

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:

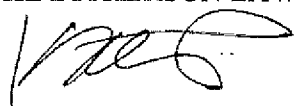
LSN Nevada Trust
c/o The Dickerson Law Group
1745 Village Center Circle
Las Vegas, Nevada 89134

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

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

9/4/12

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,
v.
LYNITA SUE NELSON
Defendant/Counterclaimant.

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

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

Necessary Parties (joined in this
action pursuant to Stipulation and
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

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

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

7 v.)

8 LYNITA SUE NELSON and ERIC)
NELSON,)

9 Purported Cross-Defendant and)
10 Counterdefendant,)

11 LYNITA SUE NELSON,)

12 Counterclaimant, Cross-Claimant,)
13 and/or Third Party Plaintiff,)

14 v.)

15 ERIC L. NELSON, individually, and as)
16 the Investment Trustee of the ERIC L.)
NELSON NEVADA TRUST dated May)
17 30, 2001; the ERIC L. NELSON)
NEVADA TRUST dated May 30, 2001;)
18 LANA MARTIN, individually, and as the)
current and/or former Distribution)
19 Trustee of the ERIC L. NELSON)
NEVADA TRUST dated May 30, 2001,)
and as the former Distribution Trustee of)
20 the LSN NEVADA TRUST dated May)
30, 2001; NOLA HARBER, individually,)
and as the current and/or former)
21 Distribution Trustee of the ERIC L.)
NELSON NEVADA TRUST dated May)
22 30, 2001, and as the current and/or)
former Distribution Trustee of the LSN)
23 NEVADA TRUST dated May 30, 2001;)
ROCHELLE McGOWAN, individually;)
24 JOAN B. RAMOS, individually; and)
DOES I through X,)

25 Counterdefendants, and/or)
26 Cross-Defendants, and/or)
27 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 3rd day of August, 2012.

15 THE DICKERSON LAW GROUP

16 By

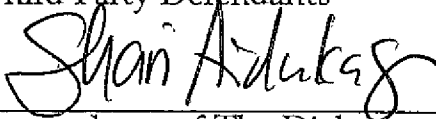
17 Robert P. Dickerson
18 ROBERT P. DICKERSON, ESQ.
19 Nevada Bar No. 000945
20 KATHERINE L. PROVOST, ESQ.
21 Nevada Bar No. 008414
22 JOSEF M. KARACSONYI, ESQ.
23 Nevada Bar No. 10634
24 1745 Village Center Circle
25 Las Vegas, Nevada 89134
26 Attorneys for Defendant
27
28

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I am this date depositing a true and correct copy of
3 the attached NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012
4 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS
5 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE, in the U.S. Mail, postage
6 prepaid to the following at their last known addresses, on the 31st day of August,
7 2012:

8
9 RHONDA K. FORSBERG, ESQ.
10 FORSBERG & DOUGLAS
1070 W. Horizon Ridge Pkwy., Ste. 100
Henderson, Nevada 89012
Attorneys for Plaintiff

11
12 MARK A. SOLOMON, ESQ.
13 SOLOMON, DWIGGINS, FREER & MORSE, LTD.
14 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Third-Party Defendants

15 
16 An employee of The Dickerson Law Group

Necessary Parties (joined in this
action pursuant to Stipulation and
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 23rd 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
25 cause appearing therefore,

26 THE COURT HEREBY FINDS that the Court has reviewed Part IV of the
27 Eighth Judicial District Court Rules with respect to probate, trust, administration of
28 estates, the rules that apply under Chapter 164 of Title 13 of the Nevada Revised
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.

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

3 IT IS SO ORDERED.

4 DATED this 28 day of August, 2012.

5 Jack B. Anna
6 DISTRICT COURT JUDGE JA

8 Submitted by:

9 THE DICKERSON LAW GROUP

10 By

11 Josef Karacsonyi
12 ROBERT P. DICKERSON, ESQ.
13 Nevada Bar No. 000945*
14 JOSEF M. KARACSONYI, ESQ.
15 Nevada Bar No. 010634
16 1745 Village Center Circle
17 Las Vegas, Nevada 89134
18 Attorneys for Defendant

Approved as to Form and Content:

IVEY, FORSBERG & DOUGLAS

By

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

16 Approved as to Form and Content:

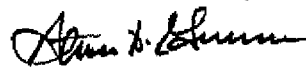
17 SOLOMON, DWIGGINS & FREER, LTD

18 By

19 Mark A. Solomon
20 MARK A. SOLOMON, ESQ.
21 Nevada Bar No. 000418
22 JEFFREY P. LUSZECK, ESQ.
23 Nevada Bar No. 009619
24 9060 W. Cheyenne Avenue
25 Las Vegas, Nevada 89129
26 Attorneys for Third-Party Defendants

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

1 NEO
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
12 Attorneys for Defendant, Lynita Sue Nelson

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

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

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

NOTICE OF ENTRY OF STIPULATION AND ORDER

18
19 TO: ERIC L. NELSON, Plaintiff; and
20 TO: DAVID A. STEPHENS, ESQ., of STEPHENS, GOURLEY & BYWATER, P.C.,
21 Attorneys for Plaintiff:

22 ...
23 ...
24 ...
25 ...
26 ...
27 ...
28

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

3 DATED this 9th day of August, 2011.

4 THE DICKERSON LAW GROUP

5
6 By [Signature]
7 ROBERT P. DICKERSON, ESQ.
8 Nevada Bar No. 000945
9 KATHERINE L. PROVOST, ESQ.
10 Nevada Bar No. 008414
11 1745 Village Center Circle
12 Las Vegas, Nevada 89134
13 Attorneys for Defendant

11 CERTIFICATE OF MAILING

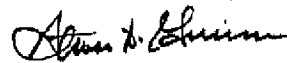
12 I HEREBY CERTIFY that I am serving via U.S. Mail, a true and correct copy of
13 the foregoing NOTICE OF ENTRY OF ORDER to the following at his last known
14 address on this 9th day of August, 2011.

15 David A. Stephens, Esq.
16 Stephens, Gourley & Bywater, P.C.
17 3636 N. Rancho Drive.
18 Las Vegas, Nevada 89130
19 Attorney for Plaintiff

18
19 [Signature]
20 An employee of The Dickerson Law Group

21
22
23
24
25
26
27
28

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


CLERK OF THE COURT

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"

18 STIPULATION AND ORDER

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


24 IT IS HEREBY STIPULATED AND AGREED that the ERIC L. NELSON
25 NEVADA TRUST dated May 30, 2001, shall be joined as a necessary party,
26 intervening in this action, as complete relief cannot be accorded among the parties
27 without the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 being named
28 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

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

12 
13 ROBERT P. DICKERSON, ESQ.
14 Nevada Bar No. 0945
15 KATHERINE L. PROVOST, ESQ.
16 Nevada Bar No. 008414
17 1745 Village Center Circle
18 Las Vegas, Nevada 89134
19 Attorney for Defendant
20
21
22
23
24
25
26
27
28

Approved as to form and content:

STEPHENS, GOURLEY &
BYWATER


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

1 ORDER

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

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

10 IT IS FURTHER ORDERED that the LSN NEVADA TRUST dated May 30,
11 2001, shall be joined as a necessary party, intervening in this action, as complete relief
12 cannot be accorded among the parties without the LSN NEVADA TRUST dated May
13 30, 2001 being named a party and the disposition of the action in the absence of the
14 LSN NEVADA TRUST dated May 30, 2001 will impair or impede its ability to protect
15 its interests and add risk of incurring double, multiple, or otherwise inconsistent
16 obligations.

17 DATED this 4 day of August, 2011.

18
19 
DISTRICT COURT JUDGE

FRANK P. SULLIVAN

20 Respectfully Submitted:

21 THE DICKERSON LAW GROUP


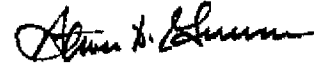
22 
23 ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 0945
24 KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
25 1745 Village Center Circle
Las Vegas, Nevada 89134
26 Attorneys for Defendant
27
28

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

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

Defendant/Counterclaimants.

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

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR
☒ Judgment Reached by Trial

FRANK R. SULLIVAN
DISTRICT JUDGE

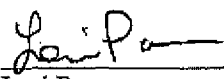
FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

1 TO:

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

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

8 DATED this 3 day of June, 2013.

9 
10 _____
11 Lori Parr
12 Judicial Executive Assistant
13 Dept. O
14
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FRANK P. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

vs.

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

Defendant/Counterclaimants.

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

Crossclaimant,

vs.

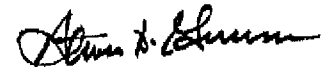
LYNITA SUE NELSON,

Crossdefendant.

CASE NO.: D-09-411537-D

DEPT. NO.: 0

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CLERK OF THE COURT

DECREE OF DIVORCE

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

FRANK R SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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

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

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

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

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

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

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

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

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

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

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

22 THE COURT FURTHER FINDS that the ELN Trust was established as a self-settled
23 spendthrift trust in accordance with NRS 166.020.¹

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

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

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

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

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

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

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

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

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26 ...
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² NRS 166.170(1)

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

6
7 THE COURT FURTHER FINDS that on numerous occasions during these proceedings,
8 Mr. Nelson indicated that the ELN Trust and LSN Trust both held assets that were indeed
9 considered by the parties to be community property.

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

14
15 THE COURT FURTHER FINDS that on direct examination, when asked what he had
16 done to earn a living following obtaining his real estate license in 1990, Mr. Nelson's lengthy
17 response included:

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

20 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)."

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

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

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

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

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

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

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

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

28 ...

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

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

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

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

16
17 *Fiduciary Duty*

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

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

26 ...

27 ...

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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:

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

9 See, NRS 163.5557 (emphasis added).

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

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

17 A. I believe so, yes.

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

21 A. Yes, sir.

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

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

26 A. No, no. But I'm just saying we could have -- the
27 this lawsuit's been pending for a while, sir. We did these
28 deeds mistake -- if you can -- if you reference back to it, it
shows -- shows Dynas -- it's my --

Q. Exhibit -- the Exhibit for the --

A. -- company. It shows Eric Nelson. That's my
company. We put them into Lynita's for community protection,
and she would not cooperate.

1
2
3 Q. You put them --

4 A. Yes, sir.

5 Q. -- into Lynita's?

6 A. Yes, sir --

7 Q. All right. Sir --

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

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

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

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

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

28 ³ NRS 163.554.

⁴ *Williams v. Waldman*, 108 Nev. 466, 472 (1992).

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

5 *Constructive Trust*
6

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

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

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

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

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

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

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

15 See, NRS 111.025 (Emphasis added).

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

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

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

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

6 THE COURT FURTHER FINDS that Mrs. Nelson, as a faithful and supporting spouse
7 of thirty years, had no reason to question Mr. Nelson regarding the true nature of the assets that
8 he transferred from the LSN Trust to the ELN Trust.
9

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

14 THE COURT FURTHER FINDS that in *DeLee*, the party seeking the imposition of the
15 constructive trust made no immediate demands because he knew that his debtors would lay
16 claim to the property. The court found that a constructive trust was not warranted because the
17 creation of the trust was not necessary to effectuate justice. *Id.*, at 1457.
18

19 THE COURT FURTHER FINDS that unlike *DeLee*, Mrs. Nelson made no demand for
20 the property because Mr. Nelson assured her that he managed the assets in the trusts for the
21 benefit of the community. Consequently, Mrs. Nelson did not have notice that the LSN Trust
22 should reclaim the property.
23

24 THE COURT FURTHER FINDS that while Mr. Nelson acted as the investment trustee
25 for both the ELN and LSN Trust respectively, the properties never effectively left the
26 community. Consequently, Mrs. Nelson never thought that she needed to recover the
27 properties on behalf of the LSN Trust. Mrs. Nelson was not advised that she was not entitled to
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1
2 the benefit of the assets transferred from the LSN Trust to the ELN Trust under the direction of
3 Mr. Nelson until the ELN Trust joined the case as a necessary party.

4 THE COURT FURTHER FINDS that allowing the ELN Trust to acquire property from
5 the LSN Trust under the guise that these property transfers benefitted the community,
6 effectively deprives Mrs. Nelson of the benefit of those assets as beneficiary under the LSN
7 Trust, and will ultimately result in Mr. Nelson, as beneficiary of the ELN Trust, being unjustly
8 enriched at the expense of Mrs. Nelson.
9

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

13 THE COURT FURTHER FINDS that as to the Russell Road property, according to the
14 report prepared by Larry Bertsch, the court-appointed forensic accountant, Mr. Nelson, as the
15 investment trustee for the LSN Trust, purchased the property at 5220 E. Russell Road on
16 November 11, 1999, for \$855,945. Mr. Nelson's brother, Cal Nelson, made a down payment of
17 \$20,000 and became a 50% owner of the Russell Road Property despite this paltry
18 contribution.⁵ Cal Nelson and Mrs. Nelson later formed CJE&L, LLC, which rented this
19 property to Cal's Blue Water Marine. Shortly thereafter, CJE&L, LLC obtained a \$3,100,000
20 loan for the purpose of constructing a building for Cal's Blue Water Marine.⁶
21
22

23 THE COURT FURTHER FINDS that in 2004, Mrs. Nelson signed a guarantee on the
24 flooring contract for Cal's Blue Water Marine. She subsequently withdrew her guarantee and
25 the LSN Trust forfeited its interest in the property to Cal Nelson. While Mr. Nelson argues that
26 the release of Mrs. Nelson as guarantor could be consideration, the flooring contract was never
27

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

⁶ 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."⁷ 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.⁸
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.⁹
25

26
27 ⁷ Defendant's Exhibit UUUU

⁸ Id.

⁹ Defendant's Exhibit GGGG.
28

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

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

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

22 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for
23 the 50% interest being transferred to the ELN Trust was the transfer of the Mississippi property
24 to the LSN, the court did not find such testimony credible as it appears that the transfer of the
25 Mississippi property occurred in 2004, whereas, the Lindell transfer to the ELN Trust was in
26 2007. In addition, the testimony was not clear as to which Mississippi properties were involved
27
28

¹⁰ Defendant's Exhibit PPPP.

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

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

10 THE COURT FURTHER FINDS that the Court imposes a constructive trust over the
11 ELN Trust's 50% interest in the Lindell property; therefore, the LSN Trust is entitled to 100%
12 interest in the Lindell property, with an appraised value of \$1,145,000.
13

14 *Unjust Enrichment*

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

19 THE COURT FURTHER FINDS that on January 11, 2000, the High Country Inn was
20 initially purchased by Mrs. Nelson's Revocable 1993 Trust.¹¹ While multiple transfer deeds
21 were executed with related parties (e.g. Grotta Financial Partnership, Frank Soris) at the
22 direction of Mr. Nelson, the LSN Trust owned the High Country Inn. On January 18, 2007, Mr.
23 Nelson, as investment trustee for both the ELN Trust and the LSN Trust, was the sole
24 orchestrator of the transfer of the High Country Inn from the LSN Trust to the ELN Trust.
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¹¹ The Nelson Trust would later transfer its interest in the High Country Inn to the LSN Trust on 5/30/01.

1
2 THE COURT FURTHER FINDS that on January 19, 2007, the ELN Trust sold the
3 High Country Inn for \$1,240,000 to Wyoming Lodging, LLC, with the proceeds from the sale
4 being placed directly into the bank account of ELN Trust,¹² 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.¹³
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.¹⁴ 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 ¹² 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 ¹³ Defendant's Exhibit NNNN.

¹⁴ Plaintiff's Exhibit 10K.

1
2 THE COURT FURTHER FINDS that Banone, LLC, currently holds seventeen
3 Nevada properties worth \$1,184,236.¹⁵

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

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

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

18 THE COURT FURTHER FINDS that the Tierra del Sol property was sold in August 5,
19 2005, for \$4,800,000. Out of the proceeds from the first installment payment, Mr. Nelson had a
20 check issued from the LSN Trust account in the amount of \$677,717.48 in payment of a line of
21 credit incurred by Mr. Nelson against the Palmyra residence, which was solely owned by the
22 LSN Trust. From the proceeds for the second installment payment, the ELN Trust received
23 proceeds in the amount of \$1,460,190.58. As such, the ELN Trust received proceeds from the
24 sale of the Tierra del Sol property despite having no ownership interest in the property.
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¹⁵ 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.
16

17 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were
18 significant loans from the LSN Trust to the ELN Trust, specifically: \$172,293.80 loan in May
19 of 2002; \$700,000 loan in October of 2003; \$250,000 loan in December of 2005 which resulted
20 in a total amount of \$576,000 being borrowed by the ELN Trust from the LSN Trust in 2005.
21

22 THE COURT FURTHER FINDS that while testimony was presented regarding
23 repayments of the numerous loans via cash and property transfers, the Court was troubled by
24 the fact that the loans were always going from the LSN Trust to the ELN Trust and further
25 troubled by the fact that the evidence failed to satisfactorily establish that all of the loans were
26 in fact paid in full,
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2 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson
3 exhibited a course of conduct in which he had significant property transferred, including loans,
4 from the LSN Trust to the ELN Trust which benefited the ELN Trust to the detriment of the
5 LSN Trust, and, as such, justice and equity demands that the LSN Trust receive compensation
6 to avoid such unjust enrichment on the part of the ELN Trust.
7

8 *Credibility*

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

13 THE COURT FURTHER FINDS that during the last several weeks of trial in 2012, Mr.
14 Nelson changed his testimony to reflect his new position that the ELN Trust and the LSN Trust
15 were not part of the community and were the separate property of the respective trusts.
16

17 THE COURT FURTHER FINDS that Mr. Nelson failed to answer questions in a direct
18 and forthright manner throughout the course of the proceedings.
19

20 THE COURT FURTHER FINDS that Mr. Nelson argued in the Motion to Dissolve
21 Injunction requesting the release of \$1,568,000, which the Court had ordered be placed in a
22 blocked trust account and enjoined from being released, that the ELN Trust "has an opportunity
23 to purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00;
24 however, the ELN will be unable to do so unless the Injunction is dissolved."
25

26 THE COURT FURTHER FINDS that despite the Court's denial of the request to
27 dissolve the injunction, the ELN Trust via Dynasty Development Group, LLC, completed the
28 transaction and reacquired Wyoming Downs at a purchase price of \$440,000. The completion
29

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

4 THE COURT FURTHER FINDS that it should be noted that in an attempt to
5 circumvent this Court's injunction regarding the \$1,568,000, Mr. Nelson had a Bankruptcy
6 Petition filed in the United States Bankruptcy Court, District of Nevada, on behalf of the
7 Dynasty Development Group, LLC, requesting that the \$1,568,000 be deemed property of the
8 Debtor's bankruptcy estate; however, the bankruptcy court found that this Court had exclusive
9 jurisdiction over the \$1,568,000 and could make whatever disposition of the funds without
10 regard to the Debtor's bankruptcy filing.
11

12 THE COURT FURTHER FINDS that based upon Mr. Nelson's change of testimony
13 under oath, his repeated failure to answer questions in a direct and forthright manner, his less
14 that candid testimony regarding the necessity of dissolving the injunction in order to purchase
15 the Wyoming race track and RV park, and his attempt to circumvent the injunction issued by
16 this Court clearly reflect that Mr. Nelson lacks credibility.
17

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

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

5 THE COURT FURTHER FINDS that Mr. Nelson's behavior and conduct during the
6 course of these proceedings has been deplorable. This Court has observed Mr. Nelson angrily
7 bursting from the courtroom following hearings.
8

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

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

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

25 ...

26 ...

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28 ¹⁷ Defendant's Exhibit QQQQQ.

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

6
7 THE COURT FURTHER FINDS that as to Mr. Daniel Gerety, who testified as an
8 expert witness on behalf of the ELN Trust and Mr. Nelson, he based his report solely on
9 information and documentation provided to him by Mr. Nelson. It appears that Mr. Gerety
10 made no effort to engage Mrs. Nelson or her counsel in the process. In the Understanding of
11 Facts section of his report, Mr. Gerety repeatedly used the phrases "I have been told" or "I am
12 advised".¹⁸ Since Mr. Gerety considered statements from Mr. Nelson and others who were in
13 support of Mr. Nelson, an impartial protocol would dictate that he obtain statements from Mrs.
14 Nelson and her counsel in order to have a full and complete framework to fairly address the
15 issues at hand.
16

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

21 THE COURT FURTHER FINDS that while Mr. Gerety submitted documentation
22 allegedly outlining every transaction made by the ELN Trust from its inception through
23 September 2011, and "tracing" the source of funds used to establish Banone, LLC, this Court
24 found that Mr. Gerety's testimony was not reliable, and, as such, the Court found it to be of
25 little probative value.
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¹⁸ Intervenor's Exhibit 168.

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

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

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

14 *Lack of Trust Formalities*

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

20
21 THE COURT FURTHER FINDS that Attorney Burr testified that on February 22,
22 2007, at Mr. Nelson's request, he removed Mr. Nelson's employee, Lana Martin, as
23 Distribution Trustee of both the ELN Trust and the LSN Trust and appointed Mr. Nelson's
24 sister, Nola Harber, as the new Distribution Trustee for both trusts. Attorney Burr further
25 testified that he did not provide Ms. Martin with ten days notice as specified in the trusts
26 documents. In June 2011, at Mr. Nelson's request, Attorney Burr once again replaced the
27
28

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

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

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

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

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

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

5 THE COURT FURTHER FINDS that the numerous bookkeeping and accounting
6 errors, in conjunction with the corresponding need to correct the entries to accurately reflect the
7 assets in each trust, raises serious questions as to whether the assets of each trust were truly
8 being separately maintained and managed.
9

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

13 THE COURT FURTHER FINDS that while the Court could invalidate both Trusts
14 based upon the lack of Trust formalities, this Court is not inclined to do so since invalidation of
15 the Trusts could have serious implications for both parties in that it could expose the assets to
16 the claims of creditors, thereby, defeating the intent of the parties to "supercharge" the
17 protection of the assets from creditors.
18

19 *Liabilities*

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

25 ...

26 ...

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

6
7 THE COURT FURTHER FINDS that the Bertsch report indicated that several of the
8 liabilities were actually options held by subsidiaries that Mr. Nelson owns or options held by
9 relatives of Mr. Nelson, and, as such, were not true liabilities.²⁰

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

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

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

21 *Community Waste*

22
23 THE COURT FURTHER FINDS that the Nevada Supreme Court case of *Lofgren v.*
24 *Lofgren* addressed community waste and found that the husband wasted community funds by
25 making transfers/payments to family members, using the funds to improve the husband's home
26 and using the funds to furnish his new home. *Lofgren v. Lofgren*, 112 Nev. 1282, 1284 (1996).

27
28 ¹⁹ Defendant's Exhibit GGGGG.

²⁰ *Id.*

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

8 THE COURT FURTHER FINDS that transfers to Mr. Nelson's family members appear
9 to have been part of Mr. Nelson's regular business practices during the course of the marriage
10 and that Mrs. Nelson has always been aware of this practice and never questioned such
11 transfers prior to the initiation of these proceedings.
12

13 THE COURT FURTHER FINDS that Mrs. Nelson failed to establish that the transfers
14 to Mr. Nelson's family members constituted waste upon the community estate.
15

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

21 *Child Support*

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

28 ²¹ 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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2 THE COURT FURTHER FINDS that the parties separated in September of 2008 when
3 Mr. Nelson permanently left the marital residence, and, therefore, Mrs. Nelson is entitled to
4 child support payments commencing in October 2008.

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

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

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

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

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

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

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

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

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

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

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

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

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

10
11 *Spousal Support*

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

13 1. In granting a divorce, the court:

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

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

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

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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;

7
8 THE COURT FURTHER FINDS that Mrs. Nelson's lack of work experience and
9 limited education greatly diminishes her marketability. Additionally, Mrs. Nelson solely relied
10 on Mr. Nelson, as her husband and delegated investment trustee, to acquire and manage
11 properties to support her and the children, and, as such, Mrs. Nelson's ability to support herself
12 is essentially limited to the property award that she receives via these divorce proceedings.

13 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.

19
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
28

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

6 THE COURT FURTHER FINDS that based the upon the findings addressed
7 hereinabove, Mrs. Nelson is entitled to an award of spousal support pursuant to NRS 125.150
8 and the factors enunciated in Sprenger²²
9

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

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

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

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

²² Sprenger v. Sprenger, 110 Nev. 855 (1974).

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

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

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

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

17 THE COURT FURTHER FINDS that the Nevada Supreme Court has indicated that a
18 lump sum award is the setting aside of a spouse's separate property for the support of the other
19 spouse and is appropriate under the statute. *Sargeant v. Sargeant*, 88 Nev. 223, 229 (1972). In
20 *Sargeant*, the Supreme Court affirmed the trial court's decision to award the wife lump sum
21 alimony based on the husband short life expectancy and his litigious nature. The Supreme
22 Court, citing the trial court, highlighted that "the overall attitude of this plaintiff illustrates
23 some possibility that he might attempt to liquidate, interfere, hypothecate or give away his
24 assets to avoid payment of alimony or support obligations to the defendant" *Id.* at 228.
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1
2 THE COURT FURTHER FINDS that Mr. Nelson's open and deliberate violation of the
3 Joint Preliminary Injunction evidences his attitude of disregard for court orders. The Court also
4 takes notice of Bankruptcy Judge Olack's finding that Mr. Nelson attempted to deplete the
5 assets of Dynasty Development Group on the eve of the bankruptcy filing, raising the concern
6 that Mr. Nelson may deplete assets of the ELN Trust precluding Mrs. Nelson from receiving a
7 periodic alimony award.
8

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

13 THE COURT FURTHER FINDS that, as addressed hereinbefore, the ELN Trust moved
14 this Court to dissolve the injunction regarding the \$1,568,000 because it "has an opportunity to
15 purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00; however,
16 the ELN will be unable to do so unless the Injunction is dissolved."
17

18 THE COURT FURTHER FINDS that despite the representation to the Court that the
19 injunction needed to be dissolved so that the ELN Trust would be able to purchase Wyoming
20 Downs, less than a month after the hearing, the ELN Trust, with Mr. Nelson serving as the
21 investment trustee, completed the purchase of Wyoming Downs. This leads this Court to
22 believe that Mr. Nelson was less than truthful about the extent and nature of the funds available
23 in the ELN Trust and such conduct on the part of Mr. Nelson raises serious concerns about the
24 actions that Mr. Nelson will take to preclude Mrs. Nelson from receiving periodic spousal
25 support payments.
26
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1
2 THE COURT FURTHER FINDS that Mr. Nelson alleged numerous debts and
3 liabilities worth millions of dollars, but forensic accountant, Mr. Bertsch, found that these
4 alleged debts and liabilities were based solely on threats and speculations.

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

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

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

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

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

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

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

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

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

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

24 ...

25 ...

26

27

28 ²³ NRS 166.130

²⁴ Restatement (Third) of Trust § 59 (2003).

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

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

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

20 *Attorney's Fees*

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

26
27 ²⁵ Id at 301.

28 ²⁶ *Gilbert v. Gilbert*, 447 So.2d 299, 301

²⁷ Id at 301.

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

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

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

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

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

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

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

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

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

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

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

25 ...

26 ...

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

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

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

14
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.²⁸

22
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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28 ²⁸ *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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1
2 IT IS FURTHER ORDERED that the following properties shall remain in or be
3 transferred into the ELN Trust:

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 80,000
Arizona Gateway Lots	\$ 139,500
Family Gifts	\$ 35,000
Gift from Nikki C.	\$ 200,000
Bella Kathryn Property	\$1,839,495
Mississippi Property (121.23 acres)	\$ 607,775
Notes Receivable	\$ 642,761
Banone AZ Properties	\$ 913,343
Dynasty Buyout	\$1,568,000
½ of Brianhead Cabin	\$ 492,500
<u>1/3 of Russell Road (+ note for rents)</u>	<u>\$2,265,113.50 (\$2,166,775 + \$98,338.50)</u>
Total	\$8,783,487.50

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

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 200,000
Palmyra Property	\$ 750,000
Pebble Beach Property	\$ 75,000
Arizona Gateway Lots	\$ 139,500
Wyoming Property (200 acres)	\$ 405,000
Arnold Property in Miss.	\$ 40,000
Mississippi RV Park	\$ 559,042
Mississippi Property	\$ 870,193
Grotta 16.67% Interest	\$ 21,204
Emerald Bay Miss. Prop.	\$ 560,900
Lindell Property	\$1,145,000
Banone, LLC	\$1,184,236
JB Ramos Trust Note Receivable	\$ 78,000
½ of Brianhead Cabin	\$ 492,500
<u>1/3 of Russell Road (+ note for rents)</u>	<u>\$2,265,113.50 (\$2,166,775 + \$98,338.50)</u>
Total	\$8,785,988.50

28
FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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

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

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

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

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

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

26
27 ²⁹ Defendant's Exhibit GGGGG.

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

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

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

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

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

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

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

21 IT IS FURTHER ORDERED that the parties shall equally bear the private education
22 costs, including tuition, of Carli's private school education at Faith Lutheran.
23

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FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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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 3rd 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
NEVADA TRUST dated May 30, 2001.

17 Real Parties in Interest.
18

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"),
27
28

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

25 **LEGAL ANALYSIS**

26 27 **A. Legal standards for granting a stay pending appeal.**

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
27
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Decree is not stayed while the writ proceeding is pending. As such, a stay pending the resolution of the ELN Trust's Petition for Writ of Prohibition should be granted.

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

The second factor also militates in favor of a stay pending the resolution of the ELN Trust's Writ of Prohibition. As this Court has previously recognized, "real property and its attributes are considered unique and loss of real property rights generally results in irreparable harm." *Dixon v. Thatcher*, 103 Nev. 414, 415-16, 742 P.2d 1029, 1029-30 (1987); *see also Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000) providing that trustee's sale of a house as an example of irreparable harm warranting the imposition of a stay pending appeal; *Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction to stop foreclosure reversed because legal remedy inadequate).

The ELN Trust will suffer irreparable harm should it be required to transfer 100% of its interest in the Lindell Property, the rental properties owned by Banone, LLC, and JB Ramos Trust Note Receivable, and 50% interest in the Russell Road Property, to the LSN Trust. Indeed, not only is the LSN Trust collecting rents, but is also entering into leases and/or altering the contractual obligations existing with the ELN Trust. *See* Correspondence from Katherine L.

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

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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.
16
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18 Specifically, despite the District Court’s determination not to invalidate the
19 ELN Trust, it nonetheless, in contravention of Nevada law, ordered the ELN Trust
20 to transfer certain property to the LSN Trust based upon its belief that Eric and
21 Lynita intended to “equalize” and/or “level off” the ELN Trust and LSN Trust.
22 Additionally, the District Court has also exceeded its jurisdiction and erred as a
23 matter of law by stating that it could impose a constructive trust because the assets
24 at issue did not did not originate with the LSN Trust, but rather were purchased
25 with the assets of the ELN Trust. Finally, the District Court exceeded its
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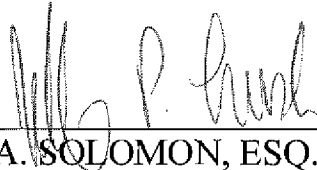
1 jurisdiction by referencing the principal of unjust enrichment because it dismissed
2 the LSN Trust's unjust enrichment claim long ago. For these reasons, and those
3 set forth in the Petition for Writ of Prohibition, a stay should be granted pending
4 resolution of the writ proceedings.
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6
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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21

22 DATED this 9th day of July, 2013.

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

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

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

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

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

1 4. This Emergency Motion was necessitated by the fact that the 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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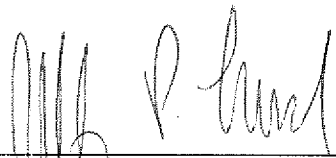
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8 5. A Counter-Motion for stay pending resolution of these writ
9 proceedings was made in the District Court on June 19, 2013, which was denied.
10 In such Counter-Motion, Counsel for the other parties were notified of the ELN
11 Trust's intent to file a writ.
12

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

18 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 9th day of July, 2013.

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7 _____
8 JEFFREY P. LUSZECK, ESQ.
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CERTIFICATE OF SERVICE

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

Robert P. Dickerson, Esq.
Katherine L. Provost, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, Nevada 89134
info@dickersonlawgroup.com

Counsel for Lynita S. Nelson, defendant
in District Court

Radford J. Smith, Chartered
Rhonda K. Forsberg, Esq.
64 N. Pecos Road, Suite 700
Henderson, Nevada 89074
rforsberg@radfordsmith.com

Counsel for Eric L. Nelson, real party in
interest

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

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

DATED: July 9, 2013


An employee of Solomon Dwiggin & Freer, Ltd.