank account, you can exempt  
9 that. Maybe that would work. Or maybe he could say, you  
10 know, I am really working hard to try to manage this Trust. I  
11 think that is a wage and exempt under NRS 21.010 Sub 1, Sub g.  
12 So you can have twenty-five percent of it and I get the rest.  
13 That is not what we have here. Think of the Spendthrift  
14 Trust, this Trust is really a golden goose. When the golden  
15 goose lays the golden egg, wherever the egg goes, if it goes  
16 into Bayuk's personal account subject to attachment, no  
17 argument here. I am saying you can't cut the goose open and  
18 take the eggs out of it.

19 Speaking of the golden goose and eggs and all that,  
20 let's talk about the argument we didn't mention what assets  
21 that we are trying to exempt. And I really do want to address  
22 that. As Exhibit 1 to the Affidavit of Mr. Bayuk, I attached  
23 a copy of the Writs. The Writs don't tell me anything. They  
24 are addressed to the Las Vegas Constable. One of them is.

1     The other one is addressed to the Las Vegas Sheriff. Go  
2     forward and seize assets. What assets? I read the thing five  
3     times. Do you know how I found out what they were going  
4     after? I had my staff call the Constable and Sheriff's  
5     office. Then we were told that they want the surplus money, if  
6     any, in Mr. Hartman's Trust account and Holly Driggs' Trust  
7     account, and that was about it. So we had to play a guessing  
8     game. We had to call and find out what are they after? It is  
9     their job, when you issue a Writ of Execution, because I have  
10    done thousands of them. You have to say, go to U.S. Bank,  
11    anything with Mr. Smith's name on it, attach. Go get the 1965  
12    Prius located over here. Go get the interest in this account.  
13    They have to specify.

14           THE COURT: Yes, but for whose benefit do they have  
15    to specify?

16           MR. LEHNERS: Well, Your Honor for the judgment  
17    debtor's benefit. Otherwise, how can they file a claim of  
18    exemption where they fail to specify what they are going  
19    after? If they want to haul-- Opposing counsel did say we  
20    have the right to haul Mr. Bayuk in and ask him questions  
21    under NRS 21.270. What she did not add is you can only do it  
22    in the county in which the debtor resides. So they can't do  
23    that. What they have to do is figure out what asset they want,  
24    and specify where it is and attach it, or, if they want to



1     examine Mr. Bayuk as to what assets he has versus what the  
2     Spendthrift Trust has, then they get to go to Orange County,  
3     California and conduct a judgment debtor exam down there under  
4     the Foreign Judgment Act. That hasn't happened. Well they've  
5     gone to Orogen County and the have domesticated it, but there  
6     is no judgment debtor exam yet.

7             So the point is, and this goes to Salvatore  
8     Morabito's claim, we're guessing. I mean the Salvatore  
9     Morabito, I didn't know what they are trying to get. So I  
10    threw up the wild card exemption and I threw up the gee  
11    exemption because that is all I could think of.

12            The reason I filed it for Mr. Morabito, we have done  
13    this before. I have a case where we have executed on a Wells  
14    Fargo account branch in Nevada, they will look up stuff in  
15    California and we have to turn it loose. That happens more  
16    often than you think. What I didn't want to have happen is, I  
17    don't know where Mr. Morabito keeps his bank accounts, he  
18    hasn't really told me, but if any of them are locked up by  
19    executing on a branch here, it is not proper to lock them up  
20    outside the State. That is the only reason I filed  
21    Mr. Morabito's exemption.

22            In any event, getting to the Spendthrift Trust, with  
23    respect to the restraint of alienation, with respect to the  
24    mandatory procedure for filing an in rem action against the

1 Trust, with respect to the two years and the six months and  
2 their knowledge as of March 3rd, 2011, and in acknowledgment  
3 of NRS 166.170, saying you can't bring an action unless it is  
4 within the time period of Subsection 1, I would argue that  
5 there is no subject matter jurisdiction, and it can be raised  
6 at any time. I apologize for any, you know, waiver argument.  
7 I know this Court works very, very hard. You have put a lot  
8 of time into trying this case and rendering your decision. I  
9 read the competing statements of facts and conclusions of law.  
10 It was a very difficult decision, and here comes somebody  
11 trying to upset the whole apple card. Judge, I am doing it  
12 based on jurisdiction.

13 THE COURT: Okay. So let's assume your argument is  
14 their failure to disclose that, isn't that a new fraud?

15 MR. LEHNERS: Their failure to disclose the Trust?

16 THE COURT: Yes. If they truly did not have the  
17 wherewithal to file an exemption, basically didn't they commit  
18 a fraud by not telling anybody they didn't have any authority  
19 to do it or give them the information so they could look it  
20 up?

21 MR. LEHNERS: Well, I cannot concede my client  
22 committed a fraud. What I can do, I can say let's assume so  
23 for the sake of argument, well, what does that mean he  
24 committed a fraud? That means he could be sued again for that

1 fraud. They could seek punitive damages for that, or they  
2 could attempt to impose the remedy for fraud which is the  
3 constructive Trust. However, this is the second important  
4 holding of Klabacka versus Nelson. They tried to put a  
5 constructive Trust which is a remedy. It is not a Trust in  
6 itself. It is a remedy. Mackey vs. Chong goes over how it is  
7 a remedy to unjust enrichment. They refused to apply it to a  
8 Spendthrift Trust. Even assuming for sake of argument he  
9 committed a fraud, Klabacka is a controlling case. And the  
10 remedy, the constructive trust getting the assets does not  
11 apply. The reason is all set forth in the legislative  
12 history. He set this thing up in 2005 long before you ever  
13 heard of Terrible Herbst. Years have past. They are the  
14 future creditor. The legislative history, talks about that.  
15 And this Spendthrift Trust Act was written so well and so  
16 powerfully to protect Nevada residents property that they made  
17 it jurisdictional just so stuff like this can't happen.  
18 Lawyers make mistakes every day. I probably made a few today  
19 so far. I don't want to think about it. I can imagine what  
20 it is like doing a week long, two week, three week long trial.  
21 There is a lot of mistakes. Humans make mistakes. People are  
22 human. Humans make mistakes. That is why we have waiver and  
23 estoppel. But then what trumps all of that is subject matter  
24 jurisdiction.

1           THE COURT: What about their argument you lost, the  
2 jurisdictional issue is lost when the trustees both left the  
3 State of Nevada?

4           MR. LEHNERS: I will be glad to address that, Your  
5 Honor, because again, as Paul Harvey used to say, the rest of  
6 the story.

7           THE COURT: Yes, but we never heard the end of the  
8 Paul Harvey story until a long time later.

9           MR. LEHNERS: Counsel referred to NRS 166.015. It  
10 says: Unless the writing declares to the contrary, expressly,  
11 this Chapter governs the construction, operation, and  
12 enforcement in this state of all spendthrift TRUSTS if: And  
13 then it says C, the declared domicile of the creator of a  
14 Spendthrift Trust affecting the personal property is in this  
15 state. Well we have got A through D, and it is in the  
16 disjunctive so any one will fit because it says 'or' after C.  
17 A says all or part of the land, rents, issues or profits  
18 affected are in this state. The Trust owns a burial plot in  
19 Washoe County. So we fall under A.

20           THE COURT: So really, you think public policy of  
21 the legislature would support an analysis by the Court that  
22 because he has a burial plot and he's left the State, no  
23 trustee in this state, we're going to let residents of another  
24 state, because they have a burial plot, commit a fraud on the

1 residents of our state which Terrible Herbst did or the  
2 Trustee?

3 MR. LEHNERS: Your Honor, there is a difference in  
4 time. One looks to what happened when the Trust was created.  
5 NRS 166.015 says the requirements. It goes over the  
6 requirements. How do you make one of these things.

7 THE COURT: No, I understand the requirements at the  
8 time the trust is created, but for the same reason that big  
9 trusts are moving into Nevada and moving into Nevada with a  
10 Trustee located in Nevada is in order to get the protections  
11 of the Nevada Trust law. For those same reasons, they're  
12 moving in, when they move out they lose the protections of the  
13 very favorable Nevada Trust law which is very favorable, not  
14 just here, but we have lots of changes that were made in 2013.

15 MR. LEHNERS: Why does the statute say it governs  
16 the construction, operation, or enforcement in this State of  
17 all spendthrift Trusts created in or outside the State so long  
18 as part of the property affected is in the State and the  
19 declared domicile of the creator of the Spendthrift Trust  
20 affected is in this state? At that time he was. Now again  
21 exemptions, if I move to California, Judge, I give up a lot of  
22 exemptions. I can't claim my Nevada exemptions in California.  
23 I just can't. But this is not really an exemption, because  
24 the Spendthrift Trust is dual. You have got NRS 21.080, that

1 is the exemption statute. That's where you find all of them.  
2 That is the exemption statute vis-à-vis the beneficiary of the  
3 Trust. In other words, I'm the beneficiary. He's the  
4 creditor. And they are trying to get it by Spendthrift Trust.  
5 I flop out NRS 21.080 which says you can't do that.

6 Now Mr. Bayuk is not the beneficiary of the Trust.  
7 Why do we raise 21.080? Well he's bound to it because of the  
8 beneficiary of the Trust. What we really have, it is not as  
9 much an exemption, Judge, as it is an anti-alienation and  
10 here's the jurisdiction and here's the Statute of Limitations.

11 THE COURT: So a Trust is domiciled where the  
12 Trustee is. And the case law is very clear that the case law  
13 you apply to the administration or review of the Trust is  
14 based on where the Trust is domiciled. So right now this Trust  
15 is not domiciled in Nevada. It is domiciled in California  
16 because the only Trustee of the Trust lives in California.

17 MR. LEHNERS: But, Your Honor, if it is an in rem  
18 action that must be brought, you would look to where the Trust  
19 was initially created.

20 THE COURT: No. No. Not if the trust comes to  
21 Nevada. You create it in Delaware and bring it to Nevada, you  
22 get to use Nevada law. I tried those in rem actions. So the  
23 Nevada law applies no matter where it was created. As long as  
24 I brought it to Nevada, you have a Trustee living in Nevada,

1     it is a Nevada Trust. Now it doesn't matter if the dollars  
2     are located here. You can be in multi-national banks or a  
3     local bank in Indiana. If the Trustee is located in Nevada, it  
4     is a Nevada Trust.

5             MR. LEHNERS: In reading this and the legislature  
6     history behind it, I don't think the exemption -- and I didn't  
7     see anything in the case law. I read all the statutes and  
8     annotations -- I didn't see anything where you would lose it.  
9     It is not an exemption. It is anti-alienation, really. I  
10    didn't see where that was waived or lost if you cease being a  
11    Nevada resident. Even if I accept your argument as true, you  
12    are the Judge and I will --

13            THE COURT: I don't know it is true.

14            MR. LEHNERS: We still have the fact that some of  
15    the property that is owned by that Trust is here in Nevada,  
16    and that is enough to confer the domicile requirement under  
17    166.015 because remember 166.015 gives us four disjunctive  
18    methods for a Trust to be domiciled here, and there is a  
19    burial plot. I mean it doesn't say you have to have most of  
20    it, twenty-five percent, a third of it. It just says all or  
21    part. Part means part. It is a small part, but it is here and  
22    always remained here. It is a burial plot. So even if  
23    Mr. Bayuk were deemed to have waived any --

24            THE COURT: So you are saying the Spendthrift Trust

1 owns the asset of the Trustee's burial plot because he's not a  
2 beneficiary?

3 MR. LEHNERS: No, it owns a burial plot for him. He  
4 has a burial plot in Nevada. It owns it. A Trust can hold  
5 property, and other people can have rights in that property  
6 without being a beneficiary. Why not? They can own  
7 businesses. That is in the Trust Agreement. And then they  
8 will have other shareholders as well. So the point is I do not  
9 believe that is going to be waived if he goes to a different  
10 state as I would waive my automobile exemption if I went to  
11 California. I can't use Nevada's anymore. But at the same  
12 time, the Trust is here. If you are going to go after it, you  
13 have to do it within the time limit. It is jurisdiction, and  
14 the procedure is jurisdictional. It has to be an in rem  
15 action. In other words, Judge, it is easy being a Monday  
16 morning quarterback. I do it all the time with the San  
17 Francisco giants. I wasn't there. I wasn't in the trenches.  
18 And I think, you know, for the record, all attorneys did the  
19 best that they could, but in coming back and going through the  
20 record on this, I saw some things, and I do think that the  
21 jurisdiction cannot be waived, and I think it is absolute.  
22 And it's not really -- It is an irrevocable Trust. Whose  
23 stuff is it? It is belonging to the Trust for the benefit of  
24 his stepmother. He can never, ever, ever, ever revoke that.



1           THE COURT: Right. We are not talking about -- We  
2 are not talking about assets that the Trust legitimately  
3 secured. The Trust secured assets by fraud. That was the  
4 finding.

5           MR. LEHNERS: I read the finding.

6           THE COURT: That is a fraudulent transfer into a  
7 Spendthrift Trust that failed to be disclosed.

8           MR. LEHNERS: And this action was brought under  
9 Chapter 112 which is Nevada's Uniform Fraudulent Transfer Act.  
10 It should have been brought within two years or six months of  
11 discovery, at the latest September 3rd, 2011 under 164.010. It  
12 wasn't. It is jurisdictional.

13          THE COURT: I have jurisdiction whether it is 164 or  
14 112, you are not in a different court. It is not like I can't  
15 put on a hat. I have jurisdiction on every statute in the  
16 State of Nevada.

17          MR. LEHNERS: But we do have to follow what was pled  
18 in the Complaint. I didn't see 164 in the Complain and I  
19 didn't see it in the findings either. I read it.

20          THE COURT: You don't have to state the statute in  
21 order to have jurisdiction.

22          MR. LEHNERS: Well, again --

23          THE COURT: I am not saying it was in the Judgment.  
24 It wasn't. There was no argument presented in the trial. But

1       when you talk about jurisdiction, this Court has the  
2       jurisdiction whether you allege it under 164 or 112, does not  
3       make a difference.

4               MR. LEHNERS: Your Honor, that is what the issue was  
5       in the Family Court in Klabacka.

6               THE COURT: Klabacka was even before the Supreme  
7       Court determined the Family Court had co-existence  
8       jurisdiction.

9               MR. LEHNERS: I will defer to you on all issues of  
10      family law.

11              THE COURT: It used to be that was considered a  
12      separate jurisdiction and the Family Court judges didn't have  
13      jurisdiction over any general jurisdiction cases.

14              MR. LEHNERS: But the one thing I think is important  
15      to point out is the difference in personam and in rem.  
16      Mr. Bayuk, we know that he is the judgment debtor,  
17      individually on the fraudulent conveyance action and in his  
18      capacity as the Trustee. But the Trust is a thing, and an in  
19      rem action had to have been brought which wasn't. He could  
20      have brought it had it been properly pled and filed and timely  
21      filed but it wasn't.

22              THE COURT: Of course, their argument is it was not  
23      disclosed.

24              MR. LEHNERS: Well, Judge, of the things that

1       166.170.1 says, it not only says discover within six months --

2               THE COURT: Mr. Bayuk, it really isn't appropriate  
3       for you to be doing what you're doing.

4               THE DEFENDANT: Sorry.

5               MR. LEHNERS: Your Honor he's getting to the point I  
6       was going to get to. In addition between knew or should have  
7       known, we have a second part of 166.170, Sub 1 you are  
8       imparted with knowledge on the public land records. All of  
9       the transfers of these properties are in the public land  
10      records. We are talking about real property here. What he's  
11      pointing out is that a bunch of stuff was transferred in I  
12      guess between 2007 and 2010, but the Deeds would be in the  
13      public record and that imparts notice period.

14              THE COURT: But the Trust was never disclosed.

15              MR. LEHNERS: Well, Your Honor, if the Trust owns  
16      the asset it has been disclosed, because what the statute  
17      says, I would like to read it verbatim so I don't make an  
18      error.

19              THE COURT: Well wait a minute. You are saying you  
20      could disclose a revocable Living Trust and give the  
21      parameters of that revocable Living Trust, secretly create an  
22      irrevocable Spendthrift Trust using the exact same name and  
23      never disclose the content of that and therefore protect your  
24      assets?

1           MR. LEHNERS: Your Honor, that is not what I am  
2 saying at all. What, I am saying is, and let's go with  
3 exactly what the statute says. This is where a person becomes  
4 a creditor after the transfer is made which I believe is what  
5 would have here.

6           THE COURT: Why? Because it is a judgment debtor?

7           MR. LEHNERS: Well I think he became a creditor when  
8 he sued in 2007. I believe that is the earliest he could have  
9 become a creditor of Terrible Herbst.

10          THE COURT: Well, it is the bankruptcy Trustee.

11          MR. LEHNERS: Well the bankruptcy Trustee stepped in  
12 in place instead. The Herbst creditors started this with the  
13 lawsuit of 2007. Then there is a Judgment. Then there is a  
14 Confession of Judgment, and then we had the Superpumper case  
15 which is tried in your court.

16          THE COURT: We are talking about the case from Judge  
17 Adams.

18          MR. LEHNERS: Right. So my point is is that is the  
19 earliest, the farthest we could go back, and that is still two  
20 years after he did the 2005 Amendment November 2005. And  
21 here's what it does say: A person shall be deemed to have  
22 discovered the transfer at the time a public record is made of  
23 the transfer including without limitation the conveyance of  
24 real property that is recorded in the office of the County

1 Recorder where the property is located. Okay. Your point is we  
2 hid the fact, allegedly, that we did not disclose it was a  
3 Spendthrift Trust. We disclosed the name of the Trust is  
4 located on the Deed, and that is all that is required.

5 THE COURT: But you already disclosed with that name  
6 of the Trust, you disclosed the contents of it. You disclosed  
7 the content of the Trust, what existed and what it was with  
8 that name. Then you secretly, as you say, created a novation  
9 by the Amendment in 2005, and then never provided, using the  
10 exact same name, then you never provided discovery as to what  
11 that new Trust even though it says it is a Living Trust, you  
12 never gave any -- so on its name it didn't give anybody notice  
13 of this Amendment and the content of it.

14 MR. LEHNERS: Well, Your Honor, I do know that the  
15 Living Trust was created in '98. It ceased to exist in  
16 November of 2005 and now we have the self-settled Spendthrift  
17 Trust in place. We have that.

18 THE COURT: I understand that.

19 MR. LEHNERS: It doesn't help the names are the  
20 same. It does make it somewhat confusing. I will leave it to  
21 the Trust lawyers to do what Trust lawyers do. But then some  
22 spendthrift trusts were created with the same name. But what  
23 you have in 2005, he didn't owe anybody anything. He had no  
24 creditors. When a creditor comes into being in 2007, all right

1       then it is two years after the transfer or six months, and  
2       they knew about the Trust. They knew there was a Trust out  
3       there. And it was also a matter of public record the name of  
4       Trust that owned it. They knew it. What they didn't do is  
5       follow up. Had I been --

6               THE COURT: Let's assume they did. Let's assume  
7       there was litigation with regard to the content of the Trust  
8       that was not disclosed by the Trustee, and you argued a few  
9       minutes ago that he had an obligation not to disclose it.

10              MR. LEHNERS: Mr. Bayuk.

11              THE COURT: So how could you discover it?

12              MR. LEHNERS: By court order. You discover it, you  
13       produce it or you go to jail.

14              THE COURT: If you don't know their not producing it  
15       how can you get an order like that?

16              MR. LEHNER: Well because in the deposition they talk  
17       about the El Camino Del Mar property being transferred to the  
18       Bayuk Trust. Mr. Morabito testified to that.

19              THE COURT: Right.

20              MR. LEHNERS: They knew, well there is a Bayuk Trust  
21       out there.

22              THE COURT: They knew there was a Bayuk Trust?

23              MR. LEHNERS: Well they also knew the address and  
24       county of the Del Mar property. Dig out the public record,

1 look at that. Say I want a copy of the Trust Agreement that  
2 owns this property.

3 THE COURT: I am saying I assume the request for the  
4 copy of the Trust Agreement was made and discovered.

5 MR. LEHNERS: Your Honor, I can't speak to that. I  
6 don't have that in the record. I just can't speak to that.  
7 What I am telling you is if somebody says hey give me a copy  
8 of the Trust Agreement or they send something over, it is  
9 like, well, I am under an obligation not to disclose it as a  
10 Trustee. I've been a Trustee of a Trust once. Your  
11 obligation is to that beneficiary, not the creditors.

12 THE COURT: Well certainly if the request for  
13 production was responded to that I cannot give you that  
14 information, then the person would be on notice to go follow  
15 up and get a court order to produce. When you say here it is  
16 and what you get isn't the right one, how can you then claim  
17 protection?

18 MR. LEHNERS: Well what you do is you make a  
19 privilege call, you know, this exists.

20 THE COURT: I understand how you can do it. What if  
21 you say here it is and you don't give the right one?

22 MR. LEHNERS: Well, it looks like trusts can all  
23 have the same name. I can't explain exactly why.

24 THE COURT: I am not discussing anything about the

1 name. But assuming that you said you have an obligation to ask  
2 for it and you asked for it and you weren't given it, it was  
3 I'm not giving it to you because I can't. It was here you go  
4 and it was the Trust that was no longer in existence based on  
5 your argument. What is remedy then?

6 MR. LEHNERS: Your Honor, the Trust that is no  
7 longer in existence and the Trust that replaced it are the  
8 same names. It is a novation. One replaced the other.

9 THE COURT: I understand your argument. What if he  
10 didn't produce it.

11 MR. LEHNERS: Well, the discovery request should  
12 have been as follows: Here's the Deed, it says the Edward  
13 Bayuk Living Trust. I want the Trust Agreement, all  
14 amendments with respect to the Trust that owns this property.  
15 Give me that. That is what should have happened.

16 THE COURT: I am just asking you to assume that was  
17 made.

18 MR. LEHNERS: Well, if they didn't give it, then  
19 they are going to be under the contempt powers of this Court.

20 THE COURT: But not until someone figures out that  
21 they didn't give it, because they gave the wrong thing.

22 MR. LEHNERS: Well, Your Honor, what we don't have  
23 here is actually who did know what. Let's say that we accept  
24 your argument. The recordation of a public record is enough to



1 start the six month statute. It is statutory. And maybe,  
2 even if there were, for the sake of argument only, maybe if  
3 there was a little bit of misdirection, and I am not saying  
4 there was, and opposing counsel and what I have seen did an  
5 excellent job, but my point is this: In the event that there  
6 was some misdirection, the statute says you have got six  
7 months as long as something has been recorded with that Trust  
8 name and we know that there was.

9 THE COURT: Okay. Judge, thank you for hearing me  
10 today.

11 THE COURT: Oh, you're welcome. That's it?

12 MR. LEHNERS: Unless you have more questions for me.

13 THE COURT: No, no. I didn't want to interrupt you  
14 so much you didn't finish.

15 MR. LEHNERS: Before I close, I would like to confer  
16 with my client. I may need a little bit of time. Thank you,  
17 Judge.

18 THE COURT: You're welcome.

19 MR. LEHNERS: I am going to probably say a few  
20 closing remarks after I confer.

21 Judge, did you want me to make closing comments now?

22 THE COURT: Sure.

23 MR. LEHNERS: Because I do want to ask a couple of  
24 questions of my client.

1 THE COURT: Do you want to take a short recess?

2 MR. LEHNERS: If I could.

3 THE COURT: Court's in recess.

4 (Short recess taken.)

5 MR. LEHNERS: Judge, I have no further submission.

6 THE COURT: Okay. Thank you, Mr. Lehnern. Counsel.

7 MS. TURNER: Thank you Your Honor. I am going to try

8 to unpack the argument of counsel and start with the subject

9 matter jurisdiction argument, that this Court somehow lacks

10 subject matter jurisdiction. A review of Chapter NRS 166 and

11 the Klabacka case do not support counsel's argument as he has

12 set forth. NRS 166.170 provides specifically that a creditor

13 does have the right to bring an action against a Spendthrift

14 Trust, if it is a Spendthrift Trust, so long as the person is

15 a creditor, a transfer has been made to that Trust, and the

16 action is commenced within two years after the transfer is

17 made or six months after the person discovers or reasonably

18 should have discovered the transfer.

19 Your Honor, for the purpose of discussing this

20 particular point, in Klabacka, the Supreme Court said that the

21 Family Court had subject matter jurisdiction without question.

22 And here, when the only claim in the case was under the

23 Fraudulent Transfer Act, and a creditor is bringing the claim

24 challenging the transfer to Edward William Bayuk Living Trust,

1       there could be no question that under NRS 166.170 Your Honor  
2       would determine whether or not we had a valid claim against  
3       the Edward William Bayuk Living Trust.

4               Now the question then becomes was the claim brought  
5       within the two years or six months of discovery whichever is  
6       later. And I did not hear any argument that made sense on the  
7       tolling agreements, that the tolling agreements applied and  
8       there could be an extension of or a tolling of the two year  
9       statute period.

10              As Your Honor brought up, there are waivers of  
11       Statutes of Limitation and at the five year rule by  
12       stipulation. Why wouldn't a tolling Agreement also extend?  
13       But I don't even think we need to get too bogged down in that  
14       position because, one, we were not on notice of a Spendthrift  
15       Trust existing and being the transferee of the properties,  
16       whether cash or the real property until this month. When you  
17       look at the Edward William Bayuk deposition, and counsel was  
18       clever in what he cited to, but our Exhibit 4 to our objection  
19       to the Claim for Exemption contained the September 28, 2015  
20       deposition of Mr. Bayuk, and the question was posed:

21              "Q Do you know what kind of Trust it is?

22              "A It is just a living -- it is the Edward -- it is  
23       listed as Edward William Bayuk Living Trust.

24              "Q What's your understanding?

1                   "A Edward William Bayuk Living Trust.

2                   "Q So it is a Living Trust?

3                   "A Correct.

4                   "Q and what's your understanding of what a Living  
5 Trust is?"

6                   And he goes on and describes how it is to address  
7 his demise, a probate. Paul Morabito's deposition that is  
8 attached I believe to the Reply also refers to a probate  
9 purpose which would be a revocable Trust. There is never a  
10 disclosure, not in responses to requests for production, not  
11 in deposition and not in trial testimony that would ever give  
12 rise to or in the public documents themselves, the Deeds that  
13 were exhibits at trial, that referred to only the Edward  
14 William Bayuk Living Trust or Edward William Bayuk Living  
15 Trust with dates other than 2005. The 2008 and the 2009 dates  
16 don't correlate with anything. There was no information that  
17 would give rise to an inquiry is this a Spendthrift Trust that  
18 we are talking about.

19                   Then when there is an obligation to bring evidence  
20 in support of the affirmative defense, never, never, ever was  
21 there a discussion of a Statute of Limitations or other  
22 infirmity in the claims being brought against the Edward  
23 William Bayuk Living Trust because of some argument there was  
24 a spendthrift provision.

1           Your Honor at trial made a finding at Page 6  
2 paragraph 17 the Bayuk Trust, is a self-settled Trust, formed  
3 in expectation for the estate planning purposes issue. The  
4 finding was based on testimony presented at trial by Mr. Bayuk  
5 continuing on with this fraud upon his creditors and the  
6 Court, and now post judgment there is this argument, well,  
7 there is no subject matter jurisdiction. I think that is  
8 belied by the fact that, even if Mr. Bayuk purposefully  
9 withheld the information in order to withhold it and use it on  
10 appeal, there is a lack of subject matter jurisdiction, NRS  
11 Chapter 166 provides a creditor can make this claim now that  
12 it is discovered and there doesn't need to be a new fraud  
13 action. I think that if we were to say, Your Honor, there is a  
14 new Trust that was not earlier disclosed that was the  
15 transferee, we can substitute in a new party when it is  
16 discovered a new party is -- there has been a successor or  
17 different party that is truly responsible. We don't even need  
18 to do that here. The only Trust the Edward William Bayuk  
19 Living Trust was named as a judgment debtor, and here we sit  
20 addressing the Edward William Bayuk Living Trust. The correct  
21 Trust is the correct defendant and judgment debtor.

22           And, Your Honor, with respect to whether or not  
23 NRS Chapter 166 even applies, I submit to you that the  
24 arguments of counsel were not credible. That there was a

1 misleading of NRS 166.015 which requires that in order to  
2 obtain the protections of a Spendthrift Trust under NRS  
3 Chapter 166, at least one Trustee qualified under Section 2  
4 has powers that include maintaining records and preparing  
5 income tax returns for the Trust and all or part of the  
6 administration of the Trust is performed in this State. Which  
7 makes sense. That this is an abrogation of the common law and  
8 only the citizens of the State of Nevada will receive the  
9 benefits of the Spendthrift Trust set forth at NRS Chapter  
10 166. If a natural person -- if the settlor is the beneficiary  
11 of the Trust, at least one Trustee of the Spendthrift Trust  
12 must be a natural person who resides and has his or her  
13 domicile in the state.

14 Now counsel said, Your Honor, Mr. Bayuk is not a  
15 beneficiary of the Trust. When you read the Amendment to the  
16 Trust Agreement, it says very explicitly that the co-trustee,  
17 Paul Morabeto, is not a beneficiary. And then there are named  
18 beneficiaries upon Mr. Bayuk's demise. However, there can be  
19 no question that Mr. Bayuk is a beneficiary of whatever Trust  
20 it is, whether it receives the protections under Chapter 166  
21 or not, when he claims otherwise, he receives his living  
22 expenses, and all of his assets now and forever more as set  
23 forth in that Trust for his benefit. He receives no other  
24 income other than from from this Edward William Bayuk Living

1 Trust. And it is an inconsistent position, not one that is  
2 dispositive. The dispositive provision I think is at  
3 NRS 166.015c and d. It was partially referenced by  
4 Mr. Lehnert, and it certainly makes sense in light of what the  
5 public policy behind Spendthrift Trust is and how narrow this  
6 statutory framework is.

7 And, Your Honor, in the argument it was said, well,  
8 this Trust Agreement, the Amendment was not produced because  
9 of confidentiality concerns. There should have been a court  
10 order. There was a court order in this case. There was a  
11 protective order that was entered which was utilized by both  
12 sides for the production of thousands and thousands of pages  
13 of documents, and this 2005 Amendment was held back. And, Your  
14 Honor, if NRS Chapter 166 is no longer available to the Edward  
15 William Bayuk Living Trust by virtue of both co-trustees  
16 moving to California, then the Statute of Limitations for a  
17 fraudulent transfer action that is set forth in NRS Chapter 11  
18 and 112, that statute would apply and there could be no  
19 question that that three year statute was utilized here or  
20 met.

21 Again, there was no argument at the time of trial  
22 the Statute of Limitations applied or barred the claims  
23 brought by Plaintiff. And, Your Honor, at the end of the day,  
24 we still don't have any description of the the specific assets

1     that are subject of the exemption. And this general argument  
2     that all assets are subject to the exemption, I suppose they  
3     are hanging their hat on NRS Chapter 166. But when  
4     NRS Chapter 166 is no longer available, unless we have a  
5     specific asset to address, then the judgment debtor has not  
6     met their burden for a claim of exemption here today. Thank  
7     you.

8             THE COURT: What about his argument that the  
9     Trustees not residing, the business of Trust not taking place  
10    in Nevada is not required as long as a piece of the Trust is  
11    located in Nevada?

12            MS. TURNER: That is inconsistent with the provision  
13    of NRS 166.015 that talks about the domicile of the creator of  
14    the Spendthrift Trust. It is a domicile of the creator of the  
15    Spendthrift Trust that must be in the State of Nevada or at  
16    least one Trustee. Having the estate there, that is also all  
17    or part of land, rents, issues or profits affected are in this  
18    state.

19            THE COURT: That is an "and." It isn't an "or," is  
20    the argument.

21            MS TURNER: It appears he's reading it as that is  
22    enough. I have not seen any evidence presented that there is  
23    anything other than a plot, a burial plot that has been argued  
24    with no evidence that has been discussed. There is no evidence



1 of that. But, Your Honor, that would only permit the  
2 establishment of the Trust. You still have Subsection 2, if  
3 the settlor is a beneficiary of the Trust, at least one  
4 Trustee of the Spendthrift Trust must be a natural person that  
5 resides in or who is domiciled in the state. Mr. Morabito  
6 expressly is not a beneficiary, but Mr. Bayuk is during his  
7 lifetime.

8 THE COURT: Thank you.

9 THE COURT: Mr. Lehnerns, you always give me such  
10 interesting arguments.

11 MR. LEHNERS: Thank you, Your Honor.

12 THE COURT: And I enjoy the mental issues that you  
13 raise. However, in this case, I think the objection to the  
14 lack of -- Well I guess I'll start with the explanation of why  
15 the request for exemption was not specific was based upon a  
16 allegation that the execution wasn't specific, and that is not  
17 sufficient to get around the need to be explicit.

18 Also, I do find that in order to get the benefits of  
19 the Spendthrift Trust, you need to have at least one of the  
20 Trustees or the beneficiary reside in the State of Nevada, and  
21 that is not the case. They are not domiciled here, so I do not  
22 find, even though I don't have any evidence of the burial  
23 plot, that would be sufficient to create the Trust protection  
24 under the statute.

1           I also find that I do have subject matter  
2 jurisdiction in this case based upon the Court's jurisdiction  
3 over the Trust in all respects whether it is alleged here or  
4 not.

5           I think any objection to it not being pled  
6 sufficiently was waived by not raising it as an affirmative  
7 defense during the trial, and so I do have subject matter  
8 jurisdiction, and it was waived by the Trust by not raising it  
9 to argue that somehow 166 should apply.

10           So with all of those things in mind, the Court does  
11 find that it is appropriate to deny your request for  
12 exemption.

13           MR. LEHNERS: Your Honor, thank you for hearing me.  
14 May I make one request --

15           THE COURT: Yes.

16           MR. LEHNERS:: -- on behalf of my client, and there  
17 is some authority for this. We have raised a lot of new  
18 ground here today.

19           THE COURT: Yes.

20           MR. LEHNERS:: And this is going to probably go up  
21 the appellate ladder. At this time, I would wish to make an  
22 oral motion for a stay pending appeal, so matters of stay  
23 while the Supreme Court can figure this out, because we have a  
24 lot of matters of first impression. I mean counsel has made

1     some very good arguments. I think I have made some good  
2     arguments, and there is some stuff out there that just isn't  
3     really addressed, and I think that is the way, you know, to  
4     eventually sort things out. I think, you know, you have done a  
5     great job listening and reading, doing all that, but we do  
6     intend to file an appeal, and I would request a stay pending  
7     appeal at this time. There is some authority it can be made  
8     by oral motion in the District Court.

9             THE COURT: Thank you. Counsel.

10            MR. LEHNERS: Thank you, Judge.

11            MR. TURNER: Well, Your Honor, on an oral motion,  
12     the Court doesn't have the benefit of the arguments in detail  
13     or briefs to consider the amount of the bond. But here, you  
14     know, the Court should look at the likelihood of success on  
15     the merits of these new arguments. And given NRS 166, NRS  
16     Chapter 21 are black and white, there is not a likelihood of  
17     success on the merits that has been shown here today or in the  
18     briefs.

19            And so then we look at the risk of loss. What we  
20     have seen time and time again with Mr. Bayuk is he has no  
21     qualms with misleading the Court, his creditors and otherwise,  
22     and we are chasing somebody who takes time and pivots in big  
23     giant leaps, and we are in further danger. This is years and  
24     years of litigation to pursue a judgment, and then the

1       fraudulent transfers. We need to be able to collect, to move  
2       forward with collection. To be halted in that process now  
3       gives a risk of loss that we can't stand. The prejudice would  
4       be too great. There is no money in an account that we could  
5       use to satisfy this Judgment or that has been shown to be in  
6       an account if for some reason we prevail on appeal, and we  
7       don't have a bond posted at least as of the amount of the  
8       Judgment plus interest that would accrue at the statutory rate  
9       or what two years plus attorney's fees and costs. You know,  
10      we are talking about a fifteen million dollar bond that I  
11      think is minimal that would be required to avoid the prejudice  
12      we would suffer if the requested stay was granted.

13               THE COURT: Okay.

14              MR. LEHNERS: Your Honor, one other question for  
15      clarification, we did have Salvatore Morabito's motion for  
16      today as well. Little shrift was given to that because he  
17      doesn't really have anything here. The only thing I would  
18      request when this Court issues an order denying it, that it  
19      direct no accounts and branches outside the State of Nevada be  
20      affected by any attachment issued by this Court.

21              THE COURT: Without pursuing those?

22              MR. LEHNERS: Exactly. Pursuant to the laws of the  
23      State in which the other accounts may be located in. In other  
24      words, in the event they attach say a Wells Fargo branch here

1 and lock up a deposit account in Iowa, we would not want that  
2 to happen. They would have to go to Iowa and domesticate the  
3 Judgment there first. That is all I am asking.

4 THE COURT: Normally I would agree that is the law.  
5 The only problem I have is entering this sort of a broad order  
6 like that, because theoretically you could have money here in  
7 Wells Fargo and think it is going to be attached through a  
8 Judgment and the money could be transferred to an account in  
9 Wells Fargo in another state.

10 MR. LEHNERS: Perhaps the best way to do it is  
11 retain jurisdiction. In the event that an execution is levied  
12 on a Nevada bank account and an Iowa bank account is seized,  
13 we could come back and with proof that money had been there  
14 prior to the execution. And that way, the Court could fashion  
15 a remedy.

16 The last thing I wish to make for the record, I did  
17 make an offer proof the Trust owns a burial plot here. I am  
18 wondering whether counsel would accept that offer of proof as  
19 evidence or if I may ask Mr. Bayuk that one simple question to  
20 get it on the record and make the record complete.

21 THE COURT: I don't know if she'll accept the  
22 statement. You might need some evidence.

23 MR. LEHNERS:: I can swear Mr. Bayuk and ask him the  
24 one question and there is the evidence.

1           THE COURT: We have a little bit of an issue there  
2 if he doesn't have any evidence of it.

3           MR. LEHNERS: Well he has personal knowledge. If he  
4 has personal knowledge the Trust owns burial plot, he's  
5 qualified.

6           THE COURT: He would be qualified if he told the  
7 truth.

8           MR. LEHNERS: Well, Your Honor, under oath, I  
9 presume he would. He could be cross-examined as to that  
10 limited issue. Your Honor, I simply want to make the record.

11          THE COURT: Counsel.

12          MS. TURNER: Your Honor, nowhere in the Claim of  
13 Exemption that was filed in this action or Reply was there any  
14 reference to a burial plot. If there had been, we would have  
15 asked for the ability to go up and get documentary evidence of  
16 it, because of exactly what Your Honor just noted. And  
17 Mr. Lehnars was not counsel so he did not see, but unless  
18 confronted with a document, Mr. Bayuk's testimony shifts on a  
19 dime. And we would need to -- We already have an exhibit  
20 actually in evidence in the trial where there was discussion  
21 from Paul Morabito they were going to move the plots from  
22 Nevada to California. So this is not just a simple matter  
23 that we can trust oral testimony.

24          If Your Honor is inclined to take evidence, we would

1 ask that Mr. Bayuk be deposed under NRS 21.270 regarding all  
2 of his assets, whether that be a burial plot or beyond.

3 THE COURT: So what you are asking is if he's going  
4 to testify as to assets that he owns or the Living Trust owns,  
5 that it can't be limited to just -- cross-examination can't be  
6 limited to just the one thing he wants to tell us about.

7 MR. TURNER: Right.

8 MR. LEHNERS: In response to that, the evidence the  
9 Trust owns the burial plot is to confer domestication on the  
10 Trust which is one of the issues on appeal. Counsel must  
11 follow NRS 21.270 if she wants to examine Mr. Bayuk about the  
12 assets, which means she has to go to the county in which he  
13 resides. The purpose of the offer of proof and testimony is  
14 to make the record complete for purposes of domestication  
15 rather than opening up a judgment debtor exam before it's  
16 taken place in the proper procedure. I am just trying to make  
17 the record clear.

18 THE COURT: Over their objection, the fact you  
19 already rested your arguments today, I am not going to  
20 entertain anymore evidence. If you want to try to do  
21 something in the future with some documentary evidence, you  
22 can certainly do that, but not today.

23 MR. LEHNERS: Thank you, Your Honor.

24 THE COURT: So with regard to the request for a

1 stay, I think in this instance you have already told me you  
2 are going to appeal, I am not shocked by that idea, so I  
3 believe I need a written decision on the exemption, and I  
4 think the best thing to do is have that in writing and then  
5 you can make your request for a stay. But I am denying the  
6 exemption today, and I am denying the oral request for an  
7 exemption or for a stay for the reason stated by counsel.

8 I don't know how to set the bond amount you would  
9 need. Now if you wanted to stipulate it was fifteen million  
10 which is what she argued, you can do that. But absent --  
11 Right now I have no true evidence before me other than what I  
12 had in the trial.

13 MR. LEHNERS: Your Honor, I had a question for  
14 clarification. On the rules regarding the stay pending  
15 appeal, we are required to first ask the District Court. If  
16 the District Court says no, then you can ask the Appellate  
17 Court. Is this Court saying no or is this Court saying wait  
18 until I enter my written Judgment then you may file a motion  
19 to stay pending appeal?

20 THE COURT: I think you need to wait until I enter  
21 my written Judgment or decision. I am not sure the Supreme  
22 Court would even hear your appeal.

23 MR. LEHNERS: All right. I will file the motion to  
24 stay after the entry of written Judgment.



1           THE COURT: That is fine. I just think that you  
2 would be premature if you filed an appeal on my oral decision  
3 at this point.

4           MR. LEHNERS: Your Honor, I agree with you. That is  
5 how I shall proceed. Thank you.

6           MR. TURNER: Your Honor, just one housekeeping  
7 issue, I understand Your Honor denied the claim for exemption.  
8 There was also a third party claim where the Edward William  
9 Bayuk Living Trust filed what they call a third party claim.  
10 It was the same grounds. But that is also being denied?

11          THE COURT: Yes.

12          MR. TURNER: We'll include that in the order.

13          THE COURT: Okay. Yes. I would like you to include  
14 that in the order and provide the draft to Mr. Lehnerns and  
15 then present it to the Court. I know that you're executing on  
16 the Judgment. I have orally told you it is not exempt, but we  
17 should get that written decision to me as soon as you can so I  
18 can review it and enter my decision.

19          MS. TURNER: We'll get that over to Mr. Lehnerns  
20 quickly.

21          THE COURT: All right. Anything further for today?

22          MR. LEHNERS: No, Judge. Thank you for letting us be  
23 here.

24          THE COURT: Court's in recess.

1       STATE OF NEVADA,       )  
2                                       )   ss.  
3       COUNTY OF WASHOE.    )  
4  
5       I, Judith Ann Schonlau, Official Reporter of the Second  
6       Judicial District Court of the State of Nevada, in and for the  
7       County of Washoe, DO HEREBY CERTIFY:  
8       That as such reporter I was present in Department No. 4 of the  
9       above-entitled court on Monday, July 22, 2019 at the hour of  
10      2:00 of said day and that I then and there took verbatim  
11      stenotype notes of the proceedings had in the matter of  
12      WILLIAM A. LEONARD, JR. TRUSTEE vs. EDWARD WILLIAM BAYUK  
13      Living Trust, ET AL, Case Number CV13-02663.  
14      That the foregoing transcript, consisting of pages numbered  
15      1-60 inclusive, is a full, true and correct transcription of  
16      my said stenotypy notes, so taken as aforesaid, and is a full,  
17      true and correct statement of the proceedings had and  
18      testimony given upon the trial of the above-entitled action to  
19      the best of my knowledge, skill and ability.  
20      DATED:   At Reno, Nevada this 25th day of July, 2019.  
21  
22  
23                                       /s/ Judith Ann Schonlau  
24                                       JUDITH ANN SCHONLAU CSR #18

# Exhibit 9

## TOLLING AGREEMENT

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and PAUL A. MORABITO ("PAM"). JH and Herbst are collectively referred to herein as the "Herbst Parties." PAM and the Herbst Parties are collectively referred to herein as the "Parties."

### RECITALS:

A. JH, and P.A. MORABITO & CO. LTD., a Nevada corporation ("PAMCO") entered into that certain Amended and Restated Stock Purchase Agreement dated June 28, 2007 (the "ARSPA"), whereby JH was to purchase the stock of BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("BHI") from PAMCO. Herbst was the guarantor of the JH obligations under the ARSPA, and Paul A. Morabito ("Morabito") guaranteed the obligations of PAMCO. CNC is the successor in interest to PAMCO. The transaction contemplated by the ARSPA closed on July 2, 2007.

B. A dispute developed between the Morabito Parties (as that term is defined in the Settlement Agreement to mean CNC and Paul A. Morabito) and the Herbst Parties regarding the sale of the BHI stock to JH. Based thereon, the Morabito Parties filed a lawsuit against the Herbst Parties on December 3, 2007. The lawsuit was captioned Consolidated Nevada Corp., et al. v. JH, et al., and was filed in Department 6 of the Second Judicial District Court in and for the County of Washoe (the "Court"), Case No. CV07-02764 (together with all claims and counterclaims, the "Action").

C. The Herbst Parties filed numerous counterclaims in the Action against the Morabito Parties, including, but not limited to, fraud in the inducement, misrepresentation and breach of contract.

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

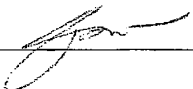
E. On October 12, 2010, the Court entered its findings of fact and conclusions or law related to the Judgment (the "Findings of Fact and Conclusions of Law"). The Findings of Fact and Conclusions of Law outlined the factual and legal basis for the Judgment.

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,



4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

PAUL A. MORABITO, Individually

By: 

Its: \_\_\_\_\_

SUBSCRIBED and SWORN to before me

this 30<sup>th</sup> day of November, 2011,

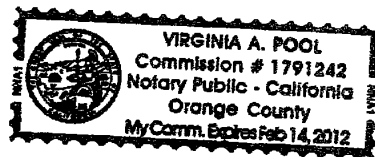
by PAUL A. MORABITO.

Virginia A. Pool  
Notary Public

JH, INC., a Nevada corporation

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

Its: \_\_\_\_\_



SUBSCRIBED and SWORN to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this \_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

\_\_\_\_\_  
Notary Public

# Exhibit 10



## **TOLLING AGREEMENT**

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and THE ARCADIA LIVING TRUST ("ARCADIA"). JH and Herbst are collectively referred to herein as the "Herbst Parties." ARCADIA and the Herbst Parties are collectively referred to herein as the "Parties."

### **RECITALS:**

A. JH, and P.A. MORABITO & CO. LTD., a Nevada corporation ("PAMCO") entered into that certain Amended and Restated Stock Purchase Agreement dated June 28, 2007 (the "ARSPA"), whereby JH was to purchase the stock of BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("BHI") from PAMCO. Herbst was the guarantor of the JH obligations under the ARSPA, and Paul A. Morabito ("Morabito") guaranteed the obligations of PAMCO. CNC is the successor in interest to PAMCO. The transaction contemplated by the ARSPA closed on July 2, 2007.

B. A dispute developed between the Morabito Parties (as that term is defined in the Settlement Agreement to mean CNC and Paul A. Morabito) and the Herbst Parties regarding the sale of the BHI stock to JH. Based thereon, the Morabito Parties filed a lawsuit against the Herbst Parties on December 3, 2007. The lawsuit was captioned Consolidated Nevada Corp., et al. v. JH, et al., and was filed in Department 6 of the Second Judicial District Court in and for the County of Washoe (the "Court"), Case No. CV07-02764 (together with all claims and counterclaims, the "Action").

C. The Herbst Parties filed numerous counterclaims in the Action against the Morabito Parties, including, but not limited to, fraud in the inducement, misrepresentation and breach of contract.

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

E. On October 12, 2010, the Court entered its findings of fact and conclusions or law related to the Judgment (the "Findings of Fact and Conclusions of Law"). The Findings of Fact and Conclusions of Law outlined the factual and legal basis for the Judgment.

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

Edward Bayuk, individually and in his capacity as Trustee of the Edward William Bayuk Living Trust, Salvatore Morabito and Trevor Lloyd, for recovery of funds the Herbst Parties believe were transferred in violation of Nevada's Uniform Fraudulent Conveyance Act (each of the foregoing causes of action a "Fraudulent Conveyance Claim"). The Morabito Parties, Edward W. Bayuk, individually and as trustee of the Edward W. Bayuk Living Trust, Salvatore Morabito, and Trevor Lloyd contend the transfers were done for fair value and dispute that any transfers were fraudulent.

G. The Herbst Parties and the Morabito Parties agreed to settle the Action, and, on November 30, 2011 executed the Settlement Agreement and Mutual Release ("Settlement Agreement"). As part of the Settlement, CNC and Morabito executed a Confession of Judgment, to be filed in the event that the Morabito Parties default under the Settlement Agreement and such default is not cured by the Morabito Parties.

NOW THEREFORE, the Parties hereby agree as follows:

1. The above Recitals A through G above, are hereby incorporated by reference entirely herein and expressly agreed to by the Parties.

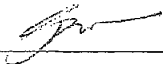
2. ARCADIA hereby agrees that any limitations period under Nevada law and the statute of limitations for filing or prosecuting claims against ARCADIA that are related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, are hereby tolled pending the full and complete performance of each and every one of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

3. In exchange, the Herbst Parties hold in abeyance all claims against ARCADIA related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, pending the full and complete performance of each and every of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

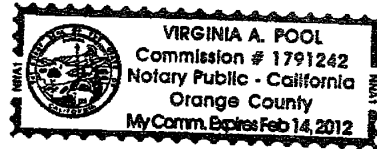
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4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

THE ARCADIA LIVING TRUST

By: 

Its: TRUSTEE



SUBSCRIBED and SWORN to before me

this 30<sup>th</sup> day of November, 2011,

by PAUL A. MORABITO, as authorized representative of The Arcadia Living Trust

Virginia A. Pool  
Notary Public  
JH, INC., a Nevada corporation

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

Its: \_\_\_\_\_

SUBSCRIBED and SWORN to before me

this \_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this \_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

\_\_\_\_\_  
Notary Public

# Exhibit 11

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

20  
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  
19

---

20 <sup>58</sup> SF, ¶ 22; Exh. 20.

21 <sup>59</sup> See Exh. 25 (Hodgson Russ 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.

# Exhibit 12



1 GORDON SILVER  
GERALD M. GORDON, ESQ.  
2 Nevada Bar No. 229  
E-mail: [ggordon@gordonsilver.com](mailto:ggordon@gordonsilver.com)  
3 BRIAN IRVINE, ESQ.  
Nevada Bar No. 007758  
E-mail: [birvine@gordonsilver.com](mailto:birvine@gordonsilver.com)  
4 GABRIELLE A. HAMM, ESQ.  
Nevada Bar No. 11588  
E-mail: [ghamm@gordonsilver.com](mailto:ghamm@gordonsilver.com)  
5 3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
6 Telephone (702) 796-5555  
7 Facsimile (702) 369-2666  
8 *Attorneys for Petitioning Creditors*  
9 *JH, Inc, Jerry Herbst, and Berry-Hinckley Industries*

10 UNITED STATES BANKRUPTCY COURT  
11 FOR THE DISTRICT OF NEVADA

12 In re:  
13 PAUL A. MORABITO,  
14 Debtor.

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

Date: N/A  
Time: N/A

15  
16  
17 **PETITIONERS' FIRST SET OF INTERROGATORIES TO DEBTOR**

18 TO: PAUL A. MORABITO

19 TO: Barry L. Breslow, Esq., Frank C. Gilmore, Esq. and Scott F. Gautier, Esq., his  
20 attorneys

21 Pursuant to RULE 33 of the FEDERAL RULES OF CIVIL PROCEDURE, made  
22 applicable to this proceeding by RULE 7033 of the FEDERAL RULES OF BANKRUPTCY  
23 PROCEDURE, JH, Inc., Jerry Herbst and Berry-Hinckley Industries (the "Petitioning  
24 Creditors"), by and through their counsel, the law firm of Gordon Silver, hereby request Alleged  
25 Debtor Paul A. Morabito ("Mr. Morabito") to answer, under oath, the following interrogatories  
26 on or before August 30, 2013: ✓

27 ///

*rec'd 8/31/13*

1 showing, disclosing, describing, explaining, summarizing, concerning, or referring to directly or  
2 indirectly.

3 N. "Relevant to" has the same meaning that it has in Federal Rule of Civil Procedure  
4 26(b)(1).

5 O. "You" or "Your" refers to Paul A. Morabito, the Arcadia Living Trust, the  
6 Arcadia Spendthrift Trust, and/or any other entity or trust in which you have an ownership or  
7 beneficial interest.

### 8 INTERROGATORIES

9 INTERROGATORY NO. 1: Please identify each and every trust in which you are or have  
10 been a grantor, settlor, beneficiary and/or trustee, including but not limited to the Arcadia Living  
11 Trust and the Arcadia Spendthrift Trust, for the past two (2) years.

12 INTERROGATORY NO. 2: Please list any and all lawsuits to which you have been a named  
13 party in the past two (2) years.

14 INTERROGATORY NO. 3: Please list any and all credit cards, including account numbers,  
15 you have had in your name, or those in the name of a third-party which you have paid personally  
16 or through a trust in the two (2) years prior to and including the Petition Date.

17 INTERROGATORY NO. 4: Please list any and all bank accounts, including account numbers  
18 and bank locations, for any and all bank accounts you have had in your name or which you have  
19 used through a trust in the two (2) years prior to and including the Petition Date.

20 INTERROGATORY NO. 5: Please list each and every creditor you claim to have owed  
21 money as of the Petition Date set forth in the Declaration filed in the Chapter 7 Case on July 31,  
22 2013 (Dkt. 46), including, for each such creditor:

- 23 a. The creditor's name, phone number, address and email address;  
24 b. Any Persons either directly obligated to the creditor or a co-obligor to the  
25 creditor;  
26 c. The amount that you owed that creditor as of the Petition Date; and  
27 d. The amounts which you paid to the creditor within 90 days of the Petition Date  
28 and since the Petition Date;

are valueless.

**INTERROGATORY NO. 14:** Please list each and every creditor you claim to have owed money, as of the Petition Date, as generally described in the Declaration filed in the Chapter 7 Case on July 31, 2013 (Dkt. 43), including, for each such creditor:

- a. The creditor's phone number, address and email address;
- b. Any Persons either directly obligated to the creditor or a co-obligor to the creditor;
- c. The amount that you owed that creditor;
- d. The amounts which you paid to the creditor within 90 days of the Petition Date and since the Petition Date;
- e. The amounts which you paid to the creditor within one year of the Petition Date;
- f. The amounts which you paid to the creditor within two years of the Petition Date;
- g. A description of the service(s) or purchase that lead to the money being owed;
- h. Any and account number(s) or customer number(s) by which that creditor may identify you; and
- i. If you failed to list any of these creditors on your Rule 1003(b) List of Creditors file in your Chapter 7 Case (Dkt. 49), why you stated that said Entities and/or Persons were creditors in your Declaration filed in your Chapter 7 Case on July 15, 2013 (Dkt. 43).

DATED this 13<sup>th</sup> day of August, 2013.

GORDON SILVER

By: 

GERALD M. GORDON, ESQ.  
GABRIELLE A. HAMM, ESQ.  
BRIAN R. IRVINE, ESQ.  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
*Attorneys for Petitioning Creditors JH, Inc,  
Jerry Herbst, and Berry-Hinckley Industries*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GORDON SILVER, and that on this date, pursuant to FRCP 5(b), I am serving a true and correct copy of the attached **PETITIONER'S FIRST SET OF INTERROGATORIES TO DEBTOR** on the parties as set forth below:

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

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

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

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

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

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

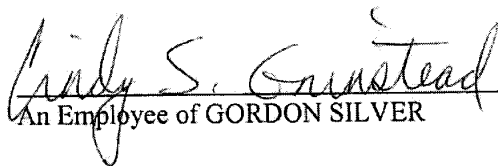
\_\_\_\_ EM/ECF Electronic Notification

addressed as follows:

Barry L. Breslow, Esq.  
Frank C. Gilmore, Esq.  
Robison, Belaustegui, Sharp & Low  
71 Washington Street  
Reno, NV 89503

Howard J. Weg, Esq.  
Scott F. Gautier, Esq.  
PEITZMAN WEG LLP  
2029 Century Park East, Suite 3100  
Los Angeles, CA 90067

DATED this 13<sup>th</sup> day of August, 2013.

  
An Employee of GORDON SILVER

# Exhibit 13

## **TOLLING AGREEMENT**

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and EDWARD W. BAYUK ("BAYUK"). JH and Herbst are collectively referred to herein as the "Herbst Parties." BAYUK and the Herbst Parties are collectively referred to herein as the "Parties."

### **RECITALS:**

A. JH, and P.A. MORABITO & CO. LTD., a Nevada corporation ("PAMCO") entered into that certain Amended and Restated Stock Purchase Agreement dated June 28, 2007 (the "ARSPA"), whereby JH was to purchase the stock of BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("BHI") from PAMCO. Herbst was the guarantor of the JH obligations under the ARSPA, and Paul A. Morabito ("Morabito") guaranteed the obligations of PAMCO. CNC is the successor in interest to PAMCO. The transaction contemplated by the ARSPA closed on July 2, 2007.

B. A dispute developed between the Morabito Parties (as that term is defined in the Settlement Agreement to mean CNC and Paul A. Morabito) and the Herbst Parties regarding the sale of the BHI stock to JH. Based thereon, the Morabito Parties filed a lawsuit against the Herbst Parties on December 3, 2007. The lawsuit was captioned Consolidated Nevada Corp., et al. v. JH, et al., and was filed in Department 6 of the Second Judicial District Court in and for the County of Washoe (the "Court"), Case No. CV07-02764 (together with all claims and counterclaims, the "Action").

C. The Herbst Parties filed numerous counterclaims in the Action against the Morabito Parties, including, but not limited to, fraud in the inducement, misrepresentation and breach of contract.

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

E. On October 12, 2010, the Court entered its findings of fact and conclusions or law related to the Judgment (the "Findings of Fact and Conclusions of Law"). The Findings of Fact and Conclusions of Law outlined the factual and legal basis for the Judgment.

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,

Edward Bayuk, individually and in his capacity as Trustee of the Edward William Bayuk Living Trust, Salvatore Morabito and Trevor Lloyd, for recovery of funds the Herbst Parties believe were transferred in violation of Nevada's Uniform Fraudulent Conveyance Act (each of the foregoing causes of action a "Fraudulent Conveyance Claim"). The Morabito Parties, Edward W. Bayuk, individually and as trustee of the Edward W. Bayuk Living Trust, Salvatore Morabito, and Trevor Lloyd contend the transfers were done for fair value and dispute that any transfers were fraudulent.

G. The Herbst Parties and the Morabito Parties agreed to settle the Action, and, on November 30, 2011 executed the Settlement Agreement and Mutual Release ("Settlement Agreement"). As part of the Settlement, CNC and Morabito executed a Confession of Judgment, to be filed in the event that the Morabito Parties default under the Settlement Agreement and such default is not cured by the Morabito Parties.

**NOW THEREFORE, the Parties hereby agree as follows:**

1. The above Recitals A through G above, are hereby incorporated by reference entirely herein and expressly agreed to by the Parties.

2. BAYUK hereby agrees that any limitations period under Nevada law and the statute of limitations for filing or prosecuting claims against BAYUK that are related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, are hereby tolled pending the full and complete performance of each and every one of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

3. In exchange, the Herbst Parties hold in abeyance all claims against BAYUK related to the alleged transfers referred to in Recital F, including but not limited to, the Fraudulent Conveyance Claims, pending the full and complete performance of each and every of the Morabito Parties' obligations under the Settlement Agreement or entry of the Confession of Judgment, whichever is first to occur.

*///*

4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

EDWARD W. BAYUK, Individually

By: [Signature]

Its: \_\_\_\_\_

SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

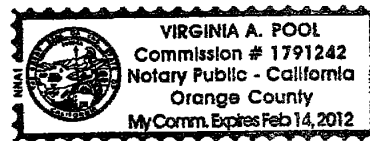
by EDWARD W. BAYUK

Virginia A. Pool  
Notary Public

JH, INC., a Nevada corporation

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

Its: \_\_\_\_\_



SUBSCRIBED and SWORN to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

\_\_\_\_\_  
Notary Public

[Handwritten mark]



\_\_\_\_\_  
JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this \_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

\_\_\_\_\_  
Notary Public

# Exhibit 14

## **TOLLING AGREEMENT**

This TOLLING AGREEMENT is entered into by and between JH, Inc. ("JH"), JERRY HERBST ("Herbst") and THE EDWARD W. BAYUK LIVING TRUST ("The Bayuk Trust"). JH and Herbst are collectively referred to herein as the "Herbst Parties." The Bayuk Trust and the Herbst Parties are collectively referred to herein as the "Parties."

### **RECITALS:**

A. JH, and P.A. MORABITO & CO. LTD., a Nevada corporation ("PAMCO") entered into that certain Amended and Restated Stock Purchase Agreement dated June 28, 2007 (the "ARSPA"), whereby JH was to purchase the stock of BERRY-HINCKLEY INDUSTRIES, a Nevada corporation ("BHI") from PAMCO. Herbst was the guarantor of the JH obligations under the ARSPA, and Paul A. Morabito ("Morabito") guaranteed the obligations of PAMCO. CNC is the successor in interest to PAMCO. The transaction contemplated by the ARSPA closed on July 2, 2007.

B. A dispute developed between the Morabito Parties (as that term is defined in the Settlement Agreement to mean CNC and Paul A. Morabito) and the Herbst Parties regarding the sale of the BHI stock to JH. Based thereon, the Morabito Parties filed a lawsuit against the Herbst Parties on December 3, 2007. The lawsuit was captioned Consolidated Nevada Corp., et al. v. JH, et al., and was filed in Department 6 of the Second Judicial District Court in and for the County of Washoe (the "Court"), Case No. CV07-02764 (together with all claims and counterclaims, the "Action").

C. The Herbst Parties filed numerous counterclaims in the Action against the Morabito Parties, including, but not limited to, fraud in the inducement, misrepresentation and breach of contract.

D. The matter was tried before the Honorable Judge Brent Adams by way of a bench trial commencing May 10, 2010 that lasted for several weeks. At the conclusion of the bench trial, the Court found that the Morabito Parties had breached the ARSPA and committed fraud in the inducement and misrepresentation in relation to numerous aspects of the transaction contemplated by the ARSPA. The Court ultimately awarded the Herbst Parties total damages in the amount of One Hundred Forty-Two Million, Five Hundred Ninety-Seven Thousand, Two Hundred Eighty-Eight and 80/100ths Dollars (\$142,597,288.80), representing both compensatory and punitive damages (the "Judgment"). The Judgment was entered by the Court on August 23, 2011. There was also a Determination that the Morabito Parties owed the Herbst Parties \$6.7 million for the working capital of BHI pursuant to the ARSPA.

E. On October 12, 2010, the Court entered its findings of fact and conclusions or law related to the Judgment (the "Findings of Fact and Conclusions of Law"). The Findings of Fact and Conclusions of Law outlined the factual and legal basis for the Judgment.

F. The Herbst Parties contend that prior to and after the Court's oral pronouncement of judgment, Morabito undertook numerous fraudulent transfers and conveyances in an effort to conceal assets and render himself judgment proof. Morabito denies such allegations. Notwithstanding the denial by Morabito, the Herbst Parties believe they possess valid claims against CNC, Morabito, individually and in his capacity as Trustee of the Arcadia Living Trust,



4. The Herbst Parties shall have no obligation to hold in abeyance any claim related to the Action against any of the foregoing individuals or entities that fail to deliver a duly executed Tolling Agreement within sixty (60) days of Closing.

THE EDWARD W. BAYUK LIVING TRUST

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

Its: \_\_\_\_\_

SUBSCRIBED and SWORN to before me

this 30 day of November, 2011,

by EDWARD W. BAYUK

Virginia A. Pool  
Notary Public

JH, INC., a Nevada corporation

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

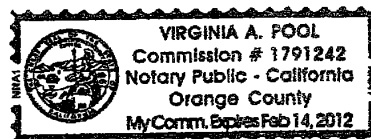
Its: \_\_\_\_\_

SUBSCRIBED and SWORN to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

\_\_\_\_\_  
Notary Public



601

JERRY HERBST, an individual

SUBSCRIBED and SWORN to before me

this \_\_\_\_ day of \_\_\_\_\_, 2011,

by JERRY HERBST.

Notary Public

# Exhibit 15

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

4 CONSOLIDATED NEVADA  
5 CORPORATION, a Nevada corporation and  
6 PAUL A. MORABITO, an individual,

7 Plaintiffs,

8 vs.

9 JH, INC., a Nevada corporation, and JERRY  
10 HERBST, an individual,

11 Defendants.

12 JH, INC., a Nevada Corporation, et al.,

13 Counter-Claimants,

14 vs.

15 CONSOLIDATED NEVADA  
16 CORPORATION, a Nevada corporation, et al.

17 Counter-Defendants.

Case No.: CV07-02764

Dept. No.: B6

18 **DECLARATION OF MARK E. LEHMAN, ESQ.**

19 I, MARK E. LEHMAN, ESQ., hereby declare as follows:

20 1. I make this Declaration of my own personal knowledge and, if called as a witness,  
21 I could and would testify competently to the matters stated herein. I make this Declaration at  
22 the request of the plaintiffs in this action, and in opposition to Defendant's motion to amend  
23 Defendant's counterclaim.

24 2. I am an attorney duly licensed to practice law and a member in good standing  
25 with the State Bar of California.

26 3. I was retained in September of 2010 by Edward Bayuk to represent him  
27 personally and the Trust known as the Edward Bayuk Living Trust (hereinafter "EBLT") in  
28



1 relation to a series of transactions whereby residences located at 370 Los Olivos (the "Los Olivos  
2 Property"); 371 El Camino (the "El Camino Property"); both in Laguna Beach, California  
3 92651; and 8355 Panorama Drive Reno, Nevada 89511 (collectively "the Properties"), which  
4 were each partially owned by either Mr. Bayuk or EBLT and Paul Morabito or the Arcadia  
5 Living Trust (hereinafter "ALT"), were transferred.  
6

7 3. The intent of the transfers was to equitably separate the financial interests of the  
8 two Trusts, Mr. Bayuk and Mr. Morabito so that the total net equity interest held by each and or  
9 their respective Trusts were not diminished.  
10

11 4. By way of background, I am informed and believe that Mr. Bayuk, the EBLT  
12 Trustee, was originally a Plaintiff and eventually a Counter-claim Defendant in the above  
13 captioned matter. Important to my representation of Mr. Bayuk, the September 13, 2010  
14 decision in the above-captioned matter dismissed all counter-claims against Mr. Bayuk. As a  
15 result of the decision, Mr. Bayuk desired to separate his financial interests and those of the EBLT  
16 from those of the ALT and Paul Morabito, a potential judgment debtor as a result of the  
17 September 13, 2010 decision.  
18

19 4. In facilitating the separation of financial interests, the Properties were all  
20 appraised by licensed real estate appraisers. The results of the appraisals allowed for the  
21 calculation of the net equity of each Property (appraised value less the outstanding mortgage  
22 amount).  
23

24 5. In addition to transferring ownership interests in the Properties, the transaction  
25 involved the transfer of Excess Water Rights at the Panorama Drive Property, the transfer of the  
26 Mr. Bayuk's interest in the theatre equipment located at the Panorama Drive Property, and  
27 payment by Mr. Bayuk to Mr. Morabito cash in the amount of \$60,117.00.  
28

1           6.       These supplemental transfers were made in order to ensure that the net value of  
2 the property received by Mr. Morabito and the ALT equaled the net value of the property which  
3 was transferred to Mr. Bayuk and the EBLT.  
4

5           7.       As a result of the above-described transfers, the financial interests of Mr. Bayuk  
6 and Mr. Morabito, as well as the two Trusts are now completely separate and each individual and  
7 Trust has been left with equity interests that are substantially the same to their respective  
8 interests held prior to the September 13, 2010 decision.  
9

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

12       Executed on March 21, 2011

13   
14 Mark E. Lehman, Esq.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit 16

Page 50

1 simple. The decision entered by Judge Adams, for  
 2 as much as Herbst and their litigation team wanted  
 3 to wave that decision around as it related to Paul  
 4 Morabito, they were not as willing to wave it  
 5 around as it related to Salvatore Morabito and  
 6 Edward Bayuk, both of whom were exonerated, if you  
 7 will, by Judge Adams.

8 Judge Adams found that they were not  
 9 involved in any of the alleged fraud that was the  
 10 subject of the judgment, and the -- the decision of  
 11 Judge Adams dismissed the claims, rejected the  
 12 claims against Salvatore Morabito and Edward Bayuk.

13 The -- the effort was because they owned --  
 14 all three of them, in many instances, owned assets  
 15 together, the goal, after researching Nevada law  
 16 and consulting with Nevada counsel, was to  
 17 right-size the investment so that everybody walked  
 18 away with their proportionate share of the  
 19 investment, including Paul A. Morabito.

20 For instance, the Panorama property, which  
 21 was located in Reno, my recollection serves me that  
 22 it was owned by a Morabito entity and an Edward  
 23 Bayuk entity but not in equal proportions, if I  
 24 recall correctly.

25 There were properties in California, Laguna

Page 52

1 Q. The parties being Paul Morabito, Sam  
 2 Morabito, and Edward Bayuk?

3 A. Sure. Edward and Sam didn't want to  
 4 be -- be chased because they had an equity interest  
 5 in properties that were also attached to Paul.

6 Q. So who raised the idea of separating  
 7 the assets?

8 A. I don't recall.

9 Q. Do you recall the first discussion  
 10 regarding separating the assets?

11 A. No.

12 Q. Do you recall any discussions regarding  
 13 separating the assets?

14 A. Yes.

15 Q. When was the first discussion that you  
 16 can remember?

17 A. I don't recall.

18 Q. Do you recall what that discussion was?

19 A. No.

20 Q. Do you recall who was present during  
 21 any of these discussions?

22 A. Keep in mind, most of these discussions  
 23 were telephonic.

24 Q. Okay.

25 A. So, again, I don't remember.

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1 Beach, California, that was jointly owned, again,  
 2 not in equal proportions.

3 And then there was Superpumper, where all  
 4 three of them had an ownership interest.

5 So the goal was to essentially take all of  
 6 those assets and to -- to identify the value of  
 7 Morabito's stake in those assets, and to transfer  
 8 that value exclusively to him, and then separate  
 9 the equity, if you will, to the extent it existed,  
 10 for Edward and Sam, because they were now relieved  
 11 of this lawsuit.

12 And in an effort to not embroil them,  
 13 ironically, as they are now, in litigation, the  
 14 properties were, again, valued and moved so that  
 15 everybody, at the end of the day, as you took the  
 16 whole and you took the percentages that each one of  
 17 them owned in the whole, the goal was to have  
 18 Morabito walk away with the same value that he had  
 19 in the whole, while separating from Morabito the  
 20 interest that Edward and Sam also owned.

21 Q. When did you start that process?

22 A. Mid -- mid to late September of 2010.

23 Q. Who ultimately decided to commence this  
 24 separation of the assets?

25 A. Well, the parties.

Page 53

1 Q. Do you recall who was on any of the  
 2 phone calls?

3 A. Well, certainly Paul and, from time to  
 4 time, Edward and Sam. I would say Sam less so  
 5 than -- than Edward. And the -- the Breslow people  
 6 too. Belaustegui people.

7 Q. Do you recall whether you raised the  
 8 idea of separating assets or if it was raised to  
 9 you?

10 A. It might have come from me, mostly  
 11 because I was fixated on the fact that Edward and  
 12 Sam had been exonerated. So the Panorama  
 13 property's a perfect example. Again, I don't  
 14 remember the two specific entities that Edward and  
 15 Paul controlled that were the actual owners of the  
 16 property. My recollection -- and I could stand  
 17 corrected on this if you show me a document -- is  
 18 that the split wasn't 50/50; it was either 60/40 or  
 19 70/30, including, you know, mortgage obligation.

20 We separated Edward's interest, ownership  
 21 interest, in that so that the property located in  
 22 Nevada would be a ripe target for the Herbsts and  
 23 their collection efforts, minus the satisfaction of  
 24 the underlying mortgage, because they didn't have  
 25 to then deal with Edward, and Edward was tired of



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1 the litigation, and Edward didn't want to be  
2 embroiled in any more litigation with the Herbsts.  
3 Judge Adams exonerated him. He wanted out.

4 And this effort was to -- to maintain value,  
5 maintain value -- maintain the value of Morabito's  
6 ownership interest, while separating the ownership  
7 interest of the two individuals who were exonerated  
8 by Judge Adams.

9 So going back to the Panorama property, just  
10 for illustration purposes, if it was worth a  
11 million dollars, but because Edward's ownership  
12 interest -- let's just say it was 30 percent as  
13 opposed to 50 percent. That means that the best  
14 that the Herbsts could do, free and clear of the  
15 mortgage, was \$700,000 or Paul's interest in the  
16 Panorama property. By virtue of what we did, they  
17 now had access to the full million dollar value.

18 Q. Do you recall any of your discussions  
19 with Paul Morabito regarding the separation of  
20 assets?

21 A. There were many.

22 Q. Do you recall any specific discussions?

23 A. No.

24 Q. Did you represent Edward Bayuk  
25 individually?

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1 A. I don't recall particular  
2 conversations.

3 Q. Do you recall the general sense of your  
4 discussions?

5 A. Again, it was -- so, you know, I have  
6 an ownership interest in property X or in asset X.  
7 How am I going to get that out?

8 Q. Other than Paul Morabito, Sam Morabito,  
9 and Edward Bayuk, was there anyone else that you  
10 discussed the separation of assets with?

11 A. So I mentioned the Belaustegui people.  
12 But maybe even before then, Leif Reid.

13 Q. What was your conversation with Leif  
14 Reid?

15 MR. GILMORE: I'll ask you not to disclose  
16 attorney-client communications --

17 THE WITNESS: Yeah.

18 MR. GILMORE: -- but you can testify as to  
19 nonattorney-client communications.

20 THE WITNESS: We -- we were researching  
21 Nevada law on these types of transfers. We were --  
22 we were -- we were spend -- obviously, we weren't  
23 Nevada attorneys, so we were researching Nevada  
24 law, and we wanted a better understanding of what  
25 the -- the, you know, body of caselaw was out

Page 55

1 A. Yes. At that time. Yes.

2 Q. Did you have a retention agreement with  
3 Mr. Bayuk?

4 A. I don't believe so.

5 Q. Is it your normal practice to have  
6 retention agreements with clients that you  
7 represent?

8 A. Usually.

9 Q. Is there a reason why you didn't have  
10 one with Mr. Bayuk?

11 A. I don't recall.

12 Q. Did you represent Sam Morabito during  
13 this separation of assets?

14 A. I -- I don't remember whether Sam had  
15 independent counsel or not.

16 Q. Do you recall if you had a retention  
17 agreement with Mr. -- with Mr. Sam Morabito?

18 A. No.

19 Q. No, you don't recall, or no, you do --

20 A. Did not.

21 Q. Did not have one?

22 A. Correct. To the best of my knowledge.

23 Q. Do you recall any of your discussions  
24 with Edward -- with Sam Morabito regarding the  
25 separation of assets?

Page 57

1 there. So it was more technical nature with --  
2 with -- whether it was Leif or with the Belaustegui  
3 firm, although, eventually, the Belaustegui firm  
4 got more involved in the mechanics, if you will.

5 We were very cognizant of the claims that  
6 are made in this lawsuit now. And we went to great  
7 lengths to avoid these claims, which is why --  
8 eventually, you'll get to it because you asked for  
9 it -- why we went to Matrix to get an independent  
10 third-party appraisal of the so-called Superpumper  
11 asset. We just didn't stick a finger in the wind  
12 because Nevada law said that you can make these  
13 transfers, as long as they're arm's length and for  
14 fair market value. That was our understanding of  
15 Nevada law.

16 And that's how we tried to arrange each one  
17 of these separations, if you will, of the various  
18 equity interest.

19 BY MS. PILATOWICZ:

20 Q. When you say the -- and I can never say  
21 the name of Mr. Gilmore's firm.

22 A. Belaustegui.

23 Q. -- Belaustegui were involved in more  
24 the mechanics of it, what do you mean by that?

25 A. Well, eventually, so as the -- the



<p style="text-align: right;">Page 58</p> <p>1 Lewis &amp; Roca firm transitioned out of  2 representation and Barry Breslow and Mr. Gilmore  3 stepped into the role of primary Nevada counsel,  4 you know, we worked on a variety of issues  5 collaboratively.  6 So when I say they -- they were more -- they  7 got more involved in the mechanics, it wasn't just  8 a matter of giving us their assessment of Nevada  9 law. We were working collaboratively to -- for  10 instance, these -- these settlements or, you know,  11 I recall there was -- you know, there was even some  12 depositions in these -- I want to say that there  13 was a deposition, for instance, in the Moreno case  14 that Mr. Breslow -- 'cause I'm not admitted in  15 Nevada, so we worked very closely with this law  16 firm.  17 Q. Was there any specific work that  18 Mr. Gilmore's law firm did with respect to the  19 separation of assets you've been describing?  20 A. I don't -- I don't think that they were  21 that deep in the weeds.  22 MS. PILATOWICZ: Would you mark this as  23 Exhibit 3, please.  24 The following was marked for Identification:  25 EXHIBIT 3 Purchase and sale agreement</p>	<p style="text-align: right;">Page 59</p> <p>1 dated September 27, 2010  2 BY MS. PILATOWICZ:  3 Q. Mr. Vacco, you've been handed what's  4 been marked as Exhibit 3. Do you recognize  5 Exhibit 3?  6 A. Yes. Generally, I do.  7 Q. And what is Exhibit 3?  8 A. It's a purchase and sale agreement.  9 Q. Did you prepare Exhibit 3?  10 A. My law firm did.  11 Q. Do you know who in your law firm did?  12 A. I don't recall specifically.  13 Q. Did you represent Paul Morabito with  14 respect to this purchase and sale agreement?  15 A. Yes.  16 Q. Did you represent the Arcadia Living  17 Trust dated February 14, 2006, with respect to this  18 purchase and sale agreement?  19 A. Yes.  20 Q. Do you have a retention agreement with  21 the Arcadia Living Trust?  22 A. I don't -- I don't recall.  23 Q. If you reviewed your internal records,  24 would you be able to locate whether you have a  25 retention agreement?</p>
<p style="text-align: right;">Page 60</p> <p>1 A. Yes.  2 Q. Did you represent Mr. Edward Bayuk with  3 respect to this purchase and sale agreement?  4 A. I don't recall whether Edward had  5 independent counsel look at this or not. I don't  6 recall.  7 Q. Do you recall if you were representing  8 Mr. Bayuk, though?  9 A. On this transaction, I just -- I just  10 don't recall. There's -- there's -- there's a  11 piece of me that says that Edward was consulting  12 counsel in California.  13 Q. Do you have any idea who that counsel  14 would be?  15 A. I'm guessing Mark Lehman.  16 Q. Who's Mark Lehman?  17 A. A lawyer in Los Angeles.  18 Q. Did he work at a firm?  19 A. I think he had his own firm.  20 Q. Okay. Had you worked with Mr. Lehman?  21 A. Did I work with him?  22 Q. Yes.  23 A. What do you mean by that?  24 Q. Did you -- how were you aware of  25 Mr. Lehman?</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Edward or Paul brought him to my  2 attention.  3 Q. Did you represent the Edward William  4 Bayuk Living Trust dated 6/18/2008, with respect to  5 this purchase and sale agreement?  6 A. I've -- I've already said that I  7 don't -- I don't recall.  8 Q. I'm sorry. I was asking you about  9 the -- the trust as opposed to --  10 A. I'm sorry.  11 Q. -- him individually.  12 A. Yeah. I don't recall.  13 Q. Now, this document represents the  14 transfer of multiple properties --  15 A. Right.  16 Q. -- one being 371 El Camino Del Mar,  17 another one being 370 Los Olivos, and the other one  18 being 8355 Panorama Drive.  19 Do you recognize those properties?  20 A. I do.  21 Q. What do you -- what was your  22 recollection about who owned the El Camino  23 property?  24 A. Well, I'm looking at the document, so  25 it's refreshed my recollection.</p>

# Exhibit 17

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("July A&AA") is made as of July 3, 2007 by and between P.A. Morabito & Co., Limited, a Nevada corporation ("Assignor") and together to the Arcadia Living Trust ("Arcadia Trust") and the Edward William Bayuk Living Trust ("Bayuk Trust") (together the Arcadia Trust and Bayuk Trust are the "Assignees").

WHEREAS the Assignor entered into an assignment and assumption agreement on June 29, 2007 (the "June A&AA") by and between Assignor and Berry-Hinckley Industries ("BHI") that assigned certain assets to Assignor by BHI defined in the June A&AA by way of an exhibit as excluded assets ("June A&AA Excluded Assets"). A copy of the June A&AA including the referenced June A&AA exhibit are attached hereto as Exhibit A to this July A&AA.

WHEREAS the stock of BHI was owned by the Assignor. The Assignor entered into that certain Amended and Restated Purchase Agreement ("ARSPA") dated as of June 28, 2007, by and between JH, Inc., Jerry Herbst, (together "JH/Herbst"), Paul A. Morabito (on behalf of the Arcadia Trust), Edward Bayuk (on behalf of the Bayuk Trust), Salvatore Morabito (on behalf of the Salvatore Robert Morabito, Jr. Trust ("SRM Trust")) and Trevor Lloyd, individually (the "BHI Stock Purchase Agreement") pursuant to which Assignor sold all of the issued and outstanding stock of BHI to JH/Herbst.

WHEREAS the Arcadia Trust is an irrevocable self settled spendthrift trust domiciled in Nevada created by Paul A. Morabito, as Settlor and Grantee, on October 14, 2005 in Reno, Nevada. Paul A. Morabito is the Trustee and James A. Gibbons is the Co-Trustee of the Arcadia Living Trust. Neither the Trustee nor the Co-Trustee are a beneficiary.

WHEREAS the Bayuk Trust is an irrevocable self settled spendthrift trust domiciled in Nevada created by Edward W. Bayuk, as Settlor and Grantee, on November 12, 2005 in Reno, Nevada. Edward W. Bayuk is the Trustee and James A. Gibbons is the Co-Trustee of the Arcadia Living Trust. Neither the Trustee nor the Co-Trustee are a beneficiary.

WHEREAS a copy of the executed settlement statement from Chicago Title for the ARSPA ("ARSPA Settlement Statement") dated June 28, 2007 is attached hereto as Exhibit B to this July A&AA. A copy of the authorization from Chicago Title to transfer funds to Assignor from the escrow account of JH/Herbst ("ARSPA Proceeds Due Seller") dated July 2, 2007 is attached hereto as Exhibit C to this July A&AA and



WHEREAS, the Assignor is desirous of assigning and transferring certain of the June A&AA Excluded, as listed more specifically on Exhibit D attached hereto (the "Assigned Excluded Assets"), to the Assignees.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the Assignor and Assignees agree as follows:


1. Assignor hereby assigns, transfers and sets over to Assignees all of its right, title and interest in, under and to the Assigned Excluded Assets.
2. Assignees hereby assume the Assigned Excluded Assets, and agrees to pay or otherwise perform when due all of the obligations and liabilities, direct or indirect, of Assignor related to the Assigned Excluded Assets from and after the date of execution of this July A&AA.
3. Assignees shall determine as between the Arcadia Trust and the Bayuk Trust which of the Assigned Excluded Assets are to be assigned jointly, equally and/or solely from the Assignor to the Assignees.
4. Each party agrees it will execute and deliver any further documents, instruments or agreements which may be necessary or which may be deemed reasonably necessary by the other party to transfer the Assigned Excluded Assets from Assignor to Assignees in accordance with the July A&AA.
5. This July A&AA shall be construed in accordance with the laws of the State of Nevada, without regards to principles of conflicts of law.

**[SIGNATURE PAGE FOLLOWS]**

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


**ASSIGNOR:**

**P. A. MORABITO & CO., LIMITED**

By:   
Name: Salvatore R. Morabito, Jr.  
Title: Vice-President


**ASSIGNEE**

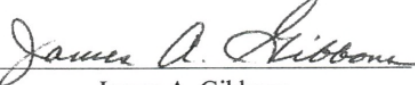
**ARCADIA LIVING TRUST**

By:   
Name: Paul A. Morabito  
Title: Trustee

**ASSIGNEE**

**EDWARD WILLIAM BAYUK LIVING TRUST**

By:   
Name: Edward W. Bayuk  
Title: Trustee

By:   
Name: James A. Gibbons  
Title: Co-Trustee, Arcadia Trust  
C-Trustee, Bayuk Trust

**[EXHIBITS A, B, C & D FOLLOWS]**

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
EXHIBIT A**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement is made as of June 29, 2007, by and between Berry-Hinckley Industries, a Nevada corporation ("Assignor") and P. A. Morabito & Co., Limited, a Nevada corporation ("Assignee").

WHEREAS, Assignee has entered into that certain Amended and Restated Stock Purchase Agreement, dated as of June 28, 2007, by and between Assignee, JH, Inc., Jerry Herbst, Paul A Morabito, Edward Bayuk, Salvatore Morabito and Trevor Lloyd (the "Stock Purchase Agreement"), pursuant to which Assignee will sell all of the issued and outstanding stock of Assignor; and

WHEREAS, certain assets of Assignor are excluded assets under the Stock Purchase Agreement, as listed more specifically on Exhibit A attached hereto (the "Excluded Assets").

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

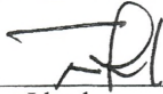
1. Assignor hereby assigns, transfers and sets over to Assignee all of its right, title and interest in, under and to the Excluded Assets.
2. Assignee hereby assumes the Excluded Assets, and agrees to pay or otherwise perform when due all of the obligations and liabilities, director or indirect, of Assignor relating to the Excluded Assets from and after the Closing Date.
3. Each party agrees that it will execute and deliver any further documents, instruments or agreements which may be necessary or which may be deemed reasonably necessary by the other party to transfer the Excluded Assets from Assignor to Assignee in accordance with this Assignment and Assumption Agreement.
4. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Stock Purchase Agreement. This Assignment and Assumption Agreement shall be construed in accordance with the laws of the State of Nevada, without regard to principles of conflicts of law.

[SIGNATURE PAGE FOLLOWS]

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

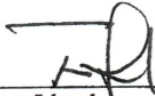
**ASSIGNOR:**

**BERRY-HINCKLEY INDUSTRIES**

By:   
Name: Trevor Lloyd  
Title: Secretary

**ASSIGNEE:**

**P. A. MORABITO & CO., LIMITED**

By:   
Name: Trevor Lloyd  
Title: Vice President

## EXHIBIT A

### Excluded Assets

- Amended and Restated Agreement, dated May 1, 2006, between Spirit SPE Portfolio 2005-5, LLC and BHI
- Stock of Berry-Hinckley Aviation, a Nevada corporation, and Tibarom NV, Inc., a Nevada corporation
- All executive automobiles
- All artwork
- All executive office furniture
- Gas station, convenience store, real property and development site located in Fernley, Nevada
- Shareholder receivables and payables
- Intercompany receivables and payables
- All San Francisco Giants baseball season tickets, and all rights related thereto
- San Francisco 49ers Club Suite, and all rights related thereto
- Computer servers not related to the Business at the following locations: Scottsdale, AZ, Superpumper office, Reno Tibarom office and BHI offices.
- The executive suite at 425 Maestro Drive, Reno, Nevada, which includes the offices of Paul Morabito and Arthur T. Hinckley, and all personal property not associated with the Business located therein, including computer equipment and personal communication devices in the possession of the executives.
- 3 reserved parking spaces in the parking lot at 425 Maestro Drive, Reno, Nevada in conjunction with the executive suite
- Retro Chevron gas pump in lobby at 425 Maestro Drive, Reno, Nevada
- Shell Oil storage display unit in lobby at 425 Maestro Drive, Reno, Nevada
- All assets associated with the Wholesale Business, except Buyer will obtain an option to acquire the Chevron dealer business and Chevron terminal from Western Energetix

Terminals, LLC pursuant to the Asset Purchase Agreement, dated as of December 28, 2006 among Western Energetix LLC, Western Energetix Terminals, LLC and BHI.

- All shares in the Raffles insurance program and all premiums and other refunds or rebates applicable to the Raffles insurance program up to and including the Closing Date
- Asset Purchase Agreement, dated as of December 28, 2006 among Western Energetix LLC, Western Energetix Terminals, LLC and BHI

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
EXHIBIT B**



# CHICAGO TITLE

3993 Howard Hughes Pkwy., #120, Las Vegas, NV 89169  
(702) 836-8000

## SETTLEMENT STATEMENT

### Estimated

Buyer(s):  
JH, Inc., a Nevada corporation

Seller(s):  
Paul A. Morabito

Property: Mutiple Sites - Nevada

Escrow No. 07019030-079 TL

Close Date: 06/27/2007

Proration Date:

Buyer		Description		Debit	Credit
Debit	Credit				
35,532,000.00		<b>TOTAL CONSIDERATION:</b>			35,532,000.00
	21,507,267.44	Total Consideration			
	9,221.56	To Be Deposited by Buyer			
		Interest Accrual on Deposit			
	23,700,000.00	<b>NEW AND EXISTING ENCUMBRANCES:</b>			
		Principal Amount of Loan from 1st National Bank of Nevada			
		<b>NEW LOAN CHARGES:</b>			
\$1,295,000.00		Loan Origination Fee to 1st National Bank of Nevada			
(129,500.00)		Commitment Fee to 1st National Bank of Nevada			
6,250.00		Quarterly Commitment Fee to 1st National Bank of Nevada			
23,700,000.00		Non-Funded Loan Proceeds to 1st National Bank of Nevada			
		<b>ADDITIONAL CHARGES:</b>			
1,039,397.00		Consulting Fee to Silver Pacific Advisors			
130,000.00		Legal Fees-Estimated (Need Invoice to Henderson & Morgan, LLC)			
		Legal Fees to Gibson, Dunn - paid outside of escrow (\$363,232.56)			
		Payment to Dennis Banks Construction		2,849,676.00	
2,638,783.00		Excess Funds to JH, Inc. (Operating Account)			
		<b>PRORATIONS AND ADJUSTMENTS:</b>			
	8,907,500.00	WGI Purchase Price Adjustment (2.4)		8,907,500.00	
4,102,165.00		Reimbursable Development Expenses (2.8)			\$4,102,165.00
3,165,690.00		Initial Working Capital			3,165,690.00
	4,546,250.00	PAMCO & Seller Notes		4,546,250.00	
	2,000,000.00	Non-Refundable Deposit		1,000,000.00	
	1,000,000.00	Prior Non-Refundable Deposit		11,532,000.00	
	11,532,000.00	Development Amount			
		Building Permit Portion for Devopment Sites			1,678,500.00
1,678,500.00		Non Refundable Deposit released to Seller		2,000,000.00	
		<b>ESCROW CHARGES:</b>			
1,500.00		Escrow Fee to Chicago Title			
		<b>TITLE CHARGES:</b>			
5,000.00		Title Examination to Chicago Title (Out of County Searches)			
23,226.00		CLTA Owners (\$23.7MILL) to Chicago Title			
6,998.00		ALTA L.P.(\$23.7MILL) - concurrent rate to Chicago Title			
2,550.00		Title Endorsements - Loan Policy to Chicago Title			
180.00		Overnight Deliveries/Fed-X to Chicago Title			
		<b>RECORDING FEES:</b>			
4,500.00		Recording Fee - ESTIMATED to Chicago Title			
73,202,239.00	73,202,239.00	<b>Sub Totals</b>		30,835,426.00	44,478,355.00
		<b>Balance Due From Buyer</b>		13,642,929.00	
73,202,239.00	73,202,239.00	<b>Totals</b>		44,478,355.00	44,478,355.00

Printed 06/28/2007 at 9:13 PM

3993 Howard Hughes Pkwy., #120, Las Vegas, NV 89169  
(702) 836-8000

Escrow No. 07019030-079 TL

JH, Inc., a Nevada corporation

Paul A. Morabito

Edward Bayuk

**Trevor Lloyd**

**Salvatore Morabito**

9883

3993 Howard Hughes Pkwy., #120, Las Vegas, NV 89169  
(702) 836-8000

Escrow No. 07019030-079 TL

JH, Inc., a Nevada corporation

Paul A. Morabito

Edward Bayuk

Salvatore Merabito

החל/תחילת השבוע הבא יחול

• YD.J

**ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**EXHIBIT C**

JUL-02-07 MON 02:23 PM

JUL 02 2007 14:52 FR BANK OF AMERICA  
JUL-02-07 MON 02:23 PM

FAX NO.  
714 223 8205 TO 917028368110  
FAX NO.

P. 01

# Chicago Title

Vista arHy8

3880 Howard Hughes Pkwy., Ste. 100, Las Vegas, NV 89169  
Fax (702) 836-8110

Phone (702) 836-8000

July 2, 2007

Bank of America  
Attn: Client Services/PNP-Chicago Title Team  
Phone: 888-635-2714  
Fax: 714-223-8200  
RE: Transfer of funds

Mike Thomas  
Global Client Service  
CSR Code 713  
888-635-2714 x 61778

*Mike Thomas*

## TO WHOM IT MAY CONCERN:

This letter serves as our authorization to transfer from our account #123381-3719 in the amount of \$13,642,929.00 to account #005011455856 under P.A. Morabito @ Co. Ltd. Please reference "Closing payment - Pamco, JH, Inc".

I thank you for your attention to this matter. Should you have any questions, please don't hesitate to call us at (702)836-8000.

Thank you,

Sincerely,

*[Signature]*  
Authorized Signer

*[Signature]*  
Authorized Signer

JUL 02 2007 14:47

\*\* TOTAL PAGE.01 \*\*

9886



**ASSIGNMENT AND ASSUMPTION AGREEMENT  
EXHIBIT D**

Assigned Excluded Assets

To Both The Arcadia Trust And The Bayuk Trust, Equally:

- All executive automobiles
- All artwork
- All executive office furniture
- All San Francisco Giants Baseball seasons tickets, and all rights related thereto
- San Francisco 49ers Club Suite, and all rights related thereto
- All computer equipment and personal communication devices in the possession of the executives in the executive suite at 425 Maestro Drive
- Retro Chevron gas pump in lobby at 425 Maestro Drive, Reno, Nevada
- Shell Oil Storage display unit in lobby at 425 Maestro Drive, Reno, Nevada

To The Arcadia Trust, Solely:

- All assets associated with the Wholesale Business, except Buyer will obtain an option to acquire the Chevron dealer business and Chevron Terminal from Western Energetix Terminals, LLC pursuant to the Asset Purchase Agreement, dated as of December 28, 2006 among Western Energetix LLC, Western Energetix Terminals, LLC and BHI.
- All shares in the Raffles insurance program and all premiums and other refunds or rebates applicable to the Raffles insurance program up to and including the Closing Date
- Asset Purchase Agreement, dated as of December 28, 2006 among Western Energetix LLC, Western Energetix Terminals, LLC and BHI

**[END OF AGREEMENT - NO ADDITIONAL PAGES]**

# Exhibit 18

1 2840

2  
3  
4  
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**  
7 **THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE**

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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;  
and 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.  
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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.

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15 Connie J. Steinheimer  
DISTRICT JUDGE  
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