

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF:
DENNIS JOHN CARVER, DECEASED.

COLONIAL REAL ESTATE
PARTNERSHIP, LTD.; AND JOHN
HOULIHAN,

Appellants,

vs.

RHONDA MORGAN, PERSONAL
REPRESENTATIVE OF THE ESTATE
DENNIS JOHN CARVER,

Respondent.

Electronically Filed
Oct 15 2021 12:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No.: 81447
Eighth Judicial District
District Court Case No.: P-18-095892-E

APPELLANTS' APPENDIX INDEX – VOLUME 2 - ALPHABETICALLY

FLANGAS CIVIL LAW FIRM, LTD.
LEO P. FLANGAS, ESQ
Nevada Bar No. 5637
600 S. 3rd Street
Las Vegas, NV 89101
Phone: (702) 384-1990
E-mail: leo@flangaslawfirm.com
Attorney for Appellants

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
3	ROA000045-46	7/3/2018	1	Addendum to Petition for Probate of Will and Issuance of Letters
6	ROA000049-57	7/18/2018	1	Addendum to Petition for Probate of Will and Issuance of Letters
31	ROA000251-52	3/21/2020	2	Affidavit of Mailing Notice of Interested Parties

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
35	ROA000257-58	3/31/2020	2	Affidavit of Mailing Notice of Interested Parties
36	ROA000259-60	3/31/2020	2	Affidavit of Mailing Notice of Interested Parties
5	ROA000048	7/16/2018	1	Affidavit of Publication
11	ROA000066	8/10/2018	1	Affidavit of Publication
15	ROA000092	4/23/2019	1	Affidavit of Publication
22	ROA000116-17	2/6/2020	1	Amended Certificate of Service
39	ROA000263-65	3/31/2020	2	Amended Certificate of Service
51	ROA000368-71	7/21/2020	2	Case Appeal Statement
4	ROA000047	7/3/2018	1	Certificate of Mailing Petition for Probate of Will and Issuance of Letters, Addendum to Petition for Probate of Will and Issuance of Letters, and Notice of Hearing
14	ROA000091	4/10/2019	1	Certificate of Mailing Petition for Waiver of Accounting, for Payment of Attorney s Fees, and Petition for Distribution, for the Estate, and Notice of Hearing
21	ROA000114-15	2/6/2020	1	Certificate of Service

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
23	ROA000118-19	2/11/2020	1	Certificate of Service
32	ROA000253-54	3/22/2020	2	Certificate of Service
33	ROA000255	3/22/2020	2	Certificate of Service
37	ROA000261	3/31/2020	2	Certificate of Service
38	ROA000262	3/31/2020	2	Certificate of Service
20	ROA000113	2/5/2020	1	Clerk's Notice of Hearing
29	ROA000247	3/17/2020	1	Clerk's Notice of Hearing
47	ROA000352	5/15/2020	2	Decision - Petition for Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets. Minute order denying petition
9	ROA000061-63	7/25/2018	1	Letters Testamentary
45	ROA000350	5/11/2020	2	Minute order re: May 14, 2020 BlueJeans Hearing Notice
8	ROA000060		1	Minutes – Petition - HM
17	ROA000106		1	Minutes – Petition - HM
40	ROA000266		2	Minutes – Petition - HM
50	ROA000366-67	7/2/2020	2	Notice of Appeal

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
49	ROA000359-65	6/23/2020	2	Notice of entry of Order denying Petition
25	ROA000139-141	3/6/2020	1	Notice of Exercise of Right to have Hearing before Probate Court Judge
19	ROA000111-12	2/4/2020	1	Notice of Hearing
2	ROA000043-44	6/28/2018	1	Notice of Hearing on Petition for Probate of Will and Issuance of Letters
13	ROA000089-90	4/8/2019	1	Notice of Hearing on Petition for Waiver of Accounting, for Payment of Attorney s Fees, and Petition for Distribution
30	ROA000248-50	3/17/2020	1	Notice of Interested Parties
10	ROA000064-65	7/25/2018	1	Notice to Creditors - Ninety (90 Day Notice)
27	ROA000242-43	3/12/2020	1	Objection to Notice of Right to Have Hearing Before Probate Court Judge
24	ROA000120-138	2/18/2020	1	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
48	ROA000353-58	6/23/2020	2	Order denying Petition

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
7	ROA000058-59	7/20/2018	1	Order Granting Petition for Probate of Will and Issuance of Letters.
16	ROA000093-105	5/10/2019	1	Order Granting Petition for Waiver of Accounting, for Payment of Attorney's Fees, and Petition for Distribution
41	ROA00267	4/28/2020	2	Order Scheduling Status Check
42	ROA000268	4/30/2020	2	Order Scheduling Status Check
34	ROA000256		2	Petition - HM
18	ROA000107-10	2/2/2020	1	Petition for an Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets
1	ROA000001-42	6/28/2018	1	Petition for Probate of Will and Issuance of Letters
12	ROA000067-88	4/8/2019	1	Petition for Waiver of Accounting, for Payment of Attorney s Fees, and Petition for Distribution
26	ROA000142-241	3/6/2020	1	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

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
53	ROA000375-93	8/5/2021	2	Recorder's Transcript of Proceedings Re: Petition for Order to Show Cause why Estate Should not be- Opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets May 14, 2020
28	ROA000244-46	3/16/2020	1	Re-Notice of Hearing
52	ROA000372-74	5/21/2021	2	Request for Transcript of Proceedings
46	ROA000351	5/14/2020	2	Status Check - Re: Petition for Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets. Minute order stating Matter taken under advisement
43	ROA000269-71	5/8/2020	2	Substitution of Attorney
44	ROA000272-349	5/8/2020	2	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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Appellants,

vs.

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Supreme Court No.: 81447

Eighth Judicial District

District Court Case No.: P-18-095892-E

APPELLANTS' APPENDIX VOLUME 2 - CHRONOLOGICALLY

FLANGAS CIVIL LAW FIRM, LTD.

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Attorney for Appellants

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
1	ROA000001 - 42	6/28/2018	1	Petition for Probate of Will and Issuance of Letters
2	ROA000043 - 44	6/28/2018	1	Notice of Hearing on Petition for Probate of Will and Issuance of Letters

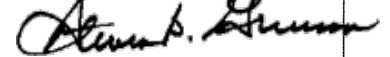
<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
3	ROA000045 - 46	7/03/2018	1	Addendum to Petition for Probate of Will and Issuance of Letters
4	ROA000047	7/03/2018	1	Certificate of Mailing Petition for Probate of Will and Issuance of Letters, Addendum to Petition for Probate of Will and Issuance of Letters, and Notice of Hearing
5	ROA000048	7/16/2018	1	Affidavit of Publication
6	ROA000049 - 57	7/18/2018	1	Addendum to Petition for Probate of Will and Issuance of Letters
7	ROA000058 - 59	7/20/2018	1	Order Granting Petition for Probate of Will and Issuance of Letters.
8	ROA000060		1	Minutes – Petition - HM
9	ROA000061 - 63	7/25/2018	1	Letters Testamentary
10	ROA000064 - 65	7/25/2018	1	Notice to Creditors - Ninety (90 Day Notice)
11	ROA000066	8/10/2018	1	Affidavit of Publication
12	ROA000067 - 88	4/08/2019	1	Petition for Waiver of Accounting, for Payment of Attorney s Fees, and Petition for Distribution
13	ROA000089 - 90	4/08/2019	1	Notice of Hearing on Petition for Waiver of Accounting, for Payment of Attorney s Fees, and Petition for Distribution
14	ROA000091	4/10/2019	1	Certificate of Mailing Petition for Waiver of Accounting, for Payment of Attorney s Fees, and Petition for Distribution, for the Estate, and Notice of Hearing

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
15	ROA000092	4/23/2019	1	Affidavit of Publication
16	ROA000093 - 105	5/10/2019	1	Order Granting Petition for Waiver of Accounting, for Payment of Attorney's Fees, and Petition for Distribution
17	ROA000106		1	Minutes – Petition - HM
18	ROA000107 - 10	2/02/2020	1	Petition for an Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets
19	ROA000111 - 12	2/04/2020	1	Notice of Hearing
20	ROA000113	2/05/2020	1	Clerk's Notice of Hearing
21	ROA000114 - 15	2/06/2020	1	Certificate of Service
22	ROA000116 - 17	2/06/2020	1	Amended Certificate of Service
23	ROA000118 - 19	2/11/2020	1	Certificate of Service
24	ROA000120 -138	2/18/2020	1	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
25	ROA000139 - 141	3/06/2020	1	Notice of Exercise of Right to have Hearing before Probate Court Judge
26	ROA000142 - 241	3/06/2020	1	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

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
27	ROA000242 - 43	3/12/2020	1	Objection to Notice of Right to Have Hearing Before Probate Court Judge
28	ROA000244 - 46	3/16/2020	1	Re-Notice of Hearing
29	ROA000247	3/17/2020	1	Clerk's Notice of Hearing
30	ROA000248 - 50	3/17/2020	1	Notice of Interested Parties
31	ROA000251 - 52	3/21/2020	2	Affidavit of Mailing Notice of Interested Parties
32	ROA000253 - 54	3/22/2020	2	Certificate of Service
33	ROA000255	3/22/2020	2	Certificate of Service
34	ROA000256		2	Petition - HM
35	ROA000257 - 58	3/31/2020	2	Affidavit of Mailing Notice of Interested Parties
36	ROA000259 - 60	3/31/2020	2	Affidavit of Mailing Notice of Interested Parties
37	ROA000261	3/31/2020	2	Certificate of Service
38	ROA000262	3/31/2020	2	Certificate of Service
39	ROA000263 - 65	3/31/2020	2	Amended Certificate of Service
40	ROA000266		2	Minutes – Petition - HM
41	ROA000267	4/28/2020	2	Order Scheduling Status Check
42	ROA000268	4/30/2020	2	Order Scheduling Status Check
43	ROA000269 - 71	5/08/2020	2	Substitution of Attorney
44	ROA000272 - 349	5/08/2020	2	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

<u>TAB NO.</u>	<u>PAGE NOS.</u>	<u>DATE</u>	<u>VOL.</u>	<u>DOCUMENT</u>
				Claims and Accounting of the Estate Assets
45	ROA000350	5/11/2020	2	Minute order re: May 14, 2020 BlueJeans Hearing Notice
46	ROA000351	5/14/2020	2	Status Check - Re: Petition for Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets. Minute order stating Matter taken under advisement
47	ROA000352	5/15/2020	2	Decision - Petition for Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets. Minute order denying petition
48	ROA000353 - 58	6/23/2020	2	Order denying Petition
49	ROA000359 - 65	6/23/2020	2	Notice of entry of Order denying Petition
50	ROA000366 - 67	7/02/2020	2	Notice of Appeal
51	ROA000368 - 71	7/21/2020	2	Case Appeal Statement
52	ROA000372 - 74	5/21/2021	2	Request for Transcript of Proceedings
53	ROA000375 - 93	8/05/2021	2	Recorder's Transcript of Proceedings Re: Petition for Order to Show Cause why Estate Should not be- Opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets May 14, 2020

EXHIBIT 31



LEO P. FLANGAS, ESQ.
Nevada Bar No. 5637
FLANGAS LAW FIRM, LTD.
600 S. 3rd Street
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e-mail: leo@flangaslawfirm.com
*Attorney for Petitioner Colonial
Real Estate Partnership, Ltd.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: P-18-095892-E

In re the Matter of the Estate of

Dept. No.: 8

Dennis John Carver

**AFFIDAVIT OF MAILING
NOTICE OF INTERESTED
PARTIES**

Deceased

NOW BEFORE ME came and appeared NATASHA SMITH, who after being sworn did depose and state that she is a United States citizen of the age of majority, and that the statements she, makes are of her own personal knowledge:

That I do certify that on the 18th day of March, 2020, I effected service by mailing a true and correct copy of the NOTICE OF INTERESTED PARTIES of same in the above captioned matter by placing copies in an envelope, and depositing same in the U.S. Mail, postage prepaid, and properly addressed to:

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Brooke Nichole Carver Daughter 38368Via Calorin
Murrieta. CA 92562

Madison Denise Carver Daughter 38368Via Calorin
Murrieta. CA 92562

Natasha Smith
NATASHA SMITH

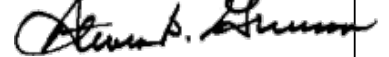
SUBSCRIBED AND SWORN to before me

This 20 day of March, 2020



Russell West
NOTARY

EXHIBIT 32



1 **FLANGAS CIVIL LAW FIRM, LTD.**
2 LEO P FLANGAS, ESQ.
3 Nevada Bar No. 5637
4 600 South Third Street
5 Las Vegas, Nevada 89101
6 Telephone: (702) 384-1990
7 Facsimile: (702) 384-1009
8 Email: leo@flangaslawfirm.com
9 *Attorney for Petitioners*

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

9 In the Matter of the Estate of:

Case No.: P-18-095892-E

10 DENNIS JOHN CARVER,

11 Deceased.
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17 **CERTIFICATE OF SERVICE**

18 Pursuant to NRCP 5(b), I hereby certify that on this 18th day of March, 2020, service of the a
19 **NOTICE OF INTERESTED PARTIES** was made by submission to the electronic filing service
20 for the Clark County Nevada Eighth Judicial Court upon all the parties registered to the District
21 Court Electronic Filing Program and depositing a true and correct copy of the same service via

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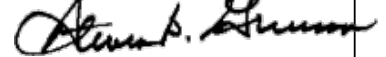
1 Certified U.S. Mail addressed to the following:

2 Brooke Nichole Carver Daughter 38368Via Calorin
3 Murrieta. CA 92562

4 Madison Denise Carver Daughter 38368Via Calorin
5 Murrieta. CA 92562

6
7 /s/ Natasha Smith
8 An employee of FLANGAS CIVIL LAW FIRM,LTD.
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EXHIBIT 33



1 **FLANGAS CIVIL LAW FIRM, LTD.**
2 LEO P FLANGAS, ESQ.
3 Nevada Bar No. 5637
4 600 South Third Street
5 Las Vegas, Nevada 89101
6 Telephone: (702) 384-1990
7 Facsimile: (702) 384-1009
8 Email: leo@flangaslawfirm.com
9 *Attorney for Petitioners*

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

9 In the Matter of the Estate of:

Case No.: P-18-095892-E

10 DENNIS JOHN CARVER,

11 Deceased.
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17 **CERTIFICATE OF SERVICE**

18 Pursuant to NRCP 5(b), I hereby certify that on this 16th day of March, 2020, service of the a
19 **RE-NOTICE OF HEARING** made by submission to the electronic filing service for the Clark
20 County Nevada Eighth Judicial Court upon all the parties registered to the District Court Electronic
21 Filing Program.
22

23 /s/ Natasha Smith
24 An employee of FLANGAS CIVIL LAW FIRM
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EXHIBIT 34

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate - General
Administration**

COURT MINUTES

March 13, 2020

P-18-095892-E In the matter of:
Dennis Carver, Deceased

March 13, 2020 9:30 AM Petition - HM

HEARD BY: Yamashita, Wesley **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Sharon Chun

RECORDER:

REPORTER:

PARTIES

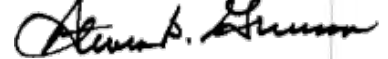
PRESENT: Flangas, Leonidas P, ESQ Attorney

JOURNAL ENTRIES

- 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

COMMISSIONER RECOMMENDED, OFF CALENDAR, interested parties need to be noticed. Mr. Flangas so noted.

EXHIBIT 35



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

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

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

14 Dept. No.: 8

15 In re the Matter of the Estate of

16 Dennis John Carver

17 Deceased

18 **AFFIDAVIT OF MAILING**
19 **NOTICE OF INTERESTED**
20 **PARTIES**

21 NOW BEFORE ME came and appeared NATASHA SMITH, who after being sworn did
22 depose and state that she is a United States citizen of the age of majority, and that the statements she,
23 makes are of her own personal knowledge:

24 That I do certify that on the 31st day of March, 2020, I effected service by mailing a true
25 and correct copy of the NOTICE OF INTERESTED PARTIES of same in the above captioned matter
26 by placing copies in an envelope, and depositing same in the U.S. Mail, postage prepaid, and properly
27 addressed to:

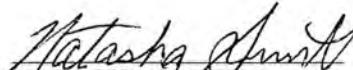
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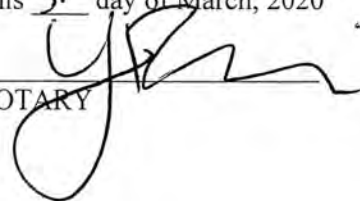
Brooke Nichole Carver Daughter 38368Via Calorin
Murrieta. CA 92562

Madison Denise Carver Daughter 38368Via Calorin
Murrieta. CA 92562


NATASHA SMITH

SUBSCRIBED AND SWORN to before me

This 31st day of March, 2020


NOTARY

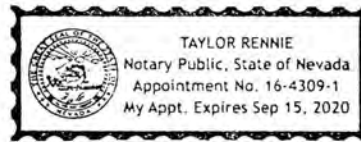
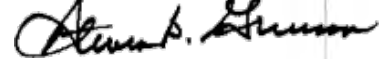


EXHIBIT 36



1 LEO P. FLANGAS, ESQ.
2 Nevada Bar No. 5637
3 FLANGAS LAW FIRM, LTD.
4 600 S. 3rd Street
5 Las Vegas, Nevada 89101
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e-mail: leo@flangaslawfirm.com
Attorney for Petitioner Colonial
Real Estate Partnership, Ltd.

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

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

11 Dept. No.: 8

12 In re the Matter of the Estate of

13 Dennis John Carver

14 Deceased
15
16

**AMENDED AFFIDAVIT OF
MAILING NOTICE OF
INTERESTED PARTIES**

17 NOW BEFORE ME came and appeared NATASHA SMITH, who after being sworn did
18 depose and state that she is a United States citizen of the age of majority, and that the statements she,
19 makes are of her own personal knowledge:
20

21 That I do certify that on the 31st day of March, 2020, I effected service by mailing a true
22 and correct copy of the NOTICE OF INTERESTED PARTIES of same in the above captioned matter
23 by placing copies in an envelope, and depositing same in the U.S. Mail, postage prepaid, and properly
24 addressed to:

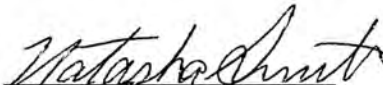
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Rhonda L. Morgan Personal Representative

31630 Railroad Canyon Road, Ste 10
Canyon Lake CA 92587


NATASHA SMITH

SUBSCRIBED AND SWORN to before me

This 31st day of March, 2020

NOTARY

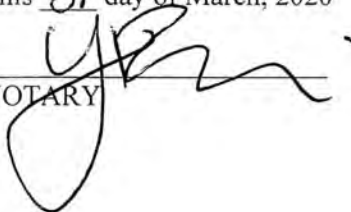
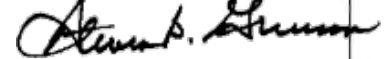




EXHIBIT 37



1 **FLANGAS CIVIL LAW FIRM, LTD.**
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8 Email: leo@flangaslawfirm.com
9 *Attorney for Petitioners*

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

12 In the Matter of the Estate of:
13
14 DENNIS JOHN CARVER,
15
16 Deceased.

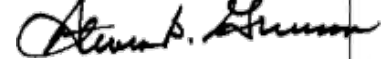
Case No.: P-18-095892-E

17 **CERTIFICATE OF SERVICE**

18 Pursuant to NRCp 5(b), I hereby certify that on this 31st day of March, 2020, service of the a
19 AFFIDAVIT OF MAILING NOTICE OF INTERESTED PARTIES made by submission to the
20 electronic filing service for the Clark County Nevada Eighth Judicial Court upon all the parties
21 registered to the District Court Electronic Filing Program.

22
23
24 /s/ Natasha Smith
25 An employee of FLANGAS CIVIL LAW FIRM
26
27
28

EXHIBIT 38



1 **FLANGAS CIVIL LAW FIRM, LTD.**
2 LEO P FLANGAS, ESQ.
3 Nevada Bar No. 5637
4 600 South Third Street
5 Las Vegas, Nevada 89101
6 Telephone: (702) 384-1990
7 Facsimile: (702) 384-1009
8 Email: leo@flangaslawfirm.com
9 *Attorney for Petitioners*

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

12 In the Matter of the Estate of:
13
14 DENNIS JOHN CARVER,
15
16 Deceased.

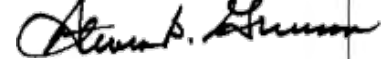
Case No.: P-18-095892-E

17 **CERTIFICATE OF SERVICE**

18 Pursuant to NRCp 5(b), I hereby certify that on this 31st day of March, 2020, service of the a
19 AFFIDAVIT OF MAILING NOTICE OF INTERESTED PARTIES made by submission to the
20 electronic filing service for the Clark County Nevada Eighth Judicial Court upon all the parties
21 registered to the District Court Electronic Filing Program.

22
23
24 /s/ Natasha Smith
25 An employee of FLANGAS CIVIL LAW FIRM
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27
28

EXHIBIT 39



1 **FLANGAS CIVIL LAW FIRM, LTD.**
2 LEO P FLANGAS, ESQ.
3 Nevada Bar No. 5637
4 600 South Third Street
5 Las Vegas, Nevada 89101
6 Telephone: (702) 384-1990
7 Facsimile: (702) 384-1009
8 Email: leo@flangaslawfirm.com
9 *Attorney for Petitioners*

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

12 In the Matter of the Estate of:
13
14 DENNIS JOHN CARVER,
15
16 Deceased.

Case No.: P-18-095892-E

17 **AMENDED CERTIFICATE OF SERVICE**

18 Pursuant to NRCP 5(b), I hereby certify that on this 31st day of March, 2020, service of the a
19 **NOTICE OF INTERESTED PARTIES** was made by submission to the electronic filing service
20 for the Clark County Nevada Eighth Judicial Court upon all the parties registered to the District
21 Court Electronic Filing Program and depositing a true and correct copy of

22 ///

23 ///

1 the same service via Certified U.S. Mail addressed to the following:

2 Brooke Nichole Carver Daughter 38368Via Calorin
3 Murrieta. CA 92562

4 Madison Denise Carver Daughter 38368Via Calorin
5 Murrieta. CA 92562

6 Rhonda L Morgan Personal Representative 31630 Railroad Canyon Road, Ste 10
7 Canyon Lake, CA 92587

8 /s/ Natasha Smith
9 An employee of FLANGAS CIVIL LAW FIRM.LTD.

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EXHIBIT 40

DISTRICT COURT
CLARK COUNTY, NEVADA

Probate - General Administration

COURT MINUTES

April 24, 2020

P-18-095892-E In the matter of:
Dennis Carver, Deceased

April 24, 2020 03:00 AM Petition for an Order to Show Cause Why Estate Should not be
Re-opened for Creditors to Submit Proof of Claims and
Accounting of the Estate Assets

HEARD BY: Yamashita, Wesley COURTROOM: Chambers

COURT CLERK: Chun, Sharon

RECORDER:

REPORTER:

PARTIES PRESENT:

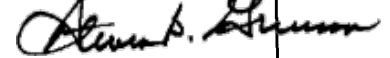
JOURNAL ENTRIES

Petition for an Order to Show Cause Why Estate Should not be Re-opened for Creditors to
Submit Proof of Claims and Accounting of the Estate Assets

Pursuant to the Notice of Exercise of Right to Have Hearing Before Probate Court Judge, filed
by Leonidas Flangas, Esq. on March 6, 2020, COMMISSIONER REFERRED THIS MATTER
TO DISTRICT COURT JUDGE TREVOR ATKIN.

CLERK'S NOTE 4/24/20/sc: A copy of this minute order has been distributed to Judge Atkin's
Judicial Executive Assistant, Lynne Lerner for setting on calendar and notification to all
interested parties.

EXHIBIT 41



**DISTRICT COURT
CLARK COUNTY, NEVADA**
* * * *

In the matter of:
Dennis Carver, Deceased

Case No.: P-18-095892-E

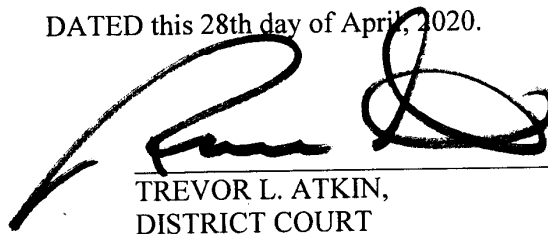
Department 8

ORDER SCHEDULING STATUS CHECK

TO: Donna Stidham; Leonidas P Flangas, ESQ

YOU ARE HEREBY ORDERED TO APPEAR in District Court, 330 S. 3rd St,
Department 8, **May 14, 2020, at 10:30 AM** to discuss the Probate Commissioner's referral of the
Petition for an Order to Show Cause Why Estate Should not be Re-opened for Creditors to
Submit Proof of Claims and Accounting of the Estate Assets. After hearing the issues, Court will
set the matter for oral argument, if needed.

DATED this 28th day of April, 2020.


TREVOR L. ATKIN,
DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I e-served a copy to all registered service
contacts, including those listed above.


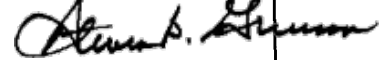

Lynne Lerner
Judicial Executive Assistant

EXHIBIT 42



**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the matter of:
Dennis Carver, Deceased

Case No.: P-18-095892-E

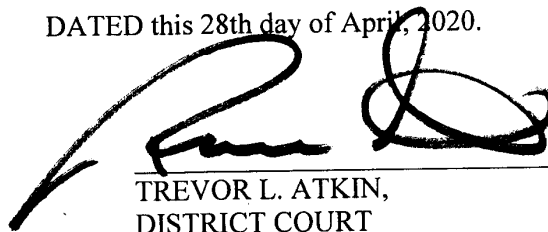
Department 8

ORDER SCHEDULING STATUS CHECK

TO: Donna Stidham; Leonidas P Flangas, ESQ

YOU ARE HEREBY ORDERED TO APPEAR in District Court, 330 S. 3rd St,
Department 8, **May 14, 2020, at 10:30 AM** to discuss the Probate Commissioner's referral of the
Petition for an Order to Show Cause Why Estate Should not be Re-opened for Creditors to
Submit Proof of Claims and Accounting of the Estate Assets. After hearing the issues, Court will
set the matter for oral argument, if needed.

DATED this 28th day of April, 2020.


TREVOR L. ATKIN,
DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I e-served a copy to all registered service
contacts, including those listed above.

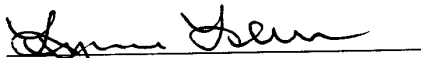
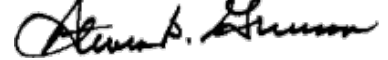

Lynne Lerner
Judicial Executive Assistant

EXHIBIT 43



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 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

Substitution Of Attorney

Rhonda Morgan as Personal Representative of the Estate of Dennis John Carver, hereby substitutes in David T. Blake, Esq. of Clear Counsel Law Group, as her attorneys of record, in place of Donna Stidham, Esq. of Law Office of Donna Stidham, in the above captioned matter.

Dated: May 8, 2020.

/s/ Rhonda Morgan

Rhonda Morgan

David T. Blake of the law firm Clear Counsel Law Group, hereby acknowledges the above substitution of attorneys.

Dated: May 8, 2020.

CLEAR COUNSEL LAW GROUP

/s/ David T. Blake

David T. Blake, Esq. (#11059)



1 Donna Stidham of Law Office of Donna Stidham, LLC, hereby acknowledges the above
2 substitution of attorneys.

3 Dated: May 8, 2020.

4

5

LAW OFFICE OF DONNA STIDHAM, LLC

6

/s/Donna Stidham
Donna Stidham, Esq. (#9663)

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the 8th day of May 2020, I caused the foregoing **Substitution of Attorney** to be served as follows:

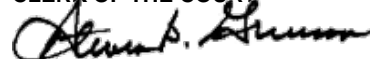
- ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid addressed to the parties below; and/or
- ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or
-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

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

EXHIBIT 44

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

Electronically Filed
5/8/2020 4:05 PM
Steven D. Grierson
CLERK OF THE COURT



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

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

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

18 **2. Morgan did not violate rules of professional conduct.**

19 Colonial's argument that Morgan breached her duties of professional conduct is incorrect
20 for the same reason that its fraud argument is incorrect: Morgan did not fail to disclose any
21 material facts. As argued above, Alfano's misappropriation of California estate assets was being
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24 probate proceedings closed and long after the 3-month limitation period to challenge the probate
25 of a will had passed. See NRS 137.080. The only means to toll this limitations period would be
26 for a party to challenge the probated will based on *extrinsic* fraud. But Alfano's forgery of
27 signatures was intrinsic, not extrinsic. See *Murphy v. Murphy*, 65 Nev. 264, 271 (1948);
28 *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.

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III.

Conclusion

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

Dated: May 8, 2020.

Clear Counsel Law Group

/s/ David Blake
David T. Blake

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the 8th day of May, 2020, I caused the foregoing **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** 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 “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”

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Attorneys for Petitioners

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 27 2019

Logg
~~A. Zamora-Freer~~

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

2/16/20
8:30 AM, 11

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

JURISDICTION, VENUE AND NOTICE

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

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

3. The parties entitled to notice are:

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

PARTIES

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

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, Jennifer 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.

- d. Borrowing money from the Trust and Estate;
- e. Loaning money to Alfano Law, his law firm;
- f. Collecting excessive Trustee and attorney fees;
- g. Using funds to purchase property for his law firm;
- h. Using Trust funds to pay his law firms rent;
- i. Entering into contracts with A &N Acquisitions to collect trust assets at a 30% fee, a company he has an ownership interest in;
- j. Failing to maintain records;
- k. Destroying records;
- l. Selling assets at well below the fair market value;
- m. As well as other acts and failures to act in violation of his fiduciary duties to be proven at trial.

71. As mentioned herein, Lindsay knowingly assisted and/or encourage Nicholas as trustee executor in breaching his fiduciary duties and as such participated in the breaches.

72. As a proximate result of Nicholas and Lindsay's breaches, the Trusts and Estates have been damaged.

73. For committing the breaches described above Petitioners seek an order of the Court surcharging Nicholas and Lindsay personally for any loss or depreciation in value of the Trust and/or Estate assets resulting from these breaches, with interest, under Probate Code §§ 16440(a)(1) and 9602.

74. For committing the breaches described above Petitioners seek an order of the Court surcharging Nicholas and Lindsay personally for any loss of profit that would have accrued to the Trust if the loss of profit is the result of the breach under Probate Code §§ 16440(a)(3) and 9601.

75. If the Court finds that Nicholas and Lindsay's actions above caused Petitioners to lose any use of Trust or Estate property as a result of their oppression, fraud or malice, then Petitioner seeks pre-judgement interest under Civil Code § 3288.

1 76. If this Court finds that Nicholas and Lindsay has in bad faith wrongfully taken.
2 concealed, or disposed of property belonging to the Trust or Estate, or has taken, concealed, or
3 disposed of the property by the use of undue influence in bad faith or through the commission
4 of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and
5 Institutions Code, he be liable for twice the value of the property recovered in addition to
6 another remedy sought in this Petition. Petitioners also seek reasonable attorneys fees and costs
7 under Probate Code § 859.

8 **SECOND CAUSE OF ACTION**
9 **(Compel an Accounting)**
10 **(Against Nicholas)**

11 77. Petitioners hereby realleges and incorporates by reference each and every
12 allegation contained in Paragraphs 1 through 65.

13 78. Nicholas, as Trustee has a duty to account and report to the beneficiaries of the
14 Trust, annually, and upon the change of trustees (which occurred when Morgan and Brooke
15 were appointed as Co-Trustees) Yet, Nicholas has not provided an accounting or sufficient
16 information regarding the administration of the Trust.

17 79. More than 60 days has elapsed since Nicholas was requested to provide an
18 accounting for the time he was Trustee of the Trust.

19 80. In addition, since Morgan and Brooke were appointed Co-Trustees numerous
20 unexplained discrepancies were discovered. For example, on information and belief, Lindsay
21 wrote for Nicholas' signature a check in the amount of \$30,000 to Amber Management, the
22 Landlord who leases office space to Alfano Law. It is reasonably likely that a material breach
23 of trust has occurred.

24 81. As such, under Probate Code §§ 16062, 16063, 16064, subdivision (a), and 17200,
25 subdivision (b)(7)(c), the Court should order Nicholas to provide a full accounting during the
26 time he was Trustee of the Trust.

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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. Lindsey. 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.

111. Petitioners did not consent to the acts of Respondents.

112. Petitioners as Co-Trustees of the Trust were harmed because the personal property has been wrongly removed from the Trust.

113. The defendants' conduct was a substantial factor in causing Petitioners' harm.

114. WHEREFORE Petitioners pray for relief as set forth below.

EIGHTH CAUSE OF ACTION

(Civil Conspiracy)

(Against all Respondents)

115. Petitioners hereby reallege and incorporates by reference each and every allegation contained in Paragraphs 1 through 65.

116. In all the aforementioned conduct, Respondents agreed, between and among themselves, to engage in actions and a course of conduct designed to further an illegal act or accomplish a legal act by unlawful means, and to commit one or more overt acts in furtherance of the conspiracy to defraud Petitioners.

117. Respondents agreed between and among themselves to engage in the conspiracy to defraud for the common purposes of accruing economic gains for themselves at the expense of and detriment to Petitioners.

118. Respondents' actions in this matter have been willful, knowing, malicious, fraudulent and oppressive, entitling the Petitioners to punitive damages in an amount appropriate to punish Respondents and to deter others from engaging in the same or similar behavior.

119. WHEREFORE Petitioners pray for relief as set forth below.

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NINTH CAUSE OF ACTION

(Breach of Contract)

**(Against Nicholas, Lindsay, Brian Matthews, Alfano Law,
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.

1 121. In doing the above acts, Respondents breached the written agreements with
2 Petitioners. Petitioners have performed all acts required of them under those agreements, and
3 has demanded performance by Respondents.

4 122. As a result of Respondents breach of the written agreement, Petitioners have been
5 harmed by being denied distributions from the collection efforts to which the Trust was
6 entitled. Instead of making these distributions, Respondents used the collection money and
7 assets for their own benefit.

8 123. As a further result of Respondent's breach of written agreement, Petitioners have
9 been harmed by the need to file suit and incur costs of suit and attorney's fees. The Agreement
10 provides for attorney's fees in the event of a dispute, and Petitioners claim attorney's fees as an
11 element of damages as well as pursuant to applicable statute.

12 124. Petitioners cannot determine the amount that Respondents owe without a proper
13 accounting but believes the amount is larger than Eight Hundred Thousand Dollars (\$800,000).

14 125. The conduct alleged in the preceding paragraphs was willful, malicious and
15 fraudulent within the meaning of Civil Code Section 3294, entitling Petitioners to an award of
16 punitive damages in an amount sufficient to punish Respondents and deter future despicable
17 conduct.

18 126. WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

19 **TENTH CAUSE OF ACTION**
20 **(For Breach of the Covenant of Good Faith and Fair Dealing)**
21 **(Against Nicholas, Lindsv. Matthews, Alfano Law,**
22 **A&N Acquisitions, and DOES 1-10.)**

23 127. Petitioners incorporate and allege Paragraphs 1 through 65 as if fully set forth
24 herein.

25 128. Every contract imposes upon each party a duty of good faith and fair dealing in its
26 performance and enforcement. This implied covenant of good faith and fair dealing requires
27 that no party will do anything that will have the effect of impairing, destroying, or injuring the
28 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.

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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.

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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

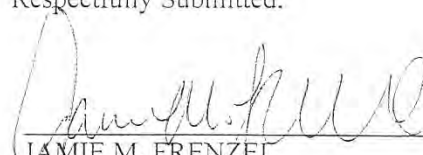
WHEREFORE, Petitioners pray for judgment against the Respondents jointly, severally or in the alternative as follows:

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

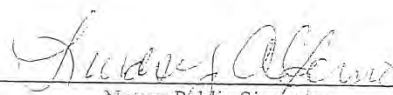
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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 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, 1961, as amended, and/or the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunities created thereby.

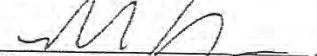
VI. MISCELLANEOUS:

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 _____ 20__

CPANDAC:

Brooke Nicole Carver
Brooke Nicole 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		DECEDECENT	
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): 29 Huntwick Lane, Englewood, Colorado 80113
 - 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	CASE NUMBER: MCP 1700877
--	------------------------------------

	FACTS SUPPORTING THE CREDITOR'S CLAIM <input checked="" type="checkbox"/> See attachment (if space is insufficient) Item and supporting facts	
Date of item		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)

1. 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.
2. My residence or business address is (specify): 5440 W. Sahara Ave., #206, Las Vegas, NV 89146
3. I mailed or personally delivered a copy of this *Creditor's Claim* to the personal representative as follows (check either a or b below):
 - a. ☒ **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) ☒ **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) ☐ **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.
 - (2) The envelope was addressed and mailed first-class as follows:
 - (a) Name of personal representative served: Ronda Morgan, Esq.
 - (b) Address on envelope: The Legacy Firm of Southern California
19800 MacArthur Blvd, Suite 300, Irvine, CA 92612
 - (c) Date of mailing: 4/11/19
 - (d) Place of mailing (city and state): Las Vegas, NV
 - b. ☐ **Personal delivery.** I personally delivered a copy of the claim to the personal representative as follows:
 - (1) Name of personal representative served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) 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**
 11155 Moorpark, 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>* Eric C. Haul 11/13/13</i></p>			
<p>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.</p>			<p>Total 578,310.68</p>

COMMERCIAL PLUMBING AND AC

P.O. Box 1125 Murietta, 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>RT</i> <i>x Eric [Signature] 11/13/13</i>			
Total			\$20,989.88

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.

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
WO11920/114/WO1165	3/24/14		111851.64	1.00	SERVICES AND MATERIALS

9039

www.checkprofirst.com 800-245-5775 Order # JB1527-1



COLONIAL REAL ESTATE PARTNERSHIP
14100 E. 15th Ave. Suite 100
Denver, CO 80231
Phone: (303) 751-1111
Fax: (303) 751-1112
Email: info@colonialrealestate.com
Website: www.colonialrealestate.com

Check Number: 4016
Check Date: 3/24/14
Check Amount: \$111,851.64

One Hundred Eleven Thousand One Hundred Fifty One and No/100 Dollars

For: Commercial Plumbing and AC
PO Box 114
Meriden, CT 06450

Signature: Leo Flangas

REF#8857279261 CK# 4016 111851.64

Check Pro First
14100 E. 15th Ave. Suite 100
Denver, CO 80231
Phone: (303) 751-1111
Fax: (303) 751-1112
Email: info@colonialrealestate.com
Website: www.colonialrealestate.com

Check Number: 4016
Check Date: 3/24/14
Check Amount: \$111,851.64

One Hundred Eleven Thousand One Hundred Fifty One and No/100 Dollars

For: Commercial Plumbing and AC
PO Box 114
Meriden, CT 06450

Signature: Leo Flangas

REF#8857279261 CK# 4016 111851.64



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
do 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,

John J. Houlihan IV
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 45

DISTRICT COURT
CLARK COUNTY, NEVADA

Probate - General Administration

COURT MINUTES

May 11, 2020

P-18-095892-E In the matter of:
Dennis Carver, Deceased

May 11, 2020 03:00 PM May 14, 2020 BlueJeans Hearing Notice

HEARD BY: Atkin, Trevor COURTROOM: Chambers

COURT CLERK: Castle, Alan

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Department 8 Request to Appear Telephonically

Pursuant to Administrative Order 20-10, Department 8 will temporarily request all matters be heard via telephone conference ONLY. We will NOT be utilizing video conferencing. The court has set up an appearance through BlueJeans, which can accommodate multiple callers at no cost to participants.

To use BlueJeans, please call in prior to the hearing at 1-888-748-9073.

To connect to your hearing, simply input the assigned meeting ID number provided immediately below, followed by #.

Your Meeting ID: 688 105 235 (NOTE: The meeting number will be different for each day s court session.)

For your hearing, PLEASE observe the following protocol:

Place your telephone on mute while waiting for your matter/case to be called.
Do not place the conference on hold as it may play wait/hold music to others.
Identify yourself before speaking each time as a record is being made.
Please be mindful of sounds of rustling of papers or coughing.

EXHIBIT 46

DISTRICT COURT
CLARK COUNTY, NEVADA

Probate - General Administration

COURT MINUTES

May 14, 2020

P-18-095892-E In the matter of:
Dennis Carver, Deceased

May 14, 2020 10:30 AM Status Check - Re: Petition for Order to Show Cause Why Estate
Should not be Re-opened for Creditors to Submit Proof of Claims
and Accounting of the Estate Assets

HEARD BY: Atkin, Trevor

COURTROOM: Phoenix Building 11th Floor 110

COURT CLERK: Castle, Alan

RECORDER: Kirkpatrick, Jessica

REPORTER:

PARTIES PRESENT:

David T. Blake Esq

Attorney for Personal Representative,
Petitioner

Leonidas P Flangas, ESQ

Attorney for Petitioner

JOURNAL ENTRIES

Following arguments of counsel, MATTER TAKEN UNDER ADVISEMENT. Parties to be notified of decision by Minute Order or written decision.

EXHIBIT 47

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate - General
Administration**

COURT MINUTES

May 15, 2020

P-18-095892-E In the matter of:
Dennis Carver, Deceased

May 15, 2020	3:00 AM	Minute Order	Decision - Petition for Order to Show Cause Why Estate Should not be Re- opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets
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HEARD BY: Atkin, Trevor

COURTROOM: Chambers

COURT CLERK: Alan Castle

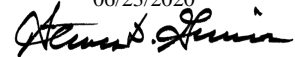
**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Having considered the pleadings and the arguments of counsel, COURT ORDERS, Petition for Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims and Accounting of the Estate Assets is DENIED for legal basis' outlined in the Estate's Sur-Reply in support of Objection to Petition. Mr. Blake to prepare the order within 10 days of this Minute Order have Mr. Flangas review as to form and Content and distribute a filed copy to all parties involved in this matter. .

CLERK'S NOTE: The above minute order has been electronically distributed.

EXHIBIT 48


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

27 ///

28 ///

1 Assets is DENIED as set forth above.

Dated this 23rd day of June, 2020

2 Dated this ____ day of _____, 2020.

3
4 
DISTRICT COURT JUDGE

DBB 544 505A 24A8

Trevor Atkin

5 Prepared and submitted by:

6 CLEAR COUNSEL LAW GROUP

7
8 /s/David T. Blake

David T. Blake, Esq. (#11059)

9 *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

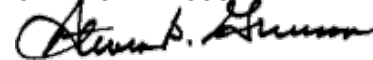
AUTOMATED CERTIFICATE OF SERVICE

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
Leo Flangas	leo@flangaslawfirm.com
Flangas Documents	documents@flangaslawfirm.com
Donna Stidham	donna@stidhamlawoffice.com
Donna Stidham	donna@stidhamlawoffice.com

EXHIBIT 49



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

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



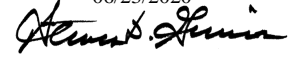
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the 23rd day of June, 2020, I caused the foregoing **Notice of Entry of Order** 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


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

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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,
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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
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5 14. The Nevada Supreme Court has repeatedly insisted that Nevada's district courts
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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
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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,
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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
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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
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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
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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

27 ///

28 ///

1 Assets is DENIED as set forth above.

Dated this 23rd day of June, 2020

2 Dated this ____ day of _____, 2020.

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4 
DISTRICT COURT JUDGE

DBB 544 505A 24A8

Trevor Atkin

5 Prepared and submitted by:

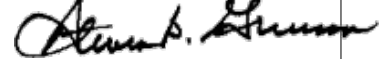
6 CLEAR COUNSEL LAW GROUP

7
8 /s/David T. Blake

David T. Blake, Esq. (#11059)

9 *Attorneys for the Estate*

EXHIBIT 50



LEO P. FLANGAS, ESQ.
Nevada Bar No. 5637
FLANGAS CIVIL LAW FIRM, LTD.
600 S. 3rd Street
Las Vegas, Nevada 89101
VOX: (702) 384-1990
FAX: (702) 384-1009
e-mail: leo@flangaslawfirm.com
*Attorney for Petitioner Colonial Real
Estate Partnership, Ltd. and John
Houlihan*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: P-18-095892-E

In re the Matter of the Estate of

Dept. No.: 8

Dennis John Carver

Deceased

NOTICE OF APPEAL

Notice is hereby given that JOHN HOULIHAN and COLONIAL REAL ESTATE PARTNERSHIP, LTD., Petitioners by and through their attorney, LEO P. FLANGAS, ESQ., of the FLANGAS CIVIL LAW FIRM, LTD., hereby appeals to the Supreme Court of Nevada from the ORDER entered in this action on the 23rd day of June, 2020.

DATED this 2nd of July, 2020

/s/ Leo P. Flangas
LEO P. FLANGAS, ESQ.
Nevada Bar No. 5637
leo@flangaslawfirm.com
*Attorney for Petitioners
JOHN HOULIHAN and
COLONIAL REAL ESTATE PARTNERSHIP, LTD.*

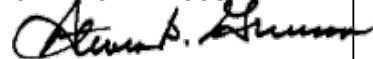
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on this 2nd day of July, 2020, service of the a
NOTICE OF APPEAL made by submission to the electronic filing service for the Clark County
Nevada Eighth Judicial Court upon all the parties registered to the District Court Electronic Filing
Program.

/s/ Natasha Smith
An employee of FLANGAS CIVIL LAW FIRM

EXHIBIT 51



LEO P. FLANGAS, ESQ.
Nevada Bar No. 5637
FLANGAS CIVIL LAW FIRM, LTD.
600 S. 3rd Street
Las Vegas, Nevada 89101
VOX: (702) 384-1990
FAX: (702) 384-1009
e-mail: leo@flangaslawfirm.com
*Attorney for Petitioner Colonial
Real Estate Partnership, Ltd.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No.: P-18-095892-E

In re the Matter of the Estate of

Dept. No.: 8

Dennis John Carver

Deceased

CASE APPEAL STATEMENT

JOHN HOULIHAN and COLONIAL REAL ESTATE PARTNERSHIP, LTD., by and
through their attorney, LEO P. FLANGAS, ESQ., hereby files his Case Appeal Statement.

1. Name of Appellants filing this case appeal statement: JOHN HOULIHAN and
COLONIAL REAL ESTATE PARTNERSHIP, LTD.

2. Identify the Judge issuing the decision, judgment, or order appealed from: The
Honorable Trevor Atkin, District Court Judge.

3. Identify each appellant and name and address of counsel for each appellant:
JOHN HOULIHAN and COLONIAL REAL ESTATE PARTNERSHIP.LTD., Appellants and are
represented on appeal by LEO P. FLANGAS, ESQ., 600 S. Third Street, Las Vegas, NV 89101.

1 (702) 384-1990.

2 4. Identify each Respondent and name and address of appellate counsel, if known, for each
3 respondent (if the name of respondent's counsel is unknown, indicate as much and provide the name
4 and address of respondent's trial counsel: ESTATE OF DENNIS JOHN CARVER and RHONDA
5 MORGAN, Personal Representative of the Estate, Respondents, and are represented by DAVID
6 BLAKE, ESQ., of the law firm of CLEAR COUNSEL LAW GROUP, 1671 W. Horizon Ridge Pkwy.,
7 Suite 200 Henderson, Nevada 89012 Telephone: (702) 476-5900.– Appellant's counsel believes the
8 same attorneys will represent respondent on appeal.
9

10 5. Indicate whether any attorney identified above in response to questions 3 or 4 is not
11 licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission
12 to appear under SCR 42 (attach a copy of any district court order granting such permission): All
13 counsel are licensed to practice law in Nevada.

14 6. Indicate whether appellant was represented by appointed or retained counsel in the
15 district court: Represented by retained counsel.
16

17 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
18 Represented by retained counsel

19 8. Indicate whether appellant was granted leave to proceed in forma pauperis and the date
20 of entry of the district court order granting appellant permission: Appellant did not request to proceed
21 in forma pauperis and therefore there is no order.

22 9. Indicate the date the proceeding commenced in district court: The Petition for an
23 Order to Show Cause Why Estate Should not be Re-opened for Creditors to Submit Proof of Claims
24 and Accounting of the Estate Assets was filed on February 2, 2020.
25

26 10. Provide a brief description of the nature of the Action and result in the district court,
27 including the type of judgment or order being appealed and the relief granted by the district court:
28

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

6 11. Indicate whether the case was previously the subject of an appeal to or original writ
7 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior
8 proceeding: There was no prior appeal filed in Supreme Court.
9

10 12. Indicate whether this appeal involves child custody or visitation: This case does not
11 involve child custody or visitation.

12 13. If this is a civil case, indicate whether this involves the possibility of settlement:
13 Settlement is worth pursuing.

14 Dated this 21 day of July 2020.
15

16 /s/ Leo P. Flangas
17 FLANGAS CIVIL LAW FIRM, LTD.
18 LEO P. FLANGAS, ESQ
19 Nevada Bar No. 5637
20 600 S. 3rd Street
21 Las Vegas, NV 89101
22 Phone: (702) 384-1990
23 E-mail: leo@flangaslawfirm.com
24 *Attorneys for Petitioners*
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on this 21th day of July, 2020, service of the CASE APPEAL STATEMENT was made by depositing a true and correct copy of the same service was made U.S. Mail and by submission to the electronic filing service for the Clark County Nevada Eighth Judicial Court upon all the parties registered to the District Court Electronic Filing Program addressed to the following:

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Attorneys for the Estate and Rhonda Morgan
Personal Representative of the Estate

/s/ Natasha Smith
Employee of Flangas Civil Law Firm, LTD.

EXHIBIT 52

1 I hereby certify that on the _20_ day of May, 2021, I ordered the transcripts listed above
2 from the Court Reporter named above, and I am still awaiting the deposit amount. When the
3 deposit amount is received, I will amend this request to reflect the deposit paid.

4 Done and dated this __20__ day of May, 2021.

5
6 /s/ Leo Flangas
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10 Las Vegas, Nevada 89101
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13 *Attorney for Appellants*
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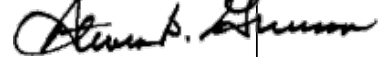
CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of May 2021 that I served the foregoing **REQUEST FOR TRANSCRIPT OF PROCEEDINGS** on all interested parties by placing a true and correct copy thereof in a sealed envelope with first class postage thereon and depositing same in the United States Mail at Las Vegas, Nevada addressed as follows:

DAVID T. BLAKE, ESQ.
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Henderson, Nevada 89012
Attorneys for Respondent

/s/ Natasha Smith
Employee of the Firm

EXHIBIT 53



1 **RTRAN**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **IN THE MATTER OF:**) **Case No. P-18-095892-E**
7 **DENNIS CARVER, DECEASED.**)
8) **DEPT. VIII/Probate**
9)

10 **BEFORE THE HONORABLE TREVOR ATKIN,**
11 **DISTRICT COURT JUDGE**

12 **THURSDAY, MAY 14, 2020**

13
14
15 ***TRANSCRIPT OF PROCEEDINGS RE:***
16 **PETITION FOR ORDER TO SHOW CAUSE WHY ESTATE SHOULD**
17 **NOT BE RE-OPENED FOR CREDITORS TO SUBMIT PROOF OF**
18 **CLAIMS AND ACCOUNTING OF THE ESTATE ASSETS**

19 **APPEARANCES:**

20 **For the Petitioner, Colonial**
21 **Real Estate Partnership, LTD: LEONIDAS P. FLANGAS, ESQ.**

22 **For the Petitioners and**
23 **Personal Representative: DAVID T. BLAKE, ESQ.**

24
25 **RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER**

1 **LAS VEGAS, NEVADA, THURSDAY, MAY 14, 2020**

2 [Proceeding commenced at 10:29 a.m.]

3
4 THE COURT CLERK: Page 15, P-095892, In The Matter of
5 Dennis Carver.

6 THE COURT: All right. Counsel, please introduce
7 yourself.

8 MR. BLAKE: My name is Dave Blake. Sorry, I'll go first.
9 My name is Dave Blake, Bar Number 11059, for the administrator,
10 Rhonda Morgan.

11 MR. FLANGAS: My name is Leo Flangas, Bar
12 Number 5637, for Colonial Real Estate Partnerships and Houlihan.

13 THE COURT: Okay. Good morning, counsel. Nice to hear
14 from you both. This -- I'm hearing this pursuant to the Notice of
15 Exercise of Right to Have a Hearing Before the Probate Court Judge
16 that was filed by Mr. Flangas on March 6. So this matter is referred
17 to me. And this is Petitioner's Request to Show Cause Why the
18 Estate Should Not Be Reopened for his Client, Colonial Real Estate's
19 Claim to Submit Proof of Claims and Accounting of the Estate
20 Assets.

21 So with that tee-up, Mr. Flangas, let's hear your motion.

22 MR. FLANGAS: Okay. Thank you, Your Honor.

23 I -- you know, I was informed, by the way, I'm just letting
24 you know, but I could give you my pitch. I was informed that we
25 were setting this for a hearing for argument. So I'm not totally

1 prepared to argue. But I can tell you it's in my briefs, which is that,
2 first of all, my client was known by the estate as a creditor. We
3 attached an affidavit of I believe his name was McKenzie [phonetic].
4 And we attached a affidavit by Mr. McKenzie, who is the right-hand
5 person and, basically, the operational manager of the decedent's
6 business, which was a sole proprietorship.

7 And he was fully aware that our client was a creditor.
8 He's talked to the secretary or the person who is handling it, the
9 bookkeeper who is handling the actual estate after Mr. Carver
10 passed, and talked to her about my client being a creditor.

11 And in the briefs -- so we were known and ascertainable
12 creditor, no notice of mailings went out to my client. And you
13 couple that with the history of this case and what the new
14 administrator, I believe her name is Morgan, she filed documents in
15 California appointing her, because there was some, you know,
16 issues, skull and daggers [sic] issues, issues of the daughter and
17 the previous lawyer not fulfilling the responsibilities. And it's -- I
18 attached exhibits to that and what she actually said in her affidavit
19 that they, you know, they needed to do a full accounting of the
20 estate.

21 And then what happened here in Nevada is that they just
22 closed it out. They didn't do an accounting of what had occurred
23 and you -- so you couple that with the fact that, you know, we don't
24 even need that part or those facts, but you add that into the whole
25 mix, where our client was ascertainable, we have an affidavit from

1 the operation manager saying they knew about us, and we have
2 him talking to the bookkeeper who is helping out the lawyer for the
3 estate and the previous administrator, and that they knew about it.
4 And this estate needs to be reopened.

5 THE COURT: Okay.

6 MR. FLANGAS: And we need to be able to file our claim
7 and then they can reject it or accept it, and we can move forward on
8 it.

9 THE COURT: Okay. What about their argument that your
10 client is 490 days late; is that because you didn't get notice?

11 MR. FLANGAS: That's correct. We never -- our sole
12 argument is my client never got notice that Mr. Carver passed and
13 there was an estate until -- they never would have given the
14 individual notice, mailed the notice that the estate had a
15 requirement to do.

16 And what happened was my client found out from
17 McKenzie, who is the operations manager, he found out late and he
18 found out, like, within a couple of weeks before their Notice of
19 Publication ran out or -- I don't have the exact timing, because, like I
20 said, I wasn't prepared to argue. But it doesn't matter. He was
21 found out late.

22 He called Rhonda Morgan, actually, within the 120-day
23 time period, to no avail. And then finally he sent a letter to her and
24 tried to find out what was going on so that he could make a claim.

25 In any event, sole argument with my motion, why it

1 should be reopened, is twofold. One is my client was ascertainable
2 and there's no evidence to show that they weren't ascertainable.
3 And we have actual positive evidence that they were. And two, that
4 the notice wasn't sent out to my client.

5 THE COURT: Okay. I would just -- make this note.

6 MR. FLANGAS: And then you have the backdrop of all
7 this, Your Honor, where the new administrator, Morgan, actually
8 filed an affidavit talking about how the previous lawyer was getting
9 the contingent basis on the estate, you know. And if you really
10 think about it, and I'm not -- would -- and that there were irregular --
11 irregularities with the previous lawyer and administrator, that
12 why -- that's why they were thrown off.

13 And, clearly, you know, the previous lawyer was getting
14 some type of percentage, like a third or 40 percent of whatever was
15 in the estate. So what do you try to do? You try to minimize your
16 creditors and maximize the estate.

17 Now, I don't need that evidence. All -- the law's clear that
18 if my client's ascertainable, they should have sent a individual
19 notice. I presented proof that my client was ascertainable. That's
20 all it needs.

21 But you add that backdrop to it, and it really makes
22 everything suspect. I don't need to prove why my client wasn't
23 notified. But it does shed some light that maybe this was one of the
24 possible reasons why they were, you know, sweeping all the -- at
25 least my creditor under the rug as someone, you know, who can

1 make a claim.

2 THE COURT: Okay. Thank you, Mr. Flangas. I appreciate
3 that.

4 Mr. Blake, if you could, I've read your opposition. And if
5 you could please hone in on Mr. Flangas' argument that his client
6 was ascertainable and, in fact, did not receive notice, thus they
7 didn't timely file the claim, and thus why this estate should be
8 reopened and allow the accounting to include his client, his
9 creditor's claim.

10 MR. BLAKE: Sure. I'll address those issues. I guess at the
11 outset, I want to note that Mr. Flangas' reply that he filed in this
12 matter was a 27-page reply, that Ms. Morgan took the opportunity
13 to file a surreply to that. And this morning I realized that I never
14 sent a courtesy copy of the surreply down to Your Honor's
15 chambers and --

16 THE COURT: But through the miracle of the interweb and
17 computers, I do have it. It is 19 pages.

18 MR. BLAKE: Okay. Good. So I would say a lot of the
19 arguments are addressed in the surreply. But if we're willing to -- if
20 you want me to narrow in and focus on the notice issue, I think
21 there's a large amount of skepticism that this creditor was an actual
22 known creditor. For example, Mr. Flangas talks about the employee
23 of the decedent's sole proprietorship as knowing of this claim. But
24 that employee is not the administrator of the estate, and I don't
25 know if the awareness of that employee is enough to charge the

1 estate with knowledge.

2 But I think there's a bigger problem here, and that is
3 with -- even if you assume that Colonial was a known creditor, their
4 claim and their attempt to file a creditor's claim is not only just late,
5 it is excessively and inappropriately late and egregiously late.

6 If you look at their -- the paperwork that Colonial has filed,
7 Colonial admits that it knew of the decedent's death in September
8 of 2018. That was within the creditor's claim period. The creditor's
9 claim was published. And so the creditor was given constructive
10 notice through publication.

11 But Colonial admits that they knew of decedent's death in
12 September of 2018. Under Nevada law, we cited cases that are --
13 have not been overturned. There -- it's still good law. Knowledge
14 of a party's death charges a creditor with an obligation of
15 investigation, a duty to investigate and file a claim. That knowledge
16 is -- so that means that there's imputed knowledge, actual
17 knowledge of the estate administration proceedings.

18 There are a number of cases that we've cited that are --
19 we've been showing that -- where a creditor knew of the decedent's
20 passing and did not file a creditor's claim. That creditor was
21 charged with actual knowledge of the estate in their efforts to file a
22 creditor to claim were rejected.

23 And so in this case, that is the critical fact is that not only
24 did Colonial know of the decedent's death, Colonial made efforts to
25 communicate with the estate administrator that knew of the identity

1 of the estate administrator. Colonial admits that it tried to resolve
2 the claim informally through the administrator, through sending
3 letters, through making phone calls. But Colonial did not file a
4 creditor's claim.

5 The little wrinkle to this is that this estate has -- is being
6 administered in two locations. The decedent's main probate estate
7 was administered in California, and Colonial did file a creditor's
8 claim in the California estate. But that claim was late under the
9 California -- under California law. If Colonial had a filed -- would
10 have filed a creditor's claim in the Nevada estate, that claim may
11 have been timely. They -- certainly, Colonial's argument that it --
12 that the claim was timely would have been much stronger if they
13 actually filed the claim in Nevada. But they didn't file the claim in
14 Nevada, they waited until -- let's see, so the creditor's claim in
15 California was filed on April 12th, 2019.

16 And then instead of filing a creditor's claim in Nevada,
17 Colonial waited and then filed a lawsuit in Nevada. That was filed
18 on June 7th, 2019. We sent Colonial a letter identifying the
19 numerous procedural defects in that lawsuit. You can't -- under
20 Nevada law, it's very clear if you haven't filed a creditor's claim,
21 your claim is forever barred and you cannot file a lawsuit. So
22 Colonial voluntarily dismissed their lawsuit.

23 And then, instead of immediately filing the request to file
24 a late creditor's claim, Colonial waited almost an entire year after
25 filing the lawsuit, before they filed this petition. So the lawsuit was

1 filed on June 7, 2019, this petition was first filed on
2 February 2nd, 2020. That delay, I think, is what fully cements and
3 buries Colonial's creditor's claim. It's almost a year. That is a
4 prime example of dilatory conduct by a creditor. So I just want to
5 make sure that timeline is fully clear in the judge's eyes.

6 If you look at Nevada law, there are a few sections of the
7 statute that allow for a late creditor's claim to be -- give me a
8 second to scroll down here -- under NRS -- let me pull it up real
9 quick. Sorry.

10 THE COURT: No, that's quite all right. That's the cool
11 thing with teleconferencing like this. It's like an open-book test, you
12 can sit there with your stuff in front of you.

13 MR. BLAKE: That's what I'm doing. Just trying to find
14 the -- okay. So it's NRS 147.040(3). Colonial could have filed the
15 late creditor's claim up until the point when the estate was being
16 administered or, that is, until the estate closed, under
17 NRS 147.040(3). If the creditor can prove that it did not receive
18 notice and did not have actual notice of the administration, then
19 there's maybe an argument that Colonial could have made.

20 But here, Colonial -- it's undisputed, they knew that the
21 decedent had passed away. Under Nevada law, that knowledge
22 charges them with the duty of investigation and it is -- that is
23 construed to the actual notice of the administration of the estate.

24 But even under this statute, Colonial didn't have the ability
25 to file a creditor's claim before the closing of the estate.

1 Nevertheless, Colonial still didn't file a creditor's claim before the
2 estate was administered and closed. And so that raises a second
3 practical problem. Number one, the statute purely just simply does
4 not allow for a creditor's claim to be filed in these circumstances.
5 It's like a statute of limitations. Once you miss the deadline of the
6 estate closing, you just simply can't file a creditor's claim.

7 So the second point is it's a practical reason. Because aid
8 has already been administered and closed, all of the assets have
9 been distributed, there's no estate administrator that's acting under
10 any kind of authority in Nevada. And there are no assets that the
11 estate could use to satisfy the creditor's claim. And so the
12 creditor's claim would be futile.

13 Those are the main points I think squarely address
14 Colonial's argument that it didn't have notice of the estate. I just --
15 it's just flatly wrong. Colonial knew the decedent passed away,
16 they're charged with knowledge of the estate administration and
17 other than the Nevada statutes, the creditor's claim is time-barred.

18 And add on top of that is Colonial waited over a year after
19 the estate closed and almost a year after they improperly filed a
20 lawsuit to even request for the creditor's claim to be filed. I think
21 the delay shows a lack of diligence and the claim should be barred.

22 I want to address one other issue before I'll rest my
23 arguments and rest on what we briefed. The argument about the
24 former estate administrator, his name was Nicholas Alfano
25 [phonetic], he was the administrator of the California estate. And

1 his misconduct, as far as we've been able to discover so far, did not
2 [indiscernible; audio cut out] up to the assets in Nevada. We
3 submitted a declaration of the estate administrator, Ms. Morgan.
4 And, you know, she addressed that misconduct in the California
5 probate, the California judge was well -- there was no need to raise
6 that issue in the Nevada state, because his misconduct didn't really
7 interfere with the estate -- the estate assets in Nevada.

8 The point that we raise is had Ms. Morgan disclosed that
9 there was a misconduct before in the California estate, it's very
10 unlikely that the probate commissioner would have ordered
11 anything different than what it ordered. This didn't affect any of the
12 assets.

13 The sole question in the Nevada state was let's administer
14 the assets that are located in Nevada and subject to jurisdiction
15 here. And his misconduct didn't affect any of those assets.
16 Therefore, there was no reason to disclose that. So that's, in my
17 opinion, a red herring argument. It doesn't affect the merits of
18 Colonial's creditor's claim or the timing of it.

19 Nevada law is it was not any conduct by Morgan that
20 prevented Colonial from filing under his claim. Colonial knew her
21 identify, sent her letters, made multiple efforts to resolve this
22 creditor's claim informally. It simply just did not take the correct
23 procedural action of filing a creditor's claim. And that's not the
24 estate's fault; that's on Colonial.

25 And unless the Court has any other questions on that?

1 THE COURT: I don't. But I do want to hear from
2 Mr. Flangas.

3 If you could address the arguments that were raised by
4 Mr. Blake.

5 MR. FLANGAS: I know -- absolutely. And I will, and, you
6 know, like I said, I didn't realize we were arguing today.
7 Unfortunately, I'm on PCH driving, but I think I've jotted everything
8 down in my memory.

9 Judge, first of all, what he's arguing is a laches argument.
10 Okay. I want to go through the timeline again. In September -- he's
11 correct, in September, my client, Jack Houlihan, found out about
12 Mr. Carver's death. And he called Morgan twice before sending a
13 letter. And in both phone calls, where he left messages to her, and
14 this is during the publication period of the creditor's claim, because,
15 as we know, they never sent him an individual notice.

16 And during that last 30 days where he called, she
17 stonewalled him. She didn't return his call. She refused to pick up
18 the phone. He left a message and he left a message with his
19 secretary.

20 Finally, his first letter that he sent out was on the very last
21 day of the 120-day publication period or whatever the publication
22 period is. It would have been the very last day where he would
23 have been able to file a creditor's claim if he was not ascertainable
24 and it was simply by publication. Okay.

25 What I hear in the argument is the evidence that we have

1 is undisputed that they were ascertainable. Mr. McKenzie, in his
2 affidavit, states that the administrator knew, the lawyer for the
3 administrator and the bookkeeper who's putting everything
4 together for the estate knew that they were a creditor. And I have
5 not seen the surreply, but that's -- I mean, that's direct evidence of
6 someone who was actually working to close down the estate.

7 What counsel's arguing is, well, okay, so yes, maybe
8 they're ascertainable, we should have sent something to them. But
9 they waited over a year to file this petition to reopen. And, you
10 know, that's correct. But there is no statute that says that we can't
11 reopen it, that we have to file within a certain time period.

12 He did argue, well, my client was under investigative duty
13 to file some type of claim before the estate closed. The estate
14 closed just several months later, in Nevada. The estate has not
15 closed in California yet. Okay?

16 But there's no statute that says that my client asked to be
17 forced to file within six months or within a year versus a year and
18 three months later. Okay. And, yes, my client did file complaint
19 first, and that's because the estate was closed. And we did get
20 counsel's letter and we voluntarily dismissed it. And now we've
21 filed this petition to reopen.

22 A laches argument, you have to show some type of
23 prejudice, there was prejudice why, if we didn't file -- if we filed six
24 months ago, what's the difference between six months ago and a
25 year later? I did hear argument that they're claiming that the

1 properties were sold in Nevada. I didn't see any evidence of that.
2 And I don't think that matters. I think we should be able to have a
3 right -- no, there's no doubt that my client was owed the money.
4 There's no doubt that the bookkeeper, based on our affidavits, knew
5 about it, and that the number one operational manager knew about
6 it, and that they were working to close down the business and the
7 estate, because that's what they were doing.

8 And I believe we're allowed to have it reopened so we can
9 submit our claim, and then we could find out whether all the assets
10 are closed out or not. Our claim is -- belongs here in Nevada and
11 there's still a California estate that is open. It is not closed. We
12 don't know what assets are there to -- that could be used to pay off
13 creditors also, and I don't -- I'm surprised to hear that all the
14 property has been sold. That's surprising to me that all the
15 property's sold, and that's not part of the test to reopen the petition.

16 The part of the test is my client is ascertainable, and
17 because my client's ascertainable, they should have sent notice.
18 And because they didn't send him notice, we should be allowed to
19 submit a claim. And then we could fether things out after the
20 estate's reopened and if all the assets are gone, then those are
21 arguments in the future.

22 Finally, what I'd like to say is, like I said before, I did not
23 see the surreply in Ms. Morgan's affidavit. But I will tell you that
24 when you have the lawyer, the previous administrator, they're
25 making money as a contingent basis, you -- the whole purpose is to

1 minimize the creditors and maximize the estate. And just that
2 notion alone and that -- the fact that that was part of the agreement
3 that was found -- that Ms. Morgan found out about and removed
4 him is a factor, and may be a factor on why my client's -- who's the
5 ascertainable creditor -- was not notified. And I think that -- all that
6 needs to be explored, but that's down the road.

7 Thank you.

8 THE COURT: Thank you, Mr. Flangas.

9 MR. BLAKE: I'd like to -- if the Court is willing, I'd like to
10 correct a couple of the things that Mr. Flangas made in that -- or
11 clarify a couple of the -- Ms. Morgan's arguments on that point.

12 THE COURT: That's fine. I've got an empty courtroom.
13 I'll -- I'm going to hear you guys out.

14 And Mr. Flangas, if Mr. Blake says something that you
15 want to have the last word on, that's fine.

16 So go ahead, Mr. Blake.

17 MR. BLAKE: Okay. Sure. I want to clarify Mr. Flangas
18 mentioned the affidavit of this employee of Colonial and that he
19 specifically worked with the attorney of the estate and the estate
20 administrator in California. I don't believe that that's what this
21 affidavit says. I'm looking at it here. Mr. McKenzie states that he
22 was the employee, that Jennifer Shea [phonetic] was a point of
23 contact for the Carver estate, and that she was assisting Carver's
24 daughter and the attorney until she was fired. But it never says that
25 she mentioned anything about this potential claim in the

1 declaration. There are a couple of paragraphs that are blocked out,
2 that the signer blocked out, and maybe that's what the affidavit
3 originally stated. Just want to make that point of clarification.

4 The second point I want to make is that there's not a test
5 for reopening the estate. There are certain circumstances in which
6 the estate can be opened and this is not one of those
7 circumstances. There are three specific circumstances, as the
8 statute mentions. One of them is to correct -- if new property is
9 discovered. Another one is to correct legal descriptions of property.
10 And then the third one is to issue new letters for any purpose that
11 letters may be issued.

12 But it's very -- that third point does not arise here, because
13 Colonial is not asking for letters to be reissued, and they're not
14 asking to reopen the estate for any purpose that needs letters.
15 File -- they want to file a creditor's claim and that's not an action
16 that there's letters to be issued.

17 And then there was one other point I'm going to address
18 about --

19 THE COURT: Can you tell --

20 MR. BLAKE: -- California estate. Oh, this --

21 THE COURT: Address this for me, Mr. Blake. Mr. Flangas
22 makes the repeated point, okay, if you knew about each other and,
23 particularly if the estate knew of this claim, why didn't they send
24 notice?

25 MR. BLAKE: Well, I don't think the estate knew of this

1 claim during the time that was for sending notice. And the original
2 claim was submitted in California, and it was untimely against the
3 California estate. And by the time it was submitted in California, it
4 was after the period for the filing of claims in Nevada.

5 And so the estate administrator has a duty to send notice
6 to known creditors. When that notice got sent out, Colonial, as far
7 as the state is concerned, was not a known creditor.

8 And so they didn't get notice. They didn't take action
9 within the time required during that notice period, where the
10 creditors can file the claim. After that period ended, the
11 administrator's obligation to renotify creditors, I believe, ended.
12 But I think that's a secondary point.

13 The larger point is at that point, if Colonial, once it learned
14 that its creditor claim was untimely, it should have immediately
15 taken some action with the Court to reopen the estate when
16 something could have been done about it. But they didn't do that.
17 They waited many, many, many months, more than a year to take
18 any action to file an untimely creditor's claim. But I think that is the
19 thing that truly prevents this estate from being reopened.

20 THE COURT: Okay.

21 MR. BLAKE: But to answer the Court's -- to answer the
22 question directly, once Colonial became known to the estate, I
23 believe that the obligation to renotice creditors at that point was
24 already long gone -- long past.

25 MR. FLANGAS: Judge, just two quick comments.

1 THE COURT: Yes.

2 MR. FLANGAS: May I?

3 THE COURT: Yes, absolutely.

4 MR. FLANGAS: One is McKenzie, in his affidavit and if we
5 had him come testify, I talked to him personally, will testify the
6 daughter who's administrator, and the bookkeeper who is putting
7 all the financial affairs together, her name is Jennifer, for the
8 daughter, knew about Colonial being the creditor. Period. And
9 there's no facts before this Court that shows that that's not true.

10 The second thing is this: What counsel's talked about is
11 the laches argument. After the 120 days from the publication went
12 out, according to the rules, unless my client's a known ascertained
13 creditor, according to the rules, he's SOL. And -- but that's what
14 we -- that's why we presented the evidence, to show that they were
15 ascertainable. They should have known it. They had a credit in
16 their bank account of \$110,000.

17 You know, any simple review of the financial records
18 would have shown that they had a credit. It was in the QuickBooks.
19 You know, unfortunately, Jennifer, who's the -- was the bookkeeper
20 and secretary and was putting everything together and handling all
21 this stuff, lives in Japan. So we couldn't catch her. But we got
22 Robert, who was there and knew about all this stuff.

23 Laches argument, it doesn't matter if I filed it -- I mean,
24 there's no prejudice if we -- I filed it three months later or one year
25 late, there was no statute saying -- and I looked it up, there's no

1 statute that actually says, well, you've got to file this within three
2 months. You know, I had plenty of time to file this. I filed it timely.
3 If they have a laches argument as to, you know, which is a separate
4 issue, it's not a issue why it should be reopened, I think, because
5 that would be down the road, which would be all the properties
6 gone.

7 That's all, Judge.

8 THE COURT: All right. Thank you, counsel.

9 I am going to take this under advisement and issue a
10 decision.

11 MR. FLANGAS: Okay. Take care.

12 THE COURT: Thank you.

13 MR. BLAKE: Thank you.

14 [Proceeding concluded at 11:00 a.m.]

15 ///

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17
18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled case
20 to the best of my ability. Please note: Technical glitches in the
21 BlueJeans audio/video which resulted in audio distortion and/or
audio cutting out completely were experienced and are reflected in
the transcript.

22 

23 Shawna Ortega, CET *562
24
25