

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of

THE WILLIAM J. RAGGIO FAMILY TRUST.

DALE CHECKET RAGGIO, individually and as Trustee of The Marital Deduction Portion and Credit Share of the William J. Raggio Family Trust,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE; AND **THE HONORABLE DAVID A. HARDY**,

Respondents,

and

LESLIE RAGGIO RIGHETTI and **TRACY RAGGIO CHEW**, Co-Trustees of the William J. Raggio and Dorothy B. Raggio Trust under agreement dated January 27, 1998 as decanted and Vested Remaindermen of the Marital Deduction Trust portion of The William J. Raggio Family Trust,
Real Parties in Interest.

No. _____

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Aug 02 2018 03:51 p.m.

District Court Consolidated Case
No. PR13-00624
Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONER'S APPENDIX TO
PETITION FOR WRIT OF
PROHIBITION OR,
ALTERNATIVELY,
MANDAMUS - VOLUME I**

Concerning The District Court,
Department 15 (Hon. David A.
Hardy), Second Judicial District

HOLLAND & HART LLP
Tamara Reid (SBN 9840)
J. Robert Smith (SBN10992)
Frank Z. LaForge (SBN 12246)
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
(775) 327-3000 | 786-6179 Fax

ECHEVERRIA LAW OFFICE
John Echeverria (SBN 200)
9432 Double R Boulevard
Reno, Nevada 89521
(775) 786-4800 | 786-4808 Fax

Attorneys for Petitioner

DALE CHECKET RAGGIO, individually and as trustee of The Marital Deduction Portion of the William J. Raggio Family Trust

APPENDIX

DATE	DOCUMENT	VOL.	PAGE NOS.
7/2/2015	First Amended Complaint	I	PA-0001-PA-0009
7/2/2015	NRS 153.031 Petition Concerning Affairs of Trust	I	PA-0010-PA-0022
7/23/2015	Response to NRS 153.031 Petition Concerning Affairs of Trust	I	PA-0023-PA-0043
9/16/2015	Order Consolidating Matters	I	PA-0044-PA-0046
12/16/2015	Answer to First Amended Complaint	I	PA-0047-PA-0052
7/19/2017	Motion for Partial Summary Judgment	I-II	PA-0053-PA-0266
8/14/2017	Opposition to Motion for Partial Summary Judgment	II	PA-0267-PA-0287
8/24/2017	Reply in Support of Motion for Partial Summary Judgment	II	PA-0288-PA-0324
8/30/2017	Request for Oral Argument	II	PA-0325-PA-0327
9/1/2017	Response to Request for Oral Argument	II	PA-0328-PA-0331
9/5/2017	Motion to Strike Remainder Beneficiaries' Response	II	PA-0332-PA-0334
9/8/2017	Petitioners'/Plaintiffs' Motion to Compel Written Discovery	II	PA-0335-PA-0396
9/18/2017	Leslie Raggio Righetti and Tracy Raggio Chew's Opposition to Trustee's Motion to Strike	II	PA-0397-PA-0401
9/25/2017	Opposition to Petitioners'/Plaintiffs' Motion to Compel Written Discovery	II-III	PA-0402-PA-0626
10/3/2017	Reply In Support of Motion to Strike Remainder Beneficiaries' Response	III	PA-0627-PA-0629
10/3/2017	Request for Submission (Motion to Strike Remainder Beneficiaries' Response)	III	PA-0630-PA-0632
10/13/2017	Reply In Support of Motion to Compel Written Discovery	III	PA-0633-PA-0665
10/16/2017	Petitioner's Request to Submit Their Motion to Compel Written Discovery	III	PA-0666-PA-0668
11/13/2017	Commissioner's Recommendation and Order Regarding Submitted Matters	III	PA-0669-PA-0670

1/9/2018	Commissioner's (1) Order Denying Request for Oral Argument and (2) Recommendation for Order Denying Motion to Strike Remainder Beneficiaries' Response	III	PA-0671-PA-0673
1/9/2018	Commissioner's (1) Recommendation for Denial of Motion for Partial Summary Judgment and (2) Recommendation Holding Motion to Compel Written Discovery in Abeyance	IV	PA-0674-PA-0678
1/22/2018	Objection to Recommendation	IV	PA-0679-PA-0685
4/3/2018	Transcript of Proceedings - Hearing on Objection to Commissioner's Recommendation	IV	PA-0686-PA-0757
4/17/2018	Order Confirming Recommendation	IV	PA-0758-PA-0762
4/17/2018	Notice of Entry of Order Confirming Recommendation	IV	PA-0763-PA-0772
4/25/2018	Petitioners' Request to Resubmit Their Motion to Compel Written Discovery	IV	PA-0773-PA-0775
6/4/2018	Order Granting Motion to Compel	IV	PA-0776-PA-0777
6/5/2018	Notice of Entry of Order Granting Motion to Compel	IV	PA-0778-PA-0784
6/21/2018	Transcript of Proceedings Case Management Conference	IV	PA-0785-PA-0798

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12/16/2015	Answer to First Amended Complaint	I	PA-0047-PA-0052
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1/9/2018	Commissioner's (1) Order Denying Request for Oral Argument and (2) Recommendation for Order Denying Motion to Strike Remainder	III	PA-0671-PA-0673

	Beneficiaries' Response		
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7/2/2015	First Amended Complaint	I	PA-0001-PA-0009
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4/17/2018	Order Confirming Recommendation	IV	PA-0758-PA-0762
9/16/2015	Order Consolidating Matters	I	PA-0044-PA-0046
6/4/2018	Order Granting Motion to Compel	IV	PA-0776-PA-0777
4/25/2018	Petitioners' Request to Resubmit Their Motion to Compel Written Discovery	IV	PA-0773-PA-0775
10/16/2017	Petitioner's Request to Submit Their Motion to Compel Written Discovery	III	PA-0666-PA-0668
9/8/2017	Petitioners'/Plaintiffs' Motion to Compel Written Discovery	II	PA-0335-PA-0396
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4/3/2018	Transcript of Proceedings - Hearing on Objection to Commissioner's Recommendation	IV	PA-0686-PA-0757
6/21/2018	Transcript of Proceedings Case Management Conference	IV	PA-0785-PA-0798

CERTIFICATE OF SERVICE

I, Martha Hauser, certify that on August 2, 2018, I electronically filed the foregoing **PETITIONER'S APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR, ALTERNATIVELY, MANDAMUS** with the Clerk of the Nevada Supreme Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants. Non-eFlex participants will be served by U.S. mail, as noted.

Michael A. Rosenauer
MICHAEL A. ROSENAUER, LTD.
michael@mrosenauer.com
Attorney for Tracy Raggio Chew

G. Barton Mowry
Enrique R. Schaerer
MAUPIN, COX & LEGOY
gbmowry@mcllawfirm.com
eschaerer@mcllawfirm.com
Attorneys for Leslie Raggio Righetti

Hon. David A. Hardy
Dept. 15
Second Judicial District Court
75 Court Street
Reno, Nevada 89501
By U.S. Mail

/s/ Martha Hauser
An Employee of HOLLAND & HART LLP

1 Code: \$1425
2 Michael A. Rosenauer, Esq.
3 State Bar No. 2782
4 F. McClure Wallace, Esq.
5 State Bar No. 10264
6 Rosenauer & Wallace
7 510 W. Plumb Lane, Suite A
8 Reno, Nevada 89509
9 (775) 324-3303

6 G. Barton Mowry, Esq.
7 State Bar No.1934
8 Maupin, Cox & LeGoy
9 P.O. Box 30000
10 Reno, NV 89520
11 (775) 827-2000

10 Counsel for Leslie Righetti and
11 Tracy Chew, Co-Trustees of the
12 William J. and Dorothy B. Raggio
13 Trust under agreement dated January 27, 1998
14 as decanted, and Vested Remaindermen of the
15 Marital Deduction Trust portion of
16 The William J. Raggio Family Trust

14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 LESLIE RAGGIO RIGHETTI
17 and TRACY CHEW, Co Trustees
18 of the William J. Raggio and Dorothy
19 B. Raggio Trust under agreement dated
20 January 27, 1998 as decanted and Vested
21 Remaindermen of the Marital Deduction
22 portion of The William J. Raggio
23 Family Trust,

21 Plaintiffs,

22 vs.

23 DALE CHECKETT RAGGIO,
24 Trustee of The Marital Deduction
25 Portion and Credit Share of the William J.
26 Raggio Family Trust; DALE CHECKETT
27 RAGGIO, Individually;
28 DOES II through X inclusive;

26 Defendants.

CASE NO.: CV15-01202

DEPT. NO.: 15

Exempt from Arbitration as request
exceeds \$50,000.00

FIRST AMENDED COMPLAINT

1 responsible for the occurrences alleged in this Complaint and that Plaintiffs' damages, as alleged,
2 were proximately caused by the conduct of the fictitiously named Defendants. More
3 particularly, these fictitiously named defendants spent trust assets, received value or chose to
4 spend money otherwise belonging to the Credit Shelter portion of the William J. Raggio Trust
5 without providing equal consideration to such trust and without regard to the provisions of the
6 trust agreement. As they owed a duty to Plaintiffs to act within the provisions of the trust
7 agreement or agreed to spend trust assets consistently with the terms and conditions set forth in
8 the Trust Agreement, and failed to do so, they are in some manner liable for Plaintiffs' damages.
9

10 6. William J. Raggio (hereinafter "Bill") was married to Dorothy B. Raggio
11 (hereinafter "Dorothy") for 49½ years.

12 7. During Bill's marriage to Dorothy, they executed and funded the William and
13 Dorothy Raggio Family Trust.

14 8. The William and Dorothy Raggio Family Trust named Bill to serve as Trustee
15 with their daughter Plaintiff Leslie Righetti as first successor.
16

17 9. Dorothy died in 1998.

18 10. Upon Dorothy's demise, The William and Dorothy Raggio Family Trust divided
19 into The Bill and Dorothy Raggio Survivor's Trust and the Bill and Dorothy Raggio Credit
20 Shelter Trust.

21 11. Bill served as Trustee of both The William and Dorothy Raggio Survivor's Trust
22 and the William and Dorothy Raggio Credit Shelter Trust until his demise.
23

24 12. Leslie Righetti and Tracy Chew are the now vested beneficiaries as well the Co-
25 Trustees of the William and Dorothy Raggio Credit Shelter Trust (Leslie Righetti recently
26 "decanted" the trust pursuant to NRS 163.556 to name her sister Plaintiff Tracy Chew as a Co-
27 Trustee and to implement a succession plan for future trustees).
28

13. Bill married Dale Checkett Raggio in April, 2004.

1 14. From the assets of the Survivor's portion of the William and Dorothy Raggio
2 Family Trust, Bill created and funded the William J. Raggio Family Trust under the Trust
3 agreement dated April 13, 2007.

4 15. Dale Checkett Raggio contributed no assets to the William J. Raggio Family
5 Trust.

6 16. During his lifetime, Bill was the sole Trustee of the William J. Raggio Family
7 Trust.

8 17. The terms of the William J. Raggio Family Trust stated that upon Bill's demise,
9 Dale Checkett Raggio would serve as Trustee until her demise or incapacity.
10

11 18. Bill died on February 24, 2012.

12 19. Since Bill's death, Dale Checkett Raggio has been serving as the Trustee of the
13 William J. Raggio Family Trust and its sub trusts.

14 20. Upon Bill's demise, the William J. Raggio Family Trust has, by its terms, been
15 divided into two sub trusts: a Marital Deduction Trust and a Credit Shelter Trust.
16

17 21. Upon the demise of Dale Checkett Raggio, the balance then remaining of the
18 Marital Deduction portion of the William J. Raggio Family Trust pours into the Credit Shelter
19 portion of the William and Dorothy Raggio Family Trust.

20 22. The Credit Shelter portion of the William and Dorothy Raggio Family Trust is the
21 beneficiary of the remainder interest in the Marital Deduction portion of the William J. Raggio
22 Family Trust. Upon Bill's demise, the interests of the Credit Shelter portion of the William and
23 Dorothy Raggio Family Trust vested indefeasibly in Plaintiffs Leslie Righetti and Tracy Chew as
24 the sole beneficiaries of such Credit Shelter portion.
25

26 23. The Marital Deduction portion of the William J. Raggio Family Trust provides
27 that Dale Checkett Raggio is entitled to mandatory distributions of the net income and
28 discretionary distributions of principal as the Trustee, in the Trustee's discretion, deems

1 “necessary” for the “proper support, care and maintenance” of Dale Checkett Raggio.

2 24. By taking the distributions from the Marital Deduction portion of the William J.
3 Raggio Family Trust, Dale Checkett Raggio, in her capacity as the beneficiary of that Trust,
4 agreed to use the distributions solely for her necessary support, care, and maintenance.

5 25. Plaintiffs are informed and believe, and upon that basis, allege that Dale Checkett
6 Raggio did not use the distributions solely for her necessary support, care and maintenance.

7 26. Plaintiffs are further informed and believe, and upon that basis, allege that Dale
8 Checkett Raggio purposefully increased her spending after the demise of Bill thereby exceeding
9 what had been the level of spending prior to his demise.

10 27. Dale Checkett Raggio’s misuse of distributions from the Marital Deduction
11 portion of the William J. Raggio Family Trust for purposes beyond her “necessary support, care
12 and maintenance” is a breach of the trust.

13 28. Dale Checkett Raggio is also the Trustee of the Credit Shelter portion of the
14 William J. Raggio Family Trust and the sole beneficiary thereof during her lifetime entitled to
15 discretionary distributions of income and principal as “necessary” for her “health, support and
16 maintenance.”

17 29. On information and belief, Plaintiffs allege that though Dale Checkett Raggio has
18 the discretion to distribute to herself assets from the Credit Shelter portion on the identical
19 standard for discretionary distributions from the Marital Deduction portion, she deliberately
20 chose not to do so thereby enhancing the value of the remainder interest in the Credit Shelter
21 portion of which her grandchildren are the sole remainder beneficiaries.

22 30. The actions of Dale Checkett Raggio, as Trustee, in treating herself differently as
23 the discretionary beneficiary of both the Credit Shelter portion and Marital Deduction portion of
24 the William J. Raggio Family Trust with the effect of diminishing the interests of the remainder
25 beneficiaries of the Marital Deduction Trust and thereby enhancing the interests of her
26
27
28

1 grandchildren as remainder beneficiaries of the Credit Shelter portion of the William J. Raggio
2 Family Trust breaches her duty of impartiality to all remainder beneficiaries and duty of loyalty
3 owed to all beneficiaries of the William J. Raggio Family Trust.

4 31. By breaching the trust, Dale Checkett Raggio has damaged both the Marital
5 Deduction portion of the William J. Raggio Family Trust as well as Plaintiff's remainder interest
6 in the William and Dorothy Raggio Family Trust, in an amount in excess of Ten Thousand
7 Dollars (\$10,000.00).
8

9
10 **SECOND CLAIM FOR RELIEF**
11 **(Unjust Enrichment)**

12 32. Plaintiffs reallege Paragraphs 1 through 31 as if they are set forth herein in their
13 entirety.

14 33. Dale Checkett Raggio, as beneficiary and individually, has been unjustly enriched
15 by using the assets from the Marital Deduction portion of the William J. Raggio Family Trust in
16 a manner outside the terms of the trust.

17 34. Dale Checkett Raggio's has been unjustly enriched in a manner exceeding Ten
18 Thousand Dollars (\$10,000.00).
19

20 **THIRD CLAIM FOR RELIEF**
21 **(Request for Constructive Trust)**

22 35. Plaintiffs reallege Paragraphs 1 through 35 as if they are set forth herein in their
23 entirety.

24 36. A confidential relationship existed between Dale Checkett Raggio, as the
25 Successor Trustee of the Marital Deduction portion of the William J. Raggio Family Trust, and
26 Dale Checkett Raggio as the Beneficiary of the Marital Deduction portion of the William J.
27 Raggio Family Trust.

28 37. It would be inequitable for Dale Checkett Raggio as the beneficiary of the Marital

1 Deduction portion of the William J. Raggio Family Trust to be permitted to retain those sums or
2 that value of the assets she received from herself as Trustee of the William J. Raggio Family
3 Trust but were spent by her in a manner inconsistent with the terms of said trust.

4 38. A constructive trust should be imposed upon the personal assets of Dale Checkett
5 Raggio in an amount equal to the value of the assets she received from the William J. Raggio
6 Family Trust but were spent by her in a manner inconsistent with the terms of said Trust.

7
8 WHEREFORE, Plaintiffs pray as follows:

9 A. Damages in an amount exceeding Ten Thousand Dollars (\$10,000.00).

10 B. Damages equal to the value of the Trust assets Dale Checkett Raggio has spent
11 inconsistently with the terms of the Marital Deduction portion of the William J. Raggio Family
12 Trust.

13 C. The imposition of a Constructive Trust over the personal assets acquired by Dale
14 Checkett Raggio by way of improper uses or expenditures of money received from the Marital
15 Deduction portion of the William J. Raggio Family Trust.

16
17 D. The reasonable costs incurred in prosecuting this action as permitted by law;

18 E. The reasonable attorney' fees incurred in prosecuting this action as permitted by
19 law;

20 F. Such other and further relief as the Court deems just and proper under the
21 circumstances.

22
23
24 **AFFIRMATION: Pursuant to NRS 239B.030, the undersigned does hereby affirm that the**

25 ///

26 ///

27 ///

28 ///

1
2 preceding document does not contain the Social Security number of any person.
3

4 DATED this 2nd day of July, 2015.
5

6 ROSENAUER & WALLACE
7

8 By Michael A. Rosenauer
9 MICHAEL A. ROSENAUER, ESQ.
10 510 West Plumb Lane, Suite A
11 Reno, Nevada 89509

12 MAUPIN, COX & LEGOY
13

14 By G. Barton Mowry
15 G. Barton Mowry, Esq.
16 Maupin, Cox & LeGoy
17 P.O. Box 30000
18 Reno, NV 89520
19 (775) 827-2000
20
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Rosenauer & Wallace, 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

on the party(s) set forth below by:

XXX

Electronic Mailing via Second Judicial District Court
CM/ECF System to all those persons listed on the ECF
Confirmation Sheet.

XXX

Placing an original or true copy thereof in a sealed
envelope placed for collection and mailing in the United
States Mail, at Reno, Nevada, postage paid, following
ordinary business practices.

addressed as follows:

Timothy J. Riley, Esq.
Holland & Hart LLP
5441 Kietzke Lane
2nd Floor
Reno, NV 89511

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

G. Barton Mowry, Esq.
Proctor J. Hug IV, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519

DATED this 2nd day of July, 2015.


REBECCA SQUIRE

1 Code: \$1425
2 Michael A. Rosenauer, Esq.
3 State Bar No. 2782
4 F. McClure Wallace, Esq.
5 State Bar No. 10264
6 Rosenauer & Wallace
7 510 W. Plumb Lane, Suite A
8 Reno, Nevada 89509
9 (775) 324-3303

6 G. Barton Mowry, Esq.
7 State Bar No. 1934
8 Maupin, Cox & LeGoy
9 P.O. Box 30000
10 Reno, NV 89520
11 (775) 827-2000

10 Counsel for Leslie Righetti and
11 Tracy Chew, Co-Trustees of the
12 William J. and Dorothy B. Raggio
13 Trust under agreement dated January 27, 1998
14 as decanted, and Vested Remaindermen of the
15 Marital Deduction Trust portion of
16 The William J. Raggio Family Trust

14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 LESLIE RAGGIO RIGHETTI
17 and TRACY CHEW, Co Trustees
18 of the William J. Raggio and Dorothy
19 B. Raggio Trust under agreement dated
20 January 27, 1998 as decanted and Vested
21 Remaindermen of the Marital Deduction
22 portion of The William J. Raggio
23 Family Trust,

CASE NO.: PR13-00624

DEPT. NO.: PR

21 Petitioners,

22 vs.

23 DALE CHECKETT RAGGIO,
24 Trustee of The Marital Deduction
25 Portion and Credit Share Portion of the
26 William J. Raggio Family Trust;
27 DOES I through X inclusive;

28 Respondent.

NRS 153.031 PETITION CONCERNING AFFAIRS OF TRUST

Petitioners Leslie Raggio Righetti and Tracy Chew, in their capacities as Co-Trustees of

1 the Credit Shelter portion of the William J. and Dorothy B. Raggio Trust under the trust
2 agreement dated January 27, 1998, as decanted subsequently, and in their capacities as vested
3 remainder beneficiaries of the Marital Deduction Trust portion of The William J. Raggio Family
4 Trust created under the trust agreement dated April 13, 2007 respectfully petition ("Petition")
5 pursuant to NRS Chapter 153 and NRS 164.005 as follows:

6 GENERAL ALLEGATIONS

- 7
8 1. Pursuant to NRS 153.031(2), the names and addresses of each interested person
9 is:

10 Dale Checkett Raggio
11 c/o Timothy Riley, Esq.
12 Holland and Hart
13 5441 Kietzke Lane, Second Floor
14 Reno, NV 89511

Leslie Raggio Righetti
c/o G. Barton Mowry, Esq.
Maupin, Cox & LeGoy
P.O. Box 30000
Reno, NV, 89520

13 Tracy Chew
14 c/o Michael A. Rosenauer, Esq.
15 Rosenauer & Wallace
16 510 West Plumb Lane, Suite A
17 Reno, NV 89509

- 17 2. Pursuant to NRS 153.031(2), the grounds for this Petition, in part, are as follows:
- 18 a. At all times relevant hereto, Petitioners Leslie Righetti and Tracy Chew were
19 residents of Washoe County, Nevada.
- 20 b. At all times relevant hereto, Respondent Dale Checkett Raggio was a resident of
21 Washoe County, Nevada.
- 22 c. At all times relevant hereto, all assets within the Marital Deduction portion of The
23 William J. Raggio Family Trust were domiciled within and managed from
24 Washoe County, Nevada.
- 25 d. At all times relevant hereto, the assets of The William J. Raggio and Dorothy B.
26 Raggio Trust under the agreement dated January 27, 1998 were domiciled within
27
28

and managed from Washoe County, Nevada.

- e. Petitioners are ignorant of the true names and capacities of those Respondents named in this Petition as Does I-X, inclusive, and therefore sues those Respondents by such fictitious name. Petitioners will amend their Petition to allege the true names and capacities of these Respondents when they are ascertained. Petitioners are informed and believe, and thereon allege, that each of the fictitiously named Respondents were vested in assets belonging to the Marital Deduction portion of the William J. Raggio Family Trust, managed said assets, were transferred said assets, spent said assets, received the benefit of said assets, and/or acted as a trustee or some type of fiduciary over said assets. As such, these fictitious Respondents are in some manner responsible for the occurrences alleged in this Petition and that Petitioners' damages, as alleged, were proximately caused by the conduct of the fictitiously named Respondents. More particularly, these fictitiously named Respondents spent trust assets, received value or chose to spend money from the trust without consideration of the Credit Shelter portion of the William J. Raggio Family Trust without regard to the provisions of the trust agreement.. As they owed a duty to Petitioners to act within the provisions of the trust agreement, and failed to do so, they are in some manner liable for Petitioners' damages.
- f. William J. Raggio (hereinafter "Bill") was married to Dorothy B. Raggio (hereinafter "Dorothy") for 49½ years.
- g. During Bill's marriage to Dorothy, they executed and funded the William and Dorothy Raggio Family Trust.
- h. The William and Dorothy Raggio Family Trust named Bill to serve as Trustee followed by their daughter Plaintiff Leslie Raggio Righetti.

- i. Dorothy died in 1998.
- j. Upon Dorothy's demise, The William and Dorothy Raggio Family Trust divided into The William and Dorothy Raggio Survivor's Trust and the William and Dorothy Raggio Credit Shelter Trust.
- k. Leslie Raggio Righetti and Tracy Chew are the now vested beneficiaries as well the Co-Trustees of the William and Dorothy Raggio Credit Shelter Trust (Leslie Righetti recently "decanted" the trust pursuant to NRS 163.556 to name her sister Petitioner Tracy Chew as a Co-Trustee and to implement a succession plan for future trustees).
- l. Bill served as Trustee of both The William and Dorothy Raggio Survivor's Trust and the William and Dorothy Raggio Credit Shelter Trust until his demise.
- m. Bill married Dale Checkett Raggio in April, 2004.
- n. From the assets of the Survivor's portion of the William and Dorothy Raggio Family Trust, Bill created and funded the William J. Raggio Family Trust under the trust agreement dated April 13, 2007.
- o. Dale Checkett Raggio contributed no assets to the William J. Raggio Family Trust.
- p. During his lifetime, Bill was the sole Trustee of the William J. Raggio Family Trust.
- q. The terms of the William J. Raggio Family Trust stated that upon Bill's demise, Dale Checkett Raggio would serve as Trustee until her demise or incapacity.
- r. Bill died on February 24, 2012.
- s. Since Bill's death, Dale Checkett Raggio has been serving as the Trustee of the William J. Raggio Family Trust and its sub trusts.
- t. Upon Bill's demise, the William J. Raggio Family Trust has, by its terms, been

divided into two sub trusts: a Marital Deduction Trust and a Credit Shelter Trust.

- u. Upon the demise of Dale Checkett Raggio, the balance then remaining of the Marital Deduction portion of the William J. Raggio Family Trust pours into the Credit Shelter portion of the William and Dorothy Raggio Family Trust.
- v. Upon Bill's demise, the interests of the Credit Shelter portion of the William and Dorothy Raggio Family Trust vested indefeasibly in Petitioners Leslie Righetti and Tracy Chew as the Co-Trustees and sole Beneficiaries of such Credit Shelter portion upon the death of William J. Raggio.
- w. The Marital Deduction portion of the William J. Raggio Family Trust provides that Dale Checkett Raggio is entitled to mandatory distributions of the net income and discretionary distributions of principal as the Trustee, in the Trustee's discretion, deems "necessary" for the proper support, care and maintenance of Dale Checkett Raggio.
- x. The Credit Shelter portion of the William J. Raggio Family Trust provides that Dale Checkett Raggio is entitled to discretionary distributions of net income and principal as the Trustee, in the Trustee's discretion, shall deem "necessary" for the proper support, care, and maintenance of Dale Checkett Raggio.

FIRST CLAIM FOR RELIEF

(Breach of Trust/Fiduciary Duty Compelling Redress and Reviewing the Acts of the Trustee)

1. In the first year the Marital Deduction portion of the William J. Raggio Family Trust existed, the net income earned was approximately Forty-Eight Thousand Dollars (\$48,000.00).
2. In the first year of the Marital Deduction portion of the William J. Raggio Family

1 Trust, Dale Checkett Raggio distributed the entirety of its income to herself as beneficiary.

2 3. In addition to the net income, Dale Checkett Raggio, as Trustee, made
3 discretionary distributions of principal to herself as beneficiary from the Marital Deduction
4 portion of the William J. Raggio Family Trust in the amount of Two Hundred Thousand Dollars
5 (\$200,000.00).
6

7 4. Dale Checkett Raggio owes the Petitioners as beneficiaries of the Marital
8 Deduction portion of the William J. Raggio Family Trust and the beneficiaries of the Credit
9 Shelter portion of the William J. Raggio Family Trust the same fiduciary duties. Among others,
10 such duties include the duty of loyalty, duty of impartiality, duty to administer the trust by its
11 terms, and the duty of avoidance of conflict of interest.
12

13 5. Petitioners are informed and believe, and upon that basis, allege that Dale
14 Checkett Raggio has not treated the Credit Shelter portion of the William J. Raggio Family Trust
15 consistently with the Marital Deduction portion of the William J. Raggio Family Trust.
16

17 6. Petitioners are informed and believe, and upon that basis, allege that Dale
18 Checkett Raggio has consistently made discretionary distributions to herself from the Marital
19 Deduction portion of the William J. Raggio Family Trust as opposed to the Credit Shelter portion
20 of the William J. Raggio Family Trust, thereby intentionally depleting the former to the benefit
21 of the latter.
22

23 7. Petitioners are informed and believe, and on that basis allege, that Dale Checkett
24 Raggio has also refused to use her own substantial resources inherited from William J. Raggio to
25 provide for her own support.
26

27 8. Petitioners are further informed and believe, and upon such information and
28 belief, allege that as Trustee of the Marital Deduction portion of the William J. Raggio Family
Trust, Dale Checkett Raggio has withdrawn money from the Marital Deduction portion of the

1 William J. Raggio Family Trust beyond what is “necessary” for her “proper support, care and
2 maintenance”.

3 9. Dale Checkett Raggio’s inequitable and disparate treatment of the Marital
4 Deduction portion of the William J. Raggio Family Trust vis-a-vis the Credit Shelter portion of
5 the William J. Raggio Family Trust is a breach of fiduciary duty Dale Checkett Raggio owes to
6 Petitioners as the Remainder Beneficiaries.

7 10. Dale Checkett Raggio’s failure to use her own resources to provide for her
8 support relying almost exclusively on the assets of the Marital Deduction portion of the William
9 J. Raggio Family Trust is also a breach of fiduciary duty Dale Checkett Raggio owes to
10 Petitioners as the Remainder Beneficiaries.

11 11. Dale Checkett Raggio’s withdrawals of assets from the Marital Deduction portion
12 of the William J. Raggio Family Trust knowing that they would be spent inconsistently with the
13 terms of the trust is a breach of her duties to the Remainder Beneficiaries.

14 12. By breaching her fiduciary duties owed to the Remainder Beneficiaries of the
15 Marital Deduction portion of the William J. Raggio Family Trust, namely the Credit Shelter
16 portion of the William and Dorothy Raggio Family Trust, and the Petitioners herein who are the
17 Co-Trustees thereof and the indefeasibly vested remainder beneficiaries thereof, have been
18 damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).

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23 **SECOND CLAIM FOR RELIEF**
24 **(Breach of Contract Compelling Redress and Reviewing the Acts of the Trustee)**

25 13. Petitioners reallege Paragraphs 1 through 12 as if set forth herein in their entirety.

26 14. By drafting the William J. Raggio Family Trust, Bill offered to form a contract
27 which permitted him to hold his property in the form of a Trust and with restrictions, pass that
28 property after his demise to Dale Checkett Raggio for her lifetime and then, at least as to the

1 Marital Deduction portion of the William J. Raggio Family Trust, to the Credit Shelter portion of
2 the William and Dorothy Raggio Family Trust.

3 15. The offer was accepted by Bill by his signature as Settlor on the William J.
4 Raggio Family Trust instrument.

5 16. Bill provided consideration for the contract, that being the William J. Raggio
6 Family Trust, by funding the William J. Raggio Family Trust with his assets from the Survivor's
7 portion of the William and Dorothy Raggio Family Trust.

8 17. A contract consisting of the William J. Raggio Family Trust existed between
9 William J. Raggio as Settlor and the initial beneficiary, Dale Checkett Raggio as the Successor
10 Trustee, and Leslie Raggio Righetti and Tracy Chew, in their capacities as Co-Trustees of the
11 Credit Shelter portion of the William and Dorothy Raggio Family Trust and the vested remainder
12 beneficiaries thereunder as third party beneficiaries of the contract.

13 18. Upon Bill's demise, Dale Checkett Raggio became the Successor Trustee of the
14 William J. Raggio Family Trust.

15 19. Dale Checkett Raggio, in her capacity as the Successor Trustee of the William J.
16 Raggio Family Trust, divided its assets into the Marital Deduction portion and the Credit Shelter
17 portion.

18 20. Upon the division of the William J. Raggio Family Trust, Dale Checkett Raggio
19 became the Successor Trustee of the Marital Deduction portion and Credit Shelter portion of the
20 William J. Raggio Family Trust.

21 21. As Successor Trustee of the Marital Deduction portion and of the Credit Shelter
22 portion of the William J. Raggio Family Trust, Dale Checkett Raggio has the duty to administer
23 this trust in a manner consistent with its terms.

24 22. Petitioners are informed and believe, and upon such information and belief, allege
25 that Dale Checkett Raggio has breached her obligation under the contract by, among other
26

1 actions or omissions, ignoring the Credit Shelter portion of the William J. Raggio Family Trust
2 thereby treating the two inconsistently and also treating herself as the lifetime beneficiary of both
3 trusts differently by favoring her grandchildren at the expense of the Petitioners as the vested
4 remainder beneficiaries of the Marital Deduction portion.

5 23. Petitioners are further informed and believe, and upon such information and
6 belief, allege that Dale Checkett Raggio transferred assets from the Marital Deduction portion of
7 the Raggio Family Trust to the Beneficiary knowing that the Beneficiary was not intending to
8 spend the funds in a manner consistently with the Trust's terms.

9
10 24. Dale Checkett Raggio's breach of the contract has damaged Petitioners in an
11 amount in excess of Ten Thousand Dollars (\$10,000.00).

12 **THIRD CLAIM FOR RELIEF**
13 **(Breach of the Covenant of Good Faith and Fair Dealing Compelling Redress and**
14 **Reviewing the Acts of the Trustee)**

15 25. Petitioners reallege Paragraphs 1 through 23 of their Petition as if they are set out
16 herein in their entirety.

17 26. Dale Checkett Raggio, as Successor Trustee of the Marital Deduction portion of
18 the William J. Raggio Family Trust, owes all of the beneficiaries thereunder including the
19 Remainder Beneficiaries a duty of good faith and fair dealing.

20
21 27. Dale Checkett Raggio has breached her duty of good faith and fair dealing owed
22 to the Beneficiaries and Remainder Beneficiaries of the Marital Deduction portion of the
23 William J. Raggio Family Trust by intentionally treating them dissimilarly to the manner in
24 which she treats the lifetime and Remainder Beneficiaries portion of the Credit Shelter portion of
25 the William J. Raggio Family Trust.

26
27 28. By breaching her duty of good faith and fair dealing, Dale Checkett Raggio has
28 damaged the Remainder Beneficiaries of the Marital Deduction portion of the William J. Raggio

1 Family Trust in an amount in excess of Ten Thousand Dollars (\$10,000.00).

2 **FOURTH CLAIM FOR RELIEF**
3 **(Removal of Trustee)**

4 29. Petitioners reallege Paragraphs 1 through 28 of their Petition as if they are set out
5 herein in their entirety.

6 30. Dale Checkett Raggio, the Successor Trustee of the Marital Deduction portion of
7 the William J. Raggio Family Trust has breached her duties of impartiality, loyalty, good faith,
8 reasonableness, fidelity and fairness to the Remainder Beneficiaries by treating them dissimilarly
9 to these remainder beneficiaries of the Credit Shelter Trust Portion, who are her grandchildren.

10 31. The breach of the duties and obligations Dale Checkett Raggio, the Successor
11 Trustee of the Marital Deduction portion of the William J. Raggio Family Trust owes to the
12 Remainder Beneficiaries of that Trust requires her removal as Successor Trustee.

13 32. An individual or entity wholly independent of this Trust or their agents should be
14 appointed to administer the William J. Raggio Family Trust and its subtrusts
15

16 **FIFTH CLAIM FOR RELIEF**
17 **(Accounting)**

18 33. Petitioners reallege Paragraphs 1 through 30 of their Petition as if they are set out
19 herein in their entirety.

20 34. The William J. Raggio Family Trust requires Dale Checkett Raggio, the
21 Successor Trustee, to only make discretionary distributions of funds to herself as the beneficiary
22 when the assets will be used for the Beneficiary's necessary support, care and maintenance.

23 35. Petitioners are informed and believe, and upon such information and belief allege
24 that the Successor Trustee of the Martial Deduction portion of the William J. Raggio Family
25 Trust, Dale Checkett Raggio, distributed funds to herself as beneficiary knowing that the
26 distributed funds would not be used in a manner consistent with the Trust.
27

28 36. Dale Checkett Raggio should be required to account for the manner in which the

1 Beneficiary utilized the funds distributed from the Trust.

2 WHEREFORE, Petitioners pray as follows:

3 A. An accounting of the manner in which Dale Checkett Raggio has spent the
4 Marital Deduction portion of the William J. Raggio Family Trust and an accounting of the sums
5 she withdrew from her personal assets and those of the Credit Shelter portion;

6 B. The removal of Dale Checkett Raggio from her position as Trustee of the Marital
7 Deduction portion of the William J. Raggio Family Trust;

8 C. Damages in an amount exceeding Ten Thousand Dollars (\$10,000.00).

9 D. Damages equal to the value of the goods and services Dale Checkett Raggio has
10 unjustly received and/or improperly utilized.

11 E. The reasonable costs incurred in prosecuting this action as permitted by law;

12 F. The reasonable attorney' fees incurred in prosecuting this action as permitted by
13 law;
14

15 G. Such other and further relief as the Court deems just and proper under the
16 circumstances.
17

18
19 **AFFIRMATION: Pursuant to NRS 239B.030, the undersigned does hereby affirm that the**

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1 ///

2 preceding document does not contain the Social Security number of any person.

3
4 DATED this 2nd day of July, 2015.

5
6 ROSENAUER & WALLACE

7
8 By Michael A. Rosenauer
9 MICHAEL A. ROSENAUER, ESQ.
10 510 West Plumb Lane, Suite A
11 Reno, Nevada 89509

12 MAUPIN, COX & LEGOY

13
14 By G. Barton Mowry
15 G. Barton Mowry, Esq.
16 Maupin, Cox & LeGoy
17 P.O. Box 30000
18 Reno, NV 89520
19 (775) 827-2000
20
21
22
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28

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of Rosenauer & Wallace, 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

NRS 153.031 PETITION CONCERNING AFFAIRS OF TRUST

on the party(s) set forth below by:

XXX

Electronic Mailing via Second Judicial District Court
CM/ECF System to all those persons listed on the ECF
Confirmation Sheet.

XXX

Placing an original or true copy thereof in a sealed
envelope placed for collection and mailing in the United
States Mail, at Reno, Nevada, postage paid, following
ordinary business practices.

addressed as follows:

Timothy J. Riley, Esq.
Holland & Hart LLP
5441 Kietzke Lane
2nd Floor
Reno, NV 89511

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

G. Barton Mowry, Esq.
Proctor J. Hug IV, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519

DATED this 2nd day of July, 2015.


REBECCA SQUIRE

1 **3880**

2 Soraya Tabibi Aguirre, Esq.
3 Nevada Bar No. 9918
4 Timothy J. Riley, Esq.
5 Nevada Bar No. 10428
6 Tamara Reid, Esq.
7 Nevada Bar No. 9840
8 HOLLAND & HART LLP
9 5441 Kietzke Lane, Second Floor
10 Reno, Nevada 89511
11 Tel: (775) 327-3000
12 Fax: (775) 786-6179
13 STAguirre@hollandhart.com
14 TRiley@hollandhart.com
15 TReid@hollandhart.com

16 John Echeverria, Esq.
17 Nevada Bar No. 200
18 Echeverria Law Office
19 9432 Double R Boulevard
20 Reno, NV 89521
21 Tel: (775) 786-4800
22 je@eloreno.com

23 *Attorneys for Dale Raggio*

24
25 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

26 IN AND FOR THE COUNTY OF WASHOE

27 IN THE MATTER OF THE
28 WILLIAM J. RAGGIO FAMILY TRUST.

Case No. PR13-00624
Dept. No. PR

29
30
31 **RESPONSE TO NRS 153.031 PETITION CONCERNING AFFAIRS OF TRUST**

32
33
34 DALE RAGGIO ("Mrs. Raggio" and/or "Trustee"), Trustee of the WILLIAM J.
35 RAGGIO FAMILY TRUST, dated April 13, 2007 (the "Trust"), by and through her counsel,
36 Holland & Hart LLP, hereby responds to the NRS 153 Petition Regarding Affairs of Trust.

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Mrs. Raggio first offers a statement of her affirmative defenses to Petitioners' claims in narrative form. This statement will frame the issues and explain the deficiencies with the Petition. Mrs. Raggio follows this statement by responding to each numbered allegation of the Petition.

I. STATEMENT OF AFFIRMATIVE DEFENSES

A. This Court Already Rejected Any Joined Reading Of the Sub-Trusts.

If the allegations in the NRS 153.031 Petition sound familiar to this Court, it is because they largely echo the same arguments that Ms. Chew raised in her attempt to obtain similar relief, i.e. an accounting of the Credit Shelter Trust. *See Tracy Chew's Petition to Interplead Inter Vivos Trust, Request for Review of Beneficiary's Request for an Accounting and Documents*, filed December 9, 2013. On June 3, 2014, this Court heard extensive oral argument from counsel regarding the structure of the trusts and the proper interpretation of the language used. At the conclusion of the hearing, the Court noted as follows:

As to the argument that Ms. Righetti could be brought in, we'd do the same thing all over again. Maybe? And maybe not. So my recommendation would be that the petition be denied without prejudice.

Now, I suppose I could say that I want to be the last one to create a repetition of the litigation that we've already seen, but I'm not going to project or predict what would happen if she did come in. ***Because her arguments could be different, they could hinge on different statutes or authority*** and, in fact, it might just sort of make the picture a little bit clearer if she were here.

But for now, and based on the posture of what we have, I think that the characterization of there being some kind of an obligation of these two portions of the trust to function in a parallel way or that the use of the two trusts has to be done proportionately, ***I think that argument has not been proven by the language of the trusts themselves. I think it was intentional.*** And yes, the end result could be a big discrepancy, but I think that had to have been the vision, if not the intent, at least the vision or the appreciation of what would have occurred, or what might have occurred.

See Transcript of Proceedings from June 3, 2014, at p. 80:2-24 (emphasis added), attached as Exhibit 1.

The Recommendation for Order finds that "a proportionate spend-down of the Credit and Marital Trusts formed under the Trust is not supported by the terms of the Trust or applicable law." *See February 17, 2015 Recommendation for Order, attached as Exhibit 2.* Ms. Chew did

1 not file any objection to the Recommendation, and the District Court entered its confirming order
2 on March 4, 2015.

3 While this Court was unsure at the time of the June 3, 2014 hearing whether Ms. Righetti
4 would raise different arguments, based on different authority, the Court now has confirmation
5 that the daughters are litigating the exact same issue. The Court should summarily reject their
6 second bite at the apple.

7 Whether denominated law of the case, collateral estoppel, or issue preclusion, the issue of
8 whether the two sub-trusts may be read together was actually litigated and finally determined
9 against Petitioners as a result of Ms. Chew's December 9, 2013 Petition. That determination still
10 controls this proceeding. *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. ___, ___, ___, 245
11 P.3d 547, 548, 550 (2010) ("[s]ummary judgment is appropriate where issue preclusion bars a
12 claim"); *Moore v. Jas. H. Matthews & Co.*, 682 F.2d 830, 833 (9th Cir.1982) ("[t]he 'law of the
13 case' rule ordinarily precludes a court from re-examining an issue previously decided by the
14 same court, or a higher appellate court, in the same case"); *see also* 18B Charles Alan Wright,
15 Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4478.1 (2d ed.2002)
16 (conventional law-of-the-case doctrine applies to trial court determinations).

17 Mrs. Raggio urges the Court to strike from the NRS 153.031 Petition all references and
18 arguments based on any joined reading of the Sub-Trusts. This issue cannot be raised for a
19 second time before this Court. The determination was already made that Mrs. Raggio's actions as
20 trustee of the Marital Trust cannot be weighed, judged or measured against her actions as the
21 Trustee of the Credit Shelter Trust. By striking or denying these types of arguments outright, the
22 Court will streamline and narrow the remaining issues to be considered in this proceeding. Those
23 issues boil down to two questions: (1) Were the distributions to Mrs. Raggio from the Marital
24 Trust appropriate for her health, support and maintenance? (2) In making the distributions from
25 the Marital Trust, was Mrs. Raggio required to consider other resources available to her?

26 **B. There Is No Legitimate Basis For Removal or Surcharge of The Trustee.**

27 Petitioners assert that Mrs. Raggio has breached her fiduciary duties to them as remainder
28 beneficiaries of the Marital Trust and thus request removal of Mrs. Raggio as trustee, and other

claims for relief, pursuant to NRS 163.115. To establish the purported breach of trust, Petitioners attack the distributions Mrs. Raggio has made to herself from the Marital Trust as purportedly excessive. Not only are the distributions perfectly reasonable and consistent with Mrs. Raggio's accustomed standard of living during her marriage to Senator Raggio, no further discovery is warranted given the detailed nature of the accounting and summary of monthly expenses submitted by Mrs. Raggio.

i. Standard of Review

In reviewing the Marital Trust, this Court should construe the trust in a manner effecting the apparent intent of the settlor. *See, e.g., Byrd v. Lanahan*, 105 Nev. 707, 783 P.2d 426 (1989); *Nicosia v. Turzyn*, 97 Nev. 93, 624 P.2d 499 (1981); *see also McIndoe v. Olivos*, 132 Cal. App. 4th 483, 487, 33 Cal. Rptr. 3d 689, 692 (2005), as modified on denial of reh'g (Sept. 20, 2005) ("In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from the whole of the trust instrument, not just separate parts of it.").

More recently, the Court has held that where a trust instrument is unambiguous, parol evidence is not admissible to vary the terms or contradict the plain meaning of its contents. *Frei ex rel. Litem v. Goodsell*, 305 P.3d 70, 74 (Nev. 2013); *Templeton v. Peoples Nat'l. Bank of Wash.*, 722 P.2d 63 (Wash. 1986) (quoting 90 C.J.S. Trusts § 161 at 18–19 (1955)) ("Where the meaning of an instrument evidencing a trust is unambiguous, the instrument is not one requiring judicial construction or interpretation....") Here, the language of the Marital Trust is unambiguous. It demonstrates Senator Raggio's intent to provide for his wife's health, support and maintenance after his death. Because the language is clear on its face, this Court need not resort to any extrinsic evidence to interpret the meaning of the language used. Rather, the only proper question before the Court is whether the distributions from the Marital Trust were made for Mrs. Raggio's health, support and maintenance, and whether the distributions were in line with her accustomed standard of living. The answer to both questions is yes.

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ii. *The Marital Trust Distributions Are Well-Within The Reasonable Maintenance and Support Standard.*

As an initial matter, there is no question that Mrs. Raggio is entitled to make distributions from the Marital Trust; the only question is the reasonableness of the amounts. This point is worth making because Petitioners' contentions, taken to their logical extreme, would have Mrs. Raggio make *no* distributions from the Marital Trust (other than the mandatory income distribution) because she has other significant resources available to her. This is simply not the case.

With respect to the expenses themselves, Mrs. Raggio previously identified categories of expenses and average monthly amounts spent for her support and maintenance. For example, Mrs. Raggio continues to reside in the home that she occupied with Senator Raggio during their marriage, which home requires regular maintenance, upkeep and payment of insurance and property taxes. Mrs. Raggio is entitled to continue to live in the same residence and does not have an obligation to "down-size" her home or minimize the expenses associated with her home.

The same holds true for Mrs. Raggio's other regular expenditures, such as medical costs, professional fees, taxes, cars and maintenance. Mrs. Raggio is not obligated to minimize or alter her normal expenditures in these categories lest she be accused of breaching her fiduciary duties to the remainder beneficiaries of the Marital Trust. The rule even extends to more flexible categories of expenses such as personal expenses, gifts and charity. As set forth in Restatement (Third) of Trusts §50 comment d(2), "[t]he standard ordinarily entitles a beneficiary to *distributions sufficient for accustomed living expenses*, extending to such items as regular mortgage payments, property taxes, suitable health insurance or care, existing programs of life and property insurance, and *continuation of accustomed patterns of vacation and of charitable and family giving*." (emphasis added).

The Restatement further addresses, and rejects, Petitioners' narrow interpretation of the word "necessary." Rather, "[u]nder the usual construction of a support standard (*supra*) it would not be reasonable (Comment *b*), or even a result contemplated by the settlor (Comment *c*), for the trustee to provide only the bare essentials for a beneficiary who had enjoyed a relatively

1 comfortable lifestyle. (*This is so even though the discretionary power is couched in terms of*
2 *amounts the trustee considers “necessary” for the beneficiary’s support.*.)” (emphasis added).
3 Thus, Mrs. Raggio is entitled to distributions from the Marital Trust sufficient to maintain her
4 accustomed standard of living.

5 Finally, Petitioners fail to acknowledge that Mrs. Raggio’s monthly expenses are *in*
6 *excess* of the distributions from the Marital Trust. Specifically, the distributions from the Marital
7 Trust are \$20,000 per month, while Mrs. Raggio’s average expenses are \$28,200 monthly. Thus,
8 Mrs. Raggio already relies on other resources to meet all of her expenses.

9 *iii. Mrs. Raggio Has No Duty To Consider Other Resources*

10 Petitioners assert that Mrs. Raggio is obligated to consider other sources of income or
11 resources available to her, prior to making any discretionary distributions from the Marital Trust.
12 Not only is Mrs. Raggio not required to consider other resources, but Petitioners’ argument
13 would eviscerates the purpose of the Marital Trust in the first place, which is to provide for Mrs.
14 Raggio during her lifetime.

15 Petitioners’ claim fails because NRS 163.4175 is directly contrary to their proposition.
16 The statute provides that “[e]xcept as otherwise provided in the trust instrument, ***the trustee is***
17 ***not required to consider a beneficiary’s assets or resources in determining whether to make a***
18 ***distribution of trust assets.***” (emphasis added). There is no contrary provision in the Trust. NRS
19 163.4175 is controlling authority and this Court must apply it accordingly.

20 To the extent the Court agrees that Mrs. Raggio should consider her other assets before
21 determining the amount of her distributions from the Marital Trust, Mrs. Raggio should not be
22 forced to take into consideration any principal balances (401K plan for example), but only her
23 minimum required distributions. A beneficiary should not be forced to take on adverse tax
24 consequences before receiving a distribution.

25 *iv. Conflict of Interest Alone Is Insufficient Grounds For Removal of Trustee.*

26 “The fact that the trustee named by the settlor is one of the beneficiaries of the trust, or
27 *would otherwise have conflicting interests*, is not a sufficient ground for removing the trustee.”
28 Restatement (Third) of Trusts § 37 at cmt. f(1) (2003) (emphasis added). Here, Senator Raggio

1 set up the Trust with Mrs. Raggio as trustee and beneficiary of both sub-trusts. Thus, he intended
2 not only to provide for Mrs. Raggio but also to give her broad discretion after his death. As a
3 result, Petitioners' implied conflict of interest claims, standing alone, are insufficient for removal
4 of Mrs. Raggio as trustee.

5 **II. RESPONSE TO GENERAL ALLEGATIONS**

6 1. Respondent admits the allegations in Paragraph 1.

7 2. Respondent admits the allegations in Paragraphs 2(a) through (d).

8 Respondent denies the allegations in Paragraph 2(e).

9 Respondent admits the allegations in Paragraph 2(f).

10 Respondent admits the allegations in Paragraph 2(g).

11 Respondent admits the allegations in Paragraph 2(h).

12 Respondent admits the allegations in Paragraph 2(i).

13 Respondent admits the allegations in Paragraph 2(j).

14 Respondent is without sufficient knowledge to admit or deny the allegations in Paragraph
15 2(k).

16 Respondent admits the allegations in Paragraph 2(l).

17 Respondent denies the allegations in Paragraph 2(m).

18 Respondent admits the allegations in Paragraph 2(n).

19 Respondent admits the allegations in Paragraph 2(o).

20 Respondent admits the allegations in Paragraph 2(p).

21 Respondent admits the allegations in Paragraph 2(q).

22 Respondent admits the allegations in Paragraph 2(r).

23 Respondent admits the allegations in Paragraph 2(s).

24 Respondent admits the allegations in Paragraph 2(t).

25 Respondent admits the allegations in Paragraph 2(u).

26 Respondent admits the allegations in Paragraph 2(v).

27 Respondent admits the allegations in Paragraph 2(w).

28 Respondent admits the allegations in Paragraph 2(x).

FIRST CLAIM FOR RELIEF
(Breach of Trust/Fiduciary Duty Compelling Redress and Reviewing the
Acts of the Trustee)

1. Respondent admits the allegations in Paragraph 1.
2. Respondent admits the allegations in Paragraph 2.
3. Respondent admits the allegations in Paragraph 3.
4. Respondent admits the allegations in Paragraph 4.
5. Respondent denies the allegations in Paragraph 5.
6. Respondent denies the allegations in Paragraph 6.
7. Respondent denies the allegations in Paragraph 7.
8. Respondent denies the allegations in Paragraph 8.
9. Respondent denies the allegations in Paragraph 9.
10. Respondent denies the allegations in Paragraph 10.
11. Respondent denies the allegations in Paragraph 11.
12. Respondent denies the allegations in Paragraph 12.

SECOND CLAIM FOR RELIEF
(Breach of Contract Compelling Redress and Reviewing the Acts of the Trustee)

13. Respondent incorporates her responses to the prior allegations as if set forth fully herein.
14. Respondent admits the allegations in Paragraph 14.
15. Respondent admits the allegations in Paragraph 15.
16. Respondent denies the allegations in Paragraph 16.
17. Respondent denies the allegations in Paragraph 17.
18. Respondent admits the allegations in Paragraph 18.
19. Respondent admits the allegations in Paragraph 19.
20. Respondent admits the allegations in Paragraph 20.
21. Respondent admits the allegations in Paragraph 21.
22. Respondent denies the allegations in Paragraph 22.
23. Respondent denies the allegations in Paragraph 23.
24. Respondent denies the allegations in Paragraph 24.

THIRD CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing Compelling Redress and
Reviewing the Acts of the Trustee)

25. Respondent incorporates her responses to the prior allegations as if set forth fully herein.
26. Respondent admits the allegations in Paragraph 26.
27. Respondent denies the allegations in Paragraph 27.
28. Respondent denies the allegations in Paragraph 28.

FOURTH CLAIM FOR RELIEF
(Removal of Trustee)

29. Respondent incorporates her responses to the prior allegations as if set forth fully herein.
30. Respondent denies the allegations in Paragraph 30.
31. Respondent denies the allegations in Paragraph 31.
32. Respondent denies the allegations in Paragraph 32.

FIFTH CLAIM FOR RELIEF
(Accounting)

33. Respondent incorporates her responses to the prior allegations as if set forth fully herein.
34. Respondent admits the allegations in Paragraph 34.
35. Respondent denies the allegations in Paragraph 35.
36. Respondent denies the allegations in Paragraph 36.

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WHEREFORE, Respondent prays for judgment as follows:

1. That Petitioners take nothing by way of their NRS 153.031 Petition, and that the Petition be dismissed with prejudice;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the court deems just and proper.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of July, 2015.

/s/ Tamara Reid, Esq.
HOLLAND & HART LLP
Soraya Tabibi Aguirre, Esq.
Timothy J. Riley, Esq.
Tamara Reid, Esq.

/s/ John Echeverria
John Echeverria, Esq.

Attorneys for Dale Raggio

1 **CERTIFICATE OF SERVICE**

2 I, Cynde Kelb, declare:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by the law
4 offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno,
Nevada 89511. I am over the age of 18 years and not a party to this action.

5 I am readily familiar with Holland & Hart's practice for collection and processing of:
6 HAND DELIVERIES, FACSIMILES, E-MAIL and OUTGOING MAIL. Such practice in the
7 ordinary course of business provides for the delivery or faxing and/or mailing with the United
States Postal Service, to occur on the same day the document is collected and processed.

8 On July 23, 2015, I caused the foregoing **RESPONSE TO NRS 153.031 PETITION**
9 **CONCERNING AFFAIRS OF TRUST** to be served by the following method(s):

10 ☒ Electronic: filed the document electronically with the U.S. District Court and therefore
11 the court's computer system has electronically delivered a copy of the foregoing
document to the following person(s) at the following e-mail addresses:

12 Michael A. Rosenauer, Esq.
13 Rosenauer & Wallace
14 510 West Plumb Lane, Suite A
Reno, NV 89509

G. Barton Mowry, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
P.O. Box 30000
Reno, NV 89520

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct, and that this declaration was executed on July 23, 2015.

17 /s/ Cynde Kelb

18 Cynde Kelb

Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

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EXHIBIT INDEX

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>NO. PAGES</u>
Exhibit "1"	Transcript of Proceedings	5
Exhibit "2"	February 17, 2015 Recommendation for Order	2

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Jacqueline Bryant
Clerk of the Court
Transaction # 5060434 : yvilorla

EXHIBIT “1”

EXHIBIT “1”

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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8 BEFORE COMMISSIONER ROBIN WRIGHT

9 ---o0o---

10
11 TRUST: WILLIAM J. RAGGIO) Case No. PR13-00624
12 FAMILY TRUST)
13) Dept. No. 4
14) TRANSCRIPT OF PROCEEDINGS
15)
16 _____)

15 ORAL ARGUMENTS
16 JUNE 3, 2014, RENO, NEVADA

17 APPEARANCES:

18 For Tracy Chew: MICHAEL A. ROSENAUER
19 Attorney at Law
510 W. Plumb Lane, Suite A
Reno, Nevada 89509

20 For the Trustee HOLLAND & HART
21 Mrs. Dale Raggio: Attorneys at Law
By: Timothy J. Riley, Esq.
22 5441 Kietzke Lane
Second Floor
23 Reno, Nevada 89511

24 Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

1 CONTINUATION OF APPEARANCES:

2 For the Trustee ECHEVERRIA LAW OFFICE
3 Mrs. Dale Raggio: By: John Echeverria, Esq.
4 9432 Double R Boulevard
5 Reno, Nevada 89521
6
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1 days or 15 months or whatever.

2 As to the argument that Ms. Righetti could be
3 brought in, we'd do the same thing all over again.
4 Maybe? And maybe not. So my recommendation would be
5 that the petition be denied without prejudice.

6 Now, I suppose I could say that I want to be
7 the last one to create a repetition of the litigation
8 that we've already seen, but I'm not going to project or
9 predict what would happen if she did come in. Because
10 her arguments could be different, they could hinge on
11 different statutes or authority and, in fact, it might
12 just sort of make the picture a little bit clearer if
13 she were here.

14 But for now, and based on the posture of what
15 we have, I think that the characterization of there
16 being some kind of an obligation of these two portions
17 of the trust to function in a parallel way or that the
18 use of the two trusts has to be done proportionately, I
19 think that argument has not been proven by the language
20 of the trusts themselves. I think it was intentional.
21 And yes, the end result could be a big discrepancy, but
22 I think that had to have been the vision, if not the
23 intent, at least the vision or the appreciation of what
24 would have occurred, or what might have occurred.

1 So this is very technical. And again, there
2 are moments where certain words, use of words seem to
3 send it off into a different path of analysis, but I
4 think I have now seen from the help of all of you the
5 full circle of this, that there was no standing on the
6 part of Tracy Chew to bring this petition for the period
7 of the -- for the ongoing accountings, for the
8 obligation of initial and ongoing accountings on the
9 part of this particular trustee.

10 So Mr. Riley and/or Mr. Echeverria if you
11 would kindly write up a proposed finding on that? You
12 should send it to Mr. Rosenauer, let him have the five
13 days to sign off on the form and content, and it will be
14 a recommendation which can be appealed, okay? Thank you
15 very much.

16 MR. ROSENAUER: Thank you, your Honor.

17 COMMISSIONER WRIGHT: Thank you.

18 (Proceedings concluded.)

19 ---oOo---

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Tuesday,
9 June 3, 2014, at the hour of 1:45 p.m. of said day, and
10 I then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein upon the
12 Oral Arguments of the case of THE WILLIAM J. RAGGIO
13 FAMILY TRUST, Case No. PR13-00624.

14 That the foregoing transcript, consisting of
15 pages numbered 1 through 81, both inclusive, is a full,
16 true and correct transcript of my said stenotype notes,
17 so taken as aforesaid, and is a full, true and correct
18 statement of the proceedings of the above-entitled
19 action to the best of my knowledge, skill and ability.

20
21 DATED: At Reno, Nevada, this 11th day of June, 2014.

22
23 /s/ Julie Ann Kernan

24 JULIE ANN KERNAN, CCR #427

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2015-07-23 04:48:14 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5060434 : yvilorla

EXHIBIT “2”

EXHIBIT “2”

1 **1940**

2 Soraya Tabibi Aguirre, Esq.
3 Nevada Bar No. 9918
4 Timothy J. Riley, Esq.
5 Nevada Bar No. 10428
6 HOLLAND & HART LLP
7 5441 Kietzke Lane, Second Floor
8 Reno, Nevada 89511
9 Tel: (775) 327-3000
10 Fax: (775) 786-6179
11 STAguirre@hollandhart.com
12 TRiley@hollandhart.com

13 John Echeverria, Esq.
14 Nevada Bar No. 200
15 Echeverria Law Office
16 9432 Double R Boulevard
17 Reno, NV 89521
18 Tel: (775) 786-4800
19 je@eloreno.com

20 *Attorneys for Dale Raggio*

21
22 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

23
24 IN AND FOR THE COUNTY OF WASHOE

25
26 IN THE MATTER OF THE
27 WILLIAM J. RAGGIO FAMILY TRUST.

28 Case No. PR13-00624
Dept. No. PR

29
30 **RECOMMENDATION FOR ORDER:**
31 **DENYING PETITION TO INTERPLEAD *INTER VIVOS* TRUST, AND**
32 **DENYING REQUEST FOR REVIEW OF BENEFICIARY'S REQUEST**
33 **FOR AN ACCOUNTING AND DOCUMENTS**

34
35 Petitioner TRACY CHEW ("Petitioner"), daughter of WILLIAM J. RAGGIO, filed a
36
37 Petition to Interplead Inter Vivos Trust and Request for Review of Beneficiary's Request for an
38
39 Accounting and Documents ("Petition").

40
41 Respondent DALE RAGGIO ("Respondent"), Trustee of the WILLIAM J. RAGGIO
42
43 FAMILY TRUST, dated April 13, 2007 ("Trust"), filed a Response and Objection to the Petition
44
45 to Interplead Inter Vivos Trust and Request for Review of Beneficiary's Request for an Accounting
46
47 and Documents.

Thereafter, Petitioner filed Tracey Raggio Chew's Points and Authorities in Support of Request for an Accounting and Supportive Documents, Tracey Raggio Chew's Points and Authorities in Reply to Dale Raggio's Opposition to Her Request for an Accounting and Supportive Documents and an Errata to the Points and Authorities in Response.

The Respondent additionally filed the Response to Tracey Raggio Chew's Points and Authorities in Support of Request for an Accounting and Supportive Documents.

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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 In the Matter of:

Case No. PR13-00624

10 THE WILLIAM J. RAGGIO FAMILY TRUST.
11 _____/

Dept. No. PR

12
13 LESLIE RIGHETTI RAGGIO and TRACY
14 CHEW, Co Trustees of the William J. Raggio
15 and Dorothy B. Raggio Trust under agreement
16 dated January 27, 1998 as decanted and Vested
17 Remaindermen of the Marital Deduction portion
18 of The William J. Raggio Family Trust,

Case No. CV15-01202

Dept. No. 15

19 Plaintiffs,

18 vs.

19
20 DALE CHECKETT RAGGIO, Trustee of The
21 Marital Deduction Portion and Credit Share of
22 the William J. Raggio Family Trust; DALE
23 CHECKETT RAGGIO, Individually; DOES II
24 through X inclusive;

Defendants.
_____/

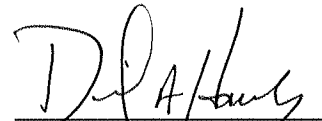
25 **ORDER CONSOLIDATING MATTERS**

26 On August 27, 2015, Petitioners/Plaintiffs filed a motion to consolidate the above
27 captioned matters. This Court has read the moving papers in these matters and finds
28 consolidation of the matters to be necessary. Accordingly, CV15-01202 shall be

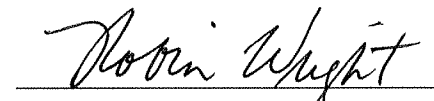
1 consolidated into PR13-00624. All further proceedings and pending motions shall be
2 heard and determined by the probate court.

3 **IT IS SO ORDERED:**

4 DATED this 16 day of September, 2015.

5 
6 _____
7 Hon. David A. Hardy
8 DISTRICT JUDGE

9 DATED this 16 day of September, 2015.

10 
11 _____
12 Master Robin Wright
13 PROBATE COURT MASTER
14
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial
3 District Court of the State of Nevada, County of Washoe; that on this 16th day of September,
4 2015, I electronically filed the foregoing with the Clerk of the Court System which will send a notice
5 of electronic filing to the following:

6 G. MOWRY, ESQ. for LESLIE RIGHETTI & WILLIAM J. RAGGIO FAMILY TRUST

7 JOHN ECHEVERRIA, ESQ. for DALE RAGGIO

8 TIMOTHY RILEY, ESQ. for DALE RAGGIO

9 MICHAEL ROSENAUER, ESQ. for TRACY CHEW & WILLIAM RAGGIO FAMILY TRUST

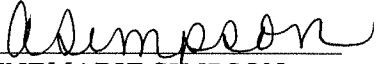
10 TAMARA REID, ESQ. for DALE RAGGIO

11 PROCTOR HUG, IV, ESQ. for LESLIE RIGHETTI

12 F. MCCLURE WALLACE, ESQ. for WILLIAM J. RAGGIO FAMILY TRUST

13 Further, I certify that I deposited in the Washoe County mailing system for postage and
14 mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached
15 document addressed to:

16
17 Soraya Tabibi Aguirre, Esq.
18 5441 Kietzke Lane, Second Floor
19 Reno, NV 89511

20
21 
22 ANNEMARIE SIMPSON
23 Administrative Secretary
24
25
26
27
28

1140

Soraya Tabibi Aguirre, Esq.
Timothy J. Riley, Esq.
Tamara Reid, Esq.
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Tel: (775) 327-3000
Fax: (775) 786-6179
STAguirre@hollandhart.com
TRiley@hollandhart.com
TReid@hollandhart.com

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Boulevard
Reno, Nevada 89521
Tel: (775) 786-4800
je@eloreno.com

Attorneys for Dale Raggio

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of

THE WILLIAM J. RAGGIO FAMILY
TRUST.

Case No. PR13-00624
Dept. No. PR

LESLIE RIGHETTI RAGGIO
and TRACY CHEW, Co Trustees
of the William J. Raggio and Dorothy
B. Raggio Trust under agreement dated
January 27, 1998 as decanted and Vested
Remaindermen of the Marital Deduction
portion of The William J. Raggio
Family Trust,

Consolidated with:

Case No. CV15-01202
Dept. No. 15

Plaintiffs,

vs.

DALE CHECKETT RAGGIO, Trustee of The
Marital Deduction Portion and Credit Share of
the William J. Raggio Family Trust; DALE
CHECKETT RAGGIO, Individually; DOES II
through X inclusive;

Defendants.

Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

ANSWER TO FIRST AMENDED COMPLAINT

Defendant, DALE CHECKET RAGGIO("Defendant"), by and through her counsel Holland & Hart LLP, responds to the First Amended Complaint filed by Leslie Raggio Righetti and Tracy Chew (collectively "Plaintiffs"), as follows:

FIRST CLAIM FOR RELIEF
(Breach of Trust)

1. Defendant admits paragraph 1 of the First Amended Complaint.
2. Defendant admits paragraph 2 of the First Amended Complaint.
3. Defendant admits paragraph 3 of the First Amended Complaint.
4. Defendant admits paragraph 4 of the First Amended Complaint.
5. Defendant has insufficient knowledge to admit or deny paragraph 5 of the First Amended Complaint and on that basis denies the same.
6. Defendant admits paragraph 6 of the First Amended Complaint.
7. Defendant admits paragraph 7 of the First Amended Complaint.
8. Defendant admits paragraph 8 of the First Amended Complaint.
9. Defendant admits paragraph 9 of the First Amended Complaint.
10. Defendant admits paragraph 10 of the First Amended Complaint.
11. Defendant admits paragraph 11 of the First Amended Complaint.
12. Defendant has insufficient knowledge to admit or deny paragraph 12 of the First Amended Complaint and on that basis denies the same.
13. Defendant denies paragraph 13 of the First Amended Complaint. Defendant married Bill Raggio on April 27, 2013.
14. Defendant admits that the assets of the Survivor's portion of the William and Dorothy Raggio Family Trust partially funded the William J. Raggio Family Trust.
15. Defendant has insufficient knowledge to admit or deny paragraph 15 of the First Amended Complaint and therefore denies the same.
16. Defendant admits paragraph 16 of the First Amended Complaint.

17. Defendant admits paragraph 17 of the First Amended Complaint.
18. Defendant admits paragraph 18 of the First Amended Complaint.
19. Defendant admits paragraph 19 of the First Amended Complaint.
20. Defendant admits paragraph 20 of the First Amended Complaint.
21. Defendant admits paragraph 21 of the First Amended Complaint.
22. Defendant admits paragraph 22 of the First Amended Complaint.
23. Defendant admits paragraph 23 of the First Amended Complaint.
24. Defendant admits paragraph 24 of the First Amended Complaint.
25. Defendant denies paragraph 25 of the First Amended Complaint.
26. Defendant denies paragraph 26 of the First Amended Complaint.
27. Defendant denies paragraph 27 of the First Amended Complaint.
28. Defendant admits paragraph 28 of the First Amended Complaint.
29. Defendant denies paragraph 29 of the First Amended Complaint.
30. Defendant denies paragraph 30 of the First Amended Complaint.
31. Defendant denies paragraph 31 of the First Amended Complaint.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

32. Defendant repeats and realleges her responses set forth above as if set forth fully herein.

33. Defendant denies paragraph 33 of the First Amended Complaint.
34. Defendant denies paragraph 34 of the First Amended Complaint.

THIRD CLAIM FOR RELIEF
(Request for Constructive Trust)

35. Defendant repeats and realleges her responses set forth above as if set forth fully herein.

36. Defendant denies that a “confidential relationship” existed as stated in paragraph 36 of the First Amended Complaint. Rather, as successor trustee, Dale Raggio has a fiduciary duty to the beneficiary of the Marital Deduction portion of the William J. Raggio Family Trust.

37. Defendant denies paragraph 37 of the First Amended Complaint.

38. Defendant denies paragraph 38 of the First Amended Complaint.

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses, Defendant alleges and asserts the following:

1. Plaintiffs have failed to state a claim against Defendant upon which relief can be granted.

2. Without admitting Plaintiffs are entitled to any recovery whatsoever, Plaintiffs have an adequate remedy at law.

3. Without admitting that Defendant acted as alleged in Plaintiffs' First Amended Complaint, Plaintiffs consented to the acts as alleged to have been committed by Defendant.

4. At all times referred to in Plaintiffs' First Amended Complaint, Defendant exercised due care and good faith toward Plaintiffs.

5. Plaintiffs' unjust enrichment claim is barred due to the existence of valid and binding trust agreement which they seek to enforce against Defendant.

6. Without admitting that Plaintiffs have a valid claim for unjust enrichment, Defendant has not received a benefit from Plaintiffs, the retention of which would be unjust to retain without payments or reimbursement.

7. Defendant has been required to retain the services of Holland & Hart LLP to defend against these claims and is entitled to an award of its reasonable attorneys' fees and costs.

8. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry upon the filing of Plaintiff's First Amended Complaint and, therefore, Defendant reserves the right to amend her Answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs take nothing by way of their First Amended Complaint, and that the First Amended Complaint be dismissed with prejudice;

2. For reasonable attorneys' fees and costs; and

3. For such other and further relief as the court deems just and proper.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 16th day of December 2015

HOLLAND & HART LLP

/s/ Tamara Reid

Soraya Tabibi Aguirre, Esq.

Timothy J. Riley, Esq.

Tamara Reid, Esq.

HOLLAND & HART LLP

5441 Kietzke Lane, Second Floor

Reno, Nevada 89511

/s/ John Echeverria

John Echeverria, Esq.

Echeverria Law Office

9432 Double R Boulevard

Reno, NV 89521

Attorneys for Dale Raggio

1 **CERTIFICATE OF SERVICE**

2 I, Cynde Kelb, declare:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by the law
4 offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno,
Nevada 89511. I am over the age of 18 years and not a party to this action.

5 I am readily familiar with Holland & Hart's practice for collection and processing of:
6 HAND DELIVERIES, FACSIMILES and OUTGOING MAIL. Such practice in the ordinary
7 course of business provides for the delivery or faxing and/or mailing with the United States
Postal Service, to occur on the same day the document is collected and processed.

8 On December 16, 2015, I caused the foregoing **ANSWER TO FIRST AMENDED**
9 **COMPLAINT** to be served by the following method(s):

10 ☒ Electronic: filed the document electronically with the U.S. District Court and therefore
11 the court's computer system has electronically delivered a copy of the foregoing
document to the following person(s) at the following e-mail addresses:

12 Michael A. Rosenauer, Esq.
13 Rosenauer & Wallace
510 West Plumb Lane, Suite A
14 Reno, Nevada 89509

G. Barton Mowry, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
P.O. Box 30000
Reno, Nevada 89520

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct, and that this declaration was executed on December 16, 2015.

17
18 /s/ Cynde Kelb
Cynde Kelb

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28

1 **2160**

2 Tamara Reid, Esq.
3 HOLLAND & HART LLP
4 5441 Kietzke Lane, Second Floor
5 Reno, Nevada 89511
6 Tel: (775) 327-3000
7 Fax: (775) 786-6179
8 TReid@hollandhart.com

9 John Echeverria, Esq.
10 Echeverria Law Office
11 9432 Double R Boulevard
12 Reno, Nevada 89521
13 Tel: (775) 786-4800
14 je@eloreno.com

15 *Attorneys for Dale Raggio*

16
17 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

18
19 IN AND FOR THE COUNTY OF WASHOE

20 In the Matter of

Case No. PR13-00624
Dept. No. PR

21 THE WILLIAM J. RAGGIO FAMILY
22 TRUST.

23 LESLIE RAGGIO RIGHETTI and TRACY
24 RAGGIO CHEW, Co Trustees of the William
25 J. Raggio and Dorothy B. Raggio Trust under
26 agreement dated January 27, 1998 as decanted
27 and Vested Remaindermen of the Marital
28 Deduction portion of The William J. Raggio
Family Trust,

Consolidated with:

Case No. CV15-01202

Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The
Marital Deduction Portion and Credit Share of
the William J. Raggio Family Trust; DALE
CHECKET RAGGIO, Individually; DOES II
through X inclusive;

Defendants.

MOTION FOR PARTIAL SUMMARY JUDGMENT

DALE CHECKET RAGGIO, in her capacity as Trustee of The Marital Deduction Portion and Credit Share of the William J. Raggio Family Trust and individually, hereby moves for partial summary judgment on Petitioners'/Plaintiffs' claims that are grounded on the argument that she, as the Trustee, is obligated to consider other resources when determining the appropriate distributions from the Marital Trust. This motion is based upon the following memorandum of points and authorities, the exhibits attached hereto, and the records and pleadings already on file with the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This consolidated action arises out of allegations by two remainder trust beneficiaries that the trustee improperly depleted assets from a sub-trust. The case involves several trusts established by the late Senator William Raggio: the William J. Raggio Family Trust (the "Raggio Trust"), which in turn created two sub-trusts at Senator Raggio's death, the Marital Trust and the Credit Shelter Trust. Respondent/Defendant Dale Raggio ("Mrs. Raggio") is the current beneficiary of both the Marital Trust and the Credit Shelter Trust. She is also the Trustee of both. Petitioners/Plaintiffs Leslie Raggio Righetti and Tracy Chew are the daughters of Senator Raggio and remainder beneficiaries of the Marital Trust.¹

In multiple pleadings, Righetti and Chew allege, among other things, that Mrs. Raggio, as Trustee of the sub-trusts, has been making unwarranted discretionary distributions to herself from the Marital Trust rather than considering and using funds from the Credit Shelter Trust. According to Righetti and Chew, Mrs. Raggio is obligated to consider and spend down the assets of the Credit Shelter Trust when determining the appropriate distributions from the Marital Trust. Otherwise, they contend that they (as the remainder beneficiaries of the Marital Trust) will be left with little, or no, remaining assets when Mrs. Raggio dies. Based on these allegations, either

¹ After Dale Raggio's death, the assets in the Marital Trust are to be distributed to the William and Dorothy Raggio Credit Shelter Trust ("W&D Trust"), which was formed separately from the Raggio Trust. Righetti and Chew are beneficiaries of the W&D Trust, and thus, in effect the remainder beneficiaries of the Marital Trust.

1 exclusively or in part,² Righetti and Chew asserted claims for breach of trust /fiduciary duty;
2 breach of contract; breach of the covenant of good faith and fair dealing; unjust enrichment;
3 constructive trust; removal of trustee and accounting.

4 Righetti and Chew's claims, however, cannot be maintained as a matter of law. This
5 Court previously ruled that Mrs. Raggio is not obligated to consider other resources (such as
6 assets in the Credit Trust) when determining the appropriate distributions from the Marital Trust.
7 Accordingly, the Court should preclude Righetti and Chew from pursuing claims against Mrs.
8 Raggio based on such argument. Such a ruling would be consistent with this Court's prior
9 March 4, 2015 ruling that a proportionate spend-down of the Credit and Marital Trusts formed
10 under the Trust is not supported by the terms of the Trust or applicable law.

11 Significantly, both Chew and Righetti had an opportunity to object to this Court's
12 recommendation interpreting the Trust, but failed to do so. They similarly failed to appeal the
13 March 4, 2015 confirming order. The prior order is thus final and binding for purposes of these
14 proceedings. Specifically, claim preclusion bars the ability of Righetti and Chew to assert new
15 claims for relief to the extent such claims rely on a joint reading of the two sub-trusts. And issue
16 preclusion bars their ability to seek relief based on a re-argument of the identical issue previously
17 raised in the same case. Because Righetti and Chew have presented no alternate basis to re-visit
18 this issue, the Court should enter summary judgment in favor of Mrs. Raggio on their claims that
19 continue to assert this rejected legal theory.

20 ///

21 ///

22 ///

23 ///

25 ²Righetti and Chew also allege that Dale made discretionary distributions to herself (as the
26 beneficiary) from the Marital Trust that were excessive and not for her necessary support, care
27 and maintenance, and that such conduct also supports some of their claims. To the extent
28 Righetti's and Chew's claims allege this alternative legal theory, such theory is not part of this
partial summary judgment motion. Rather, this motion seeks to dismiss those claims that are
based on the legal theory that Dale was obligated to consider other resources in determining the
amount necessary for her health, maintenance and support from the Marital Trust.

II. STATEMENT OF UNDISPUTED FACTS

There are three trusts at issue, namely, the Raggio Family Trust, which in turn created two sub-trusts upon Senator William Raggio's death, the Marital Trust and the Credit Shelter Trust. *See Trust*, §4.1 attached as **Exhibit 1**. Mrs. Raggio is the current beneficiary of both the Marital Trust and the Credit Shelter Trust. Mrs. Raggio is also the trustee of both. *Id.*

Pursuant to the provisions of the Trust, the Marital Trust would be funded first, with the principal consisting of "a pecuniary amount" equaling "the maximum marital deduction allowed" at Senator Raggio's death; "provided; however, that in no event shall such amount exceed the amount necessary to eliminate federal estate tax" on Senator Raggio's estate. *See Trust*, §4.4. In addition, this section provides that "[t]he Trustee shall satisfy this amount in cash or in kind or partly in each with assets eligible for the marital deduction." *Id.* Moreover, "[a]ssets allocated in kind shall be deemed to satisfy this amount on the *basis of their values at the date or dates of allocation* to the Marital Trust." *Id.* (emphasis added). Because Senator Raggio elected to first fund the Marital Trust with a specific sum, the risk of appreciation or depreciation fell to the Credit Shelter Trust alone. In other words, regardless of any appreciation or depreciation of the assets during the interim period, the Marital Trust would be funded with a specific dollar amount, while the Credit Shelter Trust would receive the balance.³

Section 5.1 of the Raggio Family Trust provides that the trustee of the Marital Trust shall "quarter-annually or at more frequent intervals, pay to or apply for the benefit of [Mrs. Raggio] all of the net income of the Trust." *See Trust* §5.1. In addition to this mandatory distribution of income, the Trustee is further authorized to distribute "as much of the principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for [her] proper support, care, and maintenance." *Id.* Notably, there are no provisions that direct or require the trustee of the Marital Trust to consider other sources in making the foregoing decisions to distribute income

³ Although Senator Raggio died on February 24, 2012, the Marital Trust was not funded until July 2013. This intervening "gap period" was necessary to marshal and appraise the decedent's assets, file the required tax returns, complete the computations necessary to properly determine the allocations, and make the actual transfers. Part of this delay was also the product of negotiations with Righetti's Counsel as to the proper funding of the Marital Trust.

1 and/or principal from the Marital Trust. After Mrs. Raggio death, the remaining principal in the
2 Marital Trust shall be distributed to another trust (the W&D Trust), which was formed
3 separately from the present Raggio Trust, and of which Righetti and Chew are beneficiaries. *See*
4 *Trust*, §5.3.

5 The Credit Shelter Trust holds the balance of the trust property and is also held for Mrs.
6 Raggio's benefit during her lifetime. *Trust*, §4.6. The trustee of the Credit Shelter Trust shall
7 distribute to Mrs. Raggio "as much of the net income and principal of the Credit Shelter Trust"
8 as the trustee determines necessary for her support, care and maintenance. *Id.*, §6.1.

9 Accordingly, and in contrast to the Marital Trust, the Credit Shelter Trust does not
10 include any mandatory distribution requirement to the beneficiary during her lifetime. After Mrs.
11 Raggio's death, any remaining principal in the Credit Shelter Trust shall be distributed into equal
12 shares for the benefit of Mrs. Raggio's grandsons. *Id.*, §6.2.

13 **III. PROCEDURAL BACKGROUND**

14 On December 9, 2013, Chew filed a Petition to Interplead Inter Vivos Trust, Request for
15 Review of Beneficiary's Request for an Accounting and Documents ("2013 Petition"). *See*
16 **Exhibit 2**. Chew served a Notice of Hearing on Righetti's counsel on December 9, 2013, in
17 accordance with NRS 155.010. *See* **Exhibit 3**. From that point forward, everything filed by the
18 parties in the matter was concurrently served on Righetti's counsel. In turn, pursuant to NRS
19 155.160, Righetti could have appeared and made a response or objection in writing at or before
20 the hearing, or could have appeared at the oral argument to state her position. She elected not to
21 do so.

22 Chew and Mrs. Raggio subsequently stipulated to additional briefing on the 2013
23 Petition and made a joint request for oral argument on that Petition. The parties briefs are
24 attached hereto as **Exhibits 4 and 5**, respectively. At no point did Righetti submit any briefing of
25 her own, nor did she join in Chew's arguments.

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1 On June 3, 2014, this Court heard extensive oral argument from counsel regarding the
2 structure of the trusts and the proper interpretation of the language used. *See* Transcript of
3 Hearing attached hereto as **Exhibit 6**. At the conclusion of the hearing, the Court noted as
4 follows:

5 As to the argument that Ms. Righetti could be brought in, we'd do the
6 same thing all over again. Maybe? And maybe not. So my recommendation would
be that the petition be denied without prejudice.

7 Now, I suppose I could say that I want to be the last one to create a
8 repetition of the litigation that we've already seen, but I'm not going to project or
9 predict what would happen if she did come in. ***Because her arguments could be
different, they could hinge on different statutes or authority*** and, in fact, it might
just sort of make the picture a little bit clearer if she were here.

10 But for now, and based on the posture of what we have, I think that the
11 characterization of there being some kind of an obligation of these two portions of
12 the trust to function in a parallel way or that the use of the two trusts has to be
13 done proportionately, ***I think that argument has not been proven by the
language of the trusts themselves. I think it was intentional.*** And yes, the end
14 result could be a big discrepancy, but I think that had to have been the vision, if
not the intent, at least the vision or the appreciation of what would have occurred,
or what might have occurred.

15 *Id.*, at p. 80:2-24 (emphasis added).

16 Consistent with the discussion at the hearing, the Recommendation for Order finds that “a
17 proportionate spend-down of the Credit and Marital Trusts formed under the Trust is not
18 supported by the terms of the Trust or applicable law.” *See* February 17, 2015 Recommendation
19 for Order, attached as **Exhibit 7**. Accordingly, the Commissioner recommended that the 2013
20 Petition be denied without prejudice. *Id.* No party objected to the Recommendation for Order.

21 The District Court entered its confirming order on March 4, 2015, noting that “[n]one of
22 the parties to this action has filed an objection regarding that recommendation and the period for
23 filing any objection concerning that recommendation has expired.” *See* **Exhibit 8**. A notice of
24 entry of the Confirming Order was filed on March 5, 2015, and served on counsel for both Ms.
25 Chew and Righetti. *See* **Exhibit 9**.

26 A month later, on April 7, 2015, Mrs. Raggio filed her petition for approval of
27 accounting. Righetti objected to the petition, and filed a counter petition for removal and
28 surcharge of trustee on May 22, 2015 (“Counter Petition”). In it, she repeatedly argues that Mrs.

1 Raggio should be obligated to consider and use other assets available to her:

2 “Dale is electing for her own benefit to draw down principal from the
3 Marital Deduction Trust *instead of using other assets, despite access.*” *Id.* at 8:7-
4 8.

5 “Therefore, it is apparent that Dale inherited \$1,800,000 of assets, outright
6 and free of trust, *which she has access to utilize*, in addition to the mandatory
7 income distributions from the Marital Deduction Trust.” *Id.* at 9:10-12.

8 “She also has the right to receive income from Bill’s Credit Shelter Trust,
9 and further ability to receive additional distributions of principal that the Trustee
10 determine (sic) ‘necessary’ for her ‘proper support’ *from both the* Marital
11 Deduction Trust and Bill’s Credit Shelter Trust.” *Id.* at 9:12-15.

12 “On information and belief, Dale is relying primarily, if not solely, on the
13 Marital Deduction Trust for her ‘support’ *without regard to the other resources*
14 available to her including the \$1,800,000 she received outright on Bill’s death and
15 at least another \$4,000,000 in Bill’s Credit Shelter Trust.” *Id.* at 10:1-4.

16 (emphasis added).

17 On June 24, 2015, Righetti and Chew initiated a civil action against Mrs. Raggio.
18 Thereafter, a First Amended Complaint (“FAC”) was filed on July 2, 2015, which remains the
19 operative pleading in these consolidated matters. In the FAC, Righetti and Chew assert a claim
20 for breach of trust (First Claim for Relief). Their breach of trust claim asserted two different
21 legal theories. First, Righetti and Chew allege that Mrs. Raggio made discretionary distributions
22 to herself (as the beneficiary) from the Marital Trust that were not necessary for her support, care
23 and maintenance. ¶¶25-27. Second, they allege the exact same argument previously rejected by
24 this Court in denying the 2013 Petition. Specifically, they contend that Mrs. Raggio deliberately
25 chose not to make discretionary distributions from the Credit Shelter Trust, instead choosing to
26 make distributions from the Marital Trust, which harmed them as remainder beneficiaries of the
27 Marital Trust. As they allege:

28 ¶29 On information and belief, Plaintiffs allege that though Dale Checkett
(sic) Raggio has the discretion to distribute to herself assets from the Credit
Shelter portion on the identical standard for discretionary distributions from the
Marital Deduction portion, she deliberately chose not to do so thereby enhancing
the value of the remainder interest in the Credit Shelter portion of which her
grandchildren are the sole remainder beneficiaries.

¶30 The actions of Dale Checkett Raggio, as Trustee, in treating herself
differently as the discretionary beneficiary of both the Credit Shelter portion and
Marital Deduction portion of the William J. Raggio Family Trust with the effect
of diminishing the interests of the remainder beneficiaries of the Marital

Deduction Trust and thereby enhancing the interests of her grandchildren as remainder beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust breaches her duty of impartiality to all remainder beneficiaries and duty of loyalty owed to all beneficiaries of the William J. Raggio Family Trust.

Thus, with respect to their second breach of trust theory, Righetti and Chew once against seek a joint reading of the sub-trusts to impose liability on Mrs. Raggio.⁴ In addition, on July 2, 2015, Righetti and Chew filed a NRS 153.031 Petition Concerning Affairs of Trust (“2015 Petition”). In that Petition, they also assert a claim for breach of trust/fiduciary duty (First Claim for Relief). And like their claim in the FAC, Righetti and Chew assert that Mrs. Raggio breached her fiduciary duties by not treating the Marital Trust and Credit Shelter Trust consistently. Rather, they allege that Mrs. Raggio made discretionary distributions to herself from the Marital Trust rather than from the Credit Shelter Trust, thereby depleting the assets in the Marital Trust to the benefit of the Credit Shelter Trust. As the Petition states:

¶5 Petitioners are informed and believe, and upon that basis, allege that Dale Checkett (sic) Raggio has not treated the Credit Shelter portion of the William J. Raggio Family Trust consistently with the Marital Deduction portion of the William J. Raggio Family Trust.

¶6 Petitioners are informed and believe, and upon that basis, allege that Dale Checkett (sic) Raggio has consistently made discretionary distributions to herself from the Marital portion of the William J. Raggio Family Trust as opposed to the Credit Shelter portion of the William J. Raggio Family Trust, thereby intentionally depleting the former to the benefit of the latter.

¶9 Dale Checkett Raggio’s inequitable and disparate treatment of the Marital Deduction portion of the William J. Raggio Family Trust vis-à-vis the Credit Shelter portion of the William J. Raggio Family Trust is a breach of fiduciary duty Dale Checkett Raggio owes to Petitioners as the Remainder Beneficiaries.

In addition, in their 2015 Petition, Righetti and Chew also assert claims for Breach of Contract (Second Claim for Relief) and Breach of the Covenant of Good Faith and Fair Dealing (Third Claim for Relief) which are both based on the same allegation that Mrs. Raggio treated the Marital Trust differently than the Credit Shelter Trust. For instance, with respect to their breach of contract claim, Righetti and Chew allege:

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⁴They also assert claims for unjust enrichment and constructive fraud that appear to also be based on their argument of a joint reading of the sub-trusts.

¶22 Petitioners are informed and believe, and upon such information and belief, allege that Dale Checkett [sic] Raggio has breached her obligation under the contract (the William J. Raggio Family Trust) by, among other actions or omissions, ignoring the Credit Shelter portion of the William J. Raggio Family Trust thereby treating the two inconsistently and also treating herself as the lifetime beneficiary of both trusts differently by favoring her grandchildren at the expense of the Petitioners as the vested remainder beneficiaries of the Marital Deduction portion.

Similarly, with respect to their breach of the covenant of good faith and fair dealing claim, Righetti and Chew allege:

¶27 Dale Checkett [sic] Raggio has breached her duty of good faith and fair dealing owed to the Beneficiaries and Remainder Beneficiaries of the Marital Deduction portion of the William J. Raggio Family Trust by intentionally treating them dissimilarly to the manner in which she treats the lifetime and Remainder Beneficiaries portion of the Credit Shelter portion of the William J. Raggio Family Trust.

Thus, given the allegations in the Counter Petition, the FAC, and the 2015 Petition, Righetti and Chew are reasserting claims based on the exact same arguments they made with respect to the 2013 Petition, which this Court previously rejected.

Moreover, in recently served discovery, Righetti and Chew make sweeping demands for documents and information regarding the Credit Shelter Trust to which they are simply not entitled:

Interrogatory No. 1: State with particularity the parameters you apply when deciding to distribute funds from the Credit Shelter portion of the William J. Raggio Family Trust.

Interrogatory No. 3 1: State with particularity the date and sum of all distributions to or for your benefit from the Credit Shelter portion of the William J. Raggio Family Trust after February 3, 2012.

Interrogatory No. 6 2: State with particularity the controls or methodology you utilize to insure that any sums received from the Credit Shelter portion of the William J. Raggio Family Trust are utilized consistently with the terms of the William J. Raggio Family Trust.

Interrogatory No. 7 3: State by institution name, domiciliary branch, address and account number the accounts into which distributions from the Credit Shelter portion of the William J. Raggio Family Trust have been deposited since February 3, 2012.

Interrogatory No. 23 4: Please state with particularity the dates each invoice was paid, the amount paid, and the vendor receiving the payments for legal fees, accountancy fees and investment fees paid by the Credit Shelter portion of the William J. Raggio Family Trust after February 3, 2012.

See Interrogatories, attached as **Exhibit 10**.

1 This Court was unsure at the time of the June 3, 2014 hearing on the 2013 Petition
2 whether Righetti would raise *different* arguments, based on *different* authority, and thus denied
3 Chew's 2013 Petition without prejudice. Based on the above, however, the Court now has
4 confirmation that both Righetti and Chew are litigating the identical issue that the Court has
5 already decided. The Court should, therefore, summarily reject their attempt to re-litigate this
6 issue.

7 **IV. LEGAL ARGUMENT**

8 The issue of whether the two sub-trusts may be read together was actually litigated and
9 finally determined as a result of Chew's 2013 Petition. Chew never objected to the
10 Recommendation and failed to appeal the Confirming Order. Righetti had the opportunity to
11 appear and voice her position in response to 2013 Petition, but she failed to make any
12 appearance, despite knowing that the Court's decision would be binding on her as a beneficiary.
13 Like her sister, Righetti failed to object to the Recommendation or appeal the Confirming Order.

14 Given this Court's prior order, which remains unchallenged and undisturbed and is thus
15 binding on the parties, the claims for relief asserted in the FAC (brought by way of an
16 independent civil proceeding) are subject to claim preclusion and must be rejected to the extent
17 they rely on the theory that Mrs. Raggio has an obligation to proportionally spend down the two
18 sub-trusts. Similarly, to the extent the relief sought by the Counter Petition and the 2015 Petition
19 (brought in the same case as Chew's original 2013 Petition) rely on the identical spend-down
20 arguments this Court already considered and rejected, they are barred by issue preclusion.
21 *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 445, 245 P.3d 547, 548, 550 (2010)
22 ("[s]ummary judgment is appropriate where issue preclusion bars a claim").

23 Moreover, because the arguments raised in the FAC, Counter Petition, and 2015 Petition
24 are identical to those previously urged by Chew, they do not fit the narrow caveat this Court
25 noted (*different* arguments, *different* authority) when it dismissed Chew's 2013 Petition without
26 prejudice. Thus, arguing over a proportional spend-down of the Credit Shelter Trust and the need
27 for Mrs. Raggio to consider other resources constitutes a direct attack on the Court's earlier
28 determination and should be rejected.

1 A. The Civil Suit Claims Are Barred By Claim Preclusion To The Extent They Are
2 Based On A Joint Reading Of The Sub-Trusts.

3 Under Nevada law, claim preclusion bars parties and their privies from litigating claims
4 or any part of them that were or could have been brought in a prior action concerning the same
5 controversy. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008).
6 The policy underlying this doctrine is to preserve scarce judicial resources and to prevent
7 vexation and undue expense to parties. *University of Nevada v. Tarkanian*, 110 Nev. 581, 598,
8 879 P.2d 1180, 1191 (1994).

9 In determining whether to apply claim preclusion, Nevada courts consider whether the
10 final judgment is valid, whether the subsequent action is based on the same claims or any part of
11 them that were or could have been brought in the first case, and whether the parties or their
12 privies are the same. *Five Star Capital*, 124 Nev. at 1054-55, 194 P.3d at 709. As demonstrated
13 below, each factor supports the application of claim preclusion to the daughters' claims for
14 relief, as asserted in the FAC, to the extent those claims are based on a theory of a proportionate
15 spend-down of the two sub-trusts.

16 i. *The Confirming Order Is A Final Judgment.*

17 Chew brought her 2013 Petition pursuant to NRS 164.010 and NRS 164.015. The latter
18 statute provides that:

19 [u]pon the hearing, the court shall enter such order as it deems appropriate. The
20 order is ***final and conclusive as to all matters determined and is binding*** in rem
21 upon the trust estate and ***upon the interests of all beneficiaries***, vested or
22 contingent, except that appeal to the appellate court of competent jurisdiction
23 pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article
24 6 of the Nevada Constitution may be taken from the order within 30 days after
25 notice of its entry by filing notice of appeal with the clerk of the district court.

26 NRS 164.015(6) (emphasis added). Here, notice of entry of the Confirming Order was served on
27 March 5, 2015. Neither Chew nor Righetti filed a notice of appeal pursuant to NRS 164.015(6).
28 Because no appeal was timely taken from the entry of the order, the order became a final order
29 and is immune from attack. NRS 164.015(6).

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The claim-preclusion requirement that the subsequent action be based on the same claims or any part of them that were or could have been brought in the first case generally considers whether the second suit is based on the same facts and alleged conduct as the first. *Five Star Capital*, 124 Nev. at 1058, 194 P.3d at 715. Even a cursory review of the FAC demonstrates that the breach of trust claim in particular is based, at least in part, on the theory that a proportionate spend-down of the two sub-trusts is warranted. This was the precise argument that Chew presented as part of her 2013 Petition. While Chew's 2013 Petition did not assert claims for relief in the traditional sense, the thrust of the relief sought was the same, i.e. a ruling from the Court that Mrs. Raggio be compelled to consider her other resources and proportionately spend down the Marital Trust and Credit Shelter Trust. Thus, this factor of the analysis is also met.

“For purposes of res judicata, privity exists when a person is so identified in interest with another that he represents the same legal right.” *Huggins v. Bank Deutsche Nat. Tr. CO TRS*, 2011 WL 2976818, *3 (D. Nev. July 21, 2011) (internal quotations omitted). “The focus of the inquiry is whether the party in the later action was sufficiently close to the party in the first action so as to justify application of preclusion principles.” *Id.* (internal quotations omitted). “The circumstances must be such that the party to be precluded should reasonably have expected to be bound by the prior adjudication.” *Id.* (internal quotations omitted).

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1 The above demonstrates that each of the factors are present for claim preclusion to apply
2 to the claims for relief asserted against Mrs. Raggio by the FAC. The Court should thus enter
3 summary judgment in Mrs. Raggio's favor on each of the claims for relief asserted therein to the
4 extent such claims are based on a proportionate spend-down of the two sub-trusts.

5 B. The Counter-Petition Is Barred By Issue Preclusion To The Extent The Requested
6 Relief Is Based On A Joint Reading Of The Sub-Trusts.

7 Issue preclusion "is based upon the sound public policy of limiting litigation by
8 preventing a party who had one full and fair opportunity to litigate an issue from again drawing it
9 into controversy." *Thompson v. City of North Las Vegas*, 108 Nev. 435, 439-40, 833 P.2d 1132,
10 1134-35 (1992). For issue preclusion to apply, the following factors must be satisfied: "(1) the
11 issue decided in the prior litigation must be identical to the issue presented in the current action;
12 (2) the initial ruling must have been on the merits and have become final; . . . (3) the party
13 against whom the judgment is asserted must have been a party or in privity with a party to the
14 prior litigation'; and (4) the issue was actually and necessarily litigated." *Five Star Capital Corp.*
15 *v. Ruby*, 124 Nev. 1048, 1055 (Nev. 2008). Thus, the inquiry typically revolves around whether
16 there was a common issue that "was actually decided and necessary to the judgment in the earlier
17 suit . . ." *University of Nevada v. Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994).
18 The burden of establishing preclusion lies with the party claiming it. *See* 18 Charles Alan
19 Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure: Jurisdiction*, §
20 4405, at 110 (2d ed. 2002).

21 Here, the proportionate spend-down of the two sub-trusts was specifically and hotly
22 litigated by Chew and Mrs. Raggio as part of Chew's original 2013 Petition. The identical issue
23 has now resurfaced in Righetti's Counter Petition and 2015 Petition, which Chew has joined.
24 Thus, the first factor above is met.

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1 As already discussed above, the Court’s Recommendation finding that “a proportionate
2 spend-down of the Credit and Marital Trusts formed under the Trust is not supported by the
3 terms of the Trust or applicable law” was never objected to and the Confirming Order never
4 appealed. The decision was made on the merits, after thorough briefing and a hearing, and
5 became final in the absence of a notice of appeal.

6 Third, Mrs. Raggio is asserting the findings from this order against Chew, herself a party
7 to the prior proceeding, and against Righetti, a beneficiary with identical interests to those of
8 Chew.

9 Fourth, the issue was actually and necessarily litigated. The Court need only review the
10 extensive briefs by both sides and the transcript of the proceedings to conclude that this factor is
11 also easily satisfied.

12 Finally, while the Court’s dismissal of Chew’s 2013 Petition was without prejudice, Mrs.
13 Raggio submits that there is simply no room to allow the daughters a second opportunity to re-
14 litigate this identical issue. The Nevada Supreme Court has made it clear that issue preclusion
15 cannot be avoided by attempting to raise a new legal or factual argument that involves the same
16 ultimate issue previously decided. *Alcantara v. Wal-Mart Stores, Inc.*, 321 P.3d 912, 915 (Nev.
17 2014); *see also Paulo v. Holder*, 669 F.3d 911, 918 (9th Cir. 2011) (stating that “[i]f a party
18 could avoid issue preclusion by finding some argument that it failed to raise in the previous
19 litigation, the bar on successive litigation would be seriously undermined.”). The Court has
20 ample grounds to grant Mrs. Raggio’s motion and enter partial summary judgment on the
21 grounds requested above.

22 **V. CONCLUSION**

23 Based on the foregoing, the Court should grant Mrs. Raggio’s Motion for Partial
24 Summary Judgment. This Court already concluded that as a matter of law, the Trust does not
25 support Righetti’s and Chew’s arguments that Mrs. Raggio must consider other resources
26 (including assets in the Credit Shelter Trust) in determining the amount of distributions from the
27 Marital Trust necessary for her health, maintenance, and support. Righetti and Chew have not
28 offered any analysis or legal authority that should cause this Court to re-examine this issue a

1 second time. Simply put, other than Righetti's belated participation in the case, nothing has
2 changed. Accordingly, the Court should dismiss Righetti's and Chew's claims in their Counter
3 Petition, 2015 Petition and the FAC that are based on the allegations that Mrs. Raggio is
4 obligated to consider and spend down the assets of the Credit Shelter Trust, or otherwise
5 consider other resources, in determining the distributions from the Marital Trust necessary for
6 her health, maintenance, and support.

7 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
8 document does not contain the Social Security number of any person.

9
10 DATED this 19th day of July 2017

11 HOLLAND & HART LLP

12 /s/ Tamara Reid

13 Tamara Reid, Esq.
14 HOLLAND & HART LLP
15 5441 Kietzke Lane, Second Floor
16 Reno, Nevada 89511

17 /s/ John Echeverria

18 John Echeverria, Esq.
19 Echeverria Law Office
20 9432 Double R Boulevard
21 Reno, NV 89521

22 *Attorneys for Dale Raggio*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Liz Ford, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

I am readily familiar with Holland & Hart's practice for collection and processing of: HAND DELIVERIES, FACSIMILES and OUTGOING MAIL. Such practice in the ordinary course of business provides for the delivery or faxing and/or mailing with the United States Postal Service, to occur on the same day the document is collected and processed.

On July 19, 2017, I caused the foregoing **MOTION FOR PARTIAL SUMMARY JUDGMENT** to be served by the following method(s):

☒ Electronic: filed the document electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document to the following person(s) at the following e-mail addresses:

Michael A. Rosenauer, Esq.
Rosenauer & Wallace
510 West Plumb Lane, Suite A
Reno, Nevada 89509

G. Barton Mowry, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
P.O. Box 30000
Reno, Nevada 89520

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on July 19, 2017.

/s/ Liz Ford
Liz Ford

INDEX OF EXHIBITS

Exhibit 1	The William J. Raggio Family Trust Agreement	16 Pages
Exhibit 2	December 9, 2013, Petition to Interplead Inter Vivos Trust, Request for Review of Beneficiary's Request for an Accounting and Documents	30 Pages
Exhibit 3	December 9, 2013, Notice of Hearing	4 Pages
Exhibit 4	December 31, 2013, Response and Objection to Petition to Interplead inter Vivos Trust, Request for Review of Beneficiary's Request for an Accounting and Documents	9 Pages
Exhibit 5	January 17, 2015, Tracy Raggio Chew's Points and Authorities in Support of Request for an Accounting and Supportive Documents	29 Pages
Exhibit 6	June 3, 2014 Transcript of Hearing	82 Pages
Exhibit 7	February 17, 2015, Recommendation for Order: Denying Petition to Interplead Intervivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents	2 Pages
Exhibit 8	March 4, 2015, Confirming Order	2 Pages
Exhibit 9	March 5, 2015, Notice of Entry of Confirming Order	3 Pages
Exhibit 10	May 12, 2017, Remainder Beneficiaries' First Set of Interrogatories to Trustee Dale Checkett (sic) Raggio	10 Pages

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EXHIBIT "1"

EXHIBIT "1"

THE WILLIAM J. RAGGIO FAMILY
TRUST AGREEMENT

WILLIAM J. RAGGIO of the City of Reno, County of Washoe, Nevada, declares that:

ARTICLE 1. DECLARATIONS

Conveyance to Trustee

Section 1.1. He has conveyed and transferred, without consideration, to the Trustee named in this Trust Agreement all the property described in an inventory hereto attached, marked Schedule "A".

Name of Trust

Section 1.2. This Trust shall be known as THE WILLIAM J. RAGGIO FAMILY TRUST.

Identity of Trust Estate

Section 1.3. All property described in Schedule "A", and any other property that may hereafter be transferred or conveyed to and received by the Trustee to be held pursuant to the terms of this instrument, is herein called the "Trust Estate" and shall be held, administered, and distributed by the Trustee as provided in this Trust Agreement.

Identity of Settlor

Section 1.4. As used in this Trust Agreement, the term "Settlor" shall refer to WILLIAM J. RAGGIO.

Family

Section 1.5. Settlor is married to DALE CHECKET-RAGGIO, and has two adult children from a prior marriage now living; namely, LESLIE ANN RIGHETTI and TRACY LYNN WOODRING.

Designation of Trustee

Section 1.6. WILLIAM J. RAGGIO is hereby designated as Trustee of all trusts created by or to be created pursuant to this Trust Agreement. Should WILLIAM J. RAGGIO become unable, for whatever reason, to serve as Trustee, Settlor's wife, DALE CHECKET-RAGGIO, is designated to act as successor Trustee. Should she become unable, for whatever reason, to serve as Trustee, Settlor's daughters, LESLIE ANN RIGHETTI and TRACY LYNN WOODRING, in the order indicated, are

designated to act as successor sole Trustee; provided however, that JOHN P. SANDE, III is designated to act as successor Sole Trustee of the DALE CHECKET-RAGGIO CREDIT SHELTER TRUST. The term "Trustee" as used in this Trust Agreement shall refer to any of those acting as Trustee, whether serving as a sole trustee or collectively as Co-Trustees. No bond or other security shall be required of any of those named as Trustee, notwithstanding any provisions of law to the contrary.

Additions to Trust

Section 1.7. The Settlor may, from time to time, add other property acceptable to the Trustee to the Trust Estate by conveyance, assignment, transfer or Will. Such property, when received and accepted by the Trustee, shall become part of the Trust Estate and be subject to all the terms and provisions of this Trust Agreement.

Revocation or Modification of Trust

Section 1.8. The Settlor reserves the right at any time, or from time to time, without any consent of any person and without notice to any person other than the Trustee, to revoke or modify any trust created by this Trust Agreement in whole or in part, to change the beneficiaries hereof, or to withdraw the whole or any part of the Trust Estate by filing notice of such revocation, modification, change or withdrawal with the Trustee, provided, however, that this section shall not apply to any trust which has become irrevocable and not subject to amendment.

ARTICLE 2. DISTRIBUTIONS DURING LIFE OF SETTLOR

Net Income to Settlor

Section 2.1. During the life of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor as much of the net income of the Trust Estate as is requested from time to time by the Settlor.

Distributions of Principal

Section 2.2. The Settlor may, at any time and from time to time, withdraw such amounts, up to the whole thereof, from the principal of the Trust Estate as such Settlor may, at the time of any such withdrawal, designate in a written notice served on the Trustee.

Incapacity of Settlor

Section 2.3. If, at any time, the Settlor has become incapacitated, as determined pursuant to the definition of "incapacity" set forth in Section 9.2 of this Trust Agreement, the Trustee shall apply for the benefit of the Settlor such amounts of the net income and principal as are necessary in the Trustee's absolute discretion, for the proper health, support and maintenance of the Settlor in accordance with his accustomed manner of living, until the Settlor is again able to manage his own affairs, as determined solely by the Trustee.

**ARTICLE 3. DISTRIBUTION ON THE DEATH OF SETTLOR
IF SETTLOR SURVIVES DALE CHECKET-RAGGIO**

Distribution on Death of Settlor

Section 3.1. Upon the death of Settlor, if Settlor survives DALE CHECKET-RAGGIO, the entire Trust Estate, including any additions made to the Trust by reason of the Settlor's Death, such as from Settlor's Will or life insurance policies on the Settlor's life, after making the payments and distributions provided by Sections 3.2 and 3.3, below, shall be added to and augment THE WILLIAM AND DOROTHY RAGGIO CREDIT SHELTER TRUST created April 7, 1998, to be administered and disposed of in accordance with the terms and provisions of its Trust Agreement.

Payment of Debts, Expenses and Taxes

Section 3.2. The Trustee shall pay from the Survivor's Trust the debts and expenses of administration of the Settlor's estate, expenses of the Settlor's last illness, funeral and burial, and any estate or income taxes that may be due by reason of the Settlor's Death, unless the Trustee in the Trustee's absolute discretion determine that other adequate provisions have been made for the payment of such expenses and taxes.

Specific Gifts

Section 3.3. The Trustee shall make the following gifts, free of trust:

(a) The Trustee shall distribute, free of trust, the sum of Fifty Thousand Dollars (\$50,000.00) to each of the then living grandchildren of the Settlor, currently consisting of JENNIFER RIGHETTI, MICHAEL RIGHETTI, MEGHAN RIGHETTI, JONATHAN RIGHETTI, SOMMER FERNANDES and ANTHONY WOODRING. If any of Settlor's grandchildren are then deceased leaving issue surviving, that grandchild's gift shall be distributed, free of trust, to the issue of the grandchild, by right of representation.

(b) The Trustee shall distribute, free of trust, the Settlor's interest in any tangible personal property given by the Settlor in accordance with a written statement signed by the Settlor which specifically states that it is incorporated by reference into this Trust Agreement.

**ARTICLE 4. DISTRIBUTION ON THE DEATH OF SETTLOR
IF DALE CHECKET-RAGGIO SURVIVES SETTLOR**

Creation of Two Trusts

Section 4.1. Upon the death of Settlor, if DALE CHECKET-RAGGIO survives Settlor, the Trustee, after making the distributions provided by Sections 4.2 and 4.3, below, shall divide the entire Trust Estate, including any additions made to the Trust by reason of the Settlor's Death, such as from Settlor's Will or life insurance policies on the Settlor's life, into two separate trusts known as the "Marital Deduction Trust" and the "DALE CHECKET-RAGGIO Credit Shelter Trust." Both trusts shall become at that time irrevocable and not subject to amendment. The Marital Deduction Trust and the DALE CHECKET-RAGGIO Credit Shelter Trust shall be administered and distributed as hereinafter provided in Articles 5 and 6, respectively.

Payment of Debts, Expenses and Taxes

Section 4.2. The Trustee shall pay from the Survivor's Trust the debts and expenses of administration of the Settlor's estate, expenses of the Settlor's last illness, funeral and burial, and any estate or income taxes that may be due by reason of the Settlor's Death, unless the Trustee in the Trustee's absolute discretion determine that other adequate provisions have been made for the payment of such expenses and taxes

Specific Gifts

Section 4.3. The Trustee shall make the following gifts, free of trust:

(a) The Trustee shall distribute, free of trust, the sum of Fifty Thousand Dollars (\$50,000.00) to each of the then living grandchildren of the Settlor, currently consisting of JENNIFER RIGHETTI, MICHAEL RIGHETTI, MEGHAN RIGHETTI, JONATHAN RIGHETTI, SOMMER FERNANDES and ANTHONY WOODRING. If any of Settlor's grandchildren are then deceased leaving issue surviving, that grandchild's gift shall be distributed, free of trust, to the issue of the grandchild, by right of representation.

(b) In the event that Settlor and his wife, DALE CHECKET-RAGGIO, are still married and living together in the residence owned by Settlor at the time of Settlor's death, the Trustee shall distribute, free of trust, all right, title and interest in the personal residence to Settlor's wife, DALE CHECKET-RAGGIO. The Settlor and his wife are currently residing in Settlor's personal residence commonly known as 1855 Webster Way, Reno, Nevada;

(c) The Trustee shall distribute, free of trust, the Settlor's interest in any tangible personal property given by the Settlor in accordance with a written statement signed by the Settlor which specifically states that it is incorporated by reference into this Trust Agreement.

Principal of the Marital Deduction Trust

Section 4.4. The principal or Trust Estate of the Marital Trust shall consist of a pecuniary amount which will equal the maximum marital deduction allowable in determining the federal estate tax payable by reason of the Settlor's death, pursuant to Internal Revenue Code, Section 2056, as that Section is amended and effective on the date of the Settlor's death; provided, however, that in no event shall such amount exceed the amount necessary to eliminate federal estate tax on the Settlor's estate, after taking into account all other available deductions and the federal credit against estate tax. The Trustee shall satisfy this amount in cash or in kind or partly in each with assets eligible for the marital deduction. Assets allocated in kind shall be deemed to satisfy this amount on the basis of their values at the date or dates of allocation to the Marital Trust.

Qualification for Marital Deduction

Section 4.5. It is the intentions of the Settlor to have the Marital Trust qualify for the marital deduction under Section 2056 of the Internal Revenue Code and the regulations pertaining to that section or any corresponding or substitute provisions applicable to the Trust Estate. In no event shall the Trustee take any action or have any power that will impair the marital deduction, and all provisions regarding the Marital Deduction Trust shall be interpreted to conform to this primary objective.

Principal of the Credit Shelter Trust

Section 4.6. The principal or Trust Estate of the DALE CHECKET-RAGGIO Credit Shelter Trust shall consist of the balance of the Settlor's interest in the Trust Estate.

ARTICLE 5. ADMINISTRATION AND DISTRIBUTIONS FROM THE MARITAL TRUST

Distributions during Life of DALE CHECKET-RAGGIO

Section 5.1. During the life of DALE CHECKET-RAGGIO, the Trustee shall quarterly or at more frequent intervals, pay to or apply for the benefit of DALE CHECKET-RAGGIO all of the net income of the Trust. In addition, the Trustee shall pay to or apply for the benefit of DALE CHECKET-RAGGIO as much of the principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance of the DALE CHECKET-RAGGIO.

QTIP Election

Section 5.2. The Trustee is authorized, in the Trustee's sole discretion, to elect to have treated as qualified terminable interest property for the purpose of qualifying for the marital deduction allowable in determining the federal estate tax upon the Settlor's estate, any defined fraction or percentage or all, of the property comprising the Trust. In considering such an election, the Trustee may wish to consider DALE CHECKET-RAGGIO'S age and health, the sizes of the DALE CHECKET-RAGGIO and Settlor's respective estates, and a computation of the combined death taxes (or estimated death taxes on the estate of DALE CHECKET-RAGGIO) in the Settlor's estate, which may render such an election inappropriate in whole or in part. The decision of the Trustee with respect to the exercise of the election shall be final and conclusive upon all persons whose interests in the Settlor's estate are directly or indirectly affected thereby.

With respect to any portion or all of the Marital Trust which the Trustee shall have elected to have treated as qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code, the following provisions shall apply:

(a) Upon the death of the DALE CHECKET-RAGGIO, the Trustee shall pay to the legal representative of the DALE CHECKET-RAGGIO'S estate an amount certified in writing by said legal representative as constituting the increase, if any, in all estate, inheritance and similar death taxes, which shall be incurred by DALE CHECKET-RAGGIO'S estate by reason of the inclusion therein as part of the taxable estate of such qualified terminable interest property. Such payment shall be equal to the amount by which the total of such death taxes paid in DALE CHECKET-RAGGIO'S estate, exceeds the total of such death taxes which would have been payable if the value of such qualified terminable interest property had not been included in said estate. The Trustee shall not be under any duty to determine the propriety of any such sum or sums so certified by the legal representative of DALE CHECKET-RAGGIO'S estate or to see to the application thereof.

(b) Notwithstanding any other provision of this Trust Agreement, the Trustee shall not have any rights, duties, authorities, privileges, immunities, or powers with respect to such qualified terminable interest property if or to the extent that such would disqualify the same for the marital deduction.

Distribution on Death of DALE CHECKET-RAGGIO

Section 5.3. Upon the death of DALE CHECKET-RAGGIO, the entire remaining principal of the Trust shall be added to and augment THE WILLIAM AND DOROTHY RAGGIO CREDIT SHELTER TRUST created April 7, 1998, to be administered and disposed of in accordance with the terms and provisions of its Trust Agreement.

**ARTICLE 6. ADMINISTRATION AND
DISTRIBUTIONS FROM THE CREDIT SHELTER TRUST**

Distribution during Life of DALE CHECKET-RAGGIO

Section 6.1. During the life of DALE CHECKET-RAGGIO, the Trustee shall pay to or apply for the benefit of DALE CHECKET-RAGGIO as much of the net income and principal of the Credit Shelter Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance of DALE CHECKET-RAGGIO.

Distribution on death of DALE CHECKET-RAGGIO

Section 6.2. Upon the death of DALE CHECKET-RAGGIO, the Trustee shall divide the principal and all accumulated income of the DALE CHECKET-RAGGIO Credit Shelter Trust into as many equal shares as there are grandsons of DALE CHECKET-RAGGIO then living and grandsons of DALE CHECKET-RAGGIO then deceased leaving issue then living. The Trustee shall allocate one such equal share to each living grandson of DALE CHECKET-RAGGIO, and one such equal share to each group composed of the living issue of a deceased grandson of DALE CHECKET-RAGGIO. The shares allocated to the grandsons of DALE CHECKET-RAGGIO shall be distributed or held in trust as provided by Section 6.3 of this Trust Agreement. The shares allocated to the grandsons of DALE CHECKET-RAGGIO then deceased living issue then living shall be distributed or held in trust as provided by Section 6.4 of this Trust Agreement. In the event no grandchild or issue of DALE CHECKET-RAGGIO is then living, the Trustee shall distribute, free of trust, the principal and all accumulated income of the Trust Estate to the then living heirs of DALE CHECKET-RAGGIO.

Administration and Distributions to DALE CHECKET-RAGGIO'S Grandsons

Section 6.3. Each share allocated to DALE CHECKET-RAGGIO'S grandsons shall be retained and administered by the Trustee, in separate trusts, as follows:

(a) The Trustee shall pay to or apply for the benefit of the grandson as much of the net income and principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, maintenance and education of the grandson. Any income not distributed shall be accumulated and added to principal.

(b) When such grandson attains the age of thirty (30) years, the Trustee shall distribute to the child, free of trust, the undistributed balance of the grandson's Trust.

(c) If a grandson of DALE CHECKET-RAGGIO dies before becoming entitled to receive distribution of the grandson's entire Trust, the undistributed balance of that grandson's Trust shall be distributed as provided in Section 6.4 below.

Administration and Distributions to Issue of Grandson

Section 6.4. Each share allocated to a group composed of the living issue of a grandson of DALE CHECKET-RAGGIO shall be distributed or retained in trust as follows:

(a) If, at the time the Trust Estate is divided into separate shares, no child of the deceased grandson is living who is under age twenty-one, the share shall thereupon be distributed, free of trust, to the deceased grandson's issue then living, by right of representation.

(b) If a child of the deceased grandchild is then living who is under age twenty-one, the share shall be retained by the Trustee as a separate trust for the benefit of the deceased grandson's living issue as a group, including those aged twenty-one or older. Each trust shall be held, administered and distributed as follows:

(i) The Trustee shall pay to or apply for the benefit of such issue, of whatever degree, living from time to time, including those whose ancestor or ancestors are still living, as much of the net income and principal of the Trust Estate as the Trustee, in the Trustee's discretion, shall deem necessary for their proper support, care, maintenance and education, after taking into consideration, to the extent the Trustee shall deem advisable, any other income or resources of such issue known to the Trustee. Any net income not distributed shall be accumulated and added to principal. In exercising the discretion granted by this subparagraph, the Trustee may pay more to or apply more for some beneficiaries than others and may make payments to or applications of benefits for one or more beneficiaries to the exclusion of others. Any payment or application of benefits pursuant to this subparagraph shall be charged against the Trust as a whole rather than against the ultimate distributive share of the beneficiary to whom or for whose benefit the payment is made.

(ii) The Trust shall terminate as soon as no child of the Settlor's deceased child is living who is under age twenty-one. Upon termination, the remaining balance of the Trust Estate shall be distributed, free of trust, to the then living issue of the Settlor's deceased child, by right of representation, or if there are none, to the Settlor's then living issue, by right of representation.

ARTICLE 7. SPENDTHRIFT TRUSTS

Section 7.1. Each trust created by this Trust Agreement shall be a spendthrift trust. No beneficiary of any trust established under this Trust Agreement shall have any right or power to sell, transfer, assign, pledge, mortgage, alienate or hypothecate his or her interest in the principal or income of the Trust Estate in any manner whatsoever. To the fullest extent of the law, the interest of each and every beneficiary shall not be subject to the claims of any of his or her creditors or liable to attachment, execution, bankruptcy proceedings, or any other legal process. The Trustee shall pay, disburse and distribute principal and income of the Trust Estate only in the manner provided for in this Trust Agreement, and not upon any attempted transfer or assignment, whether oral or written, neither of any beneficiary nor by operation of law.

ARTICLE 8. POWERS OF TRUSTEE

Section 8.1. In order to carry out the purposes of any trust or trusts established by this Trust Agreement, the Trustee, in addition to all other powers and discretions granted by this Trust Agreement or by law, shall have the following powers and discretions, subject to any limitations specified elsewhere in this Trust Agreement:

(a) To hold and exercise all of the powers and discretions enumerated in N.R.S. 163.265 to N.R.S. 163.410, inclusive, as such powers and discretions exist at the time of the execution of this Trust Agreement; and such powers and discretions are incorporated herein by reference with the same effect as if set forth verbatim. In the event any of such powers or discretions is inconsistent with any of the powers or discretions hereinafter set forth, the most liberal shall control to give the greatest latitude and discretion to the Trustee.

(b) To continue to hold all or any part of the Trust Estate in the form in which the same may be at the time of the receipt thereof by the Trustee, including, but without limitation, any shares of stock, uninvested cash, balances in banks, and property of any kind, whether marketable or otherwise, without any obligation to convert the same, and without regard to the limitations imposed by law on the investment of trust funds, and without liability for any loss of principal or income by reason of such retention.

(c) To invest and reinvest in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, common and preferred stocks, cash or other funds though unproductive, and any other securities, obligations or property, including gaming investments, without regard to limitations imposed by law on the investment of trust funds, and without liability for any loss of principal or income by reason thereof.

(d) To exercise, respecting securities held in the Trust Estate, all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and to pay assessments and other sums deemed by the Trustee necessary for the protection of the Trust; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscription or conversion rights; to accept and retain as an investment any securities or other property received through the exercise of any of the foregoing powers, regardless of any limitations elsewhere in this Trust Agreement relative to investments by the Trustee.

(e) To hold securities or other trust property in the name of the Trustee as Trustee under this Trust Agreement or in the Trustee's own name or in the name of a nominee or unregistered in a condition where ownership will pass by delivery.

(f) With respect to any business interest that may become a part of the Trust Estate, whether organized as a sole proprietorship, partnership, limited liability company, corporation, or other form of entity, and on such terms, for the time and in the manner that the Trustee may deem advisable, to retain and continue to operate any such business solely at the risk of the Trust Estate and without liability on the part of the Trustee for any losses resulting therefrom; to dissolve, liquidate, or sell at the time and on the terms that the Trustee may deem advisable; to incorporate the business and hold the stock as an asset of the Trust Estate; to use the general assets of the Trust Estate for the purposes of the business; to borrow money for business purposes and pledge or encumber the assets of the business or the other assets of the Trust Estate to secure the loan; to employ such officers, managers, employees, or agents as they may deem advisable in the management of such business, including electing directors, officers, or employees of any Trustee to take part in the management of the business as directors or officers; to receive compensation for the services of the Trustee, to be paid from the business or from the other assets or from both as the Trustee in the Trustee's discretion may deem advisable; and the Trustee shall have such additional powers as may now or hereafter be conferred on the Trustee by law or as may be necessary to enable the Trustee to administer the assets of the Trust Estate in accordance with the provisions of this Trust Agreement, subject to any limitations that may be provided for herein.

(g) It is the Settlor's desire that the Trustee continue to hold any corporate securities received by the Trustee or subsequently added to the Trust Estate, subject to the need to sell or dispose of the same for tax or other reasons. The foregoing is not intended to prohibit the sale of any or all such securities should the Trustee deem that course advisable, but, as the Settlor believes that it will be beneficial to the Trust Estate to retain such securities, the Trustee authorizes their retention at the risk of the Trust Estate.

(h) To sell for cash or on deferred payments at public or private sale, to exchange, and to convey any property of the Trust Estate without approval of any court.

(i) On any division of the Trust Estate into separate shares or trusts, to apportion and allocate the assets of the Trust Estate in cash or in kind, or partly in cash and partly in kind, even if shares be composed differently, or in undivided interests, in the manner deemed advisable in the discretion of the Trustee. After any division of the Trust Estate, the Trustee may make joint investments with funds from some or all of the several shares or trusts, but the Trustee shall keep separate accounts for each share or trust.

(j) To abandon any trust asset or interest therein at the discretion of the Trustee.

(k) To grant an option involving disposition of a trust asset and to take an option for the acquisition of any asset by the Trust Estate.

(l) To lease any real or personal property of the Trust Estate for any purpose for terms within or extending beyond the duration of the Trust.

(m) To manage, control, improve, and repair real and personal property belonging to the Trust Estate.

(n) To partition, divide, subdivide, assign, develop, and improve any trust property; to make or obtain the vacation of plats and adjust boundaries or to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate land or easement to public use with or without consideration.

(o) To make ordinary and extraordinary repairs and alterations in buildings or other trust property, to demolish any improvements, to raze party walls or buildings, and to erect new party walls or buildings as the Trustee deems advisable.

(p) To borrow money for any trust purpose from any person, firm, or corporation on the terms and conditions deemed proper by the Trustee and to obligate the Trust for repayment; to encumber the Trust or any of its property by mortgage, deed of trust, pledge, or otherwise, using procedures to consummate the transaction deemed advisable by the Trustee; to replace, renew, and extend any encumbrance and to pay loans or other obligations of the Trust deemed advisable by the Trustee; and to guarantee obligations of any person, firm or corporation, including any beneficiary of the trust, on the terms and conditions deemed proper by the Trustee.

(q) To loan or advance the Trustee's own funds for any trust purposes to the Trust; the loans or advances shall bear interest at prime rate existing at the date of advancement until repayment and shall, together with interest, constitute a first lien on the entire Trust Estate until repayment.

(r) To enter into oil, gas, and other mineral leases on terms deemed advisable by the Trustee, and to enter into any pooling, unitization, repressurization, community, and other types of agreements relating to the exploration, development, operation, and conservation of mineral properties; to drill, mine, and otherwise operate for the development of oil, gas, and other minerals, to contract for the installation and operation of absorption and repressuring plants, and to install and maintain pipelines.

(s) To procure and carry at the expense of the Trust insurance of the kinds, forms, and amounts deemed advisable by the Trustee to protect the Trust and the Trustee against any hazard.

(t) To enforce any deed of trust, mortgage, or pledge held by the Trust and to purchase at any sale thereunder any property subject to any such hypothecation.

(u) To extend the time of payment of any note or other obligation held in the Trust Estate, including accrued or future interest, in the discretion of the Trustee.

(v) To compromise, submit to arbitration, release with or without consideration, or otherwise adjust claims in favor of or against the Trust Estate.

(w) To commence or defend at the expense of the Trust any litigation affecting the Trust or any property of the Trust Estate deemed advisable by the Trustee.

(x) To pay all taxes, assessments, compensation of the Trustee, and other expenses incurred in the collection, care, administration, and protection of the Trust Estate.

(y) To employ any attorney, investment advisor, accountant, broker, tax specialist, or any other agent deemed necessary in the discretion of the Trustee; and to pay from the Trust Estate the reasonable compensation for all services performed by any of them.

The Trustee shall not be liable for any neglect, omission, or wrongdoing of any attorney, investment adviser, accountant, broker, tax specialist, or any other agent employed by the Trustee, provided that reasonable care was exercised in his selection.

The Trustee may consult with the attorney employed by the Trustee concerning any question which may arise with regard to the duties of the Trustee and, provided reasonable care has been exercised in selecting him, the opinion of the attorney shall be full and complete authorization and protection in regard to any action taken or suffered by the Trustee in good faith and in accordance with the opinion of the attorney.

(z) To terminate in the discretion of the Trustee any separate trust held for an income beneficiary if the fair market value of the separate trust at any time becomes less than \$50,000.00 and, regardless of the age of the income beneficiary, to distribute the principal and any accrued or undistributed net income to the income beneficiary, or to his guardian, conservator, or other fiduciary.

(aa) On any partial or final distribution of the Trust Estate, to apportion and allocate the assets of the Trust Estate in cash or in kind, or partly in cash and partly in kind, even if shares be composed differently, or in undivided interests in the manner deemed advisable in the discretion of the Trustee and to sell any property deemed necessary by the Trustee to make the distribution.

(bb) To do all the acts, to take all the proceedings, and to exercise all the rights, powers, and privileges which an absolute owner of the same property would have, subject always to the discharge of their fiduciary obligations; the enumeration of certain powers in this Trust Estate shall not limit the general or implied powers of the Trustee; the Trustee shall have all additional powers that may now or hereafter be conferred on them by law or that may be necessary to enable the Trustee to administer the assets of the Trust Estate in accordance with the provisions of this Trust Agreement, subject to any limitations specified in this Trust Agreement.

(cc) To determine in their discretion what is income and what is principal of each trust established under this Trust Agreement, and what expenses, costs, taxes and charges of all kinds shall be charged against income and what shall be charged against principal, and the decision of the Trustee with respect to these matters shall be conclusive upon all parties.

(dd) To make any and all elections permitted by any tax law applicable to any trust, the Settlor or the estate of the Settlor, and no adjustments shall be necessary among the bene-

ficiaries of any trust as to the income or principal of such trust as a result of the exercise of such election.

(ee) Any power, duty or discretionary authority granted to the Trustee shall be void to the extent that its exercise shall cause the estate of the Settlor to lose all or any part of the tax benefit afforded by the marital deduction under the Federal estate tax law.

ARTICLE 9. DEFINITIONS

Education

Section 9.1. As used in this Trust Agreement the term "education" shall be given a narrow interpretation, and may include, but is not limited to, the following activities, as long as they are pursued to advantage by the beneficiary:

- (a) Education at public or private elementary or high schools (including boarding schools);
- (b) Undergraduate, graduate and post-graduate programs of study in any and all fields whatsoever, whether of a professional character or otherwise, at properly accredited public or private universities, colleges or other institutions of higher learning; and
- (c) Vocational training or specialized formal or informal training in music, the stage, the handicrafts or the arts, as long as such training, in the opinion of the trustee, is reasonably likely to lead to a livelihood or a career, and is being pursued to advantage by the beneficiary.

The term "education" may also include, in the trustee's discretion, reasonable living and travel expenses relating to the above activities. The activities described in this paragraph may be carried on either in the United States or elsewhere.

Incapacity

Section 9.2. For all purposes under this Trust Agreement, the incapacity of any person shall be deemed to exist if:

- (a) A court of competent jurisdiction determines that such person is legally incapacitated to act in his or her own behalf; or
- (b) At least two licensed physicians render duly executed, witnessed and acknowledged written certificates, each certifying that such physician has examined such person and has concluded that, by reason of accident, physical or mental illness or other similar cause, such person had become incapacitated to act rationally and prudently in financial matters.

ARTICLE 10. CONSTRUCTION OF TRUSTS

Trusts to Include Shares or Partial Shares

Section 10.1 The terms "trust", "trusts", or "any trust provided for in this Trust Agreement" shall, as used in this Trust Agreement, unless otherwise specifically provided herein, refer to each of the separate trusts provided for, respectively, and the trust estate of each trust. There need be no physical segregation or division of the various trusts except as segregation or division may be required by termination of any of the trusts, but the Trustee shall keep separate accounts for the different individual interests.

Law For Construction of Trusts

Section 10.2. The trusts provided for in this Trust Agreement have been accepted by the Trustee in the State of Nevada, will be administered by the Trustee in Nevada, and its validity, construction, and all rights under it shall be governed by the laws of the State of Nevada.

Disclaimers

Section 10.3. Any beneficiary of any trust created by this Trust Agreement, or such beneficiary's personal representative without the necessity of any prior court authorization or approval of any kind, may disclaim all or any part or portion of his or her benefits or powers, including benefits or powers which qualify for the marital deduction, by written instrument delivered to the Trustee or in any other manner recognized by law.

Contest

Section 10.4. If any beneficiary of any trust created by this Trust Agreement contests or attacks in any manner, directly or indirectly, this Trust Agreement or any of its provisions or that certain Option to Purchase dated April 13, 2007, by and between THE WILLIAM AND DOROTHY RAGGIO FAMILY CREDIT SHELTER TRUST CREATED APRIL 7, 1998, and THE DALE CHECKET-RAGGIO TRUST DATED OCTOBER 6, 2003, as amended, or any of its provisions, any share or interest of any trust created by this Trust Agreement given to the contesting beneficiary is revoked and shall be disposed of in the same manner provided herein as if the contesting beneficiary had predeceased the Settlor without issue.

Singular and Plural Interchangeable

Section 10.5. As used in this Trust Agreement, any words used in the singular shall be construed as if used in the plural, and vice versa, if necessary, to properly carry out the Settlor's intent.

Perpetuities Saving Clause

Section 10.6. Unless sooner terminated in accordance with other provisions of this Trust Agreement, each trust created under this Trust Agreement shall terminate twenty-one years after the death of the last survivor of the group composed of the Settlor and the issue of the Settlor living at the death of Settlor. All principal and undistributed income of any trust so terminated shall be distributed to the then income beneficiaries of that trust as are then entitled or authorized in the Trustee's discretion to receive income payments.

Payments to Minors or Incompetents

Section 10.7. The Trustee, in the Trustee's absolute discretion, may make payments to a minor or other beneficiary under disability by making payments to the guardian of his person with whom he resides, or the Trustee in the Trustee's absolute discretion may make payments directly to a minor if in the Trustee's judgment he or she is of sufficient age and maturity to spend the money properly.

Disinheritance

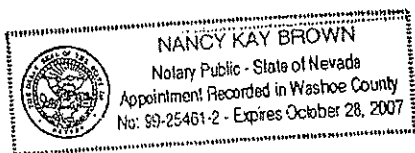
Section 10.8. Except as provided in this Trust Agreement, the Settlor has intentionally and with full knowledge omitted to provide for any heirs or next of kin which he may have.

EXECUTED this April 13, 2007, at Reno, Nevada.


WILLIAM J. RAGGIO, Settlor and
Trustee

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this April 13, 2007, WILLIAM J. RAGGIO acknowledged to me that he executed the foregoing Trust Agreement.




Nancy Kay Brown
Notary Public

WILLIAM J. RAGGIO FAMILY TRUST
DATED APRIL 13, 2007
SCHEDULE "A"

1. Real Estate

- a. Residence: 1855 Webster Way, Reno NV 89509

2. Financial Institutions

- a. Wachovia Acct. No.
- b. US Bank Acct. No.
- c. Nevada State Bank Acct. No.
- d. Gabelli Associates Fund LP, ID

EXHIBIT "2"

EXHIBIT "2"

1 CODE: \$3645
2 MICHAEL A. ROSENAUER, ESQ.
3 NSB# 2782
4 MICHAEL A. ROSENAUER, LTD.
5 510 WEST PLUMB LANE, SUITE A
6 RENO, NV 89509
7 (775) 324-3303

8 Attorney for Tracy Chew, Beneficiary of The William
9 J. Raggio Family Trust

10
11
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 * * * * *

17
18 IN THE MATTER OF THE
19 WILLIAM J. RAGGIO FAMILY
20 TRUST
21 _____/

CASE NO.: PR13-00624

DEPT. NO.: PR

HEARING DATE JAN 2, 2014

22
23 **PETITION TO INTERPLEAD INTER VIVOS TRUST, REQUEST FOR**
24 **REVIEW OF BENEFICIARY'S REQUEST FOR AN ACCOUNTING AND**
25 **DOCUMENTS**

26 Tracy Chew, daughter of William J. Raggio and a Beneficiary of the William J.
27 Raggio Family Trust, hereby Petitions the Court to take jurisdiction over the
28 above-encaptioned Trust. In this regard, Tracy Chew alleges as follows:

1. The William J. Raggio Family Trust (hereinafter "The Raggio Trust") was
established by Agreement on or about April 13, 2007.

2. At the time The Trust was established, William J. Raggio was the Trustee and a
resident of Washoe County, Nevada.

1 3. The Trust was executed in Washoe County, Nevada and all
2 amendments/restatements were executed in Washoe County, Nevada.

3 4. William J. Raggio died a resident of Washoe County, Nevada on February 3,
4 2012.¹

5 5. Petitioner is informed and believes, and upon such information and belief, alleges
6 that his surviving spouse Dale Raggio is the Successor Trustee of The Raggio Trust.

7 6. Petitioner respectfully requests this Court to confirm Dale Raggio's status as
8 Successor Trustee and to take jurisdiction over the trust *in rem* consistently with NRS
9 164.015(2).

10 7. All of the trust assets are in the actual or constructive possession of the Successor
11 Trustee.

12 8. This Petition is brought pursuant to NRS 164.010 and NRS 164.015 which
13 permits a Settlor, Trustee, Beneficiary or any interested party to seek court supervision of
14 a Trust with respect to its property, internal affairs and distribution.

15 9. Tracy Chew has standing to bring this Petition as she is a Beneficiary of The
16 Raggio Trust. As such, she is an interested party within the meaning of NRS 164.010 and
17 NRS 164.015.

18 10. Attached hereto as Exhibit "1" is the Trust Agreement for The Raggio Trust.

19 11. The Raggio Trust was created prior to William J. Raggio's demise and as such, is
20 a nontestamentary trust within the language of NRS 165.122 *et seq.*

21 12. NRS 165.135 requires each Trustee or Successor Trustee to furnish each
22 Beneficiary a yearly accounting which conforms to NRS 165.135(3) as well as other
23 information.

24 13. Tracy Chew has requested an accounting from Dale Raggio after the time in
25 which she has a duty provide such information. A copy of the requests is attached hereto
26

27 ¹ Mr. Raggio actually died while visiting Sidney, New South Wales.

1 as Exhibits "2" and "3".

2 14. Neither an Accounting nor documents have been forthcoming.

3 15. As such, and within the meaning of NRS 165.141(4), the request for an
4 accounting has been deemed rejected.

5 16. In addition to the information required pursuant to NRS Chapter 165, Petitioner is
6 entitled to the following documents:

- 7 a. Forms 706, including all attachments and appraisals, regarding
8 William J. Raggio's Estate as these documents determine the initial
9 assets owned and their values at the time of William J. Raggio's
10 death and any that flowed into The Raggio Trust by virtue of any
11 beneficiary designations such as life insurance and retirement plans;
12 b. An itemization of the manner, source and value of the property
13 funding of both the Marital portion of The Raggio Trust as well as the
14 Credit Shelter portion;
15 c. An itemization of all distributions to all beneficiaries and expenses
16 incurred as part of the administration of the Raggio Trust as well as
17 the Marital Trust and Credit Shelter Trust created thereunder
18 consistently with the requirements of NRS Chapter 165..
19 d. Copies of Forms 1041 Federal income tax returns for the Raggio Trust
20 as well as the Marital portion and the Credit Shelter portion of The
21 Raggio Trust since William J. Raggio's demise.

22 WHEREFORE, Tracy Chew respectfully requests relief as follows:

- 23 A. An Order confirming Dale Raggio as the Successor and current Trustee of The
24 Raggio Trust.
25 B. An Order wherein the Court takes jurisdiction over The Raggio Trust *in rem*;
26 C. An Order directing the Successor Trustee and her agents to provide the statutorily
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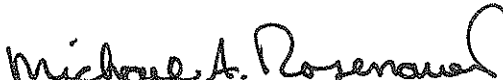
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1 required information and other requested documents within a fixed period of time.

2
3 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm
4 that the preceding document does not contain the Social Security number of any person.

5
6 DATED this 9th day of December, 2013.

7 MICHAEL A. ROSENAUER, LTD.

8 
9 Michael A. Rosenauer
Michael A. Rosenauer, Esq.

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Under penalties of perjury, the undersigned declares that she is the Petitioner named in the foregoing Petition To Interplead Inter Vivos Trust, Request For Review Of Beneficiary's Request For An Accounting And Documents and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes it to be true.

DATED this _____ day of December, 2013.

Tracy Chew

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Michael A. Rosenauer, Ltd., 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

PETITION TO INTERPLEAD INTER VIVOS TRUST, REQUEST FOR REVIEW OF BENEFICIARY'S REQUEST FOR AN ACCOUNTING AND DOCUMENTS

on the party(s) set forth below by:

 X Electronic mailing via the Second Judicial District Court CM/ECF System to all those persons listed on the ECF Confirmation Sheet.


 X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, Certified Return/Receipt following ordinary business practices.

addressed as follows:

Barton G. Mowry, Esq.
Maupin, Cox & LeGoy
P.O. Box 30000
Reno, NV 89520

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

DATED this 9th day of December, 2013.



REBECCA SQUIRE

In the Matter of the William J. Raggio Family Trust
Case No. PR13
Dept.: PR

[illegible]

Exhibit “1”

Exhibit “1”

THE WILLIAM J. RAGGIO FAMILY
TRUST AGREEMENT

WILLIAM J. RAGGIO of the City of Reno, County of Washoe, Nevada, declares that:

ARTICLE 1. DECLARATIONS

Conveyance to Trustee

Section 1.1. He has conveyed and transferred, without consideration, to the Trustee named in this Trust Agreement all the property described in an inventory hereto attached, marked Schedule "A".

Name of Trust

Section 1.2. This Trust shall be known as THE WILLIAM J. RAGGIO FAMILY TRUST.

Identity of Trust Estate

Section 1.3. All property described in Schedule "A", and any other property that may hereafter be transferred or conveyed to and received by the Trustee to be held pursuant to the terms of this instrument, is herein called the "Trust Estate" and shall be held, administered, and distributed by the Trustee as provided in this Trust Agreement.

Identity of Settlor

Section 1.4. As used in this Trust Agreement, the term "Settlor" shall refer to WILLIAM J. RAGGIO.

Family

Section 1.5. Settlor is married to DALE CHECKET-RAGGIO, and has two adult children from a prior marriage now living; namely, LESLIE ANN RIGHETTI and TRACY LYNN WOODRING.

Designation of Trustee

Section 1.6. WILLIAM J. RAGGIO is hereby designated as Trustee of all trusts created by or to be created pursuant to this Trust Agreement. Should WILLIAM J. RAGGIO become unable, for whatever reason, to serve as Trustee, Settlor's wife, DALE CHECKET-RAGGIO, is designated to act as successor Trustee. Should she become unable, for whatever reason, to serve as Trustee, Settlor's daughters, LESLIE ANN RIGHETTI and TRACY LYNN WOODRING, in the order indicated, are

designated to act as successor sole Trustee; provided however, that JOHN P. SANDE, III is designated to act as successor Sole Trustee of the DALE CHECKET-RAGGIO CREDIT SHELTER TRUST. The term "Trustee" as used in this Trust Agreement shall refer to any of those acting as Trustee, whether serving as a sole trustee or collectively as Co-Trustees. No bond or other security shall be required of any of those named as Trustee, notwithstanding any provisions of law to the contrary.

Additions to Trust

Section 1.7. The Settlor may, from time to time, add other property acceptable to the Trustee to the Trust Estate by conveyance, assignment, transfer or Will. Such property, when received and accepted by the Trustee, shall become part of the Trust Estate and be subject to all the terms and provisions of this Trust Agreement.

Revocation or Modification of Trust

Section 1.8. The Settlor reserves the right at any time, or from time to time, without any consent of any person and without notice to any person other than the Trustee, to revoke or modify any trust created by this Trust Agreement in whole or in part, to change the beneficiaries hereof, or to withdraw the whole or any part of the Trust Estate by filing notice of such revocation, modification, change or withdrawal with the Trustee, provided, however, that this section shall not apply to any trust which has become irrevocable and not subject to amendment.

ARTICLE 2. DISTRIBUTIONS DURING LIFE OF SETTLOR

Net Income to Settlor

Section 2.1. During the life of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor as much of the net income of the Trust Estate as is requested from time to time by the Settlor.

Distributions of Principal

Section 2.2. The Settlor may, at any time and from time to time, withdraw such amounts, up to the whole thereof, from the principal of the Trust Estate as such Settlor may, at the time of any such withdrawal, designate in a written notice served on the Trustee.

Incapacity of Settlor

Section 2.3. If, at any time, the Settlor has become incapacitated, as determined pursuant to the definition of "incapacity" set forth in Section 9.2 of this Trust Agreement, the Trustee shall apply for the benefit of the Settlor such amounts of the net income and principal as are necessary in the Trustee's absolute discretion, for the proper health, support and maintenance of the Settlor in accordance with his accustomed manner of living, until the Settlor is again able to manage his own affairs, as determined solely by the Trustee.

**ARTICLE 3. DISTRIBUTION ON THE DEATH OF SETTLOR
IF SETTLOR SURVIVES DALE CHECKET-RAGGIO**

Distribution on Death of Settlor

Section 3.1. Upon the death of Settlor, if Settlor survives DALE CHECKET-RAGGIO, the entire Trust Estate, including any additions made to the Trust by reason of the Settlor's Death, such as from Settlor's Will or life insurance policies on the Settlor's life, after making the payments and distributions provided by Sections 3.2 and 3.3, below, shall be added to and augment THE WILLIAM AND DOROTHY RAGGIO CREDIT SHELTER TRUST created April 7, 1998, to be administered and disposed of in accordance with the terms and provisions of its Trust Agreement.

Payment of Debts, Expenses and Taxes

Section 3.2. The Trustee shall pay from the Survivor's Trust the debts and expenses of administration of the Settlor's estate, expenses of the Settlor's last illness, funeral and burial, and any estate or income taxes that may be due by reason of the Settlor's Death, unless the Trustee in the Trustee's absolute discretion determine that other adequate provisions have been made for the payment of such expenses and taxes.

Specific Gifts

Section 3.3. The Trustee shall make the following gifts, free of trust:

(a) The Trustee shall distribute, free of trust, the sum of Fifty Thousand Dollars (\$50,000.00) to each of the then living grandchildren of the Settlor, currently consisting of JENNIFER RIGHETTI, MICHAEL RIGHETTI, MEGHAN RIGHETTI, JONATHAN RIGHETTI, SOMMER FERNANDES and ANTHONY WOODRING. If any of Settlor's grandchildren are then deceased leaving issue surviving, that grandchild's gift shall be distributed, free of trust, to the issue of the grandchild, by right of representation.

(b) The Trustee shall distribute, free of trust, the Settlor's interest in any tangible personal property given by the Settlor in accordance with a written statement signed by the Settlor which specifically states that it is incorporated by reference into this Trust Agreement.

**ARTICLE 4. DISTRIBUTION ON THE DEATH OF SETTLOR
IF DALE CHECKET-RAGGIO SURVIVES SETTLOR**

Creation of Two Trusts

Section 4.1. Upon the death of Settlor, if DALE CHECKET-RAGGIO survives Settlor, the Trustee, after making the distributions provided by Sections 4.2 and 4.3, below, shall divide the entire Trust Estate, including any additions made to the Trust by reason of the Settlor's Death, such as from Settlor's Will or life insurance policies on the Settlor's life, into two separate trusts known as the "Marital Deduction Trust" and the "DALE CHECKET-RAGGIO Credit Shelter Trust." Both trusts shall become at that time irrevocable and not subject to amendment. The Marital Deduction Trust and the DALE CHECKET-RAGGIO Credit Shelter Trust shall be administered and distributed as hereinafter provided in Articles 5 and 6, respectively.

Payment of Debts, Expenses and Taxes

Section 4.2. The Trustee shall pay from the Survivor's Trust the debts and expenses of administration of the Settlor's estate, expenses of the Settlor's last illness, funeral and burial, and any estate or income taxes that may be due by reason of the Settlor's Death, unless the Trustee in the Trustee's absolute discretion determine that other adequate provisions have been made for the payment of such expenses and taxes

Specific Gifts

Section 4.3. The Trustee shall make the following gifts, free of trust:

(a) The Trustee shall distribute, free of trust, the sum of Fifty Thousand Dollars (\$50,000.00) to each of the then living grandchildren of the Settlor, currently consisting of JENNIFER RIGHETTI, MICHAEL RIGHETTI, MEGHAN RIGHETTI, JONATHAN RIGHETTI, SOMMER FERNANDES and ANTHONY WOODRING. If any of Settlor's grandchildren are then deceased leaving issue surviving, that grandchild's gift shall be distributed, free of trust, to the issue of the grandchild, by right of representation.

(b) In the event that Settlor and his wife, DALE CHECKET-RAGGIO, are still married and living together in the residence owned by Settlor at the time of Settlor's death, the Trustee shall distribute, free of trust, all right, title and interest in the personal residence to Settlor's wife, DALE CHECKET-RAGGIO. The Settlor and his wife are currently residing in Settlor's personal residence commonly known as 1855 Webster Way, Reno, Nevada;

(c) The Trustee shall distribute, free of trust, the Settlor's interest in any tangible personal property given by the Settlor in accordance with a written statement signed by the Settlor which specifically states that it is incorporated by reference into this Trust Agreement.

Principal of the Marital Deduction Trust

Section 4.4. The principal or Trust Estate of the Marital Trust shall consist of a pecuniary amount which will equal the maximum marital deduction allowable in determining the federal estate tax payable by reason of the Settlor's death, pursuant to Internal Revenue Code, Section 2056, as that Section is amended and effective on the date of the Settlor's death; provided, however, that in no event shall such amount exceed the amount necessary to eliminate federal estate tax on the Settlor's estate, after taking into account all other available deductions and the federal credit against estate tax. The Trustee shall satisfy this amount in cash or in kind or partly in each with assets eligible for the marital deduction. Assets allocated in kind shall be deemed to satisfy this amount on the basis of their values at the date or dates of allocation to the Marital Trust.

Qualification for Marital Deduction

Section 4.5. It is the intentions of the Settlor to have the Marital Trust qualify for the marital deduction under Section 2056 of the Internal Revenue Code and the regulations pertaining to that section or any corresponding or substitute provisions applicable to the Trust Estate. In no event shall the Trustee take any action or have any power that will impair the marital deduction, and all provisions regarding the Marital Deduction Trust shall be interpreted to conform to this primary objective.

Principal of the Credit Shelter Trust

Section 4.6. The principal or Trust Estate of the DALE CHECKET-RAGGIO Credit Shelter Trust shall consist of the balance of the Settlor's interest in the Trust Estate.

ARTICLE 5. ADMINISTRATION AND DISTRIBUTIONS FROM THE MARITAL TRUST

Distributions during Life of DALE CHECKET-RAGGIO

Section 5.1. During the life of DALE CHECKET-RAGGIO, the Trustee shall quarterly or at more frequent intervals, pay to or apply for the benefit of DALE CHECKET-RAGGIO all of the net income of the Trust. In addition, the Trustee shall pay to or apply for the benefit of DALE CHECKET-RAGGIO as much of the principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance of the DALE CHECKET-RAGGIO.

QTIP Election

Section 5.2. The Trustee is authorized, in the Trustee's sole discretion, to elect to have treated as qualified terminable interest property for the purpose of qualifying for the marital deduction allowable in determining the federal estate tax upon the Settlor's estate, any defined fraction or percentage or all, of the property comprising the Trust. In considering such an election, the Trustee may wish to consider DALE CHECKET-RAGGIO'S age and health, the sizes of the DALE CHECKET-RAGGIO and Settlor's respective estates, and a computation of the combined death taxes (or estimated death taxes on the estate of DALE CHECKET-RAGGIO) in the Settlor's estate, which may render such an election inappropriate in whole or in part. The decision of the Trustee with respect to the exercise of the election shall be final and conclusive upon all persons whose interests in the Settlor's estate are directly or indirectly affected thereby.

With respect to any portion or all of the Marital Trust which the Trustee shall have elected to have treated as qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code, the following provisions shall apply:

(a) Upon the death of the DALE CHECKET-RAGGIO, the Trustee shall pay to the legal representative of the DALE CHECKET-RAGGIO'S estate an amount certified in writing by said legal representative as constituting the increase, if any, in all estate, inheritance and similar death taxes, which shall be incurred by DALE CHECKET-RAGGIO'S estate by reason of the inclusion therein as part of the taxable estate of such qualified terminable interest property. Such payment shall be equal to the amount by which the total of such death taxes paid in DALE CHECKET-RAGGIO'S estate, exceeds the total of such death taxes which would have been payable if the value of such qualified terminable interest property had not been included in said estate. The Trustee shall not be under any duty to determine the propriety of any such sum or sums so certified by the legal representative of DALE CHECKET-RAGGIO'S estate or to see to the application thereof.

(b) Notwithstanding any other provision of this Trust Agreement, the Trustee shall not have any rights, duties, authorities, privileges, immunities, or powers with respect to such qualified terminable interest property if or to the extent that such would disqualify the same for the marital deduction.

Distribution on Death of DALE CHECKET-RAGGIO

Section 5.3. Upon the death of DALE CHECKET-RAGGIO, the entire remaining principal of the Trust shall be added to and augment THE WILLIAM AND DOROTHY RAGGIO CREDIT SHELTER TRUST created April 7, 1998, to be administered and disposed of in accordance with the terms and provisions of its Trust Agreement.

**ARTICLE 6. ADMINISTRATION AND
DISTRIBUTIONS FROM THE CREDIT SHELTER TRUST**

Distribution during Life of DALE CHECKET-RAGGIO

Section 6.1. During the life of DALE CHECKET-RAGGIO, the Trustee shall pay to or apply for the benefit of DALE CHECKET-RAGGIO as much of the net income and principal of the Credit Shelter Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance of DALE CHECKET-RAGGIO.

Distribution on death of DALE CHECKET-RAGGIO

Section 6.2. Upon the death of DALE CHECKET-RAGGIO, the Trustee shall divide the principal and all accumulated income of the DALE CHECKET-RAGGIO Credit Shelter Trust into as many equal shares as there are grandsons of DALE CHECKET-RAGGIO then living and grandsons of DALE CHECKET-RAGGIO then deceased leaving issue then living. The Trustee shall allocate one such equal share to each living grandson of DALE CHECKET-RAGGIO, and one such equal share to each group composed of the living issue of a deceased grandson of DALE CHECKET-RAGGIO. The shares allocated to the grandsons of DALE CHECKET-RAGGIO shall be distributed or held in trust as provided by Section 6.3 of this Trust Agreement. The shares allocated to the grandsons of DALE CHECKET-RAGGIO then deceased living issue then living shall be distributed or held in trust as provided by Section 6.4 of this Trust Agreement. In the event no grandchild or issue of DALE CHECKET-RAGGIO is then living, the Trustee shall distribute, free of trust, the principal and all accumulated income of the Trust Estate to the then living heirs of DALE CHECKET-RAGGIO.

Administration and Distributions to DALE CHECKET-RAGGIO'S Grandsons

Section 6.3. Each share allocated to DALE CHECKET-RAGGIO'S grandsons shall be retained and administered by the Trustee, in separate trusts, as follows:

(a) The Trustee shall pay to or apply for the benefit of the grandson as much of the net income and principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, maintenance and education of the grandson. Any income not distributed shall be accumulated and added to principal.

(b) When such grandson attains the age of thirty (30) years, the Trustee shall distribute to the child, free of trust, the undistributed balance of the grandson's Trust.

(c) If a grandson of DALE CHECKET-RAGGIO dies before becoming entitled to receive distribution of the grandson's entire Trust, the undistributed balance of that grandson's Trust shall be distributed as provided in Section 6.4 below.

Administration and Distributions to Issue of Grandson

Section 6.4. Each share allocated to a group composed of the living issue of a grandson of DALE CHECKET-RAGGIO shall be distributed or retained in trust as follows:

(a) If, at the time the Trust Estate is divided into separate shares, no child of the deceased grandson is living who is under age twenty-one, the share shall thereupon be distributed, free of trust, to the deceased grandson's issue then living, by right of representation.

(b) If a child of the deceased grandchild is then living who is under age twenty-one, the share shall be retained by the Trustee as a separate trust for the benefit of the deceased grandson's living issue as a group, including those aged twenty-one or older. Each trust shall be held, administered and distributed as follows:

(i) The Trustee shall pay to or apply for the benefit of such issue, of whatever degree, living from time to time, including those whose ancestor or ancestors are still living, as much of the net income and principal of the Trust Estate as the Trustee, in the Trustee's discretion, shall deem necessary for their proper support, care, maintenance and education, after taking into consideration, to the extent the Trustee shall deem advisable, any other income or resources of such issue known to the Trustee. Any net income not distributed shall be accumulated and added to principal. In exercising the discretion granted by this subparagraph, the Trustee may pay more to or apply more for some beneficiaries than others and may make payments to or applications of benefits for one or more beneficiaries to the exclusion of others. Any payment or application of benefits pursuant to this subparagraph shall be charged against the Trust as a whole rather than against the ultimate distributive share of the beneficiary to whom or for whose benefit the payment is made.

(ii) The Trust shall terminate as soon as no child of the Settlor's deceased child is living who is under age twenty-one. Upon termination, the remaining balance of the Trust Estate shall be distributed, free of trust, to the then living issue of the Settlor's deceased child, by right of representation, or if there are none, to the Settlor's then living issue, by right of representation.

ARTICLE 7. SPENDTHRIFT TRUSTS

Section 7.1. Each trust created by this Trust Agreement shall be a spendthrift trust. No beneficiary of any trust established under this Trust Agreement shall have any right or power to sell, transfer, assign, pledge, mortgage, alienate or hypothecate his or her interest in the principal or income of the Trust Estate in any manner whatsoever. To the fullest extent of the law, the interest of each and every beneficiary shall not be subject to the claims of any of his or her creditors or liable to attachment, execution, bankruptcy proceedings, or any other legal process. The Trustee shall pay, disburse and distribute principal and income of the Trust Estate only in the manner provided for in this Trust Agreement, and not upon any attempted transfer or assignment, whether oral or written, neither of any beneficiary nor by operation of law.

ARTICLE 8. POWERS OF TRUSTEE

Section 8.1. In order to carry out the purposes of any trust or trusts established by this Trust Agreement, the Trustee, in addition to all other powers and discretions granted by this Trust Agreement or by law, shall have the following powers and discretions, subject to any limitations specified elsewhere in this Trust Agreement:

(a) To hold and exercise all of the powers and discretions enumerated in N.R.S. 163.265 to N.R.S. 163.410, inclusive, as such powers and discretions exist at the time of the execution of this Trust Agreement; and such powers and discretions are incorporated herein by reference with the same effect as if set forth verbatim. In the event any of such powers or discretions is inconsistent with any of the powers or discretions hereinafter set forth, the most liberal shall control to give the greatest latitude and discretion to the Trustee.

(b) To continue to hold all or any part of the Trust Estate in the form in which the same may be at the time of the receipt thereof by the Trustee, including, but without limitation, any shares of stock, uninvested cash, balances in banks, and property of any kind, whether marketable or otherwise, without any obligation to convert the same, and without regard to the limitations imposed by law on the investment of trust funds, and without liability for any loss of principal or income by reason of such retention.

(c) To invest and reinvest in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, common and preferred stocks, cash or other funds though unproductive, and any other securities, obligations or property, including gaming investments, without regard to limitations imposed by law on the investment of trust funds, and without liability for any loss of principal or income by reason thereof.

(d) To exercise, respecting securities held in the Trust Estate, all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and to pay assessments and other sums deemed by the Trustee necessary for the protection of the Trust; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscription or conversion rights; to accept and retain as an investment any securities or other property received through the exercise of any of the foregoing powers, regardless of any limitations elsewhere in this Trust Agreement relative to investments by the Trustee.

(e) To hold securities or other trust property in the name of the Trustee as Trustee under this Trust Agreement or in the Trustee's own name or in the name of a nominee or unregistered in a condition where ownership will pass by delivery.

(f) With respect to any business interest that may become a part of the Trust Estate, whether organized as a sole proprietorship, partnership, limited liability company, corporation, or other form of entity, and on such terms, for the time and in the manner that the Trustee may deem advisable, to retain and continue to operate any such business solely at the risk of the Trust Estate and without liability on the part of the Trustee for any losses resulting therefrom; to dissolve, liquidate, or sell at the time and on the terms that the Trustee may deem advisable; to incorporate the business and hold the stock as an asset of the Trust Estate; to use the general assets of the Trust Estate for the purposes of the business; to borrow money for business purposes and pledge or encumber the assets of the business or the other assets of the Trust Estate to secure the loan; to employ such officers, managers, employees, or agents as they may deem advisable in the management of such business, including electing directors, officers, or employees of any Trustee to take part in the management of the business as directors or officers; to receive compensation for the services of the Trustee, to be paid from the business or from the other assets or from both as the Trustee in the Trustee's discretion may deem advisable; and the Trustee shall have such additional powers as may now or hereafter be conferred on the Trustee by law or as may be necessary to enable the Trustee to administer the assets of the Trust Estate in accordance with the provisions of this Trust Agreement, subject to any limitations that may be provided for herein.

(g) It is the Settlor's desire that the Trustee continue to hold any corporate securities received by the Trustee or subsequently added to the Trust Estate, subject to the need to sell or dispose of the same for tax or other reasons. The foregoing is not intended to prohibit the sale of any or all such securities should the Trustee deem that course advisable, but, as the Settlor believes that it will be beneficial to the Trust Estate to retain such securities, the Trustee authorizes their retention at the risk of the Trust Estate.

(h) To sell for cash or on deferred payments at public or private sale, to exchange, and to convey any property of the Trust Estate without approval of any court.

(i) On any division of the Trust Estate into separate shares or trusts, to apportion and allocate the assets of the Trust Estate in cash or in kind, or partly in cash and partly in kind, even if shares be composed differently, or in undivided interests, in the manner deemed advisable in the discretion of the Trustee. After any division of the Trust Estate, the Trustee may make joint investments with funds from some or all of the several shares or trusts, but the Trustee shall keep separate accounts for each share or trust.

(j) To abandon any trust asset or interest therein at the discretion of the Trustee.

(k) To grant an option involving disposition of a trust asset and to take an option for the acquisition of any asset by the Trust Estate.

(l) To lease any real or personal property of the Trust Estate for any purpose for terms within or extending beyond the duration of the Trust.

(m) To manage, control, improve, and repair real and personal property belonging to the Trust Estate.

(n) To partition, divide, subdivide, assign, develop, and improve any trust property; to make or obtain the vacation of plats and adjust boundaries or to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate land or easement to public use with or without consideration.

(o) To make ordinary and extraordinary repairs and alterations in buildings or other trust property, to demolish any improvements, to raze party walls or buildings, and to erect new party walls or buildings as the Trustee deems advisable.

(p) To borrow money for any trust purpose from any person, firm, or corporation on the terms and conditions deemed proper by the Trustee and to obligate the Trust for repayment; to encumber the Trust or any of its property by mortgage, deed of trust, pledge, or otherwise, using procedures to consummate the transaction deemed advisable by the Trustee; to replace, renew, and extend any encumbrance and to pay loans or other obligations of the Trust deemed advisable by the Trustee; and to guarantee obligations of any person, firm or corporation, including any beneficiary of the trust, on the terms and conditions deemed proper by the Trustee.

(q) To loan or advance the Trustee's own funds for any trust purposes to the Trust; the loans or advances shall bear interest at prime rate existing at the date of advancement until repayment and shall, together with interest, constitute a first lien on the entire Trust Estate until repayment.

(r) To enter into oil, gas, and other mineral leases on terms deemed advisable by the Trustee, and to enter into any pooling, unitization, repressurization, community, and other types of agreements relating to the exploration, development, operation, and conservation of mineral properties; to drill, mine, and otherwise operate for the development of oil, gas, and other minerals, to contract for the installation and operation of absorption and repressuring plants, and to install and maintain pipelines.

(s) To procure and carry at the expense of the Trust insurance of the kinds, forms, and amounts deemed advisable by the Trustee to protect the Trust and the Trustee against any hazard.

(t) To enforce any deed of trust, mortgage, or pledge held by the Trust and to purchase at any sale thereunder any property subject to any such hypothecation.

(u) To extend the time of payment of any note or other obligation held in the Trust Estate, including accrued or future interest, in the discretion of the Trustee.

(v) To compromise, submit to arbitration, release with or without consideration, or otherwise adjust claims in favor of or against the Trust Estate.

(w) To commence or defend at the expense of the Trust any litigation affecting the Trust or any property of the Trust Estate deemed advisable by the Trustee.

(x) To pay all taxes, assessments, compensation of the Trustee, and other expenses incurred in the collection, care, administration, and protection of the Trust Estate.

(y) To employ any attorney, investment advisor, accountant, broker, tax specialist, or any other agent deemed necessary in the discretion of the Trustee; and to pay from the Trust Estate the reasonable compensation for all services performed by any of them.

The Trustee shall not be liable for any neglect, omission, or wrongdoing of any attorney, investment adviser, accountant, broker, tax specialist, or any other agent employed by the Trustee, provided that reasonable care was exercised in his selection.

The Trustee may consult with the attorney employed by the Trustee concerning any question which may arise with regard to the duties of the Trustee and, provided reasonable care has been exercised in selecting him, the opinion of the attorney shall be full and complete authorization and protection in regard to any action taken or suffered by the Trustee in good faith and in accordance with the opinion of the attorney.

(z) To terminate in the discretion of the Trustee any separate trust held for an income beneficiary if the fair market value of the separate trust at any time becomes less than \$50,000.00 and, regardless of the age of the income beneficiary, to distribute the principal and any accrued or undistributed net income to the income beneficiary, or to his guardian, conservator, or other fiduciary.

(aa) On any partial or final distribution of the Trust Estate, to apportion and allocate the assets of the Trust Estate in cash or in kind, or partly in cash and partly in kind, even if shares be composed differently, or in undivided interests in the manner deemed advisable in the discretion of the Trustee and to sell any property deemed necessary by the Trustee to make the distribution.

(bb) To do all the acts, to take all the proceedings, and to exercise all the rights, powers, and privileges which an absolute owner of the same property would have, subject always to the discharge of their fiduciary obligations; the enumeration of certain powers in this Trust Estate shall not limit the general or implied powers of the Trustee; the Trustee shall have all additional powers that may now or hereafter be conferred on them by law or that may be necessary to enable the Trustee to administer the assets of the Trust Estate in accordance with the provisions of this Trust Agreement, subject to any limitations specified in this Trust Agreement.

(cc) To determine in their discretion what is income and what is principal of each trust established under this Trust Agreement, and what expenses, costs, taxes and charges of all kinds shall be charged against income and what shall be charged against principal, and the decision of the Trustee with respect to these matters shall be conclusive upon all parties.

(dd) To make any and all elections permitted by any tax law applicable to any trust, the Settlor or the estate of the Settlor, and no adjustments shall be necessary among the bene-

ficiaries of any trust as to the income or principal of such trust as a result of the exercise of such election.

(ee) Any power, duty or discretionary authority granted to the Trustee shall be void to the extent that its exercise shall cause the estate of the Settlor to lose all or any part of the tax benefit afforded by the marital deduction under the Federal estate tax law.

ARTICLE 9. DEFINITIONS

Education

Section 9.1. As used in this Trust Agreement the term "education" shall be given a narrow interpretation, and may include, but is not limited to, the following activities, as long as they are pursued to advantage by the beneficiary:

- (a) Education at public or private elementary or high schools (including boarding schools);
- (b) Undergraduate, graduate and post-graduate programs of study in any and all fields whatsoever, whether of a professional character or otherwise, at properly accredited public or private universities, colleges or other institutions of higher learning; and
- (c) Vocational training or specialized formal or informal training in music, the stage, the handicrafts or the arts, as long as such training, in the opinion of the trustee, is reasonably likely to lead to a livelihood or a career, and is being pursued to advantage by the beneficiary.

The term "education" may also include, in the trustee's discretion, reasonable living and travel expenses relating to the above activities. The activities described in this paragraph may be carried on either in the United States or elsewhere.

Incapacity

Section 9.2. For all purposes under this Trust Agreement, the incapacity of any person shall be deemed to exist if:

- (a) A court of competent jurisdiction determines that such person is legally incapacitated to act in his or her own behalf; or
- (b) At least two licensed physicians render duly executed, witnessed and acknowledged written certificates, each certifying that such physician has examined such person and has concluded that, by reason of accident, physical or mental illness or other similar cause, such person had become incapacitated to act rationally and prudently in financial matters.

ARTICLE 10. CONSTRUCTION OF TRUSTS

Trusts to Include Shares or Partial Shares

Section 10.1 The terms "trust", "trusts", or "any trust provided for in this Trust Agreement" shall, as used in this Trust Agreement, unless otherwise specifically provided herein, refer to each of the separate trusts provided for, respectively, and the trust estate of each trust. There need be no physical segregation or division of the various trusts except as segregation or division may be required by termination of any of the trusts, but the Trustee shall keep separate accounts for the different individual interests.

Law For Construction of Trusts

Section 10.2. The trusts provided for in this Trust Agreement have been accepted by the Trustee in the State of Nevada, will be administered by the Trustee in Nevada, and its validity, construction, and all rights under it shall be governed by the laws of the State of Nevada.

Disclaimers

Section 10.3. Any beneficiary of any trust created by this Trust Agreement, or such beneficiary's personal representative without the necessity of any prior court authorization or approval of any kind, may disclaim all or any part or portion of his or her benefits or powers, including benefits or powers which qualify for the marital deduction, by written instrument delivered to the Trustee or in any other manner recognized by law.

Contest

Section 10.4. If any beneficiary of any trust created by this Trust Agreement contests or attacks in any manner, directly or indirectly, this Trust Agreement or any of its provisions or that certain Option to Purchase dated April 13, 2007, by and between THE WILLIAM AND DOROTHY RAGGIO FAMILY CREDIT SHELTER TRUST CREATED APRIL 7, 1998, and THE DALE CHECKET-RAGGIO TRUST DATED OCTOBER 6, 2003, as amended, or any of its provisions, any share or interest of any trust created by this Trust Agreement given to the contesting beneficiary is revoked and shall be disposed of in the same manner provided herein as if the contesting beneficiary had predeceased the Settlor without issue.

Singular and Plural Interchangeable

Section 10.5. As used in this Trust Agreement, any words used in the singular shall be construed as if used in the plural, and vice versa, if necessary, to properly carry out the Settlor's intent.

Perpetuities Saving Clause

Section 10.6. Unless sooner terminated in accordance with other provisions of this Trust Agreement, each trust created under this Trust Agreement shall terminate twenty-one years after the death of the last survivor of the group composed of the Settlor and the issue of the Settlor living at the death of Settlor. All principal and undistributed income of any trust so terminated shall be distributed to the then income beneficiaries of that trust as are then entitled or authorized in the Trustee's discretion to receive income payments.

Payments to Minors or Incompetents

Section 10.7. The Trustee, in the Trustee's absolute discretion, may make payments to a minor or other beneficiary under disability by making payments to the guardian of his person with whom he resides, or the Trustee in the Trustee's absolute discretion may make payments directly to a minor if in the Trustee's judgment he or she is of sufficient age and maturity to spend the money properly.

Disinheritance

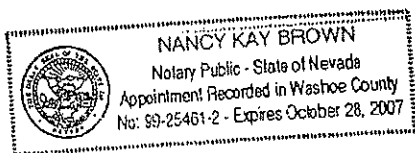
Section 10.8. Except as provided in this Trust Agreement, the Settlor has intentionally and with full knowledge omitted to provide for any heirs or next of kin which he may have.

EXECUTED this April 13, 2007, at Reno, Nevada.


WILLIAM J. RAGGIO, Settlor and
Trustee

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this April 13, 2007, WILLIAM J. RAGGIO acknowledged to me that he executed the foregoing Trust Agreement.




Nancy Kay Brown
Notary Public

WILLIAM J. RAGGIO FAMILY TRUST
DATED APRIL 13, 2007
SCHEDULE "A"

1. Real Estate

- a. Residence: 1855 Webster Way, Reno NV 89509

2. Financial Institutions

- a. Wachovia Acct. No.
- b. US Bank Acct. No.
- c. Nevada State Bank Acct. No.
- d. Gabelli Associates Fund LP, ID

Becky Squire

From: eflex@washoecourts.us
Sent: Monday, December 09, 2013 11:01 AM
To: Becky Squire
Subject: NEF: TRUST: WILLIAM J. RAGGIO FAMILY TRUST (PR): Other Prob/Trust 200K or more: PR13-00624

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: PR13-00624
Judge: PROB. COMM. WRIGHT
<="" td="">
Official File Stamp: 12-09-2013:10:27:44
Clerk Accepted: 12-09-2013:10:55:53
Court: Second Judicial District Court - State of Nevada
Case Title: TRUST: WILLIAM J. RAGGIO FAMILY TRUST (PR)
Document(s) Submitted: Other Prob/Trust 200K or more
- **Continuation
- **Continuation
Filed By: MICHAEL ROSENAUER, ESQ.

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MICHAEL ROSENAUER, ESQ. for TRACY CHEW

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

WILLIAM J. RAGGIO FAMILY TRUST

“Exhibit 2”

“Exhibit 2”

MICHAEL A. ROSENAUER, LTD.

ATTORNEYS AT LAW
510 WEST PLUMB LANE, SUITE A
RENO, NEVADA 89509
TELEPHONE (775) 324-3303
FAX (775) 324-6615

MICHAEL A. ROSENAUER
mar@mrosenauer.com

F. McCLURE WALLACE
fmw@mrosenauer.com

September 18, 2013

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

Re: Raggio Trusts

Dear Mr. Echeverria:

I represent Bill Raggio's daughter, Tracy Chew. We respectfully request copies of the following documents:

1. Form 706 regarding Bill Raggio's Estate.¹
2. Tax returns for the Marital Trust since Bill's demise.
3. Tax returns for the Credit Shelter Bill's demise.
4. If the 2007 Trust is being treated as an "Administrative Trust", then kindly provide us with the income tax returns filed or to be filed for it.

In addition, we have the following inquiries:

- A. Has the Trustee or Personal Representative received any correspondence from the IRS regarding an audit of the Form 706, any Forms 709 filed for Bill Raggio, or any closing letters?
- B. When and how was the Marital Trust funded and from what source(s)? What was the value of the assets at date of funding? If not yet funded, when do you expect that to occur?
- C. When and how was the Credit Shelter Trust funded and from what source(s)? What was the value of the assets at date of funding? If not yet funded, when do you expect that to occur?
- D. We request copies of the required annual accountings for the Marital Trust as well as any partial accountings, reports, etc.
- E. We request copies of the required annual accountings for the Credit Shelter Trust as

¹ I am not requesting the attachments at this time but am requesting the associated schedules, if any.

well as any partial accountings, reports etc.

As a matter of housekeeping, I do not see the reimbursement for the Raggio Survivor's Trust's income taxes attributable to the annuity of which your client received 1/3. I understand from Bart Mowry, Esq. that a portion of the income tax was payable by the trust because there was insufficient cash available for distribution to the residuary beneficiaries that would have caused such beneficiaries to each report 1/3rd of all of the income attributable to such annuity. . The issue arose in relation to the distribution which was completed some time ago. Can you please either send me a copy of the remittance or transmit Mrs. Raggio's share to the Trustee. The sum due is approximately \$2,000.00. If it is your client's intention not to repatriate any cash to the Survivor's Trust for her share, we would appreciate so knowing. I can represent to you that both my client and Mr. Mowry's client Leslie Raggio Righetti repatriated their share some months ago.

Please be advised that following receipt of the documents requested, my client and I may have other questions or request additional documents. Thank you in advance for your attention to this matter as well as that of your Client's.

Very truly yours,

MICHAEL A. ROSENAUER, LTD.

A handwritten signature in dark ink, appearing to read "Michael A. Rosenauer", with a stylized flourish at the end.

Michael A. Rosenauer, Esq.

MICHAEL A. ROSENAUER, LTD.

ATTORNEYS AT LAW
510 WEST PLUMB LANE, SUITE A
RENO, NEVADA 89509
TELEPHONE (775) 324-3303
FAX (775) 324-6616

MICHAEL A. ROSENAUER
mar@mrosenauer.com

F. McCLURE WALLACE
frmw@mrosenauer.com

October 8, 2013

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

Re: Raggio Trusts

Dear Mr. Echeverria:

I refer to my correspondence of September 17, 2013, a copy of which is enclosed. I have heard nothing in the intervening time. All of the returns and accountings are perfunctory and should be easily obtainable. The inquiries are equally routine as these tasks are all time sensitive and the timeline for completion has long since passed. I must also point out that the \$2,000.00 due was paid on behalf of Mrs. Raggio many months ago. Equity and fairness would tend to support prompt payment.

I therefore again reassert my requests and look forward to receiving the information soon. Should you have any further questions, please do not hesitate to contact me.

Very truly yours,

MICHAEL A. ROSENAUER, LTD.



Michael A. Rosenauer, Esq.

C: Tracy Chew
G. Barton Mowry, Esq.

Becky Squire

From: eflex@washoecourts.us
Sent: Monday, December 09, 2013 11:01 AM
To: Becky Squire
Subject: NEF: TRUST: WILLIAM J. RAGGIO FAMILY TRUST (PR): Other Prob/Trust 200K or more: PR13-00624

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: PR13-00624
Judge: PROB. COMM. WRIGHT
<="" td="">
Official File Stamp: 12-09-2013:10:27:44
Clerk Accepted: 12-09-2013:10:55:53
Court: Second Judicial District Court - State of Nevada
Case Title: TRUST: WILLIAM J. RAGGIO FAMILY TRUST (PR)
Document(s) Submitted: Other Prob/Trust 200K or more
- **Continuation
- **Continuation
Filed By: MICHAEL ROSENAUER, ESQ.

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MICHAEL ROSENAUER, ESQ. for TRACY CHEW

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

WILLIAM J. RAGGIO FAMILY TRUST

EXHIBIT "3"

EXHIBIT "3"

1 CODE: 2550
2 MICHAEL A. ROSENAUER, ESQ.
3 NSB# 2782
4 MICHAEL A. ROSENAUER, LTD.
5 510 WEST PLUMB LANE, SUITE A
6 RENO, NV 89509
7 (775) 324-3303

8 Attorney for Tracy Chew, Beneficiary of The William
9 J. Raggio Family Trust
10
11
12

13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE
16
17

18 * * * * *

19 IN THE MATTER OF THE
20 WILLIAM J. RAGGIO FAMILY
21 TRUST
22 _____/

CASE NO.: PR13-00624

DEPT. NO.: PR

HEARING DATE: January 2, 2014

23 **NOTICE OF HEARING**

24 NOTICE IS HEREBY GIVEN that on the 2nd day of January, 2014 at 8:15 a.m.,
25 in the Probate Department of the Washoe County Courthouse, Reno, NV, the Court will
26 consider the Petition to Interplead Inter Vivos Trust, Request for Review of
27 Beneficiary's Request for an Accounting and Documents. The matter will be approved.....
28

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1 without further hearing unless an objection is filed. You do not need to appear unless
2 you wish to object.

3
4 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm
5 that the preceding document does not contain the Social Security number of any person.

6 DATED this 9th day of December, 2013.

7
8 MICHAEL A. ROSENAUER, LTD.

9 
10 Michael A. Rosenauer, Esq.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Michael A. Rosenauer, Ltd., 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

NOTICE OF HEARING

on the party(s) set forth below by:

 X Electronic mailing via the Second Judicial District Court CM/ECF System to all those persons listed on the ECF Confirmation Sheet.

 X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, Certified Return/Receipt following ordinary business practices.

addressed as follows:

Barton G. Mowry, Esq.
Maupin, Cox & LeGoy
P.O. Box 30000
Reno, NV 89520

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

DATED this 9th day of December, 2013.



REBECCA SQUIRE

Becky Squire

From: eflex@washoecourts.us
Sent: Monday, December 09, 2013 12:18 PM
To: Becky Squire
Subject: NEF: TRUST: WILLIAM J. RAGGIO FAMILY TRUST (PR): Notice of Hearing: PR13-00624

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: PR13-00624
Judge: PROB. COMM. WRIGHT
<="" td="">
Official File Stamp: 12-09-2013:11:51:37
Clerk Accepted: 12-09-2013:12:10:35
Court: Second Judicial District Court - State of Nevada
Case Title: TRUST: WILLIAM J. RAGGIO FAMILY TRUST (PR)
Document(s) Submitted: Notice of Hearing
Filed By: MICHAEL ROSENAUER, ESQ.

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MICHAEL ROSENAUER, ESQ. for TRACY CHEW

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

WILLIAM J. RAGGIO FAMILY TRUST

FILED
Electronically
PR13-00624
2017-07-19 04:31:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6204644 : tbritton

EXHIBIT "4"

EXHIBIT "4"

3880

Soraya Tabibi Aguirre, Esq.

Nevada Bar No. 9918

Timothy J. Riley, Esq.

Nevada Bar No. 10428

HOLLAND & HART LLP

5441 Kietzke Lane, Second Floor

Reno, Nevada 89511

Tel: (775) 327-3000

Fax: (775) 786-6179

STAguirre@hollandhart.comTRiley@hollandhart.com

John Echeverria, Esq.

Nevada Bar No. 200

Echeverria Law Office

9432 Double R Boulevard

Reno, NV 89521

Tel: (775) 786-4800

je@eloreno.com*Attorneys for Dale Raggio*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY TRUST.Case No. PR13-00624
Dept. No. PR

**RESPONSE AND OBJECTION TO
PETITION TO INTERPLEAD INTER VIVOS TRUST,
REQUEST FOR REVIEW OF BENEFICIARY'S REQUEST
FOR AN ACCOUNTING AND DOCUMENTS**

DALE RAGGIO, as Trustee (the "Trustee") of the WILLIAM J. RAGGIO FAMILY TRUST, dated April 13, 2007 (the "Trust"), by and through her counsel, Holland & Hart LLP, hereby files this Response and Objection to the Petition to Interplead Inter Vivos Trust, Request for Review of Beneficiary's Request for an Accounting and Documents.

///

///

1 This Response and Objection is based upon the attached points, the papers and pleadings
2 on file in this matter, and any oral argument that the Court may allow.

3 DATED this 31st day of December, 2013.

4 HOLLAND & HART LLP

5 
6 Soraya Tabibi Aguirre, Esq.
7 Timothy J. Riley, Esq.

8 ECHEVERRIA LAW OFFICE

9 
10 John Echeverria, Esq.

11 Attorneys for Dale Raggio

12 **TRUSTEE'S POSITION**

13 Petitioner Tracy Chew has filed a Petition as the daughter of William J. Raggio and
14 purported beneficiary of the Trust. Petitioner is requesting that the Court: (1) confirm Dale
15 Raggio as the Successor Trustee of the Trust; (2) take jurisdiction over the Trust *in rem*
16 consistently with N.R.S. 164.015(2); and (3) direct the Successor Trustee and her agents to
17 provide the statutorily required information and other requested documents within a fixed period
18 of time. The Petitioner's requests should be denied. First, Petitioner lacks standing to bring her
19 Petition because she is not a trustee, settlor or beneficiary of the Trust. Second, even if Petitioner
20 is found to have standing, she would still not be entitled to an accounting because she is not a
21 beneficiary of the Trust. Finally, although not raised in her Petition, the Trustee suspects that
22 Petitioner will attempt to argue that she is entitled to an accounting as a Co-Trustee of the
23 WILLIAM AND DOROTHY RAGGIO CREDIT SHELTER TRUST created April 17, 1998
24 ("W&D Trust"), which is entitled to any remaining principal of the Marital Trust¹ that was
25 formed under the Trust. Petitioner, however, did not bring her Petition in this capacity nor has
26 she provided any evidence that she is a co-trustee of the W&D Trust. Even if the Petitioner is
27 the Co-Trustee of the W&D Trust, Petitioner still lacks standing because she brought her Petition

28 ¹ As explained later the Trust divided into two separate trusts, a marital deduction trust (hereinafter the "Marital Trust") and a credit shelter trust (hereinafter the "Credit Trust").

1 individually, and not as a Co-Trustee of the W&D Trust. In addition, the W&D Trust is only
2 entitled to the remaining principal, if any, in the Marital Trust after the Trustee's death.
3 Petitioner, if a Co-Trustee of the W&D Trust is only entitled to receive is an accounting of the
4 Marital Trust, and not the Credit Trust. Therefore, and as explained more thoroughly below,
5 Petitioner's attempt to have this Court obtain jurisdiction over the Trust and order a full
6 accounting is without merit and should be denied.

7 **A. PETITIONER LACKS STANDING TO BRING HER PETITION**

8 Petitioner has brought her Petition pursuant to NRS 164.010 and NRS 164.015, which
9 permits certain individuals to seek court supervision of a trust with respect to its property,
10 internal affairs and distribution. *See Petition, at ¶8.* NRS 164.010, however, only authorizes
11 the trustee, settlor or beneficiary of a trust to petition the court to confirm the appointment of the
12 trustee, and thereafter to take jurisdiction of the trust. As that statute states:

13 1. *Upon petition of any person appointed as trustee* of an
14 *express trust by any written instrument other than a will, or upon*
15 *petition of a settlor or beneficiary of the trust*, the district court of
16 the county in which the trustee resides or conducts business, or in
17 which the trust has been domiciled, shall consider the application to
confirm the appointment of the trustee and specify the manner in
which the trustee must qualify. Thereafter the court has jurisdiction
of the trust as a proceeding in rem.

18 Therefore, unless a person is the trustee, settlor or beneficiary of a trust, they cannot bring a
19 petition under NRS 164.010.

20 As explained above, Petitioner purports to bring her Petition as the "daughter of William
21 J. Raggio and a Beneficiary of the Trust." *See Petition, 1:20-21.* But Petitioner has not provided
22 any evidence that she is a beneficiary of the Trust. Nor is she the settlor or trustee of the Trust.
23 In fact, the only reference in the Trust to Petitioner is as the third successor trustee in the event
24 the other two successor trustees are unable or unwilling to serve. Therefore, because Petitioner
25 is not a trustee, settlor or beneficiary of the Trust, she has no standing to bring her Petition under
26 NRS 164.010 in an attempt to have this Court accept jurisdiction of the Trust.

27 ///

28 ///

1 Similarly, Petitioner's attempt to bring her Petition under NRS 164.015 also fails.
2 Although this statute allows an "interested person"² to bring a petition concerning the internal
3 affairs of a nontestamentary trust – as opposed to a beneficiary – the statute explains that such
4 Petition can only be brought: (1) in conjunction with a petition under NRS 164.010; or (2) after
5 the court has assumed jurisdiction. As NRS 164.015 states:

6
7 2. A petition under this section may be filed in conjunction
8 with a petition under NRS 164.010 or at any time after the court
has assumed jurisdiction under that section.

9 Thus, a Petition by an "interested person" under NRS 164.015 cannot be brought until a trustee,
10 settlor or beneficiary files a Petition under NRS 164.010, or after the Court assumes jurisdiction
11 of the Trust.

12 As explained above, Petitioner cannot bring her Petition in conjunction with a petition
13 under NRS 164.010 because she is not a trustee, settlor or beneficiary of the Trust. Therefore,
14 the only grounds upon which Petitioner, as an interested person, could bring her Petition is if the
15 Court has already assumed jurisdiction under NRS 164.010. But the Court has not yet assumed
16 jurisdiction. As a result, the Petition cannot be brought on that basis either. The net result is that
17 Petitioner has no standing to bring her Petition and the Court should not assume jurisdiction of
18 the Trust at this time.

19 **B. PETITIONER IS NOT ENTITLED TO AN ACCOUNTING BECAUSE SHE IS NOT A**
20 **BENEFICIARY**

21 Even if the Court finds that Petitioner has standing and accepts jurisdiction of the Trust,
22 Petitioner is still not entitled to an accounting. NRS 165.135 sets forth a trustee's obligations
23 with respect to providing an accounting. That statute declares that a trustee is only required to
24 furnish "each beneficiary" with an accounting. As that statute provides in relevant part:

25 **NRS 165.135 Accounts.**

26 1. The trustee of a nontestamentary trust shall furnish to *each*
27 *beneficiary* an account in accordance with the provisions of NRS
165.122 to 165.149, inclusive.

28 ² As the daughter of William J. Raggio, Petitioner is considered an interested person.

2. At a minimum, the trustee shall furnish an account to *each beneficiary* in accordance with the terms and conditions stated in the trust instrument. The cost of each account must be allocated to income and principal as provided in the trust instrument. (*Emphasis added*).

As previously explained, Petitioner has not provided any evidence that she is a beneficiary of the Trust. Because Petitioner is not identified as a beneficiary of the Trust, the Trustee has no obligation to provide her with an accounting. Therefore, even if Petitioner can bring her Petition under NRS 164.010 and .015, she would still not be entitled to an accounting.

C. THE MOST THAT PETITIONER WOULD BE ENTITLED TO RECEIVE IS AN ACCOUNTING RELATING TO THE MARITAL DEDUCTION TRUST.

After the settlor William Raggio died, the Trust was separated into the Credit Trust and the Marital Trust for the benefit of his spouse Dale Raggio. *See Trust, §4.1.* The Trust provides that after Dale Raggio's death, any remaining principal in the Marital Trust shall be distributed to the W&D Trust – which was formed separately from the present Trust. *See Trust, §5.3.* Although Petitioner did not raise this issue in her Petition, the Trustee suspects that Petitioner will attempt to argue that she is a co-trustee of the W&D Trust, and that her co-trustee status entitles her to an accounting. Any such argument, however, would fail for several reasons.

First, Petitioner has not provided the Trustee with any evidence that she is a co-trustee of W&D Trust. Unless Petitioner can show she is the co-trustee of that trust, Petitioner is not entitled to any accounting.

Second, in the event Petitioner shows she is co-trustee of the W&D Trust, such a position only undermines her ability to bring the present Petition. This is because Petitioner brought her Petition individually; not in her alleged capacity as a co-trustee of the W&D Trust. Because the W&D Trust is the entity that would be entitled to any remaining principal from the Marital Trust after the Trustee's death, only the trustee of that separate credit trust could bring the Petition. But Petitioner has brought her Petition in her individual capacity. As a result, the Petition would still need to be dismissed for lack of standing.

///

1 In fact, even if Petitioner is able to establish she is a co-trustee of the W&D Trust, and
2 brings her Petition in her capacity as a co-trustee, she still would not be entitled to everything she
3 seeks. The W&D Trust is only entitled to the remaining principal of the Marital Deduction
4 Trust. *See Trust*, §5.3. As a result, the most that such a co-trustee would be entitled to receive
5 is an accounting of: (i) the Trust *before* it was separated into the Credit Trust and Marital Trust,
6 and (ii) an accounting of the Marital Trust. That is it. As a result, Petitioner's request for
7 detailed information regarding the Credit Trust should be rejected.

8 For instance, the co-trustee of the W&D Trust would not be entitled to "Forms 1041
9 Federal income tax returns" for the Trust, or the Credit Shelter portion of the Trust since William
10 Raggio's demise.³ *See Petition*, at ¶16(d). Nor would such a co-trustee be entitled to an
11 "itemization of all distributions to all beneficiaries and expenses incurred as part of the
12 administration" of the Trust, Marital Trust and Credit Trust. *See Petition*, at ¶16(c). And
13 because the Trustee has already provided Petitioner with Forms 706 regarding William Raggio
14 Estate, Petitioner's request for Forms 706 and an "itemization of the manner, source and value of
15 the property funding" both the Marital and Credit Shelter portions of the Trust is now moot.⁴ *See*
16 *Petition*, at ¶16(a) and (b). Given the foregoing, if the Court allows Petitioner to maintain her
17 Petition despite her lack of standing, the Court should only order the Trustee to provide an
18 accounting as it relates to the Marital Trust.

19 Finally, in the event the Court does order Trustee to provide Petitioner with an
20 accounting related to the Marital Trust, then the Trustee respectfully requests that she have until
21 May 15, 2014 to provide such accounting. Notably, the Marital Trust was not formed and
22 funded until July 2013. As a result, an extension to provide an accounting until May 15 would
23 still be well within one year of when that Trust was formed. Second, because the next several
24 months are an extremely busy time for accountants, the Trustee's accountant needs time after tax
25 season to prepare the accounting. Accordingly, the Trustee requests that if an accounting is
26

27 ³ Note, however, that Petitioner was provided a copy of Form 1041 for the Trust as a courtesy on December 27,
2013.

28 ⁴ Petitioner was provided a copy of Form 706 and the related IRS closing letter on December 23, 2013.

ordered, that the deadline to provide such accounting be May 15, 2014.

CONCLUSION

Given the foregoing, the Petition should be dismissed for lack of standing. In the event the Court decides that Petitioner does have standing as a co-trustee of the W&D Trust, the Court should nevertheless limit the accounting to the Marital Trust and allow the Trustee until May 15, 2014 to provide such accounting.

Respectfully submitted this 31st day of December, 2013.

HOLLAND & HART LLP



Soraya Tabibi Aguirre, Esq.
Timothy J. Riley, Esq.

ECHEVERRIA LAW OFFICE



John Echeverria, Esq.

Attorneys for Dale Raggio

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31st day of December, 2013, a true and correct copy of the foregoing RESPONSE AND OBJECTION TO PETITION TO INTERPLEAD INTER VIVOS TRUST, REQUEST FOR REVIEW OF BENEFICIARY'S REQUEST FOR AN ACCOUNTING AND DOCUMENTS was deposited in the United States Mail, postage prepaid, first class delivery, addressed as follows:

Michael A. Rosenauer, Esq.
Michael A. Rosenauer, Ltd.
510 West Plumb Lane, Suite A
Reno, NV 89509

Barton G. Mowry, Esq.
Maupin, Cox & LeGoy
P.O. Box 30000
Reno, NV 89520


An employee of Holland & Hart LLP

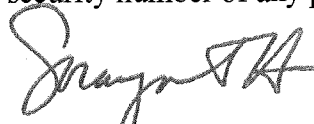
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding RESPONSE AND OBJECTION TO PETITION TO INTERPLEAD INTER VIVOS TRUST, REQUEST FOR REVIEW OF BENEFICIARY'S REQUEST FOR AN ACCOUNTING AND DOCUMENTS filed in District Court Case No. PR13-00624 does not contain the social security number of any person.

DATED this 31st day of December, 2013.



Soraya Tabibi Aguirre, Esq.
Nevada Bar No. 9918
Timothy J. Riley, Esq.
Nevada Bar No. 10428
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Tel: (775) 327-3000
Fax: (775) 786-6179
STAguirre@hollandhart.com
TRiley@hollandhart.com

Attorneys for Dale Raggio

FILED
Electronically
PR13-00624
2017-07-19 04:31:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6204644 : tbritton

EXHIBIT "5"

EXHIBIT "5"

1 CODE: 3665
2 MICHAEL A. ROSENAUER, ESQ.
3 NSB# 2782
4 ROSENAUER & WALLACE
5 510 WEST PLUMB LANE, SUITE A
6 RENO, NV 89509
7 (775) 324-3303

8 Attorney for Tracy Chew, Beneficiary of The William
9 J. Raggio Family Trust

10
11
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 * * * * *

17
18 IN THE MATTER OF THE CASE NO.: PR13-00624
19 WILLIAM J. RAGGIO FAMILY DEPT. NO.: PR
20 TRUST HEARING DATE N/A
21 _____/

22 **TRACY RAGGIO CHEW'S POINTS AND AUTHORITIES IN SUPPORT OF**
23 **REQUEST FOR AN ACCOUNTING AND SUPPORTIVE DOCUMENTS**

24 Tracy Chew, daughter of William J. Raggio and a Beneficiary of the William J.
25 Raggio Family Trust, previously filed a Petition requesting two forms of relief. This
26 initial form of relief is the confirmation of Dale Raggio as Trustee. It is included only to
27 fulfill the statutory requirements. The second form of relief focuses upon the accounting
28 issues. Ms. Chew believes that this is where the Parties respective views diverge.

There are fundamentally three Trusts at issue. The first is the William J. Raggio
Family Trust. The second and third are those trusts which split the Raggio Family Trust

1 into the Marital Trust and the Credit Shelter Trust. Because the Credit Shelter Trust is
2 designed to maximize the Federal Estate Tax exemption available in 2012 of \$5,100,000,
3 it is fully funded to that point (after considering other gifts made by the decedent to his
4 grandchildren and others) and is therefore, the vastly larger of the two. The important
5 consideration is that while Dale Raggio is the Beneficiary of both, there are differing
6 remainder beneficiaries on both trusts. Upon Dale Raggio's demise, the Credit Shelter
7 Trust is distributed to Dale Raggio's grandchildren in Australia while the Marital Trust is
8 distributed to Tracy Chew and her sister Leslie Raggio Righetti both of whom live in the
9 Reno area. As is explained below, this fact is critical to the request.

10
11 1. The Contingent Beneficiaries are entitled to an Accounting of the Raggio
Family Trust.

12 NRS Chapter 165 focuses upon Trustee's Accountings. More particularly, NRS
13 165.137(1) directs each Trustee to provide an accounting to each Beneficiary and
14 remainder Beneficiary. Accountings are not required more often than once each year.
15 NRS 165.137(1)(a) and (b). Attached hereto as Exhibit 1 is a copy of the Raggio Family
16 Trust. Article 4 delineates Dale Raggio as the Beneficiary and sets out the division into
17 two trusts upon the first of William or Dale's demise. Sections 5.3 and 6.3 of Exhibit
18 "1" set forth the aforementioned remainder gifts. As such, during the time after William
19 Raggio's death and before the trust split, Tracy Chew was a remainder beneficiary. She is
20 therefore entitled to an accounting prior to its split.

21
22 While William Raggio died on February 3, 2012, the split did not occur until July,
23 2013. The assets being split are valued as of the date of the decedent's demise. Despite
24 this valuation, they were actually divided much later in time, thusly giving rise to the
25 ability to retrospectively determine which assets had incrementally increased in value
26
27

1 and which had not. This potential inequity is partially brought about because a
2 substantial amount of the assets owned by the Raggio Family Trust were securities. In
3 the 17 months under discussion, the S & P 500 rose from 1365.68 to 1606.28, an increase
4 in value of approximately 18%. A graphical analysis of the data is attached hereto as
5 Exhibit "2". An accounting is therefore appropriate at this point so as to insure that one
6 trust was not favored over the other. The Trustee owes a duty to all Remainder
7 Beneficiaries at this point and it would be inappropriate to allocate all of the assets which
8 increased in value between the decedent's date of death and the date of the allocation to
9 one trust over the other. NRS 164.720 addresses the Trustee's fundamental duty of
10 impartiality to all beneficiaries. Specifically, it provides as follows;
11

12
13 **NRS 164.720 Trust having two or more**
14 **beneficiaries; impartial administration of trust or**
15 **estate.**

16 1. If a trust has two or more beneficiaries, the
17 trustee shall act impartially in investing and
18 managing the trust property, taking into account any
19 differing interests of the beneficiaries. (emphasis in
20 original)

21 Without knowing the nature and value of the assets from the Family Trust used to
22 fund the Credit Shelter Trust and Marital Trust on the date of funding, one is incapable of
23 being able to ascertain if the Trustee has acted impartially and treated both classes of
24 remainder beneficiaries equally. Recall that one set of remainder beneficiaries are the
25 Trustee's grandchildren (who had no familial relationship to the principal Grantor,
26 William J. Raggio and who, on information and belief, only met them twice during his
27 lifetime) while the others are her step daughters who became such very late in the life of
28 their deceased father Bill Raggio. In addition, the Remainder Beneficiaries are entitled to

1 insure that the Trust assets in the 17 months before the split were used consistently with
2 the terms of the trust, namely to support the Beneficiary's support, care and maintenance.

3 Finally, one will expect the Trustee to argue that the Raggio Family Trust was
4 terminated upon Bill Raggio's demise. Because the Marital and Credit Trusts
5 immediately arose at that time, no further accounting or documentation as to the
6 allocation of assets to the two trusts is appropriate. However, while the Trust and tax
7 codes may embrace this interpretation, the reality is that this is impossible. The Trustee
8 of the Family Trust creates the intervening "gap" period to marshal and appraise the
9 decedent's assets, file the required tax returns, complete the computations necessary to
10 properly determine the allocations, and make the actual transfers. As such, the language
11 is reflective of that which is assumed by the tax code but has nothing to do with reality. It
12 is an accounting of the income and expenses within this "gap" period to which the
13 Petitioner asserts she is entitled.

14
15 2. In this context, Contingent Beneficiaries are entitled to an accounting of both
16 the Credit Shelter Trust as well as the Marital Trust.

17 It is undisputed that Petitioner is a Remainder Beneficiary of the Marital Trust.
18 The straightforward application of NRS 165.137 and the date from which time is
19 measured-the date of the decedent's death or the date the Marital Trust was funded-
20 demonstrate that the accounting is overdue. This assertion and conclusion is not expected
21 to be at issue.

22 However the argument will focus upon whether there is an entitlement to an
23 accounting for the Credit Shelter Trust. An accounting is appropriate because one must
24 understand what expenses are being allocated to each trust what assets were used to fund
25 each trust and their values, and what distributions have been made to the income
26 beneficiary who is also the Trustee/Grandmother. The conditions for spending down
27 the trusts are identical in that both are for health, maintenance and welfare. See Exhibit 1,

1 Sections 5.1 and 6.1. Dale Raggio is the sole Trustee of both Trusts. The key point is that
2 in this set of facts, the remainder beneficiaries of the Credit Shelter Trust are Dale
3 Raggio's Australian grandsons while the remainder beneficiaries of the Marital Trust are
4 William Raggio's two daughters. Dale and Bill Raggio married very late in life at a time
5 when Bill Raggio's daughters were mature adults themselves with grown children of
6 their own. As such, the critical analysis rests upon the fair and impartial funding of both
7 Trusts, the spend down of both Trusts, not one to the exclusion of the other when there
8 are competing interests. If the duty is the same to both groups of beneficiaries, and the
9 terms of the trusts are substantially identical, then the Trustee has a fundamental and
10 paramount obligation as Trustee to treat each trust, and hence each group of Remainder
11 Beneficiaries, fairly and impartially. NRS 164.720 *supra*. A transparent view of both
12 Trusts is necessary to insure that one is not being spent down to the detriment of the
13 other. This Court must insure that the Trustee's family is not being favored over the
14 decedent's issue.

15 To rule against the requested relief brings up many future problems. It would be
16 significantly different if the remaindermen of the Credit Shelter Trust lived nearby.
17 However, they live in Australia. As such, the remaindermen of the Marital Trust would
18 have to pursue these assets literally half way around the world in the event that the two
19 trusts were not spent down as provided by law. Moreover, if one is required to wait until
20 Dale Raggio's demise to learn of a breach of duty of impartiality, or even a possible
21 defalcation, the money is not only spent, but also literally 10,000 miles away. This is
22 unfair to the Marital Trust Remaindermen and another reason why the Marital Trust
23 Remaindermen should be provided periodic accountings. If Dale Raggio's argument that
24 no accounting is appropriate becomes persuasive, the other remainder beneficiaries have
25 no means by which to police the manner in which the trust funds are invested and
26 dissipated. Moreover, if the Marital Trust is being inappropriately spent down, the

1 beneficiaries of the Credit Shelter Trust will have no motivation to object as their assets
2 are not the assets being inappropriately dissipated. The upshot is that without an
3 accounting, the Marital Trust Remaindermen are unable to insure that they are being
4 treated fairly by the Trustee. This Trustee is not an independent trustee but the biological
5 grandmother of one group of beneficiaries and has no familial relationship or love and
6 affection for the other group of beneficiaries.

7 We cannot lose sight of from where these assets came. These assets originated
8 with William and Dorothy Raggio, the Petitioner's parents. They established a Trust
9 which ultimately poured the vast majority of its assets into the Raggio Family Trust.
10 Petitioner was a Remainder Beneficiary of this earlier Trust. In fact, some of the assets
11 which are divided into the two trusts because of Bill Raggio's demise are easily traceable
12 back to not only Bill and Dorothy Raggio, but to Dorothy Raggio's mother. If these
13 assets are allocated to the Credit Shelter Trust, they are shipped to Australia. The fact that
14 the Raggio Family Trust is now being divided to take advantage of the tax regulations
15 should not be held above the desire to be fair and transparent to everybody involved. This
16 request is not one seeking to pick a fight or in some other manner become a malcontent.
17 If the accountings are made public, the Petitioner's personal information is equally as
18 disseminated. Dale Raggio's personal information is not more important than a
19 remainder Beneficiary's. In addition, if the Trustee is managing the Trusts
20 appropriately, she has nothing to hide.

21 In sum, this request is all about insuring that the assets and expenses being
22 allocated to these Trusts are being properly administered and utilized in a manner which
23 is not only consistent with the terms of the trusts, but also with due regard, impartiality
24 and fairness to the interests of all Remaindermen. To date, there has been absolutely no
25 accounting to any remainder beneficiary. This is, in-and-of-itself, inconsistent with the
26 obligations to act as a Trustee and should be an indicator as to how the Trustee views the

1 Remaindermen. This request is one that assures fairness and transparency to all
2 involved.

3 The Trustee should be directed to render an accounting of the Raggio Family
4 Trust from Bill Raggio's demise through the date the Marital Trust and Credit Shelter
5 Trust were funded. It is equally appropriate for this Court to direct that the Trustee render
6 annual accountings for the Marital Trust and the Credit Shelter trust on an annual basis.¹

7 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm
8 that the preceding document does not contain the Social Security number of any person.
9

10 Dated this 17th day of January, 2014
11

12 ROSENAUER & WALLACE

13 
14 Michael A. Rosenauer, Esq.
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26 ¹ Petitioner has no problem giving the CPA preparing the accounting until May 15, 2014 in which to
27 provide an accounting of the relevant period(s).

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of, Rosenauer & Wallace,
510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the
foregoing document(s) described as follows:

**TRACY RAGGIO CHEW'S POINTS AND AUTHORITIES IN SUPPORT OF
REQUEST FOR AN ACCOUNTING AND SUPPORTIVE DOCUMENTS**

on the party(s) set forth below by:

 X Electronic mailing via the Second Judicial District
Court CM/ECF System to all those persons listed
on the ECF Confirmation Sheet.

 X Placing an original or true copy thereof in a sealed
envelope placed for collection and mailing in the
United States Mail, at Reno, Nevada, postage paid,
Certified Return/Receipt following ordinary
business practices.

addressed as follows:

Barton G. Mowry, Esq.
Maupin, Cox & LeGoy
P.O. Box 30000
Reno, NV 89520

Soraya Aguirre
Holland & Hart
5441 Kietzke Lane, Second Floor
Reno, NV 89511

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

DATED this 17th day of January, 2014.



REBECCA SQUIRE

In the Matter of the William J. Raggio Family Trust
Case No. PR13-00624
Dept.: PR

[illegible]

FILED

Electronically

01-17-2014:11:16:50 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4264897

Exhibit “1”

EXHIBIT “1”

THE WILLIAM J. RAGGIO FAMILY
TRUST AGREEMENT

WILLIAM J. RAGGIO of the City of Reno, County of Washoe, Nevada, declares that:

ARTICLE 1. DECLARATIONS

Conveyance to Trustee

Section 1.1. He has conveyed and transferred, without consideration, to the Trustee named in this Trust Agreement all the property described in an inventory hereto attached, marked Schedule "A".

Name of Trust

Section 1.2. This Trust shall be known as THE WILLIAM J. RAGGIO FAMILY TRUST.

Identity of Trust Estate

Section 1.3. All property described in Schedule "A", and any other property that may hereafter be transferred or conveyed to and received by the Trustee to be held pursuant to the terms of this instrument, is herein called the "Trust Estate" and shall be held, administered, and distributed by the Trustee as provided in this Trust Agreement.

Identity of Settlor

Section 1.4. As used in this Trust Agreement, the term "Settlor" shall refer to WILLIAM J. RAGGIO.

Family

Section 1.5. Settlor is married to DALE CHECKET-RAGGIO, and has two adult children from a prior marriage now living; namely, LESLIE ANN RIGHETTI and TRACY LYNN WOODRING.

Designation of Trustee

Section 1.6. WILLIAM J. RAGGIO is hereby designated as Trustee of all trusts created by or to be created pursuant to this Trust Agreement. Should WILLIAM J. RAGGIO become unable, for whatever reason, to serve as Trustee, Settlor's wife, DALE CHECKET-RAGGIO, is designated to act as successor Trustee. Should she become unable, for whatever reason, to serve as Trustee, Settlor's daughters, LESLIE ANN RIGHETTI and TRACY LYNN WOODRING, in the order indicated, are

designated to act as successor sole Trustee; provided however, that JOHN P. SANDE, III is designated to act as successor Sole Trustee of the DALE CHECKET-RAGGIO CREDIT SHELTER TRUST. The term "Trustee" as used in this Trust Agreement shall refer to any of those acting as Trustee, whether serving as a sole trustee or collectively as Co-Trustees. No bond or other security shall be required of any of those named as Trustee, notwithstanding any provisions of law to the contrary.

Additions to Trust

Section 1.7. The Settlor may, from time to time, add other property acceptable to the Trustee to the Trust Estate by conveyance, assignment, transfer or Will. Such property, when received and accepted by the Trustee, shall become part of the Trust Estate and be subject to all the terms and provisions of this Trust Agreement.

Revocation or Modification of Trust

Section 1.8. The Settlor reserves the right at any time, or from time to time, without any consent of any person and without notice to any person other than the Trustee, to revoke or modify any trust created by this Trust Agreement in whole or in part, to change the beneficiaries hereof, or to withdraw the whole or any part of the Trust Estate by filing notice of such revocation, modification, change or withdrawal with the Trustee, provided, however, that this section shall not apply to any trust which has become irrevocable and not subject to amendment.

ARTICLE 2. DISTRIBUTIONS DURING LIFE OF SETTLOR

Net Income to Settlor

Section 2.1. During the life of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor as much of the net income of the Trust Estate as is requested from time to time by the Settlor.

Distributions of Principal

Section 2.2. The Settlor may, at any time and from time to time, withdraw such amounts, up to the whole thereof, from the principal of the Trust Estate as such Settlor may, at the time of any such withdrawal, designate in a written notice served on the Trustee.

Incapacity of Settlor

Section 2.3. If, at any time, the Settlor has become incapacitated, as determined pursuant to the definition of "incapacity" set forth in Section 9.2 of this Trust Agreement, the Trustee shall apply for the benefit of the Settlor such amounts of the net income and principal as are necessary in the Trustee's absolute discretion, for the proper health, support and maintenance of the Settlor in accordance with his accustomed manner of living, until the Settlor is again able to manage his own affairs, as determined solely by the Trustee.

**ARTICLE 3. DISTRIBUTION ON THE DEATH OF SETTLOR
IF SETTLOR SURVIVES DALE CHECKET-RAGGIO**

Distribution on Death of Settlor

Section 3.1. Upon the death of Settlor, if Settlor survives DALE CHECKET-RAGGIO, the entire Trust Estate, including any additions made to the Trust by reason of the Settlor's Death, such as from Settlor's Will or life insurance policies on the Settlor's life, after making the payments and distributions provided by Sections 3.2 and 3.3, below, shall be added to and augment THE WILLIAM AND DOROTHY RAGGIO CREDIT SHELTER TRUST created April 7, 1998, to be administered and disposed of in accordance with the terms and provisions of its Trust Agreement.

Payment of Debts, Expenses and Taxes

Section 3.2. The Trustee shall pay from the Survivor's Trust the debts and expenses of administration of the Settlor's estate, expenses of the Settlor's last illness, funeral and burial, and any estate or income taxes that may be due by reason of the Settlor's Death, unless the Trustee in the Trustee's absolute discretion determine that other adequate provisions have been made for the payment of such expenses and taxes.

Specific Gifts

Section 3.3. The Trustee shall make the following gifts, free of trust:

(a) The Trustee shall distribute, free of trust, the sum of Fifty Thousand Dollars (\$50,000.00) to each of the then living grandchildren of the Settlor, currently consisting of JENNIFER RIGHETTI, MICHAEL RIGHETTI, MEGHAN RIGHETTI, JONATHAN RIGHETTI, SOMMER FERNANDES and ANTHONY WOODRING. If any of Settlor's grandchildren are then deceased leaving issue surviving, that grandchild's gift shall be distributed, free of trust, to the issue of the grandchild, by right of representation.

(b) The Trustee shall distribute, free of trust, the Settlor's interest in any tangible personal property given by the Settlor in accordance with a written statement signed by the Settlor which specifically states that it is incorporated by reference into this Trust Agreement.

**ARTICLE 4. DISTRIBUTION ON THE DEATH OF SETTLOR
IF DALE CHECKET-RAGGIO SURVIVES SETTLOR**

Creation of Two Trusts

Section 4.1. Upon the death of Settlor, if DALE CHECKET-RAGGIO survives Settlor, the Trustee, after making the distributions provided by Sections 4.2 and 4.3, below, shall divide the entire Trust Estate, including any additions made to the Trust by reason of the Settlor's Death, such as from Settlor's Will or life insurance policies on the Settlor's life, into two separate trusts known as the "Marital Deduction Trust" and the "DALE CHECKET-RAGGIO Credit Shelter Trust." Both trusts shall become at that time irrevocable and not subject to amendment. The Marital Deduction Trust and the DALE CHECKET-RAGGIO Credit Shelter Trust shall be administered and distributed as hereinafter provided in Articles 5 and 6, respectively.

Payment of Debts, Expenses and Taxes

Section 4.2. The Trustee shall pay from the Survivor's Trust the debts and expenses of administration of the Settlor's estate, expenses of the Settlor's last illness, funeral and burial, and any estate or income taxes that may be due by reason of the Settlor's Death, unless the Trustee in the Trustee's absolute discretion determine that other adequate provisions have been made for the payment of such expenses and taxes

Specific Gifts

Section 4.3. The Trustee shall make the following gifts, free of trust:

(a) The Trustee shall distribute, free of trust, the sum of Fifty Thousand Dollars (\$50,000.00) to each of the then living grandchildren of the Settlor, currently consisting of JENNIFER RIGHETTI, MICHAEL RIGHETTI, MEGHAN RIGHETTI, JONATHAN RIGHETTI, SOMMER FERNANDES and ANTHONY WOODRING. If any of Settlor's grandchildren are then deceased leaving issue surviving, that grandchild's gift shall be distributed, free of trust, to the issue of the grandchild, by right of representation.

(b) In the event that Settlor and his wife, DALE CHECKET-RAGGIO, are still married and living together in the residence owned by Settlor at the time of Settlor's death, the Trustee shall distribute, free of trust, all right, title and interest in the personal residence to Settlor's wife, DALE CHECKET-RAGGIO. The Settlor and his wife are currently residing in Settlor's personal residence commonly known as 1855 Webster Way, Reno, Nevada;

(c) The Trustee shall distribute, free of trust, the Settlor's interest in any tangible personal property given by the Settlor in accordance with a written statement signed by the Settlor which specifically states that it is incorporated by reference into this Trust Agreement.

Principal of the Marital Deduction Trust

Section 4.4. The principal or Trust Estate of the Marital Trust shall consist of a pecuniary amount which will equal the maximum marital deduction allowable in determining the federal estate tax payable by reason of the Settlor's death, pursuant to Internal Revenue Code, Section 2056, as that Section is amended and effective on the date of the Settlor's death; provided, however, that in no event shall such amount exceed the amount necessary to eliminate federal estate tax on the Settlor's estate, after taking into account all other available deductions and the federal credit against estate tax. The Trustee shall satisfy this amount in cash or in kind or partly in each with assets eligible for the marital deduction. Assets allocated in kind shall be deemed to satisfy this amount on the basis of their values at the date or dates of allocation to the Marital Trust.

Qualification for Marital Deduction

Section 4.5. It is the intentions of the Settlor to have the Marital Trust qualify for the marital deduction under Section 2056 of the Internal Revenue Code and the regulations pertaining to that section or any corresponding or substitute provisions applicable to the Trust Estate. In no event shall the Trustee take any action or have any power that will impair the marital deduction, and all provisions regarding the Marital Deduction Trust shall be interpreted to conform to this primary objective.

Principal of the Credit Shelter Trust

Section 4.6. The principal or Trust Estate of the DALE CHECKET-RAGGIO Credit Shelter Trust shall consist of the balance of the Settlor's interest in the Trust Estate.

ARTICLE 5. ADMINISTRATION AND DISTRIBUTIONS FROM THE MARITAL TRUST

Distributions during Life of DALE CHECKET-RAGGIO

Section 5.1. During the life of DALE CHECKET-RAGGIO, the Trustee shall quarterly or at more frequent intervals, pay to or apply for the benefit of DALE CHECKET-RAGGIO all of the net income of the Trust. In addition, the Trustee shall pay to or apply for the benefit of DALE CHECKET-RAGGIO as much of the principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance of the DALE CHECKET-RAGGIO.

QTIP Election

Section 5.2. The Trustee is authorized, in the Trustee's sole discretion, to elect to have treated as qualified terminable interest property for the purpose of qualifying for the marital deduction allowable in determining the federal estate tax upon the Settlor's estate, any defined fraction or percentage or all, of the property comprising the Trust. In considering such an election, the Trustee may wish to consider DALE CHECKET-RAGGIO'S age and health, the sizes of the DALE CHECKET-RAGGIO and Settlor's respective estates, and a computation of the combined death taxes (or estimated death taxes on the estate of DALE CHECKET-RAGGIO) in the Settlor's estate, which may render such an election inappropriate in whole or in part. The decision of the Trustee with respect to the exercise of the election shall be final and conclusive upon all persons whose interests in the Settlor's estate are directly or indirectly affected thereby.

With respect to any portion or all of the Marital Trust which the Trustee shall have elected to have treated as qualified terminable interest property under Section 2056(b)(7) of the Internal Revenue Code, the following provisions shall apply:

(a) Upon the death of the DALE CHECKET-RAGGIO, the Trustee shall pay to the legal representative of the DALE CHECKET-RAGGIO'S estate an amount certified in writing by said legal representative as constituting the increase, if any, in all estate, inheritance and similar death taxes, which shall be incurred by DALE CHECKET-RAGGIO'S estate by reason of the inclusion therein as part of the taxable estate of such qualified terminable interest property. Such payment shall be equal to the amount by which the total of such death taxes paid in DALE CHECKET-RAGGIO'S estate, exceeds the total of such death taxes which would have been payable if the value of such qualified terminable interest property had not been included in said estate. The Trustee shall not be under any duty to determine the propriety of any such sum or sums so certified by the legal representative of DALE CHECKET-RAGGIO'S estate or to see to the application thereof.

(b) Notwithstanding any other provision of this Trust Agreement, the Trustee shall not have any rights, duties, authorities, privileges, immunities, or powers with respect to such qualified terminable interest property if or to the extent that such would disqualify the same for the marital deduction.

Distribution on Death of DALE CHECKET-RAGGIO

Section 5.3. Upon the death of DALE CHECKET-RAGGIO, the entire remaining principal of the Trust shall be added to and augment THE WILLIAM AND DOROTHY RAGGIO CREDIT SHELTER TRUST created April 7, 1998, to be administered and disposed of in accordance with the terms and provisions of its Trust Agreement.

ARTICLE 6. ADMINISTRATION AND DISTRIBUTIONS FROM THE CREDIT SHELTER TRUST

Distribution during Life of DALE CHECKET-RAGGIO

Section 6.1. During the life of DALE CHECKET-RAGGIO, the Trustee shall pay to or apply for the benefit of DALE CHECKET-RAGGIO as much of the net income and principal of the Credit Shelter Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, and maintenance of DALE CHECKET-RAGGIO.

Distribution on death of DALE CHECKET-RAGGIO

Section 6.2. Upon the death of DALE CHECKET-RAGGIO, the Trustee shall divide the principal and all accumulated income of the DALE CHECKET-RAGGIO Credit Shelter Trust into as many equal shares as there are grandsons of DALE CHECKET-RAGGIO then living and grandsons of DALE CHECKET-RAGGIO then deceased leaving issue then living. The Trustee shall allocate one such equal share to each living grandson of DALE CHECKET-RAGGIO, and one such equal share to each group composed of the living issue of a deceased grandson of DALE CHECKET-RAGGIO. The shares allocated to the grandsons of DALE CHECKET-RAGGIO shall be distributed or held in trust as provided by Section 6.3 of this Trust Agreement. The shares allocated to the grandsons of DALE CHECKET-RAGGIO then deceased living issue then living shall be distributed or held in trust as provided by Section 6.4 of this Trust Agreement. In the event no grandchild or issue of DALE CHECKET-RAGGIO is then living, the Trustee shall distribute, free of trust, the principal and all accumulated income of the Trust Estate to the then living heirs of DALE CHECKET-RAGGIO.

Administration and Distributions to DALE CHECKET-RAGGIO'S Grandsons

Section 6.3. Each share allocated to DALE CHECKET-RAGGIO'S grandsons shall be retained and administered by the Trustee, in separate trusts, as follows:

(a) The Trustee shall pay to or apply for the benefit of the grandson as much of the net income and principal of the Trust as the Trustee, in the Trustee's discretion, shall deem necessary for the proper support, care, maintenance and education of the grandson. Any income not distributed shall be accumulated and added to principal.

(b) When such grandson attains the age of thirty (30) years, the Trustee shall distribute to the child, free of trust, the undistributed balance of the grandson's Trust.

(c) If a grandson of DALE CHECKET-RAGGIO dies before becoming entitled to receive distribution of the grandson's entire Trust, the undistributed balance of that grandson's Trust shall be distributed as provided in Section 6.4 below.

Administration and Distributions to Issue of Grandson

Section 6.4. Each share allocated to a group composed of the living issue of a grandson of DALE CHECKET-RAGGIO shall be distributed or retained in trust as follows:

(a) If, at the time the Trust Estate is divided into separate shares, no child of the deceased grandson is living who is under age twenty-one, the share shall thereupon be distributed, free of trust, to the deceased grandson's issue then living, by right of representation.

(b) If a child of the deceased grandchild is then living who is under age twenty-one, the share shall be retained by the Trustee as a separate trust for the benefit of the deceased grandson's living issue as a group, including those aged twenty-one or older. Each trust shall be held, administered and distributed as follows:

(i) The Trustee shall pay to or apply for the benefit of such issue, of whatever degree, living from time to time, including those whose ancestor or ancestors are still living, as much of the net income and principal of the Trust Estate as the Trustee, in the Trustee's discretion, shall deem necessary for their proper support, care, maintenance and education, after taking into consideration, to the extent the Trustee shall deem advisable, any other income or resources of such issue known to the Trustee. Any net income not distributed shall be accumulated and added to principal. In exercising the discretion granted by this subparagraph, the Trustee may pay more to or apply more for some beneficiaries than others and may make payments to or applications of benefits for one or more beneficiaries to the exclusion of others. Any payment or application of benefits pursuant to this subparagraph shall be charged against the Trust as a whole rather than against the ultimate distributive share of the beneficiary to whom or for whose benefit the payment is made.

(ii) The Trust shall terminate as soon as no child of the Settlor's' deceased child is living who is under age twenty-one. Upon termination, the remaining balance of the Trust Estate shall be distributed, free of trust, to the then living issue of the Settlor's deceased child, by right of representation, or if there are none, to the Settlor's then living issue, by right of representation.

ARTICLE 7. SPENDTHRIFT TRUSTS

Section 7.1. Each trust created by this Trust Agreement shall be a spendthrift trust. No beneficiary of any trust established under this Trust Agreement shall have any right or power to sell, transfer, assign, pledge, mortgage, alienate or hypothecate his or her interest in the principal or income of the Trust Estate in any manner whatsoever. To the fullest extent of the law, the interest of each and every beneficiary shall not be subject to the claims of any of his or her creditors or liable to attachment, execution, bankruptcy proceedings, or any other legal process. The Trustee shall pay, disburse and distribute principal and income of the Trust Estate only in the manner provided for in this Trust Agreement, and not upon any attempted transfer or assignment, whether oral or written, neither of any beneficiary nor by operation of law.

ARTICLE 8. POWERS OF TRUSTEE

Section 8.1. In order to carry out the purposes of any trust or trusts established by this Trust Agreement, the Trustee, in addition to all other powers and discretions granted by this Trust Agreement or by law, shall have the following powers and discretions, subject to any limitations specified elsewhere in this Trust Agreement:

(a) To hold and exercise all of the powers and discretions enumerated in N.R.S. 163.265 to N.R.S. 163.410, inclusive, as such powers and discretions exist at the time of the execution of this Trust Agreement; and such powers and discretions are incorporated herein by reference with the same effect as if set forth verbatim. In the event any of such powers or discretions is inconsistent with any of the powers or discretions hereinafter set forth, the most liberal shall control to give the greatest latitude and discretion to the Trustee.

(b) To continue to hold all or any part of the Trust Estate in the form in which the same may be at the time of the receipt thereof by the Trustee, including, but without limitation, any shares of stock, uninvested cash, balances in banks, and property of any kind, whether marketable or otherwise, without any obligation to convert the same, and without regard to the limitations imposed by law on the investment of trust funds, and without liability for any loss of principal or income by reason of such retention.

(c) To invest and reinvest in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, common and preferred stocks, cash or other funds though unproductive, and any other securities, obligations or property, including gaming investments, without regard to limitations imposed by law on the investment of trust funds, and without liability for any loss of principal or income by reason thereof.

(d) To exercise, respecting securities held in the Trust Estate, all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and to pay assessments and other sums deemed by the Trustee necessary for the protection of the Trust; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the Trustee may deem advisable; to exercise or sell stock subscription or conversion rights; to accept and retain as an investment any securities or other property received through the exercise of any of the foregoing powers, regardless of any limitations elsewhere in this Trust Agreement relative to investments by the Trustee.

(e) To hold securities or other trust property in the name of the Trustee as Trustee under this Trust Agreement or in the Trustee's own name or in the name of a nominee or unregistered in a condition where ownership will pass by delivery.

(f) With respect to any business interest that may become a part of the Trust Estate, whether organized as a sole proprietorship, partnership, limited liability company, corporation, or other form of entity, and on such terms, for the time and in the manner that the Trustee may deem advisable, to retain and continue to operate any such business solely at the risk of the Trust Estate and without liability on the part of the Trustee for any losses resulting therefrom; to dissolve, liquidate, or sell at the time and on the terms that the Trustee may deem advisable; to incorporate the business and hold the stock as an asset of the Trust Estate; to use the general assets of the Trust Estate for the purposes of the business; to borrow money for business purposes and pledge or encumber the assets of the business or the other assets of the Trust Estate to secure the loan; to employ such officers, managers, employees, or agents as they may deem advisable in the management of such business, including electing directors, officers, or employees of any Trustee to take part in the management of the business as directors or officers; to receive compensation for the services of the Trustee, to be paid from the business or from the other assets or from both as the Trustee in the Trustee's discretion may deem advisable; and the Trustee shall have such additional powers as may now or hereafter be conferred on the Trustee by law or as may be necessary to enable the Trustee to administer the assets of the Trust Estate in accordance with the provisions of this Trust Agreement, subject to any limitations that may be provided for herein.

(g) It is the Settlor's desire that the Trustee continue to hold any corporate securities received by the Trustee or subsequently added to the Trust Estate, subject to the need to sell or dispose of the same for tax or other reasons. The foregoing is not intended to prohibit the sale of any or all such securities should the Trustee deem that course advisable, but, as the Settlor believes that it will be beneficial to the Trust Estate to retain such securities, the Trustee authorizes their retention at the risk of the Trust Estate.

(h) To sell for cash or on deferred payments at public or private sale, to exchange, and to convey any property of the Trust Estate without approval of any court.

(i) On any division of the Trust Estate into separate shares or trusts, to apportion and allocate the assets of the Trust Estate in cash or in kind, or partly in cash and partly in kind, even if shares be composed differently, or in undivided interests, in the manner deemed advisable in the discretion of the Trustee. After any division of the Trust Estate, the Trustee may make joint investments with funds from some or all of the several shares or trusts, but the Trustee shall keep separate accounts for each share or trust.

(j) To abandon any trust asset or interest therein at the discretion of the Trustee.

(k) To grant an option involving disposition of a trust asset and to take an option for the acquisition of any asset by the Trust Estate.

(l) To lease any real or personal property of the Trust Estate for any purpose for terms within or extending beyond the duration of the Trust.

(m) To manage, control, improve, and repair real and personal property belonging to the Trust Estate.

(n) To partition, divide, subdivide, assign, develop, and improve any trust property; to make or obtain the vacation of plats and adjust boundaries or to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate land or easement to public use with or without consideration.

(o) To make ordinary and extraordinary repairs and alterations in buildings or other trust property, to demolish any improvements, to raze party walls or buildings, and to erect new party walls or buildings as the Trustee deems advisable.

(p) To borrow money for any trust purpose from any person, firm, or corporation on the terms and conditions deemed proper by the Trustee and to obligate the Trust for repayment; to encumber the Trust or any of its property by mortgage, deed of trust, pledge, or otherwise, using procedures to consummate the transaction deemed advisable by the Trustee; to replace, renew, and extend any encumbrance and to pay loans or other obligations of the Trust deemed advisable by the Trustee; and to guarantee obligations of any person, firm or corporation, including any beneficiary of the trust, on the terms and conditions deemed proper by the Trustee.

(q) To loan or advance the Trustee's own funds for any trust purposes to the Trust; the loans or advances shall bear interest at prime rate existing at the date of advancement until repayment and shall, together with interest, constitute a first lien on the entire Trust Estate until repayment.

(r) To enter into oil, gas, and other mineral leases on terms deemed advisable by the Trustee, and to enter into any pooling, unitization, repressurization, community, and other types of agreements relating to the exploration, development, operation, and conservation of mineral properties; to drill, mine, and otherwise operate for the development of oil, gas, and other minerals, to contract for the installation and operation of absorption and repressuring plants, and to install and maintain pipelines.

(s) To procure and carry at the expense of the Trust insurance of the kinds, forms, and amounts deemed advisable by the Trustee to protect the Trust and the Trustee against any hazard.

(t) To enforce any deed of trust, mortgage, or pledge held by the Trust and to purchase at any sale thereunder any property subject to any such hypothecation.

(u) To extend the time of payment of any note or other obligation held in the Trust Estate, including accrued or future interest, in the discretion of the Trustee.

(v) To compromise, submit to arbitration, release with or without consideration, or otherwise adjust claims in favor of or against the Trust Estate.

(w) To commence or defend at the expense of the Trust any litigation affecting the Trust or any property of the Trust Estate deemed advisable by the Trustee.

(x) To pay all taxes, assessments, compensation of the Trustee, and other expenses incurred in the collection, care, administration, and protection of the Trust Estate.

(y) To employ any attorney, investment advisor, accountant, broker, tax specialist, or any other agent deemed necessary in the discretion of the Trustee; and to pay from the Trust Estate the reasonable compensation for all services performed by any of them.

The Trustee shall not be liable for any neglect, omission, or wrongdoing of any attorney, investment adviser, accountant, broker, tax specialist, or any other agent employed by the Trustee, provided that reasonable care was exercised in his selection.

The Trustee may consult with the attorney employed by the Trustee concerning any question which may arise with regard to the duties of the Trustee and, provided reasonable care has been exercised in selecting him, the opinion of the attorney shall be full and complete authorization and protection in regard to any action taken or suffered by the Trustee in good faith and in accordance with the opinion of the attorney.

(z) To terminate in the discretion of the Trustee any separate trust held for an income beneficiary if the fair market value of the separate trust at any time becomes less than \$50,000.00 and, regardless of the age of the income beneficiary, to distribute the principal and any accrued or undistributed net income to the income beneficiary, or to his guardian, conservator, or other fiduciary.

(aa) On any partial or final distribution of the Trust Estate, to apportion and allocate the assets of the Trust Estate in cash or in kind, or partly in cash and partly in kind, even if shares be composed differently, or in undivided interests in the manner deemed advisable in the discretion of the Trustee and to sell any property deemed necessary by the Trustee to make the distribution.

(bb) To do all the acts, to take all the proceedings, and to exercise all the rights, powers, and privileges which an absolute owner of the same property would have, subject always to the discharge of their fiduciary obligations; the enumeration of certain powers in this Trust Estate shall not limit the general or implied powers of the Trustee; the Trustee shall have all additional powers that may now or hereafter be conferred on them by law or that may be necessary to enable the Trustee to administer the assets of the Trust Estate in accordance with the provisions of this Trust Agreement, subject to any limitations specified in this Trust Agreement.

(cc) To determine in their discretion what is income and what is principal of each trust established under this Trust Agreement, and what expenses, costs, taxes and charges of all kinds shall be charged against income and what shall be charged against principal, and the decision of the Trustee with respect to these matters shall be conclusive upon all parties.

(dd) To make any and all elections permitted by any tax law applicable to any trust, the Settlor or the estate of the Settlor, and no adjustments shall be necessary among the bene-

ficiaries of any trust as to the income or principal of such trust as a result of the exercise of such election.

(ee) Any power, duty or discretionary authority granted to the Trustee shall be void to the extent that its exercise shall cause the estate of the Settlor to lose all or any part of the tax benefit afforded by the marital deduction under the Federal estate tax law.

ARTICLE 9. DEFINITIONS

Education

Section 9.1. As used in this Trust Agreement the term "education" shall be given a narrow interpretation, and may include, but is not limited to, the following activities, as long as they are pursued to advantage by the beneficiary:

(a) Education at public or private elementary or high schools (including boarding schools);

(b) Undergraduate, graduate and post-graduate programs of study in any and all fields whatsoever, whether of a professional character or otherwise, at properly accredited public or private universities, colleges or other institutions of higher learning; and

(c) Vocational training or specialized formal or informal training in music, the stage, the handicrafts or the arts, as long as such training, in the opinion of the trustee, is reasonably likely to lead to a livelihood or a career, and is being pursued to advantage by the beneficiary.

The term "education" may also include, in the trustee's discretion, reasonable living and travel expenses relating to the above activities. The activities described in this paragraph may be carried on either in the United States or elsewhere.

Incapacity

Section 9.2. For all purposes under this Trust Agreement, the incapacity of any person shall be deemed to exist if:

(a) A court of competent jurisdiction determines that such person is legally incapacitated to act in his or her own behalf; or

(b) At least two licensed physicians render duly executed, witnessed and acknowledged written certificates, each certifying that such physician has examined such person and has concluded that, by reason of accident, physical or mental illness or other similar cause, such person had become incapacitated to act rationally and prudently in financial matters.

ARTICLE 10. CONSTRUCTION OF TRUSTS

Trusts to Include Shares or Partial Shares

Section 10.1 The terms "trust", "trusts", or "any trust provided for in this Trust Agreement" shall, as used in this Trust Agreement, unless otherwise specifically provided herein, refer to each of the separate trusts provided for, respectively, and the trust estate of each trust. There need be no physical segregation or division of the various trusts except as segregation or division may be required by termination of any of the trusts, but the Trustee shall keep separate accounts for the different individual interests.

Law For Construction of Trusts

Section 10.2. The trusts provided for in this Trust Agreement have been accepted by the Trustee in the State of Nevada, will be administered by the Trustee in Nevada, and its validity, construction, and all rights under it shall be governed by the laws of the State of Nevada.

Disclaimers

Section 10.3. Any beneficiary of any trust created by this Trust Agreement, or such beneficiary's personal representative without the necessity of any prior court authorization or approval of any kind, may disclaim all or any part or portion of his or her benefits or powers, including benefits or powers which qualify for the marital deduction, by written instrument delivered to the Trustee or in any other manner recognized by law.

Contest

Section 10.4. If any beneficiary of any trust created by this Trust Agreement contests or attacks in any manner, directly or indirectly, this Trust Agreement or any of its provisions or that certain Option to Purchase dated April 13, 2007, by and between THE WILLIAM AND DOROTHY RAGGIO FAMILY CREDIT SHELTER TRUST CREATED APRIL 7, 1998, and THE DALE CHECKET-RAGGIO TRUST DATED OCTOBER 6, 2003, as amended, or any of its provisions, any share or interest of any trust created by this Trust Agreement given to the contesting beneficiary is revoked and shall be disposed of in the same manner provided herein as if the contesting beneficiary had predeceased the Settlor without issue.

Singular and Plural Interchangeable

Section 10.5. As used in this Trust Agreement, any words used in the singular shall be construed as if used in the plural, and vice versa, if necessary, to properly carry out the Settlor's intent.

Perpetuities Saving Clause

Section 10.6. Unless sooner terminated in accordance with other provisions of this Trust Agreement, each trust created under this Trust Agreement shall terminate twenty-one years after the death of the last survivor of the group composed of the Settlor and the issue of the Settlor living at the death of Settlor. All principal and undistributed income of any trust so terminated shall be distributed to the then income beneficiaries of that trust as are then entitled or authorized in the Trustee's discretion to receive income payments.

Payments to Minors or Incompetents

Section 10.7. The Trustee, in the Trustee's absolute discretion, may make payments to a minor or other beneficiary under disability by making payments to the guardian of his person with whom he resides, or the Trustee in the Trustee's absolute discretion may make payments directly to a minor if in the Trustee's judgment he or she is of sufficient age and maturity to spend the money properly.

Disinheritance

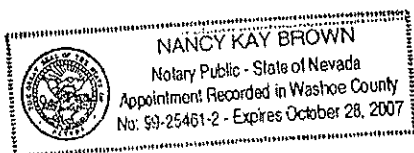
Section 10.8. Except as provided in this Trust Agreement, the Settlor has intentionally and with full knowledge omitted to provide for any heirs or next of kin which he may have.

EXECUTED this April 13, 2007, at Reno, Nevada.


WILLIAM J. RAGGIO, Settlor and
Trustee

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this April 13, 2007, WILLIAM J. RAGGIO acknowledged to me that he executed the foregoing Trust Agreement.




Nancy Kay Brown
Notary Public

WILLIAM J. RAGGIO FAMILY TRUST
DATED APRIL 13, 2007
SCHEDULE "A"

1. Real Estate

- a. Residence: 1855 Webster Way, Reno NV 89509

2. Financial Institutions

- a. Wachovia Acct. No. 7025-1403
- b. US Bank Acct. No. 153700160747
- c. Nevada State Bank Acct. No. 540045369
- d. Gabelli Associates Fund LP, ID No. 24256804, Holder ID No. 1000906804, Acct. ID No. 10009068

FILED

Electronically

01-17-2014:11:16:50 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4264897

Exhibit “2”

EXHIBIT “2”

Jan 16, 2014 09:37PM ET S&P 500 -0.31% NASDAQ -0.19%

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S&P 500: 1848.36 USD for Dec 2013 [Add to Watchlists](#)
[Overview](#) [Interactive Chart](#)

S&P 500 is at a current level of 1848.36, up from 1805.81 last month and up from 1426.19 one year ago. This is a change of 2.36% from last month and 29.60% from one year ago.

Category: Market Indexes

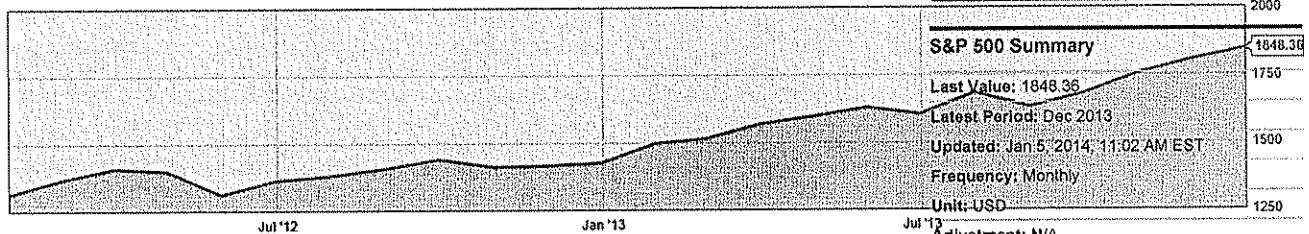
Report: S&P 500 Returns

Region: N/A

Source: Standard and Poor's

S&P 500 Chart
[View Full Chart](#)

Historical data for S&P 500 is limited to 2 years.
 Access full history with a YCharts Pro Gold membership. [Click here to learn more.](#)

[5d](#) [1m](#) [3m](#) [6m](#) [YTD](#) [1y](#) [5y](#) [10y](#) [Max](#)
[Pro Export Data](#) [Pro Save Image](#)


5/1 ARM mortgage rates in Reno, NV

AmeriSave NMLS # 1169 State Lic # 3679	APR: 3.070% Payment: \$718 Fees: \$1,995 Caps: 2/2/5	3.250% RATE Thu Jan 16
Sebanic Financial NMLS # 66247 State Lic # 3957	APR: 2.923% Payment: \$685 Fees: \$0 Caps: 5/2/5	2.875% RATE Thu Jan 16
ROUNDPOINT NMLS # 49936 State Lic # 3415	APR: 2.931% Payment: \$707 Fees: \$0 Caps: 5/2/5	3.125% RATE Thu Jan 16

[Criteria used](#) [SEE ALL RATES](#)

S&P 500 Summary

Last Value: 1848.36
Latest Period: Dec 2013
Updated: Jan 5, 2014, 11:02 AM EST
Frequency: Monthly
Unit: USD
Adjustment: N/A

Value Previously: 1805.81
Change From Previous: 2.36%
Value One Year Ago: 1426.19
Change From One Year Ago: 29.60%

S&P 500 Historical Data

 Date Range: [2/29/2012](#) to [7/15/2013](#) [Get Data](#)
[Pro Export Data](#)Viewing 1 of 1 [First](#) [Previous](#) [Next](#) [Last](#)
Data for this Date Range

June 30, 2013	1806.28	Sept. 30, 2012	1440.67
May 31, 2013	1630.74	Aug. 31, 2012	1406.58
April 30, 2013	1597.57	July 31, 2012	1379.32
March 31, 2013	1569.19	June 30, 2012	1362.16
Feb. 28, 2013	1514.68	May 31, 2012	1310.33
Jan. 31, 2013	1498.11	April 30, 2012	1397.91
Dec. 31, 2012	1426.19	March 31, 2012	1408.47
Nov. 30, 2012	1416.18	Feb. 29, 2012	1355.68
Oct. 31, 2012	1412.16		

Pro Platinum Data Verification

Need to see the raw data? Download the original data directly from our source.

[Pro Platinum Download Source File](#)
Related Indicators

Barclay Hedge Fund Index	1.66%
S&P 500 Monthly Return	2.36%
Tobin's Q	0.9847
VIX	12.53
Wilshire 5000 Price Index	19289.17
World Market Capitalization of Listed Companies	77.24% of GDP

Browse All Economic Indicators

Production Industrial Production, Nonfinancial Business Assets and Liabilities, Producer Prices, Retail and Services, Transportation

Labor Employment, Hours and Wages

Government Central Banks, Governance and Policy, Government Assets and Liabilities, Government Receipts and Outlays, Military

National Accounts Components of
GDP, GDP, International Transactions

Money, Banking, and Finance Business Lending
and Investment, Derivatives, Financial Services
Sector Assets and Liabilities, Foreign
Exchange, Interest Rates, Monetary

Households Consumer Prices, Household Assets
and Liabilities, Personal Income and Spending

Housing and Construction Construction, House
Prices, House Sales

Commodities Agriculture and
Livestock, Chemicals, Energy, Industrial
Metals, Precious Metals

**Markets, Economic Activity, and
Sentiment** Economic Activity Indexes, Market
Indexes, Sentiment Surveys

Development Environment, Infrastructure, Population

Countries Brazil, Canada, China, France, Germany, India, .
Kingdom, United States, View All

States California, Florida, Illinois, Massachusetts, New
Jersey, New York, Pennsylvania, Texas, View All

Sources ADP, BLS, EIA, ECB, Eurostat, Federal
Reserve, S&P, World Bank, View All

Reports ADP Employment, Case-
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△

EXHIBIT "6"

EXHIBIT "6"

4185

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE COMMISSIONER ROBIN WRIGHT

---o0o---

TRUST: WILLIAM J. RAGGIO) Case No. PR13-00624
FAMILY TRUST)
) Dept. No. 4
)
) TRANSCRIPT OF PROCEEDINGS
)
)

ORAL ARGUMENTS
JUNE 3, 2014, RENO, NEVADA

APPEARANCES:

For Tracy Chew: MICHAEL A. ROSENAUER
Attorney at Law
510 W. Plumb Lane, Suite A
Reno, Nevada 89509

For the Trustee HOLLAND & HART
Mrs. Dale Raggio: Attorneys at Law
By: Timothy J. Riley, Esq.
5441 Kietzke Lane
Second Floor
Reno, Nevada 89511

Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

1 CONTINUATION OF APPEARANCES:

2 For the Trustee ECHEVERRIA LAW OFFICE
3 Mrs. Dale Raggio: By: John Echeverria, Esq.
4 9432 Double R Boulevard
5 Reno, Nevada 89521
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1 RENO, NEVADA; TUESDAY, JUNE 3, 2014; 1:45 P.M.

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3
4 COMMISSIONER WRIGHT: Good afternoon. This is
5 the matter of the William J. Raggio Family Trust,
6 PR13-00624. Big chair here. All right. And this is
7 the time for oral arguments on the initial petition on
8 the objections, et cetera.

9 So I'll start with petitioner and her counsel,
10 I'll have you make you introductions, please.

11 MR. ROSENAUER: Good morning, your Honor.
12 Michael Rosenauer on behalf of Tracy Chew.

13 COMMISSIONER WRIGHT: Thank you.

14 MR. ECHEVERRIA: And I'm John Echeverria on
15 behalf of the trustee, Ms. Raggio.

16 MR. RILEY: Tim Riley on behalf of the
17 trustee, Ms. Raggio, as well.

18 COMMISSIONER WRIGHT: Thank you. All right.
19 So, I'm ready to proceed, pleadings have been reviewed,
20 and I believe Judge Steinheimer has spoken with you, but
21 I am ready to proceed.

22 So Mr. Rosenauer, if you'd like to begin?

23 MR. ROSENAUER: Thank you, your Honor. Your
24 Honor, this is an issue -- the issue that brings us here

1 is, in essence, your Honor, the accounting of the assets
2 in the Raggio Family Trust. That trust split into the
3 Credit Shelter Trust and the marital trust upon William
4 Raggio's demise in February of 2012.

5 As review for the Court, your Honor, the
6 marital trust goes to, or is split between the
7 decedent's two children upon Dale Raggio's demise, and
8 the other Credit Shelter Trust goes to Dale Raggio's
9 grandsons, as I recall, who currently reside in
10 Australia.

11 What is truly at issue, your Honor, is the
12 allocation and the accounting for the Raggio Family
13 Trust during that period of time which is between
14 February 3rd of 2012 and the split between -- of that
15 trust into the two trusts, that being the Credit Shelter
16 Trust and the marital trust on or in July of 2013. That
17 is really what this is all about.

18 The secondary portion of it, your Honor, is
19 the understanding that one must grasp what the expenses
20 were out of one trust to understand what has occurred in
21 the other trust. And the reason for that, your Honor,
22 in summary is to ensure that the allocation or the spend
23 down of both trusts are, indeed, and if I might digress
24 for just a moment because we have some technology here,

1 your Honor. It's fine by me, but I didn't want you guys
2 to press down on this and have it topple over. And I
3 apologize, your Honor.

4 COMMISSIONER WRIGHT: Oh, no problem.

5 MR. ROSENAUER: Because it will be a momentary
6 -- it will be a surprise.

7 In any event, your Honor, to understand one
8 you have to understand the other. And the reason for
9 that, as I will explain in a moment, is because the
10 standard for both is the same, and we have the same
11 trustee. If the standard is the same, that being the
12 purpose, in other words, health care maintenance of --
13 if that is the same between the two trusts, and you have
14 the same trustee, then the allocation and the basis for
15 choosing one over the other must, indeed, be identical.
16 And the trustee is going to owe the same obligation to
17 both sets of contingent beneficiaries. So that in a --
18 as an overview is why we are -- why we are here.

19 The big problem, and let's start again going
20 back for half a second, is the fact that it is the use
21 of the funds during the gap period, in other words, the
22 time between the demise of William Raggio and the
23 allocation of the assets to the various trusts. We have
24 been supplied, your Honor, with the right list and the

1 understanding of how these assets were allocated to each
2 trust, so to understand or to get to the point where the
3 manner in which they were funded. And so that gets us
4 part of the way in one side of the equation, but it
5 doesn't answer what is truly the crux of the problem,
6 and that is to ensure so that the beneficiaries have the
7 means by which to understand and check that the assets
8 are being used for the purpose that was stated in the
9 trust.

10 And again, to understand one, you have to
11 understand the other because, again, the obligation is
12 identical, it is the same, and that is, health
13 maintenance care. So, you know, that is -- is a portion
14 of it.

15 Let's understand and talk for a moment also,
16 your Honor, about the origination of the assets because
17 that is important. The origination of the assets are
18 the William and Dorothy or William and Dorothy Raggio,
19 the petitioner's parents and Mr. Raggio's first wife.

20 In fact, some of those assets date all the way
21 back to William Raggio and his mother, Dorothy Briggman.
22 Excuse me, not Dorothy, I only knew her as Mrs.
23 Briggman. And that, your Honor, I bring that as
24 important with respect to the fairness of what we are

1 asking for. I don't think that we are overreaching or
2 anything else with respect to that. But again, it's all
3 about the transparency of what has occurred in the
4 intervening time and within that interim or gap time.

5 Now, Mrs. Raggio distinguishes some of the
6 mandatory language in the marital trust versus the --
7 with the permissive language in the Credit Shelter
8 Trust. If there -- if that interpretation were to be
9 persuasive, your Honor, the marital trust would be spent
10 down, first, notwithstanding the fact that the terms of
11 the need, that being the reason for the spend down or
12 the authority to spend it down is, again, the same,
13 support, care and maintenance. Again, it becomes a
14 distinction without a difference.

15 I would submit also, your Honor, that the --
16 Mrs. Raggio does spend a significant period of time
17 making an argument with respect to standing, again, a
18 distinction without a difference. The claim is that the
19 trustee of the marital trust must be the one that is
20 bringing the claim, not Tracy Chew, because the
21 beneficiary of that trust is really a subtrust going
22 down. Again, we're talking about a distinction without
23 a difference because Ms. Chew is a beneficiary of that
24 other trust in any event, and so all we would do is turn

1 around, make the exact same argument, and stick
2 something somebody else in here. Again, it makes
3 absolutely no difference or sense and we would be here
4 at a later time. And this is all about, I suggest, your
5 Honor, taking care of the problem.

6 Plus, the important thing is that there has
7 been no accounting in any event. More than a year has
8 passed and, in fact, your Honor, more than a year passed
9 between Mr. Raggio's demise and the allocation, which,
10 of course, both trusts, that being the marital trust and
11 the Credit Shelter Trust were one. There was no
12 accounting as far as what assets were used for support,
13 care and maintenance during that time, so even if Ms.
14 Raggio wants to turn around and say gee whiz, we don't -
15 that ow that because Tracy Chew is not a beneficiary of
16 the Credit Shelter Trust, they can not take that
17 position during the gap or interim time because it was
18 still the Raggio Family Trust at that time, for those --
19 between February 3rd and July of 2013. So there's been
20 no accounting with respect to that.

21 Now, we have received, your Honor, and I thank
22 counsel for it, some tax documents and those types of
23 things. And that's fine and dandy. But your Honor,
24 that does not demonstrate or give notice to any of the

1 beneficiaries, especially within the trust statute that
2 is out there as far as what the assets were used for.
3 In other words, if they -- they will have to demonstrate
4 that, gee whiz, a hundred dollars was spent at CVS
5 Pharmacy for pharmaceuticals, aspirin for Ms. Raggio,
6 because that is going to be within the terms of
7 maintenance, care, maintenance and support.

8 What we don't want to have happen, your Honor,
9 and what -- and remember the trust -- the trust statutes
10 are all about transparency. They are all about giving
11 every interested party an idea of income, inventory,
12 use, and administrative expenses. And while tax
13 documents tell us there was this much gain, this is the
14 basis of the -- of the assets, that, again, is taxed at
15 this rate, pay this amount in tax, and again, I thank
16 counsel for that. We still don't know what this -- and
17 we would know what was distributed, but we don't know
18 how that is spent because we don't know whether or not
19 that which was distributed was spent on something that
20 is completely absurd, a new sail boat or, you know,
21 something like that, and that's what the accounting
22 statutes are designed to check and to ensure.

23 The opposition also, your Honor, makes the
24 argument that there is not the same duty to the two sets

1 of beneficiaries. As I stated, your Honor, the Credit
2 Shelter Trust after Dale Raggio's demise goes to, I
3 believe, her grandsons who live in Australia. The
4 assets in the marital trust that remain at Dale Raggio's
5 demise are split between Tracy Chew and her sister,
6 Leslie Righetti, so -- but the thing to focus on, your
7 Honor, is that the use of those funds are identical. In
8 other words, the two documents say, or the two trusts
9 say they must be used for Dale Raggio's health,
10 maintenance -- excuse me, support, care, and
11 maintenance. And so if the use is the same, then there
12 is an obligation on behalf of the trustee, Ms. Raggio,
13 to spend those things down equitably. You can't
14 allocate all of the expenses for care, support and
15 maintenance to just one, thereby, benefitting your own
16 side, for example, or one beneficiaries over the other
17 when the standard is identical.

18 I would submit that if the standard is
19 identical the duty's identical, and that leads me to the
20 reason why we make the argument that to understand one
21 you have to understand the other. And by understanding
22 that means that the accounting and the itemization of
23 the use has to be consistent. It is unfair to wait or
24 request the parties to wait until Ms. Raggio's demise to

1 then pull back the curtain, so to speak, not only is
2 that not supported by the statute, your Honor, but
3 remember, one group is going to be 10,000 miles away and
4 that money is going to be very, very difficult to trace
5 back and bring back to the Court if, indeed, everybody
6 figures out later on that there was not the type of
7 spending that went to support, care, and maintenance.

8 In sum, therefore, your Honor, all we are
9 asking is for the ability to understand -- we understand
10 what the assets are at the time of the division in July
11 of 2013. We acknowledge that there is different
12 beneficiaries. The issue that we bring to this Court is
13 the itemization and accounting within the terms of the
14 trust for the gap period and to ensure that both trusts
15 are being spent down equitably. And that because to
16 understand one, again, you have to understand the other
17 to ensure that one is not being favored over the other
18 and, therefore, one beneficiary's being favored over the
19 other set of beneficiaries, your Honor. Thank you.

20 COMMISSIONER WRIGHT: Thank you. I have a
21 question. I mean, I've read your pleadings and when you
22 just summed up I want to make sure that I'm hearing you
23 correctly. You're asking about the gap period, which I
24 understand. Now, do I understand you to also be asking

1 for ongoing -- an order for ongoing accountings from
2 that point forward during Dale Raggio's lifetime?

3 MR. ROSENAUER: The answer to that is yes,
4 your Honor.

5 COMMISSIONER WRIGHT: Okay.

6 MR. ROSENAUER: And do you want me to clarify
7 that at all?

8 COMMISSIONER WRIGHT: Yeah. Go ahead, please.

9 MR. ROSENAUER: Well, the fact of the matter
10 is that the ongoing expenses must be for support, care,
11 and maintenance of Dale Raggio. The beneficiaries of
12 those two trusts are different. To understand,
13 therefore, the difference between, or the allocation,
14 you have to one trust, as opposed to the other trust,
15 you have to understand what each is doing.

16 So, again, let's use CVS pharmacy because that
17 is clearly support, care and maintenance. And she has,
18 she went to the doctor and there's a prescription that's
19 out there. We need to make sure, your Honor, and we are
20 entitled to know that all of the care, support, care,
21 and maintenance is not being allocated to one trust as
22 opposed to the other, thereby favoring one group of
23 beneficiaries over the other. So you can't just do it
24 in the abstract and, gee whiz, here's just one. Here's

1 just the marriage -- the marital trust, that's all other
2 that you get, because we don't know, therefore, and no
3 one would be able to know whether or not everything --
4 let's say a hundred percent of the maintenance, support,
5 care and maintenance is being allocated to that trust,
6 and when Dale Raggio dies, 100 percent of the Credit
7 Shelter Trust remains and is, therefore, intact and goes
8 to the grandsons.

9 If the standards are the same, then the duty
10 to both are the same because, remember, Dale Raggio has
11 the trustee of both and the lifetime beneficiary of
12 both, therefore, owes the obligation to all the
13 beneficiaries. And, unfortunately, in this instance, it
14 would work if either, A, the beneficiaries were the
15 same; or B, there was some type of communication such
16 that the information would be shared.

17 Here you have nothing even close to that. We
18 have beneficiaries, I believe, some who are -- that are
19 younger that live in Australia, and they probably are
20 not about to come before this Court and say hey, wait a
21 second, you know, there's the remodel of this house in
22 our -- that's been charged off to our trust, we don't
23 believe that that is support, care, and maintenance.
24 There's no way for anybody to understand, unless you

1 have all of the allocation and all of the accounting and
2 all of the attribution much the same way as we have to
3 do in the Probate Court, that -- and the guardianship
4 court more especially, to understand what the expense
5 is, how does it fit within the terms of the trust, and
6 you can't -- if you're only getting half of the picture,
7 you don't understand what's going on on the other side
8 of the picture because that's beyond your sight.

9 So, you know, the answer to your question is
10 yes, we believe that it is both fair and appropriate and
11 within the statute to order that all of the -- all of
12 the accountings with the itemization are sent to the
13 parties. And we have no problems with the side that is
14 the marital settlement trust, you know, being disclosed
15 to the grandsons and, you know, so -- so we are -- we
16 are here with open arms and open hands, your Honor, and
17 again, this is -- this is just all about transparency.
18 And that's it.

19 COMMISSIONER WRIGHT: Thank you.

20 MR. ROSENAUER: Thank you, your Honor.

21 MR. ECHEVERRIA: They wanted me to turn it off
22 before we started so we gotta let it warm up again.

23 COMMISSIONER WRIGHT: Oh, okay. No problem.

24 MR. ECHEVERRIA: Your Honor, this is an

1 important petition because boiled to its essence as we'll
2 demonstrate what this petition really seems to do is
3 reform the trust and put language in the trust that
4 doesn't exist. And because it's so important, your
5 Honor, I thought it would be worthwhile to go back and
6 actually look at the two trusts, look at a little bit of
7 the family history, and how we got to where we are.

8 So the Raggio family was created that's at
9 issue here was created when for Raggio married Dorothy
10 Raggio in 1948. They had three children; Leslie, who is
11 the natural daughter, Tracy and Mark, who were two
12 adopted children. Dorothy passed away on April 7th,
13 1998, and Mark passed away in 2001. And then the
14 Senator married Dale Checket on April 27th of 2003, so
15 that gives us a little bit of a time line as to how this
16 family evolved.

17 There were two trusts that Senator Raggio
18 created during his lifetime. The first one was the
19 William and Dorothy Raggio Family Trust that was created
20 before Dorothy died, obviously, on January 27th of 1998.
21 And then after the Senator married Dale Checket, he
22 created the William J. Raggio Family Trust, and that was
23 created on April 13th, 2007, some four years after he
24 and Dale were married. So I think --

1 COMMISSIONER WRIGHT: Could you go back? I'm
2 sorry, the date?

3 MR. ECHEVERRIA: I'm sorry, sure.

4 COMMISSIONER WRIGHT: The date of the second
5 one?

6 MR. ECHEVERRIA: The second trust?

7 COMMISSIONER WRIGHT: April 15th.

8 MR. ECHEVERRIA: April of 2 2007.

9 COMMISSIONER WRIGHT: They were married in
10 2003, right?

11 MR. ECHEVERRIA: I'm sorry?

12 COMMISSIONER WRIGHT: They were made in 2003?

13 MR. ECHEVERRIA: They were. The trust was
14 created in April of 2007.

15 COMMISSIONER WRIGHT: But they had already
16 been married in 2003.

17 MR. ECHEVERRIA: And three, correct.

18 COMMISSIONER WRIGHT: Okay. Thank you.

19 MR. ECHEVERRIA: So I think, given the
20 argument, it's important to look at what the two trusts
21 did, how they were created differently, and the
22 differences between the two trusts. So for shorthand,
23 your Honor, I've referred to the William and Dorothy
24 trust as the W and D Raggio trust. And in that trust

1 they identified who the family members were and
2 identified all three children. They then designated
3 trustees.

4 And the trustee initially was Senator Raggio,
5 and if he were to succeed, if he were unable to serve
6 it, then it became the trustee with Mrs. Raggio, with
7 Dorothy Raggio. And then the successor trustees, and
8 this is important, because they specifically said that
9 the children in that order, Leslie, Tracy, and Mark, in
10 the order indicated, as successor, sole trustee so his
11 intent clearly was to make each child in the order of
12 their age a sole successor trustee.

13 Upon the death of the first settlor, in this
14 case it was Mrs. Dorothy Raggio to die first, that trust
15 created two trusts. What they called the survivor's
16 trust, and a Credit Shelter Trust. And on the death of
17 the surviving settlor, in this case for Raggio, the
18 entire remaining principal, and this is an important
19 distinction because Mr. Rosenauer raises this in one of
20 his arguments, the entire remaining principal of the
21 survivor's trust shall be added to and augment the
22 Credit Shelter Trust.

23 Now, that's different than what occurred in
24 the second trust. And we'll highlight that when we get

1 to it. But that's an important distinction because here
2 he puts the two trusts together. And then the
3 distribution was to have allocate one equal share after
4 the two trusts were combined, to allocate one equal
5 share Dean's living child and so that was done.

6 In the William J. Raggio Trust, which is what
7 is in issue here, simply it's the family this time
8 recognizing the unfortunate death of their son, Mark, he
9 identified his wife as Dale Checket Raggio, and then his
10 two children. He designated trustees within that trust
11 and he indicated that Dale Checket Raggio was to be the
12 successor trustee to the Senator, and here he makes an
13 important distinction that signifies, in my view, his
14 intent. He says, first of all, "Should Mrs. Raggio be
15 unable to serve, then the settlor's daughters, again in
16 the order indicated, are designed to act as successor,
17 again, sole trustee". So he lists Leslie, and then
18 Tracy Woodring, who is now Ms. Chew. He listed the
19 successors of the trust in that order, but here's the
20 important distinction. He also said, "Provided,
21 however, that John Sande, III, is designated to act as
22 successor's sole trustee of the Dale Checket Raggio
23 Credit Shelter Trust", the trust that Mr. Rosenauer now
24 seeks an accounting for.

1 And I think that's an important distinction
2 because it tells us a little bit about the senator's
3 intent. Because he didn't appoint either of his two
4 daughters to act as a trustee for the Credit Shelter
5 Trust that went to his wife, Dale.

6 Again, on the distribution of the death,
7 should Dale succeed, the senator again invited the two
8 trusts, the marital trust, and the Dale Checket Raggio
9 Credit Shelter Trust, which is, as you'll see as we go
10 through here, I'm calling it DCR, Credit Shelter Trust,
11 to distinguish the prior Credit Shelter Trust of which
12 Leslie Righetti is the trustee.

13 The administration of the two trusts were
14 different. Mr. Rosenauer wishes to characterize them as
15 identical, but they're substantially different. First,
16 in the marital trust, the trustee is to pay or to apply
17 for the benefit of Mrs. Dale Raggio all of the net
18 income of the trust. Regardless of need, all the income
19 goes to Mrs. Raggio. He then says that in addition to
20 that, it's to pay or apply to the benefit of Mrs. Raggio
21 as much of the principal for her proper support, care,
22 and maintenance.

23 With respect to the -- so the key provisions
24 of the marital trust are, all income goes to the

1 senator's wife, and she may apply as much principal as
2 is needed for her support, care, and maintenance.

3 With respect to the Dale Checket Raggio Credit
4 Shelter Trust, it's different. There's no mandatory
5 spend provision. It's to pay as much of the net income
6 and principal as the trustee shall deem necessary for
7 the proper support, care, and maintenance.

8 So the key provisions of this Credit Shelter
9 Trust are there's no mandatory distribution. There's a
10 mandatory distribution in the marriage trust, but no
11 mandatory distribution in the Credit Shelter, and the
12 income and principal may be applied for the proper
13 support, care, and maintenance.

14 So these two trusts are not identical,
15 contrary to the impression Mr. Rosenauer would like to
16 leave with the Court. The distribution for the support,
17 care, and maintenance is significant because there is no
18 provision in the trust, none, dictating a proportionate
19 distribution as between the two trusts for the support,
20 care, and maintenance.

21 Mr. Rosenauer argues that this should be in
22 there and he wants the Court to impose that. But had
23 the senator desired to do that he could have easily put
24 it in there. But he did not have that provision calling

1 for proportionate spend-down.

2 Furthermore, there is no provision in the
3 trust that requires the trustee to consider other
4 resources in determining the distributions from the
5 marital trust. And that's sometimes not in a trust.

6 So we're getting a picture of his intent here.
7 Had the senator intended the result that Mr. Rosenauer
8 now seeks on behalf of Ms. Chew, he could have written
9 it in there, but he didn't. And this motion, this
10 petition, therefore, asks this court to write those
11 proportionate provisions into this trust, and that would
12 violate his intent.

13 The distributions of the two trusts are also
14 quite different. Again, we note that in the William and
15 Dorothy Raggio Trust, he said upon his death you're to
16 combine the two trusts, and then do an equal division,
17 so he knew how to do that. Mr. Rosenauer says it's
18 common in that he wants that kind of written into this
19 agreement, but it's not in there. But the senator knew
20 how to do it, but he intentionally left the two trusts
21 to different beneficiaries.

22 COMMISSIONER WRIGHT: Would you mind going
23 back one?

24 MR. ECHEVERRIA: Sure. The beneficiaries of

1 the marital trust is the William and Dorothy Raggio
2 Credit Shelter Trust, not Tracy Chew, not Leslie
3 Righetti. It's the William and Dorothy Raggio Credit
4 Shelter Trust, that's the beneficiary.

5 Now, Leslie and Tracy may be beneficiaries of
6 that trust, but that doesn't make them beneficiaries of
7 beneficiaries, I guess it does, it makes them a
8 beneficiary of a beneficiary. But we need to look at
9 this trust that's at issue here and the beneficiary of
10 that trust, the remainder beneficiary of the merit trust
11 is the Credit Shelter Trust created in the prior trust.

12 COMMISSIONER WRIGHT: And who's the trustee of
13 that?

14 MR. ECHEVERRIA: Pardon me?

15 COMMISSIONER WRIGHT: Who's the trustee of
16 that? Is that John Sande?

17 MR. ECHEVERRIA: Leslie Righetti.

18 COMMISSIONER WRIGHT: Oh, okay. Thank you.

19 MR. ECHEVERRIA: As the sole trustee. So the
20 difference is that now with respect with the Dale
21 Checket Raggio Credit Shelter Trust, on her death, the
22 senator intentionally left the remainder of that trust
23 to the grandsons of Mrs. Raggio. So there's an
24 important distinction here; we have two different groups

1 of beneficiaries for the two trusts. So, obviously, the
2 senator intended to treat the two trusts differently.

3 As a summary, Judge, we've prepared a graph of
4 the -- of the William J. Raggio Family Trust, the second
5 trust. So upon his death, there are specific gifts made
6 to each living grandchild of his. Those are Ms. Chew's
7 and Ms. Righetti's children. And then he left the
8 personal residence outright to his wife, Dale. Then
9 after that, they were split into the two trusts; the
10 Dale Checket Raggio Credit Shelter Trust, which is on
11 the left, and that goes to her grandsons.

12 On the right is the marital deduction trust,
13 which goes to the William and Dorothy Raggio Credit
14 Shelter Trust, to then be divided upon the heirs there.
15 And as we saw it when we looked at that trust provision,
16 it applied to the -- it was equally divided and the
17 Credit Shelter Trust goes to the living grandchildren,
18 and if there are no heirs, if there are no living
19 grandchildren or children, the original Credit Shelter
20 Trust goes, then, to the heirs of the husband and the
21 wife, individually, so the heirs of Dorothy and the
22 heirs of -- so there's different -- there's contingent
23 beneficiaries in the William and Dorothy Credit Shelter
24 Trust, which wouldn't have an expectancy until Dale

1 Raggio passes.

2 So in review, what we learn is that Dale
3 Raggio as the sole trustee of the William J. Raggio
4 Family Trust. The successor trustees are for the
5 marital trust, Leslie Righetti, and then Tracy Chew, in
6 that order, as sole trustees. And then for the Dale
7 Checket Raggio Credit Shelter Trust, the trustee is John
8 Sande, successor trustee. So Mrs. Chew can never be a
9 trustee or a beneficiary of the Credit Shelter Trust,
10 it's not in there.

11 With respect to the William and Dorothy Raggio
12 trust, it's the beneficiary of the William Raggio Family
13 Marital Trust, the second one. It is not a beneficiary
14 of the Dale Checket Raggio Credit Shelter Trust. And
15 Tracy Chew is not a beneficiary of any trust created by
16 the William J. Raggio Family Trust. And that's an
17 important distinction, as we'll see when we get to
18 discussing the statutes that apply.

19 Tracy Chew is a contingent beneficiary only of
20 the William and Dorothy Raggio Family Credit Shelter
21 Trust, so she will have to survive Dale Raggio to even
22 be a beneficiary of the beneficiary.

23 So we know that Leslie Righetti is the trustee
24 of the William and Dorothy Credit Shelter Trust, the

1 beneficiary of the marital trust that you see here, and
2 that Tracy Chew is not a cotrustee. She carefully in
3 her petition doesn't explain under what capacity she was
4 bringing this petition, because she can't do it as a
5 trustee of anything. She can't do it as a beneficiary
6 of any trust created in the trust that's at issue here.
7 She can only do it as a beneficiary of a beneficiary.

8 So again, just to summary, here's our chart,
9 here's how it's divided. And it's important to note
10 that the William and Dorothy Raggio Credit Shelter Trust
11 is the beneficiary of the marital deduction trust that's
12 at issue here.

13 So the petition. The petition seeks to
14 confirm Dale Raggio as successor trustee. Well, we all
15 agree to that, that's not an issue. But they also ask
16 the Court to take some jurisdiction, so we have to ask
17 the Court to involve itself. They ask for the Court to
18 compel an accounting of the trust allocation, which I'll
19 get to here. They also ask the Court to compel an
20 annual accounting of the marital trust. And they ask
21 the Court to compel an annual accounting to, I guess,
22 Ms. Chew, of the Dale Checket Raggio Credit Shelter
23 Trust. They also ask for Form 706, which has been
24 provided. They ask for an itemization of manner, source

1 and value of the funding of both trusts. And I'll
2 discuss that issue as we get further in. And they want
3 an itemization of all distributions, they want copies of
4 Forms 1041 for the federal income tax returns, and I
5 think those have been provided.

6 The basis for this petition as stated in the
7 petition is NRS Section 164.010 and NRS 164.015. And
8 they seek the accountings pursuant to 165.

9 So I think it's important that we look at the
10 statutes to see what they tell us. Who can bring this
11 kind of petition? The statute specifically says how the
12 legislature has spent a lot of time writing out what
13 happens and who has authority to do what with respect to
14 trusts. So it tells us that the people that can bring
15 the petition under 164.010, which is the stated basis
16 for this petition, is to be upon the petition of any
17 person who is appointed as a trustee, that's not Mrs.
18 Chew, or upon the petition of a settlor, that's not Mrs.
19 Chew, or the beneficiary of the trust that's at issue,
20 and that's not Ms. Chew.

21 The beneficiary of the trust that's at issue
22 here is Leslie Righetti, I'm sorry, is the William and
23 Dorothy Credit Shelter Trust, whose trustee is Leslie
24 Righetti. So the statute basically tells us under this

1 provision that Ms. Chew has no standing. Under 015 it
2 tells us that a petition under this section may be filed
3 in conjunction with a petition under 164.010, but that's
4 -- that presumes that the proper person has brought the
5 petition under 010. It also tells us that an interested
6 person can bring this petition any time after the Court
7 has assumed jurisdiction under this section, under
8 Section 164.010. But the Court can't assume
9 jurisdiction over that because the proper person to
10 bring that petition has not done so.

11 Now we look at the accountings. And the
12 statutes again tell us, what accountings have to be
13 made, and to whom? 165.135 tells us that they're to
14 furnish to each beneficiary, at a minimum, it says, the
15 trustee shall furnish an account to each beneficiary.
16 It doesn't saw beneficiaries of beneficiaries, it says
17 beneficiary.

18 165.137 gets more specific. And this is the
19 section that defines what must be provided with respect
20 to an accounting by a trustee, and this is a critical
21 provision. The trustee has to provide to each current
22 beneficiary and to each remainder beneficiary. But it
23 also says that it's not required, the trustee is not
24 required to provide an account to a remote beneficiary.

1 So what do the statutes mean by a current
2 beneficiary? It defines that. A current beneficiary is
3 the distribution beneficiary to whom or for whom benefit
4 the trustee is required to make distributions. As to
5 these two trusts, therefore, the current beneficiary is
6 Mrs. Raggio. The second -- I didn't want to interrupt
7 your note taking.

8 COMMISSIONER WRIGHT: Yes. Let me just have a
9 second here.

10 MR. ECHEVERRIA: Sure.

11 COMMISSIONER WRIGHT: Was there one right
12 before that, a slide right in front of that?

13 MR. ECHEVERRIA: Sure. This is a provision
14 that spells out specifically what types of beneficiaries
15 are entitled to accountings under our trust, and so it
16 says to provide to a current beneficiary and a remainder
17 beneficiary. And then the statutes also describe and
18 define those two terms.

19 COMMISSIONER WRIGHT: Okay.

20 MR. ECHEVERRIA: So we've heard the current
21 beneficiary is someone that's entitled to distributing
22 is today, basically. And that's Mrs. Raggio, herself.
23 The remainder beneficiary is defined in 165.132 as
24 meaning a beneficiary who will become a current

1 beneficiary upon the death of an existing current
2 beneficiary. So as to the marital trust, that's at
3 issue here, that remainder beneficiary is the William
4 and Dorothy Credit Shelter Trust whose trustee is Mrs.
5 Righetti.

6 So as to the William J. Raggio marital trust,
7 the remainder of the trustee, as I said, is the Credit
8 Shelter Trust under the original, the first trust
9 created. And Mrs. Chew's, at best, a contingent
10 beneficiary of that trust.

11 So to whom is an accounting owed here? Well,
12 it's owed, as the statute tells us, to the current
13 beneficiary. That's Mrs. Raggio. And it's owed to the
14 remainder beneficiary, which is the Credit Shelter
15 Trust, not Mrs. Chew, and not Mrs. Righetti except as
16 her capacity as a trustee.

17 So having reviewed the statutes, let's look at
18 the standing, and I think it's interesting to note that
19 the standing issue was raised originally in the
20 opposition by Mrs. Raggio, and never addressed by Ms.
21 Chew until her reply.

22 COMMISSIONER WRIGHT: May I ask you to dial
23 back to one point for a second? I'm sorry to interrupt
24 you.

1 MR. ECHEVERRIA: No problem, Judge. This is
2 complicated, and that's why I wanted to bring these
3 statutes so we could look at them and see, as opposed to
4 just making characterizations like she's a beneficiary
5 of this trust.

6 COMMISSIONER WRIGHT: You said that Chew is a
7 contingent beneficiary of the William and Dorothy Credit
8 Shelter Trust. Where can I find that for quick
9 reference?

10 MR. ECHEVERRIA: Okay. That will be --

11 COMMISSIONER WRIGHT: Do you have a slide or?

12 MR. ECHEVERRIA: I can pull that back up
13 again.

14 COMMISSIONER WRIGHT: Okay.

15 MR. ECHEVERRIA: I'm going the wrong way,
16 Judge. Let's back up and go through it this way. The
17 marital trust specifically goes to the William and
18 Dorothy Raggio Credit Shelter Trust, that's the trust
19 that's at issue here. So now let's go back and see who
20 the beneficiaries are of the William and Dorothy Credit
21 Shelter Trust and those beneficiaries.

22 MR. RILEY: While he's looking for that, your
23 Honor --

24 MR. ECHEVERRIA: This one right here, it's

1 Section 5.2 of the original William and Dorothy Raggio
2 Credit Shelter Trust which we, I think, provided a
3 courtesy copy for the Court. It's Section 5.2, and it
4 says, "On the death of the surviving settlor", which
5 would be Senator Raggio, "the trustee shall divide the
6 principal and all accumulated income of the Credit
7 Shelter Trust into as many equal shares as there are
8 children of the settlors then living, and children of
9 the settlors then deceased". That's not yet an issue.

10 COMMISSIONER WRIGHT: Yes.

11 MR. ECHEVERRIA: But this says if none of
12 those survive, here's how it's distributed. So being a
13 child of -- an adopted child of William and Dorothy
14 Raggio, she is one of the identified children who is a
15 beneficiary of the William and Dorothy Credit Shelter
16 Trust. That's the trust is the beneficiary of the trust
17 that's at issue here. So that's why I say she's not a
18 direct beneficiary of the trust in which she's
19 petitioning involvement, she's a beneficiary of the
20 beneficiary at best.

21 COMMISSIONER WRIGHT: But you called her
22 contingent, and that's the word I am --

23 MR. ECHEVERRIA: She has to survive Ms.
24 Raggio.

1 COMMISSIONER WRIGHT: Okay. All right.
2 That's what you meant by contingent.

3 MR. ECHEVERRIA: Right. Because this -- this
4 Credit Shelter Trust doesn't get any of the marital
5 trust that's at issue here until Mrs. Raggio dies.

6 COMMISSIONER WRIGHT: Okay.

7 MR. RILEY: If she -- if Ms. Chew is not
8 living at that time, then it would go to her children,
9 if living, and down her descendent's line.

10 COMMISSIONER WRIGHT: Okay. Okay. Thank you.

11 MR. ECHEVERRIA: So -- and the reason I'm
12 going through this exercise, Judge, is this is all kind
13 of skated over in the petition. In the petition, if one
14 reads it, leaves the impression that Mrs. Chew is a
15 beneficiary of the trust in which she's making a
16 petition. And she's not. And that's the problem with
17 the standing.

18 So my argument here is Ms. Chew does not have
19 standing to bring this petition in this trust under
20 164.010. She is neither a trustee of any trust in the
21 William J. Raggio Trust, she's not a settlor, and she's
22 not a beneficiary. And 164.010 tells us that those are
23 the classes of people that may bring this petition.

24 And it's important to note that she's not even

1 a trustee of a beneficiary of any trust in this trust,
2 or the beneficiary trust of the marital trust.

3 So she's bringing this petition in a capacity,
4 apparently, without capacity, because she doesn't fit
5 any of the classifications dictated by the legislature
6 in 164.010 of people that may bring this petition.

7 So because she lacks standing to bring the
8 petition, the petition should be denied in its entirety,
9 because she's not the proper person bringing it.

10 Now, that doesn't leave her without a remedy.
11 Her rights are not going to be impaired in any way by
12 this Court's denial of this petition because, first, she
13 will be permitted to obtain an accounting through the
14 trustee of the William and Dale Credit Shelter Trust.
15 So when the accounting is made, as I'll point out later,
16 but I might as well say it here, the marital trust to
17 which there -- Tracy Righetti is the trustee of the
18 William and Dorothy trust, that one-year period hasn't
19 yet run since it was funded, and as I argued ahead here,
20 that accounting will be provided.

21 But second, if the trustee of the William and
22 Dorothy Credit Shelter Trust, Ms. Righetti, fails to
23 fulfill her fiduciary duties, then Ms. Chew has a remedy
24 available to her as a direct beneficiary of the William

1 and Dorothy Credit Shelter Trust. So the denial of this
2 petition won't in any way impair any of her rights
3 whatsoever. So --

4 COMMISSIONER WRIGHT: I think that in a very
5 unpolished sort of way, that's why I asked you about the
6 word contingent, I wanted to know where you were going
7 with that. And I should have let you continue because I
8 wondered where you were going with the word contingent,
9 because previously you had pointed out, you know,
10 current, remainder and remote. But go ahead, because I
11 feel like I'm now -- I'm now in step with you as far as
12 where you were going with that.

13 MR. ECHEVERRIA: Okay. And the reason I'm
14 doing this exercise is because the petition itself kind
15 of glosses over all these distinctions and niceties, it
16 just constantly refers to as the beneficiary, but she's
17 not a beneficiary of the trust in which she is
18 petitioning, and that's the point. She's a beneficiary
19 of a beneficiary, and the statutes don't tell us that
20 that person can bring this kind of petition. And, but
21 the statutes do give her a remedy as to the William and
22 Dorothy Credit Shelter Trust.

23 So if the Court is to decide that she has some
24 form of standing in which to seek relief in this trust

1 that's at issue here, what they've asked for is a
2 preallocation accounting. And I think it's important
3 because it's not discussed, to look into the background
4 of the allocation.

5 So the trust that's at issue here tells us how
6 we're to allocate between the marital trust, the funding
7 of the marital trust and the funding of the Credit
8 Shelter Trust. And it tells us that the principal of
9 the marital trust shall consist of a pecuniary amount
10 which will equal the maximum marital deduction
11 allowable. And it tells us when you value that. And
12 the assets valuation is the date or dates of allocation,
13 okay? So when the two trusts are funded, that's the
14 date that the values are put on them. And this tells us
15 that we have a fixed amount, basically, that goes into
16 the marital trust.

17 What does this really mean? Mr. Rosenauer's
18 made an argument that to the extent there is an
19 appreciation, somehow that has to be accounted for, but
20 it's contrary to the trust provisions, because this
21 tells us that we're to value everything as of the date
22 of allocation. It's different than tax purposes, for
23 tax purposes it's valued as of the date of death.

24 But for the allocation purposes, the value is

1 at the time that the trusts are split, which is
2 significantly different than Mr. Rosenauer implies,
3 because what this means is, to the extent there's an
4 appreciation or devaluation, the Credit Shelter Trust
5 eats that to the extent there's a devaluation, because
6 the pecuniary amount is a fixed amount, less expenses of
7 the estate that goes into the marital trust, so it
8 doesn't matter whether there's appreciation or not
9 because that number is fixed.

10 But it's also important, your Honor, that's
11 not discussed is the background of the allocation. Now,
12 I initially met with Leslie Righetti's attorney, Bart
13 Mowry, in May of 2012, less than three months after the
14 death of the senator. And these allocations were -- had
15 been discussed with Mrs. Righetti's attorney from very
16 early on. And, in fact, Mr. Rosenauer in September of
17 2013, when I sent him some communication about looking
18 into a -- I think it was a warehouse facility, actually
19 instructed me that I should deal with Mr. Mowry for a
20 one point of focus, and I did deal with Mr. Mowry.

21 The issue that was involved is not how much
22 money goes into the marital trust, because that was
23 fixed. We knew the pecuniary amount because that would
24 be calculated by the accounts.

1 The issue that was involved in the allocation
2 had to do with the fact that Senator Raggio had
3 overfunded the original Credit Shelter Trust by placing
4 a condominium in that exceeded the exemption, so that
5 created an issue taxwise as to did that amount to a gift
6 and should that be removed from the current exemption,
7 in other words, to the extent that was overvalued.

8 Then it became even more complicated because
9 after funding the Credit Shelter Trust with the
10 condominium at Lake Tahoe that exceeded the value of the
11 exemption at that time, the Senator made improvements to
12 the condominium through his personal funds, so that
13 created another issue as to how we're to value those
14 improvements. And Mr. Mowry and I were involved in
15 that, this became probably -- well, as I'll reveal, as a
16 result of this complicated situation, I hired Professor
17 Steve Lind, who's the tax guru in the country to figure
18 out the allocation.

19 Mr. Mowry eventually agreed that we would
20 follow his recommendation because we all knew this was a
21 complicated tax issue. We'd hired the best expert in
22 the country, and he's gonna sit down and tell us how we
23 do the numbers, and he did. And Mr. Mowry and I came to
24 an agreement on that allocation pending Mr. Lind's input

1 in May of 2013. And Mr. Rosenauer was copied on the
2 letter that was sent to me by Mr. Mowry. So it's not
3 like these issues were hidden, I mean, we've been
4 working with the trustee's lawyers for more than a year.
5 The allocation finally occurred in July of 2013.

6 So that's the history of this allocation. The
7 petition makes it sounds like we were totally ignoring
8 anybody and not discussing anything with anybody. The
9 fact is that Mr. Mowry -- I should preface that. Mrs.
10 Raggio hired Kim Cooney to do the estate tax return.

11 Mr. Mowry and I met with Mrs. Raggio and Ms.
12 Cooney in May, that meeting in May of 2012. She was
13 there, that's when this issue came up. Mr. Mowry went
14 to three or four meeting with the accountant, as we were
15 discussed the return, how did the allocations, what the
16 values of properties were, and so the trustee of the
17 beneficiary here was intimately involved with every
18 setting up the allocation before the allocation was
19 made. So they -- they had access to all that
20 information, and participated in looking at drafts of
21 the federal -- the 706 form.

22 So the implication that somehow Mrs. Raggio
23 was hiding all these facts from the beneficiary of the
24 marital trust doesn't fly in the face of the true facts

1 where not only was I dealing with the lawyer for the
2 trustee, but under Mr. Rosenauer's direction, I was
3 directed to deal with him as the single point of
4 contact.

5 So the return was filed. So she's not really
6 entitled to a preallocation accounting for a number of
7 reasons. First, the allocation was discussed,
8 negotiated, and ultimately approved by the trustee's
9 attorney.

10 Second, Mr. Rosenauer was provided a courtesy
11 copy of what the allocation was to be and how it was to
12 be calculated at the time of the agreement.

13 And third, it's unreasonable to permit
14 contingent beneficiaries to come back after we've -- and
15 I use that term and then you know how I'm using it,
16 because she has to succeed Mrs. Raggio.

17 How many times do we have to deal with this
18 accounting issue on the preallocation? The trustee for
19 the beneficiary was intimately involved, knew what was
20 going on, had input as to how all these were to be
21 valued. And there's no harm here, because he says we
22 have to look at what's appreciation and what has been
23 appreciated and how we divide it. That has nothing to
24 with how it was divided.

1 Remember that the allocation was to be based
2 on values at the time of the allocation as performed by
3 the trust. So any appreciation or spending down or
4 whatever prior to that doesn't really apply because they
5 were calculated and split. They were aware of it, and
6 they had the data. They have the tax return that
7 documents how all that was allocated out. So I think
8 this preallocation is ready.

9 The trustee's responsibility on how many times
10 to do an accounting has to end at some point. And
11 there's no necessity, as I indicated, for an accounting
12 of the preallocation accounting.

13 Now, if Ms. Chew has issues with how the
14 allocation was done or how it was valued? Her relief is
15 to petition in the William and Dorothy Raggio Credit
16 Shelter Trust. Mr. Rosenauer was involved.

17 Let's talk about the accounting that they
18 requested of the marital trust. The accounting as odd
19 as we've seen to each current beneficiary, and to each
20 remainder beneficiary, in this case, that's the William
21 and Dorothy Raggio Credit Shelter Trust, through its
22 trustee, Leslie Righetti.

23 Ms. Raggio agrees that an accounting of the
24 marital trust is to be made. But that trust wasn't

1 funded until July of last year, the one-year period
2 hasn't run. When that one year period runs, there will
3 be an accounting provided to Mrs. Righetti and,
4 presumably, through Mrs. Righetti to Ms. Chew, so she'll
5 get an accounting of the marital trust, so this -- to
6 the extent this petition seeks it now is premature. But
7 it will be provided to Mrs. Righetti.

8 Now, I really want to get into the discussion
9 of the accounting of the Credit Shelter Trust.

10 COMMISSIONER WRIGHT: Is that an ongoing --
11 I'm sorry, is that an annual thing do you acknowledge --
12 do you acknowledge that it's an annual accounting on the
13 --

14 MR. ECHEVERRIA: Yes.

15 COMMISSIONER WRIGHT: All right.

16 MR. ECHEVERRIA: But there's no need for an
17 order for that yet, it's premature, so that's why I'm
18 saying the petition is going to be denied without any
19 depravation of Ms. Chew's rights. She's going to get an
20 accounting when the proper time comes.

21 MR. RILEY: And your Honor, if I may interrupt
22 real briefly? We have not been requested an accounting
23 by Ms. Righetti to date, I think, with the anticipation
24 that the funding occurred last July and the time should

1 be one year for that.

2 COMMISSIONER WRIGHT: Okay. Thank you.

3 MR. ECHEVERRIA: So NRS can't be read to
4 provide Ms. Chew a remedy with respect to the credit
5 shelter instruments. She's neither a settlor, she's not
6 a trustee, she's not a successor trustee, she's not a
7 beneficiary, she's not even a contingent beneficiary of
8 the Credit Shelter Trust. She's not even a remote
9 beneficiary. She has no interest or even future
10 expectancy in the Credit Shelter Trust. So again, she
11 lacks standing to the bring this aspect of the petition
12 and demand an accounting of the Credit Shelter Trust
13 because she doesn't fit the criteria on what the statute
14 says or the permissible people to bring an accounting of
15 the Credit Shelter Trust.

16 So what is her argument? Well, we've heard it
17 again today. It's, basically, and this is in their
18 reply, they say "Fairness requires accounting and
19 disclosure of both the Credit Shelter Trust, as well as
20 the marital trust.

21 So I pulled out the arguments in the two pages
22 he makes. He says that his position is to ensure that
23 the two trusts are being treated fairly, identically,
24 and consistently. Well, the two trusts are not

1 identical, they're different. So there's no Band-Aid
2 that they should be treated identical. They say it's
3 inappropriate to allocate all of the expenses to the one
4 to the benefit of the other. They argue that it's if
5 permitted to allocate a hundred percent of the expenses
6 to the marital trust, the corpus of the Credit Shelter
7 Trust is presumed preserved. They argue that the
8 solution proposed solves the problem of how the trustee
9 chooses from which trust to draw funds. And they say
10 again, when the obligation to both groups of
11 beneficiaries is identical. Well, it's not.

12 Remember, the marital trust requires mandatory
13 distribution of all income, the Credit Shelter Trust
14 does not. So Senator Raggio, when he put in those
15 provisions, determined that the spend-downs would be, in
16 fact, different and that the trustee would have
17 discretion in that regard.

18 He says at page 6 on line 15 and 16, "The
19 focus is upon fairness". He says, "All beneficiaries,
20 no matter their affiliation, should and must be treated
21 identically". Well, they're not. The beneficiaries are
22 gonna get different amount of monies because the two
23 trusts have different numbers, even if you go with this
24 proposal, they're not gonna be treated identically,

1 because the trust doesn't treat them identically.

2 Then they say none of this would have been
3 germane had William Raggio followed the memory found on
4 these estates. Well, the Senator knew how to do what he
5 wanted, and that's to combine the two trusts upon his
6 death, he did it in the first trust. But he
7 intentionally did not do it in the second trust, and I
8 think that's a significant point. Had he done so, then
9 maybe there would have been identical treatment, but he
10 didn't do that.

11 They say, "Unfortunately, the assets remaining
12 are not divided upon Raggio's demise amongst them.
13 That's telling us we'd rather have you, Judge, tell the
14 senator after his death how he's to decide to divide
15 things up. But that's not the law. And Senator Raggio
16 could have did this, as he did in the first trust, but
17 he didn't do it in the second trust.

18 So what's really being said here? What Ms.
19 Chew is saying is I don't like the way my father created
20 the trust. I want you, Judge, to rewrite the trust. It
21 just isn't fair. No, fairness -- fairness is an
22 interesting issue to me because I suppose that any heirs
23 treated differently in a trust could say it's unfair.

24 If I were to bequeath my daughter a hundred

1 thousand and my son 200,000, I'm permitted to do that.
2 Now, could somebody say that's unfair? Sure. But they
3 wouldn't know the reasons I did it. So fairness doesn't
4 apply here, it's the settlor's intent, what he wrote.

5 What he intended the trust to do, that's at
6 issue here. And what this petition seeks to do is go
7 beyond the Senator's intent when he created the trust
8 and to rewrite it, to be, as they say, more fair. It's
9 other not the function of this court.

10 There is not a single legal or factual basis
11 cited for support of the proposition that we have to
12 have an accounting of the Credit Shelter Trust in order
13 to make sure they are, quote, spent down
14 proportionately. There's not a single citation of case
15 law, statute law, not a single reference to anything in
16 the trust to support the position of a proportional
17 spend-down that they see.

18 In fact, the trust agreement leads us to the
19 exact opposition conclusion. There's no provision in
20 the trust directed the result sought here, and it could
21 have easily been inserted had that been the Senator's
22 wishes. It could have easily been made.

23 Senator Raggio was a sophisticated settlor.
24 He's a lawyer. He served as trustee on numerous

1 estates. He was the longest serving member and chairman
2 of the Nevada State Finance Committee. He's no stranger
3 to numbers, no stranger to consequences of what he
4 wrote. And we know what he wrote in the trust.

5 Trust indicates that the Senator's intent was
6 to treat the beneficiaries differently. The two trusts
7 were funded differently, with different amounts. It was
8 intentionally done that way, he maximized the amount
9 that went into the marital trust by having the
10 accountant and everybody determine what that number
11 would be that would produce no income, no state tax.
12 The beneficiaries of two trusts were intentionally
13 different, completely different beneficiaries; his
14 natural and adopted daughter on one side, the
15 grandchildren of his wife on the other. That's
16 intentional. There was a specific intent not to make
17 his daughters successors to the Dale Checket Raggio
18 Credit Shelter Trust. That tells us something about his
19 intent. They were not made successor trustees to that
20 trust. The marital trust was mandated to pay all
21 interest to Mrs. Raggio, unlike the Credit Shelter
22 Trust. Yet, this evidence is a clear attempt to
23 maximize the growth of the Credit Shelter Trust over the
24 marital trust, contrary to the argument of Mrs. Chew.

1 So let me back up on that one. He puts
2 different amounts into the two trusts. He treats the
3 two trusts differently with the terms of the
4 beneficiaries. He's got a specific intent not to make
5 his daughters successor trustees to the Credit Shelter
6 Trust. And he puts in the trust that the marital trust
7 is to be -- pay all income to Mrs. Raggio, unlike the
8 Credit Shelter Trust, so he intended to treat those two
9 trusts differently. And what that shows is inevitably
10 to maximize the growth of the Credit Shelter Trust
11 because there's no mandated spend-down of income, but
12 there is in the marital trust. That's contrary to the
13 argument Ms. Chew made here that we should have a
14 proportional spend-down, and it's got to be equal.

15 And this is the more important. There was no
16 provision in the trust imposing any duty on the trustee
17 to spend the two trusts proportionally as they seek
18 here. And that being the case, there's no basis for a
19 dual accounting to a person that is not even an
20 interested party in the Credit Shelter Trust.

21 Here's a plain attempt to reform the trust
22 agreement. It's asking this Court to write into this
23 trust a proportional spend-down provision. It's asking
24 this Court to write into this trust what I call the --

1 the ordering clause that is in some trusts that say in
2 determining how you spend down for care and maintenance,
3 you can look at other assets, look at other income, look
4 at other resources. None of that's in here. And he put
5 no ordering provision in here as to how you look at it.
6 But they seek one by this petition. And that's not
7 within the trust, and this is -- it's an attempt to
8 reform the trust.

9 This request, because it intends to reform
10 this trust, arguably violates the no-contest laws
11 because they're asking to have language inserted by you
12 in fairness, without legal authority, without factual
13 support to reform and reword this trust. And that's why
14 I think it's very interesting that the trustee of the
15 beneficiary, Mrs. Righetti, has not requested any of
16 this relief. I think that's an important distinction.

17 So in summary, Judge, I think the petition
18 should be denied outright as lacking standard. Mrs.
19 Chew has her remedies. She'll get an accounting of the
20 marital trust through the trustee of the trust to which
21 she is a beneficiary. And she's not entitled to an
22 accounting of the Credit Shelter Trust by the expressed
23 differences that the Senator created and how the two
24 trusts were to be administered, how they're to be

1 distributed and the fact that there aren't provisions in
2 the trust that could be written in, that they seek you
3 to now write in.

4 So as I say, the petition should be denied.
5 Assuming she has stance, the preallocation should be
6 denied as they were intimately involved in that entire
7 process. Their argument that on the appreciation
8 doesn't apply because the asset -- the trusts were
9 funded at the valuation -- at the date of allocation.
10 I'm sorry, they were valued at the date of allocation,
11 not as suggested by the petition on the day of the
12 death, and then each one bears -- each one is a benefit
13 of any appreciation or depreciation. That's not what
14 the trust said, but that's what they're asking you to
15 put into it. Assuming she has standing, request for
16 accounting of the marital trust shall be denied as
17 premature at best because that doesn't happen until
18 July. And the request for accounting Credit Shelter
19 Trust must be denied as well, Judge. She has no
20 standing in any capacity to seek administration of that
21 trust. And even if she did, there's no legal or factual
22 support for the interpretation that they're ask this
23 Court to assume.

24 And third, her request clearly runs contrary

1 to the clear intent of the trust. Thank you, Judge. I
2 appreciate your attention. I wanted to spend time with
3 this because these provisions have been kind of glossed
4 over in the papers, and people have been identified in
5 capacities of which they may not be an art, and that's
6 why I thought it was important we spend a little bit of
7 time assisting you in going through the trust and what
8 our position is.

9 So, in short, your Honor, we would ask that
10 the petition be denied in its entirety. Thank you.

11 COMMISSIONER WRIGHT: Thank you. Does anybody
12 want a recess or do you want to take five or ten
13 minutes? I'm fine, but anybody else? Mr. Rosenauer?

14 MR. ROSENAUER: I'm ready to go, your Honor.

15 COMMISSIONER WRIGHT: Court reporter?

16 REPORTER: I'm fine, thank you.

17 COMMISSIONER WRIGHT: Go ahead, Mr. Rosenauer.
18 Thanks.

19 MR. ROSENAUER: I'll let Mr. Echeverria get --

20 MR. ECHEVERRIA: I'll shut it down so it won't
21 be a distraction.

22 MR. ROSENAUER: We could have the deputy just
23 shoot it.

24 (Discussion held off the record.)

1 MR. ROSENAUER: If may please the Court? And
2 very good argument, counsel. I have to laugh a little
3 bit about two different things, your Honor. First of
4 all, the one that -- that the comment -- and I
5 completely agree, Steve Lind is a wonderful person. He
6 is -- I am very good friends with him from Lake Tahoe,
7 he and Mike Freel were collaborators on the federal
8 income tax class that I took in law school at
9 Williamette, so I know Steve and Professor Lind very,
10 very well, and was very heartened when he was involved.
11 And he's a great guy to know, as well as a resource.

12 The other thing that interested me was this,
13 your Honor. You heard Mr. Echeverria talk about William
14 Raggio being the head of the state finance committee and
15 he was a lawyer and all the rest of those attributes.
16 And remember, your Honor, I worked for the guy in my
17 early career at Vargas and Bartlett. Bill Raggio was
18 there and, in fact, he was in my family's basement
19 brewing beer when I was a little kid when his mother,
20 Ms. Briggman, was babysitting us, so I understand all
21 that. But the funny part about it is that on one hand,
22 Mr. Echeverria says this guy knew exactly what he was
23 doing. And on the other hand, he stood here and tells
24 ya oh, gee whiz, there was this condo thing and there

1 was this overfunding, and then they improved it and so
2 while I am not about to throw Mr. Raggio under the bus,
3 I would submit that he was human just like all the rest
4 of us, have his own frailties and was not above any kind
5 of an error.

6 The second thing and now down to the actual
7 argument, your Honor, the first thing that strikes me is
8 this. They want to argue that the one-year term has not
9 yet come for an accounting. What they don't tell you,
10 and they don't mention is, gee whiz, why is the
11 accounting for the gap period from Bill Raggio's demise
12 to the allocation? Because the money that became the
13 Credit Shelter Trust and the marital trust was there, it
14 was still in trust, and Bill Raggio had died, which
15 means that accountings were due.

16 Now, what they want to gloss over and have the
17 Court sort of skip by is this. The allegation is hey,
18 we were working with Mr. Mowry, he was there, they were
19 involved. That's not the accounting that we're talking
20 about, your Honor. That is the allocation. That's the
21 distinction that we're drawing here. Because you have
22 to look at it from both sides. One, let's call it on
23 the income side and one from the spending side. What
24 they're not willing to give to your Honor, and they

1 gloss over, oh, Mr. Mowry was there, is now the assets
2 in that trust that became the two trusts was spent and
3 prove to those beneficiaries that those assets were used
4 by Mrs. Raggio for care, maintenance and support.

5 That's the piece that is missing here, as far as the gap
6 period is concerned. To demonstrate that she, as the
7 trustee, utilized and allocated those assets pursuant to
8 the terms of the trust because, remember, they were all
9 put together, the allocation came in July of the year
10 following his demise on February 3rd. That's --

11 COMMISSIONER WRIGHT: You said trustee.
12 Trustee who?

13 MR. ROSENAUER: Ms. Raggio was the trustee at
14 the time.

15 COMMISSIONER WRIGHT: Dale?

16 MR. ROSENAUER: Dale Raggio.

17 COMMISSIONER WRIGHT: Okay.

18 MR. ROSENAUER: She then -- remember, that's
19 more than a year. Where is that proof?

20 And they're not willing to give you that,
21 they're trying to sit there and say well, oh, Mr. Mowry
22 was involved. Yes, he was involved with respect to the
23 allocation, but there is absolutely not one piece of
24 paper that's out there that says \$2.50 to CVS Pharmacy

1 for aspirin. That is care, maintenance, and support.
2 Where's that? It's not there. And they haven't done
3 it. And that was the genesis of us starting the -- me
4 starting the dialogue with Mr. Echeverria as far as how
5 this whole thing is going to start to fit together. And
6 as he said, well, when does the obligation to the
7 account end? It hasn't even started yet, your Honor,
8 because they haven't done it yet. That's the first
9 point.

10 The second point, your Honor, that they don't
11 distinguish, and they don't -- that they're not quite
12 grasping is this. It's all about the duty of the
13 trustee to use the assets in those two trusts
14 appropriately. Care, maintenance, support, that's what
15 it's all about. That's what this is about. It's not
16 about all the rest of the tax issues that may or may not
17 be out there.

18 Now, I understand, and I acknowledge the fact
19 that the trusts say what they say, no doubt about it,
20 absolutely no doubt about it. Does Ms. Raggio get
21 income off of one and she can, by discretion, take
22 income off the other, but our point is this. If the
23 duty is the same, care, maintenance, and support, she
24 can not distinguish or discriminate one over the other.

1 She may have to take the income, but what we're talking
2 about, your Honor, and I acknowledge that one says hey,
3 she gets income. We're talking about spend-down of
4 corpus. We're talking about what happens after that
5 mandatory distribution of the income because, again, she
6 has the discretion to get into either trust corpus. And
7 when she is in front of CVS Pharmacy and she's got two
8 credit cards, one for each trust for the aspirin bottle,
9 she can't take one over the other. That's not what the
10 statute permits, and that's not what the trust permit.
11 And that, for me, is what the prime distinction truly is
12 because they want to -- they want to characterize it as
13 it being a trust obligation. That's not it.

14 Much the same way as the statute, excuse me,
15 the accounting to the beneficiaries, that is by statute.
16 That's an obligation that is placed upon the trustee,
17 not as far as the trusts are concerned. Our statutes
18 tell us, and we did cite to it in our briefs that the
19 trustee has the obligation to treat everybody the same,
20 all the way through. And when you are confronted with
21 exactly the same terms, conditions, and obligations
22 within those trusts, you have to treat them fairly.
23 That's what we're talking about. That's what's here.

24 Now, they distinguish a -- quite a bit, they

1 emphasize very, very eruditely that Leslie Righetti is
2 the trustee of the trust into which the remains of the
3 marital trust will flow. The difference here is that
4 remember, Dale Raggio only has a lifetime interest,
5 that's it. So the beneficial interest has vested in the
6 other trust, and in those beneficiaries. And what they
7 want to do here is interpose a distinction without a
8 difference and that is, oh, well, you can go to Leslie
9 Righetti and get your accounting, but they don't say and
10 by the way, we've tendered that and more than a year's
11 past or anything else, we still have our remedy, but
12 it's just not here, I'm asking the Court, and to respond
13 to counsel's argument I have no problems going out and
14 joining Leslie Righetti to this request, no problems at
15 all. Under Rule 19? Fine. All interested parties, get
16 them here and we're done, distinction without a
17 difference. They still can't come up with the
18 accounting that is owed for the gap period that complies
19 with what the statutory obligation is. So it's six one
20 way half a dozen the other, and if the Court wants me to
21 do that, I can talk to Mr. Mowry, I can go ahead and get
22 it done because they can't still come up with, and they
23 want the Court to simply look past, or not look past the
24 fact that they haven't done what they're supposed to do.

1 And that's the key to, in essence, our request. We're
2 not looking to have the Court reform or revise these two
3 trusts, not at all, absolutely not at all.

4 And the reference to the challenge and the
5 sanction that may come along with it, I would submit, is
6 a complete red herring. But that notwithstanding, all
7 we are asking the Court to do is to recognize the reason
8 why we are here. And that is that to understand what is
9 coming out of one trust, you have to understand the
10 other one to ensure that they are being allocated
11 because, remember, the duty is the same, the obligation
12 is the same; maintenance, support, and I forget what the
13 third one is. But --

14 COMMISSIONER WRIGHT: Health.

15 MR. ROSENAUER: Thank you. That they have got
16 to be treated by the same person under the same
17 conditions pretty much identically. So to be able to
18 understand oh, gee whiz, here's two dollars for aspirin,
19 here's \$2.00 for Advil, then they're being treated
20 fairly. And, you know, down at the bottom line, yeah,
21 they are being treated fairly. That's fine. You can't
22 just say, gee whiz, you can see one without
23 understanding the other. Because, again, the whole idea
24 when you're done with it is to ensure that the --

1 because we're only talking about during the time that
2 Dale Raggio is the trustee. What -- upon her demise, we
3 agree that the Credit Shelter Trust is going to go to
4 the grandchildren, the other size goes down to Mr.
5 Raggio's kids here in town. We know that, your
6 Honor, and we may not agree with it, but we acknowledge
7 it, we're living with it. But it's that intervening
8 time so that then one side or the other side is not
9 getting, in essence, used as a piggy bank when the other
10 one, oh, gee whiz, that's just fine, we don't have to
11 account to them, they don't need to know what we're
12 doing, and there's no way to ensure that that obligation
13 of fairness is being taken -- that is being taken -- I'm
14 articulating it wrong, that that fairness or obligation
15 of fairness is being followed.

16 Let's look for a minute, your Honor, because
17 we did some history, and thank you very much, counsel,
18 as far as how we got here. If you look at the dates of
19 the trust, the reason why the Credit Shelter Trust
20 ballooned the way that it did was because during the
21 Bush years as the presidency, the amount that you could
22 put in and shelter continued to go up. It went up from,
23 when I was in school, \$400,000 to five million dollars.
24 If nobody did anything, what happened was, as a matter

1 of law, that amount in the Credit Shelter Trust kept
2 going up. The assets that the decedent had was staying
3 stagnant. So as it went up, it had to come out of
4 somewhere, and so those two became unbalanced.

5 Now, what I was referring to was not what
6 should happen in this case, but normally when the
7 surviving spouse dies, they both come back together
8 again and then get divided. That's normally what
9 occurs. It's not what occurs here, and we're living
10 with that. So the argument, therefore, of that that
11 we're trying to reform or rewrite this is a
12 misinterpretation or mischaracterization of what we are
13 attempting to do or what and what we're asking the Court
14 to do.

15 If you look at their analysis, your Honor,
16 they want to go backwards. They want to go from where
17 we are right now working backwards. We are asking the
18 Court to go forward, take this from February 3rd of
19 2012, Bill Raggio dies, a resident of Washoe County, but
20 he's in Australia at the time of his demise. At that
21 point, we're asking for the accounting going forward for
22 the gap period and then thereafter.

23 What counsel is arguing for Ms. Raggio is, gee
24 whiz, no accounting for the gap period and we're just

1 going to say well, here's the Credit Shelter Trust and
2 here's the marital trust, and we don't have to account
3 for the Credit Shelter Trust which means that the five
4 million dollars, or 5.1 that's in the Credit Shelter
5 Trust, no accounting here, no accounting over here, we
6 got nothing, we got nothing to do and, gee whiz, you can
7 waited another four months, now another one month for
8 the accounting to be done for the marital trust and go
9 see your sister, Leslie Righetti, and then we'll chat
10 about that later. That's the analysis that they're
11 asking the Court to do as opposed to what should be
12 done, or more precisely, what should have been done, and
13 that is on an ongoing basis starting February 3rd of
14 2012 and accounting February 3rd of 2013, and February
15 3rd, 2014 of which there is none, none, not one, zero
16 about how that trust and those assets were used for
17 health, care, and maintenance. That's what we're
18 asking, your Honor. We're not asking to reform or to
19 have this Court rewrite the bloody trusts, no, not at
20 all. What we're asking for is exactly what the statute
21 permits, and that is some type of tracing and
22 accountability as to how those trust assets were used
23 for the health, care and maintenance of Dale Checket
24 Raggio. And to understand one, you gotta have the

1 other. That's what we're asking for and that's the
2 relief that we're seeking. Thank you, your Honor.

3 COMMISSIONER WRIGHT: Thank you. Would you
4 like to respond.

5 MR. ECHEVERRIA: I would, because there was
6 some new argument raised there. And if there's
7 something to write on this with? Thank you.

8 I want to address this whole gap issue,
9 because the argument is ignoring the terms of the trust.
10 Remember that the trust specified that the marital trust
11 was to be funded in a pecuniary amount that would zero
12 out the state taxes. Ask that's a major distinction
13 where there's no necessity for an accounting. So let's
14 suppose that that number is two million dollars. All
15 right? And let's suppose that the total value of the
16 estate is six million dollars.

17 COMMISSIONER WRIGHT: Mr. Rosenauer, if you
18 want to come around and look?

19 MR. ROSENAUER: Thank you, your Honor.

20 COMMISSIONER WRIGHT: Yeah, sure.

21 MR. ROSENAUER: Thank you, counsel.

22 MR. ECHEVERRIA: Okay? Let's suppose that
23 this is the value on the date of death. So two million
24 dollars is dictated to be put into the marital trust,

1 and that value is to be -- the assets that go into that
2 are valued as of the date of the actual allocation, but
3 the number doesn't change. So if Mrs. Raggio did what
4 Mr. Rosenauer is suspicious of, and let's say she spent
5 four million dollars in the gap. She still has to put
6 two million into the marital trust. It's not
7 proportionate. That number is fixed as of the date of
8 the death, subject to the calculation of the expenses,
9 but it's a fixed number, it doesn't go up or down, it
10 only goes down by the amount of the expenses. So it
11 doesn't matter, and that's the whole point here, it
12 doesn't matter how money was spent in the interim
13 because regardless of how it was spent, she still had to
14 put x amount of money into the marital trust, so there's
15 no necessity for an accounting.

16 MR. RILEY: Can I just further that one?

17 COMMISSIONER WRIGHT: Sure.

18 MR. RILEY: And I suppose where you're going
19 to go is well, what if we allocate expenses that trigger
20 and reduce it. Those will also become -- we would have
21 to account in the initial marital trust accounting of
22 why it was two million and it's 1.8, why the 1.8 is
23 funded, and all those expenses would be disclosed what
24 was allocated, et cetera.

1 MR. ECHEVERRIA: They are disclosed in the
2 facts.

3 MR. RILEY: Correct.

4 COMMISSIONER WRIGHT: Okay.

5 MR. ECHEVERRIA: So it doesn't matter how this
6 money was spent because the trust dictated how much went
7 into the marital trust.

8 COMMISSIONER WRIGHT: But I'm just going to
9 say it may be a really poor question.

10 MR. ECHEVERRIA: That's okay.

11 COMMISSIONER WRIGHT: Doesn't that number on
12 the left bear some relationship to the whole -- I mean,
13 don't you -- how did you get that?

14 MR. RILEY: And so --

15 MR. ECHEVERRIA: These are close approximation
16 of the numbers.

17 COMMISSIONER WRIGHT: I don't mean --

18 MR. ECHEVERRIA: What went in here was two and
19 a half million, so then what went in here was --

20 MR. RILEY: If I may?

21 MR. ECHEVERRIA: Yeah.

22 COMMISSIONER WRIGHT: Yeah.

23 MR. RILEY: The marital trust, the two million
24 dollars, real simple. Someone dies, and the exemption

1 is four million. Okay. The marital trust then is under
2 the formula that's under this trust which is a marital
3 pecuniary formula, the marital trust is entitled to two
4 million dollars, the amounts required to reduce the net
5 estate to zero, however, that's also less any
6 administrative -- deductible administrative expenses on
7 the estate tax returns, that's the formula that was
8 used, that's how the trust was drafted. So preparation
9 of the 706, administrative fees come out of this share
10 because it's -- those are deducted off the top and then
11 so to get to zero, you're reducing their share, but once
12 that's fixed, that's a fixed number.

13 COMMISSIONER WRIGHT: But it's fixed from?

14 MR. RILEY: It's fixed based on initially what
15 the exemption amount is at the time.

16 And if I may, just in response to Mr.
17 Rosenauer's argument, he brought up that through the
18 Bush tax cuts that was going up over time, so we started
19 at 650,000 in '99, then 675, it went up to a million,
20 then we went to two million, 2009 we went to 3.5
21 million. And this is a very important point because Mr.
22 Rosenauer's point that Mr. Raggio was not beyond
23 mistakes, et cetera, we believe he was more than aware,
24 as with most sophisticated individuals, 2010 there was

1 no exemption anymore.

2 COMMISSIONER WRIGHT: It was a one-year sort
3 of a --

4 MR. RILEY: Correct.

5 COMMISSIONER WRIGHT: -- misfit kind of a
6 year.

7 MR. ECHEVERRIA: Correct. That trust wouldn't
8 have been funded all.

9 MR. RILEY: As a planner I was very busy that
10 work fixing these type of problems, but nobody thought
11 it would come because once 2010 came to light and
12 January 1st, Congress had enacted, many people changed
13 their trust to take care of that problem.

14 In this case the marital trust would not have
15 been funded in 2010, so I think that's also a very
16 important point to bring up to Mr. Rosenauer's argument
17 that these numbers were always in flux, but at some
18 point the marital trust wouldn't have taken anything,
19 and no amendment was made to the trust.

20 COMMISSIONER WRIGHT: But the two million
21 dollars is not a fraction of the overall --

22 MR. RILEY: No.

23 COMMISSIONER WRIGHT: -- wealth, as he said.

24 MR. ECHEVERRIA: As he said, if he starts with

1 the six million and then accepting the exemptions, if
2 the exemptions is four million and the total estate is
3 six, then that determines that number.

4 COMMISSIONER WRIGHT: Right.

5 MR. ECHEVERRIA: If the whole estate is five
6 million, and the exemption is four, then the marital
7 trust is funded by a million.

8 COMMISSIONER WRIGHT: Got it.

9 MR. RILEY: It's not a fractional share
10 formula. And what it says is the maximum amount you can
11 take for marital deduction, and then at the very end it
12 says "provided, however, not to reduce it below zero".

13 MR. ECHEVERRIA: So to the extent that they
14 need an accounting of how this number's calculated,
15 that's in the 706, which they have. To the extent that
16 they need an accounting of what the expenses were that
17 went to reduce the amount that went into the marital
18 trust, that's in 706, which they have.

19 So it doesn't matter one way or another how
20 the money is spent in the interim, because that number
21 has to get funded no matter what. So she could have
22 spent all the money, up to the amount that goes in the
23 marital trust. If she had spent every penny, yeah,
24 there would be probably be an accounting of why is it

1 two million. But the number that funded, the number
2 that funded the marital trust was calculated early, less
3 expenses, and there's no reason for an accounting, it's
4 a waste of accountant's money, it's a waste of the
5 corpus of the trusts to do an accounting for no reason.
6 It's not required.

7 And so then I did want to point out, I guess
8 Mr. Riley made it, that this idea that the numbers were
9 fluctuating, I think, really points out what they're
10 real angry is at this trust, and that is that under the
11 circumstances, and under the amount of exemption at the
12 time Senator Raggio died, there was a number that
13 produced funding of the Credit Shelter Trust in a higher
14 number than was in one. It's not anyone's fault here,
15 but it's not the Court's purpose to remedy those facts.

16 Everyone knew in 2010 that had Senator Raggio
17 died actually what, 12 months earlier? This marital
18 trust wouldn't exist. So this is sour grapes is what
19 the petition is, and it's an attempt to reform this
20 trust and rewrite it in terms that they think is more
21 fair, and that's not what this is about. It's about
22 enforcing the Senator's intent. Thank you, your Honor.

23 COMMISSIONER WRIGHT: Yeah. You say it's a
24 waste and redundant or whatever, but there's something

1 lingering about the fact, and I'd like you to just, you
2 know, what's the word I'm looking for?

3 MR. ECHEVERRIA: Address it?

4 COMMISSIONER WRIGHT: Well, that's one word.
5 I guess I was going to use something a little more
6 creative, but address.

7 MR. ECHEVERRIA: I have to move closer because
8 my hearing aid doesn't work.

9 COMMISSIONER WRIGHT: Okay. And I'm not used
10 to all this space here.

11 MR. ECHEVERRIA: So if you don't mind me
12 approaching, Judge.

13 COMMISSIONER WRIGHT: No, that's fine. That
14 for a moment, being like 14 months or so, 15 months,
15 Tracy Chew was still an interested party and would,
16 therefore, be entitled to request something, just a very
17 basic point. And you're saying, well, that would be
18 regrettably expensive and redundant, but --

19 MR. RILEY: I believe, actually, to our point
20 the counter to that is it was Ms. Righetti who was part
21 of that who was part of funding allocation, part of what
22 took the 18 months to get that is the back and forth
23 with Ms. Righetti's attorney, Bart Mowry, in negotiating
24 those fine distinctions on how much of the exemption was

1 actually used with the gifts, how to value those
2 exemptions, and again, affecting the amount that went to
3 the marital trust.

4 And our whole point to all of this is we've
5 hashed this out once before with Mr. Mowry, Ms.
6 Righetti's attorney, as the proper party and as the
7 beneficiary of the marital trust. They had -- and so we
8 close on a broader picture what Mr. Rosenauer's request
9 is you're opening up -- we would then -- we shouldn't
10 have been talking to just Mr. Mowry who was counsel for
11 the trustee. We've now -- we're now, you know, are we
12 going to be subject to rereviewing all of that? As the
13 fiduciary of that trust, that was Ms. Righetti's duty,
14 she should have been, and disclosure to Ms. Chew is
15 under her responsibility. But she is the one who signs
16 -- would sign contracts on behalf of that, if there were
17 a court settlement on these exemptions, if there was a
18 settlement agreement she would be the proper party to
19 sign them. That's who Ms. Raggio is trustee of the
20 William J. Raggio Family Trust and the marital trust.
21 That's who she owes her duty to, Ms. Righetti. We've
22 raised this multiple times.

23 Mr. Rosenauer says we can bring her in any
24 time. We still have yet to hear from her, she hasn't

1 come forth. Mainly, we have addressed these issues with
2 her, and we are going to provide an accounting to her of
3 what was funded to the marital trust. We've already
4 been through the exercise of what that number should be
5 and the accounting of the expenditure since we've funded
6 it, which would be a year in July.

7 COMMISSIONER WRIGHT: But are you saying that
8 the trustee, Dale, engaged in no trustee-like activity
9 between the date of death and July of '13?

10 MR. RILEY: No that's a distinction between
11 the two trusts.

12 COMMISSIONER WRIGHT: Okay.

13 MR. ROSENAUER: So Ms. Righetti's entitled to
14 an accounting possibly of the gap period, but
15 understanding if we put the pecuniary amounts into the
16 marital trust it was entitled to receive.

17 Now, if the delay in funding was on our part,
18 I see Mr. Rosenauer's argument that well, we could have
19 gotten that put in and put in the market invested, but
20 that was part of arm's length negotiation we couldn't
21 have funded any earlier there was a dispute over the
22 exact dollar amount.

23 COMMISSIONER WRIGHT: In the meantime, though,
24 she's not buying any aspirin and stuff like that. I

1 mean, I hate to trivialize it, but I guess what I'm
2 thinking --

3 MR. RILEY: That doesn't change the amount
4 that --

5 COMMISSIONER WRIGHT: So it doesn't matter,
6 and you've said that at least a half dozen times, but I
7 want to make sure that I know what you mean with regard
8 to that gap period that it wouldn't matter is what
9 you're saying.

10 MR. RILEY: Or if it did matter.

11 COMMISSIONER WRIGHT: Or if it did.

12 MR. RILEY: So if, again, just using this
13 example of 200,000 was to be allocated to the marital
14 trust, and let's say we spent a hundred thousand on
15 aspirin, then the marital trust accounting would have to
16 account for every dollar that wasn't put in it, that
17 would be required from the accounting.

18 COMMISSIONER WRIGHT: That's the marital trust
19 accounting that's coming up in July.

20 MR. RILEY: Correct.

21 COMMISSIONER WRIGHT: Okay. All right. So
22 we've gotten a little -- which I don't mind. Do you
23 want to chime in there?

24 MR. ROSENAUER: Yep.

1 COMMISSIONER WRIGHT: Because each point
2 should probably be --

3 MR. RILEY: Got in my way. The wheel is --

4 MR. ROSENAUER: Caput. Excuse me for walking
5 in front. And very, very brief, but you have captured
6 the essence of what we're talking about. That gap
7 period, it is undisputed that that six million dollars
8 was in a trust in which Ms. Chew had an interest for
9 those 16 months or whatever it is that is this two
10 million dollars, let's say, using their facts. They
11 have not, their position is this, your Honor. Gee whiz,
12 we don't have to account to anybody else for what
13 happened with this four million dollars because we fully
14 funded the marital trust. So whatever happened, gee
15 whiz, doesn't matter.

16 The deal, though, and the obligation by
17 statute and by the terms of the trust is you have to
18 tell us that you used this money, the four million
19 dollars for health, maintenance support, because there
20 was no allocation yet or division between the marital
21 trust and the Credit Shelter Trust because all of those
22 assets are right here in that six million dollars. So
23 even if they are successful at arguing that the marital
24 trust beneficiaries do not get an accounting of the

1 Credit Shelter Trust, they can not deny that they owed
2 an accounting to these people during the time that six
3 million dollars was in the -- was in limbo during the
4 gap period.

5 Now, the other thing that they are missing is
6 this. They are correct. They and Mr. Mowry worked on
7 the allocation of the six million dollars between the
8 four million and the two million. That's what they were
9 doing, that's fine. Everybody was covered. But that's
10 just the accounting of the allocation, not what was used
11 of that for the aspirin. That's what the statute says
12 they have to do to account to the beneficiaries.

13 COMMISSIONER WRIGHT: Well, I guess the point
14 here, then, is if it does say that, their contention is
15 that it couldn't affect you anyway, so why do you need
16 to know? I mean, again, I hate to oversimplify things,
17 but sometimes that's what it takes for me to, you know,
18 latch on to and then keep moving.

19 MR. ROSENAUER: Absolutely. No problem, your
20 Honor. And what they are, therefore, telling you, is
21 ignore what's behind the four-million-dollar curtain.
22 It doesn't matter to you so just don't -- don't mess
23 with it, it's okay. That's everybody else's problem.

24 COMMISSIONER WRIGHT: But it will matter to

1 you if I buy your second point, which is the equivalent
2 spending or the proportionate spending.

3 MR. ROSENAUER: But, your Honor --

4 COMMISSIONER WRIGHT: Or does it matter beyond
5 that?

6 MR. ROSENAUER: No, it doesn't matter
7 necessarily beyond that. And the proportionate
8 spending, your Honor, and the import of that is, again,
9 this. The trustee of both -- sorry, both of these
10 trusts, the marital trust and the Credit Shelter Trust,
11 again has the same obligation.

12 The standard by which she can take money out
13 of that trust, other than the income side, other than
14 the income side, because that is hers, no doubt about
15 it, is for those three elements. If, for whatever
16 reason she's out buying sail boats, for Christ sakes,
17 then that is not within that. And the problem then
18 becomes, for those three elements, she owes that to both
19 sides, whether it is the two million side or the four
20 million dollar side, and to understand and affect the
21 fact that one is not being prejudice to the other, you
22 have to understand one to get to the other. That's the
23 point.

24 COMMISSIONER WRIGHT: Okay.

1 MR. ROSENAUER: Thank you, your Honor.

2 COMMISSIONER WRIGHT: Yes. Anything else? I
3 guess we'll round it out now.

4 MR. RILEY: I don't want to belabor too many
5 point. My cocounsel did a great job, I think, of
6 addressing these issues. And the credit trust and the
7 difference and who the duties are owed to, Mr. Rosenauer
8 correctly points out there's this other 400,000.

9 COMMISSIONER WRIGHT: Four million.

10 MR. RILEY: Four million, I apologize. And
11 that duty is owed to her grandchildren how that credit
12 trust was funded. They have their own rights, they can
13 choose to waive an accounting, they could choose that,
14 and the statute's very clear. They are the
15 beneficiaries of that trust. They are entitled to the
16 accounting of that, the duty is owed to them, but that's
17 not -- Ms. Chew can't step in for them and enforce their
18 rights, number one.

19 Number two, not that we're trying to hide
20 anything, that's between Ms. Raggio and her grandkids,
21 and there is a reason to a point Mr. Rosenauer made at
22 the very beginning is that the statutes are all about
23 transparency. They're all about transparency to those
24 who are titled to an accounting, but they strike a

1 balance for cases such as this where somebody may come
2 in and want an accounting of every penny spent from both
3 trusts and be able to object to both of those. The
4 beneficiaries of each trust are the proper parties to do
5 that. And Mr. Rosenauer said for a brief moment Ms.
6 Chew had an interest in this. That is not accurate.
7 The William and Dorothy Credit Shelter Trust is that
8 party. Ms. Righetti has chosen to wait for us to
9 provide the accounting. We will do so.

10 But I guess the whole point here is all of
11 that, before you get there, skips over the whole very
12 important point that Ms. Righetti is the proper party as
13 the trustee of the beneficiary, and rightfully so,
14 mainly so that we don't have objection -- we're not re
15 hashing all of these arguments because if you buy Mr.
16 Rosenauer's argument that Ms. Chew is entitled it, then,
17 arguably, so should her children, so should all of the
18 heirs of --

19 COMMISSIONER WRIGHT: Dorothy.

20 MR. RILEY: Dorothy, and we could then -- then
21 in a similar situation we would need to be negotiating
22 with all the beneficiaries of that -- sub beneficiary --
23 the beneficiaries of beneficiary. The proper party here
24 is Ms. Righetti as trustee of William and Dorothy trust.

1 And again, we've addressed these issues with Mr. Mowry.
2 I can only suppose that they're happy with our
3 explanation and are willing to wait until July to
4 receive their accounting, and that's why they haven't
5 joined in the petition, and that's why they're not here
6 today. And I just think that we -- it keeps getting
7 glossed over that Ms. Chew has an interest in this
8 trust. If you collapse it all down, yes, if she
9 survives Ms. Raggio, she has an interest in a trust that
10 is a beneficiary of this marital trust and going up the
11 ladder. But all of that misses the fact that she
12 doesn't have a direct interest and the proper party, and
13 the statutes clearly delineate, that Ms. Righetti is
14 that as trustee of the beneficiary.

15 COMMISSIONER WRIGHT: All right. Thank you.

16 MR. RILEY: Thank you. Will that be all?

17 MR. ROSENAUER: Again, your Honor, we have no
18 problem with bringing in Ms. Righetti. We will be in
19 exactly the same place with exactly the same argument,
20 no problem.

21 And if the Court believes that to formulate a
22 complete adjudication that that's what we need, no
23 problem, your Honor. We can get her in here, and we
24 will not be rehashing the same thing and we'll be in

1 exactly the same place because they can't demonstrate
2 that accounting as to how those assets were used for
3 those three elements. That's the bottom line.

4 COMMISSIONER WRIGHT: Okay. All right. I'm
5 going to -- I've been kind of going back and forth. The
6 word I was looking for was deconstruct, okay? I just --
7 I found it.

8 MR. ECHEVERRIA: Good thing you didn't use it.
9 I don't know what it means.

10 COMMISSIONER WRIGHT: I'll use really simple
11 words when you're around, Mr. Echeverria.

12 MR. ROSENAUER: Your Honor, excuse me. Can I
13 get my pen? I got nothing to write on.

14 COMMISSIONER WRIGHT: Oh, sure, yes, get
15 whatever you need. And again, I'm just going to be a
16 few minutes, but if anybody needs a break, please just
17 chime in. Are we good? Okay.

18 As with all of these types of cases, there's a
19 very alluring aspect that somebody who's named somewhere
20 has the right to something and a direct interest or a
21 contingent interest or some kind of an interest in
22 knowing what's going on, and that definitely was
23 something going on here.

24 I thought everybody did an outstanding job and

1 you both brought me to just about the brink of where I
2 thought that each side had a winning argument.

3 At this point, though, and again, keep in mind
4 that I'm a commissioner and I'm making a recommendation
5 only, but my recommendation is that the petition should
6 be denied, and that is because in, you know, we can fuel
7 out the written recommendation with findings that
8 parallel the arguments of the objectors. But primarily
9 it is because what was -- what had me distracted was
10 what I thought that the petitioner, Ms. Chew, was a
11 beneficiary during that gap period and that there would
12 be some significance to an accounting that would be
13 produced for that period.

14 But I've been persuaded with the rendition on
15 the board here that it would not -- that she would not
16 have been impacted by that allocation -- excuse me.
17 That she would not have been impacted by an accounting
18 that preceded the allocation because the end result
19 would have been the same.

20 There's a part of me that wants to give her
21 that theoretical standing in that gap period, however,
22 again, it is probably based on what's been shown to me,
23 not only would not have an impact upon her, but the
24 result would be the same if that allocation took ten

1 days or 15 months or whatever.

2 As to the argument that Ms. Righetti could be
3 brought in, we'd do the same thing all over again.
4 Maybe? And maybe not. So my recommendation would be
5 that the petition be denied without prejudice.

6 Now, I suppose I could say that I want to be
7 the last one to create a repetition of the litigation
8 that we've already seen, but I'm not going to project or
9 predict what would happen if she did come in. Because
10 her arguments could be different, they could hinge on
11 different statutes or authority and, in fact, it might
12 just sort of make the picture a little bit clearer if
13 she were here.

14 But for now, and based on the posture of what
15 we have, I think that the characterization of there
16 being some kind of an obligation of these two portions
17 of the trust to function in a parallel way or that the
18 use of the two trusts has to be done proportionately, I
19 think that argument has not been proven by the language
20 of the trusts themselves. I think it was intentional.
21 And yes, the end result could be a big discrepancy, but
22 I think that had to have been the vision, if not the
23 intent, at least the vision or the appreciation of what
24 would have occurred, or what might have occurred.

1 So this is very technical. And again, there
2 are moments where certain words, use of words seem to
3 send it off into a different path of analysis, but I
4 think I have now seen from the help of all of you the
5 full circle of this, that there was no standing on the
6 part of Tracy Chew to bring this petition for the period
7 of the -- for the ongoing accountings, for the
8 obligation of initial and ongoing accountings on the
9 part of this particular trustee.

10 So Mr. Riley and/or Mr. Echeverria if you
11 would kindly write up a proposed finding on that? You
12 should send it to Mr. Rosenauer, let him have the five
13 days to sign off on the form and content, and it will be
14 a recommendation which can be appealed, okay? Thank you
15 very much.

16 MR. ROSENAUER: Thank you, your Honor.

17 COMMISSIONER WRIGHT: Thank you.

18 (Proceedings concluded.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Tuesday,
9 June 3, 2014, at the hour of 1:45 p.m. of said day, and
10 I then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein upon the
12 Oral Arguments of the case of THE WILLIAM J. RAGGIO
13 FAMILY TRUST, Case No. PR13-00624.

14 That the foregoing transcript, consisting of
15 pages numbered 1 through 81, both inclusive, is a full,
16 true and correct transcript of my said stenotype notes,
17 so taken as aforesaid, and is a full, true and correct
18 statement of the proceedings of the above-entitled
19 action to the best of my knowledge, skill and ability.

20
21 DATED: At Reno, Nevada, this 11th day of June, 2014.

22
23 /s/ Julie Ann Kernan

24

JULIE ANN KERNAN, CCR #427