

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 NANYAH VEGAS, LLC, A Nevada limited
3 liability company,

4 Petitioner,

5 v.

6 CLARK COUNTY DISTRICT COURT,
7 THE HONORABLE NANCY ALLF,
8 DEPARTMENT 27,

9 Respondent,

10 SIG ROGICH aka SIGMUND ROGICH as
11 Trustee of The Rogich Family Irrevocable
12 Trust; ELDORADO HILLS, LLC, a Nevada
13 limited liability company; TELD, LLC, a
14 Nevada limited liability company; PETER
15 ELIADES, individually and as Trustee of the
16 The Eliades Survivor Trust of 10/30/08;
17 IMITATIONS, LLC, a Nevada limited
18 liability company DOES I-X; and/or ROE
19 CORPORATIONS I-X, inclusive,

20 Real Parties in Interest.

Electronically Filed
Jun 27 2019 11:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE
NO: _____

CASE NO. A-13-686303-C
DEPT. NO.: XXVII

CONSOLIDATED WITH:
CASE NO.: A-16-746239-C

PETITION FOR WRIT OF
MANDAMUS, OR IN THE
ALTERNATIVE,
PROHIBITION

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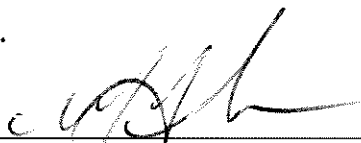
NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of a petitioner's stock: *None.*

2. Names of all law firms whose attorneys have appeared for Petitioners in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court: *Mark G. Simons of SIMONS HALL JOHNSTON PC appears in these proceedings on behalf of Petitioner. Brandon B. McDonald of McDonald Law Offices, PLLC previously represented Petitioner.*

Dated this 27th day of June, 2019.



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TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE	ii
INTRODUCTION AND SUMMARY OF WRIT PETITION	1
ROUTING STATEMENT	3
RELIEF SOUGHT	3
ISSUES PRESENTED	4
STATEMENT OF FACTS	4
A. UNDISPUTED FACTS, AS FOUND BY THE DISTRICT COURT.	4
B. PROCEDURAL HISTORY.	6
C. THE ORDER AT ISSUE IN THIS WRIT PETITION ARGUMENT.	9
ARGUMENT	11
A. WRIT RELIEF IS THE ONLY MEANS OF REDRESS FOR PETITIONERS.	11
1. THIS COURT SHOULD ENTERTAIN THE WRIT IN THE INTEREST OF JUDICIAL ECONOMY.	13
2. THIS WRIT PETITION RAISES SUBSTANTIAL LEGAL ISSUES OF GENERAL IMPORTANCE.	14
3. CLARIFICATION OF THE LAW IS REQUIRED.	15
4. THE ISSUES RAISED IN THIS WRIT PETITION ARE PURELY LEGAL.	15

1	B. THE PLAIN LANGUAGE OF NRS 163.120 PROVIDES	
2	THAT THE COURT MAY ALLOW NOTICE TO	
3	BENEFICIARIES “WITHIN SUCH OTHER TIME	
4	AS THE COURT MAY FIX”.	16
5	1. “OR” IS DISJUNCTIVE.	17
6	2. NOTICE DOES NOT HAVE TO OCCUR PRIOR	
7	TO TRIAL.	18
8	3. NEVADA CASE LAW ALLOWS PARTIES TO	
9	INTERVENE AT ANY TIME PRIOR TO THE	
10	ENTRY OF JUDGMENT.	22
11	C. THE DISTRICT COURT FAILED TO EXERCISE	
12	THE CLEAR DISCRETION IT HAS PURSUANT	
13	TO NRS 163.120, AND MANDAMUS IS THE	
14	APPROPRIATE REMEDY.	26
15	D. JUDICIAL ESTOPPEL BARS THE ROGICH	
16	TRUST’S INVOCATION OF NRS 163’S	
17	PROVISIONS.	29
18	E. THE COURT MUST EXERCISE ITS DISCRETION	
19	TO DECIDE NANYAH’S CLAIMS AND RIGHT TO	
20	RECOVERY ON “THE MERITS”.	31
21	F. RULES OF STATUTORY CONSTRUCTION	
22	SUPPORT NANYAH’S REQUEST.	33
23	CONCLUSION	33
24	AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF PETITION	
25	FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE,	
26	PROHIBITION	35
	CERTIFICATE OF SERVICE	37

TABLE OF AUTHORITIES

CASES

<u>Albany v. Arcata Associates</u> , 106 Nev. 688, 799 P.2d 566 (1990).....	12
<u>Barbara Ann Hollier Tr. V. Shack</u> , 131 Nev. Adv. Op. 59, 356 P.3d 1085, 1089 (2015).....	14
<u>Bennett v. Eighth Judicial Dist. Ct.</u> , 121 Nev. 802, 806, 121 P.3d 605, 608 (2005).....	11
<u>Bottorff v. O'Donnell</u> , 96 Nev. 606, 614 P.2d 7 (1980).....	15
<u>Bradley v. Harcourt</u> , 104 F.3d 267, 272 (9 th Cir. 1996).....	30
<u>Christy v. Carlisle</u> , 94 Nev. 651, 654, 584 P.2d 697 (1978).....	31
<u>Cleland v. Eighth Judicial Dist. Court</u> , 92 Nev. 454, 456, 552 P.2d 488, 490 (1976).....	24
<u>De Luca Importing Co. v. Buckingham Corp.</u> , 90 Nev. 158, 159, 520 P.2d 1365, 1366 (7974).....	12
<u>Eddie E. v. Superior Court</u> , 234 Cal. App. 4th 319, 327, 183 Cal. Rptr. 3d 773, 779 (Cal. Ct. App. 2015).....	17
<u>Ewing v. Fahey</u> , 86 Nev. 604, 607, 472 P.2d 347, 349 (1970).....	23
<u>Franklin v. Bartsas Realty, Inc.</u> , 95 Nev. 559, 563, 598 P.2d 1147, 1149 (1979).....	31
<u>Helfstein v. Eighth Judicial Dist. Court of Nev.</u> , 131 Nev. 909, 912-13, 362 P.3d 91, 94 (2015).....	13
<u>In re Pfizer's Estate</u> , 33 N.J. Super. 242, 265, 110 A.2d 40, 53 (Ch. Div.), aff'd, 17 N.J. 40, 110 A.2d 54 (N.J. 1954).....	19-20

1	<u>Jensen v. Sheriff, White Pine Cty.</u> , 89 Nev. 123, 125, 508 P.2d 4, 5	
2	(1973).....	18
3	<u>Las Vegas Sun v. District Court</u> , 104 Nev. 508, 511, 761 P.2d 849, 851	
4	(1988).....	33
5	<u>LoBue v. State ex rel. Dep't of Highways</u> , 92 Nev. 529, 532, 554 P.2d 258, 260	
6	(1976)).....	7
7	<u>LoMastro v. Am. Family Ins. Grp. (Estate of LoMastro)</u> , 124 Nev.	
8	1060, 1070 n.29, 195 P.3d 339, 347 (2008).....	24
9	<u>Lopez v. Merit Ins. Co.</u> , 109 Nev. 553, 556, 853 P.2d 1266, 1267-68	
10	(1993).....	25
11	<u>Lund v. Eighth Judicial Dist. Court</u> , 127 Nev. 358, 363, 255 P.3d	
12	280, 284 (2011).....	26
13	<u>Moody v. Manny's Auto Repair</u> , 110 Nev. 320, 325, 871 P.2d 935,	
14	938 (1994).....	33
15	<u>Nevada v. Daniel</u> , 129 Nev. 692, 309 P.3d 1041, 1043 (2013).....	17
16	<u>Poulos v. Eighth Judicial Dist. Court</u> , 98 Nev. 453, 455, 652 P.2d	
17	1177, 1178 (1982).....	14, 15
18	<u>Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court</u> , 130 Nev.	
19	824, 828, 335 P.3d 199, 202 (2014).....	13
20	<u>Rissetto v. Plumbers & Steamfitters Local 343</u> , 94 F. 3d 597, 600-01	
21	(9 th Cir. 1996).....	30
22	<u>Round Hill Gen. Improvement Dist. v. Newman</u> , 97 Nev. 601,	
23	637 P.2d 534 (1981).....	11
24	<u>Shell Petroleum Corp. v. Royal Petroleum Corp.</u> , 135 Tex. 12, 21,	
25	137 S.W.2d 753, 758 (Comm'n App. 1940).....	18
26		

<u>Smith v. Eighth Judicial Dist. Court</u> , 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997).....	15
<u>State v. Catanio</u> , 120 Nev. 1030, 1033, 102 P.3d 588, 591 (2004).....	17-18
<u>Sterling Builders, Inc. v. Fuhrman</u> , 80 Nev. 543, 549, 396 P.2d 850, 854 (1964).....	29
<u>Tam v. Eighth Judicial Dist. Court</u> , 131 Nev. 792, 796, 358 P.3d 234, 237 (2015).....	12
<u>Transamerican Leasing Co. v. Three Bears, Inc.</u> , 586 S.W.2d 472, 476–77 (Tex. 1979).....	18-19, 20, 25
<u>United States v. Hosteen Tse-Kesi</u> , 191 F.2d 518, 520 (10th Cir. 1951).....	32
<u>Westinghouse Credit Corp. v. Wolfer</u> , 10 Cal. App. 3d 63, 67, 88 Cal. Rptr. 654, 656 (Cal. Ct. App. 1970).....	1

STATUTES

NRS 12.130	22, 25
NRS 12.130(1)(a).....	23
NRS 12.130(1)(c).....	23
NRS 163.120.....	3, 9, 16
NRS 163.120(2).....	14, 15, 17, 30
NRS 34.160.....	11
NRS 34.320.....	11

RULES

NRAP 3A.....	12
--------------	----

1	NRAP 3A(b).....	12
2	NRAP 4(a)(4).....	25
3		
4	NRAP 17(a)(10).....	3
5	NRAP 17(b)(6).....	3
6	NRCP 24.....	23, 24, 25
7		
8	NRCP 68.....	28, 29
9	Supreme Court Rule 2(9).....	23

TREATISES

11		
12	1 California Affirmative Defense 2d, §6:33 (2 nd ed. 1995).....	28
13	31 C.J.S. Estoppel § 121 at 649.....	29
14	154 ALR 866.....	18
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INTRODUCTION AND SUMMARY OF WRIT PETITION¹

As found by the district court, it is undisputed that Petitioner Nanyah invested \$1.5 million in Eldorado Hills, LLC² (Eldorado); that Eldorado had an obligation to repay Nanyah its investment; and that the Rogich Trust specifically assumed responsibility to repay the investment on Eldorado's behalf as Eldorado's surety.³

This petition arises after years of litigation in the two (2) consolidated actions in which the Rogich Trust was a named defendant; after the Rogich Trust obtained judgment against various other parties; after the Rogich Trust made offers of judgment allowing judgment to be entered against the Rogich Trust; after holding Sigmund Rogich ("Rogich") out as the sole beneficiary of the Rogich Trust; after failing to identify any other alleged beneficiaries of the Rogich Trust as indispensable parties and/or witnesses pursuant to NRCP 16.1;

¹ For ease of reading, this introduction will omit appendix citations, but citations will be provided for factual statements in the body of the petition.

² Eldorado Hills is a 160-acre development near Boulder City, Nevada.

³ Westinghouse Credit Corp. v. Wolfer, 10 Cal. App. 3d 63, 67, 88 Cal. Rptr. 654, 656 (Cal. Ct. App. 1970) ("A surety is . . . one who promises to answer for the debt of another. . . .").

1 and after extensively litigating Nanyah's motions for summary judgment against
2 the Rogich Trust.

3
4 On the eve of trial, the Rogich Trust filed a notice requesting that the
5 district court take judicial notice of NRS 163.120(2), in particular the provision
6 that requires that the then beneficiaries to a trust be notified of the existence of
7 the action proceeding against the trust before judgment can be entered against the
8 trust. The district court erroneously concluded that the statute required that the
9 notice to the beneficiaries be provided in the early stages of an action in order to
10 permit the beneficiaries the opportunity to intervene.

11
12 Based on its entirely incorrect analysis of the statute, the district court: (1)
13
14 denied Nanyah's request to either continue the trial to allow for notification
15 pursuant to NRS 163.120, or to try the case and suspend entry of judgment in
16 order to satisfy NRS 163.120. Instead, after denying Nanyah's 30-day
17 continuance, the district court dismissed the action with respect to the Rogich
18 Trust, with prejudice, on the eve of trial contending that because the district court
19 denied the request to continue there was no time to provide notice to any alleged
20 beneficiaries prior to trial. This court should issue a writ directing the district
21 court to vacate its order.

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ROUTING STATEMENT

This is not a matter which is presumptively assigned to the Nevada Court of Appeals. While the underlying issues involve a dismissal of claims based on breach of contract, this writ petition does not satisfy NRAP 17(b)(6), which assigns writ petitions challenging orders resolving certain contract disputes to the Nevada Court of Appeals, because the matter at hand involves an amount in controversy that exceeds \$75,000.

This petition raises a question of first impression in Nevada, specifically, whether NRS 163.120 requires that notice of a pending action be given to beneficiaries of a trust within a strict timeframe or whether the district court also has discretion to allow for notification of beneficiaries at any time during an action up to immediately prior to the formal act of entering judgment. Accordingly, it would be appropriate for the Nevada Supreme Court to retain this case under NRAP 17(a)(10) (issues of first impression).

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RELIEF SOUGHT

Petitioners seek a writ of mandamus or prohibition to compel the district court to vacate its order dated April 30, 2019, which dismissed this action against the Rogich Trust with prejudice.

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1. Whether this court should exercise its discretion and entertain the writ.
2. Whether the district court misinterpreted NRS 163.120(2) as a matter of law, and consequently erroneously dismissed claims against the Rogich Trust with prejudice.
3. Whether the district court failed to exercise the discretion granted to it by NRS 163.120, as a matter of law, thereby warranting extraordinary relief.

STATEMENT OF FACTS

A. UNDISPUTED FACTS, AS FOUND BY THE DISTRICT COURT.

The following undisputed facts are taken *verbatim* from the district court's order, dated October 5, 2018 (the "Order").

Eldorado was formed in 2005 for the purpose of owning and developing approximately 161 acres of land near Boulder City, Nevada. Eldorado was originally comprised of Go Global, Inc. (100% owned by Carlos Huerta) and the Rogich Trust. 1 PA 0073.

In 2007, Huerta contacted Nanyah to invest. In December of 2007, Nanyah wired \$1,500,000.00 which eventually was deposited into Eldorado's bank account. 1 PA 0073.

1 In October of 2008, approximately ten months later, Teld purchased a 1/3
2 interest in Eldorado for \$3,000,000.00. Concurrently, The Flangas Trust also
3 purchased a 1/3 interest in Eldorado for \$3,000,000.00, which was subsequently
4 transferred to Teld when the Flangas Trust backed out of the deal. Because Teld
5 ended up with a larger percentage of Eldorado than originally contemplated, it
6 was later agreed that the Rogich Trust would re-acquire 6.67% of Eldorado from
7 Teld. As a result of these transactions, Go Global (*i.e.*, Huerta) no longer owned
8 an Eldorado membership interest, Teld owned 60% of Eldorado, and the Rogich
9 Trust owned approximately 40% of Eldorado. 1 PA 0073.

10 These transactions were memorialized in various written agreements.
11 **Nanyah was not included as a named signatory on the agreements, however,**
12 **the agreements identified that The Rogich Trust specifically agreed to**
13 **assume the obligation to pay Nanyah its percentage interest in Eldorado or**
14 **to pay Nanyah its \$1,500,000 invested into Eldorado. 1 PA 0073-74**
15 (emphasis added.)

16 The October 30, 2008, Purchase Agreement states at Section 4 the
17 following: Seller [Go Global], however, will not be responsible to pay the
18 Exhibit A Claimants their percentage or debt. This will be Buyer's [The Rogich
19

1 Trust's] obligation. . . ." The Exhibit A Claimants include Nanyah and its
2 \$1,500,000.00 investment. 1 PA 0074.
3

4 The October 30, 2008, Membership Interest Purchase Agreement identifies
5 Nanyah's \$1,500,000 investment into Eldorado at Exhibit D which clearly and
6 unequivocally states the following: Seller [Rogich and the Rogich Trust]
7 confirms that certain amounts have been advanced to or on behalf of the
8 Company [Eldorado] by certain third-parties [including Nanyah], as referenced in
9 Section 8 of the Agreement. Exhibit D also memorializes Nanyah's \$1,500,000
10 investment into Eldorado. 1 PA 0075.
11
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13 **B. PROCEDURAL HISTORY.**

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15 The first complaint in this matter was filed on July 31, 2013. 1 PA 0001-
16 21. On October 21, 2013, the plaintiffs filed an amended complaint. 1 PA 0022-
17 42. In the amended complaint, plaintiffs Carlos Huerta and Go Global alleged
18 three claims for relief against Rogich; (1) breach of express contract; (2) breach
19 of covenant of good faith and fair dealing; and (3) negligent misrepresentation.
20 Plaintiff Nanyah alleged a claim of unjust enrichment against Eldorado. 1 PA
21 0022-42.
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24 On October 1, 2014, the district court entered an order granting summary
25 judgment on Nanyah's unjust enrichment claim, based on a determination that the
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1 action was barred by the statute of limitations. 1 PA 0043-45. On appeal, this
2 court reversed the district court's erroneous grant of summary judgment, holding
3 that the district court's determination that the statute of limitations commenced to
4 run on the date of Nanyah's original \$1.5 million investment into Eldorado was
5 an incorrect statement of law (the "Decision"). 1 PA 0047. This Court also
6 stated that from the record there appeared to be genuine issues of material fact
7 with respect to when Nanyah discovered that Eldorado breached its obligation to
8 repay it for its \$1.5 million investment. Id. This court then remanded the matter
9 back to the district court for further proceedings to determine the date Eldorado
10 breached its obligation to repay Nanyah.⁴

15 On November 4, 2016, Nanyah filed a separate complaint initiating a new
16 action against a number of defendants other than Eldorado, specifically alleging:
17 (1) breach of contract against the Rogich Trust, Sig Rogich, Teld, and Peter
18

21 ⁴ This Court's Decision is the law of the case relating to Nanyah's \$1.5
22 million investment into Eldorado. In the present case, Nanyah's \$1.5 million
23 invested into Eldorado was established by the Decision and the parties are barred
24 from contesting the existence of this \$1.5 million investment in the district court
25 proceedings. LoBue v. State ex rel. Dep't of Highways, 92 Nev. 529, 532, 554
26 P.2d 258, 260 (1976) ("Where a judgment is reversed by an appellate court, **the
judgment of that court is final upon all questions decided and those questions
are no longer open to consideration.** The Court to which the cause is remanded
can take only such proceedings as conform to the judgment of the appellate
tribunal.") (emphasis added)).

1 Eliades; (2) contractual breach of the implied covenant of good faith and fair
2 dealing against the Rogich Trust, Sig Rogich, Teld, and Peter Eliades; (3) tortious
3 breach of the implied covenant of good faith and fair dealing against the Rogich
4 Trust, Rogich, Teld, and Peter Eliades; (4) intentional interference with contract
5 against Rogich, Teld, Peter Eliades, the Eliades Trust, and Imitations; (5)
6 constructive trust against the Eliades Trust; (6) conspiracy against all defendants;
7 (7) fraudulent transfer; (8) declaratory relief; and (9) specific performance. 1 PA
8 0049-67. These additional claims were based on the Rogich Trust's specific
9 contractual agreement to repay Nanyah its \$1.5 million investment on Eldorado's
10 behalf, i.e., as Eldorado's surety.

11
12 On March 31, 2017, the parties agreed to consolidate the 2016 action with
13 the remanded unjust enrichment case. 1 PA 0068-71.

14
15 The district court granted summary judgment as to the Eliades defendants
16 in an order entered on October 5, 2018. That order is the source of the
17 undisputed facts recited above. The district court granted summary judgment as
18 to the Eliades defendants based, in pertinent part, on the district court's finding as
19 a matter of law, that the Rogich Trust **"specifically agreed to assume the**
20 **obligation to pay Nanyah its . . . debt."** 1 PA 0078 (emphasis added). Further,
21 the district court found that the October 30, 2008, purchase agreement confirmed
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1 that the “**Eliades Defendants would not be responsible for the Rogich Trust’s**
2 **obligation to Nanyah.**” 1 PA 0078 (emphasis added). Accordingly, because the
3
4 “Eliades Defendants did not specifically assume[] the Rogich Trust’s obligation
5 to repay Nanyah its \$1,500,000.00 investment into Eldorado,” the Eliades
6 Defendants were all dismissed from the litigation. 1 PA 0078.

8 **C. THE ORDER AT ISSUE IN THIS WRIT PETITION.**

9 This matter was set for a five-day trial, to commence on April 22, 2019. 2
10 PA 0141. The claims which remained, and were to be tried, were: (1) breach of
11 contract against the Rogich Trust and Rogich; (2) contractual breach of the
12 implied covenant of good faith and fair dealing, against the Rogich Trust and
13 Rogich; (3) tortious breach of the implied covenant of good faith and fair dealing
14 against the Rogich Trust and Rogich; (4) conspiracy against the Rogich Trust,
15 Rogich, and Imitations; (5) breach of implied in fact contract against Eldorado;
16 and (6) unjust enrichment against Eldorado. 2 PA 0147-148.

17
18
19 One week before trial was to begin, Rogich and the Rogich Trust filed a
20 request for judicial notice, specifically requesting that the district court take
21 notice of NRS 163.120, which provides, in pertinent part:

22
23
24 A judgment may not be entered in favor of the plaintiff in the action
25 unless the plaintiff proves that within 30 days after filing the action, or
26 within 30 days after the filing of a report of an early case conference if
one is required, whichever is longer, or within such other time as the

1 court may fix, and more than 30 days before obtaining the judgment,
2 the plaintiff notified each of the beneficiaries known to the trustee
3 who then had a present interest . . . of the existence and nature of the
4 action.

5 1 PA 0091-94.

6 The next day, (and still a week prior to trial) Nanyah filed an emergency
7 motion to address the notice and/or continue the trial. 1 PA 0095-0139. The
8 Rogich Defendants (Rogich, the Rogich Trust and Imitations) filed an opposition
9 to Nanyah's emergency motion on April 18, 2019. 2 PA 0270-280. **Prior to**
10 **trial**, the district court held a hearing on the emergency motion on April 18,
11 2019, and ordered the parties to file additional briefing with respect to the scope
12 of the district court's discretion. 2 PA 0281-300.

13 Nanyah and the Rogich Defendants each filed supplemental briefs on April
14 21, 2019, and the district court held a hearing on April 22, 2019. The district
15 judge ruled from the bench that "The whole point of that statute is to allow
16 intervention. . . . There's no way those beneficiaries can seek to intervene at this
17 point. So I am going to dismiss the trust." 2 PA 0328-344. The parties all
18 agreed to a suspension of the trial to allow Nanyah to file the instant writ. 2 PA
19 0341. The Court also refused to allow the claims against the Rogich Trust to be
20 tried to the jury and the entry of judgment suspended pending compliance with
21 NRS 163.120's provisions. 2 PA 340:13-15.

1 The court entered an order on April 30, 2019, memorializing the ruling and
2 dismissing the Rogich Trust with prejudice. 2 PA 0345-348.

4 ARGUMENT

5 A. WRIT RELIEF IS THE ONLY MEANS OF REDRESS FOR 6 PETITIONERS.

7 A writ of mandamus is available “to compel the performance of an act that
8 the law requires as a duty resulting from an office, trust, or station; or to compel
9 the admission of a party to the use and enjoyment of a right or office to which the
10 party is entitled and from which the party is unlawfully precluded by such
11 inferior tribunal, corporation, board or person.” NRS 34.160. Mandamus is
12 appropriate when discretion is manifestly abused or is exercised arbitrarily or
13 capriciously. Round Hill Gen. Improvement Dist. v. Newman, 97 Nev. 601, 637
14 P.2d 534 (1981). Writs of mandamus are utilized to control a manifest abuse of
15 or arbitrary or capricious exercise of discretion, or to clarify an important issue of
16 law. Bennett v. Eighth Judicial Dist. Ct., 121 Nev. 802, 806, 121 P.3d 605, 608
17 (2005). A writ of prohibition is available to arrest the “proceedings of any
18 tribunal, corporation, board or person exercising judicial functions, which such
19 proceedings are without or in excess of the jurisdiction of such tribunal,
20 corporation, board or person.” NRS 34.320.

1 “Writ relief is an available remedy, where . . . petitioners have no plain,
2 speedy and adequate remedy at law other than to petition this court.” Albany v.
3 Arcata Associates, 106 Nev. 688, 799 P.2d 566 (1990). In the instant matter, the
4 district court order being challenged is not one that permits an appeal pursuant to
5 NRAP 3A, and aside from a writ, Petitioners do not have a plain, speedy, and
6 adequate remedy. See De Luca Importing Co. v. Buckingham Corp., 90 Nev.
7 158, 159, 520 P.2d 1365, 1366 (1974) (“An order dismissing a claim where more
8 than one claim for relief is presented without an express determination by the
9 district court, that there is no just reason for delay, is not a final order appealable
10 under NRAP 3A(b)”).

11 Although Nanyah could file an appeal from a final order in this case, there
12 are compelling reasons why this court should intervene at this juncture, as it has
13 done in similar cases. For instance, this court has held:

14
15 In this case, although an appeal from a final judgment appears to be an
16 adequate and speedy remedy for the individual parties, resolving this
17 writ petition could affect the course of the litigation and thus promote
18 sound judicial economy and administration. Moreover, this petition
19 raises an important legal issue in need of clarification involving public
20 policy, which could resolve or mitigate related or future litigation.
21 Accordingly, we exercise our discretion to entertain Dr. Tam's petition
22 for writ of mandamus.”

23 Tam v. Eighth Judicial Dist. Court, 131 Nev. 792, 796, 358 P.3d 234, 237 (2015).
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1 This court has elected to intervene where: (1) judicial economy requires
2 consideration of the writ petition; (2) there are substantial issues of legal
3 importance: (3) entertaining the petition is necessary to clarify the law; and (4)
4 there is no question of fact, and a clear question of law is presented. All four of
5 those factors are present in the instant case, and this court should therefore
6 exercise its discretion to entertain the writ.
7

8
9 **1. THIS COURT SHOULD ENTERTAIN THE WRIT IN**
10 **THE INTEREST OF JUDICIAL ECONOMY.**

11 This court has recognized that considerations of judicial economy are
12 important in deciding whether to entertain a writ petition before a final judgment
13 has been entered. Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court, 130
14 Nev. 824, 828, 335 P.3d 199, 202 (2014); Helfstein v. Eighth Judicial Dist.
15 Court of Nev., 131 Nev. 909, 912-13, 362 P.3d 91, 94 (2015). Here, judicial
16 economy would be thwarted if Nanyah was forced to proceed to trial against the
17 remaining defendants, only to have this court find on appeal that the district court
18 erred by dismissing the Rogich Trust. At that point, a second trial would be
19 required, on the identical issues and contracts, as opposed to resolving the issue
20 now, and if Nanyah prevails, a single trial can be held with all the defendants. It
21 is clear that considerations of judicial economy and the avoidance of multiple
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1 jury trials (and the costs, judicial resources, and time associated therewith) are
2 best served by consideration of the issue here.

3
4 **2. THIS WRIT PETITION RAISES SUBSTANTIAL**
5 **LEGAL ISSUES OF GENERAL IMPORTANCE.**

6 The instant writ petition also raises a substantial legal issue of general
7 importance, namely, the application of NRS 163.120(2) and whether the phrase
8 “**or within such other time as the court may fix**” should be ascribed its plain
9 meaning, thereby allowing the district court the discretion to set a time for
10 notifying the beneficiaries of a trust of a pending legal action, so long as it is
11 done at least 30 days before “the entry” of the judgment. Consideration of this
12 issue clearly comports with this court’s desire “to limit our discretion to those
13 cases which presented serious issues of substantial public policy, or which
14 involved important precedential questions of statewide interest.” Poulos v.
15 Eighth Judicial Dist. Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).
16

17 Further, the issue of statutory interpretation is an issue of law. Therefore,
18 this Court’s review of the district court’s order and interpretation of NRS 163.120
19 is a matter of law reviewed de novo. Barbara Ann Hollier Tr. v. Shack, 131 Nev.
20 Adv. Op. 59, 356 P.3d 1085, 1089 (2015) (“Statutory interpretation is a question
21 of law that we review de novo.” (internal quotations omitted)).
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1 **3. CLARIFICATION OF THE LAW IS REQUIRED.**

2 “Additionally, we may exercise our discretion where, as here, an important
3 issue of law requires clarification.” Smith v. Eighth Judicial Dist. Court, 113
4 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). It is apparent that the application of
5 NRS 163.120(2) requires clarification, as demonstrated by the district court’s
6 obvious confusion in this case and the district court’s clear refusal to recognize
7 that the term “or” creates disjunctive avenues to provide notice as long as it is
8 merely done prior to “the entry” of judgment.
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12 **4. THE ISSUES RAISED IN THIS WRIT PETITION ARE**
13 **PURELY LEGAL.**

14 “We have consistently attempted to reserve our discretion for those cases
15 in which there was no question of fact, and in which a clear question of law,
16 dispositive of the suit, was presented for our review. *See* Bottorff v. O'Donnell,
17 96 Nev. 606, 614 P.2d 7 (1980).” Poulos v. Eighth Judicial Dist. Court, 98 Nev.
18 453, 455, 652 P.2d 1177, 1178 (1982). Resolution of the instant writ petition
19 depends entirely on a legal issue, specifically whether the plain language of NRS
20 163.120(2) should be given effect.
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24 Based on the foregoing, it is clear that this court should exercise its
25 discretion and entertain the writ. Turning next to the merits of the writ petition, it
26 becomes clear that the relief requested should be granted.

1 **B. THE PLAIN LANGUAGE OF NRS 163.120 PROVIDES THAT**
2 **THE COURT MAY ALLOW NOTICE TO BENEFICIARIES**
3 **“WITHIN SUCH OTHER TIME AS THE COURT MAY FIX”.**

4 The district court indicated that it believed its “hands were tied” with
5 regard to allowing Nanyah to proceed with providing notice to any alleged
6 “other” beneficiaries of the Rogich Trust. 2 PA 0290. Specifically, the district
7 court claimed that it could not continue the trial and could not suspend entry of
8 judgment under the rule because it was only limited to consideration of
9 subsection (1) and (2) of NRS 163.120. Contrary to the district court’s
10 perception, the district court’s hands are not “tied”.
11

12 The clear and unambiguous language of the statute provides three (3)
13 separate times when notice can be provided to beneficiaries: (1) “within 30 days
14 after filing the action”, (2) “**or** within 30 days after the filing of a report of an
15 early case conference if one is required, (3) “**or within such other time as the**
16 **Court may fix**, and more than 30 days before obtaining the judgment” (emphasis
17 added). In this case, notice was not provided to the beneficiaries within 30 days
18 after filing the action, nor was notice provided within 30 days after the filing of
19 the early case conference report. Nonetheless, notice could still be timely
20 provided under the third provision, so long as the district court set a time that was
21 30 days before the entry of the judgment.
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1 **1. “OR” IS DISJUNCTIVE.**

2 ““When construing a statute, this court looks to the words in the statute to
3 determine the plain meaning of the statute” Nevada v. Daniel, 129 Nev.
4 692, 309 P.3d 1041, 1043 (2013) (citation omitted). “The plain and ordinary
5 meaning of the word ‘or’ is well established. When used in a statute, the word
6 ‘or’ indicates an intention to designate separate, disjunctive categories.” Eddie E.
7 v. Superior Court, 234 Cal. App. 4th 319, 327, 183 Cal. Rptr. 3d 773, 779 (Cal.
8 Ct. App. 2015). NRS 163.120 plainly states that there are 3 separate timing
9 situations to provide notice to beneficiaries—**1 or 2 or 3**. The Court’s hands are
10 not “tied” solely to considering situation 1 or 2. The district court erred, as a
11 matter of law, by deciding not to address the “or 3” at all.

12 Statutory construction of the use of the term “or” in NRS 163.120(2)
13 clearly means that Nanyah’s motion seeking to proceed with notice to the
14 beneficiaries after the jury verdict and before entry of judgment is entirely
15 appropriate and warranted in this case. To artificially claim that the Court’s
16 hands are “tied” and that the district court can only consider situation 1 or 2 as a
17 basis to deny Nanyah’s requested relief is clear error and is a total disregard for
18 the legislature’s use of the term “or” repeatedly in the statute to define disjunctive
19 and separate events. *See e.g.*, State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d

1 588, 591 (2004) (“By using the disjunctive ‘or, the statute clearly indicates”
2 alternative activities); Jensen v. Sheriff, White Pine Cty., 89 Nev. 123, 125, 508
3 P.2d 4, 5 (1973) (use of word “or” in the statute “spells out the several specific
4 acts in the disjunctive, and any one of them is sufficient”); Shell Petroleum
5 Corp. v. Royal Petroleum Corp., 135 Tex. 12, 21, 137 S.W.2d 753, 758 (Comm'n
6 App. 1940) (“In its ordinary use the term ‘or’ is disjunctive, and alternative in its
7 effect.”); 154 ALR 866 (“The word ‘or’ when used in a statute, is almost always
8 disjunctive”).

12 **2. NOTICE DOES NOT HAVE TO OCCUR PRIOR TO**
13 **TRIAL.**

14 As Nanyah has consistently pointed out, the NRS 163 notice does not have
15 to occur prior to trial and, instead, the case could be tried to verdict and,
16 thereafter, the district court could suspend entry of judgment pending notice to
17 any designated beneficiary. The statute does not preclude Nanyah’s claims
18 against the Rogich Trust from being tried to the jury and does not prevent a jury
19 from rendering a verdict either for or against the Rogich Trust.

22 This exact issue was addressed by the Texas Supreme Court in
23 Transamerican Leasing Co. v. Three Bears, Inc., 586 S.W.2d 472, 476–77 (Tex.
24

1 1979).⁵ The Texas Supreme Court addressed the notice to beneficiaries
2 requirement after judgment had already been entered. **Invoking the authority**
3 **granted to it under subsection (3), the trial court vacated the judgment and**
4 **then allowed the prevailing party to proceed with 163's notice requirements.**
5

6 In holding that the district court had the authority to vacate the judgment, suspend
7 entry of the judgment and allow the plaintiff to provide 163 notice to the
8 beneficiaries, the Texas Supreme Court stated:
9

10 **The requirement for a notice does not always require notice in**
11 **time for trial**, since the statute places some discretion with the court
12 to require the notice "within such other time as the court may fix" so
13 long as it is thirty days before judgment.

14 Id. (emphasis added). Allowing a plaintiff to notice beneficiaries of a trust **after** a
15 trial has been completed against a trustee has been repeatedly held to be a proper
16 exercise of the Court's discretion.⁶
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19
20 ⁵ Authority from other states is compelling and persuasive because NRS
21 163.120 is a part of the Uniform Trust Act. Like Nevada, other states have
22 adopted the Uniform Trust Act.

23 ⁶ In re Pfizer's Estate, 33 N.J. Super. 242, 265, 110 A.2d 40, 53 (Ch.
24 Div.), aff'd, 17 N.J. 40, 110 A.2d 54 (N.J. 1954) ("inasmuch as the cause has
25 been fully heard and argued without the Attorney-General having been joined as
26 a party, an order may be entered joining the Attorney-General of the State as a
party, process should be served upon him, and if he shall be satisfied that a
correct conclusion has been reached, he may file a formal answer and submit to
the judgment of the court without further hearing or proceedings. However, no

1 Clearly the Texas Supreme Court in Transamerican did not consider the
2 trial court's hands to be "tied". Instead, the Texas Supreme Court found that the
3 district court acted properly in vacating the judgment and allowing the plaintiff
4 the opportunity to comply with 163's requirements.⁷
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8 judgment will be entered until the Attorney-General has been made a party and
9 has been afforded an opportunity to be heard.").

10 ⁷ The Court in Transamerican addressed the notice to beneficiaries
11 requirement after judgment had already been rendered but during the period the
12 Court was capable of vacating the judgment and stated:

13 When this matter was first called to the attention of the trial court, it
14 vacated the original judgment while it still had jurisdiction to do so. . . .
15 After the judgment was vacated, Transamerican caused notice of the suit to
16 be sent to the beneficiaries, and the court also appointed a guardian ad
17 litem to represent the two minor contingent beneficiaries. **The trial court**
18 **also ordered the beneficiaries to show cause why judgment should not**
19 **be rendered in the case. The beneficiaries' response to the show cause**
20 **order was that a new trial was mandatory since the notice was not sent**
21 **until after the jury had returned its verdict. On August 17, 1976, the**
22 **trial court again rendered judgment for Transamerican against both Three**
23 **Bears and the McCreless Trust.**

24 The beneficiaries acknowledge that the notices complied with the
25 statutory requirement that they be sent "more than thirty (30) days prior to
26 obtaining the judgment," but insist that the technical compliance did not
allow the beneficiaries the opportunity to participate in the trial of the case.
... **The beneficiaries in this instance have not been able to show**
anything they would have done differently or in addition to what was
done in defense of the Trust liability if they had actually participated
in the trial. Prior to the court's judgment on August 17, 1976, the
beneficiaries presented nothing to the court to suggest any beneficiary
had been prejudiced by a failure to receive an earlier notice, or that

1 The Texas Supreme Court did not seek to prejudice the plaintiff in that
2 action by refusing to grant appropriate and warranted relief—even after judgment
3 had already been rendered against the trust in that case. In Transamerican the
4 jury had already rendered a verdict against the trust. The court entered judgment
5 on the verdict. When the issue of notice to beneficiaries was brought to the
6 court’s attention, the court vacated the judgment and allowed the 30-day notice to
7 be sent to the beneficiaries. The court then entered an order to show cause to the
8 beneficiaries to explain why the judgment should not be rendered. The trustee
9 who was overseeing the entire litigation was also the primary beneficiary of the
10 trust. The court held that the trustee/beneficiary “**ably participated in the**
11 **defense of the case**” therefor 163’s provisions were fully satisfied. The Texas
12 Supreme Court held that the district court’s actions in vacating judgment and
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20 **the trial would have been conducted any differently if all beneficiaries**
21 **had participated. The trustees were also the principal beneficiaries,**
22 **and they answered and ably participated in the defense of the case.**
23 **None of the beneficiaries who did not participate in the trial have ever**
24 **asserted any conflict between their *477 interests and the trustee-**
25 **beneficiaries or that their interests were not adequately represented by**
26 **the trustees. In the absence of a conflict of interest or of a pleading**
that they were inadequately represented, the beneficiaries who did not
participate in the trial were not necessary parties to the case. . . .

586 S.W.2d at 476-477 (emphasis added).

1 suspending entry of judgment to address NRS 163's notice requirements was a
2 proper and appropriate exercise of the court's discretion.
3

4 Similarly, the district court asserted that the alleged beneficiaries of the
5 Rogich Trust were not able to be provided the opportunity to intervene, therefore,
6 the Rogich Trust had to be dismissed. However, the district court undertook no
7 analysis to determine if the alleged beneficiaries had any rights to intervene, had
8 any legal basis supporting intervention and had any legal separate and distinct
9 legal defenses to the district court's prior October 5, 2018, Order holding the
10 Rogich Trust liable for repayment of Nanyah's \$1.5 million investment into
11 Eldorado. Again, the district court held as a matter of law that the Rogich Trust
12 contractually agreed to repay Nanyah its \$1.5 million investment. As the district
13 court further found, the Rogich Trust's liability to repay Nanyah its \$1.5 million
14 is clear and unambiguous. As the Texas Supreme Court noted, beneficiaries do
15 not have an automatic right to intervene and are not indispensable parties.
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21 **3. NEVADA CASE LAW ALLOWS PARTIES TO**
22 **INTERVENE AT ANY TIME PRIOR TO THE ENTRY**
23 **OF JUDGMENT.**

24 In the order at issue, the district court specifically stated, "NRS 12.130
25 provides that an interested person **must** intervene in an action '[b]efore the
26 trial.'" 2 PA 0347 (emphasis added). The district court's interpretation of NRS

1 12.130 was again in total error as the statute does not require that intervention
2 *must* happen before trial.
3

4 Rather, the complete phrase from NRS 12.130(1)(a) is: “Before the trial,
5 any person *may* intervene in an action or proceeding” (emphasis added).⁸
6
7 “May” is discretionary, not mandatory, and the district court again wrongfully
8 interpreted this statute to achieve its prejudicial objective of dismissing the
9 Rogich Trust from this action.⁹
10

11 This is not the end of the analysis, however, because NRS 12.130(1)(c)
12 provides: “Intervention is made as provided by the Nevada Rules of Civil
13 Procedure.” NRCP 24 is the rule pertaining to intervention, and it is also not so
14 rigid as the district court in this case would like to believe.
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18 ⁸ Due to the “suspension” of the trial in this action, the beneficiaries remain
19 fully capable of intervening if such action is warranted “prior to” trial in this
20 action. This is because the use of the phrase “suspension” of the trial is a
21 misnomer. The trial was never actually started. Other than the ruling addressed
22 herein, no other action occurred on April 22, 2019; no jury was empaneled, no
23 evidentiary stipulations were placed on the record and no exhibits were marked.
24 Further, there is no record of any jury panel even being called for the case.

25 ⁹ Supreme Court Rule 2(9) (“‘may’ is permissive.”); Ewing v. Fahey, 86
26 Nev. 604, 607, 472 P.2d 347, 349 (1970) (“the rule is best expressed in this
manner: ‘Generally in construing statutes, ‘may’ is construed as permissive”);
Sierra Club v. Johnson, 614 F. Supp. 2d 998, 1001 (N.D. Cal. 2008) (court “cannot
ignore the plain, permissive meaning of the word may.”).

1 The only requirement in NRCP 24 is that intervention must be “timely.”
2
3 This court has observed that, “[o]ur cases generally reflect that intervention is
4 timely if the procedural posture of the action allows the intervenor to protect its
5 interest.” LoMastro v. Am. Family Ins. Grp. (Estate of LoMastro), 124 Nev.
6 1060, 1070 n.29, 195 P.3d 339, 347 (2008). Further, “[t]imeliness is a
7 determination that lies within the sound discretion of the trial court.” Cleland v.
8 Eighth Judicial Dist. Court, 92 Nev. 454, 456, 552 P.2d 488, 490 (1976).
9

10
11 Even if the sole purpose of NRS 163.120 was to allow the beneficiaries to
12 intervene, a proposition for which neither the Rogich Trust nor the district court
13 has provided any authority, the beneficiaries could be allowed to intervene now
14 and/or even after a jury verdict, so long as judgment has not been entered. In
15 fact, Nanyah specifically requested a short 60 day continuance to allow it to
16 notify the beneficiaries and to proceed to trial, but the district court denied the
17 request, then strangely used its denial to conclude that the beneficiaries could not
18 be notified in time to allow them to intervene prior to trial. Stated another way,
19 the district court denied a short continuance to allow the beneficiaries to
20 intervene (if warranted) then used its denial of a continuance to penalize Nanyah
21 and say the beneficiaries had no opportunity to intervene prior to trial. The
22 district court’s prejudice towards Nanyah in this instance is clear.
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1 Concededly, “[t]he plain language of NRS 12.130 does not permit
2 intervention subsequent to the entry of a final judgment.” Lopez v. Merit Ins.
3 Co., 109 Nev. 553, 556, 853 P.2d 1266, 1267-68 (1993). However, “entry” of a
4 judgment is a unique event. See e.g., NRAP 4(a)(4) (written notice of entry
5 triggers appeal period). But clearly NRS 12.130 contemplates that intervention
6 can happen any time prior to “the entry of a final judgment”; even after the jury
7 has reached a verdict, so long as judgment has not been entered.
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11 In the instant case, there is still time for the beneficiaries to be notified, and
12 if they wish to intervene, the district court clearly has the ability to allow them to
13 do so. To allow notification of the beneficiaries at this point (or even later, so
14 long as judgment has not been entered), is consistent with and does not run afoul
15 of NRS 12.130, NRCP 24, or this court’s jurisprudence. As the Texas Supreme
16 Court held in Transamerican Leasing Co. v. Three Bears, Inc., 586 S.W.2d 472,
17 (Tex. 1979) the beneficiaries could not show any basis to intervene so they were
18 not necessary parties and intervention by the beneficiaries was rejected. Id. at
19 476-477 (“None of the beneficiaries who did not participate in the trial have ever
20 asserted any conflict between their *477 interests and the trustee-beneficiaries or
21 that their interests were not adequately represented by the trustees. In the
22 absence of a conflict of interest or of a pleading that they were inadequately
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1 represented, the beneficiaries who did not participate in the trial were not
2 necessary parties to the case. . . .”).

3
4 **C. THE DISTRICT COURT FAILED TO EXERCISE THE**
5 **CLEAR DISCRETION IT HAS PURSUANT TO NRS 163.120,**
6 **AND MANDAMUS IS THE APPROPRIATE REMEDY.**

7 “[M]andamus may lie to compel a court to exercise discretion that it
8 unquestionably has, when it fails to do so.” Lund v. Eighth Judicial Dist. Court,
9 127 Nev. 358, 363, 255 P.3d 280, 284 (2011). “Indeed, when, as here, legal error
10 leads the district court to decline to exercise discretion that it indisputably has ...
11 mandamus may lie, in the discretion of this court, to avert further avoidable
12 error.” Id.

13
14 As discussed above, NRS 163.120 gives the district court discretion to
15 extend the time within which the plaintiff must provide notice to the
16 beneficiaries, and the district court made an error of law which led the court to
17 utterly fail to exercise that discretion. This court should grant the instant petition
18 for writ of mandamus in order to avert further avoidable error.

19
20 The district court’s error in misinterpreting the statute is compounded by
21 the fact that if the district court had exercised its discretion, the district court
22 should have allowed additional time in which to notify the purported
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1 beneficiaries.¹⁰ The Rogich Trust waited until the eve of trial to even allude to
2 any beneficiaries. Until that point, Mr. Rogich was the only individual who had
3 ever been identified in connection with the trust. Mr. Rogich and the Rogich
4 Trust have never produced a copy of the trust documents, never disclosed any
5 beneficiaries, nor have they ever identified any indispensable parties or asserted
6 the lack of indispensable parties as a defense. The Rogich Trust never identified
7 any alleged beneficiaries as potential witnesses pursuant to NRCp 16.1, and
8 never asserted any affirmative defense that an “indispensable party” had not been
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14 ¹⁰ The egregiousness of the district court’s action, and its clear prejudicial
15 intent and application against Nanyah, is demonstrated by the district court’s
16 granting of the Rogich Trust’s request for a continuance of the trial earlier in the
17 proceedings. The Rogich Trust’s request for a continuance was made by oral
18 motion during the calendar call for the trial when the trial was set to commence on
19 November, 2018. 1 PA 0085. One of the Rogich Trust’s attorneys requested a
20 continuance for purely “personal reasons”. The attorney requesting the
21 continuance was not even the lead trial counsel. Over objection, the district court
22 granted the oral request for continuance. 1 PA 0087. In granting the continuance,
23 the district court undertook no considerations of the prejudice to Nanyah or that the
24 continuance was unrelated to any issue in the case. Instead, the district court
25 granted the Rogich Trust’s request for a continuance for purely personal reasons
26 which was clearly prejudicial to Nanyah. Then, when Nanyah requested a short
continuance of the trial to comply with NRS 163, the district court again ruled
against Nanyah, denied the request and ruled that because the trial was not
continued, the beneficiaries could not receive notice prior to trial pursuant to NRS
163 so the claims against the Rogich Trust were dismissed. The district court’s
prejudicial rulings and cannot be overlooked.

1 named.¹¹ In addition, the Rogich Trust never once asserted in the proceedings
2 that NRS 163 was applicable or that notice needed to be provided to any alleged
3 beneficiaries even though the Rogich Trust opposed two (2) separate summary
4 judgment motions filed by Nanyah.
5

6
7 Further, Rogich, on two separate occasions, as an individual and in his
8 capacity as Trustee of the Rogich Trust, made offers of judgment agreeing to
9 allow judgment to be entered in Nanyah's favor **against** the Rogich Trust (the
10 "Offers of Judgment"). 1 PA 0082-83 (Offer of Judgment 10/29/18) and 1 PA
11 0088-90 (Offer of Judgment 4/1/19). These Offers of Judgment must be treated
12 as judicial admissions admitting that Rogich was acting as the sole beneficiary
13 and/or had full authority from the beneficiaries (assuming any other than Rogich
14 actually exist) to allow judgment to be entered **against** the Rogich Trust.
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17
18 It is incongruous to believe that the Rogich Trust never asserted in
19 opposition to summary judgment NRS 163's provisions and also formally
20 extended two (2) separate Offers of Judgment pursuant to NRCP 68, authorizing
21 judgment to be entered against the Rogich Trust, then on the eve of trial claim
22 that a judgment could not be entered against the Rogich Trust because of NRS
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26 ¹¹ See e.g., 1 California Affirmative Defense 2d, §6:33 (2nd ed. 1995) (failure to join indispensable party an affirmative defense).

1 163's provisions. It is certain this Court can see the disingenuous nature of the
2 Rogich Trust's conduct.

3
4 **D. JUDICIAL ESTOPPEL BARS THE ROGICH TRUST'S**
5 **INVOCATION OF NRS 163'S PROVISIONS.**

6 Judicial estoppel applies in a proceeding when a party undertakes
7 affirmative actions and/or admits certain facts and prevents the party from
8 subsequently seeking to disavow those actions and/or facts. Sterling Builders,
9 Inc. v. Fuhrman, 80 Nev. 543, 549, 396 P.2d 850, 854 (1964) (quoting 31 C.J.S.
10 Estoppel § 121 at 649) (" 'Under the doctrine of judicial estoppel a party may be
11 estopped merely by the fact of having alleged or admitted in his pleadings in a
12 former proceeding the contrary of the assertion sought to be made.' ").

13
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15
16 Judicial estoppel bars a party from playing "fast and loose" with the legal
17 system. In the present case, the Rogich Trust made affirmations of fact and law
18 offering to allow Nanyah to obtain "judgment" against the Rogich Trust. 1 PA
19 0082-83; 88-90. The Rogich Trust undertook this activity pursuant to NRCP 68.
20 The Rogich Trust extended the Offers of Judgment on two (2) separate occasions.

21
22 The Rogich Trust is now precluded in these proceedings from contending
23 that NRS 163's provision bar judgment against it when the Rogich Trust
24 specifically authorized and represented pursuant to NRCP 68 that judgment could
25 in fact be entered against it. It is in this very situation that the doctrine of judicial
26

1 estoppel is applied. Bradley v. Harcourt, 104 F.3d 267, 272 (9th Cir. 1996)
2 (“Judicial estoppel, also known as the doctrine of inconsistent positions, ‘is
3 intended to protect against a litigant playing fast and loose with the courts,’ gaining
4 an advantage by taking one position, then seeking to gain a second advantage by
5 taking an incompatible position.”); Rissetto v. Plumbers & Steamfitters Local 343,
6 94 F.3d 597, 600-01 (9th Cir. 1996) (“Judicial estoppel, sometimes also known as
7 the doctrine of preclusion of inconsistent positions, precludes a party from gaining
8 an advantage by taking one position, and then seeking a second advantage by
9 taking an incompatible position. . . . Judicial estoppel is intended to protect against
10 a litigant playing fast and loose with the courts.”).

14 The Rogich Trust’s affirmative conduct in this case demonstrates that
15 Rogich was either the only beneficiary and/or the participation of the
16 beneficiaries was irrelevant and/or the beneficiaries had authorized Rogich to full
17 authority to proceed in this action to protect their interests. Supporting this, the
18 Rogich Trust obtained judgment in its favor and received \$240,000 in fees and
19 costs. 2 PA 0307. Throughout this litigation, Rogich has failed to identify any
20 other beneficiaries of the Rogich Trust, despite requests from Nanyah pursuant to
21 NRS 163.120(2), leading one to the conclusion that Rogich is in fact the sole
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1 beneficiary.¹² Finally, records with the Nevada Gaming Control Board show that
2 Rogich is both the beneficiary and trustee of the Rogich Family Trust. 1 PA
3 0120-122. Given the ambush tactics exercised by the Rogich Trust, the district
4 court should have found good cause to “fix some other time” as provided by NRS
5 163.120(2).
6

7
8 **E. THE COURT MUST EXERCISE ITS DISCRETION TO**
9 **DECIDE NANYAH’S CLAIMS AND RIGHT TO RECOVERY**
10 **ON “THE MERITS”.**

11 The Nevada Supreme Court has stated that it is clear public policy for
12 district courts to exercise their discretion to decide disputes on the merits. As
13 stated by the Nevada Supreme Court in Franklin v. Bartsas Realty, Inc., 95 Nev.
14 559, 563, 598 P.2d 1147, 1149 (1979): “One of the proper guides to the exercise
15 of discretion is: The basic underlying policy to have each case decided upon its
16 merits. In the normal course of events, justice is best served by such a policy.”
17 Id.; Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 697 (1978) (“It is our
18 underlying policy to have each case decided upon its merits.”). By dismissing
19 the claims against the Rogich Trust based on an alleged failure to notify
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24 ¹² Unfortunately, due to the Rogich Trust’s ambush tactics, it is quite possible
25 for the Rogich Trust to alter who the beneficiaries are under the trust so as to
26 artificially attempt to create who will claim they did not know of the litigation that
has been proceeding between multiple parties, with multiple attorneys and in
multiple courts.

1 beneficiaries (the existence of which Nanyah had not even been informed), the
2 district court totally thwarts this public policy. Further, the district court
3 undertook no efforts to determine if in fact the beneficiaries had actual and/or
4 constructive knowledge of the extensive litigation that had been proceeding for
5 years.
6
7

8 The better approach would be to allow the case to go to trial including the
9 claims against the Rogich Trust. If the jury finds in favor of the Rogich Trust,
10 then there is no issue under NRS 163.120(2), which requires that a judgment may
11 not be entered in favor of “the plaintiff” without notice to the beneficiaries of the
12 trust. If, on the other hand, the jury finds in favor of Nanyah, the Court must
13 exercise its discretion as requested by Nanyah to allow Nanyah to give NRS
14 163.120 notice to the Rogich Trust beneficiaries after jury verdict and prior to
15 entry of judgment. Only in such fashion is this Court complying with Nevada
16 public policy. *Id*; *see also United States v. Hosteen Tse-Kesi*, 191 F.2d 518, 520
17 (10th Cir. 1951) (“[court] is under a duty to decide cases upon their merits and
18 may not arbitrarily refuse to exercise its jurisdiction when invoked by appropriate
19 proceedings.”).
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1 **F. RULES OF STATUTORY CONSTRUCTION SUPPORT**
2 **NANYAH’S REQUEST.**

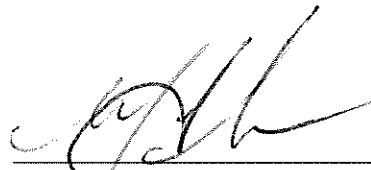
3 Nevada law is clear that the Court should construe a statute to avoid absurd
4 results. Las Vegas Sun v. District Court, 104 Nev. 508, 511, 761 P.2d 849, 851
5 (1988) ("statutes should be interpreted so as to effect the intent of the legislature
6 in enacting them; the interpretation should be reasonable and avoid absurd
7 results."); Moody v. Manny's Auto Repair, 110 Nev. 320, 325, 871 P.2d 935, 938
8 (1994) (a statute should always be construed so as to avoid absurd results). To
9 the extent the Court is under the impression that its “hands are tied” to only allow
10 notice under situation 1 or 2, the Court’s impression is incorrect and would
11 constitute an absurd result. The statute plainly and clearly identifies alternative
12 time periods to conduct notice to beneficiaries including prior to, during and even
13 after trial, i.e., situation 3. To disregard situation number 3 would constitute an
14 absurd interpretation of the statute given that this provision would be entirely
15 ignored.

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18 **CONCLUSION**

19 The district court in this matter erroneously concluded that it had no
20 discretion with respect to the timing of the notice to the beneficiaries. This legal
21 error resulted in the dismissal of the claims against the Rogich Trust with

1 prejudice. In the interest of judicial economy, and because there are important
2 legal issues that are generally applicable and should be resolved, this Court
3 should entertain the writ and grant the relief requested. To decide otherwise is to
4 promote and reward the Rogich Trust's gamesmanship and requires that this
5 Court ignore the district court's October 5, 2018 Order finding as a matter of law
6 that the Rogich Trust contractually agreed to assume Eldorado's obligation to
7 repay Nanyah its \$1.5 million investment.
8

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11 Respectfully submitted this 27th day of June, 2019.

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14 

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21 *Attorneys for Nanyah Vegas, LLC*
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1 **AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF PETITION FOR**
2 **WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, PROHIBITION**

3 STATE OF NEVADA)
4 : SS
5 COUNTY OF WASHOE)

6 MARK G. SIMONS, being first duly sworn depose and state under penalty
7 of perjury, as follows:

8 1. I am over the age of 18 years and have personal knowledge of the
9 facts stated herein, except for those stated upon information and belief, and as to
10 those, I believe them to be true. I am an attorney at Simons Hall Johnston PC and
11 am counsel for Petitioner Nanyah Vegas, LLC.
12

13 2. This Petition deals with the interpretation and application of NRS
14 163.120.
15

16 3. The Court's consideration of this Petition is necessary to clarify
17 important issues of law and procedure since NRS 163.120's express provisions
18 authorize the district court to enter any order necessary to provide notice—if
19 necessary—to any beneficiaries up to the moment prior to entry of judgment. The
20 discretion contained in NRS 163.120(2) even allows a trial to be completed and
21 verdicts rendered against a trust before notice is provided to trust beneficiaries.
22 When the district court ruled that NRS 163.120(2) did not contain discretionary
23 authority, the district court erred as a matter of law.
24
25
26


4. Further, this Court's consideration of this Petition would also serve to resolve an area of law that appears to be generating confusion with the district courts since the district court in this instance ignored the clear language of the statute and persuasive case law interpreting the identical provision from a uniform act.

5. I certify and affirm that this Petition for Writ of Mandamus, or in the Alternative, Prohibition is made in good faith and not for delay.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 27th day of June, 2019.

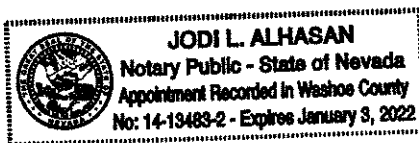
019.



MARK G. SIMONS

Subscribed and sworn to before me
this 27th day of June, 2019, by
Mark G. Simons, Esq., at Reno, NV.

Jodi Alban
NOTARY PUBLIC



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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL JOHNSTON PC, and that on this date I caused to be served a true copy of the **PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, PROHIBITION** on all parties to this action by the method(s) indicated below:

- ☒ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

Brenoch Wirthlin
Thomas Fell
Samuel S. Lionel
Fennemore Craig, P.C.
300 S. Fourth Street, Ste. 1400
Las Vegas, NV 89101
Attorneys for Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC

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Attorneys for Eldorado Hills, LLC, TELD, LLC, a Nevada limited liability company; PETER ELIADES, individually and as Trustee of the The Eliades Survivor Trust of 10/30/08

Honorable Nancy L. Allf
Eighth Judicial District Court, Dept. 27
200 Lewis Avenue
Las Vegas, NV 89101

DATED: This 27 day of June, 2019.


JODI ALHASAN