IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Appellant/Cross-Respondent, vs. LYNITA SUE NELSON, INDIVIDUALLY, AND IN HER CAPACITY AS INVESTMENT TRUSTEE OF THE LSN NEVADA TRUST DATED MAY 30, 2001; AND ERIC L. NELSON, INDIVIDUALLY, AND IN HIS CAPACITY AS INVESTMENT TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001, Respondents/Cross-Appellant.	SUPREME COURT CASE NO.: 66772 District Court Case No. D411537 Consolidated with Case No. 68292

RESPONDENT/CROSS-APPELLANT, LYNITA SUE NELSON'S, APPENDIX VOLUME 5

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Supreme Court Case 66772 Consolidated with 68292

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the Trustees, or any of them, may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustees exercise the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

13.2 **Spendthrift Provision**. No property (income or principal) distributable under this Trust Agreement, whether pursuant to Articles III, IV, Article V or otherwise, shall be subject to anticipation or assignment by any beneficiary, or to attachment by or of the interference or control of any creditor or assignee of any beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder shall be absolutely and wholly void. No beneficiary or remainderman of any Trust shall have any right or power to sell, transfer, assign, pledge, mortgage, alienate, or hypothecate his or her interest in the principal or income of the Trust estate in any manner whatsoever. To the fullest extent of the law, the interest of each beneficiary and remainderman shall not be subject to the claims of any of his or her creditors or liable to attachment, execution, bankruptcy proceedings, or any other legal process. No beneficiary of any Trust created hereunder shall have any right or power to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the Trust, in any way; nor shall any such interest in any manner be liable for or subject to the debts, liabilities, taxes or obligations of such beneficiary or claims of any sort against such beneficiary. The Distribution Trustee shall pay, disburse, and distribute principal and income of any trust only in the manner provided for in this Trust Agreement and will not make any attempted transfer or assignment, whether oral or written, to any appointee beneficiary or remainderman other than as herein provided. All Trusts created by this Trust Agreement shall be spendthrift Trusts as provided by the laws of the State of Nevada and shall be interpreted and operated so as to maintain such trusts as spendthrift trusts. Any beneficiary of any Trust created under this Trust Agreement may renounce or disclaim his or her interest in any Trust created under this Trust Agreement or any special or general power of appointment, in whole or in part, at any time; provided, however, such beneficiary shall not be treated as having died for the purpose of fiduciary appointments made in this Trust Agreement by reason of such disclaimer.

13.3 **Perpetuities Savings Clause**. Unless terminated earlier in accordance with other provisions of this trust, any trust hereby created or created by the exercise of any power

hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the Trustor; (2) all the issue of Trustor who are living at the death of the Trustor; and (3) all named beneficiaries who are living at the death of the Trustor, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the trust is then being governed. Upon such termination, the Trust estate, and any accumulations thereon, shall be distributed to those persons and in the same proportions as the income of the trust is then being paid.

13.4 **No-Contest Provision**. The Trustor specifically desires that this Trust Indenture and these Trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these Trusts or any other person, whether stranger, relative or heir, or any legatee or devisee under the Last Will and Testament of either of the Trustor or the successors-in-interest of any such persons, including Trustor's estate under the intestate laws of the State of Nevada or any other state lawfully or indirectly, singly or in conjunction with another person, seek or establish to assert any claim or claims to the assets of these Trusts established herein, or attack, oppose or seek to set aside the administration and distribution of the Trusts, or to invalidate, impair or set aside its provisions, or to have the same or any part thereof declared null and void or diminished, or to defeat or change any part of the provisions of the Trusts established herein, then in any and all of the abovementioned cases and events, such person or persons shall receive One Dollar ($1.00), and no more, in lieu of any interest in the assets of the Trusts or interest in income or principal.

13.5 **Provision For Others**. The Trustor has, except as otherwise expressly provided in this Trust Indenture, intentionally and with full knowledge declined to provide for any and all of her heirs or other persons who may claim an interest in her respective estate or in these Trusts.

13.6 **Severability**. In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible.

13.7 **Distribution Of Small Trust**. If the Trustees, in the Trustees' absolute discretion, determine that the amount held in Trust is not large enough to be administered in

Trust on an economical basis, then the Trustees may distribute the Trust assets free of Trust to those persons then entitled to receive the same.

13.8 **Headings**. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

13.9 **More Than One Original**. This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

13.10 **Interpretation**. Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

13.11 **Definitions**. The following words are defined as follows:

(a) **"Principal" and "Income"**. Except as otherwise specifically provided in this Trust Indenture, the determination of all matters with respect to what is principal and income of the Trust estate and the apportionment and allocation of receipts and expenses thereon shall be governed by the provisions of Nevada's Revised Uniform Principal and Income Act, as it may be amended from time to time and so long as such Act does not conflict with any provision of this instrument; provided, however, that as used herein, the term "Trust income" for any taxable year shall also include the net amount received in such taxable year for the sale or exchange of capital assets. Notwithstanding such Act, no allowance for depreciation shall be charged against income or net income payable to any beneficiary.

(b) **"Education"**. Whenever provision is made in this Trust Indenture for payment for the "education" of a beneficiary, the term "education" shall be construed to include technical or trade schooling, college or postgraduate study, so long as pursued to advantage by the beneficiary at an institution of the beneficiary's choice and in determining payments to be made for such college or post-graduate education, the Trustees shall take into consideration the beneficiary's related living and travelling expenses to the extent that they are reasonable.

(c) **"Child, Children, Descendants or Issue"**. As used in this instrument, the term "descendants" or "issue" of a person means all of that person's lineal descendants of all generations. The terms "child, children, descendants or issue" include adopted persons, but do not include a step-child or step-grandchild, unless that person is entitled to inherit as a legally adopted person.

13.12 **Court Instructions**. The Trustees may seek the assistance of the Courts in all matters affecting the administration of this Trust or its properties, including advice on the interpretation of the Trust or for settlement of any account by invoking the jurisdiction of any

District Court with jurisdiction (including quasi-in-rem jurisdiction) over the Trust, the Trustees, or the Trust res, in a nonadversary ex parte proceeding. The decision of the Court shall be binding upon all interested parties who were given written mailing notice of the proceedings to their last known address.

SIGNED AND SEALED by the Trustor and Trustees on the day and year first above written.

TRUSTOR AND INVESTMENT TRUSTEE:

LYNITA SUE NELSON

DISTRIBUTION TRUSTEE:

LANA MARTIN

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On this 30th day of May, 2001, personally appeared before me, a Notary Public in and for said County of Clark, State of Nevada, LYNITA SUE NELSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

Notary Public - State of Nevada
County of Clark
EDITH E. PLUMMER
My Appointment Expires
April 22, 2005
No: 97-1373-1

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On this 7 day of June, 2001, personally appeared before me, a Notary Public in and for said County of Clark, State of Nevada, LANA MARTIN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

SHELLEY J. NEWELL
Notary Public, State of Nevada
Appointment No. 9341811
My Appt. Expires July 29, 2001

APPROVED:

BY: Jeffrey L. Burr, Esq.
4455 South Pecos Road
Las Vegas, Nevada 89121

CHANGE OF DISTRIBUTION TRUSTEESHIP

FOR THE

LSN NEVADA TRUST

THIS CHANGE OF DISTRIBUTION TRUSTEESHIP, dated February 22, 2007, is made in accordance with ARTICLE XI, Section 11.3, entitled Trust Consultant, as provided in the Trust Agreement, dated May 30, 2001.

Witnesseth:

WHEREAS, LYNITA SUE NELSON, as Trustor, established the LSN NEVADA TRUST on May 30, 2001, wherein LYNITA SUE NELSON was appointed as the Investment Trustee, LANA MARTIN was appointed as the Distribution Trustee and JEFFREY BURR, LTD., formerly known as JEFFREY L. BURR, LTD., a Nevada corporation, was appointed as Trust Consultant; and

WHEREAS, pursuant to the power reserved to JEFFREY BURR, LTD., as the Trust Consultant, in Section 11.3 of the within referenced Trust Agreement, the Distribution Trustee shall now be changed, such that LANA MARTIN shall cease to serve as the Distribution Trustee of the within referenced Trust Agreement and NOLA HARBER shall now serve as the current Distribution Trustee instead, effective immediately. If NOLA HARBER should become deceased, unable or unwilling to serve as the Successor Distribution Trustee, then ROBERT MARTIN shall serve as the Successor Distribution Trustee in her stead.

NOW, THEREFORE by executing this Change of Distribution Trusteeship, the Trust Consultant herewith removes LANA MARTIN as the Distribution Trustee of the within referenced Trust Agreement and appoints NOLA HARBER to serve as the current Distribution Trustee, effective immediately. If NOLA HARBER should become deceased, unable or unwilling to serve as the Successor Distribution Trustee, then ROBERT MARTIN shall serve as the Successor Distribution Trustee in her stead.

Distribution Trustee, then ROBERT MARTIN shall serve as Successor Distribution Trustee.

THIS CHANGE OF DISTRIBUTION TRUSTEESHIP is accepted, made, and executed by the Trust Consultant on the day and year first above written.

TRUST CONSULTANT:

JEFFREY BURR, LTD.,
a Nevada corporation

BY: _____
JEFFREY L. BURR, ESQ.

ACCEPTANCE BY DISTRIBUTION TRUSTEE

I certify that I have read the foregoing Change of Distribution Trusteeship and the within referenced Declaration of Trust and understand the terms and conditions for my service as Distribution Trustee. I accept the Declaration of Trust in all particulars.

_____
NOLA HARBER

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On February 22nd 2007, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared JEFFREY BURR, ESQ., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public - State of Nevada
COUNTY OF CLARK
BARBARA MORELLI
No. 99-38492-1 My Appointment Expires Oct. 17, 2007

_____
NOTARY PUBLIC

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On February 22, 2007, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared NOLA HARBER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

ROCHELLE McGOWAN
Notary Public State of Nevada
No. 02-73189-1
My appt. exp. Feb. 12, 2010

NOTARY PUBLIC

CERTIFICATE OF IRREVOCABLE TRUST

Contemporaneously with the execution of this Certificate, the undersigned, LYNITA SUE NELSON, a resident of Clark County, Nevada, has executed that certain document entitled, the "LSN NEVADA TRUST" dated May 30, 2001, which provides in pertinent parts as follows:

1. **GRANTOR**: The Grantor under the terms of said Trust is LYNITA SUE NELSON.

2. **INVESTMENT TRUSTEE**: The Investment Trustee under said Trust is LYNITA SUE NELSON. Upon the death or incapacity of the original Investment Trustee, ERIC L. NELSON shall serve as the Successor Investment Trustee hereunder.

3. **DISTRIBUTION TRUSTEE**: The Distribution Trustee under said Trust is LANA MARTIN.

4. **BENEFICIARY**: The beneficiary of this Trust is the Trustor.

5. **IRREVOCABLE TRUST**: This Trust is irrevocable and may not be altered, amended or revoked at any time.

6. **POWERS OF TRUSTEE**:

(a) To register any securities or other property held hereunder in the name of Investment Trustee or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee shall show that all such investments are part of her respective funds.

(b) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as she may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustee's books of account.

(c) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and unitization agreements.

(d) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.

(e) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of her discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.

(f) To invest and reinvest in her absolute discretion, and she shall not be restricted in her choice of investments to such investments as are permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

(g) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.

(h) To institute, compromise, and defend any actions and proceedings.

(i) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.

(j) Except as limited in Section 3.3 above, to partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustee may deem necessary to make division or partial or final distribution of any of the Trusts.

(k) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.

(l) Except as limited by Section 3.3 above, to make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee, or by direct payment of such beneficiary's expenses.

To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.

(m) To accept additions of property to the Trusts, whether made by the Trustor, a member of the Trustor's family, by any beneficiaries hereunder, or by any one interested in such beneficiaries.

(o) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.

(p) To open and maintain safety deposit boxes in the name of this Trust.

(q) Except as limited to by Section 3.3 above, to make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed. The Trustor requests but does not direct, that the Trustees make distributions in a manner which will result in maximizing the aggregate increase in income tax basis of assets of the estate on account of federal and state estate, inheritance and succession taxes attributable to appreciation of such assets.

(r) Except as limited by Section 3.3 above, the powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.

(s) The enumeration of certain powers of the Trustee shall not limit her general powers, subject always to the discharge of her fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.

(t) To invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transactions will be effected.

(u) To sell any property in the Trust estate, with or without notice, at public or private sale and upon such terms as the Trustee deems best, without appraisement or approval of court.

(v) To invest and reinvest principal and income in such securities and properties as the Trustee shall determine. The Trustee is authorized to acquire, for cash or on credit (including margin accounts), every kind of property, real, personal or mixed, and every kind of investment (whether or not unproductive, speculative, or unusual in size of concentration), specifically including, but not by way of

limitation, corporate or governmental obligations of every kind and stocks, preferred or common, of both domestic and foreign corporations, shares or interests in any unincorporated association, Trust, or investment company, including property in which the Trustee is personally interested or in which the Trustee owns an undivided interest in any other Trust capacity.

(w) To deposit Trust funds in commercial savings or savings bank accounts in unlimited amounts for an unlimited period of time, with or without interest and subject to such restrictions upon withdrawal as the Trustee shall agree; any Trustee may sign on such account without any Trustee co-signature unless the signature card shall provide otherwise.

(x) To borrow money for any Trust purpose upon such terms and conditions as may be determined by the Trustee, and to obligate the Trust estate for the repayment thereof; to encumber the Trust estate or any part thereof by mortgage, deed of trust, pledge or otherwise, for a term within or extending beyond the term of the Trust.

(y) To grant options and rights of first refusal involving the sale or lease of any Trust asset and to sell upon deferred payments, or to acquire options and rights of first refusal for the purchase or lease of any asset, to purchase notes or accounts receivable whether secured or unsecured.

(z) To employ and compensate, out of the principal or income or both, as the Trustee shall determine, such agents, persons, corporations or associations, including accountants, brokers, attorneys, tax specialists, certified financial planners, realtors, and other assistants and advisors deemed needful by the Trustees even if they are associated with a Trustee, for the proper settlement, investment and overall financial planning and administration of the trusts; and to do so without liability for any neglect, omission, misconduct, or default of any such person or professional representative provided such person was selected and retained with reasonable care.

(aa) To invest and reinvest all or any part of the assets of any trust in any money management or registered investment advisory service which would provide for professional management of any such assets. In this regard, the Trustor specifically allows the Trustee to authorize the advisory service to have the discretionary authority to invest and reinvest the assets transferred to such advisor by the Trustee without the requirement of prior approval of the Trustee on any transactions.

(bb) Notwithstanding the prohibitions under N.R.S. 163.050 and any such Successor provisions, or notwithstanding any prohibitions against "self-dealing" as are provided under the laws of any other jurisdiction pursuant to which laws this Trust may be administered, any Trustee shall not be prohibited from engaging in

acts of self-dealing with Trust property, either directly or indirectly, so long as such act of self-dealing is disclosed to the Distribution Trustee, and so long as the Trustee, in selling her, his or their own property or selling other properties in an agency or other fiduciary capacity to the Trust or in purchasing Trust assets for her, his or their personal account or in purchasing Trust assets in an agency or other fiduciary capacity, gives fair consideration in exchange for all Trust properties received. Where Trustees have engaged in acts of self-dealing for fair and adequate consideration, and has/have given notice to the Distribution Trustee, Trustee shall be relieved of any liability, sanction, and allegation of wrongdoing for such acts by any Court or other legal authority.

(cc) To retain for any period of time any property which may be received or acquired, even though its retention by reason of its character or otherwise would not be appropriate apart from this provision.

(dd) In the event the purchase, use or disposition of any trust property gives rise to either threatened or actual liability such that, in the sole opinion of the Trustees, the remaining assets of the Trust are thereby placed at risk of exposure to such liability, the Trustee shall be empowered to take such further and necessary steps as she deems prudent to protect and preserve the remaining assets of the trust, including but not limited to transferring such property giving rise to the threatened or actual liability to a separate trust formed to hold said property. The Trustee shall be further empowered to appoint an independent third party to act as Trustee over the newly-formed trust, and such trust shall be administered according to, and governed by the terms of, this Trust Agreement. The Beneficiaries of the new trust shall be the same beneficiaries as herein, and their interests in the new trust shall be in the same proportion as indicated herein. The Trustee of the new trust shall maintain records and books of accounts which are independent of and separate from the records and accounts maintained hereunder.

(ee) The Trustee shall have the power to deal with matters involving the actual, threatened or alleged contamination of property held in the Trust estate (including any interests in partnerships or corporations and any assets owned by such business enterprises) by hazardous substances, or involving compliance with environmental laws. In particular, the Trustee may:

(1) Inspect and monitor trust property periodically, as necessary, to determine compliance with any environmental law affecting such property, with all expenses of such inspection and monitoring to be paid from the income or principal of the trust;

(2) Respond (or take any other action necessary to prevent, abate or "clean up") as it shall deem necessary, prior to or after the initiation of enforcement action by any governmental body, to any actual or threatened

violation of any environmental law affecting any of such property, the cost of which shall be payable from trust assets;

(3) Settle or compromise at any time any claim against the Trust related to any such matter asserted by any governmental body or private party;

(4) Disclaim any power which the Trustee determines may cause it to incur liability as a result of any such matter, whether such power is set forth herein, or granted or implied by any statute or rule of law.

(ff) The Trustee shall not be personally liable to any beneficiary or other party interested in the Trust, or to any third parties, for any claim against the Trust for the diminution in value of Trust property resulting from such matters, including any reporting of or response to (1) the contamination of Trust property by hazardous substances; or (2) violations of any environmental laws related to the Trust; provided that the Trustee shall not be excused from liability for her, his or their own negligence or wrongful willful act.

(gg) When used in this document the term "hazardous substance(s)" shall mean any substance defined as hazardous or toxic or otherwise regulated by any federal, state or local law(s) or regulation(s) relating to the protection of the environmental or human health ("environmental law(s)").

(hh) Notwithstanding any contrary provision of this instrument, the Trustee may withhold a distribution to a beneficiary until receiving from the beneficiary an indemnification agreement in which the beneficiary agrees to indemnify the Trustee against any claims filed against the Trustee pursuant to any federal, state or local statue or regulation relating to clean up or management of hazardous substances.

IN WITNESS WHEREOF, the Grantor has hereunto set her hand May 30 2001

LYNITA SUE NELSON

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

On May 30, 2001, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared LYNITA SUE NELSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is

subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Edith E Plummer
NOTARY PUBLIC

Notary Public - State of Nevada
County of Clark
EDITH E. PLUMMER
My Appointment Expires
April 22, 2005
No: 97-1373-1

APPROVED AS TO FORM:

Jeffrey L Burr
JEFFREY L. BURR, ESQ.
ATTORNEY FOR GRANTOR

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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. AND RELATED ACTIONS.	CASE NO. D-09-411537-D DEPT NO. "O"

DEFENDANT'S POST-TRIAL MEMORANDUM ON TRUST ISSUES

COMES NOW, DEFENDANT, LYNITA SUE NELSON ("Lynita"), by and through her attorneys of THE DICKERSON LAW GROUP, and respectfully submits for the Court's consideration this Post-Trial Memorandum pursuant to the Court's instruction at the conclusion of the July 25, 2012 trial date.

DATED this 31st day of August, 2012.

THE DICKERSON LAW GROUP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

"There shall be but one form of civil action, and law and equity may be administered in the same action." Nevada Constitution, Article 6, Section 14. Plaintiff, Eric Nelson ("Eric"), seeks to have this Court administer neither law nor equity. Instead, he seeks to make a mockery of the Court, the laws of this State, and the judicial system as a whole.

For 6 full days in 2010, Eric, individually, and as Trustor and Investment Trustee[1] of the Eric L. Nelson Nevada Trust, dated May 30, 2001 ("ELN Trust"), and being represented by James Jimmerson, Esq., one of the most respected and accomplished attorneys in Nevada, presented evidence to this Court conclusively confirming that all property held in the name of the ELN Trust, and LSN Nevada Trust, dated May 30, 2001 ("LSN Trust"), is, and at all times during the parties' nearly 30 year marriage was, managed, controlled, treated, held, and owned by the parties as community/marital property. He elicited the testimony of the parties' attorney, Jeffrey Burr, Esq. ("Mr. Burr"), to prove to this Court, **as part of his own case-in-chief**, that the ELN Trust, LSN Trust, and purported "Separate Property Agreement" signed by the parties in 1993, were not created for the purposes of dividing the parties' property in the event of divorce, but simply for estate planning purposes and asset protection, specifically protection from outside creditors. Mr. Burr is the same attorney who prepared and advised the parties with respect to all of said documents.

Following the sixth day of trial, and while the Court and Lynita were preparing to reconvene to bring this case to a conclusion, Eric perpetrated one of the most outrageous abuses of judicial process that could be conceived. Sensing the Court was not going to grant the division of property he sought, Eric reversed

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[1] The Investment Trustee is the only person authorized by the terms of the ELN Trust to represent and bind the trust in legal proceedings, and does so to the same extent as any absolute owner of property could bind himself or herself in such legal proceedings:

> 12.1 Trustee's Powers.
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> . . .
>
> The Investment Trustee shall have the following powers, all of which are to be exercised in a fiduciary capacity:
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> . . .
>
> (h) To institute, compromise, and defend any actions and proceedings.
>
> . . .
>
> (s) The enumeration of certain powers of the Trustee shall not limit his general powers, subject always to the discharge of his fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.

course and sought to erase the past by causing the ELN Trust to become a named party to this action,[2] and to assert that neither of the parties possess an interest in any of the property held by same.

On June 24, 2011, Eric filed his Motion to Join Necessary Party; or in the Alternative; to Dismiss Claims Against the Eric L. Nelson Nevada Trust Dated May 30, 2011. In the motion, Eric stated:

> As this Court is well aware, Lynita contends that some or all of the assets owned by the Eric L. Nelson Trust is community property, and as such, are subject to division in the instant divorce proceeding. Notwithstanding said contention, Lynita has failed to name the Eric L. Nelson Trust, [or] the Investment Trustee . . . . to the instant litigation.

These statements were made despite the following indisputable facts: (1) Lynita had not yet begun the presentation of her case; (2) the Investment Trustee of the ELN Trust, Eric, was a party to this action from day one when he filed his Complaint for Divorce initiating this action; and (3) during six (6) days of trial Eric contended, elicited testimony, presented evidence to support, and testified himself that **all** of the assets owned by the ELN Trust and LSN Trust were community property and subject to division in this action.

On August 9, 2011, a Stipulation and Order was entered to join the ELN and LSN Trusts as parties to this action. On August 19, 2011, the ELN Trust voluntarily appeared in this action by filing an Answer to [Eric's] Complaint for Divorce and Counterclaims and Crossclaim, submitting to the jurisdiction of the Court, asserting causes of action against Lynita, and requesting affirmative relief. Specifically, the ELN Trust requested a decision as to the status of its (the parties') property,[3] and monetary damages. Nonetheless, when Lynita subsequently asserted causes of action against the ELN Trust, it (like Eric) reversed course, and baselessly argued that the Court did not have jurisdiction over the trust and its affairs, despite the fact that it was the ELN Trust that had invoked the jurisdiction of the Court.

During the course of July and August, 2012, nine (9) additional days of trial were conducted, seven (7) of which were devoted to trust issues, and necessitated solely because of Eric' unjustifiable change in positions. As will discussed throughout this Brief, those seven (7) days of trial did nothing to support such position, and instead confirmed what Eric represented to this Court for the first two (2) years of litigation,

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[2] However, as will be discussed later, the ELN Trust was, at all times during this divorce proceeding, before this Court, and participating and represented in this action by and through Eric in his capacity as Investment Trustee and legal holder of the property in question. See ELN Trust, Section 12.1(h) (quoted in note 1, above).

[3] Not coincidentally, despite the fact that the ELN Trust seeks a declaratory judgment that neither of the parties have any interest in the property held by the ELN Trust, which if true would leave Eric penniless and at the mercy of the ELN Trust for any support, Eric has joined lock, stock, and barrel, in the positions taken by the ELN Trust in this action.

that at all times during the parties' marriage, all property held by the ELN Trust, LSN Trust, or any other trust, was managed, controlled, treated, held, and owned by the parties as community/marital property.

On July 6, 2012, the ELN Trust served its Pre-Trial Memorandum. In the Pre-Trial Memorandum, the ELN Trust (Eric)[4] argues that the law requires this Court to defeat the majority of the community property rights acquired by Lynita during her nearly thirty (30) year marriage to Eric, and the entirety of her adult life. It is expected that the ELN Trust's Post-Trial Brief concerning trust issues will assert many, if not all, of the same positions. The application of law advocated by the ELN Trust is, quite frankly, an insult to the Nevada Constitution, this Court, and the administration of justice. Lest Eric forget, this State was created under the principle that "all men [and women] . . . have certain inalienable rights among which are . . . Acquiring, Possessing and Protecting Property,"[5] and the Nevada Legislature and this Court were instituted "for the protection, security and benefit of the people."[6] Neither law nor equity supports the positions advanced by Eric and his puppet trust.

II. FACTUAL STATEMENT[7]

Lynita and Eric were married on September 17, 1983, and have been married for nearly thirty (30) years. Eric is fifty-three (53) years old, and Lynita is fifty-one (51) years old. Lynita and Eric have spent almost their entire adult lives together and married. Over the nearly thirty (30) years that the parties were married, the parties earned and accumulated substantial assets worth in excess of $18 million today. The parties accumulated such significant wealth because Eric was able to focus his attention primarily on building the parties' businesses, investments and wealth, while Lynita cared for the parties' children.

A. The 1993 Purported Separate Property Agreement, And Revocable Trusts

In the early 1990's, Eric decided to invest the parties' assets in several speculative and risky gaming ventures. Due to the concern over the parties' potential financial exposure from these ventures, Eric consulted with Mr. Burr in 1993 to formulate an estate plan that would insulate the parties' significant

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[4] As will be shown, the ELN Trust and Eric individually are one and the same. Accordingly, any references herein to just Eric or to just the ELN Trust, or to both Eric and the ELN Trust, are for the purpose of convenience and clarity only, and should not be construed as an acknowledgment that there is any distinction between the two.

[5] Nevada Constitution, Article 1, Section 1.

[6] Nevada Constitution, Article 1, Section 2.

[7] As the Court is aware, there are thousands of pages of evidence in this case, and days of testimony. Accordingly, it would be impossible to summarize every piece of evidence, and testimony that has been presented to the Court. This Post-Trial Brief summarizes the most relevant factual subjects that were established at trial.

wealth from potential creditors. Mr. Burr, who met and represented both Eric and Lynita in 1991 in the preparation of a joint family trust, concluded that he could protect a large portion of the parties' assets by having the parties enter into a separate property agreement, and then move their assets into separate trusts[8]. As with the parties' investments and businesses, Lynita had little to no involvement in this decision. Lynita went with Eric to Mr. Burr's office to discuss the strategy formulated by Mr. Burr. She was informed that the parties should separate their assets by way of a written agreement, and then transfer such assets into separate trusts. By titling assets in the parties' separate names, only one-half (½) of the parties' assets would be at risk to creditors (those held in Eric's trust). In the event Eric lost all of the assets in his trust, either to an investment gone bad, or to outside creditors, the assets held in Lynita's trust would be safe from outside attack and preserved for the community. To ensure that at least one-half (½) of the parties' assets would be protected at all times, Mr. Burr advised the parties to level off the assets held in their individual trusts periodically, and the parties agreed to do the same.[9]

After already advising Lynita with respect to the purported Separate Property Agreement (the "1993 Agreement"), and the intent of same, Mr. Burr asked Lynita whether she had an attorney. When she indicated that she did not, Mr. Burr offered for her to meet with Richard Koch, Esq. ("Koch"), an attorney in close proximity to Mr. Burr's office, and with whom Mr. Burr was friendly,[10] to represent Lynita with regards to the 1993 Agreement.[11] Lynita was never given time to research and retain independent counsel of her own choosing to advise her with respect to the 1993 Agreement, and the full legal effect of same. Moreover, by the time Lynita consulted with Mr. Koch, Mr. Burr (who was the parties' joint attorney, but purported to represent only Eric with respect to the 1993 Agreement), and Eric had already advised her as to the purpose of the 1993 Agreement, and the legal effects of same (so far as they thought was necessary), leading Lynita to reasonably rely upon same.[12] There was no discussion about the legal consequences of the 1993 Agreement in the event of divorce, as confirmed numerous times by Mr. Burr, because the parties were

[8] Eric's 1993 Trust was admitted as Plaintiff's Exhibit 211 and Intervenor's Exhibit 7, and Lynita's 1993 Trust was admitted as Plaintiff's Exhibit 222 and Intervenor's Exhibit 5.

[9] All facts set forth in this paragraph are supported by the testimony of Mr. Burr on November 22, 2010 ("Burr's 2010 Testimony"), and again on July 18, 2012 ("Burr's 2012 Testimony), and also supported by Eric's testimony in 2010 ("Eric's 2010 Testimony"), and Lynita's testimony throughout the trial ("Lynita's Testimony").

[10] Up until just a few weeks prior to the parties executing the Separate Property Agreement, Mr. Koch worked in the same office as Mr. Burr.

[11] These facts are supported by Burr's 2010 and 2012 Testimony, Lynita's Testimony, Mr. Koch's testimony on July 18, 2012 ("Koch's Testimony"), and Lynita's Testimony.

[12] Burr's 2010 and 2012 Testimony, and Lynita's Testimony.

happily married at the time, and the 1993 Agreement was not intended to affect the parties' rights in the event of divorce.[13] Ultimately, Lynita executed the 1993 Agreement without ever knowing the full legal effect of same,[14] trusting her husband and attorney to protect her interests.[15]

Almost all of the foregoing facts surrounding the execution of the 1993 Agreement, and the intent of the parties in entering into same, were elicited from Mr. Burr during Eric's presentation of his case-in-chief in 2010, attached hereto as **Exhibit A**.

The parties' intent with respect to the 1993 Agreement[16] is further evidenced by its terms:

> 4. The parties hereto shall each have a right of first refusal to match any offer of sale and purchase relating to each parties sole and separate property whether held in trust or otherwise. Each party agrees to give at least thirty (30) days notice prior to such sale and allow the other party Thirty (30) days from receiving said notice to purchase the offered property under the same terms and conditions as set forth in the offer to sale or purchase.
>
> 5. Neither Husband nor Wife shall take any action which would result in further encumbrances being placed against the marital residence without prior written permission from the other spouse.
>
> . . .
>
> 7. Notwithstanding Paragraph 4 above, Husband and Wife each, respectively, may transfer his or her own property by gift or inheritance, as they wish or to a **revocable** trust without violating this AGREEMENT.

(Emphasis added). Needless to say, if the 1993 Agreement was meant to control the parties' rights with respect to the properties purportedly divided therein, there would have been no reason to include a right of first refusal with respect to future transfers of said property, to limit the ability of Lynita (who purportedly received the parties' marital residence as her sole and separate property) to encumber such residence, or to limit the parties' ability to transfer the properties addressed therein to "revocable trust[s]" only. As will be discussed below, the terms of the 1993 Agreement, assuming such agreement is valid at all, which clearly it is not, were in fact violated in 2001 by the creation of the ELN[17] and LSN[18] Trusts.

As is discussed in subparagraph D ("Trial: Days 1 Through 6, And Eric's Admissions And Abrupt About Face"), below, Eric conclusively established in his 2010 Testimony and pre-trial filings with the

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[13] Burr's 2010 Testimony.

[14] As shown by Burr's 2010 Testimony, quoted below, Mr. Burr never discussed the legal consequences of the 1993 Agreement in the event of divorce because such agreement was not intended to affect the parties' rights as between one another.

[15] Lynita's Testimony.

[16] The 1993 Agreement was admitted as Plaintiff's Exhibit 210 and Intervenor's Exhibit 4.

[17] The ELN Trust Agreement (where applicable, citations to and quotations from the "ELN Trust" refer to the actual Trust Agreement) was admitted as Intervenor's Exhibit 86 and Plaintiff's Exhibit 80.

[18] The LSN Trust Agreement (where applicable, citations to and quotations from the "LSN Trust" refer to the actual Trust Agreement) was admitted as Intervenor's Exhibit 25 and Plaintiff's Exhibit 81.

Court, that the parties never intended to create separate property by way of the 1993 Agreement, and that all property held by the parties during marriage (whether individually or as trustee of a trust), was, and is community property. The testimony of Eric and Mr. Burr with respect to the intent of the 1993 Agreement was made a finding of this Court:

> THE COURT FURTHER FINDS that it has presided over six (6) days of trial in 2010, wherein Jeffrey Burr, Esq., the attorney who drafted the ELN and LSN Trusts, respectively, testified that Mr. Nelson and Ms. Nelson intended that the ELN Trust and the LSN Trust were formed for purposes of asset protection and were not meant to alter the rights of the parties in the event of a dissolution of marriage.
>
> THE COURT FURTHER FINDS that while Mr. Nelson's opinion as to whether property is community or separate is not controlling, Mr. Nelson testified that the property held by the ELN Trust was community property, and, as such, supports Attorney Burr's testimony that the Trusts were formed for purposes of asset protection and not intended as a distribution of the marital estate.

Findings of Fact and Order (prepared by the Court), pgs. 6-7, filed January 31, 2012.

B. Post-1993 Property Accumulation

Following the 1993 Agreement and revocable trusts, the parties continued to accumulate substantial marital property. While it would be difficult and unnecessary to list all the property acquired by the parties after 1993, there is one (1) particular property that is highly relevant to the instant action: 10180 State Highway 89 N., Evanston, Wyoming ("Wyoming Downs").[19] Wyoming Downs was purchased by the parties in 1998,[20] and sold on September 15, 2006 for $11,214,350.00.[21] The Wyoming Downs property was acquired **after** the 1993 Agreement, and needless to say, is not listed or mentioned in such Agreement.[22] Even more importantly, Eric did not and cannot prove the source of funds used for such purchase, as evidenced by the testimony of Daniel Gerety, CPA ("Mr. Gerety") in July, 2012[23] ("Gerety 2012

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[19] The real property purchased by the parties in 1998 consisted of approximately 407 acres. However, the property referred to in this subparagraph as "Wyoming Downs" includes only the approximately 211 acres which was sold in 2006 (as further discussed herein), approximately 200 of which was titled in the name of ELN Trust, and eleven (11) acres titled in the name of the LSN Trust. The parties still hold approximately 196 acres titled in the name of the LSN Trust.

[20] See Wyoming Horse Racing Inc. Stock Certificate admitted as page 1 of Intervenor's Exhibit 166. In 1998 when this asset was acquired, it was titled in the name of Eric's 1993 revocable trust.

[21] See Escrow Agreement admitted as Intervenor's Exhibit 181, Asset Purchase Agreement admitted as Intervenor's Exhibit 182, and Defendant's Exhibit LLLL (deeds admitted pertaining to Wyoming Horseracing property). The eleven (11) acres held in the name of the LSN Trust was transferred to the purchaser of Wyoming Downs on August 30, 2006, and as Eric admitted, the LSN Trust received no financial compensation for said transfer.

[22] See 1993 Agreement admitted as Plaintiff's Exhibit 210 and Intervenor's Exhibit 4.

[23] Mr. Gerety testified during the afternoon on July 18, 2012, the entire day onJuly 19, 2012, and the morning of July 23, 2012. Mr. Gerety conceded that he could not trace the funds used to purchase any asset acquired by the parties between 1993 and 2001.

Testimony"), and it is not at all improbable that the funds were taken from Lynita's trust, or community earnings.[24] Mr. Gerety and Eric both acknowledged that approximately eighty percent (80%) of the property held today by the ELN Trust can be traced to the proceeds from the sale of Wyoming Downs.[25] The proceeds from said sale were transferred into the ELN Trust, and neither Lynita, nor the LSN Trust received any of said proceeds.[26]

Furthermore, other than the Palmyra marital residence, and the parties' then forty percent (40%) interest in Eric Nelson Auctioneering, none of the properties held today in the ELN or LSN Trusts are the same as those specified in the 1993 Agreement; **all of said properties were acquired after 1993.** Of course, there are no other alleged agreements between the parties purporting to separate such properties, and all of such properties are community property (as discussed in the "Legal Analysis" section, below).

C. The 2001 Self-Settled Spendthrift Trusts

(I) *Jeffrey Burr's solicitation of Eric, and creation of the ELN and LSN Trusts.*

In 2001, Mr. Burr reached out to Eric to inform him about Nevada self-settled spendthrift trusts. He advised Eric that by creating such trusts the parties could further protect their community assets from creditors. Mr. Burr created such trusts for the parties (the ELN and LSN Trusts). As with the 1993 revocable trusts, Mr. Burr advised, and the parties acknowledged their intent, to level off and equalize the holdings of such trusts throughout the marriage.[27] The parties' intention in this regard is confirmed by the "Minutes of Special Meeting Trustees' Meeting of Eric L. Nelson Nevada Trust" from November 20, 2004 (Intervenor's Exhibit 139), signed by Eric and Ms. Martin, wherein it was "**RESOLVED,** that all Mississippi and Las Vegas properties owned by the Trust will be transferred to the LSN Nevada Trust in exchange for final payment due on loans outstanding from 2002 **and to level off the Trusts**."

As with the 1993 Agreement, Lynita had no input into which assets would be placed into the new trusts; Eric determined which community assets would be placed in which trust. Lynita was not advised as to the full potential legal effect of such trusts, and she was led to believe by her attorney and husband, both

[24] As will be discussed in greater detail below, it was extremely common for Eric to take funds from Lynita's trusts (the 1993 revocable trust and LSN Trust) because, as he testified in 2010, he never treated the funds in any of the parties' trusts as the separate property of said trusts, but rather as community property of the parties.

[25] Mr. Gerety's 2012 Testimony and Eric's 2012 Testimony.

[26] This was confirmed by Mr. Gerety's 2012 Testimony. It should be further noted that the off track betting asset ("OTB Asset") associated with Wyoming Downs, also acquired in 1998 (after the 1993 Agreement), was sold on January 22, 2007 for approximately $760,000.00. Neither Lynita nor the LSN Trust received any portion of the sale proceeds.

[27] Mr. Burr's 2010 and 2012 Testimony.

of whom owed her a fiduciary duty, that the trusts would not affect the parties' property rights in the event of divorce, and the assets could readily be withdrawn from such trusts.[28] Again, the foregoing facts were confirmed by Mr. Burr during his testimony in Eric's case-in-chief, attached hereto as **Exhibit B**. Such actions were even more egregious considering that Eric believes Lynita to be "mentally challenged."[29]

Like with the 1993 Agreement, the parties' intent in creating the ELN Trust[30] and LSN Trust[31] (not to relinquish any community/marital property rights in property transferred to such trusts) is further evidenced by the express, and reciprocal language contained in such trusts. For example, Section 2.1 of the ELN Trust makes it clear that Lynita is a beneficiary of such trust.[32] Article IV of the ELN Trust, makes Lynita, as Eric's surviving spouse, the primary beneficiary of the two (2) separate trusts to be created upon Eric's death (i.e., "The Nevada Exemption Trust" and "The Nevada Marital Trust"). Moreover, because Lynita specifically is named as the "Successor Investment Trustee" of the ELN Trust upon Eric's death (see Section 11.1 of the ELN Trust), and because Section 11.2 of the ELN Trust makes it clear "that in the event of the death of the Trustor [Eric], the Distribution Trustee shall cease to serve as Trustee hereunder, and the administration and distribution of the Trust estate shall thereupon be under the exclusive control of the Investment Trustee(s)," Lynita was intended to have full and exclusive control of these two trusts, and the property contained in same should Eric predecease Lynita. This same intent is evidenced by Sections 4.2 and 4.3 of the ELN Trust which make it clear that Lynita, as the new Investment Trustee upon Eric's death, "shall hold, manage, invest and reinvest" the assets of The Nevada Exemption Trust (Section 4.2) and The Nevada Marital Trust (Section 4.3).

Section 3.1 of the ELN Trust provides that during Eric's lifetime Lynita is an eligible beneficiary to receive "the net income and/or principal, in such amounts and proportions, including all . . ., and at such time or times as the Trustees, in their sole and absolute discretion, shall determine . . ." Such net income and/or

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[28] Mr. Burr's 2010 Testimony (see transcript excerpts below) and Lynita's Testimony.

[29] During his testimony before this Court on September 1, 2010 (the third day of trial), Eric suggested to this Court that Lynita is "mentally challenged." TT, September 1, 2010, pg. 95, line 1 to pg. 96, line 1. It is interesting to note that Eric was given the opportunity to retract this statement when he was cross-examined by Mr. Dickerson at the conclusion of his testimony on July 25, 2012; yet, Eric continued to stand by and confirm his belief that Lynita is "mentally challenged." Eric's actions in this litigation are even more repugnant and reprehensible when considering his beliefs as to Lynita's ability to comprehend the advice and representations that were made to her by Eric and Mr. Burr.

[30] The ELN Trust Agreement was admitted as Intervenor's Exhibit 86 and Plaintiff's Exhibit 80.

[31] The LSN Trust Agreement was admitted as Intervenor's Exhibit 25 and Plaintiff's Exhibit 81.

[32] All provisions of the ELN Trust discussed in this Section are reciprocal in the LSN Trust.

principal may be given ***"to or for the benefit of such one or more members of the class consisting of the Trustor [Eric], the Trustor's [Eric's] issue and other beneficiaries named [in the Trust Agreement] or as described in Section 2.1 above, until the death of the Trustor [Eric]."*** In light of the fact that Lynita specifically is named in Section 2.1, and further is the intended primary beneficiary under Article IV of the ELN Trust as Eric's "surviving spouse," it is readily apparent that the parties' intent in 2001 when they put all their assets in their respective, purported irrevocable trusts was to allow transfers to each other and between their respective trusts during the time they both are alive.

(ii) *Eric's failure to follow trust formalities.*

Eric never respected the alleged "separate" nature of the parties' trusts, nor did he respect trust formalities. Eric had no reason to respect the alleged "separate property" nature of the Trusts, or to comply with trust formalities, because as confirmed by Eric's 2010 testimony (quoted below), property titled in the name of the trusts belonged to such trusts in name only. In reality, such properties were at all times managed, controlled, treated, held, and owned by the parties as community/marital property.[33] The following are just a few examples of trust formalities completely disregarded by Eric:

(1) Failure to properly name Successor Trustees: Pursuant to the terms of the ELN Trust, Eric is the Grantor and Investment Trustee, and Lana Martin ("Ms. Martin") is the original Distribution Trustee. Section 11.3 of the ELN Trust provides as follows:

> 11.3 Trust Consultant. JEFFREY L. BURR, LTD., a Nevada Corporation (herein known as the "Consultant" to the Trust), shall have the right and power by giving ten (10) days written notice to the Trustee to remove any Trustee named herein (except the Trust Consultant may not remove the Trustor as a Trustee hereunder) and/or any Successor Trustee, **and to appoint** either (1) **an individual who is an "independent" Trustee pursuant to Internal Revenue Code Section 674, as amended**, or (2) a Nevada bank or Trust company to serve as Trustee or as Co-Trustees of the Trusts created hereunder. In the event of the death, resignation, incompetency, dissolution or failure to serve of any Trustee, then the Trust Consultant shall have the power to appoint a Successor Trustee as provided above.

[33] In this regard, it is interesting to note that the testimony of Mr. Gerety actually confirms that Eric consistently transferred property back and forth between the two (2) trusts, as was and has been the parties' intent since at least 1993. Mr. Gerety's testimony conclusively establishes that Eric used both the ELN Trust and LSN Trust as his alter ego. In fact, it is clear that Mr. Gerety was asked to get involved in this case solely for the purpose of attempting to "fix" and make "adjustments" to the ELN Trust's financial records in order to make it appear as if "loans" were being made from one trust to the other. Mr. Gerety's testimony further confirms that each trust was being used interchangeably to pay expenses related to the other trust. Moreover, Mr. Gerety acknowledged that Eric does not have a personal bank account to use for the payment of personal expenses, and that all of such expenses are paid from the parties' trusts. With respect to Eric, Mr. Gerety confirmed that, for all practical purposes, Eric's BNY/Mellon accounts ("Eric's Mellon Accounts") were not even listed on the ELN Trust's records as an asset of the trust, and the same were used by Eric as if they were his personal accounts.

The Distribution Trustee of the ELN Trust has been changed on two (2) separate occasions since May 30, 2011.[34] On February 22, 2007, Mr. Burr removed Lana Martin as Distribution Trustee and appointed Eric's sister, Nola Harber ("Ms. Harber"), as the Distribution Trustee.[35] Mr. Burr made such change at the direction of Eric, ignoring the express terms of the ELN Trust in so doing.[36] Mr. Burr confirmed that he failed to provide the required 10-day written notice to Ms. Martin.[37] Furthermore, the Successor Distribution Trustee, Ms. Harber, was neither a Nevada bank or Trust company, nor "an individual who is an 'independent' Trustee pursuant to Internal Revenue Code Section 674."

Internal Revenue Code, Section 674(c), defines the term "independent trustee" as being a person or entity other than the grantor of a trust who is not ***"related or subordinate parties who are subservient to the wishes of the grantor."*** Section 672(c) defines "related or subordinate party" under Section 674 as including the grantor's [Eric's] "sister" (such as Ms. Harber), "an employee for the grantor" (such as Ms. Martin), and "a subordinate employee of a corporation in which the grantor is an executive" (again such as Ms. Martin). Section 672(c) further provides that "a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence."

On June 8, 2011 (during the course of the divorce case, and after six (6)days of trial), again pursuant to Section 11.3 of the ELN Trust, Mr. Burr removed Ms. Harber as the Distribution Trustee, and appointed Ms. Martin as the Distribution Trustee. This change again was made at Eric's direction, and again Mr. Burr failed to comply with the provisions of 11.3.[38]

Also on June 8, 2011, and again purportedly pursuant to Section 11.3 of the Trust Agreement, Mr. Burr removed Lynita "as the first nominated Successor Investment Trustee" of the ELN Trust, and appointed Eric's sister, Ms. Harber, to serve as the Investment Trustee upon Eric's death.[39] Mr. Burr also appointed

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[34] See "Change of Distribution Trusteeship for the Eric L. Nelson Nevada Trust," dated February 22, 2007, admitted as Intervenor's Exhibit 149, "Change of Trusteeship for the Eric L. Nelson Nevada Trust," dated June 8, 2011, admitted as Intervenor's Exhibit 162, and Mr. Burr's 2012 Testimony.

[35] Intervenor's Exhibit 149.

[36] Mr. Burr's 2012 Testimony.

[37] Mr. Burr's 2012 Testimony.

[38] Intervenor's Exhibit 162 and Mr. Burr's 2012 Testimony. Although Ms. Martin was the initial Distribution Trustee under the ELN Trust, the change from Ms. Harber back to Ms. Martin in 2011 was still required to conform with the requirements of Section 11.3 of the ELN Trust. In short, once Ms. Martin was removed as Distribution Trustee in 2007, all future changes to the Distribution Trustee required the appointment of an "independent trustee" or Nevada bank or trust company.

[39] See Intervenor's Exhibit 162 and Mr. Burr's 2012 Testimony.

Eric's brother, Clarence Nelson, to serve as the Successor Investment Trustee if Ms. Harber should cease to serve, and Eric's other sister, Aleda Nelson, to serve as Successor Investment Trustee if Clarence Nelson should cease to serve.[40] Mr. Burr did not make such decisions independently, and was acting solely at Eric's direction.[41] Lynita never received ten (10) days written notice from Mr. Burr that she was being removed as Successor Investment Trustee, and Mr. Burr again failed to appoint either a Nevada bank or trust company, or an independent trustee.[42] Mr. Burr purported to make such changes by "amendment" to the ELN Trust, despite the fact that the ELN Trust is purportedly irrevocable.[43]

As a result of Mr. Burr's and Eric's failure to comply with the provisions of the ELN Trust with regards to removing Trustees, the ELN Trust has not had a valid Distribution Trustee since February, 2007. Accordingly, all distributions made to Eric since February, 2007, are in violation of the terms of the ELN Trust which require that such distributions be approved by a duly authorized Distribution Trustee.

(2) Eric's complete dominion and control over assets held in the LSN Trust:

Eric is neither Trustor, Investment Trustee, nor Distribution Trustee of the LSN Trust.[44] Nonetheless, and as is further described below, since the inception of the LSN Trust Eric has directed the disposition of, and managed all property contained in such trust.[45] Eric's exertion of complete dominion and control over the assets of the LSN Trust is provided for nowhere in the terms of the LSN Trust, and Lynita was never given the opportunity to veto any distributions to Eric or the ELN Trust.

(3) Failure to notify of right to exercise veto: Section 3.2 of the ELN and LSN Trusts provide:

> 3.2 Trustor's Veto Right. During the life of the Trustor, at least ten (10) days prior to making any payment or application of income or principal to any beneficiary other than the Trustor, the Distribution Trustee shall advise the Trustor of the Trustees' intention to pay over or apply income or principal to a beneficiary other than the Trustor and the Trustor may

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[40] See Intervenor's Exhibit 162 and Mr. Burr's 2012 Testimony.

[41] Mr. Burr's 2012 Testimony.

[42] Mr. Burr's 2012 Testimony.

[43] See Intervenor's Exhibit 162 (wherein Mr. Burr purports to "amend" the ELN Trust). Interestingly, despite the purported irrevocable nature of the parties' trusts, Mr. Burr also amended and replaced page "4" of each trust four (4) months after such trusts were finalized and signed. See Intervenor's Exhibit 34. These acts of "amending" the ELN Trust by Mr. Burr raise the question as to how he could do so if the trusts "truly" were intended to be irrevocable in accordance with Article VIII of each trust, which unequivocally provides that "[t]he Trust is irrevocable and may not be altered, amended or revoked." Of course, as Mr. Burr testified before the Court in 2010, "**. . . I explained to both parties that irrevocable is a kind of a term of art in the trust world. Any trust can be revoked or amended by transferring all of the assets out of it when it becomes unfunded and they have - - each have the power to do that pretty much as investment trustee with the distribution trustee's authority. . . . When we talk about irrevocable, there's so many ways still to change the terms of the trust.**"

[44] See Intervenor's Exhibit 25 and Plaintiff's Exhibit 81.

[45] See Mr. Gerety's 2012 Testimony and Lynita's Testimony.

> veto any such intended payment or application by directing the Distribution Trustee in writing not to make and/or authorize the payment or application, and, if such veto is exercised by the Trustor, the Distribution Trustee shall not make and/or authorize the intended payment or application to the intended beneficiary. The Trustor retains the right to renounce the veto power granted to the Trustor in this Article III by delivery of an acknowledged written instrument to the Trustees renouncing such veto power.

Lynita was never offered the opportunity to veto distributions from the LSN Trust to other named beneficiaries because the purported Distribution Trustees of the LSN Trust (during all relevant time periods) were Eric's employee, Lana Martin, and sister, Nola Harber. Ms. Martin, like all of Eric's employees, and Ms. Harber simply did what they were told and paid to do by Eric.

(4) Eric's receipt of distributions from the ELN Trust without prior or independent approval from the Distribution Trustee:

It is undisputed that in order for the ELN or LSN Trusts to qualify as valid, self-settled spendthrift trusts, Eric and Lynita cannot be permitted to make distributions from the trusts to himself or herself without the independent approval and consent of another trustee, e.g., the Distribution Trustee. NRS 166.040; NRS 166.090; NRS 166.110. In this regard, Section 3.3 of the ELN and LSN Trusts provides as follows:

> 3.3 Distributions to a Trustor. Notwithstanding anything above to the contrary, **any decision to make a distribution to the Trustor may not be made by the Trustor**, even though the Trustor may be serving as a Trustee hereunder. Prior to any distribution to the Trustor of either income or principal of the Trust estate, a meeting of a majority of the Trustees, which majority must also include the Distribution Trustee, shall be held. At such meeting, the Trustees shall discuss the advisability of making a distribution of the Trust estate to the Trustor. Upon the vote of the Distribution Trustee and a majority of the other Trustees in attendance at such meeting, which vote must in all events include the affirmative vote of the Distribution Trustee, the Trustee may authorize and carry out the distribution of Trust income and/or principal to the Trustors.
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> Notwithstanding the foregoing, a meeting of the Trustees shall be effective whether held in person or by telephone or other electronic means. In addition, the Trustees may also effect a valid meeting hereunder by execution of a written consent in lieu of Trustees' meeting, which shall specifically state the amount of the Trust estate to be distributed to Trustor. However, for any written consent to be effective, it must be a unanimous written consent, subscribed to by all Investment Trustee and all Distribution Trustees.

(Emphasis added). Eric constantly received or took money from the ELN Trust without prior approval from, or true and absolute discretion of the Distribution Trustee.[46]

[46] This is supported by the credible evidence presented to the Court. Specifically, a comparison between the monies received by Eric as documented by the Court appointed expert, Larry L. Bertsch, CPA, CFF ("Mr. Bertsch"), and the purported Minutes and written distribution authorizations provided to the Court by the ELN Trust, show a huge disparity between the amount approved for Eric to receive from the ELN Trust, and the amount actually received by Eric. This is also supported by the fact that Eric does not have a personal bank account or personal line of credit, and had unfettered access to Eric's Mellon Account (from which he took over $1,000,000.00 in one year for improvements to his Bella Kathryn estate).

To encourage adherence to the foregoing provision of the ELN and LSN Trusts, Mr. Burr sent periodic correspondences to the parties advising them of the need to hold an annual Trustee's meeting to discuss distributions from the trusts.[47] He also advised the parties to create minutes from such meetings so that approval for distributions to the parties could be verified in writing.[48] Specifically, Mr. Burr wrote:

> An important aspect of your [trust] is holding annual Trustee's meetings, as explained in the Annual Meeting instruction letter. The purpose of this meeting is to ensure that the appropriate decisions and actions are taken, in accordance with Nevada law, regarding the administration and the distribution of principal and/or income from your [trust].
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> During this meeting, a document ("Minutes of Annual Trustees' Meeting"), which was also included in your binder, should be generated. This document should set forth actions authorized by the Distribution Trustee and the Investment Trustee relative to [trust] distributions and other administrative/investment matters. This document should be signed by all of the Trustees of your [trust] and kept on file so as to provide documentation of all actions authorized and/or taken by the Trustees. In addition, I have enclosed a Distribution Authorization form which should be executed by your Distribution Trustee prior to a distribution occurring.

These letters were received and reviewed by Lana Martin, who was at the time Distribution Trustee for both the ELN and LSN Trusts.[49] Ms. Martin, or another person in Eric's office, would create minutes for meetings (several of which never occurred),[50] sometimes approving a fixed amount of yearly distributions for Lynita and/or Eric.[51] Some of the minutes were signed, and others were not. More importantly, Eric received far more money from the ELN Trust than was ever approved by Ms. Martin.[52] For example, in addition to receiving monthly checks from the ELN Trust, Eric also had debit and credit cards to pay personal expenditures directly from trust monies, and his personal bills were paid directly from trust checking accounts without further authorization.[53] This practice continued even during the course of this litigation. Of course, there was no reason for Eric to seek the approval of Ms. Martin for distributions from

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[47] Intervenor's Exhibits 26, 40, 44, 51, 57, 80, 88, 114, 122, 135, and 161.

[48] Intervenor's Exhibits 26, 40, 44, 51, 57, 80, 88, 114, 122, 135, and 161.

[49] Ms. Martin's Testimony.

[50] Ms. Martin's Testimony and Lynita's Testimony.

[51] Such purported Minutes were admitted as Intervenor's Exhibits 30, 35, 38, 47, 48, 50, 52, 53 (unsigned), 54 (unsigned), 55 (unsigned), 56, 58 (unsigned), 59 (unsigned), 60 (unsigned), 61 (unsigned), 62 (unsigned), 64 (unsigned), 65 (unsigned), 66 (unsigned), 67 (unsigned), 68 (unsigned), 70 (unsigned), 71 (unsigned), 73 (unsigned), 101, 103, 107, 109, 110, 113, 115, 116, 118, 119, 120, 126, 128, 129, 130, 131, 133, 134, 136, 137, 138 (unsigned), 139, 140 (unsigned), 141, 142, 143 (unsigned), 144, 145 (unsigned), 146, 147 (unsigned), 148, 150, 151 (unsigned), 152, 155, 158, and 164.

[52] See note 46, above.

[53] Ms. Martin's Testimony, Mr. Gerety's 2012 Testimony, and Mr. Bertsch's reports.

the trusts, or to empower Ms. Martin with true and absolute discretion with regards to such distributions, since Eric at all times treated the property in the ELN and LSN Trusts as his own.[54]

(5) Distributions to non-beneficiaries: As was confirmed by Larry Bertsch, CPA, CFF ("Mr. Bertsch"), in the last few years alone, Eric has distributed millions of dollars to related individuals who are not beneficiaries under the terms of the ELN Trust.[55] Mr. Gerety confirmed that such distributions to Eric's non-beneficiary family members occurred at all times during the existence of the ELN and LSN Trusts. Although Eric and Mr. Gerety now attempt to "reclassify" such distributions as loans, Eric has not produced any documentation to support this assertion, and has never tried to collect on such loans.[56]

(iii) *Eric's and the ELN Trust's Conversion of Property.*

As previously noted, it was not uncommon for Eric to convert property from the LSN Trust to the ELN Trust without consideration, to commingle the property of the LSN Trust and ELN Trust, and to transfer property belonging to the LSN Trust to his friends, employees, and family members.[57] Lynita was not consulted on such decisions, nor given a meaningful opportunity to prevent same.[58] Instead, Eric directed his relatives and employees (the people he alone chose to "manage," and make distributions from the ELN and LSN Trusts) to make such transfers.[59] As will be discussed in subparagraph D, below, Eric has conclusively established to this Court that he considered and treated all property held in the ELN and LSN Trusts as the parties' community property, under his sole and absolute dominion and control.[60] The following are just a few examples of monies Eric converted from the LSN Trust:

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[54] Eric's 2010 Testimony, and as can be concluded from Mr. Gerety's 2012 Testimony, as well as Mr. Burr's 2010 Testimony, quoted above, wherein Mr. Burr confirmed to the Court that the parties' intent in 2001 was never to divest themselves of ownership of the properties transferred to the ELN and LSN Trusts.

[55] Mr. Bertsch's Testimony and expert witness reports admitted into evidence at Defendant's Exhibit GGGGG.

[56] If they are loans as Eric contends, it is appropriate to award Eric the loans as property because he can collect on them.

[57] Mr. Gerety's 2012 Testimony, Mr. Bertsch's Testimony and reports, Eric's 2010 Testimony, and Lynita's Testimony.

[58] Lynita's Testimony, and Rochelle McGowan's Testimony. Rochelle McGowan ("Ms. McGowan") acknowledged that she managed the affairs of, and was the bookkeeper for, the LSN Trust for several years. Ms. McGowan never interviewed with, nor was chosen by Lynita for this position, and during all periods of time was employed by entities owned by Eric and the ELN Trust. She further acknowledged that Lynita never had an office at the Lindell Professional Plaza where the affairs of the LSN Trust were managed. Although Ms. McGowan was lead to testify during cross-examination that she consulted with Lynita regarding decisions of the ELN Trust, such testimony was completely contradicted by Ms. McGowan's deposition testimony, and Ms. McGowan could not recall a specific instance of consulting with Lynita.

[59] Mr. Gerety's 2012 Testimony, Mr. Bertsch's Testimony and reports, Eric's 2010 Testimony, and Lynita's Testimony.

[60] Eric's 2010 Testimony, and position throughout the litigation up until, and including, the first six (6) days of trial. If the ELN Trust's legal position (e.g., that each trust contained the sole and separate property of the party in whose name such trust was titled) is accepted, then Eric stole property belonging to the LSN Trust, should be ordered to return same, and should be criminally prosecuted.

(1) **Tierra Del Sol, 1606-1618 East Bell Road, Phoenix, Arizona ("Tierra Del Sol")**: The parties' fifty percent (50%) ownership interest in this commercial property was listed as Lynita's separate property in the 1993 Agreement.[61] Such interest was transferred into Lynita's revocable trust concurrently with the execution of the 1993 Agreement.[62] Thereafter, the parties acquired the remaining fifty percent (50%) interest in Tierra Del Sol, which was also transferred to Lynita's revocable trust on February 1, 1994.[63] On October 18, 2001, Tierra Del Sol was transferred into the LSN Trust.[64]

On August 5, 2005, the LSN Trust sold Tierra Del Sol in an installment sale for $4,800,000.00.[65] That same day, $936,164.06 of the first installment payment was wired into LSN Nevada Trust d/b/a Tierra Del Sol Bank of America account ending in 2743.[66] From this $936,164.06, Eric had Rochelle McGowan ("Ms. McGowan")[67] issue a check from the said LSN Trust account, payable to Wells Fargo in the amount of $677,717.48[68] to pay off a line of credit incurred by Eric against the Palmyra residence,[69] and a second check in the amount of $150,000.00[70] was issued to Irwin Union Bank. On September 28, 2006, the second and final installment payment in the amount of $3,500,000.00 was made by the purchasers of Tierra Del Sol.[71] From said installment, the LSN Nevada Trust BNY Mellon account ending in 1710, received a wire

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[61] Plaintiff's Exhibit 210 and Intervenor's Exhibit 4. See the second page of Schedule B, attached to the Intervenor's Exhibit 4, where the Tierra Del Sol property is listed as being the property at 16th and Bell, 1618 East Bell Rd., Phoenix, Arizona 85022. As Mr. Gerety testified in 2012, the 16th and Bell property is, in fact, the Tierra Del Sol property. Eric's handwritten and typed notes, admitted as Intervenor's Exhibit 2, confirm that the parties owned a fifty percent (50%) interest in Tierra Del Sol in 1993 (see Bates No. Burr00473).

[62] See Defendant's Exhibit RRRR, and specifically Warranty Deed 19930467922, executed July 13, 1993, and recorded July 19, 1993, included within said Exhibit.

[63] See Defendant's Exhibit RRRR, and specifically Warranty Deeds 19940088935, 19940088936, and 19940088937, all executed January 25, 1994, and recorded February 1, 1994, included within said Exhibit.

[64] See Defendant's Exhibit RRRR, and Grant, Bargain, Sale Deed 20010966996, executed October 2, 2001, and recorded October 18, 2001, included within said Exhibit.

[65] See Defendant's Exhibit RRRR, and specifically Special Warranty Deed 20051112783, executed August 2, 2005, and recorded August 5, 2005, included within said Exhibit.

[66] See Defendant's Exhibit KKKK, and specifically statement dated August 1, 2005 (this bank statement reflects the wire transfer on August 5, 2005, from Fidelity National Title), included within said Exhibit.

[67] Ms. McGowan has been employed by Eric since approximately September, 2001.

[68] See Defendant's Exhibit KKKK, and specifically Check No. 1562, dated August 5, 2005, included within said Exhibit.

[69] Lynita's Testimony, Eric's 2012 Testimony, and Ms. McGowan's Testimony.

[70] See Defendant's Exhibit KKKK, and specifically Check No. 1563, dated August 5, 2005, included within said Exhibit.

[71] See Intervenor's Exhibit 61, unsigned Minutes of the LSN Trust dated August 12, 2005, Intervenor's Exhibit 66, unsigned Minutes of the LSN Trust dated August 28, 2006, and Defendant's Exhibit SSSS, Lynita's 2006 1040 Income Tax Return, Form 6252.

for $2,000,000.00.[72] The same day, the ELN Trust BNY Mellon account ending in 1700 received a wire for $1,460,190.58.[73] The ELN Trust had no ownership interest in Tierra Del Sol at the time of sale.[74]

(2) **Wyoming Downs, the Wyoming OTB Rights, and High Country Inn, 1936 Harrison Drive, Evanston, Wyoming ("High Country Inn")**: In 1998, Eric purchased Wyoming Horse Racing, Inc., the owner of the property known as Wyoming Downs.[75] Wyoming Downs included a total of approximately 400 acres. In 2004, Eric transferred approximately 200 acres of Wyoming Downs to the LSN Trust.[76] On September 15, 2006, Eric sold Wyoming Horse Racing, Inc., including 11.502 acres of the parcel owned by the LSN Trust, for $11,214,350.00.[77] No financial consideration was given to the LSN Trust.[78] The Wyoming OTB Asset was purchased on June 15, 1998, and sold on January 22, 2007.[79] High Country Inn was initially purchased by Lynita's revocable 1993 trust on January 11, 2000.[80] Although multiple transfer deeds were executed with related parties (e.g., Grotta Financial Partnership[81] and Frank Soris), from 2000 until 2007, the LSN Trust owned the High Country Inn.[82] On January 18, 2007, Eric caused the LSN Trust to transfer High County Inn to the ELN Trust.[83] Until this transfer the ELN Trust had no interest in High Country Inn. The next day, January 19, 2007, the ELN Trust sold the High County Inn for $1,240,000.00.[84]

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[72] On August 20, 2012, Eric acknowledged that Lynita's Mellon Account was funded with a $2,000,000.00 wire transfer from the second installment payment (i.e., the $3,500,000.00) for the sale of Tierra Del Sol.

[73] Mr. Gerety's 2012 Testimony and report (Intervenor's Exhibit 168), Defendant's Exhibit NNNNN, Eric's September 18, 2006 handwritten notes, and Defendant's Exhibit OOOOO, September 2006 account statement for Eric's Mellon Account.

[74] See deeds pertaining to Tierra Del Sol, referenced in Notes 62-65.

[75] See Wyoming Horse Racing Inc. Stock Certificate admitted as page 1 of Intervenor's Exhibit 166, and Mr. Gerety's 2012 Testimony and report.

[76] See Defendant's Exhibit LLLL, and specifically Quit Claim Deed R122989, executed November 15, 2004, and recorded November 30, 2004, included within said Exhibit

[77] See Escrow Agreement admitted as Intervenor's Exhibit 181, Asset Purchase Agreement admitted as Intervenor's Exhibit 182, and Defendant's Exhibit LLLL (specifically General Warranty Deed R132945, executed September 13, 2006, and recorded September 15, 2006, and General Warranty Deed R132637, executed August 24, 2006, and recorded August 30, 2006, contained within said Exhibit). The eleven (11) acres held in the name of the LSN Trust was transferred to the purchaser of Wyoming Downs on August 30, 2006, however, there is no evidence that the LSN Trust received any compensation for said transfer.

[78] Mr. Gerety's 2012 Testimony and Eric's 2012 Testimony.

[79] See Eric Nelson's 2007 1040 Tax Return, Schedule D, admitted as Defendant's Exhibit NNNN.

[80] See Defendant's Exhibit MMMM, and specifically Special Warranty Deed R95419, executed on January 11, 2000, and recorded January 19, 2000, and Quit Claim Deed R102171, executed on April 13, 2000, and recorded May 18, 2001.

[81] The LSN Trust owned a 16.66% interest in the Grotta Financial Partnership, now known as Grotta Group, LLC, and the remaining 83.34% was owned by Eric's brothers and sisters (see Defendant's Exhibit WWWW, and Eric's 2010 Testimony).

[82] See generally Defendant's Exhibit MMMM, and the deeds contained within said Exhibit.

[83] See Defendant's Exhibit MMMM, and specifically Warranty Deed R135128, executed on January 18, 2007, and recorded January 23, 2007, contained within said Exhibit.

[84] See Defendant's Exhibit MMMM, and specifically General Warranty Deed R135129, executed on January 19, 2007, and recorded January 23, 2007 at 3:48 p.m. (two (2) minutes after Eric recorded the Warranty Deed transferringHigh Country

A payment of $1,947,153.37 ($1,240,000.00 for High County Inn, and $760,000.00 for the OTB Rights) was received by the ELN Nevada Trust d/b/a Nelson Associates bank account ending 2798.[85] No financial consideration was given to the LSN Trust for its ownership of the High Country Inn, and these transactions appear solely on Eric's tax filings.[86]

(3) **5725 E. Tropicana Avenue, Las Vegas, Nevada ("Tropicana-Albertson's Land")**: Tropicana-Albertson's Land was purchased on May 29, 2002, by Paul Nelson and the ELN Trust as equal, fifty percent (50%) owners.[87] On October 9, 2003, a promissory note in the amount of $700,000.00 was given by the ELN Trust to the LSN Trust.[88] The Tropicana-Albertson's Land was pledged as collateral for the $700,000.00 promissory note.[89] On January 5, 2005, the ELN Trust transferred its fifty percent (50%) interest in the Tropicana-Albertson's Land to the LSN Trust to satisfy the promissory note.[90] On November 28, 2006, Eric had Lynita sign a quitclaim deed transferring the interest back to the ELN Trust without consideration.[91] Such deed was never recorded until June 25, 2007, the date Eric and Paul Nelson sold the Tropicana-Albertson's Land to Las Vegas Center Limited, LLC, for $1,457,000.00.[92] The LSN Trust never received repayment of the note, or any of the proceeds from the sale of Tropicana-Albertson's Land.

(4) **5220 E. Russell Road, Las Vegas, Nevada ("Russell Road")**:[93] On November 23, 1999, Lynita's revocable 1993 trust acquired sole ownership of Russell Road.[94] As confirmed by Mr. Bertsch, . . .

Inn from the LSN Trust to the ELN Trust). See also Eric Nelson's 2007 1040 Tax Return, Schedule D, admitted as Defendant's Exhibit NNNN.

[85] See Defendant's Exhibit KKKK, and specifically Bank of America account statement dated January 31, 2007 (this bank statement reflects the wire transfer on January 24, 2007, from Uinta Title and Insurance in Wyoming).

[86] See Eric Nelson's 2007 1040 Tax Return, Schedule D, admitted as Defendant's Exhibit NNNN.

[87] See Defendant's Exhibit IIII, and specifically Special Warranty Deed 200205290000295, executed on May 21, 2002, and recorded on May 29, 2002, contained within said Exhibit.

[88] See Mr. Gerety's report, and specifically Exhibit 5.03 to said report, and Mr. Gerety's 2012 Testimony.

[89] See Mr. Gerety's report, and specifically Exhibit 5.03 to said report, and Mr. Gerety's 2012 Testimony.

[90] See Defendant's Exhibit IIII, and specifically Grant, Bargain, Sale Deed 200501050004265, executed on November 12, 2004, and recorded on January 5, 2005, contained within said Exhibit. Also supported by Mr. Gerety's 2012 Testimony.

[91] See Defendant's Exhibit IIII, and specifically Grant, Bargain, Sale Deed 200706250002013, executed on November 28, 2006, and recorded on June 25, 2007, contained within said Exhibit.

[92] See Defendant's Exhibit IIII, and specifically Grant, Bargain, Sale Deed 200706250002014, executed on January 11, 2007, and recorded June 25, 2007, contained within said Exhibit.

[93] The following discussion is supported by Mr. Bertsch's Testimony, and his report dated July 5, 2011 (included within Defendant's Exhibit GGGGG), and specifically his discussion about the Russell Road property on pages 4 through 7 of such report (bates numbers DEF006484-006487), as well as Defendant's Exhibit UUUU.

[94] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed 1999112301029, executed on September 25, 1999, and recorded on November 23, 1999, contained within said Exhibit.

Lynita's revocable 1993 trust paid $855,945.00 to purchase this property.[95] On June 14, 2001, without any financial consideration being paid to the LSN Trust, Eric had Lynita transfer title to Russell Road to CJE&L, LLC,[96] a newly formed entity whose membership consisted of the LSN Trust, and the Nelson Nevada Trust (Cal and Jeanette Nelson, Eric's brother and sister-in-law, as Trustees). On January 1, 2005, Eric had the LSN Trust assign its 50% membership interest in CJE&L, LLC to the Nelson Nevada Trust (Cal and Jeanette Nelson, Trustees), thus forfeiting all interest in the Russell Road property for which Eric had the LSN Trust pay the $855,945.00 in 1999. The LSN Trust again received no consideration for this transfer. Mr. Bertsch confirmed that the forfeiture of the LSN Trust's interest in the Russell Road property was transferred to the capital account of Cal Nelson, there being no cash attached to this transaction. On February 3, 2010, CJE&L, LLC sold its 50% interest in Russell Road to Eric Nelson Auctioneering for $4,000,000.00.[97] On May 27, 2011, the Russell Road property was sold to Oasis Baptist Church for $6,500,000.00.[98] The LSN Trust has never received compensation for its interest in Russell Road.

(5) **Lindell Professional Plaza - 3611 Lindell Road, Las Vegas, Nevada ("Lindell")**: On May 9, 1995, the land for Lindell was acquired in the name of Eric's 1993 revocable trust,[99] and the parties built a professional plaza on the land. On November 20, 1996, Eric transferred a 38.77% interest in Lindell to Jack P. Cavanaugh Trust, and at the same time the Jack P. Cavanaugh Trust transferred the interest right back to Eric.[100] Six (6) days later, on November 26, 1996, the entire interest in Lindell was transferred to Lynita's 1993 revocable trust.[101] On August 22, 2001, Lindell was transferred to the LSN Trust.[102] From 1996 until March 28, 2007, when a fifty percent (50%) interest in Lindell was transferred to the ELN Trust

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[95] The total purchase price was $875,000.00 as reflected in Defendant's Exhibit UUUU (see Declaration of Value form immediately following Grant, Bargain, Sale Deed.

[96] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed 2001061400850, executed on June 7, 2001, and recorded on June 14, 2001, contained within said Exhibit.

[97] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed 201002030002960, executed on February 2, 2010, and recorded on February 3, 2010, contained within said Exhibit, and Eric's 2010 Testimony.

[98] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed and Termination of Lease 2011052702434, executed on May 27, 2011, and recorded the same day, contained within said Exhibit.

[99] See Defendant's Exhibit PPPP, and specifically Parcel Ownership History.

[100] See Defendant's Exhibit PPPP, and specifically Grant, Bargain, Sale Deeds 199611200000933 and 199611200000934, both executed on November 19, 1996, and both recorded on November 20, 1996, contained within said Exhibit.

[101] See Defendant's Exhibit PPPP, and specifically Grant, Bargain, Sale Deed 199611260001180, executed on November 1, 1996, and recorded on November 26, 1996, contained within said Exhibit.

[102] See Defendant's Exhibit PPPP, and specifically Grant, Bargain, Sale Deed 200108220001118, executed on August 20, 2001, and recorded on August 22, 2001, contained within said Exhibit.

at Eric's direction,[103] Lynita's trusts were the sole owners of this property. The LSN Trust has never received compensation for the fifty percent (50%) interest in Lindell transferred to the ELN Trust in 2007.[104] The LSN Trust has also not received any rents from the ELN Trust (for its office space in the Lindell building, or for rents paid by other tenants) since this matter was initiated.[105] Of course, Eric did not feel the need to pay or share rents with the LSN Trust because, as he testified in 2010 (quoted below), Lindell was and is the parties' community property.

(6) **Brianhead Cabin, Brianhead, Utah**: As with Lindell, on May 22, 2007, Eric directed[106] the transfer of fifty percent (50%) of the LSN Trust's ownership in the Brianhead Cabin to the ELN Trust.[107] The LSN Trust received no financial consideration for this transfer.[108]

(7) **Flamingo Road Property – 3.25 acres of raw land ("Flamingo Road Property")**: On November 15, 2002, the LSN Trust purchased the Flamingo Road Property for $546,000.00.[109] On May 27, 2004, Eric had the LSN Trust transfer its 100% interest in the Flamingo Road Property to the Grotta Financial Partnership[110] (in which the LSN Trust has a 16.66% interest), without consideration.[111] Grotta Financial Partnership then transferred title to Grotta Group, LLC.[112] On December 2, 2005, Grotta Group, LLC sold the Flamingo Road Property, for $4,000,000.00.[113] In 2005, the LSN Trust received $565,000.00

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[103] See Defendant's Exhibit PPPP, and specifically Grant, Bargain, Sale Deed 200703280003565, purportedly executed on March 22, 2007, and recorded on March 28, 2007. As Lynita testified, the March 22, 2007 Grant, Bargain, Sale Deed bears a forged signature for Lynita Nelson. Similarly, the State of Nevada Declaration of Value form bears a forged signature for Lynita Nelson.

[104] Lynita's Testimony.

[105] Eric's 2010 Testimony and Mr. Gerety's 2012 Testimony.

[106] As Lynita testified, Eric represented to Lynita that the Brianhead Cabin needed to be transferred for tax purposes in order to induce her to sign a deed.

[107] See Defendant's Exhibit QQQQ, and specifically Warranty Deed 00553165, executed on March 21, 2007, and recorded on May 22, 2007, contained within said Exhibit.

[108] Lynita's Testimony.

[109] See Defendant's Exhibit TTTT, and specifically Grant, Bargain, Sale Deed 2002111501199, executed on November 13, 2002, and recorded on November 15, 2002, contained within said Exhibit.

[110] Grotta Financial Partnership was changed to Grotta Group, LLC on November 21, 2003 (see Defendant's Exhibit WWWW, Form 1065). The LSN Trust continues to have a 16.66% interest in "Grotta" (e.g., Grotta Group, LLC). The membership for Grotta includes the LSN Trust, and all of Eric's siblings.

[111] See Defendant's Exhibit TTTT, and specifically Quit Claim Deed 200405270001092, executed on April 26, 2004, and recorded on May 27, 2004, contained within said Exhibit.

[112] See Defendant's Exhibit TTTT, and specifically Quit Claim Deed 200501280000213, executed on May 28, 2004, and recorded on January 28, 2005, contained within said Exhibit.

[113] See Defendant's Exhibit TTTT, and specifically Grant, Bargain, Sale Deed 200512020003489, executed on October 6, 2005, and recorded on December 2, 2005, contained within said Exhibit. See also Defendant's Exhibit WWWW, Form 4797, which also reflects the sales price of $4,000,000.00. Notwithstanding these Exhibits, Eric claims that the $4,000,000 sale included an additional 10 acres of land adjacent to the 3.25 acres originally purchased by Lynita for the $546,000.00 which was owned by

for its 16.66% interest in this transaction in three (3) payments.[114] These proceeds were deposited into Bank of America account ending 2730, titled in the name of the LSN Nevada Trust d/b/a Lindell Professional Plaza.[115] Soon after each payment to the LSN Trust was deposited, Rochelle McGowan issued checks to Eric Nelson and the ELN Trust.[116] This occurred with all three (3) payments received by the LSN Trust.[117] On November 17, 2005, a check was issued from the LSN Trust to Eric Nelson for $25,000.00.[118] On December 7, 2005, a second check was issued from the LSN Trust to Eric Nelson for $350,000.00, bearing a notation "management fees."[119] Finally, on December 12, 2005, a third check was issued by Ms. McGowan to the ELN Trust for $250,000.00.[120] The LSN Trust purchased 100% of the Flamingo Road Property, but in the end received 0% of the sale proceeds (after the $565,000.00 was pillaged by Eric).

D. Trial: Days 1 Through 6, And Eric's Admissions And Abrupt About Face

As set forth in the "Introduction" above, Eric at all times during these proceedings, up until and including the first six (6) days of trial, represented to the Court that all assets held by the ELN and LSN Trusts were community property subject to division by the Court, and that the creation of the 1993 Agreement, 1993 revocable trusts, and 2001 ELN and LSN Trusts, were never intended to affect the parties' rights in the event of dissolution. Eric has, at all times, confirmed that he solely and exclusively managed and controlled the assets of the ELN and LSN Trusts, without interference or input from any other party associated with such trusts (e.g., the Distribution Trustees), and without regard to the formalities of such trusts, and Chapter 166 of Nevada Revised Statutes.

. . .

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him, Lynita, and his siblings and their spouses. However, Defendant's Exhibit TTTT suggests otherwise. Regardless of whether the Court accepts Eric's claims, the fact remains that Lynita was not compensated for the 100% interest she acquired in the 3.25 acre parcel referenced in this Brief as the Flamingo Road Property.

[114] Defendant's Exhibit PPPPP. On October 19, 2005, a $25,000.00 check was issued from Grotta Group, LLC, to Nelson Trust (this check should have been issued to the LSN Trust, but was appropriately deposited by the LSN Trust). On November 17, 2005, a $50,000.00 check was issued from Grotta Group, LLC, to the LSN Trust. Finally, on December 5, 2005, a $490,000.00 check was issued from Grotta Group, LLC to the LSN Trust.

[115] See Defendant's Exhibit PPPPP.

[116] Defendant's Exhibit JJJJ.

[117] Defendant's Exhibit JJJJ.

[118] Defendant's Exhibit JJJJ, and specifically check no. 1751, issued from the LSN Trust d/b/a Lindell Professional Plaza, and signed by Ms. McGowan, contained within said Exhibit.

[119] Defendant's Exhibit JJJJ, and specifically check no. 1769, issued from the LSN Trust d/b/a Lindell Professional Plaza, and signed by Ms. McGowan, contained within said Exhibit.

[120] Defendant's Exhibit JJJJ, and specifically check no. 1776, issued from the LSN Trust d/b/a Lindell Professional Plaza, contained within said Exhibit.

On August 30, 2010, Eric filed his Pretrial Memorandum, wherein Eric stated in Section "V" that his "list of substantial property is attached as Exhibit 1 . . . .," as well as his list of secured and unsecured indebtedness. Exhibit 1 to the Pretrial Memorandum is a list of all the properties and debts held in the names of the ELN and LSN Trusts, and Eric's proposed division of same in this divorce action.

On August 30, 2010, trial began, and Eric testified during several days of his case-in-chief. The following are excerpts from Eric's Opening Statement, and testimony, all of which conclusively establish that (1) in accordance with the advice given to them by Mr. Burr, the parties never intended to relinquish control of their assets by creating the ELN and LSN Trusts (hence the reason the parties transferred all of their community assets to such trusts); (2) the ELN and LSN Trusts were established solely for asset protection purposes, and were never intended to affect the parties' rights to community property; (3) at all times since 2001, Eric exclusively managed all properties in both trusts (regardless of his rights to do so under the terms of such trusts); (4) the parties believed that all assets contained in the ELN and LSN Trusts were community property, subject to their complete dominion and control (confirming the testimony of Mr. Burr); (5) at all times Eric treated the properties held in the ELN and LSN Trusts as community property, subject to his complete dominion and control without third-party influence; (6) he alone could, and did control the disposition, and distribution of assets from the ELN and LSN Trusts; and (7) any income generated by the properties held in the ELN and LSN Trusts was the parties' income:

AUGUST 30, 2010 TRIAL TESTIMONY

Opening Statement[121] by Mr. Jimmerson:

> **You have before you a list of properties** [Eric's Options A and B] **which I'll explain to you in just a minute, but to give you an overview, give or take on cost basis, 18, 19 million dollars in assets which would be divided under our proposals nine and nine...**

TT, August 30, 2010, pg. 14, beginning at line 2.

> . . . each party, on a cost basis, is going to get approximately $9 million in assets and on a real fair market value basis, something considerably more. And more importantly, **we're dividing everything that these parties have, including their businesses, in half plus or minus one or two adjustments. . .**

TT, August 30, 2010, pg. 14, beginning at line 15.

[121] Mr. Jimmerson's statements are admissible and binding upon Eric as non-hearsay. *See* NRS 51.035 ("'Hearsay' means a statement offered in evidence to prove the truth of the matter asserted unless . . . the statement is offered against a party and is: . . . (b) A statement of which the party has manifested adoption or belief in its truth; (c) A statement by a person authorized by the party to make a statement concerning the subject; . . . (d) A statement by the party's agent or servant concerning a matter within the scope of the party's agency or employment . . . .").

If I could now ask you to briefly turn your attention to Options A and B, I'd like to discuss this with you. The difference between Option A and B is it just turns on two assets, okay? **Option A is an equal division of all assets and liabilities, Judge, except for the cash that each of them have on their own, so we didn't divide the cash Lynita has in her six or seven bank accounts and we didn't divide Eric's cash that he has in his four or five bank accounts. They take their own – they take their own cars,** you know, the – they take their own personal property, they take their own furniture and furnishings that they have plus or minus some things that could be exchanged. . . .

TT, August 30, 2010, pg. 19, beginning at line 5.

So the difference between A and B is A is everything divided in half except for cash and for cars and **B is everything divided in half except for cash and cars except that Mississippi would go to Husband and Russell would go to Wife.**

TT, August 30, 2010, pg. 21, beginning at line 23.

Direct Examination of Eric L. Nelson, questioning by Mr. Jimmerson:

A. **[T]hat'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.**

TT, August 30, 2010, pg. 32, beginning at line 21.

Q. **I just asked you, please tell the Court about the trusts –**

A. LSN Trust –

Q. **– how they came about.**

A. Was designed and set up and my trust, ELN Trust, or **Eric Nelson's Trust was for asset protection purposes.**

Q. Okay.

A. 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. [He] 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.

TT, August 30, 2010, pg. 44, beginning at line 21.

Q (by the Court). So that's 1A [referencing Eric's Exhibit 1A]?

A. – this is basically a way I felt to – **to easily explain the assets, to simplify it for Joe [Leaunae], Bob [Dickerson], and Melissa [Attanasio], Mr. [Bob] Gaston, anyone else that'd look at our estate,** and so I listed the property – **you'll see that these properties are designated in somebody's trust; LSN Trust or Eric's Trust.** The majority of them if it's a sub-company it's going to flow up to my trust by design.

TT, August 30, 2010, pg. 48, beginning at line 2 (discussing Plaintiff's Exhibit 1A).

. . . I'm confident that you're going to hear that the vast majority of these can be sold and divided.

TT, August 30, 2010, pg. 49, lines 10-11 (by Mr. Jimmerson discussing properties listed in Exhibit 1A).

Q. [Indiscernible].

A. Okay, so, Your Honor, so I prepared this document to allow us to anticipate who wanted some of the assets. **It is so important that I get divorced that I'm willing to split every asset 50/50. I want you to make that very clear. . . .**

TT, August 30, 2010, pg. 52, beginning at line 2.

Q. And [the tenancy for your office at Lindell] is on a month-to-month?

A. **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.**

TT, August 30, 2010, pg. 70, beginning at line 21 (discussing the Lindell Plaza Office building).

Q. Okay. So the last 10, then, are **10 lots owned 25 percent by the Lynita Trust. It's community property**, I understand –

A. Yes.

Q. – but its owned by the Lynita Trust and three other guys?

A. Yes.

. . .

Q. **Eighty [lots] by the community?**

A. **Yes.**

TT, August 30, 2010, pg. 115, beginning at line 9 (discussing the Gateway Arizona lots).

Q. Okay, **so Dynasty Development Company, for the Court's edification. . .**

A. Yes.

Q. – is the name of the company that owns Lynita and Eric's interests in Silver Slipper?

A. **Yes, under my trust.**

Q. All right.

A. Lynita's not a party to that, I mean, with the – with side of the – the trust side of it.

Q. **The trust owns it and Eric Nelson –**

A. **The community – yes.**

Q. **– Trust, but she has a community interest, and that's the entity –**

A. **Right.**

TT, August 30, 2010, pgs. 156-57 (discussing Silver Slipper/Dynasty Development).

A. ...I said, guys – they wanted all the land that **we owned** down there, **Lynita and me,** which was in my trust, to go into the operation and the security. I refused. In fact I refused so much I said I'm **going to transfer a majority of these properties into Lynita's trust** to make sure they're fully aware that these properties aren't going off. I'm going to do a leveling of the trusts. **I recorded the deeds incorrectly. Lana typed them up.** There were some verbiage problems when we transferred them to Lynita, they clouded the title.

TT, August 30, 2010, pg. 165, beginning at line 6 (discussing land deals in Mississippi).

Q. And what do they pay Dynasty if they pay – **who is the owner of the real estate that the RV park's on?**

A. **Well the, it's the community. It's under Lynita's trust right now. It came from my trust into her trust.** It's clouded title. That's the property – the 70 or 60 or 70 acres that's in the Manise lawsuit....

TT, August 30, 2010, pg. 186, beginning at line 2.

AUGUST 31, 2010 TRIAL TESTIMONY

Cross Examination of Eric L. Nelson, questioning by Mr. Dickerson:

Q. You've given her $500 since June of 2008, correct?

. . .

A. Well, no, no, that - - that's its. As **community assets** she has 2.6-million where her flow of cash was 15,000 a month. So if it's community, estate, she - -

. . .

Q. Sir, do you understand my question?

A. – has had that. Yes, sir.

Q. Since June of 2008 - -

A. Yes, sir.

Q. - - you have given your wife Lynita a grand total of $500, correct?

Mr. Jimmerson: Objection to the form of the question.

A. Well, it's not true, Mr. Dickerson. I've given her 2.6-million of the community.

TT, August 31, 2010, pg. 443, beginning at line 17.

Q. How much were you giving her sir?

A. **I was giving her money that I would flow into the Lindell account, even if we didn't collect rent, I'd put additional money in it from Nelson Trust** so she would get an additional 6000 periodically.

TT, August 31, 2010, pg. 463, beginning at line 4 (discussing payments from ELN Trust to Lynita).

Q. Well let me ask this if I may. **Other than Lynita's bank accounts which over on the income section you don't represent any income, you're in control of all of these assets, isn't that true?**

A. **No.**

Q. **Which assets are you –**

A. **Well, I manage them but she has an ownership in – in –**

Q. Well –

A. – whatever

Q. **You're in control of them. You're the one that is receiving all this income that's being generated from these assets; is that true?**

A. **And paying all the expenses.**

TT, August 31, 2010, pg. 473, beginning at line 16.

Q. Now sir, don't you agree that you stopped paying any rental income to Lynita since May 2009?

A. I don't know when the last thing, but **Lynita didn't ever receive rental income, let's get that straight. She received a check from me to assist in some areas of whatever she needed assistance in. We never calculated that she got some percentage of any rents or whatever. That's not the way we do our business.**

TT, August 31, 2010, pg. 547, beginning at line 1.

Q. Now, **in February of this year, you used community cash to purchase an interest in this property; is that correct?**

A. **Yes, sir.**

TT, August 31, 2010, pg. 549, beginning at line 18 (discussing Russell Road property).

Q. So roughly **we're looking then at you took $2,777,861 –**

A. **Yes, sir.**

Q. **– of community cash?**

A. **Yes, sir.**

Q. And you gave that to your brother?

A. No, sir.

Q. **What'd you do with it?**

A. **I bought two-thirds of his building --**

TT, August 31, 2010, pg. 559, beginning at line 3.

...

...

SEPTEMBER 1, 2010 TRIAL TESTIMONY

Cross Examination of Eric L. Nelson, questioning by Mr. Dickerson:

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 the LSN Nevada Trust. Is that true?**

A. **Yes, sir.**

TT, September 1, 2010, pg. 673, beginning at line 20.

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 –**

. . .

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

Q. **You put them –**

A. **Yes, sir.**

Q. **– into Lynita's?**

A. **Yes, sir.**

Q. **All right. For –**

A. **– for community wealth.**

TT, September 1, 2010, pg. 691, beginning at line 21 (discussing Mississippi land).

Q. Okay. **And title then was put in the name of Lynita's trust at your –**

A. **Yes, sir.**

Q. **– at your behest, correct?**

A. **Yes, sir.**

Q. [] So you're quibbling here as to whether you didn't - - you purchased that home?

. . .

A. **I paid off the mortgage. I didn't buy the house from her. I paid off the mortgage, put it in Lynita's name** for – so they would be comfortable and her sister wouldn't think there was anything – any foul play going on.

TT, September 1, 2010, pg. 697, beginning at line 21 (discussing Pebble Beach house).

A. **But it gave us more flexibility to level off the trusses [sic] or level off this at divorce agreement.**

TT, September 1, 2010, pg. 704, beginning at line 22 (discussing Banone property division).

OCTOBER 19, 2010 TRIAL TESTIMONY

Cross Examination of Eric L. Nelson, questioning by Mr. Dickerson:

Q. And why did you do that [close the auction company], sir?

A. **. . . I was under water these businesses. . . . 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.**

TT, October 19, 2010, pg. 27, beginning at line 16 (discussing business closures).

Q. **Now you talk, sir, about you're initiating a lawsuit against the Silver Slipper?**

A. **Yes, sir. I believe I'm going to.**

Q. **Now who is – who is – you personally, you as an individual?**

A. **Me personally, yes. . .**

TT, October 19, 2010, pg. 40, beginning at line 18.

Q. **Well, but who's been damaged?**

A. **I believe myself and my – partners and Lynita.**

Q. Well, the stock – the stock is held in the name of Dynasty; is that correct?

A. Yes, sir.

Q. **And there is some stock – or no, all the stock is held in the name of Dynasty; is that true?**

A. **Yes, sir.**

Q. **It is owned by you?**

A. **Yes, sir.**

TT, October 19, 2010, pg. 41, beginning at line 4.

Q. Okay. So in other words, it's just - - this is just one of Eric Nelson's threats? I'm going to sue everybody or is there something out there? Is it really - -

A. Maybe it's a strategy . . . And - - and if they had some misgivings Mr. Dickerson, then possibly it would delay some of those areas. **And so I'm trying to salvage everything and anything I can in that investment for this community.**

TT, October 19, 2010, pgs. 42-43.

Q. So it's just - - you don't believe that's important information for us to know, whether a lot has been sold and where that money is?

. . .

A. - - let me just - - **she can have anything she wants 50/50.**

TT, October 19, 2010, pg. 58, beginning line 7.

Q. That is money, the $45,500 [promissory note], is money that is owed to Nelson & Associates by Emerald Bay Mississippi, LLC, isn't that correct?

A. All owned by Eric Nelson.

Q. Pardon me?

A. All owned by Eric Nelson.

Q. So the answer to that is yes.

A. I'm going to pay myself.

TT, October 19, 2010, pg. 76, beginning line 17.

OCTOBER 20, 2010 TRIAL TESTIMONY

Redirect Examination of Eric L. Nelson, questioning by Mr. Jimmerson:

Q. **Here you go, Judge. We're going to call this Option C.**

A. I worked off the same worksheets that we've got Bob, or the same thing we've been – we kind of duplicated it. But I couldn't pull your stuff up to do it and mine was on my computer. So I went this direction. It was okay. **And so we had court option A revised is what I'm looking at.**

TT, October 20, 2010, pg. 223, beginning line 9.

A. Well, I – I **understand the judge's position. Even though we had irrevocable trusts we wanted to put everything out there on top of everything. It was outweighed in my favor. And –**

Q. All right. So then –

A. **– one thing we do is split everything. However, this would be a fair scenario** where we both conceding in some areas in all litigation, use my expertise to fight off claims that I think I need to fight off on behalf of her and me.

And so this is what I came up with . I think under – this is subject to conditions that everybody was agreeing. It was additional conditions and things change.

TT, October 20, 2010, pg. 226, beginning line 6. Thereafter, from pages 224 through 297, Eric explained to the Court his "Option C" for division of all community property held in the Trusts in detail, asset by asset.

As can be seen, during his testimony Eric conclusively established that all property belonging to the ELN and LSN Trusts, was, and is community property. He further confirmed that such property was

maintained and treated as community property from the time such trusts were created, through to present date. Finally, he confirmed that he has the ability to distribute the property contained in the ELN Trust to Lynita or the LSN Trust upon Order of the Court – he did not like the fact that the Court did not appear inclined to enter such Order upon the terms he requested, and hence, attempted to change positions.

Finally, Eric's testimony regarding his ability to distribute property from the ELN Trust as ordered by the Court is further confirmed by the terms and provisions of the ELN Trust. Section 11.13 makes it clear that the Distribution Trustee's powers are limited to only being allowed to "exercise discretion over distributions of the Trust estate." In this regard, Section 11.13 specifically provides, "Any Trustee designated as a Distribution Trustee shall only be allowed to exercise discretion over distributions of the Trust estate." Reading the ELN Trust as a whole, it appears that such "exercise [of] discretion over distributions of the Trust estate" is intended to be limited to only those distributions in which the ELN Trust requires the Distribution Trustee to approve. As discussed below, such an interpretation of Section 11.13 is supported by the language of Section 11.14 and Sections 3.2, 3.3, and 3.4, when read together.

Section 11.14 provides as follows:

> 11.14 **Investment Trustee**. The Investment Trustee(s) shall at all time have the **exclusive custody of the entire Trust estate and shall be the legal owner of the Trust estate**. The title to Trust properties need not include the name of the Distribution Trustee, and **all Trustee powers, as set forth in Section 11.1 [sic, should be 12.1] below, *may be effected under the sole and exclusive control of the Investment Trustees*, subject to the requirements for authorization of distributions to Trustor as set forth in Section 3.3 above**.

With respect to such "Trustee powers" that may be effected under Eric's "sole and exclusive control," Sections 12.1(j) and (q) provide as follows:

> 12.1 **Trustee's Powers**. . . . The Investment Trustee shall have the following powers, all of which are to be exercised in a fiduciary capacity:
>
> . . .
>
> (j) Except as limited in Section 3.3 above, **to** partition, allot, and **distribute**, in undivided interest or in kind, or partly in money and partly in kind, and to sell such **property as the Trustee may deem necessary to make division or partial or final distribution of any of the Trusts**. (Emphasis added.)
>
> . . .
>
> (q) Except as limited to by Section 3.3 above, **to make distributions to any** Trust or **beneficiary hereunder** in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed.

. . .

Thus, Eric's "sole and exclusive control" to make distributions to any named beneficiary under the Trust Agreement is limited only by the specific requirement set out in Section 3.3, quoted above, which requires the Distribution Trustee's approval for distributions to the Trustor (Eric) only. Therefore, in light of the fact that Sections 12.1(j) and (q) give Eric the absolute authority to make distributions to any beneficiary other than himself, it is apparent that everything Eric has told the Court about being able to equalize the ELN and LSN Trusts and to shift assets between the trusts is accurate. Eric has recognized that the parties' intent has always been to treat the assets in each trust as being the parties' community property, with the parties periodically equalizing the trust assets during their marriage, and he has proposed to the Court how the ELN and LSN Trusts should be equalized (the parties' community property equally divided). Eric has recognized that he has the absolute right to effectuate any transfer ordered by the Court.[122]

Finally, with respect to the specific language of the Trust Agreement, it is undisputed that Eric, as the Investment Trustee, (1) has the exclusive power and authority ***"[t]o institute, compromise, and defend any actions and proceedings"*** concerning the property held in trust (Section 12.1(h)), (2) ***"shall at all times have the exclusive custody of the entire Trust estate and shall be the legal owner of the Trust estate"*** (Section 11.14), and (3) is ***"vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have."*** Throughout the entire course of litigation in this case, Eric has exercised these powers and rights, and he has confirmed that both he and Lynita have always agreed and intended for all the assets held in their respective trust be their community property. Now, under the guise of "assigning" to Lana Martin his exclusive authority "[t]o institute, compromise, and defend any actions and proceedings" concerning the property held in trust (Section 12.1(h)), Eric seeks to change the position he has advanced for the first two (2) years of the litigation of this case.

III. LEGAL ANALYSIS

This Section analyzes the various legal issues that have been raised by the parties to this action. No matter how the Court analyzes this case, and what issues are considered (independently or in conjunction), it is clear that Lynita should prevail on her claims as a matter of law, and equity.

. . .

[122] In fact, Section 12.4(a)(1) and (a)(5) allow any such distribution from the ELN Trust to be made directly to Lynita (see Section 12.4(a)(1)) or to any trust in which all trust assets are then fully and unqualifiedly withdrawable by Lynita (see Section 12.4(a)(5)).

A. You Cannot Have It Both Ways: Eric's Position Concerning Almost All The Outcome Determinative Facts In This Matter Were Conclusively Established, And The ELN Trust Is Bound By Same

For several days in 2010, Eric sat before this Court under oath and confirmed to this Court, **as part of his own case-in-chief,** that all property held in the name of the ELN Trust, and LSN Trust, is, and at all times during the parties' nearly thirty (30) year marriage was, managed, controlled, treated, held, and owned by the parties as community/marital property. He also elicited the testimony of Mr. Burr regarding the parties' intent in entering into the 1993 Agreement, and various trusts created during the parties' marriage. Eric now seeks to sabotage these proceedings and gain an unfair advantage by completely changing positions in the middle of trial. Fortunately, judicial estoppel acts to prevent such injustices:

> Under the doctrine of judicial estoppel a party may be estopped merely by the fact of having alleged or admitted in his pleadings in a former proceeding the contrary of the assertion sought to be made. The courts recognize that this doctrine applies with particular force to admissions or statements made in the pleadings under the sanction of an oath, and it has been held that the statement in the prior proceeding must have been made under oath. In accordance with this requirement, it is stated that under the doctrine of judicial estoppel a party who has stated on oath in former litigation, as in a pleading, a given fact a[s] true, will not be permitted to deny that fact in subsequent litigation.
>
> It has been said that the purpose of the doctrine of judicial estoppel is to suppress fraud, and to prohibit the deliberate shifting of position to suit exigencies of each particular case that may arise concerning the subject matter in controversy; but at least in so far as this doctrine is applied to statements under oath, its distinctive feature has been said to be the expressed purpose of the court, on broad grounds of public policy, to uphold the sanctity of an oath, and to eliminate the prejudice that would result to the administration of justice if a litigant were to swear one way one time and a different way another time.

Sterling Builders, Inc. v. Fuhrman, 80 Nev. 543, 549-50, 396 P.2d 850 (1964) (quoting and adopting the definition contained in 31 C.J.S. Estoppel § 121); *So. Cal. Edison v. First Judicial Dist. Ct.*, 255 P.3d 231, 237, 127 Nev. Adv. Op. 22 (2011) ("Judicial estoppel applies to protect the judiciary's integrity and prevents a party from taking inconsistent positions by 'intentional wrongdoing or an attempt to obtain an unfair advantage.'"). The Court may invoke the doctrine at its discretion "to guard the judiciary's integrity." *Marcuse v. Del Webb Communities*, 123 Nev. 278, 163 P.3d 462, 469 (2007). The Court should invoke the doctrine of judicial estoppel and disregard any testimony from Eric which contradicted his prior testimony, and evidence presented during the first six (6) days of trial in this matter.

The ELN Trust has injected itself into the dispute over whether the 1993 Agreement entered into between Eric and Lynita is valid, whether the Court can consider the intent of the parties in entering into same, and the facts and circumstances leading up to Mr. Burr's creation of the ELN and LSN Trusts for the

parties. The ELN Trust (for Eric's benefit) seeks to negate all the testimony and evidence presented to the Court during the first six (6) days of trial. The ELN Trust, however, lacks standing to challenge the validity of the 1993 Agreement, or to even have its evidence concerning matters preceding the creation of the ELN Trust considered. It is axiomatic that a party does not have standing to sue on a contract unless he or she is a party to the contract, or an intended third-party beneficiary. *See Hartford Fire Ins. v. Trustees of Const. Indus.*, 125 Nev. 16, 208 P.3d 884, 889 (2009). "To obtain [third-party] beneficiary status, there must clearly appear a promissory intent to benefit the third party [internal citation omitted], and ultimately it must be shown that the third party's reliance thereon is foreseeable." *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 379, 566 P. 2d 819, 824-25 (1977). It is indisputable that the ELN Trust was not created until May 30, 2001, almost eight (8) full years after the parties' 1993 Agreement. Accordingly, the ELN Trust could not have been a party, or third-party beneficiary to said agreement,[123] and lacks standing to litigate Eric's and Lynita's rights with regards to same.

In addition, the ELN Trust cannot negate Eric's and Mr. Burr's prior testimony. A trust is not a distinct legal entity, and can only act by and through its trustees. *Causey v. Carpenters So. Nevada Vacation Trust*, 95 Nev. 609, 610, 600 P. 2d 244, 245 (1979) ("A party to litigation is either a natural or an artificial person. . . . It is the trustee, or trustees, rather than the trust itself that is entitled to bring suit."); *see also*, NRS 163.120(1) (providing that trustees may contract on behalf of a trust in capacity of representative); *see also*, NRS 163.023 ("A trustee has the powers provided in the trust instrument [or] expressed by law . . . .). Pursuant to the terms of the ELN Trust, the Investment Trustee is the only person authorized to institute and defend actions or legal proceedings on behalf of the trust, and with respect to trust property, has all rights, powers, and privileges which an absolute owner would have in the same. See Section 12.1(h) and (s) of the ELN Trust, quoted in note 1. Additionally, an agent with actual authority, express or implied, binds his principal through his statements, representation and actions. *See, e.g., Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987). The ELN Trust does not dispute that Eric, as Investment Trustee, is an agent of the trust. Pursuant to the terms of the ELN Trust, Eric, as Investment Trustee has express, actual authority to maintain legal actions on behalf of the trust, and to exercise all powers, privileges, and rights over

[123] It should also be pointed out that the 1993 Agreement, paragraph "7," provides that the parties do not violate the terms of same by transferring property to a "revocable" trust only. Accordingly, an irrevocable trust could not have been an intended third-party beneficiary of the 1993 Agreement, because transfers to an irrevocable trust necessarily violate same.

property of the ELN Trust as an absolute owner could. Accordingly, all statements, representations, and actions by Eric during and before these proceedings, including those made to his wife during the course of their nearly 30-year marriage that all property held by the parties, whether in trust or in their individual names, is community property, is binding upon the ELN Trust.

Finally, the facts offered by Eric regarding his handling and treatment of trust property were conclusively established, and may not be rebutted by any party to this action:

> NRS 47.240 Conclusive presumptions. The following presumptions, and no others, are conclusive:
>
> . . .
>
> 3. Whenever a party has, by his or her own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, the party cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

NRS 47.240 like judicial estoppel, operates to prevent manifest injustice. NRS 47.240 prevents parties like Eric, who have led another party to believe certain facts through his or her declarations, acts and omissions, from abusing the judicial process to negate such facts upon which another party has relied. Eric conclusively established, through his sworn testimony, that at all times he held out the property of the ELN Trust as belonging to, and for the benefit of, the parties' community. He even elicited the testimony of Mr. Burr, who was the parties' attorney and is Trust Consultant to the ELN and LSN Trusts, regarding the intent of the parties in entering into the 1993 Agreement, and in creating the ELN and LSN Trusts. Such testimony established that said documents were never intended to affect the parties' rights in the event of divorce. Eric now seeks to negate these contentions through additional trial proceedings, but is precluded from doing so. As previously stated, the ELN Trust cannot negate such contentions either, as it is bound by the statements, declarations, acts and omissions of its Investment Trustee, Eric.

Based on the evidence elicited by Eric in his case-in-chief, the doctrine of judicial estoppel, and NRS 47.240, the Court has more than enough legal authority and evidence to enter judgment in Lynita's favor. Even without considering another witness or document entered into evidence, the admissions by Eric and testimony by Mr. Burr were so conclusive on this issue that they simply cannot be overcome. Nonetheless, even if the Court were to entertain the other legal arguments advanced by Eric and the ELN Trust, Lynita should still prevail on her claims to recover community property.

. . .

B. Equitable Estoppel: The Law Cannot Assist Eric And The ELN Trust In The Injustice They Seek

"Equitable estoppel functions to prevent assertion of legal rights that in equity and good conscience should not be available due to a party's conduct." *In re Harrison Living Trust*, 121 Nev. 217, 112 P.3d 1058, 1061-62 (2005). There are four elements to equitable estoppel: "(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; [and] (4) he must have relied to his detriment on the conduct of the party to be estopped." *Id.* In *In re Harrison*, a beneficiary of a trust filed a motion to set aside a judgment concerning distributions from such trust, entered after a hearing held 18 months earlier, based on lack of notice. *Id.* The Nevada Supreme Court held that the beneficiary was estopped from challenging the judgment based on equitable estoppel, because the beneficiary learned of the judgment shortly after the hearing, accepted her share of assets, and did nothing to stop the distribution of assets to other beneficiaries until nearly one (1) year later. *Id.*

In the instant case, Eric intentionally led Lynita to believe that all of the property held by the ELN and LSN Trusts was community property, both before, and during this litigation. He intended for Lynita to rely upon such representations, and trust him with respect to the disposition and handling of the parties' assets, and Lynita did in fact trust him. During the course of the parties' marriage, Eric presented Lynita with numerous deeds and other documents to sign related to the parties' holdings, and based on her trust in Eric and his representations, Lynita did as she was asked. She had no way of knowing that Eric, as her husband, and as Investment Trustee of the ELN Trust, would eventually attempt to betray her. Ultimately he did, and it goes without saying that if Eric is able to succeed in his newfound position in this matter, it will be to Lynita's detriment. "The doctrine of equitable estoppel will not permit a party to repudiate acts done or positions taken or assumed by him when there has been reliance thereon and prejudice would result to the other party." *Terrible v. Terrible*, 91 Nev. 279, 283, 534 P.2d 919, 921 (1975). Accordingly, Eric and the ELN Trust must be equitably estopped from asserting that Lynita does not have a community property interest in property purportedly held by the ELN Trust.

Finally, prior to leaving this discussion of equitable remedies and delving into the legal arguments asserted by Eric and his puppet trust, it should be pointed out that the application of equity, and equitable

remedies, by courts presiding over domestic relations matters in this State has a long established and deeply rooted history. *Dillon v. Dillon*, 67 Nev. 428, 433, 220 P. 2d 213, 216 (1950) ("This [divorce action] is an action in equity . . . ."); *Heim v. Heim*, 104 Nev. 605, 610, 763 P.2d 678, 681 (1968) ("Finally, as [the Court] must, we look to the overall justice and equity that must inform all alimony and property distribution decrees."); *Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994).

In *Milender*, a district court voided a prior order setting aside a default decree of divorce when husband (the party defaulted) failed to pay the attorney's fees and costs the court had awarded to wife. *Id.*, 110 Nev. at 975, 879 P. 2d at 750. The district court ruled that the award of fees and costs was a condition to setting aside the decree. *Id.* After the order setting aside the decree was entered, but before same was voided, wife passed away. *Id.* Husband appealed to the Nevada Supreme Court. The Nevada Supreme Court held that the district court erred in voiding the set aside order on an "unwritten, unspoken condition precedent." *Id.*, 110 Nev. at 979, 879 P. 2d at 752. Nonetheless, in order to avoid injustice and to promote equity, the Nevada Supreme Court overruled only those portions of the district court's erroneous order which voided setting aside the division of the parties' community property, and did not overturn the district court's order to the extent that it voided setting aside dissolution of the parties' marriage:

> Of course, in the instant case, [husband] now desires to posthumously confer the status of a deceased wife upon [wife] in order to retain her share of the community property. **To permit him to do so would engage the judicial process in an elevation of greed and an affront to equity. This we refuse to do.**
>
> . . .
>
> [T]here are equitable grounds for endorsing the result of our ruling. Equity considers as done that which ought to be done. [Citation omitted]. [Wife's] divorce ought to have remained undisturbed. [Husband's] attempt to hold valid that which he clearly desired to terminate before [wife's] death **offends equity and will not be aided by this court**.

Id., 110 Nev. at 975, 978-79, 879 P. 2d at 750, 752 (emphasis added). *Milender* is clear that the powers of the courts of this State cannot be invoked to offend equity, and seek an injustice, which is exactly what the ELN Trust and Eric seek from this Court, and that equity will intervene to prevent such injustice.

C. The Separate Property Non-Agreement: Rescission, Invalidation Or Both?

Prior to addressing the facts and circumstances surrounding the 1993 Agreement, there is one (1), quite frankly baseless, evidentiary argument that has been raised by the ELN Trust which must be addressed. The ELN Trust argues that the Court cannot consider parol evidence in examining the 1993 Agreement, and the parties' intent with regards to said 1993 Agreement, and the ELN and LSN Trusts. These arguments,

of course, assume that the ELN Trust has standing to participate in such determinations, which as previously set forth it clearly does not. Even if the ELN Trust could assert such arguments, the parol evidence rule does not apply to preclude evidence of the facts and circumstances surrounding the execution of an agreement when the validity of such agreement has been challenged.[124] *Havas v. Alger*, 85 Nev. 627, 632, 461 P.2d 857, 860 (1969). Furthermore, while parol evidence generally may not be admitted to vary or contradict the terms of an unambiguous contract, parol evidence of intent is admissible to explain and clarify a contract which is ambiguous on its face. As set forth above in the factual statement, there are several ambiguities in the 1993 Agreement. For example, although such agreement purports to separate the parties' property, there are restraints on each party's ability to alienate such property after division, e.g., neither party can encumber the marital residence without prior approval, and each party can only transfer to a revocable trust without violating the terms of the agreement. If the 1993 Agreement was meant to control the parties' rights with respect to the properties purportedly divided therein, there would have been no reason to include such restraints on alienation, and parol evidence is necessary to determine the true intent of the parties with respect to such agreement.

Most importantly, the evidence regarding the intention of the parties with respect to the 1993 Agreement, and ELN and LSN Trusts, was introduced by Eric during his case-in-chief. Where a party introduces otherwise inadmissible evidence without objection, such evidence should be considered by the Court, and an opposing party is permitted to introduce similar evidence to rebut or clarify such evidence:

> Even if evidence is inadmissible, a party may "open the door" to admission of that evidence. A party opens the door to evidence when that party "introduces evidence or takes some action that makes admissible evidence that would have previously been inadmissible." 21 Charles Alan Wright et al., Federal Practice & Procedure Evidence § 5039 (2d ed. 1987).

Tennessee v. Gomez, No. M2008-02737-SC-R11-CD, filed April 24, 2012; *Hayward v. Florida*, 59 So. 3d 303, 306 (Fla. 2d Dist. 2011) ("The concept of 'opening the door' permits admission of inadmissible evidence for the purpose of qualifying, explaining or limiting testimony previously admitted."). The Nevada Supreme Court addressed this issue in *Canfield v. Gill*, 101 Nev. 170, 697 P.2d 476 (1985):

> The contract in this case does not appear to be ambiguous on its face. Therefore, parol evidence on the intent of the parties should not have been admitted at trial. [Citation omitted]. The trial transcript, however, reveals that parol evidence regarding intent was

[124] See also all other cases cited within this Section pertaining to the validity of a written instrument, which cases necessarily required an analysis of the facts and circumstances surrounding execution of such written instruments.

> offered and admitted by both parties without objection. The failure to object to this evidence constitutes a waiver.

Id., 101 Nev. at 172, 697 P.2d at 477, n.2 (1985). Thus, the evidence offered by Eric regarding the intent of the parties with respect to the 1993 Agreement, and ELN and LSN Trusts, must be considered.

A husband and wife can make contracts respecting property, subject to "the general rules which control the actions of persons occupying relations of confidence and trust toward each other." NRS 123.070. The time for challenging such agreements is indefinite due to the strong public policy of maintaining marital harmony. *Cord v. Neuhoff*, 94 Nev. 21, 24, 573 P.2d 1170, 1172 (1978) ("The policy of the law is to refrain from fostering domestic discord which may follow from litigation between spouses commenced for fear that the bar of laches would attach by a lapse of time."). It cannot be disputed that both Eric and Mr. Burr owed Lynita a fiduciary duty at the time the parties entered into the 1993 Agreement, and ELN and LSN Trusts. *Williams v. Waldman*, 108 Nev. 466, 836 P.2d 614 (1992). "[A] fiduciary relationship requires a duty of **good faith, honesty and full disclosure**." *Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 86, 734 P.2d 1221, 1224 (1987) (emphasis added).

The testimony of Eric and Mr. Burr conclusively established that there was no disclosure to Lynita that the 1993 Agreement would determine the parties' rights to properties addressed therein in the event of divorce. To the contrary, with respect to the 1993 Agreement, and ELN and LSN Trusts, Lynita was advised that the parties would continue to hold all of their property for the benefit of the community. While Lynita was allegedly represented by independent counsel with respect to the 1993 Agreement, both Mr. Burr and Eric concede that they discussed the legal effects of the 1993 Agreement with Lynita prior to her ever meeting with "independent counsel," and made certain representations to her about the legal effect of same (or misrepresentations). There can be no doubt from such testimony that Eric and/or Mr. Burr, either expressly or by omission, failed to honestly and fully disclose to Lynita the legal effect of the 1993 Agreement. Lynita was further not advised as to the full nature and extent of the parties' community property at the time, which full disclosure was necessary for Lynita to make an informed decision. Accordingly, the 1993 Agreement should be declared invalid pursuant to NRS 123.070.

The 1993 Agreement is also invalid or voidable under general contract principles. From the testimony of Mr. Burr and Eric it is clear that Lynita was informed that the 1993 Agreement was simply an

estate planning and asset protection tool.[125] It is further clear that Lynita was led to believe that such agreement would not affect the parties' marital rights with respect to the properties purportedly separated therein, and that the parties would thereafter treat all of such properties as community property. Eric has now (after presenting six (6) days of evidence to the contrary) asserted that the 1993 Agreement governs the parties' rights with respect to property, and fully separated the parties' community property. A misrepresentation which causes another to enter into a contract is grounds for rescission, even if the other party did not completely rely on the misrepresentation, or was negligent in not discovering same:

> Total reliance upon a misrepresentation is not required to entitle a party to rescission. It is enough that the misrepresentation is part of the inducement to enter into the transaction.
>
> . . .
>
> A suit in equity for rescission of a contract, however, does not necessarily fail because the party seeking rescission was unreasonable in relying upon the misrepresentation made by the other party. Even negligence on the part of the other party seeking rescission will not bar equitable relief when the misrepresentation was made intentionally by the other party.

Pacific Maxon, Inc. v. Wilson, 96 Nev. 867, 869-70, 619 P.2d 816, 817 (1980); *see also*, *Havas v. Alger*, 85 Nev. 627, 631, 461 P.2d 857, 859 (1969) ("Fraud in the inducement renders [a] contract voidable."). Accordingly, the fact that Lynita was led to believe by her husband and attorney that the properties addressed in the 1993 Agreement would continue to be community property is sufficient evidence, in and of itself, for the Court to rescind such agreement. The fact that Richard Koch purported to independently represent Lynita has no bearing on this determination, as it is clear that such representations were made to Lynita prior to meeting with Mr. Koch, and caused Lynita to execute the agreement.

Finally, even if the Court were to find that Eric, Lynita, and Mr. Burr were mistaken as to the full effect of the 1993 Agreement,[126] which would be difficult given the fact that Eric and/or the ELN Trust have now taken the position that the 1993 Agreement separated the parties' community property in 1993, the mutual mistake of the parties requires the agreement to be voided. *Realty Holdings, Inc. v. Nevada Equities, Inc.*, 97 Nev. 418, 419-20, 633 P.2d 1222, 1223 (1981) ("It cannot be questioned at this late date that a court with equity powers (the district courts of [Nevada] have such powers) may reform a written instrument where it appears that there has been fraud, accident or **mistake which has brought about a writing not**

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[125] As set forth in note "121," whether such statements were made by Eric or Mr. Burr is immaterial. Pursuant to NRS 51.035, statements made to Lynita by Mr. Burr during his representation of Eric only (there can be no doubt that Mr.Burr had an attorney-client relationship with both Lynita and Eric in 1993, which was never waived by Lynita), are binding upon Eric.

[126] Assuming such agreement can even be read to separate the parties' community property in light of all the ambiguities contained therein.

truly representing the actual agreement of the parties.") (emphasis added). "Voidance is the proper remedy where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances." *In re Martinez*, 393 B.R. 27, 32 (Bankr. Nev. 2009) (quoting Restatement (Second) of Contracts). The evidence presented by Eric conclusively established that the parties' 1993 Agreement was never intended to separate their community property. The parties' lack of intent to separate their property is further evidenced by the terms of such agreement (e.g., neither party can encumber the marital residence without prior approval, and each party can only transfer to a revocable trust[127]). In the event the 1993 Agreement is found to be valid, is interpreted to separate the parties' community property, and is found not to have been entered into by Lynita as a result of misrepresentation by Eric, the 1993 Agreement should be invalidated based upon the mutual mistake of the parties.

If the Court finds that the 1993 Agreement is invalid, all property held in the ELN and LSN Trusts must be deemed community property, removed from such trusts, and equitably divided.

D. Community Property Acquired After 1993: A Presumption That Cannot Be Overcome

Regardless of the Court's decision with respect to the parties' 1993 Agreement, all property held today by Eric and the ELN Trust is community property. **All** property acquired during marriage is presumed to be community property, and such presumption may only be overcome by clear and convincing evidence. *Forrest v. Forrest*, 99 Nev. 602, 604-05, 668 P.2d 275, 277 (1983). The Nevada Supreme Court has defined clear and convincing evidence as follows:

> This court has held that clear and convincing evidence must be satisfactory proof that is: "so strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest. It need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference may be drawn." [Citation omitted].

In re Discipline of Drakulich, 111 Nev. 1556, 908 P.2d 709, 715 (1995).

Other than the Palmyra marital residence and forty percent (40%) of Eric's 100% interest in Eric Nelson Auctioneering (which has $0.00 value), none of the properties held today in the ELN or LSN Trusts are the same as those specified in the 1993 Agreement; all of said properties were acquired after 1993. Eric

[127] The settlor of a revocable inter vivos trust retains his or her ownership in the property held in such trust. *See, e.g., Linthicum v. Rudi*, 122 Nev. 1452, 148 P.3d 746, 749 (2006).

has conceded that he cannot trace the original source of funds used to acquire such properties, and it is likely, based on the parties' agreements in both 1993 and 2001 to level off their trusts periodically, as well as Eric's constant commingling of property between the parties' trusts, that the source of such funds originated from the property purportedly set aside to Lynita by the 1993 Agreement.

In addition, Eric has so extensively commingled the properties held in the parties' respective trusts (whether the 1993 trusts, or the ELN and LSN Trusts), that it would be impossible to determine the source of funds used to purchase the assets presently purportedly held by the ELN and LSN Trusts. Once an owner of separate property funds commingles those funds with community funds, "the owner assumes the burden of rebutting the presumption that all the funds in the account are community property." *Malmquist v. Malmquist*, 106 Nev. 231, 245, 792 P.2d 372, 381 (1990). "[I]ntermingled properties are considered community property [where] the properties have become so mixed and intermingled that it is no longer possible to determine their source." *Ormachea v. Ormachea*, 67 Nev. 273, 297, 217 P.2d 355, 367 (1950).

E. Even If All Of The Parties' Assets Constituted Separate Property At Some Point In Time, Such Property Was Orally Transmuted Thereafter

Regardless of the decisions rendered on the issues addressed above, the Court should rule that the parties orally transmuted all properties held in their respective trusts, and in their individual names, from separate property[128] to community property after the 1993 Agreement. *See Schreiber v. Schreiber*, 99 Nev. 453, 663 P.2d 1189 (1983) (enforcing an oral property agreement between spouses where there was partial performance); *see also, Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284 (1994) (citing to a party's testimony regarding intent in analyzing whether a transmutation of separate property occurred). In the instant case, Eric has admitted repeatedly that he and Lynita agreed that all property held in their trusts was, and is community property, and treated same as community property throughout the course of their lengthy marriage. In reliance on such representations and agreement, Lynita allowed Eric to manage the parties' properties, and signed deeds and other legal documents presented to her by Eric to transfer such properties between the parties' respective trusts. Accordingly, the Court should find that regardless of whether the parties' property was separate at some point in time in the past, all property held today by the parties and the ELN and LSN Trusts is community property based upon the agreement, and actions of the parties.

[128] To the extent any separate property is found to have ever existed.

It should be noted that the ELN Trust and Eric have constantly tried to overcome the admissions made by Eric with respect to the parties' property by asserting that a party's opinion as to the nature of property (community or separate) is irrelevant. Eric's admissions with regards to (1) the parties' intent in entering into the 1993 Agreement, and creating the ELN and LSN Trusts, (2) the representations he made to Lynita concerning the nature and extent of the parties' property during marriage (which were relied upon by Lynita), and (3) the level of control and dominion he exercised over such community property, are admissible, highly relevant, and must be considered by this Court.

F. Community Property In, Community Property Out: Recovering Community Property From The ELN And LSN Trusts

It cannot be disputed that the ELN Trust cannot take and retain title to property which belongs to another,[129] and the ELN Trust and Eric do not appear to have ever taken such an unjustifiable position. In fact, the Court has noted numerous times during this litigation, "Community property in, community property out!" As has been set forth throughout, under any analysis the property currently held in the names of the ELN and LSN Trusts should be found to be the community property of the parties. Accordingly, Eric and the ELN Trust should be ordered to transfer all property out of the name of the ELN Trust, or at least those properties which the Court awards to Lynita in making an equitable division of the parties' community property. As was set forth in the factual statement, and confirmed by Eric numerous times during his testimony, Eric has the right under the terms of the ELN Trust to transfer property to Lynita or the LSN Trust without the consent of any third party. Furthermore, the ELN Trust, its Distribution Trustee, and its Investment Trustee are all properly before the Court and subject to the Court's jurisdiction. Finally, any argument by the ELN Trust and/or Eric that the Court cannot enter such an order should be categorically denied based upon the equitable principles set forth at the beginning of this legal analysis.

In the alternative, the Court should impose a constructive or resulting trust upon the property held by the ELN Trust which belongs to the parties' community estate:

> Constructive and resulting trusts are similar in that their basic objectives are the recognition and protection of property rights that have arisen in an innocent party. The vital tenet is one of equity. Where the consideration for the property is provided by one party, but title is taken by another, and the circumstances negate the possibility of the consideration being a gift, equity will intervene to protect the rights of the first party.

[129] This topic is discussed in greater detail in subparagraph G of this legal analysis ("The Inapplicability Of Chapter 166, And The Limitations Period Contained Therein").

Cummings v. Tinkle, 91 Nev. 548, 550, 539 P.2d 1213, 1214 (1975). "The constructive trust is no longer limited to [fraud and] misconduct cases; it redresses unjust enrichment, not wrongdoing." Dobbs, Law of Remedies § 4.3(2) (2d ed.1993); *DeLee v. Roggen*, 111 Nev. 1453, 1457, 907 P.2d 168, 170 (1995); *Locken v. Locken*, 98 Nev. 369, 372, 650 P.2d 803, 804-05 (1982) ("'[a] constructive trust is a remedial device by which the holder of legal title to property is held to be a trustee of that property for the benefit of another who in good conscience is entitled to it."); *Bemis v. Estate of Bemis*, 967 P.2d 437, 114 Nev. 1021 (1998).

"A constructive trust will arise and affect property acquisitions under circumstances where: (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*, 98 Nev. at 372, 650 P. 2d at 805. "[A] resulting trust may be imposed when parties' actions or expressions indicate that they intended to create a trust relationship." *Waldman v. Maini*, 124 Nev. 1121, 195 P.3d 850, 858 (2008). In *Locken*, a father was assigned two patent applications for separate parcels of land from a third-party for satisfaction of a debt owed to him. *Id.*, 98 Nev. at 371, 650 P.2d at 804. "[T]he Desert Land Act [citation omitted] prohibited the father from making more than one entry in his own name, [and] at the suggestion of his son, the parties verbally agreed to place one of the applications in the son's name." *Id.* "Under this agreement, the father was to make certain improvements upon the land, and after the patent was granted the son was to convey the property to his father." *Id.* The father complied with the terms of the agreement, however, the son refused to convey the land back. *Id.* The district court ruled that the son held the land in constructive trust for the father, and the Nevada Supreme Court affirmed. The Court's reasoning in *Locken*, set forth in part as follows, is on all fours with the instant matter:

> [W]e must first consider whether the imposition of a constructive trust runs afoul of the statute of frauds. NRS 111.205 provides in pertinent part:
>
> > 1. No estate or interest in lands ... shall be created, granted, assigned, surrendered or declared ..., unless by act or operation of law, or by deed or conveyance, in writing
> > ....
> > 2. Subsection 1 shall not be construed to affect in any manner the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law. (Emphasis supplied.)
>
> This exception to the statute of frauds, set forth in subsection 2, permits the imposition of a constructive trust to avert the type of fraud the statute is designed and intended to prevent. Davidson v. Streeter, 68 Nev. 427, 234 P.2d 793 (1951). Thus, the statute of frauds is of no impediment to the existence of a constructive trust in the instant action.

> A constructive trust is a remedial device by which the holder of legal title to property is held to be a trustee of that property for the benefit of another who in good conscience is entitled to it. Danning v. Lum's, Inc., 86 Nev. 868, 871, 478 P.2d 166 (1970). A constructive trust will arise and affect property acquisitions under circumstances where: (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. Schmidt v. Merriweather, 82 Nev. 372, 375, 418 P.2d 991 (1966). Here, each of the aforesaid elements coexist as revealed amply by the evidence of record. A close familial relationship of trust and confidence existed between the parties at the time of their agreement, and the son abused that confidential relationship at the expense of his father. Under such circumstances, it would be manifestly inequitable to judicially countenance continued retention of legal title to the property in the son. Further, since land is unique, the creation by law of a constructive trust was necessary to the prevention of a continuing injustice.

Id., 98 Nev. at 371-73, 650 P.2d at 804-05.

As Eric has admitted since day one of this action, Eric and the ELN Trust acquired title to the parties' community property from Lynita under the guise that such property was going to be held for the benefit of the community. There was no consideration paid to the community for such property. Eric (individually and as Investment Trustee of the ELN Trust) was in a confidential relationship with Lynita as her husband. Retention of the property currently titled in the name of the ELN Trust would be inequitable, and the imposition of a constructive is essential to the effectuation of justice. Accordingly, the Court should rule that the property held by the ELN Trust is held in constructive and/or resulting trust for the benefit of Lynita and/or the community.

G. It's All Ours!: Why Eric Has Conclusively Established That The ELN And LSN Trusts Are The Parties' Alter Egos

The Court should also find that the ELN and LSN Trusts are Eric's alter egos based on Eric's admissions and actions. The Court previously found that NRS 163.418 should be applied when determining whether the ELN Trust is Eric's alter ego in this action, and that the standard set forth in NRS 78.747 (pertaining to corporate alter ego liability) is inapplicable. NRS 163.418, and the statute cited therein, however, were not added to the Nevada Revised Statutes until 2009, long after many of the acts described herein occurred. "There is a general presumption in favor of prospective application of statutes unless the legislature clearly manifests a contrary intent or unless the intent of the legislature cannot otherwise be satisfied." *McKellar v. McKellar*, 110 Nev. 200, 871 P.2d 296, 298 (1994). In *McKellar*, the Nevada Supreme Court specifically analyzed whether the Nevada Legislature intended amendments to NRS 125.050, eliminating the statute of limitations to collect child support payments, to be applied retroactively. *Id.* The

Court found no clear intent by the Legislature for the amendments to be applied retroactively, nor did it believe that retroactive application was necessary to satisfy the intent of the statute despite the fact that claims arising prior to the amendment would be barred by the limitations period. *Id.* Similarly, there is no clear intent in NRS 163.418 for such statute to apply retroactively, and the intent of such statute would not be defeated by only applying the statute prospectively.

Nonetheless, regardless of which alter ego statute and test the Court chooses to apply, it is clear from Eric's admissions, and actions, as well as the other evidence that has and will be adduced at trial, that the ELN and LSN Trusts are Eric's alter egos. In *In re Schwarzkopf*, 626 F.3d 1032 (9th Cir. 2010), the Ninth Circuit Court of Appeals, applying California law, invalidated two trusts under theories of fraud, and alter ego, respectively. *See generally, id.* There, a husband and wife created two (2) irrevocable trusts in 1992, known as the Apartment Trust, and Grove Trust, and over time funded said trusts with certain, valuable assets. *Id.* at 1036. In 2003, the husband and wife (hereinafter collectively referred to as "the debtors") "filed bankruptcy petitions seeking to discharge approximately $5.4 million in debt." *Id.* The bankruptcy trustee "filed an adversary complaint seeking to recover approximately $4 million in assets from the [trusts]." *Id.* The Ninth Circuit Court of Appeals held that the Apartment Trust was invalid because it was created for the fraudulent purpose of avoiding the debtors' creditors, and that since the Apartment Trust was invalid, the 7 year statute of limitations for bringing a fraudulent transfer claim did not begin to run. *Id.* at 1036-37.

The Ninth Circuit further held that the Grove Trust was husband's alter ego based on facts almost identical to those herein. *Id.* at 1037-40. Specifically, the Ninth Circuit found that the Grove Trust was husband's alter ego based on husband's payment of personal expenses from the Grove Trust, the purportedly independent third-party trustee's lack of action with regards to the Grove Trust, other than to perform the demands made by husband, and husband's "dominat[ion] and control[] [of] all decisions of the Grove Trust." *Id.* at 1039-40. Similarly, Eric by his own admission has exercised complete dominion and control over the properties held in the ELN and LSN Trusts. Furthermore, and amongst other things, Eric has (1) failed to comply with trust formalities concerning distributions to himself, (2) has distributed property to parties not named beneficiaries under such trusts, and (3) in conjunction with Mr. Burr, has failed to comply with the trust provisions for the naming of successor trustees, causing years of distributions to Eric from the ELN Trust during a time when there was no validly acting Distribution Trustee to approve same. Indeed,

it is hard to imagine a more clear cut case of alter ego than the instant case. If Eric is permitted to come before this Court and admit that all property of the ELN and LSN Trusts is "my property," and treat such properties in the manner that he did without a finding of alter ego, then certainly there can be nothing a settlor could do to lead a Court to find that his or her irrevocable trust is his alter ego under Nevada law.

H. The ELN Trust Should Be Invalidated Or Terminated

"[A] spendthrift trust is defined to be a trust in which by the terms thereof a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed." NRS 166.020. The testimony of Mr. Burr, elicited by Eric during his case-in-chief, conclusively established that the parties, in creating the ELN and LSN Trusts, had no intention to actually divest themselves of title to property transferred to such trusts, or to restrain their ability to transfer the interests in such properties to themselves. In fact, the parties were advised by Mr. Burr that such restraints were illusory because of the flexibility of such trusts, and that transfer of property to the trusts would not affect their rights with regards to same in the event of divorce. Under these facts and circumstances, the Court should find that the ELN and LSN Trusts are not valid self-settled spendthrift trusts.

Finally, this Court has statutory authority to terminate the ELN and LSN Trusts if it finds that the administration of such trusts is no longer feasible:

> NRS 163.185 Power of court to order termination and distribution of trust before time provided in trust instrument. Upon such terms and conditions as are just and proper, the court may order termination and distribution of a trust before the time provided in the trust instrument, if administration or continued administration of the trust is no longer feasible or economical. A petition for such an order may be filed by an interested person under NRS 164.010 and 164.015.

In *In re Marriage of Epperson*, 107 P.3d 1268, 326 Mont. 142 (MT 2005), the Montana Supreme Court affirmed a trial court's decision in a divorce action to terminate a husband's and wife's parallel irrevocable trusts created during marriage pursuant to a similar statute. Specifically, Montana statutes allow a court to terminate a trust if "the court, in its discretion, determines that the reason for [termination or modification] under the circumstances outweighs the interest in accomplishing a material purpose of the trust . . ." The trial court found that the parties' trusts were created for the purpose of avoiding probate and inheritance taxes, that there were "very few assets in the marital estate" outside the parties' trusts, that "the purpose of . . .

the trusts was defeated by the disintegration of the family," and that both parties could experience extreme detriment if the assets of the trusts were not divided as marital property.[130] *Id.*, 107 P.3d at 1273-74.

Similarly, maintaining the parties' trusts is no longer feasible. Eric has testified repeatedly that the purpose of the ELN and LSN Trusts was to "protect Lynita" and the parties' children, and Mr. Burr testified that the intent of the trusts was to protect the community. That intent is confirmed by the language contained in the ELN and LSN Trusts, e.g., each trust names the other party as Successor Investment Trustee, and sole beneficiary in the event of death. Furthermore, like the parties in *In re Marriage of Epperson*, there are "very few assets in the marital estate" outside the parties' trusts, "the purpose of the trusts [is] defeated by the disintegration of the family," and Lynita could experience extreme detriment if the assets of the trusts are not divided as marital property. Accordingly, the Court should terminate the ELN and LSN Trusts, and equitably distribute the properties held therein.

I. The Inapplicability Of Chapter 166, And The Limitations Period Contained Therein

NRS 166.170(1) provides as follows:

> 1. A person may not bring an action with respect to a transfer of property to a spendthrift trust:
>
> (a) If the person is a creditor when the transfer is made, unless the action is commenced within:
>
> (1) Two years after the transfer is made; or
>
> (2) Six months after the person discovers or reasonably should have discovered the transfer,
>
> whichever is later.

The limitations period found in NRS 166.170, however, is inapplicable to the instant matter on several different levels. The ELN Trust has argued throughout this litigation that even if it is found to be invalid or Eric's alter ego, that the statute of limitations in NRS 166.170 should apply and bar Lynita's claims. This

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130 The Montana Supreme Court stated:

> Given the issues presented to him, Judge Prezeau was obligated to determine whether continuation of the Trusts would defeat or substantially impair the accomplishment of the purposes of the Trusts. [Citation omitted] He determined, based upon the serious disintegration of this family, Robert's estrangement from the family, and the possibility that both Robert and Yvonne could experience "extreme detriment" if the assets of the Trusts were not distributed as marital property, that the "family purpose" of the Trusts was defeated. Based upon the record before us, we cannot conclude that the District Court either incorrectly interpreted or applied the statute. To the contrary, the court carefully analyzed the evidence presented in light of the statutory directives. We therefore affirm the District Court's decision to terminate the Trusts.

argument defies logic. If the Court finds that the ELN Trust is invalid and/or Eric's alter ego, then certainly Eric, individually, cannot be afforded the protections afforded to a valid spendthrift trust, including the statute of limitations for creditors to bring actions concerning transfers of property to such trust (there could be no actual transfer to a non-existent trust). *See In re Schwarzkopf*, 626 at 1036-37 (holding that the statute of limitations for bringing a fraudulent transfer claim was not applicable where the trust transferred to was found to be invalid). Indeed, if the ELN Trust is found to be invalid and/or Eric's alter ego, the properties purportedly held by such trust would be held by Eric and subject to distribution in this divorce action.

Moreover, the claims asserted by Lynita are not claims by a "creditor." NRS 166.170(10)(b) provides that "[c]reditor has the meaning ascribed to it in subsection 4 of NRS 112.150." NRS 112.150(4) defines a creditor as a "person who has a claim." A "claim" is defined in NRS 112.150 as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured." Lynita's claims against Eric and the ELN Trust are not claims for payment from the property held in the ELN Trust, but rather a legal claim of ownership in the property itself. Certainly the Legislature did not enact the Spendthrift Trust Act of Nevada,[131] and the limitations period contained in NRS 166.170 to allow individuals to convert or steal property belonging to another, or to fraudulently obtain title to such property, with impunity. Any such interpretation of the Spendthrift Trust Act of Nevada, and NRS 166.170, would be against public policy, and indeed the ELN Trust and Eric do not appear to have ever taken such a ridiculous position.

Furthermore, to the extent that any limitation periods could apply to Lynita's claims it is well-settled that limitation periods do not begin to run until an injured party knew, or should have known, of the facts constituting the elements of his or her cause of action. *See, e.g., Oak Grove Investors v. Bell & Gossett Co.*, 668 P.2d 1075, 1079, 99 Nev. 616, 623 (1983); *G & H Associates v. Ernest W. Hahn, Inc.*, 934 P.2d 229, 233, 113 Nev. 265 (1997) ("Statutes of limitation are procedural bars to a plaintiff's action, and in a tort action . . . the time limits do not commence and the cause of action does not 'accrue' until the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury."). Limitation periods also do not run when a party intentionally conceals information which would put another party on notice of his cause of action. *See Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. Adv. Op. No. 23 (2012).

[131] Chapter 166 of Nevada Revised Statutes.

Prior to June, 2011, Eric steadfastly maintained that all assets titled in the names of the ELN and LSN Trusts were held, owned and controlled by the parties as community property. Accordingly, even if NRS 166.170 was applicable to the instant action, which clearly it is not, Lynita's cause of action could not have "accrued" until June, 2011: the first possible date that Lynita could have known of any potential injury resulting from the theoretical existence of such trusts.

Finally, and as discussed above, "The policy of the law is to refrain from fostering domestic discord which may follow from litigation between spouses commenced for fear that the bar of laches would attach by a lapse of time." *Cord*, 94 Nev. at 24, 573 P.2d at 1172. Therefore, any limitation periods that could conceivably be applied to Lynita's claims must be considered tolled during the time of the parties' marriage.

IV. CONCLUSION

For the reasons set forth above, the Court should enter an Order denying the relief sought by Eric and the ELN Trust, and awarding Lynita her equitable share of the parties' community property.

DATED this 31st day of August, 2012.

THE DICKERSON LAW GROUP

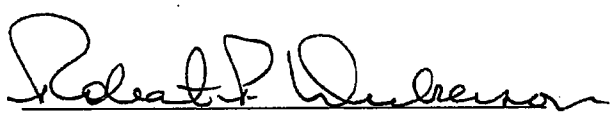

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EXHIBIT A

NOVEMBER 22, 2010 TRIAL TESTIMONY[1]

Direct Examination of Jeffrey Burr, Esq., questioning by James J. Jimmerson, Esq. ("Mr. Jimmerson"):

Q. It's my understanding that the Nelsons first consulted you for trust work in roughly 1991, about 19 years ago. Is that consistent with your recollection?

A. Yes.

Q. What do you recall in that regard?

A. They came to me at the time and they wanted to do some estate planning and we helped draft a joint family trust for them.

Trial Transcript ("TT"), November 22, 2010, pg. 7, lines 17-19.

Q. Quite a while, okay. Now, what is the - - what was the purpose in 1991 for creating the Eric Nelson and Lynita Sue Nelson Family Trust?

A. They wanted to delineate what happened in the event one or both of them became incompetent or passed away and they wanted to do a trust to help - - help avoid probate in case they had a catastrophe in their family.

TT, November 22, 2010, pg. 11, lines 2-8.

Q. Okay. Now, we know through the documents at least, about two years past and then they returned to you for additional **estate planning**; is that true?

A. Yes.

. . .

Q. Now, **what was the purpose of the 1993 Agreement which I'll show you here?**

A. The Nels --

. . .

Q. Okay. **So what I want to know is what are you being told by either Eric or Lynita or what are you telling them in response as to why they want a separate agreement now in 1992?** And the documents that went along to implement that?

---

[1] Emphasis added.

A. Well, they came to me and Eric was getting ready or just already began involvement in what they both felt were risky ventures. There was some gaming that he wanted to be involved in. And he was going to have to sign some guarantees and the concern was that we didn't want all the a - - **they didn't want all the assets subject to creditors. And so they were looking for ways to protect a portion of the assets from potential liabilities down the road.**

TT, November 22, 2010, pgs. 17-19.

Q. **Did you explain to Lynita Nelson that by signing the 1993 Agreement and the way to implement that, the separate property trust, that she was relinquishing her community property interest as it relates to assets that were being placed in Eric's separate property trust as Eric was relinquishing community property interest being placed in Lynita's separate property trust?**

. . .

A. **Okay. This is where it gets a little tricky. The discussion of course was clear and concise about trying to protect the assets from third party creditors and from guarantees and that type of thing. And in order to accomplish that, it was my opinion this - - the property needed to be separated. So, did we discuss in detail, you know, marital property rights as to each other, we did have a discussion about that. And the property was divided equally at the time. And my advice to them was, you know, going forward they should balance the assets on a periodic basis to maintain their 50/50 ownership, because again, these were two people that were doing well in their marriage, getting along, and they were primarily focusing on outside creditors and frivolous lawsuits, that kind of thing.**

So - - so there wasn't a big discussion about, you know, dissolution rights and that type of thing.

Q. Okay.

A. **It was more just protecting them against third party creditors.**

TT, November 22, 2010, pg. 21, lines 10-16; pg. 22, lines 3-22.

Cross Examination of Mr. Burr, questioning by Robert P. Dickerson, Esq. ("Mr. Dickerson"):

Q. Okay. Now, isn't it true that - - do you recall how it came about that you were contacted with respect to the issues that were being discussed for the purpose of this 1993 Agreement in say the spring of 1993?

A. Yeah, the parties again came to see me.

. . .

Q. **So it is true, Mr. Burr, that really the sole purpose of you putting together this 1993 Agreement that's been admitted into evidence as Exhibit 210 was simply and solely for the purpose of asset protection from creditors?**

. . .

A. **The purpose of this agreement was to protect them from creditors, yes.**

TT, November 22, 2010, pg. 11, lines 7-11, 19-23; pg. 12, lines 6-7.

Q (by the Court). Do you understand why they came to your - - or the purpose of you said to protect assets from creditors? Is there anything else that you understood to be the purpose of the parties coming before you for the 1993 Agreement?

A. **That was the sole purpose. <u>There was no discussion about protecting each other from each other or dissolution or anything.</u>**

Q (Mr. Dickerson resumes questioning). **And in fact, wasn't there discussion** of the fact that there would be no different - - that for example, the - - **the assets that are going to Lynita, if Eric lost every one of his assets because of the risks involved and he lost every one of his assets, was it the intent that he have no interest in the assets that are being distributed to Lynita?**

A. **<u>The intent was Lynita would take care of him and further their community.</u>**

TT, November 22, 2010, pg. 12, lines 23-24; pg. 13, lines 1-15.

Q. Okay. **And again, vis-a-vis each other as affecting their rights against each other, what was their intent?**

A. **<u>Again, my understanding of the intent and the discussions we had related to protection from third party creditors, but they still wanted to take care of each other and - - and benefit each other basically.</u>**

TT, November 22, 2010, pg. 15, lines 18-23.

EXHIBIT B

NOVEMBER 22, 2010 TRIAL TESTIMONY[1]

Direct Examination of Mr. Burr, questioning by Mr. Jimmerson:

Q. Okay. **So please tell us what communication happened between you, Lynita and Eric Nelson regarding hey guys, there's a new law** on the books that may be of some advantage to you?

A. **Well, keep in mind that the dynamics between Lynita and Eric, Eric was pretty much the business guy and so, he was the one I would predominantly communicate with.**

Q. Okay.

A. And we sent letters out, communication to our clients, informing them of this opportunity to utilize this special trust and Eric and - - and Lynita came in I believe together and we talked about, you know, how these asset protection trusts could be layered on top of the other trusts they'd done and in other words, **and give more protection to them as a couple, as a family.**

TT, November 22, 2010, pg. 37, lines 13-14.

A. **Actually, Eric,** because he's in real estate and very knowledgeable, had a pretty competent staff, **he pretty much always wanted to be in control of the funding and do that.**

TT, November 22, 2010, pg. 39, lines 15-17 (discussing funding of the ELN and LSN Trusts).

Q. Okay. So for what purposes of the Nelsons, each of them were trying to accomplish, why would the use of this trust be superior than the revocable separate property trust that they were using since 1993?

A. Okay. In these types of trusts, the self-settled spendthrift trusts were not available in any state at that time, and so the onl - - the best we could do for asset protection purposes was to try to divide assets equally between the spouses, this protecting the less risky spouse from hopefully a lawsuit for - - from - - on the risky spouse's side, because as we all know, if you have community property debt, all the community property is exposed to liability. **So back then, that was kind of the best plan we had to at least protect one-half the value of the estate.**

Q. Okay.

---

[1] Emphasis added.

A. And so time moved forward, this special trust is passed and now because they already have these other trusts that they've created there's still some utility in dividing the assets between those two trusts from a creditor protection point of view and then you layer on top of that or you - - in conjunction with that by transferring to an asset protection trust the fact that now after two years have elapsed, not only is the less risky spouse protected but also the more risky spouse hopefully is protected after two years elapse from liabilities that could occur. **So it was just a way of enhancing the asset protection planning that we had tried to put in place before.**

TT, November 22, 2010, pg. 42, lines 4-7, and 13-24; pg. 43, lines 1-11.

Q. **And what did you explain to [Lynita] were the basic concepts of the trust, the irrevocable trust of 2001, Exhibit 81?**

A. **Just that this additional statute would provide an extra layer of protection for her, Eric and the family from creditors.**

Q. Okay. So, **how were the assets divided between the parties** if you know?

A. **Eric just said he would take that upon himself.**

TT, November 22, 2010, pg. 45, lines 11-16, and 23-24; pg. 46, line 1.

Q. Okay. Would you agree with me that not only would she be able to understand the word irrevocable because of your conversation with her, but she could understand that it may not be altered, amended or revoked?

A. I **must interject now that I explained to both parties that irrevocable is a kind of a term of art in the trust world. Any trust can be revoked or amended by transferring all of the assets out of it when it becomes unfunded and they have - - each have the power to do that pretty much as investment trustee with the distribution trustee's authority.**

Q. Right.

A. And then the statute gave them a continuing power of appointment over the assets so they could change the beneficiaries, the - - the dispositive provisions at any time. So one thing I - - we tell all our clients that do these because they get all concerned about well, this is irrevocable, I don't know if I want to do it, **we stress the flexibility of these trusts still because the statute provides a lot of flexibility still with the trustor and allows for them to if they want, if it ever becomes obsolete or it becomes no longer necessary in the planning, they could pretty much get rid of the trust just by transferring the assets out of the trust.**

So it's not your typical like with gift planning and when you're trying to avoid estate tax, you really button up the trust and you make it so it's really irrevocable without independent trustee approval and all that kind of - - these types of trusts are very flexible. It's a term of art, even the statute as you read it, talks about irrevocability, but it gives all these powers to the trustor.

TT, November 22, 2010, pg. 47, lines 18-24; pg. 48, lines 1-24.

Q. . . . I **understood you to say that as a practical matter, if the trustee, with the distributors trustee, the two of them, the investment trustee and . . .the distribution trustee, . . ., can distribute assets to whom they wish or how they wish, correct?**

A. **Yes.**

. . .

A. **When we talk about irrevocable, there's so many ways still to change the terms of the trust.** That's - - I have to in fairness say that, but you're right, the term - - if you look up Webster's Dictionary, and you look at that provision, irrevocable means you can't change it.

TT, November 22, 2010, pg. 49, lines 18-24; pg. 50, lines 1, and 15-19.

Q. . . . **The things that you say about the flexibility because it's an irrevocable trust are things that the trustee can do by will, by voluntary choice, correct?**

A. **Yes.**

Q. Can a court order assets to be removed from an irrevocable trust as defined under Chapter 166?

A. I think in certain circumstances, yes.

Q. How is that possible?

A. I believe that you'd have - - any document like that, you'd have to look at who the grantor is and **if the grantor really didn't possess or own the property by him or herself [e.g. community property]. That's one reason the Court could order the revocation or amendment of the trust.**

TT, November 22, 2010, pg. 51, lines 10-22.

Q. Each party has half - - has assets in the trust. Are you telling me that Judge Sullivan has the power to order against the grantor's wish, against the trustee's wish, being the same person . . . Can Judge Sullivan order her to transfer assets over to her husband?

A. I believe so, yes.

Q. And what's the basis for that?

A. **Well, you have to go back to the 1993 Agreement, for example, what was done. That agreement, even though it did alter certain assets and their character at the time it was created, you'll notice there's no provision in there directing how community property will be split going forward; for example, earned income, personal services income. So you've got this ongoing issue of after that date there's going to be community property created and separate property that is attributable to the division that occurred. So you're going to have community property issues that arise - - that arise. And so maybe one spouse in doing the transfers and funding the trust was actually funding it with community property.**

TT, November 22, 2010, pg. 52, lines 3-23.

Q. I'll ask you again because I think you have. What were the parties agreeing to do as it relates to dividing their assets and characterizing their assets as their respective separate property in 1993 and redone again in an irrevocable nature in 2001?

A. In '93, it's clear that they were dividing their estate equally into two separate trust, into two separate prop - - and into separate property. **In 2001, you'll notice there's not that language in that trust declaring it to be separate property. At that point in time, you know, I don't see and - - there was not attempt really to define community property rights at that time. And again, the intent all along was to protect them from third-party creditors, from guarantees, and (indiscernible) for them from the very beginning that I thought these trusts would not - - should not be relied upon for dissolution rights; I mean, because their intent all along was to keep the balance of ownership.**

TT, November 22, 2010, pg. 54, lines 7-23.

Q. **2001, (indiscernible) what were the parties' understanding and intent as you understood it, as you prepared the documents, relative to whether or not there still retained a community property interest in assets they declared to be each party's separate property, vis-a-vis themselves?**

A. Again - -

Q. And not a third party creditor?

A. **Again, to be - - I mean, clear, vis-a-vis themselves, this trust - - this planning was never meant to alter the rights in the event of a dissolution or divorce. And that was never discussed. I mean, the whole discussion focused on how can the family best protect itself from potential liabilities to third parties. And so that was basically what was discussed.**

Q. Just so I have a current understanding, would that be trust, your answer be true, for all of the asset protection trusts your firm has prepared since 1999 when the statute passed?

A. Yes.

TT, November 22, 2010, pg. 56, lines 1-24.

A. **. . . But the intent, and I'll say this very clearly, our intent when we do this planning for them is not to somehow create with that planning some type of pre-dissolution event or pre-dissolution planning for the couple. That's not why they come to us for it. We tell them to go see divorce attorneys for that. So they come to us together trying to find protection from outside creditors being [sic].**

Q. Okay. Specifically as it related to Lynita Nelson and Eric Nelson, did you have a conversation with Eric Nelson and Lynita Nelson where you explained to them that the execution of the irrevocable trust in 2001 was not a protection against each other as it relates to community property rights?

A. I explained - - my best of my recollection, because I try to do this in every case, **I tried to tell them that these trusts should not be relied upon in a dissolution setting.**

TT, November 22, 2010, pg. 58, lines 10-17, and 19-24; pg. 59, lines 1-3.

Cross Examination of Mr. Burr, questioning by Mr. Dickerson:

Q. All right. Well, one of the things that you indicated that the parties agreed to specifically Lynita and Eric in 2001, was that there would be, you know, a leveling off or an updating of the trusts to try to keep them roughly even, do you recall your testimony?

A. Yes.

Q. Okay. And what did you communicate to them in that regard?

A. Just that it would be important to, you know, periodically rebalance the trusts.

TT, November 22, 2010, pg. 33, lines 4-14.

Q. Now again, at the point in time that they - - in May of 2001, when Eric Nelson and Lynita Nelson entered into their respective trusts, Exhibit 80 and 81, **did you have discussions with the parties as to what their intent was with respect to each other, vis-a-vis each other, affecting their community property rights or their interest in all their property?**

A. **I have to say that yes, the tenor, the tone all along was one of cooperation and a mutually shared goal of trying to protect their family from as - - from creditors, frivolous lawsuits, that type of thing, but a shared intent to look out for each other and the community at the same time.**

Q. So isn't it true in doing that sir, what the parties wanted to do and their intent was to take all of the assets in which there was any risk involved and put those into Eric Nelson's trust; is that correct?

A. Back - - yes. Back in the initial phase of this and continuing forward, that was one of the goals as I understood it.

Q. Okay. And the other goal was to take all of the assets that are safe that are owned free and clear and put those in Lynita Nelson's trust, correct?

A. Best of my recollection, yes.

Q. Okay. So did the parties discuss with your - - you their intent or were you aware of what their intent was, if all of the assets that were in Eric Nelson's trust went down the drain, they failed, the creditors took them away, what was going to happen with respect to the remaining assets, the safe assets, in Lynita Nelson's trust?

A. Well again, if that happened the hope was that only Eric's assets again would be gone and that would leave the rest of the assets available for the family.

Q. Now is that consistent with the intent that was expressed to you by Mr. and Mrs. Nelson when they first met with you in 1991?

A. Yes.

TT, November 22, 2010, pg. 19, lines 8-24; pg. 20, lines 1-18.

Q. Assets that are held in the name of Lynita Nelson's trust, this Court could enter an order directing Lynita Nelson to transfer tho - - transfer half of an interest in any of those assets to Eric Nelson as an individual, would you agree?

A. Or to his trust.

TT, November 22, 2010, pg. 60, lines 16-20.

Re-direct Examination of Mr. Burr, questioning by Mr. Jimmerson:

Q. The way to - - to render one of these trusts essentially ineffective is to voluntarily have the investment trustee and the distribution trustee voluntarily transfer assets away from the trust, correct?

A. That's one way, yes.

TT, November 22, 2010, pg. 62, lines 6-9.

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DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, v. LYNITA SUE NELSON, Defendant/Counterclaimant. AND RELATED ACTIONS.	CASE NO. D-09-411537-D DEPT NO. "O"

DEFENDANT'S POST-TRIAL REPLY MEMORANDUM ON TRUST ISSUES

COMES NOW, DEFENDANT, LYNITA SUE NELSON ("Lynita"), by and through her attorneys of THE DICKERSON LAW GROUP, and respectfully submits her Post-Trial Reply Memorandum on Trust Issues ("Reply Brief") responding to the Post-Trial Brief of the ELN Trust.

DATED this 28th day of September, 2012.

THE DICKERSON LAW GROUP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 31, 2012, the parties submitted their respective post-trial briefs on the trust and divorce issues presented at the trial in this matter. The relevant facts presented at trial and applicable law regarding the trust and divorce issues were set forth in detail in Defendant's Post-Trial Memorandum on Divorce Issues ("Lynita's Divorce Brief"), and Post-Trial Memorandum on Trust Issues ("Lynita's Trust Brief"), and are not restated entirely in this Reply Brief.[1] Instead, this Reply Brief only focuses on, or responds to, those legal and factual arguments set forth in the Post-Trial Brief of Eric L. Nelson Nevada Trust Dated May 30, 2001 ("ELN Trust's Brief").

The ELN Trust's Brief contains numerous factual misrepresentations, incomplete factual summaries, or factual conclusions simply not supported by the record in this matter. Several of the same factual allegations are contained in the Post-Trial Brief of Eric L. Nelson ("Eric's Brief"). As instructed by the Court, Lynita is filing a reply brief to both Eric's Brief and the ELN Trust's Brief. Accordingly, some of the factual assertions discussed in this Reply Brief are similarly discussed in the reply brief being filed in response to Eric's Brief. As will be discussed throughout, the facts presented at trial in this matter (during 2010 and 2012), and applicable law, support the entry of judgment in favor of Lynita.

II. FACTUAL STATEMENT

As previously stated, the relevant facts in this matter were summarized in detail (with specific references to the record) in Lynita's Trust Brief and Divorce Brief, and are not restated herein. Rather than list and discuss each and every representation (or misrepresentation) of fact made in the ELN Trust's Brief in this subsection, in no particular order and without regard to the specific legal issues which such alleged facts pertain to, such factual allegations are addressed in the Legal Analysis below under the specific legal issue to which such allegations are directed in the ELN Trust's Brief.

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[1] Certain facts and applications of law are restated herein as necessary to respond to the ELN Trust's Brief.

Before delving into the legal analysis, one glaring fact warrants discussion. In both the ELN Trust's Brief and Eric's Brief, Eric and the ELN Trust[2] avoid Eric's 2010 trial testimony,[3] and the other testimony elicited by Eric during his 2010 case-in-chief, like the plague.[4] They have attempted to recharacterize such testimony and proceedings as settlement negotiations – the first ever settlement negotiations conducted on the record, with opening statements, direct examination, cross examination, and re-direct examination – and have wholly ignored such testimony in the hope that if you pretend like it does not exist, perhaps it will not exist. The reason Eric and the ELN Trust have gone to such lengths to avoid such testimony and trial proceedings is that the facts conclusively established during such proceedings completely obliterate Eric's newfound legal position, discredit any testimony offered in 2012 to the contrary, and clearly show how frivolous and unnecessary it was for this matter to proceed for an additional nine (9) days of trial. Fortunately, and as explained in detail in Lynita's Trust Brief, legal and equitable principles do not permit for the injustice that Eric and the ELN Trust seek to perpetrate through this Court.

III. LEGAL ANALYSIS

This legal analysis discusses only the legal arguments made in the ELN Trust's Brief. A complete discussion of the legal bases for the relief requested by Lynita was set forth in Lynita's Trust Brief and Divorce Brief. Accordingly, if a certain legal argument from Lynita's Trust Brief and/or Divorce Brief is not further discussed herein, it is only because such argument was not addressed in the ELN Trust's Brief. Additionally, it would be a waste of time and resources to discuss every single factual assertion contained in the ELN Trust's Brief and/or Eric's Brief. If Lynita has not addressed a certain factual assertion, or legal argument for that matter, it is not because Lynita agrees with such assertion or argument, but only because Lynita believes the evidence presented or applicable law, as summarized in Lynita's Divorce Brief or Trust Brief, is so clear as to render any further discussion unnecessary.

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[2] As was shown at trial, the ELN Trust and Eric individually are one and the same. Accordingly, any references herein to just Eric or to just the ELN Trust, or to both Eric and the ELN Trust, are for the purpose of convenience and clarity only, and should not be construed as an acknowledgment that there is any distinction between the two.

[3] As set forth in Lynita's Trust Brief, judicial estoppel protects the integrity of the judicial process and prevents Eric from contradicting, or supporting any position contrary to, his testimony.

[4] This fact is pointed out in both this Reply Brief, and the reply brief to Eric's Brief. Lynita and her counsel apologize in advance for the redundant points that are made in the two (2) reply briefs, however, such redundancies have been made necessary by the repetitive points made by both the ELN Trust and Eric in their respective briefs. As will be seen (or as the Court may have already seen if it read Lynita's reply to Eric's Brief first), Lynita's counsel has tried, as best they could, to address any repetitive arguments made by both the ELN Trust and Eric in only one of the reply briefs in the interest of judicial economy.

A. The 1993 Separate Property Agreement Could Not Have Transmuted The Parties' Community Property, Because The Parties Never Intended For A Transmutation To Occur

Before getting into the specifics of the ELN Trust's arguments with regard to the purported 1993 Separate Property Agreement ("1993 Agreement"), it should again be pointed out that the ELN Trust lacks standing to challenge the validity of the 1993 Agreement, or to even have its evidence or legal arguments concerning such agreement, or any other matters preceding the creation of the ELN Trust, considered. It is axiomatic that a party does not have standing to sue on a contract unless he or she is a party to the contract, or an intended third-party beneficiary. *See Hartford Fire Ins. v. Trustees of Const. Indus.*, 125 Nev. 16, 208 P.3d 884, 889 (2009). "To obtain [third-party] beneficiary status, there must clearly appear a promissory intent to benefit the third party [internal citation omitted], and ultimately it must be shown that the third party's reliance thereon is foreseeable." *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 379, 566 P. 2d 819, 824-25 (1977). It is indisputable that the ELN Trust was not created until May 30, 2001, almost eight (8) full years after the parties' 1993 Agreement. Accordingly, the ELN Trust could not have been a party, or third-party beneficiary to said agreement, and lacks standing to litigate Eric's and Lynita's rights with regards to same. Counsel for the ELN Trust granted Lynita a continuing objection at trial to the ELN Trust's inquiry into matters predating the creation of the ELN Trust on the basis of standing, and Lynita continues to object to any arguments made by the ELN Trust regarding the validity of the 1993 Agreement, or any other matter predating 2001.

The factual summary and arguments made by the ELN Trust with respect to the 1993 Agreement are largely duplicative of the factual summary and arguments made in Eric's Brief. Lynita has chosen to reply to same in her Post-Trial Reply Memorandum on Divorce Issues ("Reply to Eric's Brief"), being filed concurrently with this Reply Brief. Accordingly, Section III(A) of Lynita's Reply to Eric's Brief is incorporated herein by reference, as though fully set forth in this Reply Brief. There are some additional arguments made by the ELN Trust with regards to the 1993 Agreement which were not made in Eric's Brief, and such arguments are addressed below.

. . .

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. . .

(i) *All property owned today by the parties and their respective trusts is presumed to be community property.*

The ELN Trust, citing *Kerley v. Kerley*, 112 Nev. 36, 37, 910 P.2d 279, 280 (1996), argues that a "conveyance of real property during marriage from husband and wife to husband alone is presumed to be a gift of wife's interest absent clear and convincing evidence otherwise," implying[5] that any real property Lynita conveyed from the LSN Trust to the ELN Trust at Eric's direction during marriage, constituted gifts from Lynita to Eric. Eric did not make this argument in his brief, perhaps knowing how unsupportable such argument is based on the evidence presented at trial, and the positions taken by Eric and the ELN Trust with regards to the transfers between the parties' respective trusts.

Mr. Burr, Lynita, and Eric emphatically testified that the transfers made between the parties or their respective trusts during marriage were never intended to transmute community property into separate property. In 2010, Eric testified at length how the property held by the parties at the time trial began was community property, thereby repudiating any presumption of a gift:

Q. And [the tenancy for your office at Lindell] is on a month-to-month?

A. **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**.

Trial Transcript ("TT"), August 30, 2010, pg. 70, beginning at line 21 (discussing the Lindell Plaza Office building).

Q. Okay. So the last 10, then, are **10 lots owned 25 percent by the Lynita Trust. It's community property**, I understand –

A. Yes.

Q. – but its owned by the Lynita Trust and three other guys?

A. Yes.

. . .

Q. **Eighty [lots] by the community?**

A. **Yes.**

TT, August 30, 2010, pg. 115, beginning at line 9 (discussing the Gateway Arizona lots).

[5] Although the ELN Trust cited the general rule of law, it would not go so far as to expressly state that the deeds Lynita executed during marriage at Eric's request, transferring property from the LSN Trust to the ELN Trust, constituted gifts from Lynita to Eric, probably knowing that such an argument is completely unsupportable.

Q. Okay, **so Dynasty Development Company, for the Court's edification. . .**

A. Yes.

Q. – is the name of the company that owns Lynita and Eric's interests in Silver Slipper?

A. **Yes, under my trust.**

Q. All right.

A. Lynita's not a party to that, I mean, with the – with side of the – the trust side of it.

Q. **The trust owns it and Eric Nelson –**

A. **The community – yes.**

Q. **– Trust, but she has a community interest, and that's the entity –**

A. **Right.**

TT, August 30, 2010, pgs. 156-57 (discussing Silver Slipper/Dynasty Development).[6] Eric also testified about his role in managing all of the parties' community property, and his ability to direct the transfer of such community property between the parties' respective trusts as he deemed necessary:

> **[T]hat'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.**

TT, August 30, 2010, pg. 32, beginning at line 21.

> A. ...I said, guys – they wanted all the land that **we owned** down there, **Lynita and me**, which was in my trust, to go into the operation and the security. I refused. In fact I refused so much I said I'm **going to transfer a majority of these properties into Lynita's trust** to make sure they're fully aware that these properties aren't going off. I'm going to do a leveling of the trusts. **I recorded the deeds incorrectly. Lana typed them up.** There were some verbiage problems when we transferred them to Lynita, they clouded the title.

TT, August 30, 2010, pg. 165, beginning at line 6 (discussing land deals in Mississippi).

> Q. And what do they pay Dynasty if they pay – **who is the owner of the real estate that the RV park's on?**
>
> A. **Well the, it's the community. It's under Lynita's trust right now. It came from my trust into her trust.** It's clouded title. That's the property – the 70 or 60 or 70 acres that's in the Manise lawsuit....

TT, August 30, 2010, pg. 186, beginning at line 2. Since Eric confirmed that it was he who directed conveyances of real property between the parties and their respective trusts (as he deemed prudent in the

[6] The most relevant portions of Eric's testimony were quoted in Lynita's Trust Brief, and are not restated entirely herein, however, Lynita respectfully requests that the Court refer to such testimony when analyzing any of the representations made in the ELN Trust's Brief and Eric's Brief.

management of the parties' assets), it would be impossible for the Court to find that such transfers were intended gifts by Lynita to Eric.

Moreover, the ELN Trust and Eric have gone to great lengths to characterize all of the transactions and transfers of property between the ELN and LSN Trusts as loans, including in their respective trial briefs. They even offered the testimony of their purported expert, Daniel Gerety, CPA ("Mr. Gerety"), to account for the alleged "loans." They have chosen this course of action because they know that there is absolutely zero evidence that such transfers constituted gifts of property. Accordingly, the ELN Trust and Eric are estopped from asserting a contrary position at this time. For the foregoing reasons, any presumption of gift that was created by the parties' execution of deeds to real property during marriage was clearly and conclusively rebutted during trial by the evidence presented.

There is one well-established presumption concerning the character of the parties' property that is particularly relevant and applicable to the instant matter which was conveniently not discussed by either the ELN Trust or Eric in their respective briefs. Specifically, **all** property acquired during marriage is presumed to be community property, and such presumption may only be overcome by clear and convincing evidence. *Forrest v. Forrest*, 99 Nev. 602, 604-05, 668 P.2d 275, 277 (1983). In all likelihood, the ELN Trust and Eric did not address this rule of law because it directly affects the outcome of this matter, and strongly supports a decision in Lynita's favor regardless of the Court's finding with respect to the parties' 1993 Agreement. Other than the Palmyra marital residence and forty percent (40%) of Eric's 100% interest in Eric Nelson Auctioneering (which has $0.00 value), none of the properties held today in the ELN or LSN Trusts are the same as those specified in the 1993 Agreement; all of said properties were acquired after 1993. Accordingly, all of the properties held today, acquired after the 1993 Agreement, are community property as a matter of law unless clear and convincing evidence proves otherwise.

> The Nevada Supreme Court has defined clear and convincing evidence as follows:
>
> This court has held that clear and convincing evidence must be satisfactory proof that is: "so strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest. It need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference may be drawn." [Citation omitted].

In re Discipline of Drakulich, 111 Nev. 1556, 908 P.2d 709, 715 (1995). As Eric and the ELN Trust have

consistently pointed out during the course of these proceedings, in a futile attempt to rebut the admissions made by Eric during his 2010 testimony that all of the property held by the ELN and LSN Trusts is the parties' community property, an opinion as to the character of property "is of no weight whatsoever." *Id.*, 99 Nev. at 605, 668 P.2d at 277. Accordingly, the only evidence that can overcome the presumption of community property by clear and convincing evidence is a direct tracing of the source of funds used to purchase such property to separate property funds. *See, e.g., Moberg v. First Nat'l Bank of NV*, 96 Nev. 235, 237, 607 P.2d 112, 114 (1980) ("[W]e are called upon to determine the status of property acquired during marriage with funds the status of which is uncertain. . . . **[W]e hold those properties that cannot be traced to be community property** . . . ." (emphasis added)).

Eric conceded during trial that he cannot trace the exact source of funds used to acquire the parties' current property holdings. Mr. Gerety (whose testimony is discussed in greater detail in Section D of this Legal Analysis) testified that a great majority of the parties' present day holdings were likely acquired with the proceeds from the Wyoming Downs property. The Wyoming Downs property, however, was purchased in 1998, and the source of funds used for such purchase was never traced and documented. In fact, Mr. Gerety admitted that his examination only focused on transactions from 2001 to present date (the life span of the ELN and LSN Trusts).[7] As stated in Lynita's Trust Brief, it is likely, based on the parties' agreements in both 1993 and 2001 to level off their trusts periodically, as well as Eric's constant commingling of property between the parties' trusts, that the source of funds for the purchase of the Wyoming Downs property in 1998, and the parties' present day holdings, originated from the property purportedly set aside to Lynita by the 1993 Agreement.

(ii) *Parol evidence and examining the parties' intent with respect to the 1993 Agreement.*

The ELN Trust argues that the Court cannot consider parol evidence in determining the intent of the parties in entering into the 1993 Agreement. As set forth in Lynita's Trust Brief, the parol evidence rule does not apply to preclude evidence of the facts and circumstances surrounding the execution of an agreement when the validity of such agreement has been challenged. *Havas v. Alger*, 85 Nev. 627, 632, 461 P.2d 857, 860 (1969). If the parol evidence rule operated in such a manner, then no court could examine whether an agreement was entered into as a result of misrepresentation, undue influence, duress, fraud, or

[7] On July 19, 2012, Mr. Gerety testified that although he tried to obtain records from 1993 to 2001, the records received and reviewed were too incomplete to prepare any report (opinion) concerning same.

any other reason not permitted by law. Furthermore, no court would be able to analyze whether an agreement between spouses complied with the law governing such agreements as set forth in NRS 123.270 (providing that a husband and wife can make contracts respecting property subject to "the general rules which control the actions of persons occupying relations of confidence and trust toward each other").

Furthermore, while parol evidence generally may not be admitted to vary or contradict the terms of an unambiguous contract, parol evidence of intent is admissible to explain and clarify a contract which is ambiguous on its face. Lynita discussed the ambiguities in the 1993 Agreement in detail in her Trust Brief.

Finally, and as was further set forth in Lynita's Trust Brief, the evidence regarding the intention of the parties with respect to the 1993 Agreement, and ELN and LSN Trusts, was introduced by Eric during his case-in-chief. Where a party introduces otherwise inadmissible evidence without objection, such evidence should be considered by the Court, and an opposing party is permitted to introduce similar evidence to rebut or clarify such evidence:

> Even if evidence is inadmissible, a party may "open the door" to admission of that evidence. A party opens the door to evidence when that party "introduces evidence or takes some action that makes admissible evidence that would have previously been inadmissible." 21 Charles Alan Wright et al., Federal Practice & Procedure Evidence § 5039 (2d ed. 1987).

Tennessee v. Gomez, No. M2008-02737-SC-R11-CD, filed April 24, 2012; *Hayward v. Florida*, 59 So. 3d 303, 306 (Fla. 2d Dist. 2011) ("The concept of 'opening the door' permits admission of inadmissible evidence for the purpose of qualifying, explaining or limiting testimony previously admitted."). The Nevada Supreme Court addressed this issue in *Canfield v. Gill*, 101 Nev. 170, 697 P.2d 476 (1985):

> The contract in this case does not appear to be ambiguous on its face. Therefore, parol evidence on the intent of the parties should not have been admitted at trial. [Citation omitted]. The trial transcript, however, reveals that parol evidence regarding intent was offered and admitted by both parties without objection. The failure to object to this evidence constitutes a waiver.

Id., 101 Nev. at 172, 697 P.2d at 477, n.2 (1985). Thus, the evidence offered by Eric regarding the intent of the parties with respect to the 1993 Agreement, and ELN and LSN Trusts, must be considered.

The ELN Trust further alleges that the statements contained in the 1993 Agreement and the parties' 1993 Trusts create conclusive presumptions pursuant to NRS 47.240(2), and that Lynita failed to overcome such presumptions. NRS 47.240(2) provides as follows:

...

> The following presumptions, and no others, are conclusive:
>
> . . .
>
> 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

As can be seen, NRS 47.240(2) only applies to the truth of a fact recited "in a written instrument between the parties thereto." *Flangas v. State*, 104 Nev. 379, 381, 760 P.2d 112, 113 (1988) (the only decision issued by the Nevada Supreme Court analyzing NRS 47.240(2), wherein the Nevada Supreme Court held that a party could challenge a date recited in an agreement because (1) it was not a party to such agreement, and (2) NRS 47.250(12) expressly provides that "the fact that a writing is truly dated is a disputable presumption."). Accordingly, any recital contained in either party's 1993 Trust cannot create a conclusive presumption between the parties because such trusts were not written instruments entered into "between the parties." If this were not the case, any person could defeat his or her spouse's interest in community property by simply declaring in a self-settled trust that the property being transferred to such trust is his or her separate property, or by including such a recital in a written instrument entered into with a third-party.

Moreover, NRS 47.240(2), like the parol evidence rule, does not apply to preclude a party from challenging the validity of a written instrument. In fact, the Nevada Legislature has specifically provided in NRS 47.250(18)(b) that whether a "private transaction [has] been fair and regular" is a disputable presumption, removing it from the purview of NRS 47.240(2). *See, id.* If NRS 47.240(2) were applied in the manner suggested by the ELN Trust it would be impossible for any party to challenge the validity of a premarital agreement, property agreement, or marital settlement agreement because almost all of such documents necessarily make some statement as to the parties' intentions in entering into same. The ELN Trust, has not, and cannot point to any case where NRS 47.240(2) has been applied in such a manner, nor could the Court accept such an application of NRS 47.240(2).

(iii) *Lynita never sought or received a benefit by virtue of the 1993 Agreement.*

The ELN Trust asserts that Lynita cannot deny the validity of the 1993 Agreement and the parties' subsequent trusts because she has accepted the benefit of such agreement and trusts. In support of this position, the ELN Trust cites to, and attaches to its brief, the California cases of *In re Marriage of Holtemann*, 166 Cal. App. 4th 1166, 83 Cal. Rptr. 3d 385 (Cal. App. 4th 2008), and *In re Marriage of Lund*,

174 Cal. App. 4th 40, 94 Cal. Rptr. 3d 84 (Cal. App. 4th 2009). In *Holtemann*, a husband and wife jointly retained an attorney "to prepare estate planning documents that would eliminate the need for probate and minimize taxes in the event of either spouse's death." *Id.*, 166 Cal. App. 4th at 1170. At the time the parties married, the husband had considerable assets while the wife had relatively few. *Id.* The attorney prepared "and the parties executed a document entitled 'Spousal Property Transmutation Agreement' (the Transmutation Agreement) and another entitled 'Holtemann Community Property Trust' (the Trust)." *Id.* The Transmutation Agreement expressly stated that it was being entered into "pursuant to the applicable provisions of the California Family Code," but "not in contemplation of a separation or marital dissolution." *Id.* In addition, the parties acknowledged that their joint attorney "explained the 'legal consequences' of the agreement, and that they had decided not to retain separate counsel after being advised of the advantages of doing so." *Id.*

Wife filed for divorce, and husband attempted to invalidate the Transmutation Agreement. *Id.* at 1171. The trial court found that the Transmutation Agreement transmuted husband's separate property into community property, and husband appealed. *Id.* The California appellate court upheld the trial court's decision, holding that the Transmutation Agreement was an express declaration to change the characterization of property entered into by husband, as required by California statute. *Id.* at 1172. Paramount to the appellate court's decision was the fact that husband was fully informed of the legal consequences of the Transmutation Agreement:

> Regardless of the motivations underlying the documents, they contain the requisite express, unequivocal declarations of a present transmutation. Moreover, the documents reflect that [husband] was fully informed of the legal consequences of his actions. Nothing in the record indicates that he was misinformed or misled. On the contrary, counsel sent [husband] a letter "reminding" him that "this 'transmutation'" of separate into community property has clear and irreversible consequences . . ." The Trust also expressly provides that if [husband] exercised his right of revocation during his lifetime – an event that came to pass – any community property that had been transferred into the Trust would continue to be community property. Under the circumstances, [husband] will not be heard to complain that his express declaration of transmutation was unknowing or that he "slipped into a transmutation by accident."

Id. at 1173-74.

In *Lund*, the California appellate court reversed a trial court's decision invalidating a transmutation agreement similar to the transmutation agreement analyzed in *Holtemann*, relying on the *Holtemann* decision. One of the bases for the trial court's decision to invalidate the transmutation agreement in *Lund*

was a lack of evidence regarding whether or not [husband] understood the legal effect of the agreement. *Lund*, 174 Cal. App. 4th at 97-98. The appellate court held that the district court lacked substantial evidence to render such decision because [husband] acknowledged his understanding of the agreement in the agreement itself, and "there [was] no other evidence in the record to weigh, as none of the testimony [went] to [husband's] understanding of the legal effect of the agreement." *Id.* at 98.

Notwithstanding the fact that *Holtemann* and *Lund* were decided under California law, by California courts, and do not establish precedence in this Court, both cases are factually and legally distinguishable from the instant case. In both *Holtemann* and *Lund* the California appellate court specifically found, and relied upon in rendering its holdings, that the party challenging the agreement of transmutation understood the full legal effect of such agreement and was not misled or misinformed. In *Holtemann*, the court reached such conclusion based on the admissions of the parties, and the correspondence sent to husband by attorney confirming the advice given to husband that the Transmutation Agreement had "irreversible consequences." *Holtemann*, 166 Cal. App. 4th at 1170, 1173-74. In *Lund*, the court reached such conclusion based on a lack of evidence and testimony to the contrary. *Lund*, 174 Cal. App. 4th at 98.

Unlike in *Holtemann* and *Lund*, the evidence and testimony presented at trial in the instant matter clearly established that Lynita was not advised of the full legal effects of the 1993 Agreement, 1993 Trusts, and ELN and LSN Trusts. To the contrary, Lynita was specifically led to believe by her attorney and husband, both of whom owed her a fiduciary duty, that the 1993 Agreement and subsequent trusts would not affect the parties' property rights in the event of divorce or otherwise.[8] Such misrepresentations to induce Lynita to enter into the 1993 Agreement, and subsequent estate planning trusts devised and agreed upon by Mr. Burr and Eric, require invalidation or rescission of the 1993 Agreement and ELN and LSN Trusts for the reasons more fully discussed in Lynita's Trust Brief.

Finally, the ELN Trust alleges that Lynita accepted or received a benefit from the 1993 Agreement, 1993 Trusts, and ELN and LSN Trusts, and therefore, cannot challenge the validity of same. The ELN Trust fails to demonstrate any real such benefit sought, accepted, or received by Lynita, however, and the benefit alleged (protection from creditors) is illusory and nonsensical. As the evidence clearly demonstrated, the assets purportedly given to Lynita as her sole and separate property in the 1993 Agreement, and placed into

[8] Mr. Burr's 2010 Testimony and Lynita's Testimony.

Lynita's 1993 Trust and later into the LSN Trust (if not already taken by Eric between 1993 and 2001), were the parties' "safe" assets which did not require any protection from creditors. Lynita also could not have received any benefit from the protection afforded to the assets purportedly given to Eric as his sole and separate property in the 1993 Agreement, because if Eric's and the ELN Trust's positions are accepted as true, Lynita had to give up all interest in such assets to gain such protection (thereby receiving no benefit).

The following example demonstrates the absurdity of the ELN Trust's argument regarding the benefit received by Lynita: A husband and wife decide to create an estate plan and husband convinces wife that as part of that plan she should purport to transmute to husband 100% of the parties' community property. He assures wife that this is necessary to protect wife from the obligations that their ownership of the community property could create, and assures her that even though she is purporting to give husband all of the parties' community property, such property will always be the community property of the parties held by husband for the benefit of wife and the parties' children. Several years later, husband files for divorce and claims that all of the property held in his name only is his sole and separate property pursuant to the parties' prior agreement and estate plan. Wife alleges that she was deceived into entering into such agreement and estate plan, and that husband misrepresented to wife that he would continue to hold properties purportedly transmuted to him as the parties' community property. In response, husband argues that wife's argument cannot be accepted by the court because wife received the benefit of no longer having any property subject to the claims of the parties' potential creditors. Under such hypothetical scenario the absurdity of the argument of a benefit conferred, accepted, or received by wife is clear. The analysis is no different where husband leaves wife with <u>some</u> of the community property, as opposed to <u>none</u> of the community property.

(iv) *The ELN Trust agrees that the parties could have orally transmuted any separate property they may have held following the 1993 Agreement into community property.*

In its brief, the ELN Trust states, "The Nevada Supreme Court has also recognized the ability of a spouse to transmute separate property into community property by an oral agreement."[9] In a footnote to such statement, the ELN Trust cites to numerous Nevada Supreme Court decisions upholding the validity of oral agreements to transmute property, including cases finding transmutation from separate property to

[9] ELN Trust's Brief, page 13, lines 10-12.

community property by oral agreement.[10] As was discussed in Lynita's Trust Brief,[11] regardless of the decision rendered on the parties' 1993 Agreement, the Court should find that the parties orally transmuted all property held in their individual names or respective trusts from separate property to community property after the 1993 Agreement. *See Schreiber v. Schreiber*, 99 Nev. 453, 663 P.2d 1189 (1983) (enforcing an oral property agreement between spouses where there was partial performance); *see also*, *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284 (1994) (citing to a party's testimony regarding intent in analyzing whether a transmutation of separate property occurred). Eric has admitted repeatedly that he and Lynita agreed that all property held in their trusts was, and is community property, and treated same as community property throughout the course of their lengthy marriage. In reliance on such representations and agreement, Lynita allowed Eric to manage the parties' properties, and signed deeds and other legal documents presented to her by Eric to transfer such properties between the parties' respective trusts. Accordingly, the Court should find that all property held today by the parties and the ELN and LSN Trusts is community property.

B. <u>The Parties' Interest In The Property Titled In The Names Of The ELN And LSN Trusts Was Conclusively Established</u>

The ELN Trust argues that Eric and Lynita do not have a legally recognizable interest in the property held in the ELN Trust. As set forth in Lynita's Trust Brief, however, it cannot be disputed that the ELN Trust cannot take and retain title to property which belongs to another, and the ELN Trust and Eric do not appear to have ever taken such an unjustifiable position. In fact, the Court has noted numerous times during this litigation, "Community property in, community property out!" As has been set forth above and in Lynita's Trust Brief, under any analysis the property currently held in the names of the ELN and LSN Trusts should be found to be the community property of the parties. Accordingly, Eric and the ELN Trust should be ordered to transfer all property out of the name of the ELN Trust, or at least those properties which the Court awards to Lynita in making an equitable division of the parties' community property.[12]

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[10] ELN Trust's Brief, note 26, pgs. 13-14.

[11] Lynita's Trust Brief, Section "E" of the Legal Analysis, pgs. 41-42.

[12] Lynita's Trust Brief discusses this issue in detail, and any additional discussion of this topic would be unnecessary and duplicative. See Lynita's Trust Brief, Section "F" of the Legal Analysis, pgs. 42-44.

C. The Statute Of Limitations Contained In NRS Chapter 166 Is Inapplicable

The ELN Trust continues to assert the limitations period contained in NRS 166.170(1). This issue has been addressed numerous times before and in great detail in Lynita's Trust Brief.[13] There is nothing additional that can be stated on this issue, as Lynita believes it is clear that NRS 166.170(1) does not time bar any of the claims she has asserted in this matter for the multitude of reasons set forth in Lynita's Trust Brief.

D. The ELN And LSN Trusts Are Eric's Alter Ego

As set forth in Lynita's Trust Brief, the Court should find that both the ELN and LSN Trusts are Eric's alter egos based on Eric's admissions and actions, and the other evidence presented at trial. Specifically, Eric by his own admission has exercised complete dominion and control over the properties held in the ELN and LSN Trusts, as was confirmed during Eric's 2010 testimony. Eric testified at length how all of the property held by each trust was, and is, the parties' community property, and never once indicated any restraint on his ability to control the disposition of same:

AUGUST 30, 2010 TRIAL TESTIMONY

> Opening Statement[14] by Mr. Jimmerson:
>
> **You have before you a list of properties** [Eric's Options A and B] **which I'll explain to you in just a minute, but to give you an overview, give or take on cost basis, 18, 19 million dollars in assets which would be divided under our proposals nine and nine**...

TT, August 30, 2010, pg. 14, beginning at line 2.

> . . . each party, on a cost basis, is going to get approximately $9 million in assets and on a real fair market value basis, something considerably more. And more importantly, **we're dividing everything that these parties have, including their businesses, in half plus or minus one or two adjustments**. . .

TT, August 30, 2010, pg. 14, beginning at line 15.

> If I could now ask you to briefly turn your attention to Options A and B, I'd like to discuss this with you. The difference between Option A and B is it just turns on two assets, okay? **Option A is an equal division of all assets and liabilities, Judge, except for the cash that each of them have on their own, so we didn't divide the cash Lynita has in her six or seven bank accounts and we didn't divide Eric's cash that he has in his four or five bank accounts. They take their own – they take their own cars**, you know, the – they

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[13] See Lynita's Trust Brief, Section "I" of the Legal Analysis, pgs. 47-49.

[14] Mr. Jimmerson's statements are admissible and binding upon Eric as non-hearsay. *See* NRS 51.035 ("'Hearsay' means a statement offered in evidence to prove the truth of the matter asserted unless . . . the statement is offered against a party and is: . . . (b) A statement of which the party has manifested adoption or belief in its truth; (c) A statement by a person authorized by the party to make a statement concerning the subject; . . . (d) A statement by the party's agent or servant concerning a matter within the scope of the party's agency or employment . . . .").

take their own personal property, they take their own furniture and furnishings that they have plus or minus some things that could be exchanged. . . .

TT, August 30, 2010, pg. 19, beginning at line 5.

So the difference between A and B is A is everything divided in half except for cash and for cars and **B is everything divided in half except for cash and cars except that Mississippi would go to Husband and Russell would go to Wife.**

TT, August 30, 2010, pg. 21, beginning at line 23.

Direct Examination of Eric L. Nelson, questioning by Mr. Jimmerson:

A. **[T]hat's my primary focus is managing all <u>my assets and Lynita's assets</u> so we manage our community assets, and that's where our primary revenue is driven.**

TT, August 30, 2010, pg. 32, beginning at line 21.

Q. I **just asked you, please tell the Court about the trusts** –

A. LSN Trust –

Q. **– how they came about.**

A. Was designed and set up and my trust, ELN Trust, or **Eric Nelson's Trust was for asset protection purposes.**

Q. Okay.

A. 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. [He] 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.

TT, August 30, 2010, pg. 44, beginning at line 21.

Q (by the Court). So that's 1A [referencing Eric's Exhibit 1A]?

A. – this is basically a way I felt to – **to easily explain the assets, to simplify it for Joe [Leaunae], Bob [Dickerson], and Melissa [Attanasio], Mr. [Bob] Gaston, anyone else that'd look at our estate**, and so I listed the property – **you'll see that these properties are designated in somebody's trust; LSN Trust or Eric's Trust**. The majority of them if it's a sub-company it's going to flow up to my trust by design.

TT, August 30, 2010, pg. 48, beginning at line 2 (discussing Plaintiff's Exhibit 1A).

. . . I'm confident that you're going to hear that the vast majority of these can be sold and divided.

TT, August 30, 2010, pg. 49, lines 10-11 (by Mr. Jimmerson discussing properties listed in Exhibit 1A).

> Q. [Indiscernible].
>
> A. Okay, so, Your Honor, so I prepared this document to allow us to anticipate who wanted some of the assets. **It is so important that I get divorced that I'm willing to split every asset 50/50. I want you to make that very clear**. . . .

TT, August 30, 2010, pg. 52, beginning at line 2.

In addition to the foregoing, Eric also testified about how he freely transferred property between the ELN and LSN Trusts as he deemed appropriate to suit his business purposes:

> A. ...I said, guys – they wanted all the land that **we owned** down there, **Lynita and me**, which was in my trust, to go into the operation and the security. I refused. In fact I refused so much I said I'm **going to transfer a majority of these properties into Lynita's trust** to make sure they're fully aware that these properties aren't going off. I'm going to do a leveling of the trusts. **I recorded the deeds incorrectly. Lana typed them up.** There were some verbiage problems when we transferred them to Lynita, they clouded the title.

TT, August 30, 2010, pg. 165, beginning at line 6 (discussing land deals in Mississippi).

> Q. And what do they pay Dynasty if they pay – **who is the owner of the real estate that the RV park's on?**
>
> A. **Well the, it's the community. It's under Lynita's trust right now. It came from my trust into her trust**. It's clouded title. That's the property – the 70 or 60 or 70 acres that's in the Manise lawsuit....

TT, August 30, 2010, pg. 186, beginning at line 2.

Furthermore, and amongst other things, Eric (1) failed to comply with trust formalities concerning distributions to himself; (2) has distributed property to parties not named beneficiaries under the ELN and LSN Trusts; and (3) in conjunction with Mr. Burr, has failed to comply with the trust provisions for the naming of successor trustees, causing years of distributions to Eric from the ELN Trust during a time when there was no validly acting Distribution Trustee to independently approve of same. These acts were summarized at length in the Factual Statement of Lynita's Trust Brief.[15]

Despite the mountain of evidence showing that the ELN and LSN Trusts are Eric's alter egos, the ELN Trust argues that Lynita has failed to introduce admissible evidence to support her alter ego claim. In support of this position the ELN Trust cites to NRS 163.418. As explained in Lynita's Trust Brief, NRS 163.418 is inapplicable to the instant proceedings.[16] However, regardless of whether the Court applies NRS

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[15] See pages 10-21 of Lynita's Trust Brief.

[16] As stated in Lynita's Trust Brief, NRS 163.418 and the statute cited therein were not added to the Nevada Revised Statutes until 2009, long after many of the acts described herein occurred. "There is a general presumption in favor of prospective application of statutes unless the legislature clearly manifests a contrary intent or unless the intent of the legislature cannot

163.418, NRS 78.747 (the corporate alter ego statute), or any other alter ego standard to Lynita's claim, the Court should still find in Lynita's favor. There is no authority that allows for a settlor of a purported self-settled spendthrift trust to ignore trust formalities, ignore the existence of the trust, transfer property freely to himself or herself without independent approval, and to distribute property to non-beneficiaries.

In its brief, the ELN Trust also attempts to rebut, by deception of the issues or mis-characterization of the facts, the facts offered by Lynita in support of her alter ego claim. For example, the ELN Trust's Brief contains an entire subsection explaining how Eric's appointment of a family member as Distribution Trustee of the ELN Trust is permissible under Nevada Law.[17] The issue in this matter as presented at trial, however, was not that Eric's appointment of a family member as Distribution Trustee or Successor Distribution or Investment Trustee of the ELN Trust violated Nevada law, but rather that the appointment of a family member as Successor Distribution or Investment Trustee of the ELN Trust violated the express terms of the ELN Trust. As stated in Lynita's Trust Brief, Section 11.3 of the ELN Trust provides as follows:

> 11.3 Trust Consultant. JEFFREY L. BURR, LTD., a Nevada Corporation (herein known as the "Consultant" to the Trust), shall have the right and power by giving ten (10) days written notice to the Trustee to remove any Trustee named herein (except the Trust Consultant may not remove the Trustor as a Trustee hereunder) and/or any Successor Trustee, **and to appoint** either (1) **an individual who is an "independent" Trustee pursuant to Internal Revenue Code Section 674, as amended**, or (2) a Nevada bank or Trust company to serve as Trustee or as Co-Trustees of the Trusts created hereunder. In the event of the death, resignation, incompetency, dissolution or failure to serve of any Trustee, then the Trust Consultant shall have the power to appoint a Successor Trustee as provided above.

The Distribution Trustee of the ELN Trust was changed on two (2) separate occasions after May 30, 2001.[18] On February 22, 2007, Mr. Burr removed Lana Martin ("Ms. Martin") as Distribution Trustee and appointed Eric's sister, Nola Harber ("Ms. Harber"), as the Distribution Trustee.[19] Mr. Burr made such change at the direction of Eric, ignoring the express terms of the ELN Trust in so doing.[20] Mr. Burr confirmed that he

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otherwise be satisfied." *McKellar v. McKellar*, 110 Nev. 200, 871 P.2d 296, 298 (1994). There is no clear intent in NRS 163.418 for such statute to apply retroactively, and the intent of such statute would not be defeated by only applying the statute prospectively. Accordingly, the Court should look to the factors set forth in NRS 78.747 in analyzing Lynita's alter ego claim.

[17] ELN Trust's Brief, pages 29-31.

[18] See "Change of Distribution Trusteeship for the Eric L. Nelson Nevada Trust," dated February 22, 2007, admitted as Intervenor's Exhibit 149, "Change of Trusteeship for the Eric L. Nelson Nevada Trust," dated June 8, 2011, admitted as Intervenor's Exhibit 162, and Mr. Burr's 2012 Testimony.

[19] Intervenor's Exhibit 149.

[20] Mr. Burr's 2012 Testimony.

failed to provide the required 10-day written notice to Ms. Martin.[21] Furthermore, the Successor Distribution Trustee, Ms. Harber, was neither a Nevada bank or Trust company, nor "an individual who is an 'independent' Trustee pursuant to Internal Revenue Code Section 674."[22]

On June 8, 2011 (during the course of this divorce case, and after six (6) days of trial), and again pursuant to Section 11.3 of the ELN Trust, Mr. Burr removed Ms. Harber as the Distribution Trustee and appointed Ms. Martin as the Distribution Trustee. This change again was made at Eric's direction, and again Mr. Burr failed to comply with the provisions of 11.3.[23]

Also on June 8, 2011, and again purportedly pursuant to Section 11.3 of the Trust Agreement, Mr. Burr removed Lynita "as the first nominated Successor Investment Trustee" of the ELN Trust, and appointed Eric's sister, Ms. Harber, to serve as the Investment Trustee upon Eric's death.[24] Mr. Burr also appointed Eric's brother, Clarence Nelson, to serve as the Successor Investment Trustee if Ms. Harber should cease to serve, and Eric's other sister, Aleda Nelson, to serve as Successor Investment Trustee if Clarence Nelson should cease to serve.[25] Mr. Burr did not make such decisions independently, and was acting solely at Eric's direction.[26] Lynita never received ten (10) days written notice from Mr. Burr that she was being removed as Successor Investment Trustee, and Mr. Burr again failed to appoint either a Nevada bank or trust company, or an independent trustee.[27] Mr. Burr purported to make such changes by "amendment" to the ELN Trust, despite the fact that the ELN Trust is purportedly irrevocable.[28]

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[21] Mr. Burr's 2012 Testimony.

[22] Internal Revenue Code, Section 674(c), defines the term "independent trustee" as being a person or entity other than the grantor of a trust who is not ***"related or subordinate parties who are subservient to the wishes of the grantor."*** Section 672(c) defines "related or subordinate party" under Section 674 as including the grantor's [Eric's] "sister" (such as Ms. Harber), "an employee for the grantor" (such as Ms. Martin), and "a subordinate employee of a corporation in which the grantor is an executive" (again such as Ms. Martin). Section 672(c) further provides that "a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence."

[23] Intervenor's Exhibit 162 and Mr. Burr's 2012 Testimony. Although Ms. Martin was the initial Distribution Trustee under the ELN Trust, the change from Ms. Harber back to Ms. Martin in 2011 was still required to conform with the requirements of Section 11.3 of the ELN Trust. In short, once Ms. Martin was removed as Distribution Trustee in 2007, all future changes to the Distribution Trustee required the appointment of an "independent trustee" or Nevada bank or trust company.

[24] See Intervenor's Exhibit 162 and Mr. Burr's 2012 Testimony.

[25] See Intervenor's Exhibit 162 and Mr. Burr's 2012 Testimony.

[26] Mr. Burr's 2012 Testimony.

[27] Mr. Burr's 2012 Testimony.

[28] See Intervenor's Exhibit 162 (wherein Mr. Burr purports to "amend" the ELN Trust). Interestingly, despite the purported irrevocable nature of the parties' trusts, Mr. Burr also amended and replaced page "4" of each trust four (4) months after such trusts were finalized and signed. See Intervenor's Exhibit 34. These acts of "amending" the ELN Trust by Mr. Burr raise the question as to how he could do so if the trusts "truly" were intended to be irrevocable in accordance with Article VIII of each trust, which unequivocally provides that "[t]he Trust is irrevocable and may not be altered, amended or revoked." Of course, as

As a result of Mr. Burr's and Eric's failures to comply with the provisions of the ELN Trust with regards to removing Trustees, the ELN Trust has not had a valid Distribution Trustee since February, 2007. Accordingly, all distributions made to Eric since February, 2007, are in violation of the terms of the ELN Trust which require that such distributions be approved by a duly authorized Distribution Trustee. Interestingly, the ELN Trust's Brief contains a subsection wherein the ELN Trust alleges that Lynita did not introduce any evidence that Eric failed to comply with trust formalities. Such subsection does not contain any reference to the facts discussed above, nor could it to appear accurate.

The ELN Trust also alleges that Lynita's representations of the transactions between the ELN and LSN Trusts were "inaccurate and unfair." In support of this allegation the ELN Trust discusses the Tropicana Albertson's Land, Wyoming Downs, and CJE&L, LLC. As will be discussed below, Lynita's representations concerning such transactions were fair, accurate, and supported by the evidence. Before delving into the specifics of such transactions, it should be pointed out that the ELN Trust discusses the various transactions in its brief in such a manner as to lead one to believe that Lynita was conducting or directing the affairs of the LSN Trust, or doing business with the ELN Trust or Eric. During his testimony, Eric made it abundantly clear that it was he who managed all of the parties' "community assets," and directed all such transactions under the guise that he was doing so for the benefit of Lynita and the parties' children.

It must further be pointed out that the ELN Trust, as well as Eric, often cite to the testimony of Mr. Gerety as purported expert testimony regarding the financial accounting maintained by the ELN Trust, and financial transactions conducted by Eric between the ELN and LSN Trusts. Eric and the ELN Trust allege that Mr. Gerety traced all of the financial transactions of the ELN Trust back to 2001, and found no transactions between the ELN Trust and LSN Trust which were not accounted for as loans between the respective trusts, and paid back. Mr. Gerety's report and testimony were clear, however, that Mr. Gerety did not, as an "expert" should do, examine and opine about the financial accounting maintained by the ELN Trust prior to his involvement in this matter. Instead, Mr. Gerety testified as to the corrections he made to the accounting of the ELN Trust in an effort to try to reconcile same with the position taken by Eric in this

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Mr. Burr testified before the Court in 2010, "**. . . I explained to both parties that irrevocable is a kind of a term of art in the trust world. Any trust can be revoked or amended by transferring all of the assets out of it when it becomes unfunded and they have - - each have the power to do that pretty much as investment trustee with the distribution trustee's authority. . . . When we talk about irrevocable, there's so many ways still to change the terms of the trust.**"

matter after the first six (6) days of trial. At the July 19, 2012 trial date, Mr. Gerety admitted that he performed his analysis and reconciliation without ever speaking to Lynita about the accounting records maintained by the LSN Trust, or the "loans" Eric alleged between the ELN and LSN Trusts, and by reviewing only the financial transactions for the ELN Trust. Bluntly stated, Mr. Gerety created a reconciliation as directed by Eric to support Eric's mid-trial change in position.

Additionally, the conclusions reached by Mr. Gerety were often based upon information conveyed to him by Eric, and not any objective documentation that an expert would normally rely upon in reaching such conclusions. The best example of this is the obligations and debts Mr. Gerety opined were owed by Eric or the ELN Trust. Almost every debt Eric claimed to be currently outstanding and owed by the ELN Trust could not be verified by any legally binding, written and signed loan documents binding Eric or the ELN Trust. When Eric failed to produce such documentation to Mr. Bertsch, Mr. Bertsh opined that the obligation could not be verified. On the other hand, Mr. Gerety simply relied on what Eric told him, and reported the debt as valid without any objective proof of same. Because of Mr. Gerety's "reconciliation" of the books and reliance on statements made by Eric which were not supported by objective and reliable evidence, Mr. Gerety's report is entitled to little or no weight. This is especially true since Mr. Gerety's opinions were clearly contradicted by the countless deeds, bank account statements, cancelled checks, and tax returns that were admitted into evidence, as well as the Minutes of the ELN Trust and Eric's very own testimony during 2010 that he transferred property freely between the ELN and LSN Trusts because **it was all community property**.

The Tropicana Albertson's Land transaction was described in detail on page 18 of Lynita's Trust Brief. The ELN Trust alleges that "Lynita intentionally failed to advise this Court [that the LSN Trust] was only supposed to obtain a deed over the Tropicana Albertson's Land as collateral for a $700,000.00 loan [to the ELN Trust]." As can be seen from Lynita's Trust Brief, Lynita acknowledges this fact very succinctly. The ELN Trust further alleges that the LSN Trust "had no choice but to relinquish its interest in the Tropicana Albertson's Land to the [ELN Trust] on or around November 28, 2006, once the $700,000.00 loan was paid in full." The ELN Trust, however, does not reference a single piece of evidence to support its contention that the loan was repaid. That is because the ELN Trust never repaid such loan. Instead, and as explained in Lynita's Trust Brief, on January 5, 2005, the ELN Trust transferred its fifty percent (50%)

interest in the Tropicana Albertson's Land to the LSN Trust to satisfy the promissory note.[29] On November 28, 2006, Eric had Lynita sign a quitclaim deed transferring the interest back to the ELN Trust without consideration.[30] Such deed was never recorded until June 25, 2007, the date Eric and Paul Nelson sold the Tropicana Albertson's Land to Las Vegas Center Limited, LLC, for $1,457,000.00.[31] The LSN Trust never received repayment of the note, or any proceeds from the sale of the Tropicana Albertson's Land.

The ELN Trust also alleges that the LSN Trust and Lynita were not entitled to any compensation for the sale of Wyoming Downs, claiming that the approximate eleven (11) acre parcel owned by the LSN Trust was conveyed to an unrelated third-party prior to the sale of Wyoming Downs in exchange for an easement across Wyoming Downs to the LSN Trust's other 200 acre parcel. As set forth in Lynita's Trust Brief, however, on September 15, 2006, Eric sold Wyoming Downs, including the 11.502 acre parcel owned by the LSN Trust, for $11,214,350.00.[32] No financial consideration was given to the LSN Trust.[33]

Finally, the ELN Trust alleges that Lynita relinquished her 50% interest in CJE&L, LLC, "because she had entered into a flooring agreement, without the advice or knowledge of Eric, thereby creating a large liability for the [LSN Trust]." This allegation contradicts the findings of Mr. Bertsch, and was never proven at trial. Furthermore, the ELN Trust fails to describe all the facts and circumstances surrounding CJE&L, and how through CJE&L, Eric caused the LSN Trust to forfeit its 100% interest in the Russell Road property without consideration. As set forth in Lynita's Trust Brief, on November 23, 1999, Lynita's revocable 1993 trust acquired sole ownership of Russell Road.[34] As confirmed by Mr. Bertsch, Lynita's revocable 1993 trust paid $855,945.00 to purchase this property.[35] On June 14, 2001, without any financial consideration

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[29] See Defendant's Exhibit IIII, and specifically Grant, Bargain, Sale Deed 200501050004265, executed on November 12, 2004, and recorded on January 5, 2005, contained within said Exhibit. Also supported by Mr. Gerety's 2012 Testimony.

[30] See Defendant's Exhibit IIII, and specifically Grant, Bargain, Sale Deed 200706250002013, executed on November 28, 2006, and recorded on June 25, 2007, contained within said Exhibit.

[31] See Defendant's Exhibit IIII, and specifically Grant, Bargain, Sale Deed 200706250002014, executed on January 11, 2007, and recorded June 25, 2007, contained within said Exhibit.

[32] See Escrow Agreement admitted as Intervenor's Exhibit 181, Asset Purchase Agreement admitted as Intervenor's Exhibit 182, and Defendant's Exhibit LLLL (specifically General Warranty Deed R132945, executed September 13, 2006, and recorded September 15, 2006, and General Warranty Deed R132637, executed August 24, 2006, and recorded August 30, 2006, contained within said Exhibit). The eleven (11) acres held in the name of the LSN Trust was transferred to the purchaser of Wyoming Downs on August 30, 2006, however, the LSN Trust received no compensation for said transfer.

[33] Mr. Gerety's 2012 Testimony and Eric's 2012 Testimony.

[34] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed 1999112301029, executed on September 25, 1999, and recorded on November 23, 1999, contained within said Exhibit.

[35] The total purchase price was $875,000.00 as reflected in Defendant's Exhibit UUUU (see Declaration of Value form immediately following Grant, Bargain, Sale Deed).

being paid to the LSN Trust, Eric had Lynita transfer title to Russell Road to CJE&L,[36] a newly formed entity whose membership consisted of the LSN Trust, and the Nelson Nevada Trust (Cal and Jeanette Nelson, Eric's brother and sister-in-law, as Trustees). On January 1, 2005, Eric had the LSN Trust assign its 50% membership interest in CJE&L to the Nelson Nevada Trust (Cal and Jeanette Nelson, Trustees), thus forfeiting all interest in the Russell Road property for which Eric had the LSN Trust pay $855,945.00 in 1999. The LSN Trust again received no consideration for this transfer. Mr. Bertsch confirmed that the forfeiture of the LSN Trust's interest in the Russell Road property was transferred to the capital account of Cal Nelson, there being no cash attached to this transaction. On February 3, 2010, CJE&L sold its 50% interest in Russell Road to Eric Nelson Auctioneering for $4,000,000.00.[37] On May 27, 2011, the Russell Road property was sold to Oasis Baptist Church for $6,500,000.00.[38] The LSN Trust has never received any compensation for its original 100% interest in Russell Road.

There were numerous other transactions directed by Eric between the ELN and LSN Trusts for which the LSN Trust was not compensated, e.g., High Country Inn, Lindell Professional Plaza, Brianhead Cabin, and Flamingo Road Property. Such transactions were discussed at length in Lynita's Trust Brief. The ELN Trust failed to discuss these transactions in its brief although such transactions were well documented at trial.

For the reasons stated herein and in Lynita's Trust Brief, regardless of which alter ego statute and test the Court chooses to apply, it is clear from Eric's admissions, and actions, as well as the other evidence admitted at trial, that the ELN and LSN Trusts are Eric's alter egos.

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[36] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed 2001061400850, executed on June 7, 2001, and recorded on June 14, 2001, contained within said Exhibit.

[37] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed 201002030002960, executed on February 2, 2010, and recorded on February 3, 2010, contained within said Exhibit, and Eric's 2010 Testimony.

[38] See Defendant's Exhibit UUUU, and specifically Grant, Bargain, Sale Deed and Termination of Lease 2011052702434, executed on May 27, 2011, and recorded the same day, contained within said Exhibit.

IV. CONCLUSION

For the reasons set forth above and in Lynita's Divorce Brief and Trust Brief, the Court should enter an Order denying the relief sought by Eric and the ELN Trust, and awarding Lynita her equitable share of the parties' community property.

DATED this 28th day of September, 2012.

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DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff/Counterdefendant, v. LYNITA SUE NELSON, Defendant/Counterclaimant. AND RELATED ACTIONS	CASE NO. D-09-411537-D DEPT NO. "O"

DEFENDANT'S POST-TRIAL REPLY MEMORANDUM ON DIVORCE ISSUES

COMES NOW, DEFENDANT, LYNITA SUE NELSON ("Lynita"), by and through her attorneys of THE DICKERSON LAW GROUP, and respectfully submits her Post-Trial Reply Memorandum on Divorce Issues ("Reply Brief") responding to the Post-Trial Brief of Plaintiff Eric L. Nelson.

DATED this 28th day of September, 2012.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 31, 2012, the parties submitted their respective post-trial briefs on the trust and divorce issues presented at the trial in this matter. The relevant facts presented at trial and applicable law regarding the trust and divorce issues were set forth in detail in Defendant's Post-Trial Memorandum on Divorce Issues ("Lynita's Divorce Brief"), and Post-Trial Memorandum on Trust Issues ("Lynita's Trust Brief"), and are not restated entirely in this Reply Brief.[1] Instead, this Reply Brief only focuses on, or responds to, those misrepresentations of fact and law set forth in the Post-Trial Brief of Plaintiff Eric L. Nelson ("Eric's Brief").

Eric's Brief contains numerous factual misrepresentations simply not supported by the record in this matter.[2] Eric's Brief also contains a number of conclusory statements regarding the applicable law, and contradictory statements of alleged fact. Eric's Brief is so far fetched on the procedural history of this matter, facts presented at trial, and applicable law, that one could only describe the brief as fantasy and wonder whether Plaintiff, Eric Nelson ("Eric"), wrote certain sections or paragraphs of the brief himself instead of relying on his counsel. Although Eric's Brief is almost devoid of reality, and has little, if any, value to the Court, a response is necessary to point out the multitude of misrepresentations contained therein.

II. FACTUAL STATEMENT

As previously stated, the relevant facts in this matter were summarized in detail (with specific references to the record) in Lynita's Trust Brief and Divorce Brief, and are not restated herein. Rather than list each and every misrepresentation of fact made in Eric's Brief in this subsection, without regard to the specific legal issues which such alleged facts pertain to, such misrepresentations are addressed in the Legal Analysis below under the specific legal issue to which such misrepresentation is directed in Eric's Brief.

That being said, there is one particular misrepresentation which deserves mentioning here, and which summarizes just how outrageous the representations are in Eric's Brief. In his "Introduction" and "legal

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[1] Certain facts and applications of law are restated herein as necessary to respond to Eric's Brief.

[2] Several of the same factual allegations are contained in the Post-Trial Brief of Eric L. Nelson Nevada Trust Dated May 30, 2001 ("ELN Trust's Brief"). As instructed by the Court, Lynita is filing a reply brief to both Eric's Brief and the ELN Trust's Brief. Accordingly, many of the factual assertions discussed in this Reply Brief are similarly discussed in the reply brief being filed in response to the ELN Trust's Brief.

analysis" regarding attorneys' fees, Eric has the audacity to represent to this Court that it was Lynita who has caused this matter to drag on for two (2) years after the beginning of trial. Specifically, Eric states:

> As this Court knows Eric attempted to resolve this case during trial in 2010. Eric made several proposals on the record. In fact the parties came extremely close until Lynita became paranoid that there were hidden assets and started her very expensive witch hunt. Lynita's paranoia combined with the fact that Lynita is not willing to take into consideration that there is debt that needs to be factored in has resulted in unnecessary prolonged litigation.
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> . . .
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> After Lynita through her Counsel has conducted a witch hunt for the past three (3) years they have ***not*** found any fraud or hidden assets.
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> . . .
>
> Though it was Lynita's right to conduct her witch hunt that produced nothing, Eric should not have to pay for it.
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> . . .
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> If anyone should be receiving fees it should be Eric as he has had to contend with Lynita's fruitless witch hunt.[3]

Needless to say, ***nothing could be further from the truth***. It is irrefutable that it was Eric who caused this matter to continue from 2010 to present date. The trial in this matter began in 2010, and for six (6) full days, Eric, individually, and as Trustor and Investment Trustee[4] of the Eric L. Nelson Nevada Trust, dated May 30, 2001 ("ELN Trust"),[5] and being represented by James Jimmerson, Esq., one of the most respected and accomplished attorneys in Nevada, presented evidence to this Court conclusively confirming that all property

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[3] Eric's Brief, pages 3 and 17.

[4] The Investment Trustee is the only person authorized by the terms of the ELN Trust to represent and bind the trust in legal proceedings, and does so to the same extent as any absolute owner of property could bind himself or herself in such legal proceedings:

> 12.1 Trustee's Powers.
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> . . .
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> The Investment Trustee shall have the following powers, all of which are to be exercised in a fiduciary capacity:
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> . . .
>
> (h) To institute, compromise, and defend any actions and proceedings.
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> . . .
>
> (s) The enumeration of certain powers of the Trustee shall not limit his general powers, subject always to the discharge of his fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.

[5] As was shown at trial, the ELN Trust and Eric individually are one and the same. Accordingly, any references herein to just Eric or to just the ELN Trust, or to both Eric and the ELN Trust, are for the purpose of convenience and clarity only, and should not be construed as an acknowledgment that there is any distinction between the two.

held in the name of the ELN Trust, and LSN Nevada Trust, dated May 30, 2001 ("LSN Trust"), is, and at all times during the parties' nearly 30 year marriage was, managed, controlled, treated, held, and owned by the parties as community/marital property. Eric's position at trial was consistent with the position he had taken throughout the course of pre-trial litigation. The trial would have certainly concluded in 2010, early 2011 at the latest, however, following the sixth day of trial, and while the Court and Lynita were preparing to reconvene to bring this case to a conclusion, Eric reversed course and sought to erase the past by causing the ELN Trust to become a named party to this action,[6] and to assert that neither of the parties possess an interest in any of the property held by same. It was this action alone which caused this matter to continue to present date, and it is inconceivable how Eric could attribute the delay to anything other than his unreasonable change in positions.

Furthermore, Eric's attempts to portray the forensic tracing, discovery, and other accounting Lynita performed through the assistance of her counsel and advisors, Melissa Attanasio, CFP, CDFA,[7] and Joseph Leaunae, CPA, as fruitless, a "witch hunt," and unnecessary expenditure of monies is unsupportable. As confirmed by Lynita during her testimony on August 20, 2012, without the assistance of Mr. Leaunae and Ms. Attanasio it would not have been possible for Lynita, her attorneys, Larry Bertsch, CPA ("Mr. Bertsch"), or this Court to ever fully understand the extent of the parties' assets given the continuous, convoluted financial finagling devised by Eric to prevent anyone from every fully understanding the parties' financial affairs (which has now been well documented). Additionally, throughout the course of this litigation, Eric engaged in numerous transactions, e.g. Russell Road and the repurchase of Wyoming Downs, without ever advising Lynita, her counsel, or the Court, and it was only because of such advisors and discovery that Lynita discovered such transactions.

It is clear that the fees and costs incurred in this matter, and the extraordinary time it took to bring this matter to conclusion, were caused by Eric's gamesmanship, lack of candor, and legal maneuvering. Any assertion to the contrary by Eric should be wholly disregarded.

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[6] The ELN Trust was, at all times during this divorce proceeding, before this Court, and participating and represented in this action by and through Eric in his capacity as Investment Trustee and legal holder of the property in question. See ELN Trust, Section 12.1(h) (quoted in note 4, above).

[7] Ms. Attanasio is a Certified Financial Planner and Certified Divorce Financial Analyst.

Before delving into the legal analysis, one other glaring fact warrants discussion. In both Eric's Brief and the ELN Trust's Brief, Eric and the ELN Trust avoid Eric's 2010 trial testimony,[8] and the other testimony elicited by Eric during his 2010 case-in-chief, like the plague.[9] They have attempted to recharacterize such testimony and proceedings as settlement negotiations – the first ever settlement negotiations conducted on the record, with opening statements, direct examination, cross examination, and re-direct examination – and have wholly ignored such testimony in the hope that if you pretend like it does not exist, perhaps it will not exist. The reason Eric and the ELN Trust have gone to such lengths to avoid such testimony and trial proceedings is that the facts conclusively established during such proceedings completely obliterate Eric's newfound legal position, discredit any testimony offered in 2012 to the contrary, and clearly show how frivolous and unnecessary it was for this matter to proceed for an additional nine (9) days of trial almost two (2) years later. Fortunately, and as explained in detail in Lynita's Trust Brief, legal and equitable principles do not permit for the injustice that Eric and the ELN Trust seek to perpetrate through this Court.

III. LEGAL ANALYSIS

This legal analysis discusses only the legal arguments made in Eric's Brief, in the order presented in such brief. A complete discussion of the legal bases for the relief requested by Lynita was set forth in Lynita's Trust Brief and Divorce Brief. Accordingly, if a certain legal argument from Lynita's Trust Brief and/or Divorce Brief is not further discussed herein, it is only because such argument was not addressed in Eric's Brief. Additionally, it would be a waste of time and resources to discuss every single factual assertion contained in Eric's Brief and/or the ELN Trust's Brief in Lynita's reply briefs. If Lynita has not addressed a certain factual assertion, or legal argument for that matter, in this Reply Brief, it is not because Lynita agrees with such assertion or argument, but only because Lynita believes the evidence presented or applicable law, as summarized in Lynita's Divorce Brief or Trust Brief, is so clear as to render any further

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[8] As set forth in Lynita's Trust Brief, judicial estoppel protects the integrity of the judicial process and prevents Eric from contradicting such testimony, or taking a position contrary to such testimony.

[9] This fact is pointed out in both this Reply Brief, and the reply brief to the ELN Trust's Brief. Lynita and her counsel apologize in advance for the redundant points that are made in the two (2) reply briefs, however, such redundancies have been made necessary by the repetitive points made by both the ELN Trust and Eric in their respective briefs. As will be seen (or as the Court may have already seen if it read Lynita's reply to the ELN Trust's Brief first), Lynita's counsel has tried, as best they could, to address any repetitive arguments made by both the ELN Trust and Eric in only one of the reply briefs in the interest of judicial economy.

discussion unnecessary. Finally, and as stated in footnote 9, several of the legal arguments and factual assertions made by Eric in his brief are stated almost verbatim in the ELN Trust's Brief. In the interest of judicial economy, and to avoid incurring any additional unnecessary fees, Lynita has consolidated her response to such issues into this Reply Brief.

A. The 1993 Separate Property Agreement Did Not Transmute The Parties' Community Property

Eric and the ELN Trust argue in their respective briefs that transmutation of property must be shown by clear and convincing evidence, and that the evidence presented regarding the parties' 1993 Separate Property Agreement ("1993 Agreement") was sufficient to prove transmutation of the parties' property from community property to separate property. Interestingly, neither Eric nor the ELN Trust cite to, or analyze, the law regarding the validity of such agreements under NRS 123.270 (providing that husband and wife can make contracts respecting property, subject to "the general rules which control the actions of persons occupying relations of confidence and trust toward each other"), or general contract principles, all of which were discussed in Lynita's Trust Brief, and all of which require invalidation, rescission, or reformation of the 1993 Agreement.

Moreover, the purported evidence cited in Eric's Brief and the ELN Trust's Brief does not establish transmutation by clear and convincing evidence as alleged. The Nevada Supreme Court has defined clear and convincing evidence as follows:

> This court has held that clear and convincing evidence must be satisfactory proof that is: "so strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest. It need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference may be drawn." [Citation omitted].

In re Discipline of Drakulich, 111 Nev. 1556, 908 P.2d 709, 715 (1995). In support of their position, Eric and the ELN Trust rely upon the testimony of Jeffrey Burr, Esq. ("Mr. Burr") in 2012, and the testimony of Richard Koch, Esq. ("Mr. Koch"). As has been discussed, Eric and the ELN Trust have attempted to wholly disregard the testimony elicited or given by Eric during his very own case-in-chief in 2010. The reason Eric and the ELN Trust have gone to such lengths to ignore such testimony is because all the facts that were conclusively established during trial in 2010 support Lynita's positions in this matter.

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Despite the efforts the ELN Trust and Eric have made to change or recharacterize Mr. Burr's testimony from 2010, Mr. Burr was extremely clear that (a) there was no discussion in 1993 regarding the effects of the 1993 Agreement as it concerned the parties' marital rights; (b) the parties intended for all property addressed in such agreement to continue to be community property used for the benefit of both parties (the community); and (c) the parties never intended to create separate property. Mr. Burr's testimony in this regard was specifically quoted in Exhibit "A" to Lynita's Divorce Brief. Eric and the ELN Trust allege, in part, the following with respect to Mr. Burr's testimony: (1) "Mr. Burr testified that he explained to the parties prior to executing the Separate Property Agreement, that the property they currently owned was community property, and that said property would be converted to separate property under the Separate Property Agreement"; and (2) "Mr. Burr testified that he also explained that either Eric or Lynita could stand by the terms of the Separate Property Agreement in the event of divorce, and that the other party bore the risk that they would not have a further interest in the other spouse's separate property." These allegations specifically contradict the testimony of Mr. Burr in 2010. Even if the Court believed that Mr. Burr changed his testimony in 2012, certainly the discrepancies in such testimony from 2010 to 2012 would preclude a finding of transmutation by "clear and convincing evidence"; contradictory testimony by a witness cannot constitute evidence so "strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest." *Id.* This is especially true when considering the fact that Mr. Burr's 2010 testimony was supported by both Lynita's **and** Eric's testimony, discussed below.

Mr. Koch's testimony also does not support the validity of the 1993 Agreement, nor could it because Mr. Koch had no independent recollection of the facts and circumstances surrounding his representation of Lynita. It is interesting the way that Eric and the ELN Trust attempted to twist Mr. Koch's lack of recollection (both during trial and in their briefs) in a way to support their position. For example, both Eric and the ELN Trust point to the fact that Mr. Koch does not recall Lynita expressing to him any side agreement between the parties. The implication is that since Mr. Koch does not recall a side agreement then there was no such agreement. Mr. Koch, however, did not recall **any** specific facts regarding his representation of Lynita. Accordingly, pointing out any one of the infinite possible acts, statements, or events that could have occurred that Mr. Koch does not recall does not constitute competent evidence that

such act, statement, or event did not occur. If it did, then it should also be pointed out that Mr. Koch did not specifically recall actually representing Lynita, advising Lynita with respect to the 1993 Agreement, or any other fact that might support the validity of such agreement. The only person that does recall the specific representation provided by Mr. Koch is Lynita. Lynita testified that she went to Mr. Koch's office and was simply asked whether she had any questions. The entire meeting lasted for a period of minutes. It was clear that Mr. Burr and Eric had already told Lynita and Mr. Koch all they needed to know. Since Lynita is the only party with a specific recollection of what occurred when she visited Mr. Koch, her testimony cannot be rebutted and should be accepted as true.

As previously stated, the testimony of Lynita **and** Eric support the fact that the parties never, at any time during their nearly thirty (30) year marriage, through the 1993 Agreement, 2001 spendthrift trusts, or otherwise, intended to transmute their community property into either party's separate property. Eric and the ELN Trust have asserted that the 1993 Agreement was created because Lynita did not want to be involved in gaming, and had a moral aversion to gaming and liquor. They would like the Court to believe that the 1993 Agreement was Lynita's idea and doing, but this position is completely unsupportable. First, the testimony from Eric, Mr. Burr, and Lynita clearly established that Eric made all decisions with regards to the parties' financial affairs and Lynita simply went along with what she was instructed to do by Eric. Can anyone truly believe that Lynita would have independently sought out Mr. Burr to divide the parties' property, or would have suggested to Eric that the parties divide their property to insulate themselves from creditors? Second, and more importantly, Lynita's testimony was never that she had an aversion to gaming and did not want to be involved in same. To the contrary, on November 17, 2010, Lynita testified that although she did not believe Eric's gaming ventures were in the best interests of the family, she stood by her husband in any decision he made for the community. That included the gaming ventures in Mississippi and Mexico, and any other financial decisions made by Eric. Lynita also testified repeatedly that she would have never agreed to truly separate the parties' community property, as she did not believe there should be "separate property" when parties are together and married. Finally, Lynita testified that she entered into the 1993 Agreement and 2001 irrevocable trusts at the advice of Mr. Burr and Eric, who represented to her that

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such agreements and trusts were simply what people did to protect their assets. Eric and his puppet trust have now tried to turn Lynita's trust in Eric into her financial demise. Fortunately, law and equity will not allow for such a result, especially when parties stand in a fiduciary (married) relationship.

Finally, Eric's very own testimony to this Court established that all property held by the parties or their respective trusts was at all times community property, and that the parties never separated such property. During Eric's 2010 Opening Statement and testimony (quoted verbatim in Lynita's Trust Brief), Eric conclusively established that (1) in accordance with the advice given to them by Mr. Burr, the parties never intended to relinquish control of their assets by creating the ELN and LSN Trusts (hence the reason the parties transferred all of their community assets to such trusts); (2) the ELN and LSN Trusts were established solely for asset protection purposes, and were never intended to affect the parties' rights to community property; (3) at all times since 2001, Eric exclusively managed all properties in both trusts (regardless of his rights to do so under the terms of such trusts); (4) the parties believed that all assets contained in the ELN and LSN Trusts were community property, subject to their complete dominion and control (confirming the testimony of Mr. Burr); (5) at all times Eric treated the property held in the ELN and LSN Trusts as community property, subject to his complete dominion and control without third-party influence; (6) Eric alone could, and did control the disposition and distribution of assets from the ELN and LSN Trusts; and (7) any income generated by the properties held in the ELN and LSN Trusts was the parties' income. His testimony was also clear that at all times he represented to Lynita that the property held by the parties or their respective trusts was for the benefit of the community, more specifically, "Lynita and the children." If Eric truly believed that the 1993 Agreement separated all of the parties' property, certainly he would have made some mention in 2010 of there being separate property which should be confirmed to him. In fact, the testimony of Eric and Mr. Burr with respect to the parties' intentions in 1993 was so clear as to already be made a finding of this Court:

> THE COURT FURTHER FINDS that it has presided over six (6) days of trial in 2010, wherein Jeffrey Burr, Esq., the attorney who drafted the ELN and LSN Trusts, respectively, testified that Mr. Nelson and Ms. Nelson intended that the ELN Trust and the LSN Trust were formed for purposes of asset protection and were not meant to alter the rights of the parties in the event of a dissolution of marriage.
>
> THE COURT FURTHER FINDS that while Mr. Nelson's opinion as to whether property is community or separate is not controlling, Mr. Nelson testified that the property held by the ELN Trust was community property, and, as such, supports Attorney Burr's testimony that

> the Trusts were formed for purposes of asset protection and not intended as a distribution of the marital estate.

Findings of Fact and Order (prepared by the Court), pgs. 6-7, filed January 31, 2012.

As Eric and the ELN Trust state, a transmutation of property requires clear and convincing evidence. Intent is necessary in order for a transmutation of property to occur. *Sprenger v. Sprenger*, 110 Nev. 855, 858, 878 P.2d 284 (1994) (citing to a party's testimony regarding intent in analyzing whether a transmutation of separate property occurred). The evidence in this matter certainly does not establish by clear and convincing evidence that the parties intended to separate their property by virtue of the 1993 Agreement. To the contrary, there was clear and convincing evidence that the parties never intended to separate any of their property at any time during marriage. Accordingly, for the reasons stated herein and in Lynita's Trust Brief, the Court should find that the 1993 Agreement is invalid and/or did not change the community property status of the parties' property.

B. <u>Regardless Of The Court's Decision Regarding The 1993 Separate Property Agreement, All Property Held Today By The Parties Is Community Property</u>

In subsection "2" of the purported "legal analysis" of his brief, Eric argues that if the Court finds the 1993 Agreement to be valid the Court should find that all property held today by the parties is separate property. Specifically, Eric states:

> Once the Court determines that the Separate Property Agreement was valid, "[T]he right of the spouses in their separate property is as sacred as is the right in their community property, and when it is once made to appear that property was once of a separate character, it will be presumed that it maintains that character until some direct evidence to the contrary is made to appear." [Citation omitted].
>
> This Court has stated that if it can be shown that there was any community property that was inappropriately placed in those 2001 self-settled spendthrift trusts, it would have the ability to remove any such property from each trust. Lynita through her counsel has had over three (3) years to conduct discovery to try to prove any such occurrence. Lynita hired Joe Leaunae at Anthem Forensics to conduct such a search. Lynita failed to find anything proving that any such thing occurred. If there had been any such finding by Mr. Leaunae there would have been a report and Mr. Leaunae would have testified. Even after spending approximately $100,000 for Anthem Forensics services Lynita failed to produce any evidence of such an occurrence.

Quite frankly, Eric's position on this subject does not make any sense and is completely contrary to law.

It is axiomatic that **<u>all</u>** property acquired during marriage is presumed to be community property, and such presumption may only be overcome by clear and convincing evidence. *Forrest v. Forrest*, 99 Nev. 602,

604-05, 668 P.2d 275, 277 (1983). Other than the Palmyra marital residence and forty percent (40%) of Eric's 100% interest in Eric Nelson Auctioneering (which has $0.00 value), none of the properties held today in the ELN or LSN Trusts are the same as those specified in the 1993 Agreement; all of said properties were acquired after 1993. Accordingly, assuming purely for the sake of argument that the 1993 Agreement was valid and divided the parties' property in 1993, it was Eric's burden, not Lynita's, to prove to the Court that the properties held today can be directly traced to the properties listed in the 1993 Agreement. Eric conceded, however, that he cannot trace the original source of funds used to acquire the parties' present holdings.[10] He even admitted during his 2010 testimony that the purchases he was making were with community earnings:

> Q. Now, **in February of this year, you used community cash to purchase an interest in this property; is that correct?**
>
> A. **Yes, sir.**

Trial Transcript ("TT"), August 31, 2010, pg. 549, beginning at line 18 (discussing Russell Road property).

> Q. So roughly **we're looking then at you took $2,777,861** –
>
> A. **Yes, sir.**
>
> Q. **– of community cash?**
>
> A. **Yes, sir.**
>
> Q. And you gave that to your brother?
>
> A. No, sir.
>
> Q. **What'd you do with it?**
>
> A. **I bought two-thirds of his building --**

TT, August 31, 2010, pg. 559, beginning at line 3.[11] Therefore, all property held today by either party or the ELN or LSN Trusts must be found to be community property, and as Eric acknowledges, divided in accordance with the Court's instruction throughout these proceedings that if community property was found to have gone into the ELN or LSN Trusts, then community property would be taken out of such trusts.

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[10] It is likely, based on the parties' agreements in both 1993 and 2001 to level off their trusts periodically, as well as Eric's constant commingling of property between the parties' trusts (summarized in Lynita's Trust Brief), that the source of funds for the parties' current holdings originated from the property purportedly set aside to Lynita by the 1993 Agreement.

[11] The most relevant portions of Eric's testimony were quoted in Lynita's Trust Brief, and are not restated entirely herein, however, Lynita respectfully requests that the Court refer to such testimony when analyzing any of the representations made in Eric's Brief and the ELN Trust's Brief.

Although any further discussion on this subject is unnecessary, some of the factual misrepresentations made by Eric and the ELN Trust with regards to commingling of property warrant further discussion. Eric and the ELN Trust have both asserted that there was no commingling of property between the parties' 1993 trusts (except for some purported gifts from Eric's 1993 Trust to Lynita's 1993 Trust), or the ELN or LSN Trusts. In support of this position, Eric and the ELN Trust cite to the testimony of Shelley Newell ("Ms. Newell"), and Daniel Gerety, CPA ("Mr. Gerety").[12] In the ELN Trust's Brief, Eric goes so far as to state that there was no evidence presented at trial to rebut or impeach the testimony of Ms. Newell and Mr. Gerety. In making such assertions, Eric and the ELN Trust completely ignore the countless deeds presented in this matter showing the transfers of property from the LSN Trust to the ELN Trust that were directed by Eric (all of which were summarized in Lynita's Trust Brief), the bank account statements, cancelled checks, and tax returns that were admitted to show that Lynita was not compensated for such transfers of property, the Minutes of the ELN Trust that were admitted into evidence and confirm the parties' intention to level off the ELN and LSN Trusts periodically, and adherence to such intention,[13] and most importantly, Eric's very own testimony. For example, on August 30, 2010, Eric testified to the following during direct examination by his counsel, Mr. Jimmerson:

> Q. I **just asked you, please tell the Court about the trusts** –
>
> A. LSN Trust –
>
> Q. – **how they came about**.
>
> A. Was designed and set up and my trust, ELN Trust, or **Eric Nelson's Trust was for asset protection purposes.**
>
> Q. Okay.
>
> A. 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. [He] 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**

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[12] The ELN Trust's Brief also cites to the testimony of Rochelle McGowan, Nola Harber, and Lana Martin.

[13] See the "Minutes of Special Meeting Trustees' Meeting of Eric L. Nelson Nevada Trust" from November 20, 2004 (Intervenor's Exhibit 139), signed by Eric and Lana Martin, wherein it was "**RESOLVED,** that all Mississippi and Las Vegas properties owned by the Trust will be transferred to the LSN Nevada Trust in exchange for final payment due on loans outstanding from 2002 **and to level off the Trusts**." (Emphasis added).

> **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.

TT, August 30, 2010, pg. 44, beginning at line 21 (emphasis added).

> A. ...I said, guys – they wanted all the land that **we owned** down there, **Lynita and me**, which was in my trust, to go into the operation and the security. I refused. In fact I refused so much I said I'm **going to transfer a majority of these properties into Lynita's trust** to make sure they're fully aware that these properties aren't going off. I'm going to do a leveling of the trusts. **I recorded the deeds incorrectly. Lana typed them up.** There were some verbiage problems when we transferred them to Lynita, they clouded the title.

TT, August 30, 2010, pg. 165, beginning at line 6 (discussing land deals in Mississippi).

> Q. And what do they pay Dynasty if they pay – **who is the owner of the real estate that the RV park's on?**
>
> A. **Well the, it's the community. It's under Lynita's trust right now. It came from my trust into her trust**. It's clouded title. That's the property – the 70 or 60 or 70 acres that's in the Manise lawsuit....

TT, August 30, 2010, pg. 186, beginning at line 2. Simply put, the evidence presented was overwhelming that there was constant commingling of property by Eric between the parties' 1993 Trusts, and the ELN and LSN Trusts, and any assertion to the contrary should be categorically rejected by the Court.

Eric and the ELN Trust cite to the testimony of Mr. Gerety as purported expert testimony regarding the financial accounting maintained by the ELN Trust. They both suggest that Mr. Gerety traced all of the financial transactions of the ELN Trust back to 2001, and found no transactions between the ELN Trust and LSN Trust which were not accounted for as loans between the respective trusts, and paid back. Mr. Gerety's report and testimony were clear, however, that Mr. Gerety did not, as an "expert" should do, examine and opine about the financial accounting maintained by the ELN Trust prior to his involvement in this matter. Instead, Mr. Gerety testified as to the corrections he made to the accounting of the ELN Trust in an effort to try to reconcile same with the position taken by Eric in this matter after the first six (6) days of trial. At the July 19, 2012 trial date, Mr. Gerety admitted that he performed his analysis and reconciliation without ever speaking to Lynita about the accounting records maintained by the LSN Trust, or the "loans" Eric alleged between the ELN and LSN Trusts, and by reviewing only the financial transactions for the ELN Trust. Bluntly stated, Mr. Gerety created a reconciliation as directed by Eric to support Eric's mid-trial change in position.

. . .

Additionally, the conclusions reached by Mr. Gerety were often based upon information conveyed to him by Eric, and not any objective documentation that an expert would normally rely upon in reaching such conclusions. The best example of this is the obligations and debts Mr. Gerety opined were owed by Eric or the ELN Trust. Almost every debt Eric claimed to be currently outstanding and owed by the ELN Trust could not be verified by any legally binding, written and signed loan documents binding Eric or the ELN Trust. When Eric failed to produce such documentation to Mr. Bertsch, Mr. Bertsh opined that the obligation could not be verified. On the other hand, Mr. Gerety simply relied on what Eric told him, and reported the debt as valid without any objective proof of same. Because of Mr. Gerety's "reconciliation" of the books and reliance on statements made by Eric which were not supported by objective and reliable evidence, Mr. Gerety's report is entitled to little or no weight. This is especially true since Mr. Gerety's opinions were clearly contradicted by the countless deeds, bank account statements, cancelled checks, and tax returns that were admitted into evidence, as well as the Minutes of the ELN Trust and Eric's very own testimony during 2010 that he transferred property freely between the ELN and LSN Trusts because **it was all community property**.

Finally, Eric and the ELN Trust both point to the fact that Lynita did not call Mr. Leaunae to testify as alleged proof that the accounting performed by Mr. Gerety could not be contradicted, or that there was no malfeasance in the management of the parties' assets by Eric. The fact that Mr. Leaunae did not testify is wholly irrelevant; it does not make the existence of any fact that is of consequence to the determination of this action more or less probable. NRS 48.015. As set forth above, the best evidence of Eric's constant commingling of property between the parties' respective trusts and failure to compensate Lynita for property taken from her trusts, was the actual deeds, bank account statements, cancelled checks, and tax returns entered into evidence, as well as the Minutes of the ELN Trust and the parties' testimony. Any other evidence on these issues was unnecessary, cumulative, and of limited value. Furthermore, the only reason Mr. Leaunae was not called to testify is that the Court appointed Mr. Bertsch as Special Master to opine on the same subjects Mr. Leaunae was hired to opine about: the parties' property and debts, and Eric's waste of community funds during these proceedings. Although Mr. Leaunae did not testify, he, as well as Ms. Attanasio, were instrumental in discovering, compiling, and explaining the intentionally convoluted transactions entered into by Eric both during, and prior to, these proceedings. As Lynita testified, it would

not have been possible for Lynita, her attorneys, Mr. Bertsch, or this Court to ever fully understand the extent of the parties' assets without the assistance of Mr. Leaunae and Ms. Attanasio.

C. Eric Failed To Prove Any Legitimate Debts Owed By The ELN Trust And To His Family Members

Eric asserts that there are legitimate debts which the Court should consider when dividing the parties' assets and liabilities. He cites to Mr. Bertsch's report to evidence same, and the report of Mr. Gerety. In fact, he argues that when considering the debts of the ELN Trust, the value of the property held by the ELN and LSN Trusts are approximately equal. Mr. Bertsch did examine whether the parties had any legitimate liabilities. Mr. Bertsch concluded, however, that not a single debt claimed by Eric as owed by himself or the ELN Trust could be independently verified, and Eric failed to provide the Court with any objective evidence of existing liabilities.[14]

Eric's Brief lists the debts that Eric requests that the Court take into account when dividing the parties' property. Interestingly, all of the debts are associated with some business entity held by the ELN Trust, and Eric does not state that there is any personal liability for same or liability on the part of the ELN Trust. Moreover, a great majority of the debts are listed as owed, or secured by property owned or previously owned by (e.g., Silver Slipper), Dynasty Development Group, LLC ("Dynasty"), which as the Court is aware, has filed for bankruptcy protection. Specifically, Eric lists the following alleged Dynasty creditors:

> Attorney's fees owed to Harold Duke in the amount of $400,000. His claim is against the 120 acres of Dynasty land.
>
> A lis pendens on Dynasty owned property in the amount of $1,000,000.
>
> A loan from Bob Martin in the amount of $200,000 secured by the 120 acres of Dynasty land.
>
> Grotta, LLC has an option as a percentage of ownership of 34% of Silver Slipper for an investment of $500,000.
>
> Paul Nelson has an option as a percentage of ownership of 34% in Silver Slipper for cash call of $81,000.
>
> Robert and Lana Martin have an option as a percentage of ownership of 34% in Silver

. . .

[14] See Defendant's Exhibit GGGGG, and specifically DEF0014893-DEF14894, attached to Lynita's Divorce Brief as Exhibit "E.".

Slipper for an investment of $375,000.[15]

Mike Cure has an option as a percentage of ownership of 34% in Silver Slipper.

Cliff McCarlie has an option as a percentage of ownership of 34% in Silver Slipper.[16]

Since the alleged debts owed by Dynasty will be satisfied or discharged through Dynasty's bankruptcy, and Eric does not claim, or has not proven, any personal liability for same, or liability on the part of the ELN Trust, the Court should not consider such debts in dividing the parties' community property.

D. Community Waste

Eric argues that the large sums of monies he gave to his family members during the pendency of this action do not constitute community waste. Specifically, Eric states:

> Though the parties have already divided all of their community property in 1993,[17] Lynita is requesting the court ignore their separate property agreement and grant her an unequal distribution based upon Eric's business dealings with his family members. Eric has always conducted business with his family members. That is what has built the wealth that Lynita's trust and Eric's trusts currently have. Doing business with family members is not a "compelling reason" to grant an unequal division of property. Mr. Bertsch's reports evidence the 1099's issued and the explanations of reimbursements for costs. Mr. Bertsch did not see fit to order copies of the 1099's from the IRS to verify but instead just listed what he saw. Lynita did not provide any evidence to contradict the 1099's in Mr. Bertsch's reports or the testimony of Nola Harber, who explained how family members work for Eric's trusts at times. Lynita has not met her burden as there is no compelling reason to make an unequal distribution.

As Eric admits, Mr. Bertsch uncovered countless payments by Eric to related individuals (Eric's family members and employees) made during these proceedings. Eric did produce to Mr. Bertsch certain 1099's to justify ***some of*** such payments, the authenticity of which was never independently verified with the Internal Revenue Service. Nonetheless, Eric was unable to account for **all** of the payments made to related individuals during the pendency of this action. Attached to Lynita's Divorce Brief as Exhibit "F" is a summary of the information concerning such payments contained in Mr. Bertsch's report (with references to pages in the actual reports where such information can be found). The amount received by each

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[15] The promissory notes given to Robert and Lana Martin are the only notes that appear to have been entered into by Eric individually. Such notes were executed by Eric on January 28, 2005, and June 1, 2006, and the time for repayment of same has long passed. Despite the fact that Eric claims that the promissory notes are outstanding obligations, Robert and Lana Martin have never pursued repayment of same, or collected against the collateral pledged in the June 1, 2006 promissory note, despite Eric's default for an extended period of time. The only logical explanation for this fact is that either (a) the loans were previously satisfied in some way or another (perhaps through Ms. Martin's employment arrangement with Eric), and Eric has not been candid with the Court; or (b) the Martins have waived there right to, or have no intention of ever pursuing, repayment.

[16] Eric's Brief, page 11, lines 7-22.

[17] This argument was previously addressed in Section A of this Legal Analysis.

individual in the summary was reduced for documented loan repayments and income that was supported by a 1099. Also taken out of the equation were any monies paid for "reimbursements" or "expenses." In addition, the monies received by Cal Nelson related to the Russell Road transaction were deducted from Mr. Bertsch's total calculation of monies given to Cal Nelson by Eric, since such sums are accounted for with respect to the Russell Road property. As has been clearly shown, Eric has given related individuals $1,329,065.25 which Eric has failed to document were anything other than gifts and unauthorized dissipations of community funds. Such transfers should be found by this Court to constitute community waste, with Lynita being compensated accordingly.

Eric's legal analysis regarding community waste also contains two (2) subsections discussing the Russell Road transaction and Bella Kathryn residence. Regarding Russell Road, Eric states that despite "[Robert P.] Dickerson's repeated barrage that the Russell Road property was a bad investment and should not have been made due to the option to purchase that would probably never happen . . . [t]he church exercised the option [and] if they pay off the note that the [ELN Trust] holds on the property it will have proved to have been a good investment." Since Eric takes such satisfaction in the fact that the church exercised its option on Russell Road, and believes same to have been a good investment, there seems to be no disagreement that Eric should receive the three (3) Russell Road promissory notes as his sole and separate property in the Court's final judgment. As set forth in Lynita's Divorce Brief, the interest in such promissory notes is worth $7,095,000.00, and given the information provided by Mr. Bertsch, this Court should find that based on the community funds invested in Russell Road, and lack of contribution by Cal Nelson, Eric and Lynita own a 100% interest in such promissory notes, and award same to Eric at a value of $7,095,000.00.

Regarding Bella Kathryn, the Court has already made it clear that it will award same to Eric at cost in its final judgment, due to the large sums of money Eric spent on the acquisition, construction, and improvement of Bella Kathryn during the pendency of this action, and in violation of the Court's Joint Preliminary Injunction ("JPI"):

> IT IS FURTHER ORDERED that if he desires to do so, Plaintiff [Eric] may order an appraisal of his Bella Kathryn residence (2911 Bella Kathryn Circle), at his expense. The Court has informed Plaintiff that Plaintiff's purchase of this residence and continued use of community funds to improve this residence appears to be a violation of the Joint Preliminary Injunction and the Court is inclined to assess the cost value against Plaintiff. The cost of

> Plaintiff's appraisal, if performed, will be assessed against Plaintiff in the final division of property."

Order entered August 24, 2011. Eric's Brief supports this result. Specifically, Eric states that he "did not make the improvements to [Bella Kathryn] so it could be sold in this economy [but instead] with the hope of future gain." Since Eric has decided to use community cash in violation of the JPI to make a long term investment "with the hope of future gain," there is no reason he should not bear all the risk associated with such investment. Accordingly, Eric should be awarded Bella Kathryn at a cost of $1,839,494.79.[18]

E. Alimony

Eric asks that the Court deny Lynita's request for alimony arguing that this is not an alimony case. In support of this position, Eric alleges that Lynita will have sufficient property at the conclusion of this matter to earn an income (despite the fact that Eric has requested to retain all the property titled in the name of the ELN Trust, which is almost all of the parties' income producing property), and has always earned an income from the LSN Trust. Eric's assertion that Lynita has always earned an income is self-serving, misleading, and contradicted by numerous statements made by Eric during trial, and in the very same brief he makes such assertion. The following are examples of statements made in Eric's Brief acknowledging that it was Eric only who had the business acumen to build the parties' wealth and generate an income:

> Eric has clearly been the driving force behind the parties' wealth.[19]
>
> . . .
>
> Eric has always conducted business with his family members. That is what has built the wealth that Lynita's trust and Eric's trust currently have.[20]
>
> . . .
>
> Neither the Court nor Lynita can disagree with Eric's business practices over the years since he started without anything and has been able to acquire more wealth than most of us will ever see.[21]

It is indisputable that any income or wealth accumulated during the parties' marriage was because of the investment decisions made by Eric. Eric openly boasts about his business acumen and ability to generate

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[18] Eric invested $1,839,494.79 into Bella Kathryn as of March 31, 2012. See Defendant's Exhibit GGGGG, and specifically DEF006818, attached to Lynita's Divorce Brief as Exhibit "B."

[19] Eric's Brief, page 3, line 23.

[20] Eric's Brief, page 13, lines 7-9.

[21] Eric's Brief, page 14, lines 12-13.

wealth at every opportunity he gets, except when it would require him to share any of said wealth with Lynita. Eric's true feelings about Lynita's ability to earn an income following the parties' divorce were made clear when he testified to the Court that Lynita is "mentally challenged." Accordingly, the Court should disregard Eric's misrepresentation that Lynita has ever been able to generate her own income, or has developed the skills necessary to develop any significant income in the future.

As set forth in Lynita's Divorce Brief, the Court has indicated throughout these proceedings that it is inclined to award Lynita lump sum alimony. Certainly the standards and guidelines established by the Nevada Supreme Court and Nevada Legislature support such an award. The parties have been married for nearly thirty (30) years. During their marriage, Eric has been the sole "breadwinner," while Lynita remained at home to care for the parties' five (5) children. As a result of Eric's earning potential, Lynita and the parties' two (2) remaining minor children have become accustomed to a certain standard of living that cannot be maintained without support from Eric. Lynita leaves this marriage at the age of fifty-one (51). She does not have a college degree, her last college class (horticulture) having been completed prior to her 1983 marriage to Eric. Lynita has not worked outside the home since 1986, and presently has no educational training or skills with which to obtain gainful employment. Her employment history is limited to being a sales clerk at a department store, receptionist at a mortgage company, and runner at a law firm. Undoubtedly, Lynita would have a very difficult time establishing a career at this stage in life. In fact, Lynita may be unemployable if she is "mentally challenged" as Eric suggests.

Although Lynita should receive property of substantial value at the conclusion of this divorce, absent an award of alimony, she will in all likelihood have to liquidate such property throughout the remainder of her life in order to provide for herself and her minor children. Lynita does not have the experience, expertise, business connections, and savvy to earn an income that is even closely comparable to Eric's proven earning ability. Further, even if Lynita were to liquidate her property, it is doubtful that such property alone will be sufficient to allow Lynita to live the rest of her life in the standard that the parties were accustomed to during marriage. Eric's ability to earn a substantial living, which ability was established during the course of the parties' marriage, will remain with him for the rest of his life. In essence, Eric is walking away from this marriage with the "career asset" that led to the accumulation of the parties' community wealth. Lynita respectfully requests the Court award her lump sum alimony of not less than

$1,000,000. Such an award is less than 7% of what Eric made during the course of this litigation alone,[22] and only 1.39 times the amount Eric determined the parties required from the ELN and LSN Trusts on an annual basis to support their lifestyle.[23]

F. Child Support

Pursuant to the Stipulated Parenting Agreement entered into by the parties on October 15, 2008, and entered as an Order of this Court on February 8, 2010, Lynita has primary physical custody of the parties' two (2) remaining minor children, Garett Nelson and Carli Nelson. In his brief, Eric acknowledges his obligation to pay child support to Lynita and requests that the Court order him to pay the presumptive maximum amount of $1,040.00 per month. As set forth in Lynita's Divorce Brief, the presumptive maximum is the minimum amount Eric should be ordered to pay in child support, and Eric's substantial monthly income, the lifestyle enjoyed by the parties' children during marriage, and the cost of the children's private education expenses all justify an upward deviation in support.

Regardless of whether the Court deviates from the presumptive maximum, in light of Eric's significant income and earning capacity, Eric should also be required to bear certain additional expenses on behalf of the parties' children, including the private education expenses for Carli, who is attending Faith Lutheran, medical insurance for both of the parties' minor children, and the children's extracurricular expenses. Lynita and Eric should equally share the costs of any medical, surgical, dental, orthodontic, psychological, and optical expenses of the minor children which are not paid by any medical insurance covering the children. All such costs and expenses should be ordered paid pursuant to the Court's standard "30/30" Rule.

Finally, Eric requests that the Court deny Lynita's request for constructive arrears because of the money Eric has spent on all of the parties' children (minor and adult) during these proceedings. NRS 125B.030 allows the Court to award Lynita constructive arrears back to the time the parties entered into their Stipulated Parenting Agreement in October, 2008. As the Court is aware, Lynita has not received any child

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[22] From January 2009 to April 2012, Eric's net income from rental and interest payments was $1,024.822.53. During the same time period, Eric had other sources of income totaling $13,880,124.60, of which only $594,500.72 was necessary for Eric's company operating expenses. See Defendant's Exhibit GGGGG, and specifically DEF006818, attached to Lynita's Divorce Brief as Exhibit "B."

[23] The Court will recall that the evidence presented at trial, and particularly the purported "Minutes" of the ELN and LSN Trusts, demonstrates that Eric determined the parties' needed $60,000.00 a month, or $720,000.00 per year, from the trusts to support their lifestyle.

support or maintenance from Eric throughout these proceedings. Instead, Lynita has been forced to deplete all of the savings available to her on living expenses for herself and the parties' minor children, and fees and costs (which were exponentially increased as a result of Eric's vexatious litigation tactics). Lynita's counsel is unaware of any statute or decision which provides that a parent's unilateral decision to pay expenses for adult children, or to spend monies on minor children directly, will relieve himself or herself from a child support obligation owed to the other parent. If there were such a law or decision, certainly Eric would have requested to continue making, at his sole and absolute discretion as to amount and purpose, contributions towards the adult children's expenses or to the minor children directly, in lieu of paying support to Lynita. For the reasons set forth above, the Court should establish Eric's child support obligation and impose constructive arrears from October, 2008 to the time of the Court's order.

G. Attorneys' Fees

As was discussed in the Introduction, Eric had the unmitigated gall in his brief to allege that it was Lynita who has caused this matter to drag on for two (2) years after the beginning of trial, and to request an award of attorneys' fees. Eric's request for fees and costs can only be seen as an attempt to make a mockery of this Court and the judicial system as a whole. The record is clear that this matter proceeded for two (2) years after the beginning of trial solely because of Eric's desire to re-write history and erase all litigation prior to, and including, the first six (6) days of trial. As was set forth in Lynita's Divorce Brief, it is impossible to imagine a more vexatious and frivolous claim than a claim which is taken **to defeat one's own position in the very same litigation**. Accordingly, and for the reasons set forth herein and in Lynita's Divorce Brief, Lynita should be awarded the attorneys' fees and costs she has incurred in this matter as a result of Eric's and the ELN Trust's vexatious and frivolous legal games, in addition to one-half (½) the fees and costs Eric paid from community funds to finance such games.

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IV. CONCLUSION

For the reasons set forth above and in Lynita's Divorce Brief and Trust Brief, the Court should enter an Order denying the relief sought by Eric and the ELN Trust, and awarding Lynita her share of the parties' community property, alimony, child support, and attorneys' fees and costs.

DATED this 28th day of September, 2012.

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ERIC L. NELSON NEVADA TRUST
dated May 30, 2001

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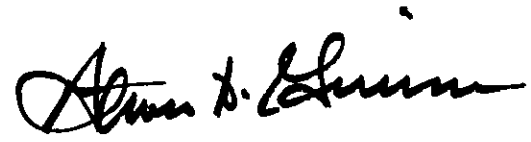

CLERK OF THE COURT

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.

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D411537

Dept.: O

MOTION TO DISQUALIFY JUDGE SULLIVAN

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MOTION TO DISQUALIFY JUDGE SULLIVAN

The Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, by and through her Counsel, the law firm of Solomon Dwiggins & Freer, Ltd., hereby move this Court to disqualify Judge Sullivan in the instant matter.

This Motion is based on the following Memorandum of Points and Authorities, all papers and pleadings on file herein, as well as any oral argument of Counsel as may be permitted at the hearing on this matter.

DATED this 3rd day of December, 2013.

SOLOMON DWIGGINS & FREER, LTD.

By: _____

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NOTICE OF MOTION

TO: The above-named parties; and

TO: Their respective counsel of record

PLEASE TAKE NOTICE that the undersigned will bring the above **MOTION TO DISQUALIFY JUDGE SULLIVAN** before Department Number 9, on the 2nd day of Janurary, 2014, at the hour of 3:00 am a.m/p.m., or as soon thereafter as counsel can be heard.

DATED this 3rd day of December, 2013.

SOLOMON DWIGGINS & FREER, LTD.

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The ELN Trust made its appearance in the instant divorce proceeding on or around August, 2011. The ELN Trust initially believed that Judge Sullivan would oversee this proceeding in a fair and unbiased manner; however, it has become abundantly clear that the ELN Trust was mistaken. Indeed, Judge Sullivan's bias towards the ELN Trust has become readily apparent making it clear that a reasonable person, knowing all the facts, would harbor reasonable doubt about Judge Sullivan's impartiality. For this reason and those set forth below, this Court should disqualify Judge Sullivan as the judge in this matter and appoint an unbiased District Court Judge in his stead.

II. STATEMENT OF FACTS

a. SEPARATE PROPERTY AGREEMENT AND SEPARATE PROPERTY TRUSTS

On or around July 13, 1993, Eric and Lynita entered into the Separate Property Agreement, wherein they divided their community property into separate property, and established THE ERIC L. NELSON SEPARATE PROPERTY TRUST dated July 13, 1993 ("ELN Separate Property Trust"), and THE NELSON TRUST dated July 13, 1993 ("LSN Separate Property Trust") due to Lynita's moral adversion to gaming and other types of risky investments. Jeffrey L. Burr, Esq., the scrivenor of the Separate Property Agreement, ELN Separate Property Trust and LSN Separate Property Trust, confirmed Lynita's adversion to gaming and testified that another purpose of the aforementioned Separate Property Agreement and trusts were to:

> take community property that would be exposed 100 percent to liabilities that Eric might incur in the venture he was undertaking and to separate that community property into separate property so that at least Lynita's one-half could remain protected in the event a liability occurred and that Eric were to, well, incur liability and they would try to reach Lynita's assets. The creditors could not reach the assets.[1]

[1] *See* Deposition Transcript of Jeffrey L. Burr at p. 117, l. 25 - p. 118, l. 1-7, attached hereto as **Exhibit 1**.

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Prior to entering into the Separate Property Agreement, Lynita met with competent Counsel, Richard Koch, Esq., who explained to her the effect of the Separate Property Agreement. Indeed, Mr. Koch, who acknowledged that he had no independent recollection of the 1993 events, nevertheless testified that it was his custom and practice to:

> explain how community and separate property work and it'd kind of be about the principles about bringing property into the marriage, about the community property rights that have accrued during the marriage, about how community property and separate property can be converted.
> And I would have, I guess, wanted her to be satisfied that she was an intelligent woman who has some understanding of that, that this was done freely by her.[2]

At trial, Lynita failed to introduce any evidence that the Separate Property Agreement, ELN Separate Property Trust or LSN Separate Property Trust are invalid or that she lacked a sound understanding of the legal implications of said documents prior to executing the same.

b. SELF-SETTLED SPENDTHRIFT TRUSTS

On May 30, 2001, in order to enhance the estate plan Eric and Lynita had in place, Mr. Burr recommended that Eric establish the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN Trust") and that Lynita establish the LYNITA S. NELSON NEVADA TRUST dated May 30, 2001 ("LSN Trust"). The ELN Trust was funded by assets that were wholly owned by the ELN Separate Property Trust. Likewise, the LSN Trust was funded by assets that were wholly owned by the LSN Separate Property Trust. Eric has always served as Investment Trustee of the ELN Trust, and Lynita has always served as Investment Trustee of the LSN Trust.

At trial, Lynita failed to introduce any evidence that the ELN Trust is invalid or that she lacked a sound understanding of the legal implications of said trusts.

c. TRIAL AND ISSUANCE OF A DIVORCE DECREE

Trial on the majority of the issues surrounding the instant divorce proceeding concluded in August 2012. Judge Sullivan issued his fifty page Decree of Divorce on June 3, 2013, wherein he

[2] *See* Deposition Transcript of Richard Koch, Esq. at p. 22, l. 20 - p. 23, l. 4, attached hereto as **Exhibit 2**.

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found that both the ELN Trust and LSN Trust were "established as a self-settled spendthrift trust in accordance with NRS 166.020,"[3] and that the ELN Trust was funded with assets that were previously owned by the ELN Separate Property Trust that had been established by Eric in or around 1993,[4] and the LSN Trust was funded with assets that were previously owned by the LSN Separate Property Trust that had been established by Lynita in or around 1993.[5]

Despite the fact that Judge Sullivan recognized that the Nevada State 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,"[6] and ordered that the ELN Trust and LSN Trust would remain intact,[7] Judge Sullivan ordered the ELN Trust to distribute some of its assets to pay Eric's personal obligations to Lynita, her Counsel Bob Dickerson, Esq., and the court-appointed special master Larry Bertsch.[8] Such ruling exceeded Judge Sullivan's jurisdiction, NRS Chapter 21 and Nevada's self-settled spendthrift trust statutes. For this reason, the ELN Trust filed two separate Petitions for Writ of Prohibition and two emergency Motions to Stay with the Nevada Supreme Court. Despite the fact that the Nevada Supreme Court has granted both Motions to Stay, copies of which are attached hereto as **Exhibits 4** and **5** respectively, Judge Sullivan continues to make rulings that adversely affect the ELN Trust based upon his bias toward both Eric and the ELN Trust. Indeed, Judge Sullivan's recent rulings clearly illustrate his bias and penchant to rule in Lynita's favor irrespective of whether such rulings comply with Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure, Eighth Judicial District Court Rules or Nevada Revised Statutes. For these reasons, it is imperative that Judge Sullivan

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[3] *See* Decree of Divorce at 4:25, attached hereto as **Exhibit 3**.

[4] *See id.* at 4:16-17.

[5] *See id.* at 5:2-3.

[6] *See id.* at 5:13-14.

[7] *See id.* at 44: 9-17.

[8] *See id.* at 48:14 – 49:3.

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be disqualified as the Judge in the instant matter and that an unbiased District Court Judge be appointed in his stead.

III. LEGAL STANDARD

Nevada has two statutes governing disqualification of district court judges: NRS 1.230 and Nevada Code of Judicial Conduct ("NCJC) Canon 2.11. NRS 1.235 requires that an affidavit for disqualification be filed at least twenty days before trial or at least three days before any contested pretrial matter is heard; however, when new grounds for disqualification are discovered after the statutory time has passed, NCJC Canon 2.11 provides an additional, independent basis for seeking disqualification. Specifically, NCJC Canon 2.11 provides, in part:

> (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
>
> (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
>
> . . .
>
> (5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

In *Towbin Dodge, LLC v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark*, 121 Nev. 251, 112 P.3d 1063 (2005), the Nevada Supreme Court took the opportunity to clarify the procedure to be followed when a party seeks to disqualify a district court judge after the deadline for filing an affidavit of bias and prejudice pursuant to NRS 1.235:

> We conclude that the federal procedure provides a convenient method for enforcing Canon 3E in situations when NRS 1.235 does not apply. Thus if new grounds for a judge's disqualification are discovered after the time limits in NRS 1.235(1) have passed, then a party may file a motion to disqualify based on Canon 3E as soon as possible after becoming aware of new information. The motion must set forth facts and reasons insufficient to cause a reasonable person to question the judge's impartiality, and the challenged judge may contradict the motion's allegations. We deviate from federal practice in one respect, however. While the federal procedure

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> permits the challenged judge to hear the motion, we share the concerns identified by some federal courts when the challenged judge decides the motion. Thus, the motion must be referred to another judge. *Id.* at 121 Nev. at 260, 112 P.3d at 1069-1070.

Further, the Nevada Supreme Court made it clear that a motion to disqualify must be filed in the district court prior to seeking writ relief directly with the Nevada Supreme Court. *Id.* at 121 Nev. at 261, 112 P.3d at 1070 ("Writ relief is not warranted in this instance because petitioners have an adequate remedy at law in the form of a motion to disqualify based on the Code of Judicial Conduct, as set forth in this opinion. Accordingly, we deny the petition.").

"[T]he test for whether a judge's impartiality might reasonably be questioned is objective," and presents "a question of law [such that] this court will exercise its independent judgment of the undisputed facts."[9] Because a judge is presumed to be impartial, "the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification."[10] Ultimately, the court must decide "whether a reasonable person, knowing all the facts, would harbor reasonable doubts about [the judge's] impartiality."[11]

IV. LEGAL ARGUMENT

a. JUDGE SULLIVAN SEEKS TO THWART THE NEVADA'S SUPREME COURT'S RULINGS.

As indicated *supra*, despite the fact that the Nevada Supreme Court has granted the ELN Trust's Motions' to Stay, thereby giving at least some credence to the ELN Trust's contention that Judge Sullivan exceeded his jurisdiction, Judge Sullivan has repeatedly stated that if the Nevada Supreme Court grants the ELN Trust's Petitions for Writ of Prohibition he will merely invalidate the ELN Trust:

> THE COURT: Yeah, we'll get there, the issue. I tell you, depending on what the Supreme Court does, you know, I thought my order of

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[9] *Ybarra v. State*, 247 P.3d 269, 272 (Nev. 2011), reh'g denied (June 29, 2011), *cert. denied*, 132 S. Ct. 1904, 182 L. Ed. 2d 776 (U.S. 2012).

[10] *Id.*

[11] *Id.*

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> decree made it clear that I was inclined to set aside those spendthrift trusts.[12]
>
> . . .
>
> THE COURT: And depending on what the Supreme Court does, they may remand it back to me and I may set aside the trust and we'll go to round two in the Supreme Court.[13]
>
> . . .
>
> THE COURT: I made it real clear in my divorce decree that the Supreme Court – depending what they do on that came back to me on a question for this Court that I would invalidate the trust . . .I'm not sure if that could impact a writ that. . ."[14]
>
> . . .
>
> THE COURT: But I think I made my divorce decree real quick – real clear. I think I made a specific finding that in the event that I felt clearly I could invalidate the trust. That – because that gave indication where I was going in case Supreme Court otherwise that I would invalidate the trust based on the formalities. . ."[15]

The ELN Trust is perplexed by the aforementioned statements because the Divorce Decree most certainly does not state that Judge Sullivan would invalidate the ELN Trust if the Nevada Supreme Court overturned his decision. To the contrary, in his Divorce Decree Judge Sullivan merely stated he "could have" invalidated both the ELN Trust and LSN Trust; however, he decided not to do so.[16] Further, although the Divorce Decree states that he could have invalidated both the ELN Trust

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[12] *See* September 5, 2013, Hearing Transcript at 25:6-9, attached hereto as **Exhibit 6**.

[13] *See id.* at 41:8-11.

[14] *See* October 21, 2013, Hearing Transcript at 12:19-21, attached hereto as **Exhibit 7**.

[15] *Id.* at 17:4-9.

[16] See Ex.3 at 29:14-19 ("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."), and 44:9-17 ("THE COURT FURTHER FINDS that while the Court could invalidate the Trusts based upon . . . the Court feels that keeping the Trusts intact, while transferring assets between the Trusts to "level off the Trusts", would effectuate the parties clear

and LSN Trust, Judge Sullivan appears now to have taken the position that if he is overturned he will merely invalidate the ELN Trust and not the LSN Trust thereby further illustrating his bias towards the ELN Trust.

Such statements and actions illustrate Judge Sullivan's bias towards the ELN Trust and his predisposition to do anything that he believes is necessary, even if it means ignoring the direction given by the Nevada Supreme Court and/or Nevada law, to provide an economic windfall to Lynita. This fact is well known to all Parties, and Lynita's Counsel constantly reminds Judge Sullivan of his purported intent to invalidate the ELN Trust and not the LSN Trust, which once again is inconsistent with the Divorce Decree:

> MR. KARACSONYI: . . . at the last hearing you said that if this comes back, you may just invalidate the trust that your purpose was just to keep the trust as a faction just to protect the parties because you thought you could reach your – the – the relief that you ordered through other means. [17]

In light of the foregoing, it is evident that the ELN Trust cannot get a fair resolution of this matter so long as it is heard by Judge Sullivan. For this reason, the ELN Trust's Motion to Disqualify should be granted.

b. JUDGE SULLIVAN SEEKS TO IMPOSE RESTRICTIONS ON THE ELN TRUST THAT HAVE NOT BEEN REQUESTED BY LYNITA.

On August 1, 2013, the Parties appeared at a routine Status Check to see (1) whether Eric had paid $1,032,742 to Lynita, and (2) whether the ELN Trust had produced an accounting of rental income. At the hearing, Judge Sullivan, without briefing or a request from Lynita's Counsel, advised the Parties for the first time that he was inclined to issue a charging order against any distributions from the ELN Trust to Eric:

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intentions of "supercharging" the protection of the assets from creditors while ensuring that the respective values of the Trusts remained equal.").

[17] *Id.* at 9:6-11.

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THE COURT: **And so I'm inclined to issue a charging order against any distributions that Mr. Nelson has coming. I think I can clearly do that with a charging order no matter what they rule on the trust**. I think as far as spousal support and child support, I think it's clear from the case law that I have looked at from spendthrift trusts that they can issue charging orders against any distributions that the parties get in to satisfy any family support issues. The issue on that is with their stay. Does that stay might – the spousal support order as well. And I'd be inclined to set about issue in a charging order against any distributions that the trust would pay to Mr. Nelson to satisfy his spousal support and child support obligations. . . So I would be inclined to . . . put a charging order against any proceeds and any distributions to Mr. Nelson and that that money would go to that first. . . I know I can issue a charging order. I'm very comfortable about that. . . **I can definitely do charging orders against the trust, any distributions he gets to make sure that any orders other than this Court that are enforceable would be paid before he gets any distributions under the trust. And I'm pretty comfortable I can do that**.[18]

At the same hearing, Judge Sullivan, once again on his own volition and without a request from Lynita's Counsel, ordered the ELN Trust to provide an accounting for the Lindell Property[19] and pay Lynita the 50% of rental proceeds from January 1, 2010, through January 1, 2013.[20] Judge Sullivan's order is significant because he had already "equalized" and/or "leveled off the ELN Trust ($8,783,487.50) and LSN Trust ($8,785,988.50)" in his Divorce Decree. Consequently, by forcing the ELN Trust to pay Lynita and/or the LSN Trust 50% of rental proceeds from the Lindell Property

[18] *See* August 1, 2013, Hearing Transcript at 10:2-11:19, attached hereto as **Exhibit 8**.

[19] *See id.* at 12:4-5 (THE COURT: "I'm also going to order an accounting of the Lindell property, because I think you're entitled to 50 percent of that property since you held it throughout the course of this marriage."); 12:17-13:8 (THE COURT: "So I need to get the Lindell real property and accounting for the Lindell property, because you're definitely entitled to that now no matter what the Supreme Court says on that, because that was clearly LSN 50/50 at best. So I think you're entitled to the rental proceeds from Lindell going back to when this decree was filed – or at least when you got 50 percent ownership. . . I think you're entitled to – to rent proceeds from that time minus any costs on that that they can establish. I want an accounting from the Lindell property and do you know off the top of your head when the ownership – I don't know when – when the property was bought and transferred.").

[20] *See* Minute Order from August 1, 2013, Hearing, attached hereto as **Exhibit 9**.

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January 1, 2010, through January 1, 2013, after he made it clear in the Divorce Decree of his intent to equalize the ELN Trust and LSN Trust, it is evident that Judge Sullivan is penalizing the ELN Trust for filing the Petitions for Writ of Prohibition with the Nevada Supreme Court. Indeed, upon information and belief, had the ELN Trust not filed such Writs Judge Sullivan would have never ordered the ELN Trust to pay such rental proceeds.

Finally, at the same hearing, Judge Sullivan, once again on his own volition and without request from Lynita's Counsel, stated that he would consider an injunction against the ELN Trust.[21]

The fact that Judge Sullivan is willing to impose restrictions on his own volition, which the ELN Trust contends exceeds his jurisdiction, further illustrates Judge Sullivan's bias and must be removed. Indeed, it is as if Judge Sullivan is litigating this matter more vigorously on Lynita's behalf than her own Counsel. Irrespective, it is clear that the ELN Trust cannot and will not obtain a fair resolution of this matter so long as this matter is heard by Judge Sullivan.

c. JUDGE SULLIVAN FREQUENTLY GRANTS LYNITA RELIEF THAT HE CONCEDES IS IMPROPER AND EXCEEDS HIS JURISDICTION.

On June 17, 2013, Lynita filed a Motion to Amend or Alter Judgment, for Declaratory and Related Relief, wherein she sought among other things, for Judge Sullivan to award her a 50% interest in an entity named Wyoming Downs, which was purchased by an entity owned 100% by the ELN Trust. At the July 22, 2013, hearing on Lynita's Motion to Amend or Alter Judgment, Lynita's Counsel, for the first time,[22] requested that Judge Sullivan treat Wyoming Downs as an undisclosed

[21] *See* Ex. 8 at 21: 7-20 (THE COURT: "I would also include – I also would consider an injunction on that 1.5 million. . . So I don't know if I need an injunction or not. But that would be my inclination at this point . . .").

[22] This is but one of many examples of Lynita's Counsel's penchant to demand that Judge Sullivan undertake certain actions at hearings without affording Counsel for the ELN Trust an opportunity to brief the issue. Indeed, at the majority, if not all of the hearings, since the entry of the Divorce Decree, Lynita has requested that Judge Sullivan make rulings that have not been properly noticed or briefed. For example, at the July 22, 2013, hearing Lynita's Counsel requested that Judge Sullivan, for the first time, treat Wyoming Downs as an undisclosed asset under *Aime*. *See* July 22, 2013, Hearing Transcript at 60:4-6 and 61:5-8. The most troubling aspect however is that Judge Sullivan entertains such arguments, and in most instances, grants the requested relief.

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asset under *Aime v. Amie*, 106 Nev. 541, 796 P.2d 233 (1990),[23] despite the fact that the Parties introduced evidence regarding Wyoming Downs at trial, and Judge Sullivan specifically referenced Wyoming Downs in the Decree of Divorce.[24] More important however, Judge Sullivan admitted that Wyoming Downs was a disclosed asset, and as such, he could not treat it as an undisclosed asset under *Aime*:

> THE COURT: Yeah, as far as what the Supreme Court would do and not do, I don't know, but **normally *Amie* is the undisclosed asset here. It was the – the asset was disclosed**, but the fact is that's why I made my finding. That was maybe I should have been more specific to make it clear that I was without sufficient information regarding the details to make any determination I thought was fair and just on the disposition that property because I did want to consider all of the evidence on that. **I don't know if I could consider that a final order or not**. I mean, I would like to get this done so you don't sit there and tie everything up. I'm sure the other side may want it tied up more and more just to get 'er done, **but I would like to treat it as an undisclosed asset. I'm not sure if I can to be honest**. I just don't know since this is kind of came up that.[25]
>
> . . .
>
> THE COURT: **I just don't know if they can – and to be honest if they can do that, because the fact it was addressed specifically in my decree, so it wasn't an undisclosed asset**. I just don't know. I think in fairness of equity and justice my intent would be to consider that a final order and do this as separate, but I'm just not sure if that would hold up to be honest under scrutiny. But that would be my desire to try to get this done for the other issue, because it may not become another issue if I find out that

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[23] *See* July 22, 2013, Hearing Transcript at 52:2-7, attached hereto as **Exhibit 10** ("MR. DICKERSON: - this to be treated as a motion to have an equal distribution of undisclosed assets or asset – because under *Aimee*, assets that were not included in the decress so that we have a final decree of divorce and they can do with that whatever they would like. And then we can have this issue dealing with this property treated separately."); Ex. 6 at 29:21- 30:2 ("I think the appeal would be the appropriate way to do it, Supreme Court decide, but that's up to them with their writ or their stay. My thing is she should get her award under the divorce decree and you should be chasing that on appeal. And if you win on the appeal, then you can make her sell everything, get your money back.").

[24] *See* Ex. 3 at 45:23-46:3.

[25] *See* Ex. 10 at 52:24-53:15.

it's – they don't have an interest on that. Of course, they – they may appeal of course on that, but at least he gets it resolved one way of the other.
So I would be inclined to try to treat it under *Amie*. I just don't know if that would hold up to be honest, because I haven't researched it. I haven't researched it.[26]

. . .

THE COURT: I just don't – you know, I would be inclined to order mine as a final order and then used just as in Aime for undisclosed assets just to try to get it moving forward. **My thing is I don't know if I'm comfortable putting it in an order, because I do have some reservations that I haven't look at it**. But that goes to my intent when I did the order was I haven't done any decision that knowing that, but I was hoping that wasn't going to delay everything. **And I did consider that at the beginning that may tie things up, because there wouldn't be a full distribution of all the . . . the properties**.[27]

Despite Judge Sullivan's admission that Wyoming Downs was a disclosed asset, for reasons unbeknownst to the ELN Trust, he ordered that he would treat his Divorce Decree as a final order under Aimee:

THE COURT: Okay. Well, here's what we'll do as far as this what we're going to do. **I'm going to consider my divorce decree a final order, consider this under *Amie***.[28]

. . .

THE COURT: Okay. I think in fairness, then let's – **I'm going to have you put in the order that the Court's going to consider its – this divorce decree as a final order. We'll address this under *Amie* as an undisclosed asset**. . .[29]

Judge Sullivan's order regarding Wyoming Downs from the July 22, 2013, hearing further illustrates that he is willing to grant any relief requested by Lynita to the detriment of the ELN Trust,

[26] *Id.* at 53:21-54:10.

[27] *Id.* at 56:10-19.

[28] *Id.* at 60:4-6.

[29] *Id.* at 61:5-8.

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even if it violates Nevada case law. Further, it is important to note that such relief was not briefed and/or requested in Lynita's Motion to Amend or Alter Judgment. Indeed, the fact that Judge Sullivan entertains Lynita's Counsels oral requests at hearings, without briefing as required by the Nevada Rules of Civil Procedure, and routinely grants such requests, further illustrates Judge Sullivan's bias against the ELN Trust.[30]

d. JUDGE SULLIVAN REPEATEDLY DENIES THE ELN TRUST'S REQUESTS BECAUSE HE BELIEVES IT WILL ADVERSELY AFFECT THE ELN TRUST'S PETITIONS FOR WRIT OF PROHIBITION THAT THE ELN TRUST FILED WITH THE NEVADA SUPREME COURT.

Lana Martin has served as the Distribution Trustee of the ELN Trust since June 8, 2011. On June 10, 2013, Lana Martin resigned as the Distribution Trustee of the ELN Trust.[31] Pursuant to the Change of Trusteeship for the ELN Trust dated June 8, 2011, Jeffrey Burr, Esq., appointed Nola Harber to serve as the Successor Distribution Trustee of the ELN Trust in the event that Ms. Martin became "deceased, unable or unwilling to serve as the current Distribution Trustee."[32] On June 10, 2013, Ms. Harber accepted the appointment as the Successor Distribution Trustee of the ELN Trust.[33] Notice that Ms. Martin had resigned and that Ms. Harber was serving as the Successor Trustee was provided to all parties and filed with the Court as early as July 16, 2013.[34]

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[30] Another example of Judge Sullivan granting relief that Lynita's Counsel demanded, without complying with the Nevada Rule of Civil Procedure and Eight Judicial District Court Rules, pertains to Lynita's Counsel's request for the appointment of a receiver over the ELN Trust at the August 1, 2013, hearing. *See* Ex. 8 at 24:3-8 (MR. DICKERSON: "Just a couple of thoughts. First approximately a year and a half, two years ago we filed a motion seeking the appointment of – of a receiver. And it's my recollection you deferred ruling on that motion. I believe Your Honor has the authority *sua sponte* to consider the appointment of a receiver.").

[31] *See* Resignation, attached hereto as **Exhibit 11**.

[32] *See* Change of Trusteeship, attached hereto as **Exhibit 12**.

[33] *See* Acceptance by Successor Distribution Trustee to Act as Current Distribution Trustee, attached hereto as **Exhibit 13**.

[34] *See* Notice of Substitution of Distribution Trustee (exhibits thereto omitted), attached hereto as **Exhibit 14**.

When Lynita discovered that Ms. Martin had resigned as Distribution Trustee, and that Ms. Harber accepted appointment as Distribution Trustee, she complained that (1) by changing the Distribution Trustee the ELN Trust could avoid compliance with the District Court's Decree,[35] and (2) Ms. Harber lacked standing to maintain the Writs on file with the Nevada Supreme Court. For these reasons, the ELN Trust filed a Motion to Substitute Parties, which was heard by Judge Sullivan on October 21, 2013. Despite the fact that Lynita alleged that the ELN Trust changed its Distribution Trustee to impede Judge Sullivan's Divorce Decree, to the ELN Trust's surprise, Lynita opposed the ELN Trust's Motion to Substitute.

At the hearing on the ELN Trust's Motion to Substitute Judge Sullivan was perturbed that the ELN Trust had the audacity to change the Distribution Trustee without first his seeking his approval:

> THE COURT: Well-well, you know, this case will go on and on and on as far as I'm going to deny the motion. No one's asked for my input on this before. . . I'm not sure if that could impact a writ that's up there. I don't know if that's something that could be a – a flaw that mayble the writ would address . . .[36]

It is important to note that the ELN Trust does not require Judge Sullivan's approval to change its Distribution Trustee. To make more matters perplexing, Judge Sullivan denied Lynita's countermotion to appoint what she deemed "an authorized trustee" of the ELN Trust:

> THE COURT: But I'm denying the motion to substitute and I'm denying the countermotion to appoint someone. I'm not getting into that stuff. I'm not going to get into an appoint and appoint someone that is a non-interested or a non-related party. We've litigated that several times already.[37]

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[35] Indeed, in her Reply to Opposition to Defendant's Motion to Amend or Alter Judgment, for Declaratory and Related Relief and Joinder to Opposition at FN 1, previously filed on July 11, 2013, Lynita contended: "[i]n theory, Eric could have the Distribution Trustee of the ELN Trust changed continuously to avoid compliance with the District Court's Decree. NRCP 25(c) prevents a party from having to litigation against such a moving target, and only allows for t he substitution of a successor in interest upon motion." Further, in her Answer to Petition for Writ of Prohibition previously filed in Nevada Supreme Court Case No. 63545 at 15:23, Lynita contended: "[i]t should not be Lynita's burden to chase a moving target."

[36] Ex. 7 at 12:14-13:4.

[37] *Id.* at 15:15-20.

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It is readily apparent that Judge Sullivan denied the Motion to Substitute because he believed it would adversely affect the ELN Trust's Petitions for Writ of Prohibition currently pending before the Nevada Supreme Court. Indeed, if Judge Sullivan believed that it was improper for Ms. Harber to serve as the Distribution Trustee of the ELN Trust it is reasonable to conclude that he would have removed her. The fact that he did not further evidences Judge Sullivan's bias towards the ELN Trust.

e. JUDGE SULLIVAN CONTINUES TO COMPEL THE ELN TRUST TO COMPLY WITH UNREASONABLE DEADLINES IN ORDER TO IMPEDE ITS ABILITY TO SEEK RELIEF FROM THE NEVADA SUPREME COURT.

Judge Sullivan's Decree of Divorce, ordered, among other things, that the ELN Trust pay Lynita $800,000 in lump sum spousal support, $87,775 in child support arrears and $144,967 in attorneys' fees and cost, for a total of $1,032,742, within thirty (30) days of issuance of the Divorce Decree.[38] On June 5, 2013, Lynita filed a Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of Same, and for Immediate Payment of Court Appointed Expert ("Motion for Payment") demanding that payment be rendered within twenty-four (24) hours.[39] The ELN Trust objected to such relief and requested that Judge Sullivan grant a stay so that it may file a petition for writ of mandamus with the Nevada Supreme Court.[40]

At the hearing on Lynita's Motion of Payment on June 19, 2013, Judge Sullivan conceded that the reason why he ordered said funds to be transferred from the ELN Trust to Lynita within thirty (30) days of issuance of the Divorce Decree was because he believed the ELN Trust would file an appeal and he wanted to give the ELN Trust sufficient time to do so.[41] Notwithstanding, Judge Sullivan

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[38] *See* Ex. 3 at 48: 10-21.

[39] *See* Motion for Payment, previously filed on June 5, 2013.

[40] *See* Opposition to Motion for Payment and Countermotion, previously filed on June 18, 2013.

[41] *See* June 19, 2013, Hearing Transcript at 12:24-13:1, attached hereto as **Exhibit 15** ("THE COURT: Okay. Yeah. We'll deal with that when it comes. My concern is this case is I thought that there could be possible appeals on that. I felt that – give people some time."). At other hearings Judge

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quickly changed course and demanded that the ELN Trust turnover said funds by 5:00 p.m. on June 21, 2013, more than ten (10) days sooner than required under the Divorce Decree, despite the fact that Eric, the Investment Trustee of the ELN Trust and only signator on the account where such funds were held, was in the Thailand with three (3) of his and Mrs. Nelson's children.[42]

In support of his order that the ELN Trust pay Lynita over $1,000,000.00 within forty-eight hours Judge Sullivan stated his belief that Lynita had sufficient collateral to repay the $1,000,000 if the Nevada Supreme Court overturned his decision.[43] Ironically, Judge Sullivan disregarded the fact that the ELN Trust also had sufficient collateral to cover the $1,000,000 that he ordered to be paid to

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Sullivan has stated that his intent was to give the Parties sufficient time to file an appeal; however, his actions have proven otherwise. Indeed, at the July 22, 2013, hearing Judge Sullivan once again stated that he respected everybody's right to appeal, but then sought to have the ELN Trust execute documents for the transfer of property at such hearing despite the fact that he knew the ELN Trust had filed a writ on that issue. *Cf.* Ex. 10 at 25:14-26:7 (THE COURT: "There was some question as to why my order I made everybody payable to transferring 30 days. I did that because I assume there would be appeals. And I don't do things high handed to put the pressure on everybody to try and get them that same day. . . But that's why I did it for the 30 days was saying they give everybody a chance to breathe, do their thing, get the Supreme Court and not have everyone panicking running around because I did respect everybody's rights to appeal . . . So I understood then I want to give everybody a chance to get that and let the Supreme Court step in any way they want, because these parties need to get this done.") *with* 17:17-20 (THE COURT: "Okay. Let's get those two signed forthwith. Do you need a notary or can we do it now or is it something you need to look at? I just want to get it done within 24 hours or-"). Judge Sullivan ultimately gave the ELN Trust about a week to execute the deeds; however, the Nevada Supreme Court stayed Judge Sullivan's order.

[42] Indeed, when Counsel for the ELN Trust apprised Judge Sullivan about Eric's absence from the country, Judge Sullivan ridiculed Counsel's concern by stating: "I – I believe Thailand has telephones and emails in Thailand I believe they have, so I imagine that it – Mr. Nelson can be contacted." Ex. 15 at 19:4-6. Further, on another occasion, Eric, the Investment Trustee of the ELN Trust advised Judge Sullivan that his orders were impeding the ELN Trust's ability to conduct business and having an adverse effect on Eric and Lynita's children. In response, Judge Sullivan stated: "Suffer? Didn't they just go to Thailand or something? Weren't you in Thailand at the last hearing with the kids? . . . Well I don't know if that's suffering -." Ex. 6 at 27:13-21.

[43] *See* Ex. 15 at 14:18-15:4 ("But I think – there's other ways I could protect that if it's appropriate, because there is sizable real estate that could be pledged as collateral if necessary. So I think that there is a remedy . . . so I'm not sure you couldn't get that money back. I think there's collateral there that could be assigned by this Court to cover the million dollars and some change paid to Ms. Nelson so that if you were successful on appeal, they would have collateral."); *Id.* at 21:15-18 ("I do not believe that the release of those funds put you at any risk from the trust, because I do believe that Ms. Nelson has significant resources that will – could be able to be collateral if – if you need that.").

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Lynita. Perhaps most disturbing however is that Lynita's own Counsel confirmed that Lynita would likely dissipate the $1,000,000 because: (1) "Lynita has no monies available to her;" (2) "she has significant debt," which includes at least $53,000 in credit card debt; and (3) Lynita had spent over $2,000,000 since 2009.[44] Judge Sullivan's concern for Lynita, to the detriment of the ELN Trust, has been a reoccurring theme throughout this litigation. For example, Judge Sullivan has made it clear that if the Petitions for Writ of Prohibition are denied he intends to enforce the Divorce Decree prior to affording the ELN Trust an opportunity to file an appeal thereby forcing the ELN Trust to "chase [its] money back the other way."[45] In other words, if the ELN Trust is successful on appeal Judge Sullivan believes it is equitable for the ELN Trust to incur the time and expense recoup the money that he erroneously ordered to be paid to Lynita.

Such rulings are not those of an unbiased judge, but rather one that seeks to effectuate his intent irrespective of whether it violates a party's right to due process and/or Nevada law. Consequently, it is imperative that this Court appoint an unbiased judge to hear the remainder of this matter.

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[44] *See* Ex. 15 at 7:21-8:19.

[45] *See* Ex. 15 at 14:2-14.

V. CONCLUSION

In light of the foregoing, Judge Sullivan should be disqualified to serve as the Judge in this matter, and an unbiased District Court Judge be appointed in his stead.

DATED this 3rd day of December, 2013.

SOLOMON DWIGGINS & FREER, LTD.

By: _____

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0001

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON

Plaintiff(s),

-vs-

LYNITA SUE NELSON

Defendant(s).

CASE NO. D411537

DEPT. NO. O

FAMILY COURT MOTION/OPPOSITION FEE INFORMATION SHEET (NRS 19.0312)

Party Filing Motion/Opposition: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

MOTION FOR OPPOSITION TO MOTION TO DISQUALIFY JUDGE SULLIVAN

Motions and Oppositions to Motions filed after entry of a final order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of $25.00, unless specifically excluded. (NRS 19.0312)

NOTICE:

If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.

Mark correct answer with an "X."

1. No final Decree or Custody Order has been entered. ☐ YES ☒ NO

2. This document is filed solely to adjust the amount of support for a child. No other request is made.
☐YES ☒NO

3. This motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order
If YES, provide file date of Order: _____
☐YES ☒NO

If you answered YES to any of the questions above, you are not subject to the $25 fee.

Motion/Opposition ☐ IS ☒ IS NOT subject to $25 filing fee

Dated this 3RD of December, 20013

Jeffrey P. Luszeck
Printed Name of Preparer

Signature of Preparer

Motion-Opposition Fee.doc/1/30/05

EXHIBIT 1

EXHIBIT 1

DISTRICT COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs. Case No. D-411537

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

Defendants/Counterclaimants.

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

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

VIDEOTAPED DEPOSITION OF JEFFREY L. BURR
Volume I

Taken on Wednesday, February 22, 2012
At 10:05 a.m.

Held at Solomon Dwiggins Freer & Morse
9060 West Cheyenne Avenue
Las Vegas, Nevada

Reported by: Ellen A. Goldstein, CCR 829

of his assets?

MR. SOLOMON: Object; leading.

THE WITNESS: Again we -- that was an important part of our discussion and she -- I mean I told both of them that the assets that remained would be available, you know, for the community for both them and their family at the discretion of course of the trustee of that trust and the trustor. In this case it was a revocable trust, so trustor/trustee.

BY MR. DICKERSON:

Q And did you explain to Lynita that she would be a beneficiary under Eric's trust?

A Yes.

Q Did Eric have any discussion or do you recall any conversation by Eric where he communicated to Lynita in any way his intent to equalize the property on a periodic basis?

A All I recall -- all I recall is that they were committed to this plan but to make sure that they were treating each other fairly and equally down the road in relation to their property and their property rights.

Q Was there any discussion as to the purpose of the separate-property settlement agreement and the two trusts that you prepared for the Nelsons?

A Yes.

Q What was the purpose?

A Again, the purpose was to take community property that

would be exposed 100 percent to liabilities that Eric might incur in the venture he was undertaking and to separate that community property into separate property so that at least Lynita's one-half could remain protected in the event a liability occurred and that Eric were to, well, incur liability and they would try to reach Lynita's assets. The creditors could not reach the assets.

Q Do you recall how many times you met with Lynita Nelson to explain what you said here today with respect to this transaction involving what occurred in 1993?

A I'm going to say, to the best of my recollection, three times.

Q Prior to those meetings in 1993, you did have an ongoing attorney-client relationship with Lynita Nelson; is that right?

A Yes.

Q And do you believe that she had the trust and confidence in the advice that you were giving her?

A Yes.

Q Now, isn't it true, Mr. Burr, that you recommended to her the name of Richard Koch?

A Yes.

Q And you suggested only one attorney, Richard Koch?

A I don't recall, but I know I suggested Richard.

Q And that -- and actually you contacted Richard Koch,

REPORTER'S CERTIFICATE

I, Ellen A. Goldstein, a duly certified court reporter in and for the County of Clark, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, JEFFREY L. BURR, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth;

That the witness requested to read and sign the transcript herewith;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS THEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 29th day of February 2012.

_____
Ellen A. Goldstein, CCR No. 829

EXHIBIT 2

EXHIBIT 2

DISTRICT COURT

CLARK COUNTY NEVADA

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

DEPOSITION OF RICHARD KOCH, ESQ.

Taken on Tuesday, May 1, 2012

At 10:06 a.m.

At Solomon Dwiggins & Freer, Ltd.

9060 West Cheyenne Avenue

Las Vegas, Nevada

Reported by: CINDY K. JOHNSON, RPR, CCR NO. 706

understanding that this agreement did not truly effectuate the parties' intent?")

THE WITNESS: I would say, yes, it would -- that this would be an incomplete representation of the agreement, if that had been represented to me.

BY MR. SOLOMON:

Q. Okay.

A. In other words, this might have been the agreement, but it may not have been complete.

Q. In accordance with your custom and habit, what would you have advised Lynita in order to explain the legal effect of this agreement and have her acknowledge to you that she had an understanding of its legal consequences?

MS. PROVOST: Object as to the form of the question. He has no recollection of what he advised Lynita. If you're asking about his custom and habit with any general person, then I don't have an objection to that.

THE WITNESS: My custom would have been to explain how community and separate property work and it'd kind of be about the principles about bringing property into the marriage, about the community property rights that have accrued during the marriage, about how community property and separate property can be

converted.

And I would have, I guess, wanted her to be satisfied that she was an intelligent woman who has some understanding of that, that this was done freely by her.

I have no recollection of going through the property list, which I see here, or the values -- I don't see any values here -- but I would have wanted to make sure she had some comprehension of what the agreement meant.

BY MR. SOLOMON:

Q. Okay. Would that also have included -- that explanation have included how the separate property would be divided normally upon divorce, if that were to occur?

A. I don't -- I have no idea if I discussed that with her specifically or not. I don't know. But I -- that's certainly a good topic for discussion. I don't know if I discussed that with her specifically.

Q. Okay. Would that have been your -- I'm not asking -- I know you have no recollection of it --

A. I understood that.

Q. -- so I'm not asking --

A. And I'm saying, generally, I don't know if I would have discussed that. I guess I would have. My perceived understanding of what they're doing and why

CERTIFICATE OF COURT REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Cindy Johnson, a duly licensed reporter for Clark County, State of Nevada, do hereby certify: That I reported the deposition of Richard Koch, Esq., commencing on Tuesday, May 1, 2012, at 10:06 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. Transcript review pursuant to NRCP 30(e) was requested.

I further certify that I am not a relative or employee of counsel or any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 7th day of May 2012.

Cindy K. Johnson, RPR, CCR No. 706

EXHIBIT 3

EXHIBIT 3

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

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CLERK OF THE COURT

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

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

DECREE OF DIVORCE

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

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

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

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.

. . .

[2] NRS 166.170(1)

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)."

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.

. . .

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

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.

. . .

. . .

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:

> **(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.

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.

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[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.

. . .

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

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

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.

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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.

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

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

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

THE COURT FURTHER FINDS that based upon Mr. Nelson's change of testimony under oath, his repeated failure to answer questions in a direct and forthright manner, his less 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.

. . .

. . .

[17] Defendant's Exhibit QQQQQ.

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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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).

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

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.

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

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

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

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

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

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

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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.

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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FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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.

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

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.

. . .

. . .

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

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

FRANK R SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

EXHIBIT 4

EXHIBIT 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

NOLA HARBER, AS DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE FRANK P. SULLIVAN, DISTRICT JUDGE,
Respondents,
and
ERIC L. NELSON AND LYNITA S. NELSON, INDIVIDUALLY; LSN NEVADA TRUST DATED MAY 30, 2001; AND LARRY BERTSCH,
Real Parties in Interest.

No. 63432

FILED

JUN 21 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Mallie
DEPUTY CLERK

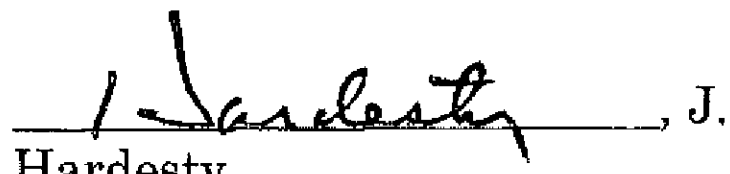
ORDER DIRECTING ANSWER AND GRANTING TEMPORARY STAY

This is an original petition for a writ of prohibition challenging a district court divorce decree and an order directing payment from a self-settled spendthrift trust. Petitioners have also filed an emergency motion for a stay of the order directing payment.

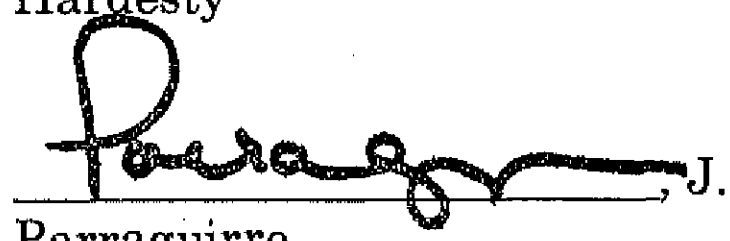
Having reviewed the petition, it appears that petitioners have set forth issues of arguable merit and that petitioners may have no adequate remedy in the ordinary course of law. Therefore, real parties in interest, on behalf of respondents, shall have 15 days from the date of this order to file an answer,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

Having considered the emergency motion to stay the district court's June 19, 2013, order directing payment from the spendthrift trust, we conclude that a temporary stay is warranted to allow for receipt and consideration of any opposition to the stay motion and the answer to the writ petition. We therefore stay the June 19, 2013, order directing payment from the trust in Eighth Judicial District Court Case No. D411537 pending further order of this court.

It is so ORDERED.



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Frank P. Sullivan, District Judge
Solomon Dwiggins & Freer
Radford J. Smith, Chtd.
Larry Bertsch
Dickerson Law Group
Eighth District Court Clerk

EXHIBIT 5

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

NOLA HARBER, AS DISTRIBUTION TRUSTEE OF THE ERIC L. NELSON NEVADA TRUST DATED MAY 30, 2001,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE FRANK P. SULLIVAN, DISTRICT JUDGE,
Respondents,
and
ERIC L. NELSON AND LYNITA S. NELSON, INDIVIDUALLY; AND LSN NEVADA TRUST DATED MAY 30, 2001,
Real Parties in Interest.

No. 63545

FILED

JUL 30 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Walker
DEPUTY CLERK

ORDER GRANTING TEMPORARY STAY

This is an original petition for a writ of prohibition challenging provisions of a district court divorce decree that directs the transfer of certain assets from the Eric L. Nelson Nevada Trust to the LSN Nevada Trust. Petitioner filed an emergency motion for a stay of those provisions of the divorce decree, which this court deferred ruling on pending a supplement and answer to the petition. On July 29, 2013, petitioner filed a request for a ruling on the motion for a stay, indicating that the district court held a hearing on July 22, 2013, and ordered Eric L. Nelson to execute deeds transferring those assets by July 31, 2013.

Having considered petitioner's renewed motion for a stay, we have determined that a temporary stay is warranted at this time. Accordingly, we temporarily stay the portions of the divorce decree

directing the transfer of the following assets from the Eric L. Nelson Nevada Trust to the LSN Nevada Trust: the Lindell Property; the rental properties owned by Banone, LLC; the JB Ramos Trust Note Receivable; and a percentage interest in the Russell Road Property. The temporary stay shall remain in effect pending further order of this court.[1] Additionally, petitioner shall have 11 days from the date of this order to file any reply to the answer to the petition.

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Saitta

cc: Hon. Frank P. Sullivan, District Judge
Solomon Dwiggins & Freer
Radford J. Smith, Chtd.
Dickerson Law Group
Eighth District Court Clerk

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[1]As for the July 22, 2013, oral ruling concerning execution of the deeds by July 31, 2013, petitioner has not provided this court with a written order, and we cannot determine whether one has been entered. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 747 P.2d 1380 (1987) (providing that an oral pronouncement of a judgment is ineffective for any purpose).

EXHIBIT 6

EXHIBIT 6

TRANS

ORIGINAL

FILED
SEP 06 2013
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON Plaintiff, vs. LYNITA NELSON, Defendant.	CASE NO. D-09-411537-D DEPT. L

BEFORE THE HONORABLE FRANK SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

THURSDAY, SEPTEMBER 5, 2013

MR. LUSZECK: I realize this is a fight for another day, but --

THE COURT: Yeah.

MR. LUSZECK: -- the appointment of Nola Harbor does not violate the terms of the trust.

THE COURT: Yeah, we'll get there, the issue. I tell you, depending on what the Supreme Court does, you know, I thought my order of decree made it real clear that I was inclined to set aside those spendthrift trusts. The only reason I didn't do it is that I wanted to give the parties the benefit of their intent, and their intent was to protect those things. I wasn't sure if Ms. Lynita's trust would be opened up to creditors because if she signed papers, she signed a lot of documents on business deals with Mr. Nelson, I wasn't sure, they could come get to her property through her trust. If I set those aside, it would -- fair game for all creditors. Whether they would have had a claim, I don't know. But I did that to protect parties saying I didn't want to see creditors, because that's why you do spendthrift is to protect for creditors. So that's why I did that.

But I think I made it clear with my findings, I felt I could set it aside. The reason I didn't do it because I tried to respect the wishes of the parties, because that's why you did it. I understand why you'd do it. You want to give

continually -- I -- the IRS did a 250-page report on a criminal investigation on me. They had four words; no change, no fraud.

MR. KARACSONYI: 1032742. Sorry.

THE PLAINTIFF: And so that I should have the opportunity to run the trusts and I can assure you that whatever the state Supreme Court does, I will sell everything I have within 30 days. I can raise any amount of money in 30 days to do that. But to continue to chastise me for being honest, being direct, and trying to run -- my five kids are these beneficiaries. If you -- and I can't even operate my business and my five children have to suffer --

THE COURT: Suffer? Didn't they just go to Thailand or something? Weren't you in Thailand at the last hearing with the kids?

THE PLAINTIFF: I'm just saying --

MS. FORSBERG: Graduation.

MR. DICKERSON: He says within 30 days he can raise any amount of money, yet for --

THE COURT: Well, I don't know if that's suffering --

MR. DICKERSON: -- four years he hasn't paid a dime of support.

THE COURT: (Indiscernible) that's fine.

THE COURT: 45, I thought it was, or something.

MR. KARACSONYI: It's 35,258.

THE COURT: I (indiscernible) to make sure that money is there because I don't think you should be benefitting off of that money when I made my decision, which has not been overruled yet. It's been stayed by the Supreme Court, but they may -- I don't think -- I think you've had the benefit of using, quote, your portion of the proceeds. Maybe that's not fair, but the real issue is to make sure that Ms. Nelson's money is there in a lump sum and Mr. Burch so they can get paid when we're done and not have to wait 30 days for liquidation, because my -- I plan on this, to be honest with you, is as soon the Supreme Court rules, if they stay (indiscernible) a writ, then I fully intend to have everything transferred immediately, or a contempt on that So my issue to get her done and then if they do the regular appeal, then the Supreme Court can do what they do. But to have you chase the money back for Ms. Lynita, then Ms. Lynita trying to chase her money from you, I'll be real honest, everybody's been chasing the money, and the fact is I don't think that's fair and just.

I think the appeal would be the appropriate way to do it, Supreme Court decide, but that's up to them with their writ or their stay. My thing is she should get her award under the divorce decree and you should be chasing that on

appeal. And if you win on the appeal, then you can make her sell everything, get your money back. But I don't think it should be the other way around because that's what it's been from day one. I'm not saying your dishonest as far as those issues on that with the money. There's been a lot of accounting, there's so many books here. Who knows who's on first. The fact is, there's a lot of books, there's a lot of money. I tried to be fair to give money so you can make money, as you indicate on that. You could raise money. Yet, when you guys came in to buy the Wyoming Downs, he needed that money because he couldn't raise it, and he had the money right away anyway.

So I'll be real honest on that, you say you can raise that money at any time. Well, it seems like you can raise the money at certain times when it's to your benefit, and if not to your benefit, you can't raise the money. I mean, so the bottom -- I am going to issue the injunctive relief, order the trust to hold the 1,032,742, which is the award given to Ms. Nelson, plus the 35,258, which is to Mr. Burch. (Indiscernible) I don't know how we do on that, if I have you issue so that the Court can put it in an account. I'm not sure how I do that or what's the better way to do an injunctive on that. I want to make sure that money is there so when the Supreme Court rules --

and then I'll give you a chance to argue your legal arguments, if there should be sanctions or not with the trust on that. Then they can do an accounting on those issues, but the fact was on those cases, I don't like the trust having control of that money, I'll be real honest with that, until this matter is resolved, because that's the big question is is that trust money, can the Court make them pay that money on behalf of Mr. Nelson to satisfy the divorce decree. And depending on what the Supreme Court does, they may remand it back to me and I may set aside the trust and we'll go to round two in the Supreme Court.

So, I mean, there's a lot of issues going on here, but I'm going to get this resolved. And I -- it's just -- it's manifestly unjust the way it's been handled. And Mr. Nelson's been running the show since day one. I respect that. He's a honorable business man, he makes a lot of money obviously on that. The fact is that he's been controlling the issue on that. The divorce decree came out and now I intend to control it until the matter is resolved ultimately. And to me, if I know that money's sitting there -- he's got the benefit of using that money through trust that they had, the portion awarded to Mr. Nelson, he's had the benefit of that to use it freely, do whatever he wants with it. Ms. Nelson's portion has not been able to be used by her pending the

THE COURT: Et cetera; does that work for everybody?

MS. FORSBERG: Thank you, Judge.

THE COURT: All right.

MR. KARACSONYI: Thank you, Your Honor.

MS. PROVOST: And then the rest, Your Honor, with respect to the deductions, that's under advisement for you to rule on in October?

THE COURT: Yeah, let me look at that. I want to get their -- they haven't replied yet.

MS. FORSBERG: But we just --

MS. PROVOST: (Indiscernible) an opportunity.

THE COURT: Yeah, let them reply and October 2nd, I'll be ready to rule on that with the other motion that's pending.

MS. FORSBERG: Thank you, Your Honor.

MS. PROVOST: Thank you, Your Honor.

THE COURT: Thanks everybody.

(The proceedings concluded at 16:24:52)

****

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-mentioned case to the best of my ability.

/s/ Sharolyn Bornholdt

Sharolyn Bornholdt, Transcriptionist

EXHIBIT 7

EXHIBIT 7

TRANS

COPY

FILED
OCT 2 8 2013
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff, vs. LYNITA NELSON, Defendant.	CASE NO. D-09-411537-D DEPT. L **(SEALED)**

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

MONDAY, OCTOBER 21, 2013

and that -- that needs to come from Jeffery Burr.

MR. NELSON: And he did approve it.

THE COURT: And I think he --

MR. LUSZECK: He did it. And he approved it. It's not -- it's not what the trustee did. It's -- Jeff Burr made this decision and he made that change.

THE COURT: I think he also testified that he didn't file under rules and give people 10 day notice when he made changes in the past.

MR. LUSZECK: Your Honor, that -- that's irrelevant though. But the distribution trustee knew that it was occurring. The distribution trustee is the only one that could object to that. She didn't object to it.

THE COURT: Well -- well, you know, this case will go on and on and on as far as I'm going to deny the motion. Noone's asked for my input on this before. They move back and forth with distribution trustees from back and forth with Mr. Burr. He was under attack for not following the formalities. I made it real clear in my divorce decree that the supreme court -- depending what they do on that came back to me on a question for this Court that I would invalidate the trust because I don't think they've been following the rules or procedures or doing wily-nilly and why now all of a sudden they want an order from the court and there's the substituted

parties on that and they haven't done it before.

I'm not sure if that could impact a writ that's up there. I don't know if that's something that could be a -- a flaw that maybe the writ would address that could say they didn't file the formalities or they -- the distribution trustees, that could be used against him for -- but the fact that it take -- it speaks it speaks for itself.

11.3 says that Jeffrey Burr has a power given 10 days written notice to the trustee to remove any trustee within except the trust consultant may not remove the trust off course and any -- or a successor trustee and to appoint either one an individual who is an independent trustee pursuant to IR -- Internal Revenue Code 674. I don't know why you put that in there if it has no reference on that or reference 672. Why put it in there? Just say that he has the right to appoint whoever he wants to a Nevada bank or trust company to show his trustee. So that's in there. So I'm not sure the purpose of that being in there. Do you have anything other --

MR. LUSZECK: Yeah, Your -- Your Honor, there are standard provisions you put in all types of trusts. Jeffrey Burr testified that it's a grantor trust and that language would be inapplicable because it's a grantor trust.

THE COURT: Well, basically they just do trust on

five --

MR. LUSZECK: Your Honor --

THE COURT: -- or six times already.

MR. LUSZECK: The trust specifically states that it is a grantor trust --

THE COURT: Yeah.

MR. LUSZECK: -- and that's what Mr. Burr testified to.

THE COURT: Exactly. And why have it in there and why it states the grantor trust and put language. It doesn't mean anything on that. To me, it's sloppy. And if it's sloppy, then so be it. But the fact is if you say it's a grantor trust and that wouldn't apply, then why put it in there. So but that's been a point. That's about the fourth time I've heard that argument. But I'm denying the motion to substitute and I'm denying the countermotion to appoint someone. I'm not getting into that stuff. I'm not going to get into an appoint and appoint someone that is a non-interested or a non-related party. We've litigated that several times already. Supreme court makes their ruling that may resolve the issues. If not, if it comes back to me, then I'll resolve those issues. But I'm not stepping into this stuff at this point.

We've been going around and around on that. We've

was challenged that they didn't.

Basically on one of their challenges to a writ that the effect that they failed to follow that procedures could be grounds. But I think I made my divorce decree real quick -- real clear. I think I made a specific finding that in the event that I felt clearly I could invalidate the trust. That -- because that gave indication where I was going in case supreme ruled otherwise that I would invalidate the trust based on the formalities, the -- the concerns about the conflict of interest I felt and a breach of fiduciary duties that that could invalidate the trust, but I'll leave that to the supreme court to decide, because my goal was not to invalidate trust if I didn't have to if I could achieve the divorce decree.

Based on what I'll do on that, that we'll protect everybody from third party creditors because I could see lawsuits coming out. So that's protect both sides and I think that was my finding on that. So to restate, I'm denying the motion and the countermotion for me to specifically appoint distribution trustee or to substitute parties.

As far as another issue we have is do you want to deal with the funding issue as far as the account that was in issue? Are you prepared for that issue as far as -- because we said we would do it by phone conference. They were

MS. FORSBERG: Yes.

THE COURT: Yeah, we'll get it under oath and we'll get -- if you want all that, we will on that.

MR. KARACSONYI: Okay.

THE COURT: Okay. That way you know exactly what it looks like. That way we can address it before the December 11th hearing if you think there's anything -- by that time maybe we'll have a decision from the supreme court.

MS. FORSBERG: Thank you, Your Honor.

THE COURT: All right.

MS. FORSBERG: You're optimistic.

THE COURT: I'm always optimistic. Thanks, everybody.

(PROCEEDINGS CONCLUDED AT 14:34:09)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano

EXHIBIT 8

EXHIBIT 8

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff, vs. LYNITA NELSON, Defendant.	CASE NO. D-09-411537-D DEPT. L **(SEALED)**

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

THURSDAY, AUGUST 1, 2013

have anything delaying things.

And so I'm inclined to issue a charging order against any distributions that Mr. Nelson has coming. I think I can clearly do that with a charging order no matter what they role on the trust. I think as far as spousal support and child support, I think it's clear from the case law that I have looked at from spendthrift trusts that they can issue charging orders against any distributions that the parties get in to satisfy any family support issues. The issue on that is with their stay. Does that stay might -- the spousal support order as well. And I'd be inclined to set about issue in a charging order against any distributions that the trust would pay to Mr. Nelson to satisfy his spousal support and child support obligations.

I had a done a spousal support. It's a lump sum. I had estimated it at 7,000 a month and based on rental incomes that she may receive about 13,000 for the 20,000. I did that over the 15 years. I think I came up with 1.2 million and then I did a -- not a very calculated to be honest, but I did a discount for a lump sum. It came out to about 800,000, but it was based on.

So I would be inclined to get her spousal support for $7,000 a month and put a charging order against any proceeds and any distributions to Mr. Nelson that that money

would go to that first. Because I don't think he should be getting money on distribution if he's not paying spousal or child support. The issues I'm not sure with the supreme court stay if that would stay the issue of spousal support. I know it stays to lump sum, but the issue is people have to eat and people have to have support. And to sit there and wait months, years while that's resolved, I know I can issue a charging order. I'm very comfortable about that.

As far as the 1.2 million, for me to order him to pay that and get that through the trust, that would kind of undermine the whole issue that's up with the supreme court. But the same token, no matter what the supreme court rules and when I make my judgment, I can definitely do charging orders against the trust, any distributions he gets to make sure that any orders other than this Court that are enforceable would be paid before he gets any distributions under that trust. And I'm pretty comfortable I can do that. I know I can do it for family support. I don't think that -- I think that's a no brainer.

The other issue is could I do that for the other judgment, because I'm inclined to do that. The issue -- I don't know how -- what's your position on with that stay. Would that stay me from pursuing a temporary spousal support order in the interim the supreme court rules accordingly. So

I guess that's probably why I need to hear the argument on, because I haven't researched all that. But they did kind of stay in my divorce decree and all the property transfers.

But I am going to order an accounting of the BANONE. I'm also going to order an accounting of the Lindell property, because I think you're entitled to 50 percent of that property since you held it throughout the course of this marriage. The Lindell thing on that, I don't remember when the -- how the ownership -- I'd have to check how the title got, but I know there's 50/50. I don't know how long you've had a 50 percent interest in that, the trust, but I think you're entitled to 50 percent of those proceedings at least minus any costs, but I haven't seen anything and you haven't received any rental properties on the Lindell property and you've owned 50 percent of it no matter what the supreme court says. 50 percent of that is yours clearly through the trust on that.

So I need to get the Lindell real property and accounting for the Lindell property, because you're definitely entitled to that now no matter what the supreme court says on that, because that was clearly LSN 50/50 at best. So I think you're entitled to the rental proceeds from Lindell going back to when this decree was filed or -- or at least when you got 50 percent ownership. I would have to look. I forgot off the top of my head. I know I would have to look at my order again

how the Lindell property came, because there was some transfer of things since you've owned the LSN Trust at 50 percent ownership of Lindell. I think you're entitled to -- to rent proceeds from that time minus any costs on that that they can establish. I want an accounting from the Lindell property and do you know off the top of your head when the ownership -- I don't know when -- when the property was brought and transferred.

MS. PROVOST: 2007 is when it was transferred to 50 percent Eric L. Nelson Trust. Prior to that, it was a hundred percent held in the name of the LSN Trust. So long prior to these proceedings even started it's been in a 50/50.

THE COURT: Would you like an accounting of the Lindell property going back to when the decree -- or when the petition was filed, 2009?

MS. PROVOST: Yes, Your Honor.

THE COURT: I think that's just to sit there and get there, because she's been entitled to that. I know she had a hundred percent ownership of that at one time, so that'll be my inclination, because I know how we played this game with all these numbers and we'll be back and we'll spend three months in accounting. It ain't going to happen. And I want to make it clear to everybody. If the supreme court does not stay my order and people appeal, I'm -- I had already denied a

go. So I don't trust that that would go. I would imagine all that money would flow somewhere else through other entities and that's just not right because I think she's entitled to at least temporary spousal support pending the supreme court determination so they have money to survive on. And then I could always equalize with that money.

I would also include -- I also would consider an injunction on that 1.5 million to make sure that doesn't disappear. I don't know if timeshare need that, because I know I was told that that was in the trust and they hadn't distribute it to MR. Nelson or to anyone else on that. I was anticipating that money being distributed right at the beginning on that that the -- you would get your money, he would get his money and then they could fight over it at the supreme court. But now that the trust has it, I want to make sure that money doesn't -- doesn't disappear and the supreme court decides what they're going to do with it.

So I don't know if I need an injunction or not, but I'll hear argument on that. But that would be my inclination at this point and I'll entertain arguments on -- on those issues on that and I'll be glad to give people a chance to -- if you want to cite some briefs about my authority to do the charging order and take it under consideration, but that's what I'm inclined to do to get this case moving.

gist of -- of what Your Honor is saying with respect to the charging order.

Just a couple of thoughts. First approximately maybe a year and a half, two years ago we filed a motion seeking the appointment of -- of a receiver. And it's my recollection you deferred ruling on that motion. I believe Your Honor has the authority sua sponte to consider the appointment of a receiver.

And -- and I would ask you to consider that relief and to appoint Larry Bertch (ph) as the receiver. In light of the fact that Mr. Bertch has not been paid by Eric the monies that he was owed, I -- I would suggest that if the Court is inclined to appoint a receiver that -- that the receiver be paid by the trust and the court order indicate that the -- the trust would be paying him so that Mr. Bertch knows that he will be paid. That's one thought.

The second thought is and -- and I really lost the conversation here, but Mr. Nelson's obligation to pay that -- that million dollars plus to Lynita still exists and it was part of the court order. And -- and I would ask that Your Honor continue that obligation. He has yet to pay it and it has been part of at least two of Your Honor's orders.

The -- the problem I see at this point is the order from the last hearing has yet to be entered, so he -- I -- I

immediately. So just so everybody knows so that we can get it there. So if they make a decision before that, I'll be glad to entertain anything before that date depending if it's resolved by the supreme court one way or another.

MS. PROVOST: Thank you, Your Honor.

MS. FORSBERG: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 16:49:04)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.

Adrian Medrano

Adrian N. Medrano

EXHIBIT 9

EXHIBIT 9

D-09-411537-D

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint **COURT MINUTES** August 01, 2013

D-09-411537-D Eric L Nelson, Plaintiff.
vs.
Lynita Nelson, Defendant.

August 01, 2013 **4:00 PM** **All Pending Motions**

HEARD BY: Sullivan, Frank P. **COURTROOM:** Courtroom 05

COURT CLERK: Helen Green

PARTIES:

Carli Nelson, Subject Minor, not present
Eric Nelson, Plaintiff, Counter Defendant, present — Rhonda Forsberg, Attorney, present
Garett Nelson, Subject Minor, not present
Joan Ramos, Other, not present — Jeffrey Luszeck, Attorney, present
Lana Martin, Cross Claimant, not present — Mark Solomon, Attorney, not present
Lynita Nelson, Defendant, Counter Claimant, present — Robert Dickerson, Attorney, not present
Rochelle McGowan, Other, not present — Jeffrey Luszeck, Attorney, present

JOURNAL ENTRIES

- ORDER TO SHOW CAUSE...STATUS CHECK: TRANSFER DEEDS

Robert Dickerson, Esq., #945, appeared telephonically.

Court reviewed the case.

Argument by counsel regarding Order to Show Cause and Transfer Deeds.

Discussion regarding spousal support and a Charging Order.

Plaintiff stated he would provide an accounting of the Lindell properties from January and write Defendant a check for 50% of the proceeds by Friday, August 9, 2013.

D-09-411537-D

Ms. Provost requested Attorney's Fees.

COURT ORDERED:

1. Plaintiff shall provide an ACCOUNTING for BANONE, LLC rental properties to Mr. Dickerson's office for June and July of 2013 going forward, by 5:00 P.M. August 16, 2013,

2. Plaintiff shall provide an ACCOUNTING of the LINDELL properties from January 1, 2013 to present to Mr. Dickerson's office along with a check for Defendant for her half of the proceeds by 5:00 P.M. August 9, 2013, which is subject to modification at next hearing. FURTHER, Plaintiff shall provide an ACCOUNTING for the LINDELL properties from January 1, 2010 through January 1, 2013 to Mr. Dickerson's office by 5:00 P.M. August 30, 2013 along with a check for Defendant for her half of the proceeds, which is subject to modification at next hearing.

3. Counsel for the Trust shall have until August 23, 2013, to brief the issue on the CHARGING ORDER and any DISTRIBUTIONS on any payments, as well as the issue of receivership. Mr. Dickerson shall have until August 30, 2013 to respond to counsel's brief. Counsel may submit a memorandum of Costs and request for Attorney's Fees.

4. Status Check SET for September 4,2013 at 3:00 P.M.

5. The Order to Show Cause shall be CONTINUED TO September 4, 2013 regarding the payment of the $1,200,000.00.

6. Per STIPULATION of counsel, and, In accordance with EDCR 7.50, the MINUTE ORDER shall suffice as the Order.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: August 01, 2013 10:00 AM Motion
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated
Elliott, Jennifer
Courtroom 09
Vinson, Debra

Canceled: August 15, 2013 11:00 AM Motion

August 15, 2013 1:30 PM Motion

D-09-411537-D

Courtroom 05
Sullivan, Frank P.

September 04, 2013 3:00 PM Order to Show Cause
Courtroom 05
Sullivan, Frank P.

September 04, 2013 3:00 PM Status Check
Courtroom 05
Sullivan, Frank P.

Canceled: September 17, 2013 10:00 AM Motion

December 11, 2013 1:30 PM Evidentiary Hearing
Courtroom 05
Sullivan, Frank P.

EXHIBIT 10

EXHIBIT 10

TRANS

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON, Plaintiff,	)	CASE NO. D-09-411537-D
vs.	)	DEPT. O
LYNITA NELSON, Defendant.	)	(SEALED)

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: MOTION

MONDAY, JULY 22, 2013

Lynita.

MR. SOLOMON: That's right. That is a third party. And you're trying to hold him liable for potential defects and title. Or at least that has the ability of doing it and that's not appropriate in a divorce --

MR. DICKERSON: Then have him --

MR. SOLOMON: -- division.

MR. DICKERSON: -- convey it to himself and convey it to Lynita.

THE COURT: Whatever works out. Does that -- whatever -- whatever works out. The two quitclaims, we can get those signed right away. There's no objection to the quitclaim deeds of that.

MS. PROVOST: Okay.

MR. SOLOMON: No objection to quitclaim deeds, Your Honor.

THE COURT: Okay. Let's get those two signed forthwith. Do you need a notary or can we do it now or is it something you need to look at? I just want to get it done within 24 hours or --

MS. PROVOST: What is --

MR. SOLOMON: What is that?

MS. PROVOST: They've had them since -- since June.

MR. DICKERSON: They've had them for --

Court up to the supreme court back and forth. So I don't know what the supreme court's planning on doing, but they -- they could issue the stay on that -- on their application. And they didn't is they want to indicate why an extraordinary relief was warranted.

So I -- I would be inclined to have them and I'll give you guys a chance to respond in a second, but I am inclined to have you execute the Banjuan deeds and the supreme court said nevermind, they stayed the order and I transfer them back if we had to just so we get this moving forward, because they say no and then we're sitting there for another time frame trying to get this case moving one way or the other by give you guys the appeal.

There was some question as to why my order I made everybody payable to transferring 30 days. I did that because I assume there would be appeals. And I don't do things high handed to put the pressure on everybody to try and get them that same day. I didn't think things would disappear. I thought that things would be in there and we got credible terms on that that let the supreme court decide if they thought it should be stayed longer than the 30 days or whatever they want to do. But that's why I did it for the 30 days was saying they give everybody a chance to breathe, do their thing, get the supreme court and not have everyone

panicking running around because I did respect everybody's rights to appeal and I did suspect that what people thought was wisdom of Solomon or Sullivan or other people would think was the stupidity of Sullivan. So I understood then I want to give everybody a chance to get that and let the supreme court step in any way they want, because these parties need to get this done. It's been going on since 2008 and the filing since 2009 and needed to get some finalization either through me or the supreme court.

So I'd be inclined to order the Banjuan deeds to be -- quitclaims need to be transferred over along with the Lindale and -- and if it comes out the supreme court issues that stay and one's executed back or hold those -- make sure those properties couldn't go anywhere while they determine that, I'd be glad to parcel that. I'll also note that this appears so that -- but -- but that would be my inclination is to get that moving forward since they didn't stay the order, but I'll give you a chance to be heard on that if you would like.

MR. SOLOMON: Your Honor, we would request that at least that that be given to the end of this month to -- to review these deeds and to sign them and turn them over. Obviously, it's -- it's quite a burden to transfer title and untransfer title. And that'll give us another week to try and

THE COURT: Is it --

MR. DICKERSON: -- this to be treated as a motion to have an equal distribution of undisclosed assets or asset -- because under Amy (ph), assets that were not included in the decree so that we have a final decree of divorce and they can do with that whatever they would like. And then we can have this issue dealing with this property treated separately.

THE COURT: And that -- that --

MR. SOLOMON: I don't think the Court has the power to do that, Your Honor. I wish it did, but it doesn't have the power to do that. That's like bifurcating the property issues. It can't. And --

MR. DICKERSON: It is not --

MR. SOLOMON: -- the supreme court would never consider that a final order. They would never --

MR. DICKERSON: Well --

MR. SOLOMON: -- consider that a final order until you dispose of all the assets --

MR. DICKERSON: I'm not so bold.

MR. SOLOMON: I mean, an Amy issue is totally different. That's where you don't have that issue tendered because you don't know about it until later. That's a whole different ball game.

THE COURT: Yeah, as far as what the supreme court

would do and not do, I don't know, but normally Amy is the undisclosed asset here. It was the -- the asset was disclosed, but the fact is that's why I made my finding. That way maybe I should have been more specific to make it clear that I was without sufficient information regarding the details to make any determination I thought was fair and just on the disposition that property because I did want to consider all of the evidence on that.

I don't know if I could consider that a final order or not. I mean, I would like to get this done so you don't sit there and tie everything up. I'm sure the other side may want it tied up more and more just to get 'er done, but I would like to treat it as an undisclosed asset. I'm not sure if I can to be honest. I just don't know since this is kind of came up that.

MR. SOLOMON: It's in your decree.

THE COURT: Yeah.

MR. DICKERSON: We will --

THE COURT: Yeah.

MR. DICKERSON: -- include that in the order.

THE COURT: I just don't know if they can -- and to be honest if they can do that, because the fact it was addressed specifically in my decree, so it wasn't an undisclosed asset. I just don't know. I think in fairness of

equity and justice my intent would be to consider that a final order and do this as separate, but I'm just not sure if that would hold up to be honest under scrutiny. But that would be my desire just to try to get this done for the other issue, because it may not become another issue if I find out that it's -- they don't have an interest on that. Of course, they -- they may appeal of course on that, but at least he gets it resolved one way or the other.

So I would be inclined to try to treat it under Amy. I just don't know if that would hold up to be honest, because I haven't researched it. I haven't researched it.

MR. SOLOMON: What -- what do you mean to prepare the order? What -- what --

MR. DICKERSON: We'll -- we'll prepare the order indicating that he is construing --

THE COURT: The judge --

MR. DICKERSON: -- that portion of our motion as it would be a motion under Amy for an asset that has not been covered under the -- the decree and that -- and but his intent --

MR. SOLOMON: And he's granting that? I mean --

MR. DICKERSON: His intent and -- no, he's -- he's setting the evidentiary hearing on that --

THE COURT: Yeah.

I guess is denied. How long are you seeking for this discovery?

MR. DICKERSON: I -- I would ask if you can set the -- if you can set the evidentiary hearing in 90 days and -- and give us the next 60 days to get the discovery.

THE COURT: Okay. Let me see what they got and see what they -- I want to get this done as often as everyone else does.

MR. SOLOMON: I -- I know you do. I --

THE COURT: I just don't -- you know, I would be inclined to order mine as a final order and then used just as in Amy for undisclosed assets just to try to get it moving forward. My thing is I don't know if I'm comfortable putting it in an order, because I do have some reservations that I haven't looked at it. But that goes to my intent when I did the order was I haven't done any decision that knowing that, but I was hoping that wasn't going to delay everything. And I did consider that at the beginning that may tie things up, because there wouldn't be a full distribution of all the --

MR. DICKERSON: The -- the issue we're --

THE COURT: -- the properties.

MR. DICKERSON: -- dealing with obviously if we got discovery out today, they got 30 days. I would like to take Mr. Nelson's deposition.

The --

MR. DICKERSON: How about before?

MS. PROVOST: You're going to kill us.

THE COURT: Okay. Well, here's what we'll do as far as this what we're going to do. I'm going to consider my divorce decree a final order, consider this under Amy. The reason for that, then I don't care if it -- if it takes it to December. I don't care in that sense because it gets it resolved. It gives counsel a chance to look at that issue. It won't negatively impact anyone. It gives them a chance to challenge that order. But that was my intent. I did not have enough with the Wyoming to -- to make a decision. I didn't want to delay this any longer because it has been going on forever. So my goal was to get it moving and felt we could deal with Wyoming later on if it was an issue. I thought maybe it wouldn't be an issue. So it wouldn't be there. So I wasn't worried about it tying up there.

But in this case, it is an issue. And with the discovery in effect that counsel is indicating that it had been a tough spot and you're in leaving in November. So what, if you did it in July you said you -- we've got -- what's today, July? So we're already almost August. So in July, August, September, October and you said you're going to be --

MR. SOLOMON: October is wiped out on a trial.