EXHIBIT 4

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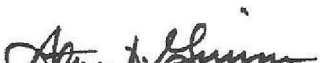

CLERK OF THE COURT

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DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, v. LYNITA SUE NELSON, Defendant/Counterclaimant.	CASE NO. D-09-411537-D DEPT NO. "O"
ERIC L. NELSON NEVADA TRUST dated May 30, 2001, and LSN NEVADA TRUST dated May 30, 2001, Necessary Parties (joined in this action pursuant to Stipulation and Order entered on August 9, 2011)	NOTICE OF ENTRY OF ORDER DETERMINING DISPOSITION OF DYNASTY DEVELOPMENT MANAGEMENT, INC. AKA WYOMING DOWNS
MATT KLABACKA, as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Counterclaimant and Crossclaimant, v. LYNITA SUE NELSON and ERIC NELSON, Purported Cross-Defendant and Counterdefendant,	

LYNITA SUE NELSON,

Counterclaimant, Cross-Claimant, and/or Third Party Plaintiff,

v.

ERIC L. NELSON, individually and as the Investment Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001; the ERIC L. NELSON NEVADA TRUST dated May 30, 2001; MATT KLABACKA, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001,

Counterdefendant, and/or Cross-Defendants, and/or Third Party Defendants.

TO: ERIC L. NELSON, Plaintiff; and

TO: RHONDA K. FORSBERG, ESQ., of RHONDA K. FORSBERG, CHTD., Attorneys for Plaintiff;

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

PLEASE TAKE NOTICE that an ORDER DETERMINING DISPOSITION OF DYNASTY DEVELOPMENT MANAGEMENT, INC. AKA WYOMING DOWNS was entered in the above-entitled matter on September 18, 2014, a copy of which is attached.

DATED this 22nd day of September, 2014.

THE DICKERSON LAW GROUP

By _____

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Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON LAW GROUP, and that on this 22nd day of September, 2014, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER DETERMINING DISPOSITION OF DYNASTY DEVELOPMENT MANAGEMENT, INC. AKA WYOMING DOWNS** to be served as follows:

[X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[X] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

[ ] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;

[ ] by hand-delivery with signed Receipt of Copy.

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

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Attorneys for Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST
dated May 30, 2001

DISTRICT COURT

COUNTY OF CLARK, NEVADA

ERIC L. NELSON, Plaintiff vs. LYNITA SUE NELSON, LANA MARTIN, as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Defendants.	Case No.: D411537 Dept.: O **ORDER DETERMINING DISPOSITION OF DYNASTY DEVELOPMENT MANAGEMENT, INC. aka WYOMING DOWNS**
LANA MARTIN, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Cross-claimant, vs. LYNITA SUE NELSON, Cross-defendant.	Date of Hearing: May 30, 2014 Time of Hearing: 9:00 a.m.

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ORDER

An evidentiary hearing on the disposition of Dynasty Development Management, LLC aka Wyoming Downs (hereinafter referred to as "Wyoming Downs") came on for hearing on this 30th day of May, 2014, before the Honorable Frank P. Sullivan. Mark A. Solomon, Esq. and Jeffrey P. Luszeck, Esq., of Solomon Dwiggins & Freer, Ltd., appeared on behalf of the Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN Trust"). Robert P. Dickerson, Esq. and Josef M. Karacsonyi, Esq., of the Dickerson Law Group, appeared on behalf of Lynita S. Nelson and the LYNITA S. NELSON NEVADA TRUST dated May 30, 2001 ("LSN Trust"), and Lynita S. Nelson was present. Rhonda K. Forsberg, Esq., of Rhonda K. Forsberg Chartered, appeared on behalf of Eric L. Nelson, and Eric L. Nelson was present. The Court having reviewed and analyzed the pleadings and papers on file herein, the testimony and exhibits proferred, and having heard the arguments of Counsel and the Parties, finds good cause to enter the following order:

THE COURT HEREBY FINDS that at the time the Court entered its Decree of Divorce on June 3, 2013 ("Divorce Decree"), it was without sufficient information to make a determination regarding the disposition of Wyoming Downs. The Court was concerned about how Wyoming Downs was purchased due to the fact that there was a motion to release monies from the $1,680,000 previously enjoined in David Stephen, Esq.'s trust account for the purchase of Wyoming Downs, which motion was denied. The motion to release monies was filed after the purchase agreement for Wyoming Downs was entered into. Although the Court does not believe it has any probative value to the issue, it will note that Lynita S. Nelson opposed the acquisition of Wyoming Downs as a non-performing asset, and took the position that the ELN Trust and Eric Nelson were taking community assets and dissipating them.

THE COURT FURTHER FINDS that Dynasty Development Management, LLC ("Dynasty") was organized as a Nevada LLC on April 26, 2011, with the ELN Trust as its sole member, and with Eric L. Nelson as its manager.

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THE COURT FURTHER FINDS that in or around November 2011, Banone LLC loaned $75,000 to Dynasty, which Dynasty utilized as an earnest money deposit toward the purchase of Wyoming Downs.

THE COURT FURTHER FINDS that Wyoming Downs was purchased around November 16, 2011, by Dynasty for $440,000, which represented a purchase price of $400,000 and a buyer's premium of $40,000.

THE COURT FURTHER FINDS that Dynasty's purchase of Wyoming Downs was financed through debt by Henderson Capital Group, LLC ("Henderson Capital"), a hard money lender.

THE COURT FURTHER FINDS that the ELN Trust entered into a promissory note in favor of Henderson Capital in the amount of $700,000. Out of the $700,000 borrowed $100,000 was taken out for prepayment of fees and interest. The remaining $600,000 in loan proceeds, plus $175.46 for tax reimbursement, and the $75,000 earnest money deposit (for a total of $675,175.46), was applied at closing as follows: $400,000 for the purchase price, $40,000 for the buyer's premium, $30,389 in settlement charges, and $10,000 for an extension fee FOR A TOTAL OF $480,839.00. Accordingly, at closing a total of $194,336.46 ($675,175.46-$480,839.00) of equity was available to pull out. Eric L. Nelson testified that from the $194,336.46, $75,000 was paid back to Banone, LLC, leaving new money of $119,336.46.

THE COURT FURTHER FINDS that although Wyoming Downs was acquired by the ELN Trust during the pendency of the marriage between Eric L. Nelson and Lynita S. Nelson, the Court does not find it to be community property as it was clearly purchased through Dynasty, an entity wholly owned by the ELN Trust and the Court maintained the ELN Trust. The Court found no facts leading it to conclude Lynita S. Nelson or the LSN Trust has an interest in Wyoming Downs. The Court maintained the integrity of the ELN Trust and LSN Trust for the reasons set forth in the Divorce Decree.

THE COURT FURTHER FINDS that there was no transmutation of Wyoming Downs from separate property to community property, even assuming that Wyoming Down was separate property of Eric L. Nelson, and not the property of the ELN Trust, separate and distrinct from Eric L. Nelson.

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THE COURT FURTHER FINDS that the Court went through great efforts in the Divorce Decree to maintain the integrity of the ELN Trust and LSN Trust to give the parties protection from third-party creditors and give them the benefits of the spendthrift trusts, while applying the principles of equity, fairness and constructive trust to remedy the transactions that the Court felt were done to the detriment of Lynita S. Nelson and the LSN Trust, and without compensation, and to the benefit of Eric L. Nelson and the ELN Trust. However, the Court finds it inappropriate to apply such principles of equity, fairness and constructive trust to Wyoming Downs because at the time Wyoming Downs was acquired by Dynasty, Lynita S. Nelson was no longer taking advice from Eric L. Nelson, the ELN Trusts and LSN Trust were being treated as separate and distinct entities, and the Court was not concerned that Wyoming Downs was acquired as a result of any breach of fiduciary duty to Lynita S. Nelson or the LSN Trust.

THE COURT FURTHER FINDS that it was concerned about the loan from Banone, LLC to Dynasty. The Court awarded the Banone, LLC properties to Lynita S. Nelson for the reasons stated in the Divorce Decree. The $75,000 loan was the source of earnest money deposit that made it possible for Dynasty to bid on and purchase Wyoming Downs.

THE COURT FURTHER FINDS that it was troubled by the conduct during discovery. Although many of Lynita S. Nelson's document requests and deposition questions in discovery were overly broad and/or might have been beyond the scope of the evidentiary hearing on Wyoming Downs, the ELN Trust's production of documents and responses to deposition questions were not in good faith, and additional documents and testimony should have been proferred. The Court felt the discovery responses were stonewalling, which has been the case from day one; it has been very difficult for this Court to get information. During the deposition of Eric L. Nelson and the ELN Trust, they failed to answer any questions of substance, and the responses to requests for production could have provided a lot more information, including information concerning issues the ELN Trust raised at the time of trial

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THE COURT FURTHER FINDS that based on the ELN Trust's and Eric L. Nelson's failure to produce documents or testimony during discovery they were precluded, pursuant to NRCP 37(c)(1) and (b)(2), from introducing such evidence at trial. The Court notes that the ELN Trust attempted to introduce documents allegedly showing repayment of the loan to Banone, LLC at the evidence stage which were not provided during discovery, which was inappropriate. If a party will not produce documents during discovery it cannot introduce same into evidence at trial.

THE COURT FURTHER FINDS that while Eric L. Nelson testified that the $75,000 was paid back, there was no other evidence to corroborate his testimony. The Court was troubled by the testimony of Eric L. Nelson regarding the repayment of $75,000 to Banone. The Court has made specific findings regarding Eric L. Nelson's credibility issues or lack thereof, and so have other Courts, including the bankruptcy court which has made some other findings as far as credibility. Accordingly, the Court is not inclined to rely upon the testimony of Eric L. Nelson as to the repayment of the $75,000 loan absent corroborating evidence.

THE COURT FURTHER FINDS that, in accordance with the findings set forth above, there was no evidence that the loan to Banone, LLC was repaid. The ELN Trust and Eric L. Nelson should repay to the LSN Trust the $75,000 earnest money deposit which made it possible for Dynasty to purchase Wyoming Downs.

NOW, THEREFORE,

IT IS HEREBY ORDERED that Dynasty Development Management, LLC aka Wyoming Downs belongs to the ELN Trust.

IT IS FURTHER ORDERED that neither Lynita S. Nelson nor the LSN Trust are entitled to an interest in Dynasty Development Management, LLC aka Wyoming Downs.

IT IS FURTHER ORDERED that the ELN Trust and Eric L. Nelson shall pay the LSN Trust $75,000 as repayment for the $75,000 loan that Banone LLC made to Dynasty Development Management, LLC in or around November 2011.

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IT IS FURTHER ORDERED that this Order disposes of the last known property to be adjudicated between the Parties.

DATED this 9th day of ~~August,~~ September 2014.

DISTRICT COURT JUDGE
FRANK P. SULLIVAN

Submitted by:

SOLOMON DWIGGINS & FREER, LTD.

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Approved as to Form and Content:

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EXHIBIT 5

EXHIBIT 5

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CLERK OF THE COURT

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DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, v. LYNITA SUE NELSON, Defendant/Counterclaimant.	CASE NO. D-09-411537-D DEPT NO. "O"
ERIC L. NELSON NEVADA TRUST dated May 30, 2001, and LSN NEVADA TRUST dated May 30, 2001, Necessary Parties (joined in this action pursuant to Stipulation and Order entered on August 9, 2011)	**NOTICE OF ENTRY OF ORDER FROM JULY 22, 2013 HEARING ON LYNITA NELSON'S MOTION TO AMEND OR ALTER JUDGMENT, FOR DECLARATION AND RELATED RELIEF**
MATT KLABACKA, as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Counterclaimant and Crossclaimant, v. LYNITA SUE NELSON and ERIC NELSON, Purported Cross-Defendant and Counterdefendant,	

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

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

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

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

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

Community Waste

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

[19] Defendant's Exhibit GGGGG.
[20] Id.

Docket 66772 Document 2014-38745

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

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

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

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

Child Support

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

[21] Mr. Bertsch did not confirm whether or not the 1099s were filed with the IRS as that was not within the scope of his assigned duties.

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

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

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

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

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

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

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

. . .

. . .

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

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

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

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

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

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

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

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

Spousal Support

THE COURT FURTHER FINDS that NRS 125.150 provides as follows:

> 1. In granting a divorce, the court:
>
> (a) May award such alimony to the wife or to the husband, in a specified principal sum or as specified periodic payments, as appears just and equitable; and
>
> (b) Shall, to the extent practicable, make an equal disposition of the community property of the parties, except that the court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition

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

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

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

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

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

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

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

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

THE COURT FURTHER FINDS that based the upon the findings addressed hereinabove, Mrs. Nelson is entitled to an award of spousal support pursuant to NRS 125.150 and the factors enunciated in Sprenger[22]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[23] NRS 166.130

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

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

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

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

Attorney's Fees

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

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[25] Id at 301.
[26] Gilbert v. Gilbert, 447 So.2d 299, 301
[27] Id at 301.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[28] *Supra*, note 6.

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

Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[29] Defendant's Exhibit GGGGG.
[30] Second Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the Period from April 1, 2012 through July 25, 2012.

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

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

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

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

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

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

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

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

Dated this 3rd day of June, 2013.

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

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

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

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

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

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

[5] Mr. Nelson testified that Cal Nelson also assumed a $160,000 liability arising from a transaction by Mr. Nelson involving a Las Vegas Casino.
[6] Defendant's Exhibit GGGGG

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

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

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

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

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

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[7] Defendant's Exhibit UUUU
[8] Id.
[9] Defendant's Exhibit GGGG.

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

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

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

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

[10] Defendant's Exhibit PPPP.

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

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

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

Unjust Enrichment

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

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

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

THE COURT FURTHER FINDS that on January 19, 2007, the ELN Trust sold the High Country Inn for $1,240,000 to Wyoming Lodging, LLC, with the proceeds from the sale being placed directly into the bank account of ELN Trust,[12] without any compensation being paid to the LSN Trust.

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

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

THE COURT FURTHER FINDS that Mr. Nelson created Banone, LLC on November 15, 2007, the same year that he sold High Country Inn.[14] The Operating Agreement lists the ELN Trust as the Initial Sole Member of the company, meaning that Banone, LLC is an asset of the ELN Trust and that all benefits received from the managing of this company are conferred to Mr. Nelson, as beneficiary of the ELN Trust.

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[12] On January 24, 2007, Uinta Title & Insurance wired proceeds in the total amount of $1,947,153.37 ($1,240,000 for High Country Inn and $760,000 for the Off Track Betting Rights) to the ELN Trust's bank account.
[13] Defendant's Exhibit NNNN.
[14] Plaintiff's Exhibit 10K.

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THE COURT FURTHER FINDS that Banone, LLC, currently holds seventeen Nevada properties worth $1,184,236.[15]

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

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

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

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

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[15] Defendant's Exhibit GGGGG.

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

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

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

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

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

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

. . .

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

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

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

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

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

Credibility

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

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

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

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

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

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

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

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

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

[16] Defendant's Exhibit QQQQQ.

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

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

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

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

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

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[17] Defendant's Exhibit QQQQQ.

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

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

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

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

[18] Intervenor's Exhibit 168.

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

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

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

Lack of Trust Formalities

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

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

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

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

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

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

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

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

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

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

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

Liabilities

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

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EXHIBIT 3

EXHIBIT 3

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, vs. LYNITA SUE NELSON, LANA MARTIN, as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Defendant/Counterclaimants.	CASE NO.: D-09-411537-D DEPT. NO.: O
LANA MARTIN, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Crossclaimant, vs. LYNITA SUE NELSON, Crossdefendant.	

NOTICE OF ENTRY OF ORDER

Non-Trial Dispositions:
- ☐ Other
- ☐ Dismissed - Want of Prosecution
- ☐ Involuntary (Statutory) Dismissal
- ☐ Default Judgment
- ☐ Transferred

Settled/Withdrawn:
- ☐ Without Judicial Conf/Hrg
- ☐ With Judicial Conf/Hrg
- ☐ By ADR

Trial Dispositions:
- ☐ Disposed After Trial Start
- ☒ Judgment Reached by Trial

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TO:

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

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

DATED this 3 day of June, 2013.

Lori Parr
Judicial Executive Assistant
Dept. O

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, vs. LYNITA SUE NELSON, LANA MARTIN, as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Defendant/Counterclaimants.	CASE NO.: D-09-411537-D DEPT. NO.: O Electronically Filed 06/03/2013 01:35:50 PM CLERK OF THE COURT
LANA MARTIN, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Crossclaimant, vs. LYNITA SUE NELSON, Crossdefendant.	

DECREE OF DIVORCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[2] NRS 166.170(1)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . .

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

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

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

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

Fiduciary Duty

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

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

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

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

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

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

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

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

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

See, NRS 163.5557 (emphasis added).

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

> Q. Now you're the one that put title to those parcels that we've talked about in the name of Dynasty, Bal Harbor, Emerald Bay, Bay Harbor Beach Resorts and (indiscernible) Financial Partnerships. Is that correct?
>
> A. I believe so, yes.
>
> Q. And you're the one that also put title in the name of -- all the remaining lots in the name of LSN Nevada Trust. Is that true?
>
> A. Yes, sir.

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

> Q. The height of the market was 18 months ago according to your testimony?
>
> A. No, no. But I'm just saying we could have -- the this lawsuit's been pending for a while, sir. We did these deeds mistake -- if you can -- if you reference back to it, it shows -- shows Dynas -- it's my --
>
> Q. Exhibit -- the Exhibit for the --
>
> A. -- company. It shows Eric Nelson. That's my company. We put them into Lynita's for community protection, and she would not cooperate.

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Q. You put them --

A. Yes, sir.

Q. -- into Lynita's?

A. Yes, sir --

Q. All right. Sir --

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

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

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

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

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

---

[3] NRS 163.554.

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

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

Constructive Trust

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

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

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

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

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

> 1. No estate or interest in lands...nor any trust or power over or concerning lands, or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared after December 2, 1861, unless by act or operation of law, or by deed or conveyance, in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by the party's lawful agent thereunto authorized in writing.
>
> 2. Subsection 1 shall not be construed to affect in any manner the power of a testator in the disposition of the testator's real property by a last will and testament, **nor to prevent any trust from arising or being extinguished by implication or operation of law.**

See, NRS 111.025 (Emphasis added).

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

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

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

. . .

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

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

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

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

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

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

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DISTRICT JUDGE
FAMILY DIVISION, DEPT. O
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EXHIBIT 2

EXHIBIT 2

FILED

JUL 11 2 03 PM '12

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

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

Defendant/Counterclaimants.

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

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

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

NOTICE OF ENTRY OF ORDER

ÜK R SULLIVAN
ISTRICT JUDGE
AMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

TO:

Rhonda Forsberg, Esq.
Robert Dickerson, Esq.
Mark Solomon, Esq.
Jeffrey Luszeck, Esq.
Larry Bertsch

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered in the above-referenced case on the 11th day of July, 2012.

DATED this 11 day of July, 2012.

Lori Parr
Judicial Executive Assistant
Dept. O

NA A SULLIVAN
DISTRICT JUDGE
AMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

ORDR

FILED

JUL 11 2 03 PM '12

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

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

Defendant/Counterclaimants.

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

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

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

FINDINGS OF FACT AND ORDER

This matter having come before this Honorable Court on Court-appointed Forensic Accountant Larry Bertsch's Request for Instructions from Court Regarding Requests for Production of Documents and Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the Period from April 4, 2011 through March 31, 2012;

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TRICT JUDGE
ILY DIVISION, DEPT. O
AS VEGAS NV 89101

Plaintiff, Eric Nelson's Limited Opposition to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the Period from April 4, 2011 through March 31, 2012; Counterdefendant, Cross-defendant, Third-Party Defendant, Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust's Response to Request for Instructions from Court regarding Requests for Production of Documents and Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the Period from April 4, 2011 through March 31, 2012; and Defendant, Lynita Nelson's Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the Period from April 4, 2011 through March 31, 2012 filed by the Eric L. Nelson Nevada Trust and Reply to Limited Opposition to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the Period from April 4, 2011 through March 31, 2012 filed by Eric Nelson, with the Court having reviewed the pleadings and papers filed herein and being duly advised in the premises, good cause being shown:

THE COURT HEREBY FINDS that on May 29, 2012, this Court issued an Order informing the parties that it would address Mr. Bertsch's concerns raised in his Request for Instructions from Court Regarding Requests for Production of Documents and Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the Period from April 4, 2011 through March 31, 2012, as if they were a Motion because such filings garnered responses from the respective parties in this matter.

THE COURT FURTHER FINDS that this Court does not need to address Mr. Bertsch's Request for Instructions from Court Regarding Requests for Production of Documents as the Eric L. Nelson Nevada Trust (hereinafter, "ELN Trust") stated in its Response to Mr. Bertsch's

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RICT JUDGE
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Request that Counsels for Parties reached an agreement with respect to the issues raised in Mr. Bertsch's Request, and, consequently, Eric Nelson and Lynita Nelson did not raise an Objection or even address the document production in their respective responses to Mr. Bertsch's filings.

THE COURT FURTHER FINDS that with respect to Mr. Bertsch's Application for Allowance of Fees and Costs for the Period from April 4, 2011 through March 31, 2012, there is an outstanding balance of Fifty-Eight Thousand Nine Hundred Thirty-Eight Dollars ($58,938.00) that is owed to Mr. Bertsch for the services he has provided since the Court assigned him to this case in April of 2011..

THE COURT FURTHER FINDS that Mr. Bertsch is currently in possession of Forty-Four Thousand One Hundred Dollars ($44,100.00), consisting of the balance of the parties' tax refund originally held by attorney David Stephens.

THE COURT FURTHER FINDS that on August 9, 2011, this Court Ordered that Eric Nelson continue to pay all fees required by Mr. Bertsch to continue his work in this case, subject to any potential offset at a later date for community expenses.

THE COURT FURTHER FINDS that the ELN Trust argues in its Objection that it should not be responsible for the payment of Mr. Bertsch's fees and costs as it was not a party to the action at the time this Court appointed Mr. Bertsch as the forensic accountant; that the ELN Trust is not in a position to pay for Mr. Bertsch's fees and costs because there are insufficient funds to pay for its attorneys' fees, experts' fees beneficiaries and operating expenses; and that only Lynita Nelson has reaped the benefits of Mr. Bertsch's appointment as the ELN Trust is already in possession of the majority of the information that Ms. Nelson has

received from Mr. Bertsch during the course and scope of his duties as a forensic accountant for this case.

THE COURT FURTHER FINDS that Eric Nelson argues in his Opposition that he should not be responsible for paying Mr. Bertsch's fees and costs as the ELN Trust has already had to pay Sixty Thousand Dollars ($60,000.00) towards Mr. Bertsch's fees and costs and that Ms. Nelson is the only party who has benefited from Mr. Bertsch's appointment.

THE COURT FURTHER FINDS that Ms. Nelson argues in her Reply that she should not be responsible for paying Mr. Bertsch's fees and costs because she does not have access to the same amount of income as Mr. Nelson, given the fact that he receives disbursements from the ELN Trust, and that all parties have benefitted from Mr. Bertsch's appointment in this case as he has provided a clear picture of the accounting for the income and expenditures of the parties in this case.

THE COURT FURTHER FINDS that upon the Court's review of Mr. Bertsch's detailed descriptions of the specific work he has performed thus far, Mr. Bertsch's services have not just helped Ms. Nelson, but have also helped Mr. Nelson in that Mr. Bertsch has provided clear, concise reports chronicling all of the transactions that have taken place with respect to the assets contained in the parties' respective trusts, as well as a complete accounting of income and expenses associated with such assets, all of which will benefit the parties by providing the Court with financial information necessary for the rendering of a fair and just decision in the pending divorce proceedings.

THE COURT FURTHER FINDS that while this Court's Order from August 9, 2011 does provide that Mr. Nelson continue to pay all of Mr. Bertsch's fees and costs, this Court finds that since Mr. Nelson, by and through the disbursements received from the ELN Trust,

has already paid Sixty Thousand Dollars ($60,000.00) towards Mr. Bertsch's fees and costs and that both Mr. and Ms. Nelson are benefitting from Mr. Bertsch's on-going services, it is fair that both should share in the payment of the remaining balance of Fifty Eight Thousand Nine Hundred Thirty-Eight Dollars ($58,938.00), subject to any potential offset and/or reimbursement as deemed appropriate at the close of the evidentiary hearing.

THE COURT FURTHER FINDS that the funds currently in Mr. Bertsch's possession in the amount of Forty-Four Thousand One Hundred Dollars ($44,100.00), consisting of the balance of the tax refund originally held by attorney David Stephens, should be applied towards the outstanding balance owed to Mr. Bertsch, with the remaining balance and any additional fees and expenses owed to Mr. Bertsch to be addressed at the close of the evidentiary hearing.

THEREFORE, IT IS HEREBY ORDERED that Mr. Bertsch is directed to apply the Forty-Four Thousand One Hundred Dollars ($44,100.00) currently in his possession from the parties' tax refund towards his outstanding balance of Fifty-Eight Thousand Nine Hundred Thirty Eight Dollars ($58,938.00), with the remaining balance and any additional fees and costs to be addressed at the close of the evidentiary hearing.

Dated this 5th day of July, 2012.

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

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RICT JUDGE
Y DIVISION, DEPT. O
VEGAS NV 89101

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 25 2014 09:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Appellant/Cross-Respondent, and,

LYNITA SUE NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LSN NEVADA TRUST DATED MAY 30, 2001, Cross-Respondent

vs.

ERIC L. NELSON, INDIVIDUALLY, AND IN HIS CAPACITY AS INVESTMENT TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Respondent/Cross-Appellant,

Supreme Court No. 66772
District Court Case No. D-411537

DOCKETING STATEMENT
CIVIL APPEALS

1. Judicial District Nevada Department O
County Clark Judge Frank P. Sullivan
District Ct. Case No. D-09-411537-D

2. **Attorney filing this docketing statement:**

Attorney Rhonda K. Forsberg, Esq. Telephone (702) 990-6468
Firm Rhonda K. Forsberg, Chartered
Address 64 N. Pecos Road, Suite 800
Henderson, Nevada 89074

Docket 66772 Document 2014-38745

Client: Eric L. Nelson

3. **Attorney representing Appellant/Cross-Respondent:**

Attorney Mark A Solomon, Esq./Jeffrey P. Luszeck, Esq.
Telephone (702) 853-5483
Firm Solomon Dwiggins & Freer
Address 9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Client: Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust Dated May 30, 2001

Attorney Robert P. Dickerson, Esq.., Katherine L. Provost, Esq., Josef M. Karacsoni,
Telephone (702) 388-8600
Firm The Dickerson Law Group
Address 1745 Village Center Circle
Las Vegas, Nevada 89134
Client: Lynita Sue Nelson, individually and in her capacity as Investment Trustee of the LSN Nevada Trust dated May 30, 2001

4. **Nature of Deposition below (check all that apply):**

X Judgment after bench trial
___ Judgment after jury verdict
___ Summary Judgment
___ Default judgment
___ Dismissal
___ Lack of Jurisdiction
___ Failure to state a claim
___ Failure to prosecute
___ Other (specify) _____

___ Grant/denial of NRCP 60(b) relief
___ Grant/denial of injunction
___ Grant/denial of declaratory relief
___ Review of agency determination
X Divorce decree:
X Original ___ Modification
___ Other disposition (specify)
_____
_____

5. **Does this appeal raise issues concerning any of the following: No**

___ Child custody
___ Termination of parental rights

___ Venue

___ Grant/denial of injunction or TRO

___ Adoption

___ Juvenile matters

6. **Pending and prior proceedings in this Court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this Court that are related to this appeal.

a. Nola Harber, Distribution Trustee of the Eric L. Nelson Nevada Trust dated 5/30/01 vs. Eighth Judicial District Court, Clark County, and the Honorable Frank P. Sullivan, District Judge and Eric L. Nelson and Lynita L. Nelson, individually and LSN Nevada Trust Dated 5/30/01, Larry Bertsch, Supreme Court Case No. 63432

b. Nola Harber, Distribution Trustee of the Eric L. Nelson Nevada Trust Dated 5/301/01 vs. Eighth Judicial District Court, Clark County, and the Honorable Frank P. Sullivan, District Court Judge and Eric L. Nelson and Lynita L. Nelson, individually and LSN Nevada Trust dated 5/30/01, Supreme Court Case No. 63545

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts that are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings and their dates of disposition.

Eric L. Nelson vs. Lynita Sue Nelson, Eighth Judicial District Court, Clark County, Nevada District Case No. D-09-411537-D

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded and the result below.

This divorce action brought by Eric L. Nelson ("Eric") against Lynita S. Nelson ("Lynita") on May 6, 2009. On August 9, 2011, the parties stipulated and agreed that the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN Trust") and the LSN Nevada Trust dated May 30, 2001 ("LSN Trust") should be joint as necessary parties

On June 3, 2013, the District Court issued the Divorce Decree, wherein he found that based upon the testimony and evidence presented at trial, that the parties entered into a valid Separate Property Agreement in July 13, 1993 and that those properties later funded the ELN Trust and LSN Trust that were "established as a self-settled spendthrift trust in accordance with NRS 166.020." The parties had relatively no other property. The parties' income is solely derived from the distributions from the ELN and LSN Trusts. Despite the Court "equalizing" the assets of the ELN Trust and LSN Trust, the court granted lump sum alimony and attorney's fees to Lynita Nelson.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

a. **June 3, 2013 Decree of Divorce**

- Whether the District Court erred in issuing an award of alimony when all of the parties income is generated from properties in ELN Trust and LSN Trust and the Court equalized the assets in the trusts;
- Whether the District Court erred in issuing the alimony award as lump sum to Lynita and that the alimony be paid from the ELN Trust;
- Whether the District Court erred in its interpretation of NRS 163.5557 that Eric Served as the Investment Trustee of the LSN Trust.
- Whether the District Court erred by finding that Mr. Nelson violated the joint preliminary injunction when the ELN Trust purchased the Bella Kathryn residence.
- Whether the District Court erred by assigning a $3,000 a month cash flow of the Russell Road and Banone LLC Properties and $10,000 cash flow from Lindell to Lynita.

b. **July 11, 2012 – Findings of Fact and Order**

- Whether the District Court erred by requiring the Eric L. Nelson to pay Mr. Bertsch's fees without providing a corresponding credit to Eric L. Nelson or the ELN Trust and/or requiring Lynita or the LSN Trust to share in the expense.

10. **Pending proceedings in this Court raising the same or similar issues.** If you are aware of any proceedings presently pending before this Court that raises the same or similar issues raised in this appeal, list the case number and docket number and identify the same or similar issues raised:

None.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the Clerk of this Court and the Attorney General in accordance with NRCP 44 and NRS 30.130?

N/A X Yes _____ No _____

12. **Other issues.** Does this appeal involve any of the following issues?

___ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

___ An issue arising under the United States and/or Nevada Constitutions

_X_ A substantial issue of first impression

___ An issue of public policy

___ An issue where *en banc* consideration is necessary to maintain uniformity of this Court's decisions

___ A ballot question

If so, explain: Can a district court commence rehabilitative support even though none was originally ordered in the Decree of Divorce.

13. **Trial.** If this action proceeded to trial, how many days did the trial last? See below dates.

2010 August 31, 2010, September 1, 2010, October 19-20, 2010, November 16-17, 2010, November 22, 2010, December 10, 2010

2012 July 16, 17, 18, 19, 23, 24, 25, 2012

2014 May 30, 2014, June 4, 2014 (Evidentiary Hearing)

Was it a bench or jury trial? Bench

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from:** Decree of Divorce: 6/3/13

Judgment: 9/22/14

Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.

(1) FINDINGS OF FACT AND ORDER entered by this Court on July 11, 2012;

(2) FINDINGS OF FACT AND ORDER entered by this Court on July 11, 2012

(3) DECREE OF DIVORCE entered by this Court on June 3, 2013;

(4) ORDER DETERMINING DISPOSITION OF DYNASTY DEVELOPMENT MANAGEMENT entered by this Court on September 22, 2014; and,

(5) ORDER FROM JULY 22, 2013, HEARING ON LYNITA NELSON'S MOTION TO AMEND OR ALTER JUDGMENT, FOR DECLARATION AND RELATED RELIEF entered by this Court on September 22, 2014

16. **Date written notice of entry of judgment or order served:** 6/3/13 and 9/22/14

Was service by delivery _____ or by mail/electronic fax (X) . (Specify)

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion**

_____**NRCP 50(b)** Date of filing:

_____ **NRCP 52(b)** Date of filing:

__X__ **NRCP 59** Date of filing: 6/17/13 Lynita Nelson's Motion to Amend or Alter Judgment, For Declaration and Related Relief

18. **Date Notice of Appeal was filed:** October 21, 2014. If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

10/20/14 by Matt Klabacka, Distribution Trustee of ELN Trust
11/03/14 by Lynita Sue Nelson, individually and as Investment Trustee of LSN Trust

19. **Specify statute or rule governing the time limit for filing the Notice of Appeal, *e.g.*, NRAP 4(a), NRS 155.190, or other:** NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this Court jurisdiction to review the judgment or order appealed from:

(a)

NRAP 3A(b)(1) __X__ NRS 155.190_____ (specify subsection)

NRAP 3A(b)(2) _____ NRS 38.205_____ (specify subsection)

NRAP 3A(b)(3) _____ NRS 703.376_____

Other (specify)_____

(b) **Explain how each authority provides a basis for appeal from the judgment or order.**

NRAP 3A(b)(1) permits an appeal from: "A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." Here, Appellant appeals the District Court order from the Evidentiary Hearing, which was a "final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered."

21. **List all parties involved in the action in the District Court:**

(a) Parties:

Eric L. Nelson, individually and as Investment Trustee of the Eric L. Nelson Nevada Trust dated 5/30/01

Lana Martin, Former Distribution Trustee of the Eric L. Nelson Nevada Trust dated 5/30/01

Nola Harber, Former Distribution Trustee of the Eric L. Nelson Nevada Trust dated 5/30/01

Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated 5/30/01

Lynita Nelson, individually and as Investment Trustee of the Lynita S. Nelson Nevada Trust dated 5/30/01

(b) If all parties in the District Court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other: Not applicable.

22. **Give a brief description (3 to 5 words) of each party's separate claims, counter-claims, cross-claims or third-party claims, and the date of disposition of each claim.**

Eric L. Nelson individually and as investment trustee of ELN Trust- Declaratory Relief: 6/3/13 and 9/22/14

Matt Klabacka, Distribution Trustee of Eric L. Nelson Nevada Trust- Declaratory Relief 6/3/13 and 9/22/14

Lynita S. Nelson – Veil Piercing, Reverse Veil Piercing; Construction Trust, and Injunctive Relief: 9/22/14

23. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below?**

____No __X__ Yes

24. **If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the District Court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

__No ____Yes **If Yes, attach a copy of the certification or order, including any notice of entry and proof of service.**

(d) Did the District Court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

___No ____Yes

25. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

N/A

26. **Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order.

VERIFICATION

I declare under penalty of perjury that I have read this Docketing Statement, and that the information provided in this Docketing Statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this Docketing Statement.

Eric L. Nelson
Name of Appellant

11/24/14
Date

State of Nevada, County of Clark
State and County where signed

Rhonda K. Forsberg, Esq.
Name of Counsel of Record

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 24 day of November 2014, I served a copy of this Docketing Statement upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address:

Mark A Solomon, Esq./Jeffrey P. Luszeck, Esq.
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Client: Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust Dated May 30, 2001

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Firm The Dickerson Law Group
Address 1745 Village Center Circle
Las Vegas, Nevada 89134
Client: Lynita Sue Nelson, individually and in her capacity as Investment Trustee of the LSN Nevada Trust dated May 30, 2001

DATED this 24 day of November, 2014.

Signature

EXHIBIT 1

EXHIBIT 1

FILED

JUL 11 2 04 PM '12

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, vs. LYNITA SUE NELSON, LANA MARTIN, as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Defendant/Counterclaimants.	CASE NO.: D-09-411537-D DEPT. NO.: O
LANA MARTIN, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Crossclaimant, vs. LYNITA SUE NELSON, Crossdefendant.	

NOTICE OF ENTRY OF ORDER

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

TO:

Rhonda Forsberg, Esq.
Robert Dickerson, Esq.
Mark Solomon, Esq.
Jeffrey Luszeck, Esq.
Larry Bertsch

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered in the above-referenced case on the 11th day of July, 2012.

DATED this 11 day of July, 2012.

Lori Parr
Judicial Executive Assistant
Dept. O

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

ORDR

FILED

JUL 11 2 04 PM '12

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, vs. LYNITA SUE NELSON, LANA MARTIN, as Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Defendant/Counterclaimants.	CASE NO.: D-09-411537-D DEPT. NO.: O
LANA MARTIN, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, Crossclaimant, vs. LYNITA SUE NELSON, Crossdefendant.	

FINDINGS OF FACT AND ORDER

This matter having come before this Honorable Court on Defendant Lynita Nelson's Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; Counterdefendant, Cross-defendant, Third-Party Defendant,

UNK R. SULLIVAN
DISTRICT JUDGE
LY DIVISION, DEPT. O
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Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust's Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; and Countermotion to Compel Lynita Nelson's Expert Witness to Return Documents to the ELN Trust; Plaintiff, Eric Nelson's Opposition to Defendant's Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; Defendant Lynita Nelson's Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets filed by Eric Nelson, Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets filed by the Eric L. Nelson Nevada Trust and Opposition to the Eric L. Nelson Nevada Trust's Countermotion to Compel Return of Documents; Counterdefendant, Cross-defendant, Third-Party Defendant, Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust's Response to New Issues Raised in Lynita Nelson's Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; and Reply to Opposition to Countermotion to Compel Lynita Nelson's Expert Witness to Return Documents to the ELN Trust; and Plaintiff Eric Nelson's Notice of Joinder to Response to New Issues Raised in Lynita Nelson's Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of

Phoenix Properties, and Tracing of all Current Assets; and Reply to Opposition to Countermotion to Compel Lynita Nelson's Expert Witness to Return Documents to the ELN Trust, with the Court having reviewed the pleadings and papers filed herein and being duly advised in the premises, good cause being shown:

THE COURT HEREBY FINDS that on May 4, 2012, Lynita Nelson filed a Motion with this Court asking that the Court order the forensic accountant that it appointed, Larry Bertsch, to perform the following tasks: examine all transactions relating to the acquisition and sale of the Wyoming Property (hereinafter, "Wyoming Downs Property"); examine all transactions relating to the acquisition and sale of the "Sycamore Plaza" Phoenix Property and the "Tierra Del Sol" Phoenix Property (hereinafter, "Phoenix Properties"); and trace the source of all current assets held by either the Eric L. Nelson Nevada Trust (hereinafter, "ELN Trust") or the LSN Nevada Trust (hereinafter, "LSN Trust").

THE COURT FURTHER FINDS that Ms. Nelson's request of the Court stems from information that she has discovered regarding the purchase of the Wyoming Downs Property and Mr. and Ms. Nelson's accumulation of assets that they both held in joint tenancy, despite the existence of a Separate Property Agreement that they both entered in 1993.

THE COURT FURTHER FINDS that in its Order issued on June 9, 2011, the Court made the following Order:

> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that LARRY BERTSCH, CPA and NICHOLAS MILLER, CFE, are appointed by this Court to perform a forensic accounting intended to provide the Court with an accurate evaluation of the parties' estate. Counsel for the parties are to meet separately with the Court appointed experts and confirm the areas they desire the experts to review during their evaluation.

THE COURT FURTHER FINDS that Ms. Nelson represents that her requests for Mr. Bertsch's investigations and subsequent reports are necessary because they will "ensure the

Court has the most accurate information regarding the assets at issue in this divorce at the time of trial."

THE COURT FURTHER FINDS that the ELN Trust argues in its Opposition that Ms. Nelson is essentially requesting that the Court allow Mr. Bertsch to conduct her discovery for the evidentiary hearing, that such request exceeds the scope of Mr. Bertsch's appointment and that Ms. Nelson's specific request that Mr. Bertsch trace the source of all of the assets held by the ELN Trust and the LSN Trust to determine the disposition of the property as either community property or separate property is an improper delegation to a special master of the Court's duty.

THE COURT FURTHER FINDS that Mr. Nelson filed his own Opposition in which he made several of the same arguments as the ELN Trust, but also went into his own theory as to why the Wyoming Downs Property is separate property and requested attorney's fees.

THE COURT FURTHER FINDS that as to Mr. Nelson's argument regarding the classification of the Wyoming Downs property, this Court is not going to entertain Mr. Nelson's theory as he and the ELN Trust will have their opportunity at the evidentiary hearing to establish the classification of the Wyoming Downs property.

THE COURT FURTHER FINDS that as to Mr. Nelson's request for attorney's fees, this Court does not find Ms. Nelson's Motion was filed disingenuously or to delay the trial, and, as such, this Court is not inclined to grant Mr. Nelson's request for reasonable attorney's fees.

THE COURT FURTHER FINDS that the issue before this Court is simply whether or not Ms. Nelson's request for Mr. Bertsch to perform the aforementioned tasks exceeds the scope of this Court's appointment.

THE COURT FURTHER FINDS that NRCP 53 (c) provides that "The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only…"

THE COURT FURTHER FINDS that the Nevada Supreme Court has determined that "Masters are appointed to aid judges in the performance of specific judicial duties…not to place the trial judge into a position of a reviewing court." *Russell v. Thompson,* 96 Nev. 830, 835, 619 P.2d 537, 539 (Nev. 1980).

THE COURT FURTHER FINDS that a Court's referral to a special master is only warranted when it is absolutely necessary, not when the Court simply desires to appoint a special master as this might lead to the Court's delegation of too much authority or power to the special master. *Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct. of St. ex rel. Co. of Clark,* 118 Nev. 124, 128, 41 P.3d 327, 329 (Nev. 2002) citing *Russell v. Thompson,* 96 Nev. 830, 834, 619 P.2d 537, 540 (Nev. 1980).

THE COURT FURTHER FINDS that in *Thompson,* the Nevada Supreme Court held that a writ of mandamus would properly issue because the Judge, in contravention of NRCP 53, improperly abdicated his judicial duties when he appointed the special master to make determinations as to whether the property at issue was separate or community property, to recommend an appropriate division of the property at issue and/or any alimony, and to provide the Court with a report chronicling his Findings of Fact and Conclusions of Law, forthwith. *Thompson,* at 832, 538.

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DISTRICT JUDGE
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THE COURT FURTHER FINDS that in *Thompson*, the Nevada Supreme Court agreed with the Colorado Supreme Court's holding that in accordance with Rule 53 of the Colorado Rules of Civil Procedure, which contains a very similar provision that exists in NRCP 53, "...where the issues in a divorce case are not beyond the competence of a court to consider without a master, a reference [to a master] constitutes an unjustified delegation of the court's decision-making powers." *Thompson*, at 834, 539 citing *Gelfond v. Dist. Ct.*, 180 Colo. 95, 504 P.2d 673 (Colo. 1972).

THE COURT FURTHER FINDS that while the ELN Trust argues that Ms. Nelson's request that Mr. Bertsch examine all transactions relating to the acquisition and sale of the Wyoming Downs Property, the Phoenix Properties and trace the source of all current assets held by the ELN Trust and the LSN Trust, respectively, teeters on the brink of this Court abdicating its judicial decision-making authority, this Court does not interpret Ms. Nelson's Motion to include such a request as she is only asking the Court to authorize Mr. Bertsch to trace the source of the properties contained in the respective trusts, not to empower Mr. Bertsch with the authority to make determinations as to the classification of the property..

THE COURT FURTHER FINDS that although Ms. Nelson is not requesting that the Court abdicate its judicial decision-making power in contravention of NRCP 53 and *Thompson*, this Court is not inclined to grant Ms. Nelson's request as it exceeds the scope of this Court's Order issued on June 9, 2011 that Mr. Bertsch perform a forensic accounting of all of the assets at issue in this divorce and their respective streams of income and expenses, not to trace the source of the income used to acquire said properties.

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DISTRICT JUDGE
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\S VEGAS NV 89101

THE COURT FURTHER FINDS that Ms. Nelson's request for Mr. Bertsch to analyze the transactions involved with the Wyoming Downs Property and Phoenix Properties and trace the source of all of the assets held by the ELN Trust and LSN Trust, not only exceeds the scope of Mr. Bertsch's original appointment, but would further delay the start of the July 16, 2012 Evidentiary Hearing.

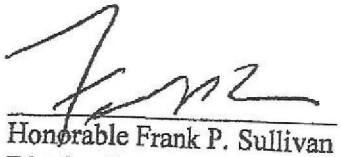
THE COURT FURTHER FINDS that with respect to the ELN Trust's Countermotion to compel Ms. Nelson's Expert Witness to return original Wells Fargo Bank Statements to the ELN Trust, Ms. Nelson should simply make copies of the documents at issue, subject to reimbursement for copying costs, and provide the originals back to the ELN Trust.

THEREFORE, IT IS HEREBY ORDERED that Ms. Nelson's Motion is DENIED in its entirety.

IT IS FURTHER ORDERED that the ELN Trust's Countermotion to compel the return of the original Wells Fargo Bank Statements is hereby GRANTED, subject to reimbursement for copying costs.

IT IS FURTHER ORDERED that Mr. Nelson's request for attorney's fees is hereby DENIED.

Dated this 11th day of July, 2012.



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