

# **EXHIBIT 4**

# **EXHIBIT 4**

## THE DICKERSON LAW GROUP

ROBERT P. DICKERSON  
KATHERINE L. PROVOST  
RENA G. HUGHES  
JOSEF KARACSONYI

A PROFESSIONAL CORPORATION OF ATTORNEYS AT LAW  
HILLS CENTER NORTH BUSINESS PARK  
1745 VILLAGE CENTER CIRCLE  
LAS VEGAS, NEVADA 89134

AREA CODE (702)  
TELEPHONE 388-8600  
FAX 388-0210

June 7, 2013

Joan Ramos  
436 Europa Way  
Las Vegas, Nevada 89145

**VIA CERTIFIED AND  
U.S. MAIL**

**Re: NOTIFICATION OF ASSIGNMENT OF NOTE  
AND DEED OF TRUST**

Dear Ms. Ramos:

You are hereby notified that on June 3, 2013 the Note dated February 23, 2010 between Joan B Ramos, Trustee of the Joan B Ramos Trust u/a/d October 4, 2004 and Banone, LLC and the corresponding Deed of Trust With Assignment of Rents has been assigned and transferred to the LSN Nevada Trust u/a/d 5/30/01.

You are now to send all payments due under the terms of the Note to the following address:

LSN Nevada Trust  
c/o The Dickerson Law Group  
1745 Village Center Circle  
Las Vegas, Nevada 89134

You are further notified that the August 25, 2011 Memorandum of Understanding entered into between you and Eric L. Nelson, on behalf of Banone, LLC is hereby null and void as it relates to your obligation to make the payments called for by the Note to the current holder of the Note. Therefore, on or before July 1, 2013, you must make a payment of \$520.00 to satisfy your obligation to the current Note holder.

You may also direct all inquiries and questions concerning this assignment to Lynita Clark Nelson at (702) 569-3696.

Sincerely,

THE DICKERSON LAW GROUP



Attorneys for LSN Nevada Trust

# **EXHIBIT 3**

# **EXHIBIT 3**

9/4/12

1 NEO  
 2 THE DICKERSON LAW GROUP  
 3 ROBERT P. DICKERSON, ESQ.  
 Nevada Bar No. 000945  
 4 KATHERINE L. PROVOST, ESQ.  
 Nevada Bar No. 008414  
 5 JOSEF M. KARACSONYI, ESQ.  
 Nevada Bar No. 010634  
 6 1745 Village Center Circle  
 Las Vegas, Nevada 89134  
 7 Telephone: (702) 388-8600  
 Facsimile: (702) 388-0210  
 8 Email: info@dickersonlawgroup.com  
 Attorneys for LYNITA SUE NELSON

9 DISTRICT COURT  
 FAMILY DIVISION

10 CLARK COUNTY, NEVADA

11 ERIC L. NELSON,  
 12 Plaintiff/Counterdefendant,  
 13 v.  
 14 LYNITA SUE NELSON  
 15 Defendant/Counterclaimant.

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

16 ERIC L. NELSON NEVADA TRUST  
 17 dated May 30, 2001, and LSN NEVADA  
 18 TRUST dated May 30, 2001,

19 Necessary Parties (joined in this  
 20 action pursuant to Stipulation and  
 21 Order entered on August 9, 2011)

NOTICE OF ENTRY OF ORDER  
FROM FEBRUARY 23, 2012  
HEARING PARTIALLY  
GRANTING ELN TRUST'S  
MOTION TO DISMISS THIRD-  
PARTY COMPLAINT WITHOUT  
PREJUDICE

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1  
2 LANA MARTIN, as Distribution Trustee )  
3 of the ERIC L. NELSON NEVADA )  
4 TRUST dated May 30, 2001, )

5 Necessary Party (joined in this )  
6 action pursuant to Stipulation and )  
7 Order entered on August 9, 2011)/ )  
8 Purported Counterclaimant and )  
9 Crossclaimant, )

10 v.

11 LYNITA SUE NELSON and ERIC )  
12 NELSON, )

13 Purported Cross-Defendant and )  
14 Counterdefendant, )

---

15 LYNITA SUE NELSON, )

16 Counterclaimant, Cross-Claimant, )  
17 and/or Third Party Plaintiff, )

18 v.

19 ERIC L. NELSON, individually, and as )  
20 the Investment Trustee of the ERIC L. )  
21 NELSON NEVADA TRUST dated May )  
22 30, 2001; the ERIC L. NELSON )  
23 NEVADA TRUST dated May 30, 2001; )  
24 LANA MARTIN, individually, and as the )  
25 current and/or former Distribution )  
26 Trustee of the ERIC L. NELSON )  
27 NEVADA TRUST dated May 30, 2001, )  
28 and as the former Distribution Trustee of )  
the LSN NEVADA TRUST dated May )  
30, 2001; NOLA HARBER, individually, )  
and as the current and/or former )  
Distribution Trustee of the ERIC L. )  
NELSON NEVADA TRUST dated May )  
30, 2001, and as the current and/or )  
former Distribution Trustee of the LSN )  
NEVADA TRUST dated May 30, 2001; )  
ROCHELLE McGOWAN, individually; )  
JOAN B. RAMOS, individually; and )  
DOES I through X,

Counterdefendants, and/or )  
Cross-Defendants, and/or )  
Third Party Defendants. )

1 NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012 HEARING  
2 PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS THIRD-  
3 PARTY COMPLAINT WITHOUT PREJUDICE

4 TO: ERIC L. NELSON, Plaintiff; and

5 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for  
6 Plaintiff;

7 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of  
8 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson  
9 Nevada Trust:

10 PLEASE TAKE NOTICE that an ORDER FROM FEBRUARY 23, 2012  
11 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS  
12 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE was entered in the above-  
13 entitled matter on August 29, 2012, a copy of which is attached hereto.

14 DATED this 30<sup>th</sup> day of August, 2012.

15 THE DICKERSON LAW GROUP

16 By Josef Karacsonyi  
17 ROBERT P. DICKERSON, ESQ.  
18 Nevada Bar No. 000945  
19 KATHERINE L. PROVOST, ESQ.  
20 Nevada Bar No. 008414  
21 JOSEF M. KARACSONYI, ESQ.  
22 Nevada Bar No. 10634  
23 1745 Village Center Circle  
24 Las Vegas, Nevada 89134  
25 Attorneys for Defendant  
26  
27  
28



*Alma D. Larson*  
CLERK OF THE COURT

1 ORDR  
2 THE DICKERSON LAW GROUP  
3 ROBERT P. DICKERSON, ESQ.  
4 Nevada Bar No. 000945  
5 KATHERINE L. PROVOST, ESQ.  
6 Nevada Bar No. 008414  
7 JOSEF M. KARACSONYI, ESQ.  
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9 1745 Village Center Circle  
10 Las Vegas, Nevada 89134  
11 Telephone: (702) 388-8600  
12 Facsimile: (702) 388-0210  
13 Email: info@dickersonlawgroup.com  
14 Attorneys for LYNITA SUE NELSON

12 EIGHTH JUDICIAL DISTRICT COURT  
13 FAMILY DIVISION

14 CLARK COUNTY, NEVADA

16 ERIC L. NELSON, )  
17 )  
18 Plaintiff/Counterdefendant, )  
19 v. )  
20 LYNITA SUE NELSON, ) CASE NO. D-09-411537-D  
21 Defendant/Counterclaimant. ) DEPT NO. "O"  
22 )  
23 ERIC L. NELSON NEVADA TRUST ) DATE OF HEARING: 02-23-12  
24 dated May 30, 2001, and LSN NEVADA ) TIME OF HEARING: 2:30 p.m.  
25 TRUST dated May 30, 2001, )  
26 Necessary Parties (joined in this )  
27 action pursuant to Stipulation and )  
28 Order entered on August 9, 2011) )



1 LANA MARTIN, as Distribution Trustee of )  
 2 the ERIC L. NELSON NEVADA TRUST )  
 3 dated May 30, 2001, )  
 4 Necessary Party (joined in this action )  
 5 pursuant to Stipulation and Order )  
 6 entered on August 9, 2011)/ Purported )  
 7 Counterclaimant and Crossclaimant, )  
 8 v. )  
 9 LYNITA SUE NELSON and ERIC )  
 10 NELSON, )  
 11 Purported Cross-Defendant and )  
 12 Counterdefendant, )  


---

 13 LYNITA SUE NELSON, )  
 14 Counterclaimant, Cross-Claimant, )  
 15 and/or Third Party Plaintiff, )  
 16 v. )  
 17 ERIC L. NELSON, individually and as the )  
 18 Investment Trustee of the ERIC L. NELSON )  
 19 NEVADA TRUST dated May 30, 2001; the )  
 20 ERIC L. NELSON NEVADA TRUST dated )  
 21 May 30, 2001; LANA MARTIN, individually, )  
 22 and as the current and/or former Distribution )  
 23 Trustee of the ERIC L. NELSON NEVADA )  
 24 TRUST dated May 30, 2001, and as the )  
 25 former Distribution Trustee of the LSN )  
 26 NEVADA TRUST dated May 30, 2001); )  
 27 NOLA HARBER, individually, and as the )  
 28 current and/or former Distribution Trustee )  
 of the ERIC L. NELSON NEVADA TRUST )  
 dated May 30, 2001, and as the current )  
 and/or former Distribution Trustee of the )  
 LSN NEVADA TRUST dated May 30, 2001; )  
 ROCHELLE McGOWAN, individually; )

1 JOAN B. RAMOS, individually; and DOES I )  
 2 through X, )  
 3 Counterdefendant, and/or )  
 4 Cross-Defendants, and/or )  
 5 Third Party Defendants. )

6  
 7 ORDER FROM FEBRUARY 23, 2012 HEARING PARTIALLY GRANTING  
 8 ELN TRUST'S MOTION TO DISMISS THIRD-PARTY COMPLAINT  
 9 WITHOUT PREJUDICE

10 This matter coming on for hearing on this 23<sup>rd</sup> day of February, 2012, before the  
 11 Honorable Frank P. Sullivan, for a Decision on Third-Party Defendants' Motion to  
 12 Dismiss, filed November 7, 2011, Plaintiff's Motion to Dismiss and Countermotion  
 13 for Attorneys Fees and Costs, filed November 4, 2011, Defendant's Opposition to  
 14 Motions to Dismiss, and Countermotion for an Award of Attorneys Fees and Costs,  
 15 filed December 1, 2011, and the various supplements to the aforementioned papers  
 16 filed by the parties; ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST,  
 17 ESQ., and JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP,  
 18 appearing on behalf of Defendant, LYNITA NELSON, and Defendant being present;  
 19 RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, appearing on behalf  
 20 of Plaintiff, ERIC NELSON, and Plaintiff being present; and MARK P. SOLOMON,  
 21 ESQ., and JEFFREY P. LUSZECK, ESQ., of SOLOMON, DWIGGINS & FREER ,  
 22 LTD., appearing on behalf of Third-Party Defendants. The Court having reviewed and  
 23 analyzed the pleadings and papers on file herein, having researched the issues presently  
 24 before the Court, and having heard the arguments of counsel and the parties, and good  
 cause appearing therefore,

25 THE COURT HEREBY FINDS that the Court has reviewed Part IV of the  
 26 Eighth Judicial District Court Rules with respect to probate, trust, administration of  
 27 estates, the rules that apply under Chapter 164 of Title 13 of the Nevada Revised  
 28 Statutes, and the various Nevada Supreme Court decisions cited by the parties in

1 analyzing whether this Court has jurisdiction to hear the various claims asserted by  
2 Defendant in her First Amended Claims for Relief Against Eric L. Nelson, et. al, filed  
3 December 20, 2011, and whether the Court would be inclined to exercise such  
4 jurisdiction. EDCR 4.16(a) provides:

5 (a) The probate judge may hear whichever contested matters the judge  
6 shall select, and schedule them at the convenience of the judge's calendar.  
7 The judge alone may refer contested matters pertaining to the probate  
8 calendar to a master appointed by the judge for hearing and report. All  
9 other contested matters pertaining to the probate calendar will be  
10 assigned on a random basis to a civil trial judge, other than a trial judge  
serving in the family division. The judge to whom a matter is assigned  
may, upon resolution of the contested matter, return the case to the  
probate calendar, or continue with the case if further contested matters  
are expected.

11 However, in *Landreth v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. 16 (2011), the  
12 Nevada Supreme Court held that a Family Court does not lack authority to resolve  
13 cases solely because such cases involve subject matter outside of those matters  
14 specifically delineated in NRS 3.223 setting forth the original and exclusive jurisdiction  
15 of the Family Court. *Landreth* was very clear in holding that Article 6, Section 6 of the  
16 Nevada Constitution, provides the district courts with jurisdiction that cannot be  
17 limited by the Nevada Legislature by legislative order or rule. *Landreth* further made  
18 it clear that NRS 3.223 does not limit the Constitutional power and authority provided  
19 under Article 6, Section 6(1) of the Nevada Constitution, to a district court judge  
20 sitting in the family division. The Court further notes that EDCR 4.16(a), and its  
21 language providing for contested probate matters to be assigned to a "civil trial judge,  
22 other than a trial judge serving in the family division," was enacted in May, 2004, and  
23 *Landreth* was decided seven (7) years later. Accordingly, this Court finds that it has  
24 jurisdiction to entertain actions concerning trusts and administration of estates if it so  
25 chooses, or where it would be appropriate. NRS 3.223, and the EDCRs, cannot limit  
26 this Court's powers under the Nevada Constitution.

27 THE COURT FURTHER FINDS that NRS 164.015(1) provides, in pertinent  
28 part: "The court has exclusive jurisdiction of proceedings initiated by the petition of

1 an interested person concerning the internal affairs of a nontestamentary trust . . .”  
2 Under NRS 132.116, “‘District court’ or ‘court’ means a district court of this State  
3 sitting in probate or otherwise adjudicating matters pursuant to this title.”  
4 Accordingly, the reference to a court in NRS 164.015(1) is not limited to district  
5 courts sitting in probate only.

6 THE COURT FURTHER FINDS that in *Barelli v Barelli*, 11 Nev. 873, 944 P.2d  
7 246 (1997), the Nevada Supreme Court held that a family court has jurisdiction to  
8 resolve issues falling outside of its original and exclusive jurisdiction that are necessary  
9 to the resolution of claims within its original and exclusive jurisdiction. This Court is  
10 only inclined to hear such claims concerning the parties’ trusts as it believes necessary  
11 to resolve the property issues surrounding the parties’ divorce, and to distribute  
12 property between the parties as the Court deems appropriate.

13 THE COURT FURTHER FINDS that it has examined the causes of action  
14 asserted by Defendant in her First Amended Claims for Relief Against Eric L. Nelson,  
15 et. al, filed December 20, 2011. The Court finds that Defendant has stated a cause of  
16 action for alter ego under the First (Veil-Piercing), and Second (Reverse Veil-Piercing)  
17 claims for relief, and has further stated a cause of action under the Fourteenth  
18 (Constructive Trust), and Fifteenth (Injunctive Relief) claims for relief, which the  
19 Court is inclined and believes it needs to hear and resolve. Although the Court has  
20 jurisdiction over Defendant’s other claims in the First Amended Claims for Relief  
21 Against Eric L. Nelson, et. al, filed December 20, 2011, the Court declines to hear such  
22 other claims (which are tort claims), without ruling on the merits of whether such  
23 causes of action state a claim for relief (which the Court has not analyzed).  
24 Consequently, claims against Joan Ramos, Lana Martin, individually and as former  
25 distribution trustee of the ELN Trust and LSN Trust (but not as current distribution  
26 trustee of the ELN Trust), Nola Harber, individually, and as former distribution trustee  
27 of the ELN Trust and LSN Trust, and Rochelle McGowan, should be dismissed,  
28 without prejudice.

1 NOW, THEREFORE,

2 IT IS HEREBY ORDERED the ELN Trust's Motion to Dismiss Third-Party  
3 Complaint is GRANTED IN PART WITHOUT PREJUDICE..

4 IT IS FURTHER ORDERED that the requests to dismiss the First, Second,  
5 Fourteenth, and Fifteenth claims for relief in Defendant's First Amended Claims for  
6 Relief Against Eric L. Nelson, et. al, filed December 20, 2011, are DENIED. Such  
7 claims shall remain as to the ELN Trust, Eric Nelson, individually and as investment  
8 trustee of the ELN Trust, and Lana Martin, as current distribution trustee of the ELN  
9 Trust.

10 IT IS FURTHER ORDERED that the provisions contained in NRS 78 are not  
11 the appropriate standards to be applied to Lynita Nelson's veil-piercing claims against  
12 the ELN Trust.

13 IT IS FURTHER ORDERED that the Court DECLINES to exercise its  
14 jurisdiction over the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth,  
15 Eleventh, Twelfth, and Thirteenth claims for relief in Defendant's First Amended  
16 Claims for Relief Against Eric L. Nelson, et. al, filed December 20, 2011, without  
17 making any specific findings or orders regarding the merits of such claims, and whether  
18 such claims state a cause of action, which issues the Court has not analyzed or  
19 addressed, and as such, said claims are hereby DISMISSED WITHOUT PREJUDICE  
20 so that same can be brought in another tribunal.

21 IT IS FURTHER ORDERED that Joan Ramos, Lana Martin, individually and  
22 as former distribution trustee of the ELN Trust and LSN Trust, Nola Harber,  
23 individually and as former distribution trustee of the ELN Trust and LSN Trust, and  
24 Rochelle McGowan are hereby DISMISSED WITHOUT PREJUDICE from this  
25 action.

26 IT IS FURTHER ORDERED that the previously set trial dates in May, 2012,  
27 are hereby VACATED, and the trial in this matter shall continue on July 16, 17, 18,  
28 19, 23, and 24, 2012, at 9:00 a.m. each day.

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IT IS FURTHER ORDERED that the parties' attorneys shall confer and attempt to reach an agreement regarding discovery deadlines.

IT IS SO ORDERED.

DATED this 28 day of August, 2012.

Jack B. Anna  
DISTRICT COURT JUDGE *JA*

Submitted by:  
THE DICKERSON LAW GROUP

Approved as to Form and Content:  
IVEY, FORSBERG & DOUGLAS

By Josef Karacsonyi  
ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945\*  
JOSEF M. KARACSONYI, ESQ.  
Nevada Bar No. 010634  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

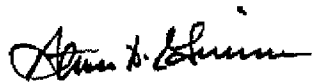
By Rhonda K. Forsberg  
RHONDA K. FORSBERG, ESQ.  
Nevada Bar No. 009557  
1020 W Horizon Ridge Pkwy #100  
Henderson, Nevada 89012  
Attorneys for Plaintiff

Approved as to Form and Content:  
SOLOMON, DWIGGINS & FREER, LTD

By Mark A. Solomon  
MARK A. SOLOMON, ESQ.  
Nevada Bar No. 000418  
JEFFREY P. LUSZECK, ESQ.  
Nevada Bar No. 009619  
9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129  
Attorneys for Third-Party Defendants

# **EXHIBIT 2**

# **EXHIBIT 2**

  
CLERK OF THE COURT

1 NEO  
THE DICKERSON LAW GROUP  
2 ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
3 KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
4 1745 Village Center Circle  
Las Vegas, Nevada 89134  
5 Telephone: (702) 388-8600  
Facsimile: (702) 388-0210  
6 Email: info@dickersonlawgroup  
7 Attorneys for Defendant, Lynita Sue Nelson

8  
9  
10 DISTRICT COURT  
FAMILY DIVISION  
11 CLARK COUNTY, NEVADA

12 ERIC L. NELSON,  
13 Plaintiff/Counterdefendant,  
14 v.  
15 LYNITA SUE NELSON,  
16 Defendant/Counterclaimant.  
17

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

18 NOTICE OF ENTRY OF STIPULATION AND ORDER

19 TO: ERIC L. NELSON, Plaintiff; and  
20 TO: DAVID A. STEPHENS, ESQ., of STEPHENS, GOURLEY & BYWATER, P.C.,  
21 Attorneys for Plaintiff:

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PLEASE TAKE NOTICE that a STIPULATION AND ORDER was entered in the above-entitled matter on August 9, 2011, a copy of which is attached hereto.

DATED this 9<sup>th</sup> day of August, 2011.

THE DICKERSON LAW GROUP

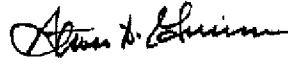
By   
ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am serving via U.S. Mail, a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER to the following at his last known address on this 9<sup>th</sup> day of August, 2011.

David A. Stephens, Esq.  
Stephens, Gourley & Bywater, P.C.  
3636 N. Rancho Drive.  
Las Vegas, Nevada 89130  
Attorney for Plaintiff

  
An employee of The Dickerson Law Group

  
CLERK OF THE COURT

1 SAO  
2 THE DICKERSON LAW GROUP  
3 ROBERT P. DICKERSON, ESQ.  
4 Nevada Bar No. 000945  
5 KATHERINE L. PROVOST, ESQ.  
6 Nevada Bar No. 008414  
7 1745 Village Center Circle  
8 Las Vegas, Nevada 89134  
9 Telephone: (702) 388-8600  
10 Facsimile: (702) 388-0210  
11 Email: info@dickersonlawgroup.com

12 Attorneys for Defendant, LYNITA NELSON

DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

13 ERIC L. NELSON,  
14 Plaintiff/Counterdefendant,  
15 v.  
16 LYNITA SUE NELSON,  
17 Defendant/Counterclaimant.

CASE NO. D-09-411637-D  
DEPT NO. "O"

STIPULATION AND ORDER

18 COME NOW, Plaintiff, ERIC L. NELSON, by and through his attorney,  
19 DAVID A. STEPHENS, ESQ., of STEPHENS, GOURLEY & BYWATER, P.C., and  
20 Defendant, LYNITA SUE NELSON, by and through her attorneys, ROBERT P.  
21 DICKERSON, ESQ., and KATHERINE L. PROVOST, ESQ., of THE DICKERSON  
22 LAW GROUP, and hereby stipulate and agree as follows:

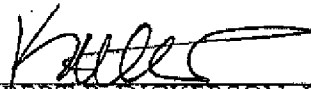
23 IT IS HEREBY STIPULATED AND AGREED that the ERIC L. NELSON  
24 NEVADA TRUST dated May 30, 2001, shall be joined as a necessary party,  
25 intervening in this action, as complete relief cannot be accorded among the parties  
26 without the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 being named  
27 a party and the disposition of the action in the absence of the ERIC L. NELSON  
28 NEVADA TRUST dated May 30, 2001 will impair or impede its ability to protect its


1 interests and add risk of incurring double, multiple, or otherwise inconsistent  
2 obligations.

3 IT IS FURTHER STIPULATED AND AGREED that the LSN NEVADA  
4 TRUST dated May 30, 2001, shall be joined as a necessary party, intervening in this  
5 action, as complete relief cannot be accorded among the parties without the LSN  
6 NEVADA TRUST dated May 30, 2001 being named a party and the disposition of the  
7 action in the absence of the LSN NEVADA TRUST dated May 30, 2001 will impair  
8 or impede its ability to protect its interests and add risk of incurring double, multiple,  
9 or otherwise inconsistent obligations.

10 Submitted by:  
11 THE DICKERSON LAW GROUP

Approved as to form and content:  
STEPHENS, GOURLEY &  
BYWATER

12   
13 \_\_\_\_\_  
14 ROBERT P. DICKERSON, ESQ.  
15 Nevada Bar No. 0945  
16 KATHERINE L. PROVOST, ESQ.  
17 Nevada Bar No. 008414  
18 1745 Village Center Circle  
19 Las Vegas, Nevada 89134  
20 Attorney for Defendant  
21  
22  
23  
24  
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\_\_\_\_\_

DAVID A. STEPHENS, ESQ.  
Nevada Bar No. 000902  
3636 N. Rancho Drive  
Las Vegas, Nevada 89130  
Attorney for Plaintiff

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ORDER

Based upon the Stipulation of the parties as set forth herein:

IT IS HEREBY ORDERED that the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, shall be joined as a necessary party, intervening in this action, as complete relief cannot be accorded among the parties without the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 being named a party and the disposition of the action in the absence of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 will impair or impede its ability to protect its interests and add risk of incurring double, multiple, or otherwise inconsistent obligations.


IT IS FURTHER ORDERED that the LSN NEVADA TRUST dated May 30, 2001, shall be joined as a necessary party, intervening in this action, as complete relief cannot be accorded among the parties without the LSN NEVADA TRUST dated May 30, 2001 being named a party and the disposition of the action in the absence of the LSN NEVADA TRUST dated May 30, 2001 will impair or impede its ability to protect its interests and add risk of incurring double, multiple, or otherwise inconsistent obligations.

DATED this 4 day of August, 2011.

  
DISTRICT COURT JUDGE

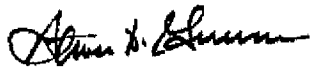
FRANK P. SULLIVAN

Respectfully Submitted:  
THE DICKERSON LAW GROUP

  
ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 0945  
KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

# **EXHIBIT 1**

# **EXHIBIT 1**



CLERK OF THE COURT

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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. )

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

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )  
)  
Crossclaimant, )  
)  
vs. )  
)  
LYNITA SUE NELSON, )  
)  
Crossdefendant. )

NOTICE OF ENTRY OF ORDER

- |  |   |
|--|---|
| <u>Non-Trial Dispositions:</u>                             |   |
| <input type="checkbox"/> Other                             | <input type="checkbox"/> Settled/Withdrawn:                   |
| <input type="checkbox"/> Dismissed - Want of Prosecution   | <input type="checkbox"/> Without Judicial Conf/Hrg            |
| <input type="checkbox"/> Involuntary (Statutory) Dismissal | <input type="checkbox"/> With Judicial Conf/Hrg               |
| <input type="checkbox"/> Default Judgment                  | <input type="checkbox"/> By ADR                               |
| <input type="checkbox"/> Transferred                       | <u>Trial Dispositions:</u>                                    |
| <input type="checkbox"/> Disposed After Trial Start        | <input checked="" type="checkbox"/> Judgment Reached by Trial |

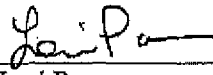
FRANK R. SULLIVAN  
DISTRICT JUDGE  
FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

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TO:  
Rhonda Forsberg, Esq.  
Robert Dickerson, Esq.  
Mark Solomon, Esq.  
Jeffrey Luszeck, Esq.

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

DATED this 3 day of June, 2013.

  
\_\_\_\_\_  
Lori Parr  
Judicial Executive Assistant  
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. )

CASE NO.: D-09-411537-D  
DEPT. NO.: 0  
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CLERK OF THE COURT

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )  
)  
Crossclaimant, )  
)  
vs. )  
)  
LYNITA SUE NELSON, )  
)  
Crossdefendant. )

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. 0  
LAS VEGAS NV 89101



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

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

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

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

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

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

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

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

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

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

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

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

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

- A First Interstate Bank account;
- A Bank of America account;
- 4021 Eat Portland Street, Phoenix, Arizona;
- 304 Ramsey Street, Las Vegas, Nevada;
- Twelve (12) acres located on Cheyenne Avenue, Las Vegas, Nevada;
- Ten (10) acres located on Cheyenne Avenue, Las Vegas, Nevada;
- 1098 Evergreen Street, Phoenix, Arizona;
- Forty nine (49) lots, notes and vacant land in Queens Creek, Arizona;
- Forty one (41) lots, notes and vacant land in Sunland Park, New Mexico;
- Sport of Kings located at 365 Convention Center Drive, Las Vegas, Nevada;
- A 1988 Mercedes;
- Forty percent (40%) interest in Eric Nelson Auctioneering, 4285 South Polaris Avenue, 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:

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

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

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

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

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

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

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

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

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

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

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

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

22  
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).**"

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

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

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

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

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

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

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

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

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

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

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

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

*Fiduciary Duty*

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

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

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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 2. An investment trust adviser may exercise the powers provided  
27 to the investment trust adviser in the instrument in the best interests of the  
28 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:



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

See, NRS 163.5557 (emphasis added).

THE COURT FURTHER FINDS that Mr. Nelson continuously testified as to his role as the investment trustee for both trusts, specifically testifying during cross examination on September 1, 2010, as follows:

Q. Now you're the one that put title to those parcels that we've talked about in the name of Dynasty, Bal Harbor, Emerald Bay, Bay Harbor Beach Resorts and (indiscernible) Financial Partnerships. Is that correct?

A. I believe so, yes.

Q. And you're the one that also put title in the name of -- all the remaining lots in the name of LSN Nevada Trust. Is that true?

A. Yes, sir.

THE COURT FURTHER FINDS that during his September 1<sup>st</sup> cross-examination, Mr. Nelson also testified as to the assets located in Mississippi as follows:

Q. The height of the market was 18 months ago according to your testimony?

A. No, no. But I'm just saying we could have -- the this lawsuit's been pending for a while, sir. We did these 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.

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Q. You put them --

A. Yes, sir.

Q. -- into Lynita's?

A. Yes, sir --

Q. All right. Sir --

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

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

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

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

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

<sup>3</sup> NRS 163.554.  
<sup>4</sup> *Williams v. Waldman*, 108 Nev. 466, 472 (1992).

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

*Constructive Trust*

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

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

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

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

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

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

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

See, NRS 111.025 (Emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<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

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

<sup>8</sup> Id.

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

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

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

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

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



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

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

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

*Unjust Enrichment*

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

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

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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.

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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.  
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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.

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

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

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

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

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

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

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

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

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

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

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

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

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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.  
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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,  
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**FRANK R SULLIVAN**  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

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

*Credibility*

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

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

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

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

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

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

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

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

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

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<sup>16</sup> Defendant's Exhibit QQQQ.

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

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

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

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

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

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<sup>17</sup> Defendant's Exhibit QQQQ.



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

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

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

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

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

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

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

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

*Lack of Trust Formalities*

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

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

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

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

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

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

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

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

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

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

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

*Liabilities*

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

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

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

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

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

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

*Community Waste*

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

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<sup>19</sup> Defendant's Exhibit GGGGG.  
<sup>20</sup> Id.

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

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

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

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

*Child Support*

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

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<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.

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

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

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

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

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

2009: Carli = \$14,000; Garrett = \$5,270;
2010: Carli = \$9,850; Garrett = \$29,539;
2011: Carli = <u>\$8,630</u> ; Garrett = <u>\$4,427</u>
Total = \$71,716

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

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

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

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

THE COURT FURTHER FINDS that, while Mr. Nelson did spend a rather significant 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.



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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

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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;

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

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

23  
24 THE COURT FURTHER FINDS that the repurchase of Wyoming Downs by Mr.  
25 Nelson via Dynasty Development Group and his ability to immediately obtain a loan against  
26 the property to pull out about \$300,000 in equity, clearly evidences Mr. Nelson's formidable  
27 and accomplished business acumen and ability to generate substantial funds through his  
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2 investment talents. This type of transaction is not atypical for Mr. Nelson and demonstrates his  
3 extraordinary ability, which was developed and honed during the couple's marriage, to evaluate  
4 and maximize business opportunities and will ensure that he is always able to support himself,  
5 unlike Mrs. Nelson.

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>

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

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

23 THE COURT FURTHER FINDS that while the evidence adduced at trial reflected that  
24 the Lindell property should generate a cash flow of approximately \$10,000 a month, the  
25 evidence failed to clearly establish the monthly cash flow from the remaining properties.  
26 However, in the interest of resolving this issue without the need for additional litigation, this  
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28 <sup>22</sup> Sprenger v. Sprenger, 110 Nev. 855 (1974).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>23</sup> NRS 166.130  
<sup>24</sup> Restatement (Third) of Trust § 59 (2003).

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

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

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

*Attorney's Fees*

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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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.

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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

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

19 THE COURT FURTHER FINDS that in preparing this Decree of Divorce, the  
20 monetary values and figures reflected herein were based on values listed in Mr. Bertsch's  
21 report and the testimony elicited from the July and August 2012 hearings.<sup>28</sup>  
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23 THE COURT FURTHER FINDS that as to the repurchase of Wyoming Downs by the  
24 ELN Trust via the Dynasty Development Group, this Court is without sufficient information  
25 regarding the details of the repurchase of the property, the value of the property and the  
26 encumbrances on the property to make a determination as to the disposition of the property,  
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<sup>28</sup> *Supra*, note 6.

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

*Conclusion*

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

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

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

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

IT IS FURTHER ORDERED that both parties shall have the right of first refusal should either Trust decide to sell its interest in the Russell Road property.

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IT IS FURTHER ORDERED that the following properties shall remain in or be 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
½ of Brianhead Cabin	\$ 492,500
<u>1/3 of Russell Road (+ note for rents)</u>	<u>\$2,265,113.50</u> (\$2,166,775 + \$98,338.50)
<b>Total</b>	<b>\$8,783,487.50</b>

IT IS FURTHER ORDERED that the following properties shall remain in or be 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
½ of Brianhead Cabin	\$ 492,500
<u>1/3 of Russell Road (+ note for rents)</u>	<u>\$2,265,113.50</u> (\$2,166,775 + \$98,338.50)
<b>Total</b>	<b>\$8,785,988.50</b>

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS FURTHER ORDERED that the parties shall equally bear the private education costs, including tuition, of Carli's private school education at Faith Lutheran.


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

Dated this 3<sup>rd</sup> day of June, 2013.

  
Honorable Frank P. Sullivan  
District Court Judge – Dept. O

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 \*\*\*\*\*

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

Electronically Filed  
Jul 09 2013 12:56 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

6 Petitioners,

7 vs.

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

CASE NO.

13 Respondents,

14 and

15 ERIC L. NELSON and LYNITA S.  
16 NELSON, individually, and LSN  
17 NEVADA TRUST dated May 30, 2001.

18 Real Parties in Interest.

19 **EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY TO ISSUE BY**  
20 **5:00 P.M. ON JULY 9, 2013, PENDING RESOLUTION OF WRIT**  
21 **PROCEEDINGS; NRAP 27(e) CERTIFICATE**

22 Pursuant to NRAP 8 and NRAP 27(e), Petitioner, NOLA HARBER,  
23 Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001  
24 (“ELN Trust”) makes this Emergency Motion under NRAP 27(e) for a Stay of the  
25 portions of the Divorce Decree ordering that certain real property be transferred  
26 from the ELN Trust to the LSN Nevada Trust dated May 30, 2001 (“LSN Trust”),  
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1 pending resolution by this Court of the ELN Trust's Petition for Writ of  
2 Prohibition.  
3

4 **I.**

5 **REASON FOR REQUEST FOR CONSIDERATION BY 5:00 P.M. ON**  
6 **JULY 9, 2013**

7  
8 The matter currently before this Court was initiated by a Petition for Writ of  
9 Prohibition challenging the certain jurisdiction of the District Court to make  
10 portions of the District Court's Divorce Decree ordering the ELN Trust to transfer  
11 100% of its interest in commercial property located at 3611 Lindell Road  
12 ("Lindell Property"), 17 residential rental properties owned by Banone, LLC, and  
13 the JB Ramos Trust Note Receivable in the amount of \$78,000.00, and 50%  
14 interest in commercial property located at 5220 East Russell Road ("Russell Road  
15 Property"), to the LSN Trust. The LSN Trust has already contacted some or all of  
16 the tenants of the aforementioned properties advising said tenants to make all  
17 future rental payments directly to the LSN Trust, and to possibly enter into a new  
18 lease with the LSN Trust. To make matters worse, the LSN Trust has served the  
19 ELN Trust, a fifteen year tenant of the Lindell Property, with a "Thirty (30) Day  
20 Notice of Termination of Tenancy," which requires the ELN Trust to vacate the  
21 Lindell Property on or before July 10, 2013, unless the ELN Trust enters into a  
22 "binding lease agreement" with the LSN Trust. Finally, the LSN Trust has  
23 contacted Joan Ramos advising her that it is the holder of the JB Ramos Trust  
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1 Note Receivable and has purportedly invalidated an August 25, 2011,  
2 Memorandum of Understanding that was entered between such trust and Banone,  
3 LLC, an asset wholly owned by the ELN Trust.  
4

5 As set forth in the attached NRAP 27(e) Certificate, immediate relief is  
6 needed because the ELN Trust will be evicted if it does not enter into a lease with  
7 the LSN Trust on or before July 10, 2013. Further, unless immediate relief is  
8 granted the LSN Trust will continue to collect rents from the tenants of the Lindell  
9 Property and Banone, LLC properties, enter into new leases with such tenants,  
10 and/or quite possibly sell such property.  
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14 **II.**

15 **STATEMENT OF FACTS**  
16

17 The facts underlying this matter are set forth in detail in the Petition for  
18 Writ of Prohibition filed on behalf of the ELN Trust on July 9, 2013. Due to the  
19 page limit imposed by NRAP 27(d)(2), the facts salient to this emergency motion  
20 are as follows:  
21

22 On June 3, 2013, the District Court issued the Divorce Decree, wherein it  
23 found that both the ELN Trust and LSN Trust were “established as a self-settled  
24 spendthrift trust in accordance with NRS 166.020,” *see See* Divorce Decree dated  
25 June 3, 2013 at 4:25, attached as Exhibit 1, and that the ELN Trust was funded  
26 with assets that were previously owned by a separate property trust that had been  
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1 established by Eric in or around 1993, *see id.* at 4:16-17, and the LSN Trust was  
2 funded with assets that were previously owned by a separate property trust that  
3 had been established by Lynita in or around 1993. *See* Ex. 1 at 5:2-3. The  
4 separate property in each trust arose from a Separate Property Agreement which  
5 the District Court found to be valid. *See* Ex. 1 at 3:9-11.  
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8         Despite the fact that the District Court recognized that the Nevada State  
9 Legislature “approved the creation of spendthrift trusts in 1999 and it is certainly  
10 not the purpose of this Court to challenge the merits of spendthrift trusts,” *see* Ex.  
11 1 at 5:13-14, and ordered that the ELN Trust and LSN Trust would remain intact,  
12 Ex. 1 at 44: 9-17, the District Court ultimately treated the assets owned by the  
13 ELN Trust and LSN Trust as community property (even though each trust was  
14 funded with the respective party’s separate property and none of the trusts’ assets  
15 are now Eric or Lynita’s community or separate property), and proceeded to  
16 “equalize” and/or “level off” the trusts:  
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21         THE COURT FURTHER FINDS . . . that keeping the Trusts intact,  
22 while transferring assets between the Trusts to “level off the Trusts”,  
23 would effectuate the parties clear intentions of “supercharging” the  
24 protection of the assets from creditors while ensuring that the  
25 respective values of the Trusts remained equal.

26         THE COURT FURTHER FINDS that in lieu of transferring assets  
27 between the Trusts to level of the Trust and to achieve an equitable  
28 allocation of assets between the Trusts as envisioned by the parties,  
the Court could award a sizeable monetary judgment against  
Mr. Nelson for the extensive property and monies that were  
transferred from the LSN Trust to the ELN Trust, at his direction, and

1 issue a corresponding charging order against any distributions to Mr.  
2 Nelson until such judgment was fully satisfied. *See* Ex. 1 at 44:9-28.

3 . . .

4 IT IS FURTHER ORDERED that the 66.67% interest in the Russell  
5 Road property (\$4,333,550) and the 66.67% interest in the \$295,000  
6 note/deed for rents and taxes (\$196,677) currently held by the ELN  
7 Trust, shall be equally divided between the ELN Trust and the LSN  
8 Trust. *See* Ex. 1 at 46:16-19.

9 . . .

10 IT IS FURTHER ORDERED that due to the difference in the value  
11 between the ELN Trust and the LSN Trust in the amount of \$153,499,  
12 the Trusts shall be equalized by transferring the JB Ramos Trust Note  
13 from the Notes Receivable of the ELN Trust, valued at \$78,000, to the  
14 LSN Trust as already reflected on the preceding page. *See* Ex. 1 at  
15 47:1 - 48:5.

16 Simply put, the Court transferred millions of dollars from the ELN Trust to  
17 the LSN Trust to “equalize” and/or the “level off” so that the ELN Trust would  
18 possess \$8,783,487.50 in assets and the LSN Trust would possess \$8,785,988.50  
19 in assets. *See* Ex. 1 at 47:2-26.

20 In making such findings, the District Court exceeded its jurisdiction by  
21 among other things, ignoring NRS Chapter 21, NRS 166.120 and other provisions  
22 of Nevada’s self-settled spendthrift trust statutes.

### 23 **III.**

### 24 **LEGAL ANALYSIS**

#### 25 **A. Legal standards for granting a stay pending appeal.**

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1 NRAP 8(a) requires that an application for a stay pending resolution of an  
2 extraordinary writ be made to the district court in the first instance, if practicable,  
3 as the district court is more familiar with the facts and circumstances of the case.  
4  
5 *See Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005). In accordance with  
6 NRAP 8, a stay was sought in, and denied by, the District Court.  
7

8 The purpose of a stay pending resolution of an extraordinary writ is to  
9 preserve the status quo. *Westside Chtr. Serv. V. Gray Line Tours*, 99 Nev. 456,  
10 460, 664 P.2d 351 (1983). A party seeking to stay the district court proceedings  
11 pending resolution of an extraordinary writ must demonstrate that the factors  
12 enumerated in NRAP 8(c) apply. *See Hansen v. District Court*, 116 Nev. 650,  
13 657, 6P.3d 982, 986 (2000). Those factors are: (1) whether the object of the  
14 appeal will be defeated; (2) whether the appellant will suffer irreparable harm or  
15 serious injury; (3) whether respondent will suffer irreparable harm or serious  
16 injury; and (4) whether appellant is likely to prevail on the merits in the appeal.  
17 NRAP 8(c); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89  
18 P.3d 36, 38 (2004). In determining whether a motion for the stay pending  
19 resolution of an extraordinary writ should be granted, consideration may also be  
20 given to the probable nature of the issues upon the merits of the appeal and to the  
21 balancing of public and private interests involved. *Nevada Tax Commission v.*  
22 *Mackie*, 74 Nev. 273, 276, 330 P.2d 496, 497 (1958).  
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1 **B. The law and the facts militate in favor of granting a stay.**

2 The NRAP 8(c) factors weigh in favor of granting a stay of the portions of  
3 the Divorce Decree that transfer ELN Trust property to the LSN Trust pending  
4 these writ proceedings for the following reasons:  
5

6  
7 1. The object of the appeal will be defeated if a stay is not issued.

8 The object of the Petition for Writ of Prohibition will be defeated if the stay  
9 is denied by this Court as it seeks to avoid the District Court from exceeding its  
10 jurisdiction by transferring certain properties from the ELN Trust to the LSN  
11 Trust. The Divorce Decree is in excess of the District Court's jurisdiction to make  
12 because it is contrary to Nevada law for the District Court to substitute its  
13 judgment for that of the Distribution Trustee by ordering the ELN Trust to transfer  
14 property to "equalize" or "level-off" the trusts; NRS 166.120 makes the  
15 beneficiary's interest unreachable by legal process; and NRS 21.080 provides that  
16 the beneficiary's interest is not subject to execution.  
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21 The object of the ELN Trust's Petition for Writ of Prohibition is to confirm  
22 that the District Court exceeded its jurisdiction under Nevada law by ordering a  
23 self-settled spendthrift trust, which was the funded with a settlor's separate  
24 property, to transfer such property to another self-settled spendthrift trust because  
25 the settlors purportedly intended to "equalize" and/or "level off" such trusts. Both  
26 Nevada law and the terms of the ELN Trust will be thwarted if the Divorce  
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1 Decree is not stayed while the writ proceeding is pending. As such, a stay  
2 pending the resolution of the ELN Trust's Petition for Writ of Prohibition should  
3 be granted.  
4

- 5 2. The absence of a stay will result in serious or irreparable harm and  
6 will be detrimental to private and public interests alike.

7 The second factor also militates in favor of a stay pending the resolution of  
8 the ELN Trust's Writ of Prohibition. As this Court has previously recognized,  
9 "real property and its attributes are considered unique and loss of real property  
10 rights generally results in irreparable harm." *Dixon v. Thatcher*, 103 Nev. 414,  
11 415-16, 742 P.2d 1029, 1029-30 (1987); *see also Hansen v. Eighth Judicial Dist.*  
12 *Court ex rel. County of Clark*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000)  
13 providing that trustee's sale of a house as an example of irreparable harm  
14 warranting the imposition of a stay pending appeal; *Nevada Escrow Service, Inc.*  
15 *v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction to stop  
16 foreclosure reversed because legal remedy inadequate).  
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22 The ELN Trust will suffer irreparable harm should it be required to transfer  
23 100% of its interest in the Lindell Property, the rental properties owned by  
24 Banone, LLC, and JB Ramos Trust Note Receivable, and 50% interest in the  
25 Russell Road Property, to the LSN Trust. Indeed, not only is the LSN Trust  
26 collecting rents, but is also entering into leases and/or altering the contractual  
27 obligations existing with the ELN Trust. *See* Correspondence from Katherine L.  
28

1 Provost, Esq. dated June 7, 2013, to the current tenant of 2209 Farmouth Circle,  
2 attached as Exhibit 2. To make matters worse, the LSN Trust is seeking to evict  
3 the ELN Trust from the Lindell Property on or before July 10, 2013, which will  
4 impede or make impossible the ELN Trust's ability to maintain and run the day-  
5 to-day operations of entities wholly owned by the ELN Trust. See  
6 Correspondence from Robert P. Dickerson, Esq. dated June 10, 2013, and Thirty  
7 Day Notice of Termination of Tenancy, attached as Exhibit 3. Finally, the LSN  
8 Trust has purportedly already voided a contract between an asset owned by the  
9 ELN Trust and the JB Ramos Trust. See Correspondence from Katherine L.  
10 Provost, Esq. dated June 7, 2013, to Joan Ramos, attached as Exhibit 4.

15 Public policy also necessitates that the sanctity of the ELN Trust be  
16 recognized as Nevada is one of the few states that recognize self-settled  
17 spendthrift trusts, see Ex. 1 at 5:11-15, and if the Emergency Motion is not  
18 granted it will set a precedent that courts may disregard the plain language of NRS  
19 Chapter 21, NRS 166.120 and the terms of self-settled spendthrift trusts to fashion  
20 any result that it desires, thereby potentially subjecting the ELN Trust to further  
21 litigation.

25 3. A stay will not result in irreparable harm to Lynita.

26 In contrast to the potential harm to the ELN Trust and to the public interests  
27 advanced by a stay, no harm would be visited on Lynita if the portions of the  
28

1 Divorce Decree regarding the transfers referenced *supra* are stayed. The LSN  
2 Trust, of which Lynita is a beneficiary, owns substantial assets the value of which  
3 exceeds \$4,000,000.00. *See* Ex. 1 at 47:16-25. Thus, the absence of hardship or  
4 harm upon Lynita also militates in favor of a stay.  
5

6  
7 4. The substantial legal question and likelihood of success on the merits  
8 militates in favor of a stay.

9 One of the factors considered by this Court in determining whether to grant  
10 a stay pending a writ proceeding is whether the appellant is likely to prevail on the  
11 merits. NRAP 8(c)(4). In *Hansen v. District Court*, 116 Nev. 650, 6 P.3d 1982  
12 (2000), this Court noted that an application for a stay did not always have to show  
13 a probability of success on the merits, but must “present a substantial case on the  
14 merits when a serious legal question is involved.” For the reasons set forth in the  
15 Petitioner for Writ of Prohibition, the ELN Trust has satisfied this criteria.  
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19 Specifically, despite the District Court’s determination not to invalidate the  
20 ELN Trust, it nonetheless, in contravention of Nevada law, ordered the ELN Trust  
21 to transfer certain property to the LSN Trust based upon its belief that Eric and  
22 Lynita intended to “equalize” and/or “level off” the ELN Trust and LSN Trust.  
23 Additionally, the District Court has also exceeded its jurisdiction and erred as a  
24 matter of law by stating that it could impose a constructive trust because the assets  
25 at issue did not did not originate with the LSN Trust, but rather were purchased  
26 with the assets of the ELN Trust. Finally, the District Court exceeded its  
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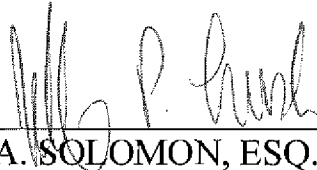
1 jurisdiction by referencing the principal of unjust enrichment because it dismissed  
2 the LSN Trust's unjust enrichment claim long ago. For these reasons, and those  
3 set forth in the Petition for Writ of Prohibition, a stay should be granted pending  
4 resolution of the writ proceedings.  
5

6  
7 **IV.**

8 **CONCLUSION**

9  
10 On balance, the factors employed by this Court militate in favor of granting  
11 a stay of the portions of the Divorce Decree which transfer the following  
12 properties from the ELN Trust to the LSN Trust pending resolution of its Petition  
13 for Writ of Prohibition: the ELN Trust's 100% interest in the Lindell Property, the  
14 rental properties owned by Banone, LLC, and JB Ramos Trust Note Receivable,  
15 and 50% interest in the Russell Road Property, The ELN Trust also asks that this  
16 Court act by 5:00 p.m. on Tuesday, July 9, 2013, so that the ELN Trust will know  
17 whether it must comply with the eviction notice to vacate the Lindell Property on  
18 or before July 10, 2013.  
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22 DATED this 9<sup>th</sup> day of July, 2013.

23  
24   
25 \_\_\_\_\_  
26 MARK A. SOLOMON, ESQ., NSB 0418  
27 JEFFREY P. LUSZECK, ESQ., NSB 9619  
28 **SOLOMON DWIGGINS & FREER, LTD.**  
9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129  
Attorneys for Petitioner, Nola Harber as  
Distribution Trustee of the ELN Nevada Trust

1 NRAP 27(e) CERTIFICATE

2 I, Jeffrey P. Luszeck, Esq. declare as follows:

3  
4 1. I am an attorney licensed to practice before the courts of Nevada, and  
5 I am an associate at the law firm of Solomon Dwiggin & Freer, Ltd., counsel of  
6 record for Petitioner, NOLA HARBER, Distribution Trustee of the ELN Nevada  
7 Trust (“the ELN TRUST”), in the above captioned proceeding. I make this  
8 certificate in support of petitioner’s Emergency Motion Under NRAP 27(e) for  
9 Stay Pending Resolution of Writ Proceedings.  
10  
11

12 2. The office address, telephone and facsimile number of the attorneys  
13 for real parties in interest are as follows:

14  
15 Robert P. Dickerson, Esq.  
16 Katherine L. Provost, Esq.  
17 THE DICKERSON LAW GROUP  
18 1745 Village Center Circle  
19 Las Vegas, Nevada 89134  
20 Telephone: (702) 388-8600  
21 Facsimile: (702) 388-0210

Counsel for Lynita S. Nelson,  
defendant in District Court

22 Radford J. Smith, Chartered  
23 Rhonda K. Forsberg, Esq.  
24 64 N. Pecos Road, Suite 700  
25 Henderson, Nevada 89074  
26 Telephone: (702) 990-6448  
27 Facsimile: (702) 990-6456

Counsel for Eric L. Nelson, real party  
in interest

28 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 LSN is  
2 seeking to evict the ELN Trust from the Lindell Property on or before July 10,  
3 2013, is collecting rents from tenants of Lindell Property and Banone, LLC and is  
4 seeking to enter into new leases with the new tenants. Further, the ELN Trust is  
5 concerned that the LSN Trust will seek to sell the property.  
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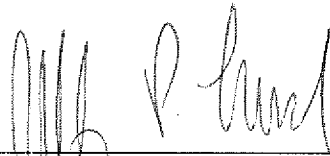
8           5.     A Counter-Motion for stay pending resolution of these writ  
9 proceedings was made in the District Court on June 19, 2013, which was denied.  
10 In such Counter-Motion, Counsel for the other parties were notified of the ELN  
11 Trust's intent to file a writ.  
12

13           6.     On July 9, 2013, this office notified the Clerk of this Court that the  
14 ELN Trust would be filing an Emergency Motion of stay pending writ  
15 proceedings in this action.  
16  
17

18           7.     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 and the Honorable Frank P. Sullivan by hand-delivery.  
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1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 9<sup>th</sup> day of July, 2013.

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JEFFREY P. LUSZECK, ESQ.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. App. P. 5(b), I hereby certify that I am an employee of  
3 the law firm of Solomon Dwiggin & Freer, Ltd., and that on July 9, 2013, I filed  
4 a true and correct copy of the foregoing *Emergency Motion Under NRAP 27(e)*  
5 *for Stay Pending Resolution of Writ Proceedings; NRAP 27(e)Certificate*, WITH  
6 THE Clerk of the Court through the Court's eFlex electronic filing system and  
7 notice will be sent electronically by the Court to the following:  
8  
9  
10


11 Robert P. Dickerson, Esq.  
12 Katherine L. Provost, Esq. Counsel for Lynita S. Nelson, defendant  
13 THE DICKERSON LAW GROUP in District Court  
14 1745 Village Center Circle  
15 Las Vegas, Nevada 89134  
[info@dickersonlawgroup.com](mailto:info@dickersonlawgroup.com)

16 Radford J. Smith, Chartered  
17 Rhonda K. Forsberg, Esq. Counsel for Eric L. Nelson, real party in  
18 64 N. Pecos Road, Suite 700 interest  
19 Henderson, Nevada 89074  
[rforsberg@radfordsmith.com](mailto:rforsberg@radfordsmith.com)

20 I also hereby certify that the foregoing document will be hand-delivered on  
21 this date to the following:  
22

23 Hon. Frank P. Sullivan, Department O  
24 Robert P. Dickerson, Esq.  
25 Rhonda K. Forsberg, Esq.

26 DATED: July 9, 2013

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An employee of Solomon Dwiggin & Freer, Ltd.