

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

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8 NANYAH VEGAS, LLC, A Nevada limited
9 liability company,

Supreme Court No.: 79917

10 Appellant,

11 v.

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

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

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

21 Respondents.

22 AND RELATED MATTERS.

23 **APPELLANT NANYAH VEGAS, LLC'S**
24 **REPLY BRIEF & ANSWERING BRIEF TO CROSS APPEAL**

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NRAP 26.1 DISCLOSURE

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

1. Appellant Nanyah Vegas, LLC (“Nanyah”) is a Nevada limited liability company. No publicly held company owns any portion of this entity.
2. The undersigned counsel at SIMONS HALL JOHNSTON PC appeared in these proceedings on behalf of Appellant.

DATED this 1st day of February, 2022.

SIMONS HALL JOHNSTON PC
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BY: 

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ARGUMENT IN REPLY

This Answering Brief will address the arguments raised by Respondents the Eliades Defendants, the Rogich Defendants, and by Eldorado.¹ Nanyah's appeal focuses on the following four (4) categories:

Category 1. Dismissal of the 5th and 7th Claims for Relief against the Eliades Trust.

Category 2. The Order granting summary judgment in favor of the Eliades Defendants on remaining claims;

Category 3. Dismissal of all claims against the Rogich Trust, Eldorado, Rogich and Imitations; and

Category 4. The Court's orders denying Nanyah's NRCP 15 motion and procedural motions.

Nanyah seeks to recover its \$1.5 million invested into Eldorado or to receive the corresponding membership interest it has been deprived of receiving and/or the value of that interest for which it has been deprived. As its remedies, Nanyah sought to recover the amount of \$1.5 million from the Rogich Trust and Eldorado, the transfer of an equity interest in Eldorado from the Eliades Trust and/or the value of that interest the Eliades Trust has deprived it of receiving in Eldorado.² A brief summary of the relevant background facts as well as relevant supplemental

¹ For ease of reading, the defined terms herein retain their meaning as contained in Nanyah's Opening Brief.

² Nanyah's remedies are cumulative and Nanyah does not argue it is entitled to both the return of its \$1.5 million investment and a membership interest in Eldorado.

1 facts implicated by the Eliades Defendants Answering Brief (“EAB”) and the
2 Rogich Defendants Answering Brief (“RAB”) are set forth below.

3
4 Nanyah’s \$1.5 million investment into Eldorado is undisputed. This
5 undisputed fact is contained in this Court’s previous Order of Reversal and
6 Remand (the “Reversal Order” at 12 JA 2894-2893), multiple orders entered by the
7 district court, undisputed evidence provided by Eldorado’s managing member
8 Carlos Huerta (“Huerta”) and the documentary evidence. Huerta affirmed Nanyah
9 invested \$1.5 million into Eldorado. 11 JA 2580, ¶¶10, 13. Huerta deposited
10 Nanyah’s \$1.5 million investment into Eldorado’s bank account. *Id.* 2580, ¶10.
11 Eldorado’s bank statement confirms receipt of Nanyah’s investment. *Id.* 2707.
12
13

14 Huerta prepared Eldorado’s Capital Account Detail showing Nanyah’s
15 investment into Eldorado was a “capital” contribution. *Id.* 2709. In addition to
16 documenting Nanyah’s “capital” investment into Eldorado, Huerta affirmed
17 Nanyah’s investment “**was a capital contribution to Eldorado Hills, LLC.**” *Id.*
18 2581, ¶14 (emphasis in original). Huerta affirms Nanyah should have formally
19 been issued a membership interest documented as a member in Eldorado. *Id.*, ¶13.
20
21 However, Huerta testified he just forgot to do so since there was so much other
22 activity going on relating to Eldorado’s default in payment of a \$21 million loan as
23 well as Rogich’s deal to buy him out of Eldorado. *Id.*, ¶14.
24
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26

1 Go Global and the Rogich Trust originally sought to buy and flip Eldorado's
2 property. 20 JA 4911, p. 34:9-10. ("We had it sold. We were going to buy the
3 property and sell it quickly."). The property was financed with a \$21 million loan
4 requiring \$175,000 month in monthly debt service payments. *Id.* 4912.³ The
5 potential buyer for the flip fell through, the bank failed, replacement financing fell
6 through, and the FDIC took over the bank and declared the loan in default. 11 JA
7 2713, ¶A; 20 JA 4912, p. 37:24-25. In this emergency setting, Eliades negotiated
8 with Go Global, the Rogich Trust and with the FDIC to pay down the loan
9 \$5,000,000 if the FDIC would rewrite the loan, which it did. 11 JA 2724, ¶¶B, C.
10
11

12 The issues in this case focus on the multitude of contracts between the
13 various parties arising out of the emergency setting described above. To effectuate
14 Eliades' investment into Eldorado, Go Global agreed to sell its membership
15 interest to the Rogich Trust—subject to four (4) investor's rights to receive
16 repayment of their investments or the issuance of a commensurate membership
17 interest of which Nanyah's investment was included.⁴ Due to the emergent
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22 ³ Because of the massive monthly debt service obligation, Huerta was tasked with
23 soliciting investor funds so Eldorado could use the investment money to help pay
24 the monthly debt service. 11 JA 2579, ¶¶5, 6.

25 ⁴ This is why Go Global's "Membership Interest" was calculated in the Purchase
26 Agreement at between 35% and 49.44%, depending on which investors elected
repayment versus an ownership interest. 11 JA 2711, ¶A.

1 situation, the investors were not included in the transaction but their rights were
2 documented to either be repaid if they wanted out of the investment or a
3 membership interest if they wanted to stay in the investment.⁵
4

5 Huerta testified that he had extensive discussions with Rogich about these
6 four (4) investors as well as two (2) other investors that Rogich separately repaid
7 their investments. 6 JA 1393-1394. Outside of the Purchase Agreement's
8 obligations, Rogich separately repaid the investment of Craig Dunlap (\$50,000)
9 and Eric Reitz (\$20,000). 20 JA 4917, p. 58:24-59:1; 2 JA 492, p. 68:4-11.
10

11 Rogich contends that he made these repayments to Mr. Dunlap and Mr. Reitz "out
12 of the goodness of my heart, gave them money back." 20 JA 4944, p. 167:15-24.
13

14 What is telling is that Rogich admits that he repaid Mr. Dunlap and Mr. Reitz
15 because he wanted them to get their money back that they invested into Eldorado.
16

17 This litigation has ensued because the Rogich Trust simply does not want to give
18 Nanyah its money back even though all other investors in Eldorado either received
19 repayment of their investment or their investment was converted into equity in
20 Eldorado.⁶
21

22
23 ⁵ Rogich testified the October 8, 2008, transaction was put together "very quickly"
24 due to the emergent situation. 20 JA 4919, p. 65:17-19.

25 ⁶ Of the four (4) investors, both The Robert Ray Family Trust and Eddyline
26 Investments, LLC converted their investments into a membership interest in
Eldorado. 20 JA 2846, ¶3.c. Antonio Nevada, LLC was repaid its investment. See

1 Nanyah’s Opening Brief also extensively details the factual and legal basis
2 of its third-party beneficiary status under each and every contract. *Lipshie v. Tracy*
3 *Investment Co.*, 93 Nev. 370, 379, 566 P.2d 819 (1977) (“To obtain such a [third
4 party beneficiary] status, there must clearly appear a promissory intent to benefit
5 the third party . . .”). While the district court repeatedly rendered clear and
6 unambiguous findings that Nanyah was an intended third-party beneficiary of the
7 terms of all four contracts, the district court ignored Nanyah’s rights and embarked
8 on dismissing all of Nanyah’s claims, regardless of the law and regardless of the
9 undisputed facts. 14 JA 3405, ¶4.
10
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13 The law is clear that when a party, such as the Rogich Trust assumes an
14 obligation to pay a debt arising, and/or the Eliades Trust agrees to hold its 40%
15 interest “subject to” Nanyah’s creditor rights, then Nanyah is by definition a third-
16 party beneficiary of those promises. *R. J. Cardinal Co. v. Ritchie*, 218 Cal. App.
17 2d 124, 136, 32 Cal. Rptr. 545, 552 (Cal. Ct. App. 1963) (“where upon the
18 transfer to him of the assets of a business, one agrees to assume its outstanding
19 liabilities, the preexisting business creditors are third-party beneficiaries.”). “In
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23 footnote 41 and accompanying text. Of note, both The Robert Ray Family Trust
24 and Eddyline Investments, LLC received their interest from the Rogich Trust’s
25 40% interest that was held subject to these investors rights to receive an equity
26 interest. *Id.* at 2845, Recital A (“Within the Rogich 40% interest is . . . interest of
other holders not of formal record with Eldorado.”).

1 any legal action brought to collect the debt, the creditor may join both the
2 assuming party and the original debtor.” *Id.* Nanyah’s claims are all supported by
3 applicable law.
4

5 **I. CATEGORY 1: DISMISSAL OF THE 5TH AND 7TH CLAIMS FOR**
6 **RELIEF AGAINST THE ELIADES TRUST.**

7 In order to put Nanyah’s arguments into context, and to refute the various
8 arguments posed by the Eliades Defendants, the following undisputed factual
9 background is provided. As detailed extensively in Nanyah’s Opening Brief at
10 Factual Background, A.1-A.3, Huerta was solely responsible for soliciting
11 Nanyah’s \$1.5 million investment into Eldorado.⁷ Rogich “confirmed” in the
12 various contracts that Nanyah paid the \$1.5 million into Eldorado. 11 JA 2807.
13
14

15 Thereafter, when Go Global transferred its membership interest in Eldorado
16 to the Rogich Trust under the Purchase Agreement⁸, the TELD MIPA⁹, the Flangas
17 MIPA and the Eldorado Amended Operating Agreement were all
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22 ⁷ Under the Purchase Agreement, Huerta “represents and warrants the accuracy” of
23 Nanyah’s investment into Eldorado and that he would not be responsible for any
24 liability to the investors for their “percentage or debt” because this obligation will
“be Buyer’s [the Rogich Trust’s] obligation” 11 JA 2714.

25 ⁸ 11 JA 2711-2721.

26 ⁹ 11 JA 2723-2827.

1 contemporaneously executed.¹⁰ These four (4) contracts all cross-reference and
2 affirm Nanyah's \$1.5 million investment into Eldorado, Eldorado's receipt of and
3 retention of the benefit of Nanyah's investment, Go Global's and Rogich's
4 "confirmation" of Nanyah's investment, the Rogich Trust's assumption of the
5 obligation to repay Nanyah for Eldorado's receipt and retention of Nanyah's
6 investment and finally, the 40% interest in Eldorado that Rogich Trust purchased
7 from Go Global was held "subject to" Nanyah's claim of a commensurate
8 ownership interest.
9

10
11 Specifically, the Purchase Agreement references the contemporaneous
12 execution of the MIPAs. 11 JA 2713, ¶4. The MIPAs address and recognize the
13 Purchase Agreement. 11 JA 2724, ¶F. The MIPAs also include the fully executed
14 Eldorado Amended Operating Agreement as Exhibit F. 12 JA 2814-2826. The
15 MIPAs state the Eldorado Amended Operating Agreement is being "adopted" as
16 part of the consideration for the transaction. 11 JA 2726, ¶3. Eldorado's Amended
17 Operating Agreement cross-references the MIPAs and "incorporates" and adopts
18 their terms. 12 JA 2814, ¶A. The Eldorado Amended Operating Agreement
19 (which is also Exhibit F to the MIPAs) expressly states the Rogich Trust's
20 membership interest is held "subject to" Nanyah's right of ownership. 12 JA 2828,
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26 ¹⁰ 12 JA 2814-2826

¶B. In addition, Eldorado's Amended Operating Agreement also specifically recognizes Rogich Trust's 40% membership interest was subject to dilution via transfer of a portion of such membership interest to Nanyah. 12 JA 2833 ("the Rogich Trust may use a portion or all of its interests to satisfy claims of those entities [*i.e.*, Nanyah] listed on Exhibit "D" to the Purchase Agreements."). The Eldorado Amended Operating Agreement specifically incorporated (i) the entirety of the MIPAs (which itself referenced the Purchase Agreement), (ii) Exhibit D of the Teld MIPA where Rogich Trust "confirms" Nanyah's \$1.5 million investment into Eldorado; (iii) the Rogich Trust's assumption of Eldorado's repayment obligation to Eldorado; (iv) and contains the "restrictive" language on the Rogich Trust's 40% interest that it is "subject to" Nanyah's right of ownership.

It is in this undisputed contractual setting, that Nanyah asserted its 5th claim against the Eliades Trust for imposition of a constructive trust on the 40% interest it acquired from the Rogich Trust which interest was "subject to" Nanyah's right of ownership. Nanyah also asserted a NRS Chapter 118 claim for a fraudulent transfer against the Eliades Trust because the Eliades Trust purportedly acquired the Rogich Trust's 40% membership interest (valued at \$4 million) for \$0.

Nanyah argues that the district court erred in granting summary judgment in favor of the Eliades Trust because the district court myopically focused on the

1 Rogich Trust's duty *to pay* Nanyah its investment back.¹¹ Nanyah argues that its
2 claims against the Eliades Trust were not premised on the obligation *to pay*
3 Nanyah the return of its \$1.5 million investment but was based upon the Eliades
4 Trust's refusal to honor its contractual liability to Nanyah *to hold* the 40% interest
5 in Eldorado "*subject to*" Nanyah's right to convert this debt to an equity position.
6 This "subject to" contractual term is not a made-up term but is an expressed
7 contractual provision contained in every contract in this case.
8
9

10 Further, Mr. Eliades specifically testified that when he acquired the Rogich
11 Trust's 40% interest, he knew and understood that this 40% interest remained
12 "subject to" Nanyah's right of ownership in exchange for its \$1.5 million
13 investment.¹² Mr. Eliades simply explained the Eliades Trust's retention of the
14 40% interest subject to Nanyah's right of equity as: "[t]hat's just the way it was."
15
16 12 JA 2926:24-27. Mr. Eliades' testimony confirms the clear and unambiguous
17 language of the contracts at issue and the Eliades Trust holds its interest in
18 Eldorado "subject to" Nanyah's right to convert its debt into a commensurate
19 membership interest.
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24 ¹¹ This Court "reviews the district court's grant of summary judgment de novo,
25 without deference to the district court's findings." *Pope Investments, LLC v. China*
26 *Yida Holding Co.*, 137 Nev. Ad. Op. 33, *8, --- P.3d --- (July 8, 2021).

¹² 13 JA 3145-3146 (29:24-30:4)

1 Nanyah's Opening Brief also highlights the district court erred granting
2 summary judgment ruling as an undisputed fact the Rogich Trust's "transfer" of its
3 membership interest to the Eliades Trust occurred "no later than September 2012"
4 and NRS 112.200(1)(b) did not apply to the Rogich Trust's "transfer" of its
5 membership interest. Nanyah also argues that the district court erred in refusing to
6 grant Nanyah NRCP 56(f) relief to allow discovery relating to when the Rogich
7 Trust actually completed the executory nature of its "transfer" of its membership
8 interest and failed to reconsider its summary judgment order when Nanyah
9 presented new evidence from Eldorado's own financial records and deposition
10 testimony that the "transfer" of the Rogich Trust's interest in Eldorado to the
11 Eliades Trust did not occur until January 1, 2013.

12 Nanyah's 7th claim asserted a fraudulent transfer claim based upon the
13 undisputed evidence and the Rogich Trust's admission it was insolvent at the time
14 of the transfer and received essentially \$0 value for the transfer.¹³ The \$0 value of
15 the Rogich Trust's transfer to the Eliades Trust is based upon the Rogich Trust's
16 claim that it borrowed \$600,000 from the Eliades Trust (to buy 6.67% back from
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24 ¹³ Huerta testified that the Rogich Trust "ran out of money" and could "no longer
25 afford to make [] payments" to contribute to Eldorado's \$175,000 a month debt
26 service obligation. 7 JA 1582:15-16; 1588:7-8; *see also* 12 JA 2845, ¶D ("Rogich
[Trust] is unable to pay its pro rata" share of Eldorado's expenses).

1 the terminated Flangas transaction), then exchanged its 40% interest as and for an
2 alleged forgiveness of the \$600,000 obligation.¹⁴
3

4 The Eliades Defendants' Answering Brief takes great liberties with
5 misstating facts, misapplying the law, misstating contract terms and misstating
6

7
8 ¹⁴ The Eliades Defendants feign confusion as to the mechanics of this \$0 dollar
9 transaction. 6 JA 1452-1457. As described in footnote 24 of Nanyah's Opening
10 Brief, Rogich claims in this litigation that the transfer of its 40% interest netted
11 him \$0. 5 JA 1236, ¶(h). Rogich claims that under the terms of the Secret
12 Membership Assignment he received \$682,000, (6 JA 1453, ¶2) which was then
13 immediately returned to Eliades as repayment of the alleged \$600,000 loan (*Id.*
14 1450) for money he allegedly borrowed for the purchase of the 6% interest when
15 the Flangas transaction terminated. So at the conclusion of the Secret Membership
16 Assignment Rogich appeared to receive \$682,000 which he then immediately paid
17 back to Eliades. The additional \$82,000 was interest on the \$600,000 loan. But,
18 behind the scenes, Rogich actually received \$4 million in value for transfer of his
19 40% to the Eliades Trust. Contrary to Rogich's contention he received \$0 value
20 from the transaction, Eliades testified that as consideration for the transfer of The
21 Rogich Trust's 40% to him, he also transferred complete ownership of Imitations
22 to Rogich. 13 JA 3152 (57:3-13). Rogich separately owed Imitations a \$2 million
23 promissory note. Eliades, the then owner of Imitations, forgave and terminated
24 Rogich's \$2 million note obligation *and* Rogich then received total ownership of
25 Imitations via use of various other entities Rogich owned and controlled. 13 JA
26 3153 (61:15-19 "**he wanted to sell his 40% interest. I agreed to forgive the
2,020,00 plus forfeit back the land. And that's how I understand that it took
place.**" (emphasis added). It is suggested that these secret transactions structured
so as to avoid Nanyah's investment is a prototypical fraudulent transfer. Applying
a separate and distinct valuation methodology the Rogich Trust's 40% interest was
valued at over \$4 million based upon the economics of the Rogich's purchase of
6.67% of Eldorado for \$600,000—equating to approximately \$100,000 per 1%. 20
JA 4941, p.152:4-6 ("And you're getting \$600,000 as the value put on that 6.67%?
A. Right."). Applying either methodology the Rogich Trust's 40% interest was
valued at over \$4 million---not the \$0 value Rogich falsely claimed he received in
this case.

1 Nanyah's arguments.¹⁵ While tiresome, Nanyah will seek to address the most
2 egregious issues so as to maintain the clarity of the arguments before this Court.
3

4 **A. Nanyah Has Repeatedly Asserted The Eliades Trust Holds Its**
5 **40% Interest "Subject To" Nanyah's Rights.**

6 Eliades Trust falsely asserts that Nanyah has not previously asserted the
7 Eliades Trust's retention of the 40% interest is "subject to" Nanyah's equity rights.
8 EAB, pp. 33-37. This contention is false. Nanyah repeatedly asserted its "subject
9 to" rights in the Complaint. 4 JA 781, 783-786. In fact, Nanyah specifically
10 alleges in its 5th claim for relief at paragraph 117 the following: **"The Eliades**
11 **Trust has obtained Rogich Trust's interest in Eldorado, which interest was**
12 **subject to Nanyah's ownership interest in Eldorado. At all times, the Eliades**
13 **Trust was fully aware of Nanyah's ownership interests in Eldorado. *Id.* 792**
14 (emphasis added).
15
16
17

18 Thereafter, in Nanyah's briefing on its 5th claim for imposition of a
19 constructive trust, Nanyah highlighted and affirmed the contractual underpinning
20 of this claim against the Eliades Trust that such interest was held "subject to"
21

22
23 ¹⁵ In addition, many arguments generically include Teld when an analysis of Teld's
24 involvement is irrelevant or immaterial. Where appropriate, Nanyah will address
25 issues relating to Teld separately. Rogich individually and as Trustee of the
26 Rogich Trust, Teld and Peter Eliades individually all signed the Teld MIPA. 11 JA
2741. Teld and the Rogich Trust executed the Eldorado Amended Operating
Agreement and the Eliades Trust took ownership in Eldorado subject to and bound
by the terms of this agreement as well.

1 Nanyah's right. 11 JA 2582, 2585, 2587, 2590, 2592, 2601, 2607. 2609, 2610. In
2 addition, the Purchase Agreement executed by the Rogich Trust (whereby the
3 Rogich Trust agreed the Go Global interest it was acquiring would remain at all
4 times "subject to" Nanyah's equity right) contained a successors and assigns
5 clause, which was applicable to Eliades Trust as a successor and/or assignee of the
6 40% interest thereby subjecting itself to the "subject to" contractual obligation. *Id.*
7 2586. Nanyah also submitted Mr. Eliades' testimony that the Eliades Trust's
8 acquisition of the 40% interest from the Rogich Trust was "subject to" Nanyah's
9 rights pursuant to "the terms and conditions of th[e] original purchase agreement."
10 *Id.* 2591. Accordingly, the contention that Nanyah has asserted a "brand new"
11 argument on appeal that the Eliades Trust holds its 40% interest "subject to"
12 Nanyah's equity conversion rights is just simply false.

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16
17 **B. All Agreements Specifically Encumber The Rogich Trust's 40%**
18 **Interest.**

19 The Eliades Defendants falsely state that "none of the 2008 Agreements
20 actually encumber the Rogich Trust's membership interest with Nanyah's potential
21 claim" EAB, pp. 33-34. As detailed above, all contracts specifically detail
22 that the Rogich Trust's 40% interest was at all times "subject to" Nanyah's equity
23 rights. Mr. Eliades admits the contracts subject the Eliades Trust's 40% interest to
24 Nanyah's equity rights. In addition, Eldorado's Amended Operating Agreement
25
26

1 specifically incorporates the restrictive condition associated with the Rogich
2 Trust's 40% interest and includes as exhibits to the operating agreement the
3 various contracts which also include the same restrictive condition.¹⁶
4

5 **C. There Is A Specific Promise Supporting Nanyah's Equity Rights.**

6 The Eliades Defendants falsely state that the Eliades Trust cannot be liable
7 for Nanyah's claim without a "specific promise" and no "specific promise" exists
8 whereby the Eliades Trust can be liable. EAB, p. 35. This statement would
9 require the Court to turn a blind eye to the "subject to" contractual provisions
10 contained in the four (4) contracts. Nanyah asserts that the Eliades Trust's
11 acquisition of the Rogich Trust's 40% interest—which is clearly delineated as
12 "subject to" Nanyah's equity rights is a sufficient promise to bind the Eliades
13 Trust.
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21
22 ¹⁶ Of relevant note, the Purchase Agreement addresses Nanyah's rights as a member
23 in Eldorado and states that Nanyah will have no capital call obligations and is
24 entitled to a right of distributions. 11 JA 2711, Recital A. Sophisticated
25 contracting parties such as the Rogich Defendants and the Eliades Defendants do
26 not include contract terms protecting an investor from capital calls and affirming
distribution rights as an accident—these contractual provisions were intentionally
included terms for the benefit of Nanyah and to protect Nanyah's \$1.5 million
investment into Eldorado.

1 **D. Nanyah Does Not Argue It Is A Secured Creditor.**

2 The Eliades Defendants falsely allege that Nanyah contends it is a secured
3 creditor. EAB, p. 37. This statement is false. Nanyah does not contend it is a
4 secured creditor.
5

6 **E. The Eliades Trust Holds Its 40% Interest Acquired From The**
7 **Rogich Trust “Subject To” Nanyah’s Equity Rights.**

8 The Eliades Defendants falsely assert that there is no basis for any liability
9 to attach to the Eliades Trust. EAB, p. 38. As repeatedly demonstrated, four (4)
10 contracts detail the Rogich Trust’s 40% interest, which was acquired by the Eliades
11 Trust, is “subject to” Nanyah’s equity rights. In addition, Mr. Eliades testified that
12 the Eliades Trust took ownership of the 40% interest knowing full well it remained
13 “subject to” Nanyah’s equity rights.¹⁷
14
15

16 **F. While The Rogich Trust (And Eldorado) Are Liable For**
17 **Repayment Of Nanyah’s Investment, The Eliades Trust Holds Its**
18 **40% Interest Acquired From The Rogich Trust “Subject To”**
19 **Nanyah’s Equity Rights In The Event Of Non-Payment.**

20 The Eliades Trust seeks to deflect liability by misstating that only “the
21 Rogich Trust is responsible for Nanyah’s” claims. EAB, p. 39. The Eliades Trust
22 ignores that (1) the Rogich Trust assumed Eldorado’s repayment of Nanyah’s \$1.5
23 million investment *into Eldorado*, **and** (2) if repayment was not performed, the
24
25

26 ¹⁷ 13 JA 3145-3146 (29:24-30:4)

1 Eliades Trust's 40% interest remained "subject to" Nanyah's right to receive an
2 equity position in Eldorado via a commensurate transfer of a portion of that
3 membership interest. Nanyah agrees that it is undisputed that the Rogich Trust
4 assumed Eldorado's obligations to repay Nanyah for its \$1.5 million investment,
5 this assumption of the repayment obligation did not release or relieve the Eliades
6 Trust from holding its 40% interest in Eldorado "subject to" Nanyah's equity rights
7 in the event of non-payment.
8

9
10 **G. The Eliades Trust 40% Interest Is "Subject To" Nanyah's Equity**
11 **Rights.**

12 The Eliades Defendants falsely state that Nanyah is arguing to this Court
13 "the Eliades Trust contractually assumed the Rogich Trust's obligation in 2012 . . .
14 ." EAB, p., 40. This is not an accurate statement of Nanyah's argument. Nanyah
15 consistently argues that Eldorado's and the Rogich Trust's duty to repay the
16 investment is distinct from the Eliades Trust's duty to hold the 40% interest in
17 Eldorado "subject to" Nanyah's equity rights. Simply stated, Eldorado owes the
18 duty to repay Nanyah for its investment (which duty was assumed by the Rogich
19 Trust). The Eliades Trust owes the duty to hold the 40% interest in trust subject to
20 Nanyah's right to receive a transfer of a commensurate ownership interest in
21 Eldorado from the 40% interest in the event of non-payment. The Eliades
22 Defendants' Answering Brief wrongfully conflates these two duties and ignores
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26

1 the well-known structure of a debt for equity swap commonly understood and
2 employed in the investment arena.¹⁸

3
4 **H. The Eliades Trust Holds Its 40% Interest Acquired From The**
5 **Rogich Trust “Subject To” Nanyah’s Equity Rights.**

6 Strangely, the Eliades Trust initially argues that Nanyah asserted contract
7 based claims against the Eliades Trust¹⁹ (successors/assigns and direct contracting
8 party) yet then proceeds to argue that Nanyah has not asserted any contract claims
9 against the Eliades Trust. EAB, pp. 40-41 (Nanyah never “plead any contractual
10 claims against the Eliades Trust”). As repeatedly demonstrated, the Eliades
11 Defendants Answering Brief is replete with false statements of fact, law and
12 argument.
13
14

15 Again, Nanyah asserts the four (4) contracts provide the foundational
16 predicate for the imposition of a constructive trust on the Eliades Trust’s 40%
17 membership interest. Constructive trusts and their counterpart equitable liens
18
19
20
21

22 ¹⁸ The Rogich Defendants explain the investment structure of the 2008 transactional
23 documents as a “payment or equity” transaction. RAB, p. 38. The Rogich Trust
24 even discusses this scenario to protect Nanyah’s investment as an “alternative
25 contract structure. *Id.* 39.

26 ¹⁹ EAB, p. 33 (“Nanyah asserted two different theories of contractual liability
against the Eliades Respondents in the District Court.”).

1 focus on the underlying contractual rights.²⁰ A constructive trust is "a remedial
2 device by which the holder of legal title to property is held to be a trustee of that
3 property for the benefit of another who in good conscience is entitled to it."

4
5 *Locken v. Locken*, 98 Nev. 369, 650 P.2d 803, 804-05 (1982).

6
7 Nanyah has demonstrated that a constructive trust is required upon the
8 Eliades Trust's 40% membership interest. This relief is mandated because, among
9 other things, the clear language of the contracts, the undisputed fact of Nanyah's
10 \$1.5 million investment into Eldorado, the clear and unambiguous terms of four (4)
11 contracts all delineating that the 40% interest would remain "subject to" Nanyah's
12 equity rights, Rogich's "confirmation" of Nanyah's investment, Mr. Eliades'
13 testimony that he knew the Eliades Trust was acquiring the 40% interest "subject
14 to" Nanyah's equity rights because "that's the way it was". Nanyah asserts it is
15
16
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18

19 ²⁰ See e.g., *Union Indem. Co. v. A.D. Drumm, Jr., Inc.*, 57 Nev. 242, 70 P.2d 767,
20 770 (1937) ("the theory of equitable liens has its ultimate foundation . . . in
21 contracts, express or implied, which either deal with or in some manner relate to
22 specific property, such as a tract of land, particular chattels or securities, a certain
23 fund, and the like. It is necessary to . . . recognize the fact that equity regards them
24 as creating a charge upon or hypothecation of the specific thing . . ."). The
25 doctrine of equitable liens "which permeates our entire system of justice regarding
26 equity" includes the intertwined remedies of a constructive trust and an equitable
lien. See *Maki v. Chong*, 119 Nev. 390, 393, 75 P.3d 376, 379 (2003). Equitable
liens are applicable to real property while constructive trusts apply to items of
personal property. *Union Indem. Co. v. A.D. Drumm, Jr., Inc.*, 57 Nev. 242, 70
P.2d 767, 768 (1937). Again, both equitable remedies look to contractual
underpinnings for the imposition of a remedy.

1 entitled to the imposition of a constructive trust as requested because this
2 constructive trust claim is derivative of and premised upon well-documented
3 contract rights in favor of Nanyah.
4

5 **I. Mr. Eliades' Testimony Is Relevant.**

6 The Eliades Trust falsely asserts that Mr. Eliades' testimony is being used by
7 Nanyah to support a claim for contractual liability and that such testimony is
8 legally irrelevant. EAB, pp. 42-43. This assertion is again incorrect on both
9 counts.
10

11 First, as discussed above, Nanyah's claim is for imposition of a constructive
12 trust on the Eliades Trust's 40% interest. The imposition of a constructive trust is
13 predicated on a multitude of undisputed facts as well as a multitude of undisputed
14 contractual provisions, including but not limited to Eldorado's Amended Operating
15 Agreement.
16

17 Second, while the Eliades Trust seeks to distance itself from Mr. Eliades'
18 testimony, the Eliades Trust provides no support for its arguments. As Nanyah
19 correctly points out in its Opening Brief, the parole evidence rule does not bar
20 introduction or use of testimony consistent with the terms of written agreements.²¹
21
22
23
24

25 ²¹ *Pentax Corp. v. Boyd*, 111 Nev. 1296, 1300, 904 P.2d 1024, 1027 (1995) ("Parol
26 evidence is admissible to explain or supplement the terms of an agreement, but not
to vary or contradict them." (internal quotations omitted)).

1 Mr. Eliades' testimony is consistent with the express terms of the numerous
2 agreements.

3
4 Next, the Eliades Trust again seeks to conflate the duty *to pay* (which
5 admittedly the Eliades Trust did not assume) with the duty *to hold* the 40% interest
6 in trust for Nanyah's equity rights. Accordingly, the parol evidence rule is
7 inapplicable to Mr. Eliades' testimony because his testimony is not offered to
8 support a duty *to pay*, rather it is offered to confirm the Eliades Trust had full
9 knowledge and understanding that when it acquired the Rogich Trust's 40%
10 interest *to hold* that interest was "subject to" Nanyah's equity conversion rights in
11 the event of nonpayment.
12
13

14 **J. There Is A Factual Dispute As To When The "Transfer" Of The**
15 **Rogich Trust's 40% Interest To The Eliades Trust Occurred.**

16 As detailed in Nanyah's Opening Brief at pages 34-35, the district court
17 erred in ruling that it was an undisputed fact that the transfer occurred "no later
18 than September, 2012." While the Eliades Trust relies upon a closing date
19 provision in the Secret Membership Assignment²², the closing date is not factually
20 or legally dispositive given the executory nature of the contract.
21
22

23 Next, the Eliades Defendants entirely ignore the legal concepts of
24 "executory contract" versus a "completed contract", and simply disregard this
25

26

²² 6 JA 1452-1457.

1 distinction as indistinguishable “monikers”. EAB, p. 48. Nanyah disagrees.
2 Nanyah argues that while the paperwork for the transfer may have been signed
3 (executory obligation/limited perfection by and between contracting parties), an
4 actual transfer of a membership interest in a company must be documented by the
5 entity itself (completed obligation/perfection against a creditor). NRS
6 86.241(2)(b). Nanyah incorporates the arguments in its Opening Brief to further
7 address this issue.
8
9

10 **K. There Is A Legal Dispute As To Whether A Transfer Of A**
11 **Membership Interest In An LLC Is Subject To NRS 112.230.**

12 As detailed in Nanyah’s Opening Brief at pages 35-38, the district court
13 erred in failing to address whether NRS 112.200(1)(b) was applicable to a transfer
14 of a membership interest. The Eliades Trust’s arguments in opposition boils down
15 to the proposition NRS 112.200 only applies to a security interest governed by
16 Article 9 of the Uniform Commercial Code. EAB, pp. 46-48. Nanyah entirely
17 disagrees.
18
19

20 Nothing in NRS 112.200 limits its applicability to Article 9 transactions. If
21 the Legislature intended such a limiting applicability and/or restricted an analysis
22 of perfection under NRS 112.200 to an Article 9 analysis, it would have so stated.
23
24
25
26

1 It did not, therefore, it is clear the legislature did not intend such a limiting
2 analysis.²³
3

4 Further, the express language of NRS 112.200(b) actually defines what
5 constitutes “perfection” and states “time at which transfer or obligation deemed
6 made or incurred” is **“when the transfer is so far perfected that a creditor on a
7 simple contract cannot acquire a judicial lien otherwise than under this
8 chapter that is superior to the interest of the transferee.”** (emphasis added).
9

10 The statute states the analysis is based upon a judgment lien on “a simple
11 contract”—a simple contract is not a security interest under Article 9.²⁴ The statute
12 also addresses a judicial lien—which again is not an Article 9 component.
13

14 Accordingly, the legislature did not limit perfection under NRS 112.200(b) to only
15 an Article 9 perfection condition and the Eliades Defendants’ arguments directly
16 contradict the express terms of the statute.²⁵
17

18
19 ²³ *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999)
20 (when Legislature enacts a statute a court presumes Legislature does so “with full
21 knowledge of existing statutes relating to the same subject.” (citing *Runion v.*
State, 116 Nev. 1041, 1047, 13 P.3d 52, 56 fn.2 (2000)).

22 ²⁴ While Nanyah agrees that Article 9 perfection components may be triggered in
23 certain factual scenarios, NRS 112.200(b) is not limited only to Article 9
24 negotiable instruments. Nanyah argues that if the Legislature wanted to limit the
25 breadth and scope of NRS 112.200 in such fashion, it would have so stated.

26 ²⁵ *Spencer v. Harrah's Inc.*, 98 Nev. 99, 101–02, 641 P.2d 481, 482 (1982) (“We
are not empowered . . . to go beyond the face of the statute to lend it a construction

1 **L. Nanyah’s 56(f) Motion And Motion To Reconsider.**

2 Nanyah relies upon its arguments in its Opening Brief as addressing the
3
4 Eliades Defendants’ arguments.

5 **II. CATEGORY 2: DISMISSAL OF REMAINING CLAIMS AGAINST**
6 **THE ELIADES DEFENDANTS.**

7 As detailed in Nanyah’s Opening Brief, the district court granted summary
8
9 judgment on the remaining claims against the Eliades Defendants based upon the
10 premise the repayment of Nanyah’s investment into Eldorado was assumed by the
11 Rogich Trust, these defendants had no liability for such *payment* obligation. OB,
12 pp. 41-45. Nanyah’s claims against the Eliades Trust are not premised on the duty
13 to repay it its investment (which obligation is held by Eldorado and Rogich Trust
14 as its surety). Instead, as detailed, Nanyah’s claims against these defendants is
15 based upon these defendants’ participation in refusing to honor Nanyah’s right to a
16 membership interest based upon the “subject to” language contained in the four (4)
17 agreements and expressly embodied in Eldorado’s Amended Operating
18 Agreement. Teld and the Eliades Trust also executed the Secret Membership
19 Assignment. 6 JA 1457. Nanyah brought its claims seeking to enforce its right of

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25 contrary to its clear meaning.”); *City of Las Vegas v. Macchiaverna*, 99 Nev. 256,
26 258, 661 P.2d 879, 880 (1983) (“When the language of a statute is plain, its
intention must be deduced from such language, and the court has no right to go
beyond it.” (citation omitted)).

1 ownership, and alternatively, it seeks to recover the damages it sustained resulting
2 from the Eliades Defendants refusal to provide it a membership interest as
3 contractually required.
4

5 The Eliades Defendants simply argue that because they did not assume a
6 duty *to pay* Nanyah its investment amount (which the Eliades Defendants admit is
7 owed by the Rogich Trust on behalf of Eldorado), they have no liability
8 whatsoever. EAB, p. 64 (“the Rogich Trust is ‘solely responsible’”). In the
9 event this Court concurs with Nanyah the duty *to pay* is distinct from the duty *to*
10 *hold the 40% interest subject to* Nanyah’s equity conversion rights, then the district
11 court’s order of dismissal of the Eliades Defendants must be reversed in total.
12
13

14 Next, the Eliades Defendants argue that Nanyah did not appeal the district
15 court’s determination that because these defendants did not “assume[] the Rogich
16 Trust’s obligation to repay Nanyah”, then dismissal of the civil conspiracy claim
17 against them on this ground is not reviewable because Nanyah did not appeal this
18 finding. EAB, p. 44. It is correct that Nanyah did not appeal this issue because
19 Nanyah did not assert Teld and the Eliades Trust assumed a duty *to repay* Nanyah.
20
21 As discussed extensively in Nanyah’s Opening Brief and herein, Nanyah’s
22 conspiracy claim is premised on the defendants’ conspiracy and breach not to
23 honor the duty *to hold the 40% membership interest in trust for protection of*
24 *Nanyah’s equity conversion rights.*
25
26

1 Also undermining the Eliades Defendants' arguments, Nanyah did
2 specifically appeal the district court's legal determinate that "there is nothing
3 within the relevant agreements which impose any sort of obligation on the Eliades
4 Defendants for Nanyah's benefit." EAB, p. 45 (*citing* 14 JA 3410¶¶17-18).
5 Nanyah has extensively briefed why and how each of the four (4) agreements
6 contain specific contractual provisions expressly for Nanyah's benefit.²⁶ In fact,
7 the district court recognized Nanyah's repayment rights and equity conversion
8 rights but intentionally and systematically refused to grant Nanyah any relief.²⁷
9
10
11

12 In addition, the district court wrongfully held that no party owed any
13 fiduciary or special relationship with Nanyah even though the various contracts
14 and Eldorado's Amended Operating Agreement expressly identified Nanyah's
15 equity rights, and its right to be immune from capital calls, and its right to receive
16 distributions. As referenced in Nanyah's Opening Brief at footnote 36, the Eliades
17 Defendants as well as the Rogich Defendants (as Managers and members in
18 Eldorado and Eldorado itself) owed Nanyah fiduciary duties arising out of
19
20
21

22 ²⁶ See footnote 8 and accompanying text.

23
24 ²⁷ The district court held the Rogich Trust "**specifically assumed**" "**the obligation**"
25 "**to pay**" Nanyah its "\$1.5 million" "**invested into Eldorado**" or "**to pay Nanyah**
26 "**its percentage interest in Eldorado.**" 14 JA 3403-3412, ¶¶4, 5.a.ii, 5.b.i., 5.b.ii.,
5.b.iv, and 7 (emphasis added). The district court ignored the Eliades Trust's duty
to hold the 40% interest subject to Nanyah's equity conversion rights.

1 Nanyah's status as an investor/potential member in Eldorado. Separately, the
2 Eliades Trust owed Nanyah fiduciary duties since it was holding the 40% interest
3 in trust subject to Nanyah's equity conversion rights.
4

5 **III. CATEGORY 3: DISMISSAL OF ALL CLAIMS AGAINST**
6 **ELDORADO.**

7 Nanyah argues the district court erred in dismissing Eldorado pursuant to
8 NRCP 41(e) because the parties stipulated and the Court held the trial had "started"
9 and "commenced" for NRCP 41(e)'s purposes.²⁸ Eldorado's Answering Brief
10 argues it is not bound by its stipulations of fact, both oral and written, or by the
11 district court's order adopting Eldorado's stipulations of fact.
12
13

14 **A. Oral And Written Stipulations Of Fact Subsequently Adopted**
15 **Into A Court Order Cannot Be Contested Or Challenged.**

16 Nanyah's Opening Brief at pages 60-65 details the extensive undisputed
17 record whereby Eldorado's counsel stipulated and the district court ordered that the
18 trial had "started", "commenced" and then "suspended". The district court also
19 held that because the trial had "started", intervention could not occur and the
20
21

22 ²⁸ *Barbara Ann Hollier Trust v. Shack*, 356 P.3d 1085, 1089, 131 Nev. 582, 589
23 (2015) ("Nevada's Rules of Civil Procedure are subject to the same rules of
24 interpretation as statutes."); *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*,
25 135 Nev. 168, 170, 443 P.3d 1115, 1117 (2019) ("We review questions of statutory
26 construction de novo."); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578,
589, 245 P.3d 1190, 1197 (2010) ("While review for abuse of discretion is
ordinarily deferential, deference is not owed to legal error.").

1 Rogich Trust had to be dismissed. Eldorado simply ignores that based upon the
2 stipulation that trial had started, the Rogich Trust was dismissed.
3

4 Eldorado spends an inordinate amount of time arguing that this Court should
5 disregard Eldorado's stipulations and the district court's order and should analyze
6 this issue as if the stipulations and order do not exist. However, the law is
7 abundantly clear that a party who stipulates to facts in a proceeding, cannot
8 thereafter contest or challenge those facts. OB, pp. 62-63.
9

10 This legal principle was stated concisely in *Palmer v. City of Long Beach*, 33
11 Cal.2d 134, 199 P.2d 952 (Cal. 1948), the California Supreme Court held: "a
12 **stipulation . . . it is conclusive upon the parties, and the truth of the facts**
13 **contained therein cannot be contradicted.**" (emphasis added). This Court has
14 cited to and relied upon *Palmer* in two prior cases.²⁹ All counsel stipulated to the
15 occurrence of a factual event, i.e. the trial had "started", both orally on the record
16 and in a written stipulation. The written stipulation was subsequently adopted as
17 an order of the district court. Consequently, Eldorado is barred from contesting
18 that the trial had "started", thereby satisfying the requirements of NRCP 41(e).³⁰
19
20
21
22

23 ²⁹ *Taylor v. State Industrial Ins. System*, 107 Nev. 595, 816 P.2d 1086, 1088
24 (1991); *Szilagyi v. Testa*, 99 Nev. 834, 673 P.2d 495, 498 (1983).

25 ³⁰ Nanyah recognizes that in an absence of a stipulation of fact and/or order
26 establishing undisputed facts, this Court has stated that "a case is brought to trial
by, *inter alia*, examining jurors." *Schwartz v. Est. of Greenspun*, 110 Nev. 1042,

1 In addition, NRS 47.240(3) establishes the conclusive presumption that
2 attaches to Eldorado's counsel's affirmations of fact on the record in both oral and
3 written stipulations bar Eldorado from challenging and seeking to falsify these
4 stipulated facts.³¹ The Rogich Trust and the district court both also relied upon
5 Eldorado's counsel's stipulation of fact to obtain the dismissal of the claims
6 against the Rogich Trust. Nanyah relied upon Eldorado's counsel's stipulations of
7 fact to affirming the trial had started thereby satisfying NRCP 41(e)'s
8 requirements. NRS 47.240(3) establishes a conclusive presumption against
9 Eldorado barring Eldorado from now contesting the trial never started so that
10 Nanyah's claims should be barred by NRCP 41(e)'s provisions.³²
11
12
13
14

15 Nanyah believes that Eldorado's counsel's arguments seeking to challenge
16 and contest the factual stipulations that the trial had "started" is both disingenuous
17
18

19 1048, 881 P.2d 638, 641 (1994). However, consideration of the underlying facts is
20 entirely irrelevant and immaterial given the stipulation of the parties that the trial
21 had "started" and the district court's affirmation of this fact in rendering its
22 subsequent order dismissing the Rogich Trust based upon a factual event that the
23 trial had officially started.

24 ³¹See NRS 47.240(3) ("Whenever a party has, by his or her own declaration, act or
25 omission, intentionally and deliberately led another to believe a particular thing
26 true and to act upon such belief, the party cannot, in any litigation arising out of
such declaration, act or omission, be permitted to falsify it.").

³² *Kusior v. Silver*, 54 Cal. 2d 603, 619, 354 P.2d 657, 668 (1960) ("A conclusive
presumption is in actuality a substantive rule of law.").

1 and undermines the very foundation of established jurisprudence relating to the
2 evidentiary purpose and applicability of stipulations of fact in Nevada's legal
3 system. For instance, Nevada Jury Instruction 2.06 states:
4

5 If counsel for the parties have stipulated to any fact, you will regard
6 that fact as being conclusively proved [as to the party or parties making the
7 stipulation].

8 Nev. J.I. 2.06. Eldorado's counsel's stipulation of fact that the trial had "started"
9 and "commenced" is conclusively proved and cannot be contested. Eldorado
10 simply ignores the purpose and intent underlying stipulations of fact in Nevada
11 jurisprudence.
12

13 Further, Eldorado ignores Nevada Rule of Professional Conduct 3.3(a) that
14 states "a lawyer shall not knowingly . . . make a false statement of fact . . . to a
15 tribunal." In this case, either Eldorado truthfully stipulated to the fact that the trial
16 had started *or* Eldorado's counsel is arguing to this Court that it lied to all the
17 parties and the district court when it stipulated as a fact that the trial started.
18 Eldorado simply wants this Court to reward it for its duplicity and to ignore the
19 evidentiary consequences of its stipulations of fact. Nanyah requests that this
20 Court bind Eldorado and its counsel to the consequences of their stipulations of
21 fact in this case.
22
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24

25 Lastly, Eldorado improperly relies on three decisions referencing that a
26 stipulation to continue a trial must contain a specific reference to NRCP 41(e).

1 Nanyah agrees that NRCP 41(e)(5) states: “The parties may stipulate in writing to
2 extend the time in which to prosecute an action.” Nanyah agrees that any
3 stipulation to continue a trial should reference NRCP 41(e)’s provisions. However,
4 these cases cited by Eldorado involve a stipulation to continue a trial. This case
5 presents a stipulation of fact that the trial had “started” and “commenced” and was
6 “suspended”.³³ Accordingly, Eldorado’s reliance on cases addressing stipulations
7 to continue under NRCP 41(e) are inapplicable to the facts of this case because this
8 case presents stipulations of fact and the substantive rule of law that applies to
9 stipulated facts.³⁴ Nanyah relies upon its arguments in its Opening Brief as
10 addressing Eldorado’s remaining argument regarding tolling (OB, p. 67).

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20 ³³ Eldorado also argues that the application of NRCP 41(e) is an issue of law and
21 parties cannot stipulate to issues of law. EAB, p. 59. Nanyah entirely disagrees.
22 The parties can and did stipulate to binding, incontrovertible facts that the trial had
“started” which facts are not subject to contestation on appeal by Eldorado.

23 ³⁴ In *Erickson v. One Thirty-Three, Inc., & Assocs.*, 104 Nev. 755, 757, 766 P.2d
24 898, 899 (1988), the stipulation related to a continuance and a stipulation that was
25 not signed by all the parties. In both *Tripi v. Johnson*, 478 P.3d 871 (Nev. 2021)
26 and *Western Cab Co. v. Dahl*, 437 P.3d 1056 (Nev. 2019), the stipulations under
analysis were stipulation “to continue” a trial and did address stipulations of fact
that the trial had “started” as in this case.

1 **IV. CATEGORY 3: DISMISSAL OF ALL CLAIMS AGAINST THE**
2 **ROGICH DEFENDANTS.**

3 The dismissal of all claims against the Rogich Trust were premised on the
4 district court's misapplication of NRS 163.100.³⁵ In its eagerness to avoid liability
5 in this case, the Rogich Trust's Answering Brief fabricates an alterative factual
6 history to avoid its clear liability for repayment of Nanyah's \$1.5 million
7 investment. The misstatements and/or inaccurate representations made to this
8 Court by the Rogich Defendants are addressed below. Thereafter Nanyah will
9 address the Rogich Defendants' substantive arguments.
10
11

12 **A. The Evidence Establishes At The Time Of The Litigation, Rogich**
13 **Was The Sole Beneficiary Of The Rogich Trust.**

14 The Rogich Defendants argue without support that the Rogich Trust's
15 disclosure to the Gaming Control Board in 2015 did not indicate that Rogich was
16 the sole beneficiary of the Rogich Trust. 28 JA 6743-6745. This action has been
17 pending since July 31, 2013. 1 JA 1-21. There is no support in the record
18 supporting the purported factual statement that in 2015 there were other
19 beneficiaries--none. The Rogich Trust then asserts that at the time of the trial, the
20 Rogich Trust asserted there were multiple other beneficiaries. RAB, p. 4.
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26 ³⁵ *Waste Mgmt. of Nevada, Inc. v. W. Taylor St., LLC*, 135 Nev. 168, 170, 443 P.3d
1115, 1117 (2019) ("We review questions of statutory construction de novo.").

1 What is clear from the record is that Rogich was the sole beneficiary of the
2 Rogich Trust until such time as the Rogich Trust sought dismissal of Nanyah's
3 claims based upon application of NRS Chapter 163.120. Then, in order to bolster
4 its argument, the Rogich Trust claimed there were new unidentified beneficiaries
5 so Nanyah's claims should be dismissed. The gamesmanship of this conduct is
6 demonstrated by the Rogich Trust's refusal to produce any trust documentation
7 pursuant to NRCP 16.1, produce any amendment thereto adding beneficiaries, its
8 lack of asserting an affirmative defense that any beneficiary other than Rogich was
9 necessary and/or an indispensable party, and by the Rogich Trust's complete
10 failure to designate any alleged beneficiary as a witness or interested party
11 pursuant to NRCP 16.1.
12

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14
15 **B. The Court Wrongly Asserted Its Hands Were Tied.**
16

17 The Rogich Defendants next assert that Nanyah falsely represented the
18 district court's hands were tied. RAB, p. 6. The district court projected onto
19 Nanyah that its hands were tied because the district court refused to consider
20 discretionary relief as allowed under NRS 163.120. The district court held that the
21 language "or within such other time as the court may fix" was meaningless and did
22 not provide any discretionary authority to the district court. 30 JA 7191-92. The
23 district court simply refused to address the discretion language in NRS 163.120 so
24 that it could proceed with dismissal of the claims against the Rogich Trust.
25
26

1 Whether semantically Nanyah's hands were tied (which they were not) or the
2 district court's hands were tied (which they were not) it is entirely irrelevant
3 because it was the district court itself that held the language "or within such other
4 time as the court may fix" in NRS 163.120 was meaningless. It was the district
5 court, not Nanyah that committed reversible error. *Spencer v. Harrah's Inc.*, 98
6 Nev. 99, 101–02, 641 P.2d 481, 482 (1982) (courts "not empowered . . . to go
7 beyond the face of the statute to lend it a construction contrary to its clear
8 meaning.").

11
12 **C. Nanyah Is A Third-Party Beneficiary.**

13 The Rogich Defendants argue that Nanyah falsely stated in its Opening Brief
14 that the district court "expressly" found Nanyah was a third-party beneficiary.
15 RAB, p. 7. This contention is another blatant misrepresentation of Nanyah's
16 Opening Brief. *See* OB, fn. 35 ("Nanyah recognizes that *the district court did not*
17 *use the label 'third-party beneficiary'*, instead the district court provided the exact
18 definition of a third-party beneficiary in its ruling." (emphasis added)). Nanyah
19 does argue that the finding by the district court based upon the clear and
20 unambiguous language of multiple contracts the Rogich Trust "**specifically**
21 **assumed**" "**the obligation**" "**to pay**" Nanyah its "\$1.5 million" "**invested into**
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1 **Eldorado” or “to pay Nanyah its percentage interest in Eldorado” makes**
2 Nanyah a third-party beneficiary as a matter of law.³⁶
3

4 The Rogich Trust’s agreement to repay Nanyah its investment is undisputed
5 based upon the testimony of every single relevant witness and the clear and
6 unambiguous terms of the Purchase Agreement, the MIPAs and Eldorado’s
7 Amended Operating Agreement.³⁷
8

9 **D. Rogich’s Admission Of The Applicability Of Fiduciary Duties.**

10 The Rogich Defendants alleged that Nanyah misstated Rogich’s testimony
11 regarding his knowledge of and applicability of fiduciary duties owed to Nanyah.
12 RAB, p. 8. Nanyah relies upon its Opening Brief to address this argument. OB, p.
13 23.
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20 ³⁶ *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 301 P.3d 364, 366 (2013) (“[I]n
21 the absence of ambiguity or other factual complexities,’ contract interpretation
22 presents a question of law.” (citation omitted)).

23 ³⁷ Huerta testified Rogich specifically agreed to repay Nanyah its investment into
24 Eldorado. 12 JA 2917:13-14. Eliades testified that Rogich represented to him that
25 the Rogich Trust would repay Nanyah its \$1.5 million investment into Eldorado.
26 *Id.* 2927:3-25. Dolores Eliades, Teld’s Managing Member, testified Rogich
promised and represented to her and Teld, Rogich would repay Nanyah its \$1.5
million investment into Eldorado. 11 JA 2590-2591 (“He [Rogich] had always
said he was going to pay [Nanyah].”).

1 **E. Canamex Is Irrelevant.**

2 In an effort to avoid liability, Rogich Trust seeks to argue that Nanyah's
3 investment was into Canamex, not Eldorado. RAB, 8-13. This argument is
4 irrelevant or inapplicable for a multitude of reasons.³⁸ First, the district court held
5 in its Decision on October 4, 2019, dismissing Eldorado, Rogich and Imitations,
6 the following:
7

8 **[I]t is undisputed that Nanyah wired \$1,500,000 as memorialized**
9 **in the October 30, 2008 Membership Interest Purchase Agreement (the**
10 **"MIPA"). In this MIPA, the Rogich Trust agreed to solely assume the**
11 **obligation to pay Nanyah's debt.**

12 33 JA 8057 (emphasis added). The Rogich Defendants have not appealed the
13 Decision nor any portion of its contents. Therefore, the undisputed facts on appeal
14 are that Nanyah invested \$1.5 million into Eldorado and the Rogich Trust agreed to
15 assume the obligation to repay Nanyah its investment.
16

17 Next, Rogich admittedly knows nothing about Nanyah's original investment
18 or how it was handled by Huerta. Up until October 31, 2008, Rogich testified
19 Eldorado was under the exclusive operational control of Huerta:
20

21 **A ... Carlos [Huerta] ran Eldorado Hills. He handled**
22 **everything. I didn't see a thing.**
23

24
25 ³⁸ For context, Nanyah's \$1.5 million money was initially wired into Canamex's
26 account then immediately transferred into Eldorado's account. 11 JA 2671:1-
2672:18. Nanyah's principal testified he was solicited to invest his money in
Eldorado. 22 JA 5285, p., 21:8-21.

1 Q Including entering into obligations on behalf of Eldorado
2 Hills, LLC?

3 A. That's correct.

4 20 JA 4916; 54:21-55:1 (emphasis added). Rogich further testified:
5

6 A ... He [Carlos Huerta] just ran the books. I never saw
7 the books.

8 ...
9 A. ... I do know that he held all of the books and took care of
10 everything at Eldorado Hills.

11 20 JA 4916; 44:2-15 (emphasis added).³⁹ Rogich, and Eldorado, cannot refute or
12 rebut Huerta's testimony that Nanyah's \$1.5 million was invested into Eldorado
13 since Rogich admittedly lacked personal knowledge of Eldorado's financial
14 affairs.⁴⁰

15 Lastly, as detailed in Nanyah's Opening Brief at pages 16-21, the extensive
16 contract provisions contained in all four documents including Rogich's
17 "confirmation" of Nanyah's \$1.5 million investment into Eldorado. Pages 12-15
18 also details the extensive documentation establishing Nanyah's \$1.5 million
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22 ³⁹ Rogich admitted Huerta was responsible for "soliciting investors" (11 JA
23 2679:13-21) and had "the authority" to solicit investors and bring their money into
24 Eldorado. *Id.* 2680:6-18. Rogich testified Huerta's "authority" was practically
unlimited and included absolute "control" of Eldorado's books. *Id.* 2682-2683.

25 ⁴⁰ See NRS 50.025(1)(b) ("**Lack of personal knowledge.** 1. A witness may not
26 testify to a matter unless: (a) Evidence is introduced sufficient to support a finding
that the witness has personal knowledge of the matter . . .").

1 investment into Eldorado. The Rogich Defendants are also barred from seeking to
2 introduce parol evidence to alter the clear and unambiguous terms of the various
3 agreements confirming Nanyah's \$1.5 million investment into Eldorado.
4

5 **F. Nanyah's "Potential Claim" Relates Solely To A Demand For**
6 **Conversion To An Equity Interest.**

7 The Rogich Defendants also severely misstate the terms of the various
8 contracts seeking to misconstrue Nanyah's investment of \$1.5 million into a
9 "potential claim." RAB, p. 13-15. The contracts are clear that Nanyah reserved a
10 "potential claim" to an equity interest in the event its \$1.5 million investment was
11 not repaid.
12

13 Specifically, the Purchase Agreement states that Go Global is selling its
14 "Membership Interest" to the Rogich Trust. 11 JA 2711, Recital A. This
15 "Membership Interest" is subject to Nanyah's claim of an ownership interest. *Id.*
16 The Purchase Agreement then expressly states that the Rogich Trust will either
17 satisfy the debt or "convert" the debt into "an equity position" in Eldorado. *Id.*
18 The Purchase Agreement then references Exhibit A, which identifies Nanyah's
19 \$1.5 million investment for which Nanyah may demand an equity interest, *i.e.*, the
20 potential claimant to an equity interest. *Id.* 2720. Accordingly, the Rogich
21 Defendants argument that Nanyah's \$1.5 million investment was some ethereal
22 unliquidated claim is directly contrary to the express terms of the contracts.
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1 In addition to the express language of the Purchase Agreement, Rogich also
2 testified that he knew and understood that Nanyah's "potential claim" related
3 solely and exclusively to Nanyah's right to obtain an equity interest in the event
4 Nanyah's \$1.5 million was not repaid. 20 JA 4936, p. 133:8-17.

6 Further, the Rogich Defendants' reference to the Antonio Nevada, LLC
7 ("Antonio Nevada") lawsuit conclusively proves Nanyah's arguments in this case.
8 Antonio Nevada was also one of the investors who invested in Eldorado and did
9 not receive a membership interest. Antonio Nevada was also expressly identified
10 in the Purchase Agreement, and the MIPAs as investing in Eldorado. 11 JA 2711,
11 2720. However, Antonio Nevada did in fact receive repayment of its investment of
12 \$3 million, yet Antonio Nevada also sued for an additional equity interest in
13 Eldorado. The court held that (1) Antonio Nevada invested \$3 million into
14 Eldorado, (2) Rogich was a co-guarantor of this "investment"; and (3) because "the
15 said investment was fully repaid" Rogich had "no obligation to Antonio Nevada."⁴¹
16 So, in summary, Rogich repaid three (3) investors their investment into Eldorado
17 and transferred a portion of the 40% interest to two (2) other investors. Rather
18 than pay the last investor Nanyah, Rogich has forced this litigation because he
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25 ⁴¹ See Supplemental Appendix ("SA") at SA 001-3, Order and Summary Judgment,
26 dated Dec. 4, 2013.

1 admits he never had any intention of repaying Nanyah when he induced all parties
2 into executing the various October 31, 2008, contracts.⁴²
3

4 Rogich and Huerta extensively discussed Nanyah's investment in Eldorado
5 and that Rogich agreed the Rogich Trust would repay Nanyah its investment or
6 transfer to it a commensurate membership interest. Huerta testified that the
7 agreements were crafted "for the sake of preserving the existing investors,
8 including Nanyah" 20 JA 4929, p. 106:2-4. Huerta wanted to make sure the
9 investors were protected in the agreements and that it did not appear that Rogich
10 just "walked away with their shares." *Id.* p. 106:15-22. Rogich admits his
11 attorneys extensively communicated with Huerta about the debt/equity situation
12 with Nanyah. *Id.*, p. 107:7-17.
13
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16 Rogich admitted that on October 24, 2008, a week prior to his execution of
17 the various agreements, he received extensive communications from Huerta about
18 Nanyah's investment into Eldorado and including the Eldorado Hills Capital
19 Account showing Nanyah's \$1.5 million investment into Eldorado. 20 JA 4930, p.
20 108:12-24. Rogich expressly admits that he fully knew about Nanyah's \$1.5
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26 ⁴² 32 JA 7810:24-7811:1 ("Q. You never had any intention of paying Nanyah
1.5 million, did you? A. No." (emphasis added)).

1 million investment into Eldorado prior to executing the various agreements. *Id.* p.
2 109:13-24.⁴³

3
4 **G. The District Court Erred In Dismissing The Claims Against The**
5 **Rogich Trust By Misinterpreting And Misapplying NRS 163.120.**

6 As detailed in Nanyah's Opening Brief at pages 45-59, Nanyah argues the
7 district court erred in dismissing Nanyah's claims against the Rogich Trust.
8 Nanyah stands by the arguments contained in its Opening Brief and will address
9 only those arguments raised by the Rogich Trust that have any substance.
10

11 **1. NRS 163.120 Does Not Require Notice At The Beginning of**
12 **An Action.**

13 The Rogich Trust argues that NRS 163.120 requires notice be given at the
14 "very beginning" of a lawsuit. RAB, pp. 22-23. This argument contradicts the
15 plain language of NRS 163.120 which states notice should be provided "**within**
16 **such other time as the court may fix, and more than 30 days before obtaining**
17 **the judgment.**" (Emphasis added). A judgment does not occur at the beginning
18 of a lawsuit making the Rogich Trust's argument an absurdity. *Las Vegas Sun v.*
19 *District Court*, 104 Nev. 508, 511, 761 P.2d 849, 851 (1988) ("statutes should be
20 interpreted so as to . . . be reasonable and avoid absurd results."). Further, this
21 argument was specifically rejected in *Transamerican Leasing Co. v. Three Bears*,
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26 ⁴³ At this excerpt, Rogich even corrects his own attorney in the deposition to show
him where it is detailed that Nanyah invested \$1.5 million into Eldorado.

1 *Inc.*, 586 S.W.2d 472, 476–77 (Tex. 1979) when the Texas Supreme Court stated:

2 “The requirement for a notice does not always require notice in time for trial”

3
4 **2. Is There A Consequence For The Rogich Defendants**
5 **Failure To Comply With NRCP 8, 16.1 And 37?**

6 As an issue of first impression, Nanyah argues that NRCP 8, 16.1 and 37
7 impose affirmative obligations upon Rogich and the Rogich Trust to assert
8 affirmative defenses relating to necessary or indispensable parties, to identify
9 beneficiaries separately as they may have interests that need to be addressed and/or
10 are implicated by the litigation and that NRCP 37 contains consequences for
11 failing to disclose information. Given the policy that Nevada’s Rules of Civil
12 Procedure are “to be construed, administered, and employed by the court and the
13 parties to secure the just, speedy, and inexpensive determination of every action
14 and proceeding” and that it is the policy of the courts to resolve disputes on their
15 merits, the secret employment of NRS 163.120 as a potential ambush in litigation
16 as an unlimited and unrestricted “get out of jail free card” to escape clear liability
17 seems inherently wrong, unfair and draconian. NRCP 1; *Franklin v. Bartsas*
18 *Realty, Inc.*, 95 Nev. 559, 563, 598 P.2d 1147, 1149 (1979) (it is “basic . . . policy
19 to have each case decided upon its merits. In the normal course of events, justice
20 is best served by such a policy.”).

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1 **3. NRS 163.120 Purpose Is To Ensure A Trustee Adequately**
2 **Protects The Beneficiaries Interest.**

3 As discussed in *Transamerican Leasing Co. v. Three Bears, Inc.*, 586
4 S.W.2d 472 (Tex. 1979), the purpose of this notice obligation to ensure
5 beneficiaries' interest in a trust is adequately protected. In *Transamerican*, as in
6 this case, the trustee who was overseeing the entire litigation was also the
7 primary beneficiary of the trust. Rogich is the trustee and was during this
8 litigation the sole and/or primary beneficiary of the Rogich Trust. Where such
9 facts are shown and the trustee/beneficiary "**ably participated in the defense of**
10 **the case**" then 163.120's provisions are fully satisfied and technical compliance
11 with the notice obligation is not required. *Id.* at 477 (emphasis added).
12
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14

15 Nanyah demonstrated that at the time of the initiation of this litigation
16 Rogich himself was the sole beneficiary of the Rogich Trust. Subsequent
17 inclusion of new beneficiaries would therefore take subject to full knowledge of
18 the existing litigation and additional notice not required. Therefore, NRS
19 163.120 notice was not required given the undisputed facts of this case that
20 Rogich was the sole beneficiary during the initiation of and the pendency of this
21 litigation and he had actual notice of these proceedings. Subsequent
22 manipulating to create "new" beneficiaries so as to manufacture a NRS 163.120
23 basis for dismissal is simply gamesmanship to avoid a clear and unambiguous
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1 obligation to pay \$1.5 million to Nanyah. The law abhors a forfeiture and to
2 adopt the district court's and the Rogich Trust's argument constitutes a forfeiture
3 of Nanyah's clear and undisputed rights.⁴⁴
4

5 **4. The Rogich Trust Admits That NRS 163.120 Allows For**
6 **Notice To Occur After Trial And Prior To Entry Of**
7 **Judgment.**

8 Although initially the Rogich Trust argues that notice must occur at the
9 beginning of a lawsuit, it then changes its arguments to admit that "notice must
10 be provided to beneficiaries no less than 30 days prior to judgment." RAB, p.
11 25:1-2. The Rogich Trust then argues that the district court had "limited judicial
12 discretion" and was obligated to dismiss the claims against it because there was
13 "no corrective language" in the statute allowing Nanyah to comply with the
14 notice obligations. *Id.*, p. 25:15-17. Clearly this is another absurd interpretation
15 of NRS 163.120's provisions because the "corrective language" is clear and
16 unambiguous the notice must be provided *prior to entry of judgment*. Entry of
17 judgment is not a date certain but clearly is a date in a case after a trial has
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25 ⁴⁴ *Matter of W.N. Connell & Marjorie T. Connell Living Tr.*, dated May 18, 1972,
26 134 Nev. 613, 616, 426 P.3d 599, 602 (2018) ("[t]he law abhors a forfeiture.");
Organ v. Winnemucca State Bank & Tr. Co., 55 Nev. 72, 26 P.2d 237, 238 (1933)
("The law abhors a forfeiture.").

1 occurred.⁴⁵ The statute itself provides the corrective action—suspend entry of
2 judgment pending notice to beneficiaries.

3
4 The Rogich Trust’s arguments ignore that courts have both suspended
5 entry of judgment after trial to allow notice and have even vacated judgments to
6 allow notice. *Transamerican Leasing Co. v. Three Bears, Inc.*, 586 S.W.2d 472
7 (Tex. 1979); *In re Pfizer's Estate*, 33 N.J. Super. 2”2, 265, 110 A.2d 40, ’3 (Ch.
8 Div.), *aff’d*, 17 N.J. 40, 110 A.2d 54 (N.J. 1954).

10 **5. The Rogich Trust Misapplies NRS 12.130.**

11
12 The Rogich Trust and the district court also erroneously contend
13 intervention under NRS 12.130 must happen prior to trial. NRS 12.130
14 contemplates intervention can happen any time prior to “the entry of a final
15 judgment”; including even after the jury has reached a verdict, so long as
16 judgment has not been entered. Again, the district court’s decision is erroneous
17 and requires reversal.

18
19
20 In this case, at the time of dismissal of the Rogich Trust, there was not a
21 “final judgment.” Pursuant to NRCP 54(b), the decision to dismiss the Rogich
22 Trust was not a final judgment. Claims against multiple parties remained.

24
25
26 ⁴⁵ Judgment may also be entered after the conclusion of motion practice. In either instance, entry of judgment may be suspended pending notice to beneficiaries.

1 Pursuant to NRCP 54(b), the district court retained jurisdiction to revisit and
2 rescind the dismissal of the Rogich Trust. *Id.* (“any order or other decision,
3 however designated, that adjudicates fewer than all the claims or the rights and
4 liabilities of fewer than all the parties does not end the action as to any of the
5 claims or parties and may be revised at any time before the entry of a judgment
6 adjudicating all the claims and all the parties’ rights and liabilities.”). Again,
7 reliance on NRCP 12.130 as a basis to dismiss the claims against the Rogich
8 Trust is simply a misapplication of the statute because no final judgment had
9 been rendered.

10
11 In addition, intervention is not a matter of right, there must be a showing
12 by a particular beneficiary that some interest is not being adequately protected.
13
14 When the district court treated intervention as an absolute right, the district court
15 again committed clear error. Intervention would have been denied because
16 Rogich has “**ably participated in the defense of the case**”, therefor 163.120’s
17 notice provisions did not apply.

22 **6. The Rogich Trust’s Offers Of Judgment Are Dispositive.**

23 Recognizing the fatality of the two Offers of Judgment to the applicability
24 of NRS 163.120 in this action, the Rogich Trust simply argues they are not
25 relevant. RAB, pp. 31-32. Nanyah believes the extensions of formal Offers of
26

1 Judgment to allow Nanyah to proceed to obtain a judgment against the Rogich
2 Trust is dispositive and obviates any requirement by Nanyah to comply with NRS
3 163.120.
4

5 The Rogich Trust's Offers of Judgment are judicial admissions of both fact
6 and law that judgment may be obtained against the Rogich Trust. The Rogich
7 Trust expressly waived NRS 163.120's provisions and affirmed that judgment
8 could be obtained against it. Nanyah argues that these Offers of Judgment
9 constitute both judicial admissions and that the Rogich Trust is judicially
10 estopped from contesting that Nanyah may proceed to obtain a judgment against
11 it. Further supporting Nanyah's position, the Rogich Trust asserted the Offers of
12 Judgment are "facially valid and demonstrated by operation of law pursuant to
13 NRCP 68." 36 JA 9047:16-17. The district court then awarded the Rogich Trust
14 attorney fees and costs in the amount of \$588,770.05. 38 JA 9255-9256; 36 JA
15 8628-8749. Given the clear judicial admissions of fact and law, Nanyah was
16 entitled to obtain judgment against the Rogich Trust based upon the Offers of
17 Judgment and compliance with NRS 163.120 was unnecessary.
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22 **H. The District Court Erred In Dismissing The Claims Against**
23 **Rogich And Imitations.**

24 Nanyah asserts in this action that the conduct of the defendants, acting
25 cooperatively, deprived Nanyah of the benefits of its \$1.5 million investment into
26

1 Eldorado. This benefit was either the repayment of its original \$1.5 million or a
2 commensurate membership interest (theoretically calculated as of 2012 when the
3 obligation to provide Nanyah with a membership interest was repudiated). 28 JA
4 6802. While the Rogich Trust claims that Nanyah abandoned its claim to an equity
5 interest, Nanyah did not.
6

7
8 The district court held that Nanyah could not pursue a claim against the
9 Eliades Trust for an equity interest—which decision has been appealed in this case.
10 14 JA 3403-3412. Because of the district court’s order denying Nanyah the right
11 to receive an equity interest, Nanyah was then forced to limit its relief to a request
12 for recovery of the \$1.5 million investment. Assuming this Court reverses the
13 district court’s order on the 5th claim for relief for a constructive trust, Nanyah’s
14 right to recover its equity interest is revived as is its right to receive the value of
15 that equity interest for which it has been deprived. Accordingly, Nanyah’s
16 conspiracy claim is premised on the defendants’ joint cooperation and actions to
17 deprive Nanyah its rights to receive a benefit for its \$1.5 million invested in
18 Eldorado which includes both the repayment of Nanyah’s \$1.5 million investment
19 or the issuance of a commensurate membership interest to it.⁴⁶
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25 ⁴⁶ Using the valuation methodology employed by the Rogich Trust and Eliades in
26 2012—1% equals \$100,000-- Nanyah’s interest for its \$1.5 million investment in
Eldorado would be 15% which it has been deprived of receiving.

1 **I. The Claim Against Imitations.**

2 Nanyah's claim against Imitations is not premised on the 2012 Assignment
3 Agreement relating to transfer of ownership of Imitations. Nanyah's claim against
4 Imitations is premised on Imitation's participation in the Secret Membership
5 Assignment as a co-conspirator to facilitate the transfer of the Rogich Trust's 40%
6 interest to the Eliades Trust so as to deprive Nanyah from its equity rights. Rather
7 than the Rogich Trust receiving the \$4 million in consideration for the transfer of
8 the 40% interest, Imitations was used as the vehicle to transfer \$4 million in value
9 to Rogich's other entities. Accordingly, Imitations was an active and vital
10 participant in the scheme to deprive Nanyah of its investment in Eldorado.
11
12
13

14 **J. Undisputed Proof Of Wrongful Intent.**

15 The Rogich Defendants argue that there was no intent to harm Nanyah
16 because Rogich provided a self-serving declaration rebutting such intent. RAB 37.
17 Actually, Nanyah relies upon Rogich's expressed and admitted intent to harm
18 Nanyah. 32 JA 7810:24-7811:1 (**"Q. You never had any intention of paying**
19 **Nanyah 1.5 million, did you? A. No."** (emphasis added)). Rogich's self-serving
20 conclusory declaration that he did not intend to pursue an unlawful objective was
21 insufficient to grant summary judgment in his favor.
22
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25 ///

26 ///

1 **K. Intracorporate Conspiracy Doctrine Is Inapplicable.**

2 The intracorporate conspiracy doctrine is inapplicable to Nanyah's
3
4 conspiracy claim. Nanyah asserts that the Rogich Trust, Rogich, Teld, Eliades, the
5 Eliades Trust and Imitations all participated in the wrongful objective to deprive
6 Nanyah of the benefits of its \$1.5 million into Eldorado. 11 JA 2741. Both Teld
7 and the Eliades Trust executed the Secret Membership Assignment. 6 JA 1452-
8 1457. Both Rogich and Eliades executed the Teld MIPA in their individual
9 capacities as well as executing in their capacities as trustees of the Rogich Trust
10 and the Eliades Trust. JA 2741. Therefore, Rogich and Eliades did not sign as
11 agents for an entity but in their individual capacities for which they are liable.
12
13

14 In addition, Eliades and Rogich both individually engaged their other
15 investment vehicles to facilitate the payment of \$4 million to Rogich in exchange
16 for the Rogich Trust's 40% interest pretextually making the transaction look like
17 the Rogich Trust received only \$0 for the transaction.⁴⁷ To facilitate this
18 fraudulent and deceitful transaction, Eliades purportedly "loaned" the Rogich Trust
19 \$682,000 so that the Rogich Trust could then "forfeit" its 40% interest back to the
20 Eliades Trust in an alleged satisfaction of this loan. 11 JA 2842. Accordingly,
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⁴⁷ See footnote 14.

1 these individuals acted in their individual capacities in various forms rendering the
2 intracorporate conspiracy doctrine inapplicable.

3
4 **L. Dismissal Of The Breach Of Contract Claims Against Rogich**
5 **Individually Was Error.**

6 Rogich argues that dismissal of the breach of contract claims against him
7 individually was proper because the district court correctly found Rogich
8 individually was not a party to any contract. Again, the district court erred because
9 Rogich executed the Teld MIPA in his individual capacity. 11 JA 2741.

10 Accordingly, while Rogich individually may not have had the duty to repay
11 Nanyah for its investment, he certainly had the contractual duty associated with the
12 covenant of good faith and fair dealing to ensure Nanyah was not deprived of its
13 investment and/or equity rights in Eldorado.

14
15
16 **V. CATEGORY 4. PROCEDURAL AND EVIDENTIARY ORDERS.**

17
18 **A. Nanyah's NRCP 15 Motion--Eldorado.**

19 The premise of Nanyah's NRCP 15 motion is simple. The district court held
20 that that clear and unambiguous terms of the various contracts established that the
21 Rogich Trust had "specifically assumed" the obligation to repay Nanyah for its
22 \$1.5 million investment.⁴⁸ Nanyah argues that this specific finding by the district
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25

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⁴⁸ 14 JA 3403-3412, ¶¶ 4, 5.a.ii, 5.b.i., 5.b.ii., 5.b.iv, and 7 (emphasis added).

1 court established its legal right to pursue a contract based claim against Eldorado
2 based upon the district court's order because the district court ruled as a matter of
3 law that Rogich Trust was Eldorado's surety.⁴⁹ Nanyah argues that if a court
4 determines a surety is liable for a debt, then the original obligor is also liable as a
5 matter of law. *DKN Holdings LLC v. Faerber*, 61 Cal. 4th 813, 820, 352 P.3d 378,
6 384 (2015) ("The plaintiff 'does not lose the right to the several liability of a
7 several obligor until the obligation is fully satisfied'").
8

9
10 In order for Eldorado to be excused from performance, Nanyah would have
11 to expressly release Eldorado from such liability. It did not.⁵⁰ Instead, the Rogich
12 Trust *added* itself to the obligation and agreed by and between itself and Eldorado,
13
14

15
16 ⁴⁹ See also NRCP 54(c) ("[e]very other final judgment should grant the relief to
17 which each party is entitled, even if the party has not demanded that relief in its
18 pleadings."); *Magille v. Lewis*, 74 Nev. 381, 387-88, 333 P.2d 717, 720 (1958)
19 ("The Nevada Supreme Court recognized the liberal nature of NRCP 54(c) by
20 confirming 'Under the liberalized rules of pleading,' a final judgment must grant
the relief a party is entitled to, even where the prayer for relief did not ask for such
relief.").

21 ⁵⁰ Misstating the law of suretyship, Eldorado argues "Nanyah agreed that the
22 Rogich Trust is 'solely responsible'" for the repayment of the \$1.5 million
23 investment. EAB, p. 64. This statement is not true. Nanyah did not release
24 Eldorado's obligation owed to Nanyah to repay it for its \$1.5 million investment.
25 The various contracts affirm Nanyah's investment into Eldorado and the Rogich
26 Trust *assumed* the liability on behalf of Eldorado to repay Nanyah and/or transfer
Nanyah a commensurate ownership interest. The Eliades Trust agreed that its
retention of the 40% interest acquired from the Rogich Trust would remain liable
for Nanyah's equity rights.

1 that the Rogich Trust would be responsible for the liability. Clearly Eldorado
2 retains the legal rights to assert breach of contract claims against the Rogich Trust
3 for contribution and indemnity to enforce the Rogich Trust's promise to it to be
4 solely liable for the obligation.⁵¹ In addition, based upon the district court's order,
5 Nanyah did not release or relieve Eldorado from such liability owed to it and is
6 entitled to judgment against Eldorado as well.
7

8
9 Eldorado also argues that it has no liability because it is bound by the
10 Rogich Trust's assumption of the obligation to be repaid "solely" by the Rogich
11 Trust. Eldorado argues that as a third-party beneficiary, this contract provision is
12 binding on Nanyah. This Court has specifically rejected Eldorado's argument.
13 This Court has held that "while a third-party beneficiary is generally 'subject to the
14 defenses that would be valid as between the parties,' **the notion that a third-party**
15 **beneficiary steps into the shoes of a contracting party is a "misstatement of**
16 **the law"**. *Hartford Fire Ins. Co. v. Trs. of the Constr. Indus. & Laborers Health &*
17 *Welfare Tr.*, 125 Nev. 149, 156-57, 208 P.3d 884, 889 (2009) (quoting *Morelli v.*
18 *Morelli*, 102 Nev. 326, 329, 720 P.2d 704, 706 (1986) (emphasis added)). *See also*
19 *Restatement (Second) of Contracts* § 309 cmt. c (1981) (providing that a third-
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25 ⁵¹ In addition, Teld and the Eliades Trust retain rights under the Teld MIPA and the
26 Eldorado Operating Agreement against the Rogich Trust because Rogich always
affirmed to Teld and the Eliades Trust that he would repay Nanyah its investment.

1 party beneficiary's right to enforce a contract is "direct, not merely derivative").

2 Accordingly, Nanyah is not limited in its right to recover \$1.5 million solely from
3 the Rogich Trust and Eldorado also remains liable for receipt and retention of this
4 investment.
5

6 Nanyah relies on the arguments in its Opening Brief to refute the remaining
7 contentions asserted by Eldorado and Eldorado's obligation to repay Nanyah its
8 \$1.5 million has always been at the heart of this litigation.
9

10 **B. Nanyah's MIL #5: Parol Evidence Rule--Eldorado.**
11

12 The district court applied the parol evidence rule against Nanyah (claiming
13 Mr. Eliades' testimony was inadmissible to explain his agreement the Eliades Trust
14 held its 40% interest "subject to" Nanyah's equity conversion rights) then stated
15 the parol evidence rule did not bar Eldorado from presenting evidence seeking to
16 alter, modify and refute the clear and unambiguous terms of the various
17 agreements—including the Eldorado Operating Agreement. Nanyah argues that
18 the district court erred in ruling that Eldorado was not a party to its own operating
19 agreement and the parol evidence rule applied against Eldorado. OB, pp. 74-77.
20
21

22 Eldorado argues that it is not a party to its own operating agreement. EAB,
23 pp. 70-72. Eldorado also argues that the provisions of the Eldorado Operating
24 Agreement stating there are no third-party beneficiary rights apply to Nanyah.
25 EAB, p. 71. Nanyah disagrees based upon the express inclusion of Nanyah in
26

1 Eldorado’s Amended Operating Agreement and the adoption and inclusion of the
2 Purchase Agreement and MIPAs, which are specifically incorporated into
3 Eldorado’s Amended Operating Agreement. Nanyah is an express and included
4 non-signatory party to the Purchase Agreement, the MIPAs and Eldorado’s
5 Amended Operating Agreement therefor this contract limitation is inapplicable to
6 Nanyah.
7
8

9 **C. Nanyah’s MIL #5: Parol Evidence Rule—Rogich Defendants.**

10 The Rogich Defendants argue that the district court correctly ruled that the
11 parol evidence did not bar the Rogich Defendants from introducing parol evidence
12 because the district court had not yet determined Nanyah was a third-party
13 beneficiary. RAB, p. 44. This argument is specious for two reasons.
14
15

16 First, the district court held in its October 5, 2018, Order dismissing the
17 remaining claims against the Eliades Defendants, the Rogich Trust “**specifically**
18 **assumed**” “**the obligation**” “**to pay**” Nanyah its “**\$1.5 million**” “**invested into**
19 **Eldorado**” or “**to pay Nanyah its percentage interest in Eldorado**”.⁵² Then, in
20 its October 4, 2019, Decision, when dismissing the claims against Eldorado,
21 Rogich and Imitations, the district court again held that the Rogich Trust “assumed
22 the obligations” to Nanyah:
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26 ⁵² 14 JA 3403-3412, ¶¶ 4, 5.a.ii, 5.b.i., 5.b.ii., 5.b.iv and 7 (emphasis added).

1 **[I]t is undisputed that Nanyah wired \$1,500,000 as memorialized**
2 **in the October 30, 2008 Membership Interest Purchase Agreement (the**
3 **“MIPA”). In this MIPA, the Rogich Trust agreed to solely assume the**
4 **obligation to pay Nanyah’s debt.**

5 33 JA 8057 (emphasis added). Nanyah suggests the foregoing findings and
6 conclusions of law establish Nanyah’s status as a third-party beneficiary. To reach
7 any other conclusion would render the concept of third-party beneficiary status
8 entirely meaningless.

9
10 Second, the district court applied the parol evidence rule *against* Nanyah
11 barring Nanyah’s attempt to use Mr. Eliades’ testimony that he knew and
12 understood the Eliades Trust received the Rogich Trust’s 40% interest “subject to”
13 Nanyah’s right of ownership. *Id.*, 3406, ¶5.b.iii; 3410, ¶14. Because the district
14 court held that the parol evidence applied to Nanyah in interpreting the Teld
15 MIPA, then clearly the district court reasoned that Nanyah was not a “stranger” to
16 the contracts. Accordingly, the parol evidence rule does in fact apply to the
17 Rogich Trust (and Eldorado as discussed above) as a party to the four contracts at
18 issue in this case and the district court’s refusal to apply this evidentiary rule is
19 clear error.

20
21
22 **D. Nanyah’s MIL #6: Date of Discovery--Eliades Defendants.**

23 Eldorado argues the district court acted properly in denying this motion in
24 limine because Eldorado intended to introduce evidence that Nanyah knew it “did
25
26

1 not receive an Eldorado membership interest in 2007, and thus Nanyah's unjust
2 enrichment claim accrued in 2007 or shortly thereafter." EAB, P. 74. This is the
3 exact evidence and argument that Nanyah sought to preclude. Why? Because this
4 is the exact argument this Court previously rejected as a matter of law.
5

6 This Court previously addressed and rejected Eldorado's contention that the
7 statute of limitations commenced to run on Nanyah's claim at the time of its
8 alleged investment. *Nanyah Vegas LLC v. Rogich*, 132 Nev. 1011, *1 (2016).
9 Nanyah argued that the proper analysis of when the statute of limitations
10 commenced was (1) not at the time of the original investment but rather when
11 Nanyah discovered that the defendant either breached or repudiated its obligations
12 to repay Nanyah its investment, and (2) the facts showed that it was not until "late
13 2012. This Court agreed with Nanyah and reversed this district court's prior grant
14 of summary judgment on the statute of limitations issue ruling as a matter of law
15 that the statute of limitations did not begin to run at the time of Nanyah's original
16 investment. *Id.*
17
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21 In addition, Eldorado conceded that it had "no issue" with Nanyah's
22 requested relief "precluding the introduction of any evidence contradicting
23 Nanyah's discovery of the Rogich's Trust's transfer of its membership interest to
24 the Eliades Trust" until December 2012." 23 JA 5673: 23-27. Accordingly, this
25 issue should have been resolved in Nanyah's favor. Nanyah relies on the
26

1 arguments presented in its Opening Brief to refute the remaining contentions
2 asserted by the Eliades Defendants.

3
4 **E. Nanyah’s MIL #6: Date of Discovery—Rogich Defendants.**

5 The Rogich Defendants respond to arguments not made by Nanyah.
6 Nanyah, did not appeal and did not argue any of the substance of MIL #3, which
7 ruling actually favored Nanyah. Accordingly, Nanyah will not address the Rogich
8 Defendants non-responsive argument.
9

10 The Rogich Defendants next argue that Nanyah conflates its discovery of the
11 Secret Membership Assignment⁵³ with the date it discovered the Rogich Trust’s
12 repudiation of its obligations to Nanyah. RAB, p. 49:11-16. Nanyah is not
13 conflating two events, these are one and the same event. And, this is exactly what
14 Nanyah *is* stating.
15
16

17 When Nanyah discovered the Rogich Trust’s Secret Membership
18 Assignment with the Eliades Trust was the exact time Nanyah discovered Rogich
19 Trust’s clear and unequivocal repudiation of its obligations to Nanyah. *Covington*
20 *Bros. v. Valley Plastering, Inc.*, 93 Nev. 355, 360, 566 P.2d 814, 817 (1977)
21 (anticipatory repudiation of a contract occurs when one party's nonperformance is
22 “clear, positive, and unequivocal . . . in light of the total factual context of the
23
24
25

26

53 6 JA 1452-1457.

1 individual case.” (citation omitted)). Up until the discovery of the execution of the
2 Rogich Trust’s Secret Membership Agreement, Nanyah had been repeatedly
3 advised that its investment would be repaid or a membership interest issued.⁵⁴
4

5 Next, the Rogich Trust itself conflates two different events in its statute of
6 limitations argument and seeks to treat them as one. First, there is a different
7 statute of limitations period with regard to Nanyah’s claims against Eldorado
8 which this Court has already addressed in *Nanyah Vegas LLC v. Rogich*, 132 Nev.
9 1011, *1 (2016) rejecting Eldorado’s contention that the statute of limitations on
10 Nanyah’s claims commenced to run at the time of Nanyah’s investment. Instead,
11 this Court held the date of discovery of Nanyah’s claims *against Eldorado* accrued
12 when Nanyah discovered that it would not receive a membership interest or receive
13 repayment. *Id.*
14
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17 The second statute of limitations analysis is the accrual of the claims against
18 the Rogich Trust as the surety of Eldorado’s repayment obligation to Nanyah. The
19 Rogich Trust assumed such obligation on October 31, 2008. The Rogich Trust’s
20 obligation did not have a date certain for performance to happen. Instead, the
21 contracts state that the Rogich Trust will work with Nanyah to establish parameters
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25 ⁵⁴ Nanyah’s principal testified that Huerta repeatedly reassured him that Rogich
26 would repay his investment or issue a membership to him. 22 JA 5289, p. 18:10-16.

1 for the repayment of the debt and/or the issuance of a membership interest. 11 JA
2 2711, Recital A. Accordingly, the date claims accrued against the Rogich Trust
3 was triggered upon the Rogich Trust's breach of its assumption of a contractual
4 obligation to Nanyah which has nothing to do with the date of Nanyah's original
5 investment into Eldorado.
6

7
8 **1. The Obligations Owed To Nanyah By The Rogich Trust**
9 **Were Due And Payable On Demand—Not A Date Certain.**

10 Nanyah's right for repayment from the Rogich Trust and/or a transfer of a
11 commensurate membership interest was a demand obligation. A demand
12 obligation is a contractual obligation to pay an amount or perform some act when
13 there is no maturity date. The relevant contracts do not contain a date certain by
14 which Nanyah's investment will be repaid and/or when the Rogich Trust was
15 obligated to issue a membership interest.
16

17
18 Obligations payable on demand are payable within six (6) years after
19 demand, however, if no such demand has been made, then within ten (10) years
20 from the date the obligation was incurred.⁵⁵ In the present case, if the Court were
21
22

23
24 ⁵⁵ NRS 104.3118(2) ("if demand for payment is made to the maker of a note
25 payable on demand, an action to enforce the obligation of a party to pay the note
26 must be commenced within 6 years after the demand. If no demand for payment is
made to the maker, an action to enforce the note is barred if neither principal nor
interest on the note has been paid for a continuous period of 10 years.").

1 to construe Nanyah's initial complaint as a demand triggering this statute of
2 limitations, then the original complaint was filed on July 31, 2013. Based upon
3 that date, all of Nanyah's claims for relief are timely and the statute of limitations
4 did not expire until July 30, 2019, three years after the consolidated complaint was
5 filed. Alternatively, if the Court imposes the ten-year statute of limitation from the
6 date of the origination of the contractual obligation to pay, then the statute did not
7 expire until October 30, 2018, two years after the consolidated complaint was filed.
8 Applying either triggering event, Nanyah initiated its claims against the Rogich
9 Trust action well within both statutes of limitation contained in NRS 114.3118.
10
11

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13 **F. Nanyah's Jury Instructions.**

14 Nanyah relies on the arguments presented in its Opening Brief to refute the
15 contentions asserted by the Eliades Defendants and the Rogich Defendants.⁵⁶
16

17 **G. Eldorado's Argument That The District Court Erred In Not**
18 **Granting Summary Judgment In Its Favor Is Improper.**

19 Eldorado argues that the district court erred in denying its motion for
20 summary judgment. EAB, pp. 75-78. Eldorado provides no explanation or excuse
21 why it has violated this Court's Order of October 14, 2020, which dismissed
22
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24

25 ⁵⁶ Nanyah will only note that when there is undisputed evidence and legal
26 determinations established during the course of litigation, a request for jury
instructions on such undisputed facts and legal determinations prior to trial is
appropriate.

1 Eldorado's attempt to cross-appeal the issue of the district court's denial of its
2 request for summary judgment. This Court held that because "Eldorado had not
3 carried its burden to establish jurisdiction . . . its cross-appeal is dismissed." Order,
4 p. 3. Given the foregoing, Nanyah will not respond to Eldorado's improper
5 arguments presented to this Court which are presented in violation of this Court's
6 October 14, 2020, Order.
7

8
9 **H. Nanyah Relies Upon Its Opening Brief To Refute The Remaining**
10 **Arguments By The Eliades Defendants.**

11 Nanyah relies on the arguments presented in its Opening Brief to refute the
12 remaining contentions asserted by the Eliades Defendants.
13

14 **VI. THE CROSS-APPEAL MUST BE DENIED.**

15 As stated above, the Rogich Defendants did not appeal the district court's
16 Decision issued on October 4, 2019, dismissing Eldorado, Rogich and Imitations,
17 which rendered the following binding factual and legal determinations:
18

19 **[I]t is undisputed that Nanyah wired \$1,500,000 as memorialized**
20 **in the October 30, 2008 Membership Interest Purchase Agreement (the**
21 **"MIPA"). In this MIPA, the Rogich Trust agreed to solely assume the**
22 **obligation to pay Nanyah's debt.**

23 33 JA 8057 (emphasis added). Accordingly, while the Rogich Defendants may
24 seek to contest a prior order, this Decision and its findings are uncontested. It is
25 therefore, undisputed that Nanyah invested \$1.5 million into Eldorado and under
26 the MIPAs, the Rogich Trust assumed the obligation to repay Nanyah. Nanyah

1 incorporates its arguments contained herein and in its Opening Brief to refute the
2 arguments raised in the cross appeal relating to the October 5, 2018, order.
3

4 With regard to the Rogich Defendants arguments that the district court
5 improperly denied its NRCP 60(b) motion, such review is subject to an abuse of
6 discretion standard. *Bianchi v. Bank of America*, 124 Nev. 472, 474, 186 P.3d
7 890, 892 (2008) (applying an abuse of discretion standard of review to an order
8 denying an NRCP 60(b) motion). The motion was properly denied because there
9 was no mistake or inadvertence.⁵⁷ The Rogich Defendants just did not like that
10 the district court found that the Rogich Trust assumed the repayment obligations
11 owed to Nanyah and/or the duty to transfer a membership interest to it.
12
13
14

15 The substance of the Rogich Defendants arguments in support of its cross
16 appeal are merely regurgitations of the same arguments presented in response to
17 Nanyah's appeal such as: Nanyah is not a third-party beneficiary, the Rogich
18 Trust did not assume any liability to Nanyah, Nanyah only held a "potential
19 claim" not a liquidated claim (again failing to distinguish between the debt owed
20 and the claim for a membership interest), Nanyah's investment was into
21 Canamex, not Eldorado. Nanyah relies upon and incorporates its arguments
22
23
24
25

26 ⁵⁷ The Rogich Defendants argue that Nanyah drafted the October 5, 2018 order.
This statement is false. Counsel for the Eliades Defendants drafted the order.

1 contained herein and in its Opening Brief to refute the arguments raised in the
2 cross appeal justifying the denial of the NRCP 60(b) motion.
3

4 **VII. THIS COURT SHOULD DIRECT REASSIGNMENT OF THIS CASE**
5 **ON REMAND.**

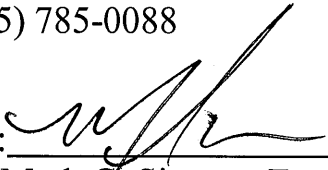
6 Nanyah stands by its briefing in its Opening Brief and herein to establish
7 that a reassignment of this case on remand is required.
8

9 **CONCLUSION**

10 Based upon the foregoing, Nanyah requests this Court reverse and remand
11 this case with specific findings relating to the clear and unambiguous obligations
12 owed by the parties, including but not limited to entering judgment in Nanyah's
13 favor that the defendants are liable to Nanyah for its damages including, but not
14 limited to the value of the membership interest Nanyah has been deprived of
15 receiving.
16

17
18 DATED this 1st day of February, 2022.

19 SIMONS HALL JOHNSTON PC
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23 BY: 
24 Mark G. Simons, Esq.
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**CERTIFICATE OF COMPLIANCE
PURSUANT TO RULE 28.2**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 font and Times New Roman type.

2. I further certify that the Opening Brief, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), is proportionately spaced, has a typeface of 14 points or more, and contains 14,689 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

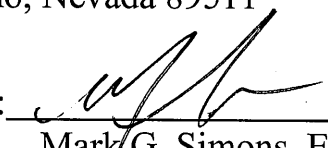
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1 sanctions in the event that the accompanying brief is not in conformity with the
2 requirements of the Nevada Rules of Appellate Procedure.
3

4 DATED this 1st day of February, 2022.

5 SIMONS HALL JOHNSTON PC
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL
3
4 JOHNSTON PC, and that on this date I caused to be served a true copy of the
5 **APPELLANT NANYAH VEGAS, LLC'S REPLY BRIEF & ANSWERING**
6 **BRIEF TO CROSS APPEAL** on all parties to this action by the method(s)
7
8 indicated below:

9 / by using the Supreme Court Electronic Filing System:

10
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24 *The Eliades Survivor Trust of 10/30/08*

25 DATED: This 1st day of February, 2022.

26

JODI ALHASAN