

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

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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.**

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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. 33**

21 MARK G. SIMONS, ESQ.
22 Nevada Bar No. 5132
23 SIMONS HALL JOHNSTON PC
24 6490 S. McCarran Blvd., #F-46
25 Reno, Nevada 89509
26 T: (775) 785-0088
 F: (775) 785-0087
 Email: msimons@shjnevada.com
 Attorney for Appellant

<u>ALPHABETICAL</u>			
<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>BATES</u>
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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
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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			
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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 nd			
	Supplemental Pre-trial			
21	Disclosures			
22	Defendant Eldorado Hills,	4/9/19	27	JA_006441-6453
23	LLC's Opposition to Nanyah			
24	Vegas, LLC's			
	Countermotion for NRCP 15			
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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
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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			

1 2 3 4 5 6 7	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
8 9 10 11 12 13	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
14 15 16 17 18 19	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 nd			
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			

1	Motion for Award of	11/19/14	3	JA_000699-744
2	Attorneys' Fees			
3	Motion for Leave to File an	4/30/14	1	JA_000064-83
4	Amended Answer on an			
5	Order Shortening Time			
6	Motion for Rehearing	8/17/18	13-14	JA_003205-3316
7	Motion for Relief from the	2/6/19	15-17	JA_003650-4035
8	October 5, 2018, Order			
9	Pursuant to NRCP 60(b)			
10	Motion for Summary	2/23/18	4-6	JA_000894-1245
11	Judgment			
12	Motion for Summary	5/10/19	30-31	JA_007237-7598
13	Judgment or Alternatively			
14	for Judgment as a Matter of			
15	Law Pursuant to NRCP			
16	50(a)			
17	Motion to Compel	2/27/19	21-22	JA_005175-5260
18	Production of Plaintiff's Tax			
19	Returns and for Attorneys'			
20	Fees on Order Shortening			
21	Time			
22	Motion to Reconsider Order	3/25/19	25	JA_006079-6104
23	on Nanyah's Motion in			
24	Limine #5: Parol Evidence			
25	Rule on Order Shortening			
26	Time			
	Motion to Reconsider Order	6/4/18	11	JA_002512-2534
	Partially Granting Summary			
	Judgment			
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	Supplemental Pretrial			
	Disclosures			
	Nanyah Vegas, LLC's 3 rd	4/12/19	27	JA_006484-6496
	Supplemental Pretrial			
	Disclosures			

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			
	Counter-motion 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	Counter-motion for Summary			
25	Judgment and Denying			
26	NRCP 56(f) Relief			

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

1	Order Granting Defendants	5/4/2020	38	JA_009243-9246
2	Peter Eliades and Teld,			
3	LLC's Motion for			
4	Attorney's Fees			
5	Order Granting Defendants	3/16/2020	38	JA_009109-9112
6	Peter Eliades and Teld,			
7	LLC's Motion for			
8	Attorney's Fees and Setting			
9	Supplemental Briefing on			
10	Apportionment			
11	Order Granting Motion for	2/10/15	4	JA_000765-767
12	Award of Attorneys Fees			
13	Order Granting Motion for	1/29/18	4	JA_000884-885
14	Leave to Amend Answer to			
15	Complaint			
16	Order Granting Partial	10/1/14	3	JA_000691-693
17	Summary Judgment			
18	Order Granting Partial	11/5/14	3	JA_000694-698
19	Summary Judgment			
20	Order Partially Granting	5/22/18	8	JA_001833-1836
21	Summary Judgment			
22	Order Regarding Motions in	11/6/18	14	JA_003458-3461
23	Limine			
24	Order Regarding Plaintiff's	5/29/19	32	JA_007821-7823
25	Emergency Motion to			
26	Address Defendant The			
	Rogich Family Irrevocable			
	Trust's NRS 163.120 Notice			
	and/or Motion to Continue			
	Trial for Purposes of NRS			
	163.120			
	Order Re-Setting Civil Jury	12/7/18	14	JA_003469-3470
	Trial and Calendar Call			
	Order Re-Setting Civil Jury	12/19/18	14	JA_003471-3472
	Trial and Calendar Call			

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 NRCP			
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 nd 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			
	Judgment and Opposition to			
	Nanyah Vegas, LLC's			
	Countermotion for Summary			
	Judgment and NRCP 56(f)			
	Relief			
13	Stipulation and Order	4/22/2020	38	JA_009232-9234
14	Stipulation and Order	5/16/19	31	JA_007599-7602
15	Suspending Jury Trial			
16	Stipulation and Order re:	1/30/2020	37	JA_009056-9058
17	October 4, 2019 Decision			
18	Stipulation and Order	6/13/19	32	JA_007824-7827
19	Regarding Rogich Family			
20	Irrevocable Trust's			
	Memorandum of Costs and			
	Motion for Attorneys' Fees			
21	Stipulation for Consolidation	3/31/17	4	JA_000818-821
22	Substitution of Attorneys	1/24/18	4	JA_000881-883
23	Substitution of Attorneys	1/31/18	4	JA_000886-889
24	Substitution of Counsel	2/21/18	4	JA_000890-893
25	Summons – Civil	12/16/16	4	JA_000803-805
26	(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

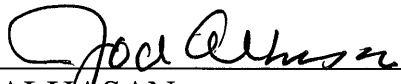
Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL JOHNSTON PC, and that on this date I caused to be served a true copy of the **JOINT APPENDIX VOL. 33** on all parties to this action by the method(s) indicated below:

✕ by using the Supreme Court Electronic Filing System:

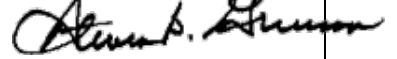
Brenoch Wirthlin
Kolesar & Leatham
400 South Rampart Blvd., Ste. 400
Las Vegas, NV 89145
*Attorneys for Sigmund Rogich, Individually and as Trustee of the
Rogich Family Irrevocable Trust and Imitations, LLC*

Joseph Liebman
Dennis Kennedy
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
*Attorneys for Eldorado Hills, LLC, Teld, LLC, a Nevada limited
liability company; Peter Eliades, individually and as Trustee of the
The Eliades Survivor Trust of 10/30/08*

DATED: This 9 day of July, 2021.



JODI ALHASAN



MDSM (CIV)

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

JLiebman@BaileyKennedy.com

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

(Hearing Requested)

**DEFENDANT ELDORADO HILLS,
LLC'S MOTION FOR DISMISSAL
WITH PREJUDICE UNDER RULE 41(e)**

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 MOTION FOR DISMISSAL WITH
PREJUDICE UNDER RULE 41(e)**

Pursuant to N.R.C.P. 41(e) and Nanyah Vegas, LLC's ("Nanyah") want of prosecution, Defendant Eldorado Hills, LLC ("Eldorado") respectfully moves the Court for dismissal of any and all of Nanyah's remaining claims against Eldorado. Nanyah had until April 29, 2019 to bring this matter to trial. It failed to do so, and Eldorado must be dismissed with prejudice. Eldorado's Motion is based on the following Memorandum of Points and Authorities, the exhibits attached hereto, and any oral argument heard by the Court.

DATED this 22nd day of July, 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

The trial was never actually started. Other than the ruling addressed herein, no other action occurred on April 22, 2019; no jury was empaneled, no evidentiary stipulations were placed on the record and no exhibits were marked. Further, there is no record of any jury panel even being called for the case.

*This is language directly from Nanyah's recent Writ Petition to the Nevada Supreme Court.*¹ And it is entirely accurate.² The trial never began due to Nanyah's request to pursue emergency writ relief regarding the dismissal of its claims against the Rogich Family Irrevocable Trust (the "Rogich Trust").

Nanyah's unjust enrichment claim against Eldorado was the subject of a remittitur that was filed with this Court on April 29, 2016. Under N.R.C.P. 41(e)(4)(B), Nanyah had until April 29,

¹ Pet. for Writ of Mandamus, or in the Alternative, Prohibition, 23 n. 8, attached as Exhibit 1.

² The Court also entertained and denied Nanyah's Motion to Amend on April 22, 2019.

2019 to bring its claims against Eldorado to trial. Based on binding Nevada precedent and Nanyah’s admission quoted above, it failed to do so. The Nevada Supreme Court has repeatedly held that—absent a written stipulation and order to extend the limitations period set forth in Rule 41(e)—noncompliance with Rule 41(e) requires dismissal regardless of the circumstances or equities involved. No such written stipulation and order exists here. Thus, the Motion must be granted, and Nanyah’s remaining claims against Eldorado must be dismissed with prejudice.

II. PROCEDURAL HISTORY

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

On July 31, 2013, Carlos Huerta (“Huerta”), Go Global, Inc. (“Go Global”), and Nanyah filed a lawsuit against Sig Rogich, the Rogich Trust, and Eldorado. Huerta and Go Global’s claims have since been dismissed. With respect to Nanyah, it initially filed claims against Eldorado for unjust enrichment and breach of implied agreement.³ After Eldorado filed a Motion to Dismiss addressing both claims, Nanyah filed an Amended Complaint, repleading its unjust enrichment claim (alleging that Eldorado was responsible for returning its \$1,500,000.00 investment) and abandoning the breach of implied agreement claim.⁴

On July 25, 2014, Eldorado filed a Motion for Partial Summary Judgment, seeking dismissal of Nanyah’s unjust enrichment claim based on a statute of limitations defense.⁵ On September 25, 2014, the Court granted the Motion for Partial Summary Judgment and dismissed Nanyah’s unjust enrichment claim against Eldorado.⁶

Nanyah appealed the dismissal of its unjust enrichment claim to the Nevada Supreme Court. On February 12, 2016, the Nevada Supreme Court issued an Order of Reversal and Remand, finding there was a question of fact with respect to the accrual of Nanyah’s unjust enrichment claim.⁷ On April 1, 2016, the Nevada Supreme Court issued an Order Denying Rehearing.⁸ On April 29, 2016,

³ Compl., Case No. A-13-686303-C, 7:18-9:2, filed July 31, 2013.

⁴ See generally Am. Compl., Case No. A-13-686303-C, filed Oct. 21, 2013.

⁵ See generally Mot. for Partial Summary Judgment, filed July 25, 2014.

⁶ See generally Order Granting Partial Summary Judgment, filed Oct. 1, 2014.

⁷ See generally Remittitur/Order of Reversal and Remand/Order Denying Rehearing, filed April 29, 2016.

⁸ Id.

the remittitur was filed with this Court, thereby triggering the limitations period under N.R.C.P. 41(e)(4)(B).⁹

B. Consolidation With Case No. A-16-746239-C

On November 4, 2016, Nanyah filed a new action against Rogich, the Rogich Trust, Imitations, LLC (collectively, the “Rogich Defendants”), Teld, LLC, Peter Eliades, and the Eliades Survivor Trust of 10/30/08 (collectively, the “Eliades Defendants”).¹⁰ Nanyah did *not* include Eldorado as a Defendant in the new action.

On March 31, 2017, Case No. A-13-686303-C was consolidated with Case No. A-16-746239-C.¹¹ On September 21, 2017, all of the parties (except Eldorado) stipulated to re-open the discovery deadlines.¹² Within the stipulation, all of the parties (except Eldorado) stated the following:

The parties hereby stipulate that the three year provision of NRCP 41(e) applies to the consolidated cases given the remittitur from the Nevada Supreme Court of the lead case on July 21, 2016.¹³

The reference to the July 21, 2016 date appears to have been a mistake, as the remittitur on Nanyah’s unjust enrichment claim was filed with this Court on April 29, 2016.¹⁴ The July 21, 2016 remittitur related to the Nevada Supreme Court’s Order affirming an award of attorney’s fees to the Rogich Trust and against Huerta/Go Global.¹⁵ Nevertheless, it has now been more than three years from the filing date of both remittiturs.

C. The Trial That Never Happened

After a couple of trial continuances due to extenuating circumstances, trial was scheduled to

⁹ *Id.*

¹⁰ (See generally Compl., Case No. A-16-746239-C, filed Nov. 4, 2016.) Any and all claims against the Eliades Defendants were later dismissed by this Court via summary judgment. (See generally Order: (1) Granting Defs. Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, and Teld, LLC’s Mot. for Summary Judgment; and (2) Denying Nanyah Vegas, LLC’s Countermot. for Summary Judgment.)

¹¹ See generally Notice of Consolidation, filed April 5, 2017.

¹² See generally Stipulation Re: Re-Open Deadlines, filed Sep. 21, 2017.

¹³ *Id.*, 2:7-9.

¹⁴ See generally Remittitur/Order of Reversal and Remand/Order Denying Rehearing, filed April 29, 2016.

¹⁵ See generally Remittitur/Order of Affirmance, filed July 21, 2016.

begin on April 22, 2019.¹⁶ On the morning of April 22, 2019, all the parties arrived to begin trial. Prior to *voir dire*, the Court was scheduled to entertain and rule on two separate motions. First, the Court entertained and denied Nanyah’s Motion for NRCP 15 Relief, which had sought to reassert an implied contract claim.¹⁷

Next, the Court entertained and granted the Rogich Trust’s request for dismissal for non-compliance with NRS 163.120.¹⁸ Based on the dismissal of the Rogich Trust, Nanyah stated that it wanted to suspend or continue the trial in order to file a Writ Petition with the Nevada Supreme Court.¹⁹ Ultimately the parties did agree to suspend the trial indefinitely to permit Nanyah to seek writ relief.²⁰

However, none of the parties agreed to waive the three year requirement set forth in N.R.C.P. 41(e)(4)(B). In fact, when the Court questioned whether there were any issues with N.R.C.P. 41(e), Nanyah was unconcerned and simply stated “[i]t’s actually been satisfied, since we’ve commenced the trial.”²¹ Yet, as shown above, Nanyah has taken the opposite (and correct) position in its Writ Petition, in which it stated the following:

Due to the “suspension” of the trial in this action, the beneficiaries remain fully capable of intervening if such action is warranted “prior to” trial in this action. That is because the use of the phrase “suspension” of the trial is a misnomer. ***The trial was never actually started.*** Other than the ruling addressed herein, no other action occurred on April 22, 2019; no jury was empaneled, no evidentiary stipulations were placed on the record and no exhibits were marked. Further, there is no record of any jury panel even being called for the case.²²

Because—as Nanyah admits above—the trial never started, there is no possible argument around N.R.C.P. 41(e)(4)(B). Thus, the Motion must be granted, and any and all claims remaining against

¹⁶ See generally Order Re-Setting Civil Jury Trial and Calendar Call, filed Dec. 7, 2018.

¹⁷ Order Denying Nanyah Vegas, LLC’s Mot. for NRCP 15 Relief, filed May 29, 2109; see also Recorder’s Trans. of Mot. Hearing, 4:2-9:2, attached as Exhibit 2.

¹⁸ Order, filed April 30, 2019; see also Ex. 2, 9:3-13:16.

¹⁹ Ex. 2, 13:17-25.

²⁰ *Id.*, 14:14-16:7.

²¹ *Id.*, 16:8-15.

²² Ex. 1, 23: n. 8 (emphasis added).

Eldorado must be dismissed with prejudice.

III. ARGUMENT

A. Legal Standard Under Rule 41(e)

If a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court.

N.R.C.P. 41(e)(4)(B). The Court does not have discretion under Rule 41(e) and cannot examine the circumstances of the delay or the equities of the case. *Allyn v. McDonald*, 117 Nev. 907, 912, 34 P.3d 584, 587 (2001). “As the promoter of its case, the plaintiff has the duty to carefully track the crucial procedural dates and to actively advance the case at all stages, a duty that may require the plaintiff to take initiative and prod the district court when the case sits dormant.” *Id.* Thus, if the limitations period expires, the Court must dismiss the case. *Id.*

The only way to avoid dismissal is to bring the case to trial or obtain a written stipulation to extend the time. *See* N.R.C.P. 41(e)(5). Any such stipulation must specifically reference N.R.C.P. 41(e), and a mere stipulation to continue the trial is insufficient as a matter of law. *Prostack v. Lowden*, 96 Nev. 230, 231, 606 P.2d 1099, 1100 (1980).

B. Nanyah Admits it Never Brought This Matter to Trial

The Nevada Supreme Court has identified only two events sufficient to commence trial for the purposes of N.R.C.P. 41(e). It has “held on numerous occasions that the swearing of a witness who gives testimony is sufficient to commence trial and thus toll the limitations period specified in N.R.C.P. 41(e).” *A French Bouquet Flower Shoppe, Ltd. v. Hubert*, 106 Nev. 324, 324, 793 P.2d 835, 836 (1990). Alternatively, it has “held that a litigant who obtains a trial date within the statutory period, appears for trial in good faith, argues motions *and examines jurors*, thereby brings the case to trial.” *Lipitt v. State*, 103 Nev. 412, 413, 743 P.2d 108, 109 (1987).

Nanyah did not have the Court swear in any witnesses on April 22, 2019. Nanyah did not examine any jurors on April 22, 2019. In fact, no potential jurors were ever brought into the courtroom. Instead, following the dismissal of the Rogich Trust, Nanyah unilaterally asked the Court and the Defendants to suspend the trial in order to seek emergency writ relief with the Nevada

1 Supreme Court. And in that Writ Petition, *Nanyah admits that the trial never began.*

2 The trial was never actually started. Other than the ruling addressed
3 herein, no other action occurred on April 22, 2019; no jury was
4 empaneled, no evidentiary stipulations were placed on the record and
no exhibits were marked. Further, there is no record of any jury panel
even being called for the case.²³

5 Pursuant to the legal authority above and Nanyah's binding admission from its Writ Petition, this
6 Court must find that the trial in this matter never commenced for the purposes of N.R.C.P. 41(e).

7 **C. Dismissal of Any and All Claims Against Eldorado is Mandatory Due to Expiration of**
8 **the Three Year Time Period in N.R.C.P. 41(e)(4)(B)**

9 There is no dispute that this case has been pending for more than three years since the
10 remittitur was filed in this Court on April 29, 2016. Even assuming this Court accepts the mistake in
11 the September 21, 2017 Stipulation which stated that the remittitur was filed on July 21, 2016, three
12 years have still lapsed without trial. The Nevada Supreme Court has repeatedly held that dismissal
13 is mandatory in such an instance. It does not matter that the Rogich Trust was dismissed on April
14 22, 2019 and that Nanyah wanted to seek emergency writ relief. Nanyah had the sole duty to bring
15 Case No. A-13-686303-C to trial against Eldorado within three years or obtain a written extension
16 under N.R.C.P. 41(e), and it failed to do either.²⁴ *Allyn*, 117 Nev. at 912, 34 P.3d at 587. Any and
17 all claims against Eldorado shall be dismissed with prejudice.

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27 ²³ Ex. 1, 23: n. 8.

28 ²⁴ It appears the Court tried to warn Nanyah about N.R.C.P. 41(e) on April 22, 2019, but Nanyah did not heed the
Court's advice. (Ex. 2, 16:8-13.)

IV. CONCLUSION

Nanyah has admitted that trial never commenced in this matter. The Nevada Supreme Court's binding precedent confirms the same. Three years have elapsed since the remittitur was filed with this Court. Thus, because trial has not commenced and Nanyah failed to procure a written extension under N.R.C.P. 41(e), any and all claims against Eldorado shall be dismissed with prejudice.

DATED this 22nd day of July, 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 22nd day of July, 2019, service of the foregoing **DEFENDANT ELDORADO HILLS, LLC'S MOTION FOR DISMISSAL WITH PREJUDICE UNDER RULE 41(e)** 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.
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Suite F-46
Reno, NV 89509

Email: msimons@shjnevada.com
Attorneys for Plaintiff
NANYAH VEGAS, LLC

SAMUEL S. LIONEL, ESQ.
BRENOCH WIRTHLIN, ESQ.
FENNEMORE CRAIG, P.C.
300 S. Fourth Street, Suite 1400
Las Vegas, NV 89101

Email: slionel@fclaw.com
bwirthlin@fclaw.com
Attorneys for Defendant
SIG ROGICH aka SIGMUND
ROGICH, Individually and as
Trustee of THE ROGICH FAMILY
IRREVOCABLE TRUST, and
IMITATIONS, LLC

MICHAEL V. CRISTALLI
JANIECE S. MARSHALL
GENTILE CRISTALLI MILLER
ARMENI SAVARESE
410 South Rampart Blvd., Suite 420
Las Vegas, NV 89145

Email: mcristalli@gcmaslaw.com
jmarshall@gcmaslaw.com
Attorneys for Defendants
SIG ROGICH aka SIGMUND
ROGICH as Trustee of THE
ROGICH FAMILY
IRREVOCABLE TRUST

/s/ Sharon L. Murnane
Employee of BAILEY ♦ KENNEDY

Exhibit 1

Exhibit 1

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

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

4 Petitioner,

5 v.

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

9 Respondent,

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

20 Real Parties in Interest.

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

SUPREME COURT CASE

NO: _____

CASE NO. A-13-686303-C

DEPT. NO.: XXVII

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

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

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

22 Nevada Bar No. 5132

23 MSimons@SHJNevada.com

24 SIMONS HALL JOHNSTON PC

25 6490 S. McCarran Blvd., Ste. F-46

26 Reno, Nevada 89509

Telephone: (775) 785-0088

Facsimile (775) 785-0087

Attorneys for Nanyah Vegas, LLC

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NRAP 26.1 DISCLOSURE

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

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

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

Dated this 27th day of June, 2019.



MARK G. SIMONS, ESQ.
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
Attorneys for Nanyah Vegas, LLC

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1 **INTRODUCTION AND SUMMARY OF WRIT PETITION¹**

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

8
9 This petition arises after years of litigation in the two (2) consolidated
10 actions in which the Rogich Trust was a named defendant; after the Rogich Trust
11 obtained judgment against various other parties; after the Rogich Trust made
12 offers of judgment allowing judgment to be entered against the Rogich Trust;
13 after holding Sigmund Rogich ("Rogich") out as the sole beneficiary of the
14 Rogich Trust; after failing to identify any other alleged beneficiaries of the
15 Rogich Trust as indispensable parties and/or witnesses pursuant to NRCP 16.1;
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22 ¹ For ease of reading, this introduction will omit appendix citations, but
23 citations will be provided for factual statements in the body of the petition.

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

25 ³ Westinghouse Credit Corp. v. Wolfer, 10 Cal. App. 3d 63, 67, 88 Cal. Rptr.
26 654, 656 (Cal. Ct. App. 1970) ("A surety is . . . one who promises to answer for the
 debt of another. . . .").

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

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

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

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ROUTING STATEMENT

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

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

RELIEF SOUGHT

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

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

10
11 These transactions were memorialized in various written agreements.
12
13 **Nanyah was not included as a named signatory on the agreements, however,**
14 **the agreements identified that The Rogich Trust specifically agreed to**
15 **assume the obligation to pay Nanyah its percentage interest in Eldorado or**
16 **to pay Nanyah its \$1,500,000 invested into Eldorado. 1 PA 0073-74**
17
18 (emphasis added.)
19

20
21 The October 30, 2008, Purchase Agreement states at Section 4 the
22 following: Seller [Go Global], however, will not be responsible to pay the
23 Exhibit A Claimants their percentage or debt. This will be Buyer's [The Rogich
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1 Trust's] obligation. . . ." The Exhibit A Claimants include Nanyah and its
2 \$1,500,000.00 investment. 1 PA 0074.

3
4 The October 30, 2008, Membership Interest Purchase Agreement identifies
5 Nanyah's \$1,500,000 investment into Eldorado at Exhibit D which clearly and
6 unequivocally states the following: Seller [Rogich and the Rogich Trust]
7 confirms that certain amounts have been advanced to or on behalf of the
8 Company [Eldorado] by certain third-parties [including Nanyah], as referenced in
9 Section 8 of the Agreement. Exhibit D also memorializes Nanyah's \$1,500,000
10 investment into Eldorado. 1 PA 0075.

11
12
13 **B. PROCEDURAL HISTORY.**

14 The first complaint in this matter was filed on July 31, 2013. 1 PA 0001-
15 21. On October 21, 2013, the plaintiffs filed an amended complaint. 1 PA 0022-
16 42. In the amended complaint, plaintiffs Carlos Huerta and Go Global alleged
17 three claims for relief against Rogich; (1) breach of express contract; (2) breach
18 of covenant of good faith and fair dealing; and (3) negligent misrepresentation.
19 Plaintiff Nanyah alleged a claim of unjust enrichment against Eldorado. 1 PA
20 0022-42.

21
22 On October 1, 2014, the district court entered an order granting summary
23 judgment on Nanyah's unjust enrichment claim, based on a determination that the
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1 action was barred by the statute of limitations. 1 PA 0043-45. On appeal, this
2 court reversed the district court's erroneous grant of summary judgment, holding
3 that the district court's determination that the statute of limitations commenced to
4 run on the date of Nanyah's original \$1.5 million investment into Eldorado was
5 an incorrect statement of law (the "Decision"). 1 PA 0047. This Court also
6 stated that from the record there appeared to be genuine issues of material fact
7 with respect to when Nanyah discovered that Eldorado breached its obligation to
8 repay it for its \$1.5 million investment. *Id.* This court then remanded the matter
9 back to the district court for further proceedings to determine the date Eldorado
10 breached its obligation to repay Nanyah.⁴

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

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

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

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

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

9 This matter was set for a five-day trial, to commence on April 22, 2019. 2
10 PA 0141. The claims which remained, and were to be tried, were: (1) breach of
11 contract against the Rogich Trust and Rogich; (2) contractual breach of the
12 implied covenant of good faith and fair dealing, against the Rogich Trust and
13 Rogich; (3) tortious breach of the implied covenant of good faith and fair dealing
14 against the Rogich Trust and Rogich; (4) conspiracy against the Rogich Trust,
15 Rogich, and Imitations; (5) breach of implied in fact contract against Eldorado;
16 and (6) unjust enrichment against Eldorado. 2 PA 0147-148.
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20 One week before trial was to begin, Rogich and the Rogich Trust filed a
21 request for judicial notice, specifically requesting that the district court take
22 notice of NRS 163.120, which provides, in pertinent part:
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25 A judgment may not be entered in favor of the plaintiff in the action
26 unless the plaintiff proves that within 30 days after filing the action, or
within 30 days after the filing of a report of an early case conference if
one is required, whichever is longer, or within such other time as the

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

5 1 PA 0091-94.

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

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

1 The court entered an order on April 30, 2019, memorializing the ruling and
2 dismissing the Rogich Trust with prejudice. 2 PA 0345-348.
3

4 ARGUMENT

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

7 A writ of mandamus is available “to compel the performance of an act that
8 the law requires as a duty resulting from an office, trust, or station; or to compel
9 the admission of a party to the use and enjoyment of a right or office to which the
10 party is entitled and from which the party is unlawfully precluded by such
11 inferior tribunal, corporation, board or person.” NRS 34.160. Mandamus is
12 appropriate when discretion is manifestly abused or is exercised arbitrarily or
13 capriciously. Round Hill Gen. Improvement Dist. v. Newman, 97 Nev. 601, 637
14 P.2d 534 (1981). Writs of mandamus are utilized to control a manifest abuse of
15 or arbitrary or capricious exercise of discretion, or to clarify an important issue of
16 law. Bennett v. Eighth Judicial Dist. Ct., 121 Nev. 802, 806, 121 P.3d 605, 608
17 (2005). A writ of prohibition is available to arrest the “proceedings of any
18 tribunal, corporation, board or person exercising judicial functions, which such
19 proceedings are without or in excess of the jurisdiction of such tribunal,
20 corporation, board or person.” NRS 34.320.
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1 “Writ relief is an available remedy, where . . . petitioners have no plain,
2 speedy and adequate remedy at law other than to petition this court.” Albany v.
3 Arcata Associates, 106 Nev. 688, 799 P.2d 566 (1990). In the instant matter, the
4 district court order being challenged is not one that permits an appeal pursuant to
5 NRAP 3A, and aside from a writ, Petitioners do not have a plain, speedy, and
6 adequate remedy. See De Luca Importing Co. v. Buckingham Corp., 90 Nev.
7 158, 159, 520 P.2d 1365, 1366 (1974) (“An order dismissing a claim where more
8 than one claim for relief is presented without an express determination by the
9 district court, that there is no just reason for delay, is not a final order appealable
10 under NRAP 3A(b)”).

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

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

23 Tam v. Eighth Judicial Dist. Court, 131 Nev. 792, 796, 358 P.3d 234, 237 (2015).
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1 This court has elected to intervene where: (1) judicial economy requires
2 consideration of the writ petition; (2) there are substantial issues of legal
3 importance: (3) entertaining the petition is necessary to clarify the law; and (4)
4 there is no question of fact, and a clear question of law is presented. All four of
5 those factors are present in the instant case, and this court should therefore
6 exercise its discretion to entertain the writ.
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8
9 **1. THIS COURT SHOULD ENTERTAIN THE WRIT IN**
10 **THE INTEREST OF JUDICIAL ECONOMY.**

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

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

6 The instant writ petition also raises a substantial legal issue of general
7 importance, namely, the application of NRS 163.120(2) and whether the phrase
8 “or within such other time as the court may fix” should be ascribed its plain
9 meaning, thereby allowing the district court the discretion to set a time for
10 notifying the beneficiaries of a trust of a pending legal action, so long as it is
11 done at least 30 days before “the entry” of the judgment. Consideration of this
12 issue clearly comports with this court’s desire “to limit our discretion to those
13 cases which presented serious issues of substantial public policy, or which
14 involved important precedential questions of statewide interest.” Poulos v.
15 Eighth Judicial Dist. Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).
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20 Further, the issue of statutory interpretation is an issue of law. Therefore,
21 this Court’s review of the district court’s order and interpretation of NRS 163.120
22 is a matter of law reviewed de novo. Barbara Ann Hollier Tr. v. Shack, 131 Nev.
23 Adv. Op. 59, 356 P.3d 1085, 1089 (2015) (“Statutory interpretation is a question
24 of law that we review de novo.” (internal quotations omitted)).
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1 **3. CLARIFICATION OF THE LAW IS REQUIRED.**

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

12 “We have consistently attempted to reserve our discretion for those cases
13 in which there was no question of fact, and in which a clear question of law,
14 dispositive of the suit, was presented for our review. *See* Bottorff v. O'Donnell,
15 96 Nev. 606, 614 P.2d 7 (1980).” Poulos v. Eighth Judicial Dist. Court, 98 Nev.
16 453, 455, 652 P.2d 1177, 1178 (1982). Resolution of the instant writ petition
17 depends entirely on a legal issue, specifically whether the plain language of NRS
18 163.120(2) should be given effect.
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21 Based on the foregoing, it is clear that this court should exercise its
22 discretion and entertain the writ. Turning next to the merits of the writ petition, it
23 becomes clear that the relief requested should be granted.
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1 **B. THE PLAIN LANGUAGE OF NRS 163.120 PROVIDES THAT**
2 **THE COURT MAY ALLOW NOTICE TO BENEFICIARIES**
3 **“WITHIN SUCH OTHER TIME AS THE COURT MAY FIX”.**

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

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

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

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

1 588, 591 (2004) (“By using the disjunctive ‘or, the statute clearly indicates”
2 alternative activities); Jensen v. Sheriff, White Pine Cty., 89 Nev. 123, 125, 508
3 P.2d 4, 5 (1973) (use of word “or” in the statute “spells out the several specific
4 acts in the disjunctive, and any one of them is sufficient”); Shell Petroleum
5 Corp. v. Royal Petroleum Corp., 135 Tex. 12, 21, 137 S.W.2d 753, 758 (Comm'n
6 App. 1940) (“In its ordinary use the term ‘or’ is disjunctive, and alternative in its
7 effect.”); 154 ALR 866 (“The word ‘or’ when used in a statute, is almost always
8 disjunctive”).
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12 **2. NOTICE DOES NOT HAVE TO OCCUR PRIOR TO**
13 **TRIAL.**

14 As Nanyah has consistently pointed out, the NRS 163 notice does not have
15 to occur prior to trial and, instead, the case could be tried to verdict and,
16 thereafter, the district court could suspend entry of judgment pending notice to
17 any designated beneficiary. The statute does not preclude Nanyah’s claims
18 against the Rogich Trust from being tried to the jury and does not prevent a jury
19 from rendering a verdict either for or against the Rogich Trust.
20
21

22 This exact issue was addressed by the Texas Supreme Court in
23 Transamerican Leasing Co. v. Three Bears, Inc., 586 S.W.2d 472, 476–77 (Tex.
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1 1979).⁵ The Texas Supreme Court addressed the notice to beneficiaries
2 requirement after judgment had already been entered. **Invoking the authority**
3 **granted to it under subsection (3), the trial court vacated the judgment and**
4 **then allowed the prevailing party to proceed with 163's notice requirements.**
5
6 In holding that the district court had the authority to vacate the judgment, suspend
7 entry of the judgment and allow the plaintiff to provide 163 notice to the
8 beneficiaries, the Texas Supreme Court stated:

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

14 Id. (emphasis added). Allowing a plaintiff to notice beneficiaries of a trust **after** a
15 trial has been completed against a trustee has been repeatedly held to be a proper
16 exercise of the Court's discretion.⁶

19 ⁵ Authority from other states is compelling and persuasive because NRS
20 163.120 is a part of the Uniform Trust Act. Like Nevada, other states have
21 adopted the Uniform Trust Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 The only requirement in NRCP 24 is that intervention must be “timely.”
2
3 This court has observed that, “[o]ur cases generally reflect that intervention is
4 timely if the procedural posture of the action allows the intervenor to protect its
5 interest.” LoMastro v. Am. Family Ins. Grp. (Estate of LoMastro), 124 Nev.
6 1060, 1070 n.29, 195 P.3d 339, 347 (2008). Further, “[t]imeliness is a
7
8 determination that lies within the sound discretion of the trial court.” Cleland v.
9 Eighth Judicial Dist. Court, 92 Nev. 454, 456, 552 P.2d 488, 490 (1976).
10

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

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

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

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

19
20 The district court’s error in misinterpreting the statute is compounded by
21 the fact that if the district court had exercised its discretion, the district court
22 should have allowed additional time in which to notify the purported
23
24
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26

1 beneficiaries.¹⁰ The Rogich Trust waited until the eve of trial to even allude to
2 any beneficiaries. Until that point, Mr. Rogich was the only individual who had
3 ever been identified in connection with the trust. Mr. Rogich and the Rogich
4 Trust have never produced a copy of the trust documents, never disclosed any
5 beneficiaries, nor have they ever identified any indispensable parties or asserted
6 the lack of indispensable parties as a defense. The Rogich Trust never identified
7 any alleged beneficiaries as potential witnesses pursuant to NRCP 16.1, and
8 never asserted any affirmative defense that an “indispensable party” had not been
9
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14 ¹⁰ The egregiousness of the district court’s action, and its clear prejudicial
15 intent and application against Nanyah, is demonstrated by the district court’s
16 granting of the Rogich Trust’s request for a continuance of the trial earlier in the
17 proceedings. The Rogich Trust’s request for a continuance was made by oral
18 motion during the calendar call for the trial when the trial was set to commence on
19 November, 2018. 1 PA 0085. One of the Rogich Trust’s attorneys requested a
20 continuance for purely “personal reasons”. The attorney requesting the
21 continuance was not even the lead trial counsel. Over objection, the district court
22 granted the oral request for continuance. 1 PA 0087. In granting the continuance,
23 the district court undertook no considerations of the prejudice to Nanyah or that the
24 continuance was unrelated to any issue in the case. Instead, the district court
25 granted the Rogich Trust’s request for a continuance for purely personal reasons
26 which was clearly prejudicial to Nanyah. Then, when Nanyah requested a short
continuance of the trial to comply with NRS 163, the district court again ruled
against Nanyah, denied the request and ruled that because the trial was not
continued, the beneficiaries could not receive notice prior to trial pursuant to NRS
163 so the claims against the Rogich Trust were dismissed. The district court’s
prejudicial rulings and cannot be overlooked.

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

6
7 Further, Rogich, on two separate occasions, as an individual and in his
8 capacity as Trustee of the Rogich Trust, made offers of judgment agreeing to
9 allow judgment to be entered in Nanyah's favor **against** the Rogich Trust (the
10 "Offers of Judgment"). 1 PA 0082-83 (Offer of Judgment 10/29/18) and 1 PA
11 0088-90 (Offer of Judgment 4/1/19). These Offers of Judgment must be treated
12 as judicial admissions admitting that Rogich was acting as the sole beneficiary
13 and/or had full authority from the beneficiaries (assuming any other than Rogich
14 actually exist) to allow judgment to be entered **against** the Rogich Trust.
15
16

17
18 It is incongruous to believe that the Rogich Trust never asserted in
19 opposition to summary judgment NRS 163's provisions and also formally
20 extended two (2) separate Offers of Judgment pursuant to NRCP 68, authorizing
21 judgment to be entered against the Rogich Trust, then on the eve of trial claim
22 that a judgment could not be entered against the Rogich Trust because of NRS
23
24

25
26 ¹¹ See e.g., 1 California Affirmative Defense 2d, §6:33 (2nd ed. 1995) (failure to join indispensable party an affirmative defense).

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

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

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

13
14
15
16 Judicial estoppel bars a party from playing "fast and loose" with the legal
17 system. In the present case, the Rogich Trust made affirmations of fact and law
18 offering to allow Nanyah to obtain "judgment" against the Rogich Trust. 1 PA
19 0082-83; 88-90. The Rogich Trust undertook this activity pursuant to NRCP 68.
20 The Rogich Trust extended the Offers of Judgment on two (2) separate occasions.

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

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

11
12 The Rogich Trust’s affirmative conduct in this case demonstrates that
13
14 Rogich was either the only beneficiary and/or the participation of the
15
16 beneficiaries was irrelevant and/or the beneficiaries had authorized Rogich to full
17
18 authority to proceed in this action to protect their interests. Supporting this, the
19
20 Rogich Trust obtained judgment in its favor and received \$240,000 in fees and
21
22 costs. 2 PA 0307. Throughout this litigation, Rogich has failed to identify any
23
24 other beneficiaries of the Rogich Trust, despite requests from Nanyah pursuant to
25
26 NRS 163.120(2), leading one to the conclusion that Rogich is in fact the sole

1 beneficiary.¹² Finally, records with the Nevada Gaming Control Board show that
2 Rogich is both the beneficiary and trustee of the Rogich Family Trust. 1 PA
3 0120-122. Given the ambush tactics exercised by the Rogich Trust, the district
4 court should have found good cause to “fix some other time” as provided by NRS
5 163.120(2).
6
7

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

11 The Nevada Supreme Court has stated that it is clear public policy for
12 district courts to exercise their discretion to decide disputes on the merits. As
13 stated by the Nevada Supreme Court in Franklin v. Bartsas Realty, Inc., 95 Nev.
14 559, 563, 598 P.2d 1147, 1149 (1979): “One of the proper guides to the exercise
15 of discretion is: The basic underlying policy to have each case decided upon its
16 merits. In the normal course of events, justice is best served by such a policy.”
17
18 Id.; Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 697 (1978) (“It is our
19 underlying policy to have each case decided upon its merits.”). By dismissing
20 the claims against the Rogich Trust based on an alleged failure to notify
21
22
23

24 ¹² Unfortunately, due to the Rogich Trust’s ambush tactics, it is quite possible
25 for the Rogich Trust to alter who the beneficiaries are under the trust so as to
26 artificially attempt to create who will claim they did not know of the litigation that
has been proceeding between multiple parties, with multiple attorneys and in
multiple courts.

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

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

1 **F. RULES OF STATUTORY CONSTRUCTION SUPPORT**
2 **NANYAH’S REQUEST.**

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

22 The district court in this matter erroneously concluded that it had no
23 discretion with respect to the timing of the notice to the beneficiaries. This legal
24 error resulted in the dismissal of the claims against the Rogich Trust with
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26

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

9 Respectfully submitted this 27th day of June, 2019.
10

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14


15 MARK G. SIMONS, ESQ.
16 Nevada Bar No. 5132
17 MSimons@SHJNevada.com
18 SIMONS HALL JOHNSTON PC
19 6490 S. McCarran Blvd., Ste. F-46
20 Reno, Nevada 89509
21 *Attorneys for Nanyah Vegas, LLC*
22
23
24
25
26

1 **AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF PETITION FOR**
2 **WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, PROHIBITION**

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

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

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

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

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


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

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

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 27th day of June, 2019.

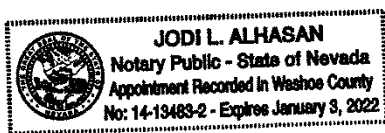
019.



MARK G. SIMONS

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

Jodi Abbasan
NOTARY PUBLIC



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CERTIFICATE OF SERVICE

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

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

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

Joseph Liebman
Dennis Kennedy
Bailey Kennedy
8984 Spanish Ridge Avenue
Las Vegas, NV 89148-1302
Attorneys for Eldorado Hills, LLC, TELD, LLC, a Nevada limited liability company; PETER ELIADES, individually and as Trustee of the The Eliades Survivor Trust of 10/30/08

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

DATED: This 27 day of June, 2019.


JODI ALHASAN

Reception

From: efiling@nvcourts.nv.gov
Sent: Thursday, June 27, 2019 11:23 AM
To: BKfederaldownloads
Subject: Notification of Electronic Filing in NANYAH VEGAS, LLC VS. DIST. CT. (ROGICH), No. 79072

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Jun 27 2019 11:22 a.m.

Case Title: NANYAH VEGAS, LLC VS. DIST. CT. (ROGICH)
Docket Number: 79072
Case Category: Civil Appeal

Document Category: Petition for Writ of Mandamus or Prohibition
Submitted by: Mark G. Simons
Official File Stamp: Jun 27 2019 11:22 a.m.
Filing Status: **Accepted and Filed**

Docket Text: Filed Petition for Writ of Mandamus or Prohibition Petition for Writ of Mandamus, or in the Alternative, Prohibition

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Clerk's Office has electronically mailed notice to:

Samuel Lionel
Dennis Kennedy

Mark Simons
Brenoch Wirthlin
Thomas Fell
Joseph Liebman

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.

Exhibit 2

Exhibit 2

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada
limited liability company,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-13-686303-C

DEPT. XXVII

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

1 BEFORE THE HONORABLE NANCY L. ALLF
2 DISTRICT COURT JUDGE
3 MONDAY, APRIL 22, 2019

4 **RECORDER'S TRANSCRIPT OF MOTION HEARING**

5 APPEARANCES:

6 For the Plaintiff: MARK SIMONS, ESQ.

7 For Defendant Rogich: BRENOCH WIRTHLIN, ESQ.
8 THOMAS FELL, ESQ.
9 SAMUEL S. LIONEL, ESQ.

10 For Defendant El Dorado Hills: JOSEPH LIEBMAN, ESQ.
11 DENNIS KENNEDY, ESQ.

12
13 RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER
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INDEX

Court's Orders11

WITNESSES FOR THE PLAINTIFF

None

WITNESSES FOR THE DEFENDANT

None

1 Las Vegas, Nevada, Monday, April 22, 2019

2

3 [Case called at 10:12 a.m.]

4 THE BAILIFF: Department XXVII is now in session, the
5 Honorable Judge Alf presiding.

6 THE COURT: Thank you. Please be seated.

7 Okay. Calling the case of Huerta v. El Dorado Hills.

8 Appearances, please, from your right to left.

9 MR. SIMONS: Mark Simons on behalf of Nanyah Vegas,
10 Your Honor, and in the courtroom with me is Yoav Harlap, the principal
11 of Nanyah Vegas, and also my assistant, Jodi Alhasan is in the audience.

12 THE COURT: Very good. Thank you and welcome.

13 MR. WIRTHLIN: Good morning, Your Honor. Brenoch
14 Wirthlin on behalf of Rogich Defendants. Mr. Sigmund Rogich is here
15 with us as well as Ms. Olivas, Melissa Olivas.

16 MR. FELL: Thomas Fell, also on behalf of the Rogich
17 Defendants.

18 MR. LIONEL: Sam Lionel representing the Rogich
19 Defendants.

20 MR. LIEBMAN: Joseph Liebman on behalf of El Dorado Hills.

21 MR. KENNEDY: And Dennis Kennedy on behalf of El Dorado
22 Hills, the Defendant in Case A-13-686303,

23 THE COURT: Thank you.

24 All right. I have the agenda, Mr. Simons. The -- with regard
25 to the NCRP 15, that order shortening time came in after we closed the

1 office Friday, but I am granting it and will argue the motion.

2 MR. SIMONS: Okay. The motion is premised on the concept
3 that the Court had entered in judgment in favor of the Eliadas
4 Defendants and there is no mechanism under the rule that says it has to
5 be done after the conclusion of the entire case, so there's a procedural
6 aspect of whether it's timely or if it needs to be addressed subsequent to
7 the trial. I think you're fully brief on the issue. We've talked about it a
8 few times. I don't have much more to add.

9 THE COURT: And I've read the briefs, so --

10 MR. SIMONS: Is there any questions you have of me?

11 THE COURT: No.

12 MR. SIMONS: Okay.

13 MR. LIEBMAN: Good morning, Your Honor. I think one of
14 the key points that's been missed here is the fact that an implied contract
15 claim was pled in this case at the inception of the case, when this was
16 filed back in 2013 and when Nanyah sued El Dorado Hills back in 2013,
17 its initial complaint contained the claim they are trying to add now.

18 In the first amended complaint after El Dorado Hills had filed
19 a motion to dismiss on that particular claim, they purposefully omitted it
20 from that particular pleading and we've cited this Court several cases
21 that says in that instance, when a plaintiff, in order to avoid a motion to
22 dismiss or when they're amending the complaint, decides to omit a
23 claim, it waives and abandons that particular claim. And that's precisely
24 what happened in this case. And we've gone five years, Your Honor,
25 since that occurred and there's never been a Rule 15(a) motion brought

1 to you to say we want to add this claim back.

2 So Mr. Simon's briefs a lot of times talk about well, this
3 claim wasn't technically pled for some reason or another, but it was and
4 they've decided to abandon it and they never decided to revive it the
5 way you're supposed to do under Rule 15(a). The procedural aspect that
6 Mr. Simons touched on is problematic for him as well. 15(b) applies to
7 instances where something's tried by implied or expressed consent at
8 trial. The actual title under the new rules of that subsection deals with
9 amendments during and after trial. And we have expressly made the
10 point.

11 We actually filed a notice of non-consent with this Court back
12 on April 9th that said we do not expressly or impliedly consent to this
13 claim being tried, so we're making that clear for the record as well. So if
14 Mr. Simons wanted to bring this motion at a later point in time, that's on
15 the record, that we do not expressly or impliedly consent to this
16 particular claim being added at the 11th hour.

17 And then the last issue I wanted to bring up is prejudice,
18 Your Honor. We were under the impression for five years that they
19 abandoned this claim and we never got to do any discovery on this
20 claim. We never got to depose Mr. Harlap on this claim. We never got
21 to depose Mr. Huerta on this claim. And these are the two people who
22 allegedly made up this so-called implied in fact contract. So to cause us
23 to have to defend against that claim at the 11th hour would cause
24 significant prejudice to the El Dorado Hills Defendants, Your Honor.

25 So unless the Court has any other questions, that's the

1 argument.

2 THE COURT: Okay. Thank you.

3 MR. LIEBMAN: Thank you.

4 MR. SIMONS: First off, we've got to put this in context.

5 What has been addressed by this Court is the obligation that's owed by
6 El Dorado to Nanyah. And that obligation occurred in 2007. It's been
7 established that Nanyah money went into El Dorado. A year after the
8 fact, you found that the Rogich Trust specifically assumed that
9 obligation. So when we have a situation where the Court makes rulings
10 and makes findings that there is an obligation, based upon receipt and
11 retention of funds and then at -- during the testimony of Mr. Huerta
12 that -- counsel just stood up and said we didn't get to depose anybody.

13 Well, this counsel is in after the fact. Mr. Lionel represented
14 El Dorado for years. Mr. Lionel deposed Mr. Huerta. Mr. Huerta said
15 yes, we actually owe them money. This Court was briefed in affidavits
16 from Carlos Huerta. When this Court originally granted summary
17 judgment on the timing, remember what the Court said. The Court said
18 the date of when Nanyah -- it's -- Nanyah's money went into El Dorado
19 was the date the statute of limitation applied and that was based upon
20 Carlos Huerta in affidavit saying El Dorado received our funds. What
21 then happens is it goes up to Supreme Court, comes back down, says
22 no, it's not on the date of the investment when El Dorado received
23 Nanyah's money.

24 So the fact that this recent counsel is contending that they
25 didn't have the opportunity to depose Mr. Huerta, El Dorado did, in fact,

1 depose Mr. Huerta, did in fact question Mr. Huerta extensively about the
2 obligation. The documents that were examined with Mr. Huerta are all
3 the written documents, which are business records of El Dorado saying
4 yes, we owe Nanyah its money back for its investment in El Dorado. So
5 then Mr. Harlap was deposed by Mr. Lionel, again went through the
6 extensive analysis of this situation. It arose -- the October 5th order
7 triggers this consideration, because the Court has rendered rulings that
8 then trigger some events.

9 And whether -- you know, after the fact, filing in the eve of
10 trial a notice of we don't consent to an issue that this Court has already
11 addressed, that's been throughout these pleadings even before the
12 appeal. El Dorado's obligation to Nanyah has been the heart of the case,
13 the contractual obligation. So that's where we have it. We have this
14 case loaded with an obligation from El Dorado to Nanyah. And what
15 does that trigger and what are the ramifications of that?

16 If you perceive that NCRP 15 relief is premature, given that
17 we haven't had the trial, that's one thing. But to say that this issue has
18 not been -- fully saturated this case from Day 1, even before recent
19 counsel, that's a misstatement of the case. Thank you.

20 THE COURT: Thank you. This is the Plaintiff's rule under
21 NRCP 15 to amend the complaint. The motion will be denied for the
22 reason that it's untimely and the claims previously abandoned. It's not
23 fair to require a defense under those circumstances.

24 MR. SIMONS: I'm sorry. You said it's denied, because it's
25 untimely?

1 THE COURT: It's untimely.

2 MR. SIMONS: Okay. Thank you.

3 THE COURT: All right. So the next matter is with regard to
4 N.R.S. 163. Mr. Simons.

5 MR. SIMONS: Again, this one deals with a possible
6 timeliness issue, because it may be that this is continued and revisited
7 after the trial, given that we need to see or should see whether there is a
8 judgment or not a judgment, or excuse me, jury verdict or not a jury
9 verdict entered to determine what steps, if any, the Court should take at
10 that time. I understand that. We -- when this type of notice issue is
11 brought to the Court's attention, steps must be taken. We notified the
12 Court of the various activities. You asked for additional briefing on the
13 discretionary aspect.

14 We've shown you that there is a discretionary aspect. It's not
15 just a black and white 30 days. That hands are -- the Court used the
16 phrase, hands are tied. I don't believe that applies or is in existence on
17 this one. So even though we brought the motion, in the alternative
18 relief, it may be necessary again that we deal with it after the trial.
19 Otherwise, then we're asking preliminarily now that you grant,
20 depending on the outcome of the case, the jury's verdict, that we then
21 take the 163 steps and the Court suspends entry of judgment until 163 is
22 able to be complied with.

23 THE COURT: Okay. And the argument for the discretion if
24 have to do that? Because the Texas case was a contingent beneficiary.

25 MR. SIMONS: Well, it -- that doesn't matter. The benefic --

1 whether it's a contingent beneficiary or not, is entirely irrelevant. What
2 the court looked at -- and it's a uniform trust act, okay? So they look at
3 and say what do we do in this situation? The courts don't automatically
4 say don't give beneficiaries an opportunity and don't prejudice the
5 Plaintiff. Don't harm the Plaintiff. We want to deal with things on the
6 merits. And in fact, the California case, when dealing with discretion
7 says apply discretion, not to be arbitrary or prejudicial to parties.

8 So the Texas case actually said judgment was entered. What
9 we're going to do is -- trial court vacated the judgment. Go do the
10 notice. Let's take steps to comply with given notice to the beneficiaries.
11 And in this case, the lead trustee is the lead beneficiary. So the Court in
12 this situation needs to exercise its discretion or at least postpone it to see
13 what happens at the end of the day. To come in and say before trial, Mr.
14 Simons, you asked for a continuance, so we can comply and now I'm
15 going to deny that.

16 And then I'm even going to deny that before trial, that you
17 don't get to move forward with N.R.S. 163 relief. It is not supported by
18 the case law. It's not supported by the language of discretionary
19 application. It's not supported by the policy of Nevada to deal with
20 matters on their merits and it's not appropriate to deal with the let's
21 penalize a party on the technical component when the Court is vested
22 with discretion to achieve fairness and justice.

23 THE COURT: Thank you.

24 MR. WIRTHLIN: Thank you. Good morning. I'll be brief. The
25 Court hit directly on the point that we're going to make and which we

1 made in our supplemental briefing, which is under this statute and in the
2 situation that has arisen, because of the Plaintiff's failure to give notice to
3 the beneficiaries of the Rogich Trust as required under the statute, there
4 is no discretion for the Court at this point to do anything other than find
5 in favor of the Trust against all Plaintiff's claims and dismiss the Trust.
6 As the Court noted, the Trans American case is distinguishable in that it
7 involved contingent beneficiaries and importantly, does not involve
8 N.R.S. 12.130, which requires intervention before trial.

9 And the beneficiaries cannot now do that. There is discretion
10 in certain instances. That's the BB&T case, where this issue is brought
11 up long before. I think in that case it was two years before there was
12 ever a judgment entered. And in that case, the demand was made for
13 the names of the trust beneficiaries and not provided by the trustee. And
14 the Court therefore in that case affixed a different time. This is an
15 entirely different situation, Your Honor.

16 We're talking about trustees. And I think as was mentioned
17 in the opening argument, that the Court should not be prejudicial to the
18 parties. But I think the consideration that needs to be made and is made
19 embodied in Chapter 163 is the prejudice to the trust beneficiaries, six of
20 whom we know in Mr. Rogich' declaration are minors, one of whom has
21 special needs. They may require appointment of other representatives
22 or guardian ad litem. That is why the statute provides and requires that
23 the beneficiaries be given notice, Your Honor, pursuant to the statute.

24 And again, I don't think it's -- I don't think can forget that the
25 statute contemplates giving that even 30 days after the JCCR is entered.

1 So unless the Court has any questions, we'll rest on our pleadings.

2 THE COURT: Does anyone else wish to weigh in? Then your
3 reply, please.

4 MR. SIMONS: Again, the Court is to look to not be unfair, to
5 not be prejudicial. The Court is to seek mechanisms to effectuate justice
6 and to try cases on the merits. We just heard now that the Rogich Trust
7 wants to be dismissed from the case right before the jury is empaneled.
8 That demonstrates the gamesmanship. After over five years, after this
9 Court rendering verdict -- judgments in favor of the Rogich Trust to come
10 in and say no, we're out of the case now. That's unfair. That's
11 prejudicial to the Plaintiff. There's a mechanism that's embodied in the
12 statute that deals with this situation.

13 Case law demonstrates the Judge is supposed to exercise
14 discretion and to deal with the notice to give opportunities to see if it
15 even matters, to determine whether those beneficiaries are
16 indispensable parties or not indispensable. In fact, the Texas case said
17 you know what, you beneficiaries aren't indispensable. Your interests
18 were adequately represented, just as in this case, just as in five years
19 and two sets of lawyers. So as we've requested, the Court either
20 suspend to see what the outcome of the trial is and/or grant the motion,
21 so that we can take the appropriate steps in the event the verdict is in our
22 favor against the Rogich Trust.

23 THE COURT: Thank you. The Court has taken judicial notice
24 of N.R.S. 163.120, which has very definite timelines with regard to the
25 rights of beneficiaries of a trust that has been sued. Here I find that the

1 fact that the notice was so late with regard to the request for information
2 about who the beneficiaries are. The time hasn't even passed for the
3 trust to have to notify you who the beneficiaries are. The whole point of
4 that statute is to allow intervention. N.R.S. 12.130 requires intervention
5 to occur before trial. There's no way those beneficiaries can seek to
6 intervene at this point. So I am going to dismiss the Trust.

7 MR. SIMONS: I'm sorry. You said you're dismissing the
8 Rogich Trust?

9 THE COURT: I am.

10 MR. SIMONS: And you're going to deny discretionary relief
11 under 163?

12 THE COURT: That's correct.

13 MR. SIMONS: Okay. Are you going to allow us to continue
14 and prove to the jury the claims against the Rogich Trust?

15 THE COURT: No. Now, if that affects how you're going to
16 put your case on, do you want a half an hour?

17 MR. SIMONS: Here's what I'd like to do. I'd like to file an
18 emergency motion with the Supreme Court to take this on up on writ.
19 Can we suspend the case, continue the case while I'm allowed to do that,
20 because --

21 THE COURT: Is there --

22 MR. SIMONS: -- this is a significant issue of law --

23 THE COURT: I understand.

24 MR. SIMONS: -- and as you recognize, we have the
25 opportunity to take these things up on writs.

1 THE COURT: Of course. Is there -- do you guys want to
2 recess to -- or are you prepared to respond?

3 MR. WIRTHLIN: Your Honor, I'm not prepared to respond.
4 Can we have a brief recess?

5 THE COURT: Yes.

6 MR. WIRTHLIN: Thank you.

7 THE COURT: Take the time you need, 10, 15 minutes and let
8 me know when everyone's ready. I'll come right back.

9 [Recess at 10:29 a.m.]

10 THE BAILIFF: Court is back in session. Remain seated,
11 please.

12 THE COURT: Please remain seated. Thank you.

13 Defense, are you ready to respond?

14 MR. WIRTHLIN: Yes, Your Honor, we are. And we have
15 spoken amongst ourselves and with Plaintiff's counsel and we would be
16 in agreement to suspend the trial with a few qualifications, which we're
17 all in agreement on, if the Court approves them. The trial has started, so
18 there would be a suspension of the trial, not a continuation. The Trust
19 has been dismissed as a party, so the Trust would not be required to
20 provide any names or other information regarding the beneficiaries of
21 the Rogich Trust and that the parties remaining have the opportunity to
22 file a dispositive motion during the suspension to tee-up the remaining
23 issues concerning the remaining parties, if the Court approves.

24 THE COURT: Are you in agreement to those three
25 conditions?

1 MR. SIMONS: I think we are, except for number 2 and the
2 reason -- number 2 is the no response and it's because I'm not -- I
3 requested I have the opportunity to brief it and their response is we
4 wanted to submit it to the Court and see. And so that's the only one I'm
5 not in agreement with, because I don't know and I didn't have the
6 opportunity clearly to see what effect the statute says, if it has to be a
7 party or not. I'm not really sure.

8 THE COURT: Okay.

9 MR. SIMONS: In order to respond to a 163 notice.

10 MR. LIEBMAN: We're in agreement with all those conditions,
11 Your Honor.

12 THE COURT: So, if there's not an agreement to all terms --

13 [Pause]

14 THE COURT: Mr. Simons, if there's not an agreement to all
15 terms, then do we go forward today? What --

16 MR. SIMONS: I'm grabbing 163.

17 THE COURT: I have it up.

18 MR. WIRTHLIN: Mark, I don't know if you want me to point
19 to it, but just that first line of Subsection 2. A judgment may not be
20 entered in favor of the Plaintiff in the action --

21 MR. SIMONS: Yeah.

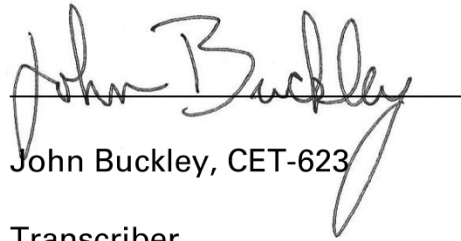
22 MR. WIRTHLIN: -- contemplates the loss.

23 MR. SIMONS: I think what you're saying is correct. So given
24 the language, I think what we need to do is also take that issue up on the
25 writ.

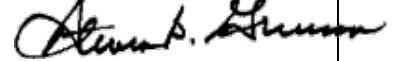
1 THE COURT: So does that mean there's consent to
2 suspension, the Trust is not required to respond and the remaining
3 parties can still file dispositive motions? Is that --
4 MR. WIRTHLIN: As far as we're concerned Your Honor.
5 MR. LIEBMAN: Yes, Your Honor.
6 UNIDENTIFIED SPEAKER: Yes.
7 UNIDENTIFIED SPEAKER: Yes.
8 THE COURT: All right. Now, I don't know if for -- this is --
9 may or may not matter whether or not your five-year rule -- there hasn't
10 been a witness -- we haven't had any witnesses, so it's just something to
11 think about.
12 MR. SIMONS: It's actually been satisfied, since we've
13 commenced the trial.
14 THE COURT: Okay. Good enough. So I guess we're in
15 recess until another matter is brought to my attention at this point.
16 MR. WIRTHLIN: Thank you, Your Honor.
17 MR. LIEBMAN: Yes, Your Honor.
18 THE COURT: Thank you, all.
19 MR. LIEBMAN: Thank you.
20 [Proceedings concluded at 10:52 a.m.]
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ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case to the
best of my ability.


John Buckley, CET-623
Transcriber

Date: April 22, 2019



Samuel S. Lionel, Esq. (Bar No. 1766)
Thomas Fell, Esq. (Bar No. 3717)
Brenoch Wirthlin, Esq. (Bar No. 10282)
FENNEMORE CRAIG, P.C.
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Tel.: (702) 692-8000; Fax: (702) 692-8099
Email: slionel@fclaw.com
tfell@fclaw.com
bwirthlin@fclaw.com

*Attorneys for Sigmund Rogich, Individually and as
Trustee of the Rogich Family Irrevocable Trust and
Imitations, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

v.

TELD, LLC, a Nevada limited liability
company; PETER 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

**REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OR
ALTERNATIVELY FOR JUDGMENT
AS A MATTER OF LAW
PURSUANT TO NRCP 50(a)**

Hearing Date: 7/31/2019

Hearing Time: 10:30 a.m.

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

1 The Moving Defendants hereby submit this Reply in support of their Motion for Summary
2 Judgment or in the Alternative Motion for Judgment as a Matter of Law Pursuant to NRCP 50(a)
3 (“Motion”)¹ as follows:

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

6 Nanyah’s opposition (“Opposition”) to the Motion provides no basis for this Court to
7 deny the Motion for multiple reasons, including the following:

8 **First, Nanyah’s Opposition is untimely and should be disregarded.**
9 Pursuant to the revised NRCP, Nanyah’s Opposition did not meet the required
10 deadline.

11 **Second, Nanyah does not and cannot dispute that Mr. Rogich,**
12 **individually, never made any promises to, or for the benefit of Nanyah.** In
13 fact, Nanyah does not even dispute this point. Accordingly, Nanyah’s first, second
14 and third claims for relief – all of which require that Mr. Rogich have made
15 individual promises to, or for the benefit of, Nanyah, fail as a matter of law.

16 **Third, Nanyah’s conspiracy claim has no evidence whatsoever to**
17 **support it.** Nanyah does not offer a single affidavit or declaration, document or
18 other piece of admissible evidence that in any way supports its sixth claim for
19 relief.

20 **Fourth, Nanyah’s proffered “alter ego” defense fails as a matter of**
21 **law.** Nanyah itself acknowledges that such a “defense” is raised far too late in this
22 process, and improperly as well since Nevada case law requires that it be pleaded
23 separately, which it has not been and cannot now be.

24 **Fifth, all defenses available against Go Global, including judicial**
25 **estoppel, bar Plaintiff’s claims.** Plaintiff’s own cited authority, in particular the
26 *Hartford* and *Morelli* decision, recognize that a third party beneficiary has fewer –
27 not more – rights than the original promisee. Neither decision, and in fact no
28 decision in Nevada jurisprudence, limits the holding in *Gibbs* that all defenses
available against a promisee are available against a third party beneficiary.
Because Plaintiff’s claims would be barred if brought by Go Global, they are
barred when brought by Nanyah, a **purported** third party beneficiary.

///

¹ Unless otherwise stated, all capitalized terms have the definitions given to them in the Motion.

1 **Finally**, Nanyah's Opposition makes clear it cannot raise a genuine
2 issue of material fact regarding any remaining claims. Nanyah's Opposition
3 offers only argument – inaccurate argument as shown forth below –in response to
4 the Motion. The only affidavit even submitted by Nanyah is its own counsel's
5 affidavit. The limited documentation it does attach to its Opposition is either
entirely inappropriate – such as the offer of judgment – or deliberately
misrepresented by Nanyah.

6 The Supreme Court of Nevada recently “emphasize[d] the important role of summary
7 judgment in promoting sound judicial economy” by reiterating that “Courts should not hesitate to
8 discourage meritless litigation in instances where, as here, claims are deficient of evidentiary
9 support and are based on little more than the complainants' conclusory allegations and
10 accusations.” See *Boesiger et al. v. Desert Appraisals, LLC, et al.*, 135 Nev. Adv. Op 25 (July 3,
11 2019). The Plaintiff's remaining claims present just such an instance. Accordingly, the Motion
12 must be granted in full.

13 **II. LAW AND ARGUMENT**

14 **A. Nanyah's Opposition is untimely and must be disregarded.**

15 As a threshold matter, Nanyah's Opposition is untimely and should, therefore, be stricken
16 in its entirety pursuant to EDCR 2.20(e). Rule 2.20(e) of the Eighth Judicial District Court Rules
17 states the following:

18 (e) **Within 10 days** after the service of the motion...the opposing
19 party **must serve and file** written notice of nonopposition or
20 **opposition** thereto, together with a memorandum of points and
authorities and supporting affidavits, if any, stating facts showing
21 why the motion and/or joinder should be denied. **Failure of the**
22 **opposing party to serve and file written opposition may be**
construed as an admission that the motion and/or joinder is
meritorious and a consent to granting the same.

23 EDCR 2.20(e)(emphases added).

24 Effective March 1, 2019, NRCP 6 was amended, *inter alia*, to clarify that “days are days.”
25 The amended rule also did away with the provision that allowed three additional days when a
26 motion was served the through electronic means. Specifically, NRCP 6 (as amended) provides, in
27 relevant part, as follows:

(a) Computing Time. **The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.**

(1) **Period Stated in Days** or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) **count every day, including intermediate Saturdays, Sundays, and legal holidays**; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

...

(d) Additional Time After Certain Kinds of Service. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

See NRCP 6 (emphases added).

On May 10, 2019, the Moving Defendants e-filed/e-served their Motion for Summary Judgment. In order to compute Nanyah's Opposition deadline under NRCP 6(a), we need to exclude the filing date (as required by NRCP 6(a)(1)(A)) and then count every day, including weekends and holidays. As such, the first day is May 11, 2019, and counting out the remainder of the ten days puts the deadline as **Monday, May 20, 2019**. Even if Nanyah could have added three days for service by electronic means (which the rule no longer allows), the deadline would have been Thursday, May 23, 2019. However, Nanyah did not file and serve its Opposition until **Friday, May 24, 2019** (four (4) days after the deadline). Nanyah's failure to follow NRCP 6 is no surprise as Nanyah has developed a pattern for failing to follow this Court's rules (i.e., NRCP 11 and EDCR 2.34, 2.47 and 7.30). Consequently, the Court should strike Nanyah's Opposition entirely.

B. All contractual claims, including the breach of contract claim and both breach of good faith and fair dealing claims must be dismissed.

As an initial point, Nanyah's Opposition glaringly fails to dispute the Moving Defendants'

1 facts or arguments related to the remaining contract-related claims. Instead, in a feeble attempt to
2 revive dead claims, Nanyah asserts for the first time an alter ego “defense”. The failings of the
3 alter ego argument are discussed below, however, Nanyah’s Opposition makes clear that, by not
4 disputing the Moving Defendants’ clear interpretation of the contractual language at issue, *there*
5 *is no dispute as to the material facts presented by the Moving Defendants*. Consequently, based
6 on the undisputed facts in the Moving Defendants’ Motion the Court should grant summary
7 judgment in favor of the Moving Defendants on claims one, two and three.

8 **1. The alter ego doctrine is inapplicable to trustees such as Mr. Rogich.**

9 In addition to the dispositive argument above, Nanyah’s Opposition is entirely based on a
10 new claim that Mr. Rogich is the alter ego of the Rogich Trust. This argument is meritless. In
11 Nevada the alter ego doctrine is codified. Generally, it is limited to corporations as it is found in
12 the corporate code. *See* NRS 78.747. Nanyah asserts that the alter ego analysis is a factual
13 determination precluding summary judgment, but even if the Court applied the doctrine here, the
14 code itself states “[t]he question of whether a stockholder, director or officer acts as the alter ego
15 of a corporation **must be determined by the court as a matter of law.**” NRS 78.747(3)
16 (emphasis added). However, the trust code, which governs here, has also codified when the alter
17 ego doctrine applies in the trust context, and more importantly, when it does not. *See* NRS
18 163.418.

19 Despite the fact that Nanyah does not and cannot dispute the fact that Mr. Rogich never
20 individually made any contractual promises to, or for the benefit of, Nanyah, Nanyah selectively
21 quotes NRS 163.120(3) in an attempt to argue that Mr. Rogich is liable in his personal capacity
22 under the Agreements at issue. However, the last sentence of NRS 163.120(3) states, “[T]he
23 addition of the word ‘trustee’ or the words ‘as trustee’ after the signature of a trustee to a contract
24 **are prima facie evidence of an intent to exclude the trustee from personal liability.**” NRS
25 163.120(3) (emphasis added). Nanyah does not dispute that **Mr. Rogich signed the contracts as**
26 **trustee** for the Rogich Trust. This statute clearly explains how and when a trustee is personally
27 liable for trust contracts, and notably does not include an alter ego theory. In fact, no part of the
28

1 trust code allows the alter ego doctrine to apply to a trustee. It bears noting that legislature did
2 prescribe a method for asserting the alter ego doctrine to the settlor of a trust. That is not the
3 situation here and, therefore, does not apply.

4 The only two cases Nanyah cites to support application of this new theory of liability are
5 cases applying California law, which differs from Nevada law, and regardless, neither case
6 applies the theory to the trustee of a trust. In *Goodrich v. Briones (In re Schwarzkopf)*, the
7 assertion was a reverse alter ego theory. 626 F.3d 1032, 1039 (9th Cir. 2010). There, a trust had
8 been set up for the purpose of avoiding creditors and the court held that the trust was the alter ego
9 of the owner of the trust. In *Torrey Pines Bank v. Hoffman*, the court allowed an alter ego claim
10 against the trustor of a trust (sometimes referred to as a settlor). 231 Cal. App. 3d 308, 282 Cal.
11 Rptr. 354, 359 (Cal. App. 1991). In addition to applying California law rather than Nevada law,
12 these two cases do not support Nanyah's argument. Actually, Nevada law specifically allows
13 alter ego claims against settlors of trusts, but not trustees. See NRS 163.418 entitled "Clear and
14 convincing evidence required to find settlor to be alter ego of trustee of irrevocable trust; certain
15 factors insufficient for finding that settlor controls or is alter ego of trustee of irrevocable trust."
16 Because the legislature clearly identified when a trustee is personally liable for the debts of a trust
17 and it provided for application of the alter ego doctrine to a settlor, if the legislature intended to
18 allow the application of the alter ego doctrine to a trustee, it would have done so. Thus, Nanyah's
19 newly minted allegations for alter ego against the trustee are invalid and fail as a matter of law.

20 **2. Alter ego claims must be pleaded separately as a matter of law.**

21 Even if the alter ego doctrine applied to trustees, which it does not, binding Nevada case
22 law requires that alter ego claims must be pleaded separately. Nanyah, however, cannot plead the
23 alter ego claim separately because Nanyah is barred by the statute of limitations and Defendants
24 do not consent to Nanyah amending the Complaint at the eleventh hour.

25 Nanyah recognized that the Nevada Supreme Court has affirmatively spoken and requires
26 alter ego claims must be pleaded separately. See Opp. 3:24–4:9. Nanyah's argument that the
27 holding in *Callie v. Bowling* is not applicable to this case because the facts differ is misplaced.

1 123 Nev. 181, 160 P.3d 878 (2007). The *Callie* holding is directly applicable here because, even
2 though Mr. Rogich had notice of the action and was a named defendant, due process does not stop
3 there. In fact, the *Callie* court stated the following:

4 **A party who wishes to assert an alter ego claim must do so in an independent**
5 **action against the alleged alter ego with the requisite notice, service of**
6 **process, and other attributes of due process.** When the judgment creditor
7 employs the proper procedure, the defendant who is subject to the alter ego claim
8 is assured a full opportunity of notice, discovery, and an opportunity to be heard
9 before potentially being found liable. **The failure to abide by this procedure**
10 **results in a deprivation of due process.**

11 *Callie*, 123 Nev. at 185, 160 P.3d at 881 (emphasis added).

12 Nanyah's argument implies that asserting a new theory of liability against Mr. Rogich
13 many years after filing the Complaint, after discovery has been completed – and the trial has
14 been commenced – somehow does not violate the Mr. Rogich's due process rights. Such an
15 argument is directly contrary to mandatory Nevada precedent. Mr. Rogich had no notice that
16 Nanyah would try to assert the "alter ego" theory – not in the proper manner but rather as an
17 afterthought to attempt to avoid summary judgment – until the filing of Nanyah's Opposition!
18 Given that this dispute has been ongoing for several years, Mr. Rogich could not have reasonably
19 anticipated that Nanyah would assert an alter ego doctrine now since Nanyah chose not to assert
20 this theory at any point in the past six (6) years. Additionally, because Mr. Rogich no longer has
21 any opportunity to defend himself against this improperly asserted "defense" and cannot engage
22 in any discovery, allowing these allegations to continue without a separate cause of action would
23 further violate Mr. Rogich's due process rights. Therefore, under the holding in *Callie*,
24 Plaintiff's reliance on the "alter ego" doctrine fails as a matter of law and the Motion must be
25 granted.

26 **3. Even if the alter ego doctrine could apply in this case and did apply to**
27 **trustees – neither of which are permissible - it would not apply to the**
28 **instant situation.**

Even if Nanyah could assert an alter ego claim, which it cannot, Nanyah's alter ego claim
still fails as a matter of law. There are three elements necessary to prove liability under the alter

1 ego doctrine. A stockholder, director or officer acts as the alter ego of a corporation if: (a) The
2 corporation is influenced and governed by the stockholder, director or officer; (b) There is such
3 unity of interest and ownership that the corporation and the stockholder, director or officer are
4 inseparable from each other; and (c) Adherence to the corporate fiction of a separate entity would
5 sanction fraud or promote a manifest injustice. NRS 163.418.

6 Contrary to Nanyah's conclusory assertions that the first two elements are met, being an
7 active participant in a trust does not equate to elements (a) and (b) being met [(a) The
8 corporation is influenced and governed by the stockholder, director or officer; (b) There is such
9 unity of interest and ownership that the corporation and the stockholder, director or officer are
10 inseparable from each other]. Furthermore, Nanyah improperly attaches offers of judgment as
11 alleged proof that Mr. Rogich is the only beneficiary, or the participation of the other
12 beneficiaries is irrelevant. Opp. 4:23:-5:10. There are multiple problems with Nanyah's
13 approach. First, Mr. Rogich has previously submitted a declaration making clear he is **not** the
14 only beneficiary of the Rogich Trust. Second, and perhaps more concerning, Nanyah's
15 submission of confidential offers of judgment is not only improper, but also sanctionable conduct,
16 as Nanyah's counsel is well aware that settlement offers are not admissible evidence. See NRS
17 48.105 (explaining that offers to compromise are generally inadmissible and listing the limited
18 exceptions to this rule, none of which apply here). Thus, exhibits 1 and 2 may not be considered.
19 Additionally, Nanyah describes conduct by Mr. Rogich that is consistent with the conduct
20 required of a trustee, especially in a discretionary trust. Nanyah cannot use a trustee's duties as
21 trustee to prove that the trustee is somehow an alter ego of the trust. If this argument were
22 allowed, every trustee would be liable for its trust through the alter ego doctrine.

23 Finally, the two sentences in which Nanyah argues that the third element is met
24 [(c) adherence to the corporate fiction of a separate entity would sanction fraud or promote a
25 manifest injustice] are devoid of logic. The Court's October 5, 2018 Order that allegedly
26 concluded that the **Rogich Trust** assumed the obligation of repayment does not morph into the
27 liability of **Mr. Rogich** simply because Nanyah says it does. Nanyah argues that injustice would
28

1 occur if Mr. Rogich were allowed to “escape clear and established liability by artificially
2 attempting to shift liability to the [Rogich] [T]rust.” Opp. 5:14–15. Even if we take Nanyah’s
3 allegation as true, it would follow that the Rogich Trust owns that liability and that one cannot
4 improperly shift liability one does not have to a party that already conclusively owns that liability.
5 By Nanyah’s own assertions, the Rogich Trust rather than Mr. Rogich is the liable party (which
6 the Moving Defendants’ dispute). Thus, no injustice or fraud would be perpetuated even if
7 Nanyah’s argument were valid, which it is not, as the third element undisputedly fails.

8 Based on the undisputed facts and Nevada law, Nanyah’s alter ego “defense” – even if it
9 were properly asserted, which it is not, and could apply to trustees, which it cannot – fails as a
10 matter of law. Accordingly, the Motion must be granted.

11 C. **Because there is undisputedly no contractual relationship between Mr.**
12 **Rogich and Nanyah, Nanyah’s second claim for relief fails as a matter of law.**

13 Nanyah does not and cannot dispute that a claim for contractual breach of the covenant of
14 good faith and fair dealing requires that the claiming party have a contractual relationship with the
15 defending party. *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1046, 862 P.2d
16 1207, 1209 (1993) (“It is well established within Nevada that every contract imposes **upon the**
17 **contracting parties** the duty of good faith and fair dealing.”) (emphasis added). Because there is
18 no contractual relationship between Mr. Rogich individually and Plaintiff – even if Plaintiff were a
19 third party beneficiary of any of the agreements at issue, which it is not – as a matter of law there
20 can be no claim for contractual breach of the covenant of good faith and fair dealing. This claim
21 fails as a matter of law.

22
23 D. **Because there is undisputedly no contractual relationship between Mr.**
24 **Rogich and Nanyah, Nanyah’s third claim for relief aslo fails as a matter of**
law.

25 Plaintiff acknowledges that under Nevada law “the tort action for breach of an implied
26 covenant of good faith and fair dealing requires a special element of reliance or fiduciary duty, A.
27 *C. Shaw Const., Inc. v. Washoe County*, 105 Nev. 913, 915, 784 P.2d 9, 10 (1989) and is limited
28

1 to 'rare and exceptional cases,'" *K Mart Corp. v. Ponsock*, 103 Nev. 39, 49, 732 P.2d 1364, 1370
2 (1987). However, despite the admission of Mr. Harlap – Plaintiff's owner – that he did not even
3 know any of the defendants personally (*see* Harlap Deposition, Exhibit 14 to the Motion, at
4 141:13 – 142:4), Plaintiff asserts that there is somehow a question of fact with respect to this
5 issue. This is based on an egregious misinterpretation of Mr. Rogich's deposition testimony.
6 Plaintiff asserts that "Rogich specifically testified that he owed a fiduciary duty to Nanyah as an
7 investor in Eldorado." *See* Opposition at p. 7. But, in fact, as the deposition excerpts cited by
8 Plaintiff demonstrate, Mr. Rogich did not testify any fiduciary duty was owed to Nanyah, much
9 less any fiduciary duty *by him personally*. In fact, in the only two (2) pages cited by Plaintiff,
10 pages 174 and 175 of Mr. Rogich's deposition, Nanyah's name is not even mentioned. There is
11 no dispute that Plaintiff had no relationship with Mr. Rogich, individually, and did not even know
12 Mr. Rogich. Plaintiff offers no declaration or other document that can dispute this.
13
14

15 Moreover, Plaintiff constantly attempts to implicitly include Mr. Rogich, individually,
16 in assertions regarding what the "defendants" allegedly did or did not do. As one example,
17 Plaintiff asserts that its claim for tortious breach of the duty of good faith and fair dealing **against**
18 **Mr. Rogich individually** should not be dismissed because **the Rogich Trust** "allegedly
19 transferred its membership in Eldorado Hills to the other defendants..." *See* Opposition at p. 8.
20 Thus, even if Plaintiff's baseless and unsupported allegations were true, which they are not, they
21 could not, as a matter of law, provide any basis for finding of liability on the part of Mr. Rogich,
22 individually.
23

24 **E. Nanyah's civil conspiracy claim fails as a matter of law.**

25 Nanyah's civil conspiracy claim fails for several reasons. First, Nanyah effectively
26 abandoned this claim by acknowledging that the Agreements provided for alternative methods of
27 performance, and by choosing the monetary payment rather than the equity interest. Further,
28

1 Nanyah has not and cannot prove the elements of this claim, including intent and unlawful act.
2 Finally, the intra-corporate doctrine applies here.²

3 **1. Nanyah effectively abandoned this claim because Nanyah was not**
4 **damaged by the alleged conspiratorial act.**

5 Civil conspiracy requires: (a) two or more persons, (b) who intend, (c) to accomplish an
6 unlawful act, and (d) damage results from the act or acts. *Consol. Generator Nev., Inc. v.*
7 *Cummings Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998). Even assuming (a),
8 (b) and (c) are met, which they are not, this claim also requires damages result from the unlawful
9 act. Further, damages cannot result from the absence of one alternative.

10 As noted in the Motion, an alternative contract is “one in which a party promises to render
11 some one of two or more alternative performances either one of which is mutually agreed upon as
12 the bargained-for equivalent given in exchange for the return performance by the other party.”
13 *Minnick v. Clearwire U.S. LLC*, 174 Wash. 2d 443, 461, 275 P.3d 1127, 1136 (2012). In an
14 alternative contract, “the promisee cannot compel performance of one alternative if the promisor
15 properly elects the other.” *Chandler v. Doran Co.*, 44 Wash.2d 396, 267 P.2d 907 (1954); *see*
16 *also Bellevue Sch. Dist. No. 405 v. Bentley*, 38 Wash. App. 152, 155, 684 P.2d 793, 796 (1984).

17 In the instant matter, Nanyah clearly and unambiguously acknowledged that the
18 Agreements upon which this claim is based provided for two alternative methods of performance.
19 *See* Plaintiff’s MSJ, exhibit 15 of Defendants’ MSJ, at page 3, note 1. Moreover, Nanyah elected
20 the monetary payment option as the method of performance. *Id.* Consequently, Nanyah cannot
21 maintain any cause of action with respect to its purported failure to receive an equity interest in
22 Eldorado. Thus, Nanyah has abandoned this claim by choosing the alternative performance,
23 which precludes damages based on the other performance option.

24 **2. Nanyah has offered no admissible evidence whatsoever that would**
25 **preclude summary judgment on its sixth claim for relief.**

26 _____
27 ² In Section (B)(2) Nanyah alleges that there is a question of fact as to which trust was
28 involved in the Agreements at issue. It is clear by the signatures in the Agreements which trust
was involved, however, it is a moot point as neither trust is a party to this action at this point.

1 The Moving Defendants supported their argument that no intent to accomplish an
2 unlawful act ever occurred with, among other things, Mr. Rogich's declaration denying any
3 unlawful intent. The burden then shifted to Nanyah to provide evidence that a genuine dispute as
4 to material facts supporting the intent element exists. Nanyah failed to meet this burden.
5 **Nanyah cannot offer any admissible evidence whatsoever of an actionable conspiracy.** The
6 citation to Mr. Rogich's deposition testimony is misleading at best. The signature referenced on
7 page 124 of Mr. Rogich's deposition was a signature by the Rogich Trust, not Mr. Rogich
8 individually, and only states that the intent at issue was to "negotiate" potential claims with Mr.
9 Huerta's assistance. *See* Opposition at p. 12.

10 Recognizing this fatal flaw, Nanyah asserts that there are factual issues with respect to
11 which trust is a party to this action. *See* Opposition at p. 11. This is inaccurate. Nanyah itself
12 may be unclear on this point, but there is no dispute about which trust was named a party in this
13 lawsuit. There is also no dispute that the documents provided by Nanyah referencing a different
14 trust – in addition to being inadmissible as hearsay – clearly do not reference the trust which
15 Nanyah decided to sue in this action. Accordingly, Nanyah cannot establish a genuine issue of
16 material fact to defeat summary judgment based upon its own alleged confusion.

17 Moreover, as noted above, it bears repeating that not only did Nanyah fail to meet its
18 burden with regard to evidence of intent to harm, Nanyah also failed to provide evidence of an
19 unlawful act. Even if we assume that Mr. Rogich could be liable under the alter ego doctrine,
20 Nanyah has not and cannot assert facts that Defendant Imitations ever owed a debt to Nanyah. As
21 such, even if we also assume that Defendant Imitations did intend to not pay Nanyah the \$1.5
22 million, it was not Defendant Imitations' debt under even the Plaintiff's allegations in the
23 Complaint. Therefore, Defendant Imitations could not have intended to engage in an unlawful act
24 because Defendant Imitations owed Nanyah nothing. Nanyah also does not dispute that Mr.
25 Rogich is not personally liable for the debt unless the Court finds that Mr. Rogich was the alter
26 ego of the Rogich Trust. Thus, absent the alter ego argument, Mr. Rogich personally cannot have
27 conspired to commit an unlawful act where he owed no duty to Nanyah.

1 **3. The intra-corporate doctrine applies and, therefore, this claim must**
2 **fail as a matter of law.**

3 As explained above, the Defendant Imitations could not be a party to the alleged
4 conspiracy because there could be no unlawful breach of the Agreements to which Defendant
5 Imitations was not a party. Additionally, Nanyah does not dispute that Mr. Rogich was not a
6 party to the Agreements in his personal capacity (as they pertain to Nanyah) and, thus, also could
7 not have unlawfully breached the Agreements. Nanyah maintains that the intra-corporate
8 doctrine does not apply because of the application of the alter ego doctrine, which again does not
9 apply to trustees. Because the alter ego doctrine does not apply here, for all the reasons provided
10 above, the intra-corporate doctrine applies. Even if the alter ego doctrine did apply to trustees,
11 Nanyah misses the obvious flaw in its argument—Mr. Rogich cannot conspire with himself as
12 Mr. Rogich personally and Mr. Rogich as trustee. It goes without saying that conspiracy requires
13 two or more distinct persons to meet the two or more element.

14 Accordingly, because Nanyah has not provided facts to support any of the elements
15 required for a civil conspiracy claim, and the intra-corporate doctrine applies, the claim must fail
16 as a matter of law.

17 **F. All defenses available against Go Global are available against Nanyah.**

18 Despite the clear statement in *Gibbs v. Giles*, 96 Nev. 243, 246–47, 607 P.2d 118, 120
19 (1980), that “a third-party beneficiary takes subject to any defense arising from the contract that is
20 assertible against the promisee”, Plaintiff asserts that somehow it should not be subject to this
21 rule. For purposes of this argument, the Moving Defendants in no way concede that Nanyah was
22 in fact a third-party beneficiary of any of the Agreements, but even if it were determined to be its
23 argument would fail as a matter of law.

24 First, it is irrelevant whether or not the grounds for summary judgment against Go Global
25 and Huerta arose from the Agreements at issue, and Plaintiff has no authority supporting his
26 contrary assertion. The single case Plaintiff does cite is the statement in *Hartford Fire Ins. Co. v.*
27 *Trustees of Const. Indus.*, 125 Nev. 149, 156–57, 208 P.3d 884, 889 (2009) that “the notion that a
28

1 third-party beneficiary steps into the shoes of a contracting party is a ‘misstatement of the law’ ”.
2 True, the *Hartford* opinion contains this statement. However, the context of the statement
3 actually shows that this statement **limits** the rights granted to a third party beneficiary, it does not
4 expand them, nor does it conflict with the Nevada Supreme Court’s holding in *Gibbs* that a
5 purported third party beneficiary is limited by “**any defense**” that could be asserted against the
6 promise. In fact, the issue in *Hartford* was whether a trustee even had standing to file a claim on
7 a payment bond. The trustee asserted that it did because it was a third party beneficiary of the
8 party that would have such a claim, the *Hartford* court held that the trustee did not have the
9 necessary standing specifically because while the Court held that while it had “recognized that a
10 third-party beneficiary has a direct right of action against the promisor in contract, *Hemphill v.*
11 *Hanson*, 77 Nev. 432, 436 n. 1, 366 P.2d 92, 94 n. 1 (1961), **that right is not necessarily carried**
12 **forward to claims against a nonparty surety, which are allowable by statute.**” *Hartford*, 125
13 Nev. at 156 (emphasis added). Thus, even though the promisee had that right, a third party
14 beneficiary did not. *Nowhere does the Hartford decision limit the holding in Gibbs.* And, in
15 fact, the *Morelli* case cited by *Hartford* specifically notes that such defenses are not limited, and
16 that a third party beneficiary has fewer – not more – rights than the original promisee:

17 Finally, the contract also provides that respondent will “pay the cost of tuition for
18 the college or other school as the parties may reasonably agree upon as the college
19 or other school most appropriate for attendance by such child or children.” That
20 provision requires the reasonable agreement of the parties. However, the parties
21 are the husband and wife. Once the wife died, the provision could no longer
22 operate. **Respondent contends that appellant, as a third party beneficiary,**
steps into the shoes of the wife. Such an interpretation is a misstatement of the
law. A third party beneficiary who seeks to enforce a contract does so subject
to the defenses that would be valid as between the parties.

23 *Morelli v. Morelli*, 102 Nev. 326, 329, 720 P.2d 704, 706 (1986) (emphasis added).

24 Accordingly, even if Plaintiff could be a third party beneficiary of any of the Agreements,
25 which it is not, all defenses available against Go Global – including judicial estoppel – operate as
26 a matter of law against Plaintiff to bar its claims in this matter. As such the Motion must be
27 granted.
28

1 **III. CONCLUSION**

2 For all these reasons, the Moving Defendants request that summary judgment be entered
3 in their favor on all remaining claims, that Plaintiff Nanyah Vegas, LLC, be awarded nothing on
4 its claims against the Moving Defendants, and for such other and further relief as the Court deems
5 just and proper.

6 DATED July 24, 2019.

7 **FENNEMORE CRAIG, P.C.**

8
9 By: /s/ Brenoch R. Wirthlin
10 Samuel S. Lionel, Esq. (Bar No. 1766)
11 Thomas Fell, Esq. (Bar No. 3717)
12 Brenoch Wirthlin, Esq. (Bar No. 10282)
13 Attorneys for the Moving Defendants
14
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.,
3 and that on the 24th day of July, 2019, I caused to be electronically served through the Court's e-
4 service/e-filing system, true and correct copies of the foregoing **REPLY IN SUPPORT OF**
5 **MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY FOR JUDGMENT AS**
6 **A MATTER OF LAW PURSUANT TO NRCP 50(a)** properly addressed to the following:

7
8 Mark Simons, Esq.
9 **SIMONS HALL JOHNSTON PC**
6490 South McCarran Blvd., #F-46
Reno, Nevada 89509
10 *Attorney for Plaintiff Nanyah Vegas, LLC*

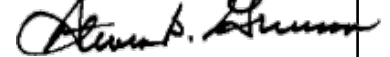
11 Charles E. ("CJ") Barnabi, Jr.
12 **COHEN JOHNSON PARKER EDWARDS**
375 E. Warm Springs Road, Suite 104
13 Las Vegas, NV 89119
14 *Attorney for Plaintiffs Carlos Huerta*
and Go Global

15 Dennis Kennedy
16 Joseph Liebman
17 **BAILEY ♦ KENNEDY**
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
18 *Attorneys for Defendants Pete Eliades,*
Teld, LLC and Eldorado Hills, LLC
19 Michael Cristalli
20 Janiece S. Marshall
21 **GENTILE CRISTALLI MILLER**
ARMENTI SAVARESE
410 S. Rampart Blvd., Suite 420
22 Las Vegas, NV 89145

23
24 /s/ Morganne Westover
An employee of **Fennemore Craig, P.C.**

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

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Steven D. Grierson
CLERK OF THE COURT



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

10 *Attorneys for Nanyah Vegas, LLC*

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

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

20 Plaintiffs,

21 v.

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

27 Defendants.

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

Plaintiff,

v.

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

Defendants.

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

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

**NANYAH VEGAS LLC'S
OPPOSITION TO ELDORADO
HILLS, LLC'S MOTION FOR
DISMISSAL WITH PREJUDICE
UNDER RULE 41(e)**

1 Plaintiff Nanyah Vegas, LLC ("Nanyah"), by and through its undersigned counsel,
2 Mark G. Simons of SIMONS HALL JOHNSTON PC, submits the following opposition to
3 the Motion for Dismissal with Prejudice Under Rule 41(e) ("the Motion") filed by Defendant
4 Eldorado Hills, LLC (Eldorado).

5
6 **I. THE INSTANT MOTION IS WITHOUT MERIT AND NOT BROUGHT IN GOOD FAITH.**

7 The present motion filed by Eldorado is meritless and inappropriate. Eldorado
8 wrongly contends that Nanyah's claims against Eldorado must be dismissed with
9 prejudice pursuant to NRCP 41(e). Eldorado files this baseless motion even though
10 Eldorado expressly stipulated in writing and affirmed on the record that the trial
11 "commenced" in this action pursuant to NRCP 41(e) within the applicable time period.
12 Further, Eldorado expressly stipulated to a "stay" of proceedings, which "stay"
13 automatically tolls the applicable time period contained in NRCP 41(e). In order for
14 Eldorado's motion to succeed, Eldorado's own counsel blatantly ignores his own
15 stipulations and oral representations to this Court. As discussed herein, Eldorado's
16 motion is baseless, frivolous and clearly not brought in good faith.

17
18
19 **A. PROCEDURAL HISTORY.**

20 Nanyah, Carlos Huerta, and Go Global, Inc. filed suit against Eldorado, Sig Rogich,
21 and the Rogich Trust on July 31, 2013. Nanyah filed an amended complaint claiming
22 unjust enrichment with respect to Eldorado on October 21, 2013. Eldorado moved for
23 partial summary judgment based on statute of limitations defense on July 25, 2014. The
24 Court granted the motion and dismissed the unjust enrichment claim against Eldorado on
25 September 25, 2014.

26
27 Nanyah appealed the Court's ruling and the Nevada Supreme Court ruled in favor
28 of Nanyah and reversed this Court's decision and remanded the case in an order entered

1 on February 12, 2016. Remittitur issued and was received in the trial court on April 29,
2 2016.

3 Nanyah filed a new action against Rogich, The Rogich Trust, Imitations, LLC, Teld,
4 LLC, Peter Eliades, and the Eliades Survivor Trust on November 4, 2016. The two cases
5 were consolidated on March 31, 2017. In a stipulation filed on September 21, 2017, the
6 parties stipulated to apply the NRCP 41(e) time frame from remittitur in the "lead case on
7 July 21, 2016".
8

9 **B. APRIL 22, 2019 TRIAL TRANSCRIPT.**

10 On the day of trial, April 22, 2019, this Court granted Rogich Trust's oral request
11 for dismissal based on noncompliance with NRS 163.120. This Court specifically found
12 that NRS 12.130 required intervention to occur "before trial" and since the trial had
13 "started" the beneficiaries could not intervene. **Exhibit 1**, Trial Transcript, p. 13. Because
14 this Court found that the trial had already "started" and no beneficiaries were able to
15 intervene, Nanyah immediately requested that the trial be "suspended" so that it could
16 immediately pursue a writ petition in the Nevada Supreme Court. Id.
17

18 After a brief recess, the Rogich Trust's attorney placed the parties' stipulation on
19 the record and specifically identified the critical points as follows:
20

- 21 • "[W]e would be in agreement **to suspend the trial with a few**
22 **qualifications, which we're all in agreement on . . .**" Id., p. 14:15-16
(emphasis added).
- 23 • **"The trial has started, so there would be a suspension of the trial, not**
24 **a continuation.** Id., p. 14:17-18 (emphasis added).
- 25 • MR. Liebman: **"We're in agreement with all those conditions Your**
26 **Honor."** Id., p. 15:10-11 (emphasis added).

27 This Court then requested that the parties "consent" to "suspension" of the trial. Id.
28 p. 16. All counsel then expressly "consented" that the trial had been commenced and had

1 been "suspended" by stipulation of the parties so that Nanyah could pursue its Writ. Id.
2 Again Eldorado's undersigned counsel Mr. Liebman specifically stated: "**Yes, Your**
3 **Honor**" in response to the Court's question if Eldorado stipulated to the suspension of the
4 trial. Id. (emphasis added). The stipulations of the parties placed on the record on April
5 22, 2019, are hereinafter referred to as the "Stipulation".
6

7 On April 22, 2019, the Court specifically inquired into the NRCP 41(e) issue and
8 Nanyah's counsel affirmed that since the trial had "officially started" pursuant to the
9 stipulation of counsel, NRCP 41(e)'s provisions were fully satisfied. NRCP 41(e)(4)(A)
10 (only requires that the action "be brought to trial" to satisfy the rule's requirements).
11 Nanyah's counsel informed the Court and all parties that since everyone stipulated that
12 the trial had "commenced", the present action was "brought to trial", NRCP 41(e)'s
13 provisions were fully satisfied. Id., p. 16:12-13.
14

15 **C. APRIL 30, 2019 ORDER.**

16 The parties then documented the Stipulation upon which this Court entered its April
17 30, 2019, holding that the trial had commenced and that the parties' stipulated to a stay of
18 the proceedings to allow Nanyah to pursue its Writ.¹ In its order entered on April 30,
19 2019, this Court specifically found that the trial in this action "commenced" on April 22,
20 2019. **Exhibit 2**, Order, p. 3:3. In fact, the Court specifically highlighted that the Rogich
21 Trust's motion to dismiss occurred after the trial had already commenced. Id. Further
22 this Court Ordered the parties to present the Court with a stipulation addressing the "stay
23 of this action." Id. p. 4:7. Accordingly, this Court appropriately treated the suspension of
24 the trial as a stay of the action.
25
26

27 _____
28 ¹ The stay did not prevent further dispositive motions from being filed.

1 **D. MAY 16, 2019, STIPULATION AND ORDER.**

2 In conformance with this Court's Order, the parties filed their stipulation on May 16,
3 2019, which this Court adopted as its Order. **Exhibit 3** ("Stip/Order"). Pursuant to the
4 express terms of the Stip/Order, the parties stipulated

- 5
- 6 • "[D]uring the trial" Nanyah "requested the jury trial be suspended" to
7 allow it to pursue a writ. Id., p. 2:6 (emphasis added).
 - 8 • "Defendants provided stipulated conditions for suspending the jury trial,
9 **which were placed upon the record, agreed to by all parties and** approved
10 by the Court". Id., p. 2:9-10.
 - 11 • The "trial was suspended". Id., p. 2:11.
 - 12 • "The trial in this matter is suspended." Id., p. 2:14.

13 The foregoing Stipulation, Order and Stip/Order all demonstrate that Eldorado's motion is
14 factually and legally baseless and filed in bad faith.

15 **II. THE STIPULATION, THE ORDER AND THE STIP/ORDER CONCLUSIVELY**
16 **ESTABLISH THAT FOR PURPOSES OF THIS PROCEEDING, THE PARTIES**
17 **STIPULATED THAT THE TRIAL WAS COMMENCED SO AS TO SATISFY**
18 **NRCP41(E).**

19 Eldorado's motion attempts a wholesale recharacterization of the Stipulation, the
20 Order and the Stip/Order entered in this matter based on commentary included in a
21 footnote in Nanyah's Writ Petition filed by Nanyah in Nevada Supreme Court Docket No.
22 79072. Eldorado take's the comment in Nanyah's footnote out of context in an effort to
23 misrepresent Nanyah's statement to this Court.

24 Nanyah's Writ noted to the Nevada Supreme Court that while the trial had been
25 "commenced" the actual starting of the trial was a "misnomer" because the actual trial
26 was never started.² Nanyah referenced the "misnomer" to show the Nevada Supreme

27 ² Nanyah's footnote 8 of its Writ notes that the parties stipulated the trial was
28 commenced, that label is a "misnomer" because the actual trial proceedings were

1 Court that the accoutrements that accompany an actual trial never occurred. This
2 statement was made to demonstrate that while the trial had started and was "suspended"
3 pursuant to stipulation of the parties, there would be no prejudice to the Rogich Trust
4 beneficiaries on intervention because the traditional aspect of the trial had not
5 commenced as of April 22, 2019.
6

7 Regardless of Nanyah's footnote, it is undisputed that a jury had not been
8 impaneled, no exhibits had been marked, no witnesses had been sworn and no opening
9 statements had occurred. Further, Nanyah's footnote does not change the legal effect of
10 Eldorado's counsel's Stipulation, the Order and the Stip/Order or the specific finding by
11 this Court that the trial had started. The Stipulation, the Order and the Stip/Order all
12 remain in effect and Nanyah could not vacate or change it merely by stating something in
13 a footnote to a brief. Even if Nanyah had conceded in its writ petition that the trial had not
14 actually commenced (which it did not and does not), such concession does not change
15 the character of the Stipulation, the Order or the Stip/Order. Put another way, Nanyah
16 cannot change the Stipulation, the Order or the Stip/Order by arguing that it was a
17 "misnomer" to call it something different in a subsequent pleading. *See e.g., Jarbough v.*
18 *Attorney General of the United States*, 483 F.3d 184, 189 (3d Cir. 2007) (in immigration
19 case, noting "[w]e are not bound by the label attached by a party to characterize a claim
20
21
22

23 _____
24 never started. Specifically, Nanyah stated: "Due to the "suspension" of the trial in
25 this action, the beneficiaries remain fully capable of intervening if such action is
26 warranted "prior to" trial in this action. This is because the use of the phrase
27 "suspension" of the trial is a misnomer. The trial was never actually started. Other
28 than the ruling addressed herein, no other action occurred on April 22, 2019; no
jury was empaneled, no evidentiary stipulations were placed on the record and no
exhibits were marked. Further, there is no record of any jury panel even being
called for the case."

1 and will look beyond the label to analyze the substance of a claim. To do otherwise
2 would elevate form over substance”).

3 **III. FOR THIS COURT TO FIND THAT THE TRIAL WAS NOT COMMENCED**
4 **WOULD BE NONSENSICAL.**

5 As noted above, this Court has already found that the trial commenced on April 22,
6 2019. This ruling was critical to this Court’s order granting the motion to dismiss the
7 Rogich Trust based upon alleged noncompliance with NRS 163.120. This Court found
8 that Nanyah could not comply with NRS 163.120 in a timely manner because **trial had**
9 **commenced** and therefore, the beneficiaries could not intervene. It is inconceivable that
10 this Court could find that trial had commenced in order to dismiss the claims against the
11 Rogich Trust, and then turn around and find that trial had not commenced in order to
12 dismiss the claims against Eldorado. It is one or the other, the Court cannot have it both
13 ways. Now that Eldorado has specifically stipulated that the trial had started and that a
14 stay of proceedings is in effect, Eldorado and this Court are bound by those repeated
15 findings.
16

17 **IV. BECAUSE THERE IS A COURT ORDER IN PLACE SUSPENDING THE**
18 **TRIAL, THE PERIOD UNDER NRCP 41(e) IS TOLLED.**

19 Even if this Court elects to disregard (1) Eldorado’s counsel’s stipulations on the
20 record that the trial commenced and was “suspended”, (2) its own Order finding that the
21 trial had started and was thereafter “stayed”; and (3) the Stip/Order again affirming that
22 “during trial” the action was suspended allowing Nanyah the opportunity to pursue its Writ,
23 and somehow concludes that the trial was not commenced, Eldorado’s argument still
24 fails. Eldorado erroneously argues in its motion that “The only way to avoid dismissal is
25 to bring the case to trial or obtain a written stipulation to extend the time.” Motion, p. 6.
26 This is a misstatement of the law.
27
28

1 In addition to the foregoing, the Nevada Supreme Court has recognized two
2 additional events that toll the NRCP 41(e) period, "the time during which a medical
3 malpractice case is pending before a medical screening panel, and a court-ordered stay
4 of district court proceedings." Morgan v. Las Vegas Sands, 118 Nev. 315, 320, 43 P.3d
5 1036, 1039 (2002). Here, the medical malpractice exception does not apply, but the
6 exception for a court-ordered stay does apply.

7
8 "Any period during which the parties are prevented from bringing an action to trial
9 by reason of a stay order shall not be computed in determining the five-year period of
10 Rule 41(e)." Boren v. N. Las Vegas, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982). The
11 Nevada Supreme Court relied on the Boren rule in D.R. Horton, Inc. v. Eighth Judicial
12 Dist. Court of Nev., 131 Nev. 865, 358 P.3d 925 (2015).

13
14 In D.R. Horton, real party in interest High Noon at Arlington Ranch Homeowners
15 Association had filed an ex parte motion to stay the proceedings to allow for the NRS
16 Chapter 40 prelitigation process to proceed. After more than five years from the filing of
17 the complaint, D.R. Horton and a third-party defendant filed a motion to dismiss pursuant
18 to NRCP 41(e). The Nevada Supreme Court held that "[b]ecause the stay prevented the
19 case from proceeding, Boren's rule applies, and the court-ordered August 2007 stay tolls
20 the prescriptive period under NRCP 41(e) while the district court-ordered stay is in effect."
21 D.R. Horton, Inc. v. Eighth Judicial Dist. Court of Nev., 131 Nev. 865, 873, 358 P.3d 925,
22 930 (2015).

23
24 Here, as in Boren and D.R. Horton, the district court entered an order which
25 prevented the case from proceeding and, using the Court's terminology, the case was
26 "stayed". Exh. 2, Order, p. 4:7. Further, the Court accepted the Stipulation to suspend
27 the trial on April 22, 2019, which included the provision that "trial has started, so there
28

1 would be a suspension of the trial, not a continuation.” Exh. 1, Transcript., p, 14. Further,
2 the Stip/Order entered by the district court on May 16, 2019, provided that “**during the**
3 **trial**, Plaintiff’s [sic] requested that the jury trial be suspended,” “the Defendants provided
4 stipulated conditions for suspending the jury trial, which were placed upon the record,
5 agreed to by all parties and approved by the Court;” and “trial was suspended.” Exh. 3,
6 Stip/Order, p.2:6-14. Based on the forgoing, this Court ruled that, “The trial in this matter
7 is suspended.” Id.

8
9 Clearly, the Boren rule applies, as the Stipulation, the Order and the Stip/Order
10 prevented the case from proceeding. As long as the Stipulation, the Order and the
11 Stip/Order order is in effect, NRCP 41(e) is inapplicable.³ Eldorado has not sought to
12 vacate the order suspending trial or challenging the validity of the stipulation and order,
13 and should not now be allowed to attack the order. Such a collateral attack is
14 procedurally improper. Before seeking NRCP 41(e) relief, Eldorado should have moved
15 to vacate the district court’s order suspending the trial or otherwise challenged its validity.
16 See D.R. Horton, Inc. v. Eighth Judicial Dist. Court of Nev., 131 Nev. at 873 n. 11, 358
17 P.3d at 930 n.11 (noting that D.R. Horton should have sought to vacate the district court’s
18 stay or challenged the validity of the stay before seeking writ relief pursuant to NRCP
19 41(e)).

20
21
22 **V. ELDORADO’S STIPULATIONS THAT THE TRIAL STARTED AND**
23 **AGREEMENT TO SUSPEND THE TRIAL.**

24 Mr. Wirthlin, on behalf of the Rogich Trust stated, as part of the terms of the
25 Stipulation, “**The trial has started**, so there would be a suspension of the trial, not a
26 continuation.” Exh. 1, p. 14 (emphasis added). Mr. Liebman, Eldorado’s counsel, then

27
28 ³ As stated above, NRCP 41(e) has been fully satisfied.

1 unequivocally stated, **"We're in agreement with all those conditions, Your Honor."** Id.
2 15:10-11. All counsel then expressly "consented" that the trial had been commenced and
3 had been "suspended" by stipulation of the parties so that Nanyah could pursue its Writ.
4 Id. Again Eldorado's undersigned counsel Mr. Liebman specifically stated: **"Yes, Your**
5 **Honor"** in response to the Court's question of Eldorado stipulated to the suspension of
6 the trial. Id., p.16 (emphasis added).
7

8 **A. ELDORADO (AND ITS COUNSEL) ARE BOUND BY THEIR**
9 **STIPULATIONS OF FACT.**

10 "Stipulations are of an inestimable value in the administration of justice (Hayes v.
11 State, 252 A.2d 431 (N.H. 1969)), and valid stipulations are controlling and conclusive
12 and both trial and appellate courts are bound to enforce them." Second Baptist Church v.
13 Mount Zion Baptist Church, 86 Nev. 164, 172, 466 P.2d 212, 217 (1970).
14

15 Here, Eldorado stipulated that the trial had started and was suspended. Eldorado
16 argues that, in order to avoid dismissal, any stipulation to continue "must specifically
17 reference NRCP 41(e), and a mere stipulation to continue the trial is insufficient as a
18 matter of law." Mot., p. 6. Eldorado relies on the Nevada Supreme Court's ruling in
19 Prostack v. Lowden, 96 Nev. 230, 606 P.2d 1099 (1980). Eldorado's argument is,
20 however, misplaced. Here, the stipulation was not merely to continue the trial, as was the
21 case in Prostack, rather the stipulation here was that the trial had actually begun and
22 having begun was now suspended. Further, when the Stipulation was placed on the
23 record, the Court addressed the application of NRCP 41(e) and because the trial had
24 "started" NRCP 41(e)'s provisions were fully satisfied. The Stipulation was not a generic
25 stipulation "to continue the trial" as Eldorado's counsel misrepresents.
26

27 Further, it was specifically disavowed that the trial was "continued". In fact, the
28 Stipulation states: **"The trial has started, so there would be a suspension of the trial,**

1 **not a continuation.** Exh. 1, Transcript, p. 14:17-18 (emphasis added). Again, Eldorado
2 intentionally misrepresents the facts to this Court in pursuit of its bad faith motion.

3 Eldorado's argument regarding a motion to continue are simply not applicable.
4 Even if the rule enunciated in Prostack applied here (which it does not), the facts at bar
5 are distinguishable from Prostack in another important respect. In Prostack,
6

7 the stipulation for a continuance was silent as to the expiration of the five
8 year limit, and the judge who heard the motion was not made aware of the
9 problem. If the issue of the five year rule had been raised at the hearing on
10 the motion for a continuance, the district judge would have been able to
11 schedule the trial at a date within the five year period, to condition the
12 granting of the continuance on a written stipulation to waive the five year
13 rule, or to deny the continuance altogether.

14 Prostack, 96 Nev. at 231, 606 P.2d at 1100. Here, a review of the transcript of the
15 hearing shows that everyone involved, including the Court, was aware of the NRCP 41(e)
16 issue. After a brief recess, the parties represented to the court that they had reached an
17 agreement that "the trial has started, so there would be a suspension of the trial, not a
18 continuation." Exh. 1, Trans., p. 14. The Court inquired about the three-year rule, and
19 the understanding of all involved was that because the trial had been commenced, there
20 was no issue.

21 Lastly, Eldorado argues that "none of the parties agreed to waive the three year
22 requirement set forth in NRCP 41(e)(4)(B)." Although the stipulation that was entered did
23 not specifically mention NRCP 41(e), the wording of the stipulation clearly reflects an
24 awareness of the issue. The parties stipulated that the trial had "started", and "during
25 trial" the trial was suspended. Merely because the parties did not articulate language in
26 their stipulation that addressed every conceivable argument that could be raised in bad
27 faith, the subject matter of the stipulation in light of the circumstances clearly
28 demonstrates that the trial started. Taylor v. State Indus. Ins. Sys., 107 Nev. 595, 598,

1 816 P.2d 1086, 1088 (1991) ("[I]n construing a stipulation, a reviewing court may look to
2 the language of the agreement along with the surrounding circumstances.").

3 Eldorado is bound by its stipulation that the trial had started, that the trial was
4 commenced and that the trial was not continued. Eldorado is barred from attempting to
5 contradict the foregoing stipulated facts. While it is known that string cites are disfavored,
6 given the well-established and comprehensive law that states Eldorado's own stipulations
7 of fact are binding upon it, the following string cite is provided to demonstrate the bad faith
8 nature of Eldorado's motion. *See also* Gallagher v. Park West Bank & Trust Co., 921 F.
9 Supp. 867, 873 (D. Mass. 1996) ("[T]he Court accepts the parties' factual stipulation as
10 true."); Federal Lanes, Inc. v. City of Houston, 905 S.W.2d 686, 689 (Tex. Ct. App. 1995)
11 ("A 'stipulation' [of facts] constitutes a contract between the parties, and between the
12 parties and the court; as such, it is binding upon the court as well as the parties."); H.B.I.
13 Construction, Inc. v. Graviett, 903 S.W.2d 653 (Mo. Ct. App. 1995) ("When the parties at
14 trial stipulate as to a fact in issue and the stipulation becomes part of the record, 'it is
15 binding upon the parties and the court . . .'" (Citation omitted)); State v. Ordonez-
16 Villanueva, 908 P.2d 333, 338 fn. 8 (Or. Ct. App. 1995) ("Facts which are stipulated to by
17 the parties conclusively establish facts . . ."); Sien v. Sien, 889 P.2d 1268, 1272 (Okla.
18 Ct. App. 1994) ("the court had no duty to look beyond . . . stipulations as they . . . are
19 binding and conclusive on the parties."); Fiedler v. Fiedler, 879 P.2d 675, 680 (Mont.
20 1994) ("If the stipulation is material, the parties and the court are bound by it."); In re
21 Marriage of Harris, 883 P.2d 785, 791 (Kan. Ct. App. 1994) ("stipulation of fact are
22 binding on the courts . . ."); Wittwer v. Wittwer, 545 N.E.2d 27, 29 (Ind. Ct. App. 1989)
23 ("Once a stipulation is entered into between the parties, the facts so stipulated are
24 conclusive upon both the parties and the tribunal."); State v. Sorrell, 506 P.2d 1065, 1067
25
26
27
28

(Az. 1973) ("Facts stipulated by counsel are conclusive . . . and binding on the parties" (citation omitted)).

Again, Eldorado is bound by its own stipulations of fact contained in the Stipulation and the Stip/Order. Eldorado and Eldorado's counsel offer no cogent argument why they are at liberty to disavow their stipulated facts that: the "**trial started**" (i.e., NRCP 41(e) fully satisfied); that "**during the trial**" Nanyah requested a stay of the trial to pursue a writ; and that the suspension was expressly "**not a continuance**" of the trial. Again, the foregoing demonstrates Eldorado's bad faith in filing the present motion.

VI. COUNTERMOTION: THE MOTION IS FRIVOLOUS AND NOT BROUGHT IN GOOD FAITH, AND NANYAH SHOULD BE AWARDED FEES AND COSTS.

NRS 7.085 provides, in pertinent part:

1. If a court finds that an attorney has:

(a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact . . . the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.

"The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations." NRS 7.085(2).

The attorney who signed the instant motion is the same attorney who stipulated on the record: "**The trial has started, so there would be a suspension of the trial, not a continuation.**" Exh. 1, Stipulation, p. 14:17-18 (emphasis added). Similarly, he again stipulated that since the trial had commenced, the proceedings would be suspended while Nanyah pursued its Writ. Id., p.16. Thereafter, pursuant to the Stip/Order, counsel again stipulated: "**[D]uring the trial**" Nanyah "requested the jury trial be suspended" to allow it to pursue a writ. Exh. 3, Stip/Order, p. 2:6 (emphasis added).

1 For Eldorado to now argue to this Court that the trial never started is a knowing
2 misrepresentation of the facts, for which NRS 7.085 sanctions are appropriate. Nevada's
3 Rules of Professional Conduct (RPC) impose certain duties and responsibilities on
4 counsel for litigants, including among other things, to only assert meritorious claims and
5 contentions (RPC 3.1)⁴ and to not knowingly make false representations of fact or law to
6 a tribunal (RPC 3.3).⁵ Counsel for Eldorado has failed with respect to each of these
7 responsibilities.
8

9
10 **⁴RPC 3.1 Meritorious Claims and Contentions** states:

11 A lawyer shall not bring or defend a proceeding, or assert or controvert an
12 issue therein, unless there is a basis in law and fact for doing so that is not
13 frivolous, which includes a good faith argument for an extension, modification
14 or reversal of existing law. A lawyer for the defendant in a criminal proceeding,
15 or the respondent in a proceeding that could result in incarceration, may
16 nevertheless so defend the proceeding as to require that every element of
17 the case be established.

18 **⁵RPC 3.3 Candor Toward the Tribunal** states:

- 19 (a) A lawyer shall not knowingly:
- 20 (1) Make a false statement of material fact or law to a tribunal
21 or fail to correct a false statement of material fact or law
22 previously made to the tribunal by the lawyer;
 - 23 (2) Fail to disclose to the tribunal legal authority in the
24 controlling jurisdiction known to the lawyer to be directly
25 adverse to the position of the client and not disclosed by
26 opposing counsel; or
 - 27 (3) Offer evidence that the lawyer knows to be false. If a lawyer,
28 the lawyer's client, or a witness called by the lawyer, has
offered material evidence and the lawyer comes to know of
its falsity, the lawyer shall take reasonable remedial
measures, including, if necessary, disclosure to the tribunal.
A lawyer may refuse to offer evidence, other than the
testimony of a defendant in a criminal matter, that the lawyer
reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding
and who knows that a person intends to engage, is engaging or
has engaged in criminal or fraudulent conduct related to the

1 In addition, counsel for Eldorado ignores and violates NRS 47.240 regarding
2 conclusive presumptions, which provides in part,

3 The following presumptions, and no others, are conclusive:

4 . . .

- 5
- 6 2. The truth of the fact recited, from the recital in a written instrument
between the parties thereto
- 7
- 8 3. Whenever a party has, by his own declaration, act or omission,
intentionally and deliberately led another to believe a particular thing
9 true and to act upon such belief, he cannot, in any litigation arising
out of such declaration, act or omission, be permitted to falsify it.

10 By affirmatively disavowing Eldorado's written stipulation, counsel for Eldorado clearly
11 violates both of these provisions. Counsel for Eldorado stipulated and affirmed in the
12 Stip/Order that the trial had commenced, and this Court entered its order affirming such
13 stipulation. Further, Eldorado is barred from arguing that the trial was not started and was
14 not suspended.

15

16 Similarly, Eldorado's counsel's attempt to argue that he only stipulated a
17 continuance of the trial, and as such, the Stipulation, Order and Stip/Order are not binding
18 upon Eldorado. However, in making such argument, Eldorado ignores that the Stipulation
19 expressly stated that the suspension was not a continuance. Eldorado and its counsel
20

21 _____
22 proceeding shall take reasonable remedial measures,
including, if necessary, disclosure to the tribunal.

- 23 (c) The duties stated in paragraphs (a) and (b) continue to the
24 conclusion of the proceeding, and apply even if compliance
25 requires disclosure of information otherwise protected by Rule
1.6.
- 26 (d) In an ex parte proceeding, a lawyer shall inform the tribunal of
27 all material facts known to the lawyer that will enable the tribunal
28 to make an informed decision, whether or not the facts are
adverse.

1 should be sanctioned for attempting to misrepresent the facts and applicable law to this
2 Court.

3 Based on the foregoing, this court should award Nanyah its attorney fees which
4 have been incurred by having to respond to this bad faith motion which is not well-
5 grounded in fact (and contradicts express factual stipulations in this case) and lacking in
6 merit. Nanyah has incurred \$4,305 in attorney fees in preparing this Opposition. See
7 **Exhibit 4**, Affidavit of Mark G. Simons.
8

9 **VII. CONCLUSION.**

10 Based on the foregoing, it is clear that the motion to dismiss pursuant to NRCP
11 41(e) must be denied as it is not supported by any fact or legal basis. Further, this court
12 should grant Nanyah's counter-motion for attorney fees incurred in responding to the
13 baseless motion.
14

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

17 DATED this 6th day of August, 2019.

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

21 

22 MARK G. SIMONS
23 Attorneys for Nanyah Vegas, LLC
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25
26
27
28


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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of
SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of
the **NANYAH VEGAS LLC'S OPPOSITION TO ELDORADO HILLS, LLC'S MOTION
FOR DISMISSAL WITH PREJUDICE UNDER RULE 41(e)** on all parties to this action via
the Odyssey E-Filing System:

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

DATED this 6th day of August, 2019.


Employee of Simons Hall Johnston PC

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

EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	4/22/19 Transcript	17
2	4/30/19 Order	4
3	5/16/19 Stip/Order	4

EXHIBIT 1

EXHIBIT 1

1	RTRAN	
2		
3		
4	CARLOS A. HUERTA, an individual;	CASE NO.: A-13-686303-C
5	CARLOS A. HUERTA as Trustee of	
6	THE ALEXANDER CHRISTOPHER	
7	TRUST, a Trust established in	
8	Nevada as assignee of interests of	
9	GO GLOBAL, INC, a Nevada	
10	corporation; NANYAH VEGAS,	
11	LLC, A Nevada limited liability	
12	company,	DEPT. XXVII
13		
14	Plaintiffs,	
15	v.	
16	SIG RIGOICH, aka SIGMUND	
17	ROGICH as Trustee of The Rogich	
18	Family Irrevocable Trust;	
19	ELDORADO HILLS, LLC, a Nevada	
20	limited liability company; DOES I-X;	
21	and/or ROE CORPORATIONS I-X,	
22	inclusive,	
23		
24	Defendants.	
25		
26	NANYAH VEGAS, LLC, a Nevada	CONSOLIDATED WITH:
27	limited liability company,	
28		CASE NO.: A-16-746239-C
29	Plaintiff,	
30	v.	
31	TELD, LLC, a Nevada limited liability	
32	company; PETER ELIADAS,	
33	individually and as Trustee of The	
34	Eliades Survivor Trust of 10/30/08;	
35	SIGMUND ROGICH, individually and	
36	as Trustee of the Rogich Family	
37	Irrevocable Trust; IMITATIONS, LLC,	
38	a Nevada limited liability company;	
39	DOES I-X: and/or ROE	
40	CORPORATIONS I-X, inclusive,	
41		
42	Defendants.	

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BEFORE THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE
MONDAY, APRIL 22, 2019

RECORDER'S TRANSCRIPT OF MOTION HEARING

APPEARANCES:

For the Plaintiff:	MARK SIMONS, ESQ.
For Defendant Rogich:	BRENOCH WIRTHLIN, ESQ. THOMAS FELL, ESQ. SAMUEL S. LIONEL, ESQ.
For Defendant El Dorado Hills:	JOSEPH LIEBMAN, ESQ. DENNIS KENNEDY, ESQ.

RECORDED BY: BRYNN GRIFFITHS, COURT RECORDER

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INDEX

Court's Orders11

WITNESSES FOR THE PLAINTIFF

None

WITNESSES FOR THE DEFENDANT

None

1 Las Vegas, Nevada, Monday, April 22, 2019

2

3 [Case called at 10:12 a.m.]

4 THE BAILIFF: Department XXVII is now in session, the
5 Honorable Judge Alf presiding.

6 THE COURT: Thank you. Please be seated.

7 Okay. Calling the case of Huerta v. El Dorado Hills.

8 Appearances, please, from your right to left.

9 MR. SIMONS: Mark Simons on behalf of Nanyah Vegas,
10 Your Honor, and in the courtroom with me is Yoav Harlap, the principal
11 of Nanyah Vegas, and also my assistant, Jodi Alhasan is in the audience.

12 THE COURT: Very good. Thank you and welcome.

13 MR. WIRTHLIN: Good morning, Your Honor. Brenoch
14 Wirthlin on behalf of Rogich Defendants. Mr. Sigmund Rogich is here
15 with us as well as Ms. Olivas, Melissa Olivas.

16 MR. FELL: Thomas Fell, also on behalf of the Rogich
17 Defendants.

18 MR. LIONEL: Sam Lionel representing the Rogich
19 Defendants.

20 MR. LIEBMAN: Joseph Liebman on behalf of El Dorado Hills.

21 MR. KENNEDY: And Dennis Kennedy on behalf of El Dorado
22 Hills, the Defendant in Case A-13-686303,

23 THE COURT: Thank you.

24 All right. I have the agenda, Mr. Simons. The -- with regard
25 to the NCRP 15, that order shortening time came in after we closed the

1 office Friday, but I am granting it and will argue the motion.

2 MR. SIMONS: Okay. The motion is premised on the concept
3 that the Court had entered in judgment in favor of the Eliadas
4 Defendants and there is no mechanism under the rule that says it has to
5 be done after the conclusion of the entire case, so there's a procedural
6 aspect of whether it's timely or if it needs to be addressed subsequent to
7 the trial. I think you're fully brief on the issue. We've talked about it a
8 few times. I don't have much more to add.

9 THE COURT: And I've read the briefs, so --

10 MR. SIMONS: Is there any questions you have of me?

11 THE COURT: No.

12 MR. SIMONS: Okay.

13 MR. LIEBMAN: Good morning, Your Honor. I think one of
14 the key points that's been missed here is the fact that an implied contract
15 claim was pled in this case at the inception of the case, when this was
16 filed back in 2013 and when Nanyah sued El Dorado Hills back in 2013,
17 its initial complaint contained the claim they are trying to add now.

18 In the first amended complaint after El Dorado Hills had filed
19 a motion to dismiss on that particular claim, they purposefully omitted it
20 from that particular pleading and we've cited this Court several cases
21 that says in that instance, when a plaintiff, in order to avoid a motion to
22 dismiss or when they're amending the complaint, decides to omit a
23 claim, it waives and abandons that particular claim. And that's precisely
24 what happened in this case. And we've gone five years, Your Honor,
25 since that occurred and there's never been a Rule 15(a) motion brought

1 to you to say we want to add this claim back.

2 So Mr. Simon's briefs a lot of times talk about well, this
3 claim wasn't technically pled for some reason or another, but it was and
4 they've decided to abandon it and they never decided to revive it the
5 way you're supposed to do under Rule 15(a). The procedural aspect that
6 Mr. Simons touched on is problematic for him as well. 15(b) applies to
7 instances where something's tried by implied or expressed consent at
8 trial. The actual title under the new rules of that subsection deals with
9 amendments during and after trial. And we have expressly made the
10 point.

11 We actually filed a notice of non-consent with this Court back
12 on April 9th that said we do not expressly or impliedly consent to this
13 claim being tried, so we're making that clear for the record as well. So if
14 Mr. Simons wanted to bring this motion at a later point in time, that's on
15 the record, that we do not expressly or impliedly consent to this
16 particular claim being added at the 11th hour.

17 And then the last issue I wanted to bring up is prejudice,
18 Your Honor. We were under the impression for five years that they
19 abandoned this claim and we never got to do any discovery on this
20 claim. We never got to depose Mr. Harlap on this claim. We never got
21 to depose Mr. Huerta on this claim. And these are the two people who
22 allegedly made up this so-called implied in fact contract. So to cause us
23 to have to defend against that claim at the 11th hour would cause
24 significant prejudice to the El Dorado Hills Defendants, Your Honor.

25 So unless the Court has any other questions, that's the

1 argument.

2 THE COURT: Okay. Thank you.

3 MR. LIEBMAN: Thank you.

4 MR. SIMONS: First off, we've got to put this in context.

5 What has been addressed by this Court is the obligation that's owed by
6 El Dorado to Nanyah. And that obligation occurred in 2007. It's been
7 established that Nanyah money went into El Dorado. A year after the
8 fact, you found that the Rogich Trust specifically assumed that
9 obligation. So when we have a situation where the Court makes rulings
10 and makes findings that there is an obligation, based upon receipt and
11 retention of funds and then at -- during the testimony of Mr. Huerta
12 that -- counsel just stood up and said we didn't get to depose anybody.

13 Well, this counsel is in after the fact. Mr. Lionel represented
14 El Dorado for years. Mr. Lionel deposed Mr. Huerta. Mr. Huerta said
15 yes, we actually owe them money. This Court was briefed in affidavits
16 from Carlos Huerta. When this Court originally granted summary
17 judgment on the timing, remember what the Court said. The Court said
18 the date of when Nanyah -- it's -- Nanyah's money went into El Dorado
19 was the date the statute of limitation applied and that was based upon
20 Carlos Huerta in affidavit saying El Dorado received our funds. What
21 then happens is it goes up to Supreme Court, comes back down, says
22 no, it's not on the date of the investment when El Dorado received
23 Nanyah's money.

24 So the fact that this recent counsel is contending that they
25 didn't have the opportunity to depose Mr. Huerta, El Dorado did, in fact,

1 depose Mr. Huerta, did in fact question Mr. Huerta extensively about the
2 obligation. The documents that were examined with Mr. Huerta are all
3 the written documents, which are business records of El Dorado saying
4 yes, we owe Nanyah its money back for its investment in El Dorado. So
5 then Mr. Harlap was deposed by Mr. Lionel, again went through the
6 extensive analysis of this situation. It arose -- the October 5th order
7 triggers this consideration, because the Court has rendered rulings that
8 then trigger some events.

9 And whether -- you know, after the fact, filing in the eve of
10 trial a notice of we don't consent to an issue that this Court has already
11 addressed, that's been throughout these pleadings even before the
12 appeal. El Dorado's obligation to Nanyah has been the heart of the case,
13 the contractual obligation. So that's where we have it. We have this
14 case loaded with an obligation from El Dorado to Nanyah. And what
15 does that trigger and what are the ramifications of that?

16 If you perceive that NCRP 15 relief is premature, given that
17 we haven't had the trial, that's one thing. But to say that this issue has
18 not been -- fully saturated this case from Day 1, even before recent
19 counsel, that's a misstatement of the case. Thank you.

20 THE COURT: Thank you. This is the Plaintiff's rule under
21 NRCP 15 to amend the complaint. The motion will be denied for the
22 reason that it's untimely and the claims previously abandoned. It's not
23 fair to require a defense under those circumstances.

24 MR. SIMONS: I'm sorry. You said it's denied, because it's
25 untimely?

1 THE COURT: It's untimely.

2 MR. SIMONS: Okay. Thank you.

3 THE COURT: All right. So the next matter is with regard to
4 N.R.S. 163. Mr. Simons.

5 MR. SIMONS: Again, this one deals with a possible
6 timeliness issue, because it may be that this is continued and revisited
7 after the trial, given that we need to see or should see whether there is a
8 judgment or not a judgment, or excuse me, jury verdict or not a jury
9 verdict entered to determine what steps, if any, the Court should take at
10 that time. I understand that. We -- when this type of notice issue is
11 brought to the Court's attention, steps must be taken. We notified the
12 Court of the various activities. You asked for additional briefing on the
13 discretionary aspect.

14 We've shown you that there is a discretionary aspect. It's not
15 just a black and white 30 days. That hands are -- the Court used the
16 phrase, hands are tied. I don't believe that applies or is in existence on
17 this one. So even though we brought the motion, in the alternative
18 relief, it may be necessary again that we deal with it after the trial.
19 Otherwise, then we're asking preliminarily now that you grant,
20 depending on the outcome of the case, the jury's verdict, that we then
21 take the 163 steps and the Court suspends entry of judgment until 163 is
22 able to be complied with.

23 THE COURT: Okay. And the argument for the discretion if
24 have to do that? Because the Texas case was a contingent beneficiary.

25 MR. SIMONS: Well, it -- that doesn't matter. The benefic --

1 whether it's a contingent beneficiary or not, is entirely irrelevant. What
2 the court looked at -- and it's a uniform trust act, okay? So they look at
3 and say what do we do in this situation? The courts don't automatically
4 say don't give beneficiaries an opportunity and don't prejudice the
5 Plaintiff. Don't harm the Plaintiff. We want to deal with things on the
6 merits. And in fact, the California case, when dealing with discretion
7 says apply discretion, not to be arbitrary or prejudicial to parties.

8 So the Texas case actually said judgment was entered. What
9 we're going to do is -- trial court vacated the judgment. Go do the
10 notice. Let's take steps to comply with given notice to the beneficiaries.
11 And in this case, the lead trustee is the lead beneficiary. So the Court in
12 this situation needs to exercise its discretion or at least postpone it to see
13 what happens at the end of the day. To come in and say before trial, Mr.
14 Simons, you asked for a continuance, so we can comply and now I'm
15 going to deny that.

16 And then I'm even going to deny that before trial, that you
17 don't get to move forward with N.R.S. 163 relief. It is not supported by
18 the case law. It's not supported by the language of discretionary
19 application. It's not supported by the policy of Nevada to deal with
20 matters on their merits and it's not appropriate to deal with the let's
21 penalize a party on the technical component when the Court is vested
22 with discretion to achieve fairness and justice.

23 THE COURT: Thank you.

24 MR. WIRTHLIN: Thank you. Good morning. I'll be brief. The
25 Court hit directly on the point that we're going to make and which we

1 made in our supplemental briefing, which is under this statute and in the
2 situation that has arisen, because of the Plaintiff's failure to give notice to
3 the beneficiaries of the Rogich Trust as required under the statute, there
4 is no discretion for the Court at this point to do anything other than find
5 in favor of the Trust against all Plaintiff's claims and dismiss the Trust.
6 As the Court noted, the Trans American case is distinguishable in that it
7 involved contingent beneficiaries and importantly, does not involve
8 N.R.S. 12.130, which requires intervention before trial.

9 And the beneficiaries cannot now do that. There is discretion
10 in certain instances. That's the BB&T case, where this issue is brought
11 up long before. I think in that case it was two years before there was
12 ever a judgment entered. And in that case, the demand was made for
13 the names of the trust beneficiaries and not provided by the trustee. And
14 the Court therefore in that case affixed a different time. This is an
15 entirely different situation, Your Honor.

16 We're talking about trustees. And I think as was mentioned
17 in the opening argument, that the Court should not be prejudicial to the
18 parties. But I think the consideration that needs to be made and is made
19 embodied in Chapter 163 is the prejudice to the trust beneficiaries, six of
20 whom we know in Mr. Rogich' declaration are minors, one of whom has
21 special needs. They may require appointment of other representatives
22 or guardian ad litem. That is why the statute provides and requires that
23 the beneficiaries be given notice, Your Honor, pursuant to the statute.

24 And again, I don't think it's -- I don't think can forget that the
25 statute contemplates giving that even 30 days after the JCCR is entered.

1 So unless the Court has any questions, we'll rest on our pleadings.

2 THE COURT: Does anyone else wish to weigh in? Then your
3 reply, please.

4 MR. SIMONS: Again, the Court is to look to not be unfair, to
5 not be prejudicial. The Court is to seek mechanisms to effectuate justice
6 and to try cases on the merits. We just heard now that the Rogich Trust
7 wants to be dismissed from the case right before the jury is empaneled.
8 That demonstrates the gamesmanship. After over five years, after this
9 Court rendering verdict -- judgments in favor of the Rogich Trust to come
10 in and say no, we're out of the case now. That's unfair. That's
11 prejudicial to the Plaintiff. There's a mechanism that's embodied in the
12 statute that deals with this situation.

13 Case law demonstrates the Judge is supposed to exercise
14 discretion and to deal with the notice to give opportunities to see if it
15 even matters, to determine whether those beneficiaries are
16 indispensable parties or not indispensable. In fact, the Texas case said
17 you know what, you beneficiaries aren't indispensable. Your interests
18 were adequately represented, just as in this case, just as in five years
19 and two sets of lawyers. So as we've requested, the Court either
20 suspend to see what the outcome of the trial is and/or grant the motion,
21 so that we can the appropriate steps in the event the verdict is in our
22 favor against the Rogich Trust.

23 THE COURT: Thank you. The Court has taken judicial notice
24 of N.R.S. 163.120, which has very definite timelines with regard to the
25 rights of beneficiaries of a trust that has been sued. Here I find that the

1 fact that the notice was so late with regard to the request for information
2 about who the beneficiaries are. The time hasn't even passed for the
3 trust to have to notify you who the beneficiaries are. The whole point of
4 that statute is to allow intervention. N.R.S. 12.130 requires intervention
5 to occur before trial. There's no way those beneficiaries can seek to
6 intervene at this point. So I am going to dismiss the Trust.

7 MR. SIMONS: I'm sorry. You said you're dismissing the
8 Rogich Trust?

9 THE COURT: I am.

10 MR. SIMONS: And you're going to deny discretionary relief
11 under 163?

12 THE COURT: That's correct.

13 MR. SIMONS: Okay. Are you going to allow us to continue
14 and prove to the jury the claims against the Rogich Trust?

15 THE COURT: No. Now, if that affects how you're going to
16 put your case on, do you want a half an hour?

17 MR. SIMONS: Here's what I'd like to do. I'd like to file an
18 emergency motion with the Supreme Court to take this on up on writ.
19 Can we suspend the case, continue the case while I'm allowed to do that,
20 because --

21 THE COURT: Is there --

22 MR. SIMONS: -- this is a significant issue of law --

23 THE COURT: I understand.

24 MR. SIMONS: -- and as you recognize, we have the
25 opportunity to take these things up on writs.

1 THE COURT: Of course. Is there -- do you guys want to
2 recess to -- or are you prepared to respond?

3 MR. WIRTHLIN: Your Honor, I'm not prepared to respond.
4 Can we have a brief recess?

5 THE COURT: Yes.

6 MR. WIRTHLIN: Thank you.

7 THE COURT: Take the time you need, 10, 15 minutes and let
8 me know when everyone's ready. I'll come right back.

9 [Recess at 10:29 a.m.]

10 THE BAILIFF: Court is back in session. Remain seated,
11 please.

12 THE COURT: Please remain seated. Thank you.

13 Defense, are you ready to respond?

14 MR. WIRTHLIN: Yes, Your Honor, we are. And we have
15 spoken amongst ourselves and with Plaintiff's counsel and we would be
16 in agreement to suspend the trial with a few qualifications, which we're
17 all in agreement on, if the Court approves them. The trial has started, so
18 there would be a suspension of the trial, not a continuation. The Trust
19 has been dismissed as a party, so the Trust would not be required to
20 provide any names or other information regarding the beneficiaries of
21 the Rogich Trust and that the parties remaining have the opportunity to
22 file a dispositive motion during the suspension to tee-up the remaining
23 issues concerning the remaining parties, if the Court approves.

24 THE COURT: Are you in agreement to those three
25 conditions?

1 MR. SIMONS: I think we are, except for number 2 and the
2 reason -- number 2 is the no response and it's because I'm not -- I
3 requested I have the opportunity to brief it and their response is we
4 wanted to submit it to the Court and see. And so that's the only one I'm
5 not in agreement with, because I don't know and I didn't have the
6 opportunity clearly to see what effect the statute says, if it has to be a
7 party or not. I'm not really sure.

8 THE COURT: Okay.

9 MR. SIMONS: In order to respond to a 163 notice.

10 MR. LIEBMAN: We're in agreement with all those conditions,
11 Your Honor.

12 THE COURT: So, if there's not an agreement to all terms --

13 [Pause]

14 THE COURT: Mr. Simons, if there's not an agreement to all
15 terms, then do we go forward today? What --

16 MR. SIMONS: I'm grabbing 163.

17 THE COURT: I have it up.

18 MR. WIRTHLIN: Mark, I don't know if you want me to point
19 to it, but just that first line of Subsection 2. A judgment may not be
20 entered in favor of the Plaintiff in the action --

21 MR. SIMONS: Yeah.

22 MR. WIRTHLIN: -- contemplates the loss.

23 MR. SIMONS: I think what you're saying is correct. So given
24 the language, I think what we need to do is also take that issue up on the
25 writ.

1 THE COURT: So does that mean there's consent to
2 suspension, the Trust is not required to respond and the remaining
3 parties can still file dispositive motions? Is that --
4 MR. WIRTHLIN: As far as we're concerned Your Honor.
5 MR. LIEBMAN: Yes, Your Honor.
6 UNIDENTIFIED SPEAKER: Yes.
7 UNIDENTIFIED SPEAKER: Yes.
8 THE COURT: All right. Now, I don't know if for -- this is --
9 may or may not matter whether or not your five-year rule -- there hasn't
10 been a witness -- we haven't had any witnesses, so it's just something to
11 think about.
12 MR. SIMONS: It's actually been satisfied, since we've
13 commenced the trial.
14 THE COURT: Okay. Good enough. So I guess we're in
15 recess until another matter is brought to my attention at this point.
16 MR. WIRTHLIN: Thank you, Your Honor.
17 MR. LIEBMAN: Yes, Your Honor.
18 THE COURT: Thank you, all.
19 MR. LIEBMAN: Thank you.

20 [Proceedings concluded at 10:52 a.m.]

21 * * * * *

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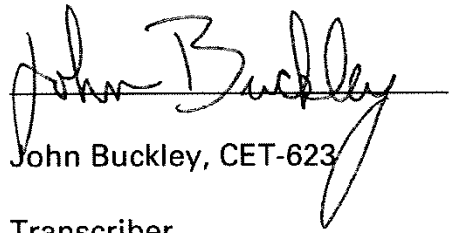
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ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case to the
best of my ability.


John Buckley, CET-623
Transcriber

Date: April 22, 2019

EXHIBIT 2

EXHIBIT 2



DISTRICT COURT
CLARK COUNTY, NEVADA

CARLOS HUERTA

Plaintiff(s)

vs.

ELDORADO HILLS LLC

Defendant(s)

CASE NO.: A-13-686303

DEPARTMENT 27

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

And all related matters.

ORDER

COURT FINDS after review that the Complaint in Case No. A686303 was filed on July 31, 2013, wherein Nanyah Vegas, LLC, as a plaintiff therein, alleged causes of action against Defendants Sig Rogich aka Sigmund Rogich as Trustee of the Rogich Family Irrevocable Trust and Eldorado Hills, LLC.

COURT FURTHER FINDS after review that the Complaint in Case No. A746239 was filed on November 4, 2016, wherein Nanyah Vegas, LLC, as the plaintiff therein, alleged causes of action against Defendants Sigmund Rogich, individually and as Trustee of The Rogich Family Irrevocable Trust, Peter Eliadas, individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Teld, LLC and Imitations, LLC.

COURT FURTHER FINDS after review that on March 31, 2017, the Stipulation for Consolidation was filed with the Court consolidating Case No. A686303 and Case No. A746239.

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HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

1 **COURT FURTHER FINDS** after review that on April 15, 2019, the Request for
2 Judicial Notice was filed with the Court requesting, pursuant to NRS 47.140(3), that the Court
3 take judicial notice of NRS 163.120, which provides the following:
4

5 **NRS 163.120 Claims based on certain contracts or obligations:**
6 **Assertion against trust; entry of judgment; notice; intervention; personal**
7 **liability of trustee; significance of use of certain terms.**

8 1. A claim based on a contract entered into by a trustee in the capacity of
9 representative, or on an obligation arising from ownership or control of trust
10 property, may be asserted against the trust by proceeding against the trustee in the
11 capacity of representative, whether or not the trustee is personally liable on the
12 claim.

13 2. A judgment may not be entered in favor of the plaintiff in the action
14 unless the plaintiff proves that within 30 days after filing the action, or within 30
15 days after the filing of a report of an early case conference if one is required,
16 whichever is longer, or within such other time as the court may fix, and more than
17 30 days before obtaining the judgment, the plaintiff notified each of the
18 beneficiaries known to the trustee who then had a present interest, or in the case
19 of a charitable trust, the Attorney General and any corporation which is a
20 beneficiary or agency in the performance of the charitable trust, of the existence
21 and nature of the action. The notice must be given by mailing copies to the
22 beneficiaries at their last known addresses. The trustee shall furnish the plaintiff a
23 list of the beneficiaries to be notified, and their addresses, within 10 days after
24 written demand therefor, and notification of the persons on the list constitutes
25 compliance with the duty placed on the plaintiff by this section. Any beneficiary,
26 or in the case of charitable trusts the Attorney General and any corporation which
27 is a beneficiary or agency in the performance of the charitable trust, may
28 intervene in the action and contest the right of the plaintiff to recover.

 3. Except as otherwise provided in this chapter or in the contract, a
trustee is not personally liable on a contract properly entered into in the capacity
of representative in the course of administration of the trust unless the trustee fails
to reveal the representative capacity or identify the trust in the contract. The
addition of the word "trustee" or the words "as trustee" after the signature of a
trustee to a contract are prima facie evidence of an intent to exclude the trustee
from personal liability.

23 **COURT FURTHER FINDS** after review that on April 16, 2019, Nanyah Vegas,
24 LLC's Emergency Motion to Address Defendant the Rogich Family Irrevocable Trust's NRS
25 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120 was filed with
26 the Court.

27 ///
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1 **COURT FURTHER FINDS** after review that a telephonic hearing was convened on
2 April 18, 2019 wherein the Court took judicial notice of NRS 163.120.

3 **COURT FURTHER FINDS** after review that at the commencement of trial on April
4 22, 2019, Defendant Sigmund Rogich as Trustee of The Rogich Family Irrevocable Trust
5 (“Defendant Rogich Trust”) orally moved the Court to dismiss this action as to Defendant
6 Rogich Trust for failure to comply with NRS 163.120 (“Motion to Dismiss”).

7 **COURT FURTHER FINDS** after review that NRS 163.120 contemplates notice
8 required thereunder being provided in the early stages of an action in order to permit the
9 beneficiaries of a trust the opportunity to intervene in such action and meaningfully participate
10 therein.
11

12 **COURT FURTHER FINDS** after review that NRS 12.130 provides that an interested
13 person must intervene in an action “[b]efore the trial.” NRS 12.130(1)(a); *see also Am. Home*
14 *Assur. Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 1229, 1244, 147 P.3d
15 1120, 1130 (2006).
16

17 **COURT FURTHER FINDS** after review that, because the trial in this action
18 commenced on April 22, 2019, Plaintiff Nanyah’s written demand for a list of beneficiaries
19 submitted to the Defendant Rogich Trust on April 15, 2019 was untimely under NRS 163.120
20 as such notification would not permit interested beneficiaries of the trust an opportunity to
21 intervene in this action pursuant to NRS 12.130(1).
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HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

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THEREFORE, COURT ORDERS for good cause appearing and after review that the Motion to Dismiss is hereby GRANTED and Defendant Rogich Trust is hereby DISMISSED with prejudice.

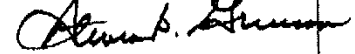
COURT FURTHER ORDERS for good cause appearing and after review that, within 10 days of the Notice of Entry of this Order, the parties are directed to submit to the Court a stipulation and order with respect to the agreed upon stay of this action.

DATED this 30 day of April, 2019.

Nancy L Allf
NANCY ALLF
DISTRICT COURT JUDGE

EXHIBIT 3

EXHIBIT 3



ORDR

Samuel S. Lionel, Esq. (Bar No. 1766)
Thomas H. Fell (Bar No. 3717)
Brenoch Wirthlin, Esq. (Bar No. 10282)
FENNEMORE CRAIG, P.C.
300 S. Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Tel.: (702) 692-8000; Fax: (702) 692-8099
Email: slionel@fclaw.com

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-13-686303-C

DEPT. NO.: XXVII

**STIPULATION AND ORDER
SUSPENDING JURY TRIAL**

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

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WHEREAS, on April 30, 2019, the Court entered an Order, wherein Defendant The Rogich Family Irrevocable Trust was dismissed with prejudice;

WHEREAS, the Defendants provided stipulated conditions for suspending the jury trial, which were placed upon the record, agreed to by all parties and approved by the Court; and

WHEREAS, as trial was suspended, this stipulation shall be consistent with the stipulated conditions previously agreed to by the parties.

Given the above understanding, the parties hereby stipulate and agree as follows:

1. The trial in this matter is suspended;
2. The Rogich Family Irrevocable Trust is not required to provide any names or information regarding the beneficiaries of the Trust; and
3. The remaining parties may file dispositive motions during the suspension of trial.

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to address Plaintiff's remaining claims.

Dated: May 9, 2019.

Dated: May _____, 2019.

FENNEMORE CRAIG, P.C.

By: 
SAMUEL S. LIONEL, ESQ.
THOMAS FELL, ESQ.
BRENOCH WIRTHLIN, ESQ.
300 South 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*

By: _____
MARK G. SIMONS, ESQ.
SIMONS HALL JOHNSTON PC
6490 South McCarran Blvd., #20
Reno, Nevada 89509
Attorneys for Nanyah Vegas, LLC

Dated: May _____, 2019.

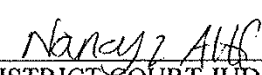
BAILEY KENNEDY

By: _____
DENNIS KENNEDY, ESQ.
JOSEPH LIEBMAN, ESQ.
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Eldorado Hills, LLC

ORDER

Given the above Stipulation of the parties,

IT IS SO ORDERED this 14 day of May, 2019.


DISTRICT COURT JUDGE

1 to address Plaintiff's remaining claims.

2 Dated: May ____, 2019.

Dated: May ____, 2019.

3 **FENNEMORE CRAIG, P.C.**


4

5 By: _____
6 SAMUEL S. LIONEL, ESQ.
7 THOMAS FELL, ESQ.
8 BRENOCH WIRTHLIN, ESQ.
9 300 South Fourth Street, Suite 1400
10 Las Vegas, Nevada 89101
11 *Attorneys for SIGMUND ROGICH,*
12 *individually and as Trustee of The Rogich*
13 *Family Irrevocable Trust and IMITATIONS,*
14 *LLC*

By: _____
MARK G. SIMONS, ESQ.
SIMONS HALL JOHNSTON PC
6490 South McCarran Blvd., #20
Reno, Nevada 89509
Attorneys for Nanyah Vegas, LLC

10 Dated: May 9, 2019.

11 **BAILEY KENNEDY**

12 By: 
13 _____
14 DENNIS KENNEDY, ESQ.
15 JOSEPH LIEBMAN, ESQ.
16 8984 Spanish Ridge Avenue
17 Las Vegas, Nevada 89148
18 *Attorneys for Eldorado Hills, LLC*

16 **ORDER**

17 Given the above Stipulation of the parties,

18 IT IS SO ORDERED this ____ day of May, 2019.

21 _____
22 DISTRICT COURT JUDGE

EXHIBIT 4

EXHIBIT 4

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

**AFFIDAVIT OF MARK G. SIMONS IN SUPPORT OF
NANYAH VEGAS LLC'S OPPOSITION TO ELDORADO HILLS, LLC'S
MOTION FOR SUMMARY JUDGMENT**

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 HALL JOHNSTON 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 Opposition to Eldorado Hills, LLC's Motion for Dismissal With Prejudice Under Rule 41(e) ("Opposition"), to which this affidavit is attached as Exhibit 4.

4. Nanyah has incurred \$4,305 in attorney fees in preparing this Opposition. These fees consist of 5.4 hours of my time at my normal and customary hourly rate of \$450.00, and 5.0 hours of time for Tracie Lindeman at her hourly rate of \$375.00.

FURTHER AFFIANT SAYETH NAUGHT.

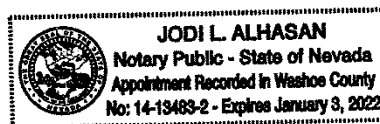
Dated this 6th day of August, 2019.

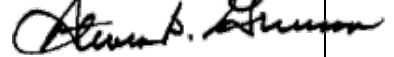

MARK G. SIMONS

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

Subscribed and sworn to before me on this 6th day of August, 2019 by Mark G. Simons at Reno, Nevada.


NOTARY PUBLIC





RIS (CIV)

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

JLiebman@BaileyKennedy.com

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

**REPLY IN SUPPORT OF DEFENDANT
ELDORADO HILLS, LLC'S MOTION
FOR SUMMARY JUDGMENT**

Date of Hearing: Sept. 5, 2019

Time of Hearing: 10:30 a.m.

CONSOLIDATED WITH:

Case No. A-16-746239-C

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Eldorado’s Motion for Summary Judgment addressed one claim and one claim alone—Nanyah’s equitable claim for unjust enrichment. *Nanyah does not have any other pending claims against Eldorado*. Nanyah outlandishly continues to base its arguments on some sort of contract theory when this Court recently ruled that: (1) “Nanyah voluntarily abandoned its implied-in-fact contract claim against Eldorado”; (2) Nanyah’s Motion to Amend to add such a claim was “untimely”; and (3) “it would be unfair and prejudicial to require Eldorado” to defend such a claim.¹ Thus, any portion of Nanyah’s Opposition addressing these supposed contractual theories (*e.g.*, the wild theory that Eldorado is the primary contractual obligor and the Rogich Trust is merely a surety) is irrelevant and must be ignored.

After Nanyah’s contractual arguments are rightfully stripped away, it is apparent that any support for its equitable unjust enrichment claim is entirely fictional. Eldorado’s first basis for summary judgment was that Nanyah—by suing as a third-party beneficiary under the October 30, 2008 Membership Interest Purchase Agreement (the “MIPA”)—agreed to and adopted the language contained therein. The MIPA explicitly states that the Rogich Trust is “*solely responsible*” for Nanyah’s potential claim. When it sued under the MIPA, Nanyah agreed that no one else—including Eldorado—was responsible for its potential claim. Eldorado cited *binding Nevada Supreme Court precedent* and other persuasive authority in support of this argument. Nanyah responded by simply ignoring all of it.

Eldorado’s second basis for summary judgment was that Nanyah’s contractual legal remedy against the Rogich Trust barred its equitable claim for unjust enrichment against Eldorado. Nanyah again conveniently ignored the vast amount of legal authority cited in the Motion, instead simply responding that Nanyah no longer has an adequate remedy at law against the Rogich Trust because Nanyah had itself failed to comply with NRS 163.120. Yet that same authority explicitly states that the disposition of any such claim is irrelevant—all that matters is whether Nanyah had an adequate

¹ Order Denying Nanyah Vegas, LLC’s Mot. for NRCP 15 Relief, filed May 29, 2019.

1 remedy at law at some point. Nanyah does not dispute that it had an adequate remedy at law against
2 the Rogich Trust but for its own noncompliance with NRS 163.120. Further, it would be extremely
3 inequitable to hold Eldorado liable merely because Nanyah—and Nanyah alone—failed to comply
4 with its notice obligations under NRS 163.120, allowing its legal remedy to be extinguished.

5 Nanyah completely failed to oppose either basis for summary judgment on its unjust
6 enrichment claim, instead primarily focusing on an unpled implied-in-fact contract claim that it
7 abandoned in 2014. Thus, the Motion should be granted on both bases, and Nanyah’s unjust
8 enrichment claim should be dismissed with prejudice, thereby dismissing Eldorado from the
9 litigation altogether.

10 II. ARGUMENT

11 A. Nanyah Has Agreed That the Rogich Trust is “Solely Responsible” for the Repayment 12 of Its \$1,500,000.00.

13 Nanyah’s sole argument regarding the binding nature of the MIPA is that “[d]espite
14 Eldorado’s assertion to the contrary, Nanyah does not agree that the Rogich Trust is ‘solely
15 responsible’ for the repayment of the \$1.5 million.”² This is not merely “Eldorado’s assertion.”
16 *This is a binding holding from the Nevada Supreme Court. See Canfora v. Coast Hotels and*
17 *Casinos, Inc.* 121 Nev. 771, 779, 121 P.3d 599, 604 (2005) (“[A]n intended third-party beneficiary is
18 bound by the terms of a contract even if she is not a signatory.”). As set forth by the Delaware
19 Chancery Court, “a court will not allow a third-party beneficiary to cherry-pick certain provisions of
20 a contract which it finds advantageous in making its claim, while simultaneously discarding
21 corresponding contractual obligations which it finds distasteful.” *NAMA Holdings, LLC v. Related*
22 *World Market Center, LLC*, 922 A.2d 417, 431 (Del. Ch. Ct. 2007). Nanyah does not get to sue
23 under the MIPA as a third-party beneficiary and unilaterally disavow the other terms of that same
24 agreement, more specifically, the two provisions which state that the Rogich Trust is “solely
25 responsible.” If the Rogich Trust is “solely responsible,” Eldorado is not responsible. Thus, as a
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27

28 ² Opp’n, 9:3-5.

1 matter of law, this Court must enter summary judgment in favor of Eldorado on Nanyah's unjust
2 enrichment claim.

3 **B. Nanyah's Contractual Remedy Against the Rogich Trust Bars Its Equitable Claim for**
4 **Unjust Enrichment Against Eldorado as a Matter of Law.**

5 Nanyah's argument regarding its legal remedy against the Rogich Trust is also fleeting and
6 confined to one paragraph of its prolix Opposition. Specifically, Nanyah claims that "Eldorado's
7 motion fails because this Court has ruled that the Rogich Trust is dismissed from this action.
8 Accordingly, Nanyah currently has no legal remedy against the Rogich Trust."³ Once again, Nanyah
9 has ignored the legal authority cited in the Motion, which states the following:

10 The disposition of those claims is irrelevant. Their mere availability is
11 a bar to a claim of unjust enrichment.

12 *Fernandes v. Havkin*, 731 F.Supp.2d 103, 114 (D. Mass. 2010). Other jurisdictions are in accord:

- 13 ➤ *CMI Roadbuilding Inc. v. Iowa Parts, Inc.*, 920 F.3d 560, 566 (8th Cir. 2019) ("We found
14 that it was the existence of, *not the efficacy of*, an adequate legal remedy that precluded the
15 equitable claim.") (emphasis in original);
- 16 ➤ *Garcia v. Tyson Foods, Inc.*, 766 F.Supp.2d 1167, 1188 n. 17 (D. Kan. 2011) ("The pertinent
17 inquiry is whether an adequate remedy is available, not whether that remedy is ultimately
18 obtained.");
- 19 ➤ *Brenner v. Heller*, No. 1:11-CV-481 (NAM), 2011 WL 6011786, at *3 (N.D.N.Y. Nov. 30,
20 2011) ("Although unfortunately it appears that the Brenners will not be made whole in the
21 bankruptcy proceeding, 'that does not mean their remedy is legally inadequate, simply that it
22 is imperfect.'");
- 23 ➤ *Mosebach v. Blythe*, 282 N.W.2d 755, 761 (Iowa Ct. App. 1979) ("Equity generally will not
24 provide relief where an adequate remedy at law existed and defendant was denied that relief
25 for appropriate legal reasons.").

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28 ³ Opp'n, 12:8-11.

1 To be sure, the United States District Court of the District of Nevada (the Honorable James Mahan)
2 recently held that “[s]imply ignoring legal remedies does not open the door to equitable relief.”
3 *Guild Mortgage Co. v. Prestwick Court Trust*, 293 F.Supp.3d 1228, 1235 (D. Nev. 2018).

4 It is self-evident from Nanyah’s filing of a third-party beneficiary claim against the Rogich
5 Trust that Nanyah claims to have an adequate contractual remedy at law against the Rogich Trust
6 ***regarding the exact same alleged debt it is also seeking from Eldorado***. In fact, Nanyah has been
7 and still is claiming that this Court made such a finding in the Summary Judgment Order.⁴ As set
8 forth by the legal authority above, the fact that Nanyah failed to comply with its notice obligations
9 under NRS 163.120 and lost its legal remedy against the Rogich Trust is irrelevant. In fact,
10 considering unjust enrichment is an equitable claim, it would be particularly inequitable to hold
11 Eldorado liable merely because Nanyah unilaterally failed to comply with NRS 163.120. This Court
12 should enter summary judgment in favor of Eldorado on Nanyah’s unjust enrichment claim.

13 C. **Rule 54(c) Does Not Permit Nanyah to Reassert a Claim Which This Court Already**
14 **Deemed to be Abandoned.**

15 Nanyah cites to N.R.C.P. 54(c) in a thinly veiled attempt to convince this Court to reconsider
16 its recent decision denying its Motion to Amend. N.R.C.P. 54(c) was one of the primary bases for
17 the denied Motion.⁵ Yet the Court rejected it when it ruled that: (1) “Nanyah voluntarily abandoned
18 its implied-in-fact contract claim against Eldorado”; (2) Nanyah’s Motion to add such a claim was
19 “untimely”; and (3) “it would be unfair and prejudicial to require Eldorado” to defend any such
20 claim.⁶ Without a proper motion for reconsideration, Nanyah cannot again cite to N.R.C.P. 54(c) in
21 a frivolous attempt to avoid summary judgment, especially since this Court already ruled it would be
22 prejudicial to force Eldorado to defend such an abandoned claim. *See Hudson v. Chertoff*, 484
23 F.Supp.2d 1268, 1270 (S.D. Fla. 2007) (Rule 54(c) will not apply if it prejudices the opposing
24

25 ⁴ The “Summary Judgment Order” refers to this Court’s October 5, 2018 Order: (1) Granting Defendants Peter
26 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.

27 ⁵ Nanyah Vegas LLC’s Opp’n to Eldorado Hills LLC’s Mot. to Extend the Dispositive Motion Deadline and
Motion for Summary Judgment and Countermotion for NRCP 15 Relief, 10:18-12:7, filed Feb. 15, 2019.

28 ⁶ Order Denying Nanyah Vegas, LLC’s Mot. for NRCP 15 Relief, filed May 29, 2019.

1 party); *Cioffe v. Morris*, 676 F.2d 539, 541-42 (11th Cir. 1982) (“[I]mplied consent under Rule 15(b)
2 will not be found if the defendant will be prejudiced....”).⁷

3 Additionally, recent Nevada Supreme Court authority has confirmed that N.R.C.P. 54(c) is
4 not nearly as forgiving as Nanyah claims it to be. “[A]lthough courts can grant relief not specifically
5 requested in the pleadings, *see* NRCP 54(c), ***a district court is jurisdictionally limited to rule on***
6 ***only the legal issues properly before it.***” *Clark Cty. Credit Union v. Saunders, M.D.*, No. 69744,
7 2017 WL 1214508, at *1 (Nev. March 30, 2017) (emphasis added). This Court has already ruled
8 that Nanyah abandoned its implied-in-fact contract claim, and thus, that particular claim is not
9 properly before the Court. *See also USX Corp. v. Barnhart*, 395 F.3d 161, 165 (3d Cir. 2004) (Rule
10 54(c) “is not designed to allow plaintiffs to recover for claims they never alleged.”).

11 N.R.C.P. 54(c) must also be analyzed in conjunction within the consent requirements of
12 N.R.C.P. 15(b). *Idaho Resources, Inc. v. Freeport-McMoran Gold Co.*, 110 Nev. 459, 461-62, 874
13 P.2d 742, 743-44 (1994). Nanyah has never expressly or impliedly consented to any such implied-
14 in-fact contract claim, and in fact, ***explicitly withheld its consent while successfully defeating***
15 ***Nanyah’s recent Motion to Amend.*** Further, Nanyah’s oft-repeated (and rejected) argument that
16 this Court’s prior Summary Judgment Order addressed and ruled on some sort of contract theory
17 against Eldorado is cut from whole cloth. There are no findings in the Summary Judgment Order
18 that Eldorado agreed to pay back Nanyah or that Eldorado was liable for Nanyah’s so-called
19 investment. There are no findings regarding any written contract between Nanyah and Eldorado.⁸
20 The Summary Judgment Order certainly does not contain any findings of fact or conclusions of law
21 supporting the wild theory that the Rogich Trust was a “surety” for Eldorado’s fictional debt
22 obligation.⁹ In fact, on March 20, 2019, this Court explicitly ruled that Eldorado is not a party to any

23 _____
24 ⁷ Federal cases interpreting rules of civil procedure are persuasive authority in Nevada courts. *Exec. Mgmt. Ltd.*
25 *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)).

26 ⁸ *See generally id.*

27 ⁹ Nanyah appears to argue that this Court’s findings and use of the term “assume” implies that there was an
28 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,

1 of the written contracts at issue in this case.¹⁰

2 Nanyah does not have a contract claim against Eldorado. The only claim at issue is unjust
3 enrichment, which must be dismissed for the reasons set forth above.

4 **III. CONCLUSION**

5 For the foregoing reasons, summary judgment should be entered against Nanyah and in favor
6 of Eldorado with respect to Nanyah's unjust enrichment claim. Because that is Nanyah's only
7 pending claim, Eldorado should be dismissed from this case entirely and with prejudice.

8 DATED this 29th day of August, 2019.

9 BAILEY ♦ KENNEDY

10
11 By: /s/ Joseph A. Liebman

12 DENNIS L. KENNEDY

13 JOSEPH A. LIEBMAN

14 *Attorneys for Defendant*

15 ELDORADO HILLS, LLC

16
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26 _____
27 under the plain language of the agreements, to the extent anyone was originally liable for Nanyah's potential claim prior
28 to the Rogich Trust, *it was Go Global and Huerta—not Eldorado*. Perhaps Nanyah should have sued them.

¹⁰ Order Denying Nanyah Vegas, LLC's Motion in Limine # 5: Parol Evidence Rule, 2:15-20, filed April 10, 2019.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 29th day of August, 2019, service of the foregoing **REPLY IN SUPPORT OF DEFENDANT ELDORADO HILLS, 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.
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Suite F-46
Reno, NV 89509

Email: msimons@shjnevada.com

Attorneys for Plaintiff
NANYAH VEGAS, LLC

SAMUEL S. LIONEL, ESQ.
BRENOCH WIRTHLIN, ESQ.
FENNEMORE CRAIG, P.C.
300 S. Fourth Street, Suite 1400
Las Vegas, NV 89101

Email: slionel@fclaw.com
bwirthlin@fclaw.com

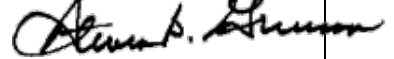
Attorneys for Defendants
SIG ROGICH aka SIGMUND
ROGICH, Individually and as
Trustee of THE ROGICH FAMILY
IRREVOCABLE TRUST, and
IMITATIONS, LLC

MICHAEL V. CRISTALLI
JANIECE S. MARSHALL
GENTILE CRISTALLI MILLER
ARMENI SAVARESE
410 South Rampart Blvd., Suite 420
Las Vegas, NV 89145

Email: mcristalli@gcmaslaw.com
jmarshall@gcmaslaw.com

Attorneys for Defendants
SIG ROGICH aka SIGMUND
ROGICH as Trustee of THE
ROGICH FAMILY
IRREVOCABLE TRUST

/s/ Sharon L. Murnane
Employee of BAILEY ♦ KENNEDY



RIS (CIV)

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

BAILEY ♦ KENNEDY

8984 Spanish Ridge Avenue

Las Vegas, Nevada 89148-1302

Telephone: 702.562.8820

Facsimile: 702.562.8821

DKennedy@BaileyKennedy.com

JLiebman@BaileyKennedy.com

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

**REPLY IN SUPPORT OF DEFENDANT
ELDORADO HILLS, LLC'S MOTION
FOR DISMISSAL WITH PREJUDICE
UNDER RULE 41(e)**

Date of Hearing: Sept. 5, 2019

Time of Hearing: 10:30 a.m.

CONSOLIDATED WITH:

Case No. A-16-746239-C

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pot, meet kettle. Despite just representing to the Nevada Supreme Court that “the trial was never actually started,” Nanyah Vegas, LLC (“Nanyah”) has the temerity to accuse Eldorado Hills, LLC (“Eldorado”) of sanctionable conduct *for taking the exact same position* with this Court. Nowhere within Nanyah’s Opposition does it provide any legitimate rationale for its conflicting positions before this Court and before the Nevada Supreme Court. Blindly following the adage that the best defense is a good offense, Nanyah instead accuses Eldorado’s counsel of violating the Rules of Professional Conduct *for simply agreeing with Nanyah that the trial never commenced*.

Regardless, Nanyah fails to grasp that Eldorado never stipulated that trial commenced *for the purposes of N.R.C.P. 41(e)*. As previously recognized by the Nevada Supreme Court, there are different triggering points for the commencement of trial depending on the legal principle at issue. *See Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1048-49, 881 P.2d 638, 641-42 (1994) (explaining the different tests for the commencement of trial under N.R.C.P. 41(e), N.R.C.P. 68, and for the purposes of double jeopardy). Any and all stipulations or agreements relating to the commencement of trial in this case dealt *solely* with the right to intervene under NRS 12.130 and *could not* change the *binding legal requirements* for the commencement of trial under N.R.C.P. 41(e). *Ahlswede v. Schonoveld*, 87 Nev. 449, 451, 488 P.2d 908, 910 (1971) (“Such stipulations *as to the law* will be disregarded.”) (emphasis added).¹

The Nevada Supreme Court has set forth only two ways to commence trial under N.R.C.P. 41(e). It “held on numerous occasions that the swearing of a witness who gives testimony is sufficient to commence trial and thus toll the limitations period specified in N.R.C.P. 41(e).” *A French Bouquet Flower Shoppe, Ltd. v. Hubert*, 106 Nev. 324, 324, 793 P.2d 835, 836 (1990). Alternatively, it has “held that a litigant who obtains a trial date within the statutory period, appears

¹ Nanyah claims that “Eldorado expressly stipulated in writing and affirmed on the record that the trial ‘commenced’ in this action pursuant to NRCP 41(e) within the applicable time period.” Nanyah further argues that “Eldorado expressly stipulated to a ‘stay’ of proceedings....” (“Opp’n, 2:10-13.”) These are blatant misrepresentations, and Eldorado challenges Nanyah to identify the specific written (or oral) stipulations where this precise language is contained. They do not exist.

1 for trial in good faith, argues motions *and examines jurors*, thereby brings the case to trial.” *Lipitt*
2 *v. State*, 103 Nev. 412, 413, 743 P.2d 108, 109 (1987) (emphasis added). *It is undisputed that*
3 *neither of these events ever occurred because Nanyah instead chose to file a writ petition with the*
4 *Nevada Supreme Court*. In other words, Nanyah never commenced trial in compliance with
5 N.R.C.P. 41(e) despite its obligation to do so. Further, none of the Defendants nor this Court ever
6 agreed to a complete stay of this litigation pending the outcome of Nanyah’s writ petition, as
7 evidenced by the fact that the parties have been briefing dispositive motions for the past several
8 months. Thus, N.R.C.P. 41(e) was not tolled, and dismissal is mandatory pursuant to the binding
9 precedent of the Nevada Supreme Court.

10 II. ARGUMENT

11 A. Eldorado Never Stipulated That Trial Commenced for the Purposes of N.R.C.P. 41(e).

12 As set forth in the Motion, Nanyah recently made the following representations to the
13 Nevada Supreme Court.

14 Due to the “suspension” of the trial in this action, the beneficiaries
15 remain fully capable of intervening if such action is warranted “prior to”
16 trial in this action. That is because the use of the phrase “suspension”
17 of the trial is a misnomer. *The trial was never actually started*. Other
18 than the ruling addressed herein, no other action occurred on April 22,
2019; no jury was empaneled, no evidentiary stipulations were placed
on the record and no exhibits were marked. Further, there is no record
of any jury panel even being called for the case.²

19 In light of this unequivocal judicial admission, it is completely absurd that Nanyah is now taking the
20 position that Eldorado cannot and should not argue that the trial never commenced. *See Gospel*
21 *Missions of Am. v. City of Los Angeles*, 328 F.3d 548, 557 (9th Cir. 2003) (“We have discretion to
22 consider a statement made in briefs to be a judicial admission, binding on both this court and the trial
23 court.”). It is even more outrageous that Nanyah would accuse undersigned counsel of violating the
24 Rules of Professional Conduct and countermove for sanctions. Simply put, Nanyah’s argument is
25 that Eldorado and its counsel have committed unethical conduct *for agreeing with the position*
26
27

28 ² Ex. 1 to Mot., 23: n. 8 (emphasis added).

1 *Nanyah just took before the Nevada Supreme Court.* That is a sanctionable argument in and of
2 itself.

3 Regardless, Nanyah has completely misunderstood the import of the parties' stipulations.
4 These stipulations arose solely as the result of Nanyah's noncompliance with NRS 163.120. On the
5 morning of April 22, 2019, this Court had just ruled that "because the trial in this action commenced
6 on April 22, 2019, Plaintiff Nanyah's written demand for a list of beneficiaries...was untimely under
7 NRS 163.120 as such notification would not permit interested beneficiaries of the trust an
8 opportunity to intervene in this action pursuant to NRS 12.130."³ Thus, when the parties stipulated
9 that trial had commenced, the purpose of the stipulation was to conform to this Court's Order
10 dismissing the Rogich Trust *and it was only relevant to the issue of intervention under NRS*
11 *12.130.*⁴

12 The mere fact that Eldorado agreed with this Court's ruling that trial had commenced for the
13 purposes of intervention under NRS 12.130 does not mean that Eldorado agreed that trial had
14 commenced for the purposes of N.R.C.P. 41(e). Commencement of trial is not a static concept.
15 There is no hard and fast rule. On the contrary, the Nevada Supreme Court has recognized different
16 triggering points depending on the legal principle at issue. For example, with respect to N.R.C.P.
17 68, the Court held that "the policy behind Rule 68 is best served by interpreting the phrase 'before
18 trial begins' to refer to the point in trial when the actual presentation of evidence commences."
19 *Schwartz*, 110 Nev. at 1049, 881 P.2d at 642. With respect to double jeopardy, "trial begins when
20 the jury is impaneled and sworn." *Id.* at 1048, 881 P.2d at 641. "With respect to NRCP 41(e), we
21 have said that a case is brought to trial by, *inter alia*, examining jurors." *Id.* These are all different
22 and unique standards for the commencement of trial, and the same is true with respect to
23 intervention under NRS 12.130. Certainly the Court would not interpret its Order to mean that no
24 party could now serve an offer of judgment under N.R.C.P. 68, as the Nevada Supreme Court has

25 ³ Ex. 2 to Opp'n, 3:17-22; *see also* Ex. 2 to Mot., 13:4-5 ("NRS 12.130 requires intervention to occur before
26 trial.").

27 ⁴ Nanyah admits that the Court's ruling that trial had commenced was for the purposes of NRS 163.120. (Opp'n,
28 7:5-7 ("As noted above, this Court has already found that trial commenced on April 22, 2019. This ruling was critical to
this Court's [O]rder granting the motion to dismiss the Rogich Trust based upon alleged noncompliance with NRS
163.120.").)

1 explicitly held that evidence must have been presented for trial to have commenced. The same is
2 true with respect to N.R.C.P. 41(e). The Court’s ruling that trial commenced for the purposes of
3 NRS 12.130 does not change the fact that a witness was never sworn and a jurors were never
4 examined.

5 Further, in order for the stipulation to have had any effect on N.R.C.P. 41(e), it must have
6 explicitly referenced that particular rule. *Erickson v. One-Thirty-Three, Inc. and Associates*, 104
7 Nev. 755, 757-58, 766 P.2d 898, 900 (1988) (“The stipulation submitted by the respondent is of
8 no effect because it was not a stipulation to extend time as required by NRCP 41(e).”); *Western Cab*
9 *Co. v. Dahl*, 437 P.3d 1056, 2019 WL 1450205, at *2 (Nev. March 29, 2019) (“*Prostack* also
10 explicitly stated that a stipulation that is silent as to the 5-year rule, but that incidentally moves the
11 trial date beyond the 5-year period, is not sufficient to satisfy NCRCP 41(e)’s written-stipulation
12 requirement.”). This oral stipulation *never* referenced N.R.C.P. 41(e) or the 3-year rule. In fact,
13 *following the parties’ oral stipulation that trial had commenced for the purposes of NRS 12.130*,
14 the Court informed the parties that there may still be issues under N.R.C.P. 41(e) because a witness
15 had not been sworn (consistent with the legal authority above and below). For some inexplicable
16 reason, Nanyah’s counsel disregarded the Court’s warning.⁵ More importantly, none of the
17 Defendants agreed with Nanyah’s counsel’s unilateral characterization that trial had commenced for
18 the purposes of N.R.C.P. 41(e).⁶ Thus, the mere fact that this Court determined—and the parties
19 ultimately agreed—that trial commenced for the purposes of NRS 12.130 has no bearing on whether
20 trial commenced for the purposes of N.R.C.P. 41(e) (it did not).

21 **B. The Parties Cannot Stipulate Around Binding Legal Precedent Regarding the**
22 **Commencement of Trial Under N.R.C.P. 41(e).**

23 As shown in the Motion, the Nevada Supreme Court has set forth *only* two ways to
24

25 ⁵ Ex. 2 to Mot., 16:8-13.

26 ⁶ Nanyah baselessly claims that “[t]he Court inquired about the three-year rule, and the understanding of all
27 involved was that because the trial had been commenced, there was no issue.” (Opp’n, 16-18.) The transcript speaks for
28 itself, and Nanyah cannot point to any portion of the transcript where any of the Defendants’ counsel agreed that the
Court’s ruling or the parties’ stipulation had resolved any issues with N.R.C.P. 41(e). Only Nanyah’s counsel took that
position, and he did not inquire of the other parties whether or not they agreed. As reflected by this Motion, Eldorado
does not agree.

1 commence trial for the purposes of N.R.C.P. 41(e). With respect to a bench trial, the swearing in of
2 a relevant witness commences trial for the purposes of N.R.C.P. 41(e). *A French Bouquet Flower*
3 *Shoppe, Ltd.*, 106 Nev. at 324, 793 P.2d at 836. With respect to a jury trial, trial commences upon
4 the examination of potential jurors. *Lipitt*, 103 Nev. at 413, 743 P.2d at 109. California law, which
5 is generally in accord with Nevada law for the purposes of N.R.C.P. 41(e), follows the same
6 approach. *The Power Co. v. Henry*, 130 Nev. 182, 188, 321 P.3d 858, 862 (2014) (looking to
7 California law for guidance under N.R.C.P. 41(e)); *see also Bella Vista Dev. Co. v. Sup. Ct.*, 36
8 Cal.Rptr. 106, 109 (Cal. Ct. App. 1963) (“Where the trial is before the court without a jury, the
9 action is not ordinarily ‘brought to trial’ ...until at least one witness is called and gives some
10 testimony; where, however, the case is set for trial before a jury, the case is ‘brought to trial’ when
11 the parties commence the examination of prospective jurors and the [e]mpanelment of the jury.”).

12 Whether or not trial has commenced for the purposes of N.R.C.P. 41(e) is an *issue of law* for
13 the Court. *See D.R. Horton, Inc. v. Dist. Ct.*, 131 Nev. 865, 358 P.3d 925, 928 (2015); *The Power*
14 *Co.*, 130 Nev. at 186, 321 P.3d at 861. And these requisite milestones which trigger the
15 commencement of trial are *binding legal precedent*. Accordingly, the parties cannot alter them or
16 stipulate around these *legal requirements*. *Ahlswede*, 87 Nev. at 451, 488 P.2d at 910 (“Such
17 stipulations *as to the law* will be disregarded.”) (emphasis added). What happened on April 22,
18 2019 is explicitly set forth in the Court transcript.⁷ The parties’ stipulation cannot change the course
19 of history and the fact remains that none of the requisite triggering events under Nevada law ever
20 occurred. As set forth by Nanyah in its Writ Petition, “no jury was empaneled, no evidentiary
21 stipulations were placed on the record and no exhibits were marked.”⁸ Thus, it is undisputed that
22 trial never commenced *for the purposes of N.R.C.P. 41(e)*, and no stipulation of the parties—short
23 of a stipulation to extend time under N.R.C.P. 41(e)—can change that. *See Nevada Contractors Ins.*
24 *Co., Inc. v. Risk Services-Nevada, Inc.*, 2016 WL 3257789, at *1 (Nev. June 10, 2016) (“[T]he
25 parties’ stipulation does not bind the district court on legal questions.”).

26
27 ⁷ See generally Ex. 2 to Mot.

28 ⁸ Ex. 1 to Mot., 23: n. 8.

1 **C. N.R.C.P. 41(e) Was Not Tolloed by a “Suspension of the Trial.”**

2 Nanyah next argues that N.R.C.P. 41(e) was tolled because there was a stay of the litigation
3 pending a decision on its writ petition. Wrong. The term “stay” is never mentioned in the April 22,
4 2019 transcript when this so-called agreement was supposedly made.⁹ The mere fact that that the
5 parties agreed to “suspend the trial” does not result in an implied stay of the entire litigation.
6 *Pontikis v. Woodlands Community Ass’n*, 432 P.3d 201, 2018 WL 6721367, at *2 (Nev. Dec. 17,
7 2018) (“[A]n implied agreement to toll the five-year deadline is explicitly rejected by the rules.”).
8 If Nanyah wanted a stay of the entire case which would toll the time period under N.R.C.P. 41(e), it
9 “needed to either enter into a written agreement, or move to stay the proceedings pending appeal
10 under NRAP 8(a).” *Id.* Nanyah did neither, and thus N.R.C.P. 41(e) was never tolled.¹⁰

11 Even if the “suspension of the trial” could be considered a stay, there certainly was not a
12 complete stay since all of the parties agreed that dispositive motions would be permitted. Partial
13 stays do not toll the time period under N.R.C.P. 41(e). *See generally Morgan v. Las Vegas Sands,*
14 *Inc.*, 118 Nev. 315, 43 P.3d 1036 (2002) (Rule 41(e) is not tolled during the court-annexed
15 arbitration program); *Martinez v. Landry’s Restaurants, Inc.*, 237 Cal.Rptr.3d 379, 387 n. 11 (Cal.
16 Ct. App. 2018) (Tolling “applies only when a stay encompasses all proceedings in the action and
17 does not include partial stays.”).

18 Finally, it should be noted that Nanyah choose to forego a trial against Eldorado, Sig Rogich,
19 and Imitations, LLC because it instead wanted to file a writ petition addressing dismissal of the
20 Rogich Trust. Under binding Nevada precedent, the time period under N.R.C.P. 41(e) is only tolled
21 if the plaintiff was completely precluded from bringing the case to trial. *D.R. Horton*, 131 Nev. 865,
22 358 P.3d at 930-31. Nanyah could have gone to trial against the remaining Defendants and still filed

23
24
25 ⁹ See generally Ex. 2 to Mot.

26 ¹⁰ Although the Court’s April 30, 2019 Order directs the parties “to submit to the Court a stipulation and order
27 with respect to the agreed upon stay of this action,” there was no such agreement. (Ex. 2 to Opp’n, 4:4-7.) In fact, when
28 the parties did submit their stipulation, it said nothing about a stay of the litigation, merely a suspension of the trial. (*See*
generally Ex. 3 to Opp’n.) Even if the Court’s reference to a stay did somehow initiate a stay, it was one day too late,
since the three year time period expired on April 29, 2019.

its writ petition or challenged the dismissal of the Rogich Trust via appeal.¹¹ The Court never precluded Nanyah from going to trial against the remaining Defendants. *Id.* (“The holding in *Boren* was based on the fact that the district court prohibited the parties from going to trial and then dismissed their action for failure to bring it to trial, circumstances that were unarguably ‘unfair and unjust.’”). Nanyah chose to pursue appellate relief and not to go to trial, and thus does not get the benefit of tolling. *Messih v. Levine*, 278 Cal.Rptr. 825, 829 (Cal Ct. App. 1991) (“An appeal from nonappealable orders does not toll the limitations statute.”).

D. Nanyah’s Countermotion for Sanctions Must Be Denied.

As thoroughly explained above, Nanyah was the first party to take the position that “the trial was never actually started.”¹² Nanyah is now attempting to backtrack by referring to its representations to the Nevada Supreme Court as “commentary.”¹³ It is not entirely clear what that is supposed to mean, but this Court can certainly make that determination on its own. Regardless, what is clear is that Nanyah has accused Eldorado and its counsel of sanctionable misconduct based on the fact that Eldorado is taking *the exact same position* (i.e., that trial never started) as Nanyah did in its “commentary” to the Nevada Supreme Court.

Nanyah also claims that Eldorado and its counsel should be sanctioned for claiming that the trial was continued as opposed to suspended.¹⁴ Unsurprisingly, *Nanyah does not cite the portion of Eldorado’s Motion where this so-called misrepresentation was made.* Nanyah also ignores the following statement from Eldorado’s Motion: “Ultimately the parties did agree to *suspend* the trial indefinitely to permit Nanyah to seek writ relief.”¹⁵ Eldorado never maintained that this Court continued—as opposed to suspended—the trial. Eldorado has instead claimed that a suspension of

¹¹ It is worth noting that although the matters have been consolidated, Nanyah’s claims against Rogich, the Rogich Trust, and Imitations, LLC are a separate lawsuit from its unjust enrichment claim against Nanyah. Considering these are separate lawsuits, Nanyah could have certainly gone to trial solely against Eldorado in Case No. A-13-686303-C.

¹² Ex. 1 to Mot., 23, n. 8.

¹³ Opp’n, 5:17-19.

¹⁴ *Id.*, 15:16-16:2.

¹⁵ Mot., 5:8-9 (emphasis added).

1 the trial does not amount to a complete stay of the proceedings, especially considering the parties are
2 going forward with dispositive motions.

3 Nanyah's Countermotion is frivolous, and if anyone should be subjected to sanctions under
4 NRS 7.085, it should be Nanyah's counsel.

5 **III. CONCLUSION**

6 Nanyah has admitted that trial never commenced in this matter. The Nevada Supreme
7 Court's binding precedent confirms the same. Three years have elapsed since the remittitur was
8 filed with this Court. Thus, because trial has not commenced and Nanyah failed to procure a written
9 extension under N.R.C.P. 41(e), any and all claims against Eldorado shall be dismissed with
10 prejudice.

11 DATED this 29th day of August, 2019.

12 BAILEY ♦ KENNEDY

13
14 By: /s/ Joseph A. Liebman

15 DENNIS L. KENNEDY
16 JOSEPH A. LIEBMAN

17 *Attorneys for Defendant*
18 ELDORADO HILLS, LLC
19
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21
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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 29th day of August, 2019, service of the foregoing **REPLY IN SUPPORT OF DEFENDANT ELDORADO HILLS, LLC'S MOTION FOR DISMISSAL WITH PREJUDICE UNDER RULE 41(e)** 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. SIMONS HALL JOHNSTON PC 6490 S. McCarran Blvd., Suite F-46 Reno, NV 89509	Email: msimons@shjnevada.com <i>Attorneys for Plaintiff</i> NANYAH VEGAS, LLC
--	---

SAMUEL S. LIONEL, ESQ. BRENOCH WIRTHLIN, ESQ. FENNEMORE CRAIG, P.C. 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 GENTILE CRISTALLI MILLER ARMENI SAVARESE 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

REGISTER OF ACTIONS

CASE NO. A-13-686303-C

Carlos Huerta, Plaintiff(s) vs. Eldorado Hills LLC, Defendant(s)

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Case Type: **Breach of Contract**
 Subtype: **Other**
 Date Filed: **07/31/2013**
 Location: **Department 27**
 Cross-Reference Case Number: **A686303**
 Supreme Court No.: **66823**
67595
70492
79917
81038
81238

RELATED CASE INFORMATION

Related Cases

A-16-746239-C (Consolidated)

PARTY INFORMATION

	Lead Attorneys
Consolidated Eliades Survivor Trust of 10-30-03 Case Party	
Consolidated Eliades, Peter Case Party	Dennis L. Kennedy <i>Retained</i> 7025628820(W)
Consolidated Sigmund Rogich Case Party	Brenoch Wirthlin <i>Retained</i> 702-385-2500(W)
Consolidated TELD, LLC Case Party	Dennis L. Kennedy <i>Retained</i> 7025628820(W)
Counter Eldorado Hills LLC Claimant	Dennis L. Kennedy <i>Retained</i> 7025628820(W)
Counter Alexander Christopher Trust Defendant	Charles E. Barnabi <i>Retained</i> 702-475-8903(W)
Counter Go Global Inc Defendant	Brandon B McDonald <i>Retained</i> 702-385-7411(W)
Counter Huerta, Carlos A Defendant	
Defendant Eldorado Hills LLC	Dennis L. Kennedy <i>Retained</i> 7025628820(W)
Other Plaintiff Go Global Inc	Brandon B McDonald <i>Retained</i> 702-385-7411(W)

Plaintiff	Huerta, Carlos A	Charles E. Barnabi <i>Retained</i> 702-475-8903(W)
Plaintiff	Nanyah Vegas LLC	Mark G Simons <i>Retained</i> 775-785-0088(W)
Trustee	Huerta, Carlos A	Charles E. Barnabi <i>Retained</i> 702-475-8903(W)
Trustee	Rogich, Sig <i>Also Known As</i> Rogich, Sigmund	Brenoch Wirthlin <i>Retained</i> 702-385-2500(W)

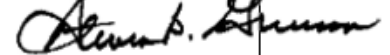
EVENTS & ORDERS OF THE COURT

09/05/2019 **All Pending Motions** (10:30 AM) (Judicial Officer Allf, Nancy)**Minutes**

09/05/2019 10:30 AM

- MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO NRCP 50(A)...DEFENDANT ELDORADO HILLS, LLC'S MOTION FOR SUMMARY JUDGMENT...DEFENDANT ELDORADO HILLS, LLC'S MOTION FOR DISMISSAL WITH PREJUDICE UNDER RULE 41(E) Arguments by Mr. Liebman and Mr. Simons regarding the merits of and opposition to the motion. COURT ORDERED, Motion for Summary Judgment or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(a); Defendant Eldorado Hills, LLC's Motion for Summary Judgment; and Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e) TAKEN UNDER ADVISEMENT. Court stated it is going to write a decision, and would like to go back to the deposition and the documents to take a second look. Court stated a decision could be expected on or about September 27, 2019. 9/24/2019 (CHAMBERS) STATUS CHECK: DECISION

Parties Present[Return to Register of Actions](#)



1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 CARLOS HUERTA,)
8 Plaintiff(s),)

CASE NO: A-13-686303-C

9 vs.)

DEPT. XXVII

10 ELDORADO HILLS LLC,)
11 Defendant(s).)
12

13 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE
14 THURSDAY, SEPTEMBER 5, 2019

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
16 **RE: MOTIONS**

17
18 APPEARANCES:

19 For the Plaintiff(s): MARK G. SIMONS, ESQ.

20 For the Defendant(s): JOSEPH A. LIEBMAN, ESQ.

21 For the Trustee Rogich: SAMUEL S. LIONEL, ESQ.
22 BRENOCH WIRTHLIN, ESQ.
23 THOMAS H. FELL, ESQ.
24

25 RECORDED BY: BRYNN WHITE, COURT RECORDER

1 **LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 5, 2019**

2 [Proceeding commenced at 10:50 a.m.]

3
4 THE COURT: -- versus Eldorado Hills. And we have
5 several matters at 11 o'clock. For those who are here at 11:00, I
6 apologize, I'm going to move through cases as soon as is reasonable
7 for everyone.

8 Are the parties present? Are all parties present?

9 And may I have your appearances, please, from the right
10 to left.

11 MR. SIMONS: Our right?

12 THE COURT: Your right.

13 MR. SIMONS: Mark Simons, on behalf of Nanyah,
14 Your Honor.

15 THE COURT: Thank you.

16 MR. WIRTHLIN: Good morning, Your Honor, Brenoch
17 Wirthlin, on behalf of the Rogich defendants.

18 THE COURT: Thank you.

19 MR. LIONEL: Good morning, Your Honor. Sam Lionel,
20 with Fennemore Craig, representing Mr. Rogich.

21 THE COURT: Thank you.

22 MR. FELL: Good morning, Your Honor. Thomas Fell, also
23 representing the Rogich defendants.

24 THE COURT: Thank you.

25 MR. LIEBMAN: Good morning, Your Honor. Joseph

1 Liebman, on behalf of Eldorado Hills.

2 THE COURT: Thank you. You guys have three motions
3 this morning.

4 Are you willing to limit your argument to 20 minutes or
5 should I call the other things at 11 o'clock first? I think -- is
6 everybody here on 11 o'clock matters? Yeah.

7 [Recess taken from 10:51 a.m., until 11:12 a.m.]

8 THE COURT: 10:30 is Huerta versus Eldorado Hills. And I
9 had already had you set up once. I apologize for the delay.

10 All right. I've already taken the appearances of
11 Mr. Simons, Wirthlin, Lionel, Fell, and Liebman.

12 You have three motions this morning. The first two are
13 Eldorado Hills' Motions. One is for the dismissal under 41(e); one is
14 for summary judgment. I'd like to argue those together. These
15 motions will get a total of 20 minutes, let's say 7, 7, 7, or 7, 7, 6.
16 Obviously, if you need more time, I'll make sure that you get it.

17 Mr. Liebman.

18 MR. LIEBMAN: Thank you, Your Honor. I'll start with the
19 Motion for Summary Judgment. It's based on two separate
20 grounds, both of which can be just decided by this Court as a matter
21 of law.

22 First, it's undisputed that Nanyah sued the Rogich Trust,
23 among other defendants who have since been dismissed, as a
24 third-party beneficiary under the October 30th, 2008, Membership
25 Interest Purchase Agreement. To this day, Nanyah continues to take

1 the position that it's a third-party beneficiary under that particular
2 agreement.

3 Now, under binding Nevada precedent, Canfora v. Coast
4 Hotels, when Nanyah asserted third-party contractual claims against
5 the Rogich Trust under this particular agreement, it adopted and
6 agreed to the language contained therein, especially with respect to
7 the provisions that dealt with the subject of their claim, this
8 \$1.5 million alleged debt. This is what Section 8(c)(l) of that
9 agreement states after explicitly referring to the alleged debt, which
10 is the subject of Nanyah's claims.

11 It is the current intention of the Rogich Trust that such
12 amounts be confirmed or converted to debt with no obligation to
13 participate in capital calls or monthly payments, a *pro rata*
14 distribution at such time as Eldorado's real property is sold or
15 otherwise disposed of. Regardless of whether this intention is
16 realized, the Rogich Trust shall remain solely responsible for any
17 claims by the above-referenced entities set forth in the section
18 above.

19 Thus, under Canfora v. Coast Hotels, when Nanyah sued
20 the Rogich Trust as a third-party beneficiary under that agreement, it
21 agreed that the Rogich Trust was solely responsible for its claim.

22 In the motion we cited, obviously Canfora, we cited
23 numerous other cases from persuasive jurisdictions that talk about
24 this particular rule. It's a widely-accepted rule. And these cases
25 specifically say that as soon as you decide to sue as a third-party

1 beneficiary, you're accepting and adopting the terms under that
2 particular agreement. That's obviously been done in this particular
3 instance.

4 And it doesn't take a lot of contractual interpretation to
5 determine when someone agrees that someone is solely
6 responsible, you can't hold anyone else responsible. And that is the
7 basis for -- the first basis for Summary Judgment for Eldorado Hills
8 with respect to the unjust enrichment claim that's currently pending
9 against it.

10 The second issue is somewhat related, but it's a different
11 basis. Under Nevada law, as well as the law of most jurisdictions, it
12 says that the cases say that if you have an adequate remedy at law,
13 you can't go forward on an equitable remedy, and unjust
14 enrichment, pursuant to the Nevada Supreme Court and many other
15 jurisdictions, is an equitable remedy.

16 Again, Nanyah has repeatedly claimed that it has this
17 adequate remedy at law, this third-party beneficiary contract claim
18 under the Membership Interest Purchase Agreement.

19 Now, as of right now, Nanyah is taking the position, I don't
20 have an adequate remedy at law because that claim was dismissed.
21 And we've cited the Court many cases from other jurisdictions that
22 say, Well, it's not whether or not you actually recover under that
23 adequate remedy at law. It's whether or not you had one at some
24 particular point in time. It's not the efficacy of it; it's the availability
25 of it. It was obviously available to Nanyah at one particular point in

1 time, but for its noncompliance with Nevada law relating to the
2 beneficiary issue with the Rogich Trust.

3 So as a result, it cannot pursue an equitable remedy such
4 as unjust enrichment against Eldorado Hills, and Summary
5 Judgment should be entered on that ground as well.

6 With respect to the Motion to Dismiss, under Rule 41(e),
7 it's a relatively simple motion. And I think it's been overcomplicated
8 a bit in briefing. I know the Court knows and understands the
9 precedent relating to Rule 41(e). It's probably one of the most widely
10 analyzed Rules of Civil Procedure by the Nevada Supreme Court.
11 There's a lot of cases out there, because obviously the results of a
12 motion granted under that rule is dispositive, the case gets
13 dismissed, and it usually goes up on appeal.

14 It's the -- I'm not going to say it under what -- any other
15 way. It's a harsh result, but it's binding Nevada law. And there's not
16 a lot of ways around it. I mean, the Court has specifically said you
17 can't look at equitable issues; you can't look really at anything. The
18 bottom line is, Did you bring the case to trial within three -- five
19 years or three years, in this instance, because of the remitter?

20 And there's only two ways to do it. You question a
21 witness or you question a juror. But the Nevada Supreme Court said
22 that many times, in this particular instance, neither of those things
23 happened.

24 Now, there's been a lot of argument that there was an
25 agreement that the trial began and was suspended and, therefore,

1 everyone's agreed that for the purposes of Rule 41(e) that the trial
2 began. But our position is we never stipulated for the purposes of
3 Rule 41(e) that the trial began.

4 When people were talking about whether or not the trial
5 began, they were talking about whether or not a party could
6 intervene under NRS 12.30. And we cited the Court, in the reply, the
7 Schwartz v. Estate of Greenspun case, and it talks about
8 commencement of trial in a whole bunch of different circumstances.
9 It deals about -- it talks about with respect to offer of judgment,
10 double jeopardy, Rule 41(e). And it says that the Rule is different in
11 every instance.

12 For offers of judgment, trial commences upon the
13 presentation of evidence. Under Rule 41(e), like I just said, Question
14 a witness, question a juror. Double jeopardy, it's just the
15 empanelment of the jury that starts the trial.

16 So the Court's prior ruling that trial began and, therefore,
17 no one could intervene at this particular point in time doesn't mean
18 that the Court agreed or that the parties agreed that the Nevada
19 precedent relating to Rule 41(e) was fulfilled -- and it wasn't. Even
20 Nanyah, in its recent writ petition to the Nevada Supreme Court,
21 specifically said that the trial has not begun. They took that position
22 before the Nevada Supreme Court.

23 We're talking obviously the same position here with
24 respect to Rule 41(e), and, therefore, we believe that the Supreme
25 Court precedent dictates that the case against Eldorado Hills needs

1 to be dismissed.

2 Thank you.

3 THE COURT: Thank you.

4 And the opposition, please.

5 MR. SIMONS: Of course. All I have to do is stay in this
6 case long enough, and I hear both sides of every argument,
7 changing their -- vacillating their position.

8 I'll start with the 41(e) Motion first, because that is the --
9 that's procedurally and factually brought in bad faith. And here's
10 why. The argument you just heard was in the reply. That wasn't
11 what they moved for. They said that the trial -- didn't contend that
12 the trial had not commenced because there was no questioning of a
13 witness or questioning of a juror. What they say in their opening
14 motion is the parties did agree to suspend the trial indefinitely.

15 Now, why did we have this articulation of the trial
16 starting? And under the statute -- no, excuse me -- under the Rule,
17 parties can stipulate, and stipulations are binding of fact and law on
18 the parties. What did counsel stipulate? That the trial had started.
19 What did counsel sign off on? An order that this Court entered
20 saying that trial was continued. It was suspended, meaning the trial
21 commenced.

22 And do you know, why they needed the trial to commence
23 so that they could support their argument to you that there was not
24 time to intervene for the Rogich Trust. So in order to get the Rogich
25 Trust out for the trial starting, Eldorado said of course, trial starts;

1 Rogich Trust can't intervene.

2 Now, as we know, Nevada Supreme Court has taken that --
3 I don't know -- I believe you do know because I think it has to be filed
4 with you -- that they accepted the writ.

5 So what we have is procedurally, did they move to set
6 aside orders of this Court? No. Procedurally, did they move to set
7 aside their stipulations? No. The stipulations are binding. Have
8 they come to you with an argument saying these stipulations are not
9 binding us -- on us in some fashion? Or that I made an affirmative
10 representation to the Court upon which the Court relied and the
11 other parties relied, now I'm going to renege? Change my mind?
12 Come up with this creative new way to get my client out? No.
13 That's bad faith, outright, because they did not challenge the
14 stipulation. They did not challenge the order. They came up with
15 this baseless Motion to Dismiss Eldorado.

16 Now, going to the Summary Judgment Motion, which is
17 amazing, because I know I've stood here, on three separate
18 occasions, argued to you that my client was a third-party beneficiary.
19 And on three separate occasions you said, No, Mr. Simons, I'm not
20 finding that. Even though we have an October 5th Order -- 2018.
21 And you wrote specifically, I'm not making that determination.

22 Now, Eldorado wants to come in and say, We want to
23 change our mind. We want Nanyah to be a third-party beneficiary so
24 we can get out of the case. Like I said when I started this, if I just
25 stay in this case long enough and their arguments changed.

1 So what we have is a court order that said it's an
2 undisputed fact -- the Nanyah investor, 1.5 million, into Eldorado.
3 We have contracts that reflect that. We also have statements of fact
4 and admissions in Eldorado's business records that they received
5 my client's money, \$1.5 million.

6 Multiple claims have been asserted. And under the rules,
7 alternative claims of relief can be asserted without prejudice to a
8 party. What they want you to focus on is the third-party beneficiary,
9 all of a sudden, now, Nanyah can't assert any claims. Pretty soon,
10 even though I have court orders that say Nanyah invested money in
11 Eldorado; Rogich Trust specifically agreed to assume that debt over
12 and over -- that I get to walk away with a judgment entered against
13 my client in the face of all of these orders -- in the face of these
14 undisputed facts.

15 The Rogich Trust is not solely liable. Eldorado argued that
16 the Rogich Trust assumed that liability.

17 Now, as part of that assumption of that liability, that
18 liability existed in 2007 when my client's money went into the
19 Eldorado. 2008, a year and a half later, the Rogich Trust agreed to
20 assume it -- the obligation that was owed by Eldorado. As a matter
21 of law, the Short versus Sinai, Nevada case, that creates a surety
22 relationship; that's a joint and several obligation. By finding that the
23 Rogich Trust assumed that obligation, you found that Eldorado owed
24 that obligation and there was a suretyship relationship.

25 So that brings us to the last argument that Eldorado

1 makes. Because, they argue, Nanyah had a claim against the Rogich
2 Trust that was subsequently dismissed by this Court, we're off the
3 hook because you at one point in time had a legal claim so you
4 cannot pursue an equitable claim.

5 The cases don't say that if at one point in time you had a
6 claim. The cases say you have to have the relief available. There is
7 no relief available, based upon your order, at least at this period of
8 time, because you've said there is no relief against the Rogich Trust
9 on a debt that the Rogich Trust assumed to pay on behalf of
10 Eldorado.

11 So we've got to look at this as, Are we going to find
12 methodologies to benefit these defendants, to find ways to let them
13 off the hook? Or are we going to say, Look, we know the money
14 went into Eldorado. We know Eldorado benefited from that money.
15 We know that the contracts document it. We know there's a
16 statement of facts in your order that the operating agreement, which
17 binds Eldorado, calls out for the investment in Eldorado. And there's
18 presently a Motion for Summary Judgment that will be filed on our
19 behalf, as you can imagine.

20 So what do we have at this period of time? We have a writ
21 that's in front of the Supreme Court that the parties have been
22 ordered to answer. There's a couple time frames on that when those
23 answers were due. The -- based upon that decision of this Court,
24 there remains quite a distinct issue before this Court is Eldorado
25 received our money. Eldorado had an obligation, both legally and

1 equitably. However, at this point in time, the Rogich Trust is out.

2 There's no way Eldorado can be out based upon this prior
3 Court's decision saying we're not a third-party beneficiary yet, even
4 though I've argued that previously, you've said, No, I'm not going to
5 give that to you, Mr. Simons, because then that would give me the
6 chance to prevail in this case.

7 So I know you're very familiar with this case. I know you
8 probably have your decision.

9 Do you have any questions that you want from me?

10 THE COURT: I don't.

11 MR. SIMONS: Because I believe both motions have to be
12 denied. Thank you.

13 THE COURT: Thank you.

14 And the reply, please.

15 MR. LIEBMAN: Your Honor, Nanyah is up here again
16 arguing about this surety relationship, this alleged contract claim.

17 We were in here on April 22nd, right before trial was
18 supposed to begin. We argued a Rule 15 Motion, where they tried to
19 assert this claim. You deny it. You said the claim has been
20 abandoned. You said asserting the claim is untimely.

21 Now, the entire basis of their opposition is based upon
22 this contractual theory that is not before the Court. There's one
23 claim pending before you, that claim is unjust enrichment.

24 Mr. Simons did not address the legal authority. He calls
25 them methodologies, right, and this is binding Nevada precedent,

1 Canfora v. Coast Hotels. Some of these other cases that expand on
2 this particular principle -- he keeps coming up here and saying, Well,
3 you haven't found that they're a third-party beneficiary yet. That
4 doesn't matter. They're claiming to be a third-party beneficiary.

5 This is what some of the cases we cited in our motion and
6 our reply say. This is a Harris v. Moran -- Harris Moran Seed
7 Company versus Phillips. The law is clear that a third-party
8 beneficiary is bound by the terms of the conditions of the contract
9 that it attempts to invoke -- not that they're actually a third-party
10 beneficiary, but that it attempts to invoke. LaSalle v. International
11 Broth., a third-party beneficiary bringing a breach of contract claim is
12 bound by all the terms and conditions of the contract that it invokes.

13 Or else the party's able to carry that, saying, Oh, I like this
14 provision over here that says that Mr. Rogich has to pay me this
15 money, but I don't like this provision that says, only Mr. Rogich has
16 to pay me this money. So I want to sue Eldorado Hills as well under
17 some equitable claim for unjust enrichment.

18 That's not how it works. Once they decided to go forward
19 against the Rogich Trust and say, You owe me this money based on
20 this agreement, you take the good with the bad. And that's what the
21 agreement says.

22 With respect to the Rule 41(e) Motion, that's not what the
23 stipulations say. The stipulations say -- and the Court's order was
24 the trial commenced for the purposes of intervention. And we --
25 again, we cited ask Schwartz that says the analysis under 41(e) is not

1 the same. The analysis under Rule 68 is not the same.

2 Nevada Supreme Court precedent specifically says you
3 have to question a witness or you have to question a juror. It's
4 undisputed matter that both things happen.

5 Thank you, Your Honor.

6 THE COURT: Thank you.

7 I'd like to now argue the Motion between -- of Rogich and
8 Imitations for Summary Judgment or As Judgment As a Matter of
9 Law.

10 MR. WIRTHLIN: Thank you, Your Honor.

11 THE COURT: Same time constraints. 7, 6, 5.

12 MR. WIRTHLIN: Okay. Well, that should be more than
13 enough time for me, I think.

14 We're basically talking about, as Your Honor mentioned,
15 two defendants here -- Mr. Rogich individually, not as trustee of the
16 Rogich Trust, but only individually; and Imitations. And we're -- we
17 have four claims at issue here: Breach of contract, breach of the --
18 contractual breach of the covenant of good faith and fair dealing,
19 and tortuous breach of that same covenant. And those are against
20 only Mr. Rogich individually that remain pending. And then the sixth
21 claim for relief: Conspiracy against Mr. Rogich, individually, in
22 Imitations.

23 So starting with the first three against Mr. Rogich that
24 relate to the contract. The first and foremost, I think, defect in the
25 plaintiff's argument is that there has to be a contract. There is no

1 contract between Mr. Rogich individually, and Nanyah -- not even
2 close.

3 The documents that are at issue here, that involved at
4 least naming the Rogich Trust were the Purchase Agreement, the
5 Assignment Agreement, and the Operating Agreement. Mr. Rogich,
6 individually, did not sign any of those agreements.

7 The only agreements at issue that he even signed on an
8 individual basis were the Flangas and the Teld agreement.

9 We pointed out for the Court in our motion, the only
10 paragraphs, 8(a) and 8(b), that even referenced Mr. Rogich,
11 individually, making any promise doesn't mention Nanyah in any
12 way. It simply relates to something that's called a Carlos guarantee.
13 Absolutely no promises, no contractual basis with respect to
14 Nanyah. And frankly, in their opposition, Nanyah does not dispute
15 that. So there is no contract. And I think that ends the inquiry as to
16 all three.

17 But we will go on just to get their arguments as to the
18 second and third claims, Your Honor.

19 In addition, the trust, itself, has been dismissed, as
20 plaintiff's counsel noted. But NRS 163.133 makes very clear that a
21 trustee cannot be personally liable as long as it's made clear that he
22 or she is entering into the contract in their representative capacity.
23 No dispute that that happened with respect to the Purchase
24 Agreement, Assignment Agreement, and Operating Agreement.

25 And plaintiff tries to get around that by attempting to

1 allege an alter ego theory at this late date. We do not consent to
2 that. And frankly, I think plaintiff saw the problems with that
3 argument at this point by initially addressing preemptively the Callie
4 versus Bowling case, but I don't think that there's any way that the
5 plaintiff can get around that.

6 And just very briefly, I wanted to mention the -- just a
7 portion of the quote there from that case. The Nevada Supreme
8 Court says: A party who wishes to assert an alter ego claim must do
9 so in an independent action against the alleged alter ego, with the
10 requisite notice, service of process, and other attributes of due
11 process. The failure to abide by this procedure results in a
12 deprivation of due process.

13 No chance that that can take place at this point. It cannot
14 be litigated against Mr. Rogich. He certainly was not aware that the
15 plaintiff would attempt to bring this up at this time. And that request
16 by the plaintiff must be denied.

17 In addition, the alter ego doctrine, as we pointed out under
18 NRS 163.418, does not apply to a trustee.

19 And finally, I think there was a reference to the Offers of
20 Judgment that have been submitted in this case by the Rogich
21 defendants. First of all, they don't show any kind of alter ego claim
22 or basis for claim.

23 And secondly, frankly, under NRS 48.105, that's
24 sanctionable conduct to mention these before the Court.

25 As far as the second claim for breach of the covenant of

1 good faith and fair dealing, again, under the Hilton Hotels case, there
2 has to be a separate contract that does not exist in this case.

3 This third claim against Mr. Rogich, individually, tortuous
4 breach of the good -- covenant of good faith and fair dealing has, in
5 addition to requiring a contract, the added element of requiring a
6 special relationship between the parties. And that's the Gibson Tile
7 case. And that case, in particular -- or that claim, in particular, in
8 addition to failing for the reasons mentioned, I just want to quote
9 very briefly from Mr. Harlap's deposition, who is the principal of
10 Nanyah. And Mr. Lionel asks him the following question,
11 Paragraph 103 of the complaint:

12 These defendants shared a special fiduciary and/or
13 confidential relationship with Nanyah. Did Nanyah have any kind of
14 relationship, personal or otherwise, with these defendants?

15 Mr. Simons objects.

16 THE WITNESS: You're asking me a legal question which I
17 cannot answer.

18 MR. LIONEL: No, I'm not. [Indiscernible.]

19 Answer, Mr. Harlap's answer: The personal part, as I told
20 you, I don't know that. The defendants, personally. I did not know
21 them personally.

22 No evidence whatsoever supporting that claim, in addition
23 to the fact that there is no contract to support it either.

24 With respect to the 6th claim for relief, Your Honor, again,
25 that's based on -- the theory is that there was some type of

1 conspiracy for wrongdoing as -- with the execution of the
2 Assignment Agreement with the Rogich Trust's assignment's
3 interest in Eldorado. And the idea is, Well, if there was an
4 assignment by the Rogich Trust of its interest in Eldorado, then it
5 could not convey an equity interest to the plaintiff.

6 Several problems with that. Number one, neither
7 Mr. Rogich, individually, nor Imitations, even signed that agreement.

8 Number two, Your Honor, there's a reference to a trust in a
9 separate and unrelated document which involves Blakely Island
10 Holdings -- completely unrelated, not the trust at issue, no dispute
11 about that.

12 Finally, Your Honor, -- well, not finally -- I'm sorry. I've got
13 a couple more arguments.

14 There's no intent that neither Mr. Rogich nor Mr. Eliadas,
15 who also was the other signatory on behalf of his trust to the
16 Assignment Agreement, showed any intent to harm Nanyah in any
17 way.

18 And even if the plaintiff could get past all of that, there's
19 the fact that -- an indisputable fact that the plaintiff is claiming
20 alternative means of performance. From the very beginning, even
21 the complaint, Nanyah has said, We're either owed an -- either an
22 equity interest in Eldorado or repayment of this 1.5 million we
23 allegedly invested.

24 At no time has the plaintiff disputed its own claim in that
25 sense, even -- so that being the case -- and that's indisputable at this

1 point -- even if the Rogich Trust, Imitations, and Mr. Rogich,
2 individually, had conspired -- which they did not -- to assign the
3 Rogich Trust's interests in Eldorado Hills so that it could not be
4 conveyed to the plaintiff, there's no dispute that the Rogich Trust still
5 could have paid \$1.5 million if it was owed to the plaintiff, and that
6 would have been compliance with this purported contract.

7 And now we dispute all of those underlying factual
8 assertions by the plaintiff. But even taking them as true, there is no
9 claim for any kind of conspiracy.

10 And finally, the Intercorporate Conspiracy Doctrine, which
11 we mentioned, also prohibits plaintiff's recovery.

12 Finally, the argument that we asserted under the Morelli
13 case with respect to third-party beneficiary status, which plaintiff
14 notes this Court has not found, that the -- that Nanyah was a
15 third-party beneficiary of any of the contracts. But even if it did, the
16 defenses which are available against the parties, which would be
17 Mr. Huerta and his entities, are also available against any third party
18 that claims under them.

19 And clearly judicial estoppel has been used effectively
20 against the -- Mr. Huerta and his entity, and would be available
21 under the Morelli case, which is binding Nevada law, against
22 plaintiff.

23 Plaintiff mentions the Hartford case -- just in closing here.
24 I just want to quote one thing, because the plaintiff is correct that the
25 Hartford case says that it's a misstatement of law to say that a

1 third-party beneficiary has everything that the initial party have. But
2 what the plaintiff fails to point out is that only limits what the
3 third-party beneficiary can do.

4 And the Court says this, Respondent contends that
5 appellant, as a third-party beneficiary, steps into the shoes of the
6 wife. Such an interpretation is a misstatement in the law. A
7 third-party beneficiary who seeks to enforce a contract does so
8 subject to the defenses that would be valid against the parties. And
9 it actually goes on to state how that is limited because you actually
10 have to have standing as that third-party beneficiary.

11 So unless the Court --

12 THE COURT: And is this a good time for you to conclude?

13 MR. WIRTHLIN: Okay. Unless the Court has any
14 questions, I am done.

15 THE COURT: I don't.

16 And Mr. Simons, he took 9 minutes. You may have 9 as
17 well.

18 MR. SIMONS: I'm sorry. What was that, ma'am?

19 THE COURT: That took 9 minutes. You may have 9 as
20 well.

21 MR. SIMONS: Okay. Well, we'll finish -- I'll start with the
22 Hartford case. It actually says, The notion that a third-party
23 beneficiary steps into the shoes of a contracting party is a
24 misstatement of the law.

25 I remember that was just what our -- what Eldorado was

1 arguing. And so to say, Hey, we're bound by stepping in, again, a
2 misstatement of the law. And it doesn't say that you cannot seek
3 enforcement against the surety or, in this case, that you cannot seek
4 claims against others. It doesn't say that.

5 To say that there is so many -- solely one claim based
6 upon that contract that you're bound to is a misstatement of the law.
7 It's a broader expansion -- the third-party beneficiary. So --

8 But in addition, on that third-party beneficiary status, is
9 that there's other direct claims -- not only against Eldorado for
10 receipt and retention of our money, but against these other
11 individuals. And I'll say, we'll start going back to our first claim.

12 Mr. Rogich, individually -- I find it interesting that they
13 don't point out to this Court that Mr. Rogich signed the documents in
14 his individual capacity. I find it interesting that they don't identify
15 that Mr. Rogich was the manager of Eldorado in his individual
16 capacity. So in these capacities, Mr. Rogich is wearing multiple hats.
17 They want you to just focus on one hat, he was the trustee of this
18 alleged Rogich Trust.

19 But we don't really know if the trust exists, because no
20 documents have been produced. And we don't know what his role
21 was. But here's what we do know. Individually, he signed.
22 Individually, he testified that he has fiduciary duties, as the manager
23 of Eldorado, to my client, Nanyah. And this concept that you have to
24 know somebody to owe them fiduciary duties? What is that -- where
25 is the citation of that? You don't have to know somebody to owe

1 them fiduciary duties. That's a nonsensical statement, especially
2 when Mr. Rogich says, Yes. Well, I owe them fiduciary duties as an
3 investor. Okay.

4 So we've got to look at the different hats, which clearly
5 these defendants don't want you to look at, so that they can get
6 dismissed, as well as the Rogich Trust.

7 So now we go to the concept of the alter ego which isn't a
8 new claim. If you look at the claims, Mr. Rogich is identified because
9 he signed off on these contracts in his individual capacities. So he's
10 in the case.

11 It's a question of fact of what role he was playing at what
12 period of time. Was he acting as the alleged trustee of the Rogich
13 Trust? Or was he acting in his individual capacity as a manager
14 promoting his own personal interest? And subject to his fiduciary
15 duties, as well, we know that role assumes a special relationship.

16 Nevada law states that managers have fiduciary duties.
17 Case law establishes it. We have an admission of fact that he owes
18 fiduciary duties.

19 Then we get to the conspiracy which underlies what was
20 going on here. Why are we here? We're here because Mr. Rogich,
21 in whatever capacity, was pulling a scam. He was defrauding and
22 lying to people.

23 And I make that bold statement, because I'm going to use
24 Mr. Rogich's own words. Mr. Rogich -- and this is on page 12 of my
25 brief, my opposition -- testified when I questioned him:

1 When you're signing these documents, you understand
2 that you're identifying -- specifically identifying in the contract
3 language that you intend to negotiate such claims with the seller's
4 assistance, and that the claim is -- will either confirm or convert their
5 amount that they invested into Nanyah into debt?

6 Yes.

7 And that was your purpose and intent when you signed
8 that document?

9 Yes.

10 So he signs documents knowing that it expressly calls out
11 his purpose and intent is to repay my client.

12 Then what he tells us -- and here's what I wrote:

13 QUESTION: You never had any intention of paying
14 Nanyah 1.5 million, did you?

15 ANSWER: No.

16 That's why we're here. He signed whatever and said
17 whatever was convenient at the time. Defrauds everybody. When it
18 comes time to pay -- and I've got his intention, right there -- no.
19 That's fraud.

20 So when you have an individual participating with other
21 entities within which he may or may not have an interest or acting as
22 a trustee for, there's a conspiracy. And just because the Rogich
23 Trust is out, doesn't mean these other parties not stay in.

24 Now, as part of this fraudulent event, what Mr. Rogich did
25 was transfer his interest. He didn't want it back. He had to go to

1 Imitations, which was an entity he owned. That's why Imitations is
2 in.

3 So what do we have? We have all the parties quickly and
4 rapidly trying to jump on your recent decision to dismiss the Rogich
5 Trust. That's when all these motions hit. And taking inconsistent
6 positions, vacillating the position, because why not? Hey, they got
7 out. The Rogich Trust is out. Maybe we can continue to articulate
8 these various reasons that don't really have support in the record,
9 but we'll just ignore the record. We'll also ignore the Court's prior
10 ruling. We'll come up with new ideas, new concepts to throw at the
11 judge. And she'll possibly buy off on it.

12 And that's why I started out, if I stay in this case long
13 enough, they'll take inconsistent positions, which they're doing; or
14 they won't represent stuff to you; or they'll hide information. That's
15 my job to call it out.

16 Mr. Rogich is in the case in his individual capacity. There's
17 questions of fact as to what point in time he was playing -- he was
18 acting as trustee or not.

19 The alter ego theory is established because in the claims
20 you'll see that he's not only -- the Rogich Trust is not only sued, but
21 Mr. Rogich is individually identified.

22 Lastly, it -- there's a -- it's an issue of law.

23 Does Mr. Rogich, individually, owe fiduciary duties?

24 Yes. That's established by the law, and it's established by
25 his admitted facts.

1 If you have any other questions for me.

2 THE COURT: I don't. Thank you.

3 And the reply, please.

4 MR. WIRTHLIN: Thank you.

5 Just three points. I just want to clarify again, it is an
6 inaccurate statement to say that Mr. Rogich signed any of these
7 agreements, other than the Flangas and Teld in his individual
8 capacity. He did not sign the Purchase Agreement in his individual
9 capacity.

10 That goes to the second point which I have which is that
11 there were quotations made with respect to an agreement that
12 reportedly Mr. Rogich, individually, had signed. Those were the
13 Purchase Agreement.

14 Again, Mr. Rogich did not sign that in his individual
15 capacity, and that is not in dispute.

16 And finally, it's a misrepresentation of Mr. Rogich's
17 testimony that he stated he owed fiduciary duties to Nanyah. He did
18 not state that. He was testifying. He -- first of all, he didn't state --
19 say that he owed any fiduciary duties to Nanyah whatsoever. And
20 secondly, there was never any question that it's -- at the core
21 disputed his case as to whether there was ever a deposit or an
22 investment that the plaintiff claims would lead to some kind of basis
23 for a claim against Mr. Rogich, individually, who is the only
24 remaining defendant, aside from Imitations, on the Rogich
25 defendant's side.

1 So unless the Court has any questions.

2 THE COURT: I don't.

3 MR. WIRTHLIN: I'm done.

4 THE COURT: All right. So the -- my intention is to grant
5 the two Eldorado Motions.

6 I'm going to go back, and I'm going to write a decision
7 with regard -- my intention walking in today was to also -- to grant
8 the Rogich Imitation motion. I just need to go back to the deposition
9 and the documents and take a second look at those.

10 This will be on my chamber's calendar on September 24th.
11 You should expect a decision that week by Friday of that week. So
12 that would put it to the 27th of September is when you should
13 expect a decision.

14 Thank you all.

15 MR. SIMONS: I'm sorry.

16 MR. WIRTHLIN: Thank you, Your Honor.

17 MR. SIMONS: Your Honor, did you say your intention is to
18 grant all the motions?

19 THE COURT: My intention, walking in today, was grant all
20 of the motions. I'm going to look at it one more time.

21 I am more than likely going to grant Eldorado. I'm going
22 to look again at the deposition and the documents with regard to
23 Rogich Imitations.

24 MR. SIMONS: Okay.

25 MR. WIRTHLIN: Thank you, Your Honor.

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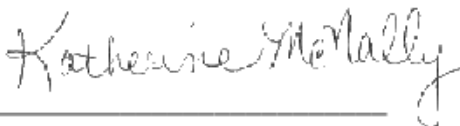
MR. SIMONS: Thank you.

THE COURT: Thank you, all.

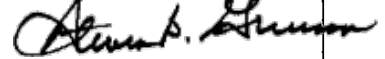
[Proceeding concluded at 11:47 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case to
the best of my ability.



Katherine McNally
Independent Transcriber CERT**D-323



DISTRICT COURT
CLARK COUNTY, NEVADA

CARLOS HUERTA, et al.

Plaintiff(s)

vs.

ELDORADO HILLS LLC, et al.

Defendant(s)

CASE NO.: A-13-686303

DEPARTMENT 27

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

And all related matters.

DECISION

Pending before the Court are (1) Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e); (2) Defendant Eldorado Hills, LLC's Motion for Summary Judgment; and (3) Defendants Sigmund Rogich and Imitations, LLC's Motion for Summary Judgment, or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(e). The matter came on for hearing on Motions Calendar on September 5, 2019 and following arguments of counsel, as well as the pleadings and papers on file herein, the Court took the matter under advisement. This decision follows.

I. Eldorado Hills LLC's Motion for Dismissal Under Rule 41(e)

On July 22, 2019, Defendant Eldorado Hills, LLC ("Eldorado") filed its Motion for Dismissal Under N.R.C.P 41(e)(4)(B). Eldorado argues that dismissal is warranted because three years have elapsed since the remittitur was filed with the Court and that Nanyah Vegas, LLC ("Nanyah") failed to prosecute its case within the applicable limitations. This Court agrees.

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CLERK OF THE COURT

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

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Applicable Standard

N.R.C.P. 41(e)(4)(B), in pertinent part, provides that “[i]f a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court must dismiss the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court (emphasis added).” In order to avoid dismissal, the parties may stipulate, in writing, to extend the time in which to prosecute the action. *See*, N.R.C.P. 41(e)(5).

Discussion

The Complaint in the instant action was filed on July 31, 2013. On July 25, 2014, Eldorado filed a Motion for Partial Summary Judgment seeking to dismiss the unjust enrichment claim, which this Court granted. Nanyah appealed this Court’s dismissal to the Nevada Supreme Court. The Nevada Supreme Court issued an Order of Reversal and Remand, finding that there was a question of fact with respect to Nanyah’s unjust enrichment claim. On April 29, 2016, the Nevada Supreme Court’s remittitur was filed with this Court, thus, triggering the limitations imposed under N.R.C.P. 41(e)(4)(B). Given this remittitur, Nanyah must have brought the action to trial by April 29, 2019, or otherwise stipulated to extend for purposes of N.R.C.P. 41(e).

The instant case was not brought to trial within the time limits of Rule 41(e); moreover, the parties did not agree to stipulate the proceedings for purposes of N.R.C.P 41(e).

The Nevada Supreme Court has held that the swearing of a witness who gives testimony is sufficient to commence trial and thus toll the limitations period specified in N.R.C.P. 41(e). *See Lipitt v. State*, 103 Nev. 412, 413 (1987). Alternatively, examining a juror satisfies the limitations in N.R.C.P. 41(e) and avoids dismissal. *See Smith v. Timm*, 96 Nev. 197, 200 (1980).

1 In *Prostack v. Lowden*, the Nevada Supreme Court interpreted N.R.C.P. 41(e) in the
2 context of the 5-year rule embedded therein and held that “an oral stipulation, entered into in
3 open court, approved by the judge, and spread upon the minutes, is the equivalent of a written
4 stipulation for the purposes of this rule.” 96 Nev. 230, 231 (1980). However, the *Prostack* Court
5 also held that a stipulation that is silent as to the 5-year rule is not sufficient to satisfy N.R.C.P.
6 41(e)’s written-stipulation requirement. *Id.* at 231. The *Prostack* Court further held that “words
7 and conduct, short of a written stipulation, cannot estop a defendant from asserting the
8 mandatory dismissal rule.” *Id.* (quoting *Thran v. District Court*, 79 Nev. 176, 181 (1963)).
9

10 Here, in order to avoid mandatory dismissal, Nanyah must have either (1) called a
11 witness; (2) examined a juror; or (3) stipulated to extend trial expressly for purposes of
12 N.R.C.P. 41(e). None of the three scenarios occurred because the jury trial was halted before
13 *voir dire* even began. First, not a single witness was called nor has a single juror been examined.
14 As such, this Court finds that trial has not begun for purposes of surviving a N.R.C.P. 41(e)
15 dismissal. Second, the April 22, 2019 oral stipulation that was made on the Court’s record was
16 silent as to N.R.C.P. 41(e)(4)(B)’s 3-year rule. Moreover, the Stipulation and Order Suspending
17 Jury Trial filed on May 16, 2019 with this Court was also silent as to N.R.C.P. 41(e)(4)(B)’s 3-
18 year rule. Rather, the jury trial was suspended to allow Nanyah to file an emergency writ with
19 the Supreme Court with respect to this Court’s Order dated April 30, 2019.¹ Therefore,
20 under *Prostack*, this Court finds that the stipulations that were made were not sufficient to
21 satisfy the rule’s express written-stipulation requirement.
22

23 Accordingly, mandatory dismissal is warranted under N.R.C.P. 41(e)(4)(B).
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¹ In its Order, the Court dismissed the Rogich Trust defendants with prejudice.

1 **II. Eldorado Hills, LLC's Motion for Summary Judgment**

2 In addition to its Motion to Dismiss discussed *supra*, Eldorado filed a Motion for
3 Summary Judgment on May 22, 2019.² Eldorado argues that Nanyah's only remaining claim
4 against it for unjust enrichment should be dismissed because Nanyah once had an adequate
5 remedy at law against the Rogich Trust. This Court disagrees.
6

7 **Applicable Standard**

8 Summary judgment is proper if the pleadings and all other evidence on file demonstrate
9 that no genuine issue of material fact exists and that the moving party is entitled to judgment as
10 a matter of law. *See*, N.R.C.P. 56 et seq. When deciding a summary judgment motion, this
11 Court views the evidence in a light most favorable to the nonmoving party. *Id.*
12

13 **Discussion**

14 "Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the
15 defendant appreciates such benefit, and there is acceptance and retention by the defendant of
16 such benefit under circumstances such that it would be inequitable for him to retain the benefit
17 without payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev.
18 371, 381 (2012). "An action based on a theory of unjust enrichment is not available when there
19 is an express, written contract, because no agreement can be implied when there is an express
20 agreement." *Leasepartners Corp. v. Robert L. Brooks Trust Dated November 12, 1975*, 113
21 Nev. 747, 755 (1997).
22

23 Here, it is undisputed that Nanyah wired Eldorado \$1,500,000 as memorialized in the
24 October 30, 2008 Membership Interest Purchase Agreement (the "MIPA"). In this MIPA, the
25 Rogich Trust agreed to solely assume the obligation to pay Nanyah's debt. However, this Court
26

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 ² In light of this Court's ruling on Eldorado's Motion for Dismissal Pursuant to N.R.C.P. 41(e), Eldorado's Motion
 for Summary Judgment is moot. Nevertheless, this Court will analyze the motion on the merits.

1 dismissed the Rogich Trust because Nanyah's written demand for a list of beneficiaries was
2 untimely under N.R.S. 163.120 as such notification would not permit interested beneficiaries of
3 the trust an opportunity to intervene in this action pursuant to N.R.S. 12.130(1). Given this
4 dismissal, Nanyah does not currently have an adequate remedy at law in which to pursue. Thus,
5 in light of this Court's decision, unjust enrichment is appropriate as an alternative equitable
6 basis.

8 The Court disagrees with Eldorado's argument that Nanyah once *had* an adequate
9 remedy at law, which bars it from pursuing a claim against it for unjust enrichment. The case
10 law in Nevada is consistent in holding that recovery based on unjust enrichment is unavailable
11 if the party *has* an adequate remedy at law. Thus, the test is not past tense—as Eldorado
12 suggests—but rather present perfect tense.

14 Viewing facts in light most favorable to Nanyah, questions of fact exist as to whether the
15 *Certified Fire Prot. Inc.* test is met. First, Nanyah has established, for purposes of surviving
16 summary judgment, that Eldorado received a benefit from the \$1,500,000 investment in made in
17 Eldorado. Second, Nanyah has shown that Eldorado accepted the funds and that it had a
18 reasonable expectation of payment. And, Nanyah has demonstrated that it would be inequitable
19 for Eldorado to retain Nanyah's investment without payment.

21 For these reasons, summary judgment on Nanyah's unjust enrichment claim is
22 premature.

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1 **III. Defendants Sigmund Rogich and Imitations, LLC's Motion for Summary**
2 **Judgment, or Alternatively for Judgment as a Matter of Law Pursuant to**
3 **NRCP 50(e)**

4 On May 10, 2019, Defendants Sigmund Rogich and Imitations, LLC filed their Motion
5 for Summary Judgment, or alternatively, for judgment as a matter of law pursuant to N.R.C.P.
6 50(a) with the Court seeking dismissal of (1) the breach of contract claim against Mr. Rogich,
7 individually; (2) the breach of implied covenant of good faith and fair dealing claim against Mr.
8 Rogich, individually; and (3) the conspiracy claim against Mr. Rogich, individually, and
9 Imitations, LLC. This Court agrees with Defendants Sigmund Rogich and Imitations, LLC that
10 summary judgment is warranted.
11

12 **Applicable Standard**

13 Summary judgment is proper if the pleadings and all other evidence on file demonstrate
14 that no genuine issue of material fact exists and that the moving party is entitled to judgment as
15 a matter of law. *See*, N.R.C.P. 56.
16

17 **Discussion**

18 **A. Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair**
19 **Dealing**

20 The elements necessary for breach of contract are as follows: (1) formation of a valid
21 contract; (2) performance or excuse of performance by the plaintiff; (3) material breach by the
22 defendant; and (4) damages. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 134 (1987). In
23 Nevada, an implied covenant of good faith and fair dealing exists in every contract. *A.C. Shaw*
24 *Const., Inc. v. Washoe County*, 105 Nev. 913, 915 (1989). When a party seeks only contractual
25 damages, that party must show that the breaching party acted in bad faith. *Nelson v. Heer*, 123
26 Nev. 217, 226 (2007) ("It is well established that all contracts impose upon the parties an
27

1 implied covenant of good faith and fair dealing, which prohibits arbitrary or unfair acts by one
2 party that work to the disadvantage of the other.”

3
4 Here, no contractual relationship between Mr. Rogich—**individually**—and Nanyah
5 exists. While Mr. Rogich was the Trustee of the Rogich Trust, “a trustee is **not personally**
6 **liable** on a contract properly entered into in the capacity of representative in the course of
7 administration of the trust unless the trustee fails to reveal the representative capacity or identify
8 the trust in the contract.” *See*, NRS 163.120. One of the fundamental elements of a breach of
9 contract claim is for a valid contract—oral or otherwise—to exist.

10
11 In its opposition, Nanyah argues that there are questions of fact related to whether Mr.
12 Rogich is personally liable under the alter ego doctrine. “A party who wishes to assert an alter
13 ego claim must do so in an **independent action** against the alleged alter ego with the requisite
14 notice, service of process, and other attributes of due process (emphasis added).” *Callie v.*
15 *Bowling*, 123 Nev. 181, 185 (2007). Nanyah has not alleged alter ego as a separate independent
16 action against Mr. Rogich. Thus, its assertion that there are questions as fact under the alter ego
17 doctrine is without merit.³

18
19 Similarly, Nanyah argues that there are questions of fact as to the existence of a “special
20 relationship” between Nanyah and Mr. Rogich, individually. This Court disagrees. First, the
21 special relationship requirement is for tortious conduct, which are only available “in rare and
22 exceptional cases when there is a special relationship between the victim and tortfeasor,” or
23 where one party holds “‘vastly superior bargaining power’ ” over another. *See K Mart Corp. v.*
24 *Ponsock*, 103 Nev. 39, 49 (1987). The relationships between the parties here are memorialized
25 in contractual agreements. Specifically, this dispute arises out of an investment by Nanyah in
26

27
28 ³ Further, this Court cannot grant Nanyah leave to amend if it so seeks it at this juncture because the applicable
statute of limitations bars alter ego claims.

1 Eldorado Hills. Eldorado Hills owned 161 acres of real property in Boulder City that was
2 intended to be developed into commercial mixed-use facilities. Nanyah invested in Eldorado
3 \$1,500,000. Agreements in October, 2008 affirm that the Rogich Trust solely owed Nanyah its
4 \$1,500,000 investment. The Court does not find that any party had “superior bargaining
5 powers” over another. Thus, the relationship is not a special relationship that gives rise to
6 recovery of tort damages; rather, it is a contractual relationship. *See Nelson v. Heer*, 123 Nev.
7 217, 226 (2007).
8

9 Accordingly, because there is no contract between Nanyah and Mr. Rogich individually,
10 the Court finds that summary judgment is appropriate on Nanyah’s causes of actions for breach
11 of contract and breach of the implied covenant of good faith and fair dealing against Mr.
12 Rogich.
13

14 **B. Civil Conspiracy**

15 An actionable civil conspiracy “consists of a combination of two or more persons who,
16 by some concerted action, **intend to accomplish an unlawful objective** for the purpose of
17 harming another, and damage results from the act or acts.” *Consol. Generator-Nevada, Inc. v.*
18 *Cummins Engine Co.*, 114 Nev. 1304, 1311 (1998).
19

20 Here, Nanyah’s conspiracy claims are primarily premised on agreements in which the
21 Rogich Trust agreed to indemnify Nanyah. Imitations, LLC was not a party to any of these
22 agreements. Nevertheless, the Court does not find that there was intent to pursue an unlawful
23 objective based on (1) Mr. Rogich’s declaration; and (2) the agreements at issue. While Nanyah
24 cites to Mr. Rogich’s deposition as evidence of his unlawful intent, the testimony does not
25 expressly state that he intended to accomplish an *unlawful* object for the purpose of harming
26 Nanyah. Similarly, there is no evidence in the record that Defendant Imitations, LLC neither
27 intended to accomplish an unlawful objective nor was Defendant Imitations, LLC even a party
28

1 to the agreements at issue. Finally, there are not facts in dispute of an illegal agreement amongst
2 the parties. Without the necessary intent requirement under *Consol. Generator-Nevada, Inc.*,
3 Nanyah's conspiracy claims cannot succeed.
4

5 As such, summary judgment is appropriate on the civil conspiracy cause of action.

6 **ORDER**

7 Accordingly, **COURT ORDERS** for good cause appearing and after review that the
8 Motion Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule
9 41(e) is hereby **GRANTED**.

10 **COURT FURTHER ORDERS** for good cause appearing and after review that
11 Defendant Eldorado Hills, LLC's Motion for Summary Judgment on the unjust enrichment
12 claim is hereby **DENIED**.
13

14 **COURT FURTHER ORDERS** for good cause appearing and after review that
15 Defendants Sigmund Rogich and Imitations, LLC's Motion for Summary Judgment, or
16 Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(e) is hereby **GRANTED**.
17

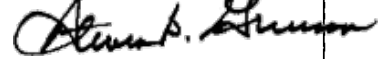
18 DATED this 30 day of September, 2019.
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20 Nancy L Allf
21 NANCY ALLF
22 DISTRICT COURT JUDGE
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HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII



DISTRICT COURT
CLARK COUNTY, NEVADA

CARLOS HUERTA, et al.

Plaintiff(s)

vs.

ELDORADO HILLS LLC, et al.

Defendant(s)

CASE NO.: A-13-686303

DEPARTMENT 27

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

And all related matters.

NOTICE OF ENTRY OF DECISION AND ORDER

PLEASE TAKE NOTICE that a Decision and Order was entered in this action on or about October 1, 2019, a true and correct copy of which is attached hereto.

DATED October 1, 2019



NANCY L. ALLF
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of the foregoing was electronically served pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court's Electronic Filing Program.



Karen Lawrence
Judicial Executive Assistant

RECEIVED

OCT - 4 2019

CLERK OF THE COURT

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

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

CARLOS HUERTA, et al.

Plaintiff(s)

vs.

ELDORADO HILLS LLC, et al.

Defendant(s)

CASE NO.: A-13-686303

DEPARTMENT 27

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

And all related matters.

DECISION

Pending before the Court are (1) Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e); (2) Defendant Eldorado Hills, LLC's Motion for Summary Judgment; and (3) Defendants Sigmund Rogich and Imitations, LLC's Motion for Summary Judgment, or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(e). The matter came on for hearing on Motions Calendar on September 5, 2019 and following arguments of counsel, as well as the pleadings and papers on file herein, the Court took the matter under advisement. This decision follows.

I. Eldorado Hills LLC's Motion for Dismissal Under Rule 41(e)

On July 22, 2019, Defendant Eldorado Hills, LLC ("**Eldorado**") filed its Motion for Dismissal Under N.R.C.P 41(e)(4)(B). Eldorado argues that dismissal is warranted because three years have elapsed since the remittitur was filed with the Court and that Nanyah Vegas, LLC ("**Nanyah**") failed to prosecute its case within the applicable limitations. This Court agrees.

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HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

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Applicable Standard

N.R.C.P. 41(e)(4)(B), in pertinent part, provides that “[i]f a party appeals a judgment and the judgment is reversed on appeal and remanded for a new trial, the court **must dismiss** the action for want of prosecution if a plaintiff fails to bring the action to trial within 3 years after the remittitur was filed in the trial court (emphasis added).” In order to avoid dismissal, the parties may stipulate, in writing, to extend the time in which to prosecute the action. *See*, N.R.C.P. 41(e)(5).

Discussion

The Complaint in the instant action was filed on July 31, 2013. On July 25, 2014, Eldorado filed a Motion for Partial Summary Judgment seeking to dismiss the unjust enrichment claim, which this Court granted. Nanyah appealed this Court’s dismissal to the Nevada Supreme Court. The Nevada Supreme Court issued an Order of Reversal and Remand, finding that there was a question of fact with respect to Nanyah’s unjust enrichment claim. On April 29, 2016, the Nevada Supreme Court’s remittitur was filed with this Court, thus, triggering the limitations imposed under N.R.C.P. 41(e)(4)(B). Given this remittitur, Nanyah must have brought the action to trial by April 29, 2019, or otherwise stipulated to extend for purposes of N.R.C.P. 41(e).

The instant case was not brought to trial within the time limits of Rule 41(e); moreover, the parties did not agree to stipulate the proceedings for purposes of N.R.C.P 41(e).

The Nevada Supreme Court has held that the swearing of a witness who gives testimony is sufficient to commence trial and thus toll the limitations period specified in N.R.C.P. 41(e). *See Lipitt v. State*, 103 Nev. 412, 413 (1987). Alternatively, examining a juror satisfies the limitations in N.R.C.P. 41(e) and avoids dismissal. *See Smith v. Timm*, 96 Nev. 197, 200 (1980).

1 In *Prostack v. Lowden*, the Nevada Supreme Court interpreted N.R.C.P. 41(e) in the
2 context of the 5-year rule embedded therein and held that “an oral stipulation, entered into in
3 open court, approved by the judge, and spread upon the minutes, is the equivalent of a written
4 stipulation for the purposes of this rule.” 96 Nev. 230, 231 (1980). However, the *Prostack* Court
5 also held that a stipulation that is silent as to the 5-year rule is not sufficient to satisfy N.R.C.P.
6 41(e)’s written-stipulation requirement. *Id.* at 231. The *Prostack* Court further held that “words
7 and conduct, short of a written stipulation, cannot estop a defendant from asserting the
8 mandatory dismissal rule.” *Id.* (quoting *Thran v. District Court*, 79 Nev. 176, 181 (1963)).
9

10 Here, in order to avoid mandatory dismissal, Nanyah must have either (1) called a
11 witness; (2) examined a juror; or (3) stipulated to extend trial expressly for purposes of
12 N.R.C.P. 41(e). None of the three scenarios occurred because the jury trial was halted before
13 *voir dire* even began. First, not a single witness was called nor has a single juror been examined.
14 As such, this Court finds that trial has not begun for purposes of surviving a N.R.C.P. 41(e)
15 dismissal. Second, the April 22, 2019 oral stipulation that was made on the Court’s record was
16 silent as to N.R.C.P. 41(e)(4)(B)’s 3-year rule. Moreover, the Stipulation and Order Suspending
17 Jury Trial filed on May 16, 2019 with this Court was also silent as to N.R.C.P. 41(e)(4)(B)’s 3-
18 year rule. Rather, the jury trial was suspended to allow Nanyah to file an emergency writ with
19 the Supreme Court with respect to this Court’s Order dated April 30, 2019.¹ Therefore,
20 under *Prostack*, this Court finds that the stipulations that were made were not sufficient to
21 satisfy the rule’s express written-stipulation requirement.
22

23 Accordingly, mandatory dismissal is warranted under N.R.C.P. 41(e)(4)(B).
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¹ In its Order, the Court dismissed the Rogich Trust defendants with prejudice.

1 **II. Eldorado Hills, LLC's Motion for Summary Judgment**

2 In addition to its Motion to Dismiss discussed *supra*, Eldorado filed a Motion for
3 Summary Judgment on May 22, 2019.² Eldorado argues that Nanyah's only remaining claim
4 against it for unjust enrichment should be dismissed because Nanyah once had an adequate
5 remedy at law against the Rogich Trust. This Court disagrees.
6

7 **Applicable Standard**

8 Summary judgment is proper if the pleadings and all other evidence on file demonstrate
9 that no genuine issue of material fact exists and that the moving party is entitled to judgment as
10 a matter of law. *See*, N.R.C.P. 56 et seq. When deciding a summary judgment motion, this
11 Court views the evidence in a light most favorable to the nonmoving party. *Id.*
12

13 **Discussion**

14 "Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the
15 defendant appreciates such benefit, and there is acceptance and retention by the defendant of
16 such benefit under circumstances such that it would be inequitable for him to retain the benefit
17 without payment of the value thereof." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev.
18 371, 381 (2012). "An action based on a theory of unjust enrichment is not available when there
19 is an express, written contract, because no agreement can be implied when there is an express
20 agreement." *Leasepartners Corp. v. Robert L. Brooks Trust Dated November 12, 1975*, 113
21 Nev. 747, 755 (1997).
22

23 Here, it is undisputed that Nanyah wired Eldorado \$1,500,000 as memorialized in the
24 October 30, 2008 Membership Interest Purchase Agreement (the "MIPA"). In this MIPA, the
25 Rogich Trust agreed to solely assume the obligation to pay Nanyah's debt. However, this Court
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28

² In light of this Court's ruling on Eldorado's Motion for Dismissal Pursuant to N.R.C.P. 41(e), Eldorado's Motion
for Summary Judgment is moot. Nevertheless, this Court will analyze the motion on the merits.

1 dismissed the Rogich Trust because Nanyah's written demand for a list of beneficiaries was
2 untimely under N.R.S. 163.120 as such notification would not permit interested beneficiaries of
3 the trust an opportunity to intervene in this action pursuant to N.R.S. 12.130(1). Given this
4 dismissal, Nanyah does not currently have an adequate remedy at law in which to pursue. Thus,
5 in light of this Court's decision, unjust enrichment is appropriate as an alternative equitable
6 basis.
7

8 The Court disagrees with Eldorado's argument that Nanyah once *had* an adequate
9 remedy at law, which bars it from pursuing a claim against it for unjust enrichment. The case
10 law in Nevada is consistent in holding that recovery based on unjust enrichment is unavailable
11 if the party *has* an adequate remedy at law. Thus, the test is not past tense—as Eldorado
12 suggests—but rather present perfect tense.
13

14 Viewing facts in light most favorable to Nanyah, questions of fact exist as to whether the
15 *Certified Fire Prot. Inc.* test is met. First, Nanyah has established, for purposes of surviving
16 summary judgment, that Eldorado received a benefit from the \$1,500,000 investment in made in
17 Eldorado. Second, Nanyah has shown that Eldorado accepted the funds and that it had a
18 reasonable expectation of payment. And, Nanyah has demonstrated that it would be inequitable
19 for Eldorado to retain Nanyah's investment without payment.
20

21 For these reasons, summary judgment on Nanyah's unjust enrichment claim is
22 premature.
23

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HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

1 **III. Defendants Sigmund Rogich and Imitations, LLC's Motion for Summary**
2 **Judgment, or Alternatively for Judgment as a Matter of Law Pursuant to**
3 **NRCP 50(e)**

4 On May 10, 2019, Defendants Sigmund Rogich and Imitations, LLC filed their Motion
5 for Summary Judgment, or alternatively, for judgment as a matter of law pursuant to N.R.C.P.
6 50(a) with the Court seeking dismissal of (1) the breach of contract claim against Mr. Rogich,
7 individually; (2) the breach of implied covenant of good faith and fair dealing claim against Mr.
8 Rogich, individually; and (3) the conspiracy claim against Mr. Rogich, individually, and
9 Imitations, LLC. This Court agrees with Defendants Sigmund Rogich and Imitations, LLC that
10 summary judgment is warranted.
11

12 **Applicable Standard**

13 Summary judgment is proper if the pleadings and all other evidence on file demonstrate
14 that no genuine issue of material fact exists and that the moving party is entitled to judgment as
15 a matter of law. *See*, N.R.C.P. 56.
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17 **Discussion**

18 **A. Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair**
19 **Dealing**

20 The elements necessary for breach of contract are as follows: (1) formation of a valid
21 contract; (2) performance or excuse of performance by the plaintiff; (3) material breach by the
22 defendant; and (4) damages. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 134 (1987). In
23 Nevada, an implied covenant of good faith and fair dealing exists in every contract. *A.C. Shaw*
24 *Const., Inc. v. Washoe County*, 105 Nev. 913, 915 (1989). When a party seeks only contractual
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26 Nev. 217, 226 (2007) ("It is well established that all contracts impose upon the parties an
27

28 HONORABLE NANCY L. ALLF

 DISTRICT COURT JUDGE

 DEPT XXVII

1 implied covenant of good faith and fair dealing, which prohibits arbitrary or unfair acts by one
2 party that work to the disadvantage of the other.”

3
4 Here, no contractual relationship between Mr. Rogich—**individually**—and Nanyah
5 exists. While Mr. Rogich was the Trustee of the Rogich Trust, “a trustee is **not personally**
6 **liable** on a contract properly entered into in the capacity of representative in the course of
7 administration of the trust unless the trustee fails to reveal the representative capacity or identify
8 the trust in the contract.” *See*, NRS 163.120. One of the fundamental elements of a breach of
9 contract claim is for a valid contract—oral or otherwise—to exist.

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11 In its opposition, Nanyah argues that there are questions of fact related to whether Mr.
12 Rogich is personally liable under the alter ego doctrine. “A party who wishes to assert an alter
13 ego claim must do so in an **independent action** against the alleged alter ego with the requisite
14 notice, service of process, and other attributes of due process (emphasis added).” *Callie v.*
15 *Bowling*, 123 Nev. 181, 185 (2007). Nanyah has not alleged alter ego as a separate independent
16 action against Mr. Rogich. Thus, its assertion that there are questions as fact under the alter ego
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19 Similarly, Nanyah argues that there are questions of fact as to the existence of a “special
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21 special relationship requirement is for tortious conduct, which are only available “in rare and
22 exceptional cases when there is a special relationship between the victim and tortfeasor,” or
23 where one party holds “‘vastly superior bargaining power’ ” over another. *See K Mart Corp. v.*
24 *Ponsock*, 103 Nev. 39, 49 (1987). The relationships between the parties here are memorialized
25 in contractual agreements. Specifically, this dispute arises out of an investment by Nanyah in
26

27
28 ³ Further, this Court cannot grant Nanyah leave to amend if it so seeks it at this juncture because the applicable
statute of limitations bars alter ego claims.

1 Eldorado Hills. Eldorado Hills owned 161 acres of real property in Boulder City that was
2 intended to be developed into commercial mixed-use facilities. Nanyah invested in Eldorado
3 \$1,500,000. Agreements in October, 2008 affirm that the Rogich Trust solely owed Nanyah its
4 \$1,500,000 investment. The Court does not find that any party had “superior bargaining
5 powers” over another. Thus, the relationship is not a special relationship that gives rise to
6 recovery of tort damages; rather, it is a contractual relationship. *See Nelson v. Heer*, 123 Nev.
7 217, 226 (2007).
8

9 Accordingly, because there is no contract between Nanyah and Mr. Rogich individually,
10 the Court finds that summary judgment is appropriate on Nanyah’s causes of actions for breach
11 of contract and breach of the implied covenant of good faith and fair dealing against Mr.
12 Rogich.
13

14 **B. Civil Conspiracy**

15 An actionable civil conspiracy “consists of a combination of two or more persons who,
16 by some concerted action, **intend to accomplish an unlawful objective** for the purpose of
17 harming another, and damage results from the act or acts.” *Consol. Generator-Nevada, Inc. v.*
18 *Cummins Engine Co.*, 114 Nev. 1304, 1311 (1998).
19

20 Here, Nanyah’s conspiracy claims are primarily premised on agreements in which the
21 Rogich Trust agreed to indemnify Nanyah. Imitations, LLC was not a party to any of these
22 agreements. Nevertheless, the Court does not find that there was intent to pursue an unlawful
23 objective based on (1) Mr. Rogich’s declaration; and (2) the agreements at issue. While Nanyah
24 cites to Mr. Rogich’s deposition as evidence of his unlawful intent, the testimony does not
25 expressly state that he intended to accomplish an *unlawful* object for the purpose of harming
26 Nanyah. Similarly, there is no evidence in the record that Defendant Imitations, LLC neither
27 intended to accomplish an unlawful objective nor was Defendant Imitations, LLC even a party
28

1 to the agreements at issue. Finally, there are not facts in dispute of an illegal agreement amongst
2 the parties. Without the necessary intent requirement under *Consol. Generator-Nevada, Inc.*,
3 Nanyah's conspiracy claims cannot succeed.
4

5 As such, summary judgment is appropriate on the civil conspiracy cause of action.

6 **ORDER**

7 Accordingly, **COURT ORDERS** for good cause appearing and after review that the
8 Motion Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule
9 41(e) is hereby **GRANTED**.

10 **COURT FURTHER ORDERS** for good cause appearing and after review that
11 Defendant Eldorado Hills, LLC's Motion for Summary Judgment on the unjust enrichment
12 claim is hereby **DENIED**.

13 **COURT FURTHER ORDERS** for good cause appearing and after review that
14 Defendants Sigmund Rogich and Imitations, LLC's Motion for Summary Judgment, or
15 Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(e) is hereby **GRANTED**.
16

17
18 DATED this 30 day of September, 2019.
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20 Nancy L Allf
21 NANCY ALLF
22 DISTRICT COURT JUDGE
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HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII



1 **MEMO**

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

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

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

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

6 300 S. Fourth Street, Suite 1400

7 Las Vegas, Nevada 89101

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

9 Email: slionel@fclaw.com

tfell@fclaw.com

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.

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,
INDIVIDUALLY AND AS TRUSTEE
OF THE ROGICH FAMILY
IRREVOCABLE TRUST, AND
IMITATIONS, LLC'S AMENDED
MEMORANDUM OF COSTS AND
DISBURSEMENTS PURSUANT TO
NRS 18.005 AND NRS 18.110**

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

FENNEMORE CRAIG, P.C.
SUITE 1400
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101

DEFENDANTS SIGMUND ROGICH, INDIVIDUALLY AND AS TRUSTEE OF THE
ROGICH FAMILY IRREVOCABLE TRUST, AND IMITATIONS, LLC'S AMENDED
MEMORANDUM OF COSTS AND DISBURSEMENTS PURSUANT TO
NRS 18.005 AND NRS 18.110

Copy Charges.....	\$ 7,900.90
Filing Fees.....	\$ 1,365.00
Messenger Fees.....	\$ 802.95
Postage Charges	\$ 53.61
SOS Record Copy Fees.....	\$ 368.00
Service of Process/Subpoena Issuance Fees.....	\$ 633.50
Transcript/Deposition Fees.....	\$ 7,668.09
Legal Research	\$ 20,956.50
TOTAL:	\$ 39,748.55

See Itemization of Costs, attached hereto.

STATE OF NEVADA)
COUNTY OF CLARK)ss.

Brenoch Wirthlin, Esq., being duly sworn under penalty of perjury states: that Affiant is the attorney for the Defendant The Rogich Family Irrevocable Trust and has personal knowledge of the above costs and disbursements expended; that the items contained in the above Memorandum of Costs and Disbursements Pursuant to NRS 18.005 and NRS 18.110 are true and correct to the best of this Affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

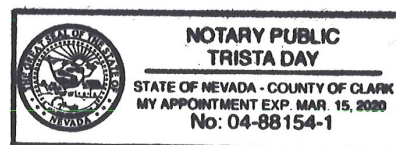
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED: October 7, 2019.


BRENOCH WIRTHLIN, ESQ.

SUBSCRIBED and SWORN to before me
on October 7, 2019.


NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C., and that on October 7, 2019, I caused to be electronically served through the Court's e-service/e-filing system, true and correct copies of the foregoing **DEFENDANTS SIGMUND ROGICH, INDIVIDUALLY AND AS TRUSTEE OF THE ROGICH FAMILY IRREVOCABLE TRUST, AND IMITATIONS, LLC'S AMENDED MEMORANDUM OF COSTS AND DISBURSEMENTS PURSUANT TO NRS 18.005 AND NRS 18.110** properly addressed to the following:

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

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

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

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

DATED: October 7, 2019

/s/ Morganne Westover
An employee of **Fennemore Craig, P.C.**

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REGISTER OF ACTIONS

CASE NO. A-13-686303-C

Carlos Huerta, Plaintiff(s) vs. Eldorado Hills LLC, Defendant(s)

§
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Case Type: **Breach of Contract**
 Subtype: **Other Contracts/Acc/Judgment**
 Date Filed: **07/31/2013**
 Location: **Department 27**
 Cross-Reference Case Number: **A686303**
 Supreme Court No.: **66823**
67595
70492

RELATED CASE INFORMATION**Related Cases**

A-16-746239-C (Consolidated)

PARTY INFORMATION

Consolidated Eliades Survivor Trust of 10-30-03
Case Party

Lead Attorneys

Consolidated Eliades, Peter
Case Party

Dennis L. Kennedy
Retained
 7025628820(W)

Consolidated Sigmund Rogich
Case Party

Samuel S. Lionel
Retained
 7023838888(W)

Consolidated TELD, LLC
Case Party

Dennis L. Kennedy
Retained
 7025628820(W)

Counter Eldorado Hills LLC
Claimant

Dennis L. Kennedy
Retained
 7025628820(W)

Counter Alexander Christopher Trust
Defendant

Charles E. Barnabi
Retained
 702-475-8903(W)

Counter Go Global Inc
Defendant

Brandon B McDonald
Retained
 702-385-7411(W)

Counter Huerta, Carlos A
Defendant

Defendant Eldorado Hills LLC

Dennis L. Kennedy
Retained
 7025628820(W)

Other Plaintiff Go Global Inc

Brandon B McDonald
Retained
 702-385-7411(W)

Plaintiff Huerta, Carlos A

Charles E. Barnabi
Retained
 702-475-8903(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
10/01/2014	Partial Summary Judgment (Judicial Officer: Alif, Nancy) Debtors: Nanyah Vegas LLC (Plaintiff) Creditors: Eldorado Hills LLC (Defendant) Judgment: 10/01/2014, Docketed: 10/08/2014
11/05/2014	Partial Summary Judgment (Judicial Officer: Alif, Nancy) Debtors: Carlos A Huerta (Plaintiff), Alexander Christopher Trust (Plaintiff) Creditors: Sig Rogich (Defendant) Judgment: 11/05/2014, Docketed: 11/12/2014 Comment: Certain Claims
11/05/2014	Order of Dismissal (Judicial Officer: Alif, Nancy) Debtors: Carlos A Huerta (Plaintiff), Alexander Christopher Trust (Plaintiff), Nanyah Vegas LLC (Plaintiff) Creditors: Sig Rogich (Defendant), Eldorado Hills LLC (Defendant) Judgment: 11/05/2014, Docketed: 11/20/2014
02/10/2015	Order (Judicial Officer: Alif, Nancy) Debtors: Carlos A Huerta (Plaintiff), Alexander Christopher Trust (Plaintiff) Creditors: Sig Rogich (Defendant) Judgment: 02/10/2015, Docketed: 02/18/2015 Total Judgment: 237,954.50
02/23/2015	Judgment (Judicial Officer: Alif, Nancy) Debtors: Carlos A Huerta (Plaintiff), Alexander Christopher Trust (Plaintiff) Creditors: Sig Rogich (Defendant) Judgment: 02/23/2015, Docketed: 03/11/2015 Total Judgment: 242,971.27 Satisfaction: Satisfaction of Judgment
04/29/2016	Clerk's Certificate (Judicial Officer: Alif, Nancy) Debtors: Eldorado Hills LLC (Defendant) Creditors: Nanyah Vegas LLC (Plaintiff) Judgment: 04/29/2016, Docketed: 05/06/2016 Comment: Supreme Court No 66823 - "APPEAL REVERSED and REMAND"
07/21/2016	Clerk's Certificate (Judicial Officer: Alif, Nancy) Debtors: Go Global Inc (Other Plaintiff), Carlos A Huerta (Plaintiff), Alexander Christopher Trust (Plaintiff), Nanyah Vegas LLC (Plaintiff) Creditors: Sig Rogich (Defendant) Judgment: 07/21/2016, Docketed: 07/28/2016 Comment: Supreme Court No 67595 - "APPEAL AFFIRMED"
07/31/2017	Clerk's Certificate (Judicial Officer: Alif, Nancy) Debtors: Go Global Inc (Other Plaintiff), Carlos A Huerta (Plaintiff) Creditors: Sig Rogich (Defendant), Eldorado Hills LLC (Defendant) Judgment: 07/31/2017, Docketed: 08/07/2017 Comment: Supreme Court No. 70492 APPEAL AFFIRMED
10/05/2018	Order of Dismissal With Prejudice (Judicial Officer: Alif, Nancy) Debtors: Nanyah Vegas LLC (Plaintiff) Creditors: TELD, LLC (Consolidated Case Party), Peter Eliades (Consolidated Case Party) Judgment: 10/05/2018, Docketed: 10/08/2018 Comment: Consolidated Case Parties Dismissed
10/04/2019	Order of Dismissal With Prejudice (Judicial Officer: Alif, Nancy) Debtors: Carlos A Huerta (Plaintiff), Alexander Christopher Trust (Plaintiff), Nanyah Vegas LLC (Plaintiff) Creditors: Eldorado Hills LLC (Defendant) Judgment: 10/04/2019, Docketed: 10/04/2019
OTHER EVENTS AND HEARINGS	
07/31/2013	Case Opened
07/31/2013	Complaint <i>Complaint</i>
08/01/2013	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
08/30/2013	Proof of Service <i>Proof of Service - Eldorado Hills LLC</i>
09/12/2013	Motion to Dismiss <i>(Vacated 10/30/2013) Defendant Eldorado Hills, LLC's Motion to Dismiss</i>
09/12/2013	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
09/18/2013	Proof of Service <i>Proof of Service - Sig Rogich aka Sigmund Rogich</i>
10/11/2013	Stipulation and Order <i>Stipulation and Order to Continue Hearing on Motion Hearings</i>
10/21/2013	Amended Complaint <i>First Amended Complaint</i>
10/30/2013	Notice <i>Defendant Eldorado Hills LLC's Notice Vacating Its Motion to Dismiss</i>
10/30/2013	Notice <i>Defendant Eldorado Hills, LLC's Notice Vacating Its Motion to Dismiss</i>

10/31/2013 **CANCELED Motion to Dismiss** (9:00 AM) (Judicial Officer Allf, Nancy)
Vacated - On In Error
Defendant Eldorado Hills, LLC's Motion to Dismiss
10/16/2013 Reset by Court to 10/31/2013

10/31/2013 **CANCELED Motion to Dismiss** (9:00 AM) (Judicial Officer Allf, Nancy)
Vacated
parties stipulated to this continuance

11/08/2013 **Answer and Counterclaim**
Answer to First Amended Complaint and Counterclaim

01/09/2014 **Joint Case Conference Report**
Joint Case Conference Report

02/12/2014 **Commissioners Decision on Request for Exemption - Granted**
Commissioner's Decision on Request for Exemption - Granted

02/14/2014 **Arbitration File**
Arbitration File

02/20/2014 **Scheduling Order**
Scheduling Order

02/20/2014 **Answer to Counterclaim**
Answer to Counterclaim

03/12/2014 **Order Setting Civil Bench Trial**
Order Setting Civil Bench Trial, Pre-Trial/Calendar Call

04/30/2014 **Motion for Leave to File**
Defendants' Motion for Leave to File an Amended Answer on an Order Shortening Time

05/14/2014 **Motion for Leave** (9:30 AM) (Judicial Officer Allf, Nancy)
Defendants' Motion for Leave to File an Amended Answer on an Order Shortening Time
Parties Present
Minutes
 Result: Granted

07/25/2014 **Motion for Partial Summary Judgment**
Motion for Partial Summary Judgment

07/25/2014 **Notice of Hearing**
Notice of Hearing

08/11/2014 **Motion for Partial Summary Judgment**
Defendant Sig Rogich, Trustee of The Rogich Family Irrevocable Trust's Motion for Partial Summary Judgment

08/13/2014 **Opposition and Countermotion**
Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment and Counter-Motion for Partial Summary Judgment

08/14/2014 **Initial Appearance Fee Disclosure**
Initial Appearance and Fee Disclosure

08/25/2014 **Countermotion For Partial Summary Judgment**
Plaintiff's Opposition to Defendant's Motion for Partial Summary Judgment and Counter-Motion for Partial Summary Judgment

09/02/2014 **Reply to Opposition**
Reply to Opposition to Motion for Partial Summary Judgment

09/08/2014 **Reply to Opposition**
Plaintiffs' Reply to Defendants' Opposition to Counter-Motion for Partial Summary Judgment

09/09/2014 **Certificate of Service**
Certificate of Service

09/10/2014 **Errata**
Errata

09/11/2014 **Motion for Summary Judgment** (10:30 AM) (Judicial Officer Allf, Nancy)
Defendant Eldorado Hills LLC's Motion for Partial Summary Judgment
 Result: Granted

09/11/2014 **Opposition and Countermotion** (10:30 AM) (Judicial Officer Allf, Nancy)
Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment and Counter-Motion for Partial Summary Judgment
 Result: Denied Without Prejudice

09/11/2014 **All Pending Motions** (10:30 AM) (Judicial Officer Allf, Nancy)
Parties Present
Minutes
 Result: Matter Heard

09/12/2014 **Motion to Compel**
Defendants' Motion to Compel Discovery Responses on Order Shortening Time

09/16/2014 **Amended Answer**
Amended Answer to First Amended Complaint; and Counterclaim Jury Demand

09/18/2014 **Reply to Opposition**
Reply to Opposition to Motion for Partial Summary Judgment

09/19/2014 **Opposition to Motion to Compel**
Plaintiffs' Opposition to Motion to Compel Discovery Responses on an Order Shortening Time

09/19/2014 **Notice of Withdrawal of Motion**
Notice of Withdrawal of Plaintiffs' Counter-Motion for Partial Summary Judgment

09/22/2014 **Certificate of Service**
Certificate of Service

09/22/2014 **Motion to Continue**
Motion to Continue Trial and Discovery on an Order Shortening Time

09/25/2014 **Opposition to Motion**
Defendants Opposition to Motion to Continue Trial and Discovery

09/25/2014 **Amended Certificate of Service**
Amended Certificate of Service

09/26/2014 **Motion to Compel** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Defts' Motion to Compel Discovery Responses on OST
 Result: Off Calendar

09/26/2014 **Motion to Continue Trial** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Pltfs' Motion to Continue Trial and Discovery on an OST
 Result: Denied Without Prejudice

09/26/2014 **All Pending Motions** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Defts' Motion to Compel Discovery Responses on OST Pltfs' Motion to Continue Trial and Discovery on an OST
Parties Present
Minutes
 Result: Matter Heard

09/30/2014 **Motion to Continue Trial**
Motion to Continue Trial on an Order Shortening Time (First Request)

09/30/2014 **Certificate of Service**
Certificate of Service

10/01/2014 **Order Granting**
Order Granting Partial Summary Judgment

10/01/2014 **Notice of Entry of Order**
Notice of Entry of Order

10/02/2014 **Opposition to Motion**
Opposition to Motion to Continue Trial

10/06/2014 **Reply to Opposition**
Reply to Defendants' Opposition to Motion to Continue Trial on Order Shortening Time

10/08/2014 **Motion for Partial Summary Judgment** (10:30 AM) (Judicial Officer Allf, Nancy)
Defendant Sig Rogich, Trustee of The Rogich Family Irrevocable Trust's Motion for Partial Summary Judgment
09/25/2014 Reset by Court to 10/08/2014
 Result: Granted

10/08/2014 **Opposition and Counter-motion** (10:30 AM) (Judicial Officer Allf, Nancy)
Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment and Counter-Motion for Partial Summary Judgment
09/25/2014 Reset by Court to 10/08/2014
 Result: Matter Heard

10/08/2014 **Motion to Continue Trial** (10:30 AM) (Judicial Officer Allf, Nancy)
Plaintiffs' Motion to Continue Trial on an Order Shortening Time
 Result: No Ruling

10/08/2014 **All Pending Motions** (10:30 AM) (Judicial Officer Allf, Nancy)
Parties Present
Minutes
 Result: Matter Heard

10/24/2014 **Status Check: Compliance** (11:00 AM) (Judicial Officer Bulla, Bonnie)
Minutes
 Result: Off Calendar

10/30/2014 **CANCELED Pretrial/Calendar Call** (10:30 AM) (Judicial Officer Allf, Nancy)
Vacated

10/30/2014 **Case Appeal Statement**
Case Appeal Statement

10/30/2014 **Notice of Appeal**
Notice of Appeal

11/03/2014 **CANCELED Bench Trial** (10:30 AM) (Judicial Officer Allf, Nancy)
Vacated

11/05/2014 **Order Granting Summary Judgment**
Order Granting Partial Summary Judgment

11/06/2014 **Notice of Entry of Order**
Notice of Entry of Order Granting Partial Summary Judgment

11/07/2014 **Memorandum of Costs and Disbursements**
Memorandum of Costs and Disbursements

11/19/2014 **Motion for Attorney Fees**
Motion for Award of Attorneys' Fees

12/05/2014 **Opposition to Motion**
Plaintiffs' Opposition to Defendant's Motion for Award of Attorneys' Fees

12/11/2014 **Stipulation and Order**
Stipulation and Order to Continue Hearing on Motion Hearing

12/15/2014 **Notice of Entry of Order**
Notice of Entry of Order

12/30/2014 **Reply in Support**
Defendant's Reply In Support of Motion for Award of Attorneys' Fees

01/15/2015 **Motion for Attorney Fees and Costs** (9:30 AM) (Judicial Officer Allf, Nancy)
Parties Present
Minutes
12/24/2014 Reset by Court to 01/15/2015
 Result: Granted

01/16/2015 **Recorders Transcript of Hearing**
Recorder's Partial Transcript of Proceedings: Defendant Sig Rogich, Trustee of the Rogich Family Irrevocable Trust's Motion for Partial Summary Judgment Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment and Counter-Motion for Partial Summary Judgment Plaintiffs' Motion to Continue Trial on Order Shortening Time - Ruling - October 8, 2014

01/28/2015 **Notice**
Notice of Transcript Request

02/10/2015 **Order Granting Motion**
Order Granting Motion For Award of Attorneys Fees

02/11/2015 **Notice of Entry of Order**
Notice of Entry of Order Granting Award of Attorneys Fees

02/23/2015 **Judgment**
FINAL JUDGMENT

02/24/2015 **Notice of Entry of Judgment**
Notice of Entry of Final Judgment

03/13/2015 **Recorders Transcript of Hearing**

Recorder's Partial Transcript of Proceedings: Notice of Hearing Plaintiff's Opposition to Defendant's Motion for Partial Summary Judgment and Countermotion for Partial Summary Judgment - September 11, 2014

03/13/2015 **Notice of Appeal**
Notice of Appeal

03/13/2015 **Case Appeal Statement**
Case Appeal Statement

03/17/2015 **Recorders Transcript of Hearing**
Recorder's Transcript of Proceedings: Notice of Hearing Plaintiff's Opposition to Defendant's Motion for Partial Summary Judgment and Countermotion for Partial Summary Judgment - September 11, 2014

04/25/2015 **Request**
Notice of Transcript Request

06/15/2015 **Recorders Transcript of Hearing**
Recorder's Transcript of Proceedings: Partial Transcript - Excludes Ruling Defendant, Sig Rogich Trustee of the Rogich Family Irrevocable Trust's Motion for Partial Summary Judgment; Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment; Plaintiffs' Motion to Continue Trial on Order Shortening Time - October 8, 2014

11/20/2015 **Recorders Transcript of Hearing**
Recorder's Transcript of Proceedings: Defendant's Motion for Attorneys Fees and Costs - January 15, 2015

02/22/2016 **Order**
Order Setting Status Check

02/22/2016 **Motion to Reconsider**
Plaintiffs' Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment

03/07/2016 **Opposition**
Opposition to Plaintiffs' Motion for Reconsideration for Relief from Order Granting Motion for Partial Summary Judgment

03/14/2016 **Supplement to Opposition**
Supplement to Opposition to Plaintiffs' Motion for Reconsideration for Relief from Order Granting Motion for Partial Summary Judgment

03/22/2016 **Minute Order** (3:00 AM) (Judicial Officer Allf, Nancy)
Minute Order: Status Check: Status of Case set 3/24/2016 VACATED
Minutes
Result: Minute Order - No Hearing Held

03/22/2016 **Reply to Opposition**
Plaintiffs' (A) Reply to Defendants' Opposition to Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment; and (B) Request for Oral Argument

03/22/2016 **Application**
Plaintiffs' Application to Set Oral Argument on Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment

03/23/2016 **Minute Order** (3:00 AM) (Judicial Officer Allf, Nancy)
Minute Order: Matters set on 3/29/2016 chambers calendar and 5/10/2016 chambers calendar.
Minutes
Result: Minute Order - No Hearing Held

03/24/2016 **CANCELED Status Check: Status of Case** (9:30 AM) (Judicial Officer Allf, Nancy)
Vacated
Status Check: Status of Case

04/04/2016 **Substitution of Attorney**
Substitution of Attorneys

04/04/2016 **Supplement**
Plaintiffs' Supplement to Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment

04/20/2016 **Motion For Reconsideration** (10:30 AM) (Judicial Officer Allf, Nancy)
Plaintiffs' Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment
Minutes
03/29/2016 Reset by Court to 04/20/2016
Result: Denied

04/28/2016 **Order Denying Motion**
Order Denying Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment

04/29/2016 **Notice of Entry of Order**
Notice of Entry of Order Denying Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment

04/29/2016 **NV Supreme Court Clerks Certificate/Judgment - Remanded**
Nevada Supreme Court Clerk's Certificate Judgment - Reversed and Remand; Rehearing Denied

05/10/2016 **CANCELED Motion** (3:00 AM) (Judicial Officer Allf, Nancy)
Vacated
Plaintiffs' Application to Set Oral Argument on Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment

05/16/2016 **Substitution of Attorney**
Substitution of Counsel

05/25/2016 **Notice of Appeal**
Notice of Appeal

05/25/2016 **Case Appeal Statement**
Case Appeal Statement

05/27/2016 **Notice of Posting Bond**
Plaintiffs' Notice of Posting Bond

07/21/2016 **NV Supreme Court Clerks Certificate/Judgment - Affirmed**
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed

07/28/2016 **Motion for Attorney Fees**
(Withdrawn 8/30/16) Motion for Award of Attorneys' Fees

07/28/2016 **Declaration**
Declaration of Samuel S. Lionel in Support of Motion for Award of Attorneys' Fees

07/29/2016 **Amended Certificate of Service**
Amended Certificate of Service

08/12/2016 **Opposition to Motion**
Plaintiffs' Opposition to Motion for Award of Attorneys' Fees

08/24/2016 **Reply in Support**
Reply in Support of Motion for Award of Attorneys' Fees

08/30/2016 **Stipulation and Order**
Stipulation and Order to Withdraw Motion for Award of Attorneys' Fees Without Prejudice

08/31/2016 **CANCELED Motion for Attorney Fees** (9:00 AM) (Judicial Officer Allf, Nancy)

Vacated - per Stipulation and Order
Motion for Award of Attorneys' Fees

10/19/2016 **Notice**
Plaintiffs' Notice of Transcript Request

11/14/2016 **Recorders Transcript of Hearing**
Transcript Re: Plaintiffs' Motion for Reconsideration or Relief from Order Granting Motion for Partial Summary Judgment - April 20, 2016

02/22/2017 **Affidavit**
Affidavit of Judgment

03/22/2017 **Order to Statistically Close Case**
Civil Order to Statistically Close Case

03/31/2017 **Stipulation and Order**
Stipulation for Consolidation

04/05/2017 **Notice of Consolidation**
Notice of Consolidation

04/24/2017 **Answer**
Defendants' Answer to Complaint

05/25/2017 **Joint Case Conference Report**
Joint Case Conference Report

06/14/2017 **Motion to Quash**
Nanyah Vegas, LLC's Motion for Temporary Protective Order to Quash Deposition Notice and Extend Time to Respond to Interrogatories

06/20/2017 **Motion to Quash**
Nanyah Vegas, LLC's Motion for Temporary Protective Order to Quash Deposition Notice and Extend Time to Respond to Interrogatories

06/26/2017 **Opposition and Countermotion**
Intermotion for 2 Days to Complete Mr. Harlap's Deposition and Leave to Serve 25 Additional Interrogatories

07/19/2017 **CANCELED Motion for Protective Order** (9:00 AM) (Judicial Officer Allf, Nancy)
Vacated
Nanyah Vegas, LLC's Motion for Temporary Protective Order to Quash Deposition Notice and Extend Time to Respond to Interrogatories

07/21/2017 **Motion for Protective Order** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Nanyah Vegas, LLC's Motion for Temporary Protective Order to Quash Deposition Notice and Extend Time to Respond to Interrogatories
Result: Granted in Part

07/21/2017 **Opposition and Countermotion** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Defendants Opposition to Plaintiff's Motion for Temporary Protective Order to Quash Deposition Notice and Extend Time to Respond to Interrogatories and Countermotion for 2 Days to Complete Mr. Harlap's Deposition and Leave to Serve 25 Additional Interrogatories
Result: Granted in Part

07/21/2017 **All Pending Motions** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Parties Present
Minutes
Result: Matter Heard

07/26/2017 **Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call**
Order Setting Civil Jury Trial, Pre-Trial/Calendar Call

07/31/2017 **NV Supreme Court Clerks Certificate/Judgment - Affirmed**
Nevada Supreme Court Clerk's Certificate Judgment - Affirmed

08/18/2017 **Affidavit**
Corrected Affidavit of Judgment

08/31/2017 **Notice of Firm Name Change**
Notice of Firm Name Change

09/12/2017 **Notice of Deposition**
NOTICE OF TAKING DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS

09/21/2017 **Status Check: Compliance** (3:00 AM) (Judicial Officer Bulla, Bonnie)
DCRR 7-21-17
Result: Matter Continued

09/21/2017 **Stipulation**
Stipulation re: Re-Open Deadlines

10/17/2017 **Objection**
Objection to Notice of Taking Deposition and Request for Production of Documents

10/24/2017 **Discovery Commissioners Report and Recommendations**
Discovery Commissioner's Report and Recommendation

10/25/2017 **Notice**
Notice of Issuance of Subpoenas Duces Tecum

11/13/2017 **Motion to Compel**
Defendants' Motion to Compel

11/16/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Nevada Title Company

11/16/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Kenneth Woloson, Esq.

11/16/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson

11/16/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Bradshaw, Smith & Co, LLP

11/16/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Gerety & Associates

11/16/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Bank of Nevada

11/21/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Mutual of Omaha Bank

11/29/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to City National Bank

11/30/2017 **Notice of Change of Hearing**
Notice of Change of Hearing

12/04/2017 **Opposition**
Opposition to Motion to Compel

12/08/2017 **Reply in Support**
Defendants' Reply in Support of Motion to Compel

12/12/2017 **Notice**
Notice of Issuance of Subpoena Duces Tecum

12/12/2017 **Subpoena Duces Tecum**
Nanyah Vegas, LLC's Subpoena Duces Tecum to Blakely Island Holdings, LLC

12/13/2017 **Notice**
Notice of Issuance of Subpoenas Duces Tecum

12/15/2017 **Motion to Compel** (9:30 AM) (Judicial Officer Bulla, Bonnie)
12/15/2017, 01/23/2018, 03/07/2018
COURT CALL - Defendants' Motion to Compel
Minutes
12/14/2017 Reset by Court to 12/15/2017
01/11/2018 Reset by Court to 01/23/2018
02/07/2018 Reset by Court to 03/07/2018
Result: Continued

12/15/2017 **Motion for Leave to File**
Motion for Leave to Amend Answer to Complaint

12/15/2017 **Certificate of Service**
Certificate of Service

12/18/2017 **Stipulation and Order to Extend Discovery Deadlines**
Stipulation and Order to Extend Discovery Deadlines

12/18/2017 **Acceptance of Service**
Acceptance of Service Regarding Subpoena Duces Tecum to Carlos Huerta

12/18/2017 **Non Opposition**
Nanyah Vegas, LLC's Non-Opposition to Motion for Leave to Amend Answer to Complaint

12/22/2017 **Motion to Strike**
Nanyah Vegas, LLC's Motion to Strike Defendants' Motion to Compel

01/02/2018 **Stipulation and Order**
Stipulation and Order to Vacate Hearing on Defendants' Motion for leave to Amend Answer

01/04/2018 **Order Shortening Time**
Order Shortening Time to Motion to Strike Defendants' Motion to Compel

01/05/2018 **Motion to Compel**
Nanyah Vegas, LLC's Motion to Compel Defendants Responses to Request for Production and Interrogatories

01/05/2018 **Opposition**
Opposition to Nanyah Vegas, LLC's Motion to Strke Defendants' Motion to Compel

01/09/2018 **Motion to Strike**
Nanyah Vegas, LLC's Reply in Support of Motion to Strike Defendants' Motion to Compel

01/17/2018 **CANCELED Motion for Leave** (9:00 AM) (Judicial Officer Allf, Nancy)
Vacated - per Stipulation and Order
Motion for Leave to Amend Answer to Complaint

01/23/2018 **Motion to Strike** (10:30 AM) (Judicial Officer Bulla, Bonnie)
Nanyah Vegas, LLC's Motion to Strike Defendants' Motion to Compel
01/25/2018 Reset by Court to 01/23/2018
Result: Denied

01/23/2018 **All Pending Motions** (10:30 AM) (Judicial Officer Bulla, Bonnie)
Parties Present
Minutes
Result: Matter Heard

01/23/2018 **Amended Answer**
(A746239) Defendants' First Amended Answer to Complaint

01/23/2018 **Certificate of Service**
Certificate of Service

01/23/2018 **Opposition to Motion to Compel**
Opposition to Motion to Compel and Countermotion for an Order that the Answers to Requests for Admissions Should be Considered as Having Been Timely Filed

01/24/2018 **Substitution of Attorney**
(A746239) Substitution of Attorneys

01/26/2018 **Reply to Opposition**
Nanyah Vegas, LLC's Reply in Support of Motion to Compel

01/26/2018 **Opposition to Motion**
Nanyah Vegas, LLC's Opposition to Countermotion for an Order That the Answers to Requests for Admission Should be Considered as Having Been Timely Filed

01/29/2018 **Order Granting Motion**
Order Granting Motion for Leave to Amend Answer to Complaint

01/31/2018 **Substitution of Attorney**
Substitution of Attorneys

02/21/2018 **Substitution of Attorney**
Substitution of Counsel

02/23/2018 **Motion for Summary Judgment**
Motion for Summary Judgment

02/27/2018 **Reply in Support**
REPLY IN SUPPORT OF COUNTERMOTION FOR AN ORDER THAT THE ANSWERS TO REQUESTS FOR ADMISSIONS SHOULD BE CONSIDERED AS HAVING BEEN TIMELY FIELD

02/28/2018 **Supplement to Opposition**
Defendants Peter Eliades, individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and TELD, LLC's Supplemental Opposition to Nanyah Vegas, LLC's Motion to Compel

03/05/2018 **Joinder to Motion For Summary Judgment**
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 Motion for Summary Judgment

03/07/2018 **Motion to Compel** (9:00 AM) (Judicial Officer Bulla, Bonnie)
COURT CALL - Nanyah Vegas, LLC's Motion to Compel Defendants Responses to Request for Production and Interrogatories
02/07/2018 Reset by Court to 02/07/2018

02/07/2018 Reset by Court to 03/07/2018
Result: Withdrawn

03/07/2018 **Opposition and Countermotion** (9:00 AM) (Judicial Officer Bulla, Bonnie)
COURT CALL - Opposition to Motion to Compel and Countermotion for an Order That the Answers to Requests for Admissions Should be Considered as Having Been Timely Filed
02/07/2018 Reset by Court to 03/07/2018
Result: Granted

03/07/2018 **All Pending Motions** (9:00 AM) (Judicial Officer Bulla, Bonnie)
Parties Present
Minutes
Result: Matter Heard

03/08/2018 **Joinder to Motion For Summary Judgment**
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

03/14/2018 **Discovery Commissioners Report and Recommendations**
Discovery Commissioners Report and Recommendation

03/19/2018 **Opposition and Countermotion**
Opposition to Motion for Summary Judgment; Countermotion for Summary Judgment; and Countermotion for NRCP 56(f) Relief

03/20/2018 **Initial Appearance Fee Disclosure**
Fee Disclosure

03/21/2018 **Notice of Entry**
NOTICE OF ENTRY

03/22/2018 **CANCELED Status Check: Compliance** (3:00 AM) (Judicial Officer Bulla, Bonnie)
Vacated - per Commissioner

04/11/2018 **Reply in Support**
Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Reply in Support of Motion for Summary Judgment and Opposition to Nanyah Vegas, LLC's Countermotion for Summary Judgment and for NRCP 56(f) Relief

04/11/2018 **Reply in Support**
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Eldorado Hills, LLC, and Teld, LLC's: (1) Reply in Support of their Joinder to Motion for Summary Judgment; and (2) Opposition to Nanyah Vegas, LLC's Countermotion for Summary Judgment and for N.R.C.P. 56(f) Relief

04/16/2018 **Reply to Opposition**
Reply to Opposition to Countermotion for Summary Judgment; and Countermotion for NRCP 56(f) Relief

04/17/2018 **Joinder**
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 Survivor Trust of 10/30/08, Eldorado Hills, LLC and Teld's Reply in Support of Their Joinder to Motion for Summary Judgment and Opposition to Nanyah Vegas, LLC's Countermotion for Summary Judgment and NRCP 56(f) Relief

04/17/2018 **Notice of Taking Deposition**
Notice of Taking Deposition of Sigmund Rogich

04/17/2018 **Notice of Taking Deposition**
Notice of Taking Deposition of Peter Eliades

04/17/2018 **Notice of Taking Deposition**
Notice of Taking Depositions

04/18/2018 **Motion for Summary Judgment** (10:00 AM) (Judicial Officer Alif, Nancy)
03/28/2018 Reset by Court to 04/18/2018
Result: Granted in Part

04/18/2018 **Joinder** (10:00 AM) (Judicial Officer Alif, Nancy)
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 Motion for Summary Judgment
03/28/2018 Reset by Court to 04/18/2018
Result: Matter Heard

04/18/2018 **Joinder** (10:00 AM) (Judicial Officer Alif, Nancy)
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
Result: Matter Heard

04/18/2018 **Opposition and Countermotion** (10:00 AM) (Judicial Officer Alif, Nancy)
Opposition to Motion for Summary Judgment; Countermotion for Summary Judgment; and Countermotion for NRCP 56(f) Relief
Result: Denied

04/18/2018 **All Pending Motions** (10:00 AM) (Judicial Officer Alif, Nancy)
Parties Present
Minutes
Result: Matter Heard

04/19/2018 **Recorders Transcript of Hearing**
Partial Transcript of Proceedings, All Pending Motions (Ruling Only), Heard on April 18, 2018

04/23/2018 **Recorders Transcript of Hearing**
Partial Transcript of Proceedings, All Pending Motions (Excludes Ruling), Heard on April 18, 2018

04/26/2018 **CANCELED Status Check: Compliance** (3:00 AM) (Judicial Officer Bulla, Bonnie)
Vacated - per Commissioner

04/27/2018 **Amended Notice of Taking Deposition**
Amended Notice of Taking Deposition of Sigmund Rogich

04/27/2018 **Notice of Taking Deposition**
Notice of Taking Deposition of Kenneth Woloson, Esq.

04/27/2018 **Amended Notice of Taking Deposition**
Amended Notice of Taking Deposition of Melissa Olivas

05/01/2018 **Discovery Commissioners Report and Recommendations**
Discovery Commissioners Report and Recommendations

05/02/2018 **Notice of Entry**
Notice of Entry

05/03/2018 **Motion to Continue Trial**
Nanyah Vegas, LLC's Motion to Continue Trial and to Set Firm Trial Date on Order Shortening Time

05/09/2018 **Notice of Taking Deposition**
Amended Notice of Taking Depositions

05/10/2018 **Opposition to Motion**
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

05/10/2018 **Notice of Taking Deposition**
Amended Notice of Taking Deposition of Kenneth Woloson, Esq.

05/10/2018 **Motion in Limine**
Nanyah Vegas, LLC's Motion in Limine #1 re: Eldorado Hills, LLC Bound by Admissions and Statements of Its Managing Member

05/10/2018 **Motion in Limine**
Nanyah Vegas, LLC's Motion in Limine #2 re: NRS 47.240(2) Mandates Finding That Nanyah Vegas, LLC Invested \$1.5 Million Into Eldorado Hills, LLC

05/10/2018 **Motion in Limine**
Nanyah Vegas, LLC's Motion in Limine #3 re: Defendants Bound by Their Answers to Complaint

05/10/2018 **Motion in Limine**
Nanyah Vegas, LLC's Motion in Limine #4 Yoav Harlap's Personal Financials

05/11/2018 **Notice of Non Opposition**
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

05/11/2018 **Motion in Limine**
Defendants' Motion in Limine to Limit Trial Testimony of Yoav Harlap at Trial

05/15/2018 **Reply to Opposition**
Nanyah Vegas, LLC's Reply in Support of Motion to Continue Trial and to Set Firm Trial Date

05/17/2018 **Motion to Continue Trial** (9:30 AM) (Judicial Officer Allf, Nancy)
Nanyah Vegas LLC's Motion to Continue Trial and to Set Firm Trial Date on Order Shortening Time
Parties Present
Minutes
Result: Denied

05/21/2018 **Joinder to Motion in Limine**
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 Motion in Limine to Limit Trial Testimony of Yoav Harlap at Trial

05/22/2018 **Order Denying Motion**
Order Denying Countermotion for Summary Judgment and Denying NRCP 56(f) Relief

05/22/2018 **Order**
(A686303) Order Partially Granting Summary Judgment

05/22/2018 **Notice of Entry of Order**
Notice of Entry of Orders

06/01/2018 **Motion for Summary Judgment**
Defendant Eldorado Hills, LLC's Motion for Summary Judgment

06/01/2018 **Appendix**
Appendix of Exhibits to Defendant Eldorado Hills, LLC's Motion for Summary Judgment Volume 1 of 2

06/01/2018 **Appendix**
Appendix of Exhibits to Defendant Eldorado Hills, LLC's Motion for Summary Judgment Volume 2 of 2

06/01/2018 **Motion for Summary Judgment**
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment

06/01/2018 **Appendix**
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

06/01/2018 **Appendix**
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

06/04/2018 **Order Denying Motion**
Order Denying Motion to Continue Trial Date and Granting Firm Trial Date Setting

06/04/2018 **Motion to Reconsider**
Motion to Reconsider Order Partially Granting Summary Judgment

06/05/2018 **Motion**
Defendants Sigmund Rogich, Individually And As Trustee Of The Rogich Family Irrevocable Trust And Imitations, LLC's Motion For Reconsideration

06/06/2018 **Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call**
Order Setting Civil Jury Trial, Pre-Trial/Calendar Call

06/12/2018 **Notice of Taking Deposition**
Amended Notice of Taking Deposition of Dolores Eliades

06/14/2018 **Opposition**
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

06/14/2018 **Joinder To Motion**
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

06/19/2018 **Motion for Leave to File**
Motion for Leave to File Nanyah Vegas, LLC's Opposition to Eliades Defendants' Motion for Summary Judgment and Countermotion for Summary Judgment in Excess of Thirty (30) Pages

06/19/2018 **Opposition and Countermotion**
Opposition to Eliades Defendants' Motion for Summary Judgment and Countermotion for Summary Judgment

06/19/2018 **Opposition and Countermotion**
Opposition to Eldorado Hill's Motion for Summary Judgment and Countermotion for Summary Judgment

06/21/2018 **Opposition to Motion**
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

06/25/2018 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer Allf, Nancy)
Vacated

06/25/2018 **Initial Appearance Fee Disclosure**
Fee Disclosure

06/25/2018 **Initial Appearance Fee Disclosure**

06/25/2018 Fee Disclosure
Reply to Opposition
Reply in Support of Motion to Reconsider Order Partially Granting Summary Judgment

06/25/2018 **Opposition to Motion**
Nanyah Vegas, LLC's Opposition to Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitation, LLC's Motion for Reconsideration and Joinder

07/02/2018 **Reply in Support**
Reply in Support of Defendants' Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations LLC's Motion for Reconsideration

07/10/2018 **Motion to Reconsider** (3:00 AM) (Judicial Officer Alf, Nancy)
Motion to Reconsider Order Partially Granting Summary Judgment
 Result: Denied

07/10/2018 **Motion For Reconsideration** (3:00 AM) (Judicial Officer Alf, Nancy)
Defendants Sigmund Rogich, Individually And As Trustee Of The Rogich Family Irrevocable Trust And Imitations, Llc's Motion For Reconsideration
 Result: Denied

07/10/2018 **All Pending Motions** (3:00 AM) (Judicial Officer Alf, Nancy)
Minutes
 Result: Minute Order - No Hearing Held

07/13/2018 **Motion to Strike**
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills, LLC's Motion, on Order Shortening Time, to Strike Nanyah Vegas, LLC's Untimely Countermotions for Summary Judgment

07/16/2018 **Receipt of Copy**
Receipt of Copy of Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills, LLC's Motion, on Order Shortening Time, to Strike Nanyah Vegas, LLC's Untimely Countermotions for Summary Judgment

07/16/2018 **Receipt of Copy**
Receipt of Copy of Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills, LLC's Motion, on Order Shortening Time, to Strike Nanyah Vegas, LLC's Untimely Countermotions for Summary Judgment

07/16/2018 **Motion**
Defendants' Motion for Expedited Hearing on Pending Motions in Limine on Order Shortening Time

07/19/2018 **Reply in Support**
Defendant Eldorado Hills, LLC's Reply in Support of Its Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment

07/19/2018 **Reply in Support**
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Reply in Support of Their Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment

07/20/2018 **Minute Order** (3:00 AM) (Judicial Officer Alf, Nancy)
Minute Order: Motion for Leave to File Nanyah Vegas LLC's Opposition to Eliades Defendant's Motion for Summary Judgment and Countermotion for Summary Judgment in Excess of Thirty (30) Pages set 7/25/2018 GRANTED and VACATED
Minutes
 Result: Minute Order - No Hearing Held

07/23/2018 **Opposition to Motion**
Nanyah Vegas, LLC's Opposition to Motion to Strike Untimely Countermotions for Summary Judgment

07/24/2018 **Order**
Order Denying Motion to Reconsider

07/24/2018 **Errata**
Errata to Nanyah Vegas, LLC's Opposition to Motion to Strike Untimely Countermotions for Summary Judgment

07/24/2018 **Reply in Support**
Reply in Support of Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills, LLC's Motion, on Order Shortening Time, to Strike Nanyah Vegas, LLC's Untimely Countermotions for Summary Judgment

07/24/2018 **Opposition to Motion**
Nanyah Vegas, LLC's Limited Opposition to Defendants' Motion for Expedited Hearing on Pending Motions in Limine on Order Shortening Time

07/25/2018 **CANCELED Motion for Leave** (9:00 AM) (Judicial Officer Alf, Nancy)
 Vacated
Motion for Leave to File Nanyah Vegas LLC's Opposition to Eliades Defendant's Motion for Summary Judgment and Countermotion for Summary Judgment in Excess of Thirty (30) Pages

07/25/2018 **Reply in Support**
Reply in Support of Defendants' Motion for Expedited Hearing on Pending Motions in Limine

07/26/2018 **Motion for Summary Judgment** (10:30 AM) (Judicial Officer Alf, Nancy)
Defendant Eldorado Hills, LLC's Motion for Summary Judgment
 07/05/2018 Reset by Court to 07/26/2018
 Result: Denied

07/26/2018 **Motion for Summary Judgment** (10:30 AM) (Judicial Officer Alf, Nancy)
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment
 07/05/2018 Reset by Court to 07/26/2018
 Result: Granted

07/26/2018 **Opposition and Countermotion** (10:30 AM) (Judicial Officer Alf, Nancy)
Opposition to Eliades Defendants Motion for Summary Judgment and Countermotion for Summary Judgment
 Result: Denied

07/26/2018 **Opposition and Countermotion** (10:30 AM) (Judicial Officer Alf, Nancy)
Opposition to Eldorado Hills Motion for Summary Judgment and Countermotion for Summary Judgment.
 Result: Denied

07/26/2018 **Motion to Strike** (10:30 AM) (Judicial Officer Alf, Nancy)
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills, LLC's Motion, on Order Shortening Time, to Strike Nanyah Vegas, LLC's Untimely Countermotions for Summary Judgment
 Result: Denied

07/26/2018 **Motion** (10:30 AM) (Judicial Officer Alf, Nancy)
Defendant's Motion for Expedited Hearing on Pending Motion In Limine on order Shortening Time
 Result: Granted

07/26/2018 **Notice of Entry of Order**
Notice of Entry of Order Denying Motion for Reconsideration

07/26/2018 **All Pending Motions** (10:30 AM) (Judicial Officer Alf, Nancy)
Parties Present

Minutes
Result: Matter Heard
08/02/2018 **Recorders Transcript of Hearing**
Transcript of Proceedings, Motions, Heard on July 26, 2018
08/07/2018 **Decision** (3:00 AM) (Judicial Officer Alf, Nancy)
DECISION: 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 Opposition to Eliades Defendants Motion for Summary Judgment and Countermotion for Summary Judgment
Minutes
Result: Decision Made
08/10/2018 **Order**
Order Denying Nanyah Vegas, LLC's Motion for Reconsideration
08/13/2018 **Notice of Entry of Order**
Notice of Entry of Order Denying Nanyah Vegas, LLC's Motion for Reconsideration
08/13/2018 **Order Granting Motion**
Order
08/17/2018 **Motion**
Motion for Rehearing
09/04/2018 **Opposition to Motion**
Nanyah Vegas, LLC's Opposition to Motion for Rehearing and Countermotion for Award of Fees and Costs
09/05/2018 **Errata**
Errata to Nanyah Vegas, LLC's Opposition to Motion for Rehearing and Countermotion for Award of Fees and Costs
09/07/2018 **Motion in Limine**
Defendant Eldorado Hills, LLC's 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
09/07/2018 **Motion in Limine**
Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Argument that Eldorado Hills, LLC is Bound by Any Contractual Recitals, Statements, or Language
09/07/2018 **Motion in Limine**
Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Evidence or Argument Regarding an Alleged Implied-In-Fact Contract Between Eldorado Hills, LLC and Nanyah Vegas, LLC
09/19/2018 **Opposition to Motion**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine # 3: Defendants Bound by their Answers to Complaint
09/19/2018 **Opposition to Motion**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine # 4: Yoav Harlap's Personal Financials
09/19/2018 **Opposition to Motion**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine # 1: Eldorado Hills, LLC Bound by Admissions and Statements of its Managing Member
09/19/2018 **Opposition to Motion**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine # 2: NRS 47.240(2) Mandates Finding that Nanyah Vegas, LLC Invested \$1.5 Million Into Eldorado Hills, LLC
09/20/2018 **Reply in Support**
Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Reply in Support of Their Motion for Rehearing
09/24/2018 **Opposition to Motion in Limine**
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
09/24/2018 **Opposition to Motion in Limine**
Nanyah Vegas, LLC's Opposition to 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 Manager
09/24/2018 **Opposition to Motion in Limine**
Nanyah Vegas, LLC's Opposition to Motion in Limine to Preclude any Argument that Eldorado Hills, LLC is Bound by any Contractual Recitals, Statements, or Language
09/26/2018 **Notice of Association of Counsel**
Notice of Association of Counsel
09/27/2018 **Motion** (10:00 AM) (Judicial Officer Alf, Nancy)
Motion for Rehearing
09/20/2018 Reset by Court to 09/27/2018
Result: Decision Made
09/27/2018 **Opposition and Countermotion** (10:00 AM) (Judicial Officer Alf, Nancy)
Nanyah Vegas LLC's Opposition to Motion for Rehearing and Countermotion for Award of Fees and Costs
09/20/2018 Reset by Court to 09/27/2018
Result: Decision Made
09/27/2018 **Amended Notice**
Amended Notice of Association of Counsel
09/27/2018 **All Pending Motions** (10:00 AM) (Judicial Officer Alf, Nancy)
Parties Present
Minutes
Result: Matter Heard
09/28/2018 **Opposition**
Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #2 Re: NRS 47.240(2) Mandates Finding that Nanyah Vegas Invested \$1.5 Million into Eldorado Hills, LLC
09/28/2018 **Opposition**
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
09/28/2018 **Non Opposition**
Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations Notice of Non-Opposition to Nanyah's Motion in Limine #4 Re Yoav Harlap's Personal Financials
09/28/2018 **Opposition**
Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #1 Re: Eldorado Hills, LLC Bound by Admissions and Statements of its Managing Member
10/02/2018 **Recorders Transcript of Hearing**

Transcript of Proceedings, Motion for Rehearing; Nanyah Vegas LLC's Opposition to Motion for Rehearing and Counter Motion for Award of Fees and Costs, Heard on September 27, 2018

10/03/2018 **Reply in Support**
Reply in Support of Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Argument that Eldorado Hills, LLC is Bound by Any Contractual Recitals, Statements, or Language

10/03/2018 **Reply in Support**
Reply in Support of Defendant Eldorado Hills, LLC's 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

10/03/2018 **Reply in Support**
Reply in Support of Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Evidence or Argument Regarding an Alleged Implied-In-Fact Contract Between Eldorado Hills, LLC and Nanyah Vegas, LLC

10/03/2018 **Reply to Opposition**
Nanyah Vegas, LLC's Reply to Oppositions to Motion in Limine #1 re: Eldorado Hills, LLC Bound by Admissions and Statements of Its Managing Member

10/03/2018 **Reply to Opposition**
Nanyah Vegas, LLC's Reply to Oppositions to Motion in Limine #2 re: NRS 47.240(2) Mandates Finding that Nanyah Vegas, LLC Invested \$1.5 Million into Eldorado Hills, LLC

10/03/2018 **Reply to Opposition**
Nanyah Vegas, LLC's Reply to Oppositions to Motion in Limine #3 re: Defendants Bound by Their Answers to Complaint

10/03/2018 **Reply to Opposition**
Nanyah Vegas, LLC's Reply to Oppositions to Motion in Limine #4 re: Yoav Harlap's Personal Financials

10/05/2018 **Decision** (3:00 AM) (Judicial Officer Alif, Nancy)
DECISION: MOTION FOR REHEARING; NANYAH VEGAS LLC'S OPPOSITION TO MOTION FOR REHEARING AND COUNTERMOTION FOR AWARD OF FEES AND COSTS
Minutes
10/09/2018 Reset by Court to 10/05/2018
Result: Minute Order - No Hearing Held

10/05/2018 **Order**
(A686303, A746239) Order: (1) Granting Defendants Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment; and (2) Denying Nanyah Vegas, LLC's Countermotion for Summary Judgment

10/08/2018 **Notice of Entry of Order**
Notice of Entry of Order

10/10/2018 **Motion in Limine** (10:30 AM) (Judicial Officer Alif, Nancy)
Nanyah Vegas, LLC's Motion in Limine #1 re: Eldorado Hills, LLC Bound by Admissions and Statements of Its Managing Member
10/10/2018 Reset by Court to 10/10/2018
11/01/2018 Reset by Court to 10/10/2018
Result: Denied

10/10/2018 **Motion in Limine** (10:30 AM) (Judicial Officer Alif, Nancy)
Nanyah Vegas, LLC's Motion in Limine #2 re: NRS 47.240(2) Mandates Finding That Nanyah Vegas, LLC Invested \$1.5 Million Into Eldorado Hills, LLC
10/10/2018 Reset by Court to 10/10/2018
11/01/2018 Reset by Court to 10/10/2018
Result: Denied

10/10/2018 **Motion in Limine** (10:30 AM) (Judicial Officer Alif, Nancy)
Nanyah Vegas, LLC's Motion in Limine #3 re: Defendants Bound by Their Answers to Complaint
10/10/2018 Reset by Court to 10/10/2018
11/01/2018 Reset by Court to 10/10/2018
Result: Granted

10/10/2018 **Motion in Limine** (10:30 AM) (Judicial Officer Alif, Nancy)
Nanyah Vegas, LLC's Motion in Limine #4 Yoav Harlap's Personal Financials
06/14/2018 Reset by Court to 06/13/2018
10/10/2018 Reset by Court to 10/10/2018
11/01/2018 Reset by Court to 10/10/2018
Result: Granted in Part

10/10/2018 **Joinder** (10:30 AM) (Judicial Officer Alif, Nancy)
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 Motion in Limine to Limit Trial Testimony of Yoav Harlap at Trial
06/14/2018 Reset by Court to 06/13/2018
10/10/2018 Reset by Court to 10/10/2018
11/01/2018 Reset by Court to 10/10/2018
Result: Matter Heard

10/10/2018 **Motion in Limine** (10:30 AM) (Judicial Officer Alif, Nancy)
Defendant Eldorado Hills, LLC's 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
10/10/2018 Reset by Court to 10/10/2018
Result: Granted

10/10/2018 **Motion in Limine** (10:30 AM) (Judicial Officer Alif, Nancy)
Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Argument that Eldorado Hills, LLC is Bound by Any Contractual Recitals, Statements, or Language
10/10/2018 Reset by Court to 10/10/2018
Result: Granted

10/10/2018 **Motion in Limine** (10:30 AM) (Judicial Officer Alif, Nancy)
Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Evidence or Argument Regarding an Alleged Implied-In-Fact Contract Between Eldorado Hills, LLC and Nanyah Vegas, LLC
10/10/2018 Reset by Court to 10/10/2018
Result: Deferred Ruling

10/10/2018 **All Pending Motions** (10:30 AM) (Judicial Officer Alif, Nancy)

Parties Present
Minutes
 Result: Matter Heard
 10/11/2018 **Memorandum of Costs and Disbursements**
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Memorandum of Costs and Disbursements
 10/12/2018 **Pre-Trial Disclosure**
Nanyah Vegas, LLC's Pretrial Disclosures
 10/15/2018 **Motion to Retax**
Nanyah Vegas, LLC's Motion to Retax and Alternatively Motion to Strike
 10/16/2018 **Recorders Transcript of Hearing**
Transcript of Proceedings, All Pending Motions in Limine, Heard on October 10, 2018
 10/25/2018 **Motion for Attorney Fees and Costs**
Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs
 10/25/2018 **Appendix**
Appendix of Exhibits to Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs
 10/29/2018 **Notice of Department Reassignment**
Notice of Department Reassignment
 10/29/2018 **Notice**
Eldorado Hills, LLC's Notice of Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-In-Fact Contract Theory
 10/31/2018 **Supplement**
Nanyah Vegas, LLC's Supplemental Pretrial Disclosures
 10/31/2018 **Objection**
Nanyah Vegas, LLC's Objections to Defendants' Pretrial Disclosures
 11/01/2018 **Calendar Call** (11:00 AM) (Judicial Officer Alf, Nancy)
Parties Present
Minutes
06/21/2018 Reset by Court to 11/01/2018
 Result: Matter Heard
 11/01/2018 **CANCELED Motion in Limine** (11:00 AM) (Judicial Officer Alf, Nancy)
Vacated - per Attorney or Pro Per
Defendants' Motion in Limine to Limit Trial Testimony of Yoav Harlap at Trial
06/14/2018 Reset by Court to 06/13/2018
07/26/2018 Reset by Court to 11/01/2018
07/26/2018 Reset by Court to 07/26/2018
11/01/2018 Reset by Court to 07/26/2018
 11/02/2018 **Opposition to Motion**
Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Opposition to Nanyah Vegas, LLC's Motion to Retax and Alternatively Motion to Strike
 11/05/2018 **Telephonic Conference** (2:30 PM) (Judicial Officer Alf, Nancy)
Parties Present
Minutes
 Result: Matter Heard
 11/06/2018 **Stipulation and Order**
Stipulation and Order to Extend Pre-Trial Memorandum Deadline
 11/06/2018 **Order**
Order Regarding Motions in Limine
 11/06/2018 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Pre-Trial Memorandum Deadline
 11/06/2018 **Notice of Entry of Order**
Notice of Entry of Order Regarding Motions in Limine
 11/13/2018 **CANCELED Jury Trial - FIRM** (10:00 AM) (Judicial Officer Alf, Nancy)
Vacated
 11/15/2018 **CANCELED Motion to Retax** (9:30 AM) (Judicial Officer Alf, Nancy)
Vacated - per Order
Nanyah Vegas, LLC's Motion to Retax and Alternatively Motion to Strike
 11/16/2018 **Stipulation and Order**
Stipulation and Order to Continue the Hearings on: (1) Nanyah Vegas, LLC's Motion to Retax and Alternatively Motion to Strike; and (2) Defendant Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs Until After the Trial Date
 11/20/2018 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Continue the Hearings on: (1) Nanyah Vegas, LLC's Motion to Retax and Alternatively Motion to Strike; and (2) Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs Until After the Trial Date
 12/05/2018 **CANCELED Motion for Attorney Fees and Costs** (9:00 AM) (Judicial Officer Alf, Nancy)
Vacated - per Order
Defendants Peter Eliades and Teld LLC's Motion for Attorney's Fees and Costs
 12/07/2018 **Order Setting Civil Jury Trial and Calendar Call**
Order Re-Setting Civil Jury Trial and Calendar Call
 12/19/2018 **Order Setting Civil Jury Trial and Calendar Call**
Order Re-Setting Civil Jury Trial and Calendar Call
 12/20/2018 **Stipulation and Order**
Stipulation and Order to Set the Hearings on: (1) Nanyah Vegas, LLC's Motion to Retax and Alternatively Motion to Strike; and (2) Defendant Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs
 12/21/2018 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Set the Hearings on: (1) Nanyah Vegas, LLC's Motion to Retax and Alternatively Motion to Strike; and (2) Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs
 01/25/2019 **Motion for Summary Judgment**
Defendant Eldorado Hills, LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment
 01/29/2019 **Satisfaction of Judgment**
Satisfaction of Judgment

01/30/2019 **Motion for Summary Judgment**
Nanyah Vegas, LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment

01/30/2019 **Initial Appearance Fee Disclosure**
Fee Disclosure

02/06/2019 **Motion for Relief**
Motion for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b)

02/07/2019 **Order Shortening Time**
Order Shortening Time

02/08/2019 **Ex Parte Motion**
Ex Parte Motion for an Order Shortening Time on Motion for Relief from the October 5, 2018 Order Pursuant to NRCP 60(b)

02/08/2019 **Notice of Entry of Order**
Notice of Entry of Order

02/12/2019 **Receipt of Copy**
Receipt of Copy

02/15/2019 **Opposition to Motion For Summary Judgment**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion for Summay Judgment

02/15/2019 **Opposition to Motion For Summary Judgment**
Nanyah Vegas LLC's Opposition to Eldorado Hills LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment and Counter-motion for NRCP 15 Relief

02/15/2019 **Opposition to Motion**
Nanyah Vegas LLC's Opposition to Motion for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b)

02/15/2019 **Motion in Limine**
Nanyah Vegas LLC's Motion in Limine #5 re: Parol Evidence Rule

02/15/2019 **Motion in Limine**
Nanyah Vegas LLC's Motion in Limine #6 re: Date of Discovery

02/18/2019 **Opposition**
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

02/19/2019 **Certificate of Service**
Certificate of Service

02/19/2019 **Reply in Support**
Reply in Support of Motion for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b)

02/21/2019 **Motion for Relief** (10:00 AM) (Judicial Officer Alif, Nancy)
Motion for Relief from the October 5, 2018 Order Pursuant to NRCP 60(b)
03/14/2019 Reset by Court to 02/21/2019
Result: Denied

02/21/2019 **Opposition** (10:00 AM) (Judicial Officer Alif, Nancy)
Nanyah Vegas LLC's Opposition to Motion for Relief from the October 5, 2018 Order Pursuant to NRCP 60(b)
Result: Matter Heard

02/21/2019 **All Pending Motions** (10:00 AM) (Judicial Officer Alif, Nancy)
Parties Present
Minutes
Result: Matter Heard

02/25/2019 **Notice of Change of Firm Name**
Notice of Firm Name Change

02/25/2019 **Motion in Limine**
Defendants' Motion in Limine to Preclude the Altered Eldorado Hills' General Ledger and Related Testimony at Trial

02/25/2019 **Motion in Limine**
Defendants' Motion in Limine to Preclude Plaintiff and Carlos Huerta from Presenting at Trial any Contrary Evidence as to Mr. Huerta's Taking of \$1.42 Million from Eldorado Hills, LLC as Go Global, Inc.'s Consulting Fee Income to Attempt to Refinance

02/26/2019 **Motion**
Nanyah Vegas, LLC's Motion to Settle Jury Instructions Based Upon the Court's October 5, 2018, Order Granting Summary Judgment

02/27/2019 **Motion to Compel**
Motion to Compel Production of Plaintiff's Tax Returns and For Attorneys' Fees on Order Shortening Time

03/05/2019 **CANCELED Decision** (3:00 AM) (Judicial Officer Alif, Nancy)
Vacated - Duplicate Entry

03/05/2019 **Decision** (3:00 AM) (Judicial Officer Alif, Nancy)
Decision Motion for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b) and Nanyah Vegas LLC's Opposition to Motion for Relief from the October 5, 2018 Order Pursuant to NRCP 60(b)
Minutes
Result: Minute Order - No Hearing Held

03/06/2019 **CANCELED Motion for Summary Judgment** (10:00 AM) (Judicial Officer Alif, Nancy)
Vacated
Defendant Eldorado Hills, LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment
02/27/2019 Reset by Court to 03/06/2019

03/06/2019 **CANCELED Motion for Summary Judgment** (10:00 AM) (Judicial Officer Alif, Nancy)
Vacated
Nanyah Vegas, LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment

03/06/2019 **CANCELED Opposition and Counter-motion** (10:00 AM) (Judicial Officer Alif, Nancy)
Vacated
Nanyah Vegas LLC's Opposition to Eldorado Hills LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment and Counter-motion for NRCP 15 Relief

03/08/2019 **Opposition**
Opposition to Nanyah Vegas, LLC's Motion in Limine #6 RE: Date of Discovery

03/08/2019 **Opposition**
OPPOSITION TO NANYAH VEGAS, LLC'S MOTION IN LIMINE #5 RE: PAROL EVIDENCE RULE

03/08/2019 **Opposition to Motion in Limine**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine # 5 Re: Parol Evidence Rule

03/08/2019 **Opposition to Motion in Limine**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine # 6 Re: Date of Discovery

03/14/2019 **Clerk's Notice of Hearing**

03/14/2019 **Notice of Hearing**
 03/14/2019 **Reply**
 Nanyah Vegas, LLC's Reply in Support of Motion in Limine #5 re: Parol Evidence Rule
 03/14/2019 **Reply**
 Nanyah Vegas, LLC's Reply in Support of Motion in Limine #6 re: Date of Discovery
 03/14/2019 **Opposition to Motion to Compel**
 Nanyah Vegas, LLC's Opposition to Rogich Defendants' Motion to Compel
 03/15/2019 **Clerk's Notice of Hearing**
 Notice of Hearing
 03/18/2019 **Reply in Support**
 Reply in Support of Motion to Compel Production of Plaintiff's Tax Returns
 03/20/2019 **Motion in Limine** (9:00 AM) (Judicial Officer Allf, Nancy)
 Nanyah Vegas LLC's Motion in Limine #5 Re: Parole Evidence Rule
 Result: Denied
 03/20/2019 **Motion in Limine** (9:00 AM) (Judicial Officer Allf, Nancy)
 Nanyah Vegas LLC's Motion in Limine #6 Re: Date of Discovery
 Result: Denied
 03/20/2019 **Motion to Compel** (9:00 AM) (Judicial Officer Allf, Nancy)
 Motion for Compel Production of Plaintiffs' Tax Return and for Attorney's Fees and Order Shortening Time
 03/08/2019 Reset by Court to 03/20/2019
 Result: Granted in Part
 03/20/2019 **Opposition to Motion in Limine**
 Nanyah Vegas, LLC's Opposition to Rogich Defendants' Motion in Limine re: Carlos Huerta
 03/20/2019 **Opposition to Motion in Limine**
 Nanyah Vegas, LLC's Opposition to Rogich Defendants' Motion in Limine to Preclude the Altered Eldorado Hill's General Ledger and Related Testimony at Trial
 03/20/2019 **Opposition to Motion**
 Nanyah Vegas, LLC's Opposition to Rogich Defendants' Motion for Summary Judgment
 03/20/2019 **Opposition**
 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
 03/20/2019 **Opposition to Motion**
 Rogich Defendants' Opposition to Plaintiff's Motion to Settle Jury Instructions
 03/20/2019 **All Pending Motions** (9:00 AM) (Judicial Officer Allf, Nancy)
 Parties Present
 Minutes
 Result: Matter Heard
 03/21/2019 **Errata**
 Errata to Rogich Defednatns' Opposition to Plaintiff's Motion to Settle Jury Instructions
 03/21/2019 **Recorders Transcript of Hearing**
 Transcript of Proceedings, Motions, Heard on March 20, 2019
 03/22/2019 **Order**
 Order Striking Filings
 03/22/2019 **Pre-Trial Disclosure**
 Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's 2nd Supplemental Pre-Trial Disclosures
 03/25/2019 **Motion to Reconsider**
 Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule on Order Shortening Time
 03/26/2019 **Order Denying Motion**
 Order Denying The Rogich Defendants' NRCP 60(b) Motion
 03/26/2019 **Notice of Entry of Order**
 Notice of Entry of Order
 03/27/2019 **Reply**
 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
 03/28/2019 **Reply in Support**
 Reply in Support of Defendants' Motion in Limine to Preclude the Altered Eldorado Hills' General Ledger and Related Testimony at Trial
 03/28/2019 **Reply**
 Rogich Defendants' Reply in Support of Motion in Limine Regarding Consulting Fee Admission
 04/04/2019 **CANCELED Motion for Summary Judgment** (9:30 AM) (Judicial Officer Bell, Linda Marie)
 Vacated
 Motion for Leave to File Motion for Summary Judgment and Motion for Summary Judgment
 03/20/2019 Reset by Court to 04/04/2019
 04/04/2019 **CANCELED Motion to Reconsider** (9:30 AM) (Judicial Officer Bell, Linda Marie)
 Vacated - Duplicate Entry
 Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule on Order Shortening Time
 04/04/2019 **Opposition to Motion**
 Defendant Eldorado Hills, LLC's Opposition to Motion to Reconsider Order on Nanyah's Motion in Limine # 5: Parol Evidence Rule
 04/05/2019 **Opposition**
 Opposition to Plaintiff's Motion to Reconsider Order on Motion in Limine #5 Re Parol Evidence Rule on OST
 04/05/2019 **Reply to Opposition**
 Reply in Support of Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule on Order Shortening Time
 04/05/2019 **Objection**
 Nanyah Vegas, LLC's Objections to Defendants' Pretrial Disclosures
 04/05/2019 **Pre-Trial Disclosure**
 Nanyah Vegas, LLC's 2nd Supplemental Pretrial Disclosures
 04/05/2019 **Objection**
 Objections to Nanyah Vegas, LLC's Pre-Trial Disclosures
 04/05/2019 **Objection**
 Objections to Eldorado Hills, LLC's Pre-Trial Disclosures
 04/08/2019 **Motion to Reconsider** (10:00 AM) (Judicial Officer Allf, Nancy)
 Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule on Order Shortening Time

04/04/2019 *Reset by Court to 04/08/2019*
04/18/2019 *Reset by Court to 04/18/2019*
04/18/2019 *Reset by Court to 04/04/2019*
Result: Denied
04/08/2019 **Motion in Limine** (10:00 AM) (Judicial Officer Allf, Nancy)
Defendants Motion in Limine to Preclude the Altered Eldorado Hills General Ledger and Related Testimony at Trial
04/04/2019 *Reset by Court to 04/08/2019*
Result: Denied Without Prejudice
04/08/2019 **Motion in Limine** (10:00 AM) (Judicial Officer Allf, Nancy)
Defendants Motion in Limine to Preclude Plaintiff and Carlos Huerta from Presenting at Trial any Contrary Evidence as to Mr. Huerta's Taking of \$1.42 Million from Eldorado Hills LLC as Go Global Inc's Consulting Fee Income o Attempt to Refinance
04/04/2019 *Reset by Court to 04/08/2019*
Result: Denied Without Prejudice
04/08/2019 **Motion** (10:00 AM) (Judicial Officer Allf, Nancy)
Nanyah Vegas, LLC's Motion to Settle Jury Instructions Based Upon the Court's October 5, 2018, Order Granting Summary Judgment
04/04/2019 *Reset by Court to 04/08/2019*
Result: Denied
04/08/2019 **CANCELED Motion** (10:00 AM) (Judicial Officer Allf, Nancy)
Vacated
Defendant Eldarado Hills, LLC's Motion to Extend the Disposition Motion Deadline and Motion for Summary Judgment
04/04/2019 *Reset by Court to 04/08/2019*
04/17/2019 *Reset by Court to 04/04/2019*
04/08/2019 **CANCELED Motion for Summary Judgment** (10:00 AM) (Judicial Officer Allf, Nancy)
Vacated
Nanyah Vegas LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment
04/04/2019 *Reset by Court to 04/08/2019*
04/08/2019 **CANCELED Motion to Reconsider** (10:00 AM) (Judicial Officer Allf, Nancy)
Vacated - Duplicate Entry
Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule on Order Shortening Time
04/04/2019 *Reset by Court to 04/08/2019*
04/08/2019 **All Pending Motions** (10:00 AM) (Judicial Officer Allf, Nancy)
Parties Present
Minutes
Result: Matter Heard
04/09/2019 **Order**
Order Granting in Part and Denying in Part Motion to Compel Production of Plaintiff's Tax Returns and for Attorneys' Fees
04/09/2019 **Notice of Entry of Order**
Notice of Entry of Order
04/09/2019 **Notice**
Eldorado Hills, LLC's Notice of Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-In-Fact Contract Theory
04/09/2019 **Pre-Trial Disclosure**
Defendants 3rd Supplemental Pre-Trial Disclosure Statement
04/09/2019 **Joinder**
Sigmund Rogich, Individually and as a Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Joinder to Eldorado Hills, LLC's Notice on Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-In-Fact Contract Theory
04/09/2019 **Opposition**
Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Countermotion for NRCP 15 Relief
04/10/2019 **Order Denying**
Order Denying Nanyah Vegas, LLC's Motion in Limine #5: Parol Evidence Rule
04/10/2019 **Joinder**
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 2nd Supplemental Pre-Trial Disclosures
04/10/2019 **Notice of Entry of Order**
Notice of Entry of Order Denying Nanyah Vegas, LLC's Motion in Limine # 5: Parol Evidence Rule
04/10/2019 **Pre-Trial Disclosure**
Defendants Fourth Supplemental Pre-Trial Disclosure Statement
04/12/2019 **Pre-Trial Disclosure**
Nanyah Vegas, LLC's 3rd Supplemental Pretrial Disclosures
04/15/2019 **Request for Judicial Notice**
Request for Judicial Notice
04/15/2019 **Objection**
Defendant Eldorado Hills, LLC's Objections to Nanyah Vegas, LLC's 3rd Supplemental Pre-Trial Disclosures
04/15/2019 **Objection**
Defendant Eldorado Hills, LLC's Objections to Defendants Sigmund Rogich, Individually and as Trustee of The Rogich Family Irrevocable Trust, and Imitations, LLC's Third and Fourth Supplemental Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3)
04/16/2019 **Notice of Compliance**
Nanyah Vegas, LLC's Notice of Compliance With 4-9-19 Order
04/16/2019 **Objection**
Nanyah Vegas, LLC's Supplement to Objections to Defendants' Pretrial Disclosures
04/16/2019 **Pre-trial Memorandum**
Pre-Trial Memorandum
04/16/2019 **Ex Parte Motion**
Nanyah Vegas, LLC's Emergency Motion to Address Defendant The Rogich Family Irrevocable Trust's NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120
04/16/2019 **Pre-trial Memorandum**
Nanyah Vegas, LLC's Pretrial Memorandum
04/16/2019 **Pre-trial Memorandum**
Eldorado Hills, LLC's Pre-Trial Memorandum
04/16/2019 **Errata**

04/17/2019 *Rogich Defendants' Errata to Pretrial Memorandum*
Certificate of Service
Certificate of Service
 04/17/2019 **Order Denying Motion**
Order Denying Nanyah Vegas, LLC's Motion in Limine #6 re: Date of Discovery
 04/17/2019 **Notice of Entry of Order**
Notice of Entry of Order
 04/17/2019 **Request for Judicial Notice**
Request for Judicial Notice and Application of the Law of the Case Doctrine
 04/17/2019 **Trial Subpoena**
Trial Subpoena - Civil (Carlos Huerta)
 04/17/2019 **Trial Subpoena**
Trial Subpoena - Civil (Dolores Eliades)
 04/17/2019 **Trial Subpoena**
Trial Subpoena - Civil (Craig Dunlap)
 04/17/2019 **Trial Subpoena**
Trial Subpoena - Civil (Peter Eliades)
 04/18/2019 **Telephonic Conference** (4:00 PM) (Judicial Officer Allf, Nancy)
Parties Present
Minutes
 Result: Matter Heard
 04/18/2019 **Opposition to Motion**
Opposition to Plaintiff's Emergency Motion to Address Defendant The Rogich Family Irrevocable Trust's NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120
 04/19/2019 **Objection**
Objection to Nanyah's Request for Judicial Notice and Application of Law of the Case Doctrine
 04/19/2019 **Response**
Defendant Eldorado Hills, LLC's Response to Nanyah Vegas, LLC's Request for Judicial Notice and Application of Law of the Case Doctrine
 04/21/2019 **Supplemental Brief**
Nanyah Vegas, LLC's Supplement to its Emergency Motion to Address Defendant The Rogich Family Irrevocable Trust's NRS 163.120 Notice and/or Motion to Continue Trial for the Purposes of NRS 163.120
 04/21/2019 **Memorandum of Points and Authorities**
The Rogich Defendants Memorandum of Points and Authorities Regarding Limits of Judicial Discretion to Modify Notice Requirements to Trust Beneficiaries Provided under NRS Chapter 163
 04/22/2019 **Jury Trial - FIRM** (10:00 AM) (Judicial Officer Allf, Nancy)
 Result: Off Calendar
 04/22/2019 **Motion** (10:00 AM) (Judicial Officer Allf, Nancy)
Emergency Motion to Continue Trial
 Result: Matter Heard
 04/22/2019 **Motion** (10:00 AM) (Judicial Officer Allf, Nancy)
Plaintiff's Rule under NRCP 15 to Amend Complaint
 Result: Denied
 04/22/2019 **All Pending Motions** (10:00 AM) (Judicial Officer Allf, Nancy)
Parties Present
Minutes
 Result: Matter Heard
 04/23/2019 **Recorders Transcript of Hearing**
Transcript of Proceedings, Jury Trial, Heard on April 22, 2019
 04/30/2019 **Order**
(A746239) Order
 04/30/2019 **Notice of Entry of Order**
Notice of Entry of Order
 05/01/2019 **Order Denying**
Order Denying Plaintiff Nanyah Vegas, LLC's Motion to Settle Jury Instructions
 05/01/2019 **Order Denying**
Order Denying Nanyah Vegas, LLC's Motion to Reconsider Order on Motion in Limine #5 re: Parol Evidence Rule
 05/01/2019 **Recorders Transcript of Hearing**
Transcript of Proceedings, Telephonic Conference, Heard on April 18, 2019
 05/01/2019 **Notice of Entry of Order**
Notice of Entry of Order
 05/01/2019 **Notice of Entry of Order**
Notice of Entry of Order
 05/06/2019 **Order**
Order Denying the Rogich Defendants' Motions in Limine
 05/06/2019 **Memorandum of Costs and Disbursements**
Defendant the Rogich Family Irrevocable Trust's Memorandum of Costs and Disbursements Pursuant to NRS 18.005 and NRS 18.110
 05/07/2019 **Notice of Entry of Order**
Notice of Entry of Order Denying The Rogich Defendants' Motions in Limine
 05/10/2019 **Motion for Summary Judgment**
Motion for Summary Judgment or Alternatively for Judgment as Matter of Law Pursuant to NRCP 50(a)
 05/13/2019 **Clerk's Notice of Hearing**
Notice of Hearing
 05/16/2019 **Stipulation and Order**
STIPULATION AND ORDER SUSPENDING JURY TRIAL
 05/16/2019 **Notice of Entry**
NOTICE OF ENTRY OF STIPULATION AND ORDER SUSPENDING JURY TRIAL
 05/21/2019 **Motion for Attorney Fees and Costs**
Defendant The Rogich Family Irrevocable Trust's Motion for Attorneys' Fees and Costs
 05/22/2019 **Clerk's Notice of Hearing**
Notice of Hearing
 05/22/2019 **Certificate of Service**
Certificate of Service

05/22/2019 **Motion for Summary Judgment**
Defendant Eldorado Hills, LLC's Motion for Summary Judgment

05/23/2019 **Clerk's Notice of Hearing**
Notice of Hearing

05/24/2019 **Opposition to Motion For Summary Judgment**
Opposition to Motion for Summary Judgment or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(a)

05/29/2019 **Order**
Order Denying Nanyah Vegas, LLC's Motion for NRCP 15 Relief

05/29/2019 **Order**
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

06/13/2019 **CANCELED Motion to Retax** (9:30 AM) (Judicial Officer Cherry, Michael A.)
Vacated - per Stipulation and Order
Motion to Retax and Alternatively Motion to Strike

06/13/2019 **CANCELED Motion for Attorney Fees and Costs** (9:30 AM) (Judicial Officer Cherry, Michael A.)
Vacated - per Stipulation and Order

06/13/2019 **Stipulation and Order**
Stipulation and Order Regarding Rogich Family Irrevocable Trust's Memorandum of Costs and Motion for Attorneys' Fees

06/13/2019 **Stipulation and Order**
Stipulation and Order Regarding Motions for Summary Judgment

06/13/2019 **Stipulation and Order**
Stipulation and Order Regarding The Eliades Defendants' Memorandum of Costs and Motion for Attorneys' Fees

06/24/2019 **Notice of Entry of Order**
Notice of Entry of Order

06/24/2019 **Notice of Entry of Order**
Notice of Entry of Order

06/26/2019 **CANCELED Motion for Attorney Fees and Costs** (9:00 AM) (Judicial Officer Cherry, Michael A.)
Vacated - per Stipulation and Order
Defendant the Rogich Family Irrevocable Trust's Motion for Attorneys' Fees and Costs

07/11/2019 **Opposition to Motion**
Nanyah Vegas, LLC's Opposition to Eldorado Hills, LLC's Motion for Summary Judgment

07/22/2019 **Motion to Dismiss**
Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e)

07/22/2019 **Clerk's Notice of Hearing**
Notice of Hearing

07/24/2019 **Reply in Support**
Reply in Support of Motion for Summary Judgment or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(a)

07/30/2019 **Stipulation and Order**
Stipulation and Order to Reset the Hearings on: (1) Defendant Eldorado Hills, LLC's Motion for Summary Judgment; and (2) Defendant Eldorado Hills, LLC's Motion for Dismissal Under Rule 41(e)

07/30/2019 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Reset the Hearings on: (1) Defendant Eldorado Hills, LLC's Motion for Summary Judgment; and (2) Defendant Eldorado Hills, LLC's Motion for Dismissal Under Rule 41(e)

08/06/2019 **Opposition to Motion to Dismiss**
Nanyah Vegas, LLC's Opposition to Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e)

08/29/2019 **Reply in Support**
Reply in Support of Defendant Eldorado Hills, LLC's Motion for Summary Judgment

08/29/2019 **Reply in Support**
Reply in Support of Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e)

09/05/2019 **Motion for Summary Judgment** (10:30 AM) (Judicial Officer Alf, Nancy)
Motion for Summary Judgment or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(a)
 06/13/2019 Reset by Court to 07/31/2019
 07/31/2019 Reset by Court to 09/05/2019
 07/31/2019 Reset by Court to 09/05/2019
 09/05/2019 Reset by Court to 07/31/2019
 Result: Granted

09/05/2019 **Motion for Summary Judgment** (10:30 AM) (Judicial Officer Alf, Nancy)
Defendant Eldorado Hills, LLC's Motion for Summary Judgment
 06/26/2019 Reset by Court to 07/31/2019
 07/31/2019 Reset by Court to 09/05/2019
 Result: Denied

09/05/2019 **Motion to Dismiss** (10:30 AM) (Judicial Officer Alf, Nancy)
Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e)
 08/22/2019 Reset by Court to 09/05/2019
 Result: Granted

09/05/2019 **All Pending Motions** (10:30 AM) (Judicial Officer Alf, Nancy)
Parties Present
Minutes
 Result: Matter Heard

09/09/2019 **Recorders Transcript of Hearing**
Recorder's Transcript of Proceedings Re: Motions, Heard on September 5, 2019

09/24/2019 **CANCELED Status Check** (3:00 AM) (Judicial Officer Alf, Nancy)
Vacated
Status Check: Decision

10/04/2019 **Notice of Entry of Decision and Order**
Notice of Entry of Decision and Order

10/04/2019 **Decision and Order**
 (A686303,A746239) Decision

 FINANCIAL INFORMATION

Consolidated Case Party Eliades, Peter			
	Total Financial Assessment		400.00
	Total Payments and Credits		400.00
	Balance Due as of 10/07/2019		0.00
03/06/2018	Transaction Assessment		200.00
03/06/2018	Efile Payment	Receipt # 2018-15968-CCCLK	(200.00)
06/04/2018	Transaction Assessment		200.00
06/04/2018	Efile Payment	Receipt # 2018-37189-CCCLK	(200.00)
Consolidated Case Party Sigmund Rogich			
	Total Financial Assessment		600.00
	Total Payments and Credits		600.00
	Balance Due as of 10/07/2019		0.00
02/23/2018	Transaction Assessment		200.00
02/23/2018	Efile Payment	Receipt # 2018-13678-CCCLK	(200.00)
03/08/2018	Transaction Assessment		200.00
03/08/2018	Efile Payment	Receipt # 2018-16795-CCCLK	(200.00)
05/10/2019	Transaction Assessment		200.00
05/10/2019	Efile Payment	Receipt # 2019-29103-CCCLK	(200.00)
Consolidated Case Party TELD, LLC			
	Total Financial Assessment		3.50
	Total Payments and Credits		3.50
	Balance Due as of 10/07/2019		0.00
04/26/2017	Transaction Assessment		3.50
04/26/2017	Efile Payment	Receipt # 2017-38879-CCCLK	(3.50)
Counter Claimant Eldorado Hills LLC			
	Total Financial Assessment		1,230.00
	Total Payments and Credits		1,230.00
	Balance Due as of 10/07/2019		0.00
09/12/2013	Transaction Assessment		223.00
09/12/2013	Efile Payment	Receipt # 2013-111104-CCCLK	(223.00)
07/25/2014	Transaction Assessment		200.00
07/25/2014	Efile Payment	Receipt # 2014-85677-CCCLK	(200.00)
04/29/2016	Transaction Assessment		3.50
04/29/2016	Efile Payment	Receipt # 2016-41812-CCCLK	(3.50)
08/24/2016	Transaction Assessment		3.50
08/24/2016	Efile Payment	Receipt # 2016-81933-CCCLK	(3.50)
06/04/2018	Transaction Assessment		200.00
06/04/2018	Efile Payment	Receipt # 2018-37183-CCCLK	(200.00)
01/28/2019	Transaction Assessment		200.00
01/28/2019	Efile Payment	Receipt # 2019-05587-CCCLK	(200.00)
03/13/2019	Transaction Assessment		200.00
03/13/2019	Efile Payment	Receipt # 2019-16077-CCCLK	(200.00)
05/22/2019	Transaction Assessment		200.00
05/22/2019	Efile Payment	Receipt # 2019-31434-CCCLK	(200.00)
Counter Defendant Alexander Christopher Trust			
	Total Financial Assessment		33.50
	Total Payments and Credits		33.50
	Balance Due as of 10/07/2019		0.00
08/01/2013	Transaction Assessment		30.00
08/01/2013	Efile Payment	Receipt # 2013-93387-CCCLK	(30.00)
04/28/2016	Transaction Assessment		3.50
04/28/2016	Efile Payment	Receipt # 2016-41498-CCCLK	(3.50)
Defendant Rogich, Sig			
	Total Financial Assessment		476.00
	Total Payments and Credits		476.00
	Balance Due as of 10/07/2019		0.00
09/12/2013	Transaction Assessment		30.00
09/12/2013	Efile Payment	Receipt # 2013-111105-CCCLK	(30.00)

08/11/2014	Transaction Assessment			200.00
08/11/2014	Efile Payment	Receipt # 2014-92154-CCCLK	Rogich, Sig	(200.00)
02/10/2015	Transaction Assessment			3.50
02/10/2015	Efile Payment	Receipt # 2015-14232-CCCLK	Rogich, Sig	(3.50)
02/11/2015	Transaction Assessment			3.50
02/11/2015	Efile Payment	Receipt # 2015-14347-CCCLK	Rogich, Sig	(3.50)
02/23/2015	Transaction Assessment			3.50
02/23/2015	Efile Payment	Receipt # 2015-18818-CCCLK	Rogich, Sig	(3.50)
02/24/2015	Transaction Assessment			3.00
02/24/2015	Payment (Window)	Receipt # 2015-19031-CCCLK	American Legal Investigation	(3.00)
02/24/2015	Transaction Assessment			3.50
02/24/2015	Efile Payment	Receipt # 2015-19063-CCCLK	Rogich, Sig	(3.50)
03/07/2016	Transaction Assessment			3.50
03/07/2016	Efile Payment	Receipt # 2016-23304-CCCLK	Rogich, Sig	(3.50)
03/15/2016	Transaction Assessment			3.50
03/15/2016	Efile Payment	Receipt # 2016-25977-CCCLK	Rogich, Sig	(3.50)
07/28/2016	Transaction Assessment			3.50
07/28/2016	Efile Payment	Receipt # 2016-72633-CCCLK	Rogich, Sig	(3.50)
07/29/2016	Transaction Assessment			3.50
07/29/2016	Efile Payment	Receipt # 2016-72696-CCCLK	Rogich, Sig	(3.50)
08/30/2016	Transaction Assessment			3.50
08/30/2016	Efile Payment	Receipt # 2016-83980-CCCLK	Rogich, Sig	(3.50)
02/21/2017	Transaction Assessment			5.00
02/21/2017	Payment (Window)	Receipt # 2017-16998-CCCLK	American Legal Investigation	(5.00)
02/22/2017	Transaction Assessment			3.50
02/22/2017	Efile Payment	Receipt # 2017-17549-CCCLK	Rogich, Sig	(3.50)
02/23/2017	Transaction Assessment			3.00
02/23/2017	Payment (Window)	Receipt # 2017-17950-CCCLK	American Legal Investigation Services Nevada, Inc	(3.00)
02/19/2019	Transaction Assessment			200.00
02/19/2019	Efile Payment	Receipt # 2019-10798-CCCLK	Rogich, Sig	(200.00)

Plaintiff Huerta, Carlos A	
Total Financial Assessment	718.00
Total Payments and Credits	718.00
Balance Due as of 10/07/2019	0.00

08/01/2013	Transaction Assessment			270.00
08/01/2013	Efile Payment	Receipt # 2013-93386-CCCLK	Huerta, Carlos	(270.00)
08/14/2014	Transaction Assessment			200.00
08/14/2014	Efile Payment	Receipt # 2014-93838-CCCLK	Huerta, Carlos	(200.00)
08/26/2014	Transaction Assessment			200.00
08/26/2014	Efile Payment	Receipt # 2014-98219-CCCLK	Huerta, Carlos	(200.00)
03/13/2015	Transaction Assessment			24.00
03/13/2015	Efile Payment	Receipt # 2015-26335-CCCLK	Huerta, Carlos	(24.00)
05/25/2016	Transaction Assessment			24.00
05/25/2016	Efile Payment	Receipt # 2016-50882-CCCLK	Huerta, Carlos	(24.00)

Plaintiff Nanyah Vegas LLC	
Total Financial Assessment	1,054.00
Total Payments and Credits	1,054.00
Balance Due as of 10/07/2019	0.00

08/01/2013	Transaction Assessment			30.00
08/01/2013	Efile Payment	Receipt # 2013-93389-CCCLK	Nanyah Vegas LLC	(30.00)
11/03/2014	Transaction Assessment			24.00
11/03/2014	Efile Payment	Receipt # 2014-123797-CCCLK	Nanyah Vegas LLC	(24.00)
03/20/2018	Transaction Assessment			200.00
03/20/2018	Efile Payment	Receipt # 2018-19700-CCCLK	Nanyah Vegas LLC	(200.00)
06/25/2018	Transaction Assessment			200.00
06/25/2018	Efile Payment	Receipt # 2018-42217-CCCLK	Nanyah Vegas LLC	(200.00)
06/25/2018	Transaction Assessment			200.00
06/25/2018	Efile Payment	Receipt # 2018-42220-CCCLK	Nanyah Vegas LLC	(200.00)
01/31/2019	Transaction Assessment			200.00
01/31/2019	Efile Payment	Receipt # 2019-06556-CCCLK	Nanyah Vegas LLC	(200.00)
03/14/2019	Transaction Assessment			200.00
03/14/2019	Efile Payment	Receipt # 2019-16182-CCCLK	Nanyah Vegas LLC	(200.00)

Plaintiff Ray, Robert	
Total Financial Assessment	30.00
Total Payments and Credits	30.00
Balance Due as of 10/07/2019	0.00

08/01/2013	Transaction Assessment			30.00
08/01/2013	Efile Payment	Receipt # 2013-93388-CCCLK	Ray, Robert	(30.00)

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REGISTER OF ACTIONS

CASE NO. A-16-746239-C

Nanyah Vegas LLC, Plaintiff(s) vs. Peter Eliadas, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Other Contract**

Date Filed: **11/04/2016**

Location: **Department 27**

Cross-Reference Case Number: **A746239**

RELATED CASE INFORMATION

Related Cases

A-13-686303-C (Consolidated)

PARTY INFORMATION

Defendant Eliadas, Peter

Lead Attorneys
Dennis L. Kennedy
Retained
7025628820(W)

Defendant Eliades Survivor Trust of 10/30/08

Dennis L. Kennedy
Retained
7025628820(W)

Defendant Imitations LLC

Samuel S. Lionel
Retained
7023838888(W)

Defendant Rogich, Sigmund

Samuel S. Lionel
Retained
7023838888(W)

Plaintiff Nanyah Vegas LLC

Mark G. Simons
Retained
775-785-0088(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

- 05/22/2018 **Partial Summary Judgment** (Judicial Officer: Alif, Nancy)
Debtors: Nanyah Vegas LLC (Plaintiff)
Creditors: TELD LLC (Defendant), Peter Eliadas (Defendant), Eliades Survivor Trust of 10/30/08 (Defendant), Sigmund Rogich (Defendant), Rogich Family Irrevocable Trust (Defendant), Imitations LLC (Defendant)
Judgment: 05/22/2018, Docketed: 05/22/2018
Comment: Filed in A686303 Certain Claims
- 05/22/2018 **Order of Dismissal With Prejudice** (Judicial Officer: Alif, Nancy)
Debtors: Nanyah Vegas LLC (Plaintiff)
Creditors: TELD LLC (Defendant), Peter Eliadas (Defendant), Eliades Survivor Trust of 10/30/08 (Defendant), Sigmund Rogich (Defendant), Rogich Family Irrevocable Trust (Defendant), Imitations LLC (Defendant)
Judgment: 05/22/2018, Docketed: 05/22/2018
Comment: Filed in A686303 Certain Claims
- 10/05/2018 **Summary Judgment** (Judicial Officer: Alif, Nancy)
Debtors: Nanyah Vegas LLC (Plaintiff)
Creditors: TELD LLC (Defendant), Peter Eliadas (Defendant), Eliades Survivor Trust of 10/30/08 (Defendant)
Judgment: 10/05/2018, Docketed: 10/08/2018
Comment: Filed in A686303
- 10/05/2018 **Order of Dismissal With Prejudice** (Judicial Officer: Alif, Nancy)
Debtors: Nanyah Vegas LLC (Plaintiff)
Creditors: TELD LLC (Defendant), Peter Eliadas (Defendant), Eliades Survivor Trust of 10/30/08 (Defendant)
Judgment: 10/05/2018, Docketed: 10/08/2018
Comment: Filed in A686303
- 04/30/2019 **Order of Dismissal With Prejudice** (Judicial Officer: Alif, Nancy)
Debtors: Rogich Family Irrevocable Trust (Defendant)
Creditors: Nanyah Vegas LLC (Plaintiff)
Judgment: 04/30/2019, Docketed: 05/01/2019

	Comment: Filed in A686303
10/04/2019	Summary Judgment (Judicial Officer: Alif, Nancy) Debtors: Nanyah Vegas LLC (Plaintiff) Creditors: Sigmund Rogich (Defendant), Imitations LLC (Defendant) Judgment: 10/04/2019, Docketed: 10/04/2019 Comment: Filed in Cons. Lead Case A686303
	OTHER EVENTS AND HEARINGS
11/04/2016	Complaint <i>Complaint</i>
12/16/2016	Summons <i>Summons - TELD, LLC</i>
12/16/2016	Summons <i>Summons - Civil (The Rogich Family Irrevocable Trust)</i>
12/16/2016	Summons <i>Summons - Civil (Imitations, LLC)</i>
12/16/2016	Summons <i>Summons - Civil (Peter Eliadas)</i>
12/16/2016	Summons <i>Summons - Civil (The Eliadas Survivor Trust of 10/30/08)</i>
12/16/2016	Summons <i>Summons - Sigmund Rogich</i>
12/22/2016	Motion to Dismiss <i>Motion to Dismiss or Strike Unauthorized Pleadings</i>
12/22/2016	Initial Appearance Fee Disclosure <i>Defendants' Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
01/09/2017	Opposition to Motion <i>Plaintiff's Opposition to Motion to Dismiss or Strike Unauthorized Pleading</i>
01/17/2017	Stipulation and Order <i>Stipulation and Order to Continue Hearing</i>
02/07/2017	Reply in Support <i>Reply in Support of Motion to Dismiss or Strike Unauthorized Pleading</i>
02/15/2017	Motion to Dismiss (9:00 AM) (Judicial Officer Herndon, Douglas W.) <i>Motion to Dismiss or Strike Unauthorized Pleadings</i> Parties Present Minutes <i>01/25/2017 Reset by Court to 02/15/2017</i>
	Result: Reserve Ruling
02/16/2017	Demand for Jury Trial <i>Demand for Jury Trial</i>
03/22/2017	CANCELED Status Check (9:00 AM) (Judicial Officer Herndon, Douglas W.) <i>Vacated</i> <i>Status Check: Consolidation/Decision</i>
03/23/2017	Notice of Early Case Conference <i>Notice of NRCP 16.1 Early Case Conference</i>
03/29/2017	Amended <i>Amended Notice of NRCP 16.1 Early Case Conference</i>
04/03/2017	Notice of Consolidation <i>Notice of Consolidation</i>
04/05/2017	Stipulation and Order <i>Stipulation for Consolidation</i>
04/05/2017	Notice of Department Reassignment <i>Notice of Department Reassignment</i>
03/14/2019	Clerk's Notice of Hearing <i>Notice of Hearing</i>

FINANCIAL INFORMATION

	Defendant Eliadas, Peter		
	Total Financial Assessment		30.00
	Total Payments and Credits		30.00
	Balance Due as of 10/07/2019		0.00
12/22/2016	Transaction Assessment		30.00
12/22/2016	Efile Payment	Receipt # 2016-123849-CCCLK	(30.00)
		Eliadas, Peter	
	Defendant Eliades Survivor Trust of 10/30/08		
	Total Financial Assessment		30.00
	Total Payments and Credits		30.00
	Balance Due as of 10/07/2019		0.00
12/22/2016	Transaction Assessment		30.00
12/22/2016	Efile Payment	Receipt # 2016-123850-CCCLK	(30.00)
		Eliades Survivor Trust of 10/30/08	

Defendant Imitations LLC			
	Total Financial Assessment		30.00
	Total Payments and Credits		30.00
	Balance Due as of 10/07/2019		0.00
12/22/2016	Transaction Assessment		30.00
12/22/2016	Efile Payment	Receipt # 2016-123852-CCCLK	(30.00)
		Imitations LLC	
Defendant Rogich Family Irrevocable Trust			
	Total Financial Assessment		30.00
	Total Payments and Credits		30.00
	Balance Due as of 10/07/2019		0.00
12/22/2016	Transaction Assessment		30.00
12/22/2016	Efile Payment	Receipt # 2016-123851-CCCLK	(30.00)
		Rogich Family Irrevocable Trust	
Defendant Rogich, Sigmund			
	Total Financial Assessment		230.00
	Total Payments and Credits		230.00
	Balance Due as of 10/07/2019		0.00
12/22/2016	Transaction Assessment		226.50
12/22/2016	Efile Payment	Receipt # 2016-123847-CCCLK	(223.00)
12/22/2016	Efile Payment	Receipt # 2016-123853-CCCLK	(3.50)
12/23/2016	Transaction Assessment		3.50
12/23/2016	Efile Payment	Receipt # 2016-124006-CCCLK	(3.50)
		Rogich, Sigmund	
Defendant TELD LLC			
	Total Financial Assessment		33.50
	Total Payments and Credits		33.50
	Balance Due as of 10/07/2019		0.00
12/22/2016	Transaction Assessment		30.00
12/22/2016	Efile Payment	Receipt # 2016-123848-CCCLK	(30.00)
02/08/2017	Transaction Assessment		3.50
02/08/2017	Efile Payment	Receipt # 2017-12586-CCCLK	(3.50)
		TELC LLC	
		TELC LLC	
Plaintiff Nanyah Vegas LLC			
	Total Financial Assessment		270.00
	Total Payments and Credits		270.00
	Balance Due as of 10/07/2019		0.00
11/07/2016	Transaction Assessment		270.00
11/07/2016	Efile Payment	Receipt # 2016-108582-CCCLK	(270.00)
		Nanyah Vegas LLC	

Rogich Family Irrevocable Trust adv. Nanyah Vegas, LLC

		Copy Charges	
Work Date	Description		Amount
11/17/2016	General Copies	\$	2.00
3/31/2017	General Copies	\$	17.00
4/7/2017	General Copies	\$	84.40
4/14/2017	General Copies	\$	24.00
6/21/2017	General Copies	\$	9.00
6/21/2017	General Copies	\$	10.00
6/22/2017	General Copies	\$	13.20
7/7/2017	General Copies	\$	16.40
8/10/2017	General Copies	\$	26.80
9/27/2017	General Copies	\$	5.00
10/9/2017	General Copies	\$	109.20
10/10/2017	General Copies	\$	53.40
10/24/2017	General Copies	\$	72.40
10/30/2017	General Copies	\$	1.90
11/14/2017	General Copies	\$	63.20
11/16/2017	General Copies	\$	1.60
1/5/2018	General Copies	\$	35.20
2/21/2018	General Copies	\$	0.40
2/21/2018	General Copies	\$	1.60
2/22/2018	General Copies	\$	0.20
2/26/2018	General Copies	\$	70.60
2/28/2018	General Copies	\$	0.40
3/21/2018	General Copies	\$	40.00
3/21/2018	General Copies	\$	7.00
4/9/2018	General Copies	\$	3.40
4/11/2018	General Copies	\$	46.40
4/12/2018	General Copies	\$	139.20
5/15/2018	General Copies	\$	0.80
5/16/2018	General Copies	\$	2.80
5/16/2018	General Copies	\$	2.40
5/16/2018	General Copies	\$	12.60
5/18/2018	General Copies	\$	0.20
5/22/2018	General Copies	\$	1.00
5/23/2018	General Copies	\$	0.20
5/23/2018	General Copies	\$	0.20
5/25/2018	General Copies	\$	0.40
5/29/2018	General Copies	\$	0.20
5/29/2018	General Copies	\$	1.20
6/5/2018	General Copies	\$	1.40
6/11/2018	General Copies	\$	0.40
6/11/2018	General Copies	\$	1.20
6/14/2018	General Copies	\$	2.20
6/19/2018	General Copies	\$	70.20
7/30/2018	General Copies	\$	239.60
7/30/2018	General Copies	\$	239.80
7/31/2018	General Copies	\$	64.60
9/5/2018	General Copies	\$	34.80
10/4/2018	General Copies	\$	1.60
10/4/2018	General Copies	\$	1.20
10/4/2018	General Copies	\$	2.20
10/5/2018	General Copies	\$	4.40
10/5/2018	General Copies	\$	11.20
10/5/2018	General Copies	\$	3.20
10/8/2018	General Copies	\$	2.20
10/8/2018	General Copies	\$	6.20

Work Date	Description	Amount
10/8/2018	General Copies	\$ 0.20
10/9/2018	General Copies	\$ 0.20
10/9/2018	General Copies	\$ 0.20
10/9/2018	General Copies	\$ 5.40
10/10/2018	General Copies	\$ 0.40
10/11/2018	General Copies	\$ 8.80
10/11/2018	General Copies	\$ 4.60
10/11/2018	General Copies	\$ 2.00
10/15/2018	General Copies	\$ 0.40
10/16/2018	General Copies	\$ 3.60
10/17/2018	General Copies	\$ 0.20
10/25/2018	General Copies	\$ 51.00
10/25/2018	General Copies	\$ 2.40
10/26/2018	General Copies	\$ 1.20
10/26/2018	General Copies	\$ 1.40
10/26/2018	General Copies	\$ 11.60
10/30/2018	General Copies	\$ 3.80
11/1/2018	General Copies	\$ 3.00
3/25/2019	General Copies	\$ 10.20
3/25/2019	General Copies	\$ 56.20
3/26/2019	General Copies	\$ 106.20
4/5/2019	General Copies	\$ 85.60
		\$ 1,920.90

Filing Fees		Amount
Work Date	Description	Amount
12/22/2016	Motion to Dismiss or Strike Unauthorized Pleadings	\$ 376.50
12/22/2016	Defendants' Initial Appearance Fee Disclosure (NRS Chapter 19)	\$ 3.50
2/7/2017	Reply in Support of Motion to Dismiss or Strike Unauthorized	\$ 3.50
4/24/2017	Defendants' Answer to Complaint	\$ 3.50
6/26/2017	Notice of Hearing	\$ 3.50
9/12/2017	Samuel Lionel - NOTICE OF TAKING DEPOSITION AND REQUEST FOR PRODUCTION OF DOCUMENTS	\$ 3.50
11/13/2017	Samuel Lionel: Defendants' Motion to Compel	\$ 3.50
12/8/2017	Samuel Lionel: Defendants' Reply in Support of Motion to Compel	\$ 3.50
12/15/2017	Samuel Lionel: Motion for Leave to Amend Answer to Complaint	\$ 3.50
12/18/2017	Samuel Lionel: Acceptance of Service Regarding Subpoena Duces Tecum to Carlos Huerta	\$ 3.50
1/5/2018	Samuel Lionel: Opposition to Nanyah Vegas, LLC's Motion to Strike Defendants' Motion to Compel	\$ 3.50
1/23/2018	Brenoch Wirthlin: Defendants' First Amended Answer to Complaint	\$ 3.50
1/23/2018	Samuel Lionel: Opposition to Motion to Compel and Countermotion for an Order that the Answers to Requests for Admissions Should be Considered as Having Been Timely Filed	\$ 3.50
1/29/2018	Brenoch Wirthlin: Order Granting Motion for Leave to Amend Answer to Complaint	\$ 3.50
2/23/2018	Samuel Lionel: Motion for Summary Judgment	\$ 209.50
2/27/2018	Samuel Lionel: Reply In Support Of Countermotion For An Order That The Answers To Requests For Admissions Should Be Considered As Having Been Timely Filed	\$ 3.50
3/8/2018	Samuel Lionel: 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	\$ 209.50
3/14/2018	Samuel Lionel: Discovery Commissioner's Report and Recommendation	\$ 3.50
3/21/2018	Samuel Lionel: Notice of Entry	\$ 3.50
4/11/2018	Samuel Lionel: Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Reply in Support of Motion for Summary Judgment and Opposition to Nanyah Vegas, LLC's Countermotion for Summary Judgment and for NRCP 56(f) Relief	\$ 3.50

Work Date	Description	Amount
4/17/2018	Samuel Lionel: 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 Survivor Trust of 10/30/08, Eldorado Hills, LLC and Teld's Reply in Support of Their Joinder to Motion for Summary Judgment and Opposition to Nanyah Vegas, LLC's Countermotion for Summary Judgment and NRCP 56(f) Relief	\$ 3.50
5/1/2018	Samuel Lionel: Discovery Commissioners Report and Recommendations	\$ 3.50
5/2/2018	Samuel Lionel: Notice of Entry	\$ 3.50
5/10/2018	Samuel Lionel: 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	\$ 3.50
5/11/2018	Brenoch Wirthlin: Defendants' Motion in Limine to Limit Trial Testimony of Yoav Harlap at Trial	\$ 3.50
6/5/2018	Samuel Lionel: Defendants Sigmund Rogich, Individually And As Trustee Of The Rogich Family Irrevocable Trust And Imitations, LLC's Motion For Reconsideration	\$ 3.50
6/14/2018	Samuel Lionel: 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	\$ 3.50
7/2/2018	Samuel Lionel: Reply in Support of Defendants' Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations LLC Motion for Reconsideration	\$ 3.50
7/24/2018	Samuel Lionel: Order Denying Motion For Reconsideration	\$ 3.50
7/25/2018	Samuel Lionel: Reply in Support of Defendants' Motion for Expedited Hearing on Pending Motions in Limine	\$ 3.50
7/26/2018	Samuel Lionel: Notice of Entry of Order Denying Motion for Reconsideration	\$ 3.50
8/17/2018	Samuel Lionel: Motion for Re-hearing	\$ 3.50
9/20/2018	Samuel Lionel: Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Reply in Support of Their Motion for Rehearing	\$ 3.50
9/28/2018	Samuel Lionel: Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations; Notice of Non-Opposition to Nanyah's Motion in Limine #4 Re: Yoav Harlap's Personal Financials	\$ 3.50
9/28/2018	Samuel Lionel: 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	\$ 3.50
9/28/2018	Samuel Lionel: Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #2 re: NRS 47.240(2) Mandates Finding that Nanyah Vegas Invested \$1.5 Million into Eldorado Hills, LLC	\$ 3.50
9/28/2018	Samuel Lionel: Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #1 re: Eldorado Hills, LLC Bound by Admissions and Statements of its Managing Member	\$ 3.50
2/6/2019	Samuel Lionel: Motion for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b)	\$ 3.50
2/8/2019	Brenoch Wirthlin: Ex Parte Motion for an Order Shortening Time on Motion for Relief from the October 5, 2018 Order Pursuant to NRCP 60(b)	\$ 3.50
2/8/2019	Brenoch Wirthlin: Order Shortening Time	\$ 3.50
2/8/2019	Brenoch Wirthlin: Notice of Entry of Order	\$ 3.50
2/13/2019	Brenoch Wirthlin: Receipt of Copy	\$ 3.50
2/15/2019	Brenoch Wirthlin: Motion for Leave to File Motion for Summary Judgment and Motion for Summary Judgment	\$ 209.50
2/19/2019	Brenoch Wirthlin: 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	\$ 3.50
2/19/2019	Brenoch Wirthlin: Certificate of Service	\$ 3.50
2/20/2019	Brenoch Wirthlin: Reply in Support of Motion for Relief From the October 5, 2018 Order Pursuant to NRCP 60(b)	\$ 3.50

Work Date	Description	Amount
2/26/2019	Brenoch Wirthlin: Defendants' Motion in Limine to Preclude Plaintiff and Carlos Huerta from Presenting at Trial any Contrary Evidence as to Mr. Huerta's Taking of \$1.42 Million from Eldorado Hills, LLC as Go Global, Inc.'s Consulting Fee Income to Attempt to Refinance	\$ 3.50
2/27/2019	Brenoch Wirthlin: Motion to Compel Production of Plaintiff's Tax Returns and For Attorneys' Fees on Order Shortening Time	\$ 3.50
3/8/2019	Thomas Fell: Opposition to Nanyah Vegas, LLC'S Motion in Limine #5 Re: Parol Evidence Rule	\$ 3.50
3/8/2019	Thomas Fell: Opposition to Nanyah Vegas, LLC's Motion in Limine #6 Re: Date of Discovery	\$ 3.50
3/19/2019	Brenoch Wirthlin: Reply in Support of Motion to Compel Production of Plaintiff's Tax Returns	\$ 3.50
3/21/2019	Brenoch Wirthlin: Errata to Rogich Defendants' Opposition to Plaintiff's Motion to Settle Jury Instructions	\$ 3.50
3/21/2019	Brenoch Wirthlin: Rogich Defendants' Opposition to Plaintiff's Motion to Settle Jury Instructions	\$ 3.50
3/22/2019	Brenoch Wirthlin: Defendants Sigmund Rogich, Individually and as Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's 2nd Supplemental Pre-Trial Disclosures	\$ 3.50
3/26/2019	Brenoch Wirthlin: Notice of Entry of Order	\$ 3.50
3/26/2019	Brenoch Wirthlin: Order Denying The Rogich Defendants' NRCP 60(b) Motion	\$ 3.50
3/28/2019	Brenoch Wirthlin: Reply in Support of Defendants' Motion in Limine to Preclude the Altered Eldorado Hills' General Ledger and Related Testimony at Trial	\$ 3.50
3/29/2019	Brenoch Wirthlin: Rogich Defendants' Reply in Support of Motion in Limine Regarding Consulting Fee Admission	\$ 3.50
4/5/2019	Brenoch Wirthlin: Opposition to Plaintiff's Motion to Reconsider Order on Motion in Limine #5 Re Parol Evidence Rule on OST	\$ 3.50
4/6/2019	Brenoch Wirthlin: Objections to Nanyah Vegas, LLC's Pre-Trial Disclosures	\$ 3.50
4/6/2019	Brenoch Wirthlin: Objections to Eldorado Hills, LLC's Pre-Trial Disclosures	\$ 3.50
4/9/2019	Brenoch Wirthlin: Order Granting in Part and Denying in Part Motion to Compel Production of Plaintiff's Tax Returns and for Attorneys' Fees	\$ 3.50
4/9/2019	Brenoch Wirthlin: Notice of Entry of Order	\$ 3.50
4/9/2019	Brenoch Wirthlin: Defendants' 3rd Supplemental Pre-Trial Disclosure Statement	\$ 3.50
4/9/2019	Brenoch Wirthlin: Sigmund Rogich, Individually and as a Trustee of the Rogich Family Irrevocable Trust and Imitations, LLC's Joinder to Eldorado Hills, LLC's Notice on Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-In-Fact Contract Theory	\$ 3.50
4/10/2019	Brenoch Wirthlin: 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 2nd Supplemental Pre-Trial Disclosures	\$ 3.50
4/10/2019	Brenoch Wirthlin: Order Denying Nanyah Vegas, LLC's Motion in Limine #5: Parol Evidence Rule	\$ 3.50
4/11/2019	Brenoch Wirthlin: Defendants' Fourth Supplemental Pre-Trial Disclosure Statement	\$ 3.50
4/15/2019	Brenoch Wirthlin: Request for Judicial Notice	\$ 3.50
4/16/2019	Brenoch Wirthlin: Pre-Trial Memorandum	\$ 3.50
4/17/2019	Brenoch Wirthlin: Certificate of Service	\$ 3.50
4/17/2019	Brenoch Wirthlin: Rogich Defendants' Errata to Pretrial Memorandum	\$ 3.50
4/17/2019	Brenoch Wirthlin: Order Denying Nanyah Vegas, LLC's Motion in Limine #6 re: Date of Discovery	\$ 3.50
4/17/2019	Brenoch Wirthlin: Notice of Entry of Order	\$ 3.50
4/18/2019	Brenoch Wirthlin: Opposition to Plaintiff's Emergency Motion to Address Defendant The Rogich Fmaily Irrevocable Trust's NRS 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120	\$ 3.50
4/19/2019	Brenoch Wirthlin: Objection to Nanyah's Request for Judicial Notice and Application of Law of the Case Doctrine	\$ 3.50
4/22/2019	Brenoch Wirthlin: The Rogich Defendants' Memorandum of Points and Authorities Regarding Limits of Judicial Discretion to Modify Notice Requirements to Trust Beneficiaries Provided under NRS Chapter 163	\$ 3.50
		\$ 1,260.50

Work Date	Description	Amount
Messenger Fees		
Work Date	Description	Amount
2/8/2017	Eighth Judicial District - Clark County	\$ 21.95
1/23/2018	Eighth Judicial District Court	\$ 39.25
10/29/2018	Offer of judgment in Huerta et al. vs. Rogich et al.	\$ 24.00
2/11/2019	Mark Simmons	\$ 85.75
2/27/2019	Mark Simons	\$ 131.50
3/26/2019	Eighth Judicial District Court	\$ 40.25
3/26/2019	Bailey Kennedy	\$ 67.75
3/29/2019	Bailey Kennedy	\$ 40.25
4/2/2019	Eighth Judicial District Court	\$ 40.25
		\$ 490.95
Postage Charges		
Work Date	Description	Amount
12/22/2016	Postage	\$ 6.45
12/22/2016	Postage	\$ 0.47
4/21/2017	Postage	\$ 1.40
5/26/2017	Postage	\$ 0.46
5/26/2017	Postage	\$ 0.67
7/7/2017	Postage	\$ 0.46
8/10/2017	Postage	\$ 8.65
9/12/2017	Postage	\$ 0.46
10/13/2017	Postage	\$ 0.67
10/24/2017	Postage	\$ 1.34
11/10/2017	Postage	\$ 11.15
11/28/2017	Postage	\$ 0.46
12/18/2017	Postage	\$ 0.46
1/5/2018	Postage	\$ 1.40
1/23/2018	Postage	\$ 2.68
3/15/2018	Postage	\$ 0.47
5/7/2018	Postage	\$ 1.21
6/7/2018	Postage	\$ 0.47
		\$ 39.33
SOS Record Copy Fees		
Work Date	Description	Amount
4/6/2017	Entity copies (4)	\$ 8.00
7/11/2017	Entity Copies [SIGMUND ROGICH - Nanyah Vegas, LLC.v. Eldorado Hills, LLC]	\$ 14.00
7/17/2017	Entity copies; Copies - Certification of Document; NVSOS [CANAMEX NEVADA, LLC]	\$ 44.00
7/26/2017	Entity Copies [SIGMUND ROGICH - Nanyah Vegas, LLC.v. Eldorado Hills, LLC]	\$ 28.00
11/30/2017	NVSOS - Entity Copies; SIGMUND ROGICH - Nanyah Vegas, LLC.v. Eldorado Hills, LLC	\$ 4.00
12/4/2017	NVSOS - Entity copies; SIGMUND ROGICH - Nanyah Vegas, LLC.v. Eldorado Hills, LLC	\$ 14.00
12/4/2017	NVSOS - Entity copies; Copies - Certification of Document; SIGMUND ROGICH - Nanyah Vegas, LLC.v. Eldorado Hills, LLC	\$ 32.00
12/29/2017	NVSOS - ENTITY COPIES, IMITATIONS, LLC	\$ 28.00
11/9/2018	NVSOS - Entity Copies; Copies - Certification of Document, SIGMUND ROGICH	\$ 164.00
		\$ 336.00
Service Fees		
Work Date	Description	Amount
11/29/2017	Carlos Huerta	\$ 160.75
11/29/2017	Carlos Huerta	\$ 79.75
12/1/2017	Carlos Huerta	\$ 79.75
12/4/2017	Carlos Huerta	\$ 79.75

Work Date	Description	Amount
		\$ 400.00

Transcript/Deposition Fees		
Work Date	Description	Amount
9/21/2017	Check 5346 to Clark County Treasurer for CD of hearing	\$ 65.00
10/11/2017	Deposition of Yoav Harlap - 10/11/2017	\$ 1,577.85
12/15/2017	Check #5372 to Clark County Treasurer for CD of hearing before discovery commissioner	\$ 65.00
4/20/2018	#5429 Clark County Treasurer for 4/18/18 hearing transcript	\$ 128.18
4/24/2018	Transcript fee for 4/18/18 hearing	\$ 329.23
5/2/2018	Depo transcript of Melissa Olivas	\$ 2,149.02
5/17/2018	Deposition transcript of Woloson	\$ 449.52
5/24/2018	Depo transcript of Sig Rogich	\$ 1,041.81
5/25/2018	Depo transcript of Peter Eliades	\$ 383.46
6/15/2018	Depo transcript of Dolores Eliades	\$ 321.48
8/2/2018	#5449 JD Reporting, Inc. for transcript	\$ 195.39
8/2/2018	#5450 Clark County Treasurer for transcript	\$ 40.00
10/3/2018	#5459 Clark County Treasurer - Transcript for 9/27/18 hearing	\$ 40.00
10/3/2018	#5460 Shawna Ortega - Transcripts	\$ 68.40
3/20/2019	#5519 JD Reporting, Inc. for 3/20/19 hearing transcript	\$ 240.90
3/21/2019	District Court case A686303	\$ 40.00
4/22/2019	Trial Transcript	\$ 128.48
		\$ 7,263.72

Legal Research Fees		
Work Date	Description	Amount
11/16/2016	Westlaw/Lexis Electronic Research	\$ 198.00
11/23/2016	Westlaw/Lexis Electronic Research	\$ 49.50
11/28/2016	Westlaw/Lexis Electronic Research	\$ 49.50
1/5/2017	Westlaw/Lexis Electronic Research	\$ 99.00
1/6/2017	Westlaw/Lexis Electronic Research	\$ 99.00
1/10/2017	Westlaw/Lexis Electronic Research	\$ 49.50
1/11/2017	Westlaw/Lexis Electronic Research	\$ 198.00
3/1/2017	Westlaw/Lexis Electronic Research	\$ 198.00
4/20/2017	Westlaw/Lexis Electronic Research	\$ 49.50
6/12/2017	Westlaw/Lexis Electronic Research	\$ 99.00
2/21/2018	Westlaw/Lexis Electronic Research	\$ 476.00
4/11/2018	Westlaw/Lexis Electronic Research	\$ 17.50
4/30/2018	Westlaw/Lexis Electronic Research	\$ 79.00
5/10/2018	Westlaw/Lexis Electronic Research	\$ 1.00
6/6/2018	Westlaw/Lexis Electronic Research	\$ 637.00
7/4/2018	Westlaw/Lexis Electronic Research	\$ 178.50
7/10/2018	Westlaw/Lexis Electronic Research	\$ 75.00
7/13/2018	Westlaw/Lexis Electronic Research	\$ 40.50
7/17/2018	Westlaw/Lexis Electronic Research	\$ 159.00
7/24/2018	Westlaw/Lexis Electronic Research	\$ 39.50
7/30/2018	Westlaw/Lexis Electronic Research	\$ 197.50
8/1/2018	Westlaw/Lexis Electronic Research	\$ 42.50
8/2/2018	Westlaw/Lexis Electronic Research	\$ 42.50
8/8/2018	Westlaw/Lexis Electronic Research	\$ 42.50
8/18/2018	Westlaw/Lexis Electronic Research	\$ 150.00
9/6/2018	Westlaw/Lexis Electronic Research	\$ 75.00
9/7/2018	Westlaw/Lexis Electronic Research	\$ 1,200.00
9/8/2018	Westlaw/Lexis Electronic Research	\$ 150.00
9/10/2018	Westlaw/Lexis Electronic Research	\$ 1,800.00
9/11/2018	Westlaw/Lexis Electronic Research	\$ 600.00
9/12/2018	Westlaw/Lexis Electronic Research	\$ 1,950.00
9/13/2018	Westlaw/Lexis Electronic Research	\$ 600.00

Work Date	Description	Amount
9/15/2018	Westlaw/Lexis Electronic Research	\$ 375.00
9/16/2018	Westlaw/Lexis Electronic Research	\$ 1,125.00
10/4/2018	Westlaw/Lexis Electronic Research	\$ 42.50
10/5/2018	Westlaw/Lexis Electronic Research	\$ 59.50
10/8/2018	Westlaw/Lexis Electronic Research	\$ 125.50
10/10/2018	Westlaw/Lexis Electronic Research	\$ 59.50
10/13/2018	Westlaw/Lexis Electronic Research	\$ 59.50
10/19/2018	Westlaw/Lexis Electronic Research	\$ 59.50
10/23/2018	Westlaw/Lexis Electronic Research	\$ 255.00
10/25/2018	Westlaw/Lexis Electronic Research	\$ 1,173.00
11/5/2018	Westlaw/Lexis Electronic Research	\$ 59.50
11/8/2018	Westlaw/Lexis Electronic Research	\$ 40.50
11/12/2018	Westlaw/Lexis Electronic Research	\$ 119.00
11/12/2018	Westlaw/Lexis Electronic Research	\$ 204.00
11/13/2018	Westlaw/Lexis Electronic Research	\$ 39.50
11/13/2018	Westlaw/Lexis Electronic Research	\$ 59.50
11/26/2018	Westlaw/Lexis Electronic Research	\$ 238.00
12/12/2018	Westlaw/Lexis Electronic Research	\$ 85.00
12/14/2018	Westlaw/Lexis Electronic Research	\$ 42.50
12/17/2018	Westlaw/Lexis Electronic Research	\$ 340.00
12/27/2018	Westlaw/Lexis Electronic Research	\$ 328.50
1/3/2019	Westlaw/Lexis Electronic Research	\$ 51.00
1/4/2019	Westlaw/Lexis Electronic Research	\$ 102.00
1/7/2019	Westlaw/Lexis Electronic Research	\$ 90.00
1/9/2019	Westlaw/Lexis Electronic Research	\$ 90.00
1/16/2019	Westlaw/Lexis Electronic Research	\$ 412.50
1/19/2019	Westlaw/Lexis Electronic Research	\$ 90.00
1/26/2019	Westlaw/Lexis Electronic Research	\$ 153.00
1/28/2019	Westlaw/Lexis Electronic Research	\$ 102.00
2/2/2019	Westlaw/Lexis Electronic Research	\$ 51.00
2/12/2019	Westlaw/Lexis Electronic Research	\$ 40.50
2/14/2019	Westlaw/Lexis Electronic Research	\$ 51.00
2/18/2019	Westlaw/Lexis Electronic Research	\$ 500.50
2/21/2019	Westlaw/Lexis Electronic Research	\$ 51.00
2/27/2019	Westlaw/Lexis Electronic Research	\$ 715.00
3/4/2019	Westlaw/Lexis Electronic Research	\$ 39.50
3/4/2019	Westlaw/Lexis Electronic Research	\$ 71.50
3/30/2019	Westlaw/Lexis Electronic Research	\$ 194.00
4/4/2019	Westlaw/Lexis Electronic Research	\$ 51.00
4/11/2019	Westlaw/Lexis Electronic Research	\$ 143.00
4/12/2019	Westlaw/Lexis Electronic Research	\$ 474.00
4/17/2019	Westlaw/Lexis Electronic Research	\$ 39.50
4/19/2019	Westlaw/Lexis Electronic Research	\$ 378.50
4/20/2019	Westlaw/Lexis Electronic Research	\$ 450.00
4/22/2019	Westlaw/Lexis Electronic Research	\$ 39.50
		\$ 18,912.00

TOTAL: \$ 30,623.40



Holo Discovery
3016 West Charleston Blvd
Suite 170
Las Vegas, NV 89102
702.333.4321

Invoice

INVOICE 7290

DATE 5/8/2019

TERMS Net 30

DUE DATE 6/8/2019

BILL TO

Fennemore Craig
300 S Fourth St #1400
Las Vegas, NV 89101

ORDERED BY
Daniel Maul

CLIENT MATTER
038537.0004/Rogich

REP
Jon

ACTIVITY	QTY	AMOUNT
CLIENT MATTER: 038537.0004 - Rogich adv. Nanyah		0.00
Description: Print documents, tab and place in binders.		
B/W Printing	36,088	3,608.80T
Color Digital Printing	370	292.30T
Index Tabs	360	126.00T
Index Tabs - 100+, AA+	1,166	524.70T
1.5 Inch Binder	6	54.00T
4 Inch Binder	46	736.00T
Sales Tax		440.70

X *[Signature]*
Bill to: 038537.0004

Project Number- 21603
Date Delivered- 04/19/2019

Total Due	\$5,782.50
Payments/Credits	\$0.00
Balance Due	\$5,782.50

Thank you for your business. Please make checks payable to HOLO Discovery.
Tax ID: 81-2158838

JA_008106