

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

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3  
4  
5 NANYAH VEGAS, LLC, A Nevada limited  
6 liability company,

7                   Appellant,

8                   v.

9 SIG ROGICH aka SIGMUND ROGICH as  
10 Trustee of The Rogich Family Irrevocable  
11 Trust; ELDORADO HILLS, LLC, a Nevada  
12 limited liability company; TELD, LLC, a  
13 Nevada limited liability company; PETER  
14 ELIADES, individually and as Trustee of the  
15 The Eliades Survivor Trust of 10/30/08; and  
16 IMITATIONS, LLC, a Nevada limited liability  
17 company,

18                   Respondents.

19 **AND RELATED MATTERS.**

Electronically Filed  
Jul 09 2021 04:29 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
**Supreme Court No. 79917**

Eighth Judicial District Court  
Case No. A-13-686303-C

Eighth Judicial District Court  
Case No. A-16-746239-C

20                   **JOINT APPENDIX VOL. 17**

21                   MARK G. SIMONS, ESQ.  
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<b><u>ALPHABETICAL</u></b>			
<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>BATES</u></b>
Amended Answer to First Amended Complaint; and Counterclaim Jury Demand	9/16/14	3	JA_000665-675
Answer to First Amended Complaint and Counterclaim	11/8/13	1	JA_000048-59
Answer to Counterclaim	2/20/14	1	JA_000060-63
Appendix of Exhibits to Defendants Eldorado Hills, LLC, Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC' Memorandum of Costs and Disbursements Volume 1 of 2	10/7/19	34-35	JA_008121-8369
Appendix of Exhibits to Defendants Eldorado Hills, LLC, Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC' Memorandum of Costs and Disbursements Volume 2 of 2	10/7/19	35	JA_008370-8406
Appendix of Exhibits to Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees	10/17/19	35-36	JA_008471-8627
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Appendix of Exhibits to Eldorado Hills, LLC's Motion for Summary Judgment Volume 2 of 2	6/1/18	9	JA_002123-2196
Appendix of Exhibits to Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment Volume 1 of 2	6/1/18	9-10	JA_002212-2455
Appendix of Exhibits to Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment Volume 2 of 2	6/1/18	10-11	JA_002456-2507
Complaint	7/31/13	1	JA_000001-21
Complaint	11/4/16	4	JA_000777-795
Decision and Order	10/4/19	33	JA_008054-8062
Declaration of Brenoch Wirthlin in Further Support of Rogich Defendants' Motion for Attorneys' Fees	2/28/2020	38	JA_009104-9108
Declaration of Joseph A. Liebman in Further Support of Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees	2/21/2020	38	JA_009098-9103

1	Defendant Eldorado Hills,	9/7/18	14	JA_003358-3364
2	LLC's Motion in Limine to			
3	Preclude Any Evidence or			
4	Argument Regarding an			
5	Alleged Implied-In-Fact			
6	Contract Between Eldorado			
	Hills, LLC and Nanyah			
	Vegas, LLC			
7	Defendant Eldorado Hills,	7/22/19	33	JA_007868-7942
8	LLC's Motion for Dismissal			
9	with Prejudice Under Rule			
	41(e)			
10	Defendant Eldorado Hills,	6/1/18	8	JA_001850-1861
11	LLC's Motion for Summary			
	Judgment			
12	Defendant Eldorado Hills,	5/22/19	32	JA_007644-7772
13	LLC's Motion for Summary			
	Judgment			
14	Defendant Eldorado Hills,	1/25/19	14-15	JA_003473-3602
15	LLC's Motion to Extend the			
16	Dispositive Motion Deadline			
17	and Motion for Summary			
	Judgment			
18	Defendant Eldorado Hills,	4/9/19	27	JA_006460-6471
19	LLC's Objections to Nanyah			
20	Vegas, LLC's 2 <sup>nd</sup>			
21	Supplemental Pre-trial			
	Disclosures			
22	Defendant Eldorado Hills,	4/9/19	27	JA_006441-6453
23	LLC's Opposition to Nanyah			
24	Vegas, LLC's			
	Counter-motion for NRCP 15			
	Relief			



Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #3: Defendants Bound by their Answers to Complaint	9/19/18	14	JA_003365-3368
Defendant Eldorado Hills, LLC's Opposition to Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule	4/4/19	26	JA_006168-6188
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion for Summary Judgment	2/15/19	17	JA_004170-4182
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #5 re: Parol Evidence Rule	3/8/19	23	JA_005618-5623
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #6 re: Date of Discovery	3/8/19	23	JA_005624-5630
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion to Settle Jury Instructions Based upon the Court's October 5, 2018, Order Granting Summary Judgment	3/20/19	24	JA_005793-5818

1	Defendant Eldorado Hills,	7/19/18	13	JA_003083-3114
2	LLC's Reply in Support of			
3	its Motion for Summary			
4	Judgment and Opposition to			
5	Countermotion for Summary			
6	Judgment			
7	Defendant Eldorado Hills,	4/19/19	29	JA_007114-7118
8	LLC's Response to Nanyah			
9	Vegas, LLC's Request for			
10	Judicial Notice and			
11	Application of Law of the			
12	Case Doctrine			
13	Defendant Peter Eliades and	10/17/19	35	JA_008458-8470
14	Teld, LLC's Motion for			
15	Attorneys' Fees			
16	Defendant Sig Rogich,	8/11/14	1-3	JA_000084-517
17	Trustee of the Rogich			
18	Family Irrevocable Trust's			
19	Motion for Partial Summary			
20	Judgment			
21	Defendant the Rogich	5/6/19	30	JA_007219-7228
22	Family Irrevocable Trust's			
23	Memorandum of Costs and			
24	Disbursements Pursuant to			
25	NRS 18.005 and NRS			
26	18.110			
	Defendant The Rogich	5/21/19	31-32	JA_007610-7643
	Family Irrevocable Trust's			
	Motion for Attorneys' Fees			
	and Costs			
	Defendant's Reply in	12/30/14	4	JA_000759-764
	Support of Motion for			
	Award of Attorneys' Fees			
	Defendants' Answer to	4/24/17	4	JA_000831-841
	Complaint			

1	Defendants' First Amended	1/23/18	4	JA_000871-880
2	Answer to Complaint			
3	Defendants' Motion in	2/25/19	21	JA_005024-5137
4	Limine to Preclude Plaintiff			
5	Carlos Huerta From			
6	Presenting at Trial any			
7	Contrary Evidence as to Mr.			
8	Huerta's Taking of \$1.42			
9	million from Eldorado Hills,			
10	LLC as Go Global, Inc.'s			
11	Consulting Fee Income to			
12	Attempt to Refinance			
13	Defendants' Motion in	2/25/19	20-21	JA_004792-5023
14	Limine to Preclude the			
15	Altered Eldorado Hills'			
16	General Ledger and Related			
17	Testimony at Trial			
18	Defendants Peter Eliades,	4/11/18	7	JA_001502-1688
19	Individually and as Trustee			
20	of The Eliades Survivor			
21	Trust of 10/30/08, Eldorado			
22	Hills, LLC, and Teld,			
23	LLC's: (1) Reply in Support			
24	of their Joinder to Motion			
25	for Summary Judgment; and			
26	(2) Opposition to Nanyah			
	Vegas, LLC's			
	Countermotion for Summary			
	Judgment and for N.R.C.P.			
	56(f) Relief			
	Defendants Peter Eliades,	3/5/18	6	JA_001246-1261
	individually and as Trustee			
	of The Eliades Survivor			
	Trust of 10/30/08, Eldorado			
	Hills, LLC, and Teld, LLC's			
	Joinder to Motion for			
	Summary Judgment			

1 2 3 4 5 6 7 8 9	Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Eldorado Hills, LLC, and Teld, LLC's Joinder to Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Motion for Reconsideration	6/14/18	11	JA_002570-2572
10 11 12 13 14 15 16	Defendants Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, Eldorado Hills, LLC, and Teld, LLC's Notice of Non-Opposition to Nanyah Vegas, LLC's Motion to Continue Trial and to Set Firm Trial Date on Order Shortening Time	5/11/18	8	JA_001822-1825
17 18 19 20 21 22 23 24 25 26	Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Eldorado Hills, LLC and Teld, LLC's Opposition to Nanyah Vegas, LLC's Motion to Reconsider Order Partially Granting Summary Judgment	6/21/18	12-13	JA_002952-3017

1	Defendants Eldorado Hills,	10/7/19	34	JA_008107-8120
2	LLC, Peter Eliades,			
3	Individually and as Trustee			
4	of the Eliades Survivor Trust			
5	of 10/30/08, and Teld,			
6	LLC's Memorandum of			
7	Costs and Disbursements			
8	Defendants Peter Eliades,	6/1/18	9	JA_002197-2211
9	Individually and as Trustee			
10	of The Eliades Survivor			
11	Trust of 10/30/08, and Teld,			
12	LLC's Motion for Summary			
13	Judgment			
14	Defendants Peter Eliades,	7/19/18	13	JA_003115-3189
15	Individually and as Trustee			
16	of the Eliades Survivor Trust			
17	of 10/30/08, and Teld,			
18	LLC's Reply in Support of			
19	Their Motion for Summary			
20	Judgment and Opposition to			
21	Countermotion for Summary			
22	Judgment			
23	Defendants Peter Eliades,	10/28/19	36-37	JA_008820-8902
24	Individually and as Trustee			
25	of The Eliades Survivor			
26	Trust of 10/30/08, Teld,			
	LLC, and Eldorado Hills,			
	LLC's: (1) Opposition to			
	Nanyah Vegas, LLC's			
	Motion to Retax Costs; and			
	(2) Countermotion to Award			
	Costs			

1	Defendants Sigmund	10/7/19	33	JA_008073-8106
2	Rogich, Individually and as			
3	Trustee of the Rogich			
4	Family Irrevocable Trust,			
5	and Imitations, LLC's			
6	Amended Memorandum of			
7	Costs and Disbursements			
8	Pursuant to NRS 18.005 and			
9	NRS 18.110			
10	Defendants Sigmund	10/8/19	35	JA_008407-8422
11	Rogich, Individually and as			
12	Trustee of the Rogich			
13	Family Irrevocable Trust,			
14	and Imitations, LLC's Errata			
15	to Amended Memorandum			
16	of Costs and disbursements			
17	Pursuant to NRS 18.005 and			
18	NRS 18.110			
19	Defendants Sigmund	6/5/18	11	JA_002535-2550
20	Rogich, Individually and As			
21	Trustee of the Rogich			
22	Family Irrevocable Trust and			
23	Imitations, LLC' Motion for			
24	Reconsideration			
25	Defendants Sigmund Rogich	2/18/19	17-19	JA_004183-4582
26	as Trustee of The Rogich			
	Family Irrevocable Trust,			
	Sigmund Rogich,			
	Individually and Imitations,			
	LLC's Omnibus Opposition			
	to (1) Nanyah Vegas LLC's			
	Motion for Summary			
	Judgment and (2) Limited			
	Opposition to Eldorado			
	Hills, LLC's Motion for			
	Summary Judgment			

Defendants Sigmund Rogich Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Opposition to Motion to Reconsider Order Partially Granting Summary Judgment	6/14/18	11	JA_002553-2569
Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Opposition to Nanyah's Motion in Limine #3 re Defendants Bound by their Answers to Complaint	9/28/18	14	JA_003387-3390
Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Opposition to Nanyah Vegas, LLC's Motion to Continue Trial and to Set Firm Trial Date on OST	5/10/18	8	JA_001783-1790

1	Defendants Sigmund	4/11/18	6-7	JA_001479-1501
2	Rogich, Individually and as			
3	Trustee of the Rogich			
4	Family Irrevocable Trust and			
5	Imitations LLC's Reply in			
6	Support of Motion for			
7	Summary Judgment and			
8	Opposition to Nanyah			
9	Vegas, LLC's			
10	Countermotion for Summary			
11	Judgment and for NRCP			
12	56(f) Relief			
13	Defendants Sigmund	9/20/18	14	JA_003369-3379
14	Rogich, Individually and as			
15	Trustee of the Rogich			
16	Family Irrevocable Trust and			
17	Imitations, LLC's Reply in			
18	Support of Their Motion for			
19	Rehearing			
20	Defendants Sigmund	3/22/19	25	JA_006040-6078
21	Rogich, Individually and as			
22	Trustee of the Rogich			
23	Family Irrevocable Trust and			
24	Imitations, LLC's 2 <sup>nd</sup>			
25	Supplemental Pre-Trial			
26	disclosures			
	Eldorado Hills, LLC's	4/9/19	27	JA_006454-6456
	Notice of Non-Consent to			
	Nanyah Vegas, LLC's			
	Unpleaded Implied-in-fact			
	Contract Theory			
	Eldorado Hills, LLC's	11/6/19	37	JA_008903-8920
	Notice of Cross-Appeal			
	Eldorado Hills, LLC's	4/16/19	29	JA_006893-7051
	Pretrial Memorandum			



1	Errata to Nanyah Vegas,	9/5/18	14	JA_003352-3357
2	LLC's Opposition to Motion			
3	for Rehearing and			
4	Countermotion for Award of			
5	Fees and Costs			
6	Errata to Pretrial	4/16/19	29	JA_007062-7068
7	Memorandum			
8	Ex Parte Motion for an	2/8/19	17	JA_004036-4039
9	Order Shortening Time on			
10	Motion for Relief From the			
11	October 5, 208 Order			
12	Pursuant to NRCP 60(b)			
13	First Amended Complaint	10/21/13	1	JA_000027-47
14	Joint Case Conference	5/25/17	4	JA_000842-861
15	Report			
16	Judgment	5/4/2020	38	JA_009247-9248
17	Judgment Regarding Award	5/5/2020	38	JA_009255-9256
18	of Attorneys' Fees and Costs			
19	in Favor of the Rogich			
20	Defendants			
21	Minutes	4/18/18	7	JA_001710-1711
22	Minutes	2/21/19	20	JA_004790-4791
23	Minutes	3/5/19	22	JA_005261-5262
24	Minutes	3/20/19	25	JA_006038-6039
25	Minutes	4/18/19	29	JA_007104-7105
26	Minutes	4/22/19	30	JA_007146-7147
	Minutes	9/5/19	33	JA_008025-8026
	Minutes	1/30/2020	37	JA_009059-9060
	Minutes	3/31/2020	38	JA_009227-9228
	Minutes – Calendar Call	11/1/18	14	JA_003454-3455
	Minutes – Telephonic	11/5/18	14	JA_003456-3457
	Conference			

Motion for Award of Attorneys' Fees	11/19/14	3	JA_000699-744
Motion for Leave to File an Amended Answer on an Order Shortening Time	4/30/14	1	JA_000064-83
Motion for Rehearing	8/17/18	13-14	JA_003205-3316
Motion for Relief from the October 5, 2018, Order Pursuant to NRCP 60(b)	2/6/19	15-17	JA_003650-4035
Motion for Summary Judgment	2/23/18	4-6	JA_000894-1245
Motion for Summary Judgment or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(a)	5/10/19	30-31	JA_007237-7598
Motion to Compel Production of Plaintiff's Tax Returns and for Attorneys' Fees on Order Shortening Time	2/27/19	21-22	JA_005175-5260
Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule on Order Shortening Time	3/25/19	25	JA_006079-6104
Motion to Reconsider Order Partially Granting Summary Judgment	6/4/18	11	JA_002512-2534
Nanyah Vegas, LLC's 2 <sup>nd</sup> Supplemental Pretrial Disclosures	4/5/19	27	JA_006410-6422
Nanyah Vegas, LLC's 3 <sup>rd</sup> Supplemental Pretrial Disclosures	4/12/19	27	JA_006484-6496

1	Nanyah Vegas, LLC's	4/16/19	28	JA_006718-6762
2	Emergency Motion to			
3	Address Defendant The			
4	Rogich Family Irrevocable			
5	Trust's NRS 163.120 Notice			
6	and/or Motion to Continue			
	Trial for Purposes of NRS			
	163.120			
7	Nanyah Vegas, LLC's	5/10/18	8	JA_001791-1821
8	Motion in Limine #3 re:			
9	Defendants Bound by Their			
	Answers to Complaint			
10	Nanyah Vegas, LLC's	2/15/19	17	JA_004115-4135
11	Motion in Limine #5 re:			
	Parol Evidence Rule			
12	Nanyah Vegas, LLC's	2/15/19	17	JA_004136-4169
13	Motion in Limine #6 re:			
	Date of Discovery			
14	Nanyah Vegas, LLC's	5/3/18	8	JA_001759-1782
15	Motion to Continue Trial			
16	and to Set Firm Trial Date			
	on Order Shortening Time			
17	Nanyah Vegas, LLC's	1/30/19	15	JA_003603-3649
18	Motion to Extend the			
19	Dispositive Motion Deadline			
20	and Motion for Summary			
	Judgment			
21	Nanyah Vegas, LLC's	10/16/19	35	JA_008423-8448
22	Motion to Retax Costs			
23	Submitted by Eldorado			
24	Hills, LLC, Peter Eliades,			
25	Individually and as Trustee			
	of The Eliades Survivor			
	Trust of 10/30/08, and Teld,			
26	LLC's Memorandum of			
	Costs and Disbursements			

1 2 3 4 5 6 7 8	Nanyah Vegas, LLC's Motion to Retax Costs Submitted by Sigmund Rogich, Individually and as Trustee of the Rogich Family Revocable Trust, and Imitations, LLC's Memorandum of Costs and Disbursements Pursuant to NRS 18.005 and NRS 18.110	10/16/19	35	JA_008449-8457
9 10 11 12	Nanyah Vegas, LLC's Motion to Settle Jury Instructions Base Upon the Court's October 5, 2018 Order Granting Summary Judgment	2/26/19	21	JA_005138-5174
13 14	Nanyah Vegas, LLC's Notice of Compliance with 4-9-2019 Order	4/16/19	29	JA_007052-7061
15 16 17 18 19 20 21	Nanyah Vegas, LLC's Opposition to Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Motion for Reconsideration and Joinder	6/25/18	13	JA_003053-3076
22 23 24 25 26	Nanyah Vegas, LLC's Opposition to Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e)	8/6/19	33	JA_007959-8006

Nanyah Vegas, LLC's Opposition to Eldorado Hills, LLC's Motion for Summary Judgment	7/11/19	32	JA_007840-7867
Nanyah Vegas LLC's Opposition to Eldorado Hills LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment and Countermotion for NRCP 15 Relief	2/15/19	17	JA_004040-4070
Nanyah Vegas, LLC's Opposition to Motion for Rehearing and Countermotion for Award of Fees and Costs	9/4/18	14	JA_003317-3351
Nanyah Vegas LLC's Opposition to Motion for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b)	2/15/19	17	JA_004071-4114
Nanyah Vegas, LLC's Opposition to Motion in Limine to Preclude any Evidence or Argument Regarding an Alleged Implied-in-Fact Contract Between Eldorado Hills, LLC and Nanyah Vegas, LLC	9/24/18	14	JA_003380-3386
Nanyah Vegas, LLC's Opposition to Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs	1/8/2020	37	JA_009001-9008

Nanyah Vegas, LLC's Opposition to Rogich Defendants' Motion for Attorneys' Fees and Costs	1/8/2020	37	JA_009009-9018
Nanyah Vegas, LLC's Opposition to Rogich Defendant's Motion for Summary Judgment	3/20/19	25	JA_005992-6037
Nanyah Vegas, LLC's Opposition to Rogich Defendants' Motion in Limine re: Carlos Huerta	3/20/19	24	JA_005836-5907
Nanyah Vegas, LLC's Opposition to Rogich Defendants' Motion in Limine to Preclude the Altered Eldorado Hill's Ledger and Related Testimony at Trial	3/20/19	25	JA_005908-5991
Nanyah Vegas, LLC's Opposition to Rogich Defendant's Motion to Compel	3/14/19	23	JA_005631-5651
Nanyah Vegas, LLC's Pretrial Disclosures	10/12/18	14	JA_003428-3439
Nanyah Vegas, LLC's Pretrial Memorandum	4/16/19	28	JA_006763-6892
Nanyah Vegas, LLC's Reply in Support of Motion in Limine #5 re: Parol Evidence Rule	3/14/19	23	JA_005652-5671
Nanyah Vegas, LLC's Reply in Support of Motion in Limine #6 re: Date of Discovery	3/14/19	23	JA_005672-5684

Nanyah Vegas, LLC's Reply in Support of Motion to Continue Trial and to set Firm Trial Date	5/15/18	8	JA_001826-1829
Nanyah Vegas, LLC's Reply in Support of Motion to Retax Costs submitted by Eldorado Hills, LLC, Peter Eliades, Individually and as Trustee of the Eliades survivor Trust of 10/30/08, and Teld, LLC's Memorandum of Costs and Disbursements	1/23/2020	37	JA_009033-9040
Nanyah Vegas, LLC's Reply in Support of its Motion to Retax Costs Submitted by Sigmund Rogich, Individually and as Trustee of the Rogich Family Revocable Trust, and Imitations, LLC's Memorandum of Costs and Disbursements Pursuant to NRS 18.005 and NRS 18.110	1/23/2020	37	JA_009041-9045
Nanyah Vegas, LLC's Reply in Support of Motion to Settle Jury Instructions Based Upon the Court's October 5, 2018, Order Granting Summary Judgment	3/27/19	25	JA_006114-6134

1	Nanyah Vegas, LLC's Reply	10/3/18	14	JA_003397-3402
2	to Oppositions to Motion in			
3	Limine #3 re: Defendants			
4	Bound by Their Answers to			
	Complaint			
5	Nanyah Vegas, LLC's	4/21/19	29	JA_007119-7133
6	Supplement to Its			
7	Emergency Motion to			
8	Address Defendant the			
9	Rogich Trust's NRS 163.120			
10	Notice and/or Motion to			
	Continue Trial for Purposes			
	of NRS 163.120			
11	Nanyah Vegas, LLC's	3/19/2020	38	JA_009120-9127
12	Supplement to its Opposition			
13	to Peter Eliades and Teld,			
	LLC's Motion for			
	Attorneys' Fees and Costs			
14	Nanyah Vegas, LLC's	3/19/2020	38	JA_009128-9226
15	Supplement to Its			
16	Opposition to Rogich			
17	Defendants' Motion for			
	Attorneys' Fees and Costs			
18	Nanyah Vegas, LLC's	10/31/18	14	JA_003440-3453
19	Supplemental Pretrial			
	Disclosures			
20	Nevada Supreme Court	4/29/16	4	JA_000768-776
21	Clerks Certificate/Judgment			
22	– Reversed and Remand;			
	Rehearing Denied			
23	Nevada Supreme Court	7/31/17	4	JA_000862-870
24	Clerk's Certificate Judgment			
	– Affirmed			
25	Notice of Appeal	10/24/19	36	JA_008750-8819
26	Notice of Appeal	4/14/2020	38	JA_009229-9231



1	Notice of Appeal	5/21/2020	38	JA_009283-9304
2	Notice of Consolidation	4/5/17	4	JA_000822-830
3	Notice of Cross-Appeal	11/7/19	37	JA_008921-8937
4	Notice of Entry of Decision and Order	10/4/19	33	JA_008063-8072
5	Notice of Entry of Judgment	5/6/2020	38	JA_009264-9268
6	Notice of Entry of Order	10/8/18	14	JA_003413-3427
7	Notice of Entry of Order	3/26/19	25	JA_006108-6113
8	Notice of Entry of Order	4/17/19	29	JA_007073-7079
9	Notice of Entry of Order	4/30/19	30	JA_007169-7173
10	Notice of Entry of Order	5/1/19	30	JA_007202-7208
11	Notice of Entry of Order	5/1/19	30	JA_007209-7215
12	Notice of Entry of Order	6/24/19	32	JA_007828-7833
13	Notice of Entry of Order	6/24/19	32	JA_007834-7839
14	Notice of Entry of Order	2/3/2020	37	JA_009061-9068
15	Notice of Entry of Order	4/28/2020	38	JA_009235-9242
16	Notice of Entry of Order	5/7/2020	38	JA_009269-9277
17	Notice of Entry of Order (sic)	5/7/2020	38	JA_009278-9282
18	Notice of Entry of Order	7/26/18	13	JA_003192-3197
19	Denying Motion for Reconsideration			
20				
21	Notice of Entry of Order Denying Nanyah Vegas, LLC's Motion for Reconsideration	8/13/18	13	JA_003200-3204
22				
23				
24	Notice of Entry of Order Denying Nanyah Vegas, LLC's Motion in Limine #5: Parol Evidence Rule	4/10/19	27	JA_006478-6483
25				
26				

1	Notice of Entry of Order	5/7/19	30	JA_007229-7236
2	Denying the Rogich			
3	Defendants' Motions in			
4	Limine			
5	Notice of Entry of Order	3/16/2020	38	JA_009113-9119
6	Granting Defendants Peter			
7	Eliades and Teld, LLC's			
8	Motion for Attorneys' Fees			
9	and Setting Supplemental			
10	Briefing on Apportionment			
11	Notice of Entry of Order	5/6/2020	38	JA_009257-9263
12	Granting Defendants Peter			
13	Eliades and Teld, LLC's			
14	Motion for Attorney's Fees			
15	Notice of Entry of Order	11/6/18	14	JA_003462-3468
16	Regarding Motions in			
17	Limine			
18	Notice of Entry of	5/16/19	31	JA_007603-7609
19	Stipulation and Order			
20	Suspending Jury Trial			
21	Notice of Entry of Orders	5/22/18	8	JA_001837-1849
22	Objection to Nanyah's	4/19/19	29	JA_007106-7113
23	Request for Judicial Notice			
24	and Application of the Law			
25	of the Case Doctrine			
26	Objections to Eldorado	4/5/19	27	JA_006434-6440
	Hills, LLC's Pre-Trial			
	Disclosures			
	Objections to Nanyah	4/5/19	27	JA_006423-6433
	Vegas, LLC's Pre-trial			
	Disclosures			

1	Opposition to Eldorado	6/19/18	12	JA_002917-2951
2	Hill's Motion for Summary			
3	Judgment and			
4	Countermotion for Summary			
5	Judgment			
6	Opposition to Eliades	6/19/18	11-12	JA_002573-2916
7	Defendants' Motion for			
8	Summary Judgment and			
9	Countermotion for Summary			
10	Judgment			
11	Opposition to Motion for	3/19/18	6	JA_001265-1478
12	Summary Judgment;			
13	Countermotion for Summary			
14	Judgment; and			
15	Countermotion for NRCP			
16	56(f) Relief			
17	Opposition to Motion for	5/24/19	32	JA_007773-7817
18	Summary Judgment or			
19	Alternatively for Judgment			
20	as a Matter of Law Pursuant			
21	to NRCP 50(a)			
22	Opposition to Nanyah	3/8/19	22-23	JA_005444-5617
23	Vegas, LLC's Motion in			
24	Limine #5 re: Parol			
25	Evidence Rule			
26	Opposition to Nanyah	3/8/19	22	JA_005263-5443
	Vegas, LLC's Motion in			
	Limine #6 re: Date of			
	Discovery			
	Opposition to Nanyah	1/9/2020	37	JA_009019-9022
	Vegas, LLC's Motion to			
	Retax Costs Submitted by			
	Rogich Defendants			

1	Opposition to Plaintiff's	4/18/19	29	JA_007093-7103
2	Emergency Motion to			
3	Address Defendant The			
4	Rogich Family Irrevocable			
5	Trust's NRS 163.120 Notice			
6	and/or Motion to Continue			
	Trial for Purposes of NRS			
	163.120			
7	Opposition to Plaintiff's	4/5/19	26	JA_006189-6402
8	Motion to Reconsider Order			
9	on Motion in Limine #5 re			
	Parol Evidence Rule on OST			
10	Order	4/30/19	30	JA_007165-7168
11	Order: (1) Granting	10/5/18	14	JA_003403-3412
12	Defendants Peter Eliades,			
13	Individually and as Trustee			
14	of the Eliades Survivor Trust			
15	of 10/30/08, and Teld,			
16	LLC's Motion for Summary			
17	Judgment; and (2) Denying			
	Nanyah Vegas, LLC's			
	Countermotion for Summary			
	Judgment			
18	Order: (1) Granting Rogich	5/5/2020	38	JA_009249-9254
19	Defendants' Renewed			
20	Motion for Attorneys' Fees			
21	and Costs; and (2) Denying			
22	Nanyah's Motion to Retax			
	Costs Submitted by Rogich			
	Defendants			
23	Order Denying	5/22/18	8	JA_001830-1832
24	Countermotion for Summary			
25	Judgment and Denying			
26	NRCP 56(f) Relief			

Order Denying Motion to Continue Trial Date and Granting Firm Trial Date Setting	6/4/18	11	JA_002508-2511
Order Denying Motion to Reconsider	7/24/18	13	JA_003190-3191
Order Denying Nanyah Vegas, LLC's Motion for NRCP 15 Relief	5/29/19	32	JA_007818-7820
Order Denying Nanyah Vegas, LLC's Motion for Reconsideration	8/10/18	13	JA_003198-3199
Order Denying Nanyah Vegas, LLC's Motion in Limine #5: Parol Evidence Rule	4/10/19	27	JA_006475-6477
Order Denying Nanyah Vegas, LLC's Motion in Limine #6 re: Date of Discovery	4/17/19	29	JA_007069-7072
Order Denying Plaintiff Nanyah Vegas, LLC's Motion to Settle Jury Instructions	5/1/19	30	JA_007174-7177
Order Denying Nanyah Vegas, LLC's Motion to Reconsider Order on Motion in Limine #5 re: Parol Evidence Rule	5/1/19	30	JA_007178-7181
Order Denying the Rogich Defendants' Motions in Limine	5/6/19	30	JA_007216-7218
Order Denying The Rogich Defendants' NRCP 60(b) Motion	3/26/19	25	JA_006105-6107

Order Granting Defendants Peter Eliades and Teld, LLC's Motion for Attorney's Fees	5/4/2020	38	JA_009243-9246
Order Granting Defendants Peter Eliades and Teld, LLC's Motion for Attorney's Fees and Setting Supplemental Briefing on Apportionment	3/16/2020	38	JA_009109-9112
Order Granting Motion for Award of Attorneys Fees	2/10/15	4	JA_000765-767
Order Granting Motion for Leave to Amend Answer to Complaint	1/29/18	4	JA_000884-885
Order Granting Partial Summary Judgment	10/1/14	3	JA_000691-693
Order Granting Partial Summary Judgment	11/5/14	3	JA_000694-698
Order Partially Granting Summary Judgment	5/22/18	8	JA_001833-1836
Order Regarding Motions in Limine	11/6/18	14	JA_003458-3461
Order Regarding 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	5/29/19	32	JA_007821-7823
Order Re-Setting Civil Jury Trial and Calendar Call	12/7/18	14	JA_003469-3470
Order Re-Setting Civil Jury Trial and Calendar Call	12/19/18	14	JA_003471-3472

Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call	6/6/18	11	JA_002551-2552
Partial Transcript of Proceedings, All Pending Motions (Excludes Ruling), Heard on April 18, 2018	4/23/18	7-8	JA_001718-1758
Partial Transcript of Proceedings, All Pending Motions (Ruling Only), Hearing on April 18, 2018	4/19/18	7	JA_001712-1717
Plaintiffs' Opposition to Defendant's Motion for Award of Attorneys' Fees	12/5/14	4	JA_000745-758
Plaintiff's Opposition to Defendant's Motion for Partial Summary Judgment and Counter-Motion for Partial Summary Judgment	8/25/14	3	JA_000518-664
Pretrial Memorandum	4/16/19	27-28	JA_006501-6717
Proof of Service (Eldorado Hills)	8/30/13	1	JA_000022-24
Proof of Service (Sig Rogich aka Sigmund Rogich)	9/18/13	1	JA_000025-26
Recorders Transcript of Hearing – Calendar Call, Heard on November 1, 2018	12/9/19	37	JA_008938-8947
Recorders Transcript of Hearing – Recorder's Transcript of Proceedings re: Motions, Heard on September 5, 2019	9/9/19	33	JA_008027-8053

1	Recorders Transcript of	12/9/19	37	JA_008948-8955
2	Hearing – Telephonic			
3	Conference, Heard on			
4	November 5, 2018			
5	Recorders Transcript of	5/1/19	30	JA_007182-7201
6	Hearing – Transcript of			
7	Proceedings, Telephonic			
8	Conference, Heard on April			
9	18, 2019			
10	Recorders Transcript of	12/9/19	37	JA_008956-9000
11	Proceedings – All Pending			
12	Motions, Heard on April 8,			
13	2019			
14	Reply in Support of	8/29/19	33	JA_008015-8024
15	Defendant Eldorado Hills,			
16	LLC’s Motion for Dismissal			
17	With Prejudice Under Rule			
18	41(e)			
19	Reply in Support of	8/29/19	33	JA_008007-8014
20	Defendant Eldorado Hills,			
21	LLC’s Motion for Summary			
22	Judgment			
23	Reply in Support of	10/3/18	14	JA_003391-3396
24	Defendant Eldorado Hills,			
25	LLC’s Motion in Limine to			
26	Preclude Any Evidence or			
	Argument Regarding an			
	Alleged Implied-In-Fact			
	Contract Between Eldorado			
	Hills, LLC and Nanyah			
	Vegas, LLC			
	Reply in Support of Motion	7/24/19	33	JA_007943-7958
	for Summary Judgment or			
	Alternatively for Judgment			
	as a Matter of Law Pursuant			
	to NRCP 50(a)			



1	Reply in Support of	3/28/19	25	JA_006135-6154
2	Defendants' Motion in			
3	Limine to Preclude the			
4	Altered Eldorado Hills'			
5	General Ledger and Related			
6	Testimony at Trial			
7	Reply in Support of	1/23/2020	37	JA_009023-9032
8	Defendants Peter Eliades			
9	and Teld, LLC's Motion for			
10	Attorneys' Fees			
11	Reply in Support of	7/2/18	13	JA_003077-3082
12	Defendants Sigmund			
13	Rogich, Individually and as			
14	Trustee of the Rogich			
15	Family Irrevocable Trust and			
16	Imitations LLC's Motion for			
17	Reconsideration			
18	Reply in Support of Motion	2/19/19	19-20	JA_004583-4789
19	for Relief From the October			
20	5, 2018 Order Pursuant to			
21	NRFP 60(b)			
22	Reply in Support of Motion	3/18/19	23-24	JA_005685-5792
23	to Compel Production of			
24	Plaintiff's Tax Returns			
25	Reply in Support of Motion	4/5/19	27	JA_006403-6409
26	to Reconsider Order on			
	Nanyah's Motion in Limine			
	#5; Parol Evidence Rule on			
	Order Shortening Time			
	Reply in Support of Motion	6/25/18	13	JA_003018-3052
	to Reconsider Order			
	Partially Granting Summary			
	Judgment			

1	Reply to Opposition to	4/16/18	7	JA_001689-1706
2	Counter-motion for Summary			
3	Judgment; and			
4	Counter-motion for NRC			
5	56(f) Relief			
6	Reply to Opposition to	9/18/14	3	JA_000676-690
7	Motion for Partial Summary			
8	Judgment			
9	Request for Judicial Notice	4/15/19	27	JA_006497-6500
10	Request for Judicial Notice	4/17/19	29	JA_007080-7092
11	and Application of the Law			
12	of the Case Doctrine			
13	Rogich Defendants'	3/20/19	24	JA_005819-5835
14	Opposition to Plaintiff's			
15	Motion to Settle Jury			
16	Instructions			
17	Rogich Defendants'	10/22/19	36	JA_008628-8749
18	Renewed Motion for			
19	Attorneys' Fees and Costs			
20	Rogich Defendants' Reply in	3/28/19	26	JA_006155-6167
21	Support of Motion in Limine			
22	to Preclude Contrary			
23	Evidence as to Mr. Huerta's			
24	Taking of \$1.42 Million			
25	from Eldorado Hills, LLC as			
26	Consulting Fee Income			
	Rogich Defendants' Reply in	1/23/2020	37	JA_009046-9055
	Support of Their Renewed			
	Motion for Attorneys' Fees			
	and Costs			

1 2 3 4 5 6 7	Sigmund Rogich, Individually and as a Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Joinder to Eldorado Hills, LLC's Notice of Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-in-fact Contract Theory	4/9/19	27	JA_006457-6459
8 9 10 11 12 13 14	Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Joinder to Eldorado Hills, LLC's Objections to Nanyah Vegas, LLC's 2 <sup>nd</sup> Supplemental Pre-Trial Disclosures	4/10/19	27	JA_006472-6474
15 16 17 18 19 20 21 22 23 24 25 26	Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations LLC's Joinder to Defendants Peter Eliades Individually and as Trustee of the Eliades Trust of 10/30/08 Eldorado Hills LLC and Teld's Joinder to Motion for Summary Judgment	3/8/18	6	JA_001262-1264

1	Sigmund Rogich,	4/17/18	7	JA_001707-1709
2	Individually and as Trustee			
3	of the Rogich Family			
4	Irrevocable Trust and			
5	Imitations LLC's Joinder to			
6	Defendants Peter Eliades,			
7	Individually and as Trustee			
8	of The Eliades Survivor			
9	Trust of 10/30/08, Eldorado			
10	Hills, LLC and Teld's Reply			
11	in Support of Their Joinder			
12	to motion for Summary			
13	Judgment and Opposition to			
14	Nanyah Vegas, LLC's			
15	Countermotion for Summary			
16	Judgment and NRCP 56(f)			
17	Relief			
18	Stipulation and Order	4/22/2020	38	JA_009232-9234
19	Stipulation and Order	5/16/19	31	JA_007599-7602
20	Suspending Jury Trial			
21	Stipulation and Order re:	1/30/2020	37	JA_009056-9058
22	October 4, 2019 Decision			
23	Stipulation and Order	6/13/19	32	JA_007824-7827
24	Regarding Rogich Family			
25	Irrevocable Trust's			
26	Memorandum of Costs and			
	Motion for Attorneys' Fees			
	Stipulation for Consolidation	3/31/17	4	JA_000818-821
	Substitution of Attorneys	1/24/18	4	JA_000881-883
	Substitution of Attorneys	1/31/18	4	JA_000886-889
	Substitution of Counsel	2/21/18	4	JA_000890-893
	Summons – Civil	12/16/16	4	JA_000803-805
	(Imitations, LLC)			
	Summons – Civil (Peter	12/16/16	4	JA_000806-809
	Eliades)			

Summons – Civil (The Eliades Survivor Trust of 10/30/08)	12/16/16	4	JA_000810-813
Summons – Civil (The Rogich Family Irrevocable Trust)	12/16/16	4	JA_000799-802
Summons – Sigmund Rogich	12/22/16	4	JA_000814-817
Summons – Teld, LLC	12/16/16	4	JA_000796-798
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	30	JA_007134-7145
Transcript of Proceedings, Jury Trial, Hearing on April 22, 2019	4/23/19	30	JA_007148-7164
Transcript of Proceedings, Motions, Hearing January 30, 2020	2/12/2020	37	JA_009069-9097

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**CERTIFICATE OF SERVICE**

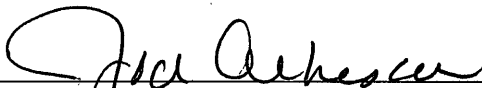
Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL JOHNSTON PC, and that on this date I caused to be served a true copy of the **JOINT APPENDIX VOL. 17** on all parties to this action by the method(s) indicated below:

X by using the Supreme Court Electronic Filing System:

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liability company; Peter Eliades, individually and as Trustee of the  
The Eliades Survivor Trust of 10/30/08*

DATED: This 9 day of July, 2021.

  
\_\_\_\_\_  
JODI ALHASAN

1 A. The entire agreement. \$1.5 million in Nanyah  
2 Vegas, 3.36 million to Antonio Nevada, my \$2.7 million  
3 is invested. The entire agreement is a provision in my  
4 opinion.  
5 Q. Besides what you're saying now, can you point  
6 to any specific provision that says he couldn't  
7 transfer?  
8 A. Do you want to read the whole agreement?  
9 Q. No.  
10 A. Okay. Well, then, I haven't read it in a year  
11 I said. So I can't point to it right now. It's like 13  
12 pages. No, I can't point to it. I think you guys are  
13 probably better off reading it in your own offices  
14 later, but if you want to read it, we can read it. I'm  
15 happy to.  
16 Q. At the time of the negotiation of the  
17 agreement, was there any discussion about having a  
18 provision in there about transfer of interests?  
19 A. Yes.  
20 Q. When was that discussion?  
21 A. With Mr. Rogich and Mr. Woloson, that they,  
22 they, Mr. Rogich, would retain an interest in Eldorado  
23 Hills, LLC, and before any of those interests were sold  
24 or conveyed, that they needed to pay us these amounts of  
25 money in order to convey those interests away.

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1 Q. And where was this discussion?  
2 A. Mr. Woloson and I would speak on the phone  
3 frequently when we were drafting this agreement. I  
4 mentioned earlier I was in Lake Tahoe for a good portion  
5 of that time, and Mr. Rogich and I met in his office  
6 frequently.  
7 Q. Why wasn't such a provision put in the  
8 agreement?  
9 A. For a man of Mr. Rogich's experience and  
10 business reputation, it was really not conceivable to us  
11 at the time that he would actually just give away his  
12 interests for free, and we still don't believe he gave  
13 it away for free.  
14 So you have been in law long enough. I think  
15 you've made your own investments. You can't think about  
16 seven years in advance and what some guy might get an  
17 idea about, a harebrained idea that can lead to all  
18 kinds of different consequences later on that you don't  
19 think of in 2006 or 2007 or 2008.  
20 You do the best that you can. You put  
21 together an agreement that you think is fair. You put  
22 together an agreement that you think is logical. An  
23 attorney participated in it. If that attorney, being  
24 Mr. Woloson, had the intention to pull a fast one on the  
25 investors, I didn't think that he would do that.

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1 Q. And that's why it wasn't put in?  
2 MR. McDONALD: Object to the form.  
3 A. You can include my whole answer. I don't want  
4 to repeat my whole answer, but my whole answer, yes, I  
5 think that's why it wasn't put in, because we could not  
6 conceive that Mr. Rogich would actually walk away from  
7 this investment for nothing, just couldn't think about  
8 that. We didn't think about that.  
9 BY MR. LIONEL:  
10 Q. Would you have liked to have had such a  
11 provision in the agreement?  
12 MR. McDONALD: Object to the form.  
13 A. I would rather have the \$4.5 million that my  
14 investors and I put in the deal, but otherwise, yes, I  
15 would like to have an additional line, and I'd actually  
16 like to have it in 15 times preferably because now you  
17 and I know that redundancy is better than not having it  
18 at all.  
19 So I would not only like to have it once, I  
20 would like to have it multiple times, but I'd rather  
21 have the \$4.5 million and all the legal fees that it  
22 takes to get there.  
23 BY MR. LIONEL:  
24 Q. Do you believe Mr. Rogich would have agreed to  
25 such a provision?

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1 A. Yes. Mr. Rogich promised that he would pay us  
2 all back. So why wouldn't he have agreed to that?  
3 Q. Are there any circumstances that would justify  
4 his having the right to transfer that without getting  
5 any consideration?  
6 MR. McDONALD: Object to the form. It calls  
7 for a legal conclusion.  
8 THE WITNESS: Can you read that question back,  
9 please?  
10 (Whereupon, the requested portion of the  
11 record was read by the reporter.)  
12 A. In my opinion, no, absolutely not.  
13 BY MR. LIONEL:  
14 Q. Suppose the value of the property would be  
15 stagnant and it was expensive to maintain the property?  
16 A. Absolutely not is the answer. Mr. Rogich,  
17 just like you would have had the common courtesy to tell  
18 me you weren't going to show up to dinner, would have at  
19 least called and said, "Hey, Carlos, Nanyah Vegas and  
20 Robert Ray and yourself are owed a bunch of money. I'm  
21 thinking about just walking away. I'm thinking about  
22 just not going to dinner because my wife has me doing  
23 stuff at the house. Are you cool with that? How about  
24 you just take it? If you want to go to dinner without  
25 me, go to dinner or not. If you want to take my

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1 interest for free, I'll just sign it over to you." That  
 2 would be common courtesy to at least give us the  
 3 opportunity.  
 4 Q. You're arguing with me.  
 5 MR. LIONEL: I move to strike the answer.  
 6 A. I'm giving you an answer. I'm giving you an  
 7 answer, Mr. Lionel. You asked me a question. I was  
 8 giving you an example and an analogy.  
 9 BY MR. LIONEL:  
 10 Q. You were giving me an argument.  
 11 A. No, I was giving you an example and an analogy  
 12 of common courtesy. You asked me if there's any  
 13 circumstance that Mr. Rogich would walk away from this  
 14 investment because the maintenance was too high or the  
 15 property had become stagnant.  
 16 Let's break down the word stagnant now.  
 17 Stagnant means that it doesn't move, right? Not that it  
 18 goes down in value. Stagnant means that it doesn't  
 19 move. That means if an asset is worth \$30 million and  
 20 it remains stagnant, that asset is still worth \$30  
 21 million.  
 22 Take it to \$35 million. Maybe a home builder  
 23 wants to buy it for \$35 million at one point. So it  
 24 remains stagnant. It didn't go down from \$30 million to  
 25 zero. I would have liked to take it even if he thought

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1 it was worth zero because I don't trust Mr. Rogich's  
 2 opinion on real estate values as much as I do my own,  
 3 but stagnant means that it wouldn't have moved down. It  
 4 didn't move down. I would have liked my interest in a  
 5 \$30 million property, not just a pure walkaway, saying,  
 6 "Hey, sorry, man, I walked away because it was  
 7 convenient." So stagnant means it's still worth  
 8 something.  
 9 Q. Supposing the property value went down?  
 10 A. I still would have a decent interest. So it  
 11 goes down from 30 million to what? Pick a number, 10,  
 12 15, 22, 23.587. It goes down to some kind of millions.  
 13 A 160-acre piece of property with an 89,000 square-foot  
 14 warehouse that TELD himself, Mr. Eliades, paid FDIC \$10  
 15 million for to buy the note I doubt would be worth  
 16 negative. It definitely is going to be worth something.  
 17 I'm in business. I'd rather have something  
 18 instead of nothing. So if it went down in value, I  
 19 still raise my hand and say I'll take my interests.  
 20 There's also a functioning gun club on that  
 21 property that actually should bring in rent. So you're  
 22 aware of that as well. I think the gun club does pretty  
 23 well. So it must make some kind of money. Otherwise  
 24 you wouldn't have the business there for five years, six  
 25 years. Desert Lake Shooting Club or something.

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1 MR. LIONEL: Would you mark this next exhibit,  
 2 please.  
 3 (Exhibit D was marked.)  
 4 MR. McDONALD: Sam, can I take a quick break  
 5 to go to the restroom?  
 6 MR. LIONEL: Sure.  
 7 (Recess taken.)  
 8 MR. LIONEL: Back on the record, please.  
 9 BY MR. LIONEL:  
 10 Q. I've given you a copy of Exhibit D, which is a  
 11 bank statement for Nevada State Bank. It shows in the  
 12 upper right-hand corner it's a statement which covers a  
 13 period for most of December, December 3rd to December  
 14 31, 2007. Is that correct?  
 15 A. Yes.  
 16 Q. And this was sent to -- it shows an account of  
 17 Canamex Nevada, LLC, Carlos Huerta, 3060 East Post Road,  
 18 Suite 110, Las Vegas. Is that correct?  
 19 A. Correct.  
 20 Q. And it shows a deposit under a section called  
 21 deposits/credits that on 12/6 a million and a half  
 22 dollars wire/in-200734000332-org Yoav, Y-o-a-v, Harlap,  
 23 H-a-r-l-a-p, semicolon, OBI, Attention: Melissa Dewin,  
 24 D-e-w-i-n, 1501200037. Is that correct?  
 25 A. Yes, sir.

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1 Q. And further down it says Check Number 92;  
 2 date, 12/10; amount, a million and a half dollars. Is  
 3 that correct?  
 4 A. Correct.  
 5 Q. And that was wired in to Canamex Nevada, care  
 6 of you, I guess, or something. Is that a fair  
 7 statement? Wired in -- whose account was this? Was  
 8 this Camanex account or Carlos Huerta?  
 9 A. It's Canamex, C-a-n-a-m-e-x, Nevada, LLC. It  
 10 was wired into that account. It's just the mailing  
 11 address is me, Carlos Huerta, but the name of the  
 12 company and the account was under Canamex Nevada, LLC.  
 13 Q. Thank you.  
 14 A. You're welcome.  
 15 Q. Do you know who Melissa Dewin was?  
 16 A. I believe she is a banker at Nevada State  
 17 Bank, or was. I don't know if she still works there.  
 18 Q. Did you give Mr. Harlap instruction to send --  
 19 wire this money in to her attention?  
 20 A. Yes. I don't think that that's her whole  
 21 name, by the way. I think it cuts it off.  
 22 Q. The name of the account was Canamex Nevada,  
 23 LLC?  
 24 A. Yes, sir.  
 25 Q. And that was an account that you had open,

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1 correct?

2 A. Yes.

3 Q. And you had instructed Mr. Harlap to send the

4 money -- wire the money to that account. Is that

5 correct?

6 A. Yes.

7 Q. And when you had testified earlier this month

8 that the million and a half was sent by Mr. Harlap by

9 wire to Nevada State Bank to the account of Eldorado,

10 you were mistaken. Is that correct?

11 MR. McDONALD: Object to the form.

12 A. I just -- at the time, I don't think that I

13 remembered if it went into Canamex Nevada or to Eldorado

14 Hills, LLC. So I was not sure at the time whether it

15 went into one or the other.

16 You had asked me about that via or through

17 Canamex Nevada, LLC, parentheses, in that agreement, and

18 that kind of jarred my memory about Canamex Nevada. So

19 I just wasn't sure at the time, but \$1.5 million did go

20 into Canamex Nevada, and then the \$1.5 million was

21 deposited into Eldorado Hills, LLC.

22 BY MR. LIONEL:

23 Q. We talked about the check process, Check

24 Number 92 dated 12/10 for a million and a half dollars,

25 and if you look at the next page, which is Plaintiffs

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1 00120, it has what appears to be the check. Is that

2 correct?

3 A. What are you saying about 00120?

4 MR. McDONALD: There (Indicating).

5 A. Oh, that's the Bates number. I was looking up

6 at the top.

7 BY MR. LIONEL:

8 Q. Sorry.

9 A. I kept looking for that number and couldn't

10 find it. I lost track of what you were saying.

11 Q. Sorry.

12 A. No, it's my fault.

13 Q. But that's a copy of the million and a half

14 check that you drew out of the Canamex Nevada bank

15 account --

16 A. Exactly.

17 Q. -- to Eldorado. Is that correct?

18 A. Yes, sir.

19 Q. So the money was not wired to that account.

20 It was put in that account by your check?

21 A. Correct.

22 MR. LIONEL: The next exhibit is D?

23 THE REPORTER: E.

24 (Exhibit E was marked.)

25 BY MR. LIONEL:

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1 Q. I'm giving you a copy of Exhibit E.

2 A. This is Exhibit E?

3 Q. Yes, that is a statement of the account at

4 Nevada State Bank, and it covers a period of the month

5 of December 2007, correct?

6 A. The Eldorado Hills account?

7 Q. Yes.

8 A. It's the Eldorado Hills Nevada State Bank

9 statement for December 2007.

10 Q. And it was sent to Eldorado Hills at your 3060

11 East Post Road, Suite 110?

12 A. Yes.

13 Q. And you received it?

14 A. Yes.

15 Q. And it shows under deposits/credits December

16 '07, there was a million and a half in the account,

17 correct?

18 A. Yes, under deposits and credits in the middle

19 of the page. Are you looking there?

20 Q. Yes.

21 A. Correct.

22 Q. And just below it, charges and debits, it

23 shows on 12/10 \$1,450,000, indicating an internet

24 transfer to DDA, and there are numbers and letters after

25 that. Is that correct?

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1 A. Yes, on December 10, correct.

2 Q. And it shows the last series of entries on the

3 page that on 12/04 the balance in the account was

4 \$1,870.51, and on 12/07, it was \$1,501,870.51. Is that

5 correct?

6 A. That's right.

7 Q. And the next page of the exhibit it shows in

8 the upper left-hand corner what they use as a net

9 deposit credit. It shows a million and a half dollars.

10 Is that correct?

11 A. Yes.

12 MR. LIONEL: Now we come to Exhibit F, one for

13 you, Ms. Reporter, and one for you.

14 (Exhibit F was marked.)

15 BY MR. LIONEL:

16 Q. This is a bank statement of Nevada State Bank

17 for the month of December of 2007. The bank statement

18 of Eldorado Hills, LLC, was sent to the -- to it,

19 Eldorado Hills, LLC, at 3060 East Post Road, Suite 110.

20 Did you receive it?

21 A. Yes, sir.

22 Q. And halfway down the page it says money market

23 account-business 612029199. It shows previous balance

24 2,373.22; deposits/credits, \$1,450,779.35, and it shows

25 checks processed, 1,420,000. Is that correct?

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1 A. Yes, correct.

2 Q. And then below that it shows deposits/credits,

3 12/10, \$1,450,000, internet transfer from DDA, and on

4 12/31, \$779.35 as an interest payment on apparently the

5 million four fifty, I guess.

6 A. Correct.

7 Q. And that million four fifty came from the

8 million and a half that had been deposited by your check

9 from Canamex Nevada, correct?

10 A. Correct.

11 Q. And below it says check processed on 12/14,

12 \$1,420,000.

13 MR. LIONEL: Off the record.

14 (Whereupon, there was a discussion off the

15 record.)

16 BY MR. LIONEL:

17 Q. That \$1,420,000 check processed, that was a

18 check that you drew on the money market account of

19 Eldorado payable to Go Global. Is that correct?

20 A. I believe so, yes.

21 The most incredible thing here is that we used

22 to earn 4.53 percent interest at the bank in 2007.

23 Q. I noticed that.

24 A. That doesn't happen anymore.

25 MR. LIONEL: Counsel, don't we have a copy of

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1 the check?

2 MR. McDONALD: Of the check itself?

3 MR. LIONEL: Yes.

4 MR. McDONALD: I don't know. Do you still

5 have a copy of the check itself?

6 MR. LIONEL: The documents you gave me today

7 just indicate on the account -- I'm sorry.

8 THE WITNESS: I don't recall having a copy of

9 that check. I don't even know if we had official checks

10 for the money market account, but it could have been

11 maybe a counter check or a cashier's check, but I don't

12 remember. I haven't seen it lately.

13 MR. LIONEL: Would you mark this as the next

14 exhibit. Is it G?

15 THE REPORTER: Yes.

16 (Exhibit G was marked.)

17 THE WITNESS: Excuse me one minute.

18 BY MR. LIONEL:

19 Q. Your lawyer delivered this morning at the

20 beginning of the deposition two pages which contain a

21 bank statement of Go Global, Inc., for December 2007

22 which shows on 12/14 a deposit of \$1,420,000. Do you

23 have a copy of that?

24 A. No.

25 MR. McDONALD: I didn't make copies of it.

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1 A. Not with me, I mean.

2 BY MR. LIONEL:

3 Q. Okay. Exhibit G is a two-page document. The

4 second page shows or purports to be a copy of a

5 withdrawal of \$1,420,000 on 12/14/07 and bearing the

6 notation "per e-mail request from Carlos Huerta,

7 transfer from" an account number, I assume, "612024471."

8 Would you look at that?

9 A. Sure. Okay.

10 Q. Is that correct the way I described it?

11 A. Yes.

12 MR. LIONEL: After lunch, we can do this. Why

13 don't we take a break now for lunch.

14 MR. McDONALD: Okay.

15 (Recess taken.)

16 BY MR. LIONEL:

17 Q. Mr. Huerta, do you have a general ledger for

18 the period that you were at Eldorado?

19 A. Yes, and it should be produced to you, and if

20 it hasn't, it should be soon.

21 Q. It has not.

22 MR. McDONALD: Which one, the general ledger?

23 MR. LIONEL: Yes.

24 A. But yes.

25 BY MR. LIONEL:

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1 Q. For what period is that general ledger?

2 A. Um, it should be from '06, and probably the

3 middle of '06 when it started, and at one point maybe to

4 the end of 2008 or near the end of 2008, I believe.

5 Q. And it would include entries in the QuickBooks

6 with respect to Mr. Harlap's million and a half,

7 correct?

8 A. I didn't maintain that general ledger

9 personally, so I can't answer you that question as if I

10 did it on my own, but I'm presuming that it would

11 contain that transaction.

12 Q. When is the last time you saw that general

13 ledger?

14 A. Not that long ago. I gave it to

15 Mr. McDonald's office, but I didn't sit there and

16 examine it. I just gave it to his office. You know

17 what I mean? I didn't look at it in terms of the

18 details.

19 MR. McDONALD: I think I just recently got it.

20 So I was reviewing it. I'll probably -- I can get it to

21 you by the end of this week.

22 MR. LIONEL: Okay.

23 THE WITNESS: Ms. Olivas has it as well.

24 BY MR. LIONEL:

25 Q. In October of 2008, did Mr. Woloson ask for

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1 your assistance for information with respect to Eldorado  
2 investors?

3 A. When you say ask for my insistence --

4 Q. Yes.

5 A. -- I'm not sure what you mean by that.

6 Q. Did he ask you about it?

7 A. Yes.

8 Q. And did you give him information?

9 A. Yes.

10 Q. What was the form of the information?

11 A. I don't remember, but a lot of it was speaking  
12 over the telephone.

13 Q. Was there anything in writing like e-mails or  
14 anything like that?

15 A. Between Mr. Woloson and I?

16 Q. Yes.

17 A. Specific to the investors I don't remember,  
18 but I would suspect there were some e-mails about them.

19 Q. What?

20 A. I would suspect there were some e-mails about  
21 it -- about them.

22 MR. LIONEL: Would you mark this.

23 (Exhibit H was marked.)

24 BY MR. LIONEL:

25 Q. Exhibit H is a two-page e-mail bearing Bates

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1 Number SR002047 and 48. Is this an e-mail that you sent  
2 to Melissa Olivas?

3 A. And to Sig Rogich.

4 Q. And cc'd to Sig Rogich.

5 A. So the answer is yes.

6 MR. LIONEL: This would be I, Ms. Reporter.

7 THE WITNESS: You see up there Eldorado Hills,  
8 and it says Investor. Below are the names. I'm not  
9 sure if Mr. Woloson received a copy of this or not.

10 MR. LIONEL: This will be I.

11 (Exhibit I was marked.)

12 BY MR. LIONEL:

13 Q. I show you what has been marked Exhibit I, a  
14 one-page exhibit bearing Bates Number SR002049 which  
15 appears to be an e-mail that you did send to Mr. Woloson  
16 with a copy to Ms. Olivas, and off the record, I've lost  
17 my voice somewhere.

18 A. That's all right. We can hear you well.

19 Q. Is this an e-mail that you sent?

20 A. It is.

21 Q. Would you look at it. I'm going to ask you a  
22 few questions.

23 A. Sure.

24 (Witness examined document.)

25 Q. I'm looking at what's apparently the fourth

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1 paragraph which says, "In regards to Nanyah, you are  
2 right; they are in Canamex."

3 What were you referring to?

4 A. Not Nanyah.

5 Q. And it says, "You are right; they are in  
6 Canamex."

7 A. Yes.

8 Q. Were you talking about his investment, the  
9 Harlap investment?

10 A. Correct.

11 Q. Was, in fact, in Canamex?

12 A. Correct, correct.

13 Q. Not in Eldorado?

14 A. Correct.

15 Q. But that was when -- I better read the whole  
16 sentence.

17 "In regards to Nanyah, you are right; they are  
18 in Canamex, but that was when we were pretty sure, as  
19 per Sig, that Dr. Nagy was coming in as an investor  
20 (when you, Melissa, Craig, and I met in your old  
21 office.)" What's that about?

22 A. Well, I didn't remember this e-mail when we  
23 were talking about it earlier, but it's consistent with  
24 everything that I said earlier. It actually goes on,  
25 and it reads how we need to transfer Nanyah's --

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1 Q. I know what it reads. Would you explain the  
2 part I just read to you.

3 A. So, yes, but you asked me to explain it. So  
4 that's what I'm trying to do.

5 So Dr. Nagy is a guy that I did not know, but  
6 now I recall, thanks to this e-mail, that this was Sig  
7 Rogich's investor who he never brought to the table. I  
8 was bringing Yoav Harlap. Mr. Rogich was brining  
9 Dr. Nagy. Dr. Nagy never ended up investing, but it  
10 shows that we were working in unison to try and bring  
11 investors to our project.

12 So Nagy is a guy that Sig was going to bring  
13 as an investor, as I brought Yoav Harlap. So we were  
14 going to bring both Nagy and Harlap into Canamex. We  
15 already explained that, I think, ad nauseam what  
16 happened to Canamex. Nagy never came in. Sig walked  
17 away with Eldorado with his purchase agreement to buy  
18 out the investors.

19 Q. The next line, "We'll have to, somehow,  
20 transfer Nanyah's interests to Eldorado, since the  
21 intentions of taking their one and a half million was to  
22 really be an investment into the 160-acre property, not  
23 necessarily in a phantom company."

24 Does that support the fact that Nanyah's  
25 interests was not in Eldorado but was in Canamex?

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1 MR. McDONALD: Object to the form.

2 A. I disagree with you. I disagree with your

3 statement.

4 BY MR. LIONEL:

5 Q. What do you disagree with, what part of my

6 statement?

7 A. That the \$1.5 million that Yoav Harlap and/or

8 Nanyah provided actually ended up in Eldorado Hills,

9 LLC. Eldorado Hills, LLC, benefitted from the

10 \$1,500,000. Eldorado Hills accepted the \$1,500,000. So

11 the money that was sent into Canamex basically ended up

12 in Eldorado Hills, LLC's account.

13 So Nanyah's or Harlap's investment should be

14 credited, and he should have been made a member, and I'm

15 actually detailing that out to Mr. Woloson very, very

16 similar to what I explained earlier when you were asking

17 me questions before lunch.

18 Q. But on October 25, 2008, when you sent this

19 e-mail, was Mr. Harlap's interests in Canamex or

20 Eldorado?

21 A. It should be in Eldorado.

22 Q. But it was, in fact, in Canamex, wasn't it?

23 A. I think it should have been in Eldorado. The

24 document wasn't signed. We didn't prepare an agreement.

25 So his interest was in Eldorado. Just because there

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1 wasn't a certificate doesn't mean he doesn't have an

2 interest in the company.

3 When Sig Rogich paid \$50,000 to Craig Dunlap,

4 Craig Dunlap didn't have a certificate. So like I said,

5 these companies were not operated like a nationally

6 rated FDIC bank or a law firm. They were closely held.

7 We dealt with friends and family or people that we knew.

8 We didn't always give a certificate. We didn't always

9 properly document everything.

10 The million and a half went into Eldorado

11 Hills, LLC, and I maintain that Nanyah Vegas' interest

12 should have been in Eldorado Hills, LLC.

13 Q. But it was, in fact, in Canamex?

14 A. I say that it's in Eldorado.

15 Q. Well, let me read the first sentence in this

16 paragraph or part of it.

17 "In regards to Nanyah, you are right; they are

18 in Canamex." Was that right? Is that what you said?

19 A. That's what's typed there, yes. You just read

20 verbatim what that sentence says.

21 Q. That's my best reading. That's what it says,

22 doesn't it?

23 A. It says that, but the meaning of it -- you

24 have to read the whole paragraph, not just the one --

25 you know, first ten words in the sentence.

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1 Read the whole paragraph, and let's talk about

2 what happened with the whole deal to get a big-picture

3 understanding of what happened with the transaction.

4 You can't just read one little sentence.

5 Q. I don't need a speech. I don't need a speech,

6 Carlos.

7 "We'll have to somehow transfer Nanyah's

8 interest to Eldorado." What did you mean by that?

9 A. I think that's pretty clear. We need to move

10 Nanyah's interests into Eldorado Hills to correctly

11 reflect the \$1,500,000 that Eldorado Hills benefitted

12 from.

13 Q. Do you have Exhibit B there? That's the

14 purchase agreement and the complaint.

15 A. Yes.

16 Q. I'm going to go through some portions of this

17 complaint and ask some questions.

18 Would you look at Page 3, please?

19 A. Of the complaint?

20 Q. Yes.

21 A. 2003 or just Page 3?

22 Q. Page 3.

23 A. General Allegations?

24 Q. Paragraph 12, that's correct.

25 "Upon information and belief, sometime in

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1 2012, Rogich conveyed his membership interest in

2 Eldorado to TELD, LLC."

3 And when I say Rogich, we're talking really

4 about his family trust. You understand that?

5 A. I'll take you at your word, but, no, I --

6 Q. No, you don't have to take me at my word. Are

7 we talking about Mr. Rogich here, or are we talking

8 about his trust, family trust?

9 A. One or the other. I don't know which one.

10 We're suing both of them, right, and Eldorado Hills,

11 LLC?

12 Q. No.

13 A. What?

14 Q. You're not.

15 A. We're not suing Sig Rogich?

16 Q. That's correct.

17 A. Okay. So it's his family trust then.

18 Q. Fine. And every place when I say Rogich in

19 here, reading from the amended complaint, it's a

20 reference to his family trust.

21 A. Okay.

22 Q. What was the information that you talk about

23 there?

24 A. We already discussed this. This is when Sig

25 Rogich and I spoke in around October of 2012. He told

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1 me that --

2 Q. All right. It was from Mr. Rogich that you

3 testified to. Is that correct?

4 A. Yes.

5 Q. Fine. It says, "Rogich failed to inform

6 Huerta and Go Global of his intentions to transfer all

7 the acquired membership interest in Eldorado to TELD,

8 and was only informed after the transfer had in fact

9 occurred."

10 Now, what I'm asking you now is what provision

11 or term in the agreement required him to inform you or

12 Go Global?

13 A. I'm going to give the same answer as before.

14 You have to read the entire agreement. When you say

15 that you're going to pay somebody back, it doesn't

16 really matter how you pay them back. He's supposed to

17 pay us back money. If it comes from Eldorado and he

18 wants to pay it from Eldorado, have him pay it from

19 Eldorado, but the fact that he gave away the only

20 interest that the investors, including myself, had to

21 point at without telling us is, I think, in violation of

22 the spirit of the agreement.

23 Q. But is there any specific provision that says

24 he was required to inform you?

25 A. The entire purchase agreement is a provision

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1 in my opinion. So, yes, it is in violation of the

2 entire agreement.

3 Q. Is there any specific provision?

4 A. I don't know. If we want to read the whole

5 thing, we can do that. I don't know of a specific

6 provision. The entire agreement says he's supposed to

7 pay back money. He took \$4.5 million and then gave it

8 away for free without telling us.

9 Q. Paragraph 13, "That by conveying the

10 membership interest to TELD, Rogich breached the

11 agreement," and I'm asking you whether there's any

12 specific term in there that said he could not convey the

13 interest?

14 A. The whole entire agreement is a provision.

15 Q. But no specific provision?

16 A. We would have to read the whole thing.

17 Q. You want to read it? Go ahead.

18 A. Do you want me to read it?

19 Q. Go ahead if --

20 A. No, I don't want to read it. I'm saying the

21 whole agreement is a provision. I've read it before.

22 Q. I understand your answer. What you're saying

23 is, if I'm correct, there is no specific term. You

24 believe the entire agreement supports that he had an

25 obligation?

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1 A. That's right.

2 Q. Fine. Now, I'm going to read another sentence

3 in that Paragraph 13.

4 A. Okay.

5 Q. "Eldorado received the benefit of the debt,

6 which formerly represented the membership capital

7 account of Huerta and Go Global, as they were enabled to

8 use those capital funds for their own benefit without

9 providing any benefit to Huerta and Go Global."

10 Please explain to me what those capital funds

11 are you're referring to in there.

12 A. They are mentioned on Page 10 of the purchase

13 agreement, and they are mentioned on Page 2 of the

14 purchase agreement in 2(a) -- that's Exhibit B -- that

15 Sig Rogich initialed.

16 Q. That is capital -- referring to capital funds?

17 A. Yes, money.

18 Q. How much money are we talking about?

19 A. Well, Go Global invested and had \$2.747

20 million or so, thereabouts, about \$2.7 million, and the

21 other investors had respectively, that I was responsible

22 for, about \$1.8 million, a little bit more.

23 Q. Well, we're talking about the capital accounts

24 of Huerta and Go Global here, and I'm asking you when

25 you say they were enabled to use those capital funds,

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1 are you talking the 2 million 7, that in some way

2 Eldorado was able to use those funds?

3 A. Yes.

4 Q. Was that capital cash that was there that they

5 could use or something, a credit or something?

6 A. They were moneys sent either via check or

7 wire, not actual cash but money deposited into Eldorado

8 Hills' bank account which Eldorado Hills used to

9 purchase the 160 acres and to maintain the 160 acres and

10 to begin developing the 160 acres that Eldorado Hills,

11 LLC, owns still today, to my knowledge, unless they've

12 sold it.

13 Q. At the time of the agreement in October of

14 2008, you and Go Global had a capital account, right?

15 A. Yes.

16 Q. And the capital account had this 2 million 7?

17 A. Right.

18 Q. And explain to me how they were able to use

19 that capital account.

20 MR. McDONALD: I believe that's been asked and

21 answered.

22 A. They used it to purchase the property and

23 maintain the property that Eldorado Hills, LLC, owns.

24 BY MR. LIONEL:

25 Q. That was before October of 2008?

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1 A. Correct.

2 Q. Okay. Paragraph 15 you're talking about

3 Nanyah, even though it talks about Nanyah and Ray.

4 You say -- I'll withdraw.

5 Paragraph 17, "While Ray's interests in

6 Eldorado are believed to have been preserved, despite

7 contrary representation by Sigmund Rogich. Nanyah never

8 received an interest in Eldorado while Eldorado retained

9 the one million five." We're talking about Mr. Harlap's

10 million five?

11 A. Yes.

12 Q. And how much of that money did Eldorado get?

13 A. A million five, \$1,500,000.

14 Q. How about the million four twenty that you

15 gave to Go Global?

16 MR. McDONALD: Object to the form.

17 BY MR. LIONEL:

18 Q. Wasn't that out of the million five?

19 A. No.

20 Q. The million four twenty was not out of the --

21 A. No.

22 Q. Where did it come from?

23 A. Prior to Nanyah's investment, Go Global had

24 actually put in \$4,100,000 into Eldorado Hills, LLC. So

25 the \$4,100,000 was Go Global's. So if we would have

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1 rewritten this document, it could just say forget about

2 Nanyah Vegas, you owe Go Global \$4,100,000, but that

3 wouldn't have been as accurate as the fact that Go

4 Global had a capital account of \$2.7 million,

5 plus/minus, and then Nanyah Vegas had a million and a

6 half.

7 So you're confusing the fact that Go Global

8 now was repaid a million four twenty, which we went over

9 already, but Go Global already had invested almost --

10 over \$4.1 million as of September of 2007. So \$4.1

11 million minus a million five, that's where it comes out

12 to about \$2.7 million, because Go Global actually added

13 a little bit more money after the 1.5 or right around

14 there.

15 So we got up to 4.1 million. Go Global took

16 back 1.42 million. We're not double dipping. I think

17 you're trying to give too much credit away. So either

18 Go Global has \$4.1 million or Go Global has 2.7 and

19 Nanyah has the 1.5.

20 Q. Mr. Harlap sent a million five to Canamex

21 Nevada, correct?

22 A. Correct.

23 Q. And of that million five, you gave a million

24 and four twenty to Go Global. Isn't that right?

25 A. No.

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1 MR. McDONALD: Object to the form.

2 A. No, it's not right. We've gone over those

3 bank statements. You need to review them again. I'm

4 positive that it's not right.

5 BY MR. LIONEL:

6 Q. You're entitled to your --

7 A. No, no, no. I'm positive it's not right. We

8 can review the bank statements if you want. You missed

9 a step.

10 Q. If Canamex -- if the million five that was

11 sent by Mr. Harlap had not been sent, would there have

12 been a million four twenty in Eldorado for you to give

13 to Go Global?

14 MR. McDONALD: Object to the form.

15 A. There had already been money in Eldorado prior

16 to Harlap sending the money because Go Global had

17 already put in \$4,100,000. So the answer is there would

18 have been money, but Eldorado Hills used that money to

19 pay off debt to Antonio and to ANB Financial.

20 So there was money in Eldorado, but Eldorado

21 chose to take that money and pay off its debts, Go

22 Global's money, and Eldorado Hills owed Go Global that

23 money. Go Global had \$4,100,000 of real money in

24 Eldorado Hills' accounts.

25 BY MR. LIONEL:

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1 Q. I'll refer you to Exhibit E.

2 A. Okay. Got it.

3 Q. Isn't it true -- and I'm looking at daily

4 balances -- on 12/4, Eldorado's balance was \$1,870.51?

5 A. Yes, Mr. Lionel, this is a snapshot. That's

6 what a bank statement is. It's a snapshot of a specific

7 time period. You're narrowing it down to a snapshot.

8 Prior to this, \$4,100,000 went into Eldorado Hills'

9 account.

10 Q. No. It shows a daily balance on 12/7 of

11 \$1,501,870.51, correct?

12 A. Yes. You read that earlier. I agree.

13 Q. Thank you. And actually then that number

14 consisted of two things, the million five that came from

15 Mr. Harlap and 1,870.51, which was the balance prior to

16 the million five coming into the account. Is that

17 correct?

18 A. Not exactly, because then you see on December

19 10th 15,000 was deposited, on December 21st, 175,000 was

20 deposited, and on December 26th, 25,000 was deposited.

21 Q. I'm talking about what I just said about what

22 was the balance on 12/4 and 12/7 of '07, the numbers I

23 gave you, 1,870.51 on 12/4, 12/7, 1,501,870.51. Is that

24 correct?

25 A. Yes, the balance on December 7, 2007 in the

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1 Eldorado Hills, LLC, bank account was \$1,501,870.51.  
 2 Q. Thank you.  
 3 A. Thank you.  
 4 Q. And the \$1,420,000 that you gave to Go Global  
 5 came out of that \$1,501,870.51. Isn't that correct?  
 6 MR. McDONALD: Object to the form.  
 7 A. Yes.  
 8 BY MR. LIONEL:  
 9 Q. I understand your position.  
 10 A. Thank you, sir.  
 11 Q. And I think you understand mine.  
 12 A. If you say so.  
 13 Actually, I really don't understand yours, but  
 14 I'm not trying to be -- I don't. I'm not trying to be  
 15 funny or anything. We can go over the numbers, but it  
 16 seems like you're trying to narrow down something that  
 17 was definitely in the account. So there is where I get  
 18 a little confused, but I'm trying to do my best to  
 19 answer your question.  
 20 Q. I'm not sure why you're confused. Let's  
 21 assume this is a million five. I'm holding this bottle  
 22 of water. The million five came from Mr. Harlap.  
 23 Within a week, a million four twenty of that was taken  
 24 out of that million five and given to Go Global.  
 25 A. That's true, but in September, four months

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1 earlier, Go Global had advanced \$2,200,000 to Eldorado  
 2 Hills which Eldorado Hills said that it would pay back  
 3 to Go Global. So that's a big point there.  
 4 Q. All right. You've made your point.  
 5 A. Okay.  
 6 Q. Paragraph 18, that Nanyah is entitled to the  
 7 return of the \$1.5 million -- I guess there's a zero  
 8 left out -- from Eldorado?  
 9 A. Yes.  
 10 Q. And that is -- well, strike that.  
 11 Why is it entitled to the return of 1,500,000?  
 12 MR. McDONALD: Object to the form.  
 13 A. Because it invested a million five, and  
 14 Mr. Rogich promised me in a conversation, and also tried  
 15 to put it down on several documents, that it would  
 16 receive a million five back for the investment that  
 17 Nanyah Vegas brought in.  
 18 It's actually a great deal for Eldorado to  
 19 take a million five for free, not pay any interest and  
 20 just give them the money back. All he had to do is give  
 21 the money back, not even asking for any interest.  
 22 BY MR. LIONEL:  
 23 Q. But this million five that you're talking  
 24 about here is a million five that came from Mr. Harlap  
 25 which you gave \$1,420,000 to Go Global.

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1 MR. McDONALD: Object to the form.  
 2 A. Go Global had put in \$4,100,000 into Eldorado  
 3 Hills, LLC. Eldorado, LLC, had taken almost \$4.5  
 4 million in investment capital from Go Global and its  
 5 investors.  
 6 Q. But that really -- we're back to my bottle of  
 7 water here. You say this million five was a million  
 8 five that came from Mr. Harlap?  
 9 A. It did.  
 10 Q. And you gave a million four twenty of that  
 11 million five to Go Global.  
 12 MR. McDONALD: Object to the form. Asked and  
 13 answered.  
 14 BY MR. LIONEL:  
 15 Q. I need an answer. You want the reporter to  
 16 read it back?  
 17 A. No, you didn't ask me a question. You just  
 18 stated a fact. You stated a fact as you see it. I  
 19 don't see it your way. You've kind of stated it and  
 20 restated it. You didn't actually ask me a question.  
 21 You just mentioned something. So I don't know what to  
 22 really answer you.  
 23 Q. The million five that you refer to in  
 24 Paragraph 18 came from Mr. Harlap. Isn't that true?  
 25 A. Yes.

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1 Q. And out of that -- and the million four twenty  
 2 that you gave to Go Global came out of that \$1,500,000  
 3 which came from Mr. Harlap.  
 4 A. I disagree.  
 5 Q. All right. Where did it come from, that  
 6 million five?  
 7 A. The way I look at it, it actually came from Go  
 8 Global four months prior to.  
 9 Q. Prior to Mr. Harlap sending the million five?  
 10 A. Yes, right.  
 11 Q. And it came out of that, not his million five.  
 12 Is that what you're saying?  
 13 A. The money is money. If you have five dollars  
 14 in one pocket and five dollars in another pocket, you  
 15 have ten dollars. Which one you use to pay for the  
 16 movie and which one you use to pay for the popcorn  
 17 doesn't matter.  
 18 My money, Go Global's money, \$4 million of it  
 19 was in Eldorado prior to Harlap's money going in. So  
 20 some of that Go Global money was to be considered a loan  
 21 temporarily to Eldorado Hills. So Eldorado Hills owed  
 22 Go Global some of that money. So when Eldorado Hills  
 23 received the Harlap money, it was able to repay some of  
 24 the \$4.1 million that Go Global had previously invested,  
 25 not all of the \$4.1 million, only 1,420,000 of the \$4.1

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1 million.

2 So if you want to call it that it came from

3 Harlap and that's Harlap's money, you can choose to do

4 that, but I'm saying that Go Global had already put

5 money into the company.

6 Q. That's not what you were talking about.

7 A. So where did that money go? Where did the Go

8 Global money go, the 4.1 million?

9 Q. You were the manager.

10 A. No, I know where it went. I'm telling you

11 where it went, but you choose not to pay attention to

12 it. You're just asking me one sentence. You're saying

13 that the Harlap money went to pay Go Global. If that's

14 what you say, you say. I have my facts as well.

15 My facts are Eldorado Hills already had \$4.1

16 million of Go Global's money, and Go Global was owed

17 that money. So whether it's Harlap's money or Rogich's

18 money or Robert Ray's money, it doesn't matter. Go

19 Global was owed money, and it's still owed money today,

20 \$2.7 million of it is what we are saying in this

21 lawsuit, and we're saying that Nanyah Vegas is owed a

22 million five.

23 Q. And when you talk about the four million,

24 you're talking about money that had been contributed or

25 put into the company -- when I say company, I'm talking

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1 about Eldorado -- sometime between 2006 and -- 2006 and

2 December of 2007. Is that correct?

3 A. Yes.

4 Q. And that's -- and you say it was out of that

5 that you took this consulting fee, this fee for

6 consultation in 2007?

7 MR. McDONALD: Object to the form.

8 A. No.

9 BY MR. LIONEL:

10 Q. Let me read Paragraph 19. "As a direct result

11 of the actions of the defendants, plaintiffs have been

12 damaged in an amount in excess of 10,000." What damages

13 are you talking about? How do you -- strike that.

14 How do you say they were damaged in an amount

15 in excess of 10,000?

16 MR. McDONALD: Object to the form, calls for a

17 legal conclusion.

18 You can answer.

19 A. I'm trying to give an answer that is

20 applicable. I think we've been damaged in several ways.

21 BY MR. LIONEL:

22 Q. How have you been damaged?

23 A. Number one, if the money would have been paid

24 back, as my understanding of our agreement, when Rogich

25 conveyed his interest away in Eldorado Hills, I could

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1 have taken that \$2.7 million and done something else

2 with it, earned interest in an account, bought a stock,

3 pay off debt. I could have been benefiting from not

4 paying interest on other loans that I have.

5 Number two, we've had to actually hire

6 Mr. McDonald's office, pay him legal fees, spend money

7 copying papers, talking through all of this with you

8 instead of being out earning money at my job.

9 So I've been damaged way more than \$10,000

10 just in the interest that I could have earned alone on

11 the \$2.7 million, which doesn't include Yoav Harlap's

12 \$1.5 million.

13 Q. If he had not transferred that property, would

14 you have received anything?

15 MR. McDONALD: Object to the form.

16 A. I don't know where the property -- if he sold

17 the property, if he's selling the property, I probably

18 would be receiving some kind of rent or income from the

19 gun club because there's a functioning business on

20 there, and it's quite successful from my understanding.

21 It brings in a lot of customers. So it would be nice to

22 receive some rent. You like to receive rent on your

23 properties I'm sure. I would like to receive some rent.

24 I think the thing is actually positive cash flow. I

25 don't think that the maintenance on that property is so

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1 vast or great that it's cost prohibitive to keep.

2 BY MR. LIONEL:

3 Q. Have you seen the tax returns for Eldorado for

4 the year 2012?

5 A. No, I'm not sent tax returns from Eldorado.

6 Q. Have you seen the tax returns for 2011?

7 A. No.

8 Q. Have you seen it for 2010?

9 A. No.

10 Q. Have you seen it for 2009?

11 A. No.

12 Q. You're sure?

13 A. I'm sure. I haven't seen the tax returns.

14 I've seen some K-1s for some of those years that were

15 sent to Robert Ray or the Ray Family Trust but not the

16 full tax return.

17 Q. What do those tax returns show, those K-1s?

18 A. Nothing that -- I don't have them in front of

19 me. I look at K-1s frequently -- nothing that glared

20 out at me, nothing that said huge losses.

21 Q. Did -- anything on there that showed any

22 profits?

23 A. Well, as a matter of fact, if we actually got

24 to go and maybe depose the operators of the gun club

25 that probably are there for free and not paying rent and

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1 absorbing about 60 acres, that would be interesting  
 2 because Mr. Eliades' son, I believe, ran that gun club,  
 3 if he still doesn't, for quite a long time. So that 60  
 4 acres is basically either not paying rent to Eldorado  
 5 Hills, LLC, the gun club, for the plus/minus 60 acres,  
 6 or they are keeping all of the profits themselves. So  
 7 it's kind of debatable on how that property and how that  
 8 business is run. My guess is they just get free rent.  
 9 So that's kind of an abatement.

10 That should be rent that's paid towards  
 11 Eldorado Hills, LLC. In most traditional real estate  
 12 deals, when a landlord owns property and a business is  
 13 on that property or in a building occupying space and  
 14 running its business, normally it would pay rent,  
 15 percentage rent, monthly rent, annual rent.

16 So my guess is there are some profits that  
 17 maybe aren't showing up in the Eldorado Hills tax  
 18 returns because Mr. Eliades and Mr. Rogich have  
 19 controlled that property. So they choose to do whatever  
 20 they want with the income from the gun club, but maybe  
 21 it's not being reflected appropriately in the tax  
 22 returns of the Eldorado Hills, LLC, for the years 2009  
 23 or 2010 or 2011 or 2012.

24 Q. Are you aware -- I think you testified -- no,  
 25 put another way.

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1 Are you aware of any distributions that  
 2 Eldorado has ever made?

3 A. No, and that's, I think, one big reason why  
 4 we're here today.

5 Q. I beg your pardon?

6 A. And I think that's one major reason why we're  
 7 here today, because they have the assets, and they keep  
 8 the income, and they don't make distributions, and they  
 9 kept \$4.5 million of our money. You think that sounds  
 10 good to me, the 4.5 million -- no matter how you divide  
 11 it -- and the 1.45 and the 1.42? They have 4.5 million  
 12 of my money which both of them signed that was owed in  
 13 multiple agreements, and they haven't paid it.

14 Q. You're not suing Eldorado for that, are you  
 15 now?

16 A. Yes, we are.

17 Q. Only for Nanyah.

18 A. Okay. Well, we'll see about that.

19 Q. Well, is there anything in the agreement that  
 20 requires Eldorado to make distributions?

21 A. In the Eldorado Hills operating agreement?  
 22 Maybe. I don't know.

23 Q. No, I'm talking about in this agreement, in  
 24 the one you have in front of you, Exhibit B.

25 A. Yes, it does. It does.

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1 Q. It requires them to make distributions?

2 A. It may not be called distributions, but, okay,  
 3 so Paragraph 2(a) on Page 2 -- and that's Bates Number  
 4 SR002011. I'm going to read it, "Buyer shall owe seller  
 5 the sum of \$2,747,729.50 as noninterest-bearing debt  
 6 with, therefore, no capital calls for monthly payments.  
 7 Said amount shall be payable to seller from future  
 8 distributions or proceeds," and then it goes on.

9 So I'm contending at the very least there is a  
 10 substantial business operating on the Eldorado Hills  
 11 property, and those moneys are going elsewhere except  
 12 not into Eldorado Hills or to the benefit of the members  
 13 of the debt holder or the people who Eldorado Hills owes  
 14 debt to, and they're keeping the money.

15 So I think that when they're keeping the  
 16 distributions or they're not sending it out or they're  
 17 not even receiving it on purpose when they should be  
 18 taking proceeds or rent and distributing the money that  
 19 they don't need to maintain the property. That's part  
 20 of what I'm saying, much less the rest of it that your  
 21 client just decided to make the interest disappear  
 22 because it sounded good to him.

23 But we haven't seen all the agreements yet,  
 24 have we, Mr. Lionel? We haven't seen them all yet.

25 Q. TELD is not a party to this agreement, right?

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1 A. Correct, not yet or not now.

2 Q. And, of course, Paragraph 2(a) says that with  
 3 respect to the debt, payments would be -- distributions  
 4 as, when and if received by buyer from the company.

5 Do you know of any distributions that has been  
 6 received --

7 A. Yes.

8 Q. -- by Mr. Rogich?

9 A. Yes.

10 Q. What are they?

11 A. I'm telling you at least there is a gun club  
 12 that should be paying rent. So I think they're  
 13 pocketing the rent and never putting it in the bank  
 14 account of Eldorado Hills, LLC, or they're keeping the  
 15 profits themselves in some other entity.

16 Q. My question is, what do you know of any  
 17 distributions that were made?

18 A. Yes, and I answered yes.

19 Q. There were -- tell me about the distributions.

20 A. There are moneys or distributions that Eliades  
 21 and/or Rogich are taking at least from the gun club, and  
 22 instead of putting them into Eldorado Hills, LLC,  
 23 they're being cut off. They're being used up before  
 24 they go into Eldorado Hills, LLC.

25 Q. Do you know of any distributions received by

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1 Rogich?

2 A. I don't know. I don't have a copy of his bank

3 statements, and I haven't spoken with him, but there is

4 a gun club, and a pretty successful one at that, that is

5 there either for free or paying Rogich and his partners

6 money outside of Eldorado Hills, LLC.

7 Q. At the time that TELD came in, was there a

8 reason why you didn't stay in, instead sold your

9 interest?

10 A. Yes.

11 Q. What was that?

12 A. Sig Rogich.

13 Q. What does that mean?

14 A. Sig Rogich told me that when Eliades came in,

15 Eliades didn't want any other partners but Sig Rogich,

16 and he would be the only partner, and he would agree to

17 pay -- Sig Rogich would agree to pay me my money out of

18 the property, and that's what this agreement was meant

19 to do. That was Sig's story.

20 Q. Paragraph 22, "Plaintiffs have complied with

21 all conditions precedent and fulfilled their duties

22 under the agreement."

23 What are the conditions?

24 MR. McDONALD: Object to the form, calls for a

25 legal conclusion.

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1 A. We provided about four and a half million

2 dollars into Eldorado Hills, LLC.

3 BY MR. LIONEL:

4 Q. Is that it?

5 MR. McDONALD: Same objection.

6 A. That's the bulk of it. I think that's the

7 most important part.

8 BY MR. LIONEL:

9 Q. I'll take it. Give me a subordinate part.

10 A. I'll stick to the most important part.

11 Q. And the other -- that's a condition you're

12 talking about?

13 MR. McDONALD: Same objection.

14 A. Yes.

15 BY MR. LIONEL:

16 Q. It's your complaint. I have a right to find

17 out what it's about.

18 A. Absolutely. I'm answering the questions. I

19 said yes.

20 Q. What duties did you fulfill?

21 MR. McDONALD: Same objection.

22 A. We took four and a half million dollars, and

23 we put it into Eldorado Hills, LLC, and we haven't

24 bothered them. We haven't given them a hard time. We

25 haven't prevented them from selling the property. We

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1 haven't prevented them from marketing the property. We

2 just asked for our money back. That's all.

3 So we've been kind of good passive investors

4 that aren't earning any interest. So I think those are

5 the kind of duties that a good guy would do.

6 BY MR. LIONEL:

7 Q. Is that it? That's your answer?

8 A. Yes.

9 Q. Paragraph 23, "Defendant Rogich materially

10 breached the terms of the agreement when he agreed to

11 remit payment from any profits paid from Eldorado, yet

12 transferred his interest in Eldorado for no

13 consideration to TELD, LLC."

14 What terms of the agreement are you referring

15 to?

16 MR. McDONALD: Same objection.

17 A. So Mr. Rogich from my understanding -- I

18 haven't seen anything in writing; maybe you have -- has

19 somehow conveyed his interest in Eldorado Hills, LLC,

20 away. He never had given us -- when I say us, the

21 investors that are mentioned in other agreements that

22 we've seen today, Go Global, Nanyah, Robert Ray -- an

23 opportunity to say, "Hey, are you going to pay us back,"

24 or he didn't pay us any money when he conveyed his

25 interests.

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1 He was supposed to get a practical amount of

2 money based upon the value of Eldorado Hills, LLC and

3 pay us, not just give it away for free, and if he was

4 going to give it away for free, you would at least think

5 that he would have called us and say, "Hey, I'm going to

6 give my interests away for free. Would you take it?"

7 That's all.

8 I think he breached the spirit of that

9 agreement backwards and forward and sideways and in

10 diagonals also.

11 BY MR. LIONEL:

12 Q. You say in here breached the terms. Tell me

13 what terms.

14 MR. McDONALD: Same objection.

15 A. I just answered. I just answered the

16 question. He's supposed to pay us when he gives up his

17 interest in Eldorado Hills, LLC, not just walk away for

18 nothing.

19 BY MR. LIONEL:

20 Q. All I'm asking you is are there any terms in

21 the agreement that say what you effectively just said?

22 That's all.

23 A. Yes, I think there are.

24 Q. Would you point them out to me?

25 A. Just read Paragraph A. I think that starts it

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1 on recitals, then (B) also. He basically -- Rogich  
2 walks away with a lot for nothing then if he doesn't  
3 pay. (B) says, "Seller desires to sell, and buyer  
4 desires to purchase, all of seller's membership  
5 interest" -- which was equity and then turns into debt  
6 as per this agreement; that's why we differentiate the  
7 terms at times -- "subject to the potential claims and  
8 pursuant to the terms of this agreement." So seller  
9 desires to sell; buyer desires to purchase.

10 In this case, the way it worked out with the  
11 magical Sig Rogich at hand is he gets 40 percent  
12 interest in a company that's worth millions of dollars,  
13 and he pays zero, zero dollars.

14 Q. You haven't answered my question.

15 A. No, no, he's supposed to pay us. He's  
16 supposed to pay us. Your question was what terms in the  
17 agreement show that he's supposed to pay.

18 Q. No, that was not my question.

19 MR. LIONEL: Read the question back, Ms.  
20 Reporter.

21 (Whereupon, the requested portion of the  
22 record was read by the reporter.)

23 BY MR. LIONEL:

24 Q. And I'm asking you what terms are there? You  
25 said that Mr. -- that Rogich breached the terms when he

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1 transferred his interest in Eldorado.

2 A. Yes. Yes.

3 Q. Okay? I'm asking you what term of the  
4 agreement says he could not transfer his interests in  
5 Eldorado --

6 MR. McDONALD: I'll object.

7 BY MR. LIONEL:

8 Q. -- for no consideration?

9 MR. McDONALD: I'll object to the form.

10 BY MR. LIONEL:

11 Q. That's all.

12 A. Those exact words verbatim the agreement does  
13 not have. The agreement, when you read, it says or  
14 states that he's not supposed to give away his interest  
15 for free without paying us.

16 Q. What says that?

17 A. Let's go back to (A). "Buyer intends to  
18 negotiate" -- buyer is Rogich -- "such claims with  
19 seller's assistance so that such claimants confirm or  
20 convert the amounts set forth beside the name of each of  
21 said claimant into noninterest-bearing debt, or an  
22 equity percentage to be determined by buyer after  
23 consultation with seller as desired by seller, with no  
24 capital calls for monthly payments, and a distribution  
25 in respect of their claims in amounts from the one-third

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1 ownership interest in the company retained by buyer."

2 That to me is a term of the agreement. It's  
3 in the recitals. The buyer received equity, extra  
4 equity that he didn't have prior to this, and he's paid  
5 nothing for it. So he's supposed to pay.

6 So verbatim it doesn't say what you stated,  
7 but if you read this whole agreement, the buyer, being  
8 Rogich, is supposed to pay for his interest. If he gave  
9 it away to you, if he gave it away for free to somebody  
10 else, that's his choice. Let him do that, but he's  
11 supposed to pay for that.

12 So, again, these terms, as I read them and I  
13 understand them, should mean that Rogich, when he  
14 received this equity interest, this additional equity  
15 interest that he didn't have, that he took basically  
16 from Go Global, that he took from Nanyah Vegas, and he  
17 didn't pay anything for, he was supposed to pay.

18 He decides later on he wants to become a  
19 philanthropist or whatever it is he wants to do, God  
20 bless him, but he's supposed to pay the group that he  
21 took the interest from.

22 So I believe that, yes, it's pretty clear.

23 Q. That he could not transfer his interest?

24 A. No, he can transfer his interest, but he's  
25 supposed to pay us when he does.

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1 Q. Is that what it says?

2 A. Not in the exact words I just said. In the  
3 big meaning, yes, that's what it says.

4 Q. Can you show me what words would effectively  
5 say he could not transfer the interest?

6 A. No, he's supposed to pay us when he does.

7 Read Paragraph A and Paragraph B. I've read them  
8 already. You need to read them because I've read them.  
9 If you want me to read them again to her, I'll read them  
10 again, but I've already read them. My opinion is and  
11 what this says and what this agreement means is when he  
12 gives away his interest, he's supposed to pay us.

13 Q. But it doesn't say that.

14 A. Okay.

15 Q. Is that a fair statement? It doesn't say  
16 that.

17 MR. McDONALD: Object to form, argumentative.

18 BY MR. LIONEL:

19 Q. I understand what you're saying, but that  
20 agreement does not say that he cannot transfer his  
21 interest.

22 A. Correct.

23 Q. That's all. It's easy.

24 A. But that wasn't the question you had asked  
25 earlier.

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JA\_004005

1 Q. I thought it was.  
2 A. NO, it wasn't.  
3 Q. Paragraph 24.  
4 A. Okay.  
5 Q. On top of Page 5. "Huerta and Go Global  
6 reasonably relied on the representations of the  
7 defendant Rogich in that they would honor the terms of  
8 the agreement, all to their detriment."  
9 What representations are you talking about?  
10 MR. McDONALD: Same objection.  
11 A. Not only in these documents that we've seen  
12 here today but in the documents that were signed with  
13 TELD and the Eliades group, there is reference in  
14 writing to the moneys that have been invested and that  
15 are supposed to be paid back interest free. They're not  
16 even paying us interest on our money.  
17 So we're referring to them, Sig Rogich, his  
18 family trust or his et als. that would pay back money  
19 that he benefitted from by getting an interest in  
20 Eldorado Hills, LLC, moving forward. That's it.  
21 BY MR. LIONEL:  
22 Q. But you say that you relied on the  
23 representations that they would honor the terms of the  
24 agreement.  
25 A. Yes.

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1 Q. Are there such representations, or are you  
2 relying on what the agreement says?  
3 A. I'm relying on what the agreement says and  
4 what we talked about earlier when I met with Sig Rogich,  
5 and he looked me in the eye and said he would pay these  
6 people back, and it was supposed to happen within the  
7 month or two. We're not supposed to be waiting in 2014,  
8 six years later.  
9 He started making payments to Dunlap and  
10 Rietz, and he said he was going to pay off Robert Ray,  
11 and he wanted to pay everybody else off. That was the  
12 intention. That's what the agreement was back then.  
13 This Exhibit 1, I think, that you call it, which is the  
14 purchase agreement, was supposed to be some  
15 understanding of what we had agreed to, but, yes, he  
16 told me face-to-face that he would pay us back.  
17 Q. That's before the agreement was signed?  
18 A. And after.  
19 Q. And after. That's what you're referring to?  
20 A. Yes. Yes.  
21 Q. All right.  
22 A. Thank you. I appreciate that.  
23 Q. I'm entitled to find out what you're saying.  
24 It's your complaint, not mine.  
25 A. Yes, absolutely.

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1 Q. Paragraph 25, "As a direct result of the  
2 actions of defendants, plaintiffs have been damaged in  
3 an amount in excess of 10,000."  
4 Is your answer to that the same one that you  
5 gave me before --  
6 A. Yes.  
7 Q. -- to Paragraph 19?  
8 A. Yes, sir.  
9 Q. Paragraph 28.  
10 A. Okay.  
11 Q. "That the parties herein agree to uphold  
12 certain obligations pursuant to their agreement;  
13 specifically, defendant agreed to reasonably uphold the  
14 terms of the agreement by remitting the requisite  
15 payments required and reasonably maintaining the  
16 membership interest to consummate the terms of the  
17 agreement."  
18 And what I'm asking you is, tell me what terms  
19 of the agreement required Mr. Rogich or his trust to  
20 reasonably maintain the membership interest.  
21 MR. McDONALD: Object to the form. It calls  
22 for a legal conclusion.  
23 A. I mean, we can go back and basically reread  
24 what I just read, but when he was -- when Rogich or his  
25 trust was buying interests and agreeing to convert it or

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1 having us convert that to a noninterest-bearing debt,  
2 it's reasonable at that time to state that he wouldn't  
3 just give away millions of dollars of interest later on  
4 because -- for whatever reason. So he didn't really  
5 stay true to what this agreement was meant for, stating  
6 that he's buying interests, and he's supposed to pay for  
7 the interest.  
8 I mean luckily, luckily we live in a pretty  
9 great country that normally when you get something, you  
10 do pay for it, and most people do receive payment. In  
11 this case, we said, "Hey, we'll wait. Just pay us  
12 later," and he just didn't pay us. He hasn't paid us.  
13 In fact, I'd be okay right now if he said,  
14 "I'm not paying you yet because we haven't sold it."  
15 What we have a problem with is that he told us that he  
16 just gave away the interest for free, you know.  
17 BY MR. LIONEL:  
18 Q. But is there a term in the agreement that says  
19 he has to maintain his membership interest? That's all  
20 I'm asking.  
21 MR. McDONALD: Same objection.  
22 A. We're going to be in the same position on your  
23 other point. I believe that he did not uphold the  
24 agreement. Is there a specific term highlighting or  
25 specifying him, hey, Sig, hereby agrees that he is not

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JA\_004006

1 going to give away his interests for free without paying  
 2 the investors or the debt holders, no, there isn't a  
 3 specific sentence that says that, but there is a  
 4 specific sentence that says he's buying, and there is a  
 5 specific sentence that refers to him paying.  
 6 He just didn't get the paying part right. He  
 7 liked the buying part, but he didn't get the paying  
 8 part. He ate the meal at the restaurant for free and  
 9 walked out and did not uphold the implied agreement to  
 10 pay for the meal. That's what he did. Let's call the  
 11 spade the spade. He ate the food and didn't pay for it.  
 12 He dined and dashed. It's classic.  
 13 BY MR. LIONEL:  
 14 Q. He didn't receive any distributions, did he?  
 15 A. He received equity in a company that owns  
 16 property worth millions of dollars. So I think he did.  
 17 He received equity.  
 18 Q. At what point?  
 19 A. October of 2008.  
 20 Q. At that time.  
 21 Were there any distributions that Rogich  
 22 received after October 2008?  
 23 MR. McDONALD: I'll object to the extent that  
 24 it calls for speculation.  
 25 A. Yes.

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1 BY MR. LIONEL:  
 2 Q. Do you agree it calls for speculation,  
 3 Mr. Witness?  
 4 A. I'm not a lawyer. I don't know.  
 5 Q. What is your answer?  
 6 A. Are you being argumentative, Mr. Attorney?  
 7 Q. What's your answer?  
 8 A. I answered this already. I believe that -- I  
 9 believe that they have accepted distributions in other  
 10 forms that didn't properly go through the company, that  
 11 being Eldorado Hills, LLC.  
 12 Q. When was this?  
 13 A. Since that -- for example, since that gun club  
 14 has been running.  
 15 Q. Was this before --  
 16 A. After 2008, after October of 2008, right.  
 17 Q. What evidence do you have of that?  
 18 A. I know that there's a gun club there, and it  
 19 takes up about 60 acres. I know that the business is  
 20 running, and I know that businesses normally don't get  
 21 to stay at places for free. So either the gun club  
 22 bought the property and they paid Eliades and Rogich  
 23 outside of an escrow, they paid Rogich and Eliades  
 24 outside of Eldorado Hills, LLC, and did what they call  
 25 the good-guy deal. "Hey, we'll pay you 6 million, hey,

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1 we'll pay you 8 million, we'll pay you 15 million for  
 2 this 60 acres. We're just going to put it in this Swiss  
 3 account. We're going to put it in your kid's trust  
 4 account. We're going to put it in the name of some  
 5 other entity, and you know what? We're not going to pay  
 6 Eldorado Hills, but you're going to let us have this  
 7 property, or you're going to give us the right to buy it  
 8 down the road for a dollar."  
 9 I don't know, but the fact of the matter is  
 10 there is a business that runs there, and Eldorado Hills  
 11 evidently hasn't received one iota of payment or moneys.  
 12 So the only thing that a logical businessman would think  
 13 is they're getting something. Maybe they get free  
 14 bullets for life. Maybe they get free rifles. They  
 15 might get free rides on the golf carts that are really  
 16 nice around the gun club. I don't know. They might get  
 17 to shoot at the tank that they put out there. They  
 18 might get to ride in the tank. I don't know. But  
 19 there's definitely some benefit and/or distribution that  
 20 we're not seeing, you are not seeing because they don't  
 21 show you that either, and I'm not seeing because I'm not  
 22 an equity member, and I'm not out at the gun club.  
 23 So I don't know exactly, but it would stand to  
 24 reason that that business that functions out there is  
 25 providing some kind of benefit to Eldorado Hills, LLC,

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1 that neither you or I know. That's all I'm saying.  
 2 So I believe that, yes, there are  
 3 distributions. I just don't know what they are and when  
 4 they're given.  
 5 Q. Paragraph 29, "Rogich never provided verbal or  
 6 written notice of his intentions to transfer the  
 7 interests held in Eldorado, and this fact was not  
 8 discovered until other parties filed suit against  
 9 Eldorado and Rogich for other similar contract --  
 10 conduct." Excuse me.  
 11 Is there any term or provision in the  
 12 agreement that required that Rogich give you notice of  
 13 his intentions to transfer the interests?  
 14 MR. McDONALD: Objection, calls for a legal  
 15 conclusion.  
 16 MR. LIONEL: Why is that calling for a legal  
 17 conclusion?  
 18 MR. McDONALD: It's asking for him to  
 19 interpret the terms of the agreement.  
 20 MR. LIONEL: I'm asking for facts.  
 21 MR. McDONALD: Well, to the extent that it  
 22 calls for him to make a legal conclusion based on the  
 23 terms of the agreement, that's my objection.  
 24 A. As we sit here today, we're not aware -- maybe  
 25 you are, but we're not aware of proceeds or

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JA\_004007

1 distributions that Mr. Rogich has received.

2 I think it's completely asinine to think and

3 presume that Mr. Rogich, as I know him, because I

4 officed with him for about five years and on one deal

5 that I did he made \$11 million on, that he would just

6 walk away from a multimillion-dollar asset and not

7 receive anything.

8 So in answer to your question, if you just

9 read this agreement, it says said amount -- referring to

10 the 2.7 million and change, "Said amount shall be

11 payable to seller" -- that's Go Global -- "from future

12 distributions or proceeds." Okay?

13 BY MR. LIONEL:

14 Q. But I'm not asking you that. I'm going to

15 move to strike that.

16 I'm asking you simply with respect to whether

17 or not there are any terms or provisions --

18 A. Yes, the answer is yes.

19 Q. -- that he had to give written notice of his

20 intentions to transfer his interests? That's all.

21 MR. McDONALD: Same objection.

22 A. The answer is yes.

23 BY MR. LIONEL:

24 Q. What are they?

25 A. Read that.

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1 Q. Read what?

2 A. What I just started to read. He's supposed to

3 pay when he gets distributions or proceeds. We don't

4 know what he's received. He doesn't tell us.

5 Q. I --

6 A. So he's supposed to tell us. He doesn't just

7 get to keep all the benefits. He doesn't just get to

8 keep valuable property. He doesn't get to keep the

9 benefit of that company without paying us. So I don't

10 know what he's received.

11 Q. I move to strike, and I'm going to read the

12 first part of Paragraph 29.

13 "Rogich never provided verbal or written

14 notice of his intentions to transfer the interests held

15 in Eldorado," and I'm asking you simply could you tell

16 me what terms or provisions in the agreement says that

17 he had to provide verbal or written notice of his

18 intentions to transfer the interests?

19 A. Okay. I'm just going to read the agreement,

20 okay, because you're asking me question after question.

21 So I think I better read it.

22 (Recess taken.)

23 MR. LIONEL: Back on the record.

24 A. So I think that after reading the agreement,

25 if Mr. Rogich would have paid us, he wouldn't have

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1 needed to notify us, but since he didn't pay us, he

2 should have at least notified us. The agreement doesn't

3 say he specifically needs to notify us, but in order to

4 get treated fairly, like I think we should have been

5 treated, and if he would have been upholding, you know,

6 just good faith, he would have called and said, "Hey,

7 I'm going to do this." He never did, and we found out

8 about it months later, and I just think that's messed

9 up.

10 BY MR. LIONEL:

11 Q. Still in Paragraph 29, it says the fact that

12 he had not discovered -- withdraw.

13 The Paragraph 29 says, "The transfer was not

14 discovered until other parties filed suit against

15 Eldorado and Rogich for other similar contract --

16 conduct." I did that twice.

17 Tell me why you say that, why you allege that

18 it was not discovered until other parties filed suit for

19 other similar conduct.

20 A. Right. Actually you made reference to this

21 earlier. We didn't get as complete as this, but it was

22 in 2012, in the fall or October, that Sig Rogich and I

23 were discussing the Antonio Nevada lawsuit which is, I

24 think, the reference, what it means here where it says,

25 "Other parties filed suit against Eldorado." That other

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1 party, I believe, only refers to Antonio Nevada, LLC,

2 and Mr. Rogich and I were discussing that lawsuit, and

3 at that time is when Sig revealed to me on the phone

4 that he had given his interest away already.

5 So I don't believe that even Mr. Rogich

6 planned on telling me that he gave away his interest.

7 It just came up when we were talking about the Antonio

8 Nevada lawsuit.

9 Q. But you're saying it was not discovered until

10 other parties filed suit against Eldorado and Rogich for

11 other similar conduct. What's the similar conduct?

12 A. Oh, I'm not that familiar with the details of

13 the Antonio Nevada lawsuit, but I believe Antonio Nevada

14 alleged that Sig Rogich and/or Eldorado Hills, LLC,

15 should have paid them money or owed them money. So

16 we're now saying in regards to Nanyah Vegas and Go

17 Global that Mr. Rogich walked away with money that we

18 believe he should have paid us. So that's the similar

19 conduct.

20 Q. You say he walked away with money owed to

21 Eldorado -- to Antonio Nevada?

22 A. No. I said in my opinion he's walked away

23 with money owed to Go Global and Nanyah, yes.

24 Q. Paragraph 31, "That each party agreed to

25 uphold the terms of the agreement upon execution of the

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JA\_004008

1 agreement and as a result agreed to perform certain  
2 duties."

3 They agreed to uphold. Is that something  
4 besides what's in the agreement? I don't understand.  
5 Where does that agreement appear?

6 MR. McDONALD: Object to the form.

7 A. The agreement is Exhibit 1, that purchase  
8 agreement.

9 BY MR. LIONEL:

10 Q. Are you talking about what the agreement says,  
11 nothing specific, though?

12 A. You know, what the agreement says and then  
13 secondly those other documents that we talked about when  
14 TELD came in. I think it kind of regurgitates the  
15 agreement and adds to it. So I don't think that  
16 Mr. Rogich has upheld his agreement -- his agreed-upon  
17 terms.

18 Q. This is talking about that each party agreed  
19 to uphold the terms of the agreement.

20 A. Right, the Exhibit 1.

21 Q. Is there a separate provision there which says  
22 that Rogich or the trust will uphold the terms of the  
23 agreement?

24 MR. McDONALD: Object to the form.

25 MR. LIONEL: It's an allegation in the

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1 complaint.

2 MR. McDONALD: I still think your question is  
3 vague. I'm confused about your question. So I don't  
4 think there is a problem with the complaint. I think  
5 it's your question.

6 A. In 6(d) in the agreement, and we can read the  
7 agreement again and again. I mean, you're obviously  
8 just reading from the complaint. I mean, I think that  
9 the writing is unclear, but 6(d) in the agreement says,  
10 "Seller and buyer further represent and warrant that the  
11 representations, and indemnification and payment  
12 obligations made in this agreement shall survive  
13 closing."

14 So he hasn't paid. Mr. Rogich hasn't paid,  
15 and he informed us that he gave away his interests. So  
16 I believe if we go back to your paragraph from the  
17 complaint that you just read that you're asking about  
18 where each party agreed to uphold the terms of the  
19 agreement, I feel like he has not upheld his side of the  
20 agreement. His interests have disappeared or been given  
21 away, but he paid nothing for them. So --

22 BY MR. LIONEL:

23 Q. All I'm asking you is, is there something that  
24 specifically says that each party agrees to uphold the  
25 terms? That's all. I understand your point.

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1 A. Okay. Well, then if you understand it, that's  
2 my answer, I guess.

3 Q. No, no, no. All I'm saying is there is no  
4 specific provision in the agreement that says we're  
5 going to uphold the terms.

6 A. Okay. Then what --

7 Q. That's your allegation in your complaint.

8 MR. McDONALD: Well, the allegation says that  
9 execution of the agreement is what they agreed to uphold  
10 the terms with.

11 MR. LIONEL: That's not what it says.

12 MR. McDONALD: Yes, it says upon execution of  
13 the agreement -- they agree to uphold the terms of the  
14 agreement upon execution.

15 MR. LIONEL: And as a result, agreed to  
16 perform certain duties.

17 MR. McDONALD: Correct.

18 I'm sorry, are you asking -- are you asking  
19 him if that is referring to any specific terms in the  
20 agreement or just the agreement in general?

21 MR. LIONEL: Exactly, exactly. No, either  
22 it's in there or it's not.

23 A. I think 6(d) is very close to that. It  
24 doesn't use the exact words. I believe 6(d) is very  
25 close, SR002014.

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1 BY MR. LIONEL:

2 Q. In 6(d)?

3 A. 6(d). It's SR002014 in the agreement.

4 Q. This is Paragraph 6. Okay?

5 A. Yes, so go to 6(d), right here, 6(d).

6 Q. "Seller and buyer further represent and  
7 warrant that the representations, and indemnification  
8 and payment obligations made in this agreement shall  
9 survive closing." That's talking about surviving  
10 closing.

11 A. Yes, that's part of it, but it also says that  
12 the buyer represents and warrants that the  
13 representations, indemnification and payment obligations  
14 made in this agreement shall survive closing.

15 He never paid. Payment obligations. Payment  
16 obligations isn't zero.

17 Q. You keep going off on that tack. All I'm  
18 asking you is, tell me what provision of the agreement.

19 A. 6(d) is the answer.

20 Q. That's your answer. Anything else?

21 A. Oh, I don't know. I mean, again, I would have  
22 to read this all again. At least 6(d), at least 6(d),  
23 but you're as capable of reading this and going through  
24 it as I am, at least 6(d).

25 MR. McDONALD: Which is a very important one.

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JA\_004009

1 BY MR. LIONEL:  
2 Q. Anything else you know?  
3 A. Well, when we contacted Mr. Rogich through  
4 Mr. McDonald's office, we asked them to notice us, as  
5 7(a), in writing of certain facts. He never notified me  
6 in writing.  
7 Q. I didn't ask that, anything about 7. I'm  
8 asking you have an allegation --  
9 A. No, uphold the agreement. We're on --  
10 Q. The agreement will uphold the agreement.  
11 A. Yes, we're on 31. Well, he never notified  
12 what he did with his interests and why he did it.  
13 Q. I didn't ask you that. I'm asking you what in  
14 the agreement said that they -- the parties agreed to  
15 uphold the terms of the agreement? That's all.  
16 A. Actually at the end, you said anything else,  
17 is there anything else? So I said at least 6(d). I  
18 also think 7(a).  
19 Q. Notices. Is that what you're talking about?  
20 A. Yes, notices.  
21 Q. Anything else?  
22 A. His signature.  
23 Q. Anything else?  
24 A. 5(a).  
25 Q. Anything else?

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1 A. 3.  
2 Q. Anything else?  
3 A. And 2(a).  
4 Q. Anything else?  
5 A. No, I think that's it. I'd also like to  
6 clarify a previous question you asked me. TELD does  
7 appear in this agreement briefly. I think I answered  
8 no, but I forgot about that. I don't think it's a big  
9 deal but on Page 3 there at the bottom.  
10 Q. Paragraph 32, "That defendant, Rogich has  
11 failed to maintain the obligations which he agreed upon  
12 as memorialized herein and in the agreement as described  
13 herein and thereby failed to act in good faith and has  
14 also failed to deal fairly in regards to upholding his  
15 defined duties under the agreement."  
16 When you say he "failed to maintain the  
17 obligations which he agreed upon as memorialized  
18 herein," what are you referring to? Are you referring  
19 to obligations set forth in the complaint?  
20 A. In the agreement.  
21 Q. In the agreement?  
22 A. Correct.  
23 Q. "And as described herein, thereby failed to  
24 act in good faith."  
25 How did he fail to act in good faith?

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1 MR. McDONALD: Same objection.  
2 A. Well, if we go to 2(a) and 3, basically it  
3 summarizes he's supposed to pay us money. He owes us  
4 money. It says, "Buyer shall owe seller the sum of  
5 2,747,000." He hasn't paid, and he gave us -- his  
6 interest disappeared.  
7 BY MR. LIONEL:  
8 Q. "And also failed to deal fairly in regards to  
9 upholding his defined duties under the agreement." Is  
10 that the same answer?  
11 MR. McDONALD: Same objection.  
12 MR. LIONEL: Counsel, I want to hear from the  
13 witness.  
14 MR. McDONALD: Right. I have my right to  
15 object.  
16 THE WITNESS: He said "same objection."  
17 That's all he said.  
18 MR. McDONALD: I wasn't talking to him. I was  
19 just asserting an objection.  
20 THE WITNESS: He did say it kind of low,  
21 though.  
22 BY MR. LIONEL:  
23 Q. Is your answer the same as you just gave me,  
24 he failed to pay?  
25 A. Yes. I'd say that's part of the answer, the

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1 beginning of the answer, and the second part is if  
2 you're going to give away your interest, the agreement  
3 should say that you would notify -- says he should  
4 notify us or at least tell us. So I'd add that.  
5 Q. Paragraph 25.  
6 A. 25 or 35?  
7 Q. 25.  
8 A. 25.  
9 Q. Excuse me. Forgive me. Forgive me. How  
10 about 33?  
11 "As a direct result of the actions of  
12 defendants, plaintiffs have been damaged in an amount in  
13 excess of 10,000."  
14 Same answer that you gave before to the two  
15 paragraphs dealing with -- similar to Paragraph 33?  
16 A. Yes, sir.  
17 Q. Let's go to the third claim, Paragraph 37.  
18 "Rogich represented at the time of the agreement that he  
19 would remit payment to Huerta and Go Global as required,  
20 yet knew or reasonably intended to transfer the acquired  
21 interest to TELD, LLC, and furthermore knew that the  
22 representations made by him in the agreement were in  
23 fact false with regard to tendering repayment or  
24 reasonably preserving the required interest so he could  
25 repay the debt in the future."

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JA\_004010



1 There's a lot in there.

2 A. Yes.

3 Q. And you know where I'm going to ask you.

4 A. No, not --

5 Q. What evidence do you have that Rogich knew or

6 reasonably intended to transfer the acquired interest at

7 the time of the agreement?

8 Let me go back a minute to the first sentence.

9 A. Okay.

10 Q. "Rogich represented at the time of the

11 agreement that he would remit payment to Huerta and Go

12 Global as required."

13 I understand what 2(a) says. Okay? What --

14 is there a specific representation besides that

15 someplace in the agreement that he's going to pay it as

16 it says in 2(a)?

17 A. Paragraph 3 of the agreement and also in

18 Paragraph 1 of the agreement.

19 Q. What?

20 A. Also in Paragraph 1 of the agreement.

21 Q. All right. Anything else?

22 A. No.

23 Q. Now it says, "Rogich knew or reasonably

24 intended to transfer the acquired interest to TELD."

25 Tell me about that. What evidence do you have

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1 of that?

2 A. I think the proof is in the pudding in the

3 fact that he did it and never told us and never paid us.

4 He actually did and didn't tell us until like eight

5 months after he did it, and he knew that we had four

6 point something million dollars hanging out there that

7 he agreed to pay us.

8 Q. Are you saying that in 2008 he intended to

9 transfer the interest to TELD, all the interest?

10 A. Yes, I am.

11 Q. What is your evidence of that?

12 A. This agreement says that, "Seller will

13 transfer and convey the membership interest to buyer,

14 and buyer will acquire the membership interest from

15 seller upon payment of the consideration set forth

16 herein at closing." This is in 2008.

17 He never pays us a dime, doesn't even take us

18 out to dinner, and in 2012, he transfers all of his

19 interests to TELD presumably, supposedly, purportedly

20 for free, but he actually didn't tell us that he did

21 that until eight months after he did it. That's a free

22 and clear --

23 Q. No, but did that mean four years earlier --

24 A. Yes, I think he planned it.

25 Q. You think he planned it?

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1 A. Yes.

2 Q. And I'm asking you what evidence do you have

3 of that?

4 A. I think the proof is in the pudding. He did

5 it. He transferred his interests away for free. What

6 else do we need?

7 Q. That's all you have?

8 A. Yes.

9 Q. Nothing else?

10 A. Yes.

11 Q. "And furthermore knew that the representations

12 made by him in the agreement were in fact false with

13 regard to tendering payment or reasonably preserving the

14 acquired interest so he could repay the debt in the

15 future."

16 How do you know that? What representations

17 are you talking about?

18 A. The representations are in the Exhibit 1 of

19 the agreement, this agreement, the purchase agreement.

20 He represents that he is going to pay moneys. In the

21 end, the fact is he doesn't pay moneys, and he walks

22 away for free, and he says -- he says, "Buyer shall owe

23 seller the sum of." He never paid. I don't think he

24 ever intended to pay, and I think he said, "Hey, I'll

25 get out of this. I'll hire a lawyer. It's cheaper not

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1 to pay. I think it's cheaper not to pay." So he didn't

2 pay. He gave away his interest. Again, eight months

3 later he tells us. That's my evidence.

4 It's like if we show up at the scene of a car

5 accident and there is a smashed car in the middle of an

6 intersection, we presume that there was an accident. We

7 didn't see the accident, but the car is all bashed up.

8 The guy is hurting. You know, he's not feeling very

9 well. You assume he's the driver. He smashed his car.

10 He took the money; he didn't pay.

11 Q. I'm asking you what representations did he

12 make in the agreement?

13 A. He said that he would pay us for our

14 interests.

15 Q. Was that a representation, or was that an

16 agreement?

17 A. It's a representation in the agreement.

18 Q. Do you know what a representation is?

19 MR. McDONALD: Objection, argumentative.

20 A. I believe so. He represented to us that he

21 was going via this agreement --

22 BY MR. LIONEL:

23 Q. Was there something in the agreement which he

24 said that -- you're talking about representation made by

25 him in the agreement were in fact false.

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JA\_004011

1 I want to know what representation you're  
2 talking about, what in the agreement?

3 MR. McDONALD: Asked and answered.

4 A. Where he was going to pay us for our  
5 interests.

6 BY MR. LIONEL:

7 Q. Was that a representation?

8 MR. McDONALD: Same objection.

9 A. To my understanding, yes, it's a  
10 representation in the agreement.

11 BY MR. LIONEL:

12 Q. That's what you're saying. That is the  
13 representation, that he said he was going to pay it?

14 A. Yes, but, again, we also had meetings in his  
15 office, and he told me to my face that he was going to  
16 pay us all off, too. So it's not just this agreement,  
17 not just this Exhibit 1.

18 Since you asked for anything else, I want to  
19 make sure we're clear. He also told me to my face that  
20 he would pay us.

21 Q. When did he do that?

22 A. In October of 2008 in his office and at Nevada  
23 Title.

24 Q. But he never intended to pay you. That's what  
25 you're saying?

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1 A. Yes, I am saying that.

2 Q. And that when he told you that in 2008, he was  
3 not -- not being truthful with you you're saying. Is  
4 that what you're saying?

5 A. Yes.

6 Q. That's your position?

7 A. That's my position, in 2008.

8 Q. I understand.

9 A. I know. You didn't say it real clearly. I'm  
10 making sure.

11 Q. Okay. All right. It's those representations  
12 you just talked about that you relied upon. Okay?

13 A. Yes.

14 Q. Let's go to Paragraph 45, "That Nanyah  
15 intended to invest a million five into Eldorado as a  
16 capital investment for the benefit of that company,  
17 which represented a benefit to Eldorado."

18 How do you know he intended to invest it into  
19 Eldorado as distinct from Canamex?

20 A. Okay. So Nanyah Vegas was controlled or is  
21 controlled by a gentleman named Yoav Harlap. It's been  
22 established that I actually flew to Israel to meet with  
23 him. Subsequent to that meeting that occurred in his  
24 house in Herzliya --

25 Q. On Herschel?

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1 A. Yes, and I flew back and had subsequent calls  
2 with him.

3 At the time when I first met him, it was early  
4 in 2007. The plan was that we were all going to go into  
5 Canamex Nevada. All the information that had been sent  
6 to him was about Canamex Nevada. It took awhile to  
7 consummate that deal and for him to invest.

8 By the time he actually did invest, we  
9 realized we're not going to do the Canamex deal. We're  
10 not going to merge into the Giroux property. We're just  
11 going to stick to our Eldorado Hills 160-acre property.  
12 So he sent the money to Canamex Nevada. Then I said,  
13 "Hey, look, Canamex isn't going to go forward right now.  
14 We're just going to put the money into Eldorado Hills,  
15 LLC. It's going to be capital contributed into Eldorado  
16 Hills, LLC."

17 So I had the conversations with Mr. Harlap.  
18 The money went from Canamex into Eldorado Hills, LLC,  
19 which was more appropriate knowing that Canamex Nevada  
20 wasn't going to own any property. Eldorado Hills did  
21 own property, a valuable property in my opinion. So his  
22 money went into Eldorado Hills, LLC, as it should have.  
23 So that's how I know. I had the relationship with  
24 Mr. Harlap.

25 Q. I think you just said -- correct me if I'm

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1 wrong -- that when the million five came into Canamex,  
2 you called Harlap and told him that you were going to  
3 put it into Eldorado?

4 A. No, that's not what I said. I think that the  
5 way it happened was I met with him early in '07 when we  
6 were talking about Canamex. All the information I had  
7 given him was about Canamex. By the time he agreed to  
8 invest, he still had the Canamex information. I must  
9 have sent it to him a long time before he wired it.

10 It would have been more appropriate for him to  
11 just wire the money directly into Eldorado Hills, LLC.  
12 About seven or eight months had passed, and the goal or  
13 the terms of the Eldorado Hills project had changed. We  
14 were no longer doing Canamex. He should have just sent  
15 the money into Eldorado Hills, LLC. I didn't catch it  
16 before he wired the money, but within a day or two --  
17 you have the bank statement -- the money went from  
18 Canamex right into Eldorado Hills, LLC.

19 Sig was aware of that as we discussed it. The  
20 money should have just been sent into Eldorado Hills,  
21 LLC. By the time Mr. Harlap invested, we were pretty  
22 sure the Canamex Nevada deal wasn't going to go forward  
23 at that point, still had a little bit of hopes that it  
24 would, but it wasn't going forward at that time. So the  
25 money went into Eldorado Hills. So I knew that.

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JA\_004012

1 Q. So the money came into the Canamex account,  
2 right?

3 A. Right.

4 Q. Which you had control over?

5 A. Yes.

6 Q. And did you notify Mr. Harlap and say -- I  
7 think you said before that when you got that money, you  
8 called him?

9 A. No, I think what I said before is that when we  
10 got the money, that we called Sig and let him know that  
11 the money arrived. You asked was Sig aware of that.  
12 That's what I remember I answered.

13 Q. No, I did not ask that question.

14 A. Yes, you did. You can go back --

15 Q. The record will show it.

16 A. Yes, correct.

17 Q. Are you saying that when you got that money,  
18 you didn't call Mr. Harlap? Is that what you're saying  
19 now?

20 A. I don't remember if I called him when I got  
21 the money. I'm answering specifically to Mr. Harlap. I  
22 don't recall at this point calling him and saying the  
23 money went into Canamex instead of Eldorado. I don't  
24 recall that.

25 Q. Did you ever tell him that?

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1 A. Sure.

2 Q. When did you tell him that?

3 A. I met with him again in -- I would talk to him  
4 periodically, send him e-mails, but I met with him again  
5 in December -- in Israel, December 30th, I think,  
6 2000 -- I believe it was '10, maybe '11, and we  
7 discussed the deal, discussed where Eldorado was at, and  
8 he knew then.

9 Oh, and prior to that, in 2008, when we  
10 were -- we, Mr. Rogich and I, were out raising money for  
11 Eldorado Hills, Pete Eliades was one potential investor  
12 that we were discussing the project with.

13 I also called Mr. Harlap and said we're  
14 raising money, told him about the FDIC situation and the  
15 loan, and I said, "This would be a time that you can  
16 increase your membership percentage in Eldorado if you  
17 invest more money and help pay the loan down." We're  
18 talking to other investors at the time. Eliades was one  
19 of them, and there was another investor that Sig knew.  
20 I can't remember. He's a poker player, though.

21 And so I told him, "Are you willing to invest  
22 more money?" And so I went over the transaction, went  
23 over the fact that the NDOT interchange was still in  
24 line, but they hadn't started construction yet, and he  
25 said, "No, I'm just going to leave my \$1.5 million in

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1 the project as it is." So I said okay.

2 So then right after that, within a month or  
3 two is when the Eliades transaction was formalized,  
4 signed, and kind of the rest is history. Eliades came  
5 in with Rogich who agreed to pay us our money.

6 Q. Between the time that the million five was  
7 wired, how often have you talked to Mr. Harlap?

8 A. How often? In the first year, much more  
9 often. So I probably spoke with him and/or e-mailed him  
10 seven or eight times. After that, I met with him once  
11 and probably e-mailed him once a year.

12 MR. LIONEL: Can we have those e-mails,  
13 Counsel? Both lawyers.

14 THE WITNESS: I don't know if I have them. I  
15 don't know if I save them that far back.

16 BY MR. LIONEL:

17 Q. Did you ever tell Mr. Harlap about the  
18 consulting fee?

19 MR. McDONALD: Object to the form.

20 BY MR. LIONEL:

21 Q. The 1,420,000.

22 A. We talked about that during the last  
23 deposition of Nanyah Vegas. You keep calling it a  
24 consulting fee. It was reclassified and was not a  
25 consulting fee.

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1 Q. Reclassified as what?

2 A. It was a loan payment back to Go Global, which  
3 has been described ad nauseam during this deposition.  
4 Go Global had put in \$4,100,000. It was paid back the  
5 \$1.42 million, a loan payment. It was not a consulting  
6 fee. Melissa didn't want it as a consulting fee, and  
7 you referred to that during the Nanyah Vegas PMK. You  
8 didn't complete that thought, and I sat there and  
9 thought about it later. You got the times confused when  
10 her and I got into the discussion. You tried to pin it  
11 on an earlier time period in an unrelated topic. She  
12 didn't want it to be a consulting fee, and then we  
13 reclassified it, and it was just treated as a loan  
14 payment back to Go Global, not a consulting fee.

15 So it wasn't a consulting fee, and it didn't  
16 end up being a consulting fee, and I did not pay taxes  
17 on it as a consulting fee.

18 Q. Did you tell Mr. Harlap that Go Global  
19 received 1,420,000 coming as a result of the payment, of  
20 him sending a million five?

21 A. Yes.

22 Q. You told him that?

23 A. Yes.

24 Q. When did you tell him that?

25 A. I don't remember the exact date but after he

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JA\_004013

1 invested, and he was aware. He's gotten a breakdown of  
 2 what I invested in the deal, that after his money, my  
 3 net ended up being \$2.7 million. Mr. Rogich invested  
 4 2.1 million and change into the deal. My other investor  
 5 invested 283,000 and change, that was Robert Ray, and  
 6 then he's aware that Eliades came in and paid off the  
 7 FDIC loan.

8 Q. You've not answered my question.

9 A. Yes, I did. I told you that after he  
 10 invested, I told him, and he also --

11 Q. Told him what?

12 A. That the -- where his money went, and he knows  
 13 the net amount invested in the Eldorado Hills by all  
 14 parties.

15 Q. Does he know that his money went to a money  
 16 market account of Eldorado and that a million four  
 17 twenty was taken out and given to Go Global?

18 A. He doesn't know about the money market part,  
 19 no, I don't think --

20 Q. Does he know -- he knows about the million  
 21 four twenty?

22 A. Yes.

23 Q. What did you tell him about the million four  
 24 twenty?

25 A. I don't remember the exact conversation.

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1 There is no way that I would remember it. He knows that  
 2 I had advanced over \$4 million or I had invested over \$4  
 3 million into Eldorado and that we were raising money for  
 4 the project and that some of my \$4 million was an  
 5 advancement, and I was going to get paid back supposedly  
 6 about a million five of it, which I didn't get in full  
 7 because Sig Rogich and I were supposed to be equal  
 8 members in it, and I was supposed to be at an equal part  
 9 with Sig, and he was coming in as an investor  
 10 additionally to Sig and I.

11 And then Robert Ray was also an investor, but  
 12 we were also talking to Dr. Nagy and one other guy, and  
 13 they never ended up investing. Those were Sig's  
 14 investors. So he knows all about that.

15 Q. But does he know specifically about the  
 16 million four twenty?

17 A. Yes.

18 Q. And he knows that it came out of his million  
 19 five?

20 MR. McDONALD: Object to form.

21 A. Yes.

22 BY MR. LIONEL:

23 Q. He knows that?

24 A. Yes.

25 Q. When did you tell him that?

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1 MR. McDONALD: Asked and answered.

2 A. After he invested the million five.

3 BY MR. LIONEL:

4 Q. How long after?

5 A. I don't remember.

6 Q. Did you tell it to him in December of 2007?

7 A. I don't remember.

8 Q. How about 2008?

9 A. Yes, in 2008, sometime in 2008 for sure.

10 Q. Is that in the e-mails, or was that --

11 A. No. I would talk to him, yes, and I met with  
 12 him twice physically.

13 Q. Do you remember whether this was something you  
 14 told him face-to-face when you met with him?

15 A. Yes, correct.

16 Q. And what did he say?

17 A. He didn't say anything about that. He knew,  
 18 he knew before he invested what that money was for and  
 19 that Go Global had advanced a bunch of money for  
 20 Eldorado Hills, LLC.

21 Q. Are you saying that Mr. Harlap knew when he  
 22 wired that million five that you were going to take out  
 23 of there a million four twenty and give it to Go Global?  
 24 Is that what you're saying?

25 MR. McDONALD: Object to the form, misstates

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1 testimony.

2 A. Yes.

3 BY MR. LIONEL:

4 Q. And he agreed to that?

5 A. Yes.

6 Q. When did he agree to that?

7 A. As part of his investment. We met and talked  
 8 about the investment.

9 Q. But we're talking about the million four  
 10 twenty out of the money that he wired in.

11 A. Yes, it was supposed to be a million five that  
 12 Go Global was going to be repaid. Go Global ended up  
 13 leaving some of the money in Eldorado Hills, LLC.

14 Q. And he knew that you would get the million  
 15 five?

16 A. Yes, in essence Go Global would have increased  
 17 its interests in Eldorado Hills, LLC, by the investments  
 18 it had made because at that time Mr. Rogich and I were  
 19 the majority members of Eldorado Hills, LLC. Okay? So  
 20 it was either Go Global increased its membership  
 21 interest or Go Global would keep its membership interest  
 22 where it was at and bring in another investor.

23 He was in essence taking a percentage of Go  
 24 Global's interest, he being Harlap, taking a percentage  
 25 of what Go Global's interests were.

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JA\_004014

1 If we take the pro rata share of the \$4.1  
2 million compared to all the capital invested into  
3 Eldorado Hills, LLC, of which Rogich was part of, Go  
4 Global would have been a much greater percentage-wise  
5 owner than Rogich. Go Global would have been majority  
6 or the largest investor.

7 When Nanyah agreed to come in, he was going to  
8 become a member of our group, Eldorado Hills or Canamex.  
9 It was going to be one or the other. Canamex didn't  
10 happen. So when he came in, he in essence took what  
11 would have been Go Global's interests at a total of \$4.1  
12 million down to the \$2.7 million, and he was supposed to  
13 own a percentage of Eldorado Hills, LLC.

14 That never was formalized. So he didn't get  
15 it on paper. We didn't give him a K-1, but he's  
16 supposed to have an interest in Eldorado Hills, LLC, and  
17 he knew that he was taking out a percentage of my  
18 membership in the company.

19 Q. And he knew that the million four twenty would  
20 be taken out of the million five he wired?

21 A. He knew that it would be a million five. I  
22 didn't end up taking all million five. Go Global didn't  
23 take all million five. It only took a million four  
24 twenty.

25 Q. Why was that?

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1 A. Because Eldorado Hills needed money for  
2 something at the time, and I left it in because I knew  
3 the company needed capital, and Sig's investor didn't  
4 come in like he was supposed to.

5 Q. Getting back to Mr. Harlap -- you're giving me  
6 a lot of -- strike that.

7 You're telling me that he knew that a million  
8 four twenty was given to Go Global which came out of his  
9 million five?

10 A. He knew that it was going to be a million  
11 five. I didn't tell him Go Global left 80,000.

12 Q. He knew that the million five would be for  
13 what purpose?

14 A. Mr. Lionel, we have -- I wish I had a  
15 chalkboard. Go Global had \$4,100,000 invested in the  
16 company at one time. When he agreed to invest, he was  
17 going to reduce Go Global's interest in Eldorado Hills,  
18 LLC, by a million five. That was the purpose. So he  
19 was going to replace Go Global to a certain extent. Go  
20 Global still had money invested in Eldorado Hills, LLC.  
21 So he wasn't fully replacing Go Global with his purchase  
22 of a million five. He was taking a portion of Go  
23 Global's interests.

24 Q. And he knew that?

25 A. Yes.

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1 Q. It wasn't that he was putting equity into  
2 Eldorado, but he was taking part of Go Global's  
3 interests.

4 MR. McDONALD: Object to the form.

5 BY MR. LIONEL:

6 Q. Is that right?

7 A. Rephrase that question. I don't understand  
8 your question.

9 Q. You don't understand the question?

10 And the money was going to go back to Go  
11 Global to lower the interest -- reduce the interest of  
12 Go Global?

13 A. Correct.

14 Q. And he knew that?

15 A. Yes.

16 Q. And that's why he was sending a million five?

17 A. Yes. He was buying into the Eldorado Hills  
18 project, just like Pete Eliades bought in, same way.  
19 When Pete came in or TELD came in, he took a percentage  
20 of Eldorado Hills, LLC, I think 60 percent. Who gave up  
21 their interest for that? Other investors. He bought  
22 our interest. Nanyah Vegas and Yoav Harlap was aware of  
23 that as well. He said he realized that he was going to  
24 have lesser interest, just like Go Global. Go Global  
25 just was referred down to a noninterest-bearing debt at

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1 the time in October of 2008, but Eliades bought a big  
2 chunk of interest, same type of transaction.

3 Q. Why was there no agreement with Harlap?

4 A. I'm going to try to keep it simple because  
5 I've already explained it. Harlap and I have a good  
6 relationship. If he sends \$1.5 million, it's supposed  
7 to go into an investment. He invests all over the  
8 world.

9 There should have been an agreement -- but  
10 things changed rather dramatically in '07 and '08 -- or  
11 some document. I never gave it to him, not on purpose,  
12 but when Sig came in with Pete Eliades and says, "Hey,  
13 we're going to buy everybody out, we have a agreement,"  
14 I put Harlap in. Sig was supposed to pay money back.

15 Harlap is also in the agreement when Eliades  
16 came in. Things were happening fast. A lot was going  
17 on. Nanyah Vegas is in the agreement. I didn't give  
18 him a certificate or a membership in Eldorado Hills,  
19 LLC. I forgot to do it, and I explained that earlier.

20 It wasn't something that we ran like these  
21 companies, like if it's a publicly traded company. It  
22 was closely held. When I advanced the money into  
23 Eldorado Hills, LLC, the \$4.1 million that I had at one  
24 point and was adding money throughout the time period  
25 leading up to that amount, I didn't charge Eldorado

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JA\_004015

1 Hills, LLC, interest like most banks would or you would  
 2 or your Lionel foundation would. I didn't charge Sig  
 3 interest for that \$4.1 million. I just put the money in  
 4 because the company needed the money.  
 5 Q. And you didn't charge it interest?  
 6 A. I didn't charge it interest.  
 7 Q. At all?  
 8 A. At all.  
 9 Q. For any of the advances?  
 10 A. For any. Oh, no, at the end, I did, but I  
 11 never got paid on that anyway. I think I ended up  
 12 sticking in \$120,000 to make one last payment because  
 13 Sig again didn't have the money. I said, "I want to get  
 14 paid interest on this," because I needed to go borrow  
 15 that money myself.  
 16 Q. How much interest?  
 17 A. Oh, I don't remember.  
 18 Q. 22 percent?  
 19 A. Maybe. Yeah, okay, so you know about it.  
 20 Yeah, but I had to borrow it.  
 21 Q. Of course I know about it.  
 22 A. Yeah, okay, so I had to borrow it. So I  
 23 charged interest, but the rest of the money, the \$4  
 24 million, I didn't charge any interest to the company. I  
 25 could have.

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1 I got negative 22 percent is what I got, plus.  
 2 Invest with Sig Rogich and you get negative.  
 3 Q. Paragraph 48, "Unknown to Nanyah, Rogich and  
 4 Eldorado decided afterwards" -- that would be after  
 5 October 2008 -- "they were not going to repay Nanyah or  
 6 buy out their equity interest."  
 7 How do you know what they decided, just  
 8 because they didn't?  
 9 A. Mr. Lionel, do we not know -- I'm making a  
 10 statement. Do we not know now that Rogich claims that  
 11 he gave away his interest in Eldorado Hills, LLC, or is  
 12 that a fact that is going to be in dispute by your side?  
 13 Q. I'm going to ask the questions.  
 14 A. Okay. So from what I've been told,  
 15 Mr. Lionel, Mr. Rogich has given away his interest in  
 16 Eldorado Hills, LLC. So this statement, 48, that you  
 17 like to read here, "Unknown to Nanyah, Rogich and  
 18 Eldorado decided afterwards that they were not going to  
 19 repay Nanyah or buy out their equity interest," we know  
 20 that -- well, I believe -- I haven't seen the document,  
 21 according to what Mr. Rogich has said, he's given away  
 22 his interest in Eldorado Hills, LLC. So he didn't pay  
 23 Nanyah. He plans on not paying him from what he told  
 24 me. He says, "I gave away my interest so I don't have  
 25 to pay anything." That's what Sig told me in October of

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1 2012.  
 2 Q. When did he tell you that?  
 3 A. October of 2012.  
 4 Q. Was that in the phone call you're talking  
 5 about?  
 6 A. In a phone call, yeah. Maybe it was  
 7 September, but I think it was October.  
 8 Q. That's the one phone call you've talked about?  
 9 A. Yes, and then we followed up with  
 10 correspondence to Mr. Rogich.  
 11 Q. What did you say when he said that?  
 12 A. You already asked me that question. I said,  
 13 "Sig, that doesn't sound right. How can you give away?  
 14 What did you get for it?" He said, "Nothing."  
 15 And, again, he told me about seven or eight  
 16 months after he purportedly gave away his interest. He  
 17 never told me when he did it, at the time that he did  
 18 it.  
 19 Q. Paragraph 51 talks about, "As a direct result  
 20 of the actions of defendants, plaintiffs have been  
 21 damaged in an amount in excess of \$10,000."  
 22 Is that basically what you said before?  
 23 A. Yes. Nanyah Vegas hasn't paid any legal fees  
 24 in this yet, but they will. So I'm sure it's going to  
 25 be a lot more than \$10,000.

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1 And, again, same thing for them, yes, he could  
 2 have had the million and a half and at least earned  
 3 interest on it.  
 4 MR. LIONEL: I think that's all that I have.  
 5 THE WITNESS: That's great.  
 6 MR. McDONALD: Let's go off the record.  
 7 (Whereupon, there was a discussion off the  
 8 record.)  
 9 MR. McDONALD: I don't have any questions.  
 10 THE REPORTER: Mr. McDonald, do you want a  
 11 copy of the transcript?  
 12 MR. McDONALD: Yes, just an eTran.  
 13 THE REPORTER: And the exhibits?  
 14 MR. McDONALD: Do you think we'll want the  
 15 exhibits, Carlos?  
 16 THE WITNESS: We have them here. So no.  
 17 MR. McDONALD: And send it to my office, and  
 18 I'll notify him.  
 19 (Whereupon, the deposition ws concluded at  
 20 3:30 p.m.)  
 21  
 22  
 23  
 24  
 25

702-476-4500

OASIS REPORTING SERVICES, LLC

Page: 171

JA\_004016

CERTIFICATE OF WITNESS				
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\* \* \* \* \*

I, CARLOS A. HUERTA, witness herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected, and do hereby affix my signature to said deposition.

\_\_\_\_\_  
CARLOS A. HUERTA

This \_\_\_\_\_ day of \_\_\_\_\_, 2014

CERTIFICATE OF REPORTER	
1	
2	STATE OF NEVADA )
3	) ss.
4	COUNTY OF CLARK )
5	
6	
7	I, Marilyn L. Speciale, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:
8	
9	That I reported the taking of the deposition of the witness, CARLOS A. HUERTA, at the time and place aforesaid;
10	
11	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;
12	
13	That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.
14	
15	I further certify (1) that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCP 30(e) was requested.
16	
17	
18	
19	IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 10th day of May, 2014.
20	
21	
22	
23	_____ MARILYN L. SPECIALE, CRR,RPR,CCR#749
24	
25	

# EXHIBIT V



## Therese Shanks

---

**From:** Yoav Harlap <Yoav.Harlap@Nanyah.com>  
**Sent:** Monday, October 16, 2017 2:31 PM  
**To:** Mark Simons  
**Subject:** FW: CanaMex Nevada 2007 K-1  
**Attachments:** Nanyah Vegas CanaMex 2007 K-1.pdf

**From:** [srellamas@gmail.com](mailto:srellamas@gmail.com) [<mailto:srellamas@gmail.com>] **On Behalf Of** Summer Rellamas  
**Sent:** Saturday, April 12, 2008 1:13 AM  
**To:** Yoav Harlap <Yoav.Harlap@Nanyah.com>  
**Subject:** CanaMex Nevada 2007 K-1

Hello Mr. Harlap. Attached is your 2007 IRS Form K-1 for your investment in CanaMex Nevada LLC. Please let me know if you have any questions.

--

Summer Rellamas  
Finance & Administration Manager  
Go Global Properties  
3060 E. Post Rd, Suite 110  
Las Vegas, NV 89120  
P: (702) 617-9861 x101  
F: (702) 617-9862

\*\*\* eSafe scanned this email for malicious content \*\*\*  
\*\*\* IMPORTANT: Do not open attachments from unrecognized senders \*\*\*

Schedule K-1  
(Form 1065)Department of the Treasury  
Internal Revenue Service

For calendar year 2007, or tax

year beginning DECEMBER 3, 2007  
ending DECEMBER 31, 2007**2007****Partner's Share of Income, Deductions, Credits, etc.**

► See separate instructions.

**Part I Information About the Partnership****A** Partnership's employer identification number  
26-1508635**B** Partnership's name, address, city, state, and ZIP code  
CANAMEX NEVADA, LLC  
C/O GO GLOBAL INC  
3060 E. POST RD. STE 110  
LAS VEGAS, NV 89120**C** IRS Center where partnership filed return  
OGDEN, UT**D** ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner****E** Partner's identifying number**APPLIED FOR****F** Partner's name, address, city, state, and ZIP code  
NANYAH VEGAS, LLC  
3060 E. POST RD. STE 110  
LAS VEGAS, NV 89120**G** ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member**H** ☒ Domestic partner ☐ Foreign partner**I** What type of entity is this partner? PARTNERSHIP**J** Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	99.0000000%	99.0000000%
Loss	99.0000000%	99.0000000%
Capital	99.0000000%	99.0000000%

**K** Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	0.

**L** Partner's capital account analysis:

Beginning capital account	\$	
Capital contributed during the year	\$	1,500,000.
Current year increase (decrease)	\$	<2,515.
Withdrawals & distributions	\$	
Ending capital account	\$	1,497,485.

☐ Tax basis ☐ GAAP ☐ Section 704(b) book  
☐ Other (explain)
☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

**Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items**

<b>1</b> Ordinary business income (loss)	<b>15</b> Credits
<2,515.>	
<b>2</b> Net rental real estate income (loss)	<b>16</b> Foreign transactions
<b>3</b> Other net rental income (loss)	
<b>4</b> Guaranteed payments	
<b>5</b> Interest income	
<b>6a</b> Ordinary dividends	<b>17</b> Alternative min tax (AMT) items
<b>6b</b> Qualified dividends	
<b>7</b> Royalties	<b>18</b> Tax-exempt income and nondeductible expenses
<b>8</b> Net short-term capital gain (loss)	
<b>9a</b> Net long-term capital gain (loss)	
<b>9b</b> Collectibles (28%) gain (loss)	<b>19</b> Distributions
<b>9c</b> Unrecaptured sec 1250 gain	<b>20</b> Other information
<b>10</b> Net section 1231 gain (loss)	
<b>11</b> Other income (loss)	
<b>12</b> Section 179 deduction	
<b>13</b> Other deductions	
<b>14</b> Self-employment earnings (loss)	
<b>A</b> 0.	

\*See attached statement for additional information.

For IRS Use Only

JWA For Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2007

711261  
12-31-07

CANAMEX NEVADA, LLC C/O GO GLOBAL INC

26-1508635

SCHEDULE K-1 CURRENT YEAR INCREASES (DECREASES)

DESCRIPTION	AMOUNT	TOTALS
ORDINARY INCOME (LOSS)	<2,515.>	
SCHEDULE K-1 INCOME SUBTOTAL		<2,515.>
TOTAL TO SCHEDULE K-1, ITEM L		<2,515.>

19340410 796474 CANA8635

10 PARTNER NUMBER 2  
2007.05040 CANAMEX NEVADA, LLC C/O GO CANA8631

NAN\_000271  
JA\_004021

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

	Code	Report on
1. Ordinary business income (loss). You must first determine whether the income (loss) is passive or nonpassive. Then enter on your return as follows:	K Empowerment zone and renewal community employment credit	Form 8844, line 3
Passive loss	L Credit for increasing research activities	See the Partner's Instructions
Passive income	M New markets credit	
Nonpassive loss	N Credit for employer social security and Medicare taxes	Form 1040, line 64
Nonpassive income	O Backup withholding	
	P Other credits	See the Partner's Instructions
2. Net rental real estate income (loss)	16. Foreign transactions	
3. Other net rental income (loss)	A Name of country or U.S. possession	Form 1116, Part I
Net income	B Gross income from all sources	
Net loss	C Gross income sourced at partner level	
4. Guaranteed payments	Foreign gross income sourced at partnership level	Form 1116, Part I
5. Interest income	D Passive category	
6a. Ordinary dividends	E General category	
6b. Qualified dividends	F Other	Form 1116, Part I
7. Royalties	Deductions allocated and apportioned to partner level	
8. Net short-term capital gain (loss)	G Interest expense	Form 1116, Part I
9a. Net long-term capital gain (loss)	H Other	Form 1116, Part I
9b. Collectibles (28%) gain (loss)	Deductions allocated and apportioned at partnership level to foreign source income	Form 1116, Part I
9c. Unrecaptured section 1250 gain	I Passive category	
10. Net section 1231 gain (loss)	J General category	
11. Other income (loss)	K Other	Form 1116, Part II
Code	Other information	
A Other portfolio income (loss)	L Total foreign taxes paid	Form 1116, Part II
B Involuntary conversions	M Total foreign taxes accrued	Form 1116, Part II
C Sec. 1256 contracts & straddles	N Reduction in taxes available for credit	Form 1116, line 12
D Mining exploration costs recapture	O Foreign trading gross receipts	Form 8873
E Cancellation of debt	P Extraterritorial income exclusion	Form 8873
F Other income (loss)	Q Other foreign transactions	See the Partner's Instructions
12. Section 179 deduction	17. Alternative minimum tax (AMT) items	
13. Other deductions	A Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251
A Cash contributions (50%)	B Adjusted gain or loss	
B Cash contributions (30%)	C Depletion (other than oil & gas)	
C Noncash contributions (50%)	D Oil, gas, & geothermal - gross income	
D Noncash contributions (30%)	E Oil, gas, & geothermal - deductions	
E Capital gain property to a 50% organization (30%)	F Other AMT items	Form 1040, line 8b
F Capital gain property (20%)	18. Tax-exempt income and nondeductible expenses	
G Investment interest expense	A Tax-exempt interest income	
H Deductions - royalty income	B Other tax-exempt income	See the Partner's Instructions
I Section 59(e)(2) expenditures	C Nondeductible expenses	See the Partner's Instructions
J Deductions - portfolio (2% floor)	19. Distributions	
K Deductions - portfolio (other)	A Cash and marketable securities	See the Partner's Instructions
L Amounts paid for medical insurance	B Other property	See the Partner's Instructions
M Educational assistance benefits	20. Other information	
N Dependent care benefits	A Investment income	Form 4952, line 4a
O Preproductive period expenses	B Investment expenses	Form 4952, line 5
P Commercial revitalization deduction from rental real estate activities	C Fuel tax credit information	Form 4136
Q Pensions and IRAs	D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
R Reforestation expense deduction	E Basis of energy property	See the Partner's Instructions
S Domestic production activities information	F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
T Qualified production activities income	G Recapture of low-income housing credit (other)	Form 8611, line 8
U Employer's Form W-2 wages	H Recapture of investment credit	Form 4255
V Other deductions	I Recapture of other credits	See the Partner's Instructions
	J Look-back interest - completed long-term contracts	Form 8597
14. Self-employment earnings (loss)	K Look-back interest - income forecast method	Form 8866
Note: If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.	L Dispositions of property with section 179 deductions	See the Partner's Instructions
A Net earnings (loss) from self-employment	M Recapture of section 179 deduction	
B Gross farming or fishing income	N Interest expense for corporate partners	
C Gross non-farm income	O Section 453(j)(3) information	
	P Section 453A(c) information	
15. Credits	Q Section 1260(b) information	
A Low-income housing credit (section 42(j)(5))	R Interest allocable to production expenditures	
B Low-income housing credit (other)	S CCF nonqualified withdrawals	
C Qualified rehabilitation expenditures (rental real estate)	T Information needed to figure depletion - oil and gas	
D Other rental real estate credits	U Amortization of reforestation costs	
E Other rental credits	V Unrelated business taxable income	
F Undistributed capital gains credit	W Other information	
G Credit for alcohol used as fuel		
H Work opportunity credit		
I Welfare-to-work credit		
J Disabled access credit		

# EXHIBIT W

CANAMEX NEVADA, LLC  
3060 E. POST RD, STE 110  
LAS VEGAS, NV 89120  
(702) 617-9861

April 3, 2011

NANYAH VEGAS, LLC  
3060 E. POST RD, STE 110  
LAS VEGAS, NV 89120

RE: CANAMEX NEVADA, LLC  
26-1508635  
Schedule K-1

Dear Partner:

Enclosed is your 2010 Schedule K-1 (Form 1065), Partner's Share of Income, Credits, Deductions, Etc., which has been filed with the partnership tax return of CANAMEX NEVADA, LLC.

The amounts reported to you on lines 1 through 20 of the Schedule K-1 represent your share of income, credits, deductions, and other information and must be reported on the appropriate lines of your income tax return. Amounts were allocated to you based on the partnership agreement. The IRS uses codes on some lines of the Schedule K-1 to identify the item and provide reporting information. These codes are identified on page 2 of the Schedule K-1.

Should you have any questions regarding the information reported to you on this Schedule K-1, please call.

Sincerely,

For  
CANAMEX NEVADA, LLC


NAN\_000389  
JA\_004024

## 2010

For calendar year 2010, or tax  
year beginning \_\_\_\_\_, 2010  
ending \_\_\_\_\_.

► See separate instructions.

<b>Part I</b>		<b>Information About the Partnership</b>	
<b>A</b>	Partnership's employer identification number	26-1508635	
<b>B</b>	Partnership's name, address, city, state, and ZIP code	CANAMEX NEVADA, LLC 3060 E. POST RD, STE 110 LAS VEGAS, NV 89120	
<b>C</b>	IRS Center where partnership filed return	OGDEN, UT	
<b>D</b>	<input type="checkbox"/> Check if this is a publicly traded partnership (PTP)		
<b>Part II</b>			
<b>Information About the Partner</b>			
<b>E</b>	Partner's identifying number	APPLIED FOR	
<b>F</b>	Partner's name, address, city, state, and ZIP code	NANYAH VEGAS, LLC 3060 E. POST RD, STE 110 LAS VEGAS, NV 89120	
<b>G</b>	<input type="checkbox"/> General partner or LLC member-manager	<input checked="" type="checkbox"/> Limited partner or other LLC member	
<b>H</b>	<input checked="" type="checkbox"/> Domestic partner	<input type="checkbox"/> Foreign partner	
<b>I</b>	What type of entity is this partner?	<u>PARTNERSHIP</u>	
<b>J</b>	Partner's share of profit, loss, and capital (see instructions):		
	<b>Beginning</b>	<b>Ending</b>	
	Profit 99.00000 %	99.00000 %	
	Loss 99.00000 %	99.00000 %	
	Capital 99.00000 %	99.00000 %	
<b>K</b>	Partner's share of liabilities at year end:		
	Nonrecourse . . . . .	\$	
	Qualified nonrecourse financing . . . . .	\$	
	Recourse . . . . .	\$	
<b>L</b>	Partner's capital account analysis:		
	Beginning capital account . . . . .	\$	1,497,695.
	Capital contributed during the year . . .	\$	
	Current year increase (decrease) . . . .	\$	-10.
	Withdrawals and distributions . . . . .	\$	
	Ending capital account . . . . .	\$	1,497,685.
	<input checked="" type="checkbox"/> Tax basis	<input type="checkbox"/> GAAP	<input type="checkbox"/> Section 704(b) book
	<input type="checkbox"/> Other (explain)		
<b>M</b>	Did the partner contribute property with a built-in gain or loss?		
	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	

Final K-1		Amended K-1		OMB No. 1545-0099	
<div>  <b>Partner's Share of Current Year Income, Deductions, Credits, and Other Items</b> </div>					
1	Ordinary business income (loss) -10.	15	Credits		
2	Net rental real estate income (loss)				
3	Other net rental income (loss)	16	Foreign transactions		
4	Guaranteed payments				
5	Interest income				
6 a	Ordinary dividends				
6 b	Qualified dividends				
7	Royalties				
8	Net short-term capital gain (loss)				
9 a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items		
9 b	Collectibles (28%) gain (loss)				
9 c	Unrecaptured section 1250 gain				
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses		
11	Other income (loss)				
		19	Distributions		
12	Section 179 deduction				
13	Other deductions	20	Other information		
14	Self-employment earnings (loss)				

\*See attached statement for additional information.

FOR  
IRS  
USE  
ONLY

Schedule K-1 (Form 1065) 2010

PTPA0312 01/25/11

NAN\_000390  
JA 004025

# EXHIBIT X



Schedule K-1  
(Form 1065)

For calendar year 2007, or tax

2007

☐ Final K-1☐ Amended K-1

OMB No. 1545-0040

Department of the Treasury  
Internal Revenue Service

year beginning

ending

**Partner's Share of Income, Deductions,  
Credits, etc.**

See separate instructions

**Part I Information About the Partnership**

A Partnership's employer identification number

59-3817718

B Partnership's name, address, city, state, and ZIP code

ELDORADO HILLS, LLC  
3060 E. POST RD., STE. 110  
LAS VEGAS, NV 89120

C IRS Center where partnership filed return

OGDEN, UT

D ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner**

E Partner's identifying number

20-5708487

F Partner's name, address, city, state, and ZIP code

EDDYLINE INVESTMENTS, LLC  
3060 E. POST RD., STE. 110  
LAS VEGAS, NV 89120G ☐ General partner or LLC☒ Limited partner or other LLC

member-manager

member

H ☒ Domestic partner☐ Foreign partnerI What type of entity is this partner? **PARTNERSHIP**

J Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	0.000000%	0.170000%
Loss	0.000000%	0.170000%
Capital	0.000000%	0.170000%

K Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	35,700.
Recourse	\$	0.

L Partner's capital account analysis:

Beginning capital account	\$	
Capital contributed during the year	\$	50,000.
Current year increase (decrease)	\$	<334.
Withdrawals & distributions	\$	
Ending capital account	\$	49,666.

☐ Tax basis  
☐ Other (explain)☐ GAAP☐ Section 704(b) book**Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1 Ordinary business income (loss)	<1.>	15 Credits
2 Net rental real estate income (loss)	<382.>	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	49.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends		
7 Royalties		
8 Net short-term capital gain (loss)		18 Tax-exempt income and nondeductible expenses
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		
10 Net section 1231 gain (loss)		20 Other information
11 Other income (loss)		A 49.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

\* See attached statement for additional information.

For IRS Use Only

JWA For Paperwork Reduction Act Notice, see instructions for Form 1065.

Schedule K-1 (Form 1065) 2007

711261  
12-31-07

Schedule K-1  
(Form 1065)

2007

For calendar year 2007, or tax

Department of the Treasury  
Internal Revenue Service

year beginning

ending

Partner's Share of Income, Deductions,  
Credits, etc.

See separate instructions.

## Part I Information About the Partnership

A Partnership's employer identification number

59-3817718

B Partnership's name, address, city, state, and ZIP code

ELDORADO HILLS, LLC  
3060 E. POST RD., STE. 110  
LAS VEGAS, NV 89120

C IRS Center where partnership filed return

OGDEN, UT

D ☐ Check if this is a publicly traded partnership (PTP)

## Part II Information About the Partner

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code

THE RAY FAMILY TRUST  
82 PANORAMA CREST AVE.  
LAS VEGAS, NV 89135G ☐ General partner or LLC

member-manager

☒ Limited partner or other LLC

member

H ☒ Domestic partner☐ Foreign partner

I What type of entity is this partner? TRUST

J Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	0.000000%	0.950000%
Loss	0.000000%	0.950000%
Capital	0.000000%	0.950000%

K Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	199,500.
Recourse	\$	0.

L Partner's capital account analysis:

Beginning capital account	\$	
Capital contributed during the year	\$	283,562.
Current year increase (decrease)	\$	<1,272.
Withdrawals & distributions	\$	
Ending capital account	\$	282,290.

☐ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	<6.>	15 Credits
2 Net rental real estate income (loss)		
3 Other net rental income (loss)	<1,454.>	16 Foreign transactions
4 Guaranteed payments		
5 Interest income	189.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends		
7 Royalties		
8 Net short-term capital gain (loss)		18 Tax-exempt income and nondeductible expenses
9a Net long-term capital gain (loss)		C* 1.
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		
10 Net section 1231 gain (loss)		20 Other information
11 Other income (loss)		A 189.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

\*See attached statement for additional information.

For IRS Use Only

JWA For Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2007

711261  
12-31-07

# EXHIBIT Y

Schedule K-1  
(Form 1065)

2007

Department of the Treasury  
Internal Revenue ServiceFor calendar year 2007, or tax  
year beginning \_\_\_\_\_  
ending \_\_\_\_\_**Partner's Share of Income, Deductions,  
Credits, etc.**

See separate instructions.

**Part I Information About the Partnership**

A Partnership's employer identification number

59-3817718

B Partnership's name, address, city, state, and ZIP code

ELDORADO HILLS, LLC  
3060 E. POST RD., STE. 110  
LAS VEGAS, NV 89120

C IRS Center where partnership filed return

OGDEN, UT

D ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner**

E Partner's identifying number

20-5509798

F Partner's name, address, city, state, and ZIP code

ANTONIO NEVADA, LLC  
3441 S. EASTERN AVE.  
LAS VEGAS, NV 89169G ☐ General partner or LLC  
member-manager☒ Limited partner or other LLC  
memberH ☒ Domestic partner☐ Foreign partnerI What type of entity is this partner? PARTNERSHIP

J Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	9.9400000%	0.0000000%
Loss	9.9400000%	0.0000000%
Capital	9.9400000%	0.0000000%

K Partner's share of liabilities at year end:

Nonrecourse	\$	0.
Qualified nonrecourse financing	\$	0.
Recourse	\$	0.

L Partner's capital account analysis:

Beginning capital account	\$	2,995,863.
Capital contributed during the year	\$	19,238.
(Current year increase) (decrease)	\$	<15,101.
Withdrawals & distributions	\$	3,000,000.
Ending capital account	\$	0.

☐ Tax basis☐ GAAP☐ Section 704(b) book☐ Other (explain)☒ Final K-1☐ Amended K-1

OMB No. 1545-0047

**Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1 Ordinary business income (loss)	<70.>	15 Credits
2 Net rental real estate income (loss)	<17,260.>	16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income	2,242.	
6a Ordinary dividends		17 Alternative min tax (AMT) items
6b Qualified dividends		
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)		C* 13.
9a Net long-term capital gain (loss)		
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		A 3,000,000.
10 Net section 1231 gain (loss)		20 Other Information
11 Other income (loss)		A 2,242.
12 Section 179 deduction		
13 Other deductions		
14 Self-employment earnings (loss)	A 0.	

\* See attached statement for additional information.

For Use Only

JWA For Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2007

7-2007  
9-31-07

# EXHIBIT Z

**Expanded Capital Account Summary**

Name **ELDORADO HILLS, LLC**

I.D. Number **59-3817718**

Partner Number	<b>GO GLOBAL, INC. 3060 E. POST RD., STE. 110 LAS VEGAS, NV 89120</b>	Partner's Identification Number
<u>1</u>		<u>88-0432565</u>

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital
<u>668,619.</u>	<u>3,240,000.</u>	<u>&lt;97,470.&gt;</u>	<u>1,079,619.</u>	<u>2,731,530.</u>

Partner Number	<b>THE ROGICH FAMILY 2004 FAMILY IRREVOC 3060 E. POST RD., STE. 110 LAS VEGAS, NV 89120</b>	Partner's Identification Number
<u>2</u>		<u>20-6200429</u>

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital
<u>831,259.</u>	<u>1,403,625.</u>	<u>&lt;97,472.&gt;</u>	<u>209,619.</u>	<u>1,927,793.</u>

Partner Number	<b>ANTONIO NEVADA, LLC 3441 S. EASTERN AVE. LAS VEGAS, NV 89169</b>	Partner's Identification Number
<u>3</u>		<u>20-5509798</u>

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital
<u>2,995,863.</u>	<u>19,238.</u>	<u>&lt;15,101.&gt;</u>	<u>3,000,000.</u>	<u>0.</u>

Partner Number	<b>EDDYLINE INVESTMENTS, LLC 3060 E. POST RD., STE. 110 LAS VEGAS, NV 89120</b>	Partner's Identification Number
<u>4</u>		<u>20-5708487</u>

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital
<u></u>	<u>50,000.</u>	<u>&lt;334.&gt;</u>	<u></u>	<u>49,666.</u>

**Total For All Partner's Capital Accounts**

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital
<u>4,495,741.</u>	<u>4,996,425.</u>	<u>&lt;211,649.&gt;</u>	<u>4,289,238.</u>	<u>4,991,279.</u>

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01 27 07

16320411 796474 ELDO7718

2007.05040 ELDORADO HILLS, LLC

RT0164

JA\_004032

# Expanded Capital Account Summary

Name **ELDORADO HILLS, LLC**

I.D. Number **59-3817718**

Partner Number	<b>THE RAY FAMILY TRUST 82 PANORAMA CREST AVE. LAS VEGAS, NV 89135</b>	Partner's Identification Number
<b>5</b>		<b>547-99-2508</b>

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital
	<b>283,562.</b>	<b>&lt;1,272.&gt;</b>		<b>282,290.</b>

Partner Number		Partner's Identification Number

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital

Partner Number		Partner's Identification Number

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital

Partner Number		Partner's Identification Number

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital

## Total For All Partner's Capital Accounts

Beginning Capital	Capital Contributed	Schedule M-2, Lines 3, 4 & 7	Withdrawals	Ending Capital
<b>4,495,741.</b>	<b>4,996,425.</b>	<b>&lt;211,649.&gt;</b>	<b>4,289,238.</b>	<b>4,991,279.</b>

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04-27-07

16320411 796474 ELDO7718

2007.05040 ELDORADO HILLS, LLC

RT0165

JA\_004033

# EXHIBIT AA



## Therese Shanks

---

**From:** Yoav Harlap <Yoav.Harlap@Nanyah.com>  
**Sent:** Monday, October 16, 2017 2:45 PM  
**To:** Mark Simons  
**Subject:** FW: Nanyah Appeal - Reversed by the Supreme Court  
**Attachments:** 160212 Order of Reversal and Remand - FILED.pdf; ATT00001.htm

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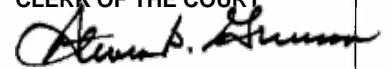
**From:** Carlos Huerta [<mailto:carlos@goglobalproperties.com>]  
**Sent:** Saturday, February 13, 2016 12:44 AM  
**To:** Yoav Harlap <Yoav.Harlap@Nanyah.com>  
**Cc:** Yoav Harlap <[harlap@netvision.net.il](mailto:harlap@netvision.net.il)>  
**Subject:** Nanyah Appeal - Reversed by the Supreme Court

Yoav,

Shabbat Shalom. Hope that you are doing okay with all of your ventures. I have some good news for you; you don't know how happy this makes me (you can't imagine how I've struggled with this), but our Nevada Supreme Court overturned the judgment entered, here in district court, against Nanyah Vegas and it proves that you (nor I) deserves what this judge Allf doled out. Attached is the order. It, basically, says that Nanyah's claims could not have been dismissed, when Eldorado Hills, LLC did not prove that the statute began to run, once the money was tendered, or when a membership interest should have been provided and maintained, on your behalf and how I was guaranteed that it would be by this "respected" Sig Rogich. This judge Allf should be exposed for the complete disgrace that she really is. So, we are still fighting and I am so very sorry how long this has taken and how your money has not produced anything, even though your money, Jacob's money, and my money all went into this very valuable property. It haunts me each day and I am still fighting for my \$2.74 million also, but my chances are not as good as yours now that this has occurred, but I am happier for you than anything else right now.

Carlos Huerta  
3060 E. Post Road, Suite 110  
Las Vegas, NV 89120  
T: 702.516.5475  
F: 702.726.2794

Begin forwarded message:



1 **EXPT**

2 Samuel S. Lionel, Esq. (Bar No. 1766)  
3 Brenoch Wirthlin, Esq. (Bar No. 10282)  
4 **FENNEMORE CRAIG, P.C.**  
5 300 S. Fourth Street, Suite 1400  
6 Las Vegas, Nevada 89101  
7 Tel.: (702) 692-8000; Fax: (702) 692-8099  
8 Email: [slionel@fclaw.com](mailto:slionel@fclaw.com)  
9 [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

10 *Attorneys for Sigmund Rogich, Individually and as*  
11 *Trustee of the Rogich Family Irrevocable Trust and*  
12 *Imitations, LLC*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

22 Plaintiffs,

23 v.

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

Defendants.

CASE NO.: A-13-686303-C

DEPT. NO.: XXVII

**EX PARTE MOTION FOR AN**  
**ORDER SHORTENING TIME ON**  
**MOTION FOR RELIEF FROM**  
**THE OCTOBER 5, 2018 ORDER**  
**PURSUANT TO NRCP 60(b)**

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.

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

**EX PARTE MOTION FOR AN ORDER SHORTENING TIME ON MOTION FOR  
RELIEF FROM THE OCTOBER 5, 2018 ORDER PURSUANT TO NRCP 60(b)**

Pursuant to EDCR 2.26, Defendants Sigmund Rogich, individually ("Mr. Rogich"), and as Trustee of the Rogich Family Irrevocable Trust (the "Trust" and collectively with Mr. Rogich referred to as the "Rogich Defendants"), and Imitations, LLC ("Imitations" and collectively with the Rogich Defendants referred to as the "Moving Defendants" and with Mr. Rogich referred to herein as the "Rogich Defendants"), hereby move this Court for an Order Shortening Time on their Motion for Relief from the October 5, 2018 Order Pursuant to NRCP 60(b) (the "Rule 60(b) Motion").

This ex parte motion is based on all documents on file with the Court and the Declaration of counsel which follows, all of which demonstrate that the Rule 60(b) Motion should be heard on shortened time.

DATED: February 7, 2019.

FENNEMORE CRAIG, P.C.

By: 

Samuel S. Lionel, Esq. (Bar No. 1766)  
Brenoch Wirthlin, Esq. (Bar No. 10282)  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101

*Attorneys for Sigmund Rogich, Individually  
and as Trustee of the Rogich Family  
Irrevocable Trust and Imitations, LLC*

**DECLARATION OF BRENOCH WIRTHLIN, ESQ. IN SUPPORT OF  
EX PARTE MOTION FOR AN ORDER SHORTENING TIME ON MOTION FOR  
RELIEF FROM THE OCTOBER 5, 2018 ORDER PURSUANT TO NRCP 60(b)**

I, BRENOCH WIRTHLIN, ESQ., declare under the penalty of perjury the following:

1. I am a director at the law firm of Fennemore Craig, P.C., counsel for Defendants Sigmund Rogich, individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC (collectively, the "Rogich Defendants"), in the above-referenced action.
2. I am aware of and have personal knowledge of the matters contained herein.
3. On February 6, 2019, the Rogich Defendants filed their Motion for Relief from the October 5, 2018 Pursuant to NRCP 60(b) (the "Rule 60(b) Motion").

1 4. Prior to the filing of the Rule 60(b) Motion, both Plaintiff Nanyah Vegas, LLC  
2 (“Nanyah”) and co-Defendant Eldorado Hills (“Eldorado”) filed their Motions for Summary  
3 Judgment, wherein they seek summary judgment based upon the same Order that the Rogich  
4 Defendants seek relief from (*i.e.*, the October 5, 2018 Order).

5 5. Eldorado’s Motion for Summary Judgment is scheduled to be heard on **February**  
6 **27, 2019 at 10:00 a.m.** and Nanyah’s Motion for Summary Judgment is scheduled to be heard on  
7 **March 6, 2019 at 10:00 a.m.**

8 6. The Moving Defendants request that their Rule 60(b) Motion should be heard on  
9 shortened time as a decision on the Rule 60(b) Motion will impact the decisions of the Motions  
10 for Summary Judgment filed by Eldorado and Nanyah.

11 7. Upon the Court issuing this Order Shortening Time, opposing counsel will be  
12 served with this Motion and the Order Shortening Time.

13 8. The Moving Defendants request that the hearing on their Rule 60(b) Motion be  
14 set for the same date and time of Eldorado’s Motion for Summary Judgment (**Wednesday,**  
15 **February 27, 2019 at 10:00 a.m.**).

16 I declare under penalty of perjury of the laws of the State of Nevada that the foregoing is  
17 true and correct to the best of my knowledge and belief.

18 DATED: February 7, 2019.

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23 BRENOCH WIRTHLIN, ESQ.  
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III.

CONCLUSION

The Rogich Defendants respectfully request that the hearing on their Rule 60(b) Motion be heard on shortened time. The Rogich Defendants specifically request that the hearing on their Rule 60(b) Motion be set for **February 27, 2019 at 10:00 a.m.**

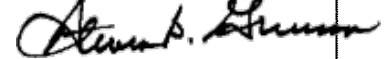
DATED: February 7, 2019.

FENNEMORE CRAIG, P.C.

By: 

Samuel S. Lionel, Esq. (Bar No. 1766)  
Brenoch Wirthlin, Esq. (Bar No. 10282)  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101

*Attorneys for Sigmund Rogich, Individually  
and as Trustee of the Rogich Family  
Irrevocable Trust and Imitations, LLC*



**OMSJ**

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Facsimile: (775) 785-0087  
Email: [mark@mgsimonslaw.com](mailto:mark@mgsimonslaw.com)

*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.

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

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

**NANYAH VEGAS LLC'S OPPOSITION  
TO ELDORADO HILLS LLC'S  
MOTION TO EXTEND THE  
DISPOSITIVE MOTION DEADLINE  
AND MOTION FOR SUMMARY  
JUDGMENT AND COUNTERMOTION  
FOR NRCP 15 RELIEF**

**Hearing Date: 3/6/19**

**Hearing Time: 10:00 a.m.**

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.

1 Plaintiff Nanyah Vegas, LLC ("Nanyah"), by and through its undersigned counsel,  
2 Mark G. Simons of SIMONS LAW, PC, submits the following Opposition To Eldorado  
3 Hills, LLC's Motion To Extend The Dispositive Motion and Motion for Summary  
4 Judgment. Nanyah also submits its countermotion for NRCP 15 relief amending its  
5 pleadings to conform to the "undisputed" findings of fact and conclusions of law  
6 contained in the Court's October 5, 2018, Order (the "Order"). A copy of the Court's  
7 Order is attached hereto as **Exhibit 1**.

9 **I. RELEVANT STATUS OF THE CASE.**

10 This case focuses on Nanyah's efforts to recover its \$1.5 million investment in  
11 Eldorado. This Court has found as "undisputed facts" in these proceedings that  
12 Nanyah invested \$1.5 million into Eldorado, that Eldorado had an "obligation" to repay  
13 Nanyah its \$1.5 million investment, and that the Rogich Trust agreed to "assume" the  
14 obligation to repay Nanyah its \$1.5 million investment on Eldorado's behalf.<sup>1</sup> Pursuant  
15 to NRS 111.220(2) the Rogich Trust agreed to be the surety of Eldorado's contractual  
16 debt obligation to Nanyah.

17 In addition, this Court found "as a matter of law" the contracts entered into by the  
18 Rogich Trust "clearly and unequivocally" identified Nanyah's \$1.5 million investment into  
19 Eldorado and the Rogich Trust's assumption of Eldorado's contractual obligation to  
20 repay Nanyah its \$1.5 million investment into Eldorado. Order, ¶¶4, 5.b.i, 7 and 14. As  
21 a consequence of the Court's factual and legal findings in the Order, Eldorado's motion  
22  
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26  
27 <sup>1</sup> Nanyah was entitled to repayment of its \$1.5 million investment and/or the issuance of  
28 a membership interest in Eldorado equal to that investment. Nanyah has elected to  
recover the repayment of its \$1.5 million investment.

1 must be denied and the Court must grant Nanyah's NRCP 15 relief.<sup>2</sup>

2 **II. THE COURT DISMISSED PARTIES AND CLAIMS BASED UPON**  
3 **THE COURT'S UNDISPUTED FACTS AND LEGAL RULINGS.**

4 The Court's Order granted summary judgment in favor of the Eliades  
5 Defendants<sup>3</sup> finding they had no liability for repayment of Nanyah's \$1.5 million  
6 investment because "**the obligation**" to repay Nanyah was "**specifically assumed**" by  
7 the Rogich Trust. The Court ruled that the various contracts clearly and unambiguously  
8 stated that "**The Rogich Trust specifically agreed to assume the obligation to pay**  
9 **Nanyah its percentage or debt.**" Order, ¶7 (emphasis added). The Court then  
10 concluded that the claims against the Eliades Defendants should be dismissed because  
11 these defendants "did not specifically assumed the Rogich Trust's obligation to repay  
12 Nanyah its \$1,500,000.00 investment into Eldorado . . . ." *Id.*, ¶21.

13  
14 As a consequence of the Court's Order, as a matter of law this Court must also  
15 deny Eldorado's request for summary judgment. This is because the Court has ruled  
16 that the contracts unambiguously state that Eldorado owed an "obligation" to Nanyah to  
17 repay it the \$1.5 million investment. The "obligation" was assumed by the Rogich Trust.  
18 Instead, Nanyah is entitled to summary judgment in its favor against Eldorado for \$1.5  
19 million since that is the underlying "obligation" that is owed to Nanyah for which  
20 Eldorado remains liable.  
21  
22  
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---

25 <sup>2</sup> In addition, Nanyah has filed its own Motion for Summary Judgment seeking summary  
26 judgment in its favor based upon the Court's factual and legal findings.

27 <sup>3</sup> The Eliades Defendants are Peter Eliades individually and as Trustee of the Eliades  
28 Survivor Trust of 10/30/08 and Teld, LLC.



1 **III. THE COURT'S ORDER CONCLUSIVELY ESTABLISHES ELDORADO LIABLE**  
2 **FOR NANYAH'S DEBT.**

3 The following are undisputed facts and rulings of law contained in the Court's  
4 Order mandating denial of Eldorado's motion.

5 **A. ELDORADO RECEIVED NANYAH'S \$1.5 MILLION INVESTMENT.**

6 The following excerpts from the Court's Order conclusively demonstrates that  
7 Nanyah invested \$1.5 million into Eldorado which investment Eldorado received.

8  
9 Order, ¶12: **"Nanyah wired \$1,500,000.00 which eventually**  
10 **was deposited into Eldorado's bank account. . . .**

11 Order, ¶15.b.i. **"The October 30, 2008, Membership Interest**  
12 **Purchase Agreement identifies Nanyah's \$1,500,000**  
13 **investment into Eldorado at Exhibit D which clearly and**  
14 **unequivocally states the following: Seller [Rogich Trust]**  
15 **confirms that certain amounts have been advanced to or**  
16 **on behalf of the Company [Eldorado] by certain third-**  
17 **parties [including Nanyah], as referenced in Section 8 of**  
18 **the Agreement. Exhibit D also memorializes Nanyah's**  
19 **\$1,500,000 investment into Eldorado.**

20 Order, ¶21. **"[T]he Court concludes that that Eliades**  
21 **Defendants did not specifically assumed the Rogich**  
22 **Trust's obligation to repay Nanyah its \$1,500,000.00**  
23 **investment into Eldorado . . . ."**

24 Based upon the foregoing, it is undisputed that Nanyah paid and Eldorado received  
25 Nanyah's \$1.5 million investment.

26 **B. ELDORADO'S "OBLIGATION" TO REPAY NANYAH'S \$1.5 MILLION**  
27 **INVESTMENT.**

28 The following excerpts from the Court's Order conclusively demonstrates that  
Eldorado had a contractual "obligation" to repay Nanyah its \$1.5 million investment.

Order, ¶14. **"[T]he agreements identified the Rogich Trust**  
specifically agreed to assume **the obligation** to pay  
Nanyah its . . . \$1,500,000 invested into Eldorado.

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Order, ¶7. “The October 30, 2008, Purchase Agreement states that The Rogich Trust specifically agreed to assume **the obligation** to pay Nanyah’s . . . debt . . . .”

Order, ¶21. “[T]he 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** . . . .

Based upon the foregoing, it is undisputed that Nanyah paid and Eldorado received Nanyah’s \$1.5 million investment and Eldorado had a contractual obligation to repay Nanyah for its investment.

**C. THE ROGICH TRUST ASSUMED ELDORADO’S “OBLIGATION” TO REPAY NANYAH ITS \$1.5 MILLION INVESTMENT.**

The facts are also undisputed that the Rogich Trust agreed to assume Eldorado’s repayment obligation to Nanyah on behalf of Eldorado.

Order, ¶4. “[T]he agreements identified the Rogich Trust specifically agreed **to assume** the obligation to pay Nanyah its . . . \$1,500,000 invested into Eldorado.

Order, ¶7. “The October 30, 2008, Purchase Agreement states that The Rogich Trust specifically agreed **to assume** the obligation to pay Nanyah . . . debt . . . .”

Based upon the foregoing, it is undisputed that Nanyah paid and Eldorado received Nanyah’s \$1.5 million investment, that Eldorado had an “obligation” to repay Nanyah that investment, and the Rogich Trust “assumed” the obligation to repay Nanyah its investment.

**D. THE “CLEAR AND UNEQUIVOCAL” LANGUAGE OF THE CONTRACTS ESTABLISH ELDORADO’S “OBLIGATION” TO REPAY NANYAH ITS \$1.5 MILLION INVESTMENT.**

The Court also analyzed the “clear and unequivocal” language of the various contracts and determined “as a matter of law” that Eldorado owed a repayment obligation to Nanyah, which obligation was assumed by the Rogich Trust as Eldorado’s

1 surety.

2 Order, ¶ 5.a.ii “The October 30, 2008, Purchase Agreement **states**  
3 at Section 4 the following: Seller [Go Global], however, will  
4 not be responsible to pay the Exhibit A Claimants their  
5 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.**

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

12 Order, ¶7. “The October 30, 2008, Purchase Agreement states  
13 that **The Rogich Trust specifically agreed to assume the  
obligation to pay Nanyah its percentage or Debt . . . .**

14 Order, ¶14 “**Because the relevant agreements are clear and  
unambiguous, this Court may determine the intent of the  
15 parties as a matter of law,**

16  
17 Exh. 1, Order (emphasis added). Based upon the foregoing, it is undisputed that the  
18 clear and unambiguous terms of the parties’ contracts detailed that Eldorado received  
19 Nanyah’s \$1.5 million investment, that Eldorado had an “obligation” to repay Nanyah  
20 that investment, and the Rogich Trust “assumed” the obligation to repay Nanyah its  
21 investment as Eldorado’s surety.<sup>4</sup>

22  
23 **IV. ELDORADO REMAINS FULLY LIABLE TO NANYAH FOR THE \$1.5 MILLION  
24 DEBT.**

25 As a matter of law, Eldorado remains liable for the debt owed to Nanyah even

26  
27 <sup>4</sup> In addition, Nanyah has filed a Motion In Limine #5 re: Parol Evidence Rule seeking to  
28 preclude any evidence, testimony or argument that contradicts or violates the “clear and  
unambiguous” terms of the parties contracts.

1 though this Court has found that the Rogich Defendants “assumed” the repayment of  
2 the \$1.5 million obligation owed to Nanyah. This is because the Rogich Trust’s  
3 assumption made it the surety for Eldorado’s debt obligation to Nanyah. As the surety,  
4 the Rogich Trust became primarily liable, however, as a matter of law, Eldorado also  
5 remains fully liable on the debt owed to Nanyah.  
6

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

9 A surety is a party that is obligated with the principal under the primary  
10 agreement [and] the surety is immediately and primarily liable upon the default  
11 of the principal. “The contract of guaranty or suretyship requires three parties,  
the principal, the obligee, and the guarantor or surety.”

12 Id.; see also Westinghouse Credit Corp. v. Wolfer, 10 Cal. App. 3d 63, 67, 88 Cal. Rptr.  
13 654, 656 (Cal. Ct. App. 1970) (“A surety is, among other things, one who promises to  
14 answer for the debt of another. . . . In a suretyship relation there are two obligors  
15 [Eldorado and the Rogich Trust] and one obligee [Nanyah] who is entitled to but one  
16 performance.”).<sup>5</sup>  
17

18 Suretyships are common. A surety is “jointly and severally liable with the  
19 principal obligor”. Restatement (Third) of Suretyship & Guaranty § 15(a), (c), and (d)  
20 (1996). “A ‘surety’ is typically jointly and severally liable with the principal obligor on an  
21 obligation to which they are both bound.” 23 Williston on Contracts § 61:2 (4th ed.);  
22

23  
24 <sup>5</sup> Recently in Aura Light US Inc. v. LTF Int’l LLC, 2018 WL 1378802, at \*8 (D. Md. 2018)  
25 the Court 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 see also Torin Assocs., Inc. v. Perez, 2016 WL 6662271, at \*5 (S.D.N.Y. 2016) (a  
2 “surety’ is typically jointly and severally liable with the principal obligor on an obligation  
3 to which they are both bound.”); Gen. Motors Acceptance Corp. v. Daniels, 303 Md.  
4 254, 259, 492 A.2d 1306, 1309 (1985) (“the surety is primarily or jointly liable with the  
5 principal obligor . . .”).

6  
7 In order to be valid, the surety agreement need only comply with Nevada’s  
8 Statute of Frauds. Specifically, NRS 111.220(2) provides that “[e]very special promise  
9 to answer for the debt, default or miscarriage of another” must be in writing and signed  
10 by the party to be bound. In this instance, the Rogich Trust’s surety agreement  
11 whereby the Rogich Trust agreed with Eldorado to be primarily liable on Eldorado’s  
12 debt to Nanyah was in writing and signed by the Rogich Trust. Accordingly, the Rogich  
13 Trust is liable to Nanyah for the repayment of Nanyah’s \$1.5 million investment as the  
14 surety, however, Eldorado remains fully liable for the same debt. See e.g., In re  
15 Mason, 573 B.R. 75, 82 (Bankr. S.D.N.Y. 2017) (“The essence of suretyship . . . is that,  
16 even if the obligee can look directly to the surety for satisfaction of its debt, as between  
17 the two obligors, one is the principal obligor that remains primarily liable . . .”).

18  
19  
20 In order for Eldorado to have avoided liability on the repayment debt to Nanyah,  
21 Nanyah would have had to sign a release exonerating Eldorado from the obligation.<sup>6</sup>  
22 Nanyah did not release Eldorado from the debt. Therefore, Eldorado remains fully  
23 liable for the obligation to repay Nanyah its \$1.5 million investment. Noah v. Metzker,  
24 85 Nev. 57, 60, 450 P.2d 141, 144 (1969) (original contracting party “shall remain liable”  
25

26  
27 <sup>6</sup> Such an agreement would have constituted a novation. Nanyah would have agreed to  
28 the Rogich Trust’s substation as the liable party to it for its \$1.5 million. Because no  
novation occurred, Eldorado’s obligation to Nanyah remains with the Rogich Trust  
agreeing to act as the surety of the debt.

1 unless there is a written release of liability signed by the recipient of the debt).

2 It is undisputed in this action that the Rogich Trust is a surety of Eldorado's debt.

3 The Court recognized this surety relationship in its Order and clearly states that "The  
4 Rogich Trust specifically agreed to assume the obligation to pay Nanyah . . . debt . . . ."

5 Exh. 1, Order, ¶7. As a surety, the Rogich Trust expressly agreed to be liable for  
6 Eldorado's debt to Nanyah. The Rogich Trust's surety, did not relieve Eldorado of the  
7 obligation, instead, both Eldorado and the Rogich Trust are liable for the debt.  
8

9 Consequently, Nanyah is entitled to judgment against both Eldorado and the  
10 Rogich Trust. Thereafter, once payment has been received, and if the payment is  
11 received from Eldorado, then Eldorado retains the legal right to pursue the Rogich Trust  
12 for breach of its surety agreement and receive full reimbursement from the Rogich  
13 Trust. Lehman Commercial Paper, Inc. v. Fid. Nat'l Title Ins. Co., 2012 WL 12884913,  
14 at \*3 fn. 2 (C.D. Cal. 2012) ("When several parties such as sureties . . . are jointly liable,  
15 and one has paid more than his or her share, that party may enforce contribution from  
16 the others."").  
17

18 Accordingly, Eldorado's motion must be denied because Nanyah is entitled to  
19 summary judgment on its claim for Eldorado's breach of its implied-in-fact contractual  
20 obligation to repay Nanyah its \$1.5 million investment. The Court has found as an  
21 undisputed fact that Nanyah invested \$1.5 million into Eldorado. This Court has ruled  
22 as a matter of law that Exhibit D to the Membership Agreement "identifies Nanyah's  
23 \$1,500,000 investment into Eldorado". Eldorado is not entitled under any theory of law  
24 to take Nanyah's \$1.5 million investment and not repay Nanyah for that investment.  
25  
26  
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28

1 **V. ELDORADO REMAINS FULLY LIABLE TO NANYAH UNDER THE**  
2 **CONTRACTUAL OBLIGATION TO REPAY NANYAH ITS \$1.5 MILLION**  
3 **INVESTMENT.**

4 As stated above, this Court has already found as an undisputed fact and as a  
5 matter of law that Eldorado had a contractual "obligation" to repay Nanyah its \$1.5  
6 million investment. Consequently, as a matter of law, this Court must deny Eldorado's  
7 motion since the Court has already determined as a matter of undisputed fact and as a  
8 matter of law, the existence of Eldorado's "obligation" to pay \$1.5 million to Nanyah is  
9 "clear and unequivocal".

10 As this Court is aware, the existence of Eldorado's receipt of Nanyah's \$1.5  
11 million investment, Eldorado's "obligation" to repay Nanyah its \$1.5 million investment,  
12 and the Rogich Trust's agreement to repay Nanyah on behalf of Eldorado are issues  
13 that have all been vigorously briefed and argued to this Court. As a result, the Court's  
14 Order addresses these exact issues and rendered its decision in its Order rendering the  
15 relief that was present to the Court based upon the undisputed facts and as a matter of  
16 law.  
17

18 NRCP 54(c) states, "[e]very other final judgment should grant the relief to  
19 which each party is entitled, even if the party has not demanded that relief in its  
20 pleadings." (Emphasis added). "The Nevada Supreme Court recognized the liberal  
21 nature of NRCP 54(c) by confirming 'Under the liberalized rules of pleading,' a final  
22 judgment must grant the relief a party is entitled to, even where the prayer for relief did  
23 not ask for such relief." Magille v. Lewis, 74 Nev. 381, 387-88, 333 P.2d 717, 720  
24 (1958).  
25

26 In Magill, the Nevada Supreme Court analyzed the breadth and power of Rule  
27 54(c) in relation to claims and relief that had not been pled by a party. The Nevada  
28

1 Supreme Court stated NRCP 54(c) grants the Court the authority and power to  
2 supersede any “particular legal theory of counsel” and that the legal theories of counsel  
3 are subordinate to the power of the Court to grant relief in favor of a party “whether  
4 demanded or not” as follows:  
5

6 **“Particular legal theories of counsel then are subordinated to the**  
7 **court's right and duty to grant the relief to which the prevailing party is**  
8 **entitled whether demanded or not. If a party has proved a claim for relief**  
9 **the court will grant him that relief to which he is entitled on the evidence**  
10 **regardless of the designation of the claim or the prayer for relief. The**  
11 **prayer for relief may be of help as indicating the relief to which the plaintiff**  
12 **may be entitled, but it is not controlling, and the question is not whether**  
13 **the plaintiff has asked for the proper remedy but whether he is entitled to**  
14 **any remedy.”**

15 Id. at 388, 333 P.2d at 720 (emphasis added) (citation omitted).

16 Accordingly, NRCP 54(c) requires the Court to grant the appropriate relief to a  
17 party even and vests the Court with broad authority and discretion to render relief  
18 “whether demanded or not”. The law is absolutely clear that when this Court entered its  
19 Order, it was not constrained, limited or restricted by the pleadings or even the “legal  
20 theories of counsel” when granting summary judgment in favor of the Eliades  
21 Defendants. As a result of the Court’s Order, this Court also established that Eldorado  
22 had a contractual obligation to repay Nanyah its \$1.5 million investment and that the  
23 Rogich Trust assumed the responsibility to pay that debt. As a result, both Eldorado  
24 and the Rogich Trust are liable to Nanyah for its \$1.5 million investment. Accordingly,  
25 Eldorado’s motion fails as a matter of law.

26 It is the express purpose and function of the Court to “grant the relief to which  
27 the prevailing party is entitled whether demanded or not.” Therefore, it is entirely  
28 irrelevant whether or not any particular claim for relief was asserted in the pleadings  
and/or whether or not a plaintiff even affirmatively asked the Court for relief. It is the



1 duty and function of the Court to “grant [a party] that relief to which he is entitled on the  
2 evidence regardless of the designation of the claim or the prayer for relief . . . .” Again,  
3 on these grounds Nanyah is entitled to summary judgment against Eldorado on a claim  
4 for implied in fact contract that Eldorado agreed and is obligated to repay Nanyah its  
5 \$1.5 million investment. Conversely, Eldorado’s motion fails as a matter of fact and  
6 law.  
7

8 **VI. THE RELIEF REQUESTED IN ELDORADO’S MOTION REQUIRES ENTRY OF**  
9 **SUMMARY JUDGMENT AGAINST ELDORADO.**

10 If the Court grants Eldorado’s motion, the Court must concurrently enter  
11 judgment in favor of Nanyah against Eldorado on Nanyah’s contract claim against  
12 Eldorado. Eldorado’s motion is premised on the undisputed facts and terms of the  
13 parties’ contracts that the Court has found the Rogich Trust fully liable for payment of  
14 Nanyah’s \$1.5 million investment. Eldorado further argues that because Nanyah has a  
15 valid contract claim against the Rogich Trust for repayment of Nanyah’s \$1.5 million into  
16 Eldorado, then Nanyah’s equitable claim of unjust enrichment against Eldorado fails.  
17

18 Assuming the merits of Eldorado’s position, that an equitable claim does not lie  
19 against Eldorado due to the established contract claim against the Rogich Trust, then  
20 Eldorado prevails on dismissal of the equitable claim—but conversely the contract claim  
21 against Eldorado is conclusively established as a matter of law. This is because  
22 Eldorado ignores that the Rogich Trust’s liability to Nanyah to repay Nanyah its \$1.5  
23 million investment is based upon Eldorado’s original contract obligation to repay  
24 Nanyah that the Rogich Trust assumed. Consequently, Nanyah consents to the  
25 dismissal of its equitable unjust enrichment claim on the condition that the Court find  
26 Eldorado liable on Nanyah’s contract claim against Eldorado.  
27  
28

1 Judgment in favor of Nanyah is also mandated since Eldorado has judicially  
2 admitted in its motion that “the Court definitively determined that Nanyah has an  
3 adequate contract remedy at law for the return of its \$1,500,000.00.” Mot., p. 7:5-6.  
4 This judicial admission also conclusively establishes the contractual claim Nanyah also  
5 has against Eldorado. Eldorado’s Motion spends three (3) pages of its Motion  
6 analyzing the various contracts, this Court’s Order and that the Rogich Trust is liable for  
7 the repayment of the \$1,500,000 investment into Eldorado. What Eldorado fails to  
8 recognize, however, is that the Rogich Trust assumed and agreed to be primarily liable  
9 for the repayment of Nanyah’s \$1.5 million as a surety. Nanyah never forgave,  
10 released or agreed that Eldorado was exonerated from repaying it its \$1.5 million  
11 investment.  
12  
13

14 The following example is illustrative of Eldorado’s contractual liability to Nanyah.  
15 “Lender” advances money to “Wealthy Business A”. Wealthy Business A receives the  
16 money and, concurrently, has an “obligation” to repay the money to Lender. “Insolvent  
17 Entity B” assumes Wealthy Business A’s liability to Lender. If Lender specifically  
18 releases Wealthy Business A from liability on the obligation, then Wealthy Business A  
19 is not liable on the contractual obligation. However, if Insolvent Entity B only assumes  
20 liability without the Lender providing a specific release to Wealthy Business A, then  
21 Insolvent Entity B is a surety for payment of Wealthy Business A’s liability to Lender.  
22 The law is clear that in addition to the surety’s liability, Wealthy Business A remains  
23

24 ///

25 ///

26 ///

27 ///

28 ///

1 jointly liable for the debt to Lender.<sup>7</sup>

2        Since Eldorado admits the existence of the “obligation” owed to Nanyah, and  
3 since Eldorado admits that the Rogich Trust agreed to pay the obligation, *a fortiori*  
4 Eldorado admits its own contractual duty to repay Nanyah the \$1.5 million investment—  
5 which debt was assumed by the Rogich Trust as Eldorado’s surety. Consequently,  
6 because Eldorado admits this Court found the Rogich Trust has a legal obligation to  
7 repay Nanyah \$1.5 million, Eldorado also necessarily concedes that the Rogich Trust  
8 has assumed Eldorado’s contractual obligation to Nanyah to repay the \$1.5 million  
9 investment. It is undisputed that Eldorado’s contractual obligation to Nanyah was never  
10 released by Nanyah and, therefore, as a matter of surety law, Eldorado remains fully  
11 liable to Nanyah on the underlying contractual duty to repay Nanyah its \$1.5 million  
12 investment. Accordingly, Eldorado’s entire Motion seeking dismissal of Nanyah’s unjust  
13 enrichment claim does nothing more than prove the merits of Nanyah’s contract based  
14 claim against Eldorado. As NRCP 54 provides, because this Court has already  
15 determined the existence of Eldorado’s contractual obligation to Nanyah and that the  
16 Rogich Trust assumed such obligation, as a matter of law, Nanyah is also entitled to  
17 summary judgment against Eldorado for Eldorado’s breach of its duty to repay Nanyah  
18  
19  
20  
21

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22 <sup>7</sup> Eldorado’s argument is also nonsensical. Eldorado proposes it is automatically  
23 released from liability to Nanyah because the Rogich Trust also agreed to repay  
24 Nanyah its \$1.5 million investment. If this were the case, every borrower in the world  
25 would borrow money, then have their insolvent buddy assume the repayment obligation  
26 to avoid the duty to repay the debt. Under Eldorado’s theory, the insolvent buddy has  
27 no money to repay the debt, the borrower takes all the money and the lender is left  
28 holding the bag with no legal remedies. Despite Eldorado’s fanciful argument, there is  
no legal support for this contention. To the contrary, the law of suretyship is abundantly  
clear that both the original debtor and the surety are both jointly and severely liable for  
the debt. Further, if the original borrower pays an obligation assumed by the surety, the  
original borrower is entitled to the right of contribution from the surety.

1 its \$1.5 million investment.

2 **VII. NANYAH'S NRCP 15 COUNTERMOTION TO AMEND NANYAH'S PLEADINGS**  
3 **TO CONFORM TO THE COURT'S ORDER.**

4 NRCP 15(b) provides: "[w]hen issues not raised by pleadings are tried by  
5 express or implied consent of the parties, **they shall be treated in all respects as if**  
6 **they had been raised in the pleadings.**" (emphasis added). NRCP 15(b) applies to  
7 these proceedings because the Court's Order established legal rights and remedies  
8 that exist, but for whatever reason, were not technically plead in this action.

9  
10 Specifically, although not technically plead, Nanyah has pursued a claim for an implied  
11 in fact contract between it and Eldorado for Eldorado to transfer a membership interest  
12 to it or, alternatively, repay it for its \$1.5 million investment.

13 The evidence supporting Nanyah's implied in fact contract is at the heart of the  
14 Court's Order and its dismissal of the claims against the Eliades Defendants.

15 Specifically, all parties presented their various positions on Eldorado's "obligation" to  
16 repay Nanyah its \$1.5 million investment and this Court's Order affirmatively addresses  
17 Eldorado's "obligation" and the Rogich Trust's "assumption" obligation to pay that  
18 obligation on behalf of Eldorado.

19  
20 "The purpose of Rule 15(b) is to align the pleadings to conform to the issues  
21 actually tried." Cole v. Layrite Prod. Co., 439 F.2d 958, 961 (9th Cir. 1971).

22 Amendments to conform to proof are perfectly proper and courts should be liberal in  
23 allowing such amendments. See Brean v. Nevada Motor Co., 51 Nev. 100, 269 P. 606,  
24 606 (1928) ("courts should be liberal in allowing such amendments . . .").

25  
26 While Eldorado may attempt to claim that they did not consent to trying these  
27 issues, their multitude of briefs engaging and arguing to the contrary undermine and  
28

1 undercut any such argument. The Court need only review any of the various motions,  
2 opposition and replies filed by Eldorado, the Rogich Trust and the Eliades Defendants  
3 in these proceedings to conclusively determine that Nanyah's \$1.5 million investment,  
4 Eldorado's receipt of that investment, the obligation to repay the investment and the  
5 Rogich Trust's assumption of that debt is at the heart of each brief. Accordingly,  
6 Nanyah is also entitled to an order amending Nanyah's pleadings to assert an implied in  
7 fact contract claim against Eldorado and an order granting summary judgment in  
8 Nanyah's favor on its breach of implied in fact contract that Eldorado is liable to it for its  
9 \$1.5 million investment since there is an "obligation" imposed upon Eldorado to repay  
10 Nanyah for its \$1.5 million investment.  
11

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

22 ///

23 ///

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1 investment into Eldorado.”).<sup>8</sup>

2 **VIII. THE COURT IS BOUND BY ITS ORDER.**

3 The Court, and the parties, are bound by the factual and legal consequences of  
4 the Court’s Order. The Court’s Order dismissed claims against the Eliades Defendants  
5 based upon “undisputed” facts and upon issue of law. Because the Court dismissed  
6 claims against the Eliades Defendants based upon the undisputed facts and issues of  
7 law, Nanyah is also entitled to obtain judgment against the remaining parties based  
8 upon those same findings and conclusions. Stated another way, this Court can’t grant  
9 summary judgment dismissing the Eliades Defendants based upon the Court’s  
10 undisputed facts and contract interpretation then refuse to enforce those same  
11 provisions against the Rogich Trust and Eldorado.  
12

13  
14 **IX. THERE IS GOOD CAUSE TO EXTEND THE DISPOSITIVE MOTION DEADLINE.**

15 Nanyah consents to the Court extending the dispositive motion deadline since  
16 the Court’s Order resolves many claims in favor of Nanyah for which Nanyah should not  
17 have to pursue at trial.  
18

19 **X. CONCLUSION.**

20 It is an undisputed fact that Nanyah invested \$1.5 million into Eldorado, that  
21

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22 <sup>8</sup> Musser v. Bank of America, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998) (“The  
23 question of the interpretation of a contract when the facts are not in dispute is a  
24 question of law.”). Further, the Court made specific conclusions of law relating to  
25 contract interpretation. The Court is vested with the authority to render conclusions of  
26 law relating to contract interpretation and enforcement. Galardi v. Naples Polaris, LLC,  
27 301 P.3d 364, 366 (Nev. 2013) (“[I]n the absence of ambiguity or other factual  
28 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 Eldorado received Nanyah's money and that Eldorado had a contractual "obligation" to  
2 repay Nanyah its \$1.5 million investment. In addition, as a matter of law, the Court has  
3 ruled that the contracts at issue are clear and unambiguous and expressly provide that  
4 the Rogich Trust also agreed to assume Eldorado's obligation to Nanyah to repay it for  
5 its \$1.5 million investment. The assumption of the obligation by the Rogich Trust on  
6 behalf of Eldorado did not terminate Eldorado's liability for the debt. Instead, Eldorado  
7 remains jointly liable for the debt. Eldorado also retains all rights and claims against the  
8 Rogich Trust for contribution to the extent Eldorado pays any of the obligation to  
9 Nanyah. As a consequence of the Court's factual and legal findings in the Order,  
10 summary judgment is now mandated in favor of Nanyah and Eldorado's motion must be  
11 denied. In addition, as stated, Nanyah is entitled to NRCP 15 relief conforming its  
12 pleadings to the claim and relief established by this Court's Order against Eldorado.

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

17 DATED this 13 day of February, 2019.

18  
19 SIMONS LAW, PC  
20 6490 S. McCarran Blvd., #F-46  
21 Reno, Nevada, 89509

22   
23 MARK G. SIMONS  
24 Attorney for Nanyah Vegas, LLC  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of  
SIMONS LAW, PC and that on this date I caused to be served a true copy of the  
**NANYAH VEGAS LLC'S OPPOSITION TO ELDORADO HILLS LLC'S MOTION TO  
EXTEND THE DISPOSITIVE MOTION DEADLINE AND MOTION FOR SUMMARY  
JUDGMENT AND COUNTERMOTION FOR NRCP 15 RELIEF** 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 15 day of February, 2019.

  
Employee of SIMONS LAW, PC



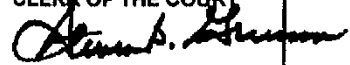
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**EXHIBIT LIST**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
1	10/5/18 Order	10

**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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For the reasons set forth above, **IT IS FURTHER ORDERED** that the Countermotion for

Summary Judgment is DENIED.

DATED this 1 day of Oct, 2018.

Nancy L. Alic  
DISTRICT COURT JUDGE

Submitted by:

SIMONS LAW

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

Approved as to Form and Content:

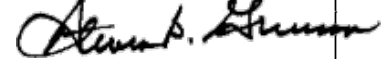
BAILEY ♦ KENNEDY

By: [Signature]  
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8984 Spanish Ridge Avenue  
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*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.

By: [Signature]  
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*Attorneys for Defendants Sig Rogich,  
Individually and as Trustee of the Rogich  
Family Irrevocable Trust, and Imitations,  
LLC*



**OPPM**

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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.

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

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

**NANYAH VEGAS LLC'S OPPOSITION  
TO MOTION FOR RELIEF FROM THE  
OCTOBER 5, 2018 ORDER  
PURSUANT TO NRCP 60(b)**

**Hearing Date: 2/21/19**

**Hearing Time: 10:00 a.m.**

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.

1 Plaintiff Nanyah Vegas, LLC ("Nanyah"), by and through its undersigned counsel,  
2 Mark G. Simons of SIMONS LAW, PC, submits the following Opposition to the Motion  
3 for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b) filed by Defendant  
4 Sigmund Rogich ("Rogich"), individually and as Trustee of the Rogich Family  
5 Irrevocable Trust ("Rogich Trust") and Imitations, LLC ("Imitations"). Rogich, the Rogich  
6 Trust and Imitations will be jointly referred to as the Rogich Defendants unless  
7 otherwise specified.

9 **I. RELEVANT STATUS OF THE CASE.**

10 This case focuses on Nanyah's efforts to recover its \$1.5 million investment in  
11 Eldorado. On October 5, 2018, this Court entered its Order (the "Order"). A copy of the  
12 Court's Order is attached hereto as **Exhibit 1**. This Court found as "undisputed facts"  
13 in these proceedings that Nanyah invested \$1.5 million into Eldorado, that Eldorado  
14 had an "obligation" to repay Nanyah its \$1.5 million investment, and that the Rogich  
15 Trust agreed to "assume" the obligation to repay Nanyah its \$1.5 million investment on  
16 Eldorado's behalf.<sup>1</sup>

17 In addition, this Court found "as a matter of law" the contracts entered into by the  
18 Rogich Trust "clearly and unequivocally" identified Nanyah's \$1.5 million investment into  
19 Eldorado and the Rogich Trust's specific assumption of Eldorado's contractual  
20 obligation to repay Nanyah its \$1.5 million investment into Eldorado. Order, ¶¶4, 5.b.i,  
21 7 and 14. The Order conclusively determined that the Rogich Trust contractually  
22 agreed to be the surety of Eldorado's contractual debt obligation to Nanyah.

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23 <sup>1</sup> Nanyah was entitled to repayment of its \$1.5 million investment or the issuance of a  
24 membership interest in Eldorado equal to that investment, however, Nanyah has  
25 elected to recover the repayment of its \$1.5 million investment.

1           Of critical application in these proceedings, the Court determined that the various  
2 contracts contain “clear and unambiguous” terms and determined “as a matter of law”  
3 the contractual duties and obligations of the parties under the various agreements.  
4 Consequently, the parole evidence rule bars each of the Rogich Trust’s arguments  
5 because each argument seeks to present testimony, evidence and argument trying to  
6 contradict or vary the “clear and unambiguous” terms of the contracts at issue in this  
7 case.  
8

9       **II.     THE ROGICH DEFENDANTS’ ARGUMENTS HAVE NO MERIT.**

10           The Rogich Defendants’ motion is a last-ditch, misplaced and desperate attempt  
11 to avoid liability in this case when faced with two (2) motions for summary judgment—  
12 one filed by Eldorado Hills, LLC and one filed by Nanyah. Both motions for summary  
13 judgment rely upon this Court’s Order detailing the numerous findings of “undisputed”  
14 fact and this Court’s interpretation of the various agreements “as a matter of law.” The  
15 Court rendered its Order, and rendered judgment in favor of the Eliades Defendants<sup>2</sup>,  
16 based upon the “clear and unambiguous” terms of the various agreements.  
17

18           Now, faced with “undisputed” facts and the Court’s express determinations of the  
19 terms and conditions contained in the various contracts that the Rogich Trust  
20 “specifically assumed” the obligation to repay Nanyah its \$1.5 million investment into  
21 Eldorado, the Rogich Defendants want the Court to “undo” its Order. The Court can’t  
22 undo its Order to change “undisputed” facts into “disputed” facts and still allow for the  
23 Order to stand. The Rogich Trust’s argument is that the Court should allow the Order  
24 dismissing the Eliades Defendants to stand but change the premise of the Order  
25  
26

27  
28       <sup>2</sup> The Eliades Defendants are Peter Eliades individually and as Trustee of the Eliades  
Survivor Trust of 10/30/08 and Teld, LLC.

1 granting summary judgment such that it is based upon “disputed” facts. The Rogich  
2 Trust’s argument is nonsensical. Not only is the argument nonsensical, the Rogich  
3 Defendants’ arguments are barred by the parol evidence rule.

### 4 **III. THE COURT ORDER DISMISSED CLAIMS AND PARTIES.**

5  
6 The issue before the Court in the prior motion practice was whether or not the  
7 Eliades Defendants were jointly liable for the repayment of Eldorado’s debt to Nanyah.  
8 The identical contracts supporting the claims against Eldorado and the Rogich  
9 Defendants applied to the Court’s analysis of the Eliades Defendants’ motion for  
10 summary judgment. Stated another way, one set of contracts applies to all defendants.  
11 Despite the Rogich Defendants’ desperate attempts to argue otherwise, the Court can’t  
12 interpret contract in different fashions for different parties.

13  
14 The Court’s Order examined the “clear and unambiguous” language of the  
15 various contracts and determined that the Eliades Defendants did not have any liability  
16 for repayment of Nanyah’s \$1.5 million investment into Eldorado because “**the**  
17 **obligation**” to repay Nanyah was “**specifically assumed**” by the Rogich Trust. The  
18 Court ruled that the various contracts clearly and unambiguously stated that “**The**  
19 **Rogich Trust specifically agreed to assume the obligation to pay Nanyah its**  
20 **percentage or debt.**” Order, ¶7 (emphasis added). The Court then concluded the  
21 Eliades Defendants “did not specifically assume the Rogich Trust’s obligation to repay  
22 Nanyah its \$1,500,000.00 investment into Eldorado . . . .” *Id.*, ¶21.

23  
24  
25 In order to render its decision, the Court thoroughly examined the undisputed  
26 facts and the clear and unambiguous terms of the various contracts all confirming that  
27 Nanyah invested \$1.5 million into Eldorado, that Eldorado owed an “obligation” to  
28 Nanyah to repay it the \$1.5 million investment. The “obligation” was then assumed by



1 the Rogich Trust to repay Nanyah its \$1.5 million investment. In order to analyze and  
2 grant the Eliades Defendants' motion for summary judgment, and to deny the  
3 counter-motion for summary judgment brought by Nanyah, the Court addressed each  
4 critical issue in this case. The Court's Order, however, was almost exclusively based  
5 upon the "clear and unambiguous" terms and conditions in the parties' various  
6 agreements. Accordingly, even though the Rogich Defendants attempt to claim there  
7 are "disputed" facts, every critical and material fact is established by the "clear and  
8 unambiguous" terms of the agreements. Consequently, the motion is baseless and  
9 must be denied.  
10

11 **IV. THE COURT'S ORDER ESTABLISHES "AS A MATTER OF LAW" THE**  
12 **ROGICH TRUST'S LIABILITY FOR NANYAH'S DEBT.**

13 Because the Court's Order contains dispositive "legal rulings", there are no  
14 mistakes in the Court's rulings that justify NRCP 60(b) relief, since the terms of the  
15 contracts are "clear and unambiguous". Because the Court has found that the  
16 contracts are "clear and unambiguous" the contract's terms are interpreted and  
17 enforced as a matter of law. See e.g., Galardi v. Naples Polaris, LLC, 129 Nev. 306,  
18 301 P.3d 364, 366 (2013) ("contract interpretation presents a question of law that the  
19 district court may decide on summary judgment"). The Court is also bound to enforce  
20 the contracts' terms and cannot distort the agreement under the guise of interpreting it.  
21 Watson v. Watson, 95 Nev. 495, 596 P.2d 507, 508 (1979) ("Courts are bound by  
22 language which is clear and free from ambiguity and cannot, using the guise of  
23 interpretation, distort the plain meaning of an agreement."). Merely because the Rogich  
24 Defendants do not like how the Court interpreted the clear and unambiguous terms of  
25 the various contracts does not make the Court's decision a mistake. See e.g., Parman  
26 v. Petricciani, 70 Nev. 427, 430–32, 272 P.2d 492, 493–94 (1954) (concluding that  
27  
28

1 summary judgment was appropriate because the interpretation offered by one party  
2 was unreasonable and, therefore, the contract contained no ambiguity).

3 The following legal determinations from the Court's Order conclusively  
4 demonstrates that, "as a matter of law", the "clear and unambiguous" terms of the  
5 various contracts state that Nanyah invested \$1.5 million into Eldorado, Eldorado had  
6 an "obligation" to repay to Nanyah and the Rogich Trust "specifically assumed" the  
7 obligation to repay Nanyah its \$1.5 million investment on behalf of Eldorado as follows:

8  
9 Order, ¶4. "[T]he agreements identified the Rogich Trust  
10 specifically agreed to assume the obligation to pay  
11 Nanyah its . . . \$1,500,000 invested into Eldorado.

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

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

27 Order, ¶7. "The October 30, 2008, Purchase Agreement **states**  
28 that **The Rogich Trust specifically agreed to assume the  
obligation to pay Nanyah its percentage or Debt . . . .**

Order, ¶14 "Because the relevant agreements are clear and  
unambiguous, this Court may determine the intent of the  
parties as a matter of law."

Order, ¶21. "[T]he 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 . . . .**

1 Based upon the foregoing, the “clear and unambiguous” terms of the  
2 agreements detail that Nanyah invested \$1.5 million into Eldorado, that Eldorado had  
3 an “obligation” to repay Nanyah that investment, and the Rogich Trust “specifically  
4 assumed” the obligation to repay Nanyah its investment.  
5

6 When agreements are clear and unambiguous, the Court has the duty and  
7 responsibility to enforce the agreement as written and such duty and responsibility is  
8 deemed to be of the highest public policy. Sante Fe, Prescott, & Phoenix Ry. Co., 228  
9 U.S. 177, 33 S.Ct. 474 (1913) (“the highest public policy is found in the enforcement of  
10 the contract which was actually made.”). Thus, because the contracts’ terms are clear  
11 and unambiguous, the motion must be denied. Davis v. Beling, 128 Nev. 301, 278 P.3d  
12 501, 515 (2012) (“[if] the language of the contract is clear and unambiguous . . . the  
13 contract will be enforced as written.”).  
14

#### 15 **V. THE PAROL EVIDENCE RULE BARS THE ROGICH DEFENDANTS’ MOTION.**

16 For over a century, the Nevada Supreme Court has held that parol evidence is  
17 inadmissible as follows: “When parties reduce a contract to writing, all prior oral  
18 negotiations and agreements are merged in the writing, and the instrument must be  
19 treated as containing the whole contract, and parol [evidence] is not admissible to alter  
20 its terms.” Gage v. Phillips, 21 Nev. 150, 26 P. 60, 61 (1891). The Nevada Supreme  
21 Court has repeatedly applied the parol evidence rule to exclude proffered testimony that  
22 attempts to contradict the terms of an unambiguous written agreement. See e.g., Kaldi  
23 v. Farmers Ins. Exchange, 117 Nev. 273, 21 P.3d 16, 21 (2003) (“parol evidence may  
24 not be used to contradict the terms of a written contractual agreement.”); Sandy Valley  
25 Assocs. v. Sky Ranch Estates Owners Assoc., 117 Nev. 948, 35 P.3d 964, 967-968  
26 (Nev. 2001) (“Parol evidence is not admissible to vary or contradict the clear and  
27 unambiguous terms of a written agreement.”); Geo. B. Smith Chemical v. Simon, 92  
28 Nev. 580, 582, 555 P.2d 216, 216 (1976) (where “a written contract is clear and

1 unambiguous on its face, extraneous evidence cannot be introduced to explain its  
2 meaning."). Further, parol evidence cannot be introduced in an attempt to create an  
3 ambiguity as such action would "eviscerate" the rule. D.E. Shaw Laminar Portfolios,  
4 LLC v. Archon Corp., 570 F.Supp.2d 1262, 1268 -1269 (D. Nev. 2008) ("To admit parol  
5 evidence to create ambiguity would 'eviscerate' the parol evidence rule." (citation  
6 omitted)).

7 In recognition of the parol evidence rule's evidentiary bar to any evidence  
8 seeking to contradict or vary the terms of the agreements, the Court's Order specifically  
9 cites to the case Krieger v. Elkins, 96 Nev. 839, 843, 620 P.2d 370, 373 (1980), for the  
10 following standard of law:

11 **testimony used to contradict or vary the written terms of an agreement is a**  
12 **violation of the parol evidence rule.**

13 Order, ¶14 (emphasis added). As a consequence of this Court's Order, and the  
14 application of the parol evidence rule as detailed in Krieger v. Elkins, the Rogich  
15 Defendants are barred from attempting to introduce any testimony, exhibit or argument  
16 that contradicts the clear and unambiguous terms of the contracts in this case.<sup>3</sup>  
17 Similarly, the Court is barred from considering any such evidence. Not surprisingly, the  
18 Rogich Defendants fail to address the Court's Order cites to Krieger v. Elkins or that the  
19 Court specifically references the parol evidence rule yet arguing that the Court should  
20 consider extraneous evidence to interpret contracts the Rogich Defendants signed.  
21 Clearly this conduct demonstrates the present motion is also brought in bad faith.

22 Consequently, as a result of this Court's Order, the Rogich Trust and Eldorado  
23 are barred from arguing or contesting the following:

- 24 (1) That Nanyah did not invest \$1,500,000 into Eldorado. The Rogich  
25 Defendants' motion make this argument purporting to rely on evidence  
26 that contradicts the clear and unambiguous terms of the contracts. Mot.,  
pp. 7-10.

27 <sup>3</sup> Nanyah is concurrently filing is Motion In Limine #5 Re: Parol Evidence Rule  
28 addressing the evidentiary exclusion mandated by the parol evidence rule and this  
Court's finding that the contracts at issue are "clear and unambiguous".

1 **BARRED:** This Court held that the agreements confirmed in  
2 clear and unambiguous language that Nanyah invested \$1,500,000  
3 into Eldorado, accordingly, the Court is barred from considering any  
4 evidence seeking to contract and/or vary the clear and  
5 unambiguous terms. *Id.*, ¶¶4, 5.a.ii and 5.b.i.. Further, the “clear  
6 and unambiguous terms of the contracts contain the Rogich  
7 Defendants express admission and acknowledgement that Nanyah  
8 invested \$1.5 million into Eldorado. *Id.*, ¶5.b.i (“Seller [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.**” (emphasis added).

- 9 (2) That Eldorado did not have an “obligation” to repay Nanyah its \$1,500,000  
10 investment into Eldorado.

11 **BARRED:** This Court held that the agreements detailed Eldorado’s  
12 “obligation” to repay Nanyah’s \$1.5 million investment. *Id.*, ¶¶4,  
13 5.a.ii and 7.

- 14 (3) That the Rogich Trust did not agree to repay Nanyah for its  
15 \$1,500,000 investment into Eldorado.

16 **BARRED:** This Court found that the agreements confirmed in  
17 clear and unambiguous language that the Rogich Trust assumed  
Eldorado’s contractual obligation to repay Nanyah its \$1.5 million  
investment into Eldorado. *Id.*, ¶¶4, 5.a.ii, 5.b.i. and 7.

- 18 (4) That the obligation to repay Nanyah its \$1,500,000 investment into  
19 Eldorado does not exist.

20 **BARRED:** This Court found that the agreements confirmed in  
21 clear and unambiguous language that Nanyah invested \$1.5 million  
22 into Eldorado, Eldorado had a contractual obligation to repay the  
23 debt and the Rogich Trust assumed Eldorado’s contractual  
obligation to repay Nanyah its \$1.5 million investment into Eldorado  
on behalf of Eldorado. *Id.*, ¶¶4, 5.a.ii, 5.b.i. and 7.

24 The parol evidence rule bars the Rogich Defendants’ motion in total. In order to  
25 even make a prima facie argument for NRCP 60(b) relief, which has not been done, the  
26 Rogich Defendants’ motion must present a meritorious argument to the Court for  
27 consideration. See e.g., Banks v. Heater, 95 Nev. 610, 612, 600 P.2d 245, 246 (1979)  
28 (“the defendant must timely tender a meritorious defense.”); Stoecklein v. Johnson

1 Elec., Inc., 109 Nev. 268, 271, 849 P.3d 305, 307 (1993) (“[a] showing of a meritorious  
2 defense to the action is . . . required” for consideration of a NRCP 60(b) motion).

3 The entirety of the Rogich Defendants’ motion is premised on information and  
4 arguments that are completely barred from consideration by the parol evidence rule.<sup>4</sup>  
5 Consequently, the Rogich Defendants’ motion must be denied in total.  
6

7 **VI. THE ROGICH DEFENDANTS’ MOTION ALSO INTENTIONALLY**  
8 **MISCONSTRUES THE LANGUAGE OF THE CONTRACTS.**

9 The Rogich Defendants also intentionally misconstrue the terms of the contracts  
10 in their effort to avoid the consequences of the Court’s Order. Specifically, the Rogich  
11 Defendants attempt to argue that there was only a “potential” debt owed to Nanyah.  
12 Mot., p.10. This argument is baseless and intentionally misstates the terms of the  
13 contracts.

14 It is undisputed and admitted by the Rogich Defendants in the various contracts  
15 that Nanyah invested \$1.5 million into Eldorado for which there was “obligation” to  
16 repay Nanyah. Order, ¶¶ 4, 5.a.ii, 5.b.i, 7 and 14. However, the members of Eldorado  
17 recognized that Nanyah could “potentially” claim a membership interest in exchange for  
18 its investment rather than seek a return of its \$1.5 million investment. In this respect,  
19 Nanyah was a “potential claimant” to a membership interest.

20 The Court’s Order even addresses Nanyah’s potential claim for a membership  
21 interest at paragraph 5.a.1. The Court even identified that the Purchase Agreement  
22 (which the Court examined in its Order at paragraphs 4, 5.a.1, 5.a.ii, 7 and 14) state in  
23 the “Recitals” that the Rogich Trust was acquiring an interest in Eldorado that was  
24 subject to dilution based upon Nanyah’s previous investment of \$1.5 million into

25 \_\_\_\_\_  
26 <sup>4</sup> Given the parol evidence rule bar, Nanyah is not going to inundate the Court with all of  
27 the facts establishing Eldorados’ receipt and retention of Nanyah’s \$1.5 million  
28 investment affirming that this fact is undisputed. The only reason this fact is now  
purportedly disputed is because the Rogich Defendants are desperately seeking to  
avoid liability and apparently wish to ignore that they have already admitted the  
existence of Nanyah’s \$1.5 million investment into Eldorado in the various agreements.

1 Eldorado. Id. Recital A of the Purchase Agreement states as follows: “[The  
2 Membership Interest being acquired] may be subject to certain potential claims of those  
3 entities set for . . . in Exhibit “A” . . . (“Potential Claimants”).” Id. In addition, Recital B  
4 states that the Rogich Trust was acquiring the Membership Interest subject to Nanyah’s  
5 potential claim of a membership interest rather than repayment of its \$1.5 million  
6 investment into Eldorado.<sup>5</sup>

7 The Court’s Order already recognized and addressed Nanyah’s potential claim  
8 for a membership interest but that Nanyah was clearly entitled to repayment of its \$1.5  
9 million investment. The Court specifically addressed in each agreement in detail that  
10 since Nanyah invested \$1.5 million into Eldorado (which investment into Eldorado was  
11 “confirmed” and admitted by the Rogich Trust), then Nanyah had the right to request  
12 and receive a membership interest for its investment.

13 In addition, pursuant to NRS 47.240(2), the facts stated in a recital to an  
14 agreement conclusively establish the “the truth” of the facts so recited as follows:

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

18 Id. Consequently, from a plain reading of the terms of the Purchase Agreement and the  
19 Court’s Order, Nanyah retained the ability to obtain a membership interest in Eldorado  
20 rather than repayment of its \$1.5 million investment. The debt owed to Nanyah was  
21 clearly and unambiguously established in the parties’ contracts, however, the method of  
22 satisfying the debt owed to Nanyah was the potential claim for a membership interest  
23 or, if not, then the Rogich Trust was obligated to repay Eldorado’s debt to Nanyah.  
24 Accordingly, this argument by the Rogich Defendants is irrelevant to the Rogich Trust’s  
25 liability to Nanyah and its assumption of Eldorado’s repayment obligation to Nanyah.

---

26 <sup>5</sup> Similarly, the recitals in the Membership Interest Purchase Agreements signed by the  
27 Rogich Trust also conclusively establish that the Rogich Trust was acquiring Go  
28 Global’s interest in Eldorado subject to Nanyah’s right to receive repayment of its \$1.5  
million investment or a transfer of a membership interest for its \$1.5 million investment.  
Recital F.

1 **VII. NRCP 60(B) RELIEF IS NOT AVAILABLE.**

2 Rule 60(b) relief is an extraordinary remedy that should be granted only in  
3 exceptional circumstances. Sellers v. Mineta, 350 F.3d 706, 716 (8th Cir. 2003);  
4 Servants of Paraclete v. Does, 204 F.3d 1005, 1009 (10th Cir. 2000); Jones v. Lincoln  
5 Elec. Co., 188 F.3d 709, 732 (7th Cir.1999).<sup>6</sup> There are no unique circumstances in  
6 this case and there is clearly no mistake. The various contracts examined by this Court  
7 clearly and unambiguously demonstrate that "as a matter of law" the contracts entered  
8 into by the Rogich Trust "clearly and unequivocally" identified Nanyah's \$1.5 million  
9 investment into Eldorado and the Rogich Trust's specific assumption of Eldorado's  
10 contractual obligation to repay Nanyah its \$1.5 million investment into Eldorado. Order,  
11 ¶¶4, 5.b.i, 7 and 14.

12 Further, the Rogich Defendants' motion is untimely due to lack of diligence.  
13 NRCP 60(b) provides that such a motion "**shall be made within a reasonable time,**  
14 **and for reasons (1), (2), and (3) not more than 6 months after the proceeding was**  
15 **taken or the date that written notice of entry of the judgment or order was**  
16 **served.**" (emphasis added). The Nevada Supreme Court has ruled that the six (6)  
17 month time limitation is not an absolute right. Instead, the Court must look to the  
18 diligence exercised by the party seeking to set aside a judgment and where there has  
19 been shown a lack of diligence, the motion must be denied regardless of whether or not  
20 it was filed prior to the expiration of the six (6) month period.

21 This exact issue was addressed in Union Petrochemical Corp. of Nevada v.  
22 Scott, 96 Nev. 337, 339, 609 P.2d 323, 324 (1980), wherein the Nevada Supreme  
23 Court held as follows:

24  
25 Union first contends that it has complied with this requirement because its motion  
26 was filed within the six-month period. To accept Union's reasoning would be to

27 <sup>6</sup> "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong  
28 persuasive authority, because the Nevada Rules of Civil Procedure are based in large  
part upon their federal counterparts.'" Exec. Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev.  
46, 53, 38 P.3d 872, 876 (2002) (citation omitted)).



1 ignore the clear import of the rule. The Rhode Island Supreme Court, in passing  
2 upon that state's Rule 60(b), correctly perceived the rule's intention:

3 The plaintiffs claim that since their motion was filed just prior to the  
4 expiration of the one-year period referred to in Rule 60(b), the trial justice  
5 had jurisdiction to grant their motion. The plaintiffs had better take a  
6 closer look at the rule. Actually, the rule in pertinent part provides that a  
7 motion seeking relief from a final judgment or order on the grounds of  
8 mistake, inadvertence, surprise or excusable neglect 'shall be made within  
9 a reasonable time, and not more than one year' after the judgment or  
10 order was taken. It is clear then that such a motion must be made within  
11 a reasonable time and the one-year period represents the extreme limit of  
12 reasonableness. . . .

13 **Union's contention is also rebutted by cases of this court which emphasize**  
14 **that want of diligence in seeking to set aside a judgment is ground enough**  
15 **for denial of such a motion.** Lentz v. Boles, 84 Nev. 197, 438 P.2d 254 (1968);  
16 see Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 380 P.2d 293 (1963).

17 Id. at 338-339, 609 P.2d at 323-324 (emphasis added).

18 While the Rogich Defendants argue they were not parties in prior proceedings  
19 leading up to the Court's Order, such statement is meritless. The Rogich Defendants  
20 were fully aware of the issues briefed and argued to the Court and counsel for the  
21 Rogich Defendants attended oral argument on the motions. Further, counsel for the  
22 Rogich Defendants was not only served with a copy of the Court's Order, a Notice of  
23 Entry of the Court's Order was filed and served on the Rogich Defendants' counsel on  
24 October 8, 2018. **Exhibit 2.** Rather than seek relief or reconsideration of the Order at  
25 that time via any appropriate motion that was available, the Rogich Defendants did  
26 nothing. They did nothing because they did not object to or contest the findings of fact  
27 and conclusions of law contained in the Order.

28 After months and months of inaction, and only when faced with two (2) motions  
for summary judgment--filed in anticipation of trial in April--did the Rogich Defendants  
get around to filing this baseless motion arguing matters that are completely barred by  
the parol evidence rule. The Rogich Defendants are not entitled to NRCP 60(b) relief

1 since their motion is untimely, baseless and lacks any legal support.

2 **VIII. THE COURT IS BOUND BY ITS ORDER.**

3 The Court, and the parties, are bound by the factual and legal consequences of  
4 the Court's Order. The Court's Order dismissed claims against the Eliades Defendants  
5 based upon "undisputed" facts and upon issue of law. Because the Court dismissed  
6 claims against the Eliades Defendants based upon the undisputed facts and issues of  
7 law, Nanyah is also entitled to obtain judgment against the remaining parties based  
8 upon those same findings and conclusions. Stated another way, this Court can't grant  
9 summary judgment dismissing the Eliades Defendants based upon the Court's finding  
10 of undisputed facts and contract interpretation "as a matter of law" then refuse to  
11 enforce those same provisions against the Rogich Trust and Eldorado.  
12

13 **IX. CONCLUSION.**

14 It is undisputed that Nanyah invested \$1.5 million into Eldorado, that Eldorado  
15 received Nanyah's money and that Eldorado had a contractual "obligation" to repay  
16 Nanyah its \$1.5 million investment, which obligation was assumed by the Rogich Trust  
17 as a surety for Eldorado's payment obligation. In addition, as a matter of law, the Court  
18 ruled that the contracts at issue are clear and unambiguous and expressly provide that  
19 the Rogich Trust agreed to assume Eldorado's obligation to Nanyah to repay Nanyah  
20 for its \$1.5 million investment.  
21

22 This motion is untimely and does not make meritorious arguments since all the  
23 arguments are barred by the parol evidence rule. In addition, the Court can't dismiss  
24 claims on summary judgment against the Eliades Defendants based upon undisputed  
25 facts and upon clear and unambiguous contract interpretation then arbitrarily change its  
26 factual findings to make them disputed and/or change the Court's contract interpretation  
27  
28

1 merely to assist a party in avoiding liability in a case. Accordingly, the motion must be  
2 denied in total.

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

5 DATED this 15<sup>th</sup> day of February, 2019.

6  
7 SIMONS LAW, PC  
8 6490 S. McCarran Blvd., #F-46  
9 Reno, Nevada, 89509

10 

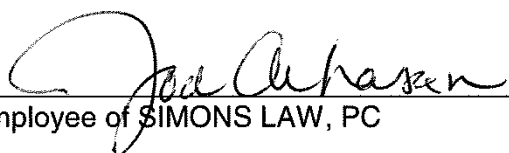
11 MARK G. SIMONS  
12 *Attorney for Nanyah Vegas, LLC*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of  
3 SIMONS LAW, PC and that on this date I caused to be served a true copy of the  
4 **NANYAH VEGAS LLC'S OPPOSITION TO MOTION FOR RELIEF FROM THE**  
5 **OCTOBER 5, 2018 ORDER PURSUANT TO NRCP 60(b)** on all parties to this action  
6 via the Odyssey E-Filing System:  
7

8		
9	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>
18		

19 DATED this 15 day of February, 2019.

20   
21 Employee of SIMONS LAW, PC  
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**EXHIBIT LIST**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
1	10/5/18 Order	10
2	Notice of Entry of Order	15

**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.'"<sup>1</sup> *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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For the reasons set forth above, **IT IS FURTHER ORDERED** that the Countermotion for  
Summary Judgment is DENIED.

DATED this 1 day of Oct., 2018.

Nancy L. Alif  
DISTRICT COURT JUDGE

Submitted by:

SIMONS LAW

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

Approved as to Form and Content:

BAILEY ♦ KENNEDY

By: [Signature]  
Dennis Kennedy, Esq.  
Joseph Liebman, Esq.  
8984 Spanish Ridge Avenue  
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.

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



**NEOJ**

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SIMONS LAW, PC  
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Reno, Nevada, 89509  
Telephone: (775) 785-0088  
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Email: [mark@mgsimonslaw.com](mailto:mark@mgsimonslaw.com)

*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,

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

**DEPT. NO.: XXVII**

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,

**CONSOLIDATED WITH:**

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

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,

**NOTICE OF ENTRY OF ORDER**

Defendants.

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**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE THAT on October 1, 2018, an 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 was entered by the Honorable Nancy L. Alf and filed with this Court on October 5, 2018 in this matter. A true and correct copy of the Order is attached hereto as **Exhibit 1**.

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

DATED this 5<sup>th</sup> day of October, 2018.

SIMONS LAW, PC  
6490 S. McCarran Blvd., #C-20  
Reno, Nevada, 89509

  
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MARK G. SIMONS  
*Attorney for Nanyah Vegas, LLC*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of  
SIMONS LAW, PC and that on this date I caused to be served a true copy of the  
**NOTICE OF ENTRY OF ORDER** 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 8<sup>th</sup> day of October, 2018.

  
Employee of SIMONS LAW, PC


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**EXHIBIT LIST**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
1	Order	10

**EXHIBIT 1**

**EXHIBIT 1**



**ORDER (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. Alif  
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

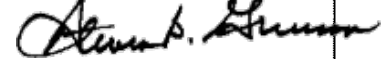
14 Approved as to Form and Content:  
15 BAILEY ♦ KENNEDY

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.

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





**MILM**

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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.

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

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

**NANYAH VEGAS, LLC'S MOTION IN  
LIMINE #5 RE: PAROL EVIDENCE  
RULE**

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.

1 **NANYAH VEGAS, LLC'S MOTION IN LIMINE #5**  
2 **RE: PAROL EVIDENCE RULE**

3 Nanyah Vegas, LLC ("Nanyah") submits the following motion in limine seeking to  
4 exclude any attempt by the defendants to solicit testimony that contradicts the clear and  
5 unambiguous terms of the various contracts this Court has determined are clear and  
6 unambiguous.

7  
8 DATED this 15<sup>th</sup> day of February, 2019.

9 SIMONS LAW, PC  
10 6490 S. McCarran Blvd., #F-46  
11 Reno, Nevada, 89509

12   
13 MARK G. SIMONS  
14 Attorney for Nanyah Vegas, LLC

15 **NOTICE OF MOTION**

16 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:**

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
18 **NANYAH'S MOTION IN LIMINE #5 RE: PAROL EVIDENCE RULE** on for hearing  
19 before the above-entitled court on the 20th day of March, 2019 at  
20 9:00 a.m./p.m. in Department XXVII or as soon thereafter as counsel may be  
21 heard.  
22

23  
24 DATED this 15<sup>th</sup> day of February, 2019.

25 SIMONS LAW, PC  
26 6490 S. McCarran Blvd., #F-46  
27 Reno, Nevada, 89509

28   
MARK G. SIMONS  
Attorney for Nanyah Vegas, LLC

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. STATUS OF CASE.

This case focuses on Nanyah's efforts to recover its \$1.5 million investment in Eldorado. On October 5, 2018, this Court entered its Order finding that the various contracts were "clear and unambiguous" and that "as a matter of law" the Court interpreted the material provisions of the contracts. **Exhibit 1.** Based upon this Court's Order, this Court found "as a matter of law" the contracts entered into by the Rogich Trust clearly and unambiguously stated that Nanyah had invested \$1.5 million into Eldorado, Eldorado had an obligation to repay the debt and that the Rogich Trust agreed to assume Eldorado's "obligation" to repay Nanyah its \$1.5 million investment into Eldorado. As a consequence of the Court's legal findings in the Order, this motion in limine must be granted.

### II. STANDARD OF REVIEW.

This motion is submitted in compliance with this Court's Order Re-Setting Civil Jury Trial and Calendar Call dated December 19, 2018. The Nevada Supreme Court has approved the use of motions in limine recognizing the legitimacy of such pre-trial motions practice and the courts' authority to rule on these motions. See, e.g., Bull v. McCuskey, 615 P.2d 957, 961 (Nev. 1976).

### III. PAROL EVIDENCE RULE STANDARD.

For over a century, the Nevada Supreme Court has held that parol evidence is inadmissible as follows: "When parties reduce a contract to writing, all prior oral negotiations and agreements are merged in the writing, and the instrument must be treated as containing the whole contract, and parol [evidence] is not admissible to alter its terms." Gage v. Phillips, 21 Nev. 150, 26 P. 60, 61 (1891). The Nevada Supreme Court has repeatedly applied the parol evidence rule to exclude proffered testimony that

1 attempts to contradict the terms of an unambiguous written agreement. *See e.g., Kaldi*  
2 *v. Farmers Ins. Exchange*, 117 Nev. 273, 21 P.3d 16, 21 (2003) ("parol evidence may  
3 not be used to contradict the terms of a written contractual agreement."); *Sandy Valley*  
4 *Assocs. v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 35 P.3d 964, 967-968  
5 (Nev. 2001) ("Parol evidence is not admissible to vary or contradict the clear and  
6 unambiguous terms of a written agreement."); *Geo. B. Smith Chemical v. Simon*, 92  
7 Nev. 580, 582, 555 P.2d 216, 216 (1976) (where "a written contract is clear and  
8 unambiguous on its face, extraneous evidence cannot be introduced to explain its  
9 meaning."). Further, parol evidence cannot be introduced in an attempt to create an  
10 ambiguity as such action would "eviscerate" the rule. *D.E. Shaw Laminar Portfolios,*  
11 *LLC v. Archon Corp.*, 570 F.Supp.2d 1262, 1268 -1269 (D. Nev. 2008) ("To admit parol  
12 evidence to create ambiguity would 'eviscerate' the parol evidence rule." (citation  
13 omitted)).

#### 14 **IV. RELEVANT FACTS RELATING TO THIS MOTION.**

15 In addition, this Court found "as a matter of law" the contracts entered into by the  
16 Rogich Trust "clearly and unequivocally" identified Nanyah's \$1.5 million investment into  
17 Eldorado and the Rogich Trust's specific assumption of Eldorado's contractual  
18 obligation to repay Nanyah its \$1.5 million investment into Eldorado. Order, ¶¶4, 5.b.i,  
19 7 and 14. The Order conclusively determined that Rogich Trust contractually agreed to  
20 be the surety of Eldorado's contractual debt obligation to Nanyah. Of critical application  
21 in these proceedings, the Court determined that the various contracts contain "clear  
22 and unambiguous" terms and determined "as a matter of law" the contractual duties  
23 and obligations of the parties under the various agreements.

24 Because the Court has found that the contracts are "clear and unambiguous" the  
25 contract's terms are interpreted and enforced as a matter of law. *See e.g., Galardi v.*  
26 *Naples Polaris, LLC*, 129 Nev. 306, 301 P.3d 364, 366 (2013) ("contract interpretation  
27 presents a question of law . . ."). The Court is also bound to enforce the contracts'  
28 terms and cannot distort the agreement under the guise of interpreting it. *Watson v.*

1 Watson, 95 Nev. 495, 596 P.2d 507, 508 (1979) ("Courts are bound by language which  
2 is clear and free from ambiguity and cannot, using the guise of interpretation, distort the  
3 plain meaning of an agreement.").

4 As a consequence of the Court's legal findings in the Order, this motion in limine  
5 must be granted because the Court has determined that the terms of the relevant  
6 contracts are clear, unambiguous and were interpreted by the Court as a matter of law.<sup>1</sup>

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

10 . . .

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

16 . . .

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

24 . . .

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

28 . . .

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

25 <sup>1</sup> Musser v. Bank of America, 114 Nev. 945, 947, 964 P.2d 51, 52 (1998) ("The  
26 question of the interpretation of a contract . . . is a question of law."). The Court is  
27 vested with the authority to render conclusions of law relating to contract interpretation  
28 and enforcement. Galardi v. Naples Polaris, LLC, 129 Nev. 306, 301 P.3d 364, 366  
(2013) ("contract interpretation presents a question of law . . .").

1 Defendants' so-called contractual liability. *Krieger v. Elkins*, 96 Nev. 839,  
2 843, 620 P.2d 370, 373 (1980) (holding that testimony used to contradict  
3 or vary the written terms of an agreement is a violation of the parole  
evidence rule).

4 Exh. 1 (emphasis added).

5 As identified in the Court's Order at paragraph 14, the Court expressly  
6 recognized that the agreements at issue in this case are "clear and unambiguous" and  
7 that the parole evidence rule bars any evidence seeking to contract or vary the terms of  
8 the agreements.

9 **V. TESTIMONY, EVIDENCE AND ARGUMENT SOUGHT TO BE EXCLUDED.**

10 The Court's Order states that the terms of the various agreements in this case  
11 are "clear and unambiguous." Order, ¶14. In addition, the Court's Order specifically  
12 cites to the case *Krieger v. Elkins*, 96 Nev. 839, 843, 620 P.2d 370, 373 (1980) for the  
13 following standard of law:

14 testimony used to contradict or vary the written terms of an agreement is a  
15 violation of the parole evidence rule.

16 Id. As a consequence of this Court's Order, the application of *Krieger v. Elkins* and the  
17 parole evidence rule, the defendants are barred from attempting to introduce any  
18 testimony, exhibit or argument that contradicts the clear and unambiguous terms of the  
19 contracts in this case.

20 Consequently, as a result of this Court's Order, the Rogich Trust and Eldorado  
21 are barred from arguing or contesting the following:

- 22 (1) That Nanyah did not invest \$1,500,000 into Eldorado.

23 **BARRED:** This Court held that the agreements confirmed in  
24 clear and unambiguous language that Nanyah invested \$1,500,000  
25 into Eldorado. Id., ¶¶4, 5.a.ii and 5.b.i..

- 26 (2) That Eldorado did not have an "obligation" to repay Nanyah its \$1,500,000  
investment into Eldorado.

27 **BARRED:** This Court held that the agreements detailed Eldorado's  
28 "obligation" to repay Nanyah's \$1.5 million investment. Id., ¶¶4,  
5.a.ii and 7.

- 1  
2 (3) That the Rogich Trust did not agree to repay Nanyah for its  
3 \$1,500,000 investment into Eldorado.

4 **BARRED:** This Court found that the agreements confirmed in  
5 clear and unambiguous language that the Rogich Trust assumed  
6 Eldorado's contractual obligation to repay Nanyah its \$1.5 million  
7 investment into Eldorado. Id., ¶¶4, 5.a.ii, 5.b.i. and 7.

- 8 (4) That the obligation to repay Nanyah its \$1,500,000 investment into  
9 Eldorado does not exist.

10 **BARRED:** This Court found that the agreements confirmed in  
11 clear and unambiguous language that Nanyah invested \$1.5 million  
12 into Eldorado, Eldorado had a contractual obligation to repay the  
13 debt and the Rogich Trust assumed Eldorado's contractual  
14 obligation to repay Nanyah its \$1.5 million investment into Eldorado  
15 on behalf of Eldorado. Id., ¶¶4, 5.a.ii, 5.b.i. and 7.

16 The parol evidence rule bars the foregoing testimony, evidence or argument  
17 seeking to contradict the clear and unambiguous terms of the various agreements.

18 **VI. CONCLUSION.**

19 This Court Order found "as a matter of law" the contracts entered into by the  
20 Rogich Trust "clearly and unambiguously" state that Nanyah had invested \$1.5 million  
21 into Eldorado, Eldorado had an obligation to repay the debt and that the Rogich Trust  
22 agreed to assume Eldorado's "obligation" to repay Nanyah its \$1.5 million investment  
23 into Eldorado. As a consequence of the Court's Order, this motion in limine must be  
24 granted because the parol evidence bars any testimony, evidence or argument seeking  
25 to vary or contradict the clear and unambiguous terms of the various agreements. *See*  
26 *e.g.*, Krieger v. Elkins, 96 Nev. 839, 843, 620 P.2d 370, 373 (1980) ("testimony used to  
27 contradict or vary the written terms of an agreement is a violation of the parol evidence  
28 rule.").

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

DATED this 13 day of February, 2019.

SIMONS LAW, PC  
6490 S. McCarran Blvd. #F-46  
Reno, Nevada, 89509

MARK G. SIMONS  
Attorney for Nanyah Vegas, LLC




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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of  
SIMONS LAW, PC and that on this date I caused to be served a true copy of the  
**NANYAH VEGAS, LLC'S MOTION IN LIMINE #5 RE: PAROL EVIDENCE RULE** 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 15 day of February, 2019.

  
Employee of SIMONS LAW, PC

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**EXHIBIT LIST**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
1	10/5/18 Order	10

# 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. AUC  
DISTRICT COURT JUDGE

7  
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:

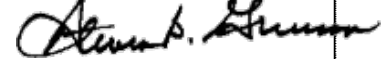
15 BAILEY ♦ KENNEDY

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.

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



**MILM**

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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.

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

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

**NANYAH VEGAS LLC'S MOTION IN  
LIMINE #6 RE: DATE OF DISCOVERY**

**Hearing Date:**

**Hearing Time:**

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.

1                                   **NANYAH VEGAS, LLC'S MOTION IN LIMINE #6**  
2                                   **RE: DATE OF DISCOVERY**

3           Nanyah Vegas, LLC ("Nanyah") submits the following motion in limine seeking to  
4           exclude any attempt by Defendant Sigmund Rogich ("Rogich"), individually and as  
5           Trustee of the Rogich Family Irrevocable Trust ("Rogich Trust"), Imitations, LLC  
6           ("Imitations") (jointly "Rogich Defendants") and Eldorado Hills, LLC ("Eldorado") unless  
7           otherwise specified from presenting any evidence seeking to contradict that Nanyah  
8           first discovered the breach of the Defendants' duty to repay Nanyah its \$1.5 million  
9           investment did not occur until December, 2012.  
10          investment did not occur until December, 2012.

11           DATED this 15<sup>th</sup> day of February, 2019.

12  
13                                   SIMONS LAW, PC  
14                                   6490 S. McCarran Blvd., #F-46  
15                                   Reno, Nevada, 89509

16                                     
17                                   MARK G. SIMONS  
18                                   Attorney for Nanyah Vegas, LLC  
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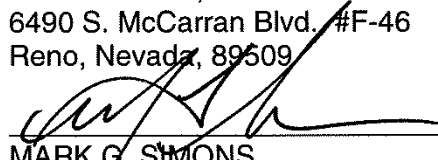
**NOTICE OF MOTION**

**TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:**

PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
**NANYAH'S MOTION IN LIMINE #6 RE: DATE OF DISCOVERY** on for hearing before  
the above-entitled court on the 20th day of March, 2019 at 9:00  
a.m./p.m. in Department XXVII or as soon thereafter as counsel may be heard.

DATED this 15<sup>th</sup> day of February, 2019.

SIMONS LAW, PC  
6490 S. McCarran Blvd. #F-46  
Reno, Nevada, 89509

  
MARK G. SIMONS  
*Attorney for Nanyah Vegas, LLC*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATUS OF CASE.**

This case focuses on Nanyah's efforts to recover its \$1.5 million investment in Eldorado. On October 5, 2018, this Court entered its Order making numerous findings of "undisputed fact" and rendering binding legal rulings "as a matter of law." Based upon this Court's Order, this Court found as "undisputed facts" that Nanyah invested \$1.5 million into Eldorado, that Eldorado had an "obligation" to repay Nanyah its \$1.5 million investment, and that the Rogich Trust agreed to repay Nanyah its \$1.5 million investment on Eldorado's behalf. Further, this Court found "as a matter of law" the contracts entered into by the Rogich Trust clearly and unambiguously stated the Rogich Trust's contractual obligation to repay Nanyah its \$1.5 million investment into Eldorado.



1       **II.       BASIS OF MOTION.**

2               This motion is a follow-up to Nanyah's Motion in Limine #3 Re: Defendants  
3       Bound by their Answers to Complaint ("MIL #3). MIL #3 sought and obtained the entry  
4       of an order confirming that the Rogich Defendants are bound by their judicial  
5       admissions in their Answer that: (1) they never informed Nanyah of the Rogich Trust's  
6       transfer of its membership interest in Eldorado to the Eliades Defendants in the later  
7       part of 2012 and (2) that defendants have no evidence rebutting or contesting that  
8       Nanyah first discovered that the Rogich Trust had no further interest in Eldorado was  
9       not until December, 2012. See **Exhibit 1**, Order Regarding Motions *In Limine* ("Limine  
10      Order"), p. 3. This motion is submitted in compliance with this Court's Order Re-Setting  
11      Civil Jury Trial and Calendar Call dated December 19, 2018.

12  
13  
14              The Court's Limine Order, however allowed the Rogich Defendants the  
15      opportunity to the "extent the Rogich Defendants obtained additional information after  
16      their Answer was filed, they are not precluded from bringing that forward at the time of  
17      trial." Id. This motion in limine must be granted since the Rogich Defendants have  
18      presented no evidence in this case rebutting or contesting that Nanyah's first discovery  
19      of the Rogich Trust's assignment of its interest in Eldorado was not until December,  
20      2012.

21  
22              This motion must be granted because the Rogich Defendants and Eldorado  
23      have both admitted and testified that not once did they communicate with Nanyah about  
24      the Rogich Trust's transfer of its interest in Eldorado. Obviously, if the Rogich  
25      Defendants and Eldorado did not communicate with Nanyah about the Rogich Trust's  
26      transfer, then these defendants are incapable of contesting Nanyah's date of discovery  
27      of the membership transfer as of December, 2012.

1     **III.     THE REASON THE DATE OF THE ROGICH TRUST'S TRANSFER OF**  
2     **INTEREST IN ELDORADO IS RELEVANT.**

3             Pursuant to the terms of the various agreements executed by the Rogich  
4     Defendants, the Rogich Trust agreed to either assume Eldorado's agreement to repay  
5     Nanyah for its \$1.5 million investment into Eldorado or to transfer a portion of the  
6     Rogich Trust's membership interest in Eldorado to Nanyah as compensation for such  
7     investment. **Exhibit 2**, Court's October 5, 2018, Order (the "Order"), ¶¶5.a.1 and 5.a.ii.  
8     In addition, this Court found "as a matter of law" the contracts entered into by the  
9     Rogich Trust "clearly and unequivocally" identified Nanyah's \$1.5 million investment into  
10    Eldorado and the Rogich Trust's assumption of Eldorado's contractual obligation to  
11    repay Nanyah its \$1.5 million investment into Eldorado. Order, ¶¶4, 5.b.i, 7 and 14.  
12

13            The contracts at issue also do not establish a date certain whereby Eldorado  
14    and/or the Rogich Trust was to repay Nanyah its \$1.5 million investment. Accordingly,  
15    there was no date certain Nanyah's claim for repayment or the transfer of the interest in  
16    Eldorado accrued. Up until December 2012, Nanyah had always been informed by  
17    Eldorado that its \$1.5 million investment would eventually be documented by a  
18    membership interest or would be repaid. **Exhibit 3**, Harlap Deposition, p. 18:10-16.<sup>1</sup>  
19

20            It was not until sometime in December 2012, that Nanyah was advised that the  
21    Rogich Trust had secretly transferred its membership interest in Eldorado and was  
22    refusing to repay Nanyah its \$1.5 million investment. **Exhibit 5**, Declaration of Yoav  
23    Harlap, ¶2. Based upon the receipt of this information, Nanyah believed such action  
24    was a repudiation of the defendants' obligations to repay its \$1.5 million investment  
25    and/or to transfer to it a membership interest in Eldorado. *Id.*, ¶3. These facts are  
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27

28            

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<sup>1</sup> See also **Exhibit 4**, Affidavit of Mark G. Simons ("Simons' Aff.") at ¶4.

1 undisputed and the Rogich Trust and Eldorado have no facts contradicting Nanyah's  
2 evidence.

3 **IV. THERE IS NO EVIDENCE PRESENTED IN THIS ACTION BY ANY**  
4 **DEFENDANTS THAT NANYAH WAS AWARE OF THE ROGICH TRUST'S**  
5 **TRANSFER OF ITS MEMBERSHIP INTEREST IN ELDORADO PRIOR TO**  
6 **DECEMBER 2012.**

7 The Limine Order did not preclude the Rogich Trust from presenting any "new"  
8 evidence at trial on this issue to the extent it "obtained additional information after the  
9 Answer was filed . . . ." Exh. 1. However, the defendants have presented no evidence  
10 establishing that Nanyah discovered the Rogich Trust's secret transfer of its  
11 membership interest in Eldorado **prior to** December, 2012.

12 Pursuant to NRCP 37(c)(1), the Defendants have not produced any evidence or  
13 information in this case relating to this issue. NRCP 37(c)(1) provides:

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

19 Id. (emphasis added).<sup>2</sup> Since no evidence has been produced in this case rebutting or  
20 contesting or even relating to Nanyah's discovery of the Rogich Trust's and/or  
21 Eldorado's breach of the repayment obligation until December, 2012, that date is  
22 uncontested and uncontestable in this action.

23 Nanyah is entitled to an order in this case establishing Nanyah's date of  
24 discovery of the Rogich Trust's transfer of its interest in Eldorado as of December, 2012  
25 and that no evidence, testimony or argument may be presented seeking to contradict  
26 this fact. A motion in limine on this issue is warranted and appropriate since there is no  
27

28  

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<sup>2</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 question of fact and no evidence contradicting Nanyah's actual date of discovery.  
2 Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801, 806 (1998) ("[T]he time of discovery  
3 may be decided as a matter of law" when "uncontroverted evidence" establishes the  
4 date of discovery of the breach).

5  
6 **V. STANDARD OF REVIEW.**

7 Motions in limine are designed to seek the Court's ruling on the admissibility  
8 and/or exclusion of arguments, assertions and evidence in advance of trial. The  
9 Nevada Supreme Court has approved the use of motions in limine recognizing the  
10 legitimacy of such pre-trial motions practice and the courts' authority to rule on these  
11 motions. See e.g., Bull v. McCuskey, 615 P.2d 957, 961 (Nev. 1976).  
12


13 **VI. CONCLUSION.**

14 The undisputed evidence is: (1) the various contracts did not have a date certain  
15 for Eldorado and the Rogich Trust to repay Nanyah its \$1.5 million investment; (2)  
16 defendants never informed Nanyah about the Rogich Trust's secret assignment of its  
17 membership interest in Eldorado; (3) and Nanyah discovered the Rogich Trust's  
18 assignment in December, 2012.  
19

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

22 DATED this 15<sup>th</sup> day of February, 2019.

23 SIMONS LAW, PC  
24 6490 S. McCarran Blvd., #F-46  
25 Reno, Nevada, 89509

26   
27 MARK G. SIMONS  
28 Attorney for Nanyah Vegas, LLC

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of  
SIMONS LAW, PC and that on this date I caused to be served a true copy of the  
**NANYAH VEGAS LLC'S MOTION IN LIMINE #6 RE: DATE OF DISCOVERY** 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>
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Brandon McDonald	<a href="mailto:brandon@mcdonaldlayers.com">brandon@mcdonaldlayers.com</a>
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Erica Rosenberry	<a href="mailto:erosenberry@fclaw.com">erosenberry@fclaw.com</a>

DATED this 15 day of February, 2019.

  
Employee of SIMONS LAW, PC

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**EXHIBIT LIST**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGES</b>
1	10/5/18 Order	10
2	11/6/18 Order	4
3	Simons Affidavit	1
4	Harlap Deposition Excerpts	4
5	Harlap Declaration	1

**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. Allie  
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.

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

ORIGINAL

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Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 **ORDR (CIV)**

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5 Nevada Bar No. 10125

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13 *Attorneys for Defendant* ELDORADO HILLS,  
14 LLC

15  
16 DISTRICT COURT  
17 CLARK COUNTY, NEVADA

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

25 Plaintiffs,

26 vs.

27 SIG ROGICH aka SIGMUND ROGICH as  
28 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 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

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

➤ Nanyah Vegas, LLC (“Nanyah”).

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

➤ Eldorado Hills, LLC (“Eldorado”).

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

**APPEARANCES**

The Parties appeared as follows:

- For 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. and Brenoch Wirthlin, Esq. of Fennemore Craig, P.C.
- For Nanyah: Mark G. Simons, Esq. of Simons Law, PC.

///

///

**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.

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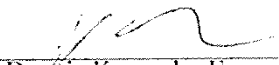
➤ Eldorado's MIL Regarding Implied-In-Fact Contract is deferred until the time of trial, as the Court needs additional information before determining whether Nanyah may proceed on an implied-in-fact contract claim against Eldorado.

DATED this 2 day of February, 2018.

Dezma Kennedy  
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 3**

**EXHIBIT 3**

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 CARLOS A. HUERTA, an individual; )  
 4 CARLOS A. HUERTA as Trustee of )  
 5 THE ALEXANDER CHRISTOPHER TRUST, )  
 6 a Trust established in Nevada )  
 7 as assignee of interests of )  
 8 GO GLOBAL, INC., a Nevada )  
 9 corporation; NANYAH VEGAS, LLC, )  
 10 A Nevada limited )  
 11 Plaintiffs, ) Case No.:  
 12 vs. ) A-13-686303-C  
 13 ) Dept. No.: XXVII

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

22 NANYAH VEGAS, LLC, a Nevada ) CONSOLIDATED WITH:  
 23 limited liability company, )  
 24 ) Case No.:  
 25 Plaintiff, ) A-16-746239-C  
 vs. )  
 TELD, LLC, a Nevada limited )  
 liability company; PETER ) DEPOSITION OF:  
 ELIADES, individually and as )  
 Trustee of The Eliades Survivor ) YOAV HARLAP  
 Trust of 10/30/08; SIGMUND )  
 ROGICH, individually and as )  
 Trustee of The Rogich Family )  
 Irrevocable Trust; IMITATIONS, ) TAKEN ON:  
 LLC, a Nevada limited liability ) OCTOBER 11, 2017  
 company; DOES I-X; and/or ROE )  
 CORPORATIONS I-X, inclusive, )  
 Defendants. )

Reported by: Monice K. Campbell, NV CCR No. 312  
 Job No.: 693

**CERTIFIED COPY**



1 Q. That is a 2008 document. Did you see it  
2 in 2008?

3 A. I do not know.

4 Q. You don't know. You don't know or you  
5 don't remember?

6 A. I don't remember.

7 Q. But you don't know?

8 A. I might have.

9 Q. You might have. Okay.

10 A. I might have, because I do remember  
11 vividly that Carlos have explained to me, if I'm not  
12 mistaken, over the phone, that my rights in the  
13 Eldorado Hills are secured and that the buyer of  
14 Eldorado Hills from him has taken the commitment to  
15 pay me or register my rights or pay me back my  
16 investment in Eldorado Hills.

17 Q. When did Carlos tell you that?

18 A. This was at the time when he explained to  
19 me that he has his own issues. He had to sell and  
20 that my rights remained there. But this is many  
21 years ago, so it's the best of my recollection from,  
22 you know, the telephone conversation that was going  
23 on.

24 MR. LIONEL: Would you mark this as three,  
25 Miss Reporter.

1 asks for a legal conclusion. He doesn't know what  
2 this claim is.

3 THE WITNESS: I don't know.

4 BY MR. LIONEL:

5 Q. You don't know.

6 It says, "Nanyah's entitled to specific  
7 performance of the purchase agreement."

8 Are you entitled to -- do you know what  
9 that means?

10 A. If that's what it says, it's probably  
11 right, and I have full confidence in my legal counsel  
12 that he knows what to write.

13 Q. In your lawyer.

14 And it says that, "These agreements vest  
15 you with a membership interest in Eldorado."

16 What do these documents have to do with  
17 your membership?

18 A. I don't know.

19 Q. You don't know.

20 MR. LIONEL: That's it.

21 (Whereupon, the deposition was concluded at  
22 3:17 p.m. this date.)

23 \* \* \* \* \*

24

25

## 1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
3 ) ss:  
4 COUNTY OF CLARK )

5 I, Monice K. Campbell, a Certified Court Reporter  
6 licensed by the State of Nevada, do hereby certify:  
7 That I reported the deposition of YOAV HARLAP, on  
8 Wednesday, October 11, 2017, at 9:45 a.m.

9 That prior to being deposed, the witness was  
10 duly sworn by me to testify to the truth. That I  
11 thereafter transcribed my said stenographic notes via  
12 computer-aided transcription into written form, and  
13 that the typewritten transcript is a complete, true  
14 and accurate transcription of my said stenographic  
15 notes; that review of the transcript was requested.

16 I further certify that I am not a relative,  
17 employee or independent contractor of counsel or of  
18 any of the parties involved in the proceeding; nor a  
19 person financially interested in the proceeding; nor  
20 do I have any other relationship that may reasonably  
21 cause my impartiality to be questioned.  
22  
23  
24  
25

# EXHIBIT 4

# EXHIBIT 4

**AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF  
NANYAH VEGAS LLC'S MOTION IN LIMINE #6 RE: DATE OF DISCOVERY**

STATE OF NEVADA       )  
  )ss.  
COUNTY OF WASHOE    )

I, Mark Simons, being duly sworn, depose and state under penalty of perjury the following:

1. I am an attorney licensed in Nevada and am counsel representing Nanyah Vegas, LLC in this matter. I am a shareholder with the law firm of SIMONS LAW, PC.

2. I have personal knowledge of the facts set forth in this affidavit, and if I am called as a witness, I would and could testify competently as to each fact set forth herein.

3. I submit this affidavit in support of Nanyah Vegas, LLC's Motion in Limine #6 re: Date of Discovery ("Motion"), to which this affidavit is attached as Exhibit 4.

4. Exhibit 3 to the Motion are and correct excerpts of Yoav Harlap's October 11, 2017 deposition transcript.


FURTHER AFFIANT SAYETH NAUGHT.

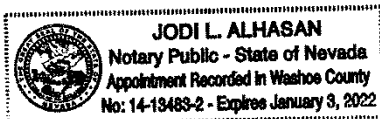
Dated this 15<sup>th</sup> day of February, 2019.

  
\_\_\_\_\_  
MARK G. SIMONS

STATE OF NEVADA       )  
  )ss.  
COUNTY OF WASHOE    )

Subscribed and sworn to before me on this 15 day of February, 2019 by Mark G. Simons at Reno, Nevada.

  
\_\_\_\_\_  
NOTARY PUBLIC



**EXHIBIT 5**

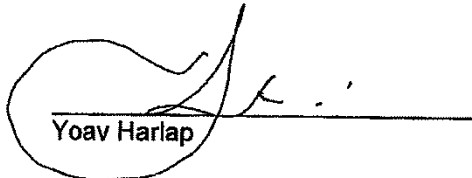
**EXHIBIT 5**

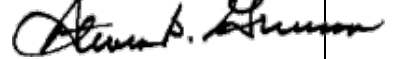
### DECLARATION OF YOAV HARLAP

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



**OMSJ (CIV)**

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

**BAILEY ♦ KENNEDY**

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*Attorneys for Defendant*

ELDORADO HILLS, 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

**DEFENDANT ELDORADO HILLS,  
LLC'S OPPOSITION TO NANYAH  
VEGAS, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: March 6, 2019

Hearing Time: 10:00 a.m.

**CONSOLIDATED WITH:**

Case No. A-16-746239-C

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



**DEFENDANT ELDORADO HILLS, LLC'S OPPOSITION TO NANYAH VEGAS, LLC'S  
MOTION FOR SUMMARY JUDGMENT**

Defendant Eldorado Hills, LLC ("Eldorado") opposes Nanyah Vegas, LLC's ("Nanyah") Motion for Summary Judgment ("Nanyah's SJ Motion").<sup>1</sup> This Opposition is based on the following Memorandum of Points of Authorities, the exhibits to the related briefs, and any oral argument heard by the Court.

DATED this 15th day of February, 2019.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

*Attorneys for Defendant*  
ELDORADO HILLS, LLC

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Nanyah's description of this Court's Summary Judgment Order is cut from whole cloth.<sup>2</sup> This Court *never* made any findings of fact or conclusions of law that "Eldorado had an 'obligation' to repay Nanyah its \$1.5 million" or that "the Rogich Trust agreed to repay Nanyah its \$1.5 million investment on Eldorado's behalf."<sup>3</sup> Quite to the contrary, the Summary Judgment Order includes specific findings that "the Rogich Trust shall remain *solely responsible* for any claims by [Nanyah] as set forth in this section above," and that "any amounts owing to [Nanyah], 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 agreements, shall be satisfied *solely by the Rogich Trust*."<sup>4</sup> Simply, if

<sup>1</sup> Eldorado does not oppose Nanyah's Motion to Extend the Dispositive Motion Deadline.

<sup>2</sup> The "Summary Judgment Order" refers to this Court's October 5, 2018 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

<sup>3</sup> Nanyah's SJ Mot., 3:8-11, filed Jan. 30, 2019.

<sup>4</sup> Summary Judgment Order, 5:4-15 (emphasis added).

1 the Rogich Trust is “solely responsible,” Eldorado is not liable, and thus, Nanyah’s SJ Motion  
2 should be denied.

3 Nanyah’s SJ Motion should be denied for numerous other reasons. First, as set forth in  
4 Eldorado’s Motion for Summary Judgment, Nanyah cannot pursue an equitable unjust enrichment  
5 claim against Eldorado when it has an adequate contractual remedy at law against the Rogich Trust  
6 (as this Court already determined in the Summary Judgment Order). Second, Nanyah abandoned  
7 and waived its implied-in-fact contract claim *over five years ago* by voluntarily omitting it from its  
8 Amended Complaint. Third, Nanyah did not provide sufficient evidence of the obligations  
9 comprising this supposed implied-in-fact contract, as required under binding Nevada precedent.  
10 Fourth, the Court has already ruled that there are genuine issues of material fact with respect to  
11 Eldorado’s statute of limitations defense. Thus, Nanyah’s SJ Motion must be denied.

## 12 II. STATEMENT OF FACTS

### 13 A. Nanyah’s Claim Against Eldorado.

14 On July 31, 2013, Carlos Huerta (“Huerta”), Go Global, Inc. (“Go Global”), and Nanyah  
15 initiated a lawsuit against Sig Rogich (“Rogich”), the Rogich Family Irrevocable Trust (the “Rogich  
16 Trust”), and Eldorado. Huerta and Go Global’s claims have since been dismissed. With respect to  
17 Nanyah, it initially filed claims against Eldorado for unjust enrichment *and* breach of implied  
18 agreement.<sup>5</sup> After Eldorado filed a Motion to Dismiss addressing both claims, Nanyah filed an  
19 Amended Complaint, repleading its unjust enrichment claim (alleging that Eldorado was responsible  
20 for returning its \$1,500,000.00 investment) *and omitting its breach of implied agreement claim.*<sup>6</sup>  
21 Although Nanyah’s unjust enrichment claim was later dismissed due to expiration of the statute of  
22 limitations, the Nevada Supreme Court reversed and remanded, and that claim remains pending to  
23 this day.<sup>7</sup>

24  
25 <sup>5</sup> Compl., 7:18-9:2, filed July 31, 2013.

26 <sup>6</sup> See generally Am. Compl., Case No. A-13-686303-C, filed Oct. 21, 2013.

27 <sup>7</sup> A separate lawsuit was filed by Nanyah on November 4, 2016, against Rogich, the Rogich Trust, and  
28 Imitations, LLC (collectively, the “Rogich Defendants”), as well as Peter Eliades, Teld, LLC (“Teld”), and the Eliades  
Survivor Trust of 10/30/08 (collectively, the “Eliades Defendants”). (See generally Compl., Case No. A-16-746239-C,  
filed November 4, 2016.) That matter was consolidated with Case No. A-13-686303-C. The Eliades Defendants are no  
longer parties to this case, as this Court entered summary judgment in their favor on every one of Nanyah’s claims. (See

1 **A. The Relevant History of Eldorado.**

2 Eldorado was formed in 2005 for the purpose of owning and developing approximately 161  
3 acres of land near Boulder City, Nevada. Eldorado was originally comprised of Go Global (100%  
4 owned by Huerta) and the Rogich Trust.<sup>8</sup>

5 In 2007, Huerta contacted Nanyah to invest. In December of 2007, Nanyah wired  
6 \$1,500,000.00, which eventually was deposited (temporarily) into Eldorado's bank account.<sup>9</sup> In  
7 October of 2008, approximately ten months later, Teld purchased a 1/3 interest in Eldorado for  
8 \$3,000,000.00. Concurrently, the Flangas Trust purchased a 1/3 interest in Eldorado for  
9 \$3,000,000.00, which was subsequently transferred to Teld when the Flangas Trust backed out of the  
10 deal. Because Teld ended up with a larger percentage of Eldorado than originally contemplated, it  
11 was later agreed that the Rogich Trust would re-acquire 6.67% of Eldorado from Teld. As a result of  
12 these transactions, Go Global (*i.e.*, Huerta) no longer owned an Eldorado membership interest, Teld  
13 owned 60% of Eldorado, and the Rogich Trust owned 40% of Eldorado.<sup>10</sup>

14 **B. The Relevant Agreements.**

15 These transactions were memorialized into various written agreements. Nanyah was not  
16 included as a named signatory on the agreements—however, they explicitly confirmed that the  
17 Rogich Trust agreed to the obligation to pay Nanyah the \$1,500,000.00 it supposedly invested into  
18 Eldorado.<sup>11</sup> In fact, the relevant agreements, which memorialized these various transactions, state  
19 that the Rogich Trust—*not Eldorado*—would be “*solely responsible*” for Nanyah's claim.  
20 Specifically, the relevant agreements state the following:

21 ➤ ***October 30, 2008 Purchase Agreement between Go Global, Huerta, and the Rogich Trust:***

- 22       ▪ “[Go Global and Huerta], however, will not be responsible to pay the Exhibit A  
23       Claimants their percentage or debt. ***This will be [the Rogich Trust's] obligation,***

24  
25 *generally* Summary Judgment Order.)

26 <sup>8</sup> Summary Judgment Order, ¶ 1.

27 <sup>9</sup> *Id.*, ¶ 2.

28 <sup>10</sup> *Id.*, ¶ 3.

<sup>11</sup> *Id.*, ¶ 4.

*moving forward....*”<sup>12</sup>

➤ ***October 30, 2008 Membership Interest Purchase Agreement between the Rogich Trust, Teld, Go Global, and Huerta:***

- “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.***”<sup>13</sup>
- “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].***”<sup>14</sup>

**B. The Summary Judgment Order.**

The Summary Judgment Order contains the following relevant findings of fact and conclusions of law:

- “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.”
- “Seller Go Global, however, will not be responsible to pay the Exhibit A claimants their percentage or debt. ***This will be Buyer[] The Rogich Trust’s obligation.*** The Exhibit A Claimants include Nanyah and its \$1,500,000.00 investment.”
- “***[T]he Rogich Trust shall remain solely responsible*** for any claims by any of the above referenced entities set forth in this section above.”

---

<sup>12</sup> *Id.*, ¶ 5(a)(ii).

<sup>13</sup> *Id.*, ¶ 5(b)(vii).

<sup>14</sup> *Id.*, ¶ 5(b)(viii).

- “[A]ny 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.*”
- “The October 30, 2008, Purchase Agreement states that *the Rogich Trust specifically agreed to assume* the obligation to pay Nanyah its percentage or debt.”<sup>15</sup>

### III. ARGUMENT

#### A. Legal Standard for Summary Judgment.

“Summary judgment is appropriate and ‘shall be rendered forthwith’ when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (quoting N.R.C.P. 56(c)).

#### B. The Summary Judgment Order Does Not Provide a Basis for Summary Judgment in Nanyah’s Favor.

An unjust enrichment claim only exists when the plaintiff confers a benefit on the defendant, the defendant appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof. *Unionamerica Mortg. and Equity Trust v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (citation omitted). The plaintiff “must establish each element of unjust enrichment.” *Certified Fire Prot., Inc. v. Precision Constr. Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012).

Nanyah based the entirety of its SJ Motion on this Court’s findings of fact and conclusions of law in the Summary Judgment Order—*an Order which dismissed all of Nanyah’s claims against the Eliades Defendants*. Nanyah somehow argues that this Court’s Summary Judgment Order fulfilled each and every one of the required elements of its unjust enrichment claim (as well as an abandoned implied-in-fact agreement theory). Wrong. The Summary Judgment Order does not contain any findings which are sufficient to impose any Eldorado liability. Although it states that

---

<sup>15</sup> See generally Summary Judgment Order, ¶¶ 4, 5(a)(ii), 5(b)(vii), 5(b)(viii), 7 (emphasis added).

Nanyah's funds were ultimately invested into Eldorado, there are absolutely no findings regarding use of the funds, acceptance of the funds, retention of the funds, or whether or not Eldorado (as opposed to the Rogich Trust and Go Global) actually benefitted from the funds. Further, and more importantly, there are no findings that Eldorado agreed to pay back Nanyah, or that Eldorado was liable for Nanyah's so-called investment.<sup>16</sup> On the contrary, there is a specific finding that "the Rogich Trust shall remain *solely responsible* for any claims by [Nanyah] as set forth in this section above."<sup>17</sup> The Court also found that "any amounts owing to [Nanyah], 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 agreements, shall be satisfied *solely by the Rogich Trust*."<sup>18</sup> Clearly, if the Rogich Trust is "solely responsible," Eldorado is not liable. Thus, Nanyah's SJ Motion must be denied as it relates to Eldorado.<sup>19</sup>

C. **Nanyah's Equitable Unjust Enrichment Claim is Barred Because It Has an Adequate Remedy at Law.**

Unjust enrichment is an equitable claim. *Wynn Las Vegas LLC v. Tofani*, No. 69936, 2017 WL 6541827, at \*6 n. 7 (Nev. Ct. App. Dec. 14, 2017) ("An equitable claim like unjust enrichment requires no proof whatsoever of intent or state of mind; it's a strict liability claim based solely on notions of equity."); *see also generally Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 274, 182 P.3d 764, 766 (2008) (referring to unjust enrichment as an "equitable claim.") "Nevada recognizes the general rule that an equitable claim, like unjust enrichment, is not available where the plaintiff has a full and adequate remedy at law." *Small v.*

<sup>16</sup> Even if Nanyah invested in Eldorado, there is no corresponding guarantee that the LLC will repay the investment. It is, after all, an investment (not a loan), and Nanyah would only be paid back if the LLC was profitable. Nanyah has not submitted any evidence that Eldorado is a profitable entity and thus would contractually owe any distributions or capital account repayments to Nanyah.

<sup>17</sup> Summary Judgment Order, 5:4-9.

<sup>18</sup> *Id.*, 5:10-15.

<sup>19</sup> Nanyah appears to argue that this Court's findings and use of the term "assume" implies that there was an obligor to Nanyah prior to the Rogich Trust. The Summary Judgment Order does not include any such implication. However, this Court did specifically cite § 4 of the October 30, 2008 Purchase Agreement between Go Global, Huerta, and the Rogich Trust, which states as follows: "[Go Global and Huerta], however, will not be responsible to pay the Exhibit A Claimants their percentage or debt. This will be [the Rogich Trust's] obligation, moving forward...." Thus, under the plain language of the agreements, to the extent anyone was originally liable for Nanyah's potential claim prior to the Rogich Trust, *it was Go Global and Huerta—not Eldorado*. Perhaps Nanyah should have sued them.

1 *Univ. Med. Center of Southern Nev.*, 2016 WL 4157309, at \*3 (D. Nev. Aug. 3, 2016) (citing *In re*  
2 *Wal-Mart Wage & Hour Emp't Prac. Litig.*, 490 F. Supp. 2d 1091, 1125 (D. Nev. 2007) (citing *State*  
3 *v. Second Judicial Dist. Court in & for Washoe Cty.*, 241 P. 317, 322 (Nev. 1925))).

4 Other jurisdictions are in accord:

- 5 ➤ *United States v. Bame*, 721 F.3d 1025, 1031 (8th Cir. 2013) (“[I]t is the existence of an  
6 adequate legal remedy that precludes unjust enrichment recovery.”) (interpreting Minnesota  
7 law);
- 8 ➤ *Buckner v. Kennard*, 99 P.3d 842, 857 (Utah 2004) (“[T]he general rule is that equitable  
9 jurisdiction is precluded if the plaintiff has an adequate remedy at law and will not suffer  
10 substantial irreparable injury.”);
- 11 ➤ *Delahunt v. Cytodyne Tech.*, 241 F.Supp.2d 827, 841 (S.D. Ohio 2003) (“The equitable claim  
12 of unjust enrichment fails when a legal remedy is available.”);
- 13 ➤ *In re Managed Care Litig.*, 185 F.Supp.2d 1310, 1337 (S.D. Fla. 2002) (“It is blackletter law  
14 that ‘the theory of unjust enrichment is equitable in nature and is, therefore, not available  
15 where there is an adequate legal remedy.’”) (citation omitted).

16 This Court has definitively determined—via the Summary Judgment Order—that Nanyah has  
17 an adequate contractual remedy against the Rogich Trust. Further, the subject of Nanyah’s  
18 contractual remedy against the Rogich Trust is synonymous with Nanyah’s unjust enrichment claim  
19 against Eldorado—*i.e.*, the \$1,500,000.00 payment. Although Nanyah may have been able to plead  
20 and pursue alternative theories for a period of time, once this Court determined that there is a valid  
21 contract obligating the Rogich Trust to Nanyah for the \$1,500,000.00 payment, Nanyah’s ability to  
22 seek equitable relief was permanently foreclosed. *See Maintenance Enterprises, LLC v. Orascom*  
23 *E&C USA*, Case No. 3:16-cv-00014-SMR-CFB, 2017 WL 6997892, at \*3 (S.D. Iowa Nov. 13,  
24 2017) (“MEI’s claim for unjust enrichment against Iowa Fertilizer is indeed precluded because MEI  
25 has an adequate remedy at law against OEC for breach of contract.”). Therefore, Nanyah’s SJ  
26 Motion should be denied.

1 **D. Nanyah Waived and Abandoned Its Implied-in-Fact Contract Claim by Voluntarily**  
2 **Omitting It From Its Amended Complaint.**

3 Nanyah's SJ Motion seeks summary judgment *on a claim that does not exist*—breach of an  
4 implied-in-fact contract. As explained above, Nanyah initially filed claims against Eldorado for  
5 unjust enrichment *and* breach of implied agreement.<sup>20</sup> After Eldorado filed a Motion to Dismiss  
6 addressing both claims, Nanyah filed an Amended Complaint, repleading its unjust enrichment claim  
7 (alleging that Eldorado was responsible for returning its \$1,500,000.00 investment) *and omitting the*  
8 *breach of implied agreement claim.*<sup>21</sup> When Nanyah voluntarily omitted its implied-in-fact contract  
9 claim from its Amended Complaint back in 2013, *that claim was waived and abandoned as a*  
10 *matter of law.* See *Washington Gas Light Co. v. Prince George's Cnty. Council Sitting as Dist.*  
11 *Council*, 784 F.Supp.2d 565, 571 (D.Md.2011) ("If an amended complaint omits claims from the  
12 original complaint, the plaintiff thereby waives or abandons the original claims.") (citing *Young v.*  
13 *City of Mount Rainer*, 238 F.3d 567, 573 (4th Cir.2001)); see also *Oregon Teamster Employers*  
14 *Trust v. Hillsboro Garbage Disposal, Inc.*, No. 3:11-cv-01487-ST, 2013 WL 2423795, at \*3 (D. Or.  
15 June 4, 2013) ("Plaintiff, however, previously included a claim for fraudulent misrepresentation in  
16 its Amended Complaint and later chose to omit that claim from its Second Amended Complaint.  
17 *Justice does not require that the Court provide Plaintiff with an opportunity to re-plead*  
18 *a claim that Plaintiff has previously elected to abandon.*") (emphasis added).

19 Now, approximately two months before trial, well past the deadline to amend pleadings, and  
20 well past the close of discovery, Nanyah seeks summary judgment regarding a claim *that was*  
21 *abandoned and waived over five years ago.* Suffice it to say that summary judgment cannot be  
22 entered on a contractual claim that was abandoned and waived. Further, any reference to N.R.C.P.  
23 15(b) and N.R.C.P. 54(c) is meaningless because those rules do not apply at the summary judgment  
24 stage.<sup>22</sup> See *Crawford v. Gould*, 56 F.3d 1162, 1168 (9th Cir. 1995); *Bullard v. Wastequip Manuf.*

25 <sup>20</sup> Compl., 7:18-9:2, filed July 31, 2013.

26 <sup>21</sup> See generally Am. Compl., Case No. A-13-686303-C, filed Oct. 21, 2013.

27 <sup>22</sup> Although Nanyah did raise this implied-in-fact contract theory in prior summary judgment and motion *in limine*  
28 briefing in 2018, Eldorado repeatedly objected to any such claim going forward. In fact, on October 29, 2018, Eldorado  
filed a Notice of Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-in-Fact Contract Theory, explaining that  
Eldorado does not explicitly or implicitly consent (as required under N.R.C.P. 15(b)) to any such claim going forward at



1 *Co. LLC*, Case No. CV 14-01309-MMM (SSx), 2015 WL 12766467, at \*12 n. 82 (C.D. Cal. Apr.  
2 14, 2015) (“Indeed, Rule 15(b) of the Federal Rules of Civil Procedure does not permit amendment  
3 of a complaint to conform to evidence presented at the summary judgment stage. It only applies to  
4 amendment of the complaint at trial.”); *Champion Foodservice, LLC v. Vista Food Exchange, Inc.*,  
5 Case No. 1:13-cv-1195, 2016 WL 4468001, at \*19 (N.D. Ohio Aug. 24, 2016) (“The Court agrees  
6 that it is not appropriate to use Rule 15(b)(2), which provides for amendment of pleadings during  
7 and after trial, to obtain an amendment to conform to evidence on summary judgment.”).<sup>23</sup> Nor  
8 should N.R.C.P. 15(b) and N.R.C.P. 54(c) apply to claims that have already been waived and  
9 abandoned *over five years ago*. Therefore, Nanyah’s SJ Motion should be denied.

10 **E. Nanyah Has Not Shown An Implied-In-Fact Contract With Eldorado.**

11 Even assuming this Court permits Nanyah to proceed on a claim it already abandoned and  
12 waived, the fact remains that Nanyah failed to prove an implied-in-fact contract with Eldorado. “To  
13 find a contract implied-in-fact, the fact-finder must conclude that the parties intended to contract and  
14 promises were exchanged, *the general obligations for which must be sufficiently clear.*” *Certified*  
15 *Fire Prot.*, 128 Nev. at 380, 283 P.3d at 256 (2012). The obligations which supposedly comprise  
16 this implied-in-fact contract between Eldorado and Nanyah are a mystery. In particular, what  
17 “membership interest” did Nanyah supposedly contract to receive for its \$1,500,000.00 investment?  
18 What percentage of Eldorado was Nanyah contractually entitled to own? Would that membership  
19 interest reduce Go Global’s or the Rogich Trust’s existing membership interest, and if so, by how  
20 much? Would Nanyah have voting rights? Would Nanyah have managerial rights? Would Nanyah  
21 be bound by the Operating Agreement? Would Nanyah have an obligation to comply with capital  
22 calls?

23 Nanyah’s SJ Motion does not include any admissible evidence from Nanyah or from  
24 Eldorado, the two supposed parties to this alleged implied-in-fact contract. Mr. Harlap—Nanyah’s

25 \_\_\_\_\_  
26 trial. (Eldorado Hills, LLC’s Notice of Non-Consent to Nanyah Vegas, LLC’s Unpleaded Implied-in-Fact Contract  
Theory, filed Oct. 29, 2018.)

27 <sup>23</sup> Federal cases interpreting rules of civil procedure are persuasive authority in Nevada courts. *Exec. Mgmt. Ltd.*  
28 *v. Titor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (citing *Las Vegas Novelty v. Fernandez*, 106 Nev. 113,  
119, 787 P.2d 772, 776 (1990)).

sole principal—has not provided a declaration or any testimony to prove up this supposed contract. And nothing in the Summary Judgment Order supports the existence of the terms of an implied-in-fact contract between Nanyah and Eldorado. Without any proof that these obligations were discussed and agreed upon, there is not nearly enough certainty or detail to conceive an implied-in-fact contract for an investment in an LLC. *See id.* (“There are simply too many gaps to fill in the asserted contract for quantum meruit to take hold.”). Thus, Nanyah’s SJ Motion should be denied.

**F. Nanyah Also Has Statute of Limitations Defenses That Mandate Denial of Nanyah’s SJ Motion.**

On May 22, 2018, this Court entered an Order Partially Granting Summary Judgment. This Court found that some of Nanyah’s claims (*i.e.*, fraudulent transfer, constructive trust) were barred by the applicable statute of limitations. With respect to Nanyah’s remaining claims in this case, including its unjust enrichment claim against Eldorado, this Court held there were genuine issues of material fact with respect to the applicable statute of limitations.<sup>24</sup> Nothing has changed since that Order. Because the Court believes there are genuine issues of material fact with respect to Eldorado’s statute of limitations defenses, Nanyah’s SJ Motion should be denied.<sup>25</sup>

**IV. CONCLUSION**

Nanyah’s SJ Motion is based on misrepresentations of this Court’s Summary Judgment Order. This Court never made any findings of fact or conclusions of law that would warrant summary judgment in Nanyah’s favor against Eldorado on any claim, let alone the sole claim Nanyah actually pled in this case (unjust enrichment). Quite to the contrary, the Summary Judgment Order definitely shows that Nanyah has an adequate contractual remedy at law “solely” against the Rogich Trust. Therefore, its equitable claim of unjust enrichment against Eldorado is barred as a matter of law. For that reason, as well as all the other reasons set forth above, Nanyah’s SJ Motion should be denied.

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<sup>24</sup> See generally Order Partially Granting Summary Judgment, filed May 22, 2018.

<sup>25</sup> Eldorado incorporates by reference the entirety of its prior briefing on its Joinder to Motion for Summary Judgment, filed on March 5, 2018, and its Reply in Support of Joinder to Motion for Summary Judgment, filed on April 11, 2018.

DATED this 15<sup>th</sup> day of February, 2019.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

*Attorneys for Defendant*  
ELDORADO HILLS, LLC

**CERTIFICATE OF SERVICE**

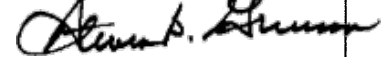
I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 15<sup>th</sup> day of February, 2019, service of the foregoing **DEFENDANT ELDORADO HILLS, LLC'S OPPOSITION TO NANYAH VEGAS, LLC'S MOTION FOR SUMMARY JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

MARK G. SIMONS, ESQ. <b>SIMONS LAW, PC</b> 6490 So. McCarran Blvd., #20 Reno, NV 89509	Email: mark@mgsimonslaw.com  <i>Attorneys for Plaintiff</i> NANYAH VEGAS, LLC
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SAMUEL S. LIONEL, ESQ. BRENOCH WIRTHLIN, ESQ. <b>FENNEMORE CRAIG, P.C.</b> 300 S. Fourth Street, Suite 1400 Las Vegas, NV 89101	Email: slionel@fclaw.com bwirthlin@fclaw.com  <i>Attorneys for Defendant</i> SIG ROGICH aka SIGMUND ROGICH, Individually and as Trustee of THE ROGICH FAMILY IRREVOCABLE TRUST, and IMITATIONS, LLC
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MICHAEL V. CRISTALLI JANIECE S. MARSHALL <b>GENTILE CRISTALLI MILLER</b> <b>ARMENI SAVARESE</b> 410 South Rampart Blvd., Suite 420 Las Vegas, NV 89145	Email: mcristalli@gcmaslaw.com jmarshall@gcmaslaw.com  <i>Attorneys for Defendants</i> SIG ROGICH aka SIGMUND ROGICH as Trustee of THE ROGICH FAMILY IRREVOCABLE TRUST
---	---

/s/ Sharon L. Murnane  
Employee of BAILEY ♦ KENNEDY



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*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 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**

**DEFENDANTS SIGMUND ROGICH AS  
TRUSTEE OF THE ROGICH FAMILY  
IRREVOCABLE TRUST, SIGMUND  
ROGICH, INDIVIDUALLY AND  
IMITATIONS, LLC'S OMNIBUS  
OPPOSITION TO (1) NANYAH VEGAS  
LLC'S MOTION FOR SUMMARY  
JUDGMENT AND (2) LIMITED  
OPPOSITION TO ELDORADO HILLS,  
LLC'S MOTION FOR SUMMARY  
JUDGMENT**

**Date of hearing:** March 6, 2019

**Time of hearing:** 10:00 a.m.

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

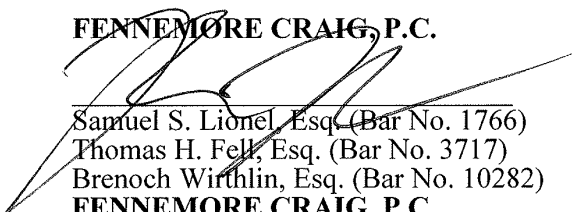
1        **DEFENDANTS SIGMUND ROGICH AS TRUSTEE OF THE ROGICH FAMILY**  
2        **IRREVOCABLE TRUST, SIGMUND ROGICH, INDIVIDUALLY, AND IMITATIONS,**  
3        **LLC'S OMNIBUS OPPOSITION TO (1) NANYAH VEGAS LLC'S MOTION FOR**  
4        **SUMMARY JUDGMENT AND (2) LIMITED OPPOSITION TO ELDORADO HILLS,**  
5        **LLC'S MOTION FOR SUMMARY JUDGMENT**

6        Pursuant to NRCP 56 and 60(b), Defendants Sigmund Rogich, individually ("Mr.  
7        Rogich"), and as Trustee of the Rogich Family Irrevocable Trust (the "Trust" or the "Rogich  
8        Trust") and Imitations, LLC ("Imitations" and collectively with the Trust and Mr. Rogich referred  
9        to herein as the "Rogich Defendants"), by and through their counsel of record, Fennemore Craig,  
10       P.C., hereby submit their omnibus opposition ("Opposition") to the motions for summary  
11       judgment filed by plaintiff Nanyah Vegas LLC ("Nanyah" and "Nanyah's MSJ") and the motion  
12       for summary judgment filed by Eldorado Hills, LLC ("Eldorado" and "Eldorado's MSJ" and  
13       collectively with Nanyah's MSJ referred to as the "MSJs").<sup>1</sup> As set forth more fully herein, the  
14       MSJs are based on an order entered in this case on October 5, 2018 ("October 2018 Order"). The  
15       Rogich Defendants have filed a motion for relief from the October 2018 Order and incorporate  
16       herein all of their arguments and assertions in that motion. As set forth in that motion as well as  
17       below, the October 2018 Order should be amended or replaced, which would effectively negate  
18       and invalidate Nanyah's MSJ. Further, the Rogich Defendants oppose Eldorado's MSJ to the  
19       extent it relies on the October 2018 Order.

20       This Opposition is based on all documents on file with the Court, the exhibits attached to  
21       this Opposition, the Memorandum of Points and Authorities which follows, and any oral  
22       argument the Court chooses to entertain at a hearing on this matter.

23       DATED: February 18, 2019.

24       **FENNEMORE CRAIG, P.C.**

25         
26       Samuel S. Lionel, Esq. (Bar No. 1766)  
27       Thomas H. Fell, Esq. (Bar No. 3717)  
28       Brenoch Wirthlin, Esq. (Bar No. 10282)  
29       **FENNEMORE CRAIG, P.C.**  
30       300 S. Fourth Street, Suite 1400  
31       Las Vegas, Nevada 89101  
32       Attorneys for the Rogich Defendants

33       <sup>1</sup> The Rogich Defendants do not oppose the request of either Eldorado or Nanyah to extend the  
34       dispositive motion deadline to allow the filing of motions for summary judgment.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 **A. Relevant Procedural History**

4 1. On June 1, 2018, Peter Eliades, Individually and as Trustee of the Eliades Survivor  
5 Trust of 10/30/08, and Teld, LLC filed their Motion for Summary Judgment (the “Eliades  
6 Defendants’ Motion for Summary Judgment”) against plaintiff Nanyah Vegas, LLC (“Plaintiff” or  
7 “Nanyah”). *See Exhibit A.*

8 2. On June 19, 2018, Nanyah filed its Opposition to the Eliades Defendants’ Motion  
9 for Summary Judgment and Countermotion for Summary Judgment (“Nanyah’s Countermotion  
10 for Summary Judgment”) against the Eliades Defendants. *See Exhibit B.*

11 3. On July 19, 2018, the Eliades Defendants filed their Reply in Support of their  
12 Motion for Summary Judgment and Opposition to Nanyah’s Countermotion for Summary  
13 Judgment. *See Exhibit C.*

14 4. On July 26, 2018, the Court held the hearing on the Eliades Defendants and  
15 Nanyah’s competing Motions. *See Exhibit D.*

16 5. On October 5, 2018, the Court entered the Order: (1) Granting Defendants Peter  
17 Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, and Teld, LLC’s  
18 Motion for Summary Judgment; and (2) Denying Nanyah Vegas, LLC’s Countermotion for  
19 Summary Judgment (the “October 2018 Order”). *See Exhibit E.* The October 2018 Order was  
20 never approved as to form and content by the Rogich Defendants’ counsel or by counsel for the  
21 Eliades Defendants. Further, competing orders were offered by the Eliades Defendants and  
22 Nanyah. *See Exhibits F-1 and F-2.*

23 6. With respect to Nanyah’s competing Order, attached as Exhibit F-2, Nanyah  
24 included a redlined version of the 2 competing Orders highlighting the differences between the 2  
25 versions. *See Exhibit F-2 to this Motion, at Attachment 2.*

26 7. On October 8, 2018, Notice of Entry of the October 2018 Order was filed and  
27 served. *See Exhibit G.*

1           There is no dispute that the above-referenced motions for summary judgment, which  
2           resulted in the entry of the October 2018 Order, did not seek summary judgment against the  
3           Rogich Defendants, or any of them.

4           **B.     The October 2018 Order is not consistent with the record.**

5           The October 2018 Order could be misconstrued to have made several affirmative findings  
6           and conclusions that the Rogich Trust has an obligation or debt owed to Nanyah (as a potential  
7           claimant) for its purported investment into Eldorado Hill. *See* Exhibit E.<sup>2</sup> The record clearly  
8           shows that the arguments/exhibits, presented in the moving papers and at the hearing (as cited  
9           below), indicate that any claim by Nanyah is only a “potential” claim, and that any purported  
10          investment by Nanyah into Eldorado is not only disputed, but demonstrably inaccurate. Set forth  
11          below are various references to documents and testimony in the record in this case demonstrating  
12          that a genuine issue of material fact clearly remains regarding Nanyah’s purported “claim” against  
13          any of the defendants, and regarding its purported “investment” into Eldorado:

14          **1.     Eliades Defendants’ Motion for Summary Judgment**

- 15           • “On the contrary, the Purchase Agreements state that the Rogich Trust  
16           agreed to negotiate with Nanyah (amongst others) to attempt to resolve its  
17           “potential claim.” *See* Exhibit A, pg. 6, ll. 6-10.
- 18           • “*Notably, the Rogich Trust --not Teld, Eliades, or the Eliades Trust--*  
19           *agreed to be responsible for Nanyah’s potential claim.”* *Id.*, pg. 11, ll. 5-  
20           6.
- 21           • “On the contrary, the Purchase Agreements reiterate over and over again  
22           the only the Rogich Trust is responsible for Nanyah’s potential claim.” *Id.*,  
23           pg. 12, ll. 7-9.

24          **2.     Eliades Defendants’ Reply in Support of their Motion**

- 25           • “Despite this clear legal authority, Nanyah argues that the successors and  
26           assigns clause contained in the October 30, 2008 Purchase Agreement

27           <sup>2</sup>     The Rogich Defendants specifically dispute the affirmative findings and conclusions provided for at: (1)  
28           Undisputed Material Facts, paragraphs 4, 5(a)(ii), 5(b)(i), 5(b)(iii), 5(b)(iv) and 5(d)(ii); and (2) Conclusion of Law,  
          paragraphs 7, 9, 12, 15, 20 and 21. The Rogich Defendants provide a redlined/amended version of the October 2018  
          Order so as to correct the disputed affirmative findings and conclusions (*See Exhibit H*).



1 accomplished the first purpose above (*i.e.*, to bind the Eliades Defendants  
2 as purported successors or assignees to the Rogich Trust's **potential**  
3 obligation to Nanyah)." *See* Exhibit C, pg. 6, ll. 1-4.

- 4 • "...the explicit language...confirms that **only** Rogich Trust would be  
5 responsible for Nanyah's **potential** claim." *Id.*, pg. 6, ll. 6-8.
- 6 • "The relevant contracts are clear as day. They explicitly show the parties'  
7 intent for the Rogich Trust to remain **solely** responsible for Nanyah's  
8 **potential** claim." *Id.*, pg. 6, ll. 16-18.
- 9 • "Accordingly, even assuming that Nanyah's **potential** claim encumbered  
10 the Rogich Trust's membership interest in any respect (it did not), the  
11 Eliades Defendants never assumed any responsibility for that potential  
12 obligation." *Id.*, pg. 7, ll. 21-23.
- 13 • "As shown above, Eliades testimony is entirely consistent with the relevant  
14 contracts, which prove that Rogich Trust **solely** assumed liability for  
15 Nanyah's **potential** claim." *Id.*, pg. 12, ll. 11-12.
- 16 • "When Teld became involved with Eldorado Hills ten months later in  
17 October of 2008, the only mention of Nanyah was in the relevant  
18 contracts, **which explicitly stated that solely the Rogich Trust was liable**  
19 **for that potential claim.**" *Id.*, pg. 13, ll. 9-12.

18 **3. Transcript of the July 26, 2018 Hearing**

- 19 • Mr. Liebman: "Fourth, in 2008, when TELD LLC does become involved  
20 with the company, they put forward these explicit agreements that address  
21 Nanyah's **potential** claim -- that's the word it uses, a **potentially** [sic]  
22 claim...." *See* Exhibit D, pg. 5, ll. 13-16.

22 **C. The language of the October 5, 2018 is internally inconsistent.**

23 As mentioned in section B above, the October 2018 Order includes disputed affirmative  
24 findings and conclusions (*i.e.*, that The Rogich Trust has any obligation or debt owed to Nanyah  
25 (as a potential claimant) for its alleged investment into Eldorado Hill), which are provided for at:  
26 (1) Undisputed Material Facts, paragraphs 4, 5(a)(ii), 5(b)(i), 5(b)(iii), 5(b)(iv) and 5(d)(ii); and  
27 (2) Conclusion of Law, paragraphs 7, 9, 12, 15, 20 and 21. *See* Exhibit E. Importantly, the  
28

1 October 2018 Order itself includes the following findings and conclusions that are inconsistent  
2 with the affirmative findings and conclusions:

- 3 • "...there is no basis for Nanyah--as an **alleged** third-party beneficiary--to  
4 sue the Eliades Defendants." *Id.*, at pg. 8, ll. 14-15.
- 5 • "...the Eliades Defendants supposedly pursued their own individual  
6 advantage by seeking to interfere with the return of Nanyah's **alleged**  
7 investment in Eldorado." *Id.*, at pg. 9, ll. 2-3.

8 These above inconsistencies acknowledge there are still disputed material facts at issue.

9 **D. Disputed Material Facts**

10 To further support relief from the October 2018 Order, the Rogich Defendants provide the  
11 Court with the below disputed material facts still at issue in this case. While this is not an  
12 exhaustive listing of the disputed material facts, it more than supports the Rogich Defendants'  
13 requested relief from the October 2018 Order:

14 **1. The Alleged Investment**

15 ***a. The set-up of Nanyah Vegas, LLC and CanaMex Nevada,***  
16 ***LLC***

17 • In June of 2007, Mr. Harlap and Mr. Huerta were communicating  
18 with one another, where they were discussing Mr. Harlap's potential investment of  
19 \$1.5 Million into CanaMex Nevada, LLC ("CanaMex"). Mr. Huerta directed Mr.  
20 Harlap to CanaMex's website of CanaMexNevada.com and Mr. Harlap confirmed  
21 he was interested in investing \$1.5 Million. Mr. Harlap requested Mr. Huerta to  
set-up the Nevada company (which would become Nanyah). Mr. Huerta suggested  
he be the Registered Agent for Nanyah. *See* NAN234-235, attached as **Exhibit I**.

22 • CanaMex registered as a Nevada limited liability company on  
23 December 3, 2007, just 4 days prior to Nanyah being registered. Mr. Harlap is the  
24 sole manager of Nanyah. Go Global Inc. was sole the Manager/Managing Member  
of CanaMex. *See* RT203 and PLTF247, attached as **Exhibit J**.

25 • Mr. Huerta was the sole officer of Go Global, Inc. *See* Harlap Depo  
26 (attached as **Exhibit K**), p. 10, ll: 17-21.

27 ***b. Nanyah's \$1.5 Million Wire***  
28

1           •       Mr. Huerta testified (as Nanyah's PMK) that he instructed Mr.  
2 Harlap to wire the money to the account of Eldorado Hills. See Nanyah PMK  
3 Depo (attached as **Exhibit L**), p. 31, ll. 4-11.

4           •       Contrary to this deposition testimony, on December 4, 2007, Mr.  
5 Huerta e-mailed Mr. Harlap instructing him to **wire the \$1.5 Million into**  
6 **CanaMex Nevada, LLC's bank account**. See NAN241, attached as **Exhibit M**.

7           •       *Nowhere in the e-mailed instructions from Mr. Huerta to Mr.*  
8 *Harlap is there any indication of, or reference to, Eldorado Hills, LLC*  
9 *("Eldorado Hills").*

10          •       Mr. Huerta further testified (as Nanyah's PMK) that Nanyah wired  
11 the funds into Eldorado Hills' bank account and that the money **never** went into  
12 the CanaMex's account. See Nanyah PMK Depo/Exhibit L, p. 29, l. 21 to p. 30, l.  
13 14 and p. 60, ll. 5-14. Further, Mr. Harlap testified that he "transferred the money  
14 to Eldorado Hills as per Carlos Huerta's wiring instructions" and that this is the  
15 basis of Nanyah's claims. See Harlap Depo/Exhibit K, p. 20, l. 20 to p. 21, l. 11.

16          •       Contrary to these deposition testimonies, the bank records show  
17 that **Mr. Harlap actually wired the \$1.5 Million into CanaMex's Nevada State**  
18 **Bank account** on December 6, 2007 in compliance with Mr. Huerta's emailed  
19 instructions (not Eldorado Hills' bank account). See NAN387-388, attached as  
20 **Exhibit N**.

21                   ***c. The Bank Transfers***

22          •       After the alleged investment funds were wired by Mr. Harlap into  
23 CanaMex's bank account, Mr. Huerta proceeded with the following series of bank  
24 transfers, where a majority of \$1.5 Million ended up in the bank account of  
25 CanaMex's sole manager/managing member (Go Global, Inc., which is a business  
26 solely operated by Mr. Huerta):

27          •       **CanaMex:** The December 2007 bank statement for CanaMex  
28 shows a \$1.5 Million check (#92) written to Eldorado Hills, signed by Mr. Huerta  
and processed on December 10, 2007. See NAN387-388, attached as Exhibit N.

          •       **Eldorado Hills:** The December 2007 bank statement for Eldorado  
Hills checking account shows a \$1.5 Million deposit on December 7, 2007 (which  
is the \$1.5 Million check from CanaMex) and a \$1.45 Million internet transfer to  
its money market account on December 10, 2007. The December 2007 bank

1 statement for Eldorado Hills money market account shows a \$1.45 Million internet  
2 transfer deposit from the Eldorado Hills checking account on December 10, 2007  
3 and a \$1.42 Million transfer out processed on December 14, 2007. *See* NAN449-  
4 450, attached as **Exhibit O**.

5 • **Go Global:** The December 2007 bank statement for Go Global  
6 checking account shows the Eldorado Hills transfer for \$1.42 Million was  
7 deposited into Go Global Inc.'s account on December 14, 2007. This \$1.42  
8 Million transfer was per "an e-mail request from Carlos Huerta". *See* RT155 and  
9 PLTF443, attached as **Exhibit P**.

10 *d. Investment confirmation*

11 • **December 8, 2007:** Mr. Harlap received an e-mail from Summer  
12 Rellamas, Finance and Administration Manager with Go Global Properties, which  
13 attached an investment confirmation letter. The letter thanked Mr. Harlap for his  
14 recent investment of \$1.5 Million into CanaMex, confirmed receipt of his \$1.5  
15 Million wire on December 6, 2007 and advised him that his 2007 federal tax forms  
16 should be received by February 2008. *See* NAN248-249, attached as **Exhibit Q**.

17 • **January 3, 2008:** Mr. Huerta e-mailed Mr. Harlap an update on  
18 CanaMex and provided a letter from Go Global Properties with a subject line of  
19 CanaMex. *See* NAN250-251, attached as **Exhibit R**.

20 • **January 30, 2008:** Mr. Harlap received an e-mail from Summer  
21 Rellamas of Go Global Properties attaching Nanyah's annual investor portfolio  
22 which summarizes its investment with Go Global Properties. *See* NAN256-264,  
23 attached as **Exhibit S**.

24 • **March 13, 2008:** Mr. Harlap received an e-mail from Huerta  
25 attaching an update letter on letterhead of Go Global Properties, signed by Mr.  
26 Huerta as Managing Manager for CanaMex, indicated that "We, at Go Global  
27 Properties, felt it time to send out an update in regards to our CanaMex Nevada  
28 project in Las Vegas" and again directed Mr. Huerta to  
[www.CanaMexNevada.com](http://www.CanaMexNevada.com). *See* NAN265-268, attached as **Exhibit T**.

*e. The K-1s*

• Mr. Huerta (as Nanyah's PMK) confirmed that equity and  
ownership interests are preserved by a K-1 and confirmed a tax return will show  
the ownership interest. *See* Nanyah PMK/Exhibit L, p. 22, ll. 3-15.

1           •       Mr. Huerta further testified (inaccurately) that Nanyah was going to  
2 be a member of Eldorado Hills or CanaMex, but that CanaMex didn't happen and  
3 Eldorado Hills never formalized its investment with a K-1. *See* Huerta Depo  
(attached as **Exhibit U**), p. 164, ll. 7-18.

4           •       Contrary to this deposition testimony, but consistent with Nanyah's  
5 confirmed investment in CanaMex, on April 12, 2008, CanaMex sent Nanyah a  
6 2007 Schedule K-1 form via an e-mail from Summer Rellamas at Go Global  
7 Properties. The Schedule K-1 from CanaMex shows: (1) shows Nanyah as 99%  
8 owner of CanaMex; (2) for the time period of December 3, 2007 through  
9 December 31, 2007; (3) Nanyah's capital contribution during the year of \$1.5  
Million; and (4) that after a decrease in business income of \$2,515, Nanyah's  
ending capital account with CanaMex as of December 31, 2007 was \$1,497,485.  
*See* NAN269-270, attached as **Exhibit V**.

10           •       CanaMex additionally sent Nanyah a 2010 Schedule K-1 with a  
11 letter, which indicated that its "2010 Schedule K-1 ... has been filed with the  
12 partnership tax return of CanaMex Nevada, LLC" and further advised that  
13 "[s]hould [Nanyah] have any questions regarding the information reported to [it]  
14 on this Schedule K-1, please call." The 2010 K-1 shows: (1) Nanyah still as 99%  
15 owner of CanaMex; (2) Nanyah's capital account with CanaMex at \$1,497,695;  
16 and (3) that after a decrease in business income of \$10, Nanyah's ending capital  
17 account with CanaMex as of December 31, 2010 was \$1,497,685. *See* NAN389-  
390, attached as **Exhibit W**.

## 18                           2.   The Potential Claimants

19           The dispute as to the relevant contracts relate to the contracts at issue. The  
20 relevant contracts provide that Mr. Rogich' Trust will look into the potential  
21 claimants listed in the Purchase Agreement, and not that his Trust would pay the  
potential claimants. In reviewing the potential claimants, Mr. Rogich knew they  
were without merit:

22           •       Eldorado Hills (under Mr. Huerta's direction as the Tax Matters  
23 partner) had already provided to the first 2 potential claimants (The Ray Trust and  
24 Eddyline) with 2007 K-1s. *See* RT197 and RT200, attached as **Exhibit X**.

25           •       As for Antonio Nevada, Eldorado Hills had paid it in full. In fact,  
26 Antonio Nevada later sued Eldorado Hills as a result of being a potential claimant  
27 under this Purchase Agreement. Eldorado Hills was successful in defending  
28 against that lawsuit and obtaining a Judgment against Antonio Nevada. *See*  
RT192, attached as **Exhibit Y**.

1           • As for Nanyah, there was no K-1 issued by Eldorado Hills to  
2 Nanyah for 2007 and none of the financial records mentioned Nanyah. *See* RT164-  
3 165, attached as **Exhibit Z**. Mr. Huerta controlled the books and records of both  
4 companies at that time.

### 5                           3. Statute of Limitations

6           • Mr. Huerta testified (as Nanyah's PMK) being aware of the  
7 Purchase Agreement being signed in October 2008. *See* Nanyah PMK  
8 Depo/Exhibit L, p. 26, ll. 4-18.

9           • Mr. Harlap testified he first became aware of the Purchase  
10 Agreement in 2008. *See* Harlap Depo/Exhibit K, p. 16, line 19 to p. 18, l. 23.

11           • Mr. Harlap testified that he understood that Nanyah's potential  
12 claim to \$1.5 Million investment in Eldorado Hills started from day one from his  
13 transferring or sending \$1.5 Million in 2007. *See* Harlap Depo/Exhibit K, p. 74, l.  
14 12 to p. 75, l. 2.

15           • On February 13, 2016, **Mr. Huerta e-mailed Mr. Harlap**  
16 **indicating the following:** "...our Nevada Supreme Court overturned the judgment  
17 entered, here in district court, against Nanyah Vegas and it proves that you (nor I)  
18 deserves what this judge Allf doled out. Attached is the order. It, basically, says  
19 that Nanyah's claims could not have been dismissed, **when Eldorado Hills, LLC**  
20 **did not prove the statute began to run, once the money was tendered, or when**  
21 **a membership interest should have been provided and maintained, on your**  
22 **behalf** and how I was guaranteed that it would be by this "respected" Sig Rogich.  
23 This judge Allf should be exposed for the complete disgrace that she really is." *See*  
24 NAN303, attached as **Exhibit AA**.

25           The above facts support this Court granting the Rogich Defendants relief from the October  
26 2018 Order, and accordingly, deny both MSJs.

### 27                           E. **The MSJs are based on the October 2018 Order**

28           Both Nanyah's MSJ and Eldorado's MSJ are based on the October 2018 Order. Nanyah's  
MSJ asserts in its introduction that "[s]ummary judgment is mandated in Nanyah's favor **based**  
**upon this Court's October 5, 2018 Order...**". *See* Nanyah's MSJ at p. 2. Similarly, Eldorado's  
MSJ argues that it is entitled to summary judgment based on the October 2018 Order. *See*  
Eldorado's MSJ at pp. 3-4.

1  
2 **II. LEGAL ARGUMENT**

3 **A. This Court should amend or replace the October 2018 Order which would**  
4 **require denial of the MSJs.**

5 NRCP 60(b) in pertinent part, allows the Court, “[o]n motion and **upon such terms as are**  
6 **just**”, to “**relieve a party...from a final judgment, order** or proceeding for the following reasons:  
7 (1) **mistake, inadvertence**, surprise or excusable neglect....” NRCP 60(b) (Emphasis Added).  
8 Moreover, the relief requested by the Rogich Defendants is well within this Court’s jurisdiction to  
9 grant. *See A-Mark Coin Co. v. Redfield's Estate*, 94 Nev. 495, 498, 582 P.2d 359, 361 (1978)  
10 (recognizing, in the probate context, that a court “has jurisdiction to vacate a prior order upon  
11 learning that it was entered through mistake” and further confirms that “[o]ur remedial rule,  
12 NRCP 60(b), contemplates such action.”) (citation omitted). The Rogich Defendants’ Rule 60(b)  
13 motion was timely filed within six (6) months from service of the notice of entry of the October  
14 2018 Order. *See id.*

15 While, as noted above, in drafting the October 2018 Order, the Plaintiff correctly noted in  
16 one instance that Nanyah’s claim that it “invested” in Eldorado is only an allegation, it is clear  
17 that in many instances the Plaintiff neglected to clarify this fact. Moreover, despite the fact that  
18 the documents at issue plainly state that Nanyah’s alleged claim is only “potential” – a significant  
19 detriment to Nanyah’s current position – this critical modifier failed to make its way into the  
20 October 2018 Order through inadvertence or neglect. Regardless, there can be no doubt that  
21 Nanyah should not be able to benefit from its own error in drafting the October 2018 Order, as it  
22 now attempts to do by ignoring the fact that its purported claim is only “potential”, and its  
23 purported “investment” into Eldorado is only an allegation, not a proven fact.

24 Thus, while the Eliades Defendants’ Motions for Summary Judgment and Nanyah’s  
25 countermotion were not seeking summary judgment against the Rogich Defendants, the October  
26 2018 Order inadvertently or mistakenly makes affirmative findings and conclusions that Nanyah  
27 now attempts to incorrectly construe as a basis for summary judgment against the Rogich  
28 Defendants, even going so far as to allege in its newly filed MSJ that the Rogich Defendants are

1 even prohibited from presenting any evidence in their defense at trial. *See generally* Nanyah's  
2 MSJ, filed on January 30, 2019.

3 It is worth noting that Nanyah Vegas has, in past proceedings, brought motions for  
4 summary judgment against the Rogich Defendants, where it sought summary judgment very  
5 similar to the disputed affirmative findings and conclusions provided for within the October 2018  
6 Order. Each time, the Rogich Defendants were successful and this Court denied Nanyah  
7 summary judgment on what are very clearly disputed issues of fact. Without question, Nanyah's  
8 mistakes in drafting the October 2018 Order, if left uncorrected, would gravely and unjustly  
9 impact the Rogich Defendants' due process rights.

10 Given there are disputed material facts still at issue regarding the referenced provisions of  
11 the October 2018 Order, the affirmative findings and conclusions related to these disputed  
12 material facts should be modified to reflect them as allegations only. This Court should grant the  
13 Rogich Defendants relief from the October 2018 Order. To illustrate the small, but significant,  
14 changes that would be required to amend the October 2018 Order, and for the Court's  
15 convenience, the Rogich Defendants provide a redlined/amended version of the October 2018  
16 Order that they believe should have been entered (the "Proposed Amended Order"). *See* Exhibit  
17 H. The Rogich Defendants request that the Proposed Amended Order be entered in place of the  
18 October 2018 Order. Because both MSJs are based on the October 2018 Order, and because the  
19 October 2018 Order should be amended or replaced, the MSJs must both be denied.

20 **B. Contrary to Nanyah's unsupported assertion, this Court is not bound by the**  
21 **October 2018 Order.**

22 Nanyah incorrectly argues that "this Court is bound by its undisputed factual findings and  
23 its legal rulings." *See* Nanyah's MSJ at p. 15. Nanyah offers no support whatsoever for this bold  
24 assertion. If Nanyah's position were correct – which it is not – Rule 60(b) would be meaningless.  
25 Once a Court entered an order, there would be no going back. Clearly this is inconsistent with  
26 Nevada's Rules of Civil Procedure, as well as the intent and spirit of the law which grants this  
27 Court "wide discretion" in determining whether to grant a motion to set aside an order under  
28 NRCP 60(b). *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. Adv. Op. 78, 428 P.3d 255, 257



1 (2018) (“The district court has **wide discretion in deciding whether to grant or deny a motion**  
2 **to set aside a judgment** under NRCP 60(b). Its determination will not be disturbed on appeal  
3 absent an abuse of discretion.”); *Cook v. Cook*, 112 Nev. 179, 182, 912 P.2d 264, 265 (1996).

4 Nanyah’s flawed reasoning asserts that “[t]he Court is not at liberty to dismiss claims  
5 against certain defendants and then refuse to allow Nanyah to obtain judgment against the  
6 remaining parties based upon those same findings.” *See* Nanyah’s MSJ at p. 15. But the defect in  
7 Nanyah’s reasoning is clear: just because the Court found that summary judgment was appropriate  
8 in favor of the Eliades Defendants because it found they did not agree to repay Nanyah its  
9 “**alleged investment**” or its “**potential claim**”, that does not necessarily mean that Nanyah  
10 actually has a claim, or that anyone agreed to repay Nanyah anything. For example, it is entirely  
11 possible that the trial may result in a finding that **no one made an enforceable agreement to**  
12 **repay Nanyah anything**. It is entirely possible that a jury could find that **Nanyah has no**  
13 **enforceable claim against anyone, with the possible exception of Canamex since that is**  
14 **where its money went**. It is also entirely possible that the jury could find that the multiple  
15 defenses the Rogich Defendants have against Nanyah prohibit recovery of any amounts by  
16 Nanyah. In other words, contrary to Nanyah’s claims, *just because summary judgment was*  
17 *granted in favor of the Eliades Defendants does not mean Nanyah has a valid claim against*  
18 *any of the other defendants, including the Rogich Defendants*. Accordingly, the MSJs must be  
19 denied.

20 C. **There are disputed issues of fact regarding whether the statute of limitations**  
21 **precludes Nanyah’s claims.**

22 Nanyah asserts that this Court has rejected “as a matter of law” that the statute of  
23 limitations cannot bar Nanyah’s claims. *See* Nanyah’s MSJ at p. 16. This is incorrect. The Court  
24 did deny in part the Rogich Defendants’ motion for summary judgment related to the statute of  
25 limitations *based on the Court’s finding that disputed questions of fact remain regarding this*  
26 *issue*. For example, in the transcript of the Court’s ruling on this issue, attached as **Exhibit AB**,  
27 the Court specifically noted the following:  
28

1 First, I find that the motion can be granted only with regard to the fran – fraudulent  
2 conveyance action and with regard to the constructive trust....

3 The other issues [including with respect to the statute of limitations  
4 arguments by the Rogich Defendants] are with regard to accrual of causes of  
5 action. **There are facts in dispute with regard to that.** I’m going to have to see  
6 the demeanor, the personal knowledge, the –the credibility of the witnesses on –  
7 on all sides to determine that – if it’s me, or a jury’s entitled, the parties are  
8 entitled to a jury.

9 *Id.* at p. 2. (emphasis added). In addition, the Nevada Supreme Court has recognized that the  
10 determination of when a cause of action accrues “ordinarily presents a question of fact” and may  
11 only be determined as a matter of law when there is irrefutable evidence supporting that  
12 determination. *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 251, 277 P.3d 458, 462 (2012);  
13 *Golden v. Forage*, No. 72163, 2017 WL 4711619, at \*1 (Nev. App. Oct. 13, 2017) (same); *Errico*  
14 *v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, No. 70147, 2016 WL 2846397, at \*1  
15 (Nev. May 11, 2016) (same). Thus, while Nanyah is correct that this Court has denied its motion  
16 for summary judgment regarding whether the statute of limitations bars Nanyah’s purported  
17 claims, this only further demonstrates that Nanyah’s MSJ must be denied because there are  
18 disputed issues of fact as to whether Nanyah’s alleged claims are barred.

19 Further, as noted above, there are specific issues that will need to be determined at trial as  
20 to when Nanyah’s claims accrued. Just because there may not have been a “date certain” in any  
21 of the agreements at issue as to when any repayment of Nanyah’s purported claim would take  
22 place, that does not mean Nanyah’s alleged claim could not have accrued outside the applicable  
23 statute of limitations period. For example, a fact finder could determine that Nanyah’s receipt of  
24 the 2007 K-1 from Canamex put Nanyah on notice that – if it did have a claim against any of the  
25 defendants for failure to repay its alleged “loan” or “investment” – such claim accrued when  
26 Nanyah received unequivocal confirmation that its purported “investment” it now claims was  
27 meant for Eldorado, was, in fact, in Canamex!

28 Further, Nanyah’s proffer of Mr. Harlap’s declaration asserting that his claim did not  
accrue until 2012 hardly constitutes “undisputed” fact. In reality, it only further proves that  
summary judgment in favor of Nanyah at this time is entirely inappropriate, since there is

1 absolutely a disputed issue of fact as to when Nanyah's purported claim accrued – if it even has a  
2 claim at all.

3 Moreover, Nanyah's transparent attempt to misconstrue this Court's order granting  
4 Nanyah's Motion in Limine 3 to somehow prohibit the introduction of evidence on this topic fails  
5 as a matter of law. *See* Nanyah's MSJ at p. 17. Nanyah itself admits that in its order this Court  
6 expressly found that the Rogich Defendants could present evidence at trial demonstrating the  
7 statute of limitations provides a defense for the Rogich Defendants based on evidence it  
8 discovered after its answer. *Id.* at pp. 17-18. Nanyah asserts that no such evidence exists. *Id.*  
9 This is an incorrect statement. In fact, an enormous amount of evidence – discovered and timely  
10 disclosed during discovery – makes clear that Nanyah's claim did, in fact, accrue in 2008. As  
11 noted above, the 2007 K-1 indisputably put Nanyah on notice that it had not received an equity  
12 interest in Eldorado, constituting accrual of Nanyah's claim (to the extent it has one, which the  
13 Rogich Defendants dispute). Moreover, Mr. Harlap's own testimony makes clear that in 2008 he  
14 was shown documents by Mr. Huerta putting him on notice of any potential claim Nanyah may  
15 have had. *See* excerpts from deposition of Mr. Harlap, Exhibit K at p. 16, line 19 to p. 18, line 23.  
16 These are only a few of the numerous pieces of evidence – not to mention the testimony of the  
17 trial witnesses – that will demonstrate the statute of limitations provides a complete defense to all  
18 of Nanyah's alleged claims.

19 In addition, there are many other disputed issues Nanyah ignores which prevent the relief  
20 requested in the MSJs. For example, during the time of Nanyah's alleged investment into  
21 Eldorado, Mr. Rogich never had any control or access to the books and records. *See* Declaration  
22 of Sigmund Rogich ("Rogich Declaration"), attached as **Exhibit AC** hereto, at ¶ 4. At that time,  
23 the books and records of Eldorado were all handled by Carlos Huerta. *Id.* Further, Mr. Huerta,  
24 who was in control of all financial filings, only sent K-1s to the shareholders of Eldorado and,  
25 consistent with the IRS code, did not send a K-1 to Nanyah. *Id.* at ¶ 5. Importantly, during the  
26 depositions of both Mr. Rogich and Melissa Olivas, the deponents were handed what was asserted  
27 by Nanyah's counsel to be the general ledger of Eldorado. *Id.* at ¶ 6. However, it has since been  
28 discovered that that this general ledger was fraudulently altered by Mr. Huerta and is not a true

1 and authenticate copy of Eldorado's general ledger handed over by Mr. Huerta to Mr. Rogich  
2 during the time of the signing of the relevant Purchase Agreement. *Id.* In addition, at no time  
3 prior to the commencement of the lawsuit, did Mr. Rogich ever even speak to or communicate  
4 with Nanyah or Mr. Harlap because there was no reason to as they were not an investor in  
5 Eldorado. *Id.* at ¶ 7. These issues, along with myriad others, prevent entry of summary judgment  
6 as requested in the MSJs.

7 From a legal standpoint, Nanyah's arguments also fail as a matter of law. For example,  
8 in *City of Fernley v. State Dept. of Tax*, 366 P. 3d 699, 707, 2016, (2016) awareness of the date of  
9 the tax distribution was the start of a statute of limitations period. "because Fernley was aware at  
10 the time of its incorporation in 2001 that its C-Tax base distributions would be calculated as of  
11 that date, this court used 2001 as the beginning of its limitations period." Further, in *Mackintosh*  
12 *v. California Fed. Sav.*, 113 Nev. 393, 403, 404, 935 P. 2d 1154, 1161 (1967), it was held that the  
13 accrual date of Plaintiff's action with respect to flooding in his basement was a prior spring when  
14 he was told by a former owner that there had been flooding in the basement during his occupancy  
15 of the house. Finally, in *Winn v. Sunrise Hospital & Medical Center*, 128 Nev. 246, 253, 277 P.  
16 3d 458, 463 (2012), referenced above, it was held that the accrual date if a medical malpractice  
17 action was when Winn and his attorney had access to medical records which showed "facts that  
18 would have led an ordinary prudent person to investigate further into whether [his child's] injury  
19 may have been caused by someone's negligence." The Court held as a matter of law, the  
20 evidence irrefutably demonstrates that Winn was put on inquiry notice of his potential cause of  
21 action. Thus, it is clear that an accrual date does not require a breach of contract or repudiation by  
22 a party.

23 Finally, it bears noting that to the extent Nanyah would claim that the parol evidence rule  
24 bars any introduction of testimony or evidence contradicting Nanyah's self-serving interpretation  
25 of the contract, this argument fails as well. While the parol evidence rule generally may be  
26 invoked by any party to a contract, the long standing rule set forth in Nevada by the state Supreme  
27 Court is that it cannot be invoked by a stranger to such contract. *See Bank of California v. White*,  
28 14 Nev. 373, 376 (1879) (holding that the parol evidence rule "**has no application whatever as**

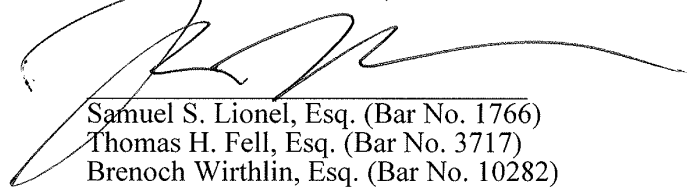
1 against any party who is a stranger to the instrument.”) (emphasis added); *see also Pittman v.*  
2 *Providence Washington Ins. Co.*, 394 So. 2d 223 (Fla. Dist. Ct. App. 1981) (recognizing that a  
3 third party beneficiary is a stranger to a contract.). Further, under binding Nevada case law,  
4 where one party to a lawsuit is not bound by the parol evidence rule, “either party is at liberty to  
5 show, by parol, a different state of facts from that set out in the writing.” *Bank of California,*  
6 *supra*, 14 Nev. at 376. Accordingly, the MSJs must be denied.

7 **III. CONCLUSION**

8 For all these reasons, the Rogich Defendants respectfully request that this Court deny the  
9 pending Motions for Summary Judgment filed by Nanyah and Eldorado, and grant such other and  
10 further relief as the Court deems appropriate.

11 DATED: February 18, 2019.

12 **FENNEMORE CRAIG, P.C.**

13   
14 Samuel S. Lionel, Esq. (Bar No. 1766)  
15 Thomas H. Fell, Esq. (Bar No. 3717)  
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17 **FENNEMORE CRAIG, P.C.**

18 300 S. Fourth Street, Suite 1400  
19 Las Vegas, Nevada 89101

20 *Attorneys for the Rogich Defendants*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of **DEFENDANTS SIGMUND ROGICH AS TRUSTEE**  
3 **OF THE ROGICH FAMILY IRREVOCABLE TRUST, SIGMUND ROGICH,**  
4 **INDIVIDUALLY AND IMITATIONS, LLC'S OMNIBUS OPPOSITION TO (1) NANYAH**  
5 **VEGAS LLC'S MOTION FOR SUMMARY JUDGMENT AND (2) LIMITED**  
6 **OPPOSITION TO ELDORADO HILLS, LLC'S MOTION FOR SUMMARY JUDGMENT**  
7 was served upon the following person(s) by electronic transmission through the Wiznet system  
8 pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, on February 18, 2019 as follows:

9 Mark Simons, Esq. *Via E-service*  
10 6490 South McCarran Blvd., #20  
11 Reno, Nevada 89509  
12 *Attorney for Plaintiff Nanyah Vegas, LLC*

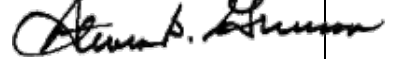
12 Charles E. ("CJ") Barnabi, Jr. *Via E-service*  
13 **COHEN JOHNSON PARKER**  
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17 *Attorney for Plaintiffs Carlos Huerta*  
18 *and Go Global*

17 Dennis Kennedy *Via E-service*  
18 Joseph Liebman  
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21 Michael Cristalli *Via E-service*  
22 Janiece S. Marshall  
23 **GENTILE CRISTALLI MILLER ARMENTI SAVARESE**  
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26 /s/ Cheryl Landis  
27 An employee of  
28 **Fennemore Craig, P.C.**

# EXHIBIT A



**MSJD (CIV)**

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ELIADES SURVIVOR TRUST OF 10/30/08,  
TELD, LLC and ELDORADO HILLS, 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

**DEFENDANTS PETER ELIADES,  
INDIVIDUALLY AND AS TRUSTEE OF  
THE ELIADES SURVIVOR TRUST OF  
10/30/08, AND TELD, LLC'S MOTION  
FOR SUMMARY JUDGMENT**

Hearing Date:

Hearing Time:

**CONSOLIDATED WITH:**

Case No. A-16-746239-C



**DEFENDANTS PETER ELIADES, INDIVIDUALLY AND AS TRUSTEE OF THE  
ELIADES SURVIVOR TRUST OF 10/30/08, AND TELD, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

Pursuant to N.R.C.P. 56, Defendants Peter Eliades, individually ("Eliades") and as Trustee of The Eliades Survivor Trust of 10/30/08 (the "Eliades Trust"), and Teld, LLC ("Teld") (collectively, the "Eliades Defendants") move for summary judgment dismissing the following claims for relief brought by Nanyah Vegas, LLC ("Nanyah"):

- First Claim for Relief – Breach of Contract against Teld and Eliades;
- Second Claim for Relief – Breach of Implied Covenant of Good Faith and Fair Dealing against Teld and Eliades;
- Third Claim for Relief – Tortious Breach of Implied Covenant of Good Faith and Fair Dealing against Teld and Eliades;
- Sixth Claim for Relief – Conspiracy against Teld, Eliades, and the Eliades Trust;
- Eighth Claim for Relief – Declaratory Relief against Teld, Eliades, and the Eliades Trust;
- Ninth Claim for Relief – Specific Performance against Teld, Eliades, and the Eliades Trust.

This Motion for Summary Judgment is based on the following Memorandum of Points and Authorities, the exhibits attached hereto, and any oral argument heard by the Court.

DATED this 1<sup>st</sup> day of June, 2018.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman  
DENNIS L. KENNEDY  
JOSEPH A. LIEBMAN

*Attorneys for Defendants*  
PETE ELIADES, THE ELIADES  
SURVIVOR TRUST OF 10/30/08, TELD,  
LLC and ELDORADO HILLS, LLC

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the foregoing Motion for Summary Judgment will come on for hearing before the Court on the 05 day of JULY, 2018, at the hour of 10:30A .M., or as soon thereafter as counsel can be heard in Dept. XXVII, at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

DATED this 1<sup>st</sup> day of June, 2018.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman  
DENNIS L. KENNEDY  
JOSEPH A. LIEBMAN

*Attorneys for Defendants*  
PETE ELIADES, THE ELIADES  
SURVIVOR TRUST OF 10/30/08, TELD,  
LLC and ELDORADO HILLS, LLC

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Nanyah sued the Eliades Defendants because they are a deep pocket, not because they actually did anything wrong. Nanyah dragged them into this lawsuit based on an alleged investment in 2007 *even though the Eliades Defendants did not have any involvement with Eldorado Hills, LLC (“Eldorado”) until October of 2008*. In fact, the Eliades Trust did not become an Eldorado member until 2012.<sup>1</sup> Further, Nanyah’s contract claims are based on agreements which *do not obligate the Eliades Defendants to do anything for Nanyah’s benefit*. On the contrary, those very agreements confirm that the Eliades Defendants are not responsible for any aspect of Nanyah’s claim. *As a matter of law*, Nanyah cannot sue the Eliades Defendants as a supposed third-party beneficiary of those agreements.

The Eliades Defendants also do not have any tort liability. Nanyah’s tortious implied

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<sup>1</sup> Nanyah’s claims and allegations that the Eliades Trust participated in some sort of fraudulent transfer in 2012 has already been dismissed by this Court via summary judgment.

covenant claim fails because there is no evidence of a special relationship between Nanyah and the Eliades Defendants, nor is there evidence of “grievous and perfidious misconduct.” Further, these agreements cannot create a tort claim when they strictly preclude a contract claim. Nanyah’s civil conspiracy claim is barred by the intra-corporate conspiracy doctrine as a matter of law, because Eliades and Rogich cannot conspire with each other as Eldorado co-agents. Likewise, Nanyah’s civil conspiracy claim fails due to the lack of an underlying tort.

Finally, Nanyah cannot prove its alleged damages when it has failed to comply with N.R.C.P. 16.1(a)(1)(C) and failed to provide any evidence showing the alleged value of an Eldorado membership interest. For the foregoing reasons, Nanyah’s claims against the Eliades Defendants have no merit, and summary judgment should be entered dismissing them with prejudice.

## II. STATEMENT OF FACTS

### A. Nanyah’s Claims Against the Eliades Defendants.

On November 4, 2016, Nanyah filed a Complaint against Sigmund Rogich, individually (“Rogich”) and as Trustee of the Rogich Family Irrevocable Trust (the “Rogich Trust”), Imitations, LLC (“Imitations”) (collectively, the “Rogich Defendants”), and the Eliades Defendants.<sup>2</sup> In sum and substance, Nanyah alleges that it invested \$1,500,000.00 for a membership interest in Eldorado which it never received.<sup>3</sup> *Notably, this investment supposedly occurred in December of 2007, ten months before Teld became an Eldorado member and over four years before the Eliades Trust became an Eldorado member.*<sup>4</sup>

The majority of Nanyah’s remaining claims for relief are contractual. Nanyah alleges that it is a third-party beneficiary of various agreements that were executed on or around October 30, 2008, which supposedly memorialize its \$1,500,000.00 investment in Eldorado.<sup>5</sup> Based on this theory, Nanyah sued some or all of the Eliades Defendants, among others, for: (1) breach of contract; (2)

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<sup>2</sup> (See generally Compl., filed Nov. 4, 2016.) This Complaint was later consolidated with Nanyah’s earlier lawsuit against Eldorado Hills, LLC, Case No. A-13-686303-C. The sole claim remaining in that action (unjust enrichment) is the subject of a separate Motion for Summary Judgment.

<sup>3</sup> See generally *id.*

<sup>4</sup> *Id.*, ¶¶ 15-17, 38.

<sup>5</sup> See generally *id.*

breach of the implied covenant of good faith and fair dealing; (3) declaratory relief; and (4) specific performance (the “Contract Claims”).<sup>6</sup>

Nanyah also sued some or all of the Eliades Defendants for various torts. Summary judgment was recently entered against Nanyah on its claims for intentional interference with contractual relations, fraudulent transfer, and constructive trust due to expiration of the statute of limitations. Nanyah’s two remaining tort claims are: (1) tortious breach of the implied covenant of good faith and fair dealing; and (2) civil conspiracy (the “Tort Claims”).<sup>7</sup>

**B. The Relevant History of Eldorado.**

Eldorado was formed in 2005 for the purpose of owning and developing approximately 161 acres of land near Boulder City, Nevada.<sup>8</sup> Eldorado was originally comprised of Go Global, Inc. (100% owned by Carlos Huerta) and the Rogich Trust.<sup>9</sup> In 2007, Huerta contacted Nanyah to invest. In December of 2007, Nanyah wired \$1,500,000.00 into another entity’s bank account, which Huerta eventually funneled into Eldorado’s bank account for a few days.<sup>10</sup> *At this time, the Eliades Defendants had absolutely no involvement with Eldorado.*

In October of 2008, *approximately ten months later*, Teld purchased a 1/3 interest in Eldorado for \$3,000,000.00.<sup>11</sup> The Flangas Trust also purchased a 1/3 interest in Eldorado for \$3,000,000.00, which was quickly transferred to Teld when the Flangas Trust backed out of the deal.<sup>12</sup> 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.<sup>13</sup> As a result,

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<sup>6</sup> *Id.*, ¶¶ 85-99, 131-140.

<sup>7</sup> *Id.*, ¶¶ 100-108, 120-123.

<sup>8</sup> *Id.*, ¶ 9.

<sup>9</sup> Operating Agreement, Ex. A (NAN\_000544), attached as Exhibit 1-A (“The members, Go Global, Inc. and The Rogich Family Irrevocable Trust will each hold their operating addresses as: 3980 Howard Hughes Pkwy, Suite 550, Las Vegas, NV 89109, and will retain 50.00% of all Membership Rights, Equity, and Interests within The Company....”).

<sup>10</sup> Huerta quickly transferred \$1,420,000.00 of those funds to himself as an alleged distribution, although it was originally characterized as a “consulting fee.” (Compl., ¶ 17.)

<sup>11</sup> *See generally* Oct. 30, 2008 Teld Membership Interest Purchase Agreement, attached as Exhibit 1-B.

<sup>12</sup> *See generally* Oct. 30, 2008 Flangas Trust Membership Interest Purchase Agreement, attached as Exhibit 1-C; *see also* Nov. 2008 Membership Interest Purchase Agreement, attached as Exhibit 1-D.

<sup>13</sup> *See generally* Oct. 30, 2008 Membership Interest Assignment Agreement, attached as Exhibit 1-E.

Go Global (*i.e.*, Huerta) no longer owned an Eldorado membership interest. These transactions were memorialized in various written agreements, none of which included Nanyah as a party.

**C. The Relevant Agreements.**

Nanyah's Contract Claims are entirely based on "the Purchase Agreement, the Membership Interest Purchase Agreements, and the Amended and Restated Operating Agreement" (collectively, the "Purchase Agreements").<sup>14</sup> Regardless of Nanyah's arguments to the contrary, none of the Purchase Agreements state that the Eliades Defendants agreed to pay Nanyah \$1,500,000.00 or ensure that it received an Eldorado membership interest. On the contrary, the Purchase Agreements state that the Rogich Trust agreed to negotiate with Nanyah (amongst others) to attempt to resolve its "potential claim." *Notably, the Rogich Trust—not Teld, Eliades, nor the Eliades Trust—agreed to be solely responsible for Nanyah's claim.* In fact, the Purchase Agreements require the Rogich Trust to fully defend and indemnify the Eliades Defendants with respect to any such claim.

Specifically, the Purchase Agreements state as follows:

➤ ***October 30, 2008 Purchase Agreement between Go Global, Carlos Huerta, and the Rogich Trust:***<sup>15</sup>

- "[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,

<sup>14</sup> Compl., ¶ 88.

<sup>15</sup> None of the Eliades Defendants are parties to the October 30, 2008 Purchase Agreement.

1 *and a distribution in respect of their claims in amounts from the one-third (1/3<sup>rd</sup>)*  
2 *ownership interest in [Eldorado] retained by [the Rogich Trust].”<sup>16</sup>*

- 3       ▪ [Go Global and Huerta], however, will not be responsible to pay the Exhibit A  
4       Claimants their percentage or debt. *This will be [the Rogich Trust’s] obligation,*  
5       *moving forward....”<sup>17</sup>*

6 ➤ *October 30, 2008 Membership Interest Purchase Agreement between the Rogich Trust,*  
7 *Teld, Go Global and Huerta.”<sup>18</sup>*

- 8       ▪ “[The Rogich Trust] is the owner, beneficially and of record, of the Membership  
9       Interest, free and clear of all liens, encumbrances, security agreements, equities,  
10       options, *claims*, charges, and restrictions, *and [Teld] will receive at Closing good and*  
11       *absolute title thereto free of any liens, charges or encumbrances thereon.”<sup>19</sup>*
- 12       ▪ “[The Rogich Trust] shall defend, indemnify, and hold [Teld] harmless from any and  
13       all the claims of Eddyline Investments, LLC, Ray Family Trust, *Nanyah Vegas, LLC*,  
14       and Antonio Nevada, LLC, each of whom invested or otherwise advanced the funds,  
15       plus certain possible claimed accrued interest.”<sup>20</sup>
- 16       ▪ “It is the current intention of [the Rogich Trust] that such amounts be confirmed or  
17       converted to debt, with no obligation to participate in capital calls or monthly  
18       payments, a pro-rata distribution at such time as [Eldorado’s] real property is sold or  
19       otherwise disposed of. *Regardless of whether this intention is realized, [the Rogich*  
20       *Trust] shall remain solely responsible for any claims by the above referenced*  
21       *entities set forth in this section above.”<sup>21</sup>*
- 22       ▪ “The ‘pro-rata distributions’ hereinabove referenced shall mean equal one-third

23  
24 <sup>16</sup> October 30, 2008 Purchase Agreement, attached as Exhibit 1-F, Recital A (emphasis added).

25 <sup>17</sup> *Id.*, § 4 (emphasis added).

26 <sup>18</sup> The Eliades Trust is not a party to the October 30, 2008 Membership Interest Purchase Agreement. Further, Eliades was only a limited party for the sole purpose of guaranteeing Eldorado’s pending bank loan. (Ex. 1-B, § 8(b).)

27 <sup>19</sup> *Id.*, § 4(a) (emphasis added).

28 <sup>20</sup> *Id.*, § 8(c) (emphasis added).

<sup>21</sup> *Id.*, § 8(c)(i) (emphasis added).

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]*.”<sup>22</sup>

- “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.”<sup>23</sup>
- “[The Rogich Trust] confirms that certain amounts have been advanced to or on behalf of [Eldorado Hills] by certain third parties, as referenced in Section 8 of the Agreement. [The Rogich Trust] shall endeavor to convert the amounts advanced into non-interest bearing promissory notes *for which [the Rogich Trust] shall be responsible*. Regardless of whether the amounts are so converted, *[the Rogich Trust] shall defend, indemnify and hold harmless [Eldorado] and its members for any claims by the parties listed below*, and any other party claiming interest in [Eldorado] as a result of transactions prior to the date of this Agreement against [Eldorado] or its Members. ...

3. Nanyah Vegas, LLC (through Canamex Nevada, LLC) \$1,500,000.00.”<sup>24</sup>

➤ ***October 30, 2008 Amended and Restated Operating Agreement between the Rogich Trust, the Flangas Trust, and Teld:***<sup>25</sup>

- “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*).”<sup>26</sup>

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<sup>22</sup> *Id.*, § 8(c)(ii) (emphasis added).

<sup>23</sup> *Id.*, § 8(g).

<sup>24</sup> *Id.*, Exhibit D (emphasis added).

<sup>25</sup> Eliades and the Eliades Trust are not parties to the Amended and Restated Operating Agreement. (Am. and Restated Op. Agreement, attached as Exhibit I-G.)

<sup>26</sup> *Id.*, Recital B (emphasis added).

- “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.”<sup>27</sup>

➤ ***January 1, 2012 Membership Interest Assignment Agreement between the Rogich Trust and the Eliades Trust.***<sup>28</sup>

- “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).”<sup>29</sup>
- “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.”<sup>30</sup>

**D. Nanyah’s Alleged Damages.**

On April 21, 2017, Nanyah served its initial disclosures pursuant to N.R.C.P. 16.1. With respect to Nanyah’s damages disclosure, Nanyah stated the following:

See Damages identified in Nanyah’s Complaint. As interest is continuing to accrue, Nanyah will supplement its damage calculation on appropriate intervals.<sup>31</sup>

Notably, the only “damages” mentioned in Nanyah’s Complaint are the boilerplate \$10,000.00 allegations required for subject matter jurisdiction.<sup>32</sup> ***Nanyah never supplemented its damages disclosure throughout this litigation. Nanyah never provided any calculations or evidence showing the alleged value of Nanyah’s supposed membership interest in Eldorado. Nanyah never***

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<sup>27</sup> *Id.*, § 4.1(a).

<sup>28</sup> Membership Interest Assignment Agreement, attached as Exhibit 1-H.

<sup>29</sup> *Id.*, Recital A.

<sup>30</sup> *Id.*, § 3(c).

<sup>31</sup> Nanyah Vegas, LLC’s NRCP 16.1 Case Conference Production, attached as Exhibit 2.

<sup>32</sup> *See, e.g., Compl.*, ¶¶ 93, 99.



1 *provided any information regarding the alleged amount or theory of damages for the various*  
2 *Contract Claims and Tort Claims it asserted against the Eliades Defendants.*

### 3 III. ARGUMENT

#### 4 A. Legal Standard.

5 “Summary judgment is appropriate and ‘shall be rendered forthwith’ when the pleadings and  
6 other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that  
7 the moving party is entitled to a judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev.  
8 724, 729, 121 P.3d 1026, 1029 (2005) (quoting N.R.C.P. 56(c)). “[T]he non-moving party must, by  
9 competent evidence, produce specific facts that demonstrate the presence of a genuine issue for  
10 trial.” *Elizabeth E. v. ADT Sec. Sys. W., Inc.*, 108 Nev. 889, 892, 839 P.2d 1308, 1310 (1992). The  
11 non-moving party’s burden must be borne on each and every element of its claims for relief;  
12 “[w]here an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to  
13 other elements are rendered immaterial and summary judgment is proper.” *Barmettler v. Reno Air,*  
14 *Inc.*, 114 Nev. 441, 446-47, 956 P.2d 1382, 1386 (1998).

#### 15 B. The Eliades Defendants Do Not Owe Any Contractual Duties to Nanyah as an Alleged 16 Third-Party Beneficiary to the Purchase Agreements.

17 Nanyah’s third-party beneficiary theory is comparable to the failed third-party beneficiary  
18 argument in *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 566 P.2d 819 (1977). Although there was an  
19 agreement whereby one party (Bonanza No. 2) agreed to pay a debt to Norman Lipshie, the other  
20 contracting party (Tracy Investment Company) did not agree to assume any such debt. Notably, in  
21 rejecting the third-party beneficiary claim against Tracy, the Court stated as follows:

22 Here, although Appellant was mentioned in the agreement and he would  
23 indeed receive a benefit, there was no promise, *at least on the part of Tracy*,  
24 to satisfy his indebtedness. The agreement between Tracy and Wolf  
25 provides only that the obligation of Bonanza to Lipshie for the amount of  
26 the extraordinary loan would survive the bankruptcy proceedings. The  
27 matter of negotiations between Tracy and Wolf, the intent of the parties,  
28 and the tenor of the agreement *make it plain that Tracy did not assume, or*  
*intend to assume, any obligation to Lipshie.*

*Id.* at 379-380, 566 P.2d at 825 (emphasis added).

1 The Eliades Defendants are in a similar posture to Tracy. Nanyah cannot point to any  
2 language within the Purchase Agreements (or any other written agreement) which shows that any of  
3 the Eliades Defendants owed any sort of contractual obligation to Nanyah. On the contrary, the  
4 Purchase Agreements merely state that the Rogich Trust would negotiate with Nanyah (amongst  
5 others) to attempt to resolve its claim. *Notably, the Rogich Trust—not Teld, Eliades, or the Eliades*  
6 *Trust—agreed to be responsible for Nanyah’s potential claim.*<sup>33</sup> Even Nanyah admits that its  
7 Eldorado membership interest was supposed to come from the Rogich Trust.<sup>34</sup> As a matter of law,  
8 the Eliades Defendants do not owe any contractual obligations to Nanyah as a third-party  
9 beneficiary. Accordingly, summary judgment should be entered, dismissing all of the Contract  
10 Claims against the Eliades Defendants.<sup>35</sup>

11 **C. Summary Judgment Should be Entered Against Nanyah on its Tort Claims.**

12 1. *Nanyah’s Tortious Implied Covenant Claim is Missing Many Required Elements.*

13 A claim for tortious breach of the implied covenant of good faith and fair dealing only arises  
14 if there is a “special relationship” between the parties. *State, Univ. and Comm. Coll. Sys. v. Sutton*,  
15 120 Nev. 972, 989, 103 P.3d 8, 19 (2004). Further, the plaintiff must prove that the alleged  
16 tortfeasor engaged in “grievous and perfidious misconduct.” *Id.* (citation omitted). A tortious  
17 implied covenant claim will only arise in “rare and exceptional circumstances.” *Ins. Co. of the West*  
18 *v. Gibson Tile Co., Inc.*, 122 Nev. 455, 461, 134 P.3d 698, 702 (2006) (citation omitted).

19 There is no basis for any sort of special relationship between Nanyah and the Eliades  
20 Defendants. Nanyah’s principal, Yoav Harlap, testified that he has never even spoken with  
21 Eliades.<sup>36</sup> The Eliades Defendants had absolutely no involvement with Eldorado when Nanyah

22 <sup>33</sup> See, e.g., Ex. 1-B, § 8(c)(i).

23 <sup>34</sup> Nanyah’s Opp’n to Mot. for S. Judg., 18:17-20, filed March 19, 2018 (“Based on the terms of the original  
24 Purchase Agreement, the Membership Interest Purchase Agreements and the Eldorado Amended Operating Agreement,  
*Nanyah’s membership interest would come from part of the Rogich Trust’s membership interest rather than Eldorado*  
25 *issuing an additional membership interest.*”) (emphasis added).

26 <sup>35</sup> Because Nanyah’s implied covenant claim is identical to its breach of contract claim, (*compare* Compl., ¶ 92  
27 *with* ¶ 97), summary judgment should be entered on those grounds as well. See *Shaw v. CitiMortgage, Inc.*, 201  
28 F.Supp.3d 1222, 1252 (D. Nev. 2016) (“It is well established that a claim alleging breach of the implied covenants of  
good faith and fair dealing cannot be based on the same conduct establishing a separately pled breach of contract  
claim.”) (citations omitted).

<sup>36</sup> Dep. Trans. of Yoav Harlap, 32:22-23, attached as Exhibit 3.

provided its \$1,500,000.00 to Huerta. Likewise, there is no evidence of any “grievous or perfidious misconduct” by any of the Eliades Defendants that would permit Nanyah to pursue the “rare and exceptional” claim of a tortious breach of the implied covenant of good faith and fair dealing.

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. Nanyah cannot seek tort liability based on the Purchase Agreements because there is nothing within those agreements which imposes any sort of obligation on the Eliades Defendants for Nanyah’s benefit. On the contrary, the Purchase Agreements reiterate over and over again that only the Rogich Trust is responsible for Nanyah’s potential investment. Accordingly, summary judgment should be entered dismissing Nanyah’s tortious implied covenant claim against the Eliades Defendants.

2. Nanyah’s Civil Conspiracy Claim is Barred by the Intra-Corporate Conspiracy Doctrine and the Lack of an Underlying Tort.

“Agents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983).

Nanyah alleges that various owners/agents of Eldorado Hills (*e.g.*, Teld, the Rogich Trust, the Eliades Trust) conspired with one another in order to prohibit Nanyah from receiving its membership interest. All of these conspiracy allegations relate back to two individuals making decisions on behalf of Eldorado—Eliades and Rogich. In other words, Nanyah is alleging that Eldorado conspired with itself. Therefore, there is no “combination of two or more persons,” a necessary element for a civil conspiracy claim.

Further, “[c]ivil conspiracy requires the existence of an underlying tort.” *Markey v. Bank of Am., N.A.*, 2012 WL 3317789, at \*3 (D. Nev. Aug. 10, 2012). Nanyah’s Complaint fails to identify any alleged tort supporting its conspiracy claim.<sup>37</sup> For the reasons stated above, Nanyah’s last remaining tort claim (tortious implied covenant claim) must be dismissed. Without an underlying

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<sup>37</sup> Compl., ¶¶ 120-123.

tort to support the conspiracy claim, it fails as a matter of law. Accordingly, summary judgment should be entered dismissing all the Tort Claims.

**D. Nanyah Cannot Prove its Alleged Damages.**

[A] party must, without awaiting a discovery request, provide to other parties ... [a] computation of any category of damages claimed by the disclosing party making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

N.R.C.P. 16.1(a)(1)(C). “[T]he ‘category of damages’ disclosure requires more than a list of the broad types of damages.” *Olaya v. Wal-Mart Stores, Inc.*, No. 2:11-cv-997-KJD-CWH, 2012 WL 3262875, at \*2 (D. Nev. Aug. 7, 2012).<sup>38</sup> This rule also “‘requires more than merely setting forth the figure demanded.’” *Max Impact, LLC v. Sherwood Group, Inc.*, No. 09 Civ. 902(JGK)(HBP), 2014 WL 902649, at \*5 (S.D.N.Y. March 7, 2014) (citations omitted); *accord CCR/AG Showcase Phase I Owner, L.L.C. v. United Artists Theatre Circuit, Inc.*, No. 2:08-cv-00984-RCJ-GWF, 2010 WL 1947016, at \*5 (D. Nev. May 13, 2010) (“[T]he word ‘computation’ contemplates some analysis beyond merely setting forth a lump sum amount for a claimed element of damages.”) (citation omitted).

Nanyah failed to comply with N.R.C.P. 16.1(a)(1)(C). Its disclosures do not contain any information or evidence relating to Nanyah’s alleged damages. As a result, Nanyah does not have any admissible evidence to prove its alleged damages. For example, it has not disclosed any evidence or expert testimony which would show the value of Nanyah’s supposed membership interest in Eldorado. It has not disclosed the percentage of the membership interest to which it believes it is entitled, and how that amount was calculated. The mere fact that Nanyah invested \$1,500,000.00 does not mean it has \$1,500,000.00 in damages. Issuance of a membership interest in a corporate entity does not guarantee repayment of the investment, especially if Eldorado is unsuccessful. As stated in the Operating Agreement at the time of Nanyah’s alleged investment:

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<sup>38</sup> Federal cases interpreting rules of civil procedure are persuasive authority in Nevada courts. *Exec. Mgmt. Ltd. v. Tigor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (citing *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

Each Member shall look solely to the Property of the Company for the return of his investment, and if the Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the investment of each Member, such Member shall have no recourse against the Company [or] any other Member, or their employees and agents for indemnification, contribution, or reimbursement.<sup>39</sup>

Members were only entitled to share in the “income, gains, losses, deductions, credit, or similar items of, and to receive Distributions from, the Company....”<sup>40</sup> Further, they were obligated to make the following investment representation and warranty:

Economic Risk. By reason of each Member’s business and financial experience, each Member has the capacity to protect such Member’s interests in connection with the purchase of such Member’s Units and can bear the economic risk of such Member’s proposed investment, ***including the loss of the entire amount of the investment.***<sup>41</sup>

Without admissible evidence supporting the value of Eldorado’s supposed right to a membership interest, the percentage amount of that membership interest, and that it would have actually been a successful investment, all of Nanyah’s claims (with the exception of declaratory relief and specific performance) fail as a matter of law.

#### IV. CONCLUSION

For the foregoing reasons, summary judgment should be entered against Nanyah and in favor of the Eliades Defendants with respect to the Contract Claims and Tort Claims.

DATED this 1st day of June, 2018.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman  
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JOSEPH A. LIEBMAN

*Attorneys for Defendants*  
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SURVIVOR TRUST OF 10/30/08, TELD,  
LLC and ELDORADO HILLS, LLC

<sup>39</sup> Operating Agreement, attached as Exhibit 1-I, § 12.3

<sup>40</sup> *Id.*, §§ 2.18; 9.1; 17.12.

<sup>41</sup> *Id.*, § 17.5 (emphasis added).

**CERTIFICATE OF SERVICE**

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 1st day of June, 2018, service of the foregoing **DEFENDANTS PETER ELIADES, INDIVIDUALLY AND AS TRUSTEE OF THE ELIADES SURVIVOR TRUST OF 10/30/08, AND TELD, LLC'S MOTION FOR SUMMARY JUDGMENT** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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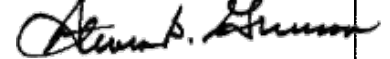
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# EXHIBIT B



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**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. NO.: XXVII**

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.

**CONSOLIDATED WITH:**

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

**OPPOSITION TO ELIADES  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT AND  
COUNTERMOTION FOR  
SUMMARY JUDGMENT**



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
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1     **I.     BASIS OF NANYAH'S CLAIMS.**

2             Nanyah invested \$1.5 million in Eldorado. All the defendants agreed Nanyah  
3     was entitled to repayment of its \$1.5 million investment or that Nanyah would be issued  
4     a membership interest reflecting its investment. The defendants all acknowledged and  
5     admit in testimony, in Court documents and in all the various contracts the existence  
6     of Nanyah's \$1.5 million investment into Eldorado and that Nanyah was owed the  
7     repayment of the \$1.5 million or the issuance of a membership certificate.  
8

9             Contrary to the Eliades Defendants' hyperbole, they are not named in this action  
10    because they are allegedly deep pocket defendants. See Mot., p. 3:16. Instead they  
11    are liable in this action due to both their contractual obligations and their participation in  
12    conduct that was perpetrated to deprive Nanyah of its investment. The Eliades  
13    Defendants motion makes the following arguments. First, that they have no contractual  
14    obligations to Nanyah as an alleged third-party beneficiary of the various contracts.  
15    Second, that there is no special relationship supporting the tort claim of breach of the  
16    implied covenant of good faith and fair dealing. Third, that the civil conspiracy claim is  
17    barred by the intra-corporate conspiracy doctrine. And finally, that Nanyah cannot  
18    prove its damages. Each of these arguments are baseless and the motion must be  
19    denied.  
20  
21

22     **II.    UNDISPUTED FACTS MANDATING SUMMARY JUDGMENT IN NANYAH'S**  
23     **FAVOR AND DENIAL OF THE ELIADES DEFENDANTS' MOTION.**

24             Subsequent to the Court's denial of Nanyah's prior motion for summary  
25    judgment, the following depositions have occurred: Rogich, Rogich's chief financial  
26    officer Melissa Olivas ("Olivas"), Peter Eliades and Dolores Eliades. Dolores Eliades  
27    was the managing member of TELD during the relevant periods of time discussed  
28

1 herein.

2 The foregoing depositions, in conjunction with Eldorado's business records,  
3 conclusively demonstrate that Nanyah invested \$1.5 million into Eldorado; that Rogich  
4 "confirmed" and represented that Nanyah was owed \$1.5 million for investing in  
5 Eldorado; that Rogich would pay Eldorado \$1.5 million obligation owed to Nanyah or  
6 would receive the transfer of a membership interest in Eldorado from Rogich equivalent  
7 to the value of such investment.  
8

9 When the evidence is undisputed, a trial on the issue is unwarranted and a party  
10 is entitled to summary judgment as a matter of right. Nw. Motorcycle Ass'n v. U.S.  
11 Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994) ("The purpose of summary judgment  
12 is to avoid unnecessary trials when there is no dispute as to the facts before the  
13 court."). In the present case, there are no facts in dispute that prevent the entry of  
14 summary judgment in Nanyah's favor.  
15

16 **A. NANYAH INVESTED \$1.5 MILLION INTO ELDORADO.**

17 1. Carlos Huerta ("Huerta") was the Managing Member of Eldorado during  
18 the time period 2005 through October 31, 2008. See **Exhibit 1**, Eldorado Hill's Motion  
19 for Partial Summary Judgment, p. 2, ¶8 ("Huerta was a manager of Eldorado from 2005  
20 through October 31, 2008."). **This admission is binding upon this Court as a**  
21 **judicial admission.** See St. Paul Mercury Ins. Co. v. Frontier Pacific Ins. Co., 111  
22 Cal.App.4th 1234, 1248, 4 Cal.Rptr.3d 416, 428-429 (Cal. Ct. App. 2003), ("In summary  
23 judgment or summary adjudication proceedings, '[a]dmissions of material facts made in  
24 an opposing party's pleadings are binding on that party as 'judicial admissions.' **They**  
25 **are conclusive concessions of the truth of those matters, are effectively removed**  
26  
27  
28

1 as issues from the litigation, and may not be contradicted by the party whose  
2 pleadings are used against him or her.” (emphasis added)).<sup>2</sup>

3 2. Eldorado’s original Operating Agreement (“Eldorado Operating  
4 Agreement”) vested Huerta, as principal of Go Global, Inc., with Managing Member  
5 responsibilities for Eldorado. **Exhibit 2**, Eldorado Operating Agreement, ¶5.3(a) and  
6 Exh. A.<sup>3</sup>

7 3. The Eldorado Operating Agreement expressly provided that Huerta “**may**  
8 **bind the Company in all matters. . . .**” Exh. 2, Exh. A (emphasis added).  
9

10 4. Eldorado’s Managing Member Huerta also testified that he was vested  
11 with the authority of being the Managing Member for Eldorado during the years 2006  
12 through 2008. **Exhibit 4**, Huerta Deposition excerpts, p. 7:20-8:2.<sup>4</sup>

13 5. Eldorado’s Managing Member Huerta also testified he was responsible for  
14 soliciting investors for Eldorado. Exh. 4, p.7:2-7.  
15

16 6. Rogich admits that Huerta had the authority to solicit investors into  
17 Eldorado. **Exhibit 5**, Sig Rogich Deposition excerpts, p. 28:6-21.<sup>5</sup>  
18

19  
20 <sup>2</sup> Reyburn Lawn & Landscape Designers, Inc. v. Plaster Development Co., Inc., 255  
21 P.3d 268, 276-277 (Nev. 2011) (“Judicial admissions are defined as deliberate, clear,  
22 unequivocal statements by a party about a concrete fact within that party’s  
23 knowledge.”); 32 C.J.S. Evidence § 628 (May 2010) (“Admissions in a pleading have  
24 the effect of withdrawing a fact from issue and eliminating the necessity of proof relating  
25 to the fact so admitted . . . .”).

26 <sup>3</sup> See also Simons’ Aff. at ¶4. For clarification, as detailed herein there are three (3)  
27 Eldorado operating agreements that are involved in this case: Eldorado’s original  
28 Operating Agreement (Exhibit 2), the Amended and Restated Operating Agreement  
(Exhibit 12) and the First Amendment to the Amended and Restated Operating  
Agreement (Exhibit 18).

<sup>4</sup> See also Simons’ Aff. at ¶5.

<sup>5</sup> See also Simons’ Aff. at ¶6.

1           7. As Managing Member of Eldorado, Huerta had the authority to bind  
2 Eldorado to repay Nanyah's investment. **Exhibit 6**, Melissa Olivas Deposition excerpts,  
3 p. 105:11-13.<sup>6</sup>  
4

5           8. Rogich has admitted and agreed that Huerta's responsibilities as  
6 Managing Member of Eldorado was to "take care of everything" including the authority  
7 to set up bank accounts, deposit and withdraw funds from the bank accounts and all  
8 aspects of the accounting and investors for Eldorado. Exh. 5, Sig Rogich deposition  
9 excerpts, p. 25:13-21; p. 43:9-24; p.79:3-6  
10

11           9. Rogich also admits that Huerta had the responsibility to handle all the  
12 financing for Eldorado. *Id.*, p. 75:15-18.

13           10. Eldorado's Managing Member Huerta admits that Nanyah invested \$1.5  
14 million into Eldorado. See **Exhibit 7**, Declaration of Carlos Huerta, ¶8.

15           11. Nanyah's \$1.5 million investment was deposited into Eldorado's bank  
16 account. **Exhibit 8**, Eldorado Bank Statement; see also Exh. 5, ¶9.<sup>7</sup>  
17

18           12. Eldorado's internal business records confirm that Nanyah invested \$1.5  
19 million into Eldorado. **Exhibit 9**, Eldorado Capital Account Detail; see also Exh. 3, ¶5.<sup>8</sup>

20           13. Eldorado's Managing Member Huerta testified regarding Nanyah's  
21 investment of \$1.5 million into Eldorado as follows:  
22

23                   **a million and a half was sent from Mr. Harlap on behalf of his entity,**  
24                   **Nanyah Vegas, LLC, and Eldorado Hills, LLC, received that**

25           <sup>6</sup> See also Simons' Aff. at ¶7.

26           <sup>7</sup> See also Simons' Aff. at ¶8.

27           <sup>8</sup> See also Simons' Aff. at ¶9.

1                   **\$1,500,000.**

2                   Exh. 4, Huerta Deposition excerpts, p. 64:11-13 (emphasis added).

3                   14.     Eldorado's Managing Member Huerta testified Eldorado treated Nanyah's  
4                   \$1.5 million investment as a "capital contribution" into Eldorado as follows: **"It was a**  
5                   **capital contribution to Eldorado Hills, LLC."** Id. p. 51:25-52:1 (emphasis added).  
6

7                   15.     Eldorado's Managing Member Huerta also testified that during the Buyout  
8                   he specifically discussed Nanyah's \$1.5 million investment with Rogich and Rogich  
9                   affirmed, promised and represented that he was going to repay Nanyah's investment  
10                  after buying Go Global's interest as follows:  
11

12                  Q.     What was said about Nanyah Vegas specifically?

13                  A.     That he [Rogich] would pay them the amount that they invested.

14                  Q.     He [Rogich] said that about Nanyah?

15                  A.     Yes.

16                  Q.     Did he know about Nanyah before October 2008?

17                  A.     Yes.  
18

19                  Exh. 4, p. 33:1-10.

20                  16.     Eldorado's Managing Member Huerta also testified that he and Rogich  
21                  specifically discussed including Nanyah's \$1.5 million investment in the Purchase  
22                  Agreement and the Membership Interest Purchase Agreements to confirm Nanyah's  
23                  membership interest and to confirm Eldorado's obligation to Nanyah as an investor as  
24                  follows:  
25

26                  Q.     ... I talked to Mr. Rogich specifically about all the investors.  
27                          They're not only mentioned in Exhibit 1 [to the Purchase  
28                          Agreement], they're also mentioned in the documents with TELD  
                                and Flangas and Eliades.



1 Id., p. 37:21-25.

2 17. Eldorado's Managing Member Huerta testified repeatedly that Nanyah  
3 was included in the Purchase Agreement and the Membership Interest Purchase  
4 Agreements with Rogich because Nanyah "was an integral party" as follows:  
5

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

10 Id., p.48:2-6 (emphasis added).

11 **B. ROGICH AND THE ROGICH TRUST ADMIT AND CONFIRM NANYAH'S**  
12 **\$1.5 MILLION INVESTMENT INTO ELDORADO.**

13 **1. THE OCTOBER 30, 2008, PURCHASE AGREEMENT.**

14 18. On October 30, 2008, Go Global, Inc. ("Go Global") and the Rogich Trust  
15 entered into a Purchase Agreement whereby the Rogich Trust agreed to acquire Go  
16 Global's membership interest in Eldorado (the "Purchase Agreement). **Exhibit 10,**  
17 **Purchase Agreement.**<sup>9</sup>

18 19. The Purchase Agreement's terms state that Go Global's interest in  
19 Eldorado, which the Rogich Trust was acquiring, was subject to dilution based upon the  
20 additional investment made by Nanyah into Eldorado. Exh. 10, Recitals, A.

21 20. The Rogich Trust agreed to be fully responsible as the new Managing  
22 Member in Eldorado for repayment of Nanyah's \$1.5 million investment in Eldorado  
23 and/or agreed it would issue membership interest to Nanyah out of the Rogich Trust's  
24 interest. Id.

25 21. Rogich Trust agreed that if Nanyah's investment was converted into a  
26

27  
28 <sup>9</sup> See also Simons' Aff. at ¶10.

1 membership interest, as a member Nanyah would not be subject to any capital calls.

2 Id.

3 22. Rogich Trust also agreed that if Nanyah's investment was converted into a  
4 membership interest in Eldorado, Nanyah's interest would be deducted from and paid  
5 from the Rogich Trust's membership interest in Eldorado. Id.

7 23. Eldorado's Managing Member Huerta specifically represented and  
8 warranted to Rogich and the Rogich Trust that Nanyah had invested \$1.5 million in  
9 Eldorado, and Nanyah's investment was specifically identified in the Purchase  
10 Agreement at Exhibit A. Id., ¶4.

11  
12 **2. THE OCTOBER 30, 2008, MEMBERSHIP INTEREST PURCHASE AGREEMENTS.**

13 24. Concurrent with the purchase of Go Global's interest in Eldorado, the  
14 Rogich Trust also entered into two (2) Membership Interest Purchase Agreements, one  
15 with Teld and the other with the Albert Flangas Revocable Living Trust u/a/d July 22,  
16 2005 ("Flangas Trust"). **Exhibit 11**,<sup>10</sup> excerpts of the Teld Membership Interest  
17 Purchase Agreement, pp. 1, 2, 4, 12, 19 and Exhibit D.

19 25. The Teld Membership Interest Purchase Agreement was executed by  
20 Rogich individually and as Trustee of the Rogich Trust, Teld and Peter Eliades  
21 individually. Exh. 11, p. 19.

23 26. In the Teld Membership Interest Purchase Agreement, Rogich and the  
24 Rogich Trust admit and confirm that Nanyah invested \$1.5 million into Nanyah at  
25 Exhibit D which clearly and unequivocally states the following:

27  
28 <sup>10</sup> See also Simons' Aff. at ¶11.

1                   **Seller [Rogich and the Rogich Trust] confirms that certain amounts**  
2                   **have been advanced to or on behalf of the Company [Eldorado] by**  
3                   **certain third-parties [including Nanyah], as referenced in Section 8 of**  
4                   **the Agreement.**

5                   ...  
6                   **3.       Nanyah Vegas, LLC       ...                               \$1,500,000**

7                   Exh. 11, at Exh. D.

8                   27.     Rogich testified that he represented and affirmed that in Exhibit D of the  
9                   Teld Membership Interest Agreement that Nanyah had invested \$1.5 million into  
10                  Eldorado. Exh. 5, p. 142:3-10 (emphasis added).

11                  28.     In addition to the clear and unequivocal language that "confirms"  
12                  Nanyah's investment of \$1.5 million into Eldorado contained in Exhibit D, Section 8(c)  
13                  of the Teld Membership Interest Purchase Agreement also clearly identify Nanyah's  
14                  \$1.5 million investment and state the following:

15                               Seller [Rogich and the Rogich Trust] shall defend, indemnify and  
16                               Hold Buyer harmless from any and all the claims of ... Nanyah ... **each**  
17                               **of whom invested or otherwise advanced ... funds ....**

18                               **(i)     It is the current intention of Seller [Rogich and the**  
19                               **Rogich Trust] that such amounts be confirmed or**  
20                               **converted to debt ....**

21                  Exh. 11, p. 12, Section 8(c) (emphasis added).

22                  29.     Rogich again testified that he represented and affirmed that Nanyah had  
23                  invested \$1.5 million into Eldorado under Section 8(c) when he executed the Teld  
24                  Membership Interest Purchase Agreement. Exh. 5, p. 143:12-144:1.

25                               **3.       THE OCTOBER 30, 2008, ELDORADO AMENDED AND**  
26                               **RESTATED OPERATING AGREEMENT EXPRESSLY**  
27                               **CONFIRMS NANYAH'S \$1.5 MILLION INVESTMENT INTO**  
28                               **ELDORADO.**

29                  30.     Concurrently with the Rogich Trust's purchase of Huerta/Go Global's

1 interest in Eldorado, and its resale of a portion of that interest to Teld, all these parties  
2 entered into an Amended and Restated Operating Agreement of Eldorado Hills, LLC  
3 ("Amended Operating Agreement"). **Exhibit 12**, Amended Operating Agreement.<sup>11</sup>  
4

5 31. The Eldorado Amended Operating Agreement specifically incorporated  
6 Exhibit D from the Membership Interest Purchase Agreements signed by Teld. Exh. 12,  
7 p. 1, Recital A.

8 32. As a matter of law, Eldorado, Rogich, the Rogich Trust, Peter Eliades,  
9 Teld and the Eliades Trust are conclusively bound by Eldorado's Amended Operating  
10 Agreement's confirmation of Nanyah's \$1.5 million investment and that Nanyah was  
11 deprived of a membership interest in Eldorado. See NRS 47.240(2).  
12

13 33. Because Nanyah's \$1.5 million investment into Eldorado is recited in the  
14 Purchase Agreement, the Teld Membership Interest Purchase Agreement and in  
15 Eldorado's Amended Operating Agreement, Nanyah is entitled to a membership  
16 interest and/or full repayment of its investment, as this fact is conclusively established  
17 and must be treated as true and uncontestable by this Court. Harpaz v. Laidlaw  
18 Transit, Inc., 942 A.2d 396, 412 (2008) ("the conclusive presumption . . . attaches and  
19 the employer is barred from contesting . . ."); Kusior v. Silver, 54 Cal. 2d 603, 619,  
20 354 P.2d 657, 668 (1960) ("A conclusive presumption is in actuality a substantive rule  
21 of law.").

22  
23 **4. ROGICH TRUST'S JANUARY 1, 2012, ASSIGNMENT OF**  
24 **INTEREST IN ELDORADO.**

25 34. Rather than honor their contractual and fiduciary obligations to Nanyah to  
26

27  
28 <sup>11</sup> See also Simons' Aff. at ¶12.

1 repay Nanyah its \$1.5 million investment or document its membership interest in  
2 Eldorado, the defendants secretly conspired for Rogich and the Rogich Trust to transfer  
3 its interest in Eldorado to the Eliades Trust allegedly in late 2012, pursuant to a  
4 Membership Interest Assignment Agreement ("Secret Membership Assignment").<sup>12</sup>  
5

6 **Exhibit 14, Secret Membership Assignment.**<sup>13</sup>

7 35. Based upon the terms of the original Purchase Agreement, Rogich and  
8 the Rogich Trust agreed that any assignees of its purchase of Huerta/Go Global's  
9 membership interest (which membership interest was subject dilution for Nanyah's  
10 interest) would remain subject to and be bound by the terms of the Purchase  
11 Agreement as follows:

12 Binding Effect. This Agreement shall be binding on. . . successors and  
13 permitted assigns of the parties hereto.

14 Exh. 10, ¶7(j).

15  
16 36. In addition, the Teld Membership Purchase Agreement, also states that  
17 the terms of the agreement are binding on all successors as follows:

18 Binding Effect. This Agreement shall be binding on. . . successors and  
19 permitted assigns of the parties hereto.

20 Exh. 11, ¶9(j).

21 ///

22 ///

23 ///

24  
25 <sup>12</sup> Concurrent documents demonstrate that this alleged transfer occurred in August,  
26 2012 and that the Secret Membership Assignment was backdated to January 1, 2012.  
27 See e.g., **Exhibit 13**. See also Simons' Aff. at ¶13.

28 <sup>13</sup> See also Simons' Aff. at ¶14.

1           **C. IT IS UNDISPUTED THAT THE DEFENDANTS NEVER INFORMED**  
2           **NANYAH OF THEIR SECRET PLAN TO NOT REPAY NANYAH ITS \$1.5**  
3           **MILLION INVESTMENT.**

4           37. This Court must accept as a stipulated fact that the defendants never  
5 informed Nanyah of the Secret Membership Assignment or the defendants' secret  
6 transfer of the Rogich Trust's membership interest in Eldorado to the Eliades Trust.  
7 This is because Nanyah's Complaint in the consolidated action A-16-746239-C asserts  
8 the following facts:

9                       82. Rogich Trust, Sigmund Rogich, Teld, Peter Eliades and the Eliades  
10                      Trust never informed Nanyah of the Eliades Trust Acquisition  
11                      and/or the Eldorado Resolution.

12           Nanyah's Complaint, ¶82. Defendants admit that they never informed Nanyah of the  
13 Secret Membership Agreement or that the Rogich Trust allegedly transferred its interest  
14 in Eldorado to Teld. Defendants' First Amended Answer, ¶82. Defendants are  
15 conclusively barred from attempting to alter, contest or change this stipulated fact.<sup>14</sup>

16           38. Up until December 2012, Nanyah had always been informed by Eldorado  
17 that its investment would be documented by a membership interest or repaid. **Exhibit**  
18 **15**, Harlap Deposition, p.18:10-16.<sup>15</sup>

19           39. It was not until sometime in December 2012, that Nanyah was advised  
20 that Rogich and the Rogich Trust had secretly agreed to transfer its interest in Eldorado  
21 to the Eliades Trust without issuing Nanyah any interest in Eldorado and without  
22 repaying Nanyah its \$1.5 million. See **Exhibit 16**, Declaration of Yoav Harlap, ¶2.

23  
24  
25  
26 <sup>14</sup> See e.g., Nevada Pattern Jury Instruction 2.06 ("If counsel for the parties have  
27 stipulated to any fact, you will regard that fact as being conclusively proved.").

28 <sup>15</sup> See also Simons' Aff. at ¶15.

1 Based upon the receipt of this information, Nanyah believed such action was a  
2 repudiation of the defendants' obligations to it to repay its \$1.5 million investment  
3 and/or to transfer to it a membership interest in Eldorado. Id., ¶13.

4  
5 **D. PETER ELIADES DEPOSITION.**

6 40. Peter Eliades testified that he knew and understood that pursuant to the  
7 terms of the Original Purchase Agreement and the Membership Interest Purchase  
8 Agreement between Peter Eliades, Teld, LLC, and the Rogich Family Irrevocable Trust,  
9 that the membership interest Rogich was acquiring from Go Global **was subject to the**  
10 **contractual duties owed by Eldorado and Rogich to Nanyah to repay the \$1.5**  
11 **million investment and/or to issue a corresponding membership interest to**  
12 **Nanyah.** Specifically, Peter Eliades testified that he was aware of the contractual  
13 obligation owed to Nanyah because "[t]hat's the way it was." **Exhibit 16**, Peter Eliades  
14 Deposition excerpt, p. 21:20-22:5.<sup>16</sup>

15  
16 41. Peter Eliades also testified that the Rogich Trust's original acquisition of  
17 the Go Global membership interest—which Nanyah had a claim in—was binding on him  
18 and Teld as follows:

19  
20 Q. Did you understand that when you acquired some of the Rogich  
21 Trust interests that it held in Eldorado Hills, that it was still subject  
22 to the terms and conditions of this original purchase agreement?

23 A Yes.

24 Id., pp. 29:24-30:4 (emphasis added).

25 42. Peter Eliades also testified that under the terms of his agreements with  
26 Rogich and the Rogich Trust, Rogich always admitted Rogich was liable to repay

27  
28 <sup>16</sup> See also Simons' Aff. at ¶16.

1 Nanyah its \$1.5 million investment as follows:

2 Q Who was going to be responsible, under  
3 your understanding of the deal, for the Nanyah  
4 Vegas, LLC, claim?

5 A Well, [Rogich] represented to me that it was  
6 always Mr. Rogich that would be responsible for --  
7 for that.

8 Id., pp., 40:22-41:2 (emphasis added).

9 43. Peter Eliades testified that under the terms of his agreements with Rogich  
10 and the Rogich Trust, that Rogich would comply with the terms of the agreements and  
11 repay Nanyah its investment as follows:

12 Q Okay. So as I understand it, you  
13 understood that Mr. Rogich would always comply  
14 with the terms of the agreement and take care of  
15 these individuals or investors?

16 A 100 percent.

17 Id., p., 42:10-14.

18 **E. DOLORES ELIADES DEPOSITION.**

19 44. Dolores Eliades, was the Managing Member of Teld during 2008.

20 **Exhibit 21**, Dolores Eliades Deposition excerpts, p. 17:19-22 ("You are identified as a  
21 managing member. Is that what you understood your position was in Teld at the time?

22 A. Yes.").<sup>17</sup>

23 45. Dolores Eliades testified that Rogich and the Rogich trust promised and  
24 represented to her and Teld, that Rogich would repay Nanyah its \$1.5 million  
25 investment into Eldorado as follows:

26  
27  
28 <sup>17</sup> See also Simons' Aff. at ¶20.



1 Q. Was there ever a time where Sig Rogich said,  
2 "I'm not going to pay Nanyah Vegas, LLC the monies that  
3 are owed to it"?

4 MR. LIONEL: I'm going to object to that. No  
5 foundation. You are leading the witness. You are  
6 asking her to speculate.

7 BY MR. SIMONS:  
8 Go ahead.

9 A. **He had always said he was going to pay.**

10 Exh. 21, pp. 30:22-31:5 (emphasis added).

11 46. Dolores Eliades, the Managing Member of Teld, testified that Rogich and  
12 the Rogich Trust were obligated to repay Nanyah's investment into Eldorado on behalf  
13 of Eldorado as follows:

14 Q. What did you understand was the agreement by  
15 the Rogich Trust with regards to the obligation called  
16 out here for Nanyah Vegas, LLC?

17 A. They were

18 MR. LIONEL: Objection. Objection. The  
19 writing speaks for itself.

20 BY MR. SIMONS:

21 Q. Okay.

22 A. That they were going to take care of the  
23 debt.

24 Q. Okay. What do you mean by "take care of the  
25 debt"?

26 A. **They were supposed to pay it.**

27 Q. **Okay. They would be Sig Rogich was supposed  
28 to pay this debt?**

MR. LIONEL: Objection. Leading the witness.  
You are testifying, Counsel.

THE WITNESS: **Sig Rogich or his entity.**

1 Id., pp. 24:14-25:7 (emphasis added).

2 **III. THE ELIADES DEFENDANTS' MOTION FOR SUMMARY JUDGMENT MUST**  
3 **BE DENIED.**

4 **A. THE ELIADES DEFENDANTS OWE CONTRACTUAL**  
5 **OBLIGATIONS TO NANYAH.**

6 The Eliades Defendants' motion for summary judgment argues that the Eliades  
7 Defendants do not have any contractual obligations to Nanyah. Mot., pp. 10-11.  
8 However, the contention is baseless in that the Eliades Defendants clearly ignore the  
9 terms of the original Purchase Agreement, the Teld Membership Purchase Agreement  
10 and Eldorado's Amended Operating Agreement, all contracts the Eliades Defendants  
11 are parties to and all contracts that subject them to direct contractual claims by Nanyah  
12 relating to Nanyah's \$1.5 million investment.  
13

14 Initially, the Purchase Agreement states that the terms of the agreement are  
15 binding on all of the Rogich Trust's successors and assignees. Exh. 10, ¶7(j) ("Binding  
16 Effect. This Agreement shall be binding on. . . successors and permitted assigns of  
17 the parties hereto."). Peter Eliades also admits that when he and Teld signed the Teld  
18 Membership Interest Purchase Agreement acquiring the Rogich Trust's membership  
19 interest in Eldorado, they took such membership interest subject to and liable for  
20 repayment of Nanyah's \$1.5 million investment or transfer of a membership interest to it  
21 as documented in the original Purchase Agreement as follows:  
22

23 **Q. Did you understand that when you acquired some of the Rogich**  
24 **Trust interests that it held in Eldorado Hills, that it was still subject**  
25 **to the terms and conditions of this original purchase agreement?**

26 **A Yes.**

27 Id., pp. 29:24-30:4 (emphasis added). This admission is binding and dispositive of the  
28

1 Eliades Defendants' arguments since this is a clear admission of liability.

2 Accordingly, as Peter Eliades admits, when Peter Eliades, Teld and the Eliades  
3 Trust entered into the various contracts acquiring the Rogich Trust's membership  
4 interest in Eldorado, under the terms of the Purchase Agreement and the Teld  
5 Membership Purchase Agreement, these defendants took such membership interest  
6 subject to and liable for the contractual obligation to repay Nanyah's its \$1.5 million  
7 investment or transfer a corresponding membership interest to it.  
8

9 The law is clear that Peter Eliades, Teld and the Eliades Trust, as successors to  
10 the assignment of Go Global's membership interest via Rogich's acquisition, are each  
11 in contractual privity with Nanyah as an express third-party beneficiary of those  
12 contracts. See Mason v. Telefunken Semiconductors Am., LLC, 797 F.3d 33, 40 (1st  
13 Cir. 2015) ("a successor in interest to a contract . . . is bound by the meaning assigned  
14 to its terms by the original parties. . . ."); In re Parrott Broad. Ltd. P'ship, 492 B.R. 35, 42  
15 (Bankr. D. Idaho 2013) ("An assignee who covenants with the lessee to perform all the  
16 obligations in the original lease is liable to the lessee on privity of contract." (citation  
17 omitted)); Chicago Title & Tr. Co. v. GTE Directories Corp., 1995 WL 584419, at \*2  
18 (N.D. Ill. 1995) ("When an assignee assumes the obligations of the original lease, privity  
19 of contract is established. The assignee becomes liable under the lease itself . . . .").  
20

21 In addition, Eldorado Hill's Amended Operating Agreement confirms and admits  
22 Nanyah's \$1.5 million investment and that Nanyah was entitled to a membership  
23 interest commensurate with its investment and/or Eldorado was obligated to repay the  
24 \$1.5 million investment. First, the Eldorado Amended Operating Agreement specifically  
25 incorporated Exhibit D from the Membership Interest Purchase Agreements signed by  
26  
27  
28

1 Rogich, the Robich Trust, Peter Eliades and Teld--which exhibit expressly confirms  
2 Nanyah invested \$1.5 million into Eldorado --and was entitled to repayment of its  
3 investment or the issuance of its membership interest as part and parcel of the  
4 Eldorado Amended Operating Agreement. Exh. 12, p. 1, Recital A. Again, Exhibit D  
5 from the Membership Interest Purchase Agreements contained all the parties' express  
6 admissions and confirmations that Nanyah invested \$1.5 million into Eldorado and that  
7 Nanyah would be issued a membership interest from Rogich and/or repaid its \$1.5  
8 million investment.  
9

10 Moreover, the Eldorado's Amended Operating Agreement specifically details that  
11 the Rogich Trust's interest in Eldorado was subject to Nanyah's contractual claims for  
12 repayment and/or a portion of the membership interest. Exh. 12, p. 1, Recital B.  
13

14 Based upon the foregoing, there are clear contractual obligations owed by the  
15 Eliades Defendants, and each of them, to Nanyah as successors in interest under the  
16 Purchase Agreement, the Teld Membership Interest Purchase Agreement and/or under  
17 Eldorad's Amended Operating Agreement's contractual terms and conditions.  
18 Consequently, the motion must be denied as the Eliades Defendants' motion is without  
19 merit as they do in fact owe contractual duties to Nanyah.  
20

21 **B. THE ELIADES DEFENDANTS OWE FIDUCIARY**  
22 **OBLIGATIONS, AND, THEREFORE, THERE IS A SPECIAL**  
23 **RELATIONSHIP TO NANYAH.**

24 The Eliades Defendants' arguments on this issue merely regurgitate the prior  
25 argument presented in the defendants' prior motion for summary judgment which the  
26 Court previously denied. The Court previously denied the Eliades Defendants' motion  
27 for summary judgment on this issue finding that the arguments had no merit. Based  
28

1 upon the Court's previous ruling, this Court must again deny the Eliades Defendants'  
2 motion for summary judgment on the claim for tortious breach of the implied covenant  
3 of good faith and fair dealing since no new evidence or law is presented.  
4

5 In an abundance of caution, Nanyah will again rebut the Eliades Defendants'  
6 contention and demonstrate again why summary judgment cannot be entered on this  
7 claim. Initially, the existence and/or non-existence of a special relationship is a  
8 question of fact and not appropriate for resolution on summary judgment. Mackintosh  
9 v. California Federal Sav. & Loan Assoc., 113 Nev. 393, 935 P.2d 1154, 1159 (1997)  
10 ("[T]he existence of the special relationship is a factual question . . ."). Accordingly,  
11 because the issue of a special relationship is a question of fact, the Eliades  
12 Defendants' motion must be denied.  
13

14 There are extensive facts demonstrating the special relationship and/or fiduciary  
15 relationship between the Eliades Defendants and Nanyah. The Eliades Defendants,  
16 and each of them, were all signatories to the various agreements identified above. In  
17 addition, the Eliades Defendants were all managers and/or members in Eldorado, and  
18 agreed that Nanyah was entitled to repayment of its \$1.5 million investment and/or the  
19 issuance of a membership interest from the Rogich Trust's interest. In this situation,  
20 Nanyah reposed a special element of reliance on defendants to honor Nanyah's  
21 Investment into Eldorado, and to advise it about all material aspects of its investment.  
22 In such a situation, a special relationship is established. Abu Dhabi Commercial Bank  
23 v. Morgan Stanley & Co. Inc., 910 F. Supp. 2d 543, 547 (S.D.N.Y. 2012) (relationship of  
24 investor created special relationship to disclose information); Boyer v. Salomon Smith  
25 Barney, 188 P.3d 233, 238 (Or. 2008) (duty to provide information to investor  
26  
27  
28

1 establishes the "special relationship"). At a minimum, the existence of a special  
2 relationship is a question of fact not appropriate for resolution on summary judgment.  
3 Mackintosh v. California Federal Sav. & Loan Assoc., 113 Nev. 393, 935 P.2d 1154,  
4 1159 (1997) ("[T]he existence of the special relationship is a factual question . . .").

5  
6 In addition, Rogich testified that all the defendants, and each of them, owed  
7 fiduciary duties to Nanyah relating to its investment into Eldorado as follows:

8 Q Are you familiar with the -- what are  
9 called fiduciary duties?

10 A Yes.

11 Q **What is your understanding of a  
12 fiduciary duty?**

13 . . .

To handle the company with integrity.

14 Q Any duties with regard to communication?

15 A As needed.

16 Q Communicate with who?

17 A The owners, partners, investors.

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

21 A **To communicate with them.**

22 . . .

23 Q **To advise the owners, partners, or  
24 investors of financial activities relating to the  
25 company?**

26 A Yes.

27 Q **Communicate with the owners, partners,  
28 investors with regard to events that may impact**

1                   **their ownership or investment?**

2           A     **Yes.**

3     **Exh. 5**, Rogich Deposition excerpt, p. 175:1-176:3. Ignoring his clear fiduciary duty as  
4     a manager and member of Eldorado, Rogich testified that he did not once communicate  
5     with Nanyah regarding Nanyah's investment into Eldorado as follows:  
6

7           Q     All right. What steps did you take to  
8                 work with Nanyah Vegas, LLC, to resolve its  
               investment in Eldorado Hills?

9           A     None.

10    Id., p. 125:10-13.

11                 As established in the Undisputed Statement of Facts, all the defendants admit  
12     they never once communicating with Nanyah regarding the repayment of Nanyah's \$1.5  
13     million investment even though Nanyah was owed fiduciary duties. Further, Rogich  
14     affirmed the Eliades Defendants' answer in that they never once communicated with  
15     Nanyah regarding its investment even though Nanyah was owed fiduciary duties as an  
16     investor in Eldorado. Exh. 5, Rogich Excerpts, p. 170:20-23 ("Q Okay. So when you  
17     filed your answer in this case and you said you never communicated with Nanyah, that  
18     was a true statement; right? A Yes.").

19                 In breach of their fiduciary duties, the defendants intentionally and willfully  
20     concealed critical facts from Nanyah for the purpose of avoiding the obligations to  
21     Nanyah. That activity is a clear breach of defendants' fiduciary duties owed to Nanyah.  
22     Powers v. United Servs. Auto. Ass'n, 114 Nev. 690, 701, 962 P.2d 596, 603 (1998)  
23     ("concealing facts to gain an advantage" . . . is a breach of this kind of fiduciary  
24     responsibility), opinion modified on denial of reh'g, 115 Nev. 38, 979 P.2d 1286 (1999)).  
25  
26  
27  
28

1 Furthermore, in Nevada as with all other states, a limited liability company is a  
2 creature of statute. Weddell v. H2O, Inc., 271 P.3d 743, 749 (Nev. 2012). NRS  
3 86.286(7) provides that a limited liability operating agreement can agree to have the  
4 members not be liable for breach of fiduciary duties owing to each other. Id. ("An  
5 operating agreement may provide for the limitation or elimination of any and all liabilities  
6 for breach of contract and breach of duties, if any, of a member, manager or other  
7 person to a limited-liability company, to any of the members or managers, or to another  
8 person that is a party to or is otherwise bound by the operating agreement.").

9  
10 Nevada statutory and case law, however, has not yet expressly defined the  
11 nature of the duties among members and managers. However, as demonstrated in  
12 NRS 86.286(7) the law is not silent because the statute expressly allows members and  
13 managers of a limited liability company to expressly negate liability for their breach of  
14 fiduciary duties. In this regard, in 2009 the Nevada Legislature specifically amended  
15 the limited liability company statute to allow members of a limited liability company to  
16 disclaim fiduciary duties among themselves, so long as that disclaimer does not excuse  
17 "a bad faith violation of the implied contractual covenant of good faith and fair dealing."  
18 NRS 86.286(7) (enacted in 2009 by S.B. 350, 75th Leg. Sess., Ch. 361, § 35).

19  
20 The language of the statute and its history demonstrates that the default state of  
21 affairs **is that managers and members owe fiduciary duties to the other members**  
22 **of the limited liability company.** See also Auriga Capital Corp. v. Gatz Props., 40  
23 A.3d 839, 850–52 (Del. Ch. 2012) (using similar reasoning in holding that managers  
24 owe fiduciary duties to members in a limited liability company).

25  
26 Consistent with NRS 86.286's express recognition of fiduciary duties between  
27  
28