

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IN THE MATTER OF THE FUND FOR THE  
ENCOURAGEMENT OF SELF RELIANCE,  
AN IRREVOCABLE TRUST.

DOAN L. PHUNG,  
Appellant,  
vs.  
THU-LE DOAN,  
Respondent.

No. 74964

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Feb 21 2018 08:46 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See *KDI Sylyan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Eighth Department 26  
County Clark Judge Gloria Sturman  
District Ct. Case No. P-16-089638-T

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

Attorney L. Joe Coppedge Telephone 702-454-3333  
Firm Mushkin Cica Coppedge  
Address 4495 South Pecos Road  
Las Vegas, NV 89121

Client(s) Doan L. Phung

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Dara Goldsmith Telephone 702-873-9500  
Firm Goldsmith & Guymon, P.C.  
Address 2055 Village Center Circle  
Las Vegas, NV 89134

Client(s) Thu-Le Doan

Attorney Peter Co Telephone 702-873-9500  
Firm Goldsmith & Guymon, P.C.  
Address 2055 Village Center Circle  
Las Vegas, NV 89134

Client(s) Thu-Le Doan

(List additional counsel on separate sheet if necessary)

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

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): _____  |

Order Denying Respondent, Doan L. Phung's  
Objection to Probate Commissioner's Report  
and Recommendation and Order Granting  
Trustee Thu-Le Doan to Decant the Assets  
of the Fund for the Encouragement of Self  
Reliance pursuant to NRS 163.556  
Entered on December 27, 2017

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

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

In the Matter of the:  
VIETNAMESE-AMERICAN SCHOLARSHIP FUND,  
An Irrevocable Trust.

Doan L. Phung, Appellant  
v.  
Thu-Le Doan, Respondent

Case No. 74963

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

In the Matter of the:  
VIETNAMESE-AMERICAN SCHOLARSHIP FUND,  
An Irrevocable Trust

Eighth Judicial District Court, Clark County Nevada  
Case No. P-16-089637-T

Order Denying Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and  
Recommendation and Order Granting Trustee Thu-Le Doan to Decant the Assets of the Vietnamese-  
American Scholarship Fund Pursuant to Tenn. Code Ann. §35-15-816  
Entered on December 27, 2017

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

See Exhibit "1" Attached

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

See Exhibit "1" Attached

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

N/A

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

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

☐ Reversal of well-settled Nevada precedent (identify the case(s))

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

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: See Response to Question No. 13

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

See Exhibit "1" Attached

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** December 27, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** December 28, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** January 19, 2018

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

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**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |
- 

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

The Order Denying Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and Recommendation and Order Granting Trustee Thu-Le Doan to Decant the Assets of the Fund for the Encouragement of Self Reliance pursuant to NRS 163.556, is a final order in a proceeding commenced in the Eighth Judicial District Court from which the order is rendered.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Thu-Le Doan, Petitioner

Doan L. Phung, Respondent

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

N/A

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

Petitioner, Thu-Le Doan filed a Petition to Decant the Assets of the Fund for the Encouragement of Self Reliance, an irrevocable trust  
December 27, 2017

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

1           **No. 8. Nature of the Action.**

2           Petitioner below, Thu Le Doan filed a Petition on September 22, 2016, requesting that the  
3 assets of the charitable trust, the Fund for the Encouragement of Self-Reliance ("FESR") be divided  
4 equally into separate irrevocable charitable trusts or, in the alternative, that the assets be divided  
5 equally and Petitioner's portion be decanted into her own charitable trust. Respondent, Doan L.  
6 Phung filed an Objection on October 12, 2016, and the matter was initially heard on an order  
7 shortening time by the Probate Commissioner on October 14, 2016. Following the entry of the initial  
8 Report and Recommendations, Respondent filed an objection. The objection was heard by the  
9 District Court on February 1, 2017. At the hearing, the District Court found, (1) it is unclear from  
10 the record and Report and Recommendation whether the Probate Commissioner considered whether  
11 there are any questions of fact that will impact or militate a different relief under the Decanting  
12 Statute, and (2) it is unclear from the record and Report and Recommendation the analysis that the  
13 Probate Commissioner went through to reach his conclusion to decant.

14           The District Court remanded this matter to the Probate Commissioner to consider and clarify  
15 certain questions, including (1) whether there are any questions of fact which are material to an  
16 analysis under the Decanting Statute, (2) whether the Probate Commissioner ascertained those  
17 material facts, and if so, what are the material facts and how did the Probate Commissioner consider  
18 them in his analysis, (3) whether the Probate Commissioner determined there are material facts not  
19 in dispute, and if so, what are the material facts that are not in dispute, and (4) whether there are  
20 material facts that support a different relief other than decanting.

21           Following a hearing on April 28, 2017, the Probate Commissioner issued new findings and  
22 recommendations, which were entered on August 4, 2017. Respondent Phung filed an objection to  
23 the new Report and Recommendation Confirming Prior Report and Recommendation Granting  
24 Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of  
25 Law, Confirming Co-Trustees and to Modify Trust. Following a hearing on October 12, 2017, the  
26 District Court entered the Order on December 27, 2017. Among other provisions, the Order indicated  
27 that although the Probate Commissioner incorrectly used the term "absolute right", he correctly  
28 analyzed NRS 163.556 in finding that Petitioner has a right to decant FESR. Based upon that and

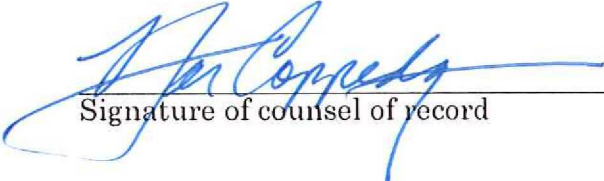
## VERIFICATION

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

Doan L. Phung  
Name of appellant

L. Joe Coppedge  
Name of counsel of record

February 20, 2018  
Date

  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE


I certify that on the 20 day of February, 2018, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dara Goldsmith  
Peter Co  
Goldsmith & Guymon, P.C.  
2055 Village Center Circle  
Las Vegas, NV 89134

Dated this 20 day of February, 2018

  
Signature

# EXHIBIT “1”

1           **No. 8. Nature of the Action.**

2           Petitioner below, Thu Le Doan filed a Petition on September 22, 2016, requesting that the  
3 assets of the charitable trust, the Fund for the Encouragement of Self-Reliance ("FESR") be divided  
4 equally into separate irrevocable charitable trusts or, in the alternative, that the assets be divided  
5 equally and Petitioner's portion be decanted into her own charitable trust. Respondent, Doan L.  
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12 Statute, and (2) it is unclear from the record and Report and Recommendation the analysis that the  
13 Probate Commissioner went through to reach his conclusion to decant.

14           The District Court remanded this matter to the Probate Commissioner to consider and clarify  
15 certain questions, including (1) whether there are any questions of fact which are material to an  
16 analysis under the Decanting Statute, (2) whether the Probate Commissioner ascertained those  
17 material facts, and if so, what are the material facts and how did the Probate Commissioner consider  
18 them in his analysis, (3) whether the Probate Commissioner determined there are material facts not  
19 in dispute, and if so, what are the material facts that are not in dispute, and (4) whether there are  
20 material facts that support a different relief other than decanting.

21           Following a hearing on April 28, 2017, the Probate Commissioner issued new findings and  
22 recommendations, which were entered on August 4, 2017. Respondent Phung filed an objection to  
23 the new Report and Recommendation Confirming Prior Report and Recommendation Granting  
24 Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of  
25 Law, Confirming Co-Trustees and to Modify Trust. Following a hearing on October 12, 2017, the  
26 District Court entered the Order on December 27, 2017. Among other provisions, the Order indicated  
27 that although the Probate Commissioner incorrectly used the term "absolute right", he correctly  
28 analyzed NRS 163.556 in finding that Petitioner has a right to decant FESR. Based upon that and

1 other findings, the District Court ordered that Petitioner has a legal right to decant FESR.

2  
3 **No. 9. Issus on Appeal.**

- 4 1. Whether the District Court erred in finding and ordering that Petitioner, Thu-Le Doan  
5 has a legal right to decant FESR.
- 6 2. Whether the District Court erred by failing to acknowledge the disputed issues of material  
7 fact which require the setting of a discovery schedule and evidentiary hearing pursuant  
8 to EDCR 4.17.
- 9 3. Whether the District Court erred by adopting the Probate Commissioner reasoning that  
10 he was relying on the ability of Petitioner to serve as a trustee, and did not inquire about  
11 her incapacity to serve and her questionable conduct with respect to another charitable  
12 trust.
- 13 4. Whether the District Court erred by adopting the Probate Commissioner's reasoning that  
14 the only material facts for the court to find in applying NRS 163.556 is whether a trustee  
15 has the power of invasion of principal and if there is no reduction of any income interest  
16 of any income beneficiary.
- 17 5. Whether the District Court erred by declining to enforce the parties contract rights as set  
18 forth in a Marital Settlement Agreement, which limit the parties' ability to make  
19 distributions from trust assets.
- 20 6. Whether the District Court erred in applying NRS 163.556.

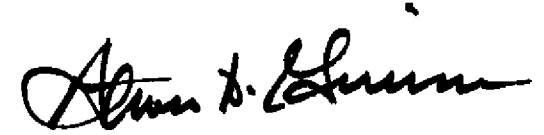
21  
22 **No. 13. Assignment to the Court of Appeals or retention in the Supreme Court.**

23 Appellant, Doan L. Phung believes the Supreme Court should retain this case under  
24 NRAP 17(a)(13) and NRAP 17(a)(14) as this appeal concerns a question of first impression  
25 of Nevada law and the principal issue is a matter of statewide public importance.

26 The question of whether a trustee of a charitable trust may decant trust assets is not  
27 only a matter of first impression in Nevada, but it does not appear that this specific question  
28 has been addressed by other jurisdictions. As such, this is a significant issue of first

1 impression that merits this case being retained by the Supreme Court.

2 Moreover, the public policy consequences of this case could be far reaching. If the  
3 District Court decision is allowed to stand, a trustee of other charitable trusts could use the  
4 decision to decant funds from that other charitable trusts, which would expand the decanting  
5 statute beyond its intended purpose.  
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CLERK OF THE COURT

1 **CODE: PETN**  
2 **GOLDSMITH & GUYMON, P.C.**  
3 Dara J. Goldsmith, Esq.  
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Peter Co, Esq.  
5 Nevada Bar No. 11938  
Email: pco@goldguylaw.com  
6 2055 Village Center Circle  
Las Vegas, Nevada 89134  
7 Telephone: (702) 873-9500  
Facsimile: (702) 873-9600  
8 Attorneys for Thu-Le Doan,  
Trustor of the FUND FOR  
THE ENCOURAGEMENT OF SELF RELIANCE

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In the Matter of the )  
14 FUND FOR THE ENCOURAGEMENT OF ) Case No. P-16-089638-T  
SELF RELIANCE ) Department PC1  
15 )  
16 An Irrevocable Trust. )

17 **PETITION TO ASSUME IN REM JURISDICTION OF TRUST, CONFIRM TRUSTEE**  
18 **AND TO MODIFY TRUST**

19 COMES NOW, Thu-Le Doan ("Petitioner"), by and through counsel,  
20 Dara J. Goldsmith, Esq. and Peter Co. Esq., of the law firm of  
21 Goldsmith & Guymon, P.C. ("Trust Counsel"), and respectfully  
22 petitions this Court to assume jurisdiction over the FUND FOR THE  
23 ENCOURAGEMENT OF SELF RELIANCE aka CENTER FOR THE ENCOURAGEMENT OF  
24 RELIANCE ("Trust") and to confirm the appointment of Thu-Le Doan and  
25 Doan L. Phung, Trustees of the Trust, in accordance with NRS 164.010,  
26 and confirm the Terms of the Trust and respectfully alleges as follows:

27 1. The FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE aka CENTER FOR THE  
28 ENCOURAGEMENT OF RELIANCE was established on December 26, 1997, by



1 Petitioner and her former husband, Doan L. Phung ("Phung") as an  
2 irrevocable charitable trust and is funded with the community property  
3 funds of Petitioner and Phung. A copy of the Charter for the Fund is  
4 attached as Exhibit A. Petitioner and Phung are the Trustors and  
5 initial Trustees of the Trust.

6 2. According to the terms of the Trust, the purpose of the Trust is  
7 to encourage the pursuit of self reliance, including but not limited to:  
8 "(1) assisting organizations that loans micro amounts of money at  
9 favorable interest rates for the purpose of enabling individuals to  
10 pursue trade or business; (2) paying micro amounts of money to  
11 individuals who are qualified as above but are nevertheless unable to  
12 meet the loan criteria; to individuals from a disadvantaged background  
13 who are qualified to attend Vietnamese or American institutions of  
14 training but because of their financial need have difficulty in so  
15 doing; or (3) contributions to any charitable organizations, trust,  
16 community chest, fund or foundation which at the time of the  
17 contribution by Trustees is one of those organizations specified in the  
18 Internal Revenue Code, contributions to which are deductible for income  
19 tax purposes."<sup>1</sup>

20 3. The Trust was amended on January 26, 1999, by the Trustors so that  
21 the Trust would comply with Section 501(c)(3) of the Internal Revenue  
22 Code. Attached as Exhibit B is a copy of Amendment 1 to the Charter of  
23 the Fund.

24 4. Petitioner and Phung are divorced and the Decree of Divorce ending  
25 their marriage was entered on April 12, 2012, with the Clark County  
26 District Court, Nevada, Case No. D-11-455322-D. The Decree of Divorce  
27 incorporated a Marital Settlement Agreement ("MSA"). A copy of the  
28

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<sup>1</sup> See Exhibit A, page 1.

1 Decree of Divorce and MSA is attached as Exhibit C.

2 5. The Trust was not divided in the divorce proceedings. The MSA gave  
3 Phung investment management powers over the Trust assets. Pursuant to  
4 the MSA any and all decisions relating to Trust contributions,  
5 expenditures, grants, etc., in excess of \$5,000.00 shall be agreed to  
6 in writing by both Petitioner and Phung, thus Petitioner and Phung can  
7 make donations from the Trust without the other's consent as long as the  
8 total donations are less than \$5,000.00 per donee.

9 6. The majority of the charitable donations made by Petitioner on  
10 behalf of the Trust are made in Vietnam. Petitioner is extensively  
11 involved in charitable programs in Vietnam relating to public sanitation  
12 and educational swimming and drowning prevention programs. Thus,  
13 Petitioner travels to Vietnam extensively and frequently to manage and  
14 run her various charitable ventures there.

15 7. Phung also makes donations to Vietnam on behalf of the Trust,  
16 however some of his donations are made to political groups that are not  
17 viewed favorably by the Vietnamese government. Such political donations  
18 are restricted by the Trust, which states that "[n]o part of the Trust  
19 fund shall be used to carry on propaganda or otherwise attempt to  
20 influence legislation, or to participate in any political campaign."

21 See Exhibit A, page 1.

22 8. In addition to the unauthorized political donations, Phung also  
23 publishes articles and blogs on Vietnamese political internet forums and  
24 signs numerous petitions against the Vietnamese government on various  
25 political issues.

26 9. Due to Phung's political activism and donations, Petitioner is  
27 advised and believes that Phung has been refused a visitor's visa by the  
28 Vietnamese government. Petitioner further believes that due to Phung's

1 political activism and donations, Petitioner has been questioned and  
2 monitored by the Vietnamese secret police during her previous visits to  
3 Vietnam.

4 10. Petitioner does not consent to such political donations by Phung  
5 and, upon information and belief, Phung believes that since the  
6 donations are less than \$5,000.00 each, he does not need Petitioner's  
7 consent for such political donations pursuant to the MSA even though  
8 such political donations are restricted by the Trust.

9 11. Phung's continued political affiliations and donations puts  
10 Petitioner's safety at risk when she travels to Vietnam for her  
11 charitable work. Even though she is divorced from Phung and she is not  
12 involved with such political groups, the fact that such donations are  
13 coming from the Trust that they jointly established puts Petitioner in  
14 an untenable situation where she is constantly monitored and questioned  
15 by the Vietnamese secret police.

16 12. In addition to Phung's political affiliations and donations, due  
17 to their contentious and litigious divorce, the relationship between  
18 Petitioner and Phung has become very hostile, thus Petitioner is unable  
19 to work with Phung as Co-Trustees to achieve the charitable goals of the  
20 Trust. Due to Phung's bad temper and past verbal threats, Petitioner  
21 fears for her own personal safety and refuses to personally meet with  
22 Phung. Due to the hostile relationship, Phung has refused to issue  
23 donations from the Trust to some of Petitioner's charities when she  
24 requested Phung to do so. Therefore, the Co-Trustees are unable to  
25 constructively work together to further the charitable goals of the  
26 Trust.

27 13. Due to the above concerns, Petitioner requests that the Court  
28 terminate the Trust and the Trust assets be divided equally and be

1 decanted into separate irrevocable charitable trusts, one for Petitioner  
2 and one for Phung; or in the alternative that the Trust assets be  
3 divided equally and Petitioner's portion be decanted into Petitioner's  
4 separate irrevocable charitable trust and Phung's portion can remain in  
5 the Trust with Phung serving as the sole Trustee of the Trust.

6 14. NRS 164.010(1), provides in relevant part, that "[u]pon petition  
7 of any person appointed as trustee of an express trust by any written  
8 instrument other than a will, or upon petition of a settlor or  
9 beneficiary of the trust, the district court of the county in which the  
10 trustee resides or conducts business, or in which the trust has been  
11 domiciled, shall consider the application to confirm the appointment of  
12 the trustee and specify the manner in which the trustee must qualify.  
13 Thereafter the court has jurisdiction of the trust as a proceeding in  
14 rem."

15 15. This Court should assume in rem jurisdiction over the Trust  
16 pursuant to NRS 164.010(1) because the Trust is domiciled in Clark  
17 County, Nevada, as there is a clear and sufficient nexus between the  
18 Trust and Clark County, Nevada for the following reasons: (a) the  
19 Trust's governing law provisions apply the law of the State of Nevada;  
20 (b) the Trustors and Trustees reside in and do business in Clark County,  
21 Nevada; and (c) the Trust is administered in Clark County, Nevada.

22 16. NRS 153.031(1) provides, in relevant part, that a trustee or  
23 beneficiary may petition the Court regarding any aspect of the affairs  
24 of the trust, including:

- 25 (a) Determining the existence of the Trust;
- 26 (b) Determining the construction of the Trust instrument;
- 27 (c) Determining the existence of an immunity, power, privilege,  
right or duty;
- 28 (d) Determining the validity of a provision of the trust;
- ...
- (n) Approving or directing the modification or termination of the  
trust; [and]

1 (o) Approving or directing the combination or division of trusts.  
2 See NRS 153.031(1).

3 17. Thus, pursuant to NRS 153.031(1), Petitioner petitions the Court  
4 to terminate the Trust and the Trust assets be divided equally and be  
5 decanted into separate irrevocable charitable trusts, one for Petitioner  
6 and one for Phung; or in the alternative that the Trust assets be  
7 divided equally and Petitioner's portion be decanted into Petitioner's  
8 separate irrevocable charitable trust and Phung's portion can remain in  
9 the Trust with Phung serving as the sole Trustee of the Trust.

10 18. That the names and addresses of the Trustors, Trustees,  
11 and Beneficiaries of this Trust are:

12	<u>NAME</u>	<u>AGE/RELATIONSHIP</u>	<u>ADDRESS</u>
13	Thu-Le Doan	Trustor/Trustee	c/o Marshal Willick, Esq.
14			3591 E. Bonanza Rd., Suite 200
			Las Vegas, NV 89110
15	Doan L. Phung	Trustor/Trustee	8021 Golfers Oasis Dr.
16			Las Vegas, NV 89149

17 WHEREFORE, Petitioners prays:

18 (1) That this Court assume jurisdiction over the FUND FOR THE  
19 ENCOURAGEMENT OF SELF RELIANCE;

20 (2) That Thu-Le Doan and Doan L. Phung be confirmed as  
21 Trustees of the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE;

22 (3) That this Court confirm the terms of the FUND FOR THE  
23 ENCOURAGEMENT OF SELF RELIANCE as set forth in the Trust attached to  
24 this Petition as Exhibit A;

25 (4) That this Court terminate the FUND FOR THE ENCOURAGEMENT  
26 OF SELF RELIANCE and the Trust assets be divided equally and be  
27 decanted into separate irrevocable charitable trusts, one for Thu-Le  
28 Doan and one for Doan L. Phung; or in the alternative that the FUND

1 FOR THE ENCOURAGEMENT OF SELF RELIANCE assets be divided equally and  
2 Thu-Le Doan's portion be decanted into Thu-Le Doan's separate  
3 irrevocable charitable trust and Doan L. Phung's portion can remain  
4 in the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE with Doan L.  
5 Phung serving as the sole Trustee of the FUND FOR THE ENCOURAGEMENT  
6 OF SELF RELIANCE;

7 (5) That this Court relinquish jurisdiction in accordance with  
8 NRS 164.010(3) after the requested relief is granted; and

9 (6) All other necessary and proper orders be made in the  
10 premises.

11 DATED this 23<sup>rd</sup> day of August, 2016.

12  
13 **GOLDSMITH & GUYMON, P.C.**

14 

15 \_\_\_\_\_  
16 Dara J. Goldsmith, Esq.  
17 Nevada Bar No. 4270  
18 Peter Co, Esq.  
19 Nevada Bar No. 11938  
20 2055 Village Center Circle  
21 Las Vegas, NV 89134  
22 (702) 873-9500  
23 Attorneys for Thu-Le Doan

24 ...

25 ...

26 ...

27 ...

28 ...

...

...

...

...

1 VERIFICATION

2 STATE OF NEVADA )  
3 ) ss:  
4 COUNTY OF CLARK )


5 Thu-Le Doan, being first duly sworn on oath, according to law,  
6 deposes and says:

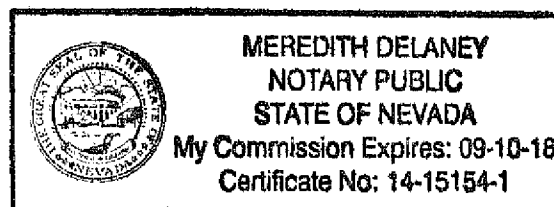
7 I am the Petitioner named in the foregoing Petition; I have read  
8 the same and know the contents thereof; and the same are true to the  
9 best of my own personal knowledge, except for those statements made  
10 upon and information and belief, and, as to those statements, I  
11 believe them to be true.

12 

13 Thu-Le Doan


14 SUBSCRIBED AND SWORN to before  
15 me this 23<sup>rd</sup> day of August, 2016.

16   
17 Notary Public in and for said  
18 County and State



19 Submitted by:

20 GOLDSMITH & GUYMON, P.C.

21   
22 Dara J. Goldsmith, Esq.  
23 Nevada Bar No. 4270  
24 Peter Co, Esq.  
25 Nevada Bar No. 11938  
26 2055 Village Center Circle  
27 Las Vegas, NV 89134  
28 (702) 873-9500  
Attorneys for the Petitioner

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**EXHIBIT A**  
**CHARTER**



CHARTER  
FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR)

For the purpose of empowering qualified but disadvantaged people and organization activities in Vietnam and the United States of America to look for ways to help themselves, we, THU-LE DOAN AND DOAN L. PHUNG of 5505 Painted Sunrise Drive, Las Vegas, Clark County, Nevada herein referred to as "Trustors," irrevocably create a Trust fund of the property listed in Exhibit "A" attached hereto and made a part hereof, which we have today delivered to THU-LE DOAN and DOAN L. PHUNG, trustees.

We hereby give, transfer, and deliver the property described in Exhibit "A" to the Trustees in Trust for the purposes stated.

This fund shall be known as the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR).

Trustors and Trustees agree as follows:

SECTION ONE

MANAGEMENT OF TRUST FUND AND INCOME

Trustees shall hold Trust fund and may, in their discretion, use any legal means permitted under the laws of the State of Nevada, invest the Trust fund to create income, or to raise further funds, to be used for the purpose of encouraging the pursuit of self reliance. These include, but are not limited to: (1) assisting organizations that loans micro amounts of money at favorable interest rates for the purpose of enabling individuals to pursue a trade or business; (2) paying micro amounts of money to individuals who are qualified as above but are nevertheless unable to meet the loan criteria; to individuals from a disadvantaged background who are qualified to attend Vietnamese or American institutions of training but because of their financial need have difficulty in so doing; or (3) contributions to any charitable organizations, trust, community chest, fund or foundation which at the time of the contribution by Trustees is one of those organizations specified in the Internal Revenue Code, contributions to which are deductible for income tax purposes.

SECTION TWO

RESTRICTIONS ON USE OF TRUST FUND

The Trust fund and the income thereof shall be devoted exclusively to the purposes described above and shall in no part and under any circumstances be given or contributed to or inure to the benefit of any private person or corporation. No part of the Trust fund shall be used to carry on propaganda or otherwise attempt to influence legislation, or to participate in any political campaign. Notwithstanding any other provision hereof, this Trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under the Internal Revenue Code and its regulations

as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended.

Other provisions of this instrument notwithstanding, the Trustees shall not engage in any act of self-dealing as defined in Section 4941 subdivision (d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor retain any excess business holding as defined in Section 4943 subdivision (c) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945.

### SECTION THREE

#### ADDITIONAL GIFTS TO FUND

Either Trustors or other persons or organizations may, from time to time, make additional gifts of money or property to Trustees to become part of the Trust fund.

### SECTION FOUR

#### ACCOUNTING

The fiscal year of the Trust shall be from January 1 to December 31 of each year. Trustees shall publish on January 31 of each year a statement of the receipts and disbursements and the purposes for which disbursements have been made for the preceding fiscal year. An annual audit shall be made of the accounts of the Trust by certified public accountants.

### SECTION FIVE

#### REIMBURSEMENT AND COMPENSATION OF TRUSTEE

Trustees shall be reimbursed from the Trust fund for all expenses reasonably incurred by them in the administration of the Trust fund.

### SECTION SIX

#### APPOINTMENT OF SUCCESSOR TRUSTEE

The number of Trustees shall not exceed five (5) individuals, two of whom are Trustors or selected exclusively by one or both Trustors. Trustors expressly reserve the right during their lifetime to appoint additional Trustees and the Trustees may elect additional Trustees by not less than two-thirds (2/3) majority vote. The term for which Trustees are authorized to act shall be for three years. A Trustee may be removed by not less than two-thirds (2/3) majority vote of all Trustees when they deem that such Trustee is incompatible, or not in sympathy with the purposes of the Trust, or for any other just cause. In

the event that a vacancy shall occur because of death, resignation, incapacity to act, or removal of a Trustee, then the remaining Trustees shall, within sixty (60) days from the date of such vacancy, fill the vacancy. The failure of a Trustee to attend any of the meetings of Trustees for three (3) consecutive meetings shall be deemed conclusive as his or its incapacity to act.

## SECTION SEVEN

### MANAGEMENT

Trustees by majority vote of not less than 51%, may hire a manager who may hire staff to manage the operations of the Fund.

## SECTION EIGHT

### LIABILITY OF TRUSTEE

Trustees shall be chargeable only with the exercise of good faith in carrying out the provisions of the Trust and shall not, in the absence of bad faith, be responsible or accountable for error of judgment in making the contributions and gifts pursuant to the provisions of Section One hereof.

## SECTION NINE

### GIFTS IRREVOCABLE

Gifts made to the Trust shall be irrevocable. Donor(s) has the privilege to designate the contribution for a specific use and in honor of an individual(s) or organization(s), provided that such use is in line with the objectives of the fund, and that it does not run counter to the law. Trustees of the fund have the right to reject such privilege by majority vote. In that case, the contribution shall be returned in total to the donor or be given to an organization of the donor's designation.

If it shall be determined by the Internal Revenue Service subsequent to the transfer of any funds to Trustees by Trustors or any other person that the Trust fund is not exempt from the payment of income tax on its income or if the donors to the fund may not be entitled to charitable deductions for income tax purposes for contributions made thereto in the manner and to the full extent provided by the Internal Revenue Code, then such gifts as remain in the fund at the time of such determination shall be given by Trustees to a qualified tax exempt charitable organization selected by Trustees to best carry out the purpose of this Trust, and this Trust shall thereupon terminate.

## SECTION TEN

### TRUST IRREVOCABLE

This CHARTER is irrevocable and may not be amended or modified; provided, however, that if for any reason whatsoever this Trust fails to qualify as tax-exempt charitable Trust, such changes as are

necessary for the Trust to so qualify may be made by Trustors so long as they are living and competent, otherwise and thereafter, by a court of competent jurisdiction.

#### SECTION ELEVEN

##### INTERPRETATION OF TRUSTOR'S INTENT

In the event that the purpose for which this Trust has been created cannot, at any time, be carried out, Trustees are to administer the Trust for another charitable purpose which is similar to the original purpose of the Trustors.

#### SECTION TWELVE

##### DISSOLUTION

In the event of dissolution, the remaining funds will be turned over to a qualified not-for-profit organization which itself is exempt as a not-for-profit organization described in Sections 501(c)(3) and 170 (c)(2) of the Internal Revenue Code of 21954, or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state, or local government for exclusive public purpose.

##### TRUSTORS:

12/26/97  
Date  
12/26/97  
Date

Thule Doan  
THU-LE DOAN  
Doan L. Phung  
DOAN L. PHUNG

We the undersigned, hereby accept and assume the Trust created by the foregoing Trust instrument according to all the terms and conditions thereof.

##### TRUSTEES:

12/26/97  
Date  
12/26/97  
Date

Thule Doan  
THU-LE DOAN  
Doan L. Phung  
DOAN L. PHUNG

STATE OF Nevada

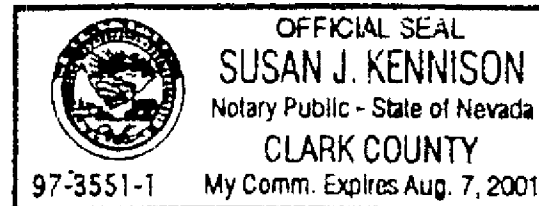
COUNTY OF Clark

Personally appeared before me, Thu Le Doan, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained.

Witness my hand, at office, this 26 day of Dec, 19 97.

Susan J. Kennison  
NOTARY PUBLIC

My Commission Expires: Aug 7, 2001



Personally appeared before me, Doan L. Phung, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained.

Witness my hand, at office, this 26 day of Dec, 19 97.

Susan J. Kennison  
NOTARY PUBLIC

My Commission Expires: Aug 7, 2001

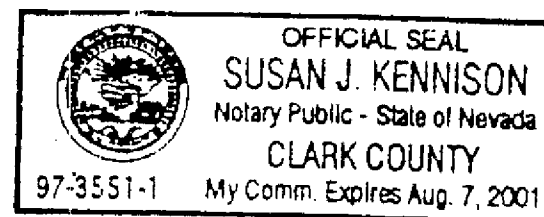


Exhibit "A"

SCHEDULE OF PROPERTY

This schedule attached hereto and made a part hereof that certain irrevocable trust agreement executed by THU-LE DOAN and DOAN L. PHUNG, referred to as "Trustors," and THU-LE DOAN and DOAN L. PHUNG, referred to as "Trustees" of a Trust fund known as the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR) and identifies the initial trust property held subject to the trust thereunder.

A check of one hundred and eighty thousand dollars (\$180,000.00)

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**EXHIBIT B**  
**AMENDMENT OF CHARTER**

## AMENDMENT 1

(Note: the additions to the Charter are *in italic and underlined*)

### CHARTER FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR)

#### SECTION ONE

##### MANAGEMENT OF TRUST FUND AND INCOME

Trustees shall hold Trust fund and may, in their discretion, use any legal means permitted under the laws of the State of Nevada, invest the Trust fund to create income, or to raise further funds, to be used for the purpose of encouraging the pursuit of self reliance within the meaning of Section 501 (c) (3) of the Internal Revenue Code. These include, but are not limited to: (1) assisting organizations that loans micro amounts of money at favorable interest rates for the purpose of enabling individuals to pursue a trade or business; (2) paying micro amounts of money to individuals who are qualified as above but are nevertheless unable to meet the loan criteria; to individuals from a disadvantaged background who are qualified to attend Vietnamese or American institutions of training but because of their financial need have difficulty in so doing; or (3) contributions to any charitable organizations, trust, community chest, fund or foundation which at the time of the contribution by Trustees is one of those organizations specified in the Internal Revenue Code, contributions to which are deductible for income tax purposes.

#### SECTION TWO

##### RESTRICTIONS ON USE OF TRUST FUND

The Trust fund and the income thereof shall be devoted exclusively to the purposes described above within the meaning of Section 501 (c) (3) of the Internal Revenue Code and shall in no part and under any circumstances be given or contributed to or inure to the benefit of any private person or corporation. FESR shall not make gifts or grants to foreign organizations or individuals without having evidence that it has full control of the donated funds within the meaning of the Internal Revenue Code Section 170 (c) and IRS guidelines GCM 35319 and 37444. No part of the Trust fund shall be used to carry on propaganda or otherwise attempt to influence legislation, or to participate in any political campaign. Notwithstanding any other provision hereof, this Trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended.

Any other provisions of this instrument notwithstanding, the trustees shall distribute its income for each tax year at a time and in a manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Any other provisions of this instrument notwithstanding, the Trustees shall not engage in any act of self-dealing as defined in Section 4941 subdivision (d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor retain any excess business holding as



defined in Section 4943 subdivision (c) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945 (d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

## SECTION TWELVE

### DISSOLUTION

In the event of dissolution, assets shall be distributed for one or more exempt purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code. The remaining funds will be turned over to a qualified not-for-profit organization which itself is exempt as a not-for-profit organization described in Sections 501(c)(3) and 170 (c)(2) of the Internal Revenue Code of 21954, or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state, or local government for exclusive public purpose.

END OF AMENDMENT 1. ALL OTHER SECTIONS REMAIN THE SAME.

### TRUSTORS:

Jan 26, 1999  
Date

Jan 26, 1999  
Date

Thu Le Doan  
THU-LE DOAN

Doan L. Phung  
DOAN L. PHUNG

We the undersigned, hereby accept and assume the Amendment 1 of the Trust created by the foregoing Trust instrument according to all the terms and conditions thereof.

### TRUSTEES:

Jan 26, 1999  
Date

Jan 26, 1999  
Date

Thu Le Doan  
THU-LE DOAN

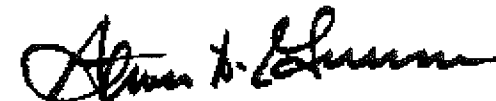
Doan L. Phung  
DOAN L. PHUNG

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EXHIBIT C  
DIVORCE DECREE & MSA

ORIGINAL

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CLERK OF THE COURT

DECD  
KIRBY R. WELLS, ESQ.  
Nevada Bar No. 001666  
WELLS & RAWLINGS  
6900 Westcliff Drive, Suite 710  
Las Vegas, Nevada 89145  
(702) 341-7117  
(702) 341-8527  
kwells@wellsrawlings.com  
Attorney for Plaintiff

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

THU-LE DOAN,

Plaintiff,

vs.

DOAN L. PHUNG,

Defendant.

CASE NO: D-11-455322-D

DEPT NO: P

DECREE OF DIVORCE

Plaintiff, Thu-Le Doan, by and through her attorney, Kirby R. Wells, Esq., of WELLS & RAWLINGS, and Defendant, Doan L. Phung, by and through his attorney, Ann E. Kolber, Esq., of Law Practice, Ltd., submitted this matter to the Court for Summary Disposition of Divorce, with both parties having consented to this Court's jurisdiction. The Court was fully advised as to the law and the facts of the case, and finds that: the parties were married on June 28, 1970, in Lake Forest, Illinois; there are no minor children the issue of this marriage, no children adopted during the marriage, and the Plaintiff is not pregnant; this Court has complete jurisdiction in the premises, both as to the subject matter, as well as the parties; the Plaintiff is an actual and bona fide resident of the County of Clark, State of Nevada, and was actually domiciled herein for more than six weeks

WELLS & RAWLINGS

ATTORNEYS AT LAW  
6900 WESTCLIFF DRIVE, SUITE 710  
LAS VEGAS, NEVADA 89145  
TELEPHONE 702 341-7117  
FACSIMILE 702 341-8527

DISPOSITIONS

- ☐ Converted from Blackstone  
☐ Involuntary Dismissal  
☐ Transferred  
☐ Voluntary Dismissal  
☒ Decision w/out Trial/Hearing  
☐ Decision w/ Trial/Hearing  
☐ Decision w/ Trial/Evidentiary Hearing  
☐ Guardianship  
☐ Death  
☐ Age of Majority  
☐ Restoration of Competency  
☐ Order Terminating Guardianship/ Final Adm.

1 immediately preceding the commencement of this action; all of the jurisdictional allegations  
2 contained in Plaintiff's Complaint are true as therein alleged and Plaintiff is entitled to a Decree of  
3 Divorce from the Defendant on the ground as set forth in Plaintiff's Complaint; and Defendant  
4 having answered has waived Findings of Fact, Conclusions of Law, and written Notice of Entry of  
5 Judgment in said cause;  
6

7 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**  
8 that the bonds of matrimony existing between Plaintiff, Thu-Le Doan ("Thu-Le"), and Defendant,  
9 Doan L. Phung ("Doan"), be, and the same are wholly dissolved, and an absolute Decree of Divorce  
10 is hereby granted to Thu-Le, and each of the parties is restored to the status of a single, unmarried  
11 person.  
12

13 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all of terms of the  
14 *Marital Settlement Agreement*, dated February 22, 2012, are approved, adopted, ratified, and  
15 confirmed as an Order of this Court, and are merged into this Decree as if set forth in full. A copy  
16 of the *Marital Settlement Agreement* (MSA) is attached to this *Decree of Divorce* as Exhibit "1."  
17

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that neither party shall pay  
19 the other alimony.

20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, recognizing the  
21 parties have already agreed to the equitable division of all of their community, jointly owned, and  
22 separate assets, as well as their community, joint, and separate debts, as set forth in the MSA, each  
23 party shall comply fully with the same, and each party is hereby ordered to comply with each and  
24 every provision set forth in the MSA.  
25

26 \* \* \* \* \*

27 \* \* \* \* \*

1           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that neither party shall  
2 hereafter incur any debts or obligations in the name of or against the other and each shall pay debts  
3 incurred by him or her and each agrees to indemnify, defend, and hold each other free and harmless  
4 from and against any claims asserted by either of them against the other, or by a third party through  
5 either of them against the other, which claims are contrary to any of the provisions contained in the  
6 MSA.  
7

8           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that each party has had a  
9 reasonable opportunity with the advise of independent counsel to obtain adequate and sufficient  
10 knowledge of the extent and approximate present value of the community and separate property of  
11 the other party, and to the extent of having declined to examine and/or investigate further, has  
12 thereby waived and does hereby waive and relinquish the right to do so.  
13

14           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Thu-Le and Doan  
15 acknowledge and agree that at their specific instructions, neither of their attorneys have undertaken  
16 any discovery and investigation to determine or confirm the nature, extent or valuation of the parties'  
17 assets and obligations. Thu-Le and Doan hereby indemnify and agree to hold harmless, Thu-Le's  
18 attorney, Kirby R. Wells, Esq., of WELLS & RAWLINGS and Doan's attorney, Ann E. Kolber, Esq.,  
19 of LAW PRACTICE, LTD., from liability relating to the valuation of community assets and/or the  
20 division of property set forth in the MSA. Thu-Le and Doan also acknowledge and agree that each  
21 has independently obtained sufficient information to individually determine to their satisfaction, the  
22 nature, extent, and/or valuation of the subject assets and obligations. Thu-Le and Doan further  
23 acknowledge and agree that each has not relied on any representations by Kirby R. Wells, Esq., of  
24 WELLS & RAWLINGS or Ann E. Kolber, Esq., of LAW PRACTICE, LTD., as to the nature, extent and  
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valuation of the subject assets and obligation or with respect to the division of properties and indebtedness herein.

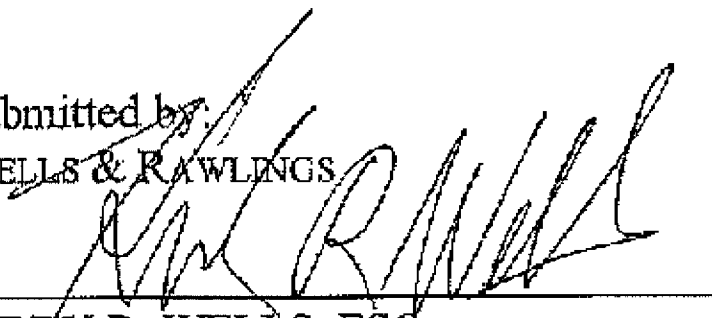
The parties further acknowledge and agree that they are fully aware of and understand the contents, legal effects, and consequences of this Decree of Divorce; that they enter into this agreement freely, voluntarily, free from duress, fraud, undue influence, coercion or misrepresentation of any kind, and with full knowledge of the consequences thereof.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties shall perform each and every act required under the terms of the *Marital Settlement Agreement*, and the Court retains jurisdiction to enforce the timely performance of said acts through its contempt powers.

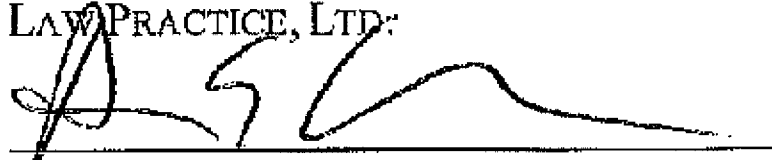
DATED April 6, 2012.

  
DISTRICT COURT JUDGE

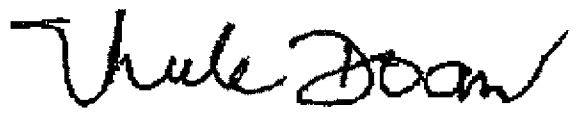
Submitted by:  
WELLS & RAWLINGS

  
KIRBY R. WELLS, ESQ.  
Nevada Bar No. 001666  
6900 Westcliff Drive, Suite 710  
Las Vegas, Nevada 89145  
(702) 341-7117  
Attorney for Plaintiff

Approved as to form and content:  
LAW PRACTICE, LTD.

  
ANN E. KOLBER, ESQ.  
Nevada Bar No. 008144  
5616 S. Fort Apache Road #110  
Las Vegas, Nevada 89148  
(702) 871-6144  
Attorney for Defendant

Approved by:

 2/22/12  
Plaintiff, Thu-Le Doan Dated

Approved by:

 2/16/12  
Defendant, Doan L. Phung Dated

( )

( )

EXHIBIT

1

MARITAL SETTLEMENT AGREEMENT

THIS AGREEMENT, is made and entered into by and between THU-LE DOAN ("WIFE"), a resident of the County of Clark, State of Nevada and DOAN L. PHUNG ("HUSBAND"), a resident of the County of Clark, State of Nevada on the 22<sup>nd</sup> day of February, 2012:

WITNESSETH:

WHEREAS, the parties to this Agreement were married on June 28, 1970, in Lake Forest, Illinois, and ever since said date have been and now are husband and wife;

WHEREAS, there are no minor children the issue of this marriage; there were no children adopted during the marriage and WIFE is not pregnant;

WHEREAS, in consequence of disputes and numerous differences, the parties hereto intend to live separate and apart one from the other;

WHEREAS, it is the mutual wish and desire of the parties that a full and final adjustment and settlement of their property rights, interests and claims against each other be had, settled and determined at the present time by this Agreement, including all issues regarding the support and maintenance of the parties; further, that this agreement be subject to the approval and order of the court, a divorce action shall be entered in the Eighth Judicial District Court of Nevada, County of Clark, Family Division;

NOW, THEREFORE, in consideration of the foregoing facts and the mutual agreements and covenants herein contained, it is covenanted, agreed and promised by each party hereto as follows:

WIFE'S INITIALS: TD

HUSBAND'S INITIALS: DP



1                   1.0     **INCORPORATION OF RECITALS**

2                   1.1     The recitals above set forth are incorporated herein as a part of this  
3 Agreement.  
4

5                   2.0     **LIVING SEPARATE AND APART**

6                   2.1     HUSBAND and WIFE agree that at all times hereafter, it shall be lawful for  
7 each party to live separate and apart from the other free from the marital control, interference,  
8 restraint, and authority of the other whatsoever, either directly or indirectly as if each party were  
9 single and unmarried. Neither party shall molest, harass, disturb or malign the other to his or her  
10 friends, relatives, employers or agents in any manner whatsoever.  
11

12                   3.0     **ALIMONY PROVISIONS**

13                   3.1     Neither party shall pay the other alimony, support, or maintenance.  
14

15                   4.0     **DIVISION OF COMMUNITY PROPERTY**

16                   4.1     WIFE shall have confirmed to her as her sole and separate property, free of  
17 any claims of HUSBAND, the sole ownership in and to the following:

18                   4.1.1   One-half of the net proceeds from the sale of the marital residence located at 8021  
19 Golfers Oasis Drive, Las Vegas, Nevada 89149 (APN: 125-33-210-058), owned free  
20 and clear, subject to the provisions set forth in Section 6 below.  
21

22                   4.1.2   One-half of the Kelley Blue Book value of the 2011 Toyota RAV4, subject to the  
23 provisions set forth in Section 7 below.

24                   4.1.3   Her 51% ownership interest in the business entity known as PAI Corporation a/k/a  
25 Professional Analysis, Inc., subject to the provisions set forth in Section 8 below.  
26

27 WIFE'S INITIALS: td

HUSBAND'S INITIALS: DLP

- 1 4.1.4 One-half of the funds in the Bank of America Checking Account No.  
2 004970158473, subject to the provisions set forth in Section 9 below.  
3  
4 4.1.5 One-half of the funds in the Bank of America Money Market Account No.  
5 004960573822, subject to the provisions set forth in Section 9 below.  
6  
7 4.1.6 One-half of the Fidelity Investments Account No. X94-109380, subject to the  
8 provisions set forth in Section 10 below.  
9  
10 4.1.7 Bank of America Checking Account No. 501009793082.  
11  
12 4.1.8 Bank of America Money Market Savings Account No. 005012957722.  
13  
14 4.1.9 Fidelity Investments Account No. X66-411965.  
15  
16 4.1.10 One-half (5%) of the parties 10% interest in Ridgeway Square Partnership.  
17 4.1.11 One-half (5%) of the parties 10% interest in Broadway Shopping Center, LLC.  
18 4.1.12 One-half of parties' retirement accounts, IRA's, and pensions, subsection to the  
19 provisions set forth in Section 11 below.  
20  
21 4.1.13 One-half of the household furniture and furnishings located at 8021 Golfers Oasis  
22 Drive, Las Vegas, Nevada 89149, subject to Section 12 below.  
23 4.1.14 WIFE's clothing, jewelry and personal possessions (including all gifts from the  
24 parties' children, grandchildren, and friends), subject to Section 12 below.  
25  
26 4.2 HUSBAND shall have confirmed to him as his sole and separate property free  
27 of any and all claims by WIFE, the sole ownership in and to the following:  
28

WIFE'S INITIALS: HDHUSBAND'S INITIALS: DLP

- 1 4.2.1 One-half of the net proceeds from the sale of the marital residence located at 8021  
2 Golfers Oasis Drive, Las Vegas, Nevada 89149 (APN: 125-33-210-058), owned free  
3 and clear, subject to the provisions set forth in Section 6 below.  
4  
5 4.2.2 One-half of the Kelley Blue Book value of the 2011 Toyota RAV4, subject to the  
6 provisions set forth in Section 7 below.  
7  
8 4.2.3 His 49% ownership interest in the business entity known as PAI Corporation a/k/a  
9 Professional Analysis, Inc., subject to the provisions set forth in Section 8 below.  
10  
11 4.2.4 One-half of the funds in the Bank of America Checking Account No.  
12 004970158473, subject to the provisions set forth in Section 9 below.  
13  
14 4.2.5 One-half of the funds in the Bank of America Money Market Account No.  
15 004960573822, subject to the provisions set forth in Section 9 below.  
16  
17 4.2.6 One-half of the Fidelity Investments Account No. X94-109380, subject to the  
18 provisions set forth in Section 10 below.  
19  
20 4.2.7 Bank of America Checking Account No. 501013725444.  
21  
22 4.2.8 Fidelity Investments Account No. X66-411280.  
23  
24 4.2.9 One-half (5%) of the parties 10% interest in Ridgeway Square Partnership.  
25  
26 4.2.10 One-half (5%) of the parties 10% interest in Broadway Shopping Center, LLC.  
27  
28 4.2.11 One-half of parties' retirement accounts, IRA's, and pensions, subjection to the  
provisions set forth in 11 below.  
4.2.12 One-half of the household furniture and furnishings located at 8021 Golfers Oasis  
Drive, Las Vegas, Nevada 89149, subject to Section 12 below.

WIFE'S INITIALS: WRHUSBAND'S INITIALS: DLP

1 4.2.13 HUSBAND's clothing, jewelry and personal possessions.

2  
3 5.0 ASSUMPTION OF COMMUNITY DEBTS

4 5.1 WIFE shall assume and pay the following debts and hold HUSBAND  
5 harmless therefrom:

6 5.1.1 Any and all personal debts incurred by WIFE since September 1, 2011.

7 5.1.2 Any and all other obligations relating to the property awarded to WIFE by this  
8 Agreement.

9  
10 5.2 HUSBAND shall assume and pay the following debts and hold WIFE  
11 harmless therefrom

12 5.2.1 Any and all personal debts incurred by HUSBAND since September 1, 2011.

13 5.2.2 Any and all other obligations relating to the property awarded to HUSBAND by this  
14 Agreement.

15  
16 6.0 PROVISIONS REGARDING THE MARITAL RESIDENCE

17 6.1. The parties shall share possession of the residence separately and equally until  
18 it is sold, and equally share the expenses associated with the residence, including, but not limited to,  
19 taxes, homeowner's association dues, repairs, maintenance, utilities, etc., to paid from the joint  
20 account.

21  
22 6.2 The cost of major improvements made to the property shall be shared equally  
23 and paid with joint funds. Any additional improvements must be mutually agreed to by the parties  
24 prior to the improvements being made.

25  
26  
27 WIFE'S INITIALS: WD

HUSBAND'S INITIALS: DLP

6.3 On or before February 28, 2012, from funds held in an account in HUSBAND's name only, he shall reimburse the joint account all funds paid or removed from any joint account belonging to the parties for his personal expenses since September 1, 2011, i.e, food, gas, medicine, clothes, etc.

6.4 The marital residence shall be listed for sale on or before June 30, 2012, unless this date is extended by written mutual agreement of the parties, with HUSBAND and WIFE equally sharing all expenses related to the sale. Alternatively, the parties may agree to have the marital residence appraised and one party may buy out the other party.

6.5 The Court shall retain jurisdiction to enter appropriate orders to effectuate the buy out of the residence as set forth herein.

7.0 2011 TOYOTA RAV 4

7.1 Both parties shall have use of the 2011 Toyota Rav 4 during the times he/she has possession of the marital residence. The expenses related to the car, such as insurance, maintenance, registration shall be paid from the joint account.

8.0 PAI CORPORATION A/K/A PROFESSIONAL ANALYSIS, INC.

8.1 Each party shall maintain their present ownership interest in the business known as PAI Corporation a/k/a Professional Analysis, Inc., under the existing terms and conditions.

8.2 In the event any dispute arises relating to business operations, financials, or ultimate disposition of this assets, either party may petition the Eighth Judicial District Court, Family Division to resolve such dispute in conformity with the laws of the State of Nevada.

WIFE'S INITIALS: HD

HUSBAND'S INITIALS: DLP

8.3 WIFE shall receive 51% and HUSBAND shall receive 49% of the PAI Fidelity Investments Account X02112178 as their sole and separate property.

8.3.1 HUSBAND shall continue to manage this account on behalf of PAI. Whenever the funds in the account exceed the necessary amount that the company needs for its daily operations, the excess funds shall be transferred to each party according to their ownership interest, i.e. 51% to WIFE's individual Fidelity Investments Account No. X66-411965 and 49% to HUSBAND's individual Fidelity Investments Account Fidelity Investments Account No. X66-411280.

8.3.2 Neither HUSBAND or WIFE shall remove or transfer any other funds from this account without the other's express written permission.

8.4 The Court shall specifically retain jurisdiction to enter appropriate orders to effectuate the provisions set forth in the section/paragraph.

9.0 **BANK OF AMERICA JOINT CHECKING AND MONEY MARKET ACCOUNTS**

9.1. As set forth in Sections 4.1.4, 4.1.5, 4.2.4, and 4.2.5 above, the funds in these accounts shall be divided at the time the marital residence is sold.

9.2 HUSBAND shall provide WIFE with an accounting of all funds paid from these accounts for his charity organization, Institute for VietNam Future (IVNF) expenses and reimburse those funds to the joint Bank of America account no later than February 28, 2012.

9.3 The Court shall retain jurisdiction to enter an appropriate order to effectuate the provisions set forth herein.

WIFE'S INITIALS: ALJ

HUSBAND'S INITIALS: DLP

10.0 FIDELITY INVESTMENTS ACCOUNT NO. X-94-109380

10.1 HUSBAND shall continue to manage this account on behalf of HUSBAND and WIFE until February 28, 2012, at which time the account shall be closed. The proceeds of the account shall be divided as follows:

10.1.1 HUSBAND shall receive the first \$127,799.07 (\$91,689.48 principal and \$36,109.59 interest), which amount belongs to HUSBAND's parents, and a 1099 shall be issued to HUSBAND's parents for the interest (\$36,109.59).

10.1.2 Thereafter, the account shall be equally divided between the parties, share by share, dollar by dollar, as is possible for the assets contained therein until the account is closed on February 28, 2012.

10.2. Neither HUSBAND or WIFE shall remove or transfer any other funds from this account without the other's express written permission.

10.3 The Court shall retain jurisdiction to enter an appropriate order to effectuate the transfers herein if necessary.

11.0 PENSIONS, RETIREMENT AND IRA ACCOUNTS

11.1 The parties acknowledge that the following accounts were accumulated during the marriage and constitute community property regardless of title:

11.1.1 Fidelity Brokerage Serv., Inc., Brokerage No. 411-070173.

11.1.2 Fidelity Brokerage Serv. Inc., Rollover IRA, Brokerage No. 194-363030.

11.1.3 Fidelity Brokerage Serv. Inc., Brokerage No. 441-070181.

WIFE'S INITIALS: AW

HUSBAND'S INITIALS: DLP

11.1.4 TIAA/CREF, TIAA A773522-6, CREF P773522-3, TIAA Traditional, SS#034-40-7758.

11.1.5 Principal 401(k) and 401(a), SSN: 034 40 7758, Contract No. 4-09529.

11.1.6 Principal 401(k) and 401(a), SSN: 170 46 4810, Contract No. 4-09529

11.2 Each party shall receive one-half of the above accounts as follows:

11.2.1 All funds in each account shall be valued as of the date this agreement is signed.

Each party shall be entitled to one-half of the total of the funds, plus one-half of all gains or losses until the accounts are distributed.

11.2.2 Each party shall maintain the accounts in their respective names, and the party with the excess funds shall pay (or transfer to) the other party's account whatever amount is necessary to equalize the division of the accounts.

11.3. Neither HUSBAND or WIFE shall remove or transfer any other funds from these accounts without the other's express written permission until the accounts are divided equally to each party's respective account.

12.0 HOUSEHOLD FURNISHINGS AND PERSONAL PROPERTY  
LOCATED AT 8021 GOLFERS OASIS DRIVE, LAS VEGAS,  
NEVADA 89149

12.1 Each party shall receive their respective personal possessions, i.e., clothing, jewelry, gifts, etc.

12.2 Each party shall receive one-half of the household furniture and furnishings. The division of the household furniture and furnishings shall be accomplished through the employment of an "A/B List," which entails the following: WIFE shall prepare two lists, each of

WIFE'S INITIALS: AD

HUSBAND'S INITIALS: DLP



which shall contain a fair and equitable distribution of one-half (1/2) of the parties household furniture and furnishings. WIFE shall provide these lists to HUSBAND Defendant [see Exhibit "A" attached], and HUSBAND shall choose, within five (5) days of the date he signs this agreement, either the "A" or the "B" list as the list of items he wishes to have. The parties shall thereafter cooperate to effectuate the resulting division of property at the time the residence is sold.

12.3 Neither party shall interfere with the other party's access to the home and the items set forth herein.

13.0 **DISSOLUTION OF THE DOAN PHUNG AND THU-LE DOAN TRUST (A REVOCABLE FAMILY TRUST)**

13.1 The parties agree that the Doan Phung and Thu-Le Doan Trust shall be dissolved and the assets contained therein shall be transferred out of the trust to effectuate the terms of this agreement.

14.0 **VIETNAMESE AMERICAN SCHOLARSHIP FUND (VASF) AND FUND FOR ENCOURAGEMENT OF SELF RELIANCE (FESR)**

14.1 HUSBAND shall manage the Fidelity VASF Brokerage Account No. Z85044792, Fidelity FESR Brokerage Account No. Z85044784, Bank of America Account No. 5010 1205 2956, and Bank of America Account 4440 0794 4259 on behalf of the both Trustees, HUSBAND and WIFE. However, any and all decisions relating to contributions, expenditures, grants, etc., in excess of \$5,000.00 shall be agreed to in writing by both trustees. Moreover, these assets cannot moved or transferred without the express written permission of both Trustees.

14.2 HUSBAND shall provide WIFE with an accounting of all funds paid from these accounts for his charity organization, Institute for VietNam Future (IVNF) expenses and

WIFE'S INITIALS: HL

HUSBAND'S INITIALS: DLP

1 reimburse those funds to the appropriate VASF or FESR accounts at Bank of America no later than  
2 February 28, 2012.  
3

4 15.0 INDEMNIFICATION AND PROTECTION

5 15.1 HUSBAND and WIFE acknowledge and agree that each of them covenants  
6 and agrees not to contract any debts, charges, or liabilities whatsoever for which the other's property  
7 or estate shall or may become liable or answerable, and agrees to hold the other party harmless and  
8 indemnified therefrom.  
9

10 16.0 TAX PROVISIONS

11 16.1 HUSBAND and WIFE shall file a joint tax return for the calendar year 2011.  
12 Thereafter, the parties shall file separate tax returns.

13 16.2 The parties shall be equally responsible for any past income tax liability,  
14 including without limitation taxes, assessments, penalties and interest on any United States tax return  
15 filed during the marriage through and including 2011.  
16

17 16.3 For tax year 2010, in the event of an audit of PAI Corporation a/k/a  
18 Professional Analysis, Inc., HUSBAND agrees to be fully responsible for additional taxes owed  
19 and interest and penalties imposed by the Internal Revenue Service, if it is related to the donation  
20 of \$657,250.00 to IVNF.  
21

22 16.4 Additionally, each party shall be responsible for all tax liabilities and/or tax  
23 benefits arising from or attributable to his or her property rights and obligations awarded or created  
24 by this Agreement.  
25

26  
27 WIFE'S INITIALS: ted

HUSBAND'S INITIALS: DLP

16.5 HUSBAND and WIFE acknowledge and agree that all transfers of property between them required by this Agreement are tax free transfers of property made between them pursuant to Section 1041 of the Internal Revenue Code and are not taxable sales or exchanges of properties. Each party covenants and agrees not to take any position inconsistent with this belief and agreement, including, without limitation, any position with respect to the basis of any asset on his or her tax return filed after the date of this Agreement.

16.6 HUSBAND and WIFE confirm and agree that each of them has had the opportunity to discuss with independent tax counselors, concerning the income tax and estate tax implications and consequences with respect to the agreed upon division of properties and indebtedness, and that KIRBY R. WELLS, ESQ. and ANN E. KOLBER, ESQ. were not expected to provide and, in fact, did not provide any tax advice concerning this Agreement.

17.0 PROPERTY ACQUIRED IN FUTURE TO BE SEPARATE PROPERTY

17.1 Any and all property acquired by either of said parties hereto from and after the date hereof shall be the sole and separate property of the one so acquiring the same and each of said parties hereby respectively grants to the other all such future acquisitions of property as the sole and separate property of the one so acquiring the same.

18.0 RIGHT TO DISPOSE OF PROPERTY BY WILL

18.1 Each of said parties shall have an immediate right to dispose of or bequeath by will his or her respective interests in and to any and all property belonging to him or her from and after the date hereof, and that such right shall extend to all of the aforesaid future acquisitions of property as well as to all property set over to either of the parties hereto under this Agreement.

WIFE'S INITIALS: tes

HUSBAND'S INITIALS: DLP

19.0 WAIVER OF INHERITANCE RIGHTS

19.1 Except as hereinafter provided, said parties each hereby waive any and all right to the estate of the other left at his or her death and forever quitclaim any and all right to share in the estate of the other by the laws of succession, and said parties hereby release one to the other all rights to inherit from the other. Furthermore, said parties hereby renounce, one to the other, all right to be administrator or administratrix, executor or executrix, of the estate of the other, and said parties hereby waive any and all right to the estate or any interest in the estate of the other by way of inheritance, or otherwise, for family allowance therein or therefrom, to a probate or other homestead upon any property of the other, and to have set aside to him or her any property of the other exempt from execution, and from the date of this Agreement to the end of the world, said waiver by each in the estate of the other party shall be effective, and said parties shall have all the rights of single persons and maintain the relationship of such toward each other.

20.0 MUTUAL RELEASE OF OBLIGATIONS AND LIABILITIES

20.1 It is hereby mutually understood and agreed by and between the parties hereto that this Marital Settlement Agreement is deemed to be a final and conclusive and integrated agreement between the parties, and that except as herein specified, each party hereto is hereby released and absolved from any and all liabilities and obligations for the future acts and duties of the other, and that each of said parties hereby releases the other from any and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of any kind or character incurred by the other except as hereinbefore provided, it being understood that this instrument is intended to

WIFE'S INITIALS: tedHUSBAND'S INITIALS: DLP

1 settle finally and conclusively the rights of the parties hereto in all respects arising out of their  
2 marital relationship except as hereinbefore provided.

3  
4 **21.0 EXECUTION OF NECESSARY DOCUMENTS**

5 **21.1** HUSBAND and WIFE agree to execute quitclaim deeds, stock transfers, and  
6 any and all other instruments that may be required in order to effectuate transfer of any and all  
7 interest either may have in and to the said property hereby conveyed to the other as hereinabove  
8 specified. Should either party fail to execute any said documents to transfer interest to the other, this  
9 Agreement shall constitute a full and complete transfer of the interest of one to the other as  
10 hereinabove provided. Upon failure of either party to execute and deliver any such deed,  
11 conveyance, title, certificate or other document or instrument to the other party, this Agreement shall  
12 constitute and operate as such properly executed document and the County Assessor and County  
13 Recorder and any and all other public and private officials are hereby authorized and directed to  
14 accept this Agreement or a properly certified copy thereof in lieu of the document regularly required  
15 for such conveyance or transfer.  
16  
17

18 **22.0 ACCEPTANCE OF AGREEMENT - ADVICE AND/OR WAIVER OF**  
19 **COUNSEL**

20 **22.1** Each party hereto acknowledges that he or she has read the foregoing  
21 Agreement and fully understands the contents thereof and accepts the same as equitable and just and  
22 that there has been no promise, agreement or understanding of either of the parties to the other except  
23 as hereinabove set forth, which has been relied upon by either as a matter of inducement to enter into  
24 this agreement.  
25  
26

27 WIFE'S INITIALS: MD

HUSBAND'S INITIALS: DLP

22.2 Each party hereto stipulates with the other that he or she has had the opportunity for independent legal representation in negotiations for and in the preparation of the Agreement by counsel by his or her own choosing.

22.3 Each party hereto has had the opportunity to be independently advised as to the legal effect of the execution of the Agreement.

22.4 Each party to this Agreement hereby understands that KIRBY R. WELLS, ESQ., of WELLS & RAWLINGS represents WIFE in this matter and is an advocate for her position, and that ANN L. KOLBER, ESQ. of LAW PRACTICE LTD. represents HUSBAND in this matter and is an advocate for his position; that both parties have entered into this Agreement without undue influence or coercion, or misrepresentation, or for any other cause except as herein specified.

### 23.0 PAYMENT OF ATTORNEY'S FEES

23.1 HUSBAND and WIFE agree to each pay his or her respective reasonable attorney's fees and costs incurred in the preparation of this Agreement.

### 24.0 KNOWLEDGE AND DISCLOSURE

24.1 HUSBAND and WIFE each acknowledge that he or she has full knowledge of the assets, financial status and possibilities of inheritance of the other at the time of this Agreement.

24.2 Each party warrants that he or she has made full disclosure of all the assets of the parties hereto. Should it be found that there exist other assets, separate or community, which have not been disclosed and stated in this Marital Settlement Agreement, with a cumulative value of more than \$2,500.00, either party may move the court for a partition of such asset(s) at any time

WIFE'S INITIALS: ALD

HUSBAND'S INITIALS: DLP

hereafter. With respect to this paragraph, each party hereto specifically waives any and all limitation periods for the bringing of an action to partition such undisclosed asset(s) and further specifically stipulates that the failure to disclose such asset(s) constitutes extrinsic fraud, which will invoke the jurisdiction of the court to partition such undisclosed asset(s) at any future time.

25.0 **VALUATION OF PROPERTY**

25.1 HUSBAND and WIFE acknowledge and agree that at their specific instructions, WIFE's attorney, Kirby R. Wells, Esq., and HUSBAND's attorney, Ann E. Kolber, Esq., have undertaken no independent investigation to determine the nature, extent, or valuation of the assets and obligations set forth in this agreement. HUSBAND and WIFE hereby indemnify and agree to hold harmless Kirby R. Wells, Esq., and Ann E. Kolber, Esq. from liability relating to the valuation of community assets and/or the division of property set forth in this agreement. HUSBAND and WIFE also acknowledge and agree that each of them has independently obtained the information necessary to determine the nature, extent, and valuation of the subject assets and obligations. HUSBAND and WIFE further acknowledge and agree that each of them has independently valued the subject assets and obligations and that they have not relied on any representations by Kirby R. Wells, Esq., and Ann E. Kolber, Esq., as to the nature, extent, and valuation of the subject assets and obligations or with respect to the division of properties and indebtedness.

26.0 **AGREEMENT SHALL BE MERGED INTO DECREE OF DIVORCE**

26.1 This Agreement shall be taken as the full and final Marital Settlement Agreement between the parties, and it is agreed that a copy of this Agreement shall be offered to the

WIFE'S INITIALS: KKO

HUSBAND'S INITIALS: QUP

Eighth Judicial District Court, Family Division, County of Clark, State of Nevada, and the Court shall be requested to ratify, confirm and approve the same, and this Agreement shall by reference be merged into and become a part of said Decree to the extent as if therein set forth in full. The parties specifically agree that the provisions of this agreement may be enforced by the contempt powers of the Family Court, however except where specifically provided, the Family Court shall have no jurisdiction to modify the agreement of the parties without the express written agreement of the parties.

**27.0 ENTIRE AGREEMENT**

27.1 This Agreement contains the entire agreement and understanding of the parties, and there are no representations, warranties, covenants or understandings other than those expressly set forth herein. Furthermore, this Agreement may not be changed, modified, or terminated orally, and any such change, modification, or termination may only be made by a written instrument executed by the parties with the same formality as this Agreement.

**28.0 NO PARTY DEEMED DRAFTER**

28.1 The parties agree that neither party shall be deemed to be drafter of this Agreement and, in the event this Agreement is ever construed by a court of law or equity, such court shall not construe this Agreement or any provision hereof against either party as the drafter of the Agreement. HUSBAND and WIFE hereby acknowledge that both parties have contributed substantially and materially to the preparation of this Agreement.

WIFE'S INITIALS: td

HUSBAND'S INITIALS: DLP



1                   29.0    WAIVER

2  
3                   29.1    No waiver of any one of the provisions hereof shall work a continuing waiver  
4 or a waiver of any subsequent breach.

5                   30.0    BINDING EFFECT

6                   30.1    This Agreement shall be binding upon, and inure to the benefit of, the  
7 respective agents, representatives, heirs, assigns, and successors-at-law of the parties hereto.

8                   31.0    GOVERNING LAW

9                   31.1    This Agreement and the rights of the parties hereto shall be governed and  
10 interpreted in all respects by the law applied to contracts made and wholly to be performed within  
11 the State of Nevada.

12                   32.0    CUMULATIVE EFFECT

13                   33.1    The parties' rights and remedies hereunder shall be cumulative, and the  
14 exercise of one or more shall not preclude the exercise of any other(s).  
15

16 \* \* \* \* \*

17 \* \* \* \* \*

18 \* \* \* \* \*

19 \* \* \* \* \*

20 \* \* \* \* \*

21 \* \* \* \* \*

22 \* \* \* \* \*

23 \* \* \* \* \*

24 WIFE'S INITIALS: HO25 HUSBAND'S INITIALS: DLP

33.0 LITIGATION/ATTORNEY'S FEES

33.1 Should litigation arise concerning the terms and conditions of this Agreement, or the breach of same by any party hereto, the prevailing party shall be entitled to attorney's fees and costs in an amount awarded by the Court.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands to this Agreement the year and date above written.

Thiule Doan  
THU-LE DOAN, Wife

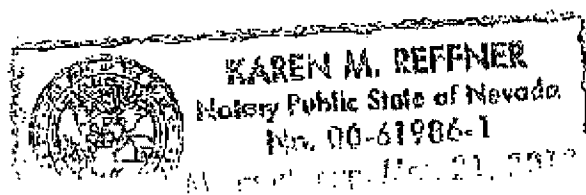
Doan L. Phung  
DOAN L. PHUNG, Husband

ACKNOWLEDGMENTS

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

On this 22 day of February, 2012, before me the undersigned Notary Public in and for said County and State, personally appeared **THU-LE DOAN**, known to me (or proven) to be the person described in and who executed the foregoing instrument, and who acknowledged to me that she did so freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



Karen M. Reffner  
NOTARY PUBLIC

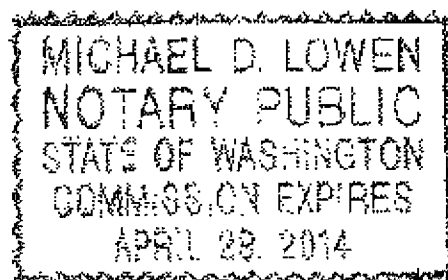
WIFE'S INITIALS: td

HUSBAND'S INITIALS: DLP

ALL  
WASHINGTON  
1 STATE OF NEVADA ALL )  
2 SNOHOMISH ) ss.  
3 COUNTY OF CLARK )

4 On this 16 day of FEBRUARY, 2012, before me the undersigned Notary  
5 Public in and for said County and State, personally appeared **DOAN L. PHUNG**, known to me (or  
6 proven) to be the person described in and who executed the foregoing instrument, and who  
7 acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein  
8 mentioned.

9 WITNESS my hand and official seal.



NOTARY PUBLIC

ATTORNEY CERTIFICATIONS

The undersigned hereby certifies that he is an attorney at law duly licensed and admitted to  
practice in the State of Nevada; that he has been employed by and compensated by TIU-LE DOAN  
in the foregoing Marital Settlement Agreement; that he has advised and consulted with her in  
connection with her property rights and has fully explained to her the legal effect of the foregoing  
Marital Settlement Agreement and the effect which it has upon her rights otherwise obtaining as a  
matter of law; that, after being duly advised by the undersigned, she acknowledged to the  
undersigned that she understood the legal effect of the foregoing Property Settlement Agreement and  
she executed the same freely and voluntarily.

DATED 2-28-12

KIRBY R. WELLS, ESQ.

WIFE'S INITIALS: LD

HUSBAND'S INITIALS: DLP

1  
2 The undersigned hereby certifies that he is an attorney at law duly licensed and admitted to  
3 practice in the State of Nevada; that he has been employed by and compensated by DOAN L.  
4 PHUNG in the foregoing Marital Settlement Agreement; that he has advised and consulted with him  
5 in connection with his property rights and has fully explained to him the legal effect of the foregoing  
6 Marital Settlement Agreement and the effect which it has upon his rights otherwise obtaining as a  
7 matter of law; that, after being duly advised by the undersigned, he acknowledged to the undersigned  
8 that he understood the legal effect of the foregoing Property Settlement Agreement and he executed  
9 the same freely and voluntarily.  
10

11 DATED 2-17-12

12   
13 ANN E. KOLBER, ESQ.  
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WIFE'S INITIALS: ALD

HUSBAND'S INITIALS: DLP

**EXHIBIT**

**“A”**

Gifts are not accounted for in the AB list:

1. Blue oriental carpet in the dining room, for daughter Lili
2. Grandfather clock, gift from husband parents, husband should keep it
3. Treadmill, used to belong to husband father, husband should keep it.

List A

1. Master bedroom, king size bedroom set
2. 4<sup>th</sup> bedroom upstairs, day bed and furniture plus sofa and chairs in master bedroom
3. Family room, all furniture in the room including desk and credenza
4. Computer and printer
5. Washer/Dryer and 32 in. TV
6. Half of desks file cabinet in the study
7. Half of bookcases and books
8. Half of kitchen items such as china, cups, silverware, small appliances
9. Half of wall hangings such as lacquers, embroideries, water paintings.
10. Half of all decorations such as silk flower arrangements and silk plants, vases
11. Half of all linens, towels, bed covers

List B

1. Bedroom downstairs, queen size bedroom set
2. 3<sup>rd</sup> bedroom upstairs, 2 single beds and other furniture in the room
3. Living room, all furniture in the room
4. Computer and printer
5. 46 in. TV
6. Half of desks file cabinet in the study
7. Half of bookcases and books
8. Half of kitchen items such as china, cups, silverware, small appliances
9. Half of wall hangings such as lacquers, embroideries, water paintings.
10. Half of all decorations such as silk flower arrangements and silk plants, vases
11. Half of all linens, towels, bed covers



1 **ORD**

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12 *Attorneys for Petitioner, Thu-Le Doan*

8 **EIGHTH JUDICIAL DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 In the matter of the

11 FUND FOR THE ENCOURAGEMENT OF  
12 SELF RELIANCE,

13 An Irrevocable Trust.

Case No.: P-16-089638-T

Dept.: 26

Date of Hearing: October 12, 2017

Time of Hearing: 9:30 a.m.

14  
15 **ORDER DENYING RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE**  
16 **COMMISSIONER'S REPORT AND RECOMMENDATION AND ORDER GRANTING**  
17 **TRUSTEE THU-LE DOAN TO DECANT THE ASSETS OF THE FUND FOR THE**  
18 **ENCOURAGEMENT OF SELF RELIANCE AKA CENTER FOR THE**  
19 **ENCOURAGEMENT OF RELIANCE PURSUANT TO NRS 163.556**

20 This matter came on for hearing on October 12, 2017 before the Honorable Gloria Sturman  
21 on Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and  
22 Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume  
23 Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law, Confirming Co-  
24 Trustees and to Modify Trust entered on August 4, 2017. Respondent was present and represented  
25 by Michael R. Mushkin, Esq. and L. Joe Coppedge, Esq. of the law firm MUSHKIN CICA  
26 COPPEDGE. Petitioner, Thu-Le Doan was present and represented by Dara Goldsmith, Esq. and  
27 Peter Co, Esq. of the law firm Goldsmith & Guymon, P.C. The Court, having reviewed the  
28

1 Objection, Petitioner's Reply thereto and Respondent's Reply Brief in support of the Objection, and  
2 having heard oral arguments from counsel, finds as follows.

- 3 1. That the Fund for the Encouragement of Self Reliance aka Center for the Encouragement  
4 of Reliance ("FESR") was created in Nevada, domiciled in Nevada and is subject to  
5 Nevada law.
- 6 2. That Thu-Le Doan and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan  
7 filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify  
8 Trust on September 22, 2016.
- 9 3. That a trustee has a legal right to decant a trust under NRS 163.556 if the following two  
10 prong test is met: (1) "[A] trustee with discretion or authority to distribute trust income or  
11 principal to or for a beneficiary of the trust may exercise such discretion or authority in  
12 favor of a second trust as provided in this section." NRS 163.556(1) and (2) "A trustee  
13 may not appoint property of the original trust to a second trust if: (a) Appointing the  
14 property will reduce any income interest of any income beneficiary of the original trust if  
15 the original trust is:...(2) A trust for which a charitable deduction has been taken for  
16 federal or state income, gift or estate tax purposes..." NRS 163.556(3).
- 17 4. That NRS 163.556 does not state that a trustee has an "absolute right" to decant a trust  
18 and that although the Probate Commissioner had incorrectly used the term "absolute  
19 right", the Probate Commissioner correctly analyzed NRS 163.556 in finding that  
20 Petitioner, Thu-Le Doan, had a right to decant FESR.
- 21 5. That the Probate Commissioner fully analyzed NRS 163.556 and correctly found that  
22 Petitioner as Co-Trustee of FESR met the two prong test: (1) that Petitioner had the  
23 power of invasion of principal of the trust assets and (2) that there is no reduction of any  
24 income interest of any income beneficiary of the trust; and as such has the right to decant  
25 FESR.



- 1 6. That Petitioner as Co-Trustee of FESR had the legal right to decant FESR when she  
2 initially filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and  
3 to Modify Trust on September 22, 2016, and that whether or not Petitioner was  
4 subsequently removed as Co-Trustee of FESR, does not affect Petitioner's ability to  
5 proceed with her petition to decant FESR.
- 6 7. That the Probate Commissioner refused to enjoin FESR from continuing to act, and as the  
7 trust continued to act, Petitioner was removed as a Co-Trustee for her failure to  
8 participate.
- 9 8. That the Court did not address whether removing Petitioner as a Co-Trustee was wrong  
10 as the Court does not believe that it has to look at that since Petitioner had the right to  
11 decant FESR when she initiated the action.
- 12 9. That although the parties Marital Settlement Agreement limited a trustee's discretion to  
13 make distributions in excess of \$5,000.00, unless agreed to in writing by both trustees,  
14 such a limitation did not affect the purpose of FESR which was to provide "micro loans"  
15 at favorable interest rates for the purpose of enabling individuals to pursue a trade or  
16 business.
- 17 10. That Petitioner, Thu-Le Doan, as Co-Trustee of FESR has a legal right to decant FESR.
- 18 11. That as a matter of law, the Probate Commissioner did not err in applying NRS 163.556,  
19 that the Probate Commissioner came to the right conclusion, but used the incorrect term  
20 "absolute right" versus "right".
- 21 12. That Respondent, Doan L. Phung's Objection to the Probate Commissioner's Report and  
22 Recommendation is denied.
- 23 13. That all of the assets of FESR should be divided equally and Thu-Le Doan's portion is to  
24 be decanted into Thu-Le Doan's separate irrevocable charitable trust with Thu-Le Doan  
25 serving as sole trustee of her separate irrevocable charitable trust and Doan L. Phung's

1 portion can either remain in FESR with Doan L. Phung serving as the sole Trustee of  
2 FESR OR Doan L. Phung's portion may be decanted into a new separate irrevocable  
3 charitable trust with Doan L. Phung serving as the sole Trustee of his new separate  
4 irrevocable charitable trust.

5 14. That all the assets of FESR including but not limited to: Fidelity accounts x4784, x4840,  
6 x9909, x9921, x2574 & x2575; Bank of America account x2956; and any and all real or  
7 personal property owned by FESR shall be divided equally and Thu-Le Doan's portion  
8 shall be distributed to Thu-Le Doan as Trustee of her separate irrevocable charitable trust  
9 and Doan L. Phung's portion can either remain in FESR with Doan L. Phung serving as  
10 the sole Trustee of FESR OR Doan L. Phung's portion may be distributed to Doan L.  
11 Phung as Trustee of his new separate irrevocable charitable trust.  
12

13 15. That a certified copy of this Order may be presented to effectuate any such transfers.  
14

15 16. That if one party violates the Charter and causes a tax effect upon the other party, the  
16 violating party shall indemnify the other party and make good of it.

17 17. That the VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T  
18 and the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-  
19 089638-T should not be consolidated.

20 18. That this Court should relinquish jurisdiction in accordance with NRS 164.010(3) after  
21 the requested relief is granted and proof of the decanting and funding is provided to the  
22 Court by Thu-Le Doan.  
23

24 19. That the Petition to Assume Jurisdiction of Trust, Confirm Trustee, and to Modify Trust  
25 ought to be granted.

26 ...

27 ...

28 ...

1 Based on the foregoing findings, it is hereby

2 **ORDERED, ADJUDGED AND DECREED** that the Fund for the Encouragement  
3 of Self Reliance aka Center for the Encouragement of Reliance ("FESR") was created in Nevada,  
4 domiciled in Nevada and is subject to Nevada law;

5 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Thu-Le Doan  
6 and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan filed her Petition to Assume In  
7 Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016;

8 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a trustee has a  
9 legal right to decant a trust under NRS 163.556 if the following two prong test is met: (1) "[A]  
10 trustee with discretion or authority to distribute trust income or principal to or for a beneficiary of  
11 the trust may exercise such discretion or authority in favor of a second trust as provided in this  
12 section." NRS 163.556(1) and (2) "A trustee may not appoint property of the original trust to a  
13 second trust if: (a) Appointing the property will reduce any income interest of any income  
14 beneficiary of the original trust if the original trust is:...(2) A trust for which a charitable deduction  
15 has been taken for federal or state income, gift or estate tax purposes..." NRS 163.556(3);

16 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that NRS 163.556  
17 does not state that a trustee has an "absolute right" to decant a trust and that although the Probate  
18 Commissioner had incorrectly used the term "absolute right", the Probate Commissioner had  
19 correctly analyzed NRS 163.556 in finding that Petitioner, Thu-Le Doan, had a right to decant  
20 FESR;

21 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate  
22 Commissioner fully analyzed NRS 163.556 and correctly found that Petitioner as Co-Trustee of  
23 FESR met the two prong test: (1) that Petitioner had the power of invasion of principal of the trust  
24 assets and (2) that there is no reduction of any income interest of any income beneficiary of the trust;  
25 and as such has the right to decant FESR;

1           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner as  
2 Co-Trustee of FESR had the legal right to decant FESR when she initially filed her Petition to  
3 Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016,  
4 and that whether or not Petitioner was subsequently removed as Co-Trustee of FESR, does not affect  
5 Petitioner's ability to proceed with her petition to decant FESR;

6           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate  
7 Commissioner refused to enjoin FESR from continuing to act, and as the trust continued to act,  
8 Petitioner was removed as a Co-Trustee for her failure to participate.

9           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Court did  
10 not address whether removing Petitioner as a Co-Trustee was wrong as the Court does not believe  
11 that it has to look at that since Petitioner had the right to decant VASF when she initiated the action.

12           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that although the  
13 parties Marital Settlement Agreement limited a trustee's discretion to make distributions in excess of  
14 \$5,000.00, unless agreed to in writing by both trustees, such a limitation did not affect the purpose of  
15 FESR which was to provide "micro loans" at favorable interest rates for the purpose of enabling  
16 individuals to pursue a trade or business;

17           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner, Thu-  
18 Le Doan, as Co-Trustee of FESR has a legal right to decant FESR;

19           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that as a matter of  
20 law, the Probate Commissioner did not err in applying NRS 163.556, that the Probate Commissioner  
21 came to the right conclusion, but used the incorrect term "absolute right" versus "right";

22           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Respondent,  
23 Doan L. Phung's Objection to the Probate Commissioner's Report and Recommendation is denied;

24           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all of the assets  
25 of FESR should be divided equally and Thu-Le Doan's portion is to be decanted into Thu-Le Doan's  
26

1 separate irrevocable charitable trust with Thu-Le Doan serving as sole trustee of her separate  
2 irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with Doan L.  
3 Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be decanted into a new  
4 separate irrevocable charitable trust with Doan L. Phung serving as the sole Trustee of his new  
5 separate irrevocable charitable trust;

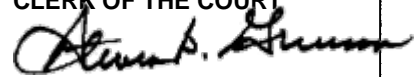
6 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all the assets of  
7 FESR including but not limited to: Fidelity accounts x4784, x4840, x9909, x9921, x2574 & x2575;  
8 Bank of America account x2956; and any and all real or personal property owned by FESR shall be  
9 divided equally and Thu-Le Doan's portion shall be distributed to Thu-Le Doan as Trustee of her  
10 separate irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with  
11 Doan L. Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be distributed  
12 to Doan L. Phung as Trustee of his new separate irrevocable charitable trust;  
13

14 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a certified copy  
15 of this Order may be presented to effectuate any such transfers;  
16

17 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that if either party  
18 violates the Charter and causes a tax effect upon the other party, the violating party shall indemnify  
19 the other party and make good of it;

20 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the  
21 VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T and the FUND FOR  
22 THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-089638-T should not be  
23 consolidated;  
24

25 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that this Court  
26 should relinquish jurisdiction in accordance with NRS 164.010(3) after the requested relief is  
27 granted and proof of the decanting and funding is provided to the Court by Thu-Le Doan; and  
28



1 CODE:NEO  
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6 Peter Co, Esq.  
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10 Las Vegas, Nevada 89134  
11 Telephone:(702) 873-9500  
12 Facsimile:(702) 873-9600  
13 Attorneys for Thu-Le Doan,  
14 Trustor of the FUND FOR  
15 THE ENCOURAGEMENT OF SELF RELIANCE

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 In the Matter of the )  
12 FUND FOR THE ENCOURAGEMENT OF ) Case No. P-16-089638-T  
13 SELF RELIANCE ) Department PC1  
14 An Irrevocable Trust. )

15 NOTICE OF ENTRY OF ORDER DENYING RESPONDENT, DOAN L. PHUNG'S  
16 OBJECTION TO PROBATE COMMISSIONER'S REPORT AND RECOMMENDATION AND  
17 ORDER GRANTING TRUSTEE THU-LE DOAN TO DECANT THE ASSETS OF THE FUND  
18 FOR THE ENCOURAGEMENT OF SELF RELIANCE AKA CENTER FOR THE  
19 ENCOURAGEMENT OF RELIANCE PURSUANT TO NRS 163.556


20 TO ALL PARTIES IN INTEREST:

21 YOU ARE HEREBY NOTICED that the above-entitled Order, filed on  
22 December 27, 2017, was entered herein on December 28, 2017. A copy of  
23 said Order is attached hereto.

24 DATED this 28th day of December, 2017.

25 SUBMITTED BY:

26 GOLDSMITH & GUYMON, P.C.

27 By:   
28 Dara J. Goldsmith, Esq.  
Nevada Bar No. 4270  
Peter Co, Esq.  
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1 **ORD**

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10 Telephone: (702) 873-9500  
11 Fax: (702) 873-9600  
12 *Attorneys for Petitioner, Thu-Le Doan*

8 **EIGHTH JUDICIAL DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 In the matter of the

11 FUND FOR THE ENCOURAGEMENT OF  
12 SELF RELIANCE,

13 An Irrevocable Trust.

Case No.: P-16-089638-T

Dept.: 26

Date of Hearing: October 12, 2017

Time of Hearing: 9:30 a.m.

14  
15 **ORDER DENYING RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE**  
16 **COMMISSIONER'S REPORT AND RECOMMENDATION AND ORDER GRANTING**  
17 **TRUSTEE THU-LE DOAN TO DECANT THE ASSETS OF THE FUND FOR THE**  
18 **ENCOURAGEMENT OF SELF RELIANCE AKA CENTER FOR THE**  
19 **ENCOURAGEMENT OF RELIANCE PURSUANT TO NRS 163.556**

20 This matter came on for hearing on October 12, 2017 before the Honorable Gloria Sturman  
21 on Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and  
22 Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume  
23 Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law, Confirming Co-  
24 Trustees and to Modify Trust entered on August 4, 2017. Respondent was present and represented  
25 by Michael R. Mushkin, Esq. and L. Joe Coppedge, Esq. of the law firm MUSHKIN CICA  
26 COPPEDGE. Petitioner, Thu-Le Doan was present and represented by Dara Goldsmith, Esq. and  
27 Peter Co, Esq. of the law firm Goldsmith & Guymon, P.C. The Court, having reviewed the  
28

1 Objection, Petitioner's Reply thereto and Respondent's Reply Brief in support of the Objection, and  
2 having heard oral arguments from counsel, finds as follows.

- 3 1. That the Fund for the Encouragement of Self Reliance aka Center for the Encouragement  
4 of Reliance ("FESR") was created in Nevada, domiciled in Nevada and is subject to  
5 Nevada law.
- 6 2. That Thu-Le Doan and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan  
7 filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify  
8 Trust on September 22, 2016.
- 9 3. That a trustee has a legal right to decant a trust under NRS 163.556 if the following two  
10 prong test is met: (1) "[A] trustee with discretion or authority to distribute trust income or  
11 principal to or for a beneficiary of the trust may exercise such discretion or authority in  
12 favor of a second trust as provided in this section." NRS 163.556(1) and (2) "A trustee  
13 may not appoint property of the original trust to a second trust if: (a) Appointing the  
14 property will reduce any income interest of any income beneficiary of the original trust if  
15 the original trust is:...(2) A trust for which a charitable deduction has been taken for  
16 federal or state income, gift or estate tax purposes..." NRS 163.556(3).
- 17 4. That NRS 163.556 does not state that a trustee has an "absolute right" to decant a trust  
18 and that although the Probate Commissioner had incorrectly used the term "absolute  
19 right", the Probate Commissioner correctly analyzed NRS 163.556 in finding that  
20 Petitioner, Thu-Le Doan, had a right to decant FESR.
- 21 5. That the Probate Commissioner fully analyzed NRS 163.556 and correctly found that  
22 Petitioner as Co-Trustee of FESR met the two prong test: (1) that Petitioner had the  
23 power of invasion of principal of the trust assets and (2) that there is no reduction of any  
24 income interest of any income beneficiary of the trust; and as such has the right to decant  
25 FESR.



- 1 6. That Petitioner as Co-Trustee of FESR had the legal right to decant FESR when she  
2 initially filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and  
3 to Modify Trust on September 22, 2016, and that whether or not Petitioner was  
4 subsequently removed as Co-Trustee of FESR, does not affect Petitioner's ability to  
5 proceed with her petition to decant FESR.
- 6 7. That the Probate Commissioner refused to enjoin FESR from continuing to act, and as the  
7 trust continued to act, Petitioner was removed as a Co-Trustee for her failure to  
8 participate.
- 9 8. That the Court did not address whether removing Petitioner as a Co-Trustee was wrong  
10 as the Court does not believe that it has to look at that since Petitioner had the right to  
11 decant FESR when she initiated the action.
- 12 9. That although the parties Marital Settlement Agreement limited a trustee's discretion to  
13 make distributions in excess of \$5,000.00, unless agreed to in writing by both trustees,  
14 such a limitation did not affect the purpose of FESR which was to provide "micro loans"  
15 at favorable interest rates for the purpose of enabling individuals to pursue a trade or  
16 business.
- 17 10. That Petitioner, Thu-Le Doan, as Co-Trustee of FESR has a legal right to decant FESR.
- 18 11. That as a matter of law, the Probate Commissioner did not err in applying NRS 163.556,  
19 that the Probate Commissioner came to the right conclusion, but used the incorrect term  
20 "absolute right" versus "right".
- 21 12. That Respondent, Doan L. Phung's Objection to the Probate Commissioner's Report and  
22 Recommendation is denied.
- 23 13. That all of the assets of FESR should be divided equally and Thu-Le Doan's portion is to  
24 be decanted into Thu-Le Doan's separate irrevocable charitable trust with Thu-Le Doan  
25 serving as sole trustee of her separate irrevocable charitable trust and Doan L. Phung's

1 portion can either remain in FESR with Doan L. Phung serving as the sole Trustee of  
2 FESR OR Doan L. Phung's portion may be decanted into a new separate irrevocable  
3 charitable trust with Doan L. Phung serving as the sole Trustee of his new separate  
4 irrevocable charitable trust.

5 14. That all the assets of FESR including but not limited to: Fidelity accounts x4784, x4840,  
6 x9909, x9921, x2574 & x2575; Bank of America account x2956; and any and all real or  
7 personal property owned by FESR shall be divided equally and Thu-Le Doan's portion  
8 shall be distributed to Thu-Le Doan as Trustee of her separate irrevocable charitable trust  
9 and Doan L. Phung's portion can either remain in FESR with Doan L. Phung serving as  
10 the sole Trustee of FESR OR Doan L. Phung's portion may be distributed to Doan L.  
11 Phung as Trustee of his new separate irrevocable charitable trust.  
12

13 15. That a certified copy of this Order may be presented to effectuate any such transfers.  
14

15 16. That if one party violates the Charter and causes a tax effect upon the other party, the  
16 violating party shall indemnify the other party and make good of it.

17 17. That the VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T  
18 and the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-  
19 089638-T should not be consolidated.

20 18. That this Court should relinquish jurisdiction in accordance with NRS 164.010(3) after  
21 the requested relief is granted and proof of the decanting and funding is provided to the  
22 Court by Thu-Le Doan.  
23

24 19. That the Petition to Assume Jurisdiction of Trust, Confirm Trustee, and to Modify Trust  
25 ought to be granted.

26 ...

27 ...

28 ...

1 Based on the foregoing findings, it is hereby

2 **ORDERED, ADJUDGED AND DECREED** that the Fund for the Encouragement  
3 of Self Reliance aka Center for the Encouragement of Reliance ("FESR") was created in Nevada,  
4 domiciled in Nevada and is subject to Nevada law;

5 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Thu-Le Doan  
6 and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan filed her Petition to Assume In  
7 Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016;

8 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a trustee has a  
9 legal right to decant a trust under NRS 163.556 if the following two prong test is met: (1) "[A]  
10 trustee with discretion or authority to distribute trust income or principal to or for a beneficiary of  
11 the trust may exercise such discretion or authority in favor of a second trust as provided in this  
12 section." NRS 163.556(1) and (2) "A trustee may not appoint property of the original trust to a  
13 second trust if: (a) Appointing the property will reduce any income interest of any income  
14 beneficiary of the original trust if the original trust is:...(2) A trust for which a charitable deduction  
15 has been taken for federal or state income, gift or estate tax purposes..." NRS 163.556(3);

16 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that NRS 163.556  
17 does not state that a trustee has an "absolute right" to decant a trust and that although the Probate  
18 Commissioner had incorrectly used the term "absolute right", the Probate Commissioner had  
19 correctly analyzed NRS 163.556 in finding that Petitioner, Thu-Le Doan, had a right to decant  
20 FESR;

21 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate  
22 Commissioner fully analyzed NRS 163.556 and correctly found that Petitioner as Co-Trustee of  
23 FESR met the two prong test: (1) that Petitioner had the power of invasion of principal of the trust  
24 assets and (2) that there is no reduction of any income interest of any income beneficiary of the trust;  
25 and as such has the right to decant FESR;

1                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner as  
2 Co-Trustee of FESR had the legal right to decant FESR when she initially filed her Petition to  
3 Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016,  
4 and that whether or not Petitioner was subsequently removed as Co-Trustee of FESR, does not affect  
5 Petitioner's ability to proceed with her petition to decant FESR;

6                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate  
7 Commissioner refused to enjoin FESR from continuing to act, and as the trust continued to act,  
8 Petitioner was removed as a Co-Trustee for her failure to participate.

9                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Court did  
10 not address whether removing Petitioner as a Co-Trustee was wrong as the Court does not believe  
11 that it has to look at that since Petitioner had the right to decant VASF when she initiated the action.

12                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that although the  
13 parties Marital Settlement Agreement limited a trustee's discretion to make distributions in excess of  
14 \$5,000.00, unless agreed to in writing by both trustees, such a limitation did not affect the purpose of  
15 FESR which was to provide "micro loans" at favorable interest rates for the purpose of enabling  
16 individuals to pursue a trade or business;

17                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner, Thu-  
18 Le Doan, as Co-Trustee of FESR has a legal right to decant FESR;

19                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that as a matter of  
20 law, the Probate Commissioner did not err in applying NRS 163.556, that the Probate Commissioner  
21 came to the right conclusion, but used the incorrect term "absolute right" versus "right";

22                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Respondent,  
23 Doan L. Phung's Objection to the Probate Commissioner's Report and Recommendation is denied;

24                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all of the assets  
25 of FESR should be divided equally and Thu-Le Doan's portion is to be decanted into Thu-Le Doan's  
26  
27  
28

1 separate irrevocable charitable trust with Thu-Le Doan serving as sole trustee of her separate  
2 irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with Doan L.  
3 Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be decanted into a new  
4 separate irrevocable charitable trust with Doan L. Phung serving as the sole Trustee of his new  
5 separate irrevocable charitable trust;

6 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all the assets of  
7 FESR including but not limited to: Fidelity accounts x4784, x4840, x9909, x9921, x2574 & x2575;  
8 Bank of America account x2956; and any and all real or personal property owned by FESR shall be  
9 divided equally and Thu-Le Doan's portion shall be distributed to Thu-Le Doan as Trustee of her  
10 separate irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with  
11 Doan L. Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be distributed  
12 to Doan L. Phung as Trustee of his new separate irrevocable charitable trust;  
13

14 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a certified copy  
15 of this Order may be presented to effectuate any such transfers;  
16

17 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that if either party  
18 violates the Charter and causes a tax effect upon the other party, the violating party shall indemnify  
19 the other party and make good of it;

20 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the  
21 VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T and the FUND FOR  
22 THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-089638-T should not be  
23 consolidated;  
24

25 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that this Court  
26 should relinquish jurisdiction in accordance with NRS 164.010(3) after the requested relief is  
27 granted and proof of the decanting and funding is provided to the Court by Thu-Le Doan; and  
28

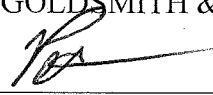
1                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Petition to  
2 Assume Jurisdiction of Trust, Confirm Trustee, and to Modify Trust ought to be granted.

3                   Dated this 21<sup>st</sup> day of December, 2017

4  
5   
6 \_\_\_\_\_  
7 DISTRICT COURT JUDGE


8 Submitted by:

9 GOLDSMITH & GUYMON, P.C.

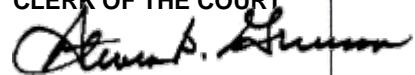
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11 \_\_\_\_\_  
12 Dara J. Goldsmith, Esq.  
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18 *Attorneys for Petitioner, Thu-Le Doan*

19 Approved as to form and content by:

20 MUSHKIN CICA COPPEDGE

21   
22 \_\_\_\_\_  
23 Michael R. Mushkin, Esq.  
24 Nevada Bar No. 2421  
25 L. Joe Coppedge, Esq.  
26 Nevada Bar No. 4954  
27 4775 South Pecos Road  
28 Las Vegas, NV 89121  
*Attorneys for Respondent, Doan L. Phung*

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*Attorneys for Respondent,*

*Doan L. Phung*

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the:

Case No.: P-16-089638-T

FUND FOR THE ENCOURAGEMENT OF  
SELF RELIANCE,

Dept. No.: 26

An Irrevocable Trust.

Date of Hearing: February 22, 2018

Time of Hearing: 9:30 am

**MOTION TO STAY PROCEEDINGS ON ORDER SHORTENING TIME**

Defendant, Doan L. Phung, by and through his counsel, Michael R. Mushkin and L. Joe Coppedge of Mushkin Cica Coppedge, submits this Motion to Stay Proceedings on Order Shortening Time. This motion is made pursuant to NRCP 62(d) and NRAP 8(a), and based upon the papers and pleadings on file herein, the points and authorities attached hereto, and any arguments made by counsel at the hearing of this motion.

DATED this 13 day of February, 2018

MUSHKIN CICA COPPEDGE



MICHAEL R. MUSHKIN, ESQ.

Nevada Bar No. 2421

L. JOE COPPEDGE, ESQ.

Nevada Bar No. 4954

4475 S. Pecos Road

Las Vegas, Nevada 89121

[illegible]

IT IS HEREBY ORDERED that the time for hearing the foregoing motion be and the same hereby is shortened, and said motion will be heard by the Honorable Gloria Sturman in Dept. 26 on the \_\_\_\_ day of February, 2018 at the hour of 9:30 a.m. or as soon thereafter as counsel can be heard.

  
DISTRICT COURT JUDGE

MICHAEL R. MUSHKIN, ESQ.  
Nevada Bar No. 2421  
L. JOE COPPEDGE, ESQ.  
Nevada Bar No. 4954  
4475 S. Pecos Road  
Las Vegas, Nevada 89121

I, L. Joe Coppedge, declare and state, under penalty of perjury, as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada and am counsel for the Respondent, Doan L. Phung in the above entitled matter. I have personal knowledge of the matters stated herein and, if called to testify, would and could testify thereto;

2. On December 27, 2017, this Court entered the Order Denying Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and Recommendation and Order Granting Trustee Thu-Le Doan to Decant the Assets of the Fund for the Encouragement of Self Reliance AKA Center for the Encouragement of Reliance Pursuant to NRS 163.556 (the "Order").



3. Notice of Entry of the Order was made on December 28, 2017.

4. Among other provisions, the Order provides, “[t]hat Petitioner, Thu-Le Doan, as Co-Trustee of FESR has a legal right to decant FESR.” *See* Order, p. 3 at ¶10.

5. The Order further states in part, “[t]hat all of the assets of FESR should be divided equally and Thu-Le Doan’s portion is to be decanted into Thu-Le Doan’s separate irrevocable charitable trust with Thu-Le Doan serving as sole trustee of her separate irrevocable charitable trust . . .” *See* Order, pp. 3-4 at ¶13

6. I am advised and understand that after the entry of the Order, Petitioner attempted to transfer half of the Trusts' assets into her own trust(s).

7. When it was brought to the attention of Petitioner's counsel that the request to transfer funds violated the provisions of Rule 62, I am advised that Petitioner caused the transfer to be reversed.

8. Respondent filed a Notice of Appeal of the Order on January 19, 2018.

9. I have consulted with Petitioner's counsel, Peter Co, and have discussed the terms of a stay of this action pending the appeal. However, we have been unable to come to an agreement regarding the terms of a stay.

10. It is my understanding that the trust funds in accounts with Fidelity bank are presently frozen, which has caused some donation checks to be dishonored.

11. Accordingly, there is in sufficient time to have this motion heard in the ordinary course.

12. Respondent respectfully requests that the motion be heard on an order shortening time at the earliest available date.

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

Executed on this 13 day of February, 2018.

L. JOE COPPEDGE

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Respondent, Doan L. Phung respectfully requests that this Court grant this motion and  
4 issue an order staying the proceedings until his appeal is resolved by the Nevada Supreme Court.  
5 As this Court will recall, Petitioner, Thu Le Doan filed two separate Petitions on September 22,  
6 2016, requesting that the assets of the Vietnamese American Scholarship Fund ("VASF") and the  
7 Fund for the Encouragement of Self-Reliance ("FESR") be divided equally into separate  
8 irrevocable charitable trusts or, in the alternative, that the assets be divided equally and Petitioner's  
9 portion be decanted into her own charitable trust. Respondent filed an Objection on October 12,  
10 2016, and the matter was initially heard on an order shortening time by the Probate Commissioner  
11 on October 14, 2016. Following the entry of the initial Report and Recommendations, Respondent  
12 filed a timely objection. That objection was heard by this Court on February 1, 2017. At the  
13 hearing, this Court made the following findings, (1) it is unclear from the record and Report and  
14 Recommendation whether the Probate Commissioner considered whether there are any questions  
15 of fact that will impact or militate a different relief under the Decanting Statute, and (2) it is  
16 unclear from the record and Report and Recommendation the analysis that the Probate  
17 Commissioner went through to reach his conclusion to decant.

18 Based on the those findings, the Court remanded this matter to the Probate Commissioner  
19 to consider and clarify certain questions, including (1) whether there are any questions of fact  
20 which are material to an analysis under the Decanting Statute, (2) whether the Probate  
21 Commissioner ascertained those material facts, and if so, what are the material facts and how did  
22 the Probate Commissioner consider them in his analysis, (3) whether the Probate Commissioner  
23 determined there are material facts not in dispute, and if so, what are the material facts that are not  
24 in dispute, and (4) whether there are material facts that support a different relief other than  
25 decanting.

26 Following a hearing on April 28, 2017, the Probate Commissioner issued new findings and  
27 recommendations, which were entered on August 4, 2017. Again, those findings and  
28 recommendations were not supported by the facts or law, which resulted in a second objection to

1 Probate Commissioner's Report and Recommendation Confirming Prior Report and  
2 Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings  
3 of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust. Following a  
4 hearing on October 12, 2017, this Court entered the Order on December 27, 2017. Among other  
5 provisions, the Order indicated that the Probate Commissioner incorrectly used the term "absolute  
6 right", but determined that the Probate Commissioner had correctly analyzed NRS 163.556 in  
7 finding that Petitioner had a right to decant FESR. Based upon that and other findings, this Court  
8 ordered that Petitioner had a legal right to decant FESR.

9 Respondent filed a Notice of Appeal of the Order on January 19, 2018.

## 10 **II. LEGAL ARGUMENT**

### 11 **A. Defendant is entitled to a stay as a matter of right.**

12 NRCP 62(d) governs stays pending appeal and provides:

13 (d) *Stay Upon Appeal.* When an appeal is taken the appellant by giving a  
14 supersedeas bond may obtain a stay subject to the exceptions contained in  
15 subdivision (a) of this rule. The bond may be given at or after the time of  
16 filing the notice of appeal. The stay is effective when the supersedeas  
bond is filed.

17 NRCP 62(d) is substantially based on its federal counterpart, FRCP 62(d). Most federal  
18 courts interpreting the rule generally recognize that FRCP 62(d) allows an appellant to obtain a  
19 stay pending appeal as of right upon the posting of a supersedeas bond for the full judgment  
20 amount, but that courts retain the inherent power to grant a stay in the absence of a full bond.  
21 *Nelson v. Heer*, 122 P.3d 1252, 121 Nev. 832 (2005). In *Nelson*, the Nevada Supreme Court noted  
22 that the purpose of security for a stay pending appeal is to protect the judgment creditor's ability to  
23 collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the  
24 creditor arising from the stay. *Id.* However, a supersedeas bond should not be the judgment  
25 debtor's sole remedy, particularly where other appropriate, reliable alternatives exist. Thus, the  
26 focus is properly on what security will maintain the status quo and protect the judgment creditor  
27 pending an appeal. As set forth below, reliable mechanisms exist that will protect both parties  
28 during the pendency of the appeal, maintain the status quo, and allow the trusts to continue their

1 good work, which should be the overriding focus of both parties.

2 **B. This Court has the inherent authority to stay of this matter pending the appeal.**

3 NRAP 8(a)(1), provides in pertinent part:

4 A party must ordinarily move first in the district court for a stay of the  
5 judgment or order of, or proceedings in, a district court pending appeal or  
6 resolution of a petition to the Supreme Court or Court of Appeals for an  
extraordinary writ

7 This court has broad discretion to stay matters pending before it. The United States  
8 Supreme Court has held:

9 The power to stay proceedings is incidental to the power inherent in every  
10 court to control the disposition of the causes on its docket with economy  
11 of time and effort for itself, for counsel, and for litigants. How this can  
12 best be done calls for the exercise of judgment which must weigh  
competing interests and maintain an even balance.

13 *Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163 (1936). The Nevada Supreme  
14 Court echoed *Landis* in *Maheu v. District Court*, 89 Nev. 214, 510 P.2d 627 (1973). As such, this  
15 court has the inherent authority to stay these proceedings.

16 **C. The NRAP 8(c) factors weigh in favor of issuing a stay.**

17 Because the rules do not set forth specific factors for the district court's consideration,  
18 Respondent directs this Court to NRAP 8(c), which identifies four factors that the Supreme Court  
19 generally considers when deciding whether to issue a stay:

20 (1) Whether the object of the appeal or writ petition will be defeated if the  
21 stay is denied; (2) Whether appellant/petitioner will suffer irreparable or  
22 serious injury if the stay is denied; (3) Whether respondent/real party in  
23 interest will suffer irreparable or serious injury if the stay is granted; and  
24 (4) Whether appellant/petitioner is likely to prevail on the merits in the  
appeal or writ petition.

25 *Hansen v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986  
26 (Nev. 2000) (citing NRAP 8(c) and *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (Nev. 1948)).

27 First, the object of Defendant's appeal will be defeated if the stay is denied because the  
28 Petitioner will be allowed to transfer approximately \$8,000,000 to her own trust(s). The

1 Commissioner's finding that he relied on the ability and rights of the trustee to the exclusion of the  
2 parties' contract rights was not only a clear error as to the parties' intent, but it ignored unrefuted  
3 evidence that Petitioner is not qualified to serve as a trustee over a separate trust consisting of  
4 approximately \$8,000,000 in assets. It is unrefuted that Petitioner never actively participated as a  
5 trustee on behalf of the Trusts. Moreover, her fitness to serve as a trustee of the Trusts is in  
6 question and will have to be addressed by the Supreme Court before the funds should be  
7 transferred to her own trust(s).

8 From 2012 until July 2016, Petitioner was the chairperson of TTKKTL, a charitable trust in  
9 Vietnam that is not the subject of these proceedings. Respondent discovered after Thu-Le's  
10 resignation as chairperson that certain transition documents revealed some loss of funds. The City  
11 of Hue Inspector found that during the time Mr. Phan Van Hai ("Phan") worked under the  
12 direction of Petitioner, both he and the Petitioner committed some questionable acts. Case in point:  
13 Petitioner caused Phan to misappropriate \$20,000.00 for her under the pretense her family donated  
14 the money without her approval. In the process of doing that, Phan stole more than \$80,000.00 for  
15 himself. Petitioner's documented neglect of her Trustee duties, her conclusive incapacity to serve  
16 as a Trustee and questionable handling of other trust funds are issues that must be addressed  
17 through competent evidence. For the Probate Commissioner to state that he was relying on the  
18 ability of Petitioner to serve as a trustee, and not even inquire about her unrefuted incapacity to  
19 serve and her questionable conduct with respect to another charitable trust mandates that this  
20 matter be stayed pending the appeal. There can be no reasonable question that the object of the  
21 appeal will be defeated if a stay is not entered, and Thu-Le is permitted to transfer half of the trust  
22 funds to her own trust account.

23 Under the same analysis, the risk of serious injury to the trusts cannot reasonably be  
24 questioned. The unrefuted facts regarding Thu-Le's neglect of her duties as trustee, her incapacity  
25 to serve as a Trustee and mishandling of other trust funds demonstrates the great risk of serious  
26 injury to the Trusts and requires that a stay be issued. By the same token, a reasonably crafted stay  
27 will allow the good work of the Trusts to continue, and absolutely no harm will come to Petitioner.

28 Moreover, based upon the relevant law and undisputed facts, Respondent has more than a

1 reasonable likelihood of prevailing in the appeal of this matter. Without rearguing the entire case,  
2 Respondent respectfully reminds the Court that the Probate Commissioner, and ultimately this  
3 Court, erred by not following the applicable court rule. EDCR 4.17(a) provides in part, “[i]n  
4 contested matters before the Probate Commissioner involving disputed issues of material fact, the  
5 Probate Commissioner shall set an evidentiary hearing date and a discovery schedule after  
6 receiving input from the attorneys for the parties and any unrepresented parties. Such settings shall  
7 be made at the time of the hearing on the initial petition commencing the litigation or at the request  
8 of any party thereto. . .” (Emphasis added).

9 As set forth in the pleadings and papers filed in this matter, there are numerous disputed  
10 issues of material fact which mandate the setting of an evidentiary hearing and a discovery  
11 schedule. Moreover, in his court filings and at the time of all hearings, Respondent requested that  
12 the Probate Commissioner and this Court establish a discovery schedule and set an evidentiary  
13 hearing. The failure to follow the applicable court rule, establish a discovery schedule and set an  
14 evidentiary hearing is an error, which provides Respondent with a more than reasonable likelihood  
15 of prevailing on appeal.

16 Further, the Probate Commissioner’s revised findings and recommendations and the Order  
17 are not supported by the limited evidence, introduced at the initial and subsequent hearings, on the  
18 Petition, and are contrary to the law. The Order, which adopts the Probate Commissioner’s  
19 reasoning that the only material facts for the court to find in applying NRS 163.556 is whether a  
20 trustee has the power of invasion of principal and if there is no reduction of any income interest of  
21 any income beneficiary, is contrary to the facts and to Nevada law.

22 As set forth in the Charter and MSA, which were expressly adopted as a part of the Divorce  
23 Decree entered April 12, 2012, Petitioner does not have unlimited discretion or authority to  
24 distribute trust income or principal. The parties agreed that Phung would manage both Trust  
25 accounts; that much is clear and not subject to dispute. See MSA at Section 14.1. Moreover, both  
26 Trustees are limited to making contributions, expenditures and grants in amounts not more than  
27 \$5,000. Any contribution, expenditure or grant exceeding \$5,000 must be agreed to in writing by  
28 both Petitioner and Respondent. Such a limitation was agreed to at the time of the divorce so

1 neither party could misuse or waste Trust assets.

2 Since the Trust assets cannot be moved or transferred without the express written  
3 permission of both Trustees, Petitioner is not a trustee with discretion or authority to distribute  
4 trust income or principal, and does not have the power to invade the principal of the Trust.  
5 Accordingly, she cannot exercise discretion or authority she does not have and, thus, she does not  
6 have the necessary authority to decant by appointing the Trust assets to a second trust. These  
7 undisputed facts alone provide Respondent with a reasonable likelihood of prevailing on appeal  
8 which requires the entry of a stay.

9 Previously, the Probate Commissioner, in his first Report and Recommendation filed herein  
10 on December 16, 2016, established a workable procedure for the management and distribution of  
11 pending applications. Specifically, the Probate Commissioner found,

12 . . . (ix) that at this time there are pending scholarship applications before  
13 the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE aka  
14 CENTER FOR THE ENCOURAGEMENT OF RELIANCE, that the  
15 scholarship program should continue and both parties must agree in  
16 granting the pending scholarships; (x) that upon the Court's inquiry  
17 whether the parties could work together on the scholarship program or  
18 whether a substantial bond be required, the parties agreed to work together  
on the scholarship program; (xi) that all pending scholarship applications  
be provided to Thu-Le Doan's counsel Dara J. Goldsmith, Esq. for an  
honest and impartial review by Thu-Le Doan as to acceptability; . . .

19 *See Report and Recommendation dated December 16, 2016, pp. 3-4.*

20 Respondent respectfully suggests that such a framework provides the most reasonable  
21 requirements for a stay pending appeal. Neither party wants the good work of the trusts to cease  
22 pending the appeal. Certainly, Respondent does not, and he reasonably believes that Thu-Le agrees  
23 with this statement. Any distributions that either party wishes to make from the trusts can be  
24 provided to the other with appropriate back up, through counsel, and after a reasonable time,  
25 perhaps thirty (30) days, if no objection is made, then the distribution will be deemed approved. If  
26 there is an objection to a distribution, which seems unlikely, then the matter could be brought to  
27 the court's attention for prompt resolution. Under this proposal, the good work of the trusts  
28 continues, and neither party, nor the Trusts are harmed pending appeal.



1 **III. CONCLUSION**

2 As set forth above, Respondent is entitled to a stay pending appeal as a matter of  
3 right upon such terms as the Court deems reasonable under these circumstances. Moreover, all  
4 relevant factors mandate that a stay of these proceedings be entered during the pendency of the  
5 appeal. Based on the foregoing, Respondent respectfully requests this Honorable Court grant his  
6 motion, and issue an order that stays this proceeding during the pendency of the appeal.

7 DATED this 13 day of February, 2018

8 MUSHKIN CICA COPPEDGE

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10   
11 MICHAEL R. MUSHKIN, ESQ.

12 Nevada Bar No. 2421

13 L. JOE COPPEDGE, ESQ.

14 Nevada Bar No. 4954

15 4475 S. Pecos Road


16 Las Vegas, Nevada 89121

17 Attorneys for Respondent,

18 Doan L. Phung

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that the foregoing **Motion to Stay Proceedings on Order Shortening**  
21 **Time** was submitted electronically for filing and/or service with the Eighth Judicial District Court  
22 on this 16 day of February, 2018. Electronic service of the foregoing document shall be upon all  
23 parties listed on the Odyssey eFileNV service contact list.

24  
25   
26 An Employee of

27 MUSHKIN CICA COPPEDGE  
28