

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

In re the Matter of the Estate of

Dennis John Carver

Deceased

No. 81447

Electronically Filed
Aug 23 2020 02:57 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department VIII
County Clark Judge Atkin
District Ct. Case No. P-18-095892-E

2. Attorney filing this docketing statement:

Attorney Leo P. Flangas Telephone 702-384-1990
Firm Flangas Civil Law Firm, LTD.
Address 600 S. Third St.
Las Vegas, NV 89101

Client(s) John Houlihan and Colonial Real Estate Partnership, LTD

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney David Blake Telephone 702-476-5900
Firm Clear Counsel Law Group
Address 1671 Horizon Ridge Parkway, Ste 200
Henderson, NV 89012

Client(s) Estate of Dennis John Carver and Rhonda Morgan

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|-------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCF 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Probate not reopen</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Case number MCP1700877 is the underlying probate matter in Riverside County, California Superior Court. That matter is still open.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an Action on a creditor's claim on an ancillary probate where a known creditor was not given notice. Appellant paid decedents company, a sole proprietorship, for services which were not performed as of his death. The ancillary probate covers several parcels of Nevada real property. In the main probate in California the original executor was removed for cause.

Appellant filed a Petition for an Order to Show Cause why Estate Should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets in the Eighth Judicial District Court for Clark County (the "Trial Court") on February 2, 2020. The Trial Court denied the petition.

The original Estate Administrator in California was removed for fraud and self dealing .

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether Appellants were reasonably ascertained creditors to whom the Estate was required to give notice.

Whether the lack of notice deprived Appellants of their due process rights under the 4th Amendment to the U.S. Constitution and applied to the States through the 14th Amendment.

Whether the Second Administrator's failure to inform the Nevada Trial Court of the original Estate Administrator's fraud and the failure of the First Administrator in California to provide an accounting in the California Probate matter was a fraud upon the Nevada court when the Second Administrator petitioned for, and was granted a, waiver of accounting, payment of attorney's fees, and petition for distribution.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This matter implicates Appellants' right to procedural due process under the 4th Amendment to the U.S. Constitution and applied to the States by the 14th Amendment. Although Appellants were known creditors of the Estate, the Estate failed to send the required notice of the Probate action in either California or Nevada.

Further, the potential Fraud upon the Court is a matter of public policy.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be retained by the Supreme Court as it involves a Constitutional Question regarding the Appellants' procedural due process rights. (NRAP 17(a)(11).)

Further it contains a question of public policy in whether the Estate Administrator committed fraud upon the court. (NRAP 17(a)(12).)

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? No trial - it was a motion hearing.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 06/23/2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 06/23/2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 07/02/2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---------------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:
3A(b)(1) applies to this matter because this involves an ancillary probate action in Nevada with a primary probate action that is still open in California. Appellant, through a Petition for an Order to Show Cause why Estate Should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets contested Respondent's closing of the Estate. The Trial Court denied Appellant's petition and effectively rendered a final judgment closing the Estate against any additional claims.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Rhonda L. Morgan - Petitioner and Estate Administrator

Dennis John Carver - Decedent

John Houlihan and Colonial Real Estate Partnership, LTD - Petitioners

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

N/A

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

This matter involves an ancillary probate matter that is independently appealable under NRAP 3A(b) because it was commenced in the Trial Court and the final judgment was rendered therein.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

John Houlihan & Colonial Real Estate
Name of appellant

Leo P. Flangas
Name of counsel of record

08/23/2020
Date

/s/ Leo P. Flangas
Signature of counsel of record

Clark County, NV
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 23 day of August, 2020, I served a copy of this completed docketing statement upon all counsel of record:

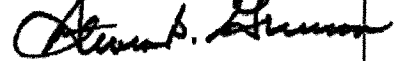
- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

David Blake, Esq.
Clear Counsel Law
1671 Horizon Ridge Parkway, Ste 200
Henderson, NV 89012

Dated this 22 day of August, 2020

/s/Natasha Smith
Signature

EXHIBIT “1”



PET
FLANGAS LAW FIRM, LTD.
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*Attorneys for Petitioners, John Houlihan and
Colonial Real Estate Partnership, LTD.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:

P-18-095892-E

DENNIS JOHN CARVER,

Deceased.

**PETITION FOR AN ORDER TO SHOW CAUSE WHY ESTATE SHOULD NOT BE
REOPENED FOR CREDITORS TO SUBMIT PROOF OF CLAIMS AND ACCOUNTING
OF THE ESTATE ASSETS**

COMES NOW, Petitioners, John Houlihan and Colonial Real Estate Partnership, LTD.,
by and through their attorney, Leo P. Flangas, Esq., of the FLANGAS LAW FIRM, LTD., and
hereby petitions this Court for an Order to Show Cause Why the Estate Should Not Be Reopened
for Creditors to Submit Proof of Claims and for an Accounting of the Estate, as follows:

1. The Decedent died on October 16, 2017, in Riverside County, California. Petition
for Probate of Will and Issuance of Letters, filed on June 28, 2018, ¶ 1.

2. The Decedent was not a resident of Clark County, Nevada but owned and operated
a plumbing and air condition company in Clark County, Nevada known as Commercial Plumbing
and A/C, which was a dba of Decedent. Fictitious Firm Name dated July 3, 2017, filed with the
Clark County Recorder.

3. That on or about June 28, 2018 the Decedent's Petition for Probate of Will and

1 Issuance of Letters was filed.

2 4. That Decedent's Estate representative Rhonda L. Morgan was notified in
3 November 2018 that Petitioners had a claim against the Estate.

4 5. Petitioners had previously paid Decedent \$121,851.64 for plumbing and related
5 services for real property located at 3775 E. Sahara Ave., Las Vegas, NV 89104. No work was
6 ever performed and no funds have been returned to Petitioners.

7
8 6. Notice of the Petition or to file a proof of claim was not provided to the Petitioners.

9 7. Pursuant to Notice standards, as codified in the Chapter 147 of the Nevada Revised
10 Statute, Rhonda L. Morgan reasonably knew that she was required to provide Petitioners with
11 notice of the Petition and the instant probate.

12 8. Pursuant to NRS 143.400, the Rhonda Morgan, as Personal Representative does
13 not have the authority to deny the Petitioners' notice of the Probate or an accounting of the
14 Estate's assets.

15
16 WHEREFORE, Petitioners prays as follows:

17 1. That this Court issue an Order to Show Cause and require the Personal
18 Representative, Rhonda Morgan, to provide an Accounting of all Decedent's Assets, to include
19 but not limited to all personal and real property disbursed, including the transfer or sale of assets
20 involving Commercial Plumbing and A/C.

21
22 2. That the deadline to submit proofs of claim be reopened;

23 3. That the Order to Show Cause issue setting a date for the Personal Representative
24 to provide an Accounting of Assets to all creditors and beneficiaries; and

25 ///

26 ///

1 4. For such other and further relief as the Court may deem proper in the premises.

2 DATED this 31st day of January 2020.

3 **FLANGAS LAW FIRM, LTD.**

4
5 By: /s/ Leo P. Flangas
6 LEO P. FLANGAS, ESQ.
7 Nevada Bar No. 5637
8 600 S. Third Street
9 Las Vegas, Nevada 89101
10 *Attorneys for Petitioners, John Houlihan and*
11 *Colonial Real Estate Partnership, LTD.*
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VERIFICATION

STATE OF Colorado)
COUNTY OF Jefferson :SS

I, John Houlihan, being first duly sworn, deposes and says that I am the managing partner of Colonial Real Estate Partnership, LTD., and Petitioner in the above entitled action; that I have read the foregoing PETITION and know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters I believe it to be true.

DATED this 17 day of January, 2020.

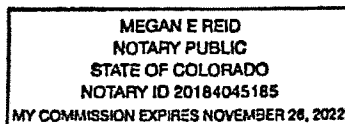
John Houlihan
JOHN HOULIHAN, Managing Partner
of Colonial Real Estate Partnership, LTD.
Petitioner

ACKNOWLEDGMENT

STATE OF Colorado)
COUNTY OF Jefferson :SS

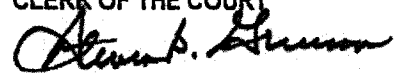
On this 17th day of January, 2020, before me, the undersigned Notary Public, in and for said County and State, personally appeared, JOHN HOULIHAN, known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that she did so freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



Megan E Reid
NOTARY PUBLIC in and for
said County and State

EXHIBIT “2”



David T. Blake (# 11059)
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Attorneys for the Estate of Rhonda Morgan
Personal Representative of the Estate

DISTRICT COURT

DISTRICT OF NEVADA

In the Matter of the Estate of:

CASE NO.: P-18-095892-E
DEPT NO.: 8

Dennis John Carver

Deceased

**Objection to Petition for an Order to
Show Cause Why Estate Should Not be
Reopened for Creditors to Submit Proof
of Claims and Accounting of the Estate
Assets**

I.

Introduction and Background

The Petition by Colonial Real Estate Partnership, Ltd. ("Colonial") is a baseless request by a creditor to reopen the creditor's claim period that expired on October 25, 2018—more than a year ago. Colonial's efforts to enforce its claim against the Estate of Dennis John Carver (the "Decedent"), administered by Personal Representative Rhonda Morgan, (collectively the "Estate"), reflects a fundamental misunderstanding of the procedure for handling creditor's claims in Nevada. Colonial admits that it discovered the Decedent's death in September of 2018. See Complaint in Case No. A-19-796234-C, attached hereto as Exhibit A, at ¶ 13. This knowledge gave Colonial a duty to inquire further and discover the existence of probate proceedings for itself. See Gardner Hotel Supply of Houston v. Clark's Estate, 83 Nev. 388, 392, (1967) ("Knowledge of death is sufficient to put the claimant on notice that probate proceedings will follow, and charges him with the responsibility of further inquiry."); Monette v. Estate of Murphy, No. 61212, 2014 WL 5173723, at *1 (Nev. 2014); Bell Brand Ranches, Inc. v. First Nat. Bank of Nevada, 91 Nev. 88, 92, (1975).

1 The Estate began administration on July 20, 2018. The notice to creditor's was first
2 published on July 27, 2018. See Affidavit of Publication, attached hereto as Exhibit B. The 90-
3 day period for creditor's claims ended on October 25, 2018. See NRS 147.040(1). The Estate
4 was closed, and the Personal Representative released from her duties on May 10, 2019. See May
5 10, 2019 Order, on file herein. Despite its duty and these events, Colonial **did not file a**
6 **creditor's claim at any time during the Estate's administration.**

7 Colonial's first formal legal filing against the Estate was on June 7, 2019, after the Estate
8 had already closed. See Exhibit A. This filing came in the form of a civil suit against the Estate.
9 Colonial filed a civil suit presumably because it knew that it had already missed the creditor's
10 claim period. If the Complaint had been a creditor's claim against the estate (which it was not), it
11 would have been 225 days late. After the Estate sent Colonial a letter demanding that it dismiss
12 its Complaint, Colonial dismissed its Complaint without prejudice. Colonial then waited another
13 240 days to file the instant Petition with the Probate court. Viewed in comparison to any deadline
14 for creditor's claims, Colonial's Petition is inexcusably and egregiously untimely—especially in
15 light of Colonial's charged knowledge of estate proceedings. The Petition was filed more than a
16 year (465 days) after the October 25, 2018 deadline to file creditor's claims and more than 8
17 months (268 days) after the estate was closed.

18 As argued below, the Petition is defective for four critical reasons, each of which are
19 separate and independent bases to deny the Petition. First, the Petition does not identify a single
20 authority—statute, case, or other source—that would authorize the court to reopen the creditor's
21 claim period or issue an Order to Show Cause in these circumstances. The Estate is aware of no
22 such authority. The Petition should be denied as unsupported and baseless.

23 Second, the Petition fails to rebut (or even address) the fact that Colonial's creditor's
24 claim is hopelessly late. All possible deadlines by which Colonial could have filed its creditor's
25 claim are discussed below and Colonial had notice of and could have met any applicable
26 deadline. Critically, the latest deadline on which Colonial could rely is the close of the
27 administration of the case, but Colonial cannot rely on that deadline because it is charged with
28 actual knowledge of the probate proceedings under Gardner Hotel Supply of Houston, 83 Nev.

1 at, 392, Monette, 2014 WL 5173723, at *1, and Bell Brand Ranches, Inc., 91 Nev. at 92 (all cited
2 above). Additionally, Colonial had actual notice of the Estate administration as of February Of
3 course, the point of Colonial's imputed knowledge of the Estate's administration is wholly
4 academic because Colonial did not file a creditor's claim before the Estate closed.

5 Third, Colonial's entire Petition rests on the logic that the Estate was under a duty to
6 notify colonial of the creditor period. However, Colonial's petition admits that it provided the
7 Estate with notice of its potential claim in November of 2018. See Petition at ¶ 4. This admission
8 is fatal to the Petition because, under NRS 155.020(5), the Estate was only under a duty to mail
9 notice of the creditors period only to those creditors who are readily ascertainable "before the
10 last day for the filing of a creditor's claim under NRS 147.040." That period ended on October
11 25, 2018, meaning that the Estate had no obligation to provide Colonial with notice of the estate
12 administration—by mail or otherwise.

13 Fourth and finally, reopening the estate would be an exercise in futility because the Estate
14 assets have already been distributed. It would, therefore, be impossible to pay any amount to
15 Colonial because there are no Estate assets to satisfy the Claim.

16 II.

17 Argument

18 **A. The Petition should be denied because it fails to identify any legal authority**
19 **suggesting that the Court has authority to issue an Order to Show Cause or reopen**
20 **the creditor's claims period in these circumstances.**

21 The Petition requests that the Court (a) issue an Order to Show Cause and require The
22 Estate to provide an accounting of assets, including distribution of any assets of Commercial
23 Plumbing and A/C, and (b) reopen the deadline for petitioners to submit a creditor's claim.
24 Colonial asserts that it notified The Estate of its claim against the Estate in November of 2018
25 and that it did not receive notice to creditors. See Petition at ¶ 4. Colonial further asserts that The
26 Estate had a duty to notify Colonial of the Nevada probate proceedings pursuant to "Chapter 147
27 of the Nevada Revised Statute[s]." Petition at ¶ 7. This is the total of substantive argument in the
28 Petition. Colonial does not cite to any specific provision of NRS 147 which would authorize the
Court to issue an Order to Show Cause or reopen any period for creditor's claims. The

1 conclusion the Court must reach is that there is no authority to support the requested relief.

2 The Court should decline to consider the Petition altogether. See EDCR 2.20 (c)
3 (requiring moving party to support a motion with a memorandum of points and authorities) and
4 (h)(i) (requiring the memorandum to contain more than bare citations to statutes, rules, or case
5 authority). If the Court is inclined to consider the Petition, the relief of reopening the creditor's
6 claims period until after the estate is administered, closed, and the final account rendered, is
7 explicitly prohibited by statute. NRS 147.040 provides that a court may, in specific limited
8 circumstances, extend the creditors' claim period only until the filing of the final account. Here,
9 the estate has been closed and the final account waived. Accordingly, even if the limited
10 circumstances were established (they are not), the court would not have authority to reopen the
11 period for making creditor's claims because the estate has been fully administered and closed.

12 Additionally, the unsupported premise is directly rejected by NRS 155.020(5), as argued
13 more fully in Section C, below. The Petition alleges that the Estate was required to notify
14 Colonial of the creditor's claim period, but under NRS 155.020(5), Colonial was not a known
15 creditor entitled to specific notice.

16 Finally, Colonial's unsupported request is also directly rejected by NRS 151.240, which
17 authorizes the court to reopen an estate only for situations involving (a) newly discovered
18 property or corrections to errors made in property descriptions, (b) the need for letters to be
19 issued, or (c) a claim of fraud related to the probated will. Colonial's Petition does not raise any
20 of these issues. Accordingly, the Court does not have authority to reopen the Estate.

21 **B. Colonial's creditor's claim is time barred.**

22 Reopening the Estate is unnecessary because Colonial's claim is time barred—and the
23 question is not close. Under NRS 147, there are three possible deadlines for when a creditor must
24 file a creditor's claim.

- 25 • **Earliest possible deadline:** 90 days after mailing or first publication of the notice to
26 creditors. NRS 147.040(1).
- 27 • **Next earliest deadline:** 30 days after receiving notice by mail if the creditor became
28 a Known Creditor during the 90-day creditor's claims period. NRS 147.040(2).
- **Last possible deadline:** any time before the filing of the final account if the claimant

1 did not receive notice as provided by NRS 155.020 and did not have actual notice of
2 the administration of the estate.

3 The Nevada Supreme Court has enforced the deadlines as provided for in the probate
4 statutes on multiple occasions and the district court does not have authority to ignore the probate
5 statutes. See Bell Brand Ranches, Inc. v. First Nat. Bank of Nevada, 91 Nev. 88, 92, (1975);
6 Monette v. Estate of Murphy, 2014 WL 5173723, at *1 (Nev. 2014). As analyzed below,
7 Colonial has not yet filed a creditor's claim and did not file a creditor's claim within any
8 applicable deadline. Thus, it has no basis to argue that the creditor's period should be reopened.

9 **1. Deadline 1: 90 days after mailing or first publication of the notice to
creditors – NRS 147.040(1)**

10 The earliest deadline to file a creditor's claim is within "90 days after the mailing for
11 those required to be mailed, or 90 days after the first publication of the notice to creditors
12 pursuant to NRS 155.020." NRS 147.040(1). NRS 155.020 requires a personal representative to
13 publish notice to the public, which includes "creditors whose names and addresses are not
14 readily ascertainable" (hereinafter "Unknown Creditors"). NRS 155.020(1)-(3). Additionally, the
15 personal representative must mail a copy of the notice "to those creditors whose names and
16 addresses are readily ascertainable as of the date of first publication of the notice . . ."
17 (hereinafter "Known Creditors").

18 Here, the notice to Unknown Creditors was published on July 27, 2018. Colonial was not
19 a Known Creditor at that time, by its own admission. See Petition ¶ 4. The 90-day period for
20 Unknown Creditors to file a claim ended on October 25, 2018. Accordingly, Colonial is
21 presumed to have received notice of the creditor's claims period by publication and is now
22 barred from making a creditors' claim.

23 **2. Deadline 2: 30 days of receiving notice by mail if the creditor became a
24 Known Creditor during the creditor's claims period – NRS 147.040(2)**

25 The next possible deadline applicable to Colonial's creditor's claim is for creditors that
26 are Unknown Creditors when the notice to creditors is first published but who become Known
27 Creditors during the 90-day claims period. If a personal representative "discovers the existence
28 of a creditor who was not readily ascertainable at the time of first publication of the notice to
creditors, the personal representative shall immediately mail a copy of the notice to the creditor."

1 See NRS 155.020(5). If this occurs, then the newly discovered creditor must file a creditor's
2 claim within the later of (a) 30 days from the date of mailing or (b) 90 days from the original
3 publication of the notice. See NRS 147.040(2).

4 Here, Colonial did not become a known creditor within the creditor's claims period and,
5 accordingly was not entitled to notice by mailing under NRS 155.020(5) and was not entitled to
6 receive additional time to file a creditor's claim under NRS 147.040(2). Colonial admits that the
7 Estate's personal representative, Ms. Morgan, was notified in November of 2018 of Colonial's
8 claim against the estate. See Petition ¶ 4. As noted previously, the creditor's claims period began
9 on July 27, 2018, when The Estate published notice to creditors, and ended on October 25, 2018.
10 Thus, Colonial was not a Known Creditor entitled to notice under NRS 155.020(5) and The
11 Estate was not required to mail a notice to Colonial.

12 **3. Deadline 3: Any time before the filing of the final account – NRS 147.040(3)**

13 The final deadline potentially applicable to Colonial's creditor's claim is NRS
14 147.040(3), which allows a creditor to file any time before the filing of the final account, but
15 only if (a) the claimant did not have notice as provided in NRS 155.020 or actual notice of the
16 administration of the estate. In terms of actual notice of the administration of an estate, the
17 Nevada Supreme Court has ruled that knowledge of a decedent's death "constitute[s] actual
18 notice of the estate's administration." See Monette v. Estate of Murphy, No. 61212, 2014 WL
19 5173723, at *1 (Nev. 2014) (citing Bell Brand Ranches, Inc. v. First Nat'l Bank of Nev., 91 Nev.
20 88, 91 n. 3 (holding that knowledge of the death of the decedent charges a creditor with a duty of
21 further inquiry)); Gardner Hotel Supply of Houston v. Clark's Estate, 83 Nev. 388, 392, (1967)
22 ("Knowledge of death is sufficient to put the claimant on notice that probate proceedings will
23 follow, and charges him with the responsibility of further inquiry.").

24 Here, again, Colonial's Petition fails to satisfy any element of subsection 3. First,
25 Colonial did not file a creditor's claim within the final administration of this estate, which acts as
26 a hard and fast cutoff date for filing of any creditor's claims. Colonials' request to extend a
27 statutory period is akin to a request to enlarge a statute of limitations, which courts lack the
28 authority to do.

1 Second, as argued above, Colonial did have notice as provided for in NRS 155.020. The
2 Estate published notice to all Unknown Creditors as required by the statute and Colonial's
3 Petition admits that it was an unknown creditor until November of 2018, after the period for
4 creditor's claims ended. Publishing notice of the administration of the Estate gives Colonial
5 constructive notice of the creditor's claims period—regardless of whether Colonial discovered
6 the notice or not.

7 Third, Colonial had actual notice of the administration of the Estate because it was aware
8 of the Decedent's death. Colonial's Complaint against The Estate states that Colonial became
9 aware of the death in or around September of 2018. See Exhibit A at ¶ 13. Under the authority
10 cited above, Colonial's knowledge of the Decedent's death provided Colonial with inquiry notice
11 and a duty to discover the administration of the estate. Thus, Colonial cannot benefit from the
12 additional time protections of NRS 147.040(3).

13 Nevada's probate statutes make clear that Colonial's creditor's claim is time barred.
14 Colonial failed to file a claim within any of the deadlines provided in NRS 147.040 and,
15 consequently, Colonial's Petition must be denied.

16 **C. The Estate had no duty to serve Colonial with a notice to creditors.**

17 The key premise underlying the Petition is that it was the Estate's obligation, not
18 Colonial's to make sure the Colonial filed a creditor's claim. See Petition at ¶ 7 (arguing that The
19 Estate knew that she was required to provide Colonial with a creditor's notice.). This is premise
20 is flatly incorrect. As noted above, NRS 155.020(4) requires notice to be mailed to mail a copy
21 of the notice to Known Creditors, that is, those creditors "whose names and addresses are readily
22 ascertainable" NRS 155.020(5) requires notice to be mailed to creditors who are discovered
23 during the 90-day claims period. This period started on July 27, 2018 and ended on October 25,
24 2018. Colonial did not learn of its potential claim until September of 2018. See Ex. A at ¶ 13.
25 And Colonial did not notify The Estate of the potential claim until after the 90-day period for
26 creditor's claims. See Petition ¶ 4 ("Decedent's Estate representative Rhonda L. Morgan was
27 notified in November 2018 that Petitioners had a claim against the Estate."). On these admitted
28 facts, under NRS 155.020(5), the Estate did not have a duty to mail notice to Colonial, who was

1 discovered as a creditor outside of the 90-day creditor period of NRS 147.040.

2 The key premise of Colonial's petition is, therefore, directly contradicted by NRS
3 155.020(5) together with the allegations in the Petition. Consequently, the Petition must be
4 denied.

5 **D. Even if Colonial could file a creditor's claim, the Estate has already distributed its**
6 **assets and it could not pay anything toward the creditors' claim.**

7 Finally, Colonial's Petition must be denied because it is futile. The Estate's assets have
8 already been distributed and the Estate has nothing to pay toward satisfying Colonial's claim.
9 Reopening the Estate and going through the creditor's claim process could not produce any
10 tangible benefit to Colonial. Thus, the Petition must be denied.

11 III.

12 Conclusion

13 Colonial's creditor's claim is 465 days late. Colonial was aware of the Decedent's death
14 and did not file a creditor's claim at any time during the Estate's administration. Colonial's
15 argument that the creditor's claim period should be reopened, and an accounting ordered is not
16 only unsupported, but directly contradicted by statute. And even if the Estate could be reopened,
17 there are no assets to satisfy Colonial's potential claim. Accordingly, the Estate respectfully
18 requests that the Petition be denied.

19 Dated: February 18, 2020.

Clear Counsel Law Group

20 /s/ David Blake
21 David T. Blake

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the 18th day of February, 2020, I caused the foregoing **Objection to Petition for an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets** to be served as follows:

- ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the parties below; and/or
- ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or
- ☐ by hand delivery; and/or
- ☒ E-Service to all registered parties

/s/K.A/Gentile
An employee of Clear Counsel Law Group

EXHIBIT “A”

EXHIBIT “A”



LEO P FLANGAS, ESQ.
Nevada Bar No. 5637
FLANGAS LAW FIRM, LTD.
600 S. Third Street
Las Vegas, Nevada 89101
Telephone: (702) 384-1990
Facsimile: (702) 384-1009
E-mail: leo@flangaslawfirm.com
Attorney for Plaintiff,
Colonial Real Estate Partnership, Ltd.

CASE NO: A-19-796234-C
Department 22

DISTRICT COURT

CLARK COUNTY, NEVADA

COLONIAL REAL ESTATE PARTNERSHIP,
LTD., a Nevada Corporation,

Case No.:
Dept. No.:

Plaintiff,

vs.

EXEMPT FROM ARBITRATION
(Amount in Controversy Exceeds \$50,000.00)

COMMERCIAL PLUMBING AND AC, an
unknown entity; DENNIS JOHN CARVER, an
individual; RHONDA L. MORGAN, the special
administrator of the ESTATE OF DENNIS
JOHN CARVER; the ESTATE OF DENNIS
JOHN CARVER; and DOES I-X, and ROE
CORPORATIONS I-10, inclusive
Defendants.

COMPLAINT

COMES NOW, Plaintiff, COLONIAL REAL ESTATE PARTNERSHIP, LTD., a Nevada
Corporation, by and through its counsel, LEO P. FLANGAS, ESQ., of the FLANGAS LAW FIRM,
LTD., and for their causes of action, allege as follows:

PARTIES

1. The Plaintiff, COLONIAL REAL ESTATE PARTNERSHIP, LTD., is now, and was
at all times relevant hereto, a resident of Clark County, Nevada.

2. The Plaintiff is informed, believes and alleges that Defendant, DENNIS JOHN
CARVER, was at all times relevant hereto, a resident of Clark County, Nevada.

1 3. The Plaintiff is informed, believes and alleges that Defendant, DENNIS JOHN
2 CARVER, died on October 16, 2017.

3 4. The Plaintiff is informed, believes and alleges that the Defendant COMMERCIAL
4 PLUMBING AND AC, an unknown entity, at all times relevant hereto conducted business in Clark
5 County, state of Nevada.

6 5. The Plaintiff is informed, believes and alleges that all conduct, actions and inactions
7 contained in the allegations against the Defendants RHONDA L. MORGAN, the special
8 administrator of the ESTATE OF DENNIS JOHN CARVER; and the ESTATE OF DENNIS JOHN
9 CARVER occurred in Clark County, state of Nevada, and thus, subjects them to personal and subject
10 matter jurisdiction to this Court.

11 6. The true names and capacities of the Defendants named herein as DOES I-X,
12 inclusive, whether individual, corporate, associate or otherwise, are presently unknown to Plaintiff
13 who therefore sues the said Defendants by such fictitious names; and when the true names and
14 capacities of DOES I-X inclusive are discovered, the Plaintiff will ask leave to amend this
15 Complaint to substitute the true names of the said Defendants. The Plaintiff is informed, believes
16 and therefore alleges that the Defendants so designated herein are responsible in some manner for
17 the events and occurrences contained in this action.

18 7. Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned in
19 this complaint, defendants and Does 1-X were the agents and/or employees of each other, and in
20 doing the things alleged in this complaint, were acting within the course and scope of that agency
21 and/or employment.

22 ///
23

24 ///
25

JURISDICTION

8. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

9. The foregoing causes of action are related to individuals, corporations, companies and an estate wherein either were residence and/or operations are or were located in this jurisdiction at all relevant times hereto or conducted business with Plaintiff within this jurisdiction.

Additionally, the foregoing causes of actions are related to construction services on Plaintiff's real property with address 3775 E. Sahara Ave., Las Vegas, Nevada (the "***Building***") and, therefore is situated in Clark County, Nevada.

10. This Court has subject matter jurisdiction over this matter and venue of this action is proper in this Court on the basis that Plaintiffs' causes of action arose in this jurisdiction.

GENERAL ALLEGATIONS

11. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

12. On or about October of 2013, Plaintiff paid Defendants COMMERCIAL PLUMBING AND AC and DENNIS JOHN CARVER monies in the amount of \$121,851.64 for the installation of new equipment and storage of this equipment for the Building. The equipment included but not limited to toilets, water heaters, sinks, urinals, water fountains, heat-pump/air-conditioners, faucets, counters, valves and more items ("***Equipment***"). Plaintiff did not want the Equipment installed at this time because there existed no tenants in the Building and Plaintiff did not want the Equipment to be stolen or vandalized. Plaintiff and Defendants agreed to store the Equipment with Defendants and that Plaintiff would notify Defendants when to commence the install.

1 13. On or about September of 2018, Plaintiff desired to commence the installation of the
2 Equipment and discovered that the Defendant, DENNIS JOHN CARVER, had passed the year
3 before.

4 14. Plaintiff has made demands on the Defendants RHONDA L. MORGAN, the special
5 administrator of the ESTATE OF DENNIS JOHN CARVER; and the ESTATE OF DENNIS JOHN
6 CARVER, for them to either install the Equipment or return the monies paid.

7 15. The special administrator RHONDA L. MORGAN was contacted and misled
8 Plaintiff's counsel by stating that the probating of the Estate of Dennis John Carver was already
9 complete and it was too late. This was a fabrication.

10 16. Plaintiff as a creditor has never been procedurally notified by the Defendants of the
11 Estate.

12 17. On or about April 12, 2019, Plaintiff filed a creditor's claim against the Defendants,
13 RHONDA L. MORGAN, the special administrator of the ESTATE OF DENNIS JOHN CARVER;
14 and the ESTATE OF DENNIS JOHN CARVER.

15 18. Since the passing of DENNIS JOHN CARVER, the Defendants RHONDA L.
16 MORGAN, the special administrator of the ESTATE OF DENNIS JOHN CARVER; and the
17 ESTATE OF DENNIS JOHN CARVER, now are in the place and stead of DENNIS JOHN
18 CARVER and therefore the correct Defendants in this case.

19 19. Plaintiff entered the agreement with DENNIS JOHN CARVER based on his
20 representations and promises.

21 20. Plaintiff now brings this action here in Clark County, Nevada because all the conduct
22 regarding the contract, work to be performed, storage of Equipment and the Building occurred or
23 was situated in Clark County, Nevada.

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FIRST CLAIM FOR RELIEF

(Breach of Contract – As to all Defendants)

21. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

22. On or about October of 2013, Plaintiff and Defendants entered into an agreement wherein Plaintiff paid monies to Defendants and in return Defendants was to store the Equipment and upon Plaintiff's request, install the Equipment into the Building.

23. Defendants breached the agreement.

24. As a direct and proximate result of the actions of the Defendants, the Plaintiffs were damaged in an amount in excess of \$15,000.

25. It has become necessary for Plaintiff to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

SECOND CLAIM FOR RELIEF

(Breach of Covenants of Good Faith and Fair Dealing - As to All Defendant)

26. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

27. That in every agreement there exist a covenant of good faith and fair dealing.

28. That Defendants failed to maintain the obligations which they agreed to in regards to the agreement between the parties, thereby breaching the covenant to act in good faith.

29. That Defendants have failed to deal fairly with the Plaintiff in regards to upholding their defined duties under the agreement.

30. As a result of the actions of the Defendants in failing to act in good faith and deal fairly with Plaintiffs, Plaintiffs have been damaged in a sum in excess of \$15,000.00.

31. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment - As to all Defendants)

32. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

33.. Through the actions of Defendants, Defendants enjoyed the benefit and have retained the benefit of the monies paid to them by the Plaintiff.

34. That allowing Defendants to retain possession of the benefits and monies is unlawful, inequitable and not in good conscience.

35. The such actions have resulted in the unjust enrichment of Defendants.

36. That as a direct and proximate result of Defendants' actions, Plaintiffs have been damaged in excess of \$15,000.00.

37. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

FOURTH CLAIM FOR RELIEF

(Alter Ego - As to all Defendants)

38. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

39. The Defendant COMMERCIAL PLUMBING AND AC was wholly controlled by DENNIS JOHN CARVER at the time of the parties agreement and thereafter until his passing, and who is the alter ego and the interest and ownership cannot be distinguished.

40. Allowing Defendants COMMERCIAL PLUMBING AND AC and DENNIS JOHN CARVER to maintain a façade of this alternate entity would bring about an inequitable result for Plaintiff.

41. That as a direct and proximate result of Defendants' actions, Plaintiffs have been damaged in excess of \$15,000.00.

42. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

THEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For general damages in excess of \$15,000 and in a sum according to proof at trial;
2. For special damages in excess of \$15,000 and in a sum according to proof at trial;
3. For attorney's fees and costs of suit herein;
4. For such other and further relief as the Court may deem appropriate.

DATED this 5th day of June, 2019

FLANGAS LAW FIRM, LTD.

LEO P FLANGAS, ESQ.

Nevada Bar No. 5637

FLANGAS LAW FIRM, LTD.

600 S. Third Street

Las Vegas, Nevada 89101

Telephone: (702) 384-1990

Facsimile: (702) 384-1009

E-mail: leo@flangaslawfirm.com

Attorney for Plaintiff.

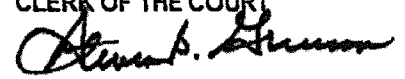
Colonial Real Estate Partnership, Ltd.

EXHIBIT “B”

EXHIBIT “B”

AFFP
P-18-095892-E NTC

Electronically Filed
8/10/2018 9:50 AM
Steven D. Grierson
CLERK OF THE COURT



Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK } SS

DISTRICT COURT
CLARK COUNTY, NEVADA
Case No.: P-18-095892-E Dept. No. PC1
IN THE MATTER OF THE ESTATE OF DENNIS JOHN CARVER Deceased,
NOTICE TO CREDITORS
NINETY (90) DAY NOTICE

I, Rosalie Qualls state:

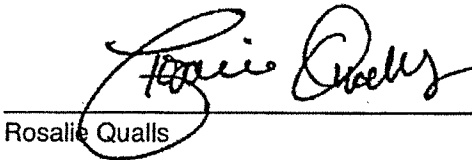
That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

Jul 27, 2018
Aug 03, 2018
Aug 10, 2018

Pursuant to NRS 147.010 and 155.020, notice is hereby given that by an Order dated July 20, 2018, this Court appointed Rhonda L. Morgan as Personal Representative for the Estate of Dennis John Carver, who died October 16, 2017. All creditors having claims against the Estate are required to file their claims with the Court Clerk within ninety (90) days after the mailing or first publication of this notice (as the case may be), or their claims will be forever barred. Such claims must satisfy the requirements of NRS 147.070, NRS 147.080, and the other provisions of NRS Chapter 147. DATED this 25th day of July, 2018. Submitted by: LAW OFFICE OF DONNA STIDHAM, LLC, By: DONNA STIDHAM, ESQ., Nevada Bar No. 9663, 2551 S Fort Apache Rd #103, Las Vegas, NV 89117, Phone: (702) 444-3713, Facsimile: (702) 444-3714, donna@stidhamlawoffice.com, Attorneys for Petitioner, Rhonda L. Morgan
July 27, August 3, 10, 2018

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Aug 10, 2018

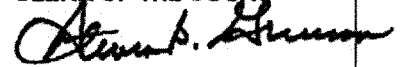


Rosalie Qualls

04109007 00450385 702-444-3714

LAW OFFICE OF DONNA STIDHAM, LLC
2551 S FORT APACHE RD, STE. 103
LAS VEGAS, NV 89117

EXHIBIT “3”



1 **RESP**
2 LEO P. FLANGAS, ESQ.
3 Nevada Bar No. 5637
4 FLANGAS LAW FIRM, LTD.
5 600 S. 3rd Street
6 Las Vegas, Nevada 89101
7 VOX: (702) 384-1990
8 FAX: (702) 384-1009
9 e-mail: leo@flangaslawfirm.com
10 *Attorney for Petitioner Colonial*
11 *Real Estate Partnership, Ltd.*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 Case No.: P-18-095892-E

11 In re the Matter of the Estate of

Dept. No.: 8

12
13 Dennis John Carver

14 Deceased
15
16 _____

**PETITIONER'S RESPONSE TO
DEFENDANT'S OBJECTION
TO PETITION ORDER TO
SHOW CAUSE WHY ESTATE
SHOULD NOT BE REOPENED
FOR CREDITORS TO SUBMIT
PROOF OF CLAIMS AND
ACCOUNTING OF THE
ESTATE ASSETS**

17
18 COMES NOW, Petitioner COLONIAL REAL ESTATE PARTNERSHIP, LTD., a
19 Nevada Corporation, ("*Colonial*") by and through its attorney of record Leo P. Flangas, Esq., of
20 the FLANGAS LAW FIRM, LTD., and hereby requests this Court reopen probate proceedings in
21 the estate of DENNIS JOHN CARVER, ("*Carver*") the decedent and order an evidentiary
22 hearing.
23

24 **I. INTRODUCTION**
25

26 It is abundantly clear from the evidence that Petitioner is a readily ascertainable creditor,
27 and that the Estate failed to provide Petitioner the required actual notice from which it could
28

1 have submitted its claim against the estate. This is the only issue in this case, and Petitioner has
2 evidence of the following:

- 3
4 (i) Carver owned a company and business called Commercial Plumbing and AC
5 (“*Commercial Plumbing*”) and the company’s foreman knew of the Colonial’s debt that
6 was owed by Commercial Plumbing and that Commercial Plumbing’s office manager who
7 was tasked with the wind-up of the estate of Carver and his business. As such, the Estate
8 had actual knowledge of Colonial’s debt. [See Exhibit 1: Affidavit of Robert
9 McKenchnie];
- 10 (ii) Petitioner submitted made several phone calls to the administrator of the estate during the
11 90-day publication period informing them of the debt owed and sent letters to the
12 administrator regarding the debt [See Exhibit 2: Affidavit of Jack Houlihan];
- 13
14 (iii) The estate administrator, Rhonda Morgan (“*Morgan*”) who replaced the previous
15 administrator, knew there was fraud perpetrated against the estate which resulted in the
16 dismissal of the previous administrator in the California probate case [See Exhibit 3:
17 California Petition for Appointment of Successor Personal Representative and Issuance of
18 Letters Testamentary, Request for Order For Accounting, Request for Order to Turn over
19 Property and Documents and Request for Surcharge of Former Personal Representative,
20 dated August 7, 2018 (Hereafter, “CA Petition for Appointment of Successor”), p. 4];
- 21
22 (iv) Morgan knew that this fraud consisted of an intentional scheme to restrict the number of
23 creditors and their liabilities against the estate, thus increasing the size and value of the
24 estate for the benefit of a certain heir and the first personal representative [See Exhibit 3:
25 CA Petition for Appointment of Successor, p. 4; and
26
27
28

1 (v) A basic review of the accounting of Commercial Plumbing's ledger and business records
2 would have clearly shown the receipt of funds of \$121,851.64 from Petitioner for the work
3 agreed upon in the parties contract.
4

5 * * *

6 On or about October of 2013, Petitioner paid Commercial Plumbing and AC, a company
7 owned by the decedent, Carver, monies in the amount of \$121,851.64 for the installation of new
8 equipment and storage of this equipment for his building. The equipment included but was not
9 limited to toilets, water heaters, sinks, urinals, water fountains, heat-ump/air conditioners,
10 faucets, counters, and valves. Petitioner did not want the equipment installed at the time of the
11 agreement's execution time because there were no tenants in the building, and Petitioner did not
12 want the equipment to be stolen or vandalized. Petitioner and Carver agreed to store the
13 equipment with his company and that Petitioner would notify him when to begin the install.
14

15 Jennifer Shea was the office manager for the decedent Carver and Commercial Plumbing
16 and knew of the debt owed to Colonial [Exhibit 1: Affidavit of Robert McKenchnie]. After
17 Carver passed, Jennifer Shea continued to act as office manager and also coordinated the
18 delivery of financial documents to the attorney for the estate and Carver's daughter. Colonial
19 was always a known creditor of Commercial Plumbing to the head manager Robert McKenchnie
20 and Jennifer Shea. In light of this, the Estate had actual knowledge of Colonial's debt. [Exhibit 1:
21 Affidavit of Robert McKenchnie].
22

23 On or about September of 2018, Petitioner wanted to begin installation of the equipment
24 but discovered that Carver had died the prior year. Petitioner made demands on Morgan; and the
25 Estate of Carver for them to either install the equipment or return the monies paid [See Exhibit 4:
26 Letter dated September 21, 2018 from Houlihan to McKenchnie].
27
28

1 The special administrator Morgan was contacted and misled Petitioner's counsel by
2 stating that the probating of the Estate of Carver was already complete, and it was too late to take
3 any action. The Estate in California remains open, and Morgan's representation was inaccurate.

4 Petitioner as a readily ascertainable creditor but was never provided actual notice by the
5 company or the estate. Because of this, Petitioner brought this request for relief.

6 **II. TIMELINE OF CRITICAL EVENTS**

7 In the Estate's objection, its counsel claims that Petitioner has a "fundamental
8 misunderstanding of the procedure for handling creditor's claims in Nevada." However, there is
9 clear evidence that the Estate had actual knowledge of the debt owed; that Colonial was a
10 creditor; and that the second administrator who was appointed had actual knowledge through
11 phone calls and letters within the 90-day notice period for creditors that Colonial was a creditor.
12 In light of this evidence, it is abundantly clear that the Estate's allegation is wholly untrue.

13 On July 20, 2018, the probate court in Nevada entered an order appointing Morgan as the
14 administrator of the Carver estate. On July 25, 2018, the administrator Morgan through her
15 attorney, filed the 90-day notice to creditors. The notice stated, "[a]ll creditors having claims
16 against the Estate are required to file their claims with the Court Clerk within ninety (90) days
17 after the mailing or first publication of this notice (as the case may be), or their claims will be
18 forever barred." [Exhibit 5, Notice to Creditors, Ninety (90) Day Notice, p. 1].

19 Since the 90-day notice to creditors was filed on July 25, 2018, the time period expired
20 on October 25, 2018. During that time frame, Petitioner sent written communications to Robert
21 McKenchnie and the administrator Morgan of the Carver estate. These communications included
22 the following:

- 23 • September 21, 2018: Colonial sends a letter to Robert McKenchnie of All Trades
24 Company regarding the agreement between the parties for the installation of the
25 equipment Exhibit 4].

- 1 • Several phone calls to Morgan with messages being left that Colonial was a creditor and
2 asking for a call back. Colonial received no response from Morgan [Exhibit 2].

3 All this oral and written communications was within the 90-day notice to creditors. After
4 this, the following communications were sent:

- 5
- 6 • On October 27, 2018, a day after the 90-day deadline had passed, Colonial sends a
7 second letter to the administrator regarding the agreement between the parties for the
8 installation of the equipment [Exhibit 6: Letter dated October 26, 2018 from Houlihan to
9 Morgan].
- 10 • On November 15, 2018, Petitioner's attorney Leo Flangas sends the administrator
11 another letter following up on the agreement [Exhibit 7: Letter dated November 15, 2018
12 from Flangas to Morgan].

13 Clearly, this shows that the Estate had actual knowledge of the debt owed to Colonial.

14 All of these events occurred under the backdrop of Administrator Morgan's actual
15 knowledge of the fraudulent nature of the original administrator and attorney for the Estate when
16 she filed the Petition for Probate in Nevada and the subsequent Notice to Creditors on July 25,
17 2018, in which she failed to apprise the Court of the fraud and the issues related to an accounting
18 which she demanded in California. [See Exhibit 8: NV Petition for Probate; Exhibit 3: CA
19 Petition for Appointment of Successor].

20

21 On April 8, 2019, the administrator Morgan filed the petition for the final distribution of
22 Carver's estate in Nevada. She did so without informing the Court of the companion probate case
23 then active in the state of California. Of the greatest significance is the fact that Morgan failed to
24 inform this Court, and in effect *concealed* the fact that she had petitioned for the removal of the
25 original administrator in California due to that individual's fraud and misappropriation of more
26 than \$47,000 in estate assets [Exhibit 3, p. 4]. In fact, Morgan alleged in the California probate
27 case that the former administrator and his company entered into a contract for services with the
28

1 daughter of Dennis John Carver to be paid a contingency fee of 30% for his efforts to collect
2 amounts owed to the CP ANDAC business [*Id.*]. Morgan's California petition clearly evidences
3 her knowledge of improprieties and inaccuracies with the accounting measures for the estate,
4 which she intentionally kept from this Court. No accounting of the estate and the business was
5 ever conducted, and the California court continues to demand this from both the former
6 administrator and Morgan. The probating of this estate in California has not closed.
7

8 Petitioner now asks this Court to reopen the estate probate and/or at the very minimum to
9 order an evidentiary hearing.
10

11 **III. LEGAL STANDARD**

12 Nev. Rev. Stat. § 151.250 provides:

13 An heir, devisee, creditor or other interested person may petition for the reopening
14 of an estate upon the grounds provided in NRS 151.240. The petition must set forth
15 the names of all heirs, devisees and creditors and their addresses, if known. If the
16 address is unknown to the petitioner, the petitioner shall state that fact in the
17 petition. The clerk shall set the petition for hearing and the petitioner shall give
notice for the period and in the manner required by NRS 155.010.

18 Nev. Rev. Stat. § 151.240(1) states that the final settlement of an estate does not prevent:

- 19 a) The reopening of the estate for the purpose of administering other property
20 which has been discovered or for correcting errors made in the description
21 of the property administered.
22 b) The subsequent issuance of letters if it becomes necessary or proper for any
cause that letters should again be issued.

23 Nev. Rev. Stat. § 151.260 provides that upon hearing the petition, if good cause is
24 shown, the court may: (1) reopen the estate; (2) order the administration of other property which
25 has been discovered; and enter any necessary orders to correct errors made in the description of
26 the estate previously administered. *Id.* The statute goes on to state:
27
28

1 In the absence of fraud, no proceedings may be taken by the court after the
2 reopening of an estate except as necessary to administer other property which has
3 been discovered or *to correct errors made in the description of the estate previously*
4 *administered*. Any orders of the court made necessary by the reopening of the estate
must be designated as supplemental orders.

5 *Id.* (emphasis added).

6 Clearly the failure to fully apprise this Court of the malfeasance of the first administrator
7 of the Estate and the winding up of the business of Commercial Plumbing at issue herein is, if
8 not fraud on the court, does demonstrate lack of candor and should have been disclosed.

9 Finally, Nev. Rev. Stat. § 147.040(3) permits a claimant to file a late claim only when
10 “the claimant did not have notice as provided in NRS § 155.020 or actual notice of the
11 administration of the estate.” *Monette v. Estate of Murphy*, 2014 Nev. Unpub. LEXIS 1652, at *2
12 (Oct. 13, 2014).

13 14 **IV. LEGAL ARGUMENT**

15 Petitioner requests that this Court reopen probate for Dennis John Carver and/or at the
16 very minimum, order an evidentiary hearing for Petitioner to present evidence because Petitioner
17 was clearly an ascertainable creditor, and the estate’s administrator erred in failing to provide
18 actual notice to Petitioner and allow him due process to be heard on his claim against the estate.

19 20 **A. PLAINTIFF WAS AN ASCERTAINABLE CREDITOR**

21
22 Petitioner was a creditor that was never procedurally notified with actual notice by the
23 Estate. The Estate claims that proper notice was given to Petitioner pursuant to Nev. Rev. Stat. §
24 155.020 (1)(b), which states:

25
26 Notice of a petition for the probate of a will and the issuance of letters and the notice
27 to creditors must be given to [...] [t]he public, including creditors whose names and
28 addresses are not readily ascertainable, by publication on three dates of publication
before the hearing, and if the newspaper is published more than once each week,

1 there must be at least 10 days from the first to last dates of publication, including
2 both the first and last days.

3
4 Nev. Rev. Stat. § 155.020 (1)(b).

5 Clearly, Petitioner was readily ascertainable in light of its many communications with the
6 Estate [See Exhibits 2, 4, 6, and 7]. Even assuming, arguendo, that there was any question about
7 plaintiff's status as a readily ascertainable creditor, there is ample support to show that any
8 reasonable and diligent search would prove this to be the case.
9

10 While the Nevada statute provides publication notice for creditors whose names and
11 addresses are not readily ascertainable, it does not defined the term "readily ascertainable" as it
12 applies to the statute. Nevada decisions do discuss the term; however, it is the context of
13 foreclosure, trade secrets, and contracts. When an issue or question has not been considered in
14 Nevada case law, courts will look to other jurisdictions for guidance. *Mason-McDuffie Real*
15 *Estate, Inc. v. Villa Fiore Dev., Ltd. Liab. Co.*, 335 P.3d 211, 214 (Nev. 2014). See, e.g., *Cornett*
16 *v. Gawker Media, Ltd. Liab. Co.*, 2014 U.S. Dist. LEXIS 175819, at *7 (D. Nev. Dec. 19, 2014)
17 ("Although the Nevada Supreme Court has not addressed where tort actions arise for purposes of
18 the Nevada borrowing statute, the Court will look to California law for guidance."); *Whitemaine*
19 *v. Aniskovich*, 124 Nev. 302, 311, 183 P.3d 137, 143 (2008) ("As this is an issue of first
20 impression in Nevada, we look to persuasive authority for guidance."); *Greenberg Traurig, Ltd.*
21 *Liab. P'ship v. Frias Holding Co.*, 331 P.3d 901, 903 (Nev. 2014); *Copper Sands Homeowners*
22 *Ass'n v. Flamingo 94 L.L.C.*, 335 P.3d 203, 206 (Nev. 2014) (same).
23
24

25
26 **1. Other states' definition of a "readily: or "reasonable ascertained creditor" - Statutes**

27 Washington Statutes define a "reasonably ascertainable" creditor of the decedent as:
28

1 [O]ne that the notice agent would discover upon exercise of reasonable diligence.
2 The notice agent is deemed to have exercised reasonable diligence upon conducting
3 a reasonable review of the decedent's correspondence, including correspondence
4 received after the date of death, and *financial records, including personal financial*
5 *statements, loan documents, checkbooks, bank statements, and income tax returns,*
6 *that are in the possession of or reasonably available to the notice agent.*

7 Wash. Rev. Code § 11.42.040(1) (emphasis added).

8 The North Dakota Supreme Court held that the definition of “reasonably ascertainable
9 creditor” in N.D.C.C. § 30.1-19-01 did not exclude a creditor who submitted a bill to a
10 decedent's guardian, rather than to the decedent or the estate, because such an exclusion would be
11 contrary to due process and to the principle that the term “includes” in a definition is a word of
12 enlargement and not a term of limitation. *Larson v. Fraase (In re Estate of Elken)*, 2007 ND 107,
13 735 N.W.2d 842 (N.D. 2007).

14 California statutes state that “a personal representative has knowledge of a creditor of the
15 decedent if the personal representative is *aware that the creditor has demanded payment* from the
16 decedent or the estate.” Cal. Prob. Code § 9050(a) (emphasis added).

17 18 **2. Other states' definition of a “readily: or “reasonable ascertained creditor” – Court** 19 **Decisions**

20 The bankruptcy court in Delaware has said that a creditor's identity is “reasonably
21 ascertainable”:

22
23 ... if that creditor can be identified through *reasonably diligent efforts* . . .
24 Reasonable diligence does not require impracticable and extended searches . . . in
25 the name of due process . . . A debtor does not have a duty to search out each
26 conceivable or possible creditor and urge that person or entity to make a claim
27 against it . . . *The requisite search instead focuses on the debtor's own book and*
28 *records.* Efforts beyond a careful examination of these documents are generally not
required...

1 *In re Exide Techs.*, 600 B.R. 753, 763 (Bankr. D. Del. 2019) (citations omitted) (emphasis added).
2 Similarly, other courts have defined this term with the words “reasonably diligent efforts.” See *In*
3 *re PG&E Corp.*, 2020 Bankr. LEXIS 487, at *6 (Bankr. N.D. Cal. Feb. 24, 2020) (“and all
4 creditors' identities are reasonably ascertainable if they can be identified through reasonably
5 diligent efforts.”); *Goodall v. Chrysler, Inc. (In re Old Carco LLC)*, 2018 Bankr. LEXIS 2401, at
6 *13-14 (Bankr. S.D.N.Y. Aug. 10, 2018) (Only those claimants who are identifiable through a
7 diligent search are 'reasonably ascertainable' and hence 'known' creditors.); *Simpson v. Estate of*
8 *Simpson*, 922 So. 2d 1027 (Fla. 5th DCA 2006) (finding the personal representative had actual
9 knowledge of creditor's claim where testimony established she made statements about his stock
10 interest); *In re Estate of Ortolano*, 766 So. 2d 330 (Fla. 4th DCA 2000) (finding appellant was a
11 reasonably ascertainable creditor where it was undisputed that the personal representative knew of
12 pending litigation against the deceased). Cf. *Evitt-Thorne v. Hiatt (In re Estate of Evitt)*, 245 Ariz.
13 352, 353, 429 P.3d 1146, 1147 (Ariz. App. 2018) (Statements made years before the decedent's
14 death and that only referenced an agreement that had already been satisfied, did not make
15 petitioner a reasonably ascertainable creditor.).
16
17
18

19 **3. Due diligence and/or reasonable effort a critical component of this definition**

20 The statutory definitions and those found in case law all focus upon the diligence or the
21 reasonable effort of the administrator. See, e.g., *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d
22 Cir.1995) (“Actual notice must be given to those whose identity could be ascertained with
23 reasonable effort [...] in the cases of persons missing or unknown, employment of an indirect and
24 even probably futile means of notification, such as notice by publication, is all that the situation
25 permits”). Further, a creditor is “reasonably ascertainable” if the creditor is discoverable through
26
27
28

1 “due diligence to identify the decedent's potential creditors from all available sources at hand.” *In*
2 *re Estate of Novakovich*, 101 P.3d 931, 938, ¶ 27, 2004 WY 158 (Wyo. 2004) (citation omitted).
3

4 In this case, applying such a standard to the definition of “readily ascertainable” or
5 “reasonably ascertainable” means that an administrator such as Morgan should have taken all
6 reasonable steps and conducted reasonable due diligence which would have clearly shown
7 Petitioner to be a “readily ascertainable” creditor pursuant to Nevada statutes. In this case, the
8 company officer manager and point of contact for the Estate (Jennifer Shea) had knowledge that
9 Petitioner had paid for work to be performed and that the work had not been performed. In
10 addition, Carver's company owed Colonial Real Estate Partnership money [Exhibit 1: Affidavit of
11 Robert McKenchnie]. Likewise, the first administrator, Nicholas Alfano, also had actual
12 knowledge that Colonial was a creditor. Shea was in contact with Alfano on Estate matters until
13 she was fired on or about March/ April/May of 2018.[See Exhibits 1 and 3]. From this, it is
14 abundantly clear that the Estate had actual knowledge of the debt owed to Colonial.
15
16

17 In addition, not only did the Estate have actual knowledge of Colonial being a creditor,
18 Morgan herself was personally told through phone messages during the 90-day period of
19 notification by publication. [See Exhibit 2: Affidavit John Houlihan]. Colonial also sent a letter to
20 McKenchnie within the 90-day notification period. [See Exhibit 4: Letter dated September 21,
21 2018 from Houlihan to McKenchnie]. After receiving a letter and personal notification from the
22 individual responsible for Carver's company in Nevada within the 90-day notification period for
23 creditors, Colonial sent a second letter one day after that 90-fday period to Morgan. [See Exhibit
24 6: Letter dated October 26, 2018 from Houlihan to Morgan]. Finally, Petitioner's counsel shortly
25 thereafter sent a letter to Morgan. [See Exhibit 7: Letter dated November 15, 2018 from Flangas
26 to Morgan].
27
28

1 Clearly, any reasonable individual would find that Petitioner was readily ascertainable as a
2 creditor to the estate and that Morgan did not take reasonable steps or conduct proper due
3 diligence to include Petitioner and its claim as part of the liabilities of the estate, especially when
4 she had all this evidence for nearly six months prior to petitioning the court to close probate.
5

6 **4. Adequate notice depends on the circumstances**

7
8 "[W]hether adequate notice has been provided depends on the circumstances of a
9 particular case." *Wright v. Corning*, 679 F.3d 101, 108 (3d Cir. 2012). In this case, it is
10 abundantly clear that the notice given to Petitioner was not adequate. Petitioner has evidence from
11 the business' head manager that the estate had actual knowledge that Colonial was a creditor
12 [Exhibit 1: Affidavit of Robert McKenchnie]. Jennifer Shea, the company officer manager and
13 point of contact for the Estate knew that Petitioner had paid for work to be performed and that the
14 work had not been performed. In addition, Carver's company owed Houlihan and his company
15 Colonial Real Estate Partnership money [Exhibit 1: Affidavit of Robert McKenchnie]. From this,
16 it is clear that the Estate had actual knowledge of the debt owed to Colonial. A simple review of
17 the financial books of Commercial Plumbing would have revealed that Colonial was owed money
18 by Estate. In addition, Petitioner made several phone calls to Morgan leaving messages, sent two
19 letters [Exhibit 2], and his counsel followed up with a third informing the administrator of the
20 estate [Exhibit 7], Morgan, that it was owed performance or a refund based on a contract between
21 Petitioner and the decedent Carver. It was an error for the administrator to totally disregard these
22 letters—as well as the numerous phone calls—which were attempts to make contact with her to
23 discuss Petitioner's claim.
24
25

26
27 Further, as mentioned above, Morgan knew of the fraud by the first administrator in
28 California who attempted to restrict the number of creditors and their liabilities against the estate

1 in an effort to increase the size and value of the estate for the benefit of a certain heir and himself
2 [See Exhibit 3: CA Petition for Appointment of Successor]. Such circumstances certainly warrant
3 actual notice, and Petitioner's request must thus be granted.
4

5 **B. PLAINTIFF DID NOT RECEIVE THE REQUIRED ACTUAL NOTICE REQUIRED**
6 **BY STATUTE AND THUS WAS DEPRIVED OF DUE PROCESS**

7 By its terms, Nev. Rev. Stat. § 147.040(3) permits a claimant to file a late claim only
8 when "the claimant did not have notice as provided in NRS 155.020 or actual notice of the
9 administration of the estate." Here, the evidence proves that the administrator failed to provide
10 Petitioner with actual notice which was required by statute as a readily ascertainable creditor of
11 the estate.
12

13 In *Cont'l Ins. Co. v. Moseley*, 100 Nev. 337, 337, 683 P.2d 20, 20 (Nev. 1984), the Nevada
14 Supreme Court found that the estate knew the insurance company had a claim against it. Similar
15 to the case at bar, the estate had actual knowledge of creditor's claim against the decedent but did
16 not give the insurance company notice of the probate proceeding, except by way of publication.
17 *Id.* The insurance company filed an action against the estate, and the Nevada Supreme Court
18 affirmed the district court's denial of the insurance company's motions for substitution of the
19 executrix for the decedent and to publish notice, and its declaration that the insurance company's
20 claim was forever barred. The court's opinion was vacated and the matter remanded by the U.S.
21 Supreme Court, which held that the estate's publication of the pending probate proceeding was
22 insufficient to provide the insurance company with notice that was reasonably calculated to
23 apprise it of the proceeding. Because the insurance company was denied its right to procedural
24 due process, the court reversed the district court's order. *Id.* Thus, it is clear that "more than
25 service by publication was required in order to afford due process" to the creditor. *Id.*, at 338, 683
26 P.2d at 21.
27
28

1 The Estate cites as support *Bell Brand Ranches v. First Nat'l Bank*, 91 Nev. 88, 92 n.3,
2 531 P.2d 471, 473 (1975), however, that case is distinguishable.¹ Rather, the instant case is quite
3 similar *Cont'l Ins. Co. v. Moseley*, in which the estate had actual knowledge of the creditor's
4 claim against the decedent. Despite this, the Estate here took no action to notify Petitioner of the
5 probate proceedings other than publishing notice pursuant to Nev. Rev. Stat. § 145.050. The issue
6 presented in that case and the case at bar is whether the Estate's complete reliance on supplying
7 notice by publication in these circumstances complied with the requirements of due process. Here,
8 it is clear that the notice was deficient.² The Court went on to explain that in *Mennonite Bd. of*
9 *Missions v. Adams*, 462 U.S. 791, 792, 103 S. Ct. 2706, 2708 (1983), the Supreme Court applied
10 this due process principle and found that mere constructive notice afforded inadequate due
11 process to a readily ascertainable mortgage holder. In light of the facts of *Moseley* and the
12 holdings in *Mennonite* and *Mullane*, the Nevada Supreme Court concluded that more than service
13 by publication was required in order to afford due process to the creditor. *Id.*, at 338.

14 Here, Jennifer Shea, the company officer manager and point of contact for the Estate knew
15 that Petitioner had paid for work to be performed and that the work had not been performed. In
16 addition, Carver's company owed Colonial Real Estate Partnership money [Exhibit 1: Affidavit of
17
18
19
20
21

22 ¹ That decision holds that late filing is permitted if the creditor had no notice of the appointment of the
23 administratrix. The court also stated in *Bell Brand Ranches* that it will be allowed if the notice is not received by one
24 with authority to act. 91 Nev. 92 n.3, 531 P.2d at 473, citing *Pahlmann v. First Nat'l Bank of Nev.*, 86 Nev. 151, 465
25 P.2d 616 (1970). See *Estate of Hughes v. First Nat'l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (Nev. 1980)
26 (bank permitted to file its late claim for promissory note). As such, this case can be distinguished from the current
27 action.

28 ² The Nevada Supreme Court said in *Moseley* that the guiding principle to be applied was expressed in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950), which held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections..." 339 U.S. at 314.

1 Robert McKenchnie]. From this, it is clear that the Estate had actual knowledge of the debt owed
2 to Colonial.

3
4 The U.S. Supreme Court reversed a decision of the Supreme Court of Oklahoma denying
5 a creditor's claim against the executor of an estate for expenses of the decedent's last illness on
6 the ground that failure to give him actual notice of probate proceedings was a denial of due
7 process. *Tulsa Profl Collection Servs., Inc. v. Pope*, 485 U.S. 478, 479, 108 S. Ct. 1340, 1342
8 (1988). The Court reasoned that because appellant's claim was a private property interest that
9 could be adversely affected by state action, and the probate court's involvement with the state
10 notice statute was sufficient to constitute state action, due process required that appellant be given
11 *actual notice if its identity could have been reasonably ascertained by appellee.*

13 That case is much like the instant dispute. In *Pope*, the executor published notice of
14 probate proceedings in accordance with the state nonclaim statute. The creditor filed a claim after
15 expiration of the statutory period, and the state court denied the claim. The Supreme Court held
16 that appellant's claim was a private property interest, protected from state action by U.S. Const.
17 amend. XIV. The probate court's involvement was substantial enough to constitute state action
18 because it was intimately involved throughout the notice procedure, and the nonclaim statute
19 became operative only after commencement of probate. The Supreme Court held that because
20 operation of the statute could have adversely affected the creditor's property interest, it was not a
21 self-executing statute of limitations. If the creditor's identity was known or reasonably
22 ascertainable by the executor, then due process required that it be given notice by mail or other
23 means certain to ensure actual notice. *Id.* The Court held that "a requirement of actual notice to
24
25
26
27
28

1 *known or reasonably ascertainable creditors* is not so cumbersome as to unduly hinder the
2 dispatch with which probate proceedings are conducted.” *Id.*, at 490 (emphasis added).³

3
4 In sum, the Supreme Court has specifically held that "a cause of action is a species of
5 property protected by the Fourteenth Amendment's Due Process Clause." *Logan v. Zimmerman*
6 *Brush Co.*, 455 U.S. 422, 428, 102 S. Ct. 1148, 1154, 71 L. Ed. 2d 265 (1982). Procedural due
7 process requires notice and an opportunity to be heard before any governmental deprivation of a
8 property interest. *Boddie v. Connecticut*, 401 U.S. 371, 378-79, 91 S. Ct. 780, 786, 28 L. Ed. 2d
9 113 (1971). Thus, failure to give Petitioner actual notice of probate proceedings was a denial of
10 due process.

11
12 **C. THE ESTATE ADMINISTRATOR HAD A DUTY TO PLAINTIFF WHEN SHE**
13 **BECAME AWARE OF THE CLAIM PRIOR TO THE FINAL ACCOUNTING BUT**
14 **FAILED TO DISCLOSE THIS**

15 “The duties of the executors are to preserve the estate, pay the indebtedness of the
16 deceased, the charges of administration, and put the estate in such condition that distribution may
17 be had to those entitled to it, under the will.” *In re Estate of Delaney*, 41 Nev. 384, 399, 171 P.
18 383, 388 (Nev. 1918), quoting *In re Estate of Willey*, 140 Cal. 238, 241, 73 P. 998, 999 (Cal.
19 1903).

20 Under Chapter 150 of Title 12 of the Nevada Revised Statutes, the executor of the estate
21 has a duty to file regular accountings which showed, *inter alia*, “[t]he claims filed or presented
22 against the estate, giving the name of each claimant, the nature of his or her claim, when it
23

24
25
26 ³ The *Pope* Court held that the Oklahoma nonclaim statute violated the due process clause of the Federal
27 Constitution's Fourteenth Amendment, because, although the statute provided solely for publication by notice, due
28 process required that actual notice be given to known or reasonably ascertainable creditors of the decedent by mail or
other means as certain to insure actual notice because such a creditor's claim—a cause of action against the estate for
an unpaid bill—was an intangible property interest protected by the due process clause. *Id.*

1 became due or will become due, whether it was allowed or rejected by the personal
2 representative, or not yet acted upon.” Nev. Rev. Stat. § 150.080(2). In addition, that statute
3 requires the executor to report on “[a]ll other matters necessary to show the condition of the
4 estate.” Nev. Rev. Stat. § 150.080(3). See also Nev. Rev. Stat. § 150.105.

5
6 Likewise, California Probate Code § 10952 provides that upon the resignation or removal
7 of a Personal Representative, the Personal Representative must provide an accounting within 60
8 days of their resignation. Morgan petitioned the California court to order Nicholas Alfano, the
9 former Personal Representative, to provide a full accounting within 60 days of May 29, 2018.
10 [Exhibit 3, Petition for Appointment of Successor, p. 6]. This was never completed, and Morgan
11 intentionally moved forward without this examination after the fraudulent activity in the estate.
12 To date, the California court has not received the accounting, and the case status shows “Under
13 Court Supervision.”⁴ That court has made repeated attempts to obtain an accounting. [California
14 Superior Court Docket, Exhibit 9]. Yet, Morgan informs this Court that there is no outstanding
15 claims and moves this Court in Nevada to close probate—waiving inventory and accounting.
16 [See Exhibit 10: NV Petition to Close Without Accounting]. The accounting for the business and
17 the Estate still has not been provided by the former administrator nor has it been completed and
18 presented to the California court. Nonetheless, Morgan waives the accounting that she was
19 demanding during the removal of the former administrator which still has yet to be produced.
20
21

22 In this matter, the administrator of the Estate breached her duty by failing to send a notice
23 of creditor to Colonial and failing to report Petitioner’s claim when there was substantial evidence
24 of that claim, and she was aware of the claim prior to closing the estate. She further breached her
25
26

27 ⁴ The case status also shows that there is an upcoming court date of March 17, 2020 concerning an order to show cause
28 for the failure to provide accounting. *Id.*

1 duty in failing to conduct an accounting after becoming aware of the fraudulent activities of the
2 first administrator of the estate.

3 **D. ADMINISTRATOR MORGAN CLEARLY KNEW THAT THERE WAS FRAUD BY**
4 **THE FIRST ADMINISTRATOR IN AN ATTEMPT TO STRUCTURE A FEE TO**
5 **MAXIMIZE PROFITS AND ELIMINATE CREDITORS SUCH AS PLAINTIFF**

6 The probate for the Carver Estate was initially brought in California court [Exhibit 9].
7 Nicholas Alfano filed a Petition for Letters Testamentary on December 1, 2017. The Court issued
8 an Order appointing Alfano as the Personal Representative on January 10, 2018. Letters
9 Testamentary were issued by the court in California on January 10, 2018. Alfano subsequently
10 resigned as executor on May 29, 2018. On July 3, 2018, Morgan, consented to act as the executor
11 for the Carver Estate.
12

13 In her Petition for Appointment of Successor, Administrator Morgan stated that she had:

14 ...obtained copies of the bank statements for the estate account at Bank of America
15 for the Estate of Dennis John Carver. These bank statements show withdrawals of
16 cash by the former personal representative in the amount of \$47,045. Petitioner
17 alleges upon information and belief that there is *no reasonable explanation for*
these withdrawals of cash that is related to the administration of the Estate.

18 [Exhibit 3, p. 4 (emphasis added)].

19 Further, Administrator Morgan alleged:

20 The former personal representative, by and through his company, A&N
21 Acquisitions, which upon information and belief is a sole proprietorship owned by
22 the former personal representative, purportedly entered into a contract for services
23 with the daughter of Dennis John Carver, Brooke Nicole Carver, whom he
24 identified as the CEO of Commercial Plumbing and AC ("CP ANDAC"), which
25 provides that he will obtain fees equal to 30% for his efforts to collect amounts
26 owed to the CP ANDAC business. (See Contract for Collection of Accounts,
27 attached hereto as Exhibit "G." [...]) Petitioner alleges that it was improper for
28 Nicholas Alfano, who was the Court appointed personal representative, to enter into
a fee agreement with the 20 year old daughter of decedent to be paid additional
funds in excess of his fee as personal representative. Furthermore, Petitioner alleges
it was improper for Nicholas Alfano, as the personal representative of the Estate, to

1 collect any fees related to administration of the Estate, including collection efforts,
2 without a Court order.

3 [Id.]

4 In light of the fact that Administrator Morgan herself petitioned the court for the removal
5 of the first administrator due to fraud, there is clear and convincing evidence of her knowledge of
6 improprieties and inaccuracies with the accounting measures for the estate. There can be no
7 doubt that these illegalities demand an accounting of the business and the Estate.
8

9 **1. Administrator Morgan concealed this fraud from this Court**

10 Administrator Morgan concealed this fraud by Nicholas Alfano and also failed to take
11 even the most elementary of steps to investigate and to conduct due diligence and a forensic
12 accounting of CPANDAC's business records. Had Morgan conducted even a cursory review of
13 the decedent's business records, she would have readily ascertained that Petitioner was a creditor
14 and was owed a return of his money or the completion of the project, not to mention actual
15 notice of the probate. From this, it is clear that Petitioner is entitled to an evidentiary hearing.
16

17 **2. Administrator Morgan had a heightened duty to conduct an accounting in light of the**
18 **fact that she had evidence of fraud by the estate's initial personal representative**

19 Again, Morgan herself petitioned the court in California for the removal of the first
20 administrator Alfano due to fraud [Exhibit 3]. This clearly evidences her knowledge of
21 improprieties and inaccuracies with the accounting measures for the estate. The case in Nevada
22 court was ancillary probate, but the issue of fraud in the underlying California probate action was
23 concealed so real property in Nevada free from any creditor's claims other than taxes.

24 From the time she filed the aforementioned petition, Morgan was on notice that there
25 were illegalities perpetrated by Alfano, and she should have made all reasonable and diligent
26 efforts to produce an accurate accounting of the liabilities of the Carver state—which included
27 the receipt of Petitioner's \$121,851.64 pursuant to contract.
28

1 Further, Petitioner's numerous communications to Morgan informing her of the claim put
2 her on notice to act pursuant to her duty as administrator prior to closing probate in the estate.
3 These actions show her deliberate attempts to ignore and conceal Petitioner's claim after being
4 placed on actual notice of its claim for performance or the return of the \$121,851.64.
5

6 **3. Administrator Morgan had a duty to conduct a winding up of Commercial Plumbing
and AC in accordance with state statute**

7 Nev. Rev. Stat. § 78.610 provides in pertinent part:
8

9 The trustees or receivers, after payment of all allowances, expenses and costs, and
10 the satisfaction of all special and general liens upon the funds of the corporation to
11 the extent of their lawful priority, shall *pay the other debts due from the*
12 *corporation*, if the funds in their hands shall be sufficient therefor, and if not, they
13 shall distribute the same ratably among all the creditors who shall prove their debts
in the manner that shall be directed by an order or decree of the court for that
purpose.

14 *Id.* (emphasis added).

15 As the administrator of Carver's Estate, Morgan had the duty to properly "wind up"
16 Commercial Plumbing and AC. The Nevada Supreme Court explains that "[w]inding up" is
17 "[t]he process of settling accounts and liquidating assets in anticipation of a partnership's or a
18 corporation's dissolution," which "is complete upon the final disposition of assets to the
19 shareholders and the *payment of debt to creditors.*" *Canarelli v. Eighth Judicial Dist. Court*, 127
20 Nev. 808, 815-16, 265 P.3d 673, 678 (2011) (internal quotation omitted) (emphasis added).
21 Because the business was not properly wound up, and there was no accounting, Morgan
22 breached her duty and violated Nevada law in distributing assets and closing probate.⁵
23

24 **4. Morgan's actions amount to a Fraud upon the Court**

25
26
27 ⁵ This Court did not waive the accounting pursuant to Nev. Rev. Stat. § 150.075; as a result, Morgan was required to
28 provide an accounting pursuant to Nev. Rev. Stat. § 150.070. she did not do so, so her actions violated state statute.

1 Again, this probate action in this Nevada court was ancillary; nonetheless, the issue of
2 fraud in the underlying California probate action was concealed from this Court in an attempt to
3 transfer real property in Nevada without providing actual notice to Petitioner, a readily
4 ascertainable creditor [Exhibit 10: NV Petition to Close Without Accounting]. Nowhere in the
5 Nevada Petition for Probate of Will and Issuance of Letters filed by Morgan is there any mention
6 of the fraud perpetrated upon the estate in the California probate proceeding [Exhibit 8]. Morgan
7 simply recites that Alfano resigned as Trustee in this matter on April 23, 2018. This Court was
8 not informed of his fraud. As such, Morgan did not provide a full disclosure to this Court as there
9 was no accounting of the business.
10

11 “A court may set aside its own judgments, or any fraudulently begotten judgment as
12 necessary to ensure the integrity of the court, the integrity of the institutions set up to protect and
13 safeguard the public, and the integrity of the process for the administration of justice.” *Chambers*
14 *v. NASCO, Inc.*, 501 U.S. 32, 44, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). “Fraud upon the
15 court” embraces “fraud perpetrated by officers of the court so that the judicial machinery can not
16 perform in the usual manner its impartial task of adjudging cases that are presented for
17 adjudication.” *Hester v. Vision Airlines, Inc.*, 2013 U.S. Dist. LEXIS 33837, at *7-8 (D. Nev.
18 Mar. 11, 2013), quoting *In re Levander*, 180 F.3d 1114, 1119 (9th Cir. 1999). Additionally
19 “fraud on the court” also “may occur when *the acts of a party prevent his adversary from fully*
20 *and fairly presenting his case or defense.*” *Id.*, quoting *Abatti v. C.I.R.*, 859 F.2d 115, 119 (9th
21 Cir. 1988) (emphasis added).
22
23

24 The Nevada Supreme Court has held that “the policy of repose yields when ‘the court
25 finds after a proper hearing that fraud has been practiced upon it, or the very temple of justice
26 has been defiled.” *Id.*, quoting *Universal Oil Co. v. Root Rfg. Co.*, 328 U.S. 575, 580, 66 S. Ct.
27 1176, 90 L. Ed. 1447 (1946). “When a judgment is shown to have been procured” by fraud upon
28

1 the court, "no worthwhile interest is served in protecting the judgment." *Id.*, quoting
2 RESTATEMENT (SECOND) OF JUDGMENTS § 70 cmt. b (1982).

3 In this case, fraud has been established by clear and convincing evidence. As such, relief
4 for the Petitioner must be granted.

5 **E. THE ESTATE ADMINISTRATOR MORGAN HAS VIOLATED THE NEVADA**
6 **RULES OF PROFESSIONAL CONDUCT BY HER LACK OF CANDOR TO THIS**
7 **COURT IN CONCEALING THE FRAUD PERPETRATED BY THE FIRST**
8 **ADMINISTRATOR OF THE ESTATE**

9 It is very clear from the evidence that Morgan has violated the Nevada and California
10 Rules of Professional Conduct in failing to inform this Court of the fraud that was committed by
11 the previous administrator.

12 Nev. Rules of Prof'l Conduct 3.3 addresses an attorneys lack of candor. Section (a)(1)
13 provides that a lawyer shall not knowingly make a false statement of fact or law to a tribunal or
14 fail to correct a false statement of material fact or law previously made to the tribunal by the
15 lawyer. *Id.* the rule in California is identical. See Cal. Rules of Prof'l Conduct, Rule 3.3. As an
16 attorney admitted to the State Bar of California, Morgan "should not engage in conduct that is
17 unbecoming a member of the Bar and an officer of the court." *In re Marriage of Davenport*, 194
18 Cal. App. 4th 1507, 1536, 125 Cal. Rptr. 3d 292, 316 (Cal. App. 2011).

19
20
21 One court has defined lack of candor to include "not only providing false information but
22 also 'concealment, evasion or other failure to be fully informative accompanied by an intent to
23 deceive.'" *Kay v. FCC*, 364 U.S. App. D.C. 448, 453, 396 F.3d 1184, 1189 (D.C. App. 2005),
24 quoting *Trinity Broad. of Fla., Inc.*, 10 F.C.C.R. 12020, 12063 (F.C.C. 1995) (emphasis added).
25 See also *Yale Diagnostic Radiology v. Kluczinsky*, 1998 Conn. Super. LEXIS 1569, at *11
26 (Conn. Super. 1998) ("where dismissal is the sought after sanction, lack of good faith means lack
27
28

1 of candor, honesty and an intention to mislead.”); In re Davey, 645 So. 2d 398, 406 (Fla. 1994)
2 (“lack of candor must be knowing and willful...”).
3

4 In this case, Morgan’s omission of the fraud perpetrated upon the Estate is a knowingly
5 false statement of fact. Nowhere in the Petition to Probate that Morgan filed with this Court is
6 there any mention of fraud or the legalities concerning the Estate. [Exhibit 8]. Morgan simply
7 disregards the critical fact that there was fraud perpetrated upon the Estate. She has never
8 received an accounting from the first administrator of the Estate as ordered by the court in
9 California, and on April 8, 2019, Morgan petitioned this Court for a waiver of accounting
10 [Exhibit 10]. In light of these facts, an accounting is essential. Morgan’s actions demonstrate her
11 lack of candor, concealment of relevant facts, and an attempt to circumvent the proper probate
12 process as outlined in Nevada statutes. This grave omission contaminates the entire probate
13 process for the Carver Estate especially when now confronted with the Petitioner’s claims that
14 they were not notified as a creditor and that the Estate had actual knowledge of the debt owed.
15 Due to Morgan’s lack of candor and violation of both the California and Nevada Rules of
16 Professional Conduct in her omission of the fraud and petitioning for a waiver of accounting,
17 Petitioner is, at the bare minimum, entitled to an evidentiary hearing in this matter.
18
19

20 **F. THE ESTATE MUST BE REOPENED**

21 **1. The trial court has the authority to reopen the Estate**

22 “The burden is upon him who seeks to file a late creditor's claim in a probate proceeding
23 to present facts to the trial court which justify favorable exercise of discretion.” *Cont'l Coffee Co.*
24 *v. Estate of Clark*, 84 Nev. 208, 212, 438 P.2d 818, 821 (Nev. 1968).
25

26 Nev. Rev. Stat. § 151.240 provides trial judge with authority to issue subsequent letters of
27 administration should it become necessary or proper from any cause. *Reid v. Scheffler*, 95 Nev.
28

1 265, 592 P.2d 948, 1979 Nev. LEXIS 488 (Nev. 1979). Under this section, the court may issue
2 further letters when there is property not fully disposed of or some act to be done which only an
3 administrator can do. *Kotecki v. Augusztiny*, 87 Nev. 393, 487 P.2d 925, 1971 Nev. LEXIS 434
4 (Nev. 1971). As a result, it is clear that this Court has the authority to reopen the Estate.
5

6 **2. Petitioner has provided ample evidence of good cause to reopen the Estate**

7 While the Estate claims in its objection that it is “aware of no such authority”,
8 Petitioner’s petition should not be denied as “unsupported and baseless” as the Estate claims
9 because there is good cause and ample evidence as to why Petitioner’s petition should be
10 granted. This court has the discretion, upon good cause, to grant this petition.
11

12 The case cited by the Estate, states, “[o]ur reading of NRS 147.040 warrants the
13 conclusion that Nevada's nonclaim statute permits trial court discretion, upon good cause shown,
14 to either allow the filing of a claim after it is barred; or upon failure to show good cause for not
15 having filed, to refuse permission to file a late claim.” *Gardner Hotel Supply v. Estate of Clark*,
16 83 Nev. 388, 392, 432 P.2d 495, 497 (Nev. 1967). The Nevada Supreme Court went on to say:
17

18 Knowledge of death is sufficient to put the claimant on notice that probate
19 proceedings will follow, and charges him with the responsibility of further inquiry.
20 Knowledge of death, or any knowledge of the estate proceedings, coupled with the
21 failure to act after receipt of the information are enough to support the exercise of
22 the lower court's discretion either to grant permission to file the claim, or to deny
it.

23 In *Gardner Hotel Supply*, the court reasoned that the creditors knew of the decedent's
24 death and held conversations with the administrators and other interested persons, but still took
25 *no action to preserve their claim* on the estate. Knowledge of decedent's death, or any
26 knowledge of the estate proceedings, coupled with the claimant's failure to act after receipt of the
27 information are enough to support the exercise of the lower court's discretion, either to grant
28

1 permission to file the claim, or to deny it, the Court held. However, this case is distinguishable
2 from the case at bar because plaintiffs did take action, and this is documented in affidavits and in
3 the numerous letters sent by Petitioner and its counsel to the administrator of the estate.⁶
4

5 CONCLUSION

6 In this case, it is abundantly clear from the evidence and testimony that the Estate had
7 actual knowledge of Colonial being a creditor through the affidavit by the head manager of the
8 business and that Petitioner made considerable efforts to communicate with the administrator of
9 the Carver Estate to inform her of its claim. Numerous phone calls and letters are evidence that
10 the administrator, Morgan, was notified of Petitioner's claim.
11

12 In light of this, Morgan erred in failing to provide Petitioner with actual notice of the
13 probating of the estate. This is especially true in light of the fact that Morgan clearly knew of the
14 fraud on the Estate and the necessity to do a proper accounting. Petitioner has provided sufficient
15 grounds to support this Court's decision to reopen probate.

16 WHEREFORE, Petitioner COLONIAL REAL ESTATE PARTNERSHIP, LTD. ask that
17 this Court reopen the probate and order an evidentiary hearing on this matter.
18

19
20 DATED this 20th day of March 2020.

21
22
23 /s/ Leo Flangas
24

25 ⁶ As soon as Plaintiff became aware of Carver's death, he did act. The court in *Gardner Hotel Supply* required
26 knowledge of the decedent's death and the claimant's failure to act after receipt of that information. As a result, the
27 court's holding in *Gardner Hotel Supply* can be distinguished from this case. Again, in this case, Plaintiff did act
28 and it has provided substantial evidence to show that it did take measures to inform the administrator of its claim.
See *Reid v. Scheffler*, 95 Nev. 265, 266, 592 P.2d 948, 949 (1979) (trial court had discretion under Nev. Rev. Stat. §
151.240 to grant the claimants' motion to reopen the estate: "Respondent's failure to file creditor's claims in the
probate proceedings was not the result of a lack of diligence.").

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Leo P. Flangas, Esq.
FLANGAS LAW FIRM, LTD.
Nevada Bar No. 5637
600 S. 3rd Street
Las Vegas, Nevada 89101
Telephone: (702) 384-1990
Fax: (702) 384-1009
Email: Leo@flangaslawfirm.com

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that on the 6th day of March 2020, I served a true and correct copy of the
4 forgoing Complaint; as indicated below:

5 ☐ By first class mail, postage prepaid from Las Vegas, Nevada pursuant to NRCP
6 5(b) addressed as follows below

7 ☐ By facsimile, pursuant to EDCR 7.26

8 ☐ By receipt of copy as indicated below

9 X Via Electronic Service pursuant to Administrative Order 14-2, effective June
10 1, 2014

11 *(Note: All parties not registered pursuant to Administrative Order 14-2 have been served via
12 mail)*

13 **ALL PARTIES WHO ARE REGISTERED TO THE EIGHTH DISTRICT COURT E-SERVICE
14 PROGRAM HAVE BEEN E-SERVED.**

15 /s/ Natasha Smith

16 An employee or associate of the law office of
17 FLANGAS LAW FIRM, LTD.
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Exhibit 1

County of Clark)
) ss.
State of Nevada)

AFFIDAVIT OF ROBERT MCKENCHNIE

I, Robert McKenchnie, being duly sworn, do hereby state as follows:

1. I am over the age of 18 years, and I am of sound mind.
2. I am an adult resident of the State of Nevada, and, if called as a witness herein, I would testify truthfully to the matters set forth herein.
3. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. Any matter that is an opinion is stated as an opinion.
4. I was the lead employee of a sole proprietorship company owned by the decedent Dennis John Carver in Nevada, Commercial Plumbing and for about 12 years.
5. Jennifer Shea was the office manager employed by Dennis Carver's company, Commercial Plumbing and AC, prior to his death and after his death.
6. After Carver's death in 2017, Jennifer Shea remained in her position as office manager and was the worker that was the only employee that was the point of contact for me on the Carver's estate and trust and she was assisting Carver's daughter and the attorney Nicholas Alfano for the estate and trust until she was fired on or about March/April/May of 2018.
7. After Carver's death but before Jennifer Shea was let go, Jennifer Shea was tasked with coordinating ^{RM} ~~the~~ documentation for the Carver's estate.
8. Jennifer Shea knew that Jack Houlihan of Colonial Real Estate Partnership had paid

1 for work to be performed and that the work had not been performed and Dennis
2 Carver's company, Commercial Plumbing and AC, owed Houlihan and his company
3 Colonial Real Estate Partnership money.

4 9. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 10. [REDACTED]
12 IN SUMMER
13 11. Sometime ~~late~~ in 2018, I talked to Jack Houlihan and told him that Carver had died

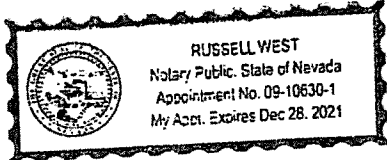
14 the year earlier and that he better make sure he gets paid the money owed to him.

15
16 FURTHER AFFIANT SAYETH NAUGHT.

17 [Signature]
18 Robert McKenchnie

19
20 SUBSRIBED AND SWORN before me
21 this 5 day of March, 2020.

22 [Signature]
23 NOTARY PUBLIC



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Exhibit 2

1 County of Arapahoe)
2) ss.
3 State of Colorado)
4

5 **AFFIDAVIT OF JOHN J. HOULIHAN**

6 I, John J. Houlihan, being duly sworn, do hereby state as follows:

- 7 1. I am over the age of 18 years and I am of sound mind.
8
9 2. I am an adult resident of the State of Colorado, and, if called as a witness herein, I
10 would testify truthfully to the matters set forth herein.
11
12 3. All of the matters set forth herein are within my personal knowledge, except those
13 matters that are stated to be upon information and belief. Any matter that is an
14 opinion is stated as an opinion.
15
16 4. I am one of the owners of Colonial Real Estate Partnership.
17
18 5. On or about October of 2013, I paid Commercial Plumbing and AC and Dennis John
19 Carver monies in the amount of \$121,851.64 for the installation of new equipment
20 and storage of this equipment for my partnership's building. A portion of this
21 money was for the labor by Commercial Plumbing and AC and Dennis John Carver
22 to install all the equipment.
23
24 6. The equipment included but was not limited to toilets, water heaters, sinks, urinals,
25 water fountains, heat-ump/air conditioners, faucets, counters, valves and more items.
26
27 7. I did not want the equipment installed at that time because there were no tenants in
28 the building and I did not want the equipment to be stolen or vandalized.
29
30 8. Dennis John Carver and Commercial Plumbing and AC and I agreed to store the
31 equipment with Defendants until I notified Defendants when to begin the install.
32
33 9. On or about September of 2018, I wanted to begin installation of the equipment.

- 1 10. On or about September of 2018, I discovered that the Dennis John Carver, had died
2 the prior year. Robert McKenzie, who was the foreman for Carver and Commercial
3 Plumbing and AC told me that Carver had died. Mr. Mckenzie previously told me
4 that he informed the estate that my partnership was owed money by Carver.
5
6 11. Immediately upon hearing this information, I called and left messages for Rhonda L
7 Morgan the special administrator of the Estate of Dennis John Carver explaining that
8 my partnership was a creditor that was owed money by the estate. One time I left a
9 voice message and the other time I left a message with the secretary who stated that
10 Rhonda L. Morgan was unavailable.
11
12 12. On or about September 21, 2018, I sent a letter to Robert McKenzie asking for the
13 installation of the equipment or the return of my money.
14
15 13. After no return phone calls from Ms. Morgan, on or about October 26, 2018, I sent a
16 letter to Ms. Morgan notifying her of who we were and the situation regarding
17 Carver and our money.
18
19 14. Each of these three letters contained an executed copy of the Installation and
20 Storage Agreement contract and a copy of check #4016 for \$111,851.64 and a copy
21 of a check for \$10,000.00 paid to CPAC as a deposit for start of the project.
22
23 15. In that letter, I informed Ms. Morgan of the money I paid Carver for the installation
24 of the equipment and that the insulation had not taken place.
25
26 16. I did not receive any response from Ms. Morgan.
27
28 17. On or about November 15, 2018, I retained counsel and had him send a letter to Ms.
Morgan again requesting a timely response as to the installation of the equipment or
the return of my money.
19. At that point in time, probate remained open, and I had sent Ms. Morgan three

1 letters notifying her of my claim.

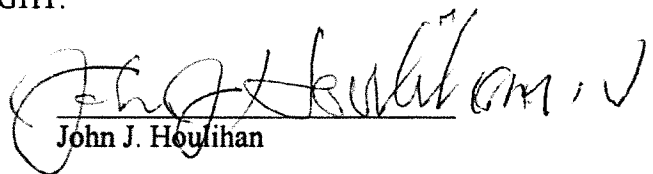
2 20. Further, Mr. Flangas' letter sent to Ms. Morgan two weeks later was months before
3 Ms. Morgan filed the petition for the final distribution of Carver's estate on April 8,
4 2019.

5 21. The financial books of Commercial Plumbing and AC would clearly show that we
6 paid the money to Carver and his business and that they did not do the labor or
7 install the equipment.

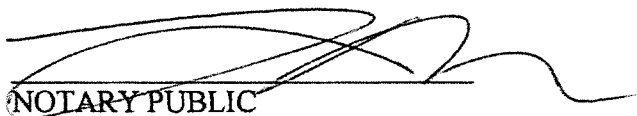
8 22. Clearly, I was a readily ascertainable creditor but was never provided actual notice
9 by the Defendants or the estate.

10 23. Because I was never afforded actual notice, I brought this action for relief.

11
12
13 FURTHER AFFIANT SAYETH NAUGHT.

14
15 
16 John J. Houlihan

17 SUBSRIBED AND SWORN before me
18 this 5th day of March, 2020.

19 
20 NOTARY PUBLIC

21 JENNIFER L. MATLOCK
22 NOTARY PUBLIC
23 STATE OF COLORADO
24 NOTARY ID 20164018617
25 MY COMMISSION EXPIRES 05/16/20
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Exhibit 3

1 Rhonda L. Morgan SBN 288920
2 Jamie Frenzel SBN 300322
3 THE LEGACY FIRM OF SOUTHERN CALIFORNIA, P.C.
4 19800 MacArthur Blvd., Ste. 300
5 Irvine, CA 92612
6 Tel.: (949) 835-4444
7 Fax: (877) 244-6606
8 rhonda@socallegacy.com

9 Attorneys for Petitioner

FILED
Superior Court of California
County of Riverside

7/3/2018
C. Powell

By Fax

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

In re
ESTATE OF DENNIS JOHN CARVER

Case No. MCP1700877

PETITION FOR APPOINTMENT OF
SUCCESSOR PERSONAL
REPRESENTATIVE AND ISSUANCE
OF LETTERS TESTAMENTARY,
REQUEST FOR ORDER FOR
ACCOUNTING, REQUEST FOR ORDER
TO TURN OVER PROPERTY AND
DOCUMENTS AND REQUEST FOR
SURCHARGE OF FORMER PERSONAL
REPRESENTATIVE

Date: 8-07-18
Time: 8:30 am
Dept: T1

Petitioner, Rhonda L. Morgan (hereafter referred to as "Petitioner"), as Co-trustee of The Living Trust of Dennis John Carver, dated January 22, 2017 (the "Trust") hereby submits this Petition for Appointment of Successor Personal Representative and Issuance of Letters, Request for Order for Accounting, Request for Order to Turn Over Property and Documents and Request for Surcharge of Former Personal Representative.

Petitioner alleges the following:

1. Nicholas Alfano filed a Petition for Letters Testamentary on December 1, 2017. The Court issued an Order appointing Nicholas Alfano as the Personal Representative on January 10,

1 2018. Letters Testamentary were issued on January 10, 2018. Nicholas Alfano thereafter resigned
2 as executor on May 29, 2018, effective immediately. (See Resignation of Executor of the Estate
3 of Dennis John Carver attached hereto as Exhibit "A".) There are no other currently acting personal
4 representatives of the Estate of Dennis John Carver, creating a vacancy in the office of the personal
5 representative of the Estate of Dennis John Carver.

6 2. Nicholas Alfano was appointed as a Personal Representative pursuant to the Last
7 Will and Testament of Dennis John Carver dated January 22, 2017 ("Will"). The Will provides
8 that the Personal Representative shall be the Trustee or Trustees of the Living Trust of Dennis John
9 Carver (the "Trust.") (see Will attached hereto as Exhibit "B", Page 1, Par. 2A.)

10 3. Nicholas Alfano resigned as Trustee of the Trust on April 23, 2018. (see Trustee
11 Resignation attached hereto as Exhibit "C".) The next named successor Trustee, Jennifer Shea,
12 declined to act as Trustee. (see Declination to Act as Trustee, electronically signed by Jennifer
13 Shea, attached hereto as Exhibit "D".) Pursuant to the terms of the Trust, Nicholas Alfano
14 appointed Rhonda L. Morgan and Brooke Nicole Carver as successor co-trustees (see Ex. C,
15 Trustee Resignation; see Trust, Page 8, Par. 3A., filed as a Confidential document concurrently
16 herewith.)

17 4. Because the Will designates the then acting Trustee or Trustees of the Trust as the
18 Personal Representative, Rhonda L. Morgan and Brooke Nicole Carver would be the next
19 nominated personal representatives pursuant the terms of the Will. (see Will, Exhibit "B", Page 1,
20 Par. 2A.)

21 5. Brooke Nicole Carver has declined to act as personal representative. (see
22 Declination to Act of Brooke Nicole Carver attached hereto as Exhibit "E"). Rhonda L. Morgan
23 has agreed to act as the sole personal representative. (See Consent to Serve as Executor by Rhonda
24 L. Morgan, attached hereto as Exhibit "F".)

25 6. The then acting Trustee or Trustees of the Living Trust of Dennis John Carver is the
26 named beneficiary of the Last Will and Testament of Dennis John Carver dated January 22, 2017.

(See Ex. B, Will, pg. 3, par. 3C.) Rhonda L. Morgan and Brooke Nicole Carver are named as Co-Trustees of the Trust and are the currently acting Co-Trustees.

7. The Will waives bond. (See Ex. B, Will, pg. 1, par. 2A.)

8. Petitioner is a resident of California and a resident of the United States.

9. The decedent's will does not preclude administration of the estate under the Independent Administration of Estates Act.

10. A request for special notice has not been filed herein and notice of the time and place for hearing will be given as required by law.

11. The persons entitled to notice are:

Rhonda L. Morgan, Co-Trustee
The Living Trust of Dennis John Carver dated January 22, 2017
19800 MacArthur Blvd., Ste. 300
Irvine, CA 92612

Brooke Nicole Carver, Co-Trustee
The Living Trust of Dennis John Carver dated January 22, 2017
38368 Via Calorin
Murrieta, CA 92562

Nicholas Alfano, Former Personal Representative
29826 Haun Rd., Ste. 314
Menifee, CA 92584

Erik Dodd, Esq., Attorney for Former Personal Representative
Law Office of Erik K. Dodd
25096 Jefferson Ave., Ste. B172
Temecula, CA 92592

12. The sole beneficiaries of the Trust are:

Brooke Nicole Carver Adult
38368 Via Calorin
Murrieta, CA 92562

Madison Carver Age: 17
38368 Via Calorin
Murrieta, CA 92562

//

//

13. The sole intestate heirs of Dennis John Carver are:

Brooke Nicole Carver Adult daughter
38368 Via Calorin
Murrieta, CA 92562

Madison Carver Age: 17 daughter
38368 Via Calorin
Murrieta, CA 92562

II. REQUEST FOR ACCOUNTING

14. Probate Code Section 10952 provides that upon the resignation or removal of a Personal Representative, the Personal Representative must provide an accounting within sixty (60) days of their resignation. Petitioner requests that the Court order Nicholas Alfano to provide an accounting within sixty (60) days of May 29, 2018.

III. REQUEST FOR ORDER TO TURN OVER PROPERTY AND RECORDS

15. Petitioner requests that the Court order Nicholas Alfano to turn over all assets and records of the estate, including electronic records, in his custody, control or possession, within 10 days of the date of the hearing on this petition. This specifically includes all files related to collection efforts through A&N Acquisitions or any other entity owned, controlled or managed by Nicholas Alfano.

IV. REQUEST FOR SURCHARGE

16. Petitioner has obtained copies of the bank statements for the estate account at Bank of America for the Estate of Dennis John Carver. These bank statements show withdrawals of cash by the former personal representative in the amount of \$47,045. Petitioner alleges upon information and belief that there is no reasonable explanation for these withdrawals of cash that is related to the administration of the Estate. Petitioner requests that the Court surcharge the former personal representative in the amount of \$47,045 and order the former personal representative to return these funds to the Estate within thirty (30) days of the date of the hearing.

17. Petitioner further requests that the Court surcharge the former personal representative for fees improperly obtained related to collection efforts on behalf of the Estate.

18. The former personal representative, by and through his company, A&N Acquisitions, which upon information and belief is a sole proprietorship owned by the former personal representative, purportedly entered into a contract for services with the daughter of Dennis John Carver, Brooke Nicole Carver, whom he identified as the CEO of Commercial Plumbing and AC ("CPANDAC"), which provides that he will obtain fees equal to 30% for his efforts to collect amounts owed to the CPANDAC business. (See Contract for Collection of Accounts, attached hereto as Exhibit "G".)

19. CPANDAC is a business which was owned as a sole proprietorship of Dennis John Carver. Upon his death, the assets of the business became part of Dennis John Carver's estate. As such, it was the duty of the personal representative of Dennis John Carver's estate to either continue to operate the business or wind up the business. Upon information and belief, the former personal representative elected to wind up the business. Marshalling assets belonging to the estate, which would necessarily include accounts receivable of a sole proprietorship of the decedent, is one of the general duties of a personal representative.

20. The former personal representative should not be allowed to circumvent the prohibitions in the probate code against payment of fees without a court order simply by appointing the 20 year old daughter of the decedent as "CEO" of the decedent's sole proprietorship and thereafter entering into a contract with her, using his own sole proprietorship, which calls for the payment of fees which amounted to more than 30% of the value of those assets.

21. Petitioner alleges that it was improper for Nicholas Alfano, who was the Court appointed personal representative, to enter into a fee agreement with the 20 year old daughter of decedent to be paid additional funds in excess of his fee as personal representative. Furthermore, Petitioner alleges it was improper for Nicholas Alfano, as the personal representative of the Estate, to collect any fees related to administration of the Estate, including collection efforts, without a Court order. If Nicholas Alfano believed that his efforts to collect fees owed to the businesses was over and above his duties as personal representative, he should have sought a Court order allowing him to enter into an independent fee agreement or requested extraordinary fees at the time of his petition for fees.

22. Petitioner alleges upon information and belief that Nicholas Alfano has paid himself fees by and through A&N Acquisitions in excess of \$50,000 under the A&N Contract for Collection in violation of the probate code prohibition against collecting fees without a court order. Petitioner further alleges upon information and belief, that Nicholas Alfano paid himself additional fees of \$2,000 per month for several months in the guise of additional payments for bookkeeping staff, which upon information and belief was actually his wife. The payment of an additional \$2,000 a month was not included in the contract terms. Petitioner cannot state the exact amount of fees improperly paid to Nicholas Alfano at this time as she is not yet in possession of all the files related to the collection accounts.

23. Petitioner requests that the Court order the former personal representative to turn over these files as requested above, and surcharge Nicholas Alfano for all fees collected under the improper contract.

24. Petitioner further requests that the Court surcharge Nicholas Alfano for all attorneys' fees and expenses incurred in bringing this petition for surcharge, as well as any extraordinary fees which may be granted to the successor personal representative for actions taken related to this request for surcharge or which were caused by Nicholas Alfano's improper actions in his administration of the estate.

WHEREFORE, Petitioner requests that:

1. Petitioner be appointed as Personal Representative of the Estate of Dennis John Carver without bond;

2. The Court issue Letters Testamentary to Petitioner with Full Authority under the Independent Administration of Estates Act;

3. The Court waive bond;

4. The Court order Nicholas Alfano, former Personal Representative, to provide a full accounting within sixty (60) days of May 29, 2018;

1 5. The Court order Nicholas Alfano, former Personal Representative, to turn over all
2 assets and documents belonging to the estate, including electronic records and emails, within ten (10)
3 days of the date of the hearing;

4 6. The Court surcharge Nicholas Alfano for all sums improperly withdrawn from the
5 estate bank account;

6 7. The Court surcharge Nicholas Alfano for all sums paid to him as fees for collection of
7 accounts belonging to the estate and for any attorneys' fees and expenses, as well as any extraordinary
8 personal representative fees incurred, in bringing this petition for surcharge;

9 8. For such other and further relief as the Court deems proper.

10
11 THE LEGACY FIRM OF
12 SOUTHERN CALIFORNIA, P.C.

13 DATED: July 3, 2018

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16 RHONDA L. MORGAN
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Exhibit 4

John J. Houlihan IV
Partner
Colonial Real Estate Partnership
29 Huntwick Lane
Englewood, Colorado 80113

September 21, 2018

LECOND REQUEST

Mr. Robert McKechnie
Owner
All Trades Company
4262 Blue Diamond Road, Suite 102
Las Vegas, Nevada 89139

Subject: Second Request, Contract agreement between Colonial Real Estate Partnership, Ltd., and Commercial Plumbing and AC (CPAC) for prepaid services and materials for the Property known as 3775 East Sahara Avenue, Las Vegas, Nevada

Dear Robert:

This is our second request and attempt to contact you about this matter. Please get back to us.

An executed copy of the Installation and Storage Agreement (Agreement) contract is attached, as well as a copy of check #4016 for \$111,851.64. Prior to this a check for \$10,000.00 was paid to CPAC in the amount of \$10,000.00 as a deposit for start of the project.

What is the next step in Colonial Real Estate receiving the prepaid labor and all materials agreed to in Agreement including the amount prepaid for four (4) swamp coolers but never delivered (\$17,011.08).

Your update on the information in this letter, and the name of CPAC's attorney including address and contact information is appreciated. CPAC's owner's estate information is appreciated too.

Sincerely,

ohnj. ulihanIV
Partner
Colonial Real Estate Partnership, Ltd.

Attach,: Copy of executed Installation and Storage Agreement
Copy of canceled Check# 4016

INSTALLATION AND STORAGE AGREEMENT

THIS Agreement is by and between the Colonial Real Estate Partnership, Ltd. (Colonial), and Commercial Plumbing and AC (CPAC). It is for services and materials for Property commonly know as 3775 East Sahara Avenue, Las Vegas, Clark County, Nevada, of which the Colonial Real Estate Partnership is the owner.

Colonial agrees to pay for amounts not to exceed those listed on estimates WO11656 (10/22/2013), 114, and WO11920 attached to and thereby made apart of the Agreement. In Exchange for said above listed payment CPAC agrees to perform all of the services and materials listed and or necessary to complete the services and installations on the estimates listed above now or in the future. In some instances the payment serves as prepayment for future services and materials needed to complete the listed and or required installation at a future time of Colonial's choosing.

Payment also serves as payment for the following materials (listed below) that from time and date of payment are the property of Colonial, and will be stored and secured by CPAC at no additional cost for a period lasting through October 31, 2014. Colonial and or its appointed agent(s) has the right to inspect the CPAC facility in which its materials and or property at any time with 24 hours notice. Colonial will insure the materials listed below at its own expense.

- 6 - New toilets with large p-trap with super flush
- 2 - New forty (40) gallon water heaters
- 6 - New wall mounting sinks
- 2 - New urinals
- 2 - New dual drinking fountains
- 8 - New ten (10) ton Goodman heat pump/air conditioner
- 2 - New five (5) ton Goodman heat pump/ air conditioner

Prepayment for the following items to be stored at 3775 E Sahara Avenue, Las Vegas, Nevada:

- 4 - New 3ph HVAC- Swamp cooler Phoenix as listed on Estimate #WO11656 dated 10/22/2013

Payment is prepayment for the following listed materials from the CPAC estimates listed above:

- 6 - New ADA approved faucets
- 2 - New drop in stainless steel sinks with faucets
- 2 - break room counters with sink drop in
- 1 - New Mop sink and faucet
- 2 - New Sloan flush valves for urinals
- 2 - New mixing valves for tempered water to hand sinks

Any and all other hardware, connections, fixtures, and or mountings to complete work and installations described in the estimates mentioned above and attached to the Agreement.

The Agreement states Colonial will pay the amount of \$121,851.64 minus \$10,000.00 deposit paid by Colonial in 2013 for a total of \$111,851.64 Check # _____ to CPAC. In exchange for that consideration CPAC agrees to perform and or complete all items listed on the attached estimates, to secure and to store the above listed items that will become property of Colonial at time and date of payment, and to provide all materials and services prepaid for by Colonial at time and date of Colonial's choosing.

The Agreement further shows that Colonial has paid the in full for all materials and or services provided by CPAC to date of this agreement, and further that Colonial has prepaid in full for any and all other materials and services outlined in the attached estimates listed in the Agreement and to provide the service set forth in the estimates.

Colonial shows their acceptance and ratification of the Agreement by signing below and by issuing CPAC payment in the amount listed above. CPAC shows their acceptance and ratification of the Agreement by signing below and or by cashing and or depositing the check number listed above.

Agreed to by Colonial Real Estate Partnership, Ltd.:

Signed

Date

Printed Name

Title

Agreed to by Commercial Plumbing and AC:

Signed

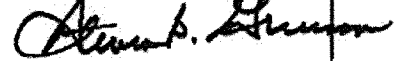
Date

Printed Name

Title

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Exhibit 5



1 **NOTC**
2 DONNA STIDHAM, ESQ.
3 Nevada Bar No. 9663
4 LAW OFFICE OF DONNA STIDHAM, LLC
5 2551 S Fort Apache Rd #103
6 Las Vegas, NV 89117
7 Phone: (702) 444-3713
8 Facsimile: (702) 444-3714
9 donna@stidhamlawoffice.com
10 Attorneys for Petitioner,
11 Rhonda L. Morgan

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 IN THE MATTER OF THE ESTATE OF
12
13 DENNIS JOHN CARVER
14
15 Deceased,

Case No.: P-18-095892-E
Dept. No. PCI

16 **NOTICE TO CREDITORS**
17 **NINETY (90) DAY NOTICE**

18 Pursuant to NRS 147.010 and 155.020, notice is hereby given that by an Order dated July 20,
19 2018, this Court appointed Rhonda L. Morgan as Personal Representative for the Estate of Dennis
20 John Carver, who died October 16, 2017. All creditors having claims against the Estate are required
21 to file their claims with the Court Clerk within ninety (90) days after the mailing or first publication
22 of this notice (as the case may be), or their claims will be forever barred.

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1 Such claims must satisfy the requirements of NRS 147.070, NRS 147.080, and the other
2 provisions of NRS Chapter 147.

3 DATED this 25th day of July, 2018.

4
5 Submitted by:

6 LAW OFFICE OF DONNA STIDHAM, LLC
7

8 By: Donna Stidham, Esq.
9 DONNA STIDHAM, ESQ.

10 Nevada Bar No. 9663

2551 S Fort Apache Rd #103

Las Vegas, NV 89117

11 Phone: (702) 444-3713

12 Facsimile: (702) 444-3714

donna@stidhamlawoffice.com

13 Attorneys for Petitioner,

Rhonda L. Morgan
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Exhibit 6

John J. Houlihan IV
Partner
Colonial Real Estate Partnership
29 Huntwick Lane
Englewood, Colorado 80113

October 26, 2018

Commercial Plumbing & AC
c/o Rhonda Morgan
The Legacy Firm of Southern California, PC
19800 MacArthur Boulevard, Suite 300
Irvine, CA 92612

Subject: Contract agreement between Colonial Real Estate Partnership, Ltd., and Commercial Plumbing and AC (CPAC) for ~~nrenaid services and materials~~ for the Property known as 3775 East Sahara Avenue, Las Vegas, Nevada

Dear Ms Morgan:

An executed copy of the Installation and Storage Agreement (Agreement) contract is attached, as well as a copy of check #4016 for \$111,851.64. Prior to this a check for \$10,000.00 was paid to CPAC in the amount of \$10,000.00 as a deposit for start of the project.

What is the next step in Colonial Real Estate receiving the prepaid labor and all materials agreed to in Agreement including the amount prepaid for four (4) swamp coolers but never delivered (\$17,011.08).

Your update on the information in this letter.. CPAC's owner's estate information is appreciated too.

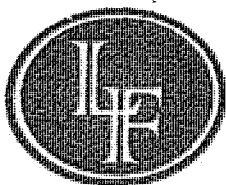
Sincerely,

John J. Houlihan Pt
Partner
Colonial Real Estate Partnership, Ltd.

Attach.: Copy of executed Installation and Storage Agreement
Copy of canceled Check# 4016

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Exhibit 7



FLANGAS LAW FIRM, LTD.

LEO P. FLANGAS, ESQ.

November 15, 2018

Via Email and U.S. Mail

Commercial Plumbing & AC

Attn: Rhonda Morgan

The Legacy Firm of Southern California, PC

19800 MacArthur Boulevard, Suite 300

Irvine, CA 92612

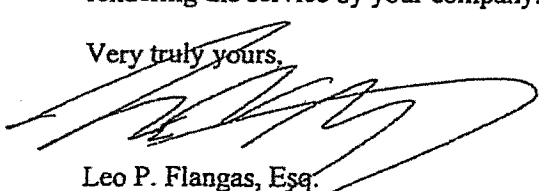
Email: Rhonda@socallegacv.com

**Rc: Contract Agreement between Colonial Real Estate Partnership, LTD.
and Commercial Plumbing & AC**

Dear Ms. Morgan,

I am the Nevada counsel for Colonial Real Estate Partnership and it has come to my attention that my client has not received a response regarding the payment of money made to your client and the services that need to be rendered. Please see the attached letter sent to you by my client on October 26, 2018. I am requesting that you contact Mr. Houlihan regarding the services that need to be rendered by your company. Mr. Houlihan has rented the property out and the tenant is preparing to start business so it is important that we get a timely response on the time table for rendering the service by your company.

Very truly yours,


Leo P. Flangas, Esq.

Enclosures: Letter dated October 26, 2018

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Exhibit 8



PET
DONNA STIDHAM, ESQ.
Nevada Bar No. 9663
LAW OFFICE OF DONNA STIDHAM, LLC
2551 S Fort Apache Rd #103
Las Vegas, NV 89117
Phone: (702) 444-3713
Facsimile: (702) 444-3714
donna@stidhamlawoffice.com
Attorneys for Petitioner,
Rhonda L. Morgan

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER OF THE ESTATE OF
DENNIS JOHN CARVER
Deceased.

Case No.: **P-18-095892-E**
Dept. No. PCI
Date of Hearing:
Time of Hearing: 9:30 a.m.

PETITION FOR PROBATE OF WILL AND ISSUANCE OF LETTERS

Petitioner, hereby presents Petition for Probate of Estate and for Letters Testamentary of
Estate, and in support of this Petition, Petitioner respectfully states the following:

1. That Dennis John Carver died on the 16th day of October, 2017, in Riverside County,
California. A certified copy of the Decedent's Death Certificate is attached hereto as Exhibit "1."
2. The Decedent was not a resident of Clark County, Nevada, but jurisdiction is proper
under NRS 136.010 because the Decedent died owning real property in Clark County, Nevada.
3. That said decedent left a Last Will and Testament which your Petitioner alleges upon
information and belief to be the Last Will and Testament of said decedent. The original Last Will and
Testament was filed in the Superior Court of California, County of Riverside. A copy of said Last
Will and Testament is attached hereto as Exhibit "2" and incorporated herein by this reference.

1 4. That at the time said Last Will and Testament was executed, to wit, on January 22,
2 2017, the said Testator was over the age of twenty-one years and was of sound and disposing mind
3 and upon information and belief was not acting under duress, menace, fraud, or undue influence, and
4 was in every respect competent, by Last Will, to dispose of all his estate.

5 5. That upon information and belief said Last Will and Testament was executed in the
6 presence of two witnesses, all then residents of the State of California, and said Last Will and
7 Testament was signed in the presence of said witnesses and in the presence of each other, and at the
8 time the Testator subscribed said instruments he declared that it was his Last Will and Testament and
9 said witnesses subscribed their names as witnesses thereto at the request of the Testator.
10

11 6. That upon information and belief the decedent executed his Last Will and Testament
12 in the State of California and said Last Will and Testament is compliant and valid in accordance
13 with the law and statutes of the State of California. Affidavit of Douglas M. Edwards, Esq., is
14 attached hereto as Exhibit "3."

15 7. That the Last Will and Testament names the then-acting Trustee or Trustees of The
16 Living Trust of Dennis John Carver (the "Trust") as the Executor thereof to serve without bond.
17

18 8. That the Trust nominated Nicholas A. Alfano as the first successor trustee of the
19 Trust, then Jennifer as the second alternative trustee. A copy of the Living Trust of Lorraine Susan
20 Carver is attached as Exhibit "4."

21 9. On or about April 18, 2018, Jennifer Shea was informed by Nicholas A. Alfano that
22 he was resigning as successor trustee. Jennifer Shea executed a Declination to Serve. A copy of the
23 Declination to Serve is attached as Exhibit "5."

24 10. On April 23, 2018, Nicholas A. Alfano resigned as Trustee and nominated Brooke
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1 Nichole Carver and Rhonda L. Morgan as successor Co-Trustees of the Trustee, pursuant to the
2 terms of the Trust (See Trust, Article III). A copy of the Trustee Resignation and Successor Trustee
3 Acceptance is attached as Exhibit "6."

4 11. That Brooke Nichole Carver has declined to serve and has waived her right to serve
5 as Executor. A Declination to Serve as Executor is attached hereto as Exhibit "7."

6 12. Petitioner, Rhonda L. Morgan, is competent and capable of executing said Will and
7 acting as Executor thereof, and hereby consents to act as Executor thereof.

8 13. That Petitioner has not been convicted of a felony.

9 14. That the names, ages, and residences of the heirs, next of kin, legatees, and devisees of
10 decedent, so far as are known to Petitioner, are:

13	<u>NAME</u>	<u>AGE</u>	<u>RELATIONSHIP</u>	<u>ADDRESS</u>
14	Brooke Nichole Carver	Adult	Daughter	38368Via Calorin Murrieta, CA 92562
15				
16	Madison Denise Carver	Minor(17)	Daughter	38368Via Calorin Murrieta, CA 92562

17 15. That the character of the property of the estate is real property.

18 16. The character of the Estate subject to administration in Nevada consists of personal
19 property with an estimated value of more than \$300,000. Therefore, General Administration is
20 required.

21 17. That the name for whom Letters Testamentary are prayed for is Rhonda L. Morgan.

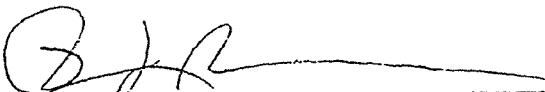
22 WHEREFORE, your Petitioner prays:

23 1. That said Last Will and Testament be admitted to probate and that Letters
24 Testamentary may be issued to your Petitioner as Executor of said Will, and that for that purpose a
25 time be appointed for proving said Will and that all interested persons be duly notified to appear at
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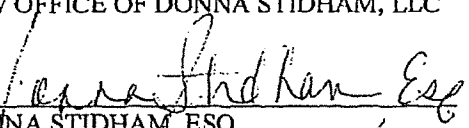
1 time be appointed for proving said Will and that all interested persons be duly notified to appear at
2 the time appointed for proving the same, and that all necessary and proper orders may be made in the
3 premises.

4 2. That such other and further orders be made as the Court considers proper.

5 DATED this 18 day of June, 2018.

7 
8 _____
9 Rhonda L. Morgan

10
11 Submitted by:
12 LAW OFFICE OF DONNA STIDHAM, LLC

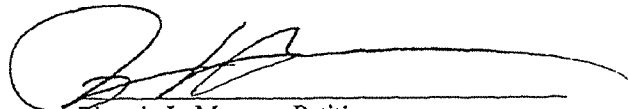
13
14 By: 
15 DONNA STIDHAM, ESQ.
16 Nevada Bar No. 9663
17 2551 S Fort Apache Rd #103
18 Las Vegas, NV 89117
19 Phone: (702) 444-3713
20 Facsimile: (702) 444-3714
21 donna@stidhamlawoffice.com
22 Attorneys for Petitioner
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1
2 VERIFICATION

3 STATE OF NEVADA)
4) ss.
5 COUNTY OF CLARK)

6 Rhonda L. Morgan, being first duly sworn, deposes and says:

7 That she is the Petitioner in the PETITION FOR PROBATE OF WILL, SUMMARY
8 ADMINISTRATION, AND ISSUANCE OF LETTERS; that she has read the foregoing Petition and
9 know the contents thereof; that the same is true of her own knowledge, except as to those matters
10 therein stated on information and belief, and as to those matters she believes them to be true.

11
12 
13 Rhonda L. Morgan, Petitioner

14
15 SUBSCRIBED AND SWORN TO before me
16 this ____ day of June, 2018.

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19 _____
20 Notary Public in and for said State
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See Attached

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Exhibit 9

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MCP1700877

Estate of: DENNIS JOHN CARVER

Filed Date: **12/01/2017**

Probate Decedent's Estates

Case Status: **Under Court Supervision**

Temecula - Department T1

\$

Case Summary

~ PARTIES

Search

Parties

Party Status

Represented By

NICHOLAS ALFANO

Former Personal
Representative

Jeremiah D Raxter

DENNIS JOHN CARVER

Decedent

BROOKE NICOLE CARVER

Rhonda L. Morgan
Jamie Marie Frenzel

MADISON DENISE CARVER

Pro Per

RHONDA L MORGAN

Proposed Special
Administrator

Rhonda L. Morgan
Jamie Marie Frenzel

BROWN, WHITE & OSBORN

Guardian ad Litem

Brown White &
Osborn

~ COMPLAINTS/PETITIONS

Filings

**Represented
By**

Status

Dispositions

**Estate of: DENNIS JOHN
CARVER Probate Decedent's Estates**

Under
Court
Supervision

Filings	Represented By	Status	Dispositions
Petition of Will & Letters of Testamentary IAEA NICHOLAS ALFANO		Filed: 12/01/2017	Judgment (Permanent Letters) 01/10/2018
Subsequent Petition for Letters of Special Administration with Limited Authority NICHOLAS ALFANO		Filed: 12/05/2017	Judgment (Permanent Letters) 12/15/2017
Subsequent Petition for Letter of Special Administration with General Powers Appointing RHONDA L MORGAN		Filed: 07/03/2018	
Subsequent Miscellaneous Petition filed by RHONDA L MORGAN		Filed: 07/03/2018	Judgment (Permanent Letters) 08/14/2018
Breach of Fiduciary Duty; To Compel An Accounting; Legal Malpractice; Breach of Fiduciary Duty As Attorney and Executor RHONDA L MORGAN		Filed: 12/27/2019	

✓ HEARINGS

Date Time	Type	Judicial Officer	Location/Courtroom	Disposition
12/15/2017 10:00 AM	Hearing on Subsequent Petition for Letters of Special Administration Appointing NICHOLAS ALFANO	Mark Cope	Department T1	Granted
01/05/2018 08:30 AM	Hearing on Petition for Probate of Will and for Letters Testamentary IAEA	Mark Cope	Department T1	Completed

Date Time	Type	Judicial Officer	Location/Courtroom	Disposition
08/22/2018 08:30 AM	Notice of Motion and Motion to be Relieved as Counsel NICHOLAS ALFANO	Mark Cope	Department T1	Completed
08/22/2018 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
09/19/2018 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Continued
09/19/2018 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
09/24/2018 10:42 AM	Court on its Own Motion	Mark Cope	Department T1	Completed
10/24/2018 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
10/24/2018 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Continued
01/09/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Continued

Date Time	Type	Judicial Officer	Location/Courtroom	Disposition
01/09/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
02/27/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
02/27/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Continued
04/17/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Continued
04/17/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
07/10/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
07/10/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Continued

Date Time	Type	Judicial Officer	Location/Courtroom	Disposition
09/04/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Continued
09/04/2019 08:30 AM	Hearing on Order to Show Cause why Surcharge should not be imposed in the amount of \$50,000.00 NICHOLAS ALFANO	Mark Cope	Department T1	Continued
09/04/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Continued
11/06/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO	Mark Cope	Department T1	Hearing Held
11/06/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO	Mark Cope	Department T1	Hearing Held
11/06/2019 08:30 AM	Hearing on Order to Show Cause why Surcharge should not be imposed in the amount of \$50,000.00 NICHOLAS ALFANO	Mark Cope	Department T1	Hearing Held
01/16/2020 11:24 AM	Court on its Own Motion	Mark Cope	Department T1	Completed
01/17/2020 08:30 AM	Hearing re: Notice of Motion and Motion to be Relieved as Counsel for	Mark Cope	Department T1	Vacated

Hearing Date Time	Probate Notes
-------------------	---------------

08/22/2018 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO at 8:30 AM in Department T1
---------------------	----------------------------------------------------------------------------------------------------------------------------------------------------

-----RECOMMENDATIONS-----

Continue for filing inventory and appraisal

-----REQUESTS-----

Letters testamentary issued 01/10/18

Examiner refers court to declaration re inventory filed 05/18/18 and declaration filed 07/16/18

-----DEFICIENCIES-----

No inventory and appraisal filed (however, Rhonda Morgan appointed successor executor on 08/07/18; OSC for final accounting by Nicholas Alfano is set for 09/19/18)

2 continuance(s)

Examined by J. Real on 05/01/18

Updated by S. Garcia on 05/22/18

Updated by J Real on 06/13/18

Updated by S. Garcia on 07/16/18

Update by O. Ciftcikara on 08/02/2018

Updated by J Real on 08/17/18

09/19/2018 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

Continue for filing first and final account of previous executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18

At hearing on 08/07/18, Court appointed Rhonda Morgan as successor executor and set this OSC for filing of an account by Nicholas

-----DEFICIENCIES-----

No first and final account filed

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Hearing Date Time Probate Notes

09/19/2018 08:30 AM Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO at 8:30 AM in Department T1

-----RECOMMENDATIONS-----

To be determined by Judge

-----REQUESTS-----

Letters testamentary issued 01/10/18

Examiner refers court to declaration re inventory filed 05/18/18 and declaration filed 07/16/18

-----DEFICIENCIES-----

No inventory and appraisal filed (however, Rhonda Morgan appointed successor executor on 08/07/18; OSC for final accounting by Nicholas Alfano is set for 09/19/18)

2 continuance(s)

Examined by J. Real on 05/01/18

Updated by S. Garcia on 05/22/18

Updated by J Real on 06/13/18

Updated by S. Garcia on 07/16/18

Update by O. Ciftcikara on 08/02/2018

Updated by J Real on 08/17/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Hearing Date Time	Probate Notes
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10/24/2018 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

To be determined by Judge

-----REQUESTS-----

Letters testamentary issued 01/10/18

Examiner refers court to declaration re inventory filed

05/18/18 and declaration filed 07/16/18

Sanctions of \$1500 imposed and stayed until 10/24/18 hearing

-----DEFICIENCIES-----

No inventory and appraisal filed (however, Rhonda Morgan appointed successor executor on 08/07/18; OSC for final accounting by Nicholas Alfano is set for 09/19/18)

3 continuance(s)

Examined by J. Real on 05/01/18

Updated by S. Garcia on 05/22/18

Updated by J Real on 06/13/18

Updated by S. Garcia on 07/16/18

Update by O. Ciftcikara on 08/02/2018

Updated by J Real on 08/17/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents filed.

Hearing Date Time	Probate Notes
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10/24/2018 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

Continue for filing first and final account of previous executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18
At hearing on 08/07/18, Court appointed Rhonda Morgan as successor executor and set this OSC for filing of an account by Nicholas

Sanctions of \$1500 imposed and stayed until 10/24/18 hearing

-----DEFICIENCIES-----

No first and final account filed

1 continuance(s)

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents filed.

01/09/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

Continue for filing first and final account of previous executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18
At hearing on 08/07/18, Court appointed Rhonda Morgan as successor executor and set this OSC for filing of an account by Nicholas

-----DEFICIENCIES-----

No first and final account filed

2 continuance(s)

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents filed.

Updated by J Real on 12/12/18

Reviewed by H. Gonzales on 01/04/19. No new documents filed.

Hearing Date Time	Probate Notes
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02/27/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Accounting NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

Continue for filing first and final account of previous executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18
At hearing on 08/07/18, Court appointed Rhonda Morgan as successor executor and set this OSC for filing of an account by Nicholas

-----DEFICIENCIES-----

No first and final account filed

4 continuance(s)

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents filed.

Updated by J Real on 12/12/18

Reviewed by H. Gonzales on 01/04/19. No new documents filed.

Updated by S. Garcia on 01/25/19

Reviewed by S. Garcia on 02/22/19. No new documents filed.

Hearing Date Time Probate Notes

04/17/2019 08:30 AM **Hearing on Order to Show Cause for Failure to Failure to File
Final Accounting NICHOLAS ALFANO at 8:30 AM** in
Department T1

-----RECOMMENDATIONS-----

Continue for filing first and final account of previous
executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18
At hearing on 08/07/18, Court appointed Rhonda Morgan as
successor executor and set this OSC for filing of an account
by Nicholas

-----DEFICIENCIES-----

No first and final account filed

5 continuance(s)

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents
filed.

Updated by J Real on 12/12/18

Reviewed by H. Gonzales on 01/04/19. No new documents
filed.

Updated by S. Garcia on 01/25/19

Reviewed by S. Garcia on 02/22/19. No new documents
filed.

Updated by J Real on 03/05/19

Reviewed by J. Real on 04/12/19. No new documents filed.

Hearing Date Time	Probate Notes
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07/10/2019 08:30 AM	Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

Continue for filing first and final account of previous executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18
At hearing on 08/07/18, Court appointed Rhonda Morgan as successor executor and set this OSC for filing of an account by Nicholas

-----DEFICIENCIES-----

No first and final account filed

6 continuance(s)

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents filed.

Updated by J Real on 12/12/18

Reviewed by H. Gonzales on 01/04/19. No new documents filed.

Updated by S. Garcia on 01/25/19

Reviewed by S. Garcia on 02/22/19. No new documents filed.

Updated by J Real on 03/05/19

Reviewed by J. Real on 04/12/19. No new documents filed.

Updated by L. Crosby on 05/29/2019

Reviewed by L. Crosby on 06/20/2019. No new documents filed.

Reviewed by H. Gonzales on 07/05/19. No new documents filed.

Hearing Date Time	Probate Notes
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09/04/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Accounting NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

Continue for filing first and final account of previous executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18
At hearing on 08/07/18, Court appointed Rhonda Morgan as successor executor and set this OSC for filing of an account by Nicholas

-----DEFICIENCIES-----

No first and final account filed

7 continuance(s)

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents filed.

Updated by J Real on 12/12/18

Reviewed by H. Gonzales on 01/04/19. No new documents filed.

Updated by S. Garcia on 01/25/19

Reviewed by S. Garcia on 02/22/19. No new documents filed.

Updated by J Real on 03/05/19

Reviewed by J. Real on 04/12/19. No new documents filed.

Updated by L. Crosby on 05/29/2019

Reviewed by L. Crosby on 06/20/2019. No new documents filed.

Reviewed by H. Gonzales on 07/05/19. No new documents filed.

Updated by J Real on 07/26/19

Updated by L. Crosby on 08/15/19

Reviewed by L. Crosby on 08/29/19. No new documents filed.

Hearing Date Time	Probate Notes
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11/06/2019 08:30 AM	Hearing on Order to Show Cause for Failure to File Final Accounting NICHOLAS ALFANO at 8:30 AM in Department T1
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-----RECOMMENDATIONS-----

Continue for filing first and final account of previous executor, Nicholas Alfano

-----REQUESTS-----

Letters testamentary issued to Nicholas Alfano on 01/10/18
At hearing on 08/07/18, Court appointed Rhonda Morgan as successor executor and set this OSC for filing of an account by Nicholas

See 10/29/19 declaration filed by attorney

-----DEFICIENCIES-----

No first and final account filed

8 continuance(s)

Examined by J. Real on 08/20/18

Updated by J Real on 08/30/18

Reviewed by J. Real on 09/14/18. No new documents filed.

Updated by J Real on 10/01/18

Reviewed by Sheri Cruz on 10/19/18. No new documents filed.

Updated by J Real on 12/12/18

Reviewed by H. Gonzales on 01/04/19. No new documents filed.

Updated by S. Garcia on 01/25/19

Reviewed by S. Garcia on 02/22/19. No new documents filed.

Updated by J Real on 03/05/19

Reviewed by J. Real on 04/12/19. No new documents filed.

Updated by L. Crosby on 05/29/2019

Reviewed by L. Crosby on 06/20/2019. No new documents filed.

Reviewed by H. Gonzales on 07/05/19. No new documents filed.

Updated by J Real on 07/26/19

Updated by L. Crosby on 08/15/19

Reviewed by L. Crosby on 08/29/19. No new documents filed.

Updated by S. Garcia on 10/03/19

Updated by S. Cruz on 11/01/19

Hearing Date Time Probate Notes

02/06/2020 08:30 AM Hearing on Subsequent Miscellaneous Petition filed by
BROOKE NICOLE CARVER, RHONDA L MORGAN at 8:30 AM
in Department T1

-----RECOMMENDATIONS-----

Continue for notice

-----REQUESTS-----

Petitioner is/are Rhonda L. Morgan and Brooke Carver, as
co-Trustees of the Dennis John Carver Trust and Lorraine
Susan Carver trust, and Rhonda L. Morgan as executor of
executors of the estates of both Trustors

Petitioner(s) alleges trust created 01/22/17

Petitioner(s) alleges both Trustors deceased 10/16/17

Petitioner(s) alleges Brooke N. Carver and Madison Carver
are surviving children of Trustors

Petitioner(s) alleges Nicholas Alfano was named as
successor Trustee and began serving on 10/17/17

Petitioner(s) alleges Nicholas was appointed special
administrator of both estates on 12/20/17 and as executor
on 01/08/18

Petitioner(s) alleges Nicholas resigned as Trustee on
04/23/18 and appointed Brooke Nicole Carver and Rhonda
L. Morgan as successor Trustees

Petitioner(s) alleges Trustor owned sole proprietorship
business known as So. Cal. Jetting and Commercial
Plumbing and AC, which were assigned to the trust

Petitioner(s) alleges Nicholas caused Brooke Carver to
execute documents wherein she purported to be come the
CEO of the businesses as he was having difficulty cashing
and depositing checks after he "dissolved" the business
Petitioner(s) alleges on 02/02/18 Nicholas released all
accounts and trades of Commercial Plumbing to Robert
McKechnie and gave away \$85,895 in materials and
supplies to Robert McKechnie

Petitioner(s) alleges Nicholas wrote improper checks and
was assisted by Lindsay Alfano

Petitioner(s) alleges Trustor loaned Nicholas \$70,000 and
Nicholas persuaded Brooke to forgive loan and give him an
additional \$30,000. They also allege he destroyed the note
Petitioner(s) alleges Nicholas took improper loans and sold
assets under fair market value from the trust

Petitioner(s) alleges Nicholas and Lindsay took improper
actions with regard to collection of accounts for Commercial
Plumbing

**Petitioner(s) alleges causes of action for breach of fiduciary
duty, to compel an accounting, for legal malpractice, breach
of fiduciary duty as an attorney, recovery of stolen property,
fraud and deceit, conversion, civil conspiracy, breach of
contract, breach of the covenant of good faith and fair
dealing, unjust enrichment, and declaratory relief**
Petitioner(s) request(s) double damages, attorney's fees

Hearing Date Time Probate Notes

03/17/2020 08:30 AM Hearing on Subsequent Miscellaneous Petition filed by
BROOKE NICOLE CARVER, RHONDA L MORGAN at 8:30 AM
in Department T1

-----RECOMMENDATIONS-----

Continue for notice

-----REQUESTS-----

Petitioner is/are Rhonda L. Morgan and Brooke Carver, as
co-Trustees of the Dennis John Carver Trust and Lorraine
Susan Carver trust, and Rhonda L. Morgan as executor of
executors of the estates of both Trustors

Petitioner(s) alleges trust created 01/22/17

Petitioner(s) alleges both Trustors deceased 10/16/17

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are surviving children of Trustors

Petitioner(s) alleges Nicholas Alfano was named as
successor Trustee and began serving on 10/17/17

Petitioner(s) alleges Nicholas was appointed special
administrator of both estates on 12/20/17 and as executor
on 01/08/18

Petitioner(s) alleges Nicholas resigned as Trustee on
04/23/18 and appointed Brooke Nicole Carver and Rhonda
L. Morgan as successor Trustees

Petitioner(s) alleges Trustor owned sole proprietorship
business known as So. Cal. Jetting and Commercial
Plumbing and AC, which were assigned to the trust

Petitioner(s) alleges Nicholas caused Brooke Carver to
execute documents wherein she purported to be come the
CEO of the businesses as he was having difficulty cashing
and depositing checks after he "dissolved" the business
Petitioner(s) alleges on 02/02/18 Nicholas released all
accounts and trades of Commercial Plumbing to Robert
McKechnie and gave away \$85,895 in materials and
supplies to Robert McKechnie

Petitioner(s) alleges Nicholas wrote improper checks and
was assisted by Lindsay Alfano

Petitioner(s) alleges Trustor loaned Nicholas \$70,000 and
Nicholas persuaded Brooke to forgive loan and give him an
additional \$30,000. They also allege he destroyed the note
Petitioner(s) alleges Nicholas took improper loans and sold
assets under fair market value from the trust

Petitioner(s) alleges Nicholas and Lindsay took improper
actions with regard to collection of accounts for Commercial
Plumbing

Petitioner(s) alleges causes of action for breach of fiduciary
duty, **to compel an accounting**, for legal malpractice, breach
of fiduciary duty as an attorney, recovery of stolen property,
fraud and deceit, conversion, civil conspiracy, breach of
contract, breach of the covenant of good faith and fair
dealing, unjust enrichment, and declaratory relief
Petitioner(s) request(s) double damages, attorney's fees

Status	Date	Description	Filed By	Confidential
Filed	07/03/2018	Subsequent Miscellaneous Probate Petition for Appointment of Successor Personal Representative and Issuance of Letters Testamentary, Request for Order for Accounting, Request for Order to Turn Over Property and Documents and Request for Surcharge of Former Personal Representative	RHONDA L MORGAN	
Filed	07/05/2018	Duties and Liabilities of Personal Representative. (DE-147) on Subsequent Petition for Letter of Special Administration with General Powers Appointing RHONDA L MORGAN	RHONDA L MORGAN	
Filed	07/05/2018	Declaration of Regarding Notice of Ex Parte Application	RHONDA L MORGAN	
Filed	07/05/2018	Confidential Supplement to Duties and Liabilities of Personal Representative. on Subsequent Petition for Letter of Special Administration with General Powers Appointing RHONDA L MORGAN		YES
Proposed	07/06/2018	Proposed Letters Submitted for the hearing date 7/06/18 on Subsequent Petition for Letter of Special Administration with General Powers Appointing RHONDA L MORGAN	RHONDA L MORGAN	YES
Generated	07/06/2018	Minute Order: Hearing re: Petition for Letters of Special Administration Appointing RHONDA L MORGAN		

Status	Date	Description	Filed By	Confidential
Filed	08/22/2018	Order Granting Attorney's Motion to be Relieved as Counsel on Petition of Will & Letters of Testamentary IAEA NICHOLAS ALFANO		
Generated	08/22/2018	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Generated	08/22/2018	Minute Order: Notice of Motion and Motion to be Relieved as Counsel NICHOLAS ALFANO		
Generated	09/19/2018	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Generated	09/19/2018	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		
Generated	09/20/2018	Certificate of Mailing		
Generated	09/20/2018	Certificate of Mailing		
Generated	09/24/2018	Minute Order: Court on its Own Motion		
Generated	09/24/2018	Certificate of Mailing		
Filed	09/26/2018	Creditor's Claim from HTA Plumbing & Mechanical, Inc in the amount of \$19,022.51 on Subsequent Miscellaneous Petition filed by RHONDA L MORGAN		
Generated	10/24/2018	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		

Status	Date	Description	Filed By	Confidential
Generated	10/24/2018	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Generated	01/09/2019	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Generated	01/09/2019	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		
Generated	01/09/2019	Amended Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Filed	02/26/2019	Inventory and Appraisal (DE-160/GC-040), Partial No. 1 on Petition of Will & Letters of Testamentary IAEA NICHOLAS ALFANO	NICHOLAS ALFANO	
Generated	02/27/2019	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		
Generated	02/27/2019	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Filed	04/12/2019	Creditor's Claim from Colonial Real Estate Partnership, Ltd in the amount of \$121,851.64		

Status	Date	Description	Filed By	Confidential
Generated	04/17/2019	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Generated	04/17/2019	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		
Generated	07/10/2019	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		
Generated	07/10/2019	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Generated	07/10/2019	Notice of Order to Show Cause why Surcharge should not be imposed.		
Proposed	07/11/2019	Proposed Order for Sanctions and Order to Show Cause As to Why Surcharge Should Not Be Granted	RHONDA L MORGAN	YES
Filed	07/16/2019	Order for Sanctions and Order to Show Cause as to Why Sucharge Should Not be Granted	RHONDA L MORGAN	
Filed	07/29/2019	Notice of Entry of Judgment	RHONDA L MORGAN	
Filed	09/04/2019	Substitution of Attorney		
Generated	09/04/2019	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		

Status	Date	Description	Filed By	Confidential
Generated	09/04/2019	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Generated	09/04/2019	Minute Order: Hearing on Order to Show Cause why Surcharge should not be imposed in the amount of \$50,000.00 NICHOLAS ALFANO		
Filed	10/29/2019	Declaration of Nicholas Alfano in Response to Order to Show Cause for Failure to File Sufficient Inventory and Appraisal; Order to Show Cause for Failure to file Final Accounting and Order to Show Cause why Surcharge should not be imposed	NICHOLAS ALFANO	
Filed	11/05/2019	Declaration of Jamie M Frenzel	RHONDA L MORGAN	
Generated	11/06/2019	Minute Order: Hearing on Order to Show Cause for Failure to Failure to File Final Accounting NICHOLAS ALFANO		
Generated	11/06/2019	Minute Order: Hearing on Order to Show Cause why Surcharge should not be imposed in the amount of \$50,000.00 NICHOLAS ALFANO		
Generated	11/06/2019	Minute Order: Hearing on Order to Show Cause for Failure to File Final Inventory and Appraisal as to Nicholas Alfano NICHOLAS ALFANO		
Filed	12/05/2019	Notice of Motion and Motion to be Relieved as Counsel (MC-051)	NICHOLAS ALFANO	

Status	Date	Description	Filed By	Confidential
Filed	12/05/2019	Declaration in Support of Attorney's Motion to be Relieved as Counsel	NICHOLAS ALFANO	
Proposed	12/05/2019	Proposed Order Granting Attorney's Motion to be Relieved as Counsel		YES
Filed	12/27/2019	Subsequent Miscellaneous Probate Petition for Breach of Fiduciary Duty; To Compel An Accounting; Legal Malpractice; Breach of Fiduciary Duty As Attorney and Executor	RHONDA L MORGAN	
Filed	12/27/2019	Trust Document Coversheet (Confidential) Local Rule 7131	RHONDA L MORGAN	YES
Filed	01/16/2020	Request for Dismissal	NICHOLAS ALFANO	
Generated	01/16/2020	Minute Order: Court on its Own Motion		
Filed	01/17/2020	Notice of Hearing (Decedent's Estate or Trust) (DE-120) re: Petition for: 1.Breach of Fiduciary Duty; 2. To Compel an Accounting; 3. Legal Malpractice;		
Generated	02/06/2020	Minute Order: Hearing on Subsequent Miscellaneous Petition filed by BROOKE NICOLE CARVER, RHONDA L MORGAN		
Filed	02/13/2020	Summons Issued and Filed as to A&N Acquisitions		
Filed	02/13/2020	Summons Issued and Filed as to Madison Carver		
Filed	02/13/2020	Summons Issued and Filed as to Alfano Law		

Date Imposed	Fee/Fine Description	Amount	Paid	Balance
09/06/2018	Preparing copies/copy fees (GC 70627A)	\$0.00	\$0.00	\$0.00
10/17/2018	Issuing writ for enforcement of order of judgment, writ of execution; abstract of judgment; certificate of satisfaction of judgment; certifying copy of paper, record, or proceeding on file; taking affidavit; etc. (GC 70626A1-8)	\$100.00	\$100.00	\$0.00
10/17/2018	Preparing copies/copy fees (GC 70627A)	\$7.00	\$7.00	\$0.00
04/12/2019	Direct fax filing/Shipping costs for transcripts for civil cases on appeal/Returning file stamped copies of documents by fax (CRC10.815)	\$24.00	\$24.00	\$0.00
07/10/2019	Sanctions imposed Due Date: 09/04/2019 Reason: Failure to File Final Accounting	\$1,500.00	\$0.00	\$1,500.00
07/10/2019	Sanctions imposed Due Date: 09/04/2019 Reason: Failure to File Final Inventory and Appraisal	\$1,500.00	\$0.00	\$1,500.00
07/11/2019	Fee for eSubmit (SAP 821157)	\$1.00	\$1.00	\$0.00
07/29/2019	Fee for eSubmit (SAP 821157)	\$1.00	\$1.00	\$0.00
09/05/2019	Fee for eSubmit (SAP 821157)	\$1.00	\$1.00	\$0.00
10/29/2019	Fee for eSubmit (SAP 821157)	\$1.00	\$1.00	\$0.00
11/06/2019	Fee for eSubmit (SAP 821157)	\$1.00	\$1.00	\$0.00
11/06/2019	Sanctions imposed Due Date: 12/06/2019 Reason: Failure to File Final Inventory and Appraisal.	\$1,500.00	\$0.00	\$0.00
12/06/2019	Probate Motion Fee	\$60.00	\$60.00	\$0.00
12/06/2019	Court Reporter Fee Under 1 Hour	\$30.00	\$30.00	\$0.00
12/06/2019	Fee for eSubmit (SAP 821157)	\$1.00	\$1.00	\$0.00

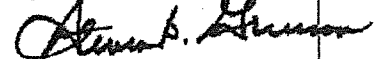
Date Imposed	Fee/Fine Description	Amount	Paid	Balance
12/27/2019	Court Reporter Fee Under 1 Hour	\$30.00	\$30.00	\$0.00
12/27/2019	Subsequent Papers: Petitions, objections, or other papers (GC70658(A))	\$435.00	\$435.00	\$0.00
01/17/2020	Fee for eSubmit (SAP 821157)	\$1.00	\$1.00	\$0.00

› OTHER CASES

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Exhibit 10



1 **PET**
2 DONNA STIDHAM, ESQ.
3 Nevada Bar No. 9663
4 LAW OFFICE OF DONNA STIDHAM, LLC
5 2551 S Fort Apache Rd #103
6 Las Vegas, NV 89117
7 Phone: (702) 444-3713
8 Facsimile: (702) 444-3714
9 donna@stidhamlawoffice.com
10 Attorneys for Petitioner,
11 Rhonda L. Morgan

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

14 IN THE MATTER OF THE ESTATE OF
15
16 DENNIS JOHN CARVER
17
18 Deceased,

Case No.: P-18-095892-E
Dept. No. PC1

Hearing Date: May 3, 2019
Hearing Time: 9:30 a.m.

19 **PETITION FOR WAIVER OF ACCOUNTING, FOR PAYMENT OF ATTORNEY'S FEES,**
20 **AND PETITION FOR DISTRIBUTION**

21 Rhonda L. Morgan, (the "Petitioner") as Executor for Estate of Dennis John Carver, (the
22 "Estate") now presents to this Honorable Court this Petition for Waiver of Final Accounting, for
23 Payment of Attorneys' Fees and Costs, and for Final Distribution of the Estate. In support of this
24 petition, the Executor respectfully declares:

25 1. That Dennis John Carver died on the 16th day of October, 2017, in Riverside County,
26 California. The Decedent was not a resident of Clark County, Nevada, but jurisdiction is proper under
27 NRS 136.010 because the Decedent died owning real property in Clark County, Nevada.

28 2. That Letters Testamentary were issued to Petitioner by the Court herein on July 25,
2018, and that Petitioner has been, and now is, the duly appointed, qualified and acting Executor of
the Estate of Dennis John Carver.

1 3. That immediately after Letters Testamentary were issued to Petitioner in this estate
2 matter, Petitioner caused to be duly published a Notice to Creditors as required by N.R.S. 147.010,
3 and that an Affidavit of Publication of such notice has been filed herein.

4 4. More than ninety (90) days have elapsed since publication of said Notice. No creditor
5 claims have been filed in this matter.

6 5. That Brooke Nichole Carver and Rhonda L. Morgan, as co-trustees of The Living
7 Trust of Dennis John Carver, dated January 22, 2017, the sole beneficiary of the Estate, have waived
8 the requirement of an inventory in this matter pursuant to NRS 144.010. The Waiver of Inventory is
9 attached as Exhibit "1."

10 6. In accordance with NRS 150.075, Brooke Nichole Carver and Rhonda L. Morgan, as
11 co-trustees of The Living Trust of Dennis John Carver, dated January 22, 2017, the sole beneficiary
12 of the Estate, have agreed to waive the final accounting. The Waiver of Accounting is attached as
13 Exhibit "2."

14 7. The Petitioner has waived the compensation to which she is entitled for her services as
15 personal representative of the Estate under NRS 150.020.

16 8. That the Law Office of Donna Stidham, LLC, as attorney for the Administrator of the
17 estate, has rendered the legal services necessary to the administration of said estate, has performed
18 services on behalf of the estate, including preparing and filing all necessary legal documents, notices
19 and pleadings required to date in this estate matter, and other necessary services in connection with
20 this estate matter, for which services the Petitioner has agreed to pay personally out of the estate the
21 sum of \$12,180.00 for attorney's fees, a copy of which is attached hereto as Exhibit "3." This fee is
22 just and reasonable in the circumstances. That the firm has advanced costs to the estate in the amount
23 of \$1,383.12. That the Law Office of Donna Stidham, LLC, may also advance additional fees and
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1 costs in conjunction with the closing of the Estate, which will not exceed \$2,000 in fees and \$500 in
2 costs without prior Court approval. Petitioner request that she be authorized and directed to pay The
3 Law Office of Donna Stidham, LLC, the total balance in the amount of \$16,063.12.

4 9. All notices and requirements of statute have been duly and regularly had and taken
5 prior to the filing of this account and petition for fees, and said estate is now in a condition to be
6 finally settled and distributed.
7

8 10. After allowance and payment of unpaid fees and closing expenses, this estate will be
9 in a condition to be finally settled and distributed. It is appropriate to distribute the assets of the
10 Estate pursuant to the Decedent's will. The will is a pour-over will and Article 3.C., directs that the
11 entire Estate be distributed to The Living Trust of Dennis John Carver, dated January 22, 2017. In the
12 event additional Estate assets are later discovered, such assets should also be distributed to The
13 Living Trust of Dennis John Carver, dated January 22, 2017.
14

15 11. Petitioner requests that she be authorized and directed to distribute and record an
16 Executor's Deed, by virtue of which title to the decedent's real properties, listed on Exhibit "4," shall
17 be vested in the name of The Living Trust of Dennis John Carver, dated January 22, 2017.
18

19 12. In the event any assets are hereinafter found, said assets should be distributed to The
20 Living Trust of Dennis John Carver, dated January 22, 2017.

21 13. In the event there are any unpaid taxes due to any governmental agency, Petitioner
22 requests that any such taxes remaining due and owing as a result of the death of Dennis John Carver
23 be borne by The Living Trust of Dennis John Carver, dated January 22, 2017.
24

25 14. That no requests for special notice have been filed in this estate proceeding.
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1 WHEREFORE, Petitioner prays that this account and petition shall be set for hearing; that
2 notice of time and place for such hearing shall be given in the manner required by law; and that, after
3 hearing the matters of this petition, this Court orders the following:

4 1. Waiving the requirement of an inventory in accordance with NRS 144.010;
5
6 2. Waiving the requirement of a final accounting in accordance with NRS 150.075;
7
8 3. That the Petitioner be authorized and directed to pay The Law Office of Donna
9 Stidham, LLC, the sum of \$13,563.12 for outstanding legal fees and costs in this matter and
10 \$2,500.00 for the additional fees and costs in conjunction with the closing of the Estate for a total of
11 \$16,063.12 due and owing;

12 4. That the Petitioner be authorized and directed to distribute the remaining assets to The
13 Living Trust of Dennis John Carver, dated January 22, 2017;

14 5. That the Petitioner be authorized and directed to distribute and record an Executor's
15 Deed, by virtue of which title to the decedent's real properties, listed on Exhibit "4," shall be vested
16 in the name of The Living Trust of Dennis John Carver, dated January 22, 2017
17

18 6. That the Petitioner be authorized and directed to distribute any assets hereinafter found
19 to The Living Trust of Dennis John Carver, dated January 22, 2017;

20 7. That this Court enter an order directing that any hereafter discovered unpaid taxes due
21 any governmental agency as a result of the death of Dennis John Carver be borne by The Living
22 Trust of Dennis John Carver, dated January 22, 2017.

23 8. That on the filing of appropriate receipts, your Executor be discharged from further
24 responsibilities as such Administrator and that said estate be then closed.
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9. That all other proper orders be made in the premises.

DATED this 8th day of April, 2019.

Submitted by:

LAW OFFICE OF DONNA STIDHAM, LLC

By: Donna Stidham, Esq.
DONNA STIDHAM, ESQ.
Nevada Bar No. 9663
2551 S Fort Apache Rd #103
Las Vegas, NV 89117
Phone: (702) 444-3713
Facsimile: (702) 444-3714
donna@stidhamlawoffice.com
Attorneys for Petitioner

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Rhonda L. Morgan, being first duly sworn, deposes and says:

That she is the Petitioner in the foregoing PETITION FOR WAIVER OF ACCOUNTING,
FOR PAYMENT OF ATTORNEY'S FEES, AND PETITION FOR DISTRIBUTION; that she has
read the foregoing Petition and know the contents thereof; that the same is true of her own
knowledge, except as to those matters therein stated on information and belief, and as to those
matters she believes them to be true.


Rhonda L. Morgan, Petitioner

SUBSCRIBED AND SWORN TO before me
this ____ day of _____, 2019.

Notary Public in and for said State

see attached

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Riverside

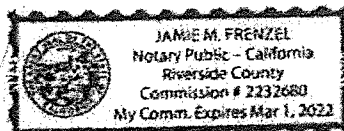
On April 3, 2019 before me, Jamie M. Frenzel, Notary Public
(insert name and title of the officer)

personally appeared Aminda L. Morgan
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jamie M. Frenzel (Seal)



1 WAIV
2 DONNA STIDHAM, ESQ.
3 Nevada Bar No. 9663
4 LAW OFFICE OF DONNA STIDHAM, LLC
5 2551 S Fort Apache Rd #103
6 Las Vegas, NV 89117
7 Phone: (702) 444-3713
8 Facsimile: (702) 444-3714
9 donna@stidhamlawoffice.com
10 Attorneys for Petitioner,
11 Rhonda L. Morgan

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 IN THE MATTER OF THE ESTATE OF
15 DENNIS JOHN CARVER

Case No.: P-18-095892-E
Dept. No. PC1

16 Deceased,

17 WAIVER OF INVENTORY

18 We, Brooke Nichole Carver and Rhonda L. Morgan, as co-trustees of The Living Trust of
19 Dennis John Carver, dated January 22, 2017, the sole beneficiary of the Estate of Dennis John
20 Carver, declare under penalties of perjury under the laws of the State of Nevada that we waive the
21 requirement of an inventory in this matter pursuant to NRS 144.010.

22 
23 Brooke Nichole Carver

10-10-18
DATE

24 
25 Rhonda L. Morgan

10-10-18
DATE

1 **WAIV**
2 **DONNA STIDHAM, ESQ.**
3 Nevada Bar No. 9663
4 **LAW OFFICE OF DONNA STIDHAM, LLC**
5 2551 S Fort Apache Rd #103
6 Las Vegas, NV 89117
7 Phone: (702) 444-3713
8 Facsimile: (702) 444-3714
9 donna@stidhamlawoffice.com
10 Attorneys for Petitioner,
11 Rhonda L. Morgan

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

14 **IN THE MATTER OF THE ESTATE OF**
15 **DENNIS JOHN CARVER**

Case No.: P-18-095892-E
Dept. No. PC1


16 Deceased,

17 **WAIVER OF ACCOUNTING**

18 We, Brooke Nichole Carver and Rhonda L. Morgan, as co-trustees of The Living Trust of
19 Dennis John Carver, dated January 22, 2017, the sole beneficiary of the Estate of Dennis John
20 Carver, declare under penalties of perjury under the laws of the State of Nevada that we waive the
21 requirement of an accounting in this matter pursuant to NRS 150.075.

22 
23 Brooke Nichole Carver

10-10-18
DATE

24 
25 Rhonda L. Morgan

10-10-18
DATE

LAW OFFICE of
DONNA STIDHAM
LLC

Invoice

2551 S Fort Apache Road, Suite 103
Las Vegas, NV 89117

Bill To:
Estate of Dennis Carver Rhonda Morgan - Administrator

Invoice Date:	Invoice #:
11/5/2018	6135

Terms
Due on receipt

Date	Description	Hours/Qty	Rate	Amount
5/14/2018	Phone call with Rhonda Morgan about probate, create engagement letter and email to administrator and set up file.	0.6	300.00	180.00
6/7/2018	Prepare petition for probate of Will, notice of hearing, certificate of mailing, civil cover sheet, affidavit of Douglas Edwards, declination to serve and letters testamentary.	10	300.00	3,000.00
6/11/2018	Received phone call from Rhonda Morgan re: lawsuit filed against the estate. Read through lawsuit.	0.5	300.00	150.00
6/11/2018	Emailed Petition and Letters to Rhonda for signature.	0.1	300.00	30.00
6/28/2018	Prepare declination to serve for Jennifer Shea and email to administrator for signatures.	0.5	300.00	150.00
6/29/2018	Received signed copy of declination to serve, review, email administrator re: signature as it looked like it was electronically signed. Confirmed with administrator that Jennifer will actually sign and email the declination to serve.	0.5	300.00	150.00
7/3/2018	Prepare addendum to petition for probate.	1.5	300.00	450.00
7/18/2018	Received email from probate court for home address of administrator. Email administrator and provide information to the court.	0.6	300.00	180.00
7/18/2018	Received phone call from administrator about vehicle accident suit against Dennis' company and moving forward with probate. Research personal injury lawsuit case. Phone call with administrator with information on lawsuit and moving forward with probate.	1	300.00	300.00
7/18/2018	Prepare second addendum to petition for probate.	1	300.00	300.00
7/20/2018	Appear in court for approved list and pick up court order. Submit orders to be stamped.	1.3	300.00	390.00

Thank you for choosing the Law Office of Donna Stidham, LLC.

Total

Phone #	702-444-3713
Fax:	702-444-3714

Payments/Credits

Balance Due

Web Site	www.stidhamlawoffice.com
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LAW OFFICE of
DONNA STIDHAM
LLC

Invoice

2551 S Fort Apache Road, Suite 103
Las Vegas, NV 89117

Bill To:
Estate of Dennis Carver Rhonda Morgan - Administrator

Invoice Date:	Invoice #:
11/5/2018	6135

Terms
Due on receipt

Date	Description	Hours/Qty	Rate	Amount
7/23/2018	Received stamped orders, save to file and emailed them to administrator.	0.2	300.00	60.00
7/25/2018	Prepare notice to creditors. Travel to court for Issuance of Letters, certified order.	1.5	300.00	450.00
7/26/2018	Email Letters Testamentary to administrator.	0.1	300.00	30.00
10/3/2018	Emails to residential and commercial appraisers with property info. Received email from both appraisers on cost and timing.	0.7	300.00	210.00
10/8/2018	Phone call with administrator re: law suits, waiving inventory and creditors. Prepare waiver of accounting and waiver of inventory.	1.5	300.00	450.00
10/15/2018	Prepare petition for waiver of accounting, petition for distribution, notice of hearing, certificate of mailing, order granting petition, notice of entry of order.	10	300.00	3,000.00
10/17/2018	Prepare Deed of Executor 250 Sunpac	1	300.00	300.00
10/17/2018	Prepare Deed of Executor 950 Empire Mesa	1	300.00	300.00
10/17/2018	Prepare Deed of Executor 958 Empire Mesa	1	300.00	300.00
10/17/2018	Prepare Deed of Executor 2316 Martinique	1	300.00	300.00
10/17/2018	Prepare Deed of Executor 4320 Alexander	1	300.00	300.00
10/17/2018	Prepare Deed of Executor Bayleaf Terrace	1	300.00	300.00
10/17/2018	Prepare Deed of Executor Four Kids	1	300.00	300.00
10/17/2018	Prepare Deed of Executor Pabco Rd.	1	300.00	300.00
11/5/2018	Prepare billing, email Petition for Final Distribution to administrator.	1	300.00	300.00
				12,180.00
7/23/2018	Fee to file court order/petition		17.50	17.50
7/23/2018	Nevada Legal News notice filing fee		79.00	79.00
7/23/2018	Fee to open probate		557.12	557.12
7/20/2018	Parking at courthouse		5.50	5.50
7/25/2018	Parking at courthouse		5.50	5.50
7/25/2018	Certified order fee		5.00	5.00

Thank you for choosing the Law Office of Donna Stidham, LLC.

Total

Phone #	702-444-3713
Fax:	702-444-3714

Payments/Credits

Balance Due

Web Site	www.stidhamlawoffice.com
----------	--------------------------

LAW OFFICE of
DONNA STIDHAM
LLC

Invoice

2551 S Fort Apache Road, Suite 103
Las Vegas, NV 89117

Bill To:

Estate of Dennis Carver
Rhonda Morgan - Administrator

Invoice Date:

11/5/2018

Invoice #:

6135

Terms

Due on receipt

Date	Description	Hours/Qty	Rate	Amount
8/23/2018	Fee to file court order/petition		3.50	3.50
8/23/2018	Nevada Legal News notice filing fee		70.00	70.00
	Filing fee for court order on properties		320.00	320.00
	Filing fee for Deed of Executor		320.00	320.00
	Total Reimbursable Expenses			1,383.12
Thank you for choosing the Law Office of Donna Stidham, LLC.			Total	\$13,563.12
Phone #	702-444-3713		Payments/Credits	\$0.00
Fax:	702-444-3714		Balance Due	\$13,563.12
Web Site	www.stidhamlawoffice.com			

PROPERTY 1:

LEGAL DESCRIPTION: THE EASTERLY 90.01 FEET OF THE WESTERLY 180.01 FEET OF THE FOLLOWING DESCRIBED PROPERTY:

A PORTION OF LOT ONE (1) OF SUNPAC INDUSTRIAL PARK UNIT TWO, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 76 OF PLATS, PAGE 60, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, BEING A PORTION OF THE NORTHEAST QUARTER (NE ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 1, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M.D.M., IN THE CITY OF HENDERSON, COUNTY OF CLARK, STATE OF NEVADA, ALSO BEING LOT 4 AND 7, OF RECORD SURVEY PER FILE 89, PAGE 97, OFFICIAL RECORDS OF SAID CLARK COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WESTERLY TERMINUS OF THE CENTERLINE OF SUNPAC AVENUE, SHOWN ON SAID RECORD OF SURVEY, AS HAVING A BEARING AND DISTANCE OF SOUTH 89°13'56" EAST A DISTANCE OF 1311.06 FEET; THENCE ALONG SAID CENTERLINE SOUTH 89°13'56" EAST A DISTANCE OF 406.44 FEET; THENCE LEAVING SAID CENTERLINE NORTH 00°14'21" EAST A DISTANCE OF 30.00 FEET TO THE NORTHERLY LINE OF SAID SUNPAC AVENUE, ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 4 AND THE TRUE POINT OF BEGINNING;

THENCE ALONG THE WESTERLY LINE OF SAID LOT 4 NORTH 00°14'21" EAST A DISTANCE OF 250.01 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 4 AND 7 SOUTH 89°13'56" EAST A DISTANCE OF 360.02 FEET; THENCE LEAVING SAID NORTHERLY LINE OF LOT 7, SOUTH 00°43'47" WEST A DISTANCE OF 250.01 FEET TO THE SOUTHERLY LINE OF SAID LOT 7; THENCE ALONG THE SOUTHERLY LINE OF SAID LOTS 4 AND 7 NORTH 89°13'56" WEST A DISTANCE OF 360.02 FEET TO THE TRUE POINT OF BEGINNING.

FURTHER DELINEATED AS LOT TWO (2) OF COMMERCIAL RECORD OF SURVEY ON FILE, IN FILE 97, PAGE 88, OF OFFICIAL RECORDS OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

More commonly known as: **250 Sunpac Avenue, #100, Henderson, Nevada 89011**

APN: 178-01-511-045

PROPERTY 2:

LEGAL DESCRIPTION:

PARCEL 1:

A PORTION OF THE LOT 2 OF THE HILLSIDE BUSINESS PARK (A COMMERCIAL SUBDIVISION) AS SHOWN ON THE FINAL PLAT THEREOF RECORDED IN BOOK 98 OF PLATS ON PAGE 84, OFFICIAL RECORDS OF CLARK COUNTY, NEVADA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2, THENCE SOUTH 01°01'23" EAST ALONG THE WEST LINE THEREOF 260.00 FEET; THENCE NORTH 88°58'37" EAST, 201.93 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88°58'37" EAST, 198.16 FEET; THENCE SOUTH 01°01'23" EAST, 83.00 FEET; THENCE SOUTH 88°58'37" WEST, 198.16 FEET; THENCE NORTH 01°01'23" WEST 83.00 FEET TO THE POINT OF BEGINNING.

SAID PROPERTY IS ALSO KNOWN AS LOT 23 OF THAT CERTAIN RECORD OF SURVEY IN FILE 123, PAGE 92, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 01, 2010 IN BOOK 20101101 AS INSTRUMENT NO. 03184, OF OFFICIAL RECORDS CLARK COUNTY, NEVADA.

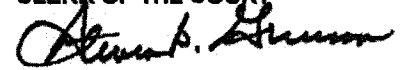
PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, PUBLIC UTILITIES AND INCIDENTAL PURPOSES AS DESCRIBED IN DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HILLSIDE BUSINESS PARK RECORDED MARCH 23, 2001 IN BOOK 20010323, DOCUMENT NO. 00483, OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AS AMENDED BY DOCUMENT RECORDED SEPTEMBER 13, 2004 IN BOOK 20040913 AS INSTRUMENT NO. 00701 OF OFFICIAL RECORDS.

More commonly known as: **950 Mesa Empire Way, Henderson, Nevada 89011**

APN: 178-02-111-034

EXHIBIT “4”



David T. Blake (# 11059)
Clear Counsel Law Group
50 S. Stephanie St., Ste. 101
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
dave@clearcounsel.com
Attorneys for Rhonda Morgan, Esq.
Personal Representative of the Estate of Carver

DISTRICT COURT

DISTRICT OF NEVADA

In the Matter of the Estate of:

CASE NO.: P-18-095892-E
DEPT NO.: 8

Dennis John Carver

Deceased

**Sur-Reply in support of Objection to
Petition for an Order to Show Cause Why
Estate Should Not be Reopened for
Creditors to Submit Proof of Claims and
Accounting of the Estate Assets**

Colonial's March 2, 2020 Petition consisted of two pages that included only a bare recitation of facts and a generic citation to NRS 143.400. The Estate responded with an objection noting the deficiencies in the Petition and rebutting the few points raised in the Petition. Colonial then filed a 25-page response (the "Reply") that contained many new facts and arguments, including 71 pages of new exhibits. Colonial was aware of the need to advance the arguments raised in the Reply before it ever filed the Petition¹ and withholding these arguments from the Petition is a clear example of a party withholding clearly relevant facts for the reply—at which point the opposing party has no opportunity to respond in writing.² For example, the Reply cites to NRS 151.250 as the basis for the request to reopen the Estate for the first time. See Reply at 7. The Reply also raises a constitutional due process argument for the first time. See Reply at 13:5-

¹ The Estate sent a letter to Colonial on August 7, 2019 outlining all the points raised in the Objection, so Colonial cannot pretend that it was surprised by any of the points.

² As noted in the Objection, Colonial filed a Complaint against the Estate and then subsequently withdrew the Complaint after the Estate demanded its withdrawal. The points raised in the Objection are the same points that the Estate raised in its letter to Colonial demanding dismissal of the Complaint.

1 16:11. Given the new facts and issues raised in the Reply, the Estate now files this Sur-Reply and
2 requests that, if the Court is inclined to consider the new argument in the Reply, it also consider
3 this Sur-Reply.

4 **I.**

5 **Introduction**

6 The lengthy arguments and assertions in Colonial's Reply 25-page Reply never
7 materialize into a meritorious argument demonstrating that this Court could or should reopen the
8 Estate. More critically, the facts asserted in the Reply, if accepted as true, contain numerous
9 admissions that entirely undermine Colonial's Petition and reveal that Colonial is the type of
10 dilatory creditor for which Nevada's probate statutes and common law do not afford relief.

11 The following undisputed facts demonstrate that Colonial's delay in enforcing its
12 creditor's claim is inexcusable and that Colonial is not entitled to relief:

- 13 (1) Colonial knew of Decedent's death in September of 2018 and is charged with actual
14 knowledge of the Estate administration in Nevada.
- 15 (2) Colonial knew the identity administrator of the Nevada Estate and contacted her in
16 October of 2018.
- 17 (3) Instead of filing a simple creditor's claim, Colonial sent *multiple letters* to the Estate,
18 and this overt (but procedurally misguided) communication with the Estate reveals
19 Colonial's actual knowledge of Estate administration.
- 20 (4) Colonial waited until April 12, 2019—roughly 7 months after learning of Decedent's
21 death—to file a creditor's claim in California.
- 22 (5) The Estate was still being administered in Nevada when Colonial filed its claim in
23 California, but Colonial did not file a claim in Nevada.
- 24 (6) Colonial then waited another two months (during which time the Nevada Estate
25 administration closed) and, instead of seeking leave to file a late claim, directly sued
26 the Nevada Estate on June 7, 2019. Colonial dismissed the lawsuit after the Estate
27 identified the numerous procedural defects in the lawsuit.
- 28 (7) Rather than seeking immediate relief in probate court, Colonial then waited almost a

1 **full additional year** before filing its Petition on February 2, 2020.

2 For all of the effort that Colonial's 25-page reply exerts in blaming the Estate for its
3 failure to file a claim, Colonial cannot hide or disguise the fact that Colonial purposefully,
4 directly, and repeatedly corresponded with the Estate administrator regarding its creditor's claim
5 and yet did not file a claim. Colonial's multiple and repeated communications with the Estate,
6 which are attached to the Reply, demonstrate that Colonial was fully aware that the Estate was in
7 active administration. Colonial's assertion to the contrary simply ignores reality. The Estate
8 could not have prevented Colonial from filing a creditor's claim any more than the Estate could
9 have prevented Colonial from sending letters. These facts conclusively show that it was
10 Colonial's improper action and failure to act on time, not its lack of knowledge, that resulted in
11 an extremely late creditor's claim.

12 Colonial's argument also has implications that reach beyond this ancillary probate
13 Proceeding. The entire probate system in Nevada would be prejudiced significantly if a creditor
14 could, like Colonial attempts to do here, reopen an estate more than a year after the Estate
15 administration ends, when the creditor knew of the Estate administration and sent
16 correspondence to the Estate regarding the creditor's claim but nonetheless failed to file a
17 creditor's claim. The finality of probate transfers would be undermined. Lenders, insurers,
18 prospective purchasers, personal representatives, and estate beneficiaries all rely on the finality
19 and consistency of probate enforcement. Without finality and consistency, banks would refuse to
20 loan money on estate sale deeds for many years, title insurers would refuse to insure titles, and
21 administrators would face many more roadblocks when attempting to transfer estate assets. The
22 usefulness of probate process and value to beneficiaries would be significantly damaged.

23 Although Colonial's inexcusable delay is the critical and foundational reason why
24 Colonial's Petition must be rejected, it is not the only reason. The facts and law regarding this
25 key point and substantive argument rebutting all the points raised in Colonial's Reply are fully
26 detailed below.

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II.

Facts Relevant to Colonial's Reply

A. The California Estate Proceeding

Decedent died on October 16, 2017. See June 28, 2018 Petition on file herein at ¶ 1. Nicholas Alfano was originally appointed as special administrator for the California Estate and Letters Testamentary were thereafter issued on January 10, 2018. Reply at 18:7-9. On May 29, 2018, Alfano resigned as executor of the California estate. Reply at 18:9-12. Thereafter, Morgan became the successor personal representative of the California Estate

Although Alfano administered probate in Decedent's home state of California, he did not commence probate proceedings in Nevada. The Estate beneficiaries discovered unexplained withdrawals from the probate bank account, and he agreed to resign as administrator. See Affidavit of Rhonda Morgan, attached hereto as Exhibit C at ¶¶ 17-20. The principal assets of the carver Estate were in Decedent's home state of California and, as far as Morgan is currently aware, Alfano's fraud touched only assets that were administered in the California proceeding. See id. Morgan is aggressively pursuing claims against Alfano in California. See Ex. C at ¶¶ 9-16; December 27, 2019 Petition attached hereto as Ex. D.

Colonial did not file a creditor's claim in the California proceeding until April 12, 2019. See Creditor's claim, attached hereto as Ex. E. The Claim was untimely and rejected. Colonial did not file a petition or take any other action to challenge rejection of the Creditor's claim in California.

Morgan has filed papers in the California proceeding to compel an accounting against Alfano at least twice. Morgan initially requested an accounting in her petition to be appointed as personal representative of the Estate. See Ex C at ¶ 9; Reply Ex. 3 at ¶ 14. Morgan also filed a petition against Alfano in California seeking the accounting, together with 13 other claims for relief. See Ex. D. Obtaining a full accounting of Alfano's estate administration will be extremely difficult if not impossible because Alfano's agent has represented to Morgan that records related to the Estate that were in his possession were destroyed. Ex. C at ¶ 12.

1 **B. The Nevada Estate Proceeding**

2 The only property subject to administration in Nevada was real estate. See May 10, 2019
3 Order Granting Petition for Waiver of Accounting, etc., on file herein, at Ex. 1; Ex. C at ¶¶ 17,
4 26. This ancillary probate proceeding commenced on June 28, 2018. Notice to creditors was
5 electronically filed on July 25, 2018. See Reply at 4:22-23.

6 Colonial acknowledges that the creditor's claim period ended on October 25, 2018. See
7 Reply at 4:23. Colonial became aware of Decedent's passing in September of 2018. See Ex. A
8 (attached to the Estate's Objection) at ¶ 13. Both the California and Nevada probate proceedings
9 were in active administration in September of 2018. Initially, Colonial sent letters to Robert
10 McKenchnie, who was not involved in the estate administration, requesting information
11 regarding completion of the alleged contract and contact information for the attorney and
12 administrator of the estate. See Reply Ex.4. More than a month later, Colonial sent a letter to the
13 Estate demanding payment on October 26, 2018. See Reply Ex. 6. The letter was received after
14 the claims filing period had expired in both the Nevada and California probate proceedings.
15 Colonial's current attorney thereafter sent a letter on November 15, 2018 letter. See Reply Ex. 7.
16 **Colonial concedes that these letters were addressed to the Estate for the purpose of**
17 **resolving its claim against the Estate.** See Reply at 3:23-4:4, 4:22-5:12; Reply Ex. 2 ¶¶ 11-19.

18 Although Colonial filed a creditor's claim in the California proceeding on April 12, 2019,
19 it failed to file a creditor's claim in the Nevada proceeding. See Ex. D. Colonial's creditor's
20 claim against the California estate was untimely.

21 Notably, Colonia's creditor's claim in California, as well as its Reply herein, fails to
22 include a copy of the allegedly signed contract. See Ex. D. Furthermore, the alleged contract
23 only contemplated CPAC storing the materials for a period of approximately one year, ending on
24 October 31, 2014. See id.

25 The Nevada Estate administration ended on May 10, 2019. See May 10, 2019 Order
26 Granting Petition for Waiver of Accounting, etc., on file herein. Colonial then filed a complaint
27 against the Nevada Estate, but waited until June 7, 2019 to do so. After demand by the Estate,
28 Colonial voluntarily dismissed its Complaint without prejudice. Colonial then filed this Petition

1 on February 2, 2020, almost a full year after its Complaint and more than 465 days after Colonial
2 became aware of Decedent's death.

3 II.

4 Argument

5 A. The Reply does not explain why Colonial waited so long to file against the Estate 6 and its delay is inexcusable.

7 Colonial's Reply focuses its entire argument on blaming the Estate for its own failure to
8 file a creditor's claim. This approach is flawed because the Reply does not address or explain
9 why Colonial, despite its knowledge that Decedent died, despite its knowledge of the existence
10 of administration proceedings, and despite its multiple letters and attempts to communicate with
11 the Estate administrator, it did not file a creditor's claim in the Nevada probate.

12 Decedent died on October 16, 2017. Colonial became aware of Decedent's passing in
13 September of 2018. Both the California and Nevada probate proceedings were in active
14 administration in September of 2018. Colonial's efforts to construe itself as a creditor without
15 knowledge of a probate proceeding are squarely contradicted by its own evidence. Instead of
16 following the universally required procedure of filing a creditor's claim, Colonial sent letters
17 demanding a remedy. See Reply Exs. 4, 6, and 7. These letters were dated September 21, 2018,
18 October 26, 2018, and November 15, 2018. Colonial's current attorney sent the November 15,
19 2018 letter. Colonial argues that these letters were addressed to the Estate for the purpose of
20 resolving its claim against the Estate. See Reply at 3:23-4:4, 4:22-5:12; Reply Ex. 2 ¶¶ 11-19. If
21 Colonial knew enough to send letters to and argue with the estate, then it knew enough to file a
22 creditor's claim.

23 The timeline below demonstrates the extreme degree to which Colonial delayed in taking
24 correct action to prosecute its claim, as summarized below:

- 25 • Colonial knew of Decedent's death in *September of 2018*. It chose to send letters
instead of a creditor's claim to the Estate.
- 26 • Colonial waited until April 12, 2019—roughly 7 months after learning of the
27 Decedent's death—to submit a creditors' claim in the California probate proceeding.
- 28 • At the time it filed in California, Colonial could have also filed a creditor's claim in
the Nevada Estate and argue lack of notice but chose not to.

- Colonial could have filed a creditor's claim in the Nevada Estate at any time between September 2018 and May 10, 2019.
- After filing its lawsuit on June 7, 2019, Colonial then waited until February 2, 2020 to file the instant petition.

Colonial's Reply fails to identify circumstance that prevented it from filing a creditor's claim between September 2018 and May 10, 2019. The Reply does not explain why Colonial sent letters instead of filing a creditor's claim. The Reply does not explain why it waited so long to file *any* legal paperwork. The Reply does not explain why Colonial filed a creditor's claim in the California probate but not the Nevada probate. The Reply does not explain why Colonial filed a complaint instead of a creditor's claim against the Nevada Estate. The Reply does not explain why Colonial waited almost a year after filing its Complaint against the Estate to file its Petition.

In short, Colonial's conduct is a textbook example of a dilatory creditor. The egregious, excessive, and inexcusable delay reflected in the timeline above is not the fault of the Estate.

B. Colonial's creditor's claim is time barred, regardless of whether Colonial was a known or unknown creditor.

A significant portion of Colonial's Reply is devoted to arguing that it became a known creditor during the claims period. See Reply at 7:20-13:13. But this argument contains three critical errors. First, this argument attempts to impute the knowledge of the former administrator of the California Estate to the current administrator of the Nevada Estate, Morgan. See Reply at 12-24. Under traditional agency rules, the knowledge of an agent will not be imputed to the principal if the agent is acting adversely to the principal. See Keyworth v. Nev. Packard Mines Co., 43 Nev. 428, 186 P. 1110, 1113 (Nev.1920); In re Agribiotech, Inc., 2005 WL 4122738, at *9 (D. Nev. 2005); USACM Liquidating Tr. v. Deloitte & Touche, LLP, 2008 WL 4790112, at *2 (D. Nev. 2008). Looting a corporation is a classic example of an agent acting adversely to the corporation. See Baena v. KPMG LLP, 453 F.3d 1, 8 (1st Cir. 2006). Here, Alfano was actively breaching his duties to the Estate and converting Estate assets, and his conduct is similar to an officer looting a corporation. The knowledge of such officer cannot be imputed to the corporation, and Alfano's knowledge here should not be imputed to the Estate or

1 to Morgan because Alfano was actively committing torts against the Estate.

2 Second, Colonial's argument also fails to address that it had actual notice of the Estate
3 administration. As argued in the Estate's Objection, Colonial could have filed a late claim
4 (before the Estate closed) only by proving to the Court that it did not receive notice under NRS
5 155.020 and did not have actual notice of the administration of the Estate. NRS 147.040(3).
6 Colonial admits that it knew of Decedent's death prior to the close of the Estate. Colonial does
7 not disagree with the Nevada authority concluding that knowledge of Decedent's death is actual
8 notice of an estate's administration and charges a creditor with a duty of further inquiry.³ See
9 Monette v. Estate of Murphy, No. 61212, 2014 WL 5173723, at *1 (Nev. 2014); Bell Brand
10 Ranches, Inc. v. First Nat'l Bank of Nev., 91 Nev. 88, 91 n. 3. Colonial's Reply makes clear that
11 Colonial communicated with Morgan, the Estate administrator, for the express purpose of
12 resolving its creditor's claim but did not file a creditor's claim. The admission is fatal to
13 Colonial's petition because its claim is time barred under NRS 147.040.

14 Third, and most importantly, regardless of notice issues, regardless of whether Colonial
15 was a known creditor, and regardless of whether Colonial had actual or constructive notice of the
16 Estate's administration, Colonial was required to file a creditor's claim at the *latest* before the
17 filing of the final account. See NRS 147.040(3). Here, the Estate has already been closed and
18 distributed and Colonial did not file its claim before this time.

19 **C. Colonial's Reply does not address, much less rebut, the fact that reopening the**
20 **Estate would be futile because the estate was closed and all assets were distributed**
to beneficiaries.

21 Although Colonial's Reply raises a host of new issues that should have been directly
22 addressed in the Petition itself, none of the new argument in Colonial's Reply addresses the
23 Estate's argument that reopening the estate would be futile because estate assets have been
24 distributed and there are no funds to satisfy the creditor's claim. Colonial does not identify any
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27
28 ³ Colonial does argue that Nevada's statute violates due process, which argument is rebutted
below, but it does not disagree that under the Probate statute and the cited Nevada authority, its
creditor's claim is time barred.

1 authority that would allow the Court to set aside or rescind prior distributions of the Estate, nor
2 does Colonial address the impracticality or prejudicial consequences of doing so.

3 Practically speaking, the court cannot cause funds that have already been spent to be
4 returned to the estate. And the practice of setting aside and rescinding Estate distributions would
5 introduce uncertainty into a probate process that relies on uniformity and predictability. Lenders,
6 insurers, prospective purchasers, personal representatives, and estate beneficiaries all rely on a
7 predictable and clear probate process to effectively transfer assets from the decedent to
8 beneficiaries or from the estate to purchasers. If distributions could be so easily clawed back by
9 dilatory creditors, banks would refuse to loan money on estate sale deeds for many years, title
10 insurers would refuse to insure titles, it would be harder for estates to liquidate estate assets, and
11 the revenue generated from all estate sale activities and transfers would be reduced because of
12 the risk of acquiring estate assets. The usefulness of probate process and value to beneficiaries
13 would be significantly prejudiced. Reopening the estate, even if the Court were authorized to do
14 so would be futile and would set negative precedent for probate cases in Nevada.

15 **D. The authority on which Colonial relies for its Due Process challenge to Nevada's**
16 **nonclaim statute is inapplicable here because (1) Colonial had actual notice of the**
17 **Estate administration but failed to take action, and (2) the statutes held**
unconstitutional in Colonial's authority are substantively different from the statute
here.

18 As a hail-Mary effort to salvage its claim against the Estate, Colonial argues that its due
19 process rights have been violated. Colonial relies primarily Cont'l Ins. Co. v. Moseley, in support
20 of its due process argument.⁴ 100 Nev. 337, 338 (1984). Colonial's reliance on Moseley is
21 misplaced for two important reasons, discussed below.

- 22 1. **Moseley does not apply to Colonial because the creditor in Moseley did not**
23 **have knowledge of the estate administration whereas Colonial had actual**
24 **notice of the administration and did not take appropriate action until more**
than 490 days later.

25 The first and most critical reason that Colonial cannot rely on Moseley is that the same
26
27

28 ⁴ Colonial also cites to Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988), but
Pope is inapplicable for the same reasons, discussed below, that Moseley is inapplicable.

1 facts that protected the Moseley creditor do not exist here. The creditor in Moseley was a known
2 creditor that did not have notice of the estate administration until the last day of the creditors
3 period. See Cont'l Ins. Co. v. Moseley, 98 Nev. 476, 477, 653 P.2d 158, 159 (1982).⁵ The estate
4 administrator served notice of the administration by publication only. After the creditor received
5 notice, it acted promptly, filing the claim **two days** after the claims period ended (3 days after
6 receiving notice of the death). See id. The estate argued that, though the timing was unfortunate,
7 the creditor was given at least constructive notice by publication and that the creditor's claim
8 was barred by the statute. The only issue on appeal before the Nevada Supreme Court was
9 whether notice by publication was enough to bar the creditor's claim. Cont'l Ins. Co. v. Moseley,
10 100 Nev. 337, 338 (1984). The court held that the known creditor who had no knowledge of the
11 estate administration was entitled to more than notice by publication. Id. In ruling in favor of the
12 creditor, Moseley protected a known creditor that did not have actual notice of the estate
13 administration and who acted promptly. On the other hand, the ruling in Moseley did not create a
14 loophole to be exploited by creditors that have actual notice of the estate and who delay filing a
15 creditor's claim.

16 Here, Colonial stands in direct contrast to that of the creditor in Moseley. The creditor in
17 Moseley (1) was readily ascertainable, (2) did not have actual notice of the Estate administration,
18 (3) received notice of the estate administration through service by publication only, and (4) acted
19 promptly after receiving notice. Here, Colonial admits that it (1) received notice of the estate
20 administration in September of 2018, (2) sent letters to the Estate for the purpose of resolving its
21 claims while the Nevada Estate was being administered instead of filing a creditor's claim (See
22 Reply at 3:23-4:4:22-5:12, Reply Ex. 2 ¶¶ 11-19), (3) did not file a creditor's claim against the
23 Estate prior to the close of the Estate, (4) filed a creditor's claim against the California Estate on
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27 ⁵ The Moseley case reached the Nevada Supreme Court twice: once in 1982 and again in 1984
28 after remand from the U. S. Supreme Court. The underlying facts are specifically detailed in the
1982 Moseley decision, but not the 1984 decision. The citation to the 1982 decision is: Cont'l Ins.
Co. v. Moseley, 98 Nev. 476 (1982). The 1984 decision is Cont'l Ins. Co. v. Moseley, 100 Nev.
337, 338 (1984).

1 April 12, 2019, but did not file a claim in the Nevada Estate proceeding, and (5) made no attempt
2 to file a creditor's claim in the Nevada Estate until February 2, 2020, which is more than 490
3 days after Colonial is charged with knowledge of the estate administration.

4 The ruling in Moseley is wholly inapplicable here. Due process requires notice and an
5 opportunity to present a defense. Colonial had knowledge of the Estate administration in Nevada
6 and the opportunity to follow the correct procedure. Colonial cannot blame its incorrect action on
7 a lack of notice or the conduct of the Estate. The Illinois Court of Appeals has held that an estate
8 administrator does not deprive due process by failing to serve notice to a known creditor if the
9 known creditor has actual notice of estate administration. See Matter of Estate of Sutherland, 593
10 N.E.2d 955, 960 (1992). The court indicated "petitioner's failure to timely file is not the result of
11 insufficiency of actual notice; it is the result of failure to timely act on the notice received." See
12 id. (internal citations and quotations omitted). Here, under the same logic, the Court cannot
13 conclude that Colonial was deprived of due process under Moseley.

14 **2. Moseley is not applicable because the nonclaim statute there is substantively**
15 **different from the statute here, and other courts have held that nonclaim**
16 **statutes like Nevada's statute were constitutional.**

17 The nonclaim statute at issue in Moseley was NRS 145.050, which has since been
18 repealed. As this statute existed in 1982, the only form of notice required was publication. See
19 Moseley, 98 Nev. at 477. After publication, creditors had to file a claim within 60 days or be
20 barred forever—no exceptions. The nonclaim statute here is different and requires more than just
21 publication of notice. NRS 155.020 requires mailing of notice to reasonably ascertainable
22 creditors and, for all other creditors, notice by publication. Additionally, the statute contains a
23 procedural safeguard found in NRS 147.040(3). Any creditor who did not (a) receive notice
24 under NRS 155.020 or (b) have actual notice of the administration of the estate, can file a claim
25 "at any time before the filing of a final account." These additional protections for known
26 creditors and creditors that may not have received actual notice of the estate administration
27 remedy the constitutional deficiency in Moseley. Colonial makes no argument that these
28

1 additional protections are constitutionally deficient.⁶

2 The substantive difference between the challenged statutes compels a different result. The
3 California Court of Appeals rejected an argument very similar to the argument that Colonial
4 raises in this case, i.e., that California's creditor's notice statute violated due process under Tulsa
5 Professional Collection Services v. Pope, 485 U.S. 478 (1988). See Interinsurance Exch. v.
6 Narula, 39 Cal. Rptr. 2d 752, 756 (1995). California's probate claims statute is like Nevada's in
7 requiring estate representatives to notice known creditors and publish notice. See id. The statute
8 also permits creditors without knowledge of the estate administration to file late claims in certain
9 circumstances. See id. The California Court noted that California had revised its probate statutes
10 in response to the ruling in Pope and created numerous procedural protections for creditors that
11 did not have actual notice of the estate administration. Id. The Court ruled that the statute as
12 applied to the creditor was constitutional.

13 Here, the Court, like the California Court of Appeals, should rule that the statute did not
14 deprive Colonial of due process rights. NRS 145.050 has been repealed in its entirety. Nevada's
15 probate statutes were substantively amended since the Pope and Moseley decisions. After these
16 amendments, Nevada's probate notice statutory scheme is vastly different from the statute that
17 was held unconstitutional in Moseley and the statute at issue in Pope, where the only form of
18 required notice was by publication.

19 Colonial's Due process argument, therefore, is doubly flawed. The facts that gave rise to
20 the meritorious due process argument in Moseley are not present here and the nonclaim statute
21 has been amended to remedy the constitutional defects identified in Moseley and Pope.

22 **E. Filing a late creditor's claim is not one of the statutory bases for reopening an Estate**
23 **under NRS 151.240.**

24 The Reply argues that this Court has authority to reopen the Estate and, for the first time,

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26
27 ⁶ These additional due process protections highlight Colonial's failure to act despite its knowledge
28 of the Estate's administration. Colonial communicated directly with the Estate administrator and
acted (albeit wrongly) to resolve its creditor's claim while the estate was being administered. If,
instead of sending letters to the administrator, Colonial had taken appropriate action during this
time, Colonial's rights might have been preserved.

1 cites to specific authority in support of the proposition. See Reply at 23-25. Colonial's arguments
2 on this point should be rejected because they mischaracterize or misapply the cited authority.

3 First, Colonial argues that it can file a late creditor's claim on a simple showing of good
4 cause. See Reply at 23:22-24, 24:7-25:4 (citing Cont'l Coffee Co. v. Estate of Clark, 84 Nev.
5 208, 212 (1968) and Gardner Hotel Supply v. Estate of Clark, 83 Nev. 388, 392 (1967)). But the
6 cases Colonial cites to are inapplicable here because they dealt with claims that were filed after
7 the claims period expired but before the close of the estate. See Continental Coffee, 84 Nev. at
8 210; Gardner Hotel Supply, 83 Nev. at 390. The issue in both cases was whether the trial court
9 should have allowed the late claim, not whether the trial court should have reopened the estate.
10 Here, however, Colonial seeks to file its claim in an already-closed Estate and the issue is
11 whether the court should reopen the Estate. The distinction is critical because Nevada's statute
12 explicitly gives the court authority to allow a late claim filed before the Estate is closed. But
13 Continental Coffee and Gardner Hotel Supply do not hold or suggest that the Court can *reopen*
14 an estate to allow a creditor to file a late creditor's claim.

15 In fact, rather than supporting Colonial's petition, Continental Coffee and Gardner Hotel
16 Supply support the Estate's position. In both cases, the creditor had actual knowledge of the
17 decedent's death, the trial court denied the motion to file the late claim, and the trial court's
18 decision was affirmed on appeal. Here, Colonial has waited much longer than the creditors in
19 Continental Coffee and Gardner Hotel Supply. Like the courts in those cases, the Court here
20 should deny Colonial's claim.

21 Next, Colonial argues that NRS 151.240 authorizes the Court to reopen the Estate to
22 allow Colonial to file a creditor's claim. Again, this argument is based on an incorrect analysis of
23 authority. NRS 151.240(1) allows the Court to reopen an estate for one of only three purposes:

- 24 (1) To administer newly discovered property,
- 25 (2) To correct errors in property descriptions,
- 26 (3) For any purpose requiring new letters to be issue.

27 NRS 151.240(1). Here, none of the circumstances identified in the statute relate to Colonial's
28 efforts to file a creditor's claim. Colonial does not identify new property, identify errors in

1 property descriptions, so the first two purposes are not relevant.

2 Colonial argues that under NRS 151.240(1)(b) the court can issue subsequent letters of
3 administration “for any cause,” citing Reid v. Scheffler, 95 Nev. 265 (Nev. 1979). But
4 subsequent letters of administration are irrelevant to Colonial’s Petition. Colonial has not
5 requested that new letters issue and filing a creditor’s claim is not conduct that requires new
6 letters. Filing a creditor’s claim is conduct of a creditor, not the Estate administrator and does not
7 require the authority of letters of administration.

8 Colonial’s reliance on Reid v. Scheffler, 95 Nev. 265 (1979) cannot save Colonial’s
9 argument. Reid involved a situation where the creditor had no notice of the administration of the
10 Estate and the new claim was asserted against a new asset that was not administered during the
11 original period of administration. The trial court specifically found that the creditor could only
12 proceed against the new asset. Here, Colonial undisputedly had notice of the administration and
13 it does not identify any new assets that could be used to satisfy its claim. Reid is inapplicable to
14 Colonial’s creditor’s claim.

15 Colonial’s efforts to construe authority as supporting reopening the Estate are meritless.
16 Filing a creditor’s claim is not one of the circumstances that allow an estate to be reopened under
17 NRS 151.240, and the cases cited by Colonial support the denial of the late creditor’s claim or
18 involve newly discovered Estate property that could be used to satisfy the late creditor’s claim.

19 **F. The misconduct of Mr. Alfano did not diminish the assets of this Ancillary Nevada**
20 **probate proceeding and Morgan was not required to disclose it. Colonial’s attempt**
to construe this as fraud on the Court is baseless ad hominem mudslinging.

21 Colonial also argues that Morgan concealed the fraud that California executor, Nicholas
22 Alfano, committed against the California Estate. See Reply at 19:9-16; 21:1-23:19. This is an
23 obvious attempt to sling mud and distract from Colonial’s failure to file a timely creditor’s claim
24 and should be disregarded. Colonial admits that it knew of Decedent’s death and corresponded
25 directly with the Estate administrator. Colonial could have filed a creditor’s claim at any time but
26 failed to act until February of 2020. Alfano’s fraud did not cause this delay; Colonial’s inaction
27 did.

1 **1. Morgan did not commit fraud, much less fraud on the Court.**

2 Colonial argues that Morgan committed fraud against the Court without ever defining the
3 term. Fraud is “a knowing misrepresentation or knowing concealment of a *material* fact made to
4 induce another to act to his or her detriment. See Black's Law Dictionary, Fraud (11th ed. 2019)
5 (emphasis added). The Nevada Supreme Court defines fraud on the court as follows:

6 that species of fraud which does, or attempts to, subvert the integrity of the court
7 itself, or is a fraud perpetrated by officers of the court so that the judicial
8 machinery cannot perform in the usual manner its impartial task of adjudging
9 cases ... and relief should be denied in the absence of such conduct.

10 NC-DSH, Inc. v. Garner, 125 Nev. 647, 654 (2009). Thus, in order to prove fraud on the court,
11 Colonial would have to prove (1) misrepresentation of (2) a material fact (3) intended to induce
12 reliance and (4) that the misrepresentation prevented judicial machinery from performing in a
13 usual manner. See id.

14 Colonial has not cited the correct elements, much less applied them to the facts here. And
15 the facts here do not satisfy the elements. There was no omission of a material fact because
16 Alfano’s misconduct occurred against the California estate assets and there was no reason to
17 raise the issue in the Nevada proceedings because it did not affect Nevada assets. Alfano did not
18 open any probate proceedings in Nevada. The principal assets of the carver Estate were in
19 Decedent’s home state of California and, as far as Morgan was aware, Alfano’s improper
20 conduct touched only assets that were administered in the California proceeding. The only court
21 with authority to award relief for Alfano’s misconduct is the California court. The Estate is
22 aggressively pursuing claims against Alfano in California. Accordingly, there was no reason to
23 raise the issue of Alfano’s improper conduct related to the California probate assets with this
24 Court because this court did not have jurisdiction on the issue and Alfano’s misconduct did not
25 affect the Nevada administration.⁷

26 ⁷ Alfano’s attorney in the California proceeding has recently revealed that the will may have in
27 fact been forged by Alfano. However, this revelation was not made until well after the Nevada
28

Colonial argues that Alfano's fraud necessarily must have affected creditors and that Morgan should have disclosed this to this Court. See Reply at 23:4-19. Colonial's reasoning contains several logical flaws. First, as noted above, Alfano's fraud did not reach assets in Nevada and Alfano was not appointed administrator over any Nevada assets. If Alfano's actions did not touch Nevada assets or the Nevada probate proceeding, this Court would not have jurisdiction to address or remedy his misconduct. If Colonial believes that Alfano's fraud prejudiced its rights, Colonial should raise those issues in the California proceeding.

Second, and more critically, Colonial does not explain how disclosure of the Estate's actions against Alfano for misconduct related to California assets would have changed the Nevada administration. All the Estate beneficiaries were aware of Alfano's misappropriation of California assets and did not object to closing the Nevada estate. This means that under Colonial's reasoning, the Court would have acted sua sponte to order Morgan to take some action above that required by Nevada's probate statutes. But Colonial provides no reason to suggest what the Court was authorized or would have done differently.

Colonial's contentions that Morgan committed fraud and that disclosure to this Court of Alfano's improper conduct related to California probate assets would have changed the outcome of the Nevada probate is meritless and must be rejected.

2. Morgan did not violate rules of professional conduct.

Colonial's argument that Morgan breached her duties of professional conduct is incorrect for the same reason that its fraud argument is incorrect: Morgan did not fail to disclose any material facts. As argued above, Alfano's misappropriation of California estate assets was being

probate proceedings closed and long after the 3-month limitation period to challenge the probate of a will had passed. See NRS 137.080. The only means to toll this limitations period would be for a party to challenge the probated will based on *extrinsic* fraud. But Alfano's forgery of signatures was *intrinsic*, not *extrinsic*. See *Murphy v. Murphy*, 65 Nev. 264, 271 (1948); *Fullerton v. Rogers*, 101 Nev. 306, 307 (1985); *Black's Law Dictionary*, Fraud (11th ed. 2019). Additionally, the interested beneficiaries of the Estate have not elected to challenge the probate of the forged will. Additionally, Colonial is not a beneficiary to the Will nor to the Estate if the assets passed through intestacy. See NRS 132.185 (defining interested person). Colonial would not have standing to challenge the probate of the will.

1 addressed in the California probate proceedings and Morgan was not required to raise the issue
2 in the Nevada probate.

3 **3. Alfano's fraud did not prevent Colonial from filing a creditor's claim.**

4 Another key error in Colonial's argument is that it does not explain how Alfano's
5 misappropriation of estate assets (or Morgan's not raising the issue in Nevada) prevented
6 colonial from filing a creditor's claim in the Nevada probate. Colonial was aware of decedent's
7 passing by at least September of 2018, while the Estate was still subject to administration.
8 Nevada law charges Colonial with a duty of further investigation and Colonial is barred, as a
9 matter of law, from arguing lack of actual notice of the estate administration. The administration
10 of the Estate was a matter of public record—discoverable by searching online court records that
11 are easy to access. Colonial sent letters to Morgan and affirmatively tried to informally assert a
12 claim against the Estate. Alfano did not make any misrepresentations to Colonial or otherwise
13 prevent Colonial from filing a creditor's claim. Morgan did not misrepresent any facts to
14 Colonial or prevent it from filing a claim. The simple fact is that Colonial sent letters instead of
15 filing a creditor's claim and then waited more than a year to attempt to remedy the mistake.

16 **4. Morgan has sought an accounting from Alfano, but Alfano destroyed Estate**
17 **records in his possession.**

18 Colonial attempts to blame Morgan for failing to seek an accounting from Alfano, but
19 this argument is directly contradicted by facts. Morgan *has* specifically filed a petition against
20 Alfano in California seeking the accounting that Colonial claims is necessary. See Ex. D.
21 Moreover, Alfano has represented to Morgan that records related to the Estate that were in his
22 possession have been destroyed. Accordingly, this is not a situation where the institutional
23 knowledge of a prior administrator is passed on to the successor. Alfano committed fraud,
24 resigned when this was discovered, destroyed evidence of his fraud, and refuses to cooperate
25 with the current administrator.

26 **5. Morgan was under no duty to wind down Decedent's sole proprietorship in**
27 **Nevada.**

28 Colonial argues that Morgan should have wound down Decedent's business, Commercial
Plumbing and A/C ("Commercial Plumbing"). This argument can easily be rejected for many

1 reasons, all stemming from the fact that Commercial Plumbing was an unincorporated entity that
2 is not different from Decedent in the eyes of the law. The wind-down procedures identified by
3 Colonial do not apply to unincorporated entities. See Horie v. Law Offices of Art Dula, 560
4 S.W.3d 425, 434 (Tex. App. 2018) (“The assumed name of a sole proprietorship is not a separate
5 legal entity or even a different capacity of the individual sole proprietor.”); NRS 78.015 (stating
6 applicability of chapter is to only incorporated entities). Because a sole proprietorship is not a
7 separate entity from the owner, the administration of the Estate in California *was* the wind up
8 proceeding for Commercial Plumbing.

9 Additionally, given that Commercial Plumbing is not a separate legal entity from
10 Decedent, its assets would be the personal property of Decedent, subject to administration in
11 Decedent’s home state, California. Nevada courts do not have authority to address issues related
12 to Decedent’s personal property. See Estate of Massaglia, 38 Cal. App. 3d 767, 774, (Cal. Ct.
13 App. 1974). Colonial’s argument that Morgan should have wound down Commercial Plumbing
14 is raised in the wrong forum and substantively incorrect. Moreover, when Morgan took over the
15 administration of the California probate, she was informed that Commercial Plumbing had
16 already effectively been wound down. The only outstanding tasks was collecting on some
17 unpaid invoices still owed to Commercial Plumbing. Records related to the collection process
18 have repeatedly been requested by Morgan from Alfano, largely to no avail.

19 As the foregoing points demonstrate, Colonial’s entire argument relating to Alfano’s
20 fraud in California is wholly meritless and should be rejected. The Estate raised the issue of
21 Alfano’s fraud in the appropriate forum—California. Contrary to Colonial’s contention, the
22 Estate has sought an order compelling an accounting against Alfano. Decedent’s personal
23 property associated with Commercial Plumbing was correctly administered in California, and the
24 Estate was not required to initial formal wind down proceedings because Commercial Plumbing
25 was an unincorporated sole proprietorship. Colonial’s argument that the Estate committed fraud
26 on the Court should be viewed for what it is: transparent ad hominem mudslinging designed to
27 draw attention away from the fact that Colonial had actual notice of the Nevada estate
28 administration and did not file a creditor’s claim.

1 **III.**

2 **Conclusion**

3 Colonial's creditor's claim is at least 490 days late. Colonial admits that it became aware
4 of Decedent's death and communicated directly with the Estate. The only explanation for
5 Colonial's failure to file is its own inaction. For these reasons and those explained in detail
6 above, the Estate requests that the Court deny Colonial's Petition to reopen the Estate.

7 Dated: May 8, 2020.

8 Clear Counsel Law Group

9 /s/ David Blake
David T. Blake

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the 8th day of
3 May, 2020, I caused the foregoing **Sur-Reply in support of Objection to Petition for an**
4 **Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof**
5 **of Claims and Accounting of the Estate Assets** to be served as follows:

- 6
- 7 ☐ by placing a true and correct copy of the same to be deposited for mailing in the
8 U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first
9 class postage was fully prepaid addressed to the parties below; and/or
- 10 ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or
- 11 ☐ by hand delivery; and/or
- 12 ☒ E-Service to all registered parties

13
14 /s/K.A/Gentile
15 An employee of Clear Counsel Law Group

EXHIBIT “C”

EXHIBIT “C”

**Declaration of Rhonda Morgan, Esq. in Support of Sur-Reply in support of Objection to
Petition for an Order to Show Cause Why Estate Should Not be Reopened for Creditors to
Submit Proof of Claims and Accounting of the Estate Assets**

Rhonda Morgan, Esq., being duly sworn, does hereby state under oath as follows:

1. I have personal knowledge of the matters set forth herein and could competently testify thereto if called to do so in a court of law.

2. I make this Declaration in support of the Sur-Reply in support of Objection to Petition for an Order to Show Cause Why Estate Should Not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets (the "Sur-Reply").

3. I was the administratrix of the Estate of Dennis Carver (the "Estate") in Nevada and California.

4. Dennis Carver ("Decedent") died on October 16, 2017.

5. Nicholas Alfano was appointed as executor of the California Estate and Letters Testamentary were issued on January 10, 2018. The case number for the California probate proceeding is Riverside Superior Court Case No. MCP1700877.

6. Nicholas Alfano also accepted his appointment as the Trustee of the Living Trust of Dennis John Carver (the "Trust").

7. After Alfano began administering the Estate, the heirs believed and alleged that Alfano was mismanaging the Estate, although the full extent of his conversion of estate assets was not known at that time.

8. The heirs confronted Alfano and he resigned as executor of the California estate on May 29, 2018.

9. I filed a Petition with the California Court to become administratrix of Decedent's estate and to compel Alfano to produce an accounting pursuant to California Probate Code Section 10952 on July 3, 2018.

10. Thereafter, I became the administratrix of the California Estate on or around August 27, 2018.

11. Alfano has been largely uncooperative in my efforts to administer the California

Estate.

12. In my efforts to receive an accounting of Alfano's administration and discover the extent of his conversion of Estate assets, his agent represented to me that Estate records in his possession had been destroyed.

13. Because of this and Alfano's failure to cooperate, he never provided me information about Decedent's creditors or Alfano's actions with respect to these creditors.

14. Recently, Alfano's attorney revealed that Alfano is alleging that he may have forged Decedent's will. This revelation was made long after the statute of limitations to challenge the will in both California and Nevada had expired.

15. The heirs were made aware of Alfano's allegations that the will is a forgery and have not challenged the probate of the will in California or Nevada. The beneficiary of the will admitted to probate is a trust which leaves all the assets in equal shares to the same persons and in the same proportions who would have received the assets if the estate had been administered intestate.

16. I filed a Petition against Alfano in California Probate Court on December 27, 2019, asserting 14 different causes of action, including a cause of action to compel Alfano to account for estate assets.

17. As administratrix of the California Estate, I became aware that Decedent owned property in Nevada.

18. I reviewed of the records related to these properties. Alfano did not transfer any Nevada real property from Decedent.

19. Because the properties were in Nevada, it was necessary to open an ancillary probate in Nevada to administer these properties. The only Estate assets subject to administration in the ancillary Nevada proceeding were the real properties.

20. Based on my review of Estate records available to me, Alfano's misconduct would not affect the administration in Nevada.

21. I became administrator of the Nevada Probate on or around July 20, 2018, when

the Court approved my petition to become administrator of the Nevada Estate.

22. Colonial argues that I should have wound down Decedent's unincorporated sole proprietorship, Commercial Plumbing and A/C ("Commercial Plumbing") in the Nevada estate proceeding, but this is unnecessary.

23. Commercial Plumbing is an unincorporated entity and upon information and belief, in the eyes of the law is not treated separate from Decedent. All Commercial Plumbing's assets were subject to administration in California and it was not necessary to wind down the company in Nevada.

24. Colonial also alleges that I defrauded the Court by failing to disclose Alfano's misconduct in the ancillary Nevada proceeding.

25. I strongly disagree with this allegation and it is demonstrably false.

26. As demonstrated by publicly filed documents in California, I have always sought to administer Decedent's Estate and mitigate as much damage as possible caused by Alfano's misconduct.

27. I have never failed to disclose or misrepresented any material fact in connection with my service as administrator in these ancillary Nevada proceedings.

28. It was not necessary to disclose or raise any issues about Alfano's conduct in the Nevada proceeding because (a) Alfano was never appointed administrator of the Nevada probate estate; (b) Alfano's misconduct, as far as I'm aware, would not have any effect on the administration of the Nevada probate estate since it was only comprised of real property in Nevada, and (c) Alfano was appointed executor in California.

29. Had I disclosed Alfano's misconduct in the Nevada estate proceedings, it is my understanding that the outcome of administration in Nevada would have been the same. The Court would not have issued orders any different from those that it issued.

30. My allegations of Alfano's misconduct were a matter of public record in the California probate as early as July of 2018. Given that Colonial learned of Decedent's death in 2018, knew of the estate administration, and knew that I was the estate administrator, it could

have discovered facts relating to Alfano's misconduct and raised the issue in the ancillary Nevada proceeding.

31. More to the point, Colonial was aware of Decedent's death in September of 2018. Colonial knew that I was the Estate administrator and that the Estate was in active administration. Instead of taking the proper action of simply filing a creditor's claim in the Ancillary Nevada proceeding, Colonial sent letters, made phone calls, filed a late claim in the California proceeding, and filed a lawsuit against the Estate.

32. Colonial's creditor's claim is untimely because Colonial took the incorrect action despite its knowledge of Decedent's passing, not because it did not have notice of its need to file a creditor's claim.

Dated: May 8, 2020.

/s/ Rhonda Morgan
Rhonda Morgan, Esq.

EXHIBIT “D”

EXHIBIT “D”

Jamie Frenzel, Esq. SBN 300322
The Legacy Firm of Southern California, P.C.
31630 Railroad Canyon Rd., Ste. 10
Canyon Lake, CA 92587
Telephone (951) 244-6633
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 27 2019

~~A. Zamora-Freer~~

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

Rhonda L. Morgan and Brooke Carver, as Co-
Trustees for The Living Trust of Dennis John
Carver, dated January 22, 2017 and The Living
Trust of Lorraine Susan Carver, dated January
22, 2017; Rhonda L. Morgan, Executor of the
Estate of Dennis John Carver; Rhonda L.
Morgan, Executor of the Estate of Lorraine
Susan Carver; and Brooke Carver, an individual

Petitioners,

vs.

Nicholas Jordan Alfano, an individual and as
former trustee of The Living Trust of Dennis
John Carver, dated January 22, 2017,
former Trustee of The Living Trust of Lorraine
Susan Carver, dated January 22, 2017, former
Executor of the Estate of Dennis John Carver;
former, and former Executor of the Estate of
Lorraine Susan Carver; Lindsay A. Alfano, an
individual; Brian Matthews, an individual;
Earlmar L. Savard, an individual; Christina
Lorea, an individual; Alfano Law, a California
business; A&N Acquisitions, LLC a California
Limited Liability Company; and DOES 1-10,
inclusive,

Respondents.

Case No.: MCP1700877

PETITION FOR:

1. BREACH OF FIDUCIARY DUTY;
2. TO COMPEL AN ACCOUNTING;
3. LEGAL MALPRACTICE;
4. BREACH OF FIDUCIARY DUTY;
AS ATTORNEY AND EXECUTOR
5. THEFT-RECOVERY OF STOLEN
PROPERTY;
6. FRAUD AND DECEIT;
7. CONVERSION;
8. CIVIL CONSPIRACY;
9. BREACH OF CONTRACT;
10. BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR
DEALING;
11. UNJUST ENRICHMENT;
12. DECLARATORY JUDGMENT;
13. DOUBLE DAMAGES; and
14. ATTORNEYS' FEES AND COSTS.

Date of Hearing

On Calendar

2/4/20

8:30 AM, T.T.

1 Petitioners, Rhonda L. Morgan and Brooke Carver, as Co-trustees of the Living Trust of
2 Dennis John Carver, dated January 22, 2017 (the "Dennis Carver Trust") and the Living Trust
3 of Lorraine Susan Carver, dated January 22, 2017 (the "Lorraine Carver Trust") (collectively,
4 the "Trusts"); Rhonda L. Morgan, as Executor of the Estates of Dennis John Carver (hereinafter
5 "Estate of Dennis Carver" or "Dennis Carver's Estate") and Lorraine Susan Carver (hereinafter
6 "Estate of Lorraine Carver" or "Lorraine Carver's Estate") (collectively, the "Estates"); and
7 Brooke Carver ("Brooke") an individual (hereinafter referred to collectively as "Petitioners")
8 by and through their undersigned attorneys, allege as follows¹:

9 **JURISDICTION, VENUE AND NOTICE**

10 1. This Petition is properly brought before this Court because the Trust was created,
11 and is administered in Riverside County and the Estates are being administered in Riverside
12 County (Prob. Code §§ 7051: 17005, subd. (a)). The Probate Code confers exclusive
13 jurisdiction over the Trusts and Estates. (Id. at §1700, subd. (a); 7050, et seq.)

14 2. This Court has personal jurisdiction over the Respondents who engaged in conduct,
15 and who continue to engage in conduct, giving rise to the claims stated herein at locations
16 within the County of Riverside, in the State of California.

17 3. The parties entitled to notice are:

18 Madison Carver	Adult	Beneficiary	813 Alabama Street Huntington Beach, CA 92648
19 Andrew Beechko		Guardian Ad Litem for Madison Carver	300 E. State Street, Suite 300 Redlands, CA 92373
20 Brooke Carver	Adult	Co-Trustee/Beneficiary	813 Alabama Street Huntington Beach, CA 92648

23 **PARTIES**

24 4. Petitioner Rhonda L. Morgan (hereinafter referred to as "Morgan") is, and at all
25 times material to this Petition was, a resident of the County of Orange, State of California.
26

27 _____
28 ¹ Petitioners refer to some of the parties and other persons identified herein by their first names, not as a sign of
disrespect but in an effort to avoid confusion where there are multiple persons with the same surname.

1 Morgan is Co-Trustee of the Trusts and Executor of the Estates. Morgan, through her law firm,
2 has maintained an office in Riverside County during the all times material to this Petition.
3 Morgan's office in Riverside County is the principal place of trust administration.

4 5. Petitioner Brooke Carver (hereinafter referred to as "Brooke") is, and at all times
5 material to this Petition was, a resident of the County of Orange, State of California. Brooke is
6 Co-Trustee and Beneficiary of the Trusts.

7 6. Petitioners are informed and believe, and based thereon allege, that Respondent
8 Nicholas Alfano (hereinafter referred to as "Nicholas") is, and at all times material to this
9 Petition was, a resident of the County of Riverside, State of California. Petitioners further
10 allege on information and belief that Nicholas is licensed to practice law in the State of
11 California, and at all times mentioned, practiced law under the name Nicholas Alfano and
12 through the Respondent Alfano Law, a California business, in the City of Menifee, County of
13 Riverside.

14 7. Petitioners are informed and believe, and based thereon allege, that Respondent
15 Lindsay Alfano (hereinafter referred to as "Lindsay") is, and at all times material to this Petition
16 was, a resident of the County of Riverside, State of California. Lindsay is the wife of Nicholas
17 Alfano. Petitioners further allege on information and belief that Lindsay is the employee and/or
18 agent of Nicholas Alfano, Alfano Law and/or A&N Lindsay is also and the Chief Operating
19 Officer of A & N Acquisitions, LLC (hereinafter "A&N").

20 8. Petitioners are informed and believe, and based thereon allege, that Respondent
21 Brian Matthews (hereinafter referred to as "Matthews") is, and at all times material to this
22 Petition was, a resident of the County of Riverside, State of California. Brian Matthews is the
23 current manager and President of A & N according to Secretary of State records.

24 9. Petitioners are informed and believe, and based thereon allege, that Respondent
25 Earlmarr L. Savard (hereinafter referred to as "Savard ") is, and at all times material to this
26 Petition was, a resident of the County of Riverside, State of California. Petitioners further
27 allege on information and belief that Savard is an employee and/or agent of Nicholas Alfano,
28 Alfano Law and/or A&N.

1 10. Petitioners are informed and believe, and based thereon allege, that Respondent
2 Christina Lorea (hereinafter referred to as " Lorea") is, and at all times material to this Petition
3 was, a resident of the County of Riverside, State of California. Lorea a employee and/or agent
4 of Nicholas Alfano, Alfano Law and/or A&N.

5 11. Petitioners are informed and believe, and on that basis allege, that respondent A&N
6 Acquisitions, LLC is a California Limited Liability Company conducting business in the State
7 of California.

8 12. The true names and capacities, whether individual, corporate or otherwise, of
9 Respondent DOES 1 through 10, inclusive, are unknown to Petitioners at this time. Therefore,
10 Portioners sue these Respondents by fictitious names pursuant to §474 of the California Code
11 of Civil Procedure. Petitioners will seek leave of the court to amend their Petition to set forth
12 the true names of the Respondents when they are ascertained.

13 13. Petitioners are informed and believe, and on that basis allege, that each of the
14 individual Respondents, including the Doe Respondents, is and was at all relevant times, the
15 agent, representative and or/employee of Nicholas, Alfano Law and/or A&N and was acting
16 within the course and scope of said agency, representation, and/or employment and with the
17 knowledge and consent of the remaining Respondents.

18 **BACKGROUND FACTS IN SUPPORT OF THE PETITION**

19 14. Petitioners are informed and believe, and based thereon allege, that on January 22,
20 2017, Dennis John Carver ("Dennis"), as settlor and initial co-trustee, executed the Living Trust
21 of Dennis John Carver and Lorraine Susan Carver ("Lorraine"), as settlor and initial co-trustee,
22 executed the Living Trust of Lorraine Susan Carver (collectively, the "Trusts"). Dennis and
23 Lorraine were husband and wife. A copy of the Trusts will be filed concurrently herewith.

24 15. On October 16, 2017, Dennis and Lorraine passed away.

25 16. Brooke N. Carver ("Brooke") and Madison Carver ("Madison") are the surviving
26 children of Dennis and Lorraine, as well as the sole heirs at law and beneficiaries of the Trusts.
27
28

1 17. Nicholas was successor Trustee of the Living Trust of Dennis John Carver and the
2 Living Trust of Lorraine Susan Carver Nicholas and assumed the duties as the Successor
3 Trustee on or about October 17, 2017.

4 18. Nicholas was appointed as Special Administrator of the Estates of Dennis and
5 Lorraine Carver and Letters of Special Administration for the Estates were issued on December
6 20, 2017. Nicholas was thereafter appointed as Executor of the Estate of Lorraine Carver and
7 Letters Testamentary were issued on January 8, 2018 and he was appointed as the Executor of
8 the Estate of Dennis Carver and Letters Testamentary were issued on January 10, 2018.
9 (Riverside Superior Court Cases MCP1700877 and MCP1700878).

10 19. Nicholas is an attorney at law and licensed to practice in the state of California and
11 acted in his capacity as an attorney in performing various acts on behalf of the Trusts and the
12 Estates, as well as for Brooke and Madison, individually.

13 20. On April 23, 2018 Nicholas resigned as Trustee of the Trusts and appointed as
14 successor Co-Trustees Brooke Nicole Carver and Rhonda L. Morgan. True and correct copies
15 of the resignations are attached hereto as Exhibit "A."

16 21. On April 23, 2018, Brooke Nichole Carver and Rhonda L. Morgan accepted their
17 appointment as Co-Trustees of the Trust.

18 22. Nicholas tendered his resignation of the Estates on May 29, 2018.

19 23. On April 22, 2019 Nichols signed a Waiver of Statutes of Limitation and Tolling
20 Agreement ("Tolling Agreement") on behalf of himself, A&N and Alfano Law.

21 24. On April 22, 2019, Lindsay also signed the Tolling Agreement.

22 25. On November 5, 2019, Nicholas and Lindsay through their attorney served a
23 Rescission of Waiver of Statutes of Limitation and Tolling Agreement deemed to be effective
24 (60) days from the date of the last party to be served.

25 **FACTS IN SUPPORT OF THE PETITION**

26 26. Upon information and belief, Dennis Carver was the owner of Southern California
27 Jetting, a sole proprietorship (hereinafter "So Cal Jetting"), which he assigned to the Trusts on
28

1 January 22, 2017 See Assignments of Business Interest true and correct copies of which are
2 attached hereto as Exhibit "B".

3 27. Upon information and belief, Dennis Carver was the owner of Commercial
4 Plumbing and AC, a sole proprietorship (hereinafter "CPANDAC"), which he assigned to the
5 Trusts on January 22, 2017. See Assignments of Business Interest true and correct copies of
6 which are attached hereto as Exhibit "B".

7 28. On or about November 14, 2017, Nicholas sent letters to the creditors of So Cal
8 Jetting and CPANDAC (collectively, the "businesses"), informing them of his intent to dissolve
9 the businesses on November 17, 2017 and November 30, 2017, respectively. The letters
10 indicated that all unpaid invoices should be remitted to "Alfano Law as they are the firm
11 responsible for the winding down and dissolving the businesses.

12 29. On information and belief, So Cal Jetting and CPANDAC each had a value in
13 excess of \$500,000.

14 30. On or around January 2018, Nicholas caused Brooke Carver, a 21-year-old
15 beneficiary of the Trusts to execute documents wherein she purported to become CEO of So
16 Cal Jetting and CPANDAC. On information and belief, this was because Nicholas was having
17 difficulty cashing and/or depositing checks received in the name of the businesses for
18 outstanding invoices after he "dissolved" the businesses in November of 2017.

19 31. On information and belief, on or about February 2, 2018, Nicholas released all
20 accounts and all trades of CPANDAC to Robert McKechnie without proper consideration.

21 32. In or around February of 2018, on information and belief Nicholas gave away
22 \$85,895 in materials and supplies of CPANDAC to Robert McKechnie without proper
23 consideration.

24 **Allegations Related to Unauthorized Loans and Missing Funds**

25 33. On or around October of 2017, Nicholas opened a checking account ending in
26 6934 for the Living Trust of Dennis John Carver.

1 34. From October 2017 through April 2018, Nicholas improperly wrote checks, made
2 withdrawals and otherwise used funds of the Trusts and Estates for his own personal use and
3 benefit, including but not limited to the following acts:

- 4 a. Nicholas wrote checks to Alfano Law in amounts of at least \$4,000;
- 5 b. From November 14, 2017 through December 12, 2017 Nicholas withdrew
6 monies in the amount of \$30,320.00 which have not been accounted for;
- 7 c. On December 12, 2017, Nicholas withdrew \$5,000 which has not been
8 accounted for;
- 9 d. On or around January 2, 2018, Nicholas took \$30,000 cash and claimed
10 they were payment for his services;
- 11 e. On or about February 6, 2018, Nicholas purchased for himself office
12 furniture in the amount of \$1,214.74;
- 13 f. On February 9, 2019, Nicholas withdrew cash in the amount of \$500.00
14 which has not been accounted for; and
- 15 g. On March 27, 2018, Nicholas wrote a check in the amount of \$30,000 to
16 Amber Management for the lease of his law firm. Alfano Law after
17 receiving an eviction notice from his landlord.

18 35. Other funds were improperly withdrawn or used from the Trust and Estate
19 accounts; cash was misappropriated or improperly used; and other property was given away or
20 sold without adequate compensation, in amounts to be proven at trial.

21 36. On information and belief, Lindsay wrote some or all of the checks for payments to
22 and from the Trusts and had full access to all Trusts' funds. Upon information and belief,
23 Lindsay was aware of Nicholas' improper use of Trust and Estate funds, and encouraged him
24 and assisted him in the improper withdrawals and spending of the funds. Upon information and
25 belief, Lindsay knowingly received benefits from these improper acts.

26 **Sale of Trust Assets**

27 37. In or around December of 2018, on information and belief Nicholas sold to
28 Matthews, his business partner a Chevy van believed to be valued at around \$16,000 for

1 \$12,500.00 which belonged to the Trusts or Estates. After multiple attempts to collect payment
2 and/or an executed a bill of sale this van was repossessed in October of 2018. On information
3 and belief. Matthews used the van for more than eight months without any form of
4 compensation to the Trusts or Estates. On information and belief. Matthews was aware that
5 Nicholas was a fiduciary for Brooke and Madison and that the van belonged to the Trusts or
6 Estates and not Nicholas personally.

7 38. On information and belief. in or around December 2018. Nicholas. sold to an
8 employee of CPANDC. Mateo Bautista a Chevy van and Jetter in the amount of \$ 33,121.00.
9 No bill of sale was executed. On information and belief. Nicholas received payment for the
10 Chevy van and Jetter. but evidence of the receipt of such payment has not been located in any
11 Trust or Estate account.

12 39. On information and belief. in or around December of 2018. Nicholas sold to
13 himself and Matthews a box truck believed to be valued at \$4,500. On information and belief. a
14 bill of sale was never executed and this vehicle has yet to be paid for. On information and
15 belief. Matthews was aware that Nicholas was a fiduciary for Brooke and Madison and that the
16 box van belonged to the Trusts or Estates and not Nicholas personally. Upon information and
17 belief. Matthews assisted and/or encouraged Nicholas in these improper acts and received a
18 personal benefit from these improper acts.

19 40. On information and belief. Lindsay was aware of Nicholas' improper sale of Trust
20 and Estate assets. was aware Nicholas failed to pay funds received from the sale of such assets
21 to the Trusts and/or Estates. Upon information and belief. Lindsay encouraged or assisted
22 Nicholas in performing these improper acts. Upon information and belief. Lindsay knowingly
23 received benefits from these improper acts.

24 Unauthorized Acts

25 41. Upon information and belief. prior to Dennis Carver's death. Dennis loaned
26 \$70,000 to Nicholas which was evidenced by a promissory note. On information and belief.
27 some or all of the note remained outstanding at the time of Dennis' death. Upon information
28 and belief. Nicholas used his authority as Trustee and Attorney to persuade Brooke to forgive

1 the \$70,000 loan and to give him \$30,000 cash as payment of his services. On information and
2 belief, Nicholas destroyed the note. Upon information and belief, Lindsay encouraged or
3 assisted Nicholas in performing these improper acts. Upon information and belief, Lindsay
4 knowingly benefited from these improper acts.

5 42. Upon information and belief, in or around January of 2018, Nicholas improperly
6 used Trust assets in the amount of approximately \$114,000 to invest in a Cannabis venture.
7 There has been no repayment of these funds and no distributions to the Trust as a result of the
8 use of these funds to invest in this venture. Alternatively, upon information and belief, Nicholas
9 borrowed Trust assets in the amount of \$114,000 and use the funds to invest in a cannabis
10 venture. Upon information and belief, Nicholas failed to execute a promissory note and has
11 failed to make any payments on the loan. Upon information and belief, Lindsay encouraged or
12 assisted Nicholas in performing these improper acts. Upon information and belief, Lindsay
13 knowingly received benefits from these improper acts.

14 43. Upon information and belief, in or around January of 2018, Nicholas took a
15 business loan and/or improperly took funds from the Trust in the amount of \$40,000 without
16 executing a promissory note. Nicholas has failed to make any payment. Upon information and
17 belief, Lindsay encouraged or assisted Nicholas in performing these improper acts. Upon
18 information and belief, Lindsay knowingly received benefits from these improper acts.

19 44. Upon information and belief, in or around February of 2018, Nicholas took another
20 personal loan and/or improperly took funds from the Trust in the amount of \$27,000 without
21 executing a promissory note. Nicholas has failed to make any payment. Upon information and
22 belief, Lindsay encouraged or assisted Nicholas in performing these improper acts. Upon
23 information and belief, Lindsay knowingly received benefits from these improper acts.

24 45. In early 2018 Nicholas used his position as Trustee to invest in one of his own
25 personal business ventures with Savard and Lorea who upon information and belief entered into
26 a lease over 950 Empire Mesa, Nevada a commercial property of the Trust. On information and
27 belief, both Nicholas, Savard and Lorea failed to abide by the lease terms and failed to remit
28 any form of payment for the use of Trust property. On information and belief, Nicholas

1 intended to use the property to engage in illegal business activities. Upon information and
2 belief. Lindsay encouraged or assisted Nicholas in performing these improper acts. Upon
3 information and belief. Lindsay knowingly received benefits from these improper acts.

4 46. In May of 2018, after Morgan became Trustee of the Trusts, Morgan caused the
5 locks on 950 Empire Mesa to be changed and for Savard and Lorea to vacate the premises
6 immediately. Upon vacating the premises Savard and Lorea were witnessed taking Trust
7 property from 950 Empire Mesa, Nevada. This property consisted of furniture, tools, supplies
8 and house hold items believed to be valued at more than \$40,000. On information and belief,
9 this property was being sold and/or kept in Riverside County.

10 47. In or around March 2018, upon information and belief, Nicholas sold a tractor
11 valued at \$7,500 to a friend of his for \$700.00. The \$700.00 for the tractor has yet to be
12 accounted for in any Trust account. Upon information and belief, Lindsay encouraged or assisted
13 Nicholas in performing these improper acts. Upon information and belief, Lindsay knowingly
14 received benefits from these improper acts.

15 48. Upon information and belief, in or around March 2018, Nicholas sold Quads for
16 \$4,500.00, \$6,000 less than the fair market value. This money has yet to be accounted for in
17 any Trust account. Upon information and belief, Lindsay encouraged or assisted Nicholas in
18 performing these improper acts. Upon information and belief, Lindsay knowingly received
19 benefits from these improper acts.

20 49. On November 29, 2017, Nicholas sent an email to Jennifer Shea about selling off
21 Estate assets stating "we can sell it. I am keeping as many assets as possible out of probate for
22 tax reasons. I know how to structure it so it wont be an issues."

23 50. In April of 2018, Nicholas also sent a text message to Brooke Carver stating "we
24 left several items out probate so we could liquidate them for quick cash if needed to float
25 overhead until social letters freed up more accounts ect." On information and belief, Nicholas
26 intended to use the cash for his own personal benefit and did use it for his own personal benefit.

27 ///

28 ///

1 Collections Contract with A&N Acquisitions

2 51. On or about January 1, 2018, Alfano as CEO and General Counsel of A&N
3 Acquisitions created and executed a contract with A&N Acquisitions and CPANDAC for
4 collection of Accounts (herein "Collections Contract"). A&N Acquisitions compensation for
5 services rendered under the terms of the contract was to be a maximum of 30% of the total
6 amount collected. The contract also stated that "*CPANDAC will not be liable for any cost or*
7 *expense incurred by A&N ACQUISITIONS in the collection of accounts. No collection fees*
8 *will be paid to A&N ACQUISITIONS on either: (1) accounts on which CPANDAC receives*
9 *payment prior to any collection efforts being performed by A&N ACQUISITIONS; or (2)*
10 *accounts which are deferred, postponed or canceled by CPANDAC in its sole discretion.*" (See
11 Attached hereto as Exhibit "C" A&N Acquisitions Contract for Collection of Accounts.)

12 52. On information and belief, in or around January 2018, Jenifer Shea, a previous
13 employee of CPANDAC, collected \$200,000 in payments for outstanding invoices. On
14 information and belief, Jennifer Shea was not acting as an employee or agent of A&N when
15 these amounts were received. Upon information and belief, Nicholas caused A&N acquisitions
16 to be paid commissions on those monies collected by Ms. Shea, despite A&N not having
17 performed any collection activities related to these payments.

18 53. Pursuant to the terms of the Collection Contract A&N section III Duties of A&N
19 acquisitions, A&N Acquisitions agreed to provide three different types of reports. This included
20 an Acknowledgement report acknowledging each account received for collection within ten
21 (10) business days of receipt, a Debtor Status Report providing a quarterly Report on all
22 accounts placed and A Fiscal Year Report which was to be provided by November 1st of each
23 year a Fiscal Year Report based on data generated by A&N Acquisitions to assist CPANDAC
24 in preparing for information required by State and Federal governmental entities and agencies.
25 Most of these reports have never been provided to CPANDAC.

26 54. Upon information and belief, in or around February 2018, A&N began collections
27 on outstanding invoices of CPANDAC.
28

1 55. On March 5, 2018, Lindsay sent Brooke an email with February breakdowns on A
2 &N Acquisitions collection efforts. On review of the March 2018 breakdown it appears that A
3 &N was compensated at more than 30% for its collection efforts in violation of the Contract
4 Terms.

5 56. In April of 2018, Lindsay sent Brooke an email with March breakdowns on A&N's
6 collection efforts. On information and belief, A&N was compensated at more than 30% under
7 the terms of the Contract in order to pay their employee "Lucy".

8 57. In late April of 2018, Trustee Morgan informed A&N that they were to cease all
9 collections efforts. Despite this termination, upon information and belief, A&N continued to
10 collect and deposit checks received on behalf of CPANDAC into Alfano Law's bank account.

11 58. In May of 2018, Attorneys for the Trustees requested the return of all client files
12 electronic and otherwise from A&N and Alfano Law. Trustees received some but not all files.

13 59. On October 18, 2018, Attorneys for the Trustees again requested the return of two
14 bins Lindsay referenced in her March 5, 2018 email stating "one for paid invoices and ones for
15 customers who will not pay along with their reason why, example some have already paid and
16 sent us copies of cancelled checks" as well as all electronic files.

17 60. On October 18, 2018, Lindsay stated that she did not have the bins. As of today's,
18 date these bins have yet to be returned to Trustees.

19 61. On October 18, 2018, Lindsay informed the Trustees that she deleted client
20 QuickBooks files if they never received payment from them. As of today's, date the Trustees
21 have yet to receive any electronic file in regards to A &N collection efforts. Pursuant to article
22 3 section 9 of the Collections Contract A&N was to "maintain company records on such
23 accounts in a manner as to be auditable, and allow audit by CPANDAC or its representatives
24 any time during normal business hours. A&N ACQUISITIONS will not destroy any of the
25 records and documents relating to CPANDAC accounts until it has received written permission
26 to do so from CPANDAC, but in no event less than three (3) years after a particular debtor file
27 is closed.
28

1 62. On October 22, 2018 Attorney for Trustees requested yet again "all
2 *correspondence and invoices that were sent out, all copies of all checks made out to Alfano law*
3 *from clients of CPAAC and So Cal Jetting, copies of all checks made out to Carver Estates or*
4 *Trusts, and the last backup of QuickBooks prior to it being deleted.*" Lindsay has refused to turn
5 over the requested documents.

6 **Other Improper Actions**

7 63. Nicholas, acting as their attorney, drafted the Trusts for Dennis and Lorraine and
8 caused them to name himself as the successor Trustee, and consequently the executor of their
9 estates. Upon information and belief, Nicholas failed to properly advise Dennis and Lorraine
10 need to transfer asset to the Trusts and/or failed to properly transfer assets to trusts on their
11 behalfes. Nicholas benefited from these acts.

12 64. Upon information and belief, Nicholas also failed to take proper actions to secure
13 the personal property of the Trusts and Estates. Upon information and belief, Nicholas also
14 caused and allowed other property of the Trusts and Estates to be used by himself and other
15 persons related or affiliated with him, without proper compensation.

16 65. On information and belief, Nicholas did not enter into an engagement agreement to
17 act as the attorney on behalf of the Trusts. Furthermore, Nicholas acted in the dual roles of
18 attorney and trustee, and on information and belief caused himself to be paid compensation for
19 both roles, without court approval or proper notice to the beneficiaries.

20 **FIRST CAUSE OF ACTION**
21 **(Breach of Fiduciary Duty as Trustee and Executor)**
22 **(Against Nicholas and Lindsay)**

23 66. Petitioners hereby realleges and incorporates by reference each and every
24 allegation contained in Paragraphs 1 through 65.

25 67. At all times mentioned herein, Respondent Nicholas is, and at all relevant times
26 was, the duly acting trustee of the Trusts and Executor of the Estates.

27 68. Probate Code section 16000 et seq. set forth a trustee's fiduciary duties in the
28 administration of a trust. Trustee, Nicholas breached the following fiduciary duties: the duty to
 administer the trust according to the trust instrument; the duty to administer the trust solely in

1 the interest of the beneficiaries: the duty not to use or deal with trust property for the trustee's
2 own profit or for any other purpose unconnected with the trust, nor to take part in any
3 transaction in which the trustee has an interest adverse to the beneficiary: the duty to take
4 reasonable steps under the circumstances to take and keep control of and to preserve the trust
5 property: the duty to make trust property productive under the circumstances and in
6 furtherance of the purposes of the trust.: the duty to take reasonable steps to enforce claims that
7 are part of the trust property: a duty not to delegate to others the performance of acts that the
8 trustee can reasonably be required personally to perform and may not transfer the office of
9 trustee to another person nor delegate the entire administration of the trust to a co-trustee or
10 other person: the duty to only incur cost that are appropriate and reasonable in relation to the
11 assets, overall investment strategy, purposes and other circumstances of the trust: and the
12 prohibition on self-dealing transactions, causing himself to be named as successor Trustee of
13 the Trusts, and being paid dual compensation for his roles as Trustee and attorney for the
14 Trusts. (Prob. Code §§ 1600, 16002, subd. (a), 16004, subd. (a), 16006, 16007, 16010, 16012,
15 16049, and 16050.)

16 69. Nicholas breached his fiduciary duties as Executor to the Estates by failing to
17 properly take control of and manage the property of the Estates: by using Estate funds for his
18 own personal use and benefit: by failing to properly account for all Estate assets: by failing to
19 collect all payments due and owing to the Estate: by selling Estate assets for less than adequate
20 compensation: by entering into contracts beneficial to himself at the expense of the Estate: by
21 destroying records of the Estate: by allowing others to use Estate assets without adequate
22 compensation: by failing to exercise the proper duty of care in administration of the Estates:
23 and other acts or failures to act as required of personal representatives.

24 70. Nicholas breached the above cited duties by:
25 a. Failing to learn and carry out his duties as trustee and executor:
26 b. Failing to conduct due diligence in the management of the Trust and Estate
27 assets:
28 c. Transferring trust and estate funds to himself personally.

- 1 d. Borrowing money from the Trust and Estate:
2 e. Loaning money to Alfano Law, his law firm:
3 f. Collecting excessive Trustee and attorney fees:
4 g. Using funds to purchase property for his law firm:
5 h. Using Trust funds to pay his law firms rent:
6 i. Entering into contracts with A &N Acquisitions to collect trust assets at a 30%
7 fee, a company he has an ownership interest in:
8 j. Failing to maintain records:
9 k. Destroying records:
10 l. Selling assets at well below the fair market value:
11 m. As well as other acts and failures to act in violation of his fiduciary duties to be
12 proven at trial.
- 13 71. As mentioned herein, Lindsay knowingly assisted and/or encourage Nicholas as
14 trustee executor in breaching his fiduciary duties and as such participated in the breaches.
- 15 72. As a proximate result of Nicholas and Lindsay's breaches, the Trusts and Estates
16 have been damaged.
- 17 73. For committing the breaches described above Petitioners seek an order of the Court
18 surcharging Nicholas and Lindsay personally for any loss or depreciation in value of the Trust
19 and/or Estate assets resulting from these breaches, with interest, under Probate Code §§
20 16440(a)(1) and 9602.
- 21 74. For committing the breaches described above Petitioners seek an order of the Court
22 surcharging Nicholas and Lindsay personally for any loss of profit that would have accrued to
23 the Trust if the loss of profit is the result of the breach under Probate Code §§ 16440(a)(3) and
24 9601.
- 25 75. If the Court finds that Nicholas and Lindsay's actions above caused Petitioners to
26 lose any use of Trust or Estate property as a result of their oppression, fraud or malice, then
27 Petitioner seeks pre-judgement interest under Civil Code § 3288.
28

76. If this Court finds that Nicholas and Lindsay has in bad faith wrongfully taken, concealed, or disposed of property belonging to the Trust or Estate, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, he be liable for twice the value of the property recovered in addition to another remedy sought in this Petition. Petitioners also seek reasonable attorneys fees and costs under Probate Code § 859.

SECOND CAUSE OF ACTION
(Compel an Accounting)
(Against Nicholas)

77. Petitioners hereby realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 65.

78. Nicholas, as Trustee has a duty to account and report to the beneficiaries of the Trust, annually, and upon the change of trustees (which occurred when Morgan and Brooke were appointed as Co-Trustees) Yet, Nicholas has not provided an accounting or sufficient information regarding the administration of the Trust.

79. More than 60 days has elapsed since Nicholas was requested to provide an accounting for the time he was Trustee of the Trust.

80. In addition, since Morgan and Brooke were appointed Co-Trustees numerous unexplained discrepancies were discovered. For example, on information and belief, Lindsay wrote for Nicholas' signature a check in the amount of \$30,000 to Amber Management, the Landlord who leases office space to Alfano Law. It is reasonably likely that a material breach of trust has occurred.

81. As such, under Probate Code §§ 16062, 16063, 16064, subdivision (a), and 17200, subdivision (b)(7)(c), the Court should order Nicholas to provide a full accounting during the time he was Trustee of the Trust.

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III

THIRD CAUSE OF ACTION
(Legal Malpractice)
(Against Nicholas Alfano and Alfano Law)

82. Petitioners hereby realleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 65.

83. Nicholas and Alfano Law owed Petitioners the duties of attorney to client, including the exercise of independence, avoidance of conflicts of interest, honesty in billing practices, safekeeping of client funds, and the exercise of care, skill and diligence. Nicholas breached said duties through acts and omissions which include, without limitation, the following:

- a. Nicholas substantially over billed and double billed Petitioners for legal fees and expenses.
- b. Nicholas failed to protect Petitioners' funds which were entrusted to Nicholas. Nicholas as Trustee loaned his law firm, Alfano Law money without executing any Note or Contract. Nicholas used Trust funds to pay Alfano Law's bills and to purchase furniture for the office without written documents or consent.
- c. Nicholas intentionally concealed conflicts of interest by entering into prohibited transactions between himself as Trustee and his Law Firm to administer the Trust and himself as Trustee and his collection company, A&E without seeking consent.
- d. Respondents Nicholas entered into contracts with beneficiaries without providing the equivalent of independent legal advice, advising of the importance of independent legal advice and without properly explaining the conflicts of interest in the transaction.
- e. In general, Respondents failed to represent and counsel Petitioners with the skill and care ordinarily required of lawyers in California.

84. As a proximate cause of the Respondents' malpractice, Petitioners have been damaged in the following manner: (1) substantial amounts of Petitioners funds were taken by Respondents or are missing and have not been replaced: (2) Petitioners substantially over paid

1 Respondents for legal fees and expenses; (3) Petitioners lost substantial amounts of funds in
2 imprudent investments by Respondents for Petitioners; (4) Respondents allowed third parties to
3 use or take Petitioners' funds and property and those funds and property were not returned; (5)
4 Petitioners lost profits on investments that Nicholas sold and on investments that should have
5 been made; and (6) substantial funds were spent by Petitioners to pay other professionals due to
6 Nicholas' negligence. The monetary damages proximately caused by Nicholas' malpractice
7 exceed \$ 1,000,000.

8 85. WHEREFORE, Petitioners pray for judgment as hereinafter set forth.
9

10 **FOURTH CAUSE OF ACTION**
11 **(Breach of Fiduciary Duty as Attorney)**
12 **(Against Nicholas Alfano and Alfano Law)**

13 86. Petitioners hereby reallege and incorporates by reference each and every allegation
14 contained in Paragraphs 1 through 65.

15 87. At all times mentioned herein, an attorney-client relationship existed between
16 Petitioners and Respondents whereby Respondents owed fiduciary duties to Petitioners.

17 88. Respondents breached their fiduciary duties owing to Petitioners as described in
18 the preceding paragraphs.

19 89. As a proximate cause of the Respondents' breaches of fiduciary duty, Petitioners
20 have been damaged as described in the preceding paragraphs.

21 90. As a proximate cause of the Respondents' breaches of fiduciary duty, Nicholas and
22 Alfano Law are required to disgorge all legal fees paid to them by the Petitioners.

23 91. The conduct alleged in the preceding paragraphs was willful, malicious and
24 fraudulent within the meaning of Civil Code Section 3294, entitling Petitioners to an award of
25 punitive damages in an amount sufficient to punish Respondents and deter future despicable
26 conduct.

27 92. WHEREFORE Petitioners pray for relief as set forth below.
28 ///

1 **FIFTH CAUSE OF ACTION**
2 **(Theft-Recovery of Stolen Property)**
3 **(Against All Respondents)**

4 93. Petitioners hereby reallege and incorporates by reference each and every allegation
5 contained in Paragraphs 1 through 65.

6 94. Respondents had, at all relevant times, custody and control of bank accounts,
7 collection proceeds and assets of the Trusts.

8 95. Respondents intentionally used, for their benefit and to Petitioners detriment Trust
9 assets that they were not were entitled to.

10 96. As a direct and proximate result of such theft, the Trust has suffered damages.

11 97. Respondents' actions in this matter have been willful, knowing, malicious,
12 fraudulent and oppressive, entitling the Petitioners to punitive damages in an amount
13 appropriate to punish Respondents and to deter others from engaging in the same or similar
14 behavior.

15 98. WHEREFORE Petitioners pray for relief as set forth below.

16 **SIXTH CAUSE OF ACTION**

17 **(Fraud and Deceit)**

18 **(Against Nicholas, Lindsy, Matthews, Alfano Law, A&N Acquisitions, and DOES 1-**
19 **10.)**

20 99. Petitioners hereby reallege and incorporates by reference each and every allegation
21 contained in Paragraphs 1 through 65.

22 100. Respondents were under a duty to disclose material facts related to trust assets,
23 conflicts of interest, investments, loans and deposits made with the Petitioners' funds, and the
24 true status of the Alfano Related Companies and other companies.

25 101. Respondents intentionally concealed and misrepresented material facts as
26 described in the preceding paragraphs to hide the gross mismanagement of Trust assets.

27 102. Because of Respondents' intentional concealment and misrepresentations, as well
28 as their sole possession of Trust assets and records, Petitioners did not know of Respondents'

1 acts of intentional concealment and misrepresentations until in or after May 2018 when Brooke
2 as a beneficiary of the Trust sought new counsel to administer her parents Trust. nor did they
3 have a reasonable opportunity to discover such acts of concealment before that time.

4 103. At this time. Petitioners do not know the extent of Respondents numerous acts of
5 fraud because they continue to conceal their gross mismanagement of Trust assets by
6 destroying evidence and refusing to hand over Trust records.

7 104. As a proximate cause of the Respondents' concealments and misrepresentations
8 Petitioners have been damaged in an amount that has not yet been fully ascertained. but which
9 is believed to be in excess of eight hundred thousand dollars (\$800,000).

10 105. The conduct alleged in the preceding paragraphs was willful, malicious and
11 fraudulent within the meaning of Civil Code Section 3294, entitling Petitioners to an award of
12 punitive damages in an amount sufficient to punish Respondents and deter future despicable
13 conduct.

14 106. WHEREFORE Petitioners pray for relief as set forth below.

15 **SEVENTH CAUSE OF ACTION**

16 **(Conversion)**

17 **(Against Nicholas, Lindsev, Matthews, Alfano Law, A&N Acquisitions, and DOES 1-**
18 **10.)**

19 107. Petitioners hereby reallege and incorporates by reference each and every allegation
20 contained in Paragraphs 1 through 65.

21 108. Petitioners, as Co-Trustees, hold legal title to all personal property assets in the
22 Trust for the benefit of Brooke and Madison Carver.

23 109. Respondents have disposed of Trust personal property in a manner inconsistent
24 with the Petitioners property rights. Respondent Nicholas, represented, agreed, and promised to
25 the Trust to act as successor trustee and comply with the terms of the trust.

26 110. Respondents intentionally took possession of Trust assets, cash and/or other
27 personal property, and kept for themselves in breach of earlier representations, agreements, and
28 promises, and against the express terms of the Trust.

1 111. Petitioners did not consent to the acts of Respondents.

2 112. Petitioners as Co-Trustees of the Trust were harmed because the personal property
3 has been wrongly removed from the Trust.

4 113. The defendants' conduct was a substantial factor in causing Petitioners' harm.

5 114. WHEREFORE Petitioners pray for relief as set forth below.

6
7 **EIGHTH CAUSE OF ACTION**

8 **(Civil Conspiracy)**

9 **(Against all Respondents)**

10 115. Petitioners hereby reallege and incorporates by reference each and every allegation
11 contained in Paragraphs 1 through 65.

12 116. In all the aforementioned conduct, Respondents agreed, between and among
13 themselves, to engage in actions and a course of conduct designed to further an illegal act or
14 accomplish a legal act by unlawful means, and to commit one or more overt acts in furtherance
15 of the conspiracy to defraud Petitioners.

16 117. Respondents agreed between and among themselves to engage in the conspiracy to
17 defraud for the common purposes of accruing economic gains for themselves at the expense of
18 and detriment to Petitioners.

19 118. Respondents' actions in this matter have been willful, knowing, malicious,
20 fraudulent and oppressive, entitling the Petitioners to punitive damages in an amount
21 appropriate to punish Respondents and to deter others from engaging in the same or similar
22 behavior.

23 119. WHEREFORE Petitioners pray for relief as set forth below.

24
25 **NINTH CAUSE OF ACTION**

26 **(Breach of Contract)**

27 **(Against Nicholas, Lindsv, Brian Matthews, Alfano Law,**
28 **A&N Acquisitions, and DOES 1-10.)**

120. Petitioners hereby realleges and incorporates by reference each and every
allegation contained in Paragraphs 1 through 65.

121. In doing the above acts, Respondents breached the written agreements with Petitioners. Petitioners have performed all acts required of them under those agreements, and has demanded performance by Respondents.

122. As a result of Respondents breach of the written agreement, Petitioners have been harmed by being denied distributions from the collection efforts to which the Trust was entitled. Instead of making these distributions, Respondents used the collection money and assets for their own benefit.

123. As a further result of Respondent's breach of written agreement, Petitioners have been harmed by the need to file suit and incur costs of suit and attorney's fees. The Agreement provides for attorney's fees in the event of a dispute, and Petitioners claim attorney's fees as an element of damages as well as pursuant to applicable statute.

124. Petitioners cannot determine the amount that Respondents owe without a proper accounting but believes the amount is larger than Eight Hundred Thousand Dollars (\$800,000).

125. The conduct alleged in the preceding paragraphs was willful, malicious and fraudulent within the meaning of Civil Code Section 3294, entitling Petitioners to an award of punitive damages in an amount sufficient to punish Respondents and deter future despicable conduct.

126. WHEREFORE. Petitioners pray for judgment as hereinafter set forth.

TENTH CAUSE OF ACTION
(For Breach of the Covenant of Good Faith and Fair Dealing)
(Against Nicholas. Lindsy. Matthews. Alfano Law,
A&N Acquisitions, and DOES 1-10.)

127. Petitioners incorporate and allege Paragraphs 1 through 65 as if fully set forth herein.

128. Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. This implied covenant of good faith and fair dealing requires that no party will do anything that will have the effect of impairing, destroying, or injuring the right of the other party to receive the benefits of their agreement. The covenant implies that in all contracts, each party will do all things reasonably contemplated by the terms of the contract

1 to accomplish this purpose. This covenant protects the benefits of the contract that the parties
2 reasonably contemplated when they entered into the agreement.

3 129. The Petitioners allege that at all times there existed an implied covenant of good
4 faith and fair dealing represented by the terms of the Agreement which imposed upon all
5 Respondents a duty of good faith and fair dealing in this matter to safeguard, protect or
6 otherwise care for the assets and rights of Petitioners.

7 130. Respondents enjoyed substantial discretionary power affecting Petitioners' rights
8 during the events alleged in this Petition: Respondents were required to exercise such power in
9 good faith but did not do so as set forth herein.

10 131. Petitioners are informed and believe, and thus allege, that all Respondents willfully
11 breached their implied covenant of good faith and fair dealing with Petitioners when, among
12 other things, they continually failed to disclose to Petitioners a report acknowledging each
13 account received for collection, a quarterly report on all accounts placed and a fiscal year
14 report.

15 132. As a result of all Respondents' breach of this continuing covenant, Petitioners have
16 suffered injury.

17 133. Respondents' actions in this matter have been willful, knowing, malicious,
18 fraudulent and oppressive, entitling the Petitioners to punitive damages in an amount
19 appropriate to punish Respondents and to deter others from engaging in the same or similar
20 behavior.

21 134. WHEREFORE Petitioners pray for relief as set forth below.

22 ///

23 ///

24 **ELEVENTH CAUSE OF ACTION**
25 **(Unjust Enrichment)**
26 **(Against all Respondents)**

27 135. Petitioners hereby realleges and incorporates by reference each and every
28 allegation contained in Paragraphs 1 through 65.

1 136. Respondents have been unjustly enriched to the detriment of Petitioners by
2 wrongfully taking Trust and Estate assets to which Respondents, in equity, are not entitled.
3 Respondents have unjustly retained the amounts wrongfully taken. In other words, Respondents
4 received the benefit which was economic gain realized from the receipt of money at the
5 expense of the Petitioners and which Respondents have unjustly retained and they are bereft of
6 the right to have received them in view of the fraud and the use of void and/or voidable
7 documents employed against the Petitioners.

8 137. Petitioners are entitled to recover from Respondents all amounts wrongfully taken,
9 collected and improperly retained by Respondents in connection with the misconduct alleged
10 herein, plus interest thereon.

11 138. Respondents' conduct and actions alleged herein were despicable, and were done
12 maliciously, oppressively and fraudulently, with a willful and conscious disregard of
13 Petitioners' rights. Petitioners are informed and believe and thereupon allege that the officers,
14 directors and managing agents of Respondents were personally involved in the decision-making
15 process with respect to the misconduct alleged herein and to be proven at trial.

16 139. The conduct alleged herein was engaged in by representatives of Respondents, and
17 officers, directors and/or managing agents of Respondents authorized and/or ratified each and
18 every act on which Petitioners' allegations of punitive damages herein are based.

19 140. On that basis, Petitioners are entitled to an award of exemplary and punitive
20 damages in an amount adequate to make an example of, and to punish and deter, Respondents,
21 and each of them.

22 141. WHEREFORE Petitioners pray for relief as set forth below.

23 ///

24 **TWELFTH CAUSE OF ACTION**
25 **(Declaratory Judgment)**
26 **(Against all Respondents)**

27 142. Petitioners incorporate and allege Paragraphs 1 through 65 as if fully set forth
28 herein.

1 143. Accordingly, Petitioners seeks a declaration that any purported agreement between
2 Petitioners, or any of them, and A&N or Alfano Law are void or voidable, invalid, and
3 unenforceable, and Petitioners are entitled to disgorgement and restitution of all fees paid.
4 Petitioners further seek a declaration that Respondents are not entitled to a "reasonable fee" for
5 services as a result of their violations of the California Rules of Professional Conduct. In
6 addition, Petitioners seek a judgment of the Court awarding monetary relief against Nicholas in
7 the amount of all fees he paid to Alfano Law, plus interest at the legal rate. Petitioners further
8 seek a return of all fees paid to Nicholas as Trustee of the Trusts and request that the Court
9 deny all compensation to Nicholas for work performed by him in his capacity as personal
10 representative of the Estates.

11 144. The conduct alleged in the preceding paragraphs was willful, malicious and
12 fraudulent within the meaning of Civil Code Section 3294, entitling Petitioners to an award of
13 punitive damages in an amount sufficient to punish Respondents and deter future despicable
14 conduct.

15 145. WHEREFORE Petitioners pray for relief as set forth below.

16 **THIRTEENTH CAUSE OF ACTION**
17 **(Double Damages and Attorneys Fees and Costs)**
18 **(Against all Respondents)**

19 146. Petitioners incorporate and allege Paragraphs 1 through 65 as if fully set forth
20 herein.

21 147. Probate Code section 859 provides:

22 If a court finds that a person has in bad faith wrongfully taken, concealed, or
23 disposed of property belonging to the estate of a decedent, conservatee, minor,
24 or trust, or has taken, concealed, or disposed of the property by the use of undue
25 influence in bad faith or through the commission of elder or dependent adult
26 financial abuse, as defined in Section 15610.30 of the Welfare and Institutions
27 Code, the person shall be liable for twice the value of the property recovered by
28 an action under this part. In addition, except as otherwise required by law,
including Section 15657.5 of the Welfare and Institutions Code, the person
may, in the court's discretion, be liable for reasonable attorney's fees and costs.
The remedies provided in this section shall be in addition to any other remedies
available in law to a person authorized to bring an action pursuant to this part.

148. Section 859 requires the defendant to return all property, plus pay damages amounting to double the value of the property taken, i.e., triple damages. (*Estate of Kraus* (2010) 184 Cal.App.4th 103.)

149. Respondents wrongfully and in bad faith took, concealed, or disposed of Trust and Estate property. Respondents took, concealed, or disposed of Trust and Estate property by the use of undue influence and fraud in bad faith.

150. Petitioners request that the Court not only order Respondents to return the property taken from the Trust, but to additionally pay damages amounting to double the value of the property taken, i.e., triple damages.

151. Petitioners also request the Court order Respondents to pay reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment against the Respondents jointly, severally or in the alternative as follows:

1. For a surcharge against Respondents according to proof at trial.
2. For an order directing, compelling and enjoining Respondents, and each of them, to provide a full and complete accounting of all trust assets, acquisitions, income, expenses, disbursements, sales and/or transfers of Trust property.
3. For damages, compensatory and/or otherwise, according to proof in an amount in excess of the jurisdictional limit of this court.
4. In that Respondents actions and omissions as alleged herein were "malicious" and/or "oppressive" and/or "fraudulent" within the meaning of said terms as set forth in Civil Code Section 3294, for punitive damages and/or exemplary damages in an amount sufficient to punish and/or make an example out of defendants.
5. For restitution to Petitioners to prevent unjust enrichment of the Respondents as a result of Respondents conversion and/or peculation of trust assets.

- 1 6. Awarding double damages against the Respondents for their bad faith wrongful taking.
2 concealing, and/ or disposing of Trust and/or Estate property:
3 7. For attorneys' fees and costs; and
4 8. For such further relief that the court deems just and proper
5

6 Date: December 23, 2019

7 Respectfully Submitted.

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9 

10 JAMIE M. FRENZEL.
11 Attorney for Petitioners.
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VERIFICATION

I am a Petitioner in this matter and I have read the PETITION FOR 1. BREACH OF FIDUCIARY DUTY, ECT. and know the contents thereof to be true of my own personal knowledge except as to those matters which are therein stated upon my information or belief and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 23, 2019 at Orange County, California.


Brooke Carver, Trustee and Beneficiary

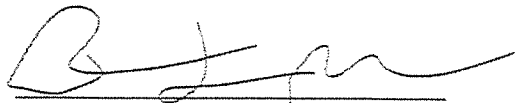
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VERIFICATION

I am a Petitioner in this matter and I have read the **PETITION FOR 1. BREACH OF FIDUCIARY DUTY, ECT.** and know the contents thereof to be true of my own personal knowledge except as to those matters which are therein stated upon my information or belief and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 23, 2019 at Irvine, California.



Rhonda L. Morgan, Co-Trustee and Executor

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EXHIBIT "A"

Trustee Resignation

I, Nicholas A. Alfano, am currently serving as Trustee of the Living Trust of Lorraine Susan Carver dated January 22, 2017, established by Lorraine Susan Carver (the "Trust"). I, Nicholas A. Alfano was appointed to serve as first alternate Trustee upon the death or incapacity of the then acting Co-Trustees, Dennis John Carver and Lorraine Susan Carver. Dennis John Carver and Lorraine Susan Carver died on October 16, 2017. I agreed to act and accepted appointment as successor Trustee effective October 17, 2017.

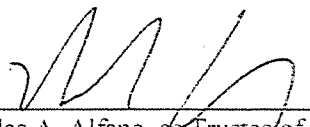
Under Section 2.C. of the Trust, Jennifer Shea is nominated as second alternate Trustee if I fail or cease to act. Upon information and belief, Jennifer Shea has refused to act as successor Trustee. No additional alternates are named in the Trust.

Pursuant to Section 3.A. of the Trust, a Trustee may designate the successor Trustee if the person designated as the alternate successor Trustee is unable or unwilling to serve. Based upon the declination to serve of Jennifer Shea, I have authority to appoint the successor Trustee upon my resignation and I hereby appoint Brooke Nicole Carver and Rhonda L. Morgan to act together as successor Co-Trustees. Brooke Nicole Carver and Rhonda L. Morgan have agreed to serve as successor Co-Trustees.

Pursuant to the terms of the Trust, notice of my resignation and appointment of the successor Trustees is being provided to all beneficiaries of the Trust.

In accordance with the above, I, Nicholas A. Alfano, hereby resign as Trustee of the Trust in favor of Brooke Nicole Carver and Rhonda L. Morgan, who I am appointing as successor Co-Trustees pursuant to Section 3.A. of the Trust. This resignation is effective immediately.

Dated: April 23, 2018.



Nicholas A. Alfano, as Trustee of the
Living Trust of Lorraine Susan Carver

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EXHIBIT "B"

ASSIGNMENT OF BUSINESS INTEREST


WITHOUT CONSIDERATION, the undersigned does hereby assign, transfer and set over to

DENNIS JOHN CARVER and LORRAINE SUSAN CARVER, as co-Trustees of THE LIVING TRUST OF DENNIS AND LORRAINE CARVER, U/A dated January 22, 2017,

all of my right, title and interest in the business entity known as SOUTHERN CALIFORNIA JETTING, PO Box 1125, Murrieta, CA 92564, and shall include, but not be limited to, the goodwill, accounts receivable, equipment, inventory, bank accounts and all other assets of the business of whatever and, wherever located, and whenever acquired.

The foregoing assignment and transfer shall apply even though "record" ownership or title, in some instances, may, presently or in the future, be registered in my individual name, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed.

Executed on January 22, 2017, in Riverside County, California.


DENNIS JOHN CARVER

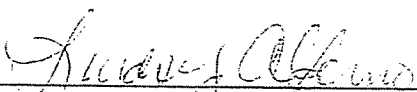
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

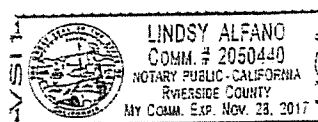
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

On January 22, 2017, before me, LINDSY ALFANO, a Notary Public, personally appeared DENNIS JOHN CARVER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public Signature



Notary Public Seal

ASSIGNMENT OF BUSINESS INTEREST

WITHOUT CONSIDERATION, the undersigned does hereby assign, transfer and set over to

DENNIS JOHN CARVER and LORRAINE SUSAN CARVER, as co-Trustees of THE LIVING TRUST OF DENNIS AND LORRAINE CARVER, U/A dated January 22, 2017,

all of my right, title and interest in the business entity known as COMMERCIAL PLUMBING AND AC, 950 Empire Mesa Way Henderson NV, 89011, and shall include, but not be limited to, the goodwill, accounts receivable, equipment, inventory, bank accounts and all other assets of the business of whatever and, wherever located, and whenever acquired.

The foregoing assignment and transfer shall apply even though "record" ownership or title, in some instances, may, presently or in the future, be registered in my individual name, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed.

Executed on January 22, 2017, in Riverside County, California.


DENNIS JOHN CARVER

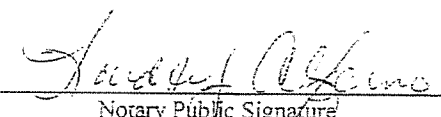
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

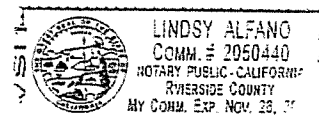
STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

On January 22, 2017, before me, LINDSY ALFANO, a Notary Public, personally appeared DENNIS JOHN CARVER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

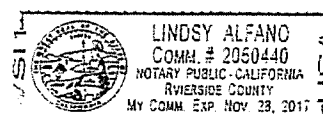
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public Signature



Notary Public Seal



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EXHIBIT "C"

A&N ACQUISITIONS

Contract for Collection of Accounts

Form approved by Office of General Counsel. No changes may be made without prior approval of Office of General Counsel. Upon execution by A&N ACQUISITIONS, forward this form to the Office of General Counsel to be sent to the General Counsel's Office. After execution by the General Counsel, the contract will be returned to A&N ACQUISITIONS to be executed by both parties.

This Contract ("Contract") is made and entered into by and between Commercial Plumbing and AC, ("CPANDAC") and A&N Acquisitions, ("A&N ACQUISITIONS").

I. **TERM.** The term of this Contract is from January 1st, 2018 to January 1st, 2019. Upon the expiration of this Contract and if both parties agree, this Contract may be renewed upon the same terms and conditions, so long as the initial term and any subsequent renewal periods do not exceed five (5) years. This Contract may be terminated at the option of either party by written notice given at least thirty (30) calendar days prior to the date of termination. CPANDAC reserves the right of immediate cancellation due to non-performance of, or non-adherence with any term or condition of this Contract. If this Contract terminates, or if A&N ACQUISITIONS goes out of business, no longer performs such collection services, or files a petition under the Bankruptcy Code, then A&N ACQUISITIONS shall, within sixty (60) calendar days of any such event, return to CPANDAC all records relating to its collection activity on behalf of CPANDAC as well as all funds collected from debtors on behalf of CPANDAC. A&N ACQUISITIONS will not be entitled to a collection fee on monies received for any account after any expiration or termination of this Contract.

II. **COLLECTION FEES.** A&N ACQUISITIONS' compensation for services rendered under the terms of this Contract will be a maximum of 30% of the total amount collected for the first referral. Accounts sent to A&N ACQUISITIONS for the first time are first referrals. To the extent allowed by the debtor's signed agreement or as otherwise authorized by law, this collection fee is to be collected in addition to the balance due. Such fee will be the sole consideration paid A&N ACQUISITIONS by the CPANDAC regardless of the type of account or collection effort. CPANDAC will not be liable for any cost or expense incurred by A&N ACQUISITIONS in the collection of accounts. No collection fees will be paid to A&N ACQUISITIONS on either: (1) accounts on which CPANDAC receives payment prior to any collection efforts being performed by A&N ACQUISITIONS; or (2) accounts which are deferred, postponed or canceled by CPANDAC in its sole discretion.

III. **DUTIES OF A&N ACQUISITIONS:** A&N ACQUISITIONS agrees to:

1. Accept for collection and pursue diligent collection efforts, in accordance with the terms and conditions set forth in this Contract, regarding the accounts which CPANDAC chooses to refer to it for collection without regard to the amount of the account.
2. Implement thorough collection procedures, including telephone calls, mail efforts, and skip tracing wherever necessary, in order to achieve a maximum recovery of any referred delinquent accounts. A&N ACQUISITIONS' collection efforts must be conducted through proper and lawful means without threats, intimidation, or harassment of the debtor in full compliance with the Fair Debt Collection Practices Act (FDCPA) and any other applicable federal or state law. A&N ACQUISITIONS' employees and agents, when communicating with any individual with respect to a debt, either by telephone, correspondence, or otherwise, shall truthfully state who they are and who they are employed by, and not, in any manner, mention CPANDAC or any member or component except in explaining to whom the debt is owed.
3. **Reports:**
 - a. Acknowledgment. Provide CPANDAC a letter acknowledging each account received for collection within ten (10) business days of receipt which will further reflect the principal, interest, late charges, collection costs, and total amount placed for collection.
 - b. Debtor Status Report. Provide a quarterly Debtor Status Report on all accounts placed. The Report must be issued on the tenth (10) business day of March, June, September, and December. Individual or cumulative Debtor Status Reports may be requested at any time and must be issued within five (5) business days.
 - c. Fiscal Year Report. Provide by November 1st of each year a Fiscal Year Report based on data generated by A&N ACQUISITIONS to assist CPANDAC in preparing information required by State and Federal governmental entities and agencies.
4. Remit by wire transfer to CPANDAC, by the twentieth (20th) day of each month, all monies collected for CPANDAC during the preceding calendar month, taking care to insure all debtor checks have been cleared on or before such date, together with an itemization of the payments received for each account. The itemization will feature debtor's name, account number, amount collected and whether or not the account has been closed. A&N ACQUISITIONS' statement for payment

must accompany the itemization. The amount due to A&N ACQUISITIONS will then be paid by CPANDAC within thirty (30) calendar days following the receipt of A&N ACQUISITIONS' statement.

- 5 Not charge a collection fee for cancellations, deferments, or postponements approved by CPANDAC.
- 6 Make every effort to collect accounts prior to making recommendations to file suits on such accounts; however, A&N ACQUISITIONS has no authority to file suit on any account referred by CPANDAC. The filing and prosecution of lawsuits will be in accordance with policies established by the General Counsel of the State of California and Nevada.
- 7 Not accept any compromise settlement on any account without prior written approval of CPANDAC.
- 8 Immediately suspend collection efforts either temporarily or permanently on any account upon notification by CPANDAC.
- 9 Maintain company records on such accounts in a manner as to be auditable, and allow audit by CPANDAC or its representatives any time during normal business hours. A&N ACQUISITIONS will not destroy any of the records and documents relating to CPANDAC accounts until it has received written permission to do so from CPANDAC, but in no event less than three (3) years after a particular debtor file is closed.
- 10 INDEMNIFY, DEFEND AND HOLD HARMLESS CPANDAC AND THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS, DAMAGE OR EXPENSE INCLUDING REASONABLE ATTORNEY'S FEES AND INVESTIGATIVE EXPENSES THEY MAY INCUR WHICH RESULT FROM ANY CLAIMS AGAINST THEM, INDIVIDUALLY OR SEVERALLY FOR ANY ACTS OR OMISSIONS BY A&N ACQUISITIONS OR ITS OFFICERS, AGENTS OR EMPLOYEES IN THE PERFORMANCE OF THIS CONTRACT.
- 11 Not assign this Contract, in whole or in part, without the prior written consent of CPANDAC.
- 12 Be responsible for ensuring accounts are updated to reflect the amount actually past due. A&N ACQUISITIONS shall return an account to CPANDAC as soon as the delinquency has been paid. A&N ACQUISITIONS must exercise special care to ensure the entire principal with interest and penalties assessed and collection fees, as authorized by the debtor's signed agreement or as otherwise authorized by law, have been paid before informing the borrower or debtor that the debt is paid in full.
- 13 Reimburse CPANDAC for any amount which becomes uncollectible or which is lost due to any act or omission of A&N ACQUISITIONS or its officers, agents, or employees. Such acts or omissions may include, but are not limited to, accepting a compromise settlement for less than the total amount due without authorization of CPANDAC, acknowledging a payment constitutes payment in full when in fact the loan or account is not paid in full, and failing to immediately refer any Notice of Bankruptcy to CPANDAC.
- 14 Suspend action either temporarily or permanently on any account, in whole or in part, referred for collection upon notification to do so by CPANDAC, or upon notice of bankruptcy of the debtor, and to return accounts to CPANDAC upon request. Accounts referred to A&N ACQUISITIONS by CPANDAC must be returned to CPANDAC if there is no payment activity for twelve (12) consecutive calendar months since date of last transaction.
- 15 Forward in full to CPANDAC any amounts received by A&N ACQUISITIONS which are in excess of monies due and payable with an explanation that the amount is an overpayment. A&N ACQUISITIONS is not entitled to a collection fee for overpayments and shall not retain any portion of an overpayment.
- 16 Promptly cancel and return to CPANDAC all accounts on which collection activity has ceased or accounts which are requested to be returned by CPANDAC. A&N ACQUISITIONS agrees to return accounts with a record of any contacts made with the debtor including current address, telephone number, and any other information that will aid in the future collection of the account. The transmission of such information is part of the service to CPANDAC that A&N ACQUISITIONS agrees to perform.
- 17 Appoint in writing at least one representative who will have primary responsibility and authority for CPANDAC'S accounts.
- 18 Provide written acknowledgment within three (3) business days of receipt of complaints or inquiries transmitted to A&N ACQUISITIONS by CPANDAC which arise out of A&N ACQUISITIONS' performance of this Contract, indicating the measures undertaken to resolve the complaint or respond to the inquiry with a time frame for resolution.
- 19 Cease any further collection effort on any account A&N ACQUISITIONS either fails or refuses to return to CPANDAC as required by any provision of this Contract and consider the account under the control of CPANDAC. A&N ACQUISITIONS is responsible for all costs, fees, and expenses incurred by CPANDAC in its efforts either in or out of court to obtain the return of accounts. A&N ACQUISITIONS is also responsible for any claims or damages which may arise from its failure or refusal to return accounts in a timely fashion.

20. Acknowledge the right of CPANDAC to assign or refer accounts to any other entity, commercial or governmental, for collection, and A&N ACQUISITIONS, upon written notification of such assignment or referral from CPANDAC, will close and return the account and will remit any payments received after the date of closing without charging a collection fee.
21. Represent and warrant that A&N ACQUISITIONS is and will remain in good standing and comply with all applicable law, and provide a certificate of good standing from the California Comptroller, if a corporation, or a certificate of authority from the California Secretary of State.

IV. DUTIES OF CPANDAC: CPANDAC agrees to:

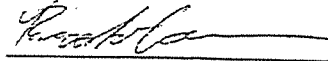
1. Periodically place accounts for collection with A&N ACQUISITIONS, providing the debtor's name, current address and phone number (if known), account number, principal and interest due, late charges, and collection costs, along with a historical summary of account activity whenever possible.
2. Grant A&N ACQUISITIONS the authority to waive collection costs in situations where recovery of such costs is prohibited by law.
3. Advise A&N ACQUISITIONS within ten (10) business days of receipt by CPANDAC of each debtor change of name and/or address.
4. Include payments received directly by CPANDAC for accounts referred to A&N ACQUISITIONS in the total payments collected which are subject to the collection fee, except as otherwise provided in this Contract. The CPANDAC will within five (5) business days notify A&N ACQUISITIONS of such payment received by it for an account placed with A&N ACQUISITIONS.

V. NON-DISCRIMINATION: A&N ACQUISITIONS shall not discriminate on the basis of sex, race, creed, color, national origin or disability in regard to collection efforts and employment decisions. A&N ACQUISITIONS must comply with all provisions of Executive Order No. 10925 of March 6, 1951, as amended, and/or the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunities created thereby.

VI. MISCELLANEOUS:

1. Independent Contractor. A&N ACQUISITIONS, its officers, agents or employees, in the performance of this Contract, act in an independent capacity and not as officers, agents or employees of the State of California, the State of Nevada or CPANDAC.
2. Contingencies. This Contract is subject to and conditioned upon the express written approval of the General Counsel of the State of California. Should the General Counsel fail to give such approval, this Contract will be null and void.
3. Notices. Any notice required or permitted under this Contract must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. CPANDAC and A&N ACQUISITIONS can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

CPANDAC:

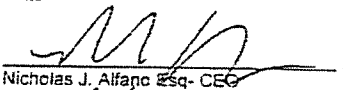


Brooke Nicole Carver- CEO

1/19/18

Date

A&N ACQUISITIONS:



Nicholas J. Alfano Esq.- CEO

01/18/2018

Date

4. Governing Law and Venue. The validity of this Contract and all matters pertaining to this Contract, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of California. Venue for any action or claim brought under this Contract shall lie in Riverside County, California.
5. Grammatical Interpretation. Whenever the singular number is used, it includes the plural, and the masculine gender includes the feminine and neuter gender.
6. Headings. Headings are for reference and will not be construed to limit or alter the meaning of the provisions of this Contract.
7. Entire Agreement. This Contract constitutes the entire agreement between the parties and will not be explained, modified or contradicted by any prior or contemporaneous negotiations, representations, or agreements, either written or oral. This Contract may be amended only by a subsequent written instrument.
8. Parties Bound. This Contract is binding upon and inures to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors in interest or office, and assigns (but this Section does not constitute permission for an assignment).
9. Saving Clause. Should any clause in this Contract be found invalid by a court of law, the remainder of this Contract will not be affected and all other provisions in this Contract remain valid and enforceable to the fullest extent permitted by law.
10. Time of Essence. Time is of the essence in the performance of this Contract.

IN WITNESS WHEREOF, the CPANDAC has executed this Contract in duplicate originals on _____ 26 _____

CPANDAC:

Brocke Nicola Carver
Brocke Nicola Carver- CEO
1/19/18
Date

IN WITNESS WHEREOF, the A&N ACQUISITIONS has executed this Contract in duplicate originals on January 18th
2018.

A&N ACQUISITIONS:

Nicholas J. Alfano
Nicholas J. Alfano Esq- CEO
1/18/2018
Date

EXHIBIT “E”

EXHIBIT “E”

DE-172

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Kevin R. Hansen # 182591 5440 W. Sahara Ave., #206 Las Vegas, NV 89146		TELEPHONE AND FAX NOS.: 702-248-7777	FOR COURT USE ONLY FILED Superior Court of California County of Riverside 4/12/2019 C. Powell By Fax
ATTORNEY FOR (Name): John J. Houlihan/Colonial Real Estate Partnership, Ltd. SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE STREET ADDRESS: 41002 County Center Drive, #100 MAILING ADDRESS: 41002 County Center Drive, #100 CITY AND ZIP CODE: Temecula, CA 92591 BRANCH NAME: Temecula courthouse			
ESTATE OF (Name): Dennis John Carver		DECEDENT	
CREDITOR'S CLAIM		CASE NUMBER: MCP 1700877	

You must file this claim with the court clerk at the court address above before the LATER of (a) four months after the date letters (authority to act for the estate) were first issued to the personal representative, or (b) sixty days after the date the *Notice of Administration* was given to the creditor, if notice was given as provided in Probate Code section 9051. You must also mail or deliver a copy of this claim to the personal representative and his or her attorney. A proof of service is on the reverse.

WARNING: Your claim will in most instances be invalid if you do not properly complete this form, file it on time with the court, and mail or deliver a copy to the personal representative and his or her attorney.

- Total amount of the claim: \$121,851.64
- Claimant (name): Colonial Real Estate Partnership, Ltd.
 - ☐ an individual
 - ☐ an individual or entity doing business under the fictitious name of (specify):
 - ☒ a partnership. The person signing has authority to sign on behalf of the partnership.
 - ☐ a corporation. The person signing has authority to sign on behalf of the corporation.
 - ☐ other (specify):
- Address of claimant (specify): 29 Huntwick Lane, Englewood, Colorado 80113
- Claimant is ☒ the creditor ☐ a person acting on behalf of creditor (state reason):
- ☒ Claimant is ☐ the personal representative ☒ the attorney for the personal representative.
- I am authorized to make this claim which is just and due or may become due. All payments on or offsets to the claim have been credited. Facts supporting the claim are ☐ on reverse ☒ attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 04/08/2019

Kevin Hansen, Esq.
(TYPE OR PRINT NAME AND TITLE)

Kevin Hansen
(SIGNATURE OF CLAIMANT)

INSTRUCTIONS TO CLAIMANT

- On the reverse, itemize the claim and show the date the service was rendered or the debt incurred. Describe the item or service in detail, and indicate the amount claimed for each item. Do not include debts incurred after the date of death, except funeral claims.
- If the claim is not due or contingent, or the amount is not yet ascertainable, state the facts supporting the claim.
- If the claim is secured by a note or other written instrument, the original or a copy must be attached (state why original is unavailable.) If secured by mortgage, deed of trust, or other lien on property that is of record, it is sufficient to describe the security and refer to the date or volume and page, and county where recorded. (See Prob. Code, § 9152.)
- Mail or take this original claim to the court clerk's office for filing. If mailed, use certified mail, with return receipt requested.
- Mail or deliver a copy to the personal representative and his or her attorney. Complete the *Proof of Mailing or Personal Delivery* on the reverse.
- The personal representative or his or her attorney will notify you when your claim is allowed or rejected.
- Claims against the estate by the personal representative and the attorney for the personal representative must be filed within the claim period allowed in Probate Code section 9100. See the notice box above.

(Continued on reverse)

ESTATE OF (Name): Dennis John Carver	DECEDENT	CASE NUMBER: MCP 1700877
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FACTS SUPPORTING THE CREDITOR'S CLAIM		
<input checked="" type="checkbox"/> See attachment (if space is insufficient)		
Date of item	Item and supporting facts	Amount claimed
10/14/2003	Contract agreement between Colonial Real Estate Partnership, Ltd. and Commercial Plumbing and AC - (Attached as Exhibit "A" proof of Debt)	\$121,851.64
TOTAL:		\$ 121,851.64

PROOF OF ☒ MAILING ☐ PERSONAL DELIVERY TO PERSONAL REPRESENTATIVE
(Be sure to mail or take the original to the court clerk's office for filing)

- I am the creditor or a person acting on behalf of the creditor. At the time of mailing or delivery I was at least 18 years of age.
- My residence or business address is (specify): 5440 W. Sahara Ave., #206, Las Vegas, NV 89146
- I mailed or personally delivered a copy of this *Creditor's Claim* to the personal representative as follows (check either a or b below):
 - ☒ Mail. I am a resident of or employed in the county where the mailing occurred.
 - I enclosed a copy in an envelope AND
 - ☒ deposited the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - ☐ placed the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - The envelope was addressed and mailed first-class as follows:
 - Name of personal representative served: Ronda Morgan, Esq.
 - Address on envelope: The Legacy Firm of Southern California
19800 MacArthur Blvd. Suite 300, Irvine, CA 92612
 - Date of mailing: 4/11/19
 - Place of mailing (city and state): Las Vegas, NV
 - ☐ Personal delivery. I personally delivered a copy of the claim to the personal representative as follows:
 - Name of personal representative served:
 - Address where delivered:
 - Date delivered:
 - Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Kevin Hansen
(TYPE OR PRINT NAME OF CLAIMANT)

Kevin Hansen
(SIGNATURE OF CLAIMANT)

COMMERCIAL PLUMBING AND AC

COST QUALITY SERVICE
 1155 Montecito, CA 92564 702.870.1277 Fax 702.538.9509 NV LIC #0070147

Estimate

Date	Estimate #
10/22/2013	W011656

Name / Address
Colonial Real Estate Partnerships 3775 E Sahara Ave Las Vegas, NV 89102

Jobsite

			P.O. No.
Description	Qty	Rate	Total
Heat Pump Unit 10 Ton Goodman - Crane old unit off - Disconnect low and high voltage lines - Disconnect Condensate drain - Crane on and install new unit - Reconnect low and high voltage - Reconnect condensate drain - Install New thermostat for control voltage	8	7,463.01	59,704.08
Field Install Economizer for 10 Ton units	8	1,202.80	9,622.40
Heat Pump Unit 5 Ton Goodman - Crane old unit off - Disconnect low and high voltage lines - Disconnect Condensate drain - Crane on and install new unit - Reconnect low and high voltage - Reconnect condensate drain - Install New thermostat for control voltage	2	4,492.10	8,984.20
<p><i>- to add amount when available for 4 swamp coolers + installation</i></p> <p><i>Includes Combined Deposit of \$10,000.00</i></p> <p><i>x Ric C. Haul 11/13/13</i></p>			
Total			\$78,310.68

Commercial Plumbing Specialist is not liable for any unforeseen construction issues not addressed in this proposal. All work orders will be based on time and materials and will be in writing.

COMMERCIAL PLUMBING AND AC**COMMERCIAL PLUMBING AND AC**

P.O. Box 1125 Winchester, CA 92564 702.870.1277 Fax 702.538.9509 NV LIC #0070147

Estimate

Date	Estimate #
10/24/2013	114

Name / Address
Colonial Real Estate Partnerships 3775 E Sahara Ave Las Vegas, NV 89102

Jobsite

			P.O. No.
Description	Qty	Rate	Total
Pull Permits with governing city 1. Install 6 toilets with large p-trap with super flush, with supply lines and angle stops 2. Install 2 water heater 40gal. 3. Install 6 Wall mounted sinks with supply lines, Angle stops, ADA covers and drain lines to wall connection 4. Install 4 faucets ADA approved 5. Install 2 urinals with Sloan flush valves 6. Install 2- dual drinking fountain supply lines, angle stop and connect to existing drain lines 7. Install 180' of 1/2" Wersbo 8. Install 150' of 3/4" Wersbo 9. Install 2 drop in stain less steel sheets with faucets, supply line, angle stops and drain lines to wall connection 10. Install 2 break room counter with sink drop in 11. Install mop sink faucet 12. Install 2 mixing valves for tempered water to hand sinks (Water lines to be connected to the main and run to the follow fixtures 6 toilets, 2 water heaters, 6 wall mounted sinks, 2 urinals, 2 dual drinking fountains, 2 mixing valves, 1 mop sink and 2 drop in sinks) (Finish wall to be done by other)	1	20,989.88	20,989.88
<i>Includes combined deposit \$10,000.00</i> <i>RS</i> <i>x Eric [Signature] 11/13/13</i>			
Commercial Plumbing Specialist is not liable for any unforeseen construction issues not addressed in this proposal. All work orders will be based on time and materials and will be in writing.			
Total			\$20,989.88

COLONIAL REAL ESTATE PARTNERSHIP

4016

Commercial Plumbing and AC

Check Number: 4016

Check Date: Mar 24, 2014

Check Amount: \$111,851.64

Invoice	Date	Discount Taken	Amount Paid	Quantity	Description
WO11920114WO1165	3/24/14		111851.64	1.00	SERVICES AND MATERIALS

9039

www.checksdirect.com 800-245-5775 Order # J61527-1



COLONIAL REAL ESTATE PARTNERSHIP
4316
Check Number: 4016
Check Date: 3/24/14
Check Amount: \$111,851.64
Pay to the order of: Commercial Plumbing and AC
P.O. Box 1165
San Diego, CA 92161
Signature: Leo Flangas
REF#8857279261 CK# 4016 111851.64

Check Number: 4016
Check Date: 3/24/14
Check Amount: \$111,851.64
Pay to the order of: Commercial Plumbing and AC
P.O. Box 1165
San Diego, CA 92161
Signature: Leo Flangas
REF#8857279261 CK# 4016 111851.64

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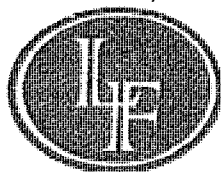
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FLANGAS LAW FIRM, LTD.

LEO P. FLANGAS, ESQ.

November 15, 2018

Via Email and U.S. Mail

Commercial Plumbing & AC

Attn: Rhonda Morgan

The Legacy Firm of Southern California, PC

19800 MacArthur Boulevard, Suite 300

Irvine, CA 92612

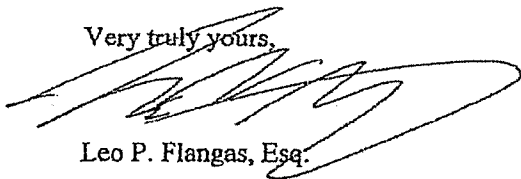
Email: Rhonda@socallegacy.com

**Re: Contract Agreement between Colonial Real Estate Partnership, LTD.
and Commercial Plumbing & AC**

Dear Ms. Morgan,

I am the Nevada counsel for Colonial Real Estate Partnership and it has come to my attention that my client has not received a response regarding the payment of money made to your client and the services that need to be rendered. Please see the attached letter sent to you by my client on October 26, 2018. I am requesting that you contact Mr. Houlihan regarding the services that need to be rendered by your company. Mr. Houlihan has rented the property out and the tenant is preparing to start business so it is important that we get a timely response on the time table for rendering the service by your company.

Very truly yours,



Leo P. Flangas, Esq.

Enclosures: Letter dated October 26, 2018

John J. Houlihan IV
Partner
Colonial Real Estate Partnership
29 Huntwick Lane
Englewood, Colorado 80113

October 26, 2018

Commercial Plumbing & AC
c/o Rhonda Morgan
The Legacy Firm of Southern California, PC
19800 MacArthur Boulevard, Suite 300
Irvine, CA 92612

Subject: Contract agreement between Colonial Real Estate Partnership, Ltd., and Commercial Plumbing and AC (CPAC) for ~~renald~~ services and materials for the Property known as 3775 East Sahara Avenue, Las Vegas, Nevada

Dear Ms Morgan:

An executed copy of the Installation and Storage Agreement (Agreement) contract is attached, as well as a copy of check #4016 for \$111,851.64. Prior to this a check for \$10,000.00 was paid to CPAC in the amount of \$10,000.00 as a deposit for start of the project.

What is the next step in Colonial Real Estate receiving the prepaid labor and all materials agreed to in Agreement including the amount prepaid for four (4) swamp coolers but never delivered (\$17,011.08).

Your update on the information in this letter.. CPAC's owner's estate information is appreciated too.

Sincerely,

John J. Houlihan Pt
Partner
Colonial Real Estate Partnership, Ltd.

Attach.: Copy of executed Installation and Storage Agreement
Copy of canceled Check# 4016

Commercial Plumbing and AC's Attorney Information:

The Legacy Firm of Southern California, PC

Rhonda Morgan

19800 MacArthur Blvd Ste 300

Irvine, CA 92612

949-835-4444

Rhonda@socallegacy.com

John J. Houlihan IV
Partner
Colonial Real Estate Partnership
29 Huntwick Lane
Englewood, Colorado 80113

September 21, 2018

LECOND REQUEST

Mr. Robert McKechnie
Owner
All Trades Company
4262 Blue Diamond Road, Suite 102
Las Vegas, Nevada 89139

Subject: Second Request, Contract agreement between Colonial Real Estate Partnership, Ltd., and Commercial Plumbing and AC (CPAC) for prepaid services and materials for the Property known as 3775 East Sahara Avenue, Las Vegas, Nevada

Dear Robert:

This is our second request and attempt to contact you about this matter. Please get back to us.

An executed copy of the Installation and Storage Agreement (Agreement) contract is attached, as well as a copy of check #4016 for \$111,851.64. Prior to this a check for \$10,000.00 was paid to CPAC in the amount of \$10,000.00 as a deposit for start of the project.

What is the next step in Colonial Real Estate receiving the prepaid labor and all materials agreed to in Agreement including the amount prepaid for four (4) swamp coolers but never delivered (\$17,011.08).

Your update on the information in this letter, and the name of CPAC's attorney including address and contact information is appreciated. CPAC's owner's estate information is appreciated too.

Sincerely,

ohnj. ulihanIV
Partner
Colonial Real Estate Partnership, Ltd.

Attach,: Copy of executed Installation and Storage Agreement
Copy of canceled Check# 4016

INSTALLATION AND STORAGE AGREEMENT

THIS Agreement is by and between the Colonial Real Estate Partnership, Ltd. (Colonial), and Commercial Plumbing and AC (CPAC). It is for services and materials for Property commonly know as 3775 East Sahara Avenue, Las Vegas, Clark County, Nevada, of which the Colonial Real Estate Partnership is the owner.

Colonial agrees to pay for amounts not to exceed those listed on estimates WO11656 (10/22/2013), 114, and WO11920 attached to and thereby made apart of the Agreement. In Exchange for said above listed payment CPAC agrees to perform all of the services and materials listed and or necessary to complete the services and installations on the estimates listed above now or in the future. In some instances the payment serves as prepayment for future services and materials needed to complete the listed and or required installation at a future time of Colonial's choosing.

Payment also serves as payment for the following materials (listed below) that from time and date of payment are the property of Colonial, and will be stored and secured by CPAC at no additional cost for a period lasting through October 31, 2014. Colonial and or its appointed agent(s) has the right to inspect the CPAC facility in which its materials and or property at any time with 24 hours notice. Colonial will insure the materials listed below at its own expense.

- 6 - New toilets with large p-trap with super flush
- 2 - New forty (40) gallon water heaters
- 6 - New wall mounting sinks
- 2 - New urinals
- 2 - New dual drinking fountains
- 8 - New ten (10) ton Goodman heat pump/air conditioner
- 2 - New five (5) ton Goodman heat pump/ air conditioner

Prepayment for the following items to be stored at 3775 E Sahara Avenue, Las Vegas, Nevada:

- 4 - New 3ph HVAC- Swamp cooler Phoenix as listed on Estimate #WO11656 dated 10/22/2013

Payment is prepayment for the following listed materials from the CPAC estimates listed above:

- 6 - New ADA approved faucets
- 2 - New drop in stainless steel sinks with faucets
- 2 - break room counters with sink drop in
- 1 - New Mop sink and faucet
- 2 - New Sloan flush valves for urinals
- 2- New mixing valves for tempered water to hand sinks

Any and all other hardware, connections, fixtures, and or mountings to complete work and installations described in the estimates mentioned above and attached to the Agreement.

The Agreement states Colonial will pay the amount of \$121,851.64 minus \$10,000.00 deposit paid by Colonial in 2013 for a total of \$111,851.64 Check # _____ to CPAC. In exchange for that consideration CPAC agrees to perform and or complete all items listed on the attached estimates, to secure and to store the above listed items that will become property of Colonial at time and date of payment, and to provide all materials and services prepaid for by Colonial at time and date of Colonial's choosing.

The Agreement further shows that Colonial has paid the in full for all materials and or services provided by CPAC to date of this agreement, and further that Colonial has prepaid in full for any and all other materials and services outlined in the attached estimates listed in the Agreement and to provide the service set forth in the estimates.

Colonial shows their acceptance and ratification of the Agreement by signing below and by issuing CPAC payment in the amount listed above. CPAC shows their acceptance and ratification of the Agreement by signing below and or by cashing and or depositing the check number listed above.

Agreed to by Colonial Real Estate Partnership, Ltd.:

Signed

Date

Printed Name

Title

Agreed to by Commercial Plumbing and AC:

Signed

Date

Printed Name

Title

EXHIBIT “4”

Heather S. Shuman
CLERK OF THE COURT

David T. Blake (# 11059)
Clear Counsel Law Group
1671 W. Horizon Ridge Pkwy., Suite 200
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
dave@clearcounsel.com
Attorneys for the Estate of Rhonda Morgan
Personal Representative of the Estate

DISTRICT COURT

DISTRICT OF NEVADA

In the Matter of the Estate of:

Dennis John Carver

Deceased

CASE NO.: P-18-095892-E
DEPT NO.: 8

Order

The Petition for Order to Show Cause Why Estate should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets of John Houlihan and Colonial Real Estate Partnership, Ltd. (collectively "Colonial") came before the Court for hearing on May 15, 2020. David Blake, Esq., of the law firm of Clear Counsel Law Group, appeared on behalf of the Estate and Leo P. Flangas, Esq. of Flangas Law Firm, Ltd. appeared on behalf of Petitioners.

After considering the Petition, Objection, Reply, Sur-Reply, and the arguments of counsel, the Court finds and orders:

1. Dennis John Carver ("Decedent") died on October 16, 2017. Nicholas Alfano was originally appointed as special administrator for Decedent's estate in California and Letters Testamentary were thereafter issued on January 10, 2018. On May 29, 2018, Alfano resigned as executor of the California estate after the estate beneficiaries alleged that he engaged in financial misconduct. Thereafter, Rhonda Morgan, Esq. became the successor administrator of the California Estate. The Estate and beneficiaries are still engaged in litigation over Alfano's misconduct in California.

2. Alfano administered probate in Decedent's home state of California and did not commence probate proceedings in Nevada. The principal assets of the carver Estate were in Decedent's home state of California. Colonial has not introduced any evidence that Alfano's fraud affected assets that were administered in Nevada.

1 3. Colonial did not file a creditor's claim in the California proceeding until April 12,
2 2019. The Claim was untimely and rejected. Colonial did not file a petition or take any other
3 action to challenge rejection of the Creditor's claim in California.

4 4. This ancillary probate proceeding commenced on June 28, 2018, with Morgan
5 appointed as Nevada Estate's Administrator. Notice to creditors was electronically filed on July
6 25, 2018. The creditor's claim period ended on or around October 25, 2018. The only property
7 subject to administration in Nevada was real estate.

8 5. Colonial became aware of Decedent's passing in September of 2018. Under
9 Nevada law, this knowledge of Decedent's death constitutes actual notice of estate
10 administration and charges Colonial with a duty of further inquiry. See Monette v. Estate of
11 Murphy, No. 61212, 2014 WL 5173723, at *1 (Nev. 2014); Bell Brand Ranches, Inc. v. First
12 Nat'l Bank of Nev., 91 Nev. 88, 91 n. 3. (1975).

13 6. Colonial did not file a creditor's claim in a reasonable time after learning of
14 Decedent's death in September of 2018.

15 7. Colonial initially sent letters to Robert McKenchnie, who was not involved in the
16 estate administration, requesting information regarding completion of the alleged contract and
17 contact information for the attorney and administrator of the estate.

18 8. Colonial then sent a letter to the Estate dated October 26, 2018 demanding
19 payment. The letter was received after the claims filing period had expired in this probate
20 proceeding. Colonial sent a follow-up letter on November 15, 2018.

21 9. Colonial also admits that it knew the identity of the Estate administrator and made
22 several efforts to contact the Estate between September and November of 2018. In spite of this,
23 Colonial did not file a creditor's claim in the Nevada Estate proceedings.

24 10. This Nevada estate administration ended on May 10, 2019.

25 11. Without first filing a creditor's claim, Colonial filed a complaint against
26 Administrator Morgan on June 7, 2019. By this time, at least 250 days had passed since Colonial
27 learned of Decedent's death.

28 12. On November 1, 2019, Colonial voluntarily dismissed its Complaint without

1 prejudice after demand by the Estate.

2 13. Thereafter, Colonial did not file or seek leave to file a creditor's claim until it
3 filed its Petition seeking to reopen the Estate on February 2, 2020. By the time Colonial had filed
4 its Petition, more than 465 days had passed since Colonial learned of Decedent's death.

5 14. The Nevada Supreme Court has repeatedly insisted that Nevada's district courts
6 follow the plain terms of Nevada's probate statutes. See, e.g., Jacobson v. Estate of Clayton, 121
7 Nev. 518, 521 (2005); Bell Brand Ranches, Inc. v. First Nat. Bank of Nevada, 91 Nev. 88, 92,
8 (1975); Monette v. Estate of Murphy, 2014 WL 5173723, at *1 (Nev. 2014).

9 15. Regarding the timeliness of creditor's claim, NRS 147.040(3) provides:

10 If a claim is not filed with the clerk within the time allowed by subsection 1 or 2,
11 the claim is forever barred, but if it is made to appear, by the affidavit of the
12 claimant or by other proof to the satisfaction of the court, that the claimant did not
13 have notice as provided in NRS 155.020 or actual notice of the administration of
14 the estate, the claim may be filed at any time before the filing of the final account.

15 16. Under this provision, a creditor can only file a late claim if (a) it seeks leave to do
16 so "before the filing of the final account" and (b) the creditor did not have "actual notice of the
17 administration of the estate."

18 17. As noted above, Colonial attempted to communicate with Morgan, the Estate
19 administrator, for the express purpose of resolving its creditor's claim but did not file a creditor's
20 claim. Accordingly, colonial had actual notice of the estate administration. Additionally,
21 Colonial did not seek leave to file a creditor's claim before the estate was closed and distributed.

22 18. Thus, the plain terms of NRS 147.040(3) prevent Colonial from filing a late
23 creditor's claim.

24 19. Colonial argues that Morgan committed fraud on the court by failing to disclose
25 Alfano's misconduct in connection with the California probate.

26 20. Fraud on the court is

27 that species of fraud which does, or attempts to, subvert the integrity of the court
28 itself, or is a fraud perpetrated by officers of the court so that the judicial
machinery cannot perform in the usual manner its impartial task of adjudging
cases ... and relief should be denied in the absence of such conduct.

NC-DSH, Inc. v. Garner, 125 Nev. 647, 654 (2009).

1 21. Colonial does not identify any statement or instance of nondisclosure by Morgan
2 that was misleading, material, or prevented this Court from performing in the usual manner.
3 Colonial's contention that Morgan committed fraud on the court is rejected.

4 22. Colonial also argues that its due process rights were violated because the Nevada
5 Estate did not receive a creditor's notice from the Nevada estate, relying on Cont'l Ins. Co. v.
6 Moseley, 98 Nev. 476, 477 (1982). Moseley involved an issue where the only form of notice that
7 the estate administrator gave to creditors was by publication. The Creditor eventually learned of
8 the decedent's death and filed a creditor's claim two days after the claims period expired (and 3
9 days after learning of the death).

10 23. The ruling in Moseley did not create a loophole to be exploited that would permit
11 creditors who have actual notice of the estate to delay excessively, as Colonial did here, and then
12 file a late creditor's claim.

13 24. The facts at bar are distinguishable from those in Moseley. The creditor there
14 acted promptly upon learning of the decedent's passing and filed a creditor's claim before the
15 estate closed. Here, colonial had actual knowledge of the estate administration and did not act in
16 a timely manner to file a creditor's claim. Colonial's due process rights were not violated
17 because Colonial had actual notice of the Estate administration.

18 25. Finally, Colonial argues that the Court is authorized to reopen an estate under
19 NRS 151.240. However, none of the bases to reopen the estate set forth in that statute are
20 applicable here. Colonial is not asking to administer newly discovered property, correct errors in
21 property descriptions, and has not requested new letters be issued.

22 26. To the extent that the Court would have discretion to reopen the estate and allow
23 Colonial to file a late creditor's claim, the Court declines to do so.

24 27. Based on the foregoing and for the addition reasons set forth in the Sur-Reply
25 filed by Morgan on May 8, 2020, Petitioners' Petition for Order to Show Cause Why Estate
26 should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate

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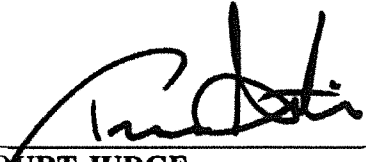
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Assets is DENIED as set forth above.

Dated this 23rd day of June, 2020

Dated this ____ day of _____, 2020.



DISTRICT COURT JUDGE

DBB 544 505A 24A8

Trevor Atkin

Prepared and submitted by:

CLEAR COUNSEL LAW GROUP

/s/David T. Blake

David T. Blake, Esq. (#11059)

Attorneys for the Estate

DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of:

CASE NO: P-18-095892-E

Dennis Carver, Deceased

DEPT. NO. Department 8

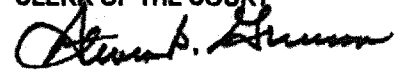
AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 6221437
Service Date: 6/23/2020

David Blake	dave@clearcounsel.com
Kathy Gentile	kathy@clearcounsel.com
Natasha Smith	natasha@flangaslawfirm.com
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Flangas Documents	documents@flangaslawfirm.com
Donna Stidham	donna@stidhamlawoffice.com
Donna Stidham	donna@stidhamlawoffice.com

EXHIBIT “5”



David T. Blake (# 11059)
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1671 W. Horizon Ridge Pkwy., Suite 200
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
dave@clearcounsel.com
Attorneys for the Estate of Rhonda Morgan
Personal Representative of the Estate

DISTRICT COURT

DISTRICT OF NEVADA

In the Matter of the Estate of:

Dennis John Carver

Deceased

CASE NO.: P-18-095892-E
DEPT NO.: 8

Notice of Entry of Order

PLEASE TAKE NOTICE that an Order Denying Petition for Order to Show Cause Why Estate should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets of John Houlihan and Colonial Real Estate Partnership, Ltd., was entered by the Court and filed on June 23, 2020, a true and correct copy of which is attached hereto.

Dated: June 23, 2020.

CLEAR COUNSEL LAW GROUP

/s/David T. Blake
David T. Blake, Esq. (#11059)
Attorneys for the Estate

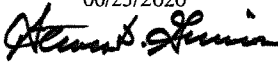
CLEARCOUNSEL
LAW GROUP

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[] by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the parties below; and/or

[] by hand delivery; and/or

/s/K.A/Gentile
An employee of Clear Counsel Law Group


CLERK OF THE COURT

David T. Blake (# 11059)
Clear Counsel Law Group
1671 W. Horizon Ridge Pkwy., Suite 200
Henderson, Nevada 89012
Telephone: (702) 476-5900
Facsimile: (702) 924-0709
dave@clearcounsel.com
Attorneys for the Estate of Rhonda Morgan
Personal Representative of the Estate

DISTRICT COURT

DISTRICT OF NEVADA

In the Matter of the Estate of:

Dennis John Carver

Deceased

CASE NO.: P-18-095892-E

DEPT NO.: 8

Order

The Petition for Order to Show Cause Why Estate should not be Reopened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets of John Houlihan and Colonial Real Estate Partnership, Ltd. (collectively "Colonial") came before the Court for hearing on May 15, 2020. David Blake, Esq., of the law firm of Clear Counsel Law Group, appeared on behalf of the Estate and Leo P. Flangas, Esq. of Flangas Law Firm, Ltd. appeared on behalf of Petitioners.

After considering the Petition, Objection, Reply, Sur-Reply, and the arguments of counsel, the Court finds and orders:

1. Dennis John Carver ("Decedent") died on October 16, 2017. Nicholas Alfano was originally appointed as special administrator for Decedent's estate in California and Letters Testamentary were thereafter issued on January 10, 2018. On May 29, 2018, Alfano resigned as executor of the California estate after the estate beneficiaries alleged that he engaged in financial misconduct. Thereafter, Rhonda Morgan, Esq. became the successor administrator of the California Estate. The Estate and beneficiaries are still engaged in litigation over Alfano's misconduct in California.

2. Alfano administered probate in Decedent's home state of California and did not commence probate proceedings in Nevada. The principal assets of the carver Estate were in Decedent's home state of California. Colonial has not introduced any evidence that Alfano's fraud affected assets that were administered in Nevada.

CLEARCOUNSEL
LAW GROUP

1 3. Colonial did not file a creditor's claim in the California proceeding until April 12,
2 2019. The Claim was untimely and rejected. Colonial did not file a petition or take any other
3 action to challenge rejection of the Creditor's claim in California.

4 4. This ancillary probate proceeding commenced on June 28, 2018, with Morgan
5 appointed as Nevada Estate's Administrator. Notice to creditors was electronically filed on July
6 25, 2018. The creditor's claim period ended on or around October 25, 2018. The only property
7 subject to administration in Nevada was real estate.

8 5. Colonial became aware of Decedent's passing in September of 2018. Under
9 Nevada law, this knowledge of Decedent's death constitutes actual notice of estate
10 administration and charges Colonial with a duty of further inquiry. See Monette v. Estate of
11 Murphy, No. 61212, 2014 WL 5173723, at *1 (Nev. 2014); Bell Brand Ranches, Inc. v. First
12 Nat'l Bank of Nev., 91 Nev. 88, 91 n. 3. (1975).

13 6. Colonial did not file a creditor's claim in a reasonable time after learning of
14 Decedent's death in September of 2018.

15 7. Colonial initially sent letters to Robert McKenchnie, who was not involved in the
16 estate administration, requesting information regarding completion of the alleged contract and
17 contact information for the attorney and administrator of the estate.

18 8. Colonial then sent a letter to the Estate dated October 26, 2018 demanding
19 payment. The letter was received after the claims filing period had expired in this probate
20 proceeding. Colonial sent a follow-up letter on November 15, 2018.

21 9. Colonial also admits that it knew the identity of the Estate administrator and made
22 several efforts to contact the Estate between September and November of 2018. In spite of this,
23 Colonial did not file a creditor's claim in the Nevada Estate proceedings.

24 10. This Nevada estate administration ended on May 10, 2019.

25 11. Without first filing a creditor's claim, Colonial filed a complaint against
26 Administrator Morgan on June 7, 2019. By this time, at least 250 days had passed since Colonial
27 learned of Decedent's death.

28 12. On November 1, 2019, Colonial voluntarily dismissed its Complaint without

1 prejudice after demand by the Estate.

2 13. Thereafter, Colonial did not file or seek leave to file a creditor's claim until it
3 filed its Petition seeking to reopen the Estate on February 2, 2020. By the time Colonial had filed
4 its Petition, more than 465 days had passed since Colonial learned of Decedent's death.

5 14. The Nevada Supreme Court has repeatedly insisted that Nevada's district courts
6 follow the plain terms of Nevada's probate statutes. See, e.g., Jacobson v. Estate of Clayton, 121
7 Nev. 518, 521 (2005); Bell Brand Ranches, Inc. v. First Nat. Bank of Nevada, 91 Nev. 88, 92,
8 (1975); Monette v. Estate of Murphy, 2014 WL 5173723, at *1 (Nev. 2014).

9 15. Regarding the timeliness of creditor's claim, NRS 147.040(3) provides:

10 If a claim is not filed with the clerk within the time allowed by subsection 1 or 2,
11 the claim is forever barred, but if it is made to appear, by the affidavit of the
12 claimant or by other proof to the satisfaction of the court, that the claimant did not
13 have notice as provided in NRS 155.020 or actual notice of the administration of
14 the estate, the claim may be filed at any time before the filing of the final account.

15 16. Under this provision, a creditor can only file a late claim if (a) it seeks leave to do
16 so "before the filing of the final account" and (b) the creditor did not have "actual notice of the
17 administration of the estate."

18 17. As noted above, Colonial attempted to communicate with Morgan, the Estate
19 administrator, for the express purpose of resolving its creditor's claim but did not file a creditor's
20 claim. Accordingly, colonial had actual notice of the estate administration. Additionally,
21 Colonial did not seek leave to file a creditor's claim before the estate was closed and distributed.

22 18. Thus, the plain terms of NRS 147.040(3) prevent Colonial from filing a late
23 creditor's claim.

24 19. Colonial argues that Morgan committed fraud on the court by failing to disclose
25 Alfano's misconduct in connection with the California probate.

26 20. Fraud on the court is

27 that species of fraud which does, or attempts to, subvert the integrity of the court
28 itself, or is a fraud perpetrated by officers of the court so that the judicial
machinery cannot perform in the usual manner its impartial task of adjudging
cases ... and relief should be denied in the absence of such conduct.

NC-DSH, Inc. v. Garner, 125 Nev. 647, 654 (2009).

1 21. Colonial does not identify any statement or instance of nondisclosure by Morgan
2 that was misleading, material, or prevented this Court from performing in the usual manner.
3 Colonial's contention that Morgan committed fraud on the court is rejected.

4 22. Colonial also argues that its due process rights were violated because the Nevada
5 Estate did not receive a creditor's notice from the Nevada estate, relying on Cont'l Ins. Co. v.
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10 23. The ruling in Moseley did not create a loophole to be exploited that would permit
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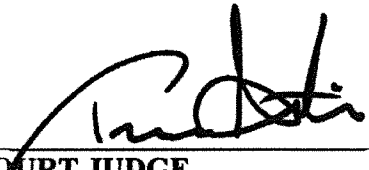
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Dated this 23rd day of June, 2020

Dated this ____ day of _____, 2020.



DISTRICT COURT JUDGE

DBB 544 505A 24A8

Trevor Atkin

Prepared and submitted by:

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