

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

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

7 Appellant,

8 v.

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

18 Respondents.

19 AND RELATED MATTERS.

20 **JOINT APPENDIX VOL. 37**

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Supreme Court No. 79917

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

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

ALPHABETICAL

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Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Countermotion for NRCP 15 Relief	4/9/19	27	JA_006441-6453

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2	LLC's Opposition to Nanyah			
3	Vegas, LLC's Motion in			
4	Limine #3: Defendants			
5	Bound by their Answers to			
6	Complaint			
7	Defendant Eldorado Hills,	4/4/19	26	JA_006168-6188
8	LLC's Opposition to Motion			
9	to Reconsider Order on			
10	Nanyah's Motion in Limine			
11	#5: Parol Evidence Rule			
12	Defendant Eldorado Hills,	2/15/19	17	JA_004170-4182
13	LLC's Opposition to Nanyah			
14	Vegas, LLC's Motion for			
15	Summary Judgment			
16	Defendant Eldorado Hills,	3/8/19	23	JA_005618-5623
17	LLC's Opposition to Nanyah			
18	Vegas, LLC's Motion in			
19	Limine #5 re: Parol			
20	Evidence Rule			
21	Defendant Eldorado Hills,	3/8/19	23	JA_005624-5630
22	LLC's Opposition to Nanyah			
23	Vegas, LLC's Motion in			
24	Limine #6 re: Date of			
25	Discovery			
26	Defendant Eldorado Hills,	3/20/19	24	JA_005793-5818
	LLC's Opposition to Nanyah			
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	Based upon the Court's			
	October 5, 2018, Order			
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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			
27	Defendant The Rogich	5/21/19	31-32	JA_007610-7643
28	Family Irrevocable Trust's			
29	Motion for Attorneys' Fees			
30	and Costs			
31	Defendant's Reply in	12/30/14	4	JA_000759-764
32	Support of Motion for			
33	Award of Attorneys' Fees			
34	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 2 3 4 5	Defendants 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	10/7/19	34	JA_008107-8120
6 7 8 9	Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgment	6/1/18	9	JA_002197-2211
10 11 12 13 14 15 16	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	7/19/18	13	JA_003115-3189
17 18 19 20 21 22 23	Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor 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	10/28/19	36-37	JA_008820-8902

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 Attorneys' Fees	11/19/14	3	JA_000699-744
2				
3	Motion for Leave to File an Amended Answer on an Order Shortening Time	4/30/14	1	JA_000064-83
4				
5	Motion for Rehearing	8/17/18	13-14	JA_003205-3316
6	Motion for Relief from the October 5, 2018, Order Pursuant to NRCP 60(b)	2/6/19	15-17	JA_003650-4035
7				
8	Motion for Summary Judgment	2/23/18	4-6	JA_000894-1245
9				
10	Motion for Summary Judgment or Alternatively for Judgment as a Matter of Law Pursuant to NRCP 50(a)	5/10/19	30-31	JA_007237-7598
11				
12				
13	Motion to Compel Production of Plaintiff's Tax Returns and for Attorneys' Fees on Order Shortening Time	2/27/19	21-22	JA_005175-5260
14				
15				
16				
17	Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule on Order Shortening Time	3/25/19	25	JA_006079-6104
18				
19				
20				
21	Motion to Reconsider Order Partially Granting Summary Judgment	6/4/18	11	JA_002512-2534
22				
23	Nanyah Vegas, LLC's 2 nd Supplemental Pretrial Disclosures	4/5/19	27	JA_006410-6422
24				
25	Nanyah Vegas, LLC's 3 rd Supplemental Pretrial Disclosures	4/12/19	27	JA_006484-6496
26				

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			
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	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			
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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			
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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
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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

1	Nanyah Vegas, LLC's Reply	5/15/18	8	JA_001826-1829
2	in Support of Motion to			
3	Continue Trial and to set			
4	Firm Trial Date			
5	Nanyah Vegas, LLC's Reply	1/23/2020	37	JA_009033-9040
6	in Support of Motion to			
7	Retax Costs submitted by			
8	Eldorado Hills, LLC, Peter			
9	Eliades, Individually and as			
10	Trustee of the Eliades			
11	survivor Trust of 10/30/08,			
12	and Teld, LLC's			
13	Memorandum of Costs and			
14	Disbursements			
15	Nanyah Vegas, LLC's Reply	1/23/2020	37	JA_009041-9045
16	in Support of its Motion to			
17	Retax Costs Submitted by			
18	Sigmund Rogich,			
19	Individually and as Trustee			
20	of the Rogich Family			
21	Revocable Trust, and			
22	Imitations, LLC's			
23	Memorandum of Costs and			
24	Disbursements Pursuant to			
25	NRS 18.005 and NRS			
26	18.110			
27	Nanyah Vegas, LLC's Reply	3/27/19	25	JA_006114-6134
28	in Support of Motion to			
29	Settle Jury Instructions			
30	Based Upon the Court's			
31	October 5, 2018, Order			
32	Granting Summary			
33	Judgment			

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			
20	Reconsideration			
21	Notice of Entry of Order	8/13/18	13	JA_003200-3204
22	Denying Nanyah Vegas,			
23	LLC's Motion for			
24	Reconsideration			
25	Notice of Entry of Order	4/10/19	27	JA_006478-6483
26	Denying Nanyah Vegas,			
	LLC's Motion in Limine #5:			
	Parol Evidence Rule			

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

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

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

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

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

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

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

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

1	Reply to Opposition to	4/16/18	7	JA_001689-1706
2	Counter-motion for Summary			
3	Judgment; and			
4	Counter-motion for NRCP			
	56(f) Relief			
5	Reply to Opposition to	9/18/14	3	JA_000676-690
6	Motion for Partial Summary			
	Judgment			
7	Request for Judicial Notice	4/15/19	27	JA_006497-6500
8	Request for Judicial Notice	4/17/19	29	JA_007080-7092
9	and Application of the Law			
	of the Case Doctrine			
10	Rogich Defendants'	3/20/19	24	JA_005819-5835
11	Opposition to Plaintiff's			
12	Motion to Settle Jury			
	Instructions			
13	Rogich Defendants'	10/22/19	36	JA_008628-8749
14	Renewed Motion for			
	Attorneys' Fees and Costs			
15	Rogich Defendants' Reply in	3/28/19	26	JA_006155-6167
16	Support of Motion in Limine			
17	to Preclude Contrary			
18	Evidence as to Mr. Huerta's			
19	Taking of \$1.42 Million			
	from Eldorado Hills, LLC as			
20	Consulting Fee Income			
21	Rogich Defendants' Reply in	1/23/2020	37	JA_009046-9055
22	Support of Their Renewed			
	Motion for Attorneys' Fees			
23	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			
13	Judgment and Opposition to			
14	Nanyah Vegas, LLC's			
15	Countermotion for Summary			
16	Judgment and NRCP 56(f)			
17	Relief			
18	Stipulation and Order	4/22/2020	38	JA_009232-9234
19	Stipulation and Order	5/16/19	31	JA_007599-7602
20	Suspending Jury Trial			
21	Stipulation and Order re:	1/30/2020	37	JA_009056-9058
22	October 4, 2019 Decision			
23	Stipulation and Order	6/13/19	32	JA_007824-7827
24	Regarding Rogich Family			
25	Irrevocable Trust's			
26	Memorandum of Costs and			
	Motion for Attorneys' Fees			
	Stipulation for Consolidation	3/31/17	4	JA_000818-821
	Substitution of Attorneys	1/24/18	4	JA_000881-883
	Substitution of Attorneys	1/31/18	4	JA_000886-889
	Substitution of Counsel	2/21/18	4	JA_000890-893
	Summons – Civil	12/16/16	4	JA_000803-805
	(Imitations, LLC)			
	Summons – Civil (Peter	12/16/16	4	JA_000806-809
	Eliades)			

Summons – Civil (The Eliades Survivor Trust of 10/30/08)	12/16/16	4	JA_000810-813
Summons – Civil (The Rogich Family Irrevocable Trust)	12/16/16	4	JA_000799-802
Summons – Sigmund Rogich	12/22/16	4	JA_000814-817
Summons – Teld, LLC	12/16/16	4	JA_000796-798
The Rogich Defendants' Memorandum of Points and Authorities Regarding Limits of Judicial Discretion Regarding Notice Requirements Provided to Trust Beneficiaries Under NRS Chapter 163	4/21/19	30	JA_007134-7145
Transcript of Proceedings, Jury Trial, Hearing on April 22, 2019	4/23/19	30	JA_007148-7164
Transcript of Proceedings, Motions, Hearing January 30, 2020	2/12/2020	37	JA_009069-9097

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL JOHNSTON PC, and that on this date I caused to be served a true copy of the **JOINT APPENDIX VOL. 37** on all parties to this action by the method(s) indicated below:

 X 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

Bailey Kennedy, LLP
Matter ID: 11272-013

Page Number 3
Statement No: 33063

06/01/2018	Court Fee for filing of Defendants Peter Eliades, Individually and as Trustee of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Motion for Summary Judgement, 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 Volumes 1 and 2.	1.00	206.00	206.00
06/01/2018	Court Fee for filing of Defendant Eldorado Hills, LLC's Motion for Summary Judgment, Appendix of Exhibits to Defendant Eldorado Hills, LLC's Motion for Summary Judgment Volumes 1 and 2.	1.00	206.00	206.00
06/14/2018	Electronic Filing Fee for 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.	1.00	3.50	3.50
06/15/2018	Transcript of Deposition of Delores Eliades.	1.00	292.25	292.25
06/21/2018	Electronic Filing Fee for 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.	1.00	3.50	3.50
06/26/2018	Postage: Mail Errata Sheet/signature page to Peter Eliades' deposition to Litigation Services, Attn: Jason Shprintz.	1.00	2.66	2.66
	Document Reproduction	912.00	0.25	228.00
06/30/2018	On-line Legal Research.	1.00	4,471.00	4,471.00
			00	
	Sub-total Expenses:			\$7,124.26

Payments

06/12/2018	Payment	Check No. 7643	52,223.19
	Sub-total Payments:		\$52,223.19

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Previous Balance Due:	\$52,223.19
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Total Now Due:	\$20,674.26

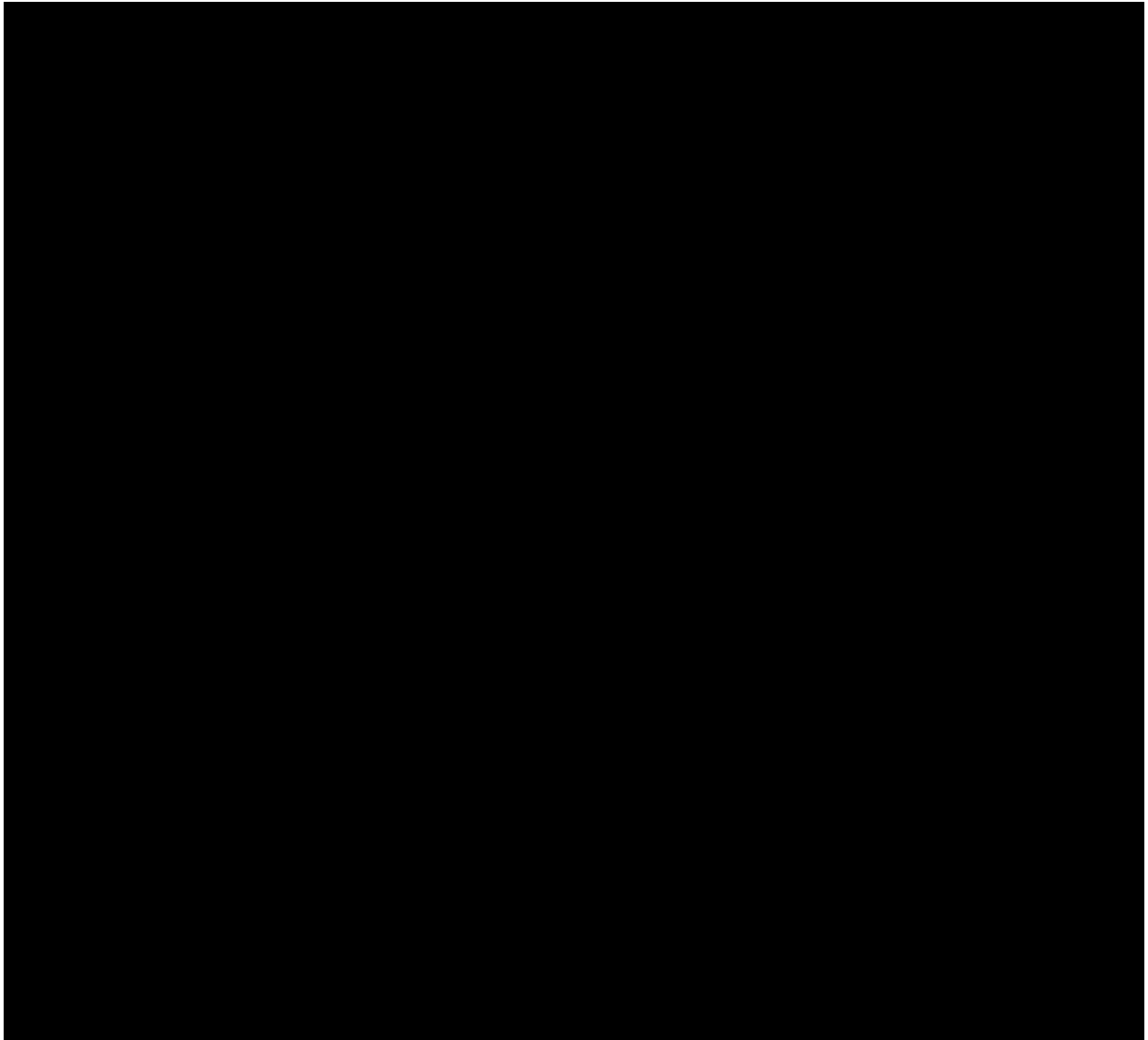
JA_008856

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 7/31/2018
Statement Date: 8/2/2018 Statement Number: 33454

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)



Expenses

		Units	Price	Amount
07/13/2018	Nationwide Legal Order No. NV140396 - Standard - Print attached Motion to Strike and two copies of the Receipt of Copy and obtain signature on Receipt of Copy from Samuel S. Lionel, Esq. at Fennemore Craig P.C.	1.00	15.00	15.00
07/13/2018	Nationwide Legal Order No. NV140391 - [Out of County] Special Delivery-Immediately - Print attached Motion to Strike and two copies of the Receipt of Copy and obtain signature on Receipt of Copy from Simons Law, PC.	1.00	175.00	175.00

Bailey Kennedy, LLP
Matter ID: 11272-013

Page Number 3
Statement No: 33454

07/13/2018	Electronic Filing Fee for Defendants Peter Eliades. Individually and as Trustees 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.	1.00	3.50	3.50
07/16/2018	Electronic Filing Fee for [Fennemore Craig] 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.	1.00	3.50	3.50
07/16/2018	Electronic Filing Fee for [Simons Law, P.C.] 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.	1.00	3.50	3.50
07/19/2018	Electronic Filing Fee for 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.	1.00	3.50	3.50
07/19/2018	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Reply in Support of its Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment.	1.00	3.50	3.50
07/24/2018	Electronic Filing Fee for 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.	1.00	3.50	3.50
07/26/2018	Courthouse Parking for Joseph A. Liebman for attendance at hearing on four Motions on 7/26/ 18.	1.00	15.00	15.00
	Document Reproduction	383.00	0.25	95.75
07/31/2018	On-line Legal Research.	1.00	7,391.00	7,391.00
	Sub-total Expenses:			<u>\$7,712.75</u>

Payments

07/10/2018	Payment	Check No. 7657	20,674.26
	Sub-total Payments:		<u>\$20,674.26</u>

Total Current Billing:	\$36,192.75
Previous Balance Due:	\$20,674.26
Total Payments:	<u>(\$20,674.26)</u>
Total Now Due:	\$36,192.75

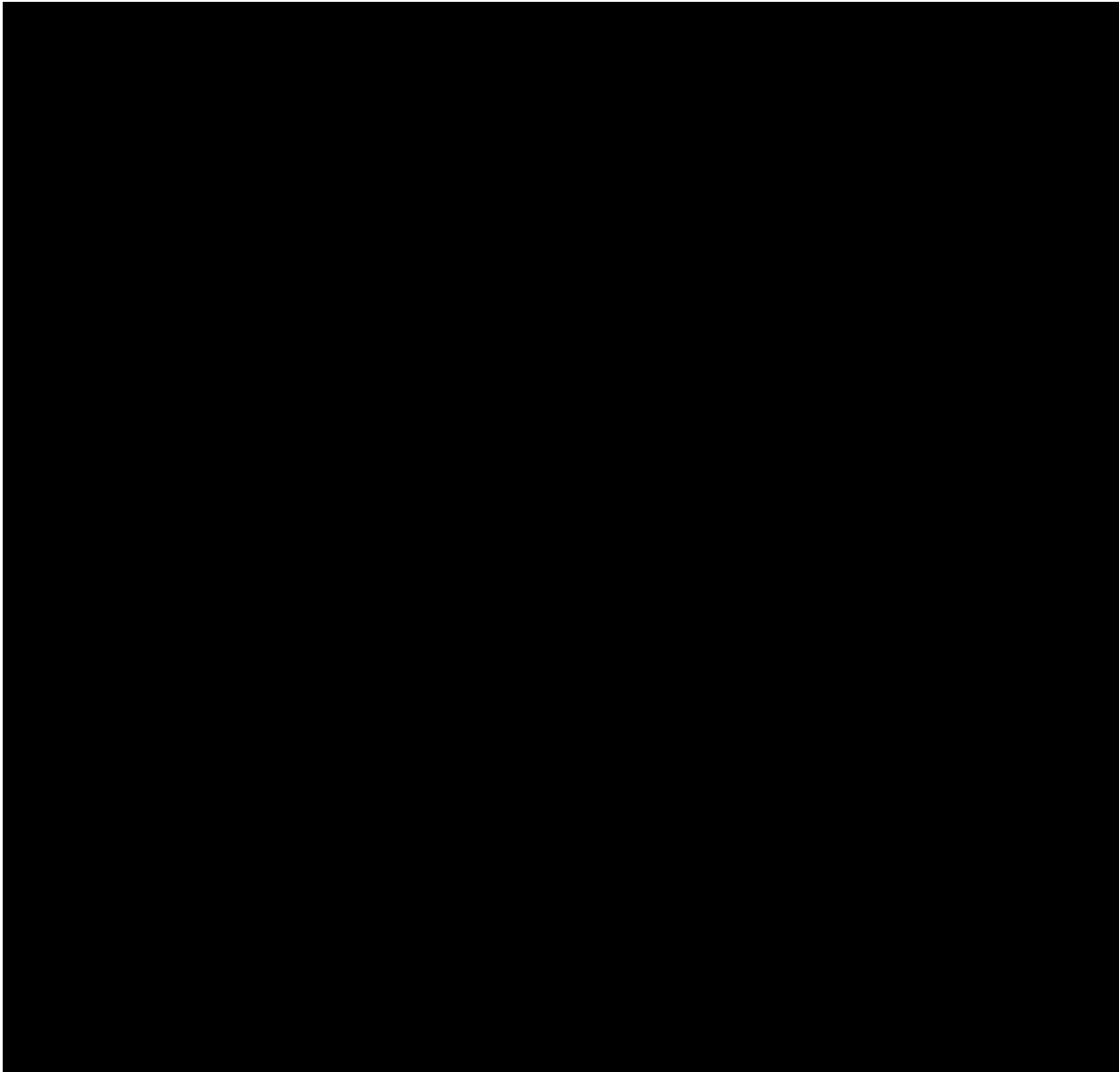
JA_008859

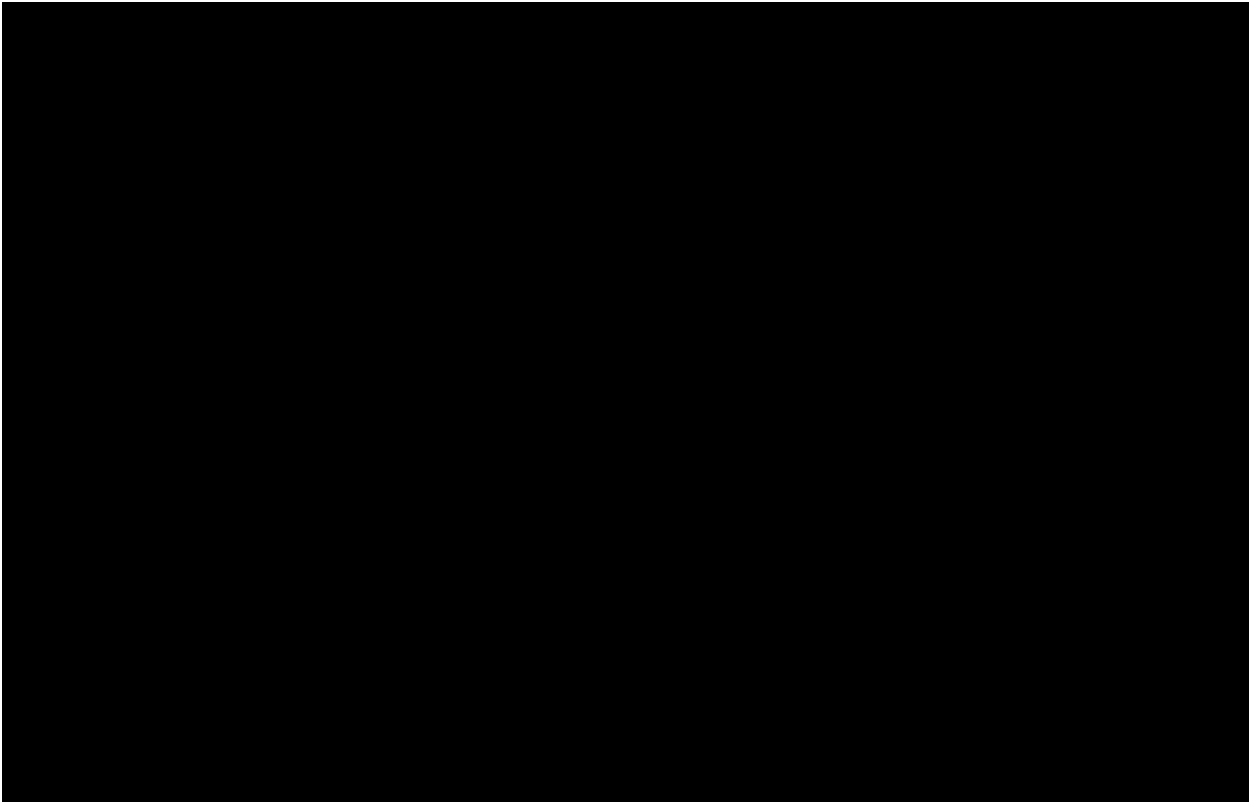
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 8/31/2018
Statement Date: 9/5/2018 Statement Number: 33484

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)





Expenses		Units	Price	Amount
08/10/2018	Electronic Filing Fee for Order Denying Nanyah Vegas, LLC's Motion for Reconsideration.	1.00	3.50	3.50
08/13/2018	Electronic Filing Fee for Notice of Entry of Order Denying Nanyah Vegas, LLC;s Motion for Reconsideration.	1.00	3.50	3.50
	Document Reproduction	9.00	0.25	2.25
08/31/2018	On-line Legal Research.	1.00	1,973.00	1,973.00
		Sub-total Expenses:		\$1,982.25

Payments

08/13/2018	Payment	Check No. 7683		36,192.75
			Sub-total Payments:	\$36,192.75

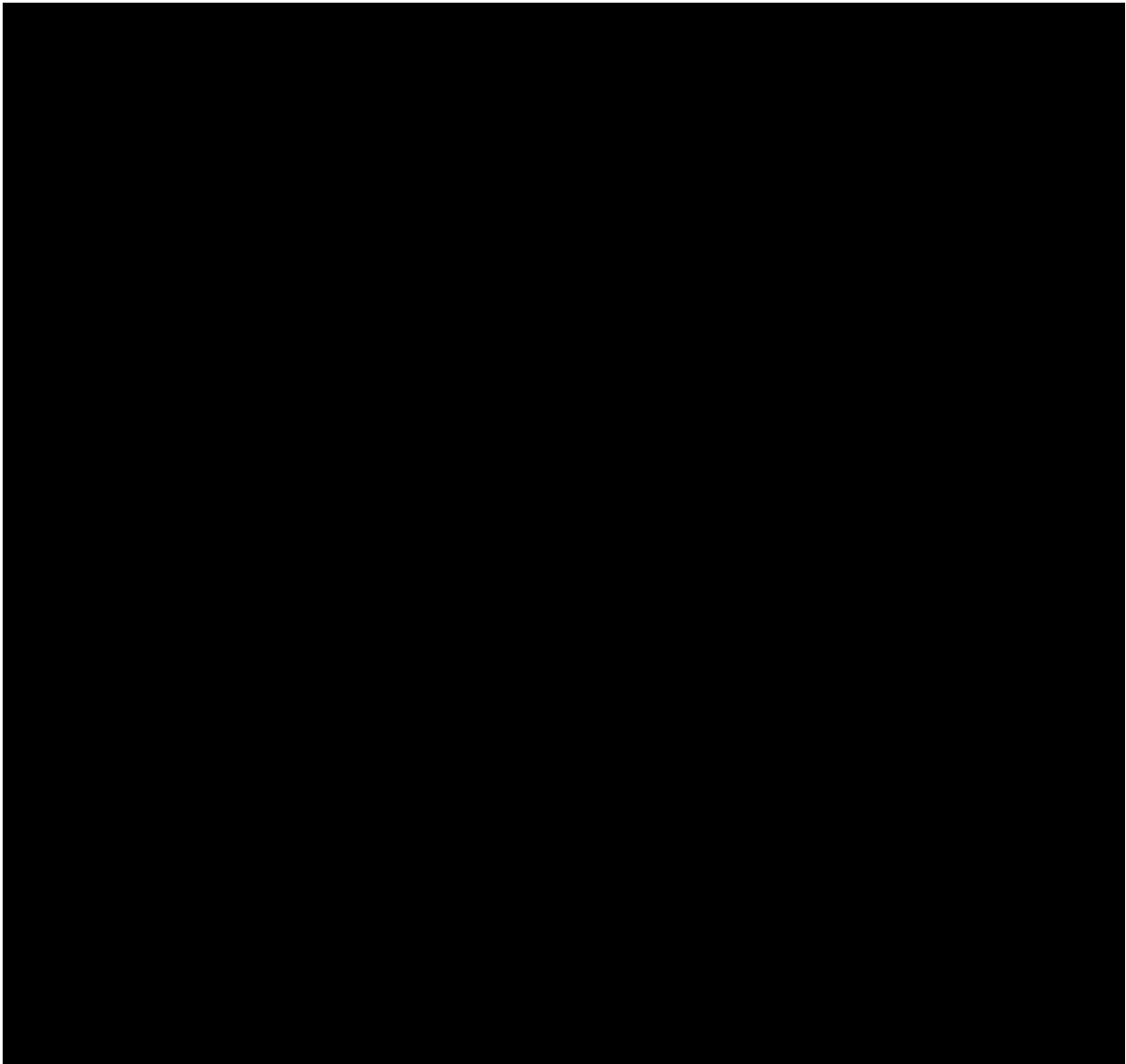
Total Current Billing:	\$13,241.00
Previous Balance Due:	\$36,192.75
Total Payments:	(\$36,192.75)
Total Now Due:	\$13,241.00

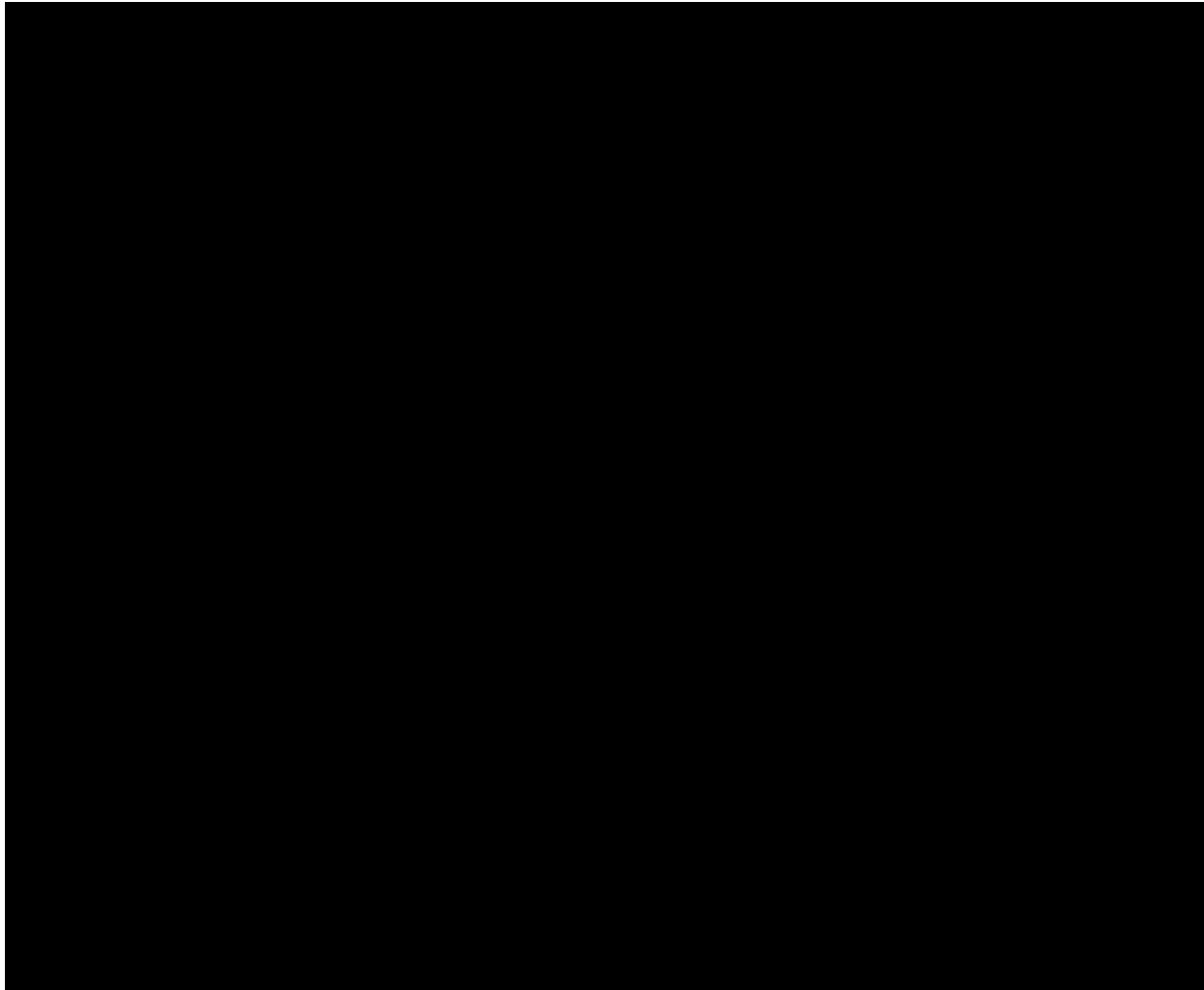
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 9/30/2018
Statement Date: 10/2/2018 Statement Number: 33663

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)





Expenses		Units	Price	Amount
09/07/2018	Electronic Filing Fee for: 1) 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 and; 2) 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.	1.00	3.50	3.50
09/07/2018	Electronic Filing Fee for 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.	1.00	3.50	3.50
09/19/2018	Electronic Filing Fee for; 1) 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 and; 2) 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 Milion into Eldorado Hills, LLC.	1.00	3.50	3.50

Bailey Kennedy, LLP
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09/19/2018	Electronic Filing Fee for: 1) Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #3: Defendants Bound by their Answers to Complaint and; 2) Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #4; Yoav Harlap's Personal Financials.	1.00	3.50	3.50
09/27/2018	Courthouse Parking for Joseph A. Liebman regarding attendance at hearing on Judge Creditor Peter Eliades' Application for Judgment Against Garnishees.	1.00	9.00	9.00
	Document Reproduction	248.00	0.25	62.00
09/30/2018	On-line Legal Research.	1.00	3,243.00	3,243.00
	Sub-total Expenses:			<u>\$3,328.00</u>

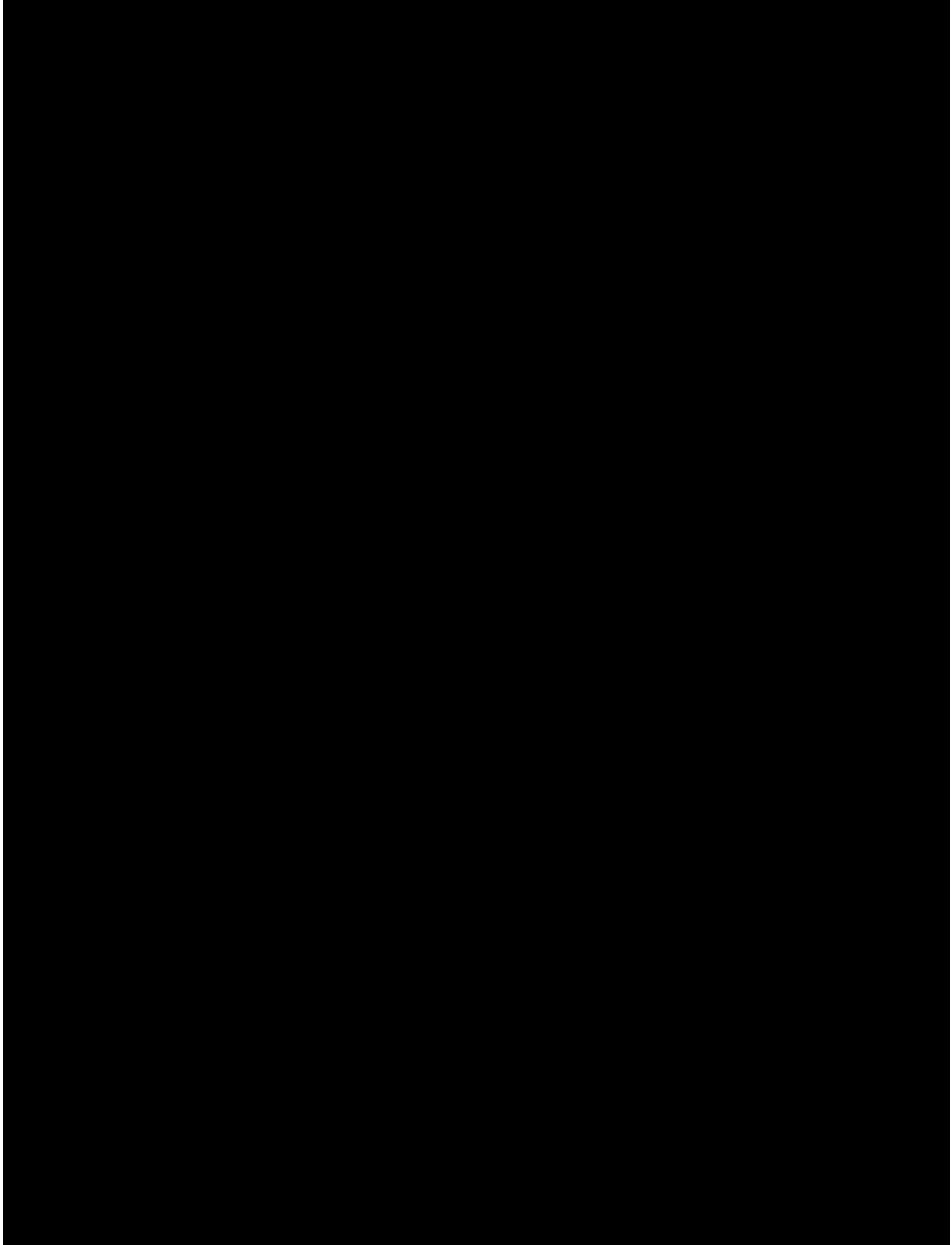
Total Current Billing:	\$21,145.50
Previous Balance Due:	<u>\$13,241.00</u>
Total Now Due:	\$34,386.50

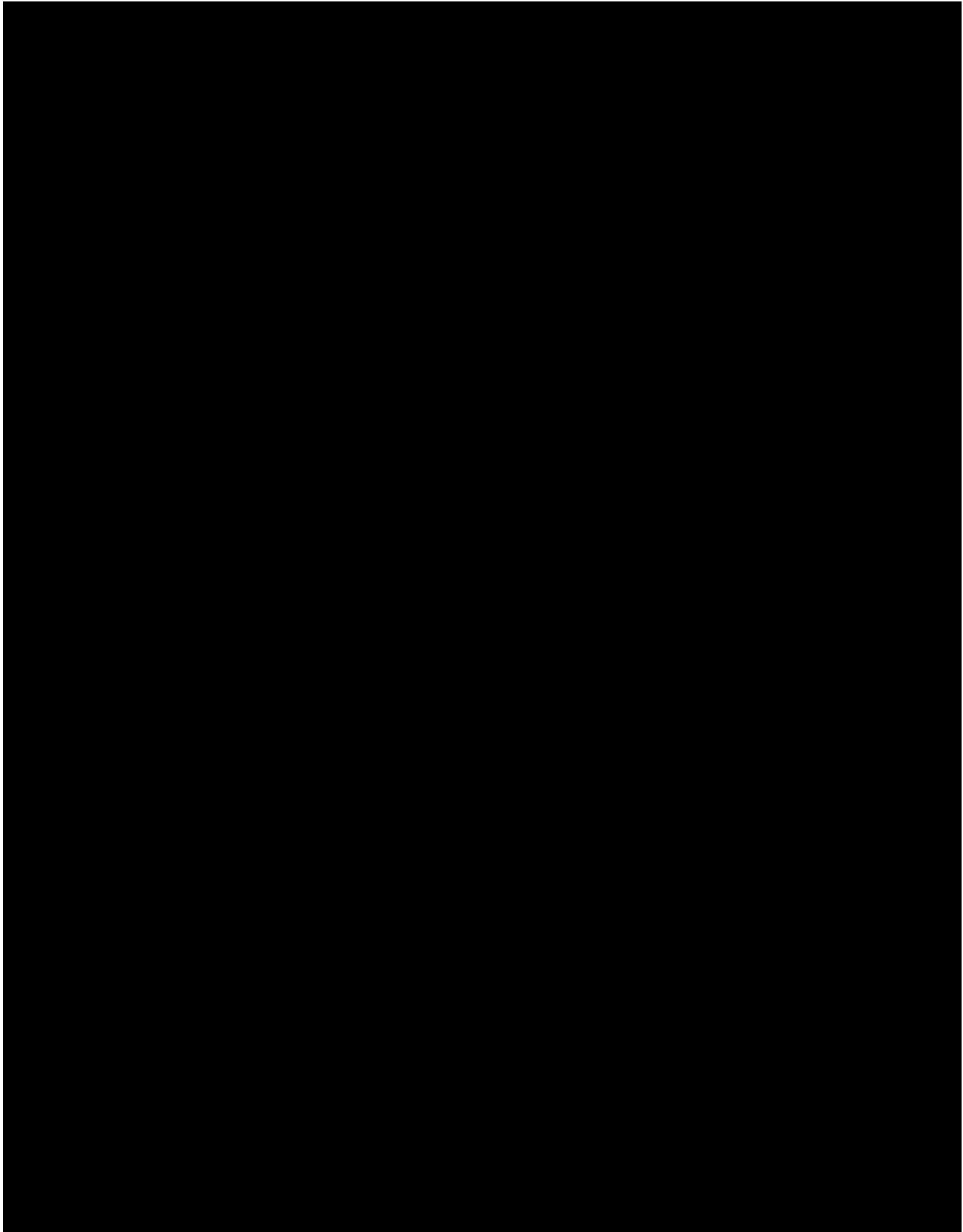
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

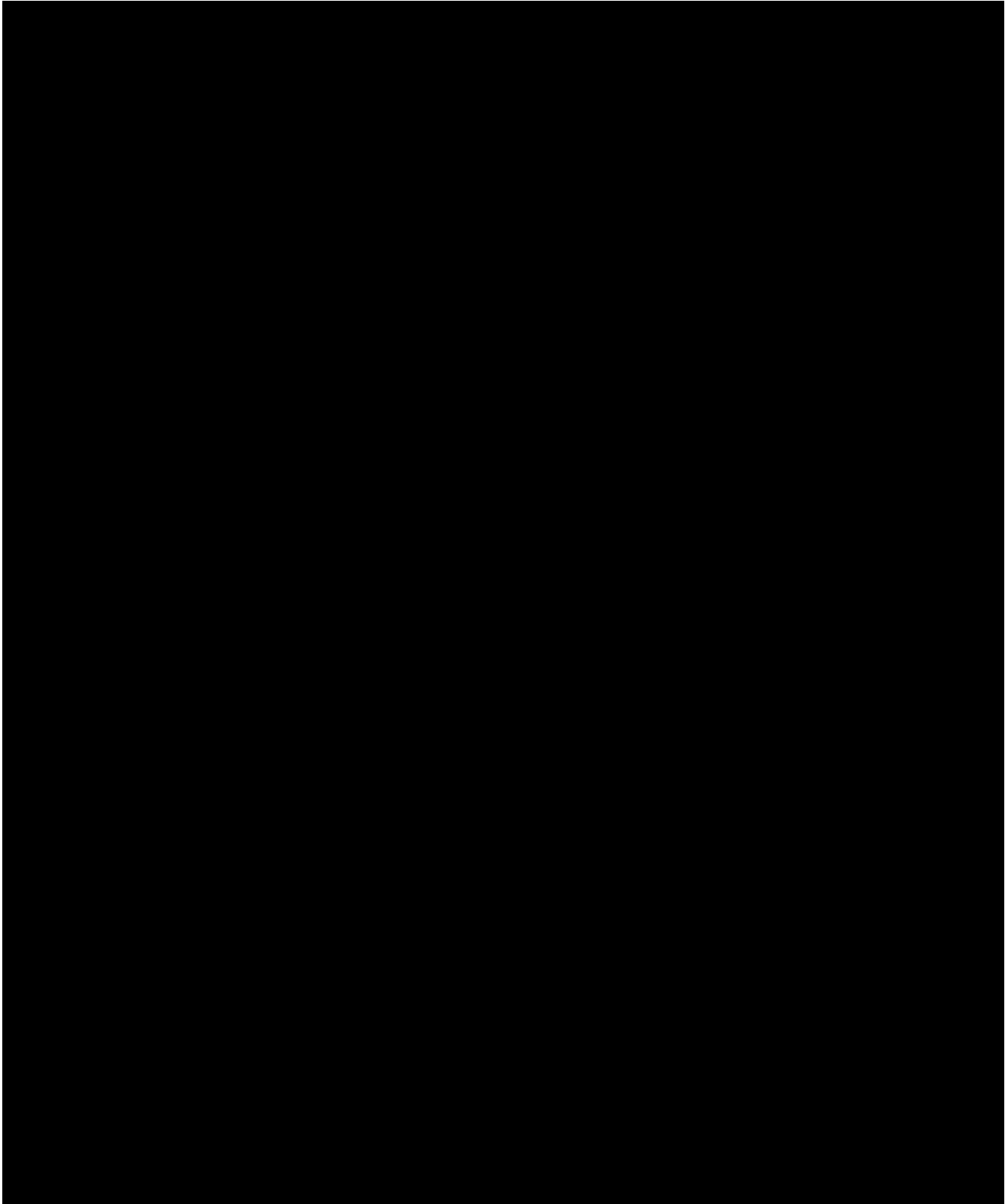
As Of: 10/31/2018
Statement Date: 11/2/2018 Statement Number: 34022

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)







Expenses

		Units	Price	Amount
10/03/2018	Electronic Filing Fee for Reply in Support of Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Argument that Eldorado Hills, LLC's Is Bound by Any Contractual Recitals, Statements, or Language.	1.00	3.50	3.50
10/03/2018	Electronic Filing Fee for 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.	1.00	3.50	3.50
10/03/2018	Electronic Filing Fee for Reply in Support of Defendant Eldorado Hills, LLC's Motion in Limine to Preclude Any Argument that Eldorado Hills, LLC's Is Bound by Any Testimony or Statements by Carlos Huerta Following His Resignation as an Eldorado Hills, LLC Manager.	1.00	3.50	3.50
10/03/2018	Postage: Mail three Replies in Support of Eldorado Hills' Motions in Limine to Charles E. ("CJ") Barnabi Jr. at Cohen Johnson Parker Edwards.	1.00	1.63	1.63
10/10/2018	Courthouse Parking for Joseph A. Liebman to attend hearing on Motions in Limine.	1.00	21.00	21.00
10/10/2018	Shawna Ortega - Expedited transcript of 10/10/18 hearing.	1.00	165.33	165.33
10/11/2018	Electronic Filing Fee for Defendants Peter Eliades, Individually and as Trustees of The Eliades Survivor Trust of 10/30/08, and Teld, LLC's Memorandum of Costs and Disbursements.	1.00	3.50	3.50
10/12/2018	Postage: Mail Defendant Eldorado Hills, LLC's N.R.C.P. 16.1(a) (3) Pre-Trial Disclosures to Michael V. Cristalli and Janiece S. Marshall of Gentile Cristalli Miller Armeni Savarese.	1.00	1.21	1.21
10/16/2018	Clark County Treasurer - Recording fee regarding 10/16/18 hearing.	1.00	40.00	40.00
10/23/2018	Postage: Mail First Supplement to Eldorado Hills, LLC's Pre-Trial Disclosures to Michael V. Cristalli and Janiece S. Marshall at Gentile Cristalli Miller Armeni Savarese.	1.00	1.42	1.42
10/24/2018	Postage: Mail Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs and Appendix of Exhibits thereto to: Michael V. Cristalli and Janiece S. Marshall of Gentile Cristalli Miller Armeni Savarese.	1.00	7.10	7.10
10/25/2018	Electronic Filing Fee for: 1) Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs and 2) Appendix of Exhibits to Defendants Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs.	1.00	3.50	3.50
10/29/2018	Electronic Filing Fee for Eldorado Hills, LLC's Notice of Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-in-Fact Contract Theory.	1.00	3.50	3.50
10/29/2018	Postage.	1.00	0.68	0.68
10/29/2018	Postage: Mail Clerk of the Court's Notice of Change of Hearing to Michael V. Cristalli and Janiece S. Marshall, of the law firm of Gentile Cristalli Miller Armeni Savarese.	1.00	0.47	0.47
10/30/2018	Postage for mailing Second Supplement to Gentile Cristalli Miller Armeni Savarese.	1.00	1.21	1.21

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10/31/2018	Postage: Mail to Gentile Cristalli Miller Armeni Savarese law firm copies of: (1) Defendant Eldorado Hills, LLC's Objections to Nanyah Vegas, LLC's Pre-Trial Disclosures; and (2) Defendant Eldorado Hills, LLC's Objections to Sigmund Rogich, Individually and as Trustee of The Rogich Family Irrevocable Trust, and Imitations, LLC's Pre-Trial Disclosures.	1.00	1.84	1.84
	Document Reproduction	2,808. 00	0.25	702.00
10/31/2018	On-line Legal Research.	1.00	2,698. 00	2,698.00
	Sub-total Expenses:			<u>\$3,662.89</u>

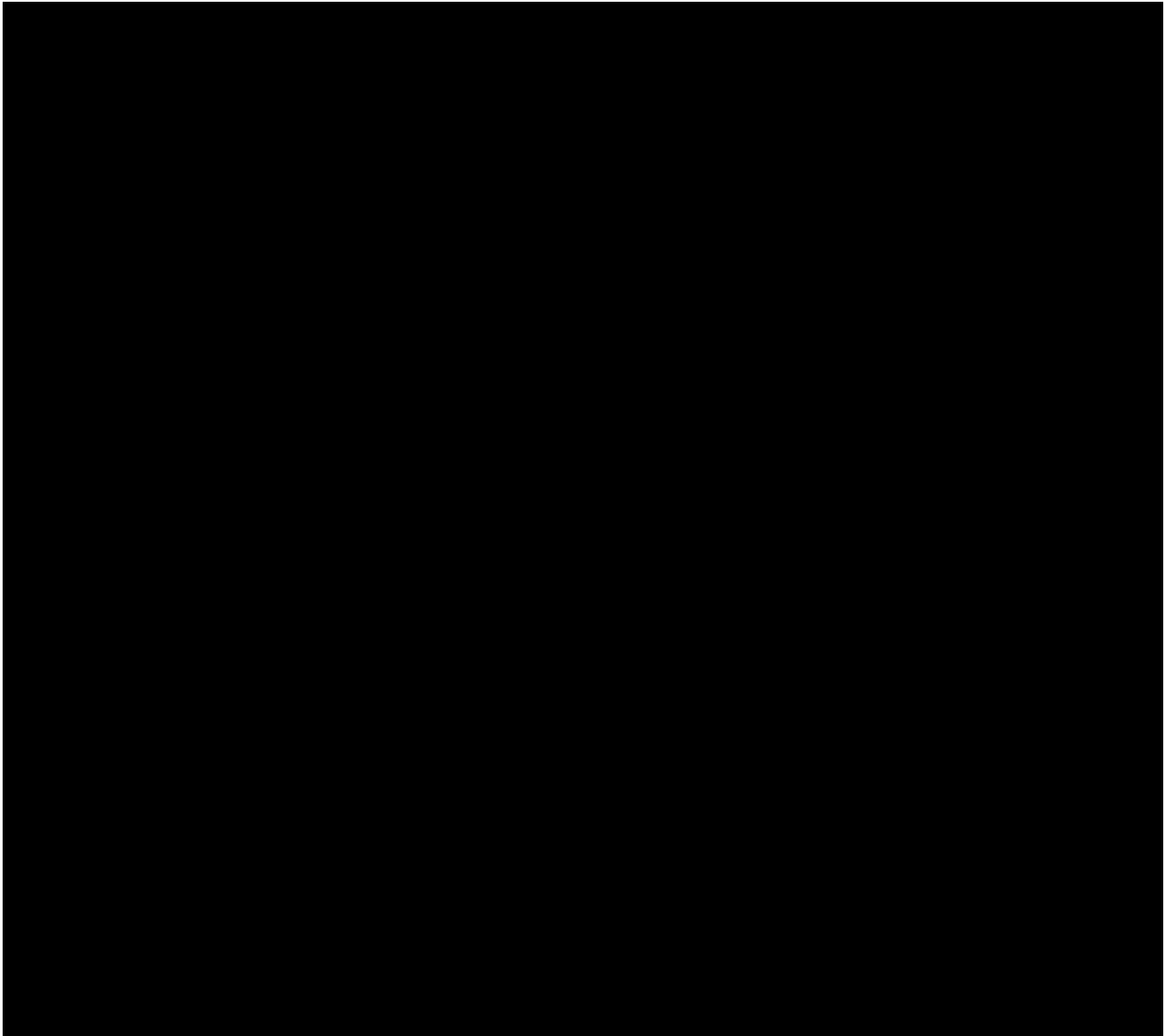
Total Current Billing:	\$46,832.89
Previous Balance Due:	<u>\$34,386.50</u>
Total Interest:	<u>\$132.41</u>
Total Now Due:	\$81,351.80

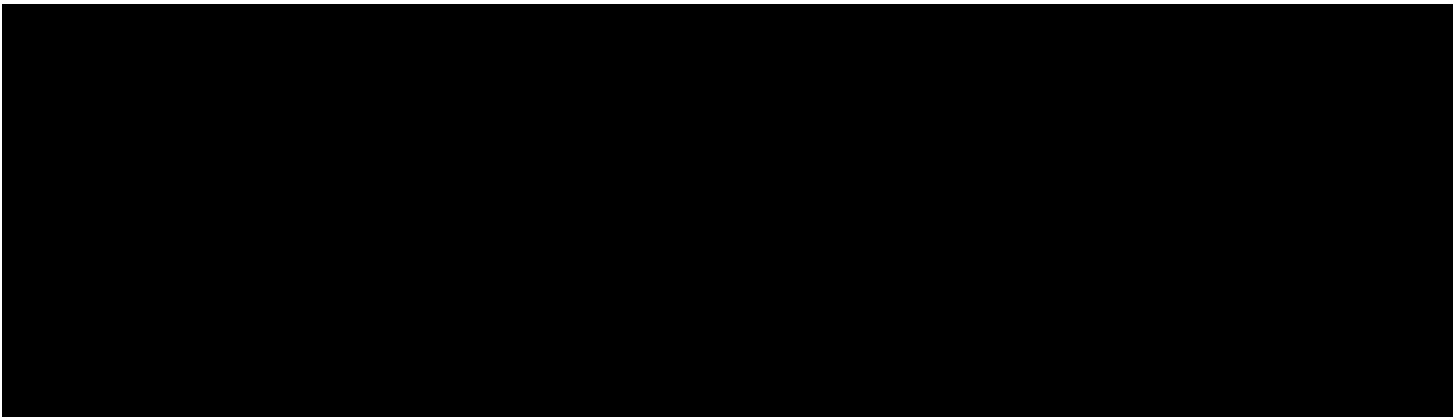
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 11/30/2018
Statement Date: 12/4/2018 Statement Number: 34044

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)





Expenses	Units	Price	Amount
11/01/2018 Courthouse Parking for Dennis L. Kennedy on 11/1/18 to attend calendar call.	1.00	15.00	15.00
11/01/2018 Courthouse Parking for Joseph A. Liebman for attendance at Calendar Call on 11/1/18.	1.00	6.00	6.00
11/02/2018 Electronic Filing Fee for 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.	1.00	3.50	3.50
11/02/2018 Postage: Mailing to law firm of Gentile Cristalli Miller Armeni Savarese copies of Opposition and two Supplements to Objections to Pre-Trial Disclosures.	1.00	3.31	3.31
11/05/2018 Conference Call Charges - Joseph A. Liebman with three other callers.	1.00	1.37	1.37
11/06/2018 Electronic Filing Fee for Notice of Entry of Stipulation and Order to Extend Pre-Trial Memorandum Deadline.	1.00	3.50	3.50
11/06/2018 Electronic Filing Fee for Notice of Entry of Order Regarding Motions in Limine.	1.00	3.50	3.50
11/06/2018 Electronic Filing Fee for Stipulation and Order to Extend Pre-Trial Memorandum Deadline.	1.00	3.50	3.50
11/06/2018 Electronic Filing Fee for Order Regarding Motions in Limine.	1.00	3.50	3.50
11/07/2018 Postage: Mail to law firm of Gentile Cristalli Miller Armeni Savarese copies of Notice of Entry of Order Regarding Motions in Limine and Notice of Entry of Stipulation and Order to Extend Pre-Trial Memorandum Deadline.	1.00	1.63	1.63
11/16/2018 Electronic Filing Fee for 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.	1.00	3.50	3.50
11/20/2018 Electronic Filing Fee for 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) Defendant Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs Until After the Trial Date.	1.00	3.50	3.50
11/20/2018 Mail Notice of Entry of Stipulation and Order to Michael V. Cristalli and Janiece S. Marshall.	1.00	1.21	1.21
Document Reproduction	187.00	0.25	46.75

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11/30/2018 On-line Legal Research.

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Statement No: 34044

1.00 1,403. 1,403.00
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Sub-total Expenses: \$1,502.77

Payments

11/17/2018 Payment Check No. 7739

34,386.50

Sub-total Payments: \$34,386.50

Total Current Billing: \$13,631.52

Previous Balance Due: \$81,351.80

Total Payments: (\$34,386.50)

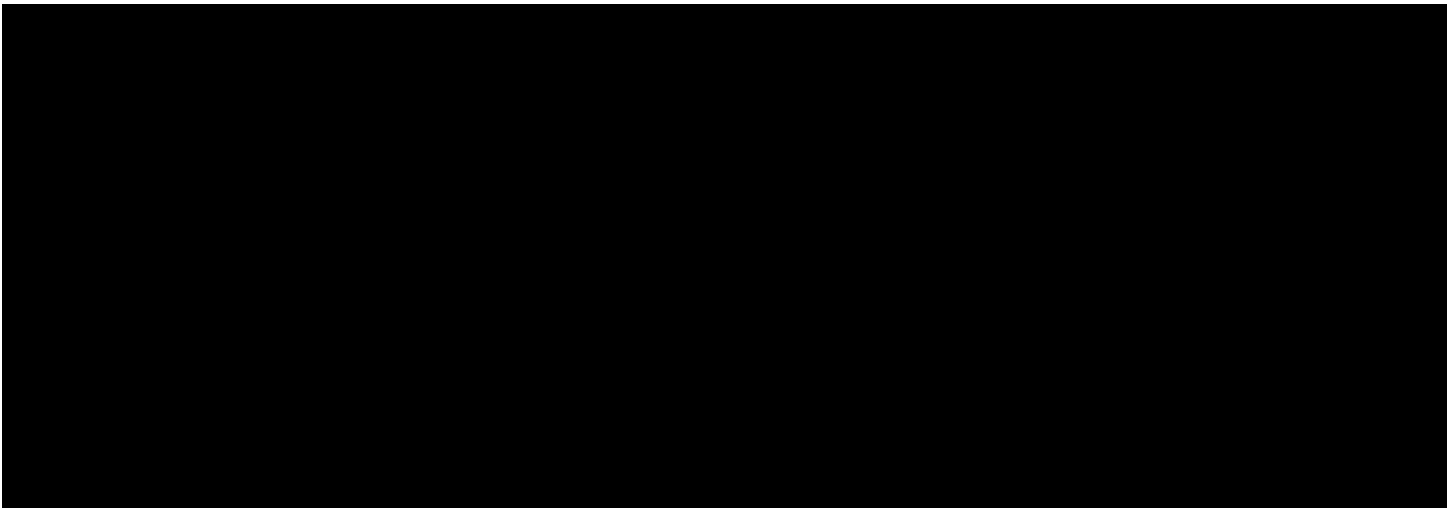
Total Now Due: \$60,596.82

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8984 Spanish Ridge Avenue
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Federal Tax ID: 20-3951680

As Of: 12/31/2018
Statement Date: 1/3/2019 Statement Number: 34220

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)



Expenses		Units	Price	Amount
12/20/2018	Electronic Filing Fee for 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.	1.00	3.50	3.50
12/21/2018	Electronic Filing Fee for 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) Defendant Peter Eliades and Teld, LLC's Motion for Attorneys' Fees and Costs.	1.00	3.50	3.50
	Document Reproduction	29.00	0.25	7.25
Sub-total Expenses:				\$14.25
Total Current Billing:				\$399.25
Previous Balance Due:				\$60,596.82
Total Interest:				\$468.33
Total Now Due:				\$61,464.40

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Bailey Kennedy, LLP
Matter ID: 11272-013

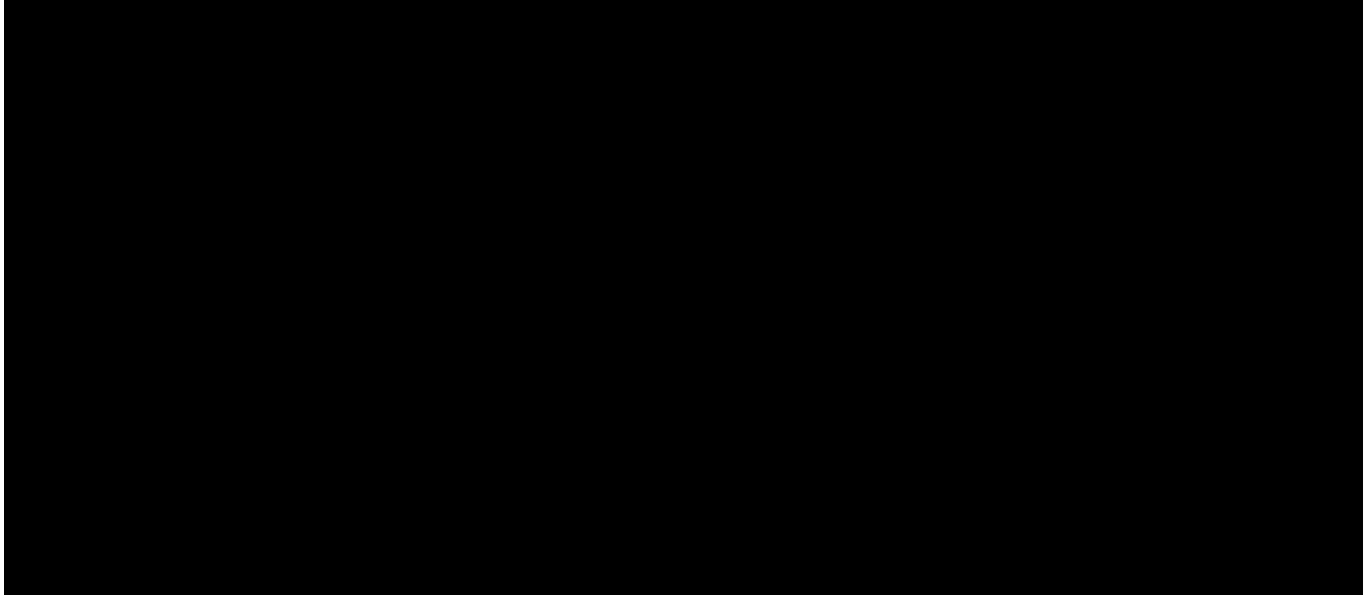
Page Number 2
Statement No: 34220

Bailey Kennedy, LLP
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Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 1/31/2019
Statement Date: 2/4/2019 Statement Number: 34390

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)



Expenses		Units	Price	Amount
01/25/2019	Court Fee for filing of Defendant Eldorado Hills, LLC'S Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment.	1.00	206.00	206.00
01/25/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC'S Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment.	1.00	3.50	3.50
	Document Reproduction	1.00	0.25	0.25
01/31/2019	On-line Legal Research.	1.00	6,956.00	6,956.00

Sub-total Expenses: \$7,165.75

Total Current Billing: \$17,504.50

Previous Balance Due: \$61,464.40

Total Interest: \$604.64

Total Now Due: \$79,573.54

Bailey Kennedy, LLP
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Federal Tax ID: 20-3951680

As Of: 2/28/2019
Statement Date: 3/4/2019 Statement Number: 34575

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)

Expenses

		Units	Price	Amount
02/15/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion for Summary Judgment.	1.00	3.50	3.50
02/21/2019	Courthouse Parking for Joseph A. Liebman on 2/21/19 regarding attendance at hearing on Rogich Defendants/Imitations, LLC's Motion for Relief from the October 5, 2018 Order.	1.00	9.00	9.00
	Document Reproduction	67.00	0.25	16.75
02/28/2019	On-line Legal Research.	1.00	2,233. 00	2,233.00
Sub-total Expenses:				\$2,262.25

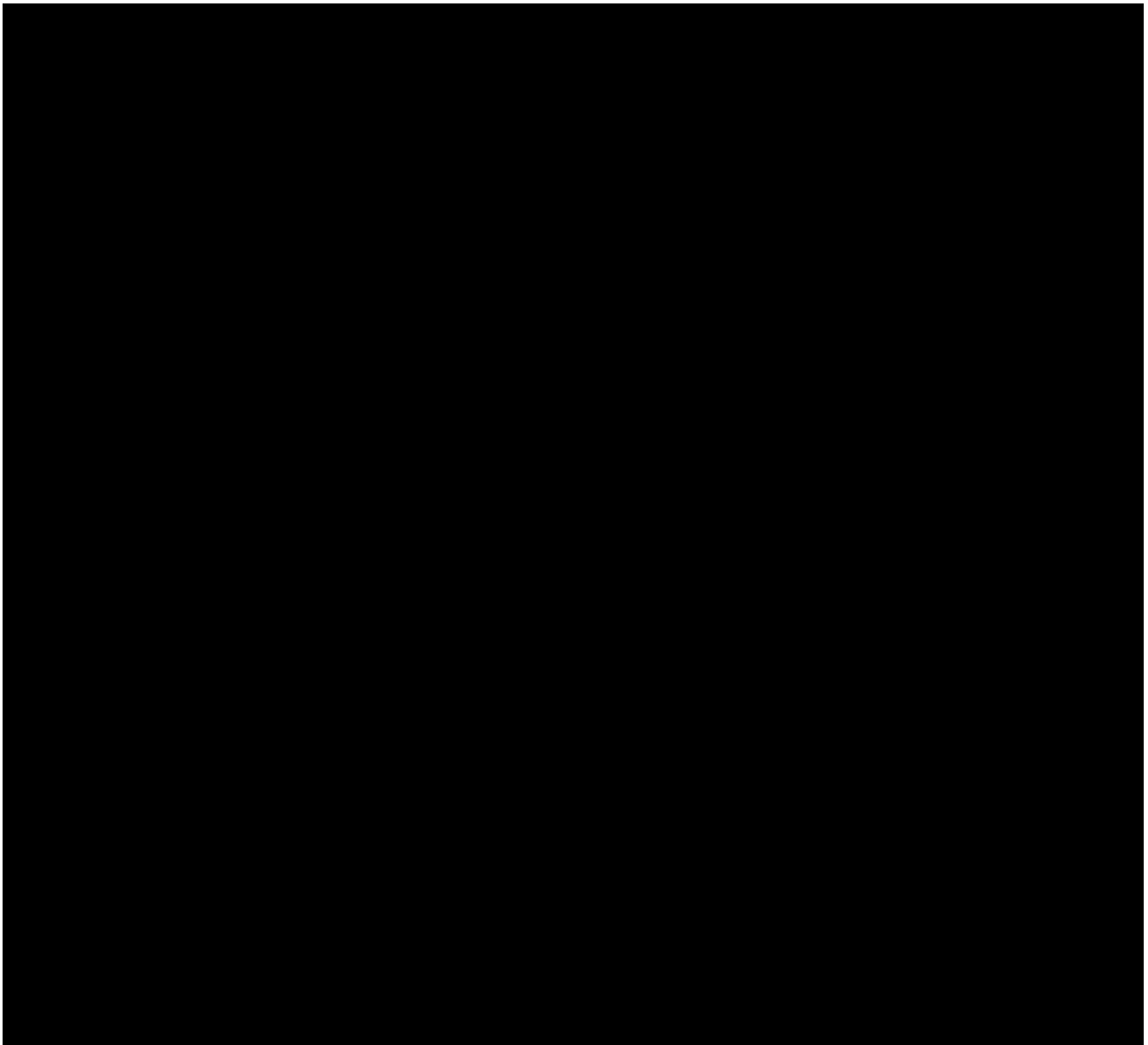
Total Current Billing:	\$11,057.25
Previous Balance Due:	\$79,573.54
Total Interest:	\$608.64
Total Now Due:	\$91,239.43

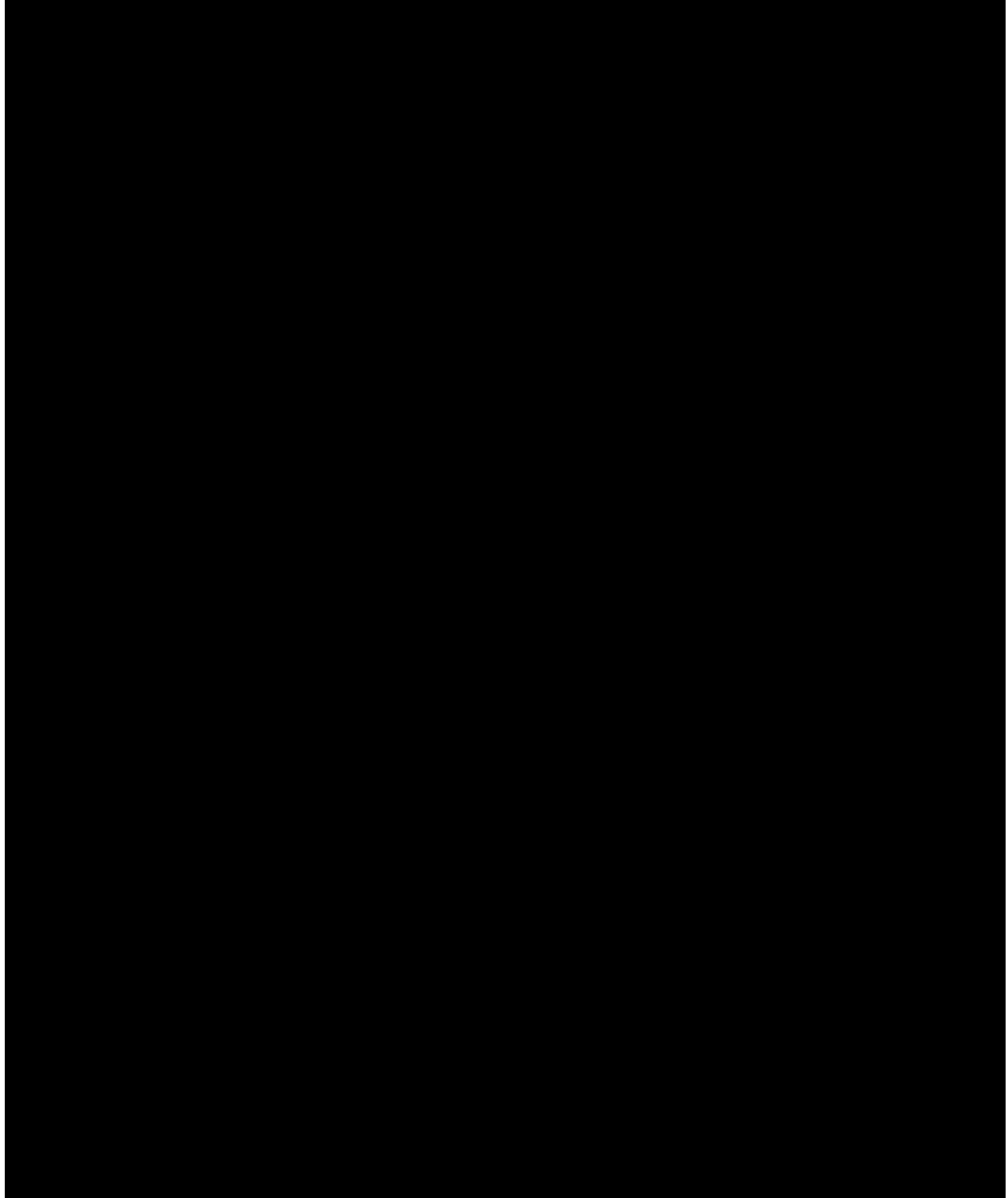
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
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(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 3/31/2019
Statement Date: 4/3/2019 Statement Number: 34942

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)





Expenses		Units	Price	Amount
03/08/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Motion in Limine #5 Re: Parol Evidence Rule.	1.00	3.50	3.50

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03/13/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment.	1.00	3.50	3.50
03/13/2019	Court Fee for filing of Defendant Eldorado Hills, LLC's Motion to Extend the Dispositive Motion Deadline and Motion for Summary Judgment.	1.00	206.00	206.00
03/20/2019	Electronic Filing Fee for 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.	1.00	3.50	3.50
03/20/2019	Courthouse Parking for Joseph A. Liebman on 3/20/19 regarding attendance at Hearing on Nanyah Vegas, LLC's Motions in Limine #5 and #6 and on Rogich/Imitations' Motion to Compel Production of Plaintiff's Tax Returns and for Attorney's Fees.	1.00	12.00	12.00
	Color Photocopies	3.00	0.50	1.50
	Document Reproduction	455.00	0.25	113.75
03/31/2019	On-line Legal Research.	1.00	7,438.00	7,438.00

Sub-total Expenses: \$7,781.75

Total Current Billing:	\$22,374.25
Previous Balance Due:	\$91,239.43
Total Interest:	<u>\$783.68</u>
Total Now Due:	\$114,397.36

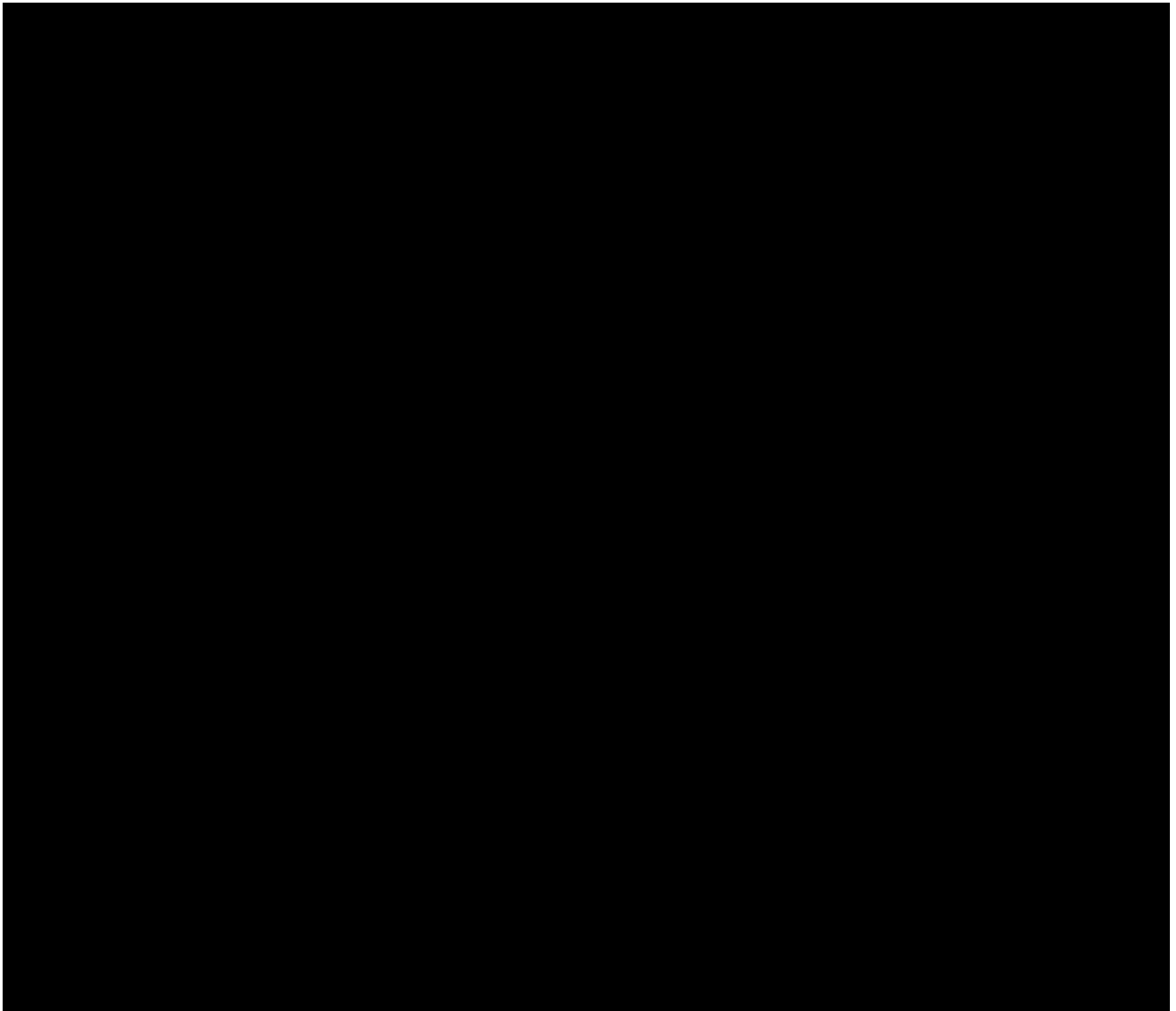
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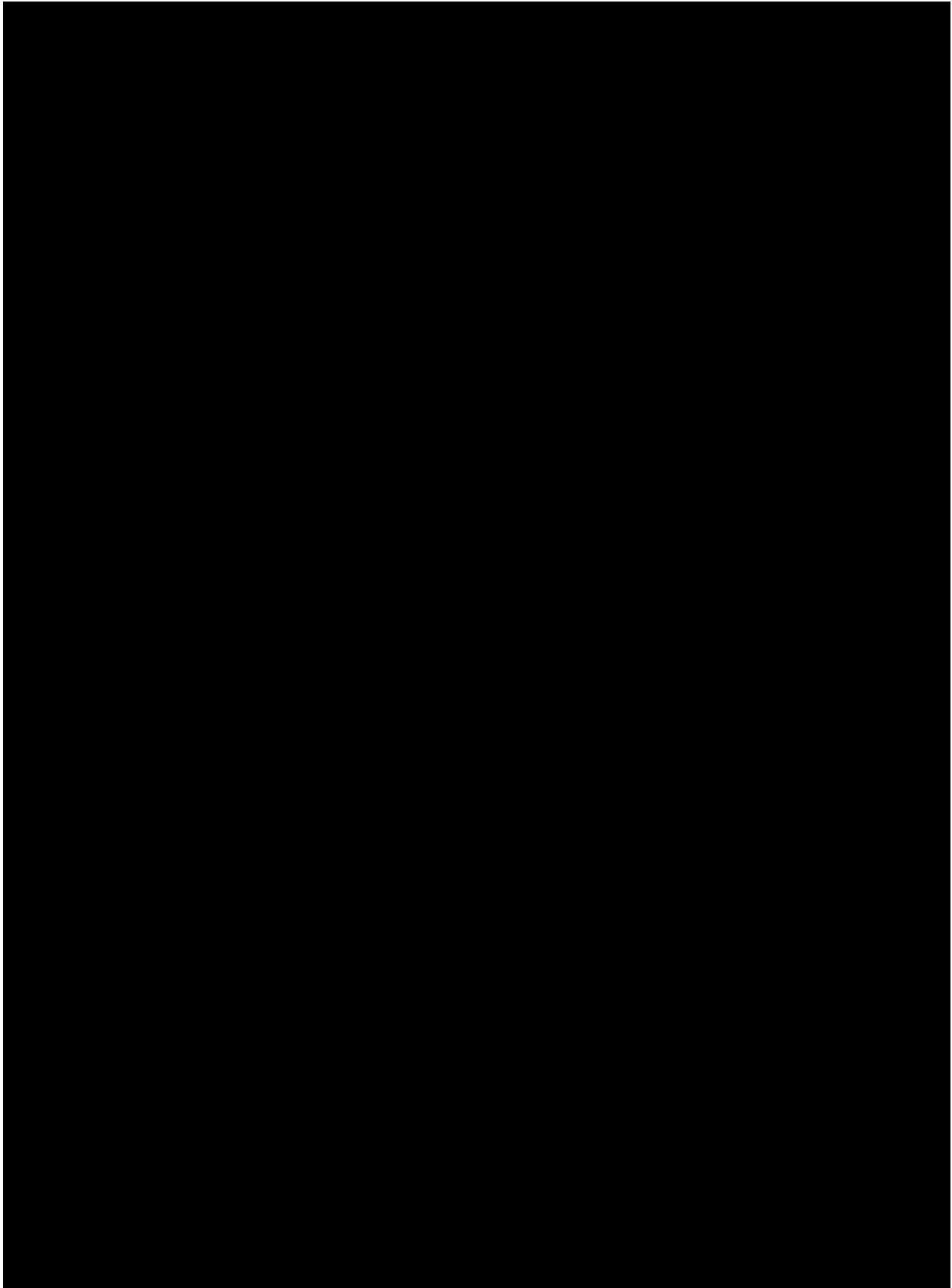
Bailey Kennedy, LLP
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Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

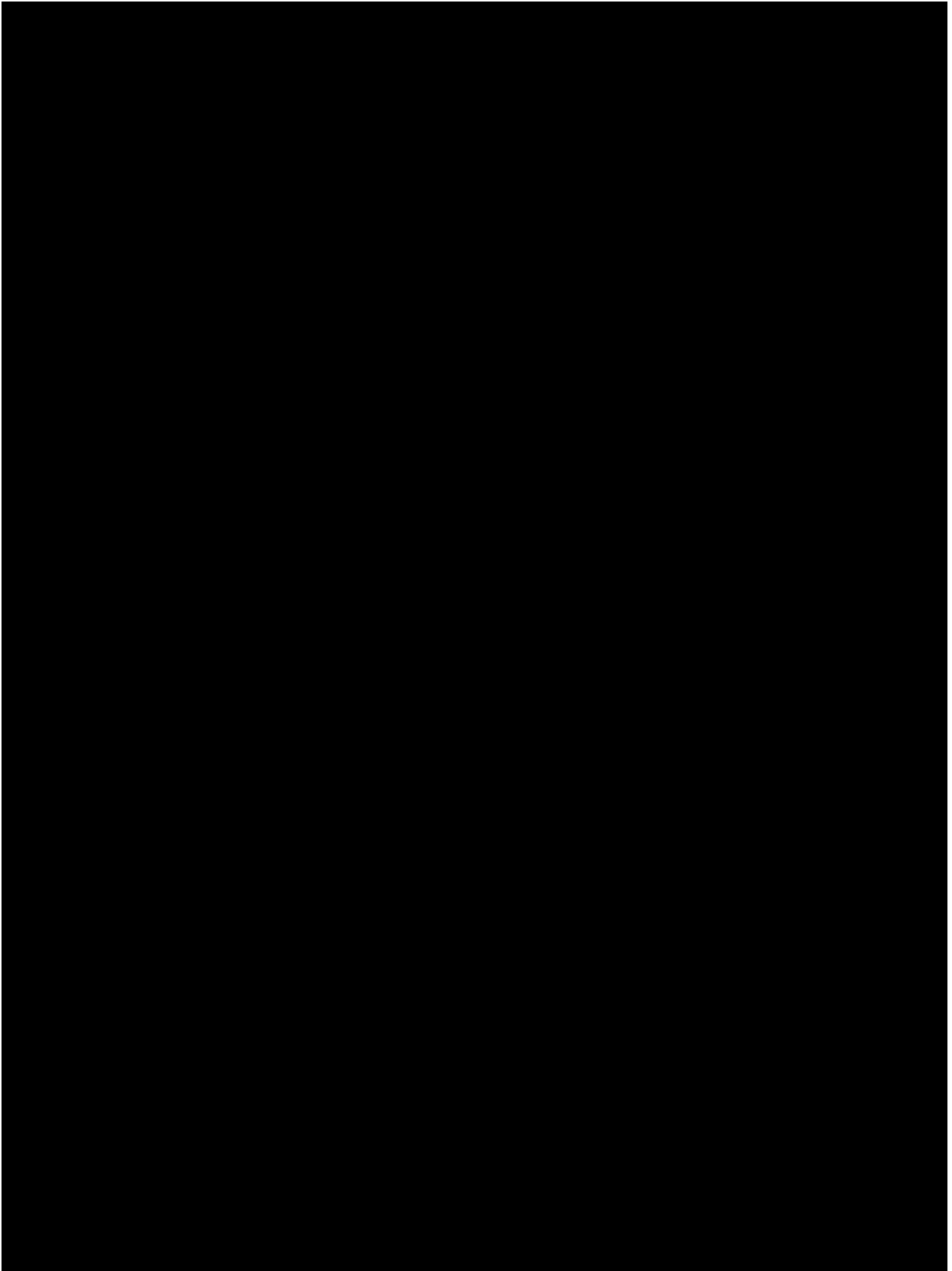
As Of: 4/30/2019
Statement Date: 5/2/2019 Statement Number: 35125

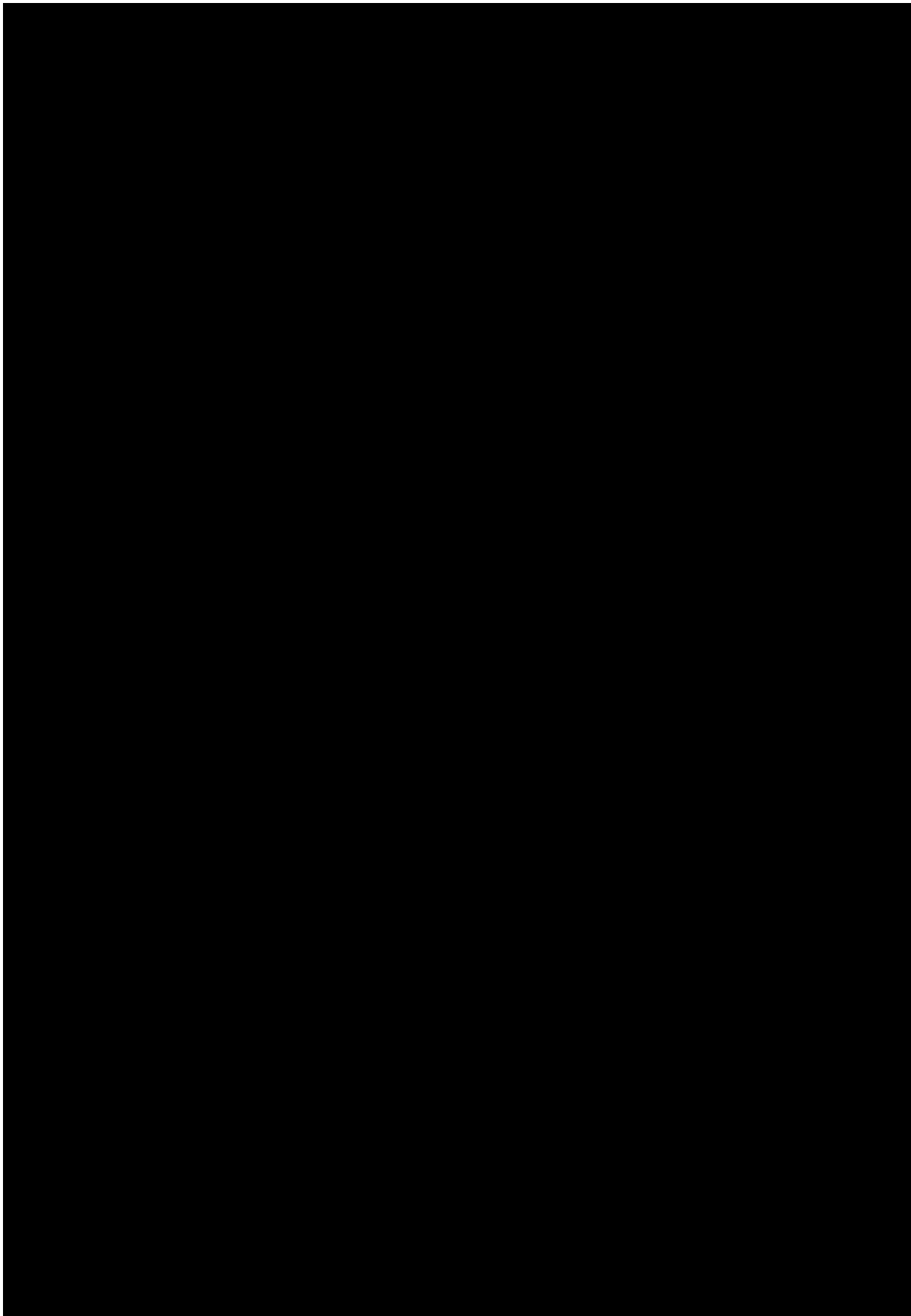
Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)









Expenses

		Units	Price	Amount
04/04/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Opposition to Motion to Reconsider Order on Nanyah's Motion in Limine #5: Parol Evidence Rule.	1.00	3.50	3.50
04/08/2019	Courthouse Parking for Joseph A. Liebman on 4/8/19 regarding attendance at hearing on Nanyah's Motion to Reconsider Order on Motion in Limine #5; Nanyah's Motion to Settle Jury Instructions; and Rogich's two Motions in Limine.	1.00	15.00	15.00
04/09/2019	Electronic Filing Fee for Eldorado Hills, LLC's Notice of Non-Consent to Nanyah Vegas, LLC's Unpleaded Implied-In-Fact Contract Theory.	1.00	3.50	3.50
04/09/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Opposition to Nanyah Vegas, LLC's Countermotion for NRCP 15 Relief.	1.00	3.50	3.50
04/10/2019	Electronic Filing Fee for Notice of Entry of Order Denying Nanyah Vegas, LLC's Motion in Limine #5: Parol Evidence Rule.	1.00	3.50	3.50
04/15/2019	Electronic Filing Fee for: 1) Defendant Eldorado Hills, LLC's Objections to Nanyah Vegas, LLC's 3rd Supplemental Pre-Trial Disclosures, 2) Defendant Eldorado Hills, LLC's Objections to Defendants Sigmund Rogich, Individually and as Trustee of The Rogich Family Irrevocable Trust, and Imitaitons LLC's Third and Fourth Supplemental Pre-Trial Disclosure Statement Pursuant to NRCP 16.1 (a)(3).	1.00	3.50	3.50
04/16/2019	Electronic Filing Fee for Eldorado Hills, LLC's Pre-Trial Memorandum.	1.00	3.50	3.50
04/17/2019	Nationwide Legal Order No. NV177859 - Rush Filing - Deliver Eldorado Hills, LLC's Pre-Trial Memorandum to District Court.	1.00	35.00	35.00
04/19/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Response to Nanyah Vegas, LLC's Request for Judicial Notice and Application of Law of the Case Doctrine.	1.00	3.50	3.50
04/22/2019	Courthouse Parking for Dennis L. Kennedy on 4/22/19 regarding attendance at Trial.	1.00	12.00	12.00
04/22/2019	Courthouse Parking for Joseph A. Liebman on 4/22/19 regarding attendance at Trial.	1.00	15.00	15.00
04/23/2019	Nationwide Legal Order No. NV178539 - Standard Filing - Go to Dept. 27 to pick up trial materials. Deliver trial materials (3 boxes, easel, demonstrative exhibit boards, and dolly) to Bailey Kennedy.	1.00	77.50	77.50
04/29/2019	Outside copying - Holo Discovery Invoice No. 7206 - Print four 36 x 48" exhibit boards.	1.00	259.80	259.80
04/29/2019	Outside copying - Holo Discovery Invoice No. 7203 - Print four 36 x 48" exhibit boards.	1.00	259.80	259.80
04/29/2019	Outside copying - Holo Discovery Invoice No. 7204 - Print documents and organize into binders - eight 3 inch binders - B/W: 4076 pages, Color: 116 pages, Index tabs: 234.	1.00	766.99	766.99

Bailey Kennedy, LLP
Matter ID: 11272-013

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04/29/2019	Outside copying - Holo Discovery Invoice No. 7205 - Print documents and organize into binders - two 2 inch binders and two 4 inch binders, B/W: 2083 pages, Index tabs: 118,.	1.00	332.76	332.76
	Document Reproduction	5,230.00	0.25	1,307.50
04/30/2019	On-line Legal Research.	1.00	5,141.00	5,141.00
	Sub-total Expenses:			<u>\$8,246.85</u>

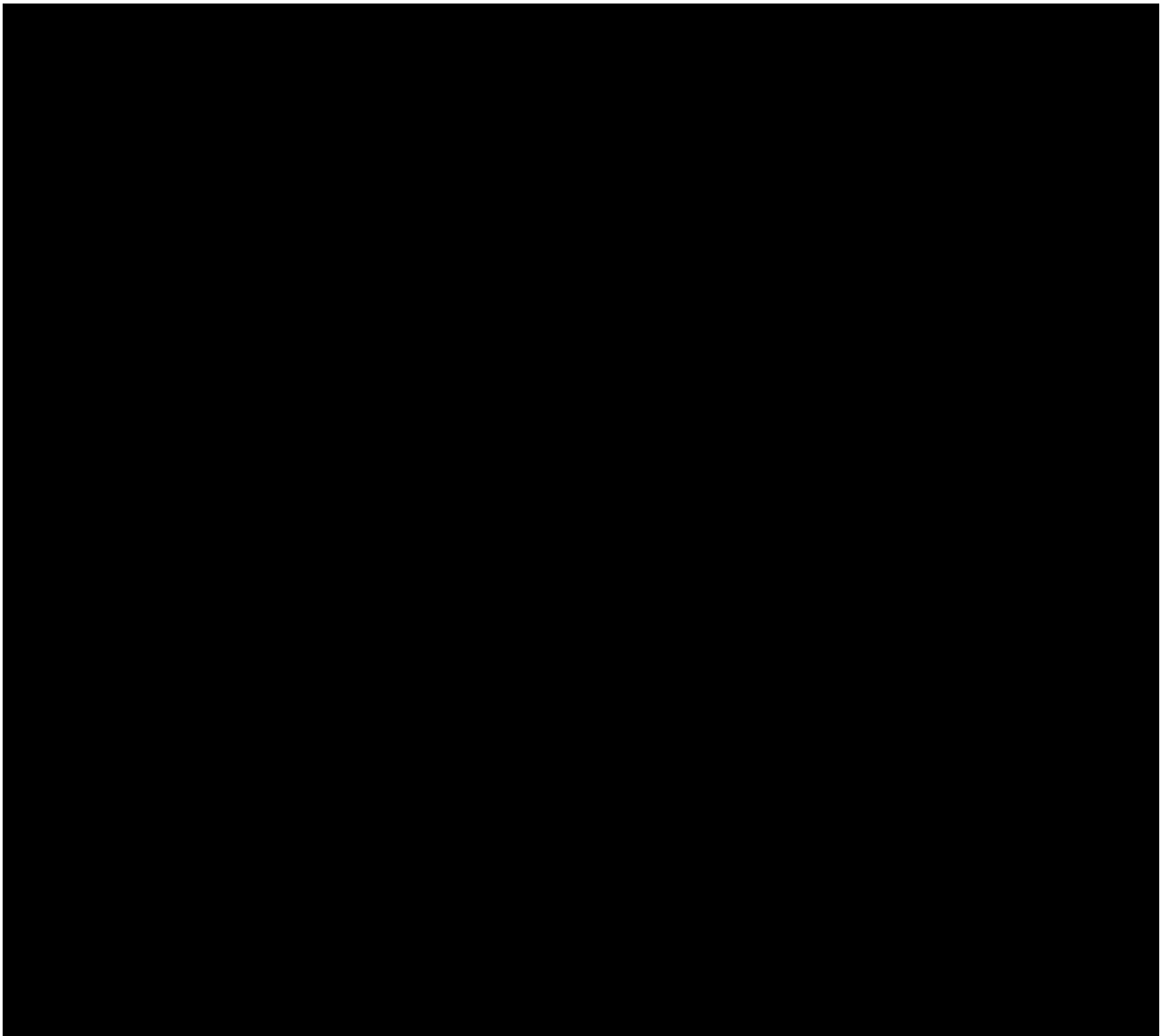
Total Current Billing:	\$82,548.10
Previous Balance Due:	<u>\$114,397.36</u>
Total Interest:	<u>\$894.25</u>
Total Now Due:	\$197,839.71

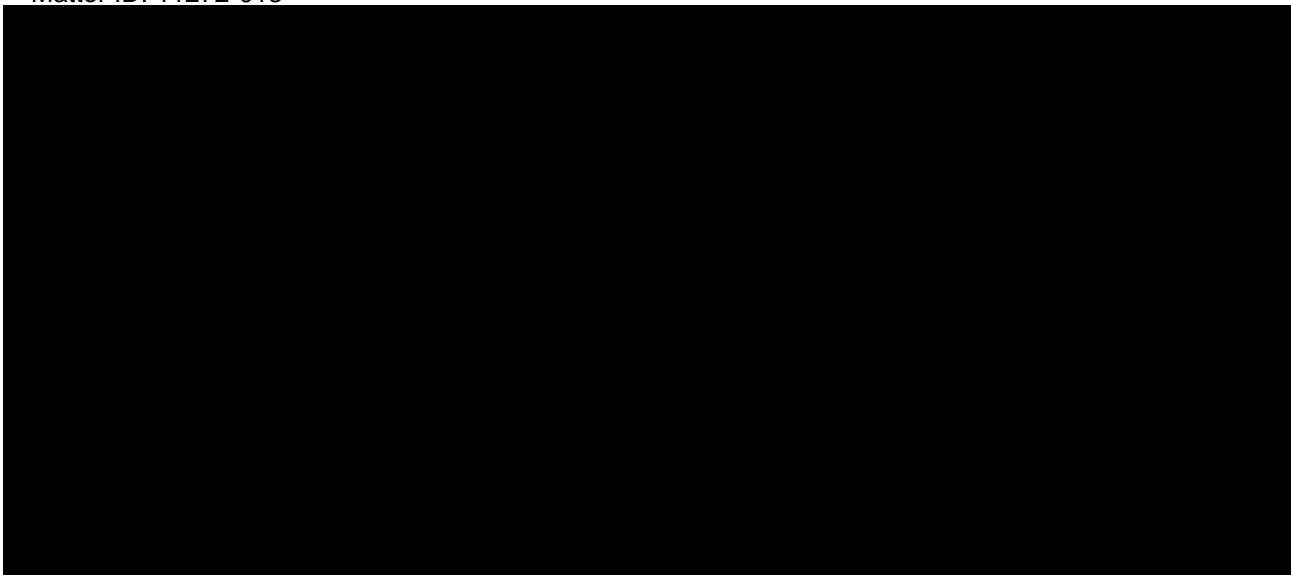
Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 5/31/2019
Statement Date: 6/5/2019 Statement Number: 35324

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)





Expenses		Units	Price	Amount
05/06/2019	Nationwide Legal Order No. NV180282 - Rush Delivery - 3 Hour - Deliver letter and Order to Fennemore Craig for signature on the Order by Brenoch Wirthlin.	1.00	44.50	44.50
05/22/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Motion for Summary Judgment.	1.00	3.50	3.50
05/22/2019	Court Fee for filing of Defendant Eldorado Hills, LLC's Motion for Summary Judgment.	1.00	206.00	206.00
	Document Reproduction	24.00	0.25	6.00
05/31/2019	On-line Legal Research.	1.00	656.00	656.00
Sub-total Expenses:				\$916.00

Total Current Billing:	\$7,988.50
Previous Balance Due:	\$197,839.71
Total Interest:	\$1,118.00
Total Now Due:	\$206,946.21

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(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 6/30/2019
Statement Date: 7/2/2019 Statement Number: 35395

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)

Expenses	Units	Price	Amount
Document Reproduction	10.00	0.25	2.50
Sub-total Expenses:			\$2.50

Total Current Billing:	\$1,727.50
Previous Balance Due:	\$206,946.21
Total Interest:	\$1,943.48
Total Now Due:	\$210,617.19

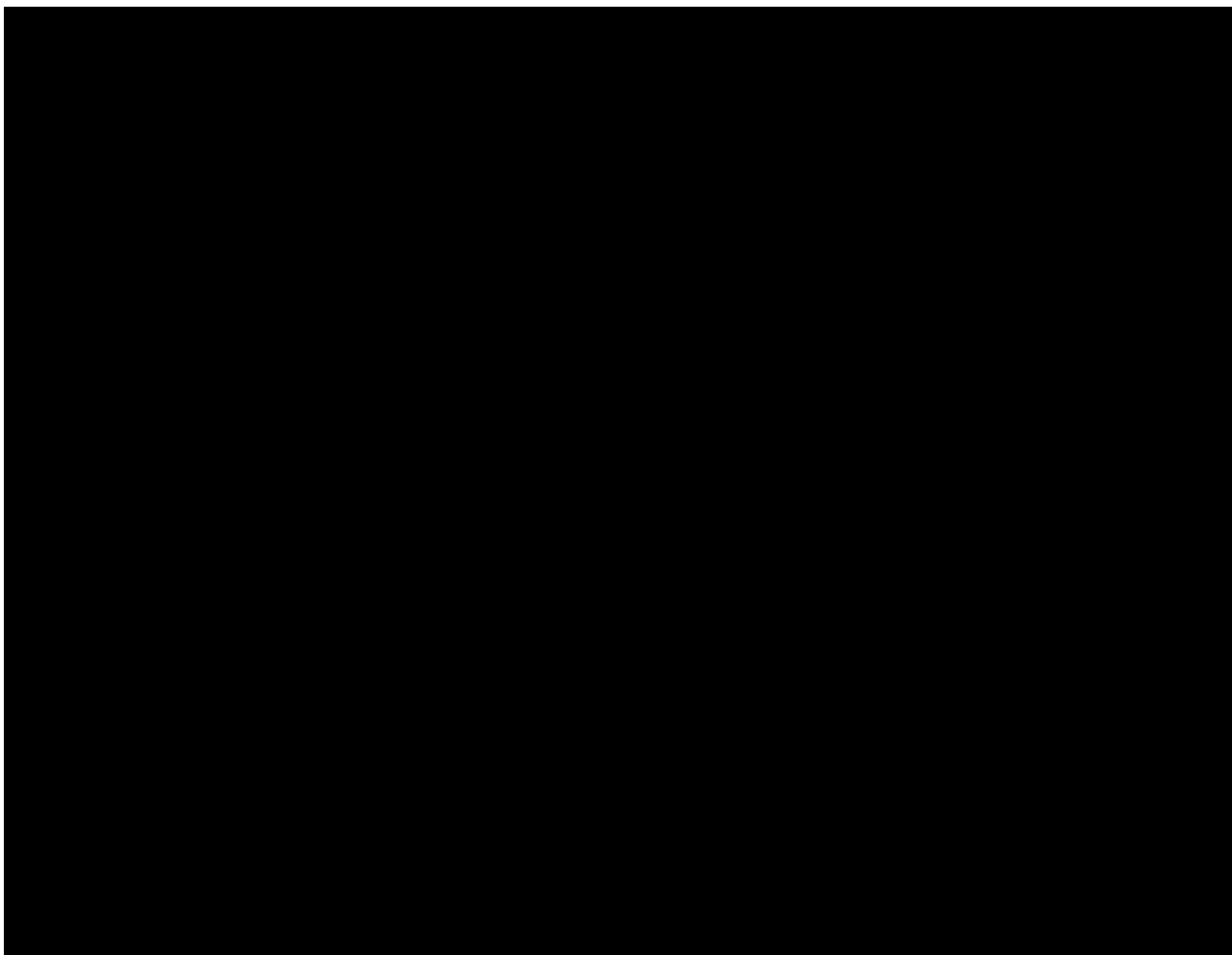
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Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 7/31/2019
Statement Date: 8/2/2019 Statement Number: 35735

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)



Expenses		Units	Price	Amount
07/22/2019	Electronic Filing Fee for Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e).	1.00	3.50	3.50
07/30/2019	Electronic Filing Fee for 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).	1.00	3.50	3.50
07/30/2019	Electronic Filing Fee for 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).	1.00	3.50	3.50
	Document Reproduction	140.00	0.25	35.00
07/31/2019	On-line Legal Research.	1.00	5,483.00	5,483.00
		Sub-total Expenses:		\$5,528.50

Payments

07/18/2019	Payment	Unnumbered Check dated 7/18/19 from Peter Eliades Revocable Trust	46,965.30
Sub-total Payments:			\$46,965.30

Bailey Kennedy, LLP
Matter ID: 11272-013

Page Number 3
Statement No: 35735

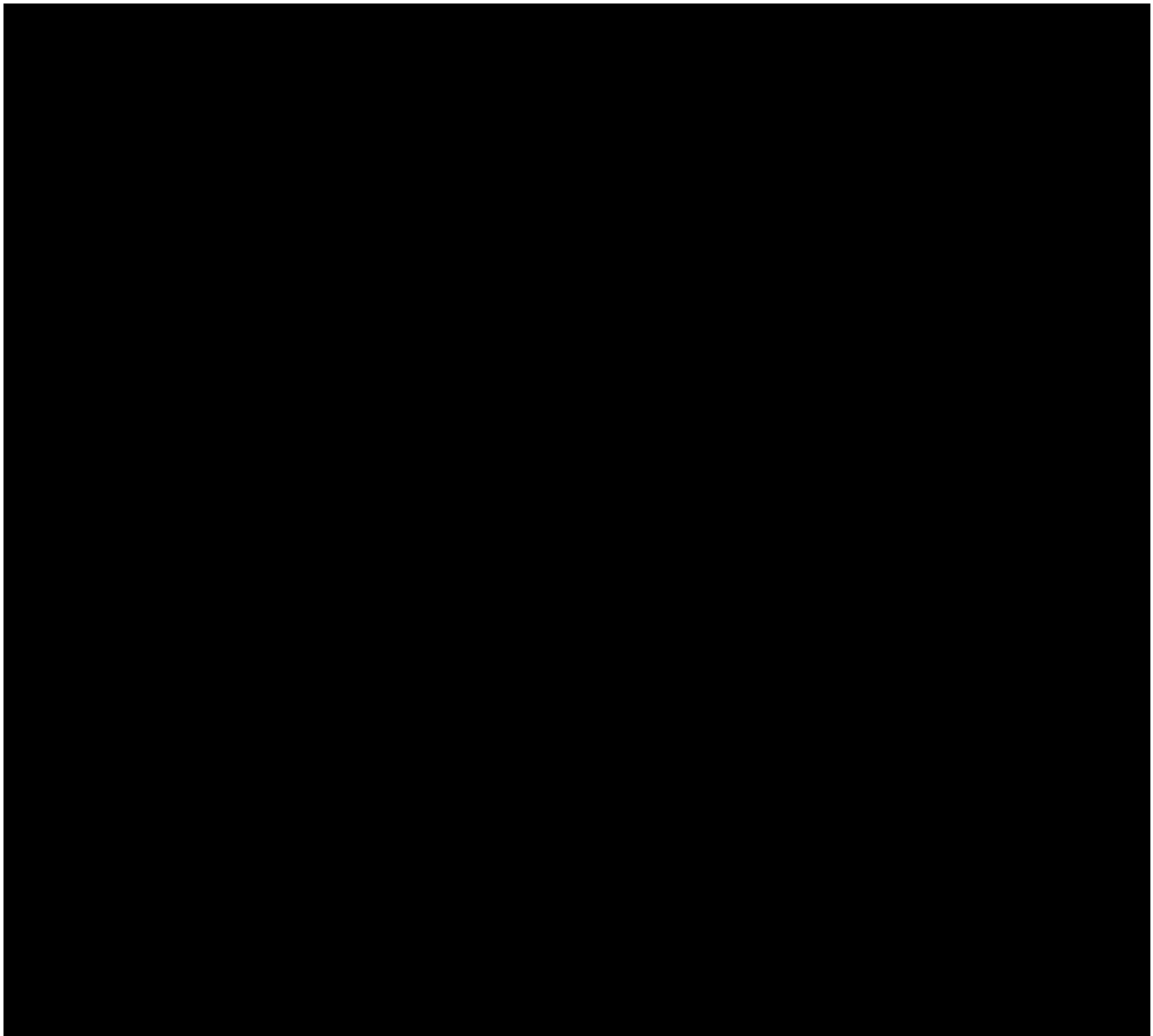
Total Current Billing:	\$18,516.00
Previous Balance Due:	\$210,617.19
Total Payments:	(\$46,965.30)
Total Interest:	<u>\$1,555.03</u>
Total Now Due:	\$183,722.92

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 8/31/2019
Statement Date: 9/4/2019 Statement Number: 35957

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)



Expenses

		Units	Price	Amount
08/12/2019	Postage - Mailed copy of Response to Judge Nancy Alf, Eighth Judicial Court.	1.00	1.30	1.30
08/29/2019	Electronic Filing Fee for, 1) Reply in Support of Defendant Eldorado Hills, LLC's Motion for Summary Judgment and, 2) Reply in Support of Defendant Eldorado Hills, LLC's Motion for Dismissal with Prejudice Under Rule 41(e).	1.00	3.50	3.50
	Document Reproduction	657.00	0.25	164.25
08/31/2019	On-line Legal Research.	1.00	5,067.00	5,067.00
		Sub-total Expenses:		\$5,236.05

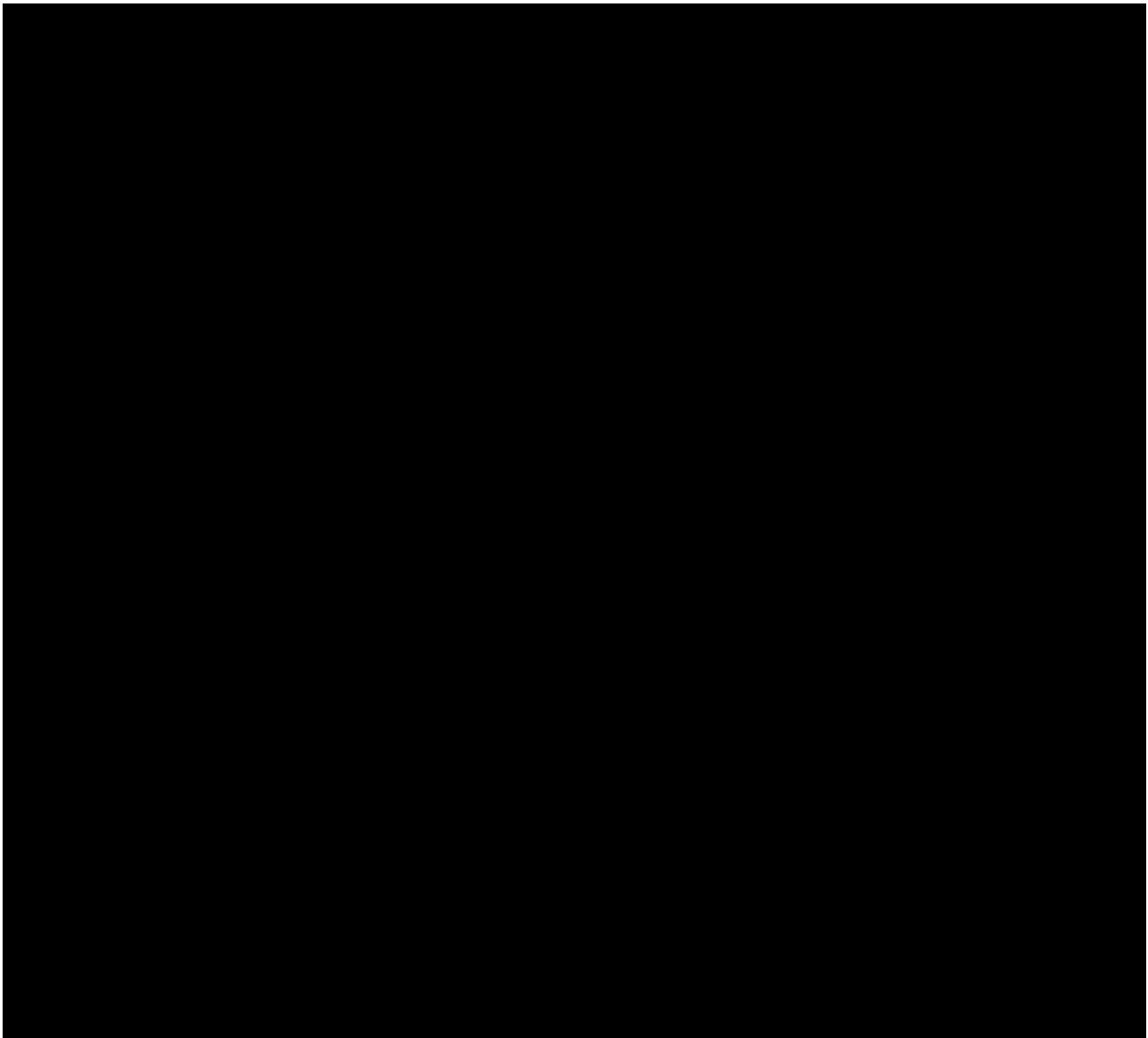
Total Current Billing:	\$17,281.05
Previous Balance Due:	\$183,722.92
Total Interest:	\$1,572.31
Total Now Due:	\$202,576.28

Bailey Kennedy, LLP
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148
(702) 562-8820
Federal Tax ID: 20-3951680

As Of: 9/30/2019
Statement Date: 10/2/2019 Statement Number: 36155

Peter Eliades
9125 South Buffalo
Las Vegas, NV 89113

11272-013 / Nanyah Vegas, LLC (adv.) (A-16-746239-C)



Expenses		Units	Price	Amount
09/05/2019	Courthouse Parking on 9/5/19 for Joseph A. Liebman regarding attendance at hearing on Defendant Eldorado Hills, LLC's: 1) Motion for Dismissal with Prejudice Under Rule 41(e) and, 2) Motion for Summary Judgment; also, hearing on Rogich Defendants' Motion for Summary Judgment.	1.00	12.00	12.00
09/16/2019	Postage: Mail to Judge Nancy Alf a copy of: Eldorado Hills, LLC's Response to Defendants' Emergency Motion for Extension of Time to File Answering Brief (Second Request) and Counter-Request for Affirmative Relief.	1.00	1.30	1.30
09/24/2019	Postage: Mail to Honorable Nancy L. Alf a file-stamped copy of Eldorado Hills, LLC's Reply in Support of Counter-Request for Affirmative Relief.	1.00	1.90	1.90
	Document Reproduction	53.00	0.25	13.25
09/30/2019	On-line Legal Research.	1.00	1,907.00	1,907.00
Sub-total Expenses:				\$1,935.45

Total Current Billing:	\$9,960.45
Previous Balance Due:	\$202,576.28
Total Interest:	\$1,757.47
Total Now Due:	\$214,294.20

Exhibit 2

Exhibit 2

Joseph Liebman

From: Lawrence, Karen <lawrencek@clarkcountycourts.us>
Sent: Wednesday, March 13, 2019 3:53 PM
To: Joseph Liebman
Subject: RE: HEARING DATES IN HUERTA V. ROGICH - A-13-686303-A [FC-Email.FID6567867]

no

From: Joseph Liebman [mailto:JLiebman@baileykennedy.com]
Sent: Wednesday, March 13, 2019 3:26 PM
To: Lawrence, Karen; 'FARNHAM, DENISE'; Downing, Brian
Cc: WIRTHLIN, BRENOCH; msimons@shjnevada.com; WESTOVER, MORGANNE; MAUL, DANIEL; FELL, TOM; LANDIS, CHERYL
Subject: RE: HEARING DATES IN HUERTA V. ROGICH - A-13-686303-A [FC-Email.FID6567867]

Do the Oppositions to those Summary Judgment Motions need to be refiled as well?

From: Lawrence, Karen [mailto:lawrencek@clarkcountycourts.us]
Sent: Wednesday, March 13, 2019 3:22 PM
To: 'FARNHAM, DENISE' <DFARNHAM@FCLAW.com>; Downing, Brian <Dept27LC@clarkcountycourts.us>
Cc: WIRTHLIN, BRENOCH <BWIRTHLIN@fclaw.com>; msimons@shjnevada.com; Joseph Liebman <JLiebman@baileykennedy.com>; WESTOVER, MORGANNE <MWESTOVER@fclaw.com>; MAUL, DANIEL <dmaul@fclaw.com>; FELL, TOM <TFELL@FCLAW.com>; LANDIS, CHERYL <CLANDIS@FCLAW.com>
Subject: RE: HEARING DATES IN HUERTA V. ROGICH - A-13-686303-A [FC-Email.FID6567867]

Items 1 and 3 under 4/4 need to be refiled. In the NOH section put in April 4, 2019 at 9:30 a.m.

From: FARNHAM, DENISE [mailto:DFARNHAM@FCLAW.com]
Sent: Wednesday, March 13, 2019 2:58 PM
To: Lawrence, Karen; Downing, Brian
Cc: WIRTHLIN, BRENOCH; msimons@shjnevada.com; Joseph Liebman; WESTOVER, MORGANNE; MAUL, DANIEL; FELL, TOM; LANDIS, CHERYL
Subject: HEARING DATES IN HUERTA V. ROGICH - A-13-686303-A [FC-Email.FID6567867]

Good afternoon Karen,

These are the dates that everyone has agreed to for the remaining motions to be heard in the above case.

Please confirm that this works for the Court and Judge Allf.

Hearings on 3/20

1. Nanyah's two MILs
2. Rogich's motion to compel

Hearings on 4/4

1. Nanyah's MSJ
2. Nanyah's jury instruction motion
3. Eldorado's MSJ
4. Rogich's MSJ
5. Rogich's MILs

Briefing Schedule

Nanyah's MSJ – Reply due on March 28.

Eldorado's MSJ – Reply due on March 28.

Rogich's MSJ – Oppositions due on March 20, Reply due on March 28.

Nanyah's Jury Instruction Motion – Oppositions due on March 20, Reply due on March 28.

Rogich's MILs – Oppositions due on March 20, Replies due on March 28.

Nanyah's MILs will still go forward on March 20, and Nanyah will file Replies by March 14.

Rogich's Motion to Compel – Opposition due 15; Reply if any due March 18

Thanks,

Denise Farnham

Denise Farnham, Legal Administrative Assistant

FENNEMORE CRAIG

300 S. Fourth Street, Suite 1400, Las Vegas, NV 89101

T: 702.791.8239

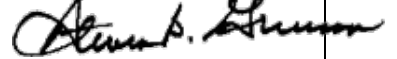
dfarnham@fclaw.com

Legal Administrative Assistant to:

Richard H. Bryan, Samuel S. Lionel, Tyre Gray, Gregory Borgel



CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.



NOAS (CIV)

DENNIS L. KENNEDY

Nevada Bar No. 1462

JOSEPH A. LIEBMAN

Nevada Bar No. 10125

BAILEY ♦ KENNEDY

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Las Vegas, Nevada 89148-1302

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DKennedy@BaileyKennedy.com

JLiebman@BaileyKennedy.com

Attorneys for Respondent/Cross-Appellant

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

**ELDORADO HILLS, LLC'S NOTICE
OF CROSS-APPEAL**

CONSOLIDATED WITH:

Case No. A-16-746239-C

ELDORADO HILLS, LLC'S NOTICE OF CROSS-APPEAL

Please take notice that Defendant Eldorado Hills, LLC ("Eldorado Hills") hereby appeals to the Supreme Court of Nevada from the following Orders of the District Court:

- October 4, 2019 Decision, specifically, the portion of the Court's Order Denying Eldorado Hills, LLC's Motion for Summary Judgment (Exhibit 1); and
- May 22, 2018 Order Granting Partial Summary Judgment, specifically, the portion of the Court's Order Denying Eldorado Hills, LLC's Joinder to Motion for Summary Judgment (Exhibit 2).

DATED this 6th day of November, 2019.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN

Attorneys for Respondent/Cross-Appellant
ELDORADO HILLS, LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 6th day of November, 2019, service of the foregoing **ELDORADO HILLS, LLC'S NOTICE OF CROSS-APPEAL** 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. Email: msimons@shjnevada.com
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Suite F-46 *Attorneys for Plaintiff*
Reno, NV 89509 **NANYAH VEGAS, LLC**

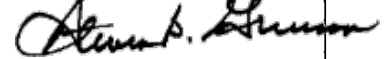
SAMUEL S. LIONEL, ESQ. Email: slionel@fclaw.com
BRENOCH WIRTHLIN, ESQ. bwirthlin@fclaw.com
FENNEMORE CRAIG, P.C.
300 S. Fourth Street, Suite 1400 *Attorneys for Defendant*
Las Vegas, NV 89101 **SIG ROGICH aka SIGMUND**
ROGICH, Individually and as
Trustee of THE ROGICH FAMILY
IRREVOCABLE TRUST, and
IMITATIONS, LLC

MICHAEL V. CRISTALLI Email: mcristalli@gcmaslaw.com
JANIECE S. MARSHALL jmarshall@gcmaslaw.com
GENTILE CRISTALLI MILLER
ARMENI SAVARESE *Attorneys for Defendants*
410 South Rampart Blvd., Suite 420 **SIG ROGICH aka SIGMUND**
Las Vegas, NV 89145 **ROGICH as Trustee of THE**
ROGICH FAMILY
IRREVOCABLE TRUST

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

EXHIBIT 1

EXHIBIT 1



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.

///

RECEIVED

OCT - 4 2019

CLERK OF THE COURT

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).
24
25 ///

26 ///
27

28

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

27
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.

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.

23 ///

24 ///

25 ///

26 ///

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28 ///

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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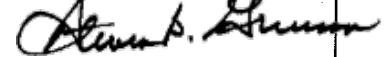
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DISTRICT COURT JUDGE

DEPT XXVII

EXHIBIT 2

EXHIBIT 2



ORDER

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Attorneys for Nanyah Vegas, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-13-686303-C

DEPT. NO.: XXVII

**ORDER PARTIALLY GRANTING
SUMMARY JUDGMENT**

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

BENNETT CROIG

LAS VEGAS

13882013

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

9 **RELEVANT FACTS**

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

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

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

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

19 **LEGAL DETERMINATION**

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

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

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

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

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

1 withdrawn by Plaintiff and should be dismissed.

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

5 Dated this 17 day of May, 2018.

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

9 Respectfully submitted by:

10 SIMONS LAW, PC

11 BY: [Signature]

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

15 Approved:

16 This ____ day of ____, 2018

17 FENNEMORE CRAIG, P.C.

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19 Brenoch Wirthlin, Esq. NV Bar No. 10282
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24 Attorneys for Sigmund Rogich, Individually and as Trustee of
25 The Rogich Family Irrevocable Trust and Imitations, LLC

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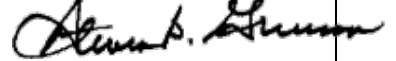
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10 *Trustee of The Eliades Survivor Trust of 10/30/08*
11 *Teld, LLC and Eldorado Hills, LLC*
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DENNIS KENNEDY

LAS VEGAS



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

DISTRICT COURT
CLARK COUNTY, NEVADA

CARLOS A. HUERTA, an individual; **CASE NO.: A-13-686303-C**
CARLOS A. HUERTA as Trustee of THE
ALEXANDER CHRISTOPHER TRUST, a **DEPT. NO.: XXVII**
Trust established in Nevada as assignee of
interests of GO GLOBAL, INC., a Nevada **CONSOLIDATED WITH:**
corporation; NANYAH VEGAS, LLC, A **CASE NO.: A-16-746239-C**
Nevada limited liability company,

Plaintiffs,
v.

NOTICE OF CROSS-APPEAL

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 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.

NOTICE IS HEREBY GIVEN that Defendants Sigmund Rogich, as Trustee of The Rogich Family Irrevocable Trust (“The Rogich Trust”), Sigmund Rogich individually (“Rogich”) and Imitations, LLC (“Imitations” and collectively with the Rogich Trust and Rogich referred to herein as the “Rogich Defendants”), by and through their attorneys of records, Fennemore Craig, P.C., hereby appeal to the Supreme Court of Nevada from the (1) October 5, 2018, Order: (1) Granting Defendants Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, and Teld, LLC’s Motion for Summary Judgment; and (2) Denying Nanyah Vegas, LLC’s Countermotion for Summary Judgment; and (2) March 26, 2019, Order Denying the Rogich Defendants’ NRCP 60(b) Motion, attached as **Exhibit 1**.

DATED: November 7, 2019.

FENNEMORE CRAIG, P.C.

By: /s/ Brenoch R. Wirthlin

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Thomas Fell, Esq. (Bar No. 3717)

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Attorneys for Sigmund Rogich, Individually

and as Trustee of the Rogich Family

Irrevocable Trust and Imitations, LLC

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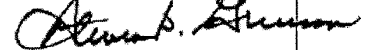
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/s/ Morganne Westover
An employee of **Fennemore Craig, P.C.**

EXHIBIT 1



ORDR (CIV)

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

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

Defendants.

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

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

CONSOLIDATED WITH:

Case No. A-16-746239-C

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

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

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

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

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

UNDISPUTED MATERIAL FACTS

The Relevant History of Eldorado

1. Eldorado was formed in 2005 for the purpose of owning and developing approximately 161 acres of land near Boulder City, Nevada. Eldorado was originally comprised of Go Global, Inc. (100% owned by Carlos Huerta) and the Rogich Trust.
2. In 2007, Huerta contacted Nanyah to invest. In December of 2007, Nanyah wired \$1,500,000.00 which eventually was deposited into Eldorado's bank account. At this time, the Eliades Defendants had no involvement with Eldorado.
3. In October of 2008, approximately ten months later, Teld purchased a 1/3 interest in Eldorado for \$3,000,000.00. Concurrently, The Flangas Trust also purchased a 1/3 interest in Eldorado for \$3,000,000.00, which was subsequently transferred to Teld when the Flangas Trust backed out of the deal. Because Teld ended up with a larger percentage of Eldorado than originally contemplated, it was later agreed that the Rogich Trust would re-acquire 6.67% of Eldorado from Teld. As a result of these transactions, Go Global (*i.e.*, Huerta) no longer owned an Eldorado membership interest, Teld owned 60% of Eldorado, and the Rogich Trust owned approximately 40% of Eldorado.
4. These transactions were memorialized in various written agreements. Nanyah was not

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

The Relevant Agreements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

- explicit language contained in the October 30, 2008 Membership Interest Purchase Agreement (whereby Teld purchased some of the Rogich Trust's membership interests) confirms that the Eliades Defendants would not be responsible for the Rogich Trust's obligations to Nanyah's to pay Nanyah is percentage of Eldorado or the debt to Nanyah.
13. Likewise, the explicit language of the relevant agreements also make it crystal clear that the Eliades Defendants purchased all of their Eldorado membership interests free and clear from any type of encumbrance. Nanyah was not a party to this agreement.
14. Because the relevant agreements are clear and unambiguous, this Court may determine the intent of the parties as a matter of law, and is precluded from considering any testimony to determine the Eliades Defendants' so-called contractual liability. *Krieger v. Elkins*, 96 Nev. 839, 843, 620 P.2d 370, 373 (1980) (holding that testimony used to contradict or vary the written terms of an agreement is a violation of the parol evidence rule).
15. Based on the above, the Eliades Defendants never assumed the Rogich Trust's debt or obligation to Nanyah, and therefore, there is no contractual basis for Nanyah—as an alleged third-party beneficiary—to sue the Eliades Defendants. *See Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 379-80, 566 P.2d 819, 825 (1977).
16. A tortious implied covenant claim will only arise in “rare and exceptional circumstances.” *Ins. Co. of the West v. Gibson Tile Co., Inc.*, 122 Nev. 455, 461, 134 P.3d 698, 702 (2006) (citation omitted).
17. Further, “the implied covenant or duty of good faith and fair dealing does not create rights or duties beyond those agreed to by the parties.” 17A C.J.S. Contracts § 437.
18. Nanyah's tortious implied covenant claim fails because the Court concludes there is nothing within the relevant agreements which imposes any sort of obligation on the Eliades Defendants for Nanyah's benefit.
19. “[C]ivil conspiracy liability may attach where two or more persons undertake some concerted action with the intent to commit an unlawful objective, not necessarily a tort.” *Cadle Woods v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1052 (2015).
20. Nanyah's conspiracy theory relates to the transactions whereby the Eliades Defendants

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

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

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

ORDER

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

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

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

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

4 DATED this 1 day of Oct., 2018.

5
6 Nancy L. Alif
7 DISTRICT COURT JUDGE

8 Submitted by:

9 SIMONS LAW

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

14 Approved as to Form and Content:

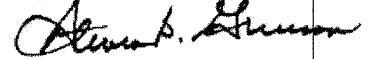
15 BAILEY ♦ KENNEDY

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

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By: [Signature]
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Individually and as Trustee of the Rogich
Family Irrevocable Trust, and Imitations,
LLC



ORDR

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

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

Defendants.

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

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

CONSOLIDATED WITH:

Case No. A-16-746239-C

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

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

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

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

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

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

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

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

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

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

4 DATED this 22 day of March, 2019.

5 Nancy J. AHE
6 DISTRICT COURT JUDGE

7 

8 Submitted by:

9 FENNEMORE CRAIG, P.C.

10 By:

11 Samuel Lionel, Esq.
12 Brenoch Wirthlin, Esq.
13 300 S. Fourth Street, Suite 1400
14 Las Vegas, NV 89101

15 *Attorneys for Defendants Sig Rogich,*
16 *Individually and as Trustee of the Rogich*
17 *Family Irrevocable Trust, and Imitations, LLC*

18 Approved as to Form and Content:

19 BAILEY ♦ KENNEDY

20 By


21 Dennis Kennedy, Esq.
22 Joseph Liebman, Esq.
23 8984 Spanish Ridge Avenue
24 Las Vegas, NV 89148-1302
25 *Attorneys for Defendants PETE ELIADES,*
26 *THE ELIADES SURVIVOR TRUST OF*
27 *10/30/08,*
28 *TELD, LLC and ELDORADO HILLS, LLC*

Approved as to Form and Content:

SIMONS HALL JOHNSTON PC

By:

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



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

CALENDAR CALL

THURSDAY, NOVEMBER 1, 2018

APPEARANCES:

FOR THE PLAINTIFFS: MARK G. SIMONS, ESQ.

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

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

1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 1, 2018, 10:52 A.M.

2 (Court was called to order)

3 THE COURT: Is everyone here then? We have one last
4 matter today at 11:00. Is everyone here on Huerta versus
5 Eldorado Hills? It's a little early, but if you're all -- if
6 you're all here, we can start early.

7 MR. SIMONS: Mark Simons on behalf of Nanyah, Your
8 Honor.

9 THE COURT: Thank you. Let's go ahead and get set up
10 and I'll take appearances from the right of the room to the
11 left.

12 MR. LIONEL: Samuel Lionel representing Rogich, Your
13 Honor.

14 THE COURT: Thank you. Why don't you guys go ahead
15 and get set up at counsel table so I have everybody in order,
16 please. And I see counsel in the back of the room. Are you
17 guys going to appear?

18 UNKNOWN SPEAKER: We're here on the Rowan --

19 THE COURT: Are you all going to appear?

20 UNKNOWN SPEAKER: -- matter, Your Honor.

21 THE COURT: Are you appearing on this matter? No?

22 UNKNOWN SPEAKER: No.

23 THE COURT: What are you here for?

24 UNKNOWN SPEAKER: We're here on the Rowan matter, Your
25 Honor.

1 (Colloquy between unrelated counsel and the Court)

2 THE COURT: Before I continue with the Eldorado Hills
3 case, let me ask counsel to come forward.

4 (Pause in the proceedings)

5 THE COURT: Let me recall Huerta versus Eldorado
6 Hills. Appearances right to left, please.

7 MR. SIMONS: Mark Simons on behalf of Nanyah, Your
8 Honor.

9 THE COURT: Thank you.

10 MR. LIONEL: Sam Lionel representing the Rogich Trust.

11 THE COURT: Thank you.

12 MR. WIRTHLIN: Brenoch Wirthlin, Rogich Trust, Your
13 Honor.

14 THE COURT: Thank you.

15 MR. KENNEDY: Dennis Kennedy on behalf of Eldorado
16 Hills, LLC.

17 MR. LIEBMAN: Joseph Liebman on behalf of Eldorado
18 Hills, LLC.

19 THE COURT: Thank you. All right. I brought you guys
20 in for an additional calendar call just because our time is
21 really precious on the business court cases. I need to make
22 sure you're on track. You're set for a firm setting on November
23 13th. Is the case going to go on November 13th?

24 MR. LIONEL: Your Honor, may I be heard on it?

25 THE COURT: Yes, of course.

1 MR. LIONEL: I'm going to ask you for a continuance.

2 THE COURT: I believe --

3 MR. LIONEL: I've had a few --

4 THE COURT: I believe --

5 MR. LIONEL: My sister, I have two of them, but I now
6 I have one died Friday night. She had been sick for several
7 weeks and we never knew whether she would make it or not and
8 pulling the plug was a problem. We finally pulled the plug
9 Monday night. I was back in Florida. I was in Florida, Your
10 Honor. I had to get a plane. I was down there.

11 The funeral was yesterday in the afternoon. After the
12 funeral I came back last night and I have really -- I had
13 brought work with me. I thought I would use it on the plane,
14 and I didn't pull anything out. I'm just -- it's very difficult
15 for me and the past couple of weeks have been. I'm asking the
16 Court for a continuance.

17 THE COURT: First of all, my deepest condolences to
18 you and your family. I also lost a sister-in-law on Friday, so
19 it's hard.

20 MR. LIONEL: I'm sorry to hear that, Your Honor.

21 THE COURT: It's never easy. So first of all, if
22 everyone consents to a continuance, we'll do it today.
23 Otherwise, I can't. And I am very mindful of the pain of losing
24 a loved one. So let me hear from the other parties.

25 MR. LIONEL: Yes.

1 THE COURT: Have you shared this information with
2 others?

3 MR. WIRTHLIN: Yes, Your Honor. We'll let them
4 address that, I guess.

5 MR. KENNEDY: Your Honor, we have no objection.

6 THE COURT: Mr. Simons?

7 MR. SIMONS: Yes, Your Honor. And I appreciate what
8 he's going through. I just, less than a month ago, had to lay
9 to rest my father-in-law. So it's unfortunate.

10 THE COURT: You know, getting old is not easy, is it?

11 MR. SIMONS: No.

12 THE COURT: For any of us. So I -- I sense that
13 there's a consent to putting the trial off?

14 MR. SIMONS: No, I don't have authority to agree to a
15 continuance. And we've got, as you know, we've got a Rule 41(e)
16 issue because this has already gone up to the Supreme Court and
17 down. That's why we have a firm set. So we're ready to go.

18 THE COURT: Mr. Wirthlin.

19 MR. WIRTHLIN: If I may be heard very briefly, Your
20 Honor. We certainly, as Mr. Simons points out, I believe in his
21 prior motion for a continuance, it's July 2019, we're talking
22 about maybe 60 days. And we have no objection to a firm trial
23 setting after that point at the Court's convenience and Mr.
24 Simon's client.

25 THE COURT: Mr. Simons, if I can accommodate a time of

1 grief for an attorney without affecting the rights greatly of
2 all the parties, I would do that.

3 MR. SIMONS: Here -- I have no problem with --

4 THE COURT: And I understand that you are mindful of
5 the grieving process, but that you haven't had a chance to
6 consult with your client. How long do you think that would
7 take?

8 MR. SIMONS: Just so you know, an email came out this
9 morning as I was sitting out in front. That's when we were
10 notified of this, so I haven't been in communication with my
11 client. I can reach out to him, but clearly my instruction at
12 this time that I have for here today is to move forward with the
13 trial. I will do what I can to reach out to him to get a
14 response back.

15 THE COURT: What's a reasonable amount of time for me
16 to conduct a telephonic on the issue with all counsel? Monday,
17 Tuesday?

18 MR. SIMONS: Monday, I think. That will give me the
19 weekend to get a hold of him.

20 THE COURT: Everybody willing to wait until Monday for
21 a telephonic?

22 If you can consent, let them know. If you can't,
23 we'll hold a telephonic on the issue. But I am going to ask
24 that everyone have their availability for alternative trial
25 dates when we convene that telephonic on Monday.

1 MR. LIONEL: Thank you, Your Honor.

2 MR. WIRTHLIN: Thank you, Your Honor.

3 MR. LIONEL: Thank you very much.

4 THE COURT: And I know that puts you in an awkward
5 position, so I try not to pick on anybody. I try to be equal
6 opportunity to pick on people. But let's convene Monday, say,
7 at 2:30. I'll be in a trial, but I'll take a recess at that
8 time. Monday, 2:30, telephonic. Because I noticed that the --
9 when I had called you to the bench last time, those follow-up
10 things have not been filed on either side. So it didn't look to
11 me like there had been a 2.47. I didn't have the bench briefs I
12 had asked for.

13 MR. SIMONS: We -- if I may approach. We've
14 communicated with regards to seeing if there could be some
15 middle ground. That doesn't seem to be finding any traction.

16 THE COURT: That's fine.

17 MR. SIMONS: The second point was we have exchanged
18 exhibits relatively -- the good news is there's not going to be
19 a lot of exhibits in this case. Maybe at most 100 with probably
20 15 of primary relevance. The -- we're doing our pretrial
21 memorandums. We've agreed to file them on Monday, so that will
22 give us the opportunity to lodge our objections to any of the
23 exhibits. We're going to, after this hearing today, talk, so --

24 THE COURT: Well, I -- I'm sorry for interrupting. Go
25 ahead, please.

1 MR. SIMONS: No, no problem. We're close. We're
2 moving this thing along. It's looking like it could go. All
3 parties are ready except for this little event that has
4 occurred.

5 THE COURT: All right. I'm mindful of the toll that
6 grieving takes, and the stakes are fairly high here. I want to
7 make sure that everyone gets a fair shot. So Monday at 2:30
8 we'll convene a telephonic. And I'll make sure that my office
9 provides the Court Call information for all of you.

10 MR. SIMONS: Okay.

11 THE COURT: Was there anything else to take up today?
12 Telephonic means you don't have to fly in.

13 MR. SIMONS: Thank goodness. And I brought all the
14 exhibits.

15 THE COURT: You can always appear by phone, Mr.
16 Simons. You did bring the exhibits?

17 MR. SIMONS: Yeah. That's okay. We'll talk with
18 that. We're trying to make the --

19 THE COURT: I normally wouldn't want to take them now
20 given the fact that the trial may be continued.

21 MR. SIMONS: Okay. I'll be ready to address any
22 issues on the -- prior to I communicate with my client, I'll
23 advise the defense counsel so that they can either -- if we're
24 agreeable, great, we can work something out. If we're not
25 agreeable, that they can prepare to present their arguments to

1 you.

2 THE COURT: Is it a hardship for you to have to
3 transport exhibits?

4 MR. SIMONS: No, I can take care of it.

5 THE COURT: Are you sure?

6 MR. SIMONS: But thank you for the offer.

7 THE COURT: Because if not, we'll take custody of
8 them.

9 MR. SIMONS: I don't think we need to do that. I can
10 make arrangements to do it.

11 THE COURT: Good enough. All right.

12 MR. SIMONS: Thank you for that offer.

13 THE COURT: Thank you all. Monday at 2:30 on the
14 phone.

15 MR. WIRTHLIN: Thank you, Your Honor.

16 MR. LIONEL: Thank you.

17 (Proceedings concluded at 11:01 a.m.)

18 * * * * *

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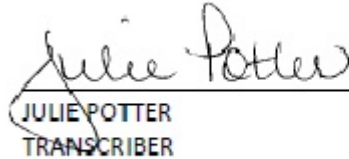
CERTIFICATION

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

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER

SECRETARY OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CARLOS HUERTA, et al,)
)
 Plaintiffs,)
)
 vs.)
)
 ELDORADO HILLS, LLC, et al,)
)
 Defendants.)
)
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 AND RELATED CASES AND PARTIES)

CASE NO. A-13-686303-C
A-16-746239-C

DEPT NO. XXVII

Transcript of Proceedings

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

TELEPHONIC CONFERENCE

MONDAY, NOVEMBER 5, 2018

APPEARANCES :

FOR THE PLAINTIFFS: MARK G. SIMONS, ESQ.

FOR THE DEFENDANTS:

SAMUEL S. LIONEL, ESQ.
BRENOCH WIRTHLIN, ESQ.
JOSEPH A. LIEBMAN, ESQ.

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

1 LAS VEGAS, NEVADA, MONDAY, NOVEMBER 5, 2018, 2:24 P.M.

2 (Court was called to order)

3 THE CLERK: This is Nicole McDevitt, court clerk for
4 Department 27. Can I get --

5 MR. WIRTHLIN: Brenoch Wirthlin -- oh, sorry.

6 THE CLERK: Go ahead.

7 MR. WIRTHLIN: Brenoch Wirthlin and Sam Lionel.

8 THE CLERK: Are we waiting for other parties?

9 MR. LIEBMAN: Joseph Liebman here.

10 MR. SIMONS: Mark Simons here.

11 THE COURT: This is the Judge. I'm calling the case
12 of Huerta versus Eldorado Hills, A686303. Appearances, please,
13 starting first with the plaintiff.

14 MR. LIONEL: Sam Lionel for the Rogich Trust.

15 THE COURT: Thank you.

16 MR. SIMONS: Mark Simons on behalf of Nanyah.

17 THE COURT: Thank you.

18 MR. LIEBMAN: Joseph Liebman on behalf of Eldorado
19 Hills.

20 THE COURT: Thank you. All right. This is the status
21 hearing based upon the oral motion last week at the calendar
22 call to request a continuance.

23 Mr. Simons, have you had the chance to consult with
24 your client?

25 MR. SIMONS: I have, Your Honor.

1 THE COURT: And?

2 MR. SIMONS: He did not consent to a continuance, but
3 in light of your inclination, or at least what I interpreted an
4 inclination to continue the trial, I did obtain availability of
5 my client.

6 THE COURT: Thank you. All right.

7 Mr. Lionel, Mr. Liebman, do you have anything more to
8 add?

9 MR. LIONEL: No, Your Honor, except our calendar.

10 THE COURT: Okay.

11 MR. LIEBMAN: And this is Mr. Liebman. We have no
12 objection to it.

13 THE COURT: Thank you. Based upon the oral request
14 for a continuance of trial, I am going to grant the continuance.
15 You guys only had four days, and I asked for a lot of up-front
16 work for you so that I could be prepared to try the case, which
17 hasn't yet been provided. So I have to take Mr. Lionel at his
18 word that he hasn't had the time, given his family
19 circumstances, to be fully prepared on Tuesday.

20 Now, are -- I'm willing to set some time aside to set
21 you on a date certain today. Have you guys talked to each other
22 about available dates?

23 MR. LIONEL: We have not.

24 THE COURT: Okay. So, Mr. Simons, give us an idea of
25 when you will be available.

1 MR. SIMONS: We'll be available after February 4th.

2 THE COURT: After February 4th?

3 MR. SIMONS: Correct.

4 THE COURT: Okay. And, Mr. Lionel, do you have your
5 availability for you and your witnesses in February?

6 MR. LIONEL: That would be a good month for me, Your
7 Honor.

8 THE COURT: All right. Mr. Liebman?

9 MR. LIEBMAN: Yeah, I have it in front of me
10 [inaudible].

11 THE COURT: I have my JEA here in the courtroom, and
12 she can give you the availability. Are you guys sure that even
13 with jury selection you can do this in four days?

14 MR. LIONEL: I think we need five, Your Honor.

15 THE COURT: Because we only had you set for four days
16 next week. So we're going to need a week. My JEA is here. Can
17 you give us the first --

18 THE JUDICIAL EXECUTIVE ASSISTANT: The week of March
19 11th or the week of March 18th.

20 THE COURT: March 11th or March 18th. Can the parties
21 consult and let me know by the end of business tomorrow which
22 week you want, March 11 or March 18?

23 MR. LIONEL: March 18th is my trial date. I'm on
24 stack.

25 THE COURT: I'm sorry? Do you have a conflict on that

1 day?

2 MR. LIONEL: I have a full week stack begins on that
3 date [inaudible].

4 THE COURT: Okay. What about the 11th, then, of
5 March?

6 MR. LIONEL: I wouldn't want two in a row, Your Honor.
7 In February, particularly the date of availability of Mr.
8 Simons' client.

9 THE COURT: The problem is that I'm booked solid in
10 February. Now, I can double stack you guys so that if something
11 goes off you can have the time, but I wouldn't know that until a
12 week or two in advance.

13 MR. SIMONS: I can't do that. My client will be
14 traveling.

15 THE COURT: Right.

16 MR. SIMONS: So if we could set aside the 11th and the
17 18th of March, those weeks, then I can get back with my client
18 because I didn't have those dates as confirmed by my client.

19 THE COURT: Again, all of you let me know by the --
20 what -- what's a reasonable time, by the close of business on
21 Wednesday, November 7th, to let me know whether you can do March
22 11th and March 18th?

23 MR. SIMONS: I think that's reasonable.

24 MR. LIEBMAN: Joseph Liebman, that's certainly fine
25 with us. It looks good for us, but I'll double check.

1 THE COURT: Okay. And, Mr. Lionel, are you still
2 concerned about March 11th or 18th?

3 MR. LIONEL: Well, I do -- on my calendar is March
4 18th I have -- I have a trial that's supposed to start on a
5 stack.

6 MR. LIEBMAN: Do you know where you are on the stack,
7 Sam?

8 MR. LIONEL: I do not.

9 THE COURT: Well, that will give you a day and a half,
10 then, to see. Because the stacks are usually five or six-week
11 stacks. And I'm mindful of --

12 MR. WIRTHLIN: I will look into that.

13 THE COURT: Yeah.

14 MR. LIONEL: When is the time -- what time Wednesday,
15 Your Honor?

16 THE COURT: By close of business. If you guys will
17 just let my assistant know, my JEA, Karen, whether you want
18 March 11th or March 18th.

19 MR. LIONEL: Will do, Your Honor.

20 THE COURT: Thank you all.

21 MR. SIMONS: Your Honor, just one question. If we
22 have -- is there any difference in the number of court days we
23 would have between those two weeks?

24 THE COURT: No, they're both full weeks.

25 MR. SIMONS: Okay.

1 THE COURT: You'll only get half a day on Wednesday
2 and Thursday because I have motion calendars.

3 MR. SIMONS: So we have a full day Monday, full day
4 Tuesday, half Wednesday, half Thursday, and Friday?

5 THE COURT: That's correct.

6 MR. SIMONS: Okay.

7 THE COURT: And if you think you need more time, I'll
8 -- you can have the Monday or Tuesday of the next week to add on
9 if you can start on Monday the 11th. So let me know by the
10 close of business on Wednesday duration, as well as the date.

11 MR. SIMONS: Okay.

12 MR. LIONEL: Thank you, Your Honor.

13 MR. WIRTHLIN: Will do.

14 MR. LIEBMAN: Thank you, Your Honor.

15 THE COURT: Thank you all.

16 MR. SIMONS: Thank you, Your Honor.

17 (Proceedings concluded at 2:31 p.m.)

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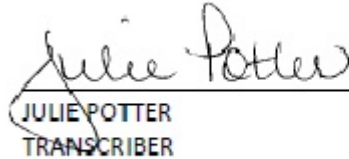
CERTIFICATION

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


AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
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JULIE POTTER
TRANSCRIBER



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

**DEFENDANTS' MOTIONS IN LIMINE
NANYAH VEGAS, LLC'S MOTION TO SETTLE JURY INSTRUCTIONS
MOTION TO RECONSIDER NANYAH'S MOTION IN LIMINE NO. 5**

MONDAY, APRIL 8, 2019

APPEARANCES:

FOR THE PLAINTIFFS: MARK G. SIMONS, ESQ.

FOR THE DEFENDANTS: BRENOCH WIRTHLIN, ESQ.
SAMUEL S. LIONEL, ESQ.
JOSEPH A. LIEBMAN, ESQ.

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

1 LAS VEGAS, NEVADA, MONDAY, APRIL 8, 2019, 10:08 A.M.

2 (Court was called to order)

3 THE COURT: Thank you. Please be seated. Good
4 morning, everyone. Calling the case of Huerta versus Rogich,
5 A686303. Appearances, please.

6 MR. SIMONS: Your Honor, Mark Simons. I apologize. I
7 was in front of Judge Denton. I apologize.

8 THE COURT: We understand.

9 MR. SIMONS: Okay.

10 THE COURT: Thank you.

11 MR. WIRTHLIN: Good morning, Your Honor. Brenoch
12 Wirthlin on behalf of Rogich defendants.

13 THE COURT: Thank you.

14 MR. LIONEL: Good morning, Your Honor. Sam Lionel
15 representing the Rogich Trust.

16 THE COURT: Thank you.

17 MR. LIEBMAN: Good morning, Your Honor. Joseph
18 Liebman on behalf of Eldorado Hills.

19 THE COURT: Thank you. And thank you to all of you
20 for accommodating my schedule in having to move the hearing.

21 All right. So the way that we briefed this is first
22 the defendants' motion in limine, the first two, the first with
23 regard to the general ledger and with regard to contrary
24 evidence. The third thing is the motion to settle jury
25 instructions, and the fourth matter was the plaintiffs' motion

1 to reconsider. I'd like to argue those in that order, please.

2 MR. WIRTHLIN: Yes, Your Honor. Thank you. I'll
3 address that motion in limine regarding the altered ledger.
4 It's fairly straightforward, I think. Our position is, and I
5 think that the pleadings show this and the moving papers with
6 respect to both of these motions in limine and plaintiffs'
7 opposition, that the altered ledger that has been proffered by
8 the plaintiff cannot be authenticated.

9 Plaintiffs' counsel attempted to authenticate it, but
10 I don't think that will work. There was a reference to a
11 purported authentication by defendant Eldorado Hills, which we
12 looked at. And, in fact, all that Eldorado Hills has ever done
13 as far as authenticating or anything related to that concerning
14 the general ledger is that it's -- Eldorado states that this was
15 the ledger that was produced by the plaintiff. But, again, for
16 the reasons that we mentioned in the motion, that will not
17 suffice to allow to be authenticated.

18 Mr. Rogich and Ms. Olivas did not accurately
19 authenticate that ledger. We point that out in our motion.
20 They were confused. There was some difficulty reading it.
21 There were multiple objections to that ledger, and it has been
22 made clear subsequent to those depositions that that was not an
23 accurate ledger of Eldorado Hills.

24 And Mr. Huerta, finally, cannot authenticate the
25 ledger because it -- the altered ledger that was produced by

1 plaintiff because it contains entries, multiple entries, we lay
2 out a spreadsheet with the entries that are made after Mr.
3 Huerta left the company in October 2008. It has several years
4 of -- they're closing entries, but they show that the ledger was
5 printed subsequent to the business divorce several years
6 afterwards, in fact, has no as of date, and the other things
7 that we point out in our motion.

8 So we believe that because this altered ledger cannot
9 be authenticated, it would be confusing to the jury and it
10 should be stricken, as well as the testimony that was elicited
11 improperly based upon it.

12 I don't know if the Court wants me to address the
13 ethical issue that was raised in the plaintiffs' opposition.
14 I'm not -- to be totally candid, I don't really understand it,
15 but I did not receive a Rule 11 letter, so I'll leave it unless
16 the Court would like me to address that. Unless the Court has
17 any questions.

18 THE COURT: It's not necessary.

19 MR. WIRTHLIN: Thank you.

20 THE COURT: Thank you.

21 The opposition, please.

22 MR. SIMONS: First off, we have an October 5, 2018,
23 order that identifies that Nanyah did invest the money into
24 Eldorado, and that that investment was reiterated multiple times
25 in the Court's order. So in that context, apparently the

1 defendants want to challenge the investment again.

2 And it said, look, we know we have some bulletproof
3 evidence, plaintiff, that you have our investment and it's
4 contained in the general ledger. So what did I do? I deposed
5 the relevant people using a specifically identified Bates
6 stamped documents, Plaintiff 547 through 574, deposed Ms. Olivas
7 who testifies, yep, that's Eldorado's general ledger. Deposed
8 Mr. Rogich, yep, that's Eldorado's general ledger.

9 Then later in these proceedings, counsel, sitting over
10 at their table, proposes in a motion for summary judgment,
11 here's Eldorado's general ledger as an undisputed fact.
12 Plaintiff 547 through 574, that Bates stamped document, the one
13 that's been in the case for four -- over five years -- not five
14 years. Maybe five years because of the stay.

15 So this -- but on the eve of trial, all of the sudden
16 these affidavits, those aren't the general ledgers by Mr. Rogich
17 who has no idea what he's talking about because his affidavit
18 said I had nothing to do with the books and records of Eldorado.
19 Oh, by the way, I'm not even speaking on behalf of Eldorado.
20 Mr. Rogich doesn't even have standing to bring his argument to
21 you. He's a witness party. He's not a party and does not speak
22 on behalf of Eldorado. I don't know if the Court noticed that,
23 but that is the situation.

24 So what happens, they file a motion and accuse me of
25 using -- hypothetically they call it an altered document, using

1 a Nanyah document that was Nanyah Bates stamped. Now, if you
2 look at the exhibit that I used, Exhibit 3 to the deposition, it
3 actually shows it was plaintiffs' stamped document, not a Nanyah
4 document. So that was a false statement of fact.

5 So when confronted with the, oops, we really don't
6 know what we're talking about and we're making false
7 representations to the Court, let's switch our argument, we'll
8 call it authentication. Well, it's already been authenticated.
9 Melissa Olivas, who took over the books and records for
10 Eldorado, testified, oh, yeah, that's Eldorado's general ledger.

11 So then we also have counsel saying, yes, that's
12 Eldorado's general ledger, an undisputed statement of fact that
13 was submitted to the Court. So I really don't understand how
14 this motion -- what would even be the purpose of this motion
15 because this document has been already established in this case.
16 It's already been used. It's already been submitted to this
17 Court. The Court has already evaluated the document. So the
18 motion should be denied.

19 THE COURT: Thank you.

20 And do you have anything to add?

21 MR. LIEBMAN: I just want to point out again, I mean,
22 Mr. Simons keeps pointing to a declaration that --

23 MR. SIMONS: I'm sorry.

24 MR. LIEBMAN: -- I prepared.

25 MR. SIMONS: I'm sorry. I need to object here.

1 There's not been an opposition filed.

2 THE COURT: I'll give you a chance to respond.

3 MR. SIMONS: Or with regard to this, Eldorado's
4 counsel has not made an appearance on this issue.

5 THE COURT: I understand.

6 MR. LIEBMAN: I'm not opposing the motion. I'm
7 opposing something Mr. Simons said in his opposition.

8 THE COURT: All right. So make your statement. I'll
9 give Mr. Simons a chance to respond.

10 MR. LIEBMAN: Sure. I apologize. He keeps pointing
11 to a declaration that I prepared saying that I authenticated
12 that ledger. I can't authenticate the ledger. I don't -- I
13 wasn't there at the time the ledger was created. I'm not
14 associated with Eldorado Hills. My declaration says that this
15 document was a document that was produced by the plaintiff
16 pursuant to one of their 16.1 disclosures.

17 I didn't authenticate the document. I just simply
18 said that the plaintiff produced it. Nanyah is the plaintiff.
19 Obviously, Huerta was the plaintiff at one particular point in
20 time, as well, but it appears that they all produced this
21 particular document back before my firm got involved. And
22 that's all I was saying in the declaration was essentially this
23 was something that was produced pursuant to plaintiffs' initial
24 disclosures.

25 THE COURT: Mr. Simons, do you wish to respond?

1 MR. SIMONS: Yes. He can try to distance himself as
2 much as possible, but when you file a document called a summary
3 judgment and you make firm affirmations of fact to this Court
4 that this is Eldorado's general ledger and you sign that
5 document, then you're making affirmations that this is the
6 document on behalf of the party he's representing. He
7 represented Eldorado, told you this is Eldorado's general
8 ledger. That's the point of that argument.

9 THE COURT: Thank you.

10 And the reply, please.

11 MR. WIRTHLIN: Yes, Your Honor, very briefly. We
12 agree with Mr. Liebman's statement regarding the effect of the
13 declaration at issue. We disagree with plaintiffs', I guess,
14 the way that they have construed the October 5th order. It
15 states that there was only an alleged investment at issue.

16 And, finally, Mr. Rogich, certainly while he was,
17 there is no question that Mr. Huerta had control of the books
18 and records. That doesn't mean that Mr. Simons -- or, I'm
19 sorry, Mr. Rogich and Ms. Olivas cannot testify as to what they
20 received shortly before the business divorce in 2008 from Mr.
21 Huerta, represented to be the accurate ledger of Eldorado Hills,
22 and the differences to the altered ledger. Thank you, Your
23 Honor.

24 THE COURT: Thank you. This is the plaintiffs' motion
25 in limine to preclude the general ledger and related testimony

1 at trial. I'm going to defer the matter until trial. I can do
2 that or deny it without prejudice. Because the authenticity is
3 an issue at this point. It's an issue of fact. It's in
4 dispute.

5 The credibility of the witnesses as to whether or not
6 the document can be authenticated at the time of trial will be
7 relevant. So the matter will be deferred until trial or denied
8 without prejudice for determination at trial. And so Mr. Simons
9 to prepare that order, please.

10 The second matter is the -- the second motion in
11 limine by the defendants to preclude the plaintiff and Huerta
12 from presenting contrary evidence as to the taking of \$1.42
13 million from Eldorado Hills as the consulting fee.

14 MR. WIRTHLIN: Yes, Your Honor. Thank you.

15 THE COURT: Mr. Wirthlin.

16 MR. WIRTHLIN: Thank you. So I'll be very brief.
17 This coincides a lot with our argument with respect to the
18 general -- the altered ledger and may, in fact, have the same
19 result. I think that there's a big issue, again, with
20 authentication of the altered general ledger. And if that
21 ruling is deferred until trial, that will probably, I would
22 think, affect this, as well.

23 But the point we want to make here is that Mr. Huerta
24 served as the PMK witness for the plaintiff. And so I believe
25 that this is misconstrued in the opposition as being some type

1 of attempt to limit a third-party witness separately from the
2 plaintiff, and I don't think that that's what this is.

3 What we're doing and what we're saying is that Mr.
4 Huerta, who was the only one who had knowledge of these type --
5 of these issues, clearly, that's why he served as PMK and Mr.
6 Harlap's testimony makes clear he really didn't have any
7 involvement with these issues. Mr. Huerta testified that this
8 was a consulting fee. It was listed as a consulting fee.

9 And the only ledger we believe that can be
10 authenticated shows that it was taken as a consulting fee, not
11 as a distribution in the altered ledger. So we would submit
12 that he should be -- Mr. -- the plaintiff, effectively, should
13 be prohibited from -- and Mr. Huerta, as well, from entering
14 into any testimony that contradicts that.

15 But really briefly, the case law that is cited by
16 plaintiff, we believe, is inapplicable. Chequer does not say
17 that the -- does not prohibit estoppel as to third-party
18 witnesses. The Zillage (phonetic) case really only talks about
19 testimony regarding property, which an individual owner of the
20 property can testify as to the value of the property. And the
21 Magarity (phonetic) case, again, that's between two separate
22 third-party experts. It's inapplicable. Unless the Court has
23 any questions.

24 THE COURT: I don't.

25 Opposition, please.

1 MR. SIMONS: First off, a 30(b)(6) witness can testify
2 as to personal knowledge and knowledge on behalf of an entity.
3 Mr. Huerta was testifying in that deposition in his individual
4 capacity as the managing member of Eldorado when there was
5 discussion going on. So what was discussed was why was this
6 money paid back to Carlos Huerta?

7 And the Court was already presented with this
8 information in Mr. Huerta's declaration August 24, 2014, when
9 there was an original summary judgment filed before the
10 consolidation. And Mr. Huerta told the Court, I, through Go
11 Global, loaned 1.5 million to the company so it could retain the
12 real property with the understanding that this debt was a
13 priority debt that was entitled to repayment.

14 And why was Mr. Huerta advancing funds to Eldorado?
15 Because the Rogich, Mr. Rogich, was broke. He couldn't afford
16 to make his payment. All he could pay was \$770 -- \$770,000. So
17 Carlos Huerta pays \$2.23 million, equaling the 770, so that puts
18 it at about 1.5, and there's 1.5 short because they have to pay
19 Antonio Nevada \$3 million. So where do they go get that
20 shortfall? Money was borrowed by Carlos -- from Carlos Huerta
21 that then was repaid.

22 So there was an attempt with discussion to repay Mr.
23 Huerta rather than identify it as a distribution. Treat it, as
24 we'll call it, a consulting fee, put it on income, and that was
25 discussed. And, in fact, that was discussed in extensive detail

1 and I put it in our opposition where it says that the parties
2 talked about it and that they said we will -- we will either be
3 treated as a distribution and/or treat it as income under this
4 capital differentiation, okay.

5 So what they're trying to do is say, look, we only
6 want a piece of the story. We want Carlos Huerta, I guess, who
7 is a witness, to come in and testify that the 1.42 he received
8 was a consulting fee. Well, that's a witness testimony and the
9 witness already has said and given an explanation. It's two
10 components. I'm getting paid back money. We either treat it as
11 a loan repayment or we treat it as an income. And it was
12 treated as a loan repayment.

13 So you can't limit a witness's testimony. They used
14 this doctrine of equitable estoppel. It's never been applied.
15 There's not a single case that applies to that concept in an
16 evidentiary setting. And really they want to challenge and say,
17 Mr. Huerta, what are you doing about this money that you took
18 from Eldorado, and by the way, we're not a party to Eldorado,
19 we're not speaking on their internal operations.

20 Cross-examine him, present the different documents to
21 him, give us an explanation so we can tell the jury what your
22 explanation is, and then they can make a determination what
23 story they think is most credible.

24 So, again, this all goes back to we know Eldorado
25 received our money, the Court has already found it, we know that

1 it was an investment, we know that Rogich Trust specifically
2 assumed the obligation to repay us back. I don't know why we're
3 trying to limit Mr. Huerta's testimony with regard to this
4 particular issue since it's a cross-examination issue.

5 THE COURT: Thank you.

6 And the reply, please.

7 MR. WIRTHLIN: Thank you, Your Honor. I think the
8 argument kind of illustrates exactly what I'm talking about.
9 It's extremely confusing to the jury. Mr. Huerta, in the
10 original Eldorado's ledger, he said it was taken as a consulting
11 fee. When that didn't work, it was a distribution. When that
12 didn't work, it was a loan.

13 And, again, we're not limiting -- we're not trying to
14 limit Mr. Huerta individually. I mean, if he's going to get up
15 and change his testimony individually from what he said as PMK
16 of Nanyah, I suppose that's his right and we can cross-examine
17 him on that, but that's not what we're talking about.

18 What we're talking about is the limitation of Nanyah's
19 PMK binding Nanyah to the testimony that we cite in our brief
20 that this money was taken as a consulting fee. And he certainly
21 was deposed as a PMK of Nanyah, not of any other entity, and
22 testified as PMK rather than individually. So we would -- we
23 would submit to the Court that Nanyah should be bound by that
24 testimony. Thank you.

25 THE COURT: And you were correct, Mr. Wirthlin, in

1 saying that my ruling on the first motion would probably dictate
2 the ruling on the second motion. These are issues that
3 credibility is going to matter, and they're issues that are in
4 dispute. Whether it was paid as a consulting fee or a loan
5 payment is a factual issue. So I'm not going to, at this point,
6 rule on it. I'm going to defer it to the time of trial to
7 determine the credibility of the witness.

8 And the third motion is with regard to some of the
9 jury instructions.

10 MR. SIMONS: Can I ask for clarification on that last
11 one?

12 THE COURT: Of course.

13 MR. SIMONS: Are you denying it?

14 THE COURT: I'm either denying it or deferring it to
15 the time of trial.

16 MR. SIMONS: Okay. Because if it's a credibility
17 issue, then I think it has to be denied rather than a deferral.
18 And I'm just trying to make sure when I write the order that I'm
19 articulating what you're saying.

20 THE COURT: Then you can indicate that it's denied.

21 MR. SIMONS: Okay.

22 THE COURT: All right. So were there any other
23 questions?

24 MR. WIRTHLIN: That's just a denial without prejudice,
25 Your Honor --

1 THE COURT: That's -- of course.

2 MR. WIRTHLIN: -- correct? Okay.

3 THE COURT: Yeah. Then the third one was the motion
4 to settle jury instructions. And to let you guys know, I've
5 never settled jury instructions pre-trial because I think I have
6 to see how the evidence comes in before -- before we can
7 determine how to instruct the jury. So with that in mind, I
8 don't want to cut you off, but just to give you a tentative.

9 MR. SIMONS: It's my motion.

10 THE COURT: Oh. Sorry, Mr. Simons.

11 MR. SIMONS: If I may lay the groundwork for why it's
12 being presented this way. The Nevada Supreme Court has made it
13 clear in a number of cases that -- and the primary issue on
14 appeal, on reversals, are all based upon jury instructions.

15 So knowing that, the Nevada Supreme Court in the
16 Edigar (phonetic) case has said in order to preserve an issue
17 for appeal, you've got to notify the Court and bring it to the
18 Court's attention what your proposed jury instruction is, and
19 there has to be a clear record as to what the objection is or
20 why the Court has refused to enter an order.

21 Now, typically, the standard is we see what the
22 evidence has been presented. However, there's no prohibition on
23 seeking to settle specific jury instructions prior to trial. In
24 this instance, the jury instruction motion is based upon the
25 clearly established law that it is reversible error not to

1 provide a jury instruction when there's evidence or law
2 supporting the requested instruction.

3 In this case, and I've identified that in our opening
4 brief that identifies we all know it's reversible error if the
5 evidence is available to support a jury instruction, then that
6 jury instruction should be given. Here we have a unique
7 situation because we had a dispositive motion granted by this
8 Court rendering decisions, almost a bifurcated trial.

9 You knocked out a bunch of defendants on cross-motions
10 for summary judgment. Nanyah was moving for summary judgment.
11 Eliadas defendants was moving for summary judgment. The Court
12 entered an order that controls the rest of the case because the
13 Court said two things, undisputed facts and interpret a contract
14 as a matter of law. In those instances, juries don't decide
15 issues of law, only the Court does.

16 So if this Court has rendered decisions and issued
17 rulings as a matter of law, I'm entitled to those instructions
18 and that's what the Nevada law says. As to undisputed facts,
19 Nevada law also says if there are undisputed facts, I'm entitled
20 to jury instructions establishing those undisputed facts. So
21 that's why before trial I need to have a resolution of this to
22 protect the issue on appeal.

23 And the orders that have been submitted -- excuse me,
24 I misspoke. The proposed jury instructions that have been
25 submitted are supported by the evidence that this Court has

1 already ruled. The Exhibit 2 is undisputed fact instruction.
2 There's undisputed facts. That evidence is established in this
3 case.

4 Exhibit 3, the contract interpretation jury
5 instruction. This Court has already interpreted contracts as a
6 matter of law. The jury cannot interpret a contract as a matter
7 of law. So that issue cannot, the jury cannot decide how to
8 interpret the contract because the Court has already interpreted
9 it.

10 We have the surety instruction, which is No. 5, which
11 is that the Court has said that there was an obligation and
12 after approximately a year in time, the Rogich Trust assumed
13 that obligation, specifically assumed it. So the evidence and
14 the Court said as a matter of law the contracts say this. So,
15 therefore, all those instructions are applicable and should be
16 issued in this case.

17 The fourth instruction was the parol evidence rule.
18 And, again, I have to offer that and I do offer that because
19 this Court has already ruled in its October 5, 2018, the parol
20 evidence rule applies, and applied it against my client on a
21 motion for summary judgment. So those facts and those -- that
22 parol evidence instruction is applicable to the case

23 We're going to be talking about the reconsideration
24 of that motion shortly, but that is why this motion has been
25 brought because I need a ruling to establish and protect the

1 record on appeal.

2 THE COURT: Thank you.

3 Opposition, please.

4 MR. WIRTHLIN: Yes, Your Honor. Again, very brief
5 here. The case law we cited, I think, makes clear that the jury
6 instructions need to be settled once the Court has heard the
7 evidence. And I want to make just one distinction here.
8 Plaintiff continues -- well, first of all, we disagree with
9 their -- the way that they construe the October 2018 order.
10 This Court did not find that Nanyah was a third-party
11 beneficiary.

12 This Court found that it was an alleged third-party
13 beneficiary, which leaves that issue directly in the jury's
14 hands. That's the Canfora case we cite. And that is an element
15 of contract interpretation. And to the extent plaintiff
16 suggests that this Court somehow can go around that, go around
17 the Canfora case, we would disagree with that and so does the
18 Supreme Court. So unless the Court has any questions, we'll let
19 it rest on the pleading.

20 MR. LIEBMAN: Good morning, Your Honor. Again, we
21 would obviously agree with you that the motion is premature at
22 this particular point in time, but I do want to point out, and
23 we'll probably get into this a little bit more in detail with
24 the next motion, as well, but if you take your court -- your
25 order on October 5th and then take the jury instructions that

1 have been submitted to you, they're not even in the same
2 ballpark. They're not even in the same universe.

3 What he is purporting to you as to what your order
4 says simply is not contained within that particular document.
5 We went through this a little bit with the parol evidence issue
6 before. I mean, there is -- there is statements in the jury
7 instruction saying that Eldorado has contractual obligations to
8 Nanyah. That's nowhere in the order. It's nowhere within the
9 evidence. You specifically made that finding in response to his
10 parol evidence motion in limine before.

11 This whole surety guarantor theory that he's bringing
12 up for the first time now, those words don't appear anywhere.
13 There's no promissory note in this particular case, there's no
14 guarantee, there's none of those particular things. And,
15 obviously, the parol evidence issue, he keeps saying, well,
16 parol evidence applied to me, so it must apply to everybody
17 else. That's not how it works.

18 You have made findings that Eldorado Hills is not a
19 party to any of the agreements in this particular case. Mr.
20 Rogich's claims are based on being a third-party beneficiary
21 with respect to contracts that were signed by the Eliadas
22 defendants who were parties to those particular agreements.
23 Obviously, the parol evidence rule is going to apply in that
24 instance.

25 To the extent Nanyah brings an unjust enrichment claim

1 against Eldorado Hills because Eldorado Hills is not a party to
2 any of those agreements that the Eliadas defendants are parties
3 to, then obviously the parol evidence rule will not apply
4 because there is no written contract. So that's essentially our
5 position on these points.

6 THE COURT: Thank you.

7 Your reply, please.

8 MR. SIMONS: We've got to be -- make sure we
9 understand the jury instruction as it relates, which is separate
10 and distinct from the parol evidence rule because they're
11 jumping into the parol evidence rule arguments. That's a
12 distinct argument because that is evidence that is admissible
13 into the case or whether it's not.

14 Jury instructions are whether there has been evidence
15 in the case or issues of law in the case that support the
16 instruction irrespective of what has actually occurred at trial.
17 I have your order, October 5, 2018, establishing undisputed
18 facts.

19 For example, let me use this hypothetical. You found
20 as an undisputed fact the car was traveling 25 miles an hour,
21 okay. Now, if you found that in a motion and you dismissed
22 parties saying the car was going 25 miles an hour, do I get to
23 tell the jury that's an undisputed fact, 25 miles an hour? Of
24 course, I do.

25 Now, if you say as a matter of law the speed limit was

1 15 miles an hour, do I get to tell the jury she dismissed
2 parties, as a matter of law the speed limit is 15 miles an hour?
3 Of course, I do. Does the jury have to be instructed on that
4 issue of law because you decided it? Yes.

5 Do the parties get to come and say, oh, no, no, that
6 doesn't go to the jury because there's no evidence supporting
7 it? Well, actually, the evidence is already in the case.
8 You've given me my undisputed facts, you've given me my issues
9 of law, those are contained in the proposed orders. It doesn't
10 have to be bulletproof. It doesn't have to be I absolutely
11 decided this.

12 There only has to be sufficient evidence to support my
13 requested instruction. You've determined that there was an
14 obligation that Eldorado received my money, my client's money,
15 and there was an obligation to repay it that the Rogich Trust
16 specifically assumed. Does a surety instruction come into play?
17 Absolutely, based upon those findings and those interpretation
18 of law.

19 Do the -- do the law -- do the instructions I provide
20 correctly state your undisputed findings? Yes. Do they
21 correctly state the issues of law as you interpreted, which is
22 your responsibility to interpret the contract, not the jury's?
23 Absolutely. There's no competing instructions. And I'm
24 entitled to those instructions based upon the posture of the
25 case since effectively the case was bifurcated with dismissal of

1 other parties.

2 We don't revisit and start all anew and just disregard
3 findings of fact and conclusions of law, which is what has been
4 attempted to do and that's why the motion for reconsideration is
5 important. But so the motion should be granted because the law
6 says I'm entitled to the instructions because they're supported
7 already by the information that this Court has found. Thank
8 you.

9 THE COURT: Thank you. And the -- this is the
10 plaintiffs' motion to settle jury instructions. I'm going to
11 deny it now for the reason that Beattie versus Thomas says that
12 I can't enter jury instructions until I have heard all of the
13 evidence and that I have the obligation to instruct the jury
14 based upon the evidence. However, it's my intention that the
15 jury instructions should be consistent with the October 5th
16 order with regard to the conclusions of law, but it's premature
17 for me to make this -- to grant the motion now.

18 Then we have the fourth motion, which is plaintiffs'
19 motion to reconsider the motion in limine with regard to parol
20 evidence. Mr. Simons.

21 MR. SIMONS: Before I jump into this argument, Your
22 Honor, there's also the issue of my previously filed Rule 15
23 motion that was -- appears to be stricken, as well, with your
24 striking. And so I'm going to, at the end of this, I'd like to
25 prepare a record on that issue.

1 THE COURT: Sure.

2 MR. SIMONS: All right. Just one moment, please.

3 Again, Nevada Supreme Court made it clear that counsel are
4 supposed to or attempt to correct their errors of law at the
5 district court level. That's the purpose of this motion because
6 I believe there's a clear error of law. And the standard allows
7 for review based upon a clear error. It doesn't have to be more
8 evidence or new evidence. It is an incorrect application of the
9 law.

10 The status of what brings -- brought the Motion in
11 Limine No. 5 in place was competing countermotions against the
12 Eldorado defendant -- excuse me, Eliadas defendants. As you
13 understand and referenced to earlier, both sides made motions
14 for summary judgment.

15 My side, based upon Mr. Eliadas' testimony saying, oh,
16 yes, I knew my receipt of my investment, my receipt of my shares
17 was subject to this obligation to repay Nanyah, okay. So that
18 was one of the foundational premises. Eldorado's counsel
19 opposed it saying, hey, you can't get parol evidence ruled, the
20 parol evidence rule excludes or bars yours from consideration.

21 So the Court issued its order dismissing Eliadas
22 defendants and against my client, my client's claims, saying my
23 client could not use the parol evidence rule to introduce
24 information. By definition, this Court held that my client was
25 a party to those contracts as a third-party beneficiary.

1 And then the Court's order goes on and says, because
2 under the third-party beneficiary and the Court's duties and
3 obligations to interpret contracts as a matter of law when the
4 facts are undisputed, the Rogich Trust specifically assumed an
5 obligation to Nanyah, you say that seven times, for the
6 investment. To Nanyah.

7 You determined as a matter of contract interpretation
8 that my client was a third-party beneficiary, and then you
9 applied the parol evidence rule.

10 THE COURT: I don't believe I made that express
11 finding.

12 MR. SIMONS: You -- by your definitions. You did not
13 necessarily have to say Nanyah is a third-party beneficiary, but
14 when you say Nanyah, the Rogich Trust expressly agreed to pay
15 Nanyah pursuant to three separate contracts, you call out that
16 my client is a specifically called-out party to receive a
17 benefit from the contract. Specially identified. And that's
18 what third-party beneficiary says.

19 Then what you say is Nanyah cannot use parol evidence.
20 Well, if Nanyah cannot use parol evidence, Nanyah is clearly not
21 a stranger to the contract. It is a third-party beneficiary.
22 Otherwise, you would have had to consider my parol evidence when
23 you dismissed other parties. You did not. You ruled, without
24 expressly stating it, as a matter of law my client is a
25 third-party beneficiary of those contracts.

1 You said, dismissing Eliadas defendant, that I was not
2 an alleged third-party beneficiary as to them, okay. Because
3 they make a big deal about the word alleged. That is to
4 different parties. So the way your order reads and has to be
5 interpreted, you've already made those determinations.

6 Then what happens, there's a 60(b) motion. Please
7 reconsider. And that 60(b) motion by the Rogich Trust used the
8 identical arguments that it used in its opposition to my Motion
9 in Limine No. 5. The Court evaluated and rendered its order and
10 said my decision on October 5, 2018, is not incorrect, there's
11 no mistake, there's no inadvertence, there's no errors, and the
12 order stands.

13 So then in that setting, we move forwards with the
14 parol evidence rule application, which says that parties cannot
15 use evidence to contradict clear and unambiguous contracts,
16 which you said they are, okay. So by definition, the parol
17 evidence rule should be applicable in this case because you've
18 already made decisions that I'm a third-party -- my client is a
19 third-party beneficiary. You ruled, dismissing parties,
20 applying the parol evidence rule to the contracts and saying I
21 -- it applies to me, my client, because you are a party as a
22 third-party beneficiary.

23 You can't then change your decision right before trial
24 and say I'm going to disregard the parol evidence rule because
25 all that does is prejudice my client. It gives the remaining

1 defendants as if your October 5, 2018, order dismissing clients
2 should never exist. It can't. That's a consequence. It's a
3 bifurcation of proceedings effectively. You render -- when you
4 render decisions and rulings in a bifurcated proceeding, they
5 apply to the rest of the case. That's all I'm seeking for the
6 correct enforcement.

7 Now, let me go through what the Rogich Trust has
8 argued, which was that the Court didn't -- that the Court -- the
9 opposition is just kind of the restatement of you -- your prior
10 decision saying I didn't rule that Nanyah was an express
11 third-party beneficiary, but you did because you -- undisputed
12 facts and as a matter of law in that decision. And you can't
13 get away from the fact that you've already precluded my client's
14 use of parol evidence rule in this case. There's no way to get
15 around that.

16 If you now say parol evidence rule, the defense can
17 come in and put as much parol evidence as they want on these
18 undisputed findings, then you've committed error somewhere.
19 It's either at this stage of the proceedings, or when you
20 dismissed Eliadas. You can't have both. That's why I'm trying
21 to show you on this motion for reconsideration, that we have a
22 major issue. And that's my job to bring it to your attention.

23 THE COURT: And I take no offense.

24 MR. SIMONS: Okay. Because I have to do this to
25 protect the record. We all know that.

1 All right. Then we have the Eldorado argument. And I
2 know the Court would prefer to have the jury make all findings
3 in this case because of the players and because of the
4 complexity. Let them figure it out. That's not their role.
5 Their role is to consider the evidence that is appropriate to be
6 submitted to them. The parol evidence rule bars specific
7 evidence to be submitted to them.

8 Eldorado comes in and makes this very unique argument,
9 the same attorney that represented the Eliadas defendants, by
10 the way, who argued in those proceedings the parol evidence rule
11 barred my client. Now comes in and says, oh, the parol evidence
12 rule doesn't apply because Eldorado is not a party. Yet there
13 was no explanation by this Court.

14 Paragraph 14 of your order uses the incorporation by
15 reference doctrine, okay. That is a doctrine that binds parties
16 that are not signators to a contract when they specifically
17 incorporate prior contracts and terms and conditions. So what
18 we have is an application of an issue of law by this Court,
19 specifically calling out that the Eldorado operating agreement
20 incorporates all these contract that are clear and unambiguous
21 that contain the obligation for the Rogich Trust and Eldorado to
22 repay my client.

23 So the Court makes that. There's an issue there. The
24 Court just ignores the incorporation by reference doctrine in
25 paragraph, I believe it's 14. Was I correct? I thought you

1 were looking at it.

2 THE COURT: I am looking it up. It was 12, 13, and
3 14. Yes.

4 MR. SIMONS: Okay. So I apologize, I did misstate
5 that -- all right. Moving on. I miscited, and I can correct
6 that just shortly. The Court -- then Eldorado had presented
7 this argument with absolutely no support under any case law in
8 the United States that Eldorado is not a party to its own
9 operating agreement.

10 I demonstrated throughout the country that entities
11 are parties to their own operating agreements and/or bylaws
12 because that's how the entity is governed. It is a party. The
13 Court said that Eldorado is not a party to its own operating
14 agreement. If the Court is going to make that ruling, I need
15 that specific finding because that -- there is no support that I
16 have been able to find that would substantiate that legal
17 position. To protect the record, I would need that if the Court
18 is going to deny my motion for reconsideration.

19 So we have two significant issue with regards to
20 Eldorado that it incorporated all the clear and unambiguous
21 contracts to which the parol evidence should apply, and Eldorado
22 is a member and party to its own operating agreement that
23 incorporates those contracts.

24 If there's going to be some kind of creative way to
25 avoid the application incorporation doctrine and that Eldorado

1 is not a party to its own contract, I need that spelled out so I
2 can protect the record. Because there's no, from my
3 perspective, and as briefed to this Court, there's no support
4 for that. So the conclusion is the parol evidence rule has to
5 apply because of the prior rulings.

6 The parties -- this Court was faced with a
7 determination whether there was an investment. The Eliadas
8 defendants and Eldorado previously in this case said there's
9 been no investment. And the Court found undisputed facts. And
10 why? Because Eldorado's own business records contain it.
11 Eldorado's general ledger contains it. Everybody testified to
12 it. The contracts call it out. The contracts specifically
13 reference it in other exhibits.

14 So to find that my client invested 1.5 million into
15 Eldorado, that's really not in dispute. So to allow evidence to
16 come in and say, well, you didn't invest in Eldorado, that
17 violates parol evidence rule because the contract specifically
18 said as a matter of law. There's no dispute. The jury doesn't
19 get to determine now whether we invested or not. That has been
20 taken away from them.

21 With regards to the obligations, the obligations are
22 the obligations. You called them out. So at this point in
23 time, the parol evidence rule should be applicable to stay
24 consistent with its prior -- this Court's prior rulings, barring
25 evidence, any evidence that seeks to vary or contradict the

1 written contracts at issue. Thank you.

2 THE COURT: Thank you.

3 Opposition.

4 MR. LIEBMAN: Good morning, Your Honor. Sometimes you
5 wonder if opposing counsel is reading the briefs you write. He
6 just stood before you and said I can't find any authority
7 anywhere that says that an LLC need not be a party to their own
8 operating agreement.

9 In our brief to the Court, in our opposition to motion
10 for reconsideration, page 4 of 7, I cited you a District of
11 Nevada case, J.P. Morgan Chase Bank v. KB Home, 632 F. Supp. 2d
12 1013, which specifically made a finding in that case that the
13 LLC called South Edge was not a party to the operating agreement
14 in that case.

15 You also don't have to go much further than the actual
16 language of the statute. NRS 86.101 specially says an operating
17 agreement means any valid agreement of the members, of the
18 members, as to the affairs of the limited liability company.
19 I'm not saying an LLC can't be a party to the operating
20 agreement. I've seen plenty where there are. In this case,
21 they did not sign it. They are not listed there.

22 And what else does the operating agreement say? It
23 has a specific paragraph, Section 10.11, which Mr. Simons did
24 not reference, that says no third-party beneficiaries, and then
25 it goes on to say except as set forth in Article IX, which

1 doesn't apply to this situation, this agreement is adopted
2 solely by and for the benefit of the members and its respective
3 successors and assigns, and no other person shall have any
4 rights, interest, or claims hereunder, or be entitled to any
5 benefits under or on account of this agreement as a third-party
6 beneficiary or otherwise.

7 So it seems pretty clear that they didn't want the LLC
8 to be a party to the operating agreement in this case. Even if
9 it were, there's still no language in the operating agreement.
10 There's no language in the membership interest purchase
11 agreements that says that Eldorado Hills owes anything to
12 Nanyah. The agreements don't say that.

13 So the parol evidence wouldn't even keep -- even if
14 Eldorado Hills was a party, it wouldn't keep out any evidence
15 contradicting anything in those agreements because there's
16 nothing that those agreements say that bind Eldorado Hills to
17 Nanyah. The language simply doesn't exist.

18 If there was a contract at issue and Nanyah had a
19 benefit to a contract right against Eldorado Hills, they would
20 have sued Eldorado Hills for breach of contract. They didn't do
21 that. They sued him for unjust enrichment, and as this Court
22 has already determined, that only applies in the absence of a
23 contract. They did that for a reason, and that's why we're
24 where we are today. Thank you.

25 THE COURT: Thank you.

1 MR. WIRTHLIN: Thank you, Your Honor. Two really, I
2 think, important points that kind of highlight what our
3 opposition is to the motion to reconsider and why the plaintiff
4 has not come anywhere near the [indiscernible] standard of
5 providing new evidence of law to the Court.

6 First of all, no matter how many times plaintiff says
7 that this Court found something in the October 2018 order, which
8 it did not find, it won't make it true. I believe that the
9 statement was that the Court, quote, ruled without expressly
10 stating, end quote, that somehow Nanyah was a third-party
11 beneficiary to these contracts, and that is just absolutely
12 inaccurate.

13 Plaintiff -- it was plaintiff's counsel that drafted
14 this order, and it states specifically that Nanyah is an alleged
15 third-party beneficiary. Nowhere did the Court find, nor could
16 it under the Canfor standard and the other numerous authorities
17 that we cite, that Nanyah was a third-party beneficiary to these
18 agreements. That is absolutely an issue for the jury, and
19 that's really what's going on here.

20 Plaintiff knows that it has some serious issues with
21 its claim that it's a third-party beneficiary to these
22 agreements. It knows that it has serious issues with whether or
23 not there was ever an investment by it into Eldorado Hills as
24 opposed to CanaMex, which we've mentioned numerous times. The
25 K-1s show that the investment, if any, was in CanaMex, and

1 plaintiff absolutely has to prove that to the jury. Other than
2 that, unless the Court has questions, we'll rest on our
3 pleadings.

4 THE COURT: Thank you.

5 The reply, please.

6 MR. SIMONS: The October 5, 2018, order states,
7 paragraph 4, Nanyah was not included as a named signatory on the
8 agreements. However, the agreements identified that the Rogich
9 trust specifically agreed to assume the obligation to pay Nanyah
10 its percentage interest in Eldorado or to pay Nanyah's 1.5
11 million invested into Eldorado. Finding of fact.

12 Then the Court goes through the agreements
13 memorializing the following. Exhibit D clearly and
14 unequivocally states the following, the Rogich Trust confirms
15 that certain amounts have been advanced to Eldorado and affirms
16 Nanyah's 1.5 million investment into Eldorado. And then the --
17 I'm not going to read out all the provisions because it's in the
18 briefing.

19 There's -- this Court's October 5, 2018, order has
20 some kind of consequence, and that consequence by application of
21 the parol evidence rule. It's not as if this is a revisiting of
22 the same players. This Court kicked out defendants applying the
23 parol evidence rule against my client, holding my client as a
24 party to these contracts. Therefore, there's a consequence to
25 that order.

1 We can't unwind that order. We cannot now bring in
2 the Eldorado -- Eliadas defendants a week before -- two weeks
3 before trial. There's a consequence and that consequence is the
4 parol evidence rule does apply, as I've stated in the brief.
5 Thank you.

6 THE COURT: Thank you both. This is the plaintiffs'
7 motion to reconsider the prior -- it's a recent order, actually.
8 And the motion will be denied for the reason that I considered
9 all of the arguments that were advanced when I ruled previously.
10 I did not -- I have not found that Nanyah was expressly a
11 third-party beneficiary. I said they were an alleged
12 third-party beneficiary.

13 And I know, Mr. Simons, that you don't like it, and I
14 can see it on your face, but it just -- the argument doesn't
15 change my mind with regard to the prior ruling. And there's
16 just nothing new here. So for that reason, the motion is
17 denied, and Mr. Wirthlin to prepare that order, please.

18 MR. WIRTHLIN: Yes, Your Honor. Oh, Your Honor, can I
19 raise one issue? I don't want to interrupt.

20 THE COURT: I was going to say, this should be your
21 last hearing before we start trial two weeks from today, yes?

22 MR. SIMONS: Correct.

23 MR. WIRTHLIN: Yes, Your Honor.

24 MR. LIEBMAN: I believe we have a calendar call.

25 MR. WIRTHLIN: We do have a calendar call. Correct.

1 THE COURT: You know, do you need the calendar call?

2 MR. WIRTHLIN: That's a good question.

3 MR. LIEBMAN: I think we should have it --

4 MR. WIRTHLIN: Yeah, I think --

5 MR. LIEBMAN: -- if that's okay, Your Honor.

6 MR. WIRTHLIN: -- in case any last minute things come
7 up.

8 MR. LIEBMAN: Yeah.

9 THE COURT: And, Mr. Simons, if you'd like to appear
10 by phone, that's fine.

11 MR. SIMONS: That might make sense.

12 THE COURT: Of course. I allow everyone to appear by
13 phone, even local.

14 MR. LIEBMAN: Oh.

15 THE COURT: Always. Anytime.

16 MR. LIEBMAN: Okay.

17 THE COURT: I do see that there's some objections to
18 pretrial disclosures. Is that something you would raise at a --
19 at a pretrial? How do you --

20 MR. WIRTHLIN: If we can't work them out, maybe. I
21 think we can probably work them out.

22 THE CLERK: Judge, I don't see a pretrial on here.

23 THE COURT: Okay. So I don't see a pretrial anywhere.
24 I just see jury trial 4/22.

25 THE CLERK: Yeah.

1 MR. LIEBMAN: As far as our objections, we were just
2 preserving those objections for trial.

3 THE COURT: Right.

4 MR. LIEBMAN: I don't intend to have any pretrial
5 briefing on various exhibits. We didn't even file our pretrial
6 disclosure. We just served them under the rule. I guess some
7 people did file theirs.

8 MR. WIRTHLIN: Right. And we received some
9 supplementals this Friday that we're still looking at, but --

10 THE COURT: All right.

11 MR. WIRTHLIN: And I just had one -- oh, after Mr.
12 Simons.

13 THE COURT: Mr. Simons also had something to raise.
14 Mr. Simons.

15 MR. SIMONS: As I indicated before, when there was the
16 countermotions for summary judgment that have been filed and the
17 Court struck because they were untimely, included in my motion
18 was also an NRCP 15 motion to amend the pleadings to conform to
19 the evidence. The order striking the filing didn't address the
20 NR 15 motion -- NRCP 15 motion. And that motion sought relief
21 that based upon the October 5, 2018, Court's order finding --
22 making certain findings, that our pleadings should be amended to
23 conform to the evidence that has been established in your order.
24 So I need to address that --

25 THE COURT: Right. And it hasn't been --

1 MR. SIMONS: -- in some fashion.

2 THE COURT: It hasn't been set. So I assume you want
3 a briefing schedule?

4 MR. SIMONS: Oh, no. It was set.

5 THE COURT: Set for today?

6 MR. SIMONS: No, no, no. This was set -- and this
7 was, as part of your order striking filings you gave us the last
8 time --

9 THE COURT: Right.

10 MR. SIMONS: -- you took everything off calendar. So
11 it had been briefed and it had been scheduled for oral argument,
12 and then it was just taken off calendar. So I don't know how,
13 if you want to render some type of motion, I'll submit it. I
14 need --

15 THE COURT: Well, and I understand it's unopposed; is
16 that correct?

17 MR. LIEBMAN: That's not correct, Your Honor. Since
18 -- since the order came out striking the particular summary
19 judgment motions, this was filed as a countermotion to the
20 summary judgment motion. I checked on Odyssey. Everything came
21 off the calendar at that particular point in time, so it was
22 certainly our inclination to believe that that was coming off,
23 too. If Mr. Simons wants to refile it, we will file an
24 opposition.

25 It's certainly our position it's a 15(b) motion.

1 15(b) only applies at trial. I don't know why he's bringing
2 this motion now. He can make this motion at trial. He can make
3 a motion to conform to the evidence. We're, obviously, going to
4 oppose it. We don't believe that he can assert an implied in
5 fact contract claim this late in this particular case.

6 But if Your Court wants to address it in some respect,
7 he can refile it, I'll file something, and then we can address
8 it at the calendar call. Or it certainly would be my
9 inclination, since it's Rule 15(b) relief, that this is
10 something for trial. That's when you make a 15(b) motion. This
11 is not a 15(a) motion and, in fact, would be -- I mean, it's two
12 years after the motion to amend deadline, so a 15(a) motion
13 wouldn't have any legs. But that -- that would certainly be our
14 position in that regard.

15 THE COURT: Mr. Wirthlin.

16 MR. WIRTHLIN: Yes, Your Honor. We would agree with
17 everything Mr. Liebman said.

18 THE COURT: Mr. Simons, how do you wish to proceed?

19 MR. SIMONS: Here's -- I'm not going to refile it
20 because it's already been filed. It's been briefed and it was
21 submitted for oral argument, and then --

22 THE COURT: What I would suggest is that we can take
23 it up at the close of the evidence.

24 MR. SIMONS: Well, if the -- it doesn't -- a 15(b)
25 does not require to be concluded at the end of trial when an

1 issue is actually tried and there's a decision rendered. You
2 have dismissed parties, the Eliadas parties. And by rendering
3 that decision, you've triggered the ability to seek 15(b)
4 relief, so that's what we did in a timely fashion based upon the
5 Court's ruling. So at this point in time, as I see it, I still
6 have this motion pending because your order doesn't expressly
7 state that it's --

8 THE COURT: If you'd like to have it heard before
9 trial, submit an ex parte order shortening time, but make sure
10 that's served upon the parties so that I'll know availability to
11 set it before trial.

12 MR. SIMONS: Okay. Are we going to set a pretrial
13 conference? Did we agree on that?

14 THE COURT: No, there is not one.

15 MR. SIMONS: Okay. Did we agree that we were going to
16 or not going to? Because if so, we can try to wrap that into
17 that at that same time.

18 THE COURT: The next thing we have is your trial on
19 the 22nd. And we can do it the morning of trial if you wish to
20 do that, but I assume you'll want to get right into jury
21 selection the first day.

22 MR. SIMONS: Let me contemplate what would be the best
23 approach. It may be that we just have to address it first thing
24 out of the shoot or after jury selection before evidence is
25 presented or something so that I can keep that issue preserved

1 for appeal, as well.

2 THE COURT: Have you guys scheduled your last
3 conference, your pretrial conference?

4 MR. LIEBMAN: Not yet.

5 THE COURT: No. I'll ask you to address it before --
6 before you come in on the 22nd.

7 MR. WIRTHLIN: We will, Your Honor.

8 MR. LIEBMAN: Okay.

9 THE COURT: Very good.

10 MR. LIEBMAN: We will.

11 MR. SIMONS: And the last question I have is for jury
12 selection. Do you have a standard time frame, do you let
13 counsel have --

14 THE COURT: I'd like to -- I'd like to -- I use the
15 Arizona method. We start with 20 in the box. I do the
16 preliminary question only, and then I turn it over to counsel.
17 However long the plaintiff takes, the defendant gets. If
18 anybody needs more time, I try to limit it to an hour of voir
19 dire on each side so that we can seat a jury the first day.

20 MR. SIMONS: So is it one hour plaintiff, one hour
21 defendants side?

22 THE COURT: Yeah.

23 MR. SIMONS: Okay.

24 THE COURT: If you need more time, then let me know
25 why. But I do like to seat the jury the first day.

1 MR. SIMONS: Okay. Well, I think we can -- and we're
2 going to start at 9:00 a.m.?

3 THE COURT: 10:00.

4 MR. SIMONS: 10:00? 10:00 a.m.? Okay.

5 THE COURT: And Wednesdays and Thursdays are always
6 motion calendars, so you only get half a day on Wednesday and
7 Thursday. If the motion calendars are short, we'll start at
8 12:30 or 1:00. If they run late, we may not start until 1:30.
9 If you need overtime, give us 24 hours' notice. I would be
10 available, but the staff would have to make arrangements.

11 MR. SIMONS: Just to be clear because sometimes I
12 don't hear correctly.

13 THE COURT: Overtime.

14 MR. SIMONS: Did you say Wednesday and Thursday are
15 half days?

16 THE COURT: Yes.

17 MR. SIMONS: So we start at 1:00 or 1:30. Okay.

18 MR. LIEBMAN: And just for clarification on the 15(b),
19 so --

20 THE COURT: It's going to be up to Mr. Simons to
21 determine whether or not he wants to have it heard --

22 MR. LIEBMAN: Okay.

23 THE COURT: -- before we start trial or on the morning
24 of the 22nd.

25 MR. LIEBMAN: And he would do that through refiling it

1 and getting a notice of hearing?

2 MR. SIMONS: No, I'm not refiling it.

3 MR. LIEBMAN: Well, I'm asking the Judge what she
4 wants you to do.

5 THE COURT: I suggested he could request an order
6 shortening time on ex parte basis, but with notice to the two of
7 you for your availability.

8 MR. LIEBMAN: Okay. But just to be clear, there is
9 not currently a pending motion to amend before you that's going
10 to be heard, unless Mr. Simons does something about it.

11 THE COURT: There is a countermotion on file.

12 MR. LIEBMAN: Okay.

13 THE COURT: There is not a separate freestanding
14 motion.

15 MR. LIEBMAN: Okay. So do I have an obligation to
16 file an opposition to that countermotion, or does Mr. Simons
17 have to refile the motion in order to have it heard? I just
18 want to be clear about that.

19 THE COURT: The way I understand it is that you --
20 either you all will file oppositions and we'll argue it the
21 morning of the 22nd, or an order shortening time will be sought
22 which would have a briefing schedule. I'm going to suggest that
23 at your last pretrial conference, that you do it as soon as
24 possible so it possibly can be determined this -- how you want
25 this issue to be resolved.

1 MR. SIMONS: Okay. Just so we're clear, this motion
2 was set for a hearing, the countermotion was set at the same
3 time. So it wasn't as if this is something new.

4 THE COURT: Okay.

5 MR. WIRTHLIN: I just have one final thing, Your
6 Honor, if I could.

7 THE COURT: Yes.

8 MR. WIRTHLIN: Our motion to compel the tax returns, I
9 know that the Court ordered that they needed to -- it needed to
10 be produced ten days once the order was entered. I don't know
11 if a competing order has been entered. I tried to get an answer
12 to that. I'm not clear on that. But we would ask that if a
13 competing order has not been entered, that the Court enter their
14 order if it's sufficient and that we get those within a week, if
15 possible.

16 THE COURT: I had a family emergency --

17 MR. WIRTHLIN: Oh, understood.

18 THE COURT: -- and was out of --

19 MR. WIRTHLIN: Understood.

20 THE COURT: -- the state for the last few days of last
21 week. If there is an order, I'll go through all of my orders
22 and make sure everything gets signed today.

23 MR. WIRTHLIN: Okay. And --

24 THE COURT: And if there are competing orders --

25 THE CLERK: No.

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THE COURT: No.

MR. WIRTHLIN: No. Okay.

THE COURT: I'll get everything signed today.

MR. WIRTHLIN: Understood. And then one last, simply because we're literally two weeks out at trial, it's my understanding under the revised NRCP, ten days mean calendar days, which would give it to us on the --

THE COURT: The new rules --

MR. WIRTHLIN: -- 18th?

THE COURT: The new rules are in effect.

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

THE COURT: All right. Thank you all.

(Proceedings concluded at 11:05 a.m.)

* * * * *

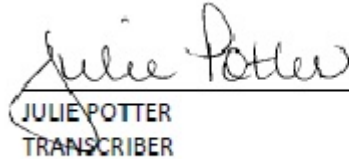
CERTIFICATION

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

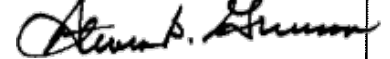
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER



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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

26 Defendants.

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

Plaintiff,

v.

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

Defendants.

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

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

NANYAH VEGAS, LLC'S
OPPOSITION TO PETER
ELIADES AND TELD, LLC'S
MOTION FOR ATTORNEYS'
FEES AND COSTS

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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 Attorneys' Fees and Costs (the "Motion") filed by Peter Eliades individually
4 ("Eliades") and Teld, LLC ("TELD") (collectively referred to herein as the "Eliades
5 Defendants" unless otherwise specified).

6
7 **I. THE MOTION HAS NO MERIT.**

8 The Motion has no legal merit. The arguments supporting an award of fees are
9 facially improper and violate well-established Nevada law. Even if this court were to
10 entertain such requests, the attorneys' fees sought are not related to the representation of
11 the Eliades Defendants—but to the representation of the Eliades Trust, an entity not
12 seeking recovery of fees. In addition, there is no evidence that these alleged fees were
13 actually incurred and/or paid for by the Eliades Defendants. Further, there is no
14 differentiation between claims and defendants in this fee request. Lastly, the request for
15 costs is subject to a pending Motion to Retax and Nanyah incorporates all arguments as if
16 fully set forth herein.

17
18 Of critical note, the Eliades Defendants did not assert recovery of fees for the
19 Eliades Trust ("Eliades Trust") or Edorado Hills, LLC ("Eldorado"). The reason the Eliades
20 Trust did not seek any attorneys' fees is because there were no contract based claims
21 asserted against it. Accordingly, these parties have waived any right to recover attorneys'
22 fees in these proceedings.

23
24 **II. THE MOTION IS PREMISED ON A CONTRACTUAL RIGHT TO AN AWARD OF
25 FEES AS A PREVILAING PARTY.**

26 "The established rule is that a court may not award attorney's fees unless
27 authorized by statute, rule or contract." State Dep't of Human Resources v. Fowler, 109
28 Nev. 782, 784, 858 P.2d 375, 376 (1993). In the present case, the Motion is premised

1 exclusively upon the following language contained in the TELD Membership Interest

2 Purchase Agreement which states as follows:

3 In the event any action or proceeding is instituted to interpret or enforce the
4 terms and provisions of this Agreement, however, the prevailing **party** shall be
5 entitled to its costs and attorney's fees, in addition to any other relief it may obtain
or be entitled to.

6 TELD MIPA, ¶19(d). See also Mot., p. 3:6-8.

7 The Eliades Defendants' sole argument is that because Nanyah sued as a third-
8 party beneficiary of the various contracts at issue in this case, then it is liable for an award
9 of attorney's fees that is contained in those contracts. This statement is an incorrect
10 statement of law.
11

12 **A. NANYAH IS NOT A PARTY TO THE CONTRACTS.**

13 First, while Nanyah is clearly a third-party beneficiary of the contracts (based upon
14 this Court's October 5, 2018 Order) Nanyah's status as a third-party beneficiary does not
15 make it "a party" to the TELD MIPA. The attorneys' fees provision expressly only applies
16 to any "party" to the contract. County of Clark v. Bonanza No.1, 96 Nev. 436, 439, 777
17 P.2d 898, 899 (1980) ("no one is liable on a contract except those who are parties to it.")
18

19 While the law is clear that Nanyah has the right to enforce the TELD MIPA,
20 Nanyah is not legally a "party" to the agreement. This very concept was discussed in
21 Olson v. Iacometti, 91 Nev. 241, 245-46, 533 P.2d 1360, 1364 (1975) as follows:

22 Although a plaintiff can maintain an action on a simple contract **to**
23 **which he is not a party** . . . when it contains a provision for his benefit . . .
24 he must prove that there was an intent to benefit him. '**Before a stranger**
25 **can avail himself of the exceptional privilege of suing for a breach of an**
agreement, to which he is not a party, he must at least show that it was
for his direct benefit.'

26 Id. (emphasis added) (citations omitted). Because Nanyah is not legally "a party" to the
27 contracts, it cannot be bound by a prevailing "party" contract provision.
28

1 **B. AN ATTORNEYS' FEE PROVISION IS NOT A "DEFENSE".**

2 The Eliades Defendants also argue that because Nanyah takes subject to any
3 "defenses" contained in the contract, it is bound by the attorney's fees provision.¹
4 However, a prevailing party attorneys' fees provision is not a defense. Defenses are legal
5 principles that apply as a means to avoid liability and/or damages. An attorneys' fees
6 provision is not a defense and does not subject a party to liability for the claims asserted.
7 Instead, an award of attorney's fees is a cost of litigation. See e.g., Sandy Valley Assocs.
8 v. Sky Ranch Estates Owners Assoc., 117 Nev. 948, 956, 35 P.3d 964, 969 (2001) (an
9 award of attorneys' fees as a prevailing party is "a cost of litigation" and not part of the
10 substantive merits of the underlying dispute).
11

12 NRCP 8(c) lists those recognized affirmative defenses and attorney's fees is not
13 identified as an affirmative defense. A prevailing party fee provision is not a defense to
14 liability and/or damages, therefore, Nanyah is again not bound by this contract provision.
15 Rowland v. Lepire, 99 Nev. 308, 316, 662 P.2d 1332,1337 (1983) ("Attorney's fees are
16 not properly awarded as special damages for breach of contract.").

17 **C. NANYAH DOES NOT STEP INTO THE SHOES OF ANY PARTY.**

18 While the named parties to the various contracts are clearly bound by the
19 prevailing party attorney's fees provision, as a matter of law Nanyah does not step into
20 the shoes of any party to the agreements. In Hartford Fire Ins. Co. v. Trustees of Const.
21 Indus., 125 Nev. 149, 156–57, 208 P.3d 884, 889 (2009) the Nevada Supreme Court
22 stated that the **"the notion that a third-party beneficiary steps into the shoes of a**
23
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26 _____
27 ¹ Gibbs v. Giles, 96 Nev. 243, 246-47, 607 P.2d 118 (1980) ("As a general rule, a third-
28 party beneficiary takes subject to any defense arising from the contract that is assertible
against the promisee . . .").

1 **contracting party is a “misstatement of the law”.** The Court also made it clear that a
2 third-party’s right to sue on a contract as a third-party beneficiary is a “direct right” and not
3 a right derivative of any party to the contract. *Id.* citing Restatement (Second) of
4 Contracts § 309 cmt. c (1981) (providing that a third-party beneficiary’s right to enforce a
5 contract is “direct, not merely derivative”).
6

7 Accordingly, Nanyah does not step into the shoes of any “party” to the contract and
8 is therefore, not bound by a prevailing party clause in the contract because Nanyah did not
9 agree to be bound by such provision. See e.g., *In Morelli v. Morelli*, 102 Nev. 326, 329,
10 720 P.2d 704, 706 (1986) (contention that a “third party beneficiary, steps into the shoes”
11 of a party is “a misstatement of the law.”).

12 **D. NEVADA DOES NOT HAVE A RECIPROCAL FEE STATUTE.**

13
14 Lastly, the Eliades Defendants make the legally baseless argument that because
15 they are bound under the attorney’s fees provision of the various contracts then Nanyah
16 has to be too. The Eliades Defendants then rely upon extra-jurisdictional case law for
17 support of this proposition.² However, the Eliades Defendants fail to inform this Court that
18 their arguments are legally baseless in Nevada because Nevada has rejected the concept
19

20
21 ² The cases relied upon by the Eliades Defendants are from California and Utah, which
22 are jurisdictions that have expressly enacted statutes making any attorney fee clause
23 reciprocal and not merely applicable to a single party. See California Civil Code Section
24 1717 and Utah Code Ann, § 78B-5-826. See also *Loduca v. Polyzos*, 153 Cal. App. 4th
25 334, 343, 62 Cal. Rptr. 3d 780, 785 (2007) (“[Civil Code] [s]ection 1717 was enacted to
26 ‘avoid the perceived unfairness of one-sided attorney fee provisions’; *Sessions*
27 *Payroll Management, Inc. v. Noble Const. Co., Inc.*, 84 Cal. App. 4th 671, 678, 101 Cal.
28 Rptr. 2d 127, 131 (Cal. Ct. App. 2000) (“when the contract provides the right to recover
attorney fees to one party but not to the other, Civil Code section 1717 allows recovery of
attorney fees by “whichever contracting party prevails,” whether or not the contract
specifies that party.” (citation omitted); *Brodkin v. Tuhaye Golf, LLC*, 355 P.3d 224, 231
(Ut. Ct. App, 2018) (“Utah’s reciprocal fee statute allows a court to award costs and
attorney fees to the prevailing party in any civil action based upon a contract whose terms
allow at least one party to recover fee.”).

1 of reciprocal fee agreements and Nevada does not have a reciprocal fee statute.

2 In Rowland v. Lepire, 99 Nev. 308, 316, 662 P.2d 1332, 1337 (1983), the Nevada
3 Supreme Court specifically rejected the concept of reciprocal application of a prevailing
4 party fee agreement. In Rowland, the contract between the parties only included the right
5 to recover attorneys' fees by one party. The district court adopted an implied agreement
6 for the attorneys' fees provision to be reciprocal. The Nevada Supreme Court expressly
7 rejected the district court's reciprocal fee analysis and held: "We conclude that the trial
8 court erred in basing the fee award on an implied agreement." Id. Accordingly, merely
9 because the Eliades Defendants are bound by the attorneys' fees provision in the
10 contracts as parties to the contract, Nanyah is not so bound under controlling Nevada law.

11
12 **B. THE FEES SOUGHT ARE UNREASONABLE AND UNJUSTIFIED.**

13 In the event the Court ignores the foregoing, and insists on awarding fees without a
14 legal basis to do so, then the following factors must be considered in reducing any such
15 award.
16

17 **1. There is no evidence that these alleged fees were actually**
18 **incurred and/or paid for by the Rogich Defendants.**

19 There is no evidence that the alleged fees were actually incurred and/or paid for by
20 any of the Eliades Defendants. It is believed that all fees were paid by the Eliades Trust,
21 which fees are not recoverable. Accordingly, no award of fees can be awarded to the
22 Eliades Defendants when only the Eliades Trust incurred such expense.

23 **2. The Fees Sought are Unjustified.**

24 From the attached billing records, it is apparent that all the work performed was
25 applicable to the claims asserted against the Eliades Trust. As this court should recall, it
26 dismissed all claims against the Eliades Trust in its October 5, 2018, Order. However, the
27 Eliades Trust has not sought recovery of any attorneys' fees in this case. Given that the
28

1 focus of the prior summary judgment was applicable to claims against the Eliades Trust in
2 conjunction with TELD and Mr. Eliades individually, any award of fees must be reduced
3 and apportioned to the Eliades Trust. Based upon Nanyah's review of the billing records
4 and motion practice 50% of the attorney's fees incurred related to the defense of the
5 Eliades Trust. Accordingly, the requested attorneys' fees should be reduced by 50%.

7 **II. CONCLUSION.**

8 The Motion has no legal merit. The arguments supporting an award of fees are
9 facially improper and violate well-establish Nevada law. Even if this court were to
10 entertain such requests, the attorneys' fees sought are not supported. Lastly, the request
11 for costs is subject to a pending Motion to Retax and Nanyah incorporates all arguments
12 as if fully set forth herein.

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

15 DATED this 8th day of January, 2020.

16 SIMONS HALL JOHNSTON PC
17 6490 S. McCarran Blvd., Ste. F-46
18 Reno, NV 89509

19 By: 
20

21 MARK G. SIMONS
22 Attorneys for Nanyah Vegas, LLC
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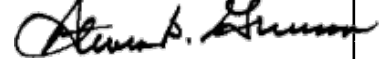
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of
SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of
the **NANYAH VEGAS, LLC'S OPPOSITION TO PETER ELIADES AND TELD, LLC'S**
MOTION FOR ATTORNEYS' FEES AND COSTS on all parties to this action via the
Odyssey E-Filing System:

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DATED this 8th day of January, 2020.


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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

26 Defendants.

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

Plaintiff,

v.

TELD, LLC, a Nevada limited liability company;
PETER ELIADAS, individually and as Trustee of
The 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 ROGICH
DEFENDANTS' MOTION FOR
ATTORNEYS' FEES AND
COSTS

SIMONS HALL JOHNSTON PC
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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 Attorneys' Fees and Costs (the "Motion") filed by Sigmund Rogich,
4 individually as Trustee of the Rogich Family Irrevocable Trust ("Rogich Trust") and
5 Imitations, LLC ("Imitations") (collectively referred to herein as the "Rogich Defendants"
6 unless otherwise specified).

8 **I. THE MOTION HAS NO MERIT.**

9 The Motion has no legal merit. The arguments supporting an award of fees are
10 facially improper and violate well-established Nevada law. Even if this Court were to
11 entertain such requests, the attorneys' fees sought are ridiculous, not supported and were
12 incurred for meaningless and unreasonable activity. In addition, there is no evidence that
13 these alleged fees were actually incurred and/or paid for by the Rogich Defendants.
14 Instead, the fee relationship appears more of a contingency type fee relationship (*i.e.*, fees
15 will only be paid to the extent they are recovered from the opposing party) rather than a
16 traditional hourly retention. Lastly, the request for costs is subject to a pending Motion to
17 Retax and Nanyah incorporates all arguments as if fully set forth herein.

19 **A. NRS 18.010(2)(a) DOES NOT APPLY.**

20 The Rogich Defendants argue that they are entitled to an award of almost \$1
21 million in alleged fees pursuant to NRS 18.010(2)(a). Mot., p. 9:16. However, NRS
22 18.010(2)(a) requires that the party seeking fees must first have recovered a money
23 judgment. Thomas v. City of N. Las Vegas, 122 Nev. 82, 86, 127 P.3d 1057, 1060 (2006)
24 ("under NRS 18.010(2)(a), it is well settled that a money judgment is a prerequisite to
25 recovery of attorney fees."); Smith v. Crown Fin. Servs. of Am., 111 Nev. 277, 285, 890
26 P.2d 769, 774 (1995) (holding "that the recovery of a money judgment is a prerequisite to
27
28

1 an award of attorney fees pursuant to NRS 18.010(2)(a)"). The Rogich Defendants did not
2 pursue any claims against Nanyah and did not recover a money judgment. Therefore, as
3 a matter of well-established Nevada law, NRS 18.010(2)(a) does not apply.

4 **B. NRS 18.010(2)(b) DOES NOT APPLY.**

5
6 The Rogich Defendants also argue that they are entitled to an award of almost \$1
7 million in alleged fees pursuant to NRS 18.010(2)(a). Mot., p. 9:19. The Rogich
8 Defendants contend that Nanyah's claims were frivolous. The Rogich Defendants'
9 contentions are again baseless and meritless. This Court has previously ruled that
10 Nanyah's claims against the Rogich Defendants were based upon the undisputed facts
11 and based upon the "clear and unambiguous" language of the parties' contracts.

12 Specifically, The district court found "as a matter of law" the four material contracts
13 "clearly and unequivocally" identified Nanyah's \$1.5 million investment into Eldorado.¹
14 Further, the court found that the Rogich Trust "specifically agreed to assume" Eldorado's
15 obligation to repay Nanyah its \$1.5 million investment into Eldorado or to transfer to
16 Nanyah a commensurate membership interest. Specifically, the court's Order states:

17
18 4. "The Rogich Trust specifically agreed to assume the obligation to pay
19 Nanyah its percentage interest in Eldorado or to pay Nanyah its \$1,500,000
20 invested into Eldorado."

21 . . .

22 7. "The [Rogich Trust PSA] states that the Rogich Trust specifically agreed to
23 assume the obligation to pay Nanyah its percentage or debt."

24 Id. Similarly, in the Court's October 4, 2019, Decision, dismissing the remaining claims

25
26 ¹October 5, 2018, Order ("Order"), ¶¶2, 4, 5.a.ii, b.i, b.ii, b.iii, b.iv, b.v, b.vi, b.ix, d.ii, 7 and
27 14.

1 against Eldorado and the Rogich Defendants, the court again expressly stated:

2 Here, it is undisputed that Nanyah wired Eldorado \$1,500,000 as
3 memorialized in the October 30, 2018 Membership Interest Purchase Agreement
4 (the "MIPA"). In this MIPA, the Rogich Trust agreed . . . to assume the obligation
to pay Nanyah/s debt."

5 Id. at p. 4:23-25. Given the foregoing, it is clear that Nanyah's claims are were well-
6 founded based upon both the undisputed facts and as a matter of law.

7 **C. NRCP 68 DOES NOT APPLY.**

8 The Rogich Defendants next contend that they are entitled to attorneys' fees in the
9 amount of \$541,021.50 based upon an Offer of Judgment ("Initial Offer"). The Rogich
10 Defendants attach a copy of their Initial Offer to their Motion as Exhibit 3. The Rogich
11 Defendants also attach a copy of their 2nd Offer of Judgment to their Motion as Exhibit 4
12 ("2nd Offer"). However, the Rogich Defendants fail to demonstrate that the Initial Offer or
13 2nd Offer was authorized, valid and/or would have allowed judgment to actually be
14 entered against the Rogich Trust for \$50,000 jointly and severally with the other Rogich
15 Defendants. Accordingly, neither offer is valid.

16 **D. EVEN IF NRCP 68 APPLIES, THE FEES SOUGHT ARE
17 UNREASONABLE, NOT SUPPORTED, WERE INCURRED FOR
18 MEANINGLESSLY OR REDUNDANT ACTIVITY AND FAIL TO
19 DIFFERENTIATE BETWEEN PARTIES AND CLAIM.**

20 In Uniroyal Goodrich Tire v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995), the
21 Nevada Supreme Court instructed the courts to evaluate various factors in determining
22 whether or not to award fees as follows:

23 In exercising its discretion, the trial court must consider and weigh the
24 following factors:

25 (1) whether Plaintiff's claim was brought in good faith; (2) whether the
26 offeror's offer of judgment was brought in good faith; (3) whether the
27 offeree's decision to reject the offer and proceed to trial was grossly
28 unreasonable or in bad faith; and (4) whether the fees sought by the offeror
are reasonable and justified in amount.

1 Id. at 323, 890 P.2d at 789 (citing Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268,
2 274 (1983)). An examination of these factors demonstrate that fees should not be
3 awarded in this action.
4

5 **1. NANYAH'S CLAIMS WERE BROUGHT IN GOOD FAITH.**

6 Clearly this prong is satisfied based upon the undisputed findings of fact and
7 conclusions of law rendered by this Court holding the Rogich Trust liable for Nanyah's
8 \$1.5 million investment into Eldorado.
9

10 **2. THE OFFER WAS NOT BROUGHT IN GOOD FAITH.**

11 Clearly the Rogich Defendants cannot satisfy this prong. The Rogich Defendants'
12 liability was undisputed at \$1.5 million. A \$50,000 offer of judgment is facially not
13 reasonable. The unreasonableness of this offer is magnified by the contention that
14 counsel for the Rogich Trust allegedly incurred \$1,354,453,50 million in attorney's fees.
15 Mot., fn. 4. Obviously, the offer was not made in good faith.
16

17 **3. THE REJECTION OF THE OFFER WAS NOT GROSSLY
UNREASONABLE OR IN BAD FAITH.**

18 Nanyah declined to accept the offer and such conduct was not grossly
19 unreasonable or in bad faith. This Court has specifically found that Nanyah's claims were
20 valid and supported by the undisputed facts and the clear and unambiguous language of
21 the parties' contracts finding: (1) "The Rogich Trust specifically agreed to assume the
22 obligation to pay Nanyah its percentage interest in Eldorado or to pay Nanyah its
23 \$1,500,000 invested into Eldorado"; and (2) "The [Rogich Trust PSA] states that the
24 Rogich Trust specifically agreed to assume the obligation to pay Nanyah its percentage or
25 debt." Nanyah's claims were clearly established and the only issue at trial was the
26 Rogich Defendants' contention that the claims were not timely asserted. However, the
27
28

1 Rogich Defendants had no evidence supporting their contention that Nanyah should have
2 discovered the Rogich Defendants' breaches and/or repudiation prior to December, 2012.
3 Again, this prong demonstrates that fees should not be awarded.

4 **4. THE FEES SOUGHT ARE UNREASONABLE AND UNJUSTIFIED.**

5
6 Initially, the Offer was extended on October 29, 2018. Allegedly in the few months
7 leading up to trial the Rogich Defendants incurred over \$540,000 in alleged fees. An
8 examination of this prong demonstrates that fees should not be awarded.

9 **a. The Fees are Unjustified.**

10 From the attached billing records, it is literally impossible to determine what alleged
11 actions took place by what alleged timekeeper. Other than the dates of time entries,
12 every task is redacted. Such action prohibits Nanyah from addressing the alleged
13 charges and deprives it of the right of due process since Nanyah is prevented from
14 contesting the reasonableness of the time billed, the persons allegedly performing the
15 tasks and the applicability and reasonableness of the alleged time. For instance, the
16 billing records are full of multiple timekeepers working on practically a daily basis on tasks
17 that appear to be duplicative of the same tasks performed by others and/or previously
18 performed.
19

20
21 Further, there is obvious block billing.² Block billing is improper and cannot form
22 the basis of an award of fees when it is impossible for Nanyah to examine the alleged
23 tasks and billing rates and time. See Okla. Natural Gas Co. v. Apache Corp., 355
24

25
26 ² See e.g., Exhibit 6, entries dated 4/15/19: 10.10 hours for Brenoch Wirthlin (tasks
27 redacted); 4/16/19: 14.90 hours for Brenoch Wirthlin (tasks redacted); 4/18/19: 10.20
28 hours for Brenoch Wirthlin (tasks redacted); 4/19/19: 11.40 hours for Brenoch Wirthlin
(tasks redacted); 4/20/19: 7.40 hours for Brenoch Wirthlin (tasks redacted).

1 F.Supp.2d 1246, 1264 (N.D. Okla.2004) (finding that it was difficult, if not impossible, to
2 review the reasonableness of block-billed time entries, one of which was a time entry for
3 7.3 hours containing eight tasks). Based upon the block billing, the requested fees should
4 be reduced by 75%. See e.g., Lahiri v. Universal Music & Video Distrib. Corp., 606 F.3d
5 1216, 1222-23 (9th Cir. 2010) (affirming district court's reduction of 80% of attorneys'
6 hours to account for block-billing); Schrum v. Burlington N. Santa Fe Ry. Co., 2008 WL
7 2278137, *9 (D. Ariz. May 30, 2008) (applying 75% reduction due to block billing and
8 duplicative tasking).
9

10 **b. The Work Performed Was Meaningless And/Or**
11 **Regurgitation Of Prior Failed Actions.**

12 The vast majority of the fees incurred appear to be based upon the preparation
13 and filing of futile and unsuccessful motions that had previously been rejected by the
14 Court. Specifically, the Rogich Defendants filed their Motion for Relief from the October
15 5, 2018 Order Pursuant to NRCP 60(b) (the "60(b) Motion"). The 60(b) Motion was
16 merely a regurgitation of the Rogich Trust's Motion to Reconsider the October 5, 2018
17 Order (filed June 5, 2018) and the Rogich Trust's Motion For Rehearing (filed August 17,
18 2018). The Court denied both of these motions finding that they were baseless as there
19 was "no mistake, inadvertence, surprise or excusable neglect" that supported the
20 requested relief. See Order, dated March 26, 2019, p. 2. Similarly, the Rogich
21 Defendants filed motions in limine that were baseless and unwarranted. See Order,
22 dated May 26, 2019, p. 2.
23

24 Further, the Rogich Trust merely reformatted its prior filed Motion for
25 Reconsideration and Motion for Rehearing and captioned it a "Motion for Summary
26 Judgment" and filed this document on February 15, 2019. This Court again found that the
27
28

1 Rogich Defendants' motion for summary judgment was untimely and struck it. See Order,
2 dated March 22, 2019, p. 2.

3 Based upon the foregoing, no fees should be granted given the inability for Nanyah
4 to review and/or contest the fees sought. To the extent the Court ignores this limitation
5 on Nanyah's ability to contest the fees, 75% of the alleged fees were incurred for these
6 meaningless and repetitive motions that were all baseless and without merit and/or were
7 for block billing. Accordingly, at best, even assuming all other prongs were satisfied,
8 \$135,250 in fees is all that would be appropriate.
9

10 **c. There Is No Differentiation Between Parties And**
11 **Claims.**

12 The Rogich Defendants do not differentiate between any of the parties allegedly
13 incurring the fees and/or to which claims the fees may or may not have been applicable.

14 **d. There is no evidence that these alleged fees were actually**
15 **incurred and/or paid for by the Rogich Defendants.**

16 In addition, there is no evidence that these alleged fees were actually incurred
17 and/or paid for by any of the Rogich Defendants. Instead, the fee relationship appears
18 more of a contingency type fee relationship (*i.e.*, fees will only be paid to the extent they
19 are recovered from the opposing party) rather than a traditional hourly retention.
20

21 **II. CONCLUSION.**

22 The Motion has no legal merit. The arguments supporting an award of fees are
23 facially improper and violate well-establish Nevada law. Even if this court were to
24 entertain such requests, the attorneys' fees sought are ridiculous, not supported and were
25 incurred for meaningless and unreasonable activity. In addition, there is no evidence that
26 these alleged fees were actually incurred and/or paid for by the Rogich Defendants.
27 Instead, the fee relationship appears more of a contingency type fee relationship (*i.e.*, fees
28

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

1 will only be paid to the extent they are recovered from the opposing party) rather than a
2 traditional hourly retention. Lastly, the request for costs is subject to a pending Motion to
3 Retax and Nanyah incorporates all arguments as if fully set forth herein.

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

6 DATED this 8th day of January, 2020.

7
8 SIMONS HALL JOHNSTON PC
9 6490 S. McCarran Blvd., Ste. F-46
10 Reno, NV 89509

11 By: 

12 MARK G. SIMONS
13 Attorneys for Nanyah Vegas, LLC
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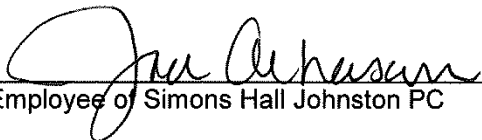
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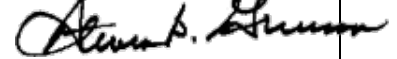
CERTIFICATE OF SERVICE

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

Dennis L. Kennedy	dkennedy@baileykennedy.com
Bailey Kennedy, LLP	bkfederaldownloads@baileykennedy.com
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Erica Rosenberry	erosenberry@fclaw.com

DATED this 8th day of January, 2020.


Employee of Simons Hall Johnston PC



OPPM

Thomas H. Fell, Esq. (Bar No. 3717)
Brenoch Wirthlin, Esq. (Bar No. 10282)

FENNEMORE CRAIG, P.C.

300 S. Fourth Street, Suite 1400
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Tel.: (702) 692-8000; Fax: (702) 692-8099
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*Attorneys for Sigmund Rogich, Individually and as Trustee of
The Rogich Family Irrevocable Trust and Imitations, LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

v.

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

Defendants.

CASE NO.: A-13-686303-C

DEPT. NO.: XXVII

**OPPOSITION TO NANYAH VEGAS,
LLC'S MOTION TO RETAX COSTS
SUBMITTED BY
ROGICH DEFENDANTS**

CONSOLIDATED WITH:

CASE NO.: A-16-746239-C

1 **OPPOSITION TO NANYAH VEGAS, LLC’S MOTION TO RETAX COSTS**
2 **SUBMITTED BY ROGICH DEFENDANTS**

3 Defendants Sigmund Rogich, individually (“Mr. Rogich”), and as Trustee of the Rogich
4 Family Irrevocable Trust (the “Rogich Trust”), and Imitations, LLC (“Imitations” and collectively
5 with Mr. Rogich and the Rogich Trust referred to as the “Rogich Defendants”), by and through
6 their counsel of record, Fennemore Craig, P.C., and hereby submit their Opposition to Plaintiff
7 Nanyah Vegas, LLC’s (“Nanyah” or “Plaintiff”) Motion to Retax Costs Submitted by Sigmund
8 Rogich, Individually and as Trustee of the Rogich Family Revocable Trust, and Imitations, LLC’s
9 Memorandum of Costs and Disbursements Pursuant to NRS 18.005 and NRS 18.110 (“Motion”).

10 This Opposition is made and based upon the following Memorandum of Points and
11 Authorities, any argument of counsel at the time of the hearing on this matter, and all papers and
12 pleadings on file herein.

13 DATED: January 9, 2020

14 **FENNEMORE CRAIG, P.C.**

15
16 By: /s/ Brenoch Wirthlin, Esq.
17 Thomas Fell, Esq. (Bar No. 3717)
18 Brenoch Wirthlin, Esq. (Bar No. 10282)
19 300 S. Fourth Street, Suite 1400
 Las Vegas, Nevada 89101
 Attorneys for the Rogich Defendants

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. ARGUMENT**

3 **A. Plaintiff's Motion must be denied. Because all of the Rogich Defendants**
4 **prevailed over Plaintiff, apportionment is inapplicable.**

5 Because all of the Rogich Defendants prevailed over Plaintiff, Plaintiff is not entitled to
6 any costs and the Rogich Defendants are entitled to their costs. *See* NRS 18.110. Further, due to
7 the fact that all of the Rogich Defendants are prevailing parties, and Plaintiff did not prevail on
8 any of its claims, no apportionment is necessary. *See Mayfield v. Koroghli*, 124 Nev. 343, 353,
9 184 P.3d 362, 369 (2008). Other jurisdictions have confirmed this principle as well. *See e.g.*,
10 *Jonkey v. Carignan Constr. Co.*, 139 Cal. App. 4th 20, 42 Cal. Rptr. 3d 399 (2006).
11 Apportionment would serve no purpose as all costs would be awardable pursuant to 18.110
12 regardless of which of the Rogich Defendants incurred them, and further, often such costs are
13 shared among the defendants represented by the same counsel and therefore apportionment is
14 neither necessary nor practical. Accordingly, the Motion should be denied.

15 **B. Plaintiff's Motion must be denied as the requested amounts are supported by**
16 **receipts and the accompanying declaration.**

17 Plaintiff asserts that certain costs should be reduced since they allegedly are not supported
18 by the data attached to the Rogich Defendants' Memorandum of Costs ("Costs Memo"). The
19 Rogich Defendants dispute this assertion and further point out that the Costs Memo is supported
20 by the declaration of counsel that the costs were actually and necessarily incurred. Plaintiff
21 provides no authority demonstrating such evidence is insufficient for an award of costs.

22 Moreover, Plaintiff quibbles over semantics by arguing that messenger service fees are not
23 recoverable because the statute does not expressly use the words "messenger service" fees. *See*
24 Motion at p. 5. This is inaccurate. In addition to allowing costs for "postage" which is very
25 similar to the purpose of messenger service fees – although sometimes messenger service fees are
26 necessary when mail will not suffice – NRS 18.005(17) allows for "[a]ny other reasonable and
27 necessary expense incurred in connection with the action". Clearly, fees for messenger services
28

1 necessary in discovery and service of other documents is included in this definition. This is also
2 true of the Secretary of State fees sought by the Rogich Defendants. Further, NRS 18.005
3 specifically provides for legal research fees which must be awarded to the Rogich Defendants as
4 prevailing parties. *See Mackall v. Jalisco Int'l, Inc.*, 28 P.3d 975, 977 (Colo. App. 2001)

5 With respect to the remaining fees disputed by the Plaintiff, the Plaintiff provides no
6 justification for denial of said fees other than that Plaintiff is not satisfied they were incurred.
7 The affidavit included with the Costs Memo provides otherwise.

8 **C. No evidentiary hearing is required.**

9 Plaintiff provides no citations to case law or statutory authority even permitting – much
10 less requiring – an evidentiary hearing for a verified memorandum of costs. Such an evidentiary
11 hearing would not only be an egregious waste of the Court’s and parties’ time and resources, but
12 it is also not permitted by the statutes which require costs be awarded to the Rogich Defendants.
13 *See* NRS 18.020, 18.050.

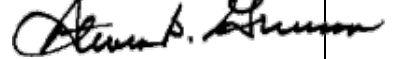
14 **II. CONCLUSION**

15 For all these reasons, the Rogich Defendants respectfully requests that this Court deny
16 Nanyah’s Motion in its entirety, grant all costs sought in the Rogich Defendants’ Costs Memo,
17 and grant such other and further relief as the Court deems appropriate.

18 DATED: January 9, 2020

19 **FENNEMORE CRAIG, P.C.**

20
21 By: /s/ Brenoch Wirthlin, Esq.
22 Thomas Fell, Esq. (Bar No. 3717)
23 Brenoch Wirthlin, Esq. (Bar No. 10282)
24 300 S. Fourth Street, Suite 1400
25 Las Vegas, Nevada 89101
26 *Attorneys for the Rogich Defendants*
27
28



RIS (CIV)

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Attorneys for Defendants PETE ELIADES, THE
ELIADES SURVIVOR TRUST OF 10/30/08,
TELD, LLC and ELDORADO HILLS, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

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

Defendants.

Case No. A-13-686303-C

Dept. No. XXVII

**REPLY IN SUPPORT OF DEFENDANTS
PETER ELIADES AND TELD, LLC'S
MOTION FOR ATTORNEYS' FEES**

Hearing Date: January 30, 2020

Hearing Time: 11:00 a.m.

CONSOLIDATED WITH:

Case No. A-16-746239-C

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is language *directly* from Nanyah’s Opposition: “Nanyah is clearly a third-party beneficiary of the contracts.”¹ Likewise, this is language *directly* from the Nevada Supreme Court: “an intended third-party beneficiary is bound by the terms of a contract even if she is not a signatory.” *Canfora v. Coast Hotels and Casinos, Inc.* 121 Nev. 771, 779, 121 P.3d 599, 604 (2005). The required analysis for this Motion is truly that simple. Nanyah claims to be and sued the Eliades Defendants as third-party beneficiaries under the Membership Interest Purchase Agreement (the “MIPA”). In fact, Nanyah explicitly pled an entitlement to attorney’s fees in its various third-party beneficiary claims against the Eliades Defendants.² If Nanyah had prevailed on its third-party beneficiary claims against the Eliades Defendants, it would have sought reimbursement of its attorney’s fees under Section 9(d) of the MIPA. Instead, all of Nanyah’s claims were dismissed via summary judgment, and therefore *it is the Eliades Defendants who are the prevailing parties under Section 9(d) of the MIPA*. For these reasons as well as the reasons set forth below, the Eliades Defendants’ Motion should be granted, and this Court should order Nanyah to pay the Eliades Defendants \$216,236.25 as reimbursement for their incurred attorneys’ fees.

II. ARGUMENT

A. The Language of the Prevailing Party Provision Supports an Award of Attorney’s Fees.

Nanyah initially argues that the term “prevailing party,” as used in Section 9(d) of the MIPA, cannot be enforced against Nanyah because although it is a third-party beneficiary of the MIPA, it is technically not a party to the MIPA. Nanyah’s argument is illogical for numerous reasons.

First, Nanyah assumes that the term “prevailing party” refers to a party to the contract. Nanyah is wrong. Considering that the relevant language of Section 9(d) is discussing the litigation process, the term “prevailing party” is referencing *a party to a lawsuit*—not a party to the MIPA. The Eleventh Circuit has explicitly addressed this point and confirmed that well-established contractual interpretation principles dictate that the term “prevailing party” refers to a party to a

¹ Opp’n, 3:13, filed Jan. 8, 2020.

² See, e.g. Compl., ¶¶ 93, 99, 107, 114, filed Nov. 4, 2016.

lawsuit—not a party to the contract. *N. Am. Clearing, Inc. v. Brokerage Computer Sys.*, 395 Fed. Appx. 563, 566 (11th Cir. 2010) (“The term ‘prevailing party’ in the context of a provision describing ‘legal action or arbitration’ is most naturally understood as a reference to the prevailing party in a legal action.”). The Eleventh Circuit went on to provide further support for its holding:

The district court's reading of the term, by contrast, would require the word "party" to bear two meanings at once: "party to the litigation" and "party to the contract. The magistrate judge concluded that such a reading was appropriate because the contract concerned the obligations of BCS and NAC to each other, without any reference to Goble's rights or responsibilities as an individual. But in our view, the provision regarding attorney's fees speaks plainly enough: in "any legal action or arbitration . . . necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees."

Id. (emphasis in original). Because the term “prevailing party” in the MIPA refers to a potential lawsuit as it does in the legal authority above, it does not matter whether Nanyah was technically a party to the MIPA.³

Second, the language in Section 9(d) is extremely broad, confirming that it would apply to an action by a nonsignatory to the MIPA. For example, the sentence begins by defining the scope of the provision, and states that it applies to “*any action or proceeding* . . . to interpret or enforce the terms and provisions of this Agreement.”⁴ Such broad language certainly includes a third-party beneficiary asserting various contractual claims under that very agreement. *Compare with LoDuca v. Polyzos*, 62 Cal.Rptr.3d 780, 781 (Cal. Ct. App. 2007) (recognizing that a prevailing party attorney’s fees provision which stated “either party to enforce the contract’s provisions” would not provide a basis for attorney’s fees against a third-party beneficiary). Such limiting language is clearly not contained within Section 9(d).

Third, Nanyah’s irrational interpretation of Section 9(d) would also lead to an unreasonable result. As this Court is well aware, “an interpretation which results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract.” *Shelton v. Shelton*, 119 Nev.

³ The term “party” is also used in the first sentence of Section 9(d). However, in that sentence, it uses the phrase “each party hereto,” confirming it is limited to the parties to the MIPA. With respect to the second sentence which is at issue in this Motion, the terms “each” and “hereto” are not used because it is referring to parties to a potential lawsuit and *not* to parties to the MIPA.

⁴ Membership Interest Purchase Agreement, § 9(d), attached as Exhibit 1 to the Mot. (emphasis added).

1 492, 497, 78 P.3d 507, 510 (2003). As stated by the Eleventh Circuit, “it would be unreasonable for
2 us to assume that the contract allowed BCS to seek attorney’s fees from Goble—as it did in its
3 Complaint—without affording him the same opportunity if he prevailed on the claims against him.”
4 *N. Am. Clearing, Inc.*, 395 Fed. Appx. At 567. ***Yet that is precisely what Nanyah is suggesting—***
5 ***that it was able to seek attorney’s fees as a prevailing party (as pled in its Complaint), but that the***
6 ***Eliades Defendants are prohibited from doing the same. The Court should reject such an***
7 ***unreasonable interpretation. See NAMA Holdings, LLC v. Related World Market Center, LLC, 922***
8 ***A.2d 417, 431 (Del. Ch. Ct. 2007) (“Indeed, a court will not allow a third-party beneficiary to***
9 ***cherry-pick certain provisions of a contract which it finds advantageous in making its claim, while***
10 ***simultaneously discarding corresponding contractual obligations which it finds distasteful.”).***

11 Fourth, although the Nevada Supreme Court has stated that a third-party beneficiary is not
12 formally a party to the contract, ***it has also confirmed that “an intended third-party beneficiary is***
13 ***bound by the terms of a contract even if she is not a signatory.”*** *Canfora*, 121 Nev. at 779, 121
14 P.3d at 604 (emphasis added). Thus, Nanyah’s argument that although it is a third-party beneficiary
15 it is technically a non-party should be recognized for what it is—form over substance.

16 Fifth, the Eliades Defendants—***not Nanyah***—are the parties enforcing Section 9(d) of the
17 MIPA. The Eliades Defendants are undisputedly parties to the MIPA. The Eliades Defendants are
18 undisputedly the prevailing parties in the litigation. Thus, the Eliades Defendants are the “prevailing
19 party” that is explicitly referenced in Section 9(d) of the MIPA. Nanyah’s argument—assuming
20 *arguendo* it is correct—would only mean that Nanyah could not be a “prevailing party” since it is
21 not technically a “party” to the MIPA.⁵ But the Eliades Defendants are undisputedly parties to the
22 MIPA and the prevailing party in the lawsuit, and thus can certainly enforce Section 9(d) of the
23 MIPA.

24 Based on the foregoing, it does not matter that Nanyah is technically not a party to the MIPA.
25 The Nevada Supreme Court has confirmed that Nanyah is bound by the terms of the MIPA, and the
26

27 _____
28 ⁵ As discussed above, Nanyah’s argument mistakenly assumes that the term “party” in “prevailing party” refers to
a party to the MIPA, when it actually refers to a party to the lawsuit.

language of Section 9(d) certainly encompasses the type of third-party beneficiary lawsuit that Nanyah unsuccessfully pursued against the Eliades Defendants.

B. The Eliades Defendants Do Not Claim That the Attorney’s Fees Provision Is a Defense or That Nanyah Stepped Into the Shoes of Another Party.

Nanyah makes two curious arguments. First, that “an attorney’s fees provision is a not a defense.”⁶ Second, that “Nanyah does not step into the shoes of any party” as a third-party beneficiary.⁷ While those may or may not be correct statements of the law, it is unclear why Nanyah made these two arguments, *as they do not resemble any of the legal arguments set forth in the Motion*. As addressed above, the Eliades Defendants have premised their request for attorney’s fees on the Nevada Supreme Court’s holding that “an intended third-party beneficiary is bound by the terms of a contract even if she is not a signatory.” *Canfora*, 121 Nev. at 779, 121 P.3d at 604 (emphasis added). *Nanyah did not address or even acknowledge this binding legal authority anywhere in its Opposition*.

The Nevada Supreme Court has *not* stated that this well-established legal principle only applies to defenses or places the third-party beneficiary in the shoes of another party. To the contrary, “[b]efore the beneficiary may accept the benefits of the contract, he must accept all of its implied, as well as express, obligations.’ As we have explained, ‘if the beneficiary accepts, he adopts the bad as well as the good, the burden as well as the benefit.’” *Benton v. Vanderbilt Univ.*, 137 S.W.3d 614, 618 (Tenn. 2004); *see also Lankford v. Orkin Exterminating Co.*, 597 S.E.2d 470, 473 (Ga. Ct. App. 2004) (“Third-party beneficiaries under the contract ‘are bound by any valid and enforceable provisions of the contract in seeking to enforce their claims.’”) (citation omitted). Section 9(d) is a “burden,” an “obligation,” and a “valid and enforceable provision,” and thus falls neatly within the confines of the legal authority above and cited in the Motion. Nanyah agreed to be bound by Section 9(d) (and the remainder of the MIPA) when it decided to sue the Eliades Parties as a third-party beneficiary under that very agreement. *See Harris Moran Seed Co., Inc. v. Phillips*, 949 So.2d 916, 931 (Ala. Ct. App. 2006) (“The law is clear that a third party beneficiary is bound

⁶ Opp’n, 4:1.

⁷ *Id.*, 4:18.

1 by the terms and conditions of the contract that it attempts to invoke.”) (citation omitted).⁸ Thus,
2 Nanyah’s arguments regarding “defenses” or “stepping into the shoes of a party” are irrelevant here.

3 **C. The Holding of *Canfora* Renders a Reciprocal Attorney’s Fees Statute Superfluous to**
4 **This Analysis.**

5 While refusing to address the *Canfora* holding as well as the countless persuasive opinions
6 which confirm that Nanyah is bound by the provisions of the MIPA, Nanyah proceeds to argue that a
7 few other opinions cited in the Motion are irrelevant because Nevada does not have a reciprocal
8 attorney’s fees statute like California and Utah. To be clear, the Eliades Defendants cited these few
9 opinions because they provide further support for the principle that it is inequitable to allow Nanyah
10 to plead an entitlement to attorney’s fees and proceed under Section 9(d) if it prevails, yet prohibit
11 the Eliades Defendants from doing the same if they prevail. *See, e.g., Manier v. Anaheim Bus. Ctr.*
12 *Co.*, 207 Cal. Rptr. 508, 511-12 (Cal. Ct. App. 1984) (“‘We believe that it is extraordinarily
13 inequitable to deny a party who successfully defends an action on a contract, which claims attorney’s
14 fees, the right to recover its attorney’s fees and costs simply because the party initiating the case has
15 filed a frivolous lawsuit.’”) (citation omitted).

16 Nevertheless, it does *not* matter that Nevada does not have a reciprocal attorney’s fees statute
17 for several reasons. First, the Eliades Defendants are primarily relying on *Canfora* and the
18 numerous similar opinions expressing the well-established principle that an alleged third-party
19 beneficiary is bound by the provisions of an agreement it attempts to invoke. Second, Section 9(d) is
20 a very broad provision that expressly encompasses “*any action or proceeding*...to interpret or
21 enforce the terms and provisions of this Agreement.”⁹ Thus, the Eliades Defendants do not need a
22 reciprocal statute to expand the scope of Section 9(d) to reach Nanyah’s third-party claims against
23

24 ⁸ As this legal authority also makes clear, this Court need not make an affirmative finding that Nanyah is actually
25 a third-party beneficiary. The mere fact that Nanyah sued as a third-party beneficiary and attempted to invoke the MIPA
26 resulted in Nanyah’s agreement to be bound by Section 9(d) of the MIPA. *Lankford*, 597 S.E.2d at 473; *Harris Moran*
27 *Seed Co.*, 949 So.2d at 931; *LaSalle Inc. v. Int’l Broth. of Elec. Workers Local No. 665*, 336 S.Supp.2d 727, 729 (W.D.
28 Mich. 2004) (“A third-party beneficiary *bringing a breach of contract claim* is bound by all of the terms and conditions
of the contract that it invokes.”) (emphasis added); *Brodkin v. Tuhaye Golf, LLC*, 355 P.3d 224, 231-32 (Utah Ct. App.
2015) (awarding attorney’s fees against an alleged third-party beneficiary under the contract at issue *even though the*
court ultimately determined he was not a third-party beneficiary under that contract).

⁹ Exhibit 1 to the Mot., § 9(d) (emphasis added).

the Eliades Defendants—they are already included within the plain language of the provision. The only question is whether Nanyah is legally bound by the MIPA, and *Canfora* confirms that it is.

D. The Eliades Defendants Incurred the Attorney’s Fees Sought in the Motion.

In a cursory, last ditch attempt to avoid its obligations under Section 9(d) of the MIPA, Nanyah argues—*without any evidence whatsoever*—that “[i]t is believed that all fees were paid by the Eliades Trust....” Nanyah further argues that there is no evidence that the fees were actually incurred by Mr. Eliades or Teld. Yet the Eliades Defendants provided a declaration from undersigned counsel which explicitly confirms that the attorney’s fees sought were incurred by the Eliades Defendants.¹⁰ Accordingly, all monthly invoices were sent to Mr. Eliades—the sole owner of all Bailey ♦ Kennedy’s clients in this matter.¹¹ Thus, the Eliades Defendants did incur these attorney’s fees in conjunction with the other two Defendants in these consolidated matters (the Eliades Trust and Eldorado Hills).

E. Because Apportionment is Impracticable, the Eliades Defendants Are Entitled to the Entirety of Their Incurred Attorney’s Fees.

Holding its pointer finger up in the air like a weathervane, Nanyah summarily concludes that the Eliades Defendants are only entitled to 50% of its incurred attorney’s fees, and the remainder should be apportioned to the Eliades Trust. Nanyah does not cite any facts in support of this conclusion. Nanyah does not cite any law in support of this conclusion.

The Nevada Supreme Court has addressed the issue of apportionment. If it is impracticable to apportion attorney’s fees and/or costs between parties and/or claims, the Court is not required to do so, and may award the moving party the entirety of what was incurred. *Mayfield v. Koroghli*, 124 Nev. 343, 353, 184 P.3d 362, 369 (2008). In reaching this conclusion, the Nevada Supreme Court relied on *Abdallah v United Savings Bank* and explicitly adopted its reasoning. *Id.* In *Abdallah*, the California Court of Appeals likewise recognized that if various claims and parties are intertwined thereby making apportionment impracticable, the court should award the entirety of the incurred

¹⁰ Decl. of Dennis L. Kennedy, ¶¶ 4, 14, attached as Exhibit 3 to the Mot.

¹¹ Exhibit 1 to Defendants Peter Eliades, Individually and as Trustee of the Eliades Survivor Trust of 10/30/08, Teld, LLC, and Eldorado Hills: (1) Opp’n to Nanyah Vegas, LLC’s Mot. to Retax Costs; and (2) Countermot. to Award Costs, filed Oct. 28, 2019.

1 attorney's fees even though some of the claims and/or parties may technically fall outside of the
2 prevailing party provision. *Abdallah v. United Savings Bank*, 51 Cal. Rptr. 2d 286, 293 (Cal. Ct.
3 App. 1996).¹² This approach certainly makes sense, because the prevailing party generally would
4 have incurred those attorney's fees and costs regardless of whether those additional claims and/or
5 parties were included.

6 This Court has presided over these consolidated matters for a long time. It is well aware of
7 the interrelatedness between the parties and the claims for relief. The entire litigation is based on the
8 solitary premise that Nanyah is supposedly entitled to reimbursement of its alleged \$1,500,000
9 investment in Eldorado Hills. Nanyah continuously pointed to various language in the MIPA to try
10 to prove its claims. Nanyah asserted many claims under the MIPA, some claims outside the MIPA,
11 and some claims against non-parties to the MIPA. Regardless, all of the issues and claims are so
12 interrelated and intermingled that it would be nearly impossible to apportion attorney's fees for
13 certain claims and certain parties. And it was Nanyah who decided to overplead and overcomplicate
14 this relatively simple legal dispute with unnecessary parties and unmeritorious claims, and it should
15 not stand to benefit from that decision by reducing its obligation under Section 9(d) of the MIPA.
16 Accordingly, the Court has the discretion to and should determine that it would be impracticable to
17 apportion attorney's fees between the Eliades Defendants, the Eliades Trust, and Eldorado Hills, and
18 instead should award the entirety of the incurred fees to the Eliades Defendants under Section 9(d) of
19 the MIPA.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

27 ¹² Notably, the *Abdallah* opinion, which the Nevada Supreme Court has adopted at least in part, also states that "a
28 defendant that has signed a contract providing for attorney fees is generally entitled to fees if it prevails against a
nonsignatory plaintiff in an action on the contract." *Id.* at 293.

III. CONCLUSION

Nanyah made the conscious choice to sue the Eliades Defendants under various contracts containing prevailing party attorneys' fees provisions. The Eliades Defendants are undoubtedly the prevailing party, and are therefore entitled to reimbursement of their attorneys' fees. Therefore, the Motion should be granted, and this Court should order Nanyah to pay the Eliades Defendants \$216,236.25 for their attorneys' fees.

DATED this 23rd day of January, 2020.

BAILEY ♦ KENNEDY

By: /s/ Joseph A. Liebman

DENNIS L. KENNEDY

JOSEPH A. LIEBMAN

Attorneys for Defendants

PETE ELIADES, THE ELIADES

SURVIVOR TRUST OF 10/30/08, TELD,

LLC and ELDORADO HILLS, LLC

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 23rd day of January, 2020, service of the foregoing **REPLY IN SUPPORT OF DEFENDANTS PETER ELIADES AND TELD, LLC'S MOTION FOR ATTORNEYS' FEES** was made by mandatory electronic service through the Eighth Judicial District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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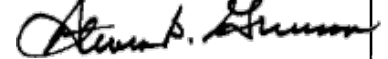
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Attorneys for Nanyah Vegas, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

NANYAH VEGAS, LLC, a Nevada limited liability company,

Plaintiff,

v.

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

Defendants.

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

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

**NANYAH VEGAS, LLC'S
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**

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

1 Nanyah Vegas, LLC ("Nanyah") by and through its attorney Mark G. Simons of
2 Simons Hall Johnston PC, submits the following Reply in support of its Motion to Retax
3 Costs Submitted by Eldorado Hills, LLC ("Eldorado"), Peter Eliades ("Eliades"),
4 individually and as Trustee of the Eliades Survivor Trust of 10/30/08 ("Eliades Trust") and
5 Teld, LLC ("Teld").
6

7 **I. THE COSTS SOUGHT MUST BE DENIED.**

8 **A. NO DIFFERENTIATION OF COSTS AS INCURRED BY EACH NAMED**
9 **DEFENDANT.**

10 "[T]he district court must make a good faith effort to apportion costs." Mayfield v.
11 Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008). This Court cannot just lump
12 costs incurred into a barrel and merely say Nanyah is liable. The costs have to be
13 apportioned to the claims asserted against the various defendants. Merely because
14 Eldorado, Eliades and Teld were represented by the same law firm does not mean that all
15 the costs incurred were applicable as to each defendant.
16

17 Similarly, the Court must only award costs to a party when that party actually
18 incurred the costs. Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994)
19 (costs incurred by a party must "actually" be incurred by the party). If one party bore the
20 responsibility of the costs, then only that party is entitled to an award of costs. The other
21 non-responsible parties are not liable. Further, if no party is liable for the costs, then no
22 costs can be awarded. Nevada law is clear that "[a]n expense can only be 'incurred'
23 when one has paid it or become legally obligated to pay it." United Servs. Auto Ass'n v.
24 Schlang, 111 Nev. 486, 490, 894 P.2d 967, 969 (1995) (internal quotations omitted).
25 Again, this Court cannot just lump costs incurred into a barrel and merely say Nanyah is
26 liable. The costs have to be apportioned to the claims asserted against the various
27 defendants. The Court must only award costs to a party when that party actually incurred
28

1 the costs. Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994) (costs
2 incurred by a party must “actually” be incurred by the party).

3 In addition, the billing records that were dilatorily produced, demonstrate that Mr.
4 Eliades individually was the “client” responsible for any alleged bills—not the Eliades
5 Trust, not Teld and not Eldorado. Accordingly, this evidence conclusively demonstrates
6 that none of these defendants are entitled to any award of costs. Further,
7

8 The claims asserted against each defendant were distinct and separable. The
9 grounds for dismissal of the various claims were also premised on entirely distinct legal
10 theories implemented by the Court. For instance, the claims were dismissed against Teld
11 because the Court held that no fraudulent transfer occurred. The claims against Eliades
12 were dismissed based upon the theory that Eliades did not assume the obligation to
13 repay Nanyah’s \$1.5 million investment (even though Eliades agreed its ownership in
14 Eldorado was subject to the assignment to Nanyah if the debt was not repaid—which
15 obligation this Court ignored). Lastly, this court dismissed the claims against Eldorado
16 based on the baseless proposition that the trial did not commence even though this Court
17 specifically found that the trial was started and all the parties stipulated the trial had
18 started.
19

20
21 The foregoing demonstrates that the theories of dismissal were varied and the
22 costs don’t just get to be lumped together. All dismissals are subject to appeal and
23 assuming some if not all of the dismissals will be reversed, the costs associated with such
24 claims must be apportioned for proper review by the Nevada Supreme Court.

25 **B. THE REQUEST FOR ELECTRONIC FILING FEES MUST BE DENIED.**

26 Nanyah stands by its briefing in its Motion, that these costs must not be allowed
27 because there is no differentiation detailing which party incurred the cost. Further,
28

1 Eldorado seeks recovery of \$419.00 for unreasonable costs incurred by Eldorado for
2 motions that were deemed untimely and improper by the Court. Nanyah cannot be liable
3 for these costs.

4 **C. THE REQUEST FOR COURIER SERVICE MUST BE DENIED.**

5 Nanyah stands by its briefing in its Motion, that \$347.00 in "courier service" fees
6 are unreasonable. Courier service fees are not a designated recoverable cost and cannot
7 be recovered. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1353, 971 P.2d 383,
8 387(1998) ("statutes permitting the recovery of costs are to be strictly construed because
9 they are in derogation of the common law."). Eldorado claims \$347.00 for courier fees is
10 magically "reasonable" because it was allegedly incurred. However, courier services fees
11 are facially unreasonable given such activity could have easily been accomplished by use
12 of mail service and/or electronic signature. Further, the Memo of Costs undertakes no
13 effort to explain the necessity of such fee. Instead, these defendants claim since the cost
14 was incurred it is automatically reasonable. Pretending to incur costs on behalf of a party
15 is also not a viable basis for awarding costs. Gibellini v. Klindt, 110 Nev. 1201, 1205, 885
16 P.2d 540, 543 (1994) (costs incurred by a party must "actually" be incurred by the party).

17 **D. THE REQUEST FOR PHOTOCOPYING FEES MUST BE REDUCED TO**
18 **\$586.55.**

19 Nanyah stands by its briefing in its Motion, that \$4,867.85 in alleged photocopying
20 costs is unreasonable since the Memo of Costs only details \$1,633.35 in photocopy costs
21 incurred. These defendants claim that there are additional internal copy costs but there is
22 no evidence such copy costs were incurred and/or paid for by any defendant. No fee
23 agreements have been produced in this case and no evidence of any such payments
24 have been made. Pretending to incur costs on behalf of a party is not a viable basis for
25
26
27
28

1 awarding costs. Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994) (costs
2 incurred by a party must "actually" be incurred by the party).

3 **E. THE REQUEST FOR PARKING MUST BE DENIED.**

4 These defendants seek \$189.00 in "parking" fees. Parking fees are not a
5 designated recoverable cost and cannot be recovered. Bobby Berosini, Ltd. v. PETA,
6 114 Nev. 1348, 1353, 971 P.2d 383, 387(1998) ("statutes permitting the recovery of costs
7 are to be strictly construed because they are in derogation of the common law."). There
8 is no basis for an award for costs associated with transportation to the Court. If such
9 costs were intended to be recoverable, the Nevada Legislature would have expressly
10 stated such costs as recoverable. Demonstrating the absurdity of this request, under
11 defendants' theory, counsel would also be entitled to reimbursement for gas and a pro-
12 rata award for depreciation of their vehicles used to engage in such transportation. And,
13 if counsel flew into town for a hearing, then such travel costs would also be subject to this
14 theory. However, travel costs are not recoverable as a costs unless incurred in the
15 discovery process. Again, these costs must be denied.

16 **F. \$83,311.00 IN LEGAL RESEARCH IS FACIALLY UNREASONABLE.**

17 The most egregious costs is the outlandish request for \$83,311 in alleged incurred
18 legal research costs. First, these costs are not supported as being attributable to in any
19 reasonable basis to these defendants. Second, only reasonably incurred costs are
20 recoverable. These defendants seek facially unreasonable costs. As stated by the
21 Nevada Supreme Court in Sheehan & Sheehan v. Nelson Malley and Co., 117 P.3d 219,
22 227 (Nev. 2005):

23 **Only reasonable costs may be awarded. "[R]easonable costs' must be**
24 **actual and reasonable, 'rather than a reasonable estimate or calculation of**
25 **such costs.' "**

1 Id. (citations omitted) (emphasis added). Further, the Memo of Costs undertakes no effort
2 to differentiate the costs incurred by the individual defendants.

3 Again, the opposition provides no support, explanation, back-up or methodology
4 for calculating why these defendants' attorneys charge 8 discrete single monthly billing
5 "units" that differentiate in "price" by thousands of dollars. In addition, there is also no
6 support establishing that these pretend "costs" were even actually incurred. Instead,
7 based upon the information provided, it appears that counsel for these defendants are
8 attempting to turn "legal research" into a profit generating function for the law firm with no
9 relation to any reasonably incurred research costs.
10

11 **G. THE REQUEST FOR PACER MUST BE DENIED.**

12 Nanyah stands by its briefing in its Motion, that \$20.20 in "Pacer" fees is improper.

13
14 **II. THE FOUNDATIONAL BASIS FOR AN AWARD OF RESEARCH COSTS IS LACKING.**

15 Should the Court ignore the complete lack of evidentiary support for the alleged
16 \$83,311 in legal research and attempt to award such a cost, then the Court must conduct
17 an evidentiary hearing to allow Nanyah the opportunity to cross-examine counsel for
18 Eldorado, Eliades and Teld regarding the methodology employed by counsel's firm to
19 charge research costs to its clients. Online research companies have a myriad way to bill
20 for research costs including flat-fees, transaction costs, client identification searches and
21 others. In this instance, it appears that the defendants' firm engaged in the "flat rate"
22 method then apportioned a certain percentage of the monthly research costs to clients
23 irrespective of the actual research costs incurred. Such methodology is facially
24 unreasonable and cannot form the basis of such a ridiculous award. Accordingly, the
25 Court must either deny in total the research costs or recognize that there are clear factual
26 issues relating to the reasonableness of the costs sought and the methodology of
27
28

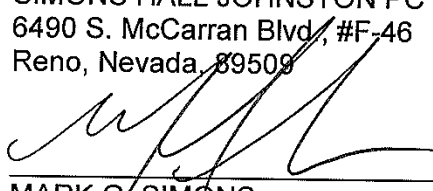
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1 imposing such costs that cannot be evaluated and/or resolved or granted via motion
2 practice. Therefore, the Court must set an evidentiary hearing on the reasonableness
3 and the methodology employed by defendants' counsel before any research award can
4 be made by this Court.
5

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

8 DATED this 23rd day of January, 2020.

9
10 SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., #F-46
11 Reno, Nevada 89509

12 
13 MARK G. SIMONS
14 Attorney for Nanyah Vegas, LLC
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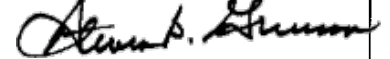
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of
SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of
the **NANYAH VEGAS, LLC'S REPLY IN SUPPORT OF ITS 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** on all parties to this action
via the Odyssey E-Filing System:

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DATED this 23 day of January, 2020.


Employee of Simons Hall Johnston PC



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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

26 Defendants.

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

Plaintiff,

v.

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

Defendants.

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

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

**NANYAH VEGAS, LLC'S
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**

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

1 Nanyah Vegas, LLC ("Nanyah") by and through its attorney Mark G. Simons of
2 Simons Hall Johnston, PC, submits the following Reply in Support of its Motion to Retax
3 Costs submitted by Sigmund Rogich, individually and as Trustee of the Rogich Family
4 Irrevocable Trust and Imitations, LLC.

5
6 **A. NO DIFFERENTIATION OF COSTS AS INCURRED BY EACH NAMED
7 DEFENDANT.**

8 "[T]he district court must make a good faith effort to apportion costs." Mayfield v.
9 Koroghli, 124 Nev. 343, 346, 184 P.3d 362, 364 (2008). This Court cannot just lump
10 costs incurred into a barrel and merely say Nanyah is liable. The costs have to be
11 apportioned to the claims asserted against the various defendants. Merely because the
12 Rogich Trust, Rogich individually and Imitations were represented by the same law firm
13 does not mean that all the costs incurred were applicable as to each defendant.

14 Similarly, the Court must only award costs to a party when that party actually
15 incurred the costs. Gibellini v. Klindt, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994)
16 (costs incurred by a party must "actually" be incurred by the party). If one party bore the
17 responsibility of the costs, then only that party is entitled to an award of costs. The other
18 non-responsible parties are not liable. Further, if no party is liable for the costs, then no
19 costs can be awarded. Nevada law is clear that "[a]n expense can only be 'incurred'
20 when one has paid it or become legally obligated to pay it." United Servs. Auto Ass'n v.
21 Schlang, 111 Nev. 486, 490, 894 P.2d 967, 969 (1995) (internal quotations omitted).

22
23 Lastly, the claims asserted against the Rogich Trust, Rogich and Imitations were
24 distinct and separable. The grounds for dismissal of the various claims were also
25 premised on entirely distinct legal theories implemented by the Court. For instance, the
26 claims were dismissed against the Rogich Trust because the Court made new law and
27 held that the Rogich Trust was not liable even though it expressly and "clearly and
28

1 unambiguously" agreed to repay Nanyah's \$1.5 million investment into Eldorado. Rogich
2 and Imitations were dismissed because the Court found that Rogich was not a party to a
3 contract that he was expressly called out in as being a party. Further, the Court
4 dismissed the tort claims against Rogich even though Rogich admitted to owing fiduciary
5 duties to Nanyah and Nevada law made clear that Rogich owed fiduciary duties to
6 Nanyah. Imitations was dismissed on similar grounds even though Imitations participated
7 in the fraud and deceit perpetrated by Rogich, the Rogich Trust and others.
8

9 **B. CONCLUSION.**

10 First, the foregoing demonstrates that the Court must undertake to determine
11 which party, if any, paid any costs or were liable for any costs. Since that analysis cannot
12 be conducted based upon the deficient information provided, all costs must be denied as
13 the Court is without foundational basis to make such evidentiary determination.
14

15 Further, as a matter of law, if one party—or no parties—paid or incurred the liability
16 for any costs, then such costs cannot be awarded.

17 Next, assuming more than one party paid any costs, the Court must apportion the
18 costs to the respective parties. Based upon the information provided, the Court cannot
19 conduct such analysis and must therefore, deny the costs requested. As demonstrated,
20 the theories of dismissal were varied and the costs don't just get to be lumped together.
21 All dismissals are subject to appeal and assuming some if not all of the dismissal's will be
22 reversed, the costs associated with such claims must be apportioned for proper review by
23 the Nevada Supreme Court.
24

25 **C. EVIDENDITIARY HEARING.**

26 Assuming the Court ignores the foregoing, then the Court must conduct an
27 evidentiary hearing to determine which costs, if any, were incurred and/or which applied
28

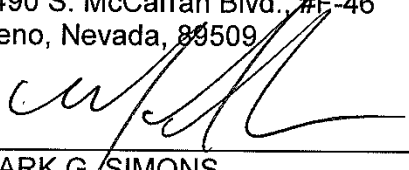
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1 to the respective claims asserted. See Mayfield v. Koroghli, 124 Nev. 343, 346, 184 P.3d
2 362, 364 (2008).

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

5
6 DATED this 23rd day of January, 2020.

7 SIMONS HALL JOHNSTON PC
8 6490 S. McCarran Blvd., #F-46
9 Reno, Nevada, 89509

10 
11 MARK G. SIMONS
12 Attorney for Nanyah Vegas, LLC
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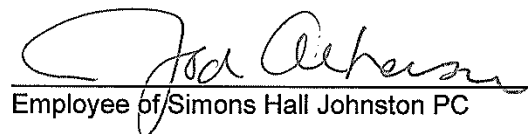
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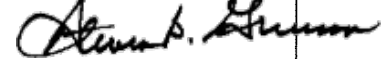
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and EDCR 8.05, I certify that I am an employee of
SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of
the **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** on all parties to this action via the Odyssey E-Filing System:

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DATED this 23 day of January, 2020.


Employee of Simons Hall Johnston PC



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and Imitations, LLC*

IN THE EIGHTH JUDICIAL DISTRICT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

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.

Defendants SIGMUND ROGICH, individually ("Rogich") and as Trustee of The Rogich

Case No.: A-13-686303-C

Dept. No.: XXVII

Consolidated With:

Case No.: A-16-746239-C

**ROGICH DEFENDANTS' REPLY IN
SUPPORT OF THEIR RENEWED
MOTION FOR ATTORNEYS' FEES
AND COSTS**

Hearing Date: January 30, 2020

Hearing Time: 11:00 a.m.

1 Family Irrevocable Trust ("Rogich Trust"), and IMITATIONS, LLC ("Imitations" and
2 collectively with Rogich and the Rogich Trust referred to herein as the "Rogich Defendants")
3 hereby submit their Reply in support of their Renewed Motion for Attorneys' Fees and Costs
4 ("Motion") as follows:

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. THE ROGICH DEFENDANTS ARE ENTITLED TO COSTS**

7
8 Preliminarily, it should be noted that the Rogich Defendants are entitled to their costs as a
9 matter of law. The Rogich Defendants have filed an opposition to Plaintiff Nanyah Vegas, LLC's
10 ("Nanyah" or "Plaintiff") motion to retax and incorporate herein all arguments and assertions of
11 the same.

12 **II. NRCP 68 APPLIES**

13 Plaintiff argues that the Rogich Defendants' Initial Offer¹ is invalid because the Rogich
14 Defendants fail to demonstrate that the Initial Offer was "authorized, valid and/or would have
15 allowed judgment to actually be entered against the Rogich Trust for \$50,000." See Opposition at
16 p. 4. These are not valid assertions by Plaintiff, as the Initial Offer's validity is facially
17 demonstrated and by operation of law pursuant to NRCP 68, as cited in the Rogich Defendants'
18 Motion. Glaringly, Plaintiff offers nothing but its own self-serving assertions to support its
19 argument, and it is demonstrably false. As a matter of law, if the Initial Offer had been accepted
20 – as it should have been – Plaintiff would have had a judgment against the Rogich Defendants,
21 jointly and severally, in the amount of \$50,000. Any purported lack of authorization for the
22 Initial Offer – which was authorized – would not have been Plaintiff's concern: it would have
23 had an enforceable judgment against the Rogich Defendants. Instead, Plaintiff decided to reject
24 the Initial Offer and proceed to trial. Plaintiff decided to take the risk that it would lose at trial,
25 which it did, knowing that it would be required to pay the Rogich Defendants' post-offer
26 attorneys' fees and costs. *Crockett & Myers, Ltd. v. Napier, Fitzgerald & Kirby, LLP*, 583 F.3d
27 1232, 1239 (9th Cir. 2009) ("Under Nevada law, **'a defendant shall be awarded reasonable**

28

¹ As that term is defined in the Plaintiff's opposition ("Opposition") to the Motion.

1 attorneys' fees incurred from the time of an offer of judgment if the plaintiff rejects it and
2 fails to receive a more favorable result.' "). Further, as Plaintiff correctly notes, the factors for
3 awarding attorney fees against a party who rejected an offer of judgment and failed to obtain a
4 more favorable judgment require the district court to evaluate: (1) whether the plaintiff's claim
5 was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in
6 good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer
7 and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by
8 the offeror are reasonable and justified in amount. See *O'Connell v. Wynn Las Vegas, LLC*, 134
9 Nev. 550, 429 P.3d 664 (Nev. App. 2018). However, "[n]one of these factors are outcome
10 determinative, however, and thus, each should be given appropriate consideration." *Frazier v.*
11 *Drake*, 131 Nev. 632, 642, 357 P.3d 365, 372 (Nev. App. 2015) (citing *Yamaha Motor Co.,*
12 *U.S.A. v. Arnoult*, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998)). Each factor weighs
13 in favor of the fees incurred from Plaintiffs' rejection of the Initial Offer.

14 A. Nanyah's claims were not brought in good faith.

15 As noted in the Motion, two (2) days before the filing of the 2016 Lawsuit – in which
16 Rogich was named as a defendant for the second time on the same claims, Nanyah's principal
17 Mr. Harlap had no clue what had even happened to the money he had given to Carlos Huerta. See
18 Exhibit 2 to the Motion. Plaintiff saw this as yet another opportunity to again bring frivolous and
19 unsupported claims against Rogich and his entities in order to further Mr. Huerta's attempts to get
20 back at Rogich for Mr. Huerta's failed attempt to deceive the bankruptcy court concerning money
21 he claimed Rogich owed to him. Rather than accepting the reality that Mr. Huerta was
22 responsible for the disappearance of Nanyah's money, it decided to proceed ahead against the
23 Rogich Defendants rather than settle and resolve them for the amount of the Initial Offer,
24 knowing that it was risking having to pay the Rogich Defendants' post-offer attorneys' fees.

25 B. The Initial Offer was brought in good faith.

26 The Initial Offer was brought in good faith, and Plaintiff again offers nothing more than
27 baseless, self-serving argument otherwise. As the Court is aware, litigation is inherently fraught
28 with risk, and the Rogich Defendants made the Initial Offer in a good faith attempt to resolve this

1 litigation, consistent with the policy and purpose behind NRCP 68. *See MEI-GSR Holdings, LLC*
2 *v. Peppermill Casinos, Inc.*, 134 Nev. 235, 245, 416 P.3d 249, 258 (2018) (recognizing that the
3 purpose of NRCP 68 is “sav[ing] time and money for the court system, the parties, and the
4 taxpayer by rewarding the party who makes a reasonable offer and punishing the party who
5 refuses to accept such an offer.”). Plaintiff’s decision to take the risk of losing at trial rather than
6 accepting the Initial Offer comes with the consequences laid out in NRCP 68. Plaintiff cannot
7 avoid those risks by simply asserting with no basis that the offer was not made in good faith. Had
8 Plaintiff accepted the Initial Offer, this matter would have been over with Plaintiff having
9 obtained a much better result for itself than it did.

10 **C. Plaintiff’s decision to reject the Initial Offer was grossly unreasonable and**
11 **made in bad faith.**

12 In Nevada, “there is no bright-line rule that qualifies an offer of judgment as per se
13 reasonable in amount; instead, the district court is vested with discretion to consider the adequacy
14 of the offer and the propriety of granting attorney fees.” *O’Connell v. Wynn Las Vegas, LLC*, 134
15 Nev. 550, 556, 429 P.3d 664, 669 (Nev. App. 2018) (citing *Certified Fire Prot, Inc. v. Precision*
16 *Constr., Inc.*, 128 Nev. 371, 383, 283 P.3d 250, 258 (2012)).

17 In this case, Plaintiff cannot rely on its own ignorance to claim its rejection of the Initial
18 Offer was reasonable or in good faith. Plaintiff should have known – and in fact was
19 constructively charged with knowledge of – the fact that it was required to provide notice of its
20 multiple and frivolous lawsuits to the beneficiaries of the Rogich Trust. In fact, as the Supreme
21 Court of Nevada has held, “every one is presumed to know the law and this presumption is
22 not even rebuttable.” *Smith v. State*, 38 Nev. 477, 151 P. 512, 513 (1915) (emphasis added).
23 Plaintiff has previously claimed the notice requirement concerning beneficiaries was not
24 applicable because it believes Rogich to be the only beneficiary of the Rogich Trust. This is
25 incorrect. The Rogich Defendants have previously submitted a declaration under penalty of
26 perjury from Rogich that he is not the only beneficiary of the Rogich Trust. Plaintiff’s failure to
27 accept the Initial Offer given the circumstances of the case was therefore grossly unreasonable in
28 this situation, and not a good faith decision.

1 Moreover, the remaining claims asserted by Plaintiff against Rogich and Imitations were
2 likewise meritless and Plaintiff knew, or should have known, that this was the case. There was no
3 question that Rogich, individually, never signed a single contract at issue with Plaintiff or Huerta.
4 Imitations was not even involved in the underlying events in any way; Plaintiff simply named it
5 as a defendant to further harass the Rogich Defendants. Accordingly, this factor weighs heavily
6 in favor of granting the Rogich Defendants' Motion.

7 **D. The fees sought by the Rogich Defendants from the Initial Offer are**
8 **reasonable and justified in amount.**

9 The Rogich Defendants incurred \$541,021.50 in attorneys' fees from the date of the Initial
10 Offer due to Plaintiff's rejection of the same. See Motion at Exhibits 1 and 6. Plaintiff now
11 wishes to avoid paying said fees by asserting that they were unnecessary. What Plaintiff fails to
12 admit is that the case did not end until the entry of the Court's summary judgment in October of
13 2019. Further, due to Plaintiff's unreasonable decision to reject the Initial Offer, the Rogich
14 Defendants were forced to complete all preparations for trial, with over one hundred potential
15 trial exhibits, a dozen or more potential witnesses, and very complex financial testimony and
16 analysis. In addition, there were serious questions regarding the validity of some of the exhibits
17 offered by Plaintiff, the anticipated testimony by Carlos Huerta (who had been deposed multiple
18 times and who served dubiously as the person most knowledgeable of the Plaintiff itself) and
19 other witnesses anticipated to be called by the Plaintiff. The Rogich Defendants did not know
20 what the outcome of the hearing to dismiss the Rogich Trust would be, but because it was set for
21 the first day of trial, they had to be prepared to go forward with the entire trial in the event the
22 Trust was not dismissed. Thus, due to Plaintiff's rejection of the Initial Offer, the Rogich
23 Defendants were required to completely prepare for a potentially full week jury trial. In addition,
24 Plaintiff made it clear it was seeking \$1,500,000 in principal, interest and potentially close to an
25 additional \$500,000 - \$750,000 in attorneys' fees and costs. Accordingly, the fees sought from
26 the Initial Offer are reasonable and were necessarily incurred.

27 It bears noting that the Supreme Court of Nevada has never held that block billing cannot
28 form the basis of a fee award, or even that it is improper. Plaintiff cites no Nevada case to

1 support this assertion, and that is because it is inaccurate. In fact, the Ninth Circuit has expressly
2 recognized that block-billed time entries are generally amenable to consideration under the
3 *Brunzell* factors. See *Mendez v. Cnty. of San Bernardino*, 540 F.3d 1109, 1129 (9th Cir. 2008),
4 *overruled on other grounds by Arizona v. ASARCO LLC*, 773 F.3d 1050 (9th Cir. 2014). Further,
5 a district court must consider block-billed time entries when awarding attorney fees. *Id.* If a
6 district court encounters difficulty considering the character of the work done or the work actually
7 performed because of block billing, then the district court may order additional briefing, but must
8 explain in its order why a reduction in attorney fees, or lack thereof, was fair and reasonable
9 under the *Brunzell* factors. See *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-65,
10 124 P.3d 530, 548-49 (2005). Further, only where a district court determines that none of the task
11 entries comprising the block billing were necessary or reasonable may a district court
12 categorically exclude block-billed time entries. *Id.*

13 Moreover, the contrary case law Plaintiff cites from other jurisdictions is misleadingly
14 represented in the Opposition. For example, the primary case relied on by the Plaintiff to support
15 this suspicious claim did not hold that block billing is per se improper or requires even a
16 reduction in fees. Rather, the issue addressed by the Court in that case was a situation in which
17 “plaintiff alleges claims for which fees may be shifted and others for which fee-shifting is not
18 appropriate.” *Oklahoma Nat. Gas Co. v. Apache Corp.*, 355 F. Supp. 2d 1246, 1264 (N.D. Okla.
19 2004). That is not the case here, as the Rogich Defendants have prevailed on all claims against
20 them, and therefore which tasks relate to which claims is a moot question.²

21 Plaintiff’s other representations are also inaccurate. Plaintiff cites to *Lahiri v. Universal*
22 *Music & Video Distribution Corp.*, 606 F.3d 1216, 1222–23 (9th Cir. 2010), and asserts that the
23 Ninth Circuit there “affirm[ed] district court’s reduction of 80% of attorneys’ hours to account for
24 block-billing”. See Opposition at p. 7. This is misleading. The *Lahiri* court only reduced 80% of

25 ///

26 ///

27 _____

28 ² Alternatively, should the Court wish to review unredacted invoices, the Rogich Defendants are more than willing to submit them to the Court only for *in camera* review.

1 the hours “by 30%”:

2
3 The district court reviewed samples from the fee application and calculated an
4 80% block billing rate. The district court identified attorneys and paralegals
5 who were primarily responsible for block billing, and reduced 80% of their billable
6 hours by 30%.

7 *Id.*

8 Moreover, the only other case cited by Plaintiff in support of its argument regarding block
9 billing – an unreported decision from the federal district of Arizona – does not even mention
10 block billing. *See Schrum v. Burlington N. Santa Fe Ry. Co.*, No. CIV 04-0619-PHX-RCB, 2008
11 WL 2278137, at *1 (D. Ariz. May 30, 2008). Accordingly, this case is inapposite except to the
12 extent it shows that Plaintiff has no basis for claiming block billed time entries are improper
13 under Nevada law.

14 **III. NRS § 18.010 APPLIES**

15 While Plaintiff is correct that NRS 18.010 has been applied multiple different ways, there
16 is clear support for both plaintiffs and defendants recovering under this statute:

17 Federal courts sitting in diversity look to the governing state law when deciding
18 whether to award attorney’s fees. In Nevada, a prevailing party typically cannot
19 recover attorney’s fees unless a statute authorizes the court to award them. NRS
20 18.010(2) allows the court to award attorney’s fees to a prevailing party if “the
21 prevailing party has not recovered more than \$20,000,” or “the court finds that the
22 claim ... was brought or maintained without reasonable ground or to harass the
23 prevailing party.” This statute is “liberally contrue[d] ... in favor of awarding
24 attorney’s fees in all appropriate situations.” The court must “inquire into the
25 actual circumstances of the case, rather than a hypothetical set of facts favoring
26 plaintiff[’]s averments.” Prevailing defendants as well as plaintiffs may
27 recover attorney’s fees under the statute.

28 *Topolewski v. Blyschak*, No. 216CV01588JADNJK, 2018 WL 1245504, at *2 (D. Nev. Mar. 8,
2018). Further, while the Plaintiff is correct that courts in Nevada have recognized that
29 subsection (2)(a) generally requires a money judgment, no such requirement is necessary for an
30 award of fees under NRS 18.010(2)(b). *See* NRS 18.010(2) (stating in the disjunctive that fees
31 may be awarded if the requirements under either (2)(a) or (2)(b) are met).

1 The question here is whether it is fair to award fees to the Rogich Defendants. Analysis of
2 the appropriate factors – more fully set forth in the Motion – makes clear that it is. First, this
3 litigation has gone on for over six (6) years. It has involved numerous claims asserted against the
4 Rogich Defendants, some of them dismissed, then reasserted, needlessly multiplying the fees and
5 costs the Rogich Defendants were required to spend to defend themselves. Further, despite the
6 Rogich Defendants' good faith attempts to resolve the issues, Plaintiff has been unyielding and
7 forced the Rogich Defendants to incur fees and costs by aiding Carlos Huerta in his attempts to
8 punish Rogich for Mr. Huerta's own wrongful conduct. Clearly, as the email evidence in the
9 Motion makes clear, Nanyah did not even know what it was suing for when it brought its lawsuit!
10 Finally, the result of this lawsuit – dismissal and/or summary judgment on all claims against the
11 Rogich Defendants – makes clear that NRS 18.010(2)(b) is applicable and supports an award of
12 all fees and costs incurred by the Rogich Defendants.

13 **IV. THE WORK PERFORMED WAS REASONABLE AND NECESSARY AND**
14 **APPLICATION OF THE *BRUNZELL* FACTORS, AS SET FORTH IN THE**
15 **MOTION, SUPPORTS THE REQUESTED AWARD.**

16 Finally, Plaintiff attacks the reasonableness of the work performed. *See* Opposition at pp.
17 7-10. Plaintiff is incorrect and given the result of the case Plaintiff's arguments are surprising.
18 As set forth in the Motion, the tasks accomplished were necessary to a favorable outcome of the
19 case and simply because a motion was denied does not mean it was "meaningless" as Plaintiff
20 asserts. Further, the Motion makes clear there was no "contingency" fee relationship and Plaintiff
21 offers no contrary evidence. Further, the fact that there is not a specific apportionment among the
22 Rogich Defendants is irrelevant, as all the Rogich Defendants prevailed. The Rogich Defendants
23 addressed this same argument from Plaintiff in their opposition to Plaintiff's motion to re-tax
24 costs, and incorporate those arguments herein. Accordingly, the Rogich Defendants request the
25 Motion be granted in its entirety.

26 **V. CONCLUSION**

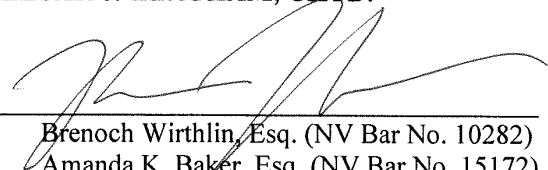
27 For all these reasons, the Rogich Defendants request that the Motion be granted in its

28 ///

1 entirety, and that the Court grant such other and further relief as it deems appropriate.

2 DATED: January 21, 2020.

3 **KOLESAR & LEATHAM, CHTD.**

4
5 By 
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13 *Attorneys for the Rogich Defendants*

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Las Vegas, Nevada 89145
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 23rd day of January 2020, I caused to be served a true and correct copy of foregoing **ROGICH DEFENDANTS' REPLY IN SUPPORT OF THEIR RENEWED MOTION FOR ATTORNEYS' FEES AND COSTS** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and **served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.**

/s/ S. DIANNE POMONIS

An Employee of KOLESAR & LEATHAM

Heather J. Simon
CLERK OF THE COURT

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7 Reno, Nevada 89509
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9 Facsimile: (775) 785-0087
10
11 *Attorneys for Nanyah Vegas, LLC*

12 **DISTRICT COURT**
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 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

STIPULATION AND ORDER
RE:
OCTOBER 4, 2019 DECISION

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

CLERK OF THE COURT

JAN 30 2020

RECEIVED

1 Plaintiff, Nanyah Vegas, LLC ("Nanyah") by and through its undersigned counsel,
2 Mark G. Simons of SIMONS HALL JOHNSTON PC, and Sigmund Rogich, individually,
3 and Imitations, LLC (collectively, the "Rogich Defendants") by and through their
4 undersigned counsel Brenoch Wirthlin of KOLESAR & LEATHAM, CHTD., and Eldorado
5 Hills, LLC ("Eldorado") by and through its undersigned counsel, Joseph Liebman of
6 BAILEY KENNEDY, hereby stipulate and agree to the following:

7 1. On April 16, 2019, Nanyah filed its Pretrial Memorandum indicating that it
8 was abandoning its 8th Claim for Declaratory Relief and its 9th Claim for Specific
9 Performance.

10 2. On October 4, 2019, this Court entered its Decision granting the Rogich
11 Defendants' Motion for Summary Judgment seeking judgment on "all remaining claims"
12 asserted by Nanyah, which remaining claims were for breach of contract, contractual
13 breach of the implied covenant of good faith and fair dealing, tortious breach of the
14 implied covenant of good faith and fair dealing and civil conspiracy (the "Decision").

15 3. The Court's Decision expressly resolved the remaining claims Nanyah
16 asserted against the Rogich Defendants.

17 **AFFIRMATION:** The undersigned do hereby affirm that this document does not
18 contain the Social Security Number of any person.

19 DATED this 30 day of January, 2020.

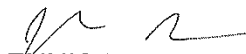
20
21 SIMONS HALL JOHNSTON PC
22 6490 S. McCarran Blvd. F-46
23 Reno, Nevada 89509

24 By: 

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

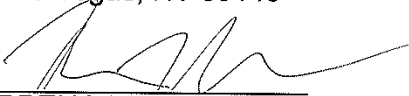
1 DATED this 30 day of January, 2020.

2 BAILEY KENNEDY
3 8984 Spanish Ridge Avenue
4 Las Vegas, NV 89148-1302

5 By: 
6 DENNIS KENNEDY, ESQ.
7 JOSEPH LIEBMAN, ESQ.
8 Attorneys for Eldorado Hills, LLC

9 DATED this 30 day of January, 2020.

10 KOLESAR & LEATHAM, CHTD.
11 400 South Rampart Blvd., Ste. 400
12 Las Vegas, NV 89145

13 By: 
14 BRENOCH WIRTHLIN
15 AMANDA K. BAKER
16 Attorneys for the Rogich Defendants

17 BASED UPON THE FOREGOING, it is hereby ordered and confirmed that the
18 Decision entered on October 4, 2019, constituted a full and final decision on all remaining
19 claims asserted by Nanyah against the Rogich Defendants, as Nanyah's 8th and 9th
20 claims for relief against these defendants were previously abandoned.

21 IT IS SO ORDERED this 30 day of January, 2020.

22 
23 DISTRICT COURT JUDGE

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

01/30/2020 **All Pending Motions (11:00 AM)** (Judicial Officer Allif, Nancy)

Minutes

01/30/2020 11:00 AM

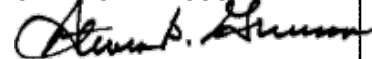
- DEFENDANTS PETER ELIADES and TELD LLC'S MOTION FOR ATTORNEY FEES . . . ROGICH DEFENDANTS' RENEWED MOTION FOR ATTORNEYS' FEES AND COSTS . . . DEFENDANTS PETER ELIADES, INDIVIDUALLY AND AS TRUSTEE OF THE ELIADES SURVIVOR TRUST OF 10/30/08, TELD, LLC, AND ELDORADO HILLS, LLC'S: (1) OPPOSITION TO NANYAH VEGAS, LLC'S MOTION TO RETAX COSTS; and (2) COUNTERMOTION TO AWARD COSTS Court stated the Supreme Court is not sure there is a final order in this matter. Mr. Simons advised the parties executed a Stipulation and Order. Upon Court's inquiry, the parties acknowledged the same and Mr. Simons advised the Stipulation resolved Claim 8 and Claim 9 related to specific performance of declaratory relief. Stipulation and Order Re: October 4, 2019 Decision, signed in open court. Arguments by Mr. Liebman, Mr. Wirthlin and Mr. Simons as to the merits of certain case law and statutes related to payment of attorneys' fees, block billing and the applicability of apportionment regarding the same. Further arguments of counsel regarding the validity of claims to attorneys' fees and costs by a non-signatory, third-party. Court stated its FINDINGS regarding Defendants Peter Eliades and Teld, LLC's and ORDERED, Motion GRANTED and set the following briefing scheduled regarding apportionment between the nonmoving parties and the moving parties: Defendants' BRIEF due February 21, 2020; Plaintiff's REPLY due March 20, 2020; Minute Order to issue March 31, 2020. Mr. Liebman to prepare the Order with form and content agreed to by all counsel. Further, Court stated its FINDINGS regarding Rogich Defendants and ORDERED, Motion GRANTED and set the following briefing scheduled regarding redactions and block billing: Rogich Defendants BRIEF due February 21, 2020; REPLY due March 20, 2020; Minute Order to issue March 31, 2020. Mr. Wirthlin to prepare the Order with form and content agreed to by all counsel. Arguments by Mr. Liebman, Mr. Wirthlin and Mr. Simon regarding various costs related to copying, research, filing fees, messenger fees, postage and other costs, reasonable charges for costs and methodologies used to calculate the same. Further arguments of counsel regarding apportionment for costs. Court stated its FINDINGS regarding Motion to Retax on Defendants Peter Eliades and Teld, LLC's and ORDERED, Motion GRANTED in part and denied in part as to certain costs. Further, Court stated its FINDINGS regarding Motion to Retax on Rogich Defendants and ORDERED, Motion DENIED. Mr. Wirthlin to prepare the Order with form agreed to by Mr. Simons.

Parties Present

[Return to Register of Actions](#)

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

Electronically Filed
2/3/2020 1:15 PM
Steven D. Grierson
CLERK OF THE COURT



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

10 *Attorneys for Nanyah Vegas, LLC*

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

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

19 **Plaintiffs,**

20 **v.**

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

26 **Defendants.**

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

Plaintiff,

v.

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

Defendants.

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

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

NOTICE OF ENTRY OF
ORDER

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

1 PLEASE TAKE NOTICE THAT a Stipulation and Order re: October 4, 2019
2
3 Decision was entered on January 30, 2020, by the Honorable Nancy L. Alf in this matter.
4 See Exhibit 1.

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

7 DATED this 3rd day of February, 2020.

8
9 SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
10 Reno, NV 89509

11 

12 MARK G. SIMONS
13 Attorneys for Nanyah Vegas, LLC
14
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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 **NOTICE OF ENTRY OF ORDER** on all parties to this action in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-
referenced document was electronically filed on the date hereof and **served through the
Notice of Electronic Filing automatically generated by the Court's facilities to those
parties listed on the Court's Master Service List.**

DATED this 3 day of February, 2020.


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	Stipulation and Order re: December 4, 2019 Decision	3

EXHIBIT 1

EXHIBIT 1

Electronically Filed
01/30/2020

Alvin S. Simon
CLERK OF THE COURT

1 **ORDR**

2 **MARK G. SIMONS, ESQ.**

3 Nevada Bar No. 5132

4 MSimons@SHJNevada.com

5 **SIMONS HALL JOHNSTON PC**

6 6490 S. McCarran Blvd., Ste. F-46

7 Reno, Nevada 89509

8 Telephone: (775) 785-0088

9 Facsimile: (775) 785-0087

10 *Attorneys for Nanyah Vegas, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

19 **Plaintiffs,**

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23 **ELDORADO HILLS, LLC, a Nevada limited liability**
24 **company; DOES I-X; and/or ROE**
25 **CORPORATIONS I-X, inclusive,**

26 **Defendants.**

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TELD, LLC, a Nevada limited liability company;
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Defendants.

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

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

STIPULATION AND ORDER
RE:
OCTOBER 4, 2019 DECISION

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

CLERK OF THE COURT

JAN 30 2020

RECEIVED

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

1 Plaintiff, Nanyah Vegas, LLC ("Nanyah") by and through its undersigned counsel,
2 Mark G. Simons of SIMONS HALL JOHNSTON PC, and Sigmund Rogich, individually,
3 and Imitations, LLC (collectively, the "Rogich Defendants") by and through their
4 undersigned counsel Brenoch Wirthlin of KOLESAR & LEATHAM, CHTD., and Eldorado
5 Hills, LLC ("Eldorado") by and through its undersigned counsel, Joseph Liebman of
6 BAILEY KENNEDY, hereby stipulate and agree to the following:

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8 was abandoning its 8th Claim for Declaratory Relief and its 9th Claim for Specific
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10 2. On October 4, 2019, this Court entered its Decision granting the Rogich
11 Defendants' Motion for Summary Judgment seeking judgment on "all remaining claims"
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13 breach of the implied covenant of good faith and fair dealing, tortious breach of the
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15 3. The Court's Decision expressly resolved the remaining claims Nanyah
16 asserted against the Rogich Defendants.

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18 contain the Social Security Number of any person.

19 DATED this 30 day of January, 2020.

20
21 SIMONS HALL JOHNSTON PC
22 6490 S. McCarran Blvd. F-46
23 Reno, Nevada 89509

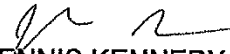
24 By:

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

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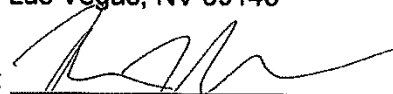
1 DATED this 30 day of January, 2020.

2 BAILEY KENNEDY
3 8984 Spanish Ridge Avenue
4 Las Vegas, NV 89148-1302

5 By: 
6 DENNIS KENNEDY, ESQ.
7 JOSEPH LIEBMAN, ESQ.
8 Attorneys for Eldorado Hills, LLC

9 DATED this 30 day of January, 2020.

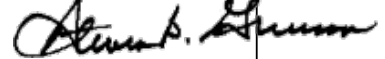
10 KOLESAR & LEATHAM, CHTD.
11 400 South Rampart Blvd., Ste. 400
12 Las Vegas, NV 89145

13 By: 
14 BRENOCH WIRTHLIN
15 AMANDA K. BAKER
16 Attorneys for the Rogich Defendants

17 BASED UPON THE FOREGOING, it is hereby ordered and confirmed that the
18 Decision entered on October 4, 2019, constituted a full and final decision on all remaining
19 claims asserted by Nanyah against the Rogich Defendants, as Nanyah's 8th and 9th
20 claims for relief against these defendants were previously abandoned.

21 IT IS SO ORDERED this 30 day of January, 2020.

22 
23 DISTRICT COURT JUDGE



1 **RTRAN**

2
3
4
5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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

9 **vs.**

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

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

13 **BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE**
14
15 **THURSDAY, JANUARY 30, 2020**

16
17 ***RECORDER'S TRANSCRIPT OF PROCEEDINGS***
18 ***RE: MOTIONS***

19 **APPEARANCES:**

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

21
22 **For the Defendant(s): JOSEPH A. LIEBMAN, ESQ.**

23 **For the Trustee Rogich: BRENOCH WIRTHLIN, ESQ.**

24
25 **RECORDED BY: BRYNN WHITE, COURT RECORDER**

1 **LAS VEGAS, NEVADA, THURSDAY, JANUARY 30, 2020**

2 [Proceeding commenced at 11:01 a.m.]

3
4 THE COURT: Huerta versus Eldorado Hills.

5 I'm going to ask for a short recess to give you a chance to
6 set up and give me a comfort break so I can listen to your
7 arguments.

8 [Recess taken from 11:01 a.m., until 11:05 a.m.]

9 THE COURT: Thank you. Please remain seated.

10 All right. Guys, as a preliminary matter, apparently the
11 Supreme Court is not certain that there's a final order in this case.
12 Let's address that first, as to whether or not we should properly
13 proceed today.

14 MR. SIMONS: We have a stipulation that will resolve that.

15 THE COURT: Oh, okay.

16 MR. SIMONS: Everybody signed off on it.

17 THE COURT: Is that correct?

18 MR. LIEBMAN: Yes, Your Honor.

19 THE COURT: You know, I didn't take your appearances for
20 the record. Let's do that, please.

21 MR. LIEBMAN: Joseph Liebman, on behalf of TELD, Pete
22 Eliadas, the Eliadas Trust, and Eldorado Hills.

23 THE COURT: Thank you.

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

1 THE COURT: Thank you.

2 MR. SIMONS: Mark Simons, on behalf of Nanyah,
3 Your Honor.

4 THE COURT: All right. And Mr. Simons, will you outline
5 the terms of the stipulation for the record, please.

6 MR. SIMONS: Yes. The term -- the stipulation addresses
7 the Supreme Court's recent order wanting finality of the decisions
8 out of this Court, and that would -- specifically in relation to Claim 8
9 and Claim 9, Specific Performance of Dec Relief.

10 We stipulated as those claims are withdrawn in the trial
11 statement, and they didn't -- even though it was withdrawn in the
12 trial statement, there was nothing of any order addressing that. So
13 we've executed the stipulation affirming that, so that this could be
14 signed off and could be provided to the Supreme Court to
15 demonstrate jurisdiction.

16 THE COURT: Thank you. And that's correct?

17 MR. LIEBMAN: That's correct, Your Honor.

18 THE COURT: That's correct?

19 MR. WIRTHLIN: Yes, Your Honor.

20 THE COURT: And please approach. And I've signed it in
21 open court so that it may be filed immediately.

22 MR. SIMONS: Thank you.

23 THE COURT: Thank you, both.

24 All right. So now that that issue is resolved, the way that I
25 would like to hear the matters today would be the TELD Motion for

1 Attorney Fees, the Eliadas Motion -- I'm sorry -- Eliadas, and then the
2 Rogich Motion for Attorneys' Fees -- one opposition as to both and
3 then reply. And after that, the issues about retaxing costs.

4 Any objection to that format?

5 MR. LIEBMAN: No, that's fine.

6 MR. SIMONS: That's fine.

7 MR. WIRTHLIN: Fine with us, Your Honor.

8 THE COURT: Very good.

9 All right. Mr. Liebman.

10 MR. LIEBMAN: Good morning, again, Your Honor. This is
11 Pete Eliadas and TELD LLC's Motion for Attorney Fees.

12 The primary basis for this motion is binding Nevada
13 precedent, specifically *Canfora v. Coast Hotels*, which explicitly holds
14 that an intended third-party beneficiary is bound by the terms of the
15 contract, even if she is not a signatory. This is pretty much
16 brought -- Black Letter Law across the country. And numerous other
17 courts have expanded on the legal principle, holding explicitly that a
18 third-party beneficiary is bound by a contract that it attempts to
19 invoke.

20 And that's precisely what Nanyah Vegas did here. Nanyah
21 Vegas sued both Pete Eliadas and TELD LLC under the Membership
22 Interest Purchase Agreement, pointing to specific language in that
23 agreement to claim that it was entitled to a \$1.5 million payment,
24 and sued both Pete Eliadas and TELD for an alleged breach of that
25 particular agreement; claimed to be a third-party beneficiary under

1 that agreement because they did not sign the agreement.

2 And in fact, in the opposition, Nanyah continues to take
3 that position to this day, stating as much in the opposition to the
4 motion.

5 That particular agreement in Section 9(d) contains a pretty
6 typical prevailing party attorney's fees provision. It says it applies to
7 any action to enforce the terms of the agreement. It's not limited to
8 disputes between the named parties or signatories to the agreement.
9 Accordingly, there was certainly a factual and a legal basis under
10 Section 9(d) to award Pete Eliadas and TELD LLC their attorney's fees
11 against Nanyah as the prevailing party.

12 It's also worth noting that Nanyah also pled an entitlement
13 to attorney's fees in their complaint. And it would be extremely
14 inequitable to say that, well, if Nanyah had proved that it was a
15 third-party beneficiary and proved that Pete Eliadas and TELD LLC
16 breached that particular agreement, it was entitled to attorney's
17 fees -- but that it doesn't work the other way around, especially
18 considering the language of that provision that says it applies to any
19 dispute. It does not need to be a dispute between the parties to the
20 particular agreement.

21 The last issue, I think, is the apportionment issue. The
22 Eliadas Trust and Eldorado Hills are not parties to the Membership
23 Interest Purchase Agreement. The claims against those particular
24 parties were a little bit different and not based on that particular
25 agreement, although the allegation was pretty much the same, the

1 \$1.5 million payment.

2 There is binding Nevada precedent dealing with these
3 apportionment issues in Nevada, the *Mayfield v. Koroghli* case. And
4 they talk about when you have a case where the claims are so
5 intertwined and interspersed that it really would be impracticable to
6 try to separate and say, okay, this particular fee for this deposition
7 over here is for Eldorado Hills and this particular fee for this hearing
8 over here was for TELD.

9 It's really -- based on the nature of this case, it's not
10 practicable to be able to do that. And under the authority of that
11 case, we believe that means that the Court is not required to
12 apportion the fees and would be entitled to grant the entire amount
13 sought.

14 The bottom line is, if he had just sued Pete Eliadas and
15 TELD for a breach of this particular agreement, at least up until the
16 time that they were dismissed, the attorney's fees would pretty
17 much have been the same amount anyway. I mean, all the --
18 because the issues were intertwined.

19 And it's worth noting that the attorney's fees request does
20 not include anything incurred by Eldorado Hills after Pete Eliadas
21 and TELD were dismissed back last year on the Motion for Summary
22 Judgment -- or two years ago on the Motion for Summary
23 Judgment. So that does take that out of the equation.

24 Unless the Court has any questions, that's pretty much the
25 motion.

1 THE COURT: I don't.
2 Mr. Wirthlin.
3 MR. WIRTHLIN: Well, Your Honor, I don't have a whole lot
4 to add to our --
5 THE COURT: Mr. Wirthlin, give Mr. Simons a chance to
6 get to back to --
7 MR. WIRTHLIN: Oh. I apologize. Sorry about that.
8 THE COURT: Go ahead, please.
9 MR. WIRTHLIN: Don't have much to add. Just kind of
10 want to hit a couple of the highlights. We believe that there is a
11 basis under 18.010(2)(b) to add -- excuse me -- to award attorney's
12 fees in their entirety. But alternatively, certainly from the offer of
13 judgment which we believe was submitted in good faith and was
14 reasonable, and rejection of that was not -- was not reasonable as
15 set forth in the motion.
16 We do believe that block billing is not an issue that the
17 Nevada Supreme Court has ever said justifies lowering an award, so
18 we would object to that. But if the Court wants to see the attorney's
19 fees unredacted or the invoices, we're certainly happy to provide
20 those to the Court *in camera*, if the Court would like to do -- to see
21 those.
22 And finally, we don't believe apportionment is
23 appropriate, given that these defendants were basically executing a
24 joint defense.
25 So unless the Court has any questions, we reserve the

1 right to reply.

2 THE COURT: I don't.

3 MR. SIMONS: Just one moment, Your Honor. Okay. So
4 I'll address in order of presentation.

5 All right. First off, this is very important for the Court to
6 recognize that Mr. Kennedy and Mr. Liebman represented four
7 different defendants. All right. Only two of the defendants have
8 moved for recovery of attorney's fees, but those two are claiming all
9 the attorney's fees should be applied to them as -- because they
10 were successful in this case.

11 And the first time, I just heard today, that certain of the
12 fees for Eldorado were carved out. That's not true. I just was
13 looking through. That's why I said but there's no differentiation.
14 They lump it all in a big pile and say, oh, we think we get this
15 recovery.

16 And there -- you heard the claims were substantially
17 different against these entities, and each one of them, and there has
18 to be an apportionment. There's an argument that apportionment
19 shouldn't apply just because that wouldn't be right. They should get
20 all their attorney's fees.

21 Now, let's go to actually what their contention is that's
22 based upon a contract provision that a third party is bound by a
23 contract and award of attorney's fees. And let's step through that.

24 The actual language of the contract, it says, Parties.
25 Nanyah is not a party. Clear case law that a third-party beneficiary is

1 not a party, so the contract can't bind a nonparty with regards to an
2 award of attorney's fees. And it also says, Third party is bound by
3 affirmative defenses. Attorney' fees are not a defense. Clear case
4 law on that.

5 Then we get to the, Nanyah does not stand in the shoes.
6 You just can't throw them in as a party.

7 Can we assert rights? Yes. And we're subject to the terms
8 and conditions of the contract. The award of attorney's fees to the
9 prevailing party is not one of the provisions that is applicable.

10 They take extra-jurisdictional case law out of California
11 and Utah to say, Look, you should apply this reciprocally. Now, I'm
12 very familiar with this, because I've actually been trying to change
13 the legislation on this and get Nevada into a reciprocal state to be
14 compatible with the two.

15 THE COURT: Sure.

16 MR. SIMONS: We have -- there's no -- we're not getting
17 any traction. It doesn't seem to be an issue that is -- the legislature
18 wants to address. So what that says is unilateral fee agreements
19 aren't unilaterally, the prevailing party. Landlord wins? No recovery
20 for a tenant if there's not a reciprocal provision.

21 So what they're trying to do is hodgepodge some
22 California reciprocal provisions and overlay it on the third party, and
23 all of a sudden, magically, a third party is bound by an attorney's
24 fees clause. None of their arguments are substantiated with every
25 detail, each one of these points in the brief.

1 Also, going to the Rogich request for attorney's fees -- and
2 this one's interesting. Because they start out with 18.010(2)(a),
3 claiming that they are entitled as a prevailing party. But you have to
4 have a monetary judgment on that. They bailed on that. And now
5 they're jumping on 18.010(2)(b), which, again, they said, was
6 baseless claims. But they can't get around the fact that this Court's
7 already determined that, look, you have an obligation to pay. The
8 Court found a different reason to dismiss the case.

9 Now that brings us to the NRCP 68, they're claiming,
10 which is the offer of judgment. And we say, No application, and if
11 you apply, you've really got to look at the work that was done. They
12 pile the work and rebill for duplicative work, spotting the same
13 motions over and over and over. I brought it to your attention. They
14 filed a Motion for Rehearing, Motion for Reconsideration, all getting
15 denied. So they're just churning the case.

16 Lastly, we have the block billing, block billing is there.
17 Block billing is disapproved of by the Nevada Supreme Court. And
18 based upon these situations, with regard to the Rogich, we said
19 there should be at least a 75 percent reduction for the block billing
20 and the duplicative work, even if this Court was somehow going to
21 find that there was an entitlement to an award under 68.

22 That's all I've got.

23 THE COURT: This might be the shortest hearing we've
24 ever had in this case. I spent hours getting ready for your hearing.
25 So all right.

1 MR. LIEBMAN: Well, I'll try to be brief then, Your Honor,
2 because you're obviously very prepared.

3 Just a couple things I wanted to point out. What I said
4 about Eldorado Hills fees being taken out -- that was all the fees
5 Eldorado Hills incurred once they became the sole party we were
6 defending in this particular case. Everything else was so
7 intertwined, it was really impossible to carve anything out specific to
8 Eldorado Hills.

9 With respect to *Canfora v. Coast Hotels*, Mr. Simons did
10 not address that finding. Nevada precedent -- obviously it's not an
11 attorney's fees provision case, but it does hold the Black Letter
12 principle that an intended third-party beneficiary is bound by the
13 terms of the contract, even if she is not a signatory. We cited those
14 California and Utah cases that have the reciprocal fee provisions
15 because they talk about how unjust and inequitable it would be to
16 say, okay, you get fees if you win, but you don't get fees if you don't
17 win.

18 The bottom -- and the Court certainly can take equity into
19 account in making a decision on this particular point. But the fact of
20 the matter is this is not a unilateral fee provision. The fee provision,
21 as written, specifically says that it applies to any action to interpret
22 the terms of the agreement. And the reference to a party in that
23 particular provision talks about the prevailing party. The prevailing
24 party in the lawsuit, not the party under the contract.

25 And we cited an 11th Circuit case that kind of dealt with a

1 similar issue that was talking about an attorney's fees provision and
2 said, Hey, when you use the term prevailing party, you're talking
3 about a party with the lawsuit. We're not talking about a party to the
4 contract, especially when the -- the preparatory language to that is
5 any action -- not any action between the parties to the contract. The
6 provision does not say that.

7 And that is it, Your Honor.

8 THE COURT: Thank you.

9 MR. LIEBMAN: Thank you.

10 THE COURT: Mr. Wirthlin.

11 MR. WIRTHLIN: Thank you. And I certainly appreciate the
12 Court's preparation. I'll be brief too.

13 The first point is we agree with them about 18.010(a), and
14 they were right on that.

15 18.010(b), we believe that there's a basis under that for an
16 award of the entire fees, but understand it's up to the Court's
17 discretion, as is all the -- all of the determination of attorney' fees. I
18 just would say, though, with respect to the block billing, that the
19 reduction they're talking about, I think, is not supported by the case
20 law. But even if it is, the reduction that we're -- that we would
21 request with respect to the offer of judgment is at least 50 percent.

22 And on that note, plaintiff alleges that there was a lot of
23 what they characterize as duplicative or several motions that related
24 to the same kind of principles. But I would submit that -- I don't
25 know that I would agree with their characterization as duplicative.

1 But at a minimum, those were -- and I think the record reflects --
2 almost entirely done, if not entirely done prior to the offer of
3 judgment. The only thing we submitted after the offer of judgment, I
4 believe, as far as that went, was a 60(b) motion for the first time, and
5 the rest of the motions as the case proceeded.

6 So we would submit that at least from the date of that first
7 offer of judgment, fees are appropriately awarded. Thank you.

8 THE COURT: Thank you.

9 So the Court takes under submission the motions by
10 defendants Eliadas and tell, and the Rogich defendants, for the
11 requests for attorney's fees. And the following is the ruling:

12 With regard to the Eliadas and TELD motion, clearly, they
13 were intended third-party beneficiary. I do find they're entitled to
14 attorney's fees.

15 However, I'm going to require that there be a carve-out
16 with regard to a better explanation in the record by affidavit of
17 counsel with regard to apportionment between the nonmoving
18 parties and the moving parties.

19 I did look at the rates, the hours -- I looked at everything.
20 And I did find that everything was reasonable under -- and met all of
21 the *Brunzell* factors.

22 But I am going to require an affidavit no later than
23 February 14, from Mr. Liebman or someone from his firm, going
24 over the apportionment issue and why it was impossible to
25 unapportion part of it and to apportion part of it in accordance with

1 your argument today.

2 Did you have a comment?

3 MR. SIMONS: And then do we get an opportunity to
4 respond?

5 THE COURT: Yeah. Your response would be due by the
6 21st. And then it will be on my calendar for February 25th to review
7 those and enter a Minute Order to determine whether or not the
8 affidavit is sufficient or if the objections are going to be withheld.

9 MR. SIMONS: Can I ask for a longer extension to respond
10 to that --

11 THE COURT: You may.

12 MR. SIMONS: -- because I have some other briefing that's
13 going to be --

14 THE COURT: You may. Then you'll have until the 28th of
15 February. It'll be on my calendar on the 10th of March.

16 March 10th, please, for my chamber's calendar.

17 And with regard to Mr. Wirthlin's argument with regard to
18 the Rogich defendants, I don't find that fees are -- that you're entitled
19 under NRS 18. But I do find under Rule 68 that based upon the offer
20 of judgment your fees are appropriate. The offer was made in good
21 faith. It was both in timing and amount that the fees were
22 reasonable and justified, and that it was grossly unreasonable -- not
23 in bad faith, but grossly unreasonable not to accept the offer.

24 I looked at the --

25 MR. SIMONS: I'm sorry. Just --

1 THE COURT: Just let me finish and then I'll give you a
2 chance.

3 MR. SIMONS: Okay.

4 THE COURT: I did look at these. I did see that there was
5 some block billing, but there was sufficient detail that I could
6 determine that the time was reasonably spent. The hourly rate was
7 very low compared to the skill of the attorney. There were some
8 redactions.

9 But I reviewed -- I mean, I've read all of these briefs. I
10 didn't find that it was churning or duplicative work. I think that the
11 work was advanced in good faith.

12 However, I'll need an affidavit in support with regard to an
13 explanation of why things were redacted, and with regard to the
14 block billing and why it was done and why you can justify that.

15 Again, same briefing deadline. And it's simply to
16 supplement the record so that both sides have the ability to fully
17 resolve the issue, since I know it will be appealed, just making sure.

18 And your comment, please.

19 MR. SIMONS: Yes. Are you concluded so I'll just have all
20 my comments at one point in time?

21 THE COURT: Yeah. No. Go ahead.

22 MR. SIMONS: Okay. Because the appellate brief is -- the
23 opening brief is due on March 6th. So what I'd like to do is see if I
24 can --

25 MR. LIEBMAN: I believe it was suspended under the --

1 MR. SIMONS: That's true.

2 MR. LIEBMAN: -- the order.

3 MR. SIMONS: But with this order it's going to be

4 reinstated.

5 MR. LIEBMAN: Yeah.

6 MR. SIMONS: So as far as I'm -- I have to treat it as if it's

7 March 6th --

8 MR. LIEBMAN: Okay.

9 MR. SIMONS: -- unless they do something.

10 So that -- given that I'm going to be working on the

11 appellate brief, is there a way we could bump this back, my

12 response, a week after -- say March 13th?

13 THE COURT: Is there a response to that?

14 MR. WIRTHLIN: I have no problem with that.

15 THE COURT: I'm certainly amenable to you guys working

16 out a briefing schedule. And I doubt there's going to be any lack of

17 professional courtesy by your opposing counsel.

18 MR. LIEBMAN: I'm fine with March 13th.

19 MR. WIRTHLIN: That's fine.

20 MR. LIEBMAN: I just want to respond.

21 MR. SIMONS: Can we do that then, at this time?

22 THE COURT: All right. So let's get these dates then on the

23 record.

24 MR. SIMONS: Okay.

25 THE COURT: Let's really tie them down now. Is

1 February 14th still good?

2 MR. LIEBMAN: I mean, are you not going to be able to
3 work on it for a while?

4 MR. SIMONS: No. You can have your --

5 MR. LIEBMAN: Okay. Can we have February 21st? And
6 then he could have March --

7 THE COURT: February 21st for the defendant's affidavits.

8 MR. LIEBMAN: Okay.

9 THE COURT: And then we will set March 20th --

10 MR. SIMONS: Perfect.

11 THE COURT: -- for any response. And then it will go on
12 my chamber's calendar then on March 31st.

13 And if I don't have it done that week, I'll just issue an
14 minute order giving you an idea of when I can get -- have everything
15 fully reviewed.

16 MR. LIEBMAN: Thank you, Your Honor.

17 MR. WIRTHLIN: Thank you, Your Honor.

18 THE COURT: All right. So we're all good on that part?

19 MR. SIMONS: Yes.

20 THE COURT: There's another question.

21 MR. SIMONS: Another question was it is my
22 understanding you've rendered a decision in favor of attorney's fees
23 for Mr. Eliadas and TELD --

24 THE COURT: That's correct.

25 MR. SIMONS: -- finding that Nanyah was an intended

1 third-party beneficiary under the contracts, therefore, it is bound by
2 the attorney's fees provision within the contract.

3 THE COURT: That is correct.

4 MR. SIMONS: Okay.

5 THE COURT: That is correct. That -- and that should be
6 reflected in the order, please.

7 MR. LIEBMAN: Understood, Your Honor.

8 THE COURT: And with regard to the findings I made with
9 regard to the offer of judgment, please include those, Mr. Wirthlin --

10 MR. WIRTHLIN: Will do, Your Honor.

11 THE COURT: -- in your order as well, as well as the
12 *Brunzell* factors.

13 MR. SIMONS: Last preemptory.

14 THE COURT: Sure.

15 MR. SIMONS: The entirety, at least the copy I received of
16 the billing records, were redacted. So I --

17 THE COURT: They were redacted.

18 MR. SIMONS: And then you --

19 THE COURT: And that's why I'm requiring the affidavit. I
20 could tell, based upon what I know, what I read in the paper, and
21 enough from their descriptions and the time that I felt the time was
22 justified. I am requiring them to do an affidavit with regard to the
23 block billing and the redactions.

24 MR. SIMONS: The difficulty I have is I don't know how
25 you could make that determination, because at least from the

1 information I saw, I looked through it, and other than the dates,
2 essentially what my copy had is entirely redacted. But what we do
3 know is that there was activity undertaken to refile the same
4 motions. So that's why I'm a little bit at a disadvantage, if not a
5 tremendous disadvantage, of not being able to challenge the
6 duplicative nature of the invoices.

7 And so I just want to have an understanding of what
8 you're asking them to disclose to the Court with regards to the
9 activities that were undertaken in the redaction.

10 THE COURT: Block billing and redaction explanations of
11 what was done during block billing --

12 MR. SIMONS: Okay.

13 THE COURT: -- what was redacted. And you'll have the
14 ability to respond to the affidavit that's provided.

15 Any other questions?

16 MR. LIEBMAN: I don't believe so, Your Honor.

17 THE COURT: All right. So -- and the moving party is to
18 prepare the orders, form to be agreed by all counsel.

19 Now, let's talk about costs. And I brought in the
20 Memoranda of Costs with me this morning. And just to give you an
21 outline of what I normally rule on costs -- that doesn't mean I won't
22 listen to your arguments.

23 I normally allow all filing fees, usually reasonable
24 messenger fees, postage, copying fees, service of process, transcript
25 and deposition fees. I was concerned in both Memorandum of

1 Costs, with regard to copy charges and legal research. And that is
2 looking first at Mr. Wirthlin's.

3 Let me now outline, Mr. Liebman, some of the issues I
4 had. I don't allow parking because it's not in the statute.

5 MR. LIEBMAN: Understood, Your Honor.

6 THE COURT: And courier, only if reasonable. Photocopies
7 have to be justified. And online legal research was wildly expensive.
8 And keep in mind, I've been -- I haven't practiced law for 10 years, so
9 I haven't had to pay a Westlaw bill for a law firm for 10 years. So
10 with that in mind, I'll ask you to present your motion to retax. And
11 then I'll hear the responses.

12 MR. SIMONS: If I've understood it, you've already looked
13 over the costs and just wanted an argument on the research.

14 THE COURT: I looked at everything. I did. And those are
15 the things that I had concerns -- I've kind of outlined what I had
16 concerns with. I didn't mean to steal your thunder.

17 MR. SIMONS: Not at all. Clearly, the 83,000 in legal
18 research is problematic. And I don't have anything to say to that,
19 other than what I've already briefed.

20 THE COURT: Good enough.

21 Mr. Liebman.

22 MR. LIEBMAN: And obviously, legal research is under the
23 statute, but obviously it had to be reasonable. That's up to the
24 Court's discretion. And we would certainly agree with any decision
25 to reduce that or not award that, if you don't believe that's

1 appropriate.

2 With respect to the copy costs, we have some internal
3 copy costs and we have copy costs that we farmed out. That was
4 mostly relating to the trial exhibits.

5 THE COURT: Right.

6 MR. LIEBMAN: I believe we have invoices in the
7 Memorandum of Costs that's evidencing the trial exhibits. The copy
8 costs internally, we printed out a report showing when they were
9 made and when they were done for all of those internal costs.

10 THE COURT: I guess -- is the price per page was 20 cents,
11 I think?

12 MR. LIEBMAN: I believe so.

13 THE COURT: Is it a profit center for your law firm?

14 MR. LIEBMAN: To be honest, I don't know, Your Honor,
15 because I don't -- I certainly don't handle that aspect of the
16 administrative process for the law firm.

17 THE COURT: All right.

18 MR. LIEBMAN: I just know --

19 THE COURT: And when you farm it out, what is the
20 price-per-page cost?

21 MR. LIEBMAN: I do not know, Your Honor. I do not know.
22 I just know that a lot of times, like when we're preparing for a
23 hearing, we put together binders internally. We don't farm that out
24 because we usually need that on a quicker basis.

25 THE COURT: Right.

1 MR. LIEBMAN: But to be honest with you, I don't have
2 those figures before me. I would imagine that when we farm it out,
3 it might be a little bit less expensive. But I'm not sure, to be honest
4 with you.

5 THE COURT: Right. And with regard to Westlaw, how can
6 you -- how do you justify? I know they're actual. It's not a profit
7 center.

8 MR. LIEBMAN: Mm-hmm.

9 THE COURT: But there are free online research services
10 available.

11 MR. LIEBMAN: Yes. And to be honest with you, we
12 actually just switched from Westlaw to Lexus to try to lessen that
13 cost going forward.

14 The agreements that we have with certain clients, in this
15 instance, is to charge those Westlaw costs directly to the client.
16 Some clients agree to it; some don't. In this particular case, this
17 particular client did agree to that and was incurred for those
18 particular costs. But if the Court believes that that amount is
19 unreasonable, then certainly we'd be -- that's up to the discretion of
20 the Court to reduce that particular amount or to not award it at all.

21 We obviously -- we incurred that to the client as a cost,
22 and certainly we had a responsibility to include that in the
23 Memorandum of Costs, especially since it's under the statute, but
24 certainly leave it up to the Court's discretion to make a determination
25 on that particular amount.

1 The parking you mentioned, that's certainly fine.

2 The courier fees, that was related to ROCs going between
3 counsel's offices and related to bringing trial exhibits and things
4 down here when we were set to go to trial. It might not be explicitly
5 mentioned under the statute, but there is that catchall in Subsection
6 17 that talks about other costs that are necessary to the case.

7 I believe there was some apportionment arguments that
8 were made. Our position on apportionment is, hey, every party
9 prevailed. Apportionment is not really an issue at this particular
10 point in time.

11 So unless the Court has any additional questions, that's all
12 I have.

13 THE COURT: I don't.

14 Mr. Simons, do you have a -- let's take these separately,
15 since the -- I kind of outlined it.

16 Your reply with regard to your Motion to Retax on TELD
17 Eliadas.

18 MR. SIMONS: Correct. And keep in mind, it's the party
19 who incurs. It's just not, hey, we all win, so we all get costs.

20 TELD, we know, didn't pay for anything, because all the
21 bills were sent to Mr. Eliadas, and he didn't pay them. So we know
22 that. We know there's an apportionment issue that's all over the
23 place. We know that there's -- I can go through the line items, but I
24 don't want to waste our time going through what I've said and why
25 there's issues with -- unless you want me to -- like, the courier fees.

1 THE COURT: It's -- if you feel you've made your record,
2 that's fine. But I don't want you to feel cut off. I don't want anybody
3 to leave this courtroom and say, I didn't get a chance to present my
4 argument.

5 MR. SIMONS: Well, my argument's in the written briefing.
6 That goes up on appeal. I understand that you like to be courteous
7 to the counsel and let them speak, but I'm not just going to
8 regurgitate what I've already written, because I know you've looked
9 at it.

10 THE COURT: Good enough.

11 MR. SIMONS: The research -- it's not up for the Court just
12 to randomly pick a number. I mean, they've got an issue with how
13 they're billing that. And that's why I brought it up with different
14 methodologies. And you know, 83,000, that -- that'll pay for legal
15 fees for my firm for the next 10 years. So it depends on the
16 methodology that was employed. It has to be reasonable -- not just
17 what they bill or what they want to charge and try to turn it into a
18 profit center. And that's why I said, look, we have to have some
19 more information on how you went about or what would be
20 reasonable. Is it a transactional amount? What's a reasonable
21 transaction amount? Or do you do it hourly? There's all different
22 methodologies to -- for legal research.

23 So at this point in time, I appreciate that counsel has said,
24 look, I'll leave it to the discretion of the Court. We've pointed out
25 that even if the Court were to exercise discretion, what would be the

1 parameters? You could pick 25 percent of what they requested?
2 You could do that and say, look, you know, I've looked at the
3 potential legal fees, the research fees sent in by Rogich. I think that's
4 a reasonable comparison and use that. I don't know, it -- that's why
5 you get the discretion.

6 THE COURT: Good enough.

7 MR. SIMONS: But our opposition was that there was no
8 basis to award [indiscernible].

9 THE COURT: With regard to the Motion to Retax on the
10 Eliadas TELD, it'll be granted in part and denied in part as follows:

11 Filing fees are a taxable cost.

12 Courier services, I find to be reasonable in the premises.

13 With regard to the copying, I have a sufficient explanation
14 with regard to in-house and photocopies. They did not seem
15 unreasonable.

16 Postage is reasonable.

17 Parking is disallowed.

18 And with regard to online research, I'm going to reduce it
19 by 75 percent, simply because I don't have a justification of the
20 benefit to the prevailing parties in this case.

21 Pacer is allowed, and long distance is allowed.

22 So it's granted in part and denied in part. And Mr. Simons
23 to prepare the order.

24 Now, with regard to the fees requested by the Rogich
25 defendants, do you wish to argue your motion, Mr. Simons?

1 MR. SIMONS: I'm good with what's submitted.

2 THE COURT: Thank you.

3 Is there a response? It looked like it was 20 cents a page
4 for copying, filing fees, messenger fees, postage, Secretary of State,
5 service of process, transcripts.

6 The biggest issue I had was Westlaw.

7 MR. WIRTHLIN: Westlaw, Your Honor, yes, and just
8 because that issue has been raised, I'll just let the Court know the
9 way that we do that to try to keep the fees down as much as possible
10 is I personally use Fastcase through the State Bar web site, because
11 it's free to do almost all of my research.

12 I do, however -- they don't -- Fastcase, I don't think has a
13 reliable Shepardization function, and so I do have to look up the
14 case, and occasionally do a little bit of research on that. Through
15 Westlaw, because I don't know -- I do try to Google -- Google
16 Scholar, I think, has cases I can find. And so I do all of those that I
17 can for free, and then only go to Westlaw when it's absolutely
18 necessary. But sometimes it is just to make sure the case law is
19 good. So that's the entirety of what I use Westlaw for.

20 I can't speak to other folks, but I think that was pretty
21 much mostly what was incurred there.

22 As far as the copy charges, yeah, that's pretty much the
23 exact same thing that Mr. Liebman said. Binders we do in-house.
24 But because we had to be ready to go to trial on that first day, we
25 had to get everything prepared. And we had the form that out and

1 they charge what they charge. And frankly, we don't have much of a
2 choice to pay it. So that was --

3 Unless the Court has any for the questions, that's --

4 THE COURT: I don't.

5 MR. WIRTHLIN: Okay.

6 THE COURT: Your response, please.

7 MR. SIMONS: Yes. Again, there's -- we raised, as one of
8 the issues, apportionment for both costs -- both in the Eliadas TELD
9 context and now in this context. And I'm assuming you're going to
10 say, given what you told me on the Eliadas TELD, that there's no
11 apportionment analysis, so that the award will go to the requesting
12 parties.

13 And other than that, that was primarily for clarification,
14 because I don't necessarily need to argue, because you know what
15 the detail is on each of the costs that we were objecting to.

16 THE COURT: Okay. With regard to the Motion to Retax
17 the Rogich defendants, it's going to be denied, the Motion to Retax.

18 The costs will be awardable only to the requesting parties.

19 I'm fine with the copying charges. They have been
20 justified.

21 Filing fees are justified.

22 Messenger fees are justified.

23 Postage, justified.

24 Secretary of State copy of records, justified.

25 Service of process, transcripts.

1 And then I have a sufficient explanation with regard to the
2 Westlaw expenses, and they're significantly less, even though the
3 Rogich parties were in the case much longer and had the laboring
4 or -- of defense.

5 So for that reason, it's denied.

6 Mr. Wirthlin to prepare the order. Mr. Simons to approve
7 the form of that.

8 All right. Anything else to take up today?

9 MR. LIEBMAN: I don't believe so, Your Honor.

10 MR. SIMONS: No, Your Honor.

11 THE COURT: So let's talk about how the case will move
12 forward. I assume you're going to continue to stay everything,
13 pending the appeal?

14 MR. LIEBMAN: Yes, Your Honor. I believe these fee
15 awards and cost awards will eventually be wrapped into the appeal.
16 And we'll go forward with the appeal and see what happens.

17 THE COURT: Good enough.

18 MR. SIMONS: There should be nothing before this Court
19 of any more substance, other than this additional --

20 MR. LIEBMAN: Briefing --

21 MR. SIMONS: -- post briefing that we will address.

22 THE COURT: Right.

23 MR. SIMONS: And then once we get a concluding order
24 from you --

25 THE COURT: Right.

1 MR. SIMONS: -- we'll appeal that. And that'll be
2 consolidated into the master appeal.
3 THE COURT: Okay. So I'm just trying to see what kind of
4 case management you may need, so you guys will let me know
5 when it's time for me to step back.
6 MR. SIMONS: Back into? Become involved again?
7 THE COURT: Back into this one.
8 MR. LIEBMAN: Yes, Your Honor.
9 THE COURT: The remaining issues?
10 MR. LIEBMAN: Yes, Your Honor.
11 MR. WIRTHLIN: Yes, Your Honor.
12 THE COURT: All right. Then thank you all.
13 MR. SIMONS: Okay.
14 MR. LIEBMAN: Thank you, Your Honor.
15 MR. WIRTHLIN: Thank you.

16 [Proceeding concluded at 11:39 a.m.]

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

22 
23 Katherine McNally
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