

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

2 NANYAH VEGAS, LLC, a Nevada
3 Limited Liability Company,

4 Appellants,

5 vs.

6 SIG ROGICH, a/k/a SIGMUND
7 ROGICH, Individually and as Trustee of
8 The Rogich Family Irrevocable Trust;
9 ELDORADO HILLS, LLC, a Nevada
10 Limited Liability Company; TELD,
11 LLC, a Nevada Limited Liability
12 Company; PETER ELIADES,
13 Individually and as Trustee of The
14 Eliades Survivor Trust of 10/30/08; and
15 IMITATIONS, LLC, a Nevada Limited
16 Liability Company,

17 Respondents.

18 AND RELATED MATTERS.

Supreme Court Case No.

79917

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Eighth Judicial District Court
Elizabeth A. Brown
Clerk of Supreme Court
Case No.: A-13-686303-C

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

RESPONDENT/CROSS
APELLANT ROGICH
PARTIES' REPLY BRIEF
ON CROSS-APPEAL

19 **RESPONDENT/CROSS APELLANT ROGICH PARTIES' REPLY**
20 **BRIEF ON CROSS-APPEAL**

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Individually and as Trustee of The Rogich Family Irrevocable Trust, and
Imitations, LLC

1 **NRCP 26.1 DISCLOSURE**

2 Counsel of record certifies that the following are persons and entities as
3 described in NRAP 26.1(a), and must be disclosed. These representations are
4 made in order that the judges of this court may evaluate possible disqualification
5 or recusal:
6

7
8 Respondents/Cross-Appellants Sig Rogich, a/k/a Sigmund Rogich
9 (“Rogich”), Individually and as Trustee of The Rogich Family Irrevocable Trust
10 (“Rogich Trust”) and Imitations, LLC, (“Imitations” and collectively with Rogich
11 and the Rogich Trust referred to herein as the “Rogich Parties”) are represented
12 by Hutchison & Steffen, including attorneys Brenoch Wirthlin, Esq. and Traci L.
13 Cassity, Esq. The Rogich Trust is a Nevada trust. Imitations is a Nevada limited
14 liability company. No publicly held company owns any portion of this entity.
15
16

17 DATED this 1st day of March, 2022.

18 HUTCHISON & STEFFEN

19
20 By: /s/ Brenoch Wirthlin
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27 *Rogich, Individually and as Trustee of*
28 *The Rogich Family Irrevocable Trust,*
And Imitations, LLC

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1 **I. SUMMARY OF ARGUMENT IN REPLY**

2 Instead of addressing specific arguments raised in the responsive briefs,
3
4 appellant Nanyah Vegas, LLC (“Appellant” or “Nanyah”) merely cut and pasted
5 the entirety of its argument in its Reply Brief. Moreover, Appellant spent a total
6 of two (2) pages of its 63 page brief actually addressing the Rogich Parties’ cross-
7 appeal (“Cross-Appeal”).¹ Despite the short number of pages addressing the
8 Cross-Appeal, Appellant manages to make several false and misleading
9 statements. The Rogich Parties will focus on correcting only the most egregious
10 statements. The Rogich Parties will focus on correcting only the most egregious
11 statements. The Rogich Parties will focus on correcting only the most egregious
12 statements. The Rogich Parties will focus on correcting only the most egregious
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20 statements. The Rogich Parties will focus on correcting only the most egregious
21 statements. The Rogich Parties will focus on correcting only the most egregious

22 ¹ Appellant incorporated by reference all of its prior briefing and argument.
23 Accordingly, in order to reply to the Appellant’s purported incorporated
24 arguments, the Rogich Parties incorporate all factual and legal arguments from
25 their Answering Brief on Appeal and Opening Brief on Cross-Appeal (“Rogich
26 Parties’ Answering Brief”) as if set forth fully herein. Further, the Rogich Parties
27 must respond to those arguments to avoid any appearance of waiver. Finally, to
28 maintain consistency, defined terms will remain the same as those set forth in the
29 Rogich Parties’ Answering Brief.

1 Appellant provides no reference to any statements, nor any evidence that such
2 statements, if made by the Rogich Defendants, were inaccurate. Accordingly, the
3 Rogich Parties reject and deny Appellants' unfounded false accusations.
4

5 Regarding the arguments at issue on the Cross-Appeal, Appellant would
6 place the burden for compliance with NRS 163.120 squarely on the Trust itself,
7 which is directly contrary to the plain language of the statute. Appellant's
8 suggestion that somehow the Trust had some obligation to disclose beneficiaries
9 – who knew nothing about the underlying lawsuit – as potential witnesses under
10 NRCP 16.1 is nonsensical. The entire burden is on the Appellant to request the
11 names of the beneficiaries in accordance with the statute. Appellant, and
12 Appellant alone, had the affirmative responsibility to comply with the statute.
13 Had Appellant done so, we would not be here.
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17 **II. ARGUMENT**

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19 **A. Contrary to Appellant's assertions, there was mistake and/or** 20 **inadvertence regardsing the October 5, 2018 Order, which** 21 **should be set aside.**

22 As noted previously, NRCP 60(b) in pertinent part, allows the Court, "[o]n
23 motion and upon such terms as are just", to "relieve a party...from a final
24 judgment, order or proceeding for the following reasons: (1) mistake,
25 inadvertence, surprise or excusable neglect...." NRCP 60(b) (Emphasis Added).
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Moreover, the relief requested by the Rogich Parties is well within this Court's jurisdiction to grant. *See A-Mark Coin Co. v. Redfield's Estate*, 94 Nev. 495, 498, 582 P.2d 359, 361 (1978) (recognizing, in the probate context, that a court "has jurisdiction to vacate a prior order upon learning that it was entered through mistake" and further confirms that "[o]ur remedial rule, NRCP 60(b), contemplates such action.") (citation omitted). The Rogich Parties' Motion was timely filed within six (6) months from service of the notice of entry of the October 2018 Order. *See id.*

The Agreements plainly state that Nanyah's alleged claim is only "potential". There can be no doubt that Nanyah should not be able to benefit from its own error in drafting the October 2018 Order, as it now attempts to do by ignoring the fact that its purported claim is only "potential", and its purported "investment" into Eldorado (when it was actually into CanaMex) is only an allegation. Thus, while the subject Motions for Summary Judgment were not seeking summary judgment against the Rogich Parties, the October 2018 Order inadvertently or mistakenly made affirmative findings and conclusions that Nanyah attempts to incorrectly construe as a basis for summary judgment against the Rogich Parties, even going so far as to assert that the Rogich Parties were even prohibited from presenting any evidence in their defense at trial. Nanyah's

1 mistakes in drafting the October 2018 Order, if left uncorrected, would gravely
2 and unjustly impact the Rogich Parties' due process rights.

3
4 To illustrate the small, but significant, changes that would be required to
5 amend the October 2018 Order, and for the Court's convenience, the Rogich
6 Parties provide a redlined/amended version of the October 2018 Order that they
7 believe should have been entered (the "Proposed Amended Order"). 16 JA
8 003850 – 003859. The Rogich Parties request that the Proposed Amended Order
9 be entered in place of the October 2018 Order.
10
11

12 While the Eliades Defendants were granted their MSJ, and Appellant's
13 Counter-MSJ was denied, the Court enter its Order which included findings and
14 conclusions that are against the Rogich Parties. Prior to the entry of the October
15 2018 Order, the Rogich Parties had no reason to oppose the summary judgment
16 sought by the Eliades Defendants, or by Appellant, since those motions did not
17 request findings against the Rogich Parties; thus, denying the Rogich Parties relief
18 from the October 2018 Order would greatly prejudice the Rogich Parties rights,
19 effectively denying them due process. *See Callie v. Bowling*, 123 Nev. 181, 183,
20 160 P.3d 878, 879 (2007) (recognizing that procedural due process requires
21 meaningful notice and an opportunity to be heard). Accordingly, the Rogich
22 Parties should be granted their requested relief from the October 2018 Order.
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1 **B. Rogich was not the sole beneficiary of the Rogich Trust.**
2 **Appellant's contrary statements are demonstrably false.**

3 Appellant falsely states that it provided public records from the Gaming
4 Control Board Showing Rogich was the sole beneficiary of the Rogich Trust.
5 Nanyah also states that it presented additional testimony affirming that Rogich
6 was the sole beneficiary of the Rogich Trust. These assertions by Appellant are
7 false. The truth is that these assertions are merely the Appellant's own briefings
8 submitted to the District Court inaccurately and deliberately misinterpreting the
9 documentation. In reality, the documentation provided to the Gaming Control
10 Board merely shows that Rogich is a beneficiary, not that he is the sole
11 beneficiary. *See* 28 JA 006744. Moreover, Appellant's assertion that Rogich is
12 the only beneficiary of the Rogich Trust is demonstrably false, and Appellant is
13 aware of that fact. In their Memorandum of Points and Authorities Regarding
14 Limits of Judicial Discretion Regarding Notice Requirements Provided to Trust
15 Beneficiaries Under NRS Chapter 163 ("Chapter 163 Brief"), the Rogich Parties
16 included a declaration from Rogich which made clear that there were two (2)
17 trustees of the Rogich Trust and ten (10) beneficiaries of the Rogich Trust, and
18 that each of the ten beneficiaries had a "present interest in trust assets." 30 JA
19 007136. Moreover, Appellant cites 28 JA 6723:1-4 for its assertion that it
20 "presented additional testimony affirming Rogich was the sole beneficiary of the
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1 Rogich Trust.” But that citation is to the deposition of Melissa Olivas, page 113,
2 lines 9-24 (*see* 28 JA 6723:1-4²) which states as follows:

3
4 Q. Do you know if Rogich as any other trusts?

5 A. Yes.

6 Q. And what are they?

7 A. The Rogich Family Trust.

8 Q. Okay. Any others?

9 A. The Sigmund Rogich 2004 Family Irrevocable Trust.

10 Q. Is that different than the one that –

11 A. Yes. Our estate attorney didn’t do us any favors.

12 Q. Okay. Do you know when those were set up?

13 A. 2004. The Rogich Family Trust was 1982.

14 Q. Do you know if Rogich is the beneficiary for any other
15 trusts?

16 A. I don’t believe so.

17 *See* 28 JA 006750. It is clear from actually reading the Appellant’s cited evidence
18 that it has nothing whatsoever to do with whether there are additional beneficiaries
19 of the Rogich Trust. Further, Appellant knows the only testimony on the subject
20 is Rogich’s undisputed testimony that there are ten beneficiaries of the Rogich
21 Trust, which Appellant knows because it read the declaration of Sig Rogich in the
22 Rogich Parties’ Chapter 163 Brief.

23 **C. Appellant failed to comply with NRS 163.120.**

24 Appellant misleadingly states that the District Court incorrectly held its

25 ² This citation in turn cites to Exhibit 4 to the Appellant’s Emergency Motion to
26 Address Defendant The Rogich Family Irrevocable Trust’s NRS 163.120 Notice
27 And/Or Motion to Continue Trial for Purposes of NRS 163.120.

1 “hands were tied.” Appellant’s statement is false. In fact, at the hearing on the
2 Appellant’s Emergency Motion to Address Defendant the Rogich Trust’s NRS
3 163.120 Notice and/or Motion to Continue Trial for Purposes of NRS 163.120
4 (“Emergency Motion”) which took place on April 18, 2019, what the District
5 Court correctly held is not that its hands were tied, but rather that Appellant’s
6 hands were tied by its own failure to comply with the statute. The District Court
7 correctly stated as follows:
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11 THE COURT: All right. And -- all right. So let me get back to my
12 questions to Mr. Simons. Mr. Simons, 163.120(2) really -- really
13 ties your hands as far as timing. It says that you have -- what it seems
14 to me is that it gives you the chance either before the 16.1 or after to
15 determine who the beneficiaries are so that they can be given notice
16 so that they have the ability to intervene.

17 And I realize that there’s a provision there that within such time as
18 the Court may fix, but the way I read it is that so that if you don’t
19 have it by the time that the initial disclosures are made you can ask
20 for additional time. I don’t see where it can be made on the eve of
21 trial.

22 JA_007191 – 7192 (emphasis added). This is an important distinction between
23 the Appellant’s false statement and what the District Court actually held. The
24 District Court was well aware of what the statute required, and what the Appellant
25 had failed to do. The District Court correctly found that there was no provision
26 for the Appellant to serve a request for the names of beneficiaries on the eve of
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1 trial.

2 Further, while Appellant is correct that statutes should be interpreted so as
3 to avoid absurd results, Appellant again repeats the falsehood that the District
4 Court held that its hands were tied; this is incorrect as the District Court held that
5 NRS 163.120 tied Appellant's hands, not the District Court's. The reality is that
6 the quotation from the Appellant's Brief on this issue also makes clear that
7 "statutes should be interpreted so as to effect the intent of the legislature in
8 enacting them." *Washoe Med. Ctr., Inc. v. Reliance Ins. Co.*, 112 Nev. 494, 496,
9 915 P.2d 288, 289 (1996). This is exactly what the District Court did and the
10 result should be upheld.
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15 **D. The District Court never found Appellant to be a third-party**
16 **beneficiary.**

17 Appellant falsely claims that the District Court found Nanyah was a third-
18 party beneficiary of the Purchase Agreement, the Teld MIPA, and Eldorado's
19 Amended Operating Agreement. This assertion, no matter how many times it is
20 repeated by Appellant, remains false. The District Court never expressly found
21 that Appellant was a third-party beneficiary of any of the agreements at issue. In
22 fact, in its Order Denying Nanyah Vegas, LLC's Motion in Limine #5: Parol
23 Evidence ("Order on MIL #5"), entered on April 10, 2019, only a few days before
24 trial, as follows:
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1 With respect to the Rogich Parties, it has not yet been determined
2 whether Nanyah is a third party beneficiary of any of the written
3 contracts at issue in this case. *See Canfora v. Coast Hotels and*
Casinos, Inc., 121 Nev. 771, 779, 121 P.3d 599, 605 (2005).

4 *See* 27 JA 006477:1-4. Thus, Appellant's assertion that the District Court "found
5 Nanyah was a third party beneficiary" of any agreements is a demonstrably false
6 statement.
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9 **E. Rogich did not admit violating, or even owing, any fiduciary**
10 **duties to Appellant.**

11 Contrary to Appellant's assertions, Rogich did not testify that all the
12 defendants owed fiduciary duties to Appellant due to its contribution, which was
13 to CanaMex. Rogich only testified that he was "familiar" with what a fiduciary
14 duty was, not that he or anyone else owed such a duty to Appellant, and said
15 nothing about Appellant's purported investment.
16

17
18 **F. While Appellant would like to mislead this Court into thinking**
19 **CanaMex is irrelevant, the alleged 'investment' by Appellant**
20 **was to CanaMex, not Eldorado.**

21 Huerta testified (as Nanyah's PMK) that he instructed Harlap to wire the
22 \$1.5 Million to the account of Eldorado Hills, LLC ("Eldorado Hills"). 22 JA
23 005338, at deposition p. 31, ll. 4-11. Contrary to this deposition testimony, on
24 December 4, 2007, Huerta e-mailed Harlap instructing him to wire the \$1.5
25 Million into CanaMex's bank account. 22 JA 005350. Nowhere in the e-mailed
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1 instructions from Huerta to Harlap is there any indication of, or reference to,
2 Eldorado Hills. *Id*

3
4 Huerta further testified (as Nanyah's PMK) that Nanyah wired the funds
5 into Eldorado Hills' bank account and that the money never went into the
6 CanaMex's account. 22 JA 005338 at deposition p. 29, l. 21 to p. 30, l. 14 and p.
7 60, l. 5-14. This was false. Further, Harlap testified that he "transferred the
8 money to Eldorado Hills as per Carlos Huerta's wiring instructions" and that this
9 is the basis of Nanyah's claims. 22 JA 005285, at deposition p. 20, l. 20 to p. 21,
10 l. 11. Contrary to these self-serving statements by Huerta, the bank records show
11 that Harlap actually wired the \$1.5 Million into CanaMex's Nevada State Bank
12 account on December 6, 2007 in compliance with Huerta's emailed instructions
13 (not Eldorado Hills' bank account). 22 JA 005352-005353.

14
15 After the alleged investment funds were wired by Harlap into CanaMex's
16 bank account, Huerta proceeded with the following series of bank transfers, where
17 a majority of \$1.5 Million ended up in the bank account of CanaMex's sole
18 manager/managing member (Go Global, which is a business solely operated by
19 Huerta).

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24 **G. The K-1s conclusively demonstrate that Appellant's interest was**
25 **in CanaMex, not Eldorado.**

26 Huerta (as Nanyah's PMK) confirmed that equity and ownership interests
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1 are preserved by a K-1 and confirmed a tax return will show the ownership
2 interest. 22 JA 005335, at deposition p. 22, ll. 3-15. Huerta further testified
3 (inaccurately) that Nanyah was going to be a member of Eldorado Hills or
4 CanaMex, but that CanaMex didn't happen and Eldorado Hills never formalized
5 its investment with a K-1. 22 JA 005422 at deposition p. 164, ll. 7-18.
6

7
8 Contrary to this deposition testimony, but consistent with Nanyah's
9 confirmed investment in CanaMex, on April 12, 2008, CanaMex sent Nanyah a
10 2007 Schedule K-1 form via an e-mail from Summer Rellamas at Go Global
11 Properties. The Schedule K-1 from CanaMex shows: (1) shows Nanyah as 99%
12 owner of CanaMex; (2) for the time period of December 3, 2007 through
13 December 31, 2007; (3) Nanyah's capital contribution during the year of \$1.5
14 Million; and (4) that after a decrease in business income of \$2,515, Nanyah's
15 ending capital account with CanaMex as of December 31, 2007 was \$1,497,485.
16 22 JA 005426-005427.
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20 CanaMex additionally sent Nanyah a 2010 Schedule K-1 with a letter,
21 which indicated that its "2010 Schedule K-1 ... has been filed with the partnership
22 tax return of CanaMex Nevada, LLC" and further advised that "[s]hould [Nanyah]
23 have any questions regarding the information reported to [it] on this Schedule K-
24 1, please call." The 2010 K-1 shows: (1) Nanyah still as 99% owner of CanaMex;
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1 (2) Nanyah's capital account with CanaMex at \$1,497,695; and (3) that after a
2 decrease in business income of \$10, Nanyah's ending capital account with
3 CanaMex as of December 31, 2010 was \$1,497,685. 22 JA 005429-005430.
4

5
6 **H. The District Court properly applied NRS 163.120 in dismissing**
7 **all claims against the Rogich Trust.**

8 The underlying effect of NRS 163.120 is to place a duty on the Plaintiff,
9 alone, to provide notice to the beneficiaries of a defendant trust to allow them time
10 to join the action to protect their rights. Appellant failed to do this. The trial court
11 ultimately determined on the morning of trial that Plaintiff had failed to provide
12 notice to the trust beneficiaries of the Sig Rogich Family Irrevocable Trust
13 pursuant to NRS 163.120, and as a consequence dismissed the trust from the
14 action.
15

16
17 Self-servingly, Appellant argues that it was somehow the duty of the
18 Rogich Trust to provide the names of the beneficiaries as "persons with
19 knowledge" under NRCP 16.1. In addition to being contrary to the plain language
20 of NRCP 16.1 and NRS 163.120, the fact is that the Trust's beneficiaries were not
21 persons with knowledge. They were not involved in the underlying issues or
22 factual history. They had nothing to do with the matter, which is exactly why
23 NRS 163.120 requires the Appellant, alone, to request the names of the
24 beneficiaries of the Trust in a timely manner. If the Trust had to affirmatively
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1 produce the names of the beneficiaries, NRS 163.120's requirements would be
2 redundant. It was Appellant who had the duty to comply with NRS 163.120 to
3 request the names of the beneficiaries in a timely manner, and it was Appellant
4 who failed to comply with that obligation.
5

6 NRS 163.120(2) states the rights and responsibilities of the respective
7 parties in a manner in words and phrases not subject to vagueness or speculative
8 interpretation. The language is plain and simple, and as a result, is "facially clear."
9 The Court, therefore, must give the language of NRS 163.120(2) its plain
10 meaning. Further, NRS 163.120 clearly contemplates that trust beneficiaries are
11 to be given notice at the very beginning in the lawsuit. The statute requires that
12 beneficiaries be notified 30 days after filing the action, or 30 days after filing the
13 early case conference report, whichever is later. This provides beneficiaries the
14 time needed to meaningfully be present and involved in the action, including
15 participating in pre-trial discovery and being present at trial to confront adverse
16 witnesses, present evidence, and argue on their own behalf. The principle of
17 fairness underlies due process, and the fundamental requisite of due process of
18 law is the opportunity to be heard, participate and protect one's rights. *Grannis v.*
19 *Ordean*, 234 U. S. 385, 234 U. S. 394 (1914). The fact that the 30 days rule is the
20 only specific time frame provided in the statute (outside a court order allowing
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1 additional time), provides a clear indication that the drafters preferred notice be
2 given to beneficiaries at the beginning of an action. While additional time can be
3 requested in some circumstances, clearly attempting to give notice on the eve of
4 trial, as Appellant did, violates the plain language of the statute and the
5 beneficiaries' due process rights.
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8 Finally, Appellant attempts to put the cart before the horse and claims that
9 the Trust was obligated to produce the names of the beneficiaries of the Rogich
10 Trust affirmatively before Appellant even requested them. This is false. The
11 beneficiaries are not part of the litigation unless and until their names are requested
12 by the Appellant in accordance with NRS 163. Appellant failed to do this.
13

14 Appellant further argues that the Rogich Trust would have been required to
15 "raise[d] the affirmative defense of some unnamed, unknown trust beneficiary as
16 an indispensable party" and thus the Rogich Trust has "waived the ability to seek
17 dismissal" of Appellant's claims. This is also false. In Nevada, a plaintiff is solely
18 responsible for providing service of process of a summons and complaint on the
19 defendants named in the lawsuit. Also in Nevada, a plaintiff that files a complaint
20 naming a trust as a defendant must provide notice to the beneficiaries. Despite
21 representations made by opposing counsel, the statute places no affirmative duty
22 on the defendant to do anything other than provide a list of beneficiaries within
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1 10 days to plaintiff upon written request.

2 NRS 163.120 also provides that the Court may adopt a different timeframe
3 than those described above should circumstances require. Such situations may
4 include difficulties or delays by the trustee in providing the list of beneficiaries to
5 the plaintiff, or the existence of noncooperative trustee who refuses to provide the
6 list of beneficiaries to the plaintiff after request was made. *See Branch Banking &*
7 *Trust Co. v. Smoke Ranch Dev., LLC*, Case No. 2:12-cv-00453-APG-NJK (D. Nev.
8 Aug. 27, 2015). However, the discretion of the Court must be exercised in light of
9 the statute's clear preference that notice be provided to beneficiaries at the start of
10 an action. In addition, the unexcused failure of a plaintiff to provide timely notice
11 to trust beneficiaries is not good cause to extend the time for notice beyond the 30
12 day rule. To extend the time allowed for notice would render the 30 day rule
13 contained within the statute meaningless. Finally, and most importantly, notice
14 must be provided to beneficiaries no less than 30 days prior to judgment.
15

16 Finally, the statute clearly bars recovery by the Appellant should proper
17 notice not be given to the beneficiaries. The severity of this provision in the
18 statute serves to underscore the importance the statute drafters placed upon trust
19 beneficiaries receiving proper notice of the action so they may meaningfully
20 participate in the litigation and "contest the right of the plaintiff to recover." *See*
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1 NRS 163.120(2).

2 Because the language of NRS 163.120 is clear on its face, the District
3 Court had, and this Court likewise has, limited judicial discretion outside of the
4 four corners of the statute. Moreover, it should be noted that the plain language
5 contained in NRS 163.120 provides no corrective course under the plain language
6 of the statute which would allow Appellant to comply with NRS 163.120.
7

8
9 As noted above, the Appellant's assertion that Rogich is the only
10 beneficiary of the Rogich Trust is a blatantly false statement. Appellant's
11 assertion that its false position was "undisputed" below is also blatantly and
12 demonstrably false. Thus, Appellant cannot excuse its failure to comply with the
13 statute by claiming Rogich was the only beneficiary of the Rogich Trust; if
14 anything the fact that Appellant repeats this falsehood knowing it to be such
15 proves the lack of merit in its position.
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18 Q. Appellant failed to meet the requirements of NRS 163.120.
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20 Appellant does not claim to have provided the beneficiaries received their
21 30-days due process notice in this matter. Appellant further does not claim that
22 the Court granted Appellant an extension of time in which to provide notice to
23 the trust beneficiaries and that they were provided notice at some later time. If
24 fact, Appellant could not have done so because the first request for a list of
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1 beneficiaries from Appellant was not even made until April 15, 2019.

2 Appellant apparently believes it possible to effectuate notice to the
3 beneficiaries at some point after trial in this matter is commenced or completed.
4 The purpose of NRS 163.120 is to enable beneficiaries to intervene in an action to
5 contest the right of the plaintiff to recover. In addition to the fact that the
6 beneficiaries of the Rogich Trust had been precluded from protecting their rights
7 in this matter for 5 ½ years due to Appellant's failure to comply with the statute,
8 notice provided after the start of trial it too late to allow the beneficiaries to
9 intervene since the right for any party to intervene in an action ends once trial
10 begins. NRS 12.130 states that an intervention can only take place "before the
11 trial", and NRCP 24 requires that any motion to intervene be made on "timely
12 motion." The Nevada Supreme Court has recognized this requirement. *Am. Home*
13 *Assur. Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 1229,
14 1244, 147 P.3d 1120, 1130 (2006) ("NRS 12.130(1) provides that an applicant
15 may intervene "[b]efore the trial." As we have previously recognized, however,
16 even when made before trial, an application must be "timely" in the sense
17 afforded the term under NRCP 24."). For this reason, the Court could not allow
18 any extension or other revision of the statute at issue, particularly with mere days
19 left before trial.
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1 **I. Transamerican is not Nevada law nor is it possible under**
2 **applicable Nevada law.**

3 The Rogich Parties incorporate their argument in their Answering Brief
4 regarding this argument repeated by Appellant.
5

6 **J. Appellant failed to comply with the requirement for properly**
7 **seeking to continue trial and its request was properly denied.**

8 The District Court had already granted numerous continuances to both
9 parties at the time Appellant filed its Emergency Motion seeking a continuance.
10 Second, as noted previously, Appellant fails to dispute that it failed to comply with
11 EDCR 7.30(c), (d), and (e) in making its Emergency Motion. Appellant's
12 Emergency Motion – filed on April 16, 2019, when trial was set to begin on April
13 22, 2019 – failed to contain a certification of counsel as required by EDCR 7.30(c)
14 and (d), and Appellant's counsel's attempts to amend its Emergency Motion at the
15 hearing were barred by subsection (e). See 30 JA 7188:22-7189:1. Accordingly,
16 the District Court properly denied the Appellant's motion to continue the trial. *Id.*
17 at 30 JA 7194:24-7195:4; *see also* Order Regarding Appellant's Emergency
18 Motion to Address Defendant the Rogich Family Irrevocable Trust's NRS 163.120
19 Motion and/or Motion to Continue Trial for Purposes of NRS 163.120. See 32 JA
20 7822:18-20.
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1 **K. The offers of judgment are not relevant.**

2 The Rogich Parties' offers of judgment are irrelevant. As noted previously,
3
4 this issue was not raised below and should be precluded. *See Schuck v. Signature*
5 *Flight Support of Nevada, Inc.*, 126 Nev. 434, 436 (245 P.3d 542, 544 (2010)).
6 Nothing supports Appellant's manufactured assertion that an offer of judgment
7
8 somehow constitutes a "judicial admission" that can be used against a party later,
9 not to mention the fact that an offer of judgment does not itself constitute a
10 "pleading", rendering any case law concerning judicial admissions wholly
11 inapplicable. Further, Appellant's baseless argument is contrary to the purposes
12 of offers of judgment.
13

14 **III. CONCLUSION**

15
16 For all these reasons, the District Court's decisions dismissing all claims
17 against the Rogich Trust and subsequent decision dismissing all remaining claims
18 against Rogich and Imitations should be affirmed in their entirety, the District
19 Court's decisions regarding Appellant's MILs and motion to settle jury
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1 instructions should be affirmed, and the District Court's denial of Rule 60(b) relief
2 to the Rogich Parties should be reversed.

3
4 DATED this 1st day of March, 2022.

5
6 HUTCHISON & STEFFEN

7
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22 *as Trustee of The Rogich Family*

23 *Irrevocable Trust, and Imitations,*

24 *LLC*

1 **NRAP 32(a)(9) CERTIFICATE OF COMPLIANCE**

2 I hereby certify that Respondent/Cross Appellant Rogich Parties' Reply
3
4 Brief on Cross-Appeal complies with the formatting requirements of NRAP
5 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style
6 requirements of NRAP 32(a)(6) because this brief has been proportionally spaced
7
8 typeface using Microsoft Word in Times New Roman font size 14.

9 I further certify that Respondent/Cross Appellant Rogich Parties' Reply
10 Brief on Cross-Appeal complies with the page or type-volume limitations of
11 NRAP 32(a)(7) because, beginning with the Summary of Argument in Reply, and
12 as contemplated by NRAP 32(a)(7)(C), it contains 4,299 words, which is less than
13 the maximum 7,000 number of words allowed pursuant to NRAP 32(a)(7)(A).
14

15
16 I further certify that I have read Respondent/Cross Appellant Rogich
17 Parties' Reply Brief on Cross-Appeal Response Brief, and to the best of my
18 knowledge, information, and belief, the brief is not frivolous or interposed for any
19 improper purpose, such as to harass or to cause unnecessary delay or needless
20 increase in the cost of litigation. I further certify that this brief complies with all
21 applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P.
22 28(e), which requires every section of the brief regarding matters in the record to
23 be supported by a reference to the page of the transcript or appendix where the
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1 matter is to be found.

2 I understand that I may be subject to sanctions in the event that the
3 accompanying brief is not in conformity with the requirements of the Nevada
4 Rules of Appellate Procedure.
5

6 DATED: March 1, 2022. HUTCHISON & STEFFEN
7

8 By: /s/ Brenoch Wirthlin, Esq.
9 Brenoch Wirthlin, Esq.
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(B), I certify that I am an employee of Hutchison & Steffen on the 1st day of March, 2022, I submitted the foregoing **RESPONDENT/CROSS APPELLANT ROGICH PARTIES' REPLY BRIEF ON CROSS-APPEAL** to the Supreme Court of Nevada's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known addresses:

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