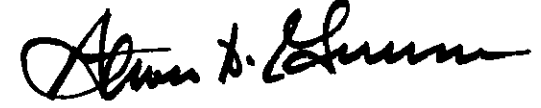


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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In re the Matter of the

THE W.N. CONNELL and MARJORIE  
T. CONNELL LIVING TRUST, dated  
May 18, 1972

A non-testamentary trust.

Case No.: P-09-066425-T  
Department: 26 (Probate)

**MOTION FOR LEAVE TO AMEND PLEADINGS OF JACQUELINE M. MONTOYA AND  
KATHRYN A. BOUVIER FOR CLAIMS, DEFENSES, DAMAGES AND ASSESSMENT OF  
PENALTIES, AND FOR OTHER RELIEF AGAINST ELEANOR CONNELL HARTMAN AHERN**

Date of Hearing: January 14, 2015  
Time of Hearing: 10 A.M.

JACQUELINE M. MONTOYA ("Jacqueline") and KATHRYN A. BOUVIER ("Kathryn") hereby move the Court, to the extent that the Court believes that such action is even necessary, for leave to amend their previously filed pleadings which seek damages, remedies, and declarations from and against Eleanor Connell Hartman Ahern ("Eleanor"), and for defenses that they have asserted. This Motion is made pursuant to NRCP 13(a), 13(f), 15(a), and 15(b) and is supported by the attached memorandum of points and authorities, the pleadings and papers on file herein, and any oral argument the Court may hear.

#### A. BACKGROUND

A.1 Eleanor has asserted in her late-filed document, filed on January 9, 2014, that Kathryn and Jacqueline have failed to assert in pleadings in these proceedings the claims they are now making, relief they are seeking, and defenses they are asserting. Further, she asserts that their Countermotion "*seeks an assortment of relief based on claims Jacqueline and Kathryn have never alleged, defenses they have never alleged, and conclusions unsupported by law or fact in violation of EDCR 2.2(c). EDCR 2.20(c) requires that in filing a motion a party must cite to points and authorities supporting the claim for relief.*"

While there has been a plethora of various petitions, motions and counter motions asserted by all parties in these proceedings wherein citation has been made to legal authority supporting Kathryn's and Jacqueline's positions in these proceedings, in their most recent Countermotion for Summary Judgment filed herein on December 24, 2014, and their further replies thereto and in opposition to the Countermotion filed by Eleanor, sufficient citation has also been made to support Kathryn's and Jacqueline's positions and requests for relief in this case.

1           A.2     Further, at the hearing before the Court on December 4, 2014, the Court  
2 recognized the confusion and numerous pleadings which had previously been filed by the  
3 parties, in addition to the initial Petition filed by Kathryn and Jacqueline, and the Objection  
4 thereto filed by Eleanor. A trial was initially set in February, 2014, but was continued at the  
5 last moment to consider late-filed defenses and counterclaims Eleanor submitted with her  
6 motion for a continuance. Thereafter, in early 2014 several additional motions and  
7 petitions were filed by Jacqueline seeking a summary decision on her initial petition, based  
8 upon equitable principles, including the doctrine of laches, as well as the interpretation of  
9 the Trust language itself. When these Trust dispute motions and petitions were set to be  
10 heard in May, 2014, Eleanor again filed a motion to continue any hearing thereon until after  
11 the Court had held an evidentiary hearing on Eleanor's Will Contest, which had been filed  
12 in a separate case in early 2014. The Court in its order from that May hearing granted  
13 Eleanor's motion and ruled that it would put off the consideration of all matters relating to  
14 the Trust dispute until after the Will Contest trial, which was then scheduled to be heard  
15 in early 2015.

19           A.3     Kathryn was not an official party to these proceedings until an appearance was  
20 made on her behalf in early June, 2014. Accordingly, with the delay of the Trust dispute  
21 proceedings ordered by the Court at the hearing in May, 2014, Kathryn was not required  
22 to file any matters relating to the Trust dispute until after the Court had ruled on the Will  
23 Contest at the trial set in early 2015. After Eleanor obtained her current counsel, her third  
24 in these proceedings, her current counsel did not understand that the proceedings in the  
25 Trust dispute had been delayed until after the trial of the Will Contest. In preparing for the  
26 hearing on December 4, 2014, and responding to Kathryn's and Jacqueline's Motion to  
27  
28

1 Enforce Settlement Agreement, they erroneously asserted that the Trust dispute motions  
2 and petitions which had been filed were set to be heard before the Will Contest trial. The  
3 undersigned counsel attempted to correctly inform them of the prior above-mentioned  
4 scheduling of the Trust dispute matters by the Court, but to no avail. Therefore at the  
5 hearing on December 4, 2014, when scheduling was discussed, the Trust dispute issues  
6 (motions and petitions) were suddenly placed in advance of the trial on the Will Contest,  
7 and the Court directed all parties to then make sure that they clarified and submitted to the  
8 Court in their further petitions and pleadings all of their claims and defenses in the Trust  
9 dispute proceedings. Kathryn and Jacqueline did this in their Countermotion for Summary  
10 Judgment submitted on December 24, 2014, the deadline set by the Court for submission  
11 by all parties of further pleadings. In that Countermotion, Kathryn asserted the defenses  
12 of Statue of Limitations, Laches, Waiver and Claim Preclusion to Eleanor's claims in these  
13 proceedings, joined in by Jacqueline. Jacqueline had previously clearly advised the Court  
14 and Eleanor in her initial petition, and in her motions and petitions filed in early 2014, that  
15 she was asserting the defense of laches and detrimental reliance to Eleanor's claims and  
16 position in the Trust dispute proceedings.

20 A.4 Therefore, for Eleanor through her current attorneys, only coming on board  
21 in late November, 2014, as Eleanor's counsel, to assert that Kathryn and Jacqueline had not  
22 effectively asserted their claims and defenses of statute of limitations, laches, waiver and  
23 claim preclusion is very disconcerting. Given the untimely filing by Eleanor of her own  
24 Countermotion, replies and pleadings in this case, and the taking of advantage of extensions  
25 of time to file graciously granted to her by Kathryn and Jacqueline, the Court should not  
26 countenance the attempt now being made by Eleanor to remove from the Court's  
27  
28



1 consideration Kathryn and Jacqueline's Countermotion for Summary judgment based upon  
2 the statute of limitations, laches, waiver, and claim preclusion, or their requests for relief,  
3 including damages for Eleanor's failure to file an accounting, enforcement against Eleanor  
4 of the Trust's no-contest clause, consequential damages suffered and removal of Eleanor  
5 as Trustee as a result of her breach of her fiduciary duties.  
6

7       A.5     Proceedings in Trust disputes are often not as clearly formulated in initial  
8 pleadings filed by parties. Matters and claims arise and are further clarified during the  
9 proceedings, such as the claim against Eleanor for an accounting which Kathryn and  
10 Jacqueline asserted in petitions filed in 2014, and the request that Eleanor be removed as  
11 Trustee. Eleanor's prior counsel recognized the need for an accounting based upon written  
12 demands therefore made by Kathryn and Jacqueline to Eleanor and her counsel, as set forth  
13 in their Countermotion for Summary Judgment. At the time of the settlement conference  
14 with Judge Robert Saint Aubin on October 15, 2014, Eleanor and her attorneys provided a  
15 letter from an accountant simply saying what income had been deposited in a Trust  
16 account, and what monies remained in that account at the time. It was agreed between the  
17 parties and counsel at that time that the letter was only a temporary review of one of the  
18 Trust's bank accounts and not the complete Trust accounting which needed to be provided,  
19 and that the accounting would be forthcoming.  
20  
21  
22

23       A.6     However, as the Court is aware, the settlement conference with Judge Saint  
24 Aubin, and further settlement negotiations between the parties, resulted in what Kathryn  
25 and Jacqueline understood was a global settlement of the Trust dispute and Will contest on  
26 October 22, 2014, evidenced by a Court Reporter's Transcript. However, that purported  
27 settlement was rejected by Eleanor with the firing of her attorneys at the time, Michael  
28

1 Lum, Esq. and John Mugan, Esq. (her initial attorneys representing her in these  
2 proceedings), and then after dismissing her second attorney, David Mann, Esq. (all with in  
3 a very short period of time) she engaged her current counsel to represent her. In this  
4 confusing and exasperating process, the promise of Eleanor to provide the accounting has  
5 apparently been forgotten and ignored. Nonetheless, it was properly made to Eleanor and  
6 her counsel and with their promises to provide the same no more formal request has been  
7 needed to have obligated Eleanor to provide the accounting.  
8

9 A.7 With respect to Kathryn's and Jacqueline's claim that Eleanor has violated the  
10 no-contest provisions of the trust and should forfeit her benefits thereunder, Eleanor and  
11 her counsel were made aware of this claim in Jacqueline's Objection to Eleanor's own claim  
12 for tortious interference with contract, filed in the spring of 2014, where in it was noted that  
13 Eleanor herself was in violation of the no-contest clause, and in the ongoing settlement  
14 negotiations of the parties before and after the Settlement Conference with Judge Saint  
15 Aubin. No objection as to timeliness was ever raised by Eleanor or her various counsel  
16 during these proceedings to the assertion against her of the no-contest provisions. At the  
17 hearing on December 17, 2014, after the Court had denied Kathryn's and Jacqueline's  
18 Motion to Enforce Settlement, the Court itself warned Eleanor through her counsel of the  
19 potential risks she was taking in rejecting a settlement and opting to proceed with the Trust  
20 dispute. No objection was raised at that time by Eleanor as to the timeliness of the pleading  
21 of the claims and defenses asserted by Kathryn and Jacqueline, which could cause her the  
22 potential adverse consequences she might suffer, clearly including the risk of possibly losing  
23 her benefits under the Trust's no-contest provisions.  
24  
25  
26  
27

28 A.8 However, to resolve any basis that Eleanor may otherwise have to the Court

1 considering all the claims and defense that they have raised and clarified (as directed by the  
2 Court at the December 4, 2014 hearing), Jacqueline and Kathryn, to the extent otherwise  
3 deemed necessary, each request the Court to allow them to amend their pleadings in these  
4 proceedings to formally add the defenses of statute of limitations, laches, waiver and claim  
5 preclusion, as asserted both in petitions and pleadings filed before December 24, 2014, and  
6 in their Countermotion filed on December 24, 2014.  
7

### 8 **B. LEGAL ARGUMENT**

9  
10 B.1 Nevada Rule of Civil Procedure 15 allows a party to amend a pleading by leave  
11 of the court. NRCP 15(a). NRCP Rule 15(a) provides that "a party may amend the party's  
12 pleading . . . by leave of court . . . : and leave shall be freely given when justice so requires."  
13 The Nevada Supreme Court has held that absent "undue delay, bad faith or dilatory motives  
14 on the part of the movant," leave should be freely granted. See *Kantor v. Kantor*, 116 Nev.  
15 886, 891, 8 P.3d 825, 828 (2000); see also *Stephens v. Southern Nev. Music Co., Inc.*, 89  
16 Nev. 104, 105-06, 507 P.2d 138, 139 (1973) ("in the absence of any apparent or declared  
17 reason – such as undue delay, bad faith or dilatory motive on the part of the movant – the  
18 leave sought should be freely given").  
19

20  
21 B.2 NRCP Rule 15(b) further provides that:

22 *When issues not raised by the pleadings are tried by express or implied*  
23 *consent of the parties, they shall be treated in all respects as if they had been*  
24 *raised in the pleadings. Such amendment of the pleadings as may be*  
25 *necessary to cause them to conform to the evidence and to raise these issues*  
26 *may be made upon motion of any party at any time, even after judgment...*

27  
28 B.3 Given (1) the fact that Jacqueline felt Eleanor's belated claim to all of the  
Texas oil income was not recognizable under various "equitable principles" asserted in her  
initial pleading as mentioned above, (2) the filing early in this case of motions and petitions

1 to deny Eleanor's claim under the doctrine of laches and detrimental reliance, (3) the late  
2 entry of Kathryn as a party in the proceedings in June, 2014, and her assertion and  
3 summary of her pleadings, defenses and claims in the Countermotion for Summary  
4 Judgment filed herein on December 24, 2014, and (4) the confusing delays and other  
5 unusual events happening in these proceedings, it is respectfully submitted that good cause  
6 exists to consider that Kathryn and Jacqueline have asserted in these proceedings the  
7 defenses and claims set forth in their Countermotion for Summary Judgment, that Eleanor  
8 has been fully aware of these claims and defenses, and it would be most appropriate to  
9 recognize these claims and defenses as having been plead in these proceedings.  
10

11  
12 B.4 NRCP 13(a) provides in part that "a pleading shall state as a counterclaim any  
13 claim which at the time of serving the pleading the pleader has against any opposing party,  
14 if it arises out of the transaction or occurrence that is the subject matter of the opposing  
15 party's claim." Additionally, NRCP 13(f) states that when "a pleader fails to set up a  
16 counterclaim through oversight, inadvertence, or excusable neglect, or when justice  
17 requires, the pleader may by leave of court set up the counterclaim by amendment."  
18

19 In *Moll v. Nevada Young American Homes, Inc.*, the Nevada Supreme Court explained:  
20

21 *[A] motion to amend should [be] granted [when] the counterclaim sought*  
22 *to be interposed [is] compulsory in nature, and justice requires that claims*  
*and counterclaims arising out of the same transaction shall be litigated in*  
*one action.*

23 93 Nev. 68, 69, 560 P.2d 152, 153 (1977) (emphasis added). The *Moll* court further  
24 determined that "[t]o do otherwise would deprive the [claimant] of [money] which the  
25 record establishes is rightfully his, or, perhaps foster further repetitive and time-  
26 consuming litigation." *Id.* at 70, 560 P.2d at 153.; see also *Nev. Bank Commerce v.*  
27  
28

1 *Edgewater, Inc.*, 84 Nev. 651, 653, 446 P.2d 990, 991 (1968) (“counterclaims may also  
2 be set up by amendment under Rule 13(f) ‘when justice requires,’ to the end that  
3 substantial justice may be accomplished between all parties to the litigation”) (internal  
4 citations omitted).  
5

### 6 7 C. CONCLUSION

8 C.1 Clearly in these proceedings, when Eleanor has been fully aware of the relief  
9 being sought by Kathryn and Jacqueline during most of this proceeding, aware of the legal  
10 defenses they have raised to her claims and position in this case, and there clearly is no  
11 motive to cause undue delay, of bad faith, or dilatory motive on Kathryn’s and Jacqueline’s  
12 part, the failure to raise an issue, if the Court shall deem that there was in fact any failure  
13 to raise to begin with, would simply be due to oversight, inadvertence, or excusable  
14 neglect. Therefore, to the extent this Court finds that the relief requested has not already  
15 been requested properly, Jacqueline and Kathryn request that this Court permit them to  
16 amend their pleadings to include in the claims for relief the following claims:  
17  
18

19 (a) That under the main 1972 Trust, and with respect to the Texas oil  
20 property, it be determined that Eleanor received only the right to receive 35% of the  
21 income from the property during her lifetime, with the remaining 65% share going  
22 initially to Marjorie while she was alive, and then to Kathryn and Jacqueline  
23 through Marjorie’s MTC Living Trust after Marjorie’s death.  
24

25 (b) That Eleanor be barred from asserting any claim of entitlement to a  
26 100% share of the Texas oil property income under the theories and defenses of an  
27 expiration of the applicable statute of limitations and the applicability of laches,  
28

1 waiver and claim preclusion.

2 (c) That Eleanor breached her duties as Trustee of the main 1972 Trust  
3 by cutting off and refusing to distribute to Kathryn and Jacqueline their 65% share  
4 of the Texas oil property income beginning approximately in June, 2013.  
5

6 (d) That as a result of Eleanor's breach of duties and shown unfitness to  
7 serve as trustee, she should be removed as the Trustee of the main 1972 Trust and  
8 of the subtrusts thereunder, including the separate property trust.  
9

10 (e) That due to Eleanor's breaches of her fiduciary duties and contest of  
11 the Trust and its provisions in these proceedings, she should be required to account  
12 and pay to Kathryn and Jacqueline all consequential damages they have suffered,  
13 including but not limited to restoring to them all of the income which should have  
14 been distributed to them.  
15

16 (f) That Eleanor be required to reimburse and pay to Kathryn and  
17 Jacqueline all of the attorney's fees they have incurred in prosecuting and  
18 defending in these proceedings.  
19

20 (g) That the no-contest provisions of the Trust should be enforced  
21 against Eleanor causing her to forfeit any further benefits and interests under the  
22 Trust, and to further disgorge any and all benefits that she received from the time  
23 that such violation occurred, which was in approximately June of 2013.  
24

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of ~~THE RUSHFORTH FIRM, LTD.~~ <sup>Albion Stoddard Warwick Albright</sup> and that

on the 12<sup>th</sup> day of January, 2015, I placed a true and correct copy of the foregoing document, in the United States Mail, at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

Liane K. Wakayama, Esq.  
Candice E. Renka, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, NV 89145

(On the same date, I also served a true and correct copy of each of the foregoing documents upon all counsel of record by electronically serving the same using the Court's electronic filing system.)

  
DIANE L. DeWALT

An Employee of ~~The Rushforth Firm, Ltd.~~ ASWA .

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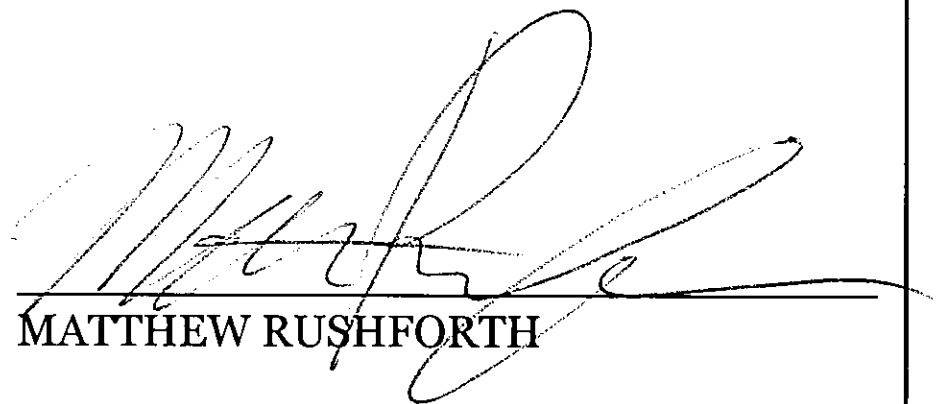


1 January 12, 2015 by personally delivering a copy of said documents to an employee of Marquis  
2 Aurbach Coffing at their office located at 10001 Park Run Drive, Las Vegas, Nevada 89145 at  
3 approximately 5P.M.

4 I had intended to effectuate personal delivery of the copies of said documents to Attorney  
5 Liane K. Wakayama, and in turn to request that she signed an "ROC", receipt of copy, but was told  
6 by a male employee that she was no longer present and had left the office for the evening. I then  
7 requested that any other employee of the Marquis Aurbach Coffing law firm sign the ROC, but such  
8 request was eventually denied as I was told that whomever was asked to sign the ROC in lieu of Ms.  
9 Wakayama was refusing to sign the ROC. I then left said documents with an employee of Marquis  
10 Aurbach Coffing, an adult male, with instruction to have said documents delivered to Ms.  
11 Wakayama. The employee confirmed that he understood my request and confirmed that said  
12 documents would be given to Ms. Wakayama.  
13

14 I declare under penalty of perjury under the law of the State of Nevada that the foregoing  
15 is true and correct.  
16

17 EXECUTED this 13<sup>th</sup> day of January, 2015.

18   
19 MATTHEW RUSHFORTH  
20  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of  
THE W. N. CONNELL AND MARJORIE  
T. CONNELL LIVING TRUST, Dated  
May 18, 1972,

CASE NO. P-09-066425  
DEPT NO. XXVI (26)

Date of Hearing: January 30, 2015  
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

**SUPPLEMENT TO MOTION TO AMEND PLEADINGS**

Kathryn A. Bouvier ("Kathryn") and Jacqueline M. Montoya ("Jacqueline") hereby submit the following Supplement to their Motion for Leave to Amend Pleadings for Claims, Defenses, Damages and Assessment of Penalties, and for Other Relief Against Eleanor Connell Hartman Ahern, filed herein on January 12, 2015. Pursuant to EDCR 5.35 and EDCR 2.30, attached hereto as Exhibit "A" is the proposed additional Pleading they are requesting that they be permitted to file in these proceedings.

In addition to the background and points and authorities provided with their Motion, the following background information and analysis is provided in support of their Motion.

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CLERK OF THE COURT

1 In ELEANOR C. AHERN'S (1) REPLY IN SUPPORT OF ELEANOR C.  
2 AHERN'S MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT  
3 FOR FAILURE TO STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED;  
4 (2) OPPOSITION TO COUNTERMOTION OF KATHRYN A. BOUVIER AND  
5 JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR  
6 DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF  
7 PENALTIES, AND FOR OTHER RELIEF; AND (3) REPLY IN SUPPORT OF  
8 COUNTERMOTION FOR SUMMARY JUDGMENT, filed herein on or after January  
9 9, 2015, she asserts that in prior pleadings in this proceeding, Kathryn and Jacqueline  
10 have only requested that the Court declare that Eleanor is only entitled to 35% of the  
11 Texas oil property income, and that they are entitled to 65% of the said income. She  
12 further asserts that they "seek an assortment of relief based on claims they have never  
13 alleged, defenses they have never alleged", as set forth in their Countermotion for  
14 Summary Judgment filed herein on December 23, 2014, and therefore, the Court should  
15 deny their Countermotion.

16 Notwithstanding Kathryn and Jacqueline are now requesting the Court to allow  
17 the filing of the Supplemental Pleading, attached hereto as Exhibit "A", it should be  
18 noted that they have not failed to file required pleadings, they have been and are in full  
19 compliance with the Nevada Rules of Civil Procedure, and their claims for relief and  
20 equitable defenses to the claims and assertions of Eleanor in these proceedings have  
21 been openly asserted and made known to her during the course of these proceedings.  
22 She cannot reasonably assert that she has been caught off guard, surprised or prejudiced  
23 in any way by being required to have to respond to the claims for relief and equitable  
24 defenses asserted against her in Kathryn and Jacqueline's Countermotion for Summary  
25 Judgment filed herein on December 23, 2014. All the claims and defenses they  
26 asserted in this Countermotion are and have been before the Court for its resolution of  
27 the dispute between the parties in this proceeding. The consolidation of all of their  
28 previously asserted claims and defenses in this one document was done pursuant to the

1 Court's direction at the hearings herein on December 4, 2014, and December 17, 2014.

2 Following is a chronological analysis of Kathryn and Jacqueline's pleadings,  
3 asserted in their initial and follow-up Petitions in this proceeding. This is not a  
4 summary of the all the documents filed by the parties, but only those which clearly  
5 demonstrate that Kathryn and Jacqueline are in compliance with pleading requirements  
6 under the Nevada Rules of Civil Procedure sufficient to have placed before the Court,  
7 and timely notified Eleanor, of all the affirmative defenses and claims for relief set  
8 forth in their Countermotion for Summary Judgment filed herein on December 23, 2014.

9 A. Original Pleading - In the initial pleading filed herein on September 27, 2013,  
10 by Jacqueline as Trustee of the MTC Living Trust, a PETITION FOR  
11 DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF TRUST  
12 ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS  
13 164.033(1)(A), and in referring to the claim to 100% of the Texas oil property asserted  
14 by Eleanor in cutting off all distribution of Trust income to Kathryn and Jacqueline, it  
15 was asserted that: "Even in the off chance that the allocation was not done with  
16 complete precision, it is simply too late to question and rehash the issue, as returns  
17 have been filed and accepted and **rights have become vested under numerous**  
18 **equitable principles**. Just as with statutes of limitations, or even with the offering of  
19 subsequently discovering a will of a decedent years after probate has been conducted  
20 and concluded, there simply becomes a point in time when it is simply too late to seek  
21 redress of an issue." See Paragraph D.12 beginning of page 11 of the Petition.  
22 (Emphasis supplied.)

23 At the time the initial Petition was filed, whether Eleanor would respond, and  
24 how she might respond, were not known. Therefore, it would be unreasonable that the  
25 Petition would set forth in more explicit terms the equitable defenses which the  
26 Pleading indicates would be available to defend against any claims and assertions  
27 which Eleanor might make in a responsive pleading.

28 In the section of the Petition entitled "Damages" beginning on page 16 of the

1 Petition it states: “

2 ”Jacquie and Kathryn have incurred substantial attorney’s fees and costs in  
3 having to seek declaratory judgment based on the unwarranted actions of Ms. Ahern.  
4 As such, Jacquie, on both her behalf and on behalf of Kathryn, hereby requests that this  
5 Court hold Ms. Ahern responsible for the damages that she has triggered by her  
6 unjustifiable and unwarranted actions. This request is made based on the provisions  
7 of NRS 153.031(3)(b), based on the applicability of that provision through NRS  
164.005. However, the amount of damages will be discussed and set forth in an  
additional related petition that will be filed shortly hereafter. Therefore, for the sake  
of clarity, the request for damages is hereby made and preserved, but topic will be  
addressed in great detail in a related petition so as not to distract or confuse the  
straightforward declaration of rights and interests that is sought herein.

8 Accordingly, in the original Petition commencing this Trust dispute, Eleanor was  
9 clearly advised that equitable principles and defenses would be asserted to defeat any  
10 claim she was belatedly making to all of the Texas oil property income, that such  
11 principles and defenses would defeat her claim regardless otherwise of the purported  
12 merits of her claim, and that a recovery of all damages caused by her actions was being  
13 pursued in this Trust dispute proceeding.

14 B. Eleanor’s initial response to pleading - In response to the original Pleading,  
15 Eleanor did not initially file her Answer and responsive pleading. Rather, she filed a  
16 Motion under NRCP Rule 12 to Dismiss the Petition based upon the principle of claim  
17 preclusion. However, therein she did assert that she was entitled to all of the income  
18 from the Texas oil property.

19 C. Second Pleading - At or near the same time that Eleanor filed her Motion,  
20 Jacqueline herself, on December 3, 2013, filed a Motion under Rule 12 entitled  
21 “PETITION TO COMPEL TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND  
22 FUTURE INCOME RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND  
23 DECLARATION OF THE APPLICABILITY OF THE DOCTRINE OF LACHES,  
24 hereinafter referred to as “Second Petition”. In this Second Petition and pleading,  
25 which was foreshadowed and said to be forthcoming in the original Petition, Jacqueline  
26 asserted against Eleanor the following claims and defenses:

27 1. In addition to declaring ownership rights to the Texas oil property income,  
28 that, “Additionally, Jacqueline hereby requests that this Court declare that the doctrine

1 of laches, among other equitable principles, requires that the status quo remain  
2 unaffected and prevent Ms. Ahern from making any claim of rights affecting the  
3 65%/35% status quo when such claims could have and should have been raised 33  
4 years ago.” See, first paragraph on page 2 of the document.

5 2. “Ms. Ahern has breached multiple duties in her capacity as trustee,  
6 including the duty of loyalty to not act for one’s self interest, as well as the duty to  
7 follow the express terms of the Trust”, which foreshadowed and gave notice that a  
8 request would be made to have her removed as trustee of the Trust. *Id.* Further, the  
9 document goes on to state:

10 “However, Jacqueline believes that the hearing in February, 2014 (an evidentiary  
11 hearing which had been set by the Court) is not necessary, as this matter can be  
12 determined immediately by rightfully barring any changes in the legal rights of  
13 Jacqueline and her sister, as beneficiaries of the MTC Living Trust through the  
14 application of equitable principles, including the doctrine of laches. The Clark County,  
Nevada probate court is a court of equity and this matter requires that equitable  
remedies be instituted immediately to prevent further, severe financial damage to the  
innocent parties that are being affected by Ms. Ahern’s breaches.”

15 See, first and last Paragraphs, on page 2 and carrying over to page 3 of the document.  
16 Specifically then, beginning on page 6 of the document, Jacqueline goes on to assert  
17 in great detail the basis for her request that the Court impose the equitable defenses  
18 against Eleanor to resolve summarily the Trust dispute proceedings, including the  
19 defenses of laches, detrimental reliance, statute of limitations, and the elements of  
20 waiver.

21 Lastly, in the Second Petition, Jacqueline repeats her claim for damages noting  
22 that she seeks, on behalf of herself and Kathryn, that “this Court hold Ms. Ahern  
23 personally responsible for **all damages that she has triggered** by her unjustifiable and  
24 unwarranted actions”, stating that such damages would be set forth in additional related  
25 petitions.

26 C. Court’s action on Motions filed - In February, 2014, when the evidentiary  
27 hearing on the Trust dispute was initially set by the Court, and before the time of the  
28 hearing, the Court had occasion to review the Motions which had been filed by both

1 parties to summarily resolve the Trust dispute without any evidentiary hearing as  
2 allowed under NRCP Rule 12. The Court indicated that it would not grant either  
3 Motion because the evidentiary hearing was set only a few days thereafter and it felt  
4 that it would be better at that point in time to hear and resolve the case on its merits.  
5 However, the denial of the Motions at that time was specifically done without prejudice  
6 to their being refiled thereafter.

7 At the same time, the Court was notified by Eleanor's counsel that they intended  
8 to plead and assert claims against Jacqueline, including punitive damages, which they  
9 had not previously pleaded, since they had not even filed a responsive pleading to  
10 Jacqueline's original Petition and Second Petition by that time, other than Eleanor's  
11 Motion to Dismiss. This then forced the Court to continue the evidentiary hearing, and  
12 it was reset for a time in August, 2014, so Eleanor could submit a responsive pleading  
13 to which Jacqueline could then respond.

14 D. Eleanor's Answer and Counterclaim - Eleanor, on February 10, 2014, then filed  
15 her Answer and Counterclaim to Jacqueline's original Petition wherein she made  
16 claims and assertions to all of the income from the Texas oil property, factual assertions  
17 regarding the background and history of the parties, the standard and generic  
18 affirmative defenses she claimed, and she asserted counterclaims against Jacqueline for  
19 intentional interference with contractual relations, for enforcement of the no-contest  
20 provision under the Trust, for punitive damages, for attorney's fees and costs, and for  
21 a declaration that she was entitled to all of the Texas oil property income.

22 E. Third and Subsequent other Pleadings - Following the filing of Eleanor's Answer  
23 and Counterclaim, Jacqueline, on March 8, 2014, in her PETITION TO COMPEL  
24 TRUSTEE TO DISTRIBUTE ACCRUED INCOME AND FUTURE INCOME  
25 RECEIVED FROM OIL, GAS, AND MINERAL LEASES AND DECLARATION OF  
26 THE APPLICABILITY OF THE DOCTRINE OF LACHES, then reasserted her  
27 Petition to dispose of the case summarily under equitable principles, seeking also to  
28 have the Court compel Eleanor to resume payments to her and Kathryn of their 65%

1 share of the Texas oil property income. Therein, she reasserted her claim that Eleanor  
2 had breached her duties as trustee, her defenses to Eleanor's claim to all of the Texas  
3 oil property income, and her request that Eleanor be held responsible for all damages  
4 caused by her actions. In addition, Jacqueline filed additional Petitions to have the  
5 Court resolve the Trust dispute in a summary manner, including her PETITION FOR  
6 CONSTRUCTION AND EFFECT OF PROBATE COURT ORDER, filed herein on  
7 March 26, 2014, and her PETITION FOR DETERMINATION OF CONSTRUCTION  
8 AND INTERPRETATION OF LANGUAGE RELATING TO TRUST NO. 2, filed  
9 herein on March 27, 2014.

10 F. Motion to Dismiss Eleanor's Counterclaim - In specific response to Eleanor's  
11 Counterclaim, filed with her initial Answer and Counterclaim on February 10, 2014,  
12 Jacqueline also filed a MOTION TO DISMISS COUNTERCLAIMS OF ELEANOR  
13 C. AHERN on March 16, 2014. In this Motion, Jacqueline reiterated the equitable  
14 defenses she had to Eleanor's claim to all of the Texas oil property income, including  
15 asserting that her claim was in violation of the statute of limitations under NRS  
16 11.190(1)(b), as well as not being cognizable under the equitable principles of laches  
17 and waiver, and that Eleanor's actions breached her duties as a trustee. In addition, and  
18 in moving to dismiss Eleanor's Counterclaim for enforcement of the no-contest  
19 provisions of the Trust, Jacqueline stated that the no-contest provisions of the Trust  
20 should be instead enforced against Eleanor for her wrongful contest of the Trust's  
21 provisions

22 G. Suspension and Continuance of all Trust dispute matters until after trial in Will  
23 Contest - The Court set a hearing on May 13, 2014, to consider the above-mentioned  
24 Petitions and Motion filed by Jacqueline. However, Eleanor filed a Motion to continue  
25 the hearing and resolution of the Petitions and Motions in the Trust dispute until after  
26 the Court had occasion to hear the Will Contest, which had been filed by Eleanor in a  
27 separate proceeding, Case No. P-14-080595-E. It was Eleanor's assertion in her  
28 Motion that if she won the Will Contest, and invalidated Marjorie T. Connell's 2008



1 Will, this would determine by its effect that she was entitled to all of the Texas oil  
2 property income, and the issues in the Trust dispute would then be resolved and  
3 rendered moot. Therefore, for economy reasons, she asserted that all Trust dispute  
4 matters should be suspended and continued until after resolution of the Will Contest.  
5 The Court agreed with this reasoning, continued all Trust dispute matters to be heard,  
6 if necessary, after the evidentiary hearing on the Will Contest, cancelled the pending  
7 evidentiary hearing in the Trust dispute set during August, 2014, and it set a jury trial  
8 on the Will Contest in January, 2015. The Court's Order from the May 13, 2014  
9 hearing, directing these events, was entered herein on July 7, 2014.

10 H. Effect of July 7, 2014 Order - As a result of the July 7, 2014 Order, several  
11 effects were put in place regarding pleadings in these proceedings. In particular, since  
12 the Court did not hear, rule on, and enter an order with respect to Jacqueline's Motion  
13 to Dismiss, filed herein on March 16, 2014, and her Petitions filed herein on March  
14 26, 27, 2014, the time for Jacqueline to further plead to the Answer and Counterclaim  
15 of Eleanor, filed herein on February 10, 2014, has never accrued or expired. Rather,  
16 as noted in NRCP Rule 12(4):

17 “(4) The service of a motion permitted under this rule alters these periods of time  
18 (i.e times to plead and respond to pleadings) as follows, unless a different time is fixed  
by order of the court” (Emphasis supplied)

19 The said Rule then goes on to provide that a party which filed the motion has 10 days  
20 after the Court's action on the motion to file a responsive pleading. Although this  
21 Court has never addressed and taken action on the Petitions and Motions which were  
22 filed by Jacqueline prior to the hearing on May 13, 2014, having continued them and  
23 now reset the same to be heard on January 30, 2015, as part of and in the resolution of  
24 the parties' Countermotions for Summary Judgment, the Court did request and set a  
25 deadline for the parties (in the hearings on December 4 and 17, 2014) to make sure all  
26 of the claims and defenses they were asserting were delineated and briefed to the Court  
27 by December 24, 2014.

28 I. Developments in the Trust Dispute Proceeding in the Later Half of 2014 - On

1 October 9, 2014, Eleanor's former counsel filed a MOTION TO DISMISS PETITION  
2 FOR DECLARATORY JUDGMENT REGARDING LIMITED INTEREST OF  
3 TRUST ASSETS PURSUANT TO NRS 30.040, NRS 153.031(1)(E), AND NRS  
4 164.033(1)(A) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN  
5 BE GRANTED. A hearing date was not obtained for this Motion, which just reiterated  
6 the relief Eleanor sought in her first Motion filed in 2013 in these proceedings. Since  
7 no hearing was effectively set on the Motion, it appears that it was the intent and  
8 understanding of Eleanor that the Motion still would not be heard until after the  
9 resolution of the Will Contest, per the Court's July 7, 2014 Order.

10 In addition, and before Jacqueline and Kathryn could file a written Response to  
11 the Motion, a Settlement Conference was held with Nevada Supreme Court Settlement  
12 Judge, Robert Saint Aubin on October 15, 2014. By agreement among the parties and  
13 with Mr. Saint Aubin, the Settlement Conference was to address not only the matter  
14 which Eleanor had appealed to the Nevada Supreme Court from this Court's July 7,  
15 2014 Order, but to also address a global settlement of all of the disputes between the  
16 parties, including the pending Trust dispute and Will Contest. As a result of this  
17 Settlement Conference, and continued subsequent negotiations between the parties  
18 thereafter through October 22, 2014, a purported Settlement Agreement was reached  
19 between the parties resolving pending proceedings in the Trust dispute and Will  
20 Contest.

21 In these negotiations, the risks each party would be assuming in going to a trial  
22 on the merits of the Will Contest and the Trust dispute were thoroughly discussed by  
23 the parties and with Mr. Saint Aubin. Jacqueline and Kathryn warned and reminded  
24 Eleanor that they were seeking not only a decision from the Court that they were  
25 entitled to 65% of the Texas oil property income, but also that they were seeking her  
26 removal as Trustee, compensatory damages restoring to them all income not paid to  
27 them and the other damages caused by her breach of her fiduciary duties, all their  
28 attorney's fees and costs they had incurred, and enforcement against Eleanor of the no-

1 contest provisions under both the main 1972 Trust and under the Will and MTC Living  
2 Trust of Marjorie T. Connell. Eleanor in turn advised Kathryn and Jacqueline of the  
3 relief she would be seeking if she prevailed in the matters.

4 Further, in the purported Settlement Agreement reached between counsel on  
5 October 22, 2014, all of the parties claims against one another were discussed and the  
6 resolution thereof set forth in the terms dictated to the Court Reporter. Thus, even  
7 though the purported Settlement Agreement never came to fruition, and the Court  
8 denied Kathryn's and Jacqueline's Motion to enforce it because Eleanor refused to  
9 acknowledge it and sign it, **there was a clear understanding** between the parties of  
10 all of the claims and defenses each was asserting against the other in the Trust dispute  
11 and Will Contest proceedings. No objections were argued regarding failure of one  
12 party to plead or otherwise notify the other of the claims and defenses. Everyone  
13 clearly understood the risks and what "was on the table" if an amicable settlement was  
14 not reached and the matters proceeded to trial.

15 As the Court is aware, following the Settlement Conference on October 22, 2014,  
16 Eleanor met and communicated with her "close advisors", who obviously convinced  
17 her to reject and disclaim that a settlement had been reached. This led to the dismissal  
18 of her first counsel representing her in these proceedings, and her engaging of David  
19 L. Mann, Esq., to take over as her counsel. Before he could get involved to any extent,  
20 Eleanor parted ways with him and engaged her current attorneys to represent her.

21 J. December 4, 2014 Calendar Call - To schedule the exact hearing date for the  
22 Will Contest trial in January, 2015, the Court had set a Calendar Call on December 4,  
23 2014. In preparing for this hearing, Eleanor's current new counsel filed a Motion  
24 asking the Court to continue the hearing which had been set on Kathryn and  
25 Jacqueline's Motion to Enforce the Settlement Agreement, as well as the other matters  
26 scheduled in the disputes between the parties, including the Trust dispute and Will  
27 Contest. Eleanor's new counsel did not understand that the Trust dispute matters had  
28 been continued until after the Will Contest Trial, and therefore expressed concern to

1 the Court that they could not prepare on the Trust dispute matters in such a short time.  
2 At the Calendar Call, the Court advised that it would not continue these matters, and  
3 a hearing would be held on the Motion to Enforce Settlement Agreement on December  
4 17, 2014. If the Court did not grant that Motion, the other scheduled matters then  
5 would proceed without delay. The Court advised, with respect to the Trust dispute  
6 matters, which had previously been filed but continued until after the Will Contest  
7 Trial, that it would instead hear the Petitions and Motions which could summarily  
8 decide the Trust dispute on January 14, 2015, prior to the trial set on the Will Contest  
9 to begin on January 21, 2015.

10 All parties have been made aware that the calendaring of matters on the Court's  
11 docket has been confusing and difficult for the Court because of the Family Court  
12 connection and interaction in the process, trust and probate matters being under the  
13 jurisdiction of the Family Court. This has led to matters not being clearly set on the  
14 Court's calendar. This was abundantly clear at the last hearing on January 14, 2015,  
15 when because the Court was not made aware of all the pending matters which the  
16 parties had filed and set to be heard that day, the hearing had to be continued and reset  
17 for January 30, 2015. Accordingly, the decision of the Court at the December 4, 2014  
18 Calendar Call, to advance the hearing of the Motions and Petitions for summary relief  
19 in the Trust dispute to be heard on January 14, 2015, prior to the Will Contest trial is  
20 understandable. Other than Eleanor's request to continue these matters which was  
21 denied, no party objected to the more expeditious hearing of the matters.

22 At the Calendar Call on December 4, 2014, and reiterated at the hearing on  
23 December 17, 2014, when the Court denied Kathryn's and Jacqueline's Motion to  
24 Enforce Settlement Agreement, the Court advised the parties that to prepare for the  
25 hearing on the Trust dispute matters set for January 14, 2015, they each needed to make  
26 sure that all claims for relief and defenses they were asserting were set forth in clear  
27 pleadings and briefing. The Court further set a deadline for the filing of such pleading  
28 and briefing on December 24, 2014.

1 K. Kathryn's and Jacqueline's Countermotion for Summary Judgment - In response  
2 to the Court's directions, Kathryn and Jacqueline filed on December 23, 2014, their  
3 OPPOSITION TO ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR  
4 DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON  
5 WHICH RELIEF CAN BE GRANTED (filed herein on or about October 9, 2014);  
6 AND, COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M.  
7 MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY  
8 JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES. Therein, in  
9 addition to opposing Eleanor's Motion to Dismiss (which had never been effectively  
10 set for hearing), they reiterated, asserted and briefed all of the affirmative defenses they  
11 had alleged to Eleanor's claim to all of the Texas oil property income in  
12 pleadings/Petitions/Motions filed prior thereto, and they reiterated, asserted and briefed  
13 the claims for relief they were asserting against her (all of which had been discussed  
14 and negotiated between the parties at length during these proceedings), including as  
15 follows:

16 "A. That Eleanor's Motion be denied, and that they receive an award of  
17 attorney's fees and costs against Eleanor, pursuant to NRS 18.010(2)(b) for having  
18 filed her frivolous and harassing Motion.

19 B. That their Countermotion for Summary Judgment be granted for the reasons  
20 submitted above, namely that Eleanor's claim to a right of the income under Trust No.  
21 3, first asserted by her in 2013 in stopping income payments to Jacqueline and Kathryn,  
22 is barred, by the Statute of Limitations, the doctrine of laches, the doctrine of waiver,  
23 and/or the doctrine of Claim Preclusion. Under NRCPP Rule 56, where no material facts  
24 are subject to dispute and the law applied shows the movant is entitled to judgment,  
25 summary judgment should be granted to avoid further waste of time and expense to the  
26 moving party and the Court. Clearly, this is an appropriate case to grant summary  
27 judgment.

28 C. That Eleanor be sanctioned for having failed to provide them with a proper  
accounting of the Trust, including awarding fees and costs incurred to them, and further  
penalizing Eleanor. It should be ordered all accruing income received by Trust No. 1  
for distribution between Trust No. 2 and Trust No. 3, and that presently being held by  
Eleanor, other than that which the Court allows to be distributed as requested above,  
be placed in a neutral bank account to not be further released without further Court  
order. Further, Eleanor should be removed as Trustee of Trust No. 1, Trust No. 2, and  
Trust No. 3, as she is not capable or fit to handle this important fiduciary duty.

D. That the Court reconsider its decision from the May 14, 2014 hearing, and allow  
Jacqueline and Kathryn to receive the income payable to Trust No. 3 during these  
proceedings without posting a bond, should these proceedings not be resolved within  
the next month, just as Eleanor has been entitled to continue receiving her share of the  
income. In the alternative, Eleanor should be required to post a bond to cover the  
potential damages, fees and costs she would suffer and owe to Jacqueline and Kathryn,

1 should she not prevail in this case, to secure the payment thereof.

2 E. That it be determined that Eleanor has forfeited her rights and benefits under  
3 Trust No. 1 and Trust No. 2, by wrongfully claiming all income earned by Trust No.  
4 1 and attempting to deprive Kathryn and Jacqueline of their right to income under Trust  
5 No. 3.

6 F. In the event that Marjorie's Will Contest challenge is denied, that it be  
7 determined that Eleanor has forfeited her rights and benefits under Marjorie's Will and  
8 her MTC Living Trust, and that she be required to disgorge and pay back to the Trust  
9 the \$300,000.00 bequest she accepted from the Trust, as a result of her wrongfully  
10 claiming that the Will is invalid."

11 If for some reason it is deemed that, prior to the filing of their Opposition and  
12 Countermotion on December 23, 2014, the Petitions and Motions previously filed by  
13 Kathryn and Jacqueline in these proceedings, as outlined above, did not properly plead  
14 all of their claims for relief and defenses against Eleanor in these proceedings, as  
15 quoted above, then the reiteration thereof in the said Opposition and Countermotion did  
16 formally plead and place these matters before the Court (at least in the parties'  
17 understanding) for resolution at the scheduled hearing on the Countermotions for  
18 Summary Judgment on January 14, 2015. Since prior to the December 4, 2014  
19 Calendar Call and hearing, under NRCR Rule 12, the time for Kathryn and Jacqueline  
20 to even formally plead to Eleanor's Answer and Counterclaim had never accrued or  
21 expired, as discussed above, the Court's direction to the parties at the Calendar Call  
22 hearing, to make sure all matters were fully plead and set forth in further filings and  
23 briefing by December 24, 2014, Kathryn and Jacqueline complied fully with their  
24 pleading requirements under NRCR Rule 12, by filing their Countermotion for  
25 Summary Judgment on December 23, 2014, clearly outlining and reiterating the claims  
26 for relief and defenses they had asserted in prior pleadings, petitions, motions,  
27 settlement negotiations and other interactions with Eleanor and her counsel prior to  
28 December 4, 2014.


25 This is why Kathryn and Jacqueline were taken back and upset when Eleanor,  
26 for the first time, alleged in her late and last-filed document, filed herein on or after  
27 January 9, 2015, that they had not previously pleaded all the affirmative defenses and  
28 claims for relief which were set out in their Opposition and Countermotion, filed herein

1 on December 23, 2014. There can be no question that all of the affirmative defenses  
2 and claims for relief were asserted in the prior Petitions and Motions filed by them  
3 against Eleanor, and that she was fully aware thereof. They were discussed fully and  
4 negotiated in the attempted settlement efforts between the parties, as mentioned above.  
5 Therefore, Kathryn and Jacqueline respectfully submit that they have fully and properly  
6 pleaded all of their affirmative defenses and claims for relief set forth in their  
7 Countertermotion for Summary Judgment.


8 However, as expressed in the Motion for Leave to Amend their Pleadings, filed  
9 herein on January 12, 2015, to resolve without reasonable objection the affirmative  
10 defenses and claims for relief which they are asserting against Eleanor and which  
11 should be considered by the Court in the hearing on the parties' Countertermotions for  
12 Summary Judgment, now set to be heard on January 30, 2015, a proposed supplemental  
13 pleading is attached hereto as Exhibit "A", the filing of which they now request be  
14 approved by the Court.

15 Dated this 20th day of January, 2015.

16 ALBRIGHT, STODDARD, WARNICK &  
17 ALBRIGHT

18 By:   
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21 THE RUSHFORTH FIRM

22 By:   
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*Attorneys for Jacqueline M. Montoya*

25  
26 CERTIFICATE OF SERVICE

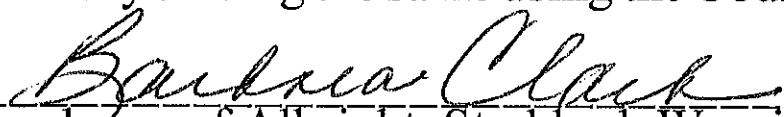
27 I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK  
28 & ALBRIGHT and that on the 20 day of January, 2015, I placed a true and correct copy



1 of the foregoing document, in the United States Mail, at Las Vegas, Nevada, enclosed in a  
2 sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

3 Liane K. Wakayama, Esq.  
4 Candice E. Renka, Esq.  
5 Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, NV 89145

6 (On the same date, I also served a true and correct copy of each of the foregoing documents  
7 upon all counsel of record by electronically serving the same using the Court's electronic filing  
system.)

  
8 An Employee of Albright, Stoddard, Warnick & Albright



# **EXHIBIT “A”**

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*Attorneys for Kathryn A. Bouvier*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of  
THE W. N. CONNELL AND MARJORIE  
T. CONNELL LIVING TRUST, Dated  
May 18, 1972,

CASE NO. P-09-066425  
DEPT NO. XXVI (26)

Date of Hearing: January 30, 2015  
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

**RESPONSE OF KATHRYN A. BOUVIER AND JACQUELINE M.  
MONTOKA TO THE ANSWER AND COUNTERCLAIMS OF ELEANOR  
C. AHERN, FILED HEREIN ON FEBRUARY 10, 2014**

Kathryn A. Bouvier ("Kathryn") and Jacqueline M. Montoya ("Jacqueline")  
hereby respond to the Answer of Trustee Eleanor C. Ahern to Jacqueline M. Montoya's  
Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets Pursuant  
to NRS 30.040, NRS 153.031(1)(e), and NRS 164.033(1)(a) and Counterclaims against  
Jacqueline M. Montoya ("Answer and Counterclaim"), filed herein on February 10,  
2014, as well as any other claims asserted by Eleanor herein in other Petitions, Motions  
or documents filed herein, as follows:

**RESPONSE TO ANSWER**

1. Responding to Paragraph 1 of the Answer and Counterclaim, they admit the

1 allegations contained therein, acknowledging that prior to the creation of the W.N.  
2 Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 ("Trust"), Mr.  
3 Connell owned the Texas Oil Property as his separate property.

4 2. Responding to Paragraph 2 of the Answer and Counterclaim, they deny the  
5 allegations therein. Pursuant to the Trust provisions, upon W.N. Connell's death,  
6 approximately 65% of the Upton County, Texas, Oil Rights ("Oil Property") were  
7 allocated to subtrust No. 3 pursuant to the provisions of the Trust.

8 3. Responding to Paragraph 3 of the Answer and Counterclaim, they deny the  
9 allegations therein. Only approximately a 35% portion of the Oil Property was  
10 allocated to subtrust No. 2 in accordance with the provisions of the Trust.

11 4. Responding to Paragraph 4 of the Answer and Counterclaim, they deny the  
12 allegations therein. Until the Oil Property, still titled in the main Trust, is formally  
13 deeded and distributed to subtrust No. 2 (receiving a 35% interest) and subtrust No. 3  
14 (receiving a 65% interest), in accordance with the allocation of rights to the Oil  
15 Property determined upon the death of W.N. Connell, in the filing of his Estate Tax  
16 Returns, and recognized in the equitable ownership of this property under the Trust  
17 terms, distribution and administration, the provisions of NRS 163.385 are being  
18 followed and remain applicable. The MTC Living Trust was given and only owns the  
19 65% interest which Marjorie T. Connell was allocated and owned in subtrust No. 3, and  
20 until said interest is formally deeded to the MTC Living Trust, it continues to own the  
21 interest as the beneficiary under subtrust No. 3.

22 5. Responding to Paragraph 5 of the Answer and Counterclaim, they deny the  
23 allegations therein. Eleanor C. Ahern only received under the Trust, as a beneficiary  
24 under subtrust No. 2, the right during her lifetime to 35% of the income earned from  
25 the Oil Property.

26 **RESPONSE TO COUNTERCLAIM AGAINST JACQUELINE M.MONTOYA**  
27 **OF INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

28 6. Responding to Paragraphs 6, 7, and 8, of the Answer and Counterclaim, they

1 admit the allegations therein, except that Eleanor's right to 35% of the Oil Property  
2 income has been forfeited by her wrongful and frivolous claim to all of the income  
3 contrary to the Trust provisions, under the no-contest clause in the Trust.

4 7. Responding to Paragraph 9 of the Answer and Counterclaim, they deny the  
5 allegations therein.

6 8. Responding to Paragraph 10 of the Answer and Counterclaim, they deny the  
7 allegations therein on the basis that Jacqueline was entitled to request a halt in  
8 payments to preserve the interests of the MTC Living Trust in the Oil Property income,  
9 any halting of income payments was for a short time, and did not cause Eleanor any  
10 appreciable damages, assuming at the same time that she was not guilty of breaching  
11 her duties as Trustee of the Trust in cutting off the Oil Property income to Kathryn and  
12 Jacqueline. However, given the fact that she breached her fiduciary duties, caused  
13 severe damages to Kathryn and Jacqueline therewith, and jeopardized their interests in  
14 their share of the Oil Property income, Eleanor's claim is without merit, she has  
15 unclean hands, and she herself is responsible for the temporary interruption of income  
16 payments to the Trust, and damages, if any resulting therefrom.

17 9. Responding to Paragraph 11 of the Answer and Counterclaim, they deny the  
18 allegations therein. Eleanor, by her breaches of her fiduciary duties, caused the short  
19 disruptions in the flow of Oil Property income to the Trust, caused and continues to  
20 cause damages to Kathryn and Jacqueline by her failure to properly allocate the Oil  
21 Property income, and she should be held responsible to reimburse and pay to them all  
22 damages triggered and caused by her improper conduct, as more fully stated hereafter  
23 in the prayer for relief.

24 10. Responding to Paragraph 12 of the Answer and Counterclaim, they deny the  
25 allegations therein. Eleanor's wrongful conduct and breaches makes her liable to  
26 Kathryn and Jacqueline for all compensatory damages they have suffered. Her failure  
27 to seek proper Court direction, had she legitimate concerns about its proper  
28 interpretation and administration, to allow Kathryn and Jacqueline the rights of due

1 process, leaves her with unclean hands and liability for all the damages she has caused.

2 **RESPONSE TO COUNTERCLAIM AGAINST JACQUELINE M.MONTOYA**  
3 **FOR ENFORCEMENT OF NO CONTEST PROVISIONS**

4 11. Responding to Paragraph 13 of the Answer and Counterclaim, they admit and  
5 deny Paragraphs 6-12 as pleaded above, and replead their responses to said Paragraphs  
6 as if set forth at length at this place in their Response.

7 12. Responding to Paragraphs 14 and 15 of the Answer and Counterclaim, they  
8 admit the allegations therein.

9 13. Responding to Paragraph 16 of the Answer and Counterclaim, they deny the  
10 allegations therein. Eleanor's breaches of her fiduciary duties justifies and requires  
11 Eleanor's removal as Trustee of the Trust and the appointment of Jacqueline as the  
12 Trustee pursuant to the Trust provisions, and the enforcement of the no-contest clause  
13 against Eleanor for wrongfully and frivolously challenging and disobeying the Trust  
14 provisions.

15 **AFFIRMATIVE DEFENSES**

16 As Affirmative defenses and claims to Eleanors Answer and Counterclaim and  
17 the assertions and claims made therein, Kathryn and Jacqueline submit that:

18 A. Eleanor's claims, including but not limited to her claim to all of the Texas Oil  
19 Property income, fail to state a cause or claim for relief which is enforceable against  
20 Kathryn and Jacqueline.

21 B. Eleanor's breaches of her fiduciary duties and other wrongful conduct justify her  
22 removal as Trustee of the Trust and the appointment of Jacqueline as the Trustee, under  
23 the provisions of the Trust and in accordance with NRS 165.200.

24 C. Eleanor comes before the Court with unclean hands thereby denying to her any  
25 relief for the claims she has asserted.

26 D. Eleanor is guilty of a violation of the Statute of Limitations preventing the  
27 assertion of or recovery on any of the claims she has asserted, including but not limited  
28 to the claim to all of the Texas Oil Property income.

1 E. Eleanor is guilty of laches denying her of the right to assert any of her claims,  
2 including but not limited to the claim to all of the Texas Oil Property income.

3 F. Eleanor has waived her right to assert any of her claims, including but not limited  
4 to the claim to all of the Texas Oil Property income.

5 G. Eleanor's claim to all of the Trust Oil Property income is prohibited under the  
6 doctrine of claim preclusion.

7 H. Eleanor's claims and wrongful conduct justify awarding to Kathryn and  
8 Jacqueline, and against Eleanor, judgment for all compensatory damages they have  
9 suffered as a result of her cutting of the distribution to them of their share of the Texas  
10 Oil Property income and forcing the filing of their claims for relief with the Court,  
11 including the accounting for and restoration to them of all the Oil Property income  
12 which she has wrongfully withheld from them, and the payment of all their attorney's  
13 fees and costs incurred in these proceedings.

14 I. Eleanor's challenge to and contravention of the Trust terms justifies the  
15 enforcement against her of the no-contest provision under the Trust, as quoted in  
16 Paragraph 14 of her Answer and Counterclaim.

17 J. 1) In 1972, W.N. Connell and Marjorie T. Connell created a Trust dated May  
18 18, 1972 ("Trust"). Transferred to the Trust was community property and two parcels  
19 of Mr. Connell's separate property, including a parcel of property in Clark County,  
20 Nevada ("Nevada Property"), and land and oil, gas and mineral rights in Upton County,  
21 Texas ("Oil Property").

22 2) On or about June 4, 1975, the Connells transferred the Nevada Property  
23 in the Trust, which was Mr. Connell's separate property, to Eleanor. From that date  
24 forward until 1988 when the Nevada Property was transferred to Eleanor's husband's  
25 trust (Ahern Trust dated April 25, 1982), Eleanor continued to own an interest in the  
26 Nevada Property, either alone, in trust, or with her former husband,

27 3) W.N. Connell died on or about November 24, 1979. At the time of his  
28 death the only separate property of his remaining in the Trust was the Oil Property.

1           4) Pursuant to the Trust provisions, upon Mr. Connell's death, the assets in  
2 the Trust were required to be allocated between two subtrusts named Trust No. 2 and  
3 Trust No. 3. The initial beneficiary under Subtrust No. 2, entitled to receive for life the  
4 income generated by the portion of Oil Property allocated to that subtrust, was Eleanor.

5           The beneficiary under subtrust No. 3 was Marjorie T. Connell, who had the right of  
6 ownership to all of the Oil Property allocated to subtrust No. 3, including the income  
7 therefrom, and including the right to at any time take out of Trust her said interests, or  
8 appoint them to whomever she chose in her Last Will and Testament. She also retained  
9 the right to invade and receive and dispose of the assets allocated to subtrust No. 2 for  
10 her, Eleanor's, or her grandchildren's benefit during the balance of her life.

11           5) The separate property of Mr. Connell which had been placed in the Trust  
12 was required to be allocated in part to subtrust No. 3. The only separate property  
13 available with which to make the allocation was the Oil Property. The portion in  
14 question was to be determined by the portion required to be allocated to Marjorie in  
15 order to maximize the Marital Deduction to save on the payment by Mr. Connell's  
16 estate of Federal and Texas Estate taxes. Whatever portion was allocated to Marjorie  
17 under the Estate Tax Returns governed and determined the portion of the Oil Property  
18 to be allocated to subtrust No. 3.

19           6) Marjorie, as the surviving Trustee of the Trust, with the counsel, aid and  
20 direction of accountants and other professionals performing their fiduciary duties, in  
21 preparing and filing the Estate Tax Returns for Mr. Connell's estate, and in following  
22 explicitly the Trust provisions, allocated to Eleanor and subtrust No. 2 approximately  
23 35% of the Oil property, and they allocated to Marjorie and subtrust No. 3  
24 approximately 65% of the Oil property.

25           7) Thereafter, and until approximately June, 2013, when Eleanor abruptly cut  
26 off and discontinued distribution of 65% of the Oil property income to Kathryn and  
27 Jacqueline, the Oil Property income was allocated with 35% going to Eleanor and 65%  
28 going to Marjorie until she died in 2009, with her 65% share then going to Kathryn and

1 Jacqueline. In addition, each recipient declared to the IRS her said shares of the  
2 income on her income tax returns. When Marjorie died in 2009, her right to 65% of  
3 the Oil Property and income therefrom under subtrust No. 3 was appointed to her MTC  
4 Living Trust for the equal benefit of Kathryn and Jacqueline, which is how they  
5 became entitled to receive 65% of the Oil Property income.

6 8) From the date of Mr. Connell's death until approximately June, 2013,  
7 Eleanor, though claiming she had been advised by an attorney and knew she was  
8 allegedly entitled to all of the Oil Property income, never asserted a right to more than  
9 35% of the Oil Property income, and her communications and conduct indicated that  
10 she did not own and was not entitled to any more than 35% of the Oil Property income.

11 9) Marjorie, while she was alive, always communicated and her conduct  
12 indicated that she owned the right to 65% of the Oil Property Income.

13 10) In her assertion of a claim to all of the Oil Property income in  
14 approximately June, 2013, Eleanor violated the terms of the Trust and contradicted her  
15 conduct, the conduct of Marjorie, and representations they made over the years as to  
16 Oil Property income ownership, which Kathryn and Jacqueline had relied upon fully  
17 in including in Marjorie's Estate the value of her subtrust No. 3 ownership to 65% of  
18 the Oil Property, paying the Estate Taxes owed by Marjorie's Estate when she died in  
19 2009, and in the decisions, both financial and otherwise, which they made in their  
20 personal lives affecting them and their families.

21 11) Eleanor's actions in cutting off the Oil Property income to Kathryn and  
22 Jacqueline in approximately June, 2013, and continuing to withhold the same from  
23 them thereafter, without seeking proper guidance from a Court of law as to the  
24 propriety of her claim to all of the Oil Property income, was without any legal basis,  
25 it was a breach of her Trustee fiduciary duties, it violated Kathryn's and Jacqueline's  
26 rights of due process, and it is ample justification to remove Eleanor as Trustee of the  
27 Trust and appoint Jacqueline as Trustee pursuant to the Trust provisions and NRS  
28 165.200.



13) However, Eleanor's claims are not based upon legal rights or equitable rights that she has, but are frivolous and wrongful, without any reasonable justification, thereby entitling Kathryn and Jacqueline the relief they seek in the Prayer for relief they hereinafter make to the Court.

Based upon the foregoing Responses and Affirmative Defenses, Kathryn and Jacqueline pray for the following relief against Eleanor:

b. That Eleanor breached her duties as Trustee of the Trust by cutting off and refusing to distribute to Kathryn and Jacqueline their 65% share of the Texas oil property income beginning approximately in June, 2013.

d. That due to Eleanor's breaches of her fiduciary duties and contest of the Trust and its provisions in these proceedings, she should be required to account and pay to Kathryn and Jacqueline all consequential damages they have suffered, including

1 but not limited to restoring to them all of the income which should have been  
2 distributed to them.

3 e. That Eleanor be required to reimburse and pay to Kathryn and Jacqueline  
4 all of the attorney's fees they have incurred in prosecuting and defending in these  
5 proceedings.

6 f. That the no-contest provisions of the Trust should be enforced against  
7 Eleanor causing her to forfeit any further benefits and interests under the Trust.

8 g. For such other and further relief as this Court deems appropriate.

9 Dated this \_\_\_\_ day of January, 2015.

10 ALBRIGHT, STODDARD, WARNICK &  
11 ALBRIGHT

12 By: \_\_\_\_\_  
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15 THE RUSHFORTH FIRM

16 By: \_\_\_\_\_  
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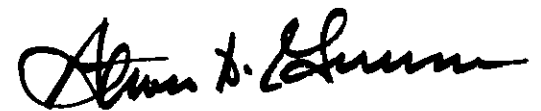
19 **CERTIFICATE OF SERVICE**

20 I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK  
21 & ALBRIGHT and that on the \_\_\_\_ day of January, 2015, I placed a true and correct copy  
22 of the foregoing document, in the United States Mail, at Las Vegas, Nevada, enclosed in a  
sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

23 Liane K. Wakayama, Esq.  
24 Candice E. Renka, Esq.  
25 Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, NV 89145

26 (On the same date, I also served a true and correct copy of each of the foregoing documents  
27 upon all counsel of record by electronically serving the same using the Court's electronic filing  
system.)

28 \_\_\_\_\_  
An Employee of Albright, Stoddard, Warnick & Albright



CLERK OF THE COURT

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Ahern, as Trustee

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of  
  
THE W.N. CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST DATED May 18,  
1972, An Inter Vivos Irrevocable Trust.

Case No.: P-09-066425-T  
Dept. No.: 26

Date of Hearing: January 30, 2015  
Time of Hearing: 10:00 a.m.

OPPOSITION TO MOTION FOR LEAVE TO AMEND PLEADINGS

Eleanor Connell Hartman Ahern, as Trustee (hereinafter "Eleanor"), by and through her attorneys of record, the law firm of Marquis Aurbach Coffing, hereby files this Opposition to Motion for Leave to Amend Pleadings of Jacqueline M. Montoya and Kathryn A. Bouvier for Claims, Defenses, Damages and Assessment of Penalties, and for Other Relief Against Eleanor Connell Hartman Ahern and the Supplement to Motion to Amend Pleadings ("Motion" or "Motion to Amend"). This Opposition is made and based upon the pleadings and papers on file herein, the following Memorandum of Points and Authorities, and any oral argument allowed at the time of hearing on this matter.

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MEMORANDUM OF POINTS AND AUTHORITIESI. INTRODUCTION.

Jacqueline and Kathryn's Motion for Leave to Amend and Supplement thereto ("Motion" or "Motion to Amend") improperly seeks leave to file a proposed "Response," which the Court should deny. The "Response" is an attempt to now file—over 10 months late—a Reply and affirmative defenses to Eleanor's Counterclaims. Any Reply and defenses were waived long ago when not timely filed. The Response is also an attempt at an amended Petition, but is fatally flawed because it fails to allege any claim upon which relief can be granted, thereby rendering amendment futile. The "Response" is procedurally and substantively flawed, and the Court should deny the Motion to Amend.

II. FACTUAL AND PROCEDURAL HISTORY.

The proposed "Response" that Jacqueline and Kathryn have filed is improper, untimely, and fatally flawed. The "Response" is an attempt to file a Response and affirmative defenses to Eleanor's Counterclaim, which was due back in March 2014, and an amended petition. The attempted Reply and affirmative defenses are untimely and have been waived. Also, to the extent the "Response" is an attempt to amend the First Petition, it is untimely and fatally flawed as it fails to state a claim upon which relief can be granted, rendering amendment futile.

A brief timeline of the relevant procedural history reveals that (1) Jacqueline and Kathryn never filed a Reply to Eleanor's Counterclaim, and (2) the Motion for Leave to Amend is untimely and improper.

**September 27, 2013:** Jacqueline files her Petition for Declaratory Judgment ("First Petition").

**November 26, 2013:** Eleanor files her Motion to Dismiss Jacqueline's First Petition.

**January 14, 2014:** Hearing on Eleanor's Motion to Dismiss Jacqueline's First Petition. Denied without prejudice, no written order is filed.

**February 10, 2014:** Eleanor files her Answer and Counterclaim.

**February 14, 2014:** Jacqueline files her Motion to Dismiss Eleanor's Counterclaim.

**March 11, 2014:** Entry of Stipulation and Order to Extend Time to Reply or Otherwise

1 Plead to Counterclaims Asserted by Eleanor C. Ahern. Response due March 20, 2014.

2 **March 20, 2014**: No Reply to Eleanor's Counterclaims is filed.

3 **January 2-9, 2015**: Parties file several motions, including cross-motions for summary  
4 judgment.

5 **January 13, 2015**: One day before hearing on the pending motions for summary  
6 judgment, Jacqueline and Kathryn serve their Motion to Amend on Eleanor's counsel,  
7 nearly *10 months* after the Reply was due on March 20, 2014. No proposed amended  
8 pleading was attached.

9 **January 20, 2015**: Jacqueline and Kathryn file a Supplement, attaching an improper,  
10 proposed "Response" to Eleanor's Answer and Counterclaim.

11 III. **LEGAL ARGUMENT.**

12 Jacqueline and Kathryn's Motion seeks leave to file a "Response." The "Response"  
13 purports to serve as a Reply and affirmative defenses to Eleanor's Counterclaim and an amended  
14 First Petition. In addition to being jumbled and confused, the "Response" is procedurally  
15 improper. The Court should (A) deny the Motion to the extent it seeks leave to file a Reply and  
16 affirmative defenses to Eleanor's Counterclaim, and (B) deny the Motion to the extent it seeks  
17 leave to file an amended First Petition.

18 A. THE COURT SHOULD DENY THE MOTION TO THE EXTENT IT  
19 SEEKS LEAVE TO FILE A REPLY AND AFFIRMATIVE DEFENSES TO  
ELEANOR'S COUNTERCLAIM.

20 Jacqueline and Kathryn have filed a proposed "Response" to Eleanor's Answer and  
21 Counterclaim. This "Response" is improper because (1) Jacqueline and Kathryn never filed a  
22 Reply to Eleanor's Counterclaim, and the "Response" is untimely, (2) the proposed "Response"  
23 is not a proper pleading to respond to a counterclaim, (3) the failure to file a Reply admitted  
24 Eleanor's allegations, (4) the failure to file a Reply waived affirmative defenses, and (5) a  
25 Motion to Amend is an improper vehicle for attempting to now file a Reply.

1. Jacqueline and Kathryn never filed a Reply to Eleanor's Counterclaim, And The "Response" Is Untimely.

Here, Eleanor filed her Answer and Counterclaim on February 10, 2014, which was served by regular mail.<sup>1</sup> "The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer . . . ." NRCP 12(a)(2). Any Reply to the Counterclaim would have been due within 20 days plus three days for service, which would have been March 5, 2014. Jacqueline and Kathryn stipulated to file a response to the Counterclaim by March 20, 2014.<sup>2</sup> Yet, no Reply was ever filed. Now, nearly 10 months after the Reply was due, Jacqueline and Kathryn argue that the time to file a Reply to the Counterclaim has not yet run because the Court never heard their Motion to Dismiss Eleanor's Counterclaim. This argument, however, fails because Jacqueline and Kathryn filed the Stipulation and Order to extend their time to file a Reply after they had filed their Motion to Dismiss. Now, over 10 months after a Reply was due and on the eve of the hearing on cross motions for summary judgment, Jacqueline and Kathryn attempt to file a "Response" in reply to the Counterclaim. Therefore, because Jacqueline and Kathryn never filed a Reply to Eleanor's Counterclaim, and the proposed "Response" is untimely, the Court should deny the Motion.

2. The Proposed "Response" Is Not A Proper Pleading To Respond To A Counterclaim.

The only pleadings allowed in this case pursuant to the Nevada Rules of Civil Procedure are "a complaint and an answer [and] a reply to a counterclaim denominated as such." NRCP 7. "No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer." NRCP 7. "Under NRCP 7(a) a reply to a counterclaim is a required responsive pleading." Bowers v. Edwards, 79 Nev. 384, 389, 385 P.2d 783, 785 (1963).

Here, Jacqueline and Kathryn have requested leave to file a "Response." This "Response" is not a pleading allowed under the Nevada Rules of Civil Procedure. Rather, only a

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<sup>1</sup> See Answer and Counterclaim filed February 10, 2014.

<sup>2</sup> See Stipulation and Order entered March 11, 2014.

1 Reply is allowed as a responsive pleading to a Counterclaim, and it should have been filed over  
2 10 months ago.

3 3. The Failure To File A Reply Admitted Eleanor's Allegations.

4 Failure to file a reply in response to a counterclaim is an admission of the allegations in  
5 the counterclaim. Bowers, 79 Nev. at 389, 385 P.2d at 785. Because a Reply is a required  
6 responsive pleading to a counterclaim, if a Reply is not timely filed, the failure to deny the  
7 allegations in the Counterclaim is an admission of the allegations. Therefore, here, because  
8 Jacqueline and Kathryn never filed a Reply to Eleanor's Counterclaim, which was due over 10  
9 months ago pursuant to their own stipulation, they have admitted the allegations in Eleanor's  
10 Counterclaim. Thus, any response is now moot.

11 4. The Failure To File A Reply Waived Affirmative Defenses.

12 Jacqueline and Kathryn's failure to file a Reply to Eleanor's Counterclaim waived their  
13 affirmative defenses. "A party shall state in short and plain terms the party's defenses to each  
14 claim asserted and shall admit or deny the averments upon which the adverse party relies."  
15 NRCP 8(b). "Every defense, in law or fact, to a claim for relief in any pleading, whether a claim,  
16 counterclaim, . . . *shall be asserted in the responsive pleading thereto* if one is required, except"  
17 for certain defenses, which are not at issue here. NRCP 12(b) (emphasis added). "Under NRCP  
18 7(a) *a reply to a counterclaim is a required responsive pleading.*" Bowers, 79 Nev. at 389, 385  
19 P.2d at 785 (1963) (emphasis added). "In pleading to a preceding pleading, a party *shall set*  
20 *forth affirmatively* . . . laches . . . res judicata, statute of frauds, statute of limitations, waiver, and  
21 any other matter constituting an avoidance or affirmative defense." NRCP 8(c) (emphasis  
22 added). "If an affirmative defense is not pleaded, it is deemed waived, and no evidence can be  
23 submitted relevant to that issue." Pierce Lathing Co. v. ISEC, Inc., 114 Nev. 291, 295, 956 P.2d  
24 93, 95 (1998). "If affirmative defenses are not pleaded or tried by consent, they are waived."  
25 Elliot v. Resnick, 114 Nev. 25, 30, 952 P.2d 961, 964 (1998).

26 Here, Jacqueline and Kathryn waived their affirmative defenses because (a) no  
27 mandatory Reply was filed, and (b) no affirmative defenses have been tried by consent.

28

1 a. No mandatory Reply was filed.

2 In this case, Jacqueline and Kathryn failed to file a Reply to Eleanor's Counterclaim,  
3 which is a required responsive pleading under NRCP 7(a). In this required pleading, Jacqueline  
4 and Kathryn were required to assert any affirmative defenses. NRCP 8(c). They cannot now,  
5 over 10 months after the Reply was due, assert affirmative defenses that were waived. The  
6 failure to file a Reply waived all of Jacqueline and Kathryn's affirmative defenses, especially  
7 those that are required to be plead under NRCP 8(c), including res judicata, statute of frauds,  
8 statute of limitations, and waiver.

9 b. No affirmative defenses have been tried by consent.

10 Also, Jacqueline and Kathryn's arguments that their proposed affirmative defenses have  
11 been tried by consent fail. "When issues not raised by the pleadings are *tried* by express or  
12 implied *consent* of the parties, they shall be treated in all respects as if they had been raised in  
13 the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform  
14 to the *evidence* and to raise these issues may be made upon motion of any party at any time, even  
15 after judgment; but failure so to amend does not affect the result of the *trial* of these issues. . . ."  
16 NRCP 15(b); Connell v. Carl's Air Conditioning, 97 Nev. 436, 439, 634 P.2d 673, 675 (1981)  
17 (affirming denial of motion to amend complaint made on eve of trial where no showing was  
18 made that defendant expressly or impliedly consented to try the subject issues) (emphasis added).

19 Here, no issues have been tried because there has been no evidentiary hearing or trial. In  
20 fact, even the summary judgment motions have not yet been heard. Also, there is no consent on  
21 behalf of Eleanor to try untimely and previously waived response and affirmative defenses to  
22 Eleanor's Counterclaims. In fact, Eleanor properly objected to Jacqueline and Kathryn's attempt  
23 to litigate the allegations and defenses in the "Response" in her Reply in Support of Eleanor C.  
24 Ahern's Motion to Dismiss Petition for Declaratory Judgment for Failure to State a Claim Upon  
25 Which Relief Can Be Granted; Opposition to Countermotion of Kathryn A. Bouvier and  
26 Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for  
27 Damages and Assessment of Penalties, and for Other Relief; and Reply in Support of  
28 Countermotion for Summary Judgment, at page 26. And, Eleanor is again objecting to this



1 untimely and improper request herein. Thus, there has been no trial and no consent of the  
2 allegations and affirmative defenses raised in Jacqueline and Kathryn's proposed "Response."

3 Accordingly, because no mandatory Reply or affirmative defenses were filed, and no  
4 affirmative defenses have been tried by consent, any affirmative defenses have been waived.  
5 Therefore, the Court should deny Jacqueline and Kathryn's request to now plead responses and  
6 affirmative defenses to Eleanor's Counterclaim.

7 5. A Motion To Amend Is An Improper Vehicle For Attempting To Now  
8 File A Reply.

9 Jacqueline and Kathryn are improperly attempting to use a Motion to Amend to request  
10 leave to file a Reply that was never filed in response to Eleanor's Counterclaim. There is no  
11 Reply which they can seek to amend—the Reply is a completely new pleading that was never  
12 before filed as required. The Motion to Amend cites no legal authority stating any reasons why  
13 Jacqueline and Kathryn should be allowed to file a responsive pleading with affirmative defenses  
14 over 10 months after the Reply was to be filed and on the eve of cross motions for summary  
15 judgment. Pursuant to EDCR 2.20(c), failure to include a memorandum of points and authorities  
16 "may be construed as an admission that the motion is not meritorious, as cause for its denial or as  
17 a waiver of all grounds not so supported." Because there is no existing Reply to amend, and  
18 because Jacqueline and Kathryn cite no legal authority authorizing a responsive pleading and  
19 affirmative defenses to be filed over 10 months after it was due, the Court should deny their  
20 request to do so.

21 B. THE COURT SHOULD DENY THE MOTION TO THE EXTENT IT  
22 SEEKS LEAVE TO AMEND THE FIRST PETITION.

23 To the extend the Motion seeks leave to amend the First Petition, the Court should deny  
24 the Motion because (1) the only pleading Jacqueline and Kathryn have filed is the First Petition;  
25 (2) delay warrants denying the Motion to Amend, and (2) amendment would be futile.

26 Typically, "a party may amend the party's pleading only by leave of court or by written  
27 consent of the adverse party; and leave shall be freely given when justice so requires." NRCP  
28 15(a). However, "[d]elay, bad faith, or a dilatory motive are all sufficient reasons to deny a  
motion to amend a pleading." Burnett v. C.B.A. Sec. Serv., Inc., 107 Nev. 787, 789, 820 P.2d

1 750, 752 (1991) (affirming the district court's denial of a motion to amend filed after the  
2 opposing party filed a motion for summary judgment). Also, "leave to amend should *not* be  
3 granted if the proposed amendment would be futile. A proposed amendment may be deemed  
4 futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim."  
5 Halcrow, Inc. v. Dist. Ct., 129 Nev. Adv. Op. 42, 302 P.3d 1148, 1152 (2013), as corrected  
6 (Aug. 14, 2013) (internal quotations omitted) (emphasis added). "[C]ourts should be cautious of  
7 last-second amendments alleging meritless claims in an attempt to save a case from summary  
8 judgment: the proper method to deal with such tactics is to deny leave to amend on grounds of  
9 futility." Soebbing v. Carpet Barn, Inc., 109 Nev. 78, 84, 847 P.2d 731, 736 (1993).

10 1. The Only Pleading Jacqueline And Kathryn Have Filed Is The First  
11 Petition.

12 Jacqueline and Kathryn filed their First Petition in September 2013, and this is the one  
13 and only pleading they have filed in this case. "A pleading which sets forth a claim for relief . . .  
14 shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to  
15 relief, and (2) a demand for judgment for the relief the pleader seeks." NRCP 8(a). The only  
16 pleadings allowed in this case pursuant to the Nevada Rules of Civil Procedure are "a complaint  
17 and an answer [and] a reply to a counterclaim denominated as such." NRCP 7. In this case, the  
18 First Petition serves as a Complaint. See EDCR 1.61(c), 2.49, and 4.01-4.60 (acknowledging the  
19 similar procedural roles of petitions/complaints and petitioners/plaintiffs). The one and only  
20 single claim for relief the First Petition pled was for declaratory relief that Eleanor is only  
21 entitled to 35% of the Oil Assets and that Jacqueline and Kathryn, as beneficiaries of the MTC  
22 Trust, are entitled to 65% of the Oil Assets.<sup>3</sup> This remains the one and only claim for relief that  
23 Jacqueline and Kathryn have properly pled in this litigation.

24 Until now, Jacqueline and Kathryn have never amended the First Petition or sought leave  
25 to amend the First Petition. In an attempt to justify their untimely request to now amend, they  
26 argue that two other Petitions they filed were pleadings that pled all the claims and defenses now  
27 at issue. This is impossible. The Second Petition, Petition to Compel Trustee to Distribute

28 <sup>3</sup> See Jacqueline's Petition for Declaratory Relief, pp. 17-18.

1 Accrued Income and Future Income Received From Oil, Gas, and Mineral Leases and  
2 Declaration of the Applicability of the Doctrine of Laches (“Petition to Compel”), was not a  
3 pleading. This was a motion pursuant to Rule 12, as admitted by Jacqueline and Kathryn. In the  
4 Supplement to the Motion to Amend, it states that this Petition was filed as “*a Motion under*  
5 *Rule 12.*”<sup>4</sup> In fact, the Court ruled on the Petition to Compel in its July 8, 2014 Order, which  
6 Order is currently on appeal. The Court cannot enter an order on a pleading, but only on a  
7 motion requesting that the Court act. Likewise, Jacqueline and Kathryn’s subsequent Petitions  
8 were not pleadings—they were motions.

9 Assuming, *arguendo*, that these subsequent Petitions were pleadings, they would have  
10 been entirely improper. In this case the First Petition served as a complaint—the initial pleading.  
11 A party cannot subsequently file additional petitions/complaints in the same litigation. Rather,  
12 they must move the Court to amend or supplement the petition/complaint under NRCP 15. None  
13 of these petitions/motions amended the First Petition or requested leave to do so. Therefore,  
14 none of these petitions altered the fact that the one and only operative pleading filed by  
15 Jacqueline and Kathryn in this case is the First Petition, and the one and only claim for relief that  
16 has been pled is for declaratory relief regarding ownership of the Oil Rights.

17 2. Delay Warrants Denying The Motion To Amend.

18 Jacqueline and Kathryn’s delay in seeking to amend the First Petition until after Eleanor  
19 filed a summary judgment motion warrants denial of the Motion to Amend. Jacqueline and  
20 Kathryn filed the First Petition in September 2013, 16 months ago. Yet, they failed to amend the  
21 Petition until Eleanor had filed a motion for summary judgment, and Eleanor had identified that  
22 they were attempting to litigate never before pled claims and affirmative defenses in her above  
23 mentioned Reply. The Nevada Supreme Court has specifically held that denial of motions to  
24 amend is proper when the motions to amend are filed untimely and after the opposing party has  
25 filed a motion for summary judgment. In Burnett, the court upheld the district court’s denial of  
26 the plaintiff’s motion to amend after the defendant had filed a motion for summary judgment.

27 \_\_\_\_\_  
28 <sup>4</sup> See Supplement to Motion to Amend, p. 4:20.

1 107 Nev. at 789, 820 P.2d at 752. Similarly, in Soebbing, the court held, “[C]ourts should be  
2 cautious of last-second amendments alleging meritless claims in an attempt to save a case from  
3 summary judgment: the proper method to deal with such tactics is to *deny leave to amend on*  
4 *grounds of futility*.” 109 Nev. at 84, 847 P.2d at 736 (emphasis added).

5 Likewise, here, the Court should deny the Motion to Amend. The Motion to Amend is a  
6 last minute effort to save Jacqueline and Kathryn’s case in the face of summary judgment. Since  
7 they never filed a Reply to Eleanor’s Counterclaim, the Court would be entirely justified in  
8 granting Eleanor summary judgment on her Counterclaims, as they are admitted and any  
9 affirmative defenses have been waived. And, since the only operative pleading in the case is  
10 currently the First Petition, which only seeks declaratory relief as to the ownership of the Oil  
11 Rights, the Court could also justifiably grant Eleanor summary judgment on that one issue.  
12 Therefore, Jacqueline and Kathryn, after Eleanor filed her motion for summary judgment, are  
13 now attempting a “kitchen sink” amendment, adding claims and affirmative defenses. This is  
14 improper, and under Burnett and Soebbing, the Court should deny the Motion to Amend.

15 3. Amendment Would Be Futile.

16 Amendment would be futile because the proposed “Response” is fatally flawed. “A  
17 pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the  
18 claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief  
19 the pleader seeks.” NRCP 8(a). Typically, a Petition/Complaint contains factual allegations,  
20 claims for relief, and a prayer for relief. Here, the proposed “Response” contains only responses  
21 to Eleanor’s Counterclaims, affirmative defenses, and a prayer for relief. The “Response” is  
22 fatally flawed because (a) the attempted Reply and affirmative defenses are improper, (b) there  
23 are no claims for relief pled, and (c) the prayer for relief is improper.

24 a. The attempted Reply and affirmative defenses are improper.

25 As discussed above, Jacqueline and Kathryn never filed a Reply and affirmative defenses  
26 as required to respond to Eleanor’s Counterclaim. Thus, the portions of the “Response” that  
27 attempt to now respond to the Counterclaim and plead affirmative defenses are improper.  
28

1 b. There are no claims for relief pled.

2 Notably absent from the “Response” are claims for relief. Without setting forth claims  
3 for relief and the factual allegations to properly plead them, the “Response” fails as a proposed  
4 amended pleading. A petition/complaint must allege facts sufficient to establish all the necessary  
5 elements of each claim for relief upon which recovery is predicated. Stockmeier v. Nevada  
6 Dept. of Corrections Psychological Review Panel, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008);  
7 Danning v. Lum’s Inc., 86 Nev. 868, 869, 478 P.2d 166, 167 (1970). Oddly, here, within the  
8 affirmative defenses, Jacqueline and Kathryn mention claims for relief, but fail to plead the  
9 elements and supporting factual allegations. For example, paragraph “B” under “Affirmative  
10 Defenses” references “Eleanor’s breaches of her fiduciary duties,” but nowhere does the  
11 “Response” set forth the elements of breach of fiduciary duty or factual allegations supporting  
12 the same.<sup>5</sup> See Stalk v. Mushkin, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009). Similarly,  
13 paragraph “I” under “Affirmative Defenses” mentions “the no-contest provision under the  
14 Trust,” but nowhere does the “Response” plead the terms of the no-contest provision or the facts  
15 or elements supporting a claim under the no-contest clause.<sup>6</sup>

16 Also, inexplicably under paragraph “J” of the Affirmative Defenses lists 13 paragraphs of  
17 what appear to be factual allegations. Such a laundry list of factual allegations is improper  
18 within affirmative defenses, and even if these are an attempt at general factual allegations, there  
19 are still no claims for relief with elements in the “Response.”

20 c. The prayer for relief is improper.

21 The prayer for relief is improper because it seeks relief based on several claims for relief  
22 that are nowhere pled in the “Response.”

- 23 • Paragraph “a” of the prayer seeks declaratory relief, but the “Response” fails to  
24 plead a claim for relief for declaratory relief, the elements, or factual allegations

25  
26  
27 <sup>5</sup> See Proposed “Response,” p. 4.B.

28 <sup>6</sup> See Proposed “Response,” p. 5.I

1 in support. See NRS 30.030; Kress v. Corey, 65 Nev. 1, 26, 189 P.2d 352, 364  
2 (1948).

- 3 • Paragraph “b” of the prayer seeks relief for breach of fiduciary duty, but the  
4 “Response” fails to plead a claim for relief for breach of fiduciary duty, the  
5 elements, or factual allegations in support. See Stalk, 125 Nev. at 28, 199 P.3d at  
6 843.
- 7 • Paragraph “c” seeks injunctive relief in the form of removing Eleanor as trustee,  
8 but the “Response” fails to plead a claim for relief for injunctive relief, the  
9 elements, or factual allegations in support. NRS 33.010; Labor Com’r of State of  
10 Nevada v. Littlefield, 123 Nev. 35, 153 P.3d 26 (2007).
- 11 • Paragraph “d” of the prayer seeks an accounting, but the “Response” fails to plead  
12 a claim for relief for an accounting, the elements, or factual allegations in support.
- 13 • Paragraph “e” seeks attorney fees, but the “Response” fails to plead any claims  
14 for relief that would entitle Jacqueline and Kathryn to attorney fees, fails to state  
15 any basis for attorney fees, and does not plead a claim for attorney fees.
- 16 • Paragraph “f” of the prayer seeks enforcement of the no contest clause, but the  
17 “Response” fails to plead a claim for relief for enforcement of the no contest  
18 clause, the elements, or factual allegations in support.

19 Overall, the proposed “Response” is fatally flawed as an amended Petition because it fails  
20 to set forth any claims for relief, the elements of any claim for relief, or factual allegations in  
21 support of any claim for relief. Rather, it is only an improper and untimely attempt to file a  
22 Reply and affirmative defenses to Eleanor’s counterclaim, with a prayer for relief tacked onto the  
23 end. As such, the Court should deny the Motion to Amend because the amendment would be  
24 futile, since the “Response” fails to set forth any claim for relief upon which this Court could  
25 grant relief.

26 ///

27 ///

28 ///

IV. CONCLUSION.

The proposed “Response” is an improper attempt by Jacqueline and Kathryn to now file a Reply and affirmative defenses to Eleanor’s Counterclaims. Any such Reply was due over 10 months ago, and the failure to file timely file the Reply has waived all affirmative defenses. The “Response” also seems to be an attempt to file an amended First Petition, but fails to properly allege any claims for relief, elements, or supporting factual allegations. Therefore, the proposed “Response” fails on its face as an amended First Petition, and amendment would be futile. Accordingly, the Court should deny the Motion to Amend in its entirety.

Dated this 27th day of January, 2015.

MARQUIS AURBACH COFFING

By /s/Candice E. Renka  
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Attorneys for Eleanor Connell Hartman  
Ahern, as Trustee

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO MOTION FOR LEAVE TO AMEND PLEADINGS** submitted electronically for filing and/or service with the Eighth Judicial District Court on the 27th day of January, 2015. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>7</sup>

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/s/ Candice E. Renka  
An employee of Marquis Aurbach Coffing

<sup>7</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Probate -  
Trust/Conservatorships**

**COURT MINUTES**

**January 30, 2015**

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P-09-066425-T      In the Matter of the Trust of:  
The W.N. Connell and Marjorie T. Connell Living Trust, dtd May 18, 1972

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**January 30, 2015      10:00 AM      Hearing**

**HEARD BY:** Sturman, Gloria      **COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Linda Denman

**RECORDER:** Kerry Esparza

<b>PARTIES</b>	Montoya, Jacqueline M	Other/ Personal Representative
<b>PRESENT:</b>	Powell, Joseph J	Attorney for Jacqueline Montoya
	Renka, Candice E.	Attorney for Trustee Eleanor Ahern
	Wakayama, Liane K.	Attorney for Trustee Eleanor Ahern
	Warnick, Whitney Bruce	Attorney for Kathryn Bouvier

**JOURNAL ENTRIES**

**- EVIDENTIARY HEARING ON PENDING MOTIONS**

Court and counsel discussed the outstanding Petitions and Motions that were stayed when the Will contest in the related probate case was set. Counsel agreed that certain responsive pleadings are subsumed in Countermotions for Summary Judgment and will be designated as moot. Counsel argued their respective positions. Ms. Wakayama showed a power point presentation during opening statements; a hard copy of which has been marked as Court Exhibit 1. Mr. Warnick and Mr. Powell prepared a notebook of all relevant information and that will be designed Court Exhibit 2.

COURT STATED ITS FINDINGS the record is replete with the fact that Eleanor received approximately 35% of the Texas oil and gas leases and Marjorie received approximately 65% for 30 years. Additionally, for four years following Marjorie's death, Eleanor continued to receive approximately 35% of the asset and Marjorie's heirs received her share. Eleanor did not assert any claim or right, and there is no mention in the record, that upon Marjorie's death she would receive 100% of the income from that asset. W.C.'s separate property changed between the initiation of the Trust and his death 7 years later and some property was conveyed directly to Eleanor. Additionally, the Trust terms that refer to separate property do not mean only the Texas oil and gas leases--that was the only separate property he had at the time of his death; all other separate property having

been previously conveyed to Eleanor. Additionally, tax records do not support Eleanor's position as the percentage claimed by Majorie was not reported as a gift. Court further notes that W.C. prepared a sound Trust document that kept this valuable income producing asset in his family, protected from taxes, and third party outsiders.

**COURT ORDERED Opposition to Eleanor C. Ahern's Motion to Dismiss Petition for Declaratory Judgment for Failure to State a Claim Upon Which Relief Can Be Granted; and, Countermotion of Kathryn A. Bouvier and Jacqueline M. Montoya for Summary Judgment on Petition for Declaratory Judgment, for Damages and Assessment of Penalties, and for Other Relief GRANTED.** Subsumed in this motion are the original **Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets** filed 9/27/13; **Petition for Construction and Effect of Probate Court Order**, filed 3/26/14; **Petition for Determination of Construction and Interpretation of Language Relating to Trust No. 2**, filed 3/27/14, and **Petition to Compel Trustee to Distribute Accrued Income and Future Income Received From Oil, Gas, and Mineral Leases and Declaration of the Applicability of the Doctrine of Laches**, which will all be resulted as Granted. As to the claims asserted in Jacqueline and Kathryn's Motion for Summary, COURT FURTHER ORDERED Breach of Fiduciary Duty claim DENIED; Removal of Eleanor as Trustee RESERVED RULING for further briefing; and request for attorney's fees RESERVED RULING as this request is premature.

COURT FURTHER ORDERED **Eleanor Ahern's Answer to Petition for Declaratory Judgment Regarding Limited Interest of Trust Assets and for Failure to State a Claim Upon Which Relief Can Be Granted and Counterclaims Against Jacqueline M. Montoya DENIED.** Specifically, COURT FINDS neither side violated the No-Contest provision as the Court was the property entity to deal with the complicated good faith disputes. COURT FURTHER FINDS Intentional Interference claim DENIED WITHOUT PREJUDICE. Additionally, **Motion to Dismiss and Motion to Strike Counterclaims Raised by Eleanor C. Ahern Pursuant to NRCP 15 and NRCP 12(B) and Motion to Dismiss Counterclaims of Eleanor C. Ahern GRANTED.**

COURT FURTHER ORDERED **Eleanor's Omnibus Opposition to 1) Petition for Determination of Construction and Interest of Language Relating to Trust No. 2, and 2) Petition for Construction and Effect of Probate Court Order; and Countermotion for Summary Judgment**, filed 1/2/15, DENIED. As a result of the rulings on the above-referenced Motions, Petitions, and Countermotions, COURT ORDERED oil and gas revenues held pending the resolution of this matter RELEASED and DISTRIBUTED to Jacqueline and Kathryn thirty (31) days after Notice of Entry of Order.

COURT FURTHER ORDERED **Motion for Leave to Amend Pleadings of Jacqueline M. Montoya and Kathryn A. Bouvier for Claims, Defenses, Damages, and Assessment of Penalties, and for Other Relief Against Eleanor Connell Hartman Ahern MOOT.** Ms. Renka made an objection to the claims raised by Jacqueline and Kathryn stating they were not raised in the original Petition and never properly asserted in a mandatory responsive pleading. They never answered or raised any affirmative defenses within the time allowed. Mr. Powell argued the claims were raised in various motions and petitions. COURT OVERRULED the objection, finding the stay imposed while the Will contest was underway left some responsive pleadings pending but the parties' agreement to subsume

responsive motions renders this objection moot.

Court and counsel discussed the possibility of filing the final Order under seal in order to protect any confidential financial information. Both parties agreed they would abide by NSC Rule 3 and submit an Order.

COURT ORDERED hearing SET; further issues to finalize are accounting of the money from the time disbursements ceased to when the money was ordered held; removal of Eleanor as trustee; attorney fees; and the best way for the Trust to continue. Parties can submit briefs on the respective issues.

3/20/2015 AT 10:00AM HEARING

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

IN THE MATTER OF: THE W.N.  
CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST, DATED  
MAY 18, 1972,

ELEANOR C. AHERN A/K/A  
ELEANOR CONNELL HARTMAN  
AHERN,

Appellant,

vs.

JACQUELINE M. MONTOYA; AND  
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231  
Consolidated with: 6782, 68046  
Electronically Filed  
Nov 20 2015 04:21 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

District Court Case No.:  
P-09-066425-T

Appeal from the Eighth Judicial  
District Court, The Honorable Gloria  
Sturman Presiding

**APPELLANT'S APPENDIX**

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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

IN THE MATTER OF: THE W.N.  
CONNELL AND MARJORIE T.  
CONNELL LIVING TRUST, DATED  
MAY 18, 1972,

ELEANOR C. AHERN A/K/A  
ELEANOR CONNELL HARTMAN  
AHERN,

Appellant,

vs.

JACQUELINE M. MONTOYA; AND  
KATHRYN A. BOUVIER,

Respondents.

Supreme Court No.: 66231

Consolidated with: 67782, 68046

District Court Case No.:  
P-09-066425-T

Appeal from the Eighth Judicial  
District Court, The Honorable Gloria  
Sturman Presiding

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRAP 25(c) and (d), I caused a true and correct copy of the foregoing **APPELLANT’S APPENDIX (Volume 12 of 17) (Pages AA 2541-2689)** by using the Court’s Electronic Filing System on November 20, 2015, upon the following:

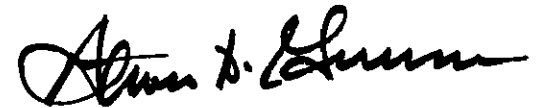
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of  
**THE W. N. CONNELL AND MARJORIE  
T. CONNELL LIVING TRUST**, Dated  
May 18, 1972,

CASE NO. P-09-066425-T  
DEPT NO. XXVI (26)

Date of Hearing: January 14, 2015  
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

**REPLY IN SUPPORT OF  
COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M.  
MONTAYA FOR SUMMARY JUDGMENT ON PETITION FOR  
DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF  
PENALTIES, AND FOR OTHER RELIEF; AND,  
OPPOSITION TO ELEANOR'S COUNTERMOTION FOR  
SUMMARY JUDGMENT**

Kathryn A. Bouvier ("Kathryn") and Jacqueline M. Montoya ("Jacqueline")  
hereby submit the following REPLY in support of their COUNTERMOTION FOR  
SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR  
DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF,  
which was filed herein on December 24, 2014; and further, provide herewith their



1 OPPOSITION TO ELEANOR'S COUNTERMOTION FOR SUMMARY  
2 JUDGMENT, which was filed herein on January 2, 2015.

3 **REPLY IN SUPPORT OF COUNTERMOTION FOR**  
4 **SUMMARY JUDGEMENT**

5 Kathryn's and Jacqueline's COUNTERMOTION FOR SUMMARY  
6 JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES  
7 AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF, is based upon  
8 the failure of Eleanor to timely and properly assert her claim to all the income from the  
9 Texas oil properties owned by the THE W. N. CONNELL AND MARJORIE T.  
10 CONNELL LIVING TRUST, dated May 18, 1972 (hereinafter referred to as "Trust No.  
11 1"). Regardless of the purported merits of Eleanor's claim (as asserted in her  
12 Countermotion for Summary Judgment now before the Court), under the legal  
13 principles and doctrines of the Statute of Limitations, Laches, Waiver, and Claim  
14 Preclusion, Eleanor's failure to assert her claim until long after percipient witnesses  
15 have died and important documentary evidence has been lost, justifies the rejection of  
16 her claim and the granting of Kathryn's and Jacqueline's Countermotion for Summary  
17 Judgment on their Petition for Declaratory Judgment filed in these proceedings.

18 Further, even if the Court were to proceed to a decision on the merits of the  
19 parties' claims in these proceedings, Eleanor's Countermotion for Summary Judgment  
20 would prove to be meritless, and the facts and law would justify the rendering of  
21 Summary Judgment in favor of Kathryn and Jacqueline. Kathryn and Jacqueline filed  
22 their Countermotion, based upon the legal principles and doctrines of the Statute of  
23 Limitations, Laches, Waiver, and Claim Preclusion, to resolve these proceedings  
24 without the need for evidentiary hearings on the Trust dispute and further incurrence  
25 of costly litigation. As hereinafter analyzed in their Opposition, the brazen  
26 Countermotion for Summary Judgment of Eleanor now filed with the Court will only  
27 prove to strengthen Kathryn's and Jacqueline's Countermotion for Summary Judgment  
28 and demonstrate that their position is not only correct from a procedural standpoint, but

1 also correct on the merits.

2 In her Omnibus Opposition to Kathryn's and Jacqueline's pending Motions,  
3 Petitions and Countermotion, Eleanor apparently is attempting to justify her delay in  
4 asserting her claim to all of the income from Trust No. 1 on the grounds that she and  
5 her mother, Marjorie T. Connell ("Marjorie"), had some secret agreement that Marjorie  
6 could receive 65% of the Trust income even though it was understood that Eleanor was  
7 legally entitled to 100% of the income. Thus, for a period of 30 years until Marjorie's  
8 death in 2009, Eleanor was gifting to Marjorie annually 65% of the Trust income, a  
9 substantial amount of money, in consideration for her love for her mother and a desire  
10 to honor their assurance to her father (sworn to on their family bible) that they would  
11 "care for each other and never do anything to hurt one another". This explanation is  
12 inconsistent with the other explanation Marjorie provided in prior briefing to the Court  
13 that her hesitancy to assert her claim to all of the income was based upon her fear that  
14 Marjorie would disinherit her in Marjorie's own estate planning decisions.

15 However, regardless of which excuse Eleanor asserts for failing to assert her  
16 right to all of the Trust income until June, 2013 (when she used her position as the  
17 acting Trustee for Trust No.1 to stop distributions to Jacqueline and Kathryn), there is  
18 clearly an admission now on Eleanor's part that she (if no one else) was aware of her  
19 purported right to claim all of the Trust income, **but she failed to assert such claim**  
20 **for 34 years.** Thus, the factual basis for applying the Statute of Limitations to deny her  
21 claim is clearly present. If that legal defense is not applied, then clearly Eleanor's  
22 grossly belated claim fails under the doctrines of Laches, Waiver, and Claim  
23 Preclusion, as analyzed in Kathryn's and Jacqueline's Countermotion for Summary  
24 Judgment. The element of untimeliness in Eleanor's conduct is present under the  
25 doctrine of Laches, the element of inconsistent behavior is present under the doctrine  
26 of Waiver, and the element of failing to timely assert a known claim is present under  
27 the doctrine of Claim Preclusion.

28 It is further obvious that Eleanor's belated conduct has caused great prejudice

1 to Kathryn and Jacqueline in defending against Eleanor's claims. As asserted in  
2 Eleanor's own Countermotion for Summary Judgment, the only remaining percipient  
3 witness who is now available to provide testimony as to the material facts relating to  
4 entitlement to the Trust income, is Eleanor. Marjorie, the Co-Trustor who created the  
5 Trust, and whose testimony would certainly be material and persuasive, is now  
6 deceased. While we have written statements from Marjorie clearly rejecting Eleanor's  
7 claims that there was some understanding between them that Eleanor was simply  
8 gifting to Marjorie 65% of the Trust income, (See, Exhibits "A", "B" and "C" attached  
9 hereto), and Marjorie's bequeathing her right to 65% of the Trust income to Kathryn  
10 and Jacqueline through Marjorie's own MTC Living Trust further demonstrates  
11 Marjorie's recognition that she was legally entitled to the 65% share of the Trust  
12 income and assets, not having Marjorie present to now testify causes great prejudice  
13 to Kathryn and Jacqueline in defending against Eleanor's claim.

14 Further prejudice results to Kathryn and Jacqueline in Eleanor's belated claim  
15 to all of the Trust income from the death and unavailability of all of the attorneys and  
16 accountants who assisted in the administration of Trust No. 1 upon the death of W. N.  
17 Connell. These professionals were tasked with properly interpreting the Trust  
18 provisions in allocating assets and right to income between Trust No. 2 and Trust No.  
19 3, in not only the Trust administration itself for the benefit of its beneficiaries, but also  
20 in the filing of the Federal Estate Tax Return and the Texas Estate Tax Return for W.  
21 N. Connell. As noted in Section C, Paragraph 3, of Article SECOND on page 3 of the  
22 Trust (copies of which Trust are attached to the parties' Countermotions):

23 "The Trustee shall allocate to Trust No. 3 from the Decedent's separate property  
24 an amount as determined in Article THIRD hereof."

25 In Article THIRD on page 3 of the Trust, the Trust then provides:

26 "The Trustee shall allocate to Trust No. 3 from the Decedent's separate property  
27 the fractional share of the said assets which is equal to the maximum marital deduction  
28 allowed for federal estate tax purposes, reduced by the total of any other amounts  
allowed under the Internal Revenue Code as a Marital Deduction which are not a part  
of this trust estate. In making the computations and allocations of the said property to  
Trust No. 3 as herein required, the determination of the character and ownership of the  
said property and the value thereof shall be as finally established for federal estate

1 **tax purposes.** (Emphasis supplied.)

2 It is clear in reviewing the documents still available, that the attorney's and  
3 accountants assisting with the allocation of Trust No. 1 assets between Trust No. 2 and  
4 Trust No. 3 followed **explicitly** the directions provided in the Trust, as set forth above.  
5 While none of these attorneys are now available to testify to these facts in support of  
6 Kathryn and Jacqueline's position in these proceedings, the expert witness engaged by  
7 them to review this issue confirms that the attorneys and accounts correctly applied the  
8 Trust terms in filing W.N. Connell's Estate Tax Returns and dividing the Trust assets  
9 between Trust No. 2 and Trust No. 3, allocating a right to approximately 35% of the  
10 Trust income for life to Eleanor as beneficiary of Trust No. 2, and allocating the  
11 remainder to Marjorie as beneficiary under Trust No. 3. Nonetheless, Eleanor's belated  
12 assertion of her claim to all of the Trust income in June, 2013, has caused serious  
13 prejudice to Kathryn and Jacqueline in that they cannot call as witnesses the said  
14 accountants and attorney's who made the Trust asset allocations in their preparation of  
15 W.N. Connell's Estate Tax Returns.

16 Eleanor, in her Omnibus Opposition and Countermotion has attempted to explain  
17 the accountants' and attorneys' allocation of the Trust No. 1 assets between Trust No.  
18 2 and Trust No. 3 by her creative assertion that one of the accountants, CPA Darrel  
19 Knight, simply fabricated Estate Tax Returns to recognize Eleanor's gift to Marjorie  
20 of 65% of the Trust No. 1 income and assets, despite the alleged fact that Eleanor was  
21 entitled to all of the Trust income. This unsupported and slanderous allegation by  
22 Eleanor implies that Mr. Knight willingly participated in a tax fraud conspiracy with  
23 Marjorie and Eleanor against the Federal government and the State of Texas.  
24 Obviously, it would be highly beneficial to now be able to call Mr. Knight and Marjorie  
25 as witnesses to defend themselves and affirm that the asset/income division between  
26 Trust No. 2 and Trust No. 3 was done legally and properly pursuant to the Trust terms,  
27 and not to reflect some fabricated generosity Eleanor claims she was providing to her  
28 mother.

While the parties and their said expert witness are still able to deduce what the Federal Estate Tax Return of W.N. Connell provided by the Closing letter received from the IRS, and based upon the copy of the Texas Estate Tax Return which still exists, Eleanor's belated claim to all of the Trust income in June, 2013, has prevented the Court from now being able to review W.N. Connell's Federal Estate Tax Return as proof of the validity of Kathryn's and Jacqueline's position in these proceedings. Eleanor in her Omnibus Opposition and Countermotion insinuates that the loss of the Federal Estate Tax Return is not her fault. Obviously, however, had she asserted her purported claim to all of the Trust income in a timely manner, a copy of W.N. Connell's Federal Estate Tax Return would be available as evidence of the proper allocation of assets/income between Trust No. 2 and Trust No. 3. A professional assisting in the preparation of the Return, or the IRS itself, would have had a copy to present as evidence to the Court. However, because Eleanor waited 34 years before asserting her claim to all of the income, she can now try to discredit the evidentiary value of the Estate Tax Return and assert her frivolous and slanderous claim that the accountant fabricated the allocation of Trust assets on the return to simply recognize Eleanor's purported generosity to Marjorie.

Clearly all of the elements necessary are present to show that the doctrine of Laches should be applied to deny Eleanor's claim and grant Kathryn's and Jacqueline's Countermotion for Summary Judgment. The elements necessary to show that Eleanor also waived her right to claim all of the Trust income (even assuming arguendo she could show she had a legal right to all of the income) are also present. As set forth in Kathryn's and Jacqueline's Countermotion for Summary Judgment, Eleanor's conduct during the 34 years following W.N. Connell's death demonstrated to everyone associated with the Trust administration that she was only entitled to 35% of the Trust income, with the balance going to Marjorie while she was alive, and then to Kathryn and Jacqueline. Eleanor's 2009 Trust Petition further admitted and recognized this allocation of the Trust income. As noted in their affidavits attached to their

1 Countermotion, Kathryn and Jacqueline relied upon Eleanor's conduct and assertions  
2 and confirmation to them after the death of Marjorie, that they would continue to  
3 receive the 65% share of the Trust income in making critical financial and employment  
4 decisions. Eleanor's belated assertion to all of the Trust income in June, 2013, was a  
5 total contradiction of her conduct and communications to them during the prior 34  
6 years.

7 Lastly, under the doctrine of Claim Preclusion, if Eleanor was in fact legally  
8 entitled to all of the trust income, she alone was aware of this purported right when she  
9 filed her 2009 Trust Petition to reform the Trust and clarify to whom the income rights  
10 and assets of Trust No. 2 would go upon her death. Failing to assert a right also to  
11 Trust No. 3's income in the filing of her 2009 Petition, is grounds to now deny her  
12 claim to the income under the doctrine of Claim Preclusion. No one but Eleanor was  
13 aware in 2009 that Eleanor thought she was entitled to all of the income. Eleanor had  
14 the legal duty to assert such right or lose it, and she clearly did not assert any right to  
15 all of the Trust income in her 2009 Petition.

16 In summary, and without even getting to the merits of the parties' claims in these  
17 proceedings to the entitlement to the income of Trust No. 1, it is respectfully submitted  
18 that the Court should grant Kathryn's and Jacqueline's COUNTERMOTION FOR  
19 SUMMARY JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR  
20 DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF.  
21 The belated claim of Eleanor to all of the Trust income, first asserted in approximately  
22 June, 2013, when she denied distribution to Kathryn and Jacqueline of their 65% share  
23 of the Trust income, should now be rejected and judgment rendered in favor of Kathryn  
24 and Jacqueline on their Petition to claim the right to the 65% share of the income. In  
25 addition, the Court should determine as requested by Kathryn and Jacqueline in their  
26 Petition and Countermotion that Eleanor has breached her duties as Trustee of Trust  
27 No. 1 and of subtrusts No. 2 and No.3, and, pursuant to NRS 165.200, she should be  
28 removed as the Trustee and Jacqueline should be appointed as the successor Trustee,

1 pursuant to the Trust provisions.

2 In addition to this requested relief, the Court should award Kathryn and  
3 Jacqueline judgment against Eleanor for all of the attorney's fees and costs they have  
4 incurred in these proceedings. Upon presenting to the Court verification of the fees and  
5 costs they incurred, and because of the frivolous and malicious conduct of Eleanor  
6 throughout these proceedings and in the claims she has asserted, judgment should be  
7 rendered against her and in favor of Kathryn and Jacqueline for not only the actual fees  
8 and costs they incurred under the legal authority cited in their Countermotion, but also  
9 for consequential damages due to Eleanor's wrongful conduct as a Trustee and  
10 otherwise.

11 Lastly, as cited in their Countermotion for Summary Judgment, Eleanor in  
12 asserting her claims to all of the Trust income has breached the "no-contest" clause  
13 found in the Trust. The penalty for such breach is the forfeiture of the benefits  
14 received. Eleanor, under Trust No. 1 has been receiving 35% of the Trust income as  
15 the beneficiary under subtrust No. 2, which income right should now be cancelled  
16 depriving her of any further income from the Trust at least from the time she first  
17 challenged the Trust provisions in June, 2013. There is no question that Marjorie's  
18 belated claims and contest have been made without good cause. Therefore, pursuant  
19 to NRS 137.005 and NRS 163.00195, the no-contest provision found under the Trust  
20 must be enforced depriving Eleanor of all of the said benefits from the time of said  
21 breach forward.

22 **OPPOSITION TO ELEANOR'S COUNTERMOTION FOR**  
23 **SUMMARY JUDGMENT**

24 Eleanor, after more than 34 years since the death of W.N. Connell, has brazenly  
25 now asserted that she is entitled to all of the income from Trust No. 1, asking the Court  
26 to render Summary Judgment to that effect. Initially, the facts and legal allegations  
27 Eleanor cites in her Countermotion would not, apart from any other considerations,  
28 entitle her to a summary judgment at this time. Her claim to judgment is basically

1 premised on three assertions: 1) that she and Marjorie understood that Eleanor was  
2 generously gifting to Marjorie 65% of the Trust income, which allegation is only  
3 supported by Eleanor's own self-serving affidavit; 2) that division orders and leases for  
4 the Texas oil properties reflect income being payable to an entity having the tax  
5 identification number of Trust No. 2; and, 3) that the Trust terms purportedly establish  
6 that W.N. Connell intended all of the Texas oil property income to go to Trust No. 2  
7 and be paid to Eleanor during the balance of her life. Kathryn and Jacqueline, in the  
8 Petitions and Countermotion they have filed, have presented what would be several  
9 material factual issues in dispute, which are not resolved in Eleanor's Countermotion  
10 for Summary Judgement. Thus, under NRCP Rule 56, Eleanor cannot be granted  
11 summary judgment.

12 Following is an analysis of these factual issues which shows not only that  
13 Eleanor's Countermotion fails to resolve the issues in her favor, but in fact the issues  
14 can now be resolved in favor of Kathryn and Jacqueline.

15 A. History of the Trust Administration

16 On its face, Eleanor's failure to assert a right to all of the Trust income until  
17 approximately June, 2013, stands as compelling testimony that her assertion is invalid.  
18 As a co-trustee with Marjorie, Eleanor had a fiduciary duty to assure that Trust  
19 distributions were properly made. By asserting that they allegedly secretly conspired  
20 to obviate the Trust provisions and allow Marjorie to have income to live on, pales as  
21 evidence in the face of 34 years of documented trust administration and tax return  
22 filing, both before and after Marjorie's death. While Eleanor insinuates in certain  
23 arguments in her Countermotion that Marjorie recognized Eleanor was entitled to all  
24 of the income, she also admits in other places that Marjorie obviously did not recognize  
25 this claim. Without Marjorie present now to testify, Eleanor is trying to use inference  
26 in place of testimonial evidence. The handwritten memorandum of Marjorie found in  
27 her records after her death attached hereto, as Exhibit "A" and hereby incorporated by  
28 this reference, further establishes that in Marjorie's mind, she and her husband created



1 a trust, and they only gifted to Eleanor the right to receive 35% of the Trust income  
2 during her lifetime as a beneficiary under Trust No. 2. There is no question in reading  
3 that memorandum that Marjorie did not believe Eleanor was doing her any favor by  
4 giving her 65% of the Trust income, but that Marjorie and W.N. Connell were initially  
5 the only ones entitled to the Trust income, and, following W.N. Connell's death, she  
6 had given Eleanor the right to receive 35% thereof during her lifetime. Additionally,  
7 there were two additional memorandums of Marjorie, one dated July 2, 2004, which  
8 is attached hereto as Exhibit "B" and hereby incorporated by this reference, and another  
9 dated July 6, 2004, which is attached hereto as Exhibit "C" and hereby incorporated by  
10 this reference, which expressly establish Marjorie's mindset in her declarations that  
11 Eleanor was entitled to 35% of the Income. In the July 6, 2004 memorandum (Exhibit  
12 "C"), Marjorie expressly states "See attached tax papers for confirmation of  
13 ownership". Although no attachments were discovered as being attached to this  
14 memorandum, it would be a logical deduction that the "attached tax papers" were likely  
15 a copy of the Form 706 for W.N. Connell and the Texas Estate Tax Return, or either  
16 of them since the Texas Estate Tax Return was required, on the face of the Return, to  
17 reflect the numbers and assets cited on the Form 706. Because the share of income on  
18 the 35/65% basis was so well-established and long-enduring it is understandable that  
19 we do not have other records providing Marjorie's stated understanding as to  
20 entitlement to Trust income. Marjorie had no reason to ever question the income  
21 sharing entitlement, because it was never questioned or challenged by Eleanor during  
22 Marjorie's lifetime. Furthermore, in a document appearing to be an intake sheet for or  
23 relating to estate planning for Marjorie, with the likely involvement of a trust company,  
24 which is deduced by the a statement in such document that states "Wants living trust  
25 with mother, Marjorie T. Connell" and then proceeds to discuss her intended  
26 trusteeship succession and her planning objectives for her estate, and which reflects a  
27 breakdown of Eleanor's assets, along with values, which in includes a reference to her  
28 attorney Steven Scow, who was her attorney for her divorce proceeding with Robert

Hartman, the father of Jacqueline and Kathryn, with such document having to had been executed in 1983 based on the referenced ages of Jacqueline and Kathryn, which is attached hereto as Exhibit “D” and is hereby incorporated by this reference, there is notation in such document that states as follows:

*U/D 35% int in 2,300 acres near Midland Texas. Stepmother who adopted Ellie @ age 35, owns 65% under trust she and Ellie’s father established. Royalty income was \$44,000 last year . . . .*

It is believed that the Oil income in 1983 was approximately \$126,433.70, therefore this reference to \$44,000 would absolutely be appropriate and accurate, with rounding, as to what Eleanor had received that year. In addition to this document, which again would have been executed in 1983 and reflected information taken directly from Eleanor herself, there is further evidence as well as to what the allocation of the Income rights were.

Attached hereto as Exhibit “E” and incorporated by this reference is an affidavit from Robert Hartman referencing the divorce proceedings that were initiated in 1982 by Eleanor and concluded in 1983. As seen from Mr. Hartman’s affidavit, the understanding in the divorce proceeding, as referenced by divorce filings, was always that Eleanor had a 35% entitlement to the Income, and not a 100% entitlement to such Income.

In addition to all of this evidence, Marjorie always represented about what her share of the 65% of the Texas Property and Income were and what she intended to do with it. Attached are statements from those that Marjorie communicated such feelings, beliefs, and desires to.

Attached hereto as Exhibit “F”, and hereby incorporated by this reference, is an affidavit from Marjorie’s long time estate planning attorney, David Straus, in which he states, in part, as follows:

8. *Marjorie always represented to me that a portion of the Texas Property had been allocated to the Survivor’s subtrust under the Connell Family Trust, which was known as Trust No. 3, for which she had been granted a power of appointment over the disposition of.*

9. *A reason Marjorie wanted to exercise a new Last Will and*

1                   *Testament in 2008 was her desire to exercise her power of*  
2                   *appointment over Trust No. 3 to ensure that all of the assets*  
3                   *belonged to Trust No. 3, specifically the interest in the Texas*  
                  *Property, would belong, following her death, to the MTC Living*  
                  *Trust, which Marjorie decided to restate in its entirety in 2008.*

4           A letter from Mozelle Miller to Joseph J. Powell, dated April 29, 2014, which  
5 is attached hereto as Exhibit “G” and incorporated by this reference, confirms  
6 Marjorie’s belief and desires about the Income.

7           Additionally, statements from Cedric Phillips, Marjorie’s brother-in-law, and  
8 Sarah Thrash Phillips, Marjorie’s sister, both dated August 25, 2014, which are  
9 respectively attached hereto as Exhibits “H” and “I” and which are incorporated herein  
10 by this reference, confirm Marjorie’s representations to them about the Income rights.

11          Thus, all the evidence regarding Marjorie’s beliefs, together with all other  
12 evidence, including documentation relating to Eleanor, along with the undeniably  
13 persuasive historical practice of Trust distributions, confirms Kathryn’s and  
14 Jacqueline’s position in these proceedings as to the entitlement to Trust income.

15           B.   Oil Division Orders and Leases vs. IRS Estate Tax and Income Tax  
16               Reporting.

17          Eleanor has argued that because certain Oil Division Orders and Leases  
18 negotiated and entered by the Trustees during the Trust administration show that Trust  
19 No. 2’s Tax Identification number was used on the Orders and Leases, this “proves”  
20 that Trust No. 2 was the sole owner of all the Texas oil properties, thus entitling her  
21 now as the beneficiary under Trust No. 2 to all of the income from such properties.  
22 Clearly, however, the use of Trust No. 2’s Tax Identification number does not equate  
23 to a legal claim of ownership. If Eleanor is arguing that use of Trust No. 2’s Tax  
24 Identification number proves Marjorie recognized that Eleanor was the owner of all the  
25 Texas oil property income, this is actually only an inference she is making. We have  
26 other evidence, such as Marjorie’s own statement (attached hereto as Exhibits “A”,  
27 “B”, and “C”), the history of the Trust administration distribution, and Marjorie’s estate  
28 planning efforts that also contradict Eleanor’s inferential proof of the issue.

1 More importantly, one must ask is it more important to correctly list the tax  
2 identification number on Texas oil Division Orders and Leases, or is it more important  
3 to correctly notify the IRS on income or gift tax returns one's entitlement to income  
4 and tax liabilities? Which would be more persuasive and probative in determining  
5 ownership rights to the income under the Trust provisions? It should be without  
6 dispute that up until June, 2013, when Eleanor abruptly cut off income distributions to  
7 Kathryn and Jacqueline, Eleanor claimed and paid income and taxes on only 35% of  
8 the Texas oil property income received by Trust No. 1, and Marjorie (through the date  
9 of her death), then Kathryn and Jacqueline after her death, claimed and paid the income  
10 and tax on the remaining 65% of the income received by Trust No. 1. Accordingly,  
11 if Eleanor was in fact legally entitled to all of the income received by Trust No. 1 from  
12 the Texas oil properties, pursuant to the trust provisions, but this income was not  
13 claimed on her income tax returns over the years, then she and the person knowingly  
14 preparing her tax returns would be guilty of tax fraud. At the same time, Eleanor's  
15 assertion that she made a gift of 65% of the income to Marjorie, would not absolve her  
16 from the income tax liability on all of the income and being guilty of tax fraud. Rather,  
17 it would only have saddled her with the additional liability of having to file gift tax  
18 returns to properly report her gifting and the paying of gift taxes owed.

19 It is well recognized that the IRS does not allow persons to freely reallocate  
20 income they have earned to another to avoid income taxes. The Trust provisions do not  
21 provide Eleanor with any income redistribution discretion. Based upon Eleanor's  
22 claims as to entitlement to all of the Trust income, to have properly handled her tax  
23 liability responsibilities over the years, she would have been required to include all of  
24 the Trust income on her income tax returns, as well as file required gift tax returns to  
25 account for the alleged gifting of the 65% share of the income to Marjorie.

26 There was no rhyme or reason for giving the Tax Identification Number of Trust  
27 No. 2 to the Oil companies when Division Orders or leases were prepared. The  
28 companies wanted a tax identification number for their records and someone simply

1 opted to give them the number for Trust No. 2, and that number was used for  
2 convenience purposes in such matters over the years. In reviewing each of the Division  
3 Order and leases, not a single one of them states with specificity that the owner of the  
4 rights is Trust No. 2. Instead, all references are to Marjorie and Eleanor as co-trustees  
5 of the “W.N. Connell and Marjorie T. Connell Living Trust”, which again is a reference  
6 to Trust No. 1. The reality is that when the income was actually received by Trust No.  
7 1, Eleanor, as a life-time income beneficiary under Trust No. 2, was only entitled to  
8 35% of the income, which was then reported to the IRS as her taxable income  
9 obligation, verified by a K-1 being issued to her by the Trust. Likewise, the remaining  
10 65% share of the income went to Eleanor as the beneficiary under Trust No. 3, which  
11 is how her income tax liability was reported to the IRS, as verified by a K-1 being  
12 issued to her by the Trust.

13 Thus, the myriad of Texas oil Division Orders and leases and related  
14 correspondence attached to Eleanor’s Countermotion for Summary Judgment only  
15 weigh down the Court’s file but do not provide any probative evidence as to the correct  
16 interpretation of the Trust and entitlement to the Trust income. Rather, the documents  
17 filed annually with the IRS (as well as those not filed with respect to required gift tax  
18 returns) provide very compelling evidence of entitlement to income under the Trust.

19 The fact that Marjorie recognized Eleanor’s position as a co-trustee relating to  
20 the signing of Texas oil Division Orders and leases, as asserted in Eleanor’s  
21 Countermotion, proves nothing with respect to the Trust requirements for distribution  
22 of the Trust income under its provisions. The same holds true with respect to the fact  
23 that after Marjorie’s death only Eleanor could sign for the Trust. These alleged facts  
24 simply show that while Marjorie was alive, Marjorie and the oil companies felt where  
25 two trustees are appointed for a trust, it is proper to have both trustees sign official  
26 documents for the trust. After Marjorie’s death, when Eleanor became the sole Trustee  
27 pursuant to the Trust provisions, she alone was tasked with the signing of official Trust  
28 documents.

1           C.     Ownership of the Texas Oil Rights

2           Eleanor in her Countermotion repeatedly asserts or insinuates that Trust No. 2  
3 is the legal owner of all of the Texas oil properties. This is blatantly false. At present,  
4 and ever since this property was deeded to the Trust, its legal owner has remained as  
5 Trust No. 1, the original Trust established by Marjorie and W.N. Connell. At the time  
6 of W.N. Connell's death, and the allocation of asset/income rights between Trust No.  
7 2 and Trust No. 3, in conjunction with the preparation of W.N. Connell's Federal and  
8 Texas Estate Tax Returns, no deeding of the Texas oil properties was made from Trust  
9 No. 1 to either of the subtrusts. Rather, it was decided (apparently for convenience  
10 purposes in dealing with the oil companies in the future) to leave ownership with the  
11 main Trust and to recognize the legal entitlement to assets/income between Trust No.  
12 2 and Trust No. 3 through the Trust's internal accounting records, verified by the  
13 Federal and Texas Estate Tax Returns which had been filed and the ongoing yearly  
14 income tax returns. Neither the beneficiary of Trust No. 2, nor the beneficiaries of  
15 Trust No. 3 can point to a deed evidencing their subtrusts ownership of the Texas oil  
16 property.

17           Keeping ownership of the Texas oil property in the name of the main Trust, Trust  
18 No. 1, over the years has not been illegal or a violation of the Trust terms. Rather, as  
19 noted in the Trust, the laws of Nevada govern the administration of the Trust, and  
20 under such laws a trustee has the discretion whether or not to formally deed properties  
21 between subtrusts, or to retain ownership with the main trust and only make an  
22 accounting division of each subtrust's ownership in the Trust records and  
23 administration. This accounting division, along with IRS tax liability allocated to the  
24 subtrusts, provides adequate proof of equitable ownership of the Texas oil properties  
25 and income over the years and up to the present time. This evidence establishes that  
26 Eleanor is only the owner of a right to 35% of the Trust No. 1 income, and that Kathryn  
27 and Jacqueline, through Marjorie's MTC Living Trust provisions, are now the owners  
28 of 65% of the assets and income of Trust No. 1.

1 D. Eleanor is not being truthful with the Court

2 There are several facts and matters which evidence that Eleanor is not being  
3 truthful with the Court in her claim to 100% of Trust No. 1 income. Following are  
4 some things to note:

5 1. Eleanor's Will Contest filing- Eleanor, in addition to claiming a right to all of  
6 the Trust income in the pending Trust dispute litigation, also filed a Will Contest  
7 challenging the validity of Marjorie's 2008 Will (which the parties have now agreed  
8 to a dismissal of with prejudice, via a stipulation executed on January 7, 2015). Her  
9 reason for challenging Marjorie's Will was that it is in her Will that Marjorie exercised  
10 her Power of Appointment over the disputed rights to the assets/income of Trust No.  
11 3. Marjorie appointed these rights to her MTC Living Trust, wherein she then named  
12 Kathryn and Jacqueline as the beneficiaries to said Trust income and asset rights upon  
13 her death. Marjorie's Will was a "pour over" Will otherwise. All of Marjorie's other  
14 assets were already owned by her Trust (i.e. the MTC Living Trust). Thus, the only  
15 benefit Eleanor could obtain from trying to negate Marjorie's Will would be the  
16 negation of the exercise of the power of appointment over the Trust No.3 assets and  
17 income rights. Had Eleanor been able to successfully challenge the Will, the income  
18 and asset rights Marjorie held under Trust No. 3 would have devolved by default to  
19 Eleanor under the Trust terms.

20 At one time during these Trust dispute and Will Contest proceedings, she was  
21 asserting that Marjorie's Will was invalid, and therefore the exercise in her Will of her  
22 Power of Appointment over the income and assets of Trust No. 3 was also invalid. By  
23 successfully negating Marjorie's Will, it was argued last year when the Will Contest  
24 was filed, Eleanor could claim all of Trust No. 1's income without having to prove her  
25 claims under the pending Trust dispute Case. Since Marjorie's rights and interests to  
26 65% of the income and assets of Trust No. 1, as the beneficiary under Trust No. 3,  
27 could be claimed by Eleanor under the default terms of the Trust should Marjorie have  
28 failed to exercise her Power of Appointment, Eleanor attempted in her Will Contest

1 action to claim the income and assets of Trust No. 3 without having to try to prove her  
2 claims in the Trust dispute Case.

3 This background of conduct by Eleanor, contradicts the assertions she now  
4 makes in her Countermotion for Summary Judgment. On the one hand she asserts in  
5 her Countermotion that Marjorie recognized that Eleanor was entitled to all of the  
6 income under Trust No. 1, and that Marjorie was only receiving 65% of the income as  
7 a “gift” from Eleanor. On the other hand, in her Will Contest assertions she recognized  
8 that Marjorie in fact claimed the right to 65% of the Trust assets/income as the  
9 beneficiary under Trust No. 3, that Marjorie had through the exercise of her Power of  
10 Appointment in her Will bequeathed in essence this 65% share to her MTC Living  
11 Trust and Kathryn and Jacqueline as beneficiaries, and that if Eleanor could invalidate  
12 the Will she would cancel the transfer of the 65% share to Kathryn and Jacqueline and  
13 retain the same for herself by default under the Trust terms. That this was Marjorie’s  
14 mindset and calculations is borne out by the fact that last summer she filed a Motion  
15 to continue all Trust dispute matters pending the evidentiary hearing and determination  
16 in her Will Contest case, asserting that if she won the Will Contest case, entitlement to  
17 the Trust income would be resolved and the Trust dispute would be rendered moot.  
18 Thus, the inconsistency and lack of candor toward the Court in Eleanor’s assertions in  
19 her pending Countermotion for Summary Judgment are apparent. Eleanor knows,  
20 contrary to her Countermotion assertions, that Marjorie never recognized that Eleanor  
21 was legally entitled to the 65% share of Trust income, which now Eleanor wants to  
22 claim. Eleanor’s Will Contest assertions were an admission on her part that Trust No.  
23 3 in fact owned 65% of the asset/income rights under Trust No. 1.

24 2. Statements by Eleanor’s prior attorneys

25 Eleanor’s revolving door of attorneys representing her in the pending matters is  
26 apparently due, at least in one instance, to her attempt to have her attorney misrepresent  
27 facts to the Court, causing the attorney to part ways with her. While Eleanor took great  
28 pains to have any testimony from her former attorneys withheld from the Court as



1 attorney-client privileged communications in her Opposition to Kathryn's and  
2 Jacqueline's Motion to Enforce Settlement Agreement, in her pending Emergency  
3 Motion to Compel David L. Mann, Esq. to Turn Over Documents, Eleanor voluntarily  
4 discloses a disturbing assertion by Mr. Mann as to Eleanor's lack of integrity. Attached  
5 as Exhibit "9" to the Motion, is a letter from Mr. Mann to Eleanor's current attorneys  
6 wherein he states in paragraph 3 as follows:

7 "I am not causing Ms. Ahern to suffer 'extreme prejudice.' Ms. Ahern has  
8 caused herself prejudice by trying to back out of a settlement from The Burr Law Firm  
9 who has stated that, if subpoenaed, all three lawyers will testify that she settled; and  
10 then coming to a reputable lawyer and trying to get me to lie to the Court. She  
11 admitted constantly and consistently (in front of 4 witnesses on my staff) that she  
12 settled and she wanted me to lie to the court. When I refused, she got a new lawyer.  
13 If she did not want to suffer from 'extreme prejudice' perhaps she should tell the truth  
14 and try to attack the settlement for lack of material terms, etc., instead of lying that she  
15 did not settle.

12 Eleanor has shown a propensity for not being candid with the Court on several  
13 occasions. Given the fact her whole case is based solely upon her self-serving affidavit  
14 without corroboration from any other witness testimony, there is good reason to doubt  
15 the truthfulness of her assertions now made in her Countermotion for Summary  
16 Judgment.

17 E. The Trust Terms Themselves Defeat Eleanor's Assertions

18 For an instant let us put aside the 34+ years of Trust administration, and the other  
19 conduct of Eleanor discussed above, and put ourselves in the shoes of the Trustee and  
20 professionals tasked with interpreting the Trust terms upon W.N. Connell's death, to  
21 file the appropriate Federal and Texas Estate Tax returns, and to properly allocate the  
22 Trust assets between Trust No. 2 and Trust No. 3. Initially, it should be noted that at  
23 the time of W.N. Connell's death in 1979, the only separate real property which he  
24 owned was the Texas oil property. This fact is borne out in the Texas Estate Tax  
25 Return attached as an Exhibit to both Eleanor's Countermotion and as part of the  
26 Expert Witness Report provided by Kathryn and Jacqueline in their Countermotion.  
27 As noted in the Expert Report, the accountants and attorneys who participated in the  
28 interpretation of the Trust and made the decisions with Marjorie as to the allocation of

1 assets between the two subtrusts of Trust No. 1, created upon W. N. Connell's death  
2 in 1979 (i.e. Trust No. 2 granting Eleanor income for life, and Trust No. 3 granting to  
3 Marjorie her share of the Trust income and assets), needed to try to minimize the Estate  
4 taxes that would be owed by W.N. Connell's Estate. They were specifically tasked  
5 with this concern under Article THIRD of the Trust wherein they were directed to  
6 allocate to Trust No. 3 (i.e. Marjorie's subtrust) an amount of W.N. Connell's separate  
7 property sufficient to maximize the Estate's Marital Deduction for tax saving purposes.  
8 Had W.N. Connell's estate been small enough to avoid any concerns over Estate Tax  
9 liabilities, all of his separate property, which we know included only the Texas oil  
10 property, would have been allocated to subtrust No. 2. However, because of the  
11 explicit Trust provisions requiring that Estate Taxes be minimized as much as possible,  
12 and because his Estate was large enough to force efforts to save taxes, the Trustee and  
13 professionals had to follow the directions in the Trust contained in Article SECOND  
14 of the Trust, in Section 3, which provides:

15 "The Trustee shall allocate to Trust No. 3 **from the Decedent's separate property** an  
16 amount as determined in Article THIRD hereof. (Emphasis supplied.)

17 Article THIRD of the Trust then provides:

18 "The Trustee shall allocate to Trust No. 3 from the Decedent's separate property the  
19 fractional share of the said assets which is equal to the maximum marital deduction  
20 allowed for federal estate tax purposes, reduced by the total of any other amounts  
21 allowed under the Internal Revenue Code as a Marital Deduction which are not a part  
22 of this trust estate. **In making the computations and allocations of the said property to  
Trust No. 3 as herein required, the determination of the character and ownership of the  
said property and the value thereof shall be as finally established for federal estate  
tax purposes.** (Emphasis supplied.)

23 The said Expert's Report, The Report of Daniel T. Gerety, CPA, dated  
24 September 27, 2014, which is attached to Kathryn's and Jacqueline's Countermotion,  
25 carefully and clearly spells out how the Trustee and professionals complied with the  
26 above-quoted directives of the Trust. They allocated a portion of W.N. Connell's  
27 Texas oil property to Trust No. 3 (Marjorie's subtrust) thereby maximizing the Marital  
28 Deduction and reducing the Estate Taxes owed by W. N. Connell's Estate to the  
maximum extent allowed by the tax laws. As this allocation also then determined the

1 “character and ownership” of the property, it became the legal distribution of Trust No.  
2 1 assets between subtrusts No. 2 and No. 3. Therefore, and thereafter, rights to income  
3 earned by Trust No. 1 were allocated between the beneficiaries of each subtrust, i.e.  
4 Eleanor and Marjorie, based upon the allocation of ownership of the Trust assets as  
5 made by the Trustee and her attorneys and accountants in the preparation and filing of  
6 W.N. Connell’s Federal and Texas Estate Tax Returns.

7 There was no “creative tax maneuvering”, as asserted by Eleanor, by these  
8 professionals with fiduciary duties owed not only to the Trust beneficiaries but also to  
9 the IRS. Rather, they gave literal application to the Trust terms and properly allocated  
10 assets between subtrusts No. 2 and No. 3.

11 While it is not clear in Eleanor’s Countermotion, it appears in an effort to explain  
12 away the above-quoted Trust provisions, that she is asserting that the Trustee  
13 (Marjorie) and professionals assisting her goofed by not allocating to Trust No. 3 other  
14 separate real property of W.N. Connell than the Texas Oil property to maximize the  
15 Marital Deduction under Article THIRD of the Trust. This explanation does not work,  
16 however, because it is clear that W.N. Connell owned no other separate real property  
17 than the Texas oil property at the time of his death, the trigger date for the division of  
18 the assets into Trust No. 2 and Trust No. 3.

19 Another effort Eleanor makes in her Countermotion to try to explain away the  
20 above-quoted Trust terms, which clearly show 65% of the Texas oil property was  
21 properly allocated to Marjorie under subtrust No. 3, is the creative assertion that W.N.  
22 Connell created an “heirloom” trust, wanting to keep his separate Texas oil property  
23 in only his blood descendants, and not having any share go to Marjorie. This ignores  
24 the fact that W.N. Connell and Marjorie were happily married throughout their lengthy  
25 marriage of 37 years, and that Marjorie herself had rights and input into the creation  
26 of their 1972 Trust. While W.N. Connell was older than Marjorie, and it may have  
27 been reasonably expected that he would predecease her, such was not certain as  
28 admitted by Eleanor in her Countermotion. Therefore, in creating their Trust, they each

1 had to be content with Trust terms that were acceptable regardless of which of them  
2 survived.

3 Thus, to insinuate as Eleanor does in her Countermotion that W.N. Connell  
4 dictated solely the terms of the Trust without regard to Marjorie's input and concern  
5 for Marjorie's well-being should he die first, lacks factual support. While clearly both  
6 W.N. Connell and Marjorie had concern for Eleanor's well-being in creating their  
7 Trust, granting to her life income benefits under subtrust No. 2, the claim that W.N.  
8 Connell created an "heirloom" trust tailored for the protection mainly of only his blood  
9 descendants, makes little sense.

10 Most importantly, and in the final analysis, Eleanor's creative "heirloom" trust  
11 explanations cannot answer or explain the clear Trust terms found in Articles SECOND  
12 and THIRD, which required that the Trustee and professionals assisting her allocate a  
13 sufficient portion of W.N. Connell's separate property to Marjorie under subtrust No.  
14 3 to maximize the Estate's Marital Deduction and save on Estate taxes. Obviously, any  
15 concern W.N. Connell and Marjorie had in providing for Eleanor income for life from  
16 W. N. Connell's separate property, did not outweigh their concerns for minimizing the  
17 Estate's Federal and State Estate tax liability. As Eleanor affirms in her  
18 Countermotion, "in construing a trust instrument, the intent of the trustor prevails and  
19 it must be ascertained from the whole trust instrument, not just separate parts of it."  
20 *Fazzi v. Klein*, 190 Cal. App. 4<sup>th</sup> 1280, 1285, 119 Cal. Rptr. 3d 224, 228 (2010).  
21 Eleanor would have the Court only consider isolated provisions of the Trust in trying  
22 to assert her position, rather than giving meaning to all of the Trust provisions. The  
23 interpretation Kathryn and Jacqueline have given to the Trust terms, which  
24 interpretation is also that given by the professionals handling the Trust matters  
25 following W.N. Connell's death, and over the last 34 years, renders harmonious and  
26 gives accurate and fair meaning to all of the Trust terms.

27 In summary, not only has Eleanor failed to show a basis for granting her  
28 Countermotion for Summary Judgment, she has admitted in her Countermotion

1 sufficient matters which dictate that Kathryn's and Jacqueline's Countermotion for  
2 Summary Judgment should be granted. Their Countermotion should be granted not  
3 only on the basis of procedural demands under the Statute of Limitations, Laches,  
4 Waiver, or Claim Preclusion, but also on the merits of their claim.

5 **SUMMARY OF REQUESTED RELIEF**

6 Jacqueline and Kathryn request the following relief from the Court at this time:

7 A. That Eleanor's Countermotion be denied; and

8 B. That their Countermotion for Summary Judgment be granted, both on the  
9 procedural grounds under the Statute of Limitations, Laches, Waiver and Claim  
10 Preclusion, as well as on the merits of their claims. Under NRCP Rule 56, where no  
11 material facts are subject to dispute and the law applied shows the movant is entitled  
12 to judgment, summary judgment should be granted to avoid further waste of time and  
13 expense to the moving party and the Court. Clearly, this is an appropriate case to grant  
14 them summary judgment; and

15 C. That Eleanor be sanctioned for having failed to provide them with a proper  
16 accounting of the Trust, including awarding fees and costs incurred to them, and further  
17 penalizing Eleanor. Further, Eleanor should be removed as Trustee of Trust No. 1,  
18 subtrust No. 2, and subtrust No. 3, as she is not capable or fit to handle this important  
19 fiduciary duty; and

20 D. That the Court reconsider its decision from the May 14, 2014 hearing, and allow  
21 Jacqueline and Kathryn to receive the income payable to Trust No. 3 during these  
22 proceedings without posting a bond, should these proceedings not be resolved with  
23 their pending Countermotion, just as Eleanor has been entitled to continue receiving  
24 her share of the income. In the alternative. Eleanor should be required to post a bond  
25 to cover the potential damages, fees and costs she would suffer and owe to Jacqueline  
26 and Kathryn, should she not prevail in this case, to secure the payment thereof; and

27 E. That it be determined that Eleanor has forfeited her rights and benefits under  
28 Trust No. 1 and Trust No. 2 to payments of Trust income, by wrongfully and

frivolously claiming all income earned by Trust No. 1 and attempting to deprive Kathryn and Jacqueline of their right to income under Trust No. 3; and

F. That Kathryn and Jacqueline be awarded judgment against Eleanor for all of the attorney's fees and costs they have incurred in this Trust dispute case.

Dated this 9<sup>th</sup> day of January, 2015.

ALBRIGHT, STODDARD, WARNICK &  
ALBRIGHT

/s/ Whitney Warnick

By: WHITNEY B. WARNICK, ESQ.  
Nevada Bar No. 001573  
801 S. Rancho Drive, Suite D-4  
Las Vegas, Nevada 89016  
*Attorneys for Kathryn Bouvier*

THE RUSHFORTH FIRM

By: JOSEPH J. POWELL, ESQ.  
Nevada Bar No. 008875  
9505 Hillwood Drive, #100  
Las Vegas, Nevada 89134  
*Attorneys for Jacqueline M. Montoya*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of THE RUSHFORTH FIRM, LTD. and that on the 9<sup>th</sup> day of January, 2015, I placed a true and correct copy of the foregoing document, in the United States Mail, at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

Liane K. Wakayama, Esq.  
Candice E. Renka, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, NV 89145

(On the same date, I also served a true and correct copy of each of the foregoing documents upon all counsel of record by electronically serving the same using the Court's electronic filing system.)

Liane L. DeHart  
An Employee of The Rushforth Firm, Ltd.

**EXHIBIT A**

**EXHIBIT A**

Our Trust <sup>man not</sup> <sup>new for</sup>  
Bill owned all of Texas assets  
He gave them all to me  
I paid <sup>when he died</sup> the inheritance &  
gift tax when I settled  
his estate plus the gift  
tax & it is now all mine  
When this was all settled  
I later gave Ellen 35% of  
the Minerals & Ranch.  
She paid me the gift tax  
out of money I received from  
damages & gave her to pay  
me - there is no record of  
this transaction since it  
was Damage Money & it is  
not Taxable. (where she got  
the money to pay me is not  
my concern really) So this  
35% of Texas is out of my estate.  
Now - my estate - The estate tax  
was paid in whole by my husband's  
Estate so - it goes Tax free to  
my heirs when I die - I also  
paid the gift tax on assets he gave me.

5/20/09 - Norma did not even pay's tax  
P/David STRAUSS



**EXHIBIT B**

**EXHIBIT B**

*Marjorie T. Connell, Trustee  
Of the Marjorie T. Connell Living Trust  
P.O. Box 710  
Las Vegas, Nevada 89101  
702-878-8698*

July 2, 2004

TO WHOM IT MAY CONCERN

My daughter, Eleanor C. Hartman, aka Eleanor C. Ahern, was given by me, Marjorie T. Connell, 35% of  $\frac{1}{4}$  of 14,000 mineral acres of oil royalties and 35% ownership in 2,301 acres located in Rankin County, Texas near Midland, Texas.

See attached tax papers for confirmation of ownership.

Eleanor's oil income started in 1980 and will continue to infinity. She consistently receives approximately \$2,500 each month.

Marjorie T. Connell, Trustee  
Marjorie T. Connell, Trustee

July 2, 2004  
Date

**EXHIBIT C**

**EXHIBIT C**

*Marjorie T. Connell, Trustee  
of the Marjorie T. Connell Living Trust  
P.O. Box 710  
Las Vegas, Nevada 89101  
702-878-8698*

July 6, 2004

TO WHOM IT MAY CONCERN

Payment will continue as long as Oil, Gas and other Minerals are producing.

The heirs of the Dora Connell Estate receive an undivided interest of the Oil, Gas and Other Minerals. Dora Connell had four children, William N. Connell, Corinne Cowden, Eleanor C. Hopkins and Lady Chattword. Eleanor Connell Hartman, aka, Eleanor C. Ahern, is the only daughter and heir of William N. and Marjorie Connell Living Trust. Present monthly income is approximately \$3,000.

35% percent of  $\frac{1}{4}$  of the undivided Oil, Gas and Other Mineral Royalty interest deeded to the Dora Connell Estate was given to Eleanor C. Hartman, aka Ahern by her mother, Marjorie T. Connell after the death of her father W. N. Connell.

2,301 surface acres is owned only by the W. N. and Marjorie T. Connell Estate located in Upton County, Texas South of Midland, Texas. 35% of the land surface and 35% of the Oil, Gas and Other Minerals were given to Eleanor C. Hartman, aka Ahern, by me, her mother, Marjorie T. Connell, heir and widow of W. N. Connell Trust.

The 2301 surface acres is fenced and crossed fenced with sheep proof fencing and cedar posts. Two water wells with submerged electrical pumps and also windmills for emergencies are centrally located to water each separate pasture. Each water well has a 5,000 gallon concrete storage tank and concrete automatic watering trough. The 2301 acre ranch surface and improvements is owned by the W. N. and Marjorie T. Connell Estate. The sections marked in blue are owned by the W. N. and Marjorie T. Connell Trust.

See attached tax papers for confirmation of ownership. Eleanor's oil income started 1980. Attached is letter signed by Eleanor and me stating the 35% ownership in the Land and Oil Royalties? The gift given to Eleanor will last her lifetime and be given to her two daughters, Jacqueline Montoya and Kathy Bouvier.

Attached you will find the Oil, Gas and Other Minerals map showing the surface owners. You will notice the Oil Map shows the location of the wells. Surface land owned by W. N. and Marjorie Connell Estate is Section 38, 47, 48 and West  $\frac{1}{2}$  of Section 37. Eleanor C. Hartman, aka Ahern, my daughter, now owns 35%.

*Marjorie T. Connell*  
Marjorie T. Connell, Trustee

*July 6, 2004*  
Date

**EXHIBIT D**

**EXHIBIT D**

NAME Eleanor Marguerite Connell Flattman AGE 15 divorced August, 1983

WIFE 6225 W. Buckskin Ave. ADDRESS ZVN 89109 PHONE \_\_\_\_\_

SS NO. (H) \_\_\_\_\_ SS NO. (W) \_\_\_\_\_

ATTORNEY Steven Scow PHONE \_\_\_\_\_

ACCOUNTANT \_\_\_\_\_ PHONE \_\_\_\_\_

INVESTMENT OBJECTIVES \_\_\_\_\_

TAX BRACKET \_\_\_\_\_

WILLS (H) \_\_\_\_\_ (W) \_\_\_\_\_ CURRENT (H) \_\_\_\_\_ (W) \_\_\_\_\_

PANK NAMED \_\_\_\_\_ CAPACITY \_\_\_\_\_

ATTORNEYS RECOMMENDED \_\_\_\_\_

\* Use mailing address: P.O. Box 710  
ZVN 89125

ASSETS	COMMUNITY	SEPARATE	DATE	FOLLOW UP COMMENTS
Ashman Equipment	40,000.00	Profit Sharing (Stop here until ex-husband quits Co. or dies He is 48)		
1615 W. Bohemia	250,000.00	To be zoned as Commercial property		
409 Del Rio Ave.	80,000.00	Days 143 H-Mtg.		
One acre	42,500.00	Between Atwood & Buckskin		
Two acres	50,000.00	old 1/2 int in 4 acre plot @ Buckskin + Mustang		
New State Bank	10,000.00	Money Market		
Pioneer Citizens	15,000.00	@ 7 1/2 %		
Whole Life	100,000.00	Co. is ?		
I.R.A.	2,000.00	Danamon Oil		
Texas Royalties	440,000.00	Assume 10 year payout -		
Texas Soapsheds	402,500.00	Surface of 2380 acres @ \$500 per acre		
Total Community				
Total Husband				
Total Wife	1,411,000.00			
Total All Property				

Wants living trust with mother, Margaret T. Connell, as Trustee should Ellie be unwilling or unable to serve, with Trustee to be as Successor Trustee to Margaret T. Connell. As they reach age 21, each daughter to become a Co-Trustee with mother or Bank. Wants trust to last per Stipes right up to Ellie (Mother's) Perpetuities. All children to be deceased within 30 years all to Margaret Connell. If all be deceased and no issue, then to Shriners Hospital for Crippled Children.

Monthly Income: Rupture \$3,666.00  
Child Support 500.00  
Rentals 450.00  
MCH Job 600.00  
\$5,216.66

It is grantor's intent that no funds, income or principal from Trust ever be considered to or for use for Charles Flattman, husband, Robert S. Flattman, or should it be found that either or both is so considered, funds directly or indirectly, then she would keep her status as Co-Trustee for 10 years as well as her right to current income, other than as decided upon in the discretion of the other Co-Trustees.

In event of disagreements, a majority of the Trustees shall govern.

CREDIT FOR INTERVIEW BRANCH NO. \_\_\_\_\_ OFFICE \_\_\_\_\_

OTHER \_\_\_\_\_

R. Johnson  
TRUST SERVICE OFFICER

Found this on

**EXHIBIT E**

**EXHIBIT E**

AFFIDAVIT OF ROBERT S. HARTMAN, JR.

STATE OF NEVADA                    )  
  )ss.  
COUNTY OF CLARK                 )

I, ROBERT S. HARTMAN, JR., being first duly sworn testifies as follows:

1. I was married to Eleanor Connell Hartman Ahern ("Eleanor") from 1963 to 1983.
2. Eleanor is the mother of my two daughters, Jaqueline M. Montoya and Kathryn A. Bouvier.
3. In the divorce proceeding between myself and Eleanor, it was represented to the Divorce Court that as to the assets of the parties that Eleanor was entitled to a 35% interest in oil, gas, and mineral rights as a beneficiary of a trust established by her father and her mother, Bill Connell and Marge Connell.
4. In fact, in my Answer to the Complaint for Divorce, dated October 7, 1982, the following statement was included on page 3 of the Answer, under paragraph (k):

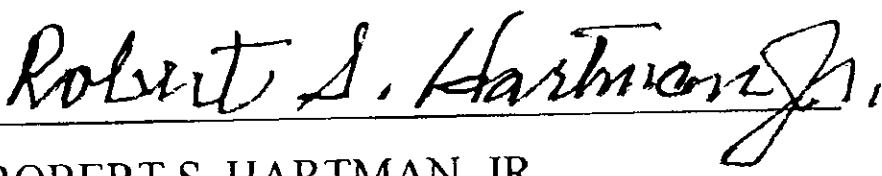
*Admits the allegations of Paragraph IV (12), that the Defendant has checking and savings accounts at First Interstate Bank with no balances therein; however, the Plaintiff has separate account at Nevada State Bank in her name from which she receives 35% of a trust created by her deceased father, from which she derived over \$35,000.00 in 1980.*
5. It was common knowledge during the divorce proceeding that Eleanor had a 35% income interest in the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 ("Connell Trust"), as to oil, gas, and mineral income derived from those rights relating to real property located in Texas held by the Connell Trust.
6. There was never any understanding on my part, nor the Court, to the best of my knowledge, nor claims or statements made by Eleanor to entitlement to a 100% interest in the oil, gas, and mineral income paid to the Connell Trust.



7. If Eleanor had claimed and represented having a 100% interest in the income described above, and not merely a 35% interest, as was well known and not in dispute at the time of the divorce proceeding, I am certain that such claim would absolutely have affected the support obligations that I was ultimately ordered to pay to support Eleanor and the property division that was entered by the Divorce Court.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge and recollection.

Dated this 9 day of January, 2015.

  
ROBERT S. HARTMAN, JR.

**EXHIBIT F**

**EXHIBIT F**

**AFFIDAVIT OF DAVID A. STRAUS**

I, DAVID A. STRAUS, ESQ., being first duly sworn, deposes and says:

1. I am an attorney licensed in the State of Nevada, the State of California, and the State of Colorado. I am in good standing in each of these states.
2. I have been licensed to practice law in the State of Nevada since 1991.
3. I reside in Clark County, Nevada.
4. I am employed by and am the sole member of the Law Offices of David A. Straus, LLC.
5. Marjorie T. Connell ("Marjorie") was a long time estate planning client of mine.
6. I prepared the MTC Living Trust for Marjorie, dated December 6, 1995, and the restatement to the MTC Living Trust, dated January 7, 2008.
7. As Marjorie's attorney, I spoke with Marjorie on multiple occasions about the real property located in Upton County, Texas and the oil, gas, and mineral rights related to such property ("Texas Property"), all of which was previously deeded to "The W.N. Connell and Marjorie T. Connell Living Trust" ("Connell Family Trust") by Mr. Connell, Marjorie's husband.
8. Marjorie always represented to me that a portion of the Texas Property had been allocated to the Survivor's subtrust under the Connell Family Trust, which was known as Trust No. 3, for which she had been granted a power of appointment over the disposition of.
9. A reason Marjorie wanted to exercise a new Last Will and Testament in 2008 was her desire to exercise her power of appointment over Trust No. 3 to ensure that all of the assets that belonged to Trust No. 3, specifically the interest in the Texas Property, would belong, following her death, to the MTC Living Trust, which Marjorie decided to restate in its entirety in 2008.
10. Following Marjorie's passing in 2009, I sent a letter dated May 21, 2009, via certified mail, to Eleanor C. Ahern, in her capacity as Trustee of the Connell Family Trust, to advise her of the fact that Marjorie had exercised her power of appointment over Trust No. 3 in favor of

1 of the MTC Living Trust. The exercise of the power of appointment over Trust No. 3 was  
2 done in Marjorie's Will dated January 7, 2008 and as such I provided Eleanor with a  
3 certified copy of the Will.

4 11. As to the Texas Property, I had multiple conversations with Jacqueline Montoya  
5 ("Jacqueline"), in her capacity as the Trustee of the MTC Living Trust, and in her capacity  
6 as a beneficiary of such Trust, together with Kathryn Bouvier ("Kathryn"), in her capacity  
7 as a beneficiary of the MTC Living Trust, regarding the need, based on Marjorie's exercise  
8 of the power of appointment over Trust No. 3 in favor of the MTC Living Trust, to effectuate  
9 a formal change in title to the Texas Property to the MTC Living Trust.  
10

11 12. Based upon my recollection, I believe that Eleanor C. Ahern ("Eleanor") participated in at  
12 least one of these conferences regarding the need to change title to the Texas Property from  
13 the Connell Family Trust to the MTC Living Trust, as to the portion that had been allocated  
14 to Trust No. 3.  
15

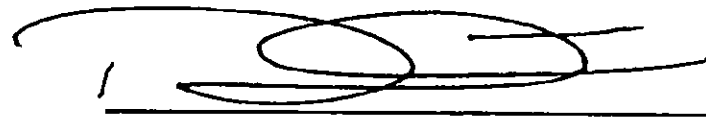
16 13. I do not recall during any of these conversations was there any objection by any of those  
17 present that Trust No. 3 had not been allocated a portion of the Texas Property when the  
18 estate tax return for Mr. Connell had been prepared following his death.

19 14. Although I would not have prepared the documents to legally change title of the share of the  
20 Texas Property from the Connell Family Trust to the MTC Living Trust, not being licensed  
21 in the state of Texas, I had offered my services to assist in finding and working with a Texas  
22 attorney who could accomplish this task.


23 15. My offer to assist with the transfer of the Texas Property was respectfully declined by  
24 Jacqueline, Kathryn, and Eleanor. I was informed that they were concerned with the fees  
25 and costs to effectuate the formal transfer of the proportional interest in the Texas Property  
26 to the MTC Living Trust and that their plan was to take care of the transfer in the future as  
27 they did not yet want to spend the legal fees necessary to accomplish this task.  
28

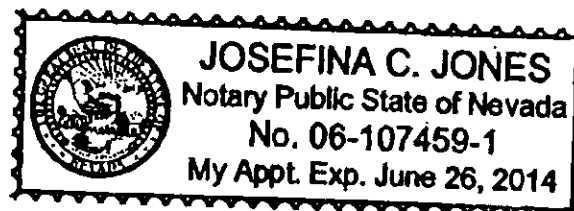
THE RUSHFORTH FIRM, LTD.  
Telephone: 702-255-4552 / Fax: 702-255-4677  
9505 Hillwood Drive, Suite 100  
Las Vegas, Nevada 89134-0514

- 1 16. From those meetings in which the Texas Property interest belonging to the MTC Living  
2 Trust was discussed, I was confident that I had adequately done my job of explaining to  
3 them the need to cleanly separate the Texas Property in accordance with the exercise of  
4 Marjorie's power of appointment and in turn for each of the Connell Family Trust and the  
5 MTC Living Trust to each legally hold title to its proportional interest in the Texas Property.  
6  
7 17. In my discussions with Eleanor, she did not indicate to me that she felt that the MTC Living  
8 Trust did not have a legal interest in the Texas Property.  
9  
10 18. At the conclusion of these meetings, in collective sense, it was my impression and  
11 understanding that Jacqueline, Kathryn, and Eleanor had decided that they would forego  
12 the expense of making the legal transfer of the Texas Property and instead were choosing  
13 to divide the income in the same proportional interests belonging to the MTC Living Trust  
14 and Eleanor's interest in the Connell Family Trust.  
15  
16 19. It was my hope that they would take my advice, for both legal and tax purposes, and  
17 effectuate the legal transfer of the Texas Property with a Texas attorney.  
18  
19 20. I am willing and able to testify to all of the statements made herein.  
20  
21 I certify under penalty of perjury that the foregoing is true and correct.  
22  
23  
24  
25  
26  
27  
28

  
DAVID A. STRAUS, ESQ.

SUBSCRIBED AND SWORN TO OR  
AFFIRMED by me on April 9, 2014.

  
NOTARY PUBLIC



**EXHIBIT G**

**EXHIBIT G**

April 29, 2014

Joseph J. Powell  
The Rushforth Firm  
P O Box 371655  
Las Vegas, Nevada 89137-1655

Re: Marjorie Connell, Letter of Intent

Dear Mr. Powell,

I am writing this letter on behalf of Jacqueline Montoya and Kathy Bouvier regarding the intentions and wishes of Marjorie Connell, their grandmother, after she passed away.

I believe some background information would be helpful in order in to assist you. My name is Mozelle Miller and Marjorie Connell was my aunt (Aunt Marge). Aunt Marge was married to William Connell (Uncle Bill), my mother's (Eleanor Hopkins) brother. Eleanor Hartman Ahern (Ellie) is the daughter of Aunt Marge and Uncle Bill, and she is my cousin. Jacquie and Kathy are Ellie's daughters and are also my cousins.

I have always been close with Aunt Marge and I always enjoyed visiting with Aunt Marge whether it was in Nevada, Texas or on occasion in New Mexico. My husband, Robert Miller, and I became involved in the oil and gas side of the ranch in Upton County, Texas after my mother, Eleanor Hopkins, died in 1990. At that time we became involved in understanding what was involved in running the business side of the ranch. We met Aunt Marge in Midland, Texas one to two times a year, and she mentored us in how the oil and gas business was run. Ellie came with her mostly and on occasion Jacquie would come.

We also visited Aunt Marge once or twice a year in Las Vegas and during our conversations we began to understand what Aunt Marge wanted upon her death. She was already grooming her granddaughter, Jacquie, to take over when she died by letting her deposit checks for her, keep the books, post the information to the ledger(s) that she kept, in general doing what Aunt Marge had always done.

Aunt Marge told my husband and I that she was leaving 35% of the oil and gas part of her estate, including damages, signing bonuses and all other money relating to the ranch to Ellie, and the remaining 65% of the oil and gas part of her estate, including damages, signing bonuses and all other money relating to the ranch to Jacquie and Kathy to be split equally. She also told us that she was leaving \$300,000 cash to Ellie upon her death. Even though everything was left to Aunt Marge upon Uncle Bill's death, Aunt Marge began giving 35% of the oil and gas interest to Ellie so that she would have an income to live on.

Aunt Marge also told us on numerous occasions that the reason she was splitting up the oil and gas interest the way she did, was because she did not trust Ellie to do the right thing by her daughters Jacquie and Kathy. Aunt Marge was always afraid that Ellie would do exactly what she is doing now, which is trying to get all the oil and gas interest and other income from the ranch for herself and leave her own daughters out entirely.

I believe that Aunt Marge and Uncle Bill would be absolutely appalled at what Ellie is doing to her daughters. I never would have thought that Ellie could do this to Jacquie and Kathy. Aunt Marge wanted all the ranch money to be split 35% (for Ellie), and 65% (for Jacquie and Kathy) so there would be no question that her granddaughters would get what she wanted them to have; and there would be no question regarding her wishes and intentions upon her death.

I hope this letter helps Jacquie and Kathy, and helps you to understand what Aunt Marge wanted for them. Aunt Marge loved Ellie, Jacquie and Kathy and only wanted the best for all of them. She believed the way she split the oil and gas interest in Upton County, Texas was the most equitable and best way for everyone and their families to have a comfortable life.

If you have any questions or if I can help in any other way, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Mozelle Miller".

Mozelle Miller  
8140 E. Whitehorn Cir  
Scottsdale, Arizona 85266

Cell: 214 801-1516



**EXHIBIT H**

**EXHIBIT H**

8/25/2014

Statement of Cedric Phillips regarding Marjorie Thrash Connell.

I am Cedric Phillips, husband of Sarah Thrash Phillips.

I retired from work in the fall of 1992. In the spring of 1993 my wife and I bought a motor home with the intent of visiting Alaska.

We traveled I-20 to El Paso. Then west to Phoenix, Arizona, continuing west and north to Las Vegas, Nevada to visit Sarah's sister Marjorie Connell. From there we would travel north to the Alcan Highway and continue to Alaska.

We visited Marjorie for several days, getting acquainted and enjoying our visit. Marjorie took us to all the sights.

We spent three or four discussion periods sitting at her dining room table. I told her my life story and she told me hers. She explained how she had met her husband Bill Connell and they had made their life in Las Vegas. Bill had a ranch in Midland, Texas where, years before, oil had been discovered. They were wealthy.

She told me that at that time, oil production from the Midland basin was declining along with the price. Marjorie was concerned. Bill had died a few years before and she was managing the Connell estate. She was accumulating the money from the oil production and sharing some of it with Bill's daughter Ellie and her two daughters Jacquie and Cathy. She shared the funds with them as needed but maintained control herself. Jacquie and Cathy were young and inexperienced while Ellie, she said, was incapable of wisely handling money. She was very gullible and easily manipulated. She was prone to get rich quick schemes. Thus, Marjorie was careful in her giving to all of them. Especially Ellie. Marjorie's husband Bill knew this and it was his decision to carefully dole out money to the family. Marjorie was following the agreement and his wishes.

Marjorie further stated that she was concerned about the future of the Connell estate if she were to die. She and Bill had agreed that, at both their deaths, to divide it one-third to Ellie and one third to each of the two girls. Sarah recalls a division of 65/35 being mentioned, which is basically one third to each of them. Marjorie was, at the time, consulting with a lawyer about the estate. She was also working with Greg Kincaid of the Smith-Barney brokerage firm to manage her investments. She asked me several estate related questions to which I responded. But, she also asked several to which I could not. We met Greg, were impressed sufficiently that we also invested some money in Smith Barney. I became impressed with Marjorie's intelligence. (I believe Smith Barney was later bought by Merrill Lynch.)

I remember Marjorie's one-third division discussion because, at that time, I wondered how hard it would be to wisely manage the income from an oil field. I thought how

fortunate Ellie and the girls were to receive such an inheritance. Ellie would receive one-third and the girls two-thirds, or one third each.


Marjorie never mentioned how much money she had and we never asked. But, with every visit then and in the following years Marjorie spoke of the estate and how she was managing it. She was always talking of problems with Ellie trying to find out details about it. She locked the estate papers in a safe in her office to keep them away from Ellie. She expected Ellie to sue her at any time to gain more money. Once, Marjorie was upset because Ellie had bought a truckload of oatmeal and rice for some "doomsday" project. Marjorie lived in dread of the time when she would die and what would happen with the management of the estate.

I must note herein that Sarah and I didn't see Ellie very often during our visits. She seldom came around. But, when we did see her, she was always friendly and courteous to us. She invited us for dinner once. The meal was cooked in a BBQ pit in cast iron pots with lids on them. The design of the BBQ pit was such that I built one back home in Alabama. We became leery of her when she tried to get us to invest in some telephone scheme she was involved in and we refused. She became irritated and never came around us any more during that visit.

Looking back at my interactions with Marjorie, I can think of three topics that always came up during our dining room table discussions.

1. Marjorie's finances, her investments, the oil wells, Ellie and the girls.
2. The past. She loved to talk about the past, especially her life with Bill. She openly told of many things he had done in his life. Such as gambling trips, cattle, his association with questionable characters. She said he claimed he killed a man when he was young. She said they loved each other but she quickly learned not to question his business. She had an extremely sharp memory.
3. Jokes and merriment. Marjorie loved a good joke. Her language could be a little salty. I recall telling her on her 90<sup>th</sup> birthday that, having achieved age 90, she qualified to be called an old goat.

I did not attend Marjorie's 90<sup>th</sup> birthday party. Sarah and Sheila attended and remained a few days. I recall calling to speak with Sarah and wound up also having a bull session with Marjorie. We laughed and joked for a few minutes. That's when I called her an old goat. I detected no difference in her mental ability. I saw nothing to cause me to think differently of her mental ability. Marjorie was mentally the same as always.

  
Cedric Phillips  
106 Deer Valley Pkwy  
Rainbow City, Al. 35906

**EXHIBIT I**

**EXHIBIT I**

August 25<sup>th</sup>, 2014

Statement of Sarah Thrash Phillips regarding Marjorie Thrash Connell.

I am Sarah Thrash Phillips, the younger sister of Marjorie Thrash Connell, deceased. The following are some of my memories of Marjorie Connell, her life in Las Vegas, her marriage to Bill Connell, and her relationship with stepdaughter Ellie Connell.

Upon graduation from Cleburne County High School in Heflin, Alabama, Marjorie attended Anniston Business College. Marjorie contracted Tuberculosis and moved out west to a dry climate for her health. She met and married her husband Bill Connell with Las Vegas as their home. Marjorie had a keen business sense and advised husband Bill Connell throughout their marriage on financial matters. They were a team. Marjorie knew all the details of their finances.

For the thirty or forty years before her death, I had, on average, at least one contact per month with Marjorie. Contact with her was usually by lengthy phone conversations, but also included many visits with her over the years. She freely discussed her life, her problems, her joys, sorrows and her relationship with her family.

Marjorie was a generous person with both her resources and her time. Over the years, she sent three to four hundred dollars to me as surprise gifts. When she died, she left a list of her personal items and who in the family would receive what. She left me a necklace and an Order of the Eastern Star pin, knowing that I belonged to the Eastern Star.

She would, pridefully, say to me, "I love you Sis. You never try to get anything from me." And, I didn't. I loved her for herself. And she loved me. After my divorce in 1980, she and Bill invited me to come to Las Vegas to work and live with them. I tell this to illustrate our closeness and the fact that I have intimate knowledge of Marjorie and her relationship with Bill and his family. Marjorie was deeply involved in the lives of Bill's daughter Ellie and her two daughters Jacquie and Cathy.

Over the years, I came to know Ellie from Marjorie's discussion of her on the phone and my visits with her in Las Vegas. When Bill died, I came to Las Vegas and stayed several days with her, Ellie, and the girls. I also visited with Ellie during other visits I had with Marjorie.

I cannot recall ever having a visit or a conversation with Marjorie that Ellie's name didn't come up. Marjorie was always concerned about some problem or incident involving Ellie. Ellie couldn't manage her finances. She was always wanting more money from Marjorie. Marjorie considered Ellie to be very gullible, vulnerable, open to manipulation, and unable to make good decisions. She said this was why Bill prepared his Last Will and Testament as he did. Both he and Marjorie considered Ellie to be untrustworthy and unable to manage her life.

I recall one incident when she met a man from Florida on the internet. His name was Earl Whiten. He came to Las Vegas to meet Ellie with his entire belongings in one suitcase. He was some sort of religious man. He married himself and Ellie, himself. He considered them to be married under the eyes of God. They moved out of state and lived in the wilds in some lifestyle akin to a hippy commune. They would party at a bar all week and Earl would hold religious services in the same bar on Sunday. Marjorie said that if she looked closely at Ellie's requests, she could usually find someone in the background advising and manipulating her. She didn't think Ellie was mentally capable of dreaming up some of the schemes and reasons she used to justify her requests for money. One scheme involved telephones. When my husband and I declined to participate, she became irritated at us and we never saw her again during our visit.

Earl and Ellie moved back to Las Vegas, Marjorie was upset every time they came around. Ellie would prowls around the house looking for something. She would go through Marjorie's financial papers until Marjorie locked everything up in a safe. Then, she asked Marjorie for the key to it. Marjorie refused her request.

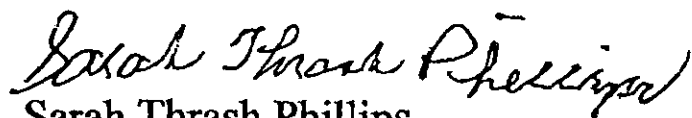
She complained that Ellie was always searching, begging, pleading and threatening in an effort to get more money from her. Marjorie felt that Ellie had little concern for her personal health.

In March, 2008, my Niece and I went to Las Vegas to attend a surprise 90<sup>th</sup> birthday party for Marjorie arranged by Jacquie and Cathy. Marjorie seemed predisposed to rely on Jacquie more than the others. Jacquie was, perhaps because she was more available, the one who visited and took care of Marjorie's needs and desires. Marjorie said that she was training Jacquie to take care of things when she was gone. She said several times over the years that the Connell estate was to be divided 65% for the girls and 35% for Ellie. My husband, Cedric Phillips also heard her make this statement. She spoke of the arrangements she had made with her lawyer for the estate. She definitely did not want Ellie involved in any estate decisions. We stayed with Marjorie 3 ½ days. She was ecstatic the entire time with having us around. I now think that she realized somehow that it would be our last visit with her. I saw no signs of mental impairment during the visit. I recall thinking that Marjorie must really be concerned over the future of the Connell estate because she spoke of it so much.

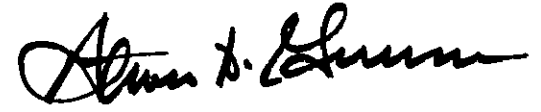
Marjorie had a quick wit and a financial mind. She could sort details and accurately analyze a problem or situation. She was a good judge of human character and she valued honesty. I never detected any decline in her mental capacity as she aged and became infirm. Marjorie was hospitalized the last several months of her life. Even after she had the breathing tube installed and couldn't talk, she communicated her thoughts via handwritten notes. When I would call, she would hear me and write a note of answer which the care-lady would read to me over the phone. I am convinced that Marjorie had her full mental abilities and knew exactly what she was doing until the last few days prior to her death.

In the years after Bill died, Marjorie became increasingly concerned about Ellie, her actions, honesty, and her intentions. Marjorie loved Ellie as a family member, but simply did not trust her and her abilities. I am convinced that Marjorie managed the Connell estate in a manner that protected its integrity and growth. From my memories of all our conversations over the many years, I am convinced that the Connell estate was managed and divided as Bill and Marjorie wanted. I believe that Bill Connell knew that the best interests of the Connell estate would be served under the guidance and supervision of Marjorie. When Marjorie died, she had led the Connell estate into increasing prosperity with each passing year.

It should be noted that in my lifetime and all my interactions with Marjorie, I never asked Marjorie for anything. Other than the above mentioned gifts from her, I never received anything from her. I have nothing to gain or lose from this document.



Sarah Thrash Phillips  
106 Deer Valley Pkwy  
Rainbow City, Al. 35906



CLERK OF THE COURT

**SUPPL**  
JOSEPH J. POWELL, ESQ.  
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[gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)  
*Attorneys for Kathryn A. Bouvier*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of  
THE W. N. CONNELL AND MARJORIE  
T. CONNELL LIVING TRUST, Dated  
May 18, 1972,

CASE NO. P-09-066425  
DEPT NO. XXVI (26)

Date of Hearing: January 14, 2015  
Time of Hearing: 10:00a.m.

An Inter Vivos Irrevocable Trust.

**SUPPLEMENT TO REPLY IN SUPPORT OF  
COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M.  
MONTOKA FOR SUMMARY JUDGMENT ON PETITION FOR  
DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF  
PENALTIES, AND FOR OTHER RELIEF; AND,  
OPPOSITION TO ELEANOR'S COUNTERMOTION FOR  
SUMMARY JUDGMENT**

Kathryn A. Bouvier ("Kathryn") and Jacqueline M. Montoya ("Jacqueline")  
hereby submit the following Supplement to their REPLY IN SUPPORT OF  
COUNTERMOTION FOR SUMMARY JUDGMENT ON PETITION FOR  
DECLARATORY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF  
PENALTIES, AND FOR OTHER RELIEF, which was filed herein on January 9, 2015;  
and further, respond herewith to the late-filed ELEANOR C. AHERN'S (1) REPLY IN  
SUPPORT OF ELEANOR C. AHERN'S MOTION TO DISMISS



1 PETITION FOR DECLARATORY JUDGMENT FOR FAILURE TO STATE A  
2 CLAIM UPON WHICH RELIEF CAN BE GRANTED; (2) OPPOSITION TO  
3 COUNTERMOTION OF KATHRYN A BOUVIER AND JACQUELINE M.  
4 MONTOYA FOR SUMMARY JUDGMENT ON PETITION FOR DECLARATORY  
5 JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR  
6 OTHER RELIEF; AND (3) REPLY IN SUPPORT OF COUNTERMOTION FOR  
7 SUMMARY JUDGMENT, which was not filed and served upon Kathryn and  
8 Jacqueline until on or after 6:30p.m. on January 9, 2015.

9 Initially, the undersigned apologize to the Court for the numerous lengthy briefs  
10 and exhibits which have been submitted to the Court within the last two weeks.  
11 Following the decision of the Court at the hearing on December 4, 2014, to consider  
12 Eleanor's Motion to Continue Hearing and Stay all Pending Matters, time deadlines  
13 were set for the parties to file any additional pleadings and responses to the Petitions  
14 and Motions which were then pending before the Court. The Court set a deadline of  
15 December 24, 2014, for Eleanor to submit her further pleadings and responses.  
16 Kathryn and Jacqueline were then granted a reasonable time thereafter to file replies.  
17 In the days and weeks following that hearing, Eleanor's counsel advised that they  
18 wanted more time to file responsive pleadings and motions. Accordingly, Kathryn's  
19 and Jacqueline's counsel graciously cooperated with the request and it was agreed that  
20 Eleanor would file all her responsive pleadings and motions by January 2, 2014. It was  
21 expected this would then still give Kathryn and Jacqueline reasonable (all though a  
22 very constricted time) within which to file replies as authorized by the Court.

23 Eleanor filed what was thought to be her final responsive pleadings and motions  
24 late on January 2, 2015. Due to the lateness of the filing Kathryn's and Jacqueline's  
25 counsel were unable to review and consider what was filed until the following Monday,  
26 January 5, 2015. Further, while not finally arranged by agreement between counsel,  
27 Eleanor's counsel advised that they wanted to proceed with depositions of Kathryn and  
28 Jacqueline on January 6 and 7, 2015, and while it was not understood that these

1 depositions were intended to go forward prior to the advice received from Eleanor's  
2 counsel, Kathryn's and Jacqueline's counsel again cooperated and Kathryn flew in  
3 from Texas on short notice to attend her deposition on January 7, 2015, and both her  
4 and Jacqueline's depositions were taken on January 6 and 7, 2015, taking up the whole  
5 working portion of those days.

6 Under these time constrictions it was very difficult for Kathryn and Jacqueline  
7 to file their authorized replies to the pleadings and motion submitted by Eleanor late  
8 on January 2, 2015, but they were able to file and serve their Reply and Opposition  
9 timely on January 9, 2015.

10 While not authorized to do so, either by the Court in the deadlines it set, or by  
11 the cooperative extension given to her counsel by Kathryn's and Jacqueline's counsel,  
12 Eleanor served on Kathryn's and Jacqueline's counsel at 6:30p.m., by email to their  
13 office addresses, on January 9, 2015, a belated ELEANOR C. AHERN'S (1) REPLY  
14 IN SUPPORT OF ELEANOR C. AHERN'S MOTION TO DISMISS PETITION FOR  
15 DECLARATORY JUDGMENT FOR FAILURE TO STATE A CLAIM UPON  
16 WHICH RELIEF CAN BE GRANTED; (2) OPPOSITION TO COUNTERMOTION  
17 OF KATHRYN A BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY  
18 JUDGMENT ON PETITION FOR DECLARATORY JUDGMENT, FOR DAMAGES  
19 AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF; AND (3)  
20 REPLY IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT  
21 (hereinafter referred to as "late-filed document"). In the service letter accompanying  
22 the late-filed document it was noted that the document had not yet even been filed with  
23 the Court.

24 This unauthorized late-filed document raises several new issues not addressed  
25 in any of Eleanor's prior pleadings, asserts or implies facts that are not true, and  
26 necessitates the following Supplement and Response from Kathryn and Jacqueline.  
27 Further, Kathryn and Jacqueline have a right to respond to the Opposition filed by  
28 Eleanor under our pleading procedures, and with the understanding of counsel.

A.

**SUPPLEMENT TO REPLY IN SUPPORT OF COUNTERMOTION FOR  
SUMMARY JUDGEMENT**

In her late-filed document, Eleanor asserts that documents submitted by Kathryn and Jacqueline in support of their position and in opposition to her Countermotion for Summary Judgment are not authenticated as admissible evidence and no foundation for their admission has been properly laid. In response to this allegation, it should initially be pointed out that Kathryn and Jacqueline have requested summary judgment on their Petition, Motions and other requests for relief made herein, on the basis of the defenses of Statute of Limitations, Laches, Waiver and Claim Preclusion. Therefore, authentication of evidence relating to the merits of the case was not considered necessary. They did not ask the Court to rule on the merits of the dispute in their initial Countermotion. However, in response to Eleanor's Countermotion filed on January 2, 2015, they did submit that in addition to grounds existing to grant their relief on the defenses asserted, it is sufficiently clear from Eleanor's failure to present evidence showing her claim is just to now also grant summary judgment to Kathryn and Jacqueline on the merits of the parties' claims in these proceedings. Therefore the following authentication is submitted.

The documents in question are three memoranda signed by Marjorie T. Connell, attached as Exhibit "A", "B", and "C" to Kathryn's and Jacqueline's Reply and Opposition, and an intake sheet prepared by an attorney assisting Eleanor with her own estate planning, attached as Exhibit "D". All of these documents had previously been received and exchanged by the parties in prior discovery in these proceedings. The Affidavit of Jacqueline M. Montoya, attached hereto verifies that these four documents were found in the records of Marjorie T. Connell upon her death, when Jacqueline, Kathryn and Eleanor went through her records following her death. Exhibits "A", "B" and "C" each bear the signature of Marjorie T. Connell, which Jacqueline is very familiar with, and therefore has attested to in her affidavit that the signatures are those

1 of Marjorie T. Connell. Thus, these three documents are relevant and admissible  
2 evidence in this matter.

3 Exhibit "D" was found in the records of Marjorie T. Connell also by the three  
4 parties, as attested to in Jacqueline's attached Affidavit. This document would qualify  
5 as an "ancient document" under NRS 52.095 in that it is more than 20 years old  
6 (prepared obviously in the mid 1980's from the information on the document); it is in  
7 such condition as to create no suspicion concerning its authenticity (i.e. the matter  
8 reported in the document is obviously accurate and information an attorney would want  
9 from his or her client in preparing an estate plan); and, it was found in a place where  
10 it could likely be expected to be found. As Eleanor is Marjorie's daughter, lived with  
11 her as a youth and an adult off and on, and likely confided in Marjorie and made her  
12 aware of her own estate planning, it is reasonable that the document was found among  
13 Marjorie's records. However, if Eleanor still objects to the authenticity of the  
14 document, one can see that the document itself provides consistent and true information  
15 regarding Eleanor's family, assets, desires for her estate planning, and was prepared  
16 under the auspices of her known attorney at the time, Mr. Steven Scow, as stated on the  
17 document. NRS 52.015 provides that authenticity is "satisfied by evidence or other  
18 showing sufficient to support a finding that the matter in question is what the proponent  
19 claims". Thus, under the catch-all provisions of NRS 52.015, the document should be  
20 recognized as authentic.

21 In addition to authenticating Exhibits "A-D" submitted with the Reply and  
22 Opposition, Kathryn and Jacqueline attempted to obtain the affidavit of Corey Haina  
23 to verify facts provided to the Court. However, Mr. Haina was difficult to contact and  
24 it was not possible to obtain his affidavit and timely file the Supplement to the Reply  
25 and Opposition by January 9, 2015. However, over the weekend they were able to  
26 obtain his affidavit and it is attached hereto also. In his affidavit, he verifies the  
27 statements made concerning the income allocated to Eleanor and Marjorie (and  
28 thereafter to Kathryn and Jacqueline) from the Texas oil properties for inclusion in

1 their Federal income tax returns over the years. He further explains the use of the tax  
2 identification number given to Trust No. 2 under the main 1972 Trust. He notes that  
3 the placing of a tax identification number for Trust No. 2 next to the signatures of  
4 Marjorie and Eleaonor on various Oil Division Orders and leases was simply done for  
5 the use of the oil companies who wanted an entitty trust number for their reference,  
6 rather than the use of Marjorie's and Eleanor's personal Social Security numbers which  
7 had been used in prior times when dealing with the oil companies. Regardless of the  
8 designation of the tax identification number of Trust No. 2 on the documents from time  
9 to time, this did not equate to a recognition, either by the oil companies, or by Marjorie  
10 and Eleanor, that Eleanor was the sole owner of the Texas oil properties. In fact each  
11 Division Order and Lease consistently noted that the owner of the Texas oil properties  
12 they were dealing with was the main 1972 Trust, as has been admitted to by Eleanor  
13 in her briefing. The recognition of ownership under the main Trust terms was done  
14 with the division of the oil income between Marjorie (receiving 65%) and Eleanor  
15 receiving (35%) in the K-1's and tax reporting information and returns provided to the  
16 Internal Revenue Service.

17 The creative theory and argument Eleanor has asserted in these proceedings, that  
18 the Division Orders and Leases somehow evidence her claim to ownership of all the  
19 Texas oil property, was obviously concocted by her Texas attorney (only engaged in  
20 2012) and her "personal advisors" (who only came into her life during the last few  
21 years) who have been advising and encouraging her to make belated objections and  
22 claims to the right to income distribution from the Trust. There is no evidence that  
23 Eleanor understood the ins-and-outs of the Texas oil property income until at least  
24 2012-2013 after she came under the influences of these persons. The several  
25 statements of persons who knew well Marjorie and Eleanor over the years, attached as  
26 Exhibits "G-I" to Kathryn's and Jacqueline's Supplement to their Reply and  
27 Opposition, establish that Eleanor was not involved with Trust administration and  
28 distribution of oil income over the years. While she complained at times and pestered

1 Marjorie to give her more money from time to time, as evidenced in her deposition, she  
2 had no understanding of how the interest and rights of the beneficiaries of Trust No.  
3 2 and Trust No. 3 were determined under the main 1972 Trust after the death of W. N.  
4 Connell. Thus, for her to claim or insinuate now that the placing of the tax  
5 identification number next to her and Marjorie's signatures on Division Orders and  
6 Leases was intended by them to acknowledge who owned the Texas oil property is  
7 clearly illogical and unsupportable under the facts in this case. While the letters  
8 attached as Exhibits "G-I" were provided in discovery as statements of persons having  
9 knowledge of material facts in this case and are not submitted in affidavit form, it is  
10 requested that the Court recognize them under NRCP Rule 56(f) as evidence and  
11 testimony which is available to refute the basis for and assertions made in Eleonor's  
12 Countermotion for Summary Judgment.

13 B.

14 **REQUEST TO ALLOW FORMAL AMENDMENT, IF NECESSARY, OF**  
15 **KATHRYN'S AND JAQUELINE'S PLEADINGS IN THESE PROCEEDINGS**  
16 **TO INCLUDE THEIR CLAIMS AND DEFENSES TO ELEANOR'S CLAIMS**  
17 **AND POSITION ASSERTED IN THESE PROCEEDINGS UNDER THE LEGAL**  
18 **THEORIES OF THE STATUTE OF LIMITATIONS, LACHES, WAIVER, AND**  
19 **CLAIM PRECLUSION, ENFORCEMENT OF THE NO-CONTEST PROVI-**  
20 **SIONS UNDER THE TRUST, REMOVAL OF ELEANOR AS TRUSTEE OF**  
21 **THE TRUST, AND FOR CONSEQUENTIAL DAMAGES CAUSED BY HER**  
22 **BREACH OF HER FIDUCIARY DUTIES.**

23 Eleanor has asserted in her late-filed document that Kathryn and Jacqueline have  
24 failed to assert in pleadings in these proceedings the claims they are now making, relief  
25 they are seeking, and defenses they are asserting. Further, she asserts that their  
26 Countermotion "seeks an assortment of relief based on claims Jacqueline and Kathryn  
27 have never alleged, defenses they have never alleged, and conclusions unsupported by  
28 law or fact in violation of EDCR 2.2(c). EDCR 2.20(c) requires that in filing a motion

1 a party must cite to points and authorities supporting the claim for relief. While there  
2 has been a plethora of various petitions, motions and countermotions asserted by all  
3 parties in these proceedings wherein citation has been made to legal authority  
4 supporting Kathryn's and Jacqueline's positions in these proceedings, in their most  
5 recent Countermotion for Summary Judgment filed herein on December 24, 2014, and  
6 their further replies thereto and in opposition to the Countermotion filed by Eleanor,  
7 sufficient citation has also been made to support Kathryn's and Jacqueline's positions  
8 and requests for relief in this case.

9 Further, at the hearing before the Court on December 4, 2014, the Court  
10 recognized the confusion and numerous pleadings which had previously been filed by  
11 the parties, in addition to the initial Petition filed by Kathryn and Jacqueline, and the  
12 Objection thereto filed by Eleanor. A trial was initially set in February, 2014, but was  
13 continued at the last moment to consider late-filed defenses Eleanor submitted with her  
14 motion for a continuance. Thereafter, in early 2014 several additional motions and  
15 petitions were filed by Jacqueline seeking a summary decision on her initial petition,  
16 based upon equitable principles, including the doctrine of laches, as well as the  
17 interpretation of the Trust language itself. When these Trust dispute motions and  
18 petitions were set to be heard in May, 2014, Eleanor again filed a motion to continue  
19 any hearing thereon until after the Court had held an evidentiary hearing on Eleanor's  
20 Will Contest, which had been filed in a separate case in early 2014. The Court in its  
21 order from that May hearing granted Eleanor's motion and ruled that it would put off  
22 the consideration of all matters relating to the Trust dispute until after the Will Contest  
23 trial, which was then scheduled to be heard in early 2015.

24 Kathryn was not an official party to these proceedings until an appearance was  
25 made on her behalf in early June, 2014. Accordingly, with the delay of the Trust  
26 dispute proceedings ordered by the Court at the hearing in May, 2014, Kathryn was not  
27 required to file any matters relating to the Trust dispute until after the Court had ruled  
28 on the Will Contest at the trial set in early 2015. After Eleanor obtained her current



1 counsel, her third in these proceedings, her current counsel did not understand that the  
2 proceedings in the Trust dispute had been delayed until after the trial of the Will  
3 Contest. In preparing for the hearing on December 4, 2014, and responding to  
4 Kathryn's and Jacqueline's Motion to Enforce Settlement Agreement, they erroneously  
5 asserted that the Trust dispute motions and petitions which had been filed were set to  
6 be heard before the Will Contest trial. The undersigned counsel attempted to correctly  
7 inform them of the prior above-mentioned scheduling of the Trust dispute matters by  
8 the Court, but to no avail. Therefore at the hearing on December 4, 2014, when  
9 scheduling was discussed, the Trust dispute issues (motions and petitions) were  
10 suddenly placed in advance of the trial on the Will Contest, and the Court directed all  
11 parties to then make sure that they clarified and submitted to the Court in their further  
12 petitions and pleadings all of their claims and defenses in the Trust dispute  
13 proceedings. Kathryn and Jacqueline did this in their Countermotion for Summary  
14 Judgment submitted on December 23, 2014, the deadline set by the Court for  
15 submission by all parties of further pleadings. In that Countermotion, Kathryn asserted  
16 the defenses of Statue of Limitations, Laches, Waiver and Claim Preclusion to  
17 Eleanor's claims in these proceedings, joined in by Jacqueline. Jacqueline had  
18 previously clearly advised the Court and Eleanor in her initial petition, and in her  
19 motions and petitions filed in early 2014, that she was asserting the defense of laches  
20 and detrimental reliance to Eleanor's claims and position in the Trust dispute  
21 proceedings.

22 Therefore, for Eleanor through her current attorneys, only coming on board in  
23 late November, 2014, as Eleanor's counsel, to assert that Kathryn and Jacqueline had  
24 not effectively asserted their claims and defenses of statute of limitations, laches,  
25 waiver and claim preclusion is very disconcerting. Given the untimely filing by  
26 Eleanor of her own Countermotion, replies and pleadings in this case, and the taking  
27 of advantage of extensions of time to file graciously granted to her by Kathryn and  
28 Jacqueline, the Court should not countenance the attempt now being made by Eleanor



1 to remove from the Court's consideration Kathryn and Jacqueline's Countermotion for  
2 Summary judgment based upon the statute of limitations, laches, waiver, and claim  
3 preclusion, or their requests for relief, including damages for Eleanor's failure to file  
4 an accounting, enforcement against Eleanor of the Trust's no-contest clause,  
5 consequential damages suffered and removal of Eleanor as Trustee as a result of her  
6 breach of her fiduciary duties.

7 Proceedings in Trust disputes are often not as clearly formulated in initial  
8 pleadings filed by parties. In Trust matters, the Court sits as a court of equity. The  
9 various claims of parties may come out in initial petitions filed or arise and be included  
10 in later petitions and motions, as occurred in this case. Matters and claims arise and  
11 are further clarified during the proceedings, such as the claim against Eleanor for an  
12 accounting which Kathryn and Jacqueline asserted in petitions filed in 2014, and the  
13 request that Eleanor be removed as Trustee. Eleanor's prior counsel, several months  
14 ago, recognized the need for an accounting based upon written demands therefore  
15 made by Kathryn and Jacqueline to Eleanor and her counsel, as set forth in their  
16 Countermotion for Summary Judgment. At the time of the settlement conference with  
17 Judge Robert Saint Aubin on October 15, 2014, Eleanor and her attorneys provided a  
18 letter from an accountant simply saying what income had been deposited in a Trust  
19 account, and what monies remained in that account at the time. It was agreed between  
20 the parties and counsel at that time that the letter was only a temporary review of one  
21 of the Trust's bank accounts and not the complete Trust accounting which needed to  
22 be provided, and that the accounting would be forthcoming.

23 However, as the Court is aware, the settlement conference with Judge Saint  
24 Aubin, and further settlement negotiations between the parties, resulted in what  
25 Kathryn and Jacqueline understood was a global settlement of the Trust dispute and  
26 Will contest on October 22, 2014, evidenced by a Court Reporter's Transcript.  
27 However, that purported settlement was rejected by Eleanor with the firing of her  
28 attorney at the time (her second attorney representing her in these proceedings), and

1 then after dismissing her second attorney (all within a very short period of time) she  
2 engaged her current counsel to represent her. In this confusing and exasperating  
3 process, the promise of Eleanor to provide the accounting has apparently been  
4 forgotten and ignored. Nonetheless, it was properly made to Eleanor and her counsel  
5 and with their promises to provide the same no more formal request has been needed  
6 to have obligated Eleanor to provide the accounting.

7 With respect to Kathryn's and Jacqueline's claim that Eleanor has violated the  
8 no-contest provisions of the trust and should forfeit her benefits thereunder, Eleanor  
9 and her counsel were made aware of this claim in Jacqueline's Objection to Eleanor's  
10 own claim for tortious interference with contract, filed in the spring of 2014, where in  
11 it was noted that Eleanor herself was in violation of the no-contest clause, and in the  
12 ongoing settlement negotiations of the parties before and after the Settlement  
13 Conference with Judge Saint Aubin. No objection as to timeliness was ever raised by  
14 Eleanor or her various counsel during these proceedings to the assertion against her  
15 of the no-contest provisions. At the hearing on December 17, 2014, after the Court had  
16 denied Kathryn's and Jacqueline's Motion to Enforce Settlement, the Court itself  
17 warned Eleanor through her counsel of the potential risks she was taking in rejecting  
18 a settlement and opting to proceed with the Trust dispute. No objection was raised at  
19 that time by Eleanor as to the timeliness of the pleading of the claims and defenses  
20 asserted by Kathryn and Jacqueline, which could cause her the potential adverse  
21 consequences she might suffer, clearly including the risk of possibly losing her benefits  
22 under the Trust's no-contest provisions.

23 However, to resolve any basis that Eleanor may otherwise have to the Court  
24 considering all the claims and defense that they have raised and clarified (as directed  
25 by the Court at the December 4, 2014 hearing), Kathryn incorporates as her pleadings  
26 in this Trust dispute proceeding the defenses and claims made in the Countermotion  
27 she and Jacqueline submitted on December 23, 2014. Further, Jacqueline (and to the  
28 extent otherwise deemed necessary) Kathryn, each request the Court to allow them to

1 amend their pleadings in these proceedings to formally add the defenses of statute of  
2 limitations, laches, waiver and claim preclusion, as asserted both in petitions and  
3 pleadings filed before December 23, 2014, and in their Countermotion filed on  
4 December 23, 2014, and to include in the claims for relief the following claims:

5 a. That under the main 1972 Trust, and with respect to the Texas oil property,  
6 it be determined that Eleanor received only the right to receive 35% of the income  
7 from the property during her lifetime, with the remaining 65% share going initially to  
8 Marjorie while she was alive, and then to Kathryn and Jacqueline through Marjorie's  
9 MTC Living Trust after Marjorie's death.

10 b. That Eleanor breached her duties as Trustee of the main 1972 Trust by  
11 cutting off and refusing to distribute to Kathryn and Jacqueline their 65% share of the  
12 Texas oil property income beginning approximately in June, 2013.

13 c. That as a result of Eleanor's breach of duties and shown unfitness to serve  
14 as trustee, she should be removed as the Trustee of the main 1972 Trust and of the  
15 subtrusts thereunder, including the separate property trust.

16 d. That due to Eleanor's breaches of her fiduciary duties and contest of the  
17 Trust and its provisions in these proceedings, she should be required to account and  
18 pay to Kathryn and Jacqueline all consequential damages they have suffered, including  
19 but not limited to restoring to them all of the income which should have been  
20 distributed to them.

21 e. That Eleanor be required to reimburse and pay to Kathryn and Jacqueline  
22 all of the attorney's fees they have incurred in prosecuting and defending in these  
23 proceedings.

24 f. That the no-contest provisions of the Trust should be enforced against  
25 Eleanor causing her to forfeit any further benefits and interests under the Trust.

26 NRCP Rule 15(a) provides that "a party may amend the party's pleading . . . by  
27 leave of court . . . : and leave shall be freely given when justice so requires." NRCP  
28 Rule 15(b) further provides that: "When issues not raised by the pleadings are tried by

1 express or implied consent of the parties, they shall be treated in all respects as if they  
2 had been raised in the pleadings. Such amendment of the pleadings as may be  
3 necessary to cause them to conform to the evidence and to raise these issues may be  
4 made upon motion of any party at any time, even after judgment . . .” Given 1) the  
5 mention of the fact that Jacqueline felt Eleanor’s belated claim to all of the Texas oil  
6 income was not recognizable under various “equitable principles” asserted in her initial  
7 pleading as mentioned above, 2) the filing early in this case of motions and petitions  
8 to deny Eleanor’s claim under the doctrine of laches and detrimental reliance, 3) the  
9 late entry of Kathryn as a party in the proceedings in June, 2014, and her assertion and  
10 summary of her pleadings, defenses and claims in the Countermotion for Summary  
11 Judgment filed herein on December 23, 2014, and 4) the confusing delays and other  
12 unusual events happening in these proceedings, it is respectfully submitted that good  
13 cause exists to consider that Kathryn and Jacqueline have asserted in these proceedings  
14 the defenses and claims set forth in their Countermotion for Summary Judgment, that  
15 Eleanor has been fully aware of these claims and defenses, and it would be most  
16 appropriate to recognize these claims and defenses as having been plead in these  
17 proceedings.

18 The Nevada Supreme Court has held that:

19 “Rule 15(a) of the Nevada Rules of Civil Procedure clearly provides that leave  
20 to amend shall be freely given when justice so requires. . .

21 We have held that in the absence of any apparent or declared reason - such as  
undue delay, bad faith or dilatory motive on the part of the movant - the leave sought  
should be freely given.”

22 See, *Stephens v. Southern Nevada Music Co., Inc.*, 89 Nev. 104, 507 P.2d 138, 139  
23 (1973). See. also, *Adamson v. Bowker*, 85 Nev. 115, 450 P.2d 796, 800 (1969),  
24 wherein the Court stated:

25 “Since the adoption of the Nevada Rules of Civil Procedure we have emphasized that  
26 NRCP 15(a) mandates that leave to amend shall be freely given when justice so  
requires. (Citations) In *Forman v. Davis*, (citation to this U.S. Supreme Court case),  
27 the United Supreme Court said: ‘Rule 15(a) declares that leave to amend “shall be  
freely given when justice so requires”; this mandate is to be heeded’.

28 Clearly in these proceedings, when Eleanor has been fully aware of the relief being

1 sought by Kathryn and Jacqueline during most of this proceeding, aware of the legal  
2 defenses they have raised to her claims and position in this case, and there clearly is no  
3 motive to cause undue delay, of bad faith or dilatory motive on Kathryn's and  
4 Jacqueline's part, the Court should grant their request to amend their pleadings in these  
5 proceedings to include the legal defenses and claims for relief as mentioned above.

6 C.

7 **RESPONSE TO ELEANOR'S SUMMARY OF ALLEGED UNDISPUTED**  
8 **FACTS SET FORTH IN HER LATE-FILED DOCUMENT**

9 In that Kathryn and Jacqueline were not provided the opportunity to read  
10 Eleanor's late-filed document before they timely filed their Reply and Opposition to  
11 Eleanor's Countermotion, following is a clarification of the alleged facts asserted by  
12 Eleanor beginning on page 16 of the late-filed document.

13 a. Asserted Fact No. 1: "The Trust now consists solely of Trust No. 2." This is not  
14 correct. While they have misinterpreted a statement made in Jacqueline's deposition  
15 to arrive at this assertion, the **fact** remains that the main 1972 Trust is still in full  
16 existence and administration, including the subtrusts created thereunder. Eleanor  
17 makes this assertion because she would like it to be the case that Trust No. 3 under the  
18 main 1972 Trust was terminated when Marjorie exercised her Power of Appointment  
19 and appointed her benefits under Trust No. 3 to her MTC Living Trust and Kathryn and  
20 Jacqueline. Then she can wrongfully assert that following Marjorie's death Eleanor  
21 signed oil company leases solely as the only remaining beneficiary and trustee under  
22 the only remaining trust under the main 1972 Trust. This would purportedly confirm  
23 Eleanor's assertion that the oil company thus recognized her as the sole remaining  
24 beneficiary of the Texas oil property income.

25 However, at the time of Marjorie's death in 2009, the main trust was clearly still  
26 being administered, as were the subtrusts thereunder. She had never taken her right to  
27 a 65% share of the Texas oil property rights and benefits out of Trust No. 3. The main  
28 trust continued to hold legal title to the Texas oil property, and it alone had the right

1 to initially receive income payments from the oil companies. In her Power of  
2 Appointment in her Will, effective upon her death, Marjorie simply appointed to her  
3 own MTC Living Trust (with Kathryn and Jacqueline as beneficiaries thereunder) her  
4 rights as the beneficiary under Trust No. 3, including the right to continue receiving  
5 65% of the oil property income. This appointment, however, clearly did not in and of  
6 itself terminate subtrust No. 3. Until the Texas oil property is formally deeded out of  
7 the main 1972 Trust (if ever that becomes the necessary and is the best way to handle  
8 the Trust administration) the subtrusts thereunder remain in full existence. Once this  
9 distribution is formally made, then, at that time, the 35% interest to Trust No. 2 and  
10 the 65% interest to Trust No. 3 can be deeded and the portion deeded to Trust No. 3  
11 could be taken out of Trust (Marjorie had the right during her lifetime) by the MTC  
12 Living Trust and Kathryn and Jacqueline (who received that right under the Power of  
13 Appointment). Further, until Eleanor's death and transfer of all rights and benefits inure  
14 to Kathryn and Jacqueline under Trust No. 2, that subtrust remains a subtrust under the  
15 main 1972 Trust, along with subtrust No. 3, (and as a matter of fact along with the  
16 "separate property" trust created also under the main 1972 Trust by its terms).

17 In order to have terminated subtrust No. 3 upon Marjorie's death, Eleanor as the  
18 surviving and sole-acting Trustee of the main 1972 Trust would have had to distribute  
19 to Trust No. 3 by deed its 65% of the Texas oil property to the appointees of Marjorie  
20 under her Power of Appointment. This never occurred because, as testified to by David  
21 Strauss, Esq., in his Affidavit (submitted with Kathryn's and Jacqueline's  
22 Countermotion) and after Marjorie's death, Eleanor desired and agreed to not make any  
23 formal deeding of the Texas oil property to the subtrusts, and to leave title in the main  
24 1972 Trust, to save on legal fees and undoubtedly to also maximize the savings  
25 received by not creating two separate beneficiaries of the Texas oil properties in  
26 dealing with the oil companies thereafter. Eleanor further requested that Jacqueline  
27 continue to administer the trust responsibilities with respect to the Texas oil properties  
28 associated with receiving oil income payments, depositing of them in the Trust's bank

1 accounts, then separating out and paying to Eleanor her 35% share of the income, and  
2 paying to Kathryn and Jacqueline their 65% share of the Trust income, including  
3 providing tax K-1 Statements for the IRS verifying what income they were entitled to  
4 receive for the filing of their individual tax returns.

5 While it would fit better into Eleanor's concocted scheme to now claim all of the  
6 income from the Texas oil properties, her factual assertion No. 1 is incorrect.

7 b. Asserted Fact No. 3: "Eleanor was appointed and has only served as Co-Trustee  
8 over Trust No. 2 from the time of William's death until the time of Marjorie's death."  
9 This is also untrue. This is a tricky ploy that Eleanor is trying to put over in these  
10 proceedings. While Jacqueline could not clarify this issue in her deposition as she is  
11 not an attorney and repeatedly so mentioned when asked questions concerning the  
12 meaning of trust provisions, we can clearly show that Eleanor's factual assertion is  
13 false.

14 The appointment of Eleanor as a Co-trustee with Marjorie under the main 1972  
15 Trust provisions is not set forth in the FOURTH Article of the Trust dealing with the  
16 administration of Trust No. 2. Rather, it is found in Paragraph 6 in the provisions  
17 under Article SECOND under the main 1972 Trust. It reads as follows:

18 "6. It is the intention of the parties, that ELEANOR MARGUERITE  
19 CONNELL HARTMAN shall be a Co-trustee of the Decedent's separate property in  
20 trust in this Trust to the extent the term 'Trustee', as hereinafter used, shall apply to  
21 her."

22 In prior Paragraph 3. in the same Article SECOND, the Trust provides:

23 "3. The Trustee shall allocate to Trust No. 3 from the Decedent's separate  
24 property an amount as determined in Article THIRD hereof."

25 Accordingly, it is obvious that the Trust terms require and the Trustors expected Trust  
26 No. 3 to receive a portion of the Decedent's "separate property". Thus, when Eleanor  
27 is appointed as a Co-Trustee with Marjorie over the Decedent's separate property in  
28 trust (only meaning in the main 1972 Trust and subtrusts thereunder) her trustee duties  
extended to the separate property of the Decedent placed in subtrust No. 3, as well as  
the portion of his separate property placed in subtrust No. 2. This is further verified by



1 the actual document appointing Eleanor, a copy of which is attached as Exhibit 7 to  
2 Eleanor's Omnibus Opposition and Countermotion for Summary Judgment filed herein  
3 on January 2, 2015.

4 This clarification is important because under Eleanor's belated concocted theory  
5 that she is entitled to all of the income, it fits better to recognize (although incorrectly)  
6 that Eleanor was only appointed as a Co-Trustee over Trust No. 2, rather than a Co-  
7 Trustee over all of the Decedent's separate property owned by the main 1972 Trust and  
8 subtrusts thereunder. With the refutation of this asserted fact, Eleanor cannot  
9 substantiate or logically support her theory.

10 c. Asserted Fact No. 5: "Eleanor was never appointed a trustee over Trust No. 3."  
11 This again is a misstatement by Eleanor. As noted above, with respect to the separate  
12 property of the Decedent allocated to subtrust No. 3, as required by the Trust terms and  
13 verified by the document appointing her, Eleanor was appointed as a Co-Trustee with  
14 Marjorie over all of the said separate property in the Trust, including subtrust No. 3.  
15 Since 65% of the Texas oil property was allocated to subtrust No. 3 under the terms of  
16 the main 1972 Trust, even though no formal deeding occurred in allocating shares of  
17 the Texas oil properties between subtrust No. 2 and subtrust No. 3, Eleanor clearly had  
18 Co-Trustee duties over the 65% share allocated to subtrust No. 3, as well as the 35%  
19 share allocated to subtrust No. 2. Thus, in dealing with the oil companies over the  
20 years Marjorie made sure Eleanor signed on the Division Orders and Leases along with  
21 her signature.

22 d. Asserted Fact No. 6: "Since William's death all royalty payments from the oil  
23 companies were always paid to Trust No. 2". This is a gross misstatement of the facts.  
24 Eleanor makes this assertion because in the oil company Division Orders and leases  
25 beginning in the late 1980's signed by Marjorie and Eleanor as Co-Trustees, they put  
26 the tax identification number of Trust No. 2 next to their signatures. However, it is  
27 important to carefully analyze the asserted evidence Eleanor cites in her late-filed  
28 document on pages 7 and 8, as well as the similar assertions made in her



1 Countermotion for Summary Judgment.

2 For instance, the referenced letter from Halco, dated February 16, 1986 (attached  
3 as Exhibit 15 to Eleaonor's Omnibus Opposition and Countermotion for Summary  
4 Judgment), does request that Marjorie and Eleanor obtain a tax identification number  
5 for the trust. The letter states: "We received your Social Security numbers for Marjorie  
6 T. Connell and Eleanor C. Hartman but because the interest in the Exxon-Cowden lease  
7 is a Trust (i.e. the main 1972 Trust) we must have a Tax Identification Number. Please  
8 obtain this information from your tax accountant and send it to us as soon as possible."  
9 Thus, the oil company was advising Marjorie and Eleanor that it did not want them to  
10 continue using **both** of their Social Security Numbers as tax identification numbers in  
11 dealing with the oil company. Rather, they now needed to obtain another tax  
12 identification number to be used for the Trust, which owned the oil rights.

13 Marjorie, in her hand written note back to the oil company on the same letter  
14 states: "My auditor has advised us to use our Social Security Numbers (i.e not one  
15 Number ) as a Tax identification Number. Other Oil and gas Companies that we have  
16 Royalty interest (with) accept and use our Social Security Numbers." She then again  
17 provides her and Eleanor's personal Social Security numbers in the letter. A copy of  
18 this letter from Halco, and Marjorie's handwritten reply is attached hereto as Exhibit  
19 "A".

20 What this clearly establishes is that from the date of W.N. Connell's death in  
21 1979 until sometime in the mid-to-late 1980's, in dealing with the oil companies in  
22 signing Division Orders and Leases, Marjorie and Eleanor signed and provided their  
23 personal Social Security Numbers as tax identification information to the oil companies  
24 when requested. The main 1972 Trust apparently was never given a tax identification  
25 number. While they were asked in the 1986 letter from Halco to obtain an  
26 identification number for the Trust (meaning the main 1972 Trust) this was not done.  
27 In fact it does not appear that Marjorie and Eleanor obtained a Trust tax identification  
28 number immediately after this correspondence from Halco, but opted to continue using

1 their personal Social Security Numbers in oil company correspondence and dealings  
2 when a request was made for a tax identification number.

3 As Corey Haina has explained in his Affidavit attached hereto, it was decided  
4 at sometime to apply for tax identification numbers for the subtrust No. 2 and subtrust  
5 No. 3 under the main 1972 Trust. Then, it was simply decided to use the tax  
6 identification number for Trust No. 2 which had apparently been acquired sometime  
7 in the late 1980's as the identification number to provide to the oil companies when  
8 such was requested. This made sense because Marjorie and Eleanor were acting as Co-  
9 Trustees over the Texas oil property (per the Trust provisions) and simply providing  
10 the tax identification number for subtrust No. 2 was an easy and simple way to respond  
11 to the oil company requests for a tax identification number, assuming the oil companies  
12 in fact were always making this demand in the late 1980's going forward.

13 However, when each of the Oil Division Orders and Leases submitted as exhibits  
14 by Eleanor with her Countermotion are carefully examined, it is an incorrect statement  
15 to assert that the oil companies **recognized** subtrust No. 2 as the sole owner of the  
16 Texas oil property in the main 1972 Trust. Rather each of the documents shows that  
17 the oil companies knew that the main 1972 Trust was the legal owner of the property,  
18 and Marjorie and Eleanor were simply Co-Trustees of the Texas oil properties owned  
19 by the main Trust. Marjorie herself brought this to their attention in faithfully and  
20 diligently performing her duties as a Trustee.

21 e. Asserted Facts No. 7, No. 8, and No. 10: "From 1989 to 2006, all division orders  
22 issued by oil companies were always signed by Marjorie and Eleanor as Co-Trustees  
23 of Trust No. 2."; "From 1989 to 2006, Trust No. 2's Tax ID number was always used  
24 to identify the owner of all Oil Assets on the division orders signed by Marjorie and  
25 Eleanor, as Co-Trustees of Trust No. 2"; and "In all of Marjorie's correspondence to  
26 the oil companies and handwritten records, Trust No. 2's Tax ID number was always  
27 referenced in identifying the owner of Oil Assets." These three alleged Fact statements  
28 are each incorrect assumptions and assertions. As noted above, the placing of a tax

1 identification number next to their signatures on Division Orders does not equate to  
2 Marjorie and Eleanor signing the Order as Co-Trustees of Trust No. 2. They were Co-  
3 Trustees under the main 1972 Trust, specifically the Decedent's separate property  
4 interests owned by the main 1972 Trust. When the written statements Marjorie has  
5 made attached as Exhibits "A - C" to Kathryn's and Jaqueline's Countermotion are  
6 examined, as well as all of the other evidence showing Marjorie clearly understood and  
7 recognized that she, under subtrust No. 3, owned 65% of the Texas oil property,  
8 Eleanor's assertion that Marjorie would have agreed that the oil property was only  
9 owned by subtrust No. 2 makes absolutely no sense.

10 It further makes no sense on the one had to know that the Texas oil property has  
11 remained titled in the main 1972 Trust since the death of W.N. Connell to the present,  
12 which the oil companies are most certainly aware of and acknowledge consistently in  
13 the listing of owners attached to the various division orders and leases in question, and  
14 on the other hand, to assets that they thought, or Marjorie and Eleanor thought, they  
15 were signing the documents as the co-trustees of Trust No. 2. That they were signing  
16 as co-trustees of the Texas oil property (Decedent's separate property) owned by the  
17 main 1972 Trust in whatever allocated interests were provided for under the main 1972  
18 Trust (which the oil companies were not involved with and had no interest in being  
19 involved with since the property was legally titled solely in the name of the main 1972  
20 Trust), is the only accurate conclusion which can be drawn.

21 Accordingly, when the evidence is examined (submitted by Eleanor to try to  
22 show that in dealings after W.N. Connell's death by Marjorie with the oil companies,  
23 she acknowledged or admitted that subtrust No. 2 owned all of the Texas oil property  
24 and was therefore entitled to all of the income therefrom), one can see that Eleanor has  
25 drawn some unfounded conclusions. Prior to the Halco letter requesting a separate  
26 entity tax identification number for the main 1972 Trust, which owned all of the Texas  
27 oil property, it is clear Marjorie and Eleanor were submitting their own personal Social  
28 Security Numbers to the oil companies when a tax identification number was requested.

1 Sometime in the late 1980's, as explained by Corey Haina in his Affidavit attached  
2 hereto, Marjorie understood that an entity tax identification number was best used to  
3 respond to oil company requests for some number. The number which was chosen to  
4 be used was the identification number for subtrust No. 2. This, however, in no way was  
5 meant to communicate to the oil companies, or served as an understanding by Marjorie  
6 and Eleanor, that subtrust No. 2 was the sole owner of the Texas oil property entitled  
7 to all of the income from the property.

8 After W.N. Connell's death, once the oil income was received from time to time  
9 from the oil companies, it was deposited into what was considered the main 1972 Trust  
10 account under Marjorie's control while she was alive, and then under Jacqueline's and  
11 Eleanor's control until Eleanor removed Jacqueline from the account in 2012, after the  
12 rift developed between her and her daughters. All during this time, and even after  
13 Jacqueline was removed from the main 1972 trust account in 2012, the income coming  
14 into the account was divided, with 35% going to Eleanor and 65% going to Marjorie,  
15 and after her death to Kathryn and Jacqueline. This historical evidence, along with the  
16 clear allocation of the Texas oil property between subtrust No. 2 and subtrust No. 3 in  
17 the filing of W.N. Connell's Estate Tax Returns, which then controlled equitable  
18 ownership of the Texas oil property thereafter, testifies to the correctness of the  
19 position of Kathryn and Jacqueline in these proceedings.

20 It should further be noted that when Marjorie died in 2009, a 706 Federal Estate  
21 Tax return was filed as required by law. In that return Marjorie's estate claimed that  
22 she owned 65% of the Texas oil property, and any tax liability resulting from the  
23 inclusion of that valuable asset in her taxable estate had to be paid which was  
24 substantial. This clearly shows, that Marjorie always knew she was the owner of the  
25 65% interest in the oil property, and never believed that Eleanor was just gifting to her  
26 over the years 65% of the oil property income. Thus, when Marjorie appointed her  
27 interest in this oil property to her MTC Living Trust, the right to the 65% share of the  
28 oil property income clearly devolved to Kathryn and Jacqueline. This also refutes any

1 inferences Eleanor has raised and alleged as to the meaning of the placing of subtrust  
2 No. 2's tax identification number next to signatures on the Oil Divisions Orders. It  
3 further evidences the justifiable reliance placed upon Eleanor's failure to ever claim a  
4 right to the property, recognizing it had been transferred to Kathryn and Jacqueline, and  
5 thus having it included in Marjorie's Federal taxable estate. Kathryn and Jacqueline,  
6 in reliance upon Eleanor's actions and representations, have been financially harmed  
7 and prejudiced, by Eleanor's belated claim, after 34 years, to all of the Texas oil  
8 property income.

9 Lastly, and as conclusive evidence that Eleanor's position in this proceeding is  
10 invalid, and judgment should be rendered now against her as requested by Kathryn and  
11 Jacqueline, following is an historical analysis of what happened to all of the separate  
12 property placed by W.N. Connell in the main 1972 Trust, which he and Marjorie  
13 established.

14 In her late-filed document, Eleanor attaches as Exhibit 8 (hi-lighted for emphasis  
15 in footnote 5 on page 3) a copy of the 1944 deed placing title to property in Clark  
16 County, Nevada, in the name of W.N. Connell and his first wife, Marguerite. However,  
17 Eleanor does not then explain what happened to this property. This same property was  
18 deeded to the main 1972 Trust by W.N. Connell when he and Marjorie established that  
19 Trust, and is listed as a separate property which previously belonged to W.N. Connell  
20 on Exhibit "A" of the main 1972 Trust. Since Eleanor in her late-filed document does  
21 not explain what happened to this property, one might conclude, or make the argument,  
22 from this Exhibit 8, that since W.N. Connell put this separate property which he owned  
23 in the Trust, along with his separate Texas oil property, this Nevada separate property,  
24 by being allocated to Marjorie under Trust No. 3, could have been used to obtain the  
25 maximum Marital Deduction in W.N. Connell's Federal and Texas Estate Tax returns,  
26 rather than using the Texas oil property. Then, arguably, all of the Texas oil property  
27 could have been allocated to subtrust No. 2, with Eleanor then being entitled to all of  
28 the income therefrom during her lifetime.

1 One might then further argue that the surviving Trustee and the professionals,  
2 attorneys and accountants, assisting in the preparation of W.N. Connell's Estate Tax  
3 Returns, should not have allocated Texas oil property to subtrust No. 3 (Marjorie's  
4 subtrust). This, it might be argued, was a discretionary mistake on their part. Even  
5 though the Trust terms did not say which of W.N. Connell's separate property was to  
6 be transferred to subtrust No. 3 to maximize the Marital Deduction to save on Estate  
7 taxes payable, arguably, they should have resorted to the Nevada separate property  
8 rather than the Texas oil property under the Trust terms. Thus, arguably, Eleanor  
9 should now be considered the owner of the right to all of the income from the Texas  
10 oil properties as beneficiary under subtrust No. 2. However, such assumptions or  
11 arguments would not be valid.

12 Attached hereto as Exhibit "B" are several documents and deeds showing the  
13 history of the devolution of title to the Nevada separate property W.N. Connell initially  
14 deeded to the main 1972 Trust. This is what the facts show:

15 a. Initially, the joint ownership goes from W.N. Connell and his first wife,  
16 Marguerite, to W.N. Connell alone in 1965, after Marguerite died.

17 b. Title was then placed in the main 1972 Trust.

18 c. Thereafter, in 1975, W.N. Connell and Marjorie T. Connell, as Trustees  
19 of the main 1972 Trust, deeded the property to their daughter, **Eleanor**.

20 d. Eleanor, in the same year, then deeded the property to herself and her first  
21 husband, Robert S. Hartman (the father of Kathryn and Jacqueline).

22 e. In 1980, Eleanor and Robert deeded their property to their 1980 Trust.

23 f. In 1983, with her divorce from Robert, the property was deeded to Eleanor  
24 alone as an unmarried woman.

25 g. In 1984, Eleanor deeded the property to her own Trust, represented by her  
26 attorney, Steven R. Scow who assisted her in the preparation of her 1984 Trust.

27 h. And finally, in 1988, after Eleanor was remarried to John P. Ahern, the  
28 property was deeded to the Trust which he had established.

(It should also be noted that the 1984 deed attached hereto with Exhibit "B" verifies that Steven R. Scow assisted Eleanor with the establishment of her 1984 Trust. This further verifies and provides authentication that Exhibit "D", attached to Kathryn's and Jacqueline's Reply and Opposition filed herein on January 9, 2015, discussed in Jacqueline's Affidavit attached hereto, is in fact the intake document for preparation of Eleanor's 1984 Trust with her attorney, Steven Scow. Therein, Eleanor admits that she only had a right to 35% of the Texas oil property income, and Marjorie owned the rights to the other 65%.)

Based upon the history of the title to W.N. Connell's Nevada separate property placed in the main 1972 Trust, set forth above, the following is clear:

1. When W.N. Connell died in 1979, the only separate property which he owned and which he had put into his and Marjorie's main 1972 Trust, was the Texas oil property.

2. Thus, when his Federal and Texas Estate Tax Returns were prepared, they showed the Texas oil property as the only separate real property owned by W.N. Connell at the time of his death.

3. In complying with the main 1972 Trust terms, in Article SECOND, Paragraph 3, the **only** separate property of W.N. Connell available in the main 1972 Trust was the Texas oil property. Thus, a 65% interest in this property was allocated (per the explicit Trust terms) to subtrust No. 3 (Marjorie's subtrust) in order to claim the maximum Marital Deduction and reduce as much as possible taxes payable on the Federal and Texas Estate Tax Returns.

4. Thus, per Article SECOND and Article THIRD of the main 1972 Trust, 65% of the Texas oil property was allocated to Marjorie as beneficiary under subtrust No. 3, and she had all the rights and benefits to such ownership thereafter, including the right always to 65% of the income earned from the Texas oil property.

5. By the exercise of her Power of Appointment under her 2008 Will, Marjorie transferred to her MTC Living Trust, and Kathryn and Jacqueline as



1 beneficiaries thereunder, her rights under subtrust No. 3, including the right to continue  
2 collecting and receiving 65% of the Texas oil property income.

3       6. Eleanor, as beneficiary under subtrust No. 2, only has the right to  
4 35% of the Texas oil property income during her lifetime, and her claim, first  
5 asserted in 2013, to all of the income, is clearly invalid. She breached her duties  
6 as Trustee, and the no-contest provisions under the main 1972 Trust, by cutting  
7 off and refusing to distribute to Kathryn and Jacqueline their 65% of the Texas  
8 oil property income beginning in approximately June, 2013.

### 9 SUMMARY

10 Most clearly, if not also on the merits, the foregoing discussion and analysis of  
11 Eleanor's claims establishes the clear merit of Kathryn and Jacqueline's Countermotion  
12 for Summary Judgment based upon the statute of limitations, laches, waiver and claim  
13 preclusion. The convoluted inferences Eleanor has drawn from the Oil Division Orders  
14 and Leases argues most persuasively for the need to have Marjorie present to testify as  
15 to the true facts in this proceeding. The claim by Eleanor that the accountant and other  
16 professionals handling the filing of W.N. Connell's Estate Tax Returns committed tax  
17 fraud (i.e. creative tax maneuvering to report Eleanor's generosity) could easily be  
18 refuted by calling these professionals as witnesses, if they were still alive 34 years after  
19 the matters in question. Remember also that Eleanor claims and admits that she had  
20 no involvement with the preparation of the Estate Tax Returns, was unaware of their  
21 filing and who prepared them, and never saw the one still-existing Texas return until  
22 approximately 2012. **Question!** How is it that Eleanor can now assert that the  
23 accountants and professionals preparing the tax returns were falsifying the Returns to  
24 effect her alleged generosity to Marjorie, if she was totally unaware of what was  
25 happening and had no participation in the matter. This is only another clear case of  
26 Eleanor not telling the truth and fabricating whatever claims and facts might suit her  
27 concocted theory generated in or around 2012 to try to gain more of the income coming  
28 in from the Texas oil property. When one falsehood is asserted, it then becomes



1 necessary to make-up additional ones to try to rehabilitate the prior assertions made.

2 Hopefully, the Court will see through this pattern and conduct of Eleanor and  
3 determine that it is now far too late, and totally unfair and prejudicial to Kathryn and  
4 Jacqueline, to allow Eleanor to try to reverse 34 years of history, and seek an interest  
5 in the oil property contrary to the provisions of the Trust and its administration. This  
6 includes the effect of her obviously flimsy challenge to the filing of the Estate Tax  
7 Returns, her efforts to cover-up and attempt to negate her own contradictory conduct  
8 over the years, which evidences her admission to ownership of only 35% of the oil  
9 property income, and her wanting the Court to ignore the income tax returns she has  
10 filed (and the lack of any gift tax returns for alleged gifts to Marjorie, Jacqueline and  
11 Kathryn from 1979-2012). Eleanor's claims and position in these proceedings should  
12 be denied, and Kathryn and Jacqueline's Countermotion for Summary judgment should  
13 be granted.

14 Because of the shortage of time before the scheduled hearing on the parties'  
15 Countermotions for Summary Judgment, Kathryn and Jacqueline request the Court's,  
16 permission, if deemed necessary, to amend their pleadings to comport with and add the  
17 actual claims and defenses they have asserted in these proceedings, as alleged above,  
18 without seeking an order shortening time so the request can be heard at the time the  
19 Countermotions are heard. A separate motion on order shortening time would only  
20 cause more confusion in the already serious late-filing of documents for the Court to  
21 consider, and under NRCP Rule 15(a), a request to amend pleadings can be made at  
22 any time.

23 Dated this 12<sup>th</sup> day of January, 2015.

24 ALBRIGHT, STODDARD, WARNICK &  
25 ALBRIGHT

26 By: 

27 WHITNEY B. WARNICK, ESQ.  
28 Nevada Bar No. 001573  
801 S. Rancho Drive, Suite D-4  
Las Vegas, Nevada 89016  
*Attorneys for Kathryn Bouvier*

THE RUSHFORTH FIRM

By

JOSEPH J. POWELL, ESQ.

Nevada Bar No. 008875

9505 Hillwood Drive, #100

Las Vegas, Nevada 89134

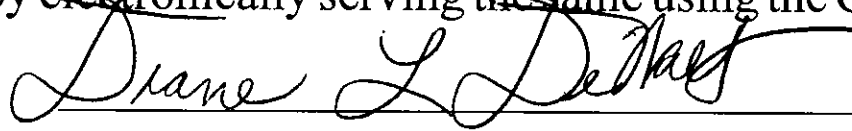
*Attorneys for Jacqueline M. Montoya*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of The Rushforth Firm, Ltd. and that on the 12<sup>th</sup> day of January, 2015, I placed a true and correct copy of the foregoing document, in the United States Mail, at Las Vegas, Nevada, enclosed in a sealed envelope with first class postage thereon fully prepaid, and addressed to the following:

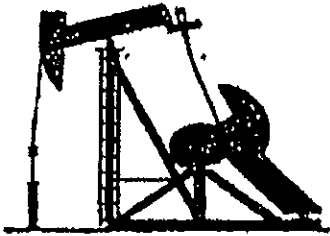
Liane K. Wakayama, Esq.  
Candice E. Renka, Esq.  
Marquis Aurbach Coffing  
10001 Park Run Drive  
Las Vegas, NV 89145

(On the same date, I also served a true and correct copy of each of the foregoing documents upon all counsel of record by electronically serving the same using the Court's electronic filing system.)



DIANE L. DeWALT  
An Employee of The Rushforth Firm, Ltd.

# **EXHIBIT “A”**



HALLCO PETROLEUM INC.

2525 N.W. EXPRESSWAY • SUITE 212

OKLAHOMA CITY, OK 73112

405/848-0548

*Copy  
mailed 2-19-86*

February 14, 1986

Marjorie T. Connell and  
Eleanor C. Hartman  
P. O. Box 710  
Las Vegas, NV 89125

Re: Marjorie T. Connell and  
Eleanor C. Hartman, Trustees  
of the W. N. Connell &  
Marjorie T. Connell Living  
Trust, dated 5/18/72,  
recorded 459 DR 100.

Gentlemen:

We received Social Security numbers for Marjorie T. Connell and Eleanor C. Hartman but because the interest in the Exxon-Cowden lease is a Trust, we must have a Tax Identification Number. Please obtain this information from your tax accountant and send it to us as soon as possible.

Thank you.

*Stephen Hall  
checked & OK  
checked & OK to go*

Very truly yours,

HALLCO PETROLEUM INC.

R.G.H.

Robert G. Hall

RGH/sh

*My auditor has advised us to use our  
Social Security Number as a Tax  
identification Number. Other oil & gas  
companies that we have Royalty interest  
accept and use our Social Security  
Numbers*

*MARJORIE T. CONNELL, TRUSTEE  
SS# - 417-12-1212*

*ELEANOR C. HARTMAN, CO-TRUSTEE  
SS# REDACTED 1044*

# **EXHIBIT “B”**

BOOK 622

500631

37

# AFFIDAVIT TERMINATING JOINT TENANCY

STATE OF NEVADA  
COUNTY OF CLARK

WILLIAM N. CONNELL

sworn, deposes and says that affiant is over the age of 21 years and competent to be a witness as to the matters hereinafter stated.

That affiant is William N. Connell the person named as William N. Connell one of the grantees in that certain deed recorded May 2, 1944 as Document No. 180405 in Book 35, Page 159 & 160 of Deeds in the office of the County Recorder of Clark County, State of Nevada.

That MARGUERITE L. NICHOLSON was one of the grantees named in said deed and was the identical person named as MARGUERITE LAVINA GALLWICH the decedent, in that certain Death Certificate, certified copy of which is annexed hereto and made a part hereof.

STATE OF NEVADA  
COUNTY OF

Clark

On this April 27, 1965 personally appeared before me, a Notary Public, in and for said County and State

William N. Connell

known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned



William C. Eyrud  
Notary Public

Subscribed and sworn to before me on July 14, 1965

RETURN TO:

William N. Connell  
217 So 3rd St  
Las Vegas, Nev

State: Nevada

County: Clark

Doc Type: B-Series - DocID(1/2/54 to 12/31/69)

Description: 500631

Page: 2

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BOOK 622

500631

2-3

NO 500631

RECORDED AT THE REQUEST OF

*William D. Connell*

APR 27 4 11 PM 85

OFFICIAL RECORDS BOOK NO. 622  
CLARK COUNTY NEVADA  
PAUL E. DEAN, ALDERMAN  
FEE \$ 3.00

35  
6m



BOOK 523

RPTT \$ 60.50

482631

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That W. N. CONNELL and MARJORIE T. CONNELL, as Trustee of The  
W. N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972,

In consideration of \$ 10.00

the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

ELEANOR C. HARTMAN,

all that real property situate in the

County of Clark

State of Nevada, bounded and described as follows:

That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B. & M. described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue produced Westerly as the same is now established (hereinafter called Line 2); thence South along said Line 1 a distance of 378 feet thence North 89° 36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning.

REFERENCE: Deed # 180405, Book 35, Pages 159 and 160.



Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Witness our hand W. N. Connell this 3<sup>rd</sup> day of June, 19 75  
W. N. CONNELL and Marjorie T. Connell  
MARJORIE T. CONNELL,

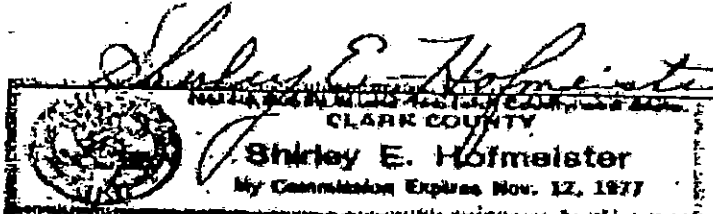
As Trustee of The W. N. Connell and Marjorie T. Connell Living Trust dated May 18, 1972

STATE OF NEVADACounty of ClarkOn this 3<sup>rd</sup> day of June, 19 75

personally appeared before me, a Notary Public in and for said

County and State, W. N. CONNELL and  
MARJORIE T. CONNELL,

I know to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he or she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

ESCROW NO. LV-155850-6

WHEN RECORDED MAIL TO: Eleanor C. Hartman, 6225A West  
Buckskin, Las Vegas, Nevada 89108

482631

INST. NO. 482631  
 OFFICIAL RECORD BOOK NO. 523  
 RECORDED AT REQUEST OF  
 TITLE INSURANCE AND TRUST CO.

JUN 4 10 08 AM '75

CLARK COUNTY NEVADA  
 JOAN L. SWIFT RECORDERFEE 30 DEPUTY 22300  
 3/10  
 NST-18

RPTT \$       

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

ELEANOR C. HARTMAN,

in consideration of \$ 10.00the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to  
ROBERT S. HARTMAN, JR. and ELEANOR C. HARTMAN, as community property,

all that real property situate in the

County of Clark

State of Nevada, bounded and described as follows:

That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B. & M. described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue produced Westerly as the same is now established (hereinafter called Line 2); thence South along said Line 1 a distance of 378 feet thence North 89° 36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning.

REFERENCE: Deed # 180405, Book 35, Pages 159 and 160.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Witness my hand this 3rd day of June 19 75

Eleanor C. Hartman  
ELEANOR C. HARTMAN

STATE OF NEVADA

County of ClarkOn this 3rd day of June 19 75

personally appeared before me, a Notary Public in and for said

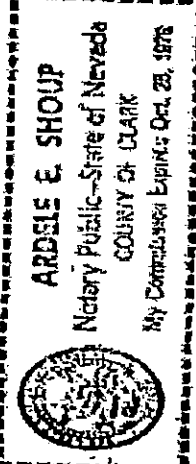
County and State, ELEANOR C. HARTMAN

Known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Ardele E. Shoup  
Notary Public in and for said County and State.

ESCROW NO. NV-155850-6

WHEN RECORDED MAIL TO: Mr. & Mrs. Robert S. Hartman, Jr.,  
6225A West Buckskin, Las Vegas, Nevada 89108



INST. NO. 482633  
OFFICIAL RECORD BOOK NO. 523  
RECORDED AT REQUEST OF  
TITLE INSURANCE AND TRUST CO.  
JUN 4 10 09 AM '75  
CLARK COUNTY NEVADA  
JOAN L. SWIFT RECORDER  
FEE 3.00 DEPUTY na

300  
NSF-18

# Grant, Bargain, Sale Deed

THIS INDENTURE WITNESSETH: That ROBERT S. HARTMAN, JR. and ELEANOR C. HARTMAN

In consideration of \$ 10.00 the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to ROBERT S. HARTMAN, JR. and ELEANOR C. HARTMAN, Trustees of the Robert S. Hartman, Jr. and Eleanor C. Hartman Trust, dated September 15, 1980, all that real property situate in the \_\_\_\_\_ County of Clark State of Nevada, bounded and described as follows:

That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SE 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B. & M. described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue produced Westerly as the same is now established (hereinafter called Line 2); then South along said Line 1 a distance of 378 feet then North 89° 36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning.  
REFERENCE: Deed # 180405, Book 35, Pages 159 and 160.

DOCUMENTARY TRANSFER TAX \$ 107  
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED OR  
COMPUTED ON FULL VALUE LESS LIES AND ENCUMBRANCES  
REMAINING THEREON AT TIME OF TRANSFER  
UNDER PENALTY OF PERJURY

Eleanor C. Hartman  
SIGNATURE OF DECLARANT OR AGENT  
DETERMINE NO. TAX FIRM NAME

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness our hand & this 25<sup>th</sup> day of September, 1980

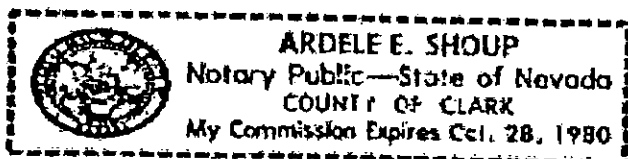
STATE OF NEVADA  
COUNTY OF Clark } ss.

On September 25, 1980,  
personally appeared before me, a Notary Public,  
ROBERT S. HARTMAN, JR. and  
ELEANOR C. HARTMAN,

who acknowledged that they executed the above instrument.

Signature Ardele E. Shoup  
(Notary Public)

(Notarial Seal)



Robert S. Hartman, Jr.  
ROBERT S. HARTMAN, JR.

Eleanor C. Hartman  
ELEANOR C. HARTMAN

ESCROW NO. \_\_\_\_\_  
ORDER NO. \_\_\_\_\_  
RECORDED AT REQUEST OF  
WHEN RECORDED MAIL TO: Robert S. Hartman, Jr.,  
6225 West Buckskin, Las Vegas, Nevada 89108

CLARK COUNTY NEVADA  
JAN-L. SWIFT, RECORDER  
RECORDED AT REQUEST OF  
Robert S. Hartman, Jr.  
SEP 30 11 21 AM '80  
FEE FL DEPUTY  
OFFICIAL RECORDS  
BOOK \_\_\_\_\_ INSTRUMENT

1289 1248149 3.00  
CD

1844

AMLS.P.T.T. 1 EXEMPT #1

1774908

2-1

# GRANT, BARGAIN, SALE DEED

THE INDENTURE WITNESSETH: That ROBERT S. HARTMAN, JR. and ELEANOR C. HARTMAN,  
Trustees of the Robert S. Hartman, Jr. and Eleanor C.  
Hartman Trust, dated September 15, 1980,  
 in consideration of \$ 10.00 The receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

ELEANOR C. HARTMAN, an unmarried woman,  
 all that real property situate in the \_\_\_\_\_ County of Clark  
 State of Nevada, bounded and described as follows:

That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B.&M. described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue produced Westerly as the same is now established (hereinafter called Line 2); then South along said Line 1 a distance of 378 feet then North 89°36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning.

REFERENCE: Deed #180405, Book 35, Pages 159 and 160.

SUBJECT TO: encumbrances, deeds of trust, easements and other restrictions of record.

SUBJECT TO: 1. Taxes for the fiscal year  
 2. Rights of way, reservations, restrictions, easements and conditions of record.


Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Witness OUR hand, S. H. 3/15 day of August 1983  
Robert S. Hartman, Jr.  
ROBERT S. HARTMAN, JR.  
Eleanor C. Hartman  
ELEANOR C. HARTMAN

STATE OF NEVADA  
 County of CLARK  
 On this 3/15 day of August, 1983  
 personally appeared before me, a Notary Public in and for said County and State:  
Robert S. Hartman, Jr., and  
Eleanor C. Hartman

I know to be the persons described in and who executed the foregoing instrument, who acknowledged to me that \_\_\_\_\_  
 executed the same freely and voluntarily and for the uses and purposes therein expressed.

Cathie S. France  
 Notary Public in and for said County and State.

 CATHIE S. FRANCE  
 Notary Public - State of Nevada  
 CLARK COUNTY  
 My Commission Expires 1-7-84

ESCROW NO. \_\_\_\_\_  
 WHEN RECORDED MAIL TO: ELEANOR C. HARTMAN, 6225 W.  
BUCKSKIN, Las Vegas, NV 89108

E-14

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2-2

STATE OF NEVADA )  
COUNTY OF CLARK ) ss

On this 29<sup>th</sup> day of August, 1983, before me, a Notary Public, in and for the County of Clark, State of Nevada, personally appeared ELEANOR C. HARTMAN, known to me to be the person who subscribed to the within instrument and who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Gina Di Marco  
NOTARY PUBLIC



GINA DI MARCO  
Notary Public - State of Nevada  
CLARK COUNTY  
My Appointment Expires Mar. 2, 1986

CLARK COUNTY, NEVADA  
JAN L. SWIFT, RECORDER  
RECORDED AT REQUEST OF  
Morse Foley  
OCT 6 4 18 PM '83  
DEPUTY CAF  
OFFICIAL RECORDS  
INSTRUMENT

CAF

1815

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BOOK 1907

A.M. R.P.T. 1984

1866488

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That ELEANOR C. HARTMAN, an unmarried womanin consideration of \$ 10.00 the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to  
ELEANOR C. HARTMAN as Trustee of the ELEANOR C. HARTMAN 1984 TRUSTall that real property situate in the \_\_\_\_\_ County of Clark  
State of Nevada, bounded and described as follows:

That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B.&amp;M. described as follows:

Beginning at the point of intersection of the East Line of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereinafter called Line 1) with the South boundary of Clark Avenue (hereinafter called Line 2); then South along said Line 1 a distance of 378 feet then North 89°36' West and parallel to said Line 2 a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning.

REFERENCE: Deed #180405, Book 35, Pages 159 and 160.

SUBJECT TO: 1. Taxes for the fiscal year  
2. Rights of way, reservations, restrictions, easements and conditions of record, and encumbrances of record

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Witness \_\_\_\_\_ and \_\_\_\_\_ this 3<sup>rd</sup> day of April 1984ELEANOR C. HARTMANELEANOR C. HARTMANSTATE OF NEVADA  
County of CLARKOn this 13 day of April 1984personally appeared before me, a Notary Public in and for said County and State, Eleanor C. Hartman

known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Steven R. Scow

Notary Public in and for said County and State.

STEVEN R SCOW  
Notary Public - State of Nevada  
CLARK COUNTY  
My Comm. Expires 01/01/87

ESCROW NO. \_\_\_\_\_

WHEN RECORDED MAIL TO: Eleanor C. Hartman  
6225 W. BRICKSKIN LN, NV 89108

APR 18 11 23 AM '84

1907

1866488

E-14

8 3 0 7 2 1 0 0 1 7 7  
Quitclaim Deed

By this instrument dated....., for a valuable consideration,  
ELEANOR C. HARTMAN, TRUSTEE OF THE ELEANOR C. HARTMAN 1984 TRUST.

do..... hereby REMISE, RELEASE, and FOREVER QUITCLAIM to

JOHN P. AHERN FAMILY TRUST UNDER TRUST AGREEMENT DATED APRIL 25, 1982.

the following described real property in the State of Nevada, County of Clark:

That portion of the North Half (N 1/2) of the South Half (S 1/2) of the Southwest Quarter (SW 1/4) of Section 28, Township 20 South, Range 61 East, M.D.B. & M., described as follows:

Beginning at the point of intersection of the East line of the Northwest Quarter (NW 1/4) of the Southeast Quarter of the Southwest Quarter (SW 1/4) of said Section 28, said Township and Range, (hereafter called Line 1) with the South boundary of Clark Avenue, produced Westerly as the same is now established (hereinafter called Line 2); then South along said Line 1 a distance of 378 feet, then North 89°36' West and parallel to said Line 2, a distance of 100 feet; thence North along a line parallel to said Line 1 a distance of 378 feet to said Line 2; thence East along said Line 2, 100 feet to the point of beginning.

STATE OF NEVADA  
COUNTY OF CLARK

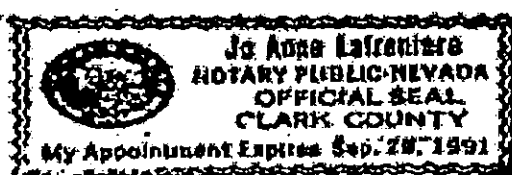
On June 30, 1988 before me,  
the undersigned, a Notary Public in and for said County  
and State, personally appeared

Eleanor C. Hartman

known to me to be the person whose names  
subscribed to the within instrument, and acknowledged  
to me that she executed the same.

WITNESS my hand and Official Seal,

*Jo Anne Latreille*  
(SEAL) (SIGN)  
Notary Public Commissioned for said County and State.



*Eleanor C. Hartman*  
ELEANOR C. HARTMAN

Title Order No. ....

Escrow or Loan No. ....

RECORDING REQUESTED BY

MORSE & MOWBRAY

AFTER RECORDING MAIL TO

STEVEN SCOW  
MORSE & MOWBRAY  
302 E. Carson, #700  
Las Vegas, NV 89101

CLARK COUNTY, NEVADA  
JOAN L. SWIFT, RECORDER  
RECORDED AT REQUEST OF:

MORSE AND MOWBRAY

07-21-88 10:25 N91  
BOOK: 880721 INST: 00427  
FEE: 5.00 RPTT: EX006





## AFFIDAVIT OF JACQUELINE M. MONTOYA

STATE OF NEVADA    )  
                                  )ss  
COUNTY OF CLARK    )

JACQUELINE M. MONTOYA, being duly sworn and under the penalties of perjury, states as follows:

1. I am an adult and competent to testify as to the matters herein stated.
2. Attached as Exhibit "A-C" to the REPLY IN SUPPORT OF COUNTERMOTION OF KATHRYN A. BOUVIER AND JACQUELINE M. MONTOYA FOR SUMMARY JUDGMENT, FOR DAMAGES AND ASSESSMENT OF PENALTIES, AND FOR OTHER RELIEF; AND OPPOSITION TO ELEANOR'S COUNTERMOTION FOR SUMMARY JUDGMENT, are three memoranda/letters signed by Marjorie T. Connell, my grandmother.
3. Over a period of more than 10 years, I worked closely with my grandmother and became very familiar with her handwriting and signature.
4. I attest that the signature of Marjorie T. Connell on the three said Exhibits is in fact her very own signature.
5. All of these three Exhibits, along with Exhibit "D" submitted with our said Reply and Opposition, were located in the records of Marjorie T. Connell after her death, when I, Eleanor Ahern, and Kathryn A. Bouvier went through her records together.
6. I also verify that I, as Marjorie's appointed Personal Representative, know that a 706 Federal Estate Tax Return was filed for Marjorie's Estate. Included with her assets in that return, prepared by professionals who had to be aware of Marjorie's assets and make sure they were all included in reporting them to the IRS, was her 65% interest in the Texas oil properties now claimed by Eleanor.
7. While Eleanor is now claiming all of the Texas oil property income, she never made such a claim and fully participated in the arrangements which needed to be made after Marjorie's death to transfer the right to 65% of the Texas oil property income to myself and my sister, Kathryn, as was understood to be the allocation granted initially to Marjorie under her and W.N. Connell's 1972 Trust, and which allocation then inured to me and my sister under Marjorie's estate plan.
8. My mother wanted me to continue handling the Trust affairs with respect to the collection of the Texas oil property income, deposit of the same in the Trust's bank account, and the allocation of income between her, receiving the always allotted

35% share, and Kathryn and I receiving our allotted 65% share. She also had me continue providing this information to the Trust's accountant so that K-1's could be prepared showing the entitlement to said income of all three of us to the IRS in filing our tax returns.

9. A rift developed between my mother and I in approximately 2012 when I and my sister became concerned with her erratic and troubling behavior. It became apparent to us from her conduct, self-isolation and what was reported to us by other trust-worthy individuals, that she was being harmfully influenced by others in her decisions relating to the Trust administration and other matters. In our efforts to try to help our mother, she instead further withdrew from us, took me off the Trust accounts and did not allow me to further handle the Trust income administration as I had been doing for nearly 15 years alone, and in assisting Marjorie at her request.

10. It was during this time that my mother first made any indication that she was not going to cooperate in the Trust affairs, which might possibly jeopardize the interest of Kathryn and myself. Based upon advice from my Texas attorney, I filed a probate petition for Marjorie's Will in Texas, which I believe was recommended by the Texas attorney to then effectuate the eventual deeding of the Texas oil property between Eleanor, as to a 35% interest, and Kathryn and I, as to a 65% interest, as had been recommended to us upon the death of Marjorie by her estate planning attorney. This it was apparently felt by the Texas attorney would be the simplest way to solve the developing problems with Marjorie, and allow us to go our separate ways in the handling of each of our interests in the Texas oil properties.

11. Unbeknownst to me, in the probate petition an allegation was made that Marjorie had no children. This was clearly untrue, and my Texas attorney has explained the reason for this goof. However, Eleanor did receive notice of the probate proceeding in time to object to it on the grounds of jurisdiction, alleging that the Texas oil property was owned by the Trust, and therefore the Texas court lacked subject matter jurisdiction.

12. Following this matter, Eleanor then decided to unilaterally cut off and terminate Kathryn's and my right to the 65% interest from the Texas oil property under the Trust, without informing us and without giving us the opportunity to ask the Court to determine entitlement. I therefore, as Trustee of the MTC Living Trust, which received Marjorie's 65% share of the Texas oil property under subtrust No. 3 of the main Trust, had no choice but to file the Petition to seek relief in the Nevada Court, on behalf of myself and Kathryn.

I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true.

Dated:

January 12, 2015

Jacqueline M. Montoya  
JACQUELINE M. MONTOYA

AFFIDAVIT OF COREY HAINA

STATE OF CALIFORNIA     )  
                                      )ss.  
COUNTY OF ORANGE COUNTY )

I, Corey Haina, being first duly sworn, state that:

1. I am a Ctec Registered Tax Preparer licensed and in good standing in the State of California.
2. I have been licensed as a Ctec Registered Tax Preparer in the State of California since 1990.
3. I was the accountant for Marjorie T. Connell ("Marjorie") for approximately 10 years. I handled both Marjorie's personal taxes, as well as the tax returns and K-1s for the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 Form 1041. Federal Tax Identification number ("EIN"), [REDACTED] 3010 (65% - Marjorie J. Connell) and [REDACTED] 7338 (35% - Eleanor H. Ahern).
4. Following Marjorie's death, I also assisted Jacqueline Montoya, in her capacity as the personal representative of Marjorie's Estate and as the trustee of Marjorie's trust, with the preparation of the final returns for Marjorie and Marjorie's Estate, including the preparation and filing of the Estate return Form 706.
5. Subsequent to Marjorie's passing, I remained the accountant for the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972, on behalf of Eleanor Connell Hartman Ahern ("Eleanor"), in her capacity as trustee of the W.N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972 (the "Trust"). As part of such capacity, as was done when Marjorie was still alive, I prepared and issued K-1s (schedule K-1 Form 1041) to the trust beneficiaries.
6. During Marjorie's lifetime, a K-1 was issued to her from the Trust to reflect the approximate 65% of the oil, gas, and mineral income that was being distributed to her personally as a beneficiary of the Trust. In addition, in my capacity as Marjorie's accountant for her personal tax return, Marjorie's Form 1040 always reflected the income that she had received from the Trust as verified by the K-1 that she was issued on a yearly basis by the Trust.
7. Like Marjorie, Eleanor was also presented with a K-1 by the Trust to reflect the approximate 35% of the oil, gas, and mineral income that was being distributed to her personally as a beneficiary of the Trust. To my knowledge, I do not know who prepares Eleanor's personal tax return.

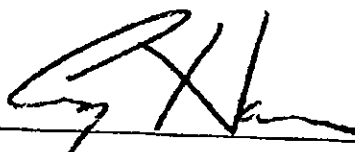
8. Following Marjorie's death, K-1s were then issued from the Trust to Jacqueline Montoya ("Jacqueline") and Kathryn Bouvier ("Kathryn"), with each receiving 32.5% of the oil, gas, and mineral income paid to the Trust. As to Jacqueline, the "beneficiary's" name listed on the K-1 issued to her would read "MTC Non-Exempt Subtrust FBO Jacqueline Marguerite Montoya". As to Kathryn, the "beneficiary's" name listed on the K-1 issued to her would read "MTC Non-Exempt Subtrust FBO Kathryn A. Bouvier".
9. Following Marjorie's death, a K-1 was also issued from the Trust to Eleanor for 35% of the oil, gas, and mineral income paid to the Trust. The "beneficiary's" name listed on the K-1 issued to her would read "Eleanor C. Ahern Foundation".
10. In all of my years of representation of Marjorie, I had always been told by her that she was entitled to 65% of the oil, gas, and income rights paid to the Trust and that Eleanor was entitled to 35% of the oil, gas, and income rights paid to the Trust. Marjorie further explained to me that an EIN number was obtained for her after W.N. ("Bill") Connell's death relating to the Trust and that this was the number that she reported to the various oil, gas, and mineral companies since this was the EIN number that was associated with the longtime Wells Fargo account that all of the oil, gas, and mineral payments were deposited into before they were divided into a 65%/35% split.
11. My understanding from Marjorie was that after the death of her husband, W.N. Connell, the income related to the oil, gas, and mineral rights had always been received in one "pot", a Wells Fargo account, and then from there the income was distributed proportionately to Marjorie and Eleanor according to their beneficial interests under the Trust, at which point they each then reported and paid the tax associated with the income individually.
12. I can testify with absolute certainty from my interactions over the years with Marjorie that even though an EIN number was labeled in the name of Trust No. 2 of the Trust that such labeling had absolutely nothing to do with any belief from Marjorie that Trust No. 2 was legally entitled to 100% of the oil, gas, and mineral rights income. Again my understanding from Marjorie was that the use of the EIN referencing Trust No. 2 was simply to comply with the association of the Wells Fargo account and given to the various companies who required an EIN to track where their payments had been made to.
13. To the best of my understanding and knowledge, the EIN numbers associated with the Trust have merely been used for informational purposes and have never been used for, or indicative

of, the ownership of the Texas income assets of the Trust since the payment of the income tax always flowed through to the actual beneficiaries who received the income from the Trust.

14. At no point during my preparation of tax returns for the Trust did the Trust ever pay any taxes itself relating to the income that it received. For tax purposes, the Trust, via the Wells Fargo account, was merely a conduit that received the income and then distributed out such income, with, again, K-1s being issued by the Trust to the respective beneficiaries reflecting the income that they had received.

*I declare under penalty of perjury pursuant to the law of the State of Nevada that the foregoing statements are true and correct to the best of my knowledge and recollection.*

Dated this 12th day of January, 2015.

  
\_\_\_\_\_  
COREY HAINA