

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

In the Matter of the Administration of
the SSJ'S ISSUE TRUST,

In the Matter of the Administration of
the SAMUEL S. JAKSICK, JR. FAMILY
TRUST,

WENDY JAKSICK,
Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, INDIVIDUALLY, AS
CO-TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST, AND AS
TRUSTEE OF THE SSJ'S ISSUE
TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-
TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST; AND
STANLEY S. JAKSICK,
INDIVIDUALLY AND AS CO-
TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST; KEVIN
RILEY, INDIVIDUALLY AND AS
FORMER TRUSTEE OF THE SAMUEL
S. JAKSICK, JR. FAMILY TRUST AND
TRUSTEE OF THE WENDY A.
JAKSICK 2012 BHC FAMILY TRUST,
Petitioners and Counter-Respondents.

CASE NO.: PR17-00445
DEPT. NO. 15

No. 81470 Electronically Filed
Aug 18 2020 03:23 p.m.
Elizabeth A. Brown
DOCKETING STATEMENT
Clerk of Supreme Court
CIVIL APPEALS

FORMATION

ent in compliance with NRAP 14(a). The
he Supreme Court in screening jurisdiction,
tive assignment to the Court of Appeals under
nd settlement conferences, classifying cases for
rt of Appeals, and compiling statistical

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tely and on time. NRAP 14(c). The Supreme
llant if it appears that the information provided
ut the statement completely or to file it in a
sition of sanctions, including a fine and/or

ttached appears as Question 27 on this docketing
ents will result in the delay of your appeal and

t take seriously their obligations under NRAP 14
nd conscientiously, they waste the valuable
osition of sanctions appropriate. See KDI Sylvan
1217, 1220 (1991). Please use tab dividers to

1. Judicial District Second Department 15
County Washoe Judge David A. Hardy
District Ct. Case No. PR17-00445

2. Attorney filing this docketing statement:

Attorney R. Kevin Spencer Telephone (214) 965-9999

Firm Spencer & Johnson, PLLC

Address 500 N. Akard St, Suite 2150
Dallas, Texas 75201

Client(s) Wendy Jaksick

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

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

Attorney Donald A. Lattin Telephone (775) 827 2000
4785 Caughlin Parkway

Firm Maupin Cox LeGoy Reno, Nevada 89519

Address (1) Michael S. Kimmel, Individually and as Co-Trustee of Samuel S. Jaksick Jr.
Family Trust
(2) Todd B. Jaksick, Co-Trustee of Samuel S. Jaksick Jr. Family Trust and
Trustee of SSJ's Issue Trust

Client(s) (3) Kevin Riley, Individually, Former Trustee of Family Trust, Trustee of Wendy
A. Jaksick 2012 BHC Family Trust

Attorney Kent R. Robison Telephone (775) 329-3151

Firm Robison, Sharp Sullivan Brust

Address 71 Washington Street
Reno, Nevada 89503

Client(s) Todd Jaksick, Individually

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

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

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

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

None.

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

None.

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

Trustees of the Samuel S. Jaksick Jr. Family Trust and SSJ's Issue Trust filed Petitions for Confirmation of Trust Accountings and the administration of the Trusts for April 21, 2013 through December 31, 2017. One of the Co-Trustees and Wendy Jaksick, separately, filed Objections to the Petitions for Confirmation and counter-claims related to the Trusts, the Administration and other property. The Co-Trustee who objected to the Petitions for Confirmation and filed counter-claims, forced a beneficial settlement for himself just days before trial and combined forces with the other Trustees against Wendy. From February 14, 2019 through March 4, 2019, the Parties legal claims were tried to a jury. The jury returned a verdict finding Todd Jaksick, as Co-Trustee of the Family Trust and Trustee of the SSJ's Issue Trust breached his fiduciary duties and awarded damages of \$15,000 to Wendy. Following the jury trial the Parties' equitable claims were tried to the bench through the submission of briefs. On March 12, 2020, the Court issued its finding and orders concerning the claims in the Equitable Trial. On April 1, 2020, the Court entered the Judgment after the conclusion of the equitable trial, awarding Wendy equitable relief, deferring to the jury on its rulings on equitable claims and denying Wendy other relief, awarding Todd, Individually, fees and costs from Wendy. After substantial motion work, the Court entered the Amended Judgment on July 7, 2020, excluding from Todd's personal responsibility 25% of the fees the Trusts paid for the benefit of Co-Trustee Stanley Jaksick.

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

- (1) Denial of Trial Continuance: The Court granted a short continuance of trial and ordered the production of tens of thousands of pages of documents Wendy had sought in discovery. Wendy received rolling production of documents just days before trial and after all depositions and other discovery had been completed.
- (2) Equitable Claims Decided by Jury: During the jury trial, the jury was repeatedly told that the Court would decide the validity of the purported Indemnification Agreement, the Agreements and Consents to Proposed Actions, and the sufficiency of the accountings. The jury was specifically and repeatedly told these issues were not for them to consider or decide and were not presented with jury questions concerning the validity of these documents. At the conclusion of the equitable trial, the Court determined the jury decided these equitable claims and deferred to the jury.
- (3) Limited Wendy's Use of Trustees' Settlement Agreement: The jury heard Todd and Stan settled their claims, the jury was denied the ability to review and fully understand the settlement and its terms. This provided an advantage to Trustees and was extremely prejudicial to Wendy.
- (4) Award of Fees and Costs. Court awarded fees and costs to Todd, Individually, inconsistent with the law.
- (5) \$4 Million Representation. Trustees' \$4 million representation was intended to and did mislead and taint the jury when there was no evidence to support the representation.

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

None.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

Wendy believes the corpus of the SSJ Family Trust and the SSJ's Issue Trust are both greater than \$5,430,000. Therefore, this case does not appear to qualify for presumptive assignment to the Court of Appeals under NRAP 17(b)(14).

14. Trial. If this action proceeded to trial, how many days did the trial last? 12

Was it a bench or jury trial? Both. Jury Trial for 12 days and Bench Trial by Submission of Briefs

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from July 7, 2020

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

17. Date written notice of entry of judgment or order was served July 8, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing April 28, 2020 and April 29, 2020

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

(b) Date of entry of written order resolving tolling motion June 10, 2020

(c) Date written notice of entry of order resolving tolling motion was served June 11, 2020

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed July 13, 2020

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☒ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court entered a final judgment and an order denying Wendy Jaksick's motion for new trial in this civil proceeding.

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

(a) Parties:

- (1) Todd B. Jaksick, Individually, as Co-Trustee of Samuel S. Jaksick Jr. Family Trust and as Trustee of SSJ's Issue Trust
- (2) Michael S. Kimmel, Individually and as Co-Trustee of Samuel S. Jaksick Jr. Family Trust
- (3) Kevin Riley, Individually, Former Trustee of Family Trust, Trustee of Wendy A. Jaksick 2012 BHC Family Trust
- (4) Stanley Jaksick, as Co-Trustee of the Samuel S. Jaksick Jr. Family Trust
- (5) Wendy Jaksick

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

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

- (1) Todd Jaksick: Confirm Trust Actions - Resolved by Amended Final Judgment, July 7, 2020
- (2) Michael Kimmel: Confirm Trust Actions - Resolved by Amended Final Judgment, July 7, 2020
- (3) Kevin Riley: Confirm Trust Actions - Resolved by Amended Final Judgment, July 7, 2020
- (4) Stanley Jaksick: Confirm Trust Actions - Resolved by Amended Final Judgment, July 7, 2020
- (5) Wendy Jaksick: Contest Trust Actions and Property - Resolved by Amended Final Judgment, July 7, 2020

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Wendy Jaksick

Name of appellant

August 18, 2020

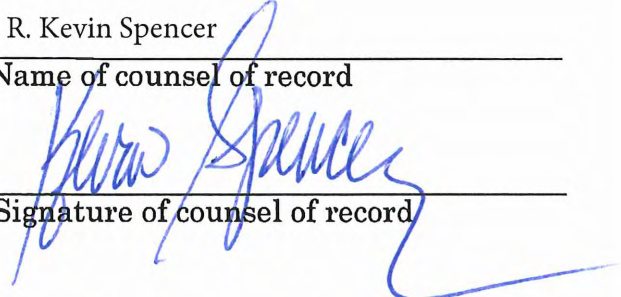
Date

Texas, Dallas County

State and county where signed

R. Kevin Spencer

Name of counsel of record



Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 18th day of August, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

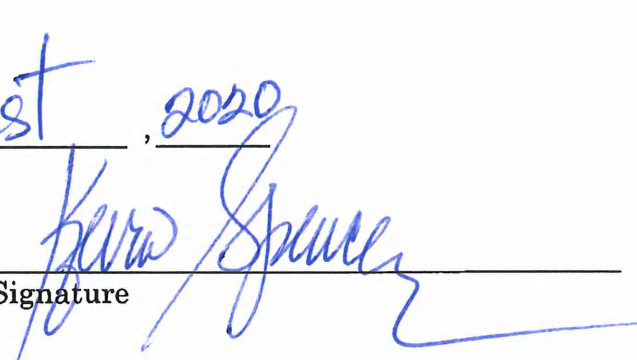
X By Electronic File and Serve System.

Kent Robison and Theresa M. Shanks
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McDonald Carano
100 West Liberty Street, 10th Fl.
P.O. Box 2670
Reno, NV 89505

Dated this 18th day of August, 2020



Signature

Exhibit “A”

MARK J. CONNOT (10010)
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Attorneys for Respondent Wendy A. Jaksick

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

In the Matter of the Administration of the
SSJ'S ISSUE TRUST,

CASE NO.: PR17-00445
DEPT. NO. 15

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST,

CASE NO.: PR17-00446
DEPT. NO. 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; AND STANLEY S. JAKSICK,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; KEVIN RILEY, INDIVIDUALLY
AND AS FORMER TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY TRUST
AND TRUSTEE OF THE WENDY A.
JAKSICK 2012 BHC FAMILY TRUST,

Petitioners and Counter-Respondents.

**FIRST AMENDED COUNTER -
PETITION TO SURCHARGE
TRUSTEES FOR BREACH OF
FIDUCIARY DUTIES, FOR
REMOVAL OF TRUSTEES AND
APPOINTMENT OF INDEPENDENT
TRUSTEE(S), AND FOR
DECLARATORY JUDGMENT AND
OTHER RELIEF**

Counter-Petitioner Wendy A. Jaksick (“Wendy” or “Counter-Petitioner”) by and through her attorneys of record, the law firm of Fox Rothschild LLP, complains against Petitioners and Counter-Respondents and alleges as follows:

PARTIES

1. Counter-Petitioner Wendy A. Jaksick (“Wendy” or “Counter-Petitioner”) is an individual who resides in Texas.

2. Counter-Respondent Todd B. Jaksick, in his Individual capacity (“Todd”), is an individual who resides in Reno, Nevada.

3. Counter-Respondent Todd B. Jaksick, in his capacity as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (“Family Trust Co-Trustee Todd”), resides in Reno, Nevada.

4. Counter-Respondent Todd B. Jaksick, in his capacity as Trustee of the SSJ’s Issue Trust (“Issue Trust Trustee”), resides in Reno, Nevada.

5. Counter-Respondent Michael S. Kimmel, in his Individual capacity (“Michael”), is an individual who resides in Reno, Nevada.

6. Counter-Respondent Michael S. Kimmel, in his capacity as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (“Family Trust Co-Trustee Michael”), resides in Reno, Nevada.

7. Counter-Respondent Stanley S. Jaksick, in his Individual capacity (“Stanley”), is an individual who resides in Reno, Nevada.

8. Counter-Respondent Stanley S. Jaksick, in his capacity as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (“Family Trust Co-Trustee Stanley”), resides in Reno, Nevada.

9. Kevin Riley, Individually (“Kevin”), is an individual who resides in Sacramento, California.

10. Kevin Riley, as former Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (“Former Family Trust Co-Trustee”), is an individual who resides in Sacramento, California.

11. Kevin Riley, as Trustee of the Wendy A. Jaksick 2012 BHC Family Trust (“BHC Trustee Kevin”), is an individual who resides in Sacramento, California.

12. Family Trust Co-Trustee Todd, Family Trust Co-Trustee Michael and Family Trust Co-Trustee Stanley shall collectively be referred to herein as the “Family Trust Co-Trustees”.

13. Family Trust Co-Trustees, Former Family Trust Trustee, Issue Trust Trustee and BHC Trust Trustee shall collectively be referred to herein as the “Trustees”.

14. Todd, Family Trust Co-Trustee Todd, Issue Trust Trustee, Michael, Family Trust Co-Trustee Michael, Stanley, Family Trust Co-Trustee Stanley, Kevin, Former Family Co-Trustee and BHC Trustee Kevin shall collectively be referred to herein as the “Counter-Respondents”.

15. The Court has proper venue pursuant to NRS 13.040.

INTERESTED PERSONS – THE FAMILY TRUST

16. The following individuals interested in the Samuel S. Jaksick, Jr. Family Trust are entitled to notice of this *Complaint*:

Name & Address	Age	Interest
Todd B. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Co-Trustee & Beneficiary
Michael S. Kemmel, Esq. Hoy Chrissinger Kimmel Vallas 50 West Liberty Street, Ste 840 Reno, Nevada 89501	Adult	Co-Trustee
Stanley S. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Co-Trustee & Beneficiary
Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Adult	Beneficiary
Kevin Riley, Trustee of the Samuel S. Jaksick, Jr. Irrevocable Grandchild Trust No. 1 Rossmann MacDonald & Benetti, CPA’s 3838 Watt Avenue, Suite E-500 Sacramento, California 95821	Adult	Beneficiary
Kevin Riley, Trustee of the Samuel S.	Adult	Beneficiary

Jaksick, Jr. Irrevocable Grandchild Trust No. 2 Rossmann MacDonald & Benetti, CPA's 3838 Watt Avenue, Suite E-500 Sacramento, California 95821		
Kevin Riley, Trustee of the Samuel S. Jaksick, Jr. Irrevocable Grandchild Trust No. 3 Rossmann MacDonald & Benetti, CPA's 3838 Watt Avenue, Suite E-500 Sacramento, California 95821	Adult	Beneficiary
Kevin Riley, Trustee of the Samuel S. Jaksick, Jr. Irrevocable Grandchild Trust No. 4 Rossmann MacDonald & Benetti, CPA's 3838 Watt Avenue, Suite E-500 Sacramento, California 95821	Adult	Beneficiary
Alexi Smrt 11 Bahama Court Mansfield, Texas 76063	Adult	Presumptive Remainder Beneficiary
Luke Jaksick c/o Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Minor	Presumptive Remainder Beneficiary
Benjamin Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Presumptive Remainder Beneficiary
Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Presumptive Remainder Beneficiary
Regan Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Presumptive Remainder Beneficiary
Sydney Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Presumptive Remainder Beneficiary
Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Presumptive Remainder Beneficiary

INTERESTED PERSONS – THE ISSUE TRUST

17. The following individuals interested in the SSJ's Issue Trust are entitled to notice of this *Complaint*:

Name & Address	Age	Interest
Todd B. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Trustee & Beneficiary
Stanley S. Jaksick 8600 Technology Way, Ste 110 Reno, Nevada 89521	Adult	Beneficiary
Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Adult	Beneficiary
Alexi Smrt 11 Bahama Court Mansfield, Texas 76063	Adult	Beneficiary
Luke Jaksick c/o Wendy A. Jaksick c/o R. Kevin Spencer Spencer Law, P.C. 500 N. Akard Street, Ste 2150 Dallas, Texas 75201	Minor	Beneficiary
Benjamin Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Beneficiary
Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Minor	Beneficiary
Regan Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary
Sydney Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary
Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Court Reno, Nevada 89519	Minor	Beneficiary

THE FAMILY TRUST

18. The Samuel S. Jaksick, Jr. Family Trust Agreement (As Restated) (the “Restated Family Trust Agreement”) establishing The Samuel S. Jaksick, Jr. Family Trust (the “Family Trust”) was executed by Samuel S. Jaksick, Jr. on June 29, 2006. *Please see a copy of the Family Trust attached as Exhibit “1” to the Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other*

1 *Trust Administration Matters, which was originally filed in Cause No.PR17-00445 (the*
2 *“Petition for Confirmation in Cause No.PR17-00445”).*

3 **THE PURPORTED SECOND AMENDMENT TO THE FAMILY TRUST**

4 19. On December 10, 2012, Samuel S. Jaksick, Jr. purportedly executed the Second
5 Amendment to the Samuel S. Jaksick, Jr. Family Trust Agreement Restated Pursuant to the
6 Third Amendment Dated June 29, 2006 (the “Purported Second Amendment”). *Please see a*
7 *copy of the Purported Second Amendment attached as Exhibits “3” to the Petition for*
8 *Confirmation in Cause No.PR17-00445.* Based upon information and belief, Wendy believes
9 the Purported Second Amendment may be invalid and she may contest it. However, at this
10 time, Wendy does not have sufficient information to proceed with a contest of the Purported
11 Second Amendment. Wendy reserves the right to amend this *Counter-Petition* to contest the
12 validity of the Purported Second Amendment once she obtains information necessary to fully
13 evaluate such claim.

14 **THE ISSUE TRUST**

15 20. The SSJ’s Issue Trust Agreement (the “Issue Trust Agreement”) establishing
16 The SSJ’s Issue Trust (the “Issue Trust”) was executed by Samuel S. Jaksick, Jr. on February
17 21, 2007. *Please see a copy of the Issue Trust attached as Exhibit “1” to the Petition for*
18 *Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for*
19 *Approval of Accountings and Other Trust Administration Matters, which was originally filed in*
20 *Cause No. PR17-00446 (the “Petition for Confirmation in Cause No. PR17-00446”).*

21 **GENERAL ALLEGATIONS**

22 21. As demonstrated herein, Counter-Respondents have failed to provide Wendy
23 the information to which she is entitled and Counter-Respondents are also the persons with
24 knowledge of the facts, as well as the documents, that underlie each of their acts or omissions.
25 Accordingly, Wendy is unable to determine at this time the entire scope and extent of Counter-
26 Respondents’ breaches and other acts or omissions, and Wendy reserves the right to amend her
27 Counter-Petition as discovery proceeds. Subject to this disclaimer and the reservation of
28

Wendy's right to amend this Counter-Petition, Wendy alleges as follows:

22. Samuel S. Jaksick, Jr. Samuel S. Jaksick, Jr. ("Samuel") was a native Nevadan who had a gift for finding and capitalizing on business and real estate opportunities in Nevada. Samuel's success and reputation were due in large part to the prosperous and well known planned communities he developed throughout Nevada. Over the course of his life, Samuel amassed a substantial amount of wealth, real estate and other property rights.

23. During his life, Samuel was married three times. His first marriage was to Gwendolyn Jaksick and that marriage ended in divorce. During his marriage to Gwendolyn, Samuel had three (3) children Stanley S. Jaksick ("Stanley"), Todd B. Jaksick ("Todd") and Wendy A. Jaksick ("Wendy"). Samuel's second marriage was to Rebecca Porter and that marriage ended in divorce; no children were born of this marriage. Samuel's final marriage was to Janene Jaksick ("Janene"). Samuel's final marriage ended when he predeceased Janene, by approximately a year and a half. Samuel and Janene did not have any children together.

24. Samuel loved his wife, Janene, children and grandchildren very much. He supported them throughout their lives and always made it clear he intended to support them when he passed. He was also very proud of the property and wealth he had acquired and intended that his family enjoy and benefit from that property for generations. Samuel engaged in Estate planning and the creation and funding of two primary (2) trusts to accomplish his objectives.

25. The Samuel S. Jaksick, Jr. Family Trust. Samuel executed The Samuel S. Jaksick, Jr. Family Trust Agreement (As Restated) (the "Family Trust Agreement") establishing The Samuel S. Jaksick, Jr. Family Trust (the "Family Trust") on June 29, 2006. The Family Trust was funded with a significant amount of property at the time it was created.

26. The purpose of the Family Trust was to provide for Samuel during his life and, upon his death, to provide for his wife through the funding of a Marital Trust and his children through the funding of a Decedent's Trust. The Decedent's Trust essentially provides each of Samuel's children a one-third interest in the Decedent's Trust and for the distribution of

1 income and principal for his children's health, education, support and maintenance.¹ The
2 Decedent's Trust also provides for discretionary distributions of certain principal for the health,
3 education, support and maintenance of his grandchildren.² However, Samuel's primary intent
4 and purpose to provide for his children is made clear by the Family Trust, which provides "the
5 primary concern of the Grantor is the proper health, education, support, and maintenance of the
6 Beneficiary, and the interest of the other beneficiaries in the trust are to be subordinate to those
7 of the Beneficiary."³

8 27. Samuel was designated as the initial Trustee of the Family Trust.⁴ If at any time
9 Samuel failed to serve as Trustee and failed to appoint a successor trustee, the Family Trust
10 provides that Stanley, Todd and another person designated in the Family Trust were to serve as
11 Co-Trustees.⁵

12 28. The Purported Second Amendment to the Family Trust. On December 10, 2012,
13 Samuel S. Jaksick, Jr. purportedly executed the Purported Second Amendment to the Family
14 Trust (the "Purported Second Amendment"). Although the Purported Second Amendment was
15 allegedly executed in 2012, Wendy was not aware of its existence until it was produced to her
16 after she retained counsel in 2016. The Purported Second Amendment, like many other
17 documents created during Todd's involvement with Samuel's Trusts and various businesses,
18 came out of nowhere and is contrary to Samuel's intent concerning Wendy as expressed by
19 Samuel over the years.

20 29. Based on Wendy's understanding of Samuel's intent, she does not believe
21 Samuel would have or did sign the Purported Second Amendment. Based on information and
22 belief, it is Wendy's understanding that Samuel's secretary often signed Samuel's name on

23 _____
24 ¹ Paragraphs D.4. and F.1. of Article II of the Family Trust Agreement.

25 ² Paragraph F.2. and F.1. of Article II of the Family Trust Agreement.

26 ³ Paragraph F.2. of Article II of the Family Trust Agreement.

27 ⁴ Paragraph A. of Article IV of the Family Trust Agreement.

28 ⁵ *Id.*

1 documents when Samuel was not present, and Todd or someone on Todd's behalf signed
2 Wendy's and her daughter's name on documents related to the Trusts. Additionally, there are
3 numerous documents related the Trusts, the administration of the Trusts and Samuel's
4 businesses Wendy believes Todd manufactured after the fact to suit his needs. Accordingly,
5 based upon information and belief, Wendy believes the Purported Second Amendment may be
6 invalid and she may contest it. However, at this time, Wendy does not have sufficient
7 information to proceed with a contest of the Purported Second Amendment. Wendy reserves
8 the right to amend this *Counter-Petition* to contest the validity of the Purported Second
9 Amendment once she obtains information necessary to fully evaluate such claim.

10 30. The SSJ's Issue Trust. Samuel executed The SSJ's Issue Trust Agreement (the
11 "Issue Trust Agreement") establishing The SSJ's Issue Trust (the "Issue Trust") on February
12 21, 2007. A copy of the Issue Trust Agreement is attached as *Exhibit "I"* to the *Petition for*
13 *Confirmation in Cause No. PR17-00445*.

14 31. The purpose of the Issue Trust was to hold, protect, and preserve family real
15 estate for the use and enjoyment of Samuel and his family for many generations.⁶ The terms of
16 the Issue Trust provide for the use of the trust property by Samuel's issue, but prohibit the
17 distribution of the income or principal from the Issue Trust until the earlier of such time as all
18 of Samuel's issue are deceased or the expiration of Nevada's perpetuity period (which is
19 currently 365 years).⁷ Samuel intended the Issue Trust hold, protect and preserve important
20 existing family property such as the approximately 20,000 acres of property known as the 49
21 Mountain Ranch. But Samuel also intended that the Issue Trust purchase and maintain homes
22 for each of his children. Samuel maintained one or more substantial life insurance policies
23 payable to the Issue Trust to fulfill its purpose and his intent. At the time of Samuel's death,
24 the Issue Trust was beneficiary of a life insurance policy insuring Samuel's life in the amount
25 of \$6 million.

26 _____
27 ⁶ Paragraph B. of Article II of the Issue Trust Agreement.

28 ⁷ Paragraphs B.3. and B.4. of Article II of the Issue Trust Agreement.

1 32. Todd was designated to serve as the sole Trustee of the Issue Trust (“Issue
2 Trustee”)⁸ and has served in that capacity since the Issue Trust was established in February
3 2007.

4 33. Samuel died in a tragic accident on April 21, 2013.

5 34. As a result of Samuel’s death, Todd, Stanley and Kevin Riley (“Kevin”) were
6 appointed and served as Co-Trustees of the Family Trust. On July 31, 2013, Kevin purportedly
7 resigned as Co-Trustee and Todd and Stanley served as two Co-Trustees until December 2016,
8 when Todd purportedly appointed Michael S. Kimmel (“Michael”) to serve as the third Co-
9 Trustee under the authority of the Purported Second Amendment. Interestingly, Todd’s
10 appointment was made not long after the Purported Second Amendment surfaced for the first
11 time. Todd, Stanley and Michael shall be known herein as the “Family Trust Co-Trustees”.

12 35. The Family Trust Co-Trustees and the Issue Trustee have refused to keep
13 Wendy informed and failed to fully disclose to her information concerning the assets and
14 property of the respective Trusts, their administration of the respective Trusts and the
15 transactions they were conducting on behalf of the respective Trusts. The Family Trust Co-
16 Trustees and Issue Trustee used their positions to control and utilize the assets and property of
17 the respective Trusts for their personal benefit at the expense of the Trusts, Wendy and
18 Wendy’s interest in the Trusts. As a result of such actions and breaches of fiduciary duties,
19 Wendy was forced to retain counsel to attempt to compel the Family Trust Co-Trustees and
20 Issue Trustee to comply with the obligations and fiduciary duties under the Trust, to keep
21 Wendy informed about the Trusts and their actions as Trustees, to fully disclose and to stop
22 self-dealing

23 36. The Lake Tahoe Property. In the 1970s, Samuel acquired the lakefront property
24 on Lake Tahoe located at 1011 Lakeshore Blvd., Incline Village, Nevada 89451 (the “Tahoe
25 Property”). The Tahoe Property was Samuel’s main residence until his death. Wendy and
26 Stanley were raised in the house during the 1980s before they left for college. When Samuel

27 _____
28 ⁸ Paragraph A. of Article IV of the Issue Trust Agreement.

1 executed the Family Trust, the Tahoe Property was listed on Schedule A as property initially
2 conveyed to the Trust.⁹ The terms of the Family Trust specifically address the Tahoe Property
3 and Samuel's intention that the Tahoe Property be retained and administered as a separate trust
4 for the benefit of his wife and children.¹⁰ In this respect the Family Trust provides as follows:

5 The Lake Tahoe Residence and Residential Funds shall be
6 retained and administered as a separate trust for the benefit of the
7 Surviving Spouse and the Grantor's children who are living on
8 the date of death of the Grantor and shall be held, administered,
9 and distributed as hereafter provided.

10 On the death of the Grantor, ... [a]t the expiration of the six (6)
11 month period set forth in the preceding sentence, the Surviving
12 Spouse and each of the Grantor's living children shall have the
13 right to use and occupy the Lake Tahoe Residence, rent free, for
14 such equal periods throughout each calendar year ... until such
15 time as the Lake Tahoe Residence is sold.¹¹

16 The Family Trust further provided that upon the sale of the Tahoe Property, the sales proceeds
17 shall be divided in three (3) equal shares for the benefit of his children. It was clear Samuel
18 intended that all his children would benefit equally from the use of the Tahoe Property while it
19 was administered as an asset of the Trust and from the proceeds upon its sale.

20 37. On December 5, 2011, the Tahoe Property was apparently transferred from the
21 Family Trust to SSJ, LLC, a single member limited liability company wholly owned by
22 Samuel. Just over a year later, on December 28, 2012, Todd, as Manager of SSJ, LLC, signed
23 and recorded a purported Grant, Bargain and Sale Deed purportedly transferring the Tahoe
24 Property to Incline TSS, Ltd. This was done just days after Samuel had open heart surgery in
25 Los Angeles, California and while he was still in the hospital there. Wendy believes the
26 purported transfer to of the Tahoe Property to Incline TSS, Ltd. may be invalid and she may
27 contest such transfer, but does not have the information at this point to make such
28 determination. Wendy reserves the right to contest this transfer as she obtains additional

⁹ Schedule A of the Family Trust Agreement.

¹⁰ Paragraphs D.2.a. and G. of Article II of the Family Trust Agreement.

¹¹ Paragraphs G. and G.1. of Article II of the Family Trust Agreement (emphasis added).

1 information through.

2 38. At some point, Todd and his family purportedly acquired a forty-six percent
3 (46%) interest in the Tahoe Property. The Tahoe Property was worth approximately \$15
4 million at the time of Samuel's death. To acquire a nearly fifty percent (50%) interest in the
5 Tahoe Property would have required Todd and his family to make a substantial payment and
6 no such payment was ever made. Additionally, transferring an interest in the Tahoe property to
7 Todd and his children was contrary to Samuel's intention for the property and does not make
8 any sense. Samuel included specific provisions in the Family Trust to protect and preserve the
9 Tahoe Property for use by his wife and all his children so that all of his children would benefit
10 from the property equally. It is clear that Todd simply took the interest in the Tahoe Property
11 for himself and his family. Accordingly, Wendy contests and disputes that Todd and his
12 family validly acquired and own forty-six percent (46%) of the Tahoe Property and disputes
13 and contests the validity of any records that purport to establish such ownership.

14 39. When Samuel died just four (4) months after the purported transfer of the Tahoe
15 Property to Incline TSS, Ltd., Todd realized he could not or did not want to make his and his
16 families' portion of the payments owed on the approximately \$6 million loan on the Tahoe
17 Property. As a result, Todd came up with a scheme to pay down the debt with the funds from
18 the \$6 million life insurance policy payable to the Issue Trust. The day after Samuel died,
19 Todd approached Stanley and Wendy and told them they should agree to use the \$6 million in
20 insurance proceeds payable to the Issue Trust to pay down the Tahoe Property loan. Todd
21 represented to Stanley and Wendy that paying down the debt would benefit all three of them as
22 owners of the property. Stanley and Wendy were led to believe that the three of them would
23 own equal interests in the Tahoe Property after the paydown of the debt. Todd never disclosed
24 to Stanley and Wendy that he and his family had acquired an interest in the Tahoe Property and
25 it was no longer wholly owned by the Family Trust. As a result, Stanley and Wendy signed a
26 consent agreeing to Todd's proposal.

27 40. Stanley and Wendy later discovered that Todd and his family apparently,
28

1 directly or indirectly, acquired the forty-six percent (46%) interest in the Tahoe Property and
2 that the Issue Trust owned the remaining fifty-four percent (54%). If Todd and his family did
3 own forty-six percent (46%) of the Tahoe Property and had Todd been forthright and not
4 misleading about it, Wendy, and presumably Stanley, would have never agreed to Todd's
5 proposal to pay down the Tahoe Property loan with the insurance proceeds from the Issue
6 Trust. Under such circumstances, paying down the Tahoe Property debt only benefits Todd
7 and his family while harming Stanley and Wendy. Todd and his family received the benefit of
8 the debt reduction on their interest in the property without having to contribute any funds to
9 pay down the debt.

10 41. Meanwhile, Wendy and Stanley lost the benefit and use of the \$6 million in life
11 insurance proceeds. The debt payment eliminated the \$6 million in liquidity Samuel intended
12 the Issue Trust use to purchase, own and maintain houses and other property for his children
13 during their lifetimes. Wendy's and Stan's and the family's use of the Tahoe Property is
14 subject to the total and absolute control of Todd as purported part owner and sole Trustee of
15 the remaining ownership interest. Retaining the \$6 million in insurance funds in the Issue
16 Trust for the benefit of all three children was in the best interest of Stanley and Wendy, not
17 paying towards the debt on a property over which Todd claims control. Distributing such
18 funds to pay down the Tahoe Property debt was only in the best interest of Todd and his family
19 and just another instance of Todd's efforts to gain personally at the expense of Wendy and
20 Stanley and completely contrary to the intent of the Decedent. Additionally, Todd was and is
21 now in complete control of the Tahoe Property, by the forty-six percent (46%) interest he
22 allegedly purportedly acquired and because he was and is the sole Trustee of the portion of the
23 property not owned by him and his family. Todd, as the sole Trustee of the Issue Trust,
24 breached his fiduciary duties to Wendy and Stanley as beneficiaries of the Issues Trust.

25 42. Wendy admits that she and Stanley signed a consent allowing the use of the \$6
26 million in insurance proceeds, but first, the consent they signed was the result of
27 misrepresentations and fraud by Todd and possibly others and, second, the consent they signed
28

1 is not the purported consent attached to *Exhibit "7"* to the *Petition for Confirmation in Cause*
2 *No. PR17-00446*. Whatever consent Stanley and Wendy signed was based on representations
3 made by Todd that were false and were made to induce Stanley and Wendy to agree to the
4 proposed debt payment and should be found invalid, ab initio, and set aside.

5 43. The Purported Indemnification Agreements. Samuel S. Jaksick, Jr., Individually
6 as Trustee of the Family Trust, and on behalf of his representative, executors, trustees,
7 successors and assigns and Todd B. Jaksick and Dawn Jaksick, Individually, TBJ SC Trust and
8 TBJ Investment Trust, and on behalf of their representatives, executors, trustees, successors
9 and assigns purportedly executed the Indemnification and Contribution Agreement on January
10 1, 2008 (the "Purported Indemnification"). A copy of the purported Indemnification
11 Agreement is attached as *Exhibit "10"* to the *Petition for Confirmation in Cause No. PR17-*
12 *00445*. Although the Purported Indemnification was allegedly created and executed in 2008,
13 and requires Samuel and the Family Trust to pay and indemnify Todd individually for various
14 obligations of Todd, the Family Trust and family businesses, no one was aware of the
15 existence of the Purported Indemnification until Todd produced it approximately two (2) years
16 after Samuel's death, when it became convenient for Todd to attempt to explain, allow or
17 exonerate his bad acts or bogus payments to himself or his avoidance of his obligations and
18 expenses. If such an agreement existed prior to Todd producing it, Stanley, Wendy, the
19 attorneys for the Trusts and the accountant would have known about it and Todd's reliance on
20 it long before Todd produced it. Wendy contends that the Purported Indemnification is invalid
21 because it was forged, altered or manufactured by Todd and possibly others and contests same
22 and contends it is not binding on anyone or the Family Trust. Wendy also contests all
23 transactions that occurred or obligations Todd avoided as a result of the Purported
24 Indemnification as such are invalid and should be set aside or, in the case of obligations Todd
25 avoided, such obligations should be enforced.

26 44. It appears Todd manufactured the purported Indemnification Agreement and is
27 using it to pay off any obligations he incurs in relation to the Trusts in addition to his personal
28

obligations. The purported Indemnification Agreement attached as *Exhibit "10"* to the *Petition for Confirmation in Cause No. PR17-00445* has, apparently, been used by Todd and his family to fund his lifestyle, and includes the payment by the Family Trust of personal obligations of Todd including, but not limited to the following:

- a. Home Loan – WAMU: Mortgage Loan for 4505 Alpes Way in favor of Wells Fargo in the original principal amount of \$1,435,000.00 with monthly payments of \$7,281.67 with Todd, individually, as the 100% responsible party;
- b. Line of Credit: Home Equity in favor of Wells Fargo: The original principal amount of \$485,000.00 with approximate monthly payments of \$1,400.00 with Todd, individually, as the 100% responsible party;
- c. Mortgage Construction Loan in Favor of First Independent Bank: The original principal amount of \$3,060,000.00 with monthly payment on the 1st of each month of \$5,774.00 with maturity date of August 1, 2008, with Todd, individually, as the 100% responsible party; and
- d. Cadillac automobile loan: Note in favor of GMAC in the original principal amount of \$33,600.00 with monthly payments of \$700.00 due on the 20th of each month with maturity date of May 20, 2010, with Todd, individually, as the 100% responsible Party.

The Purported Indemnification Agreement attached as *Petition for Confirmation in Cause No. PR17-00445* further indicates that all of these personal obligations have been paid off. Accordingly, Todd appears to be relying on the Purported Indemnification as authority to use the Family Trust as his personal piggybank at the expense of the Family Trust and the beneficiaries. Todd never bothered in any capacity to inform Wendy of any such transactions prior to them occurring. These were all Todd's transactions by Todd that materially affected the interest of Wendy and Stanley.

45. Additionally, based on information and belief, Todd appears to be acquiring property of the Trusts, directly or indirectly, and paying for such property with a note instead

1 of cash. Todd then, apparently, uses the Purported Indemnification to avoid the obligation to
2 repay the note, ultimately acquiring the property without ever paying for it or forcing the
3 Family Trust to pay for it. Based on information and belief, it appears Todd used this scheme
4 when he acquired Samuel's cattle after his death. Based on information and belief, it also
5 appears Todd has acquired other trust property, including valuable water rights, this way, sold
6 the property to third-parties and then avoided or cancelled the note he used to acquire the
7 property and retained the money he received from the sale to the third-party.

8 46. Wendy was very recently informed that an alleged Indemnification and
9 Contribution Agreement similar to Todd's may have been executed in favor of Stanley
10 ("Stanley's Purported Indemnification"). Because Wendy believes that she and other family
11 members would have been aware of any such indemnity agreement long before now, pending
12 the discovery of additional information concerning same, Wendy contends any such Indemnity
13 Agreement is invalid and contests same.

14 47. Sale of Bright Holland, Co. Property. In 2016, Todd negotiated the sale of
15 certain property owned by Bright Holland, Co. known as the Fly Ranch (the "Fly Ranch
16 Property") to the Burning Man Project. It is believed that Fly Ranch Property sold for \$6.5
17 million. Wendy was never informed concerning the proposed sale and only learned of the sale
18 when she read about it in the news. Wendy was told she has a thirteen percent (13%) interest
19 in Bright Holland through her interest in the Wendy A. Jaksick 2012 BHC Family Trust, which
20 was apparently established by Samuel on December 17, 2012 (the "BHC Family Trust"). At
21 the time the BHC Family Trust was created, it was funded with thirteen shares of Bright
22 Holland, Co. stock accordingly to the trust agreement's schedule of assets. It is Wendy's
23 understanding that similar trusts were established for Todd and Stanley, and each child had an
24 equal amount of shares and interest in Bright Holland, Co.

25 48. Despite the substantial amount of funds received by the sale of the Fly Ranch
26 Property, the Trustee of the BHC Family Trust refused and continues to refuse to use any of
27 the funds for Wendy's benefit despite repeated requests by Wendy for distributions needed for
28

1 her and her family's living expenses. Instead, Wendy was told the proceeds from the sale
2 would be held in escrow for the potential purchase of replacement property or would be used to
3 pay down debt. Apparently, Todd made the decision that no funds would be distributed to or
4 for Wendy's benefit from the sale despite his awareness that Wendy desperately needed the
5 funds for her and her family's living expenses. The is consistent with and appears to be a part
6 Todd's ongoing efforts and his scheme to minimize distributions to Wendy in order to starve
7 her and her family and force her to agree to a settlement of her interests in the Trusts for
8 substantial discounted sum. Todd clearly let his personal disdain for Wendy and her family in
9 his Individual capacity taint his judgment and ability to act in Wendy and her family's best
10 interest as her Trustees; and irreconcilable conflict of interest and bias. Additionally, Kevin, in
11 his Individual and Trustee capacities, has simply followed Todd's lead and failed to act in
12 Wendy's best interest.

13 49. Sale of Bronco Billy's Casino. Based information and belief, Samuel, through
14 the Family Trust, owned an eighteen percent (18%) interest in Bronco Billy's Casino ("Bronco
15 Billy's"). In 2015, Bronco Billy's was apparently sold for approximately \$30 million, netting
16 approximately \$5.4 million for the Family Trust's interest. Wendy expected her share of the
17 Family Trust would substantially benefit from its one-third interest in the sale proceeds.
18 However, despite Samuel's interest being held in the Family Trust, it was represented to
19 Wendy that she and her share of the Family Trust did not have an interest in Bronco Billy's.
20 Instead, apparently Todd and Stanly, directly or in trust, each owned fifty percent (50%) of
21 Samuel's interest in Bronco Billy's at the time of the sale. When Wendy complained about the
22 Bronco Billy's transaction, she was told she did not have an interest in Bronco Billy's and she
23 and her share of the Family Trust were not entitled to any of the proceeds of the sale because
24 she did not have a gaming license from the Colorado Division of Gaming; a ridiculous
25 response. In essence, Todd and Stanley stole Wendy's interest in the Trust and, in turn, in the
26 sale proceeds from Bronco Billy's.

27 50. This explanation makes no sense unless Samuel's eighteen percent (18%)
28

1 interest in Bronco Billy's was transferred out of the Family Trust to Todd and Stanley before
2 the sale. If the sale occurred while the interest was held in Trust, the proceeds of the sale
3 would be paid to the Trust and equally apportioned between the children's share of the Trust,
4 without regard to any Colorado gaming license. The Family Trust owned the interest in
5 Bronco Billy's and would have received the proceeds of the sale, not Wendy in her individual
6 capacity; accordingly, there would be no reason Wendy or any of them would need a gaming
7 license. If, however, the interest was transferred out of the Family Trust before the sale, then
8 Todd and Stanley would have wrongly received a substantial benefit from the Family Trust at
9 the expense of Wendy's interest. Todd and Stanley could not have ended up with one-hundred
10 percent (100%) ownership in the interest in Bronco Billy's without wrongfully taking Wendy's
11 share of the Trust. They had to take her interest away from her without telling her. Such
12 action by the Co-Trustees would be a, per se, breach of the Trust Agreement and a breach of
13 their fiduciary duties to Wendy, unless her share of the Trust received other property in an
14 amount equal in value and liquidity.

15 51. Despite Wendy's requests, Co-Trustees have further breached their fiduciary
16 duties to Wendy by refusing to provide her with full disclosure and an accounting concerning
17 the Bronco Billy's transaction. She still does not know all of the details of the sale and the
18 transaction. Wendy has never received confirmation of what happened to the Family Trust's
19 interest in Bronco Billy's or that her share of the Family Trust was made whole as a result of
20 the Bronco Billy's sale, and, therefore, reasonably believes that it was not made whole.

21 52. This transaction is perfect example of the Co-Trustees' continued efforts to
22 manipulate the Family Trust and its property and to use their position of authority and control
23 over same for their personal benefit at the expense of the Trust, the beneficiaries of the Trust
24 and, particularly, at the expense off Wendy and her family. It is also consistent with and
25 appears to be a part of the Co-Trustees' ongoing scheme to minimize distributions to Wendy in
26 an effort to force her to agree to settle her interest in the Trusts.

27 53. The Purported Second Amendment to the Family Trust. On December 10, 2012,
28

Samuel S. Jaksick, Jr. purportedly executed the Purported Second Amendment. Although the Purported Second Amendment was allegedly executed in 2012, Wendy was not aware of its existence until it was produced to her after she retained counsel in 2016. The Purported Second Amendment, like many other documents created during Todd's involvement with Samuel's Trusts and various businesses, came out of nowhere and is appears to be contrary to Samuel's intent concerning Wendy as expressed by Samuel over the years.

54. Based on Wendy's understanding of Samuel's intent, she does not believe Samuel would have or did sign the Purported Second Amendment. It is Wendy's understanding that Samuel's secretary often signed Samuel's name on documents when Samuel was not present, and Todd or someone on Todd's behalf signed Wendy's and her daughter's name on documents related to the Trusts. Additionally, there are numerous documents related the Trusts, the administration of the Trusts and Samuel's businesses Wendy believes Todd manufactured after the fact to suit his needs. Accordingly, based upon information and belief, Wendy believes the Purported Second Amendment may be invalid and she may contest it. However, at this time, Wendy does not have sufficient information to proceed with a contest of the Purported Second Amendment. Wendy reserves the right to amend this *Counter-Petition* to contest the validity of the Purported Second Amendment once she obtains information necessary to fully evaluate such claim.

CAUSES OF ACTION

Count 1: Breach of Fiduciary Duties.

55. Wendy incorporates by reference the foregoing paragraphs 1 through 54 as if fully stated herein.

56. "The fiduciary obligations of a trustee are great."¹² "Perhaps the most fundamental duty of a trustee is that he must display throughout the administration of the trust complete loyalty to the interests of the beneficiary and must exclude all selfish interest and all

¹² *Riley v. Rockwell*, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987).

1 consideration of the interests of third persons.”¹³

2 57. In Nevada a "trustee is a fiduciary who must act in good faith and with
3 fidelity to the beneficiary of the trust. He should not place himself in a position where it
4 would be for his own benefit to violate his duty to the beneficiary.”¹⁴Said fiduciary duties,
5 include, but are not limited to, the duty of full disclosure,¹⁵ fidelity,¹⁶ fairness, loyalty,
6 avoidance of self-dealing and utmost good faith.

7 58. NRS 164.015(1) provides that "[t]he court has exclusive jurisdiction of
8 proceedings initiated by the petition of an interested person concerning the internal
9 affairs of a nontestamentary trust. Proceedings which may be maintained under this
10 section are those concerning the administration and distribution of trusts, . . . including
11 petitions with respect to a nontestamentary trust for any appropriate relief provided with
12 respect to a testamentary trust in NRS 153.031."

13 59. N.R.S. 153.031 provides that a "beneficiary may petition the court regarding
14 any aspect of the affairs of the trust, including: . . . (g) Instructing the trustee; (h) Compelling

16 ¹³ BOGERT, TRUSTS AND TRUSTEES § 543 (2d ed. 1992); *see also* 76 AM. JUR. 2D
17 TRUSTS § 349 (2010) ("A trustee is a fiduciary of the highest order and is required to exercise
a high standard of conduct and loyalty in the administration of the trust.").

18 ¹⁴ *Bank of Nevada v. Speirs*, 95 Nev. 870, 874, 603 P.2d 1074, 1077 (1979).

19 ¹⁵ *See, e.g., Blue Chip Emerald LLC*, 299 A.D.2d 278, 279 (N.Y. 2005) ("[W]hen a
20 fiduciary, in furtherance of its individual interests, deals with the beneficiary of the duty
in a matter relating to the fiduciary relationship, the fiduciary is strictly obligated to make
21 'full disclosure' of all material facts."). *See also Zastrow v. Journal Communications, Inc.*,
718 N.W.2d 51, 61 (Wis. 2006) ("[I]f a trustee does not make a full disclosure of material
22 facts to a beneficiary, that conduct is a breach of the trustee's duty of loyalty. . . The law
concludes this breach is intentional."); *Flippo v. CSC Associates III, L.L.C.*, 547 S.E.2d
23 216, 222 (Va. 2001) (Even if a fiduciary's actions are legal, he is in breach when his legal
actions are for his own benefit and not for the beneficiary); *Taylor v. Nationsbank Corp.*,
481 S.E.2d 358, 361 (N.C. Ct. App. 1997) (Found many courts "have determined that a
24 trustee has a duty of full disclosure of all material facts for the protection of a beneficiary's
present and future interests in the trust.") (citations omitted); *Huie v. DeShazo*, 922 S.W.2d
25 920, 923 (Tex. 1996) (Trustees owe beneficiaries "a fiduciary duty of full disclosure of all
material facts known to them that might affect [the beneficiaries'] rights.") (citations
omitted); *Lind v. Webber*, 134 P. 461, 466 (Nev. 1913).

26 ¹⁶ *Bank of Nevada*, 95 Nev. at 873, 603 P.2d at 1076 ("A testamentary trustee is a fiduciary
27 who must act in good faith and with fidelity to the beneficiary of the trust. He should not
place himself in a position where it would be for his own benefit to violate his duty to the
28 beneficiary").

1 the trustee to report information about the trust or account, to the beneficiary; . . . (q)
2 Compelling compliance with the terms of the trust or other applicable law; . . ."

3 60. Similarly, N.R.S. 163.115 provides that "[i]f a trustee commits or threatens to
4 commit a breach of trust, a beneficiary or cotrustee of the trust may maintain a proceeding
5 for any of the following purposes that is appropriate: (a) To compel the trustee to perform
6 his or her duties; (b) To enjoin the trustee from committing the breach of trust; . . . (f) to set
7 aside the acts of the trustee; . . ."

8 61. Moreover, a party who knowingly participates in another's breach of fiduciary
9 duty may be liable for breach as a joint tortfeasor.¹⁷ Indeed, trustees are liable to beneficiaries
10 for the actions undertaken by a co-trustee unless they expressly disavow in writing and/or
11 attempt to prevent such breach. See N.R.S. 163.100.

12 62. The Trustees breached their fiduciary duties owed to Wendy by failing to fully
13 disclose and inform Wendy of all matters that materially affected the Trusts and the
14 beneficiaries at every step of their administration of the Trusts, by failing to act in the best
15 interest of the Trusts and their beneficiaries, by placing their own interests over and above the
16 interests of the Trusts and the beneficiaries, by self-dealing, by not being truthful, by failing to
17 act in good faith, by misrepresenting and deliberately withholding and refusing to provide
18 information and documents, by failing to timely and adequately account, by exhibiting extreme
19 carelessness, hostility and bias towards Wendy and her family and by acting in bad faith,
20 intentionally and with reckless indifference to the interests of the Trust and its beneficiaries
21 and by misappropriating assets of the Trusts. Such breaches have caused actual damages to the
22 Estate and its beneficiaries.

23 63. At a minimum, Trustees breached the following duties: (i) duty of full
24

25 ¹⁷ See *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942) (A party
26 who knowingly participates in another's breach of fiduciary duty may be liable for the breach as a
27 joint tortfeasor); RESTATEMENT (SECOND) OF TRUSTS § 326 (1959) ("A third person who,
28 although not a transferee of trust property, has notice that the trustee is committing a breach of trust
and participates therein is liable to the beneficiary for any loss caused by the breach of trust.");
BOGERT, TRUSTS AND TRUSTEES § 543 (2d ed. 1992) (Person who knowingly aids trustee in
committing a breach of his duties is liable to the beneficiary).

disclosure, (ii) duty of loyalty/fidelity, (iii) duty to not self-deal, (iv) duty of good faith and fair dealing and to not take advantage of their beneficiaries and (v) misappropriation of trust assets

64. Accordingly, as a direct violation of the Trustees' breaches and conduct, Wendy is entitled to surcharge the Trustees for damages resulting from such breaches and actions, the amount of which will be proven at trial.¹⁸ The gamesmanship of the Trustees, and particularly Todd, and their complete disregard for Wendy, her rights, constitutes a breach of fiduciary duty, conspiracy and aiding and abetting. Accordingly, Wendy is entitled to surcharge the Trustees for damages resulting from such breaches and actions.

Count 2: Failure to Disclose and Adequately Account to Compel Accounting.

65. Wendy incorporates by reference the foregoing paragraphs 1 through 64 as if fully stated herein.

66. The law clearly and unequivocally imposes a duty upon a trustee to provide clear and accurate accounts with respect to his administration of the Trust to the Trust's beneficiaries. *See, e.g.*, RESTATEMENT OF TRUSTS (Second) § 172. A beneficiary's right to an accounting is founded upon the fiduciary relationship that exists between the beneficiaries and the trustee. Indeed, courts recognize that:

As a general matter of equity, the existence of a trust relationship is accompanied as a matter of course by the right of the beneficiary to demand of the fiduciary a full and complete accounting at any proper time. . . . The scope of each accounting depends of course upon the circumstances of the individual case, and, as a general rule should include all items of information in which the beneficiary has a legitimate concern.

67. Pursuant to NRS 165.135, a trust accounting is required to contain the following information:

¹⁸ *See, e.g.*, RESTATEMENT (THIRD) OF TRUSTS § 70(b) (2007). *See also Pierce v. Lyman*, 3 Cal. Rptr. 2d 236, 241 (Cal. Ct. App. 1991) (Recognizing that "[t]he beneficiaries of a trust may sue a trustee to recover profits or recoup losses resulting from a trustee's breach of the duty of loyalty, the duty to avoid conflicts of interest, the duty to control and preserve trust property, the duty to make trust property productive and the duty to dispose of improper investments).

1. An Account must include:
 - a. A statement indicating the accounting period;
 - b. With respect to the trust principal:
 - i. The trust principal held at the beginning of the accounting period, and in what form held, and the approximate market value thereof at the beginning of the accounting period;
 - ii. Additions to the trust principal during the accounting period, with the dates and sources of acquisition;
 - iii. Investments collected, sold or charged off during the accounting period;
 - iv. Investments made during the accounting period, with the date, source and cost of each investment;
 - v. Any deductions from the trust principal during the accounting period, with the date and purpose of each deduction; and
 - vi. The trust principal, invested or uninvested, on hand at the end of the accounting period, reflecting the approximate market value thereof at that time;
 - c. With respect to trust income, the trust income:
 - i. On hand at the beginning of the accounting period, and in what form held;
 - ii. Received during the accounting period, when and from what source;
 - iii. Paid out during the accounting period, when, to whom and for what purpose; and
 - iv. On hand at the end of the accounting period and how invested;
 - d. A statement of unpaid claims with the reason for failure to pay them; and
 - e. A brief summary of the account, which must include:
 - i. The beginning value of the trust estate:
 - a. For the first accounting, the beginning value of the trust estate shall consist of the total of all original assets contained in the beginning inventory.
 - b. For accountings other than the first account, the beginning value of the trust

estate for the applicable accounting period must be the ending value of the prior accounting.

- ii. The total of all receipts received during the accounting period, excluding capital items.
- iii. The total of all gains on sales or other disposition of assets, if any, during the accounting period.
- iv. The total of disbursements and distributions during the accounting period.
- v. The total of all losses on sales or other disposition of assets, if any, during the accounting period.
- vi. The total value of the trust assets remaining on hand at the end of the accounting period.

2. A summary of the account pursuant to paragraph (e) of subsection 1 must be in substantially the following form:

...

3. In lieu of segregating the report on income and principal pursuant to subsection 1, the trustee may combine income and principal activity in the account so long as the combined report on income and principal does not materially impeded a beneficiary's ability to evaluate the charges to or credits against the beneficiary's interest.

68. The Counter-Respondents have failed to fully disclose and account to Wendy for many years. The purported "Trust Accountings" included with the *Petition for Confirmation in Cause No. PR17-00445* and the *Petition for Confirmation in Cause No. PR17-00445* do not satisfy the statutory requirements, and, as result, the Trustees have failed their obligations under Nevada law. Additionally, it is impossible to evaluate and/or fully understand the Trust assets and Trust administration without the records and information relied on to prepare the purported "Trust Accountings."

69. Despite Wendy's objections to the "Trust Accountings" and the Trustees' failure to provide her with the backup for the Trust Accountings, the Trustees have made no effort to amend or supplement the accountings to comply with Nevada law or to provide Wendy with the support and additional information necessary for Wendy to fully understand the Trust Accountings and the Trustees' administration of the Trusts. As a result, Trustees have breached and continue to breach their fiduciary duties of full disclosure and the resulting

attorneys' fees and costs are damaging Wendy and the Trusts.

70. The Trustees should be compelled to prepare and file accountings for each Trusts that comply with the statute and provide Wendy and the other beneficiaries a full understanding of the assets and administration of the Trusts. Additionally, the Trustees breaches of fiduciary duty of full disclosure and to render proper statutory accountings for the Trusts, warrant this Court entering an order surcharging the Trustees.

Count 3: Civil Conspiracy and Aiding and Abetting.

71. Wendy incorporates by reference the foregoing paragraphs 1 through 70 as if fully stated herein.

72. "[C]ivil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage."¹⁹ "[L]iability attaches for civil aiding and abetting if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person."²⁰ Furthermore, NRS 163.110 holds trustees equally liable for actions of co-trustees.

73. Wendy asserts that the Trustees, acting in their Individual and Trustee capacities, have conspired and/or aided and abetted the Trustees to the extent they undertook any actions, which resulted in a breach of the Trustees' fiduciary duties. As a direct violation of the Trustees' breach of fiduciary duties, the other Trustees, in their Trustee capacities or in their individual capacities, are liable to Wendy for damages resulting from the Trustees' breaches, the amount of which will be proven at trial.

74. To the extent Kevin claims he had resigned as Co-Trustee of the Family Trust or the BHC Family Trust and was not serving as Trustee of these Trusts at the time any of the acts complained of herein occurred is of no significance. Wendy asserts that the Trustees and Kevin, acting as in his individual capacity, conspired and/or aided and abetted the

¹⁹ *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983).

²⁰ *Dow Chemical Co. v. Mahlum*, 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998), *disapproved on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

Trustees to the extent he undertook any actions, which resulted in a breach of the Trustees' fiduciary duties. Kevin, in his individual capacity, is liable to Petitioner for damages resulting from the Trustees breaches, the amount of which will be proven at trial.

75. For the additional reasons as set forth herein, the Trustees, in their Individual and Trustee capacities, are further liable to Wendy for civil conspiracy and aiding and abetting, the amount of damages, of which, will be proven at trial.

Count 4: Aiding and Abetting Breaches of Fiduciary Duty.

76. Wendy incorporates by reference the foregoing paragraphs 1 through 75 as if fully stated herein.

77. The Trustees each had a fiduciary relationship with relationship, and owed fiduciary duties to, Wendy.

78. The Counter-Respondents were aware of the fiduciary relationships each of the Trustees had with Wendy as well as the fiduciary duties each of the Trustees owed to Wendy.

79. The Counter-Respondents knew or should have known that each of the Trustees breached their fiduciary duties to Wendy.

80. The Counter-Respondents provided substantial assistance to each other in breaching their fiduciary duties by, among other things, aiding, abetting, participating in and/or assisting with their fraudulent actions/statements and other wrongful conduct.

81. The Counter-Respondents acted intentionally and/or in concert with each other to provide substantial assistance in each Trustees' breaching of their fiduciary duties toward Wendy.

82. As a direct and proximate result of the actions of Counter-Respondents, Wendy has been substantially damaged.

Count 5: Actual Fraud.

83. Wendy incorporates by reference the foregoing paragraphs 1 through 82 as if fully stated herein.

84. The elements of intentional misrepresentation are: (1) A false representation

made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation.²¹

85. Todd, in his Individual and Trustee capacities, made material and intentional misrepresentations to Wendy, which were false, which Todd knew were false when made, which were intended to be acted upon by Wendy, were relied upon by Wendy and resulted in damages to Wendy.

86. Wendy has suffered injury and has been damaged by Todd's efforts, actions and fraudulent conduct, and these damages were directly caused by such actions and due to Wendy's reliance on Todd's misrepresentations and false representations. Todd, in his Individual and Trustee capacities, should be held liable for all damages resulting therefrom.

87. The purported consent, in which Wendy and Stanley agreed to pay down the Tahoe Property loan with the \$6 million in life insurance proceeds, was executed as the result of one or more intentional misrepresentations made by Todd, in his Individual and Trustee capacities, to Wendy and Stanley, and, therefore, should be set aside and declared void as if it were never signed.

Count 6: Removal of Trustees and Appointment of Independent Trustee(s).

88. Wendy incorporates by reference the foregoing paragraphs 1 through 87 as if fully stated herein.

89. N.R.S. 156.070 provides for the removal and appointment of Trustees as follows:

The trustee shall, when directed by the court, account to it for all his or her acts as trustee, and the court may, from time to time, upon good cause shown, remove any trustee, and appoint another in his or her place.

90. Wendy requests the Trustees be removed by the Court for the breaches of

²¹ *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998).

1 fiduciary duties and other actions described herein, as well as, their strong bias against Wendy
2 and her family that has created an irreconcilable conflict in their administration of the Trusts.
3 Upon the Trustees removal, Wendy requests the Court appoint Nevada State Bank, the
4 successor trustee named in Article IV, Paragraph A(1) of the Family Trust, or some other
5 qualified independent trustee(s).

6 **Count 7: Unjust Enrichment and Constructive Trust.**

7 91. Wendy incorporates by reference the foregoing paragraphs 1 through 90 as if
8 fully stated herein.

9 92. “Unjust enrichment occurs whenever a person has and retains a benefit which in
10 equity and good conscience belongs to another. Unjust enrichment is the unjust retention of a
11 benefit to the loss of another, or the retention of money or property of another against the
12 fundamental principles of justice or equity and good conscience.”²²

13 93. Trustees took actions in the administration of the Trusts that resulted in Trustees
14 receiving personal benefits and control of property of the Trusts. Because of such actions,
15 breaches of fiduciary duty, the misapplication of property of the Trusts, the creation and
16 reliance on invalid Purported Indemnification and other invalid documents; Todd, in his
17 Individual and Trustee capacities, and persons acting on his behalf and others fraudulently
18 inducing Wendy and/or Stanley to sign purported documents; and because of the fiduciary
19 and/or confidential relationship between Trusts and Wendy, a constructive trust, for the benefit
20 of the Trusts and/or Wendy, should be imposed upon any benefit or property acquired as a
21 result of the transactions described herein or any unfair transaction with the Trusts, because
22 Todd, Todd’s family, Stanley, Michael, Kevin and possibly others have been unjustly enriched.

23 **Count 8: Trustees Should be Precluded from Using Assets of the Trust to Defend this**
24 **Matter.**

25 94. Wendy incorporates by reference the foregoing paragraphs 1 through 93 as if
26 fully stated herein.

27
28 ²² *Nevada Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 363, 741 P.2d 802, 804 (1987).

95. A trustee is not entitled to payment of attorney's fees and expenses of litigation from the assets of the trust when the trustee breached the trust, unless a benefit was conferred upon the trust as a result of the trustee's actions.²³ As demonstrated herein, the Trustees have, at a minimum, breached the following duties (i) duty of full disclosure, (ii) duty of loyalty/fidelity, (iii) duty to not self-deal, (iv) duty of good faith and fair dealing and to not take advantage of their beneficiaries and (v) misappropriation of trust assets. Trustees defense of such actions, which are all the fruits of their own illegal and fraudulent conduct, is done in bad-faith and without just cause. Additionally, it is clear based on the Trustees actions that hold a strong bias against Wendy and her family that has created an irreconcilable conflict in their administration of the Trusts. Based on the numerous breaches of fiduciary duty and conflicts of interest, it is in the best interests of the Trusts that any and all attorney's fees and costs incurred by the Trustees, in their Individual and Trustee capacities, in defending this matter be paid from the Trustees' own personal resources and not assets of the Trusts, as they are the only persons that would benefit from using trust assets to defend their wrongful and self-serving actions.²⁴

²³ See, e.g., *Estate of Bowlds*, 120 Nev. 990, 102 P.3d 593 (Dec. 2004) (Citing *Matter of Estate of Rohrich*, 496 N.W.2d 566, 571 (N.D. 1993) (An attorney's services must benefit the estate to justify compensation from estate assets)). See also *Gump*, 1 Cal. App.4th at 605, 2 Cal.Rptr.2d at 278.

²⁴ "In the court's discretion, fees incurred by the trustee in defending against a beneficiary's claim of breach [of duty] may not be payable from the trust during the pendency of the litigation." Bogert's Trusts and Trustees § 971 (footnote omitted).

See also *Sierra v. Williamson*, 784 F. Supp. 2d 774, 777 (W.D. Ky. 2011) ("[W]hether a trustee is entitled to attorney's fees from the trust corpus is not a matter of right, but is warranted where the trustees were not at fault in the litigation and the amount of attorney expenses was reasonable . . . the Court believes that the proper procedure is to allow [the trustees] to seek reimbursement from the Trust after the conclusion of this case, assuming [the trustees] are successful and their expenses reasonable."

See also *Sierra*, 784 F. Supp. 2d at 778 ("Delaying reimbursement of trustees until after litigation is warranted because 'the need to protect beneficiaries from self-interested trustees outweighs the innocent trustee's need for immediate payment of its attorney's fees.'" (citation omitted).

See also *Wells Fargo Bank v. Sup. Ct.*, 22 Cal. 4th 201, 213 n.4, 990 P.2d 591, 599 ri.4 (2000) ("The better practice may be for a trustee to seek reimbursement after any litigation with beneficiaries concludes, initially retaining separate counsel with personal funds."). See, also, *Jacob v. Davis*, 128 Md. App. 433, 466, 738 A.2d 904, 921 (1999) ("The general rule is that at

1 96. In the instant case, the actions of the Trustees, in their Individual and Trustee
2 capacities, are so intertwined that it would be extremely difficult to segregate out the legal
3 services being provided between the various capacities. Additionally, the Trustees have
4 significant wealth and otherwise have the means to defend themselves in this matter.

5 97. To authorize the Trustees to utilize assets of the trust to defend themselves in
6 this matter would further deplete the assets of the Trusts. This is also true in light of the fact
7 that the Trusts have been drained of liquid assets by the Trustee breaches of fiduciary duties
8 and payment of Todd's obligations under the Purported Indemnity Agreement that has been
9 contested.

10 98. As such, the Trustees, in their Individual and Trustee capacities, should not only
11 be precluded from continuing to pay their legal fees from the Trusts, but they also should be
12 compelled to reimburse the Trusts for all legal fees paid to date.

13 **Count 9: Disgorgement of Trustee Fees.**

14 99. Wendy incorporates by reference the foregoing paragraphs 1 through 98 as if
15 fully stated herein.

16 N.R.S. 153.031(3) provides:

17 If the court grants any relief to the petitioner, the court may, in
18 its discretion, order any or all of the following additional relief
19 if the court determines that such additional relief is appropriate
20 to redress or avoid an injustice:

- 21 (a) Order a reduction in the trustee's compensation.
22 (b) Order the trustee to pay to the petitioner or any other
23 party all reasonable costs incurred by the party to adjudicate the
24 affairs of the trust pursuant to this section, including, without
25 limitation, reasonable attorney's fees. The trustee may not be
26 held personally liable for the payment of such costs unless the
27 court determines that the trustee was negligent in the
28 performance of or breached his or her fiduciary duties.

100. Wendy believes that the Trustees' have been paying themselves trustee's

trustee is entitled to attorneys' fees paid from the trust *if it successfully defends* an action brought by the beneficiary.") (citations omitted; emphasis added); Restatement (Third) of Trusts § 88, cmt. d ("*To the extent the trustee is successful* in defending against charges of misconduct, the trustee is normally entitled to indemnification for reasonable attorneys' fees and other costs") (emphasis added).

1 compensation.

2 101. Based upon the various breaches of fiduciary duties as set forth herein, this
3 Court should enter an order requiring Family Co-Trustees' and Issue Co-Trustee's to disgorge
4 any and all trustee compensation they have been paid.

5 102. Clearly, the Trustees' actions in engaging litigation counsel and incurring
6 significant legal fees, does not benefit the Trusts and does not amount to good faith based on
7 the Trustees' various breaches of fiduciary duties as set forth herein. This Court should compel
8 the Trustees to obtain reimbursement on behalf of the Trusts of the entire retainers paid to their
9 litigation counsel from the Trusts.

10 103. Additionally, such conduct constitutes a further breach by yet again depriving
11 the Trust of the use of such funds.

12 **Count 10: Contest of Purported Consent Agreement.**

13 104. Wendy incorporates by reference the foregoing paragraphs 1 through 103 as if
14 fully stated herein.

15 105. NRS 30.030 and NRS 30.040 provide that any person whose rights, status or
16 other legal relations are affected by contract may have determined any question of construction
17 or validity arising under the contract and obtain a declaration of rights, status or other relations
18 thereunder

19 106. Wendy contests the purported consent attached to *Exhibit "7"* to the *Petition for*
20 *Confirmation in Cause No. PR17-00446* (the "Purported Consent"), because it is not the
21 version of the consent that she signed, or, in the alternative, it was signed based on
22 representations made by Todd, in his Individual and Trustee capacities, that were false and
23 were made to induce Stanley and Wendy to agree to the proposed debt payment. As a result,
24 the Purported Consent should be found invalid, ab initio, and set aside.

25 107. Wendy also contests all actions taken by Todd, in his Individual and Trustee
26 capacities, associated with the Purported Consent and requests the Court declare all such
27 actions invalid.

Count 11: Contest of Purported Indemnity Agreement.

108. Wendy incorporates by reference the foregoing paragraphs 1 through 107 as if fully stated herein.

109. NRS 30.030 and NRS 30.040 provide that any person whose rights, status or other legal relations are affected by contract may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status or other relations thereunder.

110. Wendy contests the Purported Indemnification Amendment and contends it should be should be set aside and declared invalid because it was manufactured and forged by Todd or someone at Todd's behest and was never signed by Samuel.

111. Wendy also contests all actions taken by Todd, in his Individual and Trustee capacities, under the Purported Indemnification and all transactions that occurred or obligations Todd, in his Individual and Trustee capacities, avoided as a result of the Purported Indemnification and requests the Court declare all such are invalid and should be set aside or, in the case of obligations of Todd that were avoided, in either his Individual and Trustee capacities, such obligations should be enforced.

Count 12: Wendy is Entitled to be Awarded Attorneys' Fees and Costs.

112. Wendy incorporates by reference the foregoing paragraphs 1 through 111 as if fully stated herein

113. Wendy is additionally entitled to recover damages, including attorneys' fees and costs incurred by her to avoid, minimize, or reduce the damage caused by wrongful conduct of the Trustees. NRS 153.031(3)(b) and 164.005 provide that if the court grants any relief to a beneficiary, the court may order the trustee to pay the beneficiary all reasonable costs incurred by petitioner to adjudicate the affairs of the trust, including, without limitation, reasonable attorney's fees, and the trustee may be held personally liable for the payment of such costs if the trustee was negligent in the performance of his or her fiduciary duties.

114. This remedy is warranted given that the Trustees' blatant breaches of fiduciary duties and refusals to remedy such breaches, including failing to properly account, have cost Wendy substantial attorneys' fees and costs. As a result, this Court should award Wendy's attorneys' fees and costs from the Trustees' personal assets as contemplated by Nevada law or, in the alternative, from the Trusts.

115. Wendy is also entitled to recover costs incurred in pursuing declaratory relief sought herein related the documents, Trusts and administration/construction of the Trusts. NRS 30 and 30.120.

Count 13: Declaratory Judgment – No Contest Provision

116. Wendy incorporates by reference the foregoing paragraphs 1 through 116 as if fully stated herein.

117. NRS 30.030 and NRS 30.060 provide that any person interested as or through a trustee in the administration of a trust may have a declaration of rights or legal relations in respect thereto to direct the trustees to do or abstain from doing any particular act in their fiduciary capacity or to determine any question arising in the administration of a trust, including questions of the construction of trusts and other writings. NRS 30.060.

118. The following three paragraphs taken verbatim from each referenced document are relevant to the requested declaratory judgment.

- a. The following no-contest provision appears in Article VIII, Section O (page 52) of the **Family Trust**:

INCONTESTABILITY. If any beneficiary under this Trust Agreement, singularly or in conjunction with any other person, contests in any court the validity of this Trust Agreement or of the Will of the Grantor, or seeks to obtain an adjudication in any proceeding in any court that this Trust Agreement or any of its provisions of that such Will or any of its provisions are void, or seeks to otherwise void, nullify, or set aside this Trust Agreement or any of its provisions, then the right of the beneficiary to take any interest given to the beneficiary under this Trust Agreement is to be determined as it would have been determined had the beneficiary died prior to the date of execution of this Trust Agreement.

1 This paragraph shall be referred to herein as the “Family Trust No Contest
2 Provision”.

- 3 b. The following no-contest provision appears in Article VIII, Section O (page 36)
4 of the **Issue Trust**:

5 **INCONTESTABILITY. If any beneficiary under this**
6 **Trust Agreement, singularly or in conjunction with**
7 **any other person, contests in any court the validity of**
8 **this Trust Agreement, the Will of the Grantor, or The**
9 **Samuel S. Jaksick, Jr. Family Trust Agreement, or**
10 **seeks to obtain an adjudication in any proceeding in**
11 **any court that this Trust Agreement, the Will of**
12 **Grantor, or The Samuel S. Jaksick, Jr. Family Trust**
13 **Agreement, or any of the provisions of those**
14 **documents are void, or seeks otherwise to void,**
15 **nullify, or set aside this Trust Agreement or any of its**
16 **provisions, then the right of the beneficiary to take**
17 **any interest given to the beneficiary under this Trust**
18 **Agreement is to be determined as it would have been**
19 **determined had the beneficiary died prior to the date**
20 **of execution of this Trust Agreement.**

21 This paragraph shall be referred to herein as the “Issue Trust No Contest
22 Provision”.

- 23 c. The following Exemption & Immunity from the No-Contest Provision of the
24 Family Trust appears at Article II, Section D, Paragraph 4, Subparagraph d
25 (Page 11) of the **Family Trust** provides:

26 **It is the sole intent and desire of the Grantor that the**
27 **reductions and reallocations described in this**
28 **subparagraph D.4.d. are the only actions and/or**
remedies to be pursued against Wendy Ann Jaksick
Smrt. Accordingly, the Trustees and beneficiaries are
instructed not to pursue any additional form of legal
actions or otherwise against Wendy Ann Jaksick
Smrt, either in their capacity as Co-Trustee or
beneficiary, and any such action(s) shall be construed
as a contest of the provisions of this Trust Agreement
for [sic] subject to paragraph O. of Article VIII below.
(emphasis added).

This paragraph shall be referred to herein as the “Exemption & Immunity
Provision”.

119. Wendy requests that the Court examine the language in the original Family
Trust Agreement, the Purported Second Amendment, the Issue Trust Agreement and Samuel’s
Will and grant a declaratory judgment pursuant to NRS 30.030 and NRS 30.060 of the rights or
legal relations of the Parties and to construe such language. Wendy requests that the Court

enter a judgment declaring that:

- a.) Any lawsuit or legal action filed by the Trustees of the Family Trust against Wendy, other than one relating to “the reductions and reallocations described in this subparagraph D.4.d”, is a contest that violates the Family Trust No Contest Provision;
- b.) Todd Jaksick, as Co-Trustee, has filed a lawsuit in violation of the Exemption & Immunity Provision;
- c.) Todd Jaksick, as Co-Trustee, has filed a lawsuit that violates the Family Trust No Contest Provision;
- d.) Todd Jaksick, as Co-Trustee, has filed a lawsuit that violates the Issue Trust No Contest Provision;
- e.) As a result of Todd Jaksick, as Co-Trustee, violating the Family Trust No Contest Provision or the Issue Trust No Contest Provision or both, he has forfeited his office as Co-Trustee of the Family Trust and Trustee of the Issue Trust and should be immediately removed in such capacity;
- f.) Todd Jaksick, as a beneficiary of the Family Trust or the Issue Trust or both, has filed a lawsuit in violation of the Exemption & Immunity Provision;
- g.) Todd Jaksick, as a beneficiary of the Family Trust or the Issue Trust or both, has filed a lawsuit that violates the Family Trust No Contest Provision;
- h.) Todd Jaksick, as a beneficiary of the Family Trust or the Issue Trust or both, has filed a lawsuit that violates the Issue Trust No Contest Provision;
- i.) As a result of Todd Jaksick, Individually, violating the Family Trust No Contest Provision or the Issue Trust No Contest Provision or both, he, in his Individual capacity, has forfeited his right to inherit from the Family Trust and the Issue Trust and from the Decedent’s Estate via his Will;
- j.) Because Todd Jaksick, in his Individual capacity, has forfeited his right to inherit from the Family Trust and the Issue Trust and from the Decedent’s Estate via his Will, he shall be treated as if he died prior to the execution of the Family Trust Agreement;
- k.) Michael S. Kimmel, as Co-Trustee, has filed a lawsuit in violation of the Exemption & Immunity Provision;
- l.) Michael S. Kimmel, as Co-Trustee, has filed a lawsuit that violates the Family Trust No Contest Provision;
- m.) Michael S. Kimmel, as Co-Trustee, has filed a lawsuit that violates the Issue Trust No Contest Provision;
- n.) As a result of Michael S. Kimmel, as Co-Trustee, violating the Family Trust No Contest Provision or the Issue Trust No Contest Provision or both, he has forfeited his office as Co-Trustee and should be immediately removed in such capacity;
- o.) Wendy has not contested the Decedent’s Will or any provision thereof, directly or indirectly;
- p.) Wendy has not contested the Family Trust Agreement or any provision thereof, directly or indirectly;
- q.) Wendy has not contested the Issue Trust Agreement or any provision

- thereof, directly or indirectly;
- r.) Other than actions or remedies regarding “the reductions and reallocations described in this subparagraph D.4.d”, it was the Grantor’s intent that Wendy be completely exempt from the application of the Family Trust No Contest Provision;
 - s.) Other than actions or remedies regarding “the reductions and reallocations described in this subparagraph D.4.d”, Wendy is completely exempt from the application of the Family Trust No Contest Provision;
 - t.) Other than actions or remedies regarding “the reductions and reallocations described in this subparagraph D.4.d”, Wendy cannot violate the Family Trust No Contest Provision or the Issue Trust No Contest Provision;
 - u.) Other than actions or remedies regarding “the reductions and reallocations described in this subparagraph D.4.d”, Wendy is completely immune from any legal action by any of the Trustees of the Family Trust, per the Exemption & Immunity Provision;
 - v.) Other than actions or remedies regarding “the reductions and reallocations described in this subparagraph D.4.d”, Wendy is completely immune from any legal action by a beneficiary of the Family Trust, per the Exemption & Immunity Provision;
 - w.) Strict construction requires the Second Amendment to the original Trust Agreement to specifically state a contest to the Second Amendment itself is required in order to trigger the Family Trust No Contest Provision or the Issue Trust No Contest Provision of the Decedent’s Will; and
 - x.) The Family Trust No Contest Provision does not apply to any contest to the Second Amendment to the original Family Trust Agreement.

Wendy requests the Court construe the Family Trust No Contest Provision, the Issue Trust No Contest Provision and Samuel’s Will and declare the rights and legal relations of the Parties as stated above, declare that Todd Jaksick and Michael S. Kimmel as Co-Trustees of the Family Trust and the Issue Trust violated the Family Trust No Contest Provision, the Issue Trust No Contest Provision and forfeited their office, remove Todd Jaksick and Michael S. Kimmel from office, declare Todd Jaksick forfeited his right to inherit from the Family Trust, the Issue Trust and the Decedent’s Estate and that he shall be treated as if died prior to the execution of the Family Trust and the Issue Trust and that he predeceased the Decedent.

DAMAGES

1. Wendy is entitled to recover her damages alleged above from the Counter-Respondents, jointly and severally, and any and all other remedies available at law or equity,

including without limitation pre- and post-judgment interest pursuant to applicable law.

PRAYER FOR RELIEF

WHEREFORE, Wendy seeks a judgment against Counter Respondents:

1. For surcharge of the Trustees and recovery from Counter-Respondents, jointly and severally, for all actual, compensatory damages, including consequential damages, punitive damages, and pre-judgment and post judgment interest to which she is justly entitled, which amounts are in excess of \$10,000;

2. Finding Aiding and Abetting;

3. Finding Civil Conspiracy;

4. Finding Aiding and Abetting Breach of Fiduciary Duties;

5. Finding Fraud,

6. Compelling the Trustees to properly account;

7. For the removal of the Trustees and the appointment of one or more Independent Co-Trustees;

8. For a constructive trust and a finding of unjust enrichment and for the recoupment of any benefits conferred upon the Counter-Respondents as result of their service as Trustees and their wrongful actions;

9. Prohibiting the Counter-Respondents from paying their attorneys' fees and costs from the Trust, and an order disgorging the amounts already paid to their attorneys;

10. For the Counter-Respondents to reimburse the Trust for all legal fees, accountant fees and all costs paid from the Trusts;

11. For Declaratory Relief as requested in ¶ 119 herein;

12. Declaring the Consent Agreement signed by Wendy and Stan in association with the pay down of the Tahoe Property loan invalid and void;

13. Declaring the Purported Indemnification in favor of Todd void;

14. Declaring all actions taken by Todd, in his Individual and Trustee capacities, under the Purported Indemnification are invalid and should be set aside or, in the case of

obligations of Todd, that were avoided, in either his Individual and Trustee capacities, such obligations shall be enforced;

15. For reasonable attorney fees and costs of Wendy; and

16. For such other and further relief as the court deems proper.

Counter-Petitioner requests a jury trial.

AFFIRMATION STATEMENT

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this *First Amended Counter-Petition* filed by Wendy A. Jaksick in the above-captioned matter does not contain the social security number of any person.

DATED this 23rd day of February, 2018.

FOX ROTHSCHILD LLP

By: /s/ Mark J. Connot

MARK J. CONNOT (10010)
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and

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Attorneys for Respondent Wendy A. Jaksick

VERIFICATION

That undersigned verifies under penalty of perjury that after diligent inquiry of the facts and review of pertinent documents, the **FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** is true as to the best of his knowledge, except for those matters stated on information and belief, and that as to such matters the undersigned believes it to be true.

/s/ Zachary E. Johnson
Zachary E. Johnson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 23rd day of February, 2018, I served a true and correct copy of **FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** in the manners and at the locations described below by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada, to the attorney(s)/party(ies) listed below:

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the SSJ's Issue Trust and Samuel S.
Jaksick, Jr., Family Trust*

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/s/ Doreen Loffredo
An Employee of Fox Rothschild LLP

Exhibit “B”

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Attorneys for Respondent /Counter-Petitioner
Wendy A. Jaksick

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

In the Matter of the Administration of the
SSJ'S ISSUE TRUST,

CASE NO.: PR17-00445
DEPT. NO. 15

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST,

CASE NO.: PR17-00446
DEPT. NO. 15

WENDY JAKSICK,
Respondent and Counter-Petitioner,
v.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; AND STANLEY S. JAKSICK,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; KEVIN RILEY, INDIVIDUALLY AND
AS FORMER TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST AND TRUSTEE
OF THE WENDY A. JAKSICK 2012 BHC
FAMILY TRUST,

Petitioners and Counter-Respondents.

**NOTICE OF ERRATA REGARDING
WENDY A. JAKSICK'S FIRST
AMENDED COUNTER-PETITION TO
SURCHARGE TRUSTEES FOR
BREACH OF FIDUCIARY DUTIES,
FOR REMOVAL OF TRUSTEES AND
APPOINTMENT OF INDEPENDENT
TRUSTEE(S), AND FOR
DECLARATORY JUDGMENT AND
OTHER RELIEF**

On February 23, 2018, Respondent and Counter-Petitioner Wendy A. Jaksick, by and through her undersigned counsel, filed and served an Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief (the “Amended Counter-Petition”). The Verification attached to this Notice of Errata is hereby substituted for the Verification of Zachary E. Johnson attached to the Amended Counter-Petition filed in this action.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 26th day of December, 2018.

FOX ROTHSCHILD LLP

/s/ Mark J. Connot

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SPENCER & JOHNSON, PLLC

/s/ R. Kevin Spencer

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Attorneys for Respondent/Counter-Petitioner
Wendy A. Jaksick

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 26th day of December, 2018, I served a true and correct copy of **NOTICE OF ERRATA REGARDING WENDY A. JAKSICK'S FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** via the Court's efile and serve system to the following:

Kent Robison, Esq.
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Kimmel, as Co-Trustees of the SSJ's Issue
Trust and SSJ, Jr. Family Trust*

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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 26th day of December, 2018.

/s/ Doreen Loffredo
An Employee of Fox Rothschild LLP

VERIFICATION

I, WENDY A. JAKSICK, hereby verify under penalty of perjury that, (1) I reviewed the **FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** before it was filed on February 23, 2018, and (2) after a diligent inquiry of the facts and review of pertinent documents prior to the filing, as of the time of filing the **FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** was true to the best of my knowledge, except for those matters stated on information and belief, and as to such matters I believed them to be true.

DATED this 21 day of December, 2018.

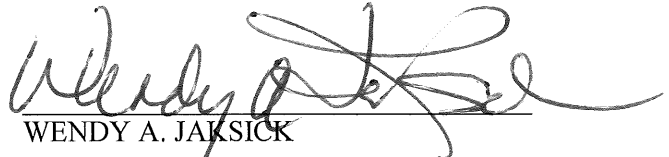

WENDY A. JAKSICK

Exhibit “C”

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Attorneys for Respondent Wendy A. Jaksick

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

In the Matter of the Administration of the
SSJ'S ISSUE TRUST,

CASE NO.: PR17-00445
DEPT. NO. 15

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST,

CASE NO.: PR17-00446
DEPT. NO. 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
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TRUST; AND STANLEY S. JAKSICK,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; KEVIN RILEY, INDIVIDUALLY
AND AS FORMER TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY TRUST
TRUSTEE OF THE WENDY A. JAKSICK 2012
BHC FAMILY TRUST, INCLINE TSS, LTD,
DUCK LAKE RANCH, LLC, AND SAMMY
SUPERCUB LLC, SERIES A

Petitioners and Counter-Respondents.

**SUPPLEMENT TO FIRST AMENDED
COUNTER PETITION TO
SURCHARGE TRUSTEES FOR
BREACH OF FIDUCIARY DUTIES,
FOR REMOVAL OF TRUSTEES AND
APPOINTMENT OF INDEPENDENT
TRUSTEE(S), AND FOR
DECLARATORY JUDGMENT AND
OTHER RELIEF**

Counter-Petitioner Wendy A. Jaksick (“Wendy” or “Counter-Petitioner”) by and through her attorneys of record, the law firm of Fox Rothschild LLP, files this *Supplement to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief* (the “Supplement”). Wendy hereby supplements her *First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief* and adds the following:

This Supplement joins Incline TSS, Ltd, Duck Lake Ranch, LLC and Sammy Supercub, LLC Series A (collectively the “Indispensable Parties”) as parties to this litigation pursuant to the Court *Order Granting in Part and Denying in Part Motion for Leave to Join Indispensable Parties* filed on January 16, 2019. Wendy complains against the Indispensable Parties and alleges as follows:

ADDITIONAL PARTIES

1. Incline TSS, Ltd., is a Nevada Limited Liability Company, is and was at all times relevant to the Petition, operating in the State of Nevada.

2. Duck Lake Ranch, LLC is a Nevada Limited Liability Company, is and was at all times relevant to the Petition, operating in the State of Nevada.

3. Sammy Supercub, LLC Series A, LLC is a Nevada Limited Liability Company, is and was at all times relevant to the Petition, operating in the State of Nevada.

4. The Court has proper venue pursuant to NRS 13.040.

ADDITIONAL GENERAL ALLEGATIONS

5. Tahoe Property. Wendy believes the transfer of the Tahoe Property to Incline TSS, Ltd. is invalid, contests the transfer and requests the Court to declare the transfer void and strike the deed from the official records of Washoe County and restore the ownership of the Tahoe Property to SSJ LLC and/or directly to the Family Trust. As Incline TSS, Ltd is the current record title holder, Wendy asserts that it is a necessary and indispensable party to this

1 action.

2 6. Upon information and belief, Wendy also believes Incline TSS, Ltd. has
3 received additional funds and other benefits from the Family Trust and/or entities owned in
4 whole or in part by the Family Trust as a result of Todd's self-dealing transactions that were
5 never fully disclosed to Wendy and were not in the best interest of the Family Trust.

6 7. Cattle Sale Agreement and Consent to Proposed Action ("Cattle Sale ACPA").
7 The Family Trust owned in excess of 500 cattle under one of its entities – White Pine Ranch
8 dba White Pine Lumber Co. According to Todd, White Pine Ranch owed a great deal of debt to
9 some unknown creditors as well as to one of his entities – Duck Lake Ranch. Upon information
10 and belief, Duck Lake Ranch is still the owner of a number of cattle previously owned by the
11 Family Trust.

12 8. Cattle had always been part of the family business and Sam Jaksick, Jr. intended
13 to keep that business running by leaving certain livestock holdings, including White Pine
14 Ranch, to the Family Trust. However, Todd decided that, rather than following Sam's desires,
15 that some of the cattle held by White Pine Ranch should be sold from the Family Trust to raise
16 funds to pay undisclosed debt(s) owed by White Pine Ranch.

17 9. In furtherance of the plan to remove cattle from the Family Trust, Todd as a
18 Trustee of the Family Trust, had an ACPA prepared that purported to outline the plan for
19 liquidation of the White Pine Ranch cattle from the Family Trust for purposes not fully
20 disclosed to Wendy, namely,

- 21 a. The Co-Trustees and the Primary and Secondary Beneficiaries of
22 the Family Trust have all agreed that it is in the best Interests of the
23 Family Trust and the Primary and Secondary Beneficiaries, and all
24 future beneficiaries of the Family Trust to sell all but 100 of the
25 best cattle on White Pine Ranch in order to pay White Pine Ranch
26 debt, past due expenses, and reserve funds for income taxes
27 resulting from the sale. The 100 reserved cattle will continue to be
28 run on the SJ Ranch to keep the traditional family cattle operation.
- b. The Primary and Secondary Beneficiaries are the sole adult
beneficiaries of the Family Trust who would otherwise be entitled
to a notice of proposed action under NRS 164.725 for the Co-
Trustees' proposed protection of the assets and operations of any
and all entities associated with the Family Trust, and they intend

for this Agreement to constitute their written and binding consents thereto.

- c. BASED ON THE FOREGOING, the Co-Trustees of the Family Trust, the Primary and Secondary Beneficiaries, and all their minor and unborn issue that they represent, hereby agree as follows: (1) Incorporation of Recitals. The Parties agree that the recitals set forth above are true and correct and hereby incorporated into this Agreement. (2) Agreement and Consent to Proposed Action. The Co-Trustees of the Family Trust and the Primary and Secondary Beneficiaries, and all the minor and unborn issue of the Primary and Secondary Beneficiaries, all agree and consent to use funds received by the Samuel S. Jaksick, Jr. Family Trust to sell all but 100 of the best cattle on White Pine Ranch in order to pay White Pine Ranch debt, past due expenses, and reserve funds for income taxes resulting from the sale. The 100 reserved cattle are run on the SJ Ranch in Eagleville, CA to keep the traditional family cattle operation.

10. Todd failed to fully disclose the details of the proposed transaction to Wendy and failed to satisfy all the requirements for a *Notice to Proposed Action*, namely, it did not provide the information required by NRS 164.725(4)(b) in that it does not include the name and mailing address of the trustee, (c) in that it does not contain the name and telephone number of a person with whom to communicate for additional information regarding the proposed action, (d) because it lacks information regarding the reasons for taking such action, (e) in that it does not state the time in which the proposed action will be taken, not less than 30 days after the notice is mailed or (f) in that, it does not state the date on or after which the proposed action is to be taken or is to become effective. See, NRS 164.725(4). It wholly fails as a notice of proposed action and Wendy requests the Court declare it insufficient to satisfy the requirements of full disclosure, the requirements of the statute and that it is invalid in all respects, to insulate Todd, as Co-Trustee of the Family Trust or Stan, as Co-Trustee of the Family Trust or both from liability for breaching their trust resulting from the Cattle Sale ACPA.

11. The Cattle Sale ACPA fails to disclose, at a minimum, which how many cattle were to be sold by White Pine Ranch, how much debt was owed by White Pine Ranch, how funds from the Family Trust were to be used in the sale of cattle by White Pine Ranch, and that

Todd's entity intended to and did obtain at least 100 of the cattle that were supposed to be sold to raise funds to pay debt. Further, following the Cattle Sale ACPA no accounting or disclosure was made of the amount of income received from the sale of the cattle, how much of the debt was satisfied using those proceeds, the full extent of Todd's benefit from the self-dealing transaction, the value of White Pine Ranch after the cattle sale, or the increase in value of the SJ Ranch upon receiving the 100 best cattle from White Pine Ranch as stated in the Cattle Sale ACPA, or the full effect and implication of the Cattle Sale ACPA to Wendy.

12. Upon information and belief, Wendy also believes Duck Lake Ranch, LLC has received additional funds, benefits and water rights from the Family Trust and/or entities owned in whole or in part by the Family Trust as a result of Todd's self-dealing transactions that were never fully disclosed to Wendy and were not in the best interest of the Family Trust.

13. Todd, as Co-Trustee of the Family Trust's (i) failure to fully disclose the amount of cattle to be sold under the Cattle Sale ACPA, (ii) failure to properly and fully disclose the effect of agreeing to sell all but 100 of the cattle owned by White Pine Ranch on the Family Trust, (iii) failure to disclose his decision to transfer 100 of the White Pine Ranch cattle to be sold to himself through Duck Lake Ranch, (iv) proceeding with the self-dealing transfer of approximately 100 of the White Pine Ranch cattle to himself through Duke Lake Ranch, (v) failure to account for the outcome of the cattle sale transaction in relation to White Pine Ranch and/or the Family Trust, and (vi) proceeding with other self-dealing transactions without providing full disclosure concerning same are breaches of trust that must be redressed.

14. Super Cub Agreement and Consent to Proposed Action ("Super Cub ACPA"). The Family Trust purportedly owed a debt of \$85,000 to Todd's entity Duck Lake Ranch. Upon information and belief, this debt was manufactured by Todd so that Duck Lake Ranch could acquire the plan without paying for it. Upon information and belief, the Sammy Super Cub was owned by Sammy Supercub, LLC Series A; which was an entity owned by the Family Trust.

15. Todd decided that, rather than following Sam's desires by retaining the Sammy

1 Super Cub airplane, the Family Trust should transfer the plan to Todd's entity – Duck Lake
2 Ranch – in order to satisfy the purported debt. While this may have been a viable method of
3 extinguishing a liability the Family Trust owed to Todd's entity, this debt was manufactured by
4 Todd. Even if the debt were valid, Todd's decision to sell the Sammy Sup Cub was based on a
5 low valuation of the plane and without fully disclosing the details of the debt to Wendy as
6 required by the self-dealing transaction.

7 16. In furtherance of the plan to pay off the purported Family Trust debt owed to
8 Duck Lake Ranch, Todd and Stan, as Co-Trustees of the Family Trust, had the Super Cub
9 ACPA prepared that purported to outline the plan for transferring the Sammy Super Cub
10 airplane from the Family Trust to Todd's entity, Duck Lake Ranch, for the purpose of
11 extinguishing the purported debt

12 17. Todd failed to fully disclose the details of the proposed transaction to Wendy
13 and failed to satisfy all the requirements for a *Notice to Proposed Action*, namely, it did not
14 provide the information required by NRS 164.725(4)(b) in that it does not include the name
15 and mailing address of the trustee, (c) in that it does not contain the name and telephone
16 number of a person with whom to communicate for additional information regarding the
17 proposed action, (d) because it lacks information regarding the reasons for taking such action,
18 (e) in that it does not state the time in which the proposed action will be taken, not less than 30
19 days after the notice is mailed or (f) in that, it does not state the date on or after which the
20 proposed action is to be taken or is to become effective. See, NRS 164.725(4). The ACPA
21 wholly fails as a notice of proposed action, fails to fully disclose the details of the self-dealing
22 transaction and Wendy requests the Court declare it insufficient to satisfy the requirements of
23 full disclosure, the requirements of the statute and that it is invalid in all respects, to insulate
24 Todd, as Co-Trustee of the Family Trust or Stan, as Co-Trustee of the Family Trust or both
25 from liability for breaching their trust resulting from the Super Cub ACPA.

26 18. The Super Cub ACPA fails to disclose, at a minimum, what the debt owed by
27 Sam Jaksick, Jr. to Duck Lake Ranch was created for, why it was due so rapidly and without
28

1 interest, why Todd, as manager of Duck Lake Ranch, was willing to accept an airplane in
2 payment of a cash debt, the full extent of Todd's benefit from the self-dealing transaction, why
3 the Family Trust was now liable for a personal debt of Sam, Jr. owed to Todd's company,
4 and/or what consideration was received by Sam, Jr. and whether or not it had been transferred
5 to the Family Trust, or the full effect and implication of the Super Cub ACPA to Wendy.

6 19. The Sammy Super Cub transaction fails because the purported debt upon which
7 the transaction was based was manufactured by Todd so that Todd's entity could acquire the
8 plane. To the extent the purported debt was valid, the failure of Todd, as Co-Trustee of the
9 Family Trust (i) to fully disclose the nature and details of the Super Cub Note as it concerned
10 the Family Trust and any liability it owed that was to be satisfied by the Super Cub ACPA, (ii)
11 to properly and fully disclose the effect the Family Trust surrendering assets to pay off a debt
12 owed by Sam, Jr. prior to his death, (iii) to disclose his decision to value the Super Cub
13 airplane at almost the exact amount of the debt owed by Sam, Jr. to Duck Lake Ranch, and (iv)
14 to account for the outcome of the self-dealing Super Cub transfer to his entity, Duck Lake
15 Ranch, and the release of any liability owed by the Family Trust are breaches of trust that must
16 be redressed.

17 DAMAGES

18 20. Wendy is entitled to recover her damages alleged above and in her First
19 Amended Counter-Petition from the Counter-Respondents and Indispensable Parties, jointly
20 and severally, and any and all other remedies available at law or equity, including without
21 limitation pre- and post-judgment interest pursuant to applicable law.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Wendy seeks a judgment against Counter Respondents:

- 3 1. Grant the relief requested in her First Amended Counter-Petition and this
4 Supplement;
- 5 2. Order any real or personal property transferred from either the Family or Issue
6 Trust to the Indispensable Parties be returned and/or reconveyed to the applicable trust and/or
7 entity;
- 8 3. For reasonable attorney fees and costs of Wendy; and
- 9 4. For such other and further relief as the court deems proper.

10 **AFFIRMATION STATEMENT**

11 Pursuant to NRS 239B.030

12 The undersigned does hereby affirm that this Supplement filed by Wendy A. Jaksick in
13 the above-captioned matter does not contain the social security number of any person.

14 DATED this 2nd day of February, 2019.

15 **FOX ROTHSCHILD LLP**

16
17 By: /s/ Mark J. Connot
18 MARK J. CONNOT (10010)
19 1980 Festival Plaza Drive, #700
20 Las Vegas, NV 89135
mconnot@foxrothschild.com

21 *and*

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27 kevin@dallasproabte.com
zach@dallasprobate.com
28 *Attorneys for Respondent Wendy A. Jaksick*

That undersigned verifies under penalty of perjury that after diligent inquiry of the facts and review of pertinent documents, the **SUPPLEMENT TO THE FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** is true as to the best of his knowledge, except for those matters stated on information and belief, and that as to such matters the undersigned believes it to be true.

Page 9 of 10

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 2nd day of February, 2019, I served a true and correct copy of **SUPPLEMENT TO THE FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** in the manners and at the locations described below by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada, to the attorney(s)/party(ies) listed below:

Kent Robison, Esq.
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*Attorneys for Petitioners/Co-Trustees
Todd B. Jaksick and Michael S. Kimmel of
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Jaksick, Jr., Family Trust*

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Attorney for Stanley S. Jaksick

/s/ Amanda Hunt
An Employee of Fox Rothschild LLP

Exhibit “D”

CASE NO. PR17-00445

CONS: TRUST: SSJ'S ISSUE TRUST

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

<p>2/13/19 HONORABLE DAVID A. HARDY Dept. No. 15 A. Dick (Clerk) C. Wolden (Reporter)</p>	<p><u>ORAL ARGUMENTS</u> Donald Lattin, Esq. represented Todd Jaksick, in a co-trustee capacity, Michael Kimmel, and Kevin Riley who were present seated in the gallery. Kent Robison, Esq. and Therese Shanks, Esq. represented Todd Jaksick, individually, who was present seated in the gallery. Adam Hosmer-Henner, Esq. and Philip Kreitlein, Esq. represented Stanley Jaksick, individually, who was present seated in the gallery. Kevin Spencer, Esq, Zachary Johnson, Esq., and Mark Connot, Esq. represented Wendy Jaksick who was present seated in the gallery. 8:31 a.m. – Court convened with counsel and respective parties present. COURT ORDERED: Wendy's supplemental declaration to continue trial DENIED; jury trial will proceed as scheduled tomorrow. Court identified the remaining legal claims: 1. Breach of Fiduciary Duties; 2. Civil Conspiracy Aiding and Abetting; 3. Aiding and Abetting Breach of Fiduciary Duties; and 4. Fraud. Court described parameters for jury selection and voir dire examination as it relates to its pretrial Order. COURT ORDERED: Counsel each, or collectively, shall provide (slip under chambers door) proposed voir dire examination questions/topics no later than 8:00 a.m. on February 14, 2019. Court requested counsel adhere to Rule 1G even though trial statements have been dispensed. Counsel Connot addressed the Court requested opposing counsel share topics for voir dire examination - GRANTED. Counsel Robison addressed the Court indicated he will share topics for voir dire examination with opposing counsel. Court stated its MIL disclaimer, to include, it prefers to avoid rigid boundaries and any inadvertent violation does not automatically result in a mistrial. Court announced its inclinations as follows: COURT ORDERED: Todd's motion to exclude CPA Frank Campagna DENIED WITHOUT PREJUDICE; Frank Campagna prohibited to invade the law and instruct the Jury. Regarding Wendy's Omnibus MIL, Court stated its inclinations as follows:</p>	<p>Feb. 14, 2019 9:00 a.m. Jury Trial (2 weeks) <i>*Counsel and Parties shall arrive at 8:30 a.m.*</i> TBD Non-Jury Trial (2 weeks)</p>
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1. **COURT ORDERED:** Reference to motions in limine is generally granted with exception.
2. **COURT ORDERED:** Referring to Hascheff as Judge shall not be overused; counsel shall refer to Judge Hascheff as “Mr. Hascheff” but there is no restriction to introduce Mr. Hascheff as a judge. Court indicated it does not intend to scrub who Pierre Hascheff is.
3. **COURT ORDERED:** Reference to suicide of Ron Kreske GRANTED.
4. **COURT ORDERED:** Reference to Wendy’s rehab DENIED IN PART/GRANTED IN PART; Court indicated it does not intend to scrub Wendy’s life story but it will disallow testimony/evidence participation indicating her participation in rehab to become a PBA or character assassination. **COURT FURTHER ORDERED:** Evidence/testimony that Wendy was in rehab for compulsive lying is PROHIBITED.
5. **COURT ORDERED:** Accusations that Wendy murdered Sam DENIED.
6. **COURT ORDERED:** Reference to Wendy’s request that Todd submit to DNA testing or belief that Todd is not Sam’s biological child DENIED; Court indicated it does not intend to scrub Todd’s life story but it will disallow testimony/evidence to become character assassination.
7. **COURT ORDERED:** Personal beliefs or opinions of counsel DENIED.
8. **COURT ORDERED:** Derogatory statements about attorneys DEFERRED; reference to counsel from Texas is permitted but character assassination evidence, if any, will be prohibited.
9. **COURT ORDERED:** Reference to number of attorneys DEFERRED.
10. **COURT ORDERED:** Reference to Wendy’s fee agreement GRANTED.
11. **COURT ORDERED:** Introduction of undisclosed evidence or records DEFERRED.
12. **COURT ORDERED:** Testimony of undisclosed lay witnesses DEFERRED WITH INCLINATION TO GRANT.
13. **COURT ORDERED:** Testimony of undisclosed expert witnesses DEFERRED WITH INCLINATION TO GRANT.
14. **COURT ORDERED:** Testimony of unqualified expert witnesses DEFERRED WITH INCLINATION TO GRANT.
15. **COURT ORDERED:** Reference to objections DEFERRED WITH INCLINATION TO DENY.
16. **COURT ORDERED:** Introduction of self-serving evidence DEFERRED WITH INCLINATION TO DENY.

17. **COURT ORDERED:** Use of privileged information DEFERRED.

18. **COURT ORDERED:** Evidence that would contradict stipulated matters DEFERRED.

19. **COURT ORDERED:** Statements of legal conclusions GRANTED.

20. **COURT ORDERED:** Reference to settlement negotiations DEFERRED/UNDER ADVISEMENT.

21. **COURT ORDERED:** Statements of superiority/inferiority of technology, charts, or demonstrative evidence used by any party DEFERRED BUT GENERALLY GRANT.

22. **COURT ORDERED:** Reference to prior rulings in this matter DEFERRED WITH INCLINATION TO GRANT.

Regarding Todd's Omnibus MIL, Court stated its inclinations as follows:

1. **COURT ORDERED:** Excluding testimony and report of Gary Stolbach DENIED; however scope may be limited. Court indicated cross examination may be rich should Gary Stolbach testify to Sam's thoughts.

2. **COURT ORDERED:** Excluding evidence of discovery disputes DEFERRED.

3. **COURT ORDERED:** Excluding Sam's medical record INCLINED TO GRANT; counsel shall seek leave before introducing said evidence.

Counsel Connot addressed the Court argued in opposition of said motion as certain dates regarding medical treatment may be important; counsel Robison did not object.

COURT FURTHER ORDERED: Evidence regarding certain dates pertaining to medical treatment PERMITTED.

5. **COURT ORDERED:** Excluding witnesses not disclosed GENERALLY GRANTED.

6. **COURT ORDERED:** Excluding documents not disclosed GENERALLY GRANTED.

7. **COURT ORDERED:** Excluding use of words "theft" and "thief" DEFERRED WITH INCLINATION TO DENY.

8. **COURT ORDERED:** Excluding expert testimony of R. Bruce Wallace, Jr. UNLIKELY TO STRIKE.

9. **COURT ORDERED:** Excluding expert testimony of Frank Campagna UNLIKELY TO STRIKE.

10. **COURT ORDERED:** Excluding any expert from testifying outside the scope of their expert report INCLINED TO DENY; counsel shall seek leave outside the presence of the Jury.

11. **COURT ORDERED:** Precluding any party from introducing evidence relating solely to equitable claims to jury GRANTED; boundary to be determined during trial.

12. Counsel Robison argued in support of MIL excluding Wendy from evidence related to undisclosed damages. Counsel Connot argued in opposition of said motion.

Sidebar conducted between Court and counsel, off the record.

Counsel Robison further argued in support.

Counsel Connot further argued in opposition.

COURT ORDERED: Excluding Wendy from evidence related to undisclosed damages DEFERRED.

13. Counsel Robison argued in support of MIL excluding evidence of settlements among the parties.

Counsel Lattin addressed the Court concurred with counsel Robison and requested the settlement conference be held as confidential.

Counsel Spencer argued in opposition of said motion.

Court inquired counsel Spencer.

Counsel Spencer answered the Court's questioning and further argued in opposition.

COURT ORDERED: MIL excluding evidence of settlements among the parties UNDER ADVISEMENT; details and process of settlement appear inadmissible; however, the fact of settlement is UNDER ADVISEMENT.

10:03 a.m. – Brief recess.

10:13 a.m. – Court reconvened with counsel and respective parties present.

Counsel Connot advised Todd's omnibus MIL #4 excluding evidence of Sam's alleged lack of capacity or competency is unopposed.

Regarding Stan's Omnibus MIL, Court stated its inclinations as follows:

1. **COURT ORDERED:** Reference to "trustees" GRANTED; counsel shall each be careful and deliberate to delineate among trustees.

2. Counsel Hosmer-Henner argued in support of MIL reference to filings, allegation, and substantive matters related to Stan's divorce.

Counsel Connot advised he does not intend to present allegations leading to Stan's divorce.

COURT ORDERED: Divorce as a fact itself is relevant as to how it effects the estate; presentation of any evidence beyond that aforementioned scope is RESERVED.

3. **COURT ORDERED:** Evidence related to Stan's corporate entities (Lakeridge, Toiyobe, etc) INCLINED TO DENY. Counsel Johnson addressed the Court argued in support Wendy's Motion in Limine to Preclude Reference to Prior Bad Acts as it relates to criminal activity.

Court inquired counsel Johnson.

Counsel Johnson answered the Court's questioning and further argued in support of said motion.

Counsel Robison argued in opposition of said motion.

Counsel Johnson further argued in support of said motion.

COURT ORDERED: Exhibits 27B, 27H, 27I, and 27P shall be inadmissible unless counsel seek leave and is otherwise ordered by this Court.

COURT FURTHER ORDERED: There is no restriction on questioning relating Wendy's criminal activity; however, the documents themselves, previously identified, are restricted until further order.

Counsel Lattin argued in opposition of Wendy's Motion in Limine to Preclude Reference to Prior Bad Acts as it relates to debt.

Court indicated it is the letter itself that is at issue.

Counsel Johnson argued in support of said motion.

COURT ORDERED: Exhibit 27C, Exhibit 27D, and Exhibit 27A shall be inadmissible unless counsel seek leave and is otherwise ordered by this Court.

COURT ORDERED: Upon execution of proper procedure and if presented during trial Exhibit 27E is admissible.

COURT ORDERED: Exhibit 27F, Exhibit 27G, Exhibit 27L, and Exhibit 27M are each NOT ADMITTED PRETRIAL.

Counsel Robison advised Todd filed a notice of clarification regarding exhibits and stated objections which may resolve Todd's objections to Wendy's pretrial disclosures.

Counsel Connot concurred with counsel Robison's representation and advised he will provide a list of Wendy's stipulated exhibits to opposing counsel.

COURT ORDERED: Pretrial disclosure objections DEFERRED.

COURT FURTHER ORDERED: Any reference to disputed evidence/exhibits shall be PROHIBITED DURING OPENING STATEMENTS.

Counsel Connot requested reprieve Thursday, February 21, 2019, around 10:00 a.m. as he is needed elsewhere – **GRANTED.**

Counsel Robison request opposing counsel provide witness sequencing 24 hours in advance of an individual testifying.

Counsel Connot did not object to counsel Robison's request so long as it is reciprocal.

COURT ORDERED: Stipulation to disclose witness sequencing 24 hours in advance GRANTED.

Counsel Lattin indicated Kevin Riley and Michael Kimmel may be absent during portions of the trial.

Court stated it does not have an opinion regarding parties' absence during trial.

Discussion ensued regarding length of trial.

11:03 a.m. – Lunch recess.

2:02 p.m. – Court reconvened with counsel and respective parties present.

Counsel Robison argued in support Todd and Kimmel's Motion in Limine to Exclude Expert Witnesses or, in the Alternative, Strike Expert Witness R. Bruce Wallace, Jr.

Counsel Spencer argued in opposition of said motion.

COURT ORDERED: Todd and Kimmel's Motion in Limine to Exclude Expert Witnesses or, in the Alternative, Strike Expert Witness R. Bruce Wallace, Jr. UNDER ADVISEMENT.

Counsel Connot argued in support of Wendy's Motion to Exclude Non-Retained Experts from Testifying as Experts identifying the importance of Robert Legoy and Brian McQuaid.

Counsel Robison argued in opposition of said motion and indicated Robert Legoy will testify the end of February 2019 thus allowing time for opposing counsel to obtain the information they are requesting.

Counsel Lattin advised there was a good faith objection lodged against Robert Legoy's subpoena which was not addressed until December 2018.

Counsel Connot presented a civil compromise, in that, he will provide opposing counsel specific page numbers containing Robert Legoy's difficult to read text/handwritten notes.

Counsel Lattin indicated he will make Robert Legoy available telephonically to answer/provide clarification opposing counsel's questions.

COURT ORDERED: Civil compromise regarding Robert Legoy's handwritten notes GRANTED.

COURT FURTHER ORDERED: Wendy's Motion to Exclude Non-Retained Experts from Testifying as Experts DENIED.

Regarding settlement; **COURT ORDERED:** Settlement negotiations, including statements, procedural steps, process, etc., between Todd and Stan shall be EXCLUDED. Further, the fact of settlement shall be PERMITTED.

Court indicated it is open to avoiding the use of the word "settlement" and possibly replacing it with "resolving differences."

Court further indicated it is not willing to go as far as Wendy requests in regards to settlement discussions but evidentiary/testimony boundaries will need to be defined; therefore, **COURT ORDERED:** Counsel shall seek leave outside the presence of the Jury to present evidence/questioning regarding details of Todd and Stan's settlement agreement, if deemed appropriate.

Counsel Spencer inquired for clarification if general questions such as the harm/benefit of said agreement as it relates to Wendy.

Counsel Robison advised said agreement may be both beneficial and harmful to Wendy, in that, settlement was conducted in her absence.

Counsel Connot argued that said settlement is self-dealing and harmful to Wendy. Counsel indicated this Court should review the agreement.

Counsel Robison conceded there is an incentive to defeat Wendy at trial.

Court stated it is not willing to open the actual agreement; however, some questioning about why Todd and Stan resolved their difference(s) and some questioning about the benefits/harms of said settlement may be appropriate and may be permitted at trial. However, Court reserved ruling further until the presentation of evidence.

COURT ORDERED: Counsel and parties shall arrive at 8:30 a.m. on Thursday, February 14, 2019.

COURT FURTHER ORDERED: Matter continued for trial by Jury. 2:40 p.m. – Court stood in recess.

Exhibit “E”

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SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

In the Matter of the Administration of the
SSJ'S ISSUE TRUST,

CASE NO.: PR17-00445
DEPT. NO. 15

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST,

CASE NO.: PR17-00446
DEPT. NO. 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; AND STANLEY S. JAKSICK,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; KEVIN RILEY, INDIVIDUALLY AND
AS FORMER TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST TRUSTEE OF
THE WENDY A. JAKSICK 2012 BHC FAMILY
TRUST, INCLINE TSS, LTD, DUCK LAKE
RANCH, LLC, AND SAMMY SUPERCUB LLC,
SERIES A

Petitioners and Counter-Respondents.

**SECOND SUPPLEMENT TO FIRST
AMENDED COUNTER PETITION TO
SURCHARGE TRUSTEES FOR
BREACH OF FIDUCIARY DUTIES,
FOR REMOVAL OF TRUSTEES AND
APPOINTMENT OF INDEPENDENT
TRUSTEE(S), AND FOR
DECLARATORY JUDGMENT AND
OTHER RELIEF**

Counter-Petitioner Wendy A. Jaksick (“Wendy” or “Counter-Petitioner”) by and through her attorneys of record, the law firm of Fox Rothschild LLP, files this *Second Supplement to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief* (the “Second Supplement”). Wendy hereby supplements her *First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief* and adds the following:

This Supplement adds additional information in support of the claims in Wendy’s *First Amended Counter-Petition* and *First Supplement* as follows:

ADDITIONAL GENERAL ALLEGATIONS

1. Todd, Stan and Michael are currently Co-Trustees of the Samuel S. Jaksick, Jr. Family Trust (the “Family Trust”). The terms of the Family Trust establish subtrusts for the benefit of Wendy (the “Wendy Subtrust”), Todd (the “Todd Subtrust”) and Stan (the “Stan Subtrust”). Todd and Stan are Co-Trustees of the Wendy Subtrust. Todd is a Trustee of the Todd Subtrust and Stan is a Trustee of the Stanley Subtrust.

2. The Trustees have failed to provide Wendy full disclosure concerning the assets and their administration of the Family Trust and the Wendy Subtrust, including failing to provide timely and sufficient accountings. Pursuant NRS 165.1214(1), the Family Trust Co-Trustees and Subtrust Co-Trustees were required to prepare and deliver annual accountings for the period January 1, 2018 through December 31, 2018 within ninety (90) days after the end of the period of account, which was March 31, 2019. Paragraph J in Section IV of the Family Trust provides trust accountings are required annually as follows:

ACCOUNTINGS. During the lifetime of the Grantor, the Trustee is required to render accountings only to the Grantor; and the accountings must be rendered at least annually. **Following the death of the Grantor, the Trustee of each trust must render accountings at least annually to each beneficiary of the trust who is entitled to receive current discretionary or mandatory distributions from income or principal, and to each living remainderman who would then be entitled to a distribution of income or principal if the event requiring final distribution**

of the trust (such as the attainment by the income beneficiary of a specified age or the death of the last living income beneficiary) had then occurred.

Family Trust, p. 26. (emphasis added).

3. To date, the Trustees have not produced and delivered the 2018 annual accountings for the Family Trust and the Wendy Subtrust as required by NRS 165.1214(1) and the terms of the Trusts. The Trustees' failure to do so is a breach of the terms of the Family Trust and a per se breach of the Trustees' fiduciary duties.

4. Since Sam Jaksick's death in April 2013, the Trustees have never timely returned any of the required annual accountings. The following chart confirms the Trustees' repeated failure to produce and deliver the required annual accountings timely:

Family Trust Accountings

End of Accounting Year	Deadline to Deliver Accounting	Date of Accounting	Late
March 31, 2014	June 29, 2014	January 22, 2015 ¹	15 Months
March 31, 2015	June 29, 2015	October 18, 2015 ²	3 Month, 19 Days
March 31, 2016	June 29, 2016	January 21, 2017 ³	6 Months, 23 Days
March 31, 2017	June 29, 2017	August 6, 2018 ⁴	13 Months, 8 Days
December 31, 2018	March 31, 2019	Never Produced	1 Month

Wendy Subtrust Accountings

¹ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees, but the Accounting was not actually provided to Wendy until October 2015, which is over fifteen (15) months after it was due.

² This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. Wendy received it sometime after this date.

³ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. Wendy received it sometime after this date.

⁴ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. Wendy received it sometime after this date.

End of Accounting Year	Deadline to Deliver Accounting	Date of Accounting	Late
March 21, 2013	June 29, 2014 ⁵	January 28, 2017 ⁶	30 Months, 30 Days
December 31, 2017	March 31, 2018	February 11, 2019	10 Months, 11 Days
December 31, 2018	March 31, 2018	Never Produced	1 Month

5. After failing to timely produce the 2017 Annual Subtrust Accounting, Wendy sent multiple written demands to the Subtrust Trustees to produce and deliver the accounting. See October 25, 2018 correspondence attached hereto as *Exhibit "1"* and January 4, 2019 correspondence attached hereto as *Exhibit "2"*. , During the deposition of Kevin Riley⁷ on January 5, 2019, counsel for the Subtrust Co-Trustees admitted on the record that the 2017 Annual Subtrust Accounting did not exist, and the Subtrust Co-Trustees had no obligation to produce it. Wendy's *Emergency Motion to Compel Production of Subtrust Accountings*, P. 5, ¶ 11, which is attached hereto as *Exhibit "3"*. Such a statement by Subtrust Co-Trustees' counsel was an admission that the Subtrust Co-Trustees had breached the terms of the Trust and their fiduciary duties and were willfully choosing to continue to refuse to comply with their obligations.

6. That same day, Kevin Riley testified during his deposition he could prepare and produce the 2017 Subtrust Annual Accounting within a short period of time but had not done so because the Subtrust Co-Trustees had not requested he prepare it. See Wendy's *Emergency Motion to Compel Production of Subtrust Accountings*, P. 6, ¶ 13 (*Exhibit "3"*). Subtrust Co-Trustees'

⁵ The terms of the Annual Accounting state that it is for the period March 21, 2013 through December 31, 2016. It appears the earliest transaction in the Annual Accounting occurred on June 4, 2014. Therefore, at the latest, the end of the first Annual Accounting would be June 3, 2015, requiring the production and delivery of the first Annual Accounting by September 1, 2015. The first Annual Accounting was delivered over seventeen (17) months after this date.

⁶ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. Wendy received it sometime after this date.

⁷ Kevin Riley is the accountant for the Family Trust and the Wendy Subtrust.

counsel's admission, when considered in conjunction with Mr. Riley's statement that the accounting could be prepared and produced quickly if the Subtrust Co-Trustees requested it, confirms the Subtrust Co-Trustees' had no legitimate excuse for not timely producing the accounting and their actions were in bad faith. Instead of complying with their obligations to fully disclose to their beneficiaries, the Subtrust Co-Trustees simply failed to provide the accountings as required by the Trusts and upon Wendy's repeated requests. The mere fact that the Trustees had information and knowledge that was not disclosed to Wendy gave them an advantage in this litigation and any settlement negotiations by the Parties.

7. The Subtrust Co-Trustees' willful and bad faith breach of trust and their fiduciary duties in refusing to return the 2017 Annual Accounting left Wendy with no choice but to file her *Emergency Motion to Compel Production of Subtrust Accountings from Todd B. Jaksick and Stanley S. Jaksick, as Co-Trustees of the Samuel S. Jaksick, Jr. Family Trust and Subtrusts, and Request for Reduction of Co-Trustees' Compensation and Reimbursement of Costs* (the "Emergency Motion to Compel Accountings") (*Exhibit "3"*). The Subtrust Co-Trustees' only argument in response to Wendy's *Emergency Motion to Compel Accounting*, was that Wendy's motion was an improper mechanism/procedure to complain about the Subtrust Co-Trustees' failure to return the required accounting. Co-Trustee Stanly Jaksick's opposition, which was joined by Todd Jaksick, stated as follows:

"Wendy Jaksick cannot compel an account to be created and delivered to her via a motion to compel, on the eve of trial, when the statutory remedy for a beneficiary, which Wendy Jaksick is not, is to file a petition to be resolved at a hearing after all interested parties have been given notice.

...

If Wendy Jaksick believes that Stanley Jaksick has improperly denied her an accounting for the Stanley Subtrust, her remedy is to petition the court or amend her Counter-Petition, not to file a Motion to Compel. This is not a discovery matter but a substantive claim held by Wendy Jaksick."

Stanley Jaksick's Opposition to Emergency Motion to Compel Production of Subtrust Accountings From Todd B. Jaksick and Stanely S. Jaksick, as Co-Trustees of the Samuel S. Jaksick, Jr. Family Trust and Subtrusts and Request for Reduction of Co-Trustees Compensation and Reimbursement of

1 *Costs*, P. 2, Lines 19-22 & P. 3, Lines 9-12 (*Exhibit "4"*). Tellingly, the Subtrust Co-Trustees did not
2 even attempt to argue Wendy was not entitled to the 2017 Annual Wendy Subtrust Accounting or
3 that they had grounds for not producing such accounting.

4 8. Ultimately, on February 6, 2019, Judge Hardy entered an Order requiring the Subtrust
5 Co-Trustees to produce and deliver the 2017 Annual Subtrust Accounting to Wendy no later than
6 February 11, 2019, at 5:00 p.m., just two (2) days before the start of trial in the pending litigation.
7 This accounting should have been provided to Wendy on or before March 31, 2018, separate and
8 apart from any litigation or discovery obligation. There is no question that the Trustees gained an
9 advantage in the litigation to the detriment of Wendy by purposefully refusing to timely produce the
10 accounting for over ten (10) months until they were ordered to do so after discovery had closed.

11 9. Having consistently failed to return required accountings timely or at all and never
12 suffering any repercussions for same, Wendy anticipated the Trustees would not timely deliver the
13 required 2018 annual accountings. As a result, Wendy's counsel sent correspondence on January 4,
14 2019, demanding the delivery of the accountings. A true and correct copy of the January 4, 2019
15 correspondence is attached hereto as *Exhibit "2"*. On March 15, 2019, just fifteen (15) days prior to
16 the deadline for Trustees to deliver the annual accountings, Wendy's counsel sent additional
17 correspondence demanding the annual accountings be prepared and delivered on or before the March
18 31, 2019 deadline provided by NRS 165.1214(1). A true and correct copy of the March 15, 2019
19 correspondence is attached hereto as *Exhibit "5"*.

20 10. Within fourteen (14) days of the receipts of the written demands, NRS 165.141(2)
21 requires that the Trustees notify Wendy of the Trustees' acceptance of or rejection of the demand
22 or that the trustees intended to seek instructions from the court concerning the demand. NRS
23 165.141(2). Wendy's counsel never received a response to the demands for the timely delivery
24 of the 2018 annual accountings included in her January 4, 2019 and March 15, 2019
25 correspondence. Because Trustees did not communicate an acceptance, rejection or intention to
26 seek instructions from the court, Trustees are deemed to have rejected Wendy's demand. NRS
27 165.141(4).
28

1 11. Once again, the Trustees have no grounds for failing to timely return the accountings
2 and have no grounds to have rejected Wendy's demand for the timely delivery of the accountings.
3 If legitimate grounds existed, the Trustees, as Wendy's fiduciaries, have an obligation to
4 communicate such grounds to Wendy. Instead, the Trustees once again chose to remain silent and
5 force Wendy to jump through procedural hoops to attempt to obtain the accountings, knowing it was
6 likely Wendy would not be able to compel or otherwise obtain the accountings prior to the
7 commencement of the second phase of trial on May 13, 2019.

8 12. The only explanation for Trustees' failure to timely return the accountings appears to
9 be Trustees' effort to provide Wendy as little information as possible concerning the administration
10 and assets of the Trusts in order to gain a tactical advantage in the ongoing litigation with Wendy and
11 in settlement negotiations associated with same. Co-Trustees' efforts to negotiate a settlement with
12 Wendy when they have refused to provide her information and accountings, which they are required
13 to deliver by law and the very terms of the Trusts, are separate breaches of their fiduciary duties. Not
14 only are such actions breaches of the Trustees' duty to disclose and account, they are also breaches
15 of Trustees' duty of loyalty, duty not to act with bias, and duty not to self-deal. Based on Trustees'
16 actions, it is clear Trustees continue to assume that only two possible outcomes may result from their
17 behavior: (1) Wendy fails to force Trustees to produce and deliver the required accountings and never
18 receives the benefit of the information contained therein or (2) after much delay, Wendy is able to
19 force the Trustees to produce and deliver the required accountings late in the discovery process or
20 after the discovery has closed and Wendy loses the benefit of that information in the discovery
21 process and in understanding the Trustees' administration of the Trusts. To date, there has not been
22 any downside or repercussions for Trustees' repeated actions and continued gamesmanship.

23 13. There is no excuse or explanation for the Trustees' actions. They are intentional, in
24 bad faith and aimed at harming Wendy and benefitting the Trustees at Wendy's expense. The
25 Trustees must be compelled to produce and deliver the required accountings and to seek other relief
26 to stop Trustees repeated and continued breaches of trust and abuse of Wendy.

27 14. Additionally, during the jury trial, the Trustees and their counsel represented to
28

1 the Jury that trusts and entities benefiting Wendy were funded or were about to be funded with
2 approximately \$4 million in value to provide for Wendy in accordance with Sam Jaksick's Estate
3 plan. In support of this representation, Todd's counsel showed the Jury the demonstrative Exhibit
4 "561". A copy of the demonstrative Exhibit "561" is attached hereto as *Exhibit "6"*. This
5 representation was very surprising to Wendy and her counsel because it was the first time they heard
6 it and it was contrary to the information previously disclosed to Wendy by the Trustees.

7 15. Throughout the administration of the Trusts, the Trustees (or Kevin Riley on behalf
8 of the Trustees) downplayed any potential for Wendy to receive distributions for support or
9 maintenance from the Trusts, while hiding information from Wendy inconsistent with this position.
10 The Trustees represented to Wendy that the Family Trust was essentially insolvent, and it was likely
11 that Wendy's Subtrust would only receive interests in ranch land or entities owning ranch land. Prior
12 to February 11, 2019⁸, the only disclosure Wendy received from the Co-Trustees regarding the
13 value of the assets in her Subtrust was the accounting for the period ending December 31, 2016.
14 This accounting indicated that the total value of the assets on hand as of December 31, 2016 was
15 approximately \$136,000. Additionally, Todd made it clear to Wendy that the Issue Trust could not
16 make distributions or buy and maintain houses for any of the beneficiaries.

17 16. If the Trustees' representation concerning the approximately \$4 million in value was
18 true and not made for the purpose of misleading the jury, the Trustees should be (i) able to provide
19 Wendy an understanding of the basis for the representation and (ii) in a position to immediately make
20 distributions for Wendy's care and support. Accordingly, on March 20, 2019, Wendy's counsel sent
21 correspondence to Trustees' counsel seeking a detailed explanation and full disclosure confirming
22 that trusts benefiting Wendy were funded or were about to be funded with \$4 million in assets
23 available to provide for Wendy. A copy of the March 20, 2019 correspondence is attached hereto as
24 *Exhibit "7"*. In their March 20, 2019 correspondence, Wendy's counsel also requested that
25 immediate distributions be made to Wendy for her health, education, maintenance and support or

26 _____
27 ⁸ The Co-Trustees delivered the 2017 Annual Wendy Subtrust Accounting on February 11, 2019,
28 over ten (10) months after it was due and had to be compelled by Court order and just two (2)
days before the commencement of the jury trial in this matter.

1 that Trustees provide an explanation why immediate distributions could not be made. Trustees'
2 counsel never responded to the March 20, 2019 correspondence or provided the requested disclosure.
3 Additionally, the requested distributions for Wendy's benefit were never made and no explanation
4 has been provided for Trustees' refusal to make the requested distributions.

5 **DAMAGES**

6 Wendy is entitled to recover her damages alleged above, in her *First Amended Counter-*
7 *Petition*, her Supplement, and her *Second Supplement* from the Counter-Respondents and
8 Indispensable Parties, jointly and severally, and any and all other remedies available at law or
9 equity, including without limitation pre- and post-judgment interest pursuant to applicable law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Wendy seeks a judgment against Counter Respondents as follows:

- 12 1. Grant the relief requested in her *First Amended Counter-Petition*, her *Supplement*
13 and this *Second Supplement*;
- 14 2. Compel the production and delivery of accountings;
- 15 3. Reduce or deny Trustees' compensation;
- 16 4. Surcharge Trustees;
- 17 5. Award Wendy's attorney's fees;

18 //

19 //

20 //

21 //

22 //

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24 //

25 //

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27 //

28

6. For reasonable attorney fees and costs of Wendy; and
7. For such other and further relief as the court deems proper.

AFFIRMATION STATEMENT

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this *Second Supplement* filed by Wendy A. Jaksick in the above-captioned matter does not contain the social security number of any person.

DATED this 9th day of May, 2019.

FOX ROTHSCHILD LLP

/s/ Mark J. Connot

Mark J. Connot (10010)
1980 Festival Plaza Drive, #700
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SPENCER & JOHNSON, PLLC

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Attorneys for Respondent Wendy A. Jaksick

VERIFICATION

That undersigned verifies under penalty of perjury that after diligent inquiry of the facts and review of pertinent documents, the **SECOND SUPPLEMENT TO THE FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** is true as to the best of her knowledge, except for those matters stated on information and belief, and that as to such matters the undersigned believes it to be true.

DATED this 9th day of May, 2019.

/s/ Wendy Jaksick
Wendy Jaksick

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 9th day of May, 2019, I served a true and correct copy of **SECOND SUPPLEMENT TO THE FIRST AMENDED COUNTER-PETITION TO SURCHARGE TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, FOR REMOVAL OF TRUSTEES AND APPOINTMENT OF INDEPENDENT TRUSTEE(S), AND FOR DECLARATORY JUDGMENT AND OTHER RELIEF** via the Court's electronic file and serve system as follows:

Kent Robison, Esq.
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Reno, NV 89505
Attorneys for Stanley S. Jaksick

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 9th day of May, 2019.

/s/ Doreen Loffredo
An Employee of Fox Rothschild LLP

LIST OF EXHIBITS

<u>NO.</u>	<u>DOCUMENT</u>	<u>PAGES</u>
1	Letter dated October 25, 2018	1
2	Letter dated January 4, 2019	3
3	Wendy Jaksick's Emergency Motion to Compel Production of Subtrust Accountings	102
4	Stanley Jaksick's Opposition to Emergency Motion to Compel Production of Subtrust Accountings From Todd B. Jaksick and Stanely S. Jaksick, as Co-Trustees of the Samuel S. Jaksick, Jr. Family Trust and Subtrusts and Request for Reduction of Co-Trustees Compensation and Reimbursement of Costs,	5
5	Letter dated March 15, 2019	5
6	Exhibit 561	1
7	Letter dated March 20, 2019	3

Exhibit “F”

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the Case No. PR17-00445
SSJ'S ISSUE TRUST.

_____ /

CONSOLIDATED
In the Matter of the Administration of the Case No. PR17-00446
SAMUEL S. JAKSICK, JR. FAMILY TRUST. Dept. No. 15

_____ /

ORDER AFTER EQUITABLE TRIAL

On August 2, 2017, the trustees of the SSJ's Issue Trust ("Issue Trust") and the Samuel S. Jaksick, Jr. Family Trust ("Family Trust") filed Petitions for Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters.¹ October 10, 2017, Wendy Jaksick filed an Opposition and Objection to the Petition. On January 19, 2018, Wendy filed a Counterpetition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief, which was subsequently amended on February 23, 2018. Family Trust co-trustee Stan Jaksick filed an Objection to Approval of Accountings and Other Trust Administration Matters on October 10, 2017. Todd Jaksick, as trustee of the Issue Trust

¹ Family Trust co-trustee Stan Jaksick did not join in the petitions.

1 and co-trustee of the Family Trust, and Michael Kimmel as co-trustee of the Family Trust,
2 are represented by Donald Lattin and Carolyn Renner. Todd is represented in his
3 individual capacity by Kent Robison. Mr. Robison also represents Duck Lake Ranch, LLC,
4 Incline TSS, Ltd., and Sammy Supercub, LLC. Stanley Jaksick, as co-trustee of the Family
5 Trust, is represented by Adam Hosmer-Henner and Philip Kreitlein. Wendy is
6 represented by Mark Connot and Kevin Spencer.

7 1. This Court presided over a jury trial on legal claims between February 14,
8 2019, and March 4, 2019. The jury concluded Todd breached his fiduciary duty as trustee
9 and awarded damages of \$15,000. The jury found no other trustee breached any fiduciary
10 duty. In addition, the jury found Wendy had not proven her claims for 1) civil conspiracy
11 and aiding and abetting, 2) aiding and abetting breach of fiduciary duty, or 3) fraud
12 against any counter-respondent whether individually or as trustee. The jury did not find
13 any counter-respondent acted with fraud, oppression, or malice.

14 2. On May 13, 2019, this Court began a bench trial to resolve the remaining
15 equitable claims. By stipulation, the parties submitted written closing trial statements and
16 replies. This Court authorized supplemental briefing on a narrow issue related to Exhibit
17 561. This Court has considered all briefs and evidence admitted during the equitable trial
18 (including many exhibits previously admitted at jury trial).² This Court is aware that
19 disagreements continue and Wendy alleges ongoing breaches of fiduciary duties, as
20 illustrated by the moving papers relating to post-trial costs, the 2018 annual accountings,
21 and distribution guidance. It now finds and orders as follows:

22 General Findings

23 1. As a factfinder, this Court is authorized to consider its everyday common
24 sense and judgment, and determine what inferences may be properly drawn from direct
25 and circumstantial evidence. See Lewis v. Sea Ray Boats, Inc., 119 Nev. 100, 105, 65 P.3d

26
27 ² On May 13, 2019, the parties stipulated into evidence many exhibits previously admitted during the jury
28 trial. Wendy also offered new evidence during the equitable phase of trial. A list of all documentary
evidence admitted on equitable issues is contained in this Court's Order Addressing Evidence at Equitable
Trial, dated May 20, 2019. This Court has not considered unadmitted documentary evidence. However, this
Court has considered deposition testimony properly part of the trial record pursuant to NRCP 32.

1 245, 248 (2003); Nev. 1GI.5 (2011); Nev. 2EV.3 (2011); Nev. J.I. 1.05 (1986).

2 2. The facts presented in support of the equitable claims inextricably overlap
3 with the legal claims presented to the jury. Despite how the claims are pled, Wendy is
4 attempting to retry her case to obtain a second review of similar facts and an outcome
5 different from the jury verdict.³ This Court may or may not have reached the same
6 decision as the jury. Regardless, it has no authority to dilute or otherwise modify the
7 jury's verdict.

8 3. The file materials compose more than 17,000 pages. There were more than
9 300 separate pleadings, motions, oppositions, replies, joinders, and other substantive
10 papers filed in this proceeding. The parties produced tens of thousands of documents
11 before trial and marked 677 exhibits for the two trials, of which 227 were admitted. The
12 substantive papers (with exhibits and transcripts) filed since the jury's verdict compose
13 more than 4,000 pages. This Court has read and re-read the pending moving papers, to
14 include exhibits and transcripts. It has analyzed every argument presented and carefully
15 studied the cited authorities. It cannot synthesize the competing moving papers, exhibits,
16 and arguments into a single coherent order. It cannot resolve the arguments in minutia.
17 Therefore, this Court elects to make general findings, which are substantially supported by
18 the evidence of record.

19 4. This Court regrets some of its more direct findings, which it must disclose to
20 support its discretionary resolution of equitable claims.

21 5. Sam Jaksick created substantial wealth during his life but his leveraged
22 estate was compromised by the "great recession" during the last season of his life. Sam's
23 estate is exceedingly complex because he used tens of different corporate entities as
24 holding companies for his wealth. Sam also partnered with non-family business entities.

25 6. Sam had three children: Stan, Wendy, and Todd. Sam loved each of his

26
27 ³ On January 3, 2018, Wendy demanded a jury trial on all legal claims. Wendy demanded a jury – at least in
28 part – because she likely suspected a judge's comprehensive, studious examination of all evidence would not
result in the \$80 million compensatory damages and additional punitive damages she asked the jury to
award. This Court honors Wendy's unfettered constitutional right to a jury trial but it will not re-visit the
identical facts to arrive at a different outcome for Wendy.

1 children, despite their different strengths, weaknesses, and personalities. Wendy did not
2 transition well into adulthood and Sam was aware of her inability to provide for herself.
3 Wendy does not understand financial complexities. Sam was more confident in Stan and
4 Todd as he worked with them during his life and designated them to continue
5 participating in his estate and business affairs after his death. Stan's trial participation was
6 not lengthy but he appears to enjoy some financial fluency and business sophistication.
7 Stan also presented as a credible witness and thoughtful sibling. While Todd is most
8 familiar with Sam's business and trust affairs, he is only marginally sophisticated as a
9 trustee. He regularly deferred to the knowledge and expertise of others.⁴ Todd also
10 presented as conflicted by his own interests, influenced by his animus towards Wendy,
11 and confused about his duties as a neutral trustee.

12 7. Sam's estate plan evolved over the years, and its last iteration was influenced
13 by debt, tax avoidance, asset protection, and planning around Stan's divorce. Both Sam
14 and Todd were exposed to personal liabilities on substantial debts Sam had incurred.
15 Some of the estate documents were created in haste because of Sam's heart illness and
16 surgery in December, 2012. (Sam survived his heart illness and tragically died in a water
17 accident in 2013). Some of the 2012-13 estate planning documents are disorganized,
18 internally inconsistent, and complicated by notarial mischief or neglect. This Court was
19 particularly troubled by the notary's abdication of statutory responsibilities, which was an
20 influencing fact in the litigation Wendy pursued. Notaries are given great authority and
21 their actions induce reliance. The notary at issue fell below the statutory standards. This
22 finding alone warrants a substantial financial consequence upon the trust, which this
23 Court includes in its analysis of the no-contest penalty and attorneys' fees requests.

24 8. Todd's participation in Sam's estate beginning in 2012 can be viewed
25 through two opposing lenses: he was either a disconnected participant who yielded to his
26

27 ⁴ This Court understands jury instruction no. 11, which does not alter the fact that Todd struggled under the
28 shadow of his father's business acumen. The dynamic of Todd relying on professionals regarding the
accountings, while the professionals provided accountings with disclaimers and hyphens, created
uncertainty (or at least the appearance of uncertainty) about transactions, values, and who was ultimately
responsible for acts and accountings of trust administration.

1 father's wishes, or he was a subtly strategic participant who enriched himself to the
2 detriment of his siblings. These opposing possibilities are relevant only to understand
3 how this dispute became so bitter. This Court is inclined to find Todd was the former
4 rather than the latter, but regardless, Stan and Wendy had cause to seek answers to
5 questions created by document anomalies, inadequate disclosures, and transactions
6 inuring to Todd's benefit.

7 9. This action began when Stan, Wendy, and Todd were opposed to each other.
8 The dispute was exacerbated by inadequate information and self-interested perspectives.
9 Some of the more personal allegations among siblings reveal a family influenced by
10 misperceptions and individual interests. Wendy was particularly personal in her
11 allegations, the worst of which were harassing, vexatious, and without factual basis. There
12 were at least seven lawyers zealously advocating for their clients, which further
13 entrenched the siblings against each other. The children chose litigation over compromise
14 to work through the complexities of Sam's estate and their disparate financial
15 circumstances. With more effortful disclosures, neutral access to information, and a little
16 sibling patience, they *might* have worked through the messiness of Sam's estate to reach a
17 non-litigation resolution. Instead, the children sued each other, with Todd and Stan
18 settling their dispute just days before the jury trial began. Despite the settlement, this
19 Court is aware of the allegations Stan made against Todd in his deposition and trial
20 testimony. The settlement does not extinguish Stan's pleading allegations and
21 testimony – it merely reflects Todd and Stan's strategic and well-advised decision to
22 compromise their claims before trial. The settlement worked to Wendy's trial detriment,
23 yet she chose trial over settlement and must now accept the consequences of her choice.
24 Stan's allegations and testimony are relevant to contextualize the legal and equitable
25 claims, particularly the request to impose a no-contest penalty and for attorneys' fees
26 under NRS Chapter 18 and NRCP 68.

27 10. Todd and Stan contend they made every effort to avoid litigation but could
28 not persuade Wendy or her attorneys to choose compromise over conflict. This is mostly

1 accurate, as Wendy's litigation position and trial demand were influenced more by animus
2 and avarice than by a desire for balanced justice. In particular, Wendy's \$80 million jury
3 demand revealed her overreach. However, Wendy's litigation zeal does not extinguish
4 her probable cause to seek answers and formulate claims based upon the information she
5 had at the time — the same information that led to Stan's allegations against Todd.

6 11. Throughout trial this Court reflected upon how Sam would respond if he
7 observed his children spending millions of dollars litigating his estate. The parties
8 repeatedly invited this Court to consider Sam's testamentary intentions. Responding to
9 that invitation, this Court has wondered how Sam would react to see his estate
10 disproportionately allocated among his children. There is no way to know how or if Sam
11 would have enlarged Wendy's beneficial interests if he survived the economic recovery.
12 Sam loved Wendy despite her issues, and this Court suspects Sam would have continued
13 his pattern of lifetime largesse in favor of his troubled daughter. But suspicion and
14 speculation are beyond this Court's authority. Death arrives at its own inconvenient time
15 and none can alter its consequences. Wendy is simply without her paternal benefactor and
16 is susceptible to the trustees' actions as governed by documents and transactions Sam
17 approved during his life.

18 12. The trustees' initial petitions were predicated upon accountings that
19 provided inadequate information. The accountings were untimely, and even if technically
20 compliant with the statutes, they failed to provide full and fair notice to Wendy as a
21 beneficiary. This Court acknowledges the trustees attempted to answer Wendy's
22 questions by making their CPA and lawyers available to Wendy, but there is only
23 marginal evidence in the record the trustees invested their own personal efforts to satisfy
24 Wendy's concerns. At some point the trustees' responses became form over function.
25 Todd particularly grew weary of Wendy, which affected his neutral trusteeship, as
26 illustrated by his hope to satisfy Wendy's beneficial interests at a discount that inured to
27 his benefit. In response, Wendy initiated scorched-earth litigation grounded in
28 entitlement and limited self-awareness. This Court cannot now alter the consequences of

1 the trust administration and litigation choices that precede this order.

2 13. Wendy's legal and equitable claims are grounded in the same common facts
3 and are exceedingly difficult to segregate. As this Court reviewed the hundreds of pages
4 of written arguments relating to the equitable claims, it was taken back to the evidence
5 and arguments presented to the jury. Through the misty fog of painfully voluminous
6 allegations and varied claims, the core of Wendy's complaint is that Todd breached his
7 fiduciary duties by self-dealing and failing to disclose information relevant to Wendy as a
8 beneficiary. No matter how Wendy frames or argues her equitable claims, she asks this
9 Court to remedy the identical facts and transactions she placed before the jury. This Court
10 must look to the substance of the claims, not just the labels used in the pleading document.
11 Nev. Power Co. v. District Court, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004).

12 14. The complexity of Sam's estate warranted extraordinary disclosures,
13 explanations, and compliance with discovery rules. There were significant discovery
14 disputes, such that this Court created a schedule for recurring access to the Discovery
15 Commissioner. This Court also ordered the production of disputed discovery. Discovery
16 continued to the very eve of trial and Wendy was still attempting to discern her beneficial
17 interests when trial began.

18 15. There were several sports references and metaphors argued to the jury.
19 Consistent with that theme, Wendy "swung for the fences" when she asked the jury to
20 award \$80 million to her (plus punitive damages), an amount that exceeds the evidentiary
21 value of this estate and would deprive Todd and Stan of any beneficial interests. She now
22 seeks a "mulligan" by re-arguing to this Court what was over-argued to the jury.⁵ The
23 jury found that Todd breached his fiduciary duties but only awarded \$15,000 to Wendy. It
24 found against Wendy on all other claims and against all other counter-respondents. This
25 Court may have been authorized to award additional equitable relief upon the same facts

26
27 ⁵ To illustrate, Wendy argued in her omnibus opposition to the cost memoranda filed before the equitable
28 claims trial that "damages may still be awarded, transactions may be set-aside, further breaches of fiduciary
duty may be found, and the ACPAs and other documents may be found fraudulent or invalid, ab initio."
These were all claims and requests rejected by the jury.

1 if the jury found for Wendy on more claims and against more counter-respondents. But
2 constitutional and decisional authorities prevent this Court from entering a subsequent
3 order diluting or altering the jury's verdict.

4 16. Todd asks this Court to contextualize the \$15,000 as a *de minimis* award. This
5 Court will not infuse qualitative meaning into the jury's verdict. To do so would be
6 impermissible speculation. Todd breached his fiduciary duties to Wendy. And Wendy
7 was not awarded the damages she sought. These two facts are integral to this Court's
8 resolution of equitable claims and fees requests.

9 General Legal References

10 1. This Court cannot supplant or alter a jury's verdict by relying upon common
11 facts to reach a different outcome. See generally Lehrer McGovern Bovis, Inc. v. Bullock
12 Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032, 1038 (2008) (discussing special interrogatory
13 verdicts). In Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir. 2013), the plaintiff
14 submitted his equitable claim for declaratory relief to the bench after the jury rejected his
15 legal claims. The court held "it would be a violation of the Seventh Amendment right to
16 jury trial for the court to disregard a jury's findings of fact. Thus, in a case where legal
17 claims are tried by a jury and equitable claims are tried by a judge, and the claims are
18 based on the same facts, in deciding the equitable claims, the Seventh Amendment
19 requires the trial judge to follow the jury's implicit or explicit factual determinations." Id.
20 at 828-29 (citations omitted).

21 2. In Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc., 908 F.3d
22 313, 343 (8th Cir. 2018), the jury found for the plaintiff on legal intellectual property claims,
23 but the bench subsequently applied the equitable defenses of laches and acquiescence.
24 The appellate court reversed, holding "[t]o bind the district court's equitable powers, a
25 jury's findings must be on an issue 'common' to the action's legal and equitable claims;
26 otherwise, the court is free to treat the jury's findings as 'merely advisory'" Id.
27 Further, "[i]f the jury's findings were on a common issue, the court, in fashioning equitable
28 relief, may take into account facts that were not determined by the jury, but it may not

1 base its decision on factual findings that conflict with the jury's findings." Id. at 344
2 (citations omitted); see also Haynes Trane Serv. Agency, Inc. v. Am. Standard, Inc., 573
3 F.3d 947, 959 (10th Cir. 2009) (noting a court cannot grant equitable relief on facts rejected
4 explicitly or implicitly by a jury verdict); Avitia v. Metro Club of Chicago, Inc., 49 F.3d
5 1219, 1231 (7th Cir. 1995) ("[A] judge who makes equitable determinations in a case in
6 which the plaintiff's legal claims have been tried to a jury is bound by any factual findings
7 made or inescapably implied by the jury's verdict.").

8 3. Among prescribed form and content, an accounting must provide a
9 beneficiary with the ability to evaluate his or her interests. NRS 165.135(3). See also NRS
10 153.041. The cost of preparing an accounting is presumptively borne by the trust. NRS
11 165.1214(5). Unless acting in good faith, a trustee can be personally liable for failing to
12 provide an accounting. NRS 165.148. A beneficiary may petition the court to order a
13 trustee to perform his or her accounting duties. NRS 165.190. This Court may order a
14 trustee's compensation be reduced or forfeited, or enter other civil penalty, when a trustee
15 fails to perform his duties. NRS 165.200.

16 4. The trustees' just and reasonable expenses are presumptively governed by
17 the trust instruments and borne by the trust. However, this Court has authority to review
18 and settle the trustees' expenses and compensation. NRS 153.070. This Court may also
19 reduce a trustee's compensation or order a trustee to pay a beneficiary's reasonable
20 attorneys' fees and costs when the beneficiary compels redress for a breach of trust or
21 compliance with trust terms. NRS 153.031(3). See also In re Estate of Anderson, No.
22 58227, 2012 WL4846488 (Oct. 9, 2012). This Court may order the trust expenses defending
23 against a beneficiary's successful claims be borne by a trustee individually. NRS 18.090.
24 See also Estate of Bowlds, 120 Nev. 990, 1,000, 102 P.3d 593, 600 (2004) (concluding
25 payment of attorney's fees from trust assets only when litigation generally benefits the
26 trust); NRS 153.031(3)(b) (stating if court grants relief to petitioner, it may order trustee to
27 pay fees and costs); RESTATEMENT (THIRD) OF TRUSTS § 100 (2012) (examining denial of
28 compensation to breaching trustee).

1 5. NRS 163.00195 governs no-contest provisions. It begins by emphasizing this
2 Court's duty to enforce no-contest clauses to effectuate a settlor's intent. NRS 163.00195(1).
3 However, the statute then creates a wide exception when it provides a no-contest clause
4 must not be enforced when a beneficiary acts to enforce her legal rights, obtain court
5 instruction regarding proper administration, seeks to enforce the trustee's fiduciary duties,
6 or institutes and maintains a legal action in good faith and based on probable cause. NRS
7 163.00195(4). See also Matter of ATS 1998 Tr., No. 68748, 2017 WL3222533, at *4 ("[T]he
8 purpose of a no-contest clause is to enforce the settlor(s)' wishes, not to discourage a
9 beneficiary from seeking his or her rights."). A legal action is based on probable cause
10 when the facts and circumstances *available to the beneficiary*, or a properly informed and
11 advised reasonable person, "would conclude that the trust, the transfer of property into
12 the trust, any document referenced in or affected by the trust or any other trust-related
13 instrument is invalid." NRS 163.00195(4)(e) (emphasis added).

14 6. A trustee has a duty to act impartially, based on what is fair and reasonable
15 to all beneficiaries. Specifically, "the trustee shall act impartially in investing and
16 managing the trust property, taking into account any differing interests of the
17 beneficiaries." NRS 164.720(1). "[I]t is the trustee's duty, reasonably and without personal
18 bias, to seek to ascertain and to give effect to the rights and priorities of the various
19 beneficiaries or purposes as expressed or implied by the terms of the trust." RESTATEMENT
20 (THIRD) OF TRUSTS § 79 (2007).

21 7. "In all matters connected with [the] trust, a trustee is bound to act in the
22 highest good faith toward all beneficiaries and may not obtain any advantage over the
23 latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any
24 kind." Charleson v. Hardesty, 108 Nev, 878, 882, 839 P.2d 1303, 1306 (1992) (quoting
25 Morales v. Field, 160 Cal.Rptr. 239, 244 (1980)).

26 8. This Court may remove a trustee for good cause, including breach of
27 fiduciary duties. NRS 156.070; NRS 163.115; NRS 163.190; NRS 163.180; NRS 164.040(2);
28 see also Diotallevi v. Sierra Dev. Co., 95 Nev. 164, 591 P.2d 270 (1979) (explaining court has

1 “full equitable powers” to redress breach of trust). Removal may be appropriate when
2 there is significant animosity between the trustee and a beneficiary, such that it has the
3 potential to materially interfere with the proper administration of the trust. Acorn v.
4 Monecchi, 386 P.3d 739, 760 (Wyo. 2016) (explaining the relevant question is whether
5 “hostility, in combination with existing circumstances, materially interferes with the
6 administration of the trust or is likely to cause that result”); In re Estate of Stuchlik, 857
7 N.W.2d 57, 70 (Neb. 2014) (stating a trustee cannot act impartially when “influenced by . . .
8 animosity toward individual beneficiaries”); BOGERT, LAW OF TRUSTS AND TRUSTEES § 129
9 (3d rev. ed. 2019) (explaining where there is potential for a conflict of interest to arise from
10 the dual status of a trustee who is also a beneficiary, removal of the trustee may be
11 appropriate); see also Dennis v. R.I. Hosp. Trust Nat. Bank, 571 F. Supp. 623, 639 (D.R.I.
12 1983) (discussing removal may be appropriate when the court could expect “that future
13 Trust transactions will be scrutinized by the beneficiaries” as a result of lengthy and
14 antagonistic litigation). Additionally, conflict between the trustee and beneficiary may
15 form a basis for removal when personal contact or collaboration is required for the
16 administration of the trust. Blumenstiel v. Morris, 180 S.W.2d 107, 109 (Ark. 1944). “The
17 purpose of removing a trustee is not to inflict a penalty for past action, but to preserve
18 trust assets.” Getty v. Getty, 205 Cal.App.3d 134, 140 (1988).

19 9. Attorney’s fees are not allowed to a prevailing party absent a contract,
20 statute, or rule to the contrary. See Smith v. Crown Fin. Servs., 111 Nev. 277, 890 P.2d 769
21 (1995) (analyzing the American and English rules regarding attorney’s fees and their
22 intersection with Nevada Law). NRS 18.010(2)(b) provides that this Court may award
23 attorney’s fees when it finds a claim was brought or maintained without reasonable
24 ground, or to harass the prevailing party. Pursuant to NRCP 68(a), “[a]t any time more
25 than 21 days before trial, any party may serve an offer in writing to allow judgment to be
26 taken in accordance with its terms and conditions.” If an offer is not accepted within the
27 prescribed time period, it will be considered rejected by the offeree. NRCP 68(e). If an
28 offeree rejects an offer and fails to obtain a more favorable judgment, “the offeree must

1 pay the offeror's post-offer costs and expenses, including . . . reasonable attorney fees, if
2 any be allowed, actually incurred by the offeror from the time of the offer." NRCP
3 68(f)(1)(B) (emphasis added).

4 10. "[T]he purpose of NRCP 68 is to encourage settlement . . . not to force
5 plaintiffs unfairly to forego legitimate claims." Beattie v. Thomas, 99 Nev. 579, 588, 668
6 P.2d 268, 274 (1983). To determine whether an award of fees is appropriate, a court must
7 consider and weigh the following factors: (1) whether the claim was brought in good faith;
8 (2) whether the offer of judgment was reasonable and in good faith in both its timing and
9 amount; (3) whether the decision to reject the offer and proceed to trial was grossly
10 unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable
11 and justified in amount.⁶ Beattie, 99 Nev. at 588-89, 668 P.2d at 274. No one Beattie factor
12 is outcome determinative, and each should be given appropriate consideration. Yamaha
13 Motor Co., USA v. Arnoult, 114 Nev. 233, 252 n.16, 955 P.2d 661, 673 n.16 (1998).

14 11. A proceeding concerning a trust "does not result in continuing supervisory
15 proceedings, and the administration of the trust must proceed expeditiously in a manner
16 consistent with the terms of the trust, without judicial intervention or the order, approval
17 or other action of any court, unless the jurisdiction of the court is [properly] invoked . . . as
18 provided by other law." NRS 164.015(7).

19 Equitable Issues

20 The following equitable issues and arguments are before this Court:

21 1. *Approval of accountings*

22 The trustees ask this Court to settle, allow, and approve the Issue and Family Trust
23 accountings without further examination, to include approval of trustees' fees, attorneys'
24

25 ⁶ When considering the fourth Beattie factor, the court must consider the Brunzell factors. See Shuette v.
26 Beazer Homes Holdings Corp., 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005). These factors include the
27 following: "(1) the qualities of the advocate: his or her ability, training, education, experience, professional
28 standing, and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, time and
skill required, the responsibility imposed and the prominence and character of the parties where they affect
the importance of litigation; (3) the work actually performed by the lawyer: the skill, time, and attention
given to the work; and (4) the result: whether the attorney was successful and what benefits were derived."
Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 fees, and payment of other professional fees and administrative expenses.⁷ Wendy
2 opposes and asks this Court to order the trustees to prepare statutory compliant
3 accountings that disclose assets, values, transactions, and other acts of trust
4 administration. Wendy further argues that if the amended accountings are untimely or
5 noncompliant, this Court should find and remedy the trustees' breach of fiduciary duties.

6 The timing and form of accountings are prescribed by statute. But an accounting is
7 more than a formulaic compilation of data. An accounting is given to provide notice. Just
8 as facts in controversy vary from case to case, an accounting must be adjusted as the trust
9 estate requires. The trusts before this Court are complex because of the multiple layers of
10 entity and fractional ownership. They are further complicated by fluid and often
11 unknown values. This Court generally agrees with Wendy that the accountings fail to
12 provide adequate notice because they reveal only a portion of Sam's complex affairs – they
13 are mere pieces in a much larger puzzle and are ineffective when only reviewed in
14 isolation.⁸ Instead, the accountings created confusion and engendered suspicion. The
15 trustees attempted to answer Wendy's questions informally and made their professionals
16 available to answer Wendy's questions. But the accountings should have included more
17 explanatory details. The best example of how the accountings failed to provide actual and
18 adequate notice occurred when Todd testified Wendy could expect to receive \$4 million
19 from a variety of sources. While the trustees may have provided explanations through
20 accountants and settlement offers, Wendy's beneficial expectancy is not apparent from the
21 accountings or evidence of the trustees' pre-trial explanations.

22 However, this Court also notes that Wendy's complaints about the content and
23 general timing of the accountings were presented to the jury in the legal phase of trial and
24 are therefore facts common to the equitable claims. The jury presumably considered all
25 evidence when deliberating its verdict. The verdict is an express or implicit rejection of

26
27 ⁷ The relevant accountings are for the Issue and Family Trusts (April, 2013 through December, 2017) and
Wendy's subtrust (2013 – 2016).

28 ⁸ Wendy argues: "While in some circumstances, preparing and delivering accountings in the format
provided by NRS 165.135 may fully satisfy a fiduciary's requirement to account and fully disclose, that is not
and cannot be the case for these very complex trusts."

1 Wendy's complaints about the accountings. Accordingly, this Court will not provide
2 equitable relief regarding the accountings, which were constructively approved and
3 confirmed by the jury's verdict. In so doing, this Court does not countenance the trustees'
4 arguments that all accountings and disclosures complied with Nevada law, to include
5 NRS 165.135(4)(a), which allows for a statement prepared by a CPA containing summaries
6 of the information required by NRS 165.135(1). This Court simply orders that all litigation
7 regarding the accountings in existence at the time of the jury trial must end.⁹ The nature of
8 the accountings influence this Court's decision regarding attorneys' fees and the no-
9 contest provisions of the trust.

10 2. *Validity of the Agreements and Consents to Proposed Actions (ACPAs) and*
11 *Indemnification Agreements*

12 Todd as trustee of the Issue Trust, and Todd and Michael Kimmel as co-trustees of
13 the Family Trust, ask this Court to ratify and approve the ACPAs, thus relieving them of
14 liability for actions reasonably taken in reliance upon them. They (and Todd individually)
15 also ask this Court to affirm the indemnification agreements. Wendy opposes and asks
16 this Court to invalidate the ACPAs and rescind any transactions accomplished through
17 them. She also contests Stan and Todd's indemnification agreements and asks that any
18 transactions accomplished through them be invalidated and set aside. Each party presents
19 substantial arguments supporting their respective positions. This Court again returns to
20 the scope and content of the jury trial and the facts common to legal and equitable claims.
21 While the attorneys argued to the jury that this Court would decide the validity of the
22 ACPAs and indemnification agreements, each of the challenged documents and related
23 transactions were thoroughly presented and argued to the jury – including document
24 preparation, execution, and other formation irregularities. Thus, at least, the jury verdict is
25 an implicit rejection of Wendy's arguments.

26 Having considered all arguments, this Court concludes it will neither affirm nor

27
28 ⁹ The trustees may wish to modify the form of future accountings to provide better notice and explanations
to the beneficiaries. Otherwise, they risk objections this Court may be inclined to grant, including an award
of attorney's fees.

1 reject the ACPAs and indemnification agreements. They cannot be segregated from the
2 legal claims presented to the jury and now subsequently argued in support of equitable
3 relief. The jury constructively approved and affirmed the ACPAs and indemnification
4 agreements when it reached its verdict. The verdict prevents additional litigation and
5 precludes liability exposure for actions taken in reliance upon these documents. All claims
6 involving the disputed ACPAs and indemnification agreements shall end with the jury's
7 verdict. Nonetheless, the ACPAs and indemnification agreements also influence this
8 Court's decision regarding attorneys' fees and the no-contest provisions.

9 3. *Violation of the no-contest provisions of the trusts*

10 All trustees except Stan ask this Court to declare that Wendy violated the no-contest
11 provisions of the trusts when she initiated and maintained this litigation. Wendy opposes
12 and asks this Court to declare that Todd violated the no-contest provisions when he filed
13 the initial petition and later moved to dismiss her litigation. The trustees' request deserves
14 analysis, whereas Wendy's request is retaliatory and made with little legal basis or
15 support from the trust instruments.

16 Wendy sought to enforce her rights, obtain instructions, and remedy a breach of
17 fiduciary duties. The jury agreed that Todd breached his fiduciary duties. Further, based
18 upon the information she possessed, she had probable cause to seek invalidation of
19 transfers and other acts of trust administration. This Court must distinguish between the
20 *existence* of probable cause for initiating and maintaining this action with the manner in
21 which the probable cause was *litigated*. As noted elsewhere, Wendy and Stan had
22 probable cause to seek answers to questions raised by the accountings and other events of
23 trust administration. Thus, while Wendy's litigation zeal and overreaching jury demand
24 may implicate Sam's intention to disincentivize litigation, Wendy's legal actions were
25 authorized and do not create a bar to her beneficial rights.

26 4. *Unjust enrichment and constructive trust*

27 Wendy asks this Court to impress a constructive trust to cure unjust enrichment
28 caused by fraud, breach of fiduciary duty, and self-dealing. Todd, Stan, and the trustees

1 make several arguments in opposition to Wendy's request. This Court disagrees with
2 Wendy's position. Wendy's allegations of misconduct, document impropriety, and self-
3 dealing underlying her request for equitable relief are inseparable from the legal claims
4 she presented to the jury. Wendy has been awarded damages for Todd's breach of
5 fiduciary duties. Any other equitable relief would constitute double recovery and alter the
6 jury's verdict in violation of the Seventh Amendment and its interpretative decisions.

- 7 5. *Removal of trustees*
8 *Disgorgement of trustee fees*
9 *Use of trust funds to initiate petition and defend against Wendy's counterpetition*
 Award of attorneys' fees

10 Wendy relies upon her same arguments when asking this Court to remove the
11 trustees, order the trustees to disgorge trustee fees, and deny the use of trust funds to
12 present their petitions and defend against her counterpetition. The parties present
13 substantial authorities and arguments (and other moving papers) relating to attorneys'
14 fees.

15 There is no basis to consider the removal of any trustee except Todd. The two bases
16 to remove Todd are 1) the jury's verdict that Todd breached his fiduciary duties, and 2)
17 this Court's observation that Todd's neutrality is conflicted by his own interests and
18 animus towards Wendy. This Court concludes removal would be unjust and
19 incommensurate for several reasons: 1) Todd is Sam's designated and preferred trustee, 2)
20 other trustees will diffuse Todd's conflicts and reduce the personal contact between Todd
21 and Wendy, 3) the remedy against Todd's breaches and conflicts are made through other
22 orders regarding attorneys' fees, disgorgement of trustee's fees, and inapplicability of the
23 no-contest provisions, 4) Todd's own affairs are inseparable from trust administration and
24 his removal as trustee will not sever him from trust business; he will remain involved in
25 Jaksick family affairs through his ongoing management and ownership of several other
26 related entities, 5) the expenses of removing Todd and educating a successor trustee
27 would be expensive and inefficient, and 6) Wendy's suggestion that a commercial trustee
28 serve as successor trustee for all trustees is neither warranted nor workable.

 However, based upon the jury's verdict that Todd breached his fiduciary duties

1 (and secondarily, this Court's findings about the timing and content of the accountings),
2 this Court grants Wendy's request that Todd disgorge or disclaim all trustee's fees from
3 the inception of his trusteeship through the date when final judgment is entered. The
4 amount disgorged or otherwise forfeited may serve as an offset against the 25% of
5 trustees' attorneys' fees Todd is ordered to pay, as set forth below. This Court confirms
6 trustee fees to all other trustees.

7 There are several requests regarding attorney's fees as a trust expense. This Court's
8 discretionary resolution of the fees requests is bound by all facts of record and influenced
9 by the entirety of the pre-trial, legal, and equitable proceedings (including the settlement
10 agreement between Todd and Stan) and uncertainties created by notarial malfeasance.

11 This Court first orders that Stan Jaksick and Michael Kimmel's attorneys' fees be
12 chargeable to the trust and paid from trust corpus. This Court's decision regarding
13 Wendy and Todd's fees (both as trustee and individually) are more complicated. There
14 are competing facts and legal principles, which this Court analyzes in the aggregate and
15 not in isolation. In particular, the NRCP 68 request cannot be considered narrowly, but
16 instead, must be viewed by a totality of the case proceedings and statutory authorities
17 governing trustees. There are several options before this Court:

- 18 - Order the trust to pay all, some, or none of Wendy's fees
19 because she successfully obtained a verdict that Todd breached
20 his fiduciary duties as trustee.
- 21 - Order the trust to pay all, some, or none of the fees Todd
22 incurred as trustee because, even though he breached his
23 fiduciary duties, he qualitatively and quantitatively prevailed
24 against other claims asserted by Wendy.
- 25 - Order Wendy to pay fees Todd incurred because she brought
26 or maintained her action without reasonable grounds or to
27 harass.
- 28 - Order Wendy to pay fees Todd incurred as trustee of the Issue
Trust because she rejected his \$25,000 offer of judgment.
- Order Wendy to pay fees Todd incurred individually because

1 she rejected his \$25,000 offer of judgment.

- 2 - Discretionarily decline to order Wendy to pay fees pursuant to
3 the offers of judgment.

4 On August 29, 2018, Todd offered Wendy to have judgment entered against him
5 individually in the amount of \$25,000. He also offered Wendy to have judgment entered
6 against him as trustee of the Issue Trust in the amount of \$25,000. The jury did not make
7 any adverse findings against Todd individually, but it concluded Todd breached his
8 fiduciary duties as trustee and awarded \$15,000 to Wendy. With adjustments for interest,
9 the amount Wendy will receive is almost indistinguishable from the \$25,000 Todd offered
10 as trustee. To the extent there is a *de minimis* distinction, the difference is not enough in a
11 dispute that incurred several million dollars of fees and involved tens of millions in
12 controversy.

13 An offer of judgment must be an authentic attempt to settle a dispute. The offer of
14 judgment benefit is not automatically conferred. Instead, this Court must carefully
15 analyze the offer and discretionarily apply it to the unique facts of each case. This Court
16 and counsel are familiar with the American Rule of attorneys' fees and discretionary
17 application of NRCP 68. This Court's discretion exists to encourage parties to convey
18 legitimate offers to resolve their disputes. Of course, judicial discretion is controversial to
19 those who are aggrieved, and it is unpredictable to all.

20 On one side, offers that are appropriate in time and amount will cause the non-
21 offering party to become realistic and engage in genuine risk/benefit analyses. These
22 offers shift a calculated risk as trial approaches. To be an effective mechanism to resolve
23 disputes before trial, they should be in an amount the non-offering party cannot decline in
24 good faith. Defendants who perceive no liability exposure chafe against making time- and
25 amount-appropriate offers because they resent the payment of any money to a party they
26 perceive will not prevail at trial. On the other side, offering parties sometimes make time-
27 and amount-inappropriate offers *they expect to be rejected*. These offers do not facilitate
28 settlement--they are strategic devices to shift the risk of fees by offering illusory

1 consideration to end litigation.

2 This Court's discretion is guided by the unique facts and procedural history of this
3 case. This Court analyzes the Beattie factors as follows:

4 *Whether Wendy's claims were brought in good faith?* Wendy believed in good faith that
5 she suffered damages from Todd's individual and fiduciary misconduct. She trusted the
6 court system and exercised her constitutional right to jury trial. This Court concludes that
7 Wendy's claims against Todd as trustee of the Issue Trust were brought in good faith.
8 Wendy's concerns are countenanced, in large part, by the questions raised by the
9 accountings, Stan's separate allegations against Todd, document anomalies, and the optics
10 of Todd's disproportionate benefit from Sam's business and trust affairs. The good-faith
11 nature of Wendy's claims against Todd individually are more difficult to discern. In the
12 final analysis, Wendy had some cause to initiate the claims against Todd individually, but
13 as discovery progressed, Wendy's cause to pursue Todd individually diminished. This
14 factor weighs slightly in Wendy's favor regarding the Issue Trust offer of judgment and is
15 neutral regarding Todd's individual offer of judgment.¹⁰

16 *Whether Todd's offers were reasonable and in good faith in both timing and amount?* This
17 Court has wrestled with the question of whether the offers of judgment were brought in
18 good faith in both timing and amount. These offers of judgment were made six months
19 after Wendy filed her amended counter-petition, when discovery was still in its infancy.
20 This Court concludes the amounts offered were neither good faith/reasonable nor
21 strategic bad faith/unreasonable. They fall within the continuum between those two
22 categories. Todd knew, or should have known, the fees incurred through continuing
23 litigation alone would substantially overshadow the offered amounts. Todd knew, or
24 should have known, that Wendy would never accept \$25,000 to resolve her claims against
25 him as trustee of the Issue Trust.

26 However, Todd also had cause to believe he would prevail at trial, a fact now
27

28 ¹⁰ Because this Court finds Wendy brought her claims in good faith, this Court concludes fees under NRS
18.010(2)(b) are not warranted.

1 proven with respect to the claims against him individually. Todd's subjective belief about
2 the strength of his position is legally relevant. "[W]here the offeror has a reasonable basis
3 to believe that exposure to liability is minimal, a nominal offer is appropriate." Arrowood
4 Indem. Co. v. Acosta, Inc., 58 So. 3d 286, 289 (Fla. Dist. Ct. App. 2011) (discussing the good
5 faith prong of an offer of judgment from a Florida statute analogous to NRCP 68). At the
6 time Todd made his individual offer, Wendy had been unable to present coherent facts
7 underlying her claims against him personally. He therefore had reason to believe
8 Wendy's claims against him individually were weak or lacked merit. See Beach, 958 F.
9 Supp. at 1171 (holding defendant's offer was reasonable even though plaintiff's alleged
10 damages exceeded the offer's amount "given the weaknesses defendant perceived in
11 plaintiff's case."); see also Scott-Hop v. Bassek, Nos. 60501, 61943, 2014 WL 859181 at *6
12 (Feb. 28, 2014) (holding reasonable an offer of \$25,000 even though plaintiff's alleged
13 medical expenses were over \$150,000 because of the uncertainty of plaintiff's case and
14 defendant's summary judgment motion); Max Bear Productions, Ltd. v. Riverwood
15 Partners, LLC, No. 3:09-CV-00512-RCJ-RAM, 2012 WL 5944767 (D. Nev. Nov. 26, 2012)
16 ("The token \$1,000 offer may appear to have been made simply for the procedural purpose
17 of preserving rights to fees . . . should Defendant win a judgment. However, the
18 weaknesses of Plaintiff's case made this token offer reasonable."); Arrowood, 58 So. 3d at
19 289-90 (holding a court is required to consider an offeror's subjective belief that an offer is
20 reasonable and not just objective factors).

21 This Court concludes the second factor to consider is neutral regarding the Issue
22 Trust and does not inure to any party's favor or disfavor. Todd hoped he would prevail at
23 trial, but given the financial and documentary complexity, discovery delays and disputes
24 (including Todd's continued depositions long after the offers of judgment were made), the
25 untimely accountings, incomplete discovery, and the amounts in controversy, the offer
26 does not appear to be made with the good-faith intention of settling Wendy's claims. In
27 contrast, Todd's offer to settle Wendy's claims against him individually for the payment of
28 \$25,000 appears more reflective of the circumstances and was made with a good-faith

1 intention to settle the claims. Thus, this factor favors Todd individually.

2 *Whether Wendy's decision to reject the offer and proceed to trial was grossly unreasonable*
3 *or in bad faith?* Wendy's decision to reject Todd's offer as trustee of the Issue Trust was not
4 grossly unreasonable or in bad faith. The offer arrived early in discovery. Wendy had
5 incurred substantially more in fees than the offered amount and she was entitled to
6 examine her legal position after discovery was received. In contrast, her decision to reject
7 Todd's individual offer is less reasonable, yet this Court cannot conclude her rejection was
8 grossly unreasonable or made in bad faith. Her decision was simply unwise in retrospect
9 and she cannot now be relieved of its consequences. This third factor weighs in favor of
10 Wendy regarding the Issue Trust and is neutral regarding Todd's personal liability.

11 *Whether the fees sought are reasonable and justified in amount?* Todd's individual and
12 trustee attorneys are experienced in law and trial. They have exemplary records of service
13 in our legal community and they obtained a positive outcome for their clients. After
14 considering each of the Brunzell factors, this Court finds the fees sought by Todd
15 individually from the date of the offer are reasonable in light of his experienced and
16 effective attorneys, duration and scope of litigation, and the result obtained. However,
17 the aggregate fees this Court expects Todd to seek as trustee of the Issue Trust are not
18 justified when the offered \$25,000 is compared to the jury verdict. Shifting substantial
19 attorneys' fees to Wendy is unjustified in this instance. Regarding Todd's individual fees,
20 the amounts are reasonable and justified when charged against Wendy. This factor is
21 neutral with respect to the Issue Trustee offer and favors Todd with respect to his
22 individual offer of judgment.

23 For these reasons, this Court orders as follows:

- 24 a. The trusts shall pay 100% of the fees incurred by their attorneys in
25 representation of the trustees. However, Todd shall reimburse the
26 trusts from his personal resources for 25% of the amount paid because
27 the jury determined he breached his fiduciary duties. Provided,
28 however, Todd is entitled to reduce this 25% personal obligation by

1 the amount of trustee's fees he is ordered to disgorge.

- 2 b. Wendy is *not* required to pay fees Todd incurred as trustee because
3 she rejected the \$25,000 offer of judgment.
- 4 c. Wendy *shall* pay 100% of fees Todd incurred individually from the
5 date the offer of judgment was made. Provided, however, Todd shall
6 be Wendy's judgment creditor and have no greater access to payment
7 than any other judgment creditor. Todd may attach or anticipate
8 Wendy's distributive share only if there are no spendthrift provisions
9 within the trust instruments that prohibit such creditor collection
10 efforts. If such spendthrift provisions exist, distributions shall be
11 made to Wendy and Todd may seek collection efforts against Wendy
12 personally, subsequent to the distribution. The trustees (including
13 Todd) shall carefully measure Todd's rights as an individual
14 judgment creditor with their fiduciary duties owed to Wendy as a
15 beneficiary.
- 16 d. The Trusts shall pay a combined attorneys' fee of \$300,000 to Wendy's
17 attorneys for prevailing in the claim against Todd for breach of
18 fiduciary duties. This payment shall be made directly to Wendy's
19 attorneys without Wendy's signatory participation as a client or trust
20 beneficiary.
- 21 e. All fees ordered shall be treated as general trust administration
22 expenses and not allocated to any beneficiary's distributive share.
- 23 f. Todd is not required to indemnify the trust for the \$300,000 payable to
24 Wendy's attorneys because he is already ordered to pay 25% of the
25 aggregate fees incurred in representation of the trustees.
- 26 g. The request for oral arguments is denied.

27 **Other Issues**

- 28 1. *Second supplement to first amended counterpetition*

1 On May 9, 2019 (after the legal phase of trial but before the equitable trial), Wendy
2 filed a Second Supplement to her First Amended Counterpetition in which she continued
3 her theme about untimely accountings. Wendy asks this Court to consider the new fact
4 allegation the Family Trust co-trustees failed to prepare and deliver accountings for the
5 Family Trust and Wendy Subtrust for the period from January 1, 2018, to December 31,
6 2018. She requests the production and delivery of these accountings and asks that the
7 trustees be sanctioned. The trustees (including Todd and Stan individually) moved to
8 strike Wendy's supplement because it was filed after the August 2, 2018, deadline to file
9 motions to amend pleadings and violated NRCP 15(d).¹¹ The 2018 accountings were
10 provided to Wendy in early July, 2019, thus rendering Wendy's request to compel moot.

11 It appears the accountings were untimely and this Court agrees Wendy could not
12 have filed the supplement until after the deadline for providing the 2018 accountings had
13 passed. However, the 2018 accountings are not part of the underlying litigation. This
14 Court declines Wendy's invitation to enlarge this litigation to satisfy judicial economy.
15 This litigation is bounded by the pleadings and cannot remain an open receptacle to
16 receive real-time allegations of inappropriate trust administration. The supplement is
17 stricken as beyond the scope of claims before this Court. Wendy may file a separate action
18 challenging the timing and content of the 2018 accountings if she is so inclined. This Court
19 neither encourages nor discourages such litigation.

20 2. *The Lake Tahoe property*

21 Though not placed within a certain claim for relief within her pleadings, Wendy
22 asks this Court to rescind all transactions involving the Lake Tahoe home and restore title
23 to the SSJ LLC, which was 100% owned by the Family Trust. Wendy continues to
24 overwhelm this Court with repetitive and lengthy arguments about the option
25 agreements, forgery, fraud, fiduciary duties, unjust enrichment, trustor intentions,
26 consideration, etc. All of Wendy's arguments were presented to the jury and rejected in
27

28 ¹¹ Stan filed an additional Motion to Dismiss or Motion to Strike, arguing Wendy's supplement alleged a new claim for breach of fiduciary duty that has not been discovered. Todd joined in Stan's motion.

1 the jury's verdict. This Court will not enter any order granting relief to Wendy regarding
2 the Lake Tahoe home.

3 3. *Future distributions*

4 On July 23, 2019, Wendy filed an Emergency Motion to Compel Distribution from
5 the Family Trust. She alleged she was being evicted from her home in Texas and needed
6 money to relocate to either Arizona or Reno. Wendy asked this Court to order the trustees
7 of the Family Trust to distribute \$6,000 for a deposit on a new apartment and \$5,000 per
8 month for living expenses. Wendy further asks this Court to advise the trustees regarding
9 the schedule of other distributions for living expenses. Wendy's motion is denied. This
10 Court will not supervise trust administration on an ongoing basis. It will not provide
11 advisory guidance or otherwise order the trustees regarding administration and
12 distributions. Instead, it will adjudicate disputes through normal judicial processes.
13 Wendy may initiate separate litigation if she is so inclined.

14 4. *Costs.*

15 Todd Jaksick as an individual, Duck Lake Ranch, LLC, and Incline TSS, are the
16 prevailing parties entitled to statutory and reasonable costs. All other parties may file cost
17 memoranda as authorized by law.

18 **Conclusions**

19 1. This Court does not confirm the accountings. However, the substance of the
20 accountings were presented to the jury and fall within the jury's verdict. Thus, this Court
21 will not allow additional litigation as to any accounting that formed the basis for Wendy's
22 legal claims. All future accountings shall be timely and formulated to provide the
23 beneficiaries with adequate notice of values, transactions, and other acts of trust
24 administration. The trustees are authorized to pay, at Wendy's request, a portion of
25 Wendy's distributive shares to Wendy's designated financial professional who will assist
26 her to understand the accountings and interact with the trustees.

27 2. This Court does not confirm the ACPAs or indemnification agreements.
28 However, the substance of the ACPAs and indemnification agreements were presented to

1 the jury and fall within the jury's verdict. This Court will not allow additional litigation as
2 to any of the ACPAs and indemnification agreements that formed the basis for Wendy's
3 legal claims.

4 3. The trustees' request to impose no-contest penalties against Wendy is
5 denied.

6 4. Wendy's claims for unjust enrichment and constructive trust are denied.

7 5. Todd is confirmed as trustee of Issue Trust and co-trustee of Family Trust.
8 All other trustees are also confirmed.

9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject
10 to the fees award provisions.

11 7. This Court anticipates the parties will seek clarification and other relief
12 through additional motion work. The attorneys' fees provisions in this order reflect the
13 entirety of this Court's intentions regarding fees. This order also reflects the entirety of
14 this Court's intentions regarding all other pending matters.

15 8. Todd and the trustees may submit a proposed judgment consistent with the
16 jury's verdict and this order on equitable claims.

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

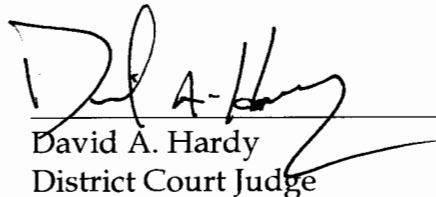
19
20 
21 David A. Hardy
22 District Court Judge
23
24
25
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27
28

Exhibit “G”

1845

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

CASE NO.: PR17-00445

DEPT. NO.: 15

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY
TRUST.

CASE NO.: PR17-00446

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,
v.

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr. Family
Trust, and as Trustee of the SSJ's Issue Trust;
MICHAEL S. KIMMEL, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr. Family
Trust; STANLEY S. JAKSICK, Individually
and as Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY, Individually, as
Former Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the Wendy A.
Jaksick 2012 BHC Family Trust, INCLINE
TSS, LTD.; and DUCK LAKE RANCH, LLC;

Petitioners and Counter-Respondents.

**JUDGMENT ON JURY VERDICT AND
COURT ORDER ON EQUITABLE
CLAIMS**

A. JUDGMENT ON JURY VERDICT

This matter was tried to a jury from February 14, 2019 to and including March 4, 2019.
The jury found in favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-

1 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
2 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
3 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust and against
4 Counter-Petitioner Wendy Jaksick on all claims and defenses. The jury found in favor of Counter-
5 Petitioner Wendy Jaksick against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr.,
6 Family Trust and as Trustee of the SSJ's Issue Trust on her breach of fiduciary duty claim and
7 assessed damages in the total amount of \$15,000. The jury found in favor of Todd Jaksick, as Co-
8 Trustee of the Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, on all
9 of Wendy Jaksick's other claims tried to the jury. The Jury Verdict is attached hereto and made a
10 part hereof.

11 Accordingly, judgment is entered as follows:

12 1. In favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-
13 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
14 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
15 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust against Counter-
16 Petitioner Wendy Jaksick on all of the claims and defenses tried to the jury. As required by NRS
17 18.110, these prevailing parties shall file their Memoranda of Costs within five days from notice
18 of entry of this Judgment on Jury Verdict.

19 2. In favor of Wendy Jaksick against Todd Jaksick as Co-Trustee of the Samuel S.
20 Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust on Wendy Jaksick's breach of
21 fiduciary duty claims. The Jury's Verdict in favor of Counter-Petitioner Wendy Jaksick in the
22 amount of \$15,000 is *de minimis* in light of her request for damages of \$80,000,000 and in light of
23 her failure to prevail on fraud, conspiracy and aiding and abetting. She is, therefore, not a
24 prevailing party and not entitled to recover costs under NRS 18.050 and NRS 18.110. Counter-
25 Petitioner Wendy Jaksick failed to obtain a judgment in excess of the Offers of Judgment served
26 by Todd Jaksick, as an individual, and is therefore not entitled to recover costs pursuant to NRCP
27 68. Counter-Petitioner Wendy Jaksick's judgment against Todd Jaksick, as Co-Trustee of the
28 Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, is for the total amount

1 of \$15,000, together with prejudgment interest from the date of her Counter-Petition (January 19,
2 2018) to the date of the Offer of Judgment (August 29, 2018) served by Todd Jaksick, in his
3 individual capacity, in the amount of \$605.34, for a total judgment of \$15,605.34. This judgment
4 shall accrue interest at judgment rate until paid in full.

5 3. All claims asserted by Counter-Petitioner Wendy Jaksick in her Counter-Petition
6 and Amended Counter-Petition and tried to the jury are dismissed with prejudice.

7 4. In favor of Duck Lake Ranch, LLC, and Incline TSS, Ltd. against Counter-
8 Petitioner Wendy Jaksick. The Court dismissed Counter-Petitioner's claims against these entities
9 and pursuant to NRS 18.110, these entities shall file their Memoranda of Costs within five days of
10 notice of entry of this judgment.

11 **B. JUDGMENT ON EQUITABLE CLAIMS**

12 On May 13, 2019, the Court began a bench trial to resolve Wendy Jaksick's equitable
13 claims. The parties stipulated to submit written closing trial briefs and replies. Having considered
14 all briefs, evidence admitted during the jury trial and evidence submitted in support of the parties'
15 positions on the equitable claims, the Court entered its *Order After Equitable Trial* on March 12,
16 2020. The Order is attached hereto, made a part hereof, and is incorporated herein. The terms,
17 provisions, findings and conclusions set forth in its *Order After Equitable Trial* are incorporated
18 herein as the Court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the
19 Nevada Rules of Civil Procedure.

20 Judgment is hereby entered as follows:

21 1. Against Counter-Petitioner Wendy Jaksick on all of her equitable claims and is
22 entered in favor of Todd Jaksick, as an individual, Stanley Jaksick, as an individual and Co-
23 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, as an individual and Co-
24 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, individually, Kevin Riley, as Co-
25 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, as Trustee of the BHC Trust,
26 Duck Lake Ranch, LLC, and Incline TSS, Ltd. These prevailing parties shall file their
27 Memoranda of Costs pursuant to NRS 18.110 within five days of the notice of entry of this
28 judgment.

1 2. In favor of Counter-Petitioner Wendy Jaksick's counsel of record in the amount of
2 \$300,000 to be paid by the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust.

3 3. In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust against
4 Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust in an amount equal to
5 25% of the attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust
6 for legal services rendered on behalf of the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust
7 and Trustee for the SSJ's Issue Trust. Todd Jaksick's obligation to satisfy this judgment requires
8 payment of the amount determined from his personal funds. Counsel for the Trustees and Trustee
9 shall submit verified Memoranda of Fees paid within twenty-one days of notice of entry of this
10 judgment.

11 4. On March 13, 2019, Todd Jaksick, in his individual capacity, filed a Motion for
12 Order Awarding Costs and Attorneys' Fees for Todd Jaksick, individually, Duck Lake Ranch,
13 LLC and Incline TSS, Ltd. For the reasons stated in the Court's March 12, 2020 *Order After*
14 *Equitable Trial*, Todd Jaksick's Motion for Order Awarding Costs and Attorneys' Fees was
15 granted, subject to section (c) on page 22 of the Court's *Order After Equitable Trial*. Accordingly,
16 judgment is hereby entered in favor of Todd Jaksick, individually, against Counter-Petitioner
17 Wendy Jaksick in the amount of \$436,331 for attorneys' fees and \$68,834.07 in costs, for a total
18 judgment in favor of Todd Jaksick against Counter-Petitioner Wendy Jaksick of \$505,165.07,
19 which amount shall accrue interest from the date hereof at the legal rate.

20 5. In favor of the SSJ's Issue Trust and Incline TSS, Ltd., confirming title to the Lake
21 Tahoe house is to remain in the name of Incline TSS, Ltd., and against Wendy Jaksick regarding
22 claims to disrupt or change the title to the Lake Tahoe home.

23 6. In favor of the Samuel S. Jaksick, Jr., Family Trust against Counter-Petitioner
24 Wendy Jaksick denying her July 23, 2019 Emergency Motion to Compel Distribution from the
25 Samuel S. Jaksick, Jr., Family Trust.

26 7. In favor of Counter-Respondents, consistent with the Jury's Verdict on the ACPAs
27 and Indemnification Agreements.
28

1 8. Against Counter-Petitioner Wendy Jaksick and in favor of Todd Jaksick,
2 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Stanley Jaksick,
3 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel,
4 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley,
5 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC
6 Trust, Duck Lake Ranch, LLC, and Incline TSS, Ltd., on Counter-Petitioner Wendy Jaksick's
7 claims on unjust enrichment and constructive trust.

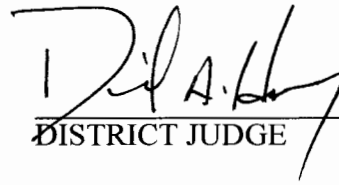
8 9. In favor of Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust
9 and as Trustee of the SSJ's Issue Trust, and against Counter-Petitioner Wendy Jaksick confirming
10 Todd Jaksick, as Trustee of the SSJ's Issue Trust and Co-Trustee of the Samuel S. Jaksick, Jr.,
11 Family Trust. Michael Kimmel and Stanley Jaksick are also confirmed as Co-Trustees of the
12 Samuel S. Jaksick, Jr., Family Trust.

13 10. In favor of the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust
14 against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the
15 SSJ's Issue Trust, for all Trustee's fees paid to Todd Jaksick. Todd Jaksick is hereby required to
16 disgorge all Trustee's fees paid to him, and payment thereof will constitute a setoff against any
17 amounts he must pay as and for 25% of the attorneys' fees paid to the Trustees' counsel of record.

18 11. Declaring and decreeing that all fees ordered against Wendy Jaksick shall be
19 treated as a general trust administration expense and are not allocated to any beneficiaries'
20 distributive share. Todd Jaksick may attach or anticipate Wendy's distributive share only if there
21 are no spendthrift provisions within the trust instruments that prohibit such creditor collection
22 efforts. If such spendthrift provisions exist, distributions shall be made to Wendy, and Todd may
23 seek collection efforts against Wendy personally, subsequent to the distribution.

24 IT IS HEREBY ORDERED, DECREED AND ADJUDGED that the foregoing, upon entry
25 and filing in this matter, is an enforceable final judgment and all findings and conclusions of the
26 Court's March 12, 2020 *Order After Equitable Trial* are expressly incorporated herein. This
27 judgment resolves all claims against all parties, and pursuant to Rule 54(b) of the Nevada Rules of
28 Civil Procedure is a final judgment.

DATED this 1st day of April, 2020.


DISTRICT JUDGE

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THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the Case No. PR17-00445
SSJ'S ISSUE TRUST.

_____ /

CONSOLIDATED
In the Matter of the Administration of the Case No. PR17-00446
SAMUEL S. JAKSICK, JR. FAMILY TRUST. Dept. No. 15

_____ /

ORDER AFTER EQUITABLE TRIAL

On August 2, 2017, the trustees of the SSJ's Issue Trust ("Issue Trust") and the Samuel S. Jaksick, Jr. Family Trust ("Family Trust") filed Petitions for Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters.¹ October 10, 2017, Wendy Jaksick filed an Opposition and Objection to the Petition. On January 19, 2018, Wendy filed a Counterpetition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief, which was subsequently amended on February 23, 2018. Family Trust co-trustee Stan Jaksick filed an Objection to Approval of Accountings and Other Trust Administration Matters on October 10, 2017. Todd Jaksick, as trustee of the Issue Trust

¹ Family Trust co-trustee Stan Jaksick did not join in the petitions.

1 and co-trustee of the Family Trust, and Michael Kimmel as co-trustee of the Family Trust,
2 are represented by Donald Lattin and Carolyn Renner. Todd is represented in his
3 individual capacity by Kent Robison. Mr. Robison also represents Duck Lake Ranch, LLC,
4 Incline TSS, Ltd., and Sammy Supercub, LLC. Stanley Jaksick, as co-trustee of the Family
5 Trust, is represented by Adam Hosmer-Henner and Philip Kreitlein. Wendy is
6 represented by Mark Connot and Kevin Spencer.

7 1. This Court presided over a jury trial on legal claims between February 14,
8 2019, and March 4, 2019. The jury concluded Todd breached his fiduciary duty as trustee
9 and awarded damages of \$15,000. The jury found no other trustee breached any fiduciary
10 duty. In addition, the jury found Wendy had not proven her claims for 1) civil conspiracy
11 and aiding and abetting, 2) aiding and abetting breach of fiduciary duty, or 3) fraud
12 against any counter-respondent whether individually or as trustee. The jury did not find
13 any counter-respondent acted with fraud, oppression, or malice.

14 2. On May 13, 2019, this Court began a bench trial to resolve the remaining
15 equitable claims. By stipulation, the parties submitted written closing trial statements and
16 replies. This Court authorized supplemental briefing on a narrow issue related to Exhibit
17 561. This Court has considered all briefs and evidence admitted during the equitable trial
18 (including many exhibits previously admitted at jury trial).² This Court is aware that
19 disagreements continue and Wendy alleges ongoing breaches of fiduciary duties, as
20 illustrated by the moving papers relating to post-trial costs, the 2018 annual accountings,
21 and distribution guidance. It now finds and orders as follows:

22 General Findings

23 1. As a factfinder, this Court is authorized to consider its everyday common
24 sense and judgment, and determine what inferences may be properly drawn from direct
25 and circumstantial evidence. See Lewis v. Sea Ray Boats, Inc., 119 Nev. 100, 105, 65 P.3d

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27 ² On May 13, 2019, the parties stipulated into evidence many exhibits previously admitted during the jury
28 trial. Wendy also offered new evidence during the equitable phase of trial. A list of all documentary
evidence admitted on equitable issues is contained in this Court's Order Addressing Evidence at Equitable
Trial, dated May 20, 2019. This Court has not considered unadmitted documentary evidence. However, this
Court has considered deposition testimony properly part of the trial record pursuant to NRCP 32.

1 245, 248 (2003); Nev. 1GI.5 (2011); Nev. 2EV.3 (2011); Nev. J.I. 1.05 (1986).

2 2. The facts presented in support of the equitable claims inextricably overlap
3 with the legal claims presented to the jury. Despite how the claims are pled, Wendy is
4 attempting to retry her case to obtain a second review of similar facts and an outcome
5 different from the jury verdict.³ This Court may or may not have reached the same
6 decision as the jury. Regardless, it has no authority to dilute or otherwise modify the
7 jury's verdict.

8 3. The file materials compose more than 17,000 pages. There were more than
9 300 separate pleadings, motions, oppositions, replies, joinders, and other substantive
10 papers filed in this proceeding. The parties produced tens of thousands of documents
11 before trial and marked 677 exhibits for the two trials, of which 227 were admitted. The
12 substantive papers (with exhibits and transcripts) filed since the jury's verdict compose
13 more than 4,000 pages. This Court has read and re-read the pending moving papers, to
14 include exhibits and transcripts. It has analyzed every argument presented and carefully
15 studied the cited authorities. It cannot synthesize the competing moving papers, exhibits,
16 and arguments into a single coherent order. It cannot resolve the arguments in minutia.
17 Therefore, this Court elects to make general findings, which are substantially supported by
18 the evidence of record.

19 4. This Court regrets some of its more direct findings, which it must disclose to
20 support its discretionary resolution of equitable claims.

21 5. Sam Jaksick created substantial wealth during his life but his leveraged
22 estate was compromised by the "great recession" during the last season of his life. Sam's
23 estate is exceedingly complex because he used tens of different corporate entities as
24 holding companies for his wealth. Sam also partnered with non-family business entities.

25 6. Sam had three children: Stan, Wendy, and Todd. Sam loved each of his

26
27 ³ On January 3, 2018, Wendy demanded a jury trial on all legal claims. Wendy demanded a jury – at least in
28 part – because she likely suspected a judge's comprehensive, studious examination of all evidence would not
result in the \$80 million compensatory damages and additional punitive damages she asked the jury to
award. This Court honors Wendy's unfettered constitutional right to a jury trial but it will not re-visit the
identical facts to arrive at a different outcome for Wendy.

1 children, despite their different strengths, weaknesses, and personalities. Wendy did not
2 transition well into adulthood and Sam was aware of her inability to provide for herself.
3 Wendy does not understand financial complexities. Sam was more confident in Stan and
4 Todd as he worked with them during his life and designated them to continue
5 participating in his estate and business affairs after his death. Stan's trial participation was
6 not lengthy but he appears to enjoy some financial fluency and business sophistication.
7 Stan also presented as a credible witness and thoughtful sibling. While Todd is most
8 familiar with Sam's business and trust affairs, he is only marginally sophisticated as a
9 trustee. He regularly deferred to the knowledge and expertise of others.⁴ Todd also
10 presented as conflicted by his own interests, influenced by his animus towards Wendy,
11 and confused about his duties as a neutral trustee.

12 7. Sam's estate plan evolved over the years, and its last iteration was influenced
13 by debt, tax avoidance, asset protection, and planning around Stan's divorce. Both Sam
14 and Todd were exposed to personal liabilities on substantial debts Sam had incurred.
15 Some of the estate documents were created in haste because of Sam's heart illness and
16 surgery in December, 2012. (Sam survived his heart illness and tragically died in a water
17 accident in 2013). Some of the 2012-13 estate planning documents are disorganized,
18 internally inconsistent, and complicated by notarial mischief or neglect. This Court was
19 particularly troubled by the notary's abdication of statutory responsibilities, which was an
20 influencing fact in the litigation Wendy pursued. Notaries are given great authority and
21 their actions induce reliance. The notary at issue fell below the statutory standards. This
22 finding alone warrants a substantial financial consequence upon the trust, which this
23 Court includes in its analysis of the no-contest penalty and attorneys' fees requests.

24 8. Todd's participation in Sam's estate beginning in 2012 can be viewed
25 through two opposing lenses: he was either a disconnected participant who yielded to his
26

27 ⁴ This Court understands jury instruction no. 11, which does not alter the fact that Todd struggled under the
28 shadow of his father's business acumen. The dynamic of Todd relying on professionals regarding the
accountings, while the professionals provided accountings with disclaimers and hyphens, created
uncertainty (or at least the appearance of uncertainty) about transactions, values, and who was ultimately
responsible for acts and accountings of trust administration.

1 father's wishes, or he was a subtly strategic participant who enriched himself to the
2 detriment of his siblings. These opposing possibilities are relevant only to understand
3 how this dispute became so bitter. This Court is inclined to find Todd was the former
4 rather than the latter, but regardless, Stan and Wendy had cause to seek answers to
5 questions created by document anomalies, inadequate disclosures, and transactions
6 inuring to Todd's benefit.

7 9. This action began when Stan, Wendy, and Todd were opposed to each other.
8 The dispute was exacerbated by inadequate information and self-interested perspectives.
9 Some of the more personal allegations among siblings reveal a family influenced by
10 misperceptions and individual interests. Wendy was particularly personal in her
11 allegations, the worst of which were harassing, vexatious, and without factual basis. There
12 were at least seven lawyers zealously advocating for their clients, which further
13 entrenched the siblings against each other. The children chose litigation over compromise
14 to work through the complexities of Sam's estate and their disparate financial
15 circumstances. With more effortful disclosures, neutral access to information, and a little
16 sibling patience, they *might* have worked through the messiness of Sam's estate to reach a
17 non-litigation resolution. Instead, the children sued each other, with Todd and Stan
18 settling their dispute just days before the jury trial began. Despite the settlement, this
19 Court is aware of the allegations Stan made against Todd in his deposition and trial
20 testimony. The settlement does not extinguish Stan's pleading allegations and
21 testimony – it merely reflects Todd and Stan's strategic and well-advised decision to
22 compromise their claims before trial. The settlement worked to Wendy's trial detriment,
23 yet she chose trial over settlement and must now accept the consequences of her choice.
24 Stan's allegations and testimony are relevant to contextualize the legal and equitable
25 claims, particularly the request to impose a no-contest penalty and for attorneys' fees
26 under NRS Chapter 18 and NRCP 68.

27 10. Todd and Stan contend they made every effort to avoid litigation but could
28 not persuade Wendy or her attorneys to choose compromise over conflict. This is mostly

1 accurate, as Wendy's litigation position and trial demand were influenced more by animus
2 and avarice than by a desire for balanced justice. In particular, Wendy's \$80 million jury
3 demand revealed her overreach. However, Wendy's litigation zeal does not extinguish
4 her probable cause to seek answers and formulate claims based upon the information she
5 had at the time — the same information that led to Stan's allegations against Todd.

6 11. Throughout trial this Court reflected upon how Sam would respond if he
7 observed his children spending millions of dollars litigating his estate. The parties
8 repeatedly invited this Court to consider Sam's testamentary intentions. Responding to
9 that invitation, this Court has wondered how Sam would react to see his estate
10 disproportionately allocated among his children. There is no way to know how or if Sam
11 would have enlarged Wendy's beneficial interests if he survived the economic recovery.
12 Sam loved Wendy despite her issues, and this Court suspects Sam would have continued
13 his pattern of lifetime largesse in favor of his troubled daughter. But suspicion and
14 speculation are beyond this Court's authority. Death arrives at its own inconvenient time
15 and none can alter its consequences. Wendy is simply without her paternal benefactor and
16 is susceptible to the trustees' actions as governed by documents and transactions Sam
17 approved during his life.

18 12. The trustees' initial petitions were predicated upon accountings that
19 provided inadequate information. The accountings were untimely, and even if technically
20 compliant with the statutes, they failed to provide full and fair notice to Wendy as a
21 beneficiary. This Court acknowledges the trustees attempted to answer Wendy's
22 questions by making their CPA and lawyers available to Wendy, but there is only
23 marginal evidence in the record the trustees invested their own personal efforts to satisfy
24 Wendy's concerns. At some point the trustees' responses became form over function.
25 Todd particularly grew weary of Wendy, which affected his neutral trusteeship, as
26 illustrated by his hope to satisfy Wendy's beneficial interests at a discount that inured to
27 his benefit. In response, Wendy initiated scorched-earth litigation grounded in
28 entitlement and limited self-awareness. This Court cannot now alter the consequences of

1 the trust administration and litigation choices that precede this order.

2 13. Wendy's legal and equitable claims are grounded in the same common facts
3 and are exceedingly difficult to segregate. As this Court reviewed the hundreds of pages
4 of written arguments relating to the equitable claims, it was taken back to the evidence
5 and arguments presented to the jury. Through the misty fog of painfully voluminous
6 allegations and varied claims, the core of Wendy's complaint is that Todd breached his
7 fiduciary duties by self-dealing and failing to disclose information relevant to Wendy as a
8 beneficiary. No matter how Wendy frames or argues her equitable claims, she asks this
9 Court to remedy the identical facts and transactions she placed before the jury. This Court
10 must look to the substance of the claims, not just the labels used in the pleading document.
11 Nev. Power Co. v. District Court, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004).

12 14. The complexity of Sam's estate warranted extraordinary disclosures,
13 explanations, and compliance with discovery rules. There were significant discovery
14 disputes, such that this Court created a schedule for recurring access to the Discovery
15 Commissioner. This Court also ordered the production of disputed discovery. Discovery
16 continued to the very eve of trial and Wendy was still attempting to discern her beneficial
17 interests when trial began.

18 15. There were several sports references and metaphors argued to the jury.
19 Consistent with that theme, Wendy "swung for the fences" when she asked the jury to
20 award \$80 million to her (plus punitive damages), an amount that exceeds the evidentiary
21 value of this estate and would deprive Todd and Stan of any beneficial interests. She now
22 seeks a "mulligan" by re-arguing to this Court what was over-argued to the jury.⁵ The
23 jury found that Todd breached his fiduciary duties but only awarded \$15,000 to Wendy. It
24 found against Wendy on all other claims and against all other counter-respondents. This
25 Court may have been authorized to award additional equitable relief upon the same facts

26
27 ⁵ To illustrate, Wendy argued in her omnibus opposition to the cost memoranda filed before the equitable
28 claims trial that "damages may still be awarded, transactions may be set-aside, further breaches of fiduciary
duty may be found, and the ACPAs and other documents may be found fraudulent or invalid, ab initio."
These were all claims and requests rejected by the jury.

1 if the jury found for Wendy on more claims and against more counter-respondents. But
2 constitutional and decisional authorities prevent this Court from entering a subsequent
3 order diluting or altering the jury's verdict.

4 16. Todd asks this Court to contextualize the \$15,000 as a *de minimis* award. This
5 Court will not infuse qualitative meaning into the jury's verdict. To do so would be
6 impermissible speculation. Todd breached his fiduciary duties to Wendy. And Wendy
7 was not awarded the damages she sought. These two facts are integral to this Court's
8 resolution of equitable claims and fees requests.

9 General Legal References

10 1. This Court cannot supplant or alter a jury's verdict by relying upon common
11 facts to reach a different outcome. See generally Lehrer McGovern Bovis, Inc. v. Bullock
12 Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032, 1038 (2008) (discussing special interrogatory
13 verdicts). In Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir. 2013), the plaintiff
14 submitted his equitable claim for declaratory relief to the bench after the jury rejected his
15 legal claims. The court held "it would be a violation of the Seventh Amendment right to
16 jury trial for the court to disregard a jury's findings of fact. Thus, in a case where legal
17 claims are tried by a jury and equitable claims are tried by a judge, and the claims are
18 based on the same facts, in deciding the equitable claims, the Seventh Amendment
19 requires the trial judge to follow the jury's implicit or explicit factual determinations." Id.
20 at 828-29 (citations omitted).

21 2. In Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc., 908 F.3d
22 313, 343 (8th Cir. 2018), the jury found for the plaintiff on legal intellectual property claims,
23 but the bench subsequently applied the equitable defenses of laches and acquiescence.
24 The appellate court reversed, holding "[t]o bind the district court's equitable powers, a
25 jury's findings must be on an issue 'common' to the action's legal and equitable claims;
26 otherwise, the court is free to treat the jury's findings as 'merely advisory'" Id.
27 Further, "[i]f the jury's findings were on a common issue, the court, in fashioning equitable
28 relief, may take into account facts that were not determined by the jury, but it may not

1 base its decision on factual findings that conflict with the jury's findings." Id. at 344
2 (citations omitted); see also Haynes Trane Serv. Agency, Inc. v. Am. Standard, Inc., 573
3 F.3d 947, 959 (10th Cir. 2009) (noting a court cannot grant equitable relief on facts rejected
4 explicitly or implicitly by a jury verdict); Avitia v. Metro Club of Chicago, Inc., 49 F.3d
5 1219, 1231 (7th Cir. 1995) ("[A] judge who makes equitable determinations in a case in
6 which the plaintiff's legal claims have been tried to a jury is bound by any factual findings
7 made or inescapably implied by the jury's verdict.").

8 3. Among prescribed form and content, an accounting must provide a
9 beneficiary with the ability to evaluate his or her interests. NRS 165.135(3). See also NRS
10 153.041. The cost of preparing an accounting is presumptively borne by the trust. NRS
11 165.1214(5). Unless acting in good faith, a trustee can be personally liable for failing to
12 provide an accounting. NRS 165.148. A beneficiary may petition the court to order a
13 trustee to perform his or her accounting duties. NRS 165.190. This Court may order a
14 trustee's compensation be reduced or forfeited, or enter other civil penalty, when a trustee
15 fails to perform his duties. NRS 165.200.

16 4. The trustees' just and reasonable expenses are presumptively governed by
17 the trust instruments and borne by the trust. However, this Court has authority to review
18 and settle the trustees' expenses and compensation. NRS 153.070. This Court may also
19 reduce a trustee's compensation or order a trustee to pay a beneficiary's reasonable
20 attorneys' fees and costs when the beneficiary compels redress for a breach of trust or
21 compliance with trust terms. NRS 153.031(3). See also In re Estate of Anderson, No.
22 58227, 2012 WL4846488 (Oct. 9, 2012). This Court may order the trust expenses defending
23 against a beneficiary's successful claims be borne by a trustee individually. NRS 18.090.
24 See also Estate of Bowlds, 120 Nev. 990, 1,000, 102 P.3d 593, 600 (2004) (concluding
25 payment of attorney's fees from trust assets only when litigation generally benefits the
26 trust); NRS 153.031(3)(b) (stating if court grants relief to petitioner, it may order trustee to
27 pay fees and costs); RESTATEMENT (THIRD) OF TRUSTS § 100 (2012) (examining denial of
28 compensation to breaching trustee).

1 5. NRS 163.00195 governs no-contest provisions. It begins by emphasizing this
2 Court's duty to enforce no-contest clauses to effectuate a settlor's intent. NRS 163.00195(1).
3 However, the statute then creates a wide exception when it provides a no-contest clause
4 must not be enforced when a beneficiary acts to enforce her legal rights, obtain court
5 instruction regarding proper administration, seeks to enforce the trustee's fiduciary duties,
6 or institutes and maintains a legal action in good faith and based on probable cause. NRS
7 163.00195(4). See also Matter of ATS 1998 Tr., No. 68748, 2017 WL3222533, at *4 ("[T]he
8 purpose of a no-contest clause is to enforce the settlor(s)' wishes, not to discourage a
9 beneficiary from seeking his or her rights."). A legal action is based on probable cause
10 when the facts and circumstances *available to the beneficiary*, or a properly informed and
11 advised reasonable person, "would conclude that the trust, the transfer of property into
12 the trust, any document referenced in or affected by the trust or any other trust-related
13 instrument is invalid." NRS 163.00195(4)(e) (emphasis added).

14 6. A trustee has a duty to act impartially, based on what is fair and reasonable
15 to all beneficiaries. Specifically, "the trustee shall act impartially in investing and
16 managing the trust property, taking into account any differing interests of the
17 beneficiaries." NRS 164.720(1). "[I]t is the trustee's duty, reasonably and without personal
18 bias, to seek to ascertain and to give effect to the rights and priorities of the various
19 beneficiaries or purposes as expressed or implied by the terms of the trust." RESTATEMENT
20 (THIRD) OF TRUSTS § 79 (2007).

21 7. "In all matters connected with [the] trust, a trustee is bound to act in the
22 highest good faith toward all beneficiaries and may not obtain any advantage over the
23 latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any
24 kind." Charleson v. Hardesty, 108 Nev, 878, 882, 839 P.2d 1303, 1306 (1992) (quoting
25 Morales v. Field, 160 Cal.Rptr. 239, 244 (1980)).

26 8. This Court may remove a trustee for good cause, including breach of
27 fiduciary duties. NRS 156.070; NRS 163.115; NRS 163.190; NRS 163.180; NRS 164.040(2);
28 see also Diotallevi v. Sierra Dev. Co., 95 Nev. 164, 591 P.2d 270 (1979) (explaining court has

1 “full equitable powers” to redress breach of trust). Removal may be appropriate when
2 there is significant animosity between the trustee and a beneficiary, such that it has the
3 potential to materially interfere with the proper administration of the trust. Acorn v.
4 Monecchi, 386 P.3d 739, 760 (Wyo. 2016) (explaining the relevant question is whether
5 “hostility, in combination with existing circumstances, materially interferes with the
6 administration of the trust or is likely to cause that result”); In re Estate of Stuchlik, 857
7 N.W.2d 57, 70 (Neb. 2014) (stating a trustee cannot act impartially when “influenced by . . .
8 animosity toward individual beneficiaries”); BOGERT, LAW OF TRUSTS AND TRUSTEES § 129
9 (3d rev. ed. 2019) (explaining where there is potential for a conflict of interest to arise from
10 the dual status of a trustee who is also a beneficiary, removal of the trustee may be
11 appropriate); see also Dennis v. R.I. Hosp. Trust Nat. Bank, 571 F. Supp. 623, 639 (D.R.I.
12 1983) (discussing removal may be appropriate when the court could expect “that future
13 Trust transactions will be scrutinized by the beneficiaries” as a result of lengthy and
14 antagonistic litigation). Additionally, conflict between the trustee and beneficiary may
15 form a basis for removal when personal contact or collaboration is required for the
16 administration of the trust. Blumenstiel v. Morris, 180 S.W.2d 107, 109 (Ark. 1944). “The
17 purpose of removing a trustee is not to inflict a penalty for past action, but to preserve
18 trust assets.” Getty v. Getty, 205 Cal.App.3d 134, 140 (1988).

19 9. Attorney’s fees are not allowed to a prevailing party absent a contract,
20 statute, or rule to the contrary. See Smith v. Crown Fin. Servs., 111 Nev. 277, 890 P.2d 769
21 (1995) (analyzing the American and English rules regarding attorney’s fees and their
22 intersection with Nevada Law). NRS 18.010(2)(b) provides that this Court may award
23 attorney’s fees when it finds a claim was brought or maintained without reasonable
24 ground, or to harass the prevailing party. Pursuant to NRCP 68(a), “[a]t any time more
25 than 21 days before trial, any party may serve an offer in writing to allow judgment to be
26 taken in accordance with its terms and conditions.” If an offer is not accepted within the
27 prescribed time period, it will be considered rejected by the offeree. NRCP 68(e). If an
28 offeree rejects an offer and fails to obtain a more favorable judgment, “the offeree must

1 pay the offeror's post-offer costs and expenses, including . . . reasonable attorney fees, if
2 any be allowed, actually incurred by the offeror from the time of the offer." NRCP
3 68(f)(1)(B) (emphasis added).

4 10. "[T]he purpose of NRCP 68 is to encourage settlement . . . not to force
5 plaintiffs unfairly to forego legitimate claims." Beattie v. Thomas, 99 Nev. 579, 588, 668
6 P.2d 268, 274 (1983). To determine whether an award of fees is appropriate, a court must
7 consider and weigh the following factors: (1) whether the claim was brought in good faith;
8 (2) whether the offer of judgment was reasonable and in good faith in both its timing and
9 amount; (3) whether the decision to reject the offer and proceed to trial was grossly
10 unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable
11 and justified in amount.⁶ Beattie, 99 Nev. at 588-89, 668 P.2d at 274. No one Beattie factor
12 is outcome determinative, and each should be given appropriate consideration. Yamaha
13 Motor Co., USA v. Arnoult, 114 Nev. 233, 252 n.16, 955 P.2d 661, 673 n.16 (1998).

14 11. A proceeding concerning a trust "does not result in continuing supervisory
15 proceedings, and the administration of the trust must proceed expeditiously in a manner
16 consistent with the terms of the trust, without judicial intervention or the order, approval
17 or other action of any court, unless the jurisdiction of the court is [properly] invoked . . . as
18 provided by other law." NRS 164.015(7).

19 Equitable Issues

20 The following equitable issues and arguments are before this Court:

21 1. *Approval of accountings*

22 The trustees ask this Court to settle, allow, and approve the Issue and Family Trust
23 accountings without further examination, to include approval of trustees' fees, attorneys'
24

25 ⁶ When considering the fourth Beattie factor, the court must consider the Brunzell factors. See Shuette v.
26 Beazer Homes Holdings Corp., 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005). These factors include the
27 following: "(1) the qualities of the advocate: his or her ability, training, education, experience, professional
28 standing, and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, time and
skill required, the responsibility imposed and the prominence and character of the parties where they affect
the importance of litigation; (3) the work actually performed by the lawyer: the skill, time, and attention
given to the work; and (4) the result: whether the attorney was successful and what benefits were derived."
Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 fees, and payment of other professional fees and administrative expenses.⁷ Wendy
2 opposes and asks this Court to order the trustees to prepare statutory compliant
3 accountings that disclose assets, values, transactions, and other acts of trust
4 administration. Wendy further argues that if the amended accountings are untimely or
5 noncompliant, this Court should find and remedy the trustees' breach of fiduciary duties.

6 The timing and form of accountings are prescribed by statute. But an accounting is
7 more than a formulaic compilation of data. An accounting is given to provide notice. Just
8 as facts in controversy vary from case to case, an accounting must be adjusted as the trust
9 estate requires. The trusts before this Court are complex because of the multiple layers of
10 entity and fractional ownership. They are further complicated by fluid and often
11 unknown values. This Court generally agrees with Wendy that the accountings fail to
12 provide adequate notice because they reveal only a portion of Sam's complex affairs – they
13 are mere pieces in a much larger puzzle and are ineffective when only reviewed in
14 isolation.⁸ Instead, the accountings created confusion and engendered suspicion. The
15 trustees attempted to answer Wendy's questions informally and made their professionals
16 available to answer Wendy's questions. But the accountings should have included more
17 explanatory details. The best example of how the accountings failed to provide actual and
18 adequate notice occurred when Todd testified Wendy could expect to receive \$4 million
19 from a variety of sources. While the trustees may have provided explanations through
20 accountants and settlement offers, Wendy's beneficial expectancy is not apparent from the
21 accountings or evidence of the trustees' pre-trial explanations.

22 However, this Court also notes that Wendy's complaints about the content and
23 general timing of the accountings were presented to the jury in the legal phase of trial and
24 are therefore facts common to the equitable claims. The jury presumably considered all
25 evidence when deliberating its verdict. The verdict is an express or implicit rejection of

26
27 ⁷ The relevant accountings are for the Issue and Family Trusts (April, 2013 through December, 2017) and
Wendy's subtrust (2013 – 2016).

28 ⁸ Wendy argues: "While in some circumstances, preparing and delivering accountings in the format
provided by NRS 165.135 may fully satisfy a fiduciary's requirement to account and fully disclose, that is not
and cannot be the case for these very complex trusts."

1 Wendy's complaints about the accountings. Accordingly, this Court will not provide
2 equitable relief regarding the accountings, which were constructively approved and
3 confirmed by the jury's verdict. In so doing, this Court does not countenance the trustees'
4 arguments that all accountings and disclosures complied with Nevada law, to include
5 NRS 165.135(4)(a), which allows for a statement prepared by a CPA containing summaries
6 of the information required by NRS 165.135(1). This Court simply orders that all litigation
7 regarding the accountings in existence at the time of the jury trial must end.⁹ The nature of
8 the accountings influence this Court's decision regarding attorneys' fees and the no-
9 contest provisions of the trust.

10 2. *Validity of the Agreements and Consents to Proposed Actions (ACPAs) and*
11 *Indemnification Agreements*

12 Todd as trustee of the Issue Trust, and Todd and Michael Kimmel as co-trustees of
13 the Family Trust, ask this Court to ratify and approve the ACPAs, thus relieving them of
14 liability for actions reasonably taken in reliance upon them. They (and Todd individually)
15 also ask this Court to affirm the indemnification agreements. Wendy opposes and asks
16 this Court to invalidate the ACPAs and rescind any transactions accomplished through
17 them. She also contests Stan and Todd's indemnification agreements and asks that any
18 transactions accomplished through them be invalidated and set aside. Each party presents
19 substantial arguments supporting their respective positions. This Court again returns to
20 the scope and content of the jury trial and the facts common to legal and equitable claims.
21 While the attorneys argued to the jury that this Court would decide the validity of the
22 ACPAs and indemnification agreements, each of the challenged documents and related
23 transactions were thoroughly presented and argued to the jury – including document
24 preparation, execution, and other formation irregularities. Thus, at least, the jury verdict is
25 an implicit rejection of Wendy's arguments.

26 Having considered all arguments, this Court concludes it will neither affirm nor

27
28 ⁹ The trustees may wish to modify the form of future accountings to provide better notice and explanations
to the beneficiaries. Otherwise, they risk objections this Court may be inclined to grant, including an award
of attorney's fees.

1 reject the ACPAs and indemnification agreements. They cannot be segregated from the
2 legal claims presented to the jury and now subsequently argued in support of equitable
3 relief. The jury constructively approved and affirmed the ACPAs and indemnification
4 agreements when it reached its verdict. The verdict prevents additional litigation and
5 precludes liability exposure for actions taken in reliance upon these documents. All claims
6 involving the disputed ACPAs and indemnification agreements shall end with the jury's
7 verdict. Nonetheless, the ACPAs and indemnification agreements also influence this
8 Court's decision regarding attorneys' fees and the no-contest provisions.

9 3. *Violation of the no-contest provisions of the trusts*

10 All trustees except Stan ask this Court to declare that Wendy violated the no-contest
11 provisions of the trusts when she initiated and maintained this litigation. Wendy opposes
12 and asks this Court to declare that Todd violated the no-contest provisions when he filed
13 the initial petition and later moved to dismiss her litigation. The trustees' request deserves
14 analysis, whereas Wendy's request is retaliatory and made with little legal basis or
15 support from the trust instruments.

16 Wendy sought to enforce her rights, obtain instructions, and remedy a breach of
17 fiduciary duties. The jury agreed that Todd breached his fiduciary duties. Further, based
18 upon the information she possessed, she had probable cause to seek invalidation of
19 transfers and other acts of trust administration. This Court must distinguish between the
20 *existence* of probable cause for initiating and maintaining this action with the manner in
21 which the probable cause was *litigated*. As noted elsewhere, Wendy and Stan had
22 probable cause to seek answers to questions raised by the accountings and other events of
23 trust administration. Thus, while Wendy's litigation zeal and overreaching jury demand
24 may implicate Sam's intention to disincentivize litigation, Wendy's legal actions were
25 authorized and do not create a bar to her beneficial rights.

26 4. *Unjust enrichment and constructive trust*

27 Wendy asks this Court to impress a constructive trust to cure unjust enrichment
28 caused by fraud, breach of fiduciary duty, and self-dealing. Todd, Stan, and the trustees

1 make several arguments in opposition to Wendy's request. This Court disagrees with
2 Wendy's position. Wendy's allegations of misconduct, document impropriety, and self-
3 dealing underlying her request for equitable relief are inseparable from the legal claims
4 she presented to the jury. Wendy has been awarded damages for Todd's breach of
5 fiduciary duties. Any other equitable relief would constitute double recovery and alter the
6 jury's verdict in violation of the Seventh Amendment and its interpretative decisions.

- 7 5. *Removal of trustees*
8 *Disgorgement of trustee fees*
9 *Use of trust funds to initiate petition and defend against Wendy's counterpetition*
 Award of attorneys' fees

10 Wendy relies upon her same arguments when asking this Court to remove the
11 trustees, order the trustees to disgorge trustee fees, and deny the use of trust funds to
12 present their petitions and defend against her counterpetition. The parties present
13 substantial authorities and arguments (and other moving papers) relating to attorneys'
14 fees.

15 There is no basis to consider the removal of any trustee except Todd. The two bases
16 to remove Todd are 1) the jury's verdict that Todd breached his fiduciary duties, and 2)
17 this Court's observation that Todd's neutrality is conflicted by his own interests and
18 animus towards Wendy. This Court concludes removal would be unjust and
19 incommensurate for several reasons: 1) Todd is Sam's designated and preferred trustee, 2)
20 other trustees will diffuse Todd's conflicts and reduce the personal contact between Todd
21 and Wendy, 3) the remedy against Todd's breaches and conflicts are made through other
22 orders regarding attorneys' fees, disgorgement of trustee's fees, and inapplicability of the
23 no-contest provisions, 4) Todd's own affairs are inseparable from trust administration and
24 his removal as trustee will not sever him from trust business; he will remain involved in
25 Jaksick family affairs through his ongoing management and ownership of several other
26 related entities, 5) the expenses of removing Todd and educating a successor trustee
27 would be expensive and inefficient, and 6) Wendy's suggestion that a commercial trustee
28 serve as successor trustee for all trustees is neither warranted nor workable.

 However, based upon the jury's verdict that Todd breached his fiduciary duties

1 (and secondarily, this Court's findings about the timing and content of the accountings),
2 this Court grants Wendy's request that Todd disgorge or disclaim all trustee's fees from
3 the inception of his trusteeship through the date when final judgment is entered. The
4 amount disgorged or otherwise forfeited may serve as an offset against the 25% of
5 trustees' attorneys' fees Todd is ordered to pay, as set forth below. This Court confirms
6 trustee fees to all other trustees.

7 There are several requests regarding attorney's fees as a trust expense. This Court's
8 discretionary resolution of the fees requests is bound by all facts of record and influenced
9 by the entirety of the pre-trial, legal, and equitable proceedings (including the settlement
10 agreement between Todd and Stan) and uncertainties created by notarial malfeasance.

11 This Court first orders that Stan Jaksick and Michael Kimmel's attorneys' fees be
12 chargeable to the trust and paid from trust corpus. This Court's decision regarding
13 Wendy and Todd's fees (both as trustee and individually) are more complicated. There
14 are competing facts and legal principles, which this Court analyzes in the aggregate and
15 not in isolation. In particular, the NRCP 68 request cannot be considered narrowly, but
16 instead, must be viewed by a totality of the case proceedings and statutory authorities
17 governing trustees. There are several options before this Court:

- 18 - Order the trust to pay all, some, or none of Wendy's fees
19 because she successfully obtained a verdict that Todd breached
20 his fiduciary duties as trustee.
- 21 - Order the trust to pay all, some, or none of the fees Todd
22 incurred as trustee because, even though he breached his
23 fiduciary duties, he qualitatively and quantitatively prevailed
24 against other claims asserted by Wendy.
- 25 - Order Wendy to pay fees Todd incurred because she brought
26 or maintained her action without reasonable grounds or to
27 harass.
- 28 - Order Wendy to pay fees Todd incurred as trustee of the Issue
Trust because she rejected his \$25,000 offer of judgment.
- Order Wendy to pay fees Todd incurred individually because

1 she rejected his \$25,000 offer of judgment.

- 2 - Discretionarily decline to order Wendy to pay fees pursuant to
3 the offers of judgment.

4 On August 29, 2018, Todd offered Wendy to have judgment entered against him
5 individually in the amount of \$25,000. He also offered Wendy to have judgment entered
6 against him as trustee of the Issue Trust in the amount of \$25,000. The jury did not make
7 any adverse findings against Todd individually, but it concluded Todd breached his
8 fiduciary duties as trustee and awarded \$15,000 to Wendy. With adjustments for interest,
9 the amount Wendy will receive is almost indistinguishable from the \$25,000 Todd offered
10 as trustee. To the extent there is a *de minimis* distinction, the difference is not enough in a
11 dispute that incurred several million dollars of fees and involved tens of millions in
12 controversy.

13 An offer of judgment must be an authentic attempt to settle a dispute. The offer of
14 judgment benefit is not automatically conferred. Instead, this Court must carefully
15 analyze the offer and discretionarily apply it to the unique facts of each case. This Court
16 and counsel are familiar with the American Rule of attorneys' fees and discretionary
17 application of NRCP 68. This Court's discretion exists to encourage parties to convey
18 legitimate offers to resolve their disputes. Of course, judicial discretion is controversial to
19 those who are aggrieved, and it is unpredictable to all.

20 On one side, offers that are appropriate in time and amount will cause the non-
21 offering party to become realistic and engage in genuine risk/benefit analyses. These
22 offers shift a calculated risk as trial approaches. To be an effective mechanism to resolve
23 disputes before trial, they should be in an amount the non-offering party cannot decline in
24 good faith. Defendants who perceive no liability exposure chafe against making time- and
25 amount-appropriate offers because they resent the payment of any money to a party they
26 perceive will not prevail at trial. On the other side, offering parties sometimes make time-
27 and amount-inappropriate offers *they expect to be rejected*. These offers do not facilitate
28 settlement--they are strategic devices to shift the risk of fees by offering illusory

1 consideration to end litigation.

2 This Court's discretion is guided by the unique facts and procedural history of this
3 case. This Court analyzes the Beattie factors as follows:

4 *Whether Wendy's claims were brought in good faith?* Wendy believed in good faith that
5 she suffered damages from Todd's individual and fiduciary misconduct. She trusted the
6 court system and exercised her constitutional right to jury trial. This Court concludes that
7 Wendy's claims against Todd as trustee of the Issue Trust were brought in good faith.
8 Wendy's concerns are countenanced, in large part, by the questions raised by the
9 accountings, Stan's separate allegations against Todd, document anomalies, and the optics
10 of Todd's disproportionate benefit from Sam's business and trust affairs. The good-faith
11 nature of Wendy's claims against Todd individually are more difficult to discern. In the
12 final analysis, Wendy had some cause to initiate the claims against Todd individually, but
13 as discovery progressed, Wendy's cause to pursue Todd individually diminished. This
14 factor weighs slightly in Wendy's favor regarding the Issue Trust offer of judgment and is
15 neutral regarding Todd's individual offer of judgment.¹⁰

16 *Whether Todd's offers were reasonable and in good faith in both timing and amount?* This
17 Court has wrestled with the question of whether the offers of judgment were brought in
18 good faith in both timing and amount. These offers of judgment were made six months
19 after Wendy filed her amended counter-petition, when discovery was still in its infancy.
20 This Court concludes the amounts offered were neither good faith/reasonable nor
21 strategic bad faith/unreasonable. They fall within the continuum between those two
22 categories. Todd knew, or should have known, the fees incurred through continuing
23 litigation alone would substantially overshadow the offered amounts. Todd knew, or
24 should have known, that Wendy would never accept \$25,000 to resolve her claims against
25 him as trustee of the Issue Trust.

26 However, Todd also had cause to believe he would prevail at trial, a fact now
27

28 ¹⁰ Because this Court finds Wendy brought her claims in good faith, this Court concludes fees under NRS
18.010(2)(b) are not warranted.

1 proven with respect to the claims against him individually. Todd's subjective belief about
2 the strength of his position is legally relevant. "[W]here the offeror has a reasonable basis
3 to believe that exposure to liability is minimal, a nominal offer is appropriate." Arrowood
4 Indem. Co. v. Acosta, Inc., 58 So. 3d 286, 289 (Fla. Dist. Ct. App. 2011) (discussing the good
5 faith prong of an offer of judgment from a Florida statute analogous to NRCP 68). At the
6 time Todd made his individual offer, Wendy had been unable to present coherent facts
7 underlying her claims against him personally. He therefore had reason to believe
8 Wendy's claims against him individually were weak or lacked merit. See Beach, 958 F.
9 Supp. at 1171 (holding defendant's offer was reasonable even though plaintiff's alleged
10 damages exceeded the offer's amount "given the weaknesses defendant perceived in
11 plaintiff's case."); see also Scott-Hop v. Bassek, Nos. 60501, 61943, 2014 WL 859181 at *6
12 (Feb. 28, 2014) (holding reasonable an offer of \$25,000 even though plaintiff's alleged
13 medical expenses were over \$150,000 because of the uncertainty of plaintiff's case and
14 defendant's summary judgment motion); Max Bear Productions, Ltd. v. Riverwood
15 Partners, LLC, No. 3:09-CV-00512-RCJ-RAM, 2012 WL 5944767 (D. Nev. Nov. 26, 2012)
16 ("The token \$1,000 offer may appear to have been made simply for the procedural purpose
17 of preserving rights to fees . . . should Defendant win a judgment. However, the
18 weaknesses of Plaintiff's case made this token offer reasonable."); Arrowood, 58 So. 3d at
19 289-90 (holding a court is required to consider an offeror's subjective belief that an offer is
20 reasonable and not just objective factors).

21 This Court concludes the second factor to consider is neutral regarding the Issue
22 Trust and does not inure to any party's favor or disfavor. Todd hoped he would prevail at
23 trial, but given the financial and documentary complexity, discovery delays and disputes
24 (including Todd's continued depositions long after the offers of judgment were made), the
25 untimely accountings, incomplete discovery, and the amounts in controversy, the offer
26 does not appear to be made with the good-faith intention of settling Wendy's claims. In
27 contrast, Todd's offer to settle Wendy's claims against him individually for the payment of
28 \$25,000 appears more reflective of the circumstances and was made with a good-faith

1 intention to settle the claims. Thus, this factor favors Todd individually.

2 *Whether Wendy's decision to reject the offer and proceed to trial was grossly unreasonable*
3 *or in bad faith?* Wendy's decision to reject Todd's offer as trustee of the Issue Trust was not
4 grossly unreasonable or in bad faith. The offer arrived early in discovery. Wendy had
5 incurred substantially more in fees than the offered amount and she was entitled to
6 examine her legal position after discovery was received. In contrast, her decision to reject
7 Todd's individual offer is less reasonable, yet this Court cannot conclude her rejection was
8 grossly unreasonable or made in bad faith. Her decision was simply unwise in retrospect
9 and she cannot now be relieved of its consequences. This third factor weighs in favor of
10 Wendy regarding the Issue Trust and is neutral regarding Todd's personal liability.

11 *Whether the fees sought are reasonable and justified in amount?* Todd's individual and
12 trustee attorneys are experienced in law and trial. They have exemplary records of service
13 in our legal community and they obtained a positive outcome for their clients. After
14 considering each of the Brunzell factors, this Court finds the fees sought by Todd
15 individually from the date of the offer are reasonable in light of his experienced and
16 effective attorneys, duration and scope of litigation, and the result obtained. However,
17 the aggregate fees this Court expects Todd to seek as trustee of the Issue Trust are not
18 justified when the offered \$25,000 is compared to the jury verdict. Shifting substantial
19 attorneys' fees to Wendy is unjustified in this instance. Regarding Todd's individual fees,
20 the amounts are reasonable and justified when charged against Wendy. This factor is
21 neutral with respect to the Issue Trustee offer and favors Todd with respect to his
22 individual offer of judgment.

23 For these reasons, this Court orders as follows:

- 24 a. The trusts shall pay 100% of the fees incurred by their attorneys in
25 representation of the trustees. However, Todd shall reimburse the
26 trusts from his personal resources for 25% of the amount paid because
27 the jury determined he breached his fiduciary duties. Provided,
28 however, Todd is entitled to reduce this 25% personal obligation by

1 the amount of trustee's fees he is ordered to disgorge.

- 2 b. Wendy is *not* required to pay fees Todd incurred as trustee because
3 she rejected the \$25,000 offer of judgment.
- 4 c. Wendy *shall* pay 100% of fees Todd incurred individually from the
5 date the offer of judgment was made. Provided, however, Todd shall
6 be Wendy's judgment creditor and have no greater access to payment
7 than any other judgment creditor. Todd may attach or anticipate
8 Wendy's distributive share only if there are no spendthrift provisions
9 within the trust instruments that prohibit such creditor collection
10 efforts. If such spendthrift provisions exist, distributions shall be
11 made to Wendy and Todd may seek collection efforts against Wendy
12 personally, subsequent to the distribution. The trustees (including
13 Todd) shall carefully measure Todd's rights as an individual
14 judgment creditor with their fiduciary duties owed to Wendy as a
15 beneficiary.
- 16 d. The Trusts shall pay a combined attorneys' fee of \$300,000 to Wendy's
17 attorneys for prevailing in the claim against Todd for breach of
18 fiduciary duties. This payment shall be made directly to Wendy's
19 attorneys without Wendy's signatory participation as a client or trust
20 beneficiary.
- 21 e. All fees ordered shall be treated as general trust administration
22 expenses and not allocated to any beneficiary's distributive share.
- 23 f. Todd is not required to indemnify the trust for the \$300,000 payable to
24 Wendy's attorneys because he is already ordered to pay 25% of the
25 aggregate fees incurred in representation of the trustees.
- 26 g. The request for oral arguments is denied.

27 **Other Issues**

- 28 1. *Second supplement to first amended counterpetition*

1 On May 9, 2019 (after the legal phase of trial but before the equitable trial), Wendy
2 filed a Second Supplement to her First Amended Counterpetition in which she continued
3 her theme about untimely accountings. Wendy asks this Court to consider the new fact
4 allegation the Family Trust co-trustees failed to prepare and deliver accountings for the
5 Family Trust and Wendy Subtrust for the period from January 1, 2018, to December 31,
6 2018. She requests the production and delivery of these accountings and asks that the
7 trustees be sanctioned. The trustees (including Todd and Stan individually) moved to
8 strike Wendy's supplement because it was filed after the August 2, 2018, deadline to file
9 motions to amend pleadings and violated NRCP 15(d).¹¹ The 2018 accountings were
10 provided to Wendy in early July, 2019, thus rendering Wendy's request to compel moot.

11 It appears the accountings were untimely and this Court agrees Wendy could not
12 have filed the supplement until after the deadline for providing the 2018 accountings had
13 passed. However, the 2018 accountings are not part of the underlying litigation. This
14 Court declines Wendy's invitation to enlarge this litigation to satisfy judicial economy.
15 This litigation is bounded by the pleadings and cannot remain an open receptacle to
16 receive real-time allegations of inappropriate trust administration. The supplement is
17 stricken as beyond the scope of claims before this Court. Wendy may file a separate action
18 challenging the timing and content of the 2018 accountings if she is so inclined. This Court
19 neither encourages nor discourages such litigation.

20 2. *The Lake Tahoe property*

21 Though not placed within a certain claim for relief within her pleadings, Wendy
22 asks this Court to rescind all transactions involving the Lake Tahoe home and restore title
23 to the SSJ LLC, which was 100% owned by the Family Trust. Wendy continues to
24 overwhelm this Court with repetitive and lengthy arguments about the option
25 agreements, forgery, fraud, fiduciary duties, unjust enrichment, trustor intentions,
26 consideration, etc. All of Wendy's arguments were presented to the jury and rejected in
27

28 ¹¹ Stan filed an additional Motion to Dismiss or Motion to Strike, arguing Wendy's supplement alleged a new claim for breach of fiduciary duty that has not been discovered. Todd joined in Stan's motion.

1 the jury's verdict. This Court will not enter any order granting relief to Wendy regarding
2 the Lake Tahoe home.

3 3. *Future distributions*

4 On July 23, 2019, Wendy filed an Emergency Motion to Compel Distribution from
5 the Family Trust. She alleged she was being evicted from her home in Texas and needed
6 money to relocate to either Arizona or Reno. Wendy asked this Court to order the trustees
7 of the Family Trust to distribute \$6,000 for a deposit on a new apartment and \$5,000 per
8 month for living expenses. Wendy further asks this Court to advise the trustees regarding
9 the schedule of other distributions for living expenses. Wendy's motion is denied. This
10 Court will not supervise trust administration on an ongoing basis. It will not provide
11 advisory guidance or otherwise order the trustees regarding administration and
12 distributions. Instead, it will adjudicate disputes through normal judicial processes.
13 Wendy may initiate separate litigation if she is so inclined.

14 4. *Costs.*

15 Todd Jaksick as an individual, Duck Lake Ranch, LLC, and Incline TSS, are the
16 prevailing parties entitled to statutory and reasonable costs. All other parties may file cost
17 memoranda as authorized by law.

18 **Conclusions**

19 1. This Court does not confirm the accountings. However, the substance of the
20 accountings were presented to the jury and fall within the jury's verdict. Thus, this Court
21 will not allow additional litigation as to any accounting that formed the basis for Wendy's
22 legal claims. All future accountings shall be timely and formulated to provide the
23 beneficiaries with adequate notice of values, transactions, and other acts of trust
24 administration. The trustees are authorized to pay, at Wendy's request, a portion of
25 Wendy's distributive shares to Wendy's designated financial professional who will assist
26 her to understand the accountings and interact with the trustees.

27 2. This Court does not confirm the ACPAs or indemnification agreements.
28 However, the substance of the ACPAs and indemnification agreements were presented to

1 the jury and fall within the jury's verdict. This Court will not allow additional litigation as
2 to any of the ACPAs and indemnification agreements that formed the basis for Wendy's
3 legal claims.

4 3. The trustees' request to impose no-contest penalties against Wendy is
5 denied.

6 4. Wendy's claims for unjust enrichment and constructive trust are denied.

7 5. Todd is confirmed as trustee of Issue Trust and co-trustee of Family Trust.
8 All other trustees are also confirmed.

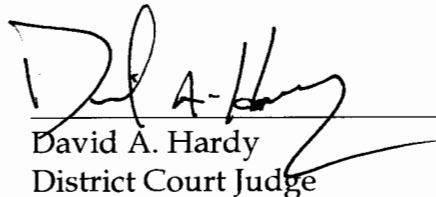
9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject
10 to the fees award provisions.

11 7. This Court anticipates the parties will seek clarification and other relief
12 through additional motion work. The attorneys' fees provisions in this order reflect the
13 entirety of this Court's intentions regarding fees. This order also reflects the entirety of
14 this Court's intentions regarding all other pending matters.

15 8. Todd and the trustees may submit a proposed judgment consistent with the
16 jury's verdict and this order on equitable claims.

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

19
20 
21 David A. Hardy
22 District Court Judge
23
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25
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27
28

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

WENDY JAKSICK,

Petitioner,

CASE NO.: PR17-00445

v.

DEPT. NO.: 15

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the
SSJ's Issue Trust; MICHAEL S. KIMMEL,
Individually and as Co-Trustee of the
Samuel S. Jaksick Jr. Family Trust;
STANLEY S. JAKSICK, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY,
Individually, as Former Trustee of the
Samuel S. Jaksick Jr. Family Trust, and
as Trustee of the Wendy A. Jaksick 2012
BHC Family Trust, INCLINE TSS, LTD.;
DUCK LAKE RANCH, LLC; SAMMY SUPERCUB
LLC, SERIES A,

CASE NO.: PR17-00446

DEPT. NO.: 15

VERDICT

Respondents.

/ / /

/ / /

/ / /

/ / /

1 We, the jury, duly impaneled in the above-entitled action,
2 find that Petitioner, Wendy Jaksick, has proven her **breach of**
3 **fiduciary duty claim**, by a preponderance of evidence, against:

4 (Please circle only one for each line item)

5 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
6 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
7 TODD JAKSICK (as Co-Trustee of Family Trust)	<input checked="" type="radio"/> YES	NO
8 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
9 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input checked="" type="radio"/> NO
10 TODD JAKSICK (as Trustee of Issue Trust)	<input checked="" type="radio"/> YES	NO

11 We, the jury, duly impaneled in the above-entitled action,
12 find that Petitioner, Wendy Jaksick, has proven her **civil**
13 **conspiracy and aiding and abetting claim**, by preponderance of
14 evidence, against:

15 (Please circle only one for each line item)

16 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
17 KEVIN RILEY (individually)	YES	<input checked="" type="radio"/> NO
18 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input checked="" type="radio"/> NO
19 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
20 TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
21 TODD JAKSICK (individually)	YES	<input checked="" type="radio"/> NO
22 TODD JAKSICK (as Trustee of Issue Trust)	YES	<input checked="" type="radio"/> NO
23 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
24 MICHAEL KIMMEL (individually)	YES	<input checked="" type="radio"/> NO

25 / / /

26 / / /

1 We, the jury, duly impaneled in the above-entitled action,
2 find that Petitioner, Wendy Jaksick, has proven her **aiding and**
3 **abetting breach of fiduciary duty claim**, by a preponderance of
4 evidence, against:

5 (Please circle only one for each line item)

6 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
7 KEVIN RILEY (individually)	YES	<input checked="" type="radio"/> NO
8 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input checked="" type="radio"/> NO
9 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
10 TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
11 TODD JAKSICK (individually)	YES	<input checked="" type="radio"/> NO
12 TODD JAKSICK (as Trustee of Issue Trust)	YES	<input checked="" type="radio"/> NO
13 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
14 MICHAEL KIMMEL (individually)	YES	<input checked="" type="radio"/> NO

15 We, the jury, duly impaneled in the above-entitled action,
16 find that Petitioner, Wendy Jaksick, has proven her **fraud claim**
17 by clear and convincing evidence, against:

18 (Please circle only one for each line item)

19 TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
20 TODD JAKSICK (individually)	YES	<input checked="" type="radio"/> NO
21 TODD JAKSICK (as Trustee of Issue Trust)	YES	<input checked="" type="radio"/> NO

22
23 (If you circled "yes" to **ANY** of the above claim(s) correlating
24 to **ANY** respondent then proceed to and answer Questions 1 AND 2.
25 If you answered "no" to **ALL** of the above then skip Questions 1
26 AND 2 and sign and date verdict form.)

27 / / /

28 / / /

/ / /

1 1. We, the jury, duly impaneled in the above-entitled
2 action, having found in favor of Petitioner, Wendy Jaksick, on
3 one or more of her claims against one or more of the
4 Respondents, find that she has proven by a preponderance of
5 evidence the amount of her damages, assess her damages to be
6 \$ 15,000.⁰⁰
7

8 2. Has Wendy Jaksick established by clear and convincing
9 evidence that any of the Respondents acted with fraud,
10 oppression, or malice?

11 (Please circle only one for each line item)

12 KEVIN RILEY	YES	<input checked="" type="radio"/> NO
13 STAN JAKSICK	YES	<input checked="" type="radio"/> NO
14 TODD JAKSICK	YES	<input checked="" type="radio"/> NO
15 MICHAEL KIMMEL	YES	<input checked="" type="radio"/> NO

16 DATED this 4 day of March, 2019.

17 Theresa Sedler
18 FOREPERSON
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Exhibit ‘H’

CODE: 2535

Adam Hosmer-Henner, Esq. (NSBN 12779)

MCDONALD CARANO

100 West Liberty Street, 10th Floor

Reno, Nevada 89501

Telephone: (775) 788-2000

ahosmerhenner@mcdonaldcarano.com

Attorneys for Stanley Jaksick,

Co-Trustee of the Family Trust

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

In the Matter of the Administration of the

SSJ ISSUE TRUST,

CASE NO.: PR17-00445

DEPT. NO.: 15

CASE NO.: PR17-00446

DEPT. NO.: 15

In the Matter of the Administration of the

SAMUEL S. JAKSICK, JR. FAMILY TRUST,

WENDY JAKSICK,

Respondent and Counter Petitioner,

v.

TODD B. JAKSICK, Individually, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, and as Trustee of the SSJ's Issue Trust, MICHAEL S. KIMMEL, Individually and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, and STANLEY S. JAKSICK, Individually and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, Kevin Riley, Individually and as former Trustee of the Samuel S. Jaksick, Jr. Family Trust and Trustee of the Wendy A. Jaksick 2012 BHC Family Trust,

Petitioners and Counter-Respondents.

STANLEY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, Individually and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD
3 CARANO and that on April 1, 2020, I served the foregoing on the parties in said case by
4 electronically filing via the Court's e-filing system. The participants in this case are registered e-
5 filing users and notice of filing will be served on all parties by operation of the Court's CM/ECF
6 system, and parties may access this filing through the Court's CM/ECF system.

7 Donald Lattin, Esq.
8 Robert LeGoy, Esq.
9 Brian C. McQuaid, Esq.
10 Carolyn Renner, Esq.
11 Maupin Cox & LeGoy
12 4785 Caughlin Parkway
13 Reno, NV 89520

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503

11 Mark J. Connot, Esq.
12 Fox Rothschild, LLP
13 1980 Festival Plaza Drive, # 700
14 Las Vegas, NV 89135

Philip L. Kreitlein, Esq.
Kreitlein Law Group, Ltd.
1575 Delucci Lane, Ste. 101
Reno, NV 89502

14 R. Kevin Spencer, Esq.
15 Zachary E. Johnson, Esq.
16 Brendan P. Harvell, Esq.
17 Spencer Law, P.C.
18 500 N. Akard St., Suite 2150
19 Dallas, TX 75201

20 I declare under penalty of perjury that the foregoing is true and correct.

21 DATED: April 1, 2020.

22 By /s/ Jill Nelson
23 An Employee of McDonald Carano
24
25
26
27
28

Exhibit “I”

1 **CODE: 2540**

Adam Hosmer-Henner, Esq. (NSBN 12779)

2 McDONALD CARANO

100 West Liberty Street, 10th Floor

3 Reno, NV 89501

(775) 788-2000

4 ahosmerhenner@mcdonaldcarano.com

5 *Attorneys for Stanley Jaksick,*
6 *Co-Trustee of the Family Trust*

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR THE COUNTY OF WASHOE**

9 * * * * *

10 In the Matter of the Administration of the

11 SSJ ISSUE TRUST,

CASE NO.: PR17-00445

DEPT. NO.: 15

CASE NO.: PR17-00446

DEPT. NO.: 15

13 In the Matter of the Administration of the

14 SAMUEL S. JAKSICK, JR. FAMILY TRUST,

15
16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that on June 10, 2020, the above-entitled Court entered its
18 Order Resolving Submitted Matters. A true and correct copy of the Order is attached hereto.

19 **Affirmation**

20 The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding
21 document does not contain the social security number of any person.

22 DATED: June 11, 2020

23 McDONALD CARANO

24
25 By: /s/ Adam Hosmer-Henner
Adam Hosmer-Henner, Esq. (NSBN 12779)
26 100 West Liberty Street, 10th Floor
Reno, NV 89501

27 *Attorneys for Stanley Jaksick,*
28 *Co-Trustee of the Family Trust*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD
3 CARANO and that on June 11, 2020, I served the foregoing on the parties in said case by
4 electronically filing via the Court's e-filing system. The participants in this case are registered e-
5 filing users and notice of filing will be served on all parties by operation of the Court's CM/ECF
6 system, and parties may access this filing through the Court's CM/ECF system.

7 Donald Lattin, Esq.
8 Robert LeGoy, Esq.
9 Brian C. McQuaid, Esq.
10 Carolyn Renner, Esq.
11 Maupin Cox & LeGoy
12 4785 Caughlin Parkway
13 Reno, NV 89520

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1575 Delucci Lane, Ste. 101
Reno, NV 89502

14 R. Kevin Spencer, Esq.
15 Zachary E. Johnson, Esq.
16 Brendan P. Harvell, Esq.
17 Spencer Law, P.C.
500 N. Akard St., Suite 2150
Dallas, TX 75201

18 I declare under penalty of perjury that the foregoing is true and correct.

19 DATED: June 11, 2020.

20
21 By /s/ Jill Nelson
22 An Employee of McDonald Carano

Exhibit “J”

1105

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

CASE NO.: PR17-00445

DEPT. NO.: 15

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY
TRUST.

CASE NO.: PR17-00446

DEPT. NO.: 15

WENDY JAKSICK,
Respondent and Counter-Petitioner,

~~PROPOSED~~
AMENDED JUDGMENT

v.

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr. Family
Trust, and as Trustee of the SSJ's Issue Trust;
MICHAEL S. KIMMEL, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr. Family
Trust; STANLEY S. JAKSICK, Individually
and as Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY, Individually, as
Former Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the Wendy A.
Jaksick 2012 BHC Family Trust, INCLINE
TSS, LTD.; and DUCK LAKE RANCH, LLC;

Petitioners and Counter-Respondents.

The procedural history of this matter, in pertinent part, is as follows:

1. This matter was tried to a jury from February 14, 2019, to and including March 4, 2019.
2. On May 13, 2019, the Court began a bench trial to resolve Wendy Jaksick's

1 equitable claims. After consideration of the evidence and briefs filed by the parties, the Court
2 entered its Order After Equitable Trial on March 12, 2020.

3 3. On April 1, 2020, Judgment on Jury Verdict and Court Order on Equitable Claims
4 (“Judgment”) was entered in these matters. A true copy of the Judgment is attached as **Exhibit 1**
5 and is made a part hereof. The jury’s March 4, 2019 Verdict and the Court’s Order After
6 Equitable Trial are attached to and made part of the Judgment.

7 4. After the Judgment was filed, the parties filed various post-judgment motions. The
8 Court resolved the post-trial motions in its June 10, 2020 Order Resolving Submitted Matters
9 (Post Judgment Order”). A true copy of the Post Judgment Order is attached as **Exhibit 2** and is
10 made a part hereof. The Post Judgment Order resolves various contested issues that require the
11 Judgment be amended in certain limited areas.

12 GOOD CAUSE APPEARING, the Judgment is amended as follows:

13 1. **Todd Jaksick’s Individual Claim For Attorneys’ Fees and Costs on the Equity**
14 **Claims.** This motion is granted and in addition to the \$505,165.07 awarded to Todd Jaksick
15 (“Todd”) individually in the Judgment, the Judgment is hereby amended to include an additional
16 \$108,124.67, for a total judgment against Wendy Jaksick (“Wendy”) in favor of Todd individually
17 in the amount of \$613,289.74.

18 2. **Todd’s Position as Wendy’s Judgment Creditor.** Todd’s rights to enforce the
19 Judgment and this Amended Judgment is not limited or restricted, except as follows:

20 **Order After Equitable Trial:** “Todd shall be Wendy’s judgment creditor and
21 have no greater access to payment than any other judgment creditor. Todd may
22 attach or anticipate Wendy’s distributive share only if there are no spendthrift
23 provisions within the trust instruments that prohibit such creditor collection efforts.
24 If such spendthrift provisions exist, distributions shall be made to Wendy and Todd
25 may seek collection efforts against Wendy personally, subsequent to the
26 distribution. The trustees (including Todd) shall carefully measure Todd’s rights as
27 an individual judgment creditor with their fiduciary duties owed to Wendy as a
28 beneficiary.”

Judgment: “Declaring and decreeing that all fees ordered against Wendy Jaksick
shall be treated as a general trust administration expense and are not allocated to
any beneficiaries’ distributive share. Todd Jaksick may attach or anticipate
Wendy’s distributive share only if there are no spendthrift provisions within the
trust instruments that prohibit such creditor collection efforts. If such spendthrift
provisions exist, distributions shall be made to Wendy, and Todd may seek
collection efforts against Wendy personally, subsequent to the distribution.”

1 3. **Co-Trustee Stanley Jaksick's Memorandum of Attorney's Fees.** The fees
2 Stanley Jaksick incurred as Co-Trustee of the Family Trust are payable from the Trust and Court
3 intervention was neither requested nor is given.

4 4. **Todd's Motion to Amend.** The judgment is amended so as to exclude from
5 Todd's personal responsibility 25% of the fees the Trusts paid for the benefit of Co-Trustee
6 Stanley Jaksick.

7 5. **Maupin, Cox & LeGoy's Errata to Verified Memorandum of Attorney's Fees.**
8 The Judgment is not amended regarding Todd being personally responsible to pay 25% of
9 the fees paid to the law firm of Maupin, Cox & LeGoy ("MCL") for representing Todd, Michael
10 Kimmel, and Kevin Riley in their Trustee capacities for MCL defending them against Wendy's
11 legal and equitable claims.

12 On May 21, 2020, MCL filed the Petitioners' Verified Memorandum of Attorney's Fees.
13 On June 18, 2020, MCL filed an Errata to its Verified Memorandum of Attorney's Fees. On June
14 21, 2020, MCL filed its Second Errata to Petitioners' Verified Memorandum of Attorney's Fees.
15 According to the Second Errata, MCL charged \$855,450.50 for representing Todd as Co-Trustee
16 of the Family Trust and as Trustee of the Issue Trust, Mike Kimmel as Co-Trustee of the Family
17 Trust, Kevin Riley as Co-Trustee of the Family Trust and Kevin Riley as Trustee of Wendy
18 Jaksick's BHC Trust.

19 6. **Todd's Challenge to Petitioners' Verified Memorandum of Attorney's Fees**
20 **and Second Errata Thereto.** On June 29, 2020, Todd filed his Response to Petitioners' Verified
21 Memorandum of Attorney's Fees and the first and second Errata filed in connection thereto. Todd
22 attempted to show that the Petitioners' Verified Memorandum of Attorney's Fees included
23 substantial charges for MCL's administration of the Family Trust and the Issue Trust and argued
24 that the \$855,450.50 should be reduced by the amount of \$88,428.75. After consideration of
25 Todd's response, it is ordered that Todd reimburse the trusts 25% of the amount charged by MCL
26 for defending against Wendy Jaksick's litigation. Todd is ordered to reimburse the trusts 25% of
27 the balance (\$797,021.75) in the amount of \$199,255.44.
28

1 IT IS HEREBY ORDERED, DECREED AND ADJUDICATED that the Judgment is
2 amended as set forth above. In all other respects, the Judgment on Jury Verdict and Court Order
3 on Equitable Claims, Order After Equitable Trial, and Order Resolving Submitted Matters, to the
4 extent not inconsistent or amended hereby, together with this Amended Judgment, resolve all
5 claims against all parties. This Amended Judgment, together with the attached exhibits
6 incorporated herein is, pursuant to Rule 54(b) of the Nevada Rules of Civil Procedure, a final
7 judgment.

8 DATED this 2nd day of July, 2020.

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12 DAVID A. HARDY
13 DISTRICT COURT JUDGE
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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Judgment on Jury Verdict and Court Order on Equitable Claims	35
2	Order Resolving Submitted Matters	8

EXHIBIT 1

1845

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

CASE NO.: PR17-00445

DEPT. NO.: 15

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY
TRUST.

CASE NO.: PR17-00446

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr. Family
Trust, and as Trustee of the SSJ's Issue Trust;
MICHAEL S. KIMMEL, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr. Family
Trust; STANLEY S. JAKSICK, Individually
and as Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY, Individually, as
Former Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the Wendy A.
Jaksick 2012 BHC Family Trust, INCLINE
TSS, LTD.; and DUCK LAKE RANCH, LLC;

Petitioners and Counter-Respondents.

**JUDGMENT ON JURY VERDICT AND
COURT ORDER ON EQUITABLE
CLAIMS**

A. JUDGMENT ON JURY VERDICT

This matter was tried to a jury from February 14, 2019 to and including March 4, 2019.
The jury found in favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-

1 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
2 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
3 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust and against
4 Counter-Petitioner Wendy Jaksick on all claims and defenses. The jury found in favor of Counter-
5 Petitioner Wendy Jaksick against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr.,
6 Family Trust and as Trustee of the SSJ's Issue Trust on her breach of fiduciary duty claim and
7 assessed damages in the total amount of \$15,000. The jury found in favor of Todd Jaksick, as Co-
8 Trustee of the Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, on all
9 of Wendy Jaksick's other claims tried to the jury. The Jury Verdict is attached hereto and made a
10 part hereof.

11 Accordingly, judgment is entered as follows:

12 1. In favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-
13 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
14 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
15 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust against Counter-
16 Petitioner Wendy Jaksick on all of the claims and defenses tried to the jury. As required by NRS
17 18.110, these prevailing parties shall file their Memoranda of Costs within five days from notice
18 of entry of this Judgment on Jury Verdict.

19 2. In favor of Wendy Jaksick against Todd Jaksick as Co-Trustee of the Samuel S.
20 Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust on Wendy Jaksick's breach of
21 fiduciary duty claims. The Jury's Verdict in favor of Counter-Petitioner Wendy Jaksick in the
22 amount of \$15,000 is *de minimis* in light of her request for damages of \$80,000,000 and in light of
23 her failure to prevail on fraud, conspiracy and aiding and abetting. She is, therefore, not a
24 prevailing party and not entitled to recover costs under NRS 18.050 and NRS 18.110. Counter-
25 Petitioner Wendy Jaksick failed to obtain a judgment in excess of the Offers of Judgment served
26 by Todd Jaksick, as an individual, and is therefore not entitled to recover costs pursuant to NRCP
27 68. Counter-Petitioner Wendy Jaksick's judgment against Todd Jaksick, as Co-Trustee of the
28 Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, is for the total amount

1 of \$15,000, together with prejudgment interest from the date of her Counter-Petition (January 19,
2 2018) to the date of the Offer of Judgment (August 29, 2018) served by Todd Jaksick, in his
3 individual capacity, in the amount of \$605.34, for a total judgment of \$15,605.34. This judgment
4 shall accrue interest at judgment rate until paid in full.

5 3. All claims asserted by Counter-Petitioner Wendy Jaksick in her Counter-Petition
6 and Amended Counter-Petition and tried to the jury are dismissed with prejudice.

7 4. In favor of Duck Lake Ranch, LLC, and Incline TSS, Ltd. against Counter-
8 Petitioner Wendy Jaksick. The Court dismissed Counter-Petitioner's claims against these entities
9 and pursuant to NRS 18.110, these entities shall file their Memoranda of Costs within five days of
10 notice of entry of this judgment.

11 **B. JUDGMENT ON EQUITABLE CLAIMS**

12 On May 13, 2019, the Court began a bench trial to resolve Wendy Jaksick's equitable
13 claims. The parties stipulated to submit written closing trial briefs and replies. Having considered
14 all briefs, evidence admitted during the jury trial and evidence submitted in support of the parties'
15 positions on the equitable claims, the Court entered its *Order After Equitable Trial* on March 12,
16 2020. The Order is attached hereto, made a part hereof, and is incorporated herein. The terms,
17 provisions, findings and conclusions set forth in its *Order After Equitable Trial* are incorporated
18 herein as the Court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the
19 Nevada Rules of Civil Procedure.

20 Judgment is hereby entered as follows:

21 1. Against Counter-Petitioner Wendy Jaksick on all of her equitable claims and is
22 entered in favor of Todd Jaksick, as an individual, Stanley Jaksick, as an individual and Co-
23 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, as an individual and Co-
24 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, individually, Kevin Riley, as Co-
25 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, as Trustee of the BHC Trust,
26 Duck Lake Ranch, LLC, and Incline TSS, Ltd. These prevailing parties shall file their
27 Memoranda of Costs pursuant to NRS 18.110 within five days of the notice of entry of this
28 judgment.

1 2. In favor of Counter-Petitioner Wendy Jaksick's counsel of record in the amount of
2 \$300,000 to be paid by the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust.

3 3. In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust against
4 Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust in an amount equal to
5 25% of the attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust
6 for legal services rendered on behalf of the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust
7 and Trustee for the SSJ's Issue Trust. Todd Jaksick's obligation to satisfy this judgment requires
8 payment of the amount determined from his personal funds. Counsel for the Trustees and Trustee
9 shall submit verified Memoranda of Fees paid within twenty-one days of notice of entry of this
10 judgment.

11 4. On March 13, 2019, Todd Jaksick, in his individual capacity, filed a Motion for
12 Order Awarding Costs and Attorneys' Fees for Todd Jaksick, individually, Duck Lake Ranch,
13 LLC and Incline TSS, Ltd. For the reasons stated in the Court's March 12, 2020 *Order After*
14 *Equitable Trial*, Todd Jaksick's Motion for Order Awarding Costs and Attorneys' Fees was
15 granted, subject to section (c) on page 22 of the Court's *Order After Equitable Trial*. Accordingly,
16 judgment is hereby entered in favor of Todd Jaksick, individually, against Counter-Petitioner
17 Wendy Jaksick in the amount of \$436,331 for attorneys' fees and \$68,834.07 in costs, for a total
18 judgment in favor of Todd Jaksick against Counter-Petitioner Wendy Jaksick of \$505,165.07,
19 which amount shall accrue interest from the date hereof at the legal rate.

20 5. In favor of the SSJ's Issue Trust and Incline TSS, Ltd., confirming title to the Lake
21 Tahoe house is to remain in the name of Incline TSS, Ltd., and against Wendy Jaksick regarding
22 claims to disrupt or change the title to the Lake Tahoe home.

23 6. In favor of the Samuel S. Jaksick, Jr., Family Trust against Counter-Petitioner
24 Wendy Jaksick denying her July 23, 2019 Emergency Motion to Compel Distribution from the
25 Samuel S. Jaksick, Jr., Family Trust.

26 7. In favor of Counter-Respondents, consistent with the Jury's Verdict on the ACPAs
27 and Indemnification Agreements.
28

1 8. Against Counter-Petitioner Wendy Jaksick and in favor of Todd Jaksick,
2 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Stanley Jaksick,
3 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel,
4 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley,
5 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC
6 Trust, Duck Lake Ranch, LLC, and Incline TSS, Ltd., on Counter-Petitioner Wendy Jaksick's
7 claims on unjust enrichment and constructive trust.

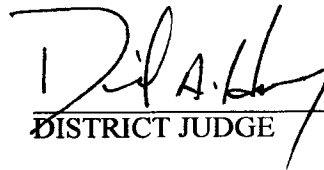
8 9. In favor of Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust
9 and as Trustee of the SSJ's Issue Trust, and against Counter-Petitioner Wendy Jaksick confirming
10 Todd Jaksick, as Trustee of the SSJ's Issue Trust and Co-Trustee of the Samuel S. Jaksick, Jr.,
11 Family Trust. Michael Kimmel and Stanley Jaksick are also confirmed as Co-Trustees of the
12 Samuel S. Jaksick, Jr., Family Trust.

13 10. In favor of the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust
14 against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the
15 SSJ's Issue Trust, for all Trustee's fees paid to Todd Jaksick. Todd Jaksick is hereby required to
16 disgorge all Trustee's fees paid to him, and payment thereof will constitute a setoff against any
17 amounts he must pay as and for 25% of the attorneys' fees paid to the Trustees' counsel of record.

18 11. Declaring and decreeing that all fees ordered against Wendy Jaksick shall be
19 treated as a general trust administration expense and are not allocated to any beneficiaries'
20 distributive share. Todd Jaksick may attach or anticipate Wendy's distributive share only if there
21 are no spendthrift provisions within the trust instruments that prohibit such creditor collection
22 efforts. If such spendthrift provisions exist, distributions shall be made to Wendy, and Todd may
23 seek collection efforts against Wendy personally, subsequent to the distribution.

24 IT IS HEREBY ORDERED, DECREED AND ADJUDGED that the foregoing, upon entry
25 and filing in this matter, is an enforceable final judgment and all findings and conclusions of the
26 Court's March 12, 2020 *Order After Equitable Trial* are expressly incorporated herein. This
27 judgment resolves all claims against all parties, and pursuant to Rule 54(b) of the Nevada Rules of
28 Civil Procedure is a final judgment.

DATED this 1st day of April, 2020.


DISTRICT JUDGE

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EXHIBIT 2

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the
SSJ'S ISSUE TRUST.

Case No. PR17-00445

CONSOLIDATED

In the Matter of the Administration of the Case
SAMUEL S. JAKSICK, JR. FAMILY TRUST.

No. PR17-00446

Dept. No. 15

ORDER RESOLVING SUBMITTED MATTERS

This lengthy dispute has been difficult for the litigants and all are aggrieved by the process and outcome. This Court anticipated additional litigation (especially regarding fees and costs) when it entered its Order After Equitable Trial on March 13, 2020. It therefore signaled to the parties that it had considered all issues, evidence, arguments, and authorities. Regarding fees and costs, this Court wrote: 1) its "discretionary resolution of the fees requests is bound by all facts of record and influenced by the entirety of the pre-trial, legal, and equitable proceedings (including the settlement agreement between Todd and Stanley) and uncertainties created by notarial malfeasance," 2) "[t]here are competing facts and legal principles, which this Court analyzes in the aggregate and not in isolation," 3) the "NRCP 68 request cannot be considered narrowly, but instead, must be viewed by a totality of the case proceedings and statutory authorities governing trustees," 4) "[t]his Court's discretion is guided by the unique facts and procedural history of this case," and

1 5) "[t]his Court anticipates the parties will seek clarification and other relief through
2 additional motion work. The attorneys' fees provisions in this order reflect the entirety of
3 this Court's intentions regarding fees. This order also reflects the entirety of this Court's
4 intentions regarding all other pending matters."

5 By order dated April 21, 2020, this Court denied Wendy Jaksick's costs. It again
6 attempted to signal to the parties that it had considered all issues, evidence, arguments,
7 and authorities. After expressing concern about how costs could be segregated between
8 parties and claims, it wrote: "This Court anticipated costs litigation when it awarded fees
9 to Wendy's counsel. Like all other issues, the issue of awardable costs cannot be viewed in
10 isolation; instead, it must be viewed as a small part of a larger whole. This Court's cost
11 analysis is embedded in the fee award." After identifying Michael Kimmel and Kevin
12 Riley as prevailing parties, this Court wrote: "The problem this Court anticipates is that
13 Messrs. Kimmel and Riley will be unable to clearly distinguish and articulate costs
14 associated with their defense that do not overlap into the costs associated with Todd's
15 defense. Thus, it is unlikely this Court will order Wendy to pay their costs."

16 The parties have now filed moving papers after the Order After Equitable Trial that
17 aggregate to more than 1,300 additional pages in the court record. The tone of some
18 arguments has subtly changed, becoming negative. This Court identified the law
19 governing fees and costs in previous orders and will not repeat itself in this order. NRCP
20 59(e) relief may be granted to correct manifest errors of law or fact, address newly
21 discovered or previously unavailable evidence, respond to a change in controlling law, or
22 to prevent manifest injustice. AA Primo Builders, LLC v. Wash., 126 Nev. 578, 582, 245
23 P.3d 1190, 1193 (2010) (internal citations omitted). Manifest injustice exists where the
24 decision is obviously contrary to the evidence. Kroeger Props. & Dev., Inc. v. Silver State
25 Title Co., 102 Nev. 112, 114, 715 P.2d 1328, 1330 (1986) (quoting Price v. Sinnott, 85 Nev.
26 600, 608, 460 P.2d 837, 842 (1969)). An NRCP 59(e) motion "may not be used to relitigate
27 old matters, or to raise arguments or present evidence that could have been raised prior to
28 the entry of judgment." 11 Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE §

1 2810.1 (3d ed.) (footnotes omitted).

2 The following submitted matters are resolved as follows:

3 1. **Todd Jaksick's individual claim for attorneys' fees and costs for equitable**
4 **trial.** Consistent with this Court's prior analysis and decision, the motion is granted.
5 Todd is awarded against Wendy the amount of \$4,749.67 in costs and attorneys' fees of
6 \$103,375.00. Interest shall accrue at the legal rate. Todd may attach or anticipate Wendy's
7 distributive share only if there are no spendthrift provisions within the trust instruments
8 that prohibit such creditor collection efforts. If such spendthrift provisions exist,
9 distributions shall be made directly to Wendy and Todd may seek collection efforts
10 against Wendy personally, subsequent to the distribution.

11 The motion is granted; Todd Jaksick may submit a proposed judgment consistent
12 with this provision.

13 2. **Kevin Riley and Michael Kimmel's motions for attorneys' fees and costs.**
14 Messrs. Riley and Kimmel seek attorneys' fees and costs against Wendy individually
15 pursuant to NRS 7.085, NRS 18.005, 18.010(2)(b), NRS 18.020(3), and NRCP 68. They
16 tacitly concede they cannot segregate their fees and costs from the fees and costs incurred
17 in representation of all aligned trustees. They therefore propose the simplistic but
18 understandable allocation of 25% each of all fees and costs incurred by the trustees
19 represented by Mr. Lattin and the attorneys at Maupin Cox & LeGoy. Their proposed
20 allocation does not accommodate the consistent and overwhelming observation this Court
21 made throughout this proceeding: Mr. Lattin (and other attorneys associated with Mr.
22 Lattin through the Law Firm of Maupin Cox & LeGoy) provided a single, common
23 representation for similarly situated trustees. But Todd is at the core of the representation
24 and Todd's fees and costs would be the same or only imperceptibly different if Messrs.
25 Riley and Kimmel were not parties.¹ Although prevailing parties, Messrs. Riley and

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27 ¹ The distinction between trustees is largely illusory. This dispute is about three siblings, two of whom were
28 given management responsibility and fiduciary duties. Having presided over all phases of this dispute, and
reading all file materials at various times during the pendency of this action, it is virtually impossible to
comprehend how the litigation would have been different if Messrs. Kimmel and Riley were not parties.

1 Kimmel failed to make a reasonable showing of individuated costs. They have failed to
2 "clearly distinguish and articulate costs associated with their defense that do not overlap
3 into the costs associated with Todd's defense."

4 This Court anticipated these motions when it developed its Order After Equitable
5 Trial. It was this anticipation that led to the express reference that trustees' fees would be
6 paid as a general trust administration expense. The relief Messrs. Kimmel and Riley seek
7 would alter the purpose and effect of other fee provisions. Accordingly, this Court would
8 be required to re-visit and modify other provisions of its order. This Court incorporates by
9 reference its previous order analyzing offers of judgment and summarily concludes the
10 \$500 offers of judgment are not a basis to shift fees to Wendy. Among other reasons, the
11 offers of judgment were presumably made in Messrs. Riley and Kimmel's individual
12 capacities. Messrs. Riley and Kimmel have made no reasonable showing that they
13 incurred fees in their individual capacities, but instead, all fees and costs were incurred in
14 the common defense of all trustees. Finally, the distinction between costs and fees
15 incurred by Todd as trustee and the costs and fees Todd incurred individually (that were
16 awarded against Wendy) is difficult to discern because Todd's trust attorneys and
17 individual attorneys worked collaboratively in joint defense of Todd.

18 The motions are denied.

19 **2. Trustees Todd Jaksick and Michael Kimmel, and former trustee Kevin**
20 **Riley's motion to alter or amend the judgment.** The trustees ask this Court to alter or
21 amend the judgment to remove the provision directing payment of \$300,000 to Wendy's
22 attorneys. The trustees contend this Court sua sponte analyzed the fees to Wendy's
23 counsel and neglected to make findings under Brunzell v. Golden Gate National Bank, 85
24 Nev. 345, 455 P.2d 31 (1969) and Shuette v. Beazer Homes Holding Corp., 121 Nev. 837,
25 124 P.3d 530 (2005).

26 The trustees' motion is an example of the type of motion this Court expected when
27 it entered its Order After Equitable Trial. This Court directly noted the fee award to
28 Wendy's counsel cannot be viewed in isolation. As this Court signaled, the fee award is

1 inseparable from this Court's entire analysis. The trustees essentially ask this Court to
2 parse out the portion of the order they dislike while preserving the provisions granting the
3 outcome they sought. To do so would render this Court's aggregate analysis incomplete.
4 Thus, if this Court were to re-visit the fee award to Wendy's counsel it would be
5 compelled to re-visit other provisions of the order.

6 This Court did not recite the talismanic words typically associated with Brunzell
7 because it was not awarding fees based upon a valuation of actual attorney time
8 presented. Instead, it considered the dominant Brunzell factors (advocates' quality,
9 character and complexity of work, actual work performed, and result) as part of this
10 unique litigation. This Court is confident it could recite the factors and will do so if
11 required upon remand.

12 The motion is denied.

13 4. **Co-trustee Stanley Jaksick's memorandum of attorneys' fees.** Consistent
14 with this Court's Order After Equitable Trial and subsequent judgment, Stanley Jaksick
15 filed a verified memorandum of attorneys' fees on April 22, 2020. Stanley Jaksick made no
16 request in his memorandum. Wendy filed an opposition, motion to strike and amended
17 opposition and motion to strike. Wendy contends that Stanley is not entitled to fees he
18 incurred individually as the fees he incurred as co-trustee were addressed in this Court's
19 Order After Equitable Trial. Todd filed an opposition, which primarily reads as a renewed
20 challenge to the propriety and constitutionality of this Court's Order After Equitable Trial.

21 Contrary to counsel's suggestion, this Court understands the role of different
22 attorneys at different times. The fees Stanley incurred as co-trustee of the family trust are
23 payable from the trust.² The fees Stanley incurred individually are not before this Court
24 and are not included within any order. Stanley's attempt to allocate fees he incurred early

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26 ² The language this Court used in its Order After Equitable Trial could be clarified. When this Court wrote
27 "Stanley Jaksick and Michael Kimmel's attorneys' fees are chargeable to the trust and paid from trust
28 corpus" it contemplated only the fees Stanley incurred as co-trustee of the Family Trust would be charged
against trust corpus. After all, Wendy dismissed her claims against Stanley individually on August 25, 2018,
long before trial. This Court did not intend that fees Stanley incurred individually would be charged against
the trust.

1 and individually from fees he incurred as co-trustee may be problematic. But at some
2 point Wendy dismissed her claims against Stanley individually. It appears the trustees
3 will either reach an agreement about the allocation of Stanley's individual and trustee fees
4 or they will participate in additional litigation.

5 Stanley's memorandum is acknowledged but no court intervention is requested and
6 none is given at this time.

7 **5. Wendy's motion for leave and first supplement to verified memorandum**
8 **of costs; the trustees' motion to strike; and Stanley's motion to strike or redact.** The
9 motions are denied as moot. The issues contained within the motions may be renewed
10 upon appellate remand, if any.

11 **6. Todd's motion to amend judgment.** Todd filed a lengthy motion in which
12 he re-argues evidence previously considered and responds to this Court's findings and
13 conclusions by arguing "clear error" and "manifest injustice." Todd's primary concern is
14 the award of fees. But as this Court noted when explaining its discretion, the attorneys'
15 fees issue is inseparable from all other issues. If this Court were to re-visit the fees award
16 it would be compelled to re-visit the totality of its order. Each constituent part of this
17 dispute is influenced by and dependent upon all other constituent parts. So, for example,
18 if this Court amended the fees provision it would be compelled to fashion broadened relief
19 elsewhere, such as its response to the accountings, continuing trusteeship, the trustees'
20 access to trust corpus to satisfy the expenses of litigation, and the fees awarded to Wendy's
21 counsel.

22 With two exceptions, this Court does not respond to the arguments Todd presents.
23 The first exception illustrates the problem of severing and modifying a part of the entire
24 order. Todd argues this Court improperly restricted his ability to collect his judgment
25 against Wendy personally by including language about spendthrift provisions. To the
26 contrary, this Court included the language about spendthrift trusts because it believed,
27 based upon the entirety of Todd's course of conduct and the jury's finding, that Todd may
28 use information he acquires as Wendy's fiduciary to advance his own personal interests

1 against Wendy as his judgment debtor. As trustee and co-trustee, Todd will know the
2 details of distributions to Wendy. This places him at an unfair advantage over Wendy and
3 other general creditors she may have. As an example of how this Court's decision should
4 be reviewed in its entirety instead of as separate parts of a whole, this Court considered
5 removing Todd as trustee. This Court recited its broad authority to do so and even
6 indicated through an earlier oral pronouncement that it was inclined to remove Todd as
7 trustee. One justification for removing Todd is the jury's verdict that he breached his
8 fiduciary duties and the probability of continued hostility between fiduciary and
9 beneficiary. In the final analysis, based upon the whole, this Court declined to remove
10 Todd as trustee, but included a provision that prevented him from taking advantage of
11 Wendy for his personal purposes through information he gains as trustee. Todd asserts a
12 distinction between his individual interests and trustee interests that is not supported by
13 the evidence of record.

14 This Court did not implicitly limit Todd's ability to recover against Wendy only
15 through distributions she receives from the trusts; Todd may exercise any lawful collection
16 efforts he wishes. What Todd cannot do is anticipate, re-direct, or attach any trust
17 distribution if a similarly situated general creditor is prohibited from doing so by
18 spendthrift provisions of the trust.

19 The second exception relates to Todd's obligation to pay 25% of trustee fees from
20 his own personal resources. The purpose of this fees provision was not to punish Todd for
21 his individual acts. The fees provision was a recognition that Todd's acts as trustee should
22 not be defended entirely at trust expense. The jury concluded that Todd alone breached
23 his fiduciary duties. The jury absolved other trustees of alleged misconduct. The jury's
24 verdict is consistent with this Court's observations in equity. Todd cannot assert the
25 benefits of the jury's verdict when it suits him and ignore the portion of the verdict that
26 repudiates his trustee conduct.

27 This Court agrees it should amend its judgment in one respect. The judgment
28 provides:

1 In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's
2 Issue Trust against Todd Jaksick, as Co-Trustee of the Samuel
3 S. Jaksick, Jr., Family Trust in an amount equal to 25% of the
4 attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust
5 and SSJ's Issue Trust for legal services rendered on behalf of
6 the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust and
7 Trustee for the SSJ's Issue Trust.

8 The above provision appears to make Todd personally responsible for 25% of the
9 fees the trusts paid for the benefit of co-trustee Stanley Jaksick. This was not this Court's
10 intention. This Court intended that Todd would pay 25% of the fees paid to the Law Firm
11 of Maupin Cox & LeGoy for representing Todd, Michael Kimmel, and Kevin Riley in their
12 trustee capacities. To the extent this Court's intention is not reflected in the judgment, this
13 Court authorizes and will sign an amended judgment correcting this possible
14 misunderstanding.

15 Motion granted only to clarify that Todd shall pay 25% of fees incurred by Maupin
16 Cox & LeGoy and not by co-trustee Stanley Jaksick.


17 7. **Wendy's motion to alter or amend judgment or, alternatively, motion for**
18 **new trial.** Wendy's motion has been fully briefed but is not submitted for this Court's
19 decision. Nonetheless, this Court analyzed all moving papers and concludes it is
20 appropriate to resolve Wendy's motion in this order.

21 The motion is denied.

22 The recent moving papers reveal the combined attorneys' fees now exceed \$3
23 million and may be approaching \$4 million. The parties are strongly encouraged to bring
24 this dispute to an end or commence their appellate litigation.

25 **IT IS SO ORDERED.**

26 Dated: June 10, 2020.

27 
28 David A. Hardy
District Court Judge