

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. _____

Electronically Filed
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 II**

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

HOLLAND & HART LLP
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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

APPENDIX INDEX - ALPHABETICAL ORDER

12/16/2015	Answer to First Amended Complaint	I	PA-0047-PA-0052
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
1/9/2018	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		
11/13/2017	Commissioner's Recommendation and Order Regarding Submitted Matters	III	PA-0669-PA-0670
7/2/2015	First Amended Complaint	I	PA-0001-PA-0009
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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.

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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

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Jacqueline Bryant
Clerk of the Court
Transaction # 6204644 : tbritton

EXHIBIT "7"

EXHIBIT "7"

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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.

Robin Wright
Probate Commissioner

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Jacqueline Bryant
Clerk of the Court
Transaction # 6204644 : tbritton

EXHIBIT "8"

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1 CODE NO. 2690

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

9 * * *

10 IN THE MATTER OF THE
11 WILLIAM J. RAGGIO FAMILY TRUST,
12 Deceased.

Case No. PR13-00624

Dept. No. PR

13
14 CONFIRMING ORDER

15 On February 17, 2015, the Probate Commissioner served a *Recommendation For*
16 *Order: Denying Petition To Interplead Inter Vivos Trust, and Denying Request For Review of*
17 *Beneficiary's Request For an Accounting and Documents* in this action. None of the parties
18 to this action has filed an objection regarding that recommendation and the period for filing
19 any objection concerning that recommendation has expired. See WDCR 57.3(7)

20 ACCORDINGLY, the Court hereby CONFIRMS, APPROVES, and ADOPTS the
21 Probate *Commissioner's Recommendation* for Order served on February 17, 2015.

22 DATED this 4th day of March, 2015.

23 *Jo A. Highil*
24 DISTRICT JUDGE
25
26

CERTIFICATE OF SERVICE

CASE NO. PR13-00624

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 4th day of March, 2015, I electronically filed the **CONFIRMING ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL ROSENAUER, ESQ. for TRACY CHEW
JOHN ECHEVERRIA, ESQ. for DALE RAGGIO
TIMOTHY RILEY, ESQ. for DALE RAGGIO

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

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Jacqueline Bryant
Clerk of the Court
Transaction # 6204644 : tbritton

EXHIBIT "9"

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

23 IN AND FOR THE COUNTY OF WASHOE

24 IN THE MATTER OF THE
25 WILLIAM J. RAGGIO FAMILY TRUST.

26 Case No. PR13-00624
27 Dept. No. PR

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**NOTICE OF ENTRY OF
CONFIRMING ORDER**

TO: ALL INTERESTED PARTIES HEREIN:

PLEASE TAKE NOTICE that on March 4, 2015, this Court entered its Confirming Order to the Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents in the above-entitled action.

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

DATED this 5th day of March, 2015.

HOLLAND & HART LLP



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

Attorneys for Dale Raggio

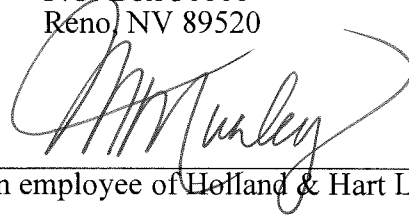
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5th day of March, 2015, a true and correct copy of the foregoing **NOTICE OF ENTRY OF CONFIRMING ORDER** was deposited in the United States Mail, postage prepaid, first class delivery, addressed as follows:

Michael A. Rosenauer, Esq.
Rosenauer & Wallace
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Barton G. Mowry, Esq.
Maupin, Cox & LeGoy
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An employee of Holland & Hart LLP

EXHIBIT "10"

EXHIBIT "10"

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9 and Leslie Raggio Righetti,
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11 J. Raggio Family Trust
12

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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

_____/

REMAINDER BENEFICIARIES' FIRST SET OF INTERROGETORIES TO TRUSTEE
DALE CHECKETT RAGGIO

PROPOUNDING PARTY: Tracy Raggio Chew and Leslie Raggio Righetti, Indefeasably Vested
Remainder Beneficiaries of the William J. Raggio Family Trust

TO: Dale Checkett Raggio, Trustee of the William J. Raggio Family Trust

REMAINDER BENEFICIARIES FIRST SET OF INTERROGETORIES TO TRUSTEE
DALE CHECKETT RAGGIO

The Remainder Beneficiaries hereby request that Trustee Dale Checkett Raggio answer, under oath, in accordance with Rule 33 of the Nevada Rules of Civil Procedure, the interrogatories which follow.

///

I. PRELIMINARY DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the interrogatories set forth hereafter and are deemed to be incorporated therein.

1. As used in these interrogatories, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded, or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone or oral conversations), emails, text messages, contracts, correspondence, agreements, applications, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, films, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any handwritten, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, in the Petitioner's possession, custody or control or to which the Petitioner have or have had access.

2. As used throughout these interrogatories, the term "you," its plural or any synonym thereof, is intended to and shall embrace and include in addition to the Respondent, counsel for the Respondent, and all agents, servants, employees, representatives, investigators, and others who are in the possession of or who may have obtained information for or on behalf of the Respondent.

3. As used throughout these interrogatories, the term "person," or its plural or any synonym thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local, or any agency of the government of a foreign country) or any other entity.

1 4. As used throughout these interrogatories, the term "communication," its plural or any
2 synonym thereof, is intended to and shall embrace and include all written communications, and with
3 respect to all written communications, shall include but is not limited to every discussion,
4 conversation, conference, meeting, interview, telephone call or doctor or other professional service
5 visit.

6
7 5. (a). As used throughout these interrogatories, the terms "identify," "identity" or
8 "identification," their plural or synonyms thereof, when used with reference to a person shall mean to
9 state the full name and address, and where applicable, the present position and business, if known,
10 and each prior position and business.

11 (b) As used throughout these interrogatories, the terms "identify," "identity" or
12 "identification," their plural or synonyms thereof, when used with referenced mean to state:
13

14 (i) The general nature of the document or object, i.e., whether it is a
15 letter, an email, a text, a memorandum, a report, a drawing, a chart
16 or tracing, a pamphlet, a tweet, snapchat, posting on electronic media,
17 etc.;

18 (ii) The general subject matter of the document or object;

19 (iii) The name and current or last known business address and home
20 address of the original author or draftsman (and, if different, the
21 signor or signors), and of any person who has edited, corrected,
22 revised or amended, or who has entered any initials or comment or
23 notation thereon;

24 (iv) The date thereof, including any date of any such editing,
25 correcting, amending or revising;

26 (v) Any numerical designation appearing thereon, such as file
27 reference;

28 (vi) The name of each recipient of a copy of the document or object;
and

(vii) The place where and the person now having custody or control
of each such document or object, or if such document or object has
been destroyed, the place of and reason for such destruction.

1 (c) As used throughout these interrogatories, the terms, "identify," identity" and
2 "identification," when used in reference to a communication, mean to state with respect to each
3 communication, the nature of the communication (telephone call, letter, etc.), the date of the
4 communication, the persons who were present at or participated in the communication or with, to or
5 from whom the communication was made, and the substance of the statement made by each person
6 involved in such communication.
7

8 6. All information is to be divulged which is in the Respondent's possession or control, or can
9 be ascertained upon reasonable investigation or areas within the Respondent's control. The
10 knowledge of the Respondent's attorney(s) is deemed to also be within the Respondent's knowledge,
11 so that, apart from privileged matters, if the Respondent's attorney has knowledge of the information
12 sought to be elicited herein, said knowledge must be incorporated into these answers, even if such
13 information is unknown to the Respondent.
14

15 7. Whenever you are unable to state an answer to these interrogatories based upon your own
16 personal knowledge, please so state, and identify the person or persons you believe to have such
17 knowledge, what you believe the correct answer to be, and the facts upon which you based your
18 answer.
19

20 8. Where an interrogatory calls for an answer in more than one part, each part should be
21 separated so that the answer is clearly understandable.

22 9. Each interrogatory should be construed independently. No interrogatory should be construed
23 by reference to any other interrogatory if the result is a limitation of the scope of the answer to such
24 interrogatory.
25

26 10. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in order to
27 bring within the scope of the interrogatory all responses which might otherwise be construed to be
28 outside of its scope.

1 11. If an interrogatory is objected to, in whole or in part, or if information responsive to an
2 interrogatory is withheld, on the ground of privilege or otherwise, please set forth fully each
3 objection, describe generally the information which is withheld, and set forth the facts upon which
4 you rely as the basis for each such objection.

5 12. Pursuant to NRCP, Rule 26(e), you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty seasonably to supplement its response with respect to
8 any question directly addressed to: (i) the identity and location of persons having knowledge of
9 discoverable matters; and (ii) the identity of each person expected to be called as an expert witness at
10 trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty seasonably to amend a prior response if it obtains
12 information upon the basis of which: (i) it knows that the response was incorrect when made; or (ii) it
13 knows that the response though correct when made is no longer true and the circumstances are such
14 that a failure to amend the response is in substance a knowing concealment.
15
16

17 II. INTERROGATORIES

18 Pursuant to the Nevada Rules of Civil Procedure, within thirty (30) days of the date hereof,
19 provide complete answers to the following Interrogatories:
20

21 INTERROGATORY NO. 1:

22 State with particularity the parameters you apply when deciding to distribute funds from the
23 Credit Shelter portion of the William J. Raggio Family Trust.

24 INTERROGATORY NO. 2:

25 State with particularity the parameters you apply when deciding to distribute funds from the
26 Marital Deduction portion of the William J. Raggio Family Trust.
27

28 INTERROGATORY NO. 3:

1 State with particularity the date and sum of all distributions to or for your benefit from the Credit
2 Shelter portion of the William J. Raggio Family Trust after February 3, 2012.

3 **INTERROGATORY NO. 5:**

4 State with particularity the controls or methodology you utilize to insure that any sums received
5 from the Marital Deduction portion of the William J. Raggio Family Trust are utilized consistently
6 with the terms of the William J. Raggio Family Trust.

7 **INTERROGATORY NO. 6:**

8 State with particularity the controls or methodology you utilize to insure that any sums received
9 from the Credit Shelter portion of the William J. Raggio Family Trust are utilized consistently with
10 the terms of the William J. Raggio Family Trust..

11 **INTERROGATORY NO. 7:**

12 State by institution name, domiciliary branch, address and account number the accounts into
13 which distributions from the Credit Shelter portion of the William J. Raggio Family Trust have been
14 deposited since February 3, 2012.

15 **INTERROGATORY NO. 8:**

16 State by institution name, domiciliary branch, address and account number the accounts into
17 which distributions from the Marital Deduction portion of the William J. Raggio Family Trust have
18 been deposited since February 3, 2012.

19 **INTERROGATORY NO. 9:**

20 State with particularity your understanding of the phrase "necessary for the proper support, care
21 and maintenance" as set forth within the Marital Deduction portion and the Credit shelter portion of
22 the William J. Raggio Family Trust.

23 **INTERROGATORY NO. 10:**

24 State with particularity how Trust legal fees are considered "necessary for your proper support,
25 care and maintenance" as set forth within the Marital Deduction portion and the Credit shelter portion

1 of the William J. Raggio Family Trust.

2 **INTERROGATORY NO. 11:**

3 State with particularity how accounting fees are considered "necessary for your proper support,
4 care and maintenance" as set forth within the Marital Deduction portion and the Credit Shelter
5 portion of the William J. Raggio Family Trust.

6 **INTERROGATORY NO. 12:**

7 State with particularity how Investment fees are considered "necessary for your proper support,
8 care and maintenance" as set forth within the Marital Deduction portion and the Credit shelter portion
9 of the William J. Raggio Family Trust.

10 **INTERROGATORY NO. 13:**

11 Please describe by date, vendor and cost of those furniture purchases made by you after February
12 3, 2012.

13 **INTERROGATORY NO. 14:**

14 Describe with particularity those improvements to your Webster Way residential property having
15 an aggregate value exceeding \$3,000.00 commenced after February 3, 2012.

16 **INTERROGATORY NO. 15:**

17 As to all improvements set forth in response to Interrogatory 14 above, please describe each and
18 every reason why each enumerated improvement was undertaken.

19 **INTERROGATORY NO. 16:**

20 Insofar as your Webster Way real property is concerned, describe those improvements that you
21 and William J. Raggio undertook during the time period from January 1, 2007 to February 2, 2012.

22 **INTERROGATORY NO. 17:**

23 Describe by date, length of time, and destination of those trips taken by you and William J.
24 Raggio having a one way distance exceeding 350 miles from Reno, Nevada after January 1, 2007.

25 **INTERROGATORY NO. 18:**

1 Describe by date, length of time and destination of those trips taken by you having a one way
2 distance exceeding 350 miles from Reno, Nevada after February 3, 2012.

3 **INTERROGATORY NO. 19:**

4 List the Season Tickets for such activities as sporting, cultural and art events you and William J.
5 Raggio purchased after January 1, 2007.

6 **INTERROGATORY NO. 20:**

7 List by vendor, vendor address and purchase price of the artwork purchased by you and William
8 J. Raggio after January 1, 2007.

9 **INTERROGATORY NO. 21:**

10 If you have purchased artwork after February 3, 2012, please provide a description, purchase
11 price, vendor name, vendor address and source of funds (E.g. Account number from which the
12 purchase price was paid).

13 **INTERROGATORY NO. 22:**

14 If you deny Request for Admission No. 1, please state each and every basis upon which you base
15 your denial.

16 **INTERROGATORY NO. 23:**

17 Please state with particularity the dates each invoice was paid, the amount paid, and the vendor
18 receiving the payments for legal fees, accountancy fees and investment fees paid by the Credit
19 Shelter portion of the William J. Raggio Family Trust after February 3, 2012.

20 **INTERROGATORY NO. 24:**

21 Please list all political donations by date, donee and amount donated you have made since
22 February 3, 2012.

23 **INTERROGATORY NO. 25:**

24 Please list all political donations by date, donee and amount donated you and/or William
25 Raggio (as Trustees and not individually) made prior to February 3, 2012 but after the William J.

1 Raggio Family Trust was established.

2 **INTERROGATORY NO. 26:**

3 Please list all charitable donations by date, donee and amount donated you have made since
4 February 3, 2012.

5 **INTERROGATORY NO. 27:**

6 Please list all charitable donations by date, donee and amount donated you and/or William J.
7 Raggio (as Trustees and not individually) made prior to February 3, 2012 but after the William J.
8 Raggio Family Trust was established.


9 **INTERROGATORY NO. 28:**

10 Please list all sources of income by payor, year received and amount received by you for
11 years 2012, 2013, 2014, 2015 and 2016.

12
13
14 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
15 preceding document does not contain the Social Security number of any person.

16
17 DATED this 11th day of May, 2017.

18 ROSENAUER & WALLACE

19
20 
21 Michael A. Rosenauer, Esq.

1 CERTIFICATE OF SERVICE

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

6 REMAINDER BENEFICIARIES' FIRST SET OF INTERROGETORIES TO TRUSTEE
7 DALE CHECKETT RAGGIO

8 on the party(s) set forth below by:

9
10 _____ Electronic Mailing via Second Judicial District Court
CM/ECF System to all those persons listed on the ECF
11 Confirmation Sheet.

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

14 addressed as follows:

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

Timothy J. Riley, Esq.
Holland and Hart
5441 Kietzke Lane, Second Floor
Reno, NV 89511

18 DATED this 12th day of May, 2017.

19 
20 _____
REBECCA SQUIRE

1 CODE: **2645**

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17 Attorney for Tracy Raggio Chew

18 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
19 **IN AND FOR WASHOE COUNTY**

20 Case No.: PR13-00624

21 Dept. No.: PR

22 IN THE MATTER OF THE WILLIAM J.
23 RAGGIO FAMILY TRUST

24 **OPPOSITION TO MOTION FOR**
25 **PARTIAL SUMMARY JUDGMENT**

26 _____ /
27 Leslie Raggio Righetti ("Leslie") and Tracy Raggio Chew ("Tracy"), daughters of
28 William J. Raggio ("Bill") and the indefeasibly vested remainder beneficiaries of the
29 Marital Deduction portion of the William J. Raggio Family Trust (the "Trust"), oppose
30 the Motion for Partial Summary Judgment (the "Motion") filed by Trustee Dale
31 Checket-Raggio ("Dale").

32 A close reading of the Motion reveals it is nothing more than a disguised motion
33 for protective order that improperly seeks to circumvent the applicable discovery rule—

1 that Dale must produce all non-privileged information that may lead to admissible
2 evidence in two matters pending before this Court: (1) Leslie and Tracy's civil action
3 (the "2015 Civil Action"); and (2) Leslie's Objection to Petition for Approval of
4 Accounting, Counter Petition for Removal and Surcharge of Trustee (the "2015
5 Counter Petition") (collectively, the "2015 Matters"). The Motion confuses claims and
6 issues in Tracy's prior petition (the "2013 Petition") with distinct and separate claims
7 and issues in the 2015 Matters. The basis of the confusion is that the 2013 Petition, as
8 well as the 2015 Matters, relate to two sub-trusts of Bill's Trust: (1) the Credit Shelter
9 portion of the Trust (the "Credit Shelter Trust"); and (2) the Marital Deduction portion
10 (the "Marital Deduction Trust") (collectively, the "Sub-Trusts"). Dale, Bill's second wife
11 to whom he was married for only about 9 years, is the sole trustee and lifetime
12 beneficiary of both the Sub-Trusts. Her grandchildren in Australia are the remainder
13 beneficiaries of the Credit Shelter Trust, even though they are not biologically related
14 to Bill and barely knew him. Leslie and Tracy, Bill's daughters from his first marriage to
15 Dorothy—to whom Bill was married for almost 50 years before Dorothy's death—are
16 the vested remainder beneficiaries of the Marital Deduction Trust. They are both Reno
17 residents and school teachers, whom Bill visited often, knew well, and loved.

18 Although the 2013 Petition and the 2015 Matters all relate to the Sub-Trusts,
19 the claims and issues in 2015 Matters are not the same as those in the 2013 Petition.
20 Indeed, they are quite different. The 2013 Petition was brought by Tracy alone (and
21 not Leslie) and sought an accounting from Dale of the allocation of principal between
22 the Sub-Trusts for the time period between Bill's death on February 24, 2012 and the
23 creation and funding of the Sub-Trusts on or about July 21, 2013. The actual
24 administration of the Sub-Trusts was not and could not be at issue in that case, as the
25 Sub-Trusts had not even been established yet.¹ Dale notes, however, that Tracy did

26 ¹ The duty to establish the Sub-Trusts belonged to Dale, in her capacity as the sole
successor trustee of the Trust.

1 raise two related issues in the 2013 Petition: (1) whether the Sub-Trusts must be spent
2 down in strict proportion, so that every distribution from one is proportional to that from
3 the other; and (2) whether a joint reading of the Sub-Trusts requires the exact same
4 distributions from each, so that every distribution from one is the same as that from the
5 other. The Probate Commissioner denied Trácy's claim for an accounting and rejected
6 her arguments on the above issues because they were not supported by the language
7 of the Trust. The Trust does not provide identical standards for distribution to Dale, as
8 it provides for mandatory distributions of net income from the Marital Deduction Trust
9 but only discretionary distributions of net income from the Credit Shelter Trust. Thus,
10 by the inclusion in the Trust of those different distribution rights, the distributions from
11 the Sub-Trusts need not be proportional.

12 The 2015 Matters, by contrast, arise from different facts over a different time
13 period and raise entirely different issues. The 2015 Matters allege claims against Dale,
14 in her capacity as sole trustee of the Sub-Trusts, for breach of fiduciary duties of good
15 faith, loyalty, and impartiality arising from her grossly disparate treatment of the Sub-
16 Trusts between when they were established on July 22, 2013 and when the first year
17 of administration ended on July 31, 2014. Although the 2015 Matters do seek an
18 accounting, the accounting is not about the funding of the Sub-Trusts (as in the 2013
19 Petition) but about Dale's use of the discretionary distributions as "necessary" for her
20 "proper support, care, and maintenance." That raises the questions of: what is her
21 standard of living (to be determined based on how she and Bill lived during their short
22 marriage) for purposes of measuring what is "necessary"; what resources are to be
23 taken into account to determine the "necessity" of discretionary distributions (as Dale
24 has considerable other assets she inherited outright from Bill and, on information and
25 belief, has barely touched the assets of the Credit Shelter Trust even though, when
26 funded, it was almost twice the size of the Marital Deduction Trust); and did she

1 properly spend money she distributed to herself under the guise of what is "necessary"
2 for her "proper support, care, and maintenance." Those are legitimate areas of inquiry
3 about which the remainder beneficiaries Leslie and Tracy have every right to inquire
4 before Dale spends down all trust assets. Clearly, the factual and temporal basis for
5 the accounting is different. So are the issues. Here, the main issue is not whether the
6 Sub-Trusts must be spent down in strict proportion, or whether a joint reading of the
7 Sub-Trusts requires the same distributions from each. Those were issues in the 2013
8 Petition. Instead, the primary issues of the 2015 Matters are: (1) whether the actual
9 pattern of Dale's distributions from the Sub-Trusts over a one-year accounting period
10 was "necessary" for her "proper support, care, and maintenance"; (2) what other
11 resources available to Dale are to be taken into account in determining "necessity";
12 and (3) whether the disparate and lopsided discretionary distributions from the Marital
13 Deduction Trust under the circumstances constitute a breach of Dale's fiduciary duties
14 of good faith, loyalty, and impartiality, requiring her removal as trustee of the Marital
15 Deduction Trust and the appointment of a new trustee, among other things.

16 Thus, claim and issue preclusion do not and cannot apply to bar either the 2015
17 Civil Action or the 2015 Counter Petition because the claims and issues are not at all
18 the same. The Court should reject Dale's attempt to conflate claims and issues from
19 the 2015 Matters with those from the 2013 Petition because the comparison is not
20 "apples to apples." The Court should also see through her improper attempt to dodge
21 discovery related to her distributions from the Credit Shelter Trust and her use or non-
22 use of other valuable assets that she owns (having inherited them from Bill free of any
23 trust) and that are available to her for her support, care, and maintenance, which
24 discovery is not only relevant but also essential to Leslie and Tracy's claims in the
25 2015 Matters. Dale should not be allowed to skirt her discovery obligations (much less
26 her breach of fiduciary duties) by bringing a dispositive motion that altogether lacks

1 merit. Accordingly, the Court should deny the Motion.

2 I.

3 **FACTUAL AND PROCEDURAL BACKGROUND.**

4 Bill was married to his first wife, Dorothy B. Raggio ("Dorothy") for almost 50
5 years. They had three children—biological daughter Leslie, adopted daughter Tracy,
6 and adopted son Mark Raggio ("Mark"). Mark predeceased Bill and Dorothy without
7 leaving issue. During Dorothy's and Bill's joint lifetimes, they created The Bill and
8 Dorothy Raggio Trust. When Dorothy died in 1998, that trust provided for the creation
9 of two sub-trusts: a revocable Survivor's Trust ("Bill's Survivor's Trust"); and an
10 irrevocable Credit Shelter Trust ("Dorothy's Credit Shelter Trust").

11 The Bill and Dorothy Raggio Trust provided that upon Dorothy's death, Bill was
12 to serve as the trustee of both Bill's Survivor's Trust and Dorothy's Credit Shelter
13 Trust. Thereafter, it provided that Leslie was to serve as the successor trustee of both
14 trusts when Bill was unable to so serve. The dispositive provisions of both trusts
15 provided for Bill's benefit for life, and upon Bill's death, Leslie and Tracy were each to
16 receive distribution, free of trust, of one-half of the assets. Dorothy's Credit Shelter
17 Trust was irrevocable, and the above provisions remained unchanged during Bill's
18 lifetime as to that trust, which trust is not the subject of the 2015 Matters.

19 Bill married his second wife, Dale, then age 61, in April 2003. Bill was age 76 at
20 the time. Before his death, Bill established a new trust known as the William J. Raggio
21 Family Trust (the "Trust") into which were decanted the assets of Bill's Survivor's Trust
22 from when he was married to Dorothy. Dale was not a co-settlor or co-grantor of the
23 Trust, as it was funded solely with Bill's separate property (from Bill's Survivor's Trust).
24 Bill named himself as the trustee of the Trust and his new wife, Dale, as the successor
25 trustee, followed by Leslie and Tracy, in that order.

26 Bill and Dale were married for only about 9 years when Bill died unexpectedly

1 on February 24, 2012, during a trip to Australia. Upon Bill's death, the terms of the
2 Trust and Bill's Will provided for some gifts outright and free of trust to Dale of tangible
3 personal property, substantial cash, significant life insurance proceeds, retirement plan
4 accounts, and the personal residence of Bill, located at 1855 Webster Way, Reno.

5 The residue of the Trust was thereafter divided into the Marital Deduction Trust
6 and the Credit Shelter Trust. The Marital Deduction Trust provides for a "QTIP trust,"
7 so there are mandatory distributions of net income payable to Dale for her life.² Mot.
8 Br., Ex. 1, at 5 ("[T]he Trustee shall quarter-annually or at more frequent intervals, pay
9 to or apply for the benefit of DALE . . . all of the net income of the Trust."). In addition
10 to the mandatory net income distributions under the Marital Deduction Trust, Dale is
11 also to receive "as much of the principal of the [QTIP] Trust as the Trustee, in the
12 Trustee's discretion, shall deem necessary for the proper support, care, and
13 maintenance of the [sic] DALE." *Id.* Upon Dale's death, the remaining balance of the
14 Marital Deduction Trust is to be added to Dorothy's Credit Shelter Trust, of which one-
15 half will be distributed to each of Leslie and Tracy. In this way, Leslie and Tracy are
16 ultimately to receive inheritance from their father, Bill, from the Marital Deduction Trust
17 upon Dale's death. Moreover, it demonstrates that their father anticipated a remainder
18 interest upon Dale's death. Otherwise, Bill simply could have given the assets of the
19 Marital Deduction Trust to Dale outright, as he did the \$1,800,000 in other assets.

20 As to Bill's Credit Shelter Trust, Dale is entitled during her life to "as much of the
21 net income and principal of the Credit Shelter Trust as the Trustee, in the Trustee's
22 discretion, shall deem necessary for the proper support, care, and maintenance of
23 DALE." *Id.* at 7. On Dale's death, the Credit Shelter Trust is to be divided into equal
24

25 ² Dale argues that mandatory income distributions from the Marital Deduction Trust
26 demonstrate Bill's intent that the Sub-Trusts have different goals. Not so. The main
motive for the mandatory income distributions is for the Marital Deduction Trust to
qualify for the estate tax marital deduction and take advantage of the tax benefits of a
QTIP trust, pursuant to statutory requirements.

1 shares among Dale's then-living grandchildren and their issue (who live in Australia
2 and whom Bill apparently met only a few times, including the trip when he died). Thus,
3 none of the Credit Shelter Trust is to be distributed to Leslie and Tracy, neither of
4 whom has a cordial or blood relationship with Dale. While they are to receive the entire
5 remainder of the Marital Deduction Trust upon Dale's death, that bequest ultimately
6 will be meaningless if Dale has since drained the Marital Deduction Trust.

7 It appears that little, if any, of the net income or principal of the Credit Shelter
8 Trust has been distributed to Dale during the accounting period, even though the
9 support distribution standard for the Credit Shelter Trust is identical to that of the
10 Marital Deduction Trust. That is, it appears Dale is electing for her own benefit to draw
11 down principal from the Marital Deduction Trust instead of using other assets, despite
12 access to them. Since no part of the Credit Shelter Trust will be distributed to Leslie
13 and Tracy, Dale is directly favoring and benefitting the remainder beneficiaries of the
14 Credit Shelter Trust (who are Dale's blood relatives) to the detriment of the remainder
15 beneficiaries of the Marital Deduction Trust (who are Bill's relatives) when the standard
16 for discretionary distributions is the same. Consequently, if Dale uses solely the Marital
17 Deduction Trust as "necessary" for her "proper support, maintenance, and care," there
18 will be no remainder of the Marital Deduction Trust left for Leslie and Tracy. The entire
19 Marital Deduction Trust will be depleted under the current rate of expenditure during
20 Dale's lifetime. Dale, as sole trustee and lifetime beneficiary of the Marital Deduction
21 Trust, will totally and effectively disinherit Bill's daughters, just as if Bill had left the
22 entire Marital Deduction Trust to Dale outright, which he did not do.

23 The Form 706 United States Federal Estate Tax Return filed for Bill's estate
24 reports that the Credit Shelter Trust was funded with \$3,940,964. In truth, the Credit
25 Shelter Trust was funded with much more than this amount because of the
26 appreciation in the value of the trust assets between Bill's death, and the date on

1 which the Marital Deduction Trust and the Credit Shelter Trust were actually funded.
2 The timing in the funding of the two trusts, which was completed by Dale as sole
3 trustee, had the unfortunate result of further prejudicing the remainder beneficiaries of
4 the Marital Deduction Trust, which was funded with the lesser \$2,555,471 amount
5 based on the funding formula set forth in the William J. Raggio Family Trust
6 Agreement, given that the Marital Deduction Trust did not share in the appreciation
7 after Bill's death but prior to the date of funding the Sub-Trusts. The timing of such
8 funding did, however, directly benefit the Credit Shelter Trust, all of which passes on
9 Dale's death to Dale's blood relatives.

10 Based on the design of Bill's estate plan, not only was Dale a lifetime
11 beneficiary of both the Marital Deduction Trust and the Credit Shelter Trust, but Dale
12 also received valuable assets and property free of trust which were reported on Bill's
13 Form 706 to exceed \$1,800,000 consisting of cash, personal property, the Webster
14 Way real property, insurance, and retirement benefits. See 2015 Counter Pet., Ex. 1.
15 Thus, it is apparent that Dale inherited \$1,800,000 of assets, outright and free of trust,
16 which she has access to utilize, in addition to the mandatory income distributions from
17 the Marital Deduction Trust. She also has the right to receive income from the Credit
18 Shelter Trust, and further ability to receive additional distributions of principal that she
19 determines "necessary" for her "proper support, care, and maintenance" from both the
20 Marital Deduction Trust and Credit Shelter Trust. As reflected in the first year's
21 accounting, the Marital Deduction Trust earned approximately \$48,000 in net income,
22 which was distributed to Dale, along with an additional \$200,000 of principal that Dale
23 deemed "necessary" for her "proper support, care, and maintenance." At this rate
24 (assuming a 2% dividend stream like the S&P 500), the Marital Deduction Trust will be
25 completely depleted by Dale in approximately 10 years and prior to the anticipated life
26 expectancy of Dale (11.12 years). Meanwhile, the Credit Shelter Trust, which has

1 almost double the value of the assets from the Marital Deduction Trust, is believed to
2 have been relatively untouched by Dale, despite its ability to generate income for
3 Dale's proper support, care and maintenance. On information and belief, Dale is
4 relying primarily, if not solely, on the Marital Deduction Trust for her "support, care, and
5 maintenance," without regard to the other resources available to her, including the
6 \$1,800,000 she received outright on Bill's death and at least another \$4,000,000 in the
7 Credit Shelter Trust. The effect of Dale's actions will disinherit Leslie and Tracy, and
8 will increase the inheritance of Dale's own family. Such a result, carried out by Dale
9 under the guise of her authority as trustee, is entirely contrary to the duties of a
10 fiduciary to act in good faith, and to be impartial and loyal to all beneficiaries whom she
11 serves.

12 Dale's counsel cites NRS 163.4175 to contend that Dale, as trustee, was not
13 required to consider her other sources of income or resources before making support
14 distributions to herself, as the income beneficiary. NRS 163.4175 provides: "**Except as**
15 **otherwise provided in the trust instrument**, the trustee is not required to consider a
16 beneficiary's assets or resources in determining whether to make a distribution of trust
17 assets." NRS 163.4175 (emphasis added). In fact, the William J. Raggio Family Trust
18 Agreement actually does specifically address this issue and, therefore, Dale may not
19 ignore her other resources. With respect to both the Credit Shelter Trust and Marital
20 Deduction Trust, the trustee is permitted to distribute principal assets to Dale only if
21 the distribution is "necessary" for her "proper support, care, and maintenance."
22 Specifically, Dale, as beneficiary, is entitled to distributions of principal of both trusts
23 "as the Trustee, in the Trustee's discretion, shall deem **necessary** for the proper
24 **support**, care, and maintenance of DALE." Mot. Br., Ex. 1, at 5, 7 (emphases added).

25 ///

26 ///

II.
**CLAIM PRECLUSION DOES NOT APPLY TO THE CLAIMS IN
THE 2015 ACTION BECAUSE DALE CANNOT ESTABLISH
AT LEAST TWO OF THREE NECESSARY FACTORS.**

Dale has the burden to establish preclusion, both as to claims and issues. She acknowledges her burden. Mot. Br. 13 ("The burden of establishing preclusion lies with the party claiming it."). But she fails to carry it, either as to claim or issue preclusion.

Her first argument is that the claims in the 2013 Petition preclude those in the 2015 Civil Action. To establish claim preclusion, Dale must show three necessary factors: (1) "the parties or their privies are the same"; (2) "the final judgment is valid"; and (3) "the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008). The three-factor test is conjunctive. It is not enough for Dale to establish one or two factors; she must establish all three. Claim preclusion does not apply where, as here, one or more factors are not satisfied. Dale argues a denial of the 2013 Petition without prejudice has preclusive effect as to the claims in the 2015 Civil Action. Her argument fails for the below reasons, and the Court should deny the Motion as to claim preclusion.

A. Dale cannot establish the second factor necessary for claim preclusion because the 2013 Petition was denied *without prejudice* and, therefore, is not a valid final judgment.

The first and most glaring reason that claim preclusion does not apply to the 2015 Civil Action is that the 2013 Petition was denied without prejudice. The order denying the 2013 Petition without prejudice is therefore not a valid final judgment. In *Five Star*, the Nevada Supreme Court made this point abundantly clear: "While the requirement of a valid final judgment does not necessarily require a determination on

1 the merits, it does not include a case that was dismissed without prejudice or for some
2 reason (jurisdiction, venue, failure to join a party) that is not meant to have preclusive
3 effect.” *Id.* at 1054 n.27 (emphasis added) (citing 18 Moore’s Federal Practice
4 § 131.30[3][a] (3d ed. 2008); Restatement (Second) of Judgements § 19 cmt. a, § 20
5 (1982); NRCP 41(b)). Under NRCP 41(b), a dismissal operates as an adjudication
6 upon the merits and thus would constitute a valid final judgment, “[u]nless the court in
7 its order for dismissal otherwise specifies,” such as by noting that the dismissal is
8 without prejudice. NRCP 41(b); *cf. Marshal v. Rodriguez*, No. 68478, 2016 WL
9 2943832, at *2 (Nev. App. May 18, 2016) (“[B]ecause the order is silent as to whether
10 the dismissal was without prejudice, it operates as . . . a valid final judgment.”).³

11 Here, by contrast, the denial of the 2013 Petition is plainly without prejudice.
12 The Probate Commissioner’s recommended order says so (Mot. Br., Ex. 7, at 2), and
13 the Court confirmed that order and, in so doing, the “without prejudice” language (*id.*,
14 Ex. 8, at 1). Dale herself therefore had no choice but to concede that the order is
15 without prejudice. *Id.* at 6, 10, 14. Although under 164.015(6), the order is final insofar
16 as it was not appealed, what is final is only an order issued without prejudice. That is
17 not a valid final judgment for purposes of claim preclusion. According to *Five Star*, “a
18 valid final judgment . . . does not include a case that was dismissed without prejudice,”
19 or in this case a petition denied without prejudice. 124 Nev. at 1054 n.27. Dale cites no
20 authority to the contrary. Nor can she identify a principled distinction between a
21 dismissal without prejudice and a denial without prejudice. In the trust context, a denial
22 of a petition without prejudice is the functional equivalent of a dismissal of a case
23 without prejudice. Compare NRCP 3 (civil action commenced by complaint), with NRS
24 153.031, 164.005, 164.010, 164.015 (trust proceeding commenced by petition); see
25 also *Dinerstein v. Evanston Athletic Clubs, Inc.*, 64 N.E.3d 1132, 1140 (Ill. App. Ct.
26

³ *Marshal* is citable under NRAP 36(c) because it was issued after January 1, 2016.

1 2016) (“[L]anguage indicating an order is ‘without prejudice’ . . . signals that the court’s
2 decision is not final.”).

3 Thus, the Court should deny the Motion as to claim preclusion for this reason
4 alone. The denial without prejudice of the 2013 Petition, which requested nothing more
5 than an accounting, does not preclude the claims in the 2015 Civil Action because a
6 denial without prejudice is not a valid final judgment. Without a valid final judgment,
7 Dale does not and cannot satisfy the second factor and a necessary requirement of
8 claim preclusion.

9 **B. The third factor of claim preclusion is absent because the claims in the**
10 **2015 Civil Action were not and could not have been brought in the 2013**
11 **Petition, as they arise from different facts over different time periods.**

12 The second reason claim preclusion does not apply is that the claims in the
13 2015 Civil Action are not the same as the claim in the 2013 Petition. Indeed, the claims
14 in the 2015 Civil Action were not and could not have been brought in the 2013 Petition
15 because the factual and temporal basis for those claims is entirely different. The claim
16 in the 2013 Petition was for an accounting of the allocation of principal between the
17 Sub-Trusts during the period from February 24, 2012 and July 21, 2013, before the
18 Sub-Trusts were even established. The claims in the 2015 Civil Action are for breach
19 of fiduciary duties of good faith, loyalty, and impartiality, as well as for an accounting,
20 with respect to Dale’s administration of the Sub-Trusts between July 22, 2013 and July
21 31, 2014, especially with respect to her grossly disparate treatment of the Sub-Trusts
22 over that time period. Dale’s actual administration of the Sub-Trusts, which is central to
23 the 2015 Civil Action, was not and could not have been at issue in the 2013 Petition,
24 given that the Sub-Trusts had not been established, much less administered, during
25 the time period at issue in the 2013 Petition. Thus, the factual and temporal basis for
26 the claims in the 2015 Civil Action is not the same and, in fact, is very different from

1 that of the claim in the 2013 Petition.

2 That means the third necessary factor of claim preclusion is not present, as
3 Dale does not and cannot establish that “the subsequent action [the 2015 Civil Action]
4 is based on the **same claims or any part of them** that were or could have been
5 brought in the first case [the 2013 Petition].” *Five Star*, 124 Nev. at 1054 (emphasis
6 added). Even a cursory comparison of the 2013 Petition and 2015 Civil Action reveals
7 that those cases do not present the same claims. The former presents a claim for an
8 accounting of Dale’s allocation of principal between the Sub-Trusts between February
9 24, 2012 and July 21, 2013; the latter presents claims for breach of fiduciary duties, as
10 well as an accounting, with respect to Dale’s actual administration of the Sub-Trusts
11 between July 22, 2013 and July 31, 2014. The claims therefore are not the same. *Id.*
12 at 1055 (“[C]laim preclusion applies to preclude an entire second suit that is based on
13 the same set of facts and circumstances as the first suit[.]”); *see also id.* at 1056
14 (noting, in a prior case, claim preclusion “could not have applied because the two suits
15 involved completely different occurrences at different locations”); *cf. Huggins v. Bank*
16 *Deutsche Nat’l Tr Co Trs*, No. 2:11-CV-00147-KJD, 2011 WL 2976818, at *1 (D. Nev.
17 July 21, 2011) (holding that the requirement of the same claims was met because the
18 second action alleged “the identical twelve claims” as the first action).

19 Nor are any part of the claims the same. In the 2013 Petition, Tracy argued
20 prospectively that the Sub-Trusts must be spent down in strict proportion and that a
21 joint reading of the Sub-Trusts requires the same distributions from each. In the 2015
22 Civil Action, by contrast, Leslie and Tracy argue retrospectively that Dale’s
23 administration of the Sub-Trusts (as well as her individually owned inherited assets)
24 was so grossly disparate and lopsided as to rise to the level of a breach of fiduciary
25 duties, requiring her to be surcharged and removed as trustee of the Marital Deduction
26 Trust, followed by the appointment of a new trustee, among other things. Thus, the

1 basis for the claims is different. *Cf. Five Star*, 124 Nev. at 1060 (holding that claim
2 preclusion applied because “Five Star . . . file[d] a second suit based on the same set
3 of facts and merely add[ed] an additional claim for relief”).

4 Claim preclusion therefore would serve no purpose here. The purpose of claim
5 preclusion rests on “fairness to the defendant” and “sound judicial administration” to
6 preclude repeated litigation over the same controversy, “especially if the plaintiff has
7 failed to avail himself of opportunities to pursue his remedies in the first proceeding.”
8 *Id.* at 1058 (internal quotation marks and ellipsis omitted). Here, neither Leslie nor
9 Tracy failed to avail herself of opportunities to pursue remedies in the 2013 Petition.
10 The claims, and the basis for the claims, were not and could not be the same because,
11 in the 2015 Civil Action, Leslie and Tracy bring breach-of-fiduciary-duty claims arising
12 from different facts over a different time period.

13 Accordingly, given the absence of a valid final judgment in the 2013 Petition,
14 the difference in claims between the 2013 Petition and 2015 Civil Action, or both, claim
15 preclusion does not bar the claims in the 2015 Civil Action, and the Court should deny
16 the Motion as to claim preclusion.

17 III.

18 ISSUE PRECLUSION DOES NOT APPLY TO THE ISSUES IN 19 THE 2015 COUNTER PETITION BECAUSE DALE CANNOT ESTABLISH 20 AT LEAST TWO OF FOUR NECESSARY FACTORS.

21 Dale also does not and cannot carry her burden to establish issue preclusion.
22 Here, her argument is that the issues in the 2013 Petition preclude those in the 2015
23 Counter Petition. Once again, her argument fails.

24 To establish issue preclusion, Dale must show each of four necessary factors:
25 (1) “the issue decided in the prior litigation must be identical to the issue presented in
26 the current action”; (2) “the initial ruling must have been on the merits and have

1 become final”; (3) “the party against whom the judgment is asserted must have been a
2 party or in privity with a party to the prior litigation”; and (4) “the issue was actually and
3 necessarily litigated.” *Five Star*, 124 Nev. at 1055 (internal quotation marks omitted). If
4 she fails to demonstrate even one factor, issue preclusion does not apply. That is,
5 “issue preclusion only applies to issues that were actually and necessarily litigated and
6 on which there was a final decision on the merits.” *Id.* Here, although there is no valid
7 final judgment (second factor) for the reasons set forth above, at least two other
8 factors necessary for issue preclusion are not satisfied: (1) the issues decided in the
9 2013 Petition are not “identical” to those in the 2015 Counter Petition (first factor); and
10 (2) the same issues were not “actually and necessarily” litigated in the 2013 Petition
11 (fourth factor). Accordingly, issue preclusion does not and cannot apply, and the Court
12 also should deny the Motion as to issue preclusion.

13 **A. Dale cannot establish the first factor necessary for issue preclusion, as**
14 **the issues in the 2013 Petition and 2015 Counter Petition are not identical.**

15 Issue preclusion does not bar the 2015 Counter Petition, in whole or in part,
16 because none of its issues are identical to those in the 2013 Petition for the reasons
17 set forth above. Dale therefore cannot satisfy the very first factor necessary for issue
18 preclusion, which requires that “the issue decided in the prior litigation [the 2013
19 Petition] must be *identical* to the issue presented in the current action [the 2015
20 Counter Petition].” *Id.* at 1055 (internal quotation marks omitted; emphasis added).
21 The 2013 Petition did not present an issue identical to one in the 2015 Counter
22 Petition, nor did it present “the same *ultimate* issue.” *Alcantara ex rel. Alcantara v.*
23 *Wal-Mart Stores, Inc.*, 130 Nev. Adv. Op. 28, 321 P.3d 912, 916–17 (2014) (emphasis
24 added) (holding that whether Wal-Mart owed a nondelegable duty to a deceased
25 employee was “the same issue” as whether, on the same facts, it was negligent in her
26 death). Put differently, the 2015 Counter Petition does not raise “a *specific* issue that

1 was decided in a previous suit between the parties.” *Five Star*, 124 Nev. at 1055
2 (emphasis added). It does not even involve the same injury as that in the 2013
3 Petition. *Cf. Elyousef v. O’Reilly & Ferrario, LLC*, 126 Nev. 441, 445, 245 P.3d 547,
4 550 (2010) (“[T]he damages issue is identical . . . because both cases involve the
5 **same injury**.” (emphasis added)).

6 Indeed, the issues in the 2015 Counter Petition are far different from those in
7 the 2013 Petition. That becomes readily apparent when the issues are viewed side by
8 side. Dale emphasizes the following issues in the 2013 Petition: (1) whether the Sub-
9 Trusts must be spent down in strict proportion, so that every distribution from one is
10 proportional to that of the other; and (2) whether a joint reading of the Sub-Trusts
11 requires the same distributions from each, so that every distribution from one is the
12 same as that of the other. By contrast, the issues in the 2015 Counter Petition are a far
13 cry from identical: (1) whether the actual pattern of Dale’s distributions from the Sub-
14 Trusts for the accounting period from July 22, 2013 through July 31, 2014 was
15 “necessary” for Dale’s “proper support, care, and maintenance”; (2) what other
16 resources available to Dale are to be taken into account in determining “necessity”;
17 and (3) whether the disparate and lopsided discretionary distributions from the Marital
18 Deduction Trust under the circumstances constitute a breach of Dale’s fiduciary duties
19 of good faith, loyalty, and impartiality, requiring her removal as trustee of the Marital
20 Deduction Trust and appointment of a new trustee, among other things. Dale does not
21 and cannot explain how those issues are identical. They are not. They are not even
22 closely related. In Dale’s myopic view, they are related only insofar as they both
23 pertain to the Trust. That is a far cry from identical. Thus, the Court should deny the
24 Motion as to issue preclusion for this reason alone. The issues in the 2013 Petition
25 and 2015 Counter Petition are not identical. Without identical issues, Dale does not
26 and cannot satisfy the first factor and a necessary requirement of issue preclusion.

1 B. The fourth factor for issue preclusion is not satisfied because the issues
2 in the 2013 Petition were not litigated in the 2015 Counter Petition, much
3 less actually and necessarily litigated.

4 A second reason claim preclusion does not apply is that no issue in the 2015
5 Counter Petition was "**actually** and **necessarily** litigated" in the 2013 Petition. *Five*
6 *Star*, 124 Nev. at 1055 (internal quotation marks omitted; emphases added). An issue
7 is "actually" litigated if it "is properly **raised** and is **submitted for determination**" in the
8 prior action. *Alcantara*, 321 P.3d at 918 (internal quotation marks and ellipsis omitted;
9 emphases added). It is "necessarily" litigated if "the common issue was **necessary** to
10 the judgment in the earlier suit." *Id.* (internal quotation marks and ellipsis omitted;
11 emphasis added). In the 2013 Petition, Tracy neither raised nor submitted for
12 determination the issues in the 2015 Counter Petition, which issues are whether Dale's
13 distributions from the Sub-Trusts have been "necessary," what resources are relevant
14 to "necessity," and whether one-sided discretionary distributions from the Marital
15 Deduction Trust constitute a breach of fiduciary duties. Those issues were not
16 common issues necessary to the denial of the 2013 Petition, which denied an
17 accounting of the allocation of principal between the Sub-Trusts for a different time
18 period. Nor were those issues necessary to the Court's conclusion that the Trust does
19 not require a "proportionate spend-down" of the Sub-Trusts. The thrust of the 2015
20 Counter Petition is not that distributions from the Sub-Trusts should be the same or
21 even proportional; it is that, in light of all the assets available to Dale and the same
22 discretionary distribution standard for the Credit Shelter Trust as the Marital Deduction
23 Trust, her one-sided discretionary distributions from the Marital Deduction were not
24 necessary for her proper support, care, and maintenance and constitute a breach of
25 her fiduciary duties of good faith, loyalty, and impartiality to Leslie and Tracy. Those
26 issues, which arose after the time period at issue in the 2013 Petition, were not and

1 could not have been raised and submitted for determination in, much less necessary
2 to the resolution of, the 2013 Petition. Thus, the issues in the 2015 Counter Petition
3 were not actually and necessarily litigated in the 203 Petition.

4 Moreover, the 2015 Counter Petition is in no way predicated on the discovery of
5 new and more persuasive evidence. *Cf. Alcantara*, 321 P.3d at 919 (noting that “an
6 exception to collateral estoppel [i.e., issue preclusion] cannot be grounded on the
7 alleged discovery of more persuasive evidence” because, otherwise, “there would be
8 no end to litigation” (internal quotation marks and brackets omitted)). Nor is it a case in
9 which Leslie and Tracy are simply advancing arguments they failed to raise as part of
10 the 2013 Petition. *Cf. Paulo v. Holder*, 669 F.3d 911, 918 (9th Cir. 2011) (“If a party
11 could avoid issue preclusion by finding some argument it failed to raise in the previous
12 litigation, the bar on successive litigation would be seriously undermined.”).

13 In the 2015 Counter Petition, Leslie and Tracy argue that disparate treatment of
14 the Sub-Trusts, especially the degree to which distributions from each have been so
15 one-sided, constitute a breach of Dale’s fiduciary duties to Leslie and Tracy as the
16 vested beneficiaries of the Marital Deduction Trust. The reasons are set forth in the
17 2015 Counter Petition itself. Leslie and Tracy will not rehearse them in detail again
18 here. But a main reason is that, as the Restatement (Third) of Trusts provides,

19 where a beneficiary is entitled to payments from another trust created by
20 the same settlor (e.g., nonmarital and marital deduction trusts for a
21 surviving spouse), or as a part of coordinated estate planning with
22 another (such as the settlor’s spouse), required distributions from the
other trust—and the purposes of both trusts—are to be taken into
account by the trustee in deciding whether, in what amounts, and from
which trust(s) discretionary payments are to be made.

23 Restatement (Third) of Trusts § 50, cmt. e.

24 With that background legal principle, the Counter Petition explains:

25 Those are precisely our facts in this case. The Marital Deduction Trust is
26 the “marital deduction trust” in the comment while Bill’s Credit Shelter
Trust is the “nonmarital trust.” Both of the trusts, as well as Dale’s
outright testamentary gifts from Bill of over \$1,800,000, are all part of a

1 coordinated estate plan with the same settlor, i.e., Bill. Dale has an
2 identical [discretionary] distribution standard for both the Marital
3 Deduction Trust and Bill's Credit Shelter Trust. Bill's Credit Shelter Trust
4 is almost twice the size and value of the Marital Deduction Trust and the
5 testamentary gifts Dale received from Bill are nearly the same size
6 Yet, on information and belief, Dale's distributions from the Marital
7 Deduction Trust dwarf any distributions Dale has made to herself from
8 Bill's Credit Shelter Trust, if any. The Petitioner respectfully submits that
9 this Court must hold Dale to the standards set forth in the Restatement
10 (Third) of Trusts. If this Court does not put a stop to Dale's excessive
11 support distributions immediately, Dale, as Trustee and life beneficiary,
12 will continue unbridled and the end result will be to rob Leslie and Tracy
13 from what their father Bill intended for them to receive, specifically a
14 remainder interest in a trust at Dale's death.

15 2015 Counter Pet. 15.

16 Dale elides or misapprehends those nuances of the 2015 Counter Petition. The
17 point is that, once again, preclusion would serve no purpose here. The purpose of
18 issue preclusion, also known as collateral estoppel, rests on "the sound public policy of
19 limiting litigation by preventing a party who had one full and fair opportunity to litigate
20 an issue from again drawing it into controversy." *Thompson v. City of N. Las Vegas*,
21 108 Nev. 435, 439–40, 833 P.2d 1132, 1134–35 (1992). The bottom line here is that
22 Leslie and Tracy never previously had an opportunity, let alone a full and fair one, to
23 litigate the issues in the 2015 Counter Petition—whether Dale's discretionary
24 distributions were in fact "necessary," what resources are relevant to "necessity," and
25 whether one-sided discretionary distributions constitute a breach of fiduciary duties—in
26 the 2013 Petition. The issues in the 2013 Petition that Dale emphasizes in the
27 Motion—whether the Sub-Trusts must be spent down in strict proportion, or whether a
28 joint reading of the Sub-Trusts requires the same distributions from each—are
29 altogether absent from the 2015 Counter Petition. Dale simply glosses over factual,
30 legal, and temporal differences between the 2013 Petition and 2015 Counter Petition.
31 The Court should not. The issues are not the same and, in fact, are entirely different.

32 Accordingly, given the issues in the 2013 Petition and 2015 Counter Petition are
33 not identical, no issue in the latter was actually and necessarily litigated in the former,

1 or both, the Court should deny the Motion as to issue preclusion.

2 IV.

3 CONCLUSION.

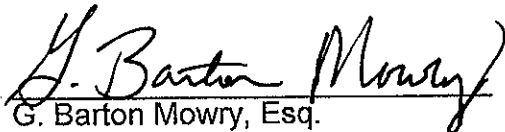
4 For the foregoing reasons, Dale does not and cannot establish one or more of
5 the necessary factors for preclusion, either as to claims or issues. The Court therefore
6 should see through her thinly veiled attempt to dodge discovery and deny the Motion.
7 Discovery of Dale's distributions from the Credit Shelter Trust is essential to the
8 resolution of the 2015 Matters, and that discovery should not be shut down circuitously
9 by means of a meritless dispositive motion.

10
11 AFFIRMATION

12 Pursuant to NRS 239B.030, the undersigned affirms that this document does
13 not contain the social security number of any person.


14 Dated this 14th day of August, 2017.

15
16 MAUPIN, COX & LeGOY

17 
18 G. Barton Mowry, Esq.

19 Attorneys for Leslie Raggio Righetti

20
21
22 MICHAEL A. ROSENAUER, LTD.

23 
24 Michael A. Rosenauer, Esq.

25 Attorney for Tracy Raggio Chew
26

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Maupin, Cox &
3 LeGoy and on this date I served the foregoing document(s) described as follows:

4 **OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT**

5 on the party(s) set forth below by:

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

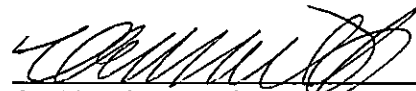
8 X Placing an original or true copy thereof in a sealed envelope placed for
9 collection and mailing in the United States Mail, at Reno, Nevada,
postage paid, Certified Return/Receipt following ordinary business
practices.

10 addressed as follows:

11 John Echeverria, Esq.
12 Echeverria Law Office
13 9432 Double R Blvd.
Reno, NV 89521

14 Tamara Reid, Esq.
15 HOLLAND AND HART
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

16 Dated this 15th day of August, 2017.

17
18 
19 An Employee of Maupin, Cox & LeGoy

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of	Case No. PR13-00624
THE WILLIAM J. RAGGIO FAMILY TRUST.	Dept. No. PR

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 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.

REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

1 **I. INTRODUCTION**

2 To differentiate their current claims for relief from Tracy Chew’s 2013 Petition, the
3 Remainder Beneficiaries attempt to draw a number of distinctions. But, in the words of their
4 counsel, these are “distinctions without a difference.” When their briefings and arguments are
5 examined side by side, it is apparent that the claims and issues raised are identical.

6 Remainder Beneficiaries first attempt to limit the scope of what the Court previously
7 considered. They argue that Chew’s 2013 Petition was limited to (1) requesting an accounting of
8 the so-called gap period between Senator Raggio’s death and the funding of the Marital and
9 Credit Shelter Trusts; and (2) arguing that the Sub-Trusts must be spent down in strict
10 proportion. There were no such limitations in Chew’s 2013 Petition. Chew not only wanted an
11 accounting of the gap period, but on-going accountings from Mrs. Raggio of both Sub-Trusts.
12 She further argued for equitable spend-down of the Sub-Trusts, rather than strict proportionality.

13 Next, Chew’s request for an accounting of the Credit Shelter Trust was rejected by the
14 Court. Nevertheless, Remainder Beneficiaries make an end-run at this ruling by arguing that
15 discovery permits broad inquiry regarding Mrs. Raggio’s standard of living and determination of
16 the “necessity” of discretionary distributions, what amounts to a *de facto* request for an
17 accounting of the Credit Shelter Trust.

18 Finally, Chew recognized in 2014 that her sister, although choosing not to participate at
19 the time, would merely make the exact same arguments and the Court would be addressing the
20 same issues all over again. Chew made this argument to *encourage* the Court to grant the relief
21 she sought, despite her lack of standing. Now, Chew and her sister, with proper standing to do
22 so, have raised the same claims and issues for the Court’s consideration for a second time.

23 Based on the foregoing, this Court should conclude that claim and issue preclusion bars
24 the claims for relief raised in the 2015 Civil Action and the 2015 Counter Petition, to the extent
25 those claims seek a joint reading of the Sub-Trusts and/or a *de facto* accounting of the Credit
26 Shelter Trust.¹

27 ¹To be clear, Mrs. Raggio’s is not seeking wholesale summary judgment. Rather, Remainder
28 Beneficiaries may pursue their claims with respect to the Marital Trust and Mrs. Raggio’s
 necessity for and use of discretionary distributions from the Marital Trust.

II. COMPARISON OF CLAIMS AND ISSUES

The 2013 Petition Never Argued For Strict Proportionality

Remainder Beneficiaries argue that Chew’s 2013 Petition made a narrow argument for “strict proportionality” of the spend down of the Sub-Trusts, which argument this Court already rejected. Their Opposition claims: “Dale notes, however, that Tracy did raise two related issues in the 2013 Petition: (1) whether the Sub-Trusts must be spent down in strict proportion, so that every distribution from one is proportional to that from the other; and (2) whether a joint reading of the Sub-Trusts requires the exact same distributions from each, so that every distribution from one is the same as that from the other.” Opposition, at 2:25, 3:1-5. This characterization is misleading.

A review of Chew’s briefing in support of her 2013 Petition, and the hearing transcript, confirms that Chew never argued for strict proportionality. Rather, much like Remainder Beneficiaries argue now, Chew argued for an “equitable” spend-down, and consideration of Mrs. Raggio’s *discretion* in choosing one trust over the other for purposes of her health, maintenance, and support on an on-going basis. The only difference is that the Remainder Beneficiaries have now given their grievances a name, in the form of claims for relief such as breach of fiduciary duties and breach of trust.

2013 PETITION & HEARING	2015 PETITION & FAC
<p>As such, the critical analysis rests upon the fair and impartial funding of both Trusts, <i>the spend down of both Trusts</i>, not one to the exclusion of the other when there are competing interests.</p> <p>.....</p> <p>A transparent view of both Trusts is necessary to insure that <i>one is not being spent down to the detriment of the other.</i></p> <p><i>Chew’s Jan. 17, 2014, Points and Authorities</i>, at 4:21-26.²</p>	<p>¶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, <i>thereby intentionally depleting the former to the benefit of the latter.</i></p> <p>¶9 Dale Checkett Raggio’s <i>inequitable and disparate treatment of the Marital Deduction portion of the William J. Raggio Family Trust vis-à-vis the Credit Shelter portion</i> of the William J. Raggio</p>

²Exhibit 5 to the July 19, 2017 Motion for Partial Summary Judgment.

	<p>Family Trust is a breach of fiduciary duty Dale Checkett [sic]Raggio owes to Petitioners as the Remainder Beneficiaries.</p> <p><i>July 2, 2015 Petition</i>³</p>
<p>In other words, the two documents say, or the two trusts say they must be used for Dale Raggio’s health, maintenance – excuse me, support, care, and maintenance. And so if the use is the same, then there is an obligation on behalf of the trustee, Mrs. Raggio, <i>to spend those things down equitably</i>.</p> <p>Transcript, 10:7-11.⁴</p> <p>The issue that we bring to this Court is the itemization and accounting within the terms of the trust for the gap period <i>and to ensure that both trusts are being spent down equitably</i>. And that because to understand one, again, you have to understand the other to ensure that one is not being favored over the other and, therefore, one beneficiary’s being favored over the other set of beneficiaries, your Honor.</p> <p>Transcript, 11:12-15.____</p> <p>We’re talking about spend-down of corpus. We’re talking about what happens after that mandatory distribution of the income because, again, she has the discretion to get into either trust corpus. And when she is in front of CVS Pharmacy and she’s got two credit cards, one for each trust for the aspirin bottle, <i>she can’t take one over the other</i>.</p> <p>Transcript, 55:4-9.</p>	<p>¶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, <i>ignoring the Credit Shelter portion of the William J. Raggio Family Trust</i> 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.</p> <p>¶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 <i>intentionally treating them dissimilarly</i> 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.</p> <p><i>July 2, 2015 Petition</i></p>

At the hearing, after considering the arguments quoted above from Chew’s counsel, the Commissioner reasoned 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*

³The July 2, 2015 Petition filed by the Remainder Beneficiaries is attached hereto as **Exhibit 1**. The Remainder Beneficiaries’ First Amended Complaint is attached hereto as **Exhibit 2**.

⁴Exhibit 6 to the July 19, 2017 Motion for Partial Summary Judgment.

to be done proportionately, I think that argument has not been proven by the language of the trusts themselves.” *See* Transcript, at 80:15-20. (emphasis added). Thus, while the Court’s ruling includes a statement that a “proportionate spend-down” is not supported by the terms of the Trust or applicable law, the ruling clearly encompassed, and rejected, Chew’s broader arguments for an “equitable spend-down” and any joint reading of the Sub-Trusts.

Chew’s Petition Sought An Accounting Of The Credit Shelter Trust, And Remainder Beneficiaries Seek The Same

Even though this Court rejected Chew’s request for an accounting of the Credit Shelter Trust, which the Opposition concedes at 3:5, Remainder Beneficiaries once again seek precisely such an accounting (see below). They argue their requested relief is permissible because “the accounting is not about the funding of the Sub-Trusts (as in the 2013 Petition) but about Dale’s use of the discretionary distributions as ‘necessary’ for her ‘proper support, care, and maintenance.’” Opposition at 3:17-20. This is another distinction without a difference.

First, Chew not only sought an accounting of the funding of the Sub-Trusts, but explicitly sought on-going accountings of the Credit Shelter Trust:

2013 PETITION & HEARING	2015 PETITION
<p>Commissioner Wright: You’re asking about the gap period, which I understand. Now, do I understand you to also be asking for ongoing – an <i>order for ongoing accountings from that point forward during Dale Raggio’s lifetime?</i></p> <p>Mr. Rosenauer: <i>The answer to that is yes, your Honor.</i></p> <p>Transcript, 11:20-24, 12:1-4.⁵</p>	<p>The 2015 Matters, by contrast, arise from different facts over a different time period and raise entirely different issues. The 2015 Matters allege claims against Dale, arising from her grossly disparate treatment of the Sub-Trusts between when they were established on July 22, 2013 and when the first year of administration ended on July 31, 2014.</p> <p>Aug. 14, 2017 Opposition, at 3: 12-17.</p>

⁵Exhibit 6 to the July 19, 2017 Motion for Partial Summary Judgment.

Mr. Rosenauer: Well, the fact of the matter is that *the ongoing expenses must be for support, care, and maintenance of Dale Raggio*. The beneficiaries of those two trusts are different. To understand, therefore, the difference between, or the allocation, you have to one trust, as opposed to the other trust, you have to understand what each is doing.

Transcript, 12: 9-15.

Chew sought this relief precisely for the same reasons that Remainder Beneficiaries are re-asserting this claim now: so that she could evaluate the propriety of Mrs. Raggio's discretionary distributions from the Marital Trust. But this Court previously considered, and rejected, the request for an accounting of the Credit Shelter Trust because the language of the Trust did not support any such joint reading. Yet, the Remainder Beneficiaries have brazenly reasserted this claim for relief:

2013 PETITION & HEARING

¶16(c) In addition to the information required pursuant to NRS Chapter 165, Petitioner is entitled to the following documents:

An itemization of *all distributions to all beneficiaries and expenses incurred* as part of the administration of the Raggio Trust as well as the Marital Trust *and Credit Shelter Trust* created thereunder consistently with the requirements of NRS Chapter 165.

See Chew's Dec. 9, 2013 Petition (emphasis added)⁶

2015 COUNTER-PETITION

Fifth Claim for Relief
(Accounting)

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

¶36. Dale Checkett (sic) Raggio should be required to account for the manner in which the Beneficiary utilized the funds distributed from the Trust.

⁶Exhibit 2 to the July 19, 2017 Motion for Partial Summary Judgment.

1 However the argument will focus upon
2 ***whether there is an entitlement to an***
3 ***accounting for the Credit Shelter***
4 ***Trust***. An accounting is appropriate
5 because one must understand what
6 expenses are being allocated to each
7 trust what assets were used to fund each
8 trust and their values, ***and what***
9 ***distributions have been made to the***
10 ***income beneficiary who is also the***
11 ***Trustee/Grandmother***.

12 *Chew's Jan. 17, 2014, Points and*
13 *Authorities, at 4:22-26.*⁷

WHEREFORE, Petitioners pray as follows:

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

See July 2, 2015 Petition (emphasis added).

14 *Chew Acknowledged That Her Sister Would Merely Raise The Same Claims*

15 A key issue addressed in the 2013 Petition was Chew's standing to pursue the requested relief. The Court understood that the correct beneficiary was not yet a party to the proceedings, but Chew's counsel nevertheless encouraged the Court to rule on the substance of the Petition:

16 The claim is that the trustee of the marital trust must be the one that is bringing the claim, not Tracy Chew, because the beneficiary of that trust is really a subtrust going down. Again, we're talking about a distinction without a difference because Ms. Chew is a beneficiary of that other trust in any event, and ***so all we would do is turn around, make the exact same argument, and stick something [sic] somebody else in here.***

17 Transcript, 7:18-24 , 8:1-4 (emphasis added). Later on in the hearing, Chew's counsel encouraged the Court, again, to consider the substance of the claims for relief and legal issues raised by Chew. "Again, your Honor, we have no problem with bringing in Ms. Righetti. ***We will be in exactly the same place with exactly the same argument, no problem.***" Transcript, 77:17-20 (emphasis added). Indeed, that is precisely what the Court is now faced with: parties with proper standing raising the same claims for relief and argument as Chew had done originally in 2013.

24 ///

25 ///

26 ///

27 _____
28 ⁷Exhibit 5 to the July 19, 2017 Motion for Partial Summary Judgment.

1 **III. CLAIM AND ISSUE PRECLUSION APPLIES**

2 A. Remainder Beneficiaries Concede That The Parties Were In Privity

3 With respect to both the claim and issue preclusion analysis, Remainder Beneficiaries
4 concede that there was privity between the parties at the time of the 2013 Petition. This factor is
5 therefore satisfied for purposes of the analysis for both claim and issue preclusion.

6 B. Remainder Beneficiaries Acknowledge Their Failure To Appeal

7 With respect to the finality of this Court's Order, Remainder Beneficiaries concede their
8 failure to appeal under NRS 164.015(6):

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

13 NRS 164.015(6) (emphasis added). Nevertheless, they urge this Court to disregard entirely the
14 plain language of the statute because the Court's prior order was without prejudice. In other
15 words, they want this Court to accept that the sum of the proceedings in 2013/2014 were for
16 naught, and that Remainder Beneficiaries can simply raise all of the *same* theories of relief two
17 years later, with no consequence. Not only should this Court uphold the purpose of NRS
18 164.015(6), but at least issue preclusion still applies despite the dismissal without prejudice.

19 The litigation of an issue presented and necessarily decided in a prior action between the
20 same parties is foreclosed by the doctrine of issue preclusion. *See Allen v. McCurry*, 449 U.S. 90,
21 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980); *Segal v. AT & T*, 606 F.2d 842, 844-45 (9th
22 Cir.1979). It does not matter that the prior action resulted in a dismissal without prejudice, so
23 long as the determination being accorded preclusive effect was essential to the dismissal. *See In*
24 *re Duncan*, 713 F.2d 538, 541 (9th Cir.1983); *see also* 18 C. Wright, A. Miller & E. Cooper,
25 Federal Practice and Procedure, § 4418 at 171 (1981) ("The most common applications of direct
26 estoppel arise from dismissal of a first action on grounds that do not go to the merits of the claim
27 presented and that are not intended to preclude a second action.").

28 ///

1 The Ninth Circuit Court of Appeals addressed the preclusive effect of a dismissal without
2 prejudice in *In re Duncan*, an appeal by a permanent resident of the United States of a denial of
3 his petition for naturalization. 713 F.2d at 539. Before his original petition for naturalization
4 came before the United States District Court for the Eastern district of Virginia for hearing and
5 adjudication, Duncan refused to complete a required form seeking information on developments
6 subsequent to the initial filing. *Id.* at 540. He objected to several of the questions on
7 constitutional grounds. His petition for naturalization was subsequently denied for his refusal to
8 complete the required forms and prosecute the petition, with the Virginia district court
9 determining that the constitutional challenge was without merit. *Id.* In denying Duncan’s motion
10 for reconsideration, the court explained that he still had the right to at any time reapply for
11 naturalization, so long as he answered all the questions in the required forms. *Id.* Duncan
12 subsequently reapplied for citizenship, again refused to complete certain required forms, and
13 again his petition was denied, this time by a different district court. *Id.*

14 On appeal, the Ninth Circuit analyzed the effect of the Virginia court’s original order
15 denying Duncan’s first petition for naturalization. “While the [second] district court alluded to
16 the preclusive effect of that order on this proceeding, it did not approach it directly in terms of
17 the doctrine of issue preclusion,” instead characterizing the Virginia proceeding as imposing on
18 Duncan an order not to re-petition unless he answered all questions on the application forms. The
19 Ninth Circuit viewed the Virginia order differently:

20 Our reading of the record indicates the Virginia court did not enjoin Duncan from
21 re-petitioning for naturalization, nor did it formally order him to answer Form
22 N445’s questions if he did re-petition. It merely explained to him that he had the
23 right to re-petition at any time, but that he must answer all questions on Form
24 N445 because his constitutional challenge would not again be entertained. It is
obvious the Virginia court intended its judgment to be conclusive on the issue of
Duncan’s constitutional right to refuse to answer questions on Form N445. Thus,
the doctrine of issue preclusion is squarely raised by the record.

25 *Id.* at 540-41.

26 After addressing the validity of the Virginia court’s order, the Ninth Circuit addressed
27 whether the Virginia court’s order satisfied the “finality” element of issue preclusion, given that
28 the court left the door open for Duncan to “at any time reapply for naturalization without

1 prejudice.” *Id.* at 544. In concluding that the order was indeed final for purposes of issue
2 preclusion, the Ninth Circuit reasoned:

3 As Duncan recognizes, a dismissal without prejudice is generally not considered
4 an adjudication on the merits of a controversy and thus is not entitled to
5 preclusive effect. 1B J. Moore, *Moore’s Federal Practice* ¶ 0.409 [1], at 1009 (2d
6 ed. 1982). But that rule has no application here. The Virginia court’s order was
7 not a dismissal but rather a substantive denial of Duncan’s petition after full
8 consideration on the merits, including the constitutional issues. The record leaves
9 no doubt as to the intention of the court. The “without prejudice” terminology was
10 used to apprise Duncan of his right to re-petition for naturalization. The sentence
11 directing Duncan to “answer all questions on Form N445” was clear notice that a
12 district court would not again entertain his constitutional claims. His recourse
13 from that order was appeal to the Fourth Circuit, not a new petition before another
14 district court. The order of the Virginia court was “sufficiently firm” to be
15 accorded conclusive effect. *Luben Industries v. United States*, 707 F.2d 1037,
16 1040 (9th Cir.1983).

17 *In re Duncan*, 713 F.2d at 544.

18 As in *Duncan*, this Court’s earlier order while including the “without prejudice”
19 language, was nevertheless a substantive denial of Chew’s 2013 petition after full consideration
20 of her arguments and Mrs. Raggio’s opposition thereto, on the merits. Also, as in *Duncan*, the
21 “without prejudice” language was used merely to indicate that the proper parties with standing
22 were not precluded from petitioning the Court on different facts or statutory authority. But with
23 respect to the Court’s conclusions rejecting any joint reading of the sub-Trusts, the original order
24 is sufficiently firm to be accorded preclusive effect.

25 C. The Comparison Above Demonstrate That The Claims And Issues Are Identical

26 Remainder Beneficiaries attempt to differentiate between the issues and claims raised in
27 2013 with the issues and claims they have raised in 2015, to no avail. They argue that “the
28 factual and temporal basis for those claims is entirely different.” Opposition at 12:15. But the
comparison presented above belies their position.

To be clear, Mrs. Raggio agrees that Remainder Beneficiaries are entitled to an
accounting of the Marital Trust (which has been provided three years in a row), and they are
entitled to investigate whether Mrs. Raggio’s discretionary distributions from the Marital Trust
were necessary for her health, support, and maintenance. But they are precluded from arguing
that a determination of what is “necessary” with respect to the Marital Trust distributions hinges

1 upon or should be weighed in any fashion against discretionary distributions from the Credit
2 Shelter Trust.

3 **IV. CONCLUSION**

4 This Court previously considered and ruled on the merits of Chew's claims and requests
5 for relief. Based on the arguments as briefed by the parties, and the oral argument before the
6 Court, the Court rejected Chew's assertion that a joint reading of the sub-trusts was warranted.
7 Thus, Chew was not entitled to an accounting of the Credit Shelter Trust, and, in the same vein,
8 was prohibited from assessing Mrs. Raggio's discretionary distributions from the Marital Trust
9 by comparing or contrasting them with discretionary distributions from the Credit Shelter Trust.

10 In denying Chew's petition without prejudice, the Court left the door open ever so
11 narrowly for the proper parties with standing to potentially raise *different* arguments, upon
12 *different* substantive grounds at a later stage. Given that the Remainder Beneficiaries are merely
13 raising the same substantive claims and issues in their latest round of pleadings, i.e. seeking not
14 only an accounting of the Credit Shelter Trust, but a joint reading of the sub-trusts, the Court
15 should conclude that claim and issue preclusion bars the same. Based on the foregoing, Mrs.
16 Raggio respectfully requests that the Court grant her Motion for Partial Summary Judgment.

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

19 DATED this 24th day of August 2017

20
21 HOLLAND & HART LLP

22 /s/ Tamara Reid
23 Tamara Reid, Esq.
24 HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

25 /s/ John Echeverria
26 John Echeverria, Esq.
27 Echeverria Law Office
9432 Double R Boulevard
Reno, NV 89521

28 *Attorneys for Dale Raggio*

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 August 24, 2017, I caused the foregoing **REPLY IN SUPPORT OF 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:

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Michael A. Rosenauer, Ltd.
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 August 24, 2017.

/s/ Liz Ford
Liz Ford

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EXHIBIT INDEX

NUMBER **DESCRIPTION** **NO. PAGES (W/ COVER)**

Exhibit 1	July 2, 2015 Petition Concerning Affairs of Trust	14 Pages
Exhibit 2	July 2, 2015 First Amended Complaint	10 Pages

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Clerk of the Court
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EXHIBIT "1"

EXHIBIT "1"

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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

- 18 2. Pursuant to NRS 153.031(2), the grounds for this Petition, in part, are as follows:
- 19 a. At all times relevant hereto, Petitioners Leslie Righetti and Tracy Chew were
20 residents of Washoe County, Nevada.
- 21 b. At all times relevant hereto, Respondent Dale Checkett Raggio was a resident of
22 Washoe County, Nevada.
- 23 c. At all times relevant hereto, all assets within the Marital Deduction portion of The
24 William J. Raggio Family Trust were domiciled within and managed from
25 Washoe County, Nevada.
- 26 d. At all times relevant hereto, the assets of The William J. Raggio and Dorothy B.
27 Raggio Trust under the agreement dated January 27, 1998 were domiciled within
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
8 10. Dale Checkett Raggio's failure to use her own resources to provide for her
9 support relying almost exclusively on the assets of the Marital Deduction portion of the William
10 J. Raggio Family Trust is also a breach of fiduciary duty Dale Checkett Raggio owes to
11 Petitioners as the Remainder Beneficiaries.

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

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

21
22
23 **SECOND CLAIM FOR RELIEF**
(Breach of Contract Compelling Redress and Reviewing the Acts of the Trustee)

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

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

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**

20 ///

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22 ///

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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.
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17 P.O. Box 30000
18 Reno, NV 89520
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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:

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

FILED
Electronically
PR13-00624
2017-08-24 03:32:59 PM
Jacqueline Bryant
Clerk of the Court

EXHIBIT "2"
Transaction # 6267081 : csulezic

EXHIBIT "2"

1 Code: \$1425
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4 F. McClure Wallace, Esq.
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12 Counsel for Leslie Righetti and
13 Tracy Chew, Co-Trustees of the
14 William J. and Dorothy B. Raggio
15 Trust under agreement dated January 27, 1998
16 as decanted, and Vested Remaindermen of the
17 Marital Deduction Trust portion of
18 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 WHEREFORE, Plaintiffs pray as follows:
8

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

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

20 F. Such other and further relief as the Court deems just and proper under the
21 circumstances.
22

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

25 ///

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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

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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

3845
Tamara Reid, Esq.
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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 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 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.

REQUEST FOR ORAL ARGUMENT

1 DALE CHECKET RAGGIO, by and through her counsel, Holland & Hart LLP, hereby
2 requests oral argument on the *Motion for Partial Summary Judgment* (the “Motion”), filed with
3 the Court on July 19, 2017. The Motion has been fully briefed and has been submitted to the
4 Court for decision.

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

7 DATED this 30th day of August 2017

8
9 HOLLAND & HART LLP

10 /s/ Tamara Reid
11 Tamara Reid, Esq.
12 HOLLAND & HART LLP
13 5441 Kietzke Lane, Second Floor
14 Reno, Nevada 89511

15 /s/ John Echeverria
16 John Echeverria, Esq.
17 Echeverria Law Office
18 9432 Double R Boulevard
19 Reno, NV 89521

20 *Attorneys for Dale Raggio*
21
22
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 August 30, 2017, I caused the foregoing **REQUEST FOR ORAL ARGUMENT** 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.
Michael A. Rosenauer, Ltd.
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 August 30, 2017.

/s/ Liz Ford
Liz Ford

10157913_1

1 CODE: 3880

2 G. Barton Mowry, Esq.

3 Nevada Bar No. 1934

4 Enrique R. Schaerer, Esq.

5 Nevada Bar No. 11706

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7 4785 Caughlin Parkway

8 Reno, Nevada 89519

9 Phone: (775) 827-2000

10 Attorneys for Leslie Raggio Righetti

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12 Nevada Bar No. 2782

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16 Phone: (775) 324-3303

17 Attorney for Tracy Raggio Chew

18 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

19 IN AND FOR WASHOE COUNTY

20 Case No.: PR13-00624

21 Dept. No.: PR

22 IN THE MATTER OF THE WILLIAM J.

23 RAGGIO FAMILY TRUST

24 **RESPONSE TO REQUEST FOR ORAL
25 ARGUMENT**

26 Petitioners/Plaintiffs Leslie Raggio Righetti and Tracy Raggio Chew, by and
through their counsel of record, Maupin Cox & LeGoy and Michael A. Rosenauer Ltd.,
submit that Trustee Dale Checket-Raggio's Motion for Partial Summary Judgment
does **not** warrant oral argument. Dale has the burden to establish claim and issue
preclusion, and has failed to carry that burden based on the briefs. The Reply fails
even to dispute the absence of necessary elements of claim preclusion, i.e., that the
"same" claims are at issue, and of issue preclusion, i.e., that "identical" issues were

1 “actually and necessarily litigated” in a prior petition. *Five Star Capital Corp. v. Ruby*,
2 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) (setting forth the necessary elements
3 of both claim and issue preclusion). The claims were not the exact “same,” nor were
4 the issues “identical,” much less “actually” litigated in that they were **properly** raised
5 and submitted for determination, or “necessarily” litigated in that they were **necessary**
6 to the judgement in the prior petition. *Alcantara ex rel. Alcantara v. Wal-Mart Stores,*
7 *Inc.*, 130 Nev. Adv. Op. 28, 321 P.3d 912, 916–18 (2014) (discussing what constitutes
8 the “same” claims, “identical” issues, and “actually” and “necessarily” litigated). (How,
9 for example, could Tracy **properly** raise issues if she lacked standing to raise them
10 before?) The Reply offers no argument or authority to the contrary. Nor does it offer
11 any authority to contradict Nevada caselaw holding that an order “without prejudice”
12 does not satisfy another necessary element of claim preclusion because such an order
13 is not a valid final judgment. Instead, it cites a federal immigration case—*In re Duncan*,
14 713 F.2d 538 (9th Cir. 1983)—that does not even apply Nevada law and does not
15 even relate to claim preclusion, only issue preclusion. But the Reply fails to establish
16 issue preclusion because, as set forth above, it does not make any attempt to
17 establish that “identical” issues were “actually” and “necessarily” litigated in the prior
18 petition. It fails to do so because it cannot do so. The factual, legal, and temporal
19 grounds for the prior petition were entirely different. The Reply’s selective quotation to
20 extraneous comments and statements from the prior petition and hearing transcript
21 does not and cannot change that simple fact.

22 Accordingly, there is no reason for the Court to deviate from the default rule that
23 decisions should be made without oral argument. WDCR 12(5) (“Decisions **shall** be
24 rendered without oral argument unless oral argument is ordered by the court”
25 (emphasis added)). The Motion plainly fails because Dale does not and cannot dispute
26 the absence of necessary elements of both claim and issue preclusion. The Court

1 therefore should deny the Motion without argument, thereby preserving time, legal
2 fees, and judicial resources.

3
4 **AFFIRMATION**

5 Pursuant to NRS 239B.030, the undersigned affirms that this document does
6 not contain the social security number of any person.

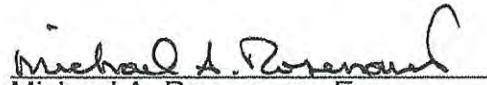
7 Dated this 31st day of August, 2017.

8
9 MAUPIN, COX & LeGOY

10 
11 G. Barton Mowry, Esq.

12 Attorneys for Leslie Raggio Righetti

13
14
15 MICHAEL A. ROSENAUER, LTD.

16 
17 Michael A. Rosenauer, Esq.

18 Attorney for Tracy Raggio Chew
19
20
21
22
23
24
25
26

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Maupin, Cox &
3 LeGoy, and on this date I served the foregoing document(s) described as follows:
4

5 **RESPONSE TO REQUEST FOR ORAL ARGUMENT**
6

7 on the party(s) set forth below by:

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

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

13 addressed as follows:

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

17 Tamara Reid, Esq.
HOLLAND AND HART
18 5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

19 Dated this 15th day of September, 2017.
20

21 
22 Heather Motta

2475

Tamara Reid, Esq.
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Tel: (775) 327-3000
Fax: (775) 786-6179
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John Echeverria, Esq.
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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

Case No. PR13-00624
Dept. No. PR

THE WILLIAM J. RAGGIO FAMILY
TRUST.

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 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 TO STRIKE REMAINDER BENEFICIARIES' RESPONSE

1 DALE CHECKET RAGGIO, by and through undersigned counsel, hereby moves to
2 strike the Remainder Beneficiaries' September 1, 2017, Response to Mrs. Raggio's request for
3 oral argument.

4 Mrs. Raggio moved for partial summary judgment on July 19, 2017. Her motion was
5 fully briefed and submitted for decision on August 25, 2017. Separately, Mrs. Raggio filed a
6 simple Request for Oral Argument on August 30, 2017. Her request included no additional facts
7 or substantive argument.

8 The Remainder Beneficiaries, however, saw fit to file a substantive response to Mrs.
9 Raggio's straightforward request for a hearing. In it, they attack the contents of Mrs. Raggio's
10 Reply. In so doing, they allowed themselves a sur-reply, without leave of Court. Their tactics are
11 entirely improper. The Court should summarily strike the September 1, 2017, Response.

12 Local rules of practice allow the filing of motions, oppositions, and replies only. *See*
13 WDCR 12. Surreplies are not allowed under local rules, and are particularly disfavored by
14 courts, for obvious reasons. *See, e.g., Piper v. Neven*, 2007 WL 4245454, at *4 (D. Nev. Nov. 21,
15 2007) ("It instead has been petitioner who has sought to have a second bite at the apple by filing
16 an improper surreply to the respondents' reply."). The Response is an impermissible "second bite
17 at the apple," in violation of the Court's rules. Accordingly, Mrs. Raggio requests that the Court
18 strike the Response.

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

21 DATED this 5th day of September 2017

22 /s/ Tamara Reid

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

23 /s/ John Echeverria

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

25 *Attorneys for Dale Raggio*

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 September 5, 2017, I caused the foregoing **MOTION TO STRIKE REMAINDER BENEFICIARIES' RESPONSE** 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.
Michael A. Rosenauer, Ltd.
510 West Plumb Lane, Suite A
Reno, Nevada 89509

G. Barton Mowry, Esq.
Enrique R. Schaerer, 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 September 5, 2017.

/s/ Liz Ford
Liz Ford

10157913_1

CODE: 2270

1 G. Barton Mowry, Esq.
Nevada Bar No. 1934
2 Enrique R. Schaerer, Esq.
Nevada Bar No. 11706
3 MAUPIN, COX & LeGOY
4785 Caughlin Parkway
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Phone: (775) 324-3303
9 Attorney for Tracy Raggio Chew

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR WASHOE COUNTY**

12
13 IN THE MATTER OF THE
14 WILLIAM J. RAGGIO FAMILY TRUST.

Case No.: PR13-00624

Dept. No.: PR

15 LESLIE RAGGIO RIGHETTI and TRACY
16 RAGGIO CHEW, Co Trustees of the William J.
17 Raggio and Dorothy B. Raggio Trust under
18 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

19 Plaintiffs,

20 vs.

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

24 Defendants.

25
26 **PETITIONERS'/PLAINTIFFS' MOTION TO COMPEL WRITTEN DISCOVERY**

27 Petitioners/Plaintiffs, Tracy Raggio Chew and Leslie Raggio Righetti ("Petitioners"), by and
28 through their counsel of record, Michael A. Rosenauer Ltd. and Maupin, Cox & LeGoy, request that

1 this Court enter an Order directing Respondent/Defendant/Trustee Dale Checket Raggio
2 (“Respondent”) to produce responses to the written discovery served upon her on May 12, 2017 and
3 to provide for the recovery of attorney’s fees attributable to preparing this Motion.¹

4 The written discovery propounded upon Respondent includes a First Set of Interrogatories
5 (Exhibit “1”) and First Request for the Production of Documents (Exhibit “2”). These Requests are
6 both appropriate and necessary because they seek discoverable information that pertains directly to
7 the administration of the sub-trusts funded from The William J. Raggio Family Trust, the manner in
8 which assets of the sub-trusts are being utilized, and other germane matters. The sub-trusts are the
9 Credit Shelter Trust, on the one hand, and the Marital Deduction Trust, on the other. This discovery
10 is important to Petitioners’ ability to prepare for Respondent’s deposition, to complete the
11 contemplated motion practice, to provide information relative to Respondent’s breaches of her
12 fiduciary duties to any experts, and to prepare for trial.

13 Authority for this Motion is NRCp 26, 33, 34 and 37.

14 This Motion is supported by the attached Memorandum of Points and Authorities, as well as
15 all other pleadings and papers currently on file with the Court.

16 POINTS AND AUTHORITIES

17 I. Introduction

18 This Motion focuses on the procedures of discovery set forth in the Nevada Rules of Civil
19 Procedure and on Respondent’s failure to meet her obligations thereunder. Respondent has filed a
20 Motion for Partial Summary Judgment solely designed to distract the Court’s focus upon her self-
21 serving administration of the two sub-trusts funded from the William J. Raggio Family Trust.

23 ¹ Payment of the fees should be from the Trustee/Respondent’s personal assets, which are substantial, and not from Trust
24 assets. In fact, the Trustee/Respondent should not be utilizing Trust assets for the payment of her attorney as not only is
25 there no Order authorizing any attorney’s fees in this matter but it is tantamount to the trust utilizing the Beneficiary’s
26 own assets to fund the litigation against them. *See, e.g., Butler v. LeBouf*, 248 Cal. App. 4th 198, 213 (Cal. 2016)
27 (“[L]itigation seeking to remove or surcharge a trustee for mismanagement of trust assets would not warrant the trustee
28 to hire counsel at the expense of the trust. Such litigation would be for the benefit of the trustee, not the trust” (quoting
Wittelsey v. Aiello, 104 Cal. App. 4th 1221, 1227 (2002); *Acher v. Acher*, 165 So. 3d 801 (Fla. Dist. Ct. App. 2015)
(attorney’s fees can be charged only if necessary and beneficial to the trust estate). When trust litigation is involved and
the trust has been brought within the jurisdiction of the Court, litigants in the Second Judicial District Court customarily
utilize NRS Chapter 150 and gain court approval of attorney’s fees prior to the payment of such fees. Trusts within the
jurisdiction of the Court are treated similarly to estates being probated. NRS 150.067 requires court approval of the
reasonableness of any attorney’s fees prior to their payment.

Respondent, the Trustee of both the Credit Shelter Trust and the Marital Deduction Trust established by the William J. Raggio Family Trust, is also the sole current beneficiary of both Trusts. Upon her death, the remainder of the Credit Shelter Trust will be distributed to Respondent's biological grandchildren in Australia, while the remainder of the Marital Deduction Trust will be distributed to William Raggio's surviving children, Tracy Raggio Chew and Leslie Raggio Righetti (neither of whom is related by blood to the Respondent). Both the Credit Shelter Trust and the Marital Deduction Trust have identical discretionary standards for the distribution of corpus or principal: that which is "necessary" for Respondent's "support, care and maintenance". Given that the two sub-trusts have the identical standard for discretionary distributions, Respondent owes the same fiduciary obligations to both groups of remainder beneficiaries. When contemplating a distribution of corpus from either trust, Respondent, as Trustee, cannot arbitrarily choose one beneficiary or set of remainder beneficiaries over another. To do so would be in violation of her fiduciary duties of loyalty, impartiality, and fairness. *Matter of W.N. Connell and Marjorie T. Connell Living Trust*, 393 P.3d 1090, 1094 (Nev. 2017) (affirming a trustee's duty to treat all beneficiaries equally and citing Restatement (Third) of Trusts, §79 (2007)).

Petitioners allege that Respondent has breached her fiduciary duties of loyalty, impartiality, and fairness by favoring the Credit Shelter Trust (and her biological grandchildren in particular) over the Marital Deduction Trust (to the financial detriment of Bill Raggio's daughters who are not related to Respondent). Respondent's strategy is quite transparent: to drain as quickly as she can that which remains of the Marital Deduction Trust, thereby effectively disinheriting Bill Raggio's daughters Tracy Raggio Chew and Leslie Raggio Righetti; and to maintain, if not grow, the Credit Shelter Trust that will be distributed to her Australian grandchildren. *See* First Am. Compl., First Claim for Relief (Breach of Trust) & Second Claim for Relief (Unjust Enrichment). The requested discovery directly inquires into several relevant matters, including but not limited to: (1) Respondent's considerations when making a discretionary distribution of corpus to herself; (2) the manner in which such discretionary distributions from each sub-trust are spent; and (3) what Respondent considers to be "necessary" for her own "support, care, and maintenance", versus what was Respondent's standard of living when Bill Raggio was alive. First Am. Compl. ¶¶ 23–28.

1 Accordingly, the discovery inquiries are reasonably calculated to lead to discoverable evidence.
2 Respondent should provide the responsive documents and information.

3 Prior to bringing this Motion, counsel for Petitioner presented Respondent with a letter
4 bringing this position to Respondent's attention and seeking to resolve any differences in compliance
5 with Rule 37(a)(2) and WDCR 12(6).² Counsel received a response and can certify that the parties
6 are at irreconcilable odds.³ Thus, Petitioners were forced to bring this Motion.

7 **II. Argument**

8 "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the
9 subject matter involved in the pending action" NRCP 26(b). Relevant, non-privileged matter is
10 discoverable, if the information sought is "reasonably calculated to lead to the discovery of
11 admissible evidence." *Id.*; see also *Greenspun v. Eighth Judicial Dist. Court*, 91 Nev. 211, 533 P.2d
12 482 (1975).

13 NRCP 33(b)(3) and NRCP 34(b)(2)(A) set forth the deadline by which responses for
14 Interrogatories and Requests for the Production of Documents must be provided by a responding
15 party. A responding party has 30 days after service to provide appropriate responses.

16 NRCP 37 provides that a party, upon reasonable notice to the other parties, may apply for an
17 Order compelling discovery if a party fails to respond to a request for production. The moving
18 party, before bringing their Motion, must demonstrate that the litigants have conferred and cannot
19 settle their discovery differences. WDCR 12(6). NRCP 37 goes on to present the remedies available
20 for being required to bring the Motion. *See* NRCP 37(a)(4)(A).

21 In this matter, the Interrogatories and Requests for the Production of Documents were served
22 on May 12, 2017. Copies of the written discovery requests are attached hereto as Exhibits "1" and
23 "2". Respondent provided responses, copies of which are attached as Exhibits "3" and "4". While
24 some responses were complete and the document responses are being prepared, Respondent objected
25 to others. Thereafter, and consistent with the Rules, counsel for Petitioners sent correspondence
26 requesting Respondent's reconsideration of their position. *See* Exhibit "5". Respondent responded

27
28 ² A copy of Petitioner's letter, dated July 5, 2017 is attached hereto as Exhibit "5".

³ A copy of Respondent's response dated July 21, 2017 is attached hereto as Exhibit "6".

1 that she felt confident in her position and would not provide the requested information and
2 documents. See Exhibit "6".

3 Immediately thereafter, Respondent filed a Motion for Partial Summary Judgment. That motion
4 was nothing more than a thinly disguised motion for protective order because it not only references
5 the outstanding discovery, but also urges the Court to make certain findings which, in Respondent's
6 analysis, would make the instant discovery irrelevant. However, the Motion for Partial Summary
7 Judgment fails to demonstrate all of the required elements of issue or claim preclusion as it suggests,
8 and conveniently overlooks important distinctions between the various proceedings. The discovery
9 at issue is based upon claims made by Petitioners in their First Amended Complaint. This First
10 Amended Complaint alleges that Respondent has failed in properly fulfilling her administrative
11 duties and has breached her fiduciary duties of loyalty, impartiality, fairness and good faith by
12 treating one sub-trust inconsistently from the other when the discretionary distribution standards are
13 identical, among other theories. A copy of the First Amended Complaint is attached hereto as
14 Exhibit "7".

15 Juxtaposing the Claims for Relief within the First Amended Complaint and the discovery
16 requests demonstrates that each of the Interrogatories and Requests directly request information
17 germane to the various Claims for Relief. For example, Petitioners allege that Respondent is not
18 utilizing trust assets for her necessary support, care and maintenance. Petitioners request documents
19 demonstrating the manner in which the assets distributed from the Credit Shelter Trust and the
20 Marital Deduction Trust are utilized. *See, e.g.,* Request No. 4; Interrogatories Nos. 1, 6. Petitioners
21 allege that Respondent is withdrawing nothing or nominal sums from the Credit Shelter Trust (which
22 is twice as large as the Marital Deduction Trust) while withdrawing \$240,000.00 per year from the
23 Marital Deduction Trust. The discovery requests information and documents focusing, in part, upon
24 Respondent's distributions from the Credit Shelter Trust. *See, e.g.,* Request No. 4; Interrogatories
25 Nos. 1, 6.

26 These Interrogatories and Requests for the Production of Documents directly call into question
27 Respondent's duty of impartiality. A trustee, having control over assets which have multiple
28 beneficiaries, has a duty to act impartially in investing, managing and distributing the trust property,

1 giving regard to the beneficiaries' respective interests. Restatement (Third) of Trusts § 79 (2007).
2 "Impartiality does mean that a trustee's treatment of beneficiaries or conduct in administering a trust
3 is not to be influenced by the trustee's personal favoritism or animosity toward individual
4 beneficiaries" *Id.*, comment a; *see also In re Estate of Stuchlik*, 857 N.W.2d 57, 70 (Neb. 2014).

5 The balance of the requested discovery follows the other facts supporting the Claims and is
6 therefore directly designed to illicit information focused upon the claims and elements at issue. The
7 requirements of NRCP 26(b) are fulfilled. The documents and information should be provided to
8 Petitioners so they can continue to prepare their case.

9 **III. Conclusion**

10 The Objections interposed by Respondent are simply an attempt to forestall the disclosure of
11 her inconsistent treatment of the remainder beneficiaries of the William J. Raggio Family Trust and
12 buy time before the Court renders a decision on her defective Motion for Partial Summary Judgment.
13 Petitioners, however, should not be delayed. The information that Respondent does not want to
14 provide will go a long way toward demonstrating that a significant part of the lopsided distributions
15 from the Marital Deduction Trust are not "necessary" for her "support, care and maintenance". The
16 responses will also show that she is improperly, and in violation of her fiduciary duties, favoring her
17 lineal descendants over the daughters of the Settlor who actually owned all of the contributed trust
18 assets as his sole and separate property. The information sought by Petitioners is not just reasonably
19 calculated to lead to discoverable evidence, but is precisely the evidence necessary to prove their

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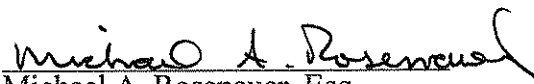
28 ///

1 theories and stop Respondent from disinheriting Petitioners under the guise of her "necessary
2 support". Respondent is properly directed to provide responsive answers and documents to
3 Petitioner's requests. This Motion to Compel Discovery is properly granted.

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

6 DATED this 8th day of September, 2017.

7 MICHAEL A. ROSENAUER LTD.

8 
9 Michael A. Rosenauer, Esq.

10
11 MAUPIN, COX & LeGOY

12
13 /s/ G. Barton Mowry, Esq.
14 G. Barton Mowry, Esq.

1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to NRCP 5(b), I certify that I am an employee of Michael A. Rosenauer, Ltd., 510
4 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing
5 document(s) described as follows:

6 **PETITIONERS/PLAINTIFFS MOTION TO COMPEL WRITTEN DISCOVERY**

7
8 on the party(s) set forth below by:

9 XXX

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

11 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.

13
14 addressed as follows:

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

Tamara Reid, Esq.
HOLLAND AND HART
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

17
18 DATED: this 8th day of September, 2017.

19 

20 REBECCA SQUIRE

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

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 portion of The William J. Raggio Family Trust,
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.

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

Consolidated With:
Case No.: CV15-01202

Exhibit	Description	Pages
1.	Remainder Beneficiaries' First Set of Interrogatories to Trustee Dale Checket Raggio	10
2.	Remainder Beneficiaries' First Set of Requests for Production of Documents to Trustee Dale Checket Raggio	6
3.	Defendant's Answers to Remainder Beneficiaries' First Set of Interrogatories to Trustee Dale Checket Raggio	17
4.	Defendant's Responses to Remainder Beneficiaries' First Set of Requests for Production of Documents to Trustee Dale Checket Raggio	7
5.	Petitioner's correspondence dated July 5, 2017	4
6.	Respondent's response correspondence dated July 21, 2017	3

Exhibit “1”

EXHIBIT “1”

1 CODE: DISC
2 MICHAEL A. ROSENAUER, ESQ.
3 Nevada Bar #2782
4 ROSENAUER & WALLACE
5 510 West Plumb Lane, Suite A
6 Reno, NV 89509
7 (775) 324-3303
8 Attorneys for Tracy Raggio Chew
9 and Leslie Raggio Righetti,
10 Remainder Beneficiaries of the William
11 J. Raggio Family Trust
12

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

13 IN THE MATTER OF THE WILLIAM J. CASE NO.: PR13-00624
14 DEPT. NO.: PR
15 RAGGIO FAMILY TRUST
16

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REMAINDER BENEFICIARIES' FIRST SET OF INTERROGETORIES TO TRUSTEE
DALE CHECKETT RAGGIO

19 PROPOUNDING PARTY: Tracy Raggio Chew and Leslie Raggio Righetti, Indefeasably Vested
20 Remainder Beneficiaries of the William J. Raggio Family Trust

21 TO: Dale Checkett Raggio, Trustee of the William J. Raggio Family Trust
22

23
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28
REMAINDER BENEFICIARIES FIRST SET OF INTERROGETORIES TO TRUSTEE
DALE CHECKETT RAGGIO

24 The Remainder Beneficiaries hereby request that Trustee Dale Checkett Raggio answer, under
25 oath, in accordance with Rule 33 of the Nevada Rules of Civil Procedure, the interrogatories which
26 follow.
27
28

///

I. PRELIMINARY DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the interrogatories set forth hereafter and are deemed to be incorporated therein.

1. As used in these interrogatories, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded, or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone or oral conversations), emails, text messages, contracts, correspondence, agreements, applications, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, films, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any handwritten, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, in the Petitioner's possession, custody or control or to which the Petitioner have or have had access.

2. As used throughout these interrogatories, the term "you," its plural or any synonym thereof, is intended to and shall embrace and include in addition to the Respondent, counsel for the Respondent, and all agents, servants, employees, representatives, investigators, and others who are in the possession of or who may have obtained information for or on behalf of the Respondent.

3. As used throughout these interrogatories, the term "person," or its plural or any synonym thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local, or any agency of the government of a foreign country) or any other entity.

1 4. As used throughout these interrogatories, the term "communication," its plural or any
2 synonym thereof, is intended to and shall embrace and include all written communications, and with
3 respect to all written communications, shall include but is not limited to every discussion,
4 conversation, conference, meeting, interview, telephone call or doctor or other professional service
5 visit.

6
7 5. (a). As used throughout these interrogatories, the terms "identify," "identity" or
8 "identification," their plural or synonyms thereof, when used with reference to a person shall mean to
9 state the full name and address, and where applicable, the present position and business, if known,
10 and each prior position and business.

11 (b) As used throughout these interrogatories, the terms "identify," "identity" or
12 "identification," their plural or synonyms thereof, when used with referenced mean to state:
13

14 (i) The general nature of the document or object, i.e., whether it is a
15 letter, an email, a text, a memorandum, a report, a drawing, a chart
16 or tracing, a pamphlet, a tweet, snapchat, posting on electronic media,
17 etc.;

18 (ii) The general subject matter of the document or object;

19 (iii) The name and current or last known business address and home
20 address of the original author or draftsman (and, if different, the
21 signor or signors), and of any person who has edited, corrected,
22 revised or amended, or who has entered any initials or comment or
23 notation thereon;

24 (iv) The date thereof, including any date of any such editing,
25 correcting, amending or revising;

26 (v) Any numerical designation appearing thereon, such as file
27 reference;

28 (vi) The name of each recipient of a copy of the document or object;
and

(vii) The place where and the person now having custody or control
of each such document or object, or if such document or object has
been destroyed, the place of and reason for such destruction.

1 (c) As used throughout these interrogatories, the terms, "identify," identity" and
2 "identification," when used in reference to a communication, mean to state with respect to each
3 communication, the nature of the communication (telephone call, letter, etc.), the date of the
4 communication, the persons who were present at or participated in the communication or with, to or
5 from whom the communication was made, and the substance of the statement made by each person
6 involved in such communication.
7

8 6. All information is to be divulged which is in the Respondent's possession or control, or can
9 be ascertained upon reasonable investigation or areas within the Respondent's control. The
10 knowledge of the Respondent's attorney(s) is deemed to also be within the Respondent's knowledge,
11 so that, apart from privileged matters, if the Respondent's attorney has knowledge of the information
12 sought to be elicited herein, said knowledge must be incorporated into these answers, even if such
13 information is unknown to the Respondent.
14

15 7. Whenever you are unable to state an answer to these interrogatories based upon your own
16 personal knowledge, please so state, and identify the person or persons you believe to have such
17 knowledge, what you believe the correct answer to be, and the facts upon which you based your
18 answer.
19

20 8. Where an interrogatory calls for an answer in more than one part, each part should be
21 separated so that the answer is clearly understandable.

22 9. Each interrogatory should be construed independently. No interrogatory should be construed
23 by reference to any other interrogatory if the result is a limitation of the scope of the answer to such
24 interrogatory.
25

26 10. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in order to
27 bring within the scope of the interrogatory all responses which might otherwise be construed to be
28 outside of its scope.

1 11. If an interrogatory is objected to, in whole or in part, or if information responsive to an
2 interrogatory is withheld, on the ground of privilege or otherwise, please set forth fully each
3 objection, describe generally the information which is withheld, and set forth the facts upon which
4 you rely as the basis for each such objection.

5 12. Pursuant to NRCP, Rule 26(e), you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty seasonably to supplement its response with respect to
8 any question directly addressed to: (i) the identity and location of persons having knowledge of
9 discoverable matters; and (ii) the identity of each person expected to be called as an expert witness at
10 trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty seasonably to amend a prior response if it obtains
12 information upon the basis of which: (i) it knows that the response was incorrect when made; or (ii) it
13 knows that the response though correct when made is no longer true and the circumstances are such
14 that a failure to amend the response is in substance a knowing concealment.
15

16 II. INTERROGATORIES

17 Pursuant to the Nevada Rules of Civil Procedure, within thirty (30) days of the date hereof,
18 provide complete answers to the following Interrogatories:
19

20 INTERROGATORY NO. 1:

21 State with particularity the parameters you apply when deciding to distribute funds from the
22 Credit Shelter portion of the William J. Raggio Family Trust.
23

24 INTERROGATORY NO. 2:

25 State with particularity the parameters you apply when deciding to distribute funds from the
26 Marital Deduction portion of the William J. Raggio Family Trust.
27

28 INTERROGATORY NO. 3:

1 State with particularity the date and sum of all distributions to or for your benefit from the Credit
2 Shelter portion of the William J. Raggio Family Trust after February 3, 2012.

3 **INTERROGATORY NO. 5:**

4 State with particularity the controls or methodology you utilize to insure that any sums received
5 from the Marital Deduction portion of the William J. Raggio Family Trust are utilized consistently
6 with the terms of the William J. Raggio Family Trust.

7 **INTERROGATORY NO. 6:**

8 State with particularity the controls or methodology you utilize to insure that any sums received
9 from the Credit Shelter portion of the William J. Raggio Family Trust are utilized consistently with
10 the terms of the William J. Raggio Family Trust..

11 **INTERROGATORY NO. 7:**

12 State by institution name, domiciliary branch, address and account number the accounts into
13 which distributions from the Credit Shelter portion of the William J. Raggio Family Trust have been
14 deposited since February 3, 2012.

15 **INTERROGATORY NO. 8:**

16 State by institution name, domiciliary branch, address and account number the accounts into
17 which distributions from the Marital Deduction portion of the William J. Raggio Family Trust have
18 been deposited since February 3, 2012.

19 **INTERROGATORY NO. 9:**

20 State with particularity your understanding of the phrase "necessary for the proper support, care
21 and maintenance" as set forth within the Marital Deduction portion and the Credit shelter portion of
22 the William J. Raggio Family Trust.

23 **INTERROGATORY NO. 10:**

24 State with particularity how Trust legal fees are considered "necessary for your proper support,
25 care and maintenance" as set forth within the Marital Deduction portion and the Credit shelter portion

1 of the William J. Raggio Family Trust.

2 **INTERROGATORY NO. 11:**

3 State with particularity how accounting fees are considered "necessary for your proper support,
4 care and maintenance" as set forth within the Marital Deduction portion and the Credit Shelter
5 portion of the William J. Raggio Family Trust.

6 **INTERROGATORY NO. 12:**

7 State with particularity how Investment fees are considered "necessary for your proper support,
8 care and maintenance" as set forth within the Marital Deduction portion and the Credit shelter portion
9 of the William J. Raggio Family Trust.

10 **INTERROGATORY NO. 13:**

11 Please describe by date, vendor and cost of those furniture purchases made by you after February
12 3, 2012.

13 **INTERROGATORY NO. 14:**

14 Describe with particularity those improvements to your Webster Way residential property having
15 an aggregate value exceeding \$3,000.00 commenced after February 3, 2012.

16 **INTERROGATORY NO. 15:**

17 As to all improvements set forth in response to Interrogatory 14 above, please describe each and
18 every reason why each enumerated improvement was undertaken.

19 **INTERROGATORY NO. 16:**

20 Insofar as your Webster Way real property is concerned, describe those improvements that you
21 and William J. Raggio undertook during the time period from January 1, 2007 to February 2, 2012.

22 **INTERROGATORY NO. 17:**

23 Describe by date, length of time, and destination of those trips taken by you and William J.
24 Raggio having a one way distance exceeding 350 miles from Reno, Nevada after January 1, 2007.

25 **INTERROGATORY NO. 18:**

1 Describe by date, length of time and destination of those trips taken by you having a one way
2 distance exceeding 350 miles from Reno, Nevada after February 3, 2012.

3 **INTERROGATORY NO. 19:**

4 List the Season Tickets for such activities as sporting, cultural and art events you and William J.
5 Raggio purchased after January 1, 2007.

6 **INTERROGATORY NO. 20:**

7 List by vendor, vendor address and purchase price of the artwork purchased by you and William
8 J. Raggio after January 1, 2007.

9 **INTERROGATORY NO. 21:**

10 If you have purchased artwork after February 3, 2012, please provide a description, purchase
11 price, vendor name, vendor address and source of funds (E.g. Account number from which the
12 purchase price was paid).

13 **INTERROGATORY NO. 22:**

14 If you deny Request for Admission No. 1, please state each and every basis upon which you base
15 your denial.

16 **INTERROGATORY NO. 23:**

17 Please state with particularity the dates each invoice was paid, the amount paid, and the vendor
18 receiving the payments for legal fees, accountancy fees and investment fees paid by the Credit
19 Shelter portion of the William J. Raggio Family Trust after February 3, 2012.

20 **INTERROGATORY NO. 24:**

21 Please list all political donations by date, donee and amount donated you have made since
22 February 3, 2012.

23 **INTERROGATORY NO. 25:**

24 Please list all political donations by date, donee and amount donated you and/or William
25 Raggio (as Trustees and not individually) made prior to February 3, 2012 but after the William J.

1 Raggio Family Trust was established.

2 **INTERROGATORY NO. 26:**

3 Please list all charitable donations by date, donee and amount donated you have made since
4 February 3, 2012.

5 **INTERROGETORY NO. 27:**

6 Please list all charitable donations by date, donee and amount donated you and/or William J.
7 Raggio (as Trustees and not individually) made prior to February 3, 2012 but after the William J.
8 Raggio Family Trust was established.


9 **INTERROGATORY NO. 28:**

10 Please list all sources of income by payor, year received and amount received by you for
11 years 2012, 2013, 2014, 2015 and 2016.

12
13
14 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
15 preceding document does not contain the Social Security number of any person.

16
17 DATED this 11th day of May, 2017.

18 ROSENAUER & WALLACE

19
20 
Michael A. Rosenauer, Esq.

1 CERTIFICATE OF SERVICE

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

6 REMAINDER BENEFICIARIES' FIRST SET OF INTERROGETORIES TO TRUSTEE
7 DALE CHECKETT RAGGIO

8 on the party(s) set forth below by:

9
10 _____ Electronic Mailing via Second Judicial District Court
CM/ECF System to all those persons listed on the ECF
11 Confirmation Sheet.

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

14 addressed as follows:

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

Timothy J. Riley, Esq.
Holland and Hart
544I Kietzke Lane, Second Floor
Reno, NV 89511

18 DATED this 12th day of May, 2017.

19 
20 _____
REBECCA SQUIRE
21
22
23
24
25
26
27
28

Exhibit “2”

EXHIBIT “2”

1 CODE: DISC

2 MICHAEL A. ROSENAUER, ESQ.

3 Nevada Bar #2782

4 ROSENAUER & WALLACE

5 510 West Plumb Lane, Suite A

6 Reno, NV 89509

7 (775) 324-3303

8 Attorneys for Tracy Raggio Chew

9 and Leslie Raggio Righetti,

10 Remainder Beneficiaries of the William

11 J. Raggio Family Trust

12
13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14
15 **IN AND FOR THE COUNTY OF WASHOE**

16
17 IN THE MATTER OF THE WILLIAM J.

CASE NO.: PR13-00624

DEPT. NO.: PR

18
19 RAGGIO FAMILY TRUST

20
21 **REMAINDER BENEFICIARIES' FIRST SET OF REQUESTS FOR**
22 **PRODUCTION OF DOCUMENTS TO TRUSTEE DALE CHECKETT RAGGIO**

23
24 PROPOUNDING PARTY: Tracy Raggio Chew and Leslie Raggio Righetti, Indefeasably Vested
25 Remainder Beneficiaries of the William J. Raggio Family Trust

26
27 TO: Dale Checkett Raggio, Trustee of the William J. Raggio Family Trust

28
INSTRUCTIONS

PLEASE TAKE NOTICE that, pursuant to NRCP Rule 34, the Indefeasibly Vested
Remainder Beneficiaries request that you produce for inspection and copying (30) days
from service of this request at Rosenauer & Wallace, 510 W. Plumb Ln., Ste. A, Reno, Nevada
89509, all documents within your possession, custody or control as set forth herein.

1 In lieu of appearance for production at the time and place indicated, you may mail or
2 otherwise cause said documents to be delivered to the address stated above on or before the
3 date scheduled for production. If the propounding party has not heard otherwise, it shall be
4 understood that the responding party has elected to comply with this request by mailing or
5 otherwise delivering the documents as set forth above. The Propounding Party or Parties
6 reserve the right to examine the original documents.

7 **DEFINITIONS**

8 A. The term "petitioner", as used herein, shall refer to Tracy Raggio Chew and
9 Leslie Raggio Righetti, Indefeasably Vested Remaindermen of the William J. Raggio Family
10 Trust, and any agent working with, for, or alongside them in relation to this matter.

11 B. "You", "Your", or "Yours" shall, unless otherwise noted, refer to Dale Checkett
12 Raggio, Trustee of the William J. Raggio Family Trust and Dale Chcekttt Raggio, as an
13 individual, together with the agents, employees, officers, managers, accountants,
14 appraisers, business evaluators, investigators, attorneys, and other representatives, and all
15 persons employed by each and all of the foregoing. Any documents responsive to any
16 request contained herein which concerns the act or omission of any party, including, but not
17 limited to, you and/or any other party to whom these interrogatories seek information
18 about, including the propounding party, shall be deemed to call for documents "identifying"
19 such party's spouse and/or any agent, employee or other representative of such party,
20 including, but not limited to, such party's employees, officers, managers, accountants,
21 appraisers, business evaluators, investigators, attorneys and other representatives who
22 acted or purported to act or whom you contend acted for such party in the matter referred
23 to.

24 C. The term "respondent", as used herein, shall refer to Dale Checkett Raggio,
25 individually and also as Trustee of the William J. Raggio Family Trust.

26 D. As used herein, the term "identity" or "identify" when pertaining to a natural
27 person, living or deceased, or entity, shall be interpreted to request the present name and all
28 past names used by such person and/or entity, and shall include a request for the present

1 residence and business address and telephone numbers for each such individual, as well as
2 the present address and telephone number for each such entity, and if none, the last known
3 address and telephone number for each such person and/or entity.

4 E. As used throughout these requests for production, "document" or
5 "documents" refers to the original and copies of all "writings," "records," "recordings," and
6 "photographs" as those terms are defined in NRS 52.18 et seq.

7 F. Under Rule 34 of the Nevada Rules of Civil Procedure, you are required to
8 produce the documents as they are kept in the usual course of business or organize and label
9 them to correspond with the categories of this request.

10 G. If you are aware of any document otherwise responsive to this request which
11 is no longer in your custody or control, please identify the name and title of the author, the
12 name and title of the addressee, the date of the document, the subject matter of the
13 document, the person or entity now within control of the document, all persons who have
14 knowledge of the circumstances surrounding its disposition, and the knowledge each person
15 has.

16 I. This request for production of documents shall be deemed continuing
17 pursuant to Rule 26(e) of the Nevada Rules of Civil Procedure, and as additional information
18 is secured, such additional information shall be supplied to the undersigned counsel for the
19 respondent.

20 **REQUEST NO. 1:**

21 Please provide full and complete statements for those accounts into which
22 distributions from the Marital Deduction portion of the Raggio Family Trust have been
23 deposited since February 3, 2012.

24 **REQUEST NO. 2:**

25 Please provide all statements for those accounts into which distributions from the
26 Credit Shelter portion of the William J. Raggio Family Trust have been deposited since
27 February 3, 2012.

28 **REQUEST NO. 3:**

1 Please provide all credit card statements, cancelled checks, receipts, invoices, bills,
2 and other evidences of expenditures from distributions received by you from the Martial
3 Deduction portion of the William J. Raggio Family Trust commencing February 3, 2012.

4 **REQUEST NO. 4:**

5 Please provide all credit card statements, cancelled checks receipts, invoices, bills and
6 other evidences of expenditures from distributions received by you from the Credit Shelter
7 portion of the William J. Raggio Family Trust commencing February 3, 2012.

8 **REQUEST NO. 5:**

9 Please provide all correspondence, memoranda, reports and other documents the
10 subject matter of which is the Credit Shelter portion of the William J. Raggio Family Trust
11 that you have had with the indefeasibly vested contingent beneficiaries and/or either or both
12 parents of such beneficiaries.

13 **REQUEST NO. 6:**

14 Please provide all credit card statements, cancelled checks, receipts, invoices, bills
15 and other evidence of expenditures by you and/ or William J. Raggio from January 1, 2007
16 through February 2, 2012.

17 **REQUEST NO. 7:**

18 Please provide all accountings, completed by you or on your behalf, the subject matter
19 of which is the Credit Shelter portion of the William J. Raggio Family Trust since February
20 3, 2012.

21 **REQUEST NO. 8:**

22 Please provide all Notices required by any Statute, Rule or Regulation you have
23 provided, sent or transmitted to beneficiaries, creditors or third parties of the Credit Shelter

24 ///

25 ///

26 ///

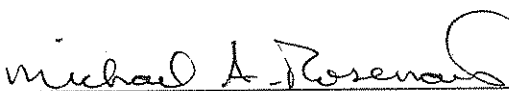
27 ///

28 ///

1 portion and the Marital Deduction portion of the William J. Raggio Family Trust.

2
3 DATED this 11th day of May, 2017.

4
5 ROSENAUER & WALLACE

6
7
8 
9 Michael A. Rosenauer, Esq.
10 Attorney for the Indefeasibly Vested Contingent
11 Beneficiaries Leslie Righetti and Tracy Chew.
12
13
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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 on the party(s) set forth below by:

REMAINDER BENEFICIARIES' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO TRUSTEE DALE CHECKETT RAGGIO

XX 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:

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

Timothy J. Riley, Esq.
Holland and Hart
5441 Kietzke Lane, Second Floor
Reno, NV 89511

DATED this 12th day of May, 2017.



REBECCA SQUIRE

Exhibit “3”

EXHIBIT “3”

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

DISC

Tamara Reid, Esq.
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Tel: (775) 327-3000
Fax: (775) 786-6179
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

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,

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.

Case No. PR13-00624
Dept. No. PR

Consolidated with:

Case No. CV15-01202

**Defendant's Answers To Remainder Beneficiaries' First Set Of Interrogatories
To Trustee Dale Checkett Raggio**

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 ("Mrs. Raggio"), by and through her counsel Holland & Hart LLP, hereby responds to the interrogatories as follows.

ANSWERS TO INTERROGATORIES

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.

Answer to Interrogatory No. 1: OBJECTION. This request is not reasonably calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an accounting of this trust. Pursuant to the Court's March 4, 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets. As such, the parameters that Trustee applies when deciding to distribute funds from the Credit Shelter portion of the William J. Raggio Family Trust are irrelevant to the Remainder Beneficiaries' claims for relief.

Interrogatory No. 2: State with particularity the parameters you apply when deciding to distribute funds from the Marital Deduction portion of the William J. Raggio Family Trust.

Answer to Interrogatory No. 2: Mrs. Raggio made the initial determination in the summer of 2012, based upon her understanding of her lifestyle and needs, that the amount of \$20,000 per month would, on average, provide for her health, support, and maintenance on a monthly basis. The distributions from the Marital Trust have been maintained at this amount since the initial distribution.

Interrogatory No. 3: 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.

Answer to Interrogatory No. 3: OBJECTION. This request is overly broad, unduly burdensome and seeks disclosure of confidential, private and sensitive information. This request is also not reasonably calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an accounting of this trust. Pursuant to the Court's March 4, 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets.

Interrogatory No. 5: State with particularity the controls or methodology you utilize to insure that any sums received from the Marital Deduction portion of the William J. Raggio Family Trust are utilized consistently with the terms of the William J. Raggio Family Trust.

Answer to Interrogatory No. 5: OBJECTION. This request is vague and ambiguous as to the definition of "controls or methodology." Notwithstanding the foregoing objection, Mrs. Raggio exercises her discretion, pursuant to the plain language of William J. Raggio Family Trust, and her best judgment to ensure that the distributions from the Marital Trust are utilized consistently with the terms of the trust.

Interrogatory No. 6: 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.

1 **Answer to Interrogatory No. 6:** OBJECTION. This request is not reasonably calculated to
2 lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries
3 of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an
4 accounting of this trust. Pursuant to the Court's March 4, 2015, Confirming Order confirming the
5 *Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying*
6 *Request for Review of Beneficiary's Request for an Accounting and Documents*, which order the
7 Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside
8 by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the
9 Trustee is not required to consider a beneficiary's assets or resources in determining whether to
10 make a distribution of trust assets. As such, the controls or methodology the Trustee applies to
11 ensure that sums received from the Credit Shelter portion of the William J. Raggio Family Trust
12 are utilized consistently with the terms of the William J. Raggio Family Trust are irrelevant to
13 the Remainder Beneficiaries' claims for relief.

14
15 **Interrogatory No. 7:** State by institution name, domiciliary branch, address and account
16 number the accounts into which distributions from the Credit Shelter portion of the William J.
17 Raggio Family Trust have been deposited since February 3, 2012.

18 **Answer to Interrogatory No. 7:** OBJECTION. This request seeks disclosure of confidential,
19 private and sensitive information. This request is also not reasonably calculated to lead to the
20 discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the
21 Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an
22 accounting of this trust or other information regarding this trust. Pursuant to the Court's March 4,
23 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to*
24 *Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an*
25 *Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and
26 which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as
27 otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's
28 assets or resources in determining whether to make a distribution of trust assets.

Interrogatory No. 8: State by institution name, domiciliary branch, address and account number the accounts into which distributions from the Marital Deduction portion of the William J. Raggio Family Trust have been deposited since February 3, 2012.

Answer to Interrogatory No. 8: OBJECTION. This request calls for confidential, private and sensitive information to which the Remainder Beneficiaries are not entitled.

Interrogatory No. 9: State with particularity your understanding of the phrase “necessary for the proper support, care and maintenance” as set forth within the Marital Deduction portion and the Credit shelter portion of the William J. Raggio Family Trust.

Answer to Interrogatory No. 9: OBJECTION. To the extent this interrogatory seeks a response as to the Credit shelter portion of the William J. Raggio Family Trust, it is not reasonably calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an accounting of this trust or other information regarding this trust. Pursuant to the Court’s March 4, 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary’s Request for an Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary’s assets or resources in determining whether to make a distribution of trust assets.

With respect to the Marital Trust, Mrs. Raggio understands the phrase “necessary for the proper support, care and maintenance” to mean distributions sufficient to maintain Mrs. Raggio in the social and economic position in which she had been living at the time of the creation of the trust, providing for all comforts and necessities to which she had grown accustomed.

1 **Interrogatory No. 10:** State with particularity how Trust legal fees are considered
2 "necessary for your proper support, care and maintenance" as set forth within the Marital
3 Deduction portion and the Credit shelter portion of the William J. Raggio Family Trust.

4 **Answer to Interrogatory No. 10:** OBJECTION. To the extent this interrogatory seeks a
5 response as to the Credit shelter portion of the William J. Raggio Family Trust, it is not
6 reasonably calculated to lead to the discovery of admissible evidence. The Remainder
7 Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family
8 Trust, and are not entitled to an accounting of this trust or other information regarding this trust.
9 Pursuant to the Court's March 4, 2015, Confirming Order confirming the *Recommendation for*
10 *Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of*
11 *Beneficiary's Request for an Accounting and Documents*, which order the Remainder
12 Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court,
13 NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not
14 required to consider a beneficiary's assets or resources in determining whether to make a
15 distribution of trust assets.

16 With respect to the Marital Trust, trust legal fees are necessary for the operation of the
17 trust whether or not there are any distributions coming from the trust itself. Trust legal fees are
18 considered administrative expenses that are required to be paid and are not subject to court
19 approval, and are expressly authorized by the William J. Raggio Family Trust, at Section 8(w)¹
20 and (y)². The ascertainable standard language, "necessary for your proper support, care and
21 maintenance," is irrelevant when considering trust legal fees as they are necessary for the
22 continued existence and maintenance of the trust.

23
24
25
26 ¹"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."

27 ²"To employ any attorney, investment advisor, accountant, broker, tax specialist, or any other agent deemed
28 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."

1 **Interrogatory No. 11:** State with particularity how accounting fees are considered
2 “necessary for your proper support, care and maintenance” as set forth within the Marital
3 Deduction portion and the Credit Shelter portion of the William J. Raggio Family Trust.

4 **Answer to Interrogatory No. 11:** OBJECTION. To the extent this interrogatory seeks a
5 response as to the Credit shelter portion of the William J. Raggio Family Trust, it is not
6 reasonably calculated to lead to the discovery of admissible evidence. The Remainder
7 Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family
8 Trust, and are not entitled to an accounting of this trust or other information regarding this trust.
9 Pursuant to the Court’s March 4, 2015, Confirming Order confirming the *Recommendation for*
10 *Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of*
11 *Beneficiary’s Request for an Accounting and Documents*, which order the Remainder
12 Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court,
13 NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not
14 required to consider a beneficiary’s assets or resources in determining whether to make a
15 distribution of trust assets.

16 With respect to the Marital Trust, accounting fees are necessary for the operation of the
17 trust whether or not there are any distributions coming from the trust itself. Accounting fees are
18 considered administrative expenses that are required to be paid and are not subject to court
19 approval, and are expressly authorized by the William J. Raggio Family Trust, at Section 8(y)³
20 and a permissible cost to be paid from the trust for investing and managing trust property
21 pursuant to NRS 164.760. The ascertainable standard language, “necessary for your proper
22 support, care and maintenance,” is irrelevant when considering accounting fees as they are
23 necessary for the continued existence and maintenance of the trust.

24
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27

³“To employ any attorney, investment advisor, accountant, broker, tax specialist, or any other agent deemed
28 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.”

1 **Interrogatory No. 12:** State with particularity how Investment fees are considered
2 "necessary for your proper support, care and maintenance" as set forth within the Marital
3 Deduction portion and the Credit shelter portion of the William J. Raggio Family Trust.

4 **Answer to Interrogatory No. 12:** OBJECTION. To the extent this interrogatory seeks a
5 response as to the Credit shelter portion of the William J. Raggio Family Trust, it is not
6 reasonably calculated to lead to the discovery of admissible evidence. The Remainder
7 Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family
8 Trust, and are not entitled to an accounting of this trust or other information regarding this trust.
9 Pursuant to the Court's March 4, 2015, Confirming Order confirming the *Recommendation for*
10 *Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of*
11 *Beneficiary's Request for an Accounting and Documents*, which order the Remainder
12 Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court,
13 NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not
14 required to consider a beneficiary's assets or resources in determining whether to make a
15 distribution of trust assets.

16 With respect to the Marital Trust, investment fees are necessary for the operation of the
17 trust whether or not there are any distributions coming from the trust itself. Investment fees are
18 considered administrative expenses that are required to be paid and are not subject to court
19 approval, and are expressly authorized by the William J. Raggio Family Trust, at Section 8(y)⁴
20 and a permissible cost to be paid from the trust for investing and managing trust property
21 pursuant to NRS 164.760. The ascertainable standard language, "necessary for your proper
22 support, care and maintenance," is irrelevant when considering investment fees as they are
23 necessary for the continued existence and maintenance of the trust.

24 ///

25 ///

26
27
28 ⁴"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."

1 **Interrogatory No. 13:** Please describe by date, vendor and cost of those furniture
2 purchases made by you after February 3, 2012.

3 **Answer to Interrogatory No. 13:** OBJECTION. Trustee does not have, and is not required to
4 create, a compilation, abstract or summary in response to this request. Notwithstanding this
5 objection, and given that the burden of deriving or ascertaining the answer is substantially the
6 same for the Remainder Beneficiaries as for the Trustee, Mrs. Raggio is gathering and will
7 produce back-up documentation from which the response to this interrogatory may be derived or
8 ascertained by the Remainder Beneficiaries.

9
10 **Interrogatory No. 14:** Describe with particularity those improvements to your Webster
11 Way residential property having an aggregate value exceeding \$3,000.00 commenced after
12 February 3, 2012.

13 **Answer to Interrogatory No. 14:** (1) Repairs to cracks in sidewalk and driveway; (2) fence
14 repair; (3) installed new motors for electric gates. Discovery is ongoing and Mrs. Raggio
15 reserves the right to supplement her response to this interrogatory.

16
17 **Interrogatory No. 15:** As to all improvements set forth in response to Interrogatory 14
18 above, please describe each and every reason why each enumerated improvement was
19 undertaken.

20 **Answer to Interrogatory No. 15:** OBJECTION. This interrogatory is unduly burdensome and
21 meant to harass the Trustee. Notwithstanding the foregoing objection, Mrs. Raggio repaired the
22 sidewalk and driveway because it was in disrepair and crumbling, and the required repairs had
23 not been performed in original remodel of the Webster Way residence in 2008. Mrs. Raggio
24 repaired a fence because it had been blown down by high winds. Mrs. Raggio installed the new
25 motors for the electric gates because they were malfunctioning. Discovery is on-going, and Mrs.
26 Raggio reserves the right to supplement her response to this interrogatory.

27 ///

1 **Interrogatory No. 16:** Insofar as your Webster Way real property is concerned, describe
2 those improvements that you and William J. Raggio undertook during the time period from
3 January 1, 2007 to February 2, 2012.

4 **Answer to Interrogatory No. 16:** In February of 2008, Senator Raggio and Mrs. Raggio
5 began a complete remodel of the Webster Way residence, taking the entire house down to the
6 ground with the exception of one room. The contractor was Jim Anderson of Silver Creek
7 Development. His invoices totaled \$744,567.24. In addition to the Silver Creek Development
8 costs in 2008, Senator and Mrs. Raggio personally paid for other furniture, fixtures and
9 improvements related to the remodel totaling \$76,622.70.

10 When the Senator and Mrs. Raggio vacated the Webster Way home in 2008, they rented
11 a home on Lyman Avenue at a monthly rental rate of \$1,800 per month for nine months. Puliz
12 Moving and Storage was hired to pack the household goods and furniture and store those items at
13 a cost of \$4,985 for packing and moving to storage and/or the rental house. The charge for
14 storage was \$710 per month for 9 months. The charge for moving furniture and belongings back
15 into the Webster Way residence was \$4,301.85.

16 In 2009, additional purchases of furniture and fixtures to complete the remodel were
17 made in the total amount of \$14,199.49. Discovery is ongoing and Mrs. Raggio reserves the right
18 to supplement her response to this interrogatory with additional expenditures incurred in 2010
19 and 2011.

20
21 **Interrogatory No. 17:** Describe by date, length of time, and destination of those trips
22 taken by you and William J. Raggio having a one way distance exceeding 350 miles from Reno,
23 Nevada after January 1, 2007.

24 **Answer to Interrogatory No. 17:** (1) Geneva, Switzerland in 2008; (2) Italy in 2011;
25 (3) Australia in February 2012. Discovery is ongoing and Mrs. Raggio reserves the right to
26 supplement her response to this interrogatory.

Interrogatory No. 18: Describe by date, length of time and destination of those trips taken by you having a one way distance exceeding 350 miles from Reno, Nevada after February 3, 2012.

Answer to Interrogatory No. 18: (1) Florida, several trips in 2012; (2) Maui, July 25 – August 2, 2014; (3) Australia – January 26 – February 9, 2015; (4) San Francisco – September 2015; (5) San Francisco – January 21-24, 2016; (6) Africa – May 16 – June 2, 2016 (7) London – August 9 – 24, 2016; (8) Maui & Australia – December 16, 2016 – January 15, 2017 (9) New York – March 2017 (10) Las Vegas – every three months, in 2016 and 2017.

Discovery is ongoing and Mrs. Raggio reserves the right to supplement her response to this interrogatory.

Interrogatory No. 19: List the Season Tickets for such activities as sporting, cultural and art events you and William J. Raggio purchased after January 1, 2007.

Answer to Interrogatory No. 19: Four (4) season tickets to the Reno Philharmonic. Discovery is ongoing and Mrs. Raggio reserves the right to supplement her response to this interrogatory.

Interrogatory No. 20: List by vendor, vendor address and purchase price of the artwork purchased by you and William J. Raggio after January 1, 2007.

Answer to Interrogatory No. 20: OBJECTION. Trustee does not have, and is not required to create, a compilation, abstract or summary in response to this request. Notwithstanding this objection, and given that the burden of deriving or ascertaining the answer is substantially the same for the Remainder Beneficiaries as for the Trustee, Mrs. Raggio is gathering and will produce back-up documentation from which the response to this interrogatory may be derived or ascertained by the Remainder Beneficiaries.

///

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1 **Interrogatory No. 21:** If you have purchased artwork after February 3, 2012, please
2 provide a description, purchase price, vendor name, vendor address and source of funds (e.g.
3 Account number from which the purchase price was paid).

4 **Answer to Interrogatory No. 21:** None.
5

6 **Interrogatory No. 22:** If you deny Request for Admission No. 1, please state each and
7 every basis upon which you base your denial.

8 **Answer to Interrogatory No. 22:** Mrs. Raggio's denial of Request for Admission No. 1 is
9 based on the plain language of the William J. Raggio Family Trust.

10 Section 5.1 provides that the trustee of the Marital Trust shall "quarter-annually or at
11 more frequent intervals, pay to or apply for the benefit of [Mrs. Raggio] all of the net income of
12 the Trust." There is no "use" restriction with respect to this mandatory distribution of net
13 income. In addition to this mandatory distribution of income, the Trustee is further authorized to
14 distribute "as much of the principal of the Trust as the Trustee, in the Trustee's discretion, shall
15 deem necessary for the proper support, care, and maintenance of [Mrs. Raggio]."

16 In contrast, Section 6.1 of the Raggio Family Trust provides that the Trustee of the Credit
17 Shelter Trust shall "pay to or apply for the benefit of [Mrs. Raggio] as much of the net income
18 and principal of the Credit Shelter Trust as the Trustee, in the Trustee's discretion, shall deem
19 necessary for the proper support, care, and maintenance of [Mrs. Raggio]."
20

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

25 **Answer to Interrogatory No. 23:** OBJECTION. This request seeks disclosure of confidential,
26 private and sensitive information. This request is also not reasonably calculated to lead to the
27 discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the
28 Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an

1 accounting of this trust or other information regarding this trust. Pursuant to the Court's March 4,
2 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to*
3 *Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an*
4 *Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and
5 which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as
6 otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's
7 assets or resources in determining whether to make a distribution of trust assets.

8
9 **Interrogatory No. 24:** Please list all political donations by date, donee and amount
10 donated you have made since February 3, 2012.

11 **Answer to Interrogatory No. 24:** OBJECTION. Trustee does not have, and is not required to
12 create, a compilation, abstract or summary in response to this request. Notwithstanding this
13 objection, and given that the burden of deriving or ascertaining the answer is substantially the
14 same for the Remainder Beneficiaries as for the Trustee, Mrs. Raggio is gathering and will
15 produce back-up documentation from which the response to this interrogatory may be derived or
16 ascertained by the Remainder Beneficiaries.

17
18 **Interrogatory No. 25:** Please list all political donations by date, donee and amount
19 donated you and/or William Raggio (as Trustees and not individually) made prior to February 3,
20 2012 but after the William J. Raggio Family Trust was established.

21 **Answer to Interrogatory No. 25:** OBJECTION. Trustee does not have, and is not required to
22 create, a compilation, abstract or summary in response to this request. Notwithstanding this
23 objection, and given that the burden of deriving or ascertaining the answer is substantially the
24 same for the Remainder Beneficiaries as for the Trustee, Mrs. Raggio is gathering and will
25 produce back-up documentation from which the response to this interrogatory may be derived or
26 ascertained by the Remainder Beneficiaries.

1 **Interrogatory No. 26:** Please list all charitable donations by date, donee and amount
2 donated you have made since February 3, 2012.

3 **Answer to Interrogatory No. 26:** OBJECTION. Trustee does not have, and is not required to
4 create, a compilation, abstract or summary in response to this request. Notwithstanding this
5 objection, and given that the burden of deriving or ascertaining the answer is substantially the
6 same for the Remainder Beneficiaries as for the Trustee, Mrs. Raggio is gathering and will
7 produce back-up documentation from which the response to this interrogatory may be derived or
8 ascertained by the Remainder Beneficiaries.

9
10 **Interrogatory No. 27:** Please list all charitable donations by date, donee and amount
11 donated you and/or William J. Raggio (as Trustees and not individually) made prior to February
12 3, 2012 but after the William J. Raggio Family Trust was established.

13 **Answer to Interrogatory No. 27:** OBJECTION. Trustee does not have, and is not required to
14 create, a compilation, abstract or summary in response to this request. Notwithstanding this
15 objection, and given that the burden of deriving or ascertaining the answer is substantially the
16 same for the Remainder Beneficiaries as for the Trustee, Mrs. Raggio is gathering and will
17 produce back-up documentation from which the response to this interrogatory may be derived or
18 ascertained by the Remainder Beneficiaries.

19
20 **Interrogatory No. 28:** Please list all sources of income by payor, year received and
21 amount received by you for years 2012, 2013, 2014, 2015 and 2016.

22 **Answer to Interrogatory No. 28:** OBJECTION. To the extent this interrogatory seeks
23 Trustee to disclose income from any source, other than the Marital Trust, the request seeks
24 disclosure of confidential, private and sensitive information. This request is also not reasonably
25 calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not
26 beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not
27 entitled to an accounting of this trust or other information regarding this trust. Pursuant to the
28 Court's March 4, 2015, Confirming Order confirming the *Recommendation for Order: Denying*

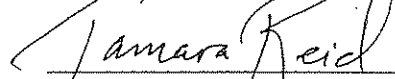
Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents, which order the Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets.

Notwithstanding the foregoing objection, Trustee receives income from the Marital Deduction portion of the William J. Raggio Family Trust, in the amount of \$20,000 per month.

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 21st day of June 2017.

HOLLAND & HART LLP



Tamara Reid, Esq.

HOLLAND & HART LLP

5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

John Echeverria, Esq.

Echeverria Law Office

9432 Double R Boulevard
Reno, NV 89521

Attorneys for Dale Raggio

VERIFICATION

I, DALE CHECKET RAGGIO, in my capacity as Trustee of The Marital Deduction Portion and Credit Share of the William J. Raggio Family Trust and individually in this matter, have read the foregoing document entitled, "**Defendant's Answers To Remainder Beneficiaries' First Set Of Interrogatories To Trustee Dale Checket Raggio**," and I know the contents thereof and that the answers contained therein are true of my own knowledge, except for those responses therein stated on information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dale Checket Raggio

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

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 June 21, 2017, I caused the foregoing **Defendant's Answers To Remainder Beneficiaries' First Set Of Interrogatories To Trustee Dale Checket Raggio** to be served by the following method(s):

☒ U.S. Mail: a true copy was placed in Holland & Hart LLP's outgoing mail in a sealed envelope addressed as follows:

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 June 21, 2017.


Liz Ford

9889395_1

Exhibit “4”

EXHIBIT “4”

DISC

Tamara Reid, Esq.
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Tel: (775) 327-3000
Fax: (775) 786-6179
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.

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,

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.

Case No. PR13-00624
Dept. No. PR

Consolidated with:

Case No. CV15-01202

**Defendant's Responses To Remainder Beneficiaries' First Set Of Requests For Production
of Documents to Trustee Dale Checkett Raggio**

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 ("Mrs. Raggio"), by and through her counsel Holland & Hart LLP, hereby responds to the requests for production of documents.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1: Please provide full and complete statements for those accounts into which distributions from the Marital Deduction portion of the Raggio Family Trust have been deposited since February 3, 2012.

Response to Request for Production No. 1: OBJECTION. This request is overly broad, unduly burdensome, and seeks disclosure of confidential, private and sensitive information. This request further seeks to discover information that the Remainder Beneficiaries are not entitled to, such as other sources of income available to Mrs. Raggio.

Request for Production No. 2: Please provide all statements for those accounts into which distributions from the Credit Shelter portion of the William J. Raggio Family Trust have been deposited since February 3, 2012.

Response to Request for Production No. 2: OBJECTION. This request is overly broad, unduly burdensome and seeks disclosure of confidential, private and sensitive information. This request is also not reasonably calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an accounting of this trust. Pursuant to the Court's March 4, 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets.

///

1 **Request for Production No. 3:** Please provide all credit card statements, cancelled checks,
2 receipts, invoices, bills, and other evidences of expenditures from distributions received by you
3 from the Marital Deduction portion of the William J. Raggio Family Trust commencing February
4 3, 2012.

5 **Response to Request for Production No. 3:** OBJECTION. This request is overly broad,
6 unduly burdensome, and seeks disclosure of confidential, private and sensitive information.
7 Notwithstanding this objection, Mrs. Raggio is gathering and will produce documents responsive
8 to this request that evidence the expenditures from the distributions received.

9
10 **Request for Production No. 4:** Please provide all credit card statements, cancelled checks
11 receipts, invoices, bills and other evidences of expenditures from distributions received by you
12 from the Credit Shelter portion of the William J Raggio Family Trust commencing February 3,
13 2012.

14 **Response to Request for Production No. 4:** OBJECTION. This request is overly broad, unduly
15 burdensome and seeks disclosure of confidential, private and sensitive information. This request
16 is also not reasonably calculated to lead to the discovery of admissible evidence. The Remainder
17 Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family
18 Trust, and are not entitled to an accounting of this trust. Pursuant to the Court's March 4, 2015,
19 Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead*
20 *Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting*
21 *and Documents*, which order the Remainder Beneficiaries have not appealed and which order has
22 not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in
23 the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in
24 determining whether to make a distribution of trust assets.

25 ///

Request for Production No. 5: Please provide all correspondence, memoranda, reports and other documents the subject matter of which is the Credit Shelter portion of the William J. Raggio Family Trust that you have had with the indefeasibly vested contingent beneficiaries and/or either or both parents of such beneficiaries.

Response to Request for Production No. 5: OBJECTION. This request is overly broad, unduly burdensome and seeks disclosure of confidential, private and sensitive information. This request is also not reasonably calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an accounting of this trust. Pursuant to the Court's March 4, 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets.

Request for Production No. 6: Please provide all credit card statements, cancelled checks, receipts, invoices, bills and other evidence of expenditures by you and/or William J. Raggio from January 1, 2007 through February 2, 2012.

Response to Request for Production No. 6: OBJECTION. This request is overly broad, unduly burdensome, and seeks disclosure of confidential, private and sensitive information. Notwithstanding this objection, Mrs. Raggio is gathering and will produce documents responsive to this request that evidence expenditures from January 1, 2007 through February 2, 2012.

///

///

Request for Production No. 7: Please provide all accountings, completed by you or on your behalf, the subject matter of which is the Credit Shelter portion of the William J. Raggio Family Trust since February 3, 2012.

Response to Request for Production No. 7: OBJECTION. This request is overly broad, unduly burdensome and seeks disclosure of confidential, private and sensitive information. This request is also not reasonably calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an accounting of this trust. Pursuant to the Court's March 4, 2015, Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting and Documents*, which order the Remainder Beneficiaries have not appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets.

Request for Production No. 8: Please provide all Notices required by any Statute, Rule or Regulation you have provided, sent or transmitted to beneficiaries, creditors or third parties of the Credit Shelter portion and the Marital Deduction portion of the William J. Raggio Family Trust.

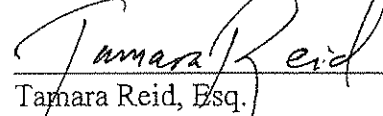
Response to Request for Production No. 8: OBJECTION. To the extent this request seeks information on the Credit Shelter portion of the William J. Raggio Family Trust, this request is overly broad, unduly burdensome and seeks disclosure of confidential, private and sensitive information. This request is also not reasonably calculated to lead to the discovery of admissible evidence. The Remainder Beneficiaries are not beneficiaries of the Credit Shelter portion of the William J. Raggio Family Trust, and are not entitled to an accounting of this trust or any other information regarding this trust.

With respect to the Marital Deduction portion of the William J. Raggio Family Trust, the requested documents will be produced.

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 21st day of June 2017

HOLLAND & HART LLP



Tamara Reid, Esq.

HOLLAND & HART LLP

5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

John Echeverria, Esq.

Echeverria Law Office

9432 Double R Boulevard

Reno, NV 89521

Attorneys for Dale Raggio

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.

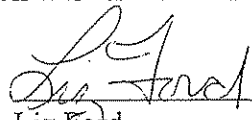
On June 21, 2017, I caused the foregoing **Defendant's Responses To Remainder Beneficiaries' First Set Of Requests For Production of Documents to Trustee Dale Checkett Raggio** to be served by the following method(s):

☒ U.S. Mail: a true copy was placed in Holland & Hart LLP's outgoing mail in a sealed envelope addressed as follows:

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 June 21, 2017.


Liz Ford

9889541_1

Exhibit “5”

EXHIBIT “5”



ROSENAUER & WALLACE
Attorneys at Law

MICHAEL A. ROSENAUER
michael@rw-nv.com

F. MCCLURE WALLACE
mcclure@rw-nv.com

July 5, 2017

Tamara Reid, Esq.
HOLLAND AND HART
5441 Kietzke Lane, Second Floor
Reno, NV 89511

John Echeverria, Esq.
Echeverria Law Office
9232 Double R Blvd.
Reno, NV 89521

Re: *Raggio Discovery*

Dear Tamara and John:

I write this in compliance with NRCP 37(a)(2)(A) as I believe we are entitled to answers and responses that were not provided. I write this understanding that the standard is extremely broad and is defined as to whether the requested information will lead to admissible evidence. Our Court has defined the areas into which inquiry can be made as being very broad and limited only to that which is not privileged. *See e.g. State ex. Rel. Tidvall v. Eighth Judicial District Court*, 91 Nev. 520, 539 P.2d 546 (Nev. 1975). Moreover, we have asked for nothing that a normal Trustee would have at their immediate disposal. The Trustee has the obligation to be following up with the Beneficiary to insure that the Beneficiary is spending the distributions consistently with the Trust from which they were derived. The Trustee has the further obligation to correspond with the Beneficiaries and others at certain times. We are following up on this Administrative element. As such, our inquiries and requests are directly involved in the issues described in the Petition.

Interrogatory No. 1: One of the assertions in the Petition brought by the Remainder Beneficiaries is that the Trustee is not applying the same standards to trusts whose language is identical. Your answers indicate that the Trustee will divulge nothing with respect to the Credit Shelter portion of the William J. Raggio Family Trust. This is error because many of the standards applicable to deciding whether to distribute to the Beneficiary are identical to that found in the Marital Deduction portion of the same trust. The assertion that one need not consider other sources of income is simply not the issue. These interrogatories focus upon the Trustee's administration of trusts having the identical language. I am therefore requesting your

reconsideration of answers which assert this Objection.

Interrogatory No. 4: There was no answer and we would request an answer.

Interrogatory No. 5: The language is neither vague nor ambiguous. Petitioners are asking for the standards by which the Trustee gauges whether an expenditure is within the language of the Trust document. For example, does the Beneficiary only use distributions to pay for her health care? Petitioners are testing the process used by the Beneficiary when spending funds received from the Marital Deduction portion of the William J. Raggio Family Trust to ensure that the expense is within the language of the trust. This response very well may lead to admissible evidence. A response is appropriate.

Interrogatory No. 6: Like the discussion set forth above with respect to Interrogatory No. 1, Interrogatory No. 6 focuses upon her administration the Trusts having identical language and standards. The fact that the Trustee does not have to consider other sources of income is irrelevant because the question looks at the Trustee's administrative activities and follow through with the Beneficiary, not other sources of income. A response is appropriate.

Interrogatory No. 7: This information is discoverable as it permits the Petitioners and Remainder Beneficiaries to scrutinize the manner in which trust assets are utilized when the standards set out in the two trusts is identical. The fact that the Trustee need not consider other sources of income never comes into play. The interrogatory should be answered.

Interrogatory No. 8: The information is indeed discoverable because it will permit the Petitioners/Remainder Beneficiaries to investigate how trust assets are actually spent. This permits the analysis of whether the distributed trust funds are actually being spent consistently with the terms of the Trust. The fact that the interrogatory inquiries about "private" information is not one of the privileges set out in the Statutes. Attorneys inquire about all manner of sensitive items. Medical records are a perfect example. How the Trustee/Beneficiary spends trust assets is directly at issue. The Interrogatory should be answered despite the fact that it may make the Trustee/Beneficiary uncomfortable. If a Trustee is not following up on the manner in which a Beneficiary is spending trust assets, the Trustee is breaching their fiduciary duty to ensure that the trust assets are being used consistently with the terms of the Trust.

Interrogatory No. 23: Again, this focuses upon Trust Administration. Moreover, it asks for information regarding whether the Marital deduction portion of the William J. Raggio Family Trust is paying the expenses for other Trusts, such as the Credit Shelter portion. The Interrogatory should be answered.

Interrogatory No. 28: The Petitioners/ Remaindermen are interested in the Trust administration and what the Trustee considers to be within the terms of the various trusts over which she has a fiduciary responsibility. Moreover, issues of the manner in which the Trustee manages the income from the various sources and then allocates the expenses is part of what the Interrogatory asks. As such, it is proper that the Interrogatory be answered.

Request for Documents No. 1: This focuses upon the manner in which assets are

managed once they are distributed from the Trust. The Trustee cannot simply spend any trust assets as she wishes because the assets are still restricted by the terms of the particular trust from which they were derived. This Request focuses upon the manner in which the Trustee is managing trust assets of which the Petitioners are Remainder Beneficiaries. They certainly have the ability to ascertain how the trust funds are actually being spent. Finally, Petitioners understand that responding to discovery is burdensome, not unduly burdensome. However, the Trustee's inconvenience is not greater than the Remainder Beneficiaries' ability to ensure that the assets are being used properly. Moreover, if the Trustee is doing her job, the information should be readily available. Please produce the requested documents.

Request For Documents No. 2: Documents are properly produced because the Petitioners are entitled to inquire as to whether the Trustee is utilizing Trust assets consistently with the terms of the Trust. The issue is one of Trust Administration and the ability for the Trustee to follow the terms of the Trust from which the assets are being drawn. Please produce the documents.

Request for Documents No. 4: Again, this focuses upon trust administration and the manner in which Trust assets are being managed and used. Petitioners are entitled to inquire as to whether the Trustee is actually utilizing the assets in a manner consistent with the Trust terms. The fact that she is not required to consider other sources of income is not logically tied to the manner in which she uses the assets. The fact that the information is private or sensitive does not create some type kind of privilege. As such, the information is not privileged and the Documents should be produced.

Request for Documents No. 5: This request again focuses upon Trust Administration. The Trustee has certain requirements of communication with Beneficiaries and Contingent Beneficiaries. The Petitioners have the ability to scrutinize whether the Trustee is fulfilling these responsibilities. The documents should be produced.

Request for Documents No. 7: Petitioners are inquiring as to the Trustee's administration of Trusts that are linked to the matters at issue. The fact that the Trustee is not required to consider other assets or resources, is not the issue. The Petitioners are entitled to ascertain whether the Trustee is administering other Trusts consistently with the terms of that trust and within the statutory requirements. Please produce the documents.

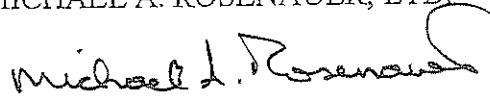
Request for Documents No. 8: This requirement is certainly not burdensome or broad. It only asks for a portion of the documents the Trustee is required to statutorily provide. It would include, but is not limited to such items as Notice to Creditors, Notice of Irrevocability due to Settlor's death, etc. The request focuses upon the Trustee's administration of Trusts containing language identical to that which is contained within the Trust at issue. Please produce the documents.

Admission No. 7: This focuses upon Trust administration of a trust having identical language. It is therefore reasonable to ascertain whether the two trusts are being treated and administered identically. Please supply an answer.

As you can see, the thrust of our queries differs from the characterizations you wish to apply. We are interested in the manner in which the Trustee is treating the assets, how she is managing the assets, and what policies and procedures she is using to discern whether an expense incurred by the Beneficiary is within the terms of the trust. As such, the questions and requests are reasonably calculated to lead to discoverable evidence and are clearly pertinent to the inquiry at hand. Please provide answers and responsive documents by July 21, 2017.

Very truly yours,

MICHAEL A. ROSENAUER, LTD.

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

Michael A. Rosenauer, Esq.

Exhibit "6"

EXHIBIT "6"

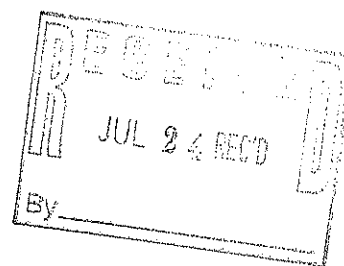


July 21, 2017

VIA U.S. Mail and E-MAIL

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

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



Re: William J. Raggio Marital Deduction Trust
Our File No. 81353.0002

Dear Mike and Bart:

I write in response to your July 5, 2017, correspondence regarding Mrs. Raggio's responses to your clients' discovery requests. Your letter demonstrates a continued, fundamental disagreement between the parties regarding the appropriate scope of discovery in this matter, something that Mrs. Raggio anticipated would be at issue from the very inception of this case.

Your clients are the remainder beneficiaries of a single trust, the Marital Deduction portion trust of the William J. Raggio Family Trust ("Marital Trust"). Your clients are, of course, entitled to an accounting of the Marital Trust, and they have been receiving accountings for the past several years. Mrs. Raggio concedes that, in addition to the accountings, your clients are entitled to some additional disclosures, but such disclosures need only be made in general terms.¹ Nevertheless, Mrs. Raggio has provided responses to the relevant interrogatories in general terms, and is in the process of reviewing and summarizing documents in order to supplement her responses to the discovery requests where appropriate.²

But, your clients are not beneficiaries or remainder beneficiaries of the Credit Shelter portion of the William J. Raggio Trust ("Credit Trust"), and accordingly not entitled to any accounting or any information regarding that separate trust. Nevertheless, your clients continue

¹The Restatement (Third) of Trusts provides that "[a]ppropriate disclosure can usually be provided in general terms that allow reasonable protection for confidential, private or sensitive information." See Restatement (Third) of Trusts §50 comment e(1).

²A supplemental disclosure of documents will be provided the first part of next week.

to tie these two separate trusts together by reading into the Trust language that is not there, ignoring a Nevada statute (NRS 163.4175) directly on point, and ignoring this Court's prior ruling on the topic. The remainder beneficiaries' continued attempt to seek information concerning, and to compel a distribution from, the Credit Shelter Trust, in contravention of the plain language of the William J. Raggio Family Trust ("Trust"), the Nevada Revised Statutes and an unequivocal ruling from the Court in this case 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" is a thinly veiled attempt to rewrite, challenge and contest the terms of the Trust. Given that your discovery requests are now bringing this fundamental disagreement to a head, Mrs. Raggio has moved for partial summary judgment on this issue.

Interrogatory No. 1, 6, 7, 23, 28: You argue that these interrogatories focus on "Trust Administration." But they are aimed solely at the Credit Trust, and not the administration of the Marital Trust. The two trusts are separate. Your clients are the remainder beneficiaries of the Marital Trust alone. They are not entitled to information, administrative or not, regarding the Credit Trust. Mrs. Raggio's summary judgment motion seeks resolution on this issue.

Interrogatory No. 4: There was no "Interrogatory no. 4" in the discovery served.

Interrogatory No. 5: Mrs. Raggio responded to this interrogatory, explaining that she "*exercises her discretion, pursuant to the plain language of William J. Raggio Family Trust, and her best judgment to ensure that the distributions from the Marital Trust are utilized consistently with the terms of the trust.*" Mrs. Raggio will supplement her response to this interrogatory to clarify that the distributions from the Marital Trust are utilized to pay for all normal monthly expenditures including, but not limited to, groceries, dining out, automobile repairs, maintenance, insurance, gas, utilities, personal upkeep, clothing, travel, entertainment, health care, as well as upkeep and maintenance of Mrs. Raggio's residence, including property taxes and insurance, and personal income taxes.

Interrogatory No. 8: Your clients are not entitled to Mrs. Raggio's private banking information, which you will then use to subpoena her bank records.

Request for Documents 1: As with Interrogatory No. 8, your clients are not entitled to Mrs. Raggio's personal bank statements. Rather, the information that your clients seek regarding expenditures of the Marital Trust distributions can be provided in general terms and/or summaries.

Request for Documents 2, 4, 5, 7, 8: Discovery aimed at the Credit Trust is inappropriate, for all the reasons already discussed above and as set forth in the objections.

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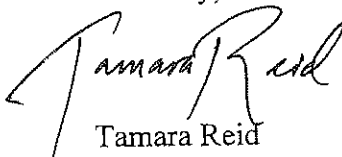


July 21, 2017
Page 3

Admission No. 7: Discovery aimed at the Credit Trust is inappropriate, for all the reasons already discussed above and as set forth in the objections. We fundamentally disagree that the Credit Trust and Marital Trust have "identical language," and even if this were true, it would be irrelevant.

John and I can be available for a telephone conference if you would like to further discuss the scope of discovery in this matter.

Sincerely,



Tamara Reid

10020222_1

CODE: 2645

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Phone: (775) 324-3303
Attorney for Tracy Raggio Chew

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR WASHOE COUNTY

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

Case No.: PR13-00624

Dept. No.: PR

Consolidated With:

Case No.: CV15-01202

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
portion of The William J. Raggio Family Trust,

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.

**LESLIE RAGGIO RIGHETTI AND TRACY RAGGIO CHEW'S OPPOSITION TO
TRUSTEE'S MOTION TO STRIKE REMAINDER BENEFICIARIES' RESPONSE**

Leslie Raggio Righetti ("Leslie") and Tracy Raggio Chew ("Tracy"), daughters of William J.
Raggio and indefeasibly vested remainder beneficiaries of the marital portion of the William J.

1 Raggio Family Trust (the “Trust”) hereby oppose the Motion to Strike Remainder Beneficiaries’
2 Response to the Request for Oral Argument.

3 Dale Checket Raggio (“Respondent”) is the successor trustee and current beneficiary of the
4 Trust. Respondent is not a settlor of the Trust because all assets were the sole and separate property
5 of William J. Raggio and contributed to the Trust exclusively by him. Upon William J. Raggio’s
6 death on February 24, 2012, Respondent became the successor trustee and bore the responsibility to
7 divide the Trust into the Marital Deduction Trust and the Credit Shelter Trust. Respondent is the
8 current and sole beneficiary of those trusts.

9 On July 29, 2017, Respondent filed a Motion for Partial Summary Judgment attempting to
10 bootstrap this Court’s decision that Tracy was not owed an accounting of the Credit Shelter Trust
11 into an order that could serve to dismiss a portion of a subsequent action and counter petition
12 brought by Leslie and Tracy. The subsequent action and counter petition allege, in part, that
13 Respondent breached various fiduciary duties owed to Leslie and Tracy, as the remainder
14 beneficiaries of the Marital Deduction Trust (but not the Credit Shelter Trust). As Leslie and Tracy
15 have clearly demonstrated, the subsequent action and counter petition are not identical and in fact are
16 quite different, could not have been brought as part of Tracy’s prior petition for an accounting, and
17 seek mostly different forms of relief. Respondent ignores the fact that neither Leslie nor Tracy could
18 have brought an action alleging Respondent’s breach of her fiduciary duties of good faith, loyalty,
19 fair dealing, and impartiality with Tracy’s prior petition for an accounting because, at the time the
20 prior petition was filed, they did not and could not know that Respondent would in the future take
21 her \$240,000.00 annual withdrawals exclusively from the trust of which they are the remainder
22 beneficiaries. Petitioners did not know that Respondent was purposefully conserving the Credit
23 Shelter Trust that, upon her death, will be distributed to her biological grandchildren (to whom
24 William J. Raggio had no blood ties and met only two or three times) in Australia. Given meaningful
25 and significant temporal, factual, and legal differences across the proceedings, both claim and issue
26 preclusion are altogether unwarranted.

27 After briefing of the Motion for Partial Summary Judgment was complete, Respondent filed
28 a Request for Oral Argument. Her Request seeks an exception to the default rule that oral argument

1 will not be held. Leslie and Tracy believe that oral argument is not necessary for several reasons and
2 informed the Court by way of their Response. Respondent's Motion to Strike therefore seeks to
3 have it both ways. Respondent wants to be able to request oral argument but seeks to deny Leslie
4 and Tracy the corresponding opportunity to oppose that request. This position is untenable.

5 Respondent also ignores the fact that oral argument of motions in the Second Judicial District
6 Court is disfavored. WDCR 12(5) reads in full: "Decision shall be rendered without oral argument
7 unless oral argument is ordered by the court, in which event the individual court department shall set
8 a date and time for hearing." The Court's decision to hear oral argument does not hinge on whether
9 counsel or the parties wish it, but whether the Court believes it would be instructive. *See, e.g.,*
10 *Dredge Corp. v. Husite Co.*, 78 Nev. 69, 89, 369 P.2d 676, 688 (Nev. 1962). Oral argument is at the
11 Court's discretion. *See id.* Respondent understands that her theory on partial summary judgment is
12 lacking and simply wants an opportunity to gloss over and talk past the fatal flaws in an attempt to
13 confuse more than clarify, not to mention waste precious time, legal fees, and judicial resources.

14 The desire to shore up one's argument, when that should have been done before (if it were
15 possible), is no reason for oral argument. The Court should set the matter for argument and direct the
16 parties to appear only if, upon review of the briefs, the Court still has questions. However, with
17 respect to the Motion for Partial Summary Judgment currently pending before the Court, Leslie and
18 Tracy submit the arguments are sufficiently clear that the Court needs no additional argument. The
19 Court can readily grasp that the claims, facts, and issues underlying a prior petition for an accounting
20 differ greatly from those underlying the current action and counter petition alleging various breaches

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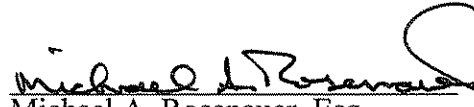
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1 of fiduciary duty. Oral argument on the Respondent's Motion for Partial Summary Judgment is
2 therefore not necessary, and the Motion to Strike should be properly denied.

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

5 DATED this 18th day of September, 2017.

6 MICHAEL A. ROSENAUER LTD.

7 
8 Michael A. Rosenauer, Esq.

9
10 MAUPIN, COX & LeGOY

11
12 /s/ G. Barton Mowry, Esq.
13 G. Barton Mowry, Esq.
14
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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:

LESLIE RAGGIO RIGHETTI AND TRACY RAGGIO CHEW'S OPPOSITION TO TRUSTEE'S MOTION TO STRIKE REMAINDER BENEFICIARIES' RESPONSE

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:

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

Tamara Reid, Esq.
HOLLAND AND HART
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

DATED: this 18th day of September, 2017.



REBECCA SQUIRE

2645

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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

Case No. PR13-00624

THE WILLIAM J. RAGGIO FAMILY
TRUST.

Dept. No. PR

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 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.

**OPPOSITION TO PETITIONERS'/PLAINTIFFS' MOTION TO COMPEL
WRITTEN DISCOVERY**

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 (“Mrs. Raggio”), opposes the Motion to Compel Written Discovery filed by the Remainder Beneficiaries, Leslie Righetti and Tracy Chew.

I. INTRODUCTION

Righetti and Chew are the remainder beneficiaries of the Marital Deduction Portion of the William J. Raggio Family Trust (the “Marital Trust”). As remainder beneficiaries of the Marital Trust, they have received annual accountings for the past three and a half years. In addition to these formal accountings, Mrs. Raggio and her counsel have spent over 100 hours compiling and producing information that responds to their inquiries regarding the distributions from the Marital Trust and the use to which Mrs. Raggio, as the current beneficiary, has put those funds.

But Righetti and Chew’s inquiry does not stop there. They claim that in order to properly evaluate the reasonableness of the distributions Mrs. Raggio is making from the Marital Trust, and to support their claims for relief, they are entitled to detailed financial information regarding all of her other assets, including the Credit Share of the William J. Raggio Family Trust (the “Credit Shelter Trust”), a separate trust. However, Righetti and Chew are not beneficiaries of the Credit Shelter Trust. As such, they have no standing to seek an accounting of the Credit Shelter Trust, nor any right to information about this separate trust. In fact, this Court previously rejected Chew’s request for an accounting of the Credit Shelter Trust. Unperturbed by this prior ruling, Righetti and Chew brazenly served discovery on Mrs. Raggio that seeks detailed financial information (all statements, all distributions, all expenses) from the Credit Shelter Trust. In other words, Righetti and Chew once again seek *an accounting* of the Credit Shelter Trust.

Moreover, Nevada law imposes no independent duty on Mrs. Raggio to consider other sources of income in making distributions from the Marital Trust. Rather, NRS 163.4175 provides that “[e]xcept as otherwise provided in the trust instrument, the trustee is not required to consider a beneficiary’s assets or resources in determining whether to make a distribution of trust assets.” Therefore, the accountings already provided to Righetti and Chew, and the flood of

1 financial information that Mrs. Raggio has compiled and continues to produce with respect to the
2 Marital Trust represents the limits of what is appropriate and necessary to resolve Righetti and
3 Chew's pending claims.

4 This Court cannot permit Righetti and Chew to continue to disregard this Court's prior
5 rulings and direct statutory authority, to gain access to information they are plainly not entitled to
6 have. To the extent their written discovery seeks disclosures and information regarding the
7 Credit Shelter Trust, such discovery must be denied.

8 **II. RELEVANT FACTS**

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

13 The remainder beneficiaries of the two trusts are different. The Petitioners/Plaintiffs,
14 Righetti and Chew, are the remainder beneficiaries of the Marital Trust only. They have no rights
15 with respect to the Credit Shelter Trust, including any right to demand an accounting of the
16 Credit Shelter Trust. Mrs. Raggio's grandsons are the remainder beneficiaries of the Credit
17 Shelter Trust. ***This is a critical distinction in assessing Righetti and Chew's discovery rights in***
18 ***this matter.***

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

1 during the interim period, the Marital Trust would be funded with a specific dollar amount, while
2 the Credit Shelter Trust would receive the balance.¹ The Remainder Beneficiaries raised no
3 challenges or objections to the allocations between the Marital Trust and the Credit Shelter Trust.

4 Section 5.1 of the Raggio Family Trust provides that the trustee of the Marital Trust shall
5 “quarter-annually or at more frequent intervals, pay to or apply for the benefit of [Mrs. Raggio]
6 all of the net income of the Trust.” *See Trust* §5.1. In addition to this mandatory distribution of
7 income, the Trustee is further authorized to distribute “as much of the principal of the Trust as
8 the Trustee, in the Trustee’s discretion, shall deem necessary for [her] proper support, care, and
9 maintenance.” *Id.* Notably, there are no provisions that direct or require the trustee of the
10 Marital Trust to consider other sources in making the foregoing decisions to distribute income
11 and/or principal from the Marital Trust. After Mrs. Raggio death, the remaining principal in the
12 Marital Trust shall be distributed to another trust (the W&D Trust), which was formed
13 separately from the present Raggio Trust, and of which Righetti and Chew are beneficiaries. *See*
14 *Trust*, §5.3.

15 The Credit Shelter Trust holds the balance of the trust property and is also held for Mrs.
16 Raggio’s benefit during her lifetime. *Trust*, §4.6. The trustee of the Credit Shelter Trust shall
17 distribute to Mrs. Raggio “as much of the net income and principal of the Credit Shelter Trust”
18 as the trustee determines necessary for her support, care and maintenance. *Id.*, §6.1. In contrast
19 to the Marital Trust, the Credit Shelter Trust does not include any mandatory distribution
20 requirement to the beneficiary during her lifetime. After Mrs. Raggio’s death, any remaining
21 principal in the Credit Shelter Trust shall be distributed into equal shares for the benefit of Mrs.
22 Raggio’s grandsons. *Id.*, §6.2.

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25 _____
26 ¹ Although Senator Raggio died on February 24, 2012, the Marital Trust was not funded until
27 July 2013. This intervening “gap period” was necessary to marshal and appraise the decedent’s
28 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.

III. RELEVANT PROCEDURAL HISTORY

On December 9, 2013, Chew filed a Petition to Interplead Inter Vivos Trust, Request for Review of Beneficiary's Request for an Accounting and Documents ("2013 Petition").² **Exhibit 2.** Her Petition explicitly sought "[a]n itemization of all distributions to all beneficiaries and expenses incurred as part of the administration of the Raggio Trust as well as the Marital Trust *and Credit Shelter Trust* created thereunder consistently with the requirements of NRS Chapter 165." *Id.* at 3:15-18. (emphasis added).

As the case progressed, Chew repeatedly and explicitly argued her position that she was entitled to an accounting of the Credit Shelter Trust: "An accounting is appropriate because one must understand what expenses are being allocated to each trust what assets were used to fund each trust and their values, and what distributions have been made to the income beneficiary who is also the Trustee/Grandmother." *See, e.g. Exhibit 3*³, at 4:22-26.

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. *See* Transcript of Hearing attached hereto as **Exhibit 4**. At the conclusion of the hearing, the Court noted as follows:

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.

Id., at p. 80:2-24. Consistent with the discussion at the hearing, 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 5**. Accordingly, the Commissioner

²Chew served a Notice of Hearing on Righetti's counsel on December 9, 2013, in accordance with NRS 155.010. From that point forward, everything filed by the parties in the matter was concurrently served on Righetti's counsel. In turn, pursuant to NRS 155.160, Righetti could have appeared and made a response or objection in writing at or before the hearing, or could have appeared at the oral argument to state her position. She elected not to do so.

³The exhibits to these prior briefs have been omitted because they are generally duplicative and voluminous.

recommended that the 2013 Petition be denied without prejudice, thus also denying the request for an accounting of the Credit Shelter Trust. *Id.* The denial was without prejudice only because the Court determined that Chew did not have standing to bring the 2013 Petition in the first place because she, as an individual, was not the actual remainder beneficiary of the Marital Trust. Instead, her sister (Righetti), as the trustee of the William and Dorothy Credit Shelter Trust, was the proper party to do so. *See id.* The District Court entered its confirming order on March 4, 2015.

A month later, on April 7, 2015, Mrs. Raggio filed her petition for approval of accounting with respect to the Marital Trust (for the initial accounting period of July 22, 2013 through July 31, 2014). **Exhibit 6.** Righetti objected to the petition, and filed a counter petition for removal and surcharge of trustee on May 22, 2015 (“Counter Petition”). **Exhibit 7.** In it, she argues that Mrs. Raggio should be obligated to consider and use other assets available to her:

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

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

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

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

On June 24, 2015, Righetti and Chew initiated a civil action against Mrs. Raggio. Thereafter, a First Amended Complaint (“FAC”) was filed on July 2, 2015, which remains the operative pleading in these consolidated matters. In the FAC, Righetti and Chew assert a claim for breach of trust (First Claim for Relief). **Exhibit 8.** Their breach of trust claim asserted two different legal theories. First, Righetti and Chew allege that Mrs. Raggio made discretionary distributions to herself (as the beneficiary) from the Marital Trust that were not necessary for her

1 support, care and maintenance. *See id.* at ¶¶25-27. Second, they allege the exact same argument
2 previously rejected by this Court in denying the 2013 Petition. Specifically, they contend that
3 Mrs. Raggio deliberately chose not to make discretionary distributions from the Credit Shelter
4 Trust, instead choosing to make distributions from the Marital Trust, which harmed them as
5 remainder beneficiaries of the Marital Trust. As they allege:

6 ¶29 On information and belief, Plaintiffs allege that though Dale Checkett
7 (sic) Raggio has the discretion to distribute to herself assets from the Credit
8 Shelter portion on the identical standard for discretionary distributions from the
9 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.

10 ¶30 The actions of Dale Checkett Raggio, as Trustee, in treating herself
11 differently as the discretionary beneficiary of both the Credit Shelter portion and
12 Marital Deduction portion of the William J. Raggio Family Trust with the effect
13 of diminishing the interests of the remainder beneficiaries of the Marital
14 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.

15 *See id.* Thus, with respect to their second breach of trust theory, Righetti and Chew once against
16 seek a joint reading of the sub-trusts to impose liability on Mrs. Raggio.⁴

17 In addition, on July 2, 2015, Righetti and Chew filed a NRS 153.031 Petition Concerning
18 Affairs of Trust (“2015 Petition”). **Exhibit 9.** In the 2015 Petition, they also assert a claim for
19 breach of trust/fiduciary duty (First Claim for Relief). And like their claim in the FAC, Righetti
20 and Chew assert that Mrs. Raggio breached her fiduciary duties by not treating the Marital Trust
21 and Credit Shelter Trust consistently. Rather, they allege that Mrs. Raggio made discretionary
22 distributions to herself from the Marital Trust rather than from the Credit Shelter Trust, thereby
23 depleting the assets in the Marital Trust to the benefit of the Credit Shelter Trust. As the 2015
24 Petition states:

25 ///

26 ///

27
28 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.

¶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:

¶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.

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1 In turn, with respect to written discovery, Righetti and Chew make sweeping demands
2 for documents and information regarding the Credit Shelter Trust to which they are simply not
3 entitled:

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

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

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

14 **Interrogatory No. 7:** State by institution name, domiciliary branch, address and
15 account number the accounts into which distributions from the Credit Shelter
16 portion of the William J. Raggio Family Trust have been deposited since February
17 3, 2012.

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

22 *See Responses to Interrogatories, attached as **Exhibit 10**. They requests for production similarly
23 make broad inquiries into the Credit Shelter Trust:*

24 **Request for Production No. 2:** Please provide all statements for those
25 accounts into which distributions from the Credit Shelter portion of the William J.
26 Raggio Family Trust have been deposited since February 3, 2012.

27 **Request For Production No. 4:** Please provide all credit card statements,
28 cancelled checks, receipts, invoices, bills and other evidences of expenditures
from distributions received by you from the Credit Shelter portion of the William
J. Raggio Family Trust commencing February 3, 2012.

Request For Production No. 7: Please provide all accountings, completed
by you or on your behalf, the subject matter of which is the Credit Shelter portion
of the William J. Raggio Family Trust since February 3, 2012.

*See Responses to Requests for Production, attached as **Exhibit 11**. Given the impropriety of
these request, Mrs. Raggio objected to all interrogatories and requests for production seeking
information on the Credit Shelter Trust. *See id.**

Nevertheless, Mrs. Raggio proceeded with the arduous task of gathering, reviewing,

1 summarizing, and producing records dating back ten (10) years that reflect her standard of living
2 during the time that Senator Raggio was alive (2007 through 2012) and her standard of living
3 since (2012 through current). *See* Supplemental Disclosures attached as **Exhibit 12** (covering
4 2013, 2014, 2015, and 2016).⁵ These records also reflect the manner in which Mrs. Raggio has
5 utilized the distributions from the Marital Trust to cover her needs as contemplated by the
6 Marital Trust.

7 **IV. LEGAL ARGUMENT**

8 **A. This Court Has Denied An Accounting Of The Credit Shelter Trust**

9 The crux of this discovery dispute turns on questions of law. This Court previously
10 addressed these questions of law in response to Chew's 2013 Petition, and Mrs. Raggio contends
11 that the Court's prior ruling governs the scope of discovery. The Remainder Beneficiaries seek to
12 avoid the constraints of this Court's prior findings and conclusions of law, by drawing
13 distinctions without a difference between Chew's 2013 Petition and their current pleadings and
14 briefs. That is precisely why Mrs. Raggio had to file a summary judgment motion regarding the
15 preclusive effect of this Court's earlier order on the current claims and issues. A ruling in favor
16 Mrs. Raggio would moot the Remainder Beneficiaries' improper discovery into the Credit
17 Shelter Trust altogether. At best, resolution of the present discovery dispute is premature until
18 the Court has an opportunity to rule on the pending summary judgment motion.

19 Bottom line, this Court cannot permit Righetti and Chew to obtain via their FAC and
20 2015 Petition what this Court *already* denied when it rejected Chew's 2013 Petition. The
21 analysis is straightforward. Chew and Righetti are not beneficiaries of the Credit Shelter Trust.
22 Mrs. Raggio does not owe them duties to account for this separate trust.⁶ Yet, in blatant disregard
23

24 ⁵Mrs. Raggio will be supplementing her response to Request for Production No. 6 (which seeks information prior to
2012).

25 ⁶ NRS 165.135 sets forth a trustee's obligations with respect to providing an accounting. The statute declares that a
26 trustee is only required to furnish "each beneficiary" with an accounting:

26 **NRS 165.135 Accounts.**

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

28 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

1 of these plain facts and this Court's earlier order, they served multiple requests seeking all
2 financial information related to the Credit Shelter Trust, which amounts to a de facto request for
3 an accounting of the Credit Shelter Trust. Mrs. Raggio's objections to these requests should be
4 upheld.

5 **B. This Court Has Rejected A Joint Reading of The Sub-Trusts**

6 As an alternative way to achieve the same result – i.e. an accounting of the Credit Shelter
7 Trust – Righetti and Chew continue to claim that Mrs. Raggio's distributions from the Marital
8 Trust cannot be evaluated in a vacuum, but rather, must be weighed against/compared
9 to/considered along with her other resources, including the Credit Shelter Trust. They argue that
10 “[w]hen contemplating a distribution of corpus from either trust, Respondent, as Trustee, cannot
11 arbitrarily choose one beneficiary or set of remainder beneficiaries over another. To do so would
12 be in violation of her fiduciary duties of loyalty, impartiality, and fairness.” Motion to Compel,
13 at 3:10-13. This argument is misplaced.

14 First, this Court already rejected this same argument when raised by Chew in her 2013
15 Petition. The Court rejected any joint reading of the sub-trusts. *See* Exhibits 4 and 5. There is no
16 basis to deviate from this earlier ruling.

17 Second, Righetti and Chew fail to cite any legal authority directly on point. Instead,
18 Petitioners cite to a single Nevada Supreme Court decision, *Matter of W.N. Connell and*
19 *Marjorie T. Connell Living Trust*, 393 P.3d 1090, 1094 (Nev. 2017) for the proposition that a
20 trustee must treat all beneficiaries equally.⁷ To the extent this case is meant to support the legal
21 proposition that a trustee owes fiduciary duties to multiple beneficiaries of a *single* trust, then it
22 is generally true. This is borne out by the legal authority cited by and relied upon by the Nevada
23 Supreme Court in the *Connell* case. *See Riley v. Rockwell*, 103 Nev. 698, 701, 747 P.2d 903, 905

24 _____ (continued)

25 cost of each account must be allocated to income and principal as provided in
26 the trust instrument.
(emphasis added).

27 ⁷Notably, the Supreme Court merely affirms the grant of summary judgment on a breach of fiduciary duties claim
28 below, and offers practically no independent analysis of the issue. Moreover, in that case, the Court agreed that the
trustee breached her fiduciary duties when she unilaterally ceased distributions to the current beneficiaries of a trust,
a set of circumstances not presented here.

(1987) (beneficiary of a fractional interest land trust brought suit against brother, who was also a beneficiary and the trustee, of that same trust); *Hearst v. Ganzi*, 145 Cal. App. 4th 1195, 1211, 52 Cal. Rptr. 3d 473, 483 (2006)(discussing trustee’s obligations to two classes of beneficiaries, income and remainder beneficiaries, of a single trust); *Matter of Duke*, 305 N.J. Super. 408, 440, 702 A.2d 1008, 1023–24 (Ch. Div. 1995), *aff’d*, 305 N.J. Super. 407, 702 A.2d 1007 (App. Div. 1997) (in a dispute between two parties claiming to be beneficiaries of a single trust, a trustee may not advocate for either side or assume the validity of either side’s position); Restatement (Third) of Trusts § 2 (2003)(“*a. Terminology.* When the term “trust” is used in this Restatement without any qualifying adjective or description, it denotes a trust (private or charitable) as defined in this Section, and an express trust rather than a resulting or constructive trust.”) *see also* Restatement (Second) of Trusts § 232(a) (1959)(“The rule stated in this Section is an application of the broader rule stated in § 183 that where there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them. That rule is applicable whether the beneficiaries are entitled to interests in the trust properly simultaneously or successively.”). Thus, the Restatement and case law stands for the general proposition that a trustee has an obligation to treat multiple (i.e. lifetime and remainder) beneficiaries of a *single* trust fairly. Therefore, with respect to the Marital Trust, Mrs. Raggio has a duty to treat the current beneficiary (herself) and remainder beneficiary – i.e., the W&D Trust – impartially. In turn, the Trustee has a duty to treat the current beneficiary (herself) and the remainder beneficiaries of the Credit Shelter Trust – Mrs. Raggio’s grandchildren – impartially.

However, to the extent the Remainder Beneficiaries claim this case supports the proposition that a trustee owes equal duties to two *different* sets of beneficiaries of two distinct trusts, Mrs. Raggio respectfully disagrees. Again, the case law relied upon by the Supreme Court does not support such a proposition. Mrs. Raggio, as Trustee of two distinct trusts, does not have equivalent obligations to these two distinct sets of remainder beneficiaries of two separate trusts. As such, the extent and nature of distributions that Mrs. Raggio may have made from the Credit Shelter Trust are not appropriately considered in determining the reasonableness of the Marital Trust distributions. Moreover, the underlying dispute in *McConnell* arose from a dispute over the

percentage allocations of assets to sub-trusts, which is not the case here. The allocation between the Marital Trust and Credit Shelter Trust is something that the Remainder Beneficiaries have never challenged.

Ultimately, the Court should not weigh Mrs. Raggio's actions as trustee of the Marital Trust against her actions as trustee of the Credit Shelter Trust for purposes of determining whether Mrs. Raggio has breached any duties to Righetti and Chew. As a result, Righetti and Chew are not entitled to a de facto accounting of the Credit Shelter Trust and the Court should uphold Mrs. Raggio's objections to their discovery requests.

C. NRS 163.4175 Prohibits Discovery Into Other Resources

To circumvent the plain fact that they have no rights to an accounting of the Credit Shelter Trust, Righetti and Chew instead argue that their discovery is permissible because it is not otherwise possible to evaluate the reasonableness of Mrs. Raggio's distributions from the Marital Trust.⁸ Not only is Mrs. Raggio not required to consider other resources, but Righetti's argument would eviscerates the purpose of the Marital Trust in the first place, which is to provide for Mrs. Raggio during her lifetime.

Righetti and Chew have continuously disregarded NRS 163.4175. The language of the statute is clear: "[e]xcept as otherwise provided in the trust instrument, *the trustee is not required to consider a beneficiary's assets or resources in determining whether to make a distribution of trust assets.*" (emphasis added). There is no contrary provision in the Raggio Family Trust, and accordingly, there is little that Righetti and Chew can do to urge an alternate interpretation of this statute. NRS 163.4175 is controlling authority, despite other generalized observations that Righetti may cite from secondary sources, and this Court must apply it accordingly.

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⁸For example, in objecting to Mrs. Raggio's Petition, Ms. Righetti contends that Mrs. Raggio cannot determine what is "absolutely needed" for her support "without considering other assets or resources available to her and her obligations in her role as Trustee to all beneficiaries." Exhibit 7, at 11:23-25.

D. The Discovery Infringes Upon The Privacy Rights Of The Credit Shelter Trust Beneficiaries

As already discussed above, Mrs. Raggio owes fiduciary duties not only to Ms. Righetti and Ms. Chew with respect to administration of the Marital Trust, but also to the remainder beneficiaries of the Credit Shelter Trust. Those remainder beneficiaries are not participants in this litigation, yet Righetti and Chew seek to uncover information that would constitute an invasion of their right to privacy. *See Onwuka v. Federal Exp. Corp.*, 178 F.R.D. 508, 517 (D. Minn. 1997) (opining that courts are reluctant to permit discovery requests that intrude on the privacy rights of non-party third persons). For this additional reason, the Court should preclude Righetti and Chew's inquiry into the administration of the Credit Shelter Trust.

E. Court Must Balances The Need For Information With The Trustee's Reasonable Expectations Of Privacy

The only appropriate area of inquiry for Righetti and Chew is discovery aimed at ascertaining Mrs. Raggio's support needs and her accustomed standard of living when Senator Raggio was alive. But even with respect to this legitimate area of inquiry, the Court must balance Righetti and Chew's right to information to prepare their case, with Mrs. Raggio's reasonable expectations of privacy. *Guruwaya v. Montgomery Ward, Inc.*, 1989 WL 79851 at *6 (9th Cir. 1989) (citing *Zaustinsky v. University of Ca*, 96 F.R.D. 622, 624 (N.D. Ca 1983)) ("When a party seeks to discover confidential information, the court may balance the need for the information against the interest in confidentiality.").

The Restatement (Third) of Trusts provides that with respect to ascertaining need and standard of living, "[a]ppropriate disclosure can usually be provided in general terms that allow reasonable protection for confidential, private or sensitive information." *See* Restatement (Third) of Trusts §50 comment e (1). Mrs. Raggio, with the assistance of her counsel, has worked diligently over the past two months to compile and disclose information spanning a ten-year period that reflects her standard of living during her marriage to Senator Raggio, as well as the expenditures necessary for her health, support and maintenances since Senator Raggio's death. Mrs. Raggio has already made one voluminous supplement to Request for Production No. 3, and

1 will be making another supplemental disclosure and response to Request for Production No. 6.
2 The information she has compiled and disclosed is more than adequate for Righetti and Chew to
3 analyze whether her distributions and expenditures from the Marital Trust are reasonable for her
4 health, support and maintenance. To the extent Petitioners seek any further documentation.

5 **V. CONCLUSION**

6 For the foregoing reasons, Mrs. Raggio respectfully requests that the Court deny
7 Petitioners' Motion To Compel Written Discovery as it relates to each Interrogatory and each
8 Request for Production aimed at the Credit Shelter Trust.

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

11 DATED this 25th day of September 2017.

12 HOLLAND & HART LLP

13 /s/ Tamara Reid

14 Tamara Reid, Esq.

15 HOLLAND & HART LLP

16 5441 Kietzke Lane, Second Floor
17 Reno, Nevada 89511

18 /s/ John Echeverria

19 John Echeverria, Esq.

20 Echeverria Law Office
21 9432 Double R Boulevard
22 Reno, NV 89521

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

CERTIFICATE OF SERVICE

I, Marcia Filipas, 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 September 25, 2017, I caused the foregoing **OPPOSITION TO PETITIONERS'/PLAINTIFFS' MOTION TO COMPEL WRITTEN DISCOVERY** 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.
Michael A. Rosenauer, Ltd.
510 West Plumb Lane, Suite A
Reno, Nevada 89509

G. Barton Mowry, Esq.
Enrique R. Schaerer, 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 September 25, 2017.

/s/ Marcia Filipas
MARCIA FILIPAS

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

EXHIBIT INDEX

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EXHIBIT "1"

William J. Raggio Family Trust Agreement

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

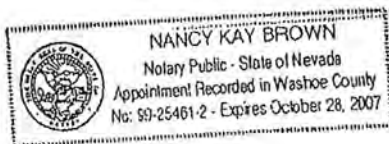
Section 10.8. Except as provided in this Trust Agreement, the Settlor has intentionally and with full knowledge omitted to provide for any heirs or next of kin which he may have.

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”

Petition to Interplead Inter Vivos Trust,
Request for Review of Beneficiary’s
Request for an Accounting and
Documents

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

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:

- 29 1. The William J. Raggio Family Trust (hereinafter "The Raggio Trust") was
30 established by Agreement on or about April 13, 2007.
- 31 2. At the time The Trust was established, William J. Raggio was the Trustee and a
32 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.
28

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
27

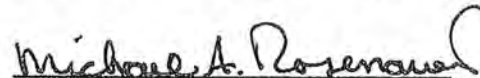
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1 required information and other requested documents within a fixed period of time.

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.

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9 
10 Michael A. Rosenauer, Esq.
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VERIFICATION

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

EXHIBIT "3"

Chew's Points and Authorities, dated
January 17, 2017

EXHIBIT "3"

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
19 WILLIAM J. RAGGIO FAMILY
20 TRUST
21 _____/

CASE NO.: PR13-00624
DEPT. NO.: PR
HEARING DATE N/A

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
12 Family Trust.

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

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

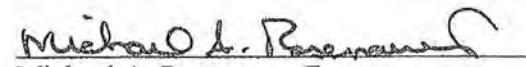
3 The Trustee should be directed to render an accounting of the Raggio Family
4 Trust from Bill Raggio's demise through the date the Marital Trust and Credit Shelter
5 Trust were funded. It is equally appropriate for this Court to direct that the Trustee render
6 annual accountings for the Marital Trust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

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Dated this 17th day of January, 2014

ROSENAUER & WALLACE


Michael A. Rosenauer, Esq.

¹ Petitioner has no problem giving the CPA preparing the accounting until May 15, 2014 in which to 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