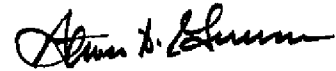


# **EXHIBIT 1**

# **EXHIBIT 1**



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as  
Distribution Trustee of the ERIC L. NELSON  
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

LANA MARTIN, Distribution Trustee of the  
ERIC L. NELSON NEVADA TRUST dated  
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

CASE NO.: D-09-411537-D  
DEPT. NO.: O

NOTICE OF ENTRY OF ORDER

Non-Trial Dispositions:

- ☐ Other
- ☐ Dismissed - Want of Prosecution
- ☐ Involuntary (Statutory) Dismissal
- ☐ Default Judgment
- ☐ Transferred
- ☐ Disposed After Trial Start

Settled/Withdrawn:

- ☐ Without Judicial Conf/Hrg
- ☐ With Judicial Conf/Hrg
- ☐ By ADR

Trial Dispositions:

☒ Judgment Reached by Trial

FRANK R. SULLIVAN  
DISTRICT JUDGE


FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

1 TO:

2 Rhonda Forsberg, Esq.  
3 Robert Dickerson, Esq.  
4 Mark Solomon, Esq.  
5 Jeffrey Luszeck, Esq.

6 PLEASE TAKE NOTICE that DECREE OF DIVORCE was duly entered in the above-  
7 referenced case on the 3rd day of June, 2013.

8 DATED this 3 day of June, 2013.

9   
10 \_\_\_\_\_  
11 Lori Parr  
12 Judicial Executive Assistant  
13 Dept. O  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

ERIC L. NELSON, )  
)  
Plaintiff/Counterdefendant, )

vs. )

LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )  
)  
Defendant/Counterclaimants. )

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )

Crossclaimant, )

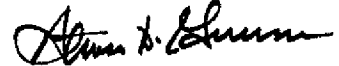
vs. )

LYNITA SUE NELSON, )

Crossdefendant. )

CASE NO.: D-09-411537-D

DEPT. NO.: O  
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CLERK OF THE COURT

**DECREE OF DIVORCE**

This matter having come before this Honorable Court for a Non-Jury Trial in October 2010, November 2010, July 2012 and August 2012, with Plaintiff, Eric Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson, appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq., and Josef Karacsonyi, Esq., and Counter-defendant, Cross-defendant, Third Party Defendant Lana Martin, Distribution

**FRANK R SULLIVAN**  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

1  
2 Trustee of the Eric L. Nelson Nevada Trust, being represented by Mark Solomon, Esq., and  
3 Jeffrey Luszeck, Esq., good cause being shown:

4 THE COURT HEREBY FINDS that it has jurisdiction in the premises, both as to the  
5 subject matter thereof and as the parties thereto, pursuant to NRS 125.010 et seq.

6  
7 THE COURT FURTHER FINDS the Eric Nelson, Plaintiff, has been, and is now, an  
8 actual and bona fide resident of the County of Clark, State of Nevada, and has been actually  
9 domiciled therein for more than six (6) weeks immediately preceding to the commencement of  
10 this action.

11 THE COURT FURTHER FINDS that the parties were married September 17, 1983.

12 THE COURT FURTHER FINDS that 5 children were born the issue of this marriage;  
13 two of which are minors, namely, Garrett Nelson born on September 13, 1994, and Carli  
14 Nelson born on October 17, 1997; and to the best of her knowledge, Lynita Nelson, is not now  
15 pregnant.  
16

17 THE COURT FURTHER FINDS that the Plaintiff filed for divorce on May 6, 2009.

18 THE COURT FURTHER FINDS that the parties entered into a Stipulated Parenting  
19 Agreement as to the care and custody of said minor children on October 15, 2008, which was  
20 affirmed, ratified and made an Order of this Court on February 8, 2010.

21 THE COURT FURTHER FINDS that on August 9, 2011, both parties stipulated and  
22 agreed that the Eric L. Nelson Nevada (ELN) Trust should be joined as a necessary party to this  
23 matter.  
24

25 THE COURT FURTHER FINDS that Eric Nelson is entitled to an absolute Decree of  
26 Divorce on the grounds of incompatibility.  
27  
28

1  
2 THE COURT FURTHER FINDS that during the couple's nearly thirty (30) years of  
3 marriage, the parties have amassed a substantial amount of wealth.

4 THE COURT FURTHER FINDS that the parties entered into a Separate Property  
5 Agreement on July 13, 1993, with Mr. Nelson being advised and counseled with respect to the  
6 legal effects of the Agreement by attorney Jeffrey L. Burr and Mrs. Nelson being advised and  
7 counseled as its legal effects by attorney Richard Koch.  
8

9 THE COURT FURTHER FINDS that, pursuant to NRS 123.080 and NRS 123.220(1),  
10 the Separate Property Agreement entered into by the parties on July 13, 1993, was a valid  
11 Agreement.

12 THE COURT FURTHER FINDS that Schedule A of the Separate Property Agreement  
13 contemporaneously established the Eric L. Nelson Separate Property Trust and named Mr.  
14 Nelson as trustor. The trust included interest in:  
15

16 A First Interstate Bank account;  
17 A Bank of America account;  
18 4021 Eat Portland Street, Phoenix, Arizona;  
19 304 Ramsey Street, Las Vegas, Nevada;  
20 Twelve (12) acres located on Cheyenne Avenue, Las Vegas, Nevada;  
21 Ten (10) acres located on Cheyenne Avenue, Las Vegas, Nevada;  
22 1098 Evergreen Street, Phoenix, Arizona;  
23 Forty nine (49) lots, notes and vacant land in Queens Creek, Arizona;  
24 Forty one (41) lots, notes and vacant land in Sunland Park, New Mexico;  
25 Sport of Kings located at 365 Convention Center Drive, Las Vegas, Nevada;  
26 A 1988 Mercedes;  
27 Forty percent (40%) interest in Eric Nelson Auctioneering, 4285 South Polaris Avenue,  
28 Las Vegas, Nevada;  
One hundred percent (100%) interest in Casino Gaming International, LTD., 4285  
South Polaris Avenue, Las Vegas, Nevada; and  
Twenty five percent (25%) interest in Polk Landing.

THE COURT FURTHER FINDS that Schedule B of the Separate Property Agreement  
contemporaneously established the Lynita S. Nelson Separate Property Trust and named Mrs.  
Nelson as trustor. The trust included interest in:

1  
2 A Continental National Bank account;  
3 Six (6) Silver State Schools Federal Credit Union accounts;  
4 An American Bank of Commerce account;  
5 7065 Palmyra Avenue, Las Vegas, Nevada;  
6 8558 East Indian School Road, Number J, Scottsdale, Arizona;  
7 Ten (10) acres on West Flamingo Road, Las Vegas, Nevada;  
8 1167 Pine Ridge Drive, Panguitch, Utah;  
9 749 West Main Street, Mesa, Arizona;  
10 1618 East Bell Road, Phoenix, Arizona;  
11 727 Hartford Avenue, Number 178, Phoenix, Arizona;  
12 4285 Polaris Avenue, Las Vegas, Nevada;  
13 Metropolitan Mortgage & Security Co., Inc., West 929 Sprague Avenue Spokane,  
14 Washington;  
15 Apirade Bumpus, 5215 South 39th Street, Phoenix, Arizona;  
16 Pool Hall Sycamore, 749 West Main Street, Mesa, Arizona;  
17 A Beneficial Life Insurance policy; and  
18 A 1992 van

19 THE COURT FURTHER FINDS that on May 30, 2001, the Eric L. Nelson Nevada  
20 Trust (hereinafter "ELN Trust") was created under the advice and counsel of Jeffrey L. Burr,  
21 Esq., who prepared the trust documents.

22 THE COURT FURTHER FINDS that the ELN Trust was established as a self-settled  
23 spendthrift trust in accordance with NRS 166.020.<sup>1</sup>

24 THE COURT FURTHER FINDS that all of the assets and interest held by the Eric L.  
25 Nelson Separate Property Trust were transferred or assigned to the ELN Trust.

26 THE COURT FURTHER FINDS that on May 30, 2001, the Lynita S. Nelson Nevada  
27 Trust (hereinafter "LSN Trust") was created under the advice and counsel of Jeffrey L. Burr,  
28 Esq., who prepared the trust documents.

THE COURT FURTHER FINDS that the LSN Trust was established as a self-settled  
spendthrift trust in accordance with NRS 166.020.

<sup>1</sup> NRS 166.020 defines a spendthrift trust as "at trust in which by the terms thereof a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed. See, NRS 166.020.

1  
2 THE COURT FURTHER FINDS that all of the assets and interest held by the Lynita S.  
3 Nelson Separate Property Trust were transferred or assigned to the LSN Trust.

4 THE COURT FURTHER FINDS that while the parties may differ as to the reason why  
5 the trusts were created, the effect of a spendthrift trust is to prevent creditors from reaching the  
6 principle or corpus of the trust unless said creditor is known at the time in which an asset is  
7 transferred to the trust and the creditor brings an action no more than two years after the  
8 transfer occurs or no more than 6 months after the creditor discovers or reasonably should have  
9 discovered the transfer, whichever occurs latest.<sup>2</sup>

10  
11 THE COURT FURTHER FINDS that while spendthrift trusts have been utilized for  
12 decades; Nevada is one of the few states that recognize self-settled spendthrift trusts. The  
13 legislature approved the creation of spendthrift trusts in 1999 and it is certainly not the purpose  
14 of this Court to challenge the merits of spendthrift trusts.

15  
16 THE COURT FURTHER FINDS that the testimony of the parties clearly established  
17 that the intent of creating the spendthrift trusts was to provide maximum protection from  
18 creditors and was not intended to be a property settlement in the event that the parties divorced.

19 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were  
20 significant transfers of property and loans primarily from the LSN Trust to the ELN Trust. Such  
21 evidence corroborates Mrs. Nelson's testimony that the purpose of the two Trusts was to allow  
22 for the ELN Trust to invest in gaming and other risky ventures, while the LSN Trust would  
23 maintain the unencumbered assets free and clear from the reach of creditors in order to provide  
24 the family with stable and reliable support should the risky ventures fail.  
25

26 ...  
27  
28

---

<sup>2</sup> NRS 166.170(1)

1  
2 THE COURT FURTHER FINDS that, due to Mrs. Nelson's complete faith in and total  
3 support of her husband, Mr. Nelson had unfettered access to the LSN Trust to regularly transfer  
4 assets from the LSN Trust to the ELN Trust to infuse cash and other assets to fund its gaming  
5 and other risky investment ventures.  
6

7 THE COURT FURTHER FINDS that on numerous occasions during these proceedings,  
8 Mr. Nelson indicated that the ELN Trust and LSN Trust both held assets that were indeed  
9 considered by the parties to be community property.

10 THE COURT FURTHER FINDS that during the first phase of trial held in August  
11 2010, Mr. Nelson was questioned ad nauseam by both his former attorney, Mr. James  
12 Jimmerson, and by Mrs. Nelson's attorney, Mr. Dickerson, about his role as the primary wage  
13 earner for the family.  
14

15 THE COURT FURTHER FINDS that on direct examination, when asked what he had  
16 done to earn a living following obtaining his real estate license in 1990, Mr. Nelson's lengthy  
17 response included:

18 "So that's my primary focus is managing all my assets and Lynita's assets so we  
19 manage our *community assets*, and that's where our primary revenue is driven  
(emphasis added)."  
20

21 THE COURT FURTHER FINDS that upon further direct examination, when asked why  
22 the ELN and LSN Trusts were created, Mr. Nelson responded:

23 "In the event that something happened to me, I didn't have to carry life insurance. I  
24 would put safe assets into her property in her assets for her and the kids. My assets  
25 were much more volatile, much more -- I would say daring; casino properties, zoning  
26 properties, partners properties, so we maintained this and these — all these trusts  
27 were designed and set up by Jeff Burr. Jeff Burr is an excellent attorney and so I felt  
28 comfortable. This protected Lynita and her children and it gave me the flexibility  
because I do a lot of tax scenarios, to protect her and the kids and me and **we could  
level off yearly by putting assets in her trust or my trust depending on the  
transaction and protect -- the basic bottom line is to protect her (emphasis added).**"

1  
2 THE COURT FURTHER FINDS that upon further examination by Attorney Jimmerson  
3 inquiring about the status of a rental property located on Lindell Road, Mr. Nelson's response  
4 was:

5 "Well, we don't pay rent because we're managing all the assets, so I don't pay  
6 myself to pay Lynita because we — it's all *community* (emphasis added)."

7 THE COURT FURTHER FINDS that during cross-examination on October 19, 2010,  
8 Mr. Nelson was questioned as to why he closed his auctioning company and his response was:

9 "I was under water these businesses. And for business purposes and to -- to set -- to  
10 save as much in our *community* estate, I was forced to lay people off, generate cash flow so  
11 Lynita would have the cash flow from these properties in the future (emphasis added)."

12 THE COURT FURTHER FINDS that throughout Mr. Nelson's aforementioned  
13 testimony, he either expressly stated that his actions were intended to benefit his and Mrs.  
14 Nelson's community estate or made reference to the community.

15 THE COURT FURTHER FINDS that it heard testimony from Mr. Nelson over several  
16 days during the months of August 2010, September 2010 and October 2010, in which Mr.  
17 Nelson's testimony clearly categorized the ELN Trust and LSN Trust's property as community  
18 property.  
19

20 THE COURT FURTHER FINDS that Mr. Nelson's sworn testimony corroborates Mrs.  
21 Nelson's claim that Mr. Nelson informed her throughout the marriage that the assets  
22 accumulated in both the ELN Trust and LSN Trust were for the betterment of their family unit,  
23 and, thus, the community.

24 THE COURT FURTHER FINDS Attorney Burr's testimony corroborated the fact that  
25 the purpose of creating the spendthrift trusts was to "supercharge" the protection afforded  
26 against creditors and was not intended to be a property settlement.  
27

28 ...

1  
2 THE COURT FURTHER FINDS that Attorney Burr testified that he discussed and  
3 suggested that the Nelsons periodically transfer properties between the two trusts to ensure that  
4 their respective values remained equal.

5 THE COURT FURTHER FINDS that Attorney Burr further testified that the values of  
6 the respective trust could be equalized through gifting and even created a gifting form for the  
7 parties to use to make gifts between the trusts.

8 THE COURT FURTHER FINDS that the Minutes from a Trust Meeting, dated  
9 November 20, 2004, reflected that all Mississippi property and Las Vegas property owned by  
10 the ELN Trust was transferred to the LSN trust as final payment on the 2002 loans from the  
11 LSN to the ELN Trust and to "*level off the trusts*" (emphasis added).  
12

13 THE COURT FURTHER FINDS that the evidence adduced at trial clearly established  
14 the parties intended to maintain an equitable allocation of the assets between the ELN Trust and  
15 the LSN Trust.  
16

17 *Fiduciary Duty*

18 THE COURT FURTHER FINDS that the Nevada Supreme Court has articulated that a  
19 fiduciary relationship exists between husbands and wives, and that includes a duty to "disclose  
20 pertinent assets and factors relating to those assets." *Williams v. Waldman*, 108 Nev. 466, 472  
21 (1992).

22 THE COURT FURTHER FINDS that Mr. Nelson owed a duty to his spouse, Mrs.  
23 Nelson, to disclose all pertinent factors relating to the numerous transfers of the assets from the  
24 LSN Trust to the ELN Trust.  
25

26 ...

27 ...

1  
2 THE COURT FURTHER FINDS that Mrs. Nelson credibly testified that on numerous  
3 occasions, Mr. Nelson requested that she sign documentation relating to the transfer of LSN  
4 Trust assets to the ELN Trust. Mrs. Nelson further stated that she rarely questioned Mr. Nelson  
5 regarding these matters for two reasons: (1) Mr. Nelson would become upset if she asked  
6 questions due to his controlling nature concerning business and property transactions; and (2)  
7 she trusted him as her husband and adviser.  
8

9 THE COURT FURTHER FINDS that Mr. Nelson's behavior during the course of these  
10 extended proceedings, as discussed in detail hereinafter, corroborates Mrs. Nelson's assertions  
11 that Mr. Nelson exercises unquestioned authority over property and other business ventures and  
12 loses control of his emotions when someone questions his authority.  
13

14 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson  
15 did not regularly discuss the factors relating to the numerous transfers of the assets from the  
16 LSN Trust to the ELN Trust with Mrs. Nelson, and, therefore, violated his fiduciary duty to his  
17 spouse.  
18

19 THE COURT FURTHER FINDS that NRS 163.554 defines a fiduciary as a trustee...or  
20 any other person, including an investment trust adviser, which is acting in a *fiduciary capacity*  
21 for any person, trust or estate. See, NRS 163.554 (emphasis added).  
22

23 THE COURT FURTHER FINDS that NRS 163.5557 defines an investment trust  
24 adviser as a person, appointed by an instrument, to act in regard to investment decisions. NRS  
25 163.5557 further states:  
26

27 2. An investment trust adviser may exercise the powers provided  
28 to the investment trust adviser in the instrument in the best interests of the  
trust. **The powers exercised by an investment trust adviser are at the  
sole discretion of the investment trust adviser and are binding on all other  
persons.** The powers granted to an investment trust adviser may include,  
without limitation, the power to:

- 1
- 2 (a) Direct the trustee with respect to the retention, purchase,
- 3 sale or encumbrance of trust property and the investment and
- 4 reinvestment of principal and income of the trust.
- 5 (b) Vote proxies for securities held in trust.
- 6 (c) Select one or more investment advisers, managers or counselors,
- 7 including the trustee, and delegate to such persons any of the powers
- 8 of the investment trust adviser.

9 See, NRS 163.5557 (emphasis added).

10 THE COURT FURTHER FINDS that Mr. Nelson continuously testified as to his role

11 as the investment trustee for both trusts, specifically testifying during cross examination on

12 September 1, 2010, as follows:

13 Q. Now you're the one that put title to those parcels

14 that we've talked about in the name of Dynasty, Bal Harbor,

15 Emerald Bay, Bay Harbor Beach Resorts and (indiscernible)

16 Financial Partnerships. Is that correct?

17 A. I believe so, yes.

18 Q. And you're the one that also put title in the name

19 of -- all the remaining lots in the name of LSN Nevada Trust.

20 Is that true?

21 A. Yes, sir.

22 THE COURT FURTHER FINDS that during his September 1<sup>st</sup> cross-examination, Mr.

23 Nelson also testified as to the assets located in Mississippi as follows:

24 Q. The height of the market was 18 months ago according

25 to your testimony?

26 A. No, no. But I'm just saying we could have -- the

27 this lawsuit's been pending for a while, sir. We did these

28 deeds mistake -- if you can -- if you reference back to it, it

shows -- shows Dynas -- it's my --

Q. Exhibit -- the Exhibit for the --

A. -- company. It shows Eric Nelson. That's my

company. We put them into Lynita's for community protection,

and she would not cooperate.

1  
2  
3 Q. You put them --

4 A. Yes, sir.

5 Q. -- into Lynita's?

6 A. Yes, sir --

7 Q. All right. Sir --

8 A. -- for *co -- unity wealth* (emphasis added).

9  
10 THE COURT FURTHER FINDS that while the LSN Trust documents expressly named  
11 Mrs. Nelson as investment trust adviser, the evidence clearly established that Mr. Nelson  
12 exercised a pattern of continuous, unchallenged investment and property-transfer decisions for  
13 both the ELN and the LSN Trusts, thereby illustrating that Mr. Nelson acted as the investment  
14 trust adviser of the LSN Trust from its inception.

15 THE COURT FURTHER FINDS that the testimony of both parties clearly shows that,  
16 pursuant to NRS 163.5557(2)(c), Mrs. Nelson delegated the duties of investment trustee to her  
17 husband, Mr. Nelson.

18  
19 THE COURT FURTHER FINDS that as the delegated investment trustee for the LSN  
20 Trust, Mr. Nelson acted in a fiduciary capacity for Mrs. Nelson.<sup>3</sup> Therefore, Mr. Nelson had a  
21 duty to "disclose pertinent assets and factors relating to those assets".<sup>4</sup>

22 THE COURT FURTHER FINDS that, despite serving as the delegated investment  
23 trustee for the LSN Trust, Mr. Nelson did not regularly discuss the pertinent factors relating to  
24 the transfer of the assets from the LSN Trust to the ELN Trust, and, as such, violated the  
25 fiduciary duty he owed to Mrs. Nelson and to the LSN Trust as the delegated investment trustee  
26 to the LSN Trust.  
27

28 <sup>3</sup> NRS 163.554.

<sup>4</sup> *Williams v. Waldman*, 108 Nev. 466, 472 (1992).

1  
2 THE COURT FURTHER FINDS that Mr. Nelson, in his dual role as a spouse and as  
3 the delegated investment trustee for the LSN Trust, violated the fiduciary duties owed to Mrs.  
4 Nelson and the LSN Trust.

5 *Constructive Trust*  
6

7 THE COURT FURTHER FINDS that Mr. Nelson's activities as the delegated  
8 investment trustee for the LSN Trust in which he transferred numerous properties and assets  
9 from the LSN Trust to the ELN Trust, unjustly resulted in the ELN Trust obtaining title to  
10 certain properties that the LSN Trust formerly held.

11 THE COURT FURTHER FINDS that a legal remedy available to rectify this unjust  
12 result is the Court's imposition of a constructive trust. The basic objective of a constructive  
13 trust is to recognize and protect an innocent party's property rights. Constructive trusts are  
14 grounded in the concept of equity. *Cummings v. Tinkle*, 91 Nev. 548, 550 (1975).  
15

16 THE COURT FURTHER FINDS that the Nevada Supreme Court has held that a  
17 constructive trust is proper when "(1) a confidential relationship exists between the parties; (2)  
18 retention of legal title by the holder thereof against another would be inequitable; and (3) the  
19 existence of such a trust is essential to the effectuation of justice." *Locken v. Locken*, 98 Nev.  
20 369, 372 (1982).  
21

22 THE COURT FURTHER FINDS that in *Locken*, the Nevada Supreme Court found that  
23 an oral agreement bound a son to convey land to his father, as the father was to make certain  
24 improvements to the land. The Court found that even though the father completed an affidavit  
25 claiming no interest in the land, this act did not preclude him from enforcing the oral  
26 agreement. *Id.*, at 373.  
27  
28

1  
2 THE COURT FURTHER FINDS that the *Locken* court found that the imposition of a  
3 constructive trust does not violate the statute of frauds as NRS 111.025 states:

4 1. No estate or interest in lands...nor any trust or power over or  
5 concerning lands, or in any manner relating thereto, shall be created,  
6 granted, assigned, surrendered or declared after December 2, 1861,  
7 unless by act or operation of law, or by deed or conveyance, in writing, subscribed by  
8 the party creating, granting, assigning, surrendering or  
9 declaring the same, or by the party's lawful agent thereunto authorized  
10 in writing.

11 2. Subsection 1 shall not be construed to affect in any manner the power  
12 of a testator in the disposition of the testator's real property by a last will  
13 and testament, **nor to prevent any trust from arising or being extinguished**  
14 **by implication or operation of law.**

15 See, NRS 111.025 (Emphasis added).

16 THE COURT FURTHER FINDS that NRS 111.025(2) creates an exception to the  
17 statute of frauds that allows for the creation of a constructive trust to remedy or prevent the  
18 type of injustice that the statute seeks to prevent.

19 THE COURT FURTHER FINDS that in this case, we clearly have a confidential  
20 relationship as the two parties were married at the time of the transfers. In addition, Mr. Nelson  
21 acted as the investment trustee for the LSN Trust, which effectively created another  
22 confidential relationship between him and Mrs. Nelson as she is the beneficiary of the LSN  
23 Trust.

24 THE COURT FURTHER FINDS that while Mr. Nelson argues that no confidential  
25 relationship existed between Mrs. Nelson and the ELN Trust, a confidential relationship clearly  
26 existed between Mrs. Nelson and Mr. Nelson, who, as the beneficiary of the ELN Trust,  
27 benefits greatly from the ELN Trust's acquisition and accumulation of properties.  
28

1  
2 THE COURT FURTHER FINDS that the ELN Trust's retention of title to properties  
3 that the LSN Trust previously held would be inequitable and would result in an unjust  
4 enrichment of the ELN Trust to the financial benefit of Mr. Nelson and to the financial  
5 detriment of the LSN Trust and Mrs. Nelson.

6 THE COURT FURTHER FINDS that Mrs. Nelson, as a faithful and supporting spouse  
7 of thirty years, had no reason to question Mr. Nelson regarding the true nature of the assets that  
8 he transferred from the LSN Trust to the ELN Trust.

9  
10 THE COURT FURTHER FINDS that Mr. Nelson argues that the imposition of a  
11 constructive trust is barred in this instance because Mrs. Nelson benefitted from the creation  
12 and implementation of the trust and cites the Nevada Supreme Court ruling in *DeLee v.*  
13 *Roggen*, to support his argument. 111 Nev. 1453 (1995).

14 THE COURT FURTHER FINDS that in *DeLee*, the party seeking the imposition of the  
15 constructive trust made no immediate demands because he knew that his debtors would lay  
16 claim to the property. The court found that a constructive trust was not warranted because the  
17 creation of the trust was not necessary to effectuate justice. *Id.*, at 1457.

18  
19 THE COURT FURTHER FINDS that unlike *DeLee*, Mrs. Nelson made no demand for  
20 the property because Mr. Nelson assured her that he managed the assets in the trusts for the  
21 benefit of the community. Consequently, Mrs. Nelson did not have notice that the LSN Trust  
22 should reclaim the property.

23 THE COURT FURTHER FINDS that while Mr. Nelson acted as the investment trustee  
24 for both the ELN and LSN Trust respectively, the properties never effectively left the  
25 community. Consequently, Mrs. Nelson never thought that she needed to recover the  
26 properties on behalf of the LSN Trust. Mrs. Nelson was not advised that she was not entitled to  
27  
28

1  
2 the benefit of the assets transferred from the LSN Trust to the ELN Trust under the direction of  
3 Mr. Nelson until the ELN Trust joined the case as a necessary party.

4 THE COURT FURTHER FINDS that allowing the ELN Trust to acquire property from  
5 the LSN Trust under the guise that these property transfers benefitted the community,  
6 effectively deprives Mrs. Nelson of the benefit of those assets as beneficiary under the LSN  
7 Trust, and will ultimately result in Mr. Nelson, as beneficiary of the ELN Trust, being unjustly  
8 enriched at the expense of Mrs. Nelson.

9  
10 THE COURT FURTHER FINDS that, as addressed in detail below, the Court will  
11 impose a constructive trust on the following assets: (1) 5220 East Russell Road Property; (2)  
12 3611 Lindell Road.

13 THE COURT FURTHER FINDS that as to the Russell Road property, according to the  
14 report prepared by Larry Bertsch, the court-appointed forensic accountant, Mr. Nelson, as the  
15 investment trustee for the LSN Trust, purchased the property at 5220 E. Russell Road on  
16 November 11, 1999, for \$855,945. Mr. Nelson's brother, Cal Nelson, made a down payment of  
17 \$20,000 and became a 50% owner of the Russell Road Property despite this paltry  
18 contribution.<sup>5</sup> Cal Nelson and Mrs. Nelson later formed CJE&L, LLC, which rented this  
19 property to Cal's Blue Water Marine. Shortly thereafter, CJE&L, LLC obtained a \$3,100,000  
20 loan for the purpose of constructing a building for Cal's Blue Water Marine.<sup>6</sup>

21  
22 THE COURT FURTHER FINDS that in 2004, Mrs. Nelson signed a guarantee on the  
23 flooring contract for Cal's Blue Water Marine. She subsequently withdrew her guarantee and  
24 the LSN Trust forfeited its interest in the property to Cal Nelson. While Mr. Nelson argues that  
25 the release of Mrs. Nelson as guarantor could be consideration, the flooring contract was never  
26

27  
28 <sup>5</sup> Mr. Nelson testified that Cal Nelson also assumed a \$160,000 liability arising from a transaction by Mr. Nelson involving a Las Vegas Casino.

<sup>6</sup> Defendant's Exhibit GGGGG

1  
2 produced at trial and no value was ever assigned as to Mrs. Nelson's liability. Furthermore, the  
3 Declaration of Value for Tax Purposes indicates that it was exempted from taxation due to  
4 being a "transfer without consideration for being transferred to or from a trust."<sup>7</sup> As such, the  
5 alleged consideration was never established and appears to be illusory, and, accordingly, the  
6 LSN Trust received no compensation from the Russell Road transaction.<sup>8</sup>

7  
8 THE COURT FURTHER FINDS that in February 2010, Mr. Nelson purchased a 65%  
9 interest in the Russell Road property, with Cal Nelson retaining a 35% interest in the property.

10 THE COURT FURTHER FINDS that on May 27, 2011, the Russell Road property was  
11 sold for \$6,500,000. As part of the sale, Mr. Nelson testified that the ELN Trust made a  
12 \$300,000 loan to the purchaser for improvements to the property, however, a first note/deed  
13 was placed in the name of Julie Brown in the amount \$300,000 for such property improvement  
14 loan. Due to the ambiguity as to who is entitled to repayment of the \$300,000 loan (ELN Trust  
15 or Julie Brown), the Court is not inclined at this time to include such loan into the calculation  
16 as to the ELN Trust's interest in the property.  
17

18 THE COURT FURTHER FINDS that a second note/deed was placed on the Russell  
19 Road property in the amount of \$295,000 to recapture all back rents and taxes.

20 THE COURT FURTHER FINDS that through a series of notes/deeds, the ELN Trust is  
21 currently entitled to 66.67% of the \$6,500,000 purchase price and 66.67% of the \$295,000  
22 note/deed for rents and taxes. Therefore, the ELN Trust and Mr. Nelson are entitled to  
23 proceeds in the amount of \$4,530,227 (\$4,333,550 + \$196,677) from the Russell Road property  
24 transaction.<sup>9</sup>  
25

26 ...  
27 <sup>7</sup> Defendant's Exhibit UUUU

28 <sup>8</sup> Id.

<sup>9</sup> Defendant's Exhibit GGGG.

1  
2 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for  
3 transferring its interest in Russell Road, under the advice and direction of Mr. Nelson, it would  
4 be inequitable to allow the ELN Trust to retain its full 66.67% interest in the property to the  
5 detriment of the LSN Trust. Therefore, the Court hereby imposes a constructive trust over half  
6 of the ELN Trust 66.67% ownership interest in the Russell Road property on behalf of the LSN  
7 Trust. As such, the LSN Trust is entitled to a 50% interest of the ELN Trust's 66.67%  
8 ownership interest, resulting in the LSN Trust effectively receiving an overall one-third interest  
9 in the Russell Road property with a value of \$2,265,113.50 ( $\$4,333,550 + \$196,677 \times 1/2$ ).  
10

11 THE COURT FURTHER FINDS that as to the 3611 Lindell property, on August 22,  
12 2001, the entire interest in the property was transferred to the LSN trust from Mrs. Nelson's  
13 1993 revocable trust.

14 THE COURT FURTHER FINDS that on March 22, 2007, a 50% interest in the Lindell  
15 property was transferred to the ELN Trust at the direction of Mr. Nelson without any  
16 compensation to the LSN Trust. Review of the Grant, Bargain, Sale Deed allegedly executed  
17 by Mrs. Nelson on said date clearly reflects a signature not consistent with Mrs. Nelson's  
18 signature when compared to the numerous documents signed by Mrs. Nelson and submitted to  
19 this Court. As such, the validity of the transfer of the 50% interest of the LSN Trust to the ELN  
20 Trust is seriously questioned.<sup>10</sup>  
21

22 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for  
23 the 50% interest being transferred to the ELN Trust was the transfer of the Mississippi property  
24 to the LSN, the court did not find such testimony credible as it appears that the transfer of the  
25 Mississippi property occurred in 2004, whereas, the Lindell transfer to the ELN Trust was in  
26 2007. In addition, the testimony was not clear as to which Mississippi properties were involved  
27

28 <sup>10</sup> Defendant's Exhibit PPPP.

1  
2 in the alleged transfer and no credible testimony as to the value of the Mississippi property was  
3 presented. Accordingly, any alleged consideration for the transfer of the 50% interest in the  
4 Lindell property from the LSN Trust to the ELN Trust is illusory.

5 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for  
6 transferring a 50% interest in the Lindell property to the ELN Trust, under the advice and  
7 direction of Mr. Nelson, it would inequitable to allow the ELN Trust to retain a 50% interest in  
8 the property.  
9

10 THE COURT FURTHER FINDS that the Court imposes a constructive trust over the  
11 ELN Trust's 50% interest in the Lindell property; therefore, the LSN Trust is entitled to 100%  
12 interest in the Lindell property, with an appraised value of \$1,145,000.

13 *Unjust Enrichment*

14 THE COURT FURTHER FINDS that to allow the ELN Trust to retain the benefits  
15 from the sale of the High Country Inn, which will be addressed hereinafter, to the detriment of  
16 the LSN Trust, would result in the unjust enrichment of the ELN Trust at the expense of the  
17 LSN Trust.  
18

19 THE COURT FURTHER FINDS that on January 11, 2000, the High Country Inn was  
20 initially purchased by Mrs. Nelson's Revocable 1993 Trust.<sup>11</sup> While multiple transfer deeds  
21 were executed with related parties (e.g. Grotta Financial Partnership, Frank Soris) at the  
22 direction of Mr. Nelson, the LSN Trust owned the High Country Inn. On January 18, 2007, Mr.  
23 Nelson, as investment trustee for both the ELN Trust and the LSN Trust, was the sole  
24 orchestrator of the transfer of the High Country Inn from the LSN Trust to the ELN Trust.  
25

26 ...

27 ...

28  

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<sup>11</sup> The Nelson Trust would later transfer its interest in the High Country Inn to the LSN Trust on 5/30/01.

1  
2 THE COURT FURTHER FINDS that on January 19, 2007, the ELN Trust sold the  
3 High Country Inn for \$1,240,000 to Wyoming Lodging, LLC, with the proceeds from the sale  
4 being placed directly into the bank account of ELN Trust,<sup>12</sup> without any compensation being  
5 paid to the LSN Trust.  
6

7 THE COURT FURTHER FINDS that in a fashion similar to the Russell Road  
8 transaction, the ELN Trust provided no consideration to the LSN Trust. Further, it is quite  
9 apparent that Mr. Nelson never intended to compensate the LSN Trust as evidenced by Mr.  
10 Nelson's 2007 Tax Return Form, which listed both the sale of "Wyoming Hotel" (High  
11 Country Inn) and "Wyoming OTB" (Off Track Betting) on his Form 1040 Schedule D.<sup>13</sup>  
12

13 THE COURT FURTHER FINDS that allowing the ELN Trust to retain the benefit of  
14 the proceeds from the sale of the High Country Inn would be unjust, and, accordingly, the LSN  
15 Trust is entitled to just compensation. As such, an amount equal to the proceeds from the sale,  
16 or in the alternative, property with comparable value, should be transferred to the LSN Trust to  
17 avoid the ELN Trust from being unjustly enriched.

18 THE COURT FURTHER FINDS that Mr. Nelson created Banone, LLC on November  
19 15, 2007, the same year that he sold High Country Inn.<sup>14</sup> The Operating Agreement lists the  
20 ELN Trust as the Initial Sole Member of the company, meaning that Banone, LLC is an asset  
21 of the ELN Trust and that all benefits received from the managing of this company are  
22 conferred to Mr. Nelson, as beneficiary of the ELN Trust.  
23  
24  
25  
26

27 <sup>12</sup> On January 24, 2007, Uinta Title & Insurance wired proceeds in the total amount of \$1,947,153.37 (\$1,240,000  
for High Country Inn and \$760,000 for the Off Track Betting Rights) to the ELN Trust's bank account.

28 <sup>13</sup> Defendant's Exhibit NNNN.

<sup>14</sup> Plaintiff's Exhibit 10K.

1  
2 THE COURT FURTHER FINDS that Banone, LLC, currently holds seventeen  
3 Nevada properties worth \$1,184,236.<sup>15</sup>

4 THE COURT FURTHER FINDS that equity and justice demands that the LSN Trust  
5 receive just compensation in the amount of \$1,200,000 for the sale of the High Country Inn in  
6 order to avoid the ELN Trust from being unjustly enriched, and, therefore, the LSN Trust  
7 should be awarded the Banone, LLC, properties held by ELN Trust, with a comparable value of  
8 \$1,184,236.  
9

10 THE COURT FURTHER FINDS that there were additional transfers from the LSN  
11 Trust to the ELN Trust, without just compensation, which financially benefitted the ELN Trust  
12 to the detriment of the LSN Trust, specifically regarding the Tierra del Sol property,  
13 Tropicana/Albertson property and the Brianhead cabin.  
14

15 THE COURT FURTHER FINDS that as to the Tierra del Sol property, the entire  
16 interest in the property was initially held in Mrs. Nelson's Revocable Trust and was  
17 subsequently transferred to the LSN Trust on or about October 18, 2001.

18 THE COURT FURTHER FINDS that the Tierra del Sol property was sold in August 5,  
19 2005, for \$4,800,000. Out of the proceeds from the first installment payment, Mr. Nelson had a  
20 check issued from the LSN Trust account in the amount of \$677,717.48 in payment of a line of  
21 credit incurred by Mr. Nelson against the Palmyra residence, which was solely owned by the  
22 LSN Trust. From the proceeds for the second installment payment, the ELN Trust received  
23 proceeds in the amount of \$1,460,190.58. As such, the ELN Trust received proceeds from the  
24 sale of the Tierra del Sol property despite having no ownership interest in the property.  
25

26 ...

27 ...

28  

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<sup>15</sup> Defendant's Exhibit GGGGG.

1  
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that the ELN Trust  
3 paid federal taxes in the amount of \$509,400 and Arizona taxes in the amount \$139,240 for a  
4 total of \$648,640 on behalf of the LSN Trust from the proceeds received by the ELN Trust  
5 from the sale of the Tierra del Sol property, that would still leave over \$800,000 that the ELN  
6 Trust received despite having no ownership interest in the Tierra del Sol property.

7  
8 THE COURT FURTHER FINDS that as to the Tropicana/Albertson's property, the  
9 ELN Trust transferred a 50% interest in the property to the LSN Trust in November of 2004 in  
10 consideration of an \$850,000 loan to the ELN Trust from the LSN Trust.

11 THE COURT FURTHER FINDS that Minutes dated November 20, 2004, reflected that  
12 all Mississippi property and Las Vegas property owned by the ELN Trust was transferred to the  
13 LSN trust as final payment on the 2002 loans from the LSN to the ELN Trust and to "level off  
14 the trusts." It must be noted that in November of 2004 the only Las Vegas property owned by  
15 the ELN Trust was the Tropicana/Albertson property.

16  
17 THE COURT FURTHER FINDS that in 2007, Mr. Nelson had the LSN Trust deed  
18 back the Tropicana/Albertson property to the ELN Trust, without compensation, and then sold  
19 the property the same day, resulting in the ELN Trust receiving all the proceeds from the sale  
20 of the property in the amount of \$966,780.23.

21 THE COURT FURTHER FINDS that as to the Brianhead cabin, the entire interest was  
22 held by the LSN Trust.

23  
24 THE COURT FURTHER FINDS that on May 22, 2007, a 50% interest in the  
25 Brianhead cabin was transferred to the ELN Trust at the direction of Mr. Nelson without any  
26 compensation to the LSN Trust.

27 ...  
28

1  
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for  
3 the 50% interest in the Brianhead cabin being transferred to the ELN Trust was the transfer of  
4 the Mississippi property to the LSN, the court did not find such testimony credible as it appears  
5 that the transfer of the Mississippi property occurred in 2004, whereas, the Brianhead cabin  
6 transfer to the ELN Trust was in 2007. In addition, the testimony was not clear as to which  
7 Mississippi properties were involved in the alleged transfer and no credible testimony as to the  
8 value of the Mississippi property was presented. Accordingly, any alleged consideration for the  
9 transfer of the 50% interest in the Brianhead cabin property from the LSN Trust to the ELN  
10 Trust is illusory.

11  
12 THE COURT FURTHER FINDS that the transfers from the LSN Trust to the ELN  
13 Trust regarding the Tierra del Sol property, the Tropicana/Albertson property and the  
14 Brianhead cabin all financially benefitted the ELN Trust to the financial detriment of the LSN  
15 Trust.

16  
17 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were  
18 significant loans from the LSN Trust to the ELN Trust, specifically: \$172,293.80 loan in May  
19 of 2002; \$700,000 loan in October of 2003; \$250,000 loan in December of 2005 which resulted  
20 in a total amount of \$576,000 being borrowed by the ELN Trust from the LSN Trust in 2005.

21  
22 THE COURT FURTHER FINDS that while testimony was presented regarding  
23 repayments of the numerous loans via cash and property transfers, the Court was troubled by  
24 the fact that the loans were always going from the LSN Trust to the ELN Trust and further  
25 troubled by the fact that the evidence failed to satisfactorily establish that all of the loans were  
26 in fact paid in full.

1  
2 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson  
3 exhibited a course of conduct in which he had significant property transferred, including loans,  
4 from the LSN Trust to the ELN Trust which benefited the ELN Trust to the detriment of the  
5 LSN Trust, and, as such, justice and equity demands that the LSN Trust receive compensation  
6 to avoid such unjust enrichment on the part of the ELN Trust.  
7

8 *Credibility*

9 THE COURT FURTHER FINDS that during the first six days of trial held in 2010, Mr.  
10 Nelson repeatedly testified that the actions he took were on behalf of the community and that  
11 the ELN Trust and LSN Trust were part of the community.  
12

13 THE COURT FURTHER FINDS that during the last several weeks of trial in 2012, Mr.  
14 Nelson changed his testimony to reflect his new position that the ELN Trust and the LSN Trust  
15 were not part of the community and were the separate property of the respective trusts.

16 THE COURT FURTHER FINDS that Mr. Nelson failed to answer questions in a direct  
17 and forthright manner throughout the course of the proceedings.

18 THE COURT FURTHER FINDS that Mr. Nelson argued in the Motion to Dissolve  
19 Injunction requesting the release of \$1,568,000, which the Court had ordered be placed in a  
20 blocked trust account and enjoined from being released, that the ELN Trust "has an opportunity  
21 to purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00;  
22 however, the ELN will be unable to do so unless the Injunction is dissolved."  
23

24 THE COURT FURTHER FINDS that despite the Court's denial of the request to  
25 dissolve the injunction, the ELN Trust via Dynasty Development Group, LLC, completed the  
26 transaction and reacquired Wyoming Downs at a purchase price of \$440,000. The completion  
27  
28

1  
2 of the purchase, without the dissolution of the injunction, evinced that Mr. Nelson misstated the  
3 ELN Trust's financial position, or at the very least was less than truthful with this Court.

4 THE COURT FURTHER FINDS that it should be noted that in an attempt to  
5 circumvent this Court's injunction regarding the \$1,568,000, Mr. Nelson had a Bankruptcy  
6 Petition filed in the United States Bankruptcy Court, District of Nevada, on behalf of the  
7 Dynasty Development Group, LLC, requesting that the \$1,568,000 be deemed property of the  
8 Debtor's bankruptcy estate; however, the bankruptcy court found that this Court had exclusive  
9 jurisdiction over the \$1,568,000 and could make whatever disposition of the funds without  
10 regard to the Debtor's bankruptcy filing.

12 THE COURT FURTHER FINDS that based upon Mr. Nelson's change of testimony  
13 under oath, his repeated failure to answer questions in a direct and forthright manner, his less  
14 that candid testimony regarding the necessity of dissolving the injunction in order to purchase  
15 the Wyoming race track and RV park, and his attempt to circumvent the injunction issued by  
16 this Court clearly reflect that Mr. Nelson lacks credibility.

18 THE COURT FURTHER FINDS that United States Bankruptcy Judge, Neil P. Olack,  
19 of the Southern District of Mississippi, cited similar concerns as to Mr. Nelson's credibility  
20 during a bankruptcy proceeding held on June 24, 2011, regarding Dynasty Development  
21 Group, LLC. Specifically, Judge Olack noted that as a witness, Mr. Nelson simply lacked  
22 credibility in that he failed to provide direct answers to straight forward questions, which gave  
23 the clear impression that he was being less than forthcoming in his responses.<sup>16</sup>  
24

25  
26  
27  
28 <sup>16</sup> Defendant's Exhibit QQQQQ.

1  
2 THE COURT FURTHER FINDS that Bankruptcy Judge Olack found that the evidence  
3 showed that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing in  
4 three separate transfers, and, subsequently, dismissed the Bankruptcy Petition.<sup>17</sup>

5 THE COURT FURTHER FINDS that Mr. Nelson's behavior and conduct during the  
6 course of these proceedings has been deplorable. This Court has observed Mr. Nelson angrily  
7 bursting from the courtroom following hearings.

8 THE COURT FURTHER FINDS that Mr. Nelson has repeatedly exhibited  
9 inappropriate conduct towards opposing counsel, Mr. Dickerson, including, cursing at him,  
10 leaving vulgar voice messages on his office phone and challenging him to a fight in the parking  
11 lot of his office.

12 THE COURT FURTHER FINDS that Mr. Nelson's deplorable behavior also included  
13 an open and deliberate violation of the Joint Preliminary Injunction that has been in place since  
14 May 18, 2009. On 12/28/2009, Mr. Nelson purchased the Bella Kathryn property and  
15 subsequently purchased the adjoining lot on 8/11/2010. Currently, with improvements to the  
16 properties factored in, a total of \$1,839,495 has been spent on the Bella Kathryn property.

17 THE COURT FURTHER FINDS that Mr. Nelson was living in the Harbor Hills  
18 residence upon his separation from Mrs. Nelson and could have remained there indefinitely  
19 pending the conclusion of these proceedings, however, he chose to purchase the Bella Kathryn  
20 residence in violation of the JPI simply because he wanted a residence comparable to the  
21 marital residence located on Palmyra.  
22  
23  
24

25 ...

26 ...

27  
28 <sup>17</sup> Defendant's Exhibit QQQQQ.

1  
2 THE COURT FURTHER FINDS that due to Mr. Nelson's willful and deliberate  
3 violation of the JPI, the Bella Kathryn property will be valued at its "costs" in the amount of  
4 \$1,839,495 and not at its appraised value of \$925,000 as a sanction for Mr. Nelson's  
5 contemptuous behavior.

6  
7 THE COURT FURTHER FINDS that as to Mr. Daniel Gerety, who testified as an  
8 expert witness on behalf of the ELN Trust and Mr. Nelson, he based his report solely on  
9 information and documentation provided to him by Mr. Nelson. It appears that Mr. Gerety  
10 made no effort to engage Mrs. Nelson or her counsel in the process. In the Understanding of  
11 Facts section of his report, Mr. Gerety repeatedly used the phrases "I have been told" or "I am  
12 advised".<sup>18</sup> Since Mr. Gerety considered statements from Mr. Nelson and others who were in  
13 support of Mr. Nelson, an impartial protocol would dictate that he obtain statements from Mrs.  
14 Nelson and her counsel in order to have a full and complete framework to fairly address the  
15 issues at hand.

16  
17 THE COURT FURTHER FINDS that Mr. Gerety has maintained a financially  
18 beneficial relationship with Mr. Nelson dating back to 1998. This relationship, which has netted  
19 Mr. Gerety many thousands of dollars in the past and is likely to continue to do so in the future,  
20 calls in question his impartiality.

21  
22 THE COURT FURTHER FINDS that while Mr. Gerety submitted documentation  
23 allegedly outlining every transaction made by the ELN Trust from its inception through  
24 September 2011, and "tracing" the source of funds used to establish Banone, LLC, this Court  
25 found that Mr. Gerety's testimony was not reliable, and, as such, the Court found it to be of  
26 little probative value.

27  
28  

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<sup>18</sup> Intervenor's Exhibit 168.

1  
2 THE COURT FURTHER FINDS that as to Rochelle McGowan, she has had an  
3 employment relationship with Mr. Nelson dating back to 2001, and was the person primarily  
4 responsible for regularly notarizing various documents executed by Mr. and Mrs. Nelson on  
5 behalf of the ELN Trust and LSN Trust, respectively.

6 THE COURT FURTHER FINDS that it was the regular practice for Mr. Nelson to  
7 bring documents home for Mrs. Nelson's execution and to return the documents the following  
8 day to be notarized by Ms. McGowan.

9  
10 THE COURT FURTHER FINDS that the testimony of Ms. McGowan indicating that  
11 she would contact Mrs. Nelson prior to the notarization of her signature is not credible as the  
12 Court finds it difficult to believe that Ms. McGowan would actually contact Mrs. Nelson  
13 directly every time prior to notarizing the documents.

14 *Lack of Trust Formalities*

15 THE COURT FURTHER FINDS that the formalities outlined within the ELN Trust and  
16 the LSN Trust were not sufficiently and consistently followed. Article eleven, section 11.3, of  
17 both trusts provides that Attorney Burr, as Trust Consultant, shall have the right to remove any  
18 trustee, with the exception of Mr. Nelson and Mrs. Nelson, provided that he gives the current  
19 trustee ten days written notice of their removal.  
20

21 THE COURT FURTHER FINDS that Attorney Burr testified that on February 22,  
22 2007, at Mr. Nelson's request, he removed Mr. Nelson's employee, Lana Martin, as  
23 Distribution Trustee of both the ELN Trust and the LSN Trust and appointed Mr. Nelson's  
24 sister, Nola Harber, as the new Distribution Trustee for both trusts. Attorney Burr further  
25 testified that he did not provide Ms. Martin with ten days notice as specified in the trusts  
26 documents. In June 2011, at Mr. Nelson's request, Attorney Burr once again replaced the  
27  
28

1  
2 Distribution Trustee for the ELN Trust, without providing ten days notice, by replacing Nola  
3 Harber with Lana Martin.

4 THE COURT FURTHER FINDS that the ELN Trust and LSN Trust documents require  
5 that a meeting of the majority of the trustees be held prior to any distribution of trust income or  
6 principal. During the meetings, the trustees must discuss the advisability of making  
7 distributions to the ELN Trust Trustor, Mr. Nelson, and the LSN Trust Trustor, Mrs. Nelson. At  
8 that time, a vote must take place and the Distribution Trustee must provide an affirmative vote.  
9

10 THE COURT FURTHER FINDS that the testimony of Lana Martin and Nola Harber  
11 indicate that neither one of them ever entered a negative vote in regards to distributions to Mr.  
12 Nelson or Mrs. Nelson. The testimony also reflected that neither one of them ever advised Mr.  
13 Nelson or Mrs. Nelson on the feasibility of making such distributions.  
14

15 THE COURT FURTHER FINDS that while Ms. Martin and Ms. Harber testified that  
16 they had the authority to approve or deny the distributions to Mr. Nelson under the ELN Trust  
17 and to Mrs. Nelson under the LSN Trust, that despite literally hundreds of distributions  
18 requests, they never denied even a single distribution request. Therefore, Ms. Martin and Ms.  
19 Harber were no more than a "rubber stamp" for Mr. Nelson's directions as to distributions to  
20 Mr. Nelson and Mrs. Nelson.  
21

22 THE COURT FURTHER FINDS that while the ELN Trust produced multiple Minutes  
23 of alleged meetings; this Court seriously questions the authenticity of the submitted  
24 documentation. Specifically, several of the Minutes were unsigned, the authenticity of the  
25 signatures reflected on some of the Minutes were questionable, and several of the Minutes  
26 reflected that the meetings were held at the office of Attorney Burr while the testimony clearly  
27 established that no such meetings ever occurred at his law office.  
28

1  
2 THE COURT FURTHER FINDS that Daniel Gerety testified that he had to make  
3 numerous adjustments to correct bookkeeping and accounting errors regarding the two trusts by  
4 utilizing the entries "Due To" and "Due From" to correctly reflect the assets in each trust.

5 THE COURT FURTHER FINDS that the numerous bookkeeping and accounting  
6 errors, in conjunction with the corresponding need to correct the entries to accurately reflect the  
7 assets in each trust, raises serious questions as to whether the assets of each trust were truly  
8 being separately maintained and managed.

9  
10 THE COURT FURTHER FINDS that the lack of formalities further emphasizes the  
11 amount of control that Mr. Nelson exerted over both trusts and that he did indeed manage both  
12 trust for the benefit of the community.

13 THE COURT FURTHER FINDS that while the Court could invalidate both Trusts  
14 based upon the lack of Trust formalities, this Court is not inclined to do so since invalidation of  
15 the Trusts could have serious implications for both parties in that it could expose the assets to  
16 the claims of creditors, thereby, defeating the intent of the parties to "supercharge" the  
17 protection of the assets from creditors.

18  
19 *Liabilities*

20 THE COURT FURTHER FINDS that while Mr. Nelson argued that he and the ELN  
21 Trust were subject to numerous liabilities, this Court did not find any documented evidence to  
22 support such claims except for the encumbrance attached to the newly reacquired Wyoming  
23 Downs property.  
24

25 ...

26 ...

1  
2 THE COURT FURTHER FINDS that Mr. Bertsch's report addresses several  
3 unsupported liabilities alleged by Mr. Nelson. Specifically, Mr. Nelson reported a contingent  
4 liability attached to the property located in the Mississippi Bay, however, no value was given to  
5 the liability.<sup>19</sup>  
6

7 THE COURT FURTHER FINDS that the Bertsch report indicated that several of the  
8 liabilities were actually options held by subsidiaries that Mr. Nelson owns or options held by  
9 relatives of Mr. Nelson, and, as such, were not true liabilities.<sup>20</sup>

10 THE COURT FURTHER FINDS that while Mr. Nelson represented that a \$3,000,000  
11 lawsuit was threatened by a third-party in regards to a transaction involving the Hideaway  
12 Casino, no evidence was submitted to the Court that any such lawsuit had in fact been filed.

13 THE COURT FURTHER FINDS that the only verified liability is the loan attached to  
14 Wyoming Downs. As mentioned above, Mr. Nelson, via Dynasty Development Group,  
15 purchased Wyoming Downs in December 2011 for \$440,000 and subsequently obtained a loan  
16 against the property.  
17

18 THE COURT FURTHER FINDS that outside of the encumbrance attached to the  
19 Wyoming Downs property, the liabilities alleged by Mr. Nelson have not been established as  
20 true liabilities and are based on mere speculations and threats.

21 *Community Waste*  
22

23 THE COURT FURTHER FINDS that the Nevada Supreme Court case of *Lofgren v.*  
24 *Lofgren* addressed community waste and found that the husband wasted community funds by  
25 making transfers/payments to family members, using the funds to improve the husband's home  
26 and using the funds to furnish his new home. *Lofgren v. Lofgren*, 112 Nev. 1282, 1284 (1996).  
27

28 <sup>19</sup> Defendant's Exhibit GGGGG.

<sup>20</sup> *Id.*

1  
2 THE COURT FURTHER FINDS that evidence was adduced at trial that the transfers to  
3 Mr. Nelson's family members were to compensate them for various services rendered and for  
4 joint-investment purposes, and while some of the family transfers were indeed questionable,  
5 Mr. Bertsch, the forensic accountant, testified that 1099s were provided to document income  
6 paid and loan repayments to Mr. Nelson's family members.<sup>21</sup>  
7

8 THE COURT FURTHER FINDS that transfers to Mr. Nelson's family members appear  
9 to have been part of Mr. Nelson's regular business practices during the course of the marriage  
10 and that Mrs. Nelson has always been aware of this practice and never questioned such  
11 transfers prior to the initiation of these proceedings.

12 THE COURT FURTHER FINDS that Mrs. Nelson failed to establish that the transfers  
13 to Mr. Nelson's family members constituted waste upon the community estate.  
14

15 THE COURT FURTHER FINDS that as to Mr. Nelson's purchase, improvement and  
16 furnishing of the Bella Kathryn residence via the ELN Trust, the ELN Trust and Mr. Nelson are  
17 being sanctioned by this Court by valuing such property at "costs" in the amount of \$1,839,495  
18 instead of at its appraised value of \$925,000, and, accordingly, it would be unjust for this Court  
19 to further consider the Bella Kathryn property under a claim of community waste.

20 *Child Support*

21 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to child support arrears  
22 pursuant to NRS 125B.030 which provides for the physical custodian of the children to recover  
23 child support from the noncustodial parent.  
24  
25  
26  
27

28 <sup>21</sup> Mr. Bertsch did not confirm whether or not the 1099s were filed with the IRS as that was not within the scope of his assigned duties.

1  
2 THE COURT FURTHER FINDS that the parties separated in September of 2008 when  
3 Mr. Nelson permanently left the marital residence, and, therefore, Mrs. Nelson is entitled to  
4 child support payments commencing in October 2008.

5 THE COURT FURTHER FINDS that Mr. Nelson's monthly earnings throughout the  
6 course of these extended proceedings exceeded the statutory presumptive maximum income  
7 range of \$14,816 and places his monthly child support obligation at the presumptive maximum  
8 amount which has varied from year to year.

9  
10 THE COURT FURTHER FINDS that Mr. Nelson's child support obligation  
11 commencing on October 1, 2008 through May 31, 2013, inclusive, is as follows:

12 October 1, 2008 - June 30, 2009 = [(2 children x \$968) x 9 months] = \$17,424  
13 July 1, 2009 - June 30, 2010 = [(2 children x \$969) x 12 months] = \$23,256  
14 July 1, 2010 - June 30, 2011 = [(2 children x \$995) x 12 months] = \$23,880  
15 July 1, 2011 - June 30, 2012 = [(2 children x \$1010) x 12 months] = \$24,240  
16 July 1, 2012 - May 31, 2013 = [(2 children x \$1040) x 11 months] = \$22,880  
17 **Total = \$111,680**

18 THE COURT FURTHER FINDS that Mr. Bertsch's report indicates that Mr. Nelson  
19 has spent monies totaling \$71,716 on the minor children since 2009, to wit:

20 2009: Carli = \$14,000; Garrett = \$5,270;  
21 2010: Carli = \$9,850; Garrett = \$29,539;  
22 2011: Carli = \$8,630; Garrett = \$4,427  
23 **Total = \$71,716**

1  
2 THE COURT FURTHER FINDS that NRS 125B.080(9) describes the factors that the  
3 Court must consider when adjusting a child support obligation. The factors to consider are:

- 4 (a) The cost of health insurance;  
5 (b) The cost of child care;  
6 (c) Any special educational needs of the child;  
7 (d) The age of the child;  
8 (e) The legal responsibility of the parents for the support of others;  
9 (f) The value of services contributed by either parent;  
10 (g) Any public assistance paid to support the child;  
11 (h) Any expenses reasonably related to the mother's pregnancy and confinement;  
12 (i) The cost of transportation of the child to and from visitation if the custodial parent  
13 moved with the child from the jurisdiction of the court which ordered the support  
14 and the noncustodial parent remained;  
15 (j) The amount of time the child spends with each parent;  
16 (k) Any other necessary expenses for the benefit of the child; and  
17 (l) The relative income of both parents.

18 THE COURT FURTHER FINDS that, while the information provided to the Court does  
19 not itemize the exact nature of the expenditures by Mr. Nelson on behalf of the children, NRS  
20 125B.080(9)(k) does provide for a deviation for any other necessary expenses for the benefit of  
21 the child.

22 THE COURT FURTHER FINDS that considering the fact that \$71,716 is a relatively  
23 large sum of money, it would appear that fairness and equity demands that Mr. Nelson be given  
24 some credit for the payments he made on behalf of the children. Therefore, the Court is inclined  
25 to give Mr. Nelson credit for \$23,905 (one-third of the payments made on behalf of the  
26 children), resulting in child support arrears in the amount of \$87,775.

27 THE COURT FURTHER FINDS that, while Mr. Nelson did spend a rather significant  
28 amount of monies on the children dating back to 2009, Mr. Nelson did not provide any monies  
whatsoever to Mrs. Nelson in support of the minor children, and, as such, crediting Mr. Nelson  
with only one-third of such payments on behalf of the children seems quite fair and reasonable.

1  
2 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to current child support in  
3 the amount of \$1,040 a month per child commencing June 1, 2013 through June 30, 2013 for a  
4 monthly total of \$2,080.

5 THE COURT FURTHER FINDS that subject minor, Garrett, is 18 years old and will be  
6 graduating from high school in June of 2013, and, as such, Mr. Nelson's child support  
7 obligation as to Garrett ends on June 30, 2013.

8 THE COURT FURTHER FINDS that beginning July 1, 2013, Mr. Nelson's child  
9 support obligation as to Carli will be \$1,058 per month.

10  
11 *Spousal Support*

12 THE COURT FURTHER FINDS that NRS 125.150 provides as follows:

13 1. In granting a divorce, the court:

- 14 (a) May award such alimony to the wife or to the husband, in a specified principal sum or as  
15 specified periodic payments, as appears just and equitable; and  
16 (b) Shall, to the extent practicable, make an equal disposition of the community property of the  
17 parties, except that the court may make an unequal disposition of the community property in  
18 such proportions as it deems just if the court finds a compelling reason to do so and sets forth in  
19 writing the reasons for making the unequal disposition

20 THE COURT FURTHER FINDS that the Nevada Supreme Court has outlined seven  
21 factors to be considered by the court when awarding alimony such as: (1) the wife's career prior  
22 to marriage; (2) the length of the marriage; (3) the husband's education during the marriage; (4)  
23 the wife's marketability; (5) the wife's ability to support herself; (6) whether the wife stayed  
24 home with the children; and (7) the wife's award, besides child support and alimony. *Sprenger*  
25 v. *Sprenger*, 110 Nev. 855, 859 (1974).

26 THE COURT FURTHER FINDS that the Nelsons have been married for nearly thirty  
27 years; that their earning capacities are drastically different in that Mr. Nelson has demonstrated  
28 excellent business acumen as reflected by the large sums of monies generated through his  
multiple business ventures and investments; that Mrs. Nelson only completed a year and a half

1  
2 of college and gave up the pursuit of a career outside of the home to become a stay at home  
3 mother to the couple's five children; that Mrs. Nelson's career prior to her marriage and during  
4 the first few years of her marriage consisted of working as a receptionist at a mortgage  
5 company, sales clerk at a department store and a runner at a law firm, with her last job outside  
6 of the home being in 1986;  
7

8 THE COURT FURTHER FINDS that Mrs. Nelson's lack of work experience and  
9 limited education greatly diminishes her marketability. Additionally, Mrs. Nelson solely relied  
10 on Mr. Nelson, as her husband and delegated investment trustee, to acquire and manage  
11 properties to support her and the children, and, as such, Mrs. Nelson's ability to support herself  
12 is essentially limited to the property award that she receives via these divorce proceedings.  
13

14 THE COURT FURTHER FINDS that while Mrs. Nelson will receive a substantial  
15 property award via this Divorce Decree, including some income generating properties, the  
16 monthly income generated and the values of the real property may fluctuate significantly  
17 depending on market conditions. In addition, it could take considerable time to liquidate the  
18 property, as needed, especially considering the current state of the real estate market. As such,  
19 Mrs. Nelson may have significant difficulty in accessing any equity held in those properties.  
20

21 THE COURT FURTHER FINDS that conversely, Mr. Nelson has become a formidable  
22 and accomplished businessman and investor. Mr. Nelson's keen business acumen has allowed  
23 him to amass a substantial amount of wealth over the course of the marriage.  
24

25 THE COURT FURTHER FINDS that the repurchase of Wyoming Downs by Mr.  
26 Nelson via Dynasty Development Group and his ability to immediately obtain a loan against  
27 the property to pull out about \$300,000 in equity, clearly evidences Mr. Nelson's formidable  
28 and accomplished business acumen and ability to generate substantial funds through his

1 investment talents. This type of transaction is not atypical for Mr. Nelson and demonstrates his  
2 extraordinary ability, which was developed and honed during the couple's marriage, to evaluate  
3 and maximize business opportunities and will ensure that he is always able to support himself,  
4 unlike Mrs. Nelson.  
5

6 THE COURT FURTHER FINDS that based the upon the findings addressed  
7 hereinabove, Mrs. Nelson is entitled to an award of spousal support pursuant to NRS 125.150  
8 and the factors enunciated in Sprenger<sup>22</sup>  
9

10 THE COURT FURTHER FINDS that during the marriage, at the direction of Mr.  
11 Nelson, Mrs. Nelson initially received monthly disbursements in the amount of \$5,000, which  
12 was increased to \$10,000 per month, and ultimately increased to \$20,000 per month dating  
13 back to 2004. The \$20,000 per month disbursements did not include expenses which were paid  
14 directly through the Trusts.  
15

16 THE COURT FURTHER FINDS that based upon the distributions that Mrs. Nelson  
17 was receiving during the marriage, \$20,000 per month is a fair and reasonable amount  
18 necessary to maintain the lifestyle that Mrs. Nelson had become accustomed to during the  
19 course of the marriage.  
20

21 THE COURT FURTHER FINDS that based upon the property distribution that will be  
22 addressed hereinafter, Mrs. Nelson will receive some income producing properties (Lindell,  
23 Russell Road, some of the Banone, LLC properties).  
24

25 THE COURT FURTHER FINDS that while the evidence adduced at trial reflected that  
26 the Lindell property should generate a cash flow of approximately \$10,000 a month, the  
27 evidence failed to clearly establish the monthly cash flow from the remaining properties.  
28 However, in the interest of resolving this issue without the need for additional litigation, this

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<sup>22</sup> Sprenger v. Sprenger, 110 Nev. 855 (1974).

1  
2 Court will assign an additional \$3,000 a month cash flow from the remaining properties  
3 resulting in Mrs. Nelson receiving a total monthly income in the amount of \$13,000.

4 THE COURT FURTHER FINDS that based upon a monthly cash flow in the amount of  
5 \$13,000 generated by the income producing properties, a monthly spousal support award in the  
6 amount of \$7,000 is fair and just and would allow Mrs. Nelson to maintain the lifestyle that she  
7 had become accustomed to throughout the course of the marriage.  
8

9 THE COURT FURTHER FINDS that Mrs. Nelson is 52 years of age and that spousal  
10 support payments in the amount of \$7,000 per month for 15 years, which would effectively  
11 assist and support her through her retirement age, appears to be a just and equitable spousal  
12 support award.  
13

14 THE COURT FURTHER FINDS that NRS 125.150(a) provides, in pertinent part, that  
15 the court may award alimony in a specified *principal sum* or as specified periodic payment  
16 (emphasis added).

17 THE COURT FURTHER FINDS that the Nevada Supreme Court has indicated that a  
18 lump sum award is the setting aside of a spouse's separate property for the support of the other  
19 spouse and is appropriate under the statute. *Sargeant v. Sargeant*, 88 Nev. 223, 229 (1972). In  
20 *Sargeant*, the Supreme Court affirmed the trial court's decision to award the wife lump sum  
21 alimony based on the husband short life expectancy and his litigious nature. The Supreme  
22 Court, citing the trial court, highlighted that "the overall attitude of this plaintiff illustrates  
23 some possibility that he might attempt to liquidate, interfere, hypothecate or give away his  
24 assets to avoid payment of alimony or support obligations to the defendant" *Id.* at 228.  
25  
26  
27  
28

1  
2 THE COURT FURTHER FINDS that Mr. Nelson's open and deliberate violation of the  
3 Joint Preliminary Injunction evidences his attitude of disregard for court orders. The Court also  
4 takes notice of Bankruptcy Judge Olack's finding that Mr. Nelson attempted to deplete the  
5 assets of Dynasty Development Group on the eve of the bankruptcy filing, raising the concern  
6 that Mr. Nelson may deplete assets of the ELN Trust precluding Mrs. Nelson from receiving a  
7 periodic alimony award.  
8

9 THE COURT FURTHER FINDS that Mr. Nelson has been less than forthcoming as to  
10 the nature and extent of the assets of the ELN Trust which raises another possible deterrent  
11 from Mrs. Nelson receiving periodic alimony payments.  
12

13 THE COURT FURTHER FINDS that, as addressed hereinbefore, the ELN Trust moved  
14 this Court to dissolve the injunction regarding the \$1,568,000 because it "has an opportunity to  
15 purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00; however,  
16 the ELN will be unable to do so unless the Injunction is dissolved."

17 THE COURT FURTHER FINDS that despite the representation to the Court that the  
18 injunction needed to be dissolved so that the ELN Trust would be able to purchase Wyoming  
19 Downs, less than a month after the hearing, the ELN Trust, with Mr. Nelson serving as the  
20 investment trustee, completed the purchase of Wyoming Downs. This leads this Court to  
21 believe that Mr. Nelson was less than truthful about the extent and nature of the funds available  
22 in the ELN Trust and such conduct on the part of Mr. Nelson raises serious concerns about the  
23 actions that Mr. Nelson will take to preclude Mrs. Nelson from receiving periodic spousal  
24 support payments.  
25  
26  
27  
28

1  
2 THE COURT FURTHER FINDS that Mr. Nelson alleged numerous debts and  
3 liabilities worth millions of dollars, but forensic accountant, Mr. Bertsch, found that these  
4 alleged debts and liabilities were based solely on threats and speculations.

5 THE COURT FURTHER FINDS that Mr. Nelson's practice of regularly transferring  
6 property and assets to family members, as highlighted in the transactions involving the High  
7 Country Inn and Russell Road properties, contributes to this Court's concern that Mr. Nelson  
8 may deplete the assets of the ELN Trust via such family transfers, and, thereby, effectively  
9 preclude Mrs. Nelson from receiving a periodic spousal support award.

10  
11 THE COURT FURTHER FINDS that Mr. Nelson's overall attitude throughout the  
12 course of these proceedings illustrates the possibility that he might attempt to liquidate,  
13 interfere, hypothecate or give away assets out of the ELN Trust to avoid payment of his support  
14 obligations to Mrs. Nelson, thereby justifying a lump sum spousal support award to Mrs.  
15 Nelson based on the factors addressed hereinabove and the rationale enunciated in *Sargeant*.

16  
17 THE COURT FURTHER FINDS that calculation of a monthly spousal support  
18 obligation of \$7,000 for 15 years results in a total spousal support amount of \$1,260,000 which  
19 needs to be discounted based upon being paid in a lump sum. Accordingly, Mrs. Nelson is  
20 entitled to a lump sum spousal support award in the amount of \$800,000.

21  
22 THE COURT FURTHER FINDS that the ELN Trust should be required to issue a  
23 distribution from the \$1,568,000 reflected in the account of Dynasty Development Group, LLC,  
24 and currently held in a blocked trust account pursuant to this Court's injunction, to satisfy Mr.  
25 Nelson's lump sum spousal support obligation and to satisfy his child support arrearages  
26 obligation.

1  
2 THE COURT FURTHER FINDS that Mr. Nelson argues that Dynasty Development  
3 Group, LLC, is 100% held by the ELN Trust, and, therefore, he has no interest in Dynasty nor  
4 the funds reflected in the Dynasty account as all legal interest rests with the ELN Trust.<sup>23</sup>

5  
6 THE COURT FURTHER FINDS that various statutes and other sources suggest that  
7 the interest of a spendthrift trust beneficiary can be reached to satisfy support of a child or a  
8 former spouse.<sup>24</sup> Specifically, South Dakota, which also recognizes self-settled spendthrift  
9 trust, has addressed the issue in South Dakota Codified Law § 55-16-15 which states:

10 Notwithstanding the provisions of §§ 55-16-9 to 55-16-14, inclusive, this chapter does  
11 not apply in any respect to any person to whom the transferor is indebted on account of  
12 an agreement or *order of court* for the payment of *support* or *alimony* in favor of such  
13 transferor's spouse, *former spouse*, or children, or for a *division or distribution of*  
14 *property* in favor of such transferor's spouse or former spouse, to the extent of such debt  
15 (emphasis added).

16 Wyoming, which also allows self-settled spendthrift trust, has also addressed the matter  
17 through Wyoming Statutes Annotated § 4-10-503(b):

18 (b) Even if a trust contains a spendthrift provision, a person who has a judgment or  
19 court order against the beneficiary for child support or maintenance may obtain from a  
20 court an order attaching present or future distributions to, or for the benefit of, the  
21 beneficiary.

22 THE COURT FURTHER FINDS that, while not binding on this Court, these statutes  
23 clearly demonstrate that spouses entitled to alimony or maintenance are to be treated differently  
24 than a creditor by providing that the interest of a spendthrift trust beneficiary can be reached to  
25 satisfy support of a child or a former spouse.  
26  
27

28 <sup>23</sup> NRS 166.130

<sup>24</sup> Restatement (Third) of Trust § 59 (2003).

1  
2 THE COURT FURTHER FINDS that in *Gilbert v. Gilbert*, 447 So.2d 299, the Florida  
3 Court of Appeals affirmed the district court's order that allowed the wife to garnish the  
4 husband's beneficiary interest in a spendthrift trust to satisfy the divorce judgment regarding  
5 alimony payments.

6 THE COURT FURTHER FINDS that the *Gilbert* court found that while "the cardinal  
7 rule of construction in trusts is to determine the intention of the settler and give effect to his  
8 wishes . . . there is a strong public policy argument which favors subjecting the interest of the  
9 beneficiary of a trust to a claim for alimony."<sup>25</sup> The Court went on to state that the dependents  
10 of the beneficiary should not be deemed to be creditors as such a view would "permit the  
11 beneficiary to have the enjoyment of the income from the trust while he refuses to support his  
12 dependents whom it is his duty to support."<sup>26</sup> The *Gilbert* court went on to state that a party's  
13 responsibility to pay alimony "is a duty, not a debt."<sup>27</sup>  
14

15 THE COURT FURTHER FINDS that there is a strong public policy argument in favor  
16 of subjecting the interest of the beneficiary of a trust to a claim for spousal support and child  
17 support, and, as such, Mr. Nelson's beneficiary interest in the ELN Trust should be subjected to  
18 Mrs. Nelson award of spousal support and child support.  
19

20 *Attorney's Fees*

21 THE COURT FURTHER FINDS that NRS 18.010(2)(b) provides, in pertinent part, for  
22 the award of attorney's fees to the prevailing party: "when the court finds that the claim,  
23 counterclaim, cross-claim or third-party complaint or defense of the opposing party was  
24 brought or maintained without reasonable ground or to harass the prevailing party."  
25  
26

27 <sup>25</sup> Id at 301.

28 <sup>26</sup> *Gilbert v. Gilbert*, 447 So.2d 299, 301

<sup>27</sup> Id at 301.

1  
2 THE COURT FURTHER FINDS that Mr. Nelson, as the Investment Trustee for the  
3 ELN Trust, was the person authorized to institute legal action on behalf of the Trust.

4 THE COURT FURTHER FINDS that Mr. Nelson did not request that the ELN Trust  
5 move to be added as a necessary party to these proceedings until almost two years after  
6 initiating this action and following the initial six days of trial. It is apparent to this Court that  
7 Mr. Nelson was not satisfied with the tenor of the courts preliminary "findings" in that it was  
8 not inclined to grant his requested relief, and, consequently, decided to pursue a "second bite at  
9 the apple" by requesting that the ELN Trust pursue being added as a necessary party.  
10

11 THE COURT FURTHER FINDS that adding the ELN Trust as a necessary party at this  
12 rather late stage of the proceedings, resulted in extended and protracted litigation including the  
13 re-opening of Discovery, the recalling of witnesses who had testified at the initial six days of  
14 trial, and several additional days of trial.

15 THE COURT FURTHER FINDS that Mr. Nelson's position that he had a conflict of  
16 interest which prevented him from exercising his authority to institute legal action on behalf of  
17 the ELN Trust was not credible as he had appeared before this Court on numerous occasions  
18 regarding community waste issues and the transfer of assets from the ELN Trust and the LSN  
19 Trust and had never raised an issue as to a conflict of interest.  
20

21 THE COURT FURTHER FINDS that while both parties were aware of the existence of  
22 the ELN and LSN Trusts from the onset of this litigation, and, as such, Mrs. Nelson could have  
23 moved to add the ELN Trust as a necessary party, Mr. Nelson had consistently maintained  
24 throughout his initial testimony that the assets held in the ELN Trust and the LSN Trusts were  
25 property of the community.  
26  
27  
28

1  
2 THE COURT FURTHER FINDS that, while this Court fully respects and supports a  
3 party's right to fully and thoroughly litigate its position, Mr. Nelson's change in position as to  
4 the character of the property of the ELN Trust and LSN Trust in an attempt to get a "second  
5 bite of the apple", resulted in unreasonably and unnecessarily extending and protracting this  
6 litigation and additionally burdening this Court's limited judicial resources, thereby justifying  
7 an award of reasonable attorney fees and costs in this matter.  
8

9 THE COURT FURTHER FINDS that in considering whether or not to award  
10 reasonable fees and cost this Court must consider "(1) the qualities of the advocate: his ability,  
11 his training, education, experience, professional standing and skill; (2) the character of the work  
12 to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility  
13 imposed and the prominence and character of the parties where they affect the importance of  
14 the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given  
15 to the work; (4) the result: whether the attorney was successful and what benefits were  
16 derived." *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349 (1969).  
17

18 THE COURT FURTHER FINDS Attorney Dickerson has been Mrs. Nelson's legal  
19 counsel continuously since September 2009 and is a very experienced, extremely skillful and  
20 well-respected lawyer in the area of Family Law. In addition, this case involved some difficult  
21 and complicated legal issues concerning Spendthrift Trusts and required an exorbitant  
22 commitment of time and effort, including the very detailed and painstaking review of  
23 voluminous real estate and financial records. Furthermore, Attorney Dickerson's skill, expertise  
24 and efforts resulted in Mrs. Nelson's receiving a very sizeable and equitable property  
25 settlement.  
26  
27  
28

1  
2 THE COURT FURTHER FINDS that upon review of attorney Dickerson's  
3 Memorandum of Fees and Costs, this Court feels that an award of attorney fees in the amount  
4 of \$144,967 is fair and reasonable and warranted in order to reimburse Mrs. Nelson for the  
5 unreasonable and unnecessary extension and protraction of this litigation by Mr. Nelson's  
6 change of position in regards to the community nature of the property and his delay in having  
7 the ELN Trust added as a necessary party which added significant costs to this litigation.  
8

9 THE COURT FURTHER FINDS that while the Court could invalidate the Trusts based  
10 upon Mr. Nelson's testimony as to community nature of the assets held by each Trust, the  
11 breach of his fiduciary duty as a spouse, the breach of his fiduciary duty as an investment  
12 trustee, the lack of Trust formalities, under the principles of a constructive trust, and under the  
13 doctrine of unjust enrichment, the Court feels that keeping the Trusts intact, while transferring  
14 assets between the Trusts to "level off the Trusts", would effectuate the parties clear intentions  
15 of "supercharging" the protection of the assets from creditors while ensuring that the respective  
16 values of the Trusts remained equal.  
17

18 THE COURT FURTHER FINDS that in lieu of transferring assets between the Trusts  
19 to level off the Trust and to achieve an equitable allocation of the assets between the Trusts as  
20 envisioned by the parties, the Court could award a sizable monetary judgment against Mr.  
21 Nelson for the extensive property and monies that were transferred from the LSN Trust to the  
22 ELN Trust, at his direction, and issue a corresponding charging order against any distributions  
23 to Mr. Nelson until such judgment was fully satisfied.  
24

25 ...

26 ...

1  
2 THE COURT FURTHER FINDS that the Court has serious concerns that Mrs. Nelson  
3 would have a very difficult time collecting on the judgment without the need to pursue endless  
4 and costly litigation, especially considering the extensive and litigious nature of these  
5 proceedings.

6  
7 THE COURT FURTHER FINDS that due to Mr. Nelson's business savvy and the  
8 complexity of his business transactions, the Court is concerned that he could effectively deplete  
9 the assets of the ELN Trust without the need to go through distributions, thereby circumventing  
10 the satisfaction of the judgment via a charging order against his future distributions.

11 THE COURT FURTHER FINDS that its concern about Mr. Nelson depleting the assets  
12 of the ELN Trust seems to be well founded when considering the fact that Bankruptcy Judge  
13 Olack found that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing.

14 THE COURT FURTHER FINDS that upon review of Mr. Bertsch's Second  
15 Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses  
16 for the Period from April 1, 2012 through July 25, 2012, Mr. Bertsch is entitled to payment of  
17 his outstanding fees in the amount of \$35,258.

18 THE COURT FURTHER FINDS that in preparing this Decree of Divorce, the  
19 monetary values and figures reflected herein were based on values listed in Mr. Bertsch's  
20 report and the testimony elicited from the July and August 2012 hearings.<sup>28</sup>

21 THE COURT FURTHER FINDS that as to the repurchase of Wyoming Downs by the  
22 ELN Trust via the Dynasty Development Group, this Court is without sufficient information  
23 regarding the details of the repurchase of the property, the value of the property and the  
24 encumbrances on the property to make a determination as to the disposition of the property,  
25  
26  
27

28  

---

<sup>28</sup> *Supra*, note 6.

1  
2 and, accordingly, is not making any findings or decisions as to the disposition of the Wyoming  
3 Downs property at this time.

4 *Conclusion*

5 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
6 bonds of matrimony now existing between Eric and Lynita Nelson are dissolved and an  
7 absolute Decree of a Divorce is granted to the parties with each party being restored to the  
8 status of a single, unmarried person.  
9

10 IT IS FURTHER ORDERED that the Brianhead cabin, appraised at a value of \$985,000  
11 and currently held jointly by the ELN Trust and the LSN Trust, is to be divided equally  
12 between the Trusts.

13 IT IS FURTHER ORDERED that both parties shall have the right of first refusal should  
14 either Trust decide to sell its interest in the Brianhead cabin.  
15

16 IT IS FURTHER ORDERED that the 66.67% interest in the Russell Road property  
17 (\$4,333,550) and the 66.67% interest in the \$295,000 note/deed for rents and taxes (\$196,677)  
18 currently held by the ELN Trust, shall be equally divided between the ELN Trust and the LSN  
19 Trust.  
20

21 IT IS FURTHER ORDERED that both parties shall have the right of first refusal should  
22 either Trust decide to sell its interest in the Russell Road property.  
23  
24  
25  
26  
27  
28

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

1  
2 IT IS FURTHER ORDERED that the following properties shall remain in or be  
3 transferred into the ELN Trust:

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 80,000
Arizona Gateway Lots	\$ 139,500
Family Gifts	\$ 35,000
Gift from Nikki C.	\$ 200,000
Bella Kathryn Property	\$1,839,495
Mississippi Property (121.23 acres)	\$ 607,775
Notes Receivable	\$ 642,761
Banone AZ Properties	\$ 913,343
Dynasty Buyout	\$1,568,000
1/2 of Brianhead Cabin	\$ 492,500
1/3 of Russell Road (+ note for rents)	\$2,265,113.50 (\$2,166,775 + \$98,338.50)
<b>Total</b>	<b>\$8,783,487.50</b>

13 IT IS FURTHER ORDERED that the following properties shall remain in or be  
14 transferred into the LSN Trust:

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 200,000
Palmyra Property	\$ 750,000
Pebble Beach Property	\$ 75,000
Arizona Gateway Lots	\$ 139,500
Wyoming Property (200 acres)	\$ 405,000
Arnold Property in Miss.	\$ 40,000
Mississippi RV Park	\$ 559,042
Mississippi Property	\$ 870,193
Grotta 16.67% Interest	\$ 21,204
Emerald Bay Miss. Prop.	\$ 560,900
Lindell Property	\$1,145,000
Banone, LLC	\$1,184,236
JB Ramos Trust Note Receivable	\$ 78,000
1/2 of Brianhead Cabin	\$ 492,500
1/3 of Russell Road (+ note for rents)	\$2,265,113.50 (\$2,166,775 + \$98,338.50)
<b>Total</b>	<b>\$8,785,988.50</b>

1  
2 IT IS FURTHER ORDERED that due to the difference in the value between the ELN  
3 Trust and the LSN Trust in the amount of \$153,499, the Trusts shall be equalized by  
4 transferring the JB Ramos Trust Note from the Notes Receivable of the ELN Trust, valued at  
5 \$78,000, to the LSN Trust as already reflected on the preceding page.<sup>29</sup>

6 IT IS FURTHER ORDERED that the injunction regarding the \$1,568,000 reflected in  
7 the account of Dynasty Development Group, LLC, ("Dynasty Buyout") and currently held in a  
8 blocked trust account, is hereby dissolved.  
9

10 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the  
11 \$1,568,000, herein awarded to the ELN Trust, to pay off the lump sum spousal support  
12 awarded to Mrs. Nelson in the amount of \$800,000. Said payment shall be remitted within 30  
13 days of the date of this Decree.

14 IT IS FURTHER ORDERED that Mrs. Nelson is awarded child support arrears in the  
15 amount of \$87,775 and that the ELN Trust shall use the distribution of the \$1,568,000, herein  
16 awarded to the ELN Trust, to pay off the child support arrears awarded to Mrs. Nelson via a  
17 lump sum payment within 30 days of issuance of this Decree.  
18

19 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the  
20 \$1,568,000, herein awarded to the ELN Trust, to pay Mr. Bertsch's outstanding fees in the  
21 amount of \$35,258 within 30 days of issuance of this Decree.<sup>30</sup>

22 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the  
23 \$1,568,000, herein awarded to the ELN Trust, to reimburse Mrs. Nelson for attorney's fees  
24 paid to Attorney Dickerson in the amount of \$144,967 in payment of fees resulting from Mr.  
25

26  
27 <sup>29</sup> Defendant's Exhibit GGGGG.

28 <sup>30</sup> Second Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the  
Period from April 1, 2012 through July 25, 2012.

1  
2 Nelson's unreasonable and unnecessary extension and protraction of this litigation. Said  
3 payment shall be remitted to Mrs. Nelson within 30 days of the date of this Decree.

4 IT IS FURTHER ORDERED that the funds remaining, in the amount of approximately  
5 \$500,000, from the distribution of the \$1,568,000, herein awarded to the ELN Trust, after the  
6 payment of the spousal support, child support arrears, Mr. Bertsch's fees and reimbursement of  
7 the attorney fees to Mrs. Nelson, shall be distributed to Mr. Nelson within 30 days of issuance  
8 of this Decree  
9

10 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$2080 in child  
11 support for the month of June 2013 for their children Garrett and Carli.

12 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$1,058 a month in  
13 support of their child Carli, commencing on July 1, 2013 and continuing until Carli attains the  
14 age of majority or completes high school, which ever occurs last.  
15

16 IT IS FURTHER ORDERED that Mr. Nelson shall maintain medical insurance  
17 coverage for Carli.

18 IT IS FURTHER ORDERED that any medical expenses not paid by any medical  
19 insurance covering Carli shall be shared equally by the parties, with such payments being made  
20 pursuant to the Court's standard "30/30" Rule.

21 IT IS FURTHER ORDERED that the parties shall equally bear the private education  
22 costs, including tuition, of Carli's private school education at Faith Lutheran.  
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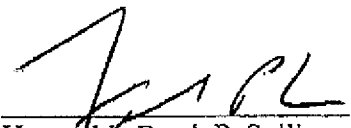
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**FRANK R. SULLIVAN**  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

1  
2 IT IS FURTHER ORDERED that the parties shall keep any personal property now in  
3 their possession and shall be individually responsible for any personal property, including  
4 vehicles, currently in their possession.

5 Dated this 3rd day of June, 2013.

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8 Honorable Frank P. Sullivan  
9 District Court Judge – Dept. O  
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FRANK P. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

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

2                               \*\*\*\*\*

3 NOLA HARBER, as Distribution Trustee  
4 of the ERIC L. NELSON NEVADA  
TRUST dated May 30, 2001

5                               Petitioners,

6 vs.

7 EIGHTH JUDICIAL DISTRICT COURT  
8 OF THE STATE OF NEVADA, CLARK  
9 COUNTY, and THE HONORABLE  
10 FRANK P. SULLIVAN, DISTRICT  
JUDGE

11                               Respondents,

12 and

13  
14 ERIC L. NELSON and LYNITA S.  
15 NELSON, individually, and LSN  
16 NEVADA TRUST dated May 30, 2001,  
LARRY BERTSCH,

17                               Real Parties in Interest.  
18

Electronically Filed  
Jun 26 2013 11:23 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CASE NO. 63432

19       **EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY TO ISSUE BY**  
20       **5:00 P.M. ON JUNE 27, 2013, PENDING RESOLUTION OF WRIT**  
21       **PROCEEDINGS; NRAP 27(e) CERTIFICATE**

22               Pursuant to NRAP 8 and NRAP 27(e), Petitioner, NOLA HARBER,  
23  
24 Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001  
25 (“ELN Trust”) makes this Emergency Motion under NRAP 27(e) for a Stay of the  
26  
27 portions of the June 3, 2013, Divorce Decree that purport to require the ELN Trust  
28 to pay Lynita S. Nelson (“Lynita”) or her attorneys the sum of \$1,032,742.00 and

1 Larry Bertsch the sum of \$35,258.00 within thirty (30) days from the entry of the  
2 June 3, 2013, Divorce Decree, pending resolution by this Court of the ELN  
3 Trust's Petition for Writ of Prohibition and/or further order of this Court.  
4

5 **I.**  
6

7 **REASON FOR REQUEST FOR CONSIDERATION BY 5:00 P.M. ON**  
8 **JUNE 28, 2013**

9 The matter currently before this Court was initiated by a Petition for Writ of  
10 Prohibition challenging certain orders within the District Court's June 3, 2013,  
11 Divorce Decree and June 19, 2013, Order for the obligation of the ELN Trust to  
12 pay the personal obligations of Eric Nelson ("Eric") to Lynita or her attorneys the  
13 sum of \$1,032,742.00 and Mr. Bertsch the sum of \$35,258.00 within thirty (30)  
14 days of the entry of the June 3, 2013, Divorce Decree.  
15  
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17 As set forth in the attached NRAP 27(e) Certificate, immediate relief is  
18 needed because the Divorce Decree purports to specifically compel the ELN Trust  
19 to pay Lynita or her attorneys the sum of \$1,032,742.00 and Mr. Bertsch the sum  
20 of \$35,258.00 within thirty (30) days of the entry of the June 3, 2013, Divorce  
21 Decree, which is before the briefing schedule issued by this Court will even be  
22 concluded. Further, as set forth below, this Court already stayed a similar order  
23 regarding the same payments.  
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## II.

### STATEMENT OF FACTS

The facts underlying this matter are set forth in detail in the Petition for Writ of Prohibition and Emergency Motion Under NRAP 27(e) for a Stay, both of which were filed on behalf of the ELN Trust on June 21, 2013, and are herein incorporated by reference.

In short, the ELN Trust contends that the District Court exceeded its jurisdiction under NRS Chapter 21, NRS 166.120 and other provisions of Nevada's self-settled spendthrift trust statutes, and erroneously relied upon statutes from South Dakota and Wyoming, which specifically allow or obligate a self-settled spendthrift trust to pay child-support or alimony obligations of a beneficiary, to support his erroneous findings. *See* Divorce Decree dated June 3, 2013 at 2:17, attached hereto as Exhibit 1. As such, the ELN Trust requested in its June 21, 2013, Emergency Motion Under NRAP 27(e) for a Stay that this Court:

issue a stay regarding the portions of the District Court's June 3, 2013, Divorce Decree and June 19, 2013, Order, which require that the ELN Trust pay Lynita or her attorneys the sum of \$1,032,742.00 and Mr. Bertsch the sum of \$35,258.00 pending resolution of its Petition for Writ of Prohibition." *See* Emergency Motion Under NRAP 27(e) for Stay to Issue at 26:, previously filed on June 21, 2013, on file herein.

1 In response to the June 21, 2013, Emergency Motion, this Court issued its  
2 Order Directing Answer and Granting Temporary Stay, which specifically stayed  
3 the June 19, 2013, Order:  
4

5 Having reviewed the petition, it appears that petitioners have set forth  
6 issues of arguable merit and that petitioners may have no adequate  
7 remedy in the ordinary course of law. Therefore, real parties in  
8 interest, on behalf of respondents, shall have 15 days from the date of  
9 this order to file an answer, including authorities, against issuance of  
10 an extraordinary writ. Petitioners shall have 11 days from filing and  
service of the answer to file and serve any reply.

11 Having considered the emergency motion to stay the district court's  
12 June 19, 2013, order directing payment from the spendthrift trust, we  
13 conclude that a temporary stay is warranted to allow for receipt and  
14 consideration of any opposition to the stay motion and the answer to  
15 the writ petition. We therefore stay the June 19, 2013, order directing  
16 payment from the trust in Eighth Judicial District Court Case No.  
17 D411537 pending further order of this court. *See* Order Directing  
Answer and Granting Temporary Stay, previously filed on June 21,  
2013, on file herein.

18 Although the Order Directing Answer and Granting Temporary Stay did  
19 not specifically stay the portions of the June 3, 2013, Divorce Decree that  
20 purportedly require the ELN Trust to make the same payments at issue in the  
21 June 19, 2013, Order, it appears this Court's intent was to temporarily stay the  
22 ELN Trust's purported obligation to pay Lynita or her attorneys the sum of  
23 \$1,032,742.00 and Mr. Bertsch the sum of \$35,258.00 pending the briefing  
24 schedule set forth in the Order Directing Answer and Granting Temporary Stay,  
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1 which does not conclude until after the aforementioned payments are due  
2 pursuant to the June 3, 2013, Divorce Decree.  
3

4 **III.**

5 **LEGAL ANALYSIS**  
6

7 Although this Court stayed the June 19, 2013, Order requiring the ELN  
8 Trust to Lynita or her attorneys the sum of \$1,032,742.00 and Mr. Bertsch the  
9 sum of \$35,258.00 by 5:00 p.m. on June 21, 2013, the ELN Trust is still arguably  
10 required to make the exact same payments within thirty (30) days of the June 3,  
11 2013, Divorce Decree. This obviously frustrates this Court's June 21, 2013,  
12 Order Directing Answer and Granting Temporary Stay, the intent of which was  
13 temporarily stay the aforementioned payments pending the briefing schedule,  
14 which does not conclude until after the ELN Trust is purportedly required to  
15 make the payments at issue under the June 3, 2013, Divorce Decree.  
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19 For the same reasons set forth in the ELN Trust's June 21, 2013,  
20 Emergency Motion, the factors employed by this Court militate in favor of  
21 granting a stay of the portions of the June 3, 2013, Divorce Decree requiring  
22 payment. In light of the foregoing, a stay should be granted pending resolution  
23 of the ELN's Petition for Writ of Prohibition.  
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IV.

**CONCLUSION**

The ELN Trust respectfully requests that this Court grant its Emergency Motion and issue a stay regarding the portions of the District Court's June 3, 2013, Divorce Decree, which require that the ELN Trust pay Lynita or her attorneys the sum of \$1,032,742.00 and Mr. Bertsch the sum of \$35,258.00 within thirty (30) days of the issuance of the Divorce Decree. The ELN Trust also requests that this Court act by 5:00 p.m. on Thursday, June 27, 2013, so that the ELN Trust will know whether it must make payment to Lynita and Mr. Bertsch within thirty (30) days of the June 3, 2013, Divorce Decree.

DATED this 26<sup>th</sup> day of June, 2013.

  
MARK A. SOLOMON, ESQ., NSB 0418

E-mail: [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)

JEFFREY P. LUSZECK, ESQ., NSB 9619

E-mail: [jluszeck@sdfnvlaw.com](mailto:jluszeck@sdfnvlaw.com)

**SOLOMON DWIGGINS & FREER, LTD.**

9060 W. Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for Petitioner, Nola Harber as

Distribution Trustee of the ELN Nevada Trust

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1. I am an attorney licensed to practice before the courts of Nevada, and I am an associate at the law firm of Solomon Dwiggin & Freer, Ltd., counsel of record for Petitioner, NOLA HARBER, Distribution Trustee of the ELN Nevada Trust ("the ELN TRUST"), in the above captioned proceeding. I make this certificate in support of petitioner's Emergency Motion Under NRAP 27(e) for Stay Pending Resolution of Writ Proceedings.

Robert P. Dickerson, Esq.  
Katherine L. Provost, Esq.  
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Telephone: (702) 388-8600  
Facsimile: (702) 388-0210

Radford J. Smith, Chartered  
Rhonda K. Forsberg, Esq.  
64 N. Pecos Road, Suite 700  
Henderson, Nevada 89074  
Telephone: (702) 990-6448  
Facsimile: (702) 990-6456

3. A Counter-Motion for stay pending resolution of these writ proceedings was made in the District Court and denied on June 19, 2013.

1           4.     This Emergency Motion was necessitated by the fact that the June 3,  
2 2013, Divorce Decree purports to require the ELN Trust to make certain payments  
3 within thirty (30) days its entry.  
4

5           5.     A Counter-Motion for stay pending resolution of these writ  
6 proceedings was made in the District Court on June 19, 2013, which was denied.  
7 In such Counter-Motion, Counsel for the other parties were notified of the ELN  
8 Trust's intent to file a writ.  
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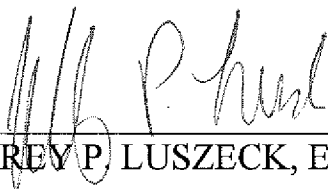
11           6.     On June 21, 2013, this office filed a similar Emergency Motion with  
12 respect to the District Court's June 19, 2013, Order.  
13

14           7.     On June 26, 2013, this office notified the Clerk of this Court that the  
15 ELN Trust would be filing an Emergency Motion of stay pending writ  
16 proceedings in this action.  
17

18           8.     This office also notified Bob Dickerson, Esq. of The Dickerson Law  
19 Group and Rhonda K. Forsberg, Esq. of Radford J. Smith Chartered, that this  
20 office would also be filing this Emergency Motion for Stay Pending Resolution of  
21 Writ Proceedings *via* facsimile transmission. This Emergency Motion will be  
22 served on Mr. Dickerson, Ms. Forsberg by electronic mail and facsimile  
23 transmission. This Emergency Motion will also be served upon Mr. Dickerson,  
24 Ms. Forsberg, Larry Bertsch and the Honorable Frank P. Sullivan by hand-  
25 delivery.  
26  
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28

1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 26<sup>th</sup> day of June, 2013.

3   
4 \_\_\_\_\_  
5 JEFFREY P. LUSZECK, ESQ.  
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## CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 5(b), I hereby certify that I am an employee of the law firm of Solomon Dwiggin & Freer, Ltd., and that on June 26, 2013, I filed a true and correct copy of the foregoing *Emergency Motion Under NRAP 27E for Stay Pending Resolution of Writ Proceedings; NRAP 27E Certificate*, WITH THE Clerk of the Court through the Court's eFlex electronic filing system and notice will be sent electronically by the Court to the following:

Robert P. Dickerson, Esq.

Katherine L. Provost, Esq.

THE DICKERSON LAW GROUP

1745 Village Center Circle

Las Vegas, Nevada 89134

[info@dickersonlawgroup.com](mailto:info@dickersonlawgroup.com)

Counsel for Lynita S. Nelson, defendant  
in District Court

Radford J. Smith, Chartered

Rhonda K. Forsberg, Esq.

64 N. Pecos Road, Suite 700

Henderson, Nevada 89074

[rforsberg@radfordsmith.com](mailto:rforsberg@radfordsmith.com)

Counsel for Eric L. Nelson, real party in  
interest

I also hereby certify that the foregoing document will be hand-delivered on this date to the following:

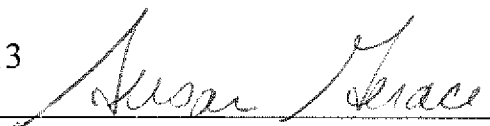
Hon. Frank P. Sullivan, Department O

Robert P. Dickerson, Esq.

Rhonda K. Forsbert, Esq.

Larry Bertsch

DATED: June 26, 2013

  
\_\_\_\_\_  
An employee of Solomon Dwiggin & Freer, Ltd.