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MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
E-mail: msolomon@sdfnlaw.com
JEFFREY P. LUSZECK
Nevada State Bar No. 9619
E-mail: jluszeck@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Centre
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone No.: (702) 853-5483
Facsimile No.: (702) 853-5485

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

DISTRICT COURT

COUNTY OF CLARK, NEVADA

ERIC L. NELSON,

Plaintiff

Case No.: D411537

Dept.: O

vs.

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

Defendants.

CASE APPEAL STATEMENT

MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

SOLOMON DWIGGINS & FREER, LTD.
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TEL: (702) 853-5483 | FAX: (702) 853-5485

1. Name of appellant filing this case appeal statement:

Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Frank P. Sullivan, Department O, Eighth Judicial District Court.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001.

Counsel for Appellant:

MARK A. SOLOMON, ESQ.
JEFFREY P. LUSZECK, ESQ.
SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Centre'
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 853-5483

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as such and provide the name and address of that respondent's trial counsel):

Respondents: Lynita 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.

Trial and Appellant Counsel for Respondents:

Lynita Nelson, individually, and in her capacity as Investment Trustee of the LSN NEVADA TRUST dated May 30, 2001: Robert P. Dickerson, Esq., The Dickerson Law Group, 1745 Village Center Circle, Las Vegas, Nevada 89134, (702) 388-8600.

Eric L. Nelson, individually, and in his capacity as Investment Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001: Rhonda K. Forsberg, Esq., Rhonda K. Forsberg, Chartered, 64 North Pecos Road, Suite 800, Henderson, Nevada 89074, (702) 990-6468.

1 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
2 **licensed to practice law in Nevada and, if so, whether the district court granted that attorney**
3 **permission to appear under SCR 42 (attach a copy of any district court order granting such**
4 **permission):**

5 All counsel identified above are licensed to practice law in Nevada.

6 **6. Indicated whether appellant was represented by appointed or retained counsel in**
7 **the district court:**

8 Appellant was represented by retained counsel in the district court.

9 **7. Indicate whether appellant is represented by appointed or retained counsel on**
10 **appeal:**

11 Appellant is represented by retained counsel on appeal.

12 **8. Indicate whether appellant was granted leave to proceed *in forma pauperis*, and the**
13 **date of entry of the district court order granting such leave:**

14 Appellant neither sought nor received leave to proceed in forma pauperis.

15 **9. Indicate the date the proceedings commenced in the district court:**

16 The proceedings commenced in the District Court on May 6, 2009.

17 **10. Provide a brief description of the nature of the action and result in the district court,**
18 **including the type of judgment or order being appealed and the relief granted by the district**
19 **court:**

20 The instant appeal stems from a divorce that was initiated by Eric L. Nelson ("Eric") against
21 Lynita S. Nelson ("Lynita") on May 6, 2009. On August 9, 2011, Mr. and Mrs. Nelson stipulated and
22 agreed that the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ELN Trust") and the
23 LSN NEVADA TRUST dated May 30, 2001 ("LSN Trust") should be joined as necessary parties.

24 On June 3, 2013, the District Court issued the Divorce Decree, wherein he found that both the
25 ELN Trust and LSN Trust were "established as a self-settled spendthrift trust in accordance with NRS
26 166.020," and that the ELN Trust was funded with assets that were previously owned by a separate
27 property trust that had been established by Eric in or around 1993, and the LSN Trust was funded with
28

1 assets that were previously owned by a separate property trust that had been established by Lynita in
2 or around 1993.

3 Despite the fact that the District Court recognized that the Nevada State Legislature “approved
4 the creation of spendthrift trusts in 1999 and it is certainly not the purpose of this Court to challenge
5 the merits of spendthrift trusts,” and ordered that the ELN Trust and LSN Trust remain intact, the
6 District Court treated the assets of the ELN Trust, as if they were community or separate property of
7 Eric or Lynita by “equalizing” the assets of the ELN Trust and LSN Trust. The District Court also
8 ordered the ELN Trust to distribute some of its assets to pay Eric’s personal obligations to Lynita, her
9 Counsel Bob Dickerson, Esq., and the court appointed special master Larry Bertsch. In light of the
10 foregoing, the ELN Trust filed an appeal on October 20, 2014, Nevada Supreme Court Case No.
11 66772 (hereinafter referred to as “First Appeal”).
12

13 During the pendency of the First Appeal, the District Court has granted the LSN Trust additional
14 relief on preexisting claims which were determined or precluded by the Divorce Decree. Most
15 recently, the District Court in its Findings of Fact and Order entered June 8, 2015, has retroactively
16 awarded the LSN Trust income collected by the ELN Trust from May 2009-June 2013, although the
17 District Court was aware of said income when it entered its Divorce Decree, thereby giving the LSN
18 Trust and/or its Settlor, Lynita S. Nelson, a greater economic windfall. Indeed, the District Court’s
19 recent rulings are contrary to its stated intent in the Divorce Decree to “equalize” the ELN and LSN
20 Trusts.

21 In addition to re-litigating issues in contravention of Nevada law and without jurisdiction, the
22 District Court has also ordered the ELN Trust to pay the LSN Trust \$405,230.53 on or before July 10,
23 2015. If the ELN Trust is required to make said coercive payment, which once again directly affects
24 the Divorce Decree which is the subject of the First Appeal, after the ELN Trust has already been
25 forced to transfer over \$4,000,000 worth of its incoming producing assets to the LSN Trust and has
26 made hundreds of thousands of other coercive payments, said payment will cause irreparable harm to
27 the ELN Trust.

28 The Findings of Fact and Order entered June 8, 2015, additionally requires the ELN Trust to
vacate the Lindell Office Complex on or before August 31, 2015, which is where the ELN Trust has

1 conducted its business since 2001. The ELN Trust possessed a 50% ownership interest in the Lindell
2 Office Complex before the District Court transferred said interest to the LSN Trust in the Divorce
3 Decree, which is subject to the First Appeal. For these reasons the ELN Trust is appealing the
4 Findings of Fact and Order entered June 8, 2015.

5 **11. Indicate whether the case has previously been the subject of an appeal in the**
6 **Supreme Court and, if so, the caption and Supreme Court docket number of the prior**
7 **proceeding:**

8 The ELN Trust filed an appeal on October 20, 2014, Nevada Supreme Court Case No. 66772.
9 The ELN Trust also initiated two writ proceedings: Nevada Supreme Court Case Nos.' 63432 and
10 63545.

11 Eric L. Nelson filed an appeal on October 22, 2014, Nevada Supreme Court Case No. 66772.

12 Lynita S. Nelson filed an appeal on November 3, 2014, Nevada Supreme Court Case No. 66772

13 **12. Indicate whether this appeal involves child custody or visitation:**

14 This appeal does not involve child custody or visitation.

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

The Parties were unable to reach at a settlement when this matter was previously referred to the Supreme Court Settlement Program in Nevada Supreme Court Case No. 66772

Dated this 23RD day of June, 2015.

SOLOMON DWIGGINS & FREER, LTD.

By: 

MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
JEFFREY P. LUSZECK, ESQ.
Nevada State Bar No. 9619
Cheyenne West Professional Centre'
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 853-5483

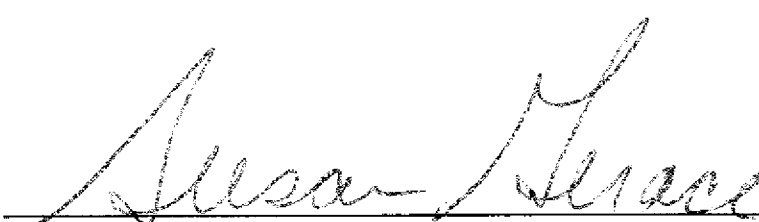
*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2015, pursuant to NRCP 5(b)(2)(B), I placed a true and correct copy of the foregoing CASE APPEAL STATEMENT, in the United States Mail, with first-class postage prepaid, addressed to the following, at their last known address, and, pursuant to EDCR 8.05 (a) and 8.05 (f) and Rule 9 of N.E.F.C.R., caused an electronic copy to be served via Odyssey, to the e-mail addresses noted below:

Robert P. Dickerson, Esq.
Dickerson Law Group
1745 Village Center Circle
Las Vegas, NV 89134
info@dickersonlawgroup.com

Rhonda K. Forsberg
Forsberg Law Office
64 N. Pecos Road, Suite 800
Henderson, NV 89074
rforsberg@forsberg-law.com


An employee of SOLOMON DWIGGINS & FREER, LTD.