

1 this order and the Court's already considered it. We're
2 actually just seeking a decision as to the scope of the JPI as
3 it concerns those other properties. We're not asking you to
4 change your prior order. We're just asking you to expand it
5 and consider all those things.

6 They make some arguments about the -- the ELN Trust,
7 that we don't have any interest in Russell Road, and the
8 Wyoming Downs property. I've already -- we've already set
9 forth the facts. You've heard about those properties and the
10 transfers a hundred times before. I won't go back into the
11 specifics of those.

12 But the bottom line is on those that you haven't
13 made that decision yet as to what the interests are. That's
14 still open for a tracing and debate. And so until that
15 decision is made, the -- we need to keep -- make sure that
16 those properties are protected.

17 So what we've asked for is that the Court enter a
18 joint preliminary injunction and we set forth the specific
19 language that -- that we propose that is hereby ordered that
20 no property list in the decree of divorce entered June 3rd,
21 2013 is to be transferred, encumbered, concealed, sold, or
22 otherwise disposed of without a written agreement between the
23 parties or further order of the Court to ensure the properties
24 remain intact prior to the completion of the tracing.

1 And then in the alternative -- and I -- I don't
2 think this is appropriate. I -- I -- but if you weren't
3 inclined to enjoin all the property, which is subject to a
4 claim of community interest, then we would ask at the very
5 least that you ensure that there is at least half the property
6 enjoined and that would mean enjoining everything that was
7 awarded to Lyn -- Lynita as part of a -- a half -- a half
8 property division in the decree of divorce.

9 But again, with changing values and changing facts
10 and circumstances, I don't know if that's going to be
11 sufficient. We don't know what the tracing's going to
12 provide. And property is unique. So we would ask that you
13 enjoin all that.

14 Did you want me to respond to their counter or or
15 wait for them and --

16 THE COURT: Why don't we give them a chance --

17 MR. KARACSONYI: Yeah.

18 THE COURT: -- and then we'll do that. So --

19 MR. KARACSONYI: Go piece-by-piece?

20 THE COURT: Because -- yeah, because we got so many
21 issues on that. We can --

22 MR. KARACSONYI: Thanks.

23 MR. LUSZECK: Your Honor, this is the third time
24 that they have been asking for the exact same relief which is

1 for JPI over the -- all over the property that's owned by the
2 ELN Trust and it's inappropriate.

3 You know, even in the last order this Court said
4 okay, I'm going to impose a JPI, but just over BanOne and
5 Lindell. But apparently that's not enough and they want a JPI
6 over all of the property, even property that's -- can't be
7 subject to a community property interest which includes
8 Wyoming Downs.

9 I mean, we've -- I don't know how many times we've
10 argued these facts before Your Honor, but the Wyoming Downs
11 property was subject to a separate order. This Court found
12 that it was the ELN Trust -- well, it -- it found that it was
13 property of the ELN Trust, there was no community property
14 interest, and that even if it was to be considered separate
15 property, it was Eric's separate property. It was not
16 remanded by the Nevada Supreme Court. She has absolutely no
17 entitlement to a community property interest to it, but if
18 this Court grants the requested relief today, they would even
19 get a JPI over that property, Wyoming Downs, which is
20 completely inappropriate.

21 Your Honor, the Nevada Supreme Court made it clear.
22 The self-settled spendthrift trust were funded with each
23 property separate which -- with each -- with Eric's separate
24 property created the ELN self-settled spendthrift trust,

1 Lynita's separate property, funded Lynita's self-settled
2 spendthrift trust.

3 Because of that, we're starting off with the
4 proposition that it's separate property. I concede that in a
5 regular divorce case you can impose a JPI over property that's
6 titled in the name of the husband or in the name of the wife.
7 That's not the circumstance here. The property that's owned
8 isn't owned by them individually. It's owned by trusts,
9 separate and distinct legal entities that the Court has -- the
10 Nevada Supreme Court has already found what's funded with --
11 with each of their separate property.

12 So because of that, I think it's inappropriate to
13 treat this like any other divorce case by finding -- by making
14 some type of finding that it's community property, especially
15 after the Nevada Supreme Court said that wasn't the case. I
16 concede that a tracing needs to be done, but the tracing is
17 going to be limited to whether or not Eric had any assets in
18 his name individually that were transferred into this trust in
19 conversely with Lynita. Other than that, the assets owned in
20 the trust maintain their separate property nature unless it's
21 proven by clear and convincing evidence that that's not the
22 case. And that hasn't happened throughout this litigation.
23 So for that reason, it's inappropriate to enter a JPI over
24 each and every piece of property that's owned by the ELN

1 Trust.

2 Ironically, Counsel mentioned the fact that there
3 should be a JPI over the LSN Trust now. Well, the fact of the
4 matter is that she sold a lot of her assets, so it's gone.
5 The Palmyra house, gone. It was sold. So it's -- you know,
6 this Court -- there's really nothing for this Court to impose
7 a JPI on from her side, because it's all gone.

8 The -- the 720,000 I -- I assume that he's
9 requesting a JPI over that as well. Your Honor, this Court
10 has specifically addressed that in the April -- or sorry, the
11 May 22nd order had a whole section on it and it said it wasn't
12 going to impose a JPI, yet here we are once again and they're
13 asking for the exact same relief. If this Court is inclined
14 to impose any type of JPI on it, I think it has to impose some
15 type of bond that needs to be paid by -- by Lynita Nelson or
16 the LSN Trust.

17 The fact of the matter is because this property is
18 being held up in this litigation, the ELN Trust is losing
19 millions of dollars, Your Honor. It is suffering irreparable
20 damage because it's just being held in abeyance because of all
21 the claims that are being brought. If she wants a JPI, fine,
22 but this Court can impose a JPI -- or sorry, pose a bond and
23 require a bond pursuant to NRCP 53. It's what's happens all
24 the time in any case with preliminary injunctions or temporary

1 restraining orders. It's not uncommon to do.

2 Once again, if the -- if the property was titled in
3 their names individually and if it clearly was community
4 property, I wouldn't have an issue with it. But it's titled
5 in the name of separate entities, the ELN Trust or the LSN
6 Trust, which there's no community property interest in.

7 Further, Your Honor, with respect to the lis pendens
8 issue, the problem that I have -- well, I have another -- a
9 number of issues with that. First, after this Court came out
10 in the May 22nd, 2018 order, the Court said okay, I'm only
11 going to impose a JPI over BanOne and Lindell. So guess what
12 the LSN Trust does? They -- they file a lis pendens over all
13 of the property owned by the ELN Trust, almost just snubbing
14 their nose in the Court's face. I mean, I can only imagine
15 what the arguments would be from that side if this had been
16 done by Eric or the ELN Trust.

17 So this Court says no, I'm doing the JPI over
18 Lindell, BanOne, and what -- what happens? We get a lis
19 pendens over all the properties. We get a lis pendens over
20 all the property. Even Bella Kathryn, Your Honor, which this
21 Court I'm sure will recall, she wanted nothing to do with.
22 The LSN Trust had -- wanted nothing to do with Bella Kathryn.
23 They fought to make sure that it ended up on the ELN Trust's
24 -- gosh, side -- side of the equation with respect to the

1 divorce decree. She wanted nothing to do with it. And now
2 all of a sudden she's filing a lis pendens on the Bella
3 Kathryn property? It's ridiculous, Your Honor. This needs to
4 stop.

5 If this Court's inclined to impose a JPI on any
6 additional property, which I disagree with because I don't
7 think -- in -- in a matter of equity and a matter of law and
8 however you want to look at it, Your Honor, I think it's
9 inappropriate. But if this Court is inclined to impose a JPI
10 in any other property, it has to be limited to Russell Road
11 and I think that would even been appropriate. But this Court
12 should impose a bond over all of those assets as well.

13 It's not unheard for courts to impose bonds on
14 property that's being held up pursuant to a TRO or a
15 preliminary injunction. I think it's only equitable for this
16 Court to do in this case, especially because of the money
17 that's being lost as a result of the same.

18 THE COURT: Do you have a position on this or --

19 MS. FORSBERG: Your Honor --

20 THE COURT: -- that's kind of --

21 MS. FORSBERG: -- just --

22 THE COURT: -- of the Trust --

23 MS. FORSBERG: -- one -- one point is that I think
24 the Court can't lose sight of the fact that part of what ELN

1 does is buy and sell property. I mean, that is the business.
2 I mean, by ham -- you know, hamstringing their entire business
3 by these lis pendens and JPIs.

4 MR. KARACSONYI: Okay.

5 THE COURT: Reply.

6 MR. KARACSONYI: First of all, this isn't the third
7 time. This was brought up initially at a hearing and you
8 reserved the right to -- to -- or you took it under
9 submission. The first time you made a decision regarding the
10 JPI was when you issued the May 22nd decision just covering
11 the BanOne and the Lindell properties which you specifically
12 said were the only properties you were considering.

13 Wyoming Downs, we -- we have argued about it a lot
14 of times. But the fact of the matter is that the supreme
15 court held that a tracing needs to occur to determine whether
16 the properties in the trust are community property or separate
17 property. And I don't see anywhere in that order where they
18 say that this excludes Wyoming Downs, which was acquired
19 during the marriage and prior to the divorce.

20 All property that these people acquired during their
21 marriage is presumed to be community property. And the way
22 they've tried to characterize the tracing is -- is not in
23 accordance with Nevada law. What -- even if you start with
24 the presumption or that the -- that the Nevada Supreme Court

1 made a factual finding that all the property in 2001 was
2 separate property, you have to be able to trace any property
3 acquired during marriage to that same separate property. So
4 the property owned at the date of divorce would need to be
5 traced back to that separate property. If it couldn't be
6 traced back to that separate property, then it's -- then it's
7 presumptively community property. And then you have issues of
8 transfers and why they occurred.

9 You'll find actually that -- well, they mentioned
10 that these properties were titled in the ELN Trust. I think
11 the facts are going to bear out that a lot of these properties
12 were titled in the LSN Trust and I think the testimony has
13 always been clear and it will be clear or -- or -- if the
14 Court takes additional evidence that she didn't transfer these
15 for a transmutation of community property. She transferred
16 this property because she was told that it was going to be
17 community property, so no transmutation has occurred.

18 The bottom line is in every divorce you may have --
19 you're going to have trusts, especially with people of some
20 affluence and they're going to have property in trust. And
21 those people are entitled to the same protections as anybody
22 else who appears before this Court.

23 Just because you were reversed on appeal and we're
24 sitting here 10 years later and people are a little worn out

1 and this has been going on a long time doesn't mean that she's
2 not entitled to the same protection today that she was
3 entitled to on day one. And so we're asking for those same
4 protections that she was entitled to on day one because that's
5 really where we find ourselves as far as a tracing goes.

6 Now they mentioned the Palmyra property. The
7 Palmyra property interestingly is the only property that was
8 still owned at the date of divorce that was listed in the
9 separate property agreement. So that's the one property out
10 of all the property that really was separate property.

11 Now the bond issue. And they -- and they brought
12 this up and responded in the -- in the opposition, but they've
13 never been required to post a bond. They only required to
14 post a bond one time on appeal was the order that you issued
15 400,000 back to us.

16 If you'll recall, even though you're supposed to
17 post a bond on appeal, what you did with the properties
18 pending appeal is you said that I'm going to transfer some of
19 the properties, not Russell Road, but I'm going to order that
20 they not be transferred or cumbered -- encumbered or sold.
21 I'm going to order that you don't transfer, encumber, or sell
22 Russell Road. So basically what you did is you used the --
23 the actual real properties as the bond for themselves.

24 We're not asking for the -- any of this to be sold

1 or -- or encumbered. We're -- we're asking for it to be --
2 for you not to encumber or sell it. We're not asking for it
3 to be transferred to us, but there shouldn't be a bond in
4 place. There's not requirement for a bond and a bond would
5 have a chilling effect in divorce actions, especially if one
6 party couldn't pay the bond. So the -- there's specific rules
7 for JPIs and for maintaining the status quo on property that
8 are unique to divorce and we're relying on those rules.

9 Now the lis pendens, the lis pendens meets all the
10 requirements of NRS 14.015. And that's why I say again, just
11 because we're here 10 years later doesn't mean she's not
12 entitled to the same protections as day one. She has
13 satisfied everyone of those factors. And, you know, there's
14 been no response, there's been nothing to show that she
15 hasn't. And real property is unique and this is the same
16 argument they made to you, Your Honor, is don't -- make sure
17 that she can't transfer this property pending appeal because
18 this is unique. It's unique then. It should be unique now.
19 And it -- -- she is going to suffer irreparable harm if it's
20 lost, just as they were going to suffer irreparable harm.

21 And so she's met all the requirements of a lis
22 pendens to ensure that it doesn't get transferred. And why
23 did she have to file the lis pendens? Because before you even
24 had the transfer due date, she was getting notices from title

1 companies that he's trying to transfer the BanOne properties.
2 She's going to be irreparably harmed. The property will be
3 gone. So we need to protect this property and she's legally
4 entitled to have a lis pendens pending -- pending appeal in
5 this action she claims. And this action affects the title or
6 possession of real property described in the lis pendens. The
7 action was not brought in bad faith. I think we can agree
8 there. She would be able to perform any conditions precedent
9 to the release sought as it affects the title of property. She
10 would definitely be able to assume the title.

11 She would be irreparably injured as they conceded
12 during the appeal and she's likely to prevail in this che --
13 action or has a fair chance. And for a lis pendens, as they
14 pointed out, the burden is really low, to the satisfaction of
15 the Court. If you find those factors are met, she's entitled
16 to this lis pendens.

17 Again, I know it's been 10 years, it's been a long
18 time, but please afford us the same -- we're asking to please
19 be afforded the same protections as if we're here on day one
20 even though it has been a long time.

21 So we hope that the Court will -- will properly
22 protect Lynita during the pendency of this action to ensure
23 that whatever happens at the end of the day that you can make
24 it happen and that we're not with an order and then trying to

1 scramble to find out what happened and where the property
2 went.

3 THE COURT: Okay.

4 MR. LUSZECK: Your Honor, with respect to Wyoming
5 Downs, it's, you know, Page 6 and 7 of -- of my opposition.
6 This Court had a separate evidentiary hearing on Wyoming
7 Downs, Your Honor. In that order, this Court specifically
8 found that there is no transmutation of Wyoming Downs from
9 separate property, community property. Even assuming that
10 Wyoming Downs was separate property of the ELN, Eric Nelson
11 and not the property of the ELN Trust.

12 THE COURT: Are you referring to Page 6 of your --

13 MR. LUSZECK: Yeah.

14 THE COURT: -- of your position?

15 MR. LUSZECK: Lynita -- Lynita appealed that order.
16 And the Court upheld the order, Your Honor. So this argument
17 that somehow the Nevada Supreme Court ordered that that issue
18 to be traced is false because the Court never overturned the
19 September 22nd, 2014 order. In fact, the -- the Supreme Court
20 specifically said we have considered the parties' other
21 arguments which would have included Lynita's argument with
22 respect to Wyoming Downs to include there without merit.

23 So this fallacy that somehow Wyoming Downs is
24 included in this tracing and that somehow she has a community

1 interest in that is false and it's completely contrary to the
2 Nevada Supreme Court's decision. It upheld the September
3 22nd, 2014 order, period.

4 With respect to the argument that trust are always
5 parties to a divorce proceeding. Well, that may be the case
6 with the simple revocable trust. That's not what we have
7 here. We have complex irrevocable trusts which have a whole
8 different set of law under NRS 166. So you can't treat these
9 self-settled spendthrift trusts which the supreme court has
10 found to be valid the same way as you would a simple revocable
11 trust. They are completely different concepts and trusts.

12 With respect to the bond issue, how, you know,
13 Counsel's argument that that somehow is going to have a
14 chilling effect on divorce, one, I disagree, but even if
15 that's the case, Your Honor, if -- if the LSN Trust can't post
16 a bond now which would really be de minimis in light of the
17 ultimate damages that can be proven later, then how is she
18 going to be able to -- to pay damages down the road? How is
19 the ELN Trust going to be -- going to be protected and
20 compensated if we -- if -- if all of the evidence shows that
21 it was the separate property and there's no community property
22 interest therein?

23 She should have to post a bond to protect the ELN
24 Trust down the road, just like she's asking for protection,

1 the ELN Trust needs to be protected as well, Your Honor. And
2 that's why a bond has to be posted now. The ELN Trust was
3 required to post one during appeal. LSN Trust should be
4 ordered to post one as well.

5 And with respect to the lis pendens issue, I think
6 Ms. Forsberg may deal with that on a little more issue.

7 But she's not likely to prevail. There's not even a
8 reasonably likelihood that she's going to prevail in this
9 instance, Your Honor, because it is clear that it was separate
10 property by the Nevada Supreme Court, so they have to prove by
11 clear and convincing evidence that it was transmuted from
12 separate to community property and there's no evidence that
13 that occurred, Your Honor.

14 MS. FORSBERG: Your Honor, a couple issues on the --
15 the lis pendens issue. I -- I think opposing Counsel fails to
16 recognize that the Supreme Court has already ruled that those
17 properties have to go back. And this Court ordered you need
18 to do the deeds back. Instead of that -- and this Court also
19 found that there was sufficient property in the list to
20 compensate for anything that might have been found. But
21 instead, they want all of this frozen when the Supreme Court
22 has already ruled that it should go back. Instead, they're
23 kind of circumventing the Supreme Court by filing these lis
24 pendens. Those lis pendens need to be removed so that

1 business contin -- can continue as usual.

2 Everything is not going to go anywhere at any time.

3 If you buy and you sell property, you're going to sell one
4 thing and then buy something else. I mean, that's how they
5 make money. That was -- that's how they became successful to
6 begin with. This Court knows that was Mr. Nelson's acumen,
7 that that's how he takes to press properties and purchase them
8 and that's part of the -- the issue.

9 But for them to put a lis pendens, now that stops
10 that whole process. And they're failing to recognize that the
11 Supreme Court has already ruled those need to go back. So I
12 think they're -- you know, they have enough security already
13 in the amount of property that is available. Even -- even
14 without -- with -- releasing those lis pendens, they have
15 sufficient property. This Court has already ruled that they
16 have sufficient property on that. So them doing a lis pendens
17 is another thing of snubbing their nose at this Court's
18 ruling.

19 THE COURT: Thank you. All right. With regard to
20 our next issue. I think we wanted to address the Lynita
21 running Lindell and her paying rent. Is that --

22 MR. KARACSONYI: Yes, Your Honor. Ms. Nelson has
23 managed the Lindell property for the last four years.

24 THE COURT: 2013, right, I think?

1 MR. KARACSONYI: That's correct. And she's -- she's
2 loved and cared for for this property and she's really poured
3 her heart and soul into it. When she took it over, and we --
4 we attached the pictures and -- and I know the Court -- the
5 Court didn't like us saying that she -- that he was a -- a
6 slum landlord. We won't say that with -- with regard to this
7 property, but there was graffiti on the building, years of
8 pigeon droppings on the roof, cracks and peeling of the paint,
9 and unprofessional sign that you saw and that she's replaced
10 with a very nice sign, trash collecting outside. A Clark
11 County Building Department violations that noted that the
12 building would be shutdown in 30 days if it wasn't brought
13 into con -- compliance, homeless people sleeping or living in
14 the steering gar -- well, taggers regularly climbing on the
15 roof and -- and graffitiing the building and windows, breaking
16 into suites, and leaving behind drug paraphernalia, food, and
17 even feces.

18 So it -- she's really poured her heart and soul into
19 this. Yes, she's put a lot of money into it, but she's done
20 it so she can bring it to where it is today. And today, it's
21 a beautiful building with a beautiful sign. And it's
22 profitable. And it's attracting the type of tenants who are
23 going to stay a long time, renew their lease, pay their rent.

24 THE COURT: I think you said there's only one

1 vacancy at the point --

2 MR. KARACSONYI: That's correct.

3 THE COURT: -- in time?

4 MR. KARACSONYI: That's correct. And -- and if you
5 had -- had the rents, and -- and what we said is if you had
6 the rents from 201, even with all the upgrades and
7 improvements, if he had paid the hundred and eighty-eight
8 thousand eight hundred dollars since June 3rd, 2013 when the
9 property was transferred, well, then you wouldn't have this
10 negative situation. It would have even covered all the
11 improvements that had brought the property to where it is
12 today.

13 So we ask that she continue -- be able to continue
14 to manage the property. We ask for a 10 percent property
15 management fee. And you previously found this sum to be
16 reasonable for him. Now they -- they do some play on words,
17 that she's asking for gross rents, but if you look at your
18 order from the hearing, which we quoted in the -- in the
19 reply, it's the exact -- exact same thing that you awarded to
20 him which was 10 percent of the rents, the gross profit, and
21 then less the expenses, the 10 percent of was one of the
22 expenses.

23 But -- so it's no different than what they asked for
24 before. And we ask that there is a lease entered into by Eric

1 and the ELN Trust because we need to have these rights and
2 obligations and we -- they need to be responsible for rent.
3 They can't take advantage of the fact that they're an owner
4 because they're only a half owner. And them taking advantage
5 -- advance -- advantage of being an owner is taking advantage
6 of her and her rights.

7 And then we ask that you prohibit Eric from
8 communicating with the tenants about the occupancy because
9 obviously that would create issues within the building and he
10 has been telling tenants that I believe from what she's been
11 informed that -- that he is the exhusband and -- and to come
12 to him with issues.

13 Now they asked to -- to manage it and to -- to do it
14 for free. The reason they're making this offer is because
15 they're going to make money on -- on the other end doing
16 business, the way that he always did business, and that's
17 making sure that there's no profits and that all kinds of
18 expenses including children's health insurance and all the
19 other expenses that we saw being paid through the business
20 last time are paid through the business last time are paid
21 through the business again and at the end of the day she gets
22 nil. And so that is to her detriment and has always been to
23 her detriment whenever he's in charge of things.

24 And so we allow that -- we ask that you not allow

1 that to happen again, but he needs to pay rent and she should
2 be able to continue to manage the property going forward.

3 THE COURT: Do you want that rent to go back to June
4 3rd, 2013 I think is what you're asking?

5 MR. KARACSONYI: Yeah -- yes. If -- if the Court's
6 inclined -- but you did incline -- say that you may be
7 inclined to do the offsets later. The -- the most important
8 part is that it's going forward. But yeah, if the rent can be
9 caught current -- current, that would be great as well. And
10 -- and you remind me one other point. I apologize for -- for
11 backtracking, but they said that they should only be required
12 to pay 1600. That doesn't -- that's not how it works, because
13 you're not factoring in to the overall expenses of the
14 building. You pay in your 3200 into the general pool of
15 monies and then you may not necessarily get 1600 profit from
16 that 32 because all the expenses for the building are going to
17 be paid. And whatever is left at the end of the day, you get
18 one-half of that amount. And so doing it the way they're
19 suggesting would only deprive her of -- of being able to get
20 her full portion or benefit of that rent, the 3200.

21 THE COURT: Thank you. The Trust?

22 MR. LUSZECK: Your Honor, I know this is kind of
23 paraphrasing, but I think the argument to some degree is is
24 Eric can't manage it because if he does that he's going to

1 make sure there's no profits and ensure at the end of the day
2 that Lynita gets nil because that's always been the way when
3 Eric's in charge.

4 Your Honor, if you've looked at the numbers, that's
5 exactly the situation since Lynita has been running Lindell.
6 There has been no profits. She has dumped over a hundred and
7 seventy-thousands dollars into that building and she's make --
8 she's collecting less in rent today than she was when Eric --
9 the ELN Trust transferred those property to her back in 2014,
10 Your Honor.

11 If you look at the rent roles, if you just compare
12 Exhibit 4 which is the accounting that they provided back in
13 2015 with the current rent roles, unit 101 in July of 2016 was
14 collecting \$1,600 a month. So Lynita dumps a hundred and
15 seventy thousand dollars into Lindell. Guess how much it's
16 collecting in rent now? \$1,102. Unit 102, \$800 a month. The
17 lease that -- that she entered into now is for \$616 a month.
18 Unit 103, \$800 a month back in 2014. Now it's -- I think it's
19 around 650 a month. It's a little hard to tell based on the
20 accounting. I mean, it's -- it's an absolute joke, Your
21 Honor.

22 In December of 2008 -- or '17, the LSN Trust
23 collected \$5,529. You compare that to July, August -- or
24 July, August, September fo 2014, it collected \$7,800 a month.

1 So she's thrown in a hundred and seventy thousand dollars in
2 maintenance and repairs and she's collecting less money than
3 the ELN Trust was when apparently the -- the Lindell was in a
4 horrible status and nobody wanted to -- to be tenants, Sir
5 it's simply not the case.

6 I mean, the business loss, Your Honor, is just
7 inexcusable. You know, it's interesting because when the ELN
8 Trust was managing Lindell, and this court I'm -- I'm sure
9 will certainly recall at one point the ELN Trust tried to get
10 an offset for maintenance and repairs. And do you remember
11 what the argument there was, Your Honor? It's so
12 unreasonable. How can the ELN Trust this month's for
13 maintenance and repairs? Well, that's a small fraction
14 compared to what the LSN Trust has charged.

15 And this Court actually found that it wasn't even
16 going to award the ELN Trust, all of the maintenance and
17 repairs, because it found it to be excessive. And now in four
18 years or five years they have incurred a hundred and
19 seventy-five thousand dollars in debt to make Lindell not
20 profitable.

21 And with respect to Lynita and the LSN Trust, I
22 don't even know if she's properly licensed. I don't know if
23 she has a license to manager the property. I don't know if
24 she has business licenses. I don't know if she has any of

1 that. Maybe she does. I don't know. But it makes no sense
2 for Lindell to pay her a -- or the ELN Trust to make sure she
3 receives a 10 percent management fee when it's willing to do
4 it for free. If she wants to do it for free, maybe that
5 changes the equation to some degree.

6 But the ELN Trust shouldn't have to pay her
7 management fee to do something that it's willing to do for
8 free, especially with respect to the unit that it's renting,
9 on the second floor. So even if this Court ordered that it
10 start paying \$3200 a month, it's going to have to pay Lynita
11 \$320 a month to manage the property. I don't know what if
12 anything she's doing with respect to unit 201 where the ELN
13 Trust operates out of. So it wouldn't be appropriate for her
14 to do that.

15 With respect to paying rent, Your Honor, if this
16 Court is inclined to order the ELN to start paying rent. AS
17 Mr. Karacsonyi indicated, the LSN Trust already owes the ELN
18 Trust 4 to \$500,000. So to the extent this Court wants to
19 start ordering that those payments be made, it should be
20 deducted from the amount. It should be offset so that the ELN
21 Trust doesn't have to keep writing a -- a -- write a check
22 every month to the LSN Trust. It should be deducted from the
23 4 or \$500,000 that this Court already recognized should not
24 have been transferred from the ELN Trust to the LSN Trust.

1 With respect to the sign that we probably heard 10
2 times about today, at least the sign that the ELN Trust had
3 up, at least it said that there was a vacancy. At least there
4 was a phone number for somebody to call if they wanted to rent
5 one of the units. The sign that's up now, there's nothing.
6 There's no contact information. If somebody wanted to get
7 into Lindell based on the pictures that were shown, I don't
8 know how they would get in contact with Lynita to find out
9 about that vacancy.

10 The fact of the matter is while she may have poured
11 her heart and soul into this property, maybe she -- I don't
12 know, but it's been a losing proposition from day one and the
13 ELN Trust is suffering because of bad business decisions that
14 have been made by the LSN Trust. Those units have been vacant
15 -- vacant for years and I believe I identified that in my
16 opposition. And the ELN Trust should not continue to incur
17 damages because of -- of what's been going on today.

18 THE COURT: Do you got a position on this?

19 MS. FORSBERG: Your Honor, one thing to add. To our
20 knowledge, I know they say that she's still a resident of
21 Nevada, but she technically lives from our understanding is in
22 Evanston. She's even on the Omni Award directory in Evanston,
23 Wyoming, to our knowledge.

24 So the other problem is he's on property to manage

1 this -- this property all the time. She's nowhere to be
2 found. So that's kind of hard to manage that on a day-to-day
3 basis whenever it's early, not here, so --

4 MR. LUSZECK: Can I -- can I just add one more
5 thing, Your Honor? And I don't know -- even if this Court
6 finds if she can still manage it, I don't understand how this
7 Court can preclude the ELN Trust which is a 50 percent owner
8 in Lindell from speaking with any other -- any of the other
9 tenants or precluding it somehow to exercise any of its rights
10 as a manager.

11 Just because -- if this Court finds that the LSN
12 Trust can continue to manage it, she can't still keep
13 incurring this debt and making improvements without the
14 consent of the ELN Trust. There still has to be
15 communication. But it seems like what she's asking for is
16 just carte blanche authority to do whatever she wants despite
17 the fact that the Nevada Supreme Court found a year ago that
18 the ELN Trust still has a community -- or sorry, a 50 percent
19 interest in the property.

20 Oh, gosh. And then the whole parking roof debacle.
21 I mean, that's just one example, Your Honor. I mean, that
22 happens in December 20th and it's not -- there is -- a tenant
23 has their truck that's stuck under this carport for a month
24 and nothing happens. And I know in the reply they say well,

1 he wanted it to stay there for insurance purposes.

2 Your Honor, that is so farfetched. You're telling
3 me a tenant of a property is going to want their truck to
4 stand under a carport for a month? That's a joke. There is
5 no evidence of that. Where is the affidavit from the tenant
6 stating that? That's not what happened. That's not what
7 occurred. It was a complete liability for Lindell property,
8 nonetheless, it sat there for 30 days until it was ultimately
9 removed and the tenant was allowed to get his car out of
10 there. And that carport still isn't up even though she's
11 managing the property.

12 THE COURT: Any rebuttal?

13 MR. KARACSONYI: Okay. And -- and Ms. Nelson would
14 like to say a few words about his last point. I mean, she's
15 really -- really upset about that.

16 THE COURT: Sure.

17 MR. KARACSONYI: But the rent roles -- first of all,
18 two of those people stopped paying rent and were run off by
19 Eric immediately after the transfer or weren't paying rent at
20 the time. The church group stopped paying rent two months
21 after the transfer. So you can have a lease for all the money
22 you want, but if the people aren't paying rent and they're not
23 staying at the building, you're not going to be profitable.

24 Now as far as the repairs and maintenance that they

1 requested in the past, as you recall, a lot of those repairs
2 and maintenance were for things that the Court really couldn't
3 justify. He wasn't changing a roof. He wasn't painting the
4 building. It was Lance Lou (ph) and other people who were
5 just getting these -- these monies for repair and management
6 but the Court couldn't really determine at that point what was
7 being repaired or managed by these people. You don't need to
8 have a license as a private owner to rent your own property.
9 You don't have to have a property management license. She's
10 an owner of this property.

11 I didn't say -- he says that we acknowledge that she
12 owes money. I didn't say she owes money. What I did
13 acknowledge, and -- and reminded this Court of, is that the
14 fact that -- that you've already said that if there are monies
15 owed between the parties that you are going to reserve that
16 for a later date. You haven't made that determination whether
17 he owes money, she owes money, and you decided, I believe
18 rightfully, that it should wait until we find out what the
19 tracing produces because if the tracing states that property
20 doesn't -- it needs to be transferred back to Ms. Nelson or
21 vice versa, it's going to affect how you look at those monies
22 that were collected during the pendency of the appeal, if she
23 still has a right to those properties.

24 So you haven't made a determination that anybody

1 owes money. I haven't conceded that we owe any money. All I
2 was simply saying is you took the issue of past monies owed
3 between the parties. You took that and reserve that to be
4 done at the very end of this case. And so to the extent that
5 you asked about him paying the back rent, I -- I just reminded
6 the Court that that was something that was reserved for a
7 better -- for -- for a future date.

8 So the receivership we asked -- or they asked for,
9 if you're not inclined to allow Ms. Nelson to run the
10 property, certainly allowing Mr. Nelson to run the property
11 isn't viable and we would ask then that you go with the
12 receivership.

13 Now she is a resident of Nevada. She's never given
14 up her residency. She is here managing the property.

15 And this -- this parking structure issue is so
16 upsetting, because Ms. Nelson was on top of this issue from
17 the very start even during the time of her mother's passing
18 which was very difficult. So the -- the tenant asked to leave
19 the -- the vehicle there until he can determine how to proceed
20 with the insurance. And in the meantime, she had bids
21 performed to replace the structure with the existing
22 materials.

23 But here's what happened. We -- she gets these bids
24 and he has all the stuff -- all -- all the material hauled

1 away. And so we sent them a letter as they know. And it --
2 we sent them a letter saying we believe you had all the -- all
3 the -- the material hauled away and you're causing -- costing
4 her more money because she was going to use the existing
5 material and already had the bids done. She's been on top of
6 these issues for day -- from day one.

7 The pictures don't lie. The condition of this
8 property is a hundred times better today than it was back
9 then. And with that, I think she would like to say a few
10 words about that issue because -- because it's really
11 upsetting to her to hear -- to hear such lies spewed in court.

12 MS. NELSON: Thank you, Your Honor. I stand here on
13 the merit of my honesty that I've had ever since I walked into
14 this court and that I've sworn to. And for the representation
15 of Coun -- of opposing Counsel to suggest that from their
16 client who has --

17 MR. KARACSONYI: You can just --

18 MS. NELSON: -- determined --

19 MR. KARACSONYI: -- stick to the --

20 MS. NELSON: -- otherwise. I -- I appreciate the
21 opportunity to talk about this proposed issue with the cover.
22 Okay.

23 With regards to -- I -- I -- I'm not sure where the
24 information is coming from. It's -- it's not from the tenant.

1 It's -- it's not accurate. It is a lie. It's not honest. I
2 was in contact with the tenant and told him that I could have
3 lifted it off myself. He wanted to pursue some situations
4 with insurance and almost refused my -- my multiple time after
5 time suggestions just to move the truck and have the insurance
6 cover for it afterwards. That's not what he wanted to do. It
7 could have been removed. I could lift the cover and pull the
8 truck out. I could do it. I had a maintenance employee lift
9 it with me, however, and there wasn't a problem.

10 The tenant also called one of the persons that I had
11 obtained a bid from, because he wanted the insurance to
12 oversee all of this. He didn't want to do it himself. Like I
13 said, I don't know why. That -- that was his decision. It
14 wasn't my responsibility. He originally wanted it to be my
15 responsibility. I told him it was not. I wasn't in charge of
16 the accident. It wasn't my responsibility. It was between
17 him and his insurance company and had nothing to do with mine
18 which is I think why he delayed it. He was trying to convince
19 people that it was my responsibility.

20 He ended up -- I have emails, I have texts, going
21 out, lifting the cover himself, and pulling the truck out.
22 It's between -- it was his decision. It had nothing to do
23 with mine. And I will address the timing as well.

24 My mom asked me to stay with her and not to leave

1 her side, because there were family members who were visiting
2 her every day asking her to transfer what little she had,
3 which was a house and two cars, over to them. When I began
4 staying with her, they ceased to come. But a new one came.
5 They were not invited to stay with her the last few days of
6 her life because they were her family. They were her flesh
7 and blood. And she because of the deceit was not allowed to
8 be with her own mother when she passed.

9 And the suggestions and the lies that are coming
10 about weeds from a person who would go and steal from a person
11 on their death bed cannot be considered --

12 MR. LUSZECK: Your Honor, I --

13 MS. NELSON: -- or acknowledged --

14 MR. LUSZECK: -- object to the extent she's talking
15 about Eric Nelson.

16 MS. NELSON: And anyway --

17 MR. LUSZECK: This is ridiculous.

18 MR. NELSON: No, she's not talking about me.

19 THE COURT: Yeah, I'm not sure it's --

20 MS. FORSBERG: She's talking about someone else.

21 THE COURT: And I didn't take it --

22 MS. FORSBERG: Her family --

23 THE COURT: -- that it still bothered her --
24

1 MR. LUSZECK: And she's not talking about her --
2 MS. FORSBERG: It's someone in her family I think
3 what she's --
4 MS. NELSON: No, I am talking about you.
5 MR. LUSZECK: Me?
6 MS. NELSON: Yes.
7 MR. LUSZECK: Come on, Your Honor.
8 THE COURT: Yeah. Yeah.
9 MR. LUSZECK: This has got to stop. This is --
10 THE COURT: Yeah, we don't --
11 MR. LUSZECK: -- ridiculous.
12 THE COURT: Yeah, I didn't think -- I didn't talk --
13 I did not take it as being --
14 MS. NELSON: I'm talking about --
15 THE COURT: -- Eric at this time.
16 MS. NELSON: -- Mr. Nelson and my sister who were in
17 cahoots together --
18 MR. LUSZECK: Your Honor, I object --
19 MS. NELSON: -- during this.
20 MR. LUSZECK: -- to this.
21 MS. NELSON: And they bring up the point that there
22 was --
23 MR. KARACSONYI: Okay.
24 MS. NELSON: -- there was --

1 MR. LUSZECK: Your Honor --

2 MS. NELSON: -- some weeds that weren't pulled.

3 THE COURT: Okay. Well, we'll strike that --
4 anything from the record as far as anything dealing with the
5 mother and stuff on that. I was more concerned about the
6 property management. Those issues are -- and obviously what
7 happens -- you know, the reason I had transferred the
8 management to Ms. Lynita back in 2014, when it was on that,
9 because there was -- these people can't communicate. That was
10 the problem. They couldn't deal with the altercation with the
11 gate and push in and Lynita's heel getting caught on that and
12 we were having almost altercations over a gate and access to
13 the property and changing locks.

14 That's why we going to have you guys communicate.
15 So I know you indicate they need to be able to communicate as
16 co-owners and do it. And I wish they could, but we couldn't
17 do that. And we almost got to a point where we had TPOs
18 being filed and things like that, so we could not co-manage.
19 And my other option would be to have a separate manager come
20 and manage the property. That costs both parties money out
21 that, because I think from when we had the testimony years ago
22 about a 10 percent management fee was somewhere in the
23 ballpark when we had it. We didn't really get a lot of
24 expert. I mean, that's the problem, but my other option is to

1 get a separate person to come in and manage. Again, that
2 costs -- that takes money out of both pockets. But if they
3 have both owners communicate, I wish they could, but that's
4 the problem on that.

5 But I think you're right for me to order and they
6 cannot communicate with tenants. It's tough as ownership
7 rights and that from the trust on that, but the fact is to try
8 to have them communicate and work together, you know, probably
9 is not going to happen. It's still very emotionally charged.
10 It's been going on for -- I think they separated in 2008,
11 filed in 2009, if I remember.

12 I mean, so I was hoping the case would ultimately
13 settle after the Supreme Court decision to try to get there
14 because I can only imagine the -- the pain and the stress and
15 let alone business, but I think Ms. Lynita has always felt
16 that when she came in on it, they talked to her kinda she was
17 like a not very bright stay-at-home kind of mom raising kids
18 on that and she felt that she can run business on that and she
19 can always get into -- should they put the money in whose
20 better business.

21 You know, the Court follows the business judgment
22 rule. You assume people -- there's a judgment and not for me
23 to secondguess people's judgment. They come in and make
24 investments, do things like that, and people make business

1 enough for me to determine unless I see someone who's doing
2 things fraudulently or not taking care of property, but that's
3 the problem we're at this point, that no one trusts each other
4 still, that they're afraid you're going to get rid of all the
5 property just to try to make sure that no matter what happens
6 that she won't get anything.

7 Your issue is you don't think that they're trying to
8 tie you guys up, so you can't do business, but you guys need
9 to get this resolved. But it's not going to be resolved. You
10 guys are going to be litigating this probably -- I'm retiring
11 in two-and-a-half years and I expect this will be litigated
12 after my retirement and so be it. But I will take all the --
13 any issues that I missed that you want to address? Because
14 I --

15 MR. LUSZECK: Well, I just had two quick things.
16 Counsel said that some of the tenants that were in the
17 property when the LSN Trust took over the property weren't
18 paying rent or only differ two months. That's false. If you
19 look at Exhibit 4, gosh, the accounting that they provided for
20 July, August, September of 2014 shows that every single tenant
21 in there paid rent. The total of \$7,800 was collected from
22 each month.

23 So I'm just telling you what they put in the
24 accounting that they sent over to me that they ordered to by

1 the Court back in 2014. I believe it's Exhibit 4. Exhibit 4
2 to my opposition.

3 And then with respect to the -- the carport, Your
4 Honor, it just boils down to it's a liability issue. If it
5 was this light -- you know, if -- if it was as light as -- as
6 Ms. Nelson says that it was and she could have lifted it up,
7 we're talking about December. What -- what would have stopped
8 the wind from coming and blowing that across the street or
9 hitting a house or hitting a commercial property or hitting
10 somebody? It's a liability issue. It needed to be submitted
11 to the insurance company for them to deal with it. It's a
12 pretty straightforward type thing when it comes to commercial
13 liability and commercial insurance policies. So that's what
14 should have been done, but it wasn't.

15 MR. KARACSONYI: And it's just not true Your Honor
16 about the rents. They -- they weren't paying full rents,
17 so --

18 MR. LUSZECK: Well, that's -- we got it from his
19 office. So it's Exhibit 4.

20 THE COURT: Any other things? I felt that -- as I
21 said, I'll give you guys written orders on, everything we need
22 written orders on, everything to get this moving forward. I
23 think Mr. Bertsch -- I think you need an issue as -- as far as
24 the tracing? I mean, and so you can get started. I think

1 that was the tie up on that. The parties cannot agree on a
2 tracing date. Is that where we're still at?

3 MR. BERTSCH: You know, as I listen to this, in some
4 cases it sounds like we're chasing the hamster and letting the
5 elephants running over us.

6 THE COURT: Yeah, I --

7 MR. BERTSCH: And I've always tell my clients one of
8 the best things to do if you're going any place, you get in
9 the car and you go. What's the biggest window in that car?
10 It's the windshield. That's where you're going. If you drive
11 down the road looking in the rearview mirror, you're going to
12 have an accident. And it appears by some of this that's about
13 where we're headed.

14 Now as far as the tracing is concerned, I was
15 looking for a starting point. And I looked at the schedules
16 that were prepared on May 31st, 2001. And ask each side to
17 verify if that is the starting point.

18 So as I understand the trust, it's like two
19 different companies. They have no relationship other than
20 they do business with each other like a vendor. I find in
21 looking at those, there was -- it was titles for everything
22 that was on there with a few exceptions which have to be
23 answered. But after that, they're claiming what went in
24 there, there's no community assets because now it's private

1 and it belongs to them individually.

2 What I find in looking at some of the information is
3 after that things get commingled. And they don't remain
4 separate. The titles go back and forth. And what I'm told is
5 if we change one or if the other person got this, they can do
6 whatever they want. So they're gifts.

7 And to my way of thinking, if there is a transfer,
8 or money transferred, even though it's commingled, there's got
9 to be due to and due from. And the transfers have to be at an
10 arms length transaction and they were not arms length
11 transactions here.

12 So the differences are passing through the
13 commingling of funds. Should be an arms length transaction.
14 If it isn't arms length and it goes to this considering a
15 gift, to me, it may not be community property going in, but it
16 gives me some sense. It became community property afterwards.
17 So we need a definition what is the community property.

18 The Lindell, I think there's no question the
19 receiver has to operate that property. In my doing this for
20 over 50 years, that's the solution. And the receiver then can
21 report and operate the property. That's my look. So it
22 becomes hard to trace if everybody has a different opinion.
23 If I trace it and it goes from one commingled to another, does
24 that mean it's a gift and I forget about it? If that's the

1 case, where everything was signed up on May 31st, and it can
2 be at a price that's not at fair value, you don't setup a due
3 to and due from on everything. Then it's over. I have no
4 tracing to do.

5 The other thing, we talked about the appraisal. And
6 as I received the -- getting an appraisal on the property, one
7 side said they didn't want to use the same person. I looked
8 at finding an appraiser for the property on the cabin. And
9 looking at their requirements and doing background checks, and
10 I didn't look at the prior appraisal, I came up with who I'd
11 like to talk to. I pull the appraisal it was the same person.
12 So I think they're qualified. They both said it's okay to use
13 the same one. I think it's cheaper. I think they're
14 qualified. And I will contact them for doing an appraisal.

15 But I would like to have direction from the Court of
16 how we treat this commingling, and if there are gifts, and
17 should we pursue it on that basis.

18 MR. KARACSONYI: I'm going to -- oh.

19 MR. LUSZECK: Oh, sure.

20 THE COURT: Do you want to be heard on that? And
21 then we'll -- thank you, Mr. Bertsch.

22 MR. LUSZECK: Yeah, I -- I thought this Court's
23 order was clear. He's supposed to conduct a tracing as to
24 what happened between the two entities, if anything. He's not

1 supposed to make opinions as to commingling or whether it's
2 community property or whether it's fair market value or
3 anything else. We have two separate entities. We've never
4 disputed that there was business transactions between the two.

5 In the Supreme Court order on Page 17, this said the
6 Court must trace trust assets to determine whether any
7 community property exists within the trust. While I concede a
8 tracing has to be done, it's not Mr. Bertsch's within his I
9 think appointment of a special master to make a determination
10 of whether or not anything was commingled or whether or not
11 anything constitutes community property. I think that's a
12 determination to be made by this Court.

13 So my understanding from day one is he's supposed to
14 look at the two entities, identify any transactions between
15 the two, and then come back to the Court and report that's
16 what my finding is, Your Honor, you know. Entity A sold, you
17 know, (indiscernible) to entity B, period. And then this
18 Court makes a determination as to whether or not there's
19 community property interest in there. If there's any claims
20 of malfeasance or anything else with respect to a transaction,
21 that's an A case, Your Honor. They've already filed a civil
22 case for that. And that's where that deal's -- that's a
23 situation where that's dealt with.

24 But I don't think it's appropriate for the special

1 master who is appointed for a -- a fairly limited purpose to
2 make determinations with respect to questions of fact and law
3 which I think are ultimately for this Court to decide. And
4 then --

5 MR. BERTSCH: Your Honor, if I recall, the order to
6 me was to find if community property got involved with those
7 transactions. So we need a starting point. They were all in
8 the trust. There was no community property at that time
9 because the titles were in the appropriate names.

10 If that's considered gifts, after that if it goes
11 back and forth, there's nothing for me to do other than just
12 say it starts where it is. But I'm telling you, as I started
13 through it, some of these other questions came to mind, and I
14 need instructions from the Court, do I just drop it or do I
15 finish going through the transactions from the first up to
16 current?

17 MS. FORSBERG: Your Honor, if I can -- one -- one
18 thing and I think perhaps would help Mr. Bertsch is that the
19 character of property remains as it is. If it's separate
20 property and you're transfer between, it's still separate
21 property. It doesn't lose its characteristic. I think that's
22 the confusion he's having. He's basically saying nothing else
23 happened and they were separate to begin with. And I don't
24 see -- I believe that's what he's saying. So I think he's not

1 understanding that character of property remains as is, the
2 existing property. If it's separate property, rents, issues,
3 and profits, which means selling or purchasing of other things
4 which is profits, rents, issues, and profits remain as they
5 are. And yet, they have to determine if they brought
6 something else in to make them community. I think that's what
7 he's confused about.

8 MR. KARACSONYI: I think what -- what's causing the
9 confusion is that it sounds to me like he's being told -- and
10 I assume this is coming from Mr. Nelson, that these transfers
11 are gifts. He -- he's not supposed to presume anything. I
12 think what you would like -- and I think what the Supreme
13 Court's charge is and what you would like him to do is find
14 out -- to report on each and every one of those transactions.
15 Okay. As he said, property was transferred, was it arms
16 length. Was there money back. If not, what should have been
17 paid and what wasn't paid. And to do that with each and every
18 transaction going forward and to find out where the property
19 that existed in 2013 came from and whether you can trace it
20 all the way back or whether it's so commingled you can't even
21 trace it back.

22 And so with each -- with each transaction, I think
23 it -- it -- it's his charge to just chart each and every
24 transaction between these entities, whether money was paid for

1 it, you know, how the transfer occurred, each and every
2 property that was acquired, where did the money come from to
3 acquire that. Was -- did it come from the original money or
4 did it come from money that was transferred between the two or
5 did it come from money that it's impossible to say where it
6 came from in which case that it's presumed to be community
7 property.

8 And then at the end of the day Your Honor needs to
9 make the decision once you have all this information, and they
10 wrote this in their initial brief, they argued some of these
11 points in their initial brief on remand, the -- the transfers
12 were gifts and this and that, so you should find that they're
13 separate property or whatever.

14 But it's ultimately your decision to determine under
15 community property law whether there was a transmutation. And
16 they talked a lot about transmutation. Whether her separate
17 property was transmuted to his separate property. Whether her
18 tran -- separate property was transmuted to community property
19 or whether his community property -- or separate property was
20 transmuted.

21 And so once you have all those transactions, then
22 you can make the determination. And you can look at the law.
23 Is this a clear and convincing evidence of a transmutation?
24 This was Lynita's separate property. It went to Eric. Did

1 she intend to transmute that property and -- or did she intend
2 to gift it to him?

3 And so those are all the things that you are
4 ultimately -- I agree with Counsel. You are ultimately going
5 to make those decisions as to whether the character of
6 property change. But I think for Mr. Bertsch's purposes, I
7 think the charges map each and every transaction from 2001 you
8 -- which you indicated was the date that you thought the
9 Supreme Court set to present -- to 2013 -- or 2013 and let me
10 know what happened between these trusts and where the property
11 that existed in 2013 if you can tell me definitively where
12 that property came from. If you can tell me that you can
13 trace that back to 2001.

14 MR. LUSZECK: Yeah, I don't -- I don't disagree with
15 that. But that's what the charge is and that's the tracing
16 that's supposed to happen is this -- yeah, what do we have in
17 2001 and where was it going forward.

18 But I think the big misconception here is the fact
19 that the only way the community property would even arise in
20 this situation is if Eric or Lynita have assets titled outside
21 of the trust that they transferred into the trust. And that
22 would make it community property. So if Eric had assets
23 income that were outside of the ELN Trust that he funded after
24 2001 into the ELN Trust, then we may have a community property

1 issue. But the fact that the ELN Trust had an -- an asset in
2 2001, sold it, purchased another asset, things like that
3 nature, that doesn't transmute it into community property.
4 The separate property retains its character throughout,
5 through present.

6 So I think that distinction needs to be made, that
7 just because there may have been transfers between the trust
8 or business transactions, that doesn't mean it's transmuted
9 into community property. It keeps and it retains its same
10 nature.

11 THE COURT: I think the issue with Mr. Bertsch is to
12 -- except -- is to trace -- is to tell (indiscernible) -- is
13 to trace it so the Court can make a determination. Many
14 positions will be it's a gift. The Supreme Court talked
15 about, you know, gifts, things like that. Well, that's the
16 whole thing to determine about. Was it -- and part of to
17 determine the gift is you look to see, you know, was there
18 arms length transaction, was there value. If I find
19 everything going from one to the other, there's millions of
20 dollars of gifts to that side and this group's getting
21 nothing, I don't know if it's really a gift or not. I mean,
22 that's the whole issue it comes on that.

23 And so I think (indiscernible) as far as whether
24 it's commingling, I -- I think those issues are due -- due to,

1 due from. And to say where it went, how it got there, and
2 where it went afterwards so we can determine those issues on
3 that, was there a value paid, was there not value paid. Is it
4 then going to be -- did he send her a gift or not a gift. I
5 think that's the issue.

6 So I think the other fact is on that if we start
7 from the premise that everything was a gift, I thin Mr.
8 Bertsch says that there's nothing to trace. And I'm not
9 taking a presumption everything was a gift. I think the issue
10 is to see where it came from, May 31st, 2001 through the
11 divorce decree or that property was, who owned it, where it
12 went.

13 And again, I agree with you. If it was separate
14 property, it doesn't automatically lose that, but the issue --
15 I don't know where everything came. That's the issue on this
16 question is that there's all these transactions, did this come
17 from that, did this come from here, and that's what the
18 Supreme Court was saying with the tracing. We don't know
19 where everything came from, let alone with titles on that.
20 But I know Mr. Karacsonyi disagrees, and I respect that about
21 the Supreme Court, but they -- to me with their language, we
22 hold. We find. I felt -- and that's why I went from the May
23 31st, 2001 based upon a -- now maybe they used poor language,
24 but that's something you clarify with them. But that's why I

1 went from the May 31st, 2001, here's where it started, where
2 did it go through, June 2013. That's all I'm trying to trace
3 it through that.

4 And I think Mr. Bertsch needs in all those issues,
5 like was there value paid for it, was it this or that, so he
6 can let me know on those issues and the Court would determine
7 whether it's separate property or was it community property or
8 where it went through, but there was the issues. I don't know
9 where all the BanOne stuff came from, how it got there, to be
10 honest.

11 I know we had different pieces of property. It's
12 been so long ago, I forgot, but there's an awful lot of
13 transactions from the 2001 when they created the trust what
14 was in there and what came up to 2013, was there any property
15 that a party put in that was separate property that of course
16 they could not give their community property and trust if
17 there was community property used on that. Eric could give
18 his half, but not Ms. Lynita's half.

19 So that's the issue is what it looks like with the
20 properties. So I'm not sure what the exact issue is from --
21 from the trust, but I'll hear it from --

22 MR. LUSZECK: Well, the issue is is -- yeah, he's
23 supposed to conduct a tracing, but he's not supposed to state,
24 you know, this is community property, this is -- I believe

1 this wasn't for fair market value in our link's transaction.
2 That's not the scope of his retention. He's supposed to
3 trace. He's supposed to look at the transactions, here they
4 are, Your Honor, here's my spreadsheet, here's my document,
5 here's what it is, but it shouldn't contain language such as
6 community property, commingling, you know, it shouldn't have
7 any of that because that's not what a special master is
8 supposed to do.

9 THE COURT: I agree.

10 MR. LUSZECK: That's one. And two, Wyoming Downs
11 shouldn't be included in this tracing either based upon the
12 fact that the 9/22/2014 was not overturned by the Nevada
13 Supreme Court. So the issue is completely outside of the
14 scope of his retention because it has nothing to do with
15 anything.

16 MS. FORSBERG: Your Honor, just to -- to finish the
17 clarification on that, is -- is -- it's -- to determine
18 whether it was community property instead of if it's trust
19 property and they did business between each other, that's not
20 community property. That's two trusts that are separate
21 entities that don't have a community interest. They're now
22 separate property that are going back and forth. And whether
23 that's fair or not is not before the Nevada Supreme Court the
24 Supreme Court said. It said find out if there's any community

1 property that's been put in there and gone back and forth.

2 That's the difference. I think that's one thing that Eric --
3 we have been discussing that that's what the task is.

4 And that's what the tracing should show you, whether
5 they brought something in from the outside that they -- they
6 had earned on a community property setting and put it in.
7 It's not whether they tran -- transferred separate property
8 and transferred -- it still remains separate property. I
9 think that's the confusion too.

10 MR. LUSZECK: But that's true, because any -- any
11 claims that, you know, a transaction --

12 MS. FORSBERG: It's unfair or --

13 MR. LUSZECK: -- was not fair or anything else,
14 that's subject to the A case.

15 MS. FORSBERG: That's not --

16 MR. LUSZECK: That's not --

17 MS. FORSBERG: -- this.

18 MR. LUSZECK: -- even -- this Court is to determine
19 whether or not there's any --

20 MS. FORSBERG: Community --

21 MR. LUSZECK: -- community --

22 MS. FORSBERG: -- property, period.

23 MR. LUSZECK: -- property within either one of the
24 trusts. It's not to determine whether or not a transaction

1 was fair or anything else. It's whether there was community
2 property. Once again, that's your determination, not Mr.
3 Bertsch's.

4 MR. KARACSONYI: So if I may just respond to them.
5 I don't disagree on the part -- part that he's not going to
6 make decision as he's not the judge and he's not going to make
7 the decision on the character of property. I don't think we
8 have any disagreement there or the character -- how -- how
9 transactions changes the character of property.

10 Certainly though if -- if a transaction was done
11 where property -- her separate property was transferred to his
12 trust without consideration, he would say -- he would note
13 that this was a transfer for zero dollars and the property
14 sold for X dollars and she didn't get that. So whether you
15 want to say whether he determines if it's arms length or not,
16 he can say -- he can trace the transactions, was it zero, was
17 it \$5, was it \$10.

18 And it is this Court's charge to find out what the
19 character of property is and the transmutation issues. That's
20 part of community property law and whether there were
21 transmutations of property. And we -- we must not forget that
22 anything earned or required during marriage is community
23 property.

24 And everything they're doing in their trust, if he's

1 earning monies during marriage, those are community efforts
2 that need to be compensated. And so that -- if that's
3 occurring in the trust and there's properties being acquired,
4 even if you acquire them in trust, I can't go defeat my wife's
5 community property interest by setting up a trust and buying a
6 property in the name of that trust. I can't do that.

7 If you purchase a property during marriage in the
8 name of a trust, just because you title it in a trust doesn't
9 make it separate property. You have to show that it was
10 derived from actual separate property. And that's exactly
11 what his charge is, to go back and look. If it's the rents
12 issues and profits, if you own the Palmyra residence, I'll
13 just use my client as an example, and you sold it for 700,000
14 and you bought another house for 700,000, that's your separate
15 property. I don't disagree if the transaction is the same on
16 that side, although I disagree with the date of tracing, but
17 that's for the Supreme Court to later decide if that was
18 correct or not.

19 But this -- this idea that just because you did
20 things in the name of the trust, that doesn't defeat your
21 spouse's community property interest. So we just need to see
22 all the transactions all the way through. If Wyoming Downs
23 gets covered there at the very end, we need to see every
24 dollar from point A to point B and then make a determination

1 as to how that affected the character of property.

2 MS. FORSBERG: Your Honor, one thing that Mr. --

3 MR. KARACSONYI: I would just --

4 MS. FORSBERG: -- Karacsonyi --

5 MR. KARACSONYI: I would just ask that --

6 MS. FORSBERG: Oh, sorry.

7 MR. KARACSONYI: -- we have, like, replies to --
8 they've talked last every time. I mean, I've noticed that
9 even when it's my motion, so I -- I don't do that generally
10 with them.

11 THE COURT: I'll give you a last -- we got so many
12 motions going back and forth and countermotions.

13 MS. FORSBERG: I'm just --

14 THE COURT: I'm not sure who's filed --

15 MS. FORSBERG: Watching them is misstated. There is
16 a separate -- separate property agreement way, way back before
17 any trust that --

18 THE COURT: Between 93.

19 MS. FORSBERG: -- separates the in come. 93. That
20 said his income is now his separate property and the Supreme
21 Court held that. I think that was the only thing I was saying
22 is that he forgot that portion, that -- that -- you -- you
23 can't say now well, if he earned it in here that now it's
24 community, because it's not according to the separate property

1 agreement.

2 THE COURT: Now the -- the issue for Mr. Bertsch on
3 that is -- to me is to see what transactions happened and was
4 there value paid, not value paid, not whether it was gifts or
5 commingled or transmuted where they to say what a property is.
6 That's been the big question of this case from day one, what's
7 the property, where it came from. There's so many
8 transactions and this accounts. That's what we're trying to
9 do is see where it came from and how it got there and from the
10 2001 to 2013. So as far as --

11 MR. KARACSONYI: And if this --

12 THE COURT: -- those issues about arms length
13 transactions, it's like that, I think the issue is -- this was
14 transferred from here to there, they paid a hundred bucks or
15 paid no money --

16 MR. KARACSONYI: And --

17 THE COURT: -- and it --

18 MR. KARACSONYI: And when prop --

19 THE COURT: -- that becomes gifts or if it's
20 community or separate. That's right.

21 MR. BERTSCH: Your Honor, what I'm talking about is
22 on Page 5 and on the top of Page 6, because it's talking about
23 at this particular point --

24 MS. FORSBERG: Of the Supreme Court?

1 MR. BERTSCH: -- this is from --

2 MR. LUSZECK: Yeah.

3 MR. BERTSCH: -- the Supreme Court.

4 THE COURT: Okay.

5 MR. BERTSCH: It's talking about where Lana Martin,
6 a Nevada resident, as initial distribution trustee was for
7 both parties. And then on the top of Page 8, it said many
8 transfers of property occurred between the trusts between
9 2001, 2009, most of which were gifts from one trust to
10 another. They're not designated that, but if they're saying
11 that any -- anything was transferred after that was a gift,
12 then the tracing of it is moot.

13 THE COURT: Is -- is moot, yeah.

14 MR. LUSZECK: Because there was no community.

15 MR. KARACSONYI: I -- I don't have the full context
16 of what he's reading right there, but I think he needs to
17 trace again all the transactions, nobody disagrees, and let
18 you make the ultimate decision of what the laws and the fact
19 -- laws are and the facts.

20 As far as -- just one thing that I hope isn't
21 missed, that he also has to when there's an acquisition,
22 because we keep talking about these transfers back and forth,
23 when there's an acquisition, he does need to say if it's
24 acquired during marriage a piece of property do you know the

1 source of those monies. Can you determine where that money
2 came from. Is it monies that could have come from her trust
3 or both their trusts or -- or where. Can you trace it back to
4 -- to which -- where did it come from, that money, so that you
5 can determine whether you can trace that property back to
6 separate property or whether you can't tell where that money
7 came from, in which case the presumption arises that it's
8 community property.

9 THE COURT: Well, the issue on that, I think the
10 Supreme Court on that they did use the word gifts. But I
11 think if they had meant gifts all the way 2009 and there are
12 no sense to trace and they did mention about the need to trace
13 is that's the issue is try to see where the property went from
14 2001 to 2013 time of divorce to see what was in there to see
15 if there's any community property claims. There may have been
16 gifts back and forth to trusts. You can give gifts between
17 trusts on that, but I think the issue from this Court is to
18 see where it came from, what it was, where it came from.
19 That's what the whole purpose of tracing was then determined,
20 was there any community interest or not.

21 I think the Supreme Court -- I said with their
22 language I wasn't sure when it went back to 1993. They made
23 it real clear that we find -- we hold that they were funded
24 with separate property agreements. That's why I started with

1 the 2001 date because I thought the Supreme Court used the
2 word we find, we hold. That's not dicta, that's findings.
3 That's why again I did the tracing from the 2001 to the
4 divorce decree to sit there and see where it came from, where
5 it went, that way we can make a determination was it separate
6 property, maintain separate property, fine.

7 Mr. Bertsch, anything else on that? I mean --

8 MR. BERTSCH: And then I take it that I will start
9 with the deeds and things that are present at March 31st,
10 2001. I will then take it to disposition through today or
11 2009, whatever you ask me to do, which would be if there's a
12 sale, where did the funds go, how they show on a tax return.
13 Then if there's other purchases in the -- after that, then
14 where did the funds come from to have the purchase. And if
15 it's from one trust to the other, they used funds and there's
16 got to be a due to or due from.

17 THE COURT: Yeah.

18 MR. KARACSONYI: And there's one other issue. When
19 money comes --

20 MS. NELSON: Wait. Wait. We can cut Larry --

21 MR. LUSZECK: Oh, I -- I don't -- I don't doubt
22 that. Yeah.

23 MR. KARACSONYI: Just to -- for -- as accounting
24 purposes, I thin. But when there's money coming in to the

1 trust too, he's -- one other thing. Not just deeds, but if
2 money comes into the trust, you have to determine where did
3 that money come from. If -- if a trust -- if you take 200,000
4 in your savings and put it in a trust, you don't defeat the
5 character of property and then buy property with it. So any
6 money coming in too, you'll have to say where did that money
7 come from, was it earnings, was it -- where did it -- do we
8 know where it came from? If -- if we don't know, then it's
9 community property and we -- the presumption arises.

10 THE COURT: I'm inclined not to have the Wyoming
11 Downs thrown in there, I remember when I did the divorce
12 decree and we held off on Wyoming Downs separately, but I'll
13 look at that, but we held separate. I think I made a separate
14 ruling on the Wyoming Downs. I heard separate testimony on
15 that. I believe it was not a final decree because I had held
16 off on Wyoming Downs because I needed to get an evidentiary
17 hearing, but I'll look at that, but I will not be inclined --
18 I think I made findings that the Wyoming Downs was separate at
19 that time even though they argued that it was still acquired
20 during marriage, should or shouldn't have been included on
21 that, but my inclination is not to include the Wyoming Doi --
22 Wyoming Downs in your tracing at this point. But I'll look at
23 all that whether -- a detailed written order.

24 But to get this going, I would think we start with

1 the -- there was the May 31st, was it the date? May 30th,
2 2001 date to --

3 MR. BERTSCH: Your Honor --

4 THE COURT: -- tracing --

5 MR. BERTSCH: -- if I take it from the trust because
6 you have to start with an inventory and see what happens, if I
7 happen to hit Wyoming Downs then I'm going to --

8 MR. KARACSONYI: Yeah.

9 MR. BERTSCH: -- have --

10 THE COURT: Sure.

11 MR. BERTSCH: -- to talk about it.

12 MR. KARACSONYI: That's -- you're not going to be
13 able to do that.

14 THE COURT: Absolutely. I mean, if it's there on
15 that, but that was my issue. I don't remember when that was
16 purchased initially.

17 MR. KARACSONYI: It was --

18 THE COURT: I don't --

19 MR. KARACSONYI: -- right before the divorce.

20 THE COURT: How they bought it and sold it and then
21 it --

22 MR. LUSZECK: It was --

23 THE COURT: -- reacquired it --

24 MR. LUSZECK: -- during the pendency --

1 THE COURT: Yeah.
2 MR. LUSZECK: -- of the divorce.
3 THE COURT: Exactly.
4 MS. FORSBERG: Very end of it.
5 MR. LUSZECK: It was 2012, 2000 --
6 MR. KARACSONYI: Yeah, right -- right prior to the
7 divorce.
8 MS. FORSBERG: What we --
9 THE COURT: But yeah --
10 MS. FORSBERG: -- we --
11 THE COURT: -- but if you don't come up with that --
12 MS. FORSBERG: We owned it before then.
13 THE COURT: -- of course, that comes in network.
14 MR. LUSZECK: Okay.
15 THE COURT: All right. That gives you enough to get
16 started on that. I'm going to get a written decision on all
17 these issues.
18 MR. BERTSCH: And I will take May 31st. I will not
19 go prior to that. May 31st, the balance sheets, is the
20 starting point and we'll go forward from that. Whatever is on
21 those balance sheets, and I will consider, is their trust
22 property.
23 THE COURT: Fair enough. I think that --
24 MR. LUSZECK: Yeah, and I think he's already

1 prepared a table that identifies all of the assets on each of
2 the trusts on that day. My -- that's my recollection --

3 THE COURT: Yeah, and when --

4 MR. LUSZECK: -- and I guess he can go --

5 THE COURT: -- we had so many --

6 MR. LUSZECK: -- back and see, yeah.

7 THE COURT: And they had a lot of accountings on
8 that. I know that Mr. Bertsch had several during the pendency
9 of the matter. So all right.

10 MR. BERTSCH: What he says is correct, but I needed
11 verification from each side, do you agree that it would be the
12 starting point. That's what I'm asking. That's what I asked
13 for.

14 MR. KARACSONYI: That's what the Court ordered.

15 THE COURT: The starting point would be --

16 MS. FORSBERG: It's what the Court ordered.

17 THE COURT: -- May 31st, 2001.

18 MR. BERTSCH: And there was one exception on that.

19 So --

20 THE COURT: Which -- which is the exception?

21 What --

22 (COUNSEL CONFER BRIEFLY)

23 MR. KARACSONYI: All right. Are we --

24 THE COURT: I think we're --

1 MR. KARACSONYI: Thank you, Your Honor.

2 MR. LUSZECK: And one I guess further clarification
3 point is I don't know that we asked for a receiver over
4 Lindell. I think we just said a third party --

5 THE COURT: You said --

6 MR. LUSZECK: -- manager.

7 THE COURT: -- a disinterested manager.

8 MR. LUSZECK: Yeah.

9 THE COURT: Okay.

10 MR. KARACSONYI: I -- I was using receiver
11 interchangeably with that.

12 THE COURT: I would be inclined to do that just
13 because it's unfortunate on that, but I think under the
14 circumstance there's no way we can -- that either party --

15 (COUNSEL CONFER BRIEFLY)

16 MR. BERTSCH: If you want to appoint that third
17 party over --

18 THE COURT: Do you --

19 MR. BERTSCH: -- they'll never get agreement.

20 THE COURT: Yeah, do you -- do you have -- do you
21 feel comfortable with making a recommendation to the Court as
22 a disinterested manager? I mean, you have more experience in
23 that or you -- I can check (indiscernible) disinterested
24 manager for the --

1 ELN Trust on May 22, 2018,⁶ she continues to manage said property despite the fact
2 that she possesses a 50% interest in said property. As evidenced by the Accountings
3 provided by Lynita and/or the LSN Trust, Lynita has mismanaged the Lindell
4 Property, and in so doing, has charged an unreasonable management fee. The ELN
5 Trust is willing to manage the Lindell Property for free pending resolution of the
6 Divorce Proceeding, which will include the preparation of a monthly accounting and
7 payment to the LSN Trust for 50% of rents collected. Alternatively, the ELN Trust
8 respectfully requests that this Court appoint a disinterested management company to
9 manage the same as it would be inequitable to allow Lynita to continue to manage
10 the same.

14 F. THE ELN TRUST IS ENTITLED TO ITS ATTORNEYS' FEES AND
15 COSTS.

16 NRS 18.010 explains:

17 "... the court may make an allowance of attorney's fees to
18 a prevailing party: (b) Without regard to the recovery
19 sought, when the court finds that the claim... of the
20 opposing party was brought or maintained **without**
21 **reasonable ground** or to harass the prevailing party. The
22 court shall liberally construe the provisions of this
23 paragraph in favor of awarding attorney's fees in all
24 appropriate situations. It is the intent of the Legislature that
25 the court award attorney's fees pursuant to this paragraph
and impose sanctions pursuant to Rule 11 of the Nevada
Rules of Civil Procedure in all appropriate situations to
punish for and deter frivolous or vexatious claims and
defenses because such claims and defenses overburden

26 ⁶
27 Lynita violated this Court's April 19 Order because she failed to transfer the Banone LLC
28 and Lindell Property to the ELN Trust within "thirty days of the date of this Order." Indeed,
although Lynita executed the quitclaim deeds on May 10, 2018, she tactically withheld turning over
the same until May 22, 2018, in violation of said order.

1 limited judicial resources, hinder the timely resolution of
2 meritorious claims and increase the costs of engaging in
3 business and providing professional services to the public.

4 EDCR 7.60 allows the Court to award attorneys' fees and costs when "a party
5 without just cause...(1) Presents to the court a motion or an opposition to a motion
6 which is obviously frivolous, unnecessary or unwarranted... (3) So multiplies the
7 proceedings in a case as to increase costs unreasonable and vexatiously."
8

9 Here, the Motion was brought without reasonable grounds for the reasons set
10 forth above. Consequently, Eric request that he be awarded his attorney's fees and
11 costs for having to oppose the frivolous Motion and seeking to have the improperly
12 recorded lis pendens expunged.
13

14 **IV. CONCLUSION**

15 As indicated *supra*, this is not one of the "rare circumstances" where a
16 rehearing and/or reconsideration should be granted. To the contrary, the majority (if
17 not all) of the arguments made in Lynita's Motion for Reconsideration were
18 identical to the arguments that she made at the prior hearings and considered by this
19 Court when it entered its Orders on April 19 and May 15. Consequently, Lynita's
20 Motion should be denied in its entirety.
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1 The ELN Trust also moves this Court for an order: (1) terminating the JPI; (2)
2 imposing a bond on any property subject to the JPI; (3) expunging the lis pendens;
3 (4) allowing the ELN Trust to manage Lindell; and (5) for Attorneys' Fees and
4 Costs.
5

6 DATED this 22nd day of June, 2018.

7 SOLOMON DWIGGINS & FREER, LTD.
8

9
10 By: 

11 MARK A. SOLOMON, ESQ.
12 Nevada State Bar No. 0418
13 JEFFREY P. LUSZECK, ESQ.
14 Nevada State Bar No. 9619
15 9060 West Cheyenne Avenue
16 Las Vegas, Nevada 89129

17 *Attorneys for Matt Klabacka, Distribution*
18 *Trustee of the ERIC L. NELSON NEVADA*
19 *TRUST dated May 30, 2001*
20
21
22
23
24
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27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to NRCP 5(b), that on June 22, 2018, I served a true and correct copy of the foregoing **OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018; AND COUNTERMOTION TO: (1) TERMINATE THE JPI; (2) IMPOSE A BOND ON ANY PROPERTY SUBJECT TO THE JPI; (3) EXPUNGE THE INAPPROPRIATELY RECORDED LIS PENDENS; (4) ALLOW THE ELN TRUST TO MANAGE LINDELL; AND (5) ATTORNEYS' FEES AND COSTS**, to the following in the manner set forth below:

☐
☐
☐
☐
☒

Hand Delivery
U.S. Mail, Postage Prepaid
Certified Mail, Receipt No.: _____
Return Receipt Request
E-Service through Wiznet

DICKERSON LAW GROUP
Robert P. Dickerson, Esq.
1745 Village Center Circle
Las Vegas, NV 89134

Attorneys for Defendant

Rhonda K. Forsberg, Esq.
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Henderson, NV 89074

Attorneys for Plaintiff


An Employee of SOLOMON DWIGGINS & FREER, LTD.

EXHIBIT “1”

EXHIBIT “1”

1 **NOTC**

2 Larry L. Bertsch, CPA, CFF
3 Nicholas S. Miller, CFE
4 LARRY L. BERTSCH, CPA & ASSOCIATES
5 265 East Warm Springs Rd., Suite 104
6 Las Vegas, Nevada 89119
7 Telephone: (702) 471-7223
8 Facsimile: (702) 471-7225

9 *Forensic Accountants*

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 ERIC L. NELSON,

14 Plaintiff,

15 v.

16 LYNITA SUE NELSON,

17 Defendant.

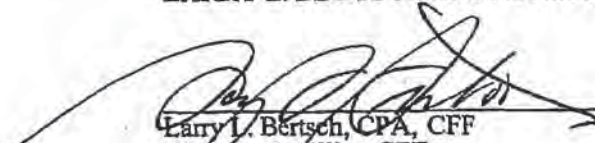
Case No. D-09-411637-D
Dept. O

**NOTICE OF FILING ASSET SCHEDULE
AND NOTES TO ASSET SCHEDULE**

18 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY
19 L. BERTSCH, CPA & ASSOCIATES, hereby file as Exhibit "A" their Asset Schedule and Notes to
20 Asset Schedule pursuant to Judge Sullivan's Order in this matter.

21 DATED this 5th day of July, 2011.

LARRY L. BERTSCH CPA & ASSOCIATES

22 
23 Larry L. Bertsch, CPA, CFF
24 Nicholas S. Miller, CFE
25 265 East Warm Springs Rd., Suite 104
26 Las Vegas, Nevada 89119
27 (702) 471-7223 Telephone
28 (702) 471-7225 Facsimile
Forensic Accountants

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of July, 2011, I mailed a copy of the Notice of Filing Asset Schedule and Notes to Asset Schedule to the following at the last known address, by depositing the same in the United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

David A. Stephens, Esq.
STEPHENS, GOURLEY & BYWATER
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorneys for Plaintiff Eric L. Nelson

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

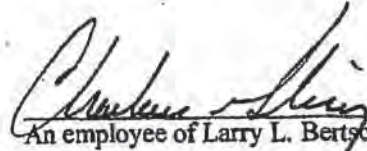

An employee of Larry L. Bertsch, CPA & Associates

Exhibit “A”

Exhibit “A”

Nelson v. Nelson
Asset Schedule

July 5, 2011

Larry L. Bertsch, CPA & Associates

Larry L. Bertsch, CPA, CFF

Nicholas S. Miller, CFE, CSAR, MBA

Nelson v. Nelson
Asset Schedule

	NOTE	Lynita Value	Eric Value	Asset Titled	Income Producing
Real Estate					
7065 Palmyra - Las Vegas, Nevada	1	650,000	910,000	Lynita - Trust	NO
2911 Bella Kathryn Circle - Las Vegas	2	TBD	900,000	Eric Trust - Banone	NO
2911 Bella Kathryn Circle - Las Vegas	2	TBD	175,000	Eric Trust - Banone	NO
AZ-31 Gateway Lots	24	139,500	139,500	Lynita Trust	NO
AZ-29 Gateway Lots	17	139,500	139,500	Eric - Trust	NO
Russell Road Property (65%)					
Owned by Eric Nelson Auctioneering (50%)	3a	TBD	2,000,000	Eric - Trust	YES
Owned by Eric Nelson Trust (15%)	3b	TBD	2,000,000	Eric - Trust	YES
Receivable from CJE & L, LLC	3c	742,368	TBD	Eric - Trust	Unknown
Brianhead, Utah	4	2,000,000	2,000,000	Each Trust - 50%	NO
3611 Lindell - Las Vegas	5	TBD	1,400,000	Each Trust - 50%	YES
5913 Pebble Beach	6	75,000	75,000	Lynita - Trust	NO
Wyoming - 200 acres (40%)	7	TBD	800,000	Lynita - Trust	NO
Mississippi Properties					
1830 Arnold Ave. (Clay House) - Greenville, Miss.	8	40,000	40,000	Lynita - Trust	YES
MS Bay 200 Acres - allocated					
Emerald Bay, LLC (Holding Company)					
Bal Harbour, LLC	9a	45,500	None	Each Trust - 50%	NO
Bay Beach Resorts, LLC	9b	TBD		Each Trust - 50%	NO
Bay Resorts, LLC	9c	TBD		Each Trust - 50%	NO
	9d	TBD		Each Trust - 50%	NO
MS Bay allocated acreage- Lynita Trust					
Lynita Trust - not used	9e	TBD		Lynita - Trust	NO
RV Park	9f	TBD		Lynita - Trust	YES
Dynasty					
Silver Slipper	10a	TBD		Eric Trust - Dynasty	YES
MS Bay allocated acreage Titled to Dynasty	10b	TBD	937,500	Eric Trust - Dynasty	NO
MS Bay allocated acreage Titled Frank Soris Trust	10c	TBD	312,500	Eric Trust - Dynasty	NO
Grotta, LLC — 16.67% Interest					
Dynasty profit sharing agreement	11a	TBD		Lynita - Trust	NO
MS Bay allocated interest - titled to Grotta, LLC	11b	TBD	16,667	Lynita - Trust	NO
Grotta Financial Partnership					
	11c				NO
Riverwalk Ent. (Holding Company for Hiaway Casino)	12	Unknown	None	Eric - Trust	NO

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

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<u>Other Investments</u>						
<u>Banone, LLC</u>						
4412 Baxter - Las Vegas	13, 13a	62,522	82,522	Eric Trust - Banone	YES	
5314 Clover Blossom Court - North Las Vegas, Nevada	13	108,705	108,750	Eric Trust - Banone	YES	
1301 Heather Ridge - North Las Vegas	13	118,459	118,459	Eric Trust - Banone	YES	
6213 Anaconda - Las Vegas	13	81,411	81,411	Eric Trust - Banone	YES	
1608 Rusty Ridge Lane - Henderson (Daughters House)	13	77,526	77,526	Eric Trust - Banone	NO	
Mesa Vista (5 acres)	13	100,000	100,000	Eric Trust - Banone	NO	
Mesa Vista - Lot 68	13	21,229	21,229	Eric Trust - Banone	NO	
2209 Farmouth Circle - Nevada	13	88,166	88,166	Eric Trust - Banone	YES	
3301 Terra Bella Drive - Nevada	13	65,013	65,013	Eric Trust - Banone	YES	
4133 Compass Rose Way - Nevada	13	67,820	67,820	Eric Trust - Banone	YES	
4601 Concord Village Drive - Nevada	13	61,070	61,070	Eric Trust - Banone	YES	
4612 Sawyer Ave - Nevada	13	49,304	49,304	Eric Trust - Banone	YES	
4820 Marnell Drive - Nevada	13	23,643	23,643	Eric Trust - Banone	YES	
5113 Churchill Ave. - Nevada	13	58,070	58,070	Eric Trust - Banone	YES	
5704 Roseridge Ave. - Nevada	13	61,510	61,510	Eric Trust - Banone	YES	
6301 Cambria Ave. - Nevada	13	68,244	68,244	Eric Trust - Banone	YES	
6304 Guadalupe Ave. - Nevada	13	41,599	51,499	Eric Trust - Banone	YES	
Mesa Vista - Lot 67 - Arizona (Deeded Back)	14	21,263	21,263	Eric Trust - Banone	NO	
1628 W. Darrel Road - Arizona	14	37,882	37,882	Eric Trust - Banone	YES	
1830 N. 66th Drive - Arizona	14	24,791	24,791	Eric Trust - Banone	YES	
1837 N. 59th Street - Arizona	14	29,050	29,050	Eric Trust - Banone	YES	
2220 W. Tonto Street - Arizona	14	30,906	30,906	Eric Trust - Banone	YES	
3225 W. Roma Ave. - Arizona	14	31,299	31,299	Eric Trust - Banone	YES	
3307 W. Thomas Road - Arizona	14	35,383	35,383	Eric Trust - Banone	YES	
3332 N. 80th Lane - Arizona	14	29,924	29,924	Eric Trust - Banone	YES	
3415 N. 84th Lane - Arizona	14	35,368	35,368	Eric Trust - Banone	YES	
3424 W. Bloomfield Road - Arizona	14	43,084	43,084	Eric Trust - Banone	YES	
3631 N. 81st Ave. - Arizona	14	30,063	30,063	Eric Trust - Banone	YES	
4141 N. 34th Ave. - Arizona	14	21,804	21,804	Eric Trust - Banone	YES	
4541 N 76th Ave. - Arizona	14	32,540	32,540	Eric Trust - Banone	YES	
4816 S. 17th Street - Arizona	14	19,633	19,633	Eric Trust - Banone	YES	
5014 W. Cypress Street - Arizona	14	30,324	30,324	Eric Trust - Banone	YES	
5518 N. 34th Drive - Arizona	14	27,641	27,641	Eric Trust - Banone	YES	
6172 W. Fillmore Street - Arizona	14	39,871	39,871	Eric Trust - Banone	YES	
6202 S. 43rd Street - Arizona	14	27,772	27,772	Eric Trust - Banone	YES	
6720 W. Cambridge Ave. - Arizona	14	32,563	32,563	Eric Trust - Banone	YES	
6822 W. Wilshire Drive - Arizona	14	40,477	40,477	Eric Trust - Banone	YES	
6901 W. Coolidge Street - Arizona	14	32,583	32,583	Eric Trust - Banone	YES	
<u>Banone, LLC - AZ</u>						
4838 W Berkeley Rd. - Arizona	15	TBD	32,622	Eric Trust - Banone	YES	
8 Homes - Arizona	15	TBD	251,000	Eric Trust - Banone	NO	
<u>Banone Nevada Notes Receivable</u>						
R & D Custom Builders - DMV Lot 16-17 (secured)	16			Eric Trust - Banone		
Advantage Construction - MV Lot 37 (secured)	16a	46,463		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 52 (secured)		20,081		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 53 (secured)		22,838		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 53 (secured)		22,838		Eric Trust - Banone	YES	
Joe Williams & Sherry Fixsen - MV Lot 54 (secured)		22,838		Eric Trust - Banone	YES	
Bidco, Inc. - MV Lot 61 (secured)		21,263		Eric Trust - Banone	YES	
Cary & Troy Fixsen - MV Lot 98 (secured)		22,838		Eric Trust - Banone	YES	
Amada & Chris Stromberg (secured by Condo in PA)	16b	133,357		Eric Trust - Banone	YES	
JB Ramos Trust (secured by 436 Europa Way)	16c	78,000		Eric Trust - Banone	YES	
Katherine Stephens (secured by 1601 Knoll Heights)	16d	83,000	63,000	Eric Trust - Banone	YES	
Chad Ramos (secured 7933 Dover Shores)	16e	60,000		Eric Trust - Banone	YES	
Alicia Harrison (secured by 1025 Academy)		68,620		Eric Trust - Banone	YES	
Eric T. Nelson (secured by 8619 W. Mohave - AZ)	16f	95,000		Eric Trust - Banone	YES	
Michael & Lyndia Asquith - MV Lot 50 (secured)	16g	23,625		Eric Trust - Banone	NO	

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

Other Receivables						
Frank Soris (Contingent)	17	TBD	1,000,000	Eric - Trust	YES	
Nikki Cvintavich	18	200,000	200,000	Eric Nelson	YES	
Family Loans						
Chad Ramos	19	261,675	-	Eric - Trust	Unknown	
Jesse Harber	20	47,000	25,000	Eric - Trust	Unknown	
Brock Nelson		10,000	10,000	Eric - Trust	Unknown	
Autos/Vehicles						
2008 Escalade EXT SUV (Owned) (Eric's)	21	40,475	38,840	Eric - Trust	NO	
2007 Mercedes SL 550 (Owned) (Eric's)	21	50,115	42,845	Eric - Trust	NO	
2011 Audi (Leased) (Lynita's)		Lease	Lease	Lynita	NO	
ATV's and Snowmobiles	21a	TBD	TBD	Unknown	NO	
Tax Situation						
2006 Tax Refund (Held by Dave Stephens, Esq.)	22	110,125	110,128	Eric Nelson	NO	
Cash & Investment Accounts						
Lynita's Accounts						
Schwab Capstone Capital- 2834 (3/31/2011)	23	1,016,969		Lynita - Trust		
Credit Union 1 37214-01 (3/31/2011)	23	5		Lynita - Trust		
Credit Union 1 37214-22 (3/31/2011)	23	48,274		Lynita - Trust		
Silver State 3736-01 (3/31/2011)	23	2,020		Lynita Nelson		
Silver State 3736-80 (3/31/2011)	23	3,767		Lynita Nelson		
Eric Accounts						
Bank of America 5010-0976-5829 (3/31/2011)	23		82,781	Eric - Trust		
Bank of America 5010-0716-2754 (3/31/2011)	23		13,685	Eric Trust - Banone		
Bank of America 0050-1157-7064 (3/31/2011)	23		3,533	Eric Trust - Banone		
Bank of America 5010-1100-6958 (3/31/2011)	23		7,439	Eric Trust - EN Auct		
Citi National Bank 363201539 (3/31/2011)	23		84,919	Eric Trust - Banone		
Citi National Bank 363005152 (3/31/2011)	23		4,304	Eric Trust - Dynasty		
Citi National Bank 363250807 (3/31/2011)	23		13,316	Eric Trust - Banone		
Mellon - 10594001700 (3/31/2011)	23		2,757,160	Eric - Trust		
Liabilities						
Frank Soris Contingent Liability	17		(562,981)	Eric - Trust		
Due on Line of Credit (3/31/2011)	23		(1,807,369)	Eric - Trust		

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

PSAPP0386

Nelson v. Nelson
Notes to Asset Schedule

July 5, 2011

Larry L. Bertsch, CPA & Associates

Larry L. Bertsch, CPA, CFF

Nicholas S. Miller, CFE, CSAR, MBA

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Larry L. Bertsch, CPA & Associates reserves the right to update this report upon the production of additional documents. The information contained within this report is for use only in the conjunction with the surrounding Clark County District Court case Nelson v Nelson.

Note 1 - 7065 Palmyra

This is the current residence of Lynita Nelson. It has been alleged that improvements have been made to the property in the last two years. The parties do not agree on the value of the Property.

Since there is no agreement on the value of the property, it is recommended an appraisal be made on the property directed by an independent third party.

Note 2 - 2911' Bella Kathryn

This is the current residence of Eric Nelson which includes an adjacent vacant lot for which Eric is conducting improvements. Eric has valued the property as \$900,000 for the residence and \$175,000 for the adjoining lot. Lynita does not agree and her issue is stated below.

According to the detailed records of Eric Nelson, a total amount of \$1,362,612.57 has been spent towards the property which contains the house. The house was initially purchased for \$381,984.00 on 12/28/2009 and improvements have been made to the property as of 06/11/2011 amounting to \$980,628.57.

In reviewing the details of the house improvements on the general ledger kept by Eric Nelson, there was only one payment recorded to a relative, Paul Nelson, in the amount of \$25,000 and designated as contract labor in building the Residence. There were other payments recorded to relatives for reimbursement of materials and supplies used on the building of the residence. None of the reimbursed amount appeared material or not related to the residence. Those reimbursed payments were made to Paul Nelson, Cal Nelson, and to Big Fish, LLC, a company owned by Cal Nelson.

The adjoining lot was purchased on 08/11/2010 for a cost of \$175,000. As of 06/11/2011, improvements have been made towards the lot in the amount of \$64,558.68. In total, the purchase price and additional improvements towards this property amount to \$239,558.68.

Therefore the aggregate costs of the residence and adjoining lot at 06/11/2011 amounts to \$1,602,171.25.

Since there is no agreement on the value it is recommended an appraisal be made of the property directed by an independent third party or a decision that funds expended for the property be the criteria of value.

At issue - Lynita claims Eric has used community funds to build this residence and feels regardless of an appraisal, she should receive 50% on the costs to buy and build the property.

Note 3 - Russell Road Property

History

Property consisting of 3.3 acres at 5220 E. Russell Road was purchased on November 11, 1999 for \$855,945 by the Lynita Nelson Trust and the down payment from Cal Nelson amounting to \$20,000. Lynita then became a 50% partner with Cal Nelson in a partnership named CJE&L, LLC which was formed for the purpose of renting the property to Cal's Blue Water Marine.

Shortly thereafter, CJE&L, LLC obtained a loan from Business Bank of Nevada in the amount of \$3,100,000. The purpose of this loan was to build a building for the operations of Cal's Blue Water Marine, Inc. The loan was to be guaranteed by Clarence and Jeanette, individually as well as their Trust dated May 31, 2001 and also Cal's Blue Water Marine, Inc.

Sometime in 2004, Lynita signed a guarantee on the flooring contract for the inventory of Cal's Blue Water Marine, Inc. On 01/01/2005, Lynita withdrew her guarantee of the flooring contract and in return, Lynita signed an assignment or forfeit of her interest in the partnership to remove her from the property records. (The Examiner has not seen the flooring agreement that was signed by Lynita, although requested - Each of the parties claims the other has the contract). According to the records, the forfeiture of partnership interest was transferred to the capital account of Cal Nelson there being no cash attached to the transaction.

The boat business failed in 2008. At that time, the Bank demanded a \$300,000 pay down to keep the loan in performing status. Eric paid the \$300,000 which was secured by property owned by Cal Nelson and located in Utah.

Eric's purchase of the interest in property

On or about 02/10/2010, Eric Nelson decided to purchase a 65% interest in the property. Eric's 65% interest is said to have cost \$4,000,000; which is comprised of the following amounts:

- 1) In 2009, Eric purchased an FDIC note on a property in Phoenix commonly known as "Sugar Daddy's" for approximately \$520,000. The source of these funds came from the Line of Credit. The property was sold with proceeds amounting to \$1,520,597.88. Since this was designed as a 1031 exchange, the proceeds were used in 2010 to purchase Eric's interest in the Russell Road Property.
- 2) As indicated above, Eric had previously paid \$300,000 to pay down the Bank Loan which was secured by property in Utah. In addition, Eric paid off the mortgage on Cal's house amounting to \$400,000. Both amounts were paid from Eric's Line of Credit. These two amounts aggregating \$700,000 were then used as a credit towards the purchase price for Eric's interest.

3) Eric gave a credit amounting to \$522,138.47 which represented future agreements with Cal and the termination of any present verbal partnership agreements. This also included money on rental payments given to Cal.

4) The remaining amount to fulfill the obligation of the purchase price was to borrow \$1,257,263.67 from the Line of Credit in 2010.

Therefore the purchase of Eric's interest is comprised of the following:

Pay down of Bank Loan	\$ 300,000.00
Pay off of personal residence of Cal Nelson	400,000.00
Credit to Cal Nelson for prior payments	522,138.45
Amount to pay Bank Note from Sugar Daddy's	1,520,597.88
Amount to pay Bank Loan from Line of Credit	1,257,263.67
	<u>\$ 4,000,000.00</u>

Therefore the amount of cash contributed directly to the interest in the property by Eric in 2010, amounts to \$2,777,861.55 (1,520,597.88 + 1,257,263.67). The cash reportedly paid off the original loan held by Business Bank of Nevada.

According to CJE&L's tax returns and representations made by Cal Nelson, Cal Nelson's capital account includes \$855,000; which represents the purchase price of the land originally purchased on November 11, 1999 by the Lynita Nelson Trust as well as \$501,529 in leasehold improvements made by Cal's Blue Water Marine. The summary document supporting the leasehold improvements contribution was believed to be at cost and not the net depreciated value. As prior indicated Cal's Blue Water Marine eventually failed in 2008. Since the Business failure in 2008, Cal Nelson has taken distributions from CJE&L of \$11,096 in 2009 and \$73,978 in 2010, aggregating to \$85,074.

The current ownership of the 5220 E. Russell Road property is 50% by Eric Nelson Auctioneering (an asset of the Eric Nelson Trust), 15% by the Eric Nelson Trust and 35% by CJE&L, LLC. (See below).

Note 3a - 50% in Russell Road owned by Eric Nelson Auctioneering

In the purchase of the Russell Road Property, the ownership of 65% of the property purchase from CJE & L, LLC was described above to be \$4,000,000. Eric Nelson says that 50% of the interest was designated to be owned by Eric Nelson Auctioneering and the other 15% by the Eric Nelson Trust.

Note 3b - 15% sale back to Cal Nelson for 15% interest by Eric Trust

The 15% interest is evidenced by a note in the amount of \$2,000,000 the principal amount is due in seven years from 2/3/2010 from Cal Nelson to Eric Nelson Trust. The note is secured by 15% of the real property owned by CJE & L, LLC and 15% of all rents collected from the property will be recognized as interest on the note.

Note 3c - Receivable from CJE & L, LLC amounting to \$742,368.

According to the 2010 tax return of CJE&L, LLC (owned 99% by Nelson Nevada Trust (Cal's Trust) and 1% by Cal Nelson), the company reports a liability in the amount of \$742,368 is due to Eric Nelson Auctioneering (Reported under Eric Trust - Eric Nelson Auctioneering). We have not received information as to the nature of this note.

Because of the controversy on this property, it is recommended that an appraisal of the property be made directed by an independent third party.

At issue, Lynita believes that Cal Nelson has not put any capital into the investment and therefore the amount of this asset is 100% owned solely by Lynita and Eric Nelson.

Also at issue is that Lynita bought the land for \$855,000 and was forced to forfeit her interest through an assignment to Cal Nelson. This issue is over a guarantee made by Lynita on a flooring arrangement on boats for a company owned by Cal Nelson, named Cal's Blue Water Marine.

Subsequent Transaction

The property was sold to the Oasis Baptist Church on 05/27/2011, prior to this transaction, the church held an option to purchase for \$6,500,000. The payments on the note were to begin on 09/01/2011. Until this date, the Oasis Baptist Church was to pay \$17,500 each month for the months of June, July, and August. Then starting on 09/01/2011 the Oasis Baptist Church will pay interest only at 6% on \$6,000,000 for 5 years and then will have a balloon payment due of \$6,500,000.

This contract was amended on 06/15/2011 because the Church could not get an exemption from property taxes unless they own the property. Therefore the original financial arrangement has been amended.

The Oasis Baptist Church needs additional improvements in order to bring their school over to the Russell Road property. In order to do this, they need an additional \$300,000 in funds for improvements to the property. Currently, they are paying \$20,000 per month space rental for them to conduct their school.

As of 06/15/2011, Julie Brown loaned \$300,000 to the Oasis Baptist Church and has a 1st Note/Deed on the property.

A 2nd Note/Deed is placed on the property to recapture all back rents and taxes in the amount of \$295,000. The 2nd Note/Deed is shared 1/3rd to Eric Nelson Auctioneering, 1/3rd to the Eric Nelson Trust and 1/3rd to CJE&L, LLC.

Therefore the remaining amount of \$6,500,000 through subordination has become a 3rd Note/Deed in the favor of shared 1/3rd to Eric Nelson Auctioneering, 1/3rd to the Eric Nelson Trust and 1/3rd to CJE&L, LLC.

The current terms are to pay \$17,500 per month until 09/01/2011 and \$30,000 thereafter. However they may ask that the payments be extended to 12/01/2011 before they begin to pay \$30,000 per month for their purchase of the property.

We understand there is a servicing agreement to collect the mortgage payments. We do not know the entity that the servicing arrangement is contracted.

The servicing agency is an issue with Lynita.

Note 4 - Brianhead, Utah

The property located in Brianhead, Utah includes a cabin on 150 acres. In addition to the property and building, the ownership includes water rights.

Eric originally valued the asset at \$3,000,000 but now believes the property has a value of approximately \$2,000,000. Lynita states the property should bring \$2,000,000 at sale, which is her preference.

It appears there is an agreement on the value of this property. However, there is no agreement on the disposition of the asset. As a result, a third-party appraisal may be required to determine the value either party should pay to buy the other one out.

Note 5 - 3611 Lindell

This property is an office complex. The complex has 13,040 square feet and is the location of Eric Nelson offices. Eric collects the monthly rents as well as pays for the monthly maintenance.

Both income and expenses will be listed in the Sources of Income and Expenses report.

Since there is a disagreement about the value of the office building, it is recommended an appraisal by made of the property by an independent third party.

Note 6 - 5913 Pebble Beach

This property is owned by the LSN Nevada Trust and is occupied by Lynita's sister, Thelma. The mortgage of \$69,000 has been paid off and the property is currently unencumbered. It appears that neither party is interested in the property and may become a non-issue.

Note 7 - Wyoming (200 acres)

This property consists of 200 acres located in Evanston, Wyoming and owned 40% by Lynita's Trust, 50% by Paul Nelson (relative) and 10% by Aleda Nelson (relative). This property could be developed into 84 Lots and are in the name of Equestrian Estates, LLC.

Eric has given a value for Lynita's 40% interest in the property of \$800,000. Lynita has not determined a value,

It is recommended an appraisal be made by an independent third party to obtain a value of the 40% interest.

Note 8 - 830 Arnold Ave.

This is a 1,300 sq. ft. house located in Greenville Mississippi. The house is being rented at \$500 per month and the rent is being collected and deposited into Banone's Bank Account. Eric has valued the property at \$40,000, which is believed to be the initial purchase price of the property.

Because there are so many other issues, it is recommended the purchase price be considered the value based upon the current economic conditions.

Note 9 - MS Bay (200 acres)

This is 200 acres located in Mississippi. The ownership and titles to the property are not clear and need to be addressed. Currently the property is titled as follows:

	<u>Acres</u>
Bal Harbour, LLC (Note 9b)	4.7790560
Bay Harbour Beach Resort, LLC (Note 9c)	2.7996560
Emerald Bay, LLC (note 9a)	0.2217080
Grotta (Note 11)	25.3773880
Lynita Trust - RV Park (Note 9e)	20.6856080
Lynita Trust (Note 9f)	41.0152290
	<u>94.8786450</u>
Dynasty (Note 10b)	91.0927580
Frank Soris Family Trust (Note 10c)	30.1382120
	<u>121.2309700</u>
Total Acres	<u>216.1096150</u>

Note 9a - Emerald Bay, LLC has .221708 acres titled in its name, which was purchased for \$55,000. Emerald Bay, LLC (formally Paradise Bay Mississippi, LLC was formed in 2005 and changed name in 2007) is a holding Company whose purpose was to assemble property of 120

acres about 2 miles from the current Silver Slipper Casino to develop a resort type project. The subsidiaries of the Company were Bal Harbour, LLC, Bay Harbour Beach Resort, Montgage Resort, LLC, Bay Resorts, LLC, and Paradise landing, LLC. This project is not currently operating and is at a standstill.

In 2008 the ownership in this property went from 100% ownership by Eric Trust to an ownership of 50% to Lynita Trust and 50% to Eric Trust.

At issue, Emerald Bay owes Nelson & Associates \$45,500.

The amount due from Emerald Bay, LLC were funds advanced to pay for expenses in the assembling process. Emerald Bay does not have funds and therefore doubtful to repay Nelson & Associates back.

Note 9b - Bal Harbour, LLC has 4.779056 acres titled in its name.

Note 9c - Bay Harbour Beach Resort, LLC has 2.799656 acres titled in its name.

Note 9d - Bay Resorts, LLC currently does not have any ownership in land. This entity operated the RV Resort, had its own Bank Account until the law suit was filed. The Bank Account was closed and the rental income from Silver Slipper was the deposited into Banone.

Note 9e - Lynita Trust has 41.0152290 titled in its name. This property is not being used.

Note 9f - RV Park is owned by Lynita's Trust. The property designated for its use is 20.6856080 acres. The Silver Slipper is leasing this property and pays an amount of approximately \$4,000.00 per month.

Since there are different owners and the property is being used differently, it is recommended either an appraisal for the separate parcels be made or that the entire 200+ acres be appraised altogether, then the value could be allocated to the individual owners. In either case, the appraisal should be directed by an independent party.

Note 10 - Dynasty

Dynasty is an entity that is included in the Eric Nelson Trust consisting of various types of investments as described below.

Note 10a - Silver Slipper (Owned by Dynasty)

Dynasty has a 34% interest in the Silver Slipper Casino. If options were to be exercised, then the interest could increase to 43%.

There is currently a dispute between Eric Nelson and the other partners of the Silver Slipper Casino. In the operating agreement of Silver Slipper is a buyout provision. The other partners are attempting to exercise that provision and have offered \$1,586,000 and are pushing Eric Nelson to accept.

The other partners have filed a law suit in Los Angeles to force Eric Nelson to accept their offer. Eric Nelson is unwilling to accept the current position of the other partners. In order to oppose the other partners, Eric Nelson did put Dynasty into Bankruptcy, filing in Mississippi.

The other partners filed a motion to have the Bankruptcy dismissed as a bad faith filing. It is understood that hearing has taken place and the Bankruptcy has been dismissed. Therefore it is back to defending the law suit filed in Los Angeles.

There are other issues affecting the ownership interest in the Silver Slipper, one of which being that Lynita is not currently licensed by the Mississippi Gaming Authorities and therefore not qualified to own an interest in a gaming property.

It is recommended that a Business Valuation be directed by an independent third party to determine the value of the Silver Slipper and also to determine the value of the percent interest owned by Dynasty.

Note 10b - Dynasty owns 91.092758 acres. There has been a lien of \$1,000,000 placed against the property by BBJ, a lender to Silver Slipper.

Note 10c - This land consisting of 30.1382120 acres was deeded to Frank Soris Family to collateralize the \$1,300,000 owed from the 2002 transaction between Soris and Lynita Trust. (See Note 17 for the Soris transactions). It has been stated that this acreage has been quitclaimed back to Dynasty when the property in Banone was substituted as collateral for the \$1,300,000 note to Soris. The quitclaim has not been recorded.

Eric Nelson stated the value of the property, both what Dynasty owns and the Frank Soris property totaling 121.230970 acres is valued at \$1,250,000.

It is recommended that an appraisal be made of the property owned by Dynasty and the property currently owned by Frank Soris. Such an appraisal should be conducted as recommended in Note 9.

Note 11 - Grotta, LLC

Lynita's Trust owns a 1/6th interest or 16.67% with Eric Nelson's relatives owning the remaining 5/6th interest. Grotta, LLC controls various investments as described below:

Note 11a - Dynasty Profit Sharing Agreement

Eric Nelson states that this Company has an interest in a Profit Sharing agreement whereby Grotta, LLC is to receive 10% of Dynasty's Profits. (No determination has been made to ascertain if that is an investment and/or operating profits). There have been no profits to-date; therefore no payments from Dynasty have ever been made to Grotta, LLC.

Note 11b - Mississippi Land

The Grotta, LLC owns 25.377388 acres of the 200 acres described in Note 9 as MS Bay 200 acres. Eric states the value of that land is approximately \$100,000.

Eric values Lynita's trust ownership in this land at \$16,667. Lynita does not have a separate value for the property owned by Grotta, LLC.

Note 11c - Grotta Financial Partnership

The Grotta Financial Partnership owned land on Flamingo Road in Las Vegas, Nevada, which was condemned for the purpose of using the land to construct the "Beltway". The condemnation was used as an IRS Section 1033 exchange. Cash amounting to \$3,025,000 which was in the Grotta Financial Partnership, was transferred to the Eric Nelson Trust for future investing purposes in order to comply with the IRS Section 1033 exchange provisions. Therefore, the cash on the books of Grotta Financial Partnership was replaced with a Note Receivable to the Eric Nelson Trust. The investments made by Eric Nelson through the Eric Nelson Trust would at this time be included in the current asset schedule.

If the Eric Nelson Trust were to pay Grotta Financial Partnership the amount of \$3,025,000 or any part thereof, it would then create the situation that the amount would become taxable because the transaction would be treated as a loan which does not qualify under the IRS Section 1033 exchange rules.

At issue, there is a Note Receivable in the amount of \$3,025,000 booked on Grotta Financial Partnership financial statements from the Eric Nelson Trust. The transaction contains various issues relating to taxable consequences if paid back.

Note 12 - Hideaway Casino

This was an Investment between Eric Nelson and Steve Bieri. Eric Nelson has not spent community funds in his effort to develop a casino. The investment was not viable and thus failed. Eric states that there may be a law suit against Eric Nelson to the extent of the loss suffered by Mr. Bieri amounting to approximately \$3,000,000.

Note 13 - Banone, LLC (Nevada)

These properties are located in Nevada and titled in the name of Banone, LLC, which is in Eric Nelson Trust. The value indicated on the schedule is the purchase price of the property including repairs thereto. In discussion with Lynita, she appeared to have a willingness to accept those values, with the exception of 4412 Baxter as described below:

Note 13a - 4412 Baxter - According to Lynita, the amount booked for 4412 Baxter is \$20,000 greater than it should be. Lynita claims the proper amount should be \$62,522; instead of \$82,522.

Note 14 - Banone, LLC (Arizona)

These properties are located in Arizona and titled in the name of Banone, LLC which is in Eric Nelson Trust. The value indicated on the schedule is the purchase price of the property including repairs thereto. In discussion with Lynita, she appeared to have a willingness to accept those values.

Note 15 - Banone AZ, LLC

There is one property in Banone AZ, LLC that is income producing. During 2010, 8 additional homes were purchased at a cost of \$251,000; at which time we have not received indication that they are income producing.

Note 16 - Notes Receivable

To date, we have not received copies of the documents relating to the various notes receivable. Eric represented that the notes were secured by property but we have not examined appropriate evidence to determine the validity of the collateral.

a. This note is in default. Roger Nelson is owner of RD Builders. Roger Nelson is not a relative.

b. Amada & Chris Stromberg are the daughter and son-in-law of Eric and Lynita Nelson.

c. JB Ramos Trust is related to an employee of Eric Nelson

d. Niece - At issue by Lynita, Purchased by Banone on 03/02/2010 and questions the down payment of \$20,000 and if that money came from Community Funds.

- e. Chad Ramos is a Nephew to Eric
- f. Eric T. Nelson is a Nephew to Eric
- g. Have received deed in lieu of foreclosure.

Note 17 - Soris Transaction

History

This first transaction commenced in 2002 when Frank Soris made an investment as mortgage holder in the Wyoming operations. Mr. Soris loaned \$2,300,000 to the Lynita Trust on a building that was to be used for Off Track Betting to support a Race Track owned at that time by the Nelson's. The operations in the building were outlawed and the operations had to cease.

The \$2,300,000 was an amount needed by Frank Soris to complete a 1031 exchange (Tax Code provision to defer taxes). The amount actually loaned is \$1,300,000 and a note payable to Lynita's Trust for \$1,000,000. Sometime between the date of the 1031 and 2010, the promissory note was transferred to the Eric L Nelson Nevada Trust. We have not received indication as to why the note was transferred out of Lynita's Trust or if any consideration was given in return for the transfer. Information has been received that interest of \$75,000 was received in 2009 relating to the \$1,000,000 note which is being serviced by U. S. Loan Servicing.

When the Off Track Betting business failed, Mr. Soris insisted on collateral to replace the building in Evanston, Wyoming. Eric Nelson then collateralized the note with property in Phoenix, Arizona. Upon failure of that collateral, Eric Nelson then collateralized the note with property in Mississippi. Since there was ongoing litigation in Mississippi, Mr. Soris again sought collateral for the amount due him. It was then, in early 2010, when Eric made a decision to take the better of the Banone properties in Arizona and transfer those rental properties to the Frank Soris Family Trust.

It was understood from Eric Nelson that there was a deal with Frank Soris that if the properties were to sell in excess of the \$1,300,000, Eric would be entitled to monies from such sales. In documents received there was a written agreement that upon the transfer of the Banone properties, the \$1,000,000.00 note made payable to the Eric L. Nelson Nevada Trust is cancelled and considered satisfied. We have not received further documentation as to why the note was cancelled or satisfied. We have yet to determine which position is current. Of course, if the properties sell for less than \$1,300,000, the concerns of the \$1,000,000 will be dispelled.

Current Situation

The cost of the current twenty properties transferred to Soris has a book value of \$737,018.67. Therefore the aggregate amount of collateral against a debt of \$1,300,000 leaves a contingent liability of \$562,981.33. In addition, Eric has pledged to use 8 lots from his investment in AZ-29 Gateway Lots, but actual lots are to be determined at a later date according to the February 19, 2010 agreement between Soris and Eric Nelson.

The contingent asset may or may not have value if the properties sell for more than \$1,300,000, depending on the outcome of the agreement to share or if the note has been cancelled.

The interest on the \$1,300,000 note is being paid by the rents collected on the properties.

At issue, Lynita believes Eric gave Soris the best properties from Banone. Eric agrees with that statement.

Note 18 - Nikki Cvintavich Note Receivable

This is a loan made by Eric Nelson to Nikki Cvintavich, an employee in Mississippi. This loan has no direct connection to the Mississippi investments. We have not received documentation evidencing if this note is collateralized by any type of property.

Note 19 - Family Loan (Chad Ramos)

This was money given to start several businesses. The businesses have all failed. This money was given to him prior to 01/01/2009 and should be considered as community participation and be eliminated as an issue.

It is recommended that this item be eliminated from any settlement.

Note 20 - Family Loan (Jesse Harber)

We have not received documentation relating to the terms and conditions of this receivable. As a result, we cannot determine a value of the outstanding amounts due or if there was or is any collateral against the receivable.

Note 21 - Autos/Vehicles

The values given by each party was from Kelly Blue Book. It has not been determined what was used as mileage, accessories, or wholesale or retail suggested prices.

Note 21a – Both parties have indicated the presence of several ATVs and snowmobiles.

It is recommended a determination by an independent third party at a selected date determined by the Court.

Note 22 - Tax Situation

It has been understood that the 2006 taxes were filed jointly. Thereafter the Federal Income Tax Returns have been filed as Married filing Separate. It has been stated that a 2006 refund in the approximate amount of \$110,125 is currently held by Eric Nelson's attorney in a separate bank account.

Note 23 – Bank Accounts

It is recommended that all of the Banking Accounts be brought up to a date determined by the Court and that all transactions be reviewed for subsequent transactions.

Note 24 - AZ-31 Gateway Lots

The property in this account consists of the following:

1. 29 parcels that are titled to the Lynita Trust.
2. 8 parcels where the Lynita Trust has a 25% interest, Harber Investments has a 25% interest, Louis Walter has a 25% interest, and Gary & Margaret Zahlen have a 25% interest.
3. 2 lots that were in foreclosure. As of the date of this report, we have not received documentation relating to the disposition of the foreclosure proceedings.
4. 7 lots from Joan Ramos. Joan Ramos filed bankruptcy and all lots were to be deeded back to Lynita's Trust. As of the date of this report, all seven lots are currently in the name of "Ramos Joan B Trustee".

Client Name	Description	File	Field
Search Text: "JOY COLE"			
Total finds for JOY COLE: 0			

Search Text: "AUTUMN COLE"

Total finds for AUTUMN COLE: 0

Search Text: "KATHERINE COLE"

Total finds for KATHERINE COLE: 0

EXHIBIT “2”

EXHIBIT “2”

Steven D. Grierson

RPLY

1 MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
2 E-mail: msolomon@sdfnlaw.com
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9060 W. Cheyenne Avenue
6 Las Vegas, Nevada 89129
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7 Facsimile No.: (702) 853-5485

8 *Attorneys for Matt Klabacka, Distribution*
Trustee of the ERIC L. NELSON NEVADA
9 *TRUST dated May 30, 2001*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

10
11
12 ERIC L. NELSON,

13 Plaintiff

14 vs.

15
16 LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of the
17 ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

18 Defendants.

19
20 MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
21 dated May 30, 2001,

22 Cross-claimant,

23 vs.

24 LYNITA SUE NELSON,

25 Cross-defendant.
26
27 / / /
28

Case No.: D411537
Dept.: O

1 **REPLY TO OPPOSITION TO MOTION TO ENFORCE SUPREME COURT'S ORDER**
2 **DATED MAY 25, 2017; MOTION TO HOLD LYNITA S. NELSON IN CONTEMPT FOR**
3 **VIOLATION OF SEPTEMBER 22, 2014 ORDER; AND FOR ATTORNEYS' FEES AND**
4 **COSTS**

5 **AND**

6 **OPPOSITION TO COUNTERMOTION FOR FINAL JUDGMENT CONSISTENT WITH**
7 **THE NEVADA SUPREME COURT'S REMAND OR, IN THE ALTERNATIVE, FOR**
8 **AFFIRMATION OF JOINT PRELIMINARY INJUNCTION, FOR A RECEIVER TO**
9 **MANAGE THE PROPERTY PENDING FINAL JUDGMENT, FOR UPDATED**
10 **FINANCIAL DISCLOSURES AND EXCHANGE OF FINANCIAL INFORMATION, AND**
11 **FOR SALE OF PROPERTY FOR PAYMENT OF ATTORNEYS' FEES AND COSTS**

12 Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated
13 May 30, 2001, hereby files his Reply to Opposition to Motion to Enforce Supreme Court's Order
14 dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22,
15 2014 Order; and for Attorneys' Fees and Costs and Opposition to Countermotion for Final
16 Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative, for
17 Affirmation of Joint Preliminary Injunction, for a Receiver to Manage the Property Pending Final
18 Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale
19 of Property for Payment of Attorneys' Fees and Costs.

20 This Reply and Opposition to Countermotion is made and based upon the pleadings and
21 papers on file herein, the Points and Authorities attached hereto, and any other evidence the Court
22 may adduce at the hearing on this matter.

23 DATED this 4th day of August, 2017.

24 SOLOMON DWIGGINS & FREER, LTD.

25 By: /s/ Jeffrey P. Luszeck

26 MARK A. SOLOMON, ESQ., NSB 0418
27 JEFFREY P. LUSZECK, ESQ., NSB 9619
28 9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001

1 (9) compel Lynita to return the \$324,000.00 that was previously paid by
2 the ELN Trust;

3 (10) compel the LSN Trust to return the \$6,050.00 security deposit that the
4 ELN Trust delivered to the LSN Trust on or around September 19, 2014;

5 (11) compel the LSN Trust to prepare quarterly accountings for the
6 Lindell Property and Banone LLC properties from June 2013 through
7 present pursuant; and

8 (12) compel the LSN Trust to return to the ELN Trust the \$75,000.00 paid
9 by Banone-AZ, LLC to the LSN Trust.

10 **B. THE SUPREME COURT FOUND THAT ERIC AND LYNITA'S**
11 **COMMUNITY PROPERTY WAS TRANSMUTATED TO SEPARATE**
12 **PROPERTY AND LYNITA FAILED TO INTRODUCE ANY EVIDENCE,**
13 **LET ALONE CLEAR AND CONVINCING EVIDENCE, THAT THE**
14 **PARTIES SEPARATE PROPERTY WAS TRANSMUTATED BACK TO**
15 **COMMUNITY PROPERTY.**

16 As an initial argument, Lynita requests that this Court review the evidence presented at trial
17 (in lieu of conducting a tracing) and find that all assets owned by the SSSTs (with the exception of
18 the Palmyra residence) are the community property of Eric and Lynita because all property was
19 acquired during the marriage and her belief that the ELN Trust "conceded" at trial that it could not
20 trace its assets from the property identified in the Separate Property Agreement. Lynita's argument
21 is contrary to the Supreme Court's Opinion that specifically provides that the Separate Property
22 Agreement was a valid agreement and transmuted Eric and Lynita's community property to
23 separate property. *See, e.g.,* Opinion at p. 12 ("We conclude that the SPA is a valid agreement and
24 transmuted the Parties community property to separate property."). The fact that much of the
25 original assets identified in the Separate Property Agreement were ultimately sold and said proceeds
26 were utilized to purchase other property is inconsequential, because all acquisitions in Eric's
27 Separate Property Trust originated from his separate property. Moreover, as discussed below, the
28 Supreme Court also held that Eric's SSST was funded with his separate property in 2001. Because
of such transmutation, Nevada law is clear that it is Lynita/Lynita's SSST, as opposed to Eric/the
ELN Trust, that has the burden to show that Eric's separate property was transmuted back to
community property.

1 “Once the separate character of property is established, a presumption arises that it remained
2 separate property in the absence of sufficient evidence to show an intent to transmute the property
3 from separate property to community property.”³ Indeed, “the right of the spouses in their separate
4 property is as sacred as is the right in their community property, and when it is once made to appear
5 that property was once of a separate character, it will be presumed that it maintains that character
6 until some direct and positive evidence to the contrary is made to appear.”⁴ This presumption shifts
7 the burden of proof to the party claiming the property was transmuted to community property.⁵
8 The spouse claiming transmutation of separate property must produce objective evidence showing
9 that, during the marriage, the parties themselves regarded the property as common property of the
10 marriage; such evidence may include placing the property in joint names, transferring the property
11 to the other spouse as a gift, using the property exclusively for marital purposes, commingling the
12 property with marital property, using marital funds to build equity in the property, or exchanging
13 the property for marital property.⁶ With specific regard to real property, for it to be transmuted to
14 community property, there generally must be an acknowledged writing proving the intent of the
15 separate real property holder to transmute it to community property (e.g. community property
16 agreement).⁷

17 ³ *In re Estate of Borghi*, 219 P.3d 932 (Wash. 2009).

18 ⁴ *Id.*

19 ⁵ 37 Am. Jur. Proof of Facts 2d 379 (Originally published in 1984)(“Ordinarily, the burden of
20 proof to show that separate property has been transmuted into community property rests on the
21 party alleging that such transmutation has taken place. This rule flows from the presumption that
22 property once fixed as the separate property of one spouse has not been converted by agreement
23 into community property merely because the other spouse acquires possession, management, or
24 control of it. In such cases, the property is presumed to remain separate property, and the burden
25 rests on the other spouse, claiming a gift or change in status of the property, to show that it has in
26 fact been transmuted.”); Kenneth W. Weber, Washington Practice: Family and Community
27 Property Law § 10.1, at 133 (1997) (“Possibly more than in any other area of law, presumptions
28 play an important role in determining ownership of assets and responsibility for debt in community
property law.”).

26 ⁶ *Crossland v. Crossland*, 397 S.C. 406, 725 S.E.2d 509 (Ct. App. 2012).

27 ⁷ *In re Estate of Borghi*, 219 P.3d 932 (Wash. 2009); *see also Volz v. Zang*, 113 Wash. 378,
28 383, 194 P. 409 (1920).

1 Here, the Supreme Court confirmed that Lynita has the burden to show that the separate
2 property was transmuted back to community property after 2001, because the purpose of the
3 tracing is “to determine whether any community property exists within the trusts.” See Supreme
4 Court Opinion at 17. In other words, if all property owned by the SSSTs is community property
5 because it was acquired during Eric and Lynita’s marriage, the Supreme Court would have ruled in
6 Lynita’s favor and there would be no reason to conduct a tracing to “determine whether any
7 community property exists.”

8 In light of the foregoing, if this Court believes that it has sufficient information to conduct a
9 tracing “to determine whether any community property exists within the trusts” after 2001, without
10 retaining a forensic accountant, the ELN Trust requests that this Court grant the relief requested in
11 the Motion to Enforce the Supreme Court’s Order because Lynita has failed to show by clear and
12 convincing evidence that the separate property contained within the ELN Trust was transmuted to
13 community property.

14 **C. LYNITA’S REQUESTED TRACING IS OVERBROAD AND RUNS**
15 **CONTRARY TO THE NEVADA SUPREME COURT’S ORDER.**

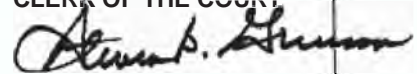
16 If this Court finds that a tracing is necessary to “determine whether any community
17 property exists within the trusts,” it is not as broad as Lynita would have this Court believe for the
18 following reasons. First, the Supreme Court never ordered this Court to conduct a tracing from
19 1993 through the creation of the SSSTs in 2001 because it repeatedly held that the ELN Trust and
20 Lynita’s SSST were funded with their respective separate property:

21 Later, the parties converted those trusts into self-settled spendthrift trusts (SSSTs)
22 and funded them with their respective separate property. P. 2.

23 In 2001, Eric and Lynita converted their separate property trusts into Eric’s Trust
24 and Lynita’s Trust, respectively, and funded the SSSTs with the separate property
25 contained within the separate property trusts. P. 4.

26 On June 3, 2013, the district court issued the decree. The district court found that
27 the SPA was valid and the parties’ SSSTs were validly established and funded
28 with separate property. P. 6.

For the reasons set forth below, we hold the SSSTs are valid and the trusts were
funded with separate property stemming from a valid separate property



1 **NOT**

2 **RHONDA K. FORSBERG, CHARTERED**
3 **RHONDA K. FORSBERG, ESQ.**

4 Nevada State Bar No. 009557

5 64 No. Pecos Road, Suite 800

6 Henderson, Nevada 89074

7 T: 702-990-6468

8 F: 702-990-6449

9 rforsberg@forsberg-law.com

10 *Attorneys for Eric Nelson, Individually*

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

13 **ERIC L. NELSON,**

14 **Plaintiff,**

15 **vs.**

16 **LYNITA SUE NELSON, MATT**
17 **KLADACKA, as Distribution Trustee of**
18 **the ERIC L. NELSON NEVADA**
19 **TRUST dates May 30, 2001,**

20 **Defendants.**

21 **MATT KLABACK, Distribution Trustee**
22 **of the ERIC L. NELSON NEVADA**
23 **TRUST dated May 30, 2001,**

24 **Cross-claimant,**

25 **vs.**

26 **LYNITA SUE NELSON,**

27 **Cross- defendant.**

CASE NO: D-09-411537-D
DEPT NO: O

**NOTICE OF JOINDER TO
OPPOSITION TO LYNITA
NELSON'S MOTION FOR
RECONSIDERATION AND
CLARIFICATION OF THE
COURT'S DECISION ENTERED
MAY 22, 2018; AND
COUNTERMOTION TO: (1)
TERMINATE THE JPI; (2)
IMPOSE A BOND ON ANY
PROPERTY SUBJECT TO THE
JPI; (3) EXPUNGE THE
INAPPROPRIATELY
RECORDED LIS PENDENS; (4)
ALLOW THE ELN TRUST TO
MANAGE LINDELL; AND (5)
ATTORNEYS' FEES AND COST**

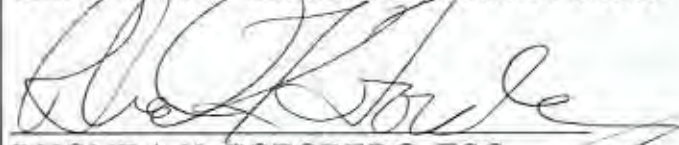
28 **PLEASE TAKE NOTICE** Defendant, Eric Nelson, Individually, by and through
his Counsel of Record, Rhonda K. Forsberg, Esq., hereby join Defendant Eric L. Nelson,

PSAPP0409

1 Investment Trustee of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001, by
2 and through his Counsel of Record in the Eighth Judicial District Court Case No. D-09-
3 411537-D, the law firm of SOLOMON DWIGGINS, & FREER, LTD, in their
4
5 OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND
6
7 CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018; AND
8
9 COUNTERMOTION TO: (1) TERMINATE THE JPI; (2) IMPOSE A BOND ON ANY
10
11 PROPERTY SUBJECT TO THE JPI; (3) EXPUNGE THE INAPPROPRIATELY
12
13 RECORDED LIS PENDENS; (4) ALLOW THE ELN TRUST TO MANAGE
14
15 LINDELL; AND (5) ATTORNEYS' FEES AND COST, filed with this Court on or
16
17 about June 22, 2018 to avoid duplicative pleadings in this matter.

18
19 Dated this 22nd day of June, 2018.

20
21 RHONDA K. FORSBERG, CHARTERED

22
23 

24
25 RHONDA K. FORSBERG, ESQ.

26
27 Nevada Bar No. 009557

28
1070 W. Horizon Ridge Pkwy. #100

Henderson, Nevada 89012

Attorneys for Eric Nelson, Individually

...

...

...

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Rhonda K. Forsberg, Chartered, and that on this 22nd day of June, 2018, I caused the above foregoing document entitled "NOTICE OF JOINDER TO OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018; AND COUNTERMOTION TO: (1) TERMINATE THE JPI; (2) IMPOSE A BOND ON ANY PROPERTY SUBJECT TO THE JPI; (3) EXPUNGE THE INAPPROPRIATELY RECORDED LIS PENDENS; (4) ALLOW THE ELN TRUST TO MANAGE LINDELL; AND (5) ATTORNEYS' FEES AND COST" to be served as follows:

☒ BY ELECTRONIC SERVICE: Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

☐ BY MAIL: Pursuant To NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada

☐ BY FACSIMILE: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via facsimile.

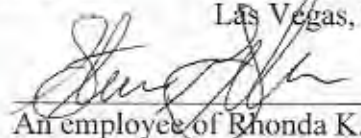
☐ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail.

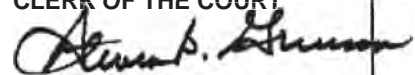
☐ BY CERTIFIED MAIL: I placed a true copy thereof enclosed in a sealed envelope, return receipt requested.

To the party(s) listed below at the address, email address, and/or facsimile number indicated below:

Robert P. Dickerson, Esq.
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1745 Village Center Circle
Facsimile: (702) 388-0210
Las Vegas, Nevada 89134

Mark A. Solomon, Esq. and Jeffrey P. Luszeck, Esq.
Solomon Dwiggin Freer & Morse, LTD
Cheyenne West Professional Centre
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Las Vegas, Nevada 89129


An employee of Rhonda K. Forsberg, Chartered



1 RPLY
2 THE DICKERSON KARACSONYI LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 JOSEF M. KARACSONYI, ESQ.
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11 Email: info@thedklawgroup.com

12 Attorneys for Lynita Sue Nelson

13 DISTRICT COURT
14 FAMILY DIVISION

15 CLARK COUNTY, NEVADA

16 ERIC L. NELSON,
17 Plaintiff/Counterdefendant,
18 v.
19 LYNITA SUE NELSON, MATT
20 KLABACKA, as Distribution
21 Trustee of the ERIC L. NELSON
22 NEVADA TRUST, dated May 30,
23 2001,
24 Defendants/Counterclaimants.

CASE NO. D-09-411537-D
DEPT NO. O 07/23/2018

Date of Hearing: ~~06/23/18~~
Time of Hearing: 10:00 a.m.

Oral Argument Requested: Yes

25 MATT KLABACKA, as
26 Distribution Trustee of the ERIC
27 L. NELSON NEVADA TRUST
dated May 30, 2001,

Crossclaimant,

28 v.
29 LYNITA SUE NELSON,
30 Individually and as Investment
31 Trustee of the LSN NEVADA
32 TRUST, dated May 30, 2001, and
33 ERIC NELSON,

Cross-Defendants.

PSAPP0412

1 DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO
2 DEFENDANT'S MOTION FOR RECONSIDERATION AND
3 CLARIFICATION OF THE COURT'S DECISION ENTERED
4 MAY 22, 2018

5 AND
6 OPPOSITION TO COUNTERMOTION TO: (1) TERMINATE
7 THE JPI; (2) IMPOSE A BOND ON ANY PROPERTY SUBJECT
8 TO THE JPI; (3) EXPUNGE THE LIS PENDENS; (4) ALLOW
9 THE ELN TRUST TO MANAGE LINDELL; AND (5)
10 ATTORNEYS' FEES AND COSTS

11 COMES NOW Defendant, LYNITA SUE NELSON ("Lynita"), by
12 and through her attorneys, ROBERT P. DICKERSON, ESQ., and JOSEF
13 M. KARACSONYI, ESQ., of THE DICKERSON KARACSONYI LAW
14 GROUP, and submits Defendant's Reply to Plaintiff's Opposition to
15 Defendant's Motion for Reconsideration and Clarification of the Court's
16 Decision Entered May 22, 2018, and Opposition to Countermotion To:
17 (1) Terminate the JPI; (2) Impose a Bond on Any Property Subject to the
18 JPI; (3) Expunge the Lis Pendens; (4) Allow the ELN Trust to Manage
19 Lindell; and (5) Attorneys' Fees and Costs ("Reply and Opposition").

20 This Reply and Opposition is made and based upon the following
21 Memorandum of Points and Authorities, all papers and pleadings on file
22 herein, all exhibits attached hereto, as well as oral argument of counsel as
23 may be permitted at the hearing on this matter.

24 DATED this 12th day of July, 2018.

25 THE DICKERSON KARACSONYI
26 LAW GROUP

27 By Robert P. Dickerson

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I. **INTRODUCTION**

3 In Plaintiff's Opposition to Defendant's Motion for Reconsideration
4 and Clarification of the Court's Decision Entered May 22, 2018, and
5 Opposition to Countermotion To: (1) Terminate the JPI; (2) Impose a
6 Bond on Any Property Subject to the JPI; (3) Expunge the Lis Pendens;
7 (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and
8 Costs ("Opposition and Countermotion"), Eric and ELN Trust
9 disingenuously seek to prevent the Court from granting Lynita's
10 reasonable and justified request for a reconsideration/clarification of its
11 Decision Affirming the Date of Tracing; Denying a Separate Blocked
12 Account for \$720,000; and Granting a Joint Preliminary Injunction for
13 the Banone, LLC and Lindell Properties ("Decision"). In addition, Eric
14 and ELN Trust have included a Countermotion baselessly seeking a
15 variety of relief, ranging from a severely untimely request for
16 reconsideration, to a ludicrous request for an award of attorneys' fees and
17 costs.

18 II. **LEGAL ANALYSIS**

19 A. **The Court Did Not Previously Address – Let Alone Deny – The**
20 **Relief Lynita Has Requested, And Lynita's Motion For**
21 **Reconsideration/Clarification Is Therefore Entirely Proper And**
22 **Should Be Granted**

23 In a disingenuous attempt to oppose Lynita's reasonable and proper
24 request that the Court reconsider/clarify its Decision, Eric and ELN Trust
25 have intentionally chosen to misrepresent the Court's Decision. In an
26 attempt to rewrite history, and to thereby support their position, Eric and
27 ELN Trust claim over and over again that Lynita is asking the Court to
"rethink" its position and to grant relief that it has purportedly already

1 rejected. Likewise, all of the case law cited by Eric and ELN Trust in
2 support of their argument relate specifically to situations in which
3 reconsideration was sought to obtain a new decision contrary to a
4 decision already made by the Court. In this case, however, Lynita's
5 request that a general Joint Preliminary Injunction ("JPI") be issued was
6 not denied by the Court in its Decision, but was entirely overlooked. The
7 Court's Decision did not even address – let alone deny – Lynita's request
8 for relief. The Court issued a limited JPI as part of its Decision, but did
9 so based on its stated belief that Lynita had requested a JPI only with
10 regard to the Banone, LLC Properties and the Lindell Property that were
11 being transferred to Eric and ELN Trust. Specifically, the Court stated
12 in its Decision that "this Court did not [previously] address the request
13 for a Joint Preliminary Injunction for the Banone, LLC, and Lindell
14 properties." In reality, however, Lynita's request that was before the
15 Court was for a general JPI to be issued, not one related only to the
16 Banone, LLC, and Lindell properties. A court's inadvertent failure to
17 address in its order a party's claim for relief does not constitute a denial,
18 but does constitute grounds for reconsideration/clarification of the order.

19 At this time, Lynita is simply asking the Court to make a decision
20 as to the remaining, unaddressed portion of her original request that a
21 general JPI be put in place. As detailed in Lynita's underlying Motion,
22 there are numerous properties subject to a claim of community interest
23 other than the Banone and Lindell properties, and a JPI over just the
24 Banone, LLC and Lindell Properties does not protect sufficient property
25 to ensure the Court can accomplish an appropriate division of property
26 if it is determined that the properties held in the ELN Trust and LSN
27 Trust are community property. In an attempt to counter this fact, Eric

1 and ELN Trust mischaracterize this Court's Decision entered on April 19,
2 2018, wherein the Court determined that there were "sufficient assets in
3 both trusts to offset any deficiency once a final balance and distribution
4 amount has been determined." Contrary to Eric and ELN Trust's attempt
5 to misinterpret this determination, the Court's comment did not stand for
6 the proposition that should Eric and ELN Trust improperly sell all of the
7 parties' real properties there would still be enough assets to properly
8 compensate Lynita and LSN Trust at the finalization of this matter. The
9 determination in question was made by the Court in the limited context
10 of its decision not to require the immediate transfer of certain funds
11 (totaling only a few hundred thousand dollars).

12 Eric and ELN Trust argue that the Russell Road property should
13 somehow be excluded from a general JPI, because Lynita and LSN Trust
14 purportedly do not have an interest in the property. First, the Court has
15 not decided yet if Russell Road is community or separate property, and
16 until such a decision is made, all property acquired during marriage is
17 presumed to be community property. *Forrest v. Forrest*, 99 Nev. 602, 604-
18 05, 668 P.2d 275, 277 (1983).

19 Even if there was no such presumption under Nevada law, Eric's
20 and ELN Trust's description of the acquisition of the Russell Road
21 property is predicably untrue. On November 23, 1999, Lynita's revocable
22 1993 trust acquired sole ownership of Russell Road.¹ As confirmed by
23 Larry Bertsch, Lynita's revocable 1993 trust paid \$855,945.00 to
24

25
26 ¹ See Defendant's trial Exhibit UUUU, and specifically Grant, Bargain, Sale
27 Deed 1999112301029, executed on September 25, 1999, and recorded on November
23, 1999, contained within said Exhibit.

1 purchase this property.² On June 14, 2001, without any financial
2 consideration being paid to the LSN Trust, Eric had Lynita transfer title
3 to Russell Road to CJE&L, LLC,³ a newly formed entity whose
4 membership consisted of the LSN Trust, and the Nelson Nevada Trust
5 (Cal and Jeanette Nelson, Eric's brother and sister-in-law, as Trustees).
6 On January 1, 2005, Eric had the LSN Trust assign its 50% membership
7 interest in CJE&L, LLC to the Nelson Nevada Trust (Cal and Jeanette
8 Nelson, Trustees), thus forfeiting all interest in the Russell Road property
9 for which Eric had Lynita's 1993 trust pay the \$855,945.00 in 1999. Mr.
10 Bertsch confirmed that the forfeiture of the LSN Trust's interest in the
11 Russell Road property was transferred to the capital account of Cal
12 Nelson, there being no cash attached to this transaction. On February 3,
13 2010, CJE&L, LLC sold its 50% interest in Russell Road to Eric Nelson
14 Auctioneering for \$4,000,000.00.⁴ The LSN Trust has never received
15 compensation for its interest in Russell Road.

16 With regard to Eric's and ELN Trust's claim that Wyoming Downs
17 should be excluded from any JPI that is issued by the Court – and from
18 any tracing – this property is also presumed to be community property as
19 it was acquired during marriage. The Nevada Supreme Court did not
20

21 ² The total purchase price was \$875,000.00 as reflected in Defendant's trial
22 Exhibit UUUU (see Declaration of Value form immediately following Grant, Bargain,
23 Sale Deed).

24 ³ See Defendant's Trial Exhibit UUUU, and specifically Grant, Bargain, Sale
25 Deed 2001061400850, executed on June 7, 2001, and recorded on June 14, 2001,
26 contained within said Exhibit.

27 ⁴ See Defendant's Trial Exhibit UUUU, and specifically Grant, Bargain, Sale
Deed 201002030002960, executed on February 2, 2010, and recorded on February 3,
2010, contained within said Exhibit, and Eric's 2010 Testimony.

1 exclude Wyoming Downs from a tracing when it indicated that the
2 properties in trust needed to be traced.

3 B. Eric's And ELN Trust's Request For Reconsideration Is Untimely

4 After frivolously attacking Lynita's entirely proper request for
5 reconsideration of the Court's Decision, Eric and ELN Trust have found
6 it appropriate to include in their own Countermotion a request for
7 reconsideration. Eric and ELN Trust have requested that the Court
8 "reconsider the imposition of its JPI against Banone, LLC and Lindell
9 without the imposition of a bond." Aside from the fact that such a request
10 has no merit, it is fatally defective in that it was filed more than two (2)
11 weeks after the deadline for such a request.

12 Eighth Judicial District Court Rules, Rule 5.512 (2018), provides
13 as follows:

14 (a) A party seeking reconsideration and/or rehearing
15 of a ruling (other than any order that may be addressed by
16 motion pursuant to NRCP 50(b), 52(b), 59 or 60), **must file**
17 **a motion for such relief within 14 calendar days after**
18 **service of notice of entry of the order unless the time is**
19 **shortened or enlarged by order.** A motion for
20 reconsideration does not toll the period for filing a notice of
21 appeal.

22 (Emphasis added).

23 Had Eric and ELN Trust wanted the Court to reconsider its
24 Decision of May 22, 2018, they could have done so at any time within
25 fourteen (14) calendar days after service of notice of entry of the Decision
26 – i.e., by no later than June 5, 2018. Instead, Eric and ELN Trust chose
27 not to file their request until June 22, 2018 – a date seventeen (17) days
28 after the deadline for same. As a result of the untimely nature of Eric's
29 and ELN Trust's request for reconsideration, this Court does not have
30 jurisdiction to entertain same, and the request should be denied.

1 C. Eric's And ELN Trust's Request For The Posting Of A Bond Should
2 Be Denied

3 Eric and ELN Trust have provided no justification – legal or
4 otherwise – for their request that Lynita be required to post a bond as a
5 result of the Joint Preliminary Injunction that was put in place by the
6 Court in its Decision. In “support” of such a request, Eric and ELN Trust
7 first cite to NRCP 65, which is entirely inapplicable to the Joint
8 Preliminary Injunction issued in this matter. Thereafter, Eric and ELN
9 Trust state that Lynita should be required to post a bond because “the
10 ELN Trust has previously been required to post bond.” Such an
11 argument is characteristically disingenuous. Eric and ELN Trust know
12 full-well that the only time they were required to post a bond in this
13 matter was during the appeal to the Nevada Supreme Court, and only in
14 relation to the approximately \$400,000 in back rents that had been
15 ordered to be paid to Lynita and LSN Trust. A bond on appeal *is*
16 required of a party who wishes to stay enforcement of the judgment being
17 appealed. *See* NRCP 62. No such requirement attaches to the Joint
18 Preliminary Injunction. Furthermore, and as the Court is aware, Eric and
19 ELN Trust were not required to post a bond, even on appeal, for the
20 Russell Road property (instead they were simply ordered not to transfer
21 the property pending appeal), nor for any of the properties awarded to
22 Lynita in the Decree of Divorce and transferred to her post-Decree (i.e.,
23 Banone and Lindell Properties), even though the Court enjoined Lynita
24 from transferring such properties pending appeal. Simply put, Eric and
25 ELN Trust were never required to post bond during the pre-divorce
26 litigation of this matter, and were never at any time required to post a

27 . . .

1 bond with regard to any of the parties' real properties even when they
2 were granted injunctive relief by the Court.

3 D. The Lis Pendens Recorded By Lynita Should Remain In Place

4 On May 11, 2018, Lynita recorded certain Notices of Lis Pendens
5 on the Banone Properties, the Lindell property, the Bella Kathryn
6 property, and the Russell Road property ("Lis Pendens"), in order to
7 protect same. On May 14, 2018, the Lis Pendens were recorded with the
8 Clark County Recorder's Office.

9 In their Countermotion, Eric and ELN Trust now seek to have the
10 Lis Pendens expunged. In order to "support" such a request, Eric and
11 ELN Trust have blatantly mischaracterized the Nevada Supreme Court's
12 holdings in this matter by stating that "Eric and Lynita's community
13 property was transmuted to separate property and Lynita failed to
14 introduce any evidence . . . that the Parties separate property was
15 transmuted back to community property." As the Court knows, Lynita
16 and Eric presented an overwhelming amount of evidence that the
17 property held by the parties in trust was transmuted to community
18 property. This Court is actively engaged in conducting a tracing of the
19 parties' properties, as directed by the Nevada Supreme Court, and will
20 have to review/hear the evidence again and determine the character of
21 property once the tracing is completed.

22 1. The Lis Pendens Meet All Requirements Of NRS 14.015

23 Pursuant to NRS 14.015(2) and (3), there are several factors that
24 must be analyzed and established by Lynita in support of her Lis
25 Pendens. Lynita bears the burden of establishing same to the satisfaction
26 of the Court, which is an extremely low burden of proof that is less than

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1 even a preponderance of the evidence. Accordingly, and in compliance
2 with NRS 14.015, Lynita now addresses each factor, in turn, below:⁵

3 a. The instant action affects the title or possession of the
4 real property described in the Lis Pendens

5 As conceded by Eric and ELN Trust in their Countermotion, lis
6 pendens are permissible in “an action for the foreclosure of a mortgage
7 upon real property, or affecting title or possession of real property.” NRS
8 14.010(1); NRS 14.015(2)(a). Further, Eric and ELN Trust acknowledge
9 that Nevada law provides that “lis pendens are not appropriate
10 instruments for use in promoting recoveries in actions for personal or
11 money judgments, rather, their office is to prevent the transfer or loss of
12 real property which is the subject of dispute in the action that provides
13 the basis for the lis pendens.” *Levinson v. District Court*, 109 Nev. 747,
14 750, 857 P.2d 18, 20 (1993). Eric and ELN Trust do not even argue that
15 the action does not affect the title to the real property in question.

16 As this Court is aware, the instant action unquestionably and
17 undisputedly affects the title to countless parcels of real property, all of
18 which are deserving of the protection offered by imposition of the Lis
19 Pendens. The Lis Pendens were not recorded to promote the recovery of
20 any personal or money judgment, but rather to protect Lynita’s potential
21 community property interest in same. The Nevada Supreme Court
22 remanded this matter in order for the Court to perform a tracing and to
23 determine the extent of the parties’ community property interests in the
24 properties held in the ELN Trust and LSN Trust. In the event the Court
25

26 ⁵ Eric and ELN Trust have cited the relevant factors in their Countermotion, but
27 have conveniently chosen to omit any analysis of same, knowing full-well that such an
analysis would only support Lynita’s actions.

1 determines that any or all of the property held in the ELN Trust and LSN
2 Trust is community property, then the title to such real property subject
3 to Lynita's Lis Pendens will be affected.

4 b. The action was not brought in bad faith or for an
5 improper motive

6 Lynita's First Amended Answer to Claims of the Eric L. Nelson
7 Nevada Trust; and First Amended Claims for Relief Against Eric L.
8 Nelson, Eric L. Nelson Nevada Trust dated May 30, 2001, Lana Martin,
9 Nola Harber, Rochelle McGowan, Joan B. Ramos, and DOES I through
10 X ("Amended Answer"), was not brought in bad faith or for an improper
11 motive. Lynita sought by that pleading only to protect her community
12 property interests in the parties' assets, and to otherwise protect her rights
13 resulting from the parties' marriage. Lynita did not act in bad faith or for
14 an improper motive at that time, or at any time throughout the litigation
15 of this matter, including, but not limited to, at the time that she recorded
16 her Lis Pendens against a number of the real properties at issue in this
17 matter.

18 c. Lynita would be able to perform any conditions
19 precedent to the relief sought in this action insofar as it
affects the title or possession of the real property

20 Should Lynita ultimately be awarded any of the real properties at
21 issue in this matter, she would be perfectly able to assume title thereof,
22 and there are no conditions precedent that she would not be able to
23 perform.

24 d. Lynita would be irreparably injured by any transfer of
25 the real properties prior to the conclusion of this action

26 If Lynita's Lis Pendens were expunged – thereby permitting Eric and
27 ELN Trust to sell the real properties in question – and this Court's tracing

1 and final adjudication ultimately determines that Lynita has a community
2 property interest in some or all of the real properties in question, Lynita
3 would be irreparably injured. The Nevada Supreme Court has long held
4 that the loss of real property constitutes irreparable harm. *See Thatcher v.*
5 *Dixon*, 103 Nev. 414, 742 P.2d 1029 (1987)(“Because real property and
6 its attributes are considered unique and loss of real property rights
7 generally results in irreparable harm). As the Court will recall, Eric and
8 ELN Trust relied on this same argument (the uniqueness of property) to
9 enjoin the sale or transfer of the Banone, LLC and Lindell Properties
10 pending appeal, even though no bond was posted by Eric and ELN Trust
11 to obtain a stay of enforcement of the judgment.

12 There is no doubt that if the Lis Pendens were expunged, Eric and
13 ELN Trust would not hesitate to liquidate the properties as soon as
14 possible, and prior to the completion of the Court’s tracing. First, Eric’s
15 and ELN Trust’s desire to immediately liquidate the properties in their
16 grasp is the only reason that Eric and ELN Trust are so desperately
17 seeking the expungement of the Lis Pendens and the
18 cancellation/limitation of a JPI. Second, Eric had begun to make
19 arrangements for the improper sale of a number of the real properties in
20 question prior to the issuance of the limited JPI. In his haste, Eric made
21 a mistake and did so even before Lynita had executed the Quitclaim
22 Deeds necessary to title the properties in the name of the ELN Trust,
23 thereby allowing Lynita to receive notification of some of the attempted
24 sales. Exhibit A.

25 . . .

26 . . .

27 . . .

1 e. Lynita is likely to prevail in this action or has a fair
2 chance of success on the merits in the action and the
3 injuries described above would be sufficiently serious
4 that the hardship on Lynita would be greater than the
5 hardship on Eric and ELN Trust resulting from the Lis
6 Pendens

7 It is likely, and, in the alternative, there is at least a fair chance, that
8 Lynita will prevail in this action and that this Court's decision of remand
9 will result in a determination that Lynita has a community property
10 interest in some or all of the real properties in question. The irreparable
11 harm that would be suffered by Lynita in the event the Lis Pendens are
12 expunged, as described above, is extremely serious, and makes clear that
13 the hardship on Lynita would be far greater than the hardship to Eric and
14 ELN Trust, which consists solely of an inability to sell the real properties
15 in question prior to the finalization of this action. It must be pointed out
16 that the real properties in question have been owned during the entire
17 nine (9) year litigation of this action, and ELN Trust and Eric will not
18 suffer any hardship by continuing to hold the properties until this matter
19 is finalized.

20 f. If Lynita prevails in this action, she will be entitled to
21 relief affecting the title or possession of the real
22 properties at issue

23 As mentioned above, in the event the Court's tracing confirms
24 Lynita's position that she has a community property in all of the parties'
25 real properties, she will be entitled to relief affecting the title of same.

26 2. The Lis Pendens Are Also Specifically Permitted By NRS
27 125.220

28 In addition to the above analysis of the factors set forth in NRS
29 14.015, it is important for the Court to take into consideration that
30 Nevada law specifically permits parties in divorce actions to record a

1 notice of pendency of the action in any county in which the other party
2 has real property. NRS 125.220 provides as follows:

- 3 1. At any time after the filing of the complaint, the complaining
4 spouse may record a notice of pendency of the action in the
5 office of the county recorder of any county in which the other
6 spouse may have real property. The notice has the same
7 effect as notice in actions directly affecting real property.
- 8 2. The court may enjoin either spouse from disposing of any
9 property during the pendency of the action.

10 By recording her Lis Pendens, Lynita has done nothing more than
11 that she was entitled to do by NRS 125.220(1). Pursuant to NRS
12 125.220(2), this Court may enjoin Eric and ELN Trust from disposing of
13 any property until a final determination is made.

14 E. Eric's And ELN Trust's Request To Manage The Lindell Property
15 Should Be Denied

16 Given that the hearing on Lynita's instant Motion is being held
17 simultaneously with that on Lynita's Motion for an Order to Allow Her
18 to Continue to Manage the Lindell Property, and Requiring Eric Nelson
19 and ELN Trust to Pay Rent for Their Tenancy at the Lindell Property
20 ("Motion to Manage"), and in order to save judicial resources in
21 reviewing the associated documents, Lynita will address Eric's and ELN
22 Trust's request to manage the Lindell Property in her Reply to their
23 Opposition to the Motion to Manage, which will be filed in the coming
24 days. Suffice it to say, however, Eric's and ELN Trust's request should
25 be denied, as Eric has proven that he cannot be trusted, and the granting
26 of his request would certainly cause financial harm to Lynita and the LSN
27 Trust.

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...

1 F. Eric's And ELN Trust's Request For Attorneys' Fees and Costs
2 Should Be Denied

3 Eric's and ELN Trust's request for an award of attorney's fees
4 should be denied. Lynita's instant Motion is not frivolous in the least,
5 and Lynita's Lis Pendens were appropriately recorded.

6 III. CONCLUSION

7 For the reasons set forth above, Lynita respectfully requests that the
8 Court grant the relief requested in her instant Motion, and deny Eric's
9 and ELN Trust's request for attorneys' fees and costs.

10 DATED this 12th day of July, 2018.

11 THE DICKERSON KARACSONYI
12 LAW GROUP

13 By Robert P. Dickerson
14 ROBERT P. DICKERSON, ESQ.
15 Nevada Bar No. 000945
16 JOSEF M. KARACSONYI, ESQ.
17 Nevada Bar No. 010634
18 1745 Village Center Circle
19 Las Vegas, Nevada 89134
20 Attorneys for Defendant
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23
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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 12th day of July, 2018, I caused the document entitled DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018, AND OPPOSITION TO COUNTERMOTION TO: (1) TERMINATE THE JPI; (2) IMPOSE A BOND ON ANY PROPERTY SUBJECT TO THE JPI; (3) EXPUNGE THE LIS PENDENS; (4) ALLOW THE ELN TRUST TO MANAGE LINDELL; AND (5) ATTORNEYS' FEES AND COSTS, to be served as follows:

- ☒ [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCp 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;
- ☐ [] sent a courtesy copy via e-mail on Eighth Judicial District Court's electronic filing system;
- ☐ [] by hand-delivery with signed Receipt of Copy.

To the attorney(s) and/or person(s) listed below at the address, email address, and/or facsimile number indicated below:

...

...

...

1 Mark A. Solomon, Esq.
Jeffrey P. Luszeck, Esq.
2 SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
3 Las Vegas, Nevada 89129
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5 Trustee of the ELN Trust

6 Rhonda S. Forsberg, Esq.
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Attorney for Eric L. Nelson, Individually
9

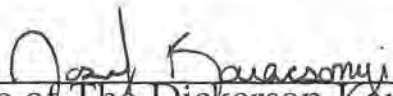
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12 An employee of The Dickerson Karacsonyi Law Group
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Exhibit “A”

Exhibit “A”

Exhibit “A”



First American Title

L S N Nevada Trust
10170 W TROPICANA AVE #156-16 LAS VEGAS NV 89147

May 01, 2018

Subject Property: 1301 Heather Ridge Road, North Las Vegas, NV 89031
Assessor's Parcel No. 124-28-814-010

Order No.: 119-2542960

Dear L S N Nevada Trust:

First American Title Insurance Company was selected to provide title insurance involving a transaction on the above listed subject property.

We are writing to you today as part of First American's fraud prevention efforts. We want to alert you that a transaction may be pending. **If you are not in the process of selling or refinancing this property, please contact us immediately at (866) 263-4563.**

However, if you are in the process of selling or refinancing this property, there is no need to contact us. The purpose of this letter is simply to alert you as the property owner, in the event that somebody is trying to convey or encumber your property without your knowledge or permission.

If you are selling or refinancing this property, we thank you very much for allowing First American to handle this transaction. We appreciate your business.

First American Title Insurance Company is the largest subsidiary of First American Financial Corporation (NYSE:FAF). First American Financial Corporation traces its heritage to 1889 and was recognized as a Fortune® 500 Company in 2016.

Sincerely,

First American's Property Notification Group
Fraud Protection Specialist
5 First American Way
Santa Ana, CA 92707
Phone: 866-263-4563

21148751

PSAPP0430



First American Title

L N S Nevada Trust
10170 W TROPICANA AVE #156-16 LAS VEGAS NV 89147

May 01, 2018

Subject Property: 4133 Compass Rose Way, Las Vegas, NV 89108
Assessor's Parcel No. 138-03-815-002

Order No.: 119-2542962

Dear L N S Nevada Trust:

First American Title Insurance Company was selected to provide title insurance involving a transaction on the above listed subject property.

We are writing to you today as part of First American's fraud prevention efforts. We want to alert you that a transaction may be pending. **If you are not in the process of selling or refinancing this property, please contact us immediately at (866) 263-4563.**

However, if you are in the process of selling or refinancing this property, there is no need to contact us. The purpose of this letter is simply to alert you as the property owner, in the event that somebody is trying to convey or encumber your property without your knowledge or permission.

If you are selling or refinancing this property, we thank you very much for allowing First American to handle this transaction. We appreciate your business.

First American Title Insurance Company is the largest subsidiary of First American Financial Corporation (NYSE:FAF). First American Financial Corporation traces its heritage to 1889 and was recognized as a Fortune® 500 Company in 2016.

Sincerely,

First American's Property Notification Group
Fraud Protection Specialist
5 First American Way
Santa Ana, CA 92707
Phone: 866-263-4563

21148754

PSAPP0431



First American Title

L S N Nevada Trust

May 03, 2018

10170 W TROPICANA AVE #156-16 LAS VEGAS NV 89147

Subject Property: 4820 Marnell Drive, Las Vegas, NV 89121
Assessor's Parcel No. 161-20-712-026

Order No.: 119-2542955

Dear L S N Nevada Trust:

First American Title Insurance Company was selected to provide title insurance involving a transaction on the above listed subject property.

We are writing to you today as part of First American's fraud prevention efforts. We want to alert you that a transaction may be pending. **If you are not in the process of selling or refinancing this property, please contact us immediately at (866) 263-4563.**

However, if you are in the process of selling or refinancing this property, there is no need to contact us. The purpose of this letter is simply to alert you as the property owner, in the event that somebody is trying to convey or encumber your property without your knowledge or permission.

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Sincerely,

First American's Property Notification Group
Fraud Protection Specialist
5 First American Way
Santa Ana, CA 92707
Phone: 866-263-4563

21160864

PSAPP0432

FILED

AUG 14 2018

Alan L. Sullivan
CLERK OF COURT

1 TRANS

2 ORIGINAL

3
4
5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA
8

9 ERIC L. NELSON,)
10 Plaintiff,) CASE NO. D-09-411537-D
11 vs.) DEPT. O
12 LYNITA NELSON,) (SEALED)
13 Defendant.) (ERRATA
14

15 BEFORE THE HONORABLE FRANK SULLIVAN
16 DISTRICT COURT JUDGE

17 TRANSCRIPT RE: ALL PENDING MOTIONS

18 MONDAY, JULY 23, 2018
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24

1 APPEARANCES:
2 The Plaintiff: ERIC L. NELSON
3 For the Plaintiff: RHONDA FORSBERG, ESQ.
4 64 N. Pecos Rd., Suite #800
 Henderson, Nevada 89074
 (702) 990-6468
5 The Trustee: NOT PRESENT
6 For the Trustee: JEFFREY LUSZECK, ESQ.
 9060 W. Cheyenne Ave.
 Las Vegas, Nevada 89129
 (702) 853-5483
7
8 The Defendant: LYNITA NELSON
9 For the Defendant: JOSEF KARACSONYI, ESQ.
 1745 Village Center Cir.
 Las Vegas, Nevada 89134
 (702) 388-8600
10
11 Also Present: LARRY BERTSCH
12 Larry L. Bertsch, CPA
 & Associates
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1 LAS VEGAS, NEVADA

MONDAY, JULY 23, 2018

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 09:05:33)

4

5 THE COURT: -- computer up so I can pull up any
6 documents I need. This is the time set in the -- whoops -- in
7 the matter -- in the Nelson matter, case number D-09-411537.
8 We'll get everyone's appearance for the record. We'll --
9 we'll start with --

10 MR. KARACSONYI: Josef Karacsonyi on behalf of
11 Lynita Nelson who is present. 10634 is my bar number.

12 THE COURT: Mr. Bertsch?

13 MR. BERTSCH: Larry Bertsch. I've been appointed to
14 do some extra research working on the project.

15 THE COURT: Thank you.

16 MR. LUSZECK: Jeff Luszeck, bar number 9619, on
17 behalf of Matt Klabacka, distribution Trustee of the trust.

18 THE COURT: Thank you.

19 MS. FORSBERG: Good morning, Your Honor. Rhonda
20 Forsberg, 9557, on behalf of Eric Nelson who is present to my
21 right.

22 THE COURT: Thank you. Sit down. Good morning.
23 Good morning Ms. Lynita and Mr. Eric. Good to see both of you
24 again. I have -- let me make sure I got everything pending

1 before me, so before -- and this is on Ms. Nelson's motion to
2 consolidate and also her motion for reconsideration. I have
3 read the Trustee's opposition to the consolidation and their
4 countermotion for attorney's fees. I also have it on for Ms.
5 Nelson's motion to run the Lindell property and for Mr. Nelson
6 to pay rent. I've read that along with the Trustee's
7 opposition to the motions and to terminate the JPI and post a
8 bond on the property, expunge the lis pendens, and allow ENL
9 Trust (sic) to run the Lindell property and for attorney's
10 fees and Ms. Nelson's reply to opposition to the motion to
11 consolidate and the Trustee's opposition to Lynita running the
12 property and Eric paying rent and all the other replies on
13 that.

14 Is -- is there anything that I missed that we have
15 on calendar for?

16 MR. KARACSONYI: I didn't -- you said the JPI,
17 the --

18 THE COURT: Yeah.

19 MR. KARACSONYI: -- reconsideration?

20 THE COURT: JPI, I said.

21 MR. KARACSONYI: Okay.

22 MR. LUSZECK: I wasn't aware of the motion to
23 consolidate --

24 MR. KARACSONYI: I wasn't --

1 MR. LUSZECK: -- was on.
2 MR. KARACSONYI: -- either.
3 MR. LUSZECK: I --
4 THE COURT: Was it?
5 MS. FORSBERG: Yeah.
6 MR. LUSZECK: I --
7 MS. FORSBERG: I don't think --
8 MR. LUSZECK: I thought based on prior
9 correspondence with your office you were just going to be
10 making a ruling --
11 THE COURT: Yeah.
12 MR. LUSZECK: -- put that on the bench.
13 THE COURT: That was my thing on that as well, but
14 that I dig through it just since people were going to be here
15 if they wanted --
16 MR. LUSZECK: Okay.
17 THE COURT: -- anything on that, but I don't really
18 indicate we do a separate order on that motion.
19 MR. LUSZECK: Okay.
20 MR. KARACSONYI: Okay. Yeah, that was my
21 understanding as well.
22 MR. LUSZECK: Yeah.
23 THE COURT: Okay. All right. Let me get logged in
24 there so I can pull up any documents and get this on a roll

1 for me.

2 (COUNSEL CONFER BRIEFLY)

3 THE COURT: I believe Mr. Bertsch you were here to
4 try to get a date for your tracing? Is that kind of --

5 MR. BERTSCH: I need --

6 THE COURT: I know you want to trace --

7 MR. BERTSCH: -- further instructions from the
8 Court --

9 THE COURT: Okay.

10 MR. BERTSCH: -- as well.

11 THE COURT: Okay. Okay. Because some of this is
12 kind of a motion for reconsideration specifically.

13 MR. KARACSONYI: Do you want me to start there?

14 THE COURT: Yeah, why don't we start there on that,
15 because as I said, I've already started writing a motion to
16 consolidate. I may include that in all these orders, all
17 these orders, so that I have one comprehensive order, but --

18 MR. KARACSONYI: Okay. All right. On May 22nd,
19 your decision basically set the groundwork for -- for what our
20 request. And that is you said both the BanOne LLC and Lindell
21 properties are subject to a claim of community interests, and
22 I'm quoting you, as such, both properties are entitled to a
23 joint preliminary injunction to ensure that the properties
24 remain intact prior to the completion of tracing and the final

1 judgment of this Court.

2 Eventually, the argument we're making here is you
3 did include the BanOne and the Lindell properties to protect
4 those, but there are other properties that are subject to a
5 claim of community interest that we believe were just simply
6 overlooked. And -- and the reason is clear. You were at that
7 time transferring the BanOne and Lindell properties from --
8 from Lynita and LSN Trust back to Eric and the ELN Trust. And
9 so that point in time, those were the two properties that were
10 really at the forefront of everyone's mind.

11 And as a result, we really didn't consider the other
12 properties which are subject to a claim of community interest.
13 Some of those properties that you divided even in the decree
14 making an equal division were never transferred to her such as
15 Russell Road, 2. -- 2.265 million worth of property. Bella
16 Kathryn. All these properties that are in the ELN Trust and
17 the LSN Trust are subject to a claim of community interest at
18 this point in time. And until the tracing determines
19 otherwise, I think we need to protect all those properties to
20 ensure that she's protected.

21 EDCR 5.517 states that any property that's subject
22 to a claim of community interest needs to be protected. And
23 so we're not so much seeking reconsideration. They -- they
24 make a big issue of well, you're seeking reconsideration of

1
2 appraiser is available. Once received, the Eric L. Nelson Nevada Trust has the
3 right of first refusal on any offer on the property with the ability to purchase the
4 Lynita S. Nelson Nevada Trust's 50% interest.
5


6 **IT IS FURTHER ORDERED** that in the event that the Eric L. Nelson
7 Nevada Trust and the Lynita S. Nelson Nevada Trust cannot agree on a valid
8 offer, Larry Bertsch, CPA, is to retain a realtor to place the property on the open
9 market for a fair market offer. Once the realtor determines that a fair offer has
10 been received, the Eric L. Nelson Nevada Trust has the right of first refusal on
11 any offer on the property with the ability to purchase the Lynita S. Nelson
12 Nevada Trust's 50% interest.
13
14

15 **IT IS FURTHER ORDERED** that any appraisal and realtor costs
16 associated with the Brian Head Utah Cabin sale will be paid equally by both Eric
17 L. Nelson Nevada Trust and the Lynita S. Nelson Nevada Trust.
18

19 **IT IS FURTHER ORDERED** that the \$720,000.00 being held in Bank of
20 Nevada Account 7502338705 be released to an account of the Eric L. Nelson
21 Nevada Trust's choosing.
22

23 **IT IS FURTHER ORDERED** that any Stay of Order is hereby **DENIED**.
24

25 DATED this 19th day of April, 2018.
26

27 
28 Honorable Frank P. Sullivan
District Court Judge – Dept. O

FRANK P. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

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Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON,
MATT KLABACKA,
as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants/Counterclaimants.

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

Date of Hearing: 06/05/18
Time of Hearing: 9:30 a.m.

ORAL ARGUMENT
REQUESTED: YES

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

1 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
2 MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
3 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10)
4 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A
5 WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN
6 (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE
7 REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT
8 HEARING PRIOR TO THE SCHEDULED HEARING DATE.

9 **LYNITA NELSON'S MOTION FOR RECONSIDERATION AND**
10 **CLARIFICATION OF THE COURT'S DECISION ENTERED**
11 **APRIL 19, 2018**

12 COMES NOW, Defendant and Cross-Defendant, LYNITA SUE
13 NELSON ("Lynita"), by and through her counsel, ROBERT P.
14 DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
15 DICKERSON KARACSONYI LAW GROUP, and respectfully submits for
16 the Court's consideration her Motion for Reconsideration, Correction, and
17 Clarification of the Court's Decision Entered April 19, 2018 ("Motion").

18 Specifically, Lynita respectfully requests the following relief:

19 1. That the Court reconsider its Decision entered April 19, 2018,
20 and Order that the appropriate time frame for the tracing of the parties'
21 property is from July 13, 1993, through June 3, 2013;

22 2. That the Court reconsider its Decision entered April 19, 2018,
23 and Order the \$720,000 to be held in a blocked account until such funds
24 can be traced;

25 3. That the Court immediately enter a Joint Preliminary
26 Injunction;

27 4. That the Court enter an Order that any exercise of the right
28 of first refusal by Eric and ELN Trust to purchase the LSN Trust's
interest in the Brian Head cabin is done without prejudice to the parties'
property rights; and

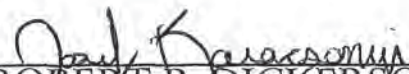
5. For such further relief as deemed appropriate in the premises.

...

1 This Motion is made and based upon the pleadings and papers on
2 file herein, the Memorandum of Points and Authorities attached hereto,
3 and any oral argument at the time of the hearing of this matter.

4 DATED this 3rd day of May, 2018.

5 THE DICKERSON KARACSONYI
6 LAW GROUP

7 
8 ROBERT P. DICKERSON, ESQ.
9 Nevada Bar No. 000945
10 JOSEF M. KARACSONYI, ESQ.
11 Nevada Bar No. 010634
12 1745 Village Center Circle
13 Las Vegas, Nevada 89134
14 Attorneys for Lynita Sue Nelson

15 **NOTICE OF MOTION**

16 TO: ERIC L. NELSON, Plaintiff;

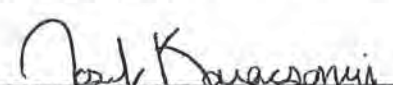
17 TO: MATT KLABACKA, Distribution Trustee of the ELN Trust;

18 TO: RHONDA K. FORSBERG, ESQ., of RHONDA K. FORSBERG,
19 CHARTERED, Attorney for Plaintiff; and

20 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ. of
21 SOLOMON DWIGGINS & FREER, LTD., Attorneys for
22 Distribution Trustee of the ELN Trust.

23 PLEASE TAKE NOTICE that the undersigned will bring the
24 foregoing MOTION FOR RECONSIDERATION AND CLARIFICATION
25 OF THE COURT'S DECISION ENTERED APRIL 19, 2018, on for
26 hearing before the above-entitled Court ^{at} ~~on~~ 9:30 a.m. on June 5, 2018.

27 THE DICKERSON KARACSONYI
28 LAW GROUP

29 By 
30 ROBERT P. DICKERSON, ESQ.
31 Nevada Bar No. 000945
32 JOSEF M. KARACSONYI, ESQ.
33 Nevada Bar No. 010634
34 1745 Village Center Circle
35 Las Vegas, Nevada 89134
36 Attorneys for Lynita Sue Nelson

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A. Introduction

This matter was recently before the Court on January 31, 2018, on Plaintiff, ERIC L. NELSON (“Eric’s) Motion to Enforce Supreme Court’s Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys’ Fees and Costs, and Lynita’s Opposition to Motion to Enforce Supreme Court’s Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys’ Fees and Costs, and Countermotion to Final Judgment Consistent with Nevada Supreme Court’s Remand, or in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Received To Manage Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys’ Fees and Costs filed July 31, 2017 (“Opposition and Countermotion”). At the conclusion of the hearing of January 31, 2018, the Court took the matter under advisement, and thereafter issued its Decision on April 19, 2018 (“Decision”).

Upon receipt and review of the Court's Decision, it became clear that clarification was necessary on a number of issues, and that the Court inadvertently did not make a ruling on a number of other issues. In addition, Lynita seeks reconsideration of the Court's Decision regarding the appropriate starting date to conduct a tracing of the parties' assets.

• • •
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• • •

1 B. The Need For Reconsideration/Clarification Of Certain Portions Of
2 The Court's Decision

3 1. The Appropriate Time frame For Tracing

4 During the hearing of January 31, 2018, the Court made the
5 following statements with regard to outstanding issues in this matter, and
6 the manner in which the Court believed such issues were to be handled:

7 Court: The issue I see is tracing. From the separate property
8 agreement, which was 1993. I believe it was signed on
9 July 13th 1993, so I don't intend to go beyond that
10 period on that because I think the Supreme Court
11 indicated those were appropriate separate property
12 agreements so any community property interest would
13 be transmuted at that time to separate property. My
14 inclination would be to go tracing from the, after the July
15 13th 1993 to see if any community property claims,
16 people put in the trust on that, they could put their half
17 but they could not put the other party's half, so my plan
18 would be to trace after the July 13th, because when I read
19 the separate property agreement I saw nothing for post
20 property after that. It just said this is the property we
21 got, this is separate property as of this time, but nothing
22 for future property acquired during their marriage, which
is presumed to be community property. So my plan
would be to trace it going back to July, or maybe
probably start August 1st 1993, currently because I know
when they did the trusts, those were 2001, but there
could have been property from 1993 August 1st to the
2001 trusts which could have had community property
claims. I don't know. And then for the 2001, of course,
anything that was community property that either party
put in to the trust, they would not have the right to put
the other party's half. So that would be my inclination
is do tracing from August 1st 1993 up to basically the
time of the divorce decree to sift through and see was
there community property interest.

23 January 31, 2018 Hearing at 11:34:57 (emphasis added). Further, while
24 the Court acknowledged that such a tracing would be extremely time-
25 consuming and expensive, the Court emphasized that "we need to get this
26 done for everybody." January 31, 2018 Hearing at 11:37:20.

27 Notwithstanding the above statements, the Court's Decision entered
28 on April 19, 2018, concludes at page 3 that "the proper date to begin

1 tracing would be May 30, 2001, the date both the ELN and LSN Trusts
2 were executed.” The Court’s stated basis for such a conclusion is that
3 “The Nevada Supreme Court held that both the ELN and LSN Trusts
4 were funded with separate property stemming from the 1993 Separate
5 Property Agreement.” As will be detailed further in the Legal Analysis
6 Section below, however, the Nevada Supreme Court’s ruling on this issue
7 was based on the perception that this Court had itself made such a
8 finding, and such a statement does not therefore constitute the law of the
9 case as argued by ELN Trust in its Reply to Opposition to Motion to
10 Enforce Supreme Court’s Order Dated May 25, 2017; Motion to Hold
11 Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order;
12 and for Attorneys’ Fees and Costs and Opposition to Countermotion for
13 Final Judgment Consistent with Nevada Supreme Court’s Remand, or in
14 the Alternative, for Affirmation of Joint Preliminary Injunction, for a
15 Receiver to Manage the Property Pending Final Judgment, for Updated
16 Financial Disclosures and Exchange of Financial Information, and for Sale
17 of Property for Payment of Attorneys’ Fees and Costs.

18 In addition to the above, in reaching the determination of what is
19 the appropriate timeframe for conducting a tracing in this matter, it is
20 extremely important for the Court to clearly establish and confirm at this
21 time the nature and extent of the tracing that had been conducted by the
22 Court at the time of entry of the parties’ Decree of Divorce, and to clarify
23 the findings that were made by the Court in such Decree. The Court’s
24 statements at the January 31, 2018 hearing, quoted above, clearly indicate
25 that the Court did not previously trace the properties from the 1993
26 Separate Property Agreement to the properties placed in the ELN Trust
27 and LSN Trust in 2001. A written confirmation and clarification of this
28 fact is absolutely vital, as Eric and ELN Trust argue that the Nevada

1 Supreme Court has expanded the Court's findings beyond those actually
2 made when it stated that "the district court found that the SPA was valid
3 and the parties' SSST's were validly established and funded with separate
4 property." *Klabacka v. Nelson*, 133 Nev. Adv. Op. 24, 394 P.3d 940, 944
5 (2017).

6 Undersigned counsel specifically requested during the hearing of
7 January 31, 2018, that the Court include a confirmation of the prior
8 tracing and of its prior findings in its Decision. The Court acknowledged
9 such request, and intimated that such a statement would be included in
10 the Decision. The exchange in question is quoted below:

11 Mr. Karacsonyi: I just had one question. I'm sure you're already
12 intending on doing this, but, whatever decision you
13 make, in the decision, we would appreciate
14 certainly if you could clarify in there, make clear,
15 when you're tracing, what the tracing that occurred
16 in the underlying proceedings was, so the Supreme
17 Court knows whether you did find. If you did find
18 that it was separate property, then fine. If you
19 didn't. If you could just make it clear whatever
20 your ruling, whatever you had done before.
21 Because I know that's going to be an argument
22 above, so.

23 Court: The issue where you said the Supreme Court said
24 I made those findings, you make sure I made
25 them?

26 Mr. Karacsonyi: Yeah, and if you can just put in your order – even
27 if you rule against us, or you rule in their favor or
28 in our favor – just so that we know we can make
clear to the Supreme Court that this is what you
did before so that they know exactly what you did.

29 January 31, 2018 Hearing at 12:17:54. Notwithstanding the above, the
30 Court's Decision does not include any statement regarding the nature and
31 extent of the Court's prior tracing, nor does it include any statement

32 ...

33 ...

34 ...

1 confirming or denying that the Court ever found that the ELN Trust and
2 the LSN Trust were funded with separate property.¹

3 2. The Release of \$720,000 To ELN Trust

4 During the hearing of January 31, 2018, the Court indicated that it
5 was not inclined to release to ELN Trust the \$720,000 held in a blocked
6 account at Bank of Nevada, as the Court still needed to “have that traced
7 to see where that money came from.” January 31, 2018 Hearing at
8 11:32:48. The Court’s Decision, however, concludes that “[a]s the
9 Supreme Court held that this Court erred in ordering the ELN Trust to
10 pay Mr. Nelson’s personal obligations, and as these funds were still readily

11 _____
12 ¹ The relevant findings made in the Decree of Divorce are as follow:

13 THE COURT FURTHER FINDS that, pursuant to NRS 123.080 and
14 NRS 123.220(1), the Separate Property Agreement entered into by the
parties on July 13, 1993, was a valid Agreement.

15 THE COURT FURTHER FINDS that Schedule A of the Separate
16 Property Agreement contemporaneously established the Eric L. Nelson
Separate Property Trust and named Mr. Nelson as trustor. [itemization
17 of property held in trust omitted].

18 THE COURT FURTHER FINDS that Schedule B of the Separate
19 Property Agreement contemporaneously established the Lynita S. Nelson
Separate Property Trust and named Mrs. Nelson as trustor. [itemization
20 of property held in trust omitted].

21 THE COURT FURTHER FINDS that all of the assets and interest held
22 by the Eric L. Nelson Separate Property Trust were transferred or
assigned to the ELN Trust.

23 ...
24 THE COURT FURTHER FINDS that all of the assets and interest held
25 by the Lynita S. Nelson Separate Property Trust were transferred or
assigned to the LSN Trust.

26 Decree, pgs. 3-5. None of the above-quoted findings appear to state that the property
27 used to fund the LSN Trust and the ELN Trust was separate property, but rather that
the assets held in the parties’ respective Separate Property Trusts – whether community
28 property or separate property at the time of the formation of the ELN Trust and the
LSN Trust – were transferred into the ELN Trust and the LSN Trust.

1 available to be dispersed, this Court will Order the \$720,000 to be
2 transferred from the Bank of Nevada blocked account to an account of the
3 ELN Trust's choosing." Accordingly, the monies in question are to be
4 released to ELN Trust, which will then likely spend or "disappear" the
5 monies.

6 Lynita requests that the Court reconsider this ruling and simply put
7 in place an Order transferring the \$720,000 from the existing blocked
8 account with Bank of Nevada to another frozen account without any
9 designation that the funds are to assist in the payment of Eric's personal
10 obligations. Such a ruling would not only comply with the Nevada
11 Supreme Court's ruling that ELN Trust cannot be made to pay Eric's
12 personal obligations, but it would simultaneously ensure that the monies
13 in question are traced prior to being released to ELN Trust and perhaps
14 irretrievably spent and lost by the community.

15 C. Issues Upon Which The Court Did Not Rule

16 1. Joint Preliminary Injunction

17 In Lynita's Opposition and Countermotion, Lynita requested that,
18 in the event the Court determined it needed additional evidence regarding
19 the character of the parties' property, the Court affirm the Joint
20 Preliminary Injunction previously entered.

21 During the hearing of January 31, 2018, counsel for the ELN Trust
22 requested that the Court require the LSN Trust to execute quitclaim deeds
23 transferring to ELN Trust interests in the Lindell Property and the
24 Banone, LLC properties. The Court indicated that it was inclined to do
25 so, and that such order would likely be included in its Decision. In
26 response, undersigned counsel again requested that the Court put in place
27 a Joint Preliminary Injunction. The exchange was as follows:

28 ...

1 Court: My inclination is to order those quitclaims deeds,
2 but I'll wait in my decision and get that, but just so
3 you know it's coming unless my research changes
that is my inclination to order those quitclaim
deeds be transferred back [. . .].

4 Mr. Karacsonyi: And you'll address the JPI then at the same time?

5 Court: Absolutely.

6 Mr. Karacsonyi: Because those go hand in hand.

7 Court: Absolutely. And I would be issuing a JPI the same
8 thing I did before on that and making sure its not
9 encumbered or sold until we get it ultimately
resolved [...].

10 January 31, 2018 Hearing at 12:20:44.

11 The Court's Decision did require the LSN Trust to transfer to the
12 ELN Trust interests in the Banone, LLC properties and the Lindell
13 Property. In addition, the Court's Decision permitted the \$720,000 held
14 in the Bank of Nevada blocked account to be transferred to an account of
15 the ELN Trust's choosing. Notwithstanding these Orders, and
16 notwithstanding the above-quoted exchange, the Court's Decision made
17 no mention whatsoever of a Joint Preliminary Injunction. Lynita believes
18 that this omission was inadvertent, and now requests that such a Joint
19 Preliminary Injunction be put in place before the assets transferred to Eric
20 and ELN Trust are transferred or encumbered. Lynita will be submitting
21 an ex parte request for a Joint Preliminary Injunction to the Court, but in
22 the event the Court does not desire to issue such a Joint Preliminary
23 Injunction on an ex parte basis, this request is included herein.

24 2. Buyout of Brian Head Cabin

25 During the course of the hearing of January 31, 2018, undersigned
26 counsel requested that in the event the Court followed its stated
27 inclination and ordered the Brian Head cabin to be sold – providing ELN
28 Trust with a right of first refusal to purchase the property – the Court

1 should also make clear that ELN Trust's buyout of LSN Trust's interest
2 be made without prejudice. In other words, in the event the monies used
3 by ELN Trust to purchase LSN Trust's interest in the Brian Head cabin
4 are ultimately traced and determined by the Court to constitute the
5 community property of the parties, Lynita should be entitled to receive an
6 additional award of property over and above her half of the remaining
7 community property in the amount of one-half (1/2) of the purchase price
8 of the interest in the Brian Head cabin sold by LSN Trust to ELN Trust.

9 While the Court's Decision provides that the Brian Head cabin is to
10 be sold, and provides that ELN Trust has the right of first refusal with
11 regard to the purchase of such cabin, the Court did not include any
12 provision providing that the monies ELN Trust uses to purchase such
13 interest will be without prejudice to Lynita and LSN Trust, and that
14 Lynita will be compensated should ELN Trust utilize to purchase the
15 Brian Head cabin monies that are ultimately determined to constitute
16 community property of the parties.

17 **II. LEGAL ANALYSIS**

18 **A. The Court Should Reconsider/Clarify Certain Portions Of Its** 19 **Decision of April 19, 2018**

20 Nevada Rules of Civil Procedure, Rule 60 (2018), provides in
21 pertinent part as follows:

22 (a) Clerical Mistakes. Clerical mistakes in judgments, orders
23 or other parts of the record and errors therein arising from
24 oversight or omission may be corrected by the court at any
25 time of its own initiative or on the motion of any party and
26 after such notice, if any, as the court orders. During the
pendency of an appeal, such mistakes may be so corrected
before the appeal is docketed in the appellate court, and
thereafter while the appeal is pending may be so corrected with
leave of the appellate court.

27 In addition, Eighth Judicial District Court Rules, Rule 5.512 (2018),
28 provides as follows:

1 (a) A party seeking reconsideration and/or rehearing of
2 a ruling (other than any order that may be addressed by
3 motion pursuant to NRCPP 50(b), 52(b), 59 or 60), must file
4 a motion for such relief within 14 calendar days after service
of notice of entry of the order unless the time is shortened or
enlarged by order. A motion for reconsideration does not toll
the period for filing a notice of appeal.

5 (b) If a motion for reconsideration and/or rehearing is
6 granted, the court may make a final disposition without
7 hearing, may set it for hearing or resubmission, or may make
such other orders as are deemed appropriate under the
circumstance.

8 Finally, NRCPP 59(e) provides the trial court the opportunity, within a
9 limited time, to rehear a motion previously brought before it, and to
10 correct or reconsider its order or judgment. *Chiara v. Belaustegui*, 86 Nev.
11 856, 859, 477 P.2d 857, 858 (1970). “[A] court may, for sufficient cause
12 shown, amend, correct, resettle, modify, or vacate, as the case may be, an
13 order previously made and entered on motion in the progress of the cause
14 or proceeding.” *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027
15 (1975).

16 1. The Court Should Order That The Appropriate Time Frame
17 For The Tracing Of The Parties’ Property Is From July 13,
1993, Through Entry Of The Parties’ Decree Of Divorce

18 As stated in the Factual Statement above, the Court’s ruling that the
19 tracing of the parties’ property should commence in 2001 is based
20 exclusively on the Nevada Supreme Court’s purported holding that the
21 ELN Trust and LSN Trust were funded in 2001 with the parties’ separate
22 property. Eric and ELN Trust argued for such a ruling, and based their
23 argument on their claim that the Nevada Supreme Court’s holding on this
24 matter constitutes “the law of the case.” Such is not an accurate reading
25 of Nevada case law on the matter, as described below. In fact, the only
26 reasonable analogy to “law of the case doctrine” in this matter leads to the
27 conclusion that the Nevada Supreme Court based its holding on its
28 ...

1 perception of “the law of the case” as established by this Court’s Decree
2 of Divorce.

3 Pursuant to Nevada law, “where an issue has once been adjudicated
4 by a first appeal, that adjudication is the law of that case in subsequent
5 proceedings.” *Andolino v. State*, 99 Nev. 346, 350, 62 P.2d 631, 633
6 (1983). In this matter, no party to this action raised on appeal the issue
7 of whether the ELN Trust and the LSN Trust were funded with separate
8 or community property, and the issue was not “adjudicated” by the
9 Nevada Supreme Court. Accordingly, the law of the case doctrine is
10 entirely inapposite.

11 It is well-established by Nevada law that “[a] district court’s findings
12 of fact and conclusions of law, even where predicated upon conflicting
13 evidence, must be upheld if supported by substantial evidence, and may
14 not be set aside unless clearly erroneous.” *Pombo v. Nev. Apartment Ass’n.*,
15 113 Nev. 559, 562, 939 P.2d 725, 727 (1997). Likewise, the Nevada
16 Supreme Court in this very matter specifically noted that “[t]his court
17 defers to a district court’s findings of fact and will only disturb them if
18 they are not supported by substantial evidence.” *Klabacka v. Nelson*, 133
19 Nev. Adv. Op. 24, 394 P.3d 940, 949 (2017) (internal citations omitted).

20 With this legal background in mind, the Nevada Supreme Court
21 specifically noted that “the district court found that the SPA was valid
22 and the parties’ SSST’s were validly established and funded with separate
23 property.” *Id.*, 394 P.3d at 944. The Nevada Supreme Court did not itself
24 perform any tracing of the parties’ property, nor did it make any factual
25 findings regarding same. Similarly, the Nevada Supreme Court did not
26 rule that any finding of fact by this Court regarding a tracing of the
27 parties’ property was erroneous or that a contrary finding was being made.
28 Accordingly, the Nevada Supreme Court relied upon this Court’s

1 purported finding that the LSN Trust and the ELN Trust were funded
2 with the parties' separate property, and deferred to such purported finding
3 in its own holding. In other words, the Nevada Supreme Court relied
4 upon the "law of the case" as established by this Court's Decree of
5 Divorce.

6 In the event this Court truly made a finding that the ELN Trust and
7 LSN Trust were funded with the parties' separate property in 2001, then
8 the Nevada Supreme Court's holding does, in fact, confirm the law of the
9 case, and the Court's instant Decision regarding the necessary time frame
10 for tracing is accurate. In the event the Court did not make such a
11 finding, however (as indicated by the Court at the January 31, 2018
12 hearing), then the Nevada Supreme Court's directives as to the
13 appropriate time frame for tracing of the parties' property are clear:

14 In a divorce involving trust assets, the district court must trace
15 those trust assets to determine whether any community
16 property exists within the trusts – as discussed below, the
17 parties' respective separate property in the SSST's would be
afforded the statutory protection against court-ordered
distribution, while any community property would be subject
to the district court's equal distribution.

18 *Id.*, 394 P.3d at 948. In other words, this Court must conduct a tracing
19 that covers a time period sufficient to know whether there was community
20 property of the parties placed into any trusts. In the event this Court
21 truly found at the time of the parties' divorce that the LSN Trust and ELN
22 Trust were funded with the parties' separate property in 2001, then the
23 appropriate time frame for the tracing would be from 2001 to entry of the
24 Decree of Divorce. If, however, this Court never made such a finding, and
25 it remains unknown to the Court whether the ELN Trust and LSN Trust
26 were funded in 2001 with separate or community property, then the
27 appropriate time frame for the tracing is from July 13, 1993, to entry of
28 the Decree of Divorce. Again, during the hearing of January 31, 2018, the

1 Court specifically indicated that it did not know whether the property that
2 funded the ELN Trust and LSN Trust in 2001 was separate or community
3 property:

4 So my plan would be to trace it going back to July, or maybe
5 probably start August 1st 1993, currently because I know when
6 they did the trusts, those were 2001, but there could have been
property from 1993 August 1st to the 2001 trusts which could
have had community property claims. I don't know.

7 January 31, 2018 Hearing at 11:35:40.

8 Based on all the above, Lynita believes that this Court never made
9 a finding that the property with which the LSN Trust and ELN Trust were
10 funded in 2001 constituted the separate property of the parties.
11 Accordingly, Lynita respectfully requests that the Court reconsider its
12 Decision that the tracing be conducted from 2001 to the entry of the
13 Decree of Divorce, and that the tracing instead be conducted from July 13,
14 1993, to the entry of the Decree of Divorce. In addition, Lynita
15 respectfully requests that this Court include in its Decision a statement
16 confirming the nature and extent of the tracing that had been conducted
17 at the time of the parties' divorce, and whether the Court had, in fact,
18 made any finding that the LSN Trust and ELN Trust were funded in 2001
19 with the parties' separate property.

20 2. The Court Should Order The \$720,000 To Be Transferred To
21 A New Blocked Account Pending A Tracing Of The Parties'
Property

22 As detailed above, the Court's Decision allows for the amount of
23 \$720,000 – all of which may ultimately be determined to be the
24 community property of the parties – to be released to the ELN Trust
25 without any restrictions being placed thereon. In keeping with the prior
26 actions of ELN Trust and Eric throughout the course of this action, there
27 is a significant likelihood that ELN Trust will spend or otherwise
28 irretrievably lose/transfer such monies once they are released. Accordingly,

1 in order to comply with the Nevada Supreme Court's ruling that ELN
2 Trust cannot be required to pay Eric's personal obligations, and to
3 simultaneously protect the monies in question, Lynita respectfully requests
4 that this Court reconsider its Decision and enter an Order requiring the
5 \$720,000 to be placed in a new blocked account that is not specifically
6 designated as being intended to assist Eric in the payment of his personal
7 support obligations.

8 B. The Court Should Immediately Enter A Joint Preliminary Injunction
9 In This Matter

10 EDCR 5.517 requires the issuance of a joint preliminary injunction
11 upon the request of any party, to prohibit all parties, and "their officers,
12 agents, servants, employees, or a person in active concert or participation
13 with them from: (1) Transferring, encumbering, concealing, selling, or
14 otherwise disposing of any of the joint, common, or community property
15 of the parties or any property that is subject of a claim of community
16 interest, except in the usual course of conduct or for the necessities of life
17 or for retention of counsel. . . ." Emphasis added. NRS 125.050 requires
18 the Court to "make such restraining order or other order as appears
19 necessary to prevent the act or conduct and preserve the status quo
20 pending final determination of the cause."

21 Based on the above, as well as the arguments and statements made
22 during the hearing of January 31, 2018, Lynita respectfully requests that
23 this Court enter a Joint Preliminary Injunction in this matter.

24 C. The Court Should Order That Any Exercise Of The Right Of First
25 Refusal By Eric And ELN Trust To Purchase The LSN Trust's
Interest in The Brian Head Cabin Is Without Prejudice

26 As detailed above, the Court should make clear that ELN Trust's
27 right of first refusal to purchase LSN Trust's interest in the Brian Head
28 cabin must be exercised, if at all, without prejudice to Lynita/LSN Trust.


1 In the event the monies used by ELN Trust to purchase LSN Trust's
2 interest in the Brian Head cabin are ultimately determined by the Court
3 to constitute the community property of the parties, Lynita should be
4 entitled to receive an additional award of property over and above her half
5 of the remaining community property in the amount of one-half (1/2) of
6 the purchase price of the interest in the Brian Head cabin sold by LSN
7 Trust to ELN Trust.

8 **III. CONCLUSION**

9 Based upon the foregoing, Lynita respectfully request the Court
10 enter the following orders and grant her requests for relief:

11 DATED this 3rd day of May, 2018.

12 THE DICKERSON KARACSONYI
13 LAW GROUP

14 
15 ROBERT P. DICKERSON, ESQ.
16 Nevada Bar No. 000945
17 JOSEF M. KARACSONYI, ESQ.
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☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCp 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

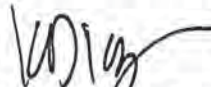
☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;

☐ by hand-delivery with signed Receipt of Copy.

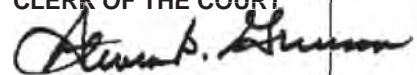
1 To the attorney(s) and/or person(s) listed below at the address, email
2 address, and/or facsimile number indicated below:

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*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

ERIC L. NELSON,

Plaintiff

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

vs.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST dated
May 30, 2001,

Defendants.

MATT KLABACKA, Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Cross-claimant,

vs.

LYNITA SUE NELSON,

Cross-defendant.

**INITIAL OPPOSITION TO LYNITA
NELSON'S MOTION FOR
RECONSIDERATION AND
CLARIFICATION OF THE COURT'S
DECISION ENTERED APRIL 19, 2018;
COUNTERPETITION TO REMOVE LIS
PENDENS INAPPROPRIATELY FILED
BY THE LSN TRUST; AND FOR
ATTORNEYS' FEES AND COSTS**

Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA TRUST dated
May 30, 2001, hereby files his Initial Opposition to Lynita Nelson's Motion for Reconsideration
and Clarification of the Court's Decision Entered April 19, 2018; and his Counterpetition to
Remove Lis Pendens Inappropriately Filed by the LSN Trust; and for Attorneys' Fees and Costs.

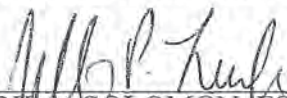
PSAPP0330

Lynita's Counsel has graciously extended the ELN Trust an extension to file its Opposition to Thursday, May 24, 2018. Consequently, the ELN Trust intends to file a Supplement to the Opposition on or before Thursday, May 24, 2018.

DATED this 21st day of May, 2018.

SOLOMON DWIGGINS & FREER, LTD.

By:


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

*Attorneys for Matt Klabacka, Distribution
Trustee of the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001*

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF INTRODUCTION AND LEGAL STANDARD

In an attempt to re-litigate issues previously heard and decided by this Court, Lynita S. Nelson requests that this Court "reconsider" and/or "clarify" its Decision entered on April 19, 2018 (hereinafter referred to as "Order") because she disagrees with this Court's ruling. Despite filing a 14-page Motion (which merely regurgitates the same arguments that this Court previously rejected in entering its Order), Lynita fails to identify how the Court's Order is clearly erroneous and or how new facts would support a reversal of this Court's decision. *See, Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for reconsideration be granted.") (Emphasis Added); *Masonry and Tile Constrs. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (motions for reconsideration must be based on "substantially different evidence [that] is subsequently introduced" showing that "the decision is clearly erroneous."). Reconsideration motions cannot not be used merely to reargue the arguments the movant already made to the Court, to "be used to ask the Court to rethink what it has already thought," *Motorola, Inc. v. J.B. Rodgers Mechanical Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003), or "to dress up arguments that previously failed." *Waddell & Reed Fin., Inc. v.*

PSAPP0331

1 *Torchmark Corp.*, 338 F. Supp. 2d 1248, 1250 (D. Kan. 2004) (citations omitted).

2 Indeed, in her Motion, Lynita advances the identical arguments that she previously raised,
3 and/or could have raised, in her Opposition to Motion to Enforce Supreme Court's Order dated
4 May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014;
5 and for Attorneys' Fees and Costs; and Countermotion for Final Judgment Consistent with Nevada
6 Supreme Court's Remand previously filed on July 31, 2017 (hereinafter referred to as
7 "Opposition") and Reply to Countermotion for Final Judgment Consistent with Nevada Supreme
8 Court's Remand previously filed on August 22, 2017 (hereinafter referred to as "Reply to
9 Countermotion"). Indeed, this is not one of those "rare circumstances" in which reconsideration is
10 appropriate, and to do so would be an abuse of discretion.

11 As indicated *supra*, Lynita's Counsel has granted an extension to the ELN Trust until
12 Thursday, May 24, 2018, to file its Opposition; however, in the interim (and in light of the fact that
13 an Ex Parte Application to have the Motion for Reconsideration heard on OST is currently pending
14 before this Court), the ELN Trust hereby briefly responds to Lynita's arguments as follows.

15 **II. LEGAL ARGUMENT**

16 A. THIS COURT FOLLOWED THE SUPREME COURT'S DIRECTIVE BY
17 ORDERING THAT THE TRACING BEGIN ON MAY 30, 2001.

18 As indicated *supra*, Lynita's request that the tracing begin on July 13, 1993 is identical to
19 the arguments raised in her Opposition and Reply to Countermotion, and as such, Nevada law
20 requires that the Motion for Reconsideration be denied. As this Court recognized in its Decision
21 entered on April 19, 2018:

22 The Nevada Supreme Court held that both the ELN and LST Trusts
23 were funded with separate property stemming from the Separate
24 Property Agreement. As such, the proper date to begin the tracing
25 would be May 30, 2001, the date both the ELN and LSN Trusts were
executed. *See* Order at 3:10-14.¹

26 ¹ While the ELN Trust concedes that the tracing should begin on May 30, 2001, it adamantly
27 objects to a tracing being conducted on Wyoming Downs for the reasons set forth in its Reply to
28 Opposition to Motion to Enforce Supreme Court's Order dated May 25, 2017; Motion to Hold
Lynita in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs
previously filed on August 4, 2017, at 8:24-10:2.

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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

1 Upon information and belief, this Court's ruling was based upon the following statements
2 made by the Nevada Supreme Court in its Order:

3 Later, the parties converted those trusts into self-settled spendthrift
4 trusts (SSSTs) and funded them with their respective separate
5 property. P. 2.

6 In 2001, Eric and Lynita converted their separate property trusts into
7 Eric's Trust and Lynita's Trust, respectively, and funded the SSSTs
8 with the separate property contained within the separate property
9 trusts. P. 4.

10 On June 3, 2013, the district court issued the decree. The district
11 court found that the SPA was valid and the parties' SSSTs were
12 validly established and funded with separate property. P. 6.

13 For the reasons set forth below, we hold the SSSTs are valid and the
14 trusts were funded with separate property stemming from a valid
15 separate property agreement. P. 13.

16 Although unclear, in addition to re-making the exact same arguments previously rejected
17 by this Court, it also appears that Lynita is requesting that this Court essentially "second guess" the
18 Nevada Supreme Court's Order, which is inappropriate and inconsistent with Nevada law because
19 the Nevada Supreme Court's Order became the law of the case. *See e.g., Bd. Of Gallery of*
20 *History, Inc. v. Datecs Corp.*, 116 Nev. 289, 994 P.2d 1149, 1150 (2000) (when the law of the case
21 doctrine applies, "the district court [is] without authority to make a contrary finding."). Indeed, if
22 there was any confusion regarding the Supreme Court's directives then Lynita had a duty to file a
23 petition for rehearing pursuant to NRAP 40, yet she failed to do so.

24 Because Lynita failed to raise any new issues of fact or law regarding this issue (and/or
25 Lynita is trying to "dress-up" its other arguments that failed), this is not one of the "rare
26 circumstances" identified by the Nevada Supreme Court where a rehearing and/or reconsideration
27 should be granted.

28 B. LYNITA HAS FAILED TO RAISE NEW ISSUES OF FACT OR LAW AS TO
WHY IT IS NECESSARY FOR THE \$720,000 TO BE TRANSFERRED TO A
NEW BLOCKED ACCOUNT.

It is unnecessary for the \$720,000 to be placed in a blocked account because this Court
found in its decision that both the ELN Trust and the LSN Trusts possess "sufficient assets...to

PSAPP0333

1 offset any deficiency once a final balance and distribution amount has been determined.” See
2 Order at 7:26-8:2. Lynita has failed to raise any new issues of fact or law regarding this issue. As
3 such, the requested relief should be denied.

4 Because Lynita failed to raise any new issues of fact or law regarding this issue, this is not
5 one of the “rare circumstances” identified by the Nevada Supreme Court where a rehearing and/or
6 reconsideration should be granted.

7 C. LYNITA HAS FAILED TO RAISE NEW ISSUES OF FACT OR LAW
8 REGARDING THE IMPOSITION OF A JPI.

9 Contrary to Lynita’s contention, the ELN Trust believes that this Court implicitly dealt with
10 the JPI issue by finding that both the ELN Trust and the LSN Trusts possess “sufficient assets...to
11 offset any deficiency once a final balance and distribution amount has been determined.” See
12 Order at 7:26-8:2. Since there are sufficient assets to offset any deficiency, it would be manifestly
13 unjust to enter a JPI.

14 Notwithstanding, if this Court believes that it inadvertently failed to rule on Lynita’s
15 request for a JPI, said request should be denied because EDCR 5.85 only applies to the husband
16 and wife in a divorce proceeding,² of which the ELN Trust is not. Consequently, if Lynita wishes
17 to pursue an injunction against the ELN Trust she will need to seek a formal injunction that
18 complies with NRCP 65.

19 Further, if the Court is inclined to enter a JPI over property which either party deems
20 “community property,” said JPI cannot and should not apply to Wyoming Downs because: (1) this
21 Court previously found that Wyoming Downs was not community property; and (2) the Supreme
22 Court upheld the September 22, 2014 Order that disposed of said asset. Specifically, as this Court
23 will certainly recall, the Divorce Decree disposed of all of the assets owned by the ELN Trust and
24 the LSN Trust, with the exception of Wyoming Downs. After a separate evidentiary hearing on
25 Wyoming Downs on May 30, 2014, this Court entered the following findings and orders:

26 THE COURT FURTHER FINDS that although Wyoming Downs

27
28 ² Indeed, whenever the term “party” or “parties” is referenced in Part V of the Eighth Judicial
Court Rules it contemplates application to a husband and wife, and not to third parties.

1 was acquired by the ELN Trust during the pendency of the marriage
2 between Eric L. Nelson and Lynita S. Nelson, the Court does not
3 find it to be community property as it was clearly purchased through
4 Dynasty, an entity wholly owned by the ELN Trust and the Court
5 maintained the ELN Trust. The Court found no facts leading it to
6 conclude Lynita S. Nelson or the LSN Trust has an interest in
7 Wyoming Downs. The Court maintained the integrity of the ELN
8 Trust and LSN Trust for the reasons set forth in the Divorce Decree.

6 THE COURT FURTHER FINDS that there was no transmutation of
7 Wyoming Downs from separate property to community property,
8 even assuming that Wyoming Downs was separate property of Eric
9 L. Nelson, and not the property of the ELN Trust, separate and
10 distinct from Eric L. Nelson. See Notice of Entry of Order entered
11 September 22, 2014.

10 Lynita appealed the September 22, 2014 Order. Indeed, one of the "Issues on Appeal" that Lynita
11 identified in her Docketing Statement was the following:

12 Whether the district court erred in denying Lynita a one-half (1/2)
13 interest in Wyoming Downs, which was purchased during the
14 pendency of Eric's and Lynita's divorce proceedings. See LSN
15 Trust's Docketing Statement at 4:10-12.³

14 In its Opinion, the Nevada Supreme Court upheld, as opposed to overturned, the September 22,
15 2014 Order:

16 Accordingly, we affirm in part and vacate in part the district court's
17 decree of divorce, affirm in part and vacate in part the district court's
18 June 8, 2015, order modifying and implementing the divorce decree,
19 and remand this matter for further proceedings consistent with this
20 opinion. See Nevada Supreme Court Order at p. 30.

20 Further, and perhaps most importantly, footnote 9 provides: "[w]e have considered the parties'
21 other arguments [which would have included Lynita's argument with respect to Wyoming Downs]
22 and conclude they are without merit." In light of the foregoing, it would be an error to enter a JPI
23 and/or litigate any issue, which would include conducting a tracing on Wyoming Downs.

24 D. BRIAN HEAD CABIN.

25 Lynita's requested relief regarding the Brian Head Cabin stems from an oral request made
26 by her Counsel at the January 31, 2018, which admittedly was not briefed in the underlying
27 pleadings. It is inappropriate for this Court to tailor its Order to further Lynita's best interest

28 ³ See also Lynita's Answering Brief and Opening Brief on Cross-Appeal at pp. 52-53.

1 without giving the Parties the opportunity to respond to the same. For this reason, Lynita's
2 requested relief should be denied.

3 **III. CONCLUSION**

4 As indicated *supra*, this is not one of the "rare circumstances" where a rehearing and/or
5 reconsideration should be granted. To the contrary, the majority (if not all) of the arguments made
6 in Lynita's Motion for Reconsideration were identical to the arguments that she made at the prior
7 hearings and considered by this Court when it entered its Order.

8 As stated above, Lynita's Counsel has granted an extension to the ELN Trust until
9 Thursday, May 24, 2018, to file its Opposition, and as such, the ELN Trust intends to supplement
10 its Opposition if necessary.

11 DATED this 21st day of May, 2018.

12 SOLOMON DWIGGINS & FREER, LTD.

13
14 By: 

15 MARK A. SOLOMON, ESQ.

16 Nevada State Bar No. 0418

17 JEFFREY P. LUSZECK, ESQ.

18 Nevada State Bar No. 9619

19 9060 West Cheyenne Avenue

20 Las Vegas, Nevada 89129

21 *Attorneys for Matt Klabacka, Distribution*
22 *Trustee of the ERIC L. NELSON NEVADA*
23 *TRUST dated May 30, 2001*
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to NRCP 5(b), that on May 21, 2018, I served a true and correct copy of the foregoing **INITIAL OPPOSITION TO LYNITA NELSON'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DECISION ENTERED APRIL 19, 2018; COUNTERPETITION TO REMOVE LIS PENDENS INAPPROPRIATELY FILED BY THE LSN TRUST; AND FOR ATTORNEYS' FEES AND COSTS**, to the following in the manner set forth below:

<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	U.S. Mail, Postage Prepaid
<input type="checkbox"/>	Certified Mail, Receipt No.: _____
<input type="checkbox"/>	Return Receipt Request
<input checked="" type="checkbox"/>	E-Service through Wiznet

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Attorneys for Plaintiff


An Employee of SOLOMON DWIGGINS & FREER, LTD.

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON

Plaintiff/Petitioner

v.

LYNITA SUE NELSON

Defendant/Respondent

Case No. D-09-411537-D

Dept. O

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

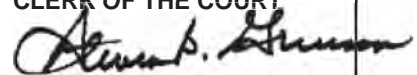
The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Matthew Klabacka Date 05/21/18

Signature of Party or Preparer /s/ Gretta G. McCall

PSAPP0338



DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

**DECISION AFFIRMING THE DATE OF TRACING; DENYING A
SEPARATE BLOCKED ACCOUNT FOR \$720,000; AND GRANTING A
JOINT PRELIMINARY INJUNCTION FOR THE BANONE, LLC. AND
LINDELL PROPERTIES**

This matter was before the Court, pursuant to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered April 19, 2018, and Lynita Nelson's Ex Parte Motion for Issuance of Joint Preliminary

1
2 Injunction. The Court, having reviewed all Motions, based thereon and good
3 cause appearing therefor:

4
5 **CONCLUSIONS OF LAW**

6 A. May 30, 2001 is the Proper Date To Begin the Tracing Because the Nevada
7 Supreme Court Found and Held That the ELN and LSN Trusts Were
8 Funded With Separate Property

9 In its May 25, 2017 Order, the Nevada Supreme Court concluded that this
10 Court erred by “not tracing the assets contained within the trusts, either through a
11 reliable expert or other available means.”¹ The Nevada Supreme Court also held
12 that both the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita S.
13 Nelson Nevada Trust (“LSN Trust”) “are valid and the trusts were funded with
14 separate property stemming from a valid separate property agreement.”²

15
16 In its April 19, 2018 Order, this Court did not address the tracing
17 performed in the underlying divorce proceeding. During the divorce proceeding,
18 this Court did not perform a tracing of assets contained within either the Eric L.
19 Nelson Nevada Trust (“ELN Trust”) or the Lynita S. Nelson Nevada Trust (“LSN
20 Trust”). In its May 25, 2017 Order, the Nevada Supreme Court found that “[i]n
21 2001, Eric and Lynita converted their separate property trusts into Eric’s Trust
22 and Lynita’s Trust, respectively, and funded the SSST’s with the separate
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28 ¹ Klabacka v. Nelson, 394 P.3d 940, 948 (Nev. 2017).

² Klabacka, 394 at 947.

1
2 property contained within the separate property trusts.”³ The Nevada Supreme
3 Court then held that both the ELN and LSN Trusts were funded with separate
4 property based on their findings.⁴
5

6 While this Court never performed a tracing of assets in the trusts in the
7 underlying divorce proceedings, the Nevada Supreme Court held that “the SSSTs
8 are valid and the trusts were funded with separate property stemming from a
9 valid separate property agreement.”⁵ Therefore, based upon the Nevada Supreme
10 Court’s finding and holding, this Court interprets the proper date to begin tracing
11 as May 30, 2001, the date on which both the ELN and LSN Trusts were executed.
12
13

14 B. The \$720,000 Released to the ELN Trust Is A Valid Disbursement As the
15 Funds Were Allocated In Error

16 In its May 25, 2017 Order, the Nevada Supreme Court found that this
17 Court erred in Ordering the ELN Trust to pay the personal obligations of Mr.
18 Nelson with regard to a lump-sum alimony payment.⁶ In response to the Nevada
19 Supreme Court’s holding, this Court Ordered the return of the \$720,000 which
20 was paid by the ELN Trust and being held in a blocked account.
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22

23 The sole purpose of the disbursement of the \$720,000 was for the payment
24 of Mr. Nelson’s personal obligations. Otherwise, the funds would have remained
25 within the ELN Trust and be afforded all the protections of a Nevada Trust. As
26

27 ³ *Id.* at 943.

⁴ *Id.* at 947.

⁵ *Id.*

⁶ Klabacka v. Nelson, 394 P.3d 940, 952 (Nev. 2017).
28

1
2 this Court erred when Ordering the distribution of funds from the ELN Trust to
3 pay for Mr. Nelson's personal obligations, the Court is obligated to return the
4 funds from the source of the distribution, the ELN Trust. Therefore, transferring
5 the funds from one blocked account to a separate frozen account is improper at
6 this time.
7

8
9 C. A Joint Preliminary Injunction for the Banone, LLC. and Lindell
10 Properties is Appropriate Because Both Properties Are Involved In A
11 Claim of Community Property

12 In its April 19, 2018 Order, this Court did not address the request for a
13 Joint Preliminary Injunction for the Banone, LLC. and Lindell Properties. Eighth
14 Judicial District Court Rule 5.517 states that "[u]pon the request of any party at
15 any time prior to the entry of...final judgment, a preliminary injunction will be
16 issued by the clerk against the parties to the action enjoining them and their
17 officers, agents, servant, employees, or a person in active concert or participation
18 with them from: transferring, encumbering, concealing, selling, or otherwise
19 disposing of...any property that is the subject of a claim of community
20 interest..."
21

22 Both the Banone, LLC. and Lindell Properties are subject to a claim of
23 community interest. As such, both properties are entitled to a Joint Preliminary
24 Injunction to ensure that the properties remain intact prior to the completion of
25 tracing and the final judgment of this Court. However, while this Court is aware
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1
2 that multiple Notices of Lis Pendens regarding both properties have been filed, a
3 Joint Preliminary Injunction on the properties is appropriate and will be granted.
4 Furthermore, considering the extensive litigation costs incurred to date, this Court
5 is issuing this decision prior to any Opposition being filed by Mr. Nelson or the
6 ELN Trust and any Reply by Ms. Nelson. Therefore, any potential Oppositions
7 and Reply will be reviewed and addressed accordingly as they are filed.
8
9

10 D. Any Funds Used to Purchase the Brian Head Property That Are
11 Considered Community Property Will Be Reimbursed Following the
12 Tracing of Assets in the ELN and LSN Trusts

13 In its April 19, 2018 Order, this Court stated any financial transfers or
14 inequities found as a result of the tracing of assets would be settled after tracing
15 has been completed and the Court issues a final judgment. This Court also stated
16 that both the ELN and LSN Trusts have sufficient assets to offset any
17 deficiencies ultimately found once a final balance and distribution amount has
18 been determined. Therefore, in the event that the tracing finds that a share of
19 LSN's property held within the ELN Trust was used to purchase the 50% interest
20 in the Brian Head Cabin, the LSN Trust will be entitled to a reimbursement of
21 said property.
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1
2 E. The June 5, 2018 Hearing Shall Be Vacated Based On This Court's
3 Decision

4 As a result of Motions filed in this case, a Motion Hearing was set on this
5 Court's calendar for June 5, 2018. As a result of this Decision, the June 5, 2018
6 Motion Hearing is hereby Vacated.
7

8 **ORDER**

9 Based thereon:

10 **IT IS HEREBY ORDERED** the this Court's decision to start the tracing
11 of assets within the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
12 Nevada Trust on May 30, 2001 is hereby **AFFIRMED**.
13

14 **IT IS FURTHER ORDERED** that the release of the \$720,000 from Bank
15 of Nevada Blocked Account #7502338705 to the ELN Trust is hereby
16 **AFFIRMED**.
17

18 **IT IS FURTHER ORDERED** that the request to transfer the \$720,000
19 from the Blocked Account into a separate frozen account is hereby **DENIED**.
20


21 **IT IS FURTHER ORDERED** that the request for a Joint Preliminary
22 Injunction on the Banone, LLC. and Lindell Properties to prevent the transfer,
23 encumbrance, concealment, sale, or otherwise disposition of the properties is
24 hereby **GRANTED**.
25

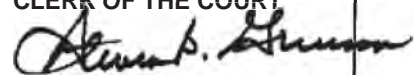
26 **IT IS FURTHER ORDERED** that in the event that a complete tracing of
27 assets finds that the Eric L. Nelson Nevada Trust's purchase of the 50% interest
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1
2 in the Brian Head Utah Cabin is made with community property, the Lynita S.
3 Nelson Nevada Trust is entitled to a reimbursement in the amount of the proceeds
4 determined to be Lynita Nelson's portion of the community property used for
5 purchase.
6

7 **IT IS FURTHER ORDERED** that any Stay of Order is hereby **DENIED**.

8
9 DATED this 22nd day of May, 2018.

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12 Honorable Frank P. Sullivan
13 District Court Judge – Dept. O
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**DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA**

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

NOTICE OF ENTRY OF ORDER

TO:


Rhonda Forsberg, Esq.
E-Service

Robert Dickerson, Esq.
E-Service

Marc Solomon, Esq.
E-Service

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2
3 PLEASE TAKE NOTICE that the DECISION AFFIRMING THE DATE OF
4 TRACING; DENYING A SEPARATE BLOCKED ACCOUNT FOR \$720,000; AND
5 GRANTING A JOINT PRELIMINARY INJUNCTION FOR THE BANONE, LLC. AND
6 LINDELL PROPERTIES was duly entered in the above-referenced case on the 22nd day of
7 May, 2018.

8 DATED this 22 day of May, 2018.

9 
10 _____
11 Lori Parr
12 Judicial Executive Assistant
13 Dept. O
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DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

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

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

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LYNITA SUE NELSON,

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**DECISION AFFIRMING THE DATE OF TRACING; DENYING A
SEPARATE BLOCKED ACCOUNT FOR \$720,000; AND GRANTING A
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This matter was before the Court, pursuant to Lynita Nelson's Motion for
Reconsideration and Clarification of the Court's Decision Entered April 19, 2018,
and Lynita Nelson's Ex Parte Motion for Issuance of Joint Preliminary

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2 Injunction. The Court, having reviewed all Motions, based thereon and good
3 cause appearing therefor:

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5 **CONCLUSIONS OF LAW**

6 A. May 30, 2001 is the Proper Date To Begin the Tracing Because the Nevada
7 Supreme Court Found and Held That the ELN and LSN Trusts Were
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9 In its May 25, 2017 Order, the Nevada Supreme Court concluded that this
10 Court erred by “not tracing the assets contained within the trusts, either through a
11 reliable expert or other available means.”¹ The Nevada Supreme Court also held
12 that both the Eric L. Nelson Nevada Trust (“ELN Trust”) and the Lynita S.
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4 property based on their findings.⁴
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7 underlying divorce proceedings, the Nevada Supreme Court held that “the SSSTs
8 are valid and the trusts were funded with separate property stemming from a
9 valid separate property agreement.”⁵ Therefore, based upon the Nevada Supreme
10 Court’s finding and holding, this Court interprets the proper date to begin tracing
11 as May 30, 2001, the date on which both the ELN and LSN Trusts were executed.
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14 B. The \$720,000 Released to the ELN Trust Is A Valid Disbursement As the
15 Funds Were Allocated In Error

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17 Court erred in Ordering the ELN Trust to pay the personal obligations of Mr.
18 Nelson with regard to a lump-sum alimony payment.⁶ In response to the Nevada
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6 this time.
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8
9 C. A Joint Preliminary Injunction for the Banone, LLC. and Lindell
10 Properties is Appropriate Because Both Properties Are Involved In A
11 Claim of Community Property

12 In its April 19, 2018 Order, this Court did not address the request for a
13 Joint Preliminary Injunction for the Banone, LLC. and Lindell Properties. Eighth
14 Judicial District Court Rule 5.517 states that "[u]pon the request of any party at
15 any time prior to the entry of...final judgment, a preliminary injunction will be
16 issued by the clerk against the parties to the action enjoining them and their
17 officers, agents, servant, employees, or a person in active concert or participation
18 with them from: transferring, encumbering, concealing, selling, or otherwise
19 disposing of...any property that is the subject of a claim of community
20 interest..."
21

22 Both the Banone, LLC. and Lindell Properties are subject to a claim of
23 community interest. As such, both properties are entitled to a Joint Preliminary
24 Injunction to ensure that the properties remain intact prior to the completion of
25 tracing and the final judgment of this Court. However, while this Court is aware
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3 Joint Preliminary Injunction on the properties is appropriate and will be granted.
4 Furthermore, considering the extensive litigation costs incurred to date, this Court
5 is issuing this decision prior to any Opposition being filed by Mr. Nelson or the
6 ELN Trust and any Reply by Ms. Nelson. Therefore, any potential Oppositions
7 and Reply will be reviewed and addressed accordingly as they are filed.
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10 D. Any Funds Used to Purchase the Brian Head Property That Are
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21 said property.
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1
2 E. The June 5, 2018 Hearing Shall Be Vacated Based On This Court's
3 Decision

4 As a result of Motions filed in this case, a Motion Hearing was set on this
5 Court's calendar for June 5, 2018. As a result of this Decision, the June 5, 2018
6 Motion Hearing is hereby Vacated.
7

8 **ORDER**

9 Based thereon:

10 **IT IS HEREBY ORDERED** the this Court's decision to start the tracing
11 of assets within the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
12 Nevada Trust on May 30, 2001 is hereby **AFFIRMED**.
13

14 **IT IS FURTHER ORDERED** that the release of the \$720,000 from Bank
15 of Nevada Blocked Account #7502338705 to the ELN Trust is hereby
16 **AFFIRMED**.
17

18 **IT IS FURTHER ORDERED** that the request to transfer the \$720,000
19 from the Blocked Account into a separate frozen account is hereby **DENIED**.
20


21 **IT IS FURTHER ORDERED** that the request for a Joint Preliminary
22 Injunction on the Banone, LLC. and Lindell Properties to prevent the transfer,
23 encumbrance, concealment, sale, or otherwise disposition of the properties is
24 hereby **GRANTED**.
25

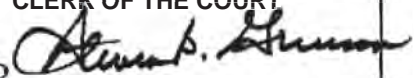
26 **IT IS FURTHER ORDERED** that in the event that a complete tracing of
27 assets finds that the Eric L. Nelson Nevada Trust's purchase of the 50% interest
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2 in the Brian Head Utah Cabin is made with community property, the Lynita S.
3 Nelson Nevada Trust is entitled to a reimbursement in the amount of the proceeds
4 determined to be Lynita Nelson's portion of the community property used for
5 purchase.
6

7 **IT IS FURTHER ORDERED** that any Stay of Order is hereby **DENIED**.

8 DATED this 22nd day of May, 2018.
9

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11 Honorable Frank P. Sullivan
12 District Court Judge – Dept. O
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MRCN
THE DICKERSON KARACSONYI LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@thedklawgroup.com

Attorneys for Lynita Sue Nelson

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,
Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON,
MATT KLABACKA,
as Distribution Trustee of the
ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Defendants/Counterclaimants.

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

Date of Hearing:
Time of Hearing:

ORAL ARGUMENT
REQUESTED: NO

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated
May 30, 2001,

Crossclaimant,

v.

LYNITA SUE NELSON, Individually
and as Investment Trustee of the LSN
NEVADA TRUST, dated
May 30, 2001, and ERIC NELSON,

Cross-Defendant.

PSAPP0355

1 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
2 MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
3 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10)
4 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A
5 WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN
6 (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE
7 REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT
8 HEARING PRIOR TO THE SCHEDULED HEARING DATE.

9 **LYNITA NELSON'S MOTION FOR RECONSIDERATION AND**
10 **CLARIFICATION OF THE COURT'S DECISION**
11 **ENTERED MAY 22, 2018**

12 COMES NOW, Defendant and Cross-Defendant, LYNITA SUE
13 NELSON ("Lynita"), by and through her counsel, ROBERT P.
14 DICKERSON, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE
15 DICKERSON KARACSONYI LAW GROUP, and respectfully submits for
16 the Court's consideration her Motion for Reconsideration and
17 Clarification of the Court's Decision Entered May 22, 2018 ("Motion").

18 Specifically, Lynita respectfully requests the following relief:


19 1. That the Court reconsider its Decision entered May 22, 2018,
20 and Order that the Joint Preliminary Injunction issued is not limited to
21 the Banone, LLC and Lindell Properties; and

22 2. For such further relief as deemed appropriate in the premises.

23 This Motion is made and based upon the pleadings and papers on
24 file herein, and the Memorandum of Points and Authorities attached
25 hereto.

26 DATED this 5th day of June, 2018.

27 THE DICKERSON KARACSONYI
28 LAW GROUP


ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Lynita Sue Nelson

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTUAL STATEMENT

3 This matter was recently before the Court pursuant to Lynita's
4 Motion for Reconsideration and Clarification of the Court's Decision
5 Entered April 19, 2018 ("Motion"), and Lynita's Ex Parte Motion for
6 Issuance of Joint Preliminary Injunction. Having reviewed all such
7 documents, and based thereon and good cause appearing therefor, on May
8 22, 2018, the Court issued its Decision Affirming the Date of Tracing;
9 Denying A Separate Blocked Account for \$720,000; and Granting a Joint
10 Preliminary Injunction for the Banone, LLC and Lindell Properties
11 ("Decision").

12 As part of the Court's Decision, the Court noted that in its prior
13 April 19, 2018 Order, "this Court did not address the request for a Joint
14 Preliminary Injunction for the Banone, LLC. and Lindell properties." In
15 reality, however, Lynita's request that was before the Court during the
16 prior hearing of January 31, 2018, and which was the subject of the April
17 19, 2018 Order, was that a general Joint Preliminary Injunction be issued,
18 and not one related only to the Banone, LLC, and Lindell Properties.

19 The legal justification provided by the Court for the issuance of the
20 limited Joint Preliminary Injunction is as follows:

21 Both the Banone, LLC. and Lindell Properties are subject to a
22 claim of community interest. As such, both properties are
23 entitled to a Joint Preliminary Injunction to ensure that the
properties remain intact prior to the completion of tracing and
the final judgment of this Court.

24 Decision, page 4.

25 As this Court is aware, however, there are numerous other properties
26 at issue in the parties' divorce action which are similarly the subject of a
27 claim of community interest. Lynita requests – as she did in her prior
28 Motions – that a general Joint Preliminary Injunction be issued in this

1 matter. Lynita asks that the Court make clear that none of the assets
2 subject to a claim of community property can be transferred, encumbered,
3 concealed, sold, or other disposed of by the parties pending the
4 finalization of the Court's tracing and entry of the Court's final Order. As
5 the Court will recall, in making an equal division of the parties' property
6 in the Decree of Divorce entered June 3, 2013, Lynita was also awarded
7 one-third (1/3) of Russell Road from the ELN Trust at a value of
8 \$2,265,113.50. An injunction over just the Banone, LLC and Lindell
9 Properties does not protect sufficient property to ensure the Court can
10 accomplish an appropriate division of property if it is determined that the
11 properties held in ELN Trust and LSN Trust are community property.

12 **II. LEGAL ANALYSIS**

13 A. The Court Should Reconsider/Clarify The Scope Of The Joint 14 Preliminary Injunction Issued As Part Of Its Decision of May 22, 2018

15 Nevada Rules of Civil Procedure, Rule 60 (2018), provides in
16 pertinent part as follows:

17 (a) Clerical Mistakes. Clerical mistakes in judgments, orders
18 or other parts of the record and errors therein arising from
19 oversight or omission may be corrected by the court at any
20 time of its own initiative or on the motion of any party and
21 after such notice, if any, as the court orders. During the
pendency of an appeal, such mistakes may be so corrected
before the appeal is docketed in the appellate court, and
thereafter while the appeal is pending may be so corrected with
leave of the appellate court.

22 In addition, Eighth Judicial District Court Rules, Rule 5.512 (2018),
23 provides as follows:

24 (a) A party seeking reconsideration and/or rehearing of
25 a ruling (other than any order that may be addressed by
26 motion pursuant to NRCP 50(b), 52(b), 59 or 60), must file
27 a motion for such relief within 14 calendar days after service
of notice of entry of the order unless the time is shortened or
enlarged by order. A motion for reconsideration does not toll
the period for filing a notice of appeal.

28 ...

1 (b) If a motion for reconsideration and/or rehearing is
2 granted, the court may make a final disposition without
3 hearing, may set it for hearing or resubmission, or may make
such other orders as are deemed appropriate under the
circumstance.

4 Finally, NRCP 59(e) provides the trial court the opportunity, within a
5 limited time, to rehear a motion previously brought before it, and to
6 correct or reconsider its order or judgment. *Chiara v. Belaustegui*, 86 Nev.
7 856, 859, 477 P.2d 857, 858 (1970). “[A] court may, for sufficient cause
8 shown, amend, correct, resettle, modify, or vacate, as the case may be, an
9 order previously made and entered on motion in the progress of the cause
10 or proceeding.” *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027
11 (1975).

12 B. The Court Should Immediately Enter A Joint Preliminary Injunction
13 In This Matter Over All Property Listed In The Decree Of Divorce

14 EDCR 5.517 requires the issuance of a joint preliminary injunction
15 upon the request of any party, to prohibit all parties, and “their officers,
16 agents, servants, employees, or a person in active concert or participation
17 with them from: (1) Transferring, encumbering, concealing, selling, or
18 otherwise disposing of any of the joint, common, or community property
19 of the parties or any property that is subject of a claim of community
20 interest, except in the usual course of conduct or for the necessities of life
21 or for retention of counsel. . . .” Emphasis added. NRS 125.050 requires
22 the Court to “make such restraining order or other order as appears
23 necessary to prevent the act or conduct and preserve the status quo
24 pending final determination of the cause.”

25 Based on the above, as well as the arguments and statements made
26 during the hearing of January 31, 2018, Lynita respectfully requests that
27 this Court enter a Joint Preliminary Injunction in this matter providing:

28 . . .

1 IT IS HEREBY ORDERED that no property listed in the
2 Decree of Divorce entered June 3, 2013, is to be transferred,
3 encumbered, concealed, sold, or otherwise disposed of without
4 a written agreement between the parties or further Order of
the Court to ensure that the properties remain intact prior to
the completion of the tracing and the final judgment of this
Court.

5 If the Court is not willing to enjoin all potential community property
6 at issue in this matter, it should, at the very least, issue an Order to Eric
7 and the ELN Trust providing:

8 IT IS HEREBY ORDERED that no property held by Eric or
9 the ELN Trust which was awarded to Lynita in the Decree of
Divorce entered June 3, 2013, is to be transferred,
10 encumbered, concealed, sold, or otherwise disposed of without
11 a written agreement between the parties or further Order of
the Court to ensure that the properties remain intact prior to
12 the completion of the tracing and the final judgment of this
Court.


13 Based on the above, as well as the arguments and statements made
14 during the hearing of January 31, 2018, Lynita respectfully requests that
15 this Court enter a Joint Preliminary Injunction in this matter as set forth
16 herein.

17 **III. CONCLUSION**

18 Based upon the foregoing, Lynita respectfully requests that the Court
19 reconsider its Decision entered May 22, 2018, and Order that the Joint
20 Preliminary Injunction issued is not limited to the Banone, LLC and
21 Lindell Properties.

22 DATED this 5th day of June, 2018.

23 THE DICKERSON KARACSONYI
24 LAW GROUP

25 
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 5th day of June, 2018, I caused the document entitled, LYNITA NELSON'S MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE COURT'S DECISION ENTERED MAY 22, 2018 to be served as follows:


- ☒ [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;
- ☐ [] by hand-delivery with signed Receipt of Copy.

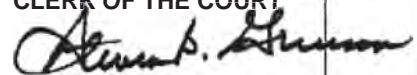
To the attorney(s) and/or person(s) listed below at the address, email address, and/or facsimile number indicated below:

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8 *Trustee of the ERIC L. NELSON NEVADA*
9 *TRUST dated May 30, 2001*

DISTRICT COURT

COUNTY OF CLARK, NEVADA

10 ERIC L. NELSON,

11 Plaintiff

Case No.: D-09-411537-D

Dept. No.: O

12 vs.

13 LYNITA SUE NELSON, MATT
14 KLABACKA, as Distribution Trustee of
15 the ERIC L. NELSON NEVADA
16 TRUST dated May 30, 2001,

17 Defendants.

18 MATT KLABACKA, Distribution
19 Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

20 Cross-claimant,

21 vs.

22 LYNITA SUE NELSON,

23 Cross-defendant.

**OPPOSITION TO LYNITA
NELSON'S MOTION FOR
RECONSIDERATION AND
CLARIFICATION OF THE
COURT'S DECISION ENTERED
MAY 22, 2018; AND
COUNTERMOTION TO: (1)
TERMINATE THE JPI; (2) IMPOSE
A BOND ON ANY PROPERTY
SUBJECT TO THE JPI; (3)
EXPUNGE THE
INAPPROPRIATELY RECORDED
LIS PENDENS; (4) ALLOW THE
ELN TRUST TO MANAGE
LINDELL; AND (5) ATTORNEYS'
FEES AND COSTS**

**HEARING DATE: July 10, 2018
HEARING TIME: 9:30 a.m.**

24
25 Matt Klabacka, Distribution Trustee of the ERIC L. NELSON NEVADA
26 TRUST dated May 30, 2001, hereby files his Opposition to Lynita Nelson's Motion
27 for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018;
28

1 and his Countermotion: (1) to Terminate the JPI; (2) Impose a Bond on any Property
2 Subject to the JPI; (3) Expunge the Inappropriately Recorded Lis Pendens; (4) Allow
3 the ELN Trust to Manage Lindell; and (5) for Attorneys' Fees and Costs.
4

5 DATED this 22nd day of June, 2018.

6 SOLOMON DWIGGINS & FREER, LTD.

7
8 By: 

9 MARK A. SOLOMON, ESQ.
10 Nevada State Bar No. 0418
11 JEFFREY P. LUSZECK, ESQ.
12 Nevada State Bar No. 9619
13 9060 West Cheyenne Avenue
14 Las Vegas, Nevada 89129

15 *Attorneys for Matt Klabacka, Distribution*
16 *Trustee of the ERIC L. NELSON NEVADA*
17 *TRUST dated May 30, 2001*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION AND STATEMENT OF FACTS**

20 "If at first you don't succeed try, try again."

21 Lynita S. Nelson has taken the aforementioned proverb to heart as this is the
22 **third** time that she has requested the exact same relief: a joint preliminary injunction
23 over all assets owned by the ELN Trust. Indeed, in her Motion (which merely
24 regurgitates the same arguments that this Court previously rejected in entering its
25 April 19, 2018 Order), Lynita fails to identify how the Court's Order entered on May
26 22, 2018 ("May 22 Order") is clearly erroneous and or how new facts would support
27 a reversal of this Court's decision. What makes Lynita's self-serving actions even
28 worse is that after this Court denied her requested relief, she filed lis pendens over

1 the majority, if not all, of the ELN Trust's real property (even property that was not
2 awarded to Lynita in Divorce Decree like Bella Kathryn). In light of the foregoing,
3 Lynita's Motion should be denied in its entirety and the ELN Trust should be
4 awarded its attorneys' fees and costs responding to the frivolous Motion.
5

6 Additionally, the ELN Trust countermoves this Court for an order: (1)
7 terminating the JPI; (2) compelling Lynita to post a bond on any property subject to
8 the JPI; (3) expunging the lis pendens; and (4) allowing the ELN Trust to manage
9 Lindell.
10

11 **II. LEGAL STANDARD**

12 A motion for reconsideration must be based on "substantially different
13 evidence [that] is subsequently introduced" showing that "the decision is clearly
14 erroneous." *Masonry and Tile Constrs. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737,
15 741, 941 P.2d 486, 489 (1997). "Only in very rare instances in which new issues of
16 fact or law are raised supporting a ruling contrary to the ruling already reached
17 should a motion for reconsideration be granted." *Moore v. City of Las Vegas*, 92
18 Nev. 402, 405, 551 P.2d 244, 246 (1976). Reconsideration motions cannot not be
19 used merely to reargue the arguments the movant already made to the Court, to "be
20 used to ask the Court to rethink what it has already thought," *Motorola, Inc. v. J.B.*
21 *Rodgers Mechanical Contractors*, 215 F.R.D. 581, 582 (D. Ariz. 2003), or "to dress
22 up arguments that previously failed." *Waddell & Reed Fin., Inc. v. Torchmark*
23 *Corp.*, 338 F. Supp. 2d 1248, 1250 (D. Kan. 2004) (citations omitted).
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1 Notwithstanding the aforementioned black letter law, in her Motion, Lynita
2 advances the identical arguments that she previously raised, and/or could have
3 raised, in her: (1) Opposition to Motion to Enforce Supreme Court's Order dated
4 May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of
5 September 22, 2014; and for Attorneys' Fees and Costs; and Countermotion for
6 Final Judgment Consistent with Nevada Supreme Court's Remand previously filed
7 on July 31, 2017 (hereinafter referred to as "Opposition"); (2) Reply to
8 Countermotion for Final Judgment Consistent with Nevada Supreme Court's
9 Remand previously filed on August 22, 2017 (hereinafter referred to as "Reply to
10 Countermotion"); and (3) Lynita Nelson's Motion for Reconsideration and
11 Clarification of the Court's Decision entered April 19, 2018 ("April 19 Order").
12 Indeed, this is not one of those "rare circumstances" in which reconsideration is
13 appropriate, and to do so would be an abuse of discretion.

18 **III. LEGAL ARGUMENT**

19 A. THIS COURT ERRED BY IMPOSING A JOINT PRELIMINARY 20 INJUNCTION ON THE BANONE, LLC AND LINDELL 21 PROPERTIES.

22 As an initial matter, this Court erred by imposing a JPI over Banone, LLC and
23 Lindell because EDCR 5.517 only applies to the husband and wife in a divorce
24 proceeding,¹ of which the ELN Trust is not. Consequently, if Lynita wishes to
25

27 ¹ Indeed, whenever the term "party" or "parties" is referenced in Part V of the Eighth Judicial
28 Court Rules it contemplates application to a husband and wife, and not to third parties.

1 pursue an injunction against the ELN Trust she must seek a formal injunction that
2 complies with NRCP 65, including, but not limited to, posting security pursuant to
3 subsection (c). Requiring Lynita to post a security “for the payment of such costs
4 and damages as may be incurred or suffered by any party who is found to have been
5 wrongfully enjoined or restrained” is mandatory under NRCP 65, and is fair and
6 equitable as the ELN Trust has previously been required to post bond. Further, the
7 imposition of a JPI over Banone, LLC and Lindell does not make sense in light of
8 this Court’s finding that both the ELN Trust and the LSN Trust possess “sufficient
9 assets in both trusts to offset any deficiency once a final balance and distribution
10 amount has been determined.”² See April 19 Order at 7:26-8:2.

11 In light of the foregoing, the ELN Trust respectfully requests that this Court
12 reconsider the imposition of its JPI against Banone, LLC and Lindell without the
13 imposition of a bond.

14 B. THIS COURT SHOULD DENY LYNITA’S SELF-SERVING
15 ATTEMPT TO INCREASE THE SCOPE OF THE JPI.

16 Notwithstanding the foregoing, Lynita demands that this Court increase the
17 scope of the JPI to encompass “any property listed in the Decree of Divorce entered
18 June 3, 2013,” or at the very least, to include any property “held by Eric or, the ELN

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25 ² The ELN Trust disagrees that the LSN Trust has sufficient assets to “offset any deficiency
26 once a final balance” has been determined because she has squandered the assets in the LSN Trust
27 and owes the ELN Trust hundreds of thousands of dollars for the following: (1) rents allocated from
28 both the Banone, LLC and Lindell Properties; (2) \$324,000 paid to Lynita from the Bank of Nevada
blocked account; (3) a \$6,050 security deposit paid to the LSN Trust from the ELN Trust; (4)
payments collected by the LSN Trust pursuant to the Farmouth Circle Note; and (5) \$75,000 paid to
the LSN Trust by Banone-AZ, LLC. See, e.g., April 19 Order at 7:11-18.

1 Trust which was awarded to Lynita in the Decree of Divorce entered June 3, 2013.”
2 Motion at 4:1-12. Once again, Lynita’s request ignores this Court’s finding that both
3 the ELN Trust and the LSN Trusts possess “sufficient assets in both trusts to offset
4 any deficiency once a final balance and distribution amount has been determined.”
5
6 See April 19 Order at 7:26-8:2.

7
8 1. THIS COURT SHOULD DENY LYNITA’S REQUEST TO
9 INCREASE THE SCOPE OF THE JPI TO ANY PROPERTY
10 IDENTIFIED IN THE DIVORCE DECREE.

11 Lynita’s request that this Court increase the scope of the JPI to any property
12 identified in the Divorce Decree would constitute gross error. Specifically, said JPI
13 cannot and should not encompass Wyoming Downs because: (1) this Court
14 previously found that Wyoming Downs was not community property; and (2) the
15 Nevada Supreme Court upheld the September 22, 2014 Order that disposed of said
16 asset. As this Court will certainly recall, the Divorce Decree disposed of all of the
17 assets owned by the ELN Trust and the LSN Trust, with the exception of Wyoming
18 Downs.
19
20

21 After a separate evidentiary hearing on Wyoming Downs on May 30, 2014,
22 this Court entered the following findings and orders:

23 THE COURT FURTHER FINDS that although Wyoming
24 Downs was acquired by the ELN Trust during the
25 pendency of the marriage between Eric L. Nelson and
26 Lynita S. Nelson, the Court does not find it to be
27 community property as it was clearly purchased through
28 Dynasty, an entity wholly owned by the ELN Trust and the
Court maintained the ELN Trust. The Court found no

1 facts leading it to conclude Lynita S. Nelson or the LSN
2 Trust has an interest in Wyoming Downs. The Court
3 maintained the integrity of the ELN Trust and LSN Trust
4 for the reasons set forth in the Divorce Decree.

4 THE COURT FURTHER FINDS that there was no
5 transmutation of Wyoming Downs from separate property
6 to community property, even assuming that Wyoming
7 Downs was separate property of Eric L. Nelson, and not
8 the property of the ELN Trust, separate and distinct from
9 Eric L. Nelson. See Notice of Entry of Order entered
10 September 22, 2014.

10 Lynita appealed the September 22, 2014 Order. Indeed, one of the "Issues on
11 Appeal" that Lynita identified in her Docketing Statement was the following:

12 Whether the district court erred in denying Lynita a one-
13 half (1/2) interest in Wyoming Downs, which was
14 purchased during the pendency of Eric's and Lynita's
15 divorce proceedings. See LSN Trust's Docketing
16 Statement at 4:10-12.³

16 In its Opinion, the Nevada Supreme Court upheld, as opposed to overturned, the
17 September 22, 2014 Order:

19 Accordingly, we affirm in part and vacate in part the
20 district court's decree of divorce, affirm in part and vacate
21 in part the district court's June 8, 2015, order modifying
22 and implementing the divorce decree, and remand this
23 matter for further proceedings consistent with this opinion.
24 See Nevada Supreme Court Order at p. 30.

23 Further, footnote 9 of the Opinion provides: "[w]e have considered the parties' other
24 arguments [which would have included Lynita's argument with respect to Wyoming
25 Downs] and conclude they are without merit." In light of the foregoing, it would be
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27 ³ See also Lynita's Answering Brief and Opening Brief on Cross-Appeal at pp. 52-53.
28

1 an error to enter a JPI and/or litigate any issue relating to Wyoming Downs.

2 2. THIS COURT SHOULD DENY LYNITA'S REQUEST TO
3 INCREASE THE SCOPE OF THE JPI TO ANY PROPERTY
4 PURPORTEDLY AWARDED TO HER IN THE DIVORCE
5 DECREE AND OVERTURNED BY THE NEVADA
6 SUPREME COURT.

7 Alternatively, Lynita requests that this Court increase the scope of the JPI to
8 include assets that were purportedly awarded to her in the Divorce Decree, despite
9 the fact that said award was overturned by the Nevada Supreme Court. Although she
10 does not come out and say it, upon information and belief the assets that Lynita is
11 referring to are the \$720,000 that was released to the ELN Trust and Russel Road.
12 Lynita's request to have a JPI imposed over the \$720,000 was already addressed by
13 this Court in its May 22 Order at 3:14-4:7, and as such, should be denied by this
14 Court.
15

16 Lynita's request to have a JPI imposed over Russel Road should also be denied
17 because said asset was purchased 100% by the ELN Trust. Indeed, on November 11,
18 1999, the LSN Trust purchased the Russell Road Property for \$855,945.⁴ Eric's
19 brother, Cal Nelson, made a down payment of \$20,000.00 and became a 50% owner
20 of the Russell Road Property. *See id.* Lynita and Cal later formed C J E & L, LLC,
21 which rented the Russell Road Property to Cal's Blue Water Marine. *See id.* Shortly
22 thereafter, C J E & L, LLC obtained a \$3,100,000 loan for the purpose of
23 constructing a building for Cal's Blue Water Marine. *See id.* In 2004, Lynita
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28 ⁴ See Notice of Filing Asset Schedule and Notes to Asset Schedule filed on or around July 4,
2011, a copy of which is attached hereto as **Exhibit 1**.

1 executed a guarantee on the flooring contract for Cal's Blue Water Marine, and
2 shortly thereafter, the LSN Trust forfeited its interest in C J E & L, LLC and the
3 Russell Road Property to be released as a guarantor. *See id.*

4
5 The ELN Trust purchased a 66.67% interest in the Russell Road Property in
6 February 2010, over 5 years after the LSN Trust forfeited its interest. The court-
7 appointed Special Master, Larry Bertsch, found that the ELN Trust paid nearly
8 \$4,000,000.00 for its 65% interest in the Russell Road Property, which is comprised
9 of the following amounts:

- 10
11 1) In 2009, the ELN Trust purchased an FDIC note on a property in
12 Phoenix commonly known as "Sugar Daddy's" for approximately
13 \$520,000. The source of these funds came from the Line of
14 Credit. The property was sold with proceeds amounting to
15 \$1,520,597.88. Since this was designated as a 1031 exchange, the
16 proceeds were used in 2010 to purchase Eric's interest in the
17 Russell Road Property.
- 18 2) As indicated above, the ELN Trust had previously paid \$300,000
19 to pay down the Bank Loan which was secured by property in
20 Utah. In addition, the ELN Trust paid off the mortgage on Cal's
21 house amounting to \$400,000. Both amounts were paid from a
22 Line of Credit. These two amounts aggregating \$700,000 were
23 then used as a credit towards the purchase price for ELN Trust's
24 interest.
- 25 3) The ELN Trust gave a credit amounting to \$522,138.47 which
26 represented future agreements with Cal and the termination of any
27 present verbal partnership agreements. This also included money
28 on rental payments given to Cal.
- 4) The remaining amount to fulfill the obligation of the purchase
price was to borrow \$1,257,263.67 from the Line of Credit in
2010.

Therefore the purchase of ELN Trust's interest is comprised of the following:

Pay down of Bank Loan	\$300,000.00
Pay off of personal residence of Cal Nelson	400,000.00
Credit to Cal Nelson for prior payments	522,138.45
Amount to pay Bank Note from Sugar Daddy's	1,520,597.88
Amount to pay Bank Loan from Line of Credit	<u>1,257,263.67</u>
	\$4,000,000.00 ⁵

Since the ELN Trust's interest in the Russell Road Property was paid for with its own assets and proceeds, as opposed to assets belonging to Lynita or the LSN Trust, it would be inappropriate to impose a JPI over the same (especially without requiring Lynita to post a bond).

C. THIS COURT SHOULD REMOVE THE INAPPROPRIATELY FILED LIS PENDENS RECORDED BY LYNITA ON OR AROUND APRIL 11, 2018.

NRS 14.010 permits a plaintiff to file a lis pendens only "[i]n an action for the foreclosure of a mortgage upon real property, or affecting title or possession of real property." "As a general proposition, lis pendens are not appropriate instruments for use in promoting recoveries in actions for personal or money judgments; rather, their office is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens." *Levinson v. Eighth Judicial Dist. Ct.*, 109 Nev. 747, 750 (Nev. 1993). Accordingly, NRS 14.015(1) and (2) provide that a defendant may request a hearing upon 15 days' notice, whereupon the plaintiff must:

...establish to the satisfaction of the court that:

⁵ See *id.*

- (a) The action is for the foreclosure of a mortgage upon the real property described in the notice or affects the title or possession of the real property described in the notice;
- (b) The action was not brought in bad faith or for an improper motive;
- (c) The party who recorded the notice will be able to perform any conditions precedent to the relief sought in the action insofar as it affects the title or possession of the real property; and
- (d) The party who recorded the notice would be injured by any transfer of an interest in the property before the action is concluded.

3. In addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:

- (a) That the party who recorded the notice is likely to prevail in the action; or
- (b) That the party who recorded the notice has a fair chance of success on the merits in the action and the injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship on him or her in the event of a transfer would be greater than the hardship on the defendant resulting from the notice of pendency, - and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

If plaintiff fails to meet the foregoing burden, the lis pendens must be expunged.
NRS 14.015(5).

Here, Lynita has not only recorded lis pendens on real property currently subject to the JPI (*i.e.* Banone LLC and Lindell), but also on Bella Kathryn (a property that was not awarded to her in the Divorce Decree and which has never been subject to a JPI following the entry of the Divorce Decree) and Russell Road. Said actions confirm Lynita's bad faith.

Lynita cannot demonstrate that she is likely to “prevail in the action” or “have a fair chance of success on the merits... and [her alleged injury] would be sufficiently serious that the hardship on [the LSN Trust] in the event of a transfer would be greater than the hardship on [ELN Trust] resulting from the notice of pendency” for the reasons set forth in the ELN Trust’s Reply to Opposition to Motion to Enforce Supreme Court’s Order filed on August 4, 2017 at 5:9-7:13, the portion of which is attached hereto as **Exhibit 2**. Specifically, the Nevada Supreme Court found that Eric and Lynita’s community property was transmuted to separate property and Lynita failed to introduce any evidence, let alone clear and convincing evidence, that the Parties separate property was transmuted back to community property. In light of the foregoing, the ELN Trust respectfully requests that the lis pendens be expunged and that it be awarded its attorneys’ fees and costs stemming relating to the same.

D. THE ELN TRUST’S REQUEST FOR IMPOSITION OF A BOND.

The ELN Trust also requests that this Court impose a reasonable bond and/or other security stemming from the imposition of the JPI for the reasons set forth in Section III(A) *supra*.

E. THE ELN TRUST RESPECTFULLY REQUESTS THAT THE ELN TRUST BE ALLOWED TO MANAGE THE LINDELL PROPERTY.

Although Lynita provided the Quitclaim Deed for the Lindell Property to the

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 LYNITA SUE NELSON,
3 INDIVIDUALLY, AND IN HER
4 CAPACITY AS INVESTMENT
5 TRUSTEE OF THE LYNITA S.
6 NELSON NEVADA TRUST DATED
7 MAY 30, 2001,

8 Petitioner,

9 v.

10 EIGHTH JUDICIAL DISTRICT
11 COURT OF THE STATE OF
12 NEVADA, FAMILY DIVISION,
13 CLARK COUNTY; THE
14 HONORABLE FRANK P.
15 SULLIVAN,

16 Respondents,

17 ERIC L. NELSON, INDIVIDUALLY,
18 AND IN HIS CAPACITY AS
19 INVESTMENT TRUSTEE OF THE
20 ERIC L. NELSON NEVADA TRUST,
21 DATED MAY 30, 2001, and MATT
22 KLABACKA, DISTRIBUTION
23 TRUSTEE OF THE ERIC L.
24 NELSON NEVADA TRUST, DATED
25 MAY 30, 2001,

26 Real Parties in Interest.

Supreme Court Case No.:

Electronically Filed
District Ct. Case No. 2018-41007
Oct 30 2018 10:00 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

27 **PETITIONER, LYNITA SUE NELSON'S, SUPPLEMENTAL**
28 **APPENDIX OF EXHIBITS TO PETITION FOR**
 WRIT OF MANDAMUS VOLUME 2

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3	10/16/18	Decision entered in case no. D-09-411537-D	0509-0518
1	07/31/17	Defendant's Opposition to Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order, and for Attorneys' Fees and Costs and Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0134-0148

1	1	08/22/17	Defendant's Reply to Opposition to Countermotion for Final Judgment Consistent with Nevada Supreme Court's Remand, or in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0197-0213
2	2	07/12/18	Defendant's Reply to Plaintiff's Opposition to Defendant's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018 and Opposition to Countermotion to: (1) Terminate the JPI; (2) Impose a Bond on any Property Subject to the JPI; (3) Expunge the Lis Pendens; (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and Costs	0412-0432
3	2	05/21/18	Initial Opposition to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered April 19, 2018; Counterpetition to Remove Lis Pendens Inappropriately Filed by the LSN Trust; and for Attorneys' Fees and Costs	0330-0338
4	2	05/03/18	Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered April 19, 2018	0311-0329
5	2	06/05/18	Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018	0355-0362
6	1	07/10/17	Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs	0035-0133
7	1	05/25/17	Nevada Supreme Court Opinion filed in case no. 66772	0005-0034
8	1	11/03/14	Notice of Appeal	0001-0004
9	2	04/19/18	Notice of Entry of Order entered in case no. D-09-411537-D	0300-0310

1	2	05/22/18	Notice of Entry of Order entered in case no. D-09-411537-D	0346-0354
2	3	10/16/18	Notice of Entry of Order entered in case no. D-09-411537-D	0519-0530
3	2	06/22/18	Notice of Joinder to Opposition to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018; and Countermotion to: (1) Terminate the JPI; (2) Impose a Bond on any Property Subject to the JPI; (3) Expunge the Inappropriately Recorded Lis Pendens; (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and Cost	0409-0411
4	1	08/04/17	Notice of Joinder to Reply to Opposition to Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorney's Fees and Costs and Opposition to Countermotion for Final Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative for Affirmation of Joint Preliminary Injunction for a Receiver to Manage the Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorney's Fees	0192-0196
5	2	06/22/18	Opposition to Lynita Nelson's Motion for Reconsideration and Clarification of the Court's Decision Entered May 22, 2018; and Countermotion to: (1) Terminate the JPI; (2) Impose a Bond on any Property Subject to the JPI; (3) Expunge the Inappropriately Recorded Lis Pendens; (4) Allow the ELN Trust to Manage Lindell; and (5) Attorneys' Fees and Costs	0363-0408
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1	1	08/04/17	Reply to Opposition to Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs and Opposition to Countermotion for Final Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage the Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0159-0191
10	1	08/29/17	Response to Defendant's Reply to Opposition to Countermotion for Final Judgment Consistent with the Nevada Supreme Court's Remand or, in the Alternative, for Affirmation of Joint Preliminary Injunction, for a Receiver to Manage the Property Pending Final Judgment, for Updated Financial Disclosures and Exchange of Financial Information, and for Sale of Property for Payment of Attorneys' Fees and Costs	0214-0224
16	2,3	07/23/18	Transcript Re: All Pending Motions from Monday, July 23, 2018 (Errata)	0433-0508
18	1,2	01/31/18	Transcript Re: Status Check of Wednesday, January 31, 2018	0225-0290

1 record, they're not going to be taken up, and that's a
2 concern.

3 MR. KARACSONYI: For later use for the Court for the
4 (indiscernible) issue.

5 THE COURT: I can -- certainly I would not accept
6 this in evidence at this time. If it becomes an evidentiary
7 issue again, my issue I was looking at it -- yeah, I was
8 looking at that as a waste argument, you know, the saying that
9 she wasted the money or the apartment on that, and I wasn't
10 inclined to get that because she was the manager and I figured
11 people have the business judgment rule where they make
12 decisions, good or bad, and the Court's not to secondguess
13 unless they thought there's some type of fraud or corruption
14 in there. So I wasn't inclined to get into that. But if it's
15 raised by the parties thinking there were, of course, I would
16 then have to get that admitted as an evidentiary.

17 But right now, the Court will accept it, but not --
18 I will keep it on the side in the confidential file, but won't
19 make it part of the record unless we come up to that issue.
20 That way we'll have it if it comes out to be disputed.

21 MR. KARACSONYI: Yeah, and you're -- you're not
22 making any rulings on it anyhow right now, so it won't come up
23 until that time, but we can't file color photographs so we
24 wanted to provide Your Honor a copy.

1 MR. LUSZECK: Yeah. And we're not stipulating to
2 the authentic -- anything like that.

3 MR. KARACSONYI: No.

4 MR. LUSZECK: We're not waiving --

5 MS. FORSBERG: Not waiving any of that.

6 MR. KARACSONYI: No.

7 MR. LUSZECK: -- any of that.

8 THE COURT: I will not admit it as an evidentiary at
9 this point.

10 MR. KARACSONYI: It's for the file, color
11 photographs for Your Honor.

12 MR. LUSZECK: I understand.

13 MR. KARACSONYI: So to -- as back up.

14 THE COURT: Well, no, we'll not accept it as
15 evidence as we need a foundation and all that, so we'll just
16 take it as a courtesy copy to the Court to see if it becomes
17 an issue, then we can argue the evidentiary and get the
18 foundation necessary to have it admitted.

19 MR. KARACSONYI: Yes.

20 THE DEFENDANT: And it's just a sampling as well.
21 It's not everything.

22 THE COURT: Not inclusive, okay.

23 MR. KARACSONYI: Okay. So Friday, the 9th then,
24 we'll have the rest of the general ledger and that's been

1 stipulated to.

2 With regard to the transfer back of Lindell and
3 Banone, and the payment of monies. First, let me -- let me
4 address the request for payment of funds and kind of make a
5 dist -- a distinction between where we were in 2013 and where
6 we are today.

7 In 2013, when you ordered the transfer of properties
8 and you ordered the payment of funds, to Ms. Nelson, you did
9 so because you had at that point a final judgment. We sit
10 here today without a final judgment. So we're in a far
11 different position today than we were in 2013 and that's why
12 the amount of work and the amount of -- the amount of
13 evidentiary proceedings and money that would be involved in
14 trying to figure out because they say that she owes 500,000,
15 we believe that they owe her 265,000, and I'll get to that in
16 a minute.

17 That type of effort wouldn't make sense at this
18 point because you don't have a final judgment. Now, if you
19 ruled at final judgment in their -- in their favor, then they
20 would be in the same position she was in in 2013 and the
21 analysis would be different. But that is really the
22 distinction, I think, that -- that supports Your Honor's
23 ruling that we're not going to get into determining at this
24 point whether or not the money should be transferred back.

1 With respect to returning the Lindell and Banone
2 properties, obviously we're concerned. One, we're concerned
3 because Ms. Nelson is in a very poor financial condition right
4 now and she's going to be forced into a situation where she's
5 going to have to start liquidating her other property and --
6 and just further depleting her estate. She has no money to --
7 to live off of at the present time without those properties.

8 Obviously, she's going to have to receive half the
9 rent because Lindell is half hers, even without a tracing.
10 And so, we would have to do that. And she's owed -- she put
11 265,000 of her own money into the -- to the properties.

12 Here's the other issue and it -- and this is really
13 important. We had a request to reinstate or to just reaffirm
14 the JPI. You -- this Court and the courts sitting in divorce
15 actions, are required to maintain some status quo during the
16 pendency of the matter. And if you have a transfer of
17 property back to them without any JPI in place that look,
18 you're not going to encumber, sell, dispose of any of this
19 property, you're putting at risk any final judgment that you
20 may ultimately enter.

21 I mean, it's vitally important that no matter what
22 you do, that you put in place a JPI to protect the parties.
23 And this protects both parties, because we don't know how it
24 will turn out, to protect both parties to ensure that your

1 final judgment can be enforced. So we'd ask --

2 THE COURT: When I transferred that initially I put
3 that into it to make sure to protect --

4 MR. KARACSONYI: You did.

5 THE COURT: -- her interest so they couldn't be sold
6 or otherwise encumbered without a court order if I remember.

7 MR. KARACSONYI: That's absolutely true. You -- you
8 actually put a freeze on -- you put a freeze on a couple
9 things.

10 You put a freeze on everything that was transferred
11 to her that she couldn't get rid of it without your approval
12 and you also put a freeze on anything that was awarded to her,
13 and I believe that included the Russell Road property that
14 they couldn't get rid of that. So -- without your approval.

15 So that's the issue. So we need to, at least to the
16 extent that -- I mean, at the very least, and I think is a
17 minimum, put a -- put -- you -- put the JPI over everything
18 that was awarded to her so you at least know that you got half
19 if everything turns out to be community property. But I think
20 really, putting a JPI in place for all property that's subject
21 to a claim of community interest, and right now that's
22 everything, putting a JPI in place, and it's not -- it's not
23 that burdensome.

24 I mean, if they tell you well, that's really

1 burdensome. They brought that up about the receiver, but all
2 you're saying is look, in order to sell or transfer anything
3 at this point, you can do business as usual, but you need to
4 come to me so that we know, so that we don't have an issue
5 that you bought or sold or -- or did anything, without court
6 approval or agreement of the parties. And that's really for
7 everyone's protection. It's not that burdensome. And it
8 makes sure that you can keep a tab on everything in existence
9 during the pendency of the case.

10 Now, as to the tracing. We agree with -- with you
11 that the tracing needs to start in 1993. The relevant -- the
12 really relevant finding that -- that you quoted and that he
13 quoted, Mr. Luszeck, was on page 6. "On June 3rd, 2013,"
14 under -- I underlined this -- "the District Court found that
15 the separate property agreement was valid and the parties'
16 self settle spendthrift trusts were validly established and
17 funded with separate property."

18 The Supreme Court, if you -- Your Honor knows that
19 you weren't -- you obviously didn't do a tracing back to 1993.
20 The Supreme Court was relying on your statement in the decree
21 that the properties from the 1993 revocable trust were
22 transferred to the 2001 trust and was just simply referring to
23 that to find that the -- the properties from one trust were
24 transferred to another. The District -- the Supreme Court

1 didn't perform a tracing. The Supreme Court wasn't making
2 additional factual findings or meaning to make additional
3 factual findings separate and distinct from what Your Honor
4 made. And if Your Honor did not trace and find that 1993
5 property made it all the way through to 2001 in the initial
6 decree, the Supreme Court certainly wasn't contradicting its
7 own order, its own holding, by doing that.

8 It's -- essentially they want you to read the
9 Supreme Court as having made findi -- having contradicted
10 themselves in their own decision, that you need to perform a
11 tracing to see if community property exists, but with respect
12 to anything before 2001, no tracing is necessary. Well, that
13 would be contrary to exactly what the Supreme Court said that
14 you need to determine whether or not there's any community
15 property in these trusts, and the Supreme Court was clear on
16 that.

17 In a divorce involving trust assets, the District
18 Court must trust those trust -- trace those trust assets to
19 determine whether any community property exists within the
20 trust. And that was page 15.

21 THE COURT: Page 15 and again --

22 MR. KARACSONYI: Yeah.

23 THE COURT: -- it comes up on page 16, about without
24 proper --

1 MR. KARACSONYI: And to -- yeah.

2 THE COURT: Without proper tracing, this Court is
3 left with only the parties' testimony regarding the
4 characterization of property which carries no weight.

5 MR. KARACSONYI: Yeah. The parties' inconsistent
6 testimony, on page 18, having concluded the District Court had
7 subject matter jurisdiction, and the written instruments at
8 issue are valid, and the District Court must trace assets to
9 determine whether any community property exists within the
10 trusts.

11 So that's the argument we made the first time and
12 that's the argument we make again. It's interesting because
13 in their -- in their brief, the things they focus on as to why
14 the Supreme Court all of a sudden found that there was
15 sufficient tracing all the way back to 1993 to conclude that
16 everything in 2001 was separate property, was that the -- that
17 the trust agreements themselves state that they should be
18 separate property, which the Supreme Court said statements by
19 the parties have no value, that Shelley Newell, the bookkeeper
20 testified. You didn't even make any findings regarding her
21 testimony, I believe. And that -- and that -- and those were
22 really the two reasons.

23 And then section 12.13 of the ELN Trust and LSN
24 Trust provide that any property held in trust shall be the

1 separate property of the beneficiaries of such trust, which
2 talks about distribution.

3 So, I don't think that the -- the arguments -- the -
4 - the reasons that they enumerated in their -- in their brief
5 are -- are persuasive. And so we bel -- we believe that
6 you've made the right decision with respect to the tracing and
7 apparently they're going to take it up to the Supreme Court
8 and we'll go back for round, you know, the third or fourth
9 time and writs and appeals and we'll argue about that there,
10 if it's appropriate for writ relief, which I'm not sure it is.

11 But the other issue is you brought up gifts and the
12 finding of a gift. I -- I -- in -- as part of this tracing
13 and analysis, I -- I believe you have to determine if there
14 were gifts and not or if those were gifts or not gifts, if
15 they were intended to be gifts, just as you in any -- any --
16 any -- any divorce case. You often have, for example, people
17 buy a house and one of them signs a quit claim deed to it
18 because they can't borrow and the other one needs to be the
19 sole party on it, and you have to determine whether or not
20 that was meant to be a transmutation of property a gift or
21 whether or not that was just a -- a matter of convenience. I
22 believe you have sufficient testimony from before to show that
23 there was no gift intent certainly because of the fact that
24 the -- the -- the testimony was that he was telling her that

1 this was all being done for the benefit of the community and
2 she certainly wasn't giving away the property. But I believe
3 you could do that as part of the analysis, assuming there's
4 even a tracing possible, because if -- if you can't trace back
5 to 1993, everything acquired after 1993 is presumed to be
6 community property and it should all be equally divided.

7 So those are our positions on -- on those issues.

8 With regard to the sale of Brianhead, you have
9 jurisdiction over the parties and their property, you -- the
10 Court's already ruled you had subject matter jurisdiction.
11 You can make -- you can make orders regarding the parties'
12 property. We believe that the sale of Brianhead is not only
13 the correct -- correct order, but it's also necessary.
14 Because of the financial situation Ms. Nelson finds herself
15 in, she absolutely needs that property sold.

16 We would ask that if there is an appraisal, that Mr.
17 Bertsch select the appraiser and -- and select an appraiser
18 for the parties. That way we can avoid any disputes between
19 the parties over appraisers.

20 We'd also ask that you, you know, that any buyout be
21 kind of without prejudice because, you know, he may be buying
22 her out with what you determine to be community property and
23 she shouldn't be paying herself for the property, so that if
24 he buys her out, that that obviously doesn't mean that that

1 property he's used to buy her out is separate property, but
2 that it'll just -- you'll -- you'll work it out in a balance
3 sheet later.

4 I would also remind the Court that she does own half
5 of Lindell and you have jurisdiction over that. And so,
6 certainly, you have jurisdiction over her and the property of
7 the LSN Trust. And certainly, if there's an issue later that
8 requires reimbursement, you have sufficient property at issue
9 to work it out in some kind of property division or sale.

10 THE COURT: Thank you. Counsel?

11 MS. FORSBERG: Your Honor, let's attack a couple of
12 issues first. Let's start with the Brianhead property.

13 And what Mr. Karacsonyi -- we kind of agree with. I
14 think maybe it's been lost on the Court that Mr. Bertsch is
15 who ordered the appraisal to begin with on Brianhead, so it
16 just needs to be updated. We agree that Mr. Bertsch should --
17 we'd ask the Court to task him with doing that and that that's
18 -- but we also do disagree with the value going in -- up,
19 because I know the Court probably heard the fire, that the
20 fire destroyed the whole thing, so it -- they'll determine
21 that, but clearly, I think that's where the difference is.
22 And then there was deferred maintenance on that property that
23 hasn't been done since this all began that --

24 THE COURT: I think it's at thirty --

1 MS. FORSBERG: -- but the appraisal will deal with
2 that.

3 THE COURT: I think they're asking 30-grand I think
4 as an offset for -- if I'm remembering in someone's motion on
5 that, about 30-grand for maintenance or a side -- again, that
6 may be updated, but --

7 MS. FORSBERG: There's still a lot more. But we're
8 just saying that that -- that we agree that Mr. Bertsch should
9 be tasked with that, but we already had an appraisal. It
10 seems like it'd be reasonable for them just to have it updated
11 and Mr. Bertsch can order -- Mr. Bertsch is the one who
12 ordered the appraisal to begin with for the Court. So I don't
13 know if that's been lost on everybody, but I think having him
14 do it, we agree with Mr. Karacsonyi that he should just have
15 it updated and -- and go from that perspective. And then give
16 that -- and then it would give Mr. Nelson an opportunity to
17 buy out her interest.

18 But, you know, clearly, the problem that I think
19 both -- that we're having -- Mr. Nelson is having with this is
20 it sounds like what they're asking for is that the Court asked
21 ELN Trust to do all these things and Mr. Nelson to do all
22 these things and said no, you're going to do it now, even if
23 things are still up in the air because you knew it was going
24 to the Supreme Court and stuff, but they don't want to do the

1 same back. That doesn't seem amicable or fair and equitable
2 with this Court. So I think that's where the thing is.

3 So if there's going to end up being a buyout, that
4 also -- any money to her needs to be held. That's what you've
5 said before; look, we need to hold the money and you're hol --
6 making him hold -- ELN Trust hold all that 500-and-some-odd-
7 thousand according to their numbers, if -- it needs to be
8 equitable. It can't just be well, we give her what she wants
9 and not -- if it's exact same issue, which this is the exact
10 same issue, it's the same property that was -- may go one
11 should come the other, and I think this Court recognizes that.

12 As far as the instituting a joint preliminary
13 injunction, that's all that these trusts do is buy and sell
14 property. So when you say they should conduct business as
15 usual, by putting in -- that in place and not allowing them to
16 sell things, that's what they do. So that would be -- it's a
17 severe burden that I think when -- the fact that the Supreme
18 Court has already ruled what needs to go back to the ELN Trust
19 and I don't think we should be encumbering a business running
20 and moving forward. These -- that's how both sides function.
21 So I think that we can't lose sight of that.

22 And of course, rents issues and profits from
23 separate property are separate property, and I'm sure that's
24 part of what it is and so I think those are the two main

1 issues that I have from a Eric Nelson and as Eric Nelson
2 Investment trustee to make, were the two more things. The
3 rest I think Mr. Luszeck made on behalf of the trust, so.

4 THE COURT: Any rebuttal? I'll give it to you since
5 it --

6 MR. LUSZECK: Yes.

7 THE COURT: -- started out as your motion to enforce
8 the order, so.

9 MR. LUSZECK: Yeah, a quick follow-up.

10 With respect to the transfer of properties,
11 Counsel's statement that that didn't happen until after a
12 final judgment, that's not true. The divorce decree was
13 entered in June of 2013, but the judgment wasn't final until
14 the end of 2014 and the property was transferred prior to that
15 time. So this concept that we had a final judgment and that's
16 what distinguishes it from now is -- is not accurate.

17 You know, with respect to the JPI, you know, if this
18 Court's inclined to do that, which the ELN Trust disagrees
19 with, I think it would -- it has to be narrow -- narrowly
20 tailored to the properties at issue; the Lindell, the Banone,
21 I mean, issues that are -- clearly belong to the ELN Trust
22 like Wyoming Downs which she has no interest in pursuant to
23 the Supreme Court. That shouldn't be encumbered by any type
24 of JPI, so I think if this Court's inclined to do that, it

1 needs to be specifically tailored.

2 You know, I -- I disagree with Counsel's
3 characterization of the Supreme Court's statements. I read
4 four statements from the order where it was clear that the
5 Supreme Court had -- the Supreme Court had found that self
6 settled spendthrift trusts were funded with separate property.
7 And as such, the tracing should be limited to that specific
8 time frame.

9 I won't go through those again. I'm in page 2, 4,
10 and 13, irrespective of what this Court -- believe that this
11 Court found on six page -- page 6 of the Supreme Court order.

12 And just in addition to that, I mean, the -- Section
13 12.13, which -- which Counsel referred to in the self settled
14 spendthrift trust, specifically says any property held in
15 trust and any income earned by the trust created hereunder,
16 shall be the separate property in distinction with community
17 property, joint tenancy property, tenancy in common, marital
18 property, quasi-community property or tenancy by the entirety
19 of the beneficiaries of such trust.

20 So this wasn't just a statement that was made by one
21 of the parties as to their belief as to the -- the legal
22 nature of the property, it was a statement that was made in a
23 trust under the advice of counsel regarding the separate
24 property nature of the property. So for that once again, I

1 think the -- the tracing needs to be narrowly tailored for
2 that short time frame.

3 With respect to the sale of Brianhead, once again, I
4 mean, they filed an A case. Last time we were here we
5 discussed, you know, if it needed to happen, it was going to
6 be a partition action. Counsel's position now that this Court
7 has jurisdiction over that issue is really contradictory to
8 the fact that they filed an A case seeking a partition of the
9 -- sorry, a partition of the Brianhead property. So we would
10 -- we would ask that this Court, I guess, defer ruling on that
11 and if they -- if the A case is the proper -- proper forum for
12 that to proceed, it should proceed there as opposed to here.

13 THE COURT: Okay. Mr. Bertsch, do you have any
14 questions or anything what I need to do, I want to look into
15 the argument I had again, laid out what my strategy was at and
16 everything. I want to re-look at everything to see -- the key
17 would be the tracing period, I need to re-look at that, I've
18 heard arguments it should go to '93 and their argument it
19 should be from 2001, so I need to read the Supreme Court
20 decision again because I didn't find it as clear as everyone
21 else seemed to find it and I was kind of looking at those
22 issues to see what they were or not, because they made it
23 clear that the Court did not trace and Court needs to trace on
24 that, so they made it real clear on page 15 through 16 about

1 the tracing, and the issue is how far do we trace back I guess
2 is the key question.

3 I want to read the -- the trust agreements again. I
4 did read the separate property agreements, but was trying to
5 find the trust agreements again to read that because the file
6 was very voluminous, so I need a chance to read that so I want
7 to see exactly what the trust documents said themselves when
8 they were created in 2001 and give a written decision so we
9 can get this moving or if people want to take it up on writs,
10 at least it gives them an order to move up on that. I want to
11 get this going.

12 As far as the last issue, mediation, is there any
13 reason or chance? I know we went around the block several
14 times before we had the case settled, prospectively a couple
15 of times and it didn't pan out on that mediation, is -- if
16 anybody -- if you respect that you think would do mediation on
17 that because you know it's going to happen in this case no
18 matter what we ultimately do, even when we get the tracings,
19 it's probably going to back up to the Supreme Court, can sit
20 there another year or two, and just going on ad infinitum on
21 that, but the same token, the parties have a right to litigate
22 this as much as they want, but I don't know if you've even
23 thought that's worth it or if you had someone in mind you
24 thought that --

1 MR. KARACSONYI: I sent an email to them this
2 morning telling them that our client has decided that based on
3 the fact that we've been to so many mediations previously, the
4 Supreme Court settlement conference, mediations prior to that,
5 and given her financial situation, she just thinks it will be
6 an incredible waste of time and money and we are willing to
7 entertain any written proposal that they -- that they want to
8 make, but I -- we just don't see it as being fruitful and
9 it'll just put her in a more precarious financial situation.

10 MR. LUSZECK: And obviously, I can't make them
11 participate in mediation. We disagree. We think if we have a
12 strong mediator who can hear this case, we could potentially
13 reach a settlement. I mean, I -- I think if we can get in
14 front of a mediator in the next couple months it would be a
15 lot less time consuming and expensive than litigating this
16 over the next, you know, I don't know how long it's going to
17 take. And no -- none of us do.

18 THE COURT: Yes, I -- right.

19 MR. LUSZECK: I mean, it's going to take a while
20 regardless of what this Court's order, it's going to take a
21 while for Mr. Bertsch to do his analysis and then, you know,
22 if issues are taking up with the Supreme Court, so obviously,
23 our preference is mediation or settlement conference with a
24 very strong mediator or settlement conference judge, but, you

1 know, I -- I don't think that we can make Ms. Nelson do that.

2 THE COURT: Mr. Nelson, your position on this or?

3 MS. FORSBERG: I believe -- we agree with Mr.

4 Luszeck. I mean, we can't force her to do it, but, at the
5 same time, is it because she thinks she has access to the
6 money that she doesn't have to give back? I don't know, maybe
7 the Court needs to prompt a little bit. I don't know.

8 THE COURT: I think the real issues on that as I
9 said, and when I had this case, we had a -- I think a 10-day
10 trial and then we thought we had it settled and then started
11 again on that, so I know it has a very -- I'm not inclined to
12 order people to mediation unless they go there willingly,
13 because otherwise, it's not going to get anything done. If
14 you think it will be, I -- just let me know and if you have a
15 specific mediator or settlement judge you want, contact my
16 chambers, you can do a conference call and appoint one if you
17 think it would be beneficial to get it done on that.

18 I'm going to get my order issued within the next 30
19 days so that we get that going. I -- no matter what happens
20 on that, any paperwork you need, Mr. Bertsch, you can start it
21 because we know we're going from at least 2001 currently, so
22 we can get that started while we're waiting for the decision
23 on if we go back to '93. But anything we can get started on
24 that, let me know if you need any documents so that you can

1 get that started on that, because I just don't see it getting
2 resolved and tracing's going to be a key issue and that's
3 going to take a significant amount of time and resources for
4 the parties on that.

5 And as far as the Brianhead, I have no idea what's
6 that worth, but I think you'd probably need a new appraisal
7 instead of just an addendum on that, because things change and
8 it -- if that fire did, you know, damage the surrounding
9 things, I have no idea on that, but you might just should
10 start with a new because I know at the time it was the real
11 estate market was kind of down at that time, so that would be
12 the key on that. Because what that materializes can help you
13 out financially and if it's, you know, millions of dollars,
14 that can help out both sides (indiscernible) on that as far as
15 any of the costs on that, but I want to make sure everybody's
16 protected on those interests in that.

17 So that'd be my think, we'll get a decision for you.
18 Did you want as far as if you want to put it on for a
19 settlement thing, just let me know and we'll set up a phone
20 conference and settlement. I'd like to get Mr. Bertsch maybe
21 get -- at least start going from 2001 and forward.

22 Any special documents you need, Mr. Bertsch? A way
23 to kind of get a jumpstart? I know I went through a lot of
24 your reports that you did and there's so many on that, I was

1 trying to see if I could use that to try to trace it, and I
2 know some of the things you had in your court reports kind of
3 showed where some of the property went to different things,
4 but I don't know -- it's kind of complicated, so I don't know
5 what you need to kind of get started because you might as well
6 kind of get the tracing going unless the parties --

7 MR. BERTSCH: This is additions to the trusts after
8 2001?

9 THE COURT: 1, yeah. Because what happens at this
10 point, and that's at -- to begin. I might go back to '93
11 depending, I need to digest the arguments of counsel today,
12 but from when the trusts were created in 2001. I forget the
13 date that was.

14 Do you know when the trust was in 2001?

15 MR. LUSZECK: May 3rd?

16 MR. KARACSONYI: May 30th?

17 MR. LUSZECK: Yeah.

18 THE COURT: So I would go from June 1st. If it was
19 May, I'd go from June 1st -- June 1st, 2001 up to the divorce
20 decree, which I think was June 2014, was it?

21 MR. KARACSONYI: June 6th, 2013.

22 MR. LUSZECK: Yeah, I believe.

23 THE COURT: So I'd go from June 1st, 2001 through
24 June, what was it?

1 MR. KARACSONYI: 6th, 2013.

2 THE COURT: June 6th, 2013. So basically, June 2001
3 through June 2013 essentially, at least get started whatever
4 paperwork you need. And again, I don't know how you go about
5 that, with all the transfers, I'm not really sure on that
6 because --

7 MR. BERTSCH: They have an accounting of the trust
8 during those periods of time, right?

9 THE COURT: Do we have all the accountings? I don't
10 --

11 MS. FORSBERG: I think they're --

12 MR. KARACSONYI: We've given them everything that --
13 that we've had since the initial case.

14 THE COURT: Okay. I don't know a whole lot of --

15 MR. BERTSCH: I'll have to go through the work
16 papers, there's a lot of them there.

17 THE COURT: Yeah, there's a lot in the -- the
18 problem is there's a lot in the file. The problem is, it's
19 real tough to find it because we've got 9000 screens when you
20 pull that up, so to try to find it unless you know the date,
21 it's real tough to find it because there's so many entries. I
22 mean, literally there's hundreds of screens when you pull up
23 to just to find the separate property agreement it was
24 difficult to find them unless you know when it was to get you

1 that time frame.

2 MR. BERTSCH: Okay.

3 THE COURT: But if they have that and if Counsel can
4 provide that, that's great. If they have those readily
5 available --

6 MS. FORSBERG: We'll get them --

7 THE COURT: -- to try to find them in the record is
8 real difficult because it's so voluminous.

9 MR. KARACSONYI: We'll give him all the accounting
10 records. Can we just stipulate that if you're going to give
11 him something new that hasn't been part of the record --

12 MS. FORSBERG: Record?

13 MR. KARACSONYI: -- that you would let the other
14 side know or at least send us each -- maybe we'll each send --
15 what -- whenever I send him something, I'll put a list and --
16 and maybe reference where it was or the bates numbers, and if
17 they could do the same, that way we can kind of keep track of
18 who sent them what.

19 MS. FORSBERG: So everything in the record.

20 THE COURT: Would that work out? Again, I said the
21 record's so voluminous trying to identify what was --

22 MR. KARACSONYI: To help us both along?

23 MR. LUSZECK: Yeah, that's fine. So any -- any
24 documents that we provide Mr. Bertsch, we just need to apprise

1 the other side and give them copies of the same.

2 MR. KARACSONYI: Yeah, if it's a new disclosure.

3 MS. FORSBERG: Well, they already have -- if it's a
4 new disclosure.

5 MR. KARACSONYI: If it's a new disclosure.

6 MS. FORSBERG: No need to get --

7 MR. LUSZECK: Okay. Okay.

8 MS. FORSBERG: -- new copies if it's -- of those.

9 MR. KARACSONYI: If it's stuff you've already given,
10 I think that if you just write the letter and say I'm giving
11 you -- Mr. Bertsch, I'm sending you --

12 MR. LUSZECK: Understood. Understood.

13 MS. FORSBERG: Exhibit --

14 MR. LUSZECK: I understand.

15 MS. FORSBERG: -- 33.

16 MR. KARACSONYI: And -- yeah, Exhibit 33 bates or --

17 MR. LUSZECK: I understand.

18 MS. FORSBERG: The --

19 MR. KARACSONYI: -- whatever. For disclosure
20 documents.

21 THE COURT: I think we're up to quadruple S at one
22 time, so I'm not sure what the --

23 MR. KARACSONYI: Yeah, I don't know if we have to do
24 exhibits or disclosures.

1 THE COURT: I'd --

2 MR. KARACSONYI: Just something that references that
3 it's already in our file.

4 THE COURT: So you know where it's at so if it goes
5 up on appeal, you've got a record on that because the Court
6 can find it in the record then.

7 MR. KARACSONYI: I just had one question. I'm sure
8 you're already intending on doing this, but whatever decision
9 you make, in the decision we would appreciate certainly if --
10 if you could clarify in there or make clear when you're
11 tracing, what the tracing that occurred in the underlying
12 proceedings was so the Supreme Court knows whether you did
13 find -- if you did find that it was separate property, then
14 fine. If you didn't, if you could just make it clear whatever
15 you're ruling and whatever you had done before, because I know
16 that's going to be an argument above, so --

17 THE COURT: That issue when you said the Supreme
18 Court said I made those findings and make sure I made those
19 findings?

20 MR. KARACSONYI: Yeah. Yeah, and if you can just
21 put in your order, even if you rule against us or you rule in
22 their favor or in our favor, just so that we know that we can
23 make it clear to the Supreme Court this is what you did before
24 and so they know exactly what you did before.

1 MS. FORSBERG: And, Your Honor, I think I -- just to
2 clarify one quick thing so Mr. Bertsch understands. He's just
3 trying to determine, he's not doing a forensic accounting of
4 everything they've had done in the world, he's trying to
5 determine whether there's community properties by clear and
6 convincing evidence is put in there.

7 MR. KARACSONYI: He's trying to figure out the
8 source, I think we all -- he's trying to find the source of
9 all --

10 MS. FORSBERG: I just want to make sure he knows
11 what --

12 MR. KARACSONYI: -- the property.

13 MS. FORSBERG: -- we're asking him to do.

14 MR. KARACSONYI: Trying to see where -- where a
15 property initiated from and it -- whether it came from --

16 THE COURT: Community interest.

17 MR. KARACSONYI: -- this property or that property,
18 basically just tracing back where the property came from is my
19 understanding.

20 MR. LUSZECK: Yeah, I mean, from page 16 to 17 of
21 the Supreme Court order it says the District Court must trace
22 assets to determine whether any community property exists
23 within the trusts.

24 MR. KARACSONYI: Yeah, so --

1 MS. FORSBERG: Yeah, we just want to make sure that
2 --

3 THE COURT: Yeah.

4 MS. FORSBERG: -- he understands his task.

5 MR. KARACSONYI: So my understanding is you just
6 trace it back -- I don't think he's making legal
7 determinations. I think he's just going to provide you a
8 report that this property you can trace back to this, to this,
9 to this, to this, all the way to 2001, and then you can decide
10 at that point the -- the legal aspect of it for --

11 MR. LUSZECK: Yeah.

12 MR. KARACSONYI: -- whether it's community or
13 separate property. Do you both agree?

14 THE COURT: I take it you're trying -- trying to see
15 where the property came from, the Court can determine if it's
16 a community interest or not, to see when it was, how it came,
17 and where it came from. So I think, you know, that's all not
18 a legal determination if it was community property or not.

19 MR. KARACSONYI: That's your determination.

20 MS. FORSBERG: Yes.

21 THE COURT: The Court to make the determination.

22 MR. LUSZECK: In that I guess when -- when you do
23 issue your order, Your Honor, I would just request I think an
24 order for us to seek relief from the -- the Supreme Court, we

1 need to request a stay here.

2 THE COURT: Okay.

3 MR. LUSZECK: So if -- if, you know, depending on
4 the way that this Court rules and the way that we make -- the
5 decision that we make in regards to that, I'd just appreciate
6 it if you would at least address that issue on --

7 THE COURT: And I'll do it for either party that --
8 that any request for a stay is hereby denied from both sides,
9 that way, anybody wants to take up, they can take it up right
10 away. Is that fair enough --

11 MR. LUSZECK: Yeah.

12 MS. FORSBERG: Correct.

13 THE COURT: -- to everybody? And then with respect
14 to I understand that this Court needs 30 days to look at the
15 issues regarding the -- the scope of the tracing, but I'd
16 still request that -- that in the interim that Ms. Lynita be
17 required to execute the quit claim deeds to get the properties
18 at least transferred back to the ELN Trust. We can deal with
19 the accounting issues later, but we would like those quit
20 claim deeds executed within five business days after the
21 hearing, which is really the time frame that you gave the ELN
22 Trust to execute those documents, you know, years ago, Your
23 Honor.

24 MR. BERTSCH: Are you --

1 THE COURT: My -- my inclination is to order those
2 quit claim deeds, but I'll wait on my decision and get that,
3 but just so you know it's coming unless --

4 MR. KARACSONYI: Okay.

5 THE COURT: -- my research changes that, that is my
6 inclination to order those quit claim deeds be transferred
7 back to where we start to where it was on that, then we trace
8 all that, and do it again, because I did the same thing when I
9 told the trust, they said oh, it's going to be a hassle doing
10 all that and I said well, too bad, we can transfer it back
11 depending on the Supreme Court. So that is my inclination.
12 Again, I will want to review the argument and review the
13 paperwork, but that is my inclination just so you know it's
14 coming, unless I change my mind when I research everything,
15 but --

16 MR. KARACSONYI: And you'll address the JPI then at
17 the same time?

18 THE COURT: Absolutely. Absolutely.

19 MR. KARACSONYI: Because those go hand in hand.

20 THE COURT: Absolutely. And I would be issuing a
21 JPI, the same thing I did before on that, making sure it's not
22 encumbered or sold until we get it ultimately resolved, but
23 not make it more narrow so it doesn't hinder the operation of
24 the property that has nothing to do with this matter that's

1 clearly not community property.

2 Mr. Bertsch?

3 MR. BERTSCH: Have we determined who is paying for
4 it and shall there be a retainer to get started?

5 THE COURT: How much would you need as a retainer?
6 What would you normally --

7 MR. BERTSCH: I don't know. I'd like to at least
8 have 5,000 to get started.

9 THE COURT: Okay. Okay. I'll put that in the order
10 on that before you get going on that, we'll make sure. My
11 inclination was to have everybody pay 50/50, but you did raise
12 the issue that you guys had paid about 139,000 in the past, so
13 I'll look at that on that, but I'll put that right in the
14 order, but you'll have the guarantee that you get paid if you
15 want to get started on that with the -- do you need any up-
16 front money to get going for -- you know, out of pocket
17 expenses or --

18 MR. BERTSCH: I'd like to.

19 THE COURT: Okay. Let me --

20 MR. KARACSONYI: Your Honor, he had mentioned -- Mr.
21 Luszeck had said something about -- you had just said
22 something about property that was clearly not. I thought all
23 the property's at issue.

24 THE COURT: Well, I mean, separate property for --

1 MR. KARACSONYI: You haven't made a determination.

2 THE COURT: The separate property from 1993 if we
3 decide --

4 MR. KARACSONYI: Oh, yeah.

5 THE COURT: -- yeah, and if we decide --

6 MR. KARACSONYI: Oh, yeah. If something still
7 existed from 1993?

8 THE COURT: Yeah, and if my decision --

9 MR. KARACSONYI: That you hadn't traced?

10 THE COURT: -- says we go from 2001, then I'm going
11 to consider everything from 2001 prior to be separate property
12 based on the separate property agreement in the trust --

13 MR. KARACSONYI: Okay.

14 THE COURT: -- if that's where we go.

15 MR. KARACSONYI: I see what you're saying.

16 MR. LUSZECK: And it's our position of why -- I
17 mean, that's clearly not an issue, Your Honor. That --

18 MR. KARACSONYI: Well --

19 MR. LUSZECK: -- the appeal on that issue was
20 denied.

21 MR. KARACSONYI: No, the -- that's not true. They
22 didn't exclude Wyoming from the tracing.

23 MR. LUSZECK: They sure did. They upheld that
24 order.

1 MR. KARACSONYI: They --

2 THE COURT: I'd have to look at that. I know we did
3 it as a separate order, so I need to look at my order what we
4 did. I know I made specific findings and I don't know what
5 the Supreme Court -- like I said, if it had merits, I don't
6 know if that include Brianhead -- I mean the Wyoming Downs --

7 MR. LUSZECK: Of course it did.

8 MR. KARACSONYI: Well, it didn't say that the -- you
9 can do a tracing except Wyoming Downs. It didn't say that. I
10 mean, it just doesn't say that. You could read it.

11 THE COURT: I'll check and look at that.

12 MR. LUSZECK: Yeah, that's --

13 MR. BERTSCH: Now, did they -- I would like to have
14 the tax returns going back to that. I suppose it was a
15 grantor trust they put on their tax returns.

16 MR. KARACSONYI: I think we have those as part of
17 the discovery. I think he's going to get most of that.

18 THE COURT: Okay. We'll see what we can get going
19 to get started. I'll guarantee the decision within 30 days.
20 I'll try to get it sooner if I can because I know it's going.
21 My issue is I have a huge juvenile calendar and being the lead
22 judge for that, I'm on all these statewide committees and on
23 national committees, so trying to -- I'm always either in
24 court or at a meeting, but I want to get this done because

1 it's important. And again, if you guys think that mediation
2 or settlement is a -- and everybody agrees, just let me know,
3 we'll do a joint phone conference to save you the time on that
4 and see if there's somebody you think that might be able to
5 help you get it resolved, because it's going to be costly and
6 time consuming with the way we're going, no matter what the
7 Court's decision is.

8 Mr. Bertsch?

9 MR. BERTSCH: The appraisal on the Brianhead
10 property, should I wait until the order is signed before I do
11 anything with that?

12 THE COURT: Do you guys want to get that started or
13 --

14 MR. KARACSONYI: I'd prefer to get it started. We
15 don't have any signifi -- any -- any really funds to -- until
16 we get that sold or taken care of.

17 MR. BERTSCH: And who should I have them contact to
18 get into the property?

19 THE DEFENDANT: The weather may not allow them in.

20 MR. KARACSONYI: Okay.

21 THE DEFENDANT: But that may be a consideration as
22 well.

23 THE COURT: So the point of contact would be the
24 Lynita fund could -- or both on that?

1 MR. KARACSONYI: Yeah, we're fine.

2 MR. LUSZECK: I almost think --

3 THE COURT: 50/50, so who's the --

4 MR. LUSZECK: I think it's almost part and parcel,
5 Your Honor. I mean, we've got an issue where we have an A
6 case that they've filed a partition action, so I think this
7 Court needs to make a determination as to who has jurisdiction
8 and authority to make a ruling.

9 THE COURT: Well, I would think I do under community
10 -- another thing we had, I think I put it specifically in my
11 divorce decree, that the other party had a right -- right of
12 first refusal and I think I even said on the record that if we
13 get to that point because the parties are 50/50, it's not
14 tenable, it's not going to work out on that, with the nature
15 of this litigation that'd be my inclination to sell it and
16 give the other party right of first refusal and I put that I
17 believe right in the divorce decree if I remember correctly.
18 But I'll check that, but it'd be my inclination and then they
19 can do an emergency motion in front of the A court and so you
20 know it's coming to see if you want to stop me from doing it,
21 but that would be my inclination.

22 MS. FORSBERG: We're getting an updated or new
23 through Mr. Bertsch? I'm a little confused on what we're
24 doing on that, on the appraisal then.

1 MR. KARACSONYI: He's getting a new appraisal he
2 said.

3 MS. FORSBERG: Okay. I mean, I -- I mean, an
4 updated appraisal is a new appraisal. They've got to go out
5 and redo and start over, but whoever he chose -- Mr. Bertsch
6 chose him before, so I assume he'll use --

7 MR. KARACSONYI: He's going to pick somebody.

8 MR. BERTSCH: See if they're still in business.

9 MS. FORSBERG: If they're still in business, right.

10 THE COURT: If they're still in business or someone
11 else.

12 MS. FORSBERG: Right. Oh no.

13 MR. BERTSCH: They've got to be paid.

14 THE COURT: Absolutely. So we'll get all that and
15 get some ideas on that, I'll get that order to you right away.

16 MR. KARACSONYI: We would -- we would prefer not
17 using the same one just because you thought it was low and we
18 just want somebody with a fresh start.

19 THE COURT: Probably get someone new that you've got
20 experience with on so just that no one comes in with a
21 preconceived idea. Again, I just said it was low. That was
22 purely --

23 MS. FORSBERG: Yeah, I --

24 THE COURT: -- speculative.

1 MR. LUSZECK: I thought Mr. Bertsch was making this
2 decision and now --

3 MS. FORSBERG: I thought he was. Now we're --

4 MR. LUSZECK: -- they're making the decision.

5 MS. FORSBERG: -- they're trying to make the
6 decision --

7 THE COURT: Well --

8 MS. FORSBERG: -- instead of allowing Mr. Bertsch to
9 -- if he used that guy last time --

10 THE COURT: -- I don't know like he said that --

11 MS. FORSBERG: -- they chose -- he chose them.

12 THE COURT: -- if that -- if that prior appraiser's
13 still in business or things or other one's you've dealt with
14 that you're comfortable with. I just want to try to avoid
15 anyone saying that there's been any (indiscernible) to try
16 this since it's so litigated on this point, I'm trying to
17 avoid that. If it's a new appraiser you're comfortable with
18 that might be preferable just simply because they can stop
19 saying that they had a preconceived idea --

20 MS. FORSBERG: Your Honor --

21 THE COURT: -- or this or that, so it --

22 MS. FORSBERG: If I could --

23 THE COURT: -- just makes it cleaner if they can,
24 but.

1 MS. FORSBERG: If I can bring a point up. I mean,
2 Mr. Bertsch might be really limited. Brianhead and Duck Creek
3 are very small communities on who would be willing to do it
4 and I think that was what they ran into before, so --

5 THE COURT: Okay.

6 MS. FORSBERG: -- I don't think it's going to be an
7 issue for either one.

8 THE COURT: Yeah, I'll leave it to Mr. Bertsch.

9 MS. FORSBERG: Leave it to Mr. Bertsch to --

10 THE COURT: I respect him and I think both parties
11 respect that.

12 MS. FORSBERG: -- he can use the same guy, fine, and
13 if he can't --

14 THE COURT: And we'll get an order to you then and
15 see about emergency funding to get you started on that with a
16 retainer agreement and any fees for appraisal and stuff so
17 we'll get you some costs and a retainer.

18 MR. BERTSCH: The appraiser's going to ask who's
19 going to pay me.

20 MS. FORSBERG: Right.

21 THE COURT: Yeah, okay.

22 MR. BERTSCH: I'll tell you that right up-front.

23 THE COURT: Okay.

24 MR. BERTSCH: On the agreement.

1 MR. KARACSONYI: The appraisal's not going to be
2 that expensive. I think we can split that. I think it's --
3 what is it, \$500?

4 MR. LUSZECK: Yeah, we're -- although, we -- we --
5 there's \$139,000 disparity of what the ELN Trust has had to
6 pay as opposed to the LSN Trust, so I think until we -- we hit
7 that benchmark, I think everything needs to be borne by Ms.
8 Nelson.

9 THE COURT: I need to see about the -- I don't know
10 the financing --

11 MR. KARACSONYI: All the money that's been paid is
12 still subject to a community claim, though.

13 THE COURT: And then I think --

14 MR. LUSZECK: Well, until that's determined --

15 THE COURT: -- just -- I think the Supreme Court
16 still had the thing about the alimony was sustained and the
17 back child support and those things on that. I don't know
18 where we're at about that. Unfortunately --

19 MR. KARACSONYI: Yeah, and we're going to try that,
20 too, now obviously.

21 THE COURT: -- I can't make -- I can't make the
22 trust pay of course that -- the Supreme Court made it clear I
23 can't make the Trust pay spousal support or alimony unless
24 there was an order in place before and then they did the trust

1 to try to block it, and they said that specifically in the
2 legislative history, and Nevada wants people to come to Nevada
3 and put their money in expensive trusts and --

4 MR. KARACSONYI: Understand that.

5 THE COURT: So I mean, that's the issue on that, so
6 I don't know -- you can file a motion on that to get --

7 MR. KARACSONYI: We're going to be seeking a
8 charging order, Your Honor.

9 THE COURT: And see if they can get something like
10 that and that might help resolve some of the funding on that.

11 Mr. Nel -- Mr. Bertsch, why don't you just put a
12 hold on that. They can give you some of the documents, why
13 don't you put a hold on everything until I make an order on
14 the payment and that way you'll do it and we'll get that all
15 done for you. That way you're not out of any pocket or
16 expenses and -- and if we need to wait a couple weeks, I'll
17 try to get that order in a couple weeks. I just need to look
18 and digest because I don't remember all this stuff to make
19 sure. While I respect all the attorneys here, it's legal
20 argument and not facts. I need to look at that and see what's
21 fair and just to try to get the ball rolling again, because
22 it's going to be very costly.

23 So if you guys would start getting together the
24 paperwork for Mr. Bertsch, but we can hold off taking any

1 action until you get your retainer in pocket and any fees out
2 of that so you -- I don't want you spinning your wheels. Or I
3 should say maybe spinning your wheel under the circumstances,
4 but --

5 (Laughter)

6 THE COURT: All right. I won't pick on Mr. Bertsch.
7 That was just silly.

8 MR. LUSZECK: Thank you, Your Honor.

9 MS. FORSBERG: Thank you.

10 MR. KARACSONYI: Thank you.

11 THE COURT: Thank you to everybody for coming today.
12 It's good to see you, Mr. Bertsch.

13 (PROCEEDINGS CONCLUDED AT 12:28:30)

14 * * * * *

15 ATTEST: I do hereby certify that I have truly and
16 correctly transcribed the digital proceedings in the
17 above-entitled case to the best of my ability.

18

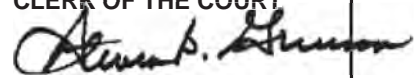
19 /s/ Kimberly C. McCright
20 Kimberly C. McCright, CET

21

22

23

24



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

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

Case No.: D-09-411537-D

Dept. No.: O

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

DECISION

This matter was before the Court on January 31, 2018, pursuant to Plaintiff's Motion to Enforce Supreme Court's Order Dated May 25, 2017; Motion to Hold Lynita S. Nelson in Contempt for Violation of September 22, 2014 Order; and for Attorneys' Fees and Costs. The Court, having reviewed all

1
2 Motions, Oppositions, Countermotions, and Replies filed in this matter between
3 July 10, 2017 and August 22, 2017, and having heard arguments of counsel,
4 based thereon and good cause appearing therefor:
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6 **CONCLUSIONS OF LAW**

7 On May 25, 2017, the Nevada Supreme Court filed an Order which
8 affirmed in part and vacated in part this Court's June 3, 2013 Divorce Decree, and
9 remanded the matter back to this Court. On July 10, 2017, the Plaintiff, Eric
10 Nelson ("Mr. Nelson") filed a Motion to compel the Defendants, Lynita Nelson
11 ("Ms. Nelson") and Matt Klabacka ("ELN Trustee"), to follow the Supreme
12 Court's Order. Several Oppositions, Countermotions, and Replies were filed by
13 all parties prior to a hearing before this Court on January 31, 2018, to address all
14 pending matters, the most important being the interpretation of the Nevada
15 Supreme Court's Opinion with regard to the tracing of property within the trusts.
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19 A. The Tracing of Property Contained Within the Eric L. Nelson Nevada Trust
20 and the Lynita S. Nelson Nevada Trust

21 In its May 25 Order, the Nevada Supreme Court concluded that this Court
22 erred by "not tracing the assets contained within the trusts, either through a
23 reliable expert or other available means."¹ The Nevada Supreme Court also held
24 that both the Eric L. Nelson Nevada Trust ("ELN Trust") and the Lynita S.
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¹ Klabacka v. Nelson, 394 P.3d 940, 948 (Nev. 2017).

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2 Nelson Nevada Trust ("LSN Trust") "are valid and the trusts were funded with
3 separate property stemming from a valid separate property agreement."²
4

5 In accordance with the Nevada Supreme Court's decision, this Court must
6 Order the tracing of property in both the trusts. In order for an accurate
7 accounting of the property in both the ELN and LSN Trusts to occur, this Court
8 must determine the correct date to commence tracing of the property in the trusts.
9
10 The Nevada Supreme Court held that both the ELN and LSN Trusts were funded
11 with separate property stemming from the 1993 Separate Property Agreement.³
12 As such, the proper date to begin the tracing would be May 30, 2001, the date
13 both the ELN and LSN Trusts were executed.
14

15 The Nevada Supreme Court concluded that the assets in the trusts need to
16 be traced through a reliable expert.⁴ In order for the trusts to be properly traced,
17 this Court shall appoint Larry L. Bertsch, CPA ("Mr. Bertsch") to perform the
18 tracing. In the interest of fairness in regards to payment, both parties will be
19 required to split the cost of Mr. Bertsch's tracing, beginning with a \$5,000
20 payment from each party for Mr. Bertsch's initial retainer. The initial retainer
21 payment to Mr. Bertsch shall be paid within thirty days of the date of this Order.
22
23

24
25 B. The Lindell Property and Banone, LLC Properties
26

27 ² *Klabacka*, 394 at 947.

28 ³ *Id.*

⁴ *Id.* at 948

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2 In its May 25 Order, the Nevada Supreme Court vacated the Constructive
3 Trust held over the Lindell Property.⁵ The Nevada Supreme Court also held that
4 “the issue of unjust enrichment was not tried by implied consent and, therefore,
5 [this Court] erred in considering it when fashioning its remedies.”⁶
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7 As the Nevada Supreme Court vacated the Constructive Trust held over the
8 Lindell Property, the LSN Trust must transfer its 50% interest in the Lindell
9 Property to the ELN Trust via Quitclaim Deed. Additionally, the LSN Trust shall
10 provide to the ELN Trust copies of any and all tenant leases for the Lindell
11 Property for the period of June 3, 2013 to the present. The LSN Trust shall also
12 provide to the ELN Trust quarterly accountings for the Lindell Property,
13 including any and all supporting documentation, for the period of June 3, 2013 to
14 the present. Supporting documentation is to include records as to gross profits
15 and expenses related thereto, including, but not limited to; general upkeep,
16 management fees, administrative fees/wages, and maintenance fees/wages.
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21 As the Nevada Supreme Court held that this Court’s finding of unjust
22 enrichment was in error, the LSN Trust must transfer its 100% interest in the
23 Banone, LLC Properties to the ELN Trust via Quitclaim Deed. The LSN Trust
24 shall also provide to the ELN Trust quarterly accountings for the Banone, LLC
25 Properties, including any and all supporting documentation, for the period of
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28

⁵ *Id.* at 953

⁶ *Id.*

1 June 3, 2013 to the present. Supporting documentation is to include records as to
2 gross profits and expenses related thereto, including, but not limited to; general
3 upkeep, management fees, administrative fees/wages, and maintenance
4 fees/wages.
5

6
7 C. Sale of the Brian Head Cabin

8 The ELN and LSN Trusts each own a 50% interest in the Brian Head
9 Cabin ("Cabin") in Utah. Upon the request of Ms. Nelson for funds to pay her
10 litigation costs and other general expenses, this Court shall Order that the Cabin
11 be sold. This Court previously Ordered that "both parties shall have the right of
12 first refusal should either Trust decide to sell its interest in the Brian Head
13 [C]abin."⁷
14

15 In order to properly ensure that both parties are receiving the fair market
16 value of the Cabin, Mr. Bertsch will be appointed to conduct the assessment of
17 the property value via a property appraiser of his choosing. To avoid concerns
18 raised as to the objectiveness of the upcoming appraisal, Mr. Bertsch shall select
19 a property appraiser other than the previous property appraiser, if available. In the
20 interest of fairness in regards to payment, both parties will be required to split the
21 cost of the property assessment.
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⁷ Divorce Decree filed June 3, 2013, pg. 46

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2 Upon receipt of a fair market value price for the Cabin, the ELN Trust is to
3 be given the right of first refusal and allowed to purchase the 50% interest owned
4 by the LSN Trust. In the event that a fair market value price for the Cabin cannot
5 be agreed upon by the parties, the Cabin is to be placed on the open market until
6 a valid offer is received. The ELN Trust will then be allowed to match the price
7 of the valid offer to purchase the 50% interest owned by the LSN Trust.
8
9

10 In the event that the ELN and LSN Trusts cannot agree on the value of a
11 valid offer, a realtor of Mr. Bertsch's choosing shall determine the validity of the
12 offer and conduct the sale of the property accordingly. All fees and costs
13 associated with the sale of the Cabin shall be shared equally between the ELN
14 and LSN Trusts.
15

16 D. \$720,000 in Bank of Nevada Account 7502338705
17

18 In its May 25, 2017 Order, the Nevada Supreme Court found that this Court
19 erred in Ordering the ELN Trust to pay the personal obligations of Mr. Nelson
20 with regard to alimony payments.⁸
21

22 On November 15, 2013, this Court Ordered the ELN Trust to transfer
23 \$1,068,000 to Bank of Nevada Account 7502338705. This account, which was
24 set up as a blocked account to assist in paying Mr. Nelson's personal obligations
25 with regard to alimony and child support, still holds \$720,000. As the Nevada
26
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28 ⁸ Klabacka v. Nelson, 394 P.3d 940, 952 (Nev. 2017).

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2 Supreme Court held that this Court erred in ordering the ELN Trust to pay Mr.
3 Nelson's personal obligations, and as these funds are still readily available to be
4 dispersed, this Court will Order the \$720,000 to be transferred from the Bank of
5 Nevada blocked account to an account of the ELN Trust's choosing.
6

7 E. All Remaining Financial Issues
8

9 Both the ELN and LSN Trusts have requested numerous financial transfers
10 based on both this Court's June 3, 2013 Divorce Decree, as well as the Nevada
11 Supreme Court's May 25, 2017 Order, including but not limited to: rents
12 allocated from both the Banone, LLC and Lindell Properties; \$324,000 paid to
13 Lynita Nelson from the Bank of Nevada blocked account; a \$6,050 security
14 deposit paid to the LSN Trust by the ELN Trust; payments collected by the LSN
15 Trust pursuant to the Farmouth Circle Note; and \$75,000 paid to the LSN Trust
16 by Banone-AZ, LLC.
17

18
19 However, the Nevada Supreme Court concluded that the matter of tracing
20 needs to occur to make an accurate accounting of property in both trusts.⁹
21

22 Therefore, it is this Court's opinion that before any financial transfers are to take
23 place, the tracing of both trusts must occur to ensure the proper transfers occur.
24

25 This Court has reviewed the assets of both the ELN and LSN Trusts and has
26 determined that there are sufficient assets in both trusts to offset any deficiency
27

28

⁹ *Klabacka*, 394 P.3d at 948.

1
2 once a final balance and distribution amount has been determined. Once the
3 tracing is finalized and a final balance sheet is received, this Court will Order the
4 proper funds to be transferred to each party accordingly.
5

6 **ORDER**

7 Based thereon:

8 **IT IS HEREBY ORDERED** that Larry Bertsch, CPA is to trace the
9 property in both the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
10 Nevada Trust beginning from the execution date of May 30, 2001 through the
11 date of the Divorce Decree, June 3, 2013.
12

13 **IT IS FURTHER ORDERED** that the tracing services provided by Larry
14 Bertsch, CPA is to be paid equally by both Eric Nelson and Lynita Nelson,
15 beginning with an initial payment of \$5,000 each. This payment shall be made
16 within thirty days of the date of this Order.
17

18 **IT IS FURTHER ORDERED** that the Lynita S. Nelson Nevada Trust
19 execute Quitclaim Deeds to transfer the Lindell Rd. and Banone, LLC Properties
20 to the Eric L. Nelson Nevada Trust. The transfer of the property shall be
21 completed within thirty days of the date of this Order
22

23 **IT IS FURTHER ORDERED** that Larry Bertsch, CPA is to acquire an
24 appraisal for the Brian Head Utah Cabin from an appraiser of his choosing. Mr.
25 Bertsch is to select an appraiser different from the original appraiser, if different
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2 appraiser is available. Once received, the Eric L. Nelson Nevada Trust has the
3 right of first refusal on any offer on the property with the ability to purchase the
4 Lynita S. Nelson Nevada Trust's 50% interest.
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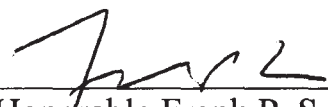
6 **IT IS FURTHER ORDERED** that in the event that the Eric L. Nelson
7 Nevada Trust and the Lynita S. Nelson Nevada Trust cannot agree on a valid
8 offer, Larry Bertsch, CPA, is to retain a realtor to place the property on the open
9 market for a fair market offer. Once the realtor determines that a fair offer has
10 been received, the Eric L. Nelson Nevada Trust has the right of first refusal on
11 any offer on the property with the ability to purchase the Lynita S. Nelson
12 Nevada Trust's 50% interest.
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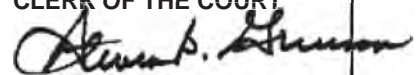
15 **IT IS FURTHER ORDERED** that any appraisal and realtor costs
16 associated with the Brian Head Utah Cabin sale will be paid equally by both Eric
17 L. Nelson Nevada Trust and the Lynita S. Nelson Nevada Trust.
18

19 **IT IS FURTHER ORDERED** that the \$720,000.00 being held in Bank of
20 Nevada Account 7502338705 be released to an account of the Eric L. Nelson
21 Nevada Trust's choosing.
22

23 **IT IS FURTHER ORDERED** that any Stay of Order is hereby **DENIED**.

24 DATED this 19th day of April, 2018.
25
26

27 
28 Honorable Frank P. Sullivan
District Court Judge – Dept. O



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

ERIC L. NELSON,

Plaintiff,

v.

LYNITA SUE NELSON, MATT
KLABACKA, as Distribution Trustee of
the ERIC L. NELSON NEVADA
TRUST dated May 30, 2001,

Defendants.

MATT KLABACKA, as Distribution
Trustee of the ERIC L. NELSON
NEVADA TRUST dated May 30, 2001,

Cross-claimant,

v.

LYNITA SUE NELSON,

Cross-defendant.

Case No.: D-09-411537-D

Dept. No.: O

NOTICE OF ENTRY OF ORDER

TO:

Rhonda Forsberg, Esq.
E-Service


Robert Dickerson, Esq.
E-Service

Marc Solomon, Esq.
E-Service

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PLEASE TAKE NOTICE that the DECISION was duly entered in the above-referenced case on the 19th day of April, 2018.

DATED this 19 day of April, 2018.


Lori Parr
Judicial Executive Assistant
Dept. O



DISTRICT COURT
FAMILY DIVISION – JUVENILE
CLARK COUNTY, NEVADA

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Plaintiff,

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DECISION

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9 Cabin ("Cabin") in Utah. Upon the request of Ms. Nelson for funds to pay her
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11 be sold. This Court previously Ordered that "both parties shall have the right of
12 first refusal should either Trust decide to sell its interest in the Brian Head
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3 tracing is finalized and a final balance sheet is received, this Court will Order the
4 proper funds to be transferred to each party accordingly.
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6 **ORDER**

7 Based thereon:

8
9 **IT IS HEREBY ORDERED** that Larry Bertsch, CPA is to trace the
10 property in both the Eric L. Nelson Nevada Trust and the Lynita S. Nelson
11 Nevada Trust beginning from the execution date of May 30, 2001 through the
12 date of the Divorce Decree, June 3, 2013.
13

14 **IT IS FURTHER ORDERED** that the tracing services provided by Larry
15 Bertsch, CPA is to be paid equally by both Eric Nelson and Lynita Nelson,
16 beginning with an initial payment of \$5,000 each. This payment shall be made
17 within thirty days of the date of this Order.
18

19 **IT IS FURTHER ORDERED** that the Lynita S. Nelson Nevada Trust
20 execute Quitclaim Deeds to transfer the Lindell Rd. and Banone, LLC Properties
21 to the Eric L. Nelson Nevada Trust. The transfer of the property shall be
22 completed within thirty days of the date of this Order
23

24 **IT IS FURTHER ORDERED** that Larry Bertsch, CPA is to acquire an
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