

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 11:24 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**

**PETITIONER'S**  
**APPENDIX**  
**VOLUME 2**

21                   MARK G. SIMONS, ESQ.  
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**CHRONOLOGICAL**

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES</u></b>
Complaint	7/31/13	1	PA_0001-0021
First Amended Complaint	10/21/13	1	PA_0022-0042
Order Granting Partial Summary Judgment	10/1/14	1	PA_0043-0045
Order of Reversal and Remand	2/12/16	1	PA_0046-0048
Complaint	11/4/16	1	PA_0049-0067
Stipulation for Consolidation	3/31/17	1	PA_0068-0071
Order: (1) Granting Defendants Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment; and (2) Denying Nanyah Vegas, LLC's Countermotion for Summary Judgment	10/5/18	1	PA_0072-0081
Offer of Judgment to Plaintiff Nanyah Vegas, LLC	10/29/18	1	PA_0082-0083
Minutes (Calendar Call)	11/1/18	1	PA_0084-0085
Minutes (Telephonic Conference)	11/5/18	1	PA_0086-0087
Offer of Judgment to Plaintiff Nanyah Vegas, LLC	4/1/19	1	PA_0088-0090
Request for Judicial Notice	4/15/19	1	PA_0091-0094

Nanyah Vegas, LLC's Emergency Motion to Address Defendant The Rogich Family Irrevocable Trust's NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120	4/16/19	1	PA_0095-0139
Nanyah Vegas, LLC's Pretrial Memorandum	4/16/19	2	PA_0140-0269
Opposition to Plaintiff's Emergency Motion to Address Defendant The Rogich Family Irrevocable Trust's NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120	4/18/19	2	PA_0270-0280
Transcript of Proceedings (Telephonic Conference)	4/18/19	2	PA_0281-0300
Nanyah Vegas, LLC's Supplement to Its Emergency Motion to Address Defendant the Rogich Trust's NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120	4/21/19	2	PA_0301-0315
The Rogich Defendants' Memorandum of Points and Authorities Regarding Limits of Judicial Discretion Regarding Notice Requirements Provided to Trust Beneficiaries Under NRS Chapter 163	4/21/19	2	PA_0316-0327

Recorder's Transcript of Motion Hearing	4/22/19	2	PA_0328-0344
Order	4/30/19	2	PA_0345-0348

<b><u>ALPHABETICAL</u></b>			
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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 **PETITIONER'S APPENDIX VOLUME 2** 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:

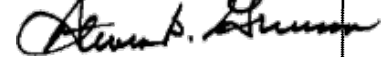
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Honorable Nancy L. Allf  
Eighth Judicial District Court, Dept. 27  
200 Lewis Avenue  
Las Vegas, NV 89101

DATED: This 27<sup>th</sup> day of June, 2019.

  
JODI ALHASAN



**PMEM**

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*Attorneys for Nanyah Vegas, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CARLOS A. HUERTA, an individual; CARLOS A.  
HUERTA as Trustee of THE ALEXANDER  
CHRISTOPHER TRUST, a Trust established in  
Nevada as assignee of interests of GO GLOBAL,  
INC., a Nevada corporation; NANYAH VEGAS,  
LLC, A Nevada limited liability company,

Plaintiffs,

v.

SIG ROGICH aka SIGMUND ROGICH as Trustee  
of The Rogich Family Irrevocable Trust;  
ELDORADO HILLS, LLC, a Nevada limited liability  
company; DOES I-X; and/or ROE  
CORPORATIONS I-X, inclusive,

Defendants.

NANYAH VEGAS, LLC, a Nevada limited liability  
company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability company;  
PETER ELIADAS, individually and as Trustee of  
the The Eliades Survivor Trust of 10/30/08;  
SIGMUND ROGICH, individually and as Trustee  
of The Rogich Family Irrevocable Trust;  
IMITATIONS, LLC, a Nevada limited liability  
company; DOES I-X; and/or ROE  
CORPORATIONS I-X, inclusive,

Defendants.

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

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

**NANYAH VEGAS, LLC'S**  
**PRETRIAL MEMORANDUM**

1 Plaintiff Nanyah Vegas, LLC ("Nanyah"), by and through its undersigned counsel,  
2 hereby submit its Pretrial Memorandum pursuant to EDCR 2.67. A jury trial of this matter  
3 is scheduled to commence on Monday, April 22, 2019. The parties will meet and confer  
4 in accordance with EDCR 2.67 regarding the subject matter of the pre-trial memorandum  
5 on Wednesday, April 17, 2019. Mark G. Simons will attend on behalf of Nanyah. Samuel  
6 Lionel and Brenoch Wirthlin will attend on behalf of Defendants Sigmund Rogich  
7 ("Rogich"), Individually and as Trustee of the Rogich Family Irrevocable Trust ("Rogich  
8 Trust") and Imitations, LLC ("Imitations") (hereinafter collectively referred to as the  
9 "Rogich Defendants" unless otherwise stated). Joseph Liebman will attend on behalf of  
10 Defendant Eldorado Hills, LLC ("Eldorado").  
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8	Eliades, Individually and as Trustee of the Eliades	
9	Survivor Trust of 10/30/08, And Teld, LLC’s Motion for	
10	Summary Judgment; and (2) Denying Nanyah Vegas,	
11	LLCs’ Countermotion for Summary Judgment.	<b>39</b>
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1 **I. STATEMENT OF THE UNDISPUTED FACTS.**

2 The following undisputed facts are taken from this Court's Order dated October 5,  
3 2018 (the "Order") (**Exhibit 1**) and affirmed on March 26, 2019 (**Exhibit 2**). The Court's  
4 two (2) Orders confirm and establish as "undisputed" the following.

5 In 2007, Nanyah invested \$1.5 million in Eldorado. All the defendants agreed  
6 Nanyah was entitled to repayment of its \$1.5 million investment or that Nanyah would be  
7 issued a membership interest reflecting its investment from Eldorado (the "Obligation").  
8 In 2008, the Rogich Trust specifically agreed to assume Eldorado's Obligation to Nanyah.  
9 As a matter of law, the Rogich Trust agreed to act as the surety for Eldorado's Obligation.  
10 Both Eldorado and the Rogich Defendants have failed, neglected and refused to repay  
11 Nanyah its \$1.5 million investment and Nanyah is entitled to judgment against the Rogich  
12 Defendants and Eldorado as requested.

14 The trial should be streamlined due to this Court having ruled on a number of  
15 summary judgment motions and found the existence of an extensive number of  
16 "undisputed facts" and "conclusions of law" in this case. The following are undisputed  
17 facts contained in the Court's Order of October 5, 2018:  
18

- 19 1. Eldorado was formed in 2005 for the purpose of owning and developing  
20 approximately 161 acres of land near Boulder City, Nevada. Eldorado was  
21 originally comprised of Go Global, Inc. (100% owned by Carlos Huerta) and  
the Rogich Trust.
- 22 2. In 2007, Huerta contacted Nanyah to invest. **In December of 2007,**  
23 **Nanyah wired \$1,500,000.00 which eventually was deposited into**  
**Eldorado's bank account. . . .**
- 24 3. In October of 2008, approximately ten months later, Teld purchased a 1/3  
25 interest in Eldorado for \$3,000,000.00. Concurrently, The Flangas Trust  
26 also purchased a 1/3 interest in Eldorado for \$3,000,000.00, which was  
27 subsequently transferred to Teld when the Flangas Trust backed out of the  
28 deal. Because Teld ended up with a larger percentage of Eldorado than  
originally contemplated, it was later agreed that the Rogich Trust would re-  
acquire 6.67% of Eldorado from Teld. As a result of these transactions, Go

Global (*i.e.*, Huerta) no longer owned an Eldorado membership interest, Teld owned 60% of Eldorado, and the Rogich Trust owned approximately 40% of Eldorado.

4. . . . **The Rogich Trust specifically agreed to assume the obligation to pay Nanyah its percentage interest in Eldorado or to pay Nanyah its \$1,500,000 invested into Eldorado.**

. . .

- 5.a.ii The October 30, 2008, Purchase Agreement **states** at Section 4 the following: **Seller [Go Global], however, will not be responsible to pay the Exhibit A Claimants their percentage or debt. This will be Buyer's [The Rogich Trust's] obligation. . . ."** The Exhibit A Claimants include Nanyah and its \$1,500,000.00 investment.

. . .

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

. . .

- 5.b.iv. Eliades acknowledges that **it was always the responsibility of Rogich and the Rogich Trust to repay Nanyah for its investment in Eldorado.**

. . .

- 5.d.i. As of August, 2012, **the debt owed to Nanyah of \$1,500,000.00 had not been paid.**

. . .

6. Any finding of fact set forth herein more appropriately designated as a conclusion of law shall be so designated.

7. The October 30, 2008, Purchase Agreement states that **The Rogich Trust specifically agreed to assume the obligation to pay Nanyah its percentage or debt . . . .**

. . .

14. Because the relevant agreements are clear and unambiguous, **this Court may determine the intent of the parties as a matter of law**, and is precluded from considering any testimony to determine the Eliades Defendants' so-called contractual liability. *Krieger v. Elkins*, 96 Nev. 839, 843, 620 P.2d 370, 373 (1980) (holding that testimony used to contradict or vary the written terms of an agreement is a violation of the parol evidence rule).

15. Based on the above, the Eliades Defendants never assumed the Rogich Trust's debt or obligation to Nanyah . . . .

. . .

21. . . . the Court concludes that that Eliades Defendants did not specifically assumed the Rogich Trust's obligation to repay Nanyah its \$1,500,000.00 investment into Eldorado . . . .

22. Any conclusion of law set forth herein more appropriately designated as a finding of fact shall be so designated.

**Exhibit 1** (emphasis added). On March 26, 2019, the Court affirmed its undisputed facts and conclusions of law in its Order, denied the Rogich Trust's NRCP 60(b) motion, and stated:

**The Court finds that no mistake, inadvertence, surprise or excusable neglect exists with respect to the Court's Order or the Court's Minute Order.**

**Exhibit 2, ¶16** (emphasis added).

Given the foregoing findings of fact and conclusions of law, the jury trial in this action should solely focus on Eldorado's use and retention of Nanyah's \$1.5 million and the defendants' various excuses for breaching the factually and legally established Obligation to repay Nanyah its \$1.5 million. The Court's prior findings of fact and conclusions of law require appropriate jury instructions be provided to the jury to ensure the jury's awareness of the conclusively established facts and their compliance with the legal requirements contained in the various contracts.

## **II. CLAIMS.**

1. First Claim for Relief. Breach of Contract – Rogich Trust/Sigmund Rogich.
2. Second Claim for Relief. Breach of the implied Covenant of Good Faith and Fair Dealing, Contractual – Rogich Trust/Sigmund Rogich.
3. Third Claim for Relief. Breach of the Implied Covenant of Good Faith and Fair Dealing, Tortious – Rogich Trust/Sigmund Rogich.

1 4. Sixth Claim for Relief. Conspiracy – Rogich Trust, Sigmund Rogich,  
2 Imitations.

3 5. Breach of Implied in Fact Contract: Eldorado. The factual and legal basis  
4 of this Obligation conclusively established by the Court's October 5, 2018  
Order and reaffirmed in its March 26, 2019 Order.<sup>1</sup>

5 6. Unjust Enrichment – Eldorado: Consolidated Action 4<sup>th</sup> Claim for Relief.

6 **III. AFFIRMATIVE DEFENSES.**

7 The affirmative defenses asserted by the Rogich Defendants and Eldorado are as  
8 follows:

9 1. The Complaint fails to state a claim against any of the Defendants.

10 2. Plaintiff's purported claims are barred by applicable statutes of limitations.

11 3. Plaintiff's purported claims are barred by the doctrine of waiver.

12 4. Plaintiff's purported claims are barred by the doctrine of estoppel.

13 5. Plaintiff's purported claims are barred by the doctrine of claim preclusion.

14 6. Defendants have always acted in good faith and fairly.

15 7. The alleged Membership Agreements are null and void and of no effect.

16 8. Plaintiff's claims are barred by applicable statutes of fraud.

17 9. There is a lack of consideration of Plaintiff's claims.

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<sup>1</sup> Eldorado has belatedly attempted to claim that this claim has not been properly asserted and has not been addressed by express or implied consent. Eldorado's belated argument is baseless. The Court's Order of October 5, 2018, has already established as an undisputed fact and as a matter of law the basis of the contractual Obligation owed by Eldorado to Nanyah.

1 **IV. CLAIMS AND DEFENSES TO BE ABANDONED.**

2 A. Plaintiff's claims to be abandoned: 8<sup>th</sup> (Declaratory Relief) and 9<sup>th</sup> (Specific  
3 Performance). Nanyah has previously elected to pursue its claim for damages rather  
4 than specific performance.

5 B. Defendants' defenses to be abandoned: unknown at this time.

6 **V. EXHIBITS.**

7 Attached hereto as **Exhibit 3** is Nanyah's list of trial exhibits.

8 Attached hereto as **Exhibit 4** is Nanyah's supplemental objections to the  
9 Defendants' lists of proposed exhibits.

10 **VI. AGREEMENTS AS TO THE LIMITATION OR EXCLUSION OF EVIDENCE.**

11 There are no agreements limiting or excluding evidence at this time.

12 **VII. LIST OF TRIAL WITNESSES.**

13 **1. Witnesses identified by the parties:**

- 14 a. Mr. Yoav Harlap  
15 b. Mr. Carlos Huerta  
16 c. Mr. Sigmund Rogich  
17 d. Mr. Peter Eliades  
18 e. Ms. Dorothy Eliades  
19 f. Ms. Melissa Olivas  
20 g. Mr. Ken Woloson  
21 h. Ms. Summer Rellamas  
22 i. Craig Dunlap  
23 i. Mr. Joseph Liebman

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1           **2.     Witnesses subpoenaed.**

- 2           a.     Carlos Huerta.
- 3           b.     Peter Eliades.
- 4           c.     Dorothy Eliades.
- 5           d.     Craig Dunlap.

6           **3.     Witnesses who may testify if needed:**

7           Unknown at this time.

8           **4.     Witnesses whose testimony is expected to be presented by**  
9           **deposition.**

10          Unknown at this time.

11           **VIII.    STATEMENT OF PRINCIPAL ISSUES OF LAW.**

12           In rendering its October 5, 2018, decision on the Eliades Defendants' motion for  
13           summary judgment, this Court made specific "undisputed" findings of fact and rendered  
14           conclusions of law based upon the Court's legal interpretation of the various contracts.  
15           Based upon those undisputed facts and conclusions of law, this Court dismissed a  
16           multitude of claims asserted against the Eliades Defendants finding that the Eliades  
17           Defendants did not contractually agree to repay Nanyah its \$1,500,000 investment.  
18           Instead the Court found that the Rogich Defendants specifically agreed to pay this  
19           "obligation" to Nanyah. The Court concluded that under its legal interpretation of the  
20           various contracts, the Rogich Defendants' legal and contractual duty to pay Nanyah its  
21           \$1,500,000 was not assumed by the Eliades Defendants. Based on the foregoing, this  
22           Court has already rendered binding and conclusive findings of fact that no party can  
23           challenge or seek to contest at trial. This is because if the facts are capable of challenge  
24           at trial, then the Court's entry of summary judgment dismissing all claims against the  
25           Eliades Defendants was in error. The Court's October 5, 2018, Order dismissing all  
26           Eliades Defendants was in error. The Court's October 5, 2018, Order dismissing all  
27           Eliades Defendants was in error. The Court's October 5, 2018, Order dismissing all  
28           Eliades Defendants was in error. The Court's October 5, 2018, Order dismissing all

1 claims against the Eliades Defendants was based upon undisputed facts and  
2 interpretation and application of the various contract provisions as a matter of law.

3 **A. THE PAROL EVIDENCE RULE APPLIES.**

4 The Court is barred from allowing any evidence at trial seeking to contest the  
5 Court's "undisputed facts" and "conclusions of law" pursuant to the parol evidence rule.  
6 Nanyah has previously sought an order applying the parol evidence rule, i.e., to exclude  
7 parol evidence submitted for the purpose of contradicting or varying the terms of the  
8 "clear and unambiguous" contracts. The Court denied Nanyah's motion (and motion for  
9 reconsideration) under the clearly erroneous ruling that (1) the Court did not specifically  
10 rule that Nanyah is not a third-party beneficiary of the various agreements (even though  
11 the Court ruled Nanyah was a third-party beneficiary because the Court specifically ruled  
12 that the parol evidence rule applied to Nanyah in the Court's October 5, 2018, Order—  
13 because Nanyah was a third-party beneficiary) and (2) that Eldorado is not a party to its  
14 own Amended Operating Agreement—even though the Amended Operating Agreement  
15 "incorporated by reference" the various unambiguous contracts.  
16

17 The Court's analysis ignored that the Order expressly identified Nanyah as a third-  
18 party beneficiary of the various contracts and ignored that the Court applied the parol  
19 evidence rule directly against Nanyah—treating Nanyah as a third-party beneficiary as a  
20 matter of law. The Court also ignored that Eldorado's own Amended Operating  
21 Agreement binds Eldorado as an express party. *See e.g.*, Eldorado's Amended  
22 Operating Agreement, Recital C ("the Members desire to set forth this Amended and  
23 Restated Operating Agreement of the Company to provide for the conduct of the  
24 Company's business and affairs . . ."). The Court undertook no analysis to determine  
25 that Eldorado was expressly called out for as a party to Eldorado's own Amended  
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28

1 Operating Agreement and, again, the decision is erroneous as a matter of law. Id. ¶9.3  
2 ("The Company does hereby indemnify and hold harmless any Covered Person to the  
3 fullest extent permitted by the Act."). The Court's erroneous ruling as to Eldorado ignores  
4 that Eldorado's own Amended Operating Agreement identifies Eldorado as a party bound  
5 under the terms of its own operating agreement.  
6

7 The Court rendered the foregoing clearly erroneous rulings in order to avoid  
8 rendering a decision contrary to the interests of the defendants and instead has artificially  
9 and, again, erroneously sought to allow the jury to consider "undisputed facts" and "issues  
10 of law". The parol evidence rule applies to any evidence sought to be introduced at trial  
11 that seeks to vary or contradict the express terms of the various agreements that the  
12 Court has held are "clear and unambiguous" and interpreted "as a matter of law."<sup>2</sup>  
13 Consequently, the Rogich Defendants and Eldorado are barred from seeking to introduce  
14 evidence and/or arguing:  
15

- 16 (1) that Nanyah did not invest \$1,500,000 into Eldorado;
- 17 (2) that the Rogich Defendants did not agree to repay Nanyah for its  
18 \$1,500,000 investment into Eldorado; and
- 19 (3) that the Obligation to repay Nanyah its \$1,500,000 does not exist.  
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23 <sup>2</sup> Musser v. Bank of America, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998) ("The question  
24 of the interpretation of a contract when the facts are not in dispute is a question of law.").  
25 Further, the Court made specific conclusions of law relating to contract interpretation.  
26 The Court is vested with the authority to render conclusions of law relating to contract  
27 interpretation and enforcement. Galardi v. Naples Polaris, LLC, 301 P.3d 364, 366 (Nev.  
28 2013) ("[I]n the absence of ambiguity or other factual complexities," contract interpretation  
presents a question of law that the district court may decide on summary judgment.");  
Chwialkowski v. Sachs, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992) (holding that  
summary judgment was proper because an unambiguous contract can be construed as a  
matter of law from the language of the document).



1           **B.    NANYAH IS ENTITLED TO SPECIFIC JURY INSTRUCTIONS**  
2           **DETAILING THE COURT’S UNDISPUTED FINDINGS OF FACT AND**  
3           **CONCLUSIONS OF LAW IN ITS ORDER.**

4           Independent and regardless of the Court’s application of the parol evidence rule, in  
5 Nevada it is well-established law that a party is entitled to jury instructions on undisputed  
6 facts, conclusions of law and upon the application of the law to the facts. The Nevada  
7 Supreme Court addressed these very issues in City of Reno v. Silver State Flying  
8 Service, Inc., 84 Nev. 170, 438 P.2d 257 (1968) and held:

9                     In Instruction No. 18, the court was not commenting upon a disputed fact or  
10                    invading the province of the jury. **It is well settled principal of law that an**  
11                    **instruction can comment upon conclusory or undisputed fact. . . .**

12                   **It is also clearly established that a court can instruct as to conclusions**  
13                   **of law or upon the application of the law to the facts. . . .**

14           Id. at 179, 438 P.2d at 263 (emphasis added) (citations omitted).

15           Nanyah is entitled to jury instructions based upon its theories of the case that are  
16 supported by the evidence and consistent with law. Beattie v. Thomas, 99 Nev. 579, 583-  
17 584, 668 P.2d 268, 271 (1983) (“A party is entitled to have the jury instructed on all of  
18 theories of the case that are supported by the evidence. . . . In addition to being  
19 supported by the evidence, the requested instruction must be consistent with existing law.  
20 . . .”); Beattie v. Thomas, 99 Nev. 579, 583-584, 668 P.2d 268, 271 (1983) (“A party is  
21 entitled to have the jury instructed on all of theories of the case that are supported by the  
22 evidence. . . .”).

23           If the Court denies the request for jury instructions applying the Court’s undisputed  
24 facts and conclusions of law contained in its Order, the Court will commit reversible error.  
25 Woosley v. State Farm Ins. Co., 117 Nev. 182, 188, 18 P.3d 317, 321 (2001) (“A party is  
26 entitled to an instruction on every theory that is supported by the evidence, and it is error  
27 to refuse such an instruction when the law applies to the facts of the case.”); Wright v.  
28

1 Lincoln City Lines, 71 N.W.2d 182, 185 (1955) ("Defendants specifically requested an  
2 instruction informing the jury of the undisputed facts resulting from the admission.  
3 Defendants were entitled to have the jury so instructed and it was prejudicial error for the  
4 trial court to refuse to do so.").

5  
6 **C. NANYAH IS ENTITLED TO HAVE ITS PLEADINGS AMENDED TO**  
7 **ASSERT ITS CONTRACT BASED CLAIM BASED UPON THIS**  
8 **COURT'S SPECIFIC FINDING OF A CONTRACTUAL "OBLIGATION"**  
9 **OWED BY ELDORADO TO REPAY NANYAH ITS \$1,500,000 MILLION.**

10 The parties had previously filed various motions for summary judgment. Nanyah's  
11 opposition to Eldorado's motion for summary judgment included a countermotion for  
12 NRCP 15 relief. The Court entered an Order Striking Motions but failed to address  
13 Nanyah's pending countermotion, which was scheduled for oral argument on April 4,  
14 2019.

15 NRCP 15(b) provides: "[w]hen issues not raised by pleadings are tried by express  
16 or implied consent of the parties, **they shall be treated in all respects as if they had**  
17 **been raised in the pleadings.**" (emphasis added). NRCP 15(b) applies to these  
18 proceedings because the Court's Order established legal rights and remedies that exist,  
19 but for whatever reason, were not technically plead in this action. Specifically, although  
20 not technically plead, Nanyah has pursued a claim for an implied in fact contract between  
21 it and Eldorado for Eldorado to transfer a membership interest to it or, alternatively, repay  
22 it for its \$1.5 million investment.

23 The evidence supporting Nanyah's implied in fact contract is at the heart of the  
24 Court's Order and its dismissal of the claims against the Eliades Defendants. Specifically,  
25 all parties presented their various positions on Eldorado's "obligation" to repay Nanyah its  
26 \$1.5 million investment and this Court's Order affirmatively addresses Eldorado's  
27  
28

1 "obligation" and the Rogich Trust's "assumption" obligation to pay that obligation on behalf  
2 of Eldorado.

3 "The purpose of Rule 15(b) is to align the pleadings to conform to the issues  
4 actually tried." Cole v. Layrite Prod. Co., 439 F.2d 958, 961 (9th Cir. 1971). Amendments  
5 to conform to proof are perfectly proper and courts should be liberal in allowing such  
6 amendments. See Brean v. Nevada Motor Co., 51 Nev. 100, 269 P. 606, 606 (1928)  
7 ("courts should be liberal in allowing such amendments . . .").  
8

9 The issue of Eldorado's contractual Obligation and the Rogich Trust's specific  
10 assumption of the debt owed by Eldorado to Nanyah has already been tried and resolved  
11 by the findings of undisputed facts and conclusions of law contained in the Court's Order.  
12 Accordingly, this Court should grant Nanyah's pending NRCP 15 Motion prior to trial.  
13

14 **D. AS A MATTER OF LAW ELDORADO IS LIABLE TO NANYAH AND  
15 THE ROGICH TRUST IS ITS SURETY.**

16 In addition, as an independent basis, and again as a matter of law, Eldorado is  
17 again contractually liable for the repayment of Nanyah's \$1.5 million investment because  
18 the Court found as a matter of law that the Rogich Defendants "assumed" the existing  
19 repayment Obligation. As the surety of the Obligation, the Rogich Trust became primarily  
20 liable, however, Eldorado also remains fully liable on the debt owed to Nanyah.

21 The three-party surety relationship was described in Bldg. Union Inv. & Local Dev.  
22 Fund of Am. Tr. v. Dolgen, 2015 WL 13106025, at \*4 (S.D. Cal. 2015) as follows:

23 A surety is a party that is obligated with the principal under the primary  
24 agreement [and] the surety is immediately and primarily liable upon the default  
25 of the principal. "The contract of guaranty or suretyship requires three parties,  
26 the principal, the obligee, and the guarantor or surety."

27 Id.; see also Westinghouse Credit Corp. v. Wolfer, 10 Cal. App. 3d 63, 67, 88 Cal. Rptr.  
28 654, 656 (Cal. Ct. App. 1970) ("A surety is, among other things, one who promises to

1 answer for the debt of another. . . . In a suretyship relation there are two obligors  
2 [Eldorado and the Rogich Trust] and one obligee [Nanyah] who is entitled to but one  
3 performance.”).<sup>3</sup>

4 Suretyships are common. A surety is “jointly and severally liable with the principal  
5 obligor”. Restatement (Third) of Suretyship & Guaranty § 15(a), (c), and (d) (1996). “A  
6 ‘surety’ is typically jointly and severally liable with the principal obligor on an obligation to  
7 which they are both bound.” 23 Williston on Contracts § 61:2 (4th ed.); see also Torin  
8 Assocs., Inc. v. Perez, 2016 WL 6662271, at \*5 (S.D.N.Y. 2016) (a “‘surety’ is typically  
9 jointly and severally liable with the principal obligor on an obligation to which they are both  
10 bound.”); Gen. Motors Acceptance Corp. v. Daniels, 303 Md. 254, 259, 492 A.2d 1306,  
11 1309 (1985) (“the surety is primarily or jointly liable with the principal obligor . . .”).

12 In order to be valid, the surety agreement need only comply with Nevada’s Statute  
13 of Frauds. Specifically, NRS 111.220(2) provides that “[e]very special promise to answer  
14 for the debt . . . of another” must be in writing and signed by the party to be bound. In this  
15 instance, the Rogich Trust’s surety agreement whereby the Rogich Trust agreed with  
16 Eldorado to be primarily liable on Eldorado’s debt to Nanyah was in writing and signed by  
17 the Rogich Trust. Accordingly, the Rogich Trust is liable to Nanyah for the repayment of  
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24 <sup>3</sup> In Aura Light US Inc. v. LTF Int’l LLC, 2018 WL 1378802, at \*8 (D. Md. 2018) the Court  
25 analyzed a suretyship contract and held that the original obligor and the surety are both  
jointly and severally liable on the underlying debt as follows:

26 A suretyship contract is a “tripartite agreement among a principal obligor,  
27 his obligee, and a surety.” . . . It is “a direct and original undertaking under which  
the surety is primarily or jointly liable with the principal obligor.”

28 Id. (quoting Gen. Motors Acceptance Corp., 492 A.2d1306, 1309 (Md. 1985)).

1 Nanyah's \$1.5 million investment as the surety, however, Eldorado remains fully liable for  
2 the same debt. See e.g., In re Mason, 573 B.R. 75, 82 (Bankr. S.D.N.Y. 2017) ("The  
3 essence of suretyship . . . is that, even if the obligee can look directly to the surety for  
4 satisfaction of its debt, as between the two obligors, one is the principal obligor that  
5 remains primarily liable . . .").

6  
7 As a matter of law, Eldorado remains liable for the debt owed to Nanyah even  
8 though this Court has found that the Rogich Defendants assumed the debt obligation  
9 owed to Nanyah. Noah v. Metzker, 85 Nev. 57, 60, 450 P.2d 141, 144 (1969) (original  
10 contracting party "shall remain liable" unless there is a written release of liability); Fay  
11 Corp. v. BAT Holdings I, Inc., 646 F. Supp. 946, 949–50 (W.D. Wash. 1986) ("assignment  
12 does not discharge the assignor's original obligation to the lessor."); 1689 First Ave., Inc.  
13 v. Zhifeng Zheng, 887 N.Y.S.2d 743, 744 (N.Y. Ct. App. 2009) ("[A]n assignment does  
14 not release the assignor of its obligations under the assigned contract. . . .")

15  
16 It is undisputed in this action that the Rogich Trust is a surety of Eldorado's debt.  
17 The Court recognized this surety relationship in its Order and clearly states that "The  
18 Rogich Trust specifically agreed to assume the obligation to pay Nanyah . . . debt . . . ."  
19 Exh. 1, Order, ¶7. The Rogich Trust's surety did not relieve Eldorado of the obligation,  
20 instead, both Eldorado and the Rogich Trust are liable for the debt.

21  
22 Consequently, Nanyah is entitled to judgment against both Eldorado and the  
23 Rogich Trust in these proceedings. Thereafter, once payment has been received, and if  
24 the payment is received from Eldorado, then Eldorado retains the legal right to  
25 subsequently pursue the Rogich Trust for breach of its surety agreement and receive full  
26 reimbursement from the Rogich Trust. Lehman Commercial Paper, Inc. v. Fid. Nat'l Title  
27 Ins. Co., 2012 WL 12884913, at \*3 fn. 2 (C.D. Cal. 2012) ("When several parties such  
28

1 as sureties . . . are jointly liable, and one has paid more than his or her share, that party  
2 may enforce contribution from the others.”). However, Eldorado’s subsequent contract  
3 claim against the Rogich Trust is irrelevant to these proceedings.

4 **E. AS A MATTER OF LAW THE ROGICH TRUST AGREED TO**  
5 **INDEMNIFY ELDORADO FOR ITS OBLIGATION TO REPAY NANYAH**  
6 **FOR ITS \$1.5 MILLION INVESTED INTO ELDORADO.**

7 In addition, as an independent basis, and again as a matter of law, Eldorado’s  
8 Amended Operating Agreement specifically states at Recital B that the Rogich Trust also  
9 agreed to indemnify and “assumed” Eldorado’s Obligation to repay Nanyah its \$1.5 million  
10 investment. Specifically, Recital B states

11 The Rogich Trust will retain a one-third (1/3<sup>rd</sup>) ownership interest in the  
12 Company (subject to certain possible dilution or other **indemnification**  
13 **responsibilities assumed** by the Rogich Trust in the Purchase Documents).

14 Id. (emphasis added). The Rogich Trust, therefore, expressly agreed to indemnify  
15 Eldorado for Eldorado’s repayment Obligation to Nanyah. This is the exact Obligation that  
16 this Court found to contractually exist in its Order. Because the Rogich Trust expressly  
17 agreed to indemnify Eldorado, and because Eldorado expressly contracted with the  
18 Rogich Trust to be indemnified, Eldorado and the Rogich Trust have affirmed Eldorado’s  
19 contractual Obligation to Nanyah.

20 Contractual indemnity was discussed in great detail in Reyburn Lawn & Landscape  
21 Designers, Inc. v. Plaster Dev. Co., 127 Nev. 331, 338–39, 255 P.3d 268, 274 (2011)  
22 wherein the Nevada Supreme Court stated:

24 Typically, “[c]ontractual indemnity is where, pursuant to  
25 a contractual provision, two parties agree that one party will reimburse the  
26 other party for liability resulting from the former’s work.” . . . . When the duty  
27 to indemnify arises from contractual language . . . “it is enforced in  
28 accordance with the terms of the contracting parties’ agreement.” . . . And . . .  
. parties have great freedom in allocating indemnification responsibilities between  
one another. . . . The interpretation of an indemnity clause within a contract is a  
question of law, which this court will review de novo.

1 Id. (emphasis added).

2  
3 Accordingly, as a matter of pure contract interpretation, Eldorado is liable to  
4 Nanyah for its \$1,500,000 investment and the Rogich Trust agreed to be liable to  
5 Eldorado for that obligation and to “reimburse” Eldorado for that liability. *See also* 18 Am.  
6 Jur. 2d Contribution § 2 (November 2014) (“Indemnity, on the other hand, arises from  
7 contract . . . and is the right of a person who has been compelled to pay what another  
8 should have paid to require complete reimbursement.”).

9  
10 **F. NANYAH’S UNJUST ENRICHMENT CLAIM DID NOT ACCRUE UNTIL**  
11 **SUCH TIME AS NANYAH BECAME AWARE THAT ELDORADO HILLS**  
12 **RETAINED NANYAH’S \$1.5 MILLION UNDER CIRCUMSTANCES**  
13 **WHEN IT WAS INEQUITABLE FOR ELDORADO HILLS TO DO SO.**

14 It was not until sometime in December 2012, that Nanyah was advised that the  
15 Rogich Trust had secretly transferred its membership interest in Eldorado and was  
16 refusing to repay Nanyah its \$1.5 million investment. **Exhibit 5**, Declaration of Yoav  
17 Harlap, ¶12. Based upon the receipt of this information, Nanyah believed such action was  
18 a repudiation of the defendants’ obligations to it to repay its \$1.5 million investment and/or  
19 to transfer to it a membership interest in Eldorado. Id., ¶13. These facts are undisputed  
20 and the Rogich Trust and Eldorado have no facts contradicting Nanyah’s evidence.

21 Because defendants have absolutely no evidence contradicting Nanyah’s date of  
22 discovery of the defendants’ breach occurring in December, 2012, Nanyah is entitled to  
23 summary judgment that all its claims are timely and not barred by any statute of  
24 limitations. Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801, 806 (1998) (“[T]he time of  
25 discovery may be decided as a matter of law” when “uncontroverted evidence”  
26 establishes the date of discovery of the breach).

1 Further, Nanyah obtained an Order granting its Motion in Limine No. 3 binding the  
2 Rogich Trust to its admissions in its Answer that they never informed Nanyah of the  
3 Rogich Trust's secret membership transfer in Eldorado in late 2012 (¶82) and that:

4 It was not until December, 2012, that Nanyah discovered that Rogich Trust  
5 purported to no longer own any interest in Eldorado and that Rogich Trust's  
6 interest in Eldorado had been transferred to Teld and/or the Eliades Trust.

7 **Exhibit 6**, Order granting Nanyah's Motion in Limine No. 3 binding Rogich Trust to its  
8 answers to Paragraphs 82 and 83, p.3.

9 The Nevada Supreme Court discussed the application and underlying theory of the  
10 "discovery rule" in Peterson v. Bruen, 106 Nev. 271, 792 P.2d 18 (1990). In Peterson, the  
11 plaintiff brought a personal injury action seeking to recover damages stemming from  
12 abuse during childhood. The court addressed the general application of the statute of  
13 limitations and the discovery rule as follows:

14 The general rule concerning statutes of limitations is that a cause of action  
15 accrues when the wrong occurs and a party sustains injuries for which relief could  
16 be sought. . . . An exception to the general rule has been recognized by this court  
17 and many others in the form of the so-called "discovery rule." Under the discovery  
18 rule, the statutory period of limitations is tolled until the injured party discovers or  
19 reasonably should have discovered facts supporting a cause of action. . . .

20 The rationale behind the discovery rule is that the policies served by  
21 statutes of limitations do not outweigh the equities reflected in the proposition that  
22 plaintiffs should not be foreclosed from judicial remedies before they know that  
23 they have been injured and can discover the cause of their injuries. Plaintiffs  
24 should be put on notice before their claims are barred by the passage of time.

25 Id. at 20; see also G & H Associates v. Ernest W. Hahn, Inc., 934 P.2d 229, 232 n.5 (Nev.  
26 1997) ("Under the discovery rule, the statutory period of limitations is tolled until the  
27 injured party discovers or reasonably should have discovered facts supporting a cause of  
28 action.").

In the present case, the defendants were obligated to repay Nanyah's \$1.5 million  
investment and/or confirm the investment as a membership interest. However, there was



1 no specific deadline or date the defendants were obligated to perform such functions  
2 under any of the agreements. So, unlike a promissory note with a maturity date, and/or a  
3 real property purchase contract that contains a closing date, there was no date certain for  
4 defendants to perform their obligations to Nanyah. Accordingly, no statute of limitations  
5 commenced to run until such time as Nanyah discovered the defendants' repudiation of  
6 their contract obligations to it.

7  
8 However, the Court did not preclude the Rogich Trust from presenting any "new"  
9 evidence at trial on this issue to the extent it "obtained additional information after the  
10 Answer was filed . . . ." Id. No such information or evidence has been produced.  
11 Pursuant to NRCP 37(c)(1)'s provisions, the Rogich Trust, as well as all the other  
12 defendants, have not produced any information in this case that effects this admitted fact  
13 in any regard. NRCP 37(c)(1) provides:

14  
15 A party that without substantial justification fails to disclose information  
16 required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery  
17 as required by Rule 26(e)(2), **is not, unless such failure is harmless, permitted  
to use as evidence at a trial, at a hearing, or on a motion any witness or  
information not so disclosed**

18 Id. (emphasis added).<sup>4</sup> Since no evidence has been produced in this case rebutting or  
19 contesting or even relating to Nanyah's discovery of the Rogich Trust's and/or Eldorado's  
20 breach of the repayment obligation until December, 2012, that date is uncontested and  
21 uncontestable in this action.  
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28 <sup>4</sup> NRCP 26(e) requires parties to promptly supplement any discovery response and/or  
disclose any information relevant to the issue in the case or be barred from use.

1 Accordingly, the undisputed evidence is: (1) the various contracts did not have a  
2 date certain to repay Nanyah its \$1.5 million investment; (2) defendants never informed  
3 Nanyah about the Rogich Trust's secret assignment in late 2012 of its membership  
4 interest in Eldorado; (3) the defendants never informed Nanyah that they were repudiating  
5 or refusing to repay Nanyah its \$1.5 million but at all times had affirmed they were going  
6 to perform their contractual obligations; and (4) Nanyah did not discover the defendants'  
7 breach of their contractual obligations until December, 2012.

9 While the defendants may want to argue at trial that Nanyah should have known  
10 sooner of the defendants' breaches, argument does not take the place of evidence. The  
11 law is clear that the defendants are not entitled merely to argue to the jury that Nanyah's  
12 evidence should not be believed.

13  
14 **G. NRS 47.240(2) CONCLUSIVE PRESUMPTION MUST BE APPLIED BY**  
15 **THIS COURT RELATING TO ELDORADO'S AMENDED OPERATING**  
16 **AGREEMENT.**

17 NRS 47.240(2) establishes a conclusive presumption establishing "the truth" of all  
18 facts recited in a written instrument as follows:

19 [There is a conclusive presumption of] [t]he truth of the fact recited, from the  
20 recital in a written instrument between the parties thereto, or their successors in  
21 interest by a subsequent title . . . .

22 Id. Eldorado's Amended Operating Agreement specifically states at Recital B that the  
23 Rogich Trust specifically agreed to indemnify Eldorado for the Rogich Trust's  
24 responsibility to repay Nanyah its \$1.5 million investment into Eldorado.

25 Because the Rogich Trust and Eldorado specifically agreed by and between  
26 themselves that the Rogich Trust would indemnify Eldorado for any liability to Nanyah for  
27 the debt "assumed" by the Rogich Trust, then Eldorado's own Operating Agreement  
28 establishes Eldorado's Obligation to repay Nanyah its \$1.5 million invested as a matter of  
law. Wiehe v. Kissick Const. Co., 232 P.3d 866, 874 (Kan. Ct. App. 2010) ("a conclusive

1 or irrebuttable presumption is not a presumption at all; it is a substantive rule of law  
2 directing that proof of certain basic facts conclusively provides an additional fact **which**  
3 **cannot be rebutted.**" (emphasis added)).<sup>5</sup>

4 **H. ELDORADO IS A PARTY TO ITS OWN OPERATING AGREEMENT.**

5 Eldorado is a party to the various contracts at issue in this case. This issue of law  
6 is established based upon the Court specifically ruled that Eldorado incorporated all of the  
7 terms of the "clear and unambiguous" contracts defining Nanyah's investment into  
8 Eldorado and the Rogich Trust's specific repayment duty to Nanyah.

9 The two (2) Membership Interest Purchase Agreements executed by the Rogich  
10 Trust detail and incorporate Eldorado's Amended and Restated Operating Agreement of  
11 Eldorado Hills, LLC ("Amended Operating Agreement"). Id., Recitals I. In addition,  
12 Eldorado's Amended Operating Agreement cross-references and cross-incorporates the  
13 Membership Interest Purchase Agreements. Both agreements reference and incorporate  
14 each other!

15 The Court's Order specifically found as a matter of law that Recital A of Eldorado's  
16 Amended Operating Agreement "fully incorporated" the totality of the Rogich Trust's  
17

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24 <sup>5</sup> Kusior v. Silver, 54 Cal. 2d 603, 619, 354 P.2d 657, 668 (1960) ("A conclusive  
25 presumption is in actuality a substantive rule of law."); Rogers v. Dep't of Revenue, 6 Or.  
26 Tax 139 (1975) ("a conclusive presumption is not so much a 'presumption' as it is  
27 a rule of law."); Ladner v. Mason Mitchell Trucking Co., 434 A.2d 37, 42 (Me. 1981) ("A  
28 conclusive presumption is not really a presumption at all. It is a rule of law.");  
Nowakowski v. New York, 835 F.3d 210, 224 (2d Cir. 2016) conclusive  
presumptions (*presumptio juris et de jure*) . . . are essentially rules of law . . .").

1 Membership Interest Purchase Agreements into Eldorado's Amended Operating  
2 Agreement as follows:

3           **5.c.iii The terms and conditions of the October 30, 2008 Membership**  
4           **Interest Purchase Agreement were incorporated by reference**  
5           **into the October 30, 2008 Amended and Restated Operating**  
6           **Agreement. Recital A.**

7 Exh. 1, ¶5.c.iii (emphasis added). Accordingly, again as a matter of law, Eldorado is in  
8 fact a party to the various agreements.

9           Second, Eldorado's Amended Operating Agreement specifically calls out for and  
10 details that Eldorado is a party to its own agreement. *See e.g.*, Eldorado's Amended  
11 Operating Agreement, Recital C ("the Members desire to set forth this Amended and  
12 Restated Operating Agreement of the Company **to provide for the conduct of the**  
13 **Company's business and affairs . . .**" (emphasis added)). The Court undertook no  
14 analysis to determine that Eldorado was expressly called out for as a party to Eldorado's  
15 own Amended Operating Agreement and, again, the decision is erroneous as a matter of  
16 law. *Id.* ¶9.3 ("**The Company** does hereby indemnify and hold harmless any Covered  
17 Person to the fullest extent permitted by the Act." (emphasis added)). The Court's  
18 erroneous ruling as to Eldorado ignores that Eldorado's own Amended Operating  
19 Agreement identifies Eldorado as a party bound under the terms of its own operating  
20 agreement.  
21

22           Third, the law is abundantly clear that Eldorado's adoption and inclusion of the  
23 October 30, 2008, Membership Interest Purchase Agreements into Eldorado's own  
24 Amended Operating Agreement makes Eldorado a party to those agreements—as a  
25 matter of law. *Hill Int'l, Inc. v. Opportunity Partners L.P.*, 119 A.3d 30, 38 (Del. 2015)  
26 ("The bylaws of a Delaware corporation constitute part of a binding broader contract  
27 among the directors, officers and stockholders formed within the statutory framework of  
28

1 the Delaware General Corporation Law. Because corporate charters and bylaws are  
2 contracts, our rules of contract interpretation apply.”); Clary v. Borrell, 398 S.C. 287, 297,  
3 727 S.E.2d 773, 778 (S.C. Ct. App. 2012) (“The operating agreement of a limited  
4 liability company is a binding contract that governs the relations among the members,  
5 managers, and the company.”); Allied Supermarkets, Inc. v. Grocer's Dairy Co., 45 Mich.  
6 App. 310, 315, 206 N.W.2d 490, 493 (1973), aff'd sub nom. Allied Supermarkets, Inc. v.  
7 Grocers' Dairy Co., 391 Mich. 729, 219 N.W.2d 55 (1974) (“The bylaws of a corporation,  
8 so long as adopted in conformity with state law, constitute a binding contract between  
9 the corporation and its shareholders.”); St. John's Hosp. Med. Staff v. St. John Reg'l Med.  
10 Ctr., Inc., 245 N.W.2d 472, 474 (S.D. 1976) (“the bylaws of a corporation . . . constitute  
11 a binding contract between the corporation and its shareholders.”); Lawson v. Household  
12 Fin. Corp., 152 A. 723, 727 (Del. 1930) (“it has been generally recognized in this country  
13 that the charter of a corporation is a contract both between the corporation and the state  
14 and the corporation and its stockholders. It is not necessary to cite authorities to support  
15 this proposition.”).

16  
17  
18 When a party's own contract refers and incorporates another contract, those two  
19 contracts form a single indivisible contract. 11 Williston on Contracts § 30:25 (4th ed.)  
20 (“When a writing refers to another document, that other document, or the portion to which  
21 reference is made, becomes constructively a part of the writing, and in that respect the  
22 two form a single instrument.”). As stated in Canadian Nat. Ry. Co. v. Montreal, Maine &  
23 Atl. Ry., Inc., 786 F. Supp. 2d 398, 415 (D. Me. 2011).

24  
25 [I]t is hornbook law that contracting parties may incorporate additional terms by  
26 reference to a separate document, in whole or in part. See 11 Richard A. Lord,  
27 Williston on Contracts § 30:25 (4th ed. 2010) (Williston). “Where a writing refers  
28 to another document, that other document, or the portion to which reference is  
made, becomes constructively a part of the writing, and in that respect the two  
form a single instrument.

1 Id. Accordingly, this Court has already ruled that Eldorado's Amended Operating  
2 Agreement incorporates in total the terms and conditions of the October 30, 2008,  
3 Membership Interest Purchase Agreements, and as such, Eldorado is a party to those  
4 agreements as a matter of law.

5  
6 Eldorado erroneously attempts to rely upon the case JPMorgan Chase Bank N.A.  
7 v. KB Home, 632 F.Supp.2d 1013, 1021 (D. Nev. 2009) for the proposition that Eldorado  
8 is not a party to its own operating agreement. Eldorado's reliance on this case is  
9 misplaced. This is because in Chase Bank, the operating agreement at issue was  
10 determined to specifically give the company enforcement rights as against members for  
11 member defaults as follows:

12  
13 **The Operating Agreement thus grants South Edge enforcement rights,**  
14 **although pursuant to specific procedures, for Member defaults. Accordingly,**  
15 **if South Edge conveyed a security interest in these rights to Plaintiff, Plaintiff**  
16 **could enforce South Edge's rights under the Operating Agreement.**

17 Id. (emphasis added). Accordingly, the determination of whether or not an entity is a  
18 party to its own Operating Agreement is premised on the language of the specific  
19 agreement. In the present case, Eldorado's Operating Agreement defines Eldorado as a  
20 party to its own agreement. Therefore, Chase Bank is inapplicable.

21 **I. THIS COURT IS REQUIRED TO EXCLUDE ANY EVIDENCE**  
22 **DEFENDANTS SEEK TO INTRODUCE THAT CONTRADICTS THE**  
23 **COURT'S UNDISPUTED FINDINGS OF FACTS AND CONCLUSIONS**  
24 **OF LAW.**

25 It is anticipated that the defendants may attempt to introduce evidence or  
26 testimony and/or present argument that seeks to contradict and/or conflict with this  
27 Court's findings of undisputed facts. However, this Court must exclude any such  
28 evidence and argument.

1                   **1. Any Contradictory Evidence is Irrelevant.**

2                   NRS 48.015 states that "'relevant evidence' means evidence having any tendency  
3 to make the existence of any fact that is of consequence to the determination of the action  
4 more or less probable that it would be without the evidence." Since the foregoing  
5 undisputed facts are "undisputed", any evidence that attempts to contest or challenge the  
6 Court's factual findings is not relevant since the determination of fact is not at issue.  
7 Therefore, since the undisputed facts are no longer at issue in this litigation (due to this  
8 Court's findings), evidence seeking to contest the undisputed facts is not relevant.  
9 Evidence which is not relevant is, therefore, irrelevant and inadmissible. NRS 48.025(2)  
10 ("Evidence which is not relevant is not admissible.").

12                   **2. Any Contradictory Evidence is Prejudicial.**

13                   Even if the Court were to somehow deem evidence or argument contradicting the  
14 Court's undisputed factual findings are somehow relevant, the evidence and arguments  
15 must still be excluded because of the great likelihood of prejudice and confusion. NRS  
16 48.035(2) provides:

18                   Although relevant, evidence is not admissible if its probative value is  
19 substantially outweighed by the danger of unfair prejudice, of confusion of the  
20 issues, or of misleading the jury . . . considerations of undue delay, waste of time  
or needless presentation of cumulative evidence.

21 Id.

22                   In the present case, the Court has made undisputed factual findings that confirm  
23 Nanyah's \$1.5 million investment into Eldorado, that Eldorado received Nanyah's money  
24 and that the Rogich Defendants agreed to repay Nanyah its investment. Evidence that  
25 some other entity received Nanyah's money, or that the Rogich Trust did not agree to  
26 repay the money directly contradicts the undisputed facts found by this Court. Even if this  
27 Court were to deem such information relevant, its probative value is minimal given the  
28

1 Court's findings of undisputed facts and there is a great danger of unfair prejudice to  
2 Nanyah.

3 If such contradictory evidence or argument were allowed to be presented to the  
4 jury, there is a significant chance that the jury will disregard the Court's factual findings  
5 because the Court would be allowing defendants to undermine and contest the Court's  
6 rulings. State another way, the Court would be in the position of telling the jury that there  
7 are undisputed facts but that the jury can ignore or disregard the undisputed facts.  
8 Similarly, if the Court were to allow such evidence, then the jury would be faced with  
9 ignoring the Court's conclusion of law that the contracts provide that the Rogich  
10 Defendants agreed to repay Nanyah its investment.  
11

12 In addition, admission of contradictory evidence would add confusion to the issues  
13 presented to the jury for consideration. The jury is tasked with determining question of  
14 fact. The jury is not tasked with revisiting the Court's findings of "undisputed" facts and  
15 the jury is not tasked with determining issues of law. Accordingly, as a separate basis,  
16 even if relevant, the Court must deem any evidence seeking to contradict the Court's  
17 undisputed findings of fact as inadmissible pursuant to 48.035(2).  
18

19 **J. NANYAH'S THIRD-PARTY BENEFICIARY STATUS IS ALREADY**  
20 **ESTABLISHED AS A MATTER OF UNDISPUTED FACT AND AS A**  
21 **MATTER OF LAW.**

22 The Rogich Trust and Eldorado have both admitted Nanyah's investment and that  
23 it did not issue a membership interest or return Nanyah's investment. In addition, this  
24 Court's Order establishes as a matter of law that Nanyah is a named third-party  
25 beneficiary of the various contracts. Specifically, the Court's Order states at Paragraph 4  
26 the following:

- 27 4. Nanyah was not included as a named signatory on the agreements,  
28 however, the agreements identified **The Rogich Trust specifically**



1                   **agreed to assume the obligation to pay Nanyah its percentage**  
2                   **interest in Eldorado or to pay Nanyah its \$1,500,000 invested into**  
3                   **Eldorado.**

4                   Exhibit 1, ¶4.

5                   Further, the Order specifically held that Nanyah could not introduce any parol  
6                   evidence to contradict or vary the terms of the unambiguous contracts seeking to hold the  
7                   Eliades Defendants liable under the various contracts—**because the Court’s ruling was**  
8                   **that Nanyah was an express third-party to the various agreements and the parol**  
9                   **evidence rule applied to Nanyah.**

10                   In Olson v. Iacometti, 91 Nev. 241, 245-46, 533 P.2d 1360 (1975) the Nevada  
11                   Supreme Court stated with respect to a third-party’s right to maintain a suit on a contract:

12                   Although a plaintiff can maintain an action on a simple contract to which he  
13                   is not a party, upon which he was not consulted, and to which he did not assent,  
14                   when it contains a provision for his benefit . . . he must prove that there was an  
15                   intent to benefit him. ‘Before a stranger can avail himself of the exceptional  
16                   privilege of suing for a breach of an agreement, to which he is not a party, he must  
17                   at least show that it was for his direct benefit.’

18                   Id. at 245-46, 533 P.2d at 1364, *see also* Lipshie v. Tracy Investment Co., 93 Nev. 370,  
19                   379 566 P.2d 819 (1977) (“To obtain such a [third party beneficiary] status, there must  
20                   clearly appear a promissory intent to benefit the third party . . . and ultimately it must be  
21                   shown that the third party’s reliance thereon is foreseeable.”); Williams v. City of North  
22                   Las Vegas, 91 Nev. 622, 627, 541 P.2d 652 (1975) (“the law has long recognized that an  
23                   individual, although unnamed in a contract or a stranger to both parties thereto, may bring  
24                   suit where a breach of the contract has caused him injury.”). The status of a third-party  
25                   beneficiary is “gleaned from reading the contract as a whole in light of the circumstances  
26                   under which it was entered.” Canfora v. Coast Hotels and Casinos, Inc., 121 Nev. 771,  
27                   121 P.3d 599, 604-605 (2005).

1 In the present case, the undisputed evidence is that Nanyah was expressly called  
2 out for in the agreements because it was the parties' specific intent in selling his  
3 membership interests to Rogich (to be partially resold to Teld and Flangas) to ensure that  
4 Nanyah's investment was repaid or a membership interest was issued to Nanyah.  
5 Eldorado's Managing Member Huerta testified that Nanyah was specifically intended to  
6 be a beneficiary of the Purchase Agreement and the Membership Interest Purchase  
7 Agreements because Nanyah "was an integral party" as follows:

8 We discussed this agreement several times, reviewed different drafts,  
9 discussed it. **Nanyah Vegas was an integral part of this agreement. I**  
10 **wanted to make sure that all the investors showed up on the**  
11 **agreement.**

12 **Exhibit** , Carlos Huerta Deposition excerpt, p. 48:2-6 (emphasis added). Accordingly, it is  
13 already an undisputed fact and established as a matter of law that Nanyah is a third-party  
14 beneficiary under the various agreements.

15 **IX. ELEMENTS OF CLAIMS.**

16 **A. FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT-ROGICH**  
17 **TRUST, SIGMUND ROGICH.**

18 To prevail on its breach of contract claim, Nanyah must establish the existence of a  
19 contractual obligation, the breach of the contractual obligation and damages. 23 Williston  
20 on Contracts § 63:1 (4th ed. May 2010) ("a breach of contract is a failure, without legal  
21 excuse, to perform any promise that forms the whole or part of a contract.").

22 In the present case, this Court has previously found as undisputed facts that the  
23 October 30, 2008, Purchase Agreement ("Purchase Agreement") and the October 30,  
24 2008, Membership Interest Purchase Agreement ("Membership Agreement"), both  
25 executed by the Rogich Trust, clearly state that the Rogich Trust contractually agreed to  
26 repay Nanyah its \$1.5 million investment into Eldorado. Exh. 1, Order, ¶4. The Court's  
27  
28

Order also outlines in excruciating detail the “undisputed facts” of conclusively establishing that the Rogich Trust breached its contractual duty to repay Nanyah the \$1.5 million invested into Eldorado as follows:

**1. Undisputed Findings of Fact.**

1. In December of 2007, Nanyah wired \$1,500,000.00 which eventually was deposited into Eldorado’s bank account.<sup>6</sup>
2. The Rogich Trust specifically agreed to assume the obligation to pay Nanyah its percentage interest in Eldorado or to pay Nanyah its \$1,500,000 invested into Eldorado.<sup>7</sup>
3. The Rogich Trust agreed to repay Nanyah its \$1,500,000 investment into Eldorado.<sup>8</sup>
4. Exhibit D to the October 30, 2018, Membership Interest Purchase Agreement “identifies Nanyah’s \$1,500,000 investment into Eldorado.”<sup>9</sup>
5. Exhibit D to the October 30, 2018, Membership Interest Purchase Agreement unequivocally states that Rogich and the Rogich Trust “confirmed” Nanyah “advanced to or on behalf of Eldorado” the \$1,500,000 investment.<sup>10</sup>
6. Section 8(c) of the October 30, 2018, Membership Interest Purchase Agreement states that Nanyah “invested or otherwise advanced funds” into Eldorado.<sup>11</sup>

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<sup>6</sup> Exh. 1, ¶2.

<sup>7</sup> Exh. 1, ¶4.

<sup>8</sup> Exhibit 1, ¶5.a.ii.

<sup>9</sup> Exhibit 1, ¶5.b.i.

<sup>10</sup> Exhibit 1, ¶5.b.i.

<sup>11</sup> Exhibit 1, ¶5.b.ii.

...(cont'd)

1 7. Peter Eliades was aware of the Rogich Trust's obligation to Nanyah  
2 contained in the October 30, 2008, Purchase Agreement when he entered  
3 into the October 30, 2008, Membership Interest Purchase Agreement.<sup>12</sup>

4 8 Peter Eliades acknowledges that it was always the responsibility of Rogich  
5 and the Rogich Trust to repay Nanyah for its investment in Eldorado.<sup>13</sup>

6 9 It is an undisputed fact that as of August, 2012, the debt owed to Nanyah  
7 of \$1,500,000 had not been paid.<sup>14</sup>

8 Consequently, in summary, the undisputed facts in this case are Nanyah invested \$1.5  
9 million into Eldorado, Eldorado had an Obligation to repay this investment, the Rogich  
10 Trust "specifically agreed" to assume the repayment obligation to Nanyah and the debt  
11 has not been repaid to Nanyah.

12 In addition, the Court's Order details that, as a matter of law, the contracts  
13 obligated the Rogich Trust to repay Nanyah's \$1.5 million investment as follows: ¶7 ("The  
14 Rogich Trust specifically agreed to assume the obligation to pay Nanyah" its \$1.5 million  
15 investment); ¶14 (affirming the terms of the Purchase Agreement and Membership  
16 Agreement are clear and unambiguous and are therefore enforced "as a matter of law");  
17 ¶15 (the Eliades Defendants did not assume the Rogich Trust's contractual obligation to  
18 repay Nanyah its \$1.5 million investment); and ¶21 (as a matter of law the Rogich Trust  
19 had an "obligation to repay Nanyah its \$1.5 million investment into Eldorado.").<sup>15</sup> Based  
20  
21  
22

23 <sup>12</sup> Exhibit 1, ¶5.b.iii.

24 <sup>13</sup> Exhibit 1, ¶5.b.iv.

25 <sup>14</sup> Exhibit 1, ¶5.d.i.

26 <sup>15</sup> Musser v. Bank of America, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998) ("The question  
27 of the interpretation of a contract when the facts are not in dispute is a question of law.").  
28 Further, the Court made specific conclusions of law relating to contract interpretation.

...(cont'd)

1 upon the foregoing, Nanyah will conclusively be able to establish that the Rogich Trust  
2 “specifically agreed” to repay Nanyah its \$1.5 million investment into Eldorado.

3 Further, all the defendants breached their duty to repay Nanyah for its investment  
4 by repudiating such obligation and acting in a manner demonstrating their clear intent not  
5 to perform.<sup>16</sup>

7 **B. SECOND CLAIM FOR RELIEF: BREACH OF IMPLIED COVENANT OF**  
8 **GOOD FAITH AND FAIR DEALING -ROGICH TRUST, SIGMUND**  
9 **ROGICH.**

10 To prevail on its breach of the implied covenant of good faith and fair dealing claim,  
11 Nanyah must prove the following: (1) a contract, (2) plaintiff's performance or excuse for  
12 nonperformance, (3) defendant's breach, and (4) damage to plaintiff therefrom. Regan  
13 Roofing Co. v. Superior Court, 24 Cal. App.4th 425, 434-435, 29 Cal. Rptr. 2d 413, 418  
14 (Cal. Ct. App. 1994). In this case, to date there are a number of contracts that define  
15 Nanyah as a third-party beneficiary. Nanyah has already established that it has the right  
16 to sue under each of these contracts via the Court's Order. Nanyah intends to seek  
17 recovery of its \$1.5 million investment into Eldorado. The determination of whether the

18  
19  
20  
21 The Court is vested with the authority to render conclusions of law relating to contract  
22 interpretation and enforcement. Galardi v. Naples Polaris, LLC, 301 P.3d 364, 366 (Nev.  
23 2013) (“[I]n the absence of ambiguity or other factual complexities,” contract interpretation  
24 presents a question of law that the district court may decide on summary judgment.”);  
25 Chwialkowski v. Sachs, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992) (holding that  
summary judgment was proper because an unambiguous contract can be construed as a  
matter of law from the language of the document).

26 <sup>16</sup> Mohr v. Lear, 395 P.2d 117, 121 (Or. 1964) (“When one party repudiates a contract . . .  
27 the injured party has an election to pursue one of three remedies: he may treat the contract  
28 as at an end and sue for restitution, he may sue for damages, or he may sue for specific  
performance in certain cases.”).

1 defendants breached their obligations under these contracts are questions of fact  
2 appropriate for resolution by the jury. See e.g., Consolidated Generator-Nevada, Inc. v.  
3 Cummins Engine Co., 114 Nev. 1302, 971 P.2d 1251, 1256 (1998) ("This court has held  
4 that good faith is a question of fact."); Hilton Hotels v. Butch Lewis Productions, 107 Nev.  
5 226, 232-34, 808 P.2d 919 (1991) (good faith "is a question of fact to be determined by  
6 the jury after presentation of all relevant evidence.").

8 As discussed in detail above, the various agreements have been breached by the  
9 defendants. See Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 234, 808 P.2d  
10 919, 923 (1991) ("In every contract or agreement there is an implied promise of good faith  
11 and fair dealing. This means that each party impliedly agrees not to do anything to  
12 destroy or injure the right of the other to receive the benefits of the contract"). Because  
13 the defendants have deprived Nanyah of the benefit of its bargain, Nanyah is entitled to  
14 recover its damages against all defendants.

16 **C. THIRD CLAIM FOR RELIEF: BREACH OF THE IMPLIED COVENANT OF**  
17 **GOOD FAITH AND FAIR DEALING, TORTIOUS-ROGICH TRUST,**  
18 **SIGMUND ROGICH.**

19 The tort claim for breach of the implied covenant of good faith and fair dealing is  
20 premised upon the obligation upon the Defendants not to deceive Mills. Elizabeth E. v.  
21 ADT Sec. Systems West, Inc., 108 Nev. 889, 893, 839 P.2d 1308, 1311 (1992) ("we have  
22 no difficulty recognizing ADT's duty of care to Taco Bell and its employees not to  
23 misrepresent the capabilities of the alarm system installed at the location where Elizabeth  
24 worked on the occasion of her injuries."). The facts of this case establish as a matter of  
25 law that the defendants owed Nanyah a fiduciary duty and/or was in a special relationship  
26 and/or a relationship whereby Nanyah reposed confidence in the defendants. A.C. Shaw  
27 Construction v. Washoe County, 105 Nev. 913, 915, 784 P.2d 9, 10 (1989) (the tort action  
28

1 for breach of the implied covenant of good faith and fair dealing requires a special  
2 element of reliance or fiduciary duty).

3 This type of reliance has been recognized in various relationships, including those  
4 formed by employment, bailment, insurance, partnership, and franchise agreements. K  
5 Mart Corp. V. Ponsock, 103 Nev. 39, 49-51, 732 P.2d 1364, 1370-72 (1987). Tort liability  
6 for breach of good faith covenant is appropriate where "the party in the superior or  
7 entrusted position" has engaged in "grievous and perfidious misconduct." K Mart Corp. V.  
8 Ponsock, 103 Nev. 39, 49, 732 P.2d 1364, 1371 (1987). Awards beyond ordinary  
9 contract damages are sanctioned where necessary to "make the aggrieved, weaker,  
10 'trusting' party 'whole'" and to fully punish the tortfeasor for his misdeeds. Id.  
11

12 The the description of the fiduciary duties owed by Kathy Parker was discussed in  
13 Clark v. Lubritz, 113 Nev. 1089, 1095-1096, 944 P.2d 861, 865 (1997) as follows:  
14

15 The fiduciary duty among partners is generally one of full and frank  
16 disclosure of all relevant information for just, equitable and open dealings at full  
17 value and consideration. Each partner has a right to know all that the others know,  
18 and each is required to make full disclosure of all material facts within his  
19 knowledge in anything relating to the partnership affairs. The requirement of full  
20 disclosure among partners in partnership business cannot be escaped. . . . Each  
21 partner must . . . not deceive another partner by concealment of material facts.<sup>17</sup>  
22

23 The existence and/or non-existence of a special relationship is typically a question  
24 of fact. Mackintosh v. California Federal Sav. & Loan Assoc., 113 Nev. 393, 935 P.2d  
25 1154, 1159 (1997) ("[T]he existence of the special relationship is a factual question . . .").  
26

27 <sup>17</sup>Clark v. Lubritz, 113 Nev. 1089, 1096, 944 P.2d 861, 865 (1997) ("[partner] owed [other  
28 partner] a fiduciary duty of full disclosure of material facts relating to the partnership  
affairs.").

1 In the present case, however, Rogich specifically testified that he owed a fiduciary duty to  
2 Nanyah as an investor into Eldorado. See **Exhibit 8**. In addition, Nanyah's Managing  
3 Member Carlos Huerta admitted in Nanyah's business records that the Defendants owed  
4 Nanyah fiduciary duties as an investor in Eldorado. See **Exhibit 9**.

5  
6 In addition, Nanyah reposed a special element of reliance on defendants to honor  
7 Nanyah's Investment into Eldorado and to advise it about all material aspects of its  
8 investment. In such a situation, a special relationship was established. Abu Dhabi  
9 Commercial Bank v. Morgan Stanley & Co. Inc., 910 F. Supp. 2d 543, 547 (S.D.N.Y.  
10 2012) (relationship of investor created special relationship to disclose information); Boyer  
11 v. Salomon Smith Barney, 188 P.3d 233, 238 (Or. 2008) (duty to provide information to  
12 investor establishes the "special relationship").

13  
14 In breach of their fiduciary duties, the defendants intentionally and willfully  
15 concealed critical facts from Nanyah—that the Rogich Trust allegedly transferred its  
16 membership in Nanyah to the other defendants for the purpose of avoiding the obligations  
17 to Nanyah. That activity is a clear breach of defendants' fiduciary duties owed to Nanyah.  
18 Powers v. United Servs. Auto. Ass'n, 114 Nev. 690, 701, 962 P.2d 596, 603 (1998)  
19 ("concealing facts to gain an advantage" . . . is a breach of this kind of fiduciary  
20 responsibility), opinion modified on denial of reh'g, 115 Nev. 38, 979 P.2d 1286 (1999)).  
21 The evidence establishes the existence of a special and/or fiduciary relationship by and  
22 between the defendants and Nanyah.  
23

24 In Nevada, NRS 86.286 expressly recognizes fiduciary duties between managers  
25 and members in limited liability companies, other states also recognize that "[g]enerally  
26 speaking, members in member-managed LLCs and managers in manager-managed  
27 LLCs have fiduciary obligations." J. William Callison and Maureen A. Sullivan, Limited  
28



1 Liability Companies: A State-by-State Guide To Law And Practice § 8:7 (2012). *See also*  
2 Rev. Unif. Ltd. Liab. Co. Act § 409(a), (g) (2006), in 6B U.L.A. 488 (2008) (providing that  
3 members and managers of an LLC owe fiduciary duties to the company and to the other  
4 members); Sofia Design& Dev. at S. Brunswick, LLC v. D'Amore (In re D'Amore), 472  
5 B.R. 679, 689 (Bankr. D.N.J. 2012) (finding, under New Jersey law, that "absent a  
6 contrary provision in an LLCs operating agreement, managing members of an LLC owe  
7 the traditional fiduciary duties of loyalty and care to non-managing members of that  
8 LLC."); Salm v. Feldstein, 20 A.D.3d 469, 469–70, 799 N.Y.S.2d 104, 104 (N.Y. App. Div.  
9 2005) (finding a fiduciary duty to make full disclosures of outside offers for assets under  
10 New York law).

12 Finally, in Delaware, a leading source of doctrine on the nature of intra-entity  
13 relationships, managers and members of a limited liability company owe fiduciary duties  
14 to other members unless such duties are explicitly and adequately disclaimed. Auriga  
15 Capital, 40 A.3d 839, 850–51 (Del. Ch. 2012).<sup>18</sup> Accordingly, as another basis, the  
16 defendants did in fact owe fiduciary duties to Nanyah as an investor in Eldorado.

18 Under the original Eldorado Operating Agreement Rogich was called out as a  
19 member of Eldorado and the Rogich Trust was a manager. Under the Amended  
20 Operating Agreement, the subsequent members were the Rogich Trust, Teld and the  
21

24  
25 <sup>18</sup> The Nevada Supreme Court often looks to Delaware law on corporate law matters  
26 when there is no case law on point. *See Am. Ethanol, Inc. v. Cordillera Fund, L.P.*, 252  
27 P.3d 663, 667 (Nev. 2011) (looking to Delaware corporate law on the scope of "fair value"  
28 in corporate buyouts); Shoen v. SAC Holding Corp., 122 Nev. 621, 633–34, 137 P.3d  
1171, 1179-80 (2006) (applying Delaware law's particularity requirements for pleading  
demand futility).

1 Flangas Trust. In addition, the Rogich Trust and Teld were both managers. Thereafter,  
2 on June 25, 2009, under the First Amendment to the Amended Operating Agreement, the  
3 Rogich Trust and Teld continued to be the members and managers. Accordingly, at all  
4 relevant times, the Rogich Trust was either co-members and/or managers of Nanyah,  
5 with each having fiduciary duties to Nanyah. Thus, as a matter of law, the defendants  
6 owed fiduciary duties to Nanyah.  
7

8 **D. SIXTH CLAIM FOR RELIEF. CONSPIRACY – ROGICH TRUST,**  
9 **SIGMUND ROGICH, IMITATIONS.**

10 Proof of a conspiracy is a question of fact and the elements are as follows:

- 11 1. Defendants, by acting in concert, intended to accomplish an unlawful  
12 objective for the purpose of harming plaintiff; and
- 13 2. Plaintiff sustained damage resulting from their act or acts.

14 Consolidated Generator Nevada, Inc. v. Cummins Engine Co., Inc., 114 Nev. 1304, 971  
15 P.2d 1251, 1256 (1998). The gist of a civil conspiracy is not the unlawful agreement but  
16 the damage resulting from that agreement or its execution. The cause of action is not  
17 created by the conspiracy itself but by the actionable tort taken by multiple tortfeasors  
18 working together. Eikelberger v. Tolotti, 96 Nev. 525, 528, 611 P.2d 1086, 1088 (1980).  
19

20 As recently explained in South Fork Livestock P'ship v. United States, 183 F.  
21 Supp. 3d 1111, 1121 (D. Nev. 2016):

22 Under Nevada state law, in order to allege a cause of action for civil conspiracy, a  
23 plaintiff must establish: (1) the commission of an underlying tort; and (2) an  
24 agreement between the defendants to commit that tort. Peterson v. Miranda, 57  
F.Supp.3d 1271, 1278 (D.Nev.2014) (citing GES, Inc. v. Corbitt, 117 Nev. 265, 21  
P.3d 11, 15 (2001)).

25 Id.; Sharda v. Sunrise Hosp. & Med. Ctr., LLC, No. 216CV2233JCMGWF, 2017 WL  
26 2870086, at \*10 (D. Nev. July 3, 2017) (same); Mitchell v. City of Henderson, Nevada,  
27 No. 213CV01154APGCWH, 2017 WL 2841327 (D. Nev. July 3, 2017) (same).  
28

1 The tortious and unlawful objective that the defendants perpetrated was the taking  
2 of Nanyah's money. The Court has found that Nanyah invested \$1.5 million into Eldorado  
3 and the defendants all agreed to repay Nanyah and/or to issue Nanyah a membership  
4 interest commensurate with that investment. Defendants did not honor their obligations  
5 and instead converted Nanyah's money. As discussed above, Nanyah has properly  
6 established that the defendants, and each of them, owed Nanyah fiduciary duties and/or  
7 were in a special relationship with Nanyah so as to honor and protect Nanyah's \$1.5  
8 million investment.  
9

10 Instead, the defendants each worked cooperatively and in furtherance of a scheme  
11 to avoid repaying Nanyah its investment and/or receiving any portion of the Rogich  
12 Trust's membership interest in Eldorado. These agreements satisfy the "agreement"  
13 element of a civil conspiracy. Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 970 P.2d  
14 98, 111 (1998) (civil conspiracy includes an express or tacit agreement between the  
15 wrongdoers to effectuate the harm to plaintiff) (overruled on other grounds in GES, Inc. v.  
16 Corbitt, 117 Nev. 265, 270, 21 P.3d 11, 14 (2001)).  
17

18 Further, the underlying transaction whereby the Rogich Trust allegedly transferred  
19 its interest to the Eliades Trust demonstrates the defendants' clear intention to deceive  
20 and harm Nanyah. For instance, Teld allegedly "loaned" the Rogich Trust \$600,000 to  
21 allow the Rogich Trust to buy a 6% portion of Eldorado from the Flangas Trust. That  
22 equates to \$100,000 per 1% interest in Eldorado. Later, Rogich uses the pretext of  
23 selling 40% of Eldorado to the Eliades Trust for the same \$600,000. Under this scam  
24 transaction, the Rogich Trust pretended to "sell" an asset valued at \$4 million for  
25 \$600,000. And all of this evidence is undisputed.  
26  
27  
28

1           **E.     BREACH OF IMPLIED IN FACT CONTRACT-ELDORADO.**

2           The United States Supreme Court long ago defined implied in fact agreements as  
3 those “founded upon a meeting of the minds, which, although not embodied in an express  
4 contract, is inferred, as a fact, from conduct of the parties showing, in the light of the  
5 surrounding circumstances, their tacit understanding.” Balt. & Ohio R.R. v. United States,  
6 261 U.S. 592, 597, 58 Ct.Cl. 709, 43 S.Ct. 425, 67 L.Ed. 816 (1923).  
7

8           The Nevada Supreme Court also recognizes implied in fact contracts. In Certified  
9 Fire Prot. Inc. v. Precision Constr., 283 P.3d 250, 256 (Nev. 2012), the Court stated:

10                   A contract implied in fact must be “manifested by conduct,” . . . it “is a true  
11 contract that arises from the tacit agreement of the parties.” . . . . To find a contract  
12 implied in fact, the fact finder must conclude that the parties intended to contract  
13 and promises were exchanged, the general obligations for which must be  
14 sufficiently clear.

15           Id. When the conduct is clear and undisputed, the Court must find the existence of a  
16 contract as a matter of law. ACC Capital Corp. v. Ace W. Foam Inc., --- P.3d ---, 2018  
17 WL 1127647 \* 2 (Utah Ct. App. 2018) (“The existence of a contract is a question of law.”);  
18 Hays v. Underwood, 196 Kan. 265, 267, 411 P.2d 717, 720 (1966) “whether a written  
19 instrument or undisputed facts establish the existence and the terms of a contract are  
20 questions of law for the court's determination.”).

21           Here, the conduct and the facts are undisputed. Nanyah invested \$1.5 million into  
22 Eldorado. The undisputed evidence is that Huerta, as Eldorado's Managing Member, had  
23 the authority to solicit and receive Nanyah's \$1.5 million investment. Eldorado now freely  
24 admits that Eldorado received Nanyah's money. The Purchase Agreement and the Teld  
25 Membership Interest Purchase Agreement all clearly and unmistakably demonstrate that  
26 Nanyah paid \$1.5 million to Eldorado and was entitled to be repaid its investment. These  
27  
28

1 facts are undisputed and there is no question that there was a meeting of the minds  
2 between Nanyah and Eldorado.

3 The Court has also found as a matter of undisputed fact and law in its Order that  
4 Eldorado owed Nanyah the Obligation to repay it for its \$1.5 million investment and that  
5 the Rogich Trust "specifically assumed" that obligation on behalf of Eldorado.  
6 Accordingly, as a matter of law there is an implied in fact contract establishing Eldorado's  
7 Obligation owed to Nanyah. This claim is established by this Court's Order and has been  
8 briefed and pled throughout this case and is the subject of this Court's motion in limine  
9 allowing this claim to proceed to the jury.  
10

11 **F. UNJUST ENRICHMENT-ELDORADO.**

12 In Certified Fire Prot. Inc. v. Precision Constr., 283 P.3d 250, 257 -258 (Nev. 2012)  
13 the Court explained as follows:  
14

15 Unjust enrichment exists when the plaintiff confers a benefit on the  
16 defendant, the defendant appreciates such benefit, and there is "acceptance and  
17 retention by the defendant of such benefit under circumstances such that it would  
18 be inequitable for him to retain the benefit without payment of the value thereof.' "

18 . . .

19 "[B]enefit" in the unjust enrichment context can include "services beneficial  
20 to or at the request of the other," "denotes any form of advantage," and is not  
21 confined to retention of money or property. See Restatement of Restitution § 1  
22 cmt. b (1937); see also Topaz Mutual Co. v. Marsh, 108 Nev. 845, 856, 839 P.2d  
23 606, 613 (1992) (citing § 1, cmt. b and noting that postponing foreclosure on a  
24 property benefits owner by providing additional time to negotiate a sale and  
reducing overall debt). But while "[r]estitution may strip a wrongdoer of all profits  
gained in a transaction with [a] claimant ... principles of unjust enrichment will not  
support the imposition of a liability that leaves an innocent recipient worse off ...  
than if the transaction with the claimant had never taken place." Restatement  
(Third) of Restitution and Unjust Enrichment § 1 cmt. d (2011).

25 Id. In the present case a benefit was conferred. Eldorado received and used Nanyah's  
26 \$1.5 million to repay a loan owed by Eldorado. Accordingly, Eldorado appreciated the  
27 benefit and has retained Nanyah's money and has not returned it. Every element of  
28 Nanyah's unjust enrichment claim is established by undisputed evidence.

1 Further, a "benefit" means more than just use and retention of money. It means  
2 any "form of advantage". Eldorado was able to satisfy a debt owed to a creditor by using  
3 Nanyah's investment funds.

4 While Eldorado may argue that it was an innocent recipient of Nanyah's money,  
5 this contention is baseless. Eldorado specifically induced Nanyah to invest, received  
6 Nanyah's money and then paid a debt owed by Eldorado. Use of Nanyah's money to  
7 repay a loan is a benefit. As such, Eldorado received a substantial benefit from use of  
8 Nanyah's money. It would clearly be inequitable to allow Eldorado to use Nanyah's funds  
9 to pay off a debt but deny Nanyah the right to be repaid.  
10

11 **X. ESTIMATED TIME FOR TRIAL.**

12 The jury trial has been scheduled to take place during the week of April 22-26,  
13 2019.

14 **XI. ANY OTHER MATTER WHICH COUNSEL DESIRES TO BRING TO THE  
15 ATTENTION OF THE COURT PRIOR TO TRIAL.**

16 Given the NRS 163 Notice previously provided to the Court, Nanyah has and/or will  
17 be filing a motion to address the Notice.  
18

19 **XII. IDENTIFICATION OF THE COURT'S ORDERS ON THE PARTIES MOTIONS IN  
20 LIMINE AND MOTIONS FOR SUMMARY JUDGMENT.**

21 **A. Motions in Limine.**

22 The Court's order regarding the resolution of the parties' motions in limine is  
23 attached hereto as **Exhibit 6**.

24 ///

25 ///

26 ///

27 ///

28

1           **B.     Motions for Summary Judgment.**

2                   1.     **October 5, 2018 Order: (1) Granting Defendants Peter Eliades,**  
3                           **Individually and as Trustee of the Eliades Survivor Trust of**  
4                           **10/30/08, And Teld, LLC's Motion for Summary Judgment; and**  
5                           **(2) Denying Nanyah Vegas, LLCs' Countermotion for Summary**  
6                           **Judgment.**

7           The Court's October 5, 2018, Order granted summary judgment on Nanyah's  
8           claims asserted against Teld and Peter Eliades, individually and as the Trustee of the  
9           Eliades Survivor Trust on the Plaintiff's 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> claims. A copy of this  
10          Order is attached hereto as Exhibit 1.

11          On March 26, 2019, the Court affirmed its undisputed facts and conclusions of law  
12          in its Order, denied the Rogich Trust's NRCP 60(b) motion, and stated:

13                   **The Court finds that no mistake, inadvertence, surprise or excusable**  
14                   **neglect exists with respect to the Court's Order or the Court's Minute Order.**  
15                   **Exhibit 2, ¶6 (emphasis added).**

16                   2.     **May 22, 2018 Order Partially Granting Summary Judgment.**

17          The Court's May 22, 2018, Order granted summary judgment in favor of  
18          defendants on Nanyah's 5<sup>th</sup>, and 7<sup>th</sup> claims for relief. The Court denied summary  
19          judgment on Nanyah's 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> claims. A copy of this Order is attached  
20          hereto as **Exhibit 10**. On August 10, 2018, the Court denied Nanyah's motion for  
21          reconsideration of this order. On June 5, 2018, the Court denied the Rogich Defendants'  
22          first motion for reconsideration of this order. On October 5, 2018, the Court entered is  
23          Minute Order denying the Rogich Trust's second motion for reconsideration of this Order  
24          and denied Nanyah's countermotion for award of fees and costs.

25                   3.     **May 22, 2018 Order Denying Countermotion for Summary**  
26                           **Judgment and denying NRCP 56(f) Relief.**

27          The Court's May 22, 2018, Order denied Nanyah's countermotion for summary  
28          judgment and NRCP 56(f) relief is attached hereto as **Exhibit 11**.

SIMONS HALL JOHNSTON PC  
6490 S. McCarran Blvd., Ste. F-46  
Reno, NV 89509  
Phone: (775) 785-0088

1       **AFFIRMATION:** This document does not contain the social security number of any  
2 person.

3       DATED this 16<sup>th</sup> day of April, 2019.

4  
5       SIMONS HALL JOHNSTON PC  
6       6490 S. McCarran Blvd., Ste. F-46  
7       Reno, NV 89509



8       \_\_\_\_\_  
9       MARK G. SIMONS  
10       Attorneys for Nanyah Vegas, LLC

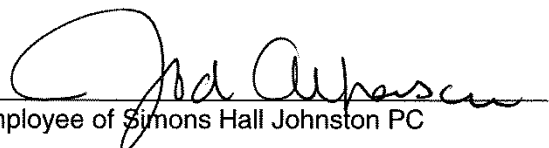


CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 8.05, 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 **NANYAH VEGAS, LLC'S PRETRIAL MEMORANDUM** on all parties to this action via  
the Odyssey E-Filing System:

Dennis L. Kennedy	<a href="mailto:dkennedy@baileykennedy.com">dkennedy@baileykennedy.com</a>
Bailey Kennedy, LLP	<a href="mailto:bkfederaldownloads@baileykennedy.com">bkfederaldownloads@baileykennedy.com</a>
Joseph A. Liebman	<a href="mailto:jlienbman@baileykennedy.com">jlienbman@baileykennedy.com</a>
Andrew Leavitt	<a href="mailto:andrewleavitt@gmail.com">andrewleavitt@gmail.com</a>
Angela Westlake	<a href="mailto:awestlake@lionelsawyer.com">awestlake@lionelsawyer.com</a>
Brandon McDonald	<a href="mailto:brandon@mcdonaldlayers.com">brandon@mcdonaldlayers.com</a>
Bryan A. Lindsey	<a href="mailto:bryan@nvfirm.com">bryan@nvfirm.com</a>
Charles Barnabi	<a href="mailto:cj@mcdonaldlawyers.com">cj@mcdonaldlawyers.com</a>
Christy Cahall	<a href="mailto:christy@nvfirm.com">christy@nvfirm.com</a>
Lettie Herrera	<a href="mailto:lettie.herrera@andrewleavittlaw.com">lettie.herrera@andrewleavittlaw.com</a>
Rob Hernquist	<a href="mailto:rhernquist@lionelsawyer.com">rhernquist@lionelsawyer.com</a>
Samuel A. Schwartz	<a href="mailto:sam@nvfirm.com">sam@nvfirm.com</a>
Samuel Lionel	<a href="mailto:slionel@fclaw.com">slionel@fclaw.com</a>
CJ Barnabi	<a href="mailto:cj@cohenjohnson.com">cj@cohenjohnson.com</a>
H S Johnson	<a href="mailto:calendar@cohenjohnson.com">calendar@cohenjohnson.com</a>
Erica Rosenberry	<a href="mailto:erosenberry@fclaw.com">erosenberry@fclaw.com</a>

DATED this 16 day of April, 2019.

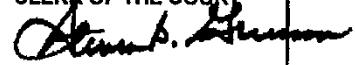
  
Employee of Simons Hall Johnston PC

## EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	10/5/18 Order	10
2	3/26/19 Order Denying the Rogich Defendants' NRCP 60(B) Motion	3
3	Nanyah Exhibit List	8
4	Nanyah Supplemental Objections to Defendants' Exhibits	27
5	Yoav Harlap Declaration	1
6	11/6/19 Order Regarding Motions in Limine	4
7	Huerta Deposition Excerpts	5
8	Rogich Deposition Excerpts	5
9	Email string	2
10	5/22/18 Order Partially Granting Summary Judgment	4
11	5/22/18 Order Denying Countermotion for Summary Judgment and denying NRCP 56(f) Relief	3

**EXHIBIT 1**

**EXHIBIT 1**



**ORDR (CIV)**

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*Attorneys for Nanyah Vegas, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CARLOS A. HUERTA, an individual;  
CARLOS A. HUERTA as Trustee of THE  
ALEXANDER CHRISTOPHER TRUST, a  
Trust established in Nevada as assignee of  
interests of GO GLOBAL, INC., a Nevada  
Corporation; NANYAH VEGAS, LLC, A  
Nevada limited liability company,

Plaintiffs,

vs.

SIG ROGICH aka SIGMUND ROGICH as  
Trustee of The Rogich Family Irrevocable  
Trust; ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X; and/or  
ROE CORPORATIONS I-X, inclusive,

Defendants.

NANYAH VEGAS, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
as Trustee of The Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

Case No. A-13-686303-C  
Dept. No. XXVII

**ORDER: (1) GRANTING DEFENDANTS  
PETER ELIADES, INDIVIDUALLY  
AND AS TRUSTEE OF THE ELIADES  
SURVIVOR TRUST OF 10/30/08, AND  
TELD, LLC'S MOTION FOR  
SUMMARY JUDGMENT; AND (2)  
DENYING NANYAH VEGAS, LLC'S  
COUNTERMOTION FOR SUMMARY  
JUDGMENT**

**CONSOLIDATED WITH:**

Case No. A-16-746239-C

THIS MATTER came before the Court on July 26, 2018 on Defendants Peter Eliades,  
individually ("Eliades") and as Trustee of The Eliades Survivor Trust of 10/30/08 (the "Eliades  
Trust"), and Teld, LLC's ("Teld") (collectively, the "Eliades Defendants") Motion for Summary

Judgment (the "Motion for Summary Judgment"), and Nanyah Vegas, LLC's ("Nanyah")

Counter-motion for Summary Judgment (the "Counter-motion for Summary Judgment"). The Parties appeared as follows:

- For the Eliades Defendants and Eldorado Hills, LLC ("Eldorado"): Joseph Liebman, Esq. of Bailey♦Kennedy, LLP.
- For Sig Rogich, individually ("Rogich") and as Trustee of the Rogich Family Irrevocable Trust (the "Rogich Trust"), and Imitations, LLC (collectively, the "Rogich Defendants"): Samuel Lionel, Esq. of Fennemore Craig, P.C.
- For Nanyah: Mark G. Simons, Esq. of Simons Law, PC.

The Court, having heard oral argument, having reviewed the papers, exhibits, and pleadings on file, and having considered the same, and for the reasons stated upon the record, finds as follows:

#### **UNDISPUTED MATERIAL FACTS**

##### **The Relevant History of Eldorado**

1. 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.
2. 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. At this time, the Eliades Defendants had no involvement with Eldorado.
3. In October of 2008, approximately ten months later, Teld purchased a 1/3 interest in Eldorado for \$3,000,000.00. Concurrently, The Flangas Trust also purchased a 1/3 interest in Eldorado for \$3,000,000.00, which was subsequently transferred to Teld when the Flangas Trust backed out of the deal. Because Teld ended up with a larger percentage of Eldorado than originally contemplated, it was later agreed that the Rogich Trust would re-acquire 6.67% of Eldorado from Teld. As a result of these transactions, Go Global (*i.e.*, Huerta) no longer owned an Eldorado membership interest, Teld owned 60% of Eldorado, and the Rogich Trust owned approximately 40% of Eldorado.
4. These transactions were memorialized in various written agreements. Nanyah was not

included as a named signatory on the agreements, however, the agreements identified that The Rogich Trust specifically agreed to assume the obligation to pay Nanyah its percentage interest in Eldorado or to pay Nanyah its \$1,500,000 invested into Eldorado.

**The Relevant Agreements**

5. The relevant agreements at issue in this case state as follows:

**a. October 30, 2008 Purchase Agreement between Go Global, Carlos Huerta, and the Rogich Trust:**

i. "[Go Global and Huerta] owns a membership interest ... in Eldorado Hills, LLC ... equal or greater than thirty-five percent and which may be as high as forty-nine and forty-four one hundredths (49.44%) of the total ownership interests in the Company. Such interest, as well as the ownership interest currently held by [the Rogich Trust], may be subject to certain potential claims of those entities set forth and attached hereto in Exhibit 'A' and incorporated by this reference ('Potential Claimants'). [The Rogich Trust] intends to negotiate such claims with [Go Global and Huerta's] assistance so that such claimants confirm or convert the amounts set forth beside the name of each said claimants into non-interest bearing debt, or an equity percentage to be determined by [the Rogich Trust] after consultation with [Go Global and Huerta] as desired by [Go Global and Huerta], with no capital calls for monthly payments, and a distribution in respect of their claims in amounts from the one-third (1/3<sup>rd</sup>) ownership interest in [Eldorado] retained by [the Rogich Trust]."

ii. The October 30, 2008, Purchase Agreement states at Section 4 the following: Seller [Go Global], however, will not be responsible to pay the Exhibit A Claimants their percentage or debt. This will be Buyer's [The Rogich Trust's] obligation. . . ." The Exhibit A Claimants include Nanyah and its \$1,500,000.00 investment.

2                   **b. October 30, 2008 Membership Interest Purchase Agreement between Rogich,**  
3                   **the Rogich Trust, Teld, Go Global and Huerta:**

- 4                   i. 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  
9                   referenced in Section 8 of the Agreement. Exhibit D also memorializes  
10                  Nanyah's \$1,500,000 investment into Eldorado.
- 11                  ii. Section 8(c) of this agreement again states that "Seller [Rogich and the Rogich  
12                  Trust] shall defend, indemnify and hold Buyer [Teld] harmless from any and  
13                  all the claims of . . . Nanyah . . . each of whom invested or otherwise  
14                  advanced . . . funds . . . (i) It is the current intention of Seller [Rogich and the  
15                  Rogich Trust] that such amounts be confirmed or converted to debt . . .
- 16                  iii. Eliades acknowledged that he was aware of the Rogich Trust's obligation to  
17                  Nanyah contained in the October 30, 2008, Purchase Agreement when he  
18                  entered into the October 30, 2008 Membership Interest Purchase Agreement  
19                  and that he understood that Teld's acquisition of the Rogich Trust's  
20                  membership interests in Eldorado was subject to the terms and conditions of  
21                  the October 30, 2008, Purchase Agreement.
- 22                  iv. Eliades acknowledges that it was always the responsibility of Rogich and the  
23                  Rogich Trust to repay Nanyah for its investment in Eldorado.
- 24                  v. "[The Rogich Trust] is the owner, beneficially and of record, of the  
25                  Membership Interest, free and clear of all liens, encumbrances, security  
26                  agreements, equities, options, claims, charges, and restrictions, and [Teld] will  
27                  receive at Closing good and absolute title thereto free of any liens, charges or  
28                  encumbrances thereon."
- vi. "[The Rogich Trust] shall defend, indemnify, and hold [Teld] harmless from

any and all the claims of Eddyline Investments, LLC, Ray Family Trust, Nanyah Vegas, LLC, and Antonio Nevada, LLC, each of whom invested or otherwise advanced the funds, plus certain possible claimed accrued interest.”

vii. “It is the current intention of [the Rogich Trust] that such amounts be confirmed or converted to debt, with no obligation to participate in capital calls or monthly payments, a pro-rata distribution at such time as [Eldorado’s] real property is sold or otherwise disposed of. Regardless of whether this intention is realized, [the Rogich Trust] shall remain solely responsible for any claims by the above referenced entities set forth in this section above.”

viii. “The ‘pro-rata distributions’ hereinabove referenced shall mean equal one-third shares pursuant to the ownership set forth in Section 3 above, provided, that any amounts owing to those entities set forth on Exhibit ‘D,’ or who shall otherwise claim an ownership interest based upon contributions or advances directly or indirectly to [Eldorado] made prior to the date of this agreement, shall be satisfied solely by [the Rogich Trust].”

ix. “The parties agree that [the Rogich Trust] may transfer [the Rogich Trust’s] ownership interest in [Eldorado] to one or more of the entities set forth in Exhibit ‘D’ to satisfy any claims such entity may have.”

**c. October 30, 2008 Amended and Restated Operating Agreement between the Rogich Trust, the Flangas Trust, and Teld:**

i. “The Rogich Trust will retain a one-third (1/3<sup>rd</sup>) ownership interest in [Eldorado] (subject to certain possible dilution or other indemnification responsibilities assumed by the Rogich Trust in the Purchase Documents).”

ii. “The Rogich trust shall indemnify and hold the Flangas Trust and Teld harmless from and against the claims of any individuals or entities claiming to be entitled to a share of profits and losses other than the Rogich Trust, the Flangas Trust and Teld, so as not to diminish the one-third (1/3<sup>rd</sup>) participation in profits and losses by each of the Flangas Trust and Teld.”



iii. The terms and conditions of the October 30, 2008 Membership Interest Purchase Agreement were incorporated by reference into the October 30, 2008 Amended and Restated Operating Agreement. Recital A.

d. **January 1, 2012 Membership Interest Assignment Agreement between the Rogich Trust and the Eliades Trust:**

- i. The January 1, 2012, Membership Interest Assignment Agreement was not executed until sometime in August, 2012.
- ii. As of August, 2012, the debt owed to Nanyah of \$1,500,000.00 had not been paid.
- iii. "Rogich has acquired a forty percent (40%) interest in Eldorado Hills, LLC, a Nevada limited-liability company...as of the date hereof...(Within the Rogich 40% is a potential 1.12% interest of other holders not of formal record with Eldorado)."
- iv. "Rogich has not, other than as previously stated, transferred, sold, conveyed or encumbered any of his Forty Percent (40%) to any other person or entity prior to this Agreement, except for the potential claims of .95% held by The Robert Ray Family Trust and .17% held by Eddyline Investments, L.L.C."
- v. "Rogich will cause the satisfaction of the Teld note at Closing and Eliades will receive at closing good and absolute title free of any liens, charges or encumbrances thereon."
- vi. The Eliades Defendants never informed Nanyah of this agreement and/or that they were acquiring the remainder of the Rogich Trust's interest in Eldorado.
- vii. The Eliades Defendants have no knowledge or understanding when Nanyah discovered or was informed of the d. January 1, 2012 Membership Interest Assignment Agreement.
- viii. Nanyah was not a party to this agreement.

6. Any finding of fact set forth herein more appropriately designated as a conclusion of law shall be so designated.

### CONCLUSIONS OF LAW

- 2 7. The October 30, 2008, Purchase Agreement states that The Rogich Trust specifically agreed  
3 to assume the obligation to pay Nanyah its percentage or debt. However, there is nothing in  
4 the Purchase Agreement that states Eliades, the Eliades Trust or Teld specifically agreed to  
5 assume those obligations from the Rogich Trust.
- 6 8. Nanyah's contract theory rests upon a successors and assigns provision contained in the  
7 October 30, 2008 Purchase Agreement between Go Global, Huerta, Rogich and the Rogich  
8 Trust.
- 9 9. The language in the October 30, 2008 Purchase Agreement indicating that this agreement  
10 will be binding on the Eliades Defendants, absent any specific agreement to be liable for the  
11 Rogich Trust's obligation to Nanyah, is not itself sufficient to impose liability on the Eliades  
12 Defendants to pay the Nanyah debt.
- 13 10. Under Nevada law, "[t]he fact that a contract or agreement contains a provision, as in the  
14 case at bar, 'binding the successors, heirs, and assigns of the parties hereto,' is not of itself, as  
15 a general rule, sufficient to impose personal liability upon the assignee, unless by specific  
16 agreement to that effect or by an agreed substitution of the assignee for the vendee. *Southern*  
17 *Pac. Co. v. Butterfield*, 39 Nev. 177, 154 P. 932, 932 (1916).<sup>1</sup>
- 18 11. Further, "[a]n assignment 'cannot shift the assignor's liability to the assignee, because it is a  
19 well-established rule that a party to a contract cannot relieve himself of his obligations by  
20 assigning the contract. Neither does it have the effect of creating a new liability on the part  
21 of the assignee, to the other party to the contract assigned, because the assignment does not  
22 bring them together, and consequently there cannot be a meeting of the minds essential to the  
23 formation of a contract.'" *Id.* at 933 (citation omitted).
- 24 12. None of the Eliades Defendants were parties to the October 30, 2008 Purchase Agreement  
25 with the successors and assigns provision relied on by Nanyah, and even if they were, the  
26

27 <sup>1</sup> Other jurisdictions are in accord. *Van Sickle v. Hallmark & Associates, Inc.*, 840 N.W.2d 92, 104 (N.D. 2013);  
28 *In re Refco Inc. Sec. Litig.*, 826 F.Supp.2d 478, 494 (S.D.N.Y. 2011); *Pelz v. Streater Nat'l Bank*, 496 N.E.2d 315, 319-  
20 (Ill. Ct. App. 1986).

explicit language contained in the October 30, 2008 Membership Interest Purchase Agreement (whereby Teld purchased some of the Rogich Trust's membership interests) confirms that the Eliades Defendants would not be responsible for the Rogich Trust's obligations to Nanyah's to pay Nanyah is percentage of Eldorado or the debt to Nanyah.

13. Likewise, the explicit language of the relevant agreements also make it crystal clear that the Eliades Defendants purchased all of their Eldorado membership interests free and clear from any type of encumbrance. Nanyah was not a party to this agreement.

14. Because the relevant agreements are clear and unambiguous, this Court may determine the intent of the parties as a matter of law, and is precluded from considering any testimony to determine the Eliades Defendants' so-called contractual liability. *Krieger v. Elkins*, 96 Nev. 839, 843, 620 P.2d 370, 373 (1980) (holding that testimony used to contradict or vary the written terms of an agreement is a violation of the parol evidence rule).

15. Based on the above, the Eliades Defendants never assumed the Rogich Trust's debt or obligation to Nanyah, and therefore, there is no contractual basis for Nanyah—as an alleged third-party beneficiary—to sue the Eliades Defendants. *See Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 379-80, 566 P.2d 819, 825 (1977).

16. A tortious implied covenant claim will only arise in "rare and exceptional circumstances." *Ins. Co. of the West v. Gibson Tile Co., Inc.*, 122 Nev. 455, 461, 134 P.3d 698, 702 (2006) (citation omitted).

17. Further, "the implied covenant or duty of good faith and fair dealing does not create rights or duties beyond those agreed to by the parties." 17A C.J.S. Contracts § 437.

18. Nanyah's tortious implied covenant claim fails because the Court concludes there is nothing within the relevant agreements which imposes any sort of obligation on the Eliades Defendants for Nanyah's benefit.

19. "[C]ivil conspiracy liability may attach where two or more persons undertake some concerted action with the intent to commit an unlawful objective, not necessarily a tort." *Cadle Woods v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1052 (2015).

20. Nanyah's conspiracy theory relates to the transactions whereby the Eliades Defendants

obtained membership interests in Eldorado allegedly subject to repayment obligations owed to Nanyah and the Eliades Defendants supposedly pursued their own individual advantage by seeking to interfere with the return of Nanyah's alleged investment in Eldorado.

21. Because the Court concludes that that Eliades Defendants did not specifically assumed the Rogich Trust's obligation to repay Nanyah its \$1,500,000.00 investment into Eldorado, there is no unlawful objective to support a civil conspiracy claim. The Court also finds that the intracorporate conspiracy doctrine does not apply because the claim does not involve the Eliades Defendants conspiring with Eldorado.

22. Any conclusion of law set forth herein more appropriately designated as a finding of fact shall be so designated.

#### **ORDER**

Based upon the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that the Motion for Summary Judgment is GRANTED. The Court enters summary judgment in favor of the Eliades Defendants and against Nanyah, and dismisses, with prejudice, Nanyah's following claims for relief against the Eliades Defendants:

1. First Claim for Relief – Breach of Contract;
2. Second Claim for Relief – Breach of Implied Covenant of Good Faith and Fair Dealing;
3. Third Claim for Relief – Tortious Breach of Implied Covenant of Good Faith and Fair Dealing;
4. Sixth Claim for Relief – Civil conspiracy;
5. Eighth Claim for Relief – Declaratory Relief; and
6. Ninth Claim for Relief – Specific Performance.

As a result of this Order, the Eliades Defendants are completely dismissed from this litigation.

///

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///

///

2 For the reasons set forth above, **IT IS FURTHER ORDERED** that the Countermotion for  
3 Summary Judgment is DENIED.

4 DATED this 1 day of Oct., 2018.

5  
6 Nancy L. Ali  
7 DISTRICT COURT JUDGE

8 Submitted by:

9 SIMONS LAW

10 By: [Signature]  
11 Mark Simons, Esq.  
12 6490 South McCarran Blvd., # 20  
13 Reno, NV 8950  
Attorneys for Plaintiff Nanyah Vegas, LLC

14 Approved as to Form and Content:

15 BAILEY ♦ KENNEDY

16 By [Signature]  
17 Dennis Kennedy, Esq.  
18 Joseph Liebman, Esq.  
19 8984 Spanish Ridge Avenue  
20 Las Vegas, NV 89148-1302  
Attorneys for Defendants PETE ELIADES,  
THE ELIADES SURVIVOR TRUST OF 10/30/08,  
TELD, LLC and ELDORADO HILLS, LLC

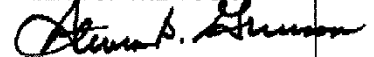
Approved as to Form and Content:

FENNMORE CRAIG, P.C.

16 By: [Signature]  
Samuel Lionel, Esq.  
300 S. Fourth Street, Suite 1400  
Las Vegas, NV 89101  
Attorneys for Defendants Sig Rogich,  
Individually and as Trustee of the Rogich  
Family Irrevocable Trust, and Imitations,  
LLC

**EXHIBIT 2**

**EXHIBIT 2**



**ORDR**

Samuel S. Lionel, Esq. (Bar No. 1766)  
Brenoch Wirthlin, Esq. (Bar No. 10282)  
**FENNEMORE CRAIG, P.C.**  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
Tel.: (702) 692-8000; Fax: (702) 692-8099  
Email: [slionel@fclaw.com](mailto:slionel@fclaw.com)  
*Attorneys for Sigmund Rogich, Individually and as  
Trustee of The Rogich Family Irrevocable Trust  
and Imitations, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CARLOS A. HUERTA, an individual;  
CARLOS A. HUERTA as Trustee of THE  
ALEXANDER CHRISTOPHER TRUST, a  
Trust established in Nevada as assignee of  
interests of GO GLOBAL, INC., a Nevada  
Corporation; NANYAH VEGAS, LLC, A  
Nevada limited liability company,

Plaintiffs,

vs.

SIG ROGICH aka SIGMUND ROGICH as  
Trustee of The Rogich Family Irrevocable  
Trust; ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X; and/or  
ROE CORPORATIONS I-X, inclusive,

Defendants.

NANYAH VEGAS, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
as Trustee of The Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

Case No. A-13-686303-C  
Dept. No. XXVII

**ORDER DENYING  
THE ROGICH DEFENDANTS'  
NRCP 60(B) MOTION**

**CONSOLIDATED WITH:**

Case No. A-16-746239-C

THIS MATTER came before the Court on February 21, 2019 on the Motion for Relief from the October 5, 2018 Order Pursuant to NRCP 60(b) filed by Defendants Sigmund Rogich, individually and as trustee of the Sigmund Family Irrevocable Trust, and Imitations, LLC (collectively referred to as the "Rogich Defendants"). The Parties appeared as follows:

- For Eldorado Hills, LLC ("Eldorado"): Joseph Liebman, Esq. of Bailey❖Kennedy, LLP.
- For the Rogich Defendants: Samuel Lionel, Esq. of Fennemore Craig, P.C.
- For Nanyah: Mark G. Simons, Esq. of Simons Hall Johnson PC.

The Court, having heard oral argument, having reviewed the papers, exhibits, and pleadings on file, and having considered the same, and for the reasons stated herein finds as follows:

1. On July 26, 2018, the Court heard argument on the Motion for Summary Judgment filed by Peter Eliades, individually ("Eliades") and as Trustee of The Eliades Survivor Trust of 10/30/08 (the "Eliades Trust"), and Teld, LLC's ("Teld") (collectively, the "Eliades Defendants") and on Nanyah's Countermotion for Summary Judgment.

2. On August 7, 2018, the Court entered its Minute Order granting the Eliades Defendants' motion for summary judgment and denying Nanyah's countermotion (the "Minute Order").

3. On October 5, 2018, the Court rendered its Order granting summary judgment in favor of the Eliades Defendants and denying Nanyah's countermotion (the "Order").

4. On February 6, 2019, the Rogich Defendants filed the present motion for relief pursuant to NRCP 60(b)(1).

5. The Court finds that the Rogich Defendants' motion was timely filed.

6. The Court finds that no mistake, inadvertence, surprise or excusable neglect exists with respect to the Court's Order or the Court's Minute Order.

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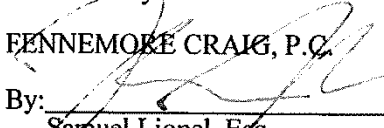
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2 For the reasons set forth above, **IT IS ORDERED** that the Rogich Defendants' Motion for  
3 NRCP 60(b) relief is **DENIED**.

4 DATED this 22 day of March, 2019.

5 Nancy J. Alf  
6 DISTRICT COURT JUDGE  
7 

8 Submitted by:  
9 FENNEMORE CRAIG, P.C.  
10 By:   
11 Samuel Lionel, Esq.  
12 Brenoch Wirthlin, Esq.  
13 300 S. Fourth Street, Suite 1400  
14 Las Vegas, NV 89101  
15 *Attorneys for Defendants Sig Rogich,*  
16 *Individually and as Trustee of the Rogich*  
17 *Family Irrevocable Trust, and Imitations, LLC*

16 Approved as to Form and Content:  
17 BAILEY ♦ KENNEDY

18 By Dennis Kennedy, Esq.  
19 Joseph Liebman, Esq.  
20 8984 Spanish Ridge Avenue  
21 Las Vegas, NV 89148-1302  
22 *Attorneys for Defendants PETE ELIADES,*  
23 *THE ELIADES SURVIVOR TRUST OF*  
24 *10/30/08,*  
25 *TELD, LLC and ELDORADO HILLS, LLC*

Approved as to Form and Content:  
SIMONS HALL JOHNSTON PC

By: Mark G. Simons, Esq.  
6490 South McCarran Blvd., #F-46  
Reno, NV 89509  
*Attorneys for Plaintiff Nanyah Vegas,*  
*LLC*

**EXHIBIT 3**

**EXHIBIT 3**

**TRIAL EXHIBITS**

PLTF: Nanyah Vegas, LLC  
DEFT: Teld, LLC, et al.

P-ATY: Mark G. Simons  
D-ATY: Samuel Lionel, Joseph A.  
Liebman, Michael V. Cristalli

Case No: **A-13-686303-C** Dept. No: **XXVII** Clerk:  
**Consolidated with A-16-746239-C**

Date: 4/22/19

Exh. No.	Party	Description	Objection	Offered	Admitted
1	Plaintiff	10/5/18 Order: (1) Granting Defendants Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment; and (2) Denying Nanyah Vegas, LLC's Countermotion for Summary Judgment			
2	Plaintiff	Project Information (RT 0616-623)			
3	Plaintiff	12/31/07 Nevada State Bank Statement for Eldorado Hills LLC (PLTF0032)			
4	Plaintiff	Eldorado Hills, LLC's General Ledger (PLTF547-574; RT 306-324)			
5	Plaintiff	Eldorado Hills General Ledger – All Transactions (SR0002334-2360)			
6	Plaintiff	5/25/07 Business Purpose Affidavit of Carlos Huerta, Manager (RT 0583)			
7	Plaintiff	6/12/08 Carlos Huerta email to Melissa Olivas (RT 0438)			
8	Plaintiff	6/13/08 Carlos Huerta letter to Terri at Pulaski Bank (RT 0449)			

**TRIAL EXHIBITS**

PLTF: Nanyah Vegas, LLC  
DEFT: Teld, LLC, et al.

P-ATY: Mark G. Simons  
D-ATY: Samuel Lionel, Joseph A.  
Liebman, Michael V. Cristalli

Case No: **A-13-686303-C** Dept. No: **XXVII** Clerk:  
**Consolidated with A-16-746239-C**

Date: 4/22/19

Exh. No.	Party	Description	Objection	Offered	Admitted
9	Plaintiff	6/24/08 Carlos Huerta letter to FDIC as receiver for ANB Financial (RT 0463)			
10	Plaintiff	10/14/08 Sigmund Rogich letter to Leroy Land at Qfinancial (RT 0513)			
11	Plaintiff	10/17-23/08 Email string between Robin Greco, Melissa Olivas, and Valerie Bussey (RT 0624-625)			
12	Plaintiff	10/24/08 Email from Carlos Huerta to Melissa Olivas and Sig Rogich (RT0156-157)			
13	Plaintiff	Go Global Capital Contributions into Eldorado Hills (PLTF575)			
14	Plaintiff	10/27-28/08 Email string between Summer Rellamas, Melissa Olivas, Carlos Huerta, Pat Sanchez (RT 0694-696)			
15	Plaintiff	10/24-25/08 Email string between Kenneth Woloson, Melissa Olivas, Carlos Huerta, Summer Rellamas (PLTF577-582)			

**TRIAL EXHIBITS**

PLTF: **Nanyah Vegas, LLC**  
DEFT: **Teld, LLC, et al.**

P-ATY: Mark G. Simons  
D-ATY: Samuel Lionel, Joseph A.  
Liebman, Michael V. Cristalli

Case No: **A-13-686303-C** Dept. No: **XXVII** Clerk:  
**Consolidated with A-16-746239-C**

Date: 4/22/19

Exh. No.	Party	Description	Objection	Offered	Admitted
16	Plaintiff	6/3-8/07 Email string between Carlos Huerta and Yoav Harlap (NAN_00234-236)			
17	Plaintiff	Rogich Defendants' Privilege Log (Depo Exh. 53)			
18	Plaintiff	10/30/08 Purchase Agreement (NAN_000001-11)			
19	Plaintiff	10/30/08 Teld Membership Interest Purchase Agreement (NAN_000545-648)			
20	Plaintiff	10/30/08 Flangas Membership Interest Purchase Agreement (NAN_000649-751)			
21	Plaintiff	10/31/08 Purchase Agreement (NAN_000752-755)			
22	Plaintiff	10/30/08 Nevada Title Company, TELD, LLC \$6 million deposit			
23	Plaintiff	10/31/08 Nevada Title Company final document package (ELIADES000028-59)			

**TRIAL EXHIBITS**

PLTF: **Nanyah Vegas, LLC**  
DEFT: **Teld, LLC, et al.**

P-ATY: Mark G. Simons  
D-ATY: Samuel Lionel, Joseph A.  
Liebman, Michael V. Cristalli

Case No: **A-13-686303-C** Dept. No: **XXVII** Clerk:  
**Consolidated with A-16-746239-C**

Date: 4/22/19

<b>Exh. No.</b>	<b>Party</b>	<b>Description</b>	<b>Objection</b>	<b>Offered</b>	<b>Admitted</b>
<b>24</b>	Plaintiff	10/30/08 Secured Promissory Note - \$3 million from Flangas/Teld (ELIADES000003-8)			
<b>25</b>	Plaintiff	10/30/08 Security Agreement – Flangas/Teld (ELIADES000009-16)			
<b>26</b>	Plaintiff	11/2008 Membership Interest Purchase Agreement – Flangas out (ELIADES0000017-27)			
<b>27</b>	Plaintiff	10/30/08 Membership Interest Assignment Agreement - Teld/Rogich (EH000001-7)			
<b>28</b>	Plaintiff	10/30/08 \$600,000 Promissory Note – Rogich/Teld (ELIADES000067-75)			
<b>29</b>	Plaintiff	10/30/08 Membership Interest Assignment Agreement – Teld/Rogich (ELIADES000060-66)			
<b>30</b>	Plaintiff	6/25/09 Unanimous Written Consent of the Managers of Eldorado Hills LLC (RT 2207)			

**TRIAL EXHIBITS**

PLTF: **Nanyah Vegas, LLC**  
DEFT: **Teld, LLC, et al.**

P-ATY: Mark G. Simons  
D-ATY: Samuel Lionel, Joseph A.  
Liebman, Michael V. Cristalli

Case No: **A-13-686303-C** Dept. No: **XXVII** Clerk:  
**Consolidated with A-16-746239-C**

Date: 4/22/19

Exh. No.	Party	Description	Objection	Offered	Admitted
31	Plaintiff	6/25/09 \$10,300,035 Promissory Note – Eldorado Hills / Eliades (RT 2198-2206)			
32	Plaintiff	Operating Agreement for Eldorado Hills LLC (SR002367-2399; NAN_000511-544 )			
33	Plaintiff	Amended and Restate Operating Agreement of Eldorado Hills, LLC (NAN_000193-205)			
34	Plaintiff	First Amendment to Amended and Restated Operating Agreement of Eldorado Hills, LLC (EH000105-107)			
35	Plaintiff	8/3-6/12 Email string between John Spilotro, Melissa Olivas, Kenneth Woloson, (NAN_000348-352; SR002361-2365)			
36	Plaintiff	1/1/12 Membership Interest Assignment Agreement (EH000008-13; RT092-97)			
37	Plaintiff	8/10/12 Peter Eliades Check No. 7316 for \$682,080 payable to the Rogich 2004 Family Irrevocable Trust (SR002356)			

**TRIAL EXHIBITS**

PLTF: **Nanyah Vegas, LLC**  
DEFT: **Teld, LLC, et al.**

P-ATY: Mark G. Simons  
D-ATY: Samuel Lionel, Joseph A.  
Liebman, Michael V. Cristalli

Case No: **A-13-686303-C** Dept. No: **XXVII** Clerk:  
**Consolidated with A-16-746239-C**

Date: 4/22/19

<b>Exh. No.</b>	<b>Party</b>	<b>Description</b>	<b>Objection</b>	<b>Offered</b>	<b>Admitted</b>
<b>38</b>	Plaintiff	8/15/12 The Rogich 2004 Family Irrevocable Trust Check No. 2565 for \$682,080 payable to Peter Eliades (SR002357)			
<b>39</b>	Plaintiff	1/1/12 Satisfaction of Promissory Note and Release of Security – Teld/Rogich (ELIADES000001)			
<b>40</b>	Plaintiff	2/22/18 Declaration of Sigmund Rogich			
<b>41</b>	Plaintiff	11/4/16 Complaint			
<b>42</b>	Plaintiff	1/23/18 Defendants' First Amended Answer to Complaint			
<b>43</b>	Plaintiff	1/24/18 Substitution of Attorneys			
<b>44</b>	Plaintiff	8/21/14 Deposition Transcript of Sig Rogich <b>(for document control purposes ONLY)</b>			
<b>45</b>	Plaintiff	5/24/18 Deposition Transcript of Sigmund Rogich <b>(for document control purposes ONLY)</b>			



PLTF: Nanyah Vegas, LLC

DEFT: Teld, LLC, et al.

P-ATY: Mark G. Simons

D-ATY: Samuel Lionel, Joseph A. Liebman, Michael V. Cristalli

Case No: A-13-686303-C

Dept. No: XXVII

Clerk:

Date: 4/22/19

Consolidated with A-16-746239-C

Exh. No.	Party	Description	Objection	Offered	Admitted
46	Plaintiff	8/27/14 Deposition Transcript of Melissa Olivas (for document control purposes ONLY)			
47	Plaintiff	5/2/18 Deposition Transcript of Melissa Olivas (for document control purposes ONLY)			
48	Plaintiff	5/17/18 Deposition Transcript of Kenneth A. Woloson, Esq. (for document control purposes ONLY)			
49	Plaintiff	5/25/18 Deposition Transcript of Peter Eliades (for document control purposes ONLY)			
50	Plaintiff	6/15/18 Deposition Transcript of Dolores Eliades (for document control purposes ONLY)			
51	Plaintiff	4/9/18 Nanyah Vegas, LLC's Supplement to Second Amended Answers to Defendants' First Set of Interrogatories			
52	Plaintiff	5/1/18 Discovery Commissioner's Report and Recommendation and Order approving			

**TRIAL EXHIBITS**

PLTF: Nanyah Vegas, LLC  
DEFT: Teld, LLC, et al.

P-ATY: Mark G. Simons  
D-ATY: Samuel Lionel, Joseph A.  
Liebman, Michael V. Cristalli

Case No: **A-13-686303-C** Dept. No: **XXVII** Clerk:  
**Consolidated with A-16-746239-C**

Date: 4/22/19

Exh. No.	Party	Description	Objection	Offered	Admitted
53	Plaintiff	9/15/05 Email chain between Carlos Huerta, Sig Rogich, Melissa Olivas, Chris Cole re: Helen Ryu (RT0300-305)			
54	Plaintiff	1/23/18 Defendants First Supplemental Disclosure of Documents Pursuant to NRCP 16.1			
55	Plaintiff	Eldorado Hills, LLC General Ledger as of October 29, 2008 (RT0306-324)			
56	Plaintiff	NRS 86.286			
57	Plaintiff	2/25/19 Rogich Declaration			
58	Plaintiff	11/7/12 Letter to Sig Rogich (SR2679-2680)			
59	Plaintiff	3/26/19 Order Denying the Rogich Defendants' NRCP 60(B) Motion			
60	Plaintiff	2/12/16 Order of Reversal and Remand (Supreme Court Case No. 66823)			

**EXHIBIT 4**

**EXHIBIT 4**



1 **OBJ**

2 MARK G. SIMONS, ESQ.  
3 Nevada Bar No. 5132  
4 MSimons@SHJNevada.com  
5 SIMONS HALL JOHNSTON PC  
6 6490 S. McCarran Blvd., Ste. F-46  
7 Reno, Nevada 89509  
8 Telephone: (775) 785-0088  
9 Facsimile: (775) 785-0087

10 *Attorneys for Nanyah Vegas, LLC*

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

13 CARLOS A. HUERTA, an individual; CARLOS A.  
14 HUERTA as Trustee of THE ALEXANDER  
15 CHRISTOPHER TRUST, a Trust established in  
16 Nevada as assignee of interests of GO GLOBAL,  
17 INC., a Nevada corporation; NANYAH VEGAS,  
18 LLC, A Nevada limited liability company,

19 Plaintiffs,

20 v.

21 SIG ROGICH aka SIGMUND ROGICH as Trustee  
22 of The Rogich Family Irrevocable Trust;  
23 ELDORADO HILLS, LLC, a Nevada limited liability  
24 company; DOES I-X; and/or ROE  
25 CORPORATIONS I-X, inclusive,

26 Defendants.

27 NANYAH VEGAS, LLC, a Nevada limited liability  
28 company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability company;  
PETER ELIADAS, individually and as Trustee of  
the The Eliades Survivor Trust of 10/30/08;  
SIGMUND ROGICH, individually and as Trustee  
of The Rogich Family Irrevocable Trust;  
IMITATIONS, LLC, a Nevada limited liability  
company; DOES I-X; and/or ROE  
CORPORATIONS I-X, inclusive,

Defendants.

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

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

**NANYAH VEGAS, LLC'S  
SUPPLEMENTAL  
OBJECTIONS TO  
DEFENDANTS' PRETRIAL  
DISCLOSURES**

SIMONS HALL JOHNSTON PC  
6490 S. McCarran Blvd., Ste. F-46  
Reno, NV 89509  
Phone: (775) 785-0088

1 Nanyah Vegas, LLC ("Nanyah"), by and through its undersigned counsel, hereby  
2 supplements its objects to the pretrial disclosures of Defendants Signmund Roich,  
3 individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC  
4 (hereinafter collectively referred to as "Rogich Defendants") and Eldorado Hills, LLC  
5 ("Eldorado") pursuant to NRCP 16.1(a)(3) filed on March 22, 2019. **Supplements are in**  
6 **bold.**  
7

8 **I. WITNESSES.**  
9

10 Nanyah objects to the Rogich Defendants' proposed list of witnesses as follows:

- 11 3. Rebuttal witnesses: None Disclosed.
- 12 4. Witnesses necessary to authenticate any piece of evidence:  
13 None Disclosed.
- 14 5. Any and all impeachment witnesses: None Disclosed.

15 Nanyah objects to Eldorado's proposed list of witnesses as follows: None.  
16

17 **II. ELDORADO'S DEPOSITION DESIGNATIONS.**

18 Nanyah objects to the deposition excerpts of Mr. Huerta's deposition testimony  
19 purporting to be answers provided as Nanyah's NRCP 30(b)(6) representative. The  
20 questions and answers solicited were from Mr. Huerta in his capacity as Manager of  
21 Eldorado Hills, LLC, which answers do not bind or apply to Nanyah. It is well-established  
22 law that 30(b)(6) deponents may be questioned about information in the deponent's  
23 personal knowledge without binding the party on whose behalf the deponent is appearing.  
24 In addition, Mr. Huerta is anticipated to attend trial as a witness, is not a party, and  
25 therefore, excerpts of his deposition testimony cannot be introduced as evidence.  
26

27 **III. EXHIBITS.**  
28

SIMONS HALL JOHNSTON PC  
6490 S. McCarran Blvd., Ste. F-46  
Reno, NV 89509  
Phone: (775) 785-0088

1 Nanyah's specific objections to the Rogich Defendants' exhibits are set forth in the  
2 attached **Exhibit 1. See updated list.**

3 Nanyah's specific objections to Eldorado Hills, LLC's exhibits are set forth in the  
4 attached **Exhibit 2.**

5 Nanyah reserves its right to supplement its objections to the Defendants' pretrial  
6 disclosures.

7 **AFFIRMATION:** This document does not contain the social security number of any  
8 person.

9 DATED this 16<sup>th</sup> day of April, 2019.

10  
11  
12 SIMONS HALL JOHNSTON PC  
13 6490 S. McCarran Blvd., Ste. F-46  
14 Reno, NV 89509

15   
16 MARK G. SIMONS  
17 Attorneys for Nanyah Vegas, LLC  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SIMONS HALL JOHNSTON PC  
6490 S. McCarran Blvd., Ste. F-46  
Reno, NV 89509  
Phone: (775) 785-0088

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 8.05, 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 **NANYAH VEGAS, LLC'S OBJECTIONS TO DEFENDANTS' PRETRIAL  
DISCLOSURES** on all parties to this action via the Odyssey E-Filing System:

Dennis L. Kennedy	<a href="mailto:dkennedy@baileykennedy.com">dkennedy@baileykennedy.com</a>
Bailey Kennedy, LLP	<a href="mailto:bkfederaldownloads@baileykennedy.com">bkfederaldownloads@baileykennedy.com</a>
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DATED this 16 day of April, 2019.

  
Employee of Simons Hall Johnston PC

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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Objections re: Rogich Defendants	8
2	Objections re: Eldorado	12



**EXHIBIT 1**

**EXHIBIT 1**

**NANYAH VEGAS, LLC'S OBJECTIONS TO ROGICH DEFENDANTS' PRETRIAL EXHIBITS**

<u>EXH. NO.</u>	<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
500	NAN_000362-364	E-mail (dated November 2, 2016) from Carlos Huerta to Yoav Harlap regarding Eldorado Hills Balance Sheet 11/2/16 (Attachment: Eldorado Hills, LLC Balance Sheets as of October 25, 2008)	X		Parol Evidence Rule ("PER"); 48.025; 48.035; Hearsay; Authentication; Foundation
501	NAN_000234-236	E-mail (dated June 8, 2007) from Carlos Huerta to Yoav Harlap regarding formation of Nevada company	X		Dup 16
502	NAN_000237-240	E-mail (dated July 13, 2007) from Carlos Huerta to Yoav Harlap regarding Nanyah Vegas setup (Attachment: Eldorado Project Update)	X		No objection
503	PLTF00244-245; RT0203-204	Articles of Organization & Resident Agent Acceptance re: CanaMex Nevada, LLC (December 3, 2007)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
504	PLTF00247; RT0205	Initial List of Managers or Managing Members and Resident Agent of CanaMex Nevada, LLC (December 3, 2007)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
505	NAN_000241-245	Email (dated December 4, 2007) from Yoav Harlap to Carlos Huerta regarding \$1.5M transfer	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
506	NAN_000246	E-mail (dated December 7, 2007) from Carlos Huerta to Yoav Harlap regarding CanaMex deposit	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
507	NAN_000247	E-mail (dated December 7, 2007) from Yoav Harlap to Carlos Herta regarding request for articles of organization & corporate documents	X		PER; 48.025; 48.035; Hearsay; Authentication;

<u>EXH. NO.</u>	<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
508	NAN_000248-249	E-mail (dated December 8, 2007) from Summer Rellamas to Yoav Harlap regarding investment confirmation and organizational docs for Nanyah Vegas (attachment: Investment Confirmation Letter)	X		Foundation PER; 48.025; 48.035; Hearsay; Authentication; Foundation
509	NAN_000387-388; NAN000451-452; RT0149-0150	CanaMex Nevada LLC's Nevada State Bank statements (dated December 31, 2007)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation; Different Documents.
510	NAN000449-450; NAN000454-455; RT0151-0154	Eldorado Hills, LLC's Nevada State Bank statements (dated December 31, 2007)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
511	RT0155	Go Global, Inc.'s Nevada State Bank statement (dated December 31, 2007)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
512	RT0219	Go Global, Inc.'s 2007 Profit & Loss Statement	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
513	RT0158-202	Eldorado Hills, LLC - 2007 Tax Return	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
514	NAN_000270-271	CanaMex Nevada's 2007 Schedule K-1 to Nanyah Vegas, LLC	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>EXH. NO.</u>	<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
515	NAN_000250-251	E-mail (dated January 2, 2008) from Carlos Huerta to Yoav Harlap regarding CanaMex Nevada update (Attachment: Letter with NZC-1289-07 BCC approval update)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
516	NAN_000252	E-mail (dated January 3, 2008) from Yoav Harlap to Carlos Huerta re additional lot	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
517	NAN_000253-255	E-mail (dated January 3, 2008) from Carlos Huerta to Yoav Harlap regarding CanaMex Nevada Update	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
518	NAN_000256-264	Email (dated January 30, 2008) from Summer Rellamas to Yoav Harlap regarding investor portfolio ( Attachment: Go Global Properties Annual Investor Update )	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
519	RT0220-0238	E-mail (dated February 2, 2008) from Carlos Huerta to Jennifer Koelin regarding CanaMex Investment Summary ( Attachment: CanaMex Investment Summary )	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
520	NAN_000265-268	E-mail (dated March 13, 2008) from Carlos Huerta to Yoav Harlap regarding update (Attachment: Letter from Huerta to Harlap re CanaMex Nevada project update)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
521	NAN_000269-272	Email (dated April 25, 2008) from Summer Rellamas to Yoav Harlap re 2007 IRS Form K-1 for CanaMex Nevada investment	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
522	NAN_000363-364	Eldorado Hills, LLC – Balance Sheet (As of October 25, 2008)	X		PER; 48.025; 48.035; Hearsay; Authentication;

<u>EXH. NO.</u>	<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
523	RT0211-217	E-mail (dated October 25, 2008) from Carlos Huerta to Kenneth Wolson regarding Ken's agreement	X		Foundation
524	NAN_000276-277	E-mail (dated October 27, 2008) from Yoav Harlap to Carlos Huerta regarding Las Vegas Update	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
525	RT0207-210	E-mail (dated October 28, 2008) from Sig Rogich to Melissa Olivas regarding Eldorado Hills Financials	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
526	RT0115-0132	Eldorado Hills, LLC – General Ledger (As of October 29, 2008)	X		Dup 55
527	NAN_000001-11; RT0023-33	Purchase Agreement between Go Global, Inc., Carlos Huerta and The Rogich Family Irrevocable Trust (dated October 30, 2008)	X		Dup 18
528	RT0206	Annual List of Managers or Managing Members and Resident Agent of CanaMex Nevada, LLC (December 31, 2008)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
529	RT2208-2330	Eldorado Hill, LLC – 2008 Tax Return	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
530	RT0145	Unanimous Written Consent of the Managers of Eldorado Hills, LLC (dated June 25, 2009)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
531	RT2331-2422	Eldorado Hills, LLC – 2009 Tax Return	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>EXH. NO.</u>	<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
532	RT2423-2479	Eldorado Hills, LLC – 2010 Tax Return	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
533	NAN_000389-391	CanaMex Nevada's 2010 Schedule K-1 to Nanyah Vegas, LLC	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
534	NAN_000279-279	E-mail (dated July 24, 2011) from Carlos Huerta to Yoav Harlap regarding project update, freeway improvements and Eliades investor	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
535	NAN_000223-224; RT0133-0136	Unanimous Written Consent of the Managers of Eldorado Hills, LLC (dated January 1, 2012)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
536	RT0001-0022	Imitations Transaction Documents	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
537	RT0218	E-mail (dated October 22, 2013) from Sig Rogich to Melissa Olivas	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
538	NAN_000280-281	E-mail (dated March 28, 2014) from Carlos Huerta to Yoav Harlap, cc: Jacob Feingold, regarding project update, in escrow with D.R. Horton, litigation with Rogich and request to be Nanyah's PMK	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
539	NAN_00356-0357	E-mail (dated November 1, 2016) from Carlos Huerta to Yoav Harlap re Eldorado Hills deal	X		PER; 48.025; 48.035; Hearsay; Authentication;

<u>EXH. NO.</u>	<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
540	PLTF00547-574; NAN_000483-510	Eldorado Hills, LLC – General Ledger	X		Foundation  Dup 4
541		Plaintiff's Responses to Second Set of Interrogatories to Carlos A. Huerta (dated September 16, 2014; Case No.: A-13-686303-C)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
542		Order Granting Partial Summary Judgment (dated November 5, 2014; Case No.: A-13-686303-C)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
543		Complaint dated November 4, 2016 (Case No.: A-16-746239-C)	X		Dup 41
544		First Amended Answer dated January 23, 2018 (Case No.: A-16-746239-C)	X		Dup 42
545		Nanyah Vegas, LLC's Answers to Defendants' First Set of Interrogatories (dated June 28, 2017)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
546		Nanyah Vegas, LLC's First Amended Answers to Defendants' First Set of Interrogatories (dated August 14, 2017)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
547		Nanyah Vegas, LLC's Response to Defendants' Request for Production of Documents (dated November 14, 2017)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
548		Nanyah Vegas, LLC's Second Amended Answers to Defendants' First Set of Interrogatories (dated December 1, 2017)	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>EXH. NO.</u>	<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
549		Nanyah Vegas, LLC's Response to Defendants' First Set of Requests for Admission (dated December 1, 2017)	X		Foundation PER; 48.025; 48.035; Hearsay; Authentication; Foundation
550		Go Global's Inc.'s Nevada State Bank Statement (dated December 31, 2017) with checking account credit slip	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
551		Nanyah's Tax Returns (years (2007 through 2016))	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
552		Correspondence between Huerta and Harlap	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
553		Email from Huerta to Harlap re Nanyah Appeal	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
554		Amended and Restated Operating Agreement of Eldorado Hills, LLC (dated October 2008) RT98-111	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
555		Letter from Mr. Simons to Judge Allif Dated 9/5/18 re Eliades Summary Judgment Order	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
556	HUERA643-904	Nevada State Bank statements for CanaMex and GoGlobal	X		PER; 48.025; 48.035; Hearsay; Authentication;



<u>EXH.</u> <u>NO.</u>	<u>BATES</u> <u>NUMBERS (IF</u> <u>APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS</u> <u>TO USE</u>	<u>MAY</u> <u>USE</u>	<u>OBJECTION</u>
557		Response of Carlos Huerta to Subpoena Duces Tecum			Foundation  PER; 48.025; 48.035; Hearsay; Authentication; Foundation

**EXHIBIT 2**

**EXHIBIT 2**

**NANYAH VEGAS, LLC'S OBJECTIONS TO ELDORADO'S PRETRIAL EXHIBITS**

<b><u>BATES NUMBERS (IF APPLICABLE)</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>EXPECTS TO USE</u></b>	<b><u>MAY USE</u></b>	<b><u>OBJECTION</u></b>
PLTF1089- PLTF1122	May 2006 Eldorado Hills, LLC Operating Agreement	X		Dup 32 but includes Exhibit A. No objection
NAN_000248 - NAN_000249	Dec. 8, 2007 e-mail between Reilamas and Harlap	X		Parol Evidence Rule (PER); 48.025; 48.035; Hearsay; Authentication; Foundation
EH000045- EH000055	Oct. 30, 2008 Purchase Agreement	X		Dup 15 without SR initials. Incomplete document
NAN_000012 - NAN_000101	Oct. 30, 2008 Membership Interest Purchase Agreement between Rogich Trust, Teld, and Go Global	X		Dup 19
NAN_000102 - NAN_000192	Oct. 30, 2008 Membership Interest Purchase Agreement between Rogich Trust, Flangas Trust, and Go Global	X		Dup. 20
NAN_000207 - NAN_000213	Oct. 30, 2008 Membership Interest Assignment Agreement	X		Dup 29
EH000062- EH000064	June 25, 2009 Revolving Credit Note Eldorado Hills, LLC	X		PER; 48.025; 48.035; Hearsay; Authentication; Foundation
EH000067	June 25, 2009 Unanimous Written Consent of the Managers of Eldorado Hills, LLC	X		Dup. 30
EH000082	June 25, 2009 Unanimous Written Consent of the Managers of Eldorado Hills, LLC	X		Dup 30
EH000090- EH000102	Oct. 2008 Amended and Restated Operating Agreement of Eldorado Hills, LLC	X		Dup 33
NAN_000193 - NAN_000204	Oct. 2008 Amended and Restated Operating Agreement of Eldorado Hills, LLC	X		Dup 33
PLTF881	Oct. 25, 2008 e-mail involving Woloson, Huerta,	X		Dup 15

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
	Olivas			
PLTF0577 - PLTF582	Oct. 25, 2008 e-mail string involving Woloson, Huerta, Olivas	X		Dup 15
SR100 - SR105	Oct. 25, 2008 e-mail string involving Woloson, Huerta, Olivas	X		Dup 15
PLTF1177	Oct. 30, 2008 e-mail involving Huerta, Woloson, Olivas	X		No objection
SR002203 - SR002211	Oct. 30, 2008 Promissory Note and Pledge Agreement	X		Dup 28
EH000105 - EH000107	June 25, 2009 First Amendment to Amended and Restated Operating Agreement of Eldorado Hills, LLC	X		Dup 34
EH000014 - EH000015	Jan. 1, 2012 Unanimous Written Consent of the Managers of Eldorado Hills, LLC	X		No objection
EH000008 - EH000013	Jan. 1, 2012 Membership Interest Assignment Agreement	X		No Objection
EH000016	Jan. 1, 2012 Satisfaction of Promissory Note and Release of Security	X		Dup 39
SR002679 - SR002680	Nov. 7, 2012 Letter from Brandon McDonald to Sig Rogich	X		No objection
EH000056 - EH000058	June 25, 2009 Revolving Credit Note Eldorado Hills, LLC		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002348 - SR002350	June 25, 2009 Revolving Credit Note Upshot Entertainment, LLC		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
EH000060	June 25, 2009 Unanimous Written Consent of the Managers of Eldorado Hills, LLC		X	PER; 48.025; 48.035; Hearsay; Authentication;

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
				Foundation
SR002351	June 25, 2009 Unanimous Written Consent of the Managers of Upshot Entertainment, LLC		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
EH000084 – EH000089	June 25, 2009 Short Form Deed of Trust		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF904 - PLTF1081	March 21, 2007 Appraisal		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF603 - PLTF819	Sep. 7, 2006 Appraisal		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF00244 – PLTF00245	CanaMex Nevada, LLC Articles of Organization		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF1086 - PLTF1087	Eldorado Hills, LLC Articles of Organization		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000234 – NAN_000236	June 8, 2007 e-mail string between Huerta and Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000237 – NAN_000240	July 13, 2007 e-mail between Huerta and Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF281-298	Nov. 18, 2007 Nanyah Vegas, LLC Operating Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF00247	Dec. 3, 2007 CanaMex Nevada, LLC Initial List of Managers		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
NAN_000241 – NAN_000245	Dec. 4, 2007 e-mail string involving Huerta and Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000247	Dec. 7, 2007 e-mail string involving Huerta and Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000250 – NAN_000251	Jan. 3, 2008 e-mail involving Huerta and Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000253 – NAN_000255	Jan. 3, 2008 e-mail string involving Huerta and Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000256 – NAN_000264	Jan. 30, 2008 e-mail involving Rellamas and Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF1184	Oct. 29, 2008 Eldorado Hills, LLC Account QuickReport		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002028- SR002046	Eldorado Hills, LLC General Ledger		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF547 - PLTF574	Eldorado Hills, LLC General Ledger		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF417 - PLTF418	Nov. 8, 2007 Eldorado Hills, LLC Update		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF436	Jan. 2, 2008 CanaMex Nevada, LLC Update		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
PLTF437 - PLTF439	March 13, 2008 CanaMex Nevada, LLC Update		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000265 - NAN_000268	March 13, 2008 e-mail involving Carlos Huerta and Yoav Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000269 - NAN_000272	April 12, 2008 e-mail between Summer Rellamas and Yoav Harlap (CanaMex Nevada 2007 K-1)		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF1123	July 30, 2008 Annual List of Managers		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF80026 - PLTF80029	Oct. 23, 2008 e-mail between Summer Rellamas and Carlos Huerta		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF887	Oct. 24, 2008 e-mail between Carlos Huerta and Melissa Olivas		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000276 - NAN_000277	Oct. 27, 2008 e-mail string between Carlos Huerta and Yoav Harlap (Las Vegas Update)		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF857	Dec. 10, 2008 e-mail involving Huerta, Woloson, Olivas		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF882	Oct. 25, 2008 e-mail involving Huerta, Woloson, Olivas		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF883 - PLTF885	Oct. 25, 2008 e-mail involving Huerta, Woloson		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
PLTF1179	Oct. 30, 2008 e-mail involving Woloson, Huerta, Olivas		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF1170	May 29, 2009 e-mail from Woloson		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF00253 - PLTF00256	March 31, 2010 Escrow Settlement Statement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF575	Go Global Capital Contributions		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF0032 - PLTF0033	Dec. 31, 2007 Eldorado Hills, LLC Nevada State Bank statement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF442 - PLTF443	December 31, 2007 Go Global, Inc. Nevada State Bank statement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF00119 - PLTF00120	December 31, 2007 Canamex Nevada, LLC Nevada State Bank statement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF00192	Dec. 31, 2007 Eldorado Hills, LLC Nevada State Bank money market account statement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF0250	April 24, 2008 Agreement to Lend Capital		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF0873 - PLTF876	Oct. 31, 2008 Purchase Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation



<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
PLTF0851 - PLTF 854	Oct. 30, 2008 Redline Purchase Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF0877 - PLTF880	Oct. 31, 2008 Purchase Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
PLTF0030	Oct. 23, 2008 Call Notes		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002404 - SR002407	Sep. 12, 2006 Private Offering		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002356	Aug. 10, 2012 Check from Eliades to Rogich		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR020357	Aug. 15, 2012 Check from Rogich to Eliades		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002215 - SR002219	Rogich Trust 2008 K-1 Final		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002220 - SR002225	Rogich Trust 2008 K-1		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002226 - SR002233	Rogich Trust 2009 K-1		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002235 - SR002240	Rogich Trust 2010 K-1		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
SR002241 – SR002245	Rogich Trust 2011 K-1		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002246 - SR002248	Rogich Trust 2012 K-1		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR012 – SR016	Antonio Nevada 2007 K-1		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002047 – SR002048	Oct. 24, 2008 e-mail from Huerta to Olivas and Rogich		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000278 – NAN_000279	July 24, 2011 e-mail between Carlos Huerta and Yoav Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002361 – SR002365	Aug. 6, 2012 e-mail string involving Woloson, Olivas, Spilotro		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002495 - SR002539	Huerta/Go Global First Amended Joint Disclosure Statement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002334 – SR002339	Aug. 9, 2012 Membership Interest Assignment Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
SR002353	Upshot Entertainment Account QuickReport		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000280 – NAN_000281	March 28, 2014 e-mail between Carlos Huerta, Yoav Harlap, and Jacob Feingold (Update from Las Vegas)		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
NAN_000303 – NAN_000306	February 13, 2016 e-mail between Carlos Huerta and Yoav Harlap		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000312- NAN_000314	October 21, 2016 e-mail string between Yoav Harlap and Stephen Odzer		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000353- NAN_000355	November 1, 2016 e-mail string between Yoav Harlap and Stephen Odzer		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000362- NAN_000364	Nov. 2, 2016 e-mail from Carlos Huerta to Yoav Harlap with Eldorado Hills balance sheet		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
Gerety_0014 – Gerety_0033	Eldorado Hills LLC General Ledger		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
BRADSHAW_0033 – BRADSHAW_0036	Eldorado Hills LLC General Ledger		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NV Title_0236 – NV Title_0238	Oct. 24, 2008 Memorandum		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NV Title_0407 – NV Title_0409	General Continuing Guaranty		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NV Title_0414	Amendment to General Continuing Guaranty		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NV Title_0410 – NV Title_0413	Eldorado Hills LLC Private Offering		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
NAN_000447	October 23, 2008 Note		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000453	Go Global Capital Contributions into Eldorado Hills		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
NAN_000752 – NAN_000755	Craig Dunlap Purchase Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 0349 – RT 0362	Canamex Nevada, LLC Subscription Booklet		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 0363 – RT 0407	Canamex Nevada, LLC Operating Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 0604-0605	Oct. 17, 2008 e-mail string between Chris Cole and Melissa Olivas		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 0697-0700	Oct. 28, 2008 e-mail string involving Summer Rellamas, Sig Rogich, and Melissa Olivas		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 0999-1010	Oct. 30, 2008 e-mail between Carlos Huerta, Kenneth Woloson, and Melissa Olivas, and attachment		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 1578 – RT 2192	Eldorado Hills QuickBooks Reports		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2198 – RT 2207	June 25, 2009 Eldorado Hills Promissory Note		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<b>BATES NUMBERS (IF APPLICABLE)</b>	<b>DESCRIPTION</b>	<b>EXPECTS TO USE</b>	<b>MAY USE</b>	<b>OBJECTION</b>
RT 2208 – RT 2247	Eldorado Hills, LLC Tax Return – January 1, 2008 - October 29, 2008		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2248 – RT 2287	Eldorado Hills, LLC Tax Return – October 30, 2008 – December 31, 2008 (Extension Granted to 9/15/2009)		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2288 – RT 2330	Eldorado Hills, LLC Tax Return – January 1, 2008 - October 29, 2008 (Extension Granted to 7/15/2009)		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2331 – RT 2373	Eldorado Hills, LLC Tax Return – 2009		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2374 – RT 2421	Eldorado Hills, LLC Tax Return – Amended 2009		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2422 – RT 2453	Eldorado Hills, LLC Tax Return – 2010		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2454 – RT 2494	Eldorado Hills, LLC Tax Return – 2011		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2495 – RT 2530	Eldorado Hills, LLC Tax Return – 2012		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
RT 2791 – RT 2801	Accord and Satisfaction and Escrow Instructions		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
HUERTA 000635 – HUERTA 000636	Nov. 1, 2016 e-mail between Yoav Harlap and Carlos Huerta		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

<u>BATES NUMBERS (IF APPLICABLE)</u>	<u>DESCRIPTION</u>	<u>EXPECTS TO USE</u>	<u>MAY USE</u>	<u>OBJECTION</u>
ELIADES000003 - ELIADES000016	Oct. 30, 2008 Secured Promissory Note		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
ELIADES000017 - ELIADES000027	Nov. 2008 Membership Interest Purchase Agreement		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation
	August 13, 2014 Declaration of Carlos A. Huerta in Support of Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment and Counter- Motion for Partial Summary Judgment		X	PER; 48.025; 48.035; Hearsay; Authentication; Foundation

# EXHIBIT 5

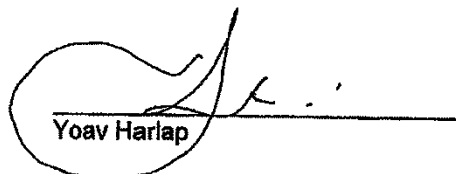
# EXHIBIT 5

### DECLARATION OF YOAV HARLAP

I, Yoav Harlap, have personal knowledge of the facts set forth in this Declaration and am competent to testify to the matters stated herein.

1. I am the sole member and manager of the plaintiff Nanyah Vegas, LLC.
2. It was not until sometime in December 2012, that I was advised that Rogich and the Rogich Trust had secretly agreed to transfer its interest in Eldorado to the Eliades Trust without issuing Nanyah any interest in Eldorado and without repaying Nanyah its \$1.5 million investment.
3. Based upon the receipt of this information, I believed such action was a repudiation of the defendants' obligations to Nanyah to repay its \$1.5 million investment and/or to transfer to it a membership interest in Eldorado to it.

Dated this 18th day of March, 2018

  
Yoav Harlap



**EXHIBIT 6**

**EXHIBIT 6**

ORIGINAL

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11/6/2018 3:22 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 **ORDR (CIV)**

2 DENNIS L. KENNEDY  
Nevada Bar No. 1462

3 JOSEPH A. LIEBMAN  
Nevada Bar No. 10125

4 **BAILEY ♦ KENNEDY**

8984 Spanish Ridge Avenue  
Las Vegas, Nevada 89148-1302

5 Telephone: 702.562.8820

6 Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

JLiebman@BaileyKennedy.com

7 *Attorneys for Defendant* ELDORADO HILLS,  
8 LLC

9  
10 DISTRICT COURT  
CLARK COUNTY, NEVADA

11 CARLOS A. HUERTA, an individual;  
12 CARLOS A. HUERTA as Trustee of THE  
ALEXANDER CHRISTOPHER TRUST, a  
13 Trust established in Nevada as assignee of  
interests of GO GLOBAL, INC., a Nevada  
14 Corporation; NANYAH VEGAS, LLC, A  
Nevada limited liability company,

15 Plaintiffs,

16 vs.

17 SIG ROGICH aka SIGMUND ROGICH as  
Trustee of The Rogich Family Irrevocable  
18 Trust; ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X; and/or  
ROE CORPORATIONS I-X, inclusive,

19 Defendants.

20 NANYAH VEGAS, LLC, a Nevada limited  
liability company,

21 Plaintiff,

22 vs.

23 TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
24 as Trustee of The Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
25 and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
26 Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

27 Defendants.  
28

Case No. A-13-686303-C  
Dept. No. XXVII

**ORDER REGARDING MOTIONS IN**  
**LIMINE**

**CONSOLIDATED WITH:**

Case No. A-16-746239-C

BAILEY ♦ KENNEDY  
8984 SPANISH RIDGE AVENUE  
LAS VEGAS, NEVADA 89148-1302  
702.562.8820

1 The following Motions *in Limine* came before the Court on October 10, 2018.

2 ➤ Nanyah Vegas, LLC (“Nanyah”).

- 3 ▪ Motion *in Limine* # 1 Re: Eldorado Hills, LLC Bound by Admissions and Statements
- 4 of its Managing Member (“Nanyah’s MIL # 1”).
- 5 ▪ Motion *in Limine* # 2 Re: NRS 47.240(2) Mandates Finding That Nanyah Vegas,
- 6 LLC Invested \$1.5 Million into Eldorado Hills, LLC (“Nanyah’s MIL # 2”).
- 7 ▪ Motion *in Limine* # 3 Re: Defendants Bound by Their Answers to Complaint
- 8 (“Nanyah’s MIL # 3”).
- 9 ▪ Motion *in Limine* # 4 Re: Yoav Harlap’s Personal Financials (“Nanyah’s MIL # 4”).

10 ➤ Eldorado Hills, LLC (“Eldorado”).

- 11 ▪ Motion *in Limine* to Preclude Any Argument That Eldorado Hills, LLC is Bound by
- 12 Any Testimony or Statements by Carlos Huerta Following His Resignation as an
- 13 Eldorado Hills, LLC Manager (“Eldorado’s MIL Regarding Carlos Huerta”).
- 14 ▪ Motion *in Limine* to Preclude Any Argument That Eldorado Hills, LLC is Bound by
- 15 Any Contractual Recitals, Statements, or Language (“Eldorado’s MIL Regarding
- 16 Contract Recitals”).
- 17 ▪ Motion *in Limine* to Preclude Any Evidence or Argument Regarding an Alleged
- 18 Implied-in-fact Contract Between Eldorado Hills, LLC and Nanyah Vegas, LLC
- 19 (“Eldorado’s MIL Regarding Implied-In-Fact Contract”).

20 **APPEARANCES**

21 The Parties appeared as follows:

- 22 ➤ For Eldorado Hills, LLC (“Eldorado”): Joseph Liebman, Esq. of Bailey ♦ Kennedy, LLP.
- 23 ➤ For Sig Rogich, individually (“Rogich”) and as Trustee of the Rogich Family Irrevocable
- 24 Trust (the “Rogich Trust”), and Imitations, LLC (collectively, the “Rogich Defendants”):
- 25 Samuel Lionel, Esq. and Brenoch Wirthlin, Esq. of Fennemore Craig, P.C.
- 26 ➤ For Nanyah: Mark G. Simons, Esq. of Simons Law, PC.

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ORDER


The Court, having heard oral argument, having reviewed the papers, exhibits, and pleadings on file, and having considered the same, and for the reasons stated upon the record, ORDERS AS FOLLOWS:

- Nanyah's MIL # 1 is denied. Conversely, Eldorado's MIL Regarding Carlos Huerta is granted. Carlos Huerta's testimony was provided or will be provided following his resignation as a manager of Eldorado and while he is adverse to Eldorado, and thus, cannot bind Eldorado as a matter of law. For any statements made by Mr. Huerta after he resigned as a manager of Eldorado, Nanyah and its counsel are precluded from arguing to the jury that Carlos Huerta's testimony is binding on Eldorado. This prohibition does not apply to statements made by Mr. Huerta while acting as a manager of Eldorado.
- Nanyah's MIL # 2 is denied. Conversely, Eldorado's MIL Regarding Contract Recitals is granted. The specific presumption sought by Nanyah under NRS 47.240(2) is a recital of consideration, which is excluded from the statute. Nanyah and its counsel are precluded from arguing to the jury that Eldorado is bound by any of the contractual recitals in the October 30, 2008 Purchase Agreement, the October 30, 2008 Membership Interest Purchase Agreement, and the October 30, 2008 Amended and Restated Operating Agreement pursuant to the provisions of NRS 47.240(2) as the Court finds that evidentiary presumption is inapplicable on the grounds stated.
- Nanyah's MIL # 3 is granted in part and only against the Rogich Defendants, as Eldorado was not a party to the Answer in Case No. A-16-746239-C. The Rogich Defendants are bound by their answers to paragraphs 82 and 83 of Nanyah's Complaint. However, to the extent the Rogich Defendants obtained additional information after their Answer was filed, they are not precluded from bringing that forward at the time of trial.
- Nanyah's MIL # 4 is granted in part. Defendants are precluded from inquiring into Yoav Harlap's personal finances. However, there may be some latitude depending on what happens at trial, and the Court will maintain discretion on these issues. If the Court deems it appropriate, it may allow inquiry into Yoav Harlap's business acumen and other investments.

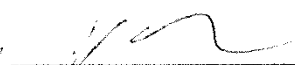
➤ Eldorado's MIL Regarding Implied-In-Fact Contract is deferred until the time of trial, as the Court needs additional information before determining whether Nanyah may proceed on an implied-in-fact contract claim against Eldorado.

DATED this 2 day of Feb., 2018.

Proctor, J. M.  
DISTRICT COURT JUDGE

Submitted by: 

BAILEY ♦ KENNEDY

By   
Dennis Kennedy, Esq.  
Joseph Liebman, Esq.  
8984 Spanish Ridge Avenue  
Las Vegas, NV 89148-1302  
*Attorneys for Defendant ELDORADO HILLS, LLC*

Approved as to Form and Content:

SIMONS LAW

By: /s/ Mark Simons  
Mark Simons, Esq.  
6490 South McCarran Blvd., # 20  
Reno, NV 89509  
*Attorneys for Plaintiff NANYAH VEGAS, LLC*

Approved as to Form and Content:

FENNMORE CRAIG, P.C.

By: /s/ Samuel Lionel  
Samuel Lionel, Esq.  
300 S. Fourth Street, Suite 1400  
Las Vegas, NV 89101  
*Attorneys for Defendants Sig Rogich,  
Individually and as Trustee of the Rogich  
Family Irrevocable Trust, and Imitations,  
LLC*

**EXHIBIT 7**

**EXHIBIT 7**

1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3	CARLOS A. HUERTA, an	)
4	individual; CARLOS A.	)
5	HUERTA as Trustee of THE	)
6	ALEXANDER CHRISTOPHER	)
7	TRUST, a Trust established	)
8	in Nevada as assignee of	)
9	interests of GO GLOBAL,	)
10	INC., a Nevada corporation;	)
11	NANYAH VEGAS, LLC, a Nevada	)
12	limited liability company,	)
13		)
14	Plaintiffs,	)
15		)
16	vs.	)
17		)
18	SIG ROGICH aka SIGMUND	)
19	ROGICH as Trustee of the	)
20	Rogich Family Irrevocable	)
21	Trust; ELDORADO HILLS, LLC,	)
22	a Nevada limited liability	)
23	company; DOES I-X; and/or	)
24	ROE CORPORATIONS I-X,	)
25	inclusive,	)
		)
	Defendants.	)
	-----	
	ELDORADO HILLS, LLC,	)
	a Nevada Limited liability	)
	company,	)
		)
	Defendant/Counterclaimants	)
		)
	vs.	)
		)
	CARLOS A. HUERTA, an	)
	Individual, CARLOS A. HUERTA	)
	as Trustee of THE ALEXANDER	)
	CHRISTOPHER TRUST, a Trust	)
	established in Nevada as	)
	assignee of interests of	)
	GO GLOBAL, INC., a Nevada	)
	corporation,	)
		)
	Plaintiffs/Counterdefendants	)
	-----	
	Reported by: Marilyn Speciale, CRR, RPR, CCR #749	

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DEPOSITION OF CARLOS A. HUERTA

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Taken on Wednesday, April 30, 2014

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At 9:33 a.m.

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At 300 South Fourth Street

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Suite 1700

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Las Vegas, Nevada

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Reported by: Marilyn Speciale, CRR, RPR, CCR #749

25

Job No. 9511



1 APPEARANCES:

2

3 For the Plaintiffs:

4 BRANDON B. McDONALD, ESQ.  
5 McDonald Law Offices, PLLC  
6 2850 West Horizon Ridge Parkway  
7 Suite 200  
8 Henderson, Nevada 89052  
9 (702) 385-7411

8 For the Defendants:

9 SAMUEL S. LIONEL, ESQ.  
10 STEVEN ANDERSON, ESQ.  
11 Lionel Sawyer & Collins  
12 300 South Fourth Street  
13 Suite 1700  
14 Las Vegas, Nevada 89101  
15 (702) 383-8888

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1 Ms. Sanchez.

2 We discussed this agreement several times,  
3 reviewed different drafts, discussed it. Nanyah Vegas  
4 was an integral part of this agreement. I wanted to  
5 make sure that all the investors showed up on the  
6 agreement.

7 Even though at that time Mr. Rogich and I had  
8 put a company together and we had made \$30 million  
9 together, I trusted Mr. Rogich that he would honor what  
10 he told me, but I put it in the agreement just in case  
11 something happened to Mr. Rogich and his trust or  
12 anybody else would be responsible to pay these guys.  
13 And so we put them in the agreement, and Mr. Woloson and  
14 I discussed all the different members.

15 At this point time, we didn't include Dunlap  
16 and Rietz because I believe Rogich had already paid  
17 them, and they accepted par value for what they had  
18 invested, and they were out. So we didn't include them  
19 in this agreement, but we discussed all the other  
20 members, including Nanyah Vegas, who we now know is Yoav  
21 Harlap.

22 Q. After you got the money from Mr. Harlap in  
23 December of 2007, did you tell Mr. Rogich that you got  
24 that money?

25 A. I did.

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STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, CHRISTINE M. JACOBS, a certified shorthand  
reporter for the state of Nevada, do hereby certify:

That I reported the deposition of the witness,  
CARLOS HUERTA, commencing on November 7, 2012, commencing  
at the hour of 10:00 a.m.

That prior to being examined, the witness was by me  
duly sworn to testify to the truth, the whole truth, and  
nothing but the truth;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcription of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time. That review of the transcript was requested.

I further certify that I am not a relative or employee of an attorney or counsel involved in said action.

IN WITNESS WHEREOF, I have hereunto set my hand  
in my office in the County of Clark, State of Nevada,  
this 17th day of November 2012.

CHRISTINE M. JACOBS, CCR 455



**EXHIBIT 8**

**EXHIBIT 8**

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 \* \* \* \* \*  
4 CARLOS A. HUERTA, an individual;  
5 CARLOS A. HUERTA as Trustee of  
6 THE ALEXANDER CHRISTOPHER TRUST,  
7 a Trust established in Nevada as  
8 assignee of interest of GO  
9 GLOBAL, INC., a Nevada  
10 corporation; NANYAH VEGAS, LLC, a  
11 Nevada limited liability company,  
12  
13 Plaintiffs,  
14 vs. Case No. A-13-686303-C  
15 Dept. No. XXVII  
16  
17 SIG ROGICH aka SIGMUND ROGICH as  
18 Trustee of The Rogich Family  
19 Irrevocable Trust; ELDORADO  
20 HILLS, LLC; et al.,  
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22 Defendants.  
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1                   Deposition of SIGMUND ROGICH, Volume 1,  
2    taken at 3770 Howard Hughes Parkway, Suite 300, Las  
3    Vegas, Nevada, on Thursday, May 24, 2018, at 9:57  
4    a.m., before Heidi K. Konsten, Certified Court  
5    Reporter in and for the State of Nevada.

6

7                   APPEARANCES OF COUNSEL

8    For the Plaintiff Nanyah Vegas, LLC:

9                   MARK G. SIMONS, ESQ.  
                  Simons Law, PC  
10                  6490 South McCarran Boulevard  
                  #20  
11                  Reno, Nevada 89509  
                  (775) 785-0088  
12                  (775) 785-0087 Fax  
                  mark@mgsimonslaw.com

13

For the Defendant Sigmund Rogich:

14

                  SAMUEL S. LIONEL, ESQ.  
15                  Fennemore Craig  
                  300 South Fourth Street  
16                  Suite 1400  
                  Las Vegas, Nevada 89101  
17                  (702) 692-8000  
                  (702) 692-8099 Fax

18

For the Defendant Peter Eliadas:

19

                  JOSEPH A. LIEBMAN, ESQ.  
20                  Bailey Kennedy  
                  8984 Spanish Ridge Avenue  
21                  Las Vegas, Nevada 89148  
                  (702) 562-8820  
22                  (702) 562-8821 Fax  
                  jliebman@baileykennedy.com

23

24    Also present:   Melissa Olivas

25

\* \* \* \* \*

1           Q     Are you familiar with the -- what are  
2     called fiduciary duties?

3           A     Yes.

4           Q     What is your understanding of a  
5     fiduciary duty?

6           A     To pay respective fees and -- that are  
7     needed to run a company. To not take money for  
8     your -- for yourself if it doesn't belong to you.  
9     To handle the company with integrity.

10          Q     Any duties with regard to communication?

11          A     As needed.

12          Q     Communicate with who?

13          A     The owners, partners, investors.

14          Q     So what's the responsibility or the duty  
15     that you believe exists with regards to investors,  
16     partners, or owners in a venture?

17          A     To communicate with them.

18                 MR. LIONEL: Object to the form of the  
19     question. It's also irrelevant.

20     BY MR. SIMONS:

21          Q     To advise the owners, partners, or  
22     investors of financial activities relating to the  
23     company?

24          A     Yes.

25          Q     Communicate with the owners, partners,

1 investors with regard to events that may impact  
2 their ownership or investment?

3 A Yes.

4 Q When did you tell Peter Eliadas about  
5 Nanyah's investments?

6 MR. LIONEL: Foundation.

7 BY MR. SIMONS:

8 Q Excuse me. Nanyah Vegas, LLC.

9 MR. LIONEL: Objection. Lacks  
10 foundation.

11 MR. SIMONS: What lacks foundation?  
12 What lacks foundation on that?

13 MR. LIONEL: Show when this was supposed  
14 to have happened, what happened, that they even  
15 talked to anybody.

16 THE WITNESS: I never discussed it with  
17 him.

18 BY MR. SIMONS:

19 Q Because you understand in the membership  
20 interest purchase agreement that we went over  
21 earlier today --

22 A Yes.

23 Q -- it calls out that you'll be  
24 responsible for any of the amounts that you  
25 confirmed on Exhibit D were invested in or on



CERTIFICATE OF COURT REPORTER

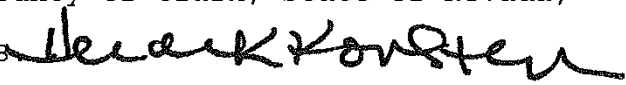
STATE OF NEVADA       )  
                                  ) ss:  
COUNTY OF CLARK       )

I, Heidi K. Konsten, Certified Court Reporter  
licensed by the State of Nevada, do hereby certify  
that I reported the deposition of SIGMUND ROGICH,  
commencing on May 24, 2018, at 9:57 a.m.

Prior to being deposed, the witness was duly  
sworn by me to testify to the truth. I thereafter  
transcribed my said stenographic notes via  
computer-aided transcription into written form,  
and that the transcript is a complete, true and  
accurate transcription and that a request was made  
for a review of the transcript.

I further certify that I am not a relative,  
employee or independent contractor of counsel or  
any party involved in the proceeding, nor a person  
financially interested in the proceeding, nor do I  
have any other relationship that may reasonably  
cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada,  
this May 6, 2018.

  
Heidi K. Konsten, RPR, CCR No. 845

**EXHIBIT 9**

**EXHIBIT 9**

**Melissa Olivas**

From: Kenneth Woloson [kwolosn@nevadafirm.com]  
Sent: Saturday, October 25, 2008 5:24 PM  
To: Carlos Huerta  
Cc: Melissa Olivas  
Subject: RE: Ken's agreement

Thanks, will wait to hear back from you...but please let me know what interest you think Nanya should have...if 2/3rds is going to Pete and Albert, then what of the remaining third do they "get"...and the others?...and I'll wait for the blackline of my "deal memo" to see your corrections and thanks in advance for that.

Take care.

Ken

Kenneth A. Woloson, Esq.  
Santoro, Driggs, Walch, Kearney,  
Holley & Thompson  
400 South Fourth Street, 3rd Floor  
Las Vegas, NV 89101  
Telephone: (702) 791-0308  
Fax: (702) 474-0281  
Cell: (702) 501-2002  
E-mail: kwoloson@nevadafirm.com

-----Original Message-----  
From: hurricanehuerta@gmail.com [mailto:hurricanehuerta@gmail.com] On Behalf Of Carlos Huerta  
Sent: Saturday, October 25, 2008 12:33 PM  
To: Kenneth Woloson  
Cc: Melissa Olivas  
Subject: Re: Ken's agreement

Hello Ken,

I was unaware of your move to Santoro. Last I knew, you were still Haney Woloson & Millins. I actually called you yesterday (after closing hours/about 5:30 pm) and, when the outgoing message said Santoro Driggs, I was confused and I just didn't even try to search for you, via their automated phone system. Now, I know and thanks.

As for the other investors, I will have a tough time having agreements buttoned up with these guys over the weekend. In regards to what they would or wouldn't expect (debt, equity, or combination), exactly, would be hard to say right now. This has all happened so fast that I have not even addressed any of this with the investors as of yet, except a little bit with Antonio Nevada, LLC and we're set to talk tomorrow/Sunday morning to see what Antonio's willing to do or not do. Antonio's progress will definitely effect Nanyah's.

In regards to Nanyah, you are right; they are in Canamax, but that was when we were pretty sure, as per Sig, that Dr. Nagy was coming in as an investor (when you, Melissa, Craig, and I met in your old office). We'll have to, somehow, transfer Nanyah's interests to Eldorado, since the intentions of taking their \$1.5 million was to really be an investment into the 160-acre property not necessarily into a phantom company. We'll have to, maybe not instantly, need to try to our best to make sure we do our best in preserving their interests, no more or less than the other members/investors, in order to avoid further complications or issues, realizing that if the asset were taken over, by the FDIC, everyone (except maybe Antonio, b/c of their claims of

What I will try to do is convince Antonio to convert into an equity position tomorrow and the other investor/members (Craig is one of them, FYI) I think will agree to help save this deal as per the current structure and sign whatever we need them to in order to do so.

Text (or talk) w/ U soon.

On 10/25/08, Kenneth Woloson <kwolosn@nevadafirm.com> wrote:

I'll give you all my contact info below. I am speaking with Melissa right now, but I would very much appreciate you/Craig's assistance on the suggested agreement between Sig (his Trust, I guess?...or maybe it should be with Sig individually and as Tee of his Irrev Trust) AND the "other investors. I have a pretty full plate over the weekend/Monday (and actually one OTHER deal closing next week also on which I'll need to spend a little time), so between the multiple agreements with Pete and Albert, with Eldorado, and P & A and Sig, and the "master agreement" among all of you, and coordinating escrow instructions AND looking at loan docs, I'll be delighted with having some assistance.

>  
> In that regard, perhaps you could let me know your thoughts on the following  
> concerning the other potential owners (and are you planning on addressing  
> each of these third parties in separate agreements, OR do they "know about  
> each other" and so on?)

> 1. Are they to remain equity owners or debtors

>  
>  
> 2. If equity, what percentage ownership (and reduces sig to  
> some extent?)

>  
>  
> 3. If debtor, who owes them, and how much and when is it due  
> and at what interest rate.

>  
>  
> 4. What is the deal with respect to each of the following (AND

**EXHIBIT 10**

**EXHIBIT 10**



1 **ORDR**

2 Mark G. Simons, Esq., NSB No. 5132  
3 SIMONS LAW, PC  
4 6490 S. McCarran Blvd., #20  
5 Reno, Nevada, 89509  
6 Telephone: (775) 785-0088  
7 Facsimile: (775) 785-0087  
8 Email: [mark@mgsimonslaw.com](mailto:mark@mgsimonslaw.com)

9 *Attorneys for Nanyah Vegas, LLC*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 CARLOS A. HUERTA, an individual;  
13 CARLOS A. HUERTA as Trustee of THE  
14 ALEXANDER CHRISTOPHER TRUST, a  
15 Trust established in Nevada as assignee of  
16 interests of GO GLOBAL, INC., a Nevada  
17 corporation; NANYAH VEGAS, LLC, A  
18 Nevada limited liability company,

19 **Plaintiffs,**

20 v.

21 SIG ROGICH aka SIGMUND ROGICH as  
22 Trustee of The Rogich Family Irrevocable  
23 Trust; ELDORADO HILLS, LLC, a Nevada  
24 limited liability company; DOES I-X; and/or  
25 ROE CORPORATIONS I-X, inclusive,

26 **Defendants.**

27 NANYAH VEGAS, LLC, a Nevada limited  
28 liability company,

**Plaintiff,**

v.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
as Trustee of the Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

**Defendants.**

**CASE NO.: A-13-686303-C**

**DEPT. NO.: XXVII**

**ORDER PARTIALLY GRANTING  
SUMMARY JUDGMENT**

**CONSOLIDATED WITH:**

**CASE NO.: A-16-746239-C**

BENNETT CRAIG

LAS VEGAS

13882013

1 The Motion for Summary Judgment by Defendant Sigmund Rogich, individually and as  
2 Trustee of the Rogich Family Irrevocable Trust, and Imitations, LLC ("Rogich Defendants"),  
3 joined by Peter Eliades, individually and as Trustee of the Eliades Survivor Trust of 10/30/08,  
4 Eldorado Hills, LLC, and Teld, LLC ("Eliades Defendants") having come on regularly to be  
5 heard on April 18, 2018, Samuel S. Lionel of Fennemore Craig, P.C. representing The Rogich  
6 Defendants and Joseph A. Liebman of Bailey Kennedy representing the Eliades Defendants and  
7 the Court having hearing argument and good cause appearing, does hereby set forth the  
8 undisputed material facts and the Court's legal determinations.

9 **RELEVANT FACTS**

10 1. Plaintiff's Complaint against the Rogich Defendants and the Eliades Defendants  
11 was filed on November 4, 2016.

12 2. The alleged transfer of the Eldorado Membership interest from the Rogich Trust to  
13 the Eliades Trust occurred no later than September 2012.

14 3. Plaintiff's Fifth and Seventh Claims for Fraudulent Transfer and Constructive  
15 Trust against the Rogich Defendants and the Eliades Defendants accrued no later than September  
16 2012.

17 4. Plaintiff's Fifth and Seventh Claims for Fraudulent Transfer and Constructive  
18 Trust were filed more than four years after they accrued.

19 **LEGAL DETERMINATION**

20 1. Plaintiff's Fifth and Seventh Claims for Fraudulent Transfer and Constructive  
21 Trust were filed more than 4 years after the alleged membership interest transfer.

22 2. NRS 112.230(1) provides that a claim for fraudulent transfer is extinguished if not  
23 brought within four years after the date of the transfer.

24 ~~3. The membership interest transfer is not a transfer that is permitted to be perfected~~  
25 ~~and therefore, NRS 112.200(1)(b)'s and NRS 112.200(2)'s provisions do not apply.~~ AT FOR  
NLA

26 3. The Rogich Defendants and the Eliades Defendants are awarded Partial Summary  
27 Judgment dismissing the Fifth and Seventh Claims, with prejudice.

28 4. Plaintiff's Fourth Claim for Intentional Interference with Contract has been

1 withdrawn by Plaintiff and should be dismissed.

2 5. The Motion of the Rogich Defendants' for Summary Judgment and the Joinder of  
3 the Eliades Defendants in said Motion for Summary Judgment with respect to Plaintiffs' First,  
4 Second, Third, Sixth, Eighth and Ninth Claims is denied.

5 Dated this 17 day of May, 2018.

6  
7 Nancy L. Ane  
8 DISTRICT COURT JUDGE  
9 AE

9 Respectfully submitted by:

10 SIMONS LAW, PC

11 BY: Mark Simons

12 Mark Simons, Esq., Nevada Bar No. 5132  
13 6490 South McCarran Blvd., #20  
14 Reno, Nevada 89509  
mark@mgsimonslaw.com  
Attorney for Plaintiff Nanyah Vegas, LLC

15 Approved:

16 This \_\_\_\_ day of \_\_\_\_, 2018

17 FENNEMORE CRAIG, P.C.

18 Samuel S. Lionel, Esq. NV Bar No. 1766  
19 Brenoch Wirthlin, Esq. NV Bar No. 10282  
20 300 S. Fourth Street, Suite 1400  
21 Las Vegas, NV 89101  
22 Tel: 702-692-8000  
23 Fax: 702-692-8099  
24 Attorneys for Sigmund Rogich, Individually and as Trustee of  
25 The Rogich Family Irrevocable Trust and Imitations, LLC  
26  
27  
28

///  
///



1 BAILEY KENNEDY

2  
3 By:

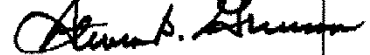
4 Joseph Liebman, Esq., Nevada Bar No. 10125  
5 Dennis Kennedy, Esq., Nevada Bar No. 1462  
6 8984 Spanish Ridge Avenue  
7 Las Vegas, NV 89148  
8 DKennedy@BaileyKennedy.com  
9 JLiebman@BaileyKennedy.com  
10 *Attorneys for Defendants Pete Eliades, individually, and as*  
11 *Trustee of The Eliades Survivor Trust of 10/30/08*  
12 *Teld, LLC and Eldorado Hills, LLC*  
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FINNEMORE CRAIG

LAS VEGAS

# EXHIBIT 11

# EXHIBIT 11



1 **ORDER**

2 Mark G. Simons, Esq., NSB No. 5132  
3 SIMONS LAW, PC  
4 6490 S. McCarran Blvd., #20  
5 Reno, Nevada, 89509  
6 Telephone: (775) 785-0088  
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8 Email: [mark@mgsimonslaw.com](mailto:mark@mgsimonslaw.com)

9 *Attorneys for Nanyah Vegas, LLC*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 CARLOS A. HUERTA, an individual;  
13 CARLOS A. HUERTA as Trustee of THE  
14 ALEXANDER CHRISTOPHER TRUST, a  
15 Trust established in Nevada as assignee of  
16 interests of GO GLOBAL, INC., a Nevada  
17 corporation; NANYAH VEGAS, LLC, A  
18 Nevada limited liability company,

19 Plaintiffs,

20 v.

21 SIG ROGICH aka SIGMUND ROGICH as  
22 Trustee of The Rogich Family Irrevocable  
23 Trust; ELDORADO HILLS, LLC, a Nevada  
24 limited liability company; DOES I-X; and/or  
25 ROE CORPORATIONS I-X, inclusive,

26 Defendants.

27 NANYAH VEGAS, LLC, a Nevada limited  
28 liability company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
as Trustee of the Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

**CASE NO.: A-13-686303-C**

**DEPT. NO.: XXVII**

**ORDER DENYING COUNTERMOTION  
FOR SUMMARY JUDGMENT AND  
DENYING NRCP 56(F) RELIEF**

**CONSOLIDATED WITH:**

**CASE NO.: A-16-746239-C**

SIMONS LAW, PC  
6490 S. McCARRAN  
BLVD., #20  
RENO, NV 89503  
(775) 785-0088

13882013

1 The Countermotion for Summary Judgment and Motion for NRCP 56(f) Relief filed by  
2 Plaintiff Nanyah Vegas, LLC ("Nanyah") having come on regularly to be heard on April 18,  
3 2018, Mark G. Simons of SIMONS LAW, PC, representing Nanyah and Samuel S. Lionel of  
4 Fennemore Craig, P.C. representing The Rogich Defendants and Joseph A. Liebman of Bailey  
5 Kennedy representing the Eliades Defendants and the Court having hearing argument and good  
6 cause appearing, does hereby find as follows:

- 7 1. Nanyah's Countermotion for Summary Judgment is denied.  
8 2. Nanyah's Motion for NRCP 56(f) relief is denied.

9 Dated this 17 day of May, 2018.

10  
11 Nancy L. Alf  
DISTRICT COURT JUDGE  
12 AE

13 Respectfully submitted by:

14 SIMONS LAW, PC

15 BY: Mark Simons

16 Mark Simons, Esq., Nevada Bar No. 5132  
6490 South McCarran Blvd., #20  
17 Reno, Nevada 89509  
mark@mgsimonslaw.com  
Attorney for Plaintiff Nanyah Vegas, LLC

18 Approved:

19 This \_\_\_\_ day of \_\_\_\_, 2018

20 FENNEMORE CRAIG, P.C.

21  
22 Samuel S. Lionel, Esq. NV Bar No. 1766  
23 Brenoch Wirthlin, Esq. NV Bar No. 10282  
300 S. Fourth Street, Suite 1400  
Las Vegas, NV 89101  
24 Tel: 702-692-8000  
Fax: 702-692-8099

25 Attorneys for Sigmund Rogich, Individually and as Trustee of  
26 The Rogich Family Irrevocable Trust and Imitations, LLC

27 ///  
28 ///

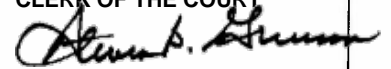
SIMONS LAW, PC  
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BAILEY KENNEDY

By:

Joseph Liebman, Esq., Nevada Bar No. 10125  
Dennis Kennedy, Esq., Nevada Bar No. 1462  
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Las Vegas, NV 89148  
DKennedy@BaileyKennedy.com  
JLiebman@BaileyKennedy.com  
*Attorneys for Defendants Pete Eliades, individually, and as  
Trustee of The Eliades Survivor Trust of 10/30/08  
Teld, LLC and Eldorado Hills, LLC*



**OPPM**

Samuel S. Lionel, Esq. (Bar No. 1766)  
Thomas H. Fell, Esq. (Bar No. 3717)  
Brenoch Wirthlin, Esq. (Bar No. 10282)  
**FENNEMORE CRAIG, P.C.**  
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Email: [slionel@fclaw.com](mailto:slionel@fclaw.com)  
*Attorneys for Sigmund Rogich, Individually and as Trustee of  
The Rogich Family Irrevocable Trust and Imitations, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CARLOS A. HUERTA, an individual;  
CARLOS A. HUERTA as Trustee of THE  
ALEXANDER CHRISTOPHER TRUST, a  
Trust established in Nevada as assignee of  
interests of GO GLOBAL, INC., a Nevada  
corporation; NANYAH VEGAS, LLC, A  
Nevada limited liability company,

Plaintiffs,

v.

SIG ROGICH aka SIGMUND ROGICH as  
Trustee of The Rogich Family Irrevocable  
Trust; ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X; and/or  
ROE CORPORATIONS I-X, inclusive,

Defendants.

NANYAH VEGAS, LLC, a Nevada limited  
liability company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
as Trustee of the Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

**CASE NO.: A-13-686303-C**

**DEPT. NO.: XXVII**

**OPPOSITION TO PLAINTIFF'S  
EMERGENCY MOTION TO ADDRESS  
DEFENDANT THE ROGICH FAMILY  
IRREVOCABLE TRUST'S NRS 163.120  
NOTICE AND/OR MOTION TO  
CONTINUE TRIAL FOR PURPOSES OF  
NRS 163.120**

**Date of Hearing:** April 18, 2019

**Time of Hearing:** 4:00 p.m. (Telephonic)

**CONSOLIDATED WITH:**

**CASE NO.: A-16-746239-C**

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**OPPOSITION TO PLAINTIFF’S EMERGENCY MOTION TO ADDRESS DEFENDANT  
THE ROGICH FAMILY IRREVOCABLE TRUST’S NRS 163.120 NOTICE AND/OR  
MOTION TO CONTINUE TRIAL FOR PURPOSES OF NRS 163.120**

Defendants Sigmund Rogich, individually (“Mr. Rogich”), and as Trustee of the Rogich Family Irrevocable Trust (the “Rogich Trust”), and Imitations, LLC (“Imitations” and collectively with Mr. Rogich and the Rogich Trust referred to as the “Rogich Defendants”), by and through their counsel of record, Fennemore Craig, P.C., and hereby submit their Opposition to Plaintiff Nanyah Vegas, LLC’s (“Nanyah” or “Plaintiff”) Emergency Motion to Address Defendant The Rogich Family Irrevocable Trust’s NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120 (“Motion”).

This Opposition is made and based upon the following Memorandum of Points and Authorities, Declaration of Sigmund Rogich, attached hereto as **Exhibit 1**, any argument of counsel at the time of the hearing on this matter, and all papers and pleadings on file herein.

DATED: April 18, 2019.

**FENNEMORE CRAIG, P.C.**

By: /s/ Brenoch Wirthlin, Esq.  
Samuel S. Lionel, Esq. (Bar No. 1766)  
Thomas Fell, Esq. (Bar No. 3717)  
Brenoch Wirthlin, Esq. (Bar No. 10282)  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
*Attorneys for the Rogich Defendants*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Plaintiff Motion filed by Plaintiff and just six (6) days before a firm trial date is a last  
5 minute attempt to improperly delay trial in this matter. Trial in this matter is to begin in a matter  
6 of days on April 22, 2019. Defendants are prepared to proceed to trial, and for the reasons set  
7 forth below, Plaintiff's Motion should be denied, including Plaintiff's request to continue the  
8 trial.

9 Further, Plaintiff requests two alternative forms of relief. Plaintiff states the Court  
10 "must" determine either that (1) NRS 163.120's provisions are not "implicated" in this matter or  
11 (2) that the case may be tried to verdict and, thereafter, suspend entry of judgment pending notice  
12 to any designated beneficiary. *See* Motion at p. 8. However, the Court does not need to make  
13 either of these determinations, as both are improper and can be dealt with only at trial.

14 Regarding the applicability of NRS 163.120 to this matter, Plaintiff's argument that this  
15 provision does not apply is based on a misstatement of fact by Plaintiff that the Rogich Trust has  
16 only one beneficiary – Mr. Rogich – and that because Mr. Rogich is a named party in this matter  
17 and therefore has notice of it, the provisions of NRS 163.120(2) are inapplicable. However, as set  
18 forth below, this statement by Plaintiff is incorrect and in fact, there are multiple beneficiaries of  
19 the Rogich Trust. Importantly, the Court is not required at this point to make a determination as  
20 to the applicability of NRS 163.120, and Plaintiff's request is unnecessary and improper.

21 Finally, Plaintiff's other request is also unnecessary and improper. In fact, Plaintiff itself  
22 asserts that the applicable statute does not prevent the trial from going forward. The parties are  
23 free to take whatever positions they choose and reserve and retain the arguments they feel are  
24 appropriate for trial. The Court can then address any required issues pertaining to NRS 163.120  
25 at trial. Accordingly, Plaintiff's Motion must be denied.

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II.

STATEMENT OF FACTS

The lead case in this matter (A-13-686303-C) was filed on July 31, 2013. The consolidated case was originally set to a June 2018 trial stack. On May 3, 2018, Nanyah filed a motion to continue trial and to set a firm trial date on order shortening time citing the unavailability of the client's principal, Yoav Harlap, which resulted in a trial date being set for November 13, 2018. Due to a death in the family of Defendants' counsel, the trial was then moved to a firm trial date of April 22, 2019.

On Monday, April 15, 2019, Defendants filed a request for judicial notice of NRS 163.120. Subsequently, counsel for Nanyah submitted a request to Defendants to provide the names of the beneficiaries of the Sig Rogich Irrevocable Trust. The next day, Nanyah filed the instant *ex parte* motion on order shortening time.

III.

ARGUMENT

**A. Plaintiff's Motion must be denied. A trial continuance would cause substantial harm to the Rogich Defendants.**

Despite the fact that Plaintiff describes the Motion as an "emergency motion," Plaintiff's Motion sets forth no events which prevent – or warrant any delay of – this matter proceeding to trial as scheduled by this Court on a firm setting to begin April 22, 2019. The fact that Defendants requested the Court take judicial notice of NRS 163.120 (*See* paragraph 4 of Declaration of Mark G. Simons in Support of Motion) in no way justifies a continuance of the trial, and further does not require the Court to "address how to proceed" prior to trial. Rather, the Court can and must allow the trial to go forward as continuing the trial (which has been continued multiple times before at Plaintiff's request and at the request of the Rogich Defendants after the passing of counsel's family member) would cause substantial harm to the Rogich Defendants, who have been involved involuntarily in this litigation for over 5 ½ years and have been planning to go to trial on the Court's firm setting now for several months. Continuation of trial at this

1 point would also be severely detrimental and may not be possible for several months due to Mr.  
2 Rogich's extremely busy travel schedule over that time period, taking him out of state and out of  
3 the country on long-planned business and other engagements. *See* Rogich Declaration at ¶ 5.  
4 Plaintiff's improper Motion, which provides no basis to continue the trial and is not in  
5 compliance with the applicable local rules or other applicable law, must be denied. The Court  
6 can address any issues that arise during trial at that time.

7 **B. Plaintiff's Motion is based on a misstatement of material fact and therefore fails to**  
8 **provide any basis for the Court to determine NRS 163.120 is not applicable, or to**  
9 **make any other improper or advisory determination as requested by Plaintiff.**

10 Plaintiff attaches exhibits to its Motion purporting to show that the true identity of The  
11 Rogich Trust sued in this action is a mystery. However, it is indisputable that The Rogich Trust  
12 was sued twice in this consolidated action – in 2013 and 2016. The trust referenced in the gaming  
13 control board records attached as Exhibit 3 to the Motion is not the proper trust. Accordingly,  
14 Plaintiff's assertion that Mr. Rogich is the only beneficiary of the Rogich Trust – a defendant  
15 herein – is inaccurate. In fact, there are multiple beneficiaries of the Rogich Trust. *See* Rogich  
16 Declaration, Exhibit 1 hereto, at ¶¶ 3-4. Thus, while Nanyah attempts to thwart the intent of NRS  
17 163.120(2) by claiming or suggesting Mr. Rogich is the only beneficiary of The Rogich Trust,  
18 this claim is inaccurate. The cited testimony from Ms. Olivas' August 2014 deposition only  
19 indicates that Mr. Rogich was a beneficiary, not the sole beneficiary. There was no testimony  
20 sought or provided that indicated that Mr. Rogich was the sole beneficiary of The Rogich Trust.  
21 Even if the testimony said what Nanyah wanted it to say, the testimony would be almost 5 years  
22 out of date. At this time, Mr. Rogich (as the Trustee) is working to gather the information  
23 required by NRS 163.120, requested by Plaintiff on April 15, 2019, and will provide this  
24 information as set forth in the statute. Further, while the Court cannot and need not decide this  
25 issue prematurely, as a beneficiary, Mr. Rogich has standing to assert application of NRS  
26 163.120(2). It is disingenuous for Nanyah to claim Mr. Rogich to be a beneficiary and then assert  
27 he lacks standing.

28 Further, it should be noted that Plaintiff asserts on page 5 of its Motion that the purpose of

1 NRS 163.120 “is to provide notice to the beneficiaries of a trust of a pending action so that the  
2 beneficiaries may intervene, should they so desire, and attempt to make the trustee liable for the  
3 trust’s debt.” That is incorrect. Rather, the express purpose of the statute is to give a defendant  
4 trust’s beneficiaries proper notice of the existence and nature of a suit against the trust to allow  
5 the beneficiaries to “contest the right of the plaintiff to recover.” *See* NRS 163.120(2).

6 Moreover, the fact – among other things – that Mr. Rogich is not the only beneficiary of  
7 the Rogich Trust also renders the only case law cited by Plaintiff distinguishable. In fact,  
8 Plaintiff introduces its citation to the Texas case referenced therein by stating incorrectly that  
9 “[b]ecause Rogich is both the Trustee of the Rogich Trust and **the** beneficiary of the trust, NRS  
10 163.120 notice of the proceedings is not mandated as Rogich has received actual notice of all  
11 activity in this case and NRS 163.120’s provisions are fully satisfied.” Plaintiff then relies on  
12 *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472, 473 (Tex. 1979), as support  
13 for its position, asserting that the “exact issue” Plaintiff purports to raise was addressed in  
14 *Transamerican. Id.* However, as noted above, Plaintiff’s assertion and arguments are based on  
15 the inaccurate assertion that Mr. Rogich is the only beneficiary of the Rogich Trust, and improper  
16 citation to unrelated documents from a separate trust. In truth, the *Transamerican* decision is  
17 entirely distinguishable from the instant case and Nevada courts have addressed the importance of  
18 Nevada’s statutory requirements. *See, e.g., Branch Banking & Tr. Co. v. Smoke Ranch Dev.,*  
19 *LLC*, No. 2:12-CV-00453-APG-NJ, 2014 WL 4796939, at \*15 (D. Nev. Sept. 26, 2014), *aff’d sub*  
20 *nom. Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751 (9th Cir. 2017). Moreover, the  
21 Texas court impermissibly attempted to shift the burden after the fact to the beneficiaries to  
22 establish prejudice, which Nevada law does not permit. Shifting the burden improperly and  
23 unlawfully requires the beneficiaries to guess in hindsight what they could have discovered and  
24 asserted without the benefit of actually participating. Accordingly, the Motion must be denied.

25 **C. Plaintiff’s remaining request is improper.**

26 Finally, Plaintiff alternatively requests that this Court make an improper determination  
27 “that the case may be tried to verdict and, thereafter, suspend entry of judgment pending notice to  
28 any designated beneficiary.” *See* Motion at p. 8. This is improper. At this point the parties are

1 free to reserve all rights and arguments, etc., regarding this issue for trial and, in fact, Plaintiff  
2 itself asserts that 163.120 “does not preclude a case from being tried to a jury and does not  
3 prevent a jury from rendering a verdict.” See Motion at 5. Plaintiff and the Rogich Defendants  
4 can both reserve the right to make whatever arguments regarding this issue they believe are  
5 appropriate at trial, which the Court can then properly address at that time. Any other  
6 determination requested by Plaintiff at this time is unnecessary and improper.

7 **IV.**

8 **CONCLUSION**

9 For all these reasons, the Rogich Defendants respectfully requests that this Court deny  
10 Nanyah’s Motion in its entirety, and grant such other and further relief as the Court deems  
11 appropriate.

12 DATED: April 18, 2019.

13 **FENNEMORE CRAIG, P.C.**

14  
15 By: /s/ Brenoch Wirthlin, Esq.  
16 Samuel S. Lionel, Esq. (Bar No. 1766)  
17 Thomas Fell, Esq. (Bar No. 3717)  
18 Brenoch Wirthlin, Esq. (Bar No. 10282)  
19 300 S. Fourth Street, Suite 1400  
20 Las Vegas, Nevada 89101  
21 *Attorneys for the Rogich Defendants*  
22  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.,  
3 and that on April 18, 2019, I caused to be electronically served through the Court's e-service/e-  
4 filing system, true and correct copies of the foregoing **OPPOSITION TO PLAINTIFF'S**  
5 **EMERGENCY MOTION TO ADDRESS DEFENDANT THE ROGICH FAMILY**  
6 **IRREVOCABLE TRUST'S NRS 163.120 NOTICE AND/OR MOTION TO CONTINUE**  
7 **TRIAL FOR PURPOSES OF NRS 163.120** properly addressed to the following:

8 Mark Simons, Esq.  
9 **SIMONS HALL JOHNSTON PC**  
6490 South McCarran Blvd., #F-46  
10 Reno, Nevada 89509  
11 *Attorney for Plaintiff Nanyah Vegas, LLC*

12 Charles E. ("CJ") Barnabi, Jr.  
13 **COHEN JOHNSON PARKER EDWARDS**  
375 E. Warm Springs Road, Suite 104  
14 Las Vegas, NV 89119  
*Attorney for Plaintiffs Carlos Huerta*  
15 *and Go Global*

16 Dennis Kennedy  
17 Joseph Liebman  
**BAILEY ♦ KENNEDY**  
8984 Spanish Ridge Avenue  
18 Las Vegas, NV 89148  
*Attorneys for Defendants Pete Eliades,*  
19 *Teld, LLC and Eldorado Hills, LLC*

20 Michael Cristalli  
21 Janiece S. Marshall  
**GENTILE CRISTALLI MILLER ARMENTI SAVARESE**  
22 410 S. Rampart Blvd., Suite 420  
23 Las Vegas, NV 89145

24 DATED: April 18, 2019

25 /s/ Morganne Westover  
26 An employee of Fennemore Craig, P.C.  
27  
28

# **EXHIBIT 1**

1 **OPPM**

2 Samuel S. Lionel, Esq. (Bar No. 1766)

3 Thomas H. Fell, Esq. (Bar No. 3717)

4 Brenoch Wirthlin, Esq. (Bar No. 10282)

5 **FENNEMORE CRAIG, P.C.**

6 300 S. Fourth Street, Suite 1400

7 Las Vegas, Nevada 89101

8 Tel.: (702) 692-8000; Fax: (702) 692-8099

9 Email: [slionel@fclaw.com](mailto:slionel@fclaw.com)

10 *Attorneys for Sigmund Rogich, Individually and as Trustee of*

11 *The Rogich Family Irrevocable Trust and Imitations, LLC*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

10 CARLOS A. HUERTA, an individual;  
11 CARLOS A. HUERTA as Trustee of THE  
12 ALEXANDER CHRISTOPHER TRUST, a  
13 Trust established in Nevada as assignee of  
14 interests of GO GLOBAL, INC., a Nevada  
15 corporation; NANYAH VEGAS, LLC, A  
16 Nevada limited liability company,

17 Plaintiffs,

18 v.

19 SIG ROGICH aka SIGMUND ROGICH as  
20 Trustee of The Rogich Family Irrevocable  
21 Trust; ELDORADO HILLS, LLC, a Nevada  
22 limited liability company; DOES I-X; and/or  
23 ROE CORPORATIONS I-X, inclusive,

24 Defendants.

25 NANYAH VEGAS, LLC, a Nevada limited  
26 liability company,

27 Plaintiff,

28 v.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
as Trustee of the Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: A-13-686303-C

DEPT. NO.: XXVII

**DECLARATION OF SIGMUND ROGICH**  
**IN OPPOSITION TO PLAINTIFF'S**  
**EMERGENCY MOTION TO ADDRESS**  
**DEFENDANT THE ROGICH FAMILY**  
**IRREVOCABLE TRUST'S NRS 163.120**  
**NOTICE AND/OR MOTION TO**  
**CONTINUE TRIAL FOR PURPOSES OF**  
**NRS 163.120**

Date of Hearing: April 18, 2019

Time of Hearing: 4:00 p.m. (Telephonic)

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

CARLOS HUERTA, et al,	)	CASE NO. A-13-686303-C
	)	A-16-746239-C
Plaintiffs,	)	
	)	
vs.	)	DEPT NO. XXVII
	)	
ELDORADO HILLS, LLC, et al,	)	
	)	
Defendants.	)	<b>Transcript of</b>
	)	<b>Proceedings</b>
<u>AND RELATED CASES AND PARTIES)</u>		

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

**TELEPHONIC CONFERENCE**

THURSDAY, APRIL 18, 2019

APPEARANCES:

FOR THE PLAINTIFFS: MARK G. SIMONS, ESQ.

FOR THE DEFENDANTS: DENNIS L. KENNEDY, ESQ.  
JOSEPH A. LIEBMAN, ESQ.  
BRENOCH WIRTHLIN, ESQ.  
SAMUEL S. LIONEL, ESQ.  
THOMAS H. FELL, ESQ.

RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER  
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1           LAS VEGAS, NEVADA, THURSDAY, APRIL 18, 2019, 3:55 P.M.

2                           (Court was called to order)

3           THE COURT:   This is the Judge.  I'm calling the case  
4 of Huerta versus Rogich, A686303.  Appearances, please, from the  
5 plaintiff to the defendant to the third parties.

6           MR. SIMONS:   This is Mark Simons on behalf of Nanyah  
7 Vegas.

8           THE COURT:   Thank you.

9           MR. LIEBMAN:   This is Joseph Liebman and Dennis  
10 Kennedy on behalf of Eldorado Hills.

11           MR. WIRTHLIN:   Brenoch Wirthlin, Sam Lionel, and Tom  
12 Fell on behalf of Rogich defendant [inaudible].

13           THE COURT:   Mr. Wirthlin, if that is you speaking, I'm  
14 having a very hard time hearing you.  Can you increase the sound  
15 on your device.

16           MR. WIRTHLIN:   Yes.  We tried, Your Honor.  Is that  
17 better?

18           THE COURT:   Yes.  Thank you.  So I have set a hearing  
19 today on Nanyah Vegas LLC's emergency motion to address  
20 defendant Rogich Family Irrevocable Trust NRS 163.120 notice  
21 and/or motion to continue trial for purposes of NRS 163.120.  To  
22 let everyone know, I think I have read everything that you have  
23 filed in the last ten days.  I've done it in a hurried basis,  
24 but I believe that I'm prepared.

25           So, Mr. Simons, let me hear from you on your motion.

1 MR. SIMONS: The motion is pretty straightforward.  
2 We're going to have to address it in some fashion. We  
3 identified that given that Mr. Rogich is a beneficiary, as well  
4 as trustee, it may not apply. But apparently in our  
5 communications previously in the 2.67 meeting there was no  
6 resolution, so that leaves two options, really, for the Court to  
7 address.

8 One is either try the case, but not enter judgment  
9 based upon the jury verdict until the 163.120 timeline is  
10 complied with, and then deal with any activity after that, or,  
11 two, do a short continuance. It's only going to be about 40  
12 days that I think would be necessary to get it in full  
13 compliance. And then the Court wouldn't have any need to delay  
14 the proceedings and could enter judgment immediately after the  
15 jury verdict.

16 THE COURT: Thank you.

17 MR. SIMONS: So --

18 THE COURT: Did I cut you off? Go ahead.

19 MR. SIMONS: No, no. I just want to make -- that's  
20 really the kind of scenario we're looking at. If the Court may  
21 recall, there was a previous continuance of this case, not  
22 because of any substantive issue, but back in November Mr.  
23 Lionel asked to continue the case for personal reasons, and then  
24 a six-month continuance was granted over the objection of  
25 Nanyah.

1           In this instance we think we have a substantive, or at  
2   least an issue that can be addressed and should be addressed,  
3   and procedurally for judicial economy and to really streamline  
4   things and not, you know, make more appellate issues, a simple  
5   continuance and a short continuance is warranted.

6           There was an argument that that's prejudicial, but, in  
7   fact, it's all really -- there's an inconvenience that is being  
8   alleged rather than a prejudicial effect. So I think for  
9   judicial economy and full compliance we suggested that a short  
10   continuance be appropriate so that all the 163.120 obligations  
11   are complied with.

12           THE COURT: Thank you, Mr. Simons.

13           MR. SIMONS: That's it.

14           THE COURT: Let me hear from Rogich defendants before  
15   I hear from Eldorado.

16           MR. WIRTHLIN: Yes, Your Honor. This is Brenoch  
17   Wirthlin. We think that as to the two aspects of that motion  
18   that Mr. Simons referenced, we'll take the continuance request  
19   first. And we would submit, Your Honor, that pursuant to EDCR  
20   7.30 both (c) and (d), the Court -- the plaintiff did not comply  
21   with those requirements, which require -- I can read very  
22   briefly from that provision.

23           Subsection (c) states except in criminal matters, if a  
24   motion for continuance is filed within 30 days before the date  
25   of the trial, the motion must contain a certificate of counsel

1 for the movant that counsel has provided counsel's client with a  
2 copy of the motion and supporting documents. The court will not  
3 consider any motion filed in violation of this paragraph.

4 And in subsection (d) it states no continuance may be  
5 granted unless the contents of the affidavit conform to this  
6 rule, and then it talks about exceptions for mining cases which  
7 does not apply.

8 We would submit, Your Honor, that in addition to the  
9 prejudice that EDCR 7.30 and the lack of that certification in  
10 plaintiff's motion prohibits the trial from being continued.

11 I do want to note just as well, there have been two  
12 continuances. I believe the first one was at the request of the  
13 plaintiff, and then there was the previous continuance, which I  
14 think the Court was willing to hear the case in February and  
15 plaintiff wanted to have it moved and the Court was willing to  
16 accommodate. But I think as far as the continuance goes, Your  
17 Honor, this case has been pending for five and a half years and  
18 the Court has given us a firm setting. And even if EDCR 7.3  
19 would permit the case to be continued or the trial to be  
20 continued, it cannot be for those reasons.

21 With respect to the second aspect, I think that  
22 that's, and we pointed that out in our pleading, but I think  
23 it's unnecessary and it's premature for the Court to make a  
24 determination. I think that these issues right now, I think  
25 that these issues are not proper before the Court yet. They

1 will be at trial, and the Court can address them at that time as  
2 needed. I think that anything other than that would constitute  
3 an advisory ruling and is just unnecessary.

4 THE COURT: Thank you.

5 MR. WIRTHLIN: Thank you.

6 THE COURT: And, Mr. Kennedy and Liebman.

7 MR. KENNEDY: Yes, Your Honor. Dennis Kennedy for  
8 Eldorado. We don't have a position on this. We're willing to  
9 go along with whatever the Court decides.

10 THE COURT: Okay. And let me hear again from you as  
11 in a form of a reply, Mr. Simons.

12 MR. SIMONS: Thank you. I do note that my motion  
13 identifies that the client was fully advised and consents to  
14 this activity, and so we put that in there. It's not in the  
15 form of an affidavit or a declaration that's sufficient to  
16 achieve that.

17 Two, it can't be an issue at trial. The statute  
18 actually says once it's brought to the attention of the Court --  
19 and, again, this is a uniform provision. Once it's brought to  
20 the attention of the Court, the Court has to do something. The  
21 Court can't just ignore it and try the case and then somehow let  
22 this be an issue at trial for the jury to decide. This -- the  
23 Court has to recognize that under this provision, it's got to  
24 address the situation. So the request that, hey, just let it go  
25 to trial and we'll deal with it at trial, that -- that's not the

1 answer.

2           We suggest the proper and really most convenient way  
3 to approach this, both for judicial economy and to minimize  
4 appellate issues which we've all been trying to do, is just --  
5 it's only going to take, I think, about 37 days to be accurate  
6 because the notices -- requests for information on who the  
7 beneficiaries are and the address was already sent out. I've  
8 asked orally. That information hasn't been provided, but it  
9 will be provided shortly. The notice gets served, there is --  
10 then everything is a go.

11           MR. WIRTHLIN: Your Honor, this is Brenoch, and I --  
12 I'm perfectly fine with Mr. Simons replying after I respond, but  
13 I would dispute that his declaration contains any certification  
14 that he has provided this to his counsel -- or, I'm sorry, to  
15 his -- to his client. So with respect to that -- right, on page  
16 2 and 3 of the motion.

17           THE COURT: And, Mr. Kennedy, and then Mr. Simons if  
18 you have anything more to add.

19           MR. KENNEDY: Your Honor, Dennis Kennedy. No, nothing  
20 else.

21           THE COURT: Mr. Simons.

22           MR. SIMONS: If you think that there is a deficiency  
23 in the affidavit, I will get an affidavit from my client  
24 acknowledging the motion, acknowledging the contents thereof,  
25 and acknowledging that the continuance is being contemplated and

1 requested.

2 MR. WIRTHLIN: Your Honor, I --

3 THE COURT: Yes?

4 MR. WIRTHLIN: Go ahead. I'm sorry, Mr. Simons.

5 MR. SIMONS: And so again, the provisions of 163.120  
6 are different and distinct with regards to continuance. It's a  
7 mechanism, what does the court do when this situation arises.  
8 This wasn't -- clearly was not something that you were unaware  
9 of or that Rogich Trust was unaware of. Five years, they've  
10 never said anything. This could have easily been handled. No,  
11 it's at the eve of trial, an ambush type of tactic, so we're  
12 just trying to figure out the best and most cost effective and  
13 efficient way to deal with all of them.

14 MR. WIRTHLIN: And, Your Honor -- I'm sorry, EDCR 7.30  
15 (e) does provide, and I'm quoting here, no amendments or  
16 additions to affidavits for a continuance will be allowed at the  
17 hearing on the motion. And we would submit that any  
18 supplemental or additional affidavit is improper and must be  
19 excluded if the trial should go forward. We dispute the other  
20 assertions at this time, but we'll rest on that, Your Honor.

21 THE COURT: All right. Mr. Simons, it's your motion.  
22 You get the last bite at the apple.

23 MR. SIMONS: If the Court recalls the last  
24 continuance, it was an oral continuance made by Mr. Lionel, I  
25 believe. So, I mean, to -- well, enough said. I think the



1 Court is very cognizant of the issue that's presented before it  
2 and I don't think I have anything else to add.

3 THE COURT: Thank you. I have a -- before I rule, I  
4 have a couple of questions for you, Mr. Simons. We did some  
5 research on 163.120 and how it's applied. Do you have certainty  
6 that there is unity of interest between Mr. Rogich as the sole  
7 beneficiary of the trust?

8 MR. SIMONS: Am I certain about that? No, because --  
9 and I have to refer to what the opposition said, and the  
10 opposition says -- just one second -- that Mr. Rogich is not the  
11 only beneficiary. So that's the first I've heard of that, so I  
12 cannot tell you with certainty that Mr. Rogich is the only  
13 beneficiary.

14 THE COURT: Okay.

15 MR. SIMONS: Because there is an indication he's not,  
16 so that's all I have to go with right then.

17 THE COURT: And other cases seem to suggest that if  
18 there's been an implied notification of the beneficiaries early  
19 in the action that that may alter the statute. Can you argue  
20 that you have implied notification to the beneficiaries?

21 MR. SIMONS: To the -- I was under the belief, based  
22 upon the deposition testimony, that Mr. Rogich was the only  
23 beneficiary. Before this hearing I tried to address that with  
24 Rogich Trust's attorneys, and they would not disclose who the  
25 beneficiaries were. So in the abstract, it seems -- it would

1 seem shocking to me to think that this case has already gone up  
2 to the Supreme Court once and come back down.

3           The Rogich defendants have been in this case, have  
4 actually moved for summary judgment, actually defended summary  
5 judgment claims without ever raising this issue, indicating to  
6 me that any beneficiary was fully cognizant of this action, of  
7 the notice. And so that's why I don't -- I don't see how the  
8 provisions of 163.120 are necessary or implicated. But, again,  
9 I don't know until I know who the beneficiaries are. Because if  
10 it's his wife, clearly, you know, there's going to be  
11 constructive notice. If there's somebody else, I don't know.

12           MR. WIRTHLIN: And, Your Honor, we -- this is Brenoch  
13 Wirthlin. We will provide that information pursuant to the  
14 statute. If the Court has additional questions about that,  
15 frankly, that's the first that I've heard about that out of an  
16 argument, and I would request that the trial not be continued,  
17 but that we be permitted to brief that issue and submit briefs  
18 on that.

19           THE COURT: All right. And -- all right. So let me  
20 get back to my questions to Mr. Simons.

21           Mr. Simons, 163.120(2) really -- really ties your  
22 hands as far as timing. It says that you have -- what it seems  
23 to me is that it gives you the chance either before the 16.1 or  
24 after to determine who the beneficiaries are so that they can be  
25 given notice so that they have the ability to intervene.

1           And I realize that there's a provision there that  
2 within such time as the Court may fix, but the way I read it is  
3 that so that if you don't have it by the time that the initial  
4 disclosures are made you can ask for additional time. I don't  
5 see where it can be made on the eve of trial. So I need to hear  
6 more about that, what you think my discretion is. Because --

7           MR. SIMONS: Well, it actually --

8           THE COURT: -- my biggest --

9           MR. SIMONS: -- gave you a date --

10          THE COURT: -- my biggest --

11          MR. SIMONS: -- that said it was done after the Court  
12 had rendered a judgment. This Court vacated the judgment, said  
13 here's what we're going to do, I'm vacating the judgment, do  
14 your notice, then we'll deal with what the beneficiaries are.

15          It's not a mechanism to preclude a judgment moving --  
16 a verdict being entered or a judgment moving forward. It has to  
17 deal with giving opportunity. And it says only before judgment.  
18 That's all. That's what the statute says. And there is -- if  
19 the Court says that -- well, none of the courts or the cases  
20 that deal with it have said if you don't do it by the time you  
21 do a 16.1 disclosure or a disclosure your hands are -- you're  
22 handcuffed.

23          If we're going to look at that, then what we have to  
24 look at is 16.1 also requires the defendants to notify in their  
25 16.1 who are the beneficiaries. It requires the defendants to

1 produce a copy of the trust. So it goes both ways.

2           It's not all of the sudden, hey, let's surprise and  
3 let's penalize Nanyah, let's do that on the eve of trial after  
4 we've tried this case for five years. Defendants haven't said  
5 anything, and, in fact, the case law says, look, all they have  
6 to do is request and participate in the activity before  
7 judgment. That's what it says.

8           THE COURT: Right. But the purpose of --

9           MR. SIMONS: And the other decision would absolutely  
10 be contrary to the whole scope and intent and purpose and case  
11 law.

12           THE COURT: But the -- the purpose of the statute to  
13 me is to give beneficiaries due process to give them the chance  
14 to intervene. You don't even have a response to the letter.  
15 And, frankly, the letter didn't specify a time frame. I don't  
16 know if it goes back to the 2013 original case or the  
17 consolidated case filed on November 4, 2016. I don't think it  
18 would be possible to have a response before the time that's set  
19 for trial now. That's my concern.

20           MR. SIMONS: Yeah. This is Mark Simons. That's why a  
21 slight continuance has been requested so that that can be fully  
22 complied with because there -- the opportunity to comply with  
23 the statute has to be provided. And the request was made, the  
24 statute says you provide -- the information has to be produced,  
25 but it only applied to the then current beneficiaries. It's not

1 to every beneficiary ever. It's only the then current. It's  
2 very specific on that. So to the extent you're saying we don't  
3 know who would be the beneficiary, it's very limited.

4 THE COURT: Well, but it's contemplated that it would  
5 be done within 30 days after filing the action, and that action  
6 was filed in November of 2016.

7 MR. SIMONS: Your Honor, Mark Simons again. It  
8 actually says, the case law that's interpreted says the court  
9 has discretion. If the court is going to decline discretion,  
10 that's one thing. It doesn't say that this is the only period  
11 of time. In fact, the cases very clearly say that's why the  
12 language is inserted in there because this does arise. It's  
13 not, hey, you've got 30 days and that's it. And that's not how  
14 the statute is written and that's not how it's been interpreted.

15 THE COURT: Good enough. Does anybody --

16 MR. SIMONS: It's clear and simple. I'm sorry, Your  
17 Honor.

18 THE COURT: No, I'm sorry. Go ahead, please. Mr.  
19 Simons, did I cut you off? I didn't mean to.

20 MR. SIMONS: The only thing I was going to say is  
21 denying the ability to allow for compliance with the statute  
22 would be an abuse of discretion when there is clearly  
23 opportunity and time to do so.

24 THE COURT: Okay. Does anyone else have anything to  
25 add before I rule? Okay. The ruling today with regard to

1 Nanyah's emergency motion to address the notice issue, the Court  
2 will take judicial notice of 163.120. The Court denies the  
3 motion to continue the trial, and Monday at 10:00 we will argue  
4 the legal aspect with regard to the scope of my discretion.

5 I only scratched the surface on my research with my  
6 law clerk. I assume you guys have done more or can do more. So  
7 I'll hear argument with regard to the discretion issue Monday at  
8 10:00 a.m. before we start choosing a jury. Any briefs --

9 MR. WIRTHLIN: Your Honor --

10 THE COURT: Any briefs that get filed here need to be  
11 by midnight on Sunday. And now comments, please?

12 MR. WIRTHLIN: Your Honor, just one housekeeping  
13 matter. I think we had talked about a motion that Mr. Simons  
14 had pending with respect to his implied contract claim and we  
15 were going to see if that could be argued after a jury was  
16 selected. We'd be fine doing it at that time or whatever time  
17 the Court decides.

18 THE COURT: You know, I was never asked to sign an  
19 order shortening time on that. I assumed the issue was dead.  
20 Is that --

21 MR. SIMONS: Your Honor, what we discussed at the last  
22 hearing was that the parties would contemplate how best to  
23 submit that issue to you and get it resolved. So there wasn't  
24 -- you weren't -- didn't instruct us to sign off on an order  
25 shortening time or request that. So the parties contemplated a

1 2.67 meeting to approach that.

2 THE COURT: Well, I was just never --

3 MR. SIMONS: Also --

4 THE COURT: -- I was never informed that you had even  
5 discussed it, so I -- I don't have a crystal ball, guys. All  
6 right. So, Mr. Simons, what do you believe was contemplated?

7 MR. SIMONS: That there -- the Court had a motion on  
8 an NRCP 15 --

9 THE COURT: Right.

10 MR. SIMONS: -- motion --

11 THE COURT: A countermotion. Right.

12 MR. SIMONS: -- that was stricken and was not  
13 addressed at the time it was calendared. So I brought that to  
14 the Court's attention.

15 THE COURT: Right.

16 MR. SIMONS: The Court said to counsel, you figure out  
17 how you want to deal with it. And so we -- there was an  
18 opposition filed by Eldorado, and we were going to just argue  
19 that briefly to have a decision before trial.

20 THE COURT: All right. So if both parties consent to  
21 that, just let me know in writing that you consent. Otherwise  
22 -- because I need to know to be prepared, as well.

23 MR. SIMONS: Okay.

24 THE COURT: And if there's --

25 MR. SIMONS: And last --

1 THE COURT: If any other briefing --

2 MR. LIEBMAN: This is Joseph Liebman on behalf of  
3 Eldorado Hills. There was -- there was certainly some confusion  
4 at the last hearing. My -- my understanding was that there --  
5 there was an instruction of Mr. Simons wanted it to be heard to  
6 -- to seek further -- that there was certainly discussion  
7 [indiscernible] I believe Mr. Simons, that he wasn't going to  
8 refile the motion. We filed an opposition just to be on the  
9 safe side to the extent that issue comes up.

10 Obviously, we oppose any sort of 15(b) amendment at  
11 this particular point in time. It's certainly up to the Court  
12 whether or not the Court wants to hear that particular issue.  
13 We would -- we would -- and this was in our opposition, we  
14 believe it's premature [indiscernible] to amendment that are  
15 baseline implying an express intent during. I don't -- we  
16 haven't even gotten to that point yet.

17 So we would -- we would certainly take the position  
18 that if Mr. Simons wants to file a rule 15(b) motion, that he  
19 make that motion during trial based on what happens at trial and  
20 the Court can entertain it at that particular point in time.  
21 That's our position on that issue.

22 THE COURT: All right. So I'll put it back to the  
23 parties. Mr. Simons, I'll be happy to sign an order shortening  
24 time if one is presented tomorrow.

25 MR. SIMONS: Okay. And lastly, to be prepared,



1 because there was a request for judicial notice and application  
2 of the law of the case.

3 THE COURT: Yeah, that --

4 MR. SIMONS: That would probably need to be addressed  
5 prior to the commencement of trial.

6 THE COURT: There's no need to argue that. I've  
7 already indicated in my ruling today that I do take judicial  
8 notice of the statute. I take judicial notice of all statutes,  
9 and that's -- that's not even discretionary.

10 MR. SIMONS: Well, Your Honor, I wasn't referring to  
11 the statute 163.120.

12 THE COURT: Oh.

13 MR. SIMONS: I was referring to the Nevada Supreme  
14 Court decision.

15 THE COURT: And where is that?

16 MR. SIMONS: We filed that. I can provide your office  
17 with a courtesy copy.

18 THE COURT: That would be good, and I'll be happy to  
19 address it Monday morning. Because I don't know what --

20 MR. SIMONS: Okay.

21 THE COURT: Let's see. Hang on. Oh, I see. This is  
22 something you filed on the 17th. I have it.

23 MR. SIMONS: Okay.

24 THE COURT: I have it. It was filed on the 17th.

25 MR. LIEBMAN: Your Honor, and we'll -- we'll file an

1 opposition to that request for judicial notice tomorrow.

2 THE COURT: Good enough.

3 MR. WIRTHLIN: And this is Brenoch Wirthlin. We will,  
4 too, Your Honor.

5 THE COURT: Very good. So I want all of you to give  
6 me before 10:00 on Monday an order of things that we are going  
7 to argue. You will determine an agenda between yourselves for  
8 Monday at 10:00 a.m.

9 MR. WIRTHLIN: Okay. Thank you, Your Honor.

10 THE COURT: Okay. Anything else, gentlemen?

11 MR. LIEBMAN: Your Honor, this is Joseph Liebman on  
12 behalf of Eldorado Hills. We discussed with you briefly your --  
13 how you handle voir dire. There was never any indication in any  
14 of the previous orders of the Court that you wanted proposed  
15 questions submitted to you, and I just wanted to make sure that  
16 that wasn't something you were expecting from us --

17 THE COURT: What I --

18 MR. LIEBMAN: -- sometime before trial begins.

19 THE COURT: What I normally require is for the parties  
20 to exchange basic outline of the areas in which they intend to  
21 inquire. I only give each party one hour. I do the preliminary  
22 and give you one hour from there because we need to pick a jury  
23 the first day.

24 MR. LIEBMAN: Okay. But the Court doesn't want any  
25 proposed questions from the parties?

1 THE COURT: No.

2 MR. LIEBMAN: Okay.

3 THE COURT: Okay. I require you to exchange them.

4 MR. SIMONS: Your Honor, Mark Simons, one last  
5 question. I thought -- did you say that after lunch on Monday  
6 court resumes at 1:30?

7 THE COURT: Probably. It depends on when we break. I  
8 usually try to take an hour for lunch.

9 MR. SIMONS: Okay.

10 THE COURT: We can take less if everyone is amenable.

11 MR. SIMONS: Okay.

12 THE COURT: All right, you guys. If not before, I  
13 guess I'll see you Monday at 10:00.

14 MR. SIMONS: Thank you.

15 MR. WIRTHLIN: Thank you, Your Honor.

16 THE COURT: Thank you, everyone.

17 (Proceedings concluded at 4:21 p.m.)

18 \* \* \* \* \*

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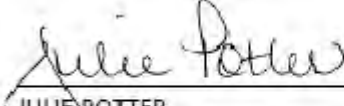
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

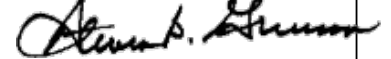
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Julie Potter  
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\_\_\_\_\_  
JULIE POTTER  
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10 *Attorneys for Nanyah Vegas, LLC*

11 **DISTRICT COURT**  
12  
13 **CLARK COUNTY, NEVADA**

14 CARLOS A. HUERTA, an individual; CARLOS A.  
15 HUERTA as Trustee of THE ALEXANDER  
16 CHRISTOPHER TRUST, a Trust established in  
17 Nevada as assignee of interests of GO GLOBAL,  
18 INC., a Nevada corporation; NANYAH VEGAS,  
19 LLC, A Nevada limited liability company,

20 Plaintiffs,

21 v.

22 SIG ROGICH aka SIGMUND ROGICH as Trustee  
23 of The Rogich Family Irrevocable Trust;  
24 ELDORADO HILLS, LLC, a Nevada limited liability  
25 company; DOES I-X; and/or ROE  
26 CORPORATIONS I-X, inclusive,

27 Defendants.

28 NANYAH VEGAS, LLC, a Nevada limited liability  
company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability company;  
PETER ELIADAS, individually and as Trustee of  
the The Eliades Survivor Trust of 10/30/08;  
SIGMUND ROGICH, individually and as Trustee  
of The Rogich Family Irrevocable Trust;  
IMITATIONS, LLC, a Nevada limited liability  
company; DOES I-X; and/or ROE  
CORPORATIONS I-X, inclusive,

Defendants.

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

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

**NANYAH VEGAS, LLC'S  
SUPPLEMENT TO ITS  
EMERGENCY MOTION TO  
ADDRESS DEFENDANT THE  
ROGICH FAMILY  
IRREVOCABLE TRUST'S  
NRS 163.120 NOTICE AND/OR  
MOTION TO CONTINUE TRIAL  
FOR PURPOSES OF NRS  
163.120**

**SUPPLEMENT TO NANYAH VEGAS, LLC'S EMERGENCY MOTION TO  
ADDRESS DEFENDANT THE ROGICH FAMILY IRREVOCABLE TRUST'S  
NRS 163.120 NOTICE  
AND/OR MOTION TO CONTINUE TRIAL FOR PURPOSES OF NRS 163.120**

Nanyah Vegas, LLC ("Nanyah") submits the following Supplement to its  
Emergency Motion to Address the Rogich Family Irrevocable Trust's NRS 163.120 notice  
("Notice").

**I. BASIS OF SUPPLEMENT.**

At the conclusion of oral argument on the Motion, the Court requested additional  
briefing on the issue of the Court's discretion under NRS 163.120 detailing, among other  
things, written notice to any beneficiaries of a trust prior to entry of judgment in a case.

Section 163.120 requires a trustee to provide a plaintiff a list of current  
beneficiaries upon request. This is to afford current beneficiaries of a trust's exposure by  
virtue of the trustee's activities.

**II. "OR WITHIN SUCH OTHER TIME AS THE COURT MAY FIX."**

The Court indicated that it believed its "hands were tied" with regard to allowing  
Nanyah to proceed with providing notice to any alleged "other" beneficiaries of the Rogich  
Trust. Contrary to the Court's perception, the Court's hands are not "tied".

The clear and unambiguous language of the statute provides three (3) separate  
times when notice can be provided to beneficiaries: (1) "within 30 days after filing the  
action", (2) "or within 30 days after the filing of a report of an early case conference if one  
is required, (3) "or within such other time as the Court may fix." 163.129(2) (emphasis  
added). The Court addressed the first two situations but requested briefing on its  
discretion under (3), the circumstances before the Court.

1           **A.       “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. 692, 309  
4 P.3d 1041, 1043 (2013) (citation omitted). **“The plain and ordinary meaning of the**  
5 **word ‘or’ is well established. When used in a statute, the word ‘or’ indicates an**  
6 **intention to designate separate, disjunctive categories.”** Eddie E. v. Superior Court,  
7 234 Cal. App. 4th 319, 327, 183 Cal. Rptr. 3d 773, 779 (Cal. Ct. App. 2015) (emphasis  
8 added). NRS 163.120 plainly states that there are 3 separate timing situations to provide  
9 notice to beneficiaries—**1 or 2 or 3**. The Court’s hands are not “tied” solely to considering  
10 situation 1 or 2.

11           Statutory construction of the use of the term “or” in NRS 163.120(b) clearly means  
12 that Nanyah’s motion seeking to proceed with notice to the beneficiaries after the jury  
13 verdict and before entry of judgment is entirely appropriate and warranted in this case.  
14 To artificially claim that the Court’s hands are “tied” and that the Court can only consider  
15 situation 1 or 2 as a basis to deny Nanyah’s requested relief is clear error and is a total  
16 disregard for the legislature’s use of the term “or” repeatedly in the statute to define  
17 disjunctive and separate events. See e.g., State v. Catanio, 120 Nev. 1030, 1033, 102  
18 P.3d 588, 591 (2004) (“By using the disjunctive ‘or, the statute clearly indicates”  
19 alternative activities); Jensen v. Sheriff, White Pine Cty., 89 Nev. 123, 125, 508 P.2d 4, 5  
20 (1973) (use of word “or” in the statute “spells out the several specific acts in  
21 the disjunctive, and any one of them is sufficient . . . .”); Shell Petroleum Corp. v. Royal  
22 Petroleum Corp., 135 Tex. 12, 21, 137 S.W.2d 753, 758 (Comm’n App. 1940) (“In its  
23 ordinary use the term ‘or’ is disjunctive, and alternative in its effect.”); 154 ALR 866 (“The  
24 word ‘or’ when used in a statute, is almost always disjunctive . . . .”).

**B. NOTICE DOES NOT HAVE TO OCCUR PRIOR TO TRIAL.**

As Nanyah's Motion pointed out, the NRS 163 notice does not have to occur prior to trial and, therefore, appropriate relief was "the case may be tried to verdict and, thereafter, suspend entry of judgment pending notice to any designated beneficiary . . . ." Mot., p. 8:17-19. Given the Court's denial of Nanyah's request to continue the trial to comply with NRS 163.120's provisions, the Court must allow the case to be tried and NRS 163's provisions addressed after verdict and prior to entry of judgment. The statute does not preclude Nanyah's claims against the Rogich Trust from tried to the jury and does not prevent a jury from rendering a verdict either for or against the Rogich Trust.

Again, **this exact issue was addressed by the Texas court** Transamerican Leasing Co. v. Three Bears, Inc., 586 S.W.2d 472, 476-77 (Tex. 1979)<sup>1</sup>, the Court addressed the notice to beneficiaries requirement **after judgment had already been entered**. The court vacated the judgment and then allowed the prevailing party to proceed with 163's notice requirements. In doing so, the Court stated:

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

---

<sup>1</sup> Authority from others states is compelling and persuasive because NRS 163.120 is a part of the Uniform Trust Act. Like Nevada, other states have adopted the Uniform Trust Act.

...(cont'd)



1 Id. (emphasis added). Allowing a plaintiff to notice beneficiaries of a trust after a trial has  
2 been completed against a trustee has been repeatedly held to be a proper exercise of the  
3 Court's discretion.<sup>2</sup>

4 Clearly the Texas Supreme Court did not consider the trial court's hands to be  
5 "tied". And clearly the Texas Supreme Court did not seek to prejudice the plaintiff in that  
6 action by refusing to grant appropriate and warranted relief—even after judgment had  
7 already been rendered against the trust in that case. In fact, the Texas Supreme Court  
8 held that the district court's exercise of discretion in vacating the judgment and  
9 proceeding with NRS 163's notice requirements was proper and appropriate.

11 **C. THE COURT MUST EXERCISE ITS DISCRETION TO DECIDE**  
12 **NANYAH'S CLAIMS AND RIGHT TO RECOVERY ON "THE**  
13 **MERITS".**

14 The Nevada Supreme Court has stated that it is clear public policy for district  
15 courts to exercise their discretion to decide disputes on the merits. As stated by the  
16 Nevada Supreme Court in Franklin v. Bartsas Realty, Inc., 95 Nev. 559, 563, 598 P.2d  
17 1147, 1149 (1979):

18 **One of the proper guides to the exercise of discretion is: The basic**  
19 **underlying policy to have each case decided upon its merits. In the normal**  
20 **course of events, justice is best served by such a policy.**

21  
22  
23  
24 <sup>2</sup> In re Pfizer's Estate, 33 N.J. Super. 242, 265, 110 A.2d 40, 53 (Ch. Div.), aff'd, 17 N.J.  
25 40, 110 A.2d 54 (N.J. 1954) ("inasmuch as the cause has been fully heard and argued  
26 without the Attorney-General having been joined as a party, an order may be entered  
27 joining the Attorney-General of the State as a party, process should be served upon him,  
28 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 judgment will be entered until the Attorney-General has been  
made a party and has been afforded an opportunity to be heard.").

1 Id. (emphasis added); Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 697 (1978) ("It is  
2 our underlying policy to have each case decided upon its merits.").

3 Consequently, the Court must exercise its discretion as requested by Nanyah to  
4 allow Nanyah to give NRS 163.120 notice to Rogich Trust beneficiaries after jury verdict  
5 and prior to entry of judgment. Only in such fashion is this Court complying with Nevada  
6 public policy. Id.; see also United States v. Hosteen Tse-Kesj, 191 F.2d 518, 520 (10th  
7 Cir. 1951) ("[court] is under a duty to decide cases upon their merits and may not  
8 arbitrarily refuse to exercise its jurisdiction when invoked by appropriate proceedings.").

9  
10 **D. RULES OF STATUTORY CONSTRUCTION SUPPORT NANYAH'S**  
11 **REQUEST.**

12 Nevada law is clear that the Court should construe a statute to avoid absurd  
13 results. Las Vegas Sun v. District Court, 104 Nev. 508, 511, 761 P.2d 849, 851 (1988)  
14 ("statutes should be interpreted so as to effect the intent of the legislature in enacting  
15 them; the interpretation should be reasonable and avoid absurd results."); Moody v.  
16 Manny's Auto Repair, 110 Nev. 320, 325, 871 P.2d 935, 938 (1994) (a statute should  
17 always be construed so as to avoid absurd results). To the extent the Court is under the  
18 impression that its "hands are tied" to only allowing notice under situation 1 or 2, the  
19 Court's impression is incorrect and would constitute an absurd result. The statute plainly  
20 and clearly identifies alternative time periods to conduct notice to beneficiaries, i.e.  
21 situation 3. To deem situation number 3, the very situation Nanyah requested in its  
22 Motion, would constitutes an absurd interpretation of the statute given that this provision  
23 would be entirely ignored.  
24  
25

26 ///

27 ///

1           **E.     DENIAL OF NANYAH'S CREATES INCONSISTENT TREATMENT OF**  
2           **PARTIES IN THIS CASE.**

3           The Court is clearly aware that it previously granted summary judgment in favor of  
4 the Rogich Trust and against Carlos Huerta and the Alexander Christopher Trust (jointly  
5 "Huerta") on February 23, 2015. See **Exhibit 7**. In addition, the Court awarded the  
6 Rogich Trust \$237,954.50 in attorneys fees and costs in the amount of \$5,016,77. Id.  
7 The Court did not require any NRS 163 notice by the plaintiffs there.

8           The Court entered judgment in favor of the Rogich Trust in these proceedings and  
9 awarded it almost \$240,000. It is suggested that if the Court is going to award the Rogich  
10 Trust almost \$240,000 then the Court should also exercise its discretion as requested and  
11 allow Nanyah to proceed with post-verdict NRS 163 notice if the jury finds in favor of  
12 Nanyah and against the Rogich Trust.

13           **AFFIRMATION**: This document does not contain the social security number of any  
14 person.  
15

16           DATED this 21<sup>st</sup> day of April, 2019.  
17

18           SIMONS HALL JOHNSTON PC  
19 6490 S. McCarran Blvd., Ste. F-46  
20 Reno, NV 89509

21           /s/ Mark G. Simons  
22 MARK G. SIMONS  
23 *Attorneys for Nanyah Vegas, LLC*  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 8.05, 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 **NANYAH VEGAS, LLC'S SUPPLEMENT TO EMERGENCY MOTION TO ADDRESS  
DEFENDANT THE ROGICH FAMILY IRREVOCABLE TRUST'S NRS 163.120 NOTICE  
AND/OR MOTION TO CONTINUE TRIAL FOR PURPOSES OF NRS 163.120** on all  
parties to this action via the Odyssey E-Filing System:

Dennis L. Kennedy	<a href="mailto:dkennedy@baileykennedy.com">dkennedy@baileykennedy.com</a>
Bailey Kennedy, LLP	<a href="mailto:bkfederaldownloads@baileykennedy.com">bkfederaldownloads@baileykennedy.com</a>
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Erica Rosenberry	<a href="mailto:erosenberry@fclaw.com">erosenberry@fclaw.com</a>

DATED this 21<sup>st</sup> day of April, 2019.

/s/ Jodi Alhasan  
Employee of Simons Hall Johnston PC

EXHIBIT LIST

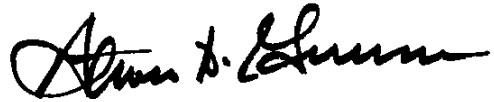
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7	Notice of Entry of Order	

**SIMONS HALL JOHNSTON PC**  
6490 S. McCarran Blvd., Ste. F-46  
Reno, NV 89509  
Phone: (775) 785-0088

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EXHIBIT 7

EXHIBIT 7



CLERK OF THE COURT

1 **NOTC**

Samuel S. Lionel, NV Bar No. 1766

2 *slionel@fclaw.com*

FENNERMORE CRAIG, P.C.

3 300 South Fourth Street, 14<sup>th</sup> Floor

Las Vegas, Nevada 89101

4 Telephone: (702) 791-8251

Fax: (702) 791-8252

5 *Attorneys for Sig Rogich aka*

*Sigmund Rogich as Trustee of*

6 *The Rogich Family Irrevocable Trust*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

10 CARLOS A. HUERTA, an individual;  
11 CARLOS A. HUERTA as Trustee of THE  
ALEXANDER CHRISTOPHER TRUST, a  
12 Trust established in Nevada as assignee of  
interests of GO GLOBAL, INC., a Nevada  
13 corporation; NANYAH VEGAS, LLC, a  
Nevada limited liability company,

14 Plaintiffs,

15 v.

16 SIG ROGICH aka SIGMUND ROGICH as  
Trustee of The Rogich Family Irrevocable  
17 Trust; ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X; and/or  
18 ROE CORPORATIONS I-X, inclusive

19 Defendants.

Case No. A-13-686303-C

Dept. XXVII

**NOTICE OF ENTRY OF FINAL  
JUDGMENT**

21 **NOTICE OF ENTRY OF FINAL JUDGMENT**

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1 Notice is hereby given that on February 23, 2015 an Order Granting Final Judgment was  
2 duly entered herein, a copy of which is attached as Exhibit A.

3 Dated: February 24, 2015.

4 FENNEMORE CRAIG, P.C.

5 By: /s/ Samuel S. Lionel

6 Samuel S. Lionel, NV Bar #1766  
7 300 South Fourth Street, 14<sup>TH</sup> Floor  
8 Las Vegas, NV 89101  
9 *Attorneys for Sig Rogich aka*  
10 *Sigmund Rogich as Trustee of*  
11 *The Rogich Family Irrevocable Trust*

12 **CERTIFICATE OF SERVICE**

13  
14 Pursuant to Administrative Order 14-2, the undersigned hereby certifies that a true and  
15 correct copy of the **Notice of Final Judgment** was served through the Wiznet mandatory  
16 electronic service on this 24<sup>th</sup> day of February, 2015 on the following counsel of record:

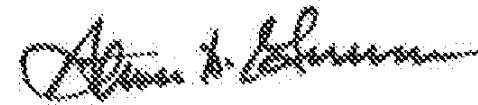
17  
18 Brandon McDonald  
19 McDonald Law Offices, PLLC  
20 2505 Anthem Village Drive, Ste. E-474  
Henderson, NV 89052  
brandon@mcdonaldlawyers.com

21 Attorney for Plaintiff

22   
23 An employee of Fennemore Craig, P.C.



# EXHIBIT A



CLERK OF THE COURT

JUDGE

Samuel S. Lionel, NV Bar No. 1766

*slionel@fclaw.com*

FENNERMORE CRAIG, P.C.

300 South Fourth Street, 14<sup>th</sup> Floor

Las Vegas, Nevada 89101

Telephone: (702) 791-8251

Fax: (702) 791-8252

*Attorneys for Sig Rogich aka*

*Sigmund Rogich as Trustee of*

*The Rogich Family Irrevocable Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

CARLOS A. HUERTA, an individual;  
CARLOS A. HUERTA as Trustee of THE  
ALEXANDER CHRISTOPHER TRUST, a  
Trust established in Nevada as assignee of  
interests of GO GLOBAL, INC., a Nevada  
corporation; NANYAH VEGAS, LLC, a  
Nevada limited liability company,

Plaintiffs,

v.

SIG ROGICH aka SIGMUND ROGICH as  
Trustee of The Rogich Family Irrevocable  
Trust; ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X; and/or  
ROE CORPORATIONS I-X, inclusive

Defendants.

Case No. A-13-686303-C

Dept. XXVII

FINAL JUDGMENT

FINAL JUDGMENT

WHEREAS, an Order Granting Summary Judgment was duly entered on November 5,  
2015 dismissing the Amended Complaint of Plaintiffs Carlos A. Huerta, individually, and as  
Trustee of The Alexander Christopher Trust; and

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration


1 WHEREAS, an Order Granting Motion for Award of Attorneys' Fees was duly entered  
2 on February 11, 2015 in favor of Defendant, The Rogich Family Irrevocable Trust, in the amount  
3 of \$237,954.50 against said Plaintiffs; and

4 WHEREAS, on November 7, 2014, The Rogich Family Irrevocable Trust duly filed a  
5 Memorandum of Costs and Disbursements in the amount of \$5,016.77; and

6 WHEREAS, the Plaintiffs did not file a Motion to Retax.

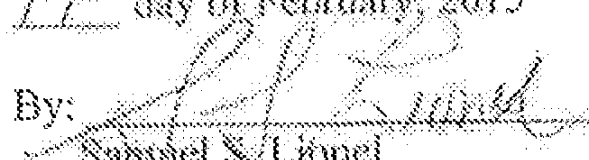
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8 NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED THAT the  
9 Defendant, The Rogich Family Irrevocable Trust, be and is hereby awarded Final Judgment  
10 against Plaintiffs Carlos A. Huerta, individually, and as Trustee of The Alexander Christopher  
11 Trust, dismissing the Amended Complaint, with prejudice, together with the award of  
12 \$237,954.50, for attorneys' fees, plus costs taxed in the amount of \$5,016.77.

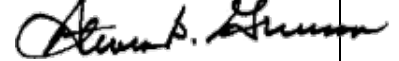
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14 Dated this 20 day of February, 2015.

15   
16 DISTRICT COURT JUDGE

17  
18 SUBMITTED by:  
19 FENNEMORE CRAIG, P.C.

20 17<sup>th</sup> day of February, 2015

21 By:   
22 Samuel S. Lionel  
23 300 S. Fourth Street, #1400  
24 Las Vegas, NV 89101  
25 Attorneys for Defendant  
26  
27  
28



Samuel S. Lionel, Esq. (Bar No. 1766)  
Brenoch Wirthlin, Esq. (Bar No. 10282)  
**FENNEMORE CRAIG, P.C.**  
300 S. Fourth Street, Suite 1400  
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Tel.: (702) 692-8000; Fax: (702) 692-8099  
Email: [slionel@fclaw.com](mailto:slionel@fclaw.com)  
*Attorneys for Sigmund Rogich, Individually and as Trustee of  
The Rogich Family Irrevocable Trust and Imitations, LLC*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CARLOS A. HUERTA, an individual;  
CARLOS A. HUERTA as Trustee of THE  
ALEXANDER CHRISTOPHER TRUST, a  
Trust established in Nevada as assignee of  
interests of GO GLOBAL, INC., a Nevada  
corporation; NANYAH VEGAS, LLC, A  
Nevada limited liability company,

Plaintiffs,

v.

SIG ROGICH aka SIGMUND ROGICH as  
Trustee of The Rogich Family Irrevocable  
Trust; ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X; and/or  
ROE CORPORATIONS I-X, inclusive,

Defendants.

NANYAH VEGAS, LLC, a Nevada limited  
liability company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADES, individually and  
as Trustee of the Eliades Survivor Trust of  
10/30/08; SIGMUND ROGICH, individually  
and as Trustee of The Rogich Family  
Irrevocable Trust; IMITATIONS, LLC, a  
Nevada limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: A-13-686303-C

DEPT. NO.: XXVII

**THE ROGICH DEFENDANTS'**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES REGARDING LIMITS**  
**OF JUDICIAL DISCRETION**  
**REGARDING NOTICE REQUIREMENTS**  
**PROVIDED TO TRUST BENEFICIARIES**  
**UNDER NRS CHAPTER 163**

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

1     **THE ROGICH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES**  
2     **REGARDING LIMITS OF JUDICIAL DISCRETION REGARDING NOTICE**  
3     **REQUIREMENTS PROVIDED TO TRUST BENEFICIARIES**  
4     **UNDER NRS CHAPTER 163**

5     Defendants Sigmund Rogich, individually ("Mr. Rogich"), and as Trustee of the Rogich  
6     Family Irrevocable Trust (the "Rogich Trust"), and Imitations, LLC ("Imitations" and collectively  
7     with Mr. Rogich and the Rogich Trust referred to as the "Rogich Defendants"), by and through  
8     their counsel of record, Fennemore Craig, P.C., hereby submit The Rogich Defendants'  
9     Memorandum of Points and Authorities Regarding Limits of Judicial Discretion to Modify Notice  
10    Requirements to Trust Beneficiaries Provided under NRS Chapter 163.

11    This Memorandum is submitted, along with the Declaration of Sigmund Rogich ("Rogich  
12    Declaration"), any argument of counsel at the time of the hearing on this matter, and all papers  
13    and pleadings on file herein.

14    DATED: April 21, 2019.

15                     **FENNEMORE CRAIG, P.C.**

16                     By: /s/ Brenoch Wirthlin, Esq.  
17                         Samuel S. Lionel, Esq. (Bar No. 1766)  
18                         Thomas Fell, Esq. (Bar No. 3717)  
19                         Brenoch Wirthlin, Esq. (Bar No. 10282)  
20                         300 S. Fourth Street, Suite 1400  
21                         Las Vegas, Nevada 89101  
22                         Attorneys for the Rogich Defendants

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**DECLARATION OF SIG ROGICH IN OPPOSITION TO MOTION**

I, Sigmund Rogich, hereby declare as follows:

- 1. I am named as a Defendant in this matter, both personally, and as a Trustee of The Rogich Family Irrevocable Trust (“Rogich Trust”).
- 2. I make this Declaration in support of the Rogich Defendants’ Memorandum of Points and Authorities Regarding Limits of Judicial Discretion to Modify Notice Requirements to Trust Beneficiaries under NRS Chapter 163.
- 3. Unless otherwise stated, I make this Declaration based upon my own personal knowledge following a review of the records in this matter and would testify to same if called upon to do so.
- 4. The Rogich Trust has two trustees.
- 5. There are currently ten (10) beneficiaries of the Rogich Trust, including myself.
- 6. Each of the ten (10) beneficiaries of the Rogich Trust has a present interest in trust assets.
- 7. Of the ten (10) beneficiaries of the Rogich Trust, six (6) are minors, including a child with special needs, and therefore may require the appointment of a guardians ad litem or other representative to represent their interests.

I declare under penalty of perjury of the laws of the United States and the State of Nevada that the foregoing is true and correct to the best of my information and belief.

DATED this 21st day of April, 2019.

/s/ Sigmund Rogich  
SIGMUND ROGICH

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//

1 **THE ROGICH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES**  
2 **REGARDING LIMITS OF JUDICIAL DISCRETION REGARDING NOTICE**  
3 **REQUIREMENTS PROVIDED TO TRUST BENEFICIARIES**  
4 **UNDER NRS CHAPTER 163**

5 **I.**

6 **INTRODUCTION**

7 It is undisputed that the beneficiaries of the Rogich Trust were never provided the notice  
8 required by NRS Chapter 163. Plaintiff's failure to comply with the provisions of NRS Chapter  
9 163 have deprived the beneficiaries of the Rogich Trust of their due process right to "contest the  
10 right of the plaintiff to recover" **for the last 5 ½ years**, as the original lawsuit was filed 2013.  
11 Moreover, given the fact that trial will commence April 22, 2019, it is too late to rectify this  
12 problem even with the most liberal use of judicial discretion. The corrective plan offered by  
13 Plaintiff---to effectuate notice after trial but before entry of judgment---is not only improper, it is  
14 not possible under Nevada law. In addition to the fact that the statute at issue clearly contemplates  
15 notice being provided 30 days after filing either the action or an early case conference report,  
16 unlike Texas law which allows post-judgment intervention, Nevada law requires any intervention  
17 take place before trial. As a result, there is no corrective course available to Plaintiff to comply  
18 with the notice requirements of NRS 163.120. Judicial discretion is further limited by the clear  
19 language of NRS 163.120 which states in simple and plain terms that trust beneficiaries must be  
20 notified of the lawsuit by Plaintiff, or judgment may not be entered in favor of Plaintiff. Because  
21 notice was never provided to the beneficiaries pursuant to NRS Chapter 163, the beneficiaries of  
22 the Rogich Trust have been irreparably harmed, including through loss of their due process rights  
23 which the statute is designed to protect, by Plaintiff's failure to comply with NRS 163.120.  
24 Judgment must be granted in favor of the Rogich Trust, therefore, as a matter of law, dismissing it  
25 as a party to this action.

26 The Court has directed the parties to provide briefs to the Court discussing what  
27 discretion the Court may exercise in this matter. As discussed below, the Court's discretion is  
28 very limited and Plaintiff's failure to comply with NRS 163.120 requires judgment in favor of the  
Rogich Trust.

1 II.

2 **STATEMENT OF FACTS**

3 The Rogich Trust has ten (10) beneficiaries and two Trustees. *See* Rogich Declaration,  
4 *supra*, at ¶¶ 4-7. Mr. Rogich serves as one of the Trustees, and is also one of the beneficiaries.  
5 *Id.* The remaining beneficiaries include nine (9) individuals, six (6) of which are minors,  
6 including one child minor with special needs. *Id.* Guardians ad litem or other representatives  
7 may need to be appointed to represent the interests of some or all of the beneficiaries who are  
8 minors. Plaintiff did not request the names of the Rogich Trust beneficiaries until April 15,  
9 2019, just seven days before trial. A hearing took place on April 18, 2019, in which Plaintiff's  
10 request to continue the trial was denied by the Court. Trial will commence April 22, 2019.

11 III.

12 **ARGUMENT**

13 **A. Judicial Discretion is Limited Regarding NRS Chapter 163.**

14 1. The appropriate legal analysis must be applied to the facts of each case.

15 When considering the proper role of judicial power, Chief Justice John Marshall pointed  
16 out nearly two hundred years ago that:

17 Courts are the mere instruments of the law, and can will nothing. When they are said to  
18 exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning  
19 the course prescribed by law; and, when that is discerned, it is the duty of the court to  
20 follow it. **Judicial power is never exercised for the purpose of giving effect to the will  
21 of the judge, always for the purpose of giving effect to the will of the legislature; or,  
in other words, to the will of the law.** *Osborn v. Bank of the United States*, 22 U. S. 738  
(1824). (Emphasis added)

22 This principle still holds true today. Appellate courts in Nevada have consistently  
23 overturned lower courts that fail to apply the full, applicable legal analysis. *Gunderson v. D.R.*  
24 *Horton, Inc.*, 130 Nev. Adv. Op. 9, 319 P.3d 606, 615 (2014). Furthermore, when determining if a  
25 lower court abused its discretion, appellate courts look to whether the decision was supported by  
26 substantial evidence and guided by applicable legal principles. *Kwist v. Chang*, 127 Nev. 1152,  
27 373 P.3d 933 (2011); *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 562–63, 598 P.2d 1147, 1149



1 (1979). Despite the constancy of this longstanding principle, there are situations which may  
2 require the use of judicial discretion to promote fairness and a more equitable legal process.  
3 Underlying this idea is the simple fact that legislatures cannot write laws to address all situations  
4 which find their way into court or that develop as a case makes its way through the legal system.

5 2. Judicial discretion is appropriate when the law is insufficient or silent.

6 When no full, applicable legal analysis is available, use of judicial discretion may be  
7 appropriate to promote an equitable legal process by allowing the judge to consider individual  
8 circumstances in cases when the law is insufficient or silent. *Pro se* litigants, for example, have  
9 no statutory right to be treated differently than those represented by counsel, but nevertheless  
10 often receive a larger degree of leniency from the courts. In the instant case, the law is not silent  
11 or insufficient with regard to what is required of Plaintiff to comply with NRS 163.120. On the  
12 contrary, NRS 163.120 provides a clear and precise explanation of the notice requirements that  
13 Plaintiff must provide to the beneficiaries in a pending lawsuit.

14 3. The Court must enforce the statute as written.

15 Judicial discretion may be required when the Court is faced with a statute, or a term or  
16 phrase within the statute, that is ambiguous. However, when interpreting a statute with language  
17 that is “facially clear,” the Court must give that language its plain meaning. *MEI-GSR Holdings,*  
18 *LLC v. Peppermill Casinos, Inc.*, 134 Nev. Adv. Op. 31, 416 P.3d 249, 253 (2018); *D.R. Horton,*  
19 *Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 456, 215 P.3d 697, 702 (2009).

20 NRS 163.120(2) states the rights and responsibilities of the respective parties in a manner  
21 in words and phrases not subject to vagueness or speculative interpretation. The language is plain  
22 and simple, and as a result, is “facially clear.” The Court, therefore, must give the language of  
23 NRS 163.120(2) its plain meaning. From the plain language of the statute, four interpretive  
24 observations about the statute can be readily drawn:

25 a) Notice should be given to beneficiaries at the beginning of an action.

26 NRS 163.120 clearly contemplates that trust beneficiaries are to be given notice at the  
27 very beginning in the lawsuit. The statute requires that beneficiaries be notified 30 after filing the  
28 action, or 30 days after filing the early case conference report, whichever is later. This provides

1 beneficiaries the time needed to meaningfully be present and involved in the action, including  
2 participating in pre-trial discovery and being present at trial to confront adverse witnesses, present  
3 evidence, and argue on their own behalf. The principle of fairness underlies due process, and the  
4 fundamental requisite of due process of law is the opportunity to be heard, participate and protect  
5 one's rights. *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394 (1914). The fact that the 30 days  
6 rule is the only specific time frame provided in the statute (outside a court order allowing  
7 additional time), provides a clear indication that the drafters preferred notice be given to  
8 beneficiaries at the beginning of an action.

9           b) The duty to provide notice to the beneficiaries is placed solely on the  
10 plaintiff.

11           In Nevada, a plaintiff that files a complaint is solely responsible for providing service of  
12 process of a summons and complaint on the defendants named in the lawsuit. Also in Nevada, a  
13 plaintiff that files a complaint naming a trust as a defendant must provide notice to the  
14 beneficiaries. Despite representations made by opposing counsel, the statute places no  
15 affirmative duty on the defendant to do anything other than provide a list of beneficiaries within  
16 10 days to plaintiff upon written request.

17           c) The Court may set a different timeframe up to 30 days before judgment

18           NRS 163.120 also provides that the Court may adopt a different timeframe than those  
19 described above should circumstances require. Such situations may include difficulties or delays  
20 by the trustee in providing the list of beneficiaries to the plaintiff, or the existence of non-  
21 cooperative trustee who refuses to provide the list of beneficiaries to the plaintiff after request  
22 was made. *See Branch Banking & Trust Co. v. Smoke Ranch Dev., LLC*, Case No. 2:12-cv-  
23 00453-APG-NJK (D. Nev. Aug. 27, 2015). However, the discretion of the Court must be  
24 exercised in light of the statute's clear preference that notice be provided to beneficiaries at the  
25 start of an action. In addition, the unexcused failure of a plaintiff to provide timely notice to trust  
26 beneficiaries is not good cause to extend the time for notice beyond the 30 day rule. To extend the  
27 time allowed for notice would render the 30 day rule contained within the statute meaningless.  
28 Finally, and most importantly, notice must be provided to beneficiaries no less than 30 days prior

1 to judgment.

2 d) Judgment for a plaintiff is precluded without proper notice to beneficiaries

3 Finally, the statute clearly bars recovery by the Plaintiff should proper notice not be given  
4 to the beneficiaries. The severity of this provision in the statute serves to underscore the  
5 importance the statute drafters placed upon trust beneficiaries receiving proper notice of the  
6 action so they may meaningfully participate in the litigation and “contest the right of the plaintiff  
7 to recover.” See NRS 163.120(2).

8 Because the language of NRS 163.120 is clear on its face, the Court has limited judicial  
9 discretion outside of the four corners of the statute. Moreover, it should be noted that the plain  
10 language contained in NRS 163.120 provides no corrective course under the plain language of the  
11 statute which would allow Plaintiff to comply with NRS 163.120 at this stage in the action.

12 **B. The Notice Requirements NRS 163.120 Can No Longer be Satisfied**

13 1. Plaintiff failed to provide the beneficiaries with proper notice before trial.

14 Plaintiff does not claim to have provided the beneficiaries received their 30-days due  
15 process notice in this matter. Plaintiff further does not claim that the Court granted Plaintiff an  
16 extension of time in which to provide notice to the trust beneficiaries and that they were provided  
17 notice at some later time. If fact, Plaintiff could not have done so because first request for a list of  
18 beneficiaries from Plaintiff was not even made until April 15, 2019.

19 2. Notice requirements are meaningless if provided after trial.

20 Plaintiff apparently believes it possible to effectuate notice to the beneficiaries at some  
21 point after trial in this matter is commenced or completed. The purpose of NRS 163.120 is to  
22 enable beneficiaries to intervene in an action to contest the right of the plaintiff to recover. In  
23 addition to the fact that the beneficiaries of the Rogich Trust have been precluded from protecting  
24 their rights in this matter **for 5 ½ years** due to Plaintiff’s failure to comply with the statute, notice  
25 provided after the start of trial it too late to allow the beneficiaries to intervene since the right for  
26 any party to intervene in an action ends once trial begins. NRS 12.130 states that an intervention  
27 can only take place “before the trial”, and NRCP 24 requires that any motion to intervene be  
28

1 made on “timely motion.” The Nevada Supreme Court has recognized this requirement. *Am.*  
2 *Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 1229, 1244, 147  
3 P.3d 1120, 1130 (2006) (“NRS 12.130(1) provides that an applicant may intervene “[b]efore the  
4 trial.” As we have previously recognized, however, even when made before trial, an  
5 application must be “timely” in the sense afforded the term under NRCP 24.”). For this  
6 reason, the Court cannot allow any extension or other revision of the statute at issue, particularly  
7 at this late date.

8 3. Plaintiff’s post-trial Transamerican plan is not possible in Nevada.

9 Plaintiff has suggested that this matter could be tried to verdict, and then entry of  
10 judgment could then be suspended to allow Plaintiff to satisfy the requirements of NRS 163.120.  
11 Plaintiff cites the Texas case *Transamerican Leasing Co. v. Three Bears, Inc.* in support of this  
12 proposition. There are a number of reasons why proposal is violative of Nevada law:

13 a) Nevada law does not allow intervention 30 days after judgment.

14 As discussed above, the right to intervene in Nevada is extinguished at the start of trial  
15 pursuant to NRS 12.130(1)(a). This is not the case in Texas. Rule 60 of the Texas Rules of Civil  
16 Procedure does not impose a deadline for intervention. The general rule in Texas is that a party  
17 may not intervene after final judgment unless the judgment is set aside. *Tex. Mut. Ins. Co. v.*  
18 *Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008); *In re Lumbermens Mut. Cas. Ins. Co.*, 184 S.W.3d at  
19 725; *State v. Naylor*, 330 S.W.3d 434, 438. To intervene post-judgment the plea in intervention  
20 must be filed and the judgment must be set aside within thirty days of the date of judgment. *First*  
21 *Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984).

22 This is exactly what happened in the *Transamerican* case. The trial court vacated the  
23 original judgment and ordered the beneficiaries to show cause why judgment should not be  
24 rendered in the case. Because Nevada law differs from Texas law, the *Transamerican* case has no  
25 applicability in this matter.

26 b) Nevada law does not require notice be provided to contingent beneficiaries

27 Another distinction with the *Transamerican* case is the underlying notice statute. Plaintiff  
28 wrongly states that the notice statute applied by the Texas court is “the identical statutory

1 provision as contained in NRS 163.120.” See Plaintiff’s Emergency Motion to Address Defendant  
2 the Rogich Trust’s NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS  
3 163.120 at p. 6. This is factually not true. NRS 163.120 only requires notice to beneficiaries that  
4 have a “present interest” in the trust. The Texas statute, on the other hand, requires notice to both  
5 primary beneficiaries and contingent beneficiaries. The show cause hearing held after trial in the  
6 *Transamerican* was just for the benefit of the contingent beneficiaries which had no present  
7 interest in the trust. It should come as no surprise that contingent beneficiaries without a present  
8 interest in Texas are afforded such weak due process rights. Moreover, the issue of whether  
9 contingent beneficiaries require notice under NRS 163.120 was litigated in *Branch Banking &*  
10 *Trust Co. v. Smoke Ranch Dev., LLC*, Id., and the Court declined to extend the statute’s notice  
11 requirement to “future heirs or beneficiaries of the Trust Remainderman.” Because of this, the  
12 ruling in *Transamerican* is in no way applicable to Nevada.

#### 13 IV.

#### 14 CONCLUSION

15 The ten beneficiaries of the Rogich Trust were not provided notice of this action which is  
16 now going to trial. As a result, the beneficiaries are not parties to this action, have no way to be  
17 heard, to confront adverse witnesses, present evidence, and argue on their own behalf, much less  
18 participate meaningfully in this litigation, including without limitation through discovery,  
19 depositions, dispositive motions, etc. Clearly, Plaintiff has violated the mandatory, unalterable  
20 provisions of NRS Chapter 163, to the irreparable detriment of the beneficiaries whose interests

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1 NRS 163.120 was designed to protect. Accordingly, judgment must be entered against the  
2 Plaintiff.<sup>1</sup>

3 DATED: April 21, 2019.

4 **FENNEMORE CRAIG, P.C.**

6 By: /s/ Brenoch Wirthlin, Esq.

Samuel S. Lionel, Esq. (Bar No. 1766)

7 Thomas Fell, Esq. (Bar No. 3717)

8 Brenoch Wirthlin, Esq. (Bar No. 10282)

300 S. Fourth Street, Suite 1400

9 Las Vegas, Nevada 89101

*Attorneys for the Rogich Defendants*

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22 <sup>1</sup> While all claims asserted against the Rogich Defendants are based upon the contracts at issue (although the Rogich  
23 Defendants deny Plaintiff is a third-party beneficiary thereunder), Plaintiff's third and sixth claims for relief are for  
24 breach of implied covenant of good faith and fair dealing and conspiracy. NRS 163.140(3) concerns the commission  
25 of a torts by a trustee and actions against trusts. The statute provides that "[a] judgment may not be entered in favor  
26 of the plaintiff in the action unless the plaintiff proves that, within 30 days after filing the action, or within 30 days  
27 after the filing of a report of an early case conference if one is required, whichever is longer, or within such other  
28 period as the court may fix, and more than 30 days before obtaining the judgment, the plaintiff notified each of the  
beneficiaries known to the trustee who then had a present interest of the existence and nature of the action. The notice  
must be given by mailing copies to the beneficiaries at their last known addresses. The trustee shall furnish the  
plaintiff a list of the beneficiaries and their addresses, within 10 days after written demand therefor, and notification  
of the persons on the list constitutes compliance with the duty placed on the plaintiff by this section. Any beneficiary  
may intervene in the action and contest the right of the plaintiff to recover." The Rogich Defendants request the Court  
take judicial notice of this statute and its application to any remaining claims against the Rogich Defendants in this  
matter.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.,  
3 and that on April 21, 2019, I caused to be **electronically served through the Court's e-**  
4 **service/e-filing system and/or served by U.S. Mail** true and correct copies of the foregoing  
5 **THE ROGICH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES**  
6 **REGARDING LIMITS OF JUDICIAL DISCRETION REGARDING NOTICE**  
7 **REQUIREMENTS PROVIDED TO TRUST BENEFICIARIES UNDER NRS CHAPTER**  
8 **163** properly addressed to the following:

9 Mark Simons, Esq. *Via E-service*  
10 **SIMONS HALL JOHNSTON PC**  
11 6490 South McCarran Blvd., #F-46  
12 Reno, Nevada 89509  
*Attorney for Plaintiff Nanyah Vegas, LLC*

13 Charles E. ("CJ") Barnabi, Jr. *Via E-service*  
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16 Las Vegas, NV 89119  
*Attorney for Plaintiffs Carlos Huerta*  
*and Go Global*

17 Dennis Kennedy *Via E-service*  
18 Joseph Liebman  
19 **BAILEY ♦ KENNEDY**  
20 8984 Spanish Ridge Avenue  
21 Las Vegas, NV 89148  
*Attorneys for Defendants Pete Eliades,*  
*Teld, LLC and Eldorado Hills, LLC*

22 Michael Cristalli *Via E-service*  
23 Janiece S. Marshall  
24 **GENTILE CRISTALLI MILLER ARMENTI SAVARESE**  
25 410 S. Rampart Blvd., Suite 420  
26 Las Vegas, NV 89145

27 */s/ Daniel Maul*  
28 *An employee of Fennemore Craig, P.C.*

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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

CARLOS A. HUERTA, an individual;  
CARLOS A. HUERTA as Trustee of  
THE ALEXANDER CHRISTOPHER  
TRUST, a Trust established in  
Nevada as assignee of interests of  
GO GLOBAL, INC, a Nevada  
corporation; NANYAH VEGAS,  
LLC, A Nevada limited liability  
company,

Plaintiffs,

v.

SIG RIGOICH, aka SIGMUND  
ROGICH as Trustee of The Rogich  
Family Irrevocable Trust;  
ELDORADO HILLS, LLC, a Nevada  
limited liability company; DOES I-X;  
and/or ROE CORPORATIONS I-X,  
inclusive,

Defendants.

NANYAH VEGAS, LLC, a Nevada  
limited liability company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability  
company; PETER ELIADAS,  
individually and as Trustee of The  
Eliades Survivor Trust of 10/30/08;  
SIGMUND ROGICH, individually and  
as Trustee of the Rogich Family  
Irrevocable Trust; IMITATIONS, LLC,  
a Nevada limited liability company;  
DOES I-X: and/or ROE  
CORPORATIONS I-X, inclusive,

Defendants.

CASE NO.: A-13-686303-C

DEPT. XXVII

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C



1                   BEFORE THE HONORABLE NANCY L. ALLF  
2                   DISTRICT COURT JUDGE  
3                   MONDAY, APRIL 22, 2019

4                   **RECORDER'S TRANSCRIPT OF MOTION HEARING**

5                   APPEARANCES:

6                   For the Plaintiff:                   MARK SIMONS, ESQ.

7                   For Defendant Rogich:               BRENOCH WIRTHLIN, ESQ.  
8                                                       THOMAS FELL, ESQ.  
9                                                       SAMUEL S. LIONEL, ESQ.

10                  For Defendant El Dorado       JOSEPH LIEBMAN, ESQ.  
11                  Hills:                           DENNIS KENNEDY, ESQ.

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13                  RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER  
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WITNESSES FOR THE PLAINTIFF

None

WITNESSES FOR THE DEFENDANT

None

1 Las Vegas, Nevada, Monday, April 22, 2019

2

3 [Case called at 10:12 a.m.]

4 THE BAILIFF: Department XXVII is now in session, the  
5 Honorable Judge Alf presiding.

6 THE COURT: Thank you. Please be seated.

7 Okay. Calling the case of Huerta v. El Dorado Hills.

8 Appearances, please, from your right to left.

9 MR. SIMONS: Mark Simons on behalf of Nanyah Vegas,  
10 Your Honor, and in the courtroom with me is Yoav Harlap, the principal  
11 of Nanyah Vegas, and also my assistant, Jodi Alhasan is in the audience.

12 THE COURT: Very good. Thank you and welcome.

13 MR. WIRTHLIN: Good morning, Your Honor. Brenoch  
14 Wirthlin on behalf of Rogich Defendants. Mr. Sigmund Rogich is here  
15 with us as well as Ms. Olivas, Melissa Olivas.

16 MR. FELL: Thomas Fell, also on behalf of the Rogich  
17 Defendants.

18 MR. LIONEL: Sam Lionel representing the Rogich  
19 Defendants.

20 MR. LIEBMAN: Joseph Liebman on behalf of El Dorado Hills.

21 MR. KENNEDY: And Dennis Kennedy on behalf of El Dorado  
22 Hills, the Defendant in Case A-13-686303,

23 THE COURT: Thank you.

24 All right. I have the agenda, Mr. Simons. The -- with regard  
25 to the NCRP 15, that order shortening time came in after we closed the

1 office Friday, but I am granting it and will argue the motion.

2 MR. SIMONS: Okay. The motion is premised on the concept  
3 that the Court had entered in judgment in favor of the Eliadas  
4 Defendants and there is no mechanism under the rule that says it has to  
5 be done after the conclusion of the entire case, so there's a procedural  
6 aspect of whether it's timely or if it needs to be addressed subsequent to  
7 the trial. I think you're fully brief on the issue. We've talked about it a  
8 few times. I don't have much more to add.

9 THE COURT: And I've read the briefs, so --

10 MR. SIMONS: Is there any questions you have of me?

11 THE COURT: No.

12 MR. SIMONS: Okay.

13 MR. LIEBMAN: Good morning, Your Honor. I think one of  
14 the key points that's been missed here is the fact that an implied contract  
15 claim was pled in this case at the inception of the case, when this was  
16 filed back in 2013 and when Nanyah sued El Dorado Hills back in 2013,  
17 its initial complaint contained the claim they are trying to add now.

18 In the first amended complaint after El Dorado Hills had filed  
19 a motion to dismiss on that particular claim, they purposefully omitted it  
20 from that particular pleading and we've cited this Court several cases  
21 that says in that instance, when a plaintiff, in order to avoid a motion to  
22 dismiss or when they're amending the complaint, decides to omit a  
23 claim, it waives and abandons that particular claim. And that's precisely  
24 what happened in this case. And we've gone five years, Your Honor,  
25 since that occurred and there's never been a Rule 15(a) motion brought

1 to you to say we want to add this claim back.

2           So Mr. Simon's briefs a lot of times talk about well, this  
3 claim wasn't technically pled for some reason or another, but it was and  
4 they've decided to abandon it and they never decided to revive it the  
5 way you're supposed to do under Rule 15(a). The procedural aspect that  
6 Mr. Simons touched on is problematic for him as well. 15(b) applies to  
7 instances where something's tried by implied or expressed consent at  
8 trial. The actual title under the new rules of that subsection deals with  
9 amendments during and after trial. And we have expressly made the  
10 point.

11           We actually filed a notice of non-consent with this Court back  
12 on April 9th that said we do not expressly or impliedly consent to this  
13 claim being tried, so we're making that clear for the record as well. So if  
14 Mr. Simons wanted to bring this motion at a later point in time, that's on  
15 the record, that we do not expressly or impliedly consent to this  
16 particular claim being added at the 11th hour.

17           And then the last issue I wanted to bring up is prejudice,  
18 Your Honor. We were under the impression for five years that they  
19 abandoned this claim and we never got to do any discovery on this  
20 claim. We never got to depose Mr. Harlap on this claim. We never got  
21 to depose Mr. Huerta on this claim. And these are the two people who  
22 allegedly made up this so-called implied in fact contract. So to cause us  
23 to have to defend against that claim at the 11th hour would cause  
24 significant prejudice to the El Dorado Hills Defendants, Your Honor.

25           So unless the Court has any other questions, that's the

1 argument.

2 THE COURT: Okay. Thank you.

3 MR. LIEBMAN: Thank you.

4 MR. SIMONS: First off, we've got to put this in context.

5 What has been addressed by this Court is the obligation that's owed by  
6 El Dorado to Nanyah. And that obligation occurred in 2007. It's been  
7 established that Nanyah money went into El Dorado. A year after the  
8 fact, you found that the Rogich Trust specifically assumed that  
9 obligation. So when we have a situation where the Court makes rulings  
10 and makes findings that there is an obligation, based upon receipt and  
11 retention of funds and then at -- during the testimony of Mr. Huerta  
12 that -- counsel just stood up and said we didn't get to depose anybody.

13 Well, this counsel is in after the fact. Mr. Lionel represented  
14 El Dorado for years. Mr. Lionel deposed Mr. Huerta. Mr. Huerta said  
15 yes, we actually owe them money. This Court was briefed in affidavits  
16 from Carlos Huerta. When this Court originally granted summary  
17 judgment on the timing, remember what the Court said. The Court said  
18 the date of when Nanyah -- it's -- Nanyah's money went into El Dorado  
19 was the date the statute of limitation applied and that was based upon  
20 Carlos Huerta in affidavit saying El Dorado received our funds. What  
21 then happens is it goes up to Supreme Court, comes back down, says  
22 no, it's not on the date of the investment when El Dorado received  
23 Nanyah's money.

24 So the fact that this recent counsel is contending that they  
25 didn't have the opportunity to depose Mr. Huerta, El Dorado did, in fact,

1 depose Mr. Huerta, did in fact question Mr. Huerta extensively about the  
2 obligation. The documents that were examined with Mr. Huerta are all  
3 the written documents, which are business records of El Dorado saying  
4 yes, we owe Nanyah its money back for its investment in El Dorado. So  
5 then Mr. Harlap was deposed by Mr. Lionel, again went through the  
6 extensive analysis of this situation. It arose -- the October 5th order  
7 triggers this consideration, because the Court has rendered rulings that  
8 then trigger some events.

9           And whether -- you know, after the fact, filing in the eve of  
10 trial a notice of we don't consent to an issue that this Court has already  
11 addressed, that's been throughout these pleadings even before the  
12 appeal. El Dorado's obligation to Nanyah has been the heart of the case,  
13 the contractual obligation. So that's where we have it. We have this  
14 case loaded with an obligation from El Dorado to Nanyah. And what  
15 does that trigger and what are the ramifications of that?

16           If you perceive that NCRP 15 relief is premature, given that  
17 we haven't had the trial, that's one thing. But to say that this issue has  
18 not been -- fully saturated this case from Day 1, even before recent  
19 counsel, that's a misstatement of the case. Thank you.

20           THE COURT: Thank you. This is the Plaintiff's rule under  
21 NRCP 15 to amend the complaint. The motion will be denied for the  
22 reason that it's untimely and the claims previously abandoned. It's not  
23 fair to require a defense under those circumstances.

24           MR. SIMONS: I'm sorry. You said it's denied, because it's  
25 untimely?

1 THE COURT: It's untimely.

2 MR. SIMONS: Okay. Thank you.

3 THE COURT: All right. So the next matter is with regard to  
4 N.R.S. 163. Mr. Simons.

5 MR. SIMONS: Again, this one deals with a possible  
6 timeliness issue, because it may be that this is continued and revisited  
7 after the trial, given that we need to see or should see whether there is a  
8 judgment or not a judgment, or excuse me, jury verdict or not a jury  
9 verdict entered to determine what steps, if any, the Court should take at  
10 that time. I understand that. We -- when this type of notice issue is  
11 brought to the Court's attention, steps must be taken. We notified the  
12 Court of the various activities. You asked for additional briefing on the  
13 discretionary aspect.

14 We've shown you that there is a discretionary aspect. It's not  
15 just a black and white 30 days. That hands are -- the Court used the  
16 phrase, hands are tied. I don't believe that applies or is in existence on  
17 this one. So even though we brought the motion, in the alternative  
18 relief, it may be necessary again that we deal with it after the trial.  
19 Otherwise, then we're asking preliminarily now that you grant,  
20 depending on the outcome of the case, the jury's verdict, that we then  
21 take the 163 steps and the Court suspends entry of judgment until 163 is  
22 able to be complied with.

23 THE COURT: Okay. And the argument for the discretion if  
24 have to do that? Because the Texas case was a contingent beneficiary.

25 MR. SIMONS: Well, it -- that doesn't matter. The benefic --



1 whether it's a contingent beneficiary or not, is entirely irrelevant. What  
2 the court looked at -- and it's a uniform trust act, okay? So they look at  
3 and say what do we do in this situation? The courts don't automatically  
4 say don't give beneficiaries an opportunity and don't prejudice the  
5 Plaintiff. Don't harm the Plaintiff. We want to deal with things on the  
6 merits. And in fact, the California case, when dealing with discretion  
7 says apply discretion, not to be arbitrary or prejudicial to parties.

8           So the Texas case actually said judgment was entered. What  
9 we're going to do is -- trial court vacated the judgment. Go do the  
10 notice. Let's take steps to comply with given notice to the beneficiaries.  
11 And in this case, the lead trustee is the lead beneficiary. So the Court in  
12 this situation needs to exercise its discretion or at least postpone it to see  
13 what happens at the end of the day. To come in and say before trial, Mr.  
14 Simons, you asked for a continuance, so we can comply and now I'm  
15 going to deny that.

16           And then I'm even going to deny that before trial, that you  
17 don't get to move forward with N.R.S. 163 relief. It is not supported by  
18 the case law. It's not supported by the language of discretionary  
19 application. It's not supported by the policy of Nevada to deal with  
20 matters on their merits and it's not appropriate to deal with the let's  
21 penalize a party on the technical component when the Court is vested  
22 with discretion to achieve fairness and justice.

23           THE COURT: Thank you.

24           MR. WIRTHLIN: Thank you. Good morning. I'll be brief. The  
25 Court hit directly on the point that we're going to make and which we

1 made in our supplemental briefing, which is under this statute and in the  
2 situation that has arisen, because of the Plaintiff's failure to give notice to  
3 the beneficiaries of the Rogich Trust as required under the statute, there  
4 is no discretion for the Court at this point to do anything other than find  
5 in favor of the Trust against all Plaintiff's claims and dismiss the Trust.  
6 As the Court noted, the Trans American case is distinguishable in that it  
7 involved contingent beneficiaries and importantly, does not involve  
8 N.R.S. 12.130, which requires intervention before trial.

9           And the beneficiaries cannot now do that. There is discretion  
10 in certain instances. That's the BB&T case, where this issue is brought  
11 up long before. I think in that case it was two years before there was  
12 ever a judgment entered. And in that case, the demand was made for  
13 the names of the trust beneficiaries and not provided by the trustee. And  
14 the Court therefore in that case affixed a different time. This is an  
15 entirely different situation, Your Honor.

16           We're talking about trustees. And I think as was mentioned  
17 in the opening argument, that the Court should not be prejudicial to the  
18 parties. But I think the consideration that needs to be made and is made  
19 embodied in Chapter 163 is the prejudice to the trust beneficiaries, six of  
20 whom we know in Mr. Rogich' declaration are minors, one of whom has  
21 special needs. They may require appointment of other representatives  
22 or guardian ad litem. That is why the statute provides and requires that  
23 the beneficiaries be given notice, Your Honor, pursuant to the statute.

24           And again, I don't think it's -- I don't think can forget that the  
25 statute contemplates giving that even 30 days after the JCCR is entered.

1 So unless the Court has any questions, we'll rest on our pleadings.

2 THE COURT: Does anyone else wish to weigh in? Then your  
3 reply, please.

4 MR. SIMONS: Again, the Court is to look to not be unfair, to  
5 not be prejudicial. The Court is to seek mechanisms to effectuate justice  
6 and to try cases on the merits. We just heard now that the Rogich Trust  
7 wants to be dismissed from the case right before the jury is empaneled.  
8 That demonstrates the gamesmanship. After over five years, after this  
9 Court rendering verdict -- judgments in favor of the Rogich Trust to come  
10 in and say no, we're out of the case now. That's unfair. That's  
11 prejudicial to the Plaintiff. There's a mechanism that's embodied in the  
12 statute that deals with this situation.

13 Case law demonstrates the Judge is supposed to exercise  
14 discretion and to deal with the notice to give opportunities to see if it  
15 even matters, to determine whether those beneficiaries are  
16 indispensable parties or not indispensable. In fact, the Texas case said  
17 you know what, you beneficiaries aren't indispensable. Your interests  
18 were adequately represented, just as in this case, just as in five years  
19 and two sets of lawyers. So as we've requested, the Court either  
20 suspend to see what the outcome of the trial is and/or grant the motion,  
21 so that we can take the appropriate steps in the event the verdict is in our  
22 favor against the Rogich Trust.

23 THE COURT: Thank you. The Court has taken judicial notice  
24 of N.R.S. 163.120, which has very definite timelines with regard to the  
25 rights of beneficiaries of a trust that has been sued. Here I find that the

1 fact that the notice was so late with regard to the request for information  
2 about who the beneficiaries are. The time hasn't even passed for the  
3 trust to have to notify you who the beneficiaries are. The whole point of  
4 that statute is to allow intervention. N.R.S. 12.130 requires intervention  
5 to occur before trial. There's no way those beneficiaries can seek to  
6 intervene at this point. So I am going to dismiss the Trust.

7 MR. SIMONS: I'm sorry. You said you're dismissing the  
8 Rogich Trust?

9 THE COURT: I am.

10 MR. SIMONS: And you're going to deny discretionary relief  
11 under 163?

12 THE COURT: That's correct.

13 MR. SIMONS: Okay. Are you going to allow us to continue  
14 and prove to the jury the claims against the Rogich Trust?

15 THE COURT: No. Now, if that affects how you're going to  
16 put your case on, do you want a half an hour?

17 MR. SIMONS: Here's what I'd like to do. I'd like to file an  
18 emergency motion with the Supreme Court to take this on up on writ.  
19 Can we suspend the case, continue the case while I'm allowed to do that,  
20 because --

21 THE COURT: Is there --

22 MR. SIMONS: -- this is a significant issue of law --

23 THE COURT: I understand.

24 MR. SIMONS: -- and as you recognize, we have the  
25 opportunity to take these things up on writs.

1 THE COURT: Of course. Is there -- do you guys want to  
2 recess to -- or are you prepared to respond?

3 MR. WIRTHLIN: Your Honor, I'm not prepared to respond.  
4 Can we have a brief recess?

5 THE COURT: Yes.

6 MR. WIRTHLIN: Thank you.

7 THE COURT: Take the time you need, 10, 15 minutes and let  
8 me know when everyone's ready. I'll come right back.

9 [Recess at 10:29 a.m.]

10 THE BAILIFF: Court is back in session. Remain seated,  
11 please.

12 THE COURT: Please remain seated. Thank you.

13 Defense, are you ready to respond?

14 MR. WIRTHLIN: Yes, Your Honor, we are. And we have  
15 spoken amongst ourselves and with Plaintiff's counsel and we would be  
16 in agreement to suspend the trial with a few qualifications, which we're  
17 all in agreement on, if the Court approves them. The trial has started, so  
18 there would be a suspension of the trial, not a continuation. The Trust  
19 has been dismissed as a party, so the Trust would not be required to  
20 provide any names or other information regarding the beneficiaries of  
21 the Rogich Trust and that the parties remaining have the opportunity to  
22 file a dispositive motion during the suspension to tee-up the remaining  
23 issues concerning the remaining parties, if the Court approves.

24 THE COURT: Are you in agreement to those three  
25 conditions?

1 MR. SIMONS: I think we are, except for number 2 and the  
2 reason -- number 2 is the no response and it's because I'm not -- I  
3 requested I have the opportunity to brief it and their response is we  
4 wanted to submit it to the Court and see. And so that's the only one I'm  
5 not in agreement with, because I don't know and I didn't have the  
6 opportunity clearly to see what effect the statute says, if it has to be a  
7 party or not. I'm not really sure.

8 THE COURT: Okay.

9 MR. SIMONS: In order to respond to a 163 notice.

10 MR. LIEBMAN: We're in agreement with all those conditions,  
11 Your Honor.

12 THE COURT: So, if there's not an agreement to all terms --

13 [Pause]

14 THE COURT: Mr. Simons, if there's not an agreement to all  
15 terms, then do we go forward today? What --

16 MR. SIMONS: I'm grabbing 163.

17 THE COURT: I have it up.

18 MR. WIRTHLIN: Mark, I don't know if you want me to point  
19 to it, but just that first line of Subsection 2. A judgment may not be  
20 entered in favor of the Plaintiff in the action --

21 MR. SIMONS: Yeah.

22 MR. WIRTHLIN: -- contemplates the loss.

23 MR. SIMONS: I think what you're saying is correct. So given  
24 the language, I think what we need to do is also take that issue up on the  
25 writ.

1 THE COURT: So does that mean there's consent to  
2 suspension, the Trust is not required to respond and the remaining  
3 parties can still file dispositive motions? Is that --  
4 MR. WIRTHLIN: As far as we're concerned Your Honor.  
5 MR. LIEBMAN: Yes, Your Honor.  
6 UNIDENTIFIED SPEAKER: Yes.  
7 UNIDENTIFIED SPEAKER: Yes.  
8 THE COURT: All right. Now, I don't know if for -- this is --  
9 may or may not matter whether or not your five-year rule -- there hasn't  
10 been a witness -- we haven't had any witnesses, so it's just something to  
11 think about.  
12 MR. SIMONS: It's actually been satisfied, since we've  
13 commenced the trial.  
14 THE COURT: Okay. Good enough. So I guess we're in  
15 recess until another matter is brought to my attention at this point.  
16 MR. WIRTHLIN: Thank you, Your Honor.  
17 MR. LIEBMAN: Yes, Your Honor.  
18 THE COURT: Thank you, all.  
19 MR. LIEBMAN: Thank you.

20 [Proceedings concluded at 10:52 a.m.]

21 \* \* \* \* \*

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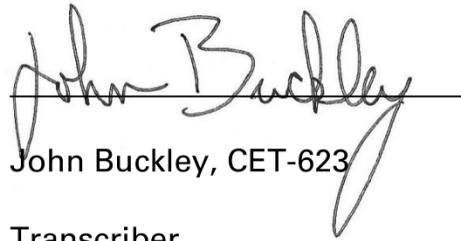
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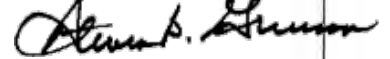
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ATTEST: I do hereby certify that I have truly and correctly  
transcribed the audio/video proceedings in the above-entitled case to the  
best of my ability.

  
John Buckley, CET-623  
Transcriber

Date: April 22, 2019





DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

CARLOS HUERTA

Plaintiff(s)

vs.

ELDORADO HILLS LLC

Defendant(s)

CASE NO.: A-13-686303

DEPARTMENT 27

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

And all related matters.

**ORDER**

**COURT FINDS** after review that the Complaint in Case No. A686303 was filed on July 31, 2013, wherein Nanyah Vegas, LLC, as a plaintiff therein, alleged causes of action against Defendants Sig Rogich aka Sigmund Rogich as Trustee of the Rogich Family Irrevocable Trust and Eldorado Hills, LLC.

**COURT FURTHER FINDS** after review that the Complaint in Case No. A746239 was filed on November 4, 2016, wherein Nanyah Vegas, LLC, as the plaintiff therein, alleged causes of action against Defendants Sigmund Rogich, individually and as Trustee of The Rogich Family Irrevocable Trust, Peter Eliadas, individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Teld, LLC and Imitations, LLC.

**COURT FURTHER FINDS** after review that on March 31, 2017, the Stipulation for Consolidation was filed with the Court consolidating Case No. A686303 and Case No. A746239.

///

///

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

1                   **COURT FURTHER FINDS** after review that on April 15, 2019, the Request for  
2 Judicial Notice was filed with the Court requesting, pursuant to NRS 47.140(3), that the Court  
3 take judicial notice of NRS 163.120, which provides the following:  
4

5                   **NRS 163.120 Claims based on certain contracts or obligations:**  
6                   **Assertion against trust; entry of judgment; notice; intervention; personal**  
7                   **liability of trustee; significance of use of certain terms.**

8                   1. A claim based on a contract entered into by a trustee in the capacity of  
9 representative, or on an obligation arising from ownership or control of trust  
10 property, may be asserted against the trust by proceeding against the trustee in the  
11 capacity of representative, whether or not the trustee is personally liable on the  
12 claim.

13                   2. A judgment may not be entered in favor of the plaintiff in the action  
14 unless the plaintiff proves that within 30 days after filing the action, or within 30  
15 days after the filing of a report of an early case conference if one is required,  
16 whichever is longer, or within such other time as the court may fix, and more than  
17 30 days before obtaining the judgment, the plaintiff notified each of the  
18 beneficiaries known to the trustee who then had a present interest, or in the case  
19 of a charitable trust, the Attorney General and any corporation which is a  
20 beneficiary or agency in the performance of the charitable trust, of the existence  
21 and nature of the action. The notice must be given by mailing copies to the  
22 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff a  
23 list of the beneficiaries to be notified, and their addresses, within 10 days after  
24 written demand therefor, and notification of the persons on the list constitutes  
25 compliance with the duty placed on the plaintiff by this section. Any beneficiary,  
26 or in the case of charitable trusts the Attorney General and any corporation which  
27 is a beneficiary or agency in the performance of the charitable trust, may  
28 intervene in the action and contest the right of the plaintiff to recover.

                  3. Except as otherwise provided in this chapter or in the contract, a  
trustee is not personally liable on a contract properly entered into in the capacity  
of representative in the course of administration of the trust unless the trustee fails  
to reveal the representative capacity or identify the trust in the contract. The  
addition of the word "trustee" or the words "as trustee" after the signature of a  
trustee to a contract are prima facie evidence of an intent to exclude the trustee  
from personal liability.

**COURT FURTHER FINDS** after review that on April 16, 2019, Nanyah Vegas,  
LLC's Emergency Motion to Address Defendant the Rogich Family Irrevocable Trust's NRS  
163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120 was filed with  
the Court.

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**COURT FURTHER FINDS** after review that a telephonic hearing was convened on April 18, 2019 wherein the Court took judicial notice of NRS 163.120.

**COURT FURTHER FINDS** after review that at the commencement of trial on April 22, 2019, Defendant Sigmund Rogich as Trustee of The Rogich Family Irrevocable Trust (“Defendant Rogich Trust”) orally moved the Court to dismiss this action as to Defendant Rogich Trust for failure to comply with NRS 163.120 (“Motion to Dismiss”).

**COURT FURTHER FINDS** after review that NRS 163.120 contemplates notice required thereunder being provided in the early stages of an action in order to permit the beneficiaries of a trust the opportunity to intervene in such action and meaningfully participate therein.

**COURT FURTHER FINDS** after review that NRS 12.130 provides that an interested person must intervene in an action “[b]efore the trial.” NRS 12.130(1)(a); *see also Am. Home Assur. Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 1229, 1244, 147 P.3d 1120, 1130 (2006).

**COURT FURTHER FINDS** after review that, because the trial in this action commenced on April 22, 2019, Plaintiff Nanyah’s written demand for a list of beneficiaries submitted to the Defendant Rogich Trust on April 15, 2019 was untimely under NRS 163.120 as such notification would not permit interested beneficiaries of the trust an opportunity to intervene in this action pursuant to NRS 12.130(1).

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**THEREFORE, COURT ORDERS** for good cause appearing and after review that the Motion to Dismiss is hereby GRANTED and Defendant Rogich Trust is hereby DISMISSED with prejudice.

**COURT FURTHER ORDERS** for good cause appearing and after review that, within 10 days of the Notice of Entry of this Order, the parties are directed to submit to the Court a stipulation and order with respect to the agreed upon stay of this action.

DATED this 30 day of April, 2019.

Nancy L Allf  
NANCY ALLF  
DISTRICT COURT JUDGE