

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of

THE WILLIAM J. RAGGIO FAMILY TRUST.

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

vs.

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

Respondents,
and

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

No. _____

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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 III**

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

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

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

Attorneys for Petitioner

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

APPENDIX

DATE	DOCUMENT	VOL.	PAGE NOS.
7/2/2015	First Amended Complaint	I	PA-0001-PA-0009
7/2/2015	NRS 153.031 Petition Concerning Affairs of Trust	I	PA-0010-PA-0022
7/23/2015	Response to NRS 153.031 Petition Concerning Affairs of Trust	I	PA-0023-PA-0043
9/16/2015	Order Consolidating Matters	I	PA-0044-PA-0046
12/16/2015	Answer to First Amended Complaint	I	PA-0047-PA-0052
7/19/2017	Motion for Partial Summary Judgment	I-II	PA-0053-PA-0266
8/14/2017	Opposition to Motion for Partial Summary Judgment	II	PA-0267-PA-0287
8/24/2017	Reply in Support of Motion for Partial Summary Judgment	II	PA-0288-PA-0324
8/30/2017	Request for Oral Argument	II	PA-0325-PA-0327
9/1/2017	Response to Request for Oral Argument	II	PA-0328-PA-0331
9/5/2017	Motion to Strike Remainder Beneficiaries' Response	II	PA-0332-PA-0334
9/8/2017	Petitioners'/Plaintiffs' Motion to Compel Written Discovery	II	PA-0335-PA-0396
9/18/2017	Leslie Raggio Righetti and Tracy Raggio Chew's Opposition to Trustee's Motion to Strike	II	PA-0397-PA-0401
9/25/2017	Opposition to Petitioners'/Plaintiffs' Motion to Compel Written Discovery	II-III	PA-0402-PA-0626
10/3/2017	Reply In Support of Motion to Strike Remainder Beneficiaries' Response	III	PA-0627-PA-0629
10/3/2017	Request for Submission (Motion to Strike Remainder Beneficiaries' Response)	III	PA-0630-PA-0632
10/13/2017	Reply In Support of Motion to Compel Written Discovery	III	PA-0633-PA-0665
10/16/2017	Petitioner's Request to Submit Their Motion to Compel Written Discovery	III	PA-0666-PA-0668
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6/4/2018	Order Granting Motion to Compel	IV	PA-0776-PA-0777
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6/21/2018	Transcript of Proceedings Case Management Conference	IV	PA-0785-PA-0798

CERTIFICATE OF SERVICE

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

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

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

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

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

EXHIBIT "4"

Transcript of Hearing, dated
June 3, 2014

EXHIBIT "4"

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

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

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

17 APPEARANCES:

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

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

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

1 CONTINUATION OF APPEARANCES:

2 For the Trustee ECHEVERRIA LAW OFFICE
3 Mrs. Dale Raggio: By: John Echeverria, Esq.
4 9432 Double R Boulevard
5 Reno, Nevada 89521
6
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10
11
12
13
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1 RENO, NEVADA; TUESDAY, JUNE 3, 2014; 1:45 P.M.

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4 COMMISSIONER WRIGHT: Good afternoon. This is
5 the matter of the William J. Raggio Family Trust,
6 PR13-00624. Big chair here. All right. And this is
7 the time for oral arguments on the initial petition on
8 the objections, et cetera.

9 So I'll start with petitioner and her counsel,
10 I'll have you make you introductions, please.

11 MR. ROSENAUER: Good morning, your Honor.
12 Michael Rosenauer on behalf of Tracy Chew.

13 COMMISSIONER WRIGHT: Thank you.

14 MR. ECHEVERRIA: And I'm John Echeverria on
15 behalf of the trustee, Ms. Raggio.

16 MR. RILEY: Tim Riley on behalf of the
17 trustee, Ms. Raggio, as well.

18 COMMISSIONER WRIGHT: Thank you. All right.
19 So, I'm ready to proceed, pleadings have been reviewed,
20 and I believe Judge Steinheimer has spoken with you, but
21 I am ready to proceed.

22 So Mr. Rosenauer, if you'd like to begin?

23 MR. ROSENAUER: Thank you, your Honor. Your
24 Honor, this is an issue -- the issue that brings us here

1 is, in essence, your Honor, the accounting of the assets
2 in the Raggio Family Trust. That trust split into the
3 Credit Shelter Trust and the marital trust upon William
4 Raggio's demise in February of 2012.

5 As review for the Court, your Honor, the
6 marital trust goes to, or is split between the
7 decedent's two children upon Dale Raggio's demise, and
8 the other Credit Shelter Trust goes to Dale Raggio's
9 grandsons, as I recall, who currently reside in
10 Australia.

11 What is truly at issue, your Honor, is the
12 allocation and the accounting for the Raggio Family
13 Trust during that period of time which is between
14 February 3rd of 2012 and the split between -- of that
15 trust into the two trusts, that being the Credit Shelter
16 Trust and the marital trust on or in July of 2013. That
17 is really what this is all about.

18 The secondary portion of it, your Honor, is
19 the understanding that one must grasp what the expenses
20 were out of one trust to understand what has occurred in
21 the other trust. And the reason for that, your Honor,
22 in summary is to ensure that the allocation or the spend
23 down of both trusts are, indeed, and if I might digress
24 for just a moment because we have some technology here,

1 your Honor. It's fine by me, but I didn't want you guys
2 to press down on this and have it topple over. And I
3 apologize, your Honor.

4 COMMISSIONER WRIGHT: Oh, no problem.

5 MR. ROSENAUER: Because it will be a momentary
6 -- it will be a surprise.

7 In any event, your Honor, to understand one
8 you have to understand the other. And the reason for
9 that, as I will explain in a moment, is because the
10 standard for both is the same, and we have the same
11 trustee. If the standard is the same, that being the
12 purpose, in other words, health care maintenance of --
13 if that is the same between the two trusts, and you have
14 the same trustee, then the allocation and the basis for
15 choosing one over the other must, indeed, be identical.
16 And the trustee is going to owe the same obligation to
17 both sets of contingent beneficiaries. So that in a --
18 as an overview is why we are -- why we are here.

19 The big problem, and let's start again going
20 back for half a second, is the fact that it is the use
21 of the funds during the gap period, in other words, the
22 time between the demise of William Raggio and the
23 allocation of the assets to the various trusts. We have
24 been supplied, your Honor, with the right list and the

1 understanding of how these assets were allocated to each
2 trust, so to understand or to get to the point where the
3 manner in which they were funded. And so that gets us
4 part of the way in one side of the equation, but it
5 doesn't answer what is truly the crux of the problem,
6 and that is to ensure so that the beneficiaries have the
7 means by which to understand and check that the assets
8 are being used for the purpose that was stated in the
9 trust.

10 And again, to understand one, you have to
11 understand the other because, again, the obligation is
12 identical, it is the same, and that is, health
13 maintenance care. So, you know, that is -- is a portion
14 of it.

15 Let's understand and talk for a moment also,
16 your Honor, about the origination of the assets because
17 that is important. The origination of the assets are
18 the William and Dorothy or William and Dorothy Raggio,
19 the petitioner's parents and Mr. Raggio's first wife.

20 In fact, some of those assets date all the way
21 back to William Raggio and his mother, Dorothy Briggman.
22 Excuse me, not Dorothy, I only knew her as Mrs.
23 Briggman. And that, your Honor, I bring that as
24 important with respect to the fairness of what we are

1 asking for. I don't think that we are overreaching or
2 anything else with respect to that. But again, it's all
3 about the transparency of what has occurred in the
4 intervening time and within that interim or gap time.

5 Now, Mrs. Raggio distinguishes some of the
6 mandatory language in the marital trust versus the --
7 with the permissive language in the Credit Shelter
8 Trust. If there -- if that interpretation were to be
9 persuasive, your Honor, the marital trust would be spent
10 down, first, notwithstanding the fact that the terms of
11 the need, that being the reason for the spend down or
12 the authority to spend it down is, again, the same,
13 support, care and maintenance. Again, it becomes a
14 distinction without a difference.

15 I would submit also, your Honor, that the --
16 Mrs. Raggio does spend a significant period of time
17 making an argument with respect to standing, again, a
18 distinction without a difference. The claim is that the
19 trustee of the marital trust must be the one that is
20 bringing the claim, not Tracy Chew, because the
21 beneficiary of that trust is really a subtrust going
22 down. Again, we're talking about a distinction without
23 a difference because Ms. Chew is a beneficiary of that
24 other trust in any event, and so all we would do is turn

1 around, make the exact same argument, and stick
2 something somebody else in here. Again, it makes
3 absolutely no difference or sense and we would be here
4 at a later time. And this is all about, I suggest, your
5 Honor, taking care of the problem.

6 Plus, the important thing is that there has
7 been no accounting in any event. More than a year has
8 passed and, in fact, your Honor, more than a year passed
9 between Mr. Raggio's demise and the allocation, which,
10 of course, both trusts, that being the marital trust and
11 the Credit Shelter Trust were one. There was no
12 accounting as far as what assets were used for support,
13 care and maintenance during that time, so even if Ms.
14 Raggio wants to turn around and say gee whiz, we don't -
15 that ow that because Tracy Chew is not a beneficiary of
16 the Credit Shelter Trust, they can not take that
17 position during the gap or interim time because it was
18 still the Raggio Family Trust at that time, for those --
19 between February 3rd and July of 2013. So there's been
20 no accounting with respect to that.

21 Now, we have received, your Honor, and I thank
22 counsel for it, some tax documents and those types of
23 things. And that's fine and dandy. But your Honor,
24 that does not demonstrate or give notice to any of the

1 beneficiaries, especially within the trust statute that
2 is out there as far as what the assets were used for.
3 In other words, if they -- they will have to demonstrate
4 that, gee whiz, a hundred dollars was spent at CVS
5 Pharmacy for pharmaceuticals, aspirin for Ms. Raggio,
6 because that is going to be within the terms of
7 maintenance, care, maintenance and support.

8 What we don't want to have happen, your Honor,
9 and what -- and remember the trust -- the trust statutes
10 are all about transparency. They are all about giving
11 every interested party an idea of income, inventory,
12 use, and administrative expenses. And while tax
13 documents tell us there was this much gain, this is the
14 basis of the -- of the assets, that, again, is taxed at
15 this rate, pay this amount in tax, and again, I thank
16 counsel for that. We still don't know what this -- and
17 we would know what was distributed, but we don't know
18 how that is spent because we don't know whether or not
19 that which was distributed was spent on something that
20 is completely absurd, a new sail boat or, you know,
21 something like that, and that's what the accounting
22 statutes are designed to check and to ensure.

23 The opposition also, your Honor, makes the
24 argument that there is not the same duty to the two sets

1 of beneficiaries. As I stated, your Honor, the Credit
2 Shelter Trust after Dale Raggio's demise goes to, I
3 believe, her grandsons who live in Australia. The
4 assets in the marital trust that remain at Dale Raggio's
5 demise are split between Tracy Chew and her sister,
6 Leslie Righetti, so -- but the thing to focus on, your
7 Honor, is that the use of those funds are identical. In
8 other words, the two documents say, or the two trusts
9 say they must be used for Dale Raggio's health,
10 maintenance -- excuse me, support, care, and
11 maintenance. And so if the use is the same, then there
12 is an obligation on behalf of the trustee, Ms. Raggio,
13 to spend those things down equitably. You can't
14 allocate all of the expenses for care, support and
15 maintenance to just one, thereby, benefitting your own
16 side, for example, or one beneficiaries over the other
17 when the standard is identical.

18 I would submit that if the standard is
19 identical the duty's identical, and that leads me to the
20 reason why we make the argument that to understand one
21 you have to understand the other. And by understanding
22 that means that the accounting and the itemization of
23 the use has to be consistent. It is unfair to wait or
24 request the parties to wait until Ms. Raggio's demise to

1 then pull back the curtain, so to speak, not only is
2 that not supported by the statute, your Honor, but
3 remember, one group is going to be 10,000 miles away and
4 that money is going to be very, very difficult to trace
5 back and bring back to the Court if, indeed, everybody
6 figures out later on that there was not the type of
7 spending that went to support, care, and maintenance.

8 In sum, therefore, your Honor, all we are
9 asking is for the ability to understand -- we understand
10 what the assets are at the time of the division in July
11 of 2013. We acknowledge that there is different
12 beneficiaries. The issue that we bring to this Court is
13 the itemization and accounting within the terms of the
14 trust for the gap period and to ensure that both trusts
15 are being spent down equitably. And that because to
16 understand one, again, you have to understand the other
17 to ensure that one is not being favored over the other
18 and, therefore, one beneficiary's being favored over the
19 other set of beneficiaries, your Honor. Thank you.

20 COMMISSIONER WRIGHT: Thank you. I have a
21 question. I mean, I've read your pleadings and when you
22 just summed up I want to make sure that I'm hearing you
23 correctly. You're asking about the gap period, which I
24 understand. Now, do I understand you to also be asking

1 for ongoing -- an order for ongoing accountings from
2 that point forward during Dale Raggio's lifetime?

3 MR. ROSENAUER: The answer to that is yes,
4 your Honor.

5 COMMISSIONER WRIGHT: Okay.

6 MR. ROSENAUER: And do you want me to clarify
7 that at all?

8 COMMISSIONER WRIGHT: Yeah. Go ahead, please.

9 MR. ROSENAUER: Well, the fact of the matter
10 is that the ongoing expenses must be for support, care,
11 and maintenance of Dale Raggio. The beneficiaries of
12 those two trusts are different. To understand,
13 therefore, the difference between, or the allocation,
14 you have to one trust, as opposed to the other trust,
15 you have to understand what each is doing.

16 So, again, let's use CVS pharmacy because that
17 is clearly support, care and maintenance. And she has,
18 she went to the doctor and there's a prescription that's
19 out there. We need to make sure, your Honor, and we are
20 entitled to know that all of the care, support, care,
21 and maintenance is not being allocated to one trust as
22 opposed to the other, thereby favoring one group of
23 beneficiaries over the other. So you can't just do it
24 in the abstract and, gee whiz, here's just one. Here's

1 just the marriage -- the marital trust, that's all other
2 that you get, because we don't know, therefore, and no
3 one would be able to know whether or not everything --
4 let's say a hundred percent of the maintenance, support,
5 care and maintenance is being allocated to that trust,
6 and when Dale Raggio dies, 100 percent of the Credit
7 Shelter Trust remains and is, therefore, intact and goes
8 to the grandsons.

9 If the standards are the same, then the duty
10 to both are the same because, remember, Dale Raggio has
11 the trustee of both and the lifetime beneficiary of
12 both, therefore, owes the obligation to all the
13 beneficiaries. And, unfortunately, in this instance, it
14 would work if either, A, the beneficiaries were the
15 same; or B, there was some type of communication such
16 that the information would be shared.

17 Here you have nothing even close to that. We
18 have beneficiaries, I believe, some who are -- that are
19 younger that live in Australia, and they probably are
20 not about to come before this Court and say hey, wait a
21 second, you know, there's the remodel of this house in
22 our -- that's been charged off to our trust, we don't
23 believe that that is support, care, and maintenance.
24 There's no way for anybody to understand, unless you

1 have all of the allocation and all of the accounting and
2 all of the attribution much the same way as we have to
3 do in the Probate Court, that -- and the guardianship
4 court more especially, to understand what the expense
5 is, how does it fit within the terms of the trust, and
6 you can't -- if you're only getting half of the picture,
7 you don't understand what's going on on the other side
8 of the picture because that's beyond your sight.

9 So, you know, the answer to your question is
10 yes, we believe that it is both fair and appropriate and
11 within the statute to order that all of the -- all of
12 the accountings with the itemization are sent to the
13 parties. And we have no problems with the side that is
14 the marital settlement trust, you know, being disclosed
15 to the grandsons and, you know, so -- so we are -- we
16 are here with open arms and open hands, your Honor, and
17 again, this is -- this is just all about transparency.
18 And that's it.

19 COMMISSIONER WRIGHT: Thank you.

20 MR. ROSENAUER: Thank you, your Honor.

21 MR. ECHEVERRIA: They wanted me to turn it off
22 before we started so we gotta let it warm up again.

23 COMMISSIONER WRIGHT: Oh, okay. No problem.

24 MR. ECHEVERRIA: Your Honor, this is an

1 important petition because boiled to its essence as we'll
2 demonstrate what this petition really seems to do is
3 reform the trust and put language in the trust that
4 doesn't exist. And because it's so important, your
5 Honor, I thought it would be worthwhile to go back and
6 actually look at the two trusts, look at a little bit of
7 the family history, and how we got to where we are.

8 So the Raggio family was created that's at
9 issue here was created when for Raggio married Dorothy
10 Raggio in 1948. They had three children; Leslie, who is
11 the natural daughter, Tracy and Mark, who were two
12 adopted children. Dorothy passed away on April 7th,
13 1998, and Mark passed away in 2001. And then the
14 Senator married Dale Checket on April 27th of 2003, so
15 that gives us a little bit of a time line as to how this
16 family evolved.

17 There were two trusts that Senator Raggio
18 created during his lifetime. The first one was the
19 William and Dorothy Raggio Family Trust that was created
20 before Dorothy died, obviously, on January 27th of 1998.
21 And then after the Senator married Dale Checket, he
22 created the William J. Raggio Family Trust, and that was
23 created on April 13th, 2007, some four years after he
24 and Dale were married. So I think --

1 COMMISSIONER WRIGHT: Could you go back? I'm
2 sorry, the date?

3 MR. ECHEVERRIA: I'm sorry, sure.

4 COMMISSIONER WRIGHT: The date of the second
5 one?

6 MR. ECHEVERRIA: The second trust?

7 COMMISSIONER WRIGHT: April 15th.

8 MR. ECHEVERRIA: April of 2 2007.

9 COMMISSIONER WRIGHT: They were married in
10 2003, right?

11 MR. ECHEVERRIA: I'm sorry?

12 COMMISSIONER WRIGHT: They were made in 2003?

13 MR. ECHEVERRIA: They were. The trust was
14 created in April of 2007.

15 COMMISSIONER WRIGHT: But they had already
16 been married in 2003.

17 MR. ECHEVERRIA: And three, correct.

18 COMMISSIONER WRIGHT: Okay. Thank you.

19 MR. ECHEVERRIA: So I think, given the
20 argument, it's important to look at what the two trusts
21 did, how they were created differently, and the
22 differences between the two trusts. So for shorthand,
23 your Honor, I've referred to the William and Dorothy
24 trust as the W and D Raggio trust. And in that trust

1 they identified who the family members were and
2 identified all three children. They then designated
3 trustees.

4 And the trustee initially was Senator Raggio,
5 and if he were to succeed, if he were unable to serve
6 it, then it became the trustee with Mrs. Raggio, with
7 Dorothy Raggio. And then the successor trustees, and
8 this is important, because they specifically said that
9 the children in that order, Leslie, Tracy, and Mark, in
10 the order indicated, as successor, sole trustee so his
11 intent clearly was to make each child in the order of
12 their age a sole successor trustee.

13 Upon the death of the first settlor, in this
14 case it was Mrs. Dorothy Raggio to die first, that trust
15 created two trusts. What they called the survivor's
16 trust, and a Credit Shelter Trust. And on the death of
17 the surviving settlor, in this case for Raggio, the
18 entire remaining principal, and this is an important
19 distinction because Mr. Rosenauer raises this in one of
20 his arguments, the entire remaining principal of the
21 survivor's trust shall be added to and augment the
22 Credit Shelter Trust.

23 Now, that's different than what occurred in
24 the second trust. And we'll highlight that when we get

1 to it. But that's an important distinction because here
2 he puts the two trusts together. And then the
3 distribution was to have allocate one equal share after
4 the two trusts were combined, to allocate one equal
5 share Dean's living child and so that was done.

6 In the William J. Raggio Trust, which is what
7 is in issue here, simply it's the family this time
8 recognizing the unfortunate death of their son, Mark, he
9 identified his wife as Dale Checket Raggio, and then his
10 two children. He designated trustees within that trust
11 and he indicated that Dale Checket Raggio was to be the
12 successor trustee to the Senator, and here he makes an
13 important distinction that signifies, in my view, his
14 intent. He says, first of all, "Should Mrs. Raggio be
15 unable to serve, then the settlor's daughters, again in
16 the order indicated, are designed to act as successor,
17 again, sole trustee". So he lists Leslie, and then
18 Tracy Woodring, who is now Ms. Chew. He listed the
19 successors of the trust in that order, but here's the
20 important distinction. He also said, "Provided,
21 however, that John Sande, III, is designated to act as
22 successor's sole trustee of the Dale Checket Raggio
23 Credit Shelter Trust", the trust that Mr. Rosenauer now
24 seeks an accounting for.

1 And I think that's an important distinction
2 because it tells us a little bit about the senator's
3 intent. Because he didn't appoint either of his two
4 daughters to act as a trustee for the Credit Shelter
5 Trust that went to his wife, Dale.

6 Again, on the distribution of the death,
7 should Dale succeed, the senator again invited the two
8 trusts, the marital trust, and the Dale Checket Raggio
9 Credit Shelter Trust, which is, as you'll see as we go
10 through here, I'm calling it DCR, Credit Shelter Trust,
11 to distinguish the prior Credit Shelter Trust of which
12 Leslie Righetti is the trustee.

13 The administration of the two trusts were
14 different. Mr. Rosenauer wishes to characterize them as
15 identical, but they're substantially different. First,
16 in the marital trust, the trustee is to pay or to apply
17 for the benefit of Mrs. Dale Raggio all of the net
18 income of the trust. Regardless of need, all the income
19 goes to Mrs. Raggio. He then says that in addition to
20 that, it's to pay or apply to the benefit of Mrs. Raggio
21 as much of the principal for her proper support, care,
22 and maintenance.

23 With respect to the -- so the key provisions
24 of the marital trust are, all income goes to the

1 senator's wife, and she may apply as much principal as
2 is needed for her support, care, and maintenance.

3 With respect to the Dale Checket Raggio Credit
4 Shelter Trust, it's different. There's no mandatory
5 spend provision. It's to pay as much of the net income
6 and principal as the trustee shall deem necessary for
7 the proper support, care, and maintenance.

8 So the key provisions of this Credit Shelter
9 Trust are there's no mandatory distribution. There's a
10 mandatory distribution in the marriage trust, but no
11 mandatory distribution in the Credit Shelter, and the
12 income and principal may be applied for the proper
13 support, care, and maintenance.

14 So these two trusts are not identical,
15 contrary to the impression Mr. Rosenauer would like to
16 leave with the Court. The distribution for the support,
17 care, and maintenance is significant because there is no
18 provision in the trust, none, dictating a proportionate
19 distribution as between the two trusts for the support,
20 care, and maintenance.

21 Mr. Rosenauer argues that this should be in
22 there and he wants the Court to impose that. But had
23 the senator desired to do that he could have easily put
24 it in there. But he did not have that provision calling

1 for proportionate spend-down.

2 Furthermore, there is no provision in the
3 trust that requires the trustee to consider other
4 resources in determining the distributions from the
5 marital trust. And that's sometimes not in a trust.

6 So we're getting a picture of his intent here.
7 Had the senator intended the result that Mr. Rosenauer
8 now seeks on behalf of Ms. Chew, he could have written
9 it in there, but he didn't. And this motion, this
10 petition, therefore, asks this court to write those
11 proportionate provisions into this trust, and that would
12 violate his intent.

13 The distributions of the two trusts are also
14 quite different. Again, we note that in the William and
15 Dorothy Raggio Trust, he said upon his death you're to
16 combine the two trusts, and then do an equal division,
17 so he knew how to do that. Mr. Rosenauer says it's
18 common in that he wants that kind of written into this
19 agreement, but it's not in there. But the senator knew
20 how to do it, but he intentionally left the two trusts
21 to different beneficiaries.

22 COMMISSIONER WRIGHT: Would you mind going
23 back one?

24 MR. ECHEVERRIA: Sure. The beneficiaries of

1 the marital trust is the William and Dorothy Raggio
2 Credit Shelter Trust, not Tracy Chew, not Leslie
3 Righetti. It's the William and Dorothy Raggio Credit
4 Shelter Trust, that's the beneficiary.

5 Now, Leslie and Tracy may be beneficiaries of
6 that trust, but that doesn't make them beneficiaries of
7 beneficiaries, I guess it does, it makes them a
8 beneficiary of a beneficiary. But we need to look at
9 this trust that's at issue here and the beneficiary of
10 that trust, the remainder beneficiary of the merit trust
11 is the Credit Shelter Trust created in the prior trust.

12 COMMISSIONER WRIGHT: And who's the trustee of
13 that?

14 MR. ECHEVERRIA: Pardon me?

15 COMMISSIONER WRIGHT: Who's the trustee of
16 that? Is that John Sande?

17 MR. ECHEVERRIA: Leslie Righetti.

18 COMMISSIONER WRIGHT: Oh, okay. Thank you.

19 MR. ECHEVERRIA: As the sole trustee. So the
20 difference is that now with respect with the Dale
21 Checket Raggio Credit Shelter Trust, on her death, the
22 senator intentionally left the remainder of that trust
23 to the grandsons of Mrs. Raggio. So there's an
24 important distinction here; we have two different groups

1 of beneficiaries for the two trusts. So, obviously, the
2 senator intended to treat the two trusts differently.

3 As a summary, Judge, we've prepared a graph of
4 the -- of the William J. Raggio Family Trust, the second
5 trust. So upon his death, there are specific gifts made
6 to each living grandchild of his. Those are Ms. Chew's
7 and Ms. Righetti's children. And then he left the
8 personal residence outright to his wife, Dale. Then
9 after that, they were split into the two trusts; the
10 Dale Checket Raggio Credit Shelter Trust, which is on
11 the left, and that goes to her grandsons.

12 On the right is the marital deduction trust,
13 which goes to the William and Dorothy Raggio Credit
14 Shelter Trust, to then be divided upon the heirs there.
15 And as we saw it when we looked at that trust provision,
16 it applied to the -- it was equally divided and the
17 Credit Shelter Trust goes to the living grandchildren,
18 and if there are no heirs, if there are no living
19 grandchildren or children, the original Credit Shelter
20 Trust goes, then, to the heirs of the husband and the
21 wife, individually, so the heirs of Dorothy and the
22 heirs of -- so there's different -- there's contingent
23 beneficiaries in the William and Dorothy Credit Shelter
24 Trust, which wouldn't have an expectancy until Dale

1 Raggio passes.

2 So in review, what we learn is that Dale
3 Raggio as the sole trustee of the William J. Raggio
4 Family Trust. The successor trustees are for the
5 marital trust, Leslie Righetti, and then Tracy Chew, in
6 that order, as sole trustees. And then for the Dale
7 Checket Raggio Credit Shelter Trust, the trustee is John
8 Sande, successor trustee. So Mrs. Chew can never be a
9 trustee or a beneficiary of the Credit Shelter Trust,
10 it's not in there.

11 With respect to the William and Dorothy Raggio
12 trust, it's the beneficiary of the William Raggio Family
13 Marital Trust, the second one. It is not a beneficiary
14 of the Dale Checket Raggio Credit Shelter Trust. And
15 Tracy Chew is not a beneficiary of any trust created by
16 the William J. Raggio Family Trust. And that's an
17 important distinction, as we'll see when we get to
18 discussing the statutes that apply.

19 Tracy Chew is a contingent beneficiary only of
20 the William and Dorothy Raggio Family Credit Shelter
21 Trust, so she will have to survive Dale Raggio to even
22 be a beneficiary of the beneficiary.

23 So we know that Leslie Righetti is the trustee
24 of the William and Dorothy Credit Shelter Trust, the

1 beneficiary of the marital trust that you see here, and
2 that Tracy Chew is not a cotrustee. She carefully in
3 her petition doesn't explain under what capacity she was
4 bringing this petition, because she can't do it as a
5 trustee of anything. She can't do it as a beneficiary
6 of any trust created in the trust that's at issue here.
7 She can only do it as a beneficiary of a beneficiary.

8 So again, just to summary, here's our chart,
9 here's how it's divided. And it's important to note
10 that the William and Dorothy Raggio Credit Shelter Trust
11 is the beneficiary of the marital deduction trust that's
12 at issue here.

13 So the petition. The petition seeks to
14 confirm Dale Raggio as successor trustee. Well, we all
15 agree to that, that's not an issue. But they also ask
16 the Court to take some jurisdiction, so we have to ask
17 the Court to involve itself. They ask for the Court to
18 compel an accounting of the trust allocation, which I'll
19 get to here. They also ask the Court to compel an
20 annual accounting of the marital trust. And they ask
21 the Court to compel an annual accounting to, I guess,
22 Ms. Chew, of the Dale Checket Raggio Credit Shelter
23 Trust. They also ask for Form 706, which has been
24 provided. They ask for an itemization of manner, source

1 and value of the funding of both trusts. And I'll
2 discuss that issue as we get further in. And they want
3 an itemization of all distributions, they want copies of
4 Forms 1041 for the federal income tax returns, and I
5 think those have been provided.

6 The basis for this petition as stated in the
7 petition is NRS Section 164.010 and NRS 164.015. And
8 they seek the accountings pursuant to 165.

9 So I think it's important that we look at the
10 statutes to see what they tell us. Who can bring this
11 kind of petition? The statute specifically says how the
12 legislature has spent a lot of time writing out what
13 happens and who has authority to do what with respect to
14 trusts. So it tells us that the people that can bring
15 the petition under 164.010, which is the stated basis
16 for this petition, is to be upon the petition of any
17 person who is appointed as a trustee, that's not Mrs.
18 Chew, or upon the petition of a settlor, that's not Mrs.
19 Chew, or the beneficiary of the trust that's at issue,
20 and that's not Ms. Chew.

21 The beneficiary of the trust that's at issue
22 here is Leslie Righetti, I'm sorry, is the William and
23 Dorothy Credit Shelter Trust, whose trustee is Leslie
24 Righetti. So the statute basically tells us under this

1 provision that Ms. Chew has no standing. Under 015 it
2 tells us that a petition under this section may be filed
3 in conjunction with a petition under 164.010, but that's
4 -- that presumes that the proper person has brought the
5 petition under 010. It also tells us that an interested
6 person can bring this petition any time after the Court
7 has assumed jurisdiction under this section, under
8 Section 164.010. But the Court can't assume
9 jurisdiction over that because the proper person to
10 bring that petition has not done so.

11 Now we look at the accountings. And the
12 statutes again tell us, what accountings have to be
13 made, and to whom? 165.135 tells us that they're to
14 furnish to each beneficiary, at a minimum, it says, the
15 trustee shall furnish an account to each beneficiary.
16 It doesn't saw beneficiaries of beneficiaries, it says
17 beneficiary.

18 165.137 gets more specific. And this is the
19 section that defines what must be provided with respect
20 to an accounting by a trustee, and this is a critical
21 provision. The trustee has to provide to each current
22 beneficiary and to each remainder beneficiary. But it
23 also says that it's not required, the trustee is not
24 required to provide an account to a remote beneficiary.

1 So what do the statutes mean by a current
2 beneficiary? It defines that. A current beneficiary is
3 the distribution beneficiary to whom or for whom benefit
4 the trustee is required to make distributions. As to
5 these two trusts, therefore, the current beneficiary is
6 Mrs. Raggio. The second -- I didn't want to interrupt
7 your note taking.

8 COMMISSIONER WRIGHT: Yes. Let me just have a
9 second here.

10 MR. ECHEVERRIA: Sure.

11 COMMISSIONER WRIGHT: Was there one right
12 before that, a slide right in front of that?

13 MR. ECHEVERRIA: Sure. This is a provision
14 that spells out specifically what types of beneficiaries
15 are entitled to accountings under our trust, and so it
16 says to provide to a current beneficiary and a remainder
17 beneficiary. And then the statutes also describe and
18 define those two terms.

19 COMMISSIONER WRIGHT: Okay.

20 MR. ECHEVERRIA: So we've heard the current
21 beneficiary is someone that's entitled to distributing
22 is today, basically. And that's Mrs. Raggio, herself.
23 The remainder beneficiary is defined in 165.132 as
24 meaning a beneficiary who will become a current

1 beneficiary upon the death of an existing current
2 beneficiary. So as to the marital trust, that's at
3 issue here, that remainder beneficiary is the William
4 and Dorothy Credit Shelter Trust whose trustee is Mrs.
5 Righetti.

6 So as to the William J. Raggio marital trust,
7 the remainder of the trustee, as I said, is the Credit
8 Shelter Trust under the original, the first trust
9 created. And Mrs. Chew's, at best, a contingent
10 beneficiary of that trust.

11 So to whom is an accounting owed here? Well,
12 it's owed, as the statute tells us, to the current
13 beneficiary. That's Mrs. Raggio. And it's owed to the
14 remainder beneficiary, which is the Credit Shelter
15 Trust, not Mrs. Chew, and not Mrs. Righetti except as
16 her capacity as a trustee.

17 So having reviewed the statutes, let's look at
18 the standing, and I think it's interesting to note that
19 the standing issue was raised originally in the
20 opposition by Mrs. Raggio, and never addressed by Ms.
21 Chew until her reply.

22 COMMISSIONER WRIGHT: May I ask you to dial
23 back to one point for a second? I'm sorry to interrupt
24 you.

1 MR. ECHEVERRIA: No problem, Judge. This is
2 complicated, and that's why I wanted to bring these
3 statutes so we could look at them and see, as opposed to
4 just making characterizations like she's a beneficiary
5 of this trust.

6 COMMISSIONER WRIGHT: You said that Chew is a
7 contingent beneficiary of the William and Dorothy Credit
8 Shelter Trust. Where can I find that for quick
9 reference?

10 MR. ECHEVERRIA: Okay. That will be --

11 COMMISSIONER WRIGHT: Do you have a slide or?

12 MR. ECHEVERRIA: I can pull that back up
13 again.

14 COMMISSIONER WRIGHT: Okay.

15 MR. ECHEVERRIA: I'm going the wrong way,
16 Judge. Let's back up and go through it this way. The
17 marital trust specifically goes to the William and
18 Dorothy Raggio Credit Shelter Trust, that's the trust
19 that's at issue here. So now let's go back and see who
20 the beneficiaries are of the William and Dorothy Credit
21 Shelter Trust and those beneficiaries.

22 MR. RILEY: While he's looking for that, your
23 Honor --

24 MR. ECHEVERRIA: This one right here, it's

1 Section 5.2 of the original William and Dorothy Raggio
2 Credit Shelter Trust which we, I think, provided a
3 courtesy copy for the Court. It's Section 5.2, and it
4 says, "On the death of the surviving settlor", which
5 would be Senator Raggio, "the trustee shall divide the
6 principal and all accumulated income of the Credit
7 Shelter Trust into as many equal shares as there are
8 children of the settlors then living, and children of
9 the settlors then deceased". That's not yet an issue.

10 COMMISSIONER WRIGHT: Yes.

11 MR. ECHEVERRIA: But this says if none of
12 those survive, here's how it's distributed. So being a
13 child of -- an adopted child of William and Dorothy
14 Raggio, she is one of the identified children who is a
15 beneficiary of the William and Dorothy Credit Shelter
16 Trust. That's the trust is the beneficiary of the trust
17 that's at issue here. So that's why I say she's not a
18 direct beneficiary of the trust in which she's
19 petitioning involvement, she's a beneficiary of the
20 beneficiary at best.

21 COMMISSIONER WRIGHT: But you called her
22 contingent, and that's the word I am --

23 MR. ECHEVERRIA: She has to survive Ms.
24 Raggio.

1 COMMISSIONER WRIGHT: Okay. All right.
2 That's what you meant by contingent.

3 MR. ECHEVERRIA: Right. Because this -- this
4 Credit Shelter Trust doesn't get any of the marital
5 trust that's at issue here until Mrs. Raggio dies.

6 COMMISSIONER WRIGHT: Okay.

7 MR. RILEY: If she -- if Ms. Chew is not
8 living at that time, then it would go to her children,
9 if living, and down her descendent's line.

10 COMMISSIONER WRIGHT: Okay. Okay. Thank you.

11 MR. ECHEVERRIA: So -- and the reason I'm
12 going through this exercise, Judge, is this is all kind
13 of skated over in the petition. In the petition, if one
14 reads it, leaves the impression that Mrs. Chew is a
15 beneficiary of the trust in which she's making a
16 petition. And she's not. And that's the problem with
17 the standing.

18 So my argument here is Ms. Chew does not have
19 standing to bring this petition in this trust under
20 164.010. She is neither a trustee of any trust in the
21 William J. Raggio Trust, she's not a settlor, and she's
22 not a beneficiary. And 164.010 tells us that those are
23 the classes of people that may bring this petition.

24 And it's important to note that she's not even

1 a trustee of a beneficiary of any trust in this trust,
2 or the beneficiary trust of the marital trust.

3 So she's bringing this petition in a capacity,
4 apparently, without capacity, because she doesn't fit
5 any of the classifications dictated by the legislature
6 in 164.010 of people that may bring this petition.

7 So because she lacks standing to bring the
8 petition, the petition should be denied in its entirety,
9 because she's not the proper person bringing it.

10 Now, that doesn't leave her without a remedy.
11 Her rights are not going to be impaired in any way by
12 this Court's denial of this petition because, first, she
13 will be permitted to obtain an accounting through the
14 trustee of the William and Dale Credit Shelter Trust.
15 So when the accounting is made, as I'll point out later,
16 but I might as well say it here, the marital trust to
17 which there -- Tracy Righetti is the trustee of the
18 William and Dorothy trust, that one-year period hasn't
19 yet run since it was funded, and as I argued ahead here,
20 that accounting will be provided.

21 But second, if the trustee of the William and
22 Dorothy Credit Shelter Trust, Ms. Righetti, fails to
23 fulfill her fiduciary duties, then Ms. Chew has a remedy
24 available to her as a direct beneficiary of the William

1 and Dorothy Credit Shelter Trust. So the denial of this
2 petition won't in any way impair any of her rights
3 whatsoever. So --

4 COMMISSIONER WRIGHT: I think that in a very
5 unpolished sort of way, that's why I asked you about the
6 word contingent, I wanted to know where you were going
7 with that. And I should have let you continue because I
8 wondered where you were going with the word contingent,
9 because previously you had pointed out, you know,
10 current, remainder and remote. But go ahead, because I
11 feel like I'm now -- I'm now in step with you as far as
12 where you were going with that.

13 MR. ECHEVERRIA: Okay. And the reason I'm
14 doing this exercise is because the petition itself kind
15 of glosses over all these distinctions and niceties, it
16 just constantly refers to as the beneficiary, but she's
17 not a beneficiary of the trust in which she is
18 petitioning, and that's the point. She's a beneficiary
19 of a beneficiary, and the statutes don't tell us that
20 that person can bring this kind of petition. And, but
21 the statutes do give her a remedy as to the William and
22 Dorothy Credit Shelter Trust.

23 So if the Court is to decide that she has some
24 form of standing in which to seek relief in this trust

1 that's at issue here, what they've asked for is a
2 preallocation accounting. And I think it's important
3 because it's not discussed, to look into the background
4 of the allocation.

5 So the trust that's at issue here tells us how
6 we're to allocate between the marital trust, the funding
7 of the marital trust and the funding of the Credit
8 Shelter Trust. And it tells us that the principal of
9 the marital trust shall consist of a pecuniary amount
10 which will equal the maximum marital deduction
11 allowable. And it tells us when you value that. And
12 the assets valuation is the date or dates of allocation,
13 okay? So when the two trusts are funded, that's the
14 date that the values are put on them. And this tells us
15 that we have a fixed amount, basically, that goes into
16 the marital trust.

17 What does this really mean? Mr. Rosenauer's
18 made an argument that to the extent there is an
19 appreciation, somehow that has to be accounted for, but
20 it's contrary to the trust provisions, because this
21 tells us that we're to value everything as of the date
22 of allocation. It's different than tax purposes, for
23 tax purposes it's valued as of the date of death.

24 But for the allocation purposes, the value is

1 at the time that the trusts are split, which is
2 significantly different than Mr. Rosenauer implies,
3 because what this means is, to the extent there's an
4 appreciation or devaluation, the Credit Shelter Trust
5 eats that to the extent there's a devaluation, because
6 the pecuniary amount is a fixed amount, less expenses of
7 the estate that goes into the marital trust, so it
8 doesn't matter whether there's appreciation or not
9 because that number is fixed.

10 But it's also important, your Honor, that's
11 not discussed is the background of the allocation. Now,
12 I initially met with Leslie Righetti's attorney, Bart
13 Mowry, in May of 2012, less than three months after the
14 death of the senator. And these allocations were -- had
15 been discussed with Mrs. Righetti's attorney from very
16 early on. And, in fact, Mr. Rosenauer in September of
17 2013, when I sent him some communication about looking
18 into a -- I think it was a warehouse facility, actually
19 instructed me that I should deal with Mr. Mowry for a
20 one point of focus, and I did deal with Mr. Mowry.

21 The issue that was involved is not how much
22 money goes into the marital trust, because that was
23 fixed. We knew the pecuniary amount because that would
24 be calculated by the accounts.

1 The issue that was involved in the allocation
2 had to do with the fact that Senator Raggio had
3 overfunded the original Credit Shelter Trust by placing
4 a condominium in that exceeded the exemption, so that
5 created an issue taxwise as to did that amount to a gift
6 and should that be removed from the current exemption,
7 in other words, to the extent that was overvalued.

8 Then it became even more complicated because
9 after funding the Credit Shelter Trust with the
10 condominium at Lake Tahoe that exceeded the value of the
11 exemption at that time, the Senator made improvements to
12 the condominium through his personal funds, so that
13 created another issue as to how we're to value those
14 improvements. And Mr. Mowry and I were involved in
15 that, this became probably -- well, as I'll reveal, as a
16 result of this complicated situation, I hired Professor
17 Steve Lind, who's the tax guru in the country to figure
18 out the allocation.

19 Mr. Mowry eventually agreed that we would
20 follow his recommendation because we all knew this was a
21 complicated tax issue. We'd hired the best expert in
22 the country, and he's gonna sit down and tell us how we
23 do the numbers, and he did. And Mr. Mowry and I came to
24 an agreement on that allocation pending Mr. Lind's input

1 in May of 2013. And Mr. Rosenauer was copied on the
2 letter that was sent to me by Mr. Mowry. So it's not
3 like these issues were hidden, I mean, we've been
4 working with the trustee's lawyers for more than a year.
5 The allocation finally occurred in July of 2013.

6 So that's the history of this allocation. The
7 petition makes it sounds like we were totally ignoring
8 anybody and not discussing anything with anybody. The
9 fact is that Mr. Mowry -- I should preface that. Mrs.
10 Raggio hired Kim Cooney to do the estate tax return.

11 Mr. Mowry and I met with Mrs. Raggio and Ms.
12 Cooney in May, that meeting in May of 2012. She was
13 there, that's when this issue came up. Mr. Mowry went
14 to three or four meeting with the accountant, as we were
15 discussed the return, how did the allocations, what the
16 values of properties were, and so the trustee of the
17 beneficiary here was intimately involved with every
18 setting up the allocation before the allocation was
19 made. So they -- they had access to all that
20 information, and participated in looking at drafts of
21 the federal -- the 706 form.

22 So the implication that somehow Mrs. Raggio
23 was hiding all these facts from the beneficiary of the
24 marital trust doesn't fly in the face of the true facts

1 where not only was I dealing with the lawyer for the
2 trustee, but under Mr. Rosenauer's direction, I was
3 directed to deal with him as the single point of
4 contact.

5 So the return was filed. So she's not really
6 entitled to a preallocation accounting for a number of
7 reasons. First, the allocation was discussed,
8 negotiated, and ultimately approved by the trustee's
9 attorney.

10 Second, Mr. Rosenauer was provided a courtesy
11 copy of what the allocation was to be and how it was to
12 be calculated at the time of the agreement.

13 And third, it's unreasonable to permit
14 contingent beneficiaries to come back after we've -- and
15 I use that term and then you know how I'm using it,
16 because she has to succeed Mrs. Raggio.

17 How many times do we have to deal with this
18 accounting issue on the preallocation? The trustee for
19 the beneficiary was intimately involved, knew what was
20 going on, had input as to how all these were to be
21 valued. And there's no harm here, because he says we
22 have to look at what's appreciation and what has been
23 appreciated and how we divide it. That has nothing to
24 with how it was divided.

1 Remember that the allocation was to be based
2 on values at the time of the allocation as performed by
3 the trust. So any appreciation or spending down or
4 whatever prior to that doesn't really apply because they
5 were calculated and split. They were aware of it, and
6 they had the data. They have the tax return that
7 documents how all that was allocated out. So I think
8 this preallocation is ready.

9 The trustee's responsibility on how many times
10 to do an accounting has to end at some point. And
11 there's no necessity, as I indicated, for an accounting
12 of the preallocation accounting.

13 Now, if Ms. Chew has issues with how the
14 allocation was done or how it was valued? Her relief is
15 to petition in the William and Dorothy Raggio Credit
16 Shelter Trust. Mr. Rosenauer was involved.

17 Let's talk about the accounting that they
18 requested of the marital trust. The accounting as odd
19 as we've seen to each current beneficiary, and to each
20 remainder beneficiary, in this case, that's the William
21 and Dorothy Raggio Credit Shelter Trust, through its
22 trustee, Leslie Righetti.

23 Ms. Raggio agrees that an accounting of the
24 marital trust is to be made. But that trust wasn't

1 funded until July of last year, the one-year period
2 hasn't run. When that one year period runs, there will
3 be an accounting provided to Mrs. Righetti and,
4 presumably, through Mrs. Righetti to Ms. Chew, so she'll
5 get an accounting of the marital trust, so this -- to
6 the extent this petition seeks it now is premature. But
7 it will be provided to Mrs. Righetti.

8 Now, I really want to get into the discussion
9 of the accounting of the Credit Shelter Trust.

10 COMMISSIONER WRIGHT: Is that an ongoing --
11 I'm sorry, is that an annual thing do you acknowledge --
12 do you acknowledge that it's an annual accounting on the
13 --

14 MR. ECHEVERRIA: Yes.

15 COMMISSIONER WRIGHT: All right.

16 MR. ECHEVERRIA: But there's no need for an
17 order for that yet, it's premature, so that's why I'm
18 saying the petition is going to be denied without any
19 depravation of Ms. Chew's rights. She's going to get an
20 accounting when the proper time comes.

21 MR. RILEY: And your Honor, if I may interrupt
22 real briefly? We have not been requested an accounting
23 by Ms. Righetti to date, I think, with the anticipation
24 that the funding occurred last July and the time should

1 be one year for that.

2 COMMISSIONER WRIGHT: Okay. Thank you.

3 MR. ECHEVERRIA: So NRS can't be read to
4 provide Ms. Chew a remedy with respect to the credit
5 shelter instruments. She's neither a settlor, she's not
6 a trustee, she's not a successor trustee, she's not a
7 beneficiary, she's not even a contingent beneficiary of
8 the Credit Shelter Trust. She's not even a remote
9 beneficiary. She has no interest or even future
10 expectancy in the Credit Shelter Trust. So again, she
11 lacks standing to the bring this aspect of the petition
12 and demand an accounting of the Credit Shelter Trust
13 because she doesn't fit the criteria on what the statute
14 says or the permissible people to bring an accounting of
15 the Credit Shelter Trust.

16 So what is her argument? Well, we've heard it
17 again today. It's, basically, and this is in their
18 reply, they say "Fairness requires accounting and
19 disclosure of both the Credit Shelter Trust, as well as
20 the marital trust.

21 So I pulled out the arguments in the two pages
22 he makes. He says that his position is to ensure that
23 the two trusts are being treated fairly, identically,
24 and consistently. Well, the two trusts are not

1 identical, they're different. So there's no Band-Aid
2 that they should be treated identical. They say it's
3 inappropriate to allocate all of the expenses to the one
4 to the benefit of the other. They argue that it's if
5 permitted to allocate a hundred percent of the expenses
6 to the marital trust, the corpus of the Credit Shelter
7 Trust is presumed preserved. They argue that the
8 solution proposed solves the problem of how the trustee
9 chooses from which trust to draw funds. And they say
10 again, when the obligation to both groups of
11 beneficiaries is identical. Well, it's not.

12 Remember, the marital trust requires mandatory
13 distribution of all income, the Credit Shelter Trust
14 does not. So Senator Raggio, when he put in those
15 provisions, determined that the spend-downs would be, in
16 fact, different and that the trustee would have
17 discretion in that regard.

18 He says at page 6 on line 15 and 16, "The
19 focus is upon fairness". He says, "All beneficiaries,
20 no matter their affiliation, should and must be treated
21 identically". Well, they're not. The beneficiaries are
22 gonna get different amount of monies because the two
23 trusts have different numbers, even if you go with this
24 proposal, they're not gonna be treated identically,

1 because the trust doesn't treat them identically.

2 Then they say none of this would have been
3 germane had William Raggio followed the memory found on
4 these estates. Well, the Senator knew how to do what he
5 wanted, and that's to combine the two trusts upon his
6 death, he did it in the first trust. But he
7 intentionally did not do it in the second trust, and I
8 think that's a significant point. Had he done so, then
9 maybe there would have been identical treatment, but he
10 didn't do that.

11 They say, "Unfortunately, the assets remaining
12 are not divided upon Raggio's demise amongst them.
13 That's telling us we'd rather have you, Judge, tell the
14 senator after his death how he's to decide to divide
15 things up. But that's not the law. And Senator Raggio
16 could have did this, as he did in the first trust, but
17 he didn't do it in the second trust.

18 So what's really being said here? What Ms.
19 Chew is saying is I don't like the way my father created
20 the trust. I want you, Judge, to rewrite the trust. It
21 just isn't fair. No, fairness -- fairness is an
22 interesting issue to me because I suppose that any heirs
23 treated differently in a trust could say it's unfair.

24 If I were to bequeath my daughter a hundred

1 thousand and my son 200,000, I'm permitted to do that.
2 Now, could somebody say that's unfair? Sure. But they
3 wouldn't know the reasons I did it. So fairness doesn't
4 apply here, it's the settlor's intent, what he wrote.

5 What he intended the trust to do, that's at
6 issue here. And what this petition seeks to do is go
7 beyond the Senator's intent when he created the trust
8 and to rewrite it, to be, as they say, more fair. It's
9 other not the function of this court.

10 There is not a single legal or factual basis
11 cited for support of the proposition that we have to
12 have an accounting of the Credit Shelter Trust in order
13 to make sure they are, quote, spent down
14 proportionately. There's not a single citation of case
15 law, statute law, not a single reference to anything in
16 the trust to support the position of a proportional
17 spend-down that they see.

18 In fact, the trust agreement leads us to the
19 exact opposition conclusion. There's no provision in
20 the trust directed the result sought here, and it could
21 have easily been inserted had that been the Senator's
22 wishes. It could have easily been made.

23 Senator Raggio was a sophisticated settlor.
24 He's a lawyer. He served as trustee on numerous

1 estates. He was the longest serving member and chairman
2 of the Nevada State Finance Committee. He's no stranger
3 to numbers, no stranger to consequences of what he
4 wrote. And we know what he wrote in the trust.

5 Trust indicates that the Senator's intent was
6 to treat the beneficiaries differently. The two trusts
7 were funded differently, with different amounts. It was
8 intentionally done that way, he maximized the amount
9 that went into the marital trust by having the
10 accountant and everybody determine what that number
11 would be that would produce no income, no state tax.
12 The beneficiaries of two trusts were intentionally
13 different, completely different beneficiaries; his
14 natural and adopted daughter on one side, the
15 grandchildren of his wife on the other. That's
16 intentional. There was a specific intent not to make
17 his daughters successors to the Dale Checket Raggio
18 Credit Shelter Trust. That tells us something about his
19 intent. They were not made successor trustees to that
20 trust. The marital trust was mandated to pay all
21 interest to Mrs. Raggio, unlike the Credit Shelter
22 Trust. Yet, this evidence is a clear attempt to
23 maximize the growth of the Credit Shelter Trust over the
24 marital trust, contrary to the argument of Mrs. Chew.

1 So let me back up on that one. He puts
2 different amounts into the two trusts. He treats the
3 two trusts differently with the terms of the
4 beneficiaries. He's got a specific intent not to make
5 his daughters successor trustees to the Credit Shelter
6 Trust. And he puts in the trust that the marital trust
7 is to be -- pay all income to Mrs. Raggio, unlike the
8 Credit Shelter Trust, so he intended to treat those two
9 trusts differently. And what that shows is inevitably
10 to maximize the growth of the Credit Shelter Trust
11 because there's no mandated spend-down of income, but
12 there is in the marital trust. That's contrary to the
13 argument Ms. Chew made here that we should have a
14 proportional spend-down, and it's got to be equal.

15 And this is the more important. There was no
16 provision in the trust imposing any duty on the trustee
17 to spend the two trusts proportionally as they seek
18 here. And that being the case, there's no basis for a
19 dual accounting to a person that is not even an
20 interested party in the Credit Shelter Trust.

21 Here's a plain attempt to reform the trust
22 agreement. It's asking this Court to write into this
23 trust a proportional spend-down provision. It's asking
24 this Court to write into this trust what I call the --

1 the ordering clause that is in some trusts that say in
2 determining how you spend down for care and maintenance,
3 you can look at other assets, look at other income, look
4 at other resources. None of that's in here. And he put
5 no ordering provision in here as to how you look at it.
6 But they seek one by this petition. And that's not
7 within the trust, and this is -- it's an attempt to
8 reform the trust.

9 This request, because it intends to reform
10 this trust, arguably violates the no-contest laws
11 because they're asking to have language inserted by you
12 in fairness, without legal authority, without factual
13 support to reform and reword this trust. And that's why
14 I think it's very interesting that the trustee of the
15 beneficiary, Mrs. Righetti, has not requested any of
16 this relief. I think that's an important distinction.

17 So in summary, Judge, I think the petition
18 should be denied outright as lacking standard. Mrs.
19 Chew has her remedies. She'll get an accounting of the
20 marital trust through the trustee of the trust to which
21 she is a beneficiary. And she's not entitled to an
22 accounting of the Credit Shelter Trust by the expressed
23 differences that the Senator created and how the two
24 trusts were to be administered, how they're to be

1 distributed and the fact that there aren't provisions in
2 the trust that could be written in, that they seek you
3 to now write in.

4 So as I say, the petition should be denied.
5 Assuming she has stance, the preallocation should be
6 denied as they were intimately involved in that entire
7 process. Their argument that on the appreciation
8 doesn't apply because the asset -- the trusts were
9 funded at the valuation -- at the date of allocation.
10 I'm sorry, they were valued at the date of allocation,
11 not as suggested by the petition on the day of the
12 death, and then each one bears -- each one is a benefit
13 of any appreciation or depreciation. That's not what
14 the trust said, but that's what they're asking you to
15 put into it. Assuming she has standing, request for
16 accounting of the marital trust shall be denied as
17 premature at best because that doesn't happen until
18 July. And the request for accounting Credit Shelter
19 Trust must be denied as well, Judge. She has no
20 standing in any capacity to seek administration of that
21 trust. And even if she did, there's no legal or factual
22 support for the interpretation that they're ask this
23 Court to assume.

24 And third, her request clearly runs contrary

1 to the clear intent of the trust. Thank you, Judge. I
2 appreciate your attention. I wanted to spend time with
3 this because these provisions have been kind of glossed
4 over in the papers, and people have been identified in
5 capacities of which they may not be an art, and that's
6 why I thought it was important we spend a little bit of
7 time assisting you in going through the trust and what
8 our position is.

9 So, in short, your Honor, we would ask that
10 the petition be denied in its entirety. Thank you.

11 COMMISSIONER WRIGHT: Thank you. Does anybody
12 want a recess or do you want to take five or ten
13 minutes? I'm fine, but anybody else? Mr. Rosenauer?

14 MR. ROSENAUER: I'm ready to go, your Honor.

15 COMMISSIONER WRIGHT: Court reporter?

16 REPORTER: I'm fine, thank you.

17 COMMISSIONER WRIGHT: Go ahead, Mr. Rosenauer.
18 Thanks.

19 MR. ROSENAUER: I'll let Mr. Echeverria get --

20 MR. ECHEVERRIA: I'll shut it down so it won't
21 be a distraction.

22 MR. ROSENAUER: We could have the deputy just
23 shoot it.

24 (Discussion held off the record.)

1 MR. ROSENAUER: If may please the Court? And
2 very good argument, counsel. I have to laugh a little
3 bit about two different things, your Honor. First of
4 all, the one that -- that the comment -- and I
5 completely agree, Steve Lind is a wonderful person. He
6 is -- I am very good friends with him from Lake Tahoe,
7 he and Mike Freel were collaborators on the federal
8 income tax class that I took in law school at
9 Williamette, so I know Steve and Professor Lind very,
10 very well, and was very heartened when he was involved.
11 And he's a great guy to know, as well as a resource.

12 The other thing that interested me was this,
13 your Honor. You heard Mr. Echeverria talk about William
14 Raggio being the head of the state finance committee and
15 he was a lawyer and all the rest of those attributes.
16 And remember, your Honor, I worked for the guy in my
17 early career at Vargas and Bartlett. Bill Raggio was
18 there and, in fact, he was in my family's basement
19 brewing beer when I was a little kid when his mother,
20 Ms. Briggman, was babysitting us, so I understand all
21 that. But the funny part about it is that on one hand,
22 Mr. Echeverria says this guy knew exactly what he was
23 doing. And on the other hand, he stood here and tells
24 ya oh, gee whiz, there was this condo thing and there

1 was this overfunding, and then they improved it and so
2 while I am not about to throw Mr. Raggio under the bus,
3 I would submit that he was human just like all the rest
4 of us, have his own frailties and was not above any kind
5 of an error.

6 The second thing and now down to the actual
7 argument, your Honor, the first thing that strikes me is
8 this. They want to argue that the one-year term has not
9 yet come for an accounting. What they don't tell you,
10 and they don't mention is, gee whiz, why is the
11 accounting for the gap period from Bill Raggio's demise
12 to the allocation? Because the money that became the
13 Credit Shelter Trust and the marital trust was there, it
14 was still in trust, and Bill Raggio had died, which
15 means that accountings were due.

16 Now, what they want to gloss over and have the
17 Court sort of skip by is this. The allegation is hey,
18 we were working with Mr. Mowry, he was there, they were
19 involved. That's not the accounting that we're talking
20 about, your Honor. That is the allocation. That's the
21 distinction that we're drawing here. Because you have
22 to look at it from both sides. One, let's call it on
23 the income side and one from the spending side. What
24 they're not willing to give to your Honor, and they

1 gloss over, oh, Mr. Mowry was there, is now the assets
2 in that trust that became the two trusts was spent and
3 prove to those beneficiaries that those assets were used
4 by Mrs. Raggio for care, maintenance and support.

5 That's the piece that is missing here, as far as the gap
6 period is concerned. To demonstrate that she, as the
7 trustee, utilized and allocated those assets pursuant to
8 the terms of the trust because, remember, they were all
9 put together, the allocation came in July of the year
10 following his demise on February 3rd. That's --

11 COMMISSIONER WRIGHT: You said trustee.
12 Trustee who?

13 MR. ROSENAUER: Ms. Raggio was the trustee at
14 the time.

15 COMMISSIONER WRIGHT: Dale?

16 MR. ROSENAUER: Dale Raggio.

17 COMMISSIONER WRIGHT: Okay.

18 MR. ROSENAUER: She then -- remember, that's
19 more than a year. Where is that proof?

20 And they're not willing to give you that,
21 they're trying to sit there and say well, oh, Mr. Mowry
22 was involved. Yes, he was involved with respect to the
23 allocation, but there is absolutely not one piece of
24 paper that's out there that says \$2.50 to CVS Pharmacy

1 for aspirin. That is care, maintenance, and support.
2 Where's that? It's not there. And they haven't done
3 it. And that was the genesis of us starting the -- me
4 starting the dialogue with Mr. Echeverria as far as how
5 this whole thing is going to start to fit together. And
6 as he said, well, when does the obligation to the
7 account end? It hasn't even started yet, your Honor,
8 because they haven't done it yet. That's the first
9 point.

10 The second point, your Honor, that they don't
11 distinguish, and they don't -- that they're not quite
12 grasping is this. It's all about the duty of the
13 trustee to use the assets in those two trusts
14 appropriately. Care, maintenance, support, that's what
15 it's all about. That's what this is about. It's not
16 about all the rest of the tax issues that may or may not
17 be out there.

18 Now, I understand, and I acknowledge the fact
19 that the trusts say what they say, no doubt about it,
20 absolutely no doubt about it. Does Ms. Raggio get
21 income off of one and she can, by discretion, take
22 income off the other, but our point is this. If the
23 duty is the same, care, maintenance, and support, she
24 can not distinguish or discriminate one over the other.

1 She may have to take the income, but what we're talking
2 about, your Honor, and I acknowledge that one says hey,
3 she gets income. We're talking about spend-down of
4 corpus. We're talking about what happens after that
5 mandatory distribution of the income because, again, she
6 has the discretion to get into either trust corpus. And
7 when she is in front of CVS Pharmacy and she's got two
8 credit cards, one for each trust for the aspirin bottle,
9 she can't take one over the other. That's not what the
10 statute permits, and that's not what the trust permit.
11 And that, for me, is what the prime distinction truly is
12 because they want to -- they want to characterize it as
13 it being a trust obligation. That's not it.

14 Much the same way as the statute, excuse me,
15 the accounting to the beneficiaries, that is by statute.
16 That's an obligation that is placed upon the trustee,
17 not as far as the trusts are concerned. Our statutes
18 tell us, and we did cite to it in our briefs that the
19 trustee has the obligation to treat everybody the same,
20 all the way through. And when you are confronted with
21 exactly the same terms, conditions, and obligations
22 within those trusts, you have to treat them fairly.
23 That's what we're talking about. That's what's here.

24 Now, they distinguish a -- quite a bit, they

1 emphasize very, very eruditely that Leslie Righetti is
2 the trustee of the trust into which the remains of the
3 marital trust will flow. The difference here is that
4 remember, Dale Raggio only has a lifetime interest,
5 that's it. So the beneficial interest has vested in the
6 other trust, and in those beneficiaries. And what they
7 want to do here is interpose a distinction without a
8 difference and that is, oh, well, you can go to Leslie
9 Righetti and get your accounting, but they don't say and
10 by the way, we've tendered that and more than a year's
11 past or anything else, we still have our remedy, but
12 it's just not here, I'm asking the Court, and to respond
13 to counsel's argument I have no problems going out and
14 joining Leslie Righetti to this request, no problems at
15 all. Under Rule 19? Fine. All interested parties, get
16 them here and we're done, distinction without a
17 difference. They still can't come up with the
18 accounting that is owed for the gap period that complies
19 with what the statutory obligation is. So it's six one
20 way half a dozen the other, and if the Court wants me to
21 do that, I can talk to Mr. Mowry, I can go ahead and get
22 it done because they can't still come up with, and they
23 want the Court to simply look past, or not look past the
24 fact that they haven't done what they're supposed to do.

1 And that's the key to, in essence, our request. We're
2 not looking to have the Court reform or revise these two
3 trusts, not at all, absolutely not at all.

4 And the reference to the challenge and the
5 sanction that may come along with it, I would submit, is
6 a complete red herring. But that notwithstanding, all
7 we are asking the Court to do is to recognize the reason
8 why we are here. And that is that to understand what is
9 coming out of one trust, you have to understand the
10 other one to ensure that they are being allocated
11 because, remember, the duty is the same, the obligation
12 is the same; maintenance, support, and I forget what the
13 third one is. But --

14 COMMISSIONER WRIGHT: Health.

15 MR. ROSENAUER: Thank you. That they have got
16 to be treated by the same person under the same
17 conditions pretty much identically. So to be able to
18 understand oh, gee whiz, here's two dollars for aspirin,
19 here's \$2.00 for Advil, then they're being treated
20 fairly. And, you know, down at the bottom line, yeah,
21 they are being treated fairly. That's fine. You can't
22 just say, gee whiz, you can see one without
23 understanding the other. Because, again, the whole idea
24 when you're done with it is to ensure that the --

1 because we're only talking about during the time that
2 Dale Raggio is the trustee. What -- upon her demise, we
3 agree that the Credit Shelter Trust is going to go to
4 the grandchildren, the other size goes down to Mr.
5 Raggio's kids here in town. We know that, your
6 Honor, and we may not agree with it, but we acknowledge
7 it, we're living with it. But it's that intervening
8 time so that then one side or the other side is not
9 getting, in essence, used as a piggy bank when the other
10 one, oh, gee whiz, that's just fine, we don't have to
11 account to them, they don't need to know what we're
12 doing, and there's no way to ensure that that obligation
13 of fairness is being taken -- that is being taken -- I'm
14 articulating it wrong, that that fairness or obligation
15 of fairness is being followed.

16 Let's look for a minute, your Honor, because
17 we did some history, and thank you very much, counsel,
18 as far as how we got here. If you look at the dates of
19 the trust, the reason why the Credit Shelter Trust
20 ballooned the way that it did was because during the
21 Bush years as the presidency, the amount that you could
22 put in and shelter continued to go up. It went up from,
23 when I was in school, \$400,000 to five million dollars.
24 If nobody did anything, what happened was, as a matter

1 of law, that amount in the Credit Shelter Trust kept
2 going up. The assets that the decedent had was staying
3 stagnant. So as it went up, it had to come out of
4 somewhere, and so those two became unbalanced.

5 Now, what I was referring to was not what
6 should happen in this case, but normally when the
7 surviving spouse dies, they both come back together
8 again and then get divided. That's normally what
9 occurs. It's not what occurs here, and we're living
10 with that. So the argument, therefore, of that that
11 we're trying to reform or rewrite this is a
12 misinterpretation or mischaracterization of what we are
13 attempting to do or what and what we're asking the Court
14 to do.

15 If you look at their analysis, your Honor,
16 they want to go backwards. They want to go from where
17 we are right now working backwards. We are asking the
18 Court to go forward, take this from February 3rd of
19 2012, Bill Raggio dies, a resident of Washoe County, but
20 he's in Australia at the time of his demise. At that
21 point, we're asking for the accounting going forward for
22 the gap period and then thereafter.

23 What counsel is arguing for Ms. Raggio is, gee
24 whiz, no accounting for the gap period and we're just

1 going to say well, here's the Credit Shelter Trust and
2 here's the marital trust, and we don't have to account
3 for the Credit Shelter Trust which means that the five
4 million dollars, or 5.1 that's in the Credit Shelter
5 Trust, no accounting here, no accounting over here, we
6 got nothing, we got nothing to do and, gee whiz, you can
7 waited another four months, now another one month for
8 the accounting to be done for the marital trust and go
9 see your sister, Leslie Righetti, and then we'll chat
10 about that later. That's the analysis that they're
11 asking the Court to do as opposed to what should be
12 done, or more precisely, what should have been done, and
13 that is on an ongoing basis starting February 3rd of
14 2012 and accounting February 3rd of 2013, and February
15 3rd, 2014 of which there is none, none, not one, zero
16 about how that trust and those assets were used for
17 health, care, and maintenance. That's what we're
18 asking, your Honor. We're not asking to reform or to
19 have this Court rewrite the bloody trusts, no, not at
20 all. What we're asking for is exactly what the statute
21 permits, and that is some type of tracing and
22 accountability as to how those trust assets were used
23 for the health, care and maintenance of Dale Checket
24 Raggio. And to understand one, you gotta have the

1 other. That's what we're asking for and that's the
2 relief that we're seeking. Thank you, your Honor.

3 COMMISSIONER WRIGHT: Thank you. Would you
4 like to respond.

5 MR. ECHEVERRIA: I would, because there was
6 some new argument raised there. And if there's
7 something to write on this with? Thank you.

8 I want to address this whole gap issue,
9 because the argument is ignoring the terms of the trust.
10 Remember that the trust specified that the marital trust
11 was to be funded in a pecuniary amount that would zero
12 out the state taxes. Ask that's a major distinction
13 where there's no necessity for an accounting. So let's
14 suppose that that number is two million dollars. All
15 right? And let's suppose that the total value of the
16 estate is six million dollars.

17 COMMISSIONER WRIGHT: Mr. Rosenauer, if you
18 want to come around and look?

19 MR. ROSENAUER: Thank you, your Honor.

20 COMMISSIONER WRIGHT: Yeah, sure.

21 MR. ROSENAUER: Thank you, counsel.

22 MR. ECHEVERRIA: Okay? Let's suppose that
23 this is the value on the date of death. So two million
24 dollars is dictated to be put into the marital trust,

1 and that value is to be -- the assets that go into that
2 are valued as of the date of the actual allocation, but
3 the number doesn't change. So if Mrs. Raggio did what
4 Mr. Rosenauer is suspicious of, and let's say she spent
5 four million dollars in the gap. She still has to put
6 two million into the marital trust. It's not
7 proportionate. That number is fixed as of the date of
8 the death, subject to the calculation of the expenses,
9 but it's a fixed number, it doesn't go up or down, it
10 only goes down by the amount of the expenses. So it
11 doesn't matter, and that's the whole point here, it
12 doesn't matter how money was spent in the interim
13 because regardless of how it was spent, she still had to
14 put x amount of money into the marital trust, so there's
15 no necessity for an accounting.

16 MR. RILEY: Can I just further that one?

17 COMMISSIONER WRIGHT: Sure.

18 MR. RILEY: And I suppose where you're going
19 to go is well, what if we allocate expenses that trigger
20 and reduce it. Those will also become -- we would have
21 to account in the initial marital trust accounting of
22 why it was two million and it's 1.8, why the 1.8 is
23 funded, and all those expenses would be disclosed what
24 was allocated, et cetera.

1 MR. ECHEVERRIA: They are disclosed in the
2 facts.

3 MR. RILEY: Correct.

4 COMMISSIONER WRIGHT: Okay.

5 MR. ECHEVERRIA: So it doesn't matter how this
6 money was spent because the trust dictated how much went
7 into the marital trust.

8 COMMISSIONER WRIGHT: But I'm just going to
9 say it may be a really poor question.

10 MR. ECHEVERRIA: That's okay.

11 COMMISSIONER WRIGHT: Doesn't that number on
12 the left bear some relationship to the whole -- I mean,
13 don't you -- how did you get that?

14 MR. RILEY: And so --

15 MR. ECHEVERRIA: These are close approximation
16 of the numbers.

17 COMMISSIONER WRIGHT: I don't mean --

18 MR. ECHEVERRIA: What went in here was two and
19 a half million, so then what went in here was --

20 MR. RILEY: If I may?

21 MR. ECHEVERRIA: Yeah.

22 COMMISSIONER WRIGHT: Yeah.

23 MR. RILEY: The marital trust, the two million
24 dollars, real simple. Someone dies, and the exemption

1 is four million. Okay. The marital trust then is under
2 the formula that's under this trust which is a marital
3 pecuniary formula, the marital trust is entitled to two
4 million dollars, the amounts required to reduce the net
5 estate to zero, however, that's also less any
6 administrative -- deductible administrative expenses on
7 the estate tax returns, that's the formula that was
8 used, that's how the trust was drafted. So preparation
9 of the 706, administrative fees come out of this share
10 because it's -- those are deducted off the top and then
11 so to get to zero, you're reducing their share, but once
12 that's fixed, that's a fixed number.

13 COMMISSIONER WRIGHT: But it's fixed from?

14 MR. RILEY: It's fixed based on initially what
15 the exemption amount is at the time.

16 And if I may, just in response to Mr.
17 Rosenauer's argument, he brought up that through the
18 Bush tax cuts that was going up over time, so we started
19 at 650,000 in '99, then 675, it went up to a million,
20 then we went to two million, 2009 we went to 3.5
21 million. And this is a very important point because Mr.
22 Rosenauer's point that Mr. Raggio was not beyond
23 mistakes, et cetera, we believe he was more than aware,
24 as with most sophisticated individuals, 2010 there was

1 no exemption anymore.

2 COMMISSIONER WRIGHT: It was a one-year sort
3 of a --

4 MR. RILEY: Correct.

5 COMMISSIONER WRIGHT: -- misfit kind of a
6 year.

7 MR. ECHEVERRIA: Correct. That trust wouldn't
8 have been funded all.

9 MR. RILEY: As a planner I was very busy that
10 work fixing these type of problems, but nobody thought
11 it would come because once 2010 came to light and
12 January 1st, Congress had enacted, many people changed
13 their trust to take care of that problem.

14 In this case the marital trust would not have
15 been funded in 2010, so I think that's also a very
16 important point to bring up to Mr. Rosenauer's argument
17 that these numbers were always in flux, but at some
18 point the marital trust wouldn't have taken anything,
19 and no amendment was made to the trust.

20 COMMISSIONER WRIGHT: But the two million
21 dollars is not a fraction of the overall --

22 MR. RILEY: No.

23 COMMISSIONER WRIGHT: -- wealth, as he said.

24 MR. ECHEVERRIA: As he said, if he starts with

1 the six million and then accepting the exemptions, if
2 the exemptions is four million and the total estate is
3 six, then that determines that number.

4 COMMISSIONER WRIGHT: Right.

5 MR. ECHEVERRIA: If the whole estate is five
6 million, and the exemption is four, then the marital
7 trust is funded by a million.

8 COMMISSIONER WRIGHT: Got it.

9 MR. RILEY: It's not a fractional share
10 formula. And what it says is the maximum amount you can
11 take for marital deduction, and then at the very end it
12 says "provided, however, not to reduce it below zero".

13 MR. ECHEVERRIA: So to the extent that they
14 need an accounting of how this number's calculated,
15 that's in the 706, which they have. To the extent that
16 they need an accounting of what the expenses were that
17 went to reduce the amount that went into the marital
18 trust, that's in 706, which they have.

19 So it doesn't matter one way or another how
20 the money is spent in the interim, because that number
21 has to get funded no matter what. So she could have
22 spent all the money, up to the amount that goes in the
23 marital trust. If she had spent every penny, yeah,
24 there would be probably be an accounting of why is it

1 two million. But the number that funded, the number
2 that funded the marital trust was calculated early, less
3 expenses, and there's no reason for an accounting, it's
4 a waste of accountant's money, it's a waste of the
5 corpus of the trusts to do an accounting for no reason.
6 It's not required.

7 And so then I did want to point out, I guess
8 Mr. Riley made it, that this idea that the numbers were
9 fluctuating, I think, really points out what they're
10 real angry is at this trust, and that is that under the
11 circumstances, and under the amount of exemption at the
12 time Senator Raggio died, there was a number that
13 produced funding of the Credit Shelter Trust in a higher
14 number than was in one. It's not anyone's fault here,
15 but it's not the Court's purpose to remedy those facts.

16 Everyone knew in 2010 that had Senator Raggio
17 died actually what, 12 months earlier? This marital
18 trust wouldn't exist. So this is sour grapes is what
19 the petition is, and it's an attempt to reform this
20 trust and rewrite it in terms that they think is more
21 fair, and that's not what this is about. It's about
22 enforcing the Senator's intent. Thank you, your Honor.

23 COMMISSIONER WRIGHT: Yeah. You say it's a
24 waste and redundant or whatever, but there's something

1 lingering about the fact, and I'd like you to just, you
2 know, what's the word I'm looking for?

3 MR. ECHEVERRIA: Address it?

4 COMMISSIONER WRIGHT: Well, that's one word.
5 I guess I was going to use something a little more
6 creative, but address.

7 MR. ECHEVERRIA: I have to move closer because
8 my hearing aid doesn't work.

9 COMMISSIONER WRIGHT: Okay. And I'm not used
10 to all this space here.

11 MR. ECHEVERRIA: So if you don't mind me
12 approaching, Judge.

13 COMMISSIONER WRIGHT: No, that's fine. That
14 for a moment, being like 14 months or so, 15 months,
15 Tracy Chew was still an interested party and would,
16 therefore, be entitled to request something, just a very
17 basic point. And you're saying, well, that would be
18 regrettably expensive and redundant, but --

19 MR. RILEY: I believe, actually, to our point
20 the counter to that is it was Ms. Righetti who was part
21 of that who was part of funding allocation, part of what
22 took the 18 months to get that is the back and forth
23 with Ms. Righetti's attorney, Bart Mowry, in negotiating
24 those fine distinctions on how much of the exemption was

1 actually used with the gifts, how to value those
2 exemptions, and again, affecting the amount that went to
3 the marital trust.

4 And our whole point to all of this is we've
5 hashed this out once before with Mr. Mowry, Ms.
6 Righetti's attorney, as the proper party and as the
7 beneficiary of the marital trust. They had -- and so we
8 close on a broader picture what Mr. Rosenauer's request
9 is you're opening up -- we would then -- we shouldn't
10 have been talking to just Mr. Mowry who was counsel for
11 the trustee. We've now -- we're now, you know, are we
12 going to be subject to rereviewing all of that? As the
13 fiduciary of that trust, that was Ms. Righetti's duty,
14 she should have been, and disclosure to Ms. Chew is
15 under her responsibility. But she is the one who signs
16 -- would sign contracts on behalf of that, if there were
17 a court settlement on these exemptions, if there was a
18 settlement agreement she would be the proper party to
19 sign them. That's who Ms. Raggio is trustee of the
20 William J. Raggio Family Trust and the marital trust.
21 That's who she owes her duty to, Ms. Righetti. We've
22 raised this multiple times.

23 Mr. Rosenauer says we can bring her in any
24 time. We still have yet to hear from her, she hasn't

1 come forth. Mainly, we have addressed these issues with
2 her, and we are going to provide an accounting to her of
3 what was funded to the marital trust. We've already
4 been through the exercise of what that number should be
5 and the accounting of the expenditure since we've funded
6 it, which would be a year in July.

7 COMMISSIONER WRIGHT: But are you saying that
8 the trustee, Dale, engaged in no trustee-like activity
9 between the date of death and July of '13?

10 MR. RILEY: No that's a distinction between
11 the two trusts.

12 COMMISSIONER WRIGHT: Okay.

13 MR. ROSENAUER: So Ms. Righetti's entitled to
14 an accounting possibly of the gap period, but
15 understanding if we put the pecuniary amounts into the
16 marital trust it was entitled to receive.

17 Now, if the delay in funding was on our part,
18 I see Mr. Rosenauer's argument that well, we could have
19 gotten that put in and put in the market invested, but
20 that was part of arm's length negotiation we couldn't
21 have funded any earlier there was a dispute over the
22 exact dollar amount.

23 COMMISSIONER WRIGHT: In the meantime, though,
24 she's not buying any aspirin and stuff like that. I

1 mean, I hate to trivialize it, but I guess what I'm
2 thinking --

3 MR. RILEY: That doesn't change the amount
4 that --

5 COMMISSIONER WRIGHT: So it doesn't matter,
6 and you've said that at least a half dozen times, but I
7 want to make sure that I know what you mean with regard
8 to that gap period that it wouldn't matter is what
9 you're saying.

10 MR. RILEY: Or if it did matter.

11 COMMISSIONER WRIGHT: Or if it did.

12 MR. RILEY: So if, again, just using this
13 example of 200,000 was to be allocated to the marital
14 trust, and let's say we spent a hundred thousand on
15 aspirin, then the marital trust accounting would have to
16 account for every dollar that wasn't put in it, that
17 would be required from the accounting.

18 COMMISSIONER WRIGHT: That's the marital trust
19 accounting that's coming up in July.

20 MR. RILEY: Correct.

21 COMMISSIONER WRIGHT: Okay. All right. So
22 we've gotten a little -- which I don't mind. Do you
23 want to chime in there?

24 MR. ROSENAUER: Yep.

1 COMMISSIONER WRIGHT: Because each point
2 should probably be --

3 MR. RILEY: Got in my way. The wheel is --

4 MR. ROSENAUER: Caput. Excuse me for walking
5 in front. And very, very brief, but you have captured
6 the essence of what we're talking about. That gap
7 period, it is undisputed that that six million dollars
8 was in a trust in which Ms. Chew had an interest for
9 those 16 months or whatever it is that is this two
10 million dollars, let's say, using their facts. They
11 have not, their position is this, your Honor. Gee whiz,
12 we don't have to account to anybody else for what
13 happened with this four million dollars because we fully
14 funded the marital trust. So whatever happened, gee
15 whiz, doesn't matter.

16 The deal, though, and the obligation by
17 statute and by the terms of the trust is you have to
18 tell us that you used this money, the four million
19 dollars for health, maintenance support, because there
20 was no allocation yet or division between the marital
21 trust and the Credit Shelter Trust because all of those
22 assets are right here in that six million dollars. So
23 even if they are successful at arguing that the marital
24 trust beneficiaries do not get an accounting of the

1 Credit Shelter Trust, they can not deny that they owed
2 an accounting to these people during the time that six
3 million dollars was in the -- was in limbo during the
4 gap period.

5 Now, the other thing that they are missing is
6 this. They are correct. They and Mr. Mowry worked on
7 the allocation of the six million dollars between the
8 four million and the two million. That's what they were
9 doing, that's fine. Everybody was covered. But that's
10 just the accounting of the allocation, not what was used
11 of that for the aspirin. That's what the statute says
12 they have to do to account to the beneficiaries.

13 COMMISSIONER WRIGHT: Well, I guess the point
14 here, then, is if it does say that, their contention is
15 that it couldn't affect you anyway, so why do you need
16 to know? I mean, again, I hate to oversimplify things,
17 but sometimes that's what it takes for me to, you know,
18 latch on to and then keep moving.

19 MR. ROSENAUER: Absolutely. No problem, your
20 Honor. And what they are, therefore, telling you, is
21 ignore what's behind the four-million-dollar curtain.
22 It doesn't matter to you so just don't -- don't mess
23 with it, it's okay. That's everybody else's problem.

24 COMMISSIONER WRIGHT: But it will matter to

1 you if I buy your second point, which is the equivalent
2 spending or the proportionate spending.

3 MR. ROSENAUER: But, your Honor --

4 COMMISSIONER WRIGHT: Or does it matter beyond
5 that?

6 MR. ROSENAUER: No, it doesn't matter
7 necessarily beyond that. And the proportionate
8 spending, your Honor, and the import of that is, again,
9 this. The trustee of both -- sorry, both of these
10 trusts, the marital trust and the Credit Shelter Trust,
11 again has the same obligation.

12 The standard by which she can take money out
13 of that trust, other than the income side, other than
14 the income side, because that is hers, no doubt about
15 it, is for those three elements. If, for whatever
16 reason she's out buying sail boats, for Christ sakes,
17 then that is not within that. And the problem then
18 becomes, for those three elements, she owes that to both
19 sides, whether it is the two million side or the four
20 million dollar side, and to understand and affect the
21 fact that one is not being prejudice to the other, you
22 have to understand one to get to the other. That's the
23 point.

24 COMMISSIONER WRIGHT: Okay.

1 MR. ROSENAUER: Thank you, your Honor.

2 COMMISSIONER WRIGHT: Yes. Anything else? I
3 guess we'll round it out now.

4 MR. RILEY: I don't want to belabor too many
5 point. My cocounsel did a great job, I think, of
6 addressing these issues. And the credit trust and the
7 difference and who the duties are owed to, Mr. Rosenauer
8 correctly points out there's this other 400,000.

9 COMMISSIONER WRIGHT: Four million.

10 MR. RILEY: Four million, I apologize. And
11 that duty is owed to her grandchildren how that credit
12 trust was funded. They have their own rights, they can
13 choose to waive an accounting, they could choose that,
14 and the statute's very clear. They are the
15 beneficiaries of that trust. They are entitled to the
16 accounting of that, the duty is owed to them, but that's
17 not -- Ms. Chew can't step in for them and enforce their
18 rights, number one.

19 Number two, not that we're trying to hide
20 anything, that's between Ms. Raggio and her grandkids,
21 and there is a reason to a point Mr. Rosenauer made at
22 the very beginning is that the statutes are all about
23 transparency. They're all about transparency to those
24 who are titled to an accounting, but they strike a

1 balance for cases such as this where somebody may come
2 in and want an accounting of every penny spent from both
3 trusts and be able to object to both of those. The
4 beneficiaries of each trust are the proper parties to do
5 that. And Mr. Rosenauer said for a brief moment Ms.
6 Chew had an interest in this. That is not accurate.
7 The William and Dorothy Credit Shelter Trust is that
8 party. Ms. Righetti has chosen to wait for us to
9 provide the accounting. We will do so.

10 But I guess the whole point here is all of
11 that, before you get there, skips over the whole very
12 important point that Ms. Righetti is the proper party as
13 the trustee of the beneficiary, and rightfully so,
14 mainly so that we don't have objection -- we're not re
15 hashing all of these arguments because if you buy Mr.
16 Rosenauer's argument that Ms. Chew is entitled it, then,
17 arguably, so should her children, so should all of the
18 heirs of --

19 COMMISSIONER WRIGHT: Dorothy.

20 MR. RILEY: Dorothy, and we could then -- then
21 in a similar situation we would need to be negotiating
22 with all the beneficiaries of that -- sub beneficiary --
23 the beneficiaries of beneficiary. The proper party here
24 is Ms. Righetti as trustee of William and Dorothy trust.

1 And again, we've addressed these issues with Mr. Mowry.
2 I can only suppose that they're happy with our
3 explanation and are willing to wait until July to
4 receive their accounting, and that's why they haven't
5 joined in the petition, and that's why they're not here
6 today. And I just think that we -- it keeps getting
7 glossed over that Ms. Chew has an interest in this
8 trust. If you collapse it all down, yes, if she
9 survives Ms. Raggio, she has an interest in a trust that
10 is a beneficiary of this marital trust and going up the
11 ladder. But all of that misses the fact that she
12 doesn't have a direct interest and the proper party, and
13 the statutes clearly delineate, that Ms. Righetti is
14 that as trustee of the beneficiary.

15 COMMISSIONER WRIGHT: All right. Thank you.

16 MR. RILEY: Thank you. Will that be all?

17 MR. ROSENAUER: Again, your Honor, we have no
18 problem with bringing in Ms. Righetti. We will be in
19 exactly the same place with exactly the same argument,
20 no problem.

21 And if the Court believes that to formulate a
22 complete adjudication that that's what we need, no
23 problem, your Honor. We can get her in here, and we
24 will not be rehashing the same thing and we'll be in

1 exactly the same place because they can't demonstrate
2 that accounting as to how those assets were used for
3 those three elements. That's the bottom line.

4 COMMISSIONER WRIGHT: Okay. All right. I'm
5 going to -- I've been kind of going back and forth. The
6 word I was looking for was deconstruct, okay? I just --
7 I found it.

8 MR. ECHEVERRIA: Good thing you didn't use it.
9 I don't know what it means.

10 COMMISSIONER WRIGHT: I'll use really simple
11 words when you're around, Mr. Echeverria.

12 MR. ROSENAUER: Your Honor, excuse me. Can I
13 get my pen? I got nothing to write on.

14 COMMISSIONER WRIGHT: Oh, sure, yes, get
15 whatever you need. And again, I'm just going to be a
16 few minutes, but if anybody needs a break, please just
17 chime in. Are we good? Okay.

18 As with all of these types of cases, there's a
19 very alluring aspect that somebody who's named somewhere
20 has the right to something and a direct interest or a
21 contingent interest or some kind of an interest in
22 knowing what's going on, and that definitely was
23 something going on here.

24 I thought everybody did an outstanding job and

1 you both brought me to just about the brink of where I
2 thought that each side had a winning argument.

3 At this point, though, and again, keep in mind
4 that I'm a commissioner and I'm making a recommendation
5 only, but my recommendation is that the petition should
6 be denied, and that is because in, you know, we can fuel
7 out the written recommendation with findings that
8 parallel the arguments of the objectors. But primarily
9 it is because what was -- what had me distracted was
10 what I thought that the petitioner, Ms. Chew, was a
11 beneficiary during that gap period and that there would
12 be some significance to an accounting that would be
13 produced for that period.

14 But I've been persuaded with the rendition on
15 the board here that it would not -- that she would not
16 have been impacted by that allocation -- excuse me.
17 That she would not have been impacted by an accounting
18 that preceded the allocation because the end result
19 would have been the same.

20 There's a part of me that wants to give her
21 that theoretical standing in that gap period, however,
22 again, it is probably based on what's been shown to me,
23 not only would not have an impact upon her, but the
24 result would be the same if that allocation took ten

1 days or 15 months or whatever.

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

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

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

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

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

16 MR. ROSENAUER: Thank you, your Honor.

17 COMMISSIONER WRIGHT: Thank you.

18 (Proceedings concluded.)

19 ---o0o---

1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

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

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

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

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

22
23 /s/ Julie Ann Kernan

24

JULIE ANN KERNAN, CCR #427

EXHIBIT "5"

Recommendation for Order, dated
February 17, 2015

EXHIBIT "5"

1 **1940**
2 Soraya Tabibi Aguirre, Esq.
3 Nevada Bar No. 9918
4 Timothy J. Riley, Esq.
5 Nevada Bar No. 10428
6 HOLLAND & HART LLP
7 5441 Kietzke Lane, Second Floor
8 Reno, Nevada 89511
9 Tel: (775) 327-3000
10 Fax: (775) 786-6179
11 STAguirre@hollandhart.com
12 TRiley@hollandhart.com

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

20 *Attorneys for Dale Raggio*

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

23
24 IN AND FOR THE COUNTY OF WASHOE

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

27 Case No. PR13-00624
28 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 Petition to Interplead Inter Vivos Trust and Request for Review of Beneficiary's Request for an
37 Accounting and Documents ("Petition").

38
39 Respondent DALE RAGGIO ("Respondent"), Trustee of the WILLIAM J. RAGGIO
40 FAMILY TRUST, dated April 13, 2007 ("Trust"), filed a Response and Objection to the Petition
41 to Interplead Inter Vivos Trust and Request for Review of Beneficiary's Request for an Accounting
42 and Documents.

Holland & Hart LLP
5441 Kietzke Lane, Second
Floor

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

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

7 This Court heard oral arguments on June 3, 2014 on the above referenced documents and
8 the matter now stands submitted for decision by the Court.

9 The Commissioner herewith recommends that the Petition be denied without prejudice
10 based on the following findings:

11 1. Petitioner TRACY CHEW is not a beneficiary entitled to an accounting under NRS
12 Chapter 165;

13 2. LESLIE REGHETTI, as the Trustee of the WILLIAM AND DOROTHY CREDIT
14 SHELTER TRUST, is the proper party to bring such a petition; and

15 3. That a proportionate spend-down of the Credit and Marital Trusts formed under the
16 Trust is not supported by the terms of the Trust or applicable law.

Accordingly, based upon the foregoing, this Commissioner recommends that the
Petition to Interplead Inter Vivos Trust and Request for Review of Beneficiary's Request for
an Accounting and Documents be DENIED, without prejudice.

Pursuant to WDCR 57.3(7), this Recommendation will become final ten (10) days after service of the Recommendation upon the parties unless a proper written Request for Judicial Review is filed and served.

23 DATED this 17th day of February, 2015.
24 IT IS SO RECOMMENDED:

Robin Wright
Probate Commissioner

EXHIBIT "6"

Petition for Approval of Accounting,
dated April 7, 2015

EXHIBIT "6"

1 **3880**
2 Soraya Tabibi Aguirre, Esq.
3 Nevada Bar No. 9918
4 Timothy J. Riley, Esq.
5 Nevada Bar No. 10428
6 Tamara Reid, Esq.
7 Nevada Bar No. 9840
8 HOLLAND & HART LLP
9 5441 Kietzke Lane, Second Floor
10 Reno, Nevada 89511
11 Tel: (775) 327-3000
12 Fax: (775) 786-6179
13 STAguirre@hollandhart.com
14 TRiley@hollandhart.com
15 TReid@hollandhart.com

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

23 *Attorneys for Dale Raggio*

24
25 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
26
27 IN AND FOR THE COUNTY OF WASHOE

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

Case No. PR13-00624
Dept. No. PR

29
30
31 **PETITION FOR APPROVAL OF ACCOUNTING**
32

33 Pursuant to NRS 164.010 and NRS 164.015, DALE RAGGIO, as Trustee (the "Trustee"
34 and/or "Dale") of the WILLIAM J. RAGGIO FAMILY TRUST, dated April 13, 2007 (the
35 "Trust"), by and through her counsel, Holland & Hart LLP, hereby petitions this Court to take
36 jurisdiction of the Trust¹ and for approval of the *Charge and Discharge Statement and*
37

38 ¹Trustee notes that Tracy Chew's December 9, 2013 *Petition to Interplead Inter Vivos Trust, Request for Review of*
Beneficiary's Request for an Accounting and Documents requested that the Court take jurisdiction of the Trust but

1 *Accountants' Compilation Report for the William J. Raggio Marital Deduction Trust*
2 ("Accounting") attached hereto as **Exhibit 1**. This Petition is based on the following
3 memorandum of points and authorities, the attached exhibits and all the papers and pleadings on
4 file herein.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 Dale brings this Petition in light of objections and unwarranted requests by Leslie
8 Raggio-Righetti, Trustee of the Credit Shelter Trust under The William and Dorothy Raggio
9 Family Trust Agreement (W&D Trust) asserted in response to the Accounting, which was
10 previously provided to the W&D Trust. Amongst other things, the Remainder Beneficiaries take
11 issue with the discretionary distributions made to or for the benefit of Dale, asking for a detailed
12 narrative explanation as to how such amounts were determined to be necessary for Dale's proper
13 support, care, and maintenance.² This Court should approve the Accounting because (1) the
14 Accounting complies with NRS 165.135, (2) Dale exercised her discretion as the Trustee to
15 make appropriate and reasonable distributions to herself as Beneficiary, (3) by statute, Dale was
16 not required to consider any other sources of income in making the distributions, and (4) the
17 distributions cover, in part, Dale's normal living expenses and maintain the standard of living
18 Dale is accustomed to from her marriage to William Raggio. Based on the foregoing, the Trustee
19 respectfully requests that the Court approve the Accounting.

20 **II. RELEVANT FACTUAL BACKGROUND**

21 As the Court is already aware, there are three trusts at issue in this matter, namely, the
22 Raggio Family Trust, which in turn created two sub-trusts, the Marital Trust and the Credit
23 Shelter Trust, upon William Raggio's death. *See Trust, §4.1*. Dale Raggio is the Current
24 Beneficiary of both the Marital Trust and the Credit Shelter Trust. Dale is also the trustee of
25 both.

26 _____ (continued)
27 since the Court denied the petition and did not specify whether it was retaining jurisdiction over the Trust, Trustee
28 renews the request herein.

1 Pursuant to the provisions of the Raggio Family Trust, the Marital Trust was funded with
2 “a pecuniary amount” equaling “the maximum marital deduction allowed” at William Raggio’s
3 death; “provided; however, that in no event shall such amount exceed the amount necessary to
4 eliminate federal estate tax” on William Raggio’s estate. *See Trust*, §4.4. Accordingly, the
5 settlor selected a pecuniary formula – i.e. a specific dollar amount – as the funding mechanism
6 for the Marital Trust.

7 Although William Raggio died on February 24, 2012, the Marital Trust was not funded
8 until July 2013. This intervening “gap” period was necessary to marshal and appraise the
9 decedent’s assets, file the required tax returns, complete the computations necessary to properly
10 determine the allocations, and make the actual transfers. Thus, the first accounting period for the
11 Marital Trust runs from July 2013 through July 2014.

12 Section 5.1 of the Raggio Family Trust provides that the trustee of the Marital Trust shall
13 “quarter-annually or at more frequent intervals, pay to or apply for the benefit of [Dale] all of the
14 net income of the Trust.” *See Trust* §5.1. In addition to this mandatory distribution of income, the
15 Trustee is further authorized to distribute “as much of the principal of the Trust as the Trustee, in
16 the Trustee’s discretion, shall deem necessary for [her] proper support, care, and maintenance.”
17 *Id.* Notably, there are no provisions that direct or require the trustee of the Marital Trust to
18 consider other sources in making the foregoing decisions to distribute income and/or principal
19 from the Marital Trust, consistent with Nevada law. After Dale Raggio’s death, any remaining
20 principal in the Marital Trust shall be distributed to the William and Dorothy Raggio Credit
21 Shelter Trust (“W&D Trust”), which was formed separately from the present Raggio Family
22 Trust. *See Trust*, §5.3. The Credit Shelter Trust holds the balance of the trust property and is also
23 held for Dale’s benefit during her lifetime. *Trust*, §4.6.

24 During the period from July 22, 2013 to July 31, 2014, there were twelve equal
25 distributions from the Marital Trust to Dale of twenty thousand dollars, with one additional
26 distribution of eight thousand dollars, for a total of \$248,000. Exhibit 1. Of this amount, \$64,018
27 was a mandatory distribution of interest and dividend income per the Marital Trust. *Id.* These
28 amounts were used to pay for the majority, but not all, of Dale’s monthly expenses. A

breakdown of Dale's estimated monthly expenses is attached hereto as **Exhibit 2**.

After consulting with counsel for the Remainder Beneficiaries as to their preferred form of accounting, Trustee's counsel directed Kim Cooney, CPA of Grant Thornton to prepare an accounting of the Marital Trust. *See* Exhibit 1. On November 6, 2014, Trustee's counsel forwarded the accounting to counsel for the Remainder Beneficiaries. *See* November 6, 2014 correspondence attached hereto as **Exhibit 3**. On February 17, 2015 the Remainder Beneficiaries asserted their objections to the Accounting. *See* February 17, 2015 correspondence attached as **Exhibit 4**. Due to the baseless nature of the objections and unwarranted requests for further information, this Petition now follows.

III. LEGAL ARGUMENT

A. The Accounting Was Performed In Accordance With NRS 165.135

NRS 165.135(2) provides that "[a]t a minimum, the trustee shall furnish an account to each beneficiary in accordance with the terms and conditions stated in the trust instrument. The cost of each account must be allocated to income and principal as provided in the trust instrument." NRS 165.135(3) further sets forth the elements that must be included in any accounting including the accounting period, details regarding the trust principal, and details regarding the trust income. In this instance, the Remainder Beneficiaries elected the option set forth in NRS 165.135(4), which provides

In lieu of the information required to be provided by a trustee to a beneficiary pursuant to subsection 3, a trustee may provide to such a beneficiary a statement indicating the accounting period and a financial report of the trust which is prepared by a certified public accountant and which summarizes the information required by paragraphs (b) to (e), inclusive, of subsection 3. Upon request, the trustee shall make all the information used in the preparation of the financial report available to each beneficiary who was provided a copy of the financial report.

Ms. Cooney of Grant Thornton performed the Accounting in accordance with the provisions of NRS 165.135(4). Notably, the Remainder Beneficiaries have not raised any concerns regarding the manner in which the Accounting was prepared and have not asserted that it fails to comply with the applicable statutory provisions. Rather, the Remainder Beneficiaries demand to inspect "cancelled checks (front and back), check register(s), and all supporting documentation including

1 invoices, bill, and all other supporting documentation for the distributions made during the
2 account period.” Exhibit 4.

3 The request for all cancelled checks and all supporting documentation for distributions is
4 inappropriate, onerous and an invasion of Dale’s privacy. The Restatement (Third) of Trusts
5 also covers this scenario stating, “[a]ppropriate disclosure can usually be provided in general
6 terms that allow reasonable protection for confidential, private or sensitive information.” See
7 Restatement (Third) of Trusts §50 comment e(1). Per the provisions of NRS 165.135(4),
8 however, the Trustee will make available for the Remainder Beneficiaries’ inspection “all the
9 information used in the preparation of the financial report,” but has no obligation to gather any
10 documents or information beyond the working papers utilized by Ms. Cooney.

11 B. The Court Should Approve All Discretionary Distributions and Expenses.

12 i. *Dale Has Acted Well Within Her Discretion In Making Distributions From*
13 *The Marital Trust.*

14 NRS 163.419 recognizes a trustee’s discretionary powers and provides for only limited
15 review by the Court. Specifically, NRS 163.419(1) states that “[a] court may review a trustee’s
16 exercise of discretion concerning a discretionary interest only if the trustee acts dishonestly, with
17 improper motive or fails to act.” In other words, absent any evidence of dishonesty or improper
18 motive, this Court should defer to the Trustee’s exercise of discretion with respect to the excess
19 distributions.

20 As the trustee of the Marital Trust, Dale distributed to herself, as beneficiary, “as much of
21 the principal of the Trust as the Trustee, *in the Trustee’s discretion*, shall deem necessary for
22 [her] proper support, care, and maintenance.” (emphasis added). In doing so, Dale has acted
23 properly and in accordance with governing principles.

24 ii. *Trustee Not Required To Consider Other Sources of Income or Resources.*

25 The Remainder Beneficiaries have further hinted at the fact that they may seek
26 information regarding other sources of income or resources available to Dale so that the
27 distributions made during the accounting period can be assessed. However, the Marital Trust
28 imposes no such duty on Dale and this Court should not insert a requirement into the trust where

1 none exists. Moreover, Nevada law imposes no independent duty to consider other sources of
2 income on the trustee. Pursuant to NRS 163.4175, a trustee is not required to consider other
3 sources of income with regard to distribution of trust assets. The statute provides that "[e]xcept
4 as otherwise provided in the trust instrument, the trustee is not required to consider a
5 beneficiary's assets or resources in determining whether to make a distribution of trust assets."
6 The trust language combined with the statute should end any inquiry into this area by the
7 Remainder Beneficiaries.

8 *iii. The Discretionary Distributions Were Made Based On The Beneficiary's*
9 *Accustomed Manner of Living.*

10 The Remainder Beneficiaries further seek "a detailed narrative explanation" as to how the
11 excess discretionary distributions made to Dale were determined to be "necessary for the proper
12 support, care, and maintenance of Dale Checket-Raggio." Exhibit 4. A "detailed narrative
13 explanation" is unnecessary because a review of Dale's average monthly expenses demonstrates
14 that the distributions were necessary and reasonable to maintain Dale's lifestyle.

15 Support and maintenance are normally construed as synonyms. An accustomed standard
16 of living may be implied from "support" or "maintenance" even without express reference to a
17 beneficiary's lifestyle. *See* Restatement (Third) of Trusts §50 comment d(2). Additionally,
18 Restatement (Third) of Trusts §50 comment d(2) provides:

19 Under the usual construction of a support standard (*supra*) it would not be
20 reasonable (Comment *b*), or even a result contemplated by the settlor
21 (Comment *c*), for the trustee to provide only the bare essentials for a
22 beneficiary who had enjoyed a relatively comfortable lifestyle. (This is so
23 even though the discretionary power is couched in terms of amounts the
24 trustee considers "necessary" for the beneficiary's support.) The standard
25 ordinarily entitles a beneficiary to ***distributions sufficient for accustomed***
26 ***living expenses***, extending to such items as regular mortgage payments,
property taxes, suitable health insurance or care, existing programs of life and
property insurance, and ***continuation of accustomed patterns of vacation and***
of charitable and family giving. Reasonable additional comforts or "luxuries"
that are within the means of many individuals of like station in life...may be
borderline as entitlements but would normally be within the *permissible* range
of the trustee's judgment, even without benefit of a grant of extended
discretion.

27 Case law from various jurisdictions supports the foregoing standard. For example, in
28 *Goss v. McCart*, 847 P.2d 184 (Colo. App. 1992), the trustee was granted discretion to provide

1 for the comfortable support, medical care, and other benefits of settlor's spouse and to provide
2 settlor's spouse with the standard of living to which he was accustomed. Similarly, the
3 Massachusetts Supreme Court held that "comfortable support and maintenance" means
4 maintaining the beneficiary in accordance with his or her standard of living when he or she
5 became a beneficiary of the trust. *Marsman v. Nasca*, 573 N.E.2d 1025 (Mass. 1991). The
6 Florida Appeals Court reasoned that "health, maintenance and support" means the beneficiaries'
7 standard of living at the time of the testator's death. *Barnett Banks Trust Co. v. Herr*, 546 So.2d
8 755 (Fla. App. 1989).

9 Here, the distributions to Dale from the Marital Trust were required to maintain, in part,
10 Dale's accustomed manner of living that she enjoyed while she was married to and living with
11 William Raggio. Attached as **Exhibit 5** is an estimated average of Dale's monthly expenses,
12 totaling \$28,200.00. The Court should note that these expenses are in excess of the distributions
13 currently being made to Dale from the Marital Trust and Dale must rely on other resources to
14 meet all of her expenses.

15 In addition to normal living expenses such as household maintenance, utilities, insurance,
16 automobiles, groceries and supplies, Dale and William regularly traveled together, including
17 overseas trips and/or cruises each year, attended charity and other social functions, were season
18 ticket holders for sporting events, and were regularly involved in the community. Dale has
19 continued these activities and the distributions made from the Marital Trust help cover some of
20 the expenses associated with such activities. In short, based on Dale's accustomed manner of
21 living during William Raggio's life and their marriage and her current monthly expenses, the
22 distributions are wholly justified and warranted.

23 **IV. CONCLUSION**

24 Based on the foregoing, Trustee respectfully requests that the Court approve the *Charge*
25 *and Discharge Statement and Accountants' Compilation Report for the William J. Raggio*
26 *Marital Deduction Trust* ("Accounting") attached hereto as **Exhibit 1**.

27 ///

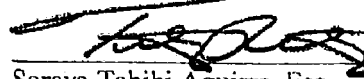
28 ///

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

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

3 DATED this 7th day of April, 2015.

4 HOLLAND & HART LLP

5 

6 Soraya Tabibi Aguirre, Esq.

7 Timothy J. Riley, Esq.

8 Tamara Reid, Esq.

9 *Attorneys for Dale Raggio*

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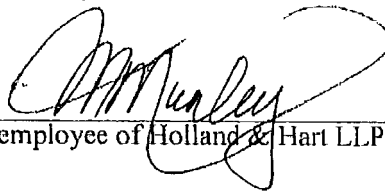
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 7th day of April, 2015, a true and correct copy of the foregoing **PETITION FOR APPROVAL OF ACCOUNTING** was deposited in the United States Mail, postage prepaid, first class delivery, addressed as follows:

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

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



An employee of Holland & Hart LLP

EXHIBIT "7"

Counter Petition for Removal and
Surcharge of Trustee, dated
May 22, 2015

EXHIBIT "7"

1 **2630**

2 G. Barton Mowry, Esq.
3 Nevada Bar No. 1934
4 Procter J. Hug, IV, Esq.
5 Nevada Bar No. 12403
6 Maupin, Cox & LeGoy
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Tel: (775) 827-2000
10 Attorneys for Leslie Raggio Righetti

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

14 IN THE MATTER OF THE
15 WILLIAM J. RAGGIO FAMILY
16 TRUST

CASE NO.: PR13-00624

DEPT. NO.: PR

17 **OBJECTION TO PETITION FOR APPROVAL OF ACCOUNTING, COUNTER**
18 **PETITION FOR REMOVAL AND SURCHARGE OF TRUSTEE**

19 Leslie Raggio Righetti ("Leslie"), as a Co-Trustee under the William J. and Dorothy
20 B. Raggio Family Trust Agreement dated January 27, 1998, as recently "decanted"
21 pursuant to NRS 163.556, and as a vested remainder beneficiary of the William J. Raggio
22 Marital Deduction Trust created from The William J. Raggio Family Trust ("The Marital
23 Deduction Trust"), by and through her counsel, the law firm of Maupin, Cox & LeGoy,
24 hereby:

- 25 1. Objects to the charge and discharge statement and accountants'
26 compilation report (the "Accounting") for the Marital Deduction Trust
attached as Exhibit 1 to the Petition for Approval of Accounting filed
by Dale Checket-Raggio ("Dale"), as Trustee;

2. seeks removal of Dale as Trustee of the Marital Deduction Trust pursuant to NRS 163.115;
3. seeks to have the Court surcharge Dale as Trustee for having breached her fiduciary obligations and duties owed to Leslie and other beneficiaries of the Marital Deduction Trust;
4. seeks to enjoin Dale, as Trustee from committing any further breaches of trust;
5. seeks to compel Dale, as Trustee to redress her breaches of trust by repatriation of excess distributions she made to herself as sole lifetime beneficiary of the Marital Deduction Trust;
6. requests the Court to appoint a temporary trustee to take possession of the assets of the Marital Deduction Trust and administer the trust properly; and
7. to trace trust property that has been wrongfully distributed and recover such property or its proceeds.

This objection and counter-petition ("Objection") is based on the following Memorandum of Points and Authorities, the attached Exhibit, all papers and pleadings on file herein, and additional evidence to be obtained as part of discovery prior to an evidentiary hearing or trial on the merits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. OVERVIEW OBJECTION.

Leslie files this Objection challenging the "support" distributions from the principal of the Marital Deduction Trust made by Dale, as Trustee, to herself as sole lifetime beneficiary of the Marital Deduction Trust, for among other reasons, unreasonableness,

1 dishonesty, or improper motivation. Leslie acknowledges that Dale, as lifetime beneficiary,
2 is entitled to mandatory distributions of net income from the Marital Deduction Trust and
3 discretionary distributions of principal as "necessary" for Dale's "proper support." Based
4 on the information set forth in Dale's Accounting, during the period of the accounting which
5 covered approximately one year from July 22, 2013 to July 31, 2014 (the "Accounting
6 Period"), Dale exercised her discretion, as Trustee of the Marital Deduction Trust to benefit
7 herself through distribution of approximately \$200,000 of principal above and beyond the
8 approximate \$48,000 of income she received from the Marital Deduction Trust, to the
9 detriment of the remainder beneficiaries.
10

11 As set forth in the Accounting, the Marital Deduction Trust earned dividend and
12 interest income in the amount of \$64,018. As further set forth in the Accounting, during
13 the Accounting Period, legal, accounting and investment fees charged to the Marital
14 Deduction Trust totaled \$32,730, of which approximately one-half (1/2) or \$16,000, should
15 be subtracted from the gross income to arrive at the net income to which Dale is entitled
16 to receive from the Marital Deduction Trust. Leslie acknowledges that Dale was entitled
17 to distribution of the Marital Deduction Trust's net income of approximately \$48,000 for the
18 Accounting Period. However, she challenges the propriety of the additional distributions
19 of principal made to Dale totaling \$200,000 as reported in the Accounting. Dale, as
20 Trustee, made these excess principal distributions to herself, as beneficiary, under the
21 guise of being "necessary" for her "proper support." The total distributions of \$248,000
22 equate to 9.7% of the beginning principal balance of the Marital Deduction Trust. The
23 combination of these distributions and the administrative expenses resulted in a shrinkage
24 of the asset value from \$2,555,471 to \$2,345,377, during the Accounting Period.

25 The terms applicable to the Trustee's authority over the Marital Deduction Trust are
26 set forth in section 5.1 of The William J. Raggio Family Trust under the agreement dated

1 April 13, 2007, which provides as follows:

2 "In addition, the Trustee shall pay to or apply for the benefit of DALE
3 CHECKET-RAGGIO as much of the principal of the Trust as the Trustee, in
4 the Trustee's discretion shall deem **necessary** for the **proper support**, care,
5 and maintenance of the [sic] DALE CHECKET-RAGGIO." (*Emphasis*
6 *added.*)

7 The above terms set forth a requirement that the Trustee deem the principal
8 distributions **necessary** for the **proper** support of herself before making such distributions.
9 Dale has breached the fiduciary duties she owes to Leslie and all other vested remainder
10 beneficiaries of the Marital Deduction Trust by improperly exercising her discretionary
11 authority to distribute principal to herself in violation of the trust terms and applicable
12 fiduciary law and further refusing requests for supporting information. On information and
13 belief, Leslie alleges that the distributions Dale made in her capacity as Trustee to herself
14 in her capacity as a beneficiary, were (1) far in excess of the "standard of living Dale is
15 accustomed to from her marriage to William Raggio" referenced in Dale's Petition for
16 Approval of Accounting, p. 2, in 17-18, and therefore are outside the amount "necessary"
17 for her "proper" support, and (2) are an attempt to unreasonably and improperly drain the
18 resources of the Marital Deduction Trust to effectuate a disinheritance of the natural
19 children of William J. Raggio ("Bill") in direct contradiction to the intent of the Grantor, Bill.
20 The ultimate result of Dale's actions, if allowed to continue unchecked, will result in the
21 disinheritance of the natural children of Bill.

22 NRS 163.115 provides various remedies for a breach of trust by a trustee.
23 Specifically, this statute provides as follows:

24 **Breach of trust by trustee: Maintenance of proceeding; permissible**
25 **purposes for maintenance of proceeding; nonexclusivity of**
26 **remedies; method of commencing proceeding.**

1. If a trustee commits or threatens to commit a breach of trust, a beneficiary or co-trustee of the trust may maintain a proceeding for any of the following purposes that is appropriate:

- 1 (a) To compel the trustee to perform his or her duties.
2 (b) To enjoin the trustee from committing the breach of trust.
3 (c) To compel the trustee to redress the breach of trust by payment
4 of money or otherwise.
5 (d) To appoint a receiver or temporary trustee to take possession of
6 the trust property and administer the trust.
7 (e) To remove the trustee.
8 (f) To set aside acts of the trustee.
9 (g) To reduce or deny compensation of the trustee.
10 (h) To impose an equitable lien or a constructive trust on trust
11 property.
12 (i) To trace trust property that has been wrongfully disposed of and
13 recover the property or its proceeds.

14 Given Dale's blatant disregard for the duties she owes to the remainder
15 beneficiaries as evidenced by her recent Accounting, Leslie brings this Objection in order
16 to prevent further damage to the intent of the Grantor and the interests of the remainder
17 beneficiaries.

18 II. BACKGROUND INFORMATION RELATED TO THE GRANTOR'S
19 FAMILY AND TRUSTS HEREIN.

20 Bill was married to his first wife, Dorothy B. Raggio ("Dorothy") for forty-nine and
21 one-half (49½) years. They had three children, daughter Leslie, daughter Tracy L. Chew
22 ("Tracy") and son Mark Raggio ("Mark"). Mark predeceased Bill and Dorothy without
23 leaving issue. During Dorothy's and Bill's joint lifetimes they created The Bill and Dorothy
24 Raggio Trust. When Dorothy died in 1998, the Bill and Dorothy Raggio Trust provided for
25 the creation of two sub-trusts – a revocable Survivor's Trust ("Bill's Survivor's Trust") and
26 an irrevocable Credit Shelter Trust ("Dorothy's Credit Shelter Trust").

1 The Bill and Dorothy Raggio Trust provided that upon Dorothy's death, Bill was to
2 serve as the Trustee of both Bill's Survivor's Trust and Dorothy's Credit Shelter Trust.
3 Thereafter, the terms of The Bill and Dorothy Raggio Trust provided that Leslie was to
4 serve as the successor Trustee of both Trusts when Bill was unable to so serve. The
5 dispositive provisions of both Trusts provided for Bill's benefit for life, and upon Bill's death,
6 Leslie and Tracy were each to receive distribution, free of trust, of one-half (1/2) of the
7 assets. Dorothy's Credit Shelter Trust was irrevocable, and the above provisions remained
8 unchanged during Bill's lifetime as to that trust which is not the subject of this Objection.
9

10 Bill's Survivor's Trust was revocable, and Bill amended the same from time to time.
11 Bill married his second wife, Dale, then age 65 in April, 2004. Bill was then age 78. The
12 last amendment to Bill's Survivor's Trust provided that upon Bill's death, Bill's Survivor's
13 Trust would be distributed with cash gifts of \$50,000 to each of his six grandchildren, and
14 with the residue of Bill's Survivor's Trust was to be divided into separate shares with one-
15 third (1/3) to each of his wife, Dale, his daughter, Leslie, and his daughter, Tracy.

16 Prior to his death, Bill established a new trust known as The William J. Raggio
17 Family Trust into which were decanted the assets of Bill's Survivor's Trust. Dale was NOT
18 a co-settlor or co-grantor of The William J. Raggio Family Trust as it was funded solely
19 from Bill's separate property (from Bill's Survivor's Trust). Bill named himself as Trustee
20 of The William J. Raggio Family Trust and named his new wife, Dale as the successor
21 Trustee, followed by Leslie and Tracy, in that order.
22

23 Bill and Dale were married for just seven and one-half (7½) years when Bill died on
24 February 24, 2012, during a trip to Australia. On Bill's death, the terms of The William J.
25 Raggio Family Trust provided for specific gifts of \$50,000 to each of Bill's six grandchildren.
26 In addition, The William J. Raggio Family Trust, and related Estate of William J. Raggio,

1 resulted in the distribution, free of trust, to Dale of tangible personal property, substantial
2 cash, significant life insurance proceeds, retirement plan accounts, and the residence of
3 Bill, located at 1855 Webster Way.
4

5 The residue of The William J. Raggio Family Trust was thereafter divided into the
6 Marital Deduction Trust and a Credit Shelter Trust ("Bill's Credit Shelter Trust"). It is these
7 trusts that are now at issue herein. The Marital Deduction Trust provides for a "QTIP trust,"
8 so there are mandatory distributions of net income payable to Dale for her life. In addition
9 to the net income distributions under the Marital Deduction Trust, Dale is also to receive
10 "as much of the principal of the trust ["QTIP trust"] as the Trustee, in the Trustee's
11 discretion, shall deem **necessary** for the **proper support**, care, and maintenance of the
12 [sic] DALE CHECKET-RAGGIO." Upon the death of Dale (Dale is age 75 and her
13 actuarial life expectancy per IRS tables is 11.12 years), the remaining balance of the
14 Marital Deduction Trust is to be added to Dorothy's Credit Shelter Trust (of which one-half
15 (1/2) will be distributed to each of Leslie and Tracy). Accordingly, Leslie and Tracy are to
16 ultimately receive inheritance from their father from the Marital Deduction Trust upon Dale's
17 death.
18

19 With respect to Bill's Credit Shelter Trust, during Dale's lifetime, Dale is entitled to
20 "as much of the net income and principal of [Bill's] Credit Shelter Trust " as the Trustee,
21 in the Trustee's discretion, shall deem **necessary** for the **proper support**, care, and
22 maintenance of DALE CHECKET-RAGGIO." On Dale's death, Bill's Credit Shelter Trust
23 is to be divided into equal shares among Dale's then living grandchildren and their issue
24 (who live in Australia and, on information and belief, had little to no relationship with Bill).
25 Thus, none of Bill's Credit Shelter Trust is to be distributed to Leslie and Tracy, neither of
26 whom has a cordial or blood relationship with Dale. While Leslie and Tracy are to receive
the entire remainder of the Marital Deduction Trust on Dale's death, that bequest will

1 ultimately be meaningless if Dale has since drained the Marital Deduction Trust.

2 On information and belief, Leslie believes that very little, if any, of the net income
3 or principal of Bill's Credit Shelter Trust has been distributed to Dale during the Accounting
4 Period even though the support distribution standard for Bill's Credit Shelter Trust is
5 identical to the Marital Deduction Trust. In other words, on information and belief, Leslie
6 asserts that Dale is electing for her own benefit to draw down principal from the Marital
7 Deduction Trust instead of using other assets, despite access. Since no part of Bill's
8 Credit Shelter Trust will be distributed to Leslie and Tracy, Dale is directly favoring and
9 benefitting the remainder beneficiaries of Bill's Credit Shelter Trust (who are Dale's blood
10 relatives) to the detriment of the remainder beneficiaries of the Marital Deduction Trust
11 (who are Bill's blood relatives). Consequently, if Dale uses solely the Marital Deduction
12 Trust for her "proper support, maintenance, and care", there will be no remainder of the
13 Marital Deduction Trust left for Leslie and Tracy. The entire Marital Deduction Trust will be
14 depleted under the current rate of expenditure during Dale's lifetime. Dale as "trustee" and
15 as lifetime beneficiary of the Marital Deduction Trust will totally and effectively disinherit
16 Bill's daughters, just as if Bill had left the entire Marital Deduction Trust outright to Dale
17 which he did not do.

18
19 The Form 706 United States Federal Estate Tax Return filed for Bill's estate reports
20 that Bill's Credit Shelter Trust was funded with \$3,940,964. In truth, Bill's Credit Shelter
21 Trust was funded with much more than this amount because of the appreciation in the
22 value of The William J. Raggio Family Trust assets between Bill's death, and the date on
23 which the Marital Deduction Trust and Bill's Credit Shelter Trust were actually funded. The
24 timing in the funding of the two trusts, which was completed by Dale as Trustee, had the
25 unfortunate result of further prejudicing the remainder beneficiaries of the Marital
26 Deduction Trust, which was funded with the lesser \$2,555,471 amount based on the

1 funding formula set forth in The William J. Raggio Family Trust Agreement since the
2 Marital Deduction Trust did not share in the appreciation during the funding period. The
3 timing of such funding did however directly benefit Bill's Credit Shelter Trust, all of which
4 passes on Dale's death to Dale's blood relatives.

5
6 Based on the design of Bill's estate plan, not only was Dale a lifetime beneficiary of
7 both the Marital Deduction Trust and Bill's Credit Shelter Trust, but Dale also received
8 valuable assets and property free of trust which were reported on Bill's 706 to exceed
9 \$1,800,000 consisting of cash, personal property, insurance and retirement benefits. See
10 Exhibit 1.¹ Therefore, it is apparent that Dale inherited \$1,800,000 of assets, outright and
11 free of trust, which she has access to utilize, in addition to the mandatory income
12 distributions from the Marital Deduction Trust. She also has the right to receive income
13 from Bill's Credit Shelter Trust, and further ability to receive additional distributions of
14 principal that the Trustee determine "necessary" for her "proper support" from both the
15 Marital Deduction Trust and Bill's Credit Shelter Trust.

16 As reflected in the Accounting, the Marital Deduction Trust earned approximately
17 \$48,000 in net income, which was distributed to Dale, along with an additional \$200,000
18 of principal that Dale deemed "necessary" for her "proper support." At this rate (and
19 assuming a 2% dividend stream similar to the S&P 500), the Marital Deduction Trust will
20 be completely depleted by Dale in approximately ten (10) years and prior to the anticipated
21 life expectancy of Dale (11.12 years). Meanwhile, Bill's Credit Shelter Trust which has
22 almost double the value of the assets from the Marital Deduction Trust, is believed to have
23 been relatively untouched by Dale despite that trust's ability to generate income for Dale's
24

25
1

26 Exhibit 1 attached hereto and incorporated herein, shows a schematic diagram of how Bill's estate was
distributed to Dale and the minimum amounts that were to be funded into the Marital Deduction Trust and
Bill's Credit Shelter Trust.

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

10 III. LEGAL ARGUMENT IN SUPPORT OF OBJECTIONS.

11 It is undisputed that a trustee owes fiduciary duties to the remainder beneficiaries
12 of a trust. Included among the many duties a trustee owes to beneficiaries are the duties
13 of good faith, impartiality and loyalty. The duty of impartiality means the trustee must show
14 impartiality in balancing the interest of lifetime beneficiaries (the interests of Dale) with
15 those of remainder beneficiaries (the interest of Leslie and Tracy). The duty of loyalty
16 prohibits a trustee from placing her own best interests ahead of the interests of the trust's
17 beneficiaries. Dale, as Trustee, has breached her fiduciary duties by making excessive
18 support distributions from the Marital Deduction Trust to herself, as beneficiary. On
19 information and belief, and which further discovery is expected to evidence, these
20 excessive distributions to Dale are well in excess of the standard of living which she
21 enjoyed during her seven and one-half (7 1/2) year marriage to Bill. Aside from that, on
22 information and belief, Dale has not made distributions to herself from the assets of Bill's
23 Credit Shelter Trust even though there is more than \$4,000,000 in that Trust which may
24 be used to provide for her support. Moreover, on Bill's February 24, 2012 death, Dale
25 received bequests free of trust from Bill totaling \$1,800,000, which included cash, a
26 personal residence, life insurance proceeds, and substantial retirement plan benefits of

1 which Dale has the ability to access for her support. Dale is ignoring her other resources
2 while claiming that the distributions to herself from the Marital Deduction Trust are
3 "necessary" for her "proper support." In other words, she has manufactured her own
4 necessity and is electing to satisfy that self-determined necessity from principal
5 distributions from the Marital Deduction Trust.

6
7 Dale's counsel cites NRS 163.4175 to contend that Dale, as Trustee, was not
8 required to consider her other sources of income or resources before making support
9 distributions to herself, as the income beneficiary. NRS 163.4175 provides that: "[e]xcept
10 **as otherwise provided in the trust instrument**, the trustee is not required to consider a
11 beneficiary's assets or resources in determining whether to make a distribution of trust
12 assets." NRS 163.4175 (Emphasis added). In point of fact, The William J. Raggio Family
13 Trust Agreement actually does specifically address this issue and therefore Dale may not
14 ignore her other resources. With respect to both Bill's Credit Shelter Trust and the Marital
15 Deduction Trust, the trustee is only permitted to distribute principal assets to Dale if the
16 distribution is "necessary" for Dale's "proper support." Specifically, Dale, as beneficiary, is
17 entitled to distributions of principal of both trusts "as the Trustee, in the Trustee's
18 discretion, shall deem **necessary** for the proper **support**, care, and maintenance of DALE
19 CHECKET-RAGGIO."

20
21 Inclusion of the word "necessary" essentially means what is needed, not whatever
22 the trustee who also is the beneficiary decides she wants it to mean. "Wants" are not the
23 same as "needs". Merriam-Webster's dictionary defines necessary as "absolutely needed."
24 It is impossible for Dale, as Trustee, to determine what is "absolutely needed" by Dale, as
25 beneficiary, without considering the other assets or resources available to her and her
26 obligations in her role as Trustee to all beneficiaries. Indeed, in most situations, the trustee
is circumspect in determining what is "necessary" to satisfy a beneficiary's support interest.

1 Most trustees carefully consider and weigh the rights of the remainder beneficiaries, to
2 whom they owe fiduciary duties, prior to determining whether a principal distribution is
3 "necessary" for a lifetime beneficiary. Here, Dale is on both sides of the decision,
4 completely ignoring her fiduciary duties as Trustee to the remainder beneficiaries with the
5 apparent belief that she can distribute any amount she desires to herself as beneficiary
6 regardless of whether it is "necessary."
7

8 NRS 163.4175 does **not** abrogate the fiduciary duties a trustee owes to remainder
9 beneficiaries. To the contrary, the trustee still "has a duty to act in a reasonable manner
10 in attempting to ascertain the beneficiary's **needs** and, under the usual rule of construction,
11 other resources that may be appropriately and reasonably available for purposes relevant
12 to the discretionary power." *Restatement (Third) of Trust* § 50, Cmt. (e)(1) (Emphasis
13 added). Moreover, "a Trustee may have discretion, and perhaps a duty, to take account
14 of the principal of the beneficiary's personal estate, depending on the terms and purposes
15 of the discretionary power and other purposes of the discretionary power and other
16 purposes of the trust." *Restatement (Third) of Trust* § 50, Cmt. (e)(2). "The settlors
17 relationships and objectives with respect to both the beneficiary in question and the trust's
18 other current and remainder beneficiaries are of particular relevance." *Id.*
19

20 A fundamental duty of a trustee is impartiality. A trustee cannot be considered to
21 have acted impartially when it is abundantly clear that she is preferring herself at the
22 expense of the remainder beneficiaries to whom she as trustee clearly owes fiduciary
23 duties. A trustee "is always subject to accountability to remaindermen where discretion is
24 improperly, arbitrarily or capriciously exercised." *Mesler v. Holly*, 318 So.2d 530, 533 (Fla.
25 Ct. App. 1975). "Clearly, a trustee who is also a beneficiary and who is given a power, or
26 discretion, to invade the trust principal has a fiduciary obligation to the remaindermen to
keep her demands within reasonable limits." *Id.* The *Mesler* court also noted that correcting

1 a trustee's abuse of discretion is particularly appropriate if the trustee is distributing
2 principal to herself as a lifetime beneficiary. *Id.*

3
4 In particular, a trustee has a fiduciary duty to act impartially as to two or more trusts
5 in allocating, investing, managing, and distributing the trust property. *See e.g., Epworth*
6 *Orphanage v. Long*, 36 S.E.2d 37, 44 (S.C. 1945). "The law does not recognize the right
7 of a trustee to escape or minimize [her] obligation by putting [herself] in a position where
8 [her] obligation to one trust conflicts with [her] obligation to another trust or with [her]
9 personal interests." *Id.* A trustee of two trusts who enters into a transaction involving
10 dealing between the two trusts has the burden, where the transaction is challenged as
11 unfair and results in a loss to one of the trusts, of showing that the transaction was in good
12 faith and in the exercise of sound discretion and prudence. *See, e.g., First Nat. Bank v.*
13 *Basham*, 238 Ala. 500, 509, 191 So. 873, 880 (1939).

14 There is also a general obligation for fiduciaries to disclose all relevant facts to
15 beneficiaries, particularly when the fiduciary is engaged in self-dealing to the potential
16 detriment of those beneficiaries. *See e.g., Lind v. Webber*, 36 Nev. 623, 134 P. 461, 465
17 (1913). "[W]hen a fiduciary, in furtherance of its individual interests, deals with the
18 beneficiary of the duty in a matter relating to the fiduciary relationship, the fiduciary is
19 strictly obligated to make 'full disclosure' of all material facts." *Blue Chip Emerald LLC v.*
20 *Allied Partners Inc.*, 299 A.D.2d 278, 279, 750 N.Y.S.2d 291 (2002). Moreover, "if a trustee
21 does not make a full disclosure of material facts to a beneficiary, that conduct is a breach
22 of the trustee's duty of loyalty . . . The law concludes this breach is intentional." *Zastrow*
23 *v. Journal Communications, Inc.*, 718 N.W.2d 51, 61 (Wis. 2006); *see also Huie v.*
24 *DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996). Even if a fiduciary's actions are legal, he is
25 in breach when his legal actions are for his own benefit and not for the beneficiary. *Flippo*
26 *v. CSC Associates III, L.L.C.*, 262 Va. 48, 57, 547 S.E.2d 216, 222 (Va. 2001).

1 A trustee owes a duty of loyalty to beneficiaries and a trustee may not place his own
2 best interests ahead of the interests of the trust's beneficiaries, even if the trustee's actions
3 are vaguely authorized by the trust instrument. "Even a power expressly conferred by the
4 trust instrument, or by statute, is subject to the fundamental duties of prudence, loyalty,
5 and impartiality." *Restatement (Third) of Trusts* § 70, Cmt. (a). Even if the act in question
6 was one the trustee had the power to perform, the trustee must exercise that power in a
7 manner consistent with the applicable standards of fiduciary conduct. *Id.* at Cmt. (a)(1). "A
8 trustee, in deciding whether and how to exercise the powers of the trusteeship, even those
9 expressly authorized by trust provision or statute, has a duty to the beneficiaries to act in
10 good faith, with prudence, and in accordance with the trustee's other fiduciary duties." *Id.*
11 at Cmt. (d). A fiduciary breaches his duty of loyalty when he fails to promote and protect
12 the interests of the beneficiary over anyone else. *See e.g., Lind v. Webber*, 36 Nev. 623,
13 134 P. 461, 467 (1913); *see also, Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137
14 P.3d 1171, 1178 (2006). A trustee, who is also a beneficiary, breaches her fiduciary duties
15 to other beneficiaries where she makes unreasonably large distributions to herself at the
16 expense of the trust's other beneficiaries. *See e.g., Restatement (Third) of Trusts* § 50.

17
18
19 Dale's legal counsel has cited the Restatement (Third) of Trusts as authority in
20 support of Dale's excessive distributions. Actually, the Restatement (Third) of Trusts
21 condemns Dale's exercise of discretion as reported in the Accounting and further provides
22 guidance which contradicts the propriety of Dale's actions. In particular, the Restatement
23 states as follows:

24
25 **"[W]here a beneficiary is entitled to payments from another trust**
26 **created by the same settlor (e.g., nonmarital and marital deduction**
trusts for a surviving spouse), or as a part of coordinated estate

1 **planning with another (such as the settlor's spouse), required**
2 **distributions from the other trust—and the purposes of both trusts—are**
3 **to be taken into account by the trustee in deciding whether, in what**
4 **amounts, and from which trust(s) discretionary payments are to be**
5 **made.”** *Restatement (Third) of Trusts* § 50, Cmt. (e) (Emphasis added).

6 Those are precisely our facts in this case. The Marital Deduction Trust is the
7 “marital deduction trust” in the comment while Bill's Credit Shelter Trust is the “nonmarital
8 trust.” Both of the trusts, as well as Dale's outright testamentary gifts from Bill of over
9 \$1,800,000, are all part of a coordinated estate plan with the same settlor, i.e., Bill. Dale
10 has an identical distribution standard for both the Marital Deduction Trust and Bill's Credit
11 Shelter Trust. Bill's Credit Shelter Trust is almost twice the size and value of the Marital
12 Deduction Trust and the testamentary gifts Dale received from Bill are nearly the same size
13 as the Marital Deduction Trust. Yet, on information and belief, Dale's distributions from the
14 Marital Deduction Trust dwarf any distributions Dale has made to herself from Bill's Credit
15 Shelter Trust, if any. The Petitioner respectfully submits that this Court must hold Dale
16 to the standards set forth in the Restatement (Third) of Trusts. If this Court does not put
17 a stop to Dale's excessive support distributions immediately, Dale, as Trustee and life
18 beneficiary, will continue unbridled and the end result will be to rob Leslie and Tracy from
19 what their father Bill intended for them to receive, specifically a remainder interest in a trust
20 at Dale's death.

21
22 NRS 30.060 provides that any person interested in the administration of a trust may
23 have a declaration of rights to direct the trustee to do or abstain from doing any particular
24 act in their fiduciary capacity or to determine any questions arising in the administration of
25 the trust. Leslie is an interested person under NRS 30.060 as a remainder beneficiary of
26

1 the Marital Deduction Trust authorized to bring this Objection and to seek the relief
2 requested herein.

3
4 In addition to the above acts of breach, Dale's stonewalling and refusal to disclose
5 to Leslie material facts relevant to support the actions reported in the Accounting violates
6 Dale's fiduciary duty of loyalty to Leslie, particularly since Dale is engaged in self-dealing
7 by making distributions to herself to the potential detriment of Leslie under the guise of
8 "necessary" support needs. In summary, to date, despite reasonable attempts and
9 requests, Dale has refused to provide information to Leslie related to the disbursements
10 she has received from other sources, her methodology of determining the amount of her
11 "need," and how she determined that the need required a principal disbursement of
12 \$200,000 from the Marital Deduction Trust in light of the totality of assets available to Dale,
13 as demonstrated by the values shown on Bill's IRS Form 706 and Exhibit 1.

14
15 IV. RELIEF REQUESTED

16 Based upon the foregoing, Leslie requests that the Court take immediate action to
17 prevent Dale's ongoing breaches to prevent disinheritance of Bill's children, and to allow
18 the parties broad discovery to determine the amount of Dale's proper support needs, her
19 "accustomed standard of living" when Bill was alive, the other resources available to Dale
20 including Bill's Credit Shelter Trust and what amounts, if any, have been distributed from
21 that trust to Dale for her "proper support." If the facts bear out what Leslie has alleged
22 herein on information and belief, then Leslie requests this Court to enter the following
23 Orders:

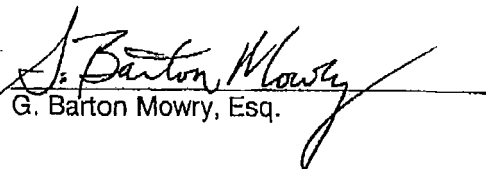
- 24
25 A. Deny Dale's Petition for Approval of Accounting.
26 B. Remove Dale as Trustee of the Marital Deduction Trust pursuant to NRS
163.115.

- 1 C. Surcharge Dale, Trustee, for breaching her fiduciary obligations and duties
2 owed to Leslie and Tracy.
3
4 D. Enjoin Dale, as Trustee, from committing any further breaches of trust.
5
6 E. Compel Dale, as Trustee, to repatriate excess distributions she made to
7 herself from the principal of the Marital Deduction Trust.
8
9 F. Appoint a temporary Trustee to take possession of the assets of the Marital
10 Deduction Trust and administer the trust properly.
11
12 G. Trace trust property that has been wrongfully distributed and recover such
13 property or its proceeds.
14
15 H. Dale be required to pay out of her personal funds the attorneys' fees, costs
16 and expenses that Leslie and Tracy have incurred in protecting their rights
17 as remainder beneficiaries of the Marital Deduction Trust.
18
19 I. Such other and further relief as the Court deems just and proper in these
20 circumstances.
21

22 **AFFIRMATION**
23 **Pursuant to NRS 239B.030**

24 The undersigned does hereby affirm that the preceding document does not contain
25 the personal information of any person.
26

Dated this 22 day of May, 2015.


G. Barton Mowry, Esq.

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VERIFICATION

Leslie Raggio Righetti hereby declares the following:

1. She is the objector and Petitioner herein;
2. She has read the foregoing Objection to Petition for Approval of Accounting, Counter Petition for Removal and Surcharge of Trustee ("Objection") and knows the contents thereof; and
3. She declares under penalties of perjury that the statements made in the Objection are true of her own knowledge, except for those matters stated on information and belief, and as to those matters she believes them to be true.

Dated this 22 day of May, 2015.


Leslie Raggio Righetti

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MAUPIN, COX & LeGOY and on this 22 day of May, 2015, I served the foregoing, Objection to Petition for Approval of Accounting, Counter Petition for Removal and Surcharge of Trustee on all parties to this action by:

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

 Facsimile (FAX)

 X Eflex Filing System

 Messenger Service

Addressed as follows:

Tim Riley, Esq.
Soraya Aguirre, Esq.
Holland & Hart
5441 Kietzke Lane
Reno, NV 89511

John Echeverria, Esq.
Echeverria Law Office
9432 Double R. Blvd.
Reno, NV 89511

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

Dated this 22 day of May, 2015


An Employee of Maupin, Cox & LeGoy

LIST OF EXHIBITS

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1. Schematic of Bill Raggio's assets distributed to Dale Checket-Raggio and allocated to trusts

1 page

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Jacqueline Bryant
Clerk of the Court
Transaction # 4966404 : mcholino

EXHIBIT 1

EXHIBIT 1

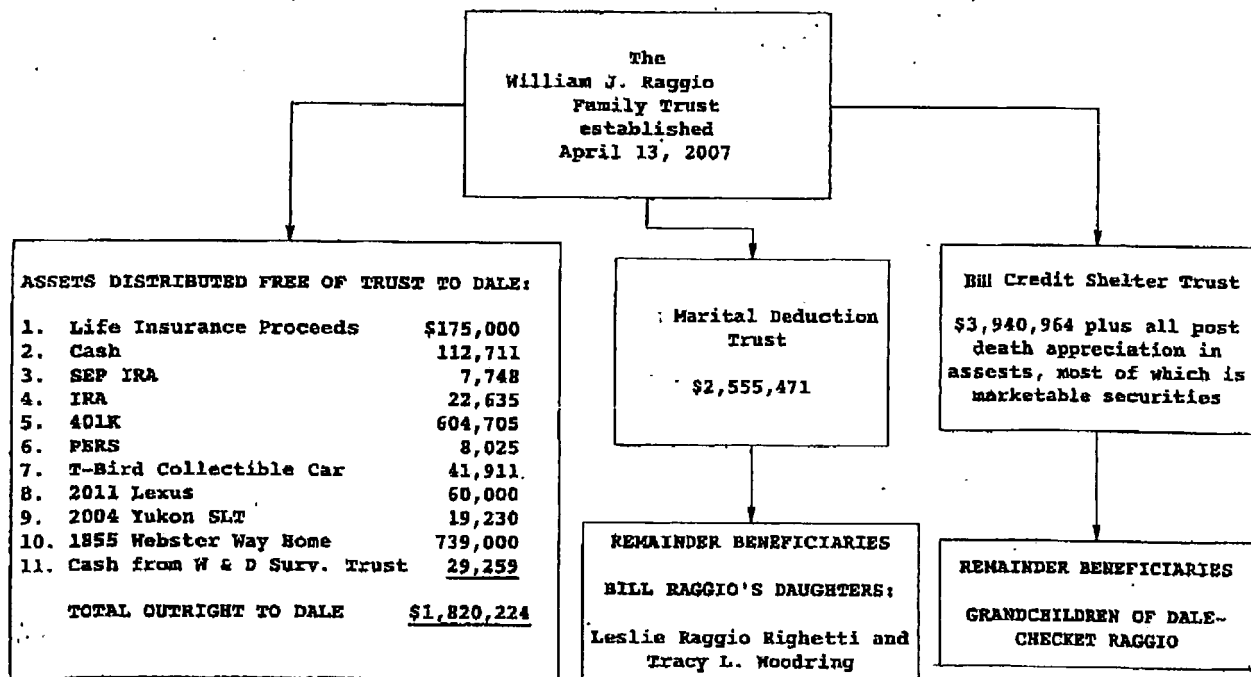


EXHIBIT "8"

First Amended Complaint, dated
July 2, 2015

EXHIBIT "8"

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

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

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,

CASE NO.: CV15-01202

DEPT. NO.: 15

Exempt from Arbitration as request
exceeds \$50,000.00

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;

Defendants.

FIRST AMENDED COMPLAINT

1 Plaintiffs Leslie Righetti and Tracy Chew, in their capacities as Co-Trustees of the Credit
2 Shelter portion of the William J. and Dorothy B. Raggio Trust under the trust agreement dated
3 January 27, 1998, as decanted subsequently, and in their capacities as Vested Remaindermen of
4 the Marital Deduction Trust portion of The William J. Raggio Family Trust created under the
5 trust agreement dated April 13, 2007 respectfully Complain and allege as follows:

6
7 **FIRST CLAIM FOR RELIEF**
8 **(Breach of Trust)**

9 1. At all times relevant hereto, Plaintiffs Leslie Raggio Righetti and Tracy Chew
10 were residents of Washoe County, Nevada.

11 2. At all times relevant hereto, Defendant Dale Checkett Raggio was a resident of
12 Washoe County, Nevada.

13 3. At all times relevant hereto, all assets within the Marital Deduction portion of The
14 William J. Raggio Family Trust were domiciled within and managed from Washoe County,
15 Nevada.

16 4. At all times relevant hereto, the assets of The William J. Raggio and Dorothy B.
17 Raggio Trust under the agreement dated January 27, 1998 were domiciled within and managed
18 from Washoe County, Nevada.

19 5. Plaintiffs are ignorant of the true names and capacities of those Defendants named
20 in this Complaint as Does II-X, inclusive, and therefore sues those Defendants by such fictitious
21 name. Plaintiffs will amend their Complaint to allege the true names and capacities of these
22 Defendants when they are ascertained. Plaintiffs are informed and believe, and thereon allege,
23 that each of the fictitiously named Defendants were vested in assets belonging to the Marital
24 Deduction portion of the William J. Raggio Family Trust, managed said assets, were transferred
25 said assets, spent said assets, received the benefit of said assets, and/or acted as a trustee or some
26 type of fiduciary over said assets. As such, these fictitious defendants are in some manner
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 38. A constructive trust should be imposed upon the personal assets of Dale Checkett
5 Raggio in an amount equal to the value of the assets she received from the William J. Raggio
6 Family Trust but were spent by her in a manner inconsistent with the terms of said Trust.
7

8 WHEREFORE, Plaintiffs pray as follows:

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

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

13 C. The imposition of a Constructive Trust over the personal assets acquired by Dale
14 Checkett Raggio by way of improper uses or expenditures of money received from the Marital
15 Deduction portion of the William J. Raggio Family Trust.
16

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

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

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

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

25 ///

26 ///

27 ///

28 ///

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

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

5
6 ROSENAUER & WALLACE

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

12 MAUPIN, COX & LEGOY

13
14 By G. Barton Mowry
15 G. Barton Mowry, Esq.
16 Maupin, Cox & LeGoy
17 P.O. Box 30000
18 Reno, NV 89520
19 (775) 827-2000
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EXHIBIT "9"

Petition Concerning Affairs of Trust,
dated July 2, 2015

EXHIBIT "9"

Code: \$1425
Michael A. Rosenauer, Esq.
State Bar No. 2782
F. McClure Wallace, Esq.
State Bar No. 10264
Rosenauer & Wallace
510 W. Plumb Lane, Suite A
Reno, Nevada 89509
(775) 324-3303

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

Counsel for Leslie Righetti and
Tracy Chew, Co-Trustees of the
William J. 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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

LESLIE RAGGIO RIGHETTI
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,

CASE NO.: PR13-00624

DEPT. NO.: PR

Petitioners,

vs.

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

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

1 and managed from Washoe County, Nevada.

2 e. Petitioners are ignorant of the true names and capacities of those Respondents
3 named in this Petition as Does I-X, inclusive, and therefore sues those
4 Respondents by such fictitious name. Petitioners will amend their Petition to
5 allege the true names and capacities of these Respondents when they are
6 ascertained. Petitioners are informed and believe, and thereon allege, that each of
7 the fictitiously named Respondents were vested in assets belonging to the Marital
8 Deduction portion of the William J. Raggio Family Trust, managed said assets,
9 were transferred said assets, spent said assets, received the benefit of said assets,
10 and/or acted as a trustee or some type of fiduciary over said assets. As such, these
11 fictitious Respondents are in some manner responsible for the occurrences alleged
12 in this Petition and that Petitioners' damages, as alleged, were proximately caused
13 by the conduct of the fictitiously named Respondents. More particularly, these
14 fictitiously named Respondents spent trust assets, received value or chose to
15 spend money from the trust without consideration of the Credit Shelter portion of
16 the William J. Raggio Family Trust without regard to the provisions of the trust
17 agreement.. As they owed a duty to Petitioners to act within the provisions of the
18 trust agreement, and failed to do so, they are in some manner liable for
19 Petitioners' damages.

22 f. William J. Raggio (hereinafter "Bill") was married to Dorothy B. Raggio
23 (hereinafter "Dorothy") for 49½ years.

25 g. During Bill's marriage to Dorothy, they executed and funded the William and
26 Dorothy Raggio Family Trust.

27 h. The William and Dorothy Raggio Family Trust named Bill to serve as Trustee
28 followed by their daughter Plaintiff Leslie Raggio Righetti.

- 1 i. Dorothy died in 1998.
- 2 j. Upon Dorothy's demise, The William and Dorothy Raggio Family Trust divided
- 3 into The William and Dorothy Raggio Survivor's Trust and the William and
- 4 Dorothy Raggio Credit Shelter Trust.
- 5 k. Leslie Raggio Righetti and Tracy Chew are the now vested beneficiaries as well
- 6 the Co-Trustees of the William and Dorothy Raggio Credit Shelter Trust (Leslie
- 7 Righetti recently "decanted" the trust pursuant to NRS 163.556 to name her sister
- 8 Petitioner Tracy Chew as a Co-Trustee and to implement a succession plan for
- 9 future trustees).
- 10
- 11 l. Bill served as Trustee of both The William and Dorothy Raggio Survivor's Trust
- 12 and the William and Dorothy Raggio Credit Shelter Trust until his demise.
- 13
- 14 m. Bill married Dale Checkett Raggio in April, 2004.
- 15
- 16 n. From the assets of the Survivor's portion of the William and Dorothy Raggio
- 17 Family Trust, Bill created and funded the William J. Raggio Family Trust under
- 18 the trust agreement dated April 13, 2007.
- 19
- 20 o. Dale Checkett Raggio contributed no assets to the William J. Raggio Family
- 21 Trust.
- 22
- 23 p. During his lifetime, Bill was the sole Trustee of the William J. Raggio Family
- 24 Trust.
- 25
- 26 q. The terms of the William J. Raggio Family Trust stated that upon Bill's demise,
- 27 Dale Checkett Raggio would serve as Trustee until her demise or incapacity.
- 28
- 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

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

- 2 u. Upon the demise of Dale Checkett Raggio, the balance then remaining of the
3 Marital Deduction portion of the William J. Raggio Family Trust pours into the
4 Credit Shelter portion of the William and Dorothy Raggio Family Trust.
- 5 v. Upon Bill's demise, the interests of the Credit Shelter portion of the William and
6 Dorothy Raggio Family Trust vested indefeasibly in Petitioners Leslie Righetti
7 and Tracy Chew as the Co-Trustees and sole Beneficiaries of such Credit Shelter
8 portion upon the death of William J. Raggio.
- 9 w. The Marital Deduction portion of the William J. Raggio Family Trust provides
10 that Dale Checkett Raggio is entitled to mandatory distributions of the net income
11 and discretionary distributions of principal as the Trustee, in the Trustee's
12 discretion, deems "necessary" for the proper support, care and maintenance of
13 Dale Checkett Raggio.
- 14 x. The Credit Shelter portion of the William J. Raggio Family Trust provides that
15 Dale Checkett Raggio is entitled to discretionary distributions of net income and
16 principal as the Trustee, in the Trustee's discretion, shall deem "necessary" for the
17 proper support, care, and maintenance of Dale Checkett Raggio.
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21 **FIRST CLAIM FOR RELIEF**
22 **(Breach of Trust/Fiduciary Duty Compelling Redress and Reviewing the Acts of the**
23 **Trustee)**

24 1. In the first year the Marital Deduction portion of the William J. Raggio Family
25 Trust existed, the net income earned was approximately Forty-Eight Thousand Dollars
26 (\$48,000.00).
27

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

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

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

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

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

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

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

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

23 **(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
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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

14 18. Upon Bill's demise, Dale Checkett Raggio became the Successor Trustee of the
15 William J. Raggio Family Trust.
16

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

20 20. Upon the division of the William J. Raggio Family Trust, Dale Checkett Raggio
21 became the Successor Trustee of the Marital Deduction portion and Credit Shelter portion of the
22 William J. Raggio Family Trust.
23

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

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

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

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

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

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 Marital Deduction portion of the William J. Raggio Family
25 Trust, Dale Checkett Raggio, distributed funds to herself as beneficiary knowing that the
26 distributed funds would not be used in a manner consistent with the Trust.
27

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

1 Beneficiary utilized the funds distributed from the Trust.

2 WHEREFORE, Petitioners pray as follows:

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

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

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

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

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

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

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

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

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///

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

DATED this 2nd day of July, 2015.

ROSENAUER & WALLACE

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

MAURIN, COX & LEGOY

By G. Barton Mowry
G. Barton Mowry, Esq.
Maupin, Cox & LeGoy
P.O. Box 30000
Reno, NV 89520
(775) 827-2000

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NRS 153.031 PETITION CONCERNING AFFAIRS OF TRUST

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.

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

2015.



REBECCA SOUIRE

EXHIBIT "10"

FILED
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Clerk of the Court
Transaction # 6316052 : csulezic

Responses to Interrogatories

EXHIBIT "10"

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

1 **DISC**

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

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

15 *Attorneys for Dale Raggio*

16
17 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
18
19 IN AND FOR THE COUNTY OF WASHOE

20 In the Matter of

21 THE WILLIAM J. RAGGIO FAMILY
22 TRUST

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

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

4 **Answer to Interrogatory No. 3:** OBJECTION. This request is overly broad, unduly
5 burdensome and seeks disclosure of confidential, private and sensitive information. This request
6 is also not 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. Pursuant to the Court's March 4, 2015,
9 Confirming Order confirming the *Recommendation for Order: Denying Petition to Interplead*
10 *Inter Vivos Trust, and Denying Request for Review of Beneficiary's Request for an Accounting*
11 *and Documents*, which order the Remainder Beneficiaries have not appealed and which order has
12 not been reviewed or set aside by the Court, NRS 163.4175, and except as otherwise provided in
13 the trust instrument, the Trustee is not required to consider a beneficiary's assets or resources in
14 determining whether to make a distribution of trust assets.

15
16 **Interrogatory No. 5:** State with particularity the controls or methodology you utilize to
17 insure that any sums received from the Marital Deduction portion of the William J. Raggio
18 Family Trust are utilized consistently with the terms of the William J. Raggio Family Trust.

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

24
25 **Interrogatory No. 6:** State with particularity the controls or methodology you utilize to
26 insure that any sums received from the Credit Shelter portion of the William J. Raggio Family
27 Trust are utilized consistently with the terms of the William J. Raggio Family Trust.
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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.

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

4 **Answer to Interrogatory No. 8:** OBJECTION. This request calls for confidential, private
5 and sensitive information to which the Remainder Beneficiaries are not entitled.
6

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

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

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

26 ¹“To commence or defend at the expense of the Trust any litigation affecting the Trust or any property of the Trust
27 Estate deemed advisable by the Trustee.”

28 ²“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. 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.

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28 ³"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. 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.

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

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

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

11
12 **Interrogatory No. 19:** List the Season Tickets for such activities as sporting, cultural and
13 art events you and William J. Raggio purchased after January 1, 2007.

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

17
18 **Interrogatory No. 20:** List by vendor, vendor address and purchase price of the artwork
19 purchased by you and William J. Raggio after January 1, 2007.

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

26 ///

27 ///

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.

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.

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*

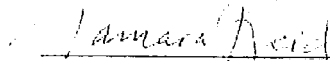
1 *Petition to Interplead Inter Vivos Trust, and Denying Request for Review of Beneficiary's*
2 *Request for an Accounting and Documents*, which order the Remainder Beneficiaries have not
3 appealed and which order has not been reviewed or set aside by the Court, NRS 163.4175, and
4 except as otherwise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

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

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

10 DATED this 21st day of June 2017.

11 HOLLAND & HART LLP

12 
13 Tamara Reid, Esq.

14 HOLLAND & HART LLP

15 5441 Kietzke Lane, Second Floor
16 Reno, Nevada 89511

17 John Echeverria, Esq.

18 Echeverria Law Office

19 9432 Double R Boulevard

20 Reno, NV 89521

21 *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.

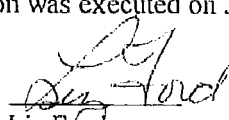
On June 21, 2017, I caused the foregoing **Defendant's Answers To Remainder Beneficiaries' First Set Of Interrogatories To Trustee Dale Checket Raggio** to be served by the following method(s):

☒ 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

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EXHIBIT "11"

Responses to Requests for Production

EXHIBIT "11"

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 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.

///

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

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

15
16 **Request for Production No. 8:** Please provide all Notices required by any Statute, Rule or
17 Regulation you have provided, sent or transmitted to beneficiaries, creditors or third parties of
18 the Credit Shelter portion and the Marital Deduction portion of the William J. Raggio Family
19 Trust.

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

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

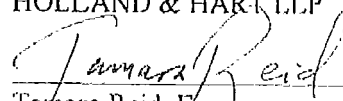
Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

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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.

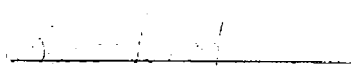
On June 21, 2017, I caused the foregoing **Defendant's Responses To Remainder Beneficiaries' First Set Of Requests For Production of Documents to Trustee Dale Checkett Raggio** to be served by the following method(s):

☒ 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 "12"

Supplemental Disclosures

EXHIBIT "12"

CODE: DISC
John Echeverria, Esq.
Nevada Bar No. 200
ECHEVERRIA LAW OFFICE
9432 Double R Boulevard
Reno, Nevada 89521
Telephone: (775) 786-4800

Tamara Reid, Esq.
Nevada Bar No. 9840
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511
Tel: (775) 327-3000
TReid@hollandhart.com

Attorneys for Dale Raggio

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

In the Matter of
THE WILLIAM J. RAGGIO FAMILY TRUST.

Case No. PR13-00624
Dept. No. PR

LESLIE 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
Dept. No. 15

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.

**DEFENDANT'S FIRST SUPPLEMENTAL DISCLOSURE OF
DOCUMENTS PURSUANT TO NRCP 16.1(a)**

1 Defendant DALE CHECKET RAGGIO, in her capacity as Trustee of The Marital Deduction
2 Portion and Credit Share of the William J. Raggio Family Trust and individually ("Defendant"), by
3 and through her counsel John Echeverria of the Echeverria Law Office, herein supplements her
4 disclosures with the information set forth below:

5 **LIST OF DOCUMENTS**

6 Defendant produces documents Bates numbered RAGGIO-001108 to RAGGIO-
7 001696 on the enclosed CD. Certain documents are marked "CONFIDENTIAL" and will be
8 subject to a Stipulated Protective Order to be finalized by counsel for the parties.

9 Defendant reserves the right to amend and/or supplement this document disclosure as
10 additional documents are discovered.

11 **AFFIRMATION**

12 Pursuant to NRS 239B.030

13 The undersigned does hereby affirm that the preceding **Defendant's First**
14 **Supplemental Disclosure of Witnesses and Documents Pursuant to NRCP 16.1(a)**
15 filed in District Case PR13-00624 does not contain the social security number of any
16 person.

17 DATED this 9th day of September, 2017.

18
19
20 
21 JOHN ECHEVERRIA, ESQ.
22 ECHEVERRIA LAW OFFICE

23 9432 Double R Boulevard
24 Reno, Nevada 89521
25 Tel: (775) 786-4800
26 Fax: (775) 786-4808

27 *In Association With*
28 Tamara Reid, Esq.

Attorneys for Dale Raggio

ECHEVERRIA LAW OFFICE
9432 Double R Blvd.
Reno, NV 89521
(775) 786-4800

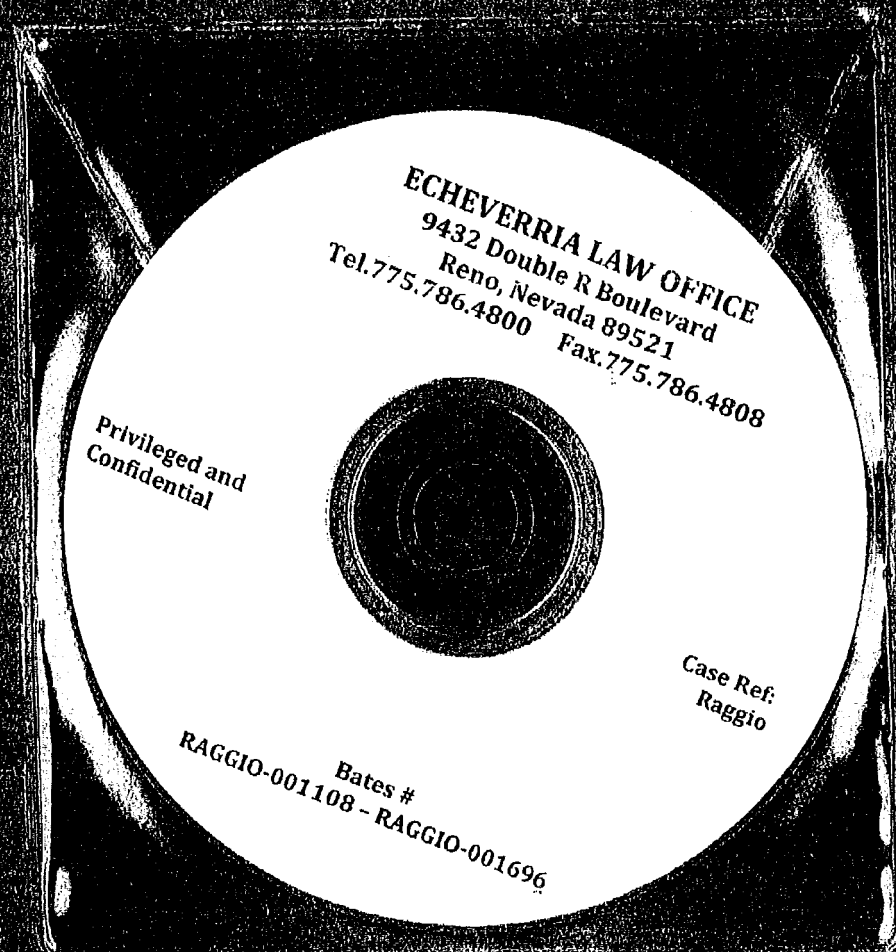
☐ Placing a true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada.
(to those Via mail)

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

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

DATED this 8th day of September, 2017.

Iresa Maloney



ECHEVERRIA LAW OFFICE
9432 Double R Boulevard
Reno, Nevada 89521
Tel. 775.786.4800 Fax. 775.786.4808

Privileged and
Confidential

Case Ref:
Raggio

Bates #
RAGGIO-001108 - RAGGIO-001696

1 **3785**

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

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

15 *Attorneys for Dale Raggio*

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

18
19 IN AND FOR THE COUNTY OF WASHOE

20 In the Matter of

Case No. PR13-00624
Dept. No. PR

21 THE WILLIAM J. RAGGIO FAMILY
22 TRUST.

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

Consolidated with:

Case No. CV15-01202

Plaintiffs,

vs.

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

Defendants.

**REPLY IN SUPPORT OF MOTION TO STRIKE
REMAINDER BENEFICIARIES' RESPONSE**

1 The reason that the Court should strike the September 1, 2017, Response to Request For
2 Oral Argument is because it is, for all intents and purposes, an impermissible surreply. Rather
3 than summarily state their disagreement with the request for oral argument, the Remainder
4 Beneficiaries brazenly address case law and arguments that Mrs. Raggio had asserted in her
5 reply in support of summary judgment. This is why their “response” was improper and warrants
6 being stricken from the record.

7 Now, in opposing the motion to strike, the Remainder Beneficiaries again seize the
8 opportunity to argue the substance of the underlying summary judgment motion (*see, e.g.*, entire
9 page 2). Not the least bit ironically, Remainder Beneficiaries contend that Mrs. Raggio seeks to
10 “shore up” her argument with her request for oral argument before the Court. But it is plainly the
11 Remainder Beneficiaries who require multiple opportunities to shore up their position by
12 inappropriately briefing the underlying issues on summary judgment repeatedly after the motion
13 has been submitted for decision.

14 Ultimately, it was improper for the Remainder Beneficiaries to file a substantive response
15 to a simple request for oral argument that went far beyond simply stating that oral argument, in
16 their opinion, is not necessary. Mrs. Raggio’s motion to strike should be granted.

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 3rd day of October 2017.

20 /s/ Tamara Reid

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

23 /s/ John Echeverria

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

26 *Attorneys for Dale Raggio*

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 October 3, 2017, I caused the foregoing **REPLY IN SUPPORT OF 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 October 3, 2017.

/s/ Marcia Filipas
Marcia Filipas

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3860
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.

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 SUBMISSION

1 IT IS HEREBY REQUESTED that the *Motion to Strike Remainder Beneficiaries'*
2 *Response*, filed on September 5, 2017, in the above-entitled matter be submitted to the Court for
3 decision.

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

6 DATED this 3rd day of October 2017.

7
8 HOLLAND & HART LLP

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

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

19 *Attorneys for Dale Raggio*
20
21
22
23
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 October 3, 2017, I caused the foregoing **REQUEST FOR SUBMISSION** 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 October 3, 2017.

/s/ Marcia Filipas
Marcia Filipas

10255957_1

1 **CODE: 3795**

2 G. Barton Mowry, Esq.
3 Nevada Bar No. 1934
4 Enrique R. Schaerer, Esq.
5 Nevada Bar No. 11706
6 MAUPIN, COX & LeGOY
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Phone: (775) 827-2000

6 Attorneys for Leslie Raggio Righetti

7 Michael A. Rosenauer, Esq.
8 Nevada Bar No. 2782
9 MICHAEL A. ROSENAUER, LTD.
10 510 West Plumb Lane, Suite A
11 Reno, Nevada 89509
12 Phone: (775) 324-3303

11 Attorney for Tracy Raggio Chew

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

16 Case No.: PR13-00624

17 Dept. No.: PR

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

**REPLY IN SUPPORT OF MOTION TO
COMPEL WRITTEN DISCOVERY**

20 Leslie Raggio Righetti ("Leslie") and Tracy Raggio Chew ("Tracy"), daughters of
21 William J. Raggio and the indefeasibly vested remainder beneficiaries of the Marital
22 Deduction portion of the William J. Raggio Family Trust, hereby reply to the Opposition
23 of Trustee Dale Checket-Raggio ("Dale") to their Motion to Compel Written Discovery.

24 The Opposition rests on the same flawed premise as Dale's prior Motion for
25 Partial Summary Judgment, currently pending before the Court. The flawed premise is
26 that Leslie and Tracy's current action and counter petition from 2015 somehow raise

1 the same claims and issues (related to the Credit Shelter portion of the Trust) as
2 Tracy's prior petition from 2013 and, hence, are barred by claim and issue preclusion.
3 The discovery-related argument Dale makes from that flawed premise is that, because
4 those claims and issues are precluded, discovery related to the Credit Shelter Trust is
5 not relevant and therefore prohibited. The above premise fails for the same reasons
6 set forth in Leslie and Tracy's Opposition to Dale's Motion for Partial Summary
7 Judgment, which Opposition is attached hereto as **Exhibit A**.

8 Those reasons are simple and straightforward: The claims and issues in Leslie
9 and Tracy's current action and counter petition are factually, legally, and temporally
10 different from those in Tracy's prior petition. Moreover, the current claims and issues
11 specifically relate to the size and frequency of distributions from the Marital Deduction
12 Trust, of which Leslie and Tracy (neither of whom is related to Dale) are remainder
13 beneficiaries, relative to those from the Credit Shelter Trust, of which Dale's biological
14 grandchildren are remainder beneficiaries.

15 As set forth in the Opposition to the Motion for Partial Summary Judgment
16 (which was really a motion for protective order in disguise),¹ the current claims and
17 issues are **factually different** because they pertain not to the funding of the Marital
18 Deduction Trust and Credit Shelter Trust, but rather to the propriety of Dale's
19 exorbitant discretionary distributions from the Marital Deduction Trust relative to her
20 paltry discretionary distributions from the Credit Shelter Trust (on information and
21 belief), where the standard for discretionary distributions is the same for both Sub-

22 ///

23 ¹ In her Opposition, Dale all but concedes that her prior Motion for Partial Summary
24 Judgment was a disguised motion for protective order designed to skirt her discovery
25 obligations: "That is precisely why Mrs. Raggio had to file a summary judgment motion
26 regarding the preclusive effect of this Court's earlier order on the current claims and
issues. A ruling in favor [sic] Mrs. Raggio would moot the Remainder Beneficiaries'
improper discovery into the Credit Shelter altogether." Opp'n Br. 10.

1 Trusts, of which she is sole Trustee. That standard is this: Dale may take distributions
2 not at whim, but only as "necessary" for her "proper" support, care, and maintenance.

3 The current claims and issues are **legally different** because they pertain not to
4 whether the language of the Trust requires distributions from the Sub-Trusts that are
5 the exact same or strictly proportional, as Tracy argued in her prior petition, but rather
6 whether Dale breached her fiduciary duties of loyalty, impartiality, and, above all, good
7 faith and fairness to Leslie and Tracy when Dale made discretionary distributions from
8 the Marital Deduction Trust that were, versus those from the Credit Shelter Trust,
9 lopsided and grossly disproportional. Whereas Tracy previously claimed that the
10 Trust's language required from the Sub-Trusts equal or strictly proportional
11 distributions, Leslie and Tracy here acknowledge that the Trust's language does not
12 require such distributions but does prohibit lopsided or grossly disproportional
13 distributions. They claim that such one-side distributions favored Dale's grandchildren,
14 as remainder beneficiaries of the Credit Shelter Trust, over Leslie and Tracy, as
15 remainder beneficiaries of the Marital Deduction Trust, in flagrant violation of Dale's
16 fiduciary duties to Leslie and Tracy.

17 The current claims and issue are **temporally different** because they look not,
18 as Tracy had done, to Dale's future conduct: whether, prospectively, Dale must spend
19 down the Sub-Trusts in strict proportion or make the same distributions from each.
20 Rather, they look to Dale's past conduct: whether, retrospectively, she breached her
21 fiduciary duties of loyalty, impartiality, and fairness to Leslie and Tracy by her lopsided
22 distributions from the Sub-Trusts. In fact, there is no overlap between the specific time
23 period subject to Tracy's prior request for accounting and Leslie and Tracy's request
24 here. Tracy sought an accounting of the allocation of principal between the Sub-Trusts
25 for the time period between the death of William J. Raggio ("Bill") on February 24,
26 2012, on the one hand, and the creation and funding of the Sub-Trusts on or about

1 July 21, 2013, on the other hand. Here, by contrast, Leslie and Tracy seek an
2 accounting of distributions from the Sub-Trusts, including the Credit Shelter Trust,
3 between when they were established on July 22, 2013 and when the first year of their
4 administration ended on July 31, 2014. Insofar as Tracy sought accounting for that
5 time period and future time periods, she did so based on strict-proportionality and
6 same-distribution theories that are not at issue here.

7 The premise behind the Opposition to the Motion to Compel therefore fails.
8 Leslie and Tracy allege in the current action and counter petition that Dale, far from
9 being loyal, impartial, and fair to them, was actually disloyal, partial, unfair, and acting
10 in bad faith when she disfavored them by intentionally depleting the Marital Deduction
11 Trust relative to the Credit Shelter Trust (which, initially, was almost twice the size of
12 the Marital Deduction Trust), thereby favoring her grandchildren over them. No
13 professional or third-party trustee of the Sub-Trusts would ever have acted in such a
14 transparently irresponsible and imprudent manner. By their Motion to Compel, Leslie
15 and Tracy merely ask the Court to order Dale to follow the law of discovery, as set
16 forth in NRCP 26, and permit them to discover relevant, unprivileged evidence to
17 support the above allegations, which were not and could not have been raised before.

18 Not surprisingly, Dale's arguments against the Motion to Compel are hollow.
19 Dale argues that Leslie and Tracy have "no standing" or "any right" to seek information
20 of the Credit Shelter Trust because they "are not beneficiaries" of it. Opp'n Br. 2
21 (emphasis in original). Dale cites no authority whatever for such a bold, blanket
22 assertion, nor can she because that assertion is contrary to NRCP 26: "Parties may
23 obtain discovery regarding **any** matter, not privileged, which is relevant to the subject
24 matter involved in the pending action It is not ground for objection that . . . the
25 information sought appears **reasonably calculated** to lead to the discovery of
26 admissible evidence." NRCP 26(b)(1) (emphases added). Dale identifies no privilege,

1 and the sought-after discovery is relevant to whether the extent of Dale's discretionary
2 distributions from the Marital Deduction Trust were in fact "necessary" for her "proper"
3 support in light of all other resources available to her—including the \$1,800,000 she
4 inherited outright from Bill, as well as the resources available to her in the Credit
5 Shelter Trust—given that it has the same "necessary" standard for discretionary
6 distributions.

7 Dale says discovery as to the Credit Shelter Trust is barred by NRS 163.4175,
8 which provides: "**Except as otherwise provided in the trust instrument**, the trustee
9 is not required to consider a beneficiary's assets or resources in determining whether
10 to make a distribution of trust assets." NRS 163.4175 (emphasis added). But she
11 conveniently overlooks the qualification in bold text above. Significantly, she also fails
12 to engage Leslie and Tracy's prior argument in their Opposition to Dale's Motion for
13 Partial Summary Judgment that the Trust **provides otherwise** because it limits Dale
14 to distributions from the Sub-Trusts only as "necessary" for her "proper" support:

15 In fact, the William J. Raggio Family Trust Agreement actually does
16 specifically address this issue and, therefore, Dale may not ignore her
17 other resources. With respect to the Credit Shelter Trust and Marital
18 Deduction Trust, the trustee is permitted to distribute principal assets to
19 Dale only if the distribution is "necessary" for her "proper support, care,
and maintenance." Specifically, Dale, as beneficiary, is entitled to
distributions of principal of both trusts "as the Trustee, in the Trustee's
discretion, shall deem **necessary** for the **proper support**, care, and
maintenance of Dale."

20 Exhibit A, at 9 (emphases in original).

21 Her silence is telling. Indeed, Dale would have this Court place no significance
22 on the word "necessary" (or "proper"), thereby reading that word (or those words) out
23 of the Trust altogether. Such a misreading would flout black-letter, well-established law
24 that requires courts to "look first and foremost to the language in the trust and interpret
25 that language to effectuate the intent of the settlors." *Klabacka v. Nelson*, 394 P.3d
26 940, 947 (Nev. 2017) (quoting 76 Am. Jur. 2d *Trusts* § 29 (2016)). After all, the word

1 "necessary" is an important limitation that the settlor, Bill, put into the Trust to limit
2 Dale's discretion to make distributions to herself from the Sub-Trusts. *Black's Law*
3 *Dictionary*, NECESSARY (10th ed. 2014) (defining the term as what "is needed for
4 some purpose or reason; essential," or what "must exist or happen and cannot be
5 avoided; inevitable"). Absent the sought-after discovery at issue in the Motion to
6 Compel, Leslie and Tracy will be unable to prove—and the Court will be unable to
7 assess—whether Dale's distributions from the Sub-Trusts were "necessary," in the
8 sense of being truly essential, for her proper support, care, and maintenance. That
9 refutes Dale's bald-faced statement that, without any explanation whatever, "there are
10 no provisions that direct or require the trustee of the Marital Trust to consider other
11 sources in making the foregoing decisions to distribute income and/or principal from
12 the Marital Trust." Opp'n Br. 4. The word "necessary" belies that point.

13 Dale also says, incredibly, that Leslie and Tracy "fail to cite any authority
14 directly on point" regarding the relevance of distributions from Credit Shelter Trust to
15 the propriety of distributions from the Marital Deduction Trust. Opp'n Br. 11. Not so.
16 Dale mistakenly attempts to distinguish *Matter of W.N. Connell & Marjorie T. Connell*
17 *Living Trust*, 393 P.3d 1090 (Nev. 2017), which is cited in the Motion to Compel, but
18 the on-point authority, cited and discussed at length in the Opposition to Dale's Motion
19 for Partial Summary Judgment, is the Restatement (Third) of Trusts, which provides:

20 [W]here a beneficiary is entitled to payments from **another trust created**
21 **by the same settlor** (e.g., nonmarital and marital deduction trusts for a
22 surviving spouse), or as a part of coordinated estate planning with
23 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.

24 Restatement (Third) of Trusts § 50, cmt. e (emphases added).²

25
26 ² Dale's citation to the Restatement (Third) of Trusts § 2, is inapposite insofar as the
general definition of "trust" in the Restatement does not apply where "any qualifying

1 The Opposition to Dale's Motion then quotes a significant portion of the counter
2 petition, which notes the near-perfect fit between the above rule from the Restatement
3 and the fact pattern of this case:

4 Those are precisely our facts in this case. The Marital Deduction Trust is
5 the "marital deduction trust" in the comment while Bill's Credit Shelter
6 Trust is the "nonmarital trust." Both of the trusts, as well as Dale's
7 outright testamentary gifts from Bill of over \$1,800,000, are all part of a
8 coordinated estate plan with the same settlor, i.e., Bill. Dale has an
9 identical [discretionary] distribution standard for both the Marital
10 Deduction Trust and Bill's Credit Shelter Trust. Bill's Credit Shelter Trust
11 is almost twice the size and value of the Marital Deduction Trust and the
12 testamentary gifts Dale received from Bill are nearly the same size
13 Yet, on information and belief, Dale's distributions from the Marital
14 Deduction Trust dwarf any distributions Dale has made to herself from
15 Bill's Credit Shelter Trust, if any. The Petitioner respectfully submits that
16 this Court must hold Dale to the standards set forth in the Restatement
17 (Third) of Trusts. If this Court does not put a stop to Dale's excessive
18 support distributions immediately, Dale, as Trustee and life beneficiary,
19 will continue unbridled and the end result will be to rob Leslie and Tracy
20 from what their father Bill intended for them to receive, specifically a
21 remainder interest in a trust at Dale's death.

22 2015 Counter Pet. 15.

23 Dale entirely ignores the authority and explanation above. If she were to take it
24 seriously, she would not have opposed the Motion to Compel. Other relevant authority
25 drives home the point that Dale, as sole Trustee of the Sub-Trusts, has fiduciary duties
26 that limit her discretion in meaningful ways. Indeed, "a trustee is always subject to
accountability to remaindermen where discretion is improperly, arbitrarily or
capriciously exercised." *Mesler v. Holly*, 318 So. 2d 530, 533 (Fla. Dist. Ct. App. 1975).
Moreover, "a trustee who is also a beneficiary and who is given a power, or discretion,
to invade the trust principal has a fiduciary obligation to the remaindermen to keep her
demands within reasonable limits." *Id.* Notably, "[t]he law does not recognize the right
of a trustee to escape or minimize [her] obligation by putting [herself] in a position
where [her] obligation to one trust conflicts with [her] obligation to another trust or with

adjective or description" relates to the term. see Opp'n Br. 12. Notably, comment e of
§ 50 refers to "another" trust "created by the same settlor," as set forth in bold above.

1 [her] personal interests." *Epworth Orphanage v. Long*, 36 S.E.2d 37, 44 (S.C. 1945).
2 Thus, even without the express standard that discretionary distributions must be
3 "necessary" for Dale's "proper" support, Dale is subject to meaningful limitations on her
4 discretion to make distributions from the Sub-Trusts, as a matter of law.

5 Dale's last-ditch attempt to resist the discovery of relevant, non-privileged
6 documents and information as to the Credit Shelter Trust, and as to what her standard
7 of living was before the settlor's death, is to invoke the supposed privacy interests of
8 Dale's grandchildren and to cite inapposite caselaw to that effect from the Title VII
9 employment discrimination context. But the privacy interests of Dale's grandchildren,
10 as remainder beneficiaries of the Credit Shelter Trust, are highly attenuated. Leslie
11 and Tracy seek discovery as to Dale's conduct with respect to the Credit Shelter Trust,
12 without any direct reference to the grandchildren. Dale is the sole current beneficiary
13 and sole trustee of the Sub-Trusts and her conduct is highly relevant here. Dale does
14 not, however, even specify precisely what privacy interests of Dale's grandchildren
15 would be affected and how, if at all, any such intrusion on privacy would be significant.
16 By contrast, Leslie and Tracy have a significant interest in the sought-after discovery
17 because their claims of breach of fiduciary duty hinge, in part, on evidence of lopsided
18 or grossly disproportional distributions from the Sub-Trusts. Accordingly, even if the
19 balancing test somehow applied, the balance would weigh in Leslie and Tracy's favor.

20 The balancing test does not apply though. Dale's authorities—*Onwuka v.*
21 *Federal Express Corp.*, 178 F.R.D. 508 (D. Minn. 1997), *Guruwaya v. Montgomery*
22 *Ward, Inc.*, 879 F.2d 865 (9th Cir. 1989), and *Zaustinsky v. University of California*,
23 96 F.R.D. 622, 624 (N.D. Cal. 1983)—are cases in which employees alleged Title VII
24 employment discrimination claims against their employers and sought the confidential
25 personnel files of other employees. Those cases simply do not apply because our
26 case is not one brought under Title VII and does not involve a third party. It involves

1 only the manner in which Dale, as the sole Trustee of the Sub-Trusts, has distributed
2 funds to herself as beneficiary, for what reasons those funds are being requested, and
3 the manner in which those funds are being spent.³

4 Accordingly, the Court should grant Leslie and Tracy's Motion to Compel
5 Written Discovery for the same reasons it should deny Dale's Motion for Partial
6 Summary Judgment. There is nothing improper about Leslie and Tracy's discovery
7 requests as to the Credit Shelter Trust. Under NRCP 26, they seek non-privileged
8 documents and information that are relevant in light of the factual, legal, and temporal
9 claims and issues in the current action and counter petition.

10 **AFFIRMATION**

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

13 Dated this 13th day of October, 2017.

14
15 MAUPIN, COX & LeGOY

16 
17 G. Barton Mowry, Esq.

18 Attorneys for Leslie Raggio Righetti

19
20 MICHAEL A. ROSENAUER, LTD.

21 /s/ Michael A. Rosenauer
22 Michael A. Rosenauer, Esq.

23 Attorney for Tracy Raggio Chew

24 ³ If Dale now pivots and asserts some kind of a privacy issue regarding her Australian
25 grandchildren, the argument is even more tenuous. Here, the discovery does not seek
26 information as to how those grandchildren might be spending distributions from the
Credit Shelter Trust. However, if Dale has made distributions to them, her distribution
would be improper because gifts to her grandchildren certainly cannot be considered
"necessary" for her "proper" support, care and maintenance.

1 **CERTIFICATE OF SERVICE**

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

5 **REPLY IN SUPPORT OF MOTION TO COMPEL WRITTEN DISCOVERY**
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 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 Michael A. Rosenauer, Esq.
15 Michael A. Rosenauer, Ltd.
510 West Plumb Lane, Suite A
16 Reno, NV 89509

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

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

22 Dated this ____ day of October, 2017.
23

24 _____
Employee
25
26

LIST OF EXHIBITS

1. Opposition to Motion for Partial Summary Judgment

20 pages

EXHIBIT 1

EXHIBIT 1

1 CODE: 2645

2 G. Barton Mowry, Esq.
3 Nevada Bar No. 1934
4 Enrique R. Schaerer, Esq.
5 Nevada Bar No. 11706
6 MAUPIN, COX & LeGOY
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Phone: (775) 827-2000

6 Attorneys for Leslie Raggio Righetti

7 Michael A. Rosenauer, Esq.
8 Nevada Bar No. 2782
9 MICHAEL A. ROSENAUER, LTD.
10 510 West Plumb Lane, Suite A
11 Reno, Nevada 89509
12 Phone: (775) 324-3303

11 Attorney for Tracy Raggio Chew

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

16 Case No.: PR13-00624

17 Dept. No.: PR

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

**OPPOSITION TO MOTION FOR
PARTIAL SUMMARY JUDGMENT**

19 _____
20 Leslie Raggio Righetti ("Leslie") and Tracy Raggio Chew ("Tracy"), daughters of
21 William J. Raggio ("Bill") and the indefeasibly vested remainder beneficiaries of the
22 Marital Deduction portion of the William J. Raggio Family Trust (the "Trust"), oppose
23 the Motion for Partial Summary Judgment (the "Motion") filed by Trustee Dale
24 Checket-Raggio ("Dale").

25 A close reading of the Motion reveals it is nothing more than a disguised motion
26 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 Tracy'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).

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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

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21
22 MICHAEL A. ROSENAUER, LTD.

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24 Michael A. Rosenauer, Esq.

25 Attorney for Tracy Raggio Chew
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CERTIFICATE OF SERVICE

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

OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

on the party(s) set forth below by:

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

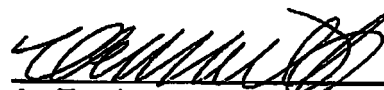
☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, Certified Return/Receipt following ordinary business practices.

addressed as follows:

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 15th day of August, 2017.


An Employee of Maupin, Cox & LeGoy

CODE: 3860

G. Barton Mowry, Esq.
Nevada Bar No. 1934
Enrique R. Schaerer, Esq.
Nevada Bar No. 11706
MAUPIN, COX & LeGOY
4785 Caughlin Parkway
Reno, Nevada 89519
Phone: (775) 827-2000
Attorneys for Leslie Raggio Righetti

Michael A. Rosenauer, Esq.
Nevada Bar No. 2782
MICHAEL A. ROSENAUER, LTD.
510 West Plumb Lane, Suite A
Reno, Nevada 89509
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.

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

**PETITIONERS' REQUEST TO SUBMIT THEIR MOTION TO COMPEL WRITTEN
DISCOVERY**

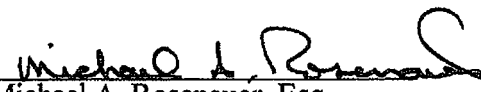
It is requested that Motion to Compel Written Discovery, the Opposition thereto and the

1 associated Reply be submitted to the Court for decision. The undersigned attorney certifies that a
2 copy of this has been mailed to all parties of record.
3

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

7 DATED this 16th day of October, 2017.

8 MICHAEL A. ROSENAUER LTD.

9 
10 Michael A. Rosenauer, Esq.
11

12 MAUPIN, COX & LeGOY

13 /s/ G. Barton Mowry
14 G. Barton Mowry, Esq.
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**PETITIONERS' REQUEST TO SUBMIT THEIR MOTION TO COMPEL WRITTEN
DISCOVERY**

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

addressed as follows:

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

Kathie Palmer

Code: 1940

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

Consolidated Case

COMMISSIONER'S RECOMMENDATION AND ORDER
REGARDING SUBMITTED MATTERS

There are three submitted matters before this Commissioner:

- Motion for Partial Summary Judgment;
- Motion to Strike Remainder Beneficiaries' Response; and
- Motion to Compel Written Discovery.

There is also a Request for Oral Argument, and an Opposition thereto.

After conferring with the Probate Judge on scheduling and case management, and in the interests of judicial economy as well as for savings to the parties, all three (or four) matters will be deemed submitted to this Commissioner for decision on the latest date of submission of the above, namely: October 16, 2017.

IT IS SO RECOMMENDED AND ORDERED.


Dated this 13th day of November, 2017.



PROBATE COMMISSIONER

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Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial District Court, and that I hereby certify that on November 13, 2017, I electronically filed the foregoing **COMMISSIONER'S RECOMMENDATION AND ORDER REGARDING SUBMITTED MATTERS** with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:


Brandon Smith

Code: 1940

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

Consolidated Case

COMMISSIONER'S
(1) ORDER DENYING REQUEST FOR ORAL ARGUMENT, AND
(2) RECOMMENDATION FOR ORDER DENYING MOTION TO STRIKE
REMAINDER BENEFICIARIES' RESPONSE

Trustee DALE CHECKET RAGGIO has filed a *Motion for Summary Judgment*, and has separately filed a *Request for Oral Argument*. Beneficiaries LESLIE RAGGIO RIGHETTI and TRACY RAGGIO CHEW filed a *Response to Request for Oral Argument*. Thereafter, the Trustee filed a *Motion to Strike Remainder Beneficiaries' Response*, which was then itself fully briefed. The matters have been submitted for decision.

Request for Oral Argument

The Commissioner DENIES the Request for Oral Argument, finding that there is no separate basis upon which the Commissioner would find oral argument helpful within the meaning of WDCR 12(5) beyond the pleadings already on file.

Notwithstanding this decision and Order, the Commissioner does find that if this matter proceeds upward or onward for either Judicial Review, further hearing, or another phase of the litigation wherein oral argument may be deemed useful by the presiding Judge, today's denial will not preclude the addressing of a new request to the presiding Judge. Accordingly, this portion of this Recommendation is procedural only and therefore not subject to Judicial Review under WDCR 57.3(7).

1 Motion to Strike

2 The Commissioner has considered the *Motion to Strike* and the responsive
3 pleadings thereto.

4 To the extent that the *Response to Request for Oral Argument* offers some
5 reason as to why the Court should not or need not allow oral arguments, the
6 Commissioner recommends that the *Motion to Strike* should be denied. Otherwise,
7 the moving party could complain that the *Response* suffers from a lack of authority (a
8 position which is clearly permissible) and could therefore be objectionable or stricken
9 on that ground alone.

10 The *Response* also informs the Court that there is a party to this dispute who
11 does not necessarily agree to the setting of oral arguments by the Court. Without
12 having that information, or having no response at all, the Court could construe the
13 situation as one in which both sides agree to scheduling oral argument (as is often the
14 case). Therefore, merely informing the Court of an opposition is proper.

15 To the extent that the *Response* then contains additional arguments on the
16 merits of the pending Motions, the Commissioner will *sua sponte* draw the proper lines
17 and will thus refrain from considering any references that are not directly pertinent to
18 the determination of whether oral argument should be held, as defined above. The
19 Commissioner would otherwise recommend that the *Motion to Strike* should be
20 granted to that degree; in the final analysis, however, it is impracticable to delineate
21 which portions of the *Response* exceed that "limit", so this Recommendation will
22 simply state that the *Motion to Strike* should be denied, with that *caveat*.

23 **Pursuant to WDCR 57.3(7), this Recommendation will become final ten**
24 **(10) days after service of the Recommendation upon the parties unless a**
25 **proper written Request for Judicial Review is filed and served.**

26 Dated this 9th day of January, 2018.

27 
28 PROBATE COMMISSIONER

1 **CERTIFICATE OF SERVICE**

2 CASE NO. PR13-00624

3 Pursuant to NRCP5(b), I certify that I am an employee of the SECOND
4 JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on
5 the 9th day of January, 2018, I electronically filed the **COMMISSIONER'S (1)**
6 **ORDER DENYING REQUEST FOR ORAL ARGUMENT, AND (2)**
7 **RECOMMENDATION FOR ORDER DENYING MOTION TO STRIKE REMAINDER**
8 **BENEFICIARIES' RESPONSE** with the Clerk of the Court by using the ECF system.

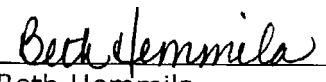
9
10 I further certify that I transmitted a true and correct copy of the foregoing
11 document by the method(s) noted below:

12
13 **Electronically filed with the Clerk of the Court by using the ECF system which**
14 **will send a notice of electronic filing to the following:**

15
16 TIMOTHY RILEY, ESQ. for DALE RAGGIO
17 G. MOWRY, ESQ. for LESLIE RIGHETTI
18 MICHAEL ROSENAUER, ESQ. for TRACY CHEW
19 ENRIQUE SCHAERER, ESQ. for LESLIE RIGHETTI
20 JOHN ECHEVERRIA, ESQ. for DALE RAGGIO
21 TAMARA REID, ESQ. for DALE RAGGIO
22 SORAYA AGUIRRE, ESQ. for DALE RAGGIO

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

25 PROCTOR J. HUG, IV, ESQ. for LESLIE RIGHETTI
26 Maupin, Cox & LeGoy
27 4785 Caughlin Parkway
28 Reno, NV 89519


Beth Hemmila