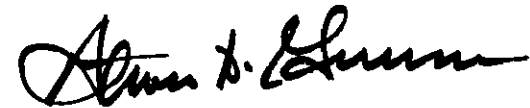


Eric Nelson				
		Approximate Cash	1,159,769	As of 3/31/2011
	Trust	AZ-29 Gateway Lots	139,500	Agreed Earlier
		Russell Road Property (65%)	4,000,000	Court Accepted
	Individually	Family Members	35,000	Face Value
		Nikki Cvintavich	200,000	Face Value
	Banone	2911 Bella Kathryn Circle (Residence)	1,602,171	Costs (Appraisal \$925,000)
		17 Nevada Rental Properties	1,184,236	Costs
		21 Arizona Rental Properties	629,221	Costs
		Notes Receivable	720,761	Face Value
	Banone-AZ	8 Properties	284,122	Costs
	Dynasty	Silver Slipper Casino	1,568,000	Settlement
		Mississippi Property (121.23 acres)	607,775	Appraisal
			12,130,555	
	* SEE ATTACHED DISCRIPTION OF LIABILITIES			
Lynita Nelson				
		Approximate Cash	1,071,035	As of 3/31/2011
	Trust	7065 Palmyra (Residence)	725,000	Preliminary Appraisal
		AZ-31 Gateway Lots	139,500	Agreed to Value Earlier
		5913 Pebble Beech (Sisters House)	75,000	Agreed to Value Earlier
		Wyoming - 200 acres	405,000	Appraisal
		830 Arnold Ave. Greenville, Miss	40,000	Agreed to Value Earlier
		Mississippi Property - RV Park	559,042	Appraisal
		Mississippi	870,193	Appraisal
		Grotta 16.67% (25.37 acres)	21,204	Appraisal (\$127,226)
			3,905,974	
Eric and Lynita (Each Trust owns 50%)				
	Trust			
		Brianhead Cabin	985,000	Appraisal
		3611 Lindell (Office Complex)	1,145,000	Appraisal
		Mississippi Property (Emerald Bay)	560,900	Appraisal
			2,690,900	



CLERK OF THE COURT

MDSM
MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
E-mail: msolomon@sdfnvlaw.com
JEFFREY P. LUSZECK
Nevada State Bar No. 9619
E-mail: jluszeck@sdfnvlaw.com
SOLOMON DWIGGINS FREER & MORSE, 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 Third-Party Defendants

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

Defendants/Counterclaimants.

) Case No. D-411537
) Dept. No. ~~Q~~ L

) HEARING DATE: January 31, 2012
) HEARING TIME: 1:30 p.m.

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

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

**MOTION TO DISMISS AMENDED THIRD-PARTY COMPLAINT AND MOTION TO
STRIKE**

Counterdefendants/Crossdefendants/Third-Party Defendants Lana Martin, Individually,
Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 ("ELN Trust"), and

1 former Distribution Trustee of the LSN Nevada Trust dated May 30, 2001; Nola Harber, Individually,
2 former Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001, and former
3 Distribution Trustee of the LSN Nevada Trust dated May 30, 2001; Rochelle McGowan; and Joan
4 B. Ramos (hereinafter collectively referred to as "Third-Party Defendants), by and through their
5 Counsel of Record, Solomon Dwiggins Freer & Morse, Ltd., hereby file their Motion to Dismiss to
6 Lynita S. Nelson's ("Lynita") Third-Party Complaint filed on or around December 20, 2011. Further,
7 Third-Party Defendants move to strike certain inadmissible allegations.

8 This Motion is based on the Memorandum of Points and Authorities which follows and on
9 all documents and papers filed herein.

10 DATED this 17th day of January, 2012.

11 SOLOMON DWIGGINS FREER & MORSE, LTD.

12
13 By: 

14 MARK A. SOLOMON, ESQ.

15 Nevada State Bar No. 0418

16 JEFFREY P. LUSZECK

17 Nevada State Bar No. 9619

18 Cheyenne West Professional Centre'

19 9060 West Cheyenne Avenue

20 Las Vegas, Nevada 89129

21 **I. INTRODUCTION**

22 Lynita's Counsel sought leave to file an Amended Third-Party Complaint at the December
23 13, 2011, hearing. Instead of eradicating the numerous deficiencies within the Third-Party Complaint,
24 which were meticulously detailed in the Motion to Dismiss and Reply to Opposition to Motion to
25 Dismiss previously filed, the Amended Third-Party Complaint asserts additional tort claims which
26 are time-barred and cannot and should not be heard in this Divorce Proceeding. In fact, hearing the
27 tort claims contemporaneously with the Divorce Proceeding would further delay the divorce that
28 Lynita and Eric L. Nelson ("Eric") have been seeking since May 6, 2009, as it would make it
impossible to conclude this matter at the currently scheduled trial date of May 7, 2012.

This Court lacks jurisdiction to hear matters arising under Title 12 and 13 of the Nevada
Revised Statutes. Notwithstanding, even if this Court has jurisdiction to hear the claims under Title

1 12 and 13 of the Nevada Revised Statutes, it is not obligated to do so. To the extent this Court
2 believes it has jurisdiction and would like to hear said claims, the Motion to Dismiss should still be
3 granted as Lynita's claims for relief: (1) violate the applicable statute of limitations, and as such, fail
4 to state a claim upon which relief can be granted; and (2) fail to meet the elements of the relief sought
5 therein.

6 **II. LEGAL ARGUMENT**

7 **A. This Court Lacks Jurisdiction To Hear The Majority, If Not All, Of The Claims 8 For Relief Asserted In The Amended Third-Party Complaint.**

9 The Nevada Constitution grants the Nevada Supreme Court authority to assign district judges
10 to specialized courts such as the Probate Court.¹ Similarly, the Nevada Legislature has also granted
11 the Nevada Supreme Court authority to make rules consistent with the Constitution and laws of the
12 State for "the government of the district courts."² The Nevada Legislature has also granted districts
13 where more than one judge exists to "make additional rules, not inconsistent with law, which will
14 enable them to transact judicial business in a convenient and lawful manner."³ Consistent with such
15 authority, the Nevada Supreme Court adopted the Eighth Judicial District Court Rules, including Part
16 IV, entitled "Probate; Guardianships; Conservatorship; Trusts; and the Administration of Estates,"
17 which "govern the practice and procedure of all proceedings under Title 12 of NRS and all of Title
18 13 of NRS except chapters 159, 160, and 161."⁴ EDCR 4.16(a), provides in part:

19 The probate judge may hear whichever contested matters the judge
20 shall select, and schedule them at the convenience of the judge's
21 calendar. The judge alone may also refer contested matters pertaining
22 to the probate calendar to a master appointed by the judge for hearing

23 ¹ See Nevada Constitution, Article 6, Section 19(1) ("The chief justice is the
24 administrative head of the court system. Subject to such rules as the supreme court may adopt, the
25 chief justice may: (b) Assign district judges to assist in other judicial districts or to specialized
26 functions which may be established by law."). (Emphasis added).

27 ² Specifically, NRS 2.120 provides: "1. The Supreme Court may make rules not
28 inconsistent with the Constitution and laws of the State for its own government, the government of
the district courts, and the government of the State Bar of Nevada."

29 ³ NRS 3.020.

30 ⁴ EDCR 4.01.

1 and report. All other contested matters pertaining to the probate
2 calendar will be assigned on a random basis to a civil trial judge,
3 other than a trial judge serving in the family division. (Emphasis
4 added).

5 Further, as previously recognized by Lynita in her Opposition to the Motion to Dismiss, the
6 “Nevada Constitution provides the Nevada Legislature with authority to assign or prescribe classes
7 of cases to a specific division of the district court. . .”⁵ Similar to the delineation of jurisdiction in
8 the justice and municipal courts, the Nevada Legislature has delineated the jurisdiction of the Probate
9 Court in NRS 30.060 and NRS 164.015(1). Under NRS 164.015(1), the “court⁶ has exclusive
10 jurisdiction of proceedings initiated by the petition of an interested person concerning the internal
11 affairs of a nontestamentary trust. . .” Indeed, proceedings which may be maintained under NRS
12 164.015(1) concern: “the administration and distribution of trusts, the declaration of rights and the
13 determination of other matters involving trustees and beneficiaries of trusts. . .” Further, NRS 30.060
14 specifically provides that “[a]ny action for declaratory relief under this section [which includes the
15 determination of “any question” arising in the administration of a trust] may only be made in a
16 proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate.”

17 As evidenced by the fact that she has stricken her Third Claim for Relief, entitled:
18 “Declaratory Relief - Alter Ego Veil-Piercing Against Eric and Eric Nelson’s Alter Ego Trust,”⁷ from
19 the Third-Party Complaint, Lynita concedes that this Court lacks jurisdiction to hear certain matters
20 commenced pursuant to Title 12 and 13 of the Nevada Revised Statutes, including, but not limited
21 to, claims for declaratory relief. Despite this acknowledgment, Lynita failed to strike her First and
22 Second Claims for Relief entitled “Veil-Piercing Against Eric, Lana, Nola, and Eric Nelson’s Alter
23 Ego Trust” and “Reverse Veil-Piercing Against Eric, Lana, Nola, and Eric Nelson’s Alter Ego Trust,”
24

25 ⁵ See Opposition to Motion to Dismiss (“Opp.”) at p. 8, ll. 1-3.

26 ⁶ The word “court” in NRS 164.015(1) means “a district court of this State sitting in
27 probate or otherwise adjudicating matters pursuant to this title.” See NRS 132.116, made applicable
28 to trust proceedings under Title 13 by NRS 164.005.

⁷ Cf. Opp. at p. 25, l. 20 - p. 26, l. 14 with Amended Third-Party Complaint.

SOLOMON DWIGGINS FREER & MORSE, LTD.
CHEYENNE WEST PROFESSIONAL CENTRE
9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
(702) 853-5483 (TELEPHONE)
(702) 853-5485 (FACSIMILE)
E-MAIL: sdf@sdm-law.com

1 respectively, both of which seek declaratory relief.⁸ Indeed, both the First and Second Claims for
2 Relief seek the following declaratory relief:

3 Pursuant to NRS 78.747, and/or NRS 163.418, LYNITA seeks a
4 declaratory judgment piercing the veil of ERIC NELSON'S ALTER
5 EGO TRUST, and declaring that the assets held in ERIC NELSON'S
6 ALTER EGO TRUST are the community assets of ERIC and
7 LYNITA, subject to division in the Instant Divorce Action.⁹

8 Since the First and Second Claims seek declaratory relief, at a minimum, said claims must be
9 "commenced pursuant to the provisions of title 12 or 13 of NRS" (*i.e.* in Probate Court) as this Court
10 lacks jurisdiction to hear the same.

11 Notwithstanding the aforementioned provisions of the Nevada Constitution, Nevada Revised
12 Statutes and the Eighth Judicial District Court Rules, Lynita previously contended that this Court is
13 the proper venue to hear any and all claims pertaining to the internal affairs of a nontestamentary trust
14 because this Court "is a division of the district court" and "district courts are courts of general
15 jurisdiction."¹⁰ As indicated *supra*, Lynita's claims must be brought pursuant to the provisions of
16 Title 12 or 13 or Nevada Revised Statutes (*i.e.* in Probate Court), at which point the Probate Court,
17 may hear the case or, in its sole discretion, assign the case to a civil trial judge, "other than a trial
18 judge serving in the family division."¹¹ Consequently, even if the Probate Court exercised its
19 discretion to assign this case to a civil trial judge it could not be this Court.

20 Lynita's prior contention that this Court has jurisdiction to hear cases which arise under Title
21 12 and 13 of the Nevada Revised Statutes is based, in part, upon her misinterpretation of *Landreth*
22 *v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. 16 (Nev. 2011) and *Barelli v. Barelli* 11 Nev. 873, 944
23 P.2d 246 (Nev. 1997), which are inapposite to her position that this Court has jurisdiction to hear
24 claims regarding the internal affairs of irrevocable trusts.

25 ⁸ See Amended Third-Party Complaint at ¶¶ 82 and 88, and p. 42, ll. 9-12.

26 ⁹ *Id.*

27 ¹⁰ See Opp. at p. 8, ll. 11-15.

28 ¹¹ EDCR 4.16(a).

1 Indeed, in *Landreth* the issue addressed by the Nevada Supreme Court was whether the family
2 court had the same constitutional power and authority as other district court judges to adjudicate cases
3 outside of the matters listed in NRS 3.223,¹² specifically whether the family court possessed
4 jurisdiction to hear a case regarding two unmarried persons over the title and ownership of property.
5 After a lengthy analysis, the Nevada Supreme Court held that “a district court judge in the family
6 division has the same constitutional power and authority as any district court judge.”¹³ However,
7 unlike *Landreth*, “any district court” does not have the power or authority to hear the majority of
8 claims contained within the Amended Third-Party Complaint (*i.e.* alter ego, conversion, money had
9 and received, unjust enrichment, breach of fiduciary duty, conspiracy and/or aided and abetting)
10 unless/until the Probate Court assigns this matter, if at all, to a civil trial judge, which cannot be a
11 “trial judge serving in the family division.”¹⁴ Since the Probate Court has not assigned this matter
12 to any district court, *Landreth* supports the Third-Party Defendants’ contention that this Court, or any
13 other district court other than the Probate Court, lack jurisdiction to hear matters pertaining to the
14 internal affairs of the ELN Trust or LSN Trust.

15 Further, in *Barelli*, a wife sued her former husband to reform a property settlement agreement
16 to incorporate alimony or alternatively to seek damages for breach of an “oral side agreement.”¹⁵
17 Because the reformation/rescission claim, which arose under NRS 3.223 (thereby invoking the family
18 court’s jurisdiction), was dependent upon the existence of the “oral side agreement,” the Nevada
19 Supreme Court concluded that the family court had jurisdiction “to resolve issues that fall outside [its]
20 jurisdiction when necessary for the resolution of those claims over which jurisdiction is properly
21 exercised.”¹⁶ In other words, the Nevada Supreme Court held that family court had jurisdiction over
22 “oral side agreement” because “the reformation/rescission claim was dependent upon the existence
23

24 ¹² See *Landreth*, 251 P.3d at 166, 127 Nev. Adv. Op. at 19 .

25 ¹³ *Id.*

26 ¹⁴ EDCR 4.16(a). (Emphasis added).

27 ¹⁵ See *Barelli*, 11 Nev. at 877, 944 P.2d at 248.

28 ¹⁶ *Id.* at 11 Nev. at 878, 944 P.2d at 249.

1 of the oral contract, and because a favorable ruling on the reformation/rescission had a potential for
2 resurrecting claims for alimony and community property, the family court also had jurisdiction to
3 adjudicate its existence.”¹⁷

4 Unlike *Barelli*, the claims asserted in the Third-Party Complaint (*i.e.* alter ego, conversion,
5 money had and received, unjust enrichment, breach of fiduciary duty, conspiracy and/or aided and
6 abetting) are unnecessary “for the resolution” of Lynita’s claim that she has a community property
7 interest in assets owned by the ELN Trust and/or any other issues pertaining to the divorce.
8 Consequently, *Barelli* does not support Lynita’s theory that this Court must hear claims pertaining
9 to the internal affairs of the ELN Trust or LSN Trust. Further, the claims brought in *Barelli* did not
10 arise from Title 12 or 13 of the Nevada Revised Statutes.

11 Lynita also previously relied upon EDCR 5.42 to support her unfounded request to have this
12 Court hear matters arising under Title 12 and 13 of the Nevada Revised Statutes. However, this
13 reliance is equally unpersuasive as said rule only applies to the “same parties,” which occurs “when
14 the same two persons in any domestic case or sub-type have an action against one another, regardless
15 of their respective party designation,”¹⁸ and the ELN Trust, LSN Trust, Lana, Nola, Rochelle
16 McGowan (“Rochelle”), Joan Ramos (“Joan”) were not parties to the Divorce Proceeding prior to the
17 filing of the Third-Party Complaint. Further, EDCR 5.42 contains a number of exceptions to the
18 purported “one judge, one family” rule, including, but not limited to, cases filed pursuant to Chapter
19 62, Chapter 432B, Chapter 159, Chapter 130 and/or Chapter 425.

20 If this Court were to adopt Lynita’s contention that EDCR 4.01 and NRS 164.015 “simply
21 provide administrative and procedural rules for matters which proceed before the probate court,” the
22 Legislature, Nevada Supreme Court and Eighth Judicial District’s purpose in designating a probate
23 judge to hear probate matters will be circumvented, and any party could escape the jurisdiction of the
24
25
26

27 ¹⁷ *Id.*

28 ¹⁸ EDCR 5.42(a).

1 designated court sitting in probate by filing their claims in any district court.¹⁹ This clearly was not
2 the intent of the Legislature, Nevada Supreme Court or the Eighth Judicial District. Irrespective of
3 whether Lynita believes it “makes [] sense at all”²⁰ for her to bring her claims for declaratory relief
4 and other claims concerning the internal affairs in the Probate Court as required by NRS 30.060 and
5 NRS 164.015, it is what the law requires.

6 Further, if all of the claims asserted in the Third-Party Complaint proceed in this Court, the
7 Third-Party Defendants will be deprived of their constitutional right to a jury trial under Article 1,
8 Section 3 of the Nevada Constitution.²¹ As such, this Court must dismiss any and all claims for
9 declaratory relief and other claims concerning the internal affairs of the ELN Trust and the LSN Trust.

10 **B. Even If This Court Has Jurisdiction To Hear Lynita’s Claims Arising Under**
11 **Title 12 or 13 Of The Nevada Revised Statutes, It Is More Appropriate For Said**
12 **Claims To Be Heard By The Probate Court And/Or A Civil District Judge Of Its**
13 **Own Choosing.**

The Nevada Supreme Court has recognized that even if a family court finds that it “may have

14 ¹⁹ Lynita’s previous contention that the Third-Party Defendants’ “interpretation of NRS
15 164.015” is that “all decisions concerning matters involving trusts would issue from the probate
16 court and the trust (or its trustees) would never be named as a party in a divorce action, or any other
17 type of civil action,” *see* Opp. at p. 10, ll. 24-26, misconstrues NRS 30.060, NRS 164.015 and EDCR
18 Part IV. As illustrated by the fact that the ELN Trust stipulated to being named as a Defendant in
19 this matter, Third-Party Defendants acknowledge that trusts may be named parties to litigation
20 outside of probate when the claims do not arise from NRS 30.060 or NRS 164.015, *e.g.* Lynita’s
21 claim she has a community property interest in the ELN Trust. *See e.g., Gladys Baker Olsen Family*
22 *Trust By and Through Olsen v. Eighth Judicial Dist. Court*, 110 Nev. 548, 553, 874 P.2d 778, 781
23 (1994) (the failure of a real party in interest to join a trust as a party was fatal error, where the trust
24 owned all the assets at issue and was therefore a necessary party under NRCP 19(a)); *Guerin v.*
Guerin, 114 Nev. 127, 132, 953 P.2d 716, 719 (1998) abrogated on other grounds by *Pengilly v.*
Rancho Santa Fe Homeowners, 116 Nev. 646, 646, 5 P.3d 569, 569 (2000) (Nevada Supreme Court
directed the Clerk of the Court to issue a writ of prohibition precluding the district court from
enforcing its April 8, 1996, order because the Hill Family Trust was not a named party to the action
at the time the order was entered). However, Lynita’s claims in her Amended Third-Party Complaint
must be initiated in Probate Court as they arise under NRS 30.060 or NRS 164.015.

25 ²⁰ *See* Opp. at p. 9, l. 1.

26 ²¹ *Cf.* Nevada Constitution, Article 1, Section 3 (“The right of trial by Jury shall be
27 secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil
28 cases in the manner to be prescribed by law. . .”) *with* NRS 125.070 (“The judge of the court shall
determine all questions of law and fact arising in any divorce proceeding under the provisions of this
chapter.”).

1 jurisdiction over [a] matter pursuant to NRS 3.223,” the matter may be heard by the “Civil Division
2 of the District Court” if the family court decides it would be more appropriate to be heard by the
3 same.²² Lynita has not and cannot cite any authority that requires this Court to hear the claims arising
4 under Title 12 and 13 or the Nevada Revised Statutes.²³ It would be unduly prejudicial to both Eric
5 and Lynita for this Court to hear the claims arising under Title 12 and 13 of the Nevada Revised
6 Statutes as it would further delay the divorce that they have been seeking since May 6, 2009. Indeed,
7 if said claims proceeded contemporaneously with the Divorce Proceeding the trial date would need
8 to be continued once again (most likely until 2013) as Third-Party Defendants would need to conduct
9 voluminous discovery, including, but not limited to retaining expert witnesses, regarding Lynita’s
10 claims for alter ego, conversion, money had and received, unjust enrichment, breach of fiduciary duty,
11 conspiracy and/or aided and abetting. Further, this Court indicated at the December 13, 2011, hearing
12 that it was unsure whether it wanted to hear Lynita’s tort claims because said claims were not
13 domestic violence torts.²⁴ This rationale has been adopted and followed by numerous other
14 jurisdictions.²⁵

16 ²² See *Kwist v. Chang*, 2011 WL 1225692 * 2 (Nev. Mar. 31, 2011) (slip copy) (family
17 court found that it “may have jurisdiction over this matter pursuant to NRS 3.223 . . . but it is more
18 appropriate for the matter to be heard by the Civil Division of the District Court.”).

19 ²³ Indeed, neither *Landreth* nor *Barelli* stand for the proposition that this Court must
20 hear said claims.

21 ²⁴ See Hearing Video at 14:26:39 - 14:27:21.

22 ²⁵ See *Ward v. Ward*, 155 Vt. 242, 247, 583 A.2d 577, 581 (1990) (“We note that the
23 better reasoned cases from other states have reached the conclusion that marital tort actions may not
24 be joined into a divorce action.”); *Stuart v. Stuart*, 143 Wis.2d 347, 421 N.W.2d 505 (1988), *aff’d*,
25 140 Wis.2d 455, 410 N.W.2d 632 (App.1987) (“the administration of justice is better served by
26 keeping tort and divorce actions separate.... Divorce actions will become unduly complicated if tort
27 claims must be litigated in the same action. A divorce action is equitable in nature and involves a
28 trial to the court. On the other hand, a trial of a tort claim is one at law and may involve, as in this
case, a request for a jury trial. Resolution of tort claims may necessarily involve numerous witnesses
and other parties such as joint tortfeasors and insurance carriers whose interests are at stake.
Consequently, requiring joinder of tort claims in a divorce action could unduly lengthen the period
of time before a spouse could obtain a divorce and result in such adverse consequences as delayed
child custody and support determinations.”); *Heacock v. Heacock*, 402 Mass. 21, 520 N.E.2d 151,
153 (1988) (“A tort action is not based on the same underlying claim as an action for divorce. The

1 In light of the foregoing, even is this Court believes that it has jurisdiction over claims arising
2 under Title 12 or 13 of the Nevada Revised Statutes, it would be more appropriate for said claims to
3 be heard by the Probate Court and/or a civil district judge of its choosing.

4 **C. Lynita's First And Second Claims For Relief For Alter Ego Should Be Dismissed**
5 **Because NRS 78.747 Does Not Apply To A Self-Settled Spendthrift Trust And**
6 **Has Failed To State A Claim Under NRS 163.418.**

7 Lynita's First and Second Claims for Relief should be dismissed because said claims, even
8 though titled claims for "Alter Ego" seek declaratory relief, which Lynita has conceded by striking
9 her Third Claim for Relief from the Third-Party Complaint, must be brought under Title 12 and 13
10 of the Nevada Revised Statutes.²⁶ The First and Second Claims for Relief should additionally be
11 dismissed for the reasons set forth below.

12 1. NRS 78.747, Which Pertains Solely To Alter Ego Claims Against
13 Corporations, Cannot Be Applied To A Self-Settled Spendthrift Trust.

14 Lynita's alter ego claims, made under NRS 78.747, must be dismissed because said statute
15 does not extend alter ego liability to trusts, specifically a self-settled spendthrift trust.²⁷ Indeed, there
16 is no statutory or judicial authority that supports applying NRS 78.487 to trusts. To the contrary,
17 applying NRS 78.747 to a self-settled spendthrift trust would frustrate NRS Chapter 166 which
18 specifically allows a settlor of a self-settled spendthrift trust to manage, benefit from and control said

19 purpose of a tort action is to redress a legal wrong in damages; that of a divorce action is to sever the
20 marital relationship between the parties, and, where appropriate, to fix the parties' respective rights
21 and obligations with regard to alimony and support, and to divide the marital estate."); *Lord v. Shaw*,
22 665 P.2d 1288, 1291 (Utah 1983) (torts between married persons should not be litigated in a divorce
23 proceeding. We believe that divorce actions will become unduly complicated in their trial and
24 disposition if torts can be or must be litigated in the same action. A divorce action is highly equitable
25 in nature, whereas the trial of a tort claim is at law and may well involve, as in this case, a request
26 for trial by jury. The administration of justice will be better served by keeping the two proceedings
27 separate).

28 ²⁶ NRS 30.060.

²⁷ See *Nevada v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1170-71 (2008) ("[u]nless
ambiguous, a statute's language is applied in accordance with its plain meaning [and] when the
Legislature's intent is clear from the plain language, [the Nevada Supreme Court] will give effect
to such intention and construe the statute's language to effectuate rather than nullify its manifested
purpose.").

1 trust except as to distributions.²⁸ This sentiment was echoed by this Court at the December 13, 2011,
2 hearing when it stated: “[t]he alter ego, I’ll be honest I’ve never seen that used in a trust. I’ve seen
3 it in corporate, I’ve seen it in LLC’s being used as the alter ego and to pierce the corporate veil. I
4 haven’t seen it in a trust context so I’m not sure . . .”²⁹

5 Lynita’s prior reliance upon *Dean v. United States*, 987 F. Supp. 1160, 1166-67 (W.D. Mo.
6 1997)³⁰ and *In re Schwarzkopf*, 626 F.3d 1032 (9th Cir. 2010), is inapposite to her contention that NRS
7 78.747 should be applied to self-settled spendthrift trusts because neither case applied an alter ego
8 statute, which specifically states that it pertains solely to the “[l]iability of stockholder, director or
9 officer for debt or liability of corporation.”³¹ Most importantly, unlike the trusts in *Dean* and
10 *Schwarzkopf*, which were created for the benefit of minor children, and not the settlor,³² NRS Chapter
11 166 specifically permits the settlor of a self-settled spendthrift trust to be a beneficiary without limits
12 as to the benefits received and to have any power except “for the power of the settlor to make
13 distributions to himself or herself without the consent of another person.”³³

14 Assuming *arguendo* that NRS 78.747 applies to self-settled spendthrift trusts, which it does
15 not, the First and Second Claim for Relief should still be dismissed because: (1) said claims are barred
16
17

18 ²⁸ See NRS 166.040(3).

19 ²⁹ See Hearing Video at 14:26:39 - 14:27:21.

20 ³⁰ Indeed, in *Dean* the court actually would not permit the alter ego doctrine to apply
21 as it would require an expansion of the alter ego doctrine which the Court was unwilling to do
22 without clearer direction from Congress or the Missouri courts. *Dean*, 987 F. Supp. at 1166-67.

23 ³¹ See NRS 78.747.

24 ³² See *Dean*, 987 F. Supp. at 1162 (settlers “decided to transfer their assets into an
25 irrevocable trust for the sole benefit of their children.”), and *Schwarzkopf*, 626 F.3d at 1036 (trust
26 was created for the benefit of a minor child).

27 ³³ Specifically, NRS 166.040(3) provides: “[e]xcept for the power of the settlor to make
28 distributions to himself or herself without the consent of another person, the provisions of this
section shall not be construed to prohibit the settlor of a spendthrift trust from holding other powers
under the trust, whether or not the settlor is a cotrustee, including, without limitation, the power to
remove and replace a trustee, direct trust investments and execute other management powers.”

1 by NRS 166.170;³⁴ and (2) a declaratory judgment would not terminate the uncertainty or controversy
2 giving rise to Lynita's claims. In Nevada, courts may refuse to render or enter a declaratory judgment
3 or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty
4 or controversy giving rise to the proceeding."³⁵ Lynita seeks a declaratory judgment stating that the
5 ELN Trust is an illusory sham trust and Eric's alter ego pursuant to NRS 78.747;³⁶ however, such a
6 declaration "would not terminate the uncertainty or controversy giving rise" to Lynita's claims.
7 Indeed, even if this Court were to find Lynita's allegations are true, the controversy would not be
8 terminated because the question of whether her claims are time-barred would still remain.

9 2. The Amended Third-Party Complaint Is Riddled With Allegations That
10 Cannot Be Considered In An Alter Ego Claim.

11 No Nevada statute specifies what makes a trust the alter ego of its settlor, but NRS 163.418
12 requires that any such claim must be proven by clear and convincing evidence. Indeed, NRS 163.418
13 provides that the following factors, alone or in combination, are insufficient for a finding of alter ego:

- 14 1. The settlor has signed checks, made disbursements or
15 executed other documents related to the trust as the trustee
16 and the settlor is not a trustee, if the settlor has done so in
17 isolated incidents.
- 18 2. The settlor has made requests for distributions on behalf of a
19 beneficiary.
- 20 3. The settlor has made requests for the trustee to hold, purchase
21 or sell any trust property.
- 22 4. The settlor has engaged in any one of the activities, alone or
23 in combination, listed in NRS 163.4177.

24 Further, under NRS 163.4177, factors which must not be considered exercising improper
25 dominion or control over a trust are:

- 26 1. A beneficiary is serving as a trustee.

27 ³⁴ As indicated *infra*, pursuant to NRS 166.170, Lynita's claims are barred because she
28 failed to file bring suit within two (2) years after the transfers were made to the ELN Trust.

³⁵ NRS 30.080. *See Aetna Cas. & Sur. Co. v. Rasa Management Co., Inc.*, 621 F. Supp.
892, 893 (D. Nev. 1985) ("a declaratory judgment should not be entered unless it disposes of a
controversy and serves a useful purpose."); *El Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev.
65, 68, 506 P.2d 426, 428 (1973) ("It is true that a court may refuse to enter a declaratory judgment
where to do so would not terminate the controversy giving rise to the action.").

³⁶ *See Amended Third-Party Complaint*, at ¶¶ 78-89.

2. The settlor or beneficiary holds unrestricted power to remove or replace a trustee.
3. The settlor or beneficiary is a trust administrator, general partner of a partnership, manager of a limited-liability company, officer of a corporation or any other manager of any other type of entity and all or part of the trust property consists of an interest in the entity.
4. The trustee is a person related by blood, adoption or marriage to the settlor or beneficiary.
5. The trustee is the settlor or beneficiary's agent, accountant, attorney, financial adviser or friend.
6. The trustee is a business associate of the settlor or beneficiary.

Notwithstanding the foregoing statutes, the majority, if not all, of Lynita's self-serving allegations pertaining to the ELN Trust must not be considered in alter ego claims. Indeed, the Amended Third-Party Complaint alleges:

1. "Eric has asserted his management and control over the ELN Trust;"³⁷
2. "Eric has influenced, directed, and controlled all aspects of both [ELN Trust] and the LSN Trust;"³⁸
3. Lana, "Eric's employee, close friend . . . served as the Distribution Trustee for [ELN Trust] and the LSN Trust;"³⁹
4. Nola, "Eric's sister . . . served as the Distribution Trustee for [ELN Trust] and the LSN Trust for approximately four years;"⁴⁰
5. "Eric directed the release of thousand of dollars of trust income to Eric and other third parties, including Eric's family members (Cal Nelson, Paul Nelson, Chad Ramos, Ryan Nelson and others) . . . to fund Eric's and Eric's family members' personal expenditures;"⁴¹
6. Eric dictated the asset transfers and loans he desired to be performed;⁴²
7. "Eric's actions demonstrate that [ELN Trust] was influenced,

³⁷ Cf. Amended Third-Party Complaint at ¶ 6 with NRS 163.4177(3).

³⁸ Cf. Amended Third-Party Complaint at ¶ 6 with NRS 163.418(2).

³⁹ Cf. Amended Third-Party Complaint at ¶ 10 with NRS 163.4177(5) & (6).

⁴⁰ Cf. Amended Third-Party Complaint at ¶ 10 with NRS 163.4177(4).

⁴¹ Cf. Amended Third-Party Complaint at ¶ 11 with NRS 163.418(2) & (3) and NRS 163.4177(3).

⁴² Cf. Amended Third-Party Complaint at ¶ 12 with NRS 163.418(3) and NRS 163.4177(3).

- 1 directed, controlled and governed by Eric;”⁴³
- 2 8. Lana, Rochelle and Joan, “as employees of any one of Eric’s
- 3 entities, they each handled Eric’s books and records and day
- 4 to day operations (under Eric’s direction and control), acted
- 5 as the registered agent for any one of Eric’s entities (under
- 6 Eric’s direction and control), and/or acted as the notary public
- 7 for Eric’s entities, including notarizing documents related to
- 8 the [ELN Trust] and [LSN Trust];⁴⁴
- 9 9. “[t]here has been such unity of interest and ownership
- 10 between Eric and [ELN Trust] that one is inseparable from
- 11 the other;⁴⁵
- 12 10. “Eric’s actions demonstrate his control over [ELN Trust] and
- 13 the assets held in the Trust, including the distribution of assets
- 14 of [ELN Trust] for his own personal benefit;⁴⁶ and
- 15 11. “Eric’s direct or indirect control and direction of [ELN Trust]
- 16 investments and disbursements invalidate any spendthrift
- 17 aspect of the Trust.”⁴⁷

18 Further, the Amended Third-Party Complaint cites and relies upon a number of payments made by

19 the ELN Trust that Mr. Larry L. Bertsch, CPA, CFF purportedly identified in a December 8, 2011,

20 document entitled “Source and Application of Funds for Eric L. Nelson Nevada Trust;”⁴⁸ however,

21 said facts cannot be considered in an alter ego claim under NRS 78.747, NRS 163.418 or NRS

22 163.4177. Unsurprisingly, although Lynita contends in the Amended Third-Party Complaint that the

23 payments Mr. Bertsch purportedly identified “are in direct contravention of the terms of the [ELN

24 Trust],”⁴⁹ she is unable to cite a single provision of the ELN Trust to support said contention.

25 Since Lynita has failed to make a proper allegation to support an alter ego claim under NRS

26 ⁴³ Cf. Amended Third-Party Complaint at ¶¶ 73 and 78 *with* NRS 163.418(2) & (3) and

27 NRS 163.4177(1)-(6).

28 ⁴⁴ Cf. Amended Third-Party Complaint at ¶ 13 *with* NRS 163.418(3) and NRS

29 163.4177(5).

30 ⁴⁵ Cf. Amended Third-Party Complaint at ¶¶ 74 & 79 *with* NRS 163.418(2) & (3) and

31 NRS 163.4177(1)-(6).

32 ⁴⁶ Cf. Amended Third-Party Complaint at ¶ 74 *with* NRS 163.418(2) & (3) and

33 163.4177(1)-(6).

34 ⁴⁷ Cf. Amended Third-Party Complaint at ¶ 84 *with* NRS 163.418(2) & (3) and NRS

35 163.4177(1)-(6).

36 ⁴⁸ See Amended Third-Party Complaint at ¶¶ 57-61.

37 ⁴⁹ *Id.* at ¶ 58.

1 163.418, the First and Second Claims for Relief for alter ego should be dismissed.

2 3. Settlement Statements Purportedly Made By Eric Do Not Demonstrate A High
3 Likelihood Of Success On Lynita's Alter Ego Claims.

4 In addition to erroneously contending that NRS 78.747 is the requisite standard for an alter
5 ego claim against a self-settled spendthrift trust, Lynita previously contended that she has otherwise
6 "demonstrate[d] a high likelihood of success on her alter ego claims."⁵⁰ Attached as an Exhibit to the
7 Opposition, was what Lynita deemed an admission of "the validity [of her] claims" in the form of
8 certain statements purportedly made by Eric during the course of trial.⁵¹ Eric's statements are not
9 controlling because under Nevada law, personal opinion of either spouse as to separate or community
10 character of property is of no moment whatsoever in determining legal status of that property.⁵² On
11 the effect of the opinion of a spouse as evidence of the separate or community character of property,
12 the court in *Re Pepper's Estate*, 158 Cal. 619, 625-26, 112 P. 62 (Cal. 1910)⁵³ stated:

13 Whether the property was community or separate, was a question of
14 law, depending on the manner and time of its acquisition. The opinion
of Pepper [the husband] on this legal question was entitled to no
weight.

15 Lynita's logic is similarly flawed because settlement proposals are inadmissible to prove the
16 validity/invalidity of Lynita's claims.⁵⁴ Further, Lynita's prior contention that "if the Court had

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18 ⁵⁰ See Opp. at p. 14, ll. 24-27.

19 ⁵¹ Upon information and belief there are just as many excerpts made by Eric during the
20 course of this litigation, which support the ELN Trust's position that it is a valid self-settled
21 spendthrift trust duly established pursuant to NRS 166, and that neither Eric nor Lynita have a
community property and/or separate property interest therein.

22 ⁵² See *Hardy v. United States*, 918 F. Supp. 312, 317 (D. Nev. 1996) ("The personal
23 opinion of either spouse as to the character of the property is of no moment whatsoever."); See also,
24 *Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) ("The opinion of either spouse as to
whether property is separate or community is of no weight whatever."); *In re Wilson's Estate*, 56
25 Nev. 353, 53 P.2d 339, 344 (1936) (court disregarded affidavit, even though it raises some doubt
26 regarding correctness of findings of the district court, because "it has been decided by this court, as
well as by appellate courts of other states, that the opinion of either spouse as to whether property
is separate or community is of no weight.").

27 ⁵³ Overruled on other grounds by *In re Neilson's Estate*, 371 P.2d 745 (Cal. 1962).

28 ⁵⁴ See generally, NRS 48.105.

1 accepted one of Eric's proposed distribution . . . Eric could have, and would have, directed such
2 distributions from the ELN and LSN Trusts to effectuate said distributions,"⁵⁵ presupposes that the
3 settlement proposal would withstand the muster of the Distribution Trustee of the ELN Trust.⁵⁶ In
4 light of the foregoing, this Court should summarily disregard the self-serving excerpts referenced by
5 Lynita.

6 **D. Lynita's Sixth Claim For Relief for Conversion, Seventh Claim For Money Had**
7 **And Received And Ninth Claim For Relief For Unjust Enrichment Are Time-**
8 **Barred.**

9 Since she undoubtedly realized that her alter ego claims are tenuous at best, Lynita sought
10 leave to amend her Third-Party Complaint to assert claims for conversion,⁵⁷ money had and received⁵⁸
11 and unjust enrichment.⁵⁹ Although unclear, it appears that said additional claims are solely against
12 the ELN Trust and not against Lana and Rochelle individually.

13 Chapter 166 of the Nevada Revised Statutes codifies the Spendthrift Trust Act of Nevada.
14 For purposes of Chapter 166, a spendthrift is defined as "a trust in which by the terms thereof a valid
15 restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed."⁶⁰
16 "The beneficiary or beneficiaries of such trust shall be named or clearly referred to in the writing. No
17 spouse, former spouse, child or dependent shall be a beneficiary unless named or clearly referred to
18 as a beneficiary in the writing."⁶¹ "A beneficiary of a spendthrift trust has no legal estate in the
19 capital, principal or corpus of the trust estate . . ."⁶²

20 ⁵⁵ See Opp. at p. 15, ll. 20-23.

21 ⁵⁶ See ELN Trust, Art. III, Section 3.3.

22 ⁵⁷ See Amended Third-Party Complaint at ¶¶ 113-117.

23 ⁵⁸ See *id.* at ¶¶ 118-121.

24 ⁵⁹ See *id.* at ¶¶ 130-134.

25 ⁶⁰ NRS 166.020.

26 ⁶¹ NRS 166.080.

27 ⁶² NRS 166.130.

1 NRS 166.170 limits the time frame in which a creditor,⁶³ which is defined as “a person who
2 has a claim, may bring an action against a trust advisor,⁶⁴ trustee and/or spendthrift trust. Specifically,
3 NRS 166.170 provides:

- 4 1. A person may not bring an action with respect to a transfer of
5 property to a spendthrift trust:
 - 6 (a) If the person is a creditor when the transfer is made,
7 unless the action is commenced within:
 - 8 (1) Two years after the transfer is made; or
 - 9 (2) Six months after the person discovers⁶⁵ or
reasonably should have discovered the
transfer, whichever is later.
 - 10 (b) If the person becomes a creditor after the transfer is
11 made, unless the action is commenced within 2 years
12 after the transfer is made. (Emphasis added).

13 NRS 166.170(3)⁶⁶ and (6),⁶⁷ require that a creditor prove by “clear and convincing evidence” that the

14 ⁶³ See NRS 112.150(4) defines a creditor as “a person who has a claim.”

15 ⁶⁴ See NRS 166.170(6)(a) defines trust advisor as: “any person, including, without
16 limitation, an accountant, attorney or investment adviser, who gives advice concerning or was
17 involved in the creation of, transfer of property to, or administration of the spendthrift trust or who
18 participated in the preparation of accountings, tax returns or other reports related to the trust.”
19 (Emphasis added).

20 ⁶⁵ NRS 166.170(2) (“A person shall be deemed to have discovered a transfer at the time
21 a public record is made of the transfer, including, without limitation, the conveyance of real property
22 that is recorded in the office of the county recorder of the county in which the property is located or
23 the filing of a financing statement pursuant to chapter 104 of NRS.”).

24 ⁶⁶ Under Section 206 of Nevada Senate Bill No. 221, NRS 166.170(3) reads as follows:
25 “[a] creditor may not bring an action with respect to transfer of property to a spendthrift trust unless
26 a creditor can prove by clear and convincing evidence that the transfer of property was a fraudulent
27 transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the
28 creditor under a contract or a valid court order that is legally enforceable by that creditor. In the
absence of such clear and convincing proof, the property transferred is not subject to the claims of
the creditor. Proof by one creditor that a transfer of property was fraudulent or wrongful does not
constitute proof as to any other creditor and proof of a fraudulent or wrongful transfer of property
as to one creditor shall not invalidate any other transfer of property.”

⁶⁷ Under Section 206 of Nevada Senate Bill No. 221, NRS 166.170(6) reads as follows:
“[a] person other than a beneficiary or settlor may not bring a claim against a trustee of a spendthrift
trust unless the person can show by clear and convincing evidence that the trustee acted in violation
of the laws of this State, knowingly and in bad faith, and the trustee’s actions directly caused the
damages suffered by the person. As used in this subsection, “trustee” includes a cotrustee, if any, and
a predecessor trustee.”

1 transfer of property was a fraudulent transfer and/or violated the laws of the State of Nevada.

2 As set forth in the Amended Third-Party Complaint, both the ELN Trust and LSN Trust were
3 created and funded in May 2001, as Lynita clearly knew.⁶⁸ Notwithstanding, the Third-Party blames
4 Eric, and takes no personal responsibility, for her failure to file a timely conversion, money had and
5 received and unjust enrichment claim, because Eric purportedly made inadmissible settlement
6 statements.⁶⁹

7 Further, the Amended Third-Party Complaint fails to articulate and/or identify what portion
8 of the ELN Trust she claims a community property interest in as the ELN Trust was funded by assets
9 that were wholly owned by the ERIC L. NELSON SEPARATE PROPERTY TRUST dated July 13,
10 1993, a fact that she acknowledged in or around 1993. If Lynita contends that the ELN Trust and the
11 LSN Trusts were invalid upon creation (*i.e.* due to fraud, sham alter ego), Lynita is deemed an
12 existing creditor, which is defined as “a person who has a claim,”⁷⁰ and pursuant to NRS 166.170, had
13 two years to challenge the creation of the ELN Trust and the LSN Trust and/or any claims against the
14 Trustees. Similarly, if Lynita contends that her community property was transferred to the ELN Trust
15 in or around May 2001, she had the later of two years after the transfer was made, or six months after
16 she discovered or reasonably should have discovered the transfer, whichever is later, to file suit.⁷¹
17 If Lynita contends that her community property was transferred to the ELN Trust within two years
18 of the Divorce Proceeding, Lynita’s claims would not be barred.

19 Lynita’s claim for conversion and money had and received are further barred under NRS
20 11.190(3)(c) and NRS 11.220.

21 1. The Continuous Tort Doctrine Is Inapplicable And Does Not Justify Lynita
22 Filing Untimely Claims.

23 In a brazen attempt to excuse her unjustified delay in bringing claims against the Third-Party
24

25 ⁶⁸ See Amended Third-Party Complaint at ¶¶ 28-29.

26 ⁶⁹ See *id.* at ¶¶ 114 and 119.

27 ⁷⁰ See NRS 112.150(4).

28 ⁷¹ NRS 166.170.

1 Defendants, Lynita contended in the Opposition, for the first time, that her delay was justified because
2 none of her “causes of action could have accrued until June, 2011.”⁷² Notwithstanding said
3 contention, the Amended Third-Party Complaint, which is the operative document for purposes of
4 the Motion to Dismiss, fails to state when: (1) the tortious conduct occurred;⁷³ and (2) she discovered
5 the same.⁷⁴ Lynita’s failure to plead the requisite elements of her Tort Claims warrants the relief
6 sought in the Motion to Dismiss.

7 Lynita’s prior reliance upon the “continuous tort doctrine” also fails as said doctrine typically
8 “applies in various cases invoking several federal statutes,”⁷⁵ and does not appear to have been
9 adopted in Nevada.⁷⁶ “[A] continuing tort is a tortious act that occurs so repeatedly that it can be
10 termed “continuous,” such that one may say that the tortious conduct has not yet ceased.”⁷⁷ The
11 doctrine only applies where there is “no single incident” that can “fairly or realistically be identified
12
13
14

15 ⁷² See Opp. at p. 19, ll. 5-9.

16 ⁷³ See NRCP 9(f) (“For the purpose of testing the sufficiency of a pleading, averments
17 of time and place are material and shall be considered like all other averments of material matter.”);
18 *Brown v. Kellar*, 97 Nev. 582, 583, 636 P.2d 874, 874 (1981) (pleading for tort claim must
19 averments to time).

20 ⁷⁴ See *Prescott v. United States*, 523 F.Supp. 918, 940-941 (D. Nev.1981), aff’d, 731
21 F.2d 1388 (9th Cir. 1984) (“Plaintiff who relies upon this delayed discovery rule must plead facts
22 justifying delayed accrual of his action. The complaint must allege: (1) the time and manner of
23 discovery, and (2) the circumstances excusing delayed discovery.”) cited with approval by the
24 Nevada Supreme Court in *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990).

25 ⁷⁵ See *Page v. United States*, 729 F.2d 818, 822 (D.C. Cir. 1984) disapproved of by
26 *Beard v. Edmondson & Gallagher*, 790 A.2d 541 (D.C. 2002) (claim that the VA wrongfully
27 prescribed addictive drugs without proper monitoring under the Tort Claims Act did not accrue for
28 purposes of the statutory limitations on suit-filing until treatment was terminated.).

⁷⁶ Indeed, the cases relied upon by Lynita had specifically already adopted the
continuous tort doctrine. See *Coulon v. Witco Corp.*, 848 So. 2d 135, 138 (La. App. 2003)
(continuous-tort doctrine adopted.).

⁷⁷ *Anderson v. State*, 965 P.2d 783, 790 (Haw. App. 1998) (“The Hawaii Supreme Court
adopted the continuing-tort exception to a statute of limitations in 1935”).

1 as the cause of significant harm”⁷⁸ such as exposure to chemicals over a period of time.⁷⁹ “[O]nce the
2 plaintiff has been placed on notice of an injury and the role of the defendants’ wrongful conduct in
3 causing it, the policy disfavoring stale claims makes application of the “continuous tort” doctrine
4 inappropriate.”⁸⁰

5 Although Lynita previously contended that the continuous tort doctrine should be applied, the
6 Amended Third-Party Complaint references certain transactions that purportedly caused her
7 significant harm, including, but not limited to, “the transaction involving the Russell Road property”⁸¹
8 and “the release of thousands of dollars of trust income to Eric and other third parties.”⁸² Since there
9 are a number of “single incidents,” which Lynita contends is the cause of “significant harm,” the
10 continuous tort doctrine does not apply. In any case, even if this Court finds that the continuous tort
11 doctrine applies, the alleged tortious conduct of Nola and Lana cannot be deemed continuous as
12 Lynita removed them as the Distribution Trustee of the LSN Trust long ago.⁸³

13 **E. Ms. Nelson’s Third And Fourth Claims For Relief For Breach Of Fiduciary Duty**
14 **Should Be Dismissed Because Said Claims Are Barred Under NRS 166.170(8)**
And NRS 11.190(3)(d).

15 Further, NRS 166.170(8) strictly prohibits any action against the trustee of a spendthrift trust
16 as follows:

17 Notwithstanding any other provision of law, no action of any kind,
18 including, without limitation, an action to enforce a judgment entered
19 by a court or other body having adjudicative authority, may be

20 ⁷⁸ *Flowers v. Carville*, 310 F.3d 1118, 1126 (9th Cir. 2002). *See also* 54 C.J.S.
21 Limitations of Actions § 223 (“The common-law continuing tort doctrine may be applied, for statute
22 of limitations purposes, when no single incident in a chain of tortious activity can fairly or
realistically be identified as the cause of significant harm”).

23 ⁷⁹ *See Coulon*, 848 So. 2d at 138 (continuous-tort doctrine applied when employee
24 suffered permanent neurological injuries as result of exposure to significant amounts of neurotoxins
and several carcinogens during employment).

25 ⁸⁰ *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 548 (D.C. 2002)

26 ⁸¹ *See* Amended Third-Party Complaint at ¶¶ 14 and 142.

27 ⁸² *See id.* at ¶¶ 11 and 57-61.

28 ⁸³ *See id.* at ¶ 51.

1 brought at law or in equity against the trustee of a spendthrift trust if
2 as of the date the action is brought, an action by a creditor with
3 respect to a transfer to the spendthrift trust would be barred pursuant
4 to this section.

5 A “clear and convincing evidence” standard is also required for claims against a trust advisor.⁸⁴

6 As indicated *supra*, both the ELN Trust and LSN Trust were created and funded in May
7 2001.⁸⁵ Consequently, the statute of limitations began to run in or around May 2001, over ten (10)
8 years ago. Pursuant to NRS 166.170, any claim that Ms. Nelson may have had against the ELN Trust
9 and/or LSN Trust should have been brought no later than May 2003, within two (2) years of its
10 creation and funding; however, she failed to do so. Said failure not only precludes Lynita’s claims
11 against the ELN Trust, but against the Trustees of the ELN Trust and LSN Trust (Eric, Lana and
12 Nola).

13 Irrespective of NRS 166.170, Lynita’s Tort Claims are further barred under NRS 11.190(3)(d)
14 and NRS 11.220. Indeed, Lynita knew, or should have known, of the facts constituting the elements
15 of her causes of action when Eric executed the ELN Trust, and she executed the LSN Trust in or
16 around May 30, 2001, as neither trust provides that the assets titled in the name of the ELN Trust or
17 the LSN Trust “were held, owned and controlled by the parties as community property.”⁸⁶ At the very
18 least, Lynita’s claims against Lana in her capacity as Distribution Trustee of the LSN Trust must be
19 dismissed because Lana was admittedly “replaced as Distribution Trustee for the LSN Trust on
20 February 22, 2007,”⁸⁷ which was over 4.5 years ago, and “breach of fiduciary duty is fraud and,
21
22

23 ⁸⁴ NRS 166.170(5) provides: “[a] person may not bring a claim against an adviser to
24 the settlor or trustee of a spendthrift trust unless the person can show by clear and convincing
25 evidence that the adviser acted in violation of the laws of this State, knowingly and in bad faith, and
the adviser’s actions directly caused the damages suffered by the person.”

26 ⁸⁵ See Amended Third-Party Complaint at ¶¶ 28-29.

27 ⁸⁶ See Opp. at p. 18, ll. 2-3.

28 ⁸⁷ See Amended Third-Party Complaint at ¶ 51.

1 therefore, [subject to] the three-year statute of limitation set forth in NRS 11.190(3)(d).”⁸⁸

2 Lynita’s prior contention that “NRS 166.170, by its express terms, only applies to the time
3 period for “creditors” to bring actions “with respect to a transfer of property to a spendthrift Trust”
4 is erroneous as NRS 166.170(8) contains no such limitation.”⁸⁹

5 **F. Lynita’s Eleventh Claim For Relief For Conspiracy And Thirteenth Claim For**
6 **Relief For Aiding And Abetting Should Be Dismissed Because Said Claims Are**
7 **Barred Under NRS 166.170 And NRS 11.220, And She Has Not Plead The**
8 **Requisite Elements.**

9 In addition to being barred by NRS 166.170, Lynita’s aiding and abetting and conspiracy
10 claims are also time-barred under NRS 11.220. Aiding and abetting⁹⁰ and conspiracy are governed
11 by the catch-all provision of NRS 11.220, which provides that an action “must be commenced within
12 four (4) years after the cause of action shall have accrued.”⁹¹ Lynita contends that Eric, “during the
13 time period October 1, 2001 through the present,”⁹² conspired with Lana, Nola, Rochelle and Joan,
14 by directing them to undertake certain actions pertaining to the ELN Trust and LSN Trust to the
15 detriment of Lynita. Further, Lynita contends that Lana, Nola, Rochelle and Joan aided and abetted
16 Eric and knowingly agreed and allowed and substantially assisted Eric to undertake such actions.”⁹³

17 Despite the fact that the purported actions begun on or around May 2001, Lynita did not file
18 claims for aiding and abetting and/or conspiracy until September 30, 2011. Said claims are clearly
19 outside of the four (4) year statute of limitations, and as such, must be dismissed.

20 ⁸⁸ *Nevada State Bank v. Jamison Family P’ship*, 106 Nev. 792, 799, 801 P.2d 1377,
21 1382 (1990).

22 ⁸⁹ *Cf. Opp.* at p. 16, l. 28 - p. 17, l. 2 *with* NRS 166.170(8).

23 ⁹⁰ *See Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998)
24 (“[L]iability attaches for civil aiding and abetting if the defendant substantially assists or encourages
another’s conduct in breaching a duty to a third person.”)

25 ⁹¹ *See Flowers v. Carville*, 292 F. Supp. 2d 1225 (D. Nev. 2003) *aff’d*, 161 F. App’x
26 697 (9th Cir. 2006) (holding that public figure’s claims of civil conspiracy to defame and hold in false
light against Presidential candidate’s wife accrued outside Nevada’s four-year statute of limitations).

27 ⁹² *See Third-Party Complaint* at ¶¶ 99-101.

28 ⁹³ *See id.* at ¶¶ 109-110.

1 Similarly, Lynita has not plead the requisite elements to support her claims for conspiracy and
2 aiding and abetting. The Opposition has unsuccessfully attempted to distinguish the facts in this
3 matter from one of the cases cited in the Motion to Dismiss, *Collins v. Union Federal Savings & Loan*
4 *Association*, 662 P.2d 610, 99 Nev. 284 (1983), by contending that the elements of conspiracy have
5 been met because Lana, Nola and Rochelle: (1) are not agents of a single corporate entity;⁹⁴ and (2)
6 acted “as individuals for their individuals benefits.”⁹⁵

7 Although in *Collins* the agents and employees were agents and employees of a single
8 corporation, that case certainly does not require that Eric, Lana, Nola, Rochelle and Joan be agents
9 and employees of a single corporation, and Lynita has failed to cite any case law holding otherwise.⁹⁶
10 Here, the Third-Party Complaint refers to Lana, Rochelle and Joan as an “employee of any one of
11 Eric’s entities”⁹⁷ who are “intricately involved in many of Eric’s entities.”⁹⁸ Further, the Third-Party
12 Complaint alleges that “Eric directed and controlled the distributions of income and assets to and
13 from”⁹⁹ the ELN Trust and the LSN Trust and Lana, Nola, Rochelle and Joan “knowingly and
14 substantially assisted Eric.”¹⁰⁰ Since Lynita concedes an agent/employee relationship existed, her
15 claim for conspiracy must be dismissed.¹⁰¹

16 The Amended Third-Party Complaint does not allege that Lana, Nola, Rochelle or Joan acted

17 ⁹⁴ See Opp. at p. 21, ll. 4-6.

18 ⁹⁵ See *id.* at p. 21, ll. 20-22.

19 ⁹⁶ See Amended Third-Party Complaint at ¶ 13.

20 ⁹⁷ See *id.* at ¶ 13.

21 ⁹⁸ See *id.* at ¶¶ 19-22, 44 and 53.

22 ⁹⁹ See *id.* at ¶¶ 142, 149 and 156.

23 ¹⁰⁰ See *id.* at ¶¶ 143-144 and 157-158.

24 ¹⁰¹ Although Nola and Lana have been sued in their capacity as former Distribution
25 Trustees of the LSN Trust, the Third-Party Complaint fails to delineate what capacity Nola and Lana
26 purportedly conspired and/or aided Eric. See Amended Third-Party Complaint at ¶¶ 141-144, and
27 155-159. For this reason, Third-Party Defendants are not estopped from asserting that they cannot
28 be con-conspirators/aiders and abettors with Eric in their individual capacities. See Opp. at p. 21,
ll. 11-19.

1 “as individuals for their individuals benefits”¹⁰² and/or “conspired with Eric for their own respective,
2 individual interests and gain.”¹⁰³ The Amended Third-Party Complaint contends that Lana¹⁰⁴ and
3 Nola¹⁰⁵ are the former Distribution Trustees of the LSN Trust and the ELN Trust and/or employees
4 of companies owned by the ELN Trust and/or the LSN Trust. Further, the Amended Third-Party
5 Complaint contends that Rochelle¹⁰⁶ and Joan¹⁰⁷ are employees of entities owned by the ELN Trust
6 and/or the LSN Trust, serving both as bookkeeper, and upon information and belief, the notary public
7 on several documents for Eric; however, it is unclear what Lynita contends they did wrong. Since
8 they have not acted for their own benefit, Lynita’s conspiracy claim fails.

9 **G. Lynita’s Twelfth Claim For Relief For Concert Of Action Fails To State A Claim**
10 **Upon Which Relief Can Be Granted.**

11 Lynita previously opposed dismissal of her concert in action claim, by erroneously contending
12 she was only alleging intentional torts, not negligence, and that concert of action claims involving
13 intentional torts do not need to involve inherently dangerous activities. In fact, Lynita contended in
14 her Opposition that the “inherently dangerous activity” prong of concert of action only applies to
15 claims sounding in “negligence” rather than intentional torts is based upon an incorrect and disjointed
16 reading of the Nevada Supreme Court’s opinions in *Dow Chemical Co. v. Mahlum* and *GES, Inc. v.*
17 *Corbitt*, and the RESTATEMENT (SECOND) OF TRUSTS § 876 (“RESTATEMENT § 876”). However, in
18 applying RESTATEMENT § 876 to tortious acts constituting both intentional torts and negligence, the
19 Nevada Supreme Court in both *Dow Chemical* and *GES* expressed that concert of action “is meant
20
21
22

23 ¹⁰² See Opp. at p. 21, ll. 20-22.

24 ¹⁰³ See *id.* at p. 21, ll. 25-26.

25 ¹⁰⁴ See Amended Third-Party Complaint at ¶ 19.

26 ¹⁰⁵ See *id.* at ¶ 20.

27 ¹⁰⁶ See *id.* at ¶ 21.

28 ¹⁰⁷ See *id.* at ¶ 22.

1 to deter antisocial or dangerous behavior.”¹⁰⁸ Indeed, each of the illustrations in the comments on
2 Restatement section 876, which demonstrate proper application of concert of action to inherently
3 dangerous activities, include the commission of intentional torts, specifically burglary, illegal
4 coercion (battery) by police officers and arson.¹⁰⁹ Moreover, other jurisdictions have specifically held
5 that imposition of concert of action over defendants engaging in intentional torts likewise required
6 that the tortious conduct be inherently dangerous or pose a substantial risk of harm to others.¹¹⁰

7 In *Dow Chemical*, the plaintiff sought to impose concert of action liability over the defendants
8 for the commission of intentional torts. The Nevada Supreme Court specifically noted that “[u]nder
9 the Restatement [section 876], liability attaches for concert of action if two persons commit a tort
10 while acting in concert with one another or pursuant to a common design.” (Emphasis added).¹¹¹ The
11 Court, therefore, correctly noted that concert of action could potentially apply to the joint commission
12 of any tort, whether intentional or negligent. Moreover, the Court expressly stated that “concert of
13 action has traditionally been quite narrow in the scope of its application,” and that “[t]he classic
14 application of concert of action is drag racing, where one driver is the cause-in-fact of plaintiff’s injury
15

16 ¹⁰⁸ *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1488, 970 P.2d 98, 111 (1998); citing
17 *Juhl v. Airington*, 936 S.W.2d 640, 644-45 (Tex.1996) (holding that “instances where concert of
18 action liability has been imposed have almost always involved conduct posing a high degree of risk
19 to others.”); *GES, Inc. v. Corbitt*, 117 Nev. 265, 271, 21 P.3d 11, 15 (2001) at footnote 18.

20 ¹⁰⁹ See RESTATEMENT § 876, illustrations 1-16 involving joint commission of burglary,
21 drag racing, participation in a riot, illegal methods of coercion by police officers (amounting to
22 battery), discharging firearms across a public road, sale of a firearm known to be dangerously
23 defective, arson, intentional explosion of dynamite, and possession of wild animals.

24 ¹¹⁰ See *III Forks Real Estate, L.P. v. Cohen*, 228 S.W.3d 810, 816 (Tex. App. 2007)
25 (declining to impose concert of action where defendant’s intentional misrepresentation was “not the
26 type of activity addressed in concert of action cases” because it “was simply not the type of highly
27 dangerous, deviant, or anti-social group activity which was likely to cause injury or death to a person
28 or certain harm to a large number of people.”). See also *Mein v. Cook*, 193 P.3d 790 (Ariz. App.
2008) (Holding that concert of action in Arizona requires the commission of an intentional tort and
substantial certainty of serious injury or death); *Ryan v. Eli Lilly & Co.*, 514 F.Supp. 1004 (D. S.C.
1981) (concert of action “involves an extremely narrow fact pattern” and has been found in such
conduct as group assault and battery.”).

¹¹¹ *Dow Chemical*, 114 Nev. at 1488, 970 P.2d at 115.

1 and the fellow racer is also held liable for the injury.”¹¹² However in discussing whether a theory of
2 concerted action could be imposed over the defendants in *Dow Chemical*, the Nevada Supreme Court
3 found that the plaintiff had not shown the requisite agreement or encouragement in the commission
4 of the tortious conduct, specifically fraudulent misrepresentation of the safety of liquid silicone breast
5 implants, and, thus, failed to reach a determination of whether the commission of the intentional tort
6 was inherently dangerous.¹¹³

7 In *GES*, the Nevada Supreme Court announced its disfavor with the *Dow Chemical* opinion
8 because the decision might be read, as Lynita concludes in her Opposition, that “concert of action
9 requires no more than an agreement along with tortious conduct.”¹¹⁴ Although, the Court in *GES*
10 dealt specifically with the negligence case before it, its decision is much broader, as the Court sought
11 to determine and clarify the meaning of “concerted acts.”¹¹⁵ In reviewing its definition of “concert
12 of action” in its *Dow Chemical* opinion, the Court in *GES* stated “to the extent our holding in [*Dow*
13 *Chemical*] suggests that concert of action requires no more than an agreement along with tortious
14 conduct, it is disfavored.”¹¹⁶ Rather, it specifically requires that tortious conduct be “inherently
15 dangerous or pose[] a substantial risk of harm to others.”¹¹⁷ Therefore, the Court’s express disfavor
16

17 ¹¹² *Id.*

18 ¹¹³ *Id.* at 114 Nev. at 1489, 970 P.2d at 112. Had it reached the issue, it is certainly
19 reasonable to conclude that the Court would have found that Dow Chemical’s fraudulent
20 misrepresentation was inherently dangerous given the broad consumer market for silicone breast
21 implants.

22 ¹¹⁴ *GES*, 117 Nev. 265, 271, 21 P.3d 11, 15 (2001).

23 ¹¹⁵ *Id.* at 117 Nev. at 270, 21 P.3d at 14-15. NRS 41.141(5)(d) simply extends joint and
24 several liability to “concerted acts of the defendants.” In finding that “the district court incorrectly
25 interpreted the phrase ‘concerted acts,’” the court looked to its previous holding in *Dow Chemical*,
26 and suggested that its opinion did not go far enough to define “concert of action.” Therefore the
Court in *GES* broadened the definition of “concert of action” in general, including the commission
of both intentional torts, as in *Dow Chemical*, and negligence, as in the case before it, to require
“conduct that is inherently dangerous or pose a substantial risk of harm to others.”

27 ¹¹⁶ *Id.* at 117 Nev. at 271, 21 P.3d at 15.

28 ¹¹⁷ *Id.*

1 of its opinion in *Dow Chemical* can only reasonably be read to conclude that concert of action applies
2 in the context of intentional torts (*Dow Chemical*) as well as negligence (*GES*), and in either case
3 requires that “the defendants must have agreed to engage in conduct that is inherently dangerous or
4 pose[] a substantial risk of harm to others.”¹¹⁸

5 Accordingly, Lynita’s prior argument that the *GES* case is limited only to negligent actions
6 under NRS 41.141(5)(d) is disingenuous because the Court in *GES* defined the phrase “concert of
7 action” as applied to “tortious conduct,” *i.e.* both intentional torts and negligence, and expressly
8 required inherently dangerous activity or conduct that poses a substantial risk of harm to others.¹¹⁹
9 Notwithstanding, Lynita’s prior reliance on *Reynolds v. Schrock*, 107 P.3d 52 (Or. App. 2005), in
10 support of her assertion that “[j]oint liability for concert of action has in fact been found in cases not
11 involving inherently dangerous activity,”¹²⁰ is disingenuous and inapposite for two reasons: (1)
12 *Reynolds* does not discuss whether concert of action required the commission of inherently dangerous
13 activities, suggesting counsel failed to litigate the issue; and (2) *Reynolds* was overruled by the
14 Oregon Supreme Court in *Reynolds v. Schrock*, 142 P.3d 1062 (Or. 2006), which expressly rejected
15 the application of concert of action over an attorney as a matter of public policy, where application
16 of the same would make the attorney liable for his client’s breach of a fiduciary duty owed to a third
17 party.¹²¹

18 Lynita’s Twelfth Claim for Relief seeking to impose joint and several liability over the
19 defendants for their purported agreement or encouragement along with tortious conduct should be
20 dismissed because it fails to allege that the Third-Party Defendants engaged in an inherently
21 dangerous activity which posed a substantial risk of harm to others, a requirement in Nevada under
22 *Dow Chemical* and *GES*. Moreover, in light of the traditional, and limited, application of concert of
23 action to deter “antisocial or dangerous behavior,” such as drag racing and participation in gang
24

25 ¹¹⁸ *Id.*

26 ¹¹⁹ *Id.*

27 ¹²⁰ *See Opp.* at p. 24, ll. 3-10.

28 ¹²¹ *Reynolds v. Schrock*, 142 P.3d 1062, 1071-72 (Or. 2006).

1 related activity, this Court should dismiss claims alleging concert of action where the underlying
2 tortious conduct falls far short of such longstanding policy considerations requiring participation in
3 inherently dangerous activities, as Lynita's counterclaim does here.

4 **H. Lynita's Fourteenth Claim For Relief For Constructive Trust Should Be**
5 **Dismissed Because The Elements To Establish A Constructive Trust Have Not**
6 **Been Met As Pled And A Constructive Trust Is A Remedy.**

7 A constructive trust exists when: "(1) a confidential relationship exists between the parties;
8 (2) retention of legal title by the holder thereof against another would be inequitable; and (3) the
9 existence of such a trust is essential to the effectuation of justice."¹²² The Amended Third-Party
10 Complaint is devoid of any allegations that a confidential relationship existed between the ELN Trust,
11 who actually owns the assets, and Lynita. For this reason alone (*i.e.* Lynita's failure to plead the
12 requisite elements of constructive trust), Lynita's Fourteenth Claim for Relief should be dismissed.

13 **I. Lynita's Fifteenth Claim For Relief For Injunctive Relief Is Improper.**

14 Lynita's Fifteenth Claim for Relief for Injunctive Relief "seeks the entry of a temporary
15 restraining order, preliminary injunction, and permanent injunction"¹²³ on the grounds that the
16 "community estate face the prospect of immediate, severe, and irreparable injury should Eric be
17 allowed to continue his current course of conduct with respect to the ELN Trust."¹²⁴ In response to
18 the previously filed Motion to Dismiss, Lynita contended that she is merely seeking to "confirm what
19 is already in place [*i.e.* the Joint Preliminary Injunction], and what she is legally entitled to."¹²⁵ Said
20 contention is a misnomer as neither Lynita nor Eric are entitled to any assets of the ELN Trust unless
21 so provided by the terms of the ELN Trust.¹²⁶ Further, if Lynita believed the ELN Trust was bound
22 by the Joint Preliminary Injunction, there would have been no reason for her to request another

23 ¹²² *Id.*

24 ¹²³ *See Opp.* at p. 34, ll. 20-22.

25 ¹²⁴ *See id.* at p. 34, ll. 12-14.

26 ¹²⁵ *See id.* at p. 27, ll. 8-9.

27 ¹²⁶ *See* NRS 166.130 ("A beneficiary of a spendthrift trust has no legal estate in the
28 capital, principal or corpus of the trust estate . . .").

1 injunction in open court at the April 4, 2011, hearing.

2 Lynita's contention that the ELN Trust should be enjoined from operating in the usual course
3 of business contravenes the terms of the ELN Trust and EDCR 5.85 upon which she relies. Indeed,
4 even if it were applicable to the ELN Trust, EDCR 5.85 specifically provides that the Joint
5 Preliminary Injunction does not impede parties from engaging in "the usual course of businesses or
6 for the necessities of life," which would include making investments and paying for the attorneys'
7 fees and costs associated with defending the interest of the ELN Trust in this litigation.¹²⁷ Further,
8 pursuant to the terms of the ELN Trust, the Trustees are allowed to use trust assets to: (1) defend
9 against Eric and Lynita's claims of community and separate property, which is specifically allowed
10 under Article XII, Section 12.1(m), 12.1(z), 12.5(a), 12.6 and 12.9;¹²⁸ and (2) invest and reinvest trust
11 assets in the Trustees' sole discretion under Article XII, Section 12.1(f).¹²⁹

12 Further, this Court lacks jurisdiction to enter an injunction against the ELN Trust under NRS
13 125.050 as such a ruling would pertain to "the internal affairs of a nontestamentary trust. . .,"¹³⁰ and
14 be therefore subject to the Probate Court's exclusive jurisdiction under Title 12 and Title 13 of the
15 Nevada Revised Statutes. Notwithstanding, to the extent that Lynita seeks an injunction under NRS
16 125.050, she should be forced to comply with the stringent requirements of EDCR 5.20, including,
17 but not limited to, providing notice to the ELN Trust. Consequently, Lynita's request for an
18 injunction must be dismissed.

19
20 ¹²⁷ *Estate of Harvey*, 1958, 330 P.2d 478, 164 Cal. App.2d 330 (Cal. App. 1958) (a
21 testamentary trustee has a power and duty to resist a claim by the widow of the testator that the trust
22 property was community property); *Bank of Am. Nat. Trust & Sav. Ass'n v. Long Beach Fed. Sav.
23 & Loan Ass'n*, 141 Cal. App. 2d 618, 624, 297 P.2d 443, 447 (Cal. App. 1956) ("The law governing
24 the administration of trusts is that a trustee not only has the right, but it is his duty, whenever
necessary to the proper administration, preservation and execution of the trust or to its defense"); *In
re Estate of Duffill*, 206 P. 42, 188 Cal. 536 (Cal. 1922) (duty to resist attack on validity of trust by
beneficiary).

25 ¹²⁸ Upon information and belief, Lynita is paying her attorneys' fees and costs from the
26 LSN Trust.

27 ¹²⁹ Upon information and belief, Lynita is investing and reinvesting the assets of the LSN
28 Trust.

¹³⁰ NRS 164.015.

1 **J. All Causes Of Action Against The ELN Trust Should Be Brought Against The**
2 **Trustee Who Is The Real Party In Interest.**

3 Pursuant to the August 9, 2011, Stipulation and Order, the ELN Trust was joined as a
4 necessary party, intervening in this action.¹³¹ On August 19, 2011, Lana, acting as the “real party in
5 interest” (*i.e.* the “trustee of an express trust”) pursuant to NRCP 17(a),¹³² filed an Answer to
6 Complaint for Divorce and Counterclaim and Cross-Claim. On September 30, 2011, Lynita filed
7 claims against the ELN Trust *and* Lana as Distribution Trustee of the ELN Trust. Since Lana in her
8 capacity as Distribution Trustee of the ELN Trust is the real party in interest, Lynita’s claims against
9 the ELN Trust should be dismissed and said claims, if any survive the Motion to Dismiss, should be
10 made by and through the Lana as Distribution Trustee of the ELN Trust.¹³³

11 **K. This Court Should Also Dismiss The Third-Party Complaint Because It Fails To**
12 **Meet The Pleading Requirement Under NRCP 9(b).**

13 “In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall
14 be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may
15 be averred generally.”¹³⁴ “This heightened pleading requirement is a response to the ‘great harm to
16 the reputation of a business firm or other enterprise a fraud claim can do.’¹³⁵ “Thus ‘a plaintiff
17 claiming fraud or mistake must do more pre-complain investigation to assure that the claim is
18

19 ¹³¹ See Stipulation and Order, previously filed 8/8/11.

20 ¹³² NRCP 17(a) provides in part that “[e]very action shall be prosecuted in the name of
21 the real party in interest.”

22 ¹³³ Lynita’s reliance upon NRCP 19(a), *Robinson v. Kind*, 23 Nev. 330, 47 P. 977 (1897)
23 and *Schwob v. Hemsath*, 98 Nev. 293, 646 P.2d 1212 (1982) is inapposite because said cases,
24 although dealing with joinder of proper parties, do not analyze whether it is proper to file a directly
25 against a trust or by and through its trustee. The remaining cases support Third-Party Defendants
26 contention that Lynita’s claims should be made against Lana as Distribution Trustee of the ELN
27 Trust.

28 ¹³⁴ NRCP 9(b).

¹³⁵ *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 507 (7th Cir. 2007) (district
court’s dismissal of complaint was justified when plaintiff refused to submit amended pleadings after
the district court indicated that the original complaint was deficient).

1 responsible and supported, rather than defamatory and extortionate.”¹³⁶

2 “The circumstances that must be detailed include averments to the time, the place, the identity
3 of the parties involved, and the nature of the fraud or mistake.”¹³⁷ “The circumstances constituting
4 the alleged fraud must be ‘specific enough to give defendants notice of the particular misconduct.’”¹³⁸

5 Further, “Rule 9(b) does not allow a complaint to merely lump multiple defendants together
6 but require[s] plaintiffs to differentiate their allegations suing more than one defendant . . . and inform
7 each defendant separately of the allegations surrounding his alleged participation in the fraud.”¹³⁹

8 Although certain claims may not require an element of fraud, a plaintiff may nonetheless be
9 subject to the particularity requirement set forth in NRCP 9(b) if a complaint “sounds in fraud.”¹⁴⁰
10 Where a plaintiff alleges a unified course of fraudulent conduct and relies entirely on that course of
11 conduct as the basis of its complaint, the complaint is said to sound in fraud and the complaint as a
12 whole must satisfy the particularity requirements of Rule 9(b).¹⁴¹ Indeed, “fraud can be averred by
13 specifically alleging fraud, or by alleging facts that necessarily constitute fraud (even if the word
14 “fraud” is not used.)”¹⁴²

15 Lynita’s Fifth Claim for Relief is for fraud.¹⁴³ Further, the Amended Third-Party Complaint
16

17 ¹³⁶ *Id.* at 477 F.3d at 507.

18 ¹³⁷ *Brown v. Kellar*, 97 Nev. 583-584, 636 P.2d 874 (1981).

19 ¹³⁸ *G.K. Las Vegas, Ltd. P’ship v. Simon Prop. Group, Inc.*, 460 F. Supp. 2nd 1246, 1257
20 (D. Nev. 2006) (court found that plaintiff failed to meet the threshold requirement of alleging fraud
21 against individual defendants).

22 ¹³⁹ *Swartz v. KPMG LLP*, 476 F.3d 756, 764-765 (9th Cir. 2007) (in the context of a fraud
23 suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each
24 defendant in the alleged fraudulent scheme).

25 ¹⁴⁰ *See Rubke v. Capitol Bancorp Ltd.*, 460 F. Supp. 2d 1124, 1134 (N.D. Cal. 2006)
(holding that if a complaint sounds in fraud it must comply with Rule 9(b)).

26 ¹⁴¹ *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003).

27 ¹⁴² *See id.* at 317 F.3d 1097 at 1105.

28 ¹⁴³ *See* Amended Third-Party Complaint at ¶¶ 106-112.

1 alleges that the Third-Party Defendants engaged in a scheme to “defraud” Lynita,¹⁴⁴ and fraudulently
2 conveyed assets from the LSN Trust and the ELN Trust.¹⁴⁵ “Further, “[a] breach of fiduciary duty is
3 fraud,”¹⁴⁶ and Rule 9(b) applies to claims of conspiracy.¹⁴⁷ The remainder of the Amended Third-
4 Party Complaint sounds in fraud as it is based on Lynita’s unfounded allegations that Eric made
5 numerous misrepresentations and omissions in the creation and funding of the ELN Trust,¹⁴⁸ and has
6 undertaken numerous other acts to defraud Lynita in her purported community property interest in
7 assets owned by the ELN Trust.¹⁴⁹ The Amended Third-Party Complaint further alleges a unified
8 course of allegedly fraudulent conduct, without differentiating her allegations against the Third-Party
9 Defendants,¹⁵⁰ and relies on said course of conduct as the basis for each and every claim for relief
10 against Eric, Lana, Nola, Rochelle and Joan. Notwithstanding, the Amended Third-Party Complaint
11 fails to state with particularity what statements, if any, Eric made to Lynita regarding the creation of
12 the ELN Trust and LSN Trust,¹⁵¹ the assets that Lynita contends were inappropriately distributed,¹⁵²
13 and/or the actions/inactions of Lana, Nola, Rochelle and Joan.

14 As a result of the foregoing, this Court should dismiss the Amended Third-Party Complaint,
15 or alternatively, order Lynita to amend the Third-Party Complaint so as to comply with NRCP 9(b).

16 **L. Motion To Strike Allegations That Cannot Be Considered In An Alter Ego**
17 **Claim.**

18 ¹⁴⁴ See *id.* at ¶ 34.

19 ¹⁴⁵ See *id.* at ¶¶ 144, 151 and 158.

20 ¹⁴⁶ See *Shupe v. Ham*, 98 Nev. 61, 64, 639 P.2d 540, 542 (1982).

21 ¹⁴⁷ See *Arroyo v. Wheat*, 591 F. Supp. 141, 144 (D. Nev. 1984) (holding Rule 9(b), which
22 requires that in averments of fraud the circumstances constituting fraud shall be stated with
23 particularity, must be plead in claim for conspiracy).

24 ¹⁴⁸ See Amended Third-Party Complaint, at ¶¶ 29, 31 and 63.

25 ¹⁴⁹ See *id.* at ¶¶ 72-108.

26 ¹⁵⁰ See fn 139 *supra*.

27 ¹⁵¹ See Amended Third-Party Complaint at ¶¶ 29, 31 and 63.

28 ¹⁵² See *id.* at ¶¶ 53-54.

1 NRCP 12(f) provides: “[u]pon motion made by a party before responding to a pleading . . .
2 the court may order stricken from any pleading any insufficient defense or any redundant, immaterial,
3 impertinent, or scandalous matter.” “Redundant matter” is that which “consists of allegations that
4 constitute a needless repetition of other averments.”¹⁵³ Matter which is “immaterial” is “that which
5 has no essential or important relationship to the claim for relief or the defenses being pleaded.”¹⁵⁴
6 “Impertinent matter” consists of statements that do not pertain, and are not necessary to the issues in
7 question.”¹⁵⁵ “Scandalous” matter “improperly casts a derogatory light on someone, most typically
8 on a party to the action.”¹⁵⁶

9 As indicated *supra* in Section (C)(2), under NRS 163.4177, factors which must not be
10 considered exercising improper dominion or control over a trust are:

- 11 1. A beneficiary is serving as a trustee.
- 12 2. The settlor or beneficiary holds unrestricted power to remove
or replace a trustee.
- 13 3. The settlor or beneficiary is a trust administrator, general
partner of a partnership, manager of a limited-liability
14 company, officer of a corporation or any other manager of any
other type of entity and all or part of the trust property
consists of an interest in the entity.
- 15 4. The trustee is a person related by blood, adoption or marriage
to the settlor or beneficiary.
- 16 5. The trustee is the settlor or beneficiary’s agent, accountant,
attorney, financial adviser or friend.
- 17 6. The trustee is a business associate of the settlor or beneficiary.

18 Notwithstanding, the Amended Third-Party Complaint is riddled with allegations that may not be
19 considered under the foregoing statute.¹⁵⁷ Consequently, this Court should strike any and all
20

21 ¹⁵³ See 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure §
22 1382, at 704 (2d ed.1990)

23 ¹⁵⁴ See *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993), rev’d on other
24 grounds, 510 U.S. 517, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994) (citing 5A Charles Alan Wright &
Arthur R. Miller § 1382, at 706–07) (internal citations omitted).

25 ¹⁵⁵ See *id.* citing 5A Charles Alan Wright & Arthur R. Miller § 1382, at 711.

26 ¹⁵⁶ See 5A Charles Alan Wright & Arthur R. Miller § 1382, at 712.

27 ¹⁵⁷ See generally Amended Third-Party Complaint at ¶¶ 6, 10 -13, 57-61, 73-74, 78-79,
28 84.

1 inadmissible allegations pertaining to Lynita's First and Second Claims for Relief.

2 **III. CONCLUSION**

3 For the reasons set forth above, this Court should grant the Motion to Dismiss and deny the
4 Countermotion.

5 DATED this 17th day of January, 2011.

6 SOLOMON DWIGGINS FREER & MORSE, LTD.

7
8 By: 

9 MARK A. SOLOMON, ESQ., NSB #0418
10 JEFFREY P. LUSZECK, ESQ., NSB # 9619
Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

11 *Attorneys for Third-Party Defendants*

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Eric L Nelson

Plaintiff/Petitioner

-vs-

Lynita Sue Nelson

Defendant/Respondent

CASE NO. D-09-411537-D

DEPT. 0

**FAMILY COURT MOTION/OPPOSITION
FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

MOTION ~~FOR~~ OPPOSITION TO DISMISS Amended 3rd Party Complaint

Notice

**Motions and Oppositions to
Motions filed after entry of
final Decree or Judgment
(pursuant to NRS 125,
125B & 125C)
are subject to the Re-open
Filing Fee of \$25.00, unless
specifically excluded.
(See NRS 19.0312)**

Excluded Motions/Oppositions

- ☒ Motions filed before final Divorce/Custody Decree entered
(Divorce/Custody Decree NOT final)
- ☐ Child Support Modification ONLY
- ☐ Motion/Opposition For Reconsideration (Within 10 days of Decree)
Date of Last Order _____
- ☐ Request for New Trial (Within 10 days of Decree)
Date of Last Order _____
- ☐ Other Excluded Motion _____
(Must be prepared to defend exclusion to Judge)

NOTE: If no boxes are checked, filing fee **MUST** be paid.

☐ Motion/Opp IS subject to \$25.00 filing fee ☒ Motion/Opp IS NOT subject to filing fee

Date: January 17, 2012

Jeffrey P. Luszeck, Esq.
Printed Name of Preparer

[Signature]
Signature of Preparer

RECEIVED
12712

1 **NOTC**

Larry L. Bertsch, CPA, CFF

2 Nicholas S. Miller, CFE

LARRY L. BERTSCH, CPA & ASSOCIATES

3 265 East Warm Springs Rd., Suite 104

Las Vegas, Nevada 89119

4 Telephone: (702) 471-7223

Facsimile: (702) 471-7225

5 *Forensic Accountants*

6
7 **DISTRICT COURT**

8 **FAMILY DIVISION**

9 **CLARK COUNTY, NEVADA**

10 ERIC L. NELSON,

11 Plaintiff,

12 v.

13 LYNITA SUE NELSON,

14 Defendant.

Case No. D-09-411537-D

Dept. O

**NOTICE OF FILING SOURCE AND
APPLICATION OF FUNDS FOR
ERIC NELSON AUCTIONEERING**

15
16 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY
17 L. BERTSCH, CPA & ASSOCIATES, file the Source and Application of Funds for Eric Nelson
18 Auctioneering, a copy of which is attached as **Exhibit "A."**

19 DATED this 26 day of January, 2012.

20 **LARRY L. BERTSCH CPA & ASSOCIATES**

21 

22 Larry L. Bertsch, CPA, CFF

23 Nicholas S. Miller, CFE

24 265 East Warm Springs Rd., Suite 104

Las Vegas, Nevada 89119

25 *Forensic Accountants*

CERTIFICATE OF SERVICE

I certify that on the 26 day of January, 2012, I mailed a copy of the foregoing **NOTICE OF FILING SOURCE AND APPLICATION OF FUNDS FOR ERIC NELSON AUCTIONEERING** to the following at their last known address, by depositing the same in the United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

Rhonda K. Forsberg, Esq.
IVEY FORSBERG & DOUGLAS
1070 West Horizon Ridge Parkway, #100
Henderson, NV 89012
Attorneys for Plaintiff Eric L. Nelson

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant Lynita Sue Nelson

Mark A. Solomon, Esq.
Jeffery P. Luszeck, Esq.
SOLOMON DWIGGINS FREER &
MORSE, LTD.
9060 W. Cheyenne Avenue
Las Vegas, NV 89129
*Attorneys for Eric L. Nelson Nevada
Trust*



An employee of Larry L. Bertsch, CPA & Associates

EXHIBIT A

Source and Application of Funds
For
Eric Nelson Auctioneering

From January 1, 2009 through May 31, 2011

District Court Family Division

Clark County, Nevada

Case Number: D-09-411537-D

Department O

Report Date: January 26, 2012

Prepared by:

Larry L. Bertsch, CPA, CFF

&

Nicholas Miller, CFE, CSAR, MBA

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Eric Nelson Auctioneering, Inc. ("ENA")

From January 1, 2009 through May 31, 2011

Sources of Cash

Beginning Cash/Equivalents	26,709.51	(A)
Affiliated Companies	285,000.00	(B)
Sale of Assets	280,165.39	(C)
Other Income	700,040.76	(D)
Refunds	88,200.15	(E)
Line of Credit	200,000.00	(F)
Total Sources	<u>1,580,115.81</u>	

Applications of Cash

Eric Nelson	43,349.45	(G)
Lynita Nelson	5,742.00	(H)
Children Payments	13,293.80	(I)
Related Individuals	225,049.94	(J)
Professionals	50,638.36	(K)
Affiliated Companies	824,349.32	(L)
Rental Expenses	170,406.29	(M)
Operating Expenses	98,450.13	(N)
Other Individuals	131,300.05	(O)
Other Companies	10,609.86	(P)
Ending Cash	6,926.61	(Q)
Total Applications	<u>1,580,115.81</u>	

Footnotes to the Financial Statement

The following report is based upon Peachtree Accounting records produced, written statements from Eric Nelson regarding various transactions and supporting documentation provided.

Sources of Cash

Beginning Cash/Equivalents	26,709.51	(A)
Affiliated Companies	285,000.00	(B)
Sale of Assets	280,165.39	(C)
Other Income	700,040.76	(D)
Refunds	88,200.15	(E)
Line of Credit	200,000.00	(F)
Total Sources	<u>1,580,115.81</u>	

- A. Beginning Cash & Cash Equivalents – As of January 1, 2009, ENA began the year with \$26,709.51 in its Bank of America Checking account ending in #5466.
- B. Affiliated Companies – Between January 2009 and May 2011, ENA received \$285,000 in funds from Banone, LLC (“Banone”) and Eric L. Nelson NV Trust (“ELN NV”). The following charts indicate the date and amount of each transfer:

Date	ELN NV	Banone
01/20/09	50,000.00	
04/13/09		50,000.00
08/17/09	20,000.00	
08/24/09	10,000.00	
08/28/09		10,000.00
09/08/09		35,000.00
02/01/10	10,000.00	
05/31/11		100,000.00
	<u>90,000.00</u>	<u>195,000.00</u>

- C. Sale of Assets – Between January 1, 2009 and May 31, 2011, ENA received funds as commissions for selling properties. Many of the commissions paid to ENA resulted from the sales of Banone, LLC properties. The following is a chart indicating the monthly receipts ENA received:

	Sale of Assets / Commissions		
	2009	2010	2011
Jan	56,969.70	25,549.00	6,250.00
Feb	33,200.00	11,500.00	
Mar	600.00	6,580.00	
Apr	3,230.00	9,000.00	
May	5,972.50	10,800.00	
June	1,900.00		
July	450.00		
Aug	15,000.00	7,000.00	
Sept	4,680.00		
Oct	16,535.00		
Nov	23,553.00		
Dec	41,396.19		
	203,486.39	70,429.00	6,250.00

- D. Other Income – In 2009 and 2010, ENA recorded three transactions for which we have classified as “Other Income”. The following is a description of each of the three transactions:

Date	Amount	Name	Description
04/22/09	300,000.00		loan payment by doctor (FDIC Notes)
06/15/09	400,000.00		Wire from Doctor (FDIC Notes)
04/12/10	40.76	CNR Real Estate	Powerpay bill
	<u>700,040.76</u>		

According to the Peachtree files, the \$300,000.00 and \$400,000.00 payments from doctors relate to FDIC notes ENA purchased and the two payments were applied against said notes.

E. Refunds – In 2009 and 2010, ENA received refunds from transactions. The following chart is a description of the transactions classified as “Refunds”:

Date	Amount	Name	Description
06/29/09	1.00	Department of the Treasury	Refund
06/29/09	25.00	Town of Pahrump	Refund
11/06/09	50,000.00	Chicago Title	Sugar Daddy's Earnest Money
12/09/09	185.00	Towne Center Escrow, LLC	refund HOA fee-8101 Pursuit
12/21/09	10,000.00	Sugar Daddy's	Closing Extension
02/08/10	22,851.19	Chicago Title	overpayment of closing fees
03/15/10	37.49	Chicago Title	Investment Exchange Int on \$ held for Sugar Daddy's Exchange
03/15/10	23.47	Century Link	Refund
04/12/10	5,077.00	Seneca Insurance Company	Premium Refund
	<u>88,200.15</u>		

F. Line of Credit – On October 1, 2009 and December 16, 2009, ENA received wires for \$100,000.00 each from the Line of Credit.

Applications of Cash

Eric Nelson	43,349.45	(G)
Lynita Nelson	5,742.00	(H)
Children Payments	13,293.80	(I)
Related Individuals	225,049.94	(J)
Professionals	50,638.36	(K)
Affiliated Companies	824,349.32	(L)
Rental Expenses	170,406.29	(M)
Operating Expenses	98,450.13	(N)
Other Individuals	131,300.05	(O)
Other Companies	10,609.86	(P)
Ending Cash	6,926.61	(Q)
Total Applications	<u>1,580,115.81</u>	

G. Eric Nelson – In 2009, Eric Nelson received two (2) payments amounting to \$34,500.00. The following is a chart of the two payments Eric received:

Date	Amount	Name	Description
11/09/09	25,500.00	Eric Nelson	loan pmt / reimbursement for Keith's expenses
12/22/09	9,000.00	Eric Nelson	loan pmt
	<u>34,500.00</u>		

The following chart details the payments for Eric's expenses:

Eric Nelson Expenses 2009	
Jan	726.98
Feb	
Mar	
Apr	485.38
May	
June	1,897.72
July	1,600.89
Aug	1,226.34
Sept	2,481.64
Oct	
Nov	
Dec	430.50
	<hr/> 8,849.45

The types of transactions listed in the Eric's expenses include payments for the following:

- Club Sport Dues
- Food & Entertainment
- Gas

H. Lynita Nelson - On 7/28/09, ENA paid Lynita Nelson \$5,742.00 with a description of "misc personal expenses".

I. Children's Payments – Between January 2009 and May 2011, ENA made payments to children directly and/or toward children related expenses. The following is a description of the direct payments and expenses paid on behalf of ENA:

Child Name	Amount	Reference
Amanda Stromberg	3,501.90	(a)
Aubrey Nelson	8,988.40	(b)
Erica Nelson	803.50	(c)
	<u>13,293.80</u>	

a) Amanda Stromberg – Amanda is the adult daughter of Eric and Lynita Nelson. Amanda is married to Chris Stromberg. Amanda received the following distributions and/or expenses:

Amanda Direct Payments	2,601.90
Chris Direct Payments	<u>900.00</u>
	<u>3,501.90</u>

b) Aubrey Nelson – Aubrey is the adult daughter of Eric and Lynita Nelson. Aubrey received the following distributions and/or expenses:

Direct Payments	8,000.00
Expenses	<u>988.40</u>
	<u>8,988.40</u>

c) Erica Nelson – Erica is the adult daughter to Eric and Lynita Nelson. Erica received \$803.50 in expenses.

- J. Related Individuals - Between January 2009 and May 2011, ENA made payments to related individuals directly and/or toward these related individuals expenses. The following is a description of the direct payments and expenses paid on behalf of ENA:

Name	Amount	Relationship	Reference
Aleda Nelson	98,249.54	Eric's Sister	(a)
Cal Nelson	30,713.60	Eric's Brother	(b)
Chad Ramos	77,386.80	Eric's Nephew (Nola's son)	(c)
Eric T. Nelson	6,000.00	Eric's Nephew (Paul's son)	(d)
Paul Nelson	4,700.00	Eric's Brother	(e)
Ryan Nelson	8,000.00	Eric's Nephew (Paul's son)	(f)
	<u>225,049.94</u>		

- a) Aleda Nelson (Eric's Sister) – In 2009 and 2010, Aleda Nelson ("Aleda"), Nelson Auctioneering, a company owned and operated by Aleda, benefited and/or received payments amounting to \$98,249.54. Eric produced 1099s for 2009 and 2010 for ENA¹. According to the 1099s and the Peachtree files, we have found discrepancies as shown below:

	2009		2010	
	1099	Records	1099	Records
Aleda Nelson	4,750.00	25,368.52		631.00
Nelson Auctioneering	58,475.00	49,621.65		8,500.00
Expenses		13,428.37		700.00
	<u>63,225.00</u>	<u>88,418.54</u>	-	<u>9,831.00</u>

Page 11 of this report indicates the various payments to or for the benefit of Aleda Nelson and/or Nelson Auctioneering.

¹ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

Aleda Nelson Payments/Expenses

Date	Amount	Payee	Description
01/22/09	950.00	Aleda Nelson	DDG INT 1/2 JAN / N&A INT 1/2 JAN
03/16/09	1,900.00	Aleda Nelson	DDG 1/2 Feb/March / N&A 1/2 Int Feb & March
04/06/09	950.00	Aleda Nelson	ddg int / n&a int
04/22/09	651.00	Aleda Nelson	Insurance reimbursement
04/22/09	950.00	Aleda Nelson	1/2 MAY DDG / 1/2 MAY N&A
06/29/09	1,302.00	Aleda Nelson	Monthly Insurance May / Monthly Insurance June
08/10/09	651.00	Aleda Nelson	Insurance
08/24/09	7,652.37	Aleda Nelson	Advertising Reimbursement-TSG
09/08/09	6,081.78	Aleda Nelson	TSG on credit card / Insurance
10/05/09	1,953.00	Aleda Nelson	Aug. Insurance / Sept. Insurance / Oct. Insurance
10/27/09	300.00	Aleda Nelson	reimbursement -open house supplies
11/09/09	725.37	Aleda Nelson	reimbursement for auction expenses / October insurance
12/02/09	651.00	Aleda Nelson	Insurance November
12/03/09	651.00	Aleda Nelson	December Insurance
02/02/10	631.00	Aleda Nelson	January insurance
	<u>25,999.52</u>		
01/22/09	5,000.00	Nelson Auctioneering	Williams & Williams
01/22/09	1,375.00	Nelson Auctioneering	GRIZZLY INT 1/2 JAN / N&A INT 1/2 JAN
03/16/09	2,750.00	Nelson Auctioneering	Grizzly 1/2 Int Feb/March / N&A 1/2 Int Jan/Feb
04/06/09	1,375.00	Nelson Auctioneering	grizzly int / n&a int
04/22/09	1,375.00	Nelson Auctioneering	1/2 MAY GRIZZLY / 1/2 INT N&A
08/10/09	15,000.00	Nelson Auctioneering	Hudson & Marshall
10/07/09	6,000.00	Nelson Auctioneering	Hudson & Marshall CK#21379
10/23/09	7,373.33	Nelson Auctioneering	reimbursement for payment to Summit Comm.
11/02/09	7,373.32	Nelson Auctioneering	Reimbursement For Advertising -Summit Comm.
12/16/09	2,000.00	Nelson Auctioneering	Hudson & Marshall commission
01/14/10	1,000.00	Nelson Auctioneering	Hudson & Marshall
02/01/10	5,000.00	Nelson Auctioneering	Hudson & Marshall-Dec online commission
06/09/10	2,500.00	Nelson Auctioneering	Hudson & Marshall Commission
	<u>58,121.65</u>		
09/11/09	5,000.00	Bank of America	TSG PMT ON LANA'S CC
05/26/09	90.00	IRS	Late filing penalty-Aleda (Nelson Auctioneering, Inc)
04/02/09	486.00	TSG	Invoice#55588-0 & 55589-0 Less Overpmt Of \$9
08/27/09	7,652.37	TSG	week 2 advertising
09/09/09	200.00	TSG	Art Changes-Aleda
04/05/10	700.00	TSG	outstanding invoices 9-09
	<u>14,128.37</u>		
	<u><u>98,249.54</u></u>		

- b) Cal Nelson (Eric's Brother) – In 2009 and 2010, Clarence Nelson (“Cal”) personally, and/or Cal’s Blue Water Marine, a company owned by Cal, received or benefited from the following payments:

Cal Nelson Payments/Expenses			
Date	Amount	Payee	Description
06/17/09	30,000.00	Cal's Blue Water Marine	Rent
06/05/09	263.60	Bank of America	Southwest Airlines & M Resort
04/21/10	450.00	Cal Nelson	
	<u>30,713.60</u>		

Eric produced a copy² of a 2009 IRS form 1099 for Cal’s Blue Water Marine in the amount of \$30,000.00.

- c) Chad Ramos (Eric's Nephew (Nola's son)) – Between January 1, 2009 and May 31, 2011, Chad Ramos (“Chad”), and/or CNR Real Estate, LLC, a company owned by Chad, received and/or benefited from payments made by ENA. Eric produced 1099s for 2009 and 2010 for Chad Ramos and/or CNR Real Estate, LLC³. According to the 1099s and the Peachtree files, we have found discrepancies as shown below:

	2009		2010	
	1099	Records	1099	Records
Chad Ramos	25,725.00	25,113.63	14,800.00	15,421.66
CNR Real Estate	-	-		22,500.00
Expenses	-	7,002.93		7,348.58
	<u>25,725.00</u>	<u>32,116.56</u>	<u>14,800.00</u>	<u>45,270.24</u>

We have not received employment records or contractor agreements between Chad and ENA. According to the Peachtree files produced by Eric, ENA recorded a note receivable from Chad Ramos prior to January 1, 2009 of 11,006.92. As of May 31, 2011, the note has an outstanding balance of \$11,006.92.

² As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

³ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

Chad Ramos Payments/Expenses

Date	Amount	Payee	Description
01/05/09	3,000.00	Chad Ramos	Commission Draw
02/03/09	3,000.00	Chad Ramos	Commission Draw
04/01/09	3,000.00	Chad Ramos	Monthly Commission
04/06/09	1,750.00	Chad Ramos	3025 Meadow Flower Ave
05/29/09	975.00	Chad Ramos	1069 Overture Drive Commission
09/09/09	581.00	Chad Ramos	House Pictures / Broker Advertising / Virtual Meetings
10/01/09	3,000.00	Chad Ramos	Monthly Commission
10/05/09	786.95	Chad Ramos	Brochures / Gas / Computer Monitor
11/02/09	3,000.00	Chad Ramos	Commission
11/03/09	572.55	Chad Ramos	Brochures / Gas / Hard Drive Backup
12/01/09	3,000.00	Chad Ramos	Monthly Commission
12/16/09	2,000.00	Chad Ramos	Copper Canyon Commission / Veneer Commission
12/16/09	448.13	Chad Ramos	computer / Headset / Map Pins / Batteries
01/04/10	3,000.00	Chad Ramos	Commission
01/05/10	1,000.00	Chad Ramos	commission-36 Marble Apex
01/11/10	372.89	Chad Ramos	gas reimbursements 12/30/09-1/7/10
01/11/10	4,000.00	Chad Ramos	Commission-Mariner Beach/New Leaf/Attributes/Gazelle
01/27/10	248.77	Chad Ramos	gas receipts
01/27/10	1,000.00	Chad Ramos	commission-Swept plains
02/01/10	2,800.00	Chad Ramos	commission
02/08/10	2,000.00	Chad Ramos	commission -Cabrini
08/17/10	1,000.00	Chad Ramos	commission - Bella Kathryn
03/01/10	15,000.00	CNR Real Estate	loan-less commission to pay Deborde MLS Fees
03/26/10	3,000.00	CNR Real Estate	Ever Clear commission / Valley Drive Commission
04/30/10	1,500.00	CNR Real Estate	Copper Pine Commission
05/11/10	3,000.00	CNR Real Estate	commission-Scarlet Sea / Commission- Palamos
01/22/09	1,098.58	GMAC	Chad's car
02/19/09	1,098.58	GMAC	Chad's car
03/26/09	160.13	Go Fish Creative, LLC	Business Cards-Chad
05/06/09	200.00	IRS	Chad Ramos Tax Pmt
05/27/09	1,101.90	American Express	NV Registration-Chad
10/20/09	1,098.58	GMAC	Chad's car
10/27/09	48.00	American Express	37 Signals-Chad
11/20/09	1,098.58	GMAC	Chad's car
12/20/09	1,098.58	GMAC	Chad's car
01/20/10	1,098.58	GMAC	Chad's car
11/08/10	6,250.00	GMAC	08 Cadi Escalade
	<u>77,386.80</u>		

d) Eric T. Nelson (Eric's Nephew (Paul's son)) – On January 27, 2009 and March 30, 2009, Eric T. Nelson received payments of \$3,000.00 each with a description of “Commission Draw” and “Monthly Commission”, respectively. According to the records produced, Eric T. Nelson received⁴ a 1099 in 2009 from ENA for \$9,000.00. We have not received employment records or contractor agreements between Eric T. Nelson and ENA.

e) Paul Nelson (Eric's Brother) – In 2009, Paul Nelson (“Paul”) received the following payments and/or benefited from the payment of expenses:

Paul Nelson Payments/Expenses			
Date	Amount	Payee	Description
01/03/09	850.00	Ford Credit	Paul's Truck
02/09/09	850.00	Ford Credit	Paul's Truck
03/15/11	3,000.00	Paul Nelson	Bella Kathryn Plans revision to be reimbursed by Banone
	<u>4,700.00</u>		

According to the records produced, Paul Nelson did not receive a 1099 in 2009 or 2010. We have not received records and/or agreements relating to the payments of Paul’s truck payment. In addition, we have not received backup from the payment of the March 15, 2011 payment to Paul for reimbursement.

⁴ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

- f) Ryan Nelson (Eric's Nephew (Paul's son)) – During 2009, Ryan Nelson (“Ryan”) received \$8,000 from ENA as shown below:

Ryan Nelson Payments/Expenses			
Date	Amount	Payee	Description
01/27/09	3,000.00	Ryan Nelson	Commission Draw
03/30/09	3,000.00	Ryan Nelson	Monthly Commission
12/21/09	2,000.00	Chris White	Misc fees for Ryan Nelson
	<u>8,000.00</u>		

According to the records produced, Ryan received⁵ a 1099 in 2009 from ENA for \$9,000.00. We have not received employment records or contractor agreements between Ryan Nelson and ENA.

- K. Professionals – The following transactions involved payments by ELN NV to professionals in the accounting and legal fields.

Professional Name	Amount
Gordon & Silver, LTD.	144.40
Ecker & Kainen	26,080.00
Harold Duke	5,000.00
Stephens, Gourley & Bywater	1,398.69
Warner Angle Hallam Jackson	15,365.27
Rogers & Haldeman (Accountant)	680.00
Gerety & Associates (Accountant)	1,970.00
	<u>50,638.36</u>

⁵ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

- L. Intercompany – The following chart explains the various transfers between related companies:

Date	Banone ⁶	Banone-Az ⁷	Dynasty ⁸	ELN NV ⁹
01/15/09				50,000.00
03/16/09	716.86			
03/16/09				23,300.00
04/22/09				300,000.00
06/01/09	200,000.00			
06/01/09		100,000.00		
06/29/09		332.46		
10/01/09			20,000.00	
10/27/09				10,000.00
12/16/09	100,000.00			
05/20/10	20,000.00			
	<u>320,716.86</u>	<u>100,332.46</u>	<u>20,000.00</u>	<u>383,300.00</u>

- M. Rental Expenses – The following chart explains the payments relating to rental real property:

Description	Amount	
Insurance	8,285.00	(a)
Oasis Baptist Church	100,000.00	(b)
Rental Expenses	54,730.46	(c)
Utilities	7,390.83	(d)
	<u>170,406.29</u>	

⁶ Banone, LLC

⁷ Banone-AZ, LLC

⁸ Dynasty Development Group, LLC

⁹ Eric L. Nelson NV Trust

- a) Insurance – Between January 1, 2009 and May 31, 2011, ENA paid the following amounts relating to insurance:

Date	Amount	Payee	Description
01/15/09	100.00	A & J Insurance	NELAU-1 Policy #1231680
05/04/09	450.00	CNA Surety	Bond/Policy#060168605314-US Bankruptcy Court
05/04/09	100.00	A & J Insurance	City of Henderson Bond
06/03/09	100.00	CNA Surety	Clark County Bond
10/27/09	1,814.00	Seneca Insurance Company	Sugar Daddy's Insurance
12/01/09	1,807.00	Seneca Insurance Company	Sugar Daddy's
12/30/09	3,614.00	Seneca Insurance Company	sugar daddy's ins
04/30/10	100.00	CNA Surety	City of LV Bond
05/09/11	100.00	CNA Surety	renewal
05/18/11	100.00	A & J Insurance	bond renewal
	<u>8,285.00</u>		

- b) Oasis Baptist Church – On May 31, 2011, ENA paid Oasis Baptist Church \$100,000.00 referencing “1 of 3 (total note \$300,000) loan for construction of school (loan to be reimbursed by outside 3rd party)”.

c) Rental Expenses – Between January 1, 2009 and May 31, 2011, ENA
paid expenses associated with rental properties¹⁰:

Date	Amount	Name	Description
01/26/09	3,200.00	Nelson & Associates	RENT STE 108
01/30/09	3,200.00	Nelson & Associates	STE 108 RENT
04/01/09	300.00	W. Charleston Lions Foundation	Football program ad
04/01/09	3,200.00	Nelson & Associates	RENT SUITE 108
05/11/09	3,200.00	Nelson & Associates	SUITE 108 RENT
06/04/09	3,200.00	Nelson & Associates	rent Suite 108
07/06/09	3,200.00	Nelson & Associates	RENT
07/28/09	3,200.00	Nelson & Associates	AUG RENT
07/22/09	2,164.77	The Sign Shop	
08/24/09	40.00	Palo Verde H.S. Theatre	Advertising
08/24/09	252.95	Tyrone Boyer	MLS Photos
08/27/09	84.31	Tyrone Boyer	Silver Heights Photos
09/08/09	3,200.00	Nelson & Associates	RENT 108
09/24/09	1,297.20	The Sign Shop	misc signs
09/25/09	2,927.21	American Express	GLVAR Fees
09/28/09	546.95	Tyrone Boyer	16 properties-Front / 6 interior
	3,270.00	Various Individuals	Open House Help (Indiv. received \$100 - \$200 for help)
10/01/09	100.00	Elsie R. Uti	Open house work
10/01/09	3,200.00	Nelson & Associates	RENT SUITE 108
10/01/09	675.62	The Sign Shop	25 signs @ \$25 each
10/05/09	42.00	Tyrone Boyer	Clover Blossom pictures
10/23/09	125.00	Adrienne Larsen	Sugar Daddy's pictures
10/23/09	125.00	Karla Primosch	Sugar Daddy's pictures
10/27/09	3,200.00	Nelson & Associates	November Rent
10/28/09	400.00	Hawkeye Striping	Sugar Daddy's re-stripe
10/28/09	548.00	Tyrone Boyer	property pictures
11/03/09	2,720.00	Various Individuals	Open House Help (Indiv. received \$80 - \$160 for help)
12/31/09	(100.00)	Danielle G. R. Grey	Voided check from September
12/01/09	3,200.00	Nelson & Associates	rent suite 108
12/16/09	25.00	Gildardo Torres	
12/29/09	486.45	The Sign Shop	
01/05/10	3,200.00	Nelson & Associates	January rent suite 108
04/21/10	300.00	W. Charleston Lions Foundation	Advertising
	<u>54,730.46</u>		

¹⁰ Payments to Nelson & Associates amounting to \$3,200.00 a month are not recorded as "Intercompany" as the payments are for rent therefore recorded as rental income on the report of Eric L. Nelson NV Trust.

- d) Utilities – Between January 1, 2009 and May 31, 2011, ENA paid \$7,390.83 in Utilities such as Power, Sewer, Trash and Gas. The following is a monthly chart of said payments:

	2009	2010
Jan	360.77	1,913.07
Feb	270.63	706.09
Mar	321.01	
Apr	166.26	
May	124.98	
June	397.76	
July	269.83	
Aug	337.52	
Sept	460.92	
Oct	426.08	
Nov	1,110.49	
Dec	525.42	
	4,771.67	2,619.16

- N. Operating Expenses – Expenses commonly associated with business operations are listed as Interest Expense, Other Expenses and Travel Expenses. The following is a description of the transaction associated with all three categories:

Description	Amount	
Interest Expense	480.40	(a)
Other Expenses	57,307.24	(b)
Travel Expenses	5,652.49	(c)
	<u>63,440.13</u>	

- a) Interest Expense – On May 11, 2009 and February 16, 2010, ENA made payments to The Bank of New York Mellon for \$166.67 and \$313.73, respectively.

- b) Other Expenses – Expenses associated with this description include payments to the following companies and/or individuals:

Name	Amount	
AMEX	8,284.56	(a)
Bank Charges	1,704.64	(b)
Golf Cart	2,702.50	(c)
Licenses / Dues	8,374.20	(d)
Printing	9,041.01	(e)
Repairs/Maintenance	1,537.09	(f)
Security	545.85	(g)
Shipping & Postage	890.97	(h)
Supplies	3,941.91	(i)
Telecommunications	20,284.51	(j)
Website	35,010.00	(k)
	<u>92,317.24</u>	

- a. AMEX – The Payments to American Express included expenses such as USPS, Office Depot, Business Cards, Email blasts, computer software, closing fees, and room rental for a seminar.
- b. Bank Charges – Between January 1, 2009 and May 31, 2011, ENA incurred \$1,704.64 in bank charges.
- c. Golf Cart – On December 21, 2009, ENA paid \$2,702.50 for a golf cart from Silver State Golf Carts. As of the date of this report, the whereabouts of said golf cart are unknown.
- d. Licenses/Dues – Between January 1, 2009 and May 31, 2011, ENA paid \$8,374.20 towards Licenses and/or dues. Said payments were to the following: City of Las Vegas, Clark County Department of Business License, Greater LV Association of Realtors, National Auctioneers Association, State of Nevada – Real Estate Division, and Town of Pahrump.

- e. Printing - Between January 1, 2009 and May 31, 2011, ENA paid \$9,041.01 in expenses associated with printing. Payments were made to Ikon Financial Services and Printsmart.
- f. Repairs/Maintenance - Between January 1, 2009 and May 31, 2011, ENA paid \$1,537.09 towards repairs and maintenance of the Lindell office building.
- g. Security – During 2009, ENA paid \$545.85 towards security for the Lindell office building. Said payments were to PJ Security and/or Protection One.
- h. Shipping & Postage – During 2009 and 2010, ENA paid Fedex Kinko's \$890.97 for shipping.
- i. Supplies - Between January 1, 2009 and May 31, 2011, ENA made payments totaling \$3,941.91 towards expenses commonly associated with the operations of an office. Said payments included: Paper, bathroom necessities, computer software, coffee, plates, and paper towels.
- j. Telecommunications - Between January 1, 2009 and May 31, 2011, ENA made payments totaling \$20,284.51 towards telecommunications related expenses. Said payments were to the following companies: End to End Networks, Embarq, Mpower Communications, Rackspace and Summit Communications.
- k. Website – In 2009, ENA paid Raster Media, LLC a total of 35,010.00 for the creation and operation of the company's website.

- c) Travel Expenses – In 2009, ENA made the following payments relating to travel:

Date	Amount	Name	Description
01/12/09	303.00	Bank of America	SWA- LAS-PHX
01/12/09	294.50	Bank of America	JET BLUE JFK-LAS
01/12/09	193.00	Bank of America	SWA-LAS-ISP
04/04/09	125.25	Bank of America	ALAMO RENT A CAR
04/04/09	971.73	Bank of America	GRAND AMERICA
04/08/09	219.20	Bank of America	SWA-SLC
04/08/09	20.00	Bank of America	SWA-TKT CHG
07/07/09	171.20	Bank of America	SWA 5/22
08/03/09	341.65	Tracy Cavanaugh	Travel reimbursements
10/05/09	2,437.36	Bank of America	Marriott Hotel
12/15/09	287.80	Bank of America	SWA - Eric -Las-PDX-Grizzly Sale
12/15/09	287.80	Bank of America	SWA-Karen Ross-Grizzly Sale
	<u>5,652.49</u>		

- O. Other Individuals – The following is a list of individuals who received payments from ENA that are not relatives to Eric and/or Lynita Nelson:

Name	Amount	
Amy Arbeli	4,287.88	(a)
Ashley Konold	2,102.83	(b)
Audie Verbrugge	1,250.00	(c)
Bobby DeBorde	1,830.00	(d)
David Anderson	3,500.00	(e)
James Lindell	8,840.71	(f)
Joseph Chad Lawson	141.14	(g)
Keith Little	46,535.91	(h)
Lana Martin	3,000.00	(i)
Lisa Klein	33,690.58	(j)
Stewart Larsen	15,000.00	(k)
Terel Coomes	1,121.00	(l)
Tracy Cavanaugh	10,000.00	(m)
	<u>131,300.05</u>	

**OPERATING AGREEMENT
OF
DYNASTY DEVELOPMENT MANAGEMENT, LLC**

THIS OPERATING AGREEMENT (this "*Agreement*") is entered into as of the 25th day of April 2011, by THE ERIC L. NELSON NEVADA TRUST u/a/d 5/30/01 (the "*Initial Sole Member*").

NOW, THEREFORE, the Initial Sole Member agrees as follows:

1. *Formation and Name.* The Initial Sole Member has caused to be formed a limited-liability company (the "*Company*") pursuant to Chapter 86 of the Nevada Revised Statutes (the "*Act*"). The name of the Company is "*Dynasty Development Management, LLC.*"

2. *Business.* The business of the Company shall be to engage in any lawful activity, including owning any real property or other assets.

3. *Principal Place of Business and Maintenance of Records.* The address in the State of Nevada where records will be maintained and the principal office and place of business of the Company shall be at 3611 S. Lindell Road, Ste 201, Las Vegas, NV 89103, or such other place as the Initial Sole Member shall from time to time determine.

4. *Resident Agent.* The name of the resident agent for service of process is Rochelle McGowan, 3611 S Lindell Road, Ste 201, Las Vegas, NV 89103

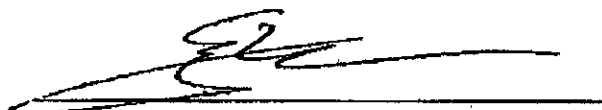
5. *Term.* The term of existence of the Company shall be perpetual or until the Manager as the Initial Sole Member elects to dissolve the Company.

6. *Ownership.* The Company is owned entirely by the Initial Sole Member and shall be treated as a sole proprietorship of the Initial Sole Member for federal income tax purposes. The initial capital contribution to the Company of the Initial Sole Member is \$1,000.

7. *Management.* All of the affairs and activities of the Company shall be managed by its Manager, who shall be elected and/or removed from time to time by the Initial Sole Member. The initial Manager of the Company is Eric L. Nelson. The Manager shall not receive any compensation for his service in such capacity but shall be reimbursed by the Company for his actual out-of-pocket expenditures on behalf of the Company.

8. *Miscellaneous.* This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and may only be amended by a written amendment hereto executed and delivered by the Initial Sole Member. This Agreement is made in the State of Nevada pursuant to the provisions of the Act and shall be governed, construed, and interpreted in accordance with the laws of the State of Nevada, without regard to its principles of conflict of laws; the exclusive forum for adjudication of any disputes hereunder is the federal and state courts located in Clark County, Nevada.

IN WITNESS WHEREOF, the undersigned have executed this agreement, as of the date first above written.


ERIC L. NELSON
"Manager"

1 AANS
THE DICKERSON LAW GROUP
2 ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
3 KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
4 JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
5 1745 Village Center Circle
Las Vegas, Nevada 89134
6 Telephone: (702) 388-8600
Facsimile: (702) 388-0210
7 Email: info@dickersonlawgroup.com
Attorneys for LYNITA SUE NELSON
8

9 DISTRICT COURT
FAMILY DIVISION
10 CLARK COUNTY, NEVADA
11

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

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

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

19 Necessary Parties (joined in this
20 action pursuant to Stipulation and
21 Order entered on August 9, 2011)

LYNITA SUE NELSON'S:
(1) FIRST AMENDED ANSWER
TO CLAIMS OF THE ERIC L.
NELSON NEVADA TRUST; AND

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

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

6 v.

7 LYNITA SUE NELSON and ERIC
8 NELSON,

9 Purported Cross-Defendant and
Counterdefendant,

10 LYNITA SUE NELSON,

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

13 v.

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

25 Counterdefendants, and/or
26 Cross-Defendants, and/or
Third Party Defendants.

) (2) FIRST AMENDED CLAIMS
FOR RELIEF AGAINST ERIC L.
NELSON, ERIC L. NELSON
NEVADA TRUST dated May 30,
2001, LANA MARTIN, NOLA
HARBER, ROCHELLE McGOWAN,
JOAN B. RAMOS, and DOES I
through X (WHETHER
DESIGNATED AS A
COUNTERCLAIM, CROSS-CLAIM,
AND/OR THIRD PARTY
COMPLAINT)

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1. LYNITA admits the allegations of paragraphs 1 and 2 of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST. In this regard, LYNITA specifically admits that both she and her husband, Eric L. Nelson, are residents of Clark County, Nevada.

22 3. LYNITA generally and specifically denies the allegations of paragraph 6
23 of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST.

28 || ...

1 5. Answering paragraph 8 of the Fugitive Pleading filed by ERIC NELSON'S
2 ALTER EGO TRUST, LYNITA admits that all of the assets owned by ERIC
3 NELSON'S ALTER EGO TRUST are community property and as such, are subject to
4 division by the Court in the instant divorce action, Case No. D-09-411537-D, entitled
5 "ERIC L. NELSON, Plaintiff/Counterdefendant v. LYNITA SUE NELSON, Defendant/
6 Counterclaimant" (the "Instant Divorce Action"). LYNITA further admits that
7 throughout the pretrial and trial proceedings in the Instant Divorce Action, Eric L.
8 Nelson has admitted and acknowledged that all of the assets owned by ERIC
9 NELSON'S ALTER EGO TRUST are his and LYNITA's community property, and that
10 the same are subject to division by the Court in the Instant Divorce Action. In this
11 regard, Eric L. Nelson has admitted and acknowledged, both tacitly, actively, and
12 otherwise, that he has treated ERIC NELSON'S ALTER EGO TRUST as his alter ego,
13 and that his and LYNITA's intent throughout their marriage has always been that all
14 of the assets owned by ERIC NELSON'S ALTER EGO TRUST are their community
15 property.

16 6. LYNITA generally and specifically denies the allegations of paragraphs 9,
17 10, 11, and 12 of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO
18 TRUST.

19 In addition to the above answers, based upon information and belief and
20 pending further investigation and discovery, LYNITA alleges the affirmative defenses
21 set forth below in this FIRST AMENDED ANSWER TO CLAIMS OF THE ERIC L.
22 NELSON NEVADA TRUST. LYNITA reserves the right to further amend this FIRST
23 AMENDED ANSWER TO CLAIMS OF THE ERIC L. NELSON NEVADA TRUST
24 to identify any and all statutory and/or decisional authorities supporting some or all of

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1 the Affirmative Defenses referenced below. LYNITA does not otherwise waive and
2 specifically reserves the right to assert additional Affirmative Defenses based on
3 statutory and decisional authorities, and equitable doctrines, and further reserves the
4 right to amend, correct, or add to these Affirmative Defenses based upon subsequent
5 investigation and discovery.

6
7 **FIRST AFFIRMATIVE DEFENSE**
(Failure to State a Cause of Action)

8 The Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST fails to
9 state facts sufficient to constitute a cause of action against LYNITA.

10
11 **SECOND AFFIRMATIVE DEFENSE**
(Wrongful Acts of ERIC NELSON'S ALTER EGO TRUST)

12 To the extent that any or all occurrences, happenings, injuries, and/or damages
13 alleged in the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST were
14 proximately caused and/or contributed to by the wrongful acts and/or omissions of
15 ERIC NELSON'S ALTER EGO TRUST, ERIC NELSON'S ALTER EGO TRUST is
16 precluded from obtaining judgment against LYNITA.

17
18 **THIRD AFFIRMATIVE DEFENSE**
(Authority)

19 Based upon information and belief, and subject to discovery in this action,
20 LYNITA alleges that ERIC NELSON'S ALTER EGO TRUST is barred from any
21 recovery based upon the lack of authority for LANA MARTIN to assert any claims on
22 behalf of ERIC NELSON'S ALTER EGO TRUST.

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FOURTH AFFIRMATIVE DEFENSE
(Consent)

To the extent ERIC NELSON'S ALTER EGO TRUST failed to object to the litigation of this divorce action, and based on the actions of Eric L. Nelson, ERIC NELSON'S ALTER EGO TRUST has assented, accepted, and acquiesced to the Instant Divorce Action as litigated, and by such consent is precluded from obtaining any relief against LYNITA.

FIFTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Laches and Unclean Hands)

Based upon information and belief, and subject to discovery in this action, LYNITA alleges that ERIC NELSON'S ALTER EGO TRUST is barred from any recovery on the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST based upon the doctrines of waiver, estoppel, laches, and unclean hands.

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1 LYNITA SUE NELSON'S FIRST AMENDED CLAIMS FOR RELIEF AGAINST
2 ERIC L. NELSON, ERIC L. NELSON NEVADA TRUST dated May 30, 2001,
3 LANA MARTIN, NOLA HARBER,
4 ROCHELLE McGOWAN, JOAN B. RAMOS,
5 and DOES I through X
6 (WHETHER DESIGNATED AS A COUNTERCLAIM, CROSS-CLAIM, AND/OR
7 THIRD PARTY COMPLAINT)

8 COMES NOW LYNITA SUE NELSON ("LYNITA"), by and through her
9 attorneys, ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST, ESQ., and
10 JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP, and as and for
11 her claims for relief against ERIC L. NELSON, ERIC L. NELSON NEVADA TRUST
12 dated May 30, 2001, LANA MARTIN, NOLA HARBER, ROCHELLE McGOWAN,
13 JOAN B. RAMOS, and DOES I through X, and whether designated as a Counterclaim,
14 Cross-claim, and/or Third Party Complaint, respectfully alleges and states as follows:

15 INTRODUCTION AND NATURE OF THE ACTION
16 BEING FILED BY LYNITA SUE NELSON

17 1. On or about August 9, 2011, the Court in this action, Case No. D-09-
18 411537-D, entitled "ERIC L. NELSON, Plaintiff/Counterdefendant v. LYNITA SUE
19 NELSON, Defendant/Counterclaimant" (the "Instant Divorce Action"), entered an
20 Order pursuant to the Stipulation of ERIC L. NELSON and LYNITA SUE NELSON,
21 joining the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("ERIC
22 NELSON'S ALTER EGO TRUST"), and the LSN NEVADA TRUST dated May 30,
23 2001 (the "LSN TRUST"), as necessary parties to this action.

24 2. On or about August 19, 2011, a fugitive pleading entitled "Answer to
25 Complaint for Divorce and Counterclaim and Cross-Claim" was filed in this Instant
26 Divorce Action by LANA MARTIN, purporting to be the Distribution Trustee of ERIC
27 NELSON'S ALTER EGO TRUST ("the Fugitive Pleading filed by ERIC NELSON'S
28 ALTER EGO TRUST").

29 3. This Pleading is being filed by LYNITA SUE NELSON pursuant to NRCP
30 13 and/or NRCP 14. The claims for relief alleged in this Pleading being filed by
31 LYNITA SUE NELSON are being filed, and have become necessary, because of the

1 filing of the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST.
2 Regardless of whether it is considered and/or designated as a Counterclaim, Cross-
3 Claim, and/or Third Party Complaint, this Pleading is intended to allege claims for
4 relief against the following individuals and trusts:

5 A. ERIC L. NELSON, individually, and as the Investment Trustee of
6 ERIC NELSON'S ALTER EGO TRUST ("ERIC");

7 B. ERIC NELSON'S ALTER EGO TRUST;

8 C. LANA MARTIN, individually, and as the current and/or former
9 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST,
10 and as the former Distribution Trustee of the LSN TRUST
11 ("LANA");

12 D. NOLA HARBER, individually, and as the current and/or former
13 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST,
14 and as the current and/or former Distribution Trustee of the LSN
15 TRUST ("NOLA");

16 E. ROCHELLE McGOWAN, individually ("ROCHELLE");

17 F. JOAN B. RAMOS, individually ("JOAN"); and

18 G. DOES I through X.

19 4. As a result of the filing of the Fugitive Pleading filed by ERIC NELSON'S
20 ALTER EGO TRUST in this Instant Divorce Action, a ripe case in controversy exists
21 between LYNITA and ERIC regarding their community property, and between
22 LYNITA and ERIC NELSON'S ALTER EGO TRUST regarding LYNITA's and ERIC's
23 community property being held in ERIC NELSON'S ALTER EGO TRUST. Further,
24 LYNITA has now had to assert claims against ERIC L. NELSON, individually, and as
25 the Investment Trustee of ERIC NELSON'S ALTER EGO TRUST; ERIC NELSON'S
26 ALTER EGO TRUST; LANA MARTIN, individually, and as the current and/or former
27 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and as the former
28 Distribution Trustee of the LSN TRUST; NOLA HARBER, individually, and as the

1 current and/or former Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST,
2 and as the current and/or former Distribution Trustee of the LSN TRUST;
3 ROCHELLE McGOWAN, individually; JOAN B. RAMOS, individually; and DOES
4 I through X, to ensure all claims and controversies are resolved in one action.

5 5. Approximately twenty-seven (27) months after ERIC filed his Complaint
6 for Divorce in the Instant Divorce Action, ERIC has caused ERIC NELSON'S ALTER
7 EGO TRUST to file the Fugitive Pleading filed by ERIC NELSON'S ALTER EGO
8 TRUST in this action denying the existence of ERIC's and LYNITA's community
9 property interest in all the assets held in ERIC NELSON'S ALTER EGO TRUST.

10 6. ERIC has asserted his management and control over ERIC NELSON'S
11 ALTER EGO TRUST, and the LSN TRUST in his sworn testimony before this Court
12 on multiple occasions. ERIC has confirmed the existence of ERIC's and LYNITA's
13 community property and/or separate property interest in both trusts through his sworn
14 testimony before this Court. From May 30, 2001 until at least early 2011, ERIC has
15 influenced, directed, and controlled all aspects of both ERIC NELSON'S ALTER EGO
16 TRUST, and the LSN TRUST.

17 7. LYNITA respectfully files this Pleading and asserts the claims for relief in
18 this Pleading to hold ERIC, and those parties aiding and abetting, conspiring with,
19 and/or acting in concert with ERIC accountable for their abusive conduct designed to
20 deprive LYNITA of her rightful access to community assets. ERIC's newly devised
21 effort to attempt to shield community assets from distribution by this Court in the
22 Instant Divorce Action, by now claiming that all such community assets are held in,
23 and belong to, his illusory, sham ERIC NELSON'S ALTER EGO TRUST that he has
24 dominated and controlled at all times, should be recognized for its true nature and
25 wholly disregarded by this Court.

26 8. LYNITA asserts the claims for relief in this Pleading to establish that both
27 ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, are ERIC's alter egos
28 ...

1 and that ERIC has used the trusts to improperly shield community assets from
2 distribution by this Court as part of this Instant Divorce Action.

3 9. As a matter of law and equity, ERIC's abusive conduct compels piercing
4 the veil of ERIC NELSON'S ALTER EGO TRUST, and determining that all of the
5 assets, profits, gains, and interests titled in the name of ERIC NELSON'S ALTER EGO
6 TRUST, and the LSN TRUST, are the community property of ERIC and LYNITA, and
7 that the same are subject to division by this Court in this Instant Divorce Action.

8 10. ERIC did not engage in this attempted, massive abuse of Nevada's trust
9 laws alone. LANA MARTIN, ERIC's employee, close friend, and co-conspirator, served
10 as the Distribution Trustee for ERIC NELSON'S ALTER EGO TRUST, and the LSN
11 TRUST, for approximately six (6) years. Likewise, NOLA HARBER, ERIC's sister and
12 co-conspirator, served as the Distribution Trustee for ERIC NELSON'S ALTER EGO
13 TRUST, and the LSN TRUST, for approximately four (4) years. In their capacity as
14 the Distribution Trustee for ERIC NELSON'S ALTER EGO TRUST, and the LSN
15 TRUST, both LANA and NOLA individually, under ERIC's direction and control,
16 abused the protections afforded by Nevada's trust laws, and their fiduciary duties to
17 ERIC NELSON'S ALTER EGO TRUST, the LSN TRUST, and LYNITA, to the benefit
18 of ERIC, and to the detriment of LYNITA and the community. Similarly, ROCHELLE
19 MCGOWAN, ERIC's employee and close friend, and JOAN B. RAMOS, ERIC's
20 employee and close friend, conspired with ERIC, LANA, and NOLA to violate Nevada's
21 trust laws to the benefit of ERIC and detriment of LYNITA and the community.

22 11. ERIC controlled and directed LANA's and NOLA's conduct as
23 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST.
24 For example, and as more fully set forth below, ERIC directed the release of tens of
25 thousands of dollars of trust income and property to ERIC, and other third parties,
26 including, but not necessarily limited to, ERIC's family members (Cal Nelson, Paul
27 Nelson, Chad Ramos, Ryan Nelson and others) during the time period October 1, 2001
28 through the present, to fund ERIC's and ERIC's family members' personal

1 expenditures. ERIC further directed the creation of Distribution Authorization forms
2 purporting to distribute trust income from the LSN TRUST to LYNITA, which was
3 never actually received by LYNITA. ERIC's directives were never scrutinized or
4 questioned by either LANA or NOLA; rather, both LANA and NOLA, at all times while
5 acting in the capacity of Distribution Trustee of ERIC NELSON'S ALTER EGO
6 TRUST, and the LSN TRUST, performed exactly as ERIC directed.

7 12. ERIC directed and controlled all of the co-conspirators' actions with
8 respect to ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, and all the
9 purported assets of such trusts, since the creation of ERIC NELSON'S ALTER EGO
10 TRUST, and the LSN TRUST. For example, ERIC dictated or handwrote notes of the
11 asset transfers, and loans he desired to be performed by ERIC NELSON'S ALTER EGO
12 TRUST, and the LSN TRUST, and would pass his dictation and/or notes of such
13 actions to one or more of the named co-conspirators, who would create the necessary
14 deeds, loan documents, promissory notes, agreements or other documents necessary to
15 effectuate ERIC's directives, create written documents confirming ERIC's directives,
16 and draft and sign all checks required to perform as directed by ERIC. ERIC's
17 directives were never scrutinized or questioned by any of the named co-conspirators;
18 rather all named co-conspirators performed exactly as ERIC directed.

19 13. LANA, ROCHELLE, and JOAN, at all times relevant hereto have served
20 as ERIC's "right hand" persons with respect to ERIC's entities, ERIC NELSON'S
21 ALTER EGO TRUST, and the LSN TRUST. In their individual capacities, as
22 employees of any one of ERIC's entities, they each handled ERIC's books and records
23 and day to day operations (under ERIC's direction and control), acted as the registered
24 agent for any one of ERIC's entities (under ERIC's direction and control), and/or acted
25 as the notary public for ERIC's entities, including notarizing documents related to
26 ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST.

27 14. Upon information and belief, and following a period of discovery focused
28 on ERIC NELSON'S ALTER EGO TRUST, the LSN TRUST, and the actions of ERIC

1 and his co-conspirators related to ERIC NELSON'S ALTER EGO TRUST, and the
2 LSN TRUST, LYNITA will be able to demonstrate that ERIC is controlling both trusts
3 as illusory, sham trusts to shield assets from distribution by this Court as part of this
4 Instant Divorce Action. For example, ERIC purchased assets with community funds,
5 and directed title to such assets be held in the name of ERIC NELSON'S ALTER EGO
6 TRUST, or an entity wholly controlled by ERIC NELSON'S ALTER EGO TRUST,
7 rather than in ERIC's personal name, to shield the assets from third-party creditors,
8 and now asserts the claims made in the Fugitive Pleading filed by ERIC NELSON'S
9 ALTER EGO TRUST to attempt to avoid the distribution of such assets by this Court
10 as part of this Instant Divorce Action. One such transaction being the transaction
11 involving the Russell Road property which has been discussed throughout this Instant
12 Divorce Action. ERIC further directed the transfer of assets from and/or between ERIC
13 NELSON'S ALTER EGO TRUST, and the LSN TRUST, without compensation or for
14 less than fair market value compensation to avoid the reach of third-party creditors,
15 and to now assert the claims made in the Fugitive Pleading filed by ERIC NELSON'S
16 ALTER EGO TRUST to attempt to avoid the distribution of such assets by this Court
17 as part of this Instant Divorce Action. Such transfers include the transfer of certain
18 real property parcels in Mississippi, the transfer of the real property located on Harbor
19 Hills Avenue from the LSN TRUST to ERIC NELSON'S ALTER EGO TRUST, which
20 ERIC thereafter sold for less than fair market value during the litigation of this Instant
21 Divorce Action, and the transfer of the commercial building located on Lindell Avenue
22 from the LSN TRUST, to the LSN TRUST and ERIC NELSON'S ALTER EGO
23 TRUST as equal, fifty-percent (50%) owners, without authority and consideration.
24 While a period of discovery has already been performed in this Instant Divorce Action,
25 such discovery did not focus on ERIC NELSON'S ALTER EGO TRUST, the LSN
26 TRUST, and ERIC's and his co-conspirators' actions related to ERIC NELSON'S
27 ALTER EGO TRUST, and the LSN TRUST; the reason being because for the first
28 twenty-seven (27) months that this Instant Divorce Action has been pending, ERIC did

1 not assert any claims other than that all of the assets created or obtained during the
2 parties' marriage were community assets subject to equal division by this Court in this
3 Instant Divorce Action.

4 15. Upon information and belief, and following a period of discovery focused
5 on ERIC NELSON'S ALTER EGO TRUST, and ERIC's and his co-conspirators'
6 actions related to ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
7 LYNITA will be able to demonstrate that ERIC designed transfers from ERIC
8 NELSON'S ALTER EGO TRUST to drain ERIC NELSON'S ALTER EGO TRUST of
9 liquidity, and from the LSN TRUST to ERIC NELSON'S ALTER EGO TRUST to
10 deprive LYNITA and the community of income and property in this Instant Divorce
11 Action. ERIC's dissipation of assets in both Trusts so as to hinder distribution by this
12 Court as part of this Instant Divorce Action include ERIC's drain of the Mellon Bank
13 account and Mellon line of credit of approximately 1.4 million dollars to improve the
14 Bella Kathryn property.

15 16. As early as June 2003, ERIC and/or LANA recognized issues existed with
16 ERIC's and LANA's actions with respect to ERIC NELSON'S ALTER EGO TRUST,
17 and sent an email to Jeffrey Burr, Esq., the attorney who originally drafted ERIC
18 NELSON'S ALTER EGO TRUST, addressing some of these issues. Specifically LANA
19 admitted to holding "special meetings" concerning ERIC NELSON'S ALTER EGO
20 TRUST, and questioned the propriety of these meetings and the appropriateness of her
21 acting as the Distribution Trustee for both ERIC NELSON'S ALTER EGO TRUST,
22 and the LSN TRUST.

23 17. In order to prevent manifest injustice, the veil surrounding ERIC
24 NELSON'S ALTER EGO TRUST and its financial relationships with other entities
25 controlled and directed by ERIC must be lifted. LYNITA brings this action to pierce
26 the veil of ERIC NELSON'S ALTER EGO TRUST because ERIC NELSON'S ALTER
27 EGO TRUST, as well as the LSN TRUST, are ERIC's alter egos; thus, LYNITA seeks
28 a declaration from this Court that ERIC NELSON'S ALTER EGO TRUST, and the

1 LSN TRUST, are illusory, sham trusts whose assets belong to ERIC, LYNITA, and the
2 community estate and are subject to division as part of these divorce proceedings.
3 LYNITA also requests that this Court ensure that ERIC's co-conspirators (LANA
4 MARTIN, NOLA HARBER, ROCHELLE McGOWAN, and JOAN B. RAMOS),
5 without whom ERIC could not have instituted and maintained his scheme to attempt
6 to deny LYNITA her lawful share of the parties' community assets, be held liable for
7 their wrongful conduct.

8 PARTIES

9 18. ERIC L. NELSON and LYNITA SUE NELSON are residents of Clark
10 County, Nevada. ERIC and LYNITA are husband and wife, as alleged in ERIC's
11 Complaint for Divorce, and LYNITA's Answer and Counterclaim filed months ago in
12 this Instant Divorce Action. ERIC is the Investment Trustee of ERIC NELSON'S
13 ALTER EGO TRUST.

14 19. LANAMARTIN ("LANA") is a resident of Clark County, Nevada. LANA
15 is an employee of ERIC. Upon information and belief, LANA is the former
16 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST; however, LANA
17 claims to be the current Distribution Trustee of ERIC NELSON'S ALTER EGO
18 TRUST. LANA is also the former Distribution Trustee of the LSN TRUST. LANA
19 is intricately involved in many of ERIC's entities serving both as bookkeeper, and upon
20 information and belief, the notary public on several documents for ERIC, ERIC
21 NELSON'S ALTER EGO TRUST, and the LSN TRUST. LANA assisted ERIC in
22 creating and maintaining his intricate web of entities, including ERIC NELSON'S
23 ALTER EGO TRUST. When being referred to jointly along with the other co-
24 conspirators, which shall specifically include LANA, NOLA, ROCHELLE, and JOAN,
25 LANA is intended to be included in as one of the co-conspirators when the term "co-
26 conspirators" is used in this Pleading.

27 20. NOLA HARBER ("NOLA") is a resident of Clark County, Nevada,
28 presently absent from the state while serving a voluntary mission for the Church of

1 Jesus Christ of Latter Day Saints in Laie, Hawaii. NOLA is the sister of ERIC. Upon
2 information and belief, NOLA is the current Distribution Trustee of ERIC NELSON'S
3 ALTER EGO TRUST. If NOLA is not the current Distribution Trustee of ERIC
4 NELSON'S ALTER EGO TRUST, she is the former Distribution Trustee of ERIC
5 NELSON'S ALTER EGO TRUST. NOLA also is either the current, one of the current,
6 or the former Distribution Trustee of the LSN TRUST. NOLA assisted ERIC in
7 maintaining his intricate web of entities, including ERIC NELSON'S ALTER EGO
8 TRUST. When being referred to jointly along with the other co-conspirators, which
9 shall specifically include LANA, NOLA, ROCHELLE, and JOAN, NOLA is intended
10 to be included in as one of the co-conspirators when the term "co-conspirators" is used
11 in this Pleading.

12 21. ROCHELLE MCGOWAN ("ROCHELLE") is a resident of Clark County,
13 Nevada. ROCHELLE is an employee of ERIC. ROCHELLE is intricately involved in
14 many of ERIC's entities serving as bookkeeper, and upon information and belief, the
15 notary public on several documents for ERIC, ERIC NELSON'S ALTER EGO TRUST,
16 and the LSN TRUST, and she is the registered agent for several of ERIC's entities.
17 ROCHELLE assisted ERIC in creating and maintaining his intricate web of entities,
18 including ERIC NELSON'S ALTER EGO TRUST. When being referred to jointly
19 along with the other co-conspirators, which shall specifically include LANA, NOLA,
20 ROCHELLE, and JOAN, ROCHELLE is intended to be included in as one of the co-
21 conspirators when the term "co-conspirators" is used in this Pleading.

22 22. JOAN B. RAMOS ("JOAN") is a resident of Clark County, Nevada.
23 JOAN is an employee of ERIC. JOAN is intricately involved in many of ERIC's entities
24 serving both as bookkeeper, and upon information and belief, the notary public on
25 several documents for ERIC, ERIC NELSON'S ALTER EGO TRUST, and the LSN
26 TRUST. JOAN assisted ERIC in creating and maintaining his intricate web of entities,
27 including ERIC NELSON'S ALTER EGO TRUST. When being referred to jointly
28 along with the other co-conspirators, which shall specifically include LANA, NOLA,

1 ROCHELLE, and JOAN, JOAN is intended to be included in as one of the co-
2 conspirators when the term "co-conspirators" is used in this Pleading.

3 23. The ERIC L. NELSON NEVADA TRUST dated May 30, 2001 is referred
4 to in this pleading as "ERIC NELSON'S ALTER EGO TRUST." The LSN NEVADA
5 TRUST dated May 30, 2001 is referred to in this pleading as the "LSN TRUST."
6 When both trusts are being jointly referred to they may be referred to as "the Trusts"
7 or "both Trusts."

8 JURISDICTION AND VENUE

9 24. All named parties are subject to the jurisdiction and venue of this Court.

10 25. This Court has jurisdiction, and LYNITA has standing, pursuant to
11 Chapters 125, 153, and 166 of the Nevada Revised Statutes.

12 26. ERIC NELSON'S ALTER EGO TRUST, by its entry to this case and
13 failure to assert any jurisdictional challenge, has assented to this Court's entry of final
14 orders in this proceeding.

15 27. This Court may enter a final judgment herein pursuant to NRS 125.130,
16 subject to review by the Nevada Supreme Court. Also, ERIC's wrongful conduct has
17 caused and will cause irreparable injury to LYNITA and the community estate, and
18 given ERIC's continued wrongdoing with respect to ERIC NELSON'S ALTER EGO
19 TRUST, LYNITA lacks adequate remedies at law to address ERIC's wrongful conduct.
20 As such, LYNITA seeks the entry of a temporary restraining order, preliminary
21 injunction, and permanent injunction.

22 ADDITIONAL FACTS

23 28. On or about May 30, 2001, ERIC caused ERIC NELSON'S ALTER EGO
24 TRUST to be formed. At that time, ERIC named himself as the Investment Trustee
25 of ERIC NELSON'S ALTER EGO TRUST, and named LANA as the Distribution
26 Trustee of ERIC NELSON'S ALTER EGO TRUST.

27 29. On or about May 30, 2001, ERIC caused the LSN TRUST to be formed.
28 At that time, ERIC instructed LYNITA to name LYNITA as the Investment Trustee

1 of the LSN TRUST, and ERIC named LANA as the Distribution Trustee of the LSN
2 TRUST. Trusting her husband to protect her and the community as he had repeatedly
3 promised to do, LYNITA signed all paperwork presented to her to create the LSN
4 TRUST.

5 30. ERIC NELSON'S ALTER EGO TRUST and the LSN TRUST are
6 purportedly Nevada spendthrift trusts. In reality, at all times, ERIC NELSON'S
7 ALTER EGO TRUST, as well as the LSN TRUST, were the alter egos of ERIC. ERIC's
8 unity of interest with ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
9 is such that their separate personalities ceased to exist. ERIC used ERIC NELSON'S
10 ALTER EGO TRUST's, and the LSN TRUST's assets as his own, and recognizing the
11 separate existence of the ERIC NELSON'S ALTER EGO TRUST, or the LSN TRUST
12 would result in a manifest fraud and injustice.

13 31. ERIC has provided sworn testimony before this Court that ERIC
14 NELSON'S ALTER EGO TRUST, and the LSN TRUST were created for asset
15 protection purposes. Specifically, in the event something happened to ERIC, ERIC did
16 not have to carry life insurance. ERIC would put safe assets into the LSN TRUST for
17 LYNITA and the parties' children, and the much more volatile assets into ERIC
18 NELSON'S ALTER EGO TRUST. Both Trusts were created by Jeffrey Burr, Esq., and
19 maintained to provide ERIC flexibility in his management of the assets and of tax
20 implications. ERIC admits to managing both Trusts, and further admits that the intent
21 was to level off ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
22 annually by putting assets in ERIC NELSON'S ALTER EGO TRUST, or the LSN
23 TRUST depending on the transaction and to bottom line – protect LYNITA. At no
24 time did ERIC state that the creation of ERIC NELSON'S ALTER EGO TRUST, or
25 the LSN TRUST were to limit either his or LYNITA's rights to receive at least an equal
26 division of assets upon a dissolution of their marriage, or to remove any asset from the
27 realm of community property created during the parties' marriage. In fact, Jeffrey Burr,
28 Esq. testified in the Instant Divorce Action on November 22, 2010, and by his

1 testimony confirmed that the sole intent of both ERIC and LYNITA at the time of the
2 creation of the Trusts was to protect their community assets from third-party creditors;
3 the Trusts were not intended to create separate property for either ERIC or LYNITA.
4 Mr. Burr further confirmed that it was the intent of both ERIC and LYNITA for the
5 assets held in both Trusts to continue to be the parties' community property.

6 32. LYNITA, upon information and belief, and on that basis alleges, that all
7 of the acts set forth in this Pleading alleged to have been done by ERIC and/or one or
8 more of the co-conspirators, were, where applicable, authorized, approved, and/or
9 ratified by one another in breach of each individual's fiduciary duties to another and
10 to the detriment of LYNITA.

11 33. LYNITA, upon information and belief, and on that basis alleges, that
12 where applicable, ERIC and/or one or more of the co-conspirators, have been, at all
13 material times, acting with the full knowledge, consent, authority, ratification and/or
14 permission of the other named persons.

15 34. LYNITA, upon information and belief, and on that basis alleges, that
16 where applicable, ERIC, and/or one or more of the co-conspirators, knowingly and
17 substantially assisted, encouraged, conspired with, authorized, requested, commanded,
18 ratified, and/or recklessly tolerated the statements and actions of each other in order
19 to engage in a scheme to defraud LYNITA of her interest in community assets and the
20 community estate.

21 35. Pursuant to the terms of Section 2.1 of ERIC NELSON'S ALTER EGO
22 TRUST, ERIC and ERIC's five (5) living children are named as beneficiaries of ERIC
23 NELSON'S ALTER EGO TRUST. Pursuant to Article IV of ERIC NELSON'S ALTER
24 EGO TRUST, LYNITA is named as a beneficiary of ERIC NELSON'S ALTER EGO
25 TRUST.

26 36. Pursuant to the terms of Section 2.1 of the LSN TRUST, LYNITA and
27 LYNITA's five (5) living children are named as beneficiaries of the LSN TRUST.

28 ...

1 37. Both Trusts have identical language concerning the use of trust income,
2 veto rights of the Trustor, powers of the Investment Trustee, and powers of the
3 Distribution Trustee.

4 38. Pursuant to the terms of Section 3.1 of both Trusts, the income of each
5 Trust is to be used as follows:

6 [T]o manage, invest and reinvest same, to collect the income thereof, and
7 to pay over or apply the net income and/or principal thereof, and in such
8 amounts and proportions, including all to the exclusion of the others, and
9 at such time or times as the Trustees, in their sole and absolute
10 discretion, shall determine, to or for the benefit of such one or more
11 members of the class consisting of the Trustor, the Trustor's issue and
12 other beneficiaries named herein or as described in Section 2.1 above,
13 until the death of Trustor.

14 39. Pursuant to the terms of Section 3.3 of both Trusts, the Trustor, during
15 the Trustor's lifetime, retains a veto right over "any payment or application of income
16 or principal to any beneficiary other than the Trustor . . .," and may direct that the
17 Distribution Trustee "shall not make and/or authorize the intended payment or
18 application to the intended beneficiary."

19 40. Pursuant to the terms of Section 3.3 of both Trusts,

20 [A]ny decision to make a distribution to the Trustor may not be made by
21 the Trustor, even though the Trustor may be serving as a Trustee
22 hereunder. Prior to any distribution to the Trustor of either income or
23 principal of Trust estate, a meeting of the majority of the Trustees, which
24 majority must also include the Distribution Trustee, shall be held. At
25 such meeting the Trustees shall discuss the advisability of making a
26 distribution of the Trust estate to the Trustor. Upon vote of the
27 Distribution Trustee and a majority of the other Trustees in attendance
28 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.

41. Pursuant to the terms of Section 3.4 of both Trusts,

In the event any distribution of any of the Trust estate shall be made to
the Trustor, and if such distribution is not previously authorized by the
Trustees in the manner as required pursuant to Section 3.3 above, then
such distribution made to the Trustor shall be void and the Distribution
Trustee shall have a lien against the Trust estate distributed to the
Trustor and such lien shall also extend if necessary to make the Trust
estate whole, to any and all other assets of the Trustor.

...

1 42. The powers afforded to the Investment Trustee by the Trusts are as set
2 forth in Section 12.1 of both Trusts. The Investment Trustee has no other powers over
3 the Trusts' assets other than as specifically set forth in Section 12.1 of the Trusts.

4 43. Pursuant to the terms of Section 12.2 of both Trusts, the "Distribution
5 Trustee shall have the power to authorize distribution of principal and/or income to the
6 beneficiaries hereunder at times and in amounts as determined in the sole discretion
7 of the Distribution Trustee, subject only to the veto power vested in the Trustor,
8 according to the standards set forth in Section 3.1 above."

9 44. LYNITA, upon information and belief, and on that basis alleges, that
10 LANA is intertwined with ERIC and ERIC's entities, including being ERIC's employee,
11 an investor in at least one of ERIC's entities, and a close friend and confidant of ERIC.
12 LANA's legal bills incurred in this action are presently being paid by assets held in
13 ERIC NELSON'S ALTER EGO TRUST, in violation of the terms of ERIC NELSON'S
14 ALTER EGO TRUST.

15 45. LYNITA, upon information and belief, and on that basis alleges, that
16 LANA, in her capacity as Distribution Trustee of ERIC NELSON'S ALTER EGO
17 TRUST, has made repeated distributions of trust assets in violation of the specific
18 terms of the Trust.

19 46. LYNITA, upon information and belief, and on that basis alleges, that
20 ERIC has controlled LANA's actions as Distribution Trustee of ERIC NELSON'S
21 ALTER EGO TRUST since its creation, that LANA has breached her duties as
22 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and that LANA has
23 had no independent authority to exercise the powers afforded to the Distribution
24 Trustee by ERIC NELSON'S ALTER EGO TRUST, but has performed exactly as ERIC
25 instructed.

26 ...

27 ...

28 ...

1 47. On February 22, 2007, LANA was replaced by NOLA as the Distribution
2 Trustee for ERIC NELSON'S ALTER EGO TRUST at ERIC's request. NOLA is
3 ERIC's sister and is intertwined with ERIC and ERIC's entities. NOLA is not an
4 independent trustee as defined by Section 672(c) of the Internal Revenue Code, as she
5 is related by blood to ERIC.

6 48. LYNITA, upon information and belief, and on that basis alleges, that
7 ERIC has controlled NOLA's actions as Distribution Trustee of ERIC NELSON'S
8 ALTER EGO TRUST since its creation, that NOLA has breached her duties as
9 Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST, and that NOLA has
10 had no independent authority to exercise the powers afforded to the Distribution
11 Trustee by ERIC NELSON'S ALTER EGO TRUST, but has performed exactly as ERIC
12 instructed.

13 49. LYNITA, upon information and belief, and on that basis alleges, that
14 NOLA is the current Distribution Trustee of ERIC NELSON'S ALTER EGO TRUST.

15 50. LYNITA, upon information and belief, and on that basis alleges, that
16 ERIC has controlled LANA's actions as Distribution Trustee of the LSN TRUST since
17 its creation, that LANA has breached her duties as Distribution Trustee of the LSN
18 TRUST, and that LANA has had no independent authority to exercise the powers
19 afforded to the Distribution Trustee by the LSN TRUST, but has performed exactly
20 as ERIC instructed.

21 51. On February 22, 2007, LANA was replaced by NOLA as the Distribution
22 Trustee for the LSN TRUST at ERIC's request. NOLA is ERIC's sister and is
23 intertwined with ERIC and ERIC's entities. NOLA is not an independent trustee as
24 defined by Section 672(c) of the Internal Revenue Code, as she is related by marriage
25 to LYNITA.

26 52. LYNITA, upon information and belief, and on that basis alleges, that
27 ERIC has controlled NOLA's actions as Distribution Trustee of the LSN TRUST since
28 her appointment as Distribution Trustee of the LSN TRUST, that NOLA has breached

1 her duties as Distribution Trustee of the LSN TRUST, and that NOLA has had no
2 independent authority to exercise the powers afforded to the Distribution Trustee by
3 the LSN TRUST, but has performed exactly as ERIC instructed.

4 53. LYNITA, upon information and belief, and on that basis alleges, that
5 since the creation of ERIC NELSON'S ALTER EGO TRUST, without adequate
6 consideration, trust assets have been inappropriately distributed to ERIC and third
7 parties in violation of the terms of ERIC NELSON'S ALTER EGO TRUST; without
8 adequate consideration, trust assets have been sold in violation of the terms of ERIC
9 NELSON'S ALTER EGO TRUST; and without adequate consideration, trust assets
10 have been transferred to other entities in violation of the terms of ERIC NELSON'S
11 ALTER EGO TRUST.

12 54. LYNITA, upon information and belief, and on that basis alleges, that
13 since the creation of the LSN TRUST, without adequate consideration, trust assets
14 have been inappropriately distributed to ERIC and third parties in violation of the
15 terms of the LSN TRUST; without adequate consideration, trust assets have been sold
16 in violation of the terms of the LSN TRUST; and without adequate consideration, trust
17 assets have been transferred to other entities in violation of the terms of the LSN
18 TRUST.

19 55. LYNITA, upon information and belief, and on that basis alleges, that
20 since the creation of the LSN TRUST, trust assets have been inappropriately
21 distributed to ERIC and third parties in violation of the terms of the LSN TRUST;
22 trust assets have been sold in violation of the terms of the LSN TRUST; and trust
23 assets have been transferred to other entities in violation of the terms of the LSN
24 TRUST.

25 56. LYNITA, upon information and belief, and on that basis alleges, that
26 since the creation of ERIC NELSON'S ALTER EGO TRUST, trust assets have been
27 inappropriately distributed to ERIC and third parties in violation of the terms of the
28 ...

1 Trust; trust assets have been sold in violation of the terms of the Trust; and trust assets
2 have been transferred to other entities in violation of the terms of the Trust.

3 57. On December 8, 2011, Larry L. Bertsch, CPA, CFF, and Nicholas S.
4 Miller, CFE, of the accounting firm of Larry L. Bertsch, CPA & Associates, the Court
5 appointed forensic accountants, filed a report entitled "Source and Application of
6 Funds for Eric L. Nelson Nevada Trust" ("Mr. Bertsch's Report") documenting some
7 of the inappropriate distributions to ERIC and third parties from ERIC NELSON'S
8 ALTER EGO TRUST during the period January 1, 2009 through May 31, 2011.

9 58. Mr. Bertsch's Report outlines the following payments to ERIC, ERIC's
10 family members, and other third parties during the time period audited, all of which,
11 upon information and belief, are in direct contravention of the terms of ERIC
12 NELSON'S ALTER EGO TRUST:

- 13 A. \$56,000.00 paid to Element Iron & Design, LLC and ERIC's
14 Nephew, Brock Nelson;
- 15 B. \$1,304,368.17 paid to ERIC's brother, Clarence Nelson, or Cal's
16 Blue Water Marine, a company owned by Clarence Nelson;
- 17 C. \$30,000.00 paid to ERIC's sister, Carlene Gutierrez, and/or The
18 Grotta Group, LLC, a company for which Carlene Gutierrez is a
19 member;
- 20 D. \$3,000.00 paid to ERIC's nephew, and NOLA's son, Chad Ramos;
- 21 E. \$5,000.00 paid to ERIC's nephew, Eric T. Nelson;
- 22 F. \$25,025.00 paid to ERIC's nephew, and NOLA's son, Jesse
23 Harber;
- 24 G. \$13,318.83 paid to ERIC's brother-in-law, and NOLA's husband,
25 Paul Harber;
- 26 H. \$19,975.00 paid to ERIC's brother, Paul Nelson; and
- 27 I. \$3,000.00 paid to ERIC's nephew, Ryan Nelson.

28 ...

1 59. Mr. Bertsch's Report also documents \$90,607.89 in personal expenditures
2 paid for ERIC from ERIC NELSON'S ALTER EGO TRUST for legal services,
3 automobile purchases, charitable contributions, "expenses designated by [ERIC] to be
4 personal," gifts, gym memberships, Las Vegas hotels, music service, restaurants,
5 sporting event tickets, and vacations.

6 60. Mr. Bertsch's Report also indicates that ERIC took \$1,243,623.47 in
7 payments to himself and "distributions" from ERIC NELSON'S ALTER EGO TRUST
8 between January 2009, and May 2011.

9 61. Upon information and belief, there were countless other inappropriate
10 distributions to ERIC and third parties from ERIC NELSON'S ALTER EGO TRUST
11 during the period preceding Mr. Bertsch's Report, including, but not limited to,
12 \$23,675.00 paid to Chad Ramos in June and July 2007, \$12,500.00 paid to Paul
13 Harber in June 2007, and \$4,900.00 in Christmas gifts from ERIC to Briana Ramos,
14 Joseph Lawson, Chad Ramos, ROCHELLE and JOAN in December 2007.

15 62. On May 6, 2009, ERIC filed his Complaint for Divorce against LYNITA.
16 However, ERIC has engaged in "divorce planning" since at least 2003.

17 63. On multiple dates between August 30, 2011 and present, ERIC testified
18 before this Court and repeatedly asserted that all assets held by ERIC NELSON'S
19 ALTER EGO TRUST, and the LSN TRUST, are community assets owned by ERIC
20 and LYNITA, and merely titled in the name of such trusts.

21 64. On multiple dates between August 30, 2011 and present, ERIC testified
22 before this Court and repeatedly asserted he has managed all assets in ERIC
23 NELSON'S ALTER EGO TRUST, and all assets held in the LSN TRUST.

24 65. Until early 2009, LYNITA has never directed or managed any aspect of
25 the LSN TRUST. Rather, LYNITA relied upon ERIC to direct and manage all assets
26 held by the LSN TRUST.

27 66. LYNITA, upon information and belief, and on that basis alleges, that
28 there exists, and at all times mentioned herein existed, a unity of interest and effective

1 ownership between ERIC and ERIC NELSON'S ALTER EGO TRUST, and ERIC and
2 the LSN TRUST, such that any individuality or separateness between ERIC and ERIC
3 NELSON'S ALTER EGO TRUST, and ERIC and the LSN TRUST, ceased to exist.

4 67. LYNITA, upon information and belief, and on that basis alleges, that
5 ERIC invested trust assets of both Trusts with third parties that ERIC controlled and
6 directed, or in which ERIC held a direct financial interest, for ERIC's own benefit.

7 68. LYNITA, upon information and belief, and on that basis alleges, that
8 ERIC directed one or more of the co-conspirators to distribute trust assets from both
9 Trusts to individuals and entities who were not beneficiaries of either trust, for ERIC's
10 own benefit.

11 69. ERIC, in his capacity as Investment Trustee of ERIC NELSON'S ALTER
12 EGO TRUST, has over funded and ignored the formalities of ERIC NELSON'S ALTER
13 EGO TRUST, and with the assistance of one or more of the co-conspirators, has
14 operated both Trusts as his own personal piggy bank.

15 70. ERIC and one or more of ERIC's co-conspirators, have also transferred
16 assets between ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, or
17 ERIC's and LYNITA's community assets to both Trusts, without authority from
18 LYNITA, forging LYNITA's signature at times to accomplish such transfers.

19 71. Adherence to the fiction of a separate existence between ERIC and ERIC
20 NELSON'S ALTER EGO TRUST, and the LSN TRUST would sanction fraud and
21 permit injustice as it would inhibit LYNITA from receiving her equal share of the
22 community assets created during the parties' lengthy marriage.

23 72. Since the initiation of this divorce litigation, ERIC has continuously
24 asserted that the assets of ERIC NELSON'S ALTER EGO TRUST are his personal
25 assets and are subject to division in this Instant Divorce Action.

26 73. Since the initiation of this divorce litigation, ERIC has continuously
27 asserted that the assets of the LSN TRUST are LYNITA's assets and are subject to
28 division in this Instant Divorce Action.

1 74. ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST are
2 illusory, sham trusts as they are being used by ERIC to secrete community property
3 from LYNITA in an effort to minimize the assets LYNITA will receive upon conclusion
4 of this Instant Divorce Action.

5 75. LYNITA, upon information and belief, and on that basis alleges, that
6 ERIC's actions since the start of this Instant Divorce Action have drained ERIC
7 NELSON'S ALTER EGO TRUST, and the LSN TRUST of nearly all liquidity, in an
8 effort to entice LYNITA to settle this action. ERIC's actions further demonstrate his
9 game playing, and establish that proper trust formalities have not been followed with
10 respect to ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, justifying
11 piercing the veil of ERIC NELSON'S ALTER EGO TRUST.

12 76. LYNITA, upon information and belief, and on that basis alleges, that
13 separate ledgers and business records have not been maintained for ERIC NELSON'S
14 ALTER EGO TRUST, and the LSN TRUST, or have been maintained on the same
15 accounting software used and maintained by ERIC's other entities. ERIC's
16 commingling of the ledgers for ERIC NELSON'S ALTER EGO TRUST, and the LSN
17 TRUST, and ERIC's personal entities and assets, further support LYNITA's allegations
18 that ERIC has exerted influence and control over the co-conspirators, and ERIC
19 NELSON'S ALTER EGO TRUST's, and the LSN TRUST's business affairs, and the
20 lack of a separate identity of both Trusts.

21 77. The above referenced activities all demonstrate that (1) ERIC is directing
22 and controlling the activities of ERIC NELSON'S ALTER EGO TRUST, and the LSN
23 TRUST; (2) ERIC NELSON'S ALTER EGO TRUST's, and the LSN TRUST's
24 operational formalities are not being followed, and in fact are being directly
25 contravened; (3) ERIC broke the sanctity of ERIC NELSON'S ALTER EGO TRUST
26 and the LSN TRUST by withdrawing or directing trust assets for his own benefit; (4)
27 ERIC NELSON'S ALTER EGO TRUST and the LSN TRUST are nothing more than
28 . . .

1 sham, illusory trusts and ERIC's alter egos used in an attempt to minimize the assets
2 LYNITA will receive upon the conclusion of this Instant Divorce Action.

3 **FIRST CLAIM FOR RELIEF**
4 **(VEIL-PIERCING AGAINST ERIC, LANA, NOLA, AND**
5 **ERIC NELSON'S ALTER EGO TRUST)**

6 78. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
7 through 77 of this Pleading as if fully set forth herein.

8 79. ERIC's actions demonstrate that ERIC NELSON'S ALTER EGO TRUST,
9 and the former and/or current Distribution Trustees of ERIC NELSON'S ALTER EGO
10 TRUST, LANA and NOLA, were influenced, directed, controlled and governed by
11 ERIC in all respects as though no trust actually existed.

12 80. There has been such unity of interest and ownership between ERIC and
13 ERIC NELSON'S ALTER EGO TRUST that one is inseparable from the other.

14 81. The facts show that adherence to the fiction of ERIC NELSON'S ALTER
15 EGO TRUST as a separate trust entity would, under the circumstances, sanction fraud
16 and promote injustice.

17 82. Pursuant to NRS 78.747, and/or NRS 163.418, LYNITA seeks a
18 declaratory judgment piercing the veil of ERIC NELSON'S ALTER EGO TRUST, and
19 declaring that the assets held in ERIC NELSON'S ALTER EGO TRUST are the
20 community assets of ERIC and LYNITA, subject to division in the Instant Divorce
21 Action.

22 83. LYNITA has been required to employ the services of her attorneys to
23 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
24 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
25 attorneys' fees and costs of suit she has incurred and will continue to incur in this
26 action.

27 ...

28 ...

...

1 **SECOND CLAIM FOR RELIEF**
2 **(REVERSE VEIL-PIERCING AGAINST ERIC, LANA, NOLA, AND**
 ERIC NELSON'S ALTER EGO TRUST)

3 84. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
4 through 83 of this Pleading as if fully set forth herein.

5 85. ERIC's actions demonstrate that ERIC NELSON'S ALTER EGO TRUST,
6 and the former and/or current Distribution Trustees of ERIC NELSON'S ALTER EGO
7 TRUST, LANA and NOLA, were influenced, directed, controlled and governed by
8 ERIC in all respects as though no trust actually existed.

9 86. There has been such unity of interest and ownership between ERIC and
10 ERIC NELSON'S ALTER EGO TRUST that one is inseparable from the other.

11 87. The facts show that adherence to the fiction of ERIC NELSON'S ALTER
12 EGO TRUST as a separate trust entity would, under the circumstances, sanction fraud
13 and promote injustice.

14 88. Pursuant to NRS 78.747, and/or NRS 163.418, LYNITA seeks a
15 declaratory judgment piercing the veil of ERIC NELSON'S ALTER EGO TRUST, and
16 declaring that the assets held in ERIC NELSON'S ALTER EGO TRUST are the
17 community assets of ERIC and LYNITA, subject to division in the Instant Divorce
18 Action.

19 89. LYNITA has been required to employ the services of her attorneys to
20 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
21 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
22 attorneys' fees and costs of suit she has incurred and will continue to incur in this
23 action.

24 **THIRD CLAIM FOR RELIEF**
25 **(BREACH OF FIDUCIARY DUTY AGAINST ERIC)**

26 90. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
27 through 89 of this Pleading as if fully set forth herein.

28 ...

1 91. A fiduciary duty arises from the existence of the marital relationship,
2 precipitating a duty to create and sustain community assets and disclose factors which
3 may effect community assets.

4 92. A fiduciary relationship existed between ERIC and LYNITA when ERIC
5 NELSON'S ALTER EGO TRUST was created, and at all time relevant hereto.

6 93. As a result of this fiduciary relationship, ERIC was bound to act in good
7 faith and with due regard to the interests of LYNITA who remained his wife and the
8 mother of his five (5) children. ERIC had an obligation to not act in any manner so
9 as to destroy or injure the parties' community assets, or to injure LYNITA's ability to
10 receive at least her one-half (1/2) share, if not more, of the parties' community
11 property.

12 94. As a direct and proximate result of ERIC's breach of his fiduciary duty to
13 LYNITA, LYNITA has sustained actual damages in excess of \$10,000.00.

14 95. Moreover, in breaching his fiduciary duties to LYNITA, ERIC acted with
15 oppression, fraud, and malice, and LYNITA is entitled to punitive damages in an
16 amount in excess of \$10,000.00.

17 96. LYNITA has been required to employ the services of her attorneys to
18 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
19 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
20 attorneys' fees and costs of suit she has incurred and will continue to incur in this
21 action.

22 **FOURTH CLAIM FOR RELIEF**
23 **(BREACH OF FIDUCIARY DUTY AGAINST**
 LANA AND NOLA)

24 97. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
25 through 96 of this Pleading as if fully set forth herein.

26 98. A fiduciary duty is deemed to exist when one party is bound to act for
27 the benefit of the other party. Such a relationship imposes a duty of utmost good faith
28 and loyalty.

99. A fiduciary relationship existed between LYNITA and LANA when LANA assumed the position of Distribution Trustee for the LSN TRUST.

100. A fiduciary relationship existed between LYNITA and NOLA when NOLA assumed the position of Distribution Trustee for the LSN TRUST.

101. As a result of this fiduciary relationship, LANA and NOLA were individually bound to act in good faith and with due regard to the interests of LYNITA, who was a beneficiary of the LSN TRUST. LANA and NOLA individually had an obligation to not act in any manner adverse to LYNITA, or in any way which would destroy or injure LYNITA, or LYNITA's ability to benefit from the existence of the LSN TRUST.

102. LANA and NOLA each individually breached their fiduciary duty to LYNITA by aligning themselves with ERIC, and acting as ERIC directed, even when such actions were to the detriment of LYNITA and the LSN TRUST.

103. As a direct and proximate result of LANA's and NOLA's breach of fiduciary duty to LYNITA, LYNITA has sustained actual damages in excess of \$10,000.00.

104. Moreover, in breaching their fiduciary duties to LYNITA, LANA and NOLA acted with oppression, fraud, and malice, and LYNITA is entitled to punitive damages in an amount in excess of \$10,000.00.

105. LYNITA has been required to employ the services of her attorneys to protect her interests as set forth in this Pleading, and to file and prosecute this Pleading on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable attorneys' fees and costs of suit she has incurred and will continue to incur in this action.

FIFTH CLAIM FOR RELIEF
(FRAUD, DECEIT AND INTENTIONAL MISREPRESENTATION
AGAINST ERIC)

106. LYNITA repeats and re-alleges all matters asserted in paragraphs 1 through 105 of this Pleading as if fully set forth herein.

1 107. As alleged above, at all times relevant hereto ERIC represented to
2 LYNITA that all assets transferred to, and held in the names of the LSN TRUST, and
3 ERIC NELSON'S ALTER EGO TRUST, were the parties' community property assets.

4 108. ERIC now contends that the parties have no interest in the assets held by
5 the LSN TRUST, and ERIC NELSON'S ALTER EGO TRUST.

6 109. As further alleged above, while representing to LYNITA that the assets
7 transferred to, and held in the names of the LSN TRUST, and ERIC NELSON'S
8 ALTER EGO TRUST were the parties' community property, ERIC engaged in a course
9 of conduct intended to diminish, minimize and destroy such property interests to
10 prevent LYNITA from recovering her community interest in such property in the
11 Instant Divorce Action.

12 110. As a direct and proximate result of the aforementioned wrongful conduct
13 of ERIC, LYNITA has sustained actual damages in excess of \$10,000.00.

14 111. In committing the acts alleged above, ERIC acted with oppression, fraud,
15 and malice, and LYNITA is entitled to punitive damages in an amount in excess of
16 \$10,000.00.

17 112. LYNITA has been required to employ the services of her attorneys to
18 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
19 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
20 attorneys' fees and costs of suit she has incurred and will continue to incur in this
21 action.

22 **SIXTH CLAIM FOR RELIEF**
23 **(CONVERSION AGAINST ERIC, LANA, NOLA, AND**
24 **ERIC NELSON'S ALTER EGO TRUST)**

25 113. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
26 through 112 of this Pleading as if fully set forth herein.

27 114. As alleged above, throughout ERIC's and LYNITA's marriage, and the
28 first twenty-seven (27) months of this Instant Divorce Action, ERIC asserted that the

...

1 property held by ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, were
2 the parties' community property.

3 115. ERIC has suddenly changed positions, causing ERIC NELSON'S ALTER
4 EGO TRUST to wrongfully exert dominion over ERIC's and LYNITA's community
5 property, in denial of, and inconsistent with the parties' community property rights.

6 116. As a direct and proximate result of the aforementioned conversion of
7 community property assets by ERIC and ERIC NELSON'S ALTER EGO TRUST,
8 LYNITA has sustained actual damages in excess of \$10,000.00.

9 117. LYNITA has been required to employ the services of her attorneys to
10 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
11 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
12 attorneys' fees and costs of suit she has incurred and will continue to incur in this
13 action.

14 **SEVENTH CLAIM FOR RELIEF**
15 **(MONEY HAD AND RECEIVED AGAINST ERIC, LANA, NOLA, AND**
16 **ERIC NELSON'S ALTER EGO TRUST)**

17 118. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
18 through 117 of this Pleading as if fully set forth herein.

19 119. As alleged above, throughout ERIC's and LYNITA's marriage, and the
20 first twenty-seven (27) months of this Instant Divorce Action, ERIC asserted that the
21 property held by ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, were
22 the parties' community property.

23 120. As a result, ERIC and ERIC NELSON'S ALTER EGO TRUST received
24 possession of money and property belonging to ERIC and LYNITA as community
25 property, which ERIC and ERIC NELSON'S ALTER EGO TRUST ought to, in equity
26 and good conscience, pay over to ERIC and LYNITA.

27 121. LYNITA has been required to employ the services of her attorneys to
28 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable

1 attorneys' fees and costs of suit she has incurred and will continue to incur in this
2 action.

3
4 EIGHTH CLAIM FOR RELIEF
(FRAUD IN THE INDUCEMENT AGAINST ERIC)

5 122. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
6 through 121 of this Pleading as if fully set forth herein.

7 123. On or about May 30, 2001, ERIC caused ERIC NELSON'S ALTER EGO
8 TRUST, and the LSN TRUST to be formed.

9 124. From May 30, 2001, to August 2011, ERIC represented to LYNITA that
10 all properties held by ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST
11 were the parties' community properties.

12 125. ERIC knew and believed that such representations were made without
13 sufficient basis, if the LSN TRUST and ERIC NELSON'S ALTER EGO TRUST were
14 valid, spendthrift trusts.

15 126. Trusting her husband to protect her and the community as he had
16 repeatedly promised to do, LYNITA justifiably relied on ERIC's representations and
17 signed documents presented to her to create the LSN TRUST, and to transfer assets
18 to and from the LSN TRUST, and ERIC NELSON'S ALTER EGO TRUST.

19 127. As a direct and proximate result of the aforementioned wrongful conduct
20 of ERIC, LYNITA has sustained actual damages in excess of \$10,000.00.

21 128. In committing the acts alleged above, ERIC acted with oppression, fraud,
22 and malice, and LYNITA is entitled to punitive damages in an amount in excess of
23 \$10,000.00.

24 129. LYNITA has been required to employ the services of her attorneys to
25 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
26 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
27 attorneys' fees and costs of suit she has incurred and will continue to incur in this
28 action.

1 **NINTH CLAIM FOR RELIEF**
2 **(UNJUST ENRICHMENT AGAINST ERIC, LANA, NOLA, AND**
3 **ERIC NELSON'S ALTER EGO TRUST)**

4 130. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
5 through 129 of this Pleading as if fully set forth herein.

6 131. As alleged above, ERIC and ERIC NELSON'S ALTER EGO TRUST
7 received, and/or accepted possession of money and property belonging to ERIC and
8 LYNITA as community property.

9 132. ERIC's and ERIC NELSON'S ALTER EGO TRUST'S retention of such
10 money and property is against the fundamental principles of justice or equity and good
11 conscience.

12 133. As a direct and proximate result of the aforementioned acts, ERIC and
13 ERIC NELSON'S ALTER EGO TRUST have been unjustly enriched, to the detriment
14 of LYNITA, causing LYNITA actual damages in excess of \$10,000.00.

15 134. LYNITA has been required to employ the services of her attorneys to
16 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
17 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
18 attorneys' fees and costs of suit she has incurred and will continue to incur in this
19 action.

20 **TENTH CLAIM FOR RELIEF**
21 **(BREACH OF ORAL CONTRACT AGAINST ERIC)**

22 135. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
23 through 134 of this Pleading as if fully set forth herein.

24 136. On or about May 30, 2001, ERIC caused ERIC NELSON'S ALTER EGO
25 TRUST, and the LSN TRUST to be formed.

26 137. From May 30, 2001, to August 2011, ERIC represented to LYNITA and
27 agreed that all properties held by ERIC NELSON'S ALTER EGO TRUST, and the
28 LSN TRUST were the parties' community properties. Trusting her husband to protect
her and the community as he had repeatedly promised to do, LYNITA signed

1 documents presented to her to create the LSN TRUST, and to transfer assets to and
2 from the LSN TRUST, and ERIC NELSON'S ALTER EGO TRUST.

3 138. ERIC has attempted to breach, or has in fact breached the oral agreement
4 with LYNITA to maintain the parties' rights to community property assets despite
5 titling same in the name of ERIC NELSON'S ALTER EGO TRUST, by causing ERIC
6 NELSON'S ALTER EGO TRUST to assert that LYNITA and ERIC have no interest
7 in the assets held by ERIC NELSON'S ALTER EGO TRUST in the Instant Divorce
8 Action.

9 139. As a direct and proximate result of the aforementioned breach, LYNITA
10 has sustained actual damages in excess of \$10,000.00.

11 140. LYNITA has been required to employ the services of her attorneys to
12 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
13 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
14 attorneys' fees and costs of suit she has incurred and will continue to incur in this
15 action.

16 **ELEVENTH CLAIM FOR RELIEF**
17 **(CONSPIRACY AGAINST ERIC, LANA, NOLA,**
ROCHELLE, AND JOAN)

18 141. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
19 through 140 of this Pleading as if fully set forth herein.

20 142. ERIC directed and controlled the distribution of income and assets to and
21 from ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, from May 30,
22 2001, through at least early 2011. ERIC's actions were committed to the detriment
23 of LYNITA, the LSN TRUST, and the community estate. Such acts include, but are
24 not limited to, the release of tens of thousands of dollars of trust income to ERIC and
25 other third parties, including ERIC's family members, during the time period October
26 1, 2001 through the present. Further, ERIC directed and controlled the release of trust
27 assets to fund ERIC's personal expenditures; directed and controlled the purchase of
28 assets with community funds only to later direct that title to such assets be held in the

1 name of ERIC NELSON'S ALTER EGO TRUST, or an entity wholly controlled by
2 ERIC NELSON'S ALTER EGO TRUST, rather than in ERIC's personal name, to
3 shield the assets from creditors and from distribution by this Court as part of this
4 Instant Divorce Action, inclusive of the transaction involving the Russell Road property
5 which has been discussed throughout this Instant Divorce Action; and directed and
6 controlled the transfer of assets between ERIC NELSON'S ALTER EGO TRUST, and
7 the LSN TRUST without compensation or for less than fair market value
8 compensation.

9 143. ERIC and one or more of ERIC's named co-conspirators, LANA, NOLA,
10 ROCHELLE, and JOAN, conspired with ERIC, knowingly agreed and consented to
11 ERIC's actions, and assisted ERIC to take such actions.

12 144. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
13 ROCHELLE, and JOAN, knowingly and substantially assisted ERIC in fraudulently
14 conveying assets out of ERIC NELSON'S ALTER EGO TRUST and the LSN TRUST,
15 ignoring the provisions of ERIC NELSON'S ALTER EGO TRUST and the LSN
16 TRUST, and provisions of Nevada law, to the detriment of LYNITA, the LSN TRUST,
17 and the community estate. LYNITA, upon information and belief, and on that basis
18 alleges, that while the co-conspirators actions were directed and controlled by ERIC,
19 each co-conspirator was aware of her role in assisting ERIC to the detriment of
20 LYNITA, the LSN TRUST, and the community estate.

21 145. As a direct and proximate result of such actions by ERIC, LANA, NOLA,
22 ROCHELLE, and JOAN, LYNITA has sustained actual damages in excess of
23 \$10,000.00.

24 146. In committing the acts alleged above, ERIC, LANA, NOLA, ROCHELLE,
25 and JOAN acted with oppression, fraud, and malice, and LYNITA is entitled to
26 punitive damages in an amount in excess of \$10,000.00.

27 147. LYNITA has been required to employ the services of her attorneys to
28 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading

1 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
2 attorneys' fees and costs of suit she has incurred and will continue to incur in this
3 action.

4
5 **TWELFTH CLAIM FOR RELIEF**
6 **(CONCERT OF ACTION FOR BREACH OF FIDUCIARY DUTY, FRAUD,**
7 **AND CONVERSION AGAINST ERIC, LANA, NOLA, ROCHELLE, AND**
8 **JOAN)**

9 148. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
2 through 147 of this Pleading as if fully set forth herein.

3 149. ERIC directed and controlled the distribution of income and assets to and
4 from ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, from May 30,
5 2001, through at least early 2011. ERIC's actions were committed to the detriment
6 of LYNITA, the LSN TRUST, and the community estate. Such acts include, but are
7 not limited to, the release of tens of thousands of dollars of trust income to ERIC and
8 other third parties, including ERIC's family members, during the time period October
9 1, 2001 through the present. Further, ERIC directed and controlled the release of trust
10 assets to fund ERIC's personal expenditures; directed and controlled the purchase of
11 assets with community funds only to later direct that title to such assets be held in the
12 name of ERIC NELSON'S ALTER EGO TRUST, or an entity wholly controlled by
13 ERIC NELSON'S ALTER EGO TRUST, rather than in ERIC's personal name; and
14 directed and controlled the transfer of assets between ERIC NELSON'S ALTER EGO
15 TRUST, and the LSN TRUST without compensation or for less than fair market value
16 compensation.

17 150. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
18 ROCHELLE, and JOAN, acted in concert with, knowingly agreed and allowed, and
19 substantially assisted ERIC to take the actions alleged above and throughout this
20 Pleading.

21 151. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
22 ROCHELLE, and JOAN, knowingly and substantially assisted ERIC in fraudulently

1 conveying assets out of ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
2 in breaching fiduciary duties owed to LYNITA, and in converting community assets to
3 ERIC NELSON'S ALTER EGO TRUST, to the detriment of LYNITA, the LSN
4 TRUST, and the community estate. LYNITA, upon information and belief, and on
5 that basis alleges, that while the co-conspirators actions were directed and controlled
6 by ERIC, each of the co-conspirators was aware of her role in assisting ERIC to the
7 detriment of LYNITA, the LSN TRUST, and the community estate.

8 152. As a direct and proximate result of such actions by ERIC, LANA, NOLA,
9 ROCHELLE, and JOAN, LYNITA has sustained actual damages in excess of
10 \$10,000.00.

11 153. In committing the acts alleged above, ERIC, LANA, NOLA, ROCHELLE,
12 and JOAN acted with oppression, fraud, and malice, and LYNITA is entitled to
13 punitive damages in an amount in excess of \$10,000.00.

14 154. LYNITA has been required to employ the services of her attorneys to
15 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
16 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
17 attorneys' fees and costs of suit she has incurred and will continue to incur in this
18 action.

19 **THIRTEENTH CLAIM FOR RELIEF**
20 **(AIDING AND ABETTING BREACH OF FIDUCIARY DUTY, FRAUD, AND**
CONVERSION AGAINST ERIC, LANA, NOLA, ROCHELLE, AND JOAN)

21 155. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
22 through 154 of this Pleading as if fully set forth herein.

23 156. ERIC directed and controlled the distribution of income and assets to and
24 from ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST, from May 30,
25 2001, through at least early 2011. ERIC's actions were committed to the detriment
26 of LYNITA, the LSN TRUST, and the community estate. Such acts include, but are
27 not limited to, the release of tens of thousands of dollars of trust income to ERIC and
28 other third parties, including ERIC's family members, during the time period October

1 1, 2001 through the present. Further, ERIC directed and controlled the release of trust
2 assets to fund ERIC's personal expenditures; directed and controlled the purchase of
3 assets with community funds only to later direct that title to such assets be held in the
4 name of ERIC NELSON'S ALTER EGO TRUST, or an entity wholly controlled by
5 ERIC NELSON'S ALTER EGO TRUST, rather than in ERIC's personal name; and
6 directed and controlled the transfer of assets between ERIC NELSON'S ALTER EGO
7 TRUST, and the LSN TRUST without compensation or for less than fair market value
8 compensation.

9 157. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
10 ROCHELLE, and JOAN, aided and abetted ERIC, and knowingly agreed and allowed
11 and substantially assisted ERIC to take the actions alleged above and throughout this
12 Pleading.

13 158. ERIC and one or more of ERIC's co-conspirators, LANA, NOLA,
14 ROCHELLE, and JOAN, knowingly and substantially assisted ERIC in fraudulently
15 conveying assets out of ERIC NELSON'S ALTER EGO TRUST, and the LSN TRUST,
16 in breaching fiduciary duties owed to LYNITA, and in converting community assets to
17 ERIC NELSON'S ALTER EGO TRUST, to the detriment of LYNITA, the LSN
18 TRUST, and the community estate. LYNITA, upon information and belief, and on
19 that basis alleges, that while the co-conspirators actions were directed and controlled
20 by ERIC, each of the co-conspirators was aware of her role in assisting ERIC to the
21 detriment of LYNITA, the LSN TRUST, and the community estate.

22 159. As a direct and proximate result of such actions by ERIC, LANA, NOLA,
23 ROCHELLE, and JOAN, LYNITA has sustained actual damage in excess of
24 \$10,000.00.

25 160. In committing the acts alleged above, ERIC, LANA, NOLA, ROCHELLE,
26 and JOAN acted with oppression, fraud, and malice, and LYNITA is entitled to
27 punitive damages in an amount in excess of \$10,000.00.

28 . . .

1 161. LYNITA has been required to employ the services of her attorneys to
2 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
3 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
4 attorneys' fees and costs of suit she has incurred and will continue to incur in this
5 action.

6 **FOURTEENTH CLAIM FOR RELIEF**
7 **(CONSTRUCTIVE TRUST AGAINST ERIC, LANA, NOLA, AND**
8 **ERIC NELSON'S ALTER EGO TRUST)**

9 162. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
through 161 of this Pleading as if fully set forth herein.

10 163. For the reasons set forth above, the assets, income, profits, rents, and fees
11 received by ERIC, or any of ERIC's intricate web of entities, including ERIC
12 NELSON'S ALTER EGO TRUST, belong, in good conscious, to ERIC and LYNITA
13 and are subject to division by this Court in this Instant Divorce Action.

14 164. For the reasons set forth above, all of ERIC NELSON'S ALTER EGO
15 TRUST's assets, including its interest in any third-party entity and real property,
16 belong, in good conscious, to ERIC and LYNITA and are subject to division by this
17 Court in this Instant Divorce Action.

18 165. ERIC NELSON'S ALTER EGO TRUST has wrongfully asserted
19 ownership and dominion over ERIC's and LYNITA's assets, and ERIC has retained
20 control of such assets, their revenues, or other proceeds for himself to the detriment of
21 LYNITA and the community estate.

22 166. In equity, a constructive trust in favor of LYNITA and the community
23 estate should be imposed over all assets in the possession or control of ERIC, and ERIC
24 NELSON'S ALTER EGO TRUST, and over all assets in the possession or control of
25 other entities or instrumentalities which are owned or controlled, directly or indirectly,
26 by ERIC and/or ERIC NELSON'S ALTER EGO TRUST.

27 167. LYNITA has been required to employ the services of her attorneys to
28 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading

1 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
2 attorneys' fees and costs of suit she has incurred and will continue to incur in this
3 action.

4 **FIFTEENTH CLAIM FOR RELIEF**
5 **(INJUNCTIVE RELIEF AGAINST ERIC, LANA, NOLA AND**
6 **ERIC NELSON'S ALTER EGO TRUST)**

6 168. LYNITA repeats and re-alleges all matters asserted in paragraphs 1
7 through 167 of this pleading as if fully set forth herein.

8 169. The above referenced allegations demonstrate that ERIC and the co-
9 conspirators are ready, willing, and able to dissipate the assets of ERIC NELSON'S
10 ALTER EGO TRUST for improper expenditures on ERIC's behalf, and for excessive
11 and extravagant personal expenditures on behalf of ERIC NELSON'S ALTER EGO
12 TRUST (such as continued funding of improvements to the Bella Kathryn property,
13 and ERIC's personal vendetta through litigation against Paul Alanis, Jess Ravitch, the
14 Manesses and any other third person whom ERIC believes has wronged him) all to the
15 detriment of LYNITA and the community estate.

16 170. LYNITA and the community estate face the prospect of immediate,
17 severe, and irreparable injury should ERIC be allowed to continue his current course
18 of conduct with respect to ERIC NELSON'S ALTER EGO TRUST. By way of example
19 only, the injuries include the threat of complete dissipation of the Mellon bank account
20 and line of credit to fund litigation, assets which rightfully belong to LYNITA and the
21 community estate. Given ERIC's continuing conduct with respect to ERIC NELSON'S
22 ALTER EGO TRUST, LYNITA and the community estate lack adequate remedies at
23 law to address ERIC's wrongful conduct. As such, LYNITA seeks the entry of a
24 temporary restraining order, preliminary injunction, and permanent injunction.

25 171. LYNITA has been required to employ the services of her attorneys to
26 protect her interests as set forth in this Pleading, and to file and prosecute this Pleading
27 on her behalf, and LYNITA thus is entitled to and should be awarded the reasonable
28 ...

1 attorneys' fees and costs of suit she has incurred and will continue to incur in this
2 action.

3 WHEREFORE, LYNITA SUE NELSON requests judgment as follows:

4 1. That ERIC NELSON'S ALTER EGO TRUST take nothing by way of the
5 Fugitive Pleading filed by ERIC NELSON'S ALTER EGO TRUST;

6 2. That the veil between ERIC and ERIC NELSON'S ALTER EGO TRUST
7 be pierced, and that ERIC NELSON'S ALTER EGO TRUST be declared to be ERIC's
8 alter ego;

9 3. Declaring that ERIC NELSON'S ALTER EGO TRUST is an illusory,
10 sham trust and not a valid, self-settled, Nevada spendthrift trust, and that the assets
11 of ERIC NELSON'S ALTER EGO TRUST are LYNITA's and ERIC's community
12 property, subject to division by this Court in the Instant Divorce Action;

13 4. Imposing a constructive trust on any property titled in the name of ERIC
14 NELSON'S ALTER EGO TRUST, and all other properties which are in the possession
15 or control of ERIC, and ERIC NELSON'S ALTER EGO TRUST, or in the possession
16 or control of other entities or instrumentalities which are owned or controlled, directly
17 or indirectly, by ERIC or ERIC NELSON'S ALTER EGO TRUST;

18 5. Entering a temporary restraining order, preliminary injunction, and
19 permanent injunction barring ERIC and ERIC NELSON'S ALTER EGO TRUST from
20 disposing of any assets held in ERIC NELSON'S ALTER EGO TRUST, or the LSN
21 TRUST;

22 6. Awarding judgment against ERIC, ERIC NELSON'S ALTER EGO
23 TRUST, LANA MARTIN, NOLA HARBER, ROCHELLE McGOWAN, and JOAN B.
24 RAMOS, jointly and severally, for all damages sustained by LYNITA and the
25 community estate by the conduct described herein in an amount in excess of
26 \$10,000.00, the exact amount of which to be proven at trial;

27 7. Awarding LYNITA punitive damages in an amount in excess of
28 \$10,000.00, the exact amount of which to be proven at trial;

1 8. For an award to LYNITA of the reasonable attorneys' fees and costs of
2 suit she has incurred and will continue to incur in this action; and

3 9. For such other and further relief as the Court deems just, equitable and
4 proper in the premises.

5 DATED this 20th day of December, 2011.

6 THE DICKERSON LAW GROUP

7
8 By Robert P. Dickerson
9 ROBERT P. DICKERSON, ESQ.
10 Nevada Bar No. 000845
11 KATHERINE L. PROVOST, ESQ.
12 Nevada Bar No. 008414
13 JOSEF M. KARACSONYI, ESQ.
14 Nevada Bar No. 010634
15 1745 Village Center Circle
16 Las Vegas, Nevada 89134
17 Attorneys for LYNITA SUE NELSON
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THE DICKERSON LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@dickersonlawgroup.com
Attorneys for LYNITA SUE NELSON

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON

Defendant/Counterclaimant.

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

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

Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

CERTIFICATE OF MAILING

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

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

6 v.)

7 LYNITA SUE NELSON and ERIC)
8 NELSON,)

9 Purported Cross-Defendant and)
Counterdefendant,)

10 _____)
11 LYNITA SUE NELSON,)

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

13 v.)

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

25 Counterdefendants, and/or)
26 Cross-Defendants, and/or)
Third Party Defendants.)

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Larry L. Bertsch, CPA, CFF
Nicholas S. Miller, CFE
LARRY L. BERTSCH, CPA & ASSOCIATES
265 East Warm Springs Rd., Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 471-7223
Facsimile: (702) 471-7225

Forensic Accountants

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON,

Defendant.

Case No. D-09-411537-D
Dept. O

**NOTICE OF FILING CORRECTED
ASSET SCHEDULE BY OWNERSHIP**

Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY L. BERTSCH, CPA & ASSOCIATES, file the attached Corrected Asset Schedule by Ownership to correct the copy provided in open Court at the hearing on October 11, 2011. A copy of the corrected asset schedule is attached as **Exhibit "A."**

DATED this 23 day of December, 2011.

LARRY L. BERTSCH CPA & ASSOCIATES



Larry L. Bertsch, CPA, CFF
Nicholas S. Miller, CFE
265 East Warm Springs Rd., Suite 104
Las Vegas, Nevada 89119

Forensic Accountants

CERTIFICATE OF SERVICE

I certify that on the 23rd day of December, 2011, I mailed a copy of the foregoing **NOTICE OF FILING CORRECTED ASSET SCHEDULE BY OWNERSHIP** to the following at their last known address, by depositing the same in the United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

Rhonda K. Forsberg, Esq.
IVEY FORSBERG & DOUGLAS
1070 West Horizon Ridge Parkway, #100
Henderson, NV 89012
Attorneys for Plaintiff Eric L. Nelson

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant Lynita Sue Nelson

Mark A. Solomon, Esq.
Jeffery P. Luszeck, Esq.
SOLOMON DWIGGINS FREER &
MORSE, LTD.
9060 W. Cheyenne Avenue
Las Vegas, NV 89129
*Attorneys for Eric L. Nelson Nevada
Trust*



An employee of Larry L. Bertsch, CPA & Associates

EXHIBIT A

Rental Expenses

Date	Amount	Payee	Description
03/19/09	2,000.00	Mojave (sic) Engineering Associates,	Engineer for Gateway AZ lots
04/23/09	60.00	Mojave (sic) County Treasurer	combine lots 317-06-203/317-06-200
05/13/09	14.00	Mojave (sic) County Recorder	deed recording
05/18/09	14,662.50	Mojave (sic) Engineering Associates,	Engineer for Gateway AZ lots
05/18/09	5,452.62	Mojave (sic) Engineering Associates,	Engineer for Gateway AZ lots
05/26/09	494.00	ADWR	Gateway Lot Fees
06/04/09	308.00	Mojave County	Environmental Health submittal
06/15/09	139.65	The Sign Shop	For Lease Sign
06/22/09	46.00	Mohave County	additional fees
06/22/09	64.00	Equity Real Estate	Additional fees Provo Condo
07/13/09	3,105.00	Seymour Engineering	S09-10-038 Silver Slipper
08/13/09	1,000.00	Arizona Dept. of Environmental	review fee
12/07/09	1,675.00	Mojave (sic) Engineering Associates,	Engineer for Gateway AZ lots
02/24/10	65.42	Mojave (sic) Engineering Associates,	Engineer for Gateway AZ lots
	<u>29,086.19</u>		

f) Taxes – The following chart indicates the various payments from ELN NV to State Agencies relating to taxes.

Date	Amount	Payee	Description
01/14/09	110.20	Hancock Cty Tax Collector	Soris Property Taxes
01/14/09	100.00	NV Dept. of Taxation	WYRodeo Events 010-1001416910
04/27/09	199.97	American Express	Gateway property taxes
10/15/09	33,983.00	Arizona Dept. of Revenue	2008 Taxes
10/21/09	2,263.32	Mohave County	Gateway property taxes
11/05/09	201.99	Arizona Dept. of Revenue	
12/31/09	925.84	Uinta County Treasurer	Wyoming 200 acres taxes
03/26/10	18,299.48	Iron County Treasurer	Cabin Property Taxes and fees
10/30/10	177.16	Mohave County	Gateway Property Taxes
	<u>56,260.96</u>		

The October 15, 2009 and November 5, 2009 are recorded in the Peachtree file as "Personal State Taxes".

- T. Operating Expenses – Expenses commonly associated with business operations are listed as Other Expenses and Travel. The following is a description of the transaction associated with both categories

Description	Amount	
Travel	7,768.67	(a)
Other	3,052.28	(b)
	<u>10,820.95</u>	

- a) Travel – The following chart indicates the various expenses paid for by ELN NV relating to travel:

Date	Amount	Payee	Description
02/06/09	7.00	Bank of America	Metro Card NY
02/06/09	929.39	Bank of America	Marriott NY
02/06/09	20.00	Bank of America	JetBlue
03/09/09	3,255.65	Bank of America	SWA-TPA Trip Larsen Co/Mellon
03/09/09	1,596.00	Bank of America	Royal Yacht Club-Mellon/Larsen
07/03/09	233.23	Bank of America	Hampton Inn 6/6/09 -Billed to SS
07/03/09	203.27	Bank of America	Hampton Inn 6/6/09-Billed to SS
07/03/09	141.80	Bank of America	Hollywood Casino
07/03/09	29.50	Bank of America	Kent & Sue's Quick Stop-Billed to SS
08/04/09	30.00	Bank of America	Gabbie's -Bay St Louis
08/04/09	168.19	Bank of America	Hollywood Casino
09/04/09	178.08	Bank of America	Island View Casino 7-20-09
09/04/09	178.08	Bank of America	Island View Casino-Cavenaugh
09/04/09	132.00	Bank of America	Hollywood Casino
09/04/09	52.00	Bank of America	McCarran Airport Parking
09/04/09	129.71	Bank of America	Hollywood Casino 7-21-09
09/04/09	129.71	Bank of America	Hollywood Casino -Cavenaugh
09/04/09	224.27	Bank of America	Hotel Provincial 7/22/09
09/04/09	130.79	Bank of America	Marriott-Eric
	<u>7,768.67</u>		

- b) Other – Expenses associated with this description include payments to the following companies: Federal Express, Bank Service Charges, State Business Licenses, and Wire Fees. A schedule of each transaction is not included as a majority of the charges are under \$100.00 a month.

- U. Other Individuals – The following is a list of individuals who received payments from ELN NV that are not relatives to Eric and/or Lynita Nelson:

Name	Amount	
David Muir	12,000.00	(a)
Joseph Chad Lawson	874.80	(b)
Keith Little	3,000.00	(c)
Lana Martin	5,030.00	(d)
Lisa Klein	4,500.00	(e)
Ronald Baird	600.00	(f)
Cliff McCarlie	3,475.00	(g)
	<u>29,479.80</u>	

- a) David Muir – On January 21, 2009, David Muir received a \$10,000.00 payment from ELN NV as a “loan”. On July 29, 2009, David Muir received an additional \$2,000.00 as a “loan”. According to Eric Nelson, the loan included an interest rate of 10% APR and the notes were mailed but never returned. As of January 1, 2009, the Peachtree files for ELN NV indicate a previous loan balance of \$10,000.00. As of May 31, 2011, the same account indicates an outstanding loan balance of \$22,000.00. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said loan.
- b) Joseph Chad Lawson – Throughout 2009 and 2010, Joseph Chad Lawson received payments totaling \$874.80 relating to reimbursements of expenses.

- c) Keith Little – On February 18, 2009, Keith Little (“Little”) received a payment of \$3,000.00 for “Commission-ENA”. According to the records produced, Little did not receive a 1099 in 2009 from ELN NV for this payment¹⁸. We have not received employment records or contractor agreements between Keith Little and ELN NV.
- d) Lana Martin – During 2010, Lana Martin, an employee of Eric Nelson Auctioneering, Inc., received the following payments:

Date	Amount	Payee	Description
02/11/10	630.00	Lana Martin	Reimbursement / Travel
02/18/10	2,000.00	Lana Martin	Loan Payment
03/26/10	1,000.00	Lana Martin	Loan Payment
04/14/10	400.00	Lana Martin	Reimbursement-Printer Cartridges/Travel
04/30/10	1,000.00	Lana Martin	Loan Payment
	<u>5,030.00</u>		

As of January 1, 2009, ELN NV Peachtree records indicate a Note Payable to “L. Martin” of \$374,997.29. As of May 31, 2011, the note has a balance of \$363,997.29. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said loan.

- e) Lisa Klein - On February 18, 2009, Lisa Klein (“Klein”) received a payment of \$3,000.00 for “Commission-ENA”. On March 6, 2009, Klein received a payment of \$1,500.00 for “Computer Reimbursement-ENA”. According to the records produced, Klein did not receive a 1099 in 2009 from ELN NV for this payment¹⁹. We have not received employment records or contractor agreements between Klein and ELN NV.

¹⁸Keith Little received a 1099 from ENA for \$38,500.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

¹⁹ Lisa Klein received a 1099 from ENA for \$37,500.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

- f) Ronald Baird – On April 21, 2010, ELN NV paid Ronald Baird (“Baird”) \$600.00 for “commission”. According to the records produced, Baird did not receive a 1099 in 2010 from ELN NV for this payment. We have not received employment records or contractor agreements between Baird and ELN NV.
- g) Cliff McCarlie – During 2009, Cliff McCarlie (“McCarlie”) received the following payments from ELN NV:

Date	Amount	Payee	Description
07/29/09	1,000.00	Cliff McCarlie	Loan
09/10/09	1,975.00	Cliff McCarlie	Loan
12/07/09	500.00	Cliff McCarlie	Loan
	<u>3,475.00</u>		

As of January 1, 2009, ELN NV Peachtree records indicate an outstanding Note Receivable balance for McCarlie of \$95,405.64. As of May 31, 2011, this account had a balance of \$95,430.64. Eric produced a copy of a 2009 IRS form 1099 for McCarlie in the amount of \$3,475.00. As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said loan.

- V. Other Companies - The following is a list of companies who received payments from ELN NV:

Name	Amount	
Soris Enterprises	146,700.00	(a)
The Larsen Company	4,000.00	(b)
Wyoming Racing, LLC	1,375.22	(c)
	<u>152,075.22</u>	

- a) Soris Enterprises – In 2009, ELN NV made the following payments to Soris Enterprises:

	2009
Jan	16,300.00
Feb	16,300.00
Mar	16,300.00
Apr	16,300.00
May	16,300.00
June	16,300.00
July	16,300.00
Aug	16,300.00
Sept	16,300.00
Oct	
Nov	
Dec	
	146,700.00

Eric explained that the payments stopped in September 2009 as Frank Soris (“Soris”) began to collect his own rents. Prior to September 2009, ELN NV collected rents on Frank Soris’ real estate and in turn paid the collections to Soris²⁰. The real estate located in Phoenix was transferred to Soris in February of 2010 as collateral on a loan originating in January of 2002 involving property in Wyoming. According to the records produced, Soris did not receive a 1099 in 2009 from ELN NV for these payments.

- b) The Larsen Company – On January 5, 2009, ELN NV paid The Larsen Company \$4,000.00 for “Partial payment –Soris”. Eric produced a copy of a 2009 IRS form 1099 for The Larsen Company in the amount of \$4,000.00. As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

²⁰ Further information on this transaction is in Section H(c) of this report.

c) Wyoming Racing, LLC – On October 27, 2009, ELN NV paid Wyoming Racing, LLC \$1,375.22 for “Reimbursement for property taxes”. According to the records produced, Wyoming Racing, LLC did not receive a 1099 in 2009 from ELN NV for this payment.

W. Ending Cash Balance – As of May 31, 2011, according to the Peachtree files, ELN NV had the following bank balances:

Ending Balance	
Ameriprise Stock	-
Ameriprise MMA	-
MMA 4118	-
MMA 4215	-
BofA 5829	15,121.26
Checking	-
Total Ending Balance	<u>15,121.26</u>

Larry L. Bertsch, CPA & Associates reserves the right to update this report upon the production of documents and/or evidence relating to the transactions continued in this report.

1 **RPLY**

2 MARK A. SOLOMON, ESQ.
3 Nevada State Bar No. 0418
4 E-mail: msolomon@sdfnlaw.com

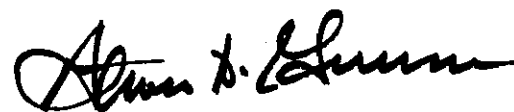
5 JEFFREY P. LUSZECK
6 Nevada State Bar No. 9619
7 E-mail: jluszeck@sdfnlaw.com

8 **SOLOMON DWIGGINS FREER & MORSE, LTD.**

9 Cheyenne West Professional Centre
10 9060 W. Cheyenne Avenue
11 Las Vegas, Nevada 89129
12 Telephone No.: (702) 853-5483
13 Facsimile No.: (702) 853-5485

14 Attorneys for LANA MARTIN, Individually and as
15 Distribution Trustee of the ERIC L. NELSON
16 NEVADA TRUST dated May 30, 2001 and former
17 Distribution Trustee of the LSN NEVADA TRUST
18 dated May 30, 2001; NOLA HARBER, Individually
19 and as former Distribution Trustee of the ERIC L.
20 NELSON NEVADA TRUST dated May 30, 2001
21 and former Distribution Trustee of the LSN NEVADA
22 TRUST dated May 30, 2001; ROCHELLE MCGOWAN;
23 and JOAN B. RAMOS

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CLERK OF THE COURT

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 ERIC L. NELSON,

17 Plaintiff/Counterdefendant,

18 vs.

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

22 Defendants/Counterclaimants.

) Case No. D-411537

) Dept. No. O

) HEARING DATE: December 13, 2011

) HEARING TIME: 1:30 p.m.

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

4 Crossclaimant,)

5 vs.)

6 LYNITA SUE NELSON,)

7 Crossdefendant.)

8 **REPLY TO OPPOSITION TO MOTION TO DISMISS AND OPPOSITION TO**
9 **COUNTERMOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**

10 Counterdefendants/Crossdefendants/Third-Party Defendants Lana Martin, Individually,
11 Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001 ("ELN Trust"), and
12 former Distribution Trustee of the LSN Nevada Trust dated May 30, 2001; Nola Harber, Individually,
13 former Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001, and former
14 Distribution Trustee of the LSN Nevada Trust dated May 30, 2001; Rochelle McGowan; and Joan
15 B. Ramos (hereinafter collectively referred to as "Third-Party Defendants), by and through their
16 Counsel of Record, Solomon Dwiggins Freer & Morse, Ltd., hereby file their Reply to Opposition
17 to Motion to Dismiss and Opposition to the Countermotion for an Award of Attorneys' Fees and
18 Costs.

19 This Reply and Opposition is based on the Memorandum of Points and Authorities which
20 follows and on all documents and papers filed herein.

21 DATED this 9th day of December, 2011.

22 SOLOMON DWIGGINS FREER & MORSE, LTD.

23 By: 

24 MARK A. SOLOMON, ESQ.

25 Nevada State Bar No. 0418

26 JEFFREY P. LUSZECK

27 Nevada State Bar No. 9619

28 Cheyenne West Professional Centre'

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

1 **I. INTRODUCTION**

2 The Opposition to the Motion to Dismiss requests this Court to exercise jurisdiction over
3 matters that are specifically prohibited under the Nevada Constitution, Nevada Revised Statutes and
4 the Eighth Judicial District Court Rules. The Opposition also seeks to redress the deficiencies
5 contained within the Claims for Relief Against Eric L. Nelson Nevada Trust dated May 30, 2001,
6 Lana Martin, Nola Harber, Rochelle McGowan, Joan B. Ramos and Does I through X (hereinafter
7 collectively referred to as “Third-Party Complaint”) by manufacturing allegations that were not plead
8 in the Third-Party Complaint. Further, the Opposition also generally contends that certain claims are
9 not barred by the statute of limitations and/or otherwise state a claim upon which relief can be
10 granted; however, the Opposition fails to cite any portions of the Third-Party Complaint evidencing
11 that the requisite elements were properly plead.

12 The Third-Party Complaint also fails to meet the stringent pleading requirements of NRCP
13 9(b), which include, but are not limited to, averments to the time, the place, the identity of the parties
14 involved, and the nature of the fraud or mistake. The circumstances constituting the alleged fraud
15 must be specific enough to give defendants notice of the particular misconduct. Despite the fact that
16 the Third-Party Complaint alleges that the Third-Party Defendants engaged in a scheme to “defraud”
17 Ms. Nelson,¹ and fraudulently conveyed assets from the LSN Trust and the ELN Trust,² and the
18 remainder of the Third-Party Complaint sounds in fraud, Ms. Nelson contends that she met
19 requirements of NRCP 9(b) because the Third-Party Complaint is thirty-six (36) pages long.³
20 However, Ms. Nelson was unable to cite any portions of the Third-Party Complaint that meet the
21 heightened pleading requirements of NRCP 9(b). As a result of the foregoing, this Court should
22 dismiss the Third-Party Complaint, or alternatively, order Ms. Nelson to amend the Third-Party
23 Complaint so as to comply with NRCP 9(b).

24
25
26 ¹ See Third-Party Complaint at ¶ 34.

27 ² See *id.* at ¶¶ 101, 105 and 110.

28 ³ See Opp. at p. 29, ll. 20-23.

1 Finally, Ms. Nelson's Countermotion for an Award of Attorneys Fees' and Costs should be
2 denied because the Motion to Dismiss was brought in good faith, and a was a direct result of Ms.
3 Nelson's defective Third-Party Complaint.

4 **II. LEGAL ARGUMENT**

5 **A. This Court Should Not Consider New Factual Allegations Raised In The** 6 **Opposition.**

7 "Generally, a court ruling on a motion to dismiss may rely on only the complaint and its
8 proper attachments."⁴ Although the factual averments in complaints are deemed true on a motion to
9 dismiss, courts may not consider new factual allegations made outside the complaint.⁵ As indicated
10 *supra*, the Opposition seeks to redress the deficiencies contained within the Third-Party Complaint
11 by manufacturing allegations that were not plead in the Third-Party Complaint. Contrary to what Ms.
12 Nelson asserts in the Opposition, the Third-Party Complaint does not plead allegations, including,
13 but not limited to: (1) several of the acts alleged by Ms. Nelson occurred within the past four years;⁶
14 (2) Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos acted as individuals for their individual
15 benefits;⁷ (3) Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos each acted in their individual
16 capacities regardless of their respective affiliations with any common entity;⁸ (4) a confidential
17 relationship existed between Ms. Nelson and the ELN Trust;⁹ and (5) in regards to her injunctive
18

19
20 ⁴ *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (plaintiff failed
21 to state a claim under Rule 10b-5); *Frederico v. Home Depot*, 507 F.3d 188, 201-02 (3rd Cir. 2007)
22 (we do not consider after-the-fact allegations in determining the sufficiency of her complaint under
23 Rules 9(b) and 12(b)(6)); *Commw. of Pa. ex. rel Zimmerman v. Pepsi Co., Inc.*, 836 F.2d 173, 181
(3rd Cir.1988) ("It is axiomatic that the complaint may not be amended by the briefs in opposition
to a motion to dismiss.").

24 ⁵ *Dorsey*, 540 F.3d at 338.

25 ⁶ *See Opp.* at p. 19, ll. 10-11.

26 ⁷ *See id.* at p. 21, ll. 22-24.

27 ⁸ *See id.* at p. 21, ll. 26-28.

28 ⁹ *See id.* at p. 25, ll. 14-18.

1 relief, Ms. Nelson “request[s] to confirm what is already in place.”¹⁰ Consequently, in ruling upon the
2 Motion to Dismiss, this Court should rely on the Complaint and disregard any new factual allegations
3 raised in the Opposition.

4 **B. This Court Lacks Jurisdiction To Hear The Majority, If Not All, Of The Claims**
5 **For Relief Asserted In The Third-Party Complaint.**

6 Ms. Nelson’s contention that this Court has jurisdiction to hear cases which arise under Title
7 12 and 13 of the Nevada Revised Statutes based upon her interpretation of *Landreth v. Malik*, 251
8 P.3d 163, 127 Nev. Adv. Op. 16 (Nev. 2011) and *Barelli v. Barelli* 11 Nev. 873, 944 P.2d 246 (Nev.
9 1997), contravenes the Nevada Revised Statutes, Eighth Judicial District Court Rules and the Nevada
10 Constitution.

11 The Nevada Constitution grants the Nevada Supreme Court authority to assign district judges
12 to specialized courts such as the Probate Court.¹¹ Similarly, the Nevada Legislature has also granted
13 the Nevada Supreme Court authority to make rules consistent with the Constitution and laws of the
14 State for “the government of the district courts.”¹² The Nevada Legislature has also granted districts
15 where more than one judge exists to “make additional rules, not inconsistent with law, which will
16 enable them to transact judicial business in a convenient and lawful manner.”¹³ Consistent with such
17 authority, the Nevada Supreme Court adopted the Eighth Judicial District Court Rules, including Part
18 IV, entitled “Probate; Guardianships; Conservatorship; Trusts; and the Administration of Estates,”
19 which “govern the practice and procedure of *all proceedings* under Title 12 of NRS and all of Title
20 13 of NRS except chapters 159, 160, and 161.”¹⁴ EDCR 4.16(a), provides in part:

21
22 ¹⁰ See *id.* at p. 27, ll. 7-8.

23 ¹¹ See Nevada Constitution, Article 6, Section 19(1) (“The chief justice is the
24 administrative head of the court system. *Subject to such rules as the supreme court may adopt, the*
25 *chief justice may: (b) Assign district judges to assist in other judicial districts or to specialized*
functions which may be established by law.”). (Emphasis added).

26 ¹² NRS 2.120.

27 ¹³ NRS 3.020.

28 ¹⁴ EDCR 4.01.

1 *The probate judge may hear whichever contested matters the judge*
2 *shall select, and schedule them at the convenience of the judge's*
3 *calendar. The judge alone may also refer contested matters pertaining*
4 *to the probate calendar to a master appointed by the judge for hearing*
5 *and report. All other contested matters pertaining to the probate*
6 *calendar will be assigned on a random basis to a civil trial judge,*
7 *other than a trial judge serving in the family division. (Emphasis*
8 *added).*

9 Further, as recognized by Ms. Nelson in her Opposition, the "Nevada Constitution provides
10 the Nevada Legislature with authority to assign or prescribe classes of cases to a specific division of
11 the district court. . ."¹⁵ Similar to the delineation of jurisdiction in the justice and municipal courts,
12 the Nevada Legislature has delineated the jurisdiction of the Probate Courts in NRS 30.060 and NRS
13 164.015(1). As set forth in the Motion to Dismiss, under NRS 164.015(1), the "court"¹⁶ has exclusive
14 jurisdiction of proceedings initiated by the petition of an interested person concerning the internal
15 affairs of a nontestamentary trust. . ." Indeed, proceedings which may be maintained under NRS
16 164.015(1) concern: "the administration and distribution of trusts, the declaration of rights and the
17 determination of other matters involving trustees and beneficiaries of trusts. . ." Further, NRS 30.060
18 specifically provides that "[a]ny action for declaratory relief under this section [which includes the
19 determination of "any question" arising in the administration of a trust] may only be made in a
20 proceeding commenced pursuant to the provisions of title 12 or 13 of NRS, as appropriate."

21 Notwithstanding the Nevada Constitution, Nevada Revised Statutes and the Eighth Judicial
22 District Court Rules, Ms. Nelson contends that this Court is the proper venue to hear her claims for
23 declaratory relief pertaining to the internal affairs of a nontestamentary trust because this Court "is
24 a division of the district court" and "district courts are courts of general jurisdiction."¹⁷ As indicated
25 *supra*, Ms. Nelson's claims must be brought pursuant to the provisions of title 12 or 13 or NRS (*i.e.*
26 in Probate Court), at which point the Probate Court, may hear the case or, in its sole discretion, assign

24 ¹⁵ See Opp. at p. 8, ll. 1-3.

25 ¹⁶ Contrary to Ms. Nelson's argument, the word "court" in NRS 164.015(1) does not
26 mean any district court of general jurisdiction, but means "a district court of this State sitting in
27 probate or otherwise adjudicating matters pursuant to this title." See NRS 132.116, made applicable
28 to trust proceedings under Title 13 by NRS 164.005.

¹⁷ See Opp. at p. 8, ll. 11-15.

1 the case to a civil trial judge, “other than a trial judge serving in the family division.”

2 Ms. Nelson’s reliance upon *Landreth v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. 16 (Nev.
3 2011) and *Barelli v. Barelli* 11 Nev. 873, 944 P.2d 246 (Nev. 1997), is inapposite because the facts
4 of *Landreth* and *Barelli* are distinctly different from this matter. Indeed, in *Landreth* the question
5 addressed by the Nevada Supreme Court was whether the family court had the same constitutional
6 power and authority as other district court judges to adjudicate cases outside of the matters listed in
7 NRS 3.223,¹⁸ specifically whether the family court possessed jurisdiction to hear a case regarding two
8 unmarried persons over the title and ownership of property. After a lengthy analysis, largely repeated
9 in Ms. Nelson’s Opposition, the Nevada Supreme Court held that “a district court judge in the family
10 division has the same constitutional power and authority as any district court judge.”¹⁹ Unlike
11 *Landreth*, “any district court” does not have the power or authority to hear the majority of claims
12 contained with the Third-Party Complaint (*i.e.* alter ego, breach of fiduciary duty, conspiracy and/or
13 aided and abetting) unless/until the Probate Court assigns this matter, if at all, to a civil trial judge,
14 other than a trial judge serving in the family division. Since the Probate Court has not assigned this
15 matter to any district court, *Landreth* supports the Third-Party Defendants’ contention that this Court,
16 or any other district court other than the Probate Court, lack jurisdiction to hear matters pertaining
17 to the internal affairs of the ELN Trust or LSN Trust.

18 Further, in *Barelli*, a wife sued her former husband to reform a property settlement agreement
19 to incorporate alimony or alternatively to seek damages for breach of an “oral side agreement.”²⁰
20 Because the reformation/rescission claim was dependent upon the existence of the oral contract, the
21 Nevada Supreme Court ultimately concluded that the family court had jurisdiction “to resolve issues
22 that fall outside [its] jurisdiction when necessary for the resolution of those claims over which
23 jurisdiction is properly exercised.”²¹ Unlike *Barelli*, the claims asserted in the Third-Party Complaint

25 ¹⁸ See *Landreth*, 251 P.3d at 166, 127 Nev. Adv. Op. at 19 .

26 ¹⁹ See *id.*

27 ²⁰ See *Barelli*, 11 Nev. at 877, 944 P.2d at 248.

28 ²¹ See *id.* at 11 Nev. at 878, 944 P.2d at 249.

(i.e. alter ego, breach of fiduciary duty, conspiracy and/or aided and abetting) are irrelevant to this Court's determination of whether Ms. Nelson has a community property interest in assets owned by the ELN Trust. Indeed, it is unnecessary for this Court to address whether Ms. Martin or Ms. Harber breached their duties to Ms. Nelson as Distribution Trustees of the LSN Trust to resolve Ms. Nelson's community property claim. Consequently, *Barelli* does not support Ms. Nelson's theory that this Court may hear claims pertaining to the internal affairs of the ELN Trust or LSN Trust.

Ms. Nelson's reliance upon EDCR 5.42 is equally unpersuasive as said rule only applies to the "same parties," which occurs "when the same two persons in any domestic case or sub-type have an action against one another, regardless of their respective party designation,"²² and the ELN Trust, Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos were not parties to the Divorce Proceeding prior to the filing of the Third-Party Complaint. Further, EDCR 5.42 contains a number of exceptions to the purported "one judge, one family" rule, including, but not limited to, cases filed pursuant to Chapter 62, Chapter 432B, Chapter 159, Chapter 130 and/or Chapter 425.

If this Court were to adopt Ms. Nelson's contention that EDCR 4.01 and NRS 164.015 "simply provide administrative and procedural rules for matters which proceed before the probate court," the Legislature, Nevada Supreme Court and Eighth Judicial District's purpose in designating a probate judge to hear probate matters will be circumvented, and any party could escape the jurisdiction of the designated court sitting in probate by filing their claims in any district court.²³ This

²² EDCR 5.42(a).

²³ Ms. Nelson's contention that Petitioners' "interpretation of NRS 164.015" is that "all decisions concerning matters involving trusts would issue from the probate court and the trust (or its trustees) would never be named as a party in a divorce action, or any other type of civil action," see Opp. at p. 10, ll. 24-26, misconstrues the Motion to Dismiss, NRS 30.060, NRS 164.015 and EDCR Part IV. As illustrated by the fact that the ELN Trust stipulated to being named as a Defendant in this matter, Third-Party Defendants acknowledge that trusts may be named parties to litigation outside of probate when the claims do not arise from NRS 30.060 or NRS 164.015, e.g. the claims of Ms. Nelson that she has community property in the ELN Trust. See e.g., *Gladys Baker Olsen Family Trust By and Through Olsen v. Eighth Judicial Dist. Court*, 110 Nev. 548, 553, 874 P.2d 778, 781 (1994) (the failure of a real party in interest to join a trust as a party was fatal error, where the trust owned all the assets at issue and was therefore a necessary party under NRCP 19(a)); *Guerin v. Guerin*, 114 Nev. 127, 132, 953 P.2d 716, 719 (1998) abrogated on other grounds by *Pengilly v. Rancho Santa Fe Homeowners*, 116 Nev. 646, 646, 5 P.3d 569, 569 (2000) (Nevada

1 clearly was not the intent of the Legislature, Nevada Supreme Court or the Eighth Judicial District.
2 Irrespective of whether Ms. Nelson believes it “makes [] sense at all”²⁴ for her to bring her claims for
3 declaratory relief and other claims concerning the internal affairs in the Probate Court as required by
4 NRS 30.060 and NRS 164.015, it is what the law requires.

5 Further, if all of the claims asserted in the Third-Party Complaint proceed in this Court, the
6 Third-Party Defendants will be deprived of their constitutional right to a jury trial under Article 1,
7 Section 3 of the Nevada Constitution.²⁵ As such, this Court should dismiss Ms. Nelson’s claims for
8 declaratory relief and other claims concerning the internal affairs of the ELN Trust and the LSN Trust.

9 **C. Ms. Nelson’s First, Second And Third Claims For Relief For Alter Ego Should**
10 **Be Dismissed.**

11 1. NRS 78.747, Which Pertains Solely To Alter Ego Claims Against
12 Corporations, Cannot Be Applied To A Self-Settled Spendthrift Trust.

13 The Motion to Dismiss seeks to have Ms. Nelson’s alter ego claims, made under NRS 78.747,
14 dismissed because said statute does not extend alter ego liability to trusts, specifically a self-settled
15 spendthrift trust.²⁶ Indeed, there is no statutory or judicial authority that supports applying NRS
16 78.487 to trusts. To the contrary, applying NRS 78.747 to a self settled spendthrift trust would
17 frustrate NRS Chapter 166 which specifically allows a settlor of a self-settled spendthrift trust to

18
19 Supreme Court directed the Clerk of the Court to issue a writ of prohibition precluding the district
20 court from enforcing its April 8, 1996, order because the Hill Family Trust was not a named party
21 to the action at the time the order was entered). However, Ms. Nelson’s claims in her Third-Party
22 Complaint must be initiated in Probate Court as they arise under NRS 30.060 or NRS 164.015.

23 ²⁴ See Opp. at p. 9, l. 1.

24 ²⁵ NRS 125.070 (“The judge of the court shall determine all questions of law and fact
25 arising in any divorce proceeding under the provisions of this chapter.”)

26 ²⁶ Indeed, it is quite perplexing how Ms. Nelson on one hand relies upon the following
27 language from the Nevada Supreme Court case, *Nevada v. Miller*, 124 Nev. 874, 881, 192 P.3d
28 1166, 1170-71 (2008), “[u]nless ambiguous, a statute’s language is applied in accordance with its
plain meaning [and] when the Legislature’s intent is clear from the plain language, [the Nevada
Supreme Court] will give effect to such intention and construe the statute’s language to effectuate
rather than nullify its manifested purpose,” see Opp. at p. 12, ll. 11-20, and on the other hand request
this Court to “apply Nevada’s corporate alter ego liability statute contained in NRS 78.747” to trusts.
See Opp. at p. 13, ll. 25-27.

1 manage, benefit from and control said trust except as to distributions.²⁷ Ms. Nelson's reliance upon
2 *Dean v. United States*, 987 F. Supp. 1160, 1166-67 (W.D. Mo. 1997)²⁸ and *In re Schwarzkopf*, 626
3 F.3d 1032 (9th Cir. 2010), is inapposite to her contention that NRS 78.747 should be applied to self-
4 settled spendthrift trusts because neither case applied an alter ego statute, which specifically states
5 that it pertains solely to the "[l]iability of stockholder, director or officer for debt or liability of
6 corporation."²⁹ Most importantly, unlike the trusts in *Dean* and *Schwarzkopf*, which were created for
7 the benefit of minor children, and not the settlor,³⁰ NRS Chapter 166 specifically permits the settlor
8 of a self-settled spendthrift trust to be a beneficiary without limits as to the benefits received and to
9 have any power except "for the power of the settlor to make distributions to himself or herself without
10 the consent of another person."³¹

11 Assuming *arguendo* that NRS 78.747 applies to self-settled spendthrift trusts, which it does
12 not, the First, Second and Third Claim for Relief should still be dismissed because: (1) said claims
13 are barred by NRS 166.170;³² and (2) a declaratory judgment would not terminate the uncertainty or
14 controversy giving rise to Ms. Nelson's claims. In Nevada, courts may refuse to render or enter a
15 declaratory judgment or decree where such judgment or decree, if rendered or entered, would not
16

17 ²⁷ See NRS 166.040(3).

18 ²⁸ Indeed, in *Dean* the court actually would not permit the alter ego doctrine to apply
19 as it would require an expansion of the alter ego doctrine which the Court was unwilling to do
20 without clearer direction from Congress or the Missouri courts. *Dean*, 987 F. Supp. at 1166-67.

21 ²⁹ See NRS 78.747.

22 ³⁰ See *Dean*, 987 F. Supp. at 1162 (settlers "decided to transfer their assets into an
23 irrevocable trust for the sole benefit of their children."), and *Schwarzkopf*, 626 F.3d at 1036 (trust
was created for the benefit of a minor child).

24 ³¹ Specifically, NRS 166.040(3) provides: "[e]xcept for the power of the settlor to make
25 distributions to himself or herself without the consent of another person, the provisions of this
26 section shall not be construed to prohibit the settlor of a spendthrift trust from holding other powers
under the trust, whether or not the settlor is a cotrustee, including, without limitation, the power to
remove and replace a trustee, direct trust investments and execute other management powers."

27 ³² As indicated *infra*, pursuant to NRS 166.170, Ms. Nelson's claims are barred because
28 she failed to file bring suit within two (2) years after the transfers were made to the ELN Trust.

1 terminate the uncertainty or controversy giving rise to the proceeding.”³³ Ms. Nelson seeks a
2 declaratory judgment stating that the ELN Trust is an illusory sham trust and Mr. Nelson’s alter ego
3 pursuant to NRS 78.747;³⁴ however, such a declaration “would not terminate the uncertainty or
4 controversy giving rise” to Ms. Nelson’s claims. Indeed, even if this Court were to find Ms. Nelson’s
5 allegations are true, the controversy would not be terminated because the question of whether her
6 claims are time-barred would still remain.

7 2. The Third-Party Complaint Is Riddled With Allegations That Cannot Not Be
8 Considered In An Alter Ego Claims.

9 No Nevada statute specifies what makes a trust the alter ego of its settlor, but NRS 163.418
10 requires that any such claim must be proven by clear and convincing evidence. Indeed, NRS 163.418
11 provides that the following factors, alone or in combination, are insufficient for a finding of alter ego:

- 12 1. The settlor has signed checks, made disbursements or
13 executed other documents related to the trust as the trustee
14 and the settlor is not a trustee, if the settlor has done so in
15 isolated incidents.
- 16 2. The settlor has made requests for distributions on behalf of a
17 beneficiary.
- 18 3. The settlor has made requests for the trustee to hold, purchase
19 or sell any trust property.
- 20 4. The settlor has engaged in any one of the activities, alone or
21 in combination, listed in NRS 163.4177.

22 Further, under NRS 163.4177, factors which must not be considered exercising improper
23 dominion or control over a trust are:

- 24 1. A beneficiary is serving as a trustee.
- 25 2. The settlor or beneficiary holds unrestricted power to remove
26 or replace a trustee.
- 27 3. The settlor or beneficiary is a trust administrator, general
28 partner of a partnership, manager of a limited-liability
 company, officer of a corporation or any other manager of any
 other type of entity and all or part of the trust property
 consists of an interest in the entity.
4. The trustee is a person related by blood, adoption or marriage

33 NRS 30.080. *See, Aetna Cas. & Sur. Co. v. Rasa Management Co., Inc.*, 621 F. Supp.
892, 893 (D. Nev. 1985) (“a declaratory judgment should not be entered unless it disposes of a
controversy and serves a useful purpose.”); *see also, El Capitan Club v. Fireman’s Fund Ins. Co.*,
89 Nev. 65, 68, 506 P.2d 426, 428 (1973) (“It is true that a court may refuse to enter a declaratory
judgment where to do so would not terminate the controversy giving rise to the action.”).

34 *See Third-Party Complaint, at ¶¶ 83-85.*

- 1 to the settlor or beneficiary.
- 2 5. The trustee is the settlor or beneficiary's agent, accountant,
- 3 attorney, financial adviser or friend.
- 4 6. The trustee is a business associate of the settlor or beneficiary.

5 Notwithstanding the foregoing statutes, the majority, if not all, of Ms. Nelson's self-serving

6 allegations pertaining to the ELN Trust must not be considered in alter ego claims. Indeed, the Third-

7 Party Complaint alleges: (1) "Eric has asserted his management and control over [ELN Trust];"³⁵ "Eric

8 has influenced, directed, and controlled all aspects of both [ELN Trust] and the LSN Trust;"³⁶ (3) Ms.

9 Martin, "Eric's employee, close friend . . . served as the Distribution Trustee for [ELN Trust] and the

10 LSN Trust;"³⁷ (4) Ms. Harber, "Eric's sister . . . served as the Distribution Trustee for [ELN Trust] and

11 the LSN Trust for approximately four years;"³⁸ (5) "Eric directed the release of thousand of dollars of

12 trust income to Eric and other third parties, including Eric's family members (Cal Nelson, Paul

13 Nelson, Chad Ramos, Ryan Nelson and others) . . . to fund Eric's and Eric's family members'

14 personal expenditures;"³⁹ (6) Eric dictated the asset transfers and loans he desired to be performed;⁴⁰

15 (7) "Eric's actions demonstrate that [ELN Trust] was influenced, directed, controlled and governed

16 by Eric;"⁴¹ (8) "[t]here has been such unity of interest and ownership between Eric and [ELN Trust]

17 that one is inseparable from the other;"⁴² (9) "Eric's actions demonstrate his control over [ELN Trust]

18 and the assets held in the Trust, including the distribution of assets of [ELN Trust] for his own

19 ³⁵ Cf. Third-Party Complaint at ¶ 6 with NRS 163.4177(3).

20 ³⁶ Cf. Third-Party Complaint at ¶ 6 with NRS 163.418(2).

21 ³⁷ Cf. Third-Party Complaint at ¶ 10 with NRS 163.4177(5) & (6).

22 ³⁸ Cf. Third-Party Complaint at ¶ 10 with NRS 163.4177(4).

23 ³⁹ Cf. Third-Party Complaint at ¶ 11 with NRS 163.418(2) & (3) and NRS 163.4177(3).

24 ⁴⁰ Cf. Third-Party Complaint at ¶ 12 with NRS 163.418(3) and NRS 163.4177(3).

25 ⁴¹ Cf. Third-Party Complaint at ¶¶ 73 and 78 with NRS 163.418(2) & (3) and NRS

26 163.4177(1)-(6).

27 ⁴² Cf. Third-Party Complaint at ¶¶ 74 & 79 with NRS 163.418(2) & (3) and NRS

28 163.4177(1)-(6).

1 personal benefit;⁴³ and (10) “Eric’s direct or indirect control and direction of [ELN Trust] investments
2 and disbursements invalidate any spendthrift aspect of the Trust.”⁴⁴ For these reasons, Ms. Nelson’s
3 First, Second and Third Claim for Relief for alter ego should be dismissed.

4 3. Settlement Statements Made By Mr. Nelson Do Not Demonstrate A High
5 Likelihood Of Success On Ms. Nelson’s Alter Ego Claims.

6 In addition to erroneously contending that NRS 78.747 is the requisite standard for an alter
7 ego claim against a self-settled spendthrift trust, Ms. Nelson contends that she has otherwise
8 “demonstrate[d] a high likelihood of success on her alter ego claims.”⁴⁵ Attached as an Exhibit to the
9 Opposition, is what Ms. Nelson deems to be an admission of “the validity [her] claims” in the form
10 of certain statements purportedly made by Mr. Nelson during the course of trial.⁴⁶ Contrary to Ms.
11 Nelson’s mistaken belief, Mr. Nelson’s statements are not controlling because under Nevada law,
12 personal opinion of either spouse as to separate or community character of property is of no moment
13 whatsoever in determining legal status of that property.⁴⁷ On the effect of the opinion of a spouse as
14 evidence of the separate or community character of property, the court in *Re Pepper’s Estate*, 158 Cal.
15 619, 625-26, 112 P. 62 (Cal. 1910)⁴⁸ stated:

16 ⁴³ Cf. Third-Party Complaint at ¶ 74 with NRS 163.418(2) & (3) and 163.4177(1)-(6).

17 ⁴⁴ Cf. Third-Party Complaint at ¶ 84 with NRS 163.418(2) & (3) and NRS 163.4177(1)-
18 (6).

19 ⁴⁵ See Opp. at p. 14, ll. 24-27.

20 ⁴⁶ Upon information and belief there are just as many excerpts made by Mr. Nelson
21 during the course of this litigation, which support the ELN Trust’s position that it is a valid self-
22 settled spendthrift trust duly established pursuant to NRS 166, and that neither Mr. Nelson nor Ms.
23 Nelson have a community property and/or separate property interest therein.

24 ⁴⁷ See *Hardy v. United States*, 918 F. Supp. 312, 317 (D. Nev. 1996) (“The personal
25 opinion of either spouse as to the character of the property is of no moment whatsoever.”); see also,
26 *Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) (“The opinion of either spouse as to
27 whether property is separate or community is of no weight whatever.”); see also, *In re Wilson’s*
28 *Estate*, 56 Nev. 353, 53 P.2d 339, 344 (1936) (court disregarded affidavit, even through it raises
some doubt regarding correctness of findings of the district court, because “it has been decided by
this court, as well as by appellate courts of other states, that the opinion of either spouse as to
whether property is separate or community is of no weight.”).

⁴⁸ Overruled on other grounds by *In re Neilson’s Estate*, 371 P.2d 745 (Cal. 1962).

1 Whether the property was community or separate, was a question of
2 law, depending on the manner and time of its acquisition. The opinion
3 of Pepper [the husband] on this legal question was entitled to no
4 weight.

5 Ms. Nelson's logic is similarly flawed because settlement proposals are inadmissible to prove
6 the validity/invalidity of Ms. Nelson's claims.⁴⁹ Further, Ms. Nelson's contention that "if the Court
7 had accepted one of Eric's proposed distribution . . . Eric could have, and would have, directed such
8 distributions from the ELN and LSN Trusts to effectuate said distributions,"⁵⁰ presupposes that the
9 settlement proposal would withstand the muster of the Distribution Trustee of the ELN Trust.⁵¹ In
10 light of the foregoing, this Court should summarily disregard the self-serving excerpts referenced by
11 Ms. Nelson.

12 **D. Ms. Nelson's Tort Claims Are Barred Under NRS 166.170(8), NRS 11.190(3)(d)**
13 **And NRS 11.220.**

14 Ms. Nelson's contention that "NRS 166.170, by its express terms, only applies to the time
15 period for "creditors" to bring actions "with respect to a transfer of property to a spendthrift Trust"
16 is erroneous as NRS 166.170(8) contains no such limitation.⁵² To the contrary, NRS 166.170(8)
17 strictly prohibits any action against the trustee of a self-settled spendthrift trust, including, but not
18 limited to an action for breach of fiduciary duty, conspiracy, aiding and abetting and concert of action
19 (hereinafter collectively referred to as "Tort Claims"), as follows:

20 Notwithstanding any other provision of law, *no action of any kind,*
21 *including, without limitation, an action to enforce a judgment entered*
22 *by a court or other body having adjudicative authority, may be*
23 *brought at law or in equity against the trustee of a spendthrift trust*
24 *if, as of the date the action is brought, an action by a creditor with*
25 *respect to a transfer to the spendthrift trust would be barred pursuant*
26 *to this section. (Emphasis added).*

27 Ms. Nelson's claims against the Trustees are time-barred pursuant to NRS 166.170. Indeed,
28 as set forth in the Third-Party Complaint, Ms. Nelson admits that the ELN Trust and the LSN Trust

25 ⁴⁹ See generally, NRS 48.105.

26 ⁵⁰ See Opp. at p. 15, ll. 20-23.

27 ⁵¹ See ELN Trust, Art. III, Section 3.3.

28 ⁵² Cf. Opp. at p. 16, l. 28 - p. 17, l. 2 with NRS 166.170(8).

1 were created and funded in May 2001.⁵³ If Ms. Nelson contends that the ELN Trust and the LSN
2 Trusts were invalid upon creation (*i.e.* due to fraud, sham alter ego), Ms. Nelson is deemed an
3 existing creditor, which is defined as “a person who has a claim,”⁵⁴ and pursuant to NRS 166.170, had
4 two years to challenge the creation of the ELN Trust and the LSN Trust and/or any claims against the
5 Trustees. Similarly, if Ms. Nelson contends that her community property was transferred to the ELN
6 Trust in or around May 2001, she had the later of two years after the transfer was made, or six months
7 after she discovered or reasonably should have discovered the transfer, whichever is later, to file
8 suit.⁵⁵ If Ms. Nelson contends that her community property was transferred to the ELN Trust within
9 two years of the Divorce Proceeding, Ms. Nelson’s claims would not be barred. Further, if Ms.
10 Nelson contends that the Trustees committed some tort within the last two years, said claims would
11 not be barred.

12 Irrespective of NRS 166.170, Ms. Nelson’s Tort Claims are further barred under NRS
13 11.190(3)(d) and NRS 11.220. Indeed, Ms. Nelson knew, or should have known, of the facts
14 constituting the elements of her causes of action when Mr. Nelson executed the ELN Trust, and she
15 executed the LSN Trust in or around May 30, 2001, as neither trust provides that the assets titled in
16 the name of the ELN Trust or the LSN Trust “were held, owned and controlled by the parties as
17 community property.”⁵⁶ At the very least, Ms. Nelson’s claims against Ms. Harber in her capacity as
18 Distribution Trustee of the LSN Trust must be dismissed because Ms. Harber was admittedly
19 “replaced as Distribution Trustee for the LSN Trust on February 22, 2007,”⁵⁷ which was over 4.5
20 years ago, and “breach of fiduciary duty is fraud and, therefore, [subject to] the three-year statute of
21
22
23

24 ⁵³ See Third-Party Complaint, at ¶¶ 28-29.

25 ⁵⁴ See NRS 112.150(4).

26 ⁵⁵ NRS 166.170.

27 ⁵⁶ See Opp. at p. 18, ll. 2-3.

28 ⁵⁷ See Third-Party Complaint at ¶ 53.

1 limitation set forth in NRS 11.190(3)(d).”⁵⁸

2 In a brazen attempt to excuse her unjustified delay in bringing claims against the Third-Party
3 Defendants, Ms. Nelson contends in the Opposition, for the first time, that her delay was justified
4 because none of her “causes of action could have accrued until June, 2011.”⁵⁹ Notwithstanding said
5 contention, the Third-Party Complaint, which is the operative document for purposes of the Motion
6 to Dismiss, fails to state when: (1) the tortious conduct occurred;⁶⁰ and (2) she discovered the same.⁶¹
7 Ms. Nelson’s failure to please the requisite elements of her Tort Claims warrants the relief sought in
8 the Motion to Dismiss.

9 Ms. Nelson’s reliance upon the “continuous tort doctrine” also fails as said doctrine typically
10 “applies in various cases invoking several federal statutes,”⁶² and does not appear to have been
11 adopted in Nevada.⁶³ “[A] continuing tort is a tortious act that occurs so repeatedly that it can be
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15 ⁵⁸ *Nevada State Bank v. Jamison Family P’ship*, 106 Nev. 792, 799, 801 P.2d 1377,
16 1382 (1990).

17 ⁵⁹ *See Opp.* at p. 19, ll. 5-9.

18 ⁶⁰ *See* NRCP 9(f) (“For the purpose of testing the sufficiency of a pleading, averments
19 of time and place are material and shall be considered like all other averments of material matter.”);
20 *Brown v. Kellar*, 97 Nev. 582, 583, 636 P.2d 874, 874 (1981) (pleading for tort claim must
21 averments to time).

22 ⁶¹ *See Prescott v. United States*, 523 F.Supp. 918, 940-941 (D. Nev.1981), *aff’d*, 731
23 F.2d 1388 (9th Cir. 1984) (“Plaintiff who relies upon this delayed discovery rule must plead facts
24 justifying delayed accrual of his action. The complaint must allege: (1) the time and manner of
25 discovery, and (2) the circumstances excusing delayed discovery.”) *cited* with approval by the
26 Nevada Supreme Court in *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990).

27 ⁶² *See Page v. United States*, 729 F.2d 818, 822 (D.C. Cir. 1984) disapproved of by
28 *Beard v. Edmondson & Gallagher*, 790 A.2d 541 (D.C. 2002) (claim that the VA wrongfully
prescribed addictive drugs without proper monitoring under the Tort Claims Act did not accrue for
purposes of the statutory limitations on suit-filing until treatment was terminated.).

⁶³ Indeed, the cases relied upon by Ms. Nelson had specifically already adopted the
continuous tort doctrine. *See, Coulon v. Witco Corp.*, 848 So. 2d 135, 138 (La. App. 2003)
(continuous-tort doctrine adopted.).

1 termed “continuous,” such that one may say that the tortious conduct has not yet ceased.”⁶⁴ The
2 doctrine only applies where there is “no single incident” that can “fairly or realistically be identified
3 as the cause of significant harm”⁶⁵ such as exposure to chemicals over a period of time.⁶⁶ “[O]nce the
4 plaintiff has been placed on notice of an injury and the role of the defendants’ wrongful conduct in
5 causing it, the policy disfavoring stale claims makes application of the “continuous tort” doctrine
6 inappropriate.”⁶⁷

7 Although Ms. Nelson contends in the Opposition that the continuous tort doctrine should be
8 applied, the Third-Party Complaint references certain transactions that purportedly caused her
9 significant harm, including, but not limited to, “the transaction involving the Russell Road property”⁶⁸
10 and “the release of thousands of dollars of trust income to Eric and other third parties.”⁶⁹ Since there
11 are a number of “single incidents,” which Ms. Nelson contends is the cause of “significant harm,” the
12 continuous tort doctrine does not apply. In any case, even if this Court finds that the continuous tort
13 doctrine applies, the alleged tortious conduct of Ms. Harber and Ms. Martin cannot be deemed
14 continuous as Ms. Nelson removed them as the Distribution Trustee of the LSN Trust long ago.⁷⁰

15 **E. Ms. Nelson’s Sixth Claim For Relief For Conspiracy And Eighth Claim For**
16 **Relief For Aiding And Abetting Should Also Be Dismissed Because She Has Not**
17 **Plead The Requisite Elements.**

18 ⁶⁴ *Anderson v. State*, 965 P.2d 783, 790 (Haw. App. 1998) (“The Hawaii Supreme Court
19 adopted the continuing-tort exception to a statute of limitations in 1935”).

20 ⁶⁵ *Flowers v. Carville*, 310 F.3d 1118, 1126 (9th Cir. 2002). *See also* 54 C.J.S.
21 Limitations of Actions § 223 (“The common-law continuing tort doctrine may be applied, for statute
22 of limitations purposes, when no single incident in a chain of tortious activity can fairly or
realistically be identified as the cause of significant harm”).

23 ⁶⁶ *See Coulon*, 848 So. 2d at 138 (continuous-tort doctrine applied when employee
24 suffered permanent neurological injuries as result of exposure to significant amounts of neurotoxins
and several carcinogens during employment).

25 ⁶⁷ *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 548 (D.C. 2002)

26 ⁶⁸ *See* Third-Party Complaint at ¶¶ 14, 99, 103 and 108.

27 ⁶⁹ *See id.* at ¶ 11.

28 ⁷⁰ *See id.* at ¶ 53.

1 Ms. Nelson has not plead the requisite elements to support her claims for conspiracy and
2 aiding and abetting. The Opposition attempts to distinguish the facts in this matter from one of the
3 cases cited in the Motion to Dismiss, *Collins v. Union Federal Savings & Loan Association*, 662 P.2d
4 610, 99 Nev. 284 (1983), by erroneously contending that the elements of conspiracy have been met
5 because Ms. Martin, Ms. Harber and Ms. McGowan: (1) are not agents of a single corporate entity;⁷¹
6 and (2) acted “as individuals for their individuals benefits.”⁷²

7 Although in *Collins* the agents and employees were agents and employees of a single
8 corporation, that case certainly does not require that Mr. Nelson, Ms. Martin, Ms. Harber, Ms.
9 McGowan and Ms. Ramos be agents and employees of a single corporation, and Ms. Nelson has
10 failed to cite any case law holding otherwise.⁷³ Here, the Third-Party Complaint refers to Ms. Martin,
11 Ms. McGowan and Ms. Ramos as an “employee of any one of Eric’s entities”⁷⁴ who are “intricately
12 involved in many of Eric’s entities.”⁷⁵ Further, the Third-Party Complaint alleges that “Eric directed
13 and controlled the distributions of income and assets to and from”⁷⁶ the ELN Trust and the LSN Trust
14 and Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos “knowingly and substantially assisted
15 Eric.”⁷⁷ Since Ms. Nelson concedes an agent/employee relationship existed, her claim for conspiracy
16 must be dismissed.⁷⁸

18 ⁷¹ See Opp. at p. 21, ll. 4-6.

19 ⁷² See *id.* at p. 21, ll. 20-22.

20 ⁷³ See Third-Party Complaint at ¶ 13.

21 ⁷⁴ See *id.* at ¶ 13.

22 ⁷⁵ See *id.* at ¶¶ 19-22, 44 and 53.

23 ⁷⁶ See *id.* at ¶¶ 99 and 108.

24 ⁷⁷ See *id.* at ¶¶ 100-101 and 109-110.

26 ⁷⁸ Although Ms. Harber and Ms. Martin have been sued in their capacity as former
27 Distribution Trustees of the LSN Trust, the Third-Party Complaint fails to delineate what capacity
28 Ms. Harber and Ms. Martin purportedly conspired and/or aided Mr. Nelson. See Third-Party
Complaint at ¶¶ 98-101, and 107-111. For this reason, Third-Party Defendants are not estopped
from asserting that they cannot be con-conspirators/aiders and abettors with Mr. Nelson in their

Contrary to Ms. Nelson's contention, the Third-Party Complaint does not allege that Ms. Martin, Ms. Harber, Ms. McGowan or Ms. Ramos acted "as individuals for their individuals benefits"⁷⁹ and/or "conspired with Eric for their own respective, individual interests and gain."⁸⁰ Had Ms. Nelson made that allegation in the Third-Party Complaint she would have undoubtedly cited to the same in her Opposition.⁸¹ To the contrary, Ms. Nelson contends that Ms. Martin⁸² and Ms. Harber⁸³ are the former Distribution Trustees of the LSN Trust and the ELN Trust and/or employees of companies owned by the ELN Trust and/or the LSN Trust. Further, Ms. Nelson contends that Ms. McGowan⁸⁴ and Ms. Ramos⁸⁵ are employees of entities owned by the ELN Trust and/or the LSN Trust, serving both as bookkeeper, and upon information and belief, the notary public on several documents for Mr. Nelson; however, it is unclear what Ms. Nelson contends they did wrong. Since they have not acted for their own benefit, Ms. Nelson's conspiracy claim fails.

F. Ms. Nelson's Seventh Claim For Relief For Concert Of Action Fails To State A Claim Upon Which Relief Can Be Granted.

Ms. Nelson opposes dismissal of her concert in action claim, contending she is only alleging intentional torts, not negligence, and that concert of action claims involving intentional torts do not

individual capacities. *See Opp.* at p. 21, ll. 11-19.

⁷⁹ *See Opp.* at p. 21, ll. 20-22.

⁸⁰ *See id.* at p. 21, ll. 25-26.

⁸¹ Ms. Nelson's allegation that Third-Party Defendants are estopped from asserting that Mr. Nelson, Ms. Harber, Ms. Martin, Ms. McGowan and Ms. Ramos "were all agents for a common principal, acting in a representative capacity, while at the same time asserting that the ELN Trust conforms for the requirements of NRS Chapter 166" because as beneficiary of the ELN Trust Mr. Nelson cannot direct distributions from the ELN Trust, *see Opp.* at p. 21, ll. 11-14, contravenes NRS 166.040(3), which provides that a "settlor [cannot] make distributions to himself or herself without the consent of another person."

⁸² *See Third-Party Complaint* at ¶ 19.

⁸³ *See id.* at ¶ 20.

⁸⁴ *See id.* at ¶ 21.

⁸⁵ *See id.* at ¶ 22.

1 need to involve inherently dangerous activities. In fact, Ms. Nelson's assertion in her Opposition that
2 the "inherently dangerous activity" prong of concert of action only applies to claims sounding in
3 "negligence" rather than intentional torts is based upon an incorrect and disjointed reading of the
4 Nevada Supreme Court's opinions in *Dow Chemical Co. v. Mahlum* and *GES, Inc. v. Corbitt*, and the
5 Restatement (Second) of Torts section 876 ("Restatement section 876"). However, in applying
6 Restatement section 876 to tortious acts constituting both intentional torts and negligence, the Nevada
7 Supreme Court in both *Dow Chemical* and *Ges* expressed that concert of action "is meant to deter
8 antisocial or dangerous behavior."⁸⁶ ⁸⁷ Indeed, each of the illustrations in the comments on
9 Restatement section 876, which demonstrate proper application of concert of action to inherently
10 dangerous activities, include the commission of intentional torts, specifically burglary, illegal
11 coercion (battery) by police officers, and arson.⁸⁸ Moreover, courts in other jurisdictions have
12 specifically held that imposition of concert of action over defendants engaging in intentional torts
13 likewise required that the tortious conduct be inherently dangerous or pose a substantial risk of harm
14 to others.⁸⁹

15 In *Dow Chemical*, the plaintiff sought to impose concert of action liability over the defendants

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17 ⁸⁶ *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1488, 970 P.2d 98, 111 (1998); citing
18 *Juhl v. Airington*, 936 S.W.2d 640, 644-45 (Tex.1996) (holding that "instances where concert of
19 action liability has been imposed have almost always involved conduct posing a high degree of risk
20 to others.").

21 ⁸⁷ *GES, Inc. v. Corbitt*, 117 Nev. 265, 271, 21 P.3d 11, 15 (2001) at footnote 18.

22 ⁸⁸ See Restatement § 876, illustrations 1-16 involving joint commission of burglary,
23 drag racing, participation in a riot, illegal methods of coercion by police officers (amounting to
24 battery), discharging firearms across a public road, sale of a firearm known to be dangerously
25 defective, arson, intentional explosion of dynamite, and possession of wild animals.

26 ⁸⁹ See *III Forks Real Estate, L.P. v. Cohen*, 228 S.W.3d 810, 816 (Tex. App. 2007)
27 (declining to impose concert of action where defendant's intentional misrepresentation was "not the
28 type of activity addressed in concert of action cases" because it "was simply not the type of highly
dangerous, deviant, or anti-social group activity which was likely to cause injury or death to a person
or certain harm to a large number of people."); see also, *Mein v. Cook*, 193 P.3d 790 (Ariz. App.
2008) (Holding that concert of action in Arizona requires the commission of an intentional tort and
substantial certainty of serious injury or death); see also, *Ryan v. Eli Lilly & Co.*, 514 F.Supp. 1004
(D. S.C. 1981) (concert of action "involves an extremely narrow fact pattern" and has been found
in such conduct as group assault and battery.").

1 for the commission of intentional torts. The Nevada Supreme Court specifically noted that “[u]nder
2 the Restatement [section 876], liability attaches for concert of action if two persons commit **a tort**
3 while acting in concert with one another or pursuant to a common design.” (Emphasis added).⁹⁰ The
4 Court, therefore, correctly noted that concert of action could potentially apply to the joint commission
5 of any tort, whether intentional or negligent. Moreover, the Court expressly stated that “concert of
6 action has traditionally been quite narrow in the scope of its application,” and that “[t]he classic
7 application of concert of action is drag racing, where one driver is the cause-in-fact of plaintiff’s injury
8 and the fellow racer is also held liable for the injury.”⁹¹ However in discussing whether a theory of
9 concerted action could be imposed over the defendants in *Dow Chemical*, our Supreme Court found
10 that the plaintiff had not shown the requisite agreement or encouragement in the commission of the
11 tortious conduct, specifically fraudulent misrepresentation of the safety of liquid silicone breast
12 implants, and, thus, failed to reach a determination of whether the commission of the intentional tort
13 was inherently dangerous.⁹²

14 In *Corbitt*, the Nevada Supreme Court announced its disfavor with the *Dow Chemical* opinion
15 because the decision might be read, as Ms. Nelson concludes in her Opposition, that “concert of
16 action requires no more than an agreement along with tortious conduct.”⁹³ Although, the Court in
17 *Corbitt* dealt specifically with the negligence case before it, its decision is much broader, as the Court
18 sought to determine and clarify the meaning of “concerted acts.”⁹⁴ In reviewing its definition of

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20 ⁹⁰ *Dow Chemical*, 114 Nev. at 1488, 970 P.2d at 15.

21 ⁹¹ *Id.*

22 ⁹² *Id.* at 114 Nev. at 1489, 970 P.2d at 112. Had it reached the issue, it is certainly
23 reasonable to conclude that the Court would have found that Dow Chemical’s fraudulent
24 misrepresentation was inherently dangerous given the broad consumer market for silicone breast
implants.

25 ⁹³ *Corbitt*, 117 Nev. 265, 271, 21 P.3d 11, 15 (2001).

26 ⁹⁴ *Corbitt*, 117 Nev. at 270, 21 P.3d at 14-15. NRS 41.141(5)(d) simply extends joint
27 and several liability to “concerted acts of the defendants.” In finding that “the district court
28 incorrectly interpreted the phrase ‘concerted acts’,” the court looked to its previous holding in *Dow*
Chemical, and suggested that its opinion did not go far enough to define “concert of action.”
Therefore the Court in *Corbitt* broadened the definition of “concert of action” in general, including

1 “concert of action” in its *Dow Chemical* opinion, the Court in *Corbitt* stated “to the extent our holding
2 in [*Dow Chemical*] suggests that concert of action requires no more than an agreement along with
3 tortious conduct, it is disfavored.”⁹⁵ Rather, it specifically requires that tortious conduct be
4 “inherently dangerous or pose[] a substantial risk of harm to others.”⁹⁶ Therefore, the Court’s express
5 disfavor of its opinion in *Dow Chemical* can only reasonably be read to conclude that concert of
6 action applies in the context of intentional torts (*Dow Chemical*) as well as negligence (*Ges*), and in
7 either case requires that “the defendants must have agreed to engage in conduct that is inherently
8 dangerous or pose[] a substantial risk of harm to others.”⁹⁷

9 Accordingly, Ms. Nelson’s argument that the *Corbitt* case is limited only to negligent actions
10 under NRS 41.141(5)(d) is disingenuous because the Court in *Corbitt* defined the phrase “concert of
11 action” as applied to “tortious conduct,” *i.e.* both intentional torts and negligence, and expressly
12 required inherently dangerous activity or conduct that poses a substantial risk of harm to others.⁹⁸
13 Notwithstanding, Ms. Nelson’s citation to *Reynolds v. Schrock*, 107 P.3d 52 (Or. App. 2005), in
14 support of her assertion that “[j]oint liability for concert of action has in fact been found in cases not
15 involving inherently dangerous activity,”⁹⁹ is disingenuous and inapposite for two reasons: (1)
16 *Reynolds* is unpersuasive because there is no discussion of whether concert of action required the
17 commission of inherently dangerous activities, suggesting counsel failed to litigate the issue; and (2)
18 *Reynolds* was overruled by the Oregon Supreme Court in *Reynolds v. Schrock*, 142 P.3d 1062 (Or.
19 2006), which expressly rejected the application of concert of action over an attorney as a matter of
20 public policy, where application of the same would make the attorney liable for his client’s breach

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22 the commission of both intentional torts, as in *Dow Chemical*, and negligence, as in the case before
23 it, to require “conduct that is inherently dangerous or pose a substantial risk of harm to others.”

24 ⁹⁵ *Id.* at 117 Nev. at 271, 21 P.3d at 15.

25 ⁹⁶ *Id.*

26 ⁹⁷ *Id.*

27 ⁹⁸ *Id.*

28 ⁹⁹ *See Opp.* at p. 24, ll. 3-10.

1 of a fiduciary duty owed to a third party.¹⁰⁰

2 Ms. Nelson's seventh claim for relief seeking to impose joint and several liability over the
3 defendants for their purported agreement or encouragement along with tortious conduct should be
4 dismissed because it fails to allege that the defendants engaged in an inherently dangerous activity
5 which posed a substantial risk of harm to others, a requirement in Nevada under *Dow Chemical* and
6 *Corbitt*. Moreover, in light of the traditional, and limited, application of concert of action to deter
7 "antisocial or dangerous behavior," such as drag racing and participation in gang related activity, this
8 Court should dismiss claims alleging concert of action where the underlying tortious conduct falls far
9 short of such longstanding policy considerations requiring participation in inherently dangerous
10 activities, as Ms. Nelson's counterclaim does here.

11 **G. Ms. Nelson's Ninth Claim For Relief For Constructive Trust Should Be**
12 **Dismissed Because The Elements To Establish A Constructive Trust Have Not**
Been Met As Pled And A Constructive Trust Is A Remedy.

13 A constructive trust exists when: "(1) a confidential relationship exists between the parties;
14 (2) retention of legal title by the holder thereof against another would be inequitable; and (3) the
15 existence of such a trust is essential to the effectuation of justice."¹⁰¹ As stated in the Motion to
16 Dismiss, the Third-Party Complaint is devoid of any allegations that a confidential relationship
17 existed between the ELN Trust, who actually owns the assets, and Ms. Nelson.¹⁰² Although Ms.
18 Nelson contends in her Opposition that a confidential relationship exists with Mr. Nelson, the Third-
19 Party Complaint fails to plead that a confidential relationship existed between Ms. Nelson and the
20 ELN Trust. For this reason alone (*i.e.* Ms. Nelson's failure to plead the requisite elements of
21 constructive trust), Ms. Nelson's Ninth Claim for Relief should be dismissed.

22 **H. Ms. Nelson's Tenth Claim For Relief For Injunctive Relief Is Improper.**

23 Ms. Nelson's Tenth Claim for Relief for Injunctive Relief "seeks the entry of a temporary
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25 ¹⁰⁰ *Reynolds v. Schrock*, 142 P.3d 1062, 1071-72 (Or. 2006).

26 ¹⁰¹ *Id.*

27 ¹⁰² Although Ms. Nelson contends in her Opposition that this argument has no merit, she
28 failed to cite to any portion of the Third-Party Complaint wherein she asserted a "confidential
relationship" existed between her and the ELN Trust.

1 restraining order, preliminary injunction, and permanent injunction¹⁰³ on the grounds that the
2 “community estate face the prospect of immediate, severe, and irreparable injury should Eric be
3 allowed to continue his current course of conduct with respect to the ELN Trust.”¹⁰⁴ In response to
4 the Motion to Dismiss, Ms. Nelson now contends that she is merely seeking to “confirm what is
5 already in place [*i.e.* the Joint Preliminary Injunction], and what she is legally entitled to.”¹⁰⁵ Said
6 contention is a misnomer as neither Ms. Nelson nor Mr. Nelson are entitled to any assets of the ELN
7 Trust unless so provided by the terms of the ELN Trust.¹⁰⁶ Further, if Ms. Nelson believed the ELN
8 Trust was bound by the Joint Preliminary Injunction, there would have been no reason for her to
9 request another injunction in open court at the April 4, 2011, hearing.

10 Ms. Nelson’s contention that the ELN Trust should be enjoined from operating in the usual
11 course of business, by among other things to purchase assets in Wyoming, contravenes the terms of
12 the ELN Trust and EDCR 5.85 upon which she relies. Indeed, even if it were applicable to the ELN
13 Trust, EDCR 5.85 specifically provides that the Joint Preliminary Injunction does not impede parties
14 from engaging in “the usual course of businesses or for the necessities of life,” which would include
15 making investments and paying for the attorneys’ fees and costs associated with defending the interest
16 of the ELN Trust in this litigation.¹⁰⁷ Further, pursuant to the terms of the ELN Trust, the Trustees
17 are allowed to use trust assets to: (1) defend against Mr. Nelson and Ms. Nelson’s claims of
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19 ¹⁰³ See Opp. at p. 34, ll. 20-22.

20 ¹⁰⁴ See Opp. at p. 34, ll. 12-14.

21 ¹⁰⁵ See Opp. at p. 27, ll. 8-9.

22 ¹⁰⁶ See NRS 166.130 (“A beneficiary of a spendthrift trust has no legal estate in the
23 capital, principal or corpus of the trust estate . . .”).

24 ¹⁰⁷ *Estate of Harvey*, 1958, 330 P.2d 478, 164 Cal. App.2d 330 (Cal. App. 1958) (a
25 testamentary trustee has a power and duty to resist a claim by the widow of the testator that the trust
26 property was community property); *Bank of Am. Nat. Trust & Sav. Ass’n v. Long Beach Fed. Sav.
27 & Loan Ass’n*, 141 Cal. App. 2d 618, 624, 297 P.2d 443, 447 (Cal. App. 1956) (“The law governing
28 the administration of trusts is that a trustee not only has the right, but it is his duty, whenever
necessary to the proper administration, preservation and execution of the trust or to its defense”); *In
re Estate of Duffill*, 206 P. 42, 188 Cal. 536 (Cal. 1922) (duty to resist attack on validity of trust by
beneficiary).

community and separate property, which is specifically allowed under Article XII, Section 12.1(m), 12.1(z), 12.5(a), 12.6 and 12.9;¹⁰⁸ and (2) invest and reinvest trust assets in the Trustees' sole discretion under Article XII, Section 12.1(f).¹⁰⁹

Further, this Court lacks jurisdiction to enter an injunction against the ELN Trust under NRS 125.050 as such a ruling would pertain to "the internal affairs of a nontestamentary trust. . .,"¹¹⁰ and be therefore subject to the Probate Court's exclusive jurisdiction under Title 12 and Title 13 of the Nevada Revised Statutes. Notwithstanding, to the extent that Ms. Nelson seeks an injunction under NRS 125.050, she should be forced to comply with the stringent requirements of EDCR 5.20, including, but not limited to, providing notice to the ELN Trust. Consequently, Ms. Nelson's request for an injunction must be dismissed.

I. All Causes Of Action Against The Trust Should Be Brought Against The Trustee Who Is The Real Party In Interest.

Pursuant to the August 9, 2011, Stipulation and Order, the ELN Trust was joined as a necessary party, intervening in this action.¹¹¹ On August 19, 2011, Ms. Martin, acting as the "real party in interest" (*i.e.* the "trustee of an express trust") pursuant to NRCP 17(a),¹¹² filed an Answer to Complaint for Divorce and Counterclaim and Cross-Claim. On September 30, 2011, Ms. Nelson filed claims against the ELN Trust *and* Ms. Martin as Distribution Trustee of the ELN Trust. Since Ms. Martin in her capacity as Distribution Trustee of the ELN Trust is the real party in interest, Ms. Nelson's claims against the ELN Trust should be dismissed and said claims, if any survive the Motion to Dismiss, should be made by and through the Ms. Martin as Distribution Trustee of the ELN

¹⁰⁸ Upon information and belief, Ms. Nelson is paying her attorneys' fees and costs from the LSN Trust.

¹⁰⁹ Upon information and belief, Ms. Nelson is investing and reinvesting the assets of the LSN Trust.

¹¹⁰ NRS 164.015.

¹¹¹ See Stipulation and Order, previously filed 8/8/11.

¹¹² NRCP 17(a) provides in part that "[e]very action shall be prosecuted in the name of the real party in interest."

1 Trust.¹¹³

2 **J. This Court Should Also Dismiss The Third-Party Complaint Because It Sounds**
3 **In Fraud And Fails To Meet The Pleading Requirement Under NRCP 9(b).**

4 Ms. Nelson generally contends that she does not need to meet the heightened pleading
5 requirements of NRCP 9(b) because she “has not specifically pled a cause of action for fraud in her
6 Third-Party Complaint.”¹¹⁴ In so doing, Ms. Nelson ignores the case law that specifically provides
7 that a plaintiff may nonetheless be subject to the particularity requirement set forth in NRCP 9(b) if
8 a complaint “sounds in fraud.”¹¹⁵ For example, where a plaintiff alleges a unified course of fraudulent
9 conduct and relies entirely on that course of conduct as the basis of its complaint, the complaint is
10 said to sound in fraud and the complaint as a whole must satisfy the particularity requirements of Rule
11 9(b).¹¹⁶ Indeed, “fraud can be averred by specifically alleging fraud, or by alleging facts that
12 necessarily constitute fraud (even if the word “fraud” is not used.)”¹¹⁷

13 Here, the Third-Party Complaint alleges that the Third-Party Defendants engaged in a scheme
14 to “defraud” Ms. Nelson,¹¹⁸ and fraudulently conveyed assets from the LSN Trust and the ELN
15 Trust.¹¹⁹ “Further, “[a] breach of fiduciary duty is fraud,”¹²⁰ and Rule 9(b) applies to claims of

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17 ¹¹³ Ms. Nelson’s reliance upon NRCP 19(a), *Robinson v. Kind*, 23 Nev. 330, 47 P. 977
18 (1897) and *Schwob v. Hemsath*, 98 Nev. 293, 646 P.2d 1212 (1982) is inapposite because said cases,
19 although dealing with joinder of proper parties, do not analyze whether it is proper to file a directly
20 against a trust or by and through its trustee. The remaining cases support Third-Party Defendants
contention that Ms. Nelson’s claims should be made against Ms. Martin as Distribution Trustee of
the ELN Trust.

21 ¹¹⁴ See Opp. at p. 29, ll. 20-21.

22 ¹¹⁵ See *Rubke v. Capitol Bancorp Ltd.*, 460 F. Supp. 2d 1124, 1134 (D. Cal. 2006)
23 (holding that if a complaint sounds in fraud it must comply with Rule 9(b)).

24 ¹¹⁶ See *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003).

25 ¹¹⁷ See *Vess*, 317 F.3d 1097 at 1105.

26 ¹¹⁸ See Third-Party Complaint at ¶ 34.

27 ¹¹⁹ See Third-Party Complaint at ¶¶ 101, 105 and 110.

28 ¹²⁰ See *Shupe v. Ham*, 98 Nev. 61, 64, 639 P.2d 540, 542 (1982).

1 conspiracy.¹²¹ The remainder of the Third-Party Complaint sounds in fraud as it is based on Ms.
2 Nelson's unfounded allegations that Mr. Nelson made numerous misrepresentations and omissions
3 in the creation and funding of the ELN Trust,¹²² and has undertaken numerous other acts to defraud
4 Ms. Nelson in her purported community property interest in assets owned by the ELN Trust.¹²³ The
5 Third-Party Complaint alleges a unified course of allegedly fraudulent conduct, without
6 differentiating her allegations against the Third-Party Defendants,¹²⁴ and relies on said course of
7 conduct as the basis for each and every claim for relief against Mr. Nelson, Ms. Martin, Ms. Harber,
8 Ms. McGowan and Ms. Ramos. Notwithstanding, the Third-Party Complaint fails to state with
9 particularity what statements, if any, Mr. Nelson made to Ms. Nelson regarding the creation of the
10 ELN Trust and LSN Trust,¹²⁵ the assets that Ms. Nelson contends were inappropriately distributed,¹²⁶
11 and/or the actions/inactions of Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Harber.

12 As a result of the foregoing, this Court should dismiss the Third-Party Complaint, or
13 alternatively, order Ms. Nelson to amend the Third-Party Complaint so as to comply with NRCP 9(b).

14 **K. Ms. Nelson's Countermotion For Attorneys' Fees And Costs Should Be Denied.**

15 Although unclear, Ms. Nelson seems to contend that she is entitled to her "fees and costs
16 incurred in defending against the Motions to Dismiss" because the "Movants bear an extremely high
17 burden in prevailing on a request to dismiss."¹²⁷ Unsurprisingly, Ms. Nelson has failed to cite to any
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19 ¹²¹ See *Arroyo v. Wheat*, 591 F. Supp. 141, 144 (D. Nev. 1984) (holding Rule 9(b), which
20 requires that in averments of fraud the circumstances constituting fraud shall be stated with
21 particularity, must be plead in claim for conspiracy).

22 ¹²² See Third-Party Complaint, at ¶¶ 29, 31 and 63.

23 ¹²³ See *id.*, at ¶¶ 72-108.

24 ¹²⁴ *Swartz v. KPMG LLP*, 476 F.3d 756, 764-765 (9th Cir. 2007) (in the context of a
25 fraud suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each
defendant in the alleged fraudulent scheme).

26 ¹²⁵ See Third-Party Complaint at ¶¶ 29, 31 and 63.

27 ¹²⁶ See Third-Party Complaint at ¶¶ 55-56.

28 ¹²⁷ See Opposition at p. 30, ll. 26-28.

1 cases that support such a proposition. The Motion to Dismiss was necessitated by the spurious
2 allegations and claims made in the Third-Party Complaint that fail to state a claim upon which relief
3 can be granted and/or request that this Court to address issues over which it has no jurisdiction. In
4 light of the foregoing, this Court must deny Ms. Nelson's Countermotion for attorneys' fees and costs.

5 **III. CONCLUSION**

6 For the reasons set forth above, this Court should grant the Motion to Dismiss and deny the
7 Countermotion.

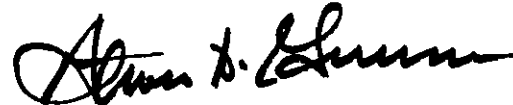
8 DATED this 9th day of December, 2011.

9 SOLOMON DWIGGINS FREER & MORSE, LTD.

10
11 By: 

12 MARK A. SOLOMON, ESQ., NSB #0418
13 JEFFREY P. LUSZECK, ESQ., NSB # 9619
14 Cheyenne West Professional Centre
15 9060 West Cheyenne Avenue
16 Las Vegas, Nevada 89129

17 *Attorneys for LANA MARTIN, Individually and as*
18 *Distribution Trustee of the ERIC L. NELSON*
19 *NEVADA TRUST dated 5-30-01 and former*
20 *Distribution Trustee of the LSN NEVADA TRUST*
21 *dated 5-30-01; NOLA HARBER, Individually*
22 *and as former Distribution Trustee of the ERIC L.*
23 *NELSON NEVADA TRUST dated 5-30-01*
24 *and former Distribution Trustee of the LSN NEVADA*
25 *TRUST dated 5-30-01; ROCHELLE MCGOWAN;*
26 *and JOAN RAMOS*



CLERK OF THE COURT

RPLY

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

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

Defendants/Counterclaimants.

) Case No. D-411537
) Dept. No. O

) HEARING DATE: December 13, 2011
) HEARING TIME: 1:30 p.m.

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

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

REPLY TO OPPOSITION TO MOTION TO DISSOLVE INJUNCTION AND
OPPOSITION TO COUNTERMOTION FOR AN AWARD OF ATTORNEYS FEES AND
COSTS

1 Counterdefendant/Crossdefendant/Third-Party Defendant Lana Martin, Distribution Trustee
2 of the Eric L. Nelson Nevada Trust dated May 30, 2001 ("ELN Trust"), by and through her Counsel
3 of Record, Solomon Dwiggins Freer & Morse, Ltd., hereby files her Reply to Opposition to Motion
4 to Dissolve Injunction and Countermotion for an Award of Attorneys Fees and Costs ("Opposition").

5 This Reply and Opposition is based on the Memorandum of Points and Authorities which
6 follows and on all documents and papers filed herein.

7 DATED this 9th day of December, 2011.

8 SOLOMON DWIGGINS FREER & MORSE, LTD.

9
10 By: 

11 MARK A. SOLOMON, ESQ.

12 Nevada State Bar No. 0418

13 JEFFREY P. LUSZECK

14 Nevada State Bar No. 9619

15 Cheyenne West Professional Centre'

16 9060 West Cheyenne Avenue

17 Las Vegas, Nevada 89129

18 *Attorneys for LANA MARTIN, as*

19 *Distribution Trustee of the ERIC L. NELSON*

20 *NEVADA TRUST dated May 30, 2001*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The June 9, 2011, Injunction (“Injunction”) was issued without notice to the ELN Trust in
4 violation of its Constitutional rights, and its issuance was otherwise inconsistent with and/or violated
5 the Eighth Judicial District Court Rules, Nevada Rules of Civil Procedure and Nevada Revised
6 Statutes. The Motion to Dissolve Injunction should be granted and the Injunction should be declared
7 *void ab initio* because this Court lacks jurisdiction to enjoin the ELN Trust. Further, Ms. Nelson
8 failed to comply with the applicable rules and statutes, and cannot rely upon rules and statutes that
9 only apply to a husband and wife in a divorce proceeding. Finally, Ms. Nelson generally contends
10 in the Opposition that this Court was justified in issuing the Injunction; however, she is unable to
11 articulate what evidence was presented to this Court at the April 4, 2011, hearing or what standard
12 this Court applied in issuing the Injunction. For these reasons, and those set forth below, the Motion
13 to Dissolve Injunction should be granted.

14 **II. LEGAL ARGUMENT**

15 **A. This Court Lacks Jurisdiction To Enjoin The ELN Trust.**

16 This Court lacked jurisdiction to enter the Injunction against the ELN Trust at the April 4,
17 2011, hearing because the Injunction pertains to “the internal affairs of a nontestamentary trust. . .,”¹
18 and is therefore subject to the Probate Court’s exclusive jurisdiction under Title 12 and Title 13 of
19 the Nevada Revised Statutes.² Consequently, the Injunction must be dissolved, and Ms. Nelson’s
20 request to have another injunction issued against the ELN Trust must be denied.

21 **B. NRS 125.05, NRCP 65(f), EDCR 5.20 and EDCR 5.85 Do Not Govern The ELN**
22 **Trust.**

23 EDCR 5.20, EDCR 5.85, NRS 125.050 and NRCP 65(f) do not apply to the ELN Trust
24 because the parties to which said rules and/or statutes apply are Mr. Nelson and Ms. Nelson, the
25 husband and wife in the divorce proceeding. Indeed, a joint preliminary injunction issued under

26 ¹ See generally, Reply to Opposition to Motion to Dismiss, filed contemporaneously
27 with this Reply.

28 ² See *id.*

1 EDCR 5.85 applies to “both parties to the action,” while preliminary injunctions issued under NRS
2 125.050 merely apply to “either party” to the divorce proceeding.³ Further, contrary to Ms. Nelson’s
3 contention, the standard set forth in NRCP65(f) is inapplicable to the ELN Trust because Ms.
4 Nelson’s claims against the ELN Trust do not constitute a “suit[] for divorce” as described in the
5 Rule.

6 The ELN Trust is neither a husband nor a wife, and was not a party to the litigation when the
7 Injunction was entered by the Court on June 9, 2011, in violation of EDCR 5.20 which limits
8 injunctions and/or restraining orders to “parties to the action.” If this Court were to accept Ms.
9 Nelson’s interpretation of the aforementioned rules and/or statutes, any husband or wife in a divorce
10 proceeding would be able to obtain a preliminary injunction against a third party without providing
11 notice and/or meeting the preliminary injunction standard set forth in NRCP 65(a) - (d) and or NRS
12 33.010. This interpretation is preposterous and should be summarily disregarded by this Court.
13 Consequently, this Court should find that EDCR 5.20, EDCR 5.85, NRS 125.050 and NRCP 65(f)
14 do not govern the issuance of an injunction against the ELN Trust, and require Ms. Nelson to comply
15 with NRS 33.010 and NRCP 65(a) - (d).

16 **C. The Injunction Must Be Dissolved Because Ms. Nelson Failed To Comply With**
17 **EDCR 2.10 and EDCR 5.20, Even Assuming Its Applicability.**

18 The Injunction should also be dissolved due to Ms. Nelson’s failure to comply with EDCR
19 2.10 and EDCR 5.20 (assuming, *arguendo*, its applicability). As conceded by Ms. Nelson in the
20 Opposition,⁴ EDCR 2.10 governs all requests for preliminary injunctions and temporary restraining
21 orders in family division matters in the Eighth Judicial District Court. Ms. Nelson’s contention that
22 EDCR 5.20 does not apply to divorce cases is misguided as the rule contains no such limitation.⁵

23
24 ³ Indeed, “[u]nless ambiguous, a statute’s language is applied in accordance with its
25 plain meaning [and] when the Legislature’s intent is clear from the plain language, [the Nevada
26 Supreme Court] will give effect to such intention and construe the statute’s language to effectuate
rather than nullify its manifested purpose.” *Nevada v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166,
1170-71 (Nev. 2008),

27 ⁴ See Opp. at p. 7, ll. 22-27.

28 ⁵ See *id.* at p. 7, ll. 18-27

1 Indeed, although EDCR 5.20(1) provides that Rule 2.10 “governs all requests for temporary
2 restraining orders and preliminary injunctions except for orders or injunctions issued under . . . Rule
3 5.85 (joint preliminary injunctions).” The ELN Trust is not subject to the joint preliminary injunction
4 for the reasons stated above. Further, the very fact that Ms. Nelson requested that this Court enjoin
5 the proceeds from the Silver Slipper Transaction at the April 4, 2011, hearing illustrates that even she
6 does not believe that the ELN Trust was bound by the Joint Preliminary Injunction previously issued
7 by this Court.

8 Since EDCR 5.85 does not govern the ELN Trust, Ms. Nelson must comply with EDCR 2.10
9 and EDCR 5.20.⁶ Despite this fact, Ms. Nelson failed meet the requisite notice requirements as set
10 forth in EDCR 2.10. Pursuant to EDCR 2.10(a) “[a] motion for a preliminary injunction must be
11 made upon the notice required by Rule 2.20(b), unless an order fixes a shorter notice,” and EDCR
12 2.20(b) requires motions to contain “a notice of motion setting the same for hearing on a day when
13 the district judge to whom the case is assigned is hearing civil motions in the ordinary course.” The
14 oral motion made by Ms. Nelson’s Counsel at the April 4, 2011, hearing certainly does not meet the
15 stringent requirements of EDCR 2.10 even if the ELN Trust had then been a party.

16 Ms. Nelson also failed to comply with the most rudimentary requirements of EDCR 5.20,
17 which include, but are not limited to, notifying the ELN Trust of her intention to seek an injunction
18 by requesting the proceeds from the Silver Slipper Transaction be enjoined at the April 4, 2011,
19 hearing, and submitting an “affidavit upon personal knowledge setting forth in detail the facts in
20 justification of such relief.”⁷ Further, the Injunction is indefinite in duration and fails to set forth the
21 reasons for issuance in contravention of EDCR 5.20(i)(1). Ms. Nelson should not be rewarded for her
22 willful violation of EDCR 2.10 and EDCR 5.20. As such, the Motion to Dissolve Injunction should
23 be granted.

24 **D. The Injunction Violates EDCR 5.85 Assuming It Applies Because It Impedes The**
25 **ELN Trust’s Ability To Transfer, Encumber, Conceal, Sell Or Otherwise**

26 ⁶ Indeed, even NRS 125.050 upon which Ms. Nelson replies, does not alleviate the
27 notice requirements set forth in EDCR 2.10 or EDCR 5.20 and required under the Constitution.

28 ⁷ See EDCR 5.20(c).

1 **Dispose Of Any Property In The Usual Course Of Business Or The Necessities**
2 **Of Life.**

3 EDCR 5.85 does not govern the ELN Trust and/or the Injunction for the reasons set forth
4 above. However, even if it did, the Motion to Dissolve Injunction should still be granted because the
5 Injunction violates EDCR 5.85(1), which allows the ELN Trust to “[t]ransfer[], encumber[],
6 conceal[], sell[] or otherwise dispos[e]” of its property in “the usual course of businesses or for the
7 necessities of life,” as it impedes the ELN Trust’s ability to: (1) pay its legal expenses in the
8 aforementioned matter; and (2) invest and reinvest trust assets as the Trustee deems necessary.

9 1. The Injunction Impedes The ELN Trust’s Ability To Defend Itself Against Ms.
10 Nelson’s Unfounded Allegations.

11 EDCR 5.85 does not prohibit the ELN Trust from using its assets to defend itself, and any
12 contention to the contrary is disingenuous and grossly inequitable as the ELN Trust is informed and
13 believes that Ms. Nelson is using assets from the LSN Trust to pay her attorneys’ fees and costs in
14 this matter. Further, pursuant to Article XII, Sections 12.1(m), 12.1(z), 12.5(a), 12.6 and 12.9 of the
15 ELN Trust, Ms. Martin has a duty to defend the ELN Trust in this matter and in the United States
16 District Court case entitled *Paul R. Alanis, et al. v. Eric Nelson, et al.*, Case No. CV11-02583.⁸ In
17 addition to EDCR 5.85 and the terms of the ELN Trust, general case law,⁹ Nevada statutes¹⁰ and

18 ⁸ Although the ELN Trust is not a named party in the California litigation, a LLC of
19 which it owns a 100% interest (Dynasty Development Group, LLC), is. Contrary, to Ms. Nelson’s
20 contention, the ELN Trust, not Mr. Nelson, is the Sole Member of Dynasty Development
21 Management, LLC. *See* Declaration of Eric L. Nelson, Investment Trustee of the Eric L. Nelson
22 Nevada Trust dated May 30, 2011, attached hereto as **Exhibit 1**.

23 ⁹ *Anselmo v. Guasto*, 13 S.W.3d 650, 653 (Mo. Ct. App. 1999) (“As a general rule a
24 trustee is entitled to be allowed against the trust estate all the trustee’s proper expenses, including
25 all expenses reasonably necessary for the security, protection, and preservation of the trust property,
26 or for the prevention of a failure of the trust.”); *Estate of Harvey*, 1958, 330 P.2d 478, 164
27 Cal.App.2d 330 (Ca. 1958) (a testamentary trustee has a power and duty to resist a claim by the
28 widow of the testator that the trust property was community property); *Bank of Am. Nat. Trust & Sav.*
Ass’n v. Long Beach Fed. Sav. & Loan Ass’n, 141 Cal. App. 2d 618, 624, 297 P.2d 443, 447 (Ca.
1956) (“The law governing the administration of trusts is that a trustee not only has the right, but it
is his duty, whenever necessary to the proper administration, preservation and execution of the trust
or to its defense”); *Republic Nat. Bank & Trust Co. v. Bruce*, 130 Tex. 136, 141, 105 S.W.2d 882,
885 (Comm’n App. 1937) (“The absolute and positive duty is imposed upon him [the trustee] to
defend the life of the trust whenever it is assailed, if the means of defense are known to him, or can

1 treatises¹¹ mandate Ms. Martin to defend the ELN Trust against Ms. Nelson's unfounded attack. In
2 light of the foregoing, this Court should dissolve the Injunction and allow the ELN Trust to pay for
3 its attorneys' fees and costs from the funds currently enjoined.

4 2. The Injunction Also Impedes The ELN Trust's Ability To Conduct The Usual
5 Course of Business.

6 The Injunction also impedes the Trustee's ability to manage and invest the ELN Trust
7 pursuant to Article III, Section 3.1 and Article XII, Section 12.1(b), Section 12.1(e), Section 12.1 (f),
8 Section 12.1(o), Section 12.1 (t), Section 12.1(v) and Section 12.1(aa) of the ELN Trust. In addition
9 to EDCR 5.85 and the terms of the ELN Trust, Nevada statutes¹² and treatises¹³ impose a duty on
10 trustees to invest trust assets so as to make them productive. However, the Trustees cannot do so with
11 the Injunction in place. It is noteworthy that there is no injunction in place impeding Ms. Nelson's

12 with diligence be discovered."); *In re Estate of Duffill*, 206 P. 42, 188 Cal. 536 (Ca. 1922) (duty to
13 resist attack on validity of trust by beneficiary).

14 ¹⁰ See NRS 163.375 ("A fiduciary may compromise, adjust, arbitrate, sue on or defend,
15 abandon or otherwise deal with and settle claims in favor of or against the estate or trust a the
16 fiduciary deems advisable. . ."); NRS 163.380 ("A fiduciary may employ and compensate, out of
17 income or principal or both and in such proportion as the fiduciary deems advisable, persons deemed
18 by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of
the trust, including, but not limited to, agents, accountants, brokers, attorneys at law, attorneys-in-
fact . . .").

19 ¹¹ See G. Bogert, *The law of Trusts and Trustees* § 581 (3d ed. 2010) ("Equity imposes
20 upon the trustee the duty of defending the integrity of the trust, if he has reasonable ground for
21 believing that the attack is unjustified or if he is reasonably in doubt on that subject."); Rest.2d
22 Trusts § 178 ("The trustee is under a duty to the beneficiary to defend actions which may result in
a loss to the trust estate . . .").

23 ¹² See NRS 164.715 ("A trustee shall invest and manage the trust property solely in the
24 interest of the beneficiaries"); NRS 164.740 (duty to comply with prudent investor rule); NRS
164.750 ("A trustee shall diversify the investments of the trust. . .").

25 ¹³ See 76 Am. Jur. 2d Trusts § 435 ("Under the general law . . . [a trustee] must exercise
26 his or her independent discretion and judgment in reference to the investment of funds, even where
27 broad discretionary power of investment is given, although provisions enlarging his or her power to
28 invest are strictly construed."); G. Bogert, *The law of Trusts and Trustees* § 611 (3d ed. 2010) ("The
duty to invest and make the trust property productive must be performed within a reasonable time,
considering the difficulty or ease of finding an appropriate investment and other circumstances.")

1 ability to operate the LSN Trust, of which she is a beneficiary. For this reason, the Injunction should
2 be dissolved.

3 **E. Ms. Nelson Cannot Meet The Self-Proclaimed Heightened Standard.**

4 The Opposition disregards the majority, if not all, of the cases cited in the Motion to Dissolve
5 Injunction, and summarily contends that Ms. Nelson can meet the self-proclaimed “heightened
6 standard.”¹⁴ Notwithstanding, Ms. Nelson has not and cannot meet the heightened standard (*i.e.*
7 likelihood of success on the merits and threat of irreparable harm) for the reasons set forth below.

8 First, Ms. Nelson failed to show a likelihood of success on the merits at the April 4, 2011,
9 hearing. The discussion regarding the Silver Slipper Transaction lasted a couple minutes and was
10 limited to Ms. Nelson’s Counsel expressing his “concern” regarding the Silver Slipper Transaction.¹⁵
11 No evidence and/or testimony regarding said transaction was introduced and/or considered by this
12 Court. In her Opposition Ms. Nelson now contends that she has a likelihood of success on the merits
13 of the case as “evidenced by the allegations in her Third-Party Complaint, and Eric’s very own
14 testimony.”¹⁶

15 As set forth in detail in the ELN Trust’s Motion to Dismiss,¹⁷ Ms. Nelson cannot show a
16 likelihood of success on the merits because her claims against the ELN Trust are, among other things,
17 barred by the statute of limitations under NRS 166.170 and rely upon alleged acts that are specifically
18 authorized by Chapter 166 of NRS. Ms. Nelson’s reliance upon Mr. Nelson’s purported testimony
19 is also misguided because under Nevada law, personal opinion of either spouse as to separate or
20 community character of property is of no moment whatsoever in determining legal status of that
21

22 ¹⁴ See Opp. at p. 10, ll. 18-23. Ms. Nelson also fails to meet the following standard set
23 forth in NRS 125.050 that a preliminary order may be entered if “it is made to appear probable to
24 the court that either party is about to do any act that would defeat or render an less effectual any
25 order which the court might ultimately make concerning the property or pecuniary interest. Other
than rely upon her self-serving statements that dissolving the Injunction

26 ¹⁵ See April 4, 2011, Video Transcript at 1:52:43.

27 ¹⁶ See Opp. at p. 10, ll. 1-2.

28 ¹⁷ See Motion to Dismiss, pp 7-11, on file herein.

1 property.¹⁸ On the effect of the opinion of a spouse as evidence of the separate or community
2 character of property, the court in *Re Pepper's Estate*, 158 Cal. 619, 625-26, 112 P. 62 (Cal. 1910)¹⁹
3 stated:

4 Whether the property was community or separate, was a question of
5 law, depending on the manner and time of its acquisition. The opinion
6 of Pepper [the husband] on this legal question was entitled to no
7 weight.

8 Ms. Nelson's logic is similarly flawed because settlement proposals are inadmissible to prove
9 the validity/invalidity of Ms. Nelson's claims,²⁰ and such testimony presupposed that the settlement
10 proposal would withstand the muster and absolute discretion of the Distribution Trustee of the ELN
11 Trust.²¹ In light of the foregoing, Ms. Nelson has not shown a likelihood of success on the merits.

12 Additionally, Ms. Nelson cannot and has not articulated how she would suffer irreparable
13 injury if the Injunction is dissolved. Ms. Nelson contends in her Opposition that there "would be no
14 realistic ability for Eric or the ELN Trust to pay [compensatory] damages to Lynita" if the Injunction
15 is dissolved.²² However, this contention is not only factually incorrect,²³ but more importantly it

16 ¹⁸ See *Hardy v. United States*, 918 F. Supp. 312, 317 (D. Nev. 1996) ("The personal
17 opinion of either spouse as to the character of the property is of no moment whatsoever."). See also
18 *Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) ("The opinion of either spouse as to
19 whether property is separate or community is of no weight whatever."); *In re Wilson's Estate*, 56
20 Nev. 353, 53 P.2d 339, 344 (1936) (court disregarded affidavit, even though it raises some doubt
regarding correctness of findings of the district court, because "it has been decided by this court, as
well as by appellate courts of other states, that the opinion of either spouse as to whether property
is separate or community is of no weight.").

21 ¹⁹ Overruled on other grounds by *In re Neilson's Estate*, 371 P.2d 745 (Cal. 1962).

22 ²⁰ See generally, NRS 48.105.

23 ²¹ See ELN Trust, Art. III, Section 3.3.

24 ²² See Opp. at p. 10, ll. 14-18.

25 ²³ Upon information and belief, the cumulative value of the ELN Trust, LSN Trust and
26 non trust assets after all debts are paid is approximately \$11,000,000.00, of which Mr. Nelson would
27 be entitled to \$5,500,000.00 if Ms. Nelson is successful in the underlying litigation. The \$450,000.00
28 the ELN Trust seeks is to purchase a valuable asset and is not being wasted. As indicated in the
Declaration of Eric L. Nelson, the purchase of Wyoming Downs is clearly worth at least
\$450,000.00.

disregards the general propositions that “[i]rreparable injury is suffered where monetary damages are difficult to ascertain or are inadequate,”²⁴ and injunctions are not upheld where the claimed injury merely constitutes a loss of money.²⁵ Since the value of cash proceeds received by the ELN Trust is known and/or is readily ascertainable, damages in the form of money, or other assets owned by the ELN Trust, will redress Ms. Nelson’s claim of entitlement to the proceeds from the Silver Slipper Transaction.

Ms. Nelson’s contention that policy of the State of Nevada as codified in NRS 125.050, and the Nevada Supreme Court’s and this Court’s rules, as stated in EDCR 5.85, is to preserve any assets subject to a community claim during the pendency of a divorce, rather than to allow such assets to be sold, transferred, encumbered during the proceedings²⁶ is inconsistent with the express provision of said rules. Indeed, EDCR 5.85(1), specifically allows the ELN Trust to transfer, encumber, sell or otherwise dispose of its property in “the usual course of businesses.” Ms. Nelson does not contend, nor can she, that the purchase of Wyoming Downs, which will occur in the “usual course of business,” is a bad investment.

In light of the foregoing, Nelson’s purported injury is not “irreparable,” thereby necessitating the dissolution of the Injunction.

F. Ms. Nelson’s Request That This Court Issue Another Injunction Be Issued Should Be Denied.

Ms. Nelson requests the issuance of another injunction if the Motion to Dissolve Injunction is granted.²⁷ Ms. Nelson’s request should be denied for the same reasons set forth above.

²⁴ *Danielson v. Local 275, Laborers Intern. Union of North America, AFL-CIO*, 479 F.2d 1033, 1037 (3rd Cir. 1973). *See also A.O. Smith Corp. v. F.T.C.*, 530 F.2d 515, 525 (3rd Cir. 1976) (defining “irreparable injury” as harm “of a peculiar nature, so that compensation in money cannot atone for it”); *In re Arthur Treacher’s Franchisee Litig.*, 689 F.2d 1137, 1145 (3^d Cir. 1982) (we have never upheld an injunction where the claimed injury constituted a loss of money, a loss capable of recoupment in a proper action at law).

²⁵ *See Danielson*, 479 F.2d at 1037.

²⁶ *See Opp.* at p. 10, ll. 18-23.

²⁷ *See id.* at p. 10, ll. 15-28.

EXHIBIT 1

EXHIBIT 1

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1. I have knowledge of the matters stated herein and would be competent to testify about them if called upon to do so.

3. I am an expert in the area of non-performing assets, and have been qualified to serve as an expert witness by the Federal Deposit Insurance Corporation, the United States Bankruptcy Court and the Clark County District Court regarding a number of different areas, including, but not limited to, valuing non-performing assets and auctioning real estate.

5. As Investment Trustee of the ELN Trust, I am the Manager of Dynasty Development Management, LLC. The ELN Trust is the sole member of Dynasty Development Management, LLC. A true and correct copy of the Operating Agreement of Dynasty Development Management, LLC is attached hereto as Exhibit A.

7. I am intimately familiar with Wyoming Downs since it was previously owned and managed by the ELN Trust until it was sold for approximately \$11,500,000.00 in or around 2006.

Page 1 of 2

1 this non-performing asset into a profitable performing asset. I also believe that Wyoming Downs
2 is clearly worth at least the \$450,000.00 purchase price.

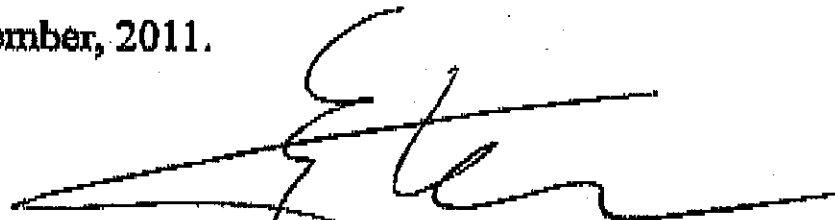
3 9. My opinion is based upon my familiarity with Wyoming Downs which I
4 gained from managing Wyoming Downs over the course of several years, during which time I was
5 able to create and foster numerous relationships with the Wyoming Racing Commission and the
6 local and State government.

7 10. Notwithstanding my foregoing opinions, I do not believe the sale will be able
8 to proceed if the Motion to Dissolve Injunction is denied because the ELN Trust has insufficient
9 assets to purchase Wyoming Downs with the June 9, 2011, Injunction in place. Consequently, it is
10 my opinion that the ELN Trust will suffer irreparable harm if the sale cannot proceed as scheduled.

11 11. The ELN Trust would not pursue the purchase of Wyoming Downs if I
12 believed that the terms were unreasonable or not in the best interests of the ELN Trust.

13 12. It is also imperative that the June 9, 2011, Injunction be vacated so that said
14 funds can be used to pay the ELN Trust's attorneys' fees and costs in this matter and in the United
15 States District Court case entitled *Paul R. Alanis, et al. v. Eric Nelson, et al.*, Case No. CV11-02583
16 and debts owed to third-party creditors.

17 DATED this 9th day of December, 2011.

18
19 

20 Eric L. Nelson, Investment Trustee of the Eric L.
21 Nelson Nevada Trust dated May 30, 2011

EXHIBIT “A”

- 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.

Page 691, line 21 (discussing MS land)

- 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. For –
- A. – for community wealth.

Page 697, line 21 (discussing Thelma's house on Pebble Beach)

- 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.
- ...
- 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 – to they would be comfortable and her sister wouldn't think there was anything – any foul play going on.

Page 704, line 22 (discussing Banone property division)

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

OCTOBER 19, 2010 TRIAL TESTIMONY - NELSON v. NELSON

(CROSS EXAMINATION OF ERIC NELSON - QUESTIONING BY MR. DICKERSON)

Page 40, line 18

- 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. . .

Page 41, line 4

- 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.

OCTOBER 20, 2010 TRIAL TESTIMONY - NELSON v. NELSONPage 223, line 9

- Jimmerson: Here you go, Judge. We're going to call this Option C.
- Eric: 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.

Page 226, line 6

- Eric: 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 –
- Jimmerson: All right. So then –
- Eric: – 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.

FILED
12/8/11

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

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON,

Defendant/Counterclaimant.

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

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

Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

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

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

v.

1 LYNITA SUE NELSON and ERIC
2 NELSON,

3 Purported Cross-Defendant and
4 Counterdefendant,

4 LYNITA SUE NELSON,

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

7 v.

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

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

21 OPPOSITION TO MOTION TO DISSOLVE INJUNCTION
22 AND
23 COUNTERMOTION FOR AN AWARD OF ATTORNEYS FEES AND COSTS

23 COMES NOW Defendant, LYNITA NELSON ("Lynita"), by and through her
24 attorneys, ROBERT P. DICKERSON, ESQ., and KATHERINE L. PROVOST, ESQ.,
25 of THE DICKERSON LAW GROUP, and responds to and opposes the Motion to
26 Dissolve Injunction filed by Counterdefendant/Crossdefendant/Third-Party Defendant
27 Lana Martin, as Distribution Trustee of the Eric L. Nelson Nevada Trust dated May
28 30, 2001 ("ELN Trust").

1 This Opposition is made and based upon the pleadings and papers on file herein,
2 the following Points and Authorities attached hereto, the attached Affidavit, and upon
3 any oral argument as this Court may entertain at the hearing on this matter.

4 DATED this 7th day of December, 2011.

5
6 THE DICKERSON LAW GROUP

7
8 By 

9 ROBERT P. DICKERSON, ESQ.
10 Nevada Bar No. 000945
11 KATHERINE L. PROVOST, ESQ.
12 Nevada Bar No. 008414
13 1745 Village Center Circle
14 Las Vegas, Nevada 89134
15 Attorneys for LYNITA NELSON

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POINTS AND AUTHORITIES

I. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

Lynita and Eric were married on September 17, 1983. They have been married for 28 years and are the parents of five (5) children born the issue of their marriage. Three of the parties' children are now adults. Custody of the remaining two (2) minor children was resolved by the parties' Stipulated Parenting Agreement signed October 15, 2008, and entered as an Order of this Court on February 8, 2010. Trial of the financial issues in this action began in August 2010, but remains unresolved.

From August, 2010, until August 9, 2011, Eric and Lynita were the only parties involved in this litigation. From the time of the parties' 2007 separation until June 2011, Eric and Lynita were in agreement that all property accumulated during their marriage, regardless of how titled or held, was community property subject to division by this Court. In fact, Eric provided counsel and this Court with multiple written options for how to divide the parties' estate in this divorce action. Certainly Eric did not propose division of the assets of the ELN Trust between himself and Lynita if he thought he had no legal title to such assets (or had not been acting like he had legal

1 title to such assets prior to testifying), or if he did not believe he had the power to
2 effectuate his unreasonable proposals if same were accepted by the Court, or Lynita.

3
4 On February 14, 2011, months before Eric changed his position in this
5 litigation, Lynita filed a Motion for Order to Show Cause, *et al.* ("Motion for Order
6 to Show Cause") concerning Eric's violations of the April 16, 2010 Behavior Order.
7 On April 4, 2011 this Court conducted a scheduled status check and hearing on
8 Lynita's Motion for Order to Show Cause. During this hearing Eric, who was
9 competently represented by David Stephens, Esq., chose to speak directly to the Court,
10 addressing his control over all of the assets at issue in this divorce action, including the
11 assets held in the name of the ELN Trust/Dynasty Development.

12 By the time of the April 4, 2011 hearing this Court was well informed of the
13 assets at issue in this divorce action. The only questions which remained for this Court
14 were questions of valuation. For this reason the Court appointed Larry Bertsch as its
15 independent expert. Well versed in the issues at hand, this Court entered its ruling on
16 Lynita's request to secure the anticipated proceeds from the sale of the parties' interest
17 in the Silver Slipper, requiring the following:

18 IT IS FURTHER ORDERED that any monies received by Plaintiff,
19 ERIC L. NELSON or any entity owned or controlled by Mr. Nelson,
20 related to his ownership interest in the Silver Slipper Casino/Dynasty
21 Development Group, LLC, shall be immediately turned over to his
counsel, David Stephens, Esq., to be placed into and held by Mr.
Stephens' in an interest bearing attorney trust account.

22 The instant motion characterizes this Court's April 4, 2011 verbal order, which
23 was entered as a written order on June 9, 2011, as an improper injunction.

24 On June 24, 2011, likely because he recognized that this action was not going
25 as he desired, Eric filed his Motion to Join Party, or in the Alternative, Dismiss Claims
26 Against the Eric L. Nelson Nevada Trust, dated May 1, 2001. The aforementioned
27 motion stated Eric's desire to join the Eric L. Nelson Nevada Trust, dated May 1, 2001
28 ("ELN Trust"), as a party to this litigation. Specifically, Eric asserted that complete

1 relief could not be accorded amongst the parties without the ELN Trust being named
2 as a party to this action; there could be no disposition of the action as any orders
3 entered by this Court could later be subject to challenge by the ELN Trust. On August
4 9, 2011, the parties, through counsel, stipulated to join the ELN Trust and LSN
5 Nevada Trust, dated May 1, 2001 (the "LSN Trust"), as necessary parties to this
6 action.

7 On August 19, 2011, Attorney Mark Solomon, on behalf of Lana Martin ("Ms.
8 Martin"), Distribution Trustee of the ELN Trust, filed an initial Notice of Appearance
9 followed by an Answer to Eric's Complaint for Divorce, as well as Counterclaims and
10 Cross-claims against Eric and Lynita, respectively. Ms. Martin, on behalf of the ELN
11 Trust, by way of her Answer, seeks a declaratory judgment that none of the property
12 held in the name of the ELN Trust is community property of Eric and Lynita Nelson,
13 and as such is not subject to distribution by this Court in the pending divorce
14 proceedings. Included in the property at issue is the \$1.568 million dollars recently
15 paid by the Silver Slipper Casino Venture, LLC (the "Silver Slipper") for the parties'
16 interest in the Silver Slipper. Such interest was held in the name of Dynasty
17 Development Group, LLC ("Dynasty"), of which Eric (as Investment Trustee of the
18 ELN Trust) is the managing member.

19 On September 30, 2011, Lynita filed her Answer to the claims asserted by the
20 ELN Trust and a Third-Party Complaint naming additional parties whose presence is
21 necessary now that Eric and Ms. Martin, on behalf of the ELN Trust, have decided it
22 is appropriate to assert the independent nature of the ELN Trust. Lynita's Third-Party
23 Complaint alleges multiple causes of action against Eric, and the ELN Trust, Ms.
24 Martin, Nola Harber ("Ms. Harber"), Rochelle McGowan ("Ms. McGowan"), and Joan
25 B. Ramos ("Ms. Ramos") as Third-Party Defendants. Lynita seeks for this Court to
26 recognize the ELN Trust as a illusory sham trust and Eric's alter ego, voiding all
27 arguments as to the independent nature of the trust and the applicable protections
28 afforded to a true spendthrift trust properly created and managed under Nevada law.

1 . . .

2 On October 27, 2011, \$1,568,000.00 was transferred into the blocked trust
3 account opened by Mr. Stephens in compliance with this Court's June 9, 2011 written
4 order. This blocked trust account is the same account utilized in this divorce action
5 to safeguard other assets. This account was *not* created for the benefit of the ELN
6 Trust. Rather, this account was established for the benefit of *Eric and Lynita Nelson*.

7 Ms. Martin, on behalf of the ELN Trust has brought the instant motion seeking
8 to dissolve the June 9, 2011 injunction and access to the monies held in Mr. Stephens'
9 trust account. She asks for such relief so as to have the ability to dissipate the monies
10 currently held in the trust account to, (1) defend against Mr. Nelson and Ms. Nelson's
11 claims of community and separate property; and (2) to invest and reinvest trust assets
12 in the Trustees sole discretion. Specifically, Ms. Martin states that she requires access
13 to these monies so the ELN Trust (i.e., Eric), "via interest in Dynasty,¹ can purchase
14 Wyoming Racing, LLC,² a horse racing track and RV park, for \$440,000.00."

15 **II. LEGAL ARGUMENT**

16 **A. THE HEIGHTENED REQUIREMENTS FOR INJUNCTIVE RELIEF AS ARGUED**
17 **BY THE ELN TRUST ARE NOT APPLICABLE IN DIVORCE ACTIONS**

18 NRS 33.010 defines the cases in which an injunction may be granted. An
19 injunction may be granted:

20 (1) When it shall appear by the complaint that the plaintiff is
21 entitled to the relief demanded, and such relief or any part thereof
22 consists in restraining the commission or continuance of the act

23 ¹ It is worthwhile to Note that the Dynasty being referred to with respect to the purchase of the
24 non-performing Wyoming racetrack is *not* the same Dynasty which held the parties' interest in the Silver
25 Slipper Casino. Rather, in violation of the Joint Preliminary Injunction, on April 26, 2011, Eric opened
26 yet another business entity, *Dynasty Development Management, LLC*, of which he is the sole officer/
27 member. The Dynasty which held the parties' interest in the Silver Slipper is *Dynasty Development*
28 *Group, LLC*. Both companies are Nevada corporations.

29 ² The asset Eric seeks to purchase is the real estate parcel more commonly known as the
30 Wyoming Downs" racetrack and adjoining RV park, inclusive of all furniture and furnishings, equipment,
31 inventory, trademarks, trade names, copyrights, etc.. Eric has already paid \$75,000 (source of funds is
32 unknown as Eric has repeatedly asserted that he has no income) in earnest money deposits toward this
33 purchase. Eric previously owned this same racetrack, which he sold in 2006.

1 complained of, either for a limited period or perpetually;

2 (2) When it shall appear by the complaint or affidavit that the
3 commission or continuance of some act, during the litigation, would
4 produce great or irreparable injury to the plaintiff;

5 (3) When it shall appear, during the litigation, that the defendant
6 is doing or threatens, or is about to do, or is procuring or suffering to be
7 done, some act in violation of the plaintiff's rights respecting the subject
8 of the action, and tending to render the judgment ineffectual.

9 As the ELN Trust correctly points out, the general rule is that requests for
10 injunctions must "be strictly complied with." *Commercial Sec. Bank v. Walker Bank &*
11 *Trust Co.*, 456 F.2d 132, 1356 (10th Cir. 1972). The general standard for injunctive
12 relief is set forth in NRCP 65(a) - (d). However, an exception to the strict
13 requirements for injunctive relief as found in NRCP 65 exists with respect to injunctive
14 relief requested in divorce actions. NRCP 65(f) states that in suits for divorce "the
15 court may make prohibitive or mandatory orders [i.e., injunctions], with or **without**
16 **notice or bond, as may be just.**" [Emphasis added] By its very language, NRCP 65
17 confirms that in certain situations, orders for injunctive relief issued in divorce actions
18 may be issued without notice or bond. All of the case law relief upon by the ELN Trust
19 in the instant motion, which address injunctions issued pursuant to NRCP 65, has no
20 application to this litigation. Similarly, the ELN Trust's reliance on violations of
21 EDCR 5.20 in support of its Motion to Dissolve Injunction is misguided. Parties to
22 a divorce action are absolutely entitled to a preliminary injunction preserving any assets
23 which are subject to a community claim and need not meet the high standard for
24 injunctive relief set forth in NRCP 65.

25 EDCR 5.20 sets forth the general rule with respect to obtaining preliminary
26 orders or injunctive relief in family division matters in the Eighth Judicial District
27 Court. EDCR 5.20(a) confirms that "Rule 2.10 governs all requests for temporary
28 restraining orders and preliminary injunctions except for orders or injunctions issued
under Rule 5.21 (residences), 5.22 (domestic violence) or 5.85 (joint preliminary
injunction)." EDCR 5.85 governs the issuance of joint preliminary injunctions in
divorce actions. This rule states:

1 ...

2 (a) At any time prior to the entry of a decree of divorce or
3 final judgment and upon the request of either party in a family
4 relations proceeding, a preliminary injunction will be issued by the
5 clerk against both parties to the action enjoining them and their
6 officers, agents, servants, employees or a person in active concert or
7 participation with them from:

8 (1) Transferring, encumbering, concealing, selling or
9 otherwise disposing of any of the joint, common or community property
10 of the parties or any property which is the subject of a claim of
11 community interest, except in the usual course of business or for the
12 necessities of life, without the written consent of the parties or the
13 permission of the court.

14 ...

15 (c) Once issued, the joint preliminary injunction will remain in
16 effect until a decree of divorce or final judgment is entered or until
17 modified or dissolved by the court.

18 (Emphasis added).

19 An initial joint preliminary injunction issued in this action on May 9, 2010.
20 Additional injunctive relief, including the relief set forth in this Court's June 9, 2011
21 Order, complies with the less stringent requirements of EDCR 5.85 and NRS 125.050,
22 which grants this Court the authority to issue injunctive orders outside of the
23 traditional standard for such relief. In fact, NRS 125.050 requires this Court to make
24 any orders necessary (including, but not limited to, issuance of an injunction) to
25 preserve the status quo and any property which will ultimately be ruled upon in this
26 matter:

27 NRS 125.050 Preliminary orders concerning property or pecuniary
28 interests.

29 If, after the filing of the complaint, it is made to appear probable to the
30 court that either party is about to do any act that would defeat or render
31 less effectual any order which the court might ultimately make concerning
32 the property or pecuniary interests, the court shall make such
33 restraining order or other order as appears necessary to prevent the
34 act or conduct and preserve the status quo pending final
35 determination of the cause.

36 In divorce actions the policy of the State of Nevada, as codified in NRS
37 125.050, and the Nevada Supreme Court's and this Court's rules, as stated in EDCR

1 5.85, is to preserve any assets subject to a community claim during the pendency of a
2 divorce, rather than to allow such assets to be sold, transferred, or encumbered during
3 the proceedings and award the injured spouse a paper judgment for monetary damages.
4 If allowed to continue his current course of action, Eric's purchase of the non-
5 performing Wyoming Downs racetrack will cause irreparable harm to Lynita. Eric
6 seeks this Court's approval to violate Nevada policy through his plan of action.

7 As entertained by NRCF 65(f), "the court may make prohibitive or mandatory
8 orders [i.e., injunctions], **with or without notice or bond**, as may be just" and this
9 Court's June 9, 2011 Order is such an Order. The June 9, 2011 Order should be
10 deemed a "restraining order or other order as appears necessary to prevent the act or
11 conduct and preserve the status quo pending final determination of the cause." NRS
12 125.050 and upheld as issued.

13 For the foregoing reasons, the ELN Trust's request to dissolve the injunction is
14 unfounded and should be denied.

15 **B. LYNITA IS STILL ENTITLED TO INJUNCTIVE RELIEF WHEN APPLYING THE**
16 **INAPPROPRIATE HEIGHTENED REQUIREMENTS TO THIS DIVORCE**
17 **ACTION**

18 In her Third Party Complaint, Lynita has requested entry of a temporary
19 restraining order, preliminary injunction, and permanent injunction prohibiting the
20 dissipation of any assets held in the name of the ELN Trust. "For a preliminary
21 injunction to issue the moving party must show that there is a likelihood of success on
22 the merits, and that the nonmoving party's conduct, should it continue, would cause
23 irreparable harm for which there is no adequate remedy at law." *Dept. of Conservation*
24 *and Natural Resources v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). However,
25 as explained above, this rule of law only applies to preliminary injunctions in non-
26 domestic, civil cases.

27 Even if the Court were to apply the incorrect standard for issuance of a
28 preliminary injunction in a divorce action, Lynita would still be entitled to injunctive

1 relief. Lynita has a high likelihood of success on the merits of this case, as evidenced
2 by the allegations in her Third-Party Complaint, and Eric's very own testimony.
3 Throughout this litigation Eric has made definition and valuation of the assets at issue
4 in this case an ever moving target. Now, once again, when it appears that such issues
5 are nearing resolution, Eric seeks to alter the status quo, incorporating yet another
6 business entity, and bidding \$450,000 in cash assets, for the purchase of a non-
7 performing racetrack. Through Ms. Martin, Eric seeks this Court's tacit consent to his
8 purchase of the Wyoming Downs racetrack for \$450,000, taking cash preserved in Mr.
9 Stephens' trust account and trading cash for a non-performing asset. If Eric and Third-
10 Party Defendants' management, and dissipation of the parties' community assets from
11 the ELN Trust is allowed to continue, there will be no adequate remedy at law.
12 Movants' desire to continue to dissipate community assets to purchase non-performing
13 real estate should be viewed for what it truly is – yet another effort to stymie
14 settlement of this case, and to force Lynita to accept an unfavorable settlement.

15 The ELN Trust argues that compensatory damages would provide an adequate
16 remedy to Lynita, and an injunction cannot be used simply to maintain cash assets.
17 However, absent the injunctive relief provided by the June 9, 2011 Order, there would
18 be no realistic ability for Eric or the ELN Trust to pay such damages to Lynita. The
19 policy of the State of Nevada as codified in NRS 125.050, and the Nevada Supreme
20 Court's and this Court's rules, as stated in EDCR 5.85, is to preserve any assets subject
21 to a community claim during the pendency of a divorce, rather than to allow such
22 assets to be sold, transferred, or encumbered during the proceedings and award the
23 injured spouse a paper judgment for monetary damages. Accordingly, the June 9, 2011
24 injunction should be preserved.

25 Alternatively, if this Court believes the June 9, 2011 Order must be dissolved,
26 nothing prohibits this Court from issuing another injunction in its place, now that the
27 ELN Trust is a party to this action, has notice of the potential for the issuance of such
28 an injunction, and there is valid cause in equity as supported by the attached Affidavit

1 for such an order to issue. Such substitute injunction should requiring the \$1.568
2 million dollars to remain held in Mr. Stephens' trust account, until the resolution of
3 this divorce action.

4 IV. COUNTERMOTION

5 A. Lynita Should Be Awarded Attorneys Fees and Costs For Having To Defend 6 Against The Frivolous Motions to Dissolve Injunction

7 NRS 125.040 provides:

8 1. In any suit for divorce the court may, in its discretion, upon
9 application by either party and notice to the other party, require each
party to pay moneys necessary to assist the other party in accomplishing
one or more of the following:

10 ...

11 (c) To enable the other party to carry on or defend such suit.

12 (Emphasis added). NRS 18.010 permits litigants to recover their attorneys' fees where
13 the Court finds that a claim or defense of an opposing party was brought without
14 reasonable ground or to harass the prevailing party. EDCR 7.60(b)(1) permits the
15 Court to sanction a party for presenting to the court a motion "which is obviously
16 frivolous, unnecessary or unwarranted." In addition to denying the ELN Trust's
17 request to dissolve the June 9, 2011 injunction, the Court should enter an Order
18 awarding Lynita her fees and costs incurred in defending against the Motion to
19 Dissolve Injunction.

20 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d
21 31, 33 (1969), in awarding reasonable fees and costs to Lynita this Court will need to
22 make specific findings regarding the quality of her advocates, the character of the work
23 done in this motion, the work actually performed, and the result. It is impossible at
24 this time to provide the Court with a total amount of time spent towards this
25 Opposition and Countermotion, as a Reply to Movants' opposition to Lynita's
26 Countermotion, and a Court appearance, will undoubtedly be required. To assist the
27 Court in making the other necessary findings, however, Lynita submits that this motion
28 is only necessary as a result of the behavior of Eric Nelson. Lynita's lead counsel

1 charges a standard hourly fee of \$550.00 for his services. Associate counsels' hourly
2 fees are \$400.00. Both fees are customary and reasonable in this locality for similarly
3 situated persons and cases and the amount of time spent by counsel in their
4 representation of Lynita in this action. Mr. Dickerson has been practicing law for 35
5 years, with the last 20 plus years devoted to the practice of family law. He is a former
6 President of the State Bar of Nevada, and Clark County Bar Associations, and is AV
7 rated both as to skill and ethics. Ms. Provost has been licensed to practice law in
8 Nevada since 2003. She has been appointed by her peers to the State Bar of Nevada,
9 Family Law Executive Council and noted for performance by Super Lawyers. Further,
10 Ms. Provost routinely lectures in the area of family law. Mr. Karacsonyi has been
11 licensed to practice law in Nevada since 2007. He too has been appointed by his peers
12 to the State Bar of Nevada Family Law Executive Council. The Dickerson Law Group
13 is an AV Preeminent rated law firm, the highest level of professional excellence. All
14 attorneys at the firm have extensive experience in the area of family law, and a
15 reputation for competency. The rates charged by Lynita's counsel are reasonable in
16 light of the experience of the law firm, and the character of work involved in the instant
17 proceedings.

18 ...

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27 ...

28 ...

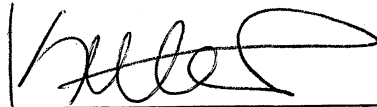
1 V. CONCLUSION

2 For the reasons set forth above, Lynita respectfully requests that the Court deny
3 the Motion to Dissolve Injunction in its entirety, and award her the fees and costs she
4 has incurred, or will incur, in the preparation and presentation of this Opposition and
5 Counter-motion.

6 DATED this 7th of December, 2011.

7 THE DICKERSON LAW GROUP

8
9 By


ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for LYNITA NELSON

AFFIDAVIT OF KATHERINE L. PROVOST, ESQ.

STATE OF NEVADA }
COUNTY OF CLARK }

KATHERINE L. PROVOST, ESQ., being first duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada, and I am a senior associate attorney with THE DICKERSON LAW GROUP, attorneys of record for the above-named Defendant, LYNITA NELSON ("Lynita").

2. I have personal knowledge of the facts set forth herein, and to the best of my knowledge, swear that the facts as set forth herein are true and accurate.

3. I have prepared and read the foregoing Opposition to Motion to Dissolve Injunction and Countermotion for an Award of Attorneys Fees and Costs, the ("Opposition") and swear, to the best of my knowledge, that the facts as set forth therein are true and accurate, save and except any fact stated upon information and belief, and as to such facts I believe them to be true. I hereby reaffirm said facts as if set forth fully herein to the extent that they are not recited herein. If called upon by this Court, I will testify as to my personal knowledge of the truth and accuracy of the statements contained therein.

4. Lynita and Eric Nelson were married on September 17, 1983. They have been married for 28 years and are the parents of five (5) children born the issue of their marriage. Three of the parties' children are now adults. Custody of the remaining two (2) minor children was resolved by the parties' Stipulated Parenting Agreement signed October 15, 2008, and entered as an Order of this Court on February 8, 2010. Trial of the financial issues in this action began in August 2010, but remains unresolved.

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5 had legal title to such assets prior to testifying), or if he did not believe he had the
6 power to effectuate his unreasonable proposals if same were accepted by the Court, or
7 Lynita.

8 6. On February 14, 2011, months before Eric changed his position in this
9 litigation, Lynita filed a Motion for Order to Show Cause, *et al.* ("Motion for Order
10 to Show Cause") concerning Eric's violations of the April 16, 2010 Behavior Order.
11 On April 4, 2011 this Court conducted a scheduled status check and hearing on
12 Lynita's Motion for Order to Show Cause. During this hearing Eric, who was
13 competently represented by David Stephens, Esq., chose to speak directly to the Court,
14 addressing his control over all of the assets at issue in this divorce action, including the
15 assets held in the name of the ELN Trust/Dynasty Development.

16 7. By the time of the April 4, 2011 hearing this Court was well informed of
17 the assets at issue in this divorce action. The only questions which remained for this
18 Court were questions of valuation. For this reason the Court appointed Larry Bertsch
19 as its independent expert. Well versed in the issues at hand, this Court entered its
20 ruling on Lynita's request to secure the anticipated proceeds from the sale of the
21 parties' interest in the Silver Slipper. The Court's April 4, 2011 verbal order, which
22 was entered as a written order on June 9, 2011, has been characterized in the instant
23 motion an improper injunction.

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25 going as he desired, Eric filed his Motion to Join Party, or in the Alternative, Dismiss
26 Claims Against the Eric L. Nelson Nevada Trust, dated May 1, 2001. The
27 aforementioned motion stated Eric's desire to join the Eric L. Nelson Nevada Trust,
28 dated May 1, 2001 ("ELN Trust"), as a party to this litigation. Specifically, Eric

1 asserted that complete relief could not be accorded amongst the parties without the
2 ELN Trust being named as a party to this action; there could be no disposition of the
3 action as any orders entered by this Court could later be subject to challenge by the
4 ELN Trust. On August 9, 2011, the parties, through counsel, stipulated to join the
5 ELN Trust and LSN Nevada Trust, dated May 1, 2001 (the "LSN Trust"), as necessary
6 parties to this action.

7 9. On August 19, 2011, Attorney Mark Solomon, on behalf of Lana Martin
8 ("Ms. Martin"), Distribution Trustee of the ELN Trust, filed an initial Notice of
9 Appearance followed by an Answer to Eric's Complaint for Divorce, as well as
10 Counterclaims and Cross-claims against Eric and Lynita, respectively. Ms. Martin, on
11 behalf of the ELN Trust, by way of her Answer, seeks a declaratory judgment that none
12 of the property held in the name of the ELN Trust is community property of Eric and
13 Lynita Nelson, and as such is not subject to distribution by this Court in the pending
14 divorce proceedings. Included in the property at issue is the \$1.568 million dollars
15 recently paid by the Silver Slipper Casino Venture, LLC (the "Silver Slipper") for the
16 parties' interest in the Silver Slipper. Such interest was held in the name of Dynasty
17 Development Group, LLC ("Dynasty"), of which Eric (as Investment Trustee of the
18 ELN Trust) is the managing member.

19 10. On September 30, 2011, Lynita filed her Answer to the claims asserted
20 by the ELN Trust and a Third-Party Complaint naming additional parties whose
21 presence is necessary now that Eric and Ms. Martin, on behalf of the ELN Trust, have
22 decided it is appropriate to assert the independent nature of the ELN Trust. Lynita's
23 Third-Party Complaint alleges multiple causes of action against Eric, and the ELN
24 Trust, Ms. Martin, Nola Harber ("Ms. Harber"), Rochelle McGowan ("Ms.
25 McGowan"), and Joan B. Ramos ("Ms. Ramos") as Third-Party Defendants. Lynita
26 seeks for this Court to recognize the ELN Trust as a illusory sham trust and Eric's alter

27 ...

28 ...

1 ego, voiding all arguments as to the independent nature of the trust and the applicable
2 protections afforded to a true spendthrift trust properly created and managed under
3 Nevada law. These questions of fact and law are yet to be resolved.

4 11. On October 27, 2011, \$1,568,000.00 was transferred into the blocked
5 trust account opened by Mr. Stephens in compliance with this Court's June 9, 2011
6 written order. This blocked trust account is the same account utilized in this divorce
7 action to safeguard other assets. This account was *not* created for the benefit of the
8 ELN Trust. Rather, this account was established for the benefit of *Eric and Lynita*
9 *Nelson*.

10 12. Ms. Martin, on behalf of the ELN Trust has brought the instant motion
11 seeking to dissolve the June 9, 2011 injunction and access to the monies held in Mr.
12 Stephens' trust account. She asks for such relief so as to have the ability to dissipate
13 the monies currently held in the trust account to, (1) defend against Mr. Nelson and
14 Ms. Nelson's claims of community and separate property; and (2) to invest and
15 reinvest trust assets in the Trustees sole discretion. Specifically, Ms. Martin states that
16 she requires access to these monies so the ELN Trust (i.e., Eric), "via interest in
17 Dynasty,³ can purchase Wyoming Racing, LLC,⁴ a horse racing track and RV park, for
18 \$440,000.00."

19 ...

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22
23 ³ It is worthwhile to Note that the Dynasty being referred to with respect to the purchase of the
24 non-performing Wyoming racetrack is *not* the same Dynasty which held the parties' interest in the Silver
25 Slipper Casino. Rather, in violation of the Joint Preliminary Injunction, on April 26, 2011, Eric opened
yet another business entity, *Dynasty Development Management, LLC*, of which he is the sole officer/
member. The Dynasty which held the parties' interest in the Silver Slipper is *Dynasty Development*
Group, LLC. Both companies are Nevada corporations.

26
27 ⁴ The asset Eric seeks to purchase is the real estate parcel more commonly known as the
28 Wyoming Downs" racetrack and adjoining RV park, inclusive of all furniture and furnishings, equipment,
inventory, trademarks, trade names, copyrights, etc.. Eric has already paid \$75,000 (source of funds is
unknown as Eric has repeatedly asserted that he has no income) in earnest money deposits toward this
purchase. Eric previously owned this same racetrack, which he sold in 2006.

1 13. Continued injunctive relief is appropriate at this time as Lynita has a high
2 likelihood of success on the merits of this case, as evidenced by the allegations in her
3 Third-Party Complaint as detailed in the foregoing Opposition to the Motion to
4 Dissolve Injunction.

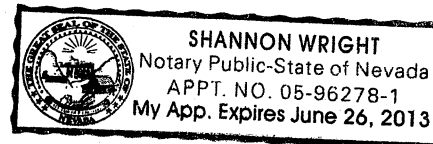
5 Further your Affiant sayeth naught.

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KATHERINE L. PROVOST

Subscribed and sworn to before me
this 7th day of December, 2011.


NOTARY PUBLIC in and for said
County and State.



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AAPP 2059

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NOTC
Larry L. Bertsch, CPA, CFF
Nicholas S. Miller, CFE
LARRY L. BERTSCH, CPA & ASSOCIATES
265 East Warm Springs Rd., Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 471-7223
Facsimile: (702) 471-7225

Forensic Accountants

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

ERIC L. NELSON,
Plaintiff,

v.

LYNITA SUE NELSON,
Defendant.

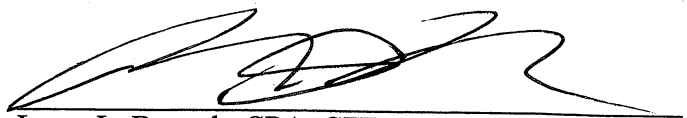
Case No. D-09-411537-D
Dept. O

**NOTICE OF FILING
SOURCE AND APPLICATION OF FUNDS
FOR ERIC L. NELSON NEVADA TRUST**

Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY L. BERTSCH, CPA & ASSOCIATES, file the Source and Application of Funds for Eric L. Nelson Nevada Trust, a copy of which is attached as **Exhibit "A."**

DATED this 8 day of December, 2011.

LARRY L. BERTSCH CPA & ASSOCIATES



Larry L. Bertsch, CPA, CFF
Nicholas S. Miller, CFE
265 East Warm Springs Rd., Suite 104
Las Vegas, Nevada 89119

Forensic Accountants

CERTIFICATE OF SERVICE

I certify that on the 8 day of December, 2011, I mailed a copy of the foregoing
NOTICE OF FILING SOURCE AND APPLICATION OF FUNDS FOR ERIC L. NELSON
NEVADA TRUST to the following at their last known address, by depositing the same in the
United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

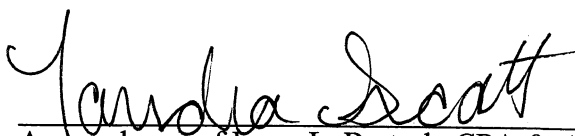
Rhonda K. Forsberg, Esq.
IVEY FORSBERG & DOUGLAS
1070 West Horizon Ridge Parkway, #100
Henderson, NV 89012

Attorneys for Plaintiff Eric L. Nelson

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134

Attorneys for Defendant Lynita Sue Nelson

Mark A. Solomon, Esq.
Jeffery P. Luszeck, Esq.
SOLOMON DWIGGINS FREER
& MORSE, LTD.
9060 W. Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Eric L. Nelson Nevada
Trust



An employee of Larry L. Bertsch, CPA & Associates

EXHIBIT A

Source and Application of Funds
For
Eric L. Nelson Nevada Trust

From January 1, 2009 through May 31, 2011

District Court Family Division

Clark County, Nevada

Case Number: D-09-411537-D

Department O

Report Date: December 7, 2011

Prepared by:

Larry L. Bertsch, CPA, CFF

&

Nicholas Miller, CFE, CSAR, MBA

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e)	Chad Ramos (Eric's Nephew (Nola's son))	18
f)	Eric T. Nelson (Eric's Nephew (Paul's son))	19
g)	Jesse Harber (Eric's Nephew (Nola's son))	19
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Eric L. Nelson Nevada Trust ("ELN NV")

From January 1, 2009 through May 31, 2011

Sources of Cash

Beginning Cash/Equivalents	2,767,381.07	(A)
Affiliated Companies	638,300.00	(B)
Related Individuals	615,121.34	(C)
C.D. Redemption	2,504,535.34	(D)
Sale of Real Property	216,598.96	(E)
Other Income	1,802,529.11	(F)
Rental Income	159,343.59	(G)
Interest Income	117,809.82	(H)
Refunds	110,597.52	(I)
Line of Credit	2,442,368.17	(J)
Total Sources	<u>11,374,584.92</u>	

Applications of Cash

Eric Nelson	1,334,231.36	(K)
Lynita Nelson	42,180.00	(L)
Children Payments	206,848.69	(M)
Related Individuals	1,433,287.00	(N)
Investments	2,386,465.87	(O)
Line of Credit	2,972,731.58	(P)
Professionals	29,186.68	(Q)
Intercompany	2,545,295.35	(R)
Rental Expenses	216,861.16	(S)
Operating Expenses	10,820.95	(T)
Other Individuals	29,479.80	(U)
Other Companies	152,075.22	(V)
Ending Cash Balance	15,121.26	(W)
Total Applications	<u>11,374,584.92</u>	

Footnotes to the Financial Statement

The following report is based upon Peachtree Accounting records produced, written statements from Eric Nelson regarding various transactions and supporting documentation provided.

Sources of Cash

Beginning Cash/Equivalents	2,767,381.07	(A)
Affiliated Companies	638,300.00	(B)
Related Individuals	615,121.34	(C)
C.D. Redemption	2,504,535.34	(D)
Sale of Real Property	216,598.96	(E)
Other Income	1,802,529.11	(F)
Rental Income	159,343.59	(G)
Interest Income	117,809.82	(H)
Refunds	110,597.52	(I)
Line of Credit	2,442,368.17	(J)
Total Sources	<u>11,374,584.92</u>	

- A. Beginning Cash & Cash Equivalents – As of January 1, 2009, ELN NV began the year with the following beginning balances within the following accounts:

Beginning Cash	
Ameriprise Stock	19,380.62
Ameriprise Money Market Account	8,059.91
Certificate of Deposit 4118	2,600,000.00
Money Market Account 4215	110,427.13
Checking	29,513.41
Total Beginning Cash/Equivalent	<u>2,767,381.07</u>

B. Affiliated Companies –

- In 2009, ELN NV received \$383,000 from Eric Nelson Auctioneering, Inc.
- In 2009, ELN NV received \$5,000 from Emerald Bay Mississippi, LLC
- In 2010, ELN NV received \$250,000 from Banone LLC.

- C. Related Individuals – During 2009 and 2010, the following individuals deposited money into ELN NV:

Name	Amount	Relationship	
Brock Nelson	3,000.00	Eric's Nephew	(a)
Eric T Nelson	35,000.00	Eric's Nephew	(b)
Harber Investments LLC	6,930.06	Eric's Sister	(c)
Eric Nelson	70,191.28		(d)
	115,121.34		

- a) Brock Nelson – Brock Nelson deposited \$3,000 in August 2009. According to the Peachtree records of ELN NV¹, the deposit was as a result of a prior 2009 loan to Element Iron & Design, LLC for \$50,000. In 2009, Element Iron & Design borrowed an additional \$6,000.00.
- b) Eric T Nelson - Eric T. Nelson deposited \$35,000 as a result of a loan with Eric Nelson Auctioneering.
- c) Harber Investments LLC - Harber Investments, LLC deposited the following amounts for 2009 and 2010:

Date	Amount	Explanation
02/03/09	1,000.00	Lindell Rent
03/03/09	1,000.00	Lindell Rent
06/04/09	1,000.00	Lindell Rent
06/08/09	2,726.31	reimbursement for Gateway fees
07/13/09	366.25	Lindell R&M Expenses
01/26/10	837.50	reimbursement for gateway lot fees
	<u>6,930.06</u>	

¹ See Section N(b) to this report.

d) Eric Nelson (Personal) - Eric Nelson deposited the following amounts:

Date	Amount
07/15/09	500,000.00
11/03/09	10,000.00
12/02/09	10,000.00
01/01/10	35,953.29
03/15/10	14,237.99
	<u>570,191.28</u>

The 7/15/09 deposit is recorded in Peachtree as "Contributions-Eric Nelson". It appears as though the deposit originated from the Mellon Investment account.

- D. C.D. Redemption – In 2009, ELN NV received \$2,504,535.34 from the redemption of Certificate of Deposits (C.D.). The entries were recorded as Eric Nelson Capital Contribution.
- E. Sale of Real Property – On June 3, 2009, ELN NV received \$143,867.38 from the sale of property recorded as "Provo Condo". On October 6, 2009, Banone, LLC ("Banone") sold a house located at 11421 W Cocopah in Arizona for \$72,731.58. The proceeds were wired directly to the Mellon Line of Credit².
- F. Other Income – On March 13, 2009, ELN NV received a wire for \$1,800,000 which is recorded as "Wire from Mike for FDIC". Eric represented that this wire related to a third party that bought one of the FDIC notes in the Sugar Daddy's transaction. The money was wired into ELN NV and then onto the FDIC for the total amount due³. In addition, on ELN NV received \$2,529.11 from the Silver Slipper Casino and recorded as "Invoice: June-July Travel".

² Refer to Section P – Line of Credit of this report for information regarding payment.

³ Refer to Section O of this report regarding the payment to the FDIC.

- G. Rental Income – ELN NV received rental income relating to the house located in Mississippi (Arnold house), and the office building located in Las Vegas (Lindell office building). The following chart shows the monthly rents collected for these two properties:

	Arnold		
	2009	2010	2011
Jan	431.25	432.00	432.00
Feb	450.00	450.00	450.00
Mar	450.00	450.00	375.00
Apr	400.00		437.46
May	450.00		410.00
June	450.00		
July	450.00		
Aug	303.25		
Sept			
Oct	310.20	430.88	
Nov	450.00	450.00	
Dec	450.00	450.00	
	4,594.70	2,662.88	2,104.46

	Lindell		
	2009	2010	2011
Jan	16,940.00	10,280.00	
Feb	4,130.00	2,930.00	
Mar	6,860.00	9,030.00	
Apr	8,060.00	4,645.55	
May	10,060.00	8,000.00	
June*	10,530.00		
July	8,930.00		
Aug	10,173.00		
Sept	8,173.00		
Oct	12,530.00		
Nov	5,130.00		
Dec	13,580.00		
	115,096.00	34,885.55	-

*Starting in June of 2010, monthly rental payments for Lindell were deposited into Banone, LLC.

H. Interest Income – During 2009 through 2011, ELN NV received the following amounts interest:

Name	Amount	
Bank Interest	12,859.72	(a)
Dominick Cvitanovich	42,500.00	(b)
Frank Sorris Note	62,450.10	(c)
	<u>117,809.82</u>	

a) Bank Interest – This interest was as a result of the Certificate of Deposits and Money Market accounts of ELN NV.

b) Dominick Cvitanovich – These payments are as a result of \$200,000 note prior to January 1, 2009 with ELN NV. Eric has stated that this individual is an employee of the Silver Slipper Casino.

c) Frank Soris Note – ELN NV received the following payments from US Loan Servicing relating to the note with Frank Soris⁴:

	2009	2010
Jan	6,245.01	
Feb	6,245.01	
Mar	6,245.01	6,245.01
Apr	6,245.01	
May	6,245.01	
June	6,245.01	
July	6,245.01	
Aug	6,245.01	
Sept	6,245.01	
Oct		
Nov		
Dec		
	<u>56,205.09</u>	<u>6,245.01</u>

⁴ Further explanation of the transaction is in Section V(c) of this report.

- I. Refunds – From January 2009 through May 2011, ELN NV received refunds amounting to \$110,597.52. Of this amount, \$106,184.02 relates to an IRS tax refund while the other \$4,413.50 relate to various refunds for past overpayments of expenses.
- J. Line of Credit – On Average, ELN NV received \$20,000 a month from the Line of credit with Mellon Bank. However, in January 2009, ELN NV received an additional \$100,000 withdrawal and in April 2009, ELN NV received an additional \$500,000 which was paid back to the Line of Credit the same month. On January 29, 2010, \$1,882,368.17 was drawn against the Line of Credit for the following: \$620,000.00 to Banone⁵, \$742,368.17 to “Chicago Title for Cal Nelson” and \$520,000.00 to “City National Bank for Cal Nelson”. The following is a chart explaining the monthly amounts deposited from the Line of Credit.

	2009	2010	2011
Jan	120,000.00	1,282,368.17	20,000.00
Feb	20,000.00	20,000.00	20,000.00
Mar	20,000.00	20,000.00	20,000.00
Apr	520,000.00	20,000.00	20,000.00
May	20,000.00	20,000.00	20,000.00
June	20,000.00	20,000.00	
July	20,000.00	20,000.00	
Aug	20,000.00	20,000.00	
Sept	20,000.00	20,000.00	
Oct	20,000.00	20,000.00	
Nov	20,000.00	20,000.00	
Dec	20,000.00	20,000.00	
	840,000.00	1,502,368.17	100,000.00

⁵ The payment of \$620,000 to Banone is accounted for on Banone’s report as a deposit from the Line of credit therefore the transaction has been removed from this report.

Applications of Cash

Eric Nelson	1,334,231.36	(K)
Lynita Nelson	42,180.00	(L)
Children Payments	206,848.69	(M)
Related Individuals	1,433,287.00	(N)
Investments	2,386,465.87	(O)
Line of Credit	2,972,731.58	(P)
Professionals	29,186.68	(Q)
Intercompany	2,545,295.35	(R)
Rental Expenses	216,861.16	(S)
Operating Expenses	10,820.95	(T)
Other Individuals	29,479.80	(U)
Other Companies	152,075.22	(V)
Ending Cash Balance	15,121.26	(W)
Total Applications	<u>11,374,584.92</u>	

- K. Eric Nelson – Between January 2009 and May 2011, Eric Nelson received \$1,243,623.47 in payments to himself as well as an additional \$90,607.89 in expenses.

The following chart details the payments made directly to Eric:

	Direct Payments		
	2009	2010	2011
Jan	100,000.00		16,000.00
Feb ⁶	500,000.00	8,000.00	8,000.00
Mar	-	46,123.47	8,000.00
Apr	100,000.00	16,000.00	8,000.00
May	7,500.00	8,000.00	9,000.00
June	353,000.00		
July			
Aug			
Sept		27,000.00	
Oct		13,000.00	
Nov		8,000.00	
Dec		8,000.00	
	<u>1,060,500.00</u>	<u>134,123.47</u>	<u>49,000.00</u>

⁶ The February 2009 transaction of \$500,000 was recorded in Peachtree as Eric Nelson Draw. As such, the amount has been recorded as a distribution to Eric Nelson Personally.

The following chart details the payments for Eric's expenses:

	Expenses		
	2009	2010	2011
Jan	1,000.00	1,850.00	
Feb	1,770.89	274.30	
Mar	6,913.57	1,000.00	
Apr	4,808.85		
May	186.29	100.00	68.36
June	4,500.93		
July	48,714.32		
Aug	2,664.32	3,000.00	
Sept	9,790.98	1,012.80	
Oct			
Nov		581.58	
Dec	2,359.51	11.19	
	82,709.66	7,829.87	68.36

The types of transactions listed in the Eric's expenses include payments for the following:

- Automobile Purchase (\$47,351.94 on July 8, 2009)
- Charitable contributions
- Expenses designated by Eric Nelson to be personal
- Gifts to Individuals for Wedding, Graduation, and/or Birthday
- Gym Memberships
- Las Vegas Hotels
- Music Service
- Restaurants
- Sports Tickets
- Vacation

- L. Lynita Nelson - Between January 2009 and May 2011, Lynita Nelson received \$41,400 in direct payments, and \$780.00 in expenses paid by ELN NV. The following chart explains the various payments:

Date	Amount	Payee	Description
01/05/09	6,000.00	Lynita Nelson	
02/05/09	6,400.00	Lynita Nelson	
03/06/09	6,000.00	Lynita Nelson	
04/14/09	5,000.00	Lynita Nelson	
05/05/09	10,000.00	Lynita Nelson	
06/25/09	8,000.00	Lynita Nelson	
08/17/09	780.00	Elder Air	a/c repair-Lynita Nelson
	<u>42,180.00</u>		

- M. Children's Payments - Between January 2009 and May 2011, ELN NV made payments to children directly and/or toward children related expenses. The following is a description of the direct payments and expenses paid on behalf of ELN NV:

Child Name	Amount	Reference
Amanda Stromberg	36,684.84	(a)
Aubrey Nelson	94,559.14	(b)
Carli Nelson	22,392.00	(c)
Erica Nelson	19,755.91	(d)
Garett Nelson	33,456.80	(e)
	<u>206,848.69</u>	

- a) Amanda Stromberg - Amanda is the adult daughter of Eric and Lynita Nelson. Amanda is married to Chris Stromberg. Amanda received the following distributions and/or expenses:

Direct Payments	2,752.84
Education	33,622.00
	<u>36,374.84</u>

- b) Aubrey Nelson – Aubrey is the adult daughter of Eric and Lynita Nelson. Aubrey received the following distributions and/or expenses:

Direct Payments	64,250.00
Personal Expenses	16,571.14
Medical	3,750.00
Housing	9,988.00
	<u>94,559.14</u>

- c) Carli Nelson – Carli is the minor daughter to Eric and Lynita. Carli received the following distributions and/or expenses:

Education	8,035.00
Personal Expenses	14,332.00
Medical	25.00
	<u>22,392.00</u>

- d) Erica Nelson – Erica is the adult daughter to Eric and Lynita Nelson. Erica received the following distributions and/or expenses:

Direct Payments	5,500.00
Education	13,853.41
Personal Expenses	402.50
	<u>19,755.91</u>

- e) Garett Nelson – Garett is the minor son to Eric and Lynita Nelson. Garett received the following distributions and/or expenses:

Automobile	28,186.06
Personal Expenses	5,270.74
	<u>33,456.80</u>

N. Related Individuals - Between January 2009 and May 2011, ELN NV made payments to related individuals directly and/or toward these related individuals expenses. The following is a description of the direct payments and expenses paid on behalf of ELN NV:

Name	Amount	Relationship	Reference
Aleda Nelson	23,600.00	Eric's Sister	(a)
Brock Nelson	6,000.00	Eric's Nephew (Cal's son)	(b)
Cal Nelson	1,304,368.17	Eric's Brother	(c)
Carlene Gutierrez	30,000.00	Eric's Sister	(d)
Chad Ramos	3,000.00	Eric's Nephew (Nola's son)	(e)
Eric T. Nelson	5,000.00	Eric's Nephew (Paul's son)	(f)
Jesse Harber	25,025.00	Eric's Nephew (Nola's son)	(g)
Paul Harber	13,318.83	Eric's Brother-in-law (Nola's husband)	(h)
Paul Nelson	19,975.00	Eric's Brother	(i)
Ryan Nelson	3,000.00	Eric's Nephew (Paul's son)	(j)
	<u>1,433,287.00</u>		

a) Aleda Nelson (Eric's Sister) – In 2009, Nelson Auctioneering, a company owned and operated by Aleda Nelson (“Aleda”), received payments amounting to \$23,600.00. Eric produced a copy of a 2009 IRS form 1099 for Aleda Nelson in the amount of \$23,600.00. As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

Date	Amount	Payee	Description
02/26/09	21,200.00	Nelson Auctioneering	Co-Broker commission
02/26/09	2,400.00	Nelson Auctioneering	
	<u>23,600.00</u>		

The 2/26/09 transaction results from a transaction with Hudson and Marshall of Texas Inc. The provided backup includes a copy of check # 20278, dated 2/18/09 from Hudson and Marshall to Eric Nelson Auctioneering for \$22,000.00. The check includes the words "License Use – 0493 CO/NV". An additional check stub dated 1/21/09 was produced with an amount of \$1,200.00. The Payee is Eric Nelson Auctioneering, Inc., and the payor is listed as Williams & Williams.

b) Brock Nelson (Eric's Nephew (Cal's son)) – On 6/30/09, Element Iron & Design, LLC received a check for \$6,000.00. The payment is described as a "loan"⁷. According to the Peachtree records of ELN NV, the deposit was as a result of a prior 2009 loan to Element Iron & Design, LLC for \$50,000. According to the records produced, neither Brock Nelson nor Element Iron & Design, LLC received a 1099 in 2009 or 2010. In addition, loan documents have not been produced evidencing the terms and conditions of said note.

c) Cal Nelson (Eric's Brother) – In 2009, Clarence Nelson ("Cal") personally, or Cal's Blue Water Marine, a company owned by Cal Nelson, received or benefited from the following payments:

Date	Amount	Payee	Description
07/27/09	32,000.00	Cal's Blue Water Marine	Rent
08/17/09	10,000.00	Clarence Nelson	Loan
01/29/10	520,000.00	Chicago Title	Chicago Title for Cal
01/29/10	742,368.17	City National Bank	City National for Cal
	<u>1,304,368.17</u>		

⁷ See Section C of this report under Brock Nelson

Eric produced a copy of a 2009 IRS form 1099 for Cal's Blue Water Marine in the amount of \$32,000.00. As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS. In addition, Eric stated that the 7/27/09 transaction resulted from "part of calculations in Russel (*sic*) Rd transaction".

Additionally, loan documents have not been produced evidencing the terms and conditions of said loan made on 8/17/09. According to the Peachtree records of ELN NV, Cal Nelson had a loan balance due of \$1,119,423.03 as of 1/1/09. On 1/29/10, Eric's Line of Credit indicates a payment to City National Bank for \$742,368.17 with a description of "loc advance wired to City National for Cal" and a wire to Chicago Title for \$520,000.00 with a description of "loc advance wired to Chicago Title for Cal". Eric represented that both of these payments relate to the purchase of two-thirds interest (2/3) in the Russell Road building. As of May 31, 2011, the Peachtree files for ELN NV indicate a loan balance of \$1,871,791.20.

In addition to the above mentioned disbursements, Cal Nelson received additional payments for reimbursed expenses associated with the Lindell Office Complex. These expenses are included in Section S of this report. We have not received employment records or contractor agreements between Cal and ELN NV.

- d) Carlene Gutierrez (Eric's Sister) – During 2009 and 2010, Carlene Gutierrez (“Carlene”) and/or The Grotta Group, LLC, a company for which Carlene is a member, received the following payments:

Date	Amount	Payee	Description
11/02/09	1,500.00	Carlene Gutierrez	Loan
11/02/09	3,500.00	Grotta Group, LLC	Loan
12/01/09	1,500.00	Carlene Gutierrez	Loan
12/01/09	3,500.00	Grotta Group, LLC	Loan
01/04/10	1,500.00	Carlene Gutierrez	Loan
01/04/10	3,500.00	Grotta Group, LLC	Loan
02/01/10	1,500.00	Carlene Gutierrez	Loan
02/01/10	3,500.00	Grotta Group, LLC	Loan
03/01/10	3,000.00	Carlene Gutierrez	Loan
03/01/10	7,000.00	Grotta Group, LLC	Loan
	<u>30,000.00</u>		

According to Eric, this money was for a loan with his sister Carlene. According to the Peachtree file produced by Eric, as of 5/31/11, Carlene had an outstanding loan balance of \$20,000.00. In addition, the two payments made to Carlene on 3/1/10 were booked as Eric Nelson draws and not recorded as a loan receivable from Carlene. Loan documents have not been produced evidencing the terms and conditions of said note.

- e) Chad Ramos (Eric's Nephew (Nola's son)) – On March 3, 2009 Chad Ramos (“Chad”) received \$3,000 for “ENA COMMISSION TO BE REIMBURSED”. According to the records produced, Chad did not receive a 1099 in 2009 from ELN NV for this payment. We have not received employment records or contractor agreements between Chad and ELN NV⁸.

⁸ Chad Ramos received a 1099 from Eric Nelson Auctioneering (“ENA”) for \$25,725.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

- f) Eric T. Nelson (Eric's Nephew (Paul's son)) – On February 5, 2009, Eric T. Nelson received \$2,000.00 for “Reimbursement for Svcs by Ron Baird”. On March 5, 2009, Eric T. Nelson received \$3,000.00 for “Commission ENA”. According to the records produced, Eric T. Nelson did not receive a 1099 in 2009 from ELN NV for this payment⁹. We have not received employment records or contractor agreements between Eric T. Nelson and ELN NV.
- g) Jesse Harber (Eric's Nephew (Nola's son)) – On February 24, 2009, On the House, LLC received a \$25,025.00 payment from ELN NV for “Loan”. ELN NV Peachtree files indicate that this entity is owned by Jesse Harber. As of May 31, 2011, the balance of the account “due from Jesse Harber” was \$25,025.00. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said note.
- h) Paul Harber (Eric's Brother-in-law (Nola's husband)) – On March 18, 2009, Paul Harber received a payment of \$13,318.83 for “1/2 POND REIMBURSEMENT”. The original payment was for \$16,818.83 less \$2,000.00 for “2 MONTHS RENT” and \$1,500.00 for “LESS FOR LIFT”. Eric produced a schedule of costs¹⁰ relating to the Cabin Pond in Utah showing a total cost of \$63,402.94. We have not received an agreement relating to the reimbursement of costs for the construction of the pond.

⁹ Eric T. Nelson received a 1099 from ENA for \$9,000.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

¹⁰ Transaction is further detailed in Banone, LLC report.

- i) Paul Nelson (Eric's Brother) – In 2009, Paul Nelson (“Paul”) received the following payments:

Date	Amount	Payee	Description
01/08/09	10,000.00	Paul Nelson	Loan
06/01/09	9,975.00	Paul Nelson	Loan
	<u>19,975.00</u>		

According to the Peachtree files produced, Paul repaid \$10,000.00 on July 28, 2009 which was booked as “loan payment to Eric's personal acct”. This transaction does not appear in the ELN NV bank accounts and is booked as Eric Nelson Draws. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said note.

- j) Ryan Nelson (Eric's Nephew (Paul's son)) – On March 5, 2009, Ryan Nelson (“Ryan”) received \$3,000.00 for “COMMISSION ENA”. According to the records produced, Ryan did not receive a 1099 in 2009 from ELN NV for this payment¹¹. We have not received employment records or contractor agreements between Ryan Nelson and ELN NV.

- O. Investments – In 2009 ELN NV made the following payments towards FDIC notes:

Date	Amount	Payee	Description
02/26/09	100,000.00	FDIC	Wire for Notes
03/16/09	2,286,465.87	FDIC	note purchase for ENA

¹¹Ryan received a 1099 from ENA for \$9,000.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

- P. Line of Credit – The following transactions were booked as payments on the Mellon Bank Line of Credit.

Date	Amount	Payee
01/20/09	800,000.00	Mellon Bank N.A.
01/20/09	750,000.00	Mellon Bank N.A.
04/21/09	500,000.00	Mellon Bank N.A.
06/23/09	100,000.00	Mellon Bank N.A.
07/15/09	500,000.00	Mellon Bank N.A.
10/06/09	72,731.58	Mellon Bank N.A.
01/20/10	250,000.00	Mellon Bank N.A.
	<u>2,972,731.58</u>	

The October 6, 2009 payment resulted from the sale of real property located at 11421 W Cocopah in Arizona.

- Q. Professionals – The following transactions involved payments by ELN NV to professionals in the accounting and legal fields.

Professional Name	Amount
Freudenthal & Bobnds, P.C.	595.00
Jeffrey Burr, LTD.	2,500.00
Stephens, Gourley & Bywater	5,323.68
Gaston Resolution	10,000.00
Gerety & Associates (Accountant)	10,768.00
	<u>29,186.68</u>

R. Intercompany – The following chart explains the various transfers between related companies:

Date	Banone ¹²	Banone-Az ¹³	Dynasty ¹⁴	ENA ¹⁵	EBM ¹⁶
01/12/09	50,000.00				
01/20/09				50,000.00	
01/22/09	200,000.00				
01/28/09	650,000.00				
02/02/09					1,500.00
02/04/09					1,000.00
02/09/09	500,000.00				
02/26/09	400,000.00				
03/06/09			505.66		
03/16/09	250,000.00				
03/16/09			15,000.00		
04/07/09			10,000.00		
04/22/09	100,000.00				
04/22/09		100,000.00			
05/04/09					10,000.00
06/01/09					2,000.00
06/10/09					1,000.00
06/17/09					10,000.00
08/05/09			10,000.00		
08/17/09				20,000.00	
08/19/09			10,000.00		
08/24/09				10,000.00	
02/01/10				10,000.00	
04/14/10	30,000.00				
05/10/10	50,000.00				
05/20/10	24,289.69				
10/04/10	30,000.00				
	<u>2,284,289.69</u>	<u>100,000.00</u>	<u>45,505.66</u>	<u>90,000.00</u>	<u>25,500.00</u>

¹² Banone, LLC

¹³ Banone-AZ, LLC

¹⁴ Dynasty Development Group, LLC

¹⁵ Eric Nelson Auctioneering, Inc.

¹⁶ Emerald Bay Mississippi, LLC

- S. Rental Expenses – The following chart explains the payments relating to rental real property:

Description	Amount	
Russell Road	80,813.99	(a)
Lindell Expenses	47,280.02	(b)
HOA Fees	960.00	(c)
Insurance	2,460.00	(d)
Rental Expenses	29,086.19	(e)
Taxes	56,260.96	(f)
	<u>216,861.16</u>	

- a) Russell Road – On May 27, 2011, ELN NV paid Old Republic Title \$80,813.99 for “closing costs pd for ENA for Russell Road Closing”.
- b) Lindell Expenses – During 2009 and 2010, ELN NV made various payments for repairs and maintenance of the real property located at 3611 Lindell Rd in Las Vegas. Located on Page 24 labeled “Repairs & Maintenance – 3611 Lindell Rd” of this report, is a list of the expenses paid for repairs and maintenance.

Repairs & Maintenance - 3611 Lindell Rd

Date	Amount	Payee	Description
01/14/09	4,963.75	Clark County Treasurer	Lindell Taxes
03/02/09	4,963.75	Clark County Treasurer	Lindell Taxes
03/16/09	386.14	Clarence Nelson (Eric's Brother)	Lindell Roof repair reimbursements
03/09/09	550.90	Bank of America	Home Depot - Lindell Repairs
03/09/09	156.49	Bank of America	Home Depot - Lindell Repairs
04/01/09	588.47	American Hardware Insurance Co	Lindell Insurance
05/07/09	1,770.53	American Hardware Insurance Co	Lindell Insurance
06/15/09	115.00	Buckley Sterling	Toilet Repairs Suite 101
06/22/09	507.63	Clarence Nelson (Eric's Brother)	Lindell Repairs
07/08/09	632.45	Clarence Nelson (Eric's Brother)	Reimbursement for Lindell Repairs
07/27/09	190.28	Clarence Nelson (Eric's Brother)	Hope (sic) Depot supplies for Lindell
08/13/09	330.38	Clarence Nelson (Eric's Brother)	Lowe's Paint, Home Depot, Star Nursery
08/20/09	5,360.85	Clark County Treasurer	Lindell 163-13-205-001
08/24/09	145.00	Cool Concepts Inc.	suite 102 repairs
10/27/09	5,360.85	Clark County Treasurer	Lindell Property Taxes
10/06/09	1,743.19	Clark County Water Reclamation	Lindell Sewer
11/24/09	540.00	Clarence Nelson (Eric's Brother)	a/c repair - pmts to Jose Rodriguez
11/30/09	2,000.00	Clarence Nelson (Eric's Brother)	reimbursement for carpet suite 101
12/07/09	1,430.00	Francisco Lopez	suite 101
01/04/10	5,360.85	Clark County Treasurer	Lindell property taxes
01/20/10	418.40	Vortex Industries, Inc.	Dr Stock door repair
02/08/10	120.00	State of NV-OSHA	Lindell Elevator
02/11/10	473.14	Clarence Nelson (Eric's Brother)	Lindell Roof repairs
03/22/10	5,360.85	Clark County Treasurer	Lindell Taxes-4th Installment
03/22/10	2,290.00	American Hardware Insurance Co	Lindell Insurance
03/01/10	62.69	Clarence Nelson (Eric's Brother)	Roof repairs-Lindell
03/01/10	900.00	Nevada Elevator Company	Annual elevator inspection
04/07/10	218.43	Clark County Treasurer	Late Fee
04/30/10	300.00	Cool Concepts Inc.	A/C Repair Suite 104 & 106
04/30/10	40.00	Clarence Nelson (Eric's Brother)	Suite 101 Repairs-Jose Rodriguez
	<u>47,280.02</u>		

- c) HOA Fees – ELN NV recorded payments to Canyon Meadow as “Dues and Subscriptions”. The following is a list of said payments:

Date	Amount
01/02/09	160.00
02/02/09	160.00
03/02/09	160.00
04/02/09	160.00
05/02/09	160.00
06/02/09	160.00
	<u>960.00</u>

- d) Insurance – On September 7, 2010, ELN NV made a payment to Thelma Slaughter (“Thelma”) for \$2,460.00 for “Pebble beach insurance”. According to the Clark County Assessor’s website¹⁷, the LSN Nevada Trust is the owner of real property located at 5913 Pebble Beach Blvd. Thelma is the sister of Lynita Nelson and both Eric and Lynita represented that Thelma does reside at this address.
- e) Rental Expenses – The chart on Page 26 of this report labeled “Rental Expenses” indicates payments from ELN NV to various companies regarding work on Rental Properties and/or Community Owned Real Property:

¹⁷ <http://sandgate.co.clark.nv.us/assrrealprop/ParcelDetail.aspx?hdnParcel=13825112034&hdnInstance=pcl7>

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, Distribution Trustee
of the Eric L. Nelson Nevada Trust dated
May30, 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 ELN NEVADA TRUST dated May 30,
2001;

Respondents/Cross-Appellants.

MATT KLABACKA, as Distribution
Trustee of the Eric L. Nelson Nevada Trust
dated May30, 2001,

Appellants,

vs.

ERIC L. NELSON; LYNITA SUE
NELSON, INDIVIDUALLY; AND LSN
NEVADA TRUST DATED MAY 30, 2001,

Respondents.

Supreme Court Case No. 66772

District Court Case No. D-09-

411537

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Consolidated With:

Supreme Court Case No. 68292

**RECORD ON APPEAL
VOLUME 9**

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 0418

JEFFREY P. LUSZECK

Nevada State Bar No. 9619

SOLOMON DWIGGINS & FREER, LTD.

Cheyenne West Professional Centre'

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Attorney for Appellant

Supreme Court Case 66772 Consolidated with 68292 In the Matter of: Klabacka v. Nelson et al.

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29, 30	03/01/2002	Mississippi Deeds (Admitted as Nelson Exhibit 8A)	7069 - 7393
10	03/06/2012	Motion for Payment of Attorneys' Fees and Costs	2461 – 2494
19	06/05/2013	Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4743 – 4752
8	11/07/2011	Motion to Dismiss	1885 - 1908
9	01/17/2012	Motion to Dismiss Amended Third-Party Complaint and Motion to Strike	2190 - 2224
8	11/29/2011	Motion to Dissolve Injunction	1916 - 1999
7	06/24/2011	Motion to Join Necessary Party; or in the Alternative; to Dismiss Claims Against The Eric L. Nelson Nevada Trust dated May 30, 2011	1606 - 1661
23	10/20/2014	Notice of Appeal	5576 – 5578
25, 26	06/23/2015	Notice of Appeal	6249 – 6251
21	09/10/2013	Notice of Entry of Injunctions from September 4, 2013 Hearing	5230 – 5241
10	01/31/2012	Notice of Entry of Order	2264 – 2272
11	05/29/2012	Notice of Entry of Order	2739 – 2745
12	06/05/2012	Notice of Entry of Order	2759 – 2770

12	07/11/2012	Notice of Entry of Order	2914 – 2920
12	07/11/2012	Notice of Entry of Order	2921 – 2929
19	08/07/2012	Notice of Entry of Order	4517 – 4520
	06/03/2012	Notice of Entry of Order	4691 – 4742
8	11/14/2011	Notice of Entry of Order and Order – August 24, 2011 Hearing	1909 - 1915
21	09/03/2013	Notice of Entry of Order Denying Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	5148 – 5153
23	09/22/2014	Notice of Entry of Order Determining Disposition of Dynasty Development Management, Inc. AKA Wyoming Downs	5553 – 5561
19	10/10/2012	Notice of Entry of Order from July 16, 2012 Hearing	4683 – 4690
19	08/31/2012	Notice of Entry of Order from April 10, 2012 Hearing and Injunction	4531 – 4539
19, 20	08/31/2012	Notice of Entry of Order from February 23, 2012 Hearing Partially Granting ELN Trust's Motion to Dismiss Third-Party Complaint Without Prejudice.	4540 – 4550
23	09/22/2014	Notice of Entry of Order from July 22, 2013 Hearing on Lynita Nelson's Motion to Amend or Alter Judgment for Declaration and Related Relief	5562 – 5575
21, 22	09/30/2013	Notice of Entry of Order from September 4, 2013 Hearing Regarding Payment of Lindell Professional Plaza Income	5247 – 5254
19	08/29/2012	Notice of Entry Of Order Granting Motion for Relief from Automatic Stay and Denying Motion to Dismiss Without Prejudice	4521 – 4527
12	06/05/2011	Notice of Entry of Order regarding Findings of Fact and Order dated June 5, 2012	2771 – 2782
7	08/09/2011	Notice of Entry of Stipulation and Order	1742 - 1746
8	09/14/2011	Notice of Filing a Summary Appraisal Report of a Two-Story Office Building (3611 Lindell Road, Las Vegas, NV)	1789 - 1801
10	02/27/2012	Notice of Filing Amendment to Source and Application of Duns for Lynita Nelson	2249 – 2460
10	01/27/2012	Notice of Filing Amendment to Source and Application of Funds for Emerald Bay Mississippi, LLC Filed December 8, 2011	2257 – 2263
10	02/27/2012	Notice of Filing Amendment to Source and Application of Funds for Eric L. Nelson Nevada Trust	2425 – 2248
7	07/05/2011	Notice of Filing Asset Schedule and Notes to Asset Schedule	1662 - 1683
9	12/23/2011	Notice of Filing Corrected Asset Schedule by Ownership	2186 - 2189
7	07/15/2011	Notice of Filing Income and Expense Reports for Banone-AZ LLC	1713 -1724

8	08/15/2011	Notice of Filing Income and Expense Reports for Emerald Bay Resorts, LLC	1762 – 1769
7	07/19/2011	Notice of Filing Income and Expense Reports for Eric L. Nelson Nevada Trust	1725 - 1741
7, 8	08/15/2011	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	1747 - 1761
9, 10	01/26/2012	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	2225 -2256
8	09/28/2011	Notice of Filing Income and Expense Reports for Lynita Nelson	1806 - 1817
7	07/11/2011	Notice of Filing Income and Expense Reports for: (1) Banone, LLC and (2) Dynasty Development Group	1684 - 1712
10	02/16/2012	Notice of Filing Source and Application of Funds for Banone-AZ, LLC	2362 – 2389
11	04/11/2012	Notice of Filing Source and Application of Funds for Dynasty Development Group, LLC	2645 – 2677
9	12/08/2011	Notice of Filing Source and Application of Funds for Eric L. Nelson Nevada Trust	2060 - 2095
11	04/23/2012	Notice of Filing Source and Application of Funds Pursuant to April 10, 2012 Hearing	2678 – 2709
8	10/03/2011	Notice of Filing Summary Appraisal Report of +202.50 Acres of Agricultural/Residential Land (Uinta County, Wyoming)	1854 - 1859
8	10/06/2011	Notice of Submission of First Billing for Fees and Expenses of Forensic Accountants	1860 -1884
11	04/09/2012	Opposition to Countermotion for Receiver, Additional Injunction and Fees and Costs	2630 – 2642
21	08/23/2013	Opposition to Imposition of Charging Order and Appointment of Receiver	5043 – 5066
10, 11	03/26/2012	Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2495 – 2594
20	06/18/2013	Opposition to Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert; and Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	4799 – 4812
16	07/20/2012	Opposition to Motion in Limine to Exclude to Exclude from Trial the Testimony and Report of Daniel T. Gerety, CPA, Layne T. Rushforth, Esq. and Any Purported Experts Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trusts' Pre-Trial Memorandum; and Counter-Motion to Continue Trial and for Attorneys' Fees and Costs	3803 – 3838

8, 9	12/01/2011	Opposition to Motion to Dismiss and Countermotion for an Award of Attorneys' Fees and Costs	2000 - 2040
9	12/07/2011	Opposition to Motion to Dissolve Injunction and Countermotion for an Aware of Attorneys' Fees and Costs	2041 - 2059
30	07/11/2012	Order entered in Case D-09-411537-D	7471 - 7479
20	06/19/2013	Order for Payment of Funds Pursuant to June 3, 2013 Decree of Divorce	4847 - 4850
30	08/09/2011	Order in Case No. D-09-411537-D	7400 - 7402
6	11/17/2010	Partial Transcript, Non-Jury Trial, November 17, 2010	1256 - 1435
6	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1436 - 1499
6, 7	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1500 - 1605
21	09/27/2013	Plaintiff Eric Nelson's Response to Lynita's Response to Court Ordered Accountings Provided by Eric Nelson	5242 - 5246
19	08/31/2012	Post-Trial Brief of Eric L. Nelson Nevada Trust Dated May 30, 2001	4551 - 4610
30	01/28/2005	Promissory Note in favor of Lana Martin	7488
30	01/28/2005	Promissory Note in favor of Robert A. Martin	7489
29	09/25/1999	Real Estate Records for 5220 E. Russell Road, Las Vegas, Nevada (UUUU)	7017 - 7049
	06/06/2013	Receipt of Copy regarding Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4753 - 4754
8	09/19/2011	Reply to Counterclaim and Answer to Cross - Claim	1802 - 1805
24, 25	01/14/2015	Reply to ELN Trust's Opposition to Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Eric Nelson's Opposition to Defendants Motion to Enforce June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Opposition to Eric Nelson's Countermotion	5941 - 6076
11	05/22/2012	Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by the Eric L. Nelson Nevada Trust and Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by Eric Nelson	2713 - 2738
22	10/14/2013	Reply to Opposition to Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs	5255 - 5265

20	07/11/2013	Reply to Opposition to Defendant's Motion to Amend or Alter Judgement, for Declaratory and Related Relief and Joinder to Opposition	4851 – 4869
21	08/30/2013	Reply to Opposition to Imposition of Charging Order and Appointment of Receiver and Requests for Injunction and Fees and Costs	5067 – 5087
11	04/04/2012	Reply to Opposition to Motion for Payment of Attorneys' Fees and Costs	2595 – 2623
9	12/09/2011	Reply to Opposition to Motion to Dismiss and Countermotion for An Aware of Attorneys' Fees and Costs	2096 - 2123
9	12/09/2011	Reply to Opposition to Motion to Dissolve Injunction and Opposition to Countermotion for an Aware of Attorneys Fees and Costs	2124 -2139
22	10/15/2013	Reply to Plaintiff Eric Nelson's Response to Court Order Accountings	5266 - 5287
27, 28, 29	07/05/2012	Report of Gerety & Associates (Admitted as Intervenor Trial Exhibit 168)	6550 – 7014
21	08/30/2013	Response to Court Order Accountings Provided by Eric Nelson	5088 – 5147
19	09/28/2012	Response to Defendant Lynita S. Nelson's Post-Trial Memorandum on Trust Issues	4628 – 4657
29	01/21/2002	Soris Original Mortgage – (Wyoming Property) – (Admitted as Nelson Exhibit 41C)	7050 – 7068
8	08/24/2011	Summons directed to Eric Nelson	1779 -1782
8	08/24/2011	Summons directed to Lynita Sue Nelson	1783 -1786
11	04/05/2012	Supplement to Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2624 – 2629
	10/08/2012	Supplement to Verified Memorandum of Attorneys' Fees and Costs	4658 – 4682
26, 27	05/30/2001	The Eric L. Nelson Nevada Trust (Admitted as Intervenor Trial Exhibit 86)	6475 – 6508
12	07/06/2012	The Eric L. Nelson Nevada Trust's Pretrial Memorandum	2783 – 2849
26	07/13/1993	The Eric L. Nelson Separate Property Trust (Admitted as Intervenor Trial Exhibit 7)	6313 – 6341
26	05/30/2001	The LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 25)	6395 - 6433
26	07/13/1993	The Nelson Trust (Admitted as Intervenor Trial Exhibit 5)	6283 - 6311
20, 21	08/01/2013	Transcript Re: All Pending Motions	4991 – 5039
21	09/05/2013	Transcript Re: All Pending Motions	5154 – 5229
22	10/21/2013	Transcript Re: All Pending Motions	5288 – 5347
25	01/26/2015	Transcript RE: All Pending Motions	6077 – 6225
22, 23	06/04/2014	Transcript RE: Decisions	5495 – 5552

20	06/19/2013	Transcript Re: Motion	4813 – 4846
20	07/22/2013	Transcript Re: Motion	4876 – 4990
10	02/23/2012	Transcript regarding Decision	2390 – 2424
10	01/31/2012	Transcript relating to Motion	2273 – 2361
4	10/19/2010	Transcript, Non-Jury Trial, October 19, 2010	849 – 990
4, 5, 6	10/20/2010	Transcript, Non-Jury Trial, October 20, 2010	991 – 1255
1, 2	08/30/2010	Transcript, Non-Jury Trial, Volume 1 from August 30, 2010	40 – 258
2	08/31/2010	Transcript, Non-Jury Trial, Volume 2 from August 31, 2010	259 - 441
2, 3	08/31/2010	Transcript, Non-Jury Trial, Volume 3 from August 31, 2010	442 – 659
3,4	09/01/2010	Transcript, Non-Jury Trial, Volume 4 from September 1, 2010	660 –848
13, 14	07/17/2012	Trial Transcript Re: Non-Jury Trial	3181 – 3406
14, 15	07/18/2012	Trial Transcript Re: Non-Jury Trial	3407 – 3584
22	05/30/2014	Trial Transcript RE: Non-Jury Trial	5348 – 5494
15	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3585 – 3714
16	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3839 – 3943
17	07/24/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4050 – 4187
18	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4279 – 4447
15, 16	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3715 – 3802
16, 17	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3494 -4049
17, 18	07/24/2013	Trial Transcript Re: Non-Jury Trial – Vol. II	4188 – 4278
18, 19	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	4448 -4514
12, 13	07/16/2012	Trial Transcript Volume I	2930 – 3120
13	07/16/2012	Trial Transcript Volume II	3121 – 3180
26	02/17/2009	Trust Agreement of the Total Amendment and Restatement of the Nelson Trust (Admitted as Intervenor Trial Exhibit 14)	6351 – 6381
30	03/31/2011	Trust Ownership-Distribution Report of Larry Bertsch (Admitted as Exhibit GGGGG at Tab 9)	7397 – 7399
19	09/28/2012	Verified Memorandum of Attorneys' Fees and Costs	4611 – 4627

1 LYNITA SUE NELSON and ERIC
2 NELSON,

3 Purported Cross-Defendant and
4 Counterdefendant,

5 LYNITA SUE NELSON,

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

8 v.

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

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

21 OPPOSITION TO MOTIONS TO DISMISS
22 AND
23 COUNTERMOTION FOR AN AWARD OF ATTORNEYS FEES AND COSTS

24 COMES NOW Defendant, LYNITA NELSON ("Lynita"), by and through her
25 attorneys, ROBERT P. DICKERSON, ESQ., and KATHERINE L. PROVOST, ESQ.,
26 of THE DICKERSON LAW GROUP, and responds and opposes: (1) the Motion to
27 Dismiss filed by Counterdefendants/Crossdefendants/Third-Party Defendants Lana
28 Martin, Individually, Distribution Trustee of the Eric L. Nelson Nevada Trust dated
May 30, 2001 ("ELN Trust"), and former Distribution Trustee of the LSN Nevada

1 Trust dated May 30, 2011; Nola Harber, Individually, former Distribution Trustee of
2 the Eric L. Nelson Nevada Trust dated May 30, 2001 ("ELN Trust"), and former
3 Distribution Trustee of the LSN Nevada Trust dated May 30, 2011; Rochelle
4 McGowan; and Joan B. Ramos (hereinafter collectively referred to as "Third-Party
5 Defendants"); and (2) the Motion to Dismiss filed by Plaintiff/Cross-Defendant, Eric
6 L. Nelson ("Eric").

7 This Opposition is made and based upon the pleadings and papers on file herein,
8 the following Points and Authorities attached hereto, and upon any oral argument as
9 this Court may entertain at the hearing on this matter.

10 DATED this 15 day of December, 2011.

11
12 THE DICKERSON LAW GROUP

13
14 By 

15 ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
16 KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
17 JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
18 1745 Village Center Circle
Las Vegas, Nevada 89134
19 Attorneys for LYNITA NELSON

20
21 **POINTS AND AUTHORITIES**

22 **I. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND**

23 Lynita and Eric were married on September 17, 1983. They have been married
24 for 28 years and are the parents of five (5) children born the issue of their marriage.
25 Three of the parties' children are now adults. Custody of the remaining two (2) minor
26 children was resolved by the parties' Stipulated Parenting Agreement signed October
27 15, 2008, and entered as an Order of this Court on February 8, 2010. Trial of the
28 financial issues in this action began in August 2010, but remains unresolved.

1 From August, 2010, until June, 2011, Eric and Lynita were in agreement that
2 all property accumulated during their marriage, regardless of how titled or held, was
3 community property subject to division by this Court. On June 24, 2011, likely
4 because he recognized that the trial was not going as he desired, Eric filed his Motion
5 to Join Party, or in the Alternative, Dismiss Claims Against the Eric L. Nelson Nevada
6 Trust, dated May 1, 2001. The aforementioned motion stated Eric's desire to join the
7 Eric L. Nelson Nevada Trust, dated May 1, 2001 ("ELN Trust" or "Eric's Alter Ego
8 Trust"), as a party to this litigation. Specifically, Eric asserted that complete relief
9 could not be accorded amongst the parties without the ELN Trust being named as a
10 party to this action, there could be no disposition of the action as any orders entered
11 by this Court could later be subject to challenge by the ELN Trust. On August 9,
12 2011, the parties, through counsel, stipulated to join the ELN Trust and LSN Nevada
13 Trust, dated May 1, 2001 (the "LSN Trust"), as necessary parties to this action.

14 On August 19, 2011, Attorney Mark Solomon, on behalf of Lana Martin ("Ms
15 Martin"), Distribution Trustee of the ELN Trust, filed an initial Notice of Appearance
16 followed by an Answer to Eric's Complaint for Divorce, as well as Counterclaims and
17 Cross-claims against Eric and Lynita, respectively. On September 30, 2011, Lynita
18 filed her Answer to the claims asserted by the ELN Trust and a Third-Party Complaint
19 naming additional parties whose presence is necessary now that Eric and Ms. Martin,
20 on behalf of the ELN Trust, have decided it is appropriate to assert the independent
21 nature of the ELN Trust.

22 Lynita's Third-Party Complaint alleges multiple causes of action against Eric,
23 and the ELN Trust, Ms. Martin, Nola Harber ("Ms. Harber"), Rochelle McGowan
24 ("Ms. McGowan"), and Joan B. Ramos ("Ms. Ramos") as Third-Party Defendants.
25 Overall it seeks for this Court to recognize the ELN Trust as a illusory sham trust and
26 Eric's alter ego, voiding all arguments as to the independent nature of the trust and the
27 applicable protections afforded to a true spendthrift trust properly created and
28 managed under Nevada law.

II. LEGAL STANDARD

Nevada Rules of Civil Procedure, Rule 12(b)(5) (2011), provides that the defense of failure to state a claim upon which relief can be granted may be made by motion at the option of the pleader in lieu of a responsive pleading. Mr. Solomon has filed such a motion on behalf of all of the Third-Party Defendants. Attorney Rhonda Forsberg has filed an independent motion to dismiss for failure to state a claim upon which relief can be granted on Eric's behalf. This Opposition is intended to respond to both such Motions to Dismiss.

The Nevada Supreme Court has declared that any order granting a motion to dismiss pursuant to NRCP 12(b)(5) "for failure to state a claim upon which relief can be granted faces a rigorous standard of review on appeal, as this court must construe the pleadings liberally and accept all factual allegations in the complaint as true." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (citing *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997)) (emphasis added). Furthermore, "[o]n a motion to dismiss for failure to state a claim for relief, the trial court . . . must construe the pleading liberally and draw every fair intendment in favor" of the claimant. *Merluzzi v. Larson*, 96 Nev. 409, 411, 610 P.2d 739, 741 (1980) (overruled on other grounds in *Smith v. Clough*, 106 Nev. 568, 796 P.2d 592 (1990)).

As previously stated, when entertaining a NRCP 12(b)(5) motion to dismiss, "a court must accept the allegations set forth in the [pleading being challenged] as true." *Blanchard v. Blanchard*, 108 Nev. 908, 910, 839 P.2d 1320, 1323 (1992). A pleading should not be dismissed for failure to state a claim for relief "unless it appears *beyond a doubt* that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief." *Edgar v. Wagner*, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985)(citing *Conley v. Gibson*, 335 U.S. 41, 45-46, (1957)) (emphasis added).

...

...

1 As can be seen, the Third-Party-Defendants and Eric (sometimes collectively
2 referred to as "Movants") bear an extremely high burden under NRCP 12(b)(5) in
3 order to prevail on their respective Motions to Dismiss. As will be discussed
4 throughout, Movants have not met this burden. Lynita has alleged sufficient facts to
5 support each and every one of her claims for relief, and dismissal of any of her causes
6 of action is unwarranted. Accordingly, the Motions to Dismiss filed by Third-Party
7 Defendant's and Eric must be denied, Third-Party Defendants and Eric must file
8 responsive pleadings, and discovery should proceed on the parties' respective claims
9 and defenses.

10 III. ARGUMENT

11 Eric and the Third-Party Defendants have opted to file their individual Motions
12 to Dismiss utilizing a "throw everything at the wall and see what sticks" approach to
13 this litigation. They assert that this case should be dismissed because (1) this Court
14 lacks jurisdiction over the subject matter, and (2) Lynita has failed to state a claim
15 upon which relief can be granted. In support of the latter, the moving parties argue
16 that Lynita's claims are barred by the statute of limitations; that employees cannot
17 conspire with each other; that Third-Party Defendants did not act in a manner giving
18 rise to a valid "concert of action" claim; that Nevada does not recognize alter ego claims
19 against a self-settled spendthrift trust; that the elements to establish a constructive
20 trust have not been met; that injunctive relief is improper in this case; that the ELN
21 Trust is not a natural person and therefore cannot be subject to a lawsuit; and that
22 Lynita's Third-Party Complaint sounds of fraud and fails to meet the heightened
23 pleading requirement of NRCP 9(b). Each of these arguments is independently
24 addressed below.

25 ...

26 ...

27 ...

28 ...

1 A. This Court Has Subject Matter Jurisdiction To Decide The Claims Asserted In
2 Lynita's Third-Party Complaint

3 Movants assert that this Court does not have subject matter jurisdiction to hear
4 the claims for relief asserted in Lynita's Third-Party Complaint. Both Eric, and Third-
5 Party Defendants have cited to Nevada Revised Statutes, Section 164.015 (2011), and
6 Eighth Judicial District Court Rules, Rule 4.01 (2011), for the proposition that only
7 the Probate Court has jurisdiction to hear the majority, if not all, of the claims for relief
8 asserted in Lynita's Third-Party Complaint. While the language of NRS 164.015
9 contains the wording "the court has exclusive jurisdiction," neither this statute, nor
10 EDCR 4.01 may be read in a vacuum. Movants' interpretation of this statute and
11 court rule are incorrect, as explained below.

12 Under Article 6, Section 6, of the Nevada Constitution, the family court is a
13 division of the district court. District courts are courts of "general jurisdiction," hearing
14 all cases not otherwise designated as within the jurisdiction of some other court.
15 Nevada Constitution, Article 6, Section 6(1). As a district court judge, a judge sitting
16 in the Family Division in the Eighth Judicial District Court possesses co-extensive and
17 concurrent jurisdiction with all other district court judges, including the district court
18 judge who presides over probate court matters in the Eighth Judicial District Court.
19 Nevada Constitution, Article 6, Section 5. A family court judge has identical power,
20 authority, and jurisdiction to any other sitting district court judge. NRS 3.020
21 specifies that all district court judges in all districts containing more than one district
22 court judge have "concurrent and coextensive jurisdiction within the district," and are
23 empowered to make their own internal rules to "enable them to transact judicial
24 business in a convenient and lawful manner," for example, transferring or hearing
25 certain cases between divisions. This concept is again repeated in NRS 3.220, which
26 states that district court judges possess equal co-extensive and concurrent jurisdiction
27 and power, and that each "shall exercise and perform the powers, duties and functions
28 of the court and of judges thereof."

1 The Nevada Constitution provides the Nevada Legislature with authority to
2 assign or prescribe classes of cases to a specific division of the district court, but not to
3 abridge the power and authority of district court judges. Article 6, Section 1, of the
4 Nevada Constitution provides that "the judicial power" of Nevada is vested in a court
5 system comprised of "a Supreme Court, district courts, and justices of the peace."
6 Municipal courts may also be established by the legislature "for municipal purposes
7 only." If the jurisdiction of a family court judge was intended to be limited, the
8 Nevada Constitution would have to be amended to so provide, just as it separately
9 provides for the judicial officers of the justices' courts (Article 6, Section 8) and
10 municipal courts (Article 6, Section 9).

11 No Nevada statute restricts the ability of a family court judge, who is a district
12 court judge, to hear any kind of case filed in the district court. Rather, if under the
13 authority granted by the Nevada Constitution, the Legislature intended to establish
14 divisions of district courts as courts of limited jurisdiction -- for example authorizing
15 only a family court judge to have the authority to hear family court cases, or
16 authorizing only a probate court judge to hear cases involving trusts -- it would have
17 clearly stated so.¹ Unlike the limitations to justices' or municipal courts jurisdiction,
18 district courts are court of "general jurisdiction," hearing all cases not otherwise
19 designated as within the jurisdiction of some other court (i.e., justices' or municipal
20 courts). Nevada Constitution, Article 6, Section 6(1).

21 Further, EDCR 5.42 exists solely to comply with the Legislative mandate that
22 multiple cases between the same parties be assigned to the same judicial department,
23 keeping with the "one judge, one family" policy which exists in Nevada. To require
24 Lynita to bring her claims involving the parties' respective trusts in an independent

25
26 ¹ It has done so with respect to dictating the subject matter jurisdiction of other courts, for
27 example, Chapters 4 and 5 of the Nevada Revised Statutes detail and define the jurisdiction of justices
28 courts and municipal courts, respectively. Specifically, the statute defining the jurisdiction of the justices
courts provides " . . . justices' courts have jurisdiction of the following civil actions and proceedings and
no others except as provided by specific statute . . ." NRS 4.370 (emphasis added).

1 action, before a different district court judge, makes no sense at all. This is particularly
2 true when considering that the Stipulation joining the parties' trusts as interveners in
3 this action was specifically intended to ensure this Court had the authority to enter all
4 necessary orders to accord complete relief between all of the parties to this action. To
5 avoid absurd results, and the delay of justice, especially in this action, the phrase
6 "exclusive jurisdiction," as stated in NRS 164.014, must be construed as being a matter
7 of case assignment, rather than a limitation of jurisdiction.

8 The Nevada Supreme Court recently addressed a similar issue to the one raised
9 by Movants (their suggestion that this Court does not have subject matter jurisdiction
10 to hear all of the claims for relief asserted in Lynita's Third-Party Complaint). In
11 *Landreth v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. 16 (Nev. 2011), Mr. Malik
12 questioned the subject matter jurisdiction of the family court to hear a case which did
13 not fit within those matters delineated under NRS 3.223. By its holding in *Landreth*,
14 the Nevada Supreme Court clearly answered the question of whether the Legislature
15 has the constitutional authority to limit the powers of a district court judge in the
16 family court division of a judicial district. In a detailed analysis the Court determined
17 that:

18 [E]ven though the Legislature has specified cases that must be designated
19 to the family court division, the construct of judicial power derives from
20 the Nevada Constitution and is not diminished by legislatively enacted
21 jurisdictions. Therefore, because a district court judge is empowered with
22 constitutional judicial power, his or her disposition, although outside the
23 scope of the family court's jurisdiction, is authorized by the Constitution.

24 *Id.*, 251 P.3d at 169. Further, the Nevada Supreme Court explained that "because we
25 hold that a district court judge in the family division has the same constitutional power
26 and authority as any district court judge, a family court judge has the authority to
27 preside over a case improperly filed or assigned to the family court division." *Id.* "[T]he
28 Legislature, could not revoke the power of a judge sitting in the family court division
to hear proceedings that lie outside the family court's jurisdiction, because a judge
sitting in the family court has the constitutional powers of a district judge." *Id.*

1 There is additional precedent in Nevada which supports this Court's jurisdiction
2 to resolve all matters in controversy in this action. In *Barelli v Barelli*, 11 Nev. 873,
3 877, 944 P.2d 246, 248 (1997), the Nevada Supreme Court considered whether the
4 Nevada Legislature's grant of "limited and exclusive jurisdiction" to the family court
5 prohibits the family court from adjudicating matters outside its "exclusive jurisdiction,"
6 but related to its jurisdictional authority. In *Barelli* the Court held that the family
7 court had jurisdiction "to resolve issues that fall outside [its] jurisdiction when
8 necessary for the resolution of those claims over which jurisdiction is properly
9 exercised." *Id.* In *Barelli* the Court used the term "jurisdiction" in the sense of case
10 assignment, not "subject matter jurisdiction." That is by far the more reasonable
11 interpretation when the question is which division of the district court should hear a
12 particular case.

13 "Jurisdiction" as analyzed in *Landreth* and *Barelli*, and "exclusive jurisdiction" as
14 stated in NRS 164.015, is shorthand for "administrative assignment," the place where
15 such actions typically should be filed. However, nothing requires that a case
16 concerning "the internal affairs of a nontestamentary trust [including those proceedings
17 concerning] the administration and distribution of trusts, the declaration of rights and
18 the determination of other matters involving trustees and beneficiaries of trusts"² be
19 adjudicated solely by a probate court judge. Rather, any district court judge, including
20 a family court judge, has the necessary subject matter jurisdiction to resolve such
21 claims. EDCR 4.01, and Part IV of the Eighth Judicial District Court Rules, in general,
22 simply provide administrative and procedural rules for matters which proceed before
23 the probate court.

24 Finally, if Movants' interpretation of NRS 164.015 were to be believed, all
25 decisions concerning matters involving trusts would issue from the probate court and
26 the trust (or its trustees) would never be named as a party in a divorce action, or any

27
28 ² Plaintiff's Motion at page 21, lines 14 - 17.

1 other type of civil action. This clearly is not the case as the Nevada Supreme Court has
2 decided two divorce actions involving trusts, namely: *Gladys Baker Olsen Family Trust*
3 *v. Eighth Judicial Dist. Ct.*, 110 Nev. 548, 874 P.2d 778 (1994) and *Guerin v. Eighth*
4 *Judicial Dist. Ct.*, 114 Nev. 127, 95 P..2d 716 (1998).

5 As set forth above, this Court clearly has the necessary subject matter
6 jurisdiction to determine all issues in controversy in this action, and should enter an
7 order denying Eric and Movants' requests to dismiss for lack of subject matter
8 jurisdiction.

9 B. Lynita Has Stated A Claim For Alter Ego, And Lynita's Claims are Not Barred
10 By the Statute of Limitations

11 Movants request that the Court dismiss Lynita's claims for relief for (1) veil-
12 piercing against Eric and Eric's Alter Ego Trust, (2) reverse veil-piercing against Eric
13 and Eric's Alter Ego Trust, and (3) declaratory relief declaring the ELN Trust to be
14 Eric's Alter Ego, asserting that Nevada does not extend alter ego liability to trusts.
15 Movants also argue that Lynita's claims are barred by the statute of limitations
16 contained in NRS 166.170. These arguments are properly addressed together herein,
17 because if the Court ultimately concludes that the ELN Trust is Eric's alter ego, and/or
18 finds the ELN Trust is fictional and invalid because of its failure to comply with the
19 requirements of NRS Chapter 166 (the Spendthrift Trust Act of Nevada), the ELN
20 Trust simply cannot be afforded the protections afforded by NRS 166.170 to valid, and
21 properly administered, spendthrift trusts.

22 Movants' assertion that alter ego claims concerning trusts are not recognized in
23 Nevada is not only without merit, but completely frivolous. The Nevada Legislature
24 has specifically recognized the viability of alter ego claims in actions concerning trusts
25 in NRS 163.418, which provides:

26 NRS 163.418 Clear and convincing evidence required to find settlor to
27 be alter ego of trustee of irrevocable trust; certain factors insufficient for
finding that settlor controls or is alter ego of trustee of irrevocable trust.

28 ...

1 Absent clear and convincing evidence, a settlor of an irrevocable trust
2 shall not be deemed to be the alter ego of a trustee of an irrevocable
3 trust. If a party asserts that a settlor of an irrevocable trust is the alter
4 ego of a trustee of the trust, the following factors, alone or in
5 combination, are not sufficient evidence for a court to find that the
6 settlor controls or is the alter ego of a trustee:

1. The settlor has signed checks, made disbursements or executed other
documents related to the trust as the trustee and the settlor is not a
trustee, if the settlor has done so in isolated acts.

2. The settlor has made requests for distributions on behalf of a
beneficiary.

3. The settlor has made requests for the trustee to hold, purchase or sell
any trust property.

4. The settlor has engaged in any one of the activities, alone or in
combination, listed in NRS 163.4177.

(Emphasis added). If alter ego claims concerning trusts were not cognizable in Nevada,
there would have been no need to reference such claims by the Nevada Legislature in
NRS 163.418. It is a well-established, and basic tenet of statutory interpretation that
"[u]nless ambiguous, a statute's language is applied in accordance with its plain
meaning [and] when the Legislature's intent is clear from the plain language, [the
Nevada Supreme Court] will give effect to such intention and construe the statute's
language to effectuate rather than nullify its manifested purpose." *Nevada v. Miller*, 192
P.3d 1166, 1170-71 (2008). Holding that alter ego claims concerning trusts are not
cognizable in Nevada, as Movants request, would nullify the Legislature's language and
intention contained in NRS 163.418.

Alter ego claims, and challenges to the validity of a trust are not only recognized
in Nevada, as set forth above, but necessary to the administration of justice. If
Movants were correct in their assertion that the validity of a trust could not be
challenged under any theory, including alter ego theory, then any person could
establish what purports to be a spendthrift trust, completely ignore the requirements
for the valid maintenance of same, and manage, control and exercise dominion over the
assets of the trust as though the trust did not exist, with complete impunity and no
recourse to outside parties under the law. Certainly such an absurd and inequitable

1 proposition could not exist under Nevada law, and it is surprising that Movants would
2 request the Court to follow such an absurd proposition.

3 Finally, alter ego claims concerning trusts are not only recognized in Nevada, but
4 have been recognized by other appellate courts presented with the issue. *See, e.g., Dean*
5 *v. U.S.*, 987 F.Supp. 1160, 1164 (W.D. Mo. 1997) ("Because there is no Missouri law
6 applying the alter ego doctrine to trusts, the court assumes that the same standard
7 applied in the corporate context would be applied to trusts."). For example, in *In re*
8 *Schwarzkopf*, 626 F.3d 1032 (9th Cir. 2010), the Ninth Circuit Court of Appeals,
9 applying California law, invalidated two trusts under theories of fraud, and alter ego,
10 respectively. *See generally, id.* There, a husband and wife created two (2), irrevocable
11 trusts in 1992, known as the Apartment Trust, and Grove Trust, and over time funded
12 said trusts with certain, valuable assets. *Id.* at 1036. In 2003, the husband and wife
13 (hereinafter collectively referred to as "the debtors") "filed bankruptcy petitions seeking
14 to discharge approximately \$5.4 million in debt." *Id.* The bankruptcy trustee "filed an
15 adversary complaint seeking to recover approximately \$4 million in assets from the
16 [trusts]." *Id.* The Ninth Circuit Court of Appeals held that the Apartment Trust was
17 invalid because it was created for the fraudulent purpose of avoiding the debtors'
18 creditors. *Id.* at 1036-37. The Ninth Circuit further held that since the Apartment
19 Trust was invalid, the seven (7) year statute of limitations for bringing a fraudulent
20 transfer claim did not begin to run. *Id.* at 1037.

21 The Ninth Circuit also held that the Grove Trust was husband's alter ego based
22 on facts almost identical to those alleged by Lynita, and legal analysis identical to that
23 advanced by Lynita. *Id.* at 1037-40. First, the Ninth Circuit applied California's alter
24 ego liability requirements applicable to corporations to the trustee's claim for alter ego
25 liability against the Grove Trust. *Id.* at 1038-39. This is the same request Lynita has
26 made of this Court: that it apply Nevada's corporate alter ego liability statute
27 contained in NRS 78.747 when determining whether the ELN Trust is Eric's alter ego.
28 The Ninth Circuit applied alter ego liability because "failure to [do so] would sanction

1 a fraud or promote injustice,” as Lynita has argued in the instant case. *See, id.* at 1040.
2 Second, the Ninth Circuit found that the Grove Trust was husband’s alter ego based
3 on husband’s payment of personal expenses from the Grove Trust, the purportedly
4 independent third-party trustees lack of action with regards to the Grove Trust, other
5 than to perform the demands made by husband, and husband’s “dominat[ion] and
6 contol[] [of] all decisions of the Grove Trust.” *Id.* at 1039-40. These acts are identical
7 to those alleged by Lynita against Eric and the Third-Party Defendants in her Third-
8 Party Complaint.

9 As has been set forth above, there is no merit to Movants’ assertion that the
10 alter ego doctrine cannot be applied to pierce the veil of a trust in Nevada, and
11 Movants’ request to dismiss Lynita’s first, second, and third causes of action on those
12 ground must be denied.

13 Movants further argue that even if the ELN Trust is found to be invalid or Eric’s
14 alter ego, that the statute of limitations in the Spendthrift Trust Act of Nevada, NRS
15 166.170, should apply and bar Lynita’s claims. This argument defies logic. If the
16 Court finds that the ELN Trust is invalid and Eric’s alter ego, then certainly Eric,
17 individually, cannot be afforded the protections afforded to a valid spendthrift trust,
18 including the statute of limitations for bringing actions concerning transfers of property
19 to such trust. Indeed, if the ELN Trust is found to be invalid and Eric’s alter ego, the
20 properties purportedly held by such trust would be held by Eric and subject to
21 community property distribution in this divorce action.

22 Finally, other than asserting that the alter ego doctrine contained in NRS 78.747
23 does not apply in the instant matter, Movants’ do not otherwise challenge the
24 sufficiency of Lynita’s alter ego allegations in their Motions to Dismiss. Nonetheless,
25 a discussion of such allegations is warranted to show that Lynita demonstrates a high
26 likelihood of success on her alter ego claims, and is entitled to additional injunctive
27 relief (discussed in further detail below). In the Third-Party Complaint, Lynita alleges,
28 amongst other things, that Eric, in concert with the other Third-Party Defendants,

1 caused monies from the ELN Trust to be diverted to his family members and other
2 third-parties not named beneficiaries of said trust, paid personal expenses from the the
3 ELN Trust, has directed distributions from the ELN Trust in contravention of the ELN
4 Trust's express terms, and has exercised complete dominion and control over the assets
5 of the ELN Trust, and LSN Trust, through puppet distribution trustees acting at his
6 sole and absolute direction. In fact, not only has Lynita stated these allegations in her
7 Third-Party Complaint, which again must be taken as true when deciding Movants'
8 Motions to Dismiss, Eric has admitted the validity of such claims throughout these
9 proceedings, in sworn testimony before the Court. Attached hereto as Exhibit A are
10 selected excerpts from Eric's trial testimony wherein he (1) admits that all assets titled
11 in the name of the ELN and LSN Trusts are community property belonging to the
12 parties, (2) admits that he has exclusive control over such assets, and (3) offers the
13 Court several proposed distributions of assets from the ELN Trust, specifically
14 describing which assets from the ELN Trust the Court should award to him, and which
15 of assets should be awarded to Lynita.³ Certainly Eric did not propose division of the
16 assets of the ELN Trust between himself and Lynita if he thought he had no legal title
17 to such assets (or had not been acting like he had legal title to such assets prior to
18 testifying), or if he did not believe he had the power to effectuate his unreasonable
19 proposals if same were accepted by the Court, or Lynita. In fact, there can be no doubt
20 from Eric's testimony and actions that if the Court had accepted one of Eric's proposed
21 distributions of assets at the time he offered same on the witness stand, Eric could
22 have, and would have, directed such distributions from the ELN and LSN Trusts to
23 effectuate such distributions. Only after Eric realized that his unreasonable proposals
24 may not be accepted by the Court, did he choose to assert that the parties have no title
25 or interest in the assets held by the ELN and LSN Trusts.

26 ...

27 ³ These excerpts represent only a fraction of such statements made by Eric during the course of
28 this litigation, and his trial testimony.

1 In conclusion, not only has Lynita asserted legally cognizable claims against Eric
2 and the ELN Trust for (1) veil-piercing, (2) reverse veil-piercing, and (3) declaratory
3 relief, she also has an extremely high likelihood of success on such claims based on
4 Eric's admissions throughout this litigation that the ELN Trust is illusory, and all assets
5 of such trust are held by, managed, invested, distributed, invaded, and disposed of at
6 Eric's sole and absolute discretion.

7 C. Lynita's Claims For Breach of Fiduciary Duty, Conspiracy, Aiding And Abetting,
8 And Concert Of Action Claims Are Not Time-Barred By The Statutes of
9 Limitation Contained In NRS 166.170, NRS 11.190(3)(d), and NRS 11.220

10 Movants argue that the NRS 166.170, NRS 11.190(3)(d), and NRS 11.220
11 statutes of limitation time-bar Lynita's causes of action for breach of fiduciary duty,
12 conspiracy, aiding and abetting, and concert of action (collectively referred to as
13 "Lynita's tort claims"). As Movants acknowledge, "Dismissal on statute of limitations
14 grounds is appropriate when 'uncontroverted evidence irrefutably demonstrates
15 plaintiff discovered or should have discovered the facts giving rise to the cause of
16 action.'" (Emphasis added). Accordingly, it is extremely difficult for a party to prevail
17 on a statute of limitation defense on a motion to dismiss, where matters contained in
18 the pleadings are taken as true, discovery has not yet been conducted, and evidence
19 outside the pleadings has not been proffered to the Court. Once again, Movants have
20 failed to meet their high burden.

21 As set forth in the prior subsection, the limitations periods contained in NRS
22 166.170 cannot be applied in this matter if Lynita prevails on her alter ego claims. It
23 would be impossible for the Court to apply NRS 166.170 at this juncture in the
24 litigation because the Court has not yet rendered a decision on the merits on Lynita's
25 alter ego claims. Therefore, the Court cannot grant Movants request for dismissal
26 based on the statute of limitations provisions contained in NRS 166.170.

27 Assuming, purely for the sake of argument, that the Court ultimately ruled
28 against Lynita on her alter ego claims, application of NRS 166.170 to Lynita's tort
claims would still be inappropriate. NRS 166.170, by its express terms, applies only

1 to the time period for “creditors” to bring actions “with respect to a transfer of property
2 to a spendthrift trust.” Lynita’s claim against Eric for breach of fiduciary duty arises
3 out of the parties’ relationship as husband and wife, and the fiduciary duties Eric owed
4 to Lynita as a result of that relationship. Lynita’s claim for breach of fiduciary duty
5 against Ms. Martin and Ms. Harber arises out of the fiduciary duties Ms. Martin and
6 Ms. Harber, as Trustees of the LSN Trust, owed to Lynita as a beneficiary of the LSN
7 Trust, with regards to management and execution of the LSN Trust and its existing
8 assets. In addition, Lynita’s claims for conspiracy, aiding and abetting, and concert of
9 action against Eric and the Third-Party Defendants are centered around each of the
10 aforementioned parties’ agreements to, and participation in the breach of fiduciary
11 duties by Eric, Ms. Martin and Ms. Harber, and other injurious actions. Certainly
12 these actions cannot be deemed to involve a creditor bringing a claim with respect to
13 transfers to a spendthrift trust.

14 Lynita’s tort claims are also not time-barred under NRS 11.190(3)(d), or NRS
15 11.220. NRS 11.220, which Movants argue applies to Lynita’s claims for conspiracy,
16 aiding and abetting, and concert of action, provides, “An action for relief, not
17 hereinbefore provided for, must be commenced within 4 years after the cause of action
18 shall have accrued.” NRS 11.190(3)(d), which Movants assert applies to Lynita’s
19 claims for breach of fiduciary duty, provides that such an action must be commenced
20 within three years.

21 It is well-settled that the limitations periods contained in NRS 11.190(3)(d),
22 and NRS 11.220 do not begin to run until an injured party knew, or should have
23 known, of the facts constituting the elements of his or her cause of action. *See, e.g., Oak*
24 *Grove Investors v. Bell & Gossett Co.*, 668 P.2d 1075, 1079, 99 Nev. 616, 623 (1983); *G*
25 *& H Associates v. Ernest W. Hahn, Inc.*, 934 P.2d 229, 233, 113 Nev. 265 (1997)
26 (“Statutes of limitation are procedural bars to a plaintiff’s action, and in a tort action
27 . . . the time limits do not commence and the cause of action does not ‘accrue’ until the
28 aggrieved party knew, or reasonably should have known, of the facts giving rise to the

1 damage or injury.”). As alluded to previously, prior to June, 2011, Eric had steadfastly
2 maintained that all assets titled in the name of the ELN Trust were held, owned and
3 controlled by the parties as community property. Accordingly, none of Lynita’s causes
4 of action could have “accrued” until June, 2011: the first possible date that Lynita
5 could have known of any injury resulting from the creation, management, and abuse
6 of the ELN Trust.

7 Moreover, the statute of limitations for Lynita’s tort claims against Eric, Ms.
8 Martin, Ms. Harber, Ms. McGowan and Ms. Ramos have not begun to run, or only
9 recently began to run based upon application of the continuous tort doctrine. In cases
10 such as these, where the tortfeasors’ actions are continuous over a period of time, the
11 courts have applied the continuous tort doctrine precluding the tortious actor(s) from
12 asserting the statute of limitations. “It is well-settled that ‘when a tort involves
13 continuing injury, the cause of action accrues, and the limitation period begins to run,
14 at the time the tortious conduct ceases.’” *Page v. U.S.*, 729 F.2d 818, 819 (C.A.D.C.
15 1984); *Coulon v. Witco Corp.*, 848 So.2d 135, 137 (La. App. 2003) (“[The statute of
16 limitations] does not commence to run until the continuing cause of the damage
17 stops”).

18 This continuing tort exception is generally recognized because usually no
19 single incident in a continuous chain of tortious activity can fairly or
20 realistically be identified as the cause of significant harm, and it seems
21 proper to regard the cumulative effect of the conduct as actionable.
Moreover, since one should not be allowed to acquire a right to continue
the tortious conduct, it follows logically that statutes of limitation should
not run prior to its cessation.

22 *Anderson v. State of Hawai’i*, 965 P.2d 783, 790 (Haw. 1998); *see also*, *Page*, 729 F.2d at
23 822 (“[S]ince ‘one should not be allowed to acquire a right to continue the tortious
24 conduct,’ it follows logically that statutes of limitation should not run prior to its
25 cessation.”).

26 The rationale for application of the continuous tort doctrine is on all fours with
27 the instant case. The ELN Trust argues that Lynita’s claims are time-barred by the
28 applicable statute of limitations because Lynita alleges that the tortious acts committed

1 by Eric, Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos occurred "during the
2 time period October 1, 2001 through the present." Since Lynita alleges that the first
3 tortious acts causing injury occurred as early as October 1, 2001, the ELN Trust asserts
4 that Lynita's claims had to be brought by October 1, 2005. Under this theory, after
5 October 1, 2005, Eric, Ms. Martin, Ms. Harber, Ms. McGowan, and Ms. Ramos could
6 not be held liable for their tortious acts committed on October 1, 2001, nor any
7 tortious acts committed after such date up until the present. The law does not permit
8 for such an injustice, and application of the continuous tort doctrine is necessary in the
9 instant case.

10 Furthermore, several of the acts alleged by Lynita occurred within the past four
11 (4) years (many during the course of this litigation). Surely such acts are not time-
12 barred by the statute of limitations, despite Movants' request, without any factual
13 support, that the Court rule to the contrary.

14 Finally, when a plaintiff knew, or should have known, of the facts constituting
15 the elements of his or her cause of action is a question of fact that should in most cases
16 be determined by the trier of fact after discovery and a trial. *See, Oak Grove Investors*, 668
17 P.2d at 1079, 99 Nev. at 623 (reversing a district court's granting of summary
18 judgment on statute of limitations grounds where corporate defendant did not meet its
19 burden of showing the absence of a genuine issue of material fact as to when corporate
20 plaintiff discovered, or should have discovered, the facts giving rise to its cause of
21 action). Therefore, a decision at this juncture regarding whether Lynita has met the
22 applicable statutes of limitations periods would be premature.

23 D. Lynita Has Stated Claims For Conspiracy And Aiding and Abetting

24 Movants' final argument with regards to Lynita's claims for civil conspiracy, and
25 aiding and abetting (in addition to the statute of limitations), is that Lynita has not
26 plead the necessary existence of two or more parties to support such causes of action
27 because "agents and employees cannot conspire with each other, and/or their principal
28 or employer where they act in their official capacities on behalf of the principal and/or

1 employer and not as individuals." While this general proposition of law is correct, its
2 application to the instant case is not.

3 In *Collins v. Union Federal Savings & Loan Association*, 662 P.2d 610, 99 Nev. 284
4 (1983), the case cited and relied upon by the ELN Trust, a landowner borrowed
5 \$1,500,000.00 from First Federal Savings and Loan Association ("First Federal"), to
6 finance the construction of a hotel on his property. *Id.*, 662 P.2d at 613, 99 Nev. at
7 289. After the landowner defaulted on his payments to First Federal, First Federal
8 foreclosed upon landowner's hotel property, and at the foreclosure sale, acquired the
9 property after submitting the only bid. *Id.*, 662 P.2d at 614, 99 Nev. at 290.
10 Landowner filed suit against First Federal, and several agents and employees of First
11 Federal, alleging that the foreclosure sale was not fair and open, and that First Federal
12 and its employees "conspired with one another, and with each or all of the prospective
13 purchasers of the [hotel property] to induce the prospective purchasers not to purchase
14 or lease the [hotel property] from [landowner]." *Id.*, 662 P.2d at 622, 99 Nev. at 303.
15 The Nevada Supreme Court affirmed the district court's entry of summary judgment
16 against landowner on his civil conspiracy claim, holding that the employees of First
17 Federal could not conspire with their principal, First Federal, when acting in their
18 official capacities:

19 The respondents, at that time, were First Federal and three of its officers,
20 Dwyer, Wholey and Small. Agents and employees of a corporation
21 cannot conspire with their corporate principal or employer where they act
22 in their official capacities on behalf of the corporation and not as
23 individuals for their individual advantage. [Citations omitted]. If Dwyer,
24 Small and Wholey were not acting as individuals for their individual
25 advantage, no unlawful combination of persons would exist, upon which
26 [landowner] could premise his claim of civil conspiracy. Thus, one of the
27 material issues of fact regarding [landowner's] civil conspiracy claim for
28 relief is whether Dwyer, Wholey and Small were acting as individuals for
their individual advantage.

[Landowner's] response to the motion for summary judgment did not
contain any facts which would suggest that the respondents Wholey,
Dwyer and Small were acting as individuals for their individual benefit.
In fact, [landowner's] amended complaint alleged that the respondents,
at all material times, "acted in their representative, agency or employment
capacity." Although an action for civil conspiracy does include a "state
of mind" issue which is usually inappropriate for disposition by way of

1 summary judgment, [landowner] has failed to show that he could produce
2 the requisite quantum of evidence to enable him to prove that Wholey,
Dwyer and Small were acting as individuals in their individual capacities.

3 *Id.*

4 Unlike the plaintiff landowner in *Collins*, Lynita has never alleged, nor have the
5 Movants established, that Eric, Ms. Martin, Ms. Harber, Ms. McGowan and Ms.
6 Ramos were agents and employees of a single corporate entity, acting in an official
7 capacity in committing the tortious acts set forth by Lynita. In fact, Ms. Harber and
8 Ms. Martin have been sued in their capacity as former Distribution Trustees to the
9 LSN Trust, which certainly was not one in the same with the ELN Trust, its
10 beneficiaries, and trustees.

11 Furthermore, Movants are estopped from asserting that Eric, Ms. Martin, Ms.
12 Harber, Ms. McGowan, and Ms. Ramos were all agents for a common principal, acting
13 in a representative capacity, while at the same time asserting that the ELN Trust
14 conforms to the requirements of NRS Chapter 166. This is because Eric, as a
15 beneficiary of the ELN Trust, cannot direct distributions from the ELN Trust, and the
16 "distribution trustees" (currently Ms. Martin, and previously Ms. Harber) must act
17 independently of Eric. *See*, NRS 166.020 and NRS 166.040. Accordingly, Lynita has
18 sufficiently plead the existence of at least two or more parties necessary to establish the
19 existence of a conspiracy.

20 Finally, unlike the landowner in *Collins*, Lynita has alleged that Eric, Ms. Martin,
21 Ms. Harber, Ms. McGowan and Ms. Ramos acted as individuals for their individual
22 benefits, precluding dismissal of Lynita's causes of action for conspiracy. Specifically,
23 Lynita alleges that Ms. Martin, Ms. Harber, Ms. McGowan and/or Ms. Ramos are
24 relatives, employees and/or close friends with Eric. As a result of their respective
25 relationships with Eric, Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos
26 conspired with Eric for their own respective, individual interests and gains. Therefore,
27 Eric, Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos each acted in their
28 individual capacities, regardless of their respective affiliations with any common entity.

1 For the foregoing reasons, the ELN Trust's request to dismiss Lynita's causes of
2 action for conspiracy, and aiding and abetting should be denied.

3 E. Lynita Has Stated A Claim For Concert of Action

4 NRS 41.141 provides:

5 1. In any action to recover damages for death or injury to persons or for
6 injury to property in which comparative negligence is asserted as a
7 defense, the comparative negligence of the plaintiff or the plaintiff's
8 decendent does not bar recovery if that negligence was not greater than the
9 negligence or gross negligence of the parties to the action against whom
10 recovery is sought.

11 5. This section does not affect the joint and several liability, if any, of the
12 defendants in an action based upon:

13 . . .
14 (b) An intentional tort;

15 . . .
16 (d) The concerted acts of the defendants

17 (Emphasis added). Movants request dismissal of Lynita's cause of action for concert
18 of action, arguing that "for a concert of action, the tortfeasors must agree to 'engage in
19 conduct that is inherently dangerous or poses a substantial risk of harm to others' as
20 'the purpose of the concert of action theory is to deter antisocial or dangerous
21 behavior.'" To support this proposition, Movants rely on the Nevada Supreme Court's
22 holding in *GES, Inc. v. Corbitt*, 21 P.3d 11, 15, 117 Nev. 265 (2001), wherein the
23 Court stated:

24 To be jointly and severally liable under NRS 41.141(5)(d)'s concert of
25 action exception, the defendants must have agreed to engage in conduct
26 that is inherently dangerous or poses a substantial risk of harm to others.
27 Thus, this requirement is met when the defendants agree to engage in an
28 inherently dangerous activity, with a known risk of harm, that could lead
to the commission of a tort. Mere joint negligence, or an agreement to
act jointly, does not suffice; such a construction of NRS 41.141(5)(d)
would render meaningless the general rule of several liability.

(Emphasis added).

NRS 41.141, and the decision in *GES*, are inapplicable to the instant case. By
its express terms NRS 41.141 only applies to actions for negligence, and not to

1 intentional torts or acts. Indeed, in *GES* the only causes of action asserted by the
2 plaintiffs were for negligence in the erection of a ground truss. *Id.*, 21 P.3d at 12.
3 There, the plaintiffs sought to hold each co-defendant jointly liable for the negligent
4 acts of the other co-defendants, pursuant to the concert of actions exception to NRS
5 41.141. *See generally, id.* As the Nevada Supreme Court stated, NRS 41.141(5)(d) was
6 not meant to abrogate the general rule of several liability for defendants who are jointly
7 negligent. *Id.*, 21 P.3d at 15. Instead, for “[m]ere joint negligence,” concert of action
8 will only be found where “defendants agree to engage in an inherently dangerous
9 activity, with a known risk of harm, that could lead to the commission of a tort.” *Id.*
10 In other words, where parties cause injury to another from mere negligence in the
11 performance of normal activities, the general rule of several liability should apply, but
12 where parties engage in an inherently dangerous activity, they should be held jointly
13 liable for injury resulting from negligence in the performance of such acts, in order to
14 discourage such acts.

15 In the instant case, Lynita has not asserted a cause of action for negligence
16 against Eric, Ms. Martin, Ms. Harber, Ms. McGowan or Ms. Ramos, nor has Lynita
17 alleged that said parties engaged in an activity ‘that could lead to the commission of
18 a tort.’ Instead, Lynita’s causes of action arise out of intentional, tortious acts
19 committed by Eric, Ms. Martin, Ms. Harber, Ms. McGowan and Ms. Ramos which
20 caused harm to Lynita, the LSN Trust, and the community estate in this divorce
21 action. Such intentional acts, when committed in concert, cause each of the several co-
22 conspirators or actors to be jointly liable for the harm resulting therefrom:

23 For harm resulting to a third person from the tortious conduct of another,
24 one is subject to liability if he

25 (a) does a tortious act in concert with the other or pursuant to a common
26 design with him, or

26 (b) knows that the other’s conduct constitutes a breach of duty and gives
27 substantial assistance or encouragement to the other so to conduct
28 himself, or

(c) gives substantial assistance to the other in accomplishing a tortious

1 result and his own conduct, separately considered, constitutes a breach
2 of duty to the third person.

3 Restatement (Second) of Torts, § 876 (1979). Joint liability for concert of action has
4 in fact been found in cases not involving "inherently dangerous activity." For example,
5 in *Reynolds v. Schrock*, 107 P.3d 52, 197 Or. App. 564 (Or. App. 2005), the Oregon
6 Court of Appeals held that an attorney could be jointly liable for his client's breach of
7 fiduciary duty to another party, even though the attorney did not owe the other party
8 a fiduciary duty himself, if the attorney acted in concert with his client in the client's
9 breach of fiduciary duty. *See generally, id.* For the foregoing reasons, Movants' request
10 to dismiss Lynita's causes of action for concert of action should be denied.

11 F. A Constructive Trust Is Warranted And Necessary

12 Movants request that the Court dismiss Lynita's claim for a constructive trust
13 on the basis that Lynita cannot establish liability to warrant such a remedy, and Lynita
14 has not alleged a confidential relationship. As will be shown, neither argument has any
15 merit.

16 "[A] constructive trust, unlike a resulting trust, does not require that the parties
17 specifically intended to create a trust." 76 Am.Jur.2d Trusts § 163 (1992). "The
18 constructive trust is no longer limited to [fraud and] misconduct cases; it redresses
19 unjust enrichment, not wrongdoing." Dan B. Dobbs, Law of Remedies § 4.3(2) (2d
20 ed.1993); *see also, DeLee v. Roggen*, 111 Nev. 1453, 1457, 907 P.2d 168, 170 (1995);
21 *Locken v. Locken*, 98 Nev. 369, 372, 650 P.2d 803, 804-05 (1982) (reiterating that "[a]
22 constructive trust is a remedial device by which the holder of legal title to property is
23 held to be a trustee of that property for the benefit of another who in good conscience
24 is entitled to it."); *Bemis v. Estate of Bemis*, 967 P.2d 437, 114 Nev. 1021 (1998).
25 Constructive trusts are involuntary and are imposed upon the trustee to remedy a
26 wrongdoing. George T. Bogert, Trusts 642 (1987). A constructive trust should be
27 imposed by the Court where "(1) a confidential relationship exists between the parties;
28 (2) the retention of legal title by the holder thereof against another would be

1 inequitable; and (3) the existence of such a trust is essential to the effectuation of
2 justice." *Bemis*, 967 P.2d at 442.

3 It is impossible for Movants to deny the existence of a confidential relationship
4 in this matter. Eric and Lynita have been married for nearly 30 years, and no one
5 would deny that a confidential relationship exists between spouses. If the Court agrees
6 that the ELN Trust is Eric's alter ego, or otherwise finds the ELN Trust to be invalid,
7 then the property currently titled in the name of the ELN Trust will be deemed to be
8 held and owned by Eric. Accordingly, a confidential relationship will be established
9 between Lynita and the holder of the property at issue, Eric, and a constructive trust
10 would be appropriate to preserve the assets currently titled in the name of the ELN
11 Trust for the community, and Lynita.

12 In addition, assuming purely for the sake of argument that the ELN Trust is
13 valid, and is not Eric's alter ego, the imposition of a constructive trust would still be
14 warranted. As previously stated, a confidential relationship existed between Eric and
15 Lynita, thus a confidential relationship existed between the ELN Trust and Lynita.
16 Lynita further is (or was) named as a contingent beneficiary of the ELN Trust upon
17 Eric's death, further creating a confidential relationship between the ELN Trust and
18 Lynita. The ELN Trust holds multiple assets which are in controversy in this divorce
19 action. The ELN Trust and Eric now allege that the assets held by the trust are not
20 community assets but assets owned solely by the trust to which Lynita has no rightful
21 interest. Lynita asserts her claim for a constructive trust as retention of legal title to
22 the assets currently titled in the name of the ELN Trust, which assets Eric previously
23 repeatedly recognized as community assets and agreed to divide with Lynita in the
24 resolution of this divorce, is inequitable. Judicial recognition of the existence of a
25 constructive trust is essential to the effectuation of justice because it would prevent Eric
26 from benefitting from his own inequitable actions – the transfer of community assets
27 to the ELN trust for the purpose of ensuring an unequal division of community
28 property.

1 With regards to Movants argument that Lynita cannot establish liability in this
2 matter, Lynita has already demonstrated a high likelihood of success. Moreover, Eric
3 has admitted in sworn testimony that the assets currently titled in the name of the
4 ELN Trust are community assets of the parties' marriage, thereby admitting the
5 liability that he now denies.

6 Finally, Eric argues in his Motion to Dismiss that Lynita's claim for a
7 constructive trust is barred by the statute of limitations. "When one seeks the
8 imposition of a constructive trust in equity, the statute of limitations accrues when the
9 wronged party knows or should have known about the constructive trustee's wrongful
10 holding." *Id.* at 442. Of course, the Court has yet to impose the remedy of a
11 constructive trust, and therefore, no limitations period has commenced.

12 G. Lynita Is Entitled To Injunctive Relief As She Has Demonstrated a Likelihood
13 of Success on the Merits And Will Suffer Irreparable Injury Without the Court's
Intervention

14 Lynita has requested entry of a temporary restraining order, preliminary
15 injunction, and permanent injunction prohibiting the dissipation of any assets held in
16 the name of the ELN Trust. As Movants correctly point out, "For a preliminary
17 injunction to issue the moving party must show that there is a likelihood of success on
18 the merits, and that the nonmoving party's conduct, should it continue, would cause
19 irreparable harm for which there is no adequate remedy at law." *Dept. of Conservation*
20 *and Natural Resources v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). However,
21 this rule of law only applies to preliminary injunctions in non-domestic, civil cases.
22 Parties to a divorce action are absolutely entitled to a preliminary injunction preserving
23 any assets which are subject to a community claim:

24 Rule 5.85. Joint preliminary injunction.

25 (a) At any time prior to the entry of a decree of divorce or final
26 judgment and upon the request of either party in a family relations
27 proceeding, a preliminary injunction will be issued by the clerk
against both parties to the action enjoining them and their officers,
28 agents, servants, employees or a person in active concert or
participation with them from:

(1) Transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties or any property which is the subject of a claim of community interest, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court.

...

(c) Once issued, the joint preliminary injunction will remain in effect until a decree of divorce or final judgment is entered or until modified or dissolved by the court.

(Emphasis added). Such an injunction, as well as other injunctions, have already been issued in this case, and Lynita's request is simply a request to confirm what is already in place, and what she is legally entitled to. In addition, NRS 125.050 requires this Court to make any orders necessary (including, but not limited to, issuance of an injunction) to preserve the status quo and any property which will ultimately be ruled upon in this matter:

NRS 125.05 Preliminary orders concerning property or pecuniary interests.

If, after the filing of the complaint, it is made to appear probable to the court that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning the property or pecuniary interests, the court shall make such restraining order or other order as appears necessary to prevent the act or conduct and preserve the status quo pending final determination of the cause.

For the foregoing reasons, Movants' opposition to Lynita's claim for injunctive relief is unfounded.

Even if the Court were to apply the incorrect standard for issuance of a preliminary injunction in a divorce action advanced by Movants, Lynita would still be entitled to an injunction. As set forth throughout, Lynita has a high likelihood of success on the merits of this case, as evidenced by the allegations in her Third-Party Complaint, and Eric's very own testimony. If Eric and Third-Party Defendants' management, and dissipation of the parties' community assets from the ELN Trust is allowed to continue, there will be no adequate remedy at law. Movants' desire to continue to dissipate community assets is evidenced by the ELN Trust's most recent

1 filing with this Court, seeking to remove the Court's prior Order requiring the \$1.568
2 million received from the sale of the parties' interest in the Silver Slipper Casino to be
3 held in an interest bearing trust account opened by Eric's former counsel, David
4 Stephens, Esq., so that Eric might utilize these funds to purchase non-performing assets
5 in Wyoming. Movants argue that compensatory damages would provide an adequate
6 remedy to Lynita, however, absent injunctive relief there would be no realistic ability
7 for Eric or the ELN Trust to pay such damages to Lynita if the assets currently titled
8 in the ELN Trust were diminished or dissipated. Finally, and was set forth above, in
9 divorce actions the policy of the State of Nevada, as codified in NRS 125.050, and the
10 Nevada Supreme Court's and this Court's rules, as stated in EDCR 5.85, is to preserve
11 any assets subject to a community claim during the pendency of a divorce, rather than
12 to allow such assets to be sold, transferred, or encumbered during the proceedings and
13 award the injured spouse a paper judgment for monetary damages.

14 H. While Not A Natural Person, The ELN Trust Is Still A Proper Party To This
15 Action

16 Lynita has named the ELN Trust as a party to this litigation as the trust has
17 legal title to, and claims absolute ownership of, multiple assets which are the subject
18 matter of this action. Considering the Stipulation joining the parties' trusts as
19 interveners in this action was specifically intended to ensure this court had the
20 authority to enter all necessary orders to accord complete relief between all of the
21 parties to this action, and Eric specifically requested the ELN Trust be named as a
22 party to this litigation, there is no reason to dismiss the ELN Trust as a party to this
23 litigation.

24 In addition, pursuant to NRCP 19(a) and the Nevada Supreme Court's holdings
25 in *Robinson v. Kind*, 23 Nev. 330, 47 P. 977 (1897), *Levis v. Smart*, 96 Nev. 846, 849,
26 619 P.2d 1212, 121 (1980), and *Schwob v. Hemsath*, 98 Nev. 293, 646 P.2d 1212
27 (1982), the ELN Trust is required to be joined as a party to this action. *See also*, *Gladys*
28 *Baker Olsen Family Trust v. Eighth Jud. Dist. Ct.*, 110 Nev. 548, 874 P.2d 778 (1994).

1 All persons or entities materially interested in the subject matter of a lawsuit must be
2 made parties so that the court may issue a decree sufficient to bind them all. *Guerin v.*
3 *Guerin*, 114 Nev. 127, 953 P.2d 716 (1998). Lynita has named the trust as well as all
4 known trustees as parties in her Third-Party Complaint. The ELN Trust has already
5 entered its appearance in this action by way of its filing of an initial Notice of
6 Appearance, and Answer to Eric's Complaint for Divorce and Counterclaim and
7 Crossclaim.

8 *Causey v. Carpenters S. Nevada Vacation Trust*, 95 Nev. 609, 610, 600 P.2d 244,
9 245 (1979), the case cited by Movants in support of their request to dismiss the ELN
10 Trust from this litigation, does not stand for the proposition that a trust cannot be
11 named a party to an action. Rather, *Causey* states that only a trustee of a trust is
12 entitled to bring suit on behalf of a trust. Accordingly, *Causey* does not limit Lynita's
13 right to bring suit against the ELN Trust, and joinder of the ELN Trust as a party, in
14 addition to the current trustees to the ELN Trust, is the only way the Court can afford
15 complete relief amongst the parties.

16 I. Fraud

17 Movants have requested that the Court dismiss Lynita's Third-Party Complaint,
18 in its entirety, because the Third-Party Complaint "sounds in fraud," and does not
19 meet the heightened pleading requirements of NRCP 9(b). As admitted by Movants,
20 however, Lynita has not specifically pled a cause of action for fraud in her Third-Party
21 Complaint. Moreover, even if Lynita had pled fraud in her Third-Party Complaint, the
22 allegations in the complaint are sufficiently particular to meet the requirements of
23 NRCP 9(b). Lynita's thirty-six (36) page Third-Party Complaint describes in detail the
24 relationship of the parties to one another, and the numerous acts committed by the
25 Movants in support of Lynita's causes of action. Finally, there is no authority for
26 dismissing Lynita's Third-Party Complaint in its entirety where Lynita has filed causes
27 of action for declaratory relief, injunctive relief, and alter ego, along with claims
28 sounding in tort, and no such authority has been offered by Movants in support of this

1 request.

2 Should this Court believe that Lynita's Third-Party Complaint is deficient in any
3 manner, including a failure to provide enough specificity to sustain any of Lynita's
4 claims for relief as plead, Lynita respectfully requests leave of Court to amend her
5 Third-Party Complaint to cure such deficiencies. The granting of leave to amend is
6 within the discretion of the court. *See Cohen v. Mirage Resorts, Inc.* 119 Nev. 1, 62 P.3d
7 720, 734 (2003); *Nelson v. Sierra Construction Corp.*, 77 Nev. 334, 364 P.2d 402
8 (1961). Where justice so requires, leave to amend should be freely granted. *Paso*
9 *Buildres, Inc. v. Hebard*, 83 Nev. 164, 426 P.2s 71 (1967).

10 IV. COUNTERMOTION

11 A. Movants' Requests For Fees And Costs Should Be Denied, And Lynita Should
12 Be Awarded Attorneys Fees and Costs For Having To Defend Against The
13 Movants' Frivolous Motions to Dismiss

14 NRS 125.040 provides:

15 1. In any suit for divorce the court may, in its discretion, upon
16 application by either party and notice to the other party, require each
17 party to pay moneys necessary to assist the other party in accomplishing
18 one or more of the following:

19 ...

20 (c) To enable the other party to carry on or defend such suit.

21 (Emphasis added). NRS 18.010 permits litigants to recover their attorneys' fees where
22 the Court finds that a claim or defense of an opposing party was brought without
23 reasonable ground or to harass the prevailing party. EDCR 7.60(b)(1) permits the
24 Court to sanction a party for presenting to the court a motion "which is obviously
25 frivolous, unnecessary or unwarranted." In addition to denying Movants' requests for
26 fees and costs, the Court should enter an Order awarding Lynita her fees and costs
27 incurred in defending against the Motions to Dismiss.

28 As was set forth above, Movants bear an extremely high burden in prevailing on
a request to dismiss for failure to state a cause of action, or under a statute of
limitations defense. While acknowledging this rigorous standard, Movants failed to

1 meet such burdens as was set forth above. As this Court is well aware, Eric has already
2 caused Lynita to incur tens of thousands of dollars in unnecessary fees and costs during
3 the course of this litigation. Lynita should not be made to continue to incur
4 unnecessary fees and costs in this litigation, while Eric continuously changes positions
5 and causes this litigation to continue longer than should have been necessary.

6 Pursuant to Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d
7 31, 33 (1969), in awarding reasonable fees and costs to Lynita this Court will need to
8 make specific findings regarding the quality of her advocates, the character of the work
9 done in this motion, the work actually performed, and the result. It is impossible at
10 this time to provide the Court with a total amount of time spent towards this
11 Opposition and Countermotion, as a Reply to Movants' opposition to Lynita's
12 Countermotion, and a Court appearance, will undoubtedly be required. To assist the
13 Court in making the other necessary findings, however, Lynita submits that this motion
14 is only necessary as a result of the behavior of Eric Nelson. Lynita's lead counsel
15 charges a standard hourly fee of \$550.00 for his services. Associate counsels' hourly
16 fees are \$400.00. Both fees are customary and reasonable in this locality for similarly
17 situated persons and cases and the amount of time spent by counsel in their
18 representation of Lynita in this action. Mr. Dickerson has been practicing law for 35
19 years, with the last 20 plus years devoted to the practice of family law. He is a former
20 President of the State Bar of Nevada, and Clark County Bar Associations, and is AV
21 rated both as to skill and ethics. Ms. Provost has been licensed to practice law in
22 Nevada since 2003. She has been appointed by her peers to the State Bar of Nevada,
23 Family Law Executive Council and noted for performance by Super Lawyers. Further,
24 Ms. Provost routinely lectures in the area of family law. Mr. Karacsonyi has been
25 licensed to practice law in Nevada since 2007. He too has been appointed by his peers
26 to the State Bar of Nevada Family Law Executive Council. The Dickerson Law Group
27 is an AV Preeminent rated law firm, the highest level of professional excellence. All
28 attorneys at the firm have extensive experience in the area of family law, and a

1 reputation for competency. The rates charged by Lynita's counsel are reasonable in
2 light of the experience of the law firm, and the character of work involved in the instant
3 proceedings.

4 **V. CONCLUSION**

5 For the reasons set forth above, Lynita respectfully requests that the Court deny
6 Movants' Motions to Dismiss in their entirety, and award her the fees and costs she
7 has incurred, or will incur, in the preparation and presentation of this Opposition and
8 Countermotion.

9 DATED this 15 of December, 2011.

10 THE DICKERSON LAW GROUP

11
12 By 

13 ROBERT P. DICKERSON, ESQ.
14 Nevada Bar No. 000945
15 KATHERINE L. PROVOST, ESQ.
16 Nevada Bar No. 008414
17 JOSEF M. KARACSONYI, ESQ.
18 Nevada Bar No. 010634
19 1745 Village Center Circle
20 Las Vegas, Nevada 89134
21 Attorneys for LYNITA NELSON
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An employee of The Dickerson Law Group

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DISTRICT COURT
CLARK COUNTY, NEVADA

ERIC L. NELSON

Plaintiff(s),

CASE NO. D411537

-vs-

DEPT. NO. O

LYNITA SUE NELSON

Defendant(s).

**FAMILY COURT
MOTION/OPPOSITION FEE
INFORMATION SHEET
(NRS 19.0312)**

Party Filing Motion/Opposition: ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

MOTION FOR OPPOSITION TO Opposition to Motions to Dismiss and

Countermotion for an Award of Attorneys Fees and Costs

**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 1st of December, 2002011

Shari Aidukas
Printed Name of Preparer

[Signature]
Signature of Preparer

Exhibit “A”

AUGUST 30, 2010 TRIAL TESTIMONY - NELSON v. NELSON

(OPENING STATEMENT - JAMES J. JIMMERSON, ESQ., Attorney for Eric L. Nelson)

P.14, line 2

You have before you a list of properties 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...

Pg 14, line15

...exaggerate his child support payment or alimony claim it's just going to fall by the wayside when you revognize that each party, on a cost basis, is going to get approximately \$9 million in assets and ona 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. . .

Page 19, line 5

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. But the two assets that are – that are – that – that create an issue are if you late item number 8 and item number 9

...

Page 21, line 23

So the difference between A and B s 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.

(DIRECT EXAMINATION OF ERIC NELSON - QUESTIONING BY MR. JIMMERSON)

Page 32, line 21

A. . . . 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.

Page 44, 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 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.

Page 48, line 2 (discussing Exhibit 1A)

~ this is basically a way I felt to – to easily explain the assets, to simplify it for... anyone 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...

Page 52, line 3

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. . . .

Page 70, line 22 (discussing Lindell Plaza Office building)

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.

Page 115, line 9 (discussing Gateway AZ lots)

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 by the community?

A. Yes.

Page 156, line 17 (discussing Silver Slipper/Dynasty)

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.

Page 165, line 6 (discussing land deals in MS)

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 verbage problems when we transferred them to Lynita, they clouded the title.

Page 186, line 2

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....

AUGUST 31, 2010 TRIAL TESTIMONY - NELSON v. NELSON

(CROSS EXAMINATION OF ERIC NELSON - QUESTIONING BY ROBERT P. DICKERSON, ESQ., Attorney for Lynita Nelson)

Page 463, line 4 (payments from Trust to Lynita)

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 it in from Nelson Trust so she would get an additional 6000 periodically.

Page 473, line 16

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 the expenses.

Page 547, line 1

- 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 out business.

Page 549, line 18 (discussing Russell Road property)

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

Page 557, line 15

- Q. Now, what is Mellon Bank Savings?
- A. That is the line of credit where I established three million cash in bonds. I – I liquidated some of the bonds and – and flowed over to – oh, into Ban – wherever it went to, Nelson Trust, and converted it into that –

Page 559, line 3

- 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 --

SEPTEMBER 1, 2010 TRIAL TESTIMONY - NELSON v. NELSON

(CROSS EXAMINATION OF ERIC NELSON - QUESTIONING BY MR. DICKERSON)

Page 672, line 9

- Q. What is the – N-1? That's – bates stamp number at the bottom is 787.
- A. That would be the number of parcels, all the parcels that are held, I believe, in Mississippi.
- ...

Page 673, line 20

- 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.