

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
ADMINISTRATION OF THE SSJ'S ISSUE
TRUST

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Elizabeth A. Brown
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CASE NO.: 81470

IN THE MATTER OF THE
ADMINISTRATION OF THE SAMUEL S.
JAKSICK, JR., FAMILY TRUST

**District Court Case No.:
PR17-00445/PR17-00446**

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

Appellants/Cross-Respondents,

vs.

WENDY JAKSICK,

Respondent/Cross-Appellant.

APPELLANT/CROSS-RESPONDENT
TODD B. JAKSICK'S APPENDIX TO OPENING BRIEF

Volume 8 of 22

Pages TJA001363-TJA001535

**CHRONOLOGICAL INDEX TO APPELLANT/CROSS-RESPONDENT
TODD B. JAKSICK'S APPENDIX TO OPENING BRIEF**

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
Petition for Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and other Trust Administration Matters (SSJ's Issue Trust)	8.2.17	1	TJA000001-000203
Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and For Approval of Accountings and Other Trust Administration Matters (Family Trust) (Separated)	8.2.17	2	TJA000204-000401
Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and For Approval of Accountings and Other Trust Administration Matters (Family Trust) (Separated)	8.2.17	3	TJA00402-00585
Respondent Wendy A. Jaksick's Opposition and Objection to Petition	10.10.17	4	TJA000586-000594

for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters (Family Trust)			
Respondent Wendy A. Jaksick's Answer to Petition for Approval of Accounting and Other Trust Administration Matters (Family Trust)	10.10.17	4	TJA000595-000601
Respondent Wendy A. Jaksick's Answer to Petition for Approval of Accounting and Other Trust Administration Matters (Issue Trust)	10.10.17	4	TJA000602-000606
Respondent Wendy A. Jaksick's Opposition and Objection to Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters (Issue Trust)	10.10.17	4	TJA000607-000614
Commissioner's Recommendation Referring Cases to Probate Judge	10.12.17	4	TJA000615-000617
Order Accepting Transfer	10.17.17	4	TJA000618-000620

Notice of Appearance (Todd B. Jaksick, individually)	11.3.17	4	TJA000621-000623
Association of Counsel	1.2.18	4	TJA000624-000625
Demand for Jury	1.3.18	4	TJA000626-000628
Order Granting Consolidation	1.5.18	4	TJA000629-000631
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	1.19.18	4	TJA000632-000671
Association of Counsel	2.23.18	4	TJA000672-000692
Association of Counsel	2.23.18	4	TJA000693-000712
First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustee(s), and for Declaratory Judgment and Other Relief	2.23.18	4	TJA000713-000752
Order Associating Counsel	3.13.18	4	TJA000753-000754
Order Associating Counsel	3.13.18	4	TJA000755-000756
Notice of Entry of Order	3.13.18	4	TJA000757-000761
Notice of Entry of Order	3.13.18	4	TJA000762-000766
Todd B. Jaksick's Answer and Objections to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary	4.9.18	4	TJA000767-000779

Duties, For Removal of Trustees and Appointment of Independent Trustee(s) and For Declaratory Judgment and Other Relief			
Todd B. Jaksick's and Michael S. Kimmel's Answer to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, For Removal of Trustees and Appointment of Independent Trustees, and for Declaratory Judgment and Other Relief	4.13.18	4	TJA000780-000795
Notice of Appearance	4.17.18	4	TJA000796-000799
Kevin Riley's Answer 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	4.17.18	5	TJA000800-000815
Errata to Todd B. Jaksick's and Michael S. Kimmel's Answer to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, For Removal of	4.19.18	5	TJA000816-000819

Trustees and Appointment of Independent Trustees, and for Declaratory Judgment and Other Relief			
Errata to Kevin Riley's Answer to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, For Removal of Trustees and Appointment of Independent Trustees, and for Declaratory Judgment and Other Relief	4.19.18	5	TJA000820-000823
Notice of Appearance	6.4.18	5	TJA000824-000827
Notice of Appearance	6.4.18	5	TJA000828-000831
Stanley S. Jaksick's Answer 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	8.2.18	5	TJA000832-000844
Joinder to Stanley S. Jaksick's Answer to First Amended Counter-petition to Surcharge Trustees for Breach of Fiduciary Duties, For	8.7.18	5	TJA000845-000847

Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief			
Wendy Jaksick's Motion for Leave to Join Indispensable Parties	11.15.18	5	TJA000848-000855
Todd B. Jaksick's, Individually, Opposition to Wendy Jaksick's Motion for Leave to Join Indispensable Parties	12.6.18	5	TJA000856-000872
Opposition to Wendy Jaksick's Motion for Leave to Join Indispensable Parties	12.6.18	5	TJA000873-000876
Petitioner's Opposition to Wendy Jaksick's Motion for Leave to Join Indispensable Parties	12.6.18	5	TJA000877-000898
Wendy Jaksick's Omnibus Reply in Support of Motion for Leave to Join Indispensable Parties	12.17.18	5	TJA000899-000933
Request for Submission of Wendy A. Jaksick's Motion for Leave to Join Indispensable Parties	12.18.18	5	TJA000934-000936
Order Granting in Part and Denying in Part Motion for Leave to Join Indispensable Parties	1.16.19	5	TJA000937-000948
Pre-Trial Order Regarding Trial	1.22.19	5	TJA000949-000953

Scheduled			
Verdicts	3.4.19	5	TJA000954-000957
Motion for Order Awarding Costs and Attorneys' Fees for Todd Jaksick, Individually, Duck Lake Ranch, LLC, and Incline TSS, Ltd.	3.13.19	6	TJA000958-001157
Petitioner Wendy A. Jaksick's Opposition to Motion for Attorney Fees	3.25.19	6	TJA001158-001175
Reply in Support of Motion for Order Awarding Costs and Attorneys' Fees for Todd Jaksick, Individually, Duck Lake Ranch, LLC and Incline TSS, Ltd.	4.1.19	7	TJA001176-001185
Request for Submission of Motion for Order Awarding Costs and Attorneys' Fees	4.1.19	7	TJA001186-001189
Trial Transcript	5.13.19	7	TJA001190-001202
Order Addressing Evidence at Equitable Trial	5.20.19	7	TJA001203-001274
Stanley Jaksick's Written Closing Arguments	7.1.19	7	TJA001275-001281
Todd B. Jaksick's Closing Argument Brief	7.1.19	7	TJA001282-001362
Wendy Jaksick's Brief of Opening Arguments in the Equitable Claims	7.1.19	8	TJA001363-001470

Trial			
Petitioner's Trial Brief on Equitable Claims	7.1.19	8	TJA001471-001535
Todd B. Jaksick's Closing Argument Brief	7.31.19	9	TJA001536-001623
Petitioner's Reply to Wendy Jaksick's Trial Brief on Equitable Claims	7.31.19	9	TJA001624-001661
Wendy Jaksick's Brief of Closing Arguments in the Equitable Claims Trial	7.31.19	10	TJA001662-001757
Stanley Jaksick's Written Closing Reply Brief	7.31.19	11	TJA001758-001977
Order for Supplemental Briefing	2.6.20	12	TJA001978-001979
Todd Jaksick's Supplemental Brief in Response to the Court's February 6, 2020 Order for Supplemental Briefing	2.18.20	12	TJA001980-002043
Trustees' Supplemental Brief	2.18.20	12	TJA002044-002077
Supplemental Brief by Stanley Jaksick, Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust	2.18.20	12	TJA002078-002085
Wendy Jaksick's Supplemental Brief in the Equitable Claims Trial	2.25.20	12	TJA002086-002093
Order After Equitable Trial	3.12.20	12	TJA002094-002118
Notice of Entry of Order	3.17.20	12	TJA002119-002146

Memorandum of Costs	3.17.20	12	TJA002147-002164
Verified Memorandum of Costs	3.23.20	13	TJA002165-002189
Todd Jaksick's Motion to Strike Wendy Jaksick's Verified Memorandum of Costs or, in the Alternative, Motion to Retax Costs	3.25.20	13	TJA002190-002194
Motion to Strike Verified Memorandum of Costs	3.26.20	13	TJA002195-002215
Motion to Retax Costs and Joinder to Motions to Strike	3.26.20	13	TJA002216-002219
Judgment on Verdict and Order After Equitable Trial	4.1.20	13	TJA002220-002254
Notice of Entry of Judgment	4.1.20	13	TJA002255-002292
Petitioners' Verified Memorandum of Costs and Disbursements	4.2.20	14	TJA002293-002409
Memorandum of Costs and Disbursements	4.2.20	14	TJA002410-002430
Memorandum of Costs and Disbursements	4.2.20	14	TJA002431-002442
Joinder to Memorandum of Costs	4.6.20	14	TJA002443-002445
Wendy Jaksick's Response to Todd Jaksick's Motion to Strike Wendy Jaksick's Verified Memorandum of Costs, or in the Alternative, Motion to Retax Costs	4.8.20	14	TJA002446-002450
Motion for Attorneys' Fees and	4.9.20	15	TJA002451-002615

Costs – Kevin Riley			
Motion for Attorney’s Fees and Costs – Michael Kimmel	4.9.20	16	TJA002616-002769
Omnibus Opposition to Motions to Strike Wendy Jaksick’s Verified Memorandum of Costs filed by Trustees	4.9.20	16	TJA002770-002776
Motion for Attorney Fees and Costs for Todd Jaksick, Individually, for Trial on Equitable Claims	4.10.20	16	TJA002777-002833
Reply in Support of Motion to Strike Verified Memorandum of Costs	4.13.20	17	TJA002834-002841
Request for Submission	4.13.20	17	TJA002842-002845
Order Denying Wendy Jaksick’s Costs	4.21.20	17	TJA002846-002847
Notice of Entry of Order	4.21.20	17	TJA002848-002857
Memorandum of Attorney’s Fees by Stanley Jaksick, as Co-Trustee of the Family Trust	4.22.20	17	TJA002858-002910
Request for Submission	4.22.20	17	TJA002911-002913
Opposition to Motion for Attorney’s Fees and Costs of Michael Kimmel, Individually and as Co-Trustee	4.23.20	17	TJA002914-002930
Opposition to Motion for Attorney’s Fees and Costs of Kevin Riley,	4.23.20	17	TJA002931-002946

Individually and as Co-Trustee of the Family Trust and as Trustee of the BHC Family Trust			
Opposition to Motion for Order Awarding Costs and Attorney's Fees for Todd Jaksick, Individually on Equitable Claims	4.24.20	17	TJA002947-002985
Opposition and Motion to Strike Memorandum of Attorney's Fees by Stanley Jaksick as Co-Trustee of the Family Trust	4.27.20	17	TJA002986-002992
Motion to Alter or Amend the Judgment	4.28.20	17	TJA002993-003000
Trial Transcript	5.13.19	17	TJA001190-001202
Order Regarding Costs	4.30.20	18	TJA003044-003045
Motion to Alter or Amend Judgment, or Alternatively, Motion for New Trial	4.30.20	18	TJA003046-003113
Reply in Support of Motion for Attorney's Fees and Costs	5.1.20	18	TJA003114-003126
Request for Submission	5.1.20	18	TJA003127-003130
Reply to Opposition to Motion for Order Awarding Costs and Attorney's Fees for Todd Jaksick, Individually, For Trial on Equitable Claims	5.1.20	18	TJA003131-003147

Request for Submission	5.1.20	18	TJA003148-003151
Todd B. Jaksick's Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment, or, Alternatively, Motion for a New Trial	5.8.20	18	TJA003152-003189
Limited Joinder to Todd B. Jaksick's Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment, or, Alternatively, Motion for a New Trial	5.12.20	18	TJA003190-003196
Opposition to Alter or Amend the Judgment Award of Attorney's Fees to Wendy	5.12.20	18	TJA003197-003205
Supplemental Motion in Support of Award of Attorney's Fees to Wendy Jaksick's Attorneys	5.12.20	19	TJA003206-003324
Opposition to Todd B. Jaksick's Motion to Amend the Judgment	5.13.20	19	TJA003325-003339
Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment, or in the Alternative, Motion for New Trial	5.13.20	19	TJA003340-003344
Reply to Wendy Jaksick's Amended Opposition and Motion to Strike Stanley Jaksick's Verified Memorandum of Attorney's Fees as	5.13.20	19	TJA003345-003348

Co-Trustee of the Family Trust			
Wendy Jaksick's Reply in Support of her Motion to Alter or Amend Judgment, or, Alternatively, Motion for New Trial	5.15.20	19	TJA003349-003357
Request for Submission	5.18.20	19	TJA003358-003365
Reply in Support of Motion to Alter or Amend Judgment	5.19.20	19	TJA003366-003372
Request for Submission	5.19.20	19	TJA003373-003376
Motion to Strike Wendy's Supplemental Motion in Support of Award of Attorney's Fees to Wendy Jaksick's Attorneys	5.19.20	19	TJA003377-003381
Reply in Support of Todd B. Jaksick's, Individually, Motion to Amend the Judgment	5.19.20	20	TJA003382-003452
Request for Submission	5.19.20	20	TJA003453-003456
Order Awarding Costs	5.19.20	20	TJA003457
Notice of Entry of Order	5.20.20	20	TJA003458-003461
Petitioner's Verified Memorandum of Attorney's Fees	5.21.20	21	TJA003462-003608
Todd B. Jaksick's Opposition to Wendy Jaksick's Supplemental Motion in Support of Award of Attorney's Fees	5.21.20	21	TJA003609-003617
Joinder to Todd B. Jaksick's	6.1.20	21	TJA003618-003621

Opposition to Wendy Jaksick's Supplemental Motion			
Opposition to Motion to Strike Wendy's Supplemental Motion in Support of Award of Attorney's Fees to Wendy Jaksick's Attorneys	6.1.20	21	TJA003622-003627
Reply in Support of Motion to Strike Wendy's Supplemental Motion in Support of Award of Attorney's Fees to Wendy Jaksick's Attorneys	6.8.20	21	TJA003628-003634
Request for Submission	6.8.20	21	TJA003635-003638
Order Resolving Submitted Matters	6.10.20	22	TJA003639-003646
Notice of Appeal	7.10.20	22	TJA003647-003650
Case Appeal Statement	7.10.20	22	TJA003651-003657
Notice of Appeal	7.10.20	22	TJA003658-003661
Case Appeal Statement	7.10.20	22	TJA003662-003669
Notice of Appeal	7.13.20	22	TJA003670-003677
Case Appeal Statement	7.13.20	22	TJA003678-003680
Notice of Cross Appeal	7.21.20	22	TJA003681-003777
Case Appeal Statement	7.21.20	22	TJA003778-003790
Amended Judgment	7.6.20	22	TJA003791-003811

ALPHABETICAL INDEX TO APPELLANT/CROSS-RESPONDENT
TODD B. JAKSICK'S APPENDIX TO OPENING BRIEF

DOCUMENT	DATE FILED or ADMITTED	VOL. NO.	PAGE NO.
Amended Judgment	7.6.20	22	TJA003791-003811
Association of Counsel	1.2.18	4	TJA000624-000625
Association of Counsel	2.23.18	4	TJA000672-000692
Association of Counsel	2.23.18	4	TJA000693-000712
Case Appeal Statement	7.10.20	22	TJA003651-003657
Case Appeal Statement	7.10.20	22	TJA003662-003669
Case Appeal Statement	7.13.20	22	TJA003678-003680
Case Appeal Statement	7.21.20	22	TJA003778-003790
Commissioner's Recommendation Referring Cases to Probate Judge	10.12.17	4	TJA000615-000617
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	1.19.18	4	TJA000632-000671
Demand for Jury	1.3.18	4	TJA000626-000628
Errata to Kevin Riley's Answer to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, For Removal of	4.19.18	5	TJA000820-000823

Trustees and Appointment of Independent Trustees, and for Declaratory Judgment and Other Relief			
Errata to Todd B. Jaksick's and Michael S. Kimmel's Answer to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, For Removal of Trustees and Appointment of Independent Trustees, and for Declaratory Judgment and Other Relief	4.19.18	5	TJA000816-000819
First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustee(s), and for Declaratory Judgment and Other Relief	2.23.18	4	TJA000713-000752
Joinder to Memorandum of Costs	4.6.20	14	TJA002443-002445
Joinder to Stanley S. Jaksick's Answer 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	8.7.18	5	TJA000845-000847

Judgment and Other Relief			
Joinder to Todd B. Jaksick's Opposition to Wendy Jaksick's Supplemental Motion	6.1.20	21	TJA003618-003621
Judgment on Verdict and Order After Equitable Trial	4.1.20	13	TJA002220-002254
Kevin Riley's Answer 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	4.17.18	5	TJA000800-000815
Limited Joinder to Todd B. Jaksick's Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment, or, Alternatively, Motion for a New Trial	5.12.20	18	TJA003190-003196
Memorandum of Attorney's Fees by Stanley Jaksick, as Co-Trustee of the Family Trust	4.22.20	17	TJA002858-002910
Memorandum of Costs	3.17.20	12	TJA002147-002164
Memorandum of Costs and Disbursements	4.2.20	14	TJA002410-002430

Memorandum of Costs and Disbursements	4.2.20	14	TJA002431-002442
Motion for Attorney Fees and Costs for Todd Jaksick, Individually, for Trial on Equitable Claims	4.10.20	16	TJA002777-002833
Motion for Attorney's Fees and Costs – Michael Kimmel	4.9.20	16	TJA002616-002769
Motion for Attorneys' Fees and Costs – Kevin Riley	4.9.20	15	TJA002451-002615
Motion for Order Awarding Costs and Attorneys' Fees for Todd Jaksick, Individually, Duck Lake Ranch, LLC, and Incline TSS, Ltd.	3.13.19	6	TJA000958-001157
Motion to Alter or Amend Judgment, or Alternatively, Motion for New Trial	4.30.20	18	TJA003046-003113
Motion to Alter or Amend the Judgment	4.28.20	17	TJA002993-003000
Motion to Retax Costs and Joinder to Motions to Strike	3.26.20	13	TJA002216-002219
Motion to Strike Verified Memorandum of Costs	3.26.20	13	TJA002195-002215
Motion to Strike Wendy's Supplemental Motion in Support	5.19.20	19	TJA003377-003381

of Award of Attorney's Fees to Wendy Jaksick's Attorneys			
Notice of Appeal	7.10.20	22	TJA003647-003650
Notice of Appeal	7.10.20	22	TJA003658-003661
Notice of Appeal	7.13.20	22	TJA003670-003677
Notice of Appearance	6.4.18	5	TJA000824-000827
Notice of Appearance	6.4.18	5	TJA000828-000831
Notice of Appearance	4.17.18	4	TJA000796-000799
Notice of Appearance (Todd B. Jaksick, individually)	11.3.17	4	TJA000621-000623
Notice of Cross Appeal	7.21.20	22	TJA003681-003777
Notice of Entry of Judgment	4.1.20	13	TJA002255-002292
Notice of Entry of Order	3.13.18	4	TJA000757-000761
Notice of Entry of Order	3.13.18	4	TJA000762-000766
Notice of Entry of Order	3.17.20	12	TJA002119-002146
Notice of Entry of Order	4.21.20	17	TJA002848-002857
Notice of Entry of Order	5.20.20	20	TJA003458-003461
Omnibus Opposition to Motions to Strike Wendy Jaksick's Verified Memorandum of Costs filed by Trustees	4.9.20	16	TJA002770-002776
Opposition and Motion to Strike Memorandum of Attorney's Fees by Stanley Jaksick as Co-Trustee of the Family Trust	4.27.20	17	TJA002986-002992
Opposition to Alter or Amend the	5.12.20	18	TJA003197-003205

Judgment Award of Attorney's Fees to Wendy			
Opposition to Motion for Attorney's Fees and Costs of Kevin Riley, Individually and as Co-Trustee of the Family Trust and as Trustee of the BHC Family Trust	4.23.20	17	TJA002931-002946
Opposition to Motion for Attorney's Fees and Costs of Michael Kimmel, Individually and as Co-Trustee	4.23.20	17	TJA002914-002930
Opposition to Motion for Order Awarding Costs and Attorney's Fees for Todd Jaksick, Individually on Equitable Claims	4.24.20	17	TJA002947-002985
Opposition to Motion to Strike Wendy's Supplemental Motion in Support of Award of Attorney's Fees to Wendy Jaksick's Attorneys	6.1.20	21	TJA003622-003627
Opposition to Todd B. Jaksick's Motion to Amend the Judgment	5.13.20	19	TJA003325-003339
Opposition to Wendy Jaksick's Motion for Leave to Join Indispensable Parties	12.6.18	5	TJA000873-000876

Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment, or in the Alternative, Motion for New Trial	5.13.20	19	TJA003340-003344
Order Accepting Transfer	10.17.17	4	TJA000618-000620
Order Addressing Evidence at Equitable Trial	5.20.19	7	TJA001203-001274
Order After Equitable Trial	3.12.20	12	TJA002094-002118
Order Associating Counsel	3.13.18	4	TJA000753-000754
Order Associating Counsel	3.13.18	4	TJA000755-000756
Order Awarding Costs	5.19.20	20	TJA003457
Order Denying Wendy Jaksick's Costs	4.21.20	17	TJA002846-002847
Order for Supplemental Briefing	2.6.20	12	TJA001978-001979
Order Granting Consolidation	1.5.18	4	TJA000629-000631
Order Granting in Part and Denying in Part Motion for Leave to Join Indispensable Parties	1.16.19	5	TJA000937-000948
Order Regarding Costs	4.30.20	18	TJA003044-003045
Order Resolving Submitted Matters	6.10.20	22	TJA003639-003646
Petition for Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and other Trust Administration	8.2.17	1	TJA000001-000203

Matters (SSJ's Issue Trust)			
Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and For Approval of Accountings and Other Trust Administration Matters (Family Trust) (Separated)	8.2.17	2	TJA000204-000401
Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and For Approval of Accountings and Other Trust Administration Matters (Family Trust) (Separated)	8.2.17	3	TJA00402-00585
Petitioner Wendy A. Jaksick's Opposition to Motion for Attorney Fees	3.25.19	6	TJA001158-001175
Petitioner's Opposition to Wendy Jaksick's Motion for Leave to Join Indispensable Parties	12.6.18	5	TJA000877-000898
Petitioner's Reply to Wendy Jaksick's Trial Brief on Equitable Claims	7.31.19	9	TJA001624-001661
Petitioner's Trial Brief on Equitable Claims	7.1.19	8	TJA001471-001535

Petitioner's Verified Memorandum of Attorney's Fees	5.21.20	21	TJA003462-003608
Petitioners' Verified Memorandum of Costs and Disbursements	4.2.20	14	TJA002293-002409
Pre-Trial Order Regarding Trial Scheduled	1.22.19	5	TJA000949-000953
Reply in Support of Motion for Attorney's Fees and Costs	5.1.20	18	TJA003114-003126
Reply in Support of Motion for Order Awarding Costs and Attorneys' Fees for Todd Jaksick, Individually, Duck Lake Ranch, LLC and Incline TSS, Ltd.	4.1.19	7	TJA001176-001185
Reply in Support of Motion to Alter or Amend Judgment	5.19.20	19	TJA003366-003372
Reply in Support of Motion to Strike Verified Memorandum of Costs	4.13.20	17	TJA002834-002841
Reply in Support of Motion to Strike Wendy's Supplemental Motion in Support of Award of Attorney's Fees to Wendy Jaksick's Attorneys	6.8.20	21	TJA003628-003634
Reply in Support of Todd B. Jaksick's, Individually, Motion to	5.19.20	20	TJA003382-003452

Amend the Judgment			
Reply to Opposition to Motion for Order Awarding Costs and Attorney's Fees for Todd Jaksick, Individually, For Trial on Equitable Claims	5.1.20	18	TJA003131-003147
Reply to Wendy Jaksick's Amended Opposition and Motion to Strike Stanley Jaksick's Verified Memorandum of Attorney's Fees as Co-Trustee of the Family Trust	5.13.20	19	TJA003345-003348
Request for Submission	4.13.20	17	TJA002842-002845
Request for Submission	4.22.20	17	TJA002911-002913
Request for Submission	5.1.20	18	TJA003127-003130
Request for Submission	5.1.20	18	TJA003148-003151
Request for Submission	5.18.20	19	TJA003358-003365
Request for Submission	5.19.20	19	TJA003373-003376
Request for Submission	5.19.20	20	TJA003453-003456
Request for Submission	6.8.20	21	TJA003635-003638
Request for Submission of Motion for Order Awarding Costs and Attorneys' Fees	4.1.19	7	TJA001186-001189
Request for Submission of Wendy A. Jaksick's Motion for Leave to Join Indispensable Parties	12.18.18	5	TJA000934-000936

Respondent Wendy A. Jaksick's Answer to Petition for Approval of Accounting and Other Trust Administration Matters (Family Trust)	10.10.17	4	TJA000595-000601
Respondent Wendy A. Jaksick's Answer to Petition for Approval of Accounting and Other Trust Administration Matters (Issue Trust)	10.10.17	4	TJA000602-000606
Respondent Wendy A. Jaksick's Opposition and Objection to Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters (Family Trust)	10.10.17	4	TJA000586-000594
Respondent Wendy A. Jaksick's Opposition and Objection to Petition for Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters (Issue Trust)	10.10.17	4	TJA000607-000614

Stanley Jaksick's Written Closing Arguments	7.1.19	7	TJA001275-001281
Stanley Jaksick's Written Closing Reply Brief	7.31.19	11	TJA001758-001977
Stanley S. Jaksick's Answer 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	8.2.18	5	TJA000832-000844
Supplemental Brief by Stanley Jaksick, Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust	2.18.20	12	TJA002078-002085
Supplemental Motion in Support of Award of Attorney's Fees to Wendy Jaksick's Attorneys	5.12.20	19	TJA003206-003324
Todd B. Jaksick's and Michael S. Kimmel's Answer to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, For Removal of Trustees and Appointment of Independent Trustees, and for Declaratory Judgment and Other	4.13.18	4	TJA000780-000795

Relief			
Todd B. Jaksick's Answer and Objections 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	4.9.18	4	TJA000767-000779
Todd B. Jaksick's Closing Argument Brief	7.1.19	7	TJA001282-001362
Todd B. Jaksick's Closing Argument Brief	7.31.19	9	TJA001536-001623
Todd B. Jaksick's Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment, or, Alternatively, Motion for a New Trial	5.8.20	18	TJA003152-003189
Todd B. Jaksick's Opposition to Wendy Jaksick's Supplemental Motion in Support of Award of Attorney's Fees	5.21.20	21	TJA003609-003617
Todd B. Jaksick's, Individually, Opposition to Wendy Jaksick's Motion for Leave to Join Indispensable Parties	12.6.18	5	TJA000856-000872

Todd Jaksick's Motion to Strike Wendy Jaksick's Verified Memorandum of Costs or, in the Alternative, Motion to Retax Costs	3.25.20	13	TJA002190-002194
Todd B. Jaksick's Motion to Amend Judgment	4.29.20	18	TJA003001-003043
Todd Jaksick's Supplemental Brief in Response to the Court's February 6, 2020 Order for Supplemental Briefing	2.18.20	12	TJA001980-002043
Trial Transcript	5.13.19	7	TJA001190-001202
Trustees' Supplemental Brief	2.18.20	12	TJA002044-002077
Verdicts	3.4.19	5	TJA000954-000957
Verified Memorandum of Costs	3.23.20	13	TJA002165-002189
Wendy Jaksick's Brief of Closing Arguments in the Equitable Claims Trial	7.31.19	10	TJA001662-001757
Wendy Jaksick's Brief of Opening Arguments in the Equitable Claims Trial	7.1.19	8	TJA001363-001470
Wendy Jaksick's Motion for Leave to Join Indispensable Parties	11.15.18	5	TJA000848-000855
Wendy Jaksick's Omnibus Reply in Support of Motion for Leave to	12.17.18	5	TJA000899-000933

Join Indispensable Parties			
Wendy Jaksick's Reply in Support of her Motion to Alter or Amend Judgment, or, Alternatively, Motion for New Trial	5.15.20	19	TJA003349-003357
Wendy Jaksick's Response to Todd Jaksick's Motion to Strike Wendy Jaksick's Verified Memorandum of Costs, or in the Alternative, Motion to Retax Costs	4.8.20	14	TJA002446-002450
Wendy Jaksick's Supplemental Brief in the Equitable Claims Trial	2.25.20	12	TJA002086-002093

Dated this 13th day of April, 2021.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

/s/ Therese M. Shanks, Esq.
KENT R. ROBISON (SBN #1167)
THERESE M. SHANKS (SBN #12890)
Attorneys for Appellant/Cross-Respondent
Todd B. Jaksick, in his individual capacity

CERTIFICATE OF SERVICE

I certify that on the 13th day of April, 2021, I served a copy of **APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S APPENDIX TO OPENING BRIEF- VOL. 8**, upon all counsel of record:

☐ BY MAIL: I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ BY FACSIMILE: I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:

X BY ELECTRONIC SERVICE: by electronically filing and serving the foregoing document with the Nevada Supreme Court's electronic filing system:

Donald A. Lattin, Esq.
Carolyn K. Renner, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
P. O. Box 30000
Reno, Nevada 89519
Email: dlattin@mcllawfirm.com / crenner@mcllawfirm.com
Attorneys for Appellants/Cross Respondents/Trustees
Todd B. Jaksick, Michael S. Kimmel, Kevin Riley

Phil Kreitlein, Esq.
Kreitlein Law Group
1575 Delucchi Lane, Suite 101
Reno, Nevada 89502
Email: philip@kreitleinlaw.com
Attorneys for Appellant/Cross Respondent Stanley S. Jaksick

Adam Hosmer-Henner, Esq.
McDonald Carano
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, NV 89505
Email: ahosmerhenner@mcdonaldcarano.com
Attorneys for Appellant/Cross Respondent Stanley S. Jaksick

Mark J. Connot, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Email: mconnot@foxrothschild.com
Attorney for Respondent/Cross Appellant Wendy A. Jaksick

R. Kevin Spencer, Esq. / Zachary E. Johnson, Esq.
Spencer & Johnson PLLC
500 N. Akard Street, Suite 2150
Dallas, Texas 75201
Email: kevin@dallasprobate.com / zach@dallasprobate.com
Attorneys for Respondent/Cross Appellant Wendy A. Jaksick

DATED this 13th day of April, 2021.

Christine O'Brien
Employee of Robison, Sharp, Sullivan
& Brust

MARK J. CONNOT (10010)
FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
(702) 262-6899 telephone
(702) 597-5503 fax
mconnot@foxrothschild.com

R. KEVIN SPENCER (*Admitted PHV*)
Texas Bar Card No. 00786254
ZACHARY E. JOHNSON (*Admitted PHV*)
Texas Bar Card No. 24063978
SPENCER & JOHNSON, PLLC
500 N. Akard Street, Suite 2150
Dallas, Texas 75201
kevin@dallasprobate.com
zach@dallasprobate.com
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.

**WENDY JAKSICK'S BRIEF OF
OPENING ARGUMENTS IN THE
EQUITABLE CLAIMS TRIAL**

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.

Respondent Wendy A. Jaksick (“Wendy” or “Respondent”), by and through her attorneys of record, the law firm of Fox Rothschild LLP and Spencer & Johnson, PLLC, submits the following *Brief of Opening Arguments in the Equitable Claims Trial*.

Procedural Background

1. On January 22, 2019, Judge Hardy entered the *Pre-Trial Order Regarding Trial Schedule* (the “TSO”) dictating the organization and trial plan for the trial of the legal and equitable claims in this matter. In accordance with the *TSO*, the Parties and their counsel appeared and tried the legal claims to the jury beginning on February 14, 2019 and ending when they jury rendered its verdict on March 4, 2019.

2. On May 13, 2019, the Parties and their counsel appeared in open court for trial of the equitable claims to the bench. At that time, the Parties entered into stipulations to conclude the evidentiary presentation of the trial to complete the record and for closing arguments. On May 20, 2019, Judge Hardy entered the *Order Addressing Evidence at Equitable Trial*, resolving all remaining issues concerning the admission of additional documentary evidence in the equitable phase of trial. The Parties were then provided thirty (30) days to prepare and file briefs including their opening arguments, which was subsequently extended ten (10) days by the Court. Accordingly, Wendy makes the following arguments in support of her claims against the Counter-Respondents in the equitable phase of the trial.

I. Failure to Disclose and Adequately Account to Compel Accountings for Issue Trust and Family Trust

Topics for Determination: Trustees’ Failure to Disclose and Adequately Account

Pretrial Scheduling Order Issue(s): Sufficiency of Accountings and Disclosure

Issues:

Did the (1) Issue Trust Accountings, for the period April 21, 2013 through December 31, 2017 (the “Issue Trust Accountings”), (2) Family Trust Accountings, for the period April 21, 2013 through December 31, 2017 (the “Family Trust Accountings”), and (3) Wendy Subtrust Accountings, for the period April 21, 2013 through December 31, 2016 (the “Wendy Subtrust Accountings”) (collectively, the Issue Trust Accountings, Family Trust Accountings and Subtrust Accountings shall be referred to herein as the “Accountings”), comply with the statutory requirements of NRS 153.041, NRS 165.1214, NRS 165.135?

1 Even if the Accountings met the minimum form requirements for trust accountings provided
2 by NRS 165.135, did the Accountings give Wendy fair notice of the assets and administration
3 of the Trust necessary to meet the Trustees' duty of disclosure to Wendy?

4 Should the Trustees be compelled to amend the Accountings to comply with NRS 165.135 and
5 to meet their duty of disclosure to Wendy?

6 **Applicable Statutes:** NRS 153.041 (requirement to account), NRS 165.1214 (timing and
7 frequency), NRS 165.135 (basic form), NRS 165.1207, NRS 165.148 (personal liability),
8 165.190 (enforcement), 165.200 (penalties), 153.031 (mechanism and award of fees and costs)

9 **Evidence - Exhibits:**

Issue Trust Accounting	April 21, 2013 – December 31, 2013	Exhibit 129
	January 1, 2014 – December 31, 2014	Exhibit 130
	January 1, 2015 – December 31, 2015	Exhibit 131
	January 1, 2016 – December 31, 2016	Exhibit 132
	January 1, 2017 – December 31, 2017	Exhibit 133
	January 1, 2018 – December 31, 2018 ¹	Exhibit 585
Family Trust Accounting	April 21, 2013 – March 31, 2014	Exhibit 72
	April 1, 2014 – March 31, 2015	Exhibit 73
	April 1, 2015 – March 31, 2016	Exhibit 74
	April 1, 2016 – March 31, 2017	Exhibit 126
Wendy Subtrust Accounting	April 21, 2013 – December 31, 2016	Exhibit 95
	January 1, 2017 – December 31, 2017	Exhibit 540

15 **Arguments:** Based on the evidence submitted during the jury trial and equitable trial phases
16 of this litigation and the detailed discussion elsewhere in this Brief, Wendy makes the
17 following arguments in support of her requested relief:

18 **(1) Failure to Timely Account.**

19 1. The Trustees' duties to account to Wendy are dictated by the terms of the Trusts and
20 Pursuant to NRS 165.1214(1). The Issue Trust and Family Trust both include the following provision
21 requiring accountings at least annually to each beneficiary. Paragraph J in Section IV of the Issue Trust
22 (EX 10, p. 13) and Paragraph J in Section IV of the Family Trust provide as follows:

23 ACCOUNTINGS. During the lifetime of the Grantor, the Trustee
24 is required to render accountings only to the Grantor; and the
25 accountings must be rendered at least annually. **Following the**
26 **death of the Grantor, the Trustee of each trust must render**
27 **accountings at least annually to each beneficiary of the trust**
28 **who is entitled to receive current discretionary or mandatory**

¹ This Accounting was not included in the *Petition for Confirmation* or *Supplement to Petition for Confirmation* seeking approval and confirmation of the Issue Trust Accounting.

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.

Exhibit 9, p. 26 (emphasis added). Additionally, NRS 165.1214(1) provides that “the trustee shall deliver the required account within 90 days after the end of the period of account.”

2. Despite this clear duty to account, the Trustees repeatedly failed and/or refused to timely prepare and timely deliver the required accountings. In fact, since Sam Jaksick’s death in April 2013, the Trustees have failed and/or refused to timely prepare and deliver all annual accountings for the Issue Trust, Family Trust, Wendy Subtrust that they are now seeking confirmation of in this proceeding. The following charts confirm the Trustees’ repeated failure to produce and deliver the required annual accountings timely:

Issue Trust Accountings

End of Accounting Year	Deadline to Deliver Accounting	Date of Accounting	Late
December 31, 2013	March 31, 2014	August 24, 2015 ²	16 Months
December 31, 2014	March 31, 2015	August 23, 2015 ³	4 Month, 23 Days
December 31, 2015	March 31, 2016	October 10, 2016 ⁴	6 Months, 10 Days
December 31, 2016	March 31, 2017	April 4, 2017 ⁵	4 Days
December 31, 2017	March 31, 2018	July 12, 2018 ⁶	3 Months, 12 Days

² This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustee. See Exhibit 129, p. JSK000935. The Accounting was not actually provided to Wendy until October 21, 2015, which is over fifteen (18) months after it was due. Transcript, 02/26/2019, 55:7-16*.

³ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustee. See Exhibit 130, p. JSK000947. 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 Trustee. See Exhibit 131, p. JSK000958. Wendy received it sometime after this date.

⁵ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustee. See Exhibit 132, p. JSK000970. Wendy received it sometime after this date.

⁶ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustee. See Exhibit 133, p. 3. Wendy received it sometime after this date.

Family Trust Accountings

End of Accounting Year	Deadline to Deliver Accounting	Date of Accounting	Late
March 31, 2014	June 29, 2014	January 22, 2015 ⁷	15 Months
March 31, 2015	June 29, 2015	October 18, 2015 ⁸	3 Month, 19 Days
March 31, 2016	June 29, 2016	January 21, 2017 ⁹	6 Months, 23 Days
March 31, 2017	June 29, 2017	August 6, 2018 ¹⁰	13 Months, 8 Days
December 31, 2018	March 31, 2019	Never Produced	Currently 3 Months

Wendy Subtrust Accountings

End of Accounting Year	Deadline to Deliver Accounting	Date of Accounting	Late
March 21, 2013	June 29, 2014 ¹¹	January 28, 2017 ¹²	30 Months, 30 Days
December 31, 2017	March 31, 2018	February 11, 2019	10 Months, 11 Days
December 31, 2018	March 31, 2019	Never Produced	Currently 3 Months

3. Each time the Trustees failed to timely prepare and deliver their required accountings was an unequivocal breach of the terms of the Trusts and a failure to comply with the mandatory requirements of NRS 165.1214(1). If the Trustees needed additional time to prepare and deliver the

⁷ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. See Exhibit 72, p. JSK001118. The Accounting was not actually provided to Wendy until October 21, 2015, which is over fifteen (15) months after it was due. Transcript, 02/26/2019, 55:7-16*.

⁸ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. See Exhibit 73, p. JSK001169. Wendy received it sometime after this date.

⁹ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. See Exhibit 74, p. JSK001229. Wendy received it sometime after this date.

¹⁰ This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. See Exhibit 126, p. 3. Wendy received it sometime after this date.

¹¹ The terms of the Annual Accounting state that it is for the period March 21, 2013 through December 31, 2016. See Exhibit 95, p. JSK001285. 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. See Exhibit 95, p. JSK001285.

¹² This is the date listed on the correspondence from the Accountant delivering the Annual Accounting to the Trustees. See Exhibit 540, p. JSK005054. Wendy received it sometime after this date.

1 accountings, NRA 165.1214(1) provides the Trustees may obtain consent from the beneficiaries or an
2 order from the Court extending the period to account. The Trustees never sought or obtained either.

3 4. In several instances, the Trustees' failure to timely account was not due to a lack of
4 diligence but, instead was based on Trustee's intentional and willful refusal to prepare and deliver the
5 accountings. For example, the Trustees failed to timely produce the 2017 Annual Wendy Subtrust
6 Accounting and, then, refused to prepare and deliver the accounting when the accounting was requested.
7 After Trustees failed to timely produce the 2017 Annual Wendy Subtrust Accounting, Wendy's counsel
8 sent multiple requests and demands for the accounting to Trustees' counsel, all of which were ignored.
9 As a result, on January 18, 2019, Wendy was forced to file *Wendy's Emergency Motion to Compel*
10 *Production of Subtrust Accountings*. On February 6, 2019, Judge Hardy signed an Order stating the
11 following:

12 **As a beneficiary of the Wendy Subtrust, Wendy had a right,**
13 **pursuant to both the Family Trust instrument and statutory**
14 **authority, to receive a 2017 accounting for the subtrust. This**
15 **Court declines to accept the co-trustees' formalistic arguments**
16 **that Wendy must file a separate petition for relief on this matter**
17 **when they have both failed to prepare or provide annual**
18 **accountings for the subtrust and erred on the side of silence**
19 **rather than formally rejecting her resulting demands for**
20 **financial information.**

21 ...

22 **While this Court finds Todd and Stanley failed to provide an**
23 **accounting for the Wendy Subtrust covering the period**
24 **encompassing calendar years 2017, it declines to reduce Todd**
25 **and Stanley's compensation as co-trustees or order them to pay**
26 **Wendy's costs pursuant to NRS 153.031(3)(b). The extent and**
27 **effect of the Family Trust co-trustees' negligence and/or breach**
28 **of fiduciary duties, if any, including alleged failure to adequately**
account, is precisely the subject of the trial in this matter, which
is scheduled to begin in less than one week. Any determinations
of trustee liability will be made at trial.

25 *Order Granting in Part and Denying in Part Motion to Compel Production of Subtrust Accountings*,
26 signed February 6, 2019, p. 4, lines 5-10 and 16-22 (emphasis added). Based on this finding, Judge Hardy
27 ordered the Trustees to produce and deliver the 2017 Annual Wendy Subtrust Accounting to Wendy no
28 later than February 11, 2019, at 5:00 p.m., just two (2) days before the start of the jury trial in this matter.

1 This accounting should have been prepared and delivered to Wendy nearly a year before, on or before
2 March 31, 2018, separate and apart from any litigation or discovery obligation. There is no question
3 Trustees gained an advantage in the litigation to the detriment of Wendy by purposefully refusing to timely
4 produce the accounting for over ten (10) months until they were ordered to do so after discovery had
5 closed and the Parties had attended two (2) full days of mediation.

6 5. Similarly, the Trustees have refused to produce the 2018 Family Trust Annual Accounting
7 and the 2018 Wendy Subtrust Annual Accounting, which were due on March 31, 2019, despite the
8 knowledge of their obligation to do so and their receipt of multiple written demands from Wendy's
9 counsel seeking the timely production of same. Trustees' intentional refusal to produce these accountings
10 has once again forced Wendy to seek Court intervention to compel the Trustees to comply with their
11 obligations. Instead of filing a new lawsuit, Wendy filed her *Second Supplement to First Amended*
12 *Counter Petition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and*
13 *Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief* (the "Second
14 Supplement"). Trustees have filed motions seeking to Strike Wendy's *Second Supplement* based on
15 formalistic arguments concerning the timing of Wendy's *Second Supplement*, without articulating or even
16 attempting to allege a legitimate basis for the failure to timely produce the required accountings. Why?
17 Because there is not one. Trustees will continue to game the rules, put up roadblocks, create delay and
18 increase costs for Wendy unless they face consequences for their actions.

19 6. Wendy's *Second Supplement* also includes allegations that Trustees have failed to
20 disclose to Wendy information confirming that trusts and entities benefiting Wendy were funded or
21 are about to be funded with approximately \$4 million in value to provide for Wendy, which Wendy
22 and her counsel heard for the very first time during the jury trial.

23 **Q. The question is whether or not you are getting close to**
24 **being able to make disbursement under the Family Trust?**

25 **Todd. Yes.**

26 **Q. And with regard to Sam's entire estate plan, the interest**
27 **of Jackrabbit and these other entities, what is your estimate**
28 **that Wendy will receive as a result of Stan – Sam's, your**
father testamentary devices?

1 **Todd. I would say it could approach \$4 million.**

2 **Q. Can you give the jury your best estimate as to when that**
3 **might happen, disbursements being made?**

4 **Todd. We would like to try to wrap up the estate as quickly**
5 **as we can, so it depends on probably the outcome of this, and**
6 **but we are shooting for the end of this year to be able to**
6 **disburse all of the assets in the trust.**

7 Transcript, 02/22/2019, 27:15-28:4*. Not only did Trustees fail to disclose this to Wendy during their
8 administration and prior to trial, they also refused to provide information and fully disclose to Wendy
9 support for this representation when her counsel requested the information after the conclusion of the
10 jury trial. If there was in fact \$4 million in value ready for Wendy's benefit, then, logically, the
11 Trustees would have rushed to produce the 2018 accountings confirming it. Instead, the Trustees have
12 made the strategic decision not to produce the 2018 accountings because they cannot support their \$4
13 million representation that was made to mislead the jury.

14 7. The Trustees did not timely prepare and deliver to Wendy any of the accountings they
15 have filed and sought confirmation and approval of in this proceeding. Additionally, the Trustees
16 continue to fail and/or refuse to timely prepare and deliver accountings to Wendy as required by the
17 terms of the Trusts and Nevada law. Each and every one of these failures is a *per se* breach of the
18 terms of the Trusts, Nevada law and the Trustees' fiduciary duties. Additionally, the Trustees refusal
19 to prepare and timely deliver certain of the accountings was intentional, done in bad faith and aimed
20 at harming Wendy and benefitting the Trustees at Wendy's expense. The Trustees' repeated flagrant
21 disregard for their mandatory obligations as fiduciaries should not be condoned or permitted to
22 continue by this Court.

23 **(2) Failure to Comply with Required Form of Accountings.**

24 8. NRS 153.041 provides that Trustees shall account in accordance with the provisions NRS
25 Chapter 165. NRS further provides that "this section must not be interpreted to abridge the authority of
26 a court having jurisdiction over a testamentary trust pursuant to NRS 153.020 or 164.010 to order a trustee
27 of a testamentary trust to account, upon good cause, to the persons and in the manner ordered by the
28

1 court.” NRS 153.041.

2 9. Pursuant to NRS 165.135, a trust accounting, by statute, is required to include, at
3 minimum, the following form and information:

4 1. An Account must include:

5 a. A statement indicating the accounting period;

6 b. With respect to the trust principal:

7 i. The trust principal held at the beginning of the accounting
8 period, and in what form held, and the approximate market value
9 thereof at the beginning of the accounting period;

10 ii. Additions to the trust principal during the accounting period,
11 with the dates and sources of acquisition;

12 iii. Investments collected, sold or charged off during the accounting
13 period;

14 iv. Investments made during the accounting period, with the date,
15 source and cost of each investment;

16 v. Any deductions from the trust principal during the accounting
17 period, with the date and purpose of each deduction; and

18 vi. The trust principal, invested or uninvested, on hand at the end of
19 the accounting period, reflecting the approximate market value
20 thereof at that time;

21 c. With respect to trust income, the trust income:

22 i. On hand at the beginning of the accounting period, and in what
23 form held;

24 ii. Received during the accounting period, when and from what
25 source;

26 iii. Paid out during the accounting period, when, to whom and for
27 what purpose; and

28 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.

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- 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.

10. The Accountings on their face are deficient and do not comply with the minimum form requirements of NRS 165.135. The most significant and glaring deficiency of the Family Trust Accountings submitted for confirmation and approval in the proceeding is the failure of such accountings to reflect the approximate market value of the trust principal on hand at the beginning and ending of the accounting periods. NRS 165.135(1)(b)(1) and 165.135(1)(b)(6). Each of the Family Trust Accountings include a list of the Closely Held Businesses at the beginning and ending of the accounting periods. Exhibit 72, pp. 4 & 12; Exhibit 73, pp. 5 & 18; Exhibit 74, pp. 7 & 18; Exhibit 126, pp. 7 & 19. The reported total "Estimated Value" of these Closely Held Businesses at the beginning of the accounting period on April 21, 2013 is \$6,574,335.00. Exhibit 72, p. 4. Twelve (12) of these entities, a majority of which were owned one hundred percent (100%) by the Family Trust, are not valued and simply include hyphens instead of values, as follows:

SAMUEL S JAKSICK JR FAMILY TRUST
SCHEDULE A1 - CLOSELY HELD BUSINESSES, BEGINNING OF PERIOD
As of April 21, 2013

	Fiduciary Acquisition Value	Estimated Value
CLOSELY HELD BUSINESSES:		
Pioneer Group, Inc. (301.05 shares)	\$ 4,335,000.00	\$ 4,335,000.00
Toiyabe Investment Co (50% interest)	895,000.00	895,000.00
SSJ LLC (100% interest)	743,397.00	743,397.00
Markhor Investment Company (46.82% interest)	136,138.00	136,138.00
Shakey's USA Inc (80,000 shares)	128,800.00	128,800.00
Duck Flat Ranch LLC (49% interest)	109,000.00	109,000.00
Sammy Supercub LLC Series A (100% interest)	85,000.00	85,000.00
Basecamp LLC (18.75% interest)	37,000.00	37,000.00
SST Westridge LLC (25% interest)	28,000.00	28,000.00
Montreux Golf Club Ltd (1% interest)	23,000.00	23,000.00
Samuel S Jaksick Jr IV LLC (100% interest)	20,000.00	20,000.00
Lakecrest Realty Inc (100% interest)	12,000.00	12,000.00
BBB Investments (49% interest)	11,000.00	11,000.00
Lakeridge Golf Course Ltd (1% interest)	8,000.00	8,000.00
Gerlach Green Energy LLC (45% interest)	3,000.00	3,000.00
ALSB LTD (100% interest)	-	-
Bent Arrow LLC (100% interest)	-	-
Buckhorn Land and Livestock LLC (25% interest)	-	-
California Bighorn LLC (100% interest)	-	-
Fly Ranch LLC (44.5% interest)	-	-
Lake-Ridge Corporation (100% interest)	-	-
Samuel S Jaksick Jr I LLC (100% interest)	-	-
Samuel S Jaksick Jr II LLC (100% interest)	-	-
Samuel S Jaksick Jr V LLC (100% interest)	-	-
SJ Ranch LLC (100% interest)	-	-
Spring Mountain NV Development Co (25% interest)	-	-
White Pine Lumber Co (100% interest)	-	-
TOTAL CLOSELY HELD BUSINESSES	\$ 6,574,335.00	\$ 6,574,335.00

11. Certain of the entities that were not valued by the Trustees were some of the most valuable assets of the Family Trust. For example, Samuel S. Jaksick, Jr. I C, which was owned one hundred percent by the Family Trust, was a holding company for an interest in Jackrabbit Properties, C. See (Exhibit) **, p. +, according to a Statement of Financial Condition prepared for Sam Jaksick by Kevin Wiley, as of October 20, 2013, Samuel S. Jaksick, Jr. I C had an estimated value of \$12,300,000. (Exhibit) **, p. +. This estimated value was based on Jackrabbit Properties, C's equity of \$1,600,000.

1 (\$23,496,000 in assets minus \$6,910,000 in liabilities) in December 31, 2011.¹³ Exhibit 214, p. 8. Had
2 the \$3,743,000 or a similar value been included in the total “Estimated Value” of the closely held
3 businesses at the beginning of the accounting period on April 21, 2013, the total “Estimated Value” would
4 have been \$10,317,335 instead of \$6,574,335.00. Exhibit 74, p. 4. This is a substantial difference and is
5 based on the inclusion of the value of just one of the twelve (12) entities that were not valued in the Family
6 Trust Accountings.

7 12. It is important to note that Kevin Riley, Sam Jaksick’s longtime accountant, prepared the
8 Family Trust Accountings. Therefore, it is undisputed that he had the information included in Exhibit
9 214 concerning the value of the Family Trusts’ interest in Samuel S. Jaksick, Jr. I LLC when he prepared
10 the Family Trust Accountings. There is no excuse for not including a value for Samuel S. Jaksick, Jr. I
11 LLC and the other entities in the Family Trust Accountings. The only reason not to include this
12 information would be to suppress the value of the Family Trust and its assets to mislead Wendy.

13 13. Not only did the Trustees fail to include a value for Samuel S. Jaksick, Jr. I LLC in their
14 first annual Family Trust Accounting, they never reported a value for Samuel S. Jaksick, Jr. I LLC in any
15 of the subsequent Family Trust Accountings. This is true even when the Family Trust’s interest in the
16 Samuel S. Jaksick, Jr. I LLC was wrongfully distributed from the Family Trust on November 11, 2015,
17 fifty percent (50%) to the Stanly Jaksick Subtrust and fifty percent (50%) to the Todd Jaksick Subtrust,
18 as follows:

23 ¹³ Confirmation that Family Trust’s interest in Samuel S. Jaksick, Jr. I LLC was worth millions of dollars
24 during the Trustees’ Administration of the Family Trust can also be found in the annual Wendy Subtrust
25 Accounting for the period ending December 31, 2017. Exhibit 540, p. 4. This Accounting reflects that
26 on October 11, 2017, Wendy’s Subtrust received 9.3984 Class A units of Jackrabbit Properties LLC,
27 which was 26.66% of the shares held by Samuel S. Jaksick, Jr. I LLC in the Family Trust before the shares
28 were distributed. *Id.* The Trustees in Wendy’s Subtrust Accounting valued the shares distributed to
Wendy’s Subtrust at \$751,872.00. Based on the number of shares distributed to Wendy’s Subtrust and
the value of the shares, the total value of Samuel S. Jaksick, Jr. I LLC at the time it was distributed would
have been \$2,820,225.06 (($\$751,872 \times 100$)/26.66).

DISTRIBUTIONS FROM PRINCIPAL:

Residuary bequests

Transfer of 50% of Samuel S Jaksick Jr I LLC to the Stanley S Jaksick Trust created by the Samuel S Jaksick Jr Family Trust Agreement on June 4, 2014 on November 11, 2015.

(NOTE: It was the intent of the co-trustees to distribute a proportionate share of the holdings to the Wendy Jaksick Trust created by the Samuel S Jaksick Jr Family Trust Agreement on June 4, 2014 and the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2 dated June 30, 2012. However, a necessary income certification was requested from Wendy to proceed with a potential sale of the holdings but the trustees were refused by Wendy Jaksick who represents the beneficiaries of both of these trusts. One third of the holdings are being held by Stanley Jaksick on behalf of the Wendy Jaksick Trust created by the Samuel S Jaksick Jr Family Trust Agreement on June 4, 2014 and the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2 dated June 30, 2012)

\$ -

Transfer of 50% of Samuel S Jaksick Jr I LLC to the Todd B Jaksick Trust created by the Samuel S Jaksick Jr Family Trust Agreement on June 4, 2014 on November 11, 2015.

(NOTE: It was the intent of the co-trustees to distribute a proportionate share of the holdings to the Wendy Jaksick Trust created by the Samuel S Jaksick Jr Family Trust Agreement on June 4, 2014 and the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2 dated June 30, 2012. However, a necessary income certification was requested from Wendy to proceed with a potential sale of the holdings but the trustees were refused by Wendy Jaksick who represents the beneficiaries of both of these trusts.)

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(Exhibit 3*, pp. 37-48). 8. Wendy's Subtrust did not receive its share of Samuel S. Jaksick, Jr. I LLC when it was distributed to Stanley and Todd's Subtrusts. Based on the Family Trust Accountings, there was no disclosure and no way for Wendy to know that Samuel S. Jaksick, Jr. I LLC was worth millions of dollars during the administration of the Family Trust. As a result, there was no way for Wendy to fully understand the transaction and its significance.

14. Because Samuel S. Jaksick, Jr. I LLC and other entities are not properly valued, the Family Trust Accountings do not provide the minimum information required by NRS 165.135(1)(b)(1) and 165.135(1)(b)(6), and it was and is impossible for Wendy to understand the actual value of the Family Trust at the beginning and ending of the accounting periods. Additionally, NRS 165.135(1)(e) requires the inclusion of a brief summary of the account that must include the total value of the trust estate at the beginning and the ending of the accounting period. Because the value of Samuel S. Jaksick, Jr. I LLC and other entities are not valued, the brief summary of account included in the Family

1 Trust Accountings does not accurately reflect the total value of the Family Trust at the beginning and
2 ending of the accounting periods.

3 15. Another deficiency of the Family Trust Accountings is the failure to provide “a
4 statement of unpaid claims and the reasons for the failure to pay them” as required by NRS
5 165.135(1)(d). While the Family Trust Accountings include some information on various claims, most
6 of the claims included in the Family Trust Accountings do not provide any reason or any basis for the
7 failure to pay each of the claims. Exhibit 72, pp. 20-23; Exhibit 73, p. 28-33; Exhibit 74, pp. 25-31;
8 Exhibit 126, p. 30-33. While this is a deficiency for each claim that does not comply, the deficiencies
9 related to the entries of Todd Jaksick’s claims against the Family Trust based on his purported
10 Indemnification Agreement are significant and have substantial implications on the accountings and
11 Wendy.

12 16. The annual Family Trust Accountings for the years ending March 31, 2014 and March
13 31, 2015 state the following concerning Todd Jaksick’s claims against the Family Trust based on his
14 purported Indemnification Agreement:

15 **Todd B Jaksick indemnification agreement which substantively**
16 **indicated that Todd B Jaksick and related entities are**
17 **indemnified against the trust from having to perform on**
obligations in excess of their respective interests.

18 Exhibit 72, p. 23 & Exhibit 73, p. 33. These Accountings then state the amounts of the claims are
19 “unknown”. Exhibit 72, p. 23 & Exhibit 73, p. 33. This is completely deficient because it does not
20 provide a statement of what claims actually exist, the value of the claims or the reason the claims have
21 not been paid.

22 17. The annual Family Trust Accountings for the years ending March 31, 2016 and
23 December 31, 2017, include more information than the prior accountings, but remain vague and fail
24 to disclose sufficient information, stating, in part, as follows:

25 **Indemnification and Contribution Agreement which**
26 **substantively indicates that Todd and Dawn Jaksick TBJ SC**
27 **Trust, and TBJ Investment Trust are indemnified against the**
28 **Samuel S. Jaksick Jr. Family Trust from having to perform on**
obligations and debts. There are many amounts listed in the
agreement and have been claimed against the trust. The Total

1 **amount of the claim has yet to be determined. The following**
2 **unpaid balances are as follows:**

3 Exhibit 74, p. 31 & Exhibit 126, p. 33. Like the entries in the prior accounting, these entries provide
4 some information concerning some of the claims that may exist relating to Todd Jaksick's purported
5 Indemnification Agreement, but do not specifically state all the claims that exist, the values of those
6 claims and the reasons why any of the claims remain unpaid. At the time these Family Trust
7 Accountings were prepared, the Trustees had been administering the Family Trust for over three and
8 a half years. That is more than enough time for the Trustees to have determined the nature and extent
9 of Todd Jaksick's claims under the purported Indemnification Agreement in order to provide specific
10 statements of the unpaid claims and the reasons such claims remained unpaid as required by NRS
11 165.135(1)(d).¹⁴

12 18. Another deficiency of the Family Trust Accountings is the failure to report the
13 purpose of certain payments made by the Family Trust as required by Nevada law. NRS
14 165.135(1)(C)(3) provides that the accounting must include the trust income "paid out during the
15 accounting period, when, to whom and for what purpose." The Family Trust Accountings include
16 information concerning when and to whom trust income was paid, but often do not include the purpose
17 for the payments. Exhibit 72, pp. 31-43; Exhibit 73, p. 41-55; Exhibit 74, pp. 41-44; Exhibit 126, p.
18 46-58. For example, on page 31 of the annual Family Trust Accountings for the period ending March
19 31, 2014, the accounting lists eight (8) distributions made to BBB Investments LLC in the total amount
20 of \$11,021.42. The entries related to these distributions do not include any explanation of the purpose
21 of these distributions and no explanation is provided elsewhere in the accounting. Exhibit 72, p. 31.
22 This is also true for payments of trust income totaling \$132,380.06 made to American AG Credit and
23

24 ¹⁴ These entries remained vague and the Trustees did not provide specific information necessary to
25 comply with NRS 165.135(1)(d), because the validity, scope and application of Todd Jaksick's
26 purported Indemnification Agreement was an issue between the Trustees, the Trustees' attorneys and
27 the Family Trust accountant throughout the Trustees' administration of the Family Trust. See Exhibits
28 32, 38, 75, 207, 447 and 449. These issues were never resolved because of Todd Jaksick's self-serving
insistence that the purported Indemnification Agreement was valid and the Family Trust should pay
all of his obligations including his personal obligations under the purported Indemnification
Agreement. *See Id.*

1 Dave Jamison on behalf of Bright Holland Company, and for many other entries reflecting they
2 payment of trust income in the Family Trust Accounting. *Id.*

3 **(3) Adequacy of the Accountings and Failure to Disclose.**

4 19. In addition to the above deficiencies that are apparent on the face of the Accountings,
5 the Accountings are also deficient because they fail to include and disclose basic information necessary
6 for Wendy and the other beneficiaries to understand the value of the assets, the debts and the Trustees'
7 administration of the Trusts. While in some circumstances, preparing and delivering accountings in
8 the format provided by NRS 165.135 may fully satisfy a fiduciary's requirement to account and fully
9 disclose, that is not and cannot be the case for these very complex Trusts.

10 20. The Family Trust and the Issue Trust both own interests in various entities that
11 comprise a significant portion of the assets and values of the Trusts. In fact, these entities were and
12 are the most significant and valuable assets of the Trusts. Many of these entities are holding companies
13 that own interests in real property or other entities. *See* Exhibit 90. For example, the Issue Trust was
14 established as a legacy trust to hold and manage tens of thousands of acres of real property and keep
15 that property in the family for many generations. *See* Exhibit 10. Based on the Issue Trust
16 Accountings, it appears¹⁵ that most of the real property is held by Home Camp Land and Livestock
17 Co., Inc. *See* Exhibit 129, p. 3. This ownership is reported on the Issue Trust Accounting for the
18 period ending December 31, 2013 and remains unchanged throughout the Issue Trust Accountings.
19 Exhibit 585, p. 3. It is impossible for Wendy and the other beneficiaries to understand what real
20 property the Issue Trust owned or owns indirectly through its interest in Home Camp Land and
21 Livestock., Co., Inc. and how that real property was and is being managed.

22 21. Additionally, at some point, the real property owned by Home Camp Land and
23 Livestock Co., Inc. was transferred to one or more entities including Nevada Pronghorn LLC and/or
24 Nevada Pronghorn II LLC entities, and Home Camp Land and Livestock Co., Inc. received an interest
25 in these entities. *See* Exhibit 90, p. 4; Exhibit 516, pp. 16-18. Sam Jaksick was the President of Home

26 ¹⁵ The Accountings do not actually provide a description of the real property or state where it is held.
27 The assumption that the real property is held in Home Camp Land and Livestock Co., Inc. is based on
28 the value Home Camp Land and Livestock Co., Inc. reported in the Issue Trust Accountings and the
fact that the real property is not reported or described anywhere else in the Issue Trust Accountings.

1 Camp Land and Livestock., Co., Inc., and Todd Jaksick was and is the Manager of Nevada Pronghorn
2 LLC and Nevada Pronghorn II LLC. Exhibit 90, pp. 2 & 4; Exhibit 516, pp. 16-18. Therefore, the prized
3 real property that Sam Jaksick intended to be held and managed by the Issue Trust for generations is not
4 even owned by the Issue Trust or Home Camp Land and Livestock., Co., Inc. Instead, the Issue Trust
5 owns a minority interests in an entity that owns a minority interest in another entity that is controlled by
6 Todd Jaksick. As a result, the restrictions included in the Issue Trust prohibiting or restricting the sale of
7 the real property it owned directly or through its interest in Home Camp Land and Livestock., Co., Inc.
8 do not apply to the real property held in Nevada Pronghorn LLC and Nevada Pronghorn II LLC. There
9 no possible way that Wendy or any of the other beneficiaries of the Issue Trust could have understood
10 this from the information provided in the Issue Trust accountings.

11 22. Similarly, because many of the entities owned by the Family Trust are holding
12 companies and provide no disclosure concerning the assets they hold, it is impossible for Wendy and
13 the other beneficiaries of the Family Trust to understand the assets, the values of the assets and the
14 administration of the Family Trust based on the Family Trust Accountings. Returning to the example
15 of Samuel S. Jaksick Jr I LLC discussed above, the value of this entity was not reported in the initial
16 or any subsequent Family Trust Accountings. Exhibit 72, pp. 4 & 12; Exhibit 73, pp. 5 & 18; Exhibit
17 74, p. 7. The Family Trust Accountings also do not disclose that Samuel S. Jaksick Jr I LLC was a
18 holding company that owned approximately 35.242 units of Jackrabbit Properties, LLC. Id. As a
19 result, Samuel S. Jaksick Jr I LLC appears to be a worthless in all of the Family Trust Accountings,
20 when in actuality it is one of the most valuable assets of the Family Trust.

21 23. Even more troubling, the Trustees did not report values for the interests of Samuel S.
22 Jasicki Jr I LLC when they were distributed on November 11, 2015, out of the Family Trust to Stan's
23 and Todd's Subtrusts. Exhibit 74, p. 11. Instead, the Trustees included hyphens¹⁶ for the values of
24 these interests. Id. How is Wendy expected to understand this transaction without this critical
25 information? The Trustees' failure to account and disclose concerning this asset does not end there.

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27 ¹⁶ It is clear Samuel S. Jasicki Jr I LLC had substantial value when it was distributed from the Family
28 Trust. See (xhibit) ", p. +9(xhibit 0*#, p. *. Therefore, any argument by the Trustees or their counsel
that the use of a hyphen in the Accountings indicated a zero value or less-than-zero value is not true.

1 The Family Trust Accounting for the period ending March 31, 2016 provided as follows:

2 Transfer of 50% of Samuel S Jaksick Jr I LLC to the **Stanley S**
3 **Jaksick Trust created by the Samuel S Jaksick Jr Family**
4 **Trust Agreement** on June 4, 2014 on November 11, 2015.
5 (NOTE: It was the intent of the co-trustees to distribute a
6 proportionate share of the holdings to the Wendy Jaksick Trust
7 created by the Samuel S Jaksick Jr Family Trust Agreement on
8 June 4, 2014 and the Samuel S Jaksick Jr Irrevocable Grandchild
9 Trust No. 2 dated June 30, 2012. However, a necessary income
10 certification was requested from Wendy to proceed with a
11 potential sale of the holdings but the trustees were refused by
12 Wendy Jaksick who represents the beneficiaries of both of these
13 trusts. **One third of the holding are being held by Stanly**
14 **Jaksick on behalf of the Wendy Jaksick Trust** created by the
15 Samuel S Jaksick Jr Family Trust Agreement on June 4, 2014 and
16 the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2 dated
17 June 30, 2012.

18 Transfer of 50% of Samuel S Jaksick Jr I LLC to the **Todd B**
19 **Jaksick Trust created by the Samuel S Jaksick Jr Family**
20 **Trust Agreement** on June 4, 2014 on November 11, 2015.
21 (NOTE: It was the intent of the co-trustees to distribute a
22 proportionate share of the holdings to the Wendy Jaksick Trust
23 created by the Samuel S Jaksick Jr Family Trust Agreement on
24 June 4, 2014 and the Samuel S Jaksick Jr Irrevocable Grandchild
25 Trust No. 2 dated June 30, 2012. However, a necessary income
26 certification was requested from Wendy to proceed with a
27 potential sale of the holdings but the trustees were refused by
28 Wendy Jaksick who represents the beneficiaries of both of these
 trusts.

29 Exhibit 74, p. 11. (emphasis added). After the Samuel S. Jaksick Jr I LLC interests were transfer to
30 Stan's and Todd's Subtrusts on November 11, 2015, they disappeared until October 11, 2017 when
31 9.3984 Class A units of Jackrabbit Properties LLC appeared in Wendy's Subtrust. Exhibit 74, p. 11;
32 540, p. 4. The Wendy Subtrust Accounting for the period ending December 31, 2017 reports that these
33 shares were "received by assignment" from Stanley Jaksick II LLC, not from Stan and Todd's
34 Subtrusts. No Family Trust Accounting, Wendy Subtrust Accounting or any other accounting
35 accounts for or discloses what happened with Wendy's Subtrust's interest in Samuel S. Jasicki Jr I
36 LLC or the Jackrabbit Properties, LLC shares during this almost two (2) year period when they
37 mysteriously disappeared. Exhibit 74, p. 11; 540, p. 4.

1 24. Based on the Accountings, Wendy has no way of knowing what happened to her
2 Subtrust's interest in Samuel S. Jaksick Jr I LLC during this period. How, when and why did her
3 Subtrust's interest end up in Stanley Jaksick II LLC, when the Family Trust Accounting reported that
4 it was distributed in equal shares to Stan and Todd's Subtrusts? What happened to Samuel S. Jaksick
5 Jr I LLC? Why did her Subtrust receive shares of Jackrabbit Properties, LLC instead of Samuel S.
6 Jaksick Jr I LLC? Did the value of her Subtrust's interest increase or decrease during the nearly two
7 (2) year period it disappeared? Was her interest used or pledged as collateral or exposed to creditors
8 by Trustees' decision to transfer it out of the Family Trust to Stan and Todd's Subtrusts or Stanley
9 Jaksick II LLC? The Accountings create many unanswered questions.

10 25. Because the Family Trust Accounting reported that Wendy's Subtrust's interest in
11 Stanley Jaksick II LLC had been transferred to and managed by Stan and Todd's Subtrusts, Wendy's
12 counsel sent correspondence to Trustees' counsel demanding accountings for Stan and Todd's
13 Subtrusts. True to course, Trustees' counsel ignored the demand and Wendy's counsel was forced to
14 file *Wendy's Emergency Motion to Compel Production of Subtrust Accountings*. On February 6, 2019,
15 Judge Hardy signed an Order stating the following:

16 The contents of the 2013-2017 accountings for the Wendy
17 Subtrust indicate assets earmarked for distribution to the
18 Wendy Subtrust were held in the Todd and Stanley Subtrusts
19 due to the absence of required income certifications, then some
20 of these assets were subsequently transferred back into the
21 Family Trust. Any changes in or losses to the assets during
22 their time in the Todd and Stanley Subtrusts would have some
tendency to make it more likely that Todd and Stanley breached
their fiduciary duties as trustees with respect to these particular
assets as they relate to preserving Wendy's interests as a
beneficiary of the Wendy subtrust.

23 *Order Granting in Part and Denying in Part Motion to Compel Production of Subtrust Accountings*,
24 signed February 6, 2019, p. 5, lines 11-20. The Court ultimately treated the *Emergency Motion to*
25 *Compel* Stan and Todd's Subtrust Accountings as a discovery dispute and declined to compel
26 production on technical grounds. However, based on the language of the Court's order cited above,
27 the Court confirmed the Trustees made their Subtrust Accountings relevant by transferring Wendy's
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1 Subtrust's assets into their own Subtrusts. While the Court treated this issue as a discovery dispute in
2 deciding Wendy's *Emergency Motion to Compel*, the Trustees are Wendy's fiduciaries and have a
3 duty to disclose separate and apart from any discovery obligations in this litigation and, to date, have
4 failed to provide such disclosure. The law does not and cannot work this way. Trustees cannot avoid
5 their duty to account and provide full disclosure simply by holding trust assets outside of the trust.

6 26. Because the Trustees have failed to account for Wendy's Subtrust's interest in Stanley
7 Jaksick II LLC during the time period after it was distributed out of the Family Trust and before it was
8 received by Wendy's Subtrust nearly two (2) years later, the Family Trust Accounting for the period
9 ending March 31, 2016 and the Wendy Subtrust Accounting for the period ending December 31, 2017
10 do not fully and accurately disclose to Wendy and are deficient. Exhibits 74 & 540. Based on these
11 Accountings, it is impossible for Wendy to understand what happened to these assets during this time
12 period and, therefore, it is impossible for Wendy to know her Subtrust received what it was supposed
13 to receive. The Trustees could have amended the Accountings to provide disclosure by including
14 values for Samuel S. Jasicki Jr I LLC and an explanation of what happened to Wendy's Subtrust
15 interest for the nearly two (2) years period it disappeared, but they have not done so.

16 27. These deficiencies in the Accountings and their lack of disclosure exist regardless of
17 the timing of the delivery of the Accountings. However, the Accountings were not delivered timely,
18 and therefore Wendy did not even receive the deficient disclosure until nearly a year late and over two
19 (2) years after the asset was deposited into her Subtrust. The timing of the disclosure is important
20 because it shows the Trustees not only failed to disclose but also intentionally refused to prepare and
21 deliver required Accountings in order to keep Wendy in the dark. From the time Wendy received the
22 Family Trust Accounting for the period ending March 31, 2016, Wendy did not receive any further
23 disclosure concerning the Samuel S. Jasicki Jr I LLC interest until she received the 2017 annual Wendy
24 Subtrust Accounting on February 11, 2019. Exhibit 540, pp. 1 & 4. The Trustees were required to
25 prepare and deliver this Subtrust Accounting to Wendy on or before March 31, 2018. Therefore, it
26 was delivered to Wendy nearly a year late, just a few days before trial and well after discovery and
27 mediation were completed in the litigation. What is worse, Trustees had no intention of producing
28 this accounting or disclosing this information to Wendy unless and until it benefitted them. The

1 Trustees refused to prepare and deliver the Wendy Subtrust Accounting despite multiple written
2 requests and demands (see above and Wendy's *Emergency Motion to Compel*). Ultimately, the
3 Trustees prepared and delivered the Subtrust Accounting only after they were ordered to do so by the
4 Court. *Order Granting in Part and Denying in Part Motion to Compel Production of Subtrust*
5 *Accountings*, signed February 6, 2019.

6 28. This has been the course of conduct of the Trustees throughout their administration of
7 the Trusts. The Trustees treated their duties and obligations to Wendy as if they were parties to a contract
8 instead of Wendy's fiduciaries. The Trustees have taken the position that they satisfied their duty of
9 disclosure to Wendy by preparing and delivering accountings in the format provided by NRS 165.135.
10 Consistent with this, the Trustees have deliberately attempted to provide Wendy bare minimum, or no,
11 disclosure throughout their administration of the Trusts. Even assuming, *arguendo*, that the law did
12 provide that Trustees could fully and completely satisfy their duty of full disclosure by simply providing
13 accountings in the format provided by NRS 165.135, the Trustees failed to even do that. The Trustees
14 breached the terms of the Trusts and Nevada law by failing to timely deliver each and every one of their
15 Accountings. Additionally, for the reasons, which are not exhaustive, discussed above, the Accountings
16 on their face do not comply with the minimum requirements of NRS 165.135. Fiduciaries have a duty
17 to make a full and fair disclosure of all facts which materially affect the rights and interest of their
18 beneficiaries. *Bennett v. Hibernia Bank*, 47 Cal. 2d 540, 559–60 (1956); *Huie v. DeShazo*, 95-0873,
19 1996 WL 51165 (Tex. 1996). Based on this requirement and the complexity of the Trusts, their assets
20 and administration, the Trusts dictate that more than bare minimum is required of the Trustees to satisfy
21 their duty of disclose through the accounting format provided by NRS 165.135. While simply complying
22 with the accounting format outlined in NRS 165.135 may provide sufficient disclosure in some
23 circumstances, the Family Trust and Issue Trusts are not standard trusts.

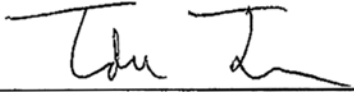
24 29. Unbelievably and tellingly, Todd Jaksick could not even verify the contents and
25 accuracy of his own Accountings. Importantly, Todd Jaksick filed the Accountings in this matter
26 seeking confirmation of each of them and an "an order from this Court that such Trust Accountings
27 are all settled, allowed, and approved as filed, including all transactions reflected therein and payment
28 of all trustees fees, attorneys' fees, and other professional fees and administrative expenses set forth

1 therein.” *Petition for Confirmation* (Family Trust), p. 6, lines 3-6; *Petition for Confirmation* (Issue
2 Trust), p. 4, lines 14-17. The *Petitions of Confirmation* include the following language concerning
3 the Accountings: “Attached hereto and incorporated by reference are all of the formal accountings that
4 have been issued by the Trustees with respect to the Trust...”. *Petition for Confirmation* (Family
5 Trust), p. 5, lines 12-14; *Petition for Confirmation* (Issue Trust), p. 4, lines 1-3. Therefore, the
6 Accountings and their contents are incorporated in the *Petitions for Confirmation* as if set forth therein.
7 Verifications signed by Todd Jaksick and Michael Kimmel for the Family Trust and Todd Jaksick for
8 the Issue Trust are included at the end of each respective *Petition for Confirmation*. *Petition for*
9 *Confirmation* (Family Trust), p. 14, lines 1-21; *Petition for Confirmation* (Issue Trust), p. 8, lines 15-
10 23. The Verifications state as follows:

11 VERIFICATION

12 Todd B. Jaksick hereby declares the following:

- 13 1. He is one of the Petitioners herein.
- 14 2. He has read the foregoing Petition and knows the contents thereof.
- 15 3. He declares under penalties of perjury that the statements made in the
16 Petition are true of his own knowledge, except for those matters stated on information and
17 belief, and as to those matters he believes them to be true.


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20 Todd B. Jaksick

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VERIFICATION

Michael S. Kimmel hereby declares the following:

1. He is one of the Petitioners herein.
2. He has read the foregoing Petition and knows the contents thereof.
3. He declares under penalties of perjury that the statements made in the Petition are true of his own knowledge, except for those matters stated on information and belief, and as to those matters he believes them to be true.




Michael S. Kimmel

VERIFICATION

Todd B. Jaksick hereby declares the following:

1. He is the Petitioner herein.
2. He has read the foregoing Petition and knows the contents thereof.
3. He declares under penalties of perjury that the statements made in the Petition are true of his own knowledge, except for those matters stated on information and belief, and as to those matters he believes them to be true.



Todd B. Jaksick

Petition for Confirmation (Family Trust), p. 14, lines 1-21; *Petition for Confirmation* (Issue Trust), p. 8, lines 15-23. Because Todd Jaksick and Michael Kimmel incorporated the Accountings in the *Petitions for Confirmation* and verified the contents of the *Petitions for Confirmation*, Todd Jaksick and Michael Kimmel declared under the penalties of perjury that the Accountings and content of the

1 Accountings were true and correct.

2 30. Despite including these verifications and representations in the *Petitions for*
3 *Confirmation*, when asked to confirm same in his deposition and during trial Todd Jaksick refused to
4 verify the contents of the Accountings.

5 Q Well, I asked about whether you understood taking
6 an oath and the penalties of perjury that go along with
7 that oath; right?

8 A Yes.

9 Q All right. And then I asked you, as you sat there
10 that day under oath, could you then swear to the contents
11 of those accountings and you said you didn't know; right?

12 A I do recall something like that, yes.

13 Q And by the end of that back-and-forth questioning,
14 you could not swear to the contents of those accountings;
15 could you?

16 A My understanding was is that our job was to have
17 Mr. Riley prepare the accountings and I'm swearing that
18 he's provided me accountings, but the details within the
19 accountings is what Mr. Riley prepares and I couldn't
20 swear that day to every single thing that was in that
21 accounting based off of not being an accountant. But my
22 understanding is I was swearing to the fact that we had
23 required Mr. Riley to prepare those.

24 Q Well, but in presenting them to the court, you had

1 1 to swear that everything in them were true and correct;
2 2 right?
3 3 A Yes, and we count on our accountant, Mr. Riley, to
4 4 be able to prepare the accounting.
5 5 Q So the fact of the matter is you didn't know
6 6 whether the contents of accountings were true and
7 7 correct; did you?
8 8 A We have looked at those, they've seemed accurate,
9 9 but it wasn't our duty -- my understanding was that just
10 10 that we were verifying that Mr. Riley had prepared them
11 11 and that then we were submitting them to the court.
12 12 Q Well, and that the -- that the information
13 13 contained in the accountings were true and correct?
14 14 A I don't know if that was the obligation or not, I
15 15 just know that it was our obligation that we were
16 16 verifying that our accountant had provided them.

15 Transcript, 02/21/2019, 188:4 – 189:16.

16 11 Q Do you deny that you swore that the contents of
17 12 the accounting were true and correct?
18 13 A No.

19 Transcript, 02/21/2019, 190:11-13.

1 9 Q And expecting the beneficiaries to believe your
2 10 sworn statement that they're true and correct; right --
3 11 the information in the accountings is true and correct?
4 12 A That's my understanding, yes.
5 13 Q And expecting this court to believe that the
6 14 information contained in the accountings were true and
7 15 correct?
8 16 A I would agree with that.
9 17 Q As far as the information contained therein, you
10 18 did not know whether it was true and correct; did you?
11 19 A I could just tell you that I didn't prepare the
12 20 accountings and you were wanting to go into details of
13 21 the accounting and so I didn't feel comfortable at that
14 22 time. But, yes, we verified that Kevin Riley had
15 23 prepared all of those accountings for us and we submitted
16 24 them to the court.

17 Transcript, 02/21/2019, 191:9-24.

18 4 Q And, as you sit here today, do you swear to the
19 5 content of those accountings?
20 6 A Yes, I believe Kevin Riley has accurately done his
21 7 job as lead accountant.
22 8 Q Sir, that's not my question. I'm not asking you
23 9 whether you swear that you believe Kevin Riley properly
24 10 did his job. I'm asking you, as a co-trustee, if you
25 11 swear to the contents of the accountings?
26 12 A And I'm just telling you that that's what I was
27 13 told my job was to do, to verify that we had Kevin Riley
28 14 providing the accountings -- the accountings, that's what
29 15 I was explained by counsel when we were signing them, but
30 16 I believe that Kevin Riley's accounting is accurate.

31 Transcript, 02/21/2019, 194:4-16.

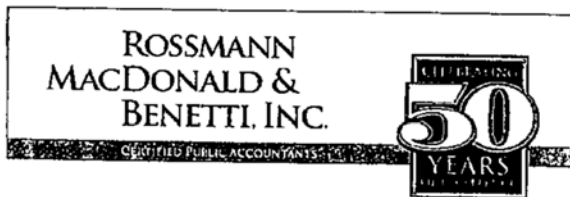
1 8 Q And right now all you can do is swear and verify
2 9 that you believe Kevin Riley is competent to do his job?
3 10 A That was my -- that was my understanding of what
4 11 our duty was, to make sure that Kevin Riley was -- did
5 12 his job properly.

6 Transcript, 02/21/2019, 197:8-12.

7 20 Q And your testimony would be the same for all of
8 21 the accountings; correct?
9 22 A Yes. I'm not an accountant, that's why we rely on
10 23 Mr. Riley to provide all the accounting.

11 Transcript, 02/21/2019, 197:20-23.

12 31. Incredibly, Todd Jaksick repeatedly took the position that the Verifications he signed
13 simply verified that Kevin Riley had prepared all the Accountings, and it was not the Trustees' duty
14 to know and confirm the contents of the Accountings were true and correct. Instead, Todd Jaksick
15 deflected this responsibility on Kevin Riley. However, the cover letter that accompanied each of the
16 Accountings confirmed that Mr. Riley and his firm had simply compiled the Accountings based on
17 information provided by the Trustees and did not audit, review or take any other steps to verify the
18 information included in the Accountings. The cover letter from the Family Trust Accounting for the
19 period ending March 31, 2014 is as follows:



ACCOUNTANT'S COMPILATION REPORT

To the trustees of
Samuel S Jaksick Jr Family Trust
Reno, Nevada

We have compiled the accompanying summary of account of the Samuel S Jaksick Jr Family Trust, and the related schedules as of March, 31, 2014, and for the period April 21, 2013 to March 31, 2014. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America.

The trustees of the Samuel S Jaksick Jr Family Trust are responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

Our responsibility is to conduct the compilation in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist the trustees of the Samuel S Jaksick Jr Family Trust in presenting financial information in the form of financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements.

The trustees have elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the trust's financial position, results of trust activities, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Samuel S Jaksick Jr Family Trust

Rossmann MacDonald & Benetti, Inc.
ROSSMANN MacDONALD & BENETTI, INC.
Certified Public Accountant

January 22, 2015

Exhibit 72, p. 1. These cover letters directly and explicitly contradict Todd Jaksick's attempt to deflect responsibility through repeated assertions under oath that Kevin Riley or his firm were responsible for the accuracy of the contents of the Accountings. The cover letters also confirm that the Trustees "elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America," stating further that "[i]f the omitted disclosures were

1 included in the financial statements, they might influence the user's conclusions about the trust's
2 financial position, results of trust activities and cash flows." Based on Todd Jaksick's deposition and
3 trial testimony, the Trustees could not and cannot verify that the contents of the Accountings is
4 accurate. Even more troubling, Todd Jaksick and Michael Kimmel committed perjury when they filed
5 the Accountings with this Court for confirmation and approval. If the Trustees cannot verify the
6 contents and accuracy of the Accountings and Kevin Riley and his accounting firm explicitly
7 disclaimed any responsibility for the accuracy and content the Accountings, how can the beneficiaries
8 of the Trusts and this Court be expected to rely on the Accountings and purported disclosure provided
9 by same? Additionally, Stan, in his capacity as Co-Trustee of the Family Trust, refused to join the
10 *Petition for Confirmation* concerning the Family Trust Accountings and actually filed an objection to
11 same. *Petition for Confirmation* (Family Trust); Transcript, 02/27/2019, 115:20-116:14. The Trustees
12 bear the burden of proving each item in their Accountings, and, if challenged by a beneficiary as has
13 occurred here, the accuracy and completeness of the Accountings and the Trustees' records must be
14 resolved against the Trustees.¹⁷

15 32. The Accountings and the Trustees' behavior throughout the administration of the Trusts
16 confirm the Trustees' goal was to provide Wendy with as little disclosure as possible while providing
17 information to Wendy only when it benefited them. The contents of the Accountings and the timing
18 of the delivery of the Accountings alone establish this. The Trustees knew Wendy was not good with
19 money and dependent on the Trusts for support, which was the very reason Samuel Jaksick appointed
20 them to protect her. During the administration of the Trusts, the Trustees' sought to convince Wendy
21 that (i) the Family Trust and Wendy's Subtrust were essentially worthless, (ii) the Family Trust was
22 not capable of making distributions to Wendy during the administration and (iii) Wendy would likely
23 never receive any substantial distributions from any of the Trusts. For example, in a July 25, 2016
24 email to Wendy, Kevin Riley communicated the following:

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27 ¹⁷ RESTATEMENT (THIRD) OF TRUSTS §100, *com. f.* ("The trustee also bears an analogous burden of
28 proving each item in an accounting or report, if challenged by a beneficiary, with doubts about the
accuracy and completeness of the trustee's records being resolved against the trustee.")

1 RE: Bronco Billys', Todd and stan received the first of three distributions. I am working with Todd and Stan is to
2 transfer the monies received by Stan's and Todd's trusts (excluding the specifically gifted interests that they received)
3 back into Sam's trust. Todd and Stan have been on vacation and we have not coordinated the details yet.

4 Because Todd and Stan will be transferring all the cash (after taxes) back into Sam's trust it will not be necessary to
5 have an equalizing distribution to your trust anymore. However, there is still not enough cash (even after the sale) to
6 pay off all of sam's debts. We are currently working on two separate scenarios

7 Option A: Use all of the cash to pay down debts and wait for more income to come in from property sales to pay off the
8 remainder of the debts.

9 Option B: Fund the grandchildren's trusts their \$100,000 distribution, set aside some monies for debts, and invest the
10 remaining monies so that the income generated would pay off the remaining debts over time and leave a distributable
11 asset for beneficiaries in the future.

12 We have also discussed settling the insurance note debts on an installment basis over a period of up to 6 years.

13 Nothing has been agreed to by the trustees so anything and everything could change.
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EXHIBIT

168

1 RE: Fly Geyser. Yes, Bright Holland sold property to the Burning Man Group for \$4.65m. You have a 13% interest in
2 Bright Holland through a trust. The proceeds of this sale are being held in escrow for the potential purchase of
3 replacement property from a family entity called Jackrabbit. The proceeds would be used to pay down debt that Bright
4 Holland has guaranteed performance on. The goal would be to release Bright Holland from the debt guarantee and
5 bring a significant asset into bright Holland. Todd has indicated that there will not be any funds distributed from this
6 sale.

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12 None of the grandchildren's trusts have been funded with cash yet, although we are working on potentially
13 accomplishing that in the next few months.

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Luke's trust is set up differently from the other grandchildren trusts. Luke is supposed to receive 20% of everything
that you are entitled to receive. I have had open conversations with Todd and Stan as to possibly settling with the trust
for a \$100,000 distribution similar to the other grandchildren trusts for the benefit of Luke, instead of receiving 20% of
everything you receive. Since neither Todd nor Stan have agreed on this, I can not say that this will occur.

Also, it appears increasingly likely that your trust will not be funded with cash, but rather some interests in some ranch
entities. Per your request, Todd and Stan are open to the possibility of a cash settlement with your trust, however no
dollar amounts have been discussed.

Exhibit 168. Kevin Riley's email conveys that it would be many years before funds, if any, were
distributed from the Family Trust. He also explains that, although Bright Holland sold property worth
\$4.65 million and Wendy has a thirteen (13%) interest in Bright Holland outside of the Family Trust,
Todd has decided to use the funds from the sale to pay down debt and potentially purchase replacement
property from Jackrabbit Properties, Inc. Id. Kevin Riley ends the discussion about Bright Holland
stating, "Todd has indicated that there will not be any funds distributed form this sale." Id. The tone
of the email is clear, Wendy cannot expect to receive any funds from Family Trust or any other source
for many years. After communicating this, Kevin Riley concludes his email stating "Also, it appears
increasingly likely that your trust will not be funded with cash, but rather some interests in some ranch
entities. Per your request, Todd and Stan are open to the possibility of a cash settlement with your
trust, however not dollar amounts have been discussed." Id.

33. Todd's goal was to starve Wendy out, so he could settle with her and buy out her
interest in the Family Trust and various entities for cheap. Transcript, 02/27/2019, 117:22–118:17.

1 Stan testified confirming this during his deposition on August 15, 2018 and during trial as follows:

2 22 Question: "Okay. So we talked about the Buckhorn
3 23 option and your belief that that's a breach of fiduciary duty by
4 24 Todd.

5 25 "Is there anything else that you can identify that you
6 1 believe is a breach of fiduciary duty by Todd?"

7 2 Your answer, "Yeah, I just think, you know, he really
8 3 did not want Wendy to get anything. I mean, he was not willing --
9 4 as you know, as your counsel is aware, wanted to settle for a few
10 5 hundred thousand dollars and get her to sign off on everything
11 6 that she was involved in.

12 7 "I don't think that's fair. I don't -- I don't think --
13 8 I think Wendy is entitled to more than that, and as I don't think
14 9 she's -- he's looking out for the best interest of the beneficiary
15 10 with that mindset."

16 11 That was your testimony just a few months ago, correct?

17 12 A Correct.

18 13 Q Do you still believe that today?

19 14 A Yes.

20
21 Transcript, 02/27/2019, 117:22–118:14.

22
23 34. After years of keeping Wendy in the dark and trying to force her to settle, Todd and
24 Michael Kimmel, in their Trustee capacities, filed the *Petitions for Confirmation* on August 2, 2017
25 instituting this lawsuit. By filing this lawsuit, Todd and Michael Kimmel forced Wendy to object and
26 litigate to protect her rights or stand by and allow the approval and confirmation of all of the Trustees'
27 actions. Wendy objected to the Accountings to protect her rights and to attempt to enforce her father's
28 intention for her and her children. At the time the *Petitions for Confirmation* were filed, the annual

1 Family Trust Accounting for the period ending March 31, 2016 and Wendy Subtrust Accounting for
2 the period ending December 31, 2016 were the most recent accountings provided to Wendy. Based
3 on these accountings, the Family Trust had a negative value of \$9,641,817.05 (\$3,383,621.62 Assets
4 - \$3,991,161.06 Unpaid Claims - \$9,034,277.61 Contingent Trust Obligations) and Wendy's Subtrust
5 had a value of \$98,982.25 (\$136,982.24¹⁸ Assets – \$38,000.00 Debts). Exhibit 74, Exhibit 95. As of
6 February 1, 2019, just days before the jury trial phase of this litigation was to begin, Wendy had
7 received one additional annual Family Trust Accounting for the period ending December 31, 2017 and
8 no additional accounting for her Subtrust. The Family Trust Accounting reportedly a value of
9 \$172,132.16 (\$7,787,274.56 Assets – \$2,127,795.16 Unpaid Claims – \$5,487,347.24 Contingent Trust
10 Obligations). Exhibit 126. Most of the change in value appears to have come: (i) from the increase
11 in value of two of closely held businesses Toiyabe Investment Co and Buckhorn Land & Livestock,
12 LLC and (ii) the decrease in the Contingent Trust Obligations. Exhibit 126, pp. 19 and 33. Of course,
13 Wendy was not provided with any disclosure of the underlying reasons for this other than the testimony
14 at trial by the Trustees and their counsel that the Trustees had done an outstanding job reducing debt.
15 Had the Trustees prepared and timely delivered adequate accountings that complied with the statutes
16 and provided Wendy additional information to explain the entities owned by the Trusts and their
17 values, some of the substantial issues in this litigation may have been avoided or mitigated. However,
18 the Trustees consistently chose to keep Wendy in the dark.

19 35. Based on the Accountings and Trustees' other disclosure to Wendy, Wendy leading up
20 to trial had no way of knowing that she had \$4 million coming to her as the Trustees and their counsel
21 represented to the Court and the jury during trial. As discussed above, following the trial, Wendy's
22 counsel sent a written request for the Trustees to provide Wendy an explanation of the basis for their
23 representation to the Court and the jury that Wendy had \$4 million in value coming to her. *Second*
24 *Supplement*, pp. 7-9, ¶¶ 14-16. Trustees ignored Wendy's request and have provided no additional
25 disclosure to Wendy concerning same. Additionally, Trustees have failed and refused to timely return the

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27 ¹⁸ These assets were comprised of interests in the balance of advances receivable from Bright Holland
28 Company and Jaksick Family LLC, neither of which were evidenced by a note or had any repayment
terms. Exhibit 95, p. 3.

1 annual Family Trust Accounting and annual Wendy Subtrust Accounting for the period ending December
2 31, 2018. The Trustees have either failed to fully disclose the information to Wendy concerning the \$4
3 million she has coming to her, or the \$4 million in value for Wendy does not exist and Trustees' and
4 their counsels' representations during trial were simply made to mislead the Court and the Jury. This is
5 completely unacceptable.

6 **II. Contest of and Opposition to Ratification and Approval of ACPAs**

7 **Topic for Determination:** Agreements and Consents to Proposed Actions ("ACPAs")

8 **Pretrial Scheduling Order Issue(s):** Ratification and Approval of ACPAs, Relief of Liability
9 Resulting from ACPAs, Contest of Validity and Enforceability of ACPAs

10 **Issues:**

- 11 (1) Are the ACPAs filed by the Trustees for Confirmation and Approval by the Court valid
12 and enforceable agreements between the Trustees and beneficiaries?
- 13 (2) If the ACPAs are valid and enforceable agreements, do they relieve Trustees for any
14 liability taken n reliance on the ACPAs?

15 **Applicable Authority & Statutes:** NRS 164.725 (Notice of Proposed Action); 165.170
16 (Power of Beneficiary)

17 **Evidence - Exhibits:**

18	ACPAs	Life Insurance Proceeds ACPA	June 5, 2013	Exhibit 14
19		Pioneer Group/Bronco Billy's ACPA	July 16, 2013	Exhibit 15
20		Ag Credit and MetLife Loan ACPA	July 24, 2013	Exhibit 16
21		Blank Check ACPA	August 14, 2013	Exhibit 17
22		Cattle Sale ACPA	August 26, 2013	Exhibit 18
23		Super Cub Note	January 31, 2014	Exhibit 19
24		White Pane Ranch Funds to Pay Family Trust Taxes	April 15, 2014	Exhibit 20
25		\$115,000 Loan from Issue Trust to Family Trust	August 28, 2014	Exhibit 21
26		\$150,000 Loan from Issue Trust to Family Trust	September 25, 2014	Exhibit 22
27		Stan Jaksick Buy-In to Tahoe Property	November 13, 2015	Exhibit 23

28 **Arguments:** Based on the evidence submitted during the jury trial and equitable trial phases
of this litigation and the detailed discussion elsewhere in this Brief, Wendy makes the
following arguments in support of her requested relief:

29 36. During the course of the administration of the Trusts, Agreements and Consents to
30 Proposed Actions ("ACPAs") were prepared and sign by the Trustees and some or all of the

1 beneficiaries of the Trusts. The ACPAs were, apparently, prepared in an attempt to obtain protection
2 from liability to the beneficiaries for actions the Trustees took during the administration of the Trusts.
3 The *Petitions for Confirmation* filed in this matter attach and incorporate the following ACPAs –
4 Exhibits 14, 15, 16, 17, 18, 19, 20, 21 and 22 – and seek an order from the Court that each of the ACPAs
5 are “ratified and approved, and that the Trustees are relieved from any liability for actions reasonably
6 taken in reliance on such Agreement & Consent.” *Petition for Confirmation* (Family Trust), p. 7, lines
7 16-18; *Petition for Confirmation* (Issue Trust), p. 5, lines 16-18. Wendy objects to the ACPAs and
8 the ratification and approval of same for various reasons.

9 37. Generally, a trustee may take any action within the trustee’s scope of authority as
10 provided by the terms of the trust and Nevada law without obtaining the consent or authorization from
11 the beneficiary. However, any such action taken by the trustee will subject the trustee to liability to
12 the beneficiary. NRS 164.725 provides a mechanism for a trustee to obtain protection from
13 beneficiaries for certain actions or decisions made during the course of the trustee’s administration.
14 The language of NRS 164.725 focuses on providing notice to beneficiaries of such actions, but also
15 provides a notice of proposed action need not be provided to a person who consents to the proposed
16 action in writing. NRS 164.725(3).

17 38. While NRS 164.725 recognizes that written notice need not be sent if a beneficiary
18 signs a written consent, it does not provide any additional detail on what form and content a written
19 consent must have to afford the trustee liability protection with respect to the proposed action. NRS
20 164.725. By seeking a written consent from a beneficiary to avoid liability for an action the trustee is
21 authorized to take, the trustee is altering his relationship and responsibilities with the beneficiary in
22 respect to that specific action. As a result, the trustee must provide full disclosure to the beneficiary
23 concerning the proposed transaction. Without full disclosure, the beneficiary has no ability to evaluate
24 the proposed action and the effects and implications of consenting to the action and waiving the right
25 to hold the trustee responsible for the action. This is consistent with the information required to be
26 disclosed by NRS 164.725, which includes, among other information, (i) a description of the proposed
27 action and an explanation of the reason for taking the proposed action and (ii) the name and number
28 of a person with whom to communicate for additional information regarding the proposed action. NRS

1 164.725(4)(c) & (d). This is also consistent with the requirements of NRS 165.170, which provides
2 that a “beneficiary, if of full age and sound mind, may, **if acting upon full information**, by written
3 instrument delivered to the trustee, excuse the trustee ... from performing any of the duties imposed
4 upon the trustee or exempt the trustee from liability to such beneficiary for failure to perform any of
5 the duties imposed upon the trustee by the terms of this chapter.” NRS 165.170 (emphasis added).

6 39. As an initial matter, each ACPA filed by the Trustees for ratification and approval must
7 be evaluated to determine if the beneficiary was in fact provided full disclosure before the beneficiary
8 consented to and excused the trustee from liability with respect to the proposed action. If the
9 beneficiary was not provided full disclosure, the ACPA should be void and unenforceable. See NRS
10 165.170. This must be the case especially when the ACPA covers a self-interested or self-dealing
11 transaction and attempts to eliminate liability of a trustee in respect to such action. To hold otherwise
12 would encourage trustees to conceal information and only disclose favorable information when
13 seeking written consent for proposed actions from their beneficiaries.¹⁹

14 40. The Trustees instituted this litigation seeking the ratification and approval of the
15 ACPAs. The Trustees have the burden of proof to establish the validity and enforceability of the
16 ACPAs. To carry this burden, the Trustees must establish that the beneficiaries were provided with
17 full disclosure and acted on full information when the Trustees obtained the written consents from the
18 beneficiaries. Because the Trustees cannot carry this burden for any of the ACPAs, the Trustees’
19 request for ratification and approval must be denied, and the ACPAs should all be declared invalid
20 and unenforceable. In addition to the lack of disclosure, many of the ACPAs have other issues that
21 render them invalid and unenforceable. Finding that the ACPAs are invalid and unenforceable does
22 not necessarily establish that all of the actions subject to the ACPAs were improper or breaches of the
23 Trustees’ fiduciary duties, but it precludes the Trustees from relying on the ACPAs to avoid liability
24 or responsibility if liability is warranted by the subject actions.

25
26 ¹⁹ The Trustees’ trust administration attorney Brian McQuaid, of MAPUIN, COX AND LEGOY,
27 understood this well when he wrote an email to Todd Jaksick on June 4, 2013 concerning the ACAPs
28 cautioning Todd Jaksick as follows: “One thing to keep in mind, **the less detailed and vague these
agreements are, the less protection they afford you down the road** should someone have a change
of heart.” See Exhibit 476, ¶ 2 (emphasis added). Clearly, Todd chose to disregard this advice.

1 41. Exhibit 14 – Use of Issue Trust Life Insurance Proceeds. On April 22, 2013, the day
2 after Samuel Jaksick died, Todd approached Stan and Wendy and told them they needed to agree to
3 use the \$6 million in life insurance proceeds payable to the Issue Trust to pay down the Tahoe Property
4 mortgage to save the property for the family. Transcript, 02/26/2019, 52:17-53:18*. Todd represented
5 to Stan and Wendy that paying down the debt would benefit all three of them as owners of the Tahoe
6 Property, without telling them that in actuality they owned none of it. Transcript, 02/26/2019, 52:17-
7 53:18*. Stan and Wendy were led to believe that the three of them would own equal interests in the
8 Tahoe Property after the paydown of the debt. Transcript, 02/27/2019, 51:14-23. Despite his role as
9 a fiduciary, Todd never disclosed to Wendy and Stan that (a) the Family Trust or SSJ, LLC no longer
10 owned the Lake Tahoe Property, (b) he and his family owned the Tahoe Property through Incline TSS,
11 (c) the \$6,000,000.00 was designed to ensure the financial future of the Issue Trust and its property,
12 (d) by using the Issue Trust money they would be jeopardizing its future and purchasing an interest in
13 an entity wholly managed by Todd or (e) Todd would be in total control of the Lake Tahoe property
14 – granting or refusing them access at his whim. Transcript, 02/26/2019, 52:17-24*. Stan and Wendy
15 both acknowledged they signed a document presented to them by Todd on the April 22, 2013 that they
16 understood authorized the use of the Life Insurance proceeds to save the Tahoe Property. However,
17 Wendy and Stan were never presented with or signed the Life Insurance Proceeds ACPA. Transcript,
18 02/27/2019, 93:22-23 & 94:13-15; Transcript, 02/26/2019, 52:17-53:18*. As a result, Exhibit 14 is
19 invalid, unenforceable and must be declared void.

20 42. The Life Insurance Proceeds ACPA is invalid and unenforceable because it was never
21 signed by Wendy and Stan. Had Wendy been presented with the Life Insurance Proceeds ACPA and
22 provided full disclosure concerning the subject transaction, she never would have signed it. The use of
23 the \$6 million in life insurance proceeds eliminated all of the Issue Trust's liquidity that was meant to
24 preserve and maintain the tens of thousands of acres of real property owned by the Issue Trust. Based on
25 the terms of the Issue Trust, these funds could have been used to purchase or build a home for Wendy to
26 use or own outright. Exhibit 14, p. 22-24, ¶ B. Instead, the Issue Trust expended all of this liquidity for
27 an ownership interest in an entity that owned the Tahoe Property but was controlled by Todd. Wendy has
28 bounced from rental property to rental property and even spent time living out of her car. Transcript,

02/26/2019, 45:11–46:13*. The possibility of living in a home purchased by the Issue Trust was and is far more valuable to Wendy and her family than the ability to stay in the Tahoe Property for a few weeks a year at Todd’s discretion. No one in Wendy’s position would have ever agreed and signed the Life Insurance Proceeds ACPA.

43. Exhibit 15 – Pioneer Group/Bronco Billy’s ACPA. The Family Trust owned shares comprising an approximately thirty-five (35%) interest in Pioneer Group, Inc., which owned an interest in a Colorado casino named, Bronco Billy’s. Months before his death, Samuel Jaksick apparently gifted 6% of his shares to Todd and, separately, 6% of the shares to Stan. Exhibit 230, RILEY2894-RILEY2897; Transcript, 02/21/2019, 20:21-21-17. The gifts left the Family Trust with an approximately thirty percent (30%) ownership interest in Pioneer Group, Inc. that was to be divided into one-third (1/3rd) shares for generation skipping trusts for Todd, Stan and Wendy, respectively, and their descendants.

44. After Samuel Jakick’s death, Todd and Stan realized to qualify for gaming licenses necessary to share in the proceeds of Pioneer Group, Inc. and Bronco Billy’s, they each needed to own six percent (6%) of the total outstanding shares of Pioneer Group, Inc., not the six-percent (6%) of Samuel Jaksick’s shares that were transferred to them in the gift transaction. Exhibit 231. As a result, Todd and Stan in a self-dealing transaction apparently changed the gift transaction after Samuel Jaksick’s death to give themselves twelve percent (12%) of the total outstanding shares of Pioneer Group, Inc., instead of the twelve percent (12%) of Samuel Jaksick’s shares unequivocally dictated by the instruments accomplishing the gift when Samuel Jaksick was alive. Exhibit 230; Transcript, 02/21/2019, 21:18-22-8 (“I think that the wording that he had there, I remember this being something that they were working on showing his intent after the fact, that had to have been six percent of the company so we could qualify, is what I remember.”).

45. Later, on or around July 16, 2013, Todd and Stan presented Wendy with Exhibit 15, which is the Pioneer Group/Bronco Billy’s ACPA. This is another self-serving transaction that must be viewed with heightened scrutiny. Once again, Stan and Todd never provided full disclosure to Wendy concerning the proposed transaction, and material statements included in the Pioneer Group/Bronco Billy’s ACPA are false. For example, paragraph B on the first page of the ACPA states:

1 “In April 2013, before his death, Sam gifted 6% of the issued and outstanding stock in Pioneer Group,
2 Inc. (“PG”) to his son Stan and another 6% to his son Todd.” Exhibit 15, p. 1, ¶ B. Also, paragraph
3 b on the second page of the ACPA states: “... Todd and Stan will each individually retain the 6% of
4 the issued and outstanding PG stock that Sam gifted to each of them in April, 2013.” Exhibit 15, p. 2,
5 ¶ b.

6 46. Additionally, Todd and Stan did not follow through with the plan outlined in the
7 Pioneer Group/Bronco Billy’s ACPA. The plan outlined in the ACPA provided for the following: (i)
8 that the proceeds would be split into two equal shares payable to the GST of Todd and Stan
9 respectively and (ii) to allow Wendy an opportunity to get her Colorado Gaming License and, if she
10 could not, then to allocate “other assets with a fair market value equal to the fair market value of the
11 [Pioneer Group, Inc.] stock” to fund Wendy’s GST Trust. The latter trust then had until April 20, 2018
12 to purchase one-third of the stock owned by Todd’s GST Trust and Stan’s GST Trust. The failure of
13 her GST Trust to purchase the one-third 1/3rd interest by that date meant the option to do so would
14 expire. Of course, Wendy had no ability to decide or take action to exercise the option of her GST
15 Trust, only her Trustee or Co-Trustees did. Regardless, Todd and Stan changed the plan outlined in
16 the Pioneer Group/Bronco Billy’s ACPA and decided to transfer the proceeds of the sale of Bronco
17 Billy’s from their Subtrusts to the Family Trust. Transcript, 02/27/2019, 135:16-136:15 (“Q: And the
18 plan changed once the casino sold and there was no obligation to have a gaming license? A: That’s
19 right.). Therefore, even had the Trustees provided Wendy full disclosure and the ACPA had not
20 contained material misstatements, the Trustees cannot rely on it for liability protection when they did
21 not actually follow through with the plan proposed in the ACPA.

22 47. Exhibit 16 – Ag Credit and MetLife Loan ACPA. On or around July 24, 2013, Todd
23 presented Wendy Exhibit 16, which is the Ag Credit and MetLife Loan ACPA. The purported purpose
24 expressed in the ACPA is to obtain consent from the beneficiaries to use funds received by the Family
25 Trust “to make monthly and/annual [sic] payments relating to loans from AG Credit and Metlife and to
26 otherwise honor all the obligations of the Family Trust and the estate of Samuel S. Jaksick, Jr. under the
27 Indemnification and Contribution Agreement.” Exhibit 16, pp. 1-2, ¶ 2 (emphasis added). Once again,
28 the action covered by this ACPA is self-serving because it personally benefits Todd.

1 48. The evidence presented at trial establishes that Wendy and the other beneficiaries did not
2 receive full disclosure prior to signing this ACPA. The very language of the ACPA is so vague it is
3 impossible to understand what obligations actually existed, the extent of the obligations, and what would
4 be required of the Family Trust to honor the obligations. At this point, the Trustees had not prepared and
5 delivered any trust accountings, so Wendy would have had no idea what the financial condition of the
6 Family Trust was and if it was even capable of honoring any such obligations. Additionally, Wendy did
7 not even have a copy of Todd's purported Indemnification Agreement until she received it from Stan in
8 August 2016, over three (3) years after this ACPA was signed. Exhibit 75. In fact, when Wendy requested
9 a copy of it from Kevin Riley on August 12, 2016, Mr. Riley confirmed he had a copy of the agreement
10 but would need Todd's permission to send it to her. Exhibit 75. Stan, a Co-Trustee of the Family Trust,
11 also confirmed he had never seen Todd's purported Indemnification Agreement until 2015. Exhibit 32
12 ("Like I said before I was never aware of or heard of the Indemnification agreement until 2015, we [sic]
13 I received a call from Kevin stating he was going to send my [sic] copy of Todd's Indemnification
14 Agreement and he suggested that I have an attorney review it. (Sorry Kevin, not trying to throw you under
15 the bus, just stating the facts.)") The ACPA was signed on or around July 24, 2013. If Stan and Wendy
16 did not have Todd's Indemnification Agreement until 2015 and 2016, respectively, it would have been
17 impossible for them to understand the implications and effects of signing this ACPA in 2013. This is
18 especially true considering Todd's purported Indemnification Agreement includes a list of obligations he
19 is apparently indemnified against paying, including the mortgage on his personal residence in the amount
20 of approximately \$3 million and the loan on one of his personal vehicles. None of this information was
21 disclosed to Wendy when she was presented with the Ag Credit and MetLife Loan ACPA.

22 49. Finally, the validity and scope of the Indemnification Agreement has also been challenged
23 in this matter by Wendy. At least three (3) different versions of the Indemnification Agreement have
24 surfaced including various issues that call into question the validity of the Agreement, whether Sam
25 Jaksick ever sign it, and what pages were included or attached to it if it was in fact signed by Sam Jaksick.
26 Exhibits 11, 11A, 11B and 542. If it is determined that the purported Indemnification Agreement is valid,
27 this Court has been asked to determine the scope and application of the Indemnification Agreement.
28 Questions about the scope and application of the purported Indemnification Agreement have existed since

1 Samuel Jaksick died. In fact, Stan, in his capacity as Co-Trustee, sued Todd concerning the validity and
2 scope of the purported Indemnification Agreement. If questions about the purported Indemnification
3 Agreement still exist today and have not been resolved by the Trustees or the Court, it would have been
4 impossible for Wendy to have received full disclosure and an understanding of the effects and implications
5 of her agreement to the ACPA in 2013.

6 50. Exhibit 17 – Blank Check ACPA. On or around July 24, 2013, Todd presented Wendy
7 Exhibit 17, which is the Blank Check ACPA. The purported purpose expressed in the ACPA is to obtain
8 consent from the beneficiaries to “transfer funds to cover deficiency (cash or otherwise) from the Samuel
9 S. Jaksick Jr Family Trust account in the event any entity that is associated with the Family Trust runs at
10 a deficiency (cash of otherwise) and/or is unable to pay expenses to keep operation [sic] running.” Exhibit
11 17, pp. 1, ¶ B (emphasis added). Once again, the action covered by this ACPA is self-serving because it
12 personally benefits Todd. Todd directly or indirectly owned an interest in many of the entities owned by
13 or associated with the Family Trust.

14 51. The evidence presented at trial establishes that Wendy and the other beneficiaries did not
15 receive full disclosure prior to signing this ACPA. The very language of the ACPA, including the phrase
16 “any entity associated with the Family Trust,” is so vague it is impossible to understand what would be
17 covered by this ACPA. Does this ACPA allow Todd to pay any deficiency of his companies the Family
18 Trust owns a minority interest in? At this point, the Trustees had not prepared and delivered any trust
19 accountings, so Wendy would have had no idea what entities the Family Trust owned, what entities may
20 have been associated with the Family Trust, the financial condition of the Family Trust or its ability to
21 pay any deficiencies.

22 52. Finally, the prior ACPAs were prepared by the attorneys for the Trusts. Transcript,
23 02/21/2019, 129:4-21. However, Todd and Jessica Clayton prepared the Blank Check ACPA. Transcript,
24 02/21/2019, 130:15-21. The fact that Todd and Jessica were preparing certain ACPAs on their own
25 without the involvement of legal counsel was not disclosed to Stan and Wendy. Transcript, 02/21/2019,
26 130:15-21 (“I just wasn’t aware the – that they were doing those ACPAs, that Todd and her were doing
27 those.”)9Exhibit 111 (“All along I assumed they all came from LeGoy’s Office”). Todd may argue that
28 the language in the ACPA representing it was prepared by the attorneys for the Trust was deleted and the

1 beneficiaries were on notice of same, but Stan, a Co-Trustee of the Family Trust, was not aware Todd and
2 Jessica were preparing ACPAs. *Id.* Exhibit 111 (“All along I assumed they all came from LeGoy’s
3 Office”). Even if Stan or Wendy had noticed of the deletion of the language stating it was prepared by
4 the Trust attorneys, the language replacing it states that the ACPA was prepared by the “Co-Trustees”.
5 This representation is false and misleading because the ACPA was prepared by Todd. No other Co-
6 Trustee participated in the creation of this document. Transcript 02/27/2019, 95:8-12, 95:20-22 (“Q: So
7 that would be inaccurate to say they were prepared by the cotrustees? A: Correct.”).

8 53. Exhibit 18 – Cattle Sale ACPA. On or around August 26, 2013, Todd presented Wendy
9 Exhibit 18, which is the Cattle Sale ACPA. The purported purpose expressed in the ACPA is to obtain
10 consent from the beneficiaries to “sell all but 100 of the best cattle on White Pine Ranch in order to pay
11 White Pine Ranch debt, past due expenses, and reserve funds for income taxes resulting from the sale.”
12 Exhibit 18, pp. 1, ¶ B. While the action covered by this ACPA does not appear to on the face of the ACPA
13 to be self-dealing, because Todd ultimately sold 100 of the cattle to himself the effect of it was to cover a
14 self-dealing transaction.

15 54. The evidence presented at trial establishes that Wendy and the other beneficiaries did not
16 receive full disclosure prior to signing this ACPA. The ACPA does not provide any information about
17 White Pine Ranch or the nature and extent of the debts and taxes owed. Had this information been
18 provided to Wendy, she would have seen that one of the purported debts of White Pine Ranch was a debt
19 owed to one of Todd’s entities. Ultimately, Todd ended up keeping 100 of the cattle for himself without
20 disclosing this information to Stan or Wendy. Transcript, 02/21/2019, p. 125:24-”) 3:09”) 3:”) -21. Todd
21 did not pay anything for the 100 cattle, but instead claimed his receipt of the cattle washed part of the debt
22 owed by White Pine Lumber to one of his entities. Transcript, 02/27/2019, 53:5-54:17. The sale of the
23 cattle to Todd was not disclosed or contemplated by the ACPA. Additionally, the stated purpose of the
24 ACPA was to raise cash to pay taxes and debt. By transferring the cattle to his entity and washing the
25 note, no cash was raised by the sale of the 100 cattle. Additionally, Todd was able to give preference to
26 the payment of his debt through this transaction that he may not have received if his debt was paid in the
27 ordinary course of the administration.

28 55. The Cattle Sale ACPA was another ACPA that was prepared by Todd and Jessica without

1 the involvement of legal counsel and without disclosure of same to Wendy. Transcript, 02/21/2019,
2 130:22-131:1.

3 56. Exhibits 19, 20, 21, 22 and 23. For similar reasons as those stated above, the Exhibits 19,
4 20, 21, 22 and 23 are invalid and not enforceable. Wendy was never provided full disclosure concerning
5 the ACPAs, and therefore did not have the information necessary to fully evaluate the ACPAs and
6 understand the effects and implications of consenting to the proposed actions. Additionally, Exhibit 23
7 involved Stan's proposed plan to purchase an interest in the entity that owned the Lake Tahoe Property.
8 This was a blatant self-dealing transaction that benefited Wendy's fiduciaries. The proposed buy in would
9 have diluted the Issue Trust's interest in the entity that owned the Tahoe Property from a majority interest
10 of 54% to a minority interest of 44.81%. Exhibit 23, p. 1, ¶ C. The implications of this transaction were
11 never disclosed to Wendy.

12 **III. Contest of Purported Indemnification Agreement for Issue Trust and Family Trust**

13 **Topic for Determination:** Indemnification Agreement

14 **Pretrial Scheduling Order Issue(s):** Invalidity, Breadth and Application, Removal as
15 Trustee, Unjust Enrichment and Constructive Trust

16 **Issues:**

- 17 (1) Whether a valid *Indemnification Agreement* in favor of Todd, Individually
18 ("Indemnification Agreement")²⁰ ever existed and, if so, which of several versions is
19 valid and controls.
- 20 (2) If the Court finds *Indemnification Agreement*, or some version of it, is valid, then to
21 determine which version is valid and applicable and construe it and then determine its
22 breadth – meaning determine, based upon the four-corners of the document, against
23 whom is it enforceable and to what extent; more specifically, what transactions it
24 exonerates, if any.
- 25 (3) Upon determining all of them are invalid, then require all transactions or payments
26 made based upon any purported sham *Indemnification Agreement* rescinded, reversed
27 and reimbursed to the person, trust, entity or account from which it came.
- 28 (4) Whether a valid *Indemnification Agreement* in favor of Stan, Individually ("Stan's
Indemnification Agreement") ever existed and, if so, which one is valid and controls.

²⁰ The term "Indemnity Agreement" as used herein shall refer only to some agreement in favor of Todd, not Stan. The Indemnity Agreement in favor of Stan shall only be referred to herein as "Stan's Indemnity Agreement."

Applicable Statute(s): NRS 153.031, NRS 163.115, NRS 163.190, NRS164.010, NRS 164.725

Evidence - Exhibits: 11, 11A, 11B, 12, 16, 32, 33, 34, 35, 36, 37, 38, 44, 72, 73, 74, 75, 93, 114, 127, 151, 152, 173, 206, 207, 212, 238, 240, 243, 258, 298, 410, 412, 413, 429, 447, 448, 449, 452, 453, 547, 548 (original of Exhibit 11), 549 (original of Exhibit 11B), 550, and 551 (original of Exhibit 12)

Evidence – Testimony:

Transcript Date:	Witness:	Page:	Lines:		Page:	Line:
02/20/2019	Todd Jaksick	42	4-7			
02/20/2019	Todd Jaksick	95	24	to	106	4
02/20/2019	Todd Jaksick	109	4	to	157	11
02/20/2019	Todd Jaksick	167	8	to	172	23
02/20/2019	Todd Jaksick	177	3	to	191	7
02/21/2019	Todd Jaksick	5	4	to	17	8
02/27/2019	Stan Jaksick	55	17	to	66	23
02/27/2019	Stan Jaksick	76	3	to	79	13
02/27/2019	Stan Jaksick	83	15	to	90	25

Arguments: Based on the evidence submitted during the jury trial and equitable trial phases of this litigation and the detailed discussion elsewhere in this Brief, Wendy makes the following arguments in support of her requested relief:

(1) Invalid Indemnification Agreement(s) – Confusion, Suspicion, and Forgery.

57. The first thing to remember in relation to the *Indemnification Agreement* is there are multiple versions of it containing the same date and all of them contain an orphan signature page. No credible evidence was presented during the trial establishing which of them was actually signed by Sam with his knowledge – meaning, knowing what document was signed, when exactly it was signed and which one would be applicable going forward. Absent the latter, none of them apply because no one presented with the *Indemnification Agreement* would be able to decipher whether any one of them is real and, if so, which one controls; it is impossible to determine whether or which any of them actually exists and applies. The record contains clear evidence the *Indemnification Agreement* was forged by virtue of signature pages being swapped and pages being swapped without any evidence that the Decedent, Sam Jaksick had even a clue about the changes.

58. There was some version of an *Indemnification Agreement* signed as of May 11, 2007,

1 per Exhibit 114, but the documents are all to be effective January 1, 2008. The latter makes no sense,
2 but Todd has no idea what version was signed by or as of May 11, 2007. When asked whether Exhibit
3 11A was the enclosure to Exhibit 114, Todd testified he was “not sure.” Transcript, 02/20/2019,
4 104:20-105:20. He does not recall any enclosure with Exhibit 114. Transcript, 02/20/2019; 110:25-
5 111:2. Todd also testified he knew of at least two separate copies of an *Indemnification Agreement*.
6 Transcript, 02/20/2019, 109:13-14. Todd testified that he was aware of at least four versions.
7 Transcript, 02/20/2019, 120:6-9. Then, ridiculously and nonsensically, Todd testified that they would
8 sign drafts before getting the final version done. Transcript, 02/20/2019, 120:10-15.

9 59. Then, during the trial, the “original” *Indemnification Agreement* was shown to Todd in
10 front of the jury; this version was sent to Todd’s expert for review and turned out to be nothing but a
11 fake document with spliced together pages. Exhibit 548; Transcript, 02/21/2019, 5:4-9:8. Todd
12 testified this version “is the original.” Transcript, 02/21/2019, 8:22-24. But, he admitted attached to
13 the original signature page are a bunch of copies. Copies on a different type of paper, each containing
14 three holes in the left margin that are not in the original signature page, with the signature page
15 containing staple-holes the copies do not contain. Transcript, 02/21/2019, 6:2-15. The document
16 Todd says is controlling that he sent to his expert to review is a hodge-podge of pages that do not
17 match up and clearly indicate a document was attached to the original signature page. Who knows
18 what the original signature page was originally attached to? The document on its face raises suspicion,
19 but, after being told by Todd that this document – Exhibit 548 – is THE document, there can be no
20 other conclusion, but that it is an invalid fraudulently created document that must be set aside, as void,
21 and ignored.

22 **(2) Execution and Signature Page Fraud.**

23 60. Todd admitted the **signature page** on the supposed earliest version of the
24 Indemnification Agreement that still exists (Exhibit 11B) marked “Old” at the top of the first page –
25 is the exact same signature page used on the purported next later version. The only difference in the
26 two is the earlier has the date of the Trust completed, the later one does not; the date of the trust under
27 the signature line is left blank. There is no valid explanation for the same signature page being used
28 on two documents that were, apparently, signed at different times with the earlier and older version

1 containing information not contained in the supposed later one - the signature page was signed in blank
2 and both versions had a signature page that lacked the date of the trust under Sam's signature line,
3 then the date was later added to the older version Exhibit 11B and then at some other point someone
4 dated the second one (Exhibit 11). Todd acknowledges and testifies the same signature page was used
5 on two different documents. Transcript, 02/20/2019, 119:11-120:5. Despite Todd contending Exhibit
6 11 is the applicable Indemnification Agreement, that version contains a signature line that references
7 a Trust with an incorrect date.

8 61. The only date contained in each of the bogus documents is typed in the first paragraph
9 – as "January 1, 2008", but the indisputable evidence is the documents were signed at many different
10 times and changed, well after the effective date. The evidence presented showed the documents were
11 signed at different times, changed well after they were supposedly signed at what date is impossible
12 to determine – so, which, if any of them, is applicable? One is marked "Old" at the top, but who
13 knows? Todd and Pierre Hascheff, the only witnesses with any personal knowledge about any
14 *Indemnification Agreement*, cannot even say for sure.

15 62. The testimony was that Exhibit 11B, marked "Old", is the earliest version that still
16 exists. Todd did testify they would sign drafts. Transcript, 02/20/2019, 120:10-15. Because no one
17 knows for sure, it appears they were having Sam sign an *Indemnification Agreement* whenever the
18 whim suited Todd and Pierre Hascheff, basically, willy-nilly. Therefore, who knows if Sam ever knew
19 what any of them said or which, if any of them, was in effect.

20 63. Additionally, Pierre Hascheff testified at trial that he did not have the 2006 Trust
21 documents until 2012. Todd and Pierre testified Exhibit 11 was executed in 2008. How could Pierre
22 Hascheff have referenced document he did not have until 2012 in a document that he prepared and
23 that was allegedly signed in 2008? Pierre's only response was that he and Todd must have manipulated
24 the document after the fact, as follows:

25 **Q. Let me reask it. I didn't mean to confuse you. If you**
26 **didn't have the 06 trust until 2012, how could you have**
27 **referenced it in a document that was supposedly signed in**
28 **2008, which is the Indemnification Agreement?**

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Hascheff. Okay. You are telling me that the Indemnification Agreement referenced the 2006 revocable trust?

Q. It does.

Hascheff. Okay. Let's take a look.

Q. Exhibit 11, the one that you say is the operative document, right?

Hascheff. Which document are you looking at?

Q. Exhibit 11.

Hascheff. Number 11.

Q. Exhibit Number 11. We can pull it up, the very top paragraph. Family Trust Agreement revised June 29, 2006, so that must have been prepared sometime after April of 2012, right?

Hascheff. Yeah, we could have actually inserted the correct date.

Q. Okay. So still manipulating and changing documents four years later; is that right?

Hascheff. I don't call them manipulation. I'm just putting in a correct date.

Q. Well, if you change a document that's manipulating it, isn't it?

Hascheff. I don't agree.

Q. Modifying?

Hascheff. Modifying, okay.

Q. Manipulating it would be to move, widen margins and do things like that. Modifying it would be changing its content, right?

Hascheff. I don't agree with the manipulation, I just don't.

Q. All right. But modifying it, you are still modifying it four years later?

1 **Hascheff. It happens all the time where you figure out you**
2 **have a typo in a document, and the quickest way to correct it**
3 **is put the correct date, in this case on the front page.**

4 Transcript, 2/22/19, 199:12-200:23.

5
6 **(3) Execution Only Obsolete Version Used.**

7 64. On top of all the above, notwithstanding that Todd testified Exhibit 11 is the operative
8 document Transcript, 02/20/2019, 102:7-11, the only version Kevin Riley knew about is Exhibit 173,
9 which is identical to Exhibit 11B, the middle version. Kevin Riley was making decisions about the
10 administration based upon an obsolete copy of the *Indemnification Agreement*. Nobody, let alone a
11 reasonable good business person, would ever expect an advisor assigned the very important task of
12 determining the breadth and applicability of an Indemnification Agreement be given only an obsolete
13 version of it. Using an inapplicable, obsolete *Indemnification Agreement* is going to invalidate any
14 advice given. Does Todd really expect anyone to believe such a ridiculous position? Absolutely not!
15 What has happened is Todd has gotten caught in his scheme to defraud his siblings of their inheritance
16 for his own benefit, and he will make up whatever he believes advances his fraud and hope everyone
17 listening is dumb enough to believe him. It is insulting, frankly. This entire *Indemnification Agreement*
18 sham cannot stand. Mr. Hascheff should be embarrassed for even considering perpetuating Todd's
19 fraud let alone committing it with him; yet, he is neither unapologetic nor remorseful about it.

20 65. Then, throughout the jury trial Todd's side took the position that none of them could
21 determine the scope and breadth of the *Indemnification Agreement*, and that the Court would have to
22 do so during the equity trial. Under these circumstances, it is not hard to believe that neither Todd nor
23 any of his "advisors" could figure out whether the *Indemnification Agreement* applied or to what it
24 applied. Without conceding for a second that any *Indemnification Agreement* is valid, if one is found
25 to be valid, the answer is simple: it does not apply at all because no one ever made demand or sued
26 Todd for payment of any "Obligation" as defined in the document. The term "Obligations" in all three
27 documents (Exhibit 11, Exhibit 11A and Exhibit 11B) is the same and is defined to include only the
28 following, "any claims, liability, obligations for any demand, threatened, pending or completed action,

1 suit or proceeding arising (directly or indirectly) pursuant to and including, without limitation,
2 obligations described on Exhibit A and incorporated herein by reference (“Obligations”).” The latter
3 definition of “Obligations” is a material term to the agreement, and it never requires payment of debts
4 as a matter of course, but only when a (1) demand, (2) threatened, pending or completed action, (3)
5 suit or (4) proceeding; normal payment of bills does not qualify. As with any indemnity, this
6 *Indemnification Agreement* requires process of some sort against the Indemnitees (Todd, his wife,
7 “Dawn Jaksick, individually, TBJ SC Trust and TBJ Investment Trust”), for any indemnity obligation
8 to be triggered; none of which ever happened. The *Indemnification Agreement* was never once invoked
9 by anyone, so Todd’s using it for anything is a farce and has caused an enormous expenditure of time,
10 effort and money of all Parties and this Court. Todd never once cared about or observed his fiduciary
11 duties and, as fiduciary for his siblings, could not care less about the harm he has done to them or their
12 descendants.

13 **(4) The Indemnification Agreement Cover-up.**

14 66. Todd and his attorney, Pierre Hascheff, were able to come up with an Indemnification
15 Agreement for Stan, when he expressed that he was upset about Todd’s Indemnification Agreement
16 in his e-mail dated July 28, 2017. Exhibit 32. Stan said he was unaware of the indemnification
17 agreement until 2015 and “[e]ven worst (sic) Kevin Riley my dad’s accountant for 10+ years WAS
18 **UNAWARE THIS AGREEMENT EXISTED, which absolutely causes me concerns over its**
19 **validity!**”. Exhibit 32:TJ1779. Stan said he never would have signed the 07/24/2013 ACPA (Exhibit
20 16) and that “**I had NO IDEA that what I was signing only benefitted Todd.**” Stan understood how
21 devastating this bogus Indemnification Agreement was and was not happy about it. Having worked with
22 his father for years, his dad would have, but never did mention it. Not only does Stan’s e-mail raise
23 valid points calling the entire document into question about where it was and whether it even existed
24 prior, but it shows the efforts and lengths Todd will go to in advancing his personal agenda over
25 promoting the interests of his beneficiaries.

26 67. Bob LeGoy, who was representing both Todd and Stan, as Co-Trustees of the Family
27 Trust on July 29, 2017, after alluding to Wendy being difficult, ignores the problem Stan raised in his
28 e-mail of July 28, 2017 (Exhibit 32) and, apparently, tries to calm Stan down, in his e-mail dated July

1 29, 2017 (Exhibit 33) by praising him for a job “well-done” and telling him he has his own
2 Indemnification Agreement. This was all done at a time when Mr. LeGoy did not even know
3 everything that was going on with the Trusts. It was total chaos through their administration as Trustee.
4 Nevertheless, Mr. LeGoy tells Stan, “*Your Dad entrusted you two to manage his affairs after his*
5 *death, he will roll over in his grave if you end up fighting each other,” which is exactly what*
6 *happened up until a week before trial started. Everything Mr. LeGoy said in his e-mail was nothing*
7 *more than “schmoozing a good client”* to keep them happy in hopes of them remaining clients if
8 litigation with Wendy ensued. He completely disregarded the conflict of interest between them that
9 detrimentally affected the Family Trust and Wendy’s interest. Despite being part of Todd’s “trust
10 advisory team,” Mr. LeGoy ignored the problems with him and his firm’s continued representation
11 and was clueless. Mr. LeGoy clearly did not know there was an *Indemnification Agreement* for Stan
12 and could not have known how any of them applied so he could not have possibly assessed how good
13 a job they were doing.

14 68. Todd was the one behind the *Indemnification Agreements*, because they personally
15 benefit and help him. Once Todd understood he could use the *Indemnification Agreements* to pay off
16 his own debt, he started wanting them in relation to all entities, even though doing so was wholly
17 contrary to them, a violation of the law and a breach of his fiduciary duties. He ignored their effects,
18 he just wanted an excuse to take Wendy’s inheritance. Todd is the one that suggests the
19 *Indemnification Agreement* “guaranteeing the debt for Wendy’s Sub Trust.” Exhibit 37.
20 Indemnifications are not guarantees, they are security blankets protecting a guarantor in the event that
21 guarantor is called upon to pay. The entire concept and all the Indemnification Agreements are a joke.
22 Todd does not even believe the Indemnification Agreement is valid Transcript, 02/20/2019, 171:19-
23 23) (“*If the document is determined to be held up by the Court.*”).

24 **(5) Destruction of Sam’s Estate Plan.**

25 69. Stan confirms that Sam loved his children, even Todd and Wendy through their trials
26 and tribulations; generally, Sam’s intent was to split his Estate into thirds. Transcript, 02/27/2019,
27 44:10-17. Todd confirmed under oath the destruction of Sam’s plan for the disposition of his Estate at
28 Transcript, 02/20/2019, 171:15-18.

1 **Q: And so the indemnification agreement actually changes the**
2 **dispositive plan of the family trust, and by that, I mean the**
3 **disposition provisions about what each of you will get or**
4 **inherit.**

5 **Stan: Yes.**

6 70. Todd got what he wanted, even if it meant yelling at and arguing with his dad.
7 Transcript, 02/27/2019, 44:18-24. Todd knew his father did not like conflict, and eventually reached
8 a point where he was not strong enough to deal with it anymore. Transcript, 02/27/2019, 45:12-16.
9 Todd argues the Indemnification Agreement, devised by Pierre Hascheff to help his client (Todd), was
10 to protect Todd Jaksick from being “wiped-out” over the personal guarantees he made on family
11 business. The latter is Mr. Hascheff’s explanation for them to Bob LeGoy. Exhibit 36. But, the way
12 Todd thinks he can or has attempted to apply the Indemnification Agreement destroys Sam’s
13 testamentary intent. Indemnification Agreements apply prophylactically, if a creditor comes to collect
14 on a personal guarantee. Even if the creditor could look for payment from the guarantor on some of
15 the obligations directly, until a creditor presents a claim that must be paid, an indemnity is never
16 triggered; no guarantor was approached about paying an obligation before the first-line, direct obligor
17 failed to pay. Todd Jaksick used the Indemnification Agreement as his own blank check, paying his
18 obligations on investments, rather than just loans “of the family” he might be called upon to pay as a
19 guarantor. Turns out, Todd’s application had the direct effect of gutting Sam Jaksick’s Estate Plan,
20 and diverting a majority of Sam’s assets to Todd, instead of a more equal division between him, Stan,
21 and Wendy.
22

23
24 71. Stan recognized the huge impact the Indemnification Agreements had on the Estate
25 Plan and wanted their application resolved saying, “***Bob thank you for your efforts in trying to get us***
26 ***to resolve these disputes but Todd’s indemnification agreement has a far bigger impact on the Trust***
27 ***than any Lawsuit or attorney fees ever will.***” Exhibit 38. An insightful analysis and telling statement
28 that Todd knew was accurate, but wholly ignored as Stan’s and Wendy’s fiduciary; he ignored it

1 because he is selfish and his fiduciary duties mean nothing to him. If he wanted to apply these
2 indemnities the way he has applied them, he should have recognized his conflict of interest as a
3 fiduciary and resigned, and – only then – filed a claim for reimbursement. He did not do that because
4 he wanted to be in charge of everything, including his own reimbursement.

5 72. There is no logical explanation for Sam Jaksick creating an estate plan just for it to be
6 undone by Todd Jaksick. If Sam’s testamentary intent was to provide for his family, for the most part
7 equally, the Indemnification Agreement destroyed that plan by enormously and unreasonably tipping
8 the largest and main benefit of his Estate to Todd.

9 **(6) Alternatively, Application of Indemnification Agreement.**

10 73. In the alternative, if the Court somehow determines some version of *Indemnification*
11 *Agreement* is valid or active, then Wendy replies regarding the next task is to determine whether it
12 even applies and, if so, how broadly it applies as follows:

13 74. There is no guidance whatsoever, not even from the architect of this ridiculous concept
14 – Pierre Hascheff; he did not know at all. It is the duty of the Co-Trustees to determine its application;
15 Todd admits it. Transcript, 02/20/2019, 133:7-9. Yet, once again deflecting and shirking his duties, he
16 further testified he is “going to leave it up to Judge Hardy to make the final decision.” Transcript,
17 02/20/2019, 133:10-15. So, even to this very day, the Co-Trustees have not determined the application
18 of the Indemnification Agreement, which makes it impossible for any of them to fully disclose or
19 properly account to the Court.

20 75. No one was ever able to testify regarding the application, scope or breadth of the
21 Indemnification Agreements – not one person – not even the people, ultimately, duty-bound to
22 determine how it applies or whether it applies at all. As late as December 14, 2017, the Co-Trustees
23 were in a dispute and still had not determined the breadth and scope of the *Indemnification Agreement*.
24 Michael Kimmel wrote in his e-mail of December 14, 2017 that, “*Stan has objected to the*
25 *enforceability or the scope of the indemnity (or maybe both),*” and then gives notice that absent an
26 agreement he will “*have no choice but to requires that the Trust engage separate legal counsel to*
27 *issue an opinion letter related to the enforceability and scope of the indemnity.*” Exhibit 38, p.
28 TJ1783. This is an issue between the Co-Trustees AFTER the time Todd and Mr. Kimmel started this

lawsuit by submitting their Accountings to get blessed by this Court. They both swore under Oath each knew the contents of the Accountings and that such contents were true and correct, but, despite that perjury and fraud upon this Court, we know their sworn statements were not true because they had not even determined the debts of the Trust because they were still in a dispute with, at least, Stan over the indemnity. Todd admits they were insufficient to advise Wendy (and Stan) regarding the application of the *Indemnification Agreement*. Transcript, 02/20/2019, 153:19-23.

76. A perfect example of the massive overreach by Todd with his *Indemnification Agreement* is the fact that he included his own personal mortgage on the Exhibit A list of indemnified obligations. Why on earth would Todd's personal mortgage be claimed as an item his father wanted him protected from "for the good of the family"? It is clear Todd expected the various trusts to pay his personal mortgage. In the last accounting received prior to the jury trial, Todd's personal mortgage remained an obligation of the Family Trust. Transcript, 02/20/2019, 155:13-21. Todd testified it was not until he and Stan entered into their settlement on the eve of trial that he agreed to remove his personal mortgage from the list. Transcript, 02/20/2019, 168:8-21. Stan did not expect or get his personal mortgage paid; Wendy sure did not. So, why would that be included in this list? The obvious explanation is Todd prepared Exhibit A or had it prepared and attached it to the indemnity himself in an effort to defraud Sam and the entire Jaksick Family. Todd testified Pierre Hascheff prepared it from information he and his dad provided. Transcript, 02/20/2019, 130:21-23 and 2/20/2019 129:2-19. Did Sam know about the list? Who knows, but what is blatantly obvious is Todd, as Co-Trustee of the Family Trust and as Trustee of the SSJ Issue Trust has misused the *Indemnification Agreement* from the outset to benefit himself, to the detriment of Wendy and Stan, which amounts to embezzlement, misappropriation of fiduciary property, theft, and breach of fiduciary duties.

77. This theme has lasted throughout this case, and Todd has not been bashful about asserting his position that he gets everything paid for and his siblings get nothing paid for, even testifying that was the case. Transcript, 02/20/2019, 134:3-11. The Exhibit A Todd attached to the *Indemnification Agreements* show payment of his personal obligations or that same was contemplated. He then penned a letter, dated March 15, 2017 seeking to establish his claims under the *Indemnification Agreement*. Exhibit 152 and Exhibit 212. Todd confirmed he and Stan got together, along with their

1 “Trust team” (attorneys, accountants, etc.) and, together, had a meeting of the minds and decided to
2 use the funds in the Jaksick Family Trust (i) to pay their own personal capital calls on Jackrabbit
3 Properties, (ii) that both of them benefitted personally by this payment, (iii) that the effect of these
4 payments was that one-third of the amount was paid by Wendy and (iv) that these were self-dealing
5 transactions. Exhibit 412; Transcript, 02/20/2019, 177:9-179:18. Todd’s testimony is a direct
6 admission of the conspiracy by the Co-Trustees of the Family Trust to self-deal and benefit themselves
7 at Wendy’s expense. The conspiracy continued when Todd admits the Trust paid his obligation or
8 share of the Ag Credit loan complex at Exhibit 152, Page TJ2609 and Page 2610, and Stan did nothing
9 to stop it at the time. In his September 6, 2016 email, Kevin Riley conveyed to Stan that “*todd wanted*
10 *Sam’s trust to pay for both Sam’s portion and his portion of the debt and when you refused to transfer*
11 *funds from your account, bright Holland funds were loaned to todd to pay down his portion of the*
12 *debt. Agcredit demanded a paydown to release property. This is part of the debt in the*
13 *indemnification agreement.”*²¹ Exhibit 238 (Emphasis added). Notwithstanding this disclosure was
14 made to Stan – the other Co-Trustee – and never made to Wendy, this is just plain wrong, and means
15 Todd’s investment was paid by Sam’s Trust – or 2/3rds by Wendy and Stan. Further evidence of the
16 latter is in the Settlement of Samuel S. Jaksick Jr. Family Trust’s obligations list, as of March 1, 2017.
17 Exhibit 240 and Exhibit 448. It got so bad that after raising his objection to the use of the
18 *Indemnification Agreement* to pay for Todd’s capital calls (Todd’s personal investment) Stan filed suit
19 against Todd for breach of fiduciary duty. Exhibit 243 at SJ547-48 & SJ550-51. Transcript,
20 02/27/2019, 83:12-14.

21 78. Todd was never asked to pay his dad’s or the Trust’s portion of the Ag Credit debt, so
22 why would he expect them to pay his portion? There is nothing that ever required Todd to pay the
23 Trust’s share of anything. Bottom-line: the indemnity was never and has never been triggered. Rarely
24 is there direct evidence of intent to defraud – meaning, testimony or evidence from the perpetrator of
25 the fraud saying, “I intend to defraud you,” but in this case there is. The Exhibit A, his letter, Kevin
26 Riley’s email, and the Accountings prove beyond a shadow of a doubt Todd’s total and complete abuse

27
28 ²¹ Written verbatim without capitalization of proper names.

1 of his position as a fiduciary, and is direct evidence of his decision and goal to use it to steal Wendy's
2 and Stan's inheritance.

3 79. Todd has a fundamental misconception about how investing works. If he is to own an
4 interest in anything, then he must pay for that interest. Instead of using the Indemnification
5 Agreements as a prophylactic remedy, if ever called upon to pay the debts of his father or the trusts,
6 Todd uses them to pay for what he describes as "his interest" or his share of investments. The effect
7 is that Sam, the Trusts, or the family is paying for Todd's obligations or share of the various entities
8 and Todd gets 100% of the interest. Who would not want that arrangement? Todd expects his siblings
9 and this Court to believe his father intended or wanted him to "take 51% of the ownership in these
10 entities and I will pay 100% of the investment or cost" – meaning, now, the Trusts pay for the entire
11 investment, and Todd gets a 51% controlling ownership interest; the effect is Wendy and Stan will
12 pay 2/3^{rds} of Todd's investments and Todd owns them 100%. The latter is an asinine application of
13 the *Indemnification Agreement*, and a direct and intentional breach of Todd's fiduciary duties. Todd
14 should not be allowed to keep any of these investments.

15 80. Riley knew how damning Todd's oppressive application of the *Indemnification*
16 *Agreement* could be and requested, on July 25, 2016 on behalf of the grandchildren's trusts, "***an***
17 ***unconditional release from the indemnification agreement that you have with Sam's trust.***" (Exhibit
18 93). The intent element of that fraud is proven by the fact that he held up the funding of the
19 grandchildren's trusts when Riley told Alexi Smart that "Todd and Stan are still working on how to
20 proceed with funding the grandchildren's trusts and setting aside enough funds to pay debts and taxes"
21 and because he hid from the beneficiaries, as evidenced by Wendy asking him why the indemnification
22 was never given to them in any of their meetings. Exhibit 75. Kevin Riley affirmatively stated "I don't
23 think you will be able to actually distribute remaining assets of Sam's trust until Todd releases the
24 trust from his Indemnification Agreement" and recommends they get a release from the
25 indemnification agreement before distributing the remaining assets to the beneficiaries." Exhibit 447.
26 Todd still refuses to give that release, while he waits to see if the Court will confirm the
27 Indemnification Agreement and the obligations that come with it. Stated another way, Todd is
28 withholding Trust distributions more than six (6) years after Sam died, based upon personal motivation

1 and his selfish desire to receive more of Sam's Estate than he is entitled.

2 81. Further evidence of their failure to disclose or provide the *Indemnification Agreement*
3 to the beneficiaries is on page WJ000297 of Exhibit 75 where Riley claims in his e-mail dated August
4 12, 2016 to have referenced it in the 2015 Account, but says, "***I have a copy of the agreement but I***
5 ***would need Todd's permission to send it to you.***" Todd had never provided the Indemnification
6 Agreement to the beneficiaries of the Family Trust more than three years after his father's death and
7 had not granted permission to Kevin Riley to provide it to Wendy. How could a Trustee conceal an
8 agreement that had such an impact on the Trust and its administration? It is appalling, and unbecoming
9 a trustee or any fiduciary. If this type of behavior by a fiduciary is allowed to stand, then no beneficiary
10 is safe from their fiduciary in the State of Nevada. The concept of fiduciary relationships and fiduciary
11 duties will cease to exist. Fiduciaries can steal the property entrusted to them at will with no
12 consequence. Atrocious!

13 **(7) Riley binds Wendy's 2012 BHC Family Trust to Indemnification Agreement.**

14 82. To further show the sinister and disturbing motive behind these ill-conceived, self-
15 serving and fraudulent Indemnification Agreements, Todd attempted to get an Indemnification
16 Agreement from his buddy, Kevin Riley as Trustee of the Wendy A. Jaksick 2012 BHC Family Trust
17 U/A dated July 30, 2012. Exhibit 127. This *Indemnification and Contribution Agreement*, apparently,
18 indemnifies "Todd B. Jaksick, Samuel S. Jaksick, Individually, and TBJ SC Trust, its representatives,
19 executors, trustees, successors and assigns." Remarkably, the same three paragraphs 15.3, 15.4 and
20 15.5 land on the signature page, lined up identically as Exhibit 11, Exhibit 11A and Exhibit 11B, the
21 only change is the signature line for Mr. Riley, as Trustee for Wendy. By now, the modus operandi
22 for all these Indemnification Agreements is clear. Make them end with the same three paragraphs
23 above the signature lines on the signature page, then Todd or his attorney, Mr. Hascheff, or both can
24 change and manipulate the document any way they please to accomplish whatever protection Todd
25 wants.

26 83. What could be more ridiculous and ill-advised than a Trustee signing an
27 Indemnification Agreement that exposes the Trust he is required to protect to liability? There was no
28 consideration given for the Trust taking on this enormous liability. Why would a Trustee do such a

1 thing? The only reason is because Kevin Riley is a co-conspirator with Todd that has worked tirelessly
2 in helping Todd steal Wendy's (and Stan's) inheritance, and this incredibly stupid move by Mr. Riley
3 as Trustee is nothing more than granting Todd the ability to raid Wendy's BHC Trust, just like he has
4 done the Family Trust and the SSJ Issue Trust. Signing this Indemnification Agreement binding
5 Wendy's 2012 BHC Trust to liability in exchange for nothing is a, *per se*, breach of fiduciary duty in
6 furtherance of Todd receiving more money, more property and more inheritance than Wendy and Stan.
7 It is disgusting and should be punished in equity by this Court.

8 **(8) Conspiracy and Breach of Fiduciary Duties Palpable.**

9 84. These Indemnification Agreements were designed for one thing and one thing only –
10 for Todd to have an excuse to take whatever he wanted from the Family Trust, the SSJ Issue Trust,
11 Wendy's 2012 BHC Family Trust or anything else he wanted – all in the name of him being
12 “protected” in his “great work” as Trustee; in actuality, this is theft plain and simple. It destroyed
13 Sam's estate plan completely because it inordinately re-directed property of the various entities into
14 the possession, control or ownership of Todd or his entities, and it allowed Todd to use Wendy and
15 Stan's inheritance shares to pay-off his personal debts and obligations. None of these payments or
16 applications of Indemnification Agreements actually comport with how Indemnification Agreements
17 actually work.

18 85. Indemnities are, by definition, protection mechanisms that only apply or are only
19 triggered – if and when – a claimant or creditor “comes knocking” demanding payment from a personal
20 guarantor or someone besides the original obligor or debtor. Never – NOT ONCE – did the latter
21 happen. Notwithstanding the evidence about how these *Indemnification Agreements* came about,
22 which lacks any semblance of credibility, and the gross fraud by a fiduciary to obtain them and their
23 invalidity, if anyone could believe Sam actually signed these various *Indemnification Agreements* with
24 any amount of understanding of them, no one on the planet – and, certainly, no attorney, judge or legal
25 scholar that understands indemnity law – can believe Sam intended it to be a “blank check” for Todd
26 to pay all debts in any location for anything, other than Todd and Mr. Hascheff. Riley understood how
27 the indemnity was triggered, as stated in his May 29, 2013 e-mail, “*Only if the entity defaults will it*
28

1 *be an obligation of sam's²² trust.*" Exhibit 206. Notably, none of the members of Todd's "Trust team"
2 could or will commit to how the *Indemnification Agreements* apply or the breadth of their scope
3 because committing to something is limiting. If any of them say they apply to A, B or C debts or
4 obligations, that necessarily prevents their application to D, E and F. They also know that Todd would
5 excoriate them if they ever did, which underscores the depravity of Todd's avarice, and their
6 conspiracy and all their malevolence toward the beneficiaries.

7 86. The fact of the matter is the Indemnification Agreement does not have any application
8 because not a single debt outstanding remained unpaid, so none of those creditors would have knocked
9 on Todd's door for payment. Todd's application of the Indemnification Agreement converts every
10 single payment made on his behalf or against his own personal debt, a gift from Sam or his Estate or
11 his Trusts, which is not even close to the supposed intent of the document. The evidence makes clear
12 that Todd has held up the trust administrations and refused to make distributions pending a
13 determination of how much of his own personal debt will be paid 2/3^{ds} by his siblings or other family
14 members or trusts. His personal interest has destroyed his fiduciary judgment. Along with the
15 accountings, the Indemnification Agreement and attempting to enforce it and asking this Court for a
16 determination is an absolute fraud upon this Court.

17 **Requested Relief:** Wendy requests the following relief:

18 (1) Rescission of all Transactions or Payments – Unjust Enrichment and Constructive
19 Trust.

20 87. Upon the Court finding each *Indemnification Agreement* invalid, the remedy must be
21 and is rescinding all transactions taken in "reliance" upon it and restoring the property subject to such
22 transactions or paid out to its former place or position.

23 (2) Removal of Trustee.

24 88. Todd became the fiduciary of Sam Jaksick when he became his power of attorney. He
25 then set out on a course to abuse him, to unduly pressure and influence him, and to redirect the
26 succession of his property to Todd instead of to the natural objects of his bounty – all of his children

27 _____
28 ²² Written verbatim without capitalizing Sam's name.

1 and grandchildren. Todd, with the help of us unscrupulous attorney, Pierre Hascheff, changed the
2 Indemnification Agreement without his father's knowledge and its application, even after Sam's death.
3 Todd Jaksick was the Trustee of the SSJ Issue Trust beginning in 2007 and was fiduciary over his
4 father and his siblings and his and their kids (descendants). He, later, became the Co-Trustee of the
5 Family Trust and was the fiduciary over his siblings and their kids. All while possessing those
6 positions of faith and trust, Todd decided he would do everything in his power to take as much of his
7 father's property and, in turn, his siblings inheritance, as possible. He used the *Indemnification*
8 *Agreement* to pay loan payments, capital calls, and attorney's fees all of which benefitted him and
9 only him.

10 89. He now claims ownership of a majority interest or full interest in the entities or
11 investments paid by the Trust. Todd takes an interest in an entity or investment, gives the impression
12 that he has some obligation to pay for his interest and then used the *Indemnification Agreement* to pay
13 his share – meaning, the fiduciary property he was entrusted to protect for himself. All these
14 transactions were a sham designed to disguise an obligation on an investment as a trigger of the
15 indemnity, allowing him to use property of the various trusts to pay his obligation on the “investment.”
16 Now, Todd claims to own these entities or a majority interest in them, paid for entirely by his Dad's
17 property, i.e., the inheritance of his Dad's children – meaning, Wendy and Stan paid 2/3rds of the
18 purchase price of Todd's Investment, and Todd got 100% of the benefit. This is a deal anyone would
19 enjoy, but it is fundamentally a fraud upon Sam and his children. Todd has been able to cry on queue
20 to feign that he cared about his dad, his siblings or his family members, but it is clear Todd cares about
21 nothing other than “feathering his nest” and taking what does not belong to him, in order to feed his
22 greed and total inability to share.

23 **Rulings and Orders Requested:** Wendy requests the following rulings:

24 (1) the *Indemnification Agreement* was invalid and unenforceable, *ab initio*, and is invalid and
25 unenforceable because:

- 26 a. the only version Todd contends applies is a hodge-podge of spliced together
27 documents that include only one original signature page and copies with three-holes
28 punched in the left margin and no staple holes, while the signature page lacks the
three-holes, but has staple holes – in other words, no valid document exists;

1 b. there is no evidence or indication in any way that Sam ever knew the *Exhibit A* was
2 ever attached to it;

3 c. that Todd committed fraud by attaching, at a later date, an *Exhibit A* he prepared
4 to cover the “family debts” he wanted, instead of those Sam could have ever
5 contemplated that included his own personal debts and obligations, and there is no
6 evidence Sam ever would have wanted Todd’s personal debts paid or to alter or
7 destroy his Estate Plan, based upon an *Indemnification Agreement*.

8 (2) despite the *Indemnification Agreement* being invalid, null and void and despite no creditor
9 ever demanding Todd pay any obligation or ever taking any action to require Todd to do
10 so; therefore, Todd was never authorized or entitled to invoke the *Indemnification*
11 *Agreement* for anything.

12 (3) alternatively, that it is no longer applicable and enforceable because all matters
13 contemplated to be covered by it have been paid in full and satisfied.

14 (4) *Stan’s Indemnification Agreement* was invalid and unenforceable, *ab initio*, and is invalid
15 and unenforceable because:

16 a. Sam never knew about it, did not understand it or, at least, had no idea about its
17 application;

18 b. it was never validly signed;

19 c. that Stan never knew about *Stan’s Indemnification Agreement* until, at the earliest,
20 2015;

21 d. that no “*Exhibit A*” was attached, so nothing specific was indemnified;

22 e. it was supposedly signed – SEE SIGNATURE LINE – by Sam in only two
23 capacities, (1) Individually and (2) as “trustee of Samuel S. Jaksick, Jr. Family Trust
24 Agreement dated June 29, 1996”; therefore, since no June 29, 1996 trust exists, it
25 is only binding, if at all, upon his Estate, which was closed many years ago.

26 (5) that *Stan’s Indemnification Agreement* was never valid or enforceable and is invalid and
27 unenforceable.

28 Wendy requests the Court order the following:

(1) ORDER that Todd’s *Indemnification Agreement* and all versions of Todd’s
Indemnification Agreement are invalid, *ab initio*, set each and all of them aside as null
and void *ab initio*;

(2) To avoid unjust enrichment by fraud, breach of fiduciary duty and self-dealing,
ORDER that Todd be required to repay the Family Trust, the SSJ Issue or any other
Jaksick Trust or entity used to fund any part of any debt or obligation based upon
Todd’s false reliance on the *Indemnification Agreement* and that he return all sums

wrongfully paid by them for obligations of Todd that never should have been required of them.

(3) ORDER that Todd, personally, to make payment or deliver his own property in payment of any obligation subject to any personal guaranty, Todd, as Co-Trustee of the Family Trust and as Trustee of the SSJ Issue Trust and as fiduciary for his siblings and all his family members refused to forego using it in any way, Todd breached his fiduciary duty by:

- i. Using the *Indemnification Agreement* to benefit himself to the detriment of his siblings and their descendants and his family;
- ii. Using the *Indemnification Agreement* to pay his personal debts and obligations;
- iii. Failing to determine the full scope of the *Indemnification Agreement* and for failing to disclose to all beneficiaries its scope;
- iv. Failing to distribute and fund various sub-trusts in hopes of using the *Indemnification Agreement* to his personal benefit by having the Family Trust satisfy his personal debts and obligations;

(4) ORDER that Todd be immediately removed as Co-Trustee of the Family Trust for his breaches of fiduciary duty in that capacity;

(5) ORDER that Todd be immediately removed as Trustee of the SSJ Issue Trust;

(6) ORDER that Stan's *Indemnification Agreement* is and all versions of Stan's *Indemnification Agreement* are invalid, *ab initio*, set each and all of them aside as null and void *ab initio* and declare them unenforceable.

(7) ORDER that the *Indemnification Agreement* in favor of Todd to the 2012 BHC Family Trust is and all versions of it are invalid, *ab initio*, set each and all of them aside as null and void *ab initio* and declare them unenforceable.

IV. Contest of Lake Tahoe Transaction

Topics for Determination: Contest of Lake Tahoe Transaction

Issue:

- (1) Whether each and every part of the Lake Tahoe House transaction should be rescinded, set aside or voided restoring the Tahoe House to the Family Trust.
- (2) Whether Todd should be removed as Co-Trustee of the Family Trust for allowing ownership of the Tahoe House to be diverted into an entity wholly owned by him or his personal or family trusts.

Applicable Statutes: NRS 153.031, NRS 163.115, NRS 163.190, NRS164.010, NRS 164.725

Evidence - Exhibits: 9, 10, 14, 23, 23.1, 23.2, 23.4, 23.5, 23.7, 23.8, 23.9, 23.13, 23.14, 23.15, 23.16, 23.17, 23.18, 23.19, 23.20, 23.21, 23.23, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 88, 89, 91, 115, 116, 117, 139, 140, 141, 199, 204, 210, 238, 242, 250, 260, 264, 265, 266, 409, 410, 414, 417, 419, 440, 441, 444, 454, 465, 471, 472, 473, 474, 475, 476, 498, 538, 539, 542, 542A, 543, 544, 545, 546, 547, 562, 572, 579, 584, 585.

Evidence – Testimony: Among other testimony, the following are excerpts from the transcript regarding the Tahoe House transaction:

Transcript Date:	Witness:	Page:	Line:		Page:	Line:
02/19/2019	Todd Jaksick	28	14	to	33	10
02/19/2019	Todd Jaksick	34	13	to	41	10
02/19/2019	Todd Jaksick	87	19	to	104	15
02/19/2019	Todd Jaksick	109	7	to	130	3
02/19/2019	Todd Jaksick	131	13	to	251	5
02/20/2019	Todd Jaksick	11	7	to	16	3
02/20/2019	Todd Jaksick	21	10	to	21	16
02/20/2019	Todd Jaksick	26	11	to	67	14
02/20/2019	Todd Jaksick	69	3	to	83	1
02/20/2019	Todd Jaksick	85	5	to	95	23
02/22/2019	Todd Jaksick	6	10	to	6	25
02/22/2019	Todd Jaksick	23	13	to	27	9
02/26/2019	Todd Jaksick	8	11	to	10	20
02/27/2019	Stan Jaksick	46	2	to	53	17
02/27/2019	Stan Jaksick	91	4	to	97	18

Arguments: Based on the evidence submitted during the jury trial and equitable trial phases of this litigation and the detailed discussion elsewhere in this Brief, Wendy makes the following arguments in support of her requested relief:

90. The property located at 1011 Lakeshore Blvd, Incline Village, NV (the “Tahoe House”) is one a crown-jewel property in an Estate that used to have several crown jewel properties before Todd got control of them. The Tahoe House was loved by Sam, and because it was where Wendy and Stan grew up and has been used by the family for decades, it was beloved by everyone in the family. And because of where the house is located and the popularity of the area the Tahoe House has grown tremendously in value. The current value of Tahoe House approaches \$20,000,000.00, if it has not surpassed it.

91. Sam was blessed in his life and he raised his children the same way. He raised them to

1 be used to the finer things in life, and to rely upon him for supplemental income or even in their
2 livelihood. Sam raised each of his children be used to the “good-life.” Any evidence, including the
3 testimony of Todd, that Sam, generally speaking, wanted to leave his daughter, Wendy, nothing or
4 less than Todd and Stan, or to take care of Todd more than his other two children or any of his
5 grandchildren, is absolute hogwash and completely not believable. The design was for the Tahoe
6 Property to remain in the family if possible, but to allow it to be sold, if needed, to take care of his
7 children and family. Sam knew all this and intended that it be used and its value available, if needed,
8 by his children, which is exactly the reason he set up the Family Trust. Unfortunately, Todd made sure
9 Sam’s desires did not happen.

10 Trail (History) of Title – Tahoe House.

11 92. Title to and ownership in the Tahoe Property went from the Family Trust to SSJ, LLC
12 to, where it is currently, in an entity known as Incline TSS, LLC, basically as follows:

- 13 a. Family Trust. Sam acquired the Tahoe House in the early to mid-1970s. He lived in the
14 home, with his family, through the end of his life. Title to the Tahoe House was put
15 into the name of the Family Trust. On January 15, 2007, Sam, as Trustee of the Family
16 Trust transferred the Tahoe House to himself, Individually. Exhibit 23.1. Then, on May
17 23, 2008, Sam, Individually – as his sole and separate property – transferred the Tahoe
18 House back to the Family Trust. **Exhibit 23.2.**
- 19 b. Option Agreement. Apparently, for the purpose of estate tax planning, Pierre Hascheff
20 created a *Real Estate Option Agreement* (see further explanation below). **Exhibit**
21 **23.25, 542 & 542A.** The *Option Agreement* says in the opening paragraph that it was
22 between Sam Jaksick, Individually, and Incline TSS, LLC, a Nevada limited liability
23 company (“Incline TSS”), but then the signature page – which is an orphan signature
24 page – reflects it was signed by Sam, as Trustee of the Samuel S. Jaksick, Jr. Family
25 Trust. The document itself is unclear about the Party granting the option. A
26 *Memorandum of Agreement and Option*, dated November 1, 2010 was filed in the Deed
27 Records of Washoe County, Nevada on February 15, 2011. **Exhibit 23.6.** None of the
28 details of the purchase of the Option are contained in the Memorandum.
- c. Transfer to SSJ, LLC. On November 23, 2011, the Tahoe House was transferred by
Sam, as Trustee of the Family Trust to a new entity known as SSJ, LLC. **Exhibit 23.8.**
The *Option Agreement* was assigned or transferred, such that it applied to SSJ, LLC –
Assignor was Sam, as Trustee of the Family Trust and Assignee was Todd as Manager
of SSJ, LLC. **Exhibit 51.**
- d. Option Exercise. In December 2012, Sam needed a heart procedure and left to go to
Los Angeles for surgery on December 17, 2012. Transcript, 02/19/2019, 130:4-
19. Sam made Todd his fiduciary by appointing him to be his attorney-in-fact via a

Power of Attorney dated December 17, 2012. **Exhibit 23.17**. His surgery occurred on December 19, 2012. Transcript, 02/19/2019, 130:4-19. Todd testified Kevin Riley was very motivated to get the Tahoe House out of Sam's Estate to reduce estate taxes and to avoid the net investment income tax that went into effect on January 1, 2013. So, Todd, as Manager of Incline TSS, sent a document titled Notice of Exercise Option of 1011 Lakeshore Blvd, Incline Village, and dated December 21, 2012. **Exhibit 23.18**. The document was addressed to Sam S. Jaksick, Jr., as Manager of SSJ, LLC, but everyone knows he was in Los Angeles at the time and did not receive the Notice, Plus All this was done while Todd was Sam's fiduciary under the power of attorney.

- e. Transfer to Incline TSS. Title to the Tahoe House was delivered to Incline TSS via a Deed, dated December 27, 2012. **Exhibit 23.21**. The Deed shows Todd, as Manager of SSJ, LLC transferred the Tahoe House to Incline TSS that he solely owned or controlled or both – Todd transferring property from himself, in one capacity, to himself, in another capacity.
- f. Option Payments. Under the terms of the *Option Agreement*, dated November 1, 2010, after deducting the amount of any option payments from the purchase price, Todd was to provide a note with "a **five (5) year maturity date**, interest only payments at **six percent (6%) per annum**." See Page 2 of **Exhibit 542** and **Exhibit 542A**. An excerpt from the spreadsheet of the payments made by Todd out of his own personal funds is below

REF #	Date	Payment	Interest	Interest	Principal	Balance Due		
			Accrued	Paid	Paid Interest	Principal	Principal	Total
Loan	12/28/2012		0.00	0.00	0.00	0.00	7,250,000.00	7,250,000.00
1	12/28/2012	50,000.00	0.00	0.00	50,000.00	0.00	7,200,000.00	7,200,000.00
2	12/28/2012	50,500.00	0.00	0.00	50,500.00	0.00	7,149,500.00	7,149,500.00
3	12/28/2012	9,607.68	0.00	0.00	9,607.68	0.00	7,139,892.32	7,139,892.32
4	12/28/2012	36,637.00	0.00	0.00	36,637.00	0.00	7,103,255.32	7,103,255.32
2012 Totals		146,744.68	0.00	0.00	146,744.68			

See **Exhibit 89**. Todd made an, initial, option payment of \$50,000.00 on February 17, 2011. **Exhibit 23.7**. Todd then made another payment of \$50,500.00, which was due on January 15, 2012, but was paid late after a purported agreement signed on January 15, 2012 requiring \$500.00 in additional consideration for an extension to February 25, 2012, that was supposedly extended to March 2, 2012, although there is no additional signature of same to support it. He then made several additional option payments, even though some of them were late (**Exhibit 23.9**), while he had to figure out a way to pay the mortgage that was outstanding on the Tahoe House.

- g. Lease Agreement. Following the exercise of the *Option Agreement* in December 2012, Todd was scrambling. He had to find a way to make option payments and to service the Bank of America mortgage. As part of this scheme to steal the Tahoe House from the Family Trust, Todd needed cash-flow in order to service the still outstanding Bank of America mortgage. So, he had Sam sign a lease agreement where he would pay \$22,000.00 per month for the use of the Tahoe House that he had previously owned. **Exhibit 23.16**. So, not only was Sam obligated to pay the Tahoe House mortgage (that Todd did not discharge) – a property neither he, Sam, nor his entity (SSJ, LLC) still

1 owned – he, now, owed the lease payments too. For Sam, the result of Todd exercising
2 the option was a disaster.

3 h. Sam Dies, with Life Insurance. Then tragedy struck, Sam died in an accident. The SSJ
4 Issue Trust owned a \$6,000,000.00 life insurance policy on Sam’s death. But, as a result
5 of this very tragic event, Todd could see a solution. He set out to con his siblings into
6 signing an ACPA that would allow him to use the life insurance proceeds how he saw
7 fit – for the benefit of all of them (the “Lake Tahoe ACPA”) (Exhibit 14); his cash-
8 flow problem was solved.

9 i. Repayment on March 14, 2014.

10 Option Against Legal Advice.

11 93. At the time it was done, the entire option agreement scenario created huge problems
12 for same, risked ownership of the entire property and, arguably, would fail to accomplish any of the
13 goals of the plan. This was evidence by advice received from both of Sam’s, really Todd’s attorneys.
14 After Pierre Hascheff concocted the Option Agreement plan, Bob LeGoy penned a letter explaining it
15 was a bad idea and would, more than likely, not pass IRS scrutiny. Todd did like what he heard from
16 LeGoy, so he goes back to Pierre to get the deal done. Then, Pierre Hascheff, the very person that
17 hatched the plan to use an option agreement to transfer property out of Sam’s Estate for estate tax
18 purposes, advised him (or someone) directly that doing so was ill-advised. He wrote in a letter dated
19 May 10, 2010, Mr. Hascheff said, “*As a result, an option would trigger the due on sale clause*” and,
20 later in the letter, after advising of the waiver of right to cure in the Deed of Trust, he advised
21 “[a]ccordingly, an option would be considered a breach.” **Exhibit 23.4.** In other words, any exercise
22 of the option without payment of that mortgage would trigger the due on sale clause and accelerate
23 the mortgage note, jeopardizing ownership of the entire property; the bank could foreclose, if the
24 mortgage was not paid immediately.

25 94. Following the exercise of the *Option Agreement*, once title to the Tahoe House was
26 moved into Incline TSS, the very problem Hascheff advised could happen occurred – there was an
27 outstanding mortgage with Bank of America against the Tahoe House in excess of \$6,300,000.00 and
28 title to the security was no longer in SSJ, LLC, the obligor on the note. The latter required Sam to
agree he would continue to be obligated on outstanding mortgage note, as he was before; the difference
is he did not own the security any longer. **Exhibit 23.9.** This was a horrible business decision by Sam.

1 So, now, Sam or his entities that Todd was directly involved with has transferred title to Todd's entity
2 and they no longer own any of the title, yet Sam is still obligated and owes a \$6,312,000.00 mortgage,
3 and the obligation on that mortgage was going to switch from a little over \$21,000.00 per month to in
4 excess of \$40,000.00 per month. Exhibit 258. Now, he also must make lease payments in the amount
5 of \$22,000.00, doubling his current obligation and soon to triple it, all without owning the property
6 any longer and, apparently, with no cash flow, other than renting the Tahoe Property. Sam could not
7 have been in a more tenuous cash-flow position, and the entire Tahoe Property that is now worth
8 almost \$20,000,000.00 was at risk of being lost forever. Sam was put into this position by Todd and
9 Pierre Hascheff, all against the advice he had received.

10 Todd's Big Con.

11 95. When Sam, tragically, died on April 21, 2013, Todd saw an opportunity and Todd had
12 contacted the life insurance company before Sam was even buried. By April 23, 2013, Todd had
13 received correspondence from Pacific Life sending its condolences and stating what it needed for the
14 claim. **Exhibit 417.** Todd called a meeting on Sunday after Sam's death. Notwithstanding that Todd
15 was the fiduciary for both Wendy and Stan at the time, Todd convinced them to sign the ACPA, dated
16 June 24, 2013. In it, Stan and Wendy purportedly agreed to use the life insurance proceeds owned by
17 the Issue Trust to purchase an interest in Incline TSS. Todd would then use those funds to pay down
18 the Bank of America mortgage note.

19 96. Despite the Lake Tahoe ACPA being signed on Jun 24, 2013, Todd did not use the
20 proceeds until March 14, 2014, when the Bank of America mortgage was paid-off with approximately
21 \$5,000,000.00 of those proceeds and a new mortgage in the amount of \$2.3M. Todd never gave notice
22 of the delay in using the funds. The remainder of the \$6,000,000.00, apparently, remained in the Issue
23 Trust or some other account for "general use". Wendy has no idea how that "other money" was spent,
24 because Todd never gave her an accounting of it. Title to the Tahoe House was now under Todd's
25 control, with a mortgage outstanding; his fraudulent goal was accomplished.

26 97. Todd convinced his siblings – Wendy and Stan – that if they agreed to using the
27 \$6,000,000.00 in life insurance proceeds in order to preserve the Tahoe House for the family. Exhibit
28 139 is an email from Todd Jaksick to Stan, Wendy, and Lexi Smrt dated March 13, 2014, and includes

1 a paragraph regarding refinancing the Tahoe loan. Todd relayed that the loan was approved which
2 allowed “us” to move forward with “our” plans. (Emphasis added). He never intended for Wendy to
3 own any part of the Tahoe House, yet he made her believe she would to accomplish his goals. Those
4 plans being to pay down \$4,800,000 of the debt from the SSJ Issue Trust and obligate the SSJ Issue
5 Trust on the \$14,600 in monthly payments. Todd referred to these plans as being agreed upon by all
6 the siblings, including Wendy. However, prior to this email Todd told Wendy she would get nothing
7 from the Tahoe House. Todd’s position only changed for purposes of this email in order to give Wendy
8 the feeling that she was involved in the decision making and convince her to approve Todd’s proposed
9 action for the good of the family – in reality Todd’s position remained the same, Wendy would receive
10 nothing from the Tahoe House and he was merely conning her into agreeing to a plan which was
11 detrimental to her interests in the SSJ Issue Trust and the Tahoe House.

12 98. Todd or his entities were 100% owners of Incline TSS, at the time the Option
13 Agreement was signed and exercised; Sam was never a part of Incline TSS. Exhibit 115.

14 99. Well after the Lake Tahoe transaction was completed, on July 7, 2015, Riley sent an e-
15 mail to the Co-Trustees containing a draft response to Wendy contriving a plan, designed to make her
16 believe she would end up with an interest in the Tahoe House:

17 Yes, I believe Stan and Todd are trying to make arrangements so that
18 ***your trust will get part of the Tahoe house.*** This is the only thing we
19 have come up with to fund your trust with equitable value without using
20 the Casino funds. If they agree, **your trust would be given this interest**
21 **as a trade for the value for the casino.** This way your trust would not
22 have to purchase it. (Emphasis added). Exhibit 324.

23 There was never any intention of giving Wendy an interest, after the Tahoe transaction, this was solely
24 designed to put her off and to give her a false sense of security, so they could continue their fraud.
25 This is direct evidence of the conspiracy between the Co-Trustees and Kevin Riley to deceive Wendy
26 and deprive her of information she is entitled to as a beneficiary of the Family Trust. The clear and
27 affirmative intent was to deceive, to misrepresent the facts with the design that Wendy rely on such
28 misrepresentations to her detriment and damages occurred; this is classic fraud meeting every element.
Unfortunately, it is worse than fraud because it was done by a fiduciary to his beneficiary.

1 Document Manipulation.

2 100. Even more modification after the fact, also known as manipulation, despite Hascheff's
3 disagreement with that term continued in relation to the Tahoe House. Transcript, 02/22/2019, 199:25
4 -200:25. An easy and clear example of manipulation is in the Notice of Exercise of Option of 1011
5 Lakeshore Blvd, Incline Village, which is Exhibit 23.18, where it was dated December 21, 2012, but
6 then states, "The promissory Note dated December 28, 2012 is attached as Exhibit D". Mr. Hascheff
7 is attaching a document to a letter on December 21, 2012 that is dated a week later, which is
8 impossible!

9 101. The Unsecured Promissory Note that Todd signed to purchase the Tahoe House in the
10 amount of \$7,103,255.32 at 2.25% per annum" with an annual payment of \$159,823.25 interest Only
11 (Exhibit 23.20) was based upon an *Option Agreement* that Todd provided to Wendy and Stan, not on
12 the Option Agreement that actually existed. On two separate occasions before the lawsuit and after it,
13 Todd forwarded the actual Option Agreement: one was sent to Ticor in relation to the mortgage payoff
14 and refinance occurred on March 14, 2014. Todd testified the documents sent to Ticor were after the
15 exercise on December 27, 2012. Transcript, 02-19-2019, 171:13-180:15). Todd testified the version
16 at a 5 year maturity at 6% was sent to Ticor as THE Option Agreement. Transcript, 02/19/2019, 174:4-
17 21). Then, later, after the lawsuit was filed Todd sent Exhibit 542A, which is the ORIGINAL OPTION
18 AGREEMENT, to his expert to analyze it and the signature; likewise it contained the 5 year maturity
19 at 6%. So, on two separate occasions when called upon to produce the original or a true and correct
20 copy of the Option Agreement, Todd produces the 5 year maturity at 6%, not the one he gave his
21 siblings, which is a 10 year maturity at 2.25%. Exhibit 23.5.

22 102. Todd's use of Exhibit 23.5 (10 year maturity, at 2.25%) instead of the original version
23 (5 year maturity, at 6%) (**Exhibit 542** and **Exhibit 542A**) is an absolute lie and fabrication to his
24 siblings that bought Todd enough time to manipulate Wendy and Stan into signing whatever he needed
25 signed to avoid the ship sinking. The entire Tahoe transaction – because it was not supported by
26 consideration on the front end due to the actions of Todd and Pierre Hascheff – was only saved by
27 Sam's unfortunate and untimely death and Todd's ability to con his brother and sister into allowing
28 him to spend the life insurance proceeds owned by the Issue Trust.

1 Stan's Buy-In.

2 103. Incredibly, despite Todd purportedly being granted an option to purchase Tahoe, the
3 reason Stan was not given an equal interest in the Tahoe property, as the story goes, is because Stan
4 was in the throes of a divorce and Sam did not want Stan's wife to have a claim against the Tahoe
5 House. The latter makes zero sense because Todd was also married, and while not in the middle of a
6 divorce, possessed the exact same issue. If Stan's wife would have a claim to the Tahoe House, why
7 would Todd's wife not have the same claim? Likewise, after his divorce was done Stan was never
8 given the same opportunity to acquire an interest in the Tahoe House that Todd received. Where did
9 the excuse go then?

10 104. When Stan was given a chance to buy back int to the Tahoe House he previously had a
11 beneficial ownership interest in, it was on terms nothing like the terms Todd got. Todd's note was
12 unsecured (**Exhibit 23.20**), Stan's note was secured (**Exhibit 61**).²³ Stan's payments were principal
13 and interest (**Exhibit 61**), Todd's were interest only (**Exhibit 23.20**). Todd paid \$146,744.68 (**Exhibit**
14 **89**) and he or his entities received 100% title to the Tahoe Property (**Exhibit 23.21**). Stan paid
15 \$235,000.00 and received nothing, initially (**Exhibit 69**). Todd cancelled his buy-in transaction on
16 March 13, 2017. (**Exhibit 419**). he later received consideration of acknowledging his prior payment
17 of \$235,000.00 in the settlement agreement he signed with Todd on January 31, 2019 a week before
18 the jury trial in this case was to begin (**Exhibit 457** or **Exhibit 584**); even then his percentage is
19 conditional. Bottom-line, Stan paid more than Todd – \$235,000.00 – and got none of the Tahoe House,
20 Todd got the entire property and paid \$146,744.68. Todd was Stan's fiduciary while all this was going
21 on and Wendy lost her entire interest in these shenanigans, which were perpetrated by her Co-Trustees.

22 105. Of course, Wendy was never given the opportunity to acquire an interest in the Tahoe
23 House, even though she was confused about the entire thing and was led to believe she could own an
24 interest. **Exhibit 23.37**. No disclosure was given to her regarding what Todd claims he understood
25 about what his dad wanted. Todd says, Sam did not want her to have an interest; it is the only story
26 Todd could come up with because he knew Sam never wanted just one of his children to own the

27 _____
28 ²³ For the specifics of Stan's buy-in, see Exhibits 60-69.

1 Tahoe House to the exclusion of the others. It was the only possible explanation for the complete
2 destruction of Sam's intent for his Estate, but, as is evident, these excuses never made sense. All of
3 this is yet another fabrication allowing Todd to justify his illicit behavior as Trustee of the Family
4 Trust and Issue Trust.

5 Benefit to Family Lost.

6 106. If the Tahoe House were still in the Family Trust it would be available for use by all
7 the family, and can be sold by unenvious vote of the Co-Trustees at Page 18, Paragraph G(4). **Exhibit**
8 **9.** More importantly, its value would be there to protect the family – protect it, not sabotage it!! By the
9 time, Todd and his attorney, Mr. Hascheff, were done deceiving, manipulating and controlling Sam
10 the only family member with true security is Todd. There is no evidence that Sam ever would have
11 wanted that result. Todd deceived the jury and is now attempting to deceive the Court into believing
12 his dad wanted him to have his Estate to the exclusion of everyone else in the family. What a horribly,
13 selfish position to promote? But, it has been the overarching theme of this entire case. The terms
14 fiduciary and selfish do not go together, in fact, they are polar opposites. Todd has never gotten the
15 message and continues to perpetuate his fraud.

16 107. There is no telling when the *Option Agreement* was signed or what its terms were at
17 the time it was signed. What is overwhelming proven is that the Option Agreement that purports to be
18 correct was changed by Todd and Hascheff to make it easier on Todd and Incline TSS to perform,
19 which is totally contrary to everything Sam ever wanted for the Tahoe House. Of course, this very
20 important document included an orphan signature page to allow for manipulation of pages as needed.
21 The end result was that, through his entity, Incline TSS, Todd purchased the Tahoe Home, which is
22 now undisputedly worth in excess of \$18,000,000.00 for a total of \$146,744.68, and has excluded his
23 siblings from using the property as suspected (**Exhibit 242**); more of the same can be expected because
24 Todd has ignored and continues to ignore his fiduciary duties at every turn, and there is no indication
25 he will stop.

26 Todd Took Advantage of His Beneficiaries:

27 108. To underscore the farce this entire transaction became, Todd required Stan (and
28 Wendy) to "buy-in" to a property he and Wendy previously owned a beneficial interest in through the

1 Family Trust. After conning Stan and Wendy into signing the June 23, 2013 ACPA (Exhibit 14), Todd
2 used SSJ Issue Trust money to pay off the note he was required to pay to acquire title the Tahoe House
3 via the Option Agreement that was, then, used to discharge the bulk of the Bank of America mortgage,
4 with the addition of a new mortgage with Incline TSS. It is difficult to imagine a more ridiculous
5 scenario.

6 109. Stan and Wendy, essentially, purchased the same property they already owned an
7 interest in twice. They owned 2/3^{rds} of the property through the Family Trust, they then owned their
8 2/3^{rds} share by the Family Trust owning 100% of SSJ, LLC, they then used their beneficial interest in
9 the life insurance proceeds owned by the SSJ Issue Trust to purchase a 54% interest in Incline TSS
10 that then owned the Tahoe Property (first buy-in), and then after all that, were again required to buy-
11 in to Incline TSS (second buy-in), if they wanted their own piece of the entity that owned the Tahoe
12 Property, an entity, if they bought in, they would have no control over whatsoever. The effect was to
13 provide Todd funds to pay off the mortgage on the Tahoe House that he and his attorneys considered
14 to be his house. **Exhibit 88.** This is a travesty of global proportions.

15 Bruce Wallace's Opinion.

16 110. Bruce Wallace testified regarding all of Todd's legal duties of impartiality, disclosure,
17 good-faith and fair dealing and then opined as follows:

18 It is my opinion that the initial exercise of the option by Todd on behalf of Incline TSS failed for
19 lack of consideration.

20 It is my opinion that the purchase of 54% of Incline TSS by Todd as Sole Trustee of Issue Trust
21 breaches his duties under the Prudent Investor Act to manage trust assets with care skill and
22 caution.

23 It is my opinion that the purchase of 54% of Incline TSS by Todd as Sole Trustee of Issue Trust
24 in an abuse of discretion granted the Trustee in the Agreement.

25 It is my opinion that the purchase of 54% of Incline TSS by Todd as Sole Trustee of Issue Trust
26 does not fall within the purpose of the Issue Trust and is a breach of his duty of loyalty, prudence
27 and good faith.

28 It is my opinion that Todd profited by these breaches of trust which resulted in his ownership of
46% of the Lake Front property with no risk and that the transaction constitutes self-dealing.

It is my opinion that the transaction creates multiple conflicts of interest among Todd
Individually, as Trustee of the Issue Trust, as Co-Trustee of the Family Trust, as Manager of
Incline TSS and SSJ, LLC and as Trustee and beneficiary of the TBJ Trust and the TBJ Family
Trust.

111. There is no question the Tahoe House transactions failed for lack of consideration and because fiduciaries cannot manipulate their beneficiaries for their own benefit like Todd did, which is an absolute breach of fiduciary duties warranting his immediate removal and surcharge as Trustee.

Rulings and Orders Requested: Wendy requests the following rulings:

- (1) Find the *Option Agreement* was invalid, *ab initio*, and remains and is invalid and unenforceable because it was a fraud designed to divert title from Sam and his family, via his estate plan, to Todd contrary to Sam's testamentary desires.
- (2) Rescind the *Real Estate Option Agreement* in its entirety and set aside and reverse each transaction that moved title to the Tahoe House further and further away from the Family Trust.
- (3) Find that Todd breached his fiduciary duties to his father and to his siblings and the beneficiaries of the Family Trust and the Issue Trust and that he should be removed as Trustee of both and surcharged for all cost or damage caused by his actions;

Wendy requests the Court order the following:

- (8) ORDER the Deed transferring the Tahoe Property from SSJ, LLC to Incline TSS null and void, *ab initio*, and rescind it and set it aside as if it had never been signed, in equity, restoring it to its original title.
- (9) ORDER the Deed transferring the Tahoe Property from the Family Trust to SSJ, LLC null and void, *ab initio*, and rescind it and set it aside as if it had never been signed, in equity, restoring it to its original title.
- (10) Surcharge Todd, as Co-Trustee of the Family Trust, as Trustee of the Issue Trust, as Manager of SSJ, LLC and as Manager of Incline TSS and rectify his wrongful acts, under equity, by ORDERING the return and restoration of title to the Tahoe House back to the SSJ, LLC or, alternatively, the Family Trust, as if none of the transactions moving title to Incline TSS ever occurred.
- (11) ORDER that Todd breached his fiduciary duties by:
 - i. Using the *Option Agreement* to benefit himself to the detriment of his siblings and their descendants and his family;
 - ii. Failing to return assets he wrongfully procured;
 - iii. Diverting assets of the Issue Trust into his own entity, Incline TSS, converting such funds from 100% ownership into a partial ownership of an entity wholly owned or controlled by Todd exposing the Issue Trust to risk of loss;

- 1 iv. Failing to exonerate irreconcilable conflicts of interest by refusing to enter
2 the suspect transactions or resigning;
- 3 v. Diverting assets of the Issue Trust into his own entity, Incline TSS,
4 converting such funds from 100% ownership into a partial ownership of an
5 entity wholly owned or controlled by Todd exposing the Issue Trust to risk
6 of loss.
- 7 (12) ORDER that the Tahoe Property be returned to its original and rightful owner and held
8 in a constructive trust until such time as it is actually transferred back to SSJ, LLC or,
9 alternatively, the Family Trust, to avoid Todd being unjustly enriched by using his
10 position of control to his personal benefit.
- 11 (13) ORDER that Todd, personally, make payment or deliver his own property or right to
12 inherit assets from his father or any of the Trusts to return assets he wrongfully procured
13 as Co-Trustee of the Family Trust and as Trustee of the SSJ Issue Trust and as fiduciary
14 for his siblings and all his family members.
- 15 (14) ORDER that Todd be immediately removed as Manager of SSJ, LLC for entering into
16 transactions to transfer the Tahoe House to himself, entering into transactions with
17 himself, in one capacity, with himself, in another capacity, creating irreconcilable
18 conflicts of interest, refusing to resign to avoid those conflicts and for his breaches of
19 fiduciary duty getting title of an SSJ, LLC asset moved into Incline TSS, his own entity.
- 20 (15) ORDER that Todd be immediately removed as Co-Trustee of the Family Trust for
21 entering into transactions to transfer the Tahoe House to himself, entering into
22 transactions with himself, in one capacity, with himself, in another capacity, creating
23 irreconcilable conflicts of interest, refusing to resign to avoid those conflict and for his
24 breaches of fiduciary duty getting title of a Family Trust asset moved into Incline TSS,
25 his own entity.
- 26 (16) ORDER that Todd be immediately removed as Trustee of the SSJ Issue Trust entering
27 into transactions to transfer the Tahoe House to himself, entering into transactions with
28 himself, in one capacity, with himself, in another capacity, creating irreconcilable
29 conflicts of interest, refusing to resign to avoid those conflict and for his breaches of
30 fiduciary duty getting title to assets in the Issue Trust moved into Incline TSS, his own
31 entity.
- 32 (17) ORDER that all requested remedies against Todd, as Co-Trustee of the Family Trust
33 above, shall apply to Michael Kimmel, as Co-Trustee of the Family Trust, including
34 ordering his removal, surcharging him and, in equity, ordering the return of title to the
35 Tahoe Property to SSJ, LLC or the Family Trust.
- 36 (18) ORDER that all requested remedies against Todd, as Co-Trustee of the Family Trust
37 above, shall apply to Michael Kimmel, as Co-Trustee of the Family Trust, including
38 ordering his removal, surcharging him and, in equity, ordering the return of title to the
39 Tahoe Property to SSJ, LLC or the Family Trust.

1 **V. Removal of Trustees and Appointment of Independent Trustee(s) for Family Trust and Issue**
2 **Trust**

3 **Topics for Determination:** Removal of Trustees

4 **Pretrial Scheduling Order Issue(s):** Removal of Trustees

5 **Issue:**

6 Do the Trustees' breaches and fiduciary duties, other actions, bias, hostility and/or conflicts of
7 interest warrant removal?

8 **Applicable Statutes:** NRS 156.070 (removal and appointment), NRS 163.115 (removal for
9 breach or threaten to breach), NRS 163.190 (removal and denial of compensation)

10 112. NRS 156.070 provides for the removal and appointment of trustees as follows:

11 The trustee shall, when directed by the court, account to it for all his or
12 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.

13 113. NRS 163.115 provides for the removal of trustees when a trustee commits or threatens
14 to commit a breach of trust as follows:

15 1. If a trustee commits or threatens to commit a breach of trust, a
16 beneficiary or cotrustee of the trust may maintain a proceeding for
17 any of the following purposes that is appropriate:

- 18 (a) To compel the trustee to perform his or her duties.
19 (b) To enjoin the trustee from committing the breach of trust.
20 (c) To compel the trustee to redress the breach of trust by
payment of money or otherwise.
21 (d) To appoint a receiver or temporary trustee to take possession
22 of the trust property and administer the trust.
23 (e) To remove the trustee.
(f) To set aside acts of the trustee.
(g) To reduce or deny compensation of the trustee.
(h) To impose an equitable lien or a constructive trust on trust
property.

24 (i) To trace trust property that has been wrongfully disposed of
and recover the property or its proceeds.

25 2. On petition or ex parte application of a beneficiary or trustee,
26 the court by temporary order, with or without bond, may restrain a
27 trustee from performing specified acts of administration,
disbursement or distribution, or exercising any powers or
28 discharging any duties of the office, or enter any other order to
secure proper performance of the duties of the office.
Notwithstanding any other provision of law governing temporary

1 injunctions, if it appears to the court that the trustee otherwise may
2 take some action that would jeopardize unreasonably the interest of
3 the petitioner, another beneficiary or the trust, the court may enter
4 the temporary order. A person with whom the trustee may transact
5 business may be made a party to the temporary order.

6 3. Any temporary order entered pursuant to subsection 2 must be
7 set for hearing within 10 days after entry of the temporary order,
8 unless the parties otherwise agree, or on a date the court otherwise
9 determines is in the best interests of the trust. Notice of entry of the
10 temporary order must be given by the petitioner to the trustee and
11 the attorney of record of the trustee, if any, to any other party named
12 as a party in the temporary order and as otherwise directed by the
13 court.

14 4. The provision of remedies in this section does not preclude
15 resort to any other appropriate remedy provided by statute or
16 common law.

17 5. A proceeding under this section must be commenced by filing
18 or bringing in conjunction with the filing of a petition under NRS
19 164.010 and 164.015.

20 114. NRS 163.190 provides for the removal of trustees and denial of compensation as
21 follows:

22 If a trustee violates any of the provisions of NRS
23 163.010 to 163.200, inclusive, the trustee may be removed and
24 denied compensation in whole or in part, and any beneficiary,
25 cotrustee or successor trustee may treat the violation as a breach of
26 trust.

27 **Arguments:** Based on the evidence submitted during the jury trial and equitable trial phases
28 of this litigation and the detailed discussion elsewhere in this Brief, Wendy makes the
following arguments in support of her requested relief:

(1) Breach of Trust – Jury Verdict.

115. On March 4, 2019, at the conclusion of the jury trial phase of this litigation, the jury
returned their Verdict confirming that Wendy had proven by a preponderance of evidence that Todd
Jaksick, as Co-Trustee of the Family Trust and Trustee of the Issue Trust, breached his fiduciary duties
in the administration of the Family Trust and Issue Trust. Nevada law gives the Court broad powers
to remove trustees for committing or even threatening to commit breaches of trust or breach of
fiduciary duties in order to protect trusts and their beneficiaries. The jury Verdict confirmed Todd
committed actual breaches of his fiduciary duties. As a result, Todd should immediately be removed

1 as Co-Trustees of the Family Trust and Trustee of the Issue Trust.

2 **(2) Breach of Trust - Insufficient Accountings and Failure to Disclose.**

3 116. The Trustees breached their fiduciary duties to the beneficiaries by: (i) failing to timely
4 deliver each and every one of the Accountings, (ii) delivering Accountings that do not, on their face,
5 comply with the form and content requirements of Nevada law, and (iii) delivering accountings that
6 do not provide the disclosure required to fairly and sufficiently inform the beneficiaries based on the
7 complexity of the Trusts, asset of the Trusts and the administration of same. In addition to these
8 breaches of trust and breaches of fiduciary duties, the Trustees have and continue to intentionally and
9 flagrantly breach their fiduciary duties to prepare and timely deliver accountings to the beneficiaries.
10 As described in detail above, the Trustees are aware that the Trusts and Nevada law require annual
11 accountings within ninety (90) days of the end of each accounting period. Regardless, the Trustees in
12 bad faith continue to intentionally refuse to deliver the required accountings even after receiving
13 written requests from Wendy's counsel for the accountings. Even more unbelievable, the Trustees
14 continue to intentionally refuse to comply with their obligations to account despite this Court's
15 February 6, 2019 Order confirming their obligations to do so. This behavior is in bad faith and shows
16 a total disregard by the Trustees for the requirements of the Trusts, Nevada law, this Court and this
17 Court's prior rulings and cannot be condoned or permitted to continue by this Court. Therefore, all of
18 the Trustees should immediately be removed.

19 **(3) Breach of Trust – Todd's Purported Indemnification Agreement.**

20 117. The Trustees breached their fiduciary duties to the beneficiaries by: (i) failing to
21 determine the validity of Todd's purported Indemnification Agreement immediately after Sam
22 Jaksick's death; (ii) failing to determine the scope and application of the Todd's purported
23 Indemnification Agreement immediately after Sam Jaksick's death; (iii) failing to fully disclose to
24 Wendy and the other beneficiaries the existence of Todd's purported Indemnification Agreement, the
25 issues and implications of it and its application and the conflicts of interest associated with it and its
26 application; and (iv) paying certain obligations based upon Todd's purported Indemnification
27 Agreement prior to definitively resolving its validity and scope and without fully disclosing to Wendy
28 and the other beneficiaries such payments.

1 118. The validity, scope and application of Todd's purported Indemnification Agreement
2 was an issue that should have been addressed immediately after Sam Jaksick's death, at the start of
3 the Trustees' administration of the Family Trust. This determination was critical to the entire
4 administration of the Family Trust, because Todd's purported Indemnification Agreement had the
5 potential to completely wipe out the value of the Family Trust. Stan confirmed this in December 14,
6 2017 email to the Trustees of the Family Trust and their trust counsel, stating "Hey, guys. Sorry for
7 involving you in these issues, and Bob thank you for your efforts in trying to get us to resolve these
8 disputes, but Todd's indemnification agreement has a far bigger impact on the trust than any lawsuit
9 or attorney fees eve will." Exhibit 38.

10 119. Despite the importance of this, the Trustees did nothing to definitively resolve the
11 issues with the validity, scope and application of Todd's purported Indemnification Agreement. As a
12 result, Todd's purported Indemnification Agreement remained an issue through the Trustees'
13 administration of the Family Trust and affected all aspects of the administration of the Family Trust.
14 As an initial matter, if the Trustees did not understand the scope of Todd's Purported Indemnification,
15 it would have been impossible for them to fully disclose to Wendy concerning its scope and use.
16 Additionally, payments were made based on Todd's purported Indemnification Agreement that should
17 not have been made or could have possibly been avoided. Finally, it was impossible for the Trustees
18 to accurately value the Family Trust's obligations under the purported Indemnification Agreement.
19 Therefore, the accountings prepared by the Trustees during this period cannot and do not reflect an
20 accurate value of Family Trust obligations.

21 120. Finally, Todd's self interest in establishing (i) the validity of his purported
22 Indemnification Agreement and (ii) that its scope should be applied as broadly as possibly, is in direct
23 conflict with the Family Trust and its beneficiaries. The more Todd can extract from the Family Trust
24 based on the purported Indemnification Agreement the less the Family Trust has for all other
25 beneficiaries. This is a direct conflict with substantial implications for the Family Trust. The annual
26 Family Trust Accounting for the period ending December 31, 2017 reports the value of the contingent
27 obligations based on Todd's purported Indemnification Agreement to be approximately \$5,000,000.
28 Exhibit 126, p. 33. Accordingly, this is a significant, irreconcilable conflict that should have been

1 resolved five (5) years ago, has tainted the Trustees' entire administration of the Family Trust,
2 disqualifies Todd from serving as Trustee and warrants his immediate removal.

3 **(4) Breach of Trust – Failure to Disclose and Overreach on ACPAs.**

4 121. As addressed earlier in this Brief, the ACPAs are invalid, unenforceable and should be
5 declared void. However, the fact Todd and/or the Trustees prepared and presented these ACPAs to
6 Wendy in an attempt to obtain exoneration for self-serving and self-dealing transactions without
7 providing her full disclosure are clear acts of overreach by Wendy's fiduciaries. Specifically, Todd's
8 actions in preparing and obtaining Wendy's signatures on the ACPAs confirm all of his efforts during
9 the course of his administration of the Trusts have been directed at obtaining the maximum benefit for
10 Todd regardless of the costs or implications to the other beneficiaries. Todd's attempted overreach of
11 Wendy in relation to the ACPAs are breaches of his fiduciary duties to Wendy and warrant his
12 immediate removal. Stan should also be removed for his attempted overreach of Wendy when he and
13 Todd presented and pressured Wendy into signing Exhibit 23, which is the ACPA concerning Stan's
14 buy in to the entity that owned the Tahoe Property. Exhibit 23.37 ("Stan has been hounding me to
15 sign the papers for his buy in to Tahoe."); Exhibit 444 ("I told the lady I had the money and would
16 have it to her by 1 today. Please don't make me a liar to them. ... I will also send the paperwork on
17 Tahoe [ACPA 23] as soon as the money is deposited."). Todd and Stan should both be removed for
18 their overreach of Wendy in relation to the various ACPAs.

19 **(5) Breach of Trust - Transfer of Trust Assets Out of Trust.**

20 122. The Trustees also committed breaches of trust when the transferred assets of the Family
21 Trust and/assets of Wendy's Subtrust out of trust. This occurred on at least two (2) occasions. The
22 first occasion occurred when Samuel S Jaksick Jr I LLC was transferred from the Family Trust to
23 Todd's and Stan's Subtrusts and then disappeared for nearly two years.²⁴ When assets of Samuel S
24 Jaksick Jr I LLC appeared in Wendy's Trust, the only disclosure she received was that they were
25 assigned from Stanley Jaksick II LLC, which is a non-trust entity presumably owned by Stan or his
26 family.

27 _____
28 ²⁴ This transaction and the evidence described and cited in further detail in Section I of this Brief.

1 123. The second occasion occurred as a result of the transfer of the Family Trust's interest
2 in Pioneer Group to Stan and Todd's Subtrusts. When Bronco Billy's, the casino owned by Pioneer
3 Group, was sold the proceeds were received by Stan and Todd's Subtrusts. Instead of making an
4 equalizing transfer from the Family Trust or Stan and Todd's Subtrusts to equalize Wendy's Subtrust
5 for the value Stan and Todd's Subtrusts received, Todd made the decision to transfer all of the proceeds
6 from the sale back into the Family Trust to pay its debts (a substantial portion of which were debts
7 based on Todd's purported Indemnification Agreement). See Exhibit 168; *Todd B. Jaksick's, as*
8 *Beneficiary of the Samuel S. Jaksick Jr. Family Trust, Petition for Reconveyance of Assets*, dated
9 October 12, 2018, pp. 3-4, ¶¶ 13 and 24. When Stan refused to return all of the funds to the Family
10 Trust because he knew they would all be used to pay obligations of Todd pursuant to Todd's purported
11 Indemnification Agreement, Todd sued Stan to force him to return the proceeds. *Petition for*
12 *Reconveyance*, p. 3, ¶17 ("Stan also improperly kept \$430,000 in his subtrust from the sale of Bronco
13 Billy's. Instead of transferring the funds into the Family Trust, as agreed, Stan transferred these funds
14 to one of his entities that he wholly controls, Lakeridge Golf Course Ltd."); Transcript, 02/20/2019,
15 189:12-25.

16 124. By transferring the assets out of trust and holding them in non-trust entities, the
17 Trustees exposed these assets to creditors of those non-trust entities as well as lawsuits between the
18 Trustees concerning the assets and the return of the assets to the Family Trust. Additionally, the
19 Trustees have never accounted and fully disclosed to Wendy how these assets were administered while
20 they were held outside of the trust, how their value was affected or if the Trustees personally benefited
21 by taking such actions. The only real disclosure Wendy received about this issue was through the
22 pleadings filed by Todd and Stan. All of these issues would have been avoided had the Trustees
23 maintained and managed the assets in the Family Trust or the Subtrusts.

24 **(6) Breach of Trust - Miscellaneous Self-Dealing.**

25 a. Preferential Loans Benefiting Todd

26 125. Todd committed breaches of trust by including nominal interest rates and no security
27 on notes he and his entities had with the Trusts. As an example, Todd, as Trustee of the Todd B
28 Jaksick Family Trust, prepared and executed a note with himself, as Co-Trustee of the Family Trust,

1 for a loan in the principal amount of \$105,510.576. Exhibit 410. The note included an interest rate of
2 1.5% and no security. *Id.* This is well below interest rates most if not all other notes of the Family
3 Trust or Issue Trust.

4 126. A review of the annual Family Trust Accounting for the period ending March 31, 2015
5 confirms most of the notes on which the Family Trust was an obligor included an interest rate of five
6 percent (5%) or above. Exhibit 73, pp. 28-33. This is true even for secured loans between the Issue
7 Trust and the Family Trust prepared and entered into by Todd on behalf of the Trusts. When the
8 Family Trust needed funds for “operational costs” in August and September 2014, the Trustees and
9 their counsel prepared ACPAs proposing loans to the Family Trust from the Issue Trust. Exhibits 21
10 and 22. These loans were secured by valuable assets and included interest rates of six percent (6%).
11 Exhibit 73, p. 29 (“Original Principal Amount of \$150,000, dated September 25, 2014. The note bears
12 an interest of 6% annually. ... This note is secured by 4005 Quail Rock Lane.”; “Original Principal
13 Amount of \$115,000, dated August 28, 2014. The note bears an interest of 6% annually... The note is
14 secured by 27,500 shares of Toiyabe Investment Company”). Todd’s preparation and execution of a
15 promissory note including an extremely preferential interest rate of one and a half percent (1.5%) with
16 no security was a breach of his fiduciary duty and self-dealing and warrants his removal.

17 b. Preferential Loan Treatment Benefitting Todd

18 127. Not only did Todd receive preferential loan terms, he also received preferential loan
19 treatment. Todd testified extensively that the Trust had over \$30 million in debt and that the Trustees
20 even considered filing for bankruptcy. Apparently, the Family Trust was so desperate for funds it was
21 forced to borrow money from the Issue Trust at an interest rate of six percent (6%) to fund operational
22 costs. Despite taking the position that the Family Trust was essentially insolvent and desperate for
23 funds, Todd and his Family Trusts had various loans payable to the Family Trust following Samuel
24 Jaksick’s death that were never repaid. Not only were these loans never repaid, it does not appear that
25 a single payment was made on any of these loans since Samuel Jaksick’s death in 2013. The annual
26 Family Trust Accounting for the period ending March 31, 2014, included the following Notes
27 Receivable:
28

1 **NOTES RECEIVABLE:**

2 ALSB LTD (including accrued interest of \$2,462.17)	415,460.65
3 Bright Holland Co (including accrued interest of \$22,911.02)	267,315.68
4 Todd Jaksick Family Trust (Note #2 - including accrued interest of \$60.16)	122,060.16
5 TBJ SC Trust (including accrued interest of \$587.37)	103,659.16
6 Home Camp Land & Livestock Co (including accrued interest of \$4,324.34)	103,465.68
7 Todd Jaksick Family Trust (Note #1 - including accrued interest of \$4,993.15)	79,993.15
8 Jaksick Family LLC (including accrued interest of \$1.22)	2,902.22

9 Exhibit 72, p. 3. Based on this accounting, as of April 21, 2013, Todd Jaksick Family Trust had a note
10 payable to the Family Trust in the amount of \$122,060.16; TBJ SC Trust had a note payable to the
11 Family Trust in the amount of \$103,659.16; and Todd Jaksick Family Trust had a note payable to the
12 Family Trust in the amount of \$79,993.15.

13 128. On June 14, 2014, Todd apparently transferred the note in the amount of \$122,501.36
14 to the Todd B. Jaksick Subtrust. Exhibit 73, p. 13. Todd and/or his Family Trust had at some point
15 received the benefit of approximately \$122,501.36 in funds that was evidenced by this note. The
16 transfer of this note to Todd's Subtrust effectively extinguished the note and insured Todd or his
17 Family Trusts would never have to repay it. At that time, Todd distributed interests in notes receivable
18 from Bright Holland Company and Jaksick Family LLC to Wendy's Subtrust. Exhibit 73, p. 13.
19 Wendy's annual Subtrust Accounting for the period ending December 16, 2016 reports that there were
20 no notes or repayment terms associated with the interests in the notes received by Wendy's Subtrust.
21 Exhibit 95, p. 3. Therefore, Wendy's Subtrust received interests in loans receivable that may not ever
22 be repaid in full or in part and may be worthless, while Todd was able to eliminate debt for value he
23 and/or his Family Trusts received and actually owed.

24 129. In relation to the notes receivable in the amounts of \$103,659.16 and \$79,993.15, the
25 annual Family Trust Accounting for the period ending December 31, 2017 confirms such notes have
26 not been paid and the balances remain unchanged. Exhibit 126, p. 17. Amazingly, the Family Trust
27 Accounting for the period ending December 31, 2017 confirms that the note in the amount of
28 \$103,659.16 had been in default since August 15, 2013, at which time the principal and accrued
interest was due in full. *Id.* It also confirms that the note in the amount of \$79,993.15 was due and

1 payable in full on January 31, 2015, but “the maturity date on the note was extended to December 31,
2 2017 by agreement.” *Id.* Had Todd and/or his Family Trusts repaid these loans in accordance with
3 the terms of the notes, the Family Trust would likely have been able to avoid borrowing money from
4 the Issue Trust. Clearly, this would have been better for the beneficiaries of the Family Trust, but,
5 once again, Todd put his and his family’s interest over that of the Family Trust.

6 c. Repayment of Debt – Preference for Todd’s Debts

7 130. Based on Todd’s claim that there was over \$30 million in debt when Samuel Jaksick
8 died and the Accountings, there were numerous creditors that had to be repaid. The Family Trust was
9 also apparently in need of cash to keep operations going. Despite this, Todd paid certain of his debts
10 ahead of others. For instance, Todd without providing disclosure to the other beneficiaries, transferred
11 approximately 100 cattle to one of his entities in exchange for a partial payment of a debt. Transcript
12 02/21/2019, 125:24-127:5 and 127:12-) "9Transcript 02/27/2019, 53:5-54:17. Through this transaction,
13 Todd was able to give preference to the payment of his debt that may not have been paid or may not have
14 been paid in full.

15 (7) Breach of Trust - Manipulation of Documents.

16 131. During trial, substantial evidence was present that Todd, in conjunction with Pierre
17 Hascheff²⁵ and Jessica Clayton,²⁶ manipulated various key documents that had and have substantial
18 effects on the Family Trust, the Issue Trust and Sam Jaksick’s Estate. These documents included, but
19 are not limited to, the Second Amendment to the Family Trust Agreement (Exhibits 13, 164, 202,
20 553), the Todd’s Purported Indemnification Agreement (Exhibits 11, 11A, 11B, 38, 75, 173), the Lake
21

22 ²⁵ Pierre Hascheff was also Todd’s attorney. Transcript, 02/22/2019, 136:23-137:2. Pierre Hascheff
23 admitted during his trial testimony that he modified documents after they were executed. Transcript,
2/22/19, 200:6-23.

24 ²⁶ Jessica Riley, who worked for Todd prior to and after Sam’s death, testified at trial that she lost her
25 notary journal in between 2011 and 2012 but never filed a report with the Secretary of State that it was
26 lost or stolen in accordance with NRS 240.120. Transcript, 02/27/2019, 12:3-19. She further testified
27 that she did not obtain another notary journal until 2015. Transcript, 02/27/2019, 14:11-13. Jessica
28 sent emails with multiple signature pages she notarized without the full documents attached. Exhibit
202. She also testified that she notarized documents that stated she administered an oath, but she had
never actually administered an oath as a notary. Transcript, 02/27/2019, 21:1-7.

1 Tahoe Property Option Agreement (Exhibits 23.5, 542, 542A).

2 132. Todd designated Jim Green as a testifying expert. Mr. Green returned his report
3 pertaining to the documents at issue and made certain findings of manipulation to Decedent's
4 testamentary documents, particularly the Second Amendment to the Family Trust. Exhibits 220 and
5 221. Despite designating Mr. Green, Trustees decided not to call him at trial, presumably because his
6 testimony would be consistent with his report and the findings of manipulation therein.

7 133. During the Jury Trial, Mr. Spencer broached the report during his examination of Pierre
8 Hascheff and questioned him about Exhibit 221. On page 867 of Exhibit 221, Mr. Green identified the
9 documents he reviewed and his findings. The first document referenced, Q-SJ-1, is the Second
10 Amendment to the Samuel S. Jaksick, Jr. Family Trust Agreement Restated Pursuant to the Third
11 Amendment Dated June 29, 2006, which includes a note stating "[r]efer to separate document with
12 images for observations made regarding non-conformity of staple holes, paper, etc." Pages 869-872
13 present Mr. Green's observations regarding the Second Amendment and the staple holes on the
14 original, the different paper brightness, pagination, and the different margins throughout the document.
15 Mr. Green's observed (1) the staple holes being consistent on pages one through five, but page six
16 contained a multitude of holes greater than the other pages, (2) "[t]he level of paper brightness was
17 consistent between pages one through five. Page six had a different level of optic brighteners.
18 (Document illuminated with ultraviolet light)," (3) "the first five pages had page numbers. Page six
19 did not," and (4) "[t]he left margin of pages one through five were consistent. Page six had a wider
20 margin."

21 134. Mr. Green's findings are direct evidence of pages being swapped and/or manipulated
22 to make the signature page fit the form, evidence which would have brought the Second Amendment
23 under further scrutiny and potentially harmed Todd's case. As a result, Trustees chose not to call Mr.
24 Green to testify, despite him being a paid expert, and deprived Wendy of her ability to question Mr.
25 Green further about the disturbing findings he reached regarding the Second Amendment. However,
26 Mr. Green's report and his various findings confirming the irregularities in the Second Amendment to
27 the Family Trust was admitted into evidence.

28 135. Todd's manipulation of key documents relating to Samuel Jaksick's Estate, the Trusts

1 and the administration of same are breaches of trust by Todd. Additionally, the failure of Todd, in his
2 capacities as Trustees, to contest the documents or otherwise redress the issues caused by the
3 manipulated documents is also a breach of Trust. Todd, in his capacities as Trustees, has actual
4 knowledge that he fraudulently manipulated the signed Option Agreement. Exhibit 542A²⁷; Exhibit
5 542²⁸; Exhibit 23.5²⁹. Todd replaced a page of the signed agreement to lower the interest rate and
6 extend the maturity date for his personal benefit. *Id.* Todd, in his capacities as Trustees, is obligated
7 to take whatever action is necessary to set aside the Option Agreement and redress the fraud that was
8 committed in connection with the manipulation of same. In other words, Todd had an obligation to
9 correct the manipulated document and implications of same and/or to sue himself in his individual
10 capacity to invalidate the document and seek damages for the fraud associated his fraudulent
11 manipulation of the document. Instead of seeking to protect the Trusts and the beneficiaries, to chose
12 to hide this information and do nothing so that he would continue to benefit personally.

13 **(8) Breach of Trust – Refusal to Distribute and Offer to Distribute for Continuance.**

14 136. During the jury trial phase of this litigation, the Trustees and their counsel represented
15 to the jury and the Court that there was approximately \$4 million in value coming to Wendy.
16 Following the conclusion of the jury trial and based on the \$4 million representation, Wendy’s counsel
17 sent Trustees’ counsel correspondence requesting distributions from the Family Trust for Wendy’s
18 maintenance. Trustees’ counsel ignored the request.

19 ²⁷ This is the original signed Option Agreement that was provided by Todd to Jim Green, the
20 handwriting expert Todd retained and paid to serve as an expert in this case. Exhibits 220 and 221,
21 pp. 612-617. The first paragraph on page two of Exhibit 542A states “The note will include a **five (5)**
22 **year** maturity date, interest only payments at **six percent (6%)** per annum.” Exhibit 542A, p. 2
(emphasis added).

23 ²⁸ This is a copy the Option Agreement that mirrors Exhibit 542A. This document was produced by
24 TICOR Title Company in response to a subpoena from Wendy. This document was provided to
25 TICOR Title when Todd exercised the purported Option Agreement in December 2012. The first
26 paragraph on page two of Exhibit 542 states “The note will include a **five (5) year** maturity date,
27 interest only payments at **six percent (6%)** per annum.” Exhibit 542, p. 2 (emphasis added).

28 ²⁹ This is the only version of the Option Agreement Todd produced to Wendy in this litigation. The
first paragraph on page two of Exhibit 542 states “The note will include a **ten (10) year** maturity date,
interest only payments at **two and one quarter percent (2.25%)** per annum.” Exhibit 23.5, p. 2
(emphasis added).

1 137. On May 13, 2019, the Parties and their counsel appeared in open court for trial of the
2 equitable claims to the bench. Following the entry of Judge Hardy's May 20, 2019 *Order Addressing*
3 *Evidence at Equitable Trial*, the Parties were then provided thirty (30) days to prepare and file briefs
4 including their opening arguments, which was subsequently extended by the Court. During the initial
5 thirty (30) day period, Trustees' counsel emailed Wendy's counsel confirming Trustees' offer to pay
6 Wendy \$10,000 in exchange for a thirty (30) day stand down agreement. Wendy's counsel responded
7 to the offer confirming Wendy would agree to the thirty (30) day stand down if the \$10,000 was not
8 assessed against or impact her interest in the Family Trust and Trustees provide a response to her most
9 recent settlement offer. Trustees' counsel never responded.

10 138. Since representing to the Court and the Jury that Wendy had \$4 million in value coming
11 to her, the Trustees have breached their fiduciary duties by refusing to make distributions to Wendy
12 despite requests for same and knowing Wendy was desperate. However, when the Trustees
13 determined a thirty (30) stand down would benefit them, they offered to distribute \$10,000 of funds
14 to Wendy. When Wendy agreed to the offer on the condition that the \$10,000 in consideration not
15 reduce her share of what she was to ultimately receive from the Trusts, the Trustees would not agree.

16 139. If Wendy truly does have \$4 million in value available for her benefit, the Trustees
17 committed breaches of trust and should be removed for refusing to distribute funds to Wendy. If the
18 Trustees' \$4 million representation to the Court and Jury was not true, Trustees, at a minimum, should
19 have responded to Wendy's request for distributions by disclosing why they could not distribute funds
20 instead of completely ignoring her request. The Trustees committed further breaches of trust and
21 should immediately be removed for conditioning a \$10,000 distribution from Wendy's beneficial
22 interest in the Trusts for a thirty day (30) stand down agreement they wanted.

23 **(9) Breach of Trust – Settlement Agreement (Exhibit 457).**

24 140. The jury trial was originally scheduled to begin on February 4, 2019. On January 31,
25 2019, Stan, Individually, as beneficiary and Co-Trustee of the Family Trust ("Stan") and as Trustee of
26 the 2013 Stanley Jaksick Revocable Family Trust ("Stan's Trusts") and Todd, Individually, as
27 beneficiary and Co-Trustee of the Family Trust, as beneficiary and Trustee of the Issue Trust, manager
28 of Incline TSS, LLC and Trustee of the Todd B. Jaksick Family Trust, TBJ Issue Trust, TBJ SC Trust,

1 and TBJ Investment Trust (“Todd’s Trust”), entered into the Settlement Agreement and Release (the
2 “Settlement Agreement”). Exhibit 457.

3 141. Just days before trial, Todd and Stan apparently resolved all issues between them and
4 their family trusts and showed up to trial to put on a united front against Wendy. To support the image
5 of a united front and the appearance that the Trustees were and had always been united against Wendy,
6 the Trustees made every effort to suppress the disclosure of the Settlement Agreement to the Court
7 and the Jury. Instead, they wanted the Jury and the Court to hear that Stan had some misunderstandings
8 about Todd’s administration of the Family Trust and Issue Trust, but Todd and Stan were able to
9 reasonably work out their differences concerning those misunderstandings. See Transcript,
10 02/20/2019, 168:11-21. They even wanted the Jury and the Court to hear and believe that Todd had
11 gratuitously agreed not to seek the payment of the \$4 million mortgage on his personal residence under
12 his purported Indemnification Agreement.

13 142. The incentive for Todd to enter into the Settlement Agreement with Stan was great. It
14 is not difficult to imagine the starkly different impression the jury would have received if Stan’s
15 counsel were sitting on Wendy’s side of the courtroom and were seeking to establish many of the same
16 claims as Wendy against Todd. Stan understood this and used it as leverage to obtain substantial
17 benefits for entering the Settlement Agreement.

18 143. Stan’s Incline TSS Buy In. Section II(D) of the Settlement Agreement allows Stan to
19 buy a 27.595% interest in Incline TSS, LLC, the entity that owns the Lake Tahoe Property for
20 \$1,630,000. Exhibit 457, p. 3, ¶ II(D). Stan’s buy in would have reduced the Issue Trust’s interest in
21 Incline TSS from 54% to 44.81%. Id. To obtain the 27.595% interest, Stan is only required make
22 interest payments at rate of 3% until 2026. Id. Additionally, the terms of the Settlement Agreement
23 provide that Stan’s interest in Incline TSS shall immediately vest, and that upon a sale, the proceeds
24 would immediately be distributed to Stan. Id. at ¶ II(D)(i).

25 144. In 2015, Stan attempted to buy an interest in in Incline TSS, LLC. Some of the terms
26 for the proposed buy in are reflected in Exhibit 23. At that time, Stan was to pay \$1,500,000 for a
27 17.02% interest in Incline TSS. Exhibit 23. Stan’s buy in would have reduced the Issue Trust’s
28 interest from 54% to 44.81%. Exhibit 23, p. 1, ¶ C. On October 28, 2014, Kevin Riley sent an email

1 to Todd and Stan with numbers on Stan's purchase of on interest in Incline TSS, as follows:

2 Todd and Stan,

3
4 I have worked up some numbers in two different worksheets.

5 The first worksheet is a hypothetical buyin at \$1.5m. There are no discounts involved and Stan would get a 14.2%
6 interest in the tahoe house.

7
8 The second worksheet is, a reasonable option provided the property is properly appraised at \$11.5m. This involves the
9 same buyin at \$1.5m and a reasonable 24% discount on the minority interest. Stan's interest would be identical to Todd's
% and the TBJ SC trust's % at 18.7%.

10 Exhibit 441. Based on the numbers provided by Kevin Riley, a payment of \$1.5 million with no
11 discounts applied would get Stan a 14.2% interest in Incline TSS. Kevin Riley further communicated
12 that if a reasonable 24% discount was applied to Stan's buy in, Stan would obtain a 18.7% interest
13 based on \$1.5 million payment. Kevin Riley confirms in his email that his numbers were based on the
14 Tahoe Property appraising for \$11.5 million.

15 145. At trial, it was agreed that the approximate value of the Lake Tahoe Property was \$18
16 million with approximately \$2.5 million in outstanding debt. Transcript, 02/20/2019, 32:9-25.
17 Therefore, the Tahoe Property had increased \$6.5 million from the \$11.5 million value Kevin Riley
18 originally used to calculate Stan's buy in. Despite this substantial increase, the Settlement Agreement
19 requires essentially the same buy in of \$1.6 million for an increased interest in Incline TSS (27.595%
20 versus 17.02%).

21 146. As an initial matter, Trustees have breached their fiduciary duties to Wendy by failing
22 to fully disclose the Settlement Agreement and the implications and effects of the Settlement
23 Agreement to Wendy. The burden is on the Trustees to disclose and provide confirmation that this is
24 a fair transaction in relation to the Issue Trust and its interest in Incline TSS. How is it possible that
25 Stan can pay essentially the same amount of consideration to buy into Incline TSS for an increased
26 interest when the value of Incline TSS has increased by \$6.5 million? Why is the Issue Trust's interest
27 in Incline TSS reduced to the same minority interest of 44% based on a payment of the same amount
28

1 of consideration? Based on this transaction, it appears Todd is trading some of the Issue Trust's value
2 in Incline TSS as consideration for Stan entering the Settlement Agreement. Additionally, as a result
3 of the buy in, the Issue Trust will no longer be the majority owner of Incline TSS with the controlling
4 share of the votes. While the Settlement Agreement reserves the Issue Trust's remaining 44.81%
5 shares the exclusive right to determine when the Tahoe Property sells, all other decisions relating to
6 Incline TSS and the Tahoe Property may only be made with the unanimous approval of Stan and Todd.
7 Exhibit 457, p. 3, ¶II(D)(ii). None of this is in the best interest of the Issue Trust and its beneficiaries.

8 147. Regardless, Stan is getting a significant value out of this buy in on very favorable terms.
9 Stan's interest only payment until January 1, 2026 at three (3%) interest means he will be paying
10 approximately \$41,000 a year for his interest worth approximately \$4.3 million $((\$18,000,000 -$
11 $\$2,500,000) \times .27595)$. Because the Settlement Agreement provides that Stan's interest vests
12 immediately and the proceeds of the sale of the Tahoe Property will be distributed immediately to the
13 members, if the Lake Tahoe Property were sold in the near future, Stan would receive \$2,882,225 in
14 profit $((\$18,000,000 - \$2,500,000) \times .27595) - \$1,395,000)$. Therefore, Stan has decided to settle and
15 obtain substantial personal benefit instead of maintaining and pursuing his claims against Todd as he
16 is obligated to do as a Co-Trustee to protect the interests of the beneficiaries.

17 148. Payment of Attorney's Fees. The Settlement Agreement provides that the Family Trust
18 will cover the legal fees incurred by the Trustees in the lawsuit. Exhibit 457, p. 2, ¶ II(A). The
19 Settlement Agreement also provides for the payment of Todd's and Stan's attorney's fees "paid or
20 incurred by Todd or Stan in their individual or beneficiary capacities in Cases Nos. PR17-00445 and
21 PR17-00446 or with respect to any attorney's fees associated with their indemnification
22 agreements...". Exhibit 457, p. 4, ¶ II(G). This specifically includes the Family Trust reimbursing
23 Todd in the amount of \$400,000 and Stan in the amount of \$250,000, with the ability to obtain another
24 \$150,000 if there is an appeal. Id. As a result, the Trustees have agreed that the Family Trust will pay
25 their all their attorney's fees, including those owed in their individual capacities, as partial
26 consideration for the Trustees resolving claims against each other in their fiduciary capacities. This
27 benefits Todd and Stan personally, not the Trusts or their beneficiaries.

28 149. Indemnification Agreement. The Settlement Agreement provides that Todd's

1 purported Indemnification Agreement will not be terminated but will be limited to the payment of Ag
2 Credit loan #101, including all reimbursement, all note forgiveness, and all loan payments until paid
3 in full. Exhibit 457, p. 4, ¶ II(F). As discussed in detail elsewhere in this Brief, Todd's purported
4 Indemnification Agreement is a product of Todd's fraud. Even if the document is valid, Todd's self-
5 serving interpretation and attempted application of the Agreement to pay his personal debts from the
6 funds of the Family Trust is ridiculous and not consistent with the terms of the Agreement. If the
7 Agreement is valid, it is clear from its terms that it was created to prevent Todd from being wiped out
8 if Samuel Jaksick's creditors sought to hold Todd or his entities liable for Samuel Jaksick's debt.
9 Instead, Todd has used and continues to use the Indemnification Agreement to pay Todd's debt on
10 property Todd owns as it becomes due. The Family Trust's prior payment of Todd's personal debts
11 were breaches of trust, and this provision in the Settlement Agreement requiring the continued
12 payment of Todd's debts on property Todd, his entities or his family trusts owns is continued self-
13 dealing which benefits Todd at the expense of the Family Trust and its beneficiaries.

14 150. Payment of Jackrabbit Capital Calls. The Settlement Agreement provides that the
15 Family Trust will pay or reimburse Todd, Stan, and Wendy from the Family Trust for prior and future
16 capital calls for Jackrabbit Properties, LLC through the 1/1/2021 RaboBank payment. Exhibit 457, p.
17 4, ¶ II(F)(iii). This is a self-dealing and a breach of trust because the payments of Todd's and Stan's
18 capital calls for Jackrabbit Properties far exceed the payments of the capital calls for Wendy's interest.

19 151. As of Samuel Jaksick's death, Jackrabbit Properties was owned as follows:

20 Jackrabbit Properties, LLC 48651.013 Managed by: Managers	21 72-1549198	22 29.242% Sam Jaksick I LLC 31.35% Todd J. I LLC 9.515% TBJ Inves. Trst 3.893% Stan Jaksick II LLC 13.5% SC Ranch 6.5% G. Brown Trust	23 Executive Committee Sam Jaksick Todd Jaksick William Douglass
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24
25 Exhibit 90, p. 2. The Family Trust's interest in Jackrabbit Properties is the 29.242% owned by Sam
26 Jaksick I LLC. Todd Jaksick I LLC owned 31.35%, the TBJ Investment Trust owned 9.515%, and
27 Stan Jaksick II LLC owned 3.93%.

28 152. Following Samuel Jaksick's death, Greenshoot Holdings LLC purchased a twenty

percent (20%) interest in Jackrabbit Properties, and the other members' interests were adjusted. During this time, Jackrabbit Properties made several capital calls of its members. On June 23, 2017, the Family Trust issued checks to pay the capital calls for Todd Jaksick I LLC in the amount of \$4,000, TBJ Investment Trust in the amount of \$28,692.00, the Family Trust in the amount of \$28,193.60, and Stan Jaksick II LLC in the amount of \$3,144.40. Exhibit 411. On September 27, 2017, the Family Trust issued checks to pay the capital calls for Todd Jaksick I LLC in the amount of \$1,600.00, TBJ Investment Trust in the amount of \$11,476.80, the Family Trust in the amount of \$11,277.44, and Stan Jaksick II LLC in the amount of \$1,248.76. Exhibit 412. Therefore, the Family Trust paid capital calls to Jackrabbit properties on behalf of Todd's entities/trusts in the amount of \$45,768.80 and Stan's entity in the amount of \$4,393.16. Exhibits 411 and 412.

153. At some point, 7.5187% of Jackrabbit Properties was distributed to Wendy's Subtrust, so the current ownership is apparently as follows:

Chart B	
\$24,000.00	20.0000% Greenshoot Holdings LLC
\$12,960.00	10.8000% SC Ranch
\$6,240.00	5.2000% George J. Brown 1986 Rev. Trust
\$45,708.00	38.0900% TBJ Investment Trust (100% owner of SmkCrk Ranch LLC)
\$4,800.00	4.0000% Todd B Jaksick LLC
\$2,255.64	1.8797% Samuel S Jaksick Jr Irrv Grandchild Tr No 2
\$9,022.44	7.5187% Wendy Jaksick Trust under SJ Trust Family Agreement
\$15,013.92	12.5116% Stan Jaksick II LLC
<u>\$120,000.00</u>	
Capital Call	

Exhibit 38, p. 6. In December 2017, Jackrabbit Properties made another capital call of its members. Todd demanded the portion of the capital call for the TBJ Investment Trust and Todd Jaksick LLC (totaling \$50,508.00) be paid by the Family Trust pursuant to his purported Indemnification Agreement. Exhibit 38, p. 5. Stan pushed back against Todd's demand, taking the position that everyone needed to pay their own interest stating "I have filed an objection with the court regarding this matter so until it is heard or Todd changes his indemnification agreement substantially (he knows

1 where I'm coming from) the trust is not going to make his payments...". Exhibit 38, p. 1. Apparently,
2 this payment was eventually made, but Wendy has no way to confirm this because the Trustees have
3 refused to deliver the annual Family Subtrust Accounting for the period ending December 1, 2018.

4 154. Regardless, if the Family Trust pays or reimburses Todd, Stan and Wendy³⁰ from the
5 Family Trust for prior and future capital calls for Jackrabbit Properties through January 1, 2021, then
6 Todd and his entities/trusts will receive the benefit of 67.75% of the distributions, Stan and his entity
7 will receive the benefit of 20.141% of the distributions and Wendy's Subtrust will receive the benefit
8 of 12.102% of the distributions. The Family Trust's prior payment of capital calls benefiting Todd
9 and Stan were breaches of trust, and this provision in the Settlement Agreement that benefits Todd
10 and Stan substantially more than it benefits Wendy is blatant self-dealing.

11 155. Mutual Releases. The Settlement Agreement includes the following releases for Todd
12 and Stan:

13 V. By execution of this Agreement, the Parties acknowledge that it is a full and
14 complete compromise, settlement and satisfaction of the Lawsuit between the Parties, and each
15 Party hereby releases, satisfies and forever discharges the other Party, including predecessors and
16 successors in interest, agents, officers, employees, attorneys, and assigns of the other Party from
17 any and all causes of action, suits, debts, dues, sums of money, accounts, contracts, agreements,
18 promises, liabilities, damages, judgments, executions, claims and demands whatsoever, whether
19 in law or in equity, whether matured or unmatured, and whether known or unknown, developed or
undeveloped or otherwise, which either Party ever had, now has, or hereafter can, shall or may
have for, upon or by reason of any claim that was asserted or that could have been asserted from
the beginning of the world to the date of full execution of this Agreement, from claims related to
the Lawsuit referenced herein.

20 Exhibit 457, p. 5, ¶ V. By entering into this Settlement Agreement, both Todd and Stan receive
21 substantial personal benefits as consideration. In exchange for this consideration, Todd, in his capacity
22 as Trustee of the Issue Trust and Co-Trustee of the Family Trust, and Stan, in his capacity as Co-
23 Trustee of the Family Trust, have released Todd and Stan, in their individual capacities, and several

24 ³⁰ The Settlement Agreement provides the "Family Trust will pay or reimburse Todd, Stan and Wendy
25 Jaksick from the Family Trust for prior or future capital calls for Jackrabbit Properties, LLC...". Todd,
26 Stan and Wendy do not own any interests in Jackrabbit Properties in their individual capacities.
27 Therefore, the language in the Settlement Agreement contemplates the Family Trust paying the
28 interests that benefit Todd, Stan and Wendy, their entities and/or their trusts. Additionally, the
Settlement Agreement defines "Todd" to include Todd as Trustee of the TBJ Investment Trust, which
owns 38.09% of Jackrabbit Properties. Exhibit 457, p. 1.

1 of their entities and their family trusts from any and all claims the Family Trust and Issue Trust ever
2 had, have or could have through the execution of the Settlement Agreement. In other words, Wendy's
3 fiduciaries, on behalf of the Family Trust and Issue Trust, are releasing all claims against themselves,
4 their entities and their family trusts. There is absolutely no reason for the Family Trust and Issue Trust
5 to release all these claims or potential claims against Todd and Stan, especially claims against Todd's
6 and Stan's entities and family trusts. There has been no disclosure to Wendy concerning the claims
7 or potential claims of the Family Trust and Issue Trust against Todd, Stan, their entities or their family
8 trusts. As a result, there is no way for Wendy to understand implications and effects of such releases
9 and to confirm same are in the best interest of the Family Trust and Issue Trust. This is just another
10 self-dealing transaction sought to benefit Todd and Stan over the interests of the Family Trust and
11 Issue Trust.

12 (10) **Removal.**

13 156. The law involves the Court in these matters and grants the Court broad powers to
14 address breaches of trust, including the power to remove fiduciaries, because of the importance of
15 fiduciaries and their roles in administering property. Nevada and Washoe County are less safe from
16 fiduciaries as a result the actions of the Trustees, their breaches of trust and the jury Verdict. To allow
17 Todd and the other Trustees to continue to serve as Trustees or fiduciaries in any capacity would: (i)
18 condone their behavior and breaches of trust, many of which were intentional or done in bad faith, (ii)
19 set precedent and (iii) have grave consequences for trust administration and fiduciaries. Doing so
20 would establish that the Trustees' behavior was and is legally acceptable, including their repeated and
21 intentional failure to account, failure to disclose, misappropriation of fiduciary property, breaches of
22 their duty of loyalty, self-dealing and overreach. Accordingly, the Trustees' must be immediately
23 removed.

24 **VI. Remedies to Redress Breaches of Fiduciary Duties by the Trustees**

25 157. "The fiduciary obligations of a trustee are great."³¹ "Perhaps the most fundamental
26 duty of a trustee is that he must display throughout the administration of the trust complete loyalty to
27 _____

28 ³¹ *Riley v. Rockwell*, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987).

1 the interests of the beneficiary and must exclude all selfish interest and all consideration of the interests
2 of third persons.”³² In Nevada a "trustee is a fiduciary who must act in good faith and with fidelity
3 to the beneficiary of the trust. He should not place himself in a position where it would be for his
4 own benefit to violate his duty to the beneficiary.”³³ Said fiduciary duties, include, but are not
5 limited to, the duty of full disclosure,³⁴ fidelity,³⁵ fairness, loyalty, avoidance of self-dealing and
6 utmost good faith.

7 158. NRS 153.031 permits the court to redress a breach of trust using its “full equitable
8 powers.” See *Diotallevi v. Sierra Dev. Co.*, 95 Nev. 164, 591, P.2d 270, 272 (Nev. 1979). Further
9 guidance on the issue is provided by Restatement (Third) of Trusts §243 and the comments thereto,
10 which state:

11 If the trustee commits a breach of trust, the court may in its discretion
12 deny him all compensation or allow him a reduced compensation or
allow him full compensation.

13 Comment a.) When the compensation of the trustee is reduced or
14 denied, the reduction or denial is not in the nature of an additional
15 penalty for the breach of trust but is based upon the fact that the trustee
has not rendered or has not properly rendered the services for which
compensation is given.

16 ³² BOGERT, TRUSTS AND TRUSTEES § 543 (2d ed. 1992); see also 76 AM. JUR. 2D TRUSTS §
17 349 (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 ³³ *Bank of Nevada v. Speirs*, 95 Nev. 870, 874, 603 P.2d 1074, 1077 (1979).

19 ³⁴ See, e.g., *Blue Chip Emerald LLC*, 299 A.D.2d 278, 279 (N.Y. 2005) ("[W]hen a fiduciary, in
20 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 'full disclosure' of all
21 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 facts to a beneficiary, that
22 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 216, 222 (Va. 2001) (Even if a
23 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)
24 (Found many courts "have determined that a 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
25 omitted); *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (Trustees owe beneficiaries "a
fiduciary duty of full disclosure of all material facts known to them that might affect [the
26 beneficiaries'] rights.") (citations omitted); *Lind v. Webber*, 134 P. 461, 466 (Nev. 1913).

27 ³⁵ *Bank of Nevada*, 95 Nev. at 873, 603 P.2d at 1076 ("A testamentary trustee is a fiduciary who
28 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 beneficiary").

1
2 Comment b.) Where the trustee commits a breach of trust which
3 causes a loss to the trust estate, even though the trustee may be entitled
4 to compensation, his claim for compensation can be set off against his
liability for the loss, and he is not entitled to full compensation without
making good the loss.

5 Comment c.) It is within the discretion of the court whether the trustee
6 who has committed a breach of trust shall receive full compensation
7 or whether his compensation shall be reduced or denied. In the
8 exercise of the court's discretion the following factors are considered:
9 (1) whether the trustee acted in good faith or not; (2) whether the
10 breach of trust was intentional or negligent or without fault; (3)
11 whether the breach of trust related to the management of the whole
trust or related only to a part of the trust property; (4) whether or not
the breach of trust occasioned any loss and whether if there has been
a loss it has been made good by the trustee; (5) whether the trustee's
services were of value to the trust.

12 Comment d.) If the trustee repudiates the trust or misappropriates the
13 trust property or if he intentionally or negligently mismanages the
14 whole trust, he will ordinarily be allowed no compensation.

15 159. "A trustee who commits a breach of trust is chargeable with (a) the amount required to
16 restore the values of the trust estate and trust distributions to what they would have been if the portion
17 of the trust affected by the breach had been properly administered; or (b) the amount of any benefit to
18 the trustee personally as a result of the breach." RESTATEMENT (THIRD) OF TRUSTS § 100 (2012). As
19 explained further, "If a breach of trust causes a loss, including any failure to realize income, capital
20 gain, or appreciation that would have resulted from proper administration, the beneficiaries are entitled
21 to restitution and may have the trustee surcharged for the amount necessary to compensate fully for
22 the consequences of the breach. Alternatively, the trustee is subject to such liability as may be
23 necessary to prevent the trustee from benefiting individually from the breach of trust." Id. at cmt. b.
24 Where a trustee has profited through a breach of trust (duty), the petitioner/plaintiff is entitled to
25 equitable relief (such as recession of the transaction accomplished by the breach, imposition of
26 constructive trust to restore property or profits lost through the breach, or fee forfeiture) without having
27 to show that the breach caused damages. *Burrow v. Arce*, 997 S.W.2d 229, 245 (Tex. 1999); *Kinzbach*
28 *Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509 (Tex. 1942); *see also* RESTATEMENT (THIRD) OF

1 AGENCY § 801 cmt. d (2006). This is particularly true in a case in which damages are unavailable or
2 there is no to little monetary damages, so the breach cannot be remedied through monetary compensation.
3 Instead, the court will grant equitable relief based on the “equity of the circumstances.” In such cases,
4 the contested fact issues are resolved by the jury (whether there was a breach), and the court decides
5 whether to grant equitable relief. *Burrow*, 997 S.W.2d 229.

6 160. Additionally, “If the court grants any relief to the petitioner, the court may, in its
7 discretion, order any or all of the following additional relief if the court determines that such additional
8 relief is appropriate to redress or avoid an injustice: (a) Order a reduction in the trustee’s
9 compensation[, and] (b) Order the trustee to pay to the petitioner or any other party all reasonable costs
10 incurred by the party to adjudicate the affairs of the trust pursuant to this section, including, without
11 limitation, reasonable attorney’s fees.” NRS 153.031 (3). The court may hold the trustee personally
12 liable for the payment of such costs when the trustee was negligent in the performance of or breached
13 his or her fiduciary duties. NRS 153.301(3)(b).

14 **(1) Disgorgement of Trustee Fees.**

15
16 161. Because of the Trustees’ numerous, repeated and often intentional and willful breaches
17 of trust and fiduciary duties, the Trustees are not entitled to compensation and/or have been paying
18 themselves compensation over and above that permitted by the Trusts and for purposes which did not
19 benefit the Trusts or their beneficiaries. As a result, Wendy asks the Court to deny any further
20 compensation from the Trusts and to order Trustees to return all fees they have received pursuant to
21 NRS 153.031(3).³⁶ In *Anderson v. Senior Guidance, Inc.*, the Supreme Court of Nevada upheld the

22
23 ³⁶ Further guidance on the denial or disgorgement of Trustee compensation is provided by
24 RESTATEMENT (THIRD) OF TRUSTS §243 and the comments thereto, as follows:

25 If the trustee commits a breach of trust, the court may in its discretion
26 deny him all compensation or allow him a reduced compensation or
allow him full compensation.

27 Comment a.) When the compensation of the trustee is reduced or
28 denied, the reduction or denial is not in the nature of an additional
penalty for the breach of trust but is based upon the fact that the trustee
has not rendered or has not properly rendered the services for which

1 district court's finding that "the trust accounting submitted by appellant was wholly deficient, that
2 appellant failed to provide substantiation for significant claimed expenses, and that appellant was not
3 entitled to the payment of trustee fees as his actions did not benefit the trust or its beneficiaries, but
4 mostly accrued to the benefit of appellant." See *Anderson v. Senior Guidance, Inc. (In re Estate of*
5 *Anderson)*, 128 Nev. 906, 381 P.3d 624, (Nev. 2012) (emphasis added).

6 162. Based upon the various breaches of fiduciary duties outlined above and incorporated
7 hereto by reference, this Court should enter an order denying Trustees any further compensation and
8 requiring Trustees to disgorge any and all trustee compensation they have been paid.

9 **(2) Surcharge Trustees.**

10 163. The court's equitable powers include the ability to apply a breaching trustee-
11 beneficiary's interest in the trust to compensate the trust and other beneficiaries for losses as a result
12 of the breaches. See *Matter of Testamentary Tr. Created Under Will of King*, 295 Or. App. 176, 434
13 P.3d, 502, 519 (Or. 2018)(citing Restatement of Trusts § 257 (1935) ("If a trustee who is also one of
14 the beneficiaries commits a breach of trust, the other beneficiaries are entitled to a charge upon his

15 _____
16 compensation is given.

17 Comment b.) Where the trustee commits a breach of trust which
18 causes a loss to the trust estate, even though the trustee may be entitled
19 to compensation, his claim for compensation can be set off against his
20 liability for the loss, and he is not entitled to full compensation without
21 making good the loss.

22 Comment c.) It is within the discretion of the court whether the trustee
23 who has committed a breach of trust shall receive full compensation
24 or whether his compensation shall be reduced or denied. In the
25 exercise of the court's discretion the following factors are considered:
26 (1) whether the trustee acted in good faith or not; (2) whether the
27 breach of trust was intentional or negligent or without fault; (3)
28 whether the breach of trust related to the management of the whole
trust or related only to a part of the trust property; (4) whether or not
the breach of trust occasioned any loss and whether if there has been
a loss it has been made good by the trustee; (5) whether the trustee's
services were of value to the trust.

Comment d.) If the trustee repudiates the trust or misappropriates the
trust property or if he intentionally or negligently mismanages the
whole trust, he will ordinarily be allowed no compensation.

beneficial interest to secure their claims against him for the breach of trust.”); *accord.* GEORGE GLEASON BOGERT, TRUSTS AND TRUSTEES, § 191 n. 47, 206-07 (1951); RESTATEMENT (SECOND) OF TRUSTS, § 257 (1959); RESTATEMENT (THIRD) OF TRUSTS, § 104 (2003). Here, the jury found that Todd, as Co-Trustee of the Family Trust and as Co-Trustee of the Issue Trust, breached his fiduciary duties to the beneficiaries of the Trusts. Additionally, the evidence and argument included herein establish Todd and the other Trustees committed additional breaches of trust that were often will for or intentional. As a result of Todd’s and the other Trustees’ self-dealing and other breaches of Trust, the Trusts have suffered damages and value to their beneficiaries has been diminished. Accordingly, as a direct violation and result of the breaches and conduct, the beneficiaries are entitled to surcharge Trustees³⁷ and have this Court, in equity, restore full value to the Family Trust and Issue Trust and return all personal benefits received by the Trustees from the breaches, as follows:

- (a) The value of the Tahoe Property or rescinding the Tahoe Property transaction and returning the property to SSJ LLC, which was owned one hundred percent (100%) by the Family Trust;
- (b) The value of the approximately \$5 million in life insurance proceeds paid by the Issue Trust for an interest in Incline TSS or rescinding the transaction and returning the Tahoe Property to SSJ LLC and refunding approximately \$5 million in proceeds to the Issue Trust (Exhibit 14);
- (c) Rescinding the transaction in which Todd’s entity Duke Lake Ranch LLC acquired 100 cattle from an entity owned by the Family Trust (Exhibit 420);
- (d) The value of all payments made pursuant to Todd’s purported Indemnification Agreement (Exhibit 11), including but not limited to, all capital calls and loan payments

³⁷ A party who knowingly participates in another’s breach of fiduciary duty may be liable for breach as a joint tortfeasor. *See Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942) (A party who knowingly participates in another’s breach of fiduciary duty may be liable for the breach as a joint tortfeasor); RESTATEMENT (SECOND) OF TRUSTS § 326 (1959) (“A third person who, 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). Indeed, trustees are liable to beneficiaries for the actions undertaken by a co-trustee unless they expressly disavow in writing and/or attempt to prevent such breach. *See* NRS. 163.100.

1 paid for Todd, his entities and/or his family trusts including those evidenced in Exhibits
2 411, 412 and 429, and those paid in 2018 that have not yet be disclosed to Wendy;

3 (e) The value of all payments made pursuant to Stan's purported Indemnification
4 Agreement (Exhibit 12), including but not limited to, all capital calls and loans paid for
5 Stan, his entities and/or his family trusts including those evidenced in Exhibits 411 and
6 412 and those paid in 2018 that have not yet be disclosed to Wendy;

7 (f) The value of all interest and penalties on Todd's loans that were in default and/or not
8 timely paid during the administration (Exhibit 73, p. 3; Exhibit 126, p. 17);

9 (g) The value of all compensation and fees paid from the Trusts to the Trustees;

10 (h) The value of all attorney's fees and costs paid from the Trusts for the benefit of the
11 Trustees, in their individual of fiduciary capacities; and

12 (i) The value of Wendy's attorney's fees and costs that cannot be returned to the Trusts
13 from the Trustees' attorneys.³⁸

14 **(3) Unjust Enrichment and Constructive Trust.**

15
16 164. "Unjust enrichment occurs whenever a person has and retains a benefit which in equity
17 and good conscience belongs to another. Unjust enrichment is the unjust retention of a benefit to the
18 loss of another, or the retention of money or property of another against the fundamental principles of
19 justice or equity and good conscience."³⁹ The elements of a claim for unjust enrichment are:

- 20 1) A benefit has been conferred upon the defendant;
21 2) Defendant appreciated the benefit;
22 3) Defendant accepted and retained the benefit under circumstances where it would
23 be inequitable for Defendant to retain the benefit without the payment of value for
24 the same; and
25 4) Absence of an express, written contract.

26 _____
27 ³⁸ These requested remedies or the property subject to the remedies are in addition to any specific
remedies identified and discussed in the sections above.

28 ³⁹ *Nevada Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 363, 741 P.2d 802, 804 (1987).

1 *Robinson v. Coury*, 115 Nev. 84, 976 P.2d 518 (1999); *Leasepartners Corp. v. Robert L. Brook Trust*,
2 13 Nev. 747, 942 P.2d 182, 187 (1997) (“The Doctrine of unjust enrichment ... applies to situations
3 where . . . the person sought to be charged is in possession of money or property which in good
4 conscience and justice he should not retain but should deliver to another [or should pay for]”). Unjust
5 enrichment is the unjust retention of a benefit to the loss of another, or the retention of money or
6 property of another against the fundamental principles of justice or equity and good conscience. *Topaz*
7 *Mut. Co., Inc. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992). Fraud and wrongdoing are not
8 required elements to prevail on a claim for unjust enrichment. *Leasepartners Corp.*, 13 Nev. at 942;
9 *see also Waldman*, 124 Nev. At 1132.

10 165. The following must be established for a court to impose a constructive trust:

- 11 1) A benefit has been conferred upon the defendant;
- 12 2) A confidential relationship between the parties;
- 13 3) Retention of legal title by defendant against plaintiff would be inequitable under
14 the circumstances; and
- 15 4) Existence of trust is essential to the effectuation of justice.

16 *Schmidt v. Merriweather*, 82 Nev. 372, 375, 418 P.2d 991, 993 (1966).

17 166. While a constructive trust is usually invoked when property has been acquired by fraud,
18 such a trust may also be imposed where it is against the principles of equity that a certain person retain
19 the property even though the property was acquired without fraud. *See Waldman v. Maini*, 124 Nev.
20 1121, 1132, 195 P.3d 850, 858 (2008) (confirming Nevada does not require fraud or wrongdoing to
21 impose a constructive trust, just an inequitable act or result); *see also Bemis*, 114 Nev. at 1027, 967
22 P.2d at 441 (explaining that constructive trusts are no longer limited to fraud and misconduct, but are
23 implemented to redress any unjust enrichment). Therefore, a constructive trust is a remedial device
24 not solely arising in cases of wrongdoing. *See Id.*

25 167. Based on the evidence and argument cited above, the Court should find unjust
26 enrichment and/or impose a constructive trust as necessary to restore the following property to the
27 Family Trust and/or Issue Trust: (1) Tahoe Property should be returned to SSJ, LLC, which was owed
28 one hundred percent (100%) by the Family Trust when the Tahoe Property was transferred; (2) the

1 approximately \$5 million in life insurance proceeds payable to the Issue Trust that were used by Todd
2 to purchase the Issue Trust's interest in the Tahoe Property (Exhibit 14) should be returned to the Issue
3 Trust; and (3) the approximately 100 cattle acquired by Todd's entity Duck Lake Ranch LLC (Exhibit
4 420).⁴⁰ The transfer of this property away from the Family Trust and/or Issue Trust was the result of
5 willful and intentional breaches of trust, therefore to allow this property to remain where it is would
6 be against the fundamental principles of justice or equity and good conscience and unconscionable.

7 **(4) Enjoin Trustees from Using Trust Assets to Defend this Matter.**
8

9 168. As are result of the Trustees' numerous, repeated and often intentional and willful
10 breaches of trust, the Trusts should not bear the burden of the significant legal fees and costs incurred
11 in this case to defend the breach of fiduciary duties by the Trustees. *See, e.g., Estate of Bowlds*, 120
12 Nev. 990, 102 P.3d 593 (Dec. 2004) (Citing *Matter of Estate of Rohrich*, 496 N.W.2d 566, 571
13 (N.D. 1993) (An attorney's services must benefit the estate to justify compensation from estate
14 assets); *See also Sierra v. Williamson*, 784 F. Supp. 2d 774, 777 (W.D. Ky. 2011) ("[W]hether a trustee
15 is entitled to attorney's fees from the trust corpus is not a matter of right, but is warranted where the
16 trustees were not at fault in the litigation and the amount of attorney expenses was reasonable . . . the
17 Court believes that the proper procedure is to allow [the trustees] to seek reimbursement from the Trust
18 after the conclusion of this case, assuming [the trustees] are successful and their expenses
19 reasonable."); *See also Jacob v. Davis*, 128 Md. App. 433, 466, 738 A.2d 904, 921 (1999) ("The
20 general rule is that a trustee is entitled to attorneys' fees paid from the trust *if it successfully defends*
21 an action brought by the beneficiary.") (citations omitted; emphasis added); RESTATEMENT (THIRD)
22 OF TRUSTS § 88, cmt. d ("*To the extent the trustee is successful in defending against charges of*
23 *misconduct, the trustee is normally entitled to indemnification for reasonable attorneys' fees and other*
24 *costs*") (emphasis added).

25 169. The jury returned a verdict confirming Todd breached his fiduciary duties as Trustee
26 of the Issue Trust and Co-Trustee of the Family Trust. Additionally, the evidence and arguments

27 ⁴⁰ These requested remedies or the property subject to the remedies are in addition to any specific
28 remedies identified and discussed in the sections above.

1 included herein confirm that Todd and the other Trustees committed numerous additional breaches of
2 trust, often times willfully or intentionally. Accordingly, this Court should deny any requests by the
3 Trustees to pay their legal counsel for services provided to the Trustees in their individual or trustee
4 capacities. Additionally, this Court should disgorge or compel the Trustees to obtain the
5 reimbursement of any legal fees and costs already paid to their legal counsel for services provided in
6 prosecuting or defending this action. In the alternative, this Court should surcharge the Trustees for
7 any and all payments made by the Trusts for legal fees and costs of the Trustees, individually or in
8 their trustee capacities, to prosecute or defend this action.

9 **(5) Award of Attorneys' Fees and Costs.**

10
11 170. NRS 153.031(3)(b) and 164.005 provide that if the court grants any relief to a
12 beneficiary, the court may order the trustee to pay the beneficiary all reasonable costs incurred by
13 petitioner to adjudicate the affairs of the trust, including, without limitation, reasonable attorney's
14 fees, and the trustee may be held personally liable for the payment of such costs if the trustee was
15 negligent in the performance of his or her fiduciary duties.

16 171. In this case, the jury found that Todd, as Co-Trustee of the Family Trust and as Co-
17 Trustee of the Issue Trust, breached his fiduciary duties. By implication, all of the Trustees are liable.⁴¹
18 Regardless, the evidence and arguments included herein confirm that Todd and the other Trustees
19 committed numerous additional breaches of trust, often times willfully or intentionally. The payment
20 of attorney's fees is clearly warranted given the Trustees' breaches of fiduciary duty and refusals to
21 remedy such breaches, including failing to properly account, have cost Wendy substantial attorneys'

22
23 ⁴¹ A party who knowingly participates in another's breach of fiduciary duty may be liable for breach
24 as a joint tortfeasor. *See Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942)
25 (A party who knowingly participates in another's breach of fiduciary duty may be liable for the breach as
26 a joint tortfeasor); RESTATEMENT (SECOND) OF TRUSTS § 326 (1959) ("A third person who,
27 although not a transferee of trust property, has notice that the trustee is committing a breach of trust and
28 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). Indeed, trustees are liable to beneficiaries for the actions
undertaken by a co-trustee unless they expressly disavow in writing and/or attempt to prevent such
breach. *See* NRS 163.100.

1 fees and costs. As a result, this Court should award Wendy's attorneys' fees and costs from the
2 Trustees' personal assets as contemplated by Nevada law or, in the alternative, from the Trusts.

3 172. Wendy is also entitled to recover costs incurred in pursuing declaratory relief related
4 to all of the contested documents and transactions, the Trusts and the administration of the Trusts.
5 NRS 30 and NRS 30.120.

6 173. The attorney's fees and costs incurred by Wendy in the litigation were substantial
7 for several reasons. First, the Trusts, assets of the Trusts and administration of the Trusts were
8 very complex and covered over four (4) years of administration. Second, at the outset of the
9 litigation, Todd's counsel sought to enlarge discovery seeking an order authorizing Todd's counsel
10 to propound sixty (60) interrogatories on Wendy and to take Wendy's deposition for no less than
11 twenty (20) hours. Status Conference Minutes, April 26, 2018, pp. 1-2. As a result of Todd's
12 counsel's request, Judge Hardy ordered Wendy could be deposed for up to three (3) days and
13 ordered the enlargement of time would be reciprocal for the other Parties. As a result of this
14 enlargement of discovery sought by Todd's counsel, Todd, Stan and Wendy were each deposed for
15 multiple days. Id. Third, Todd made every effort to obstruct Wendy's ability to obtain the
16 information necessary to develop and prepare her case. Todd, his accountant and his attorneys
17 refused to produce records and comply with discovery requests, forcing Wendy counsel to seek
18 court relief to compel production. Todd improperly terminated his deposition, which required
19 motion work and the attorneys to reschedule his deposition. Todd, his accountant and his attorneys
20 produced tens of thousands of records just days and weeks before trial (and in some cases after trial
21 was scheduled to commence), requiring Wendy's counsel to take an additional day of Todd's
22 deposition. Todd and the Trustees refused to timely produce accountings, which required Wendy
23 to file a Motion to Compel to obtain her Subtrust Accounting for the period ending December 31,
24 2017. Trustees have refused to prepare and timely deliver the Family Trust Accounting and
25 Wendy's Subtrust Accounting for the period ending December 31, 2018, which required Wendy to
26 file the Second Supplement to her First Amended Counter-Petition. Fourth, the serious questions
27 regarding the validity of a number of documents in which Todd was directly involved, as well as
28 the significant notary violations by Todd's long time (and current) assistant, further required

1 Wendy to spend an inordinate amount of time and expenses to simply have legitimate questions
2 answered.

3 174. In short, Wendy was compelled to incur substantial attorneys' fees and costs in
4 merely obtaining the information that the Trustees were required to provide her as a beneficiary,
5 not to mention the intentional roadblocks she encountered as a result of the Trustee's actions.

6 175. As of June 30, 2019, Wendy's counsel had incurred \$1,365,024.00 in attorneys' fees
7 and costs in the amount of \$361,048.74 prosecuting this litigation. After the Court enters any order
8 awarding Wendy her attorneys' fees and costs, Wendy's counsel will submit a detailed listing of the
9 costs incurred, as well as additional support for the attorneys' fees incurred.

10 176. Argument Concerning Offer of Judgment. In order to facilitate settlement, NRCP 68
11 allows parties to an action to serve an offer of judgment to the opposing party prior to trial. *See*
12 *Mendenhall v. Tassinari*, 403 P.3d 364 (Nev, 2017). NRCP 68(f) sets forth the consequences if a party
13 rejects an offer and fails to obtain a more favorable judgment. It is a mechanism to encourage
14 settlement, however, it is not to be used "force plaintiffs to unfairly forego legitimate claims." *See*
15 *Beattie v. Thomas* 99 Nev. 579, 587 668 P.2d 268, 274 (Nev. 1983) (citing *Armstrong v. Riggi*, 549
16 P.2d 753 (Nev. 1976). When a party rejects an offer of judgment and fails to obtain a more favorable
17 judgment at trial, the prevailing party is entitled to its post-offer costs, applicable interest on the
18 judgment and reasonable allowed attorney's fees. *See* NRCP 68(f). When an offer of judgment
19 precludes a separate award of costs, expenses, interest, and if attorney's fees are permitted by law or
20 contract, the court compares the amount of the offer together with the offeree's pre-offer taxable cost
21 with the principal amount of the judgment to determine whether the party rejecting the offer of
22 judgment failed to obtain a more favorable judgment. *See* NRCP 68(g).

23 177. Todd served two offers of judgment on Wendy on or about August 29, 2018 in his
24 individual capacity and as Trustee of the Trusts. These offers were made before the Trustees even
25 began to significantly comply with their discovery obligations. Much of the documents produced by
26 the Trustees were not done until December of 2018, four months after the offers of judgments were
27 made. As discussed previously, Wendy was not even made aware that her interest in the Trusts was
28 approximately \$4 million dollars until the statement was made in front of the jury. Due to the Trustees

1 continued failure timely account and provide her with information, Wendy was in no position to
2 evaluate the offer of judgment to determine whether or not it was reasonable. Thus, the offers of
3 judgment cannot reasonably be seen to been made to help facilitate settlement or any other legitimate
4 purpose.

5 178. The offers were not reasonable and were only made to invoke the protections of NRCP
6 68. Both of Todd's offers of judgment were for \$25,000.00 "and no more, which sum includes all
7 interest, costs, attorneys' fee or otherwise which have accrued to date." \$25,000 was not intended to
8 encourage settlement of litigation where multiple million dollars were at stake and where Wendy had
9 already incurred *costs* alone in excess of the amount offered⁴². Additionally, the amount is minuscule
10 when compared to the \$4 million dollars that Todd testified that Wendy would be receiving through
11 the distributions from the Trusts. Transcript, 02/22/2019, 27:15-28:4*.

12 179. Further, as set forth more fully in *Petitioner Wendy A. Jaksick's Opposition to Motion*
13 *for Attorney's fees*, Todd is not the prevailing party to this action because the \$15,000 jury verdict
14 together with her prejudgment interests and costs exceed the \$25,000 offer from Todd precluding him
15 from post-offer fees and costs pursuant to NRCP 68.

16 **VII. Declaratory Judgment – Todd and Michael Kimmel Violated No Contest Provision.**

17 180. The Family Trust includes the following provision prohibiting the pursuit of any form
18 of legal actions against Wendy:

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

27 ⁴² Not only did the costs incurred by August 29, 2018, exceed the offer of judgment, the amount of
28 hours Wendy's attorneys had spent alone prior to August 29, 2018 far exceed the \$25,000 offers of
judgment.

1 Exhibit 9, p. 11; *See also* Exhibit 9, p. 15. This paragraph shall be referred to herein as the “Prohibition
2 of Legal Action Provision”.

3 181. The no-contest provision referenced in the “Prohibition of Legal Action Provision” is as
4 follows:

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

17
18 Exhibit 9, p. 52. This paragraph shall be referred to herein as the “Family Trust No Contest Provision”.

19 182. Trustees Todd and Michael Kimmel instituted this litigation by filing the *Petitions for*
20 *Confirmation*. After years of being kept in the dark, Wendy was left with no choice but to file
21 oppositions and objections to the *Petitions for Confirmation* to preserve her objections and protect her
22 rights. At the time Wendy filed her oppositions and objections, she had questions about and seriously
23 doubted the validity of the Second Amendment to the Family Trust and certain attachments to the
24 Issue Trust. Wendy’s questions about the validity of these documents were supported by Stan, who
25 had communicated to Wendy that the signature on the Second Amendment to the Family Trust was
26 not Samuel Jaksick’s signature.

27 183. Shortly after Wendy filed her oppositions and objections to the *Petitions for*
28 *Confirmation*, Trustees Todd and Michael Kimmel filed a *Motion to Dismiss*, seeking the dismissal of

1 Wendy's objections and oppositions alleging Wendy had violated the "no-contest" provisions of the
2 Trusts and no longer had standing to make claims related the Trusts. Specifically, the Trustees Todd
3 and Michael argued the "Since Wendy has contested the validity of both the Family Trust and Issue
4 Trust, she has violated the no-contest provisions of both trusts and is no longer a beneficiary or
5 interested person in the administration of the trusts. Accordingly, she has no standing to file her
6 Counter-Petition or otherwise participate in these proceedings." *Motion to Dismiss*, dated February 6,
7 2018, p. 12, lines 8-13.

8 184. The Family Trust language is clear that any form of legal action against Wendy, other
9 than the specific actions identified in Articles E(5)(d) and IV D4(d), shall be considered a violation of
10 the Family Trust No Contest Provision. Trustees Todd and Kimmel sought a finding from the Court
11 that Wendy had violated the "no-contest" provision and, as a result, had forfeited her interest in the
12 Family Trust and was no longer a beneficiary. This legal action by Trustees Todd and Kimmel is in
13 direct violation of the Prohibition Against Legal Action Provision and, therefore, a violation of the
14 Family Trust No Contest Provision. As a result, Todd must be treated as if he died prior to the
15 execution of the Family Trust Agreement and forfeits all interest in the Samuel Jaksick's Estate and
16 the Family Trust. Additionally, by violating the terms of the Prohibition Against Legal Action
17 Provision and the Family Trust No Contest Provision, Trustee Todd and Kimmel have breached the
18 terms of the Trust and should immediately be removed as Co-Trustees.

19 **WHEREFORE**, Wendy requests the Court consider this *Opening Argument Brief*, the
20 arguments and evidence included and cited herein and enter judgment against the Counter-
21 Respondents consistent with Wendy's pleadings.

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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 1st day of July, 2019.

FOX ROTHSCHILD LLP

/s/ Mark J. Connot
Mark J. Connot (10010)
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135
mconnot@foxrothschild.com

SPENCER & JOHNSON, PLLC

/s/ R. Kevin Spencer
R. Kevin Spencer (*Admitted PHV*)
Zachary E. Johnson (*Admitted PHV*)
500 N. Akard Street, Suite 2150
Dallas, Texas 75201
kevin@dallasproabte.com
zach@dallasprobate.com
Attorneys for Respondent Wendy A. Jaksick

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that
3 on this 1st day of July, 2019, I served a true and correct copy of **WENDY JAKSICK'S BRIEF OF**
4 **OPENING ARGUMENTS IN THE EQUITABLE CLAIMS TRIAL** by the Court's electronic file
5 and serve system addressed to the following:

6
7 Kent Robison, Esq.
8 Therese M. Shanks, Esq.
9 Robison, Sharp, Sullivan & Brust
10 71 Washington Street
11 Reno, NV 89503
12 *Attorneys for Todd B. Jaksick, Beneficiary*
13 *SSJ's Issue Trust and Samuel S. Jaksick, Jr.,*
14 *Family Trust*

Donald A. Lattin, Esq.
L. Robert LeGoy, Jr., Esq.
Brian C. McQuaid, Esq.
Carolyn K. Renner, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519
Attorneys for Petitioners/Co-Trustees Todd B.
Jaksick and Michael S. Kimmel of the SSJ's
Issue Trust and Samuel S. Jaksick, Jr., Family
Trust

14 Phil Kreitlein, Esq.
15 Kreitlein Law Group
16 1575 Delucchi Lane, Ste. 101
17 Reno, NV 89502
18 *Attorneys for Stanley S. Jaksick, Co-Trustee*
19 *Samuel S. Jaksick, Jr. Family Trust*

Adam Hosmer-Henner, Esq.
McDonald Carano
100 West Liberty Street, 10th Fl.
P.O. Box 2670
Reno, NV 89505
Attorneys for Stanley S. Jaksick

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

20 DATED this 1st day of July, 2019.

21
22 /s/ Doreen Loffredo
23 An Employee of Fox Rothschild LLP
24
25
26
27
28

1 CODE: 4205
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 KRISTEN D. MATTEONI, ESQ.
7 Nevada Bar No. 14581
8 MAUPIN, COX & LeGOY
9 4785 Caughlin Parkway
10 Reno, Nevada 89519
11 Telephone: (775) 827-2000
12 Facsimile: (775) 827-2185
13 *Attorneys for Petitioners/Co-Trustees*

14
15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
16
17 IN AND FOR THE COUNTY OF WASHOE

18 In the Matter of the: Case No.: PR17-0445
19 Dept. No.: 15
20 SSJ's ISSUE TRUST.
21 _____/ Consolidated

22 In the Matter of the Administration of Case No.: PR17-0446
23 Dept. No.: 15
24 THE SAMUEL S. JAKSICK, JR., FAMILY TRUST.
25 _____/

26
27 **PETITIONER'S TRIAL BRIEF ON EQUITABLE CLAIMS**

28 TODD JAKSICK, as sole Trustee of the SSJ's Issue Trust ("Issue Trust") and as Co-
29 Trustee of the Samuel S. Jaksick, Jr. Family Trust (the "Family Trust"), MICHAEL S. KIMMEL,
30 individually and as Co-Trustee of the Family Trust and KEVIN RILEY, individually, as former
31 Trustee of the Family Trust, and Trustee of the Wendy A. Jaksick 2012 BHC Family Trust
32 (hereafter "Petitioners", "Trustees", or "Co-Trustees"), pursuant to the stipulation made on the

1 record on May 13, 2019, respectfully submit the following as their Trial Brief on Equitable Claims
2 ("Trial Brief").

3
4 **I.
INTRODUCTION**

5 This case can be summed up in one sentence, which is paramount to the final issues in this
6 case: Sam's intent prevails over all else. Whether we agree with the decisions of Samuel S.
7 Jaksick, Jr. ("Sam") is irrelevant as those decisions rested with Sam, and Sam alone. Any
8 allegations of wrongdoing that may have occurred during the formation and administration of
9 Sam's estate, have been heard, considered, and decided by the jury. What remains is for this Court
10 to determine the remaining equitable issues not already resolved by the jury, and in so doing, affirm
11 the intent of Sam Jaksick.
12

13 Upon Sam's tragic and untimely passing on April 21, 2013, Todd found himself as a Co-
14 Trustee of the Family Trust along with his brother Stan and long-time family accountant, Kevin
15 Riley. As we know, Mr. Riley resigned his position shortly after Sam's death and, after some time,
16 attorney Michael Kimmel would eventually fill that role. While Todd had been sole Trustee of
17 the Issue Trust since its creation, Sam controlled the Issue Trust until his untimely death.
18 Following Sam's passing, the Trustees also found themselves in the unfortunate position of being
19 left in charge of an Estate that was more than \$30 million in debt. However, the circumstances
20 that led to the Issue Trust and Family Trust financial positions began long before Sam's death.
21 These pre-death agreements and decisions made by Sam are not the subject of this litigation and
22 are beyond the jurisdiction of this Court. Whether the living agree or disagree with Sam's wishes,
23 the actions he took to protect his sons and the Co-Trustees during his lifetime are beyond reproach.
24
25
26

1 Similarly, the actions taken by the Trustees that conform with Sam's intent should
2 uniformly be ratified. The details of what happened during the six (6) years following Sam's death
3 have been agonizingly detailed for this Court—and will be detailed once more in this brief.
4 However, what is undeniable is that the Trustees creatively and tirelessly worked, with the help of
5 trained professionals, to pull the Family Trust and Issue Trust out of debt and ensure that Sam's
6 intended legacy would continue. The Trustees provided full complete and proper accountings and
7 disclosures that comply with the Nevada Revised Statutes, and all potential accounting and
8 disclosure standards required under Nevada law. For the major actions taken on behalf of the
9 Trusts, the Trustees sought and received signed, written consents from the appropriate
10 beneficiaries which not only provided detailed information of the proposed actions, but also an
11 opportunity to object. Additionally, not one of the Trustees has received a personal benefit that
12 did not comport with the terms of Trust Agreements and Sam's intent (i.e. Todd and Stan received
13 benefits as beneficiaries). The Trustees have served as Trustees at the bequest of Sam and have
14 never engaged in conduct warranting removal. Finally, the Trustees have abided by the terms of
15 the Trusts and properly received trustee fees, at a rate significantly below standard and institutional
16 rates, and appropriately utilized Trust funds to defend against these claims.
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20 Based on the above, Petitioners request that this Court: (1) settle and approve the Issue
21 Trust accountings; (2) settle and approve the Family Trust accountings; (3) ratify and approve the
22 validity of the Agreement and Consent to Proposed Actions ("ACPAs"); (4) find that Wendy
23 violated the no-contest provision of both the Issue Trust and Family Trust Agreements; (5) find
24 that Petitioners have not violated the no contest clause; (6) find that Wendy's claims for unjust
25 enrichment and constructive trust cannot be substantiated; (7) confirm the appointment of Todd as
26

1 Trustee of the Issue Trust; (8) confirm the appointment of Todd and Mr. Kimmel as Trustees of
2 the Family Trust; (9) deny Wendy's claim for disgorgement of Trustees' fees; (10) ratify the use
3 of Trust assets in the defense of this matter; and (11) determine that an award of attorneys' fees
4 for either side is premature.

5 6 II. LEGAL ANALYSIS

7 A. The Jury's Verdict and the Seventh Amendment.

8 The Seventh Amendment provides that "no fact tried by a jury shall be otherwise re-
9 examined in any Court of the United States, than according to the rules of the common law." U.S.
10 Const. amend. VII. The Nevada Supreme Court has recognized that Nevada courts are bound by
11 the Seventh Amendment. See *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev.
12 1102, 1111-12, 197 P.3d 1032, 1038 (2008). "It would be a violation of the Seventh Amendment
13 right to jury trial for the court to disregard a jury's finding of fact." *Acosta v. City of Costa Mesa*,
14 718 F.3d 800, 828-29 (9th Cir. 2013) (citing *Floyd v. Laws*, 929 F.2d 1390, 1397 (9th Cir. 1991)).
15 "Thus, in a case where legal claims are tried by a jury and equitable claims are tried by a judge,
16 and the claims are 'based on the same facts,' in deciding the equitable claims 'the Seventh
17 Amendment requires the trial judge to follow the jury's implicit or explicit factual
18 determinations.'" *Id.* (citing *L.A. Police Fairchild Indus.*, 885 F.2d 498, 507 (9th Cir. 1989)); see
19 also *SEC v. Capital Sols. Monthly Income Fund, LP*, 818 F.3d 346, 354 (8th Cir. 2016) (The Court
20 "may take into account facts that were not determined by the jury, but it may not base its decision
21 on factual findings that conflict with the jury's findings.").

22 As stipulated by the parties, the factual basis for the equitable claims is the same as those
23 for the legal claims already tried before the jury. As such, this Court is required to follow both the
24

1 *implicit* and explicit factual findings of the jury in deciding the equitable claims. *Acosta*, 718 F.3d
2 at 828-29. According to the Trial Schedule issued by this Court, the legal claims tried before the
3 jury were as follows: (1) breach of fiduciary duties; (2) civil conspiracy and aiding and abetting;
4 (3) aiding and abetting breaches of fiduciary duty; and (4) fraud. *See* Pre-Trial Order Regarding
5 Trial Schedule, pp. 3-4. However, throughout the jury trial, the majority of the equitable claims
6 currently pending before this Court were also argued at length and both implicit and explicit factual
7 determinations were made. Such factual determinations must be honored by this Court.

8
9 First, during the jury trial, Wendy made arguments regarding the sufficiency of the
10 accountings and the validity of the ACPAs. *See* Section II.B. *infra*; *see also* Section II.D. *infra*.
11 Second, Wendy argued extensively that the Trustees breached their fiduciary duty to fully disclose
12 all material information, duty to fully account, and duty not to self-deal. *See* Trial Transcript, Feb.
13 20 at 153:10-15; Trial Transcript, Mar. 4, 2019 at 22:23-23:4; Exhibit 5, Amended Petition at ¶¶
14 35, 51, 62. Third, Wendy argued fraud, including elements of intentional false representation,
15 intent to induce Wendy's reliance on this falsity, and Wendy's unawareness of the alleged falsity.
16 *See* Jury Instruction No. 23. The jury made specific findings that Mr. Kimmel and Mr. Riley did
17 not breach any of their fiduciary duties as trustees, nor did they engage in any fraud,
18 misrepresentation, or conspiracy. *See* Verdict. The jury also found that neither Mr. Kimmel nor
19 Mr. Riley had engaged in any wrongdoing as individuals. *Id.* Thus, any finding which contradicts
20 the findings of the jury would be made in violation of Mr. Kimmel and Mr. Riley's Seventh
21 Amendment rights.

22 Wendy made all of these arguments against Todd as Trustee as well. The jury found an
23 insignificant *and unspecified* breach of Todd's fiduciary duties for which they awarded Wendy
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1 fifteen thousand dollars (\$15,000). It is unknown what duty the jury believed Todd to have
2 breached, however, any further damages award stemming from a breach of fiduciary duty would
3 violate Todd's Seventh Amendment rights and provide Wendy with double recovery. *See* Verdict.
4 Additionally, as neither Mr. Kimmel, Mr. Riley, or Stan were found to have breached their
5 fiduciary duties, any finding of breach by Todd for actions taken as a Co-Trustee of the Family
6 Trust (of which Mr. Kimmel, Mr. Riley, or Stan would have necessarily agreed to) would per se
7 contradict the jury's finding that none of Mr. Kimmel, Mr. Riley, or Stan had breached their
8 fiduciary duties.
9

10 **B. Wendy's "Failure to Disclose and Adequately Account" Claim Has Already Been**
11 **Decided by the Jury.**

12 Wendy's claim for breach of fiduciary duty, including the purported failure to disclose and
13 account, has already been decided by the jury and Wendy has been compensated. This claim
14 should therefore be dismissed. Among the duties typically owed by a trustee (and which form the
15 bases for a claim of breach of fiduciary duty) are the duty to administer the trust solely in the
16 interest of the beneficiaries, the duty to disclose material facts, the duty to keep and render accurate
17 records and accounts of the administration of the trust, and the duty to preserve the trust's property.
18 *See* Restatement (Third) of Trusts 6 15 Intro. Note; §§ 83, 84 (2007); NRS Chapter 164.
19

20 There does not exist a separate cause of action for "failure to disclose" or "failure to
21 account" to a beneficiary. *See gen.* NRS Chapter 163-165. Rather, a factual allegation based on
22 the failure of a Trustee or Co-Trustees to properly disclose information and account stems from,
23 and is properly pleaded as, a breach of fiduciary duty. Stated another way, a beneficiary cannot
24 raise separate causes of action for self-dealing, lack of loyalty, lack of impartiality, bias, *and* failure
25 to fully disclose. Each of these allegations is a theory upon which a breach of fiduciary duty claim
26

1 is rooted. *Landau v. Landau*, 230 So. 3d 127, 129 (Fla. Dist. Ct. App. 2017) (“failure to file timely
2 and accurate annual accountings with the beneficiaries was a breach of his duty to the
3 beneficiaries”); *In re Riddle*, 946 N.E.2d 61 (Ind. Ct. App. 2011) (“Trustee of testamentary trust
4 breached her fiduciary duty to beneficiary and beneficiary’s guardian by failing to deliver written
5 accounting statement and to keep complete and accurate records. . .”); *see also O’Riley v. U.S.*
6 *Bank, N.A.*, 412 S.W.3d 400, 407-418 (Mo. Ct. App. 2013).

8 Here, Wendy’s failure to account and lack of full disclosure claim was heard and decided
9 by the jury in the context of a breach of fiduciary duty. *See* Trial Transcript Mar. 4, 2019 at 8:9-
10 9:6; 12:13-22; 19:9-11; *see also* Jury Instruction Nos. 4, 9, 14, 27 (all noting the duty of disclosure
11 in the context of a breach of fiduciary duty, including clear and accurate accounts). Wendy
12 conceded as much during closing when counsel stated “[i]n short, the accountings are a joke and
13 they do not represent full disclosure. They are direct evidence of *breach of fiduciary duty*.” Trial
14 Transcript Mar. 4, 2019 at 19:9-11 (emphasis added). Moreover, as this issue was argued to the
15 jury, a finding that the accountings were insufficient, and thus amounted to a breach of fiduciary
16 duty, contradicts the jury’s findings that Mr. Kimmel, Mr. Riley, and Stan did not breach their
17 fiduciary duties as they were responsible for approving and verifying the Family Trust
18 accountings. As Wendy’s claim for failure to account is merely a claim for breach of fiduciary
19 duty in disguise, it was heard, decided, and compensated by the jury. It is therefore not properly
20 before the Court at this time and a decision on this issue invades the province of the jury.

23 **C. All Trust Accountings and Disclosures Complied with Nevada Law and Should be**
24 **Approved.**

25 Pending before the Court is a request for approval of the trust accountings by Todd, as sole
26 Trustee of the Issue Trust, and Todd and Mr. Kimmel, as Co-Trustees of the Family Trust. *See*

1 Exhibits 3, 4. Relatedly before the Court is also Wendy's claim for failure to disclose and
2 "Adequately Account." See Exh. 5 at p. 22. In her Amended Petition, Wendy cites to NRS
3 165.135, and alleges that the Trust Accountings cited in Petitioners' Petitions for Confirmation
4 "do not satisfy the statutory requirements." See *id.* at ¶¶ 67, 68. She further alleges that "[t]he
5 Trustees should be compelled to prepare and file accountings for each Trust that comply with the
6 statute and provide Wendy and the other beneficiaries a *full understanding* of the assets and
7 administration of the Trusts." *Id.* at ¶ 70 (emphasis added). At trial, Wendy's allegations related
8 to failure to account rested upon a purported failure to "fully account" based on "hyphens" instead
9 of values as to select entities/assets held by the Family Trust and Issue Trust. Based on the above,
10 there are three issues before the Court as to the accountings/disclosure: (1) whether the accountings
11 comply with the statutory requirements of NRS 165.135; (2) whether there is a requirement that
12 Wendy have a full and/or fair understanding of the Trusts assets and, if so, whether this standard
13 was met; and (3) the effect of the "hyphens" on full disclosure.

14
15
16 i. All accounts comply with Nevada law and should be approved.

17 This is a case in which the documents speak for themselves. NRS 165.135(1) provides that
18 a Trust accounting must include:

- 19 (a) A statement indicating the accounting period;
20 (b) With respect to the trust principal:
21 (1) The trust principal held at the beginning of the accounting period, and
22 in what form held, and the approximate market value thereof at the beginning of
23 the accounting period;
24 (2) Additions to the trust principal during the accounting period, with the
25 dates and sources of acquisition;
26 (3) Investments collected, sold or charged off during the accounting
period;
(4) Investments made during the accounting period, with the date, source
and cost of each investment;

1 (5) Any deductions from the trust principal during the accounting period,
2 with the date and purpose of each deduction; and

3 (6) The trust principal, invested or uninvested, on hand at the end of the
4 accounting period, reflecting the approximate market value thereof at that time;

5 (c) With respect to trust income, the trust income:

6 (1) On hand at the beginning of the accounting period, and in what form
7 held;

8 (2) Received during the accounting period, when and from what source;

9 (3) Paid out during the accounting period, when, to whom and for what
10 purpose; and

11 (4) On hand at the end of the accounting period and how invested;

12 (d) A statement of unpaid claims with the reason for failure to pay them; and

13 (e) A brief summary of the account, which must include:

14 (1) The beginning value of the trust estate:

15 (I) For the first accounting, the beginning value of the trust estate shall
16 consist of the total of all original assets contained in the beginning inventory.

17 (II) For accountings other than the first account, the beginning value
18 of the trust estate for the applicable accounting period must be the ending value of
19 the prior accounting.

20 (2) The total of all receipts received during the accounting period,
21 excluding capital items.

22 (3) The total of all gains on sales or other disposition of assets, if any,
23 during the accounting period.

24 (4) The total of disbursements and distributions during the accounting
25 period.

26 (5) The total of all losses on sales or other disposition of assets, if any,
during the accounting period.

(6) The total value of the trust assets remaining on hand at the end of the
accounting period.

However, NRS 165.135 goes on to allow an accounting to "instead consist of" a "statement
indicating the accounting period and a financial report, which must consist of a compilation or
financial statement of the trust prepared by a certified public accountant and include summaries of
the information required by subsection 1." NRS 165.135(4)(a)

In this case, Wendy received financial statements in accordance with NRS 165.135(4)(a) –
i.e. financial statements prepared by a certified public accountant ("CPA") that included
summaries of the information required by NRS 165.135(1). For the Issue Trust, every financial

1 statement follows a similar format: (1) the accounting time period; (2) summary of the account(s)
2 including additions, deductions and assets on hand; (3) summary of assets on hand (sometimes
3 referred to as initial inventory) at the beginning of the accounting period generally broken down
4 into cash, notes, real estate, and business interests; (4) summary of income receipts (sometimes
5 called gains) broken into entity and amount; (5) summary of payment of debts and losses; (6)
6 summary of expenses; (7) summary of investment activity and non-cash transactions; (8) statement
7 of unpaid claims; and (9) summary of assets at the end of the accounting period. *See* Exhibits 129,
8 130, 131, 132, 133, Issue Trust Financial Statements. As each financial year was expectedly and
9 justifiably different, each financial statement contained slightly different and/or additional
10 information as needed to explain the financial activities of the Issue Trust. *Id.*

11
12 Similarly, the Family Trust financial statements included all of the categories noted above,
13 but, due to the increased complexity of the Family Trust assets, included extensively more detail
14 as to the financial activities and transactions of the Trust. *See* Exhibits 72, 73, 74, 126, 180, Family
15 Trust Financial Statements. For example, the Family Trust accountings also broke down some of
16 the more complex notes and obligations and provided explanation as to these transactions, as well
17 as provided summaries of major loans/accounts. *See e.g.*, Exh. 74, pp. 4-5, 32-54. In fact, despite
18 the fact that the Family Trust accountings were financial statements with summaries under NRS
19 165.135(4)(a), the level of detail of these statements provides sufficient detail that the accountings
20 would arguably comply with the plain requirements of NRS 165.135(1).
21

22
23 On their face, it is unrefuted that both the Issue Trust and Family Trust financial statements
24 provided to Wendy complied with the accounting requirements under NRS 165.135 and should be
25 approved. However, in the event the Court is not persuaded by the accountings themselves,
26

1 Wendy's own expert testified that she was provided accountings that "complied with the form and
2 contents required under" Nevada law. *See* Depo. of Frank Campagna, CPA, 37:14-38:1, attached
3 as **Exhibit 1**. Mr. Riley further testified during his deposition that, while not an attorney, he
4 produced formal accountings that complied with the Nevada Revised States. *See* Depo. of Kevin
5 Riley, CPA, Vol. III 490:22-24, attached as **Exhibit 2**. In sum, the overwhelming and unrefuted
6 evidence demonstrates that both the Issue Trust and Family Trust financial statements complied
7 with NRS 165.135 and Wendy's assertions otherwise are unfounded. Accordingly, the
8 accountings should be approved in their entirety.¹

- 10 ii. There is no "full" or "fair" disclosure requirement under Nevada law and to the
11 extent there is an implied requirement, it has been met.

12 Throughout these proceedings, Wendy has asserted that she has not received a "full"
13 accounting of the Issue Trust and Family Trust. Further, the Court has indicated it has concerns
14 related to whether a "fair disclosure" was made to Wendy through the Trust accountings. *See* Trial
15 Transcript, May 13, 2019 at 41:17-42:20. An extensive review of Nevada law reveals no standard
16 or authority to support a claim for breach of fiduciary duty on the basis that the beneficiary does
17 not have a "full understanding" or "fair disclosure" as to formal accountings. While there is the
18 statutory requirement to account under NRS 164.135, no additional obligation exists. The
19 accountings should therefore be approved as they comply with Nevada law in all regards. To hold
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24 ¹Despite Wendy's attempts to confuse the matter at trial, neither Todd nor any other Co-Trustee is required
25 to certify the accuracy of an accounting prepared by a CPA. *See* NRS Chapter 165. While the Trustees can and do
26 verify that the information provided to the accountants is correct, it is the accountant that prepares the accountings,
and the Trustees are entitled to rely on them and their accuracy. Any verification by Todd or the other Co-Trustee as
to the Petitions is a verification that the information in the Petition is accurate to the best of their knowledge. As these
steps occurred here, there has been no breach of fiduciary duty as to accounting.

1 otherwise would be unreasonably subjective and places an impossible burden on the Trustees to
2 determine the extent of a beneficiaries understanding.

3 Further, to the extent Wendy or the Court undertake to create a standard by which
4 Petitioners should have met, Petitioners submit they have met their burden under all commonly
5 known standards. For example, the Uniform Trust Act ("UTA"), of which Nevada has adopted in
6 part, employs a relaxed requirement for the format of the account, and does not require it to be
7 "prepared in any particular format or with a high degree of formality." UTA, § 813(c), cmt. Under
8 the Third Restatement, a trustee has an obligation to inform the beneficiaries "about other
9 significant developments concerning the trust and its administration, particularly material
10 information needed by beneficiaries for the protection of their interests." Restatement (Third) of
11 Trusts, § 82(1)(c). This rule "does not impose a regular or routine requirement of reporting or
12 accounting," *id.* at cmt. D, rather, it merely requires the trustee to inform the beneficiaries "of
13 important developments and information that appear reasonably necessary for the beneficiaries to
14 be aware of in order to protect their interests." *Id.*

15 In this case, the Trustee and Co-Trustees provided annual financial statements including
16 every transaction each Trust engaged in that year with dates, values, and summaries meeting the
17 requirements of NRS 164.135. They also made themselves, and their hired professionals
18 (including the CPA who prepared the accountings and the attorneys who drafted the key
19 disclosures -- i.e. the ACPAs), available to Wendy at all times so she could ask any questions she
20 could have had related to the accountings or trust dealings. *See* Exhibit 19A, Wendy, McQuaid
21 email string; Exhibit 57, Email string Riley, Wendy, Stan, Todd, Lexi; Exhibits 85, 86,
22 Riley/Wendy emails; Exhibits 167-69, Riley/Wendy email string; Exhibits 185, 188, Ltrs. from
23
24
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1 LeGoy; Trial Transcript Feb. 19, 2019 at 213:3-15. Furthermore, as related to major transactions
2 undertaken by the Trusts, the Trustees specifically sought signed written consent from the
3 beneficiaries, including Wendy, so as to properly inform them of their interests and provide them
4 the opportunity to object. *See* Exhibits 14-23, ACPAs. As described more fully below, the
5 undisputed evidence reveals that Wendy took advantage of the expert advice provided to her and
6 that she voluntarily signed the ACPAs. Thus, while she now claims a “lack of understanding” as
7 to the accountings and ACPA, the Trustees cannot be held responsible for Wendy’s subjective
8 understanding or ability to now claim a lack of understanding in light of litigation. Rather, the
9 Trustees have complied with every commonly accepted standard related to accountings and
10 disclosure and they respectfully request that the accountings be approved in their entirety.
11

12 Lastly, Petitioners address the Court’s concern that Wendy may not have had fair
13 disclosure because she purportedly learned, for the first time on the witness stand, that she was to
14 receive \$4 million. *See* Trial Transcript, May 13, 2019 at 42:1-12. First, aside from opposing
15 counsel’s comments, there is no evidence the witness stand was the first time Wendy learned this
16 information. Second, during her deposition, Wendy testified that she believed she would
17 eventually get a cash distribution from the Family Trust, to be held in trust for her lifetime. *See*
18 Depo. Of Wendy at Vol. V 1181:12-18, attached as **Exhibit 3**. While there was no discussion as
19 to the amount she was to receive, Wendy was aware (based upon her discussions with Kevin Riley
20 on the accountings) that she would ultimately receive a cash distribution once the estate was settled.
21 *Id.* Additionally, Wendy has a *beneficial interest* in various entities worth approximately \$4
22 million. This calculation includes her beneficial interest in (1) the Family Trust, as demonstrated
23 through the accountings (\$1,000,000); (2) Bright Holland, as communicated to her through Kevin
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1 and Todd (\$350,000); (3) Jackrabbit Properties, directly distributed to Wendy's subtrust
2 (\$850,000); (4) cash to date directly received by Wendy (\$631,000); and (5) Jaksick Family, LLC,
3 (approximately \$900,000). However, Jaksick Family, LLC, is solely controlled by Stan and the
4 Family Trust only has a 1% interest in this asset and thus it is not reflected in those accountings.
5 In sum, Wendy's beneficial interest in these entities is based on fluctuating real property values
6 and there remains no assertion that Wendy is to be provided with \$4 million outright, but only that
7 the speculative valuation of her beneficial interest was this amount estimated before the time of
8 trial.
9

10 iii. The hyphens represented negative values for non-income producing assets and
11 there has been no evidence that the hyphens impacted Wendy's understanding
12 of Trust property.

13 The "hyphens" utilized in the accountings did not prevent Wendy from having fair
14 disclosure of Trust assets. As stated above, there is no *legal* requirement under the laws of the state
15 of Nevada for Wendy to have a full understanding of the Trust assets, nor is there a calculable
16 standard for "fair disclosure" of which the Trustees were supposed to meet. However, even
17 assuming there was, the hyphens did not impact the disclosure of Trust assets as the accountings
18 were highly detailed and explained to Wendy on numerous occasions. Thus, the Trustees complied
19 with their fiduciary duties as to disclosure and accounting.
20

21 It is undisputed that the hyphens represented negative, non-income producing assets. *See*
22 Trial Transcript, Feb. 15, 2019 at 44:2-3; Trial Transcript, Mar. 4, 2019 at 104:24-1052. When
23 questioned as to why there were hyphens, as opposed to negative values, in the accountings, Todd
24 testified at trial:
25

26 Because the debt that was on the property was more than the value of the
land at the time of this, and we did have meetings — sit-down meetings, Kevin

1 Riley would come to Reno and we would go through each one of these entities and
2 do explanations as to how this transpired, but that — each one of those that you'll
3 see down that there that's a hyphen, it's what Kevin Riley said in his — has told us
4 previously, that that's what the purpose was because those debts outweighed the
5 value of the land so it shows like a zero value.

6 Trial Transcript, Feb. 21, 2019 at 88:1-10. This was confirmed during the deposition of Mr. Riley,
7 who verified that such hyphens were not only in compliance with generally accepted principles of
8 accounting but were in compliance with the Nevada Revised Statutes. See Depo. of Kevin Riley,
9 Vol. III 508:1-513:19; 543:10-13, attached as **Exhibit 4**. In addition, there was extensive testimony
10 that Wendy, along with the other beneficiaries, was provided “open door” access to Mr. Riley
11 whereby he went through the financial statements and answered any questions the beneficiaries
12 had or may have had. *Id.* at 515:4-14. To the extent Wendy had questions or concerns as to the
13 hyphens, or any other aspect of the financial statements, she was given ample opportunity by the
14 Trustees to ask questions and become even more informed than she already was via the
15 accountings themselves. See *Mendoza v. Gonzales*, 2009 WY 50, 204 P.3d 995 (Wyo. 2009)
16 (holding that trustee did not breach fiduciary duty to inform and report because beneficiaries failed
17 to identify any fact that trustee deliberately or wrongfully hid and failed to show how knowledge
18 of specific additional facts would have affected their decision to consent to transfer of certain trust
19 property to trustee and to waive all interest therein).

20
21 In addition, as discussed during the jury trial, Wendy has waived the right to challenge the
22 accountings at issue by failing to object with 180 days of receipt of the accounting. The express
23 language of the Trust Agreement provides that “unless any person to whom an accounting is
24 required to be rendered delivers a written objection to the Trustee within 180 days after receipt of
25 the accounting, the accounting is to be final and conclusive with respect to all transactions
26

1 disclosed in the accounting . . .” After expiration of the 180-day period, the “Trustee is no longer
2 [to] be liable to any beneficiary of the trust . . . with respect to all transactions disclosed in the
3 accounting, except for the Trustee’s intentional wrongdoing or fraud.”). See Exhibit 13, Article
4 IV, Section J, p. 26; Exhibit 10, Article IV, Section J, p. 13. Wendy did not object within 180 days
5 and the jury found that none of the Trustees engaged in intentional wrongdoing or fraud. See
6 Verdict. Merely because Wendy elected to hire counsel and sue the Trustees does not give her
7 standing to challenge accountings that have been consented to through failure to object in a timely
8 manner.
9

10 Finally, to the extent the hyphens somehow impacted Wendy’s understanding of the Trusts’
11 assets, there are no damages. Even assuming Petitioners violated their duty to account by not
12 placing negative values (assuming these were calculable) in the accountings, Wendy has suffered
13 no damages as a result. She has failed to demonstrate she would have proceeded differently with
14 “full” disclosure and instead leaves Petitioners and this Court to guess as to how we would be in a
15 different position than we are now with this information. Lastly, even assuming there was a breach
16 of the duty to account, such a breach was compensated by the jury in the amount of \$15,000.
17

18 **D. The Validity of the ACPAs Were Confirmed by the Jury and Should Similarly be**
19 **Confirmed by this Court.**

20 Under NRS 164.725(4), Trustees *may*, but are not required, to provide notice of proposed
21 actions to beneficiaries. The purpose of the notice of proposed action statute is to provide
22 beneficiaries with notice and an opportunity to object to the proposed action before the action is
23 taken. See NRS 164.725(5). It therefore follows that notice “need not be provided to a person *who*
24 *consents in writing* to the proposed action” as notice and the opportunity to object have been
25 properly provided. See NRS 164.725(3) (emphasis added).
26

1 The ACPAs were written consents, signed by Wendy, Stan, and Todd, and Lexi to
2 proposed actions taken by the Co-Trustees. *See gen.* Exhibits 14-23, ACPAs. Wendy's initial
3 contention in this case was that her signature had been forged or that she had otherwise never seen
4 the ACPAs that she signed. *See Depo. of Wendy*, Vol. II 277:17-19 :3-18; 302:15-304:3; 326:1-6;
5 344:14-345:18, attached as **Exhibit 5**. However, during trial Wendy largely conceded that her
6 signature appeared on the ACPAs but that she was unaware and uninformed of what she was
7 reading, and that her signature was on "orphan pages" and *could have been* attached to other
8 documents. *See Trial Transcript*, Feb. 26, 2019 at pp. 53:2-5; 54:10-18; 76:7-78:5; 79:7-17. First,
9 the expert report of the handwriting expert, James Green, verifies that Wendy herself signed the
10 ACPs, which was likely the catalyst leading to Wendy's inconsistent testimony that her signature
11 had not been forged and therefore a new theory at trial. *See Exhibit 220 at 27-28*, Report of James
12 Green. Second, this Court must presume that Wendy knows and has read the content of the
13 contracts she signs. *Campanelli v. Conservas Altamira, S.A.*, 86 Nev 838, 841, 477 P.2d 870, 872
14 (1970). It is unfathomable that Wendy is attempting to hold the Trustees responsible for her lack
15 of understanding of documents which she signs. As stated during trial, Wendy has significant
16 business acumen and her contention that she did not understand the content of the ACPAs does
17 not negate their validity.

18
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21 There were ten (10) ACPAs in total, however, only two (2) ACPAs have truly been at issue
22 throughout this case – the Life Insurance ACPA and the Bronco Billy's ACPA. The idea behind
23 the Life Insurance ACPA was spearheaded by Mr. Riley, as a means to pay down debt and allow
24 the trust to maintain the Tahoe House as an asset for use of the Issue Trust beneficiaries. This
25 ACPA was prepared by Bob LeGoy and Brian McQuaid in June of 2013 to authorize the use of
26

1 the Issue Trust life insurance funds to purchase 54% of Incline TSS (which held the entirety of the
2 Tahoe House), the value of which was based on a neutral appraisal by William Kimmel. *See* Trial
3 Transcript, Feb. 25, 2019 77:8-22, 82:24-83:16; Exhibit 14 at ¶ E.2. This ACPA was finalized by
4 Brian McQuaid on June 4, 2013 and was signed by all three siblings the next day. *See* Exhibit
5 23.24, Texts between Todd, Stan, and Wendy; Exhibit 204, Todd and McQuaid emails. Similarly,
6 the Bronco Billy's ACPA was drafted by Bob LeGoy and Brian McQuaid approximately one
7 month after the Life Insurance ACPA, in July 2013. *See* Exhibit 15.

9 As noted by this Court, it is undeniable that the jury considered the validity of the ACPAs
10 and that the resulting verdict verifies their validity. *See* Trial Transcript, May 13, 2019 41:5-6 (the
11 "ACPAs and indemnification agreements, they were an integral part of the trial"). Every witness
12 that testified, from Todd through Bob LeGoy, was questioned and offered testimony in relation to
13 their knowledge of the facts and circumstances, and at times opinions on, the ACPAs. *See gen.*
14 Trial Transcripts. In fact, Todd testified that he consulted with legal counsel as to the propriety of
15 documenting his actions taken as Trustee of the Issue Trust and that despite Mr. LeGoy informing
16 him that he was well within his powers as Trustee to take action without their consent, the Trustees
17 sought a way to document the beneficiaries' agreement through the ACPAs. *See* Trial Transcript,
18 Feb. 19, 2019 at 194:14-195:18; Exhibit 255, Email dated 5/30/13 from Bob LeGoy.

21 Seven of the ten ACPAs, including the Life Insurance and Bronco Billy's, were prepared
22 and approved by Maupin Cox & LeGoy, including the "orphan signature pages" that Wendy has
23 taken such dramatic issue with. Wendy attempted to cast doubt on the validity of the ACPAs,
24 however there is no evidence demonstrating that the ACPAs at issue were different from those
25 completed by Maupin, Cox & LeGoy. While not required, the Trustees specifically sought and
26

1 received Wendy's written consent to their proposed actions. Wendy has produced no credible
2 evidence, or legal basis, upon which to dispute the validity of the ACPAs and the Trustees request
3 that this Court abide by the implicit verdict of the jury and affirm their validity.

4 **E. The Co-Trustees are Entitled to Declaratory Judgment Based on the No Contest**
5 **Provision in the Family Trust and Issue Trust.**

6 Both the Family Trust and Issue Trust contain no contest provisions that prohibit contests
7 as to the validity of the Trust Agreements. See Exhibit 9, Article VIII, Section O, p. 52 of the
8 Family Trust; Exhibit 10, Article VIII, Section O, p. 36 of the Issue Trust. No-contest clauses
9 exist to "protect estates from costly and time-consuming litigation and minimize the bickering over
10 the competence and capacity of testators, and the various amounts bequeathed." *Matter of W.N.*
11 *Connell & Marjorie T. Connell Living Tr., dated May 18, 1972*, 134 Nev. Adv. Op. 73, 426 P.3d
12 599, 602 (2018) (quoting *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722, 725-26
13 (2006)). If triggered, a no-contest clause generally "must be enforced by the court." NRS
14 163.00195(1).
15

16 Wendy has violated the intent of Samuel Jaksick by commencing the underlying litigation,
17 depriving her of any beneficial interest in both the Family Trust and Issue Trust. NRS
18 163.00195(1) and (2); *Hannam v. Brown*, 114 Nev. 350, 356, 956 P.2d 794, 798 (1998) ("This
19 court has historically construed trusts in a manner effecting the apparent intent of the settlor.").
20 As such, the Trustees are entitled to declaratory judgment.
21

22 **F. Petitioners Have Not Violated the No Contest Provision.**
23

24 Wendy claims that because Todd and Mr. Kimmel, as Co-Trustees of the Family Trust,
25 and Todd as Trustee of the Issue Trust, filed their Petitions for Approval of Accountings and
26 ACPAs as to each respective trust, that both of them violated the no-contest provisions of the

1 Family Trust and the Issue Trust and that they have violated the Exemption and Immunity
2 provision of the Family Trust. This argument has no merit. There is no logical way to construe
3 the filing of these initial petitions for instruction as either (1) challenging the validity of the trusts;
4 or (2) initiating an action against Wendy. In doing so the Trustees properly complied with Nevada
5 law. *See* NRS 164.030. Wendy's request for declaratory judgement must be denied.
6

7 **G. The Co-Trustees Were Not Unjustly Enriched.**

8 Wendy's Amended Petition asserts that a claim for unjust enrichment based on the
9 "breaches of fiduciary duty, the misapplication of property of the Trusts, the creation and reliance
10 on invalid Purported Indemnification and other invalid documents" Exh. 5 at ¶ 93.
11 "[M]isapplication of property of the Trusts" and "reliance on . . . invalid documents" are not stand-
12 alone claims but are instead facts, that if proven true, would support a claim for breach of fiduciary
13 duty. As Wendy has already recovered for her breach of fiduciary duty claim through the jury's
14 award of \$15,000, *see* Verdict, awarding additional damages for "unjust enrichment" would result
15 in an improper double recovery. *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 444, 245
16 P.3d 547, 549 (2010) ("a plaintiff can recover only once for a single injury even if the plaintiff
17 asserts multiple legal theories").
18

19 In addition, unjust enrichment requires that the plaintiff confer upon the defendant a benefit
20 which in equity and good conscience belongs to another. *Certified Fire Prot. Inc. v. Precision*
21 *Constr.*, 128 Nev. 371, 381, 283 P.3d 250 (2012); *Leasepartners Corp. v. Robert L. Brooks Trust*
22 *Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997). The plaintiff must directly
23 confer said benefit upon the defendant, and the defendant must be the one who actually receives
24 the benefit. *Certified Fire Prot. Inc.*, 128 Nev. at 381, 283 P.3d at 257; *Schmidt v. Ford Motor*
25
26

1 Co., 972 F. Supp. 2d 712, 721-22 (E.D. Pa. 2013) (“The ‘benefit’ must be conferred by the plaintiff
2 directly–indirect benefits bestowed by third parties will not support a claim for unjust
3 enrichment.”); *see also Dzielak v. Whirlpool Corp.*, 26 F. Supp. 3d 304, 330-31 (D.N.J. 2014)
4 (dismissing a claim for unjust enrichment because the benefit was not conferred directly on the
5 defendant, but on an intermediary party).
6

7 It is undisputed that at no point has Wendy *herself* conferred a benefit upon any of the
8 Trustees. A transfer from the Family Trust and/or Issue Trust is not a transfer from Wendy to a
9 Trustee. As related to Mr. Kimmel and Mr. Riley, the evidence irrefutably demonstrates that
10 neither has, directly or indirectly, benefited from Trust actions. As related to Todd in his capacity
11 as Trustee, any purported benefits he received were not to him as a Trustee, but to entities he is
12 indirectly involved with as a beneficiary, not as a Trustee. Additionally, the benefiting entities
13 belonging to Todd and Stan are those that conducted business with Sam on a daily basis prior to
14 his passing. Sam recognized this and, again refusing to use boilerplate Trust language, granted his
15 sons the ability to continue this work after his passing. *See* Exh. 9 Article IV, Section K.2, p. 28
16 (“This power specifically includes, but is not limited to, the power to invest in and contribute
17 property to limited partnerships, limited liability companies, and other forms of legal entities
18 administered or managed *by the Trustee or an affiliate* of the Trustee.”) (emphasis added). As
19 such, Wendy’s claim for unjust enrichment cannot be substantiated.
20
21

22 Moreover, it is unclear *what benefit* the Trustees have purportedly received that belongs
23 to Wendy (or any of the beneficiaries). In her Amended Petition, Wendy asserts that “paying down
24 the Tahoe Property debt only benefits Todd and his family while harming Stanley and Wendy
25 [who] . . . lost the benefit and use of the \$6 million in life insurance proceeds.” *See* Exh. 5 at ¶ 40-
26

1 41. Wendy conveniently omits the fact that the Issue Trust received a 54% interest in the Tahoe
2 Property. She similarly alleges that Todd and Stan improperly kept her interest from the Bronco
3 Billy's sale. *Id.* at ¶ 49-52. Not once through the course of a ten-day trial did Wendy clarify if
4 these were the only benefits allegedly received by the Trustees. Rather, during closing, Wendy's
5 counsel confused the matter further by stating only that the "ACPA's were all designed to try and
6 exonerate and protect Todd from all of this *stuff that he was doing* to benefit himself – transactions
7 between himself, loans between the issue – him as trustee of the issue trust, with him as trustee of
8 the family trust." Trial Transcript, Mar. 4, 2019 at 20:12-16 (emphasis added). While the Trustees
9 are uncertain what "stuff" Todd was doing to benefit himself, they will attempt to take each
10 "allegation" in turn and demonstrate why Wendy's claim for unjust enrichment fails.
11

12 First, Todd did not receive a personal benefit, aside from the benefit each sibling received
13 as a beneficiary, from paying down the Tahoe House debt with the life insurance proceeds.
14 Beginning in 2006, with the implementation of the Restated Trust, Sam placed the Tahoe House
15 in the Family Trust. *See* Trial Transcript, Feb. 25, 2019 at 85:9-12. On December 5, 2011, **Sam**
16 transferred the property from the Family Trust to SSJ, LLC, a company wholly owned by Sam via
17 the Family Trust. *See* Exhibit 23.8, 12/5/12 Grant, Bargain, Sale Deed. On December 28, 2012,
18 **Sam** subsequently transferred the Tahoe House to Incline TSS, Ltd. ("Incline TSS"), an entity
19 controlled by Todd, as a means of asset protection and to avoid estate tax. *See* Exhibit 23.21,
20 12/28/12 Grant, Bargain, Sale Deed; Trial Transcript, Feb. 25, 2019 at 77:8-22, 94: 4-13 ("[Tahoe]
21 had to be out of Sam's ownership which was in his trust . . . [Sam] owned TSS.").

22 While the long-term intent of Sam was to have himself, Stan, and Todd control Incline TSS
23 jointly (hence the initials "TSS" standing for Todd, Stan, and Sam), Stan was going through a
24
25
26

1 contentious divorce at the time of formation, leading Sam to remove him from the entity for that
2 time. Trial Transcript, Feb. 19, 2019 at 113:1-6. Notably, when Stan's divorce ended in April of
3 2013, **Sam** gifted Stan 50% of Toiyabe, which owns lots in Montreaux, with significant value, so
4 that he could buy into Incline TSS. In sum, the ownership of Incline TSS, Ltd., and therefore the
5 ownership of the Tahoe House, was decided *by Sam*, pre-death. The validity of these transfers is
6 outside the reach of this Court and not subject to Wendy's baseless claims of unjust enrichment.
7

8 Following Sam's passing on April 21, 2013, Bank of America filed a creditor's claim in
9 relation to the Tahoe House for more than \$6.3 million. *See* Exhibit 258, Creditor Claim.
10 Additionally, there was a \$6 million life insurance policy, the beneficiary of which was the Issue
11 Trust. *See* Exhibit 417. In an ingenious maneuver to protect the Tahoe House from Sam's creditors,
12 including Bank of America, Todd, Stan, Pierre, and Mr. Riley devised a strategy whereby the Issue
13 Trust would purchase 54% of Incline TSS and the Issue Trust life insurance proceeds would be
14 used to pay down the debt on the Tahoe House. This did in fact occur on June 5, 2013. Both Wendy
15 and Stan signed valid and detailed ACPAs as to this procedure and, in a truly brilliant maneuver,
16 the Tahoe House was in fact preserved for the benefit of Sam's decedents. As a result of the Tahoe
17 transactions, not only was the home preserved for the benefit of the beneficiaries, but there was no
18 possible benefit to Todd as an individual as he has no personal interest in the Tahoe House, his
19 personal trusts have never received a dime from the insurance proceeds, and the Issue Trust itself
20 is a majority member of Incline TSS.
21

22 It is unclear to Petitioners what personal benefit Todd received throughout this process,
23 aside from the benefit of being a decedent of Sam and therefore being entitled to utilize the Tahoe
24 House. At the time of Sam's passing, Incline TSS, Ltd., the Company that owned the Tahoe
25 House.
26

1 House, was managed entirely by Todd. By transferring the Tahoe House to the Issue Trust, the
2 house was provided creditor protection *and* the management of the house remained the same as it
3 was pre-Sam's death. While Wendy has claimed that the life insurance proceeds were improperly
4 used to pay down over \$7.2 million in debt, to the benefit of Todd, the facts simply paint a different
5 story.
6

7 Second, as to the Bronco Billy's, the Family Trust owned stock in Pioneer Group, Inc.,
8 which owned a casino in Colorado known as "Bronco Billy's Casino." See Exhibit 90. In April
9 2013, Sam gifted 6% of the issued and outstanding stock in Pioneer Group to each of Todd and
10 Stan, leaving approximately 25% in Sam's name. See Exhibit 230; Trial Transcript Feb. 21, 2019
11 at 20:21-21:16; Trial Transcript, Feb. 25, 2019 at 186:10-22. It is undisputed that Sam did not gift
12 any Pioneer Group stock to Wendy, largely due to the fact that she could not obtain a gaming
13 license as a result of not paying taxes for many years. Trial Transcript Feb. 21, 2019 at 20:3-7.
14 The Second Amendment to the Family Trust provided that the remaining stock in Pioneer Group
15 be distributed equally between Todd, Stan, and Wendy. However, under Colorado law, persons
16 who do not hold gaming license could not own stock in a Colorado casino and thus, on Sam's
17 passing, the stock was owned in his name individually. Thus, on July 16, 2013, Todd, Stan,
18 Wendy, and Mr. Riley signed an ACPA, agreeing to alter the Family Trust's distributions because
19 it was believed that Wendy could not or would not obtain a gaming license. As a result, the
20 remaining Pioneer Group stock was distributed to two equal trusts for the benefit of Todd and Stan
21 only, with the expectation that that the two trusts would sell equalizing amounts of stock to a trust
22 for Wendy's benefit when and if she obtained a Colorado gaming license.
23
24

25 In May 2016, Pioneer Group sold Bronco Billy's Casino. The proceeds of the sale were
26

1 distributed into Todd and Stan's subtrusts as Wendy had never received, or even attempted to
2 receive, a Colorado gaming license. Shortly thereafter, by May 17, 2016, **Todd** transferred the
3 half of the proceeds he received into the Family Trust, as required by the pour over will as the
4 stock was owned in Sam's name individually at death, and upon the advice of Mr. Riley and
5 Maupin, Cox & LeGoy (note that Stan has yet to return approximately \$400,000 funds as required).
6 It is therefore once again unclear to Petitioners what benefit they/Todd received to which Wendy
7 was entitled. Undeniably Mr. Riley and Mr. Kimmel have not received a benefit from the Bronco
8 Billy's sale – in fact, Mr. Kimmel was not even made a Trustee until three years after the Bronco
9 Billy's ACPA was signed. As to Todd, he has not kept any proceeds from the Bronco Billy's sale
10 but has deposited all proceeds into the Family Trust, in conformance with Sam's estate plan, and
11 has attempted to balance the debts and proceeds to the extent possible between the siblings. *See*
12 Trial Transcript Feb. 21, 2019 at 26:3-18; 84:5-12. Additionally, all actions Todd took in relation
13 to the Bronco Billy's stock was done to protect Wendy, and the Family Trust, from losing its
14 interest in the casino due to Wendy not being licensed.²

15
16
17 In sum, the Trustees, particularly Todd, are at a loss as to what benefits they/he has received
18 that "in equity and good conscious" belong to Wendy. To the extent Wendy has made unfounded,
19 vague allegations, the Trustees believe those have been firmly refuted. Moreover, the jury
20 considered the facts underlying Wendy's claim for unjust enrichment and, based on the verdict,
21 did not believe unjust enrichment occurred. The Co-Trustees therefore respectfully request that
22
23
24

25
26
² Wendy alleged the Trustee have been unjustly enriched through sale of Bright Holland and the Wendy A. Jaksick 2012 BHC Family Trust. *See* Exh. 5 at ¶¶ 47-48. However, Mr. Riley was the sole Trustee of the BHC Trust, factual claims related to the BHC Trust and Bright Holland Sale were heard by the jury, and the jury unanimously determined that Mr. Riley had not breached his fiduciary duties or committed fraud. Wendy's claim therefore lacks merit.

1 Wendy's claim for unjust enrichment be denied.

2 **H. Imposition of a Constructive Trust Would Result in Double Recovery and Injustice.**

3 Wendy's claim for constructive trust is based on the same allegations as her claim for unjust
4 enrichment. Exh. 5 at ¶ 91-93. Like her unjust enrichment claim, Wendy seeks double recovery.
5 By receiving \$15,000 from the jury for breach of fiduciary duty, Wendy has recovered from any
6 allegedly suffered harm and to award additional damages and/or property rights would result in an
7 impermissible double recovery.
8

9 "A constructive trust is a remedial device by which the holder of legal title to property is
10 held to be a trustee of that property for the benefit of another who in good conscience is entitled to
11 it." *Locken v. Locken*, 98 Nev. 369, 372, 650 P.2d 803, 804-05 (1982). A constructive trust exists
12 where: "(1) a confidential relationship exists between the parties; (2) the retention of legal title by
13 the holder thereof against another would be inequitable; and (3) the existence of such a trust is
14 essential to the effectuation of justice." *Id.* at 372. As explained in detail above, none of Todd,
15 Mr. Kimmel, or Mr. Riley has inequitably held title to assets that belong to Wendy, and the
16 implementation of a constructive trust would prevent justice in this instance.
17

18 Further, even assuming this Court were to impose a constructive trust, the Court only has
19 jurisdiction to impose such a constructive trust over Trust assets, not over pre-death transfers made
20 by Sam Jaksick, or over interest not owned or maintained by the Trust. For example, Sam's
21 decision to give Todd sole control over the Tahoe House (via Incline TSS) as a result of Stan's
22 divorce was a lifetime decision made by Sam himself and cannot be subject to a constructive trust.
23 Similarly, if the Family Trust has a 49% interest in an entity, the remaining 51% of that interest is
24 outside the jurisdiction of the Court and thus cannot be subject to a constructive trust. Legal title
25
26

1 to these assets was determined by the settlor, and therefore by its definition the retention of such
2 property by a trustee/beneficiary cannot be inequitable. In sum, the Court has no jurisdiction over
3 lifetime decisions or assets not properly brought into this litigation.

4 **I. Petitioners Should Not be Removed as Trustees.**

5 A court may remove a trustee for a “serious breach of trust,” which is one that “causes
6 significant harm or involves flagrant misconduct.” Unif. Trust Code (“UTA”) § 706 (2000).
7 However, a trustee will not “be removed for every violation of duty, or even breach of trust, if the
8 fund is in no danger of being lost.” *Phillips v. Moeller*, 148 Conn. 361, 369 (1961). “Mere error,
9 or even breach of trust, may not be sufficient; there must be such misconduct as to show want of
10 capacity or of fidelity, putting the trust in jeopardy.” *Id.* (quotation marks omitted); *see also Betty*
11 *G. Weldon Revocable Trust v. Weldon ex rel. Weldon*, 231 S.W.3d 158 (Mo. Ct. App. W.D. 2007).
12

13 In addition, “removal of a trustee is disfavored, especially when a breach of the trustee-
14 beneficiary relationship may be cured by a narrower remedy.” *Salovaara v. Eckert*, 94 CIV. 3430
15 (KMW), 1996 WL 14444, at *4 (S.D.N.Y. Jan. 16, 1996). Before the court orders removal, cause
16 must be shown why the trustee ought to be removed and a benefit to the trust and *all* the
17 beneficiaries must be shown. UTA § 706(b)(4) (emphasis added); *In re Mashburn Marital Trusts*,
18 951 So. 2d 1136 (La. Ct. App. 1st Cir. 2006) (two of settlors’ nine children unsuccessfully sought
19 removal of trustees). While the sufficiency of the grounds for removal is within the discretion of
20 the court, the power to remove a trustee should be “used sparingly”—particularly as to a trustee
21 chosen by the settlor. *Cadle Co. v. D’Addario*, 268 Conn. 441, 458 (2004); *In re Bixby’s Estate*,
22 55 Cal. 2d 819, 13 Cal. Rptr. 411, 362 P.2d 43 (1961).
23
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1 In her Petition, Wendy asserts that her claim for removal of the Trustees is premised on
2 "breaches of fiduciary duties and other actions described herein, as well as, their strong bias against
3 Wendy and her family that has created an irreconcilable conflict in their administration of the
4 Trusts." Exh 5. at ¶ 90. As to Mr. Kimmel and Mr. Riley, the jury determined that no breaches of
5 fiduciary duty occurred, thereby rendering calls for their removal moot. As Todd and the other Co-
6 Trustees have removed nearly \$33 million in debt from the Trusts, it is clear that Todd has not
7 placed Trust assets in jeopardy, nor has he demonstrated a lack of fidelity to the beneficiaries.
8 While Wendy sought \$80 million at trial, the jury's award of \$15,000 highlights the *de minimus*
9 nature of any purported breach. Rather than removal, the "narrower remedy" was determined by
10 the jury to be a payment of \$15,000. To remove Todd, or any of the Co-Trustees from their role
11 as Trustee is unwarranted and violates Sam's intent.
12

13
14 Further, removal is unjustified simply because a single beneficiary disagrees with Sam's
15 intent. While the Petitioners understand the complex nature of leaving one child to be responsible
16 for the funds left to another, it is the intent of the settlor, not the beneficiary, that dictates the terms
17 of the Trust Agreement and administration of the Estate. Had Sam elected to cut Wendy off
18 completely, that would have been his prerogative. Instead, Sam left Todd in charge of his most
19 prized assets—the Ranches, his Ranch House, and the Tahoe House. In establishing the Issue Trust
20 Sam did not even name Stan or Wendy as successor trustees as there was no one he trusted more
21 than Todd to protect these assets. Sam similarly left Todd, Stan, and Mr. Riley in charge of the
22 remainder of his estate, including Wendy's sub-trust. Whether any of us agree to those terms is
23 irrelevant. The law supports the position that Sam is entitled to do what he wanted with his wealth
24 and legacy and it is undeniable that the current Trustees have spent the last six (6) years tirelessly
25
26

1 pulling the estate out of the debt left at the time of Sam's passing. To remove the current Trustees
2 due to one disgruntled and wrongfully entitled beneficiary, or because we personally disagree with
3 Sam's intent, would be improper and likely doom both the Family Trust and Issue Trust to
4 bankruptcy.

5
6 Finally, while concerns of family dynamics may inevitably create problems when one or
7 more siblings is/are appointed Trustee(s) over others, it is again not for the living to mandate who
8 the decedent should or could have left in charge of his legacy. Sam Jaksick knew his children and
9 their dispositions better than anyone. He loved his children equally but undeniably did not trust
10 them equally. Sam knew of his daughters' past theft, her propensity to manipulate, and her inability
11 to manage money. Sam similarly knew Stan and Todd's strengths and weakness. With the
12 knowledge of only a parent, Sam trusted only one of his children with the power to preserve his
13 most prized assets. He granted only one of his children power of attorney over healthcare and
14 business decisions. While the mix of family and money may inevitably complicate their family
15 dynamics, Sam made the determination of whom to trust with his Estate and changing that dynamic
16 now not only violates his intent, but due to the complexity of the Trusts, would likely condemn
17 the Trusts to failure.
18

19
20 **J. The Trustees Properly Received Trustee Fees and Properly Utilized Trust Assets to
21 Defend this Action.**

22 NRS 153.070, along with the express terms of the Family Trust and Issue Trust, allow for
23 reasonable Trustee fees. *See* Exh. 9, Article VI, Section I, p. 26; Exh. 10 Article VI, Section I, p.
24 13. Rather than utilize boilerplate language, Sam specifically noted in the Family Trust Agreement
25 that
26

1 The Granter acknowledges that Stanley S. Jaksick and Todd Bruce Jaksick
2 currently provide services to and/or are Involved in helping to administer and
3 develop many of the Grantor's business activities and opportunities, and that their
4 roles and responsibilities in these capacities will likely be greatly increased In the
5 event of Grantor's death. Accordingly, the Trustee is specifically authorized and
instructed to review, adjust, and increase, from time to time, the respective levels
of compensation for Stanley S. Jaksick and Todd Bruce Jaksick based upon the
increase in their then current responsibilities.

6 See Exh. 9 at Article IV, Section K.17, p. 30. Despite this provision, Todd, Stan, and later Mr.
7 Kimmel, took exceptionally reasonable trustee fees in relation to the complexity and work required
8 of Sam's estate, and astronomically lower fees than an institutional trustee would have charged.
9

10 Similarly, Article VIII, Section O, p. 52 of the Family Trust and Article VIII, Section O,
11 p. 37 of the Issue Trust allow for the Trustees to utilize Trust assets to defend against litigation
12 ("The Trustee is hereby authorized to defend, *at the expense of the trust estate*, any contests of or
13 other attack of any nature on the trusts estate or of any of the provisions of this Trust Agreement.");
14 see also Exh. 9 at Article IV, Section L, p. 33; Exh. 10 at Article IV, Section L, p. 19 ("The Trustee
15 is entitled to indemnification against any claims, liabilities, and expenses, including attorneys' fees
16 and amounts paid in settlement, resulting from the acts or omissions of the Trustee The
17 Grantor intends to provide the Trustee with indemnification to the maximum extent allowed by
18 law. The expenses of the Trustee incurred in the defense any action, suit, or proceeding must be
19 paid from the trust estate as they are incurred and in advance of the final disposition of the action,
20 suit, or proceeding'). In fact, the Trusts grant broad indemnification to the Trustees "to the
21 maximum extent allowed by law" save for acts or omissions in bad faith. Exh 9. at Article IV,
22 Section L, p. 33; Exh. 10 at Article IV, Section L, p. 19. As the jury has already determined no
23 willful misconduct or bad faith has occurred, Wendy's claims as to disgorgement of Trustee fees
24 and defense costs are without merit. See Verdict.
25
26

1 **K. Wendy is Not Entitled to Attorney's Fees and Costs.**

2 While NRS 153.031 grants the Court discretion to award reasonable attorneys' fees, such
3 an award is premature as there has been no relief granted to Wendy by the Court. *See* NRS
4 153.031(3); *see also* Exh. 9 at Article VIII, Section O, p. 52; Exh. 10 at Article VIII, Section O, p.
5 36. Until such time as this Court hears the equitable claims, attorneys' fees cannot be decided.
6 Further, there are outstanding offers of judgment, which Petitioners anticipate will be the subject
7 of numerous motions for attorneys' fees upon a final judgment in this case. *See* NRS 68(f).
8 Consequently, payment of Wendy's attorney's fees and costs are not warranted.
9

10 **III.**

11 **CONCLUSION**

12 Based on the foregoing, Petitioners believe they have met their burden as to their Petition
13 and have discredited the claims of Wendy. Despite saving the Family Trust and Issue Trust from
14 insolvency and bankruptcy many times over, paying Wendy more than \$600,000 over 6 years,
15 granting her access to the family ranches and Tahoe home, and allowing unrestricted access to the
16 team of professionals, Wendy drug her family through this litigation. Thus, in making final legal
17 determinations, Petitioners respectfully request that this Court: (1) settle and approve the Issue
18 Trust accountings; (2) settle and approve the Family Trust accountings; (3) ratify and approve the
19 validity of the Agreement and Consent to Proposed Actions ("ACPAs"); (4) find that Wendy
20 violated the no-contest provision of both the Issue Trust and Family Trust Agreements; (5) find
21 that Petitioners have not violated the no contest clause; (6) find that Wendy's claims for unjust
22 enrichment and constructive trust cannot be substantiated; (7) confirm the appointment of Todd as
23 Trustee of the Issue Trust; (8) confirm the appointment of Todd and Mr. Kimmel as Trustees of
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1 the Family Trust; (9) deny Wendy's claim for disgorgement of Trustees' fees; (10) ratify the use
2 of Trust assets in the defense of this matter; and (11) determine that an award of attorneys' fees
3 for either side is premature.

4 **NRS 239B.030 Affirmation**

5 Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not
6 contain the Social Security Number of any person.

7 Dated this 1st day of July, 2019.

9 MAUPIN, COX & LEGOY

10
11 By: 

12 Donald A. Lattin, NSB # 693
13 Carolyn K. Renner, Esq., NSB #9164
14 Kristen D. Matteoni, Esq. NSB #14581
15 4785 Caughlin Parkway
16 Reno, NV 89519
17 *Attorneys for the Co-Trustees*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law,
and in such capacity and on the date indicated below I served the foregoing document(s) as follows:

Via E-Flex Electronic filing System:

<p>Philip L. Kreitlein, Esq. Stephen C. Moss, Esq. Kreitlein Leeder Moss, Ltd. 1575 Delucchi Lane, Suite 101 Reno, Nevada 89502 philip@klmlawfirm.com <i>Attorneys for Stan Jaksick as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust</i></p> <p>Mark Connot, Esq. Fox Rothschild LLP 1980 Festival Plaza Drive, #700 Las Vegas, NV 89135 MConnot@foxrothschild.com</p> <p><i>And</i></p> <p>R. Kevin Spencer, Esq. (Pro Hac Vice) Zachary E. Johnson, Esq. (Pro Hac Vice) Spencer & Johnson PLLC 500 N. Akard Street, Suite 2150 Dallas, TX 75201 kevin@dallasprobate.com zach@dallasprobate.com <i>Attorneys for Wendy A. Jaksick</i></p>	<p>Kent R. Robison, Esq. Therese M. Shanks, Esq. Robison, Sharpe, Sullivan & Brust 71 Washington Street Reno, Nevada 89503 krobison@rssblaw.com tshanks@rssblaw.com <i>Attorneys for Todd B. Jaksick, Individually, and as beneficiary, SSJ's Issue Trust and Samuel S. Jaksick, Jr., Family Trust</i></p> <p>Adam Hosmer-Henner, Esq. Sarah A. Ferguson, Esq. McDonald Carano Wilson LLP 100 W. Liberty Street, 10th Floor Reno, NV 89501 ahosmerhenner@mcdonaldcarano.com sferguson@mcdonaldcarano.com <i>Attorneys for Stan Jaksick, individually, and as beneficiary of the Samuel S. Jaksick, Jr. Family Trust and SSJ's Issue Trust</i></p>
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Via placing an original or true copy thereof in a sealed envelope with sufficient postage
affixed thereto, in the United States mail at Reno Nevada, addressed to:

<p>Alexi Smrt 3713 Wrexham St. Frisco, TX 75034</p>	<p>Luke Jaksick c/o Wendy A. Jaksick 6501 Meyer Way Apt. # 0705 McKinney Texas 75070</p>
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Benjamin Jaksick Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Regan Jaksick Sydney Jaksick Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Ct. Reno, Nevada 89519
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Dated this 1 day of July, 2019.


EMPLOYEE

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EXHIBIT INDEX

No.	Description	Pages
1.	Depo. of Frank Campagna, CPA, 37:14-38:1	3
2.	Depo. of Kevin Riley, CPA, Vol. III 490:22-24	2
3.	Depo. Of Wendy at Vol. V 1181:12-18	2
4.	Depo. of Kevin Riley, Vol. III 508:1-513:19; 543:10-13	8
5.	Depo. of Wendy, Vol. II 277:17-19; 302:15-304:3; 326:1-6; 344:14-345:18	8

EXHIBIT 1

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EXHIBIT 1

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

3 In the Matter of the Administration
4 of the SSJ ISSUE TRUST._____

5 In the Matter of the:

6 SAMUEL S. JAKSICK, JR. FAMILY TRUST,

7 WENDY JAKSICK,

8 Respondent and Counter-Petitioner,

9 v.

10 TODD B. JAKSICK, Individually, as
11 Co-Trustee of the Samuel S. Jaksick,
12 Jr. Family Trust, and as Trustee of
13 the SSJ's Issue Trust, MICHAEL S.

14 KIMMEL, individually and as
15 Co-Trustee of the Samuel S. Jaksick,
16 Jr., Family Trust, and STANLEY S.

17 JAKSICK, Individually and as
18 Co-Trustee of the Samuel S. Jaksick,
19 Jr. Family Trust, Kevin Riley,
20 Individually and as former Trustee
21 of the Samuel S. Jaksick, Jr. Family
22 Trust and Trustee of the Wendy A.
23 Jaksick 2012 BHC Family Trust,

24 Petitioners and Counter-Respondents.

25 STANLEY JAKSICK,

26 Respondent and Counter-Petitioner,

27 v.

28 TODD B. JAKSICK, Individually and as
29 Trustee of the Samuel S. Jaksick Jr.
30 Family Trust and SSJ's Issue Trust.

31 Petitioner and Counter-Respondent.

32 =====

33 DEPOSITION OF FRANK CAMPAGNA

34 Tuesday, January 15, 2019

35 Reno, Nevada

36 REPORTED BY:

37 MICHELLE BLAZER CCR #469 (NV)
38 CSR #3361 (CA)

1 with that form?

2 A In my capacity. Once again, I am not an
3 attorney, but in my capacity, yes.

4 Q Yeah. It couldn't be any other capacity.
5 It has to be your capacity because you are the one
6 testifying.

7 A Well, the courts will ultimately decide,
8 but, yes.

9 Q I understand that.
10 Are you -- are you telling me that you
11 are giving legal opinions in this?

12 A That's what I am saying expressly that I
13 am not giving legal opinions.

14 Q Okay. All right. So you could not state
15 as a -- an opinion whether or not Mr. Riley's reports
16 comply with the legal statutes in the State of Nevada;
17 is that correct?

18 A As far as what I see, they had the form
19 and substance.

20 Q Okay. When you say form and substance in
21 just talking about the form and contents of
22 accounting, you would agree with me that under the
23 Nevada Revised Statutes his compilation reports
24 complied with the form and contents required under the
25 statutes; correct?

1 A From my knowledge, yes.

2 Q Okay. All right. Do you do any, what I
3 would refer to as boots on the ground accounting work
4 in the traditional sense of being an accountant?

5 A Yes.

6 Q You have clients that you do accounting
7 work for?

8 A Yes.

9 Q Can you just name one for me?

10 A Yes. Victory Belt.

11 Q Victory what?

12 A Victory Belt.

13 Q B-e-l-t?

14 A Uh-huh.

15 Q And do you do tax work for them?

16 A Yes.

17 Q Okay. You do trust accountings for them?

18 A Not for them.

19 Q Do you do any -- well, you don't really
20 do trust accountings?

21 A We -- our firm does accountings for
22 trusts, yes.

23 Q I am not talking about your firm.
24 Talking about you.

25 A I have done accounting statements for

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EXHIBIT 2

EXHIBIT 2

1 IN THE SECOND JUDICIAL DISTRICT COURT
2 OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF WASHOE
4 -o0o-

4 In the Matter of the : Case No.
SSJ'S ISSUE TRUST. : PR17-00445
5 : Dept. No. 15

6 In the Matter of the: :
7 SAMUEL S. JAKSICK, JR., FAMILY : Case No.
TRUST. : PR17-00446
8 : Dept No. 15

9 WENDY JAKSICK,

10 Respondent and Counter-Petitioner,

11 vs.

12 TODD B. JAKSICK, Individually, as :
Co-Trustee of the Samuel S. :
13 Jaksick, Jr. Family Trust, and as :
Trustee of the SSJ's Issue Trust, :
14 et al., :

15 Petitioners and Counter- :
Respondents. :

16 AND OTHER RELATED MATTERS. :
=====

17
18 DEPOSITION OF
19 KEVIN RILEY, VOLUME III
20 January 4, 2019
Reno, Nevada

21
22 Reported by:
23 DIANNE M. BRUMLEY, NV CCR #205
24 California CSR #6796
Job No. 3152825
25 Pages 436 - 642

**CERTIFIED
TRANSCRIPT**

Page 436

Veritext Legal Solutions
877-955-3855

TJA 001511

1 A How did I know what?

2 Q That the trustees have elected to omit
3 substantially all of those GAAP disclosures?

4 A We had discussions about the scope of the
5 financial reporting and based on counsel's input, this
6 is the format that we decided on.

7 Q And was that counsel for Todd, or for you,
8 or --

9 A Trust counsel.

10 Q So the counsel for the trustees?

11 A Yes.

12 Q And was that done at a meeting, or was that
13 something that was put in writing, or do you remember
14 how it was conveyed?

15 A I think it was a discussion at one or more
16 meetings or telephone conferences. Not meetings,
17 telephone conferences.

18 Q So you as the accountant compiling this report
19 were told to omit substantially all of the disclosures
20 under accounting principles generally accepted in the
21 United States?

22 A I as the accountant produced a formal
23 accounting that complied with Nevada Revised Statutes
24 and that was the objective of this financial statement.

25 Q When you say complied with the Nevada Revised

Page 490

EXHIBIT 3

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EXHIBIT 3

1 Case No. PR17-00445

2 Dept. No. 15

3
4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE

6 -oOo-

7 In the Matter of the:)
8 SSJ's Issue Trust.)

9 AND RELATED ACTIONS.)

10
11 VIDEOTAPED DEPOSITION OF WENDY JAKSICK, VOLUME V
12 called for examination by counsel for Todd B. Jaksick,
13 Beneficiary SSJ's Issue Trust and Samuel S. Jaksick, Jr.,
14 Family Trust pursuant to Notice, at the offices of Robison,
15 Sharp, Sullivan & Brust, 71 Washington Street, Reno, Nevada,
16 at 9:02 a.m., Friday, August 10, 2018, before Becky Van
17 Auken, a Certified Court Reporter.

18
19 APPEARANCES: (See separate page)

20
21
22
23 Reported by:

24 BECKY VAN AUKEN, CCR No. 418, RMR, CRR, CRC
25

1 BY MR. HOSMER-HENNER:

2 Q And would your opinion have changed
3 concerning every action you took with the family trust
4 if you had known the extent of this indemnification
5 obligation?.

6 A To the best of my knowledge, I would say
7 pretty close. I mean, yes, it -- to the best of my
8 knowledge, what this does is it leaves -- it gives me
9 actually an explanation why every time I asked about a
10 distribution, that they would say to me that there are
11 outstanding debts, because there would be forever.

12 Q And your understanding was that you would
13 eventually be getting a cash distribution from the
14 family trust?

15 A I -- it depends on what entity we're
16 talking about. But I believed that -- that my money
17 would go into trust and would be there for my lifetime
18 to take care of me.

19 Q How did you understand that Luke's subtrust
20 would be funded?

21 A From the family trust.

22 Q And if there were no assets remaining in
23 the family trust after debts or expenses were paid,
24 how did you understand that Luke's trust -- did you
25 understand that Luke's subtrust could be funded?

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EXHIBIT 4

EXHIBIT 4

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

-o0o-

4 In the Matter of the : Case No.
SSJ'S ISSUE TRUST. : PR17-00445
5 : Dept. No. 15

6 In the Matter of the: :
: Case No.
7 SAMUEL S. JAKSICK, JR., FAMILY : PR17-00446
TRUST. :
8 : Dept No. 15

9 WENDY JAKSICK,

10 Respondent and Counter-Petitioner,

11 vs.

12 TODD B. JAKSICK, Individually, as :
Co-Trustee of the Samuel S. :
13 Jaksick, Jr. Family Trust, and as :
Trustee of the SSJ's Issue Trust, :
14 et al., :

15 Petitioners and Counter-
Respondents. :

16 AND OTHER RELATED MATTERS. :

**CERTIFIED
TRANSCRIPT**

17
18 DEPOSITION OF
19 KEVIN RILEY, VOLUME III
20 January 4, 2019
Reno, Nevada

21
22 Reported by:
23 DIANNE M. BRUMLEY, NV CCR #205
24 California CSR #6796
Job No. 3152825
25 Pages 436 - 642

Page 436

Veritext Legal Solutions
877-955-3855

1 Q Now, starting with ALSB, Ltd., 100 percent,
2 there's a hyphen and a hyphen. Why on this list or the
3 remainder of the list have hyphens next to them?

4 A The hyphens indicate the value is -- there's no
5 value attributed to that interest.

6 Q So these ALSB, Bent Arrow, Buckhorn Land and
7 Livestock, California Bighorn, Fly Ranch, all the way to
8 the end, they had no value whatsoever on date of death?

9 A On date of death, some of these entities, the
10 liabilities exceeded the assets, so therefore they were
11 insolvent. Others were either simply never funded or
12 they had no residual value.

13 Q So these things that you've just mentioned here
14 regarding where the numbers came from, two from
15 appraisals, others from estimates, and then these that
16 are under water, would those be something that would
17 typically be contained in a footnote that was decided to
18 be omitted in this compilation?

19 A If the trustees had decided to produce
20 footnotes in this regard, there would likely be
21 additional descriptions of the activities of the
22 investments, depending on the ownership interest.

23 Q And that was information that the trustees
24 instructed you not to include in this compilation; is
25 that right?

Page 508

1 A So as a professional, I provided advice to the
2 trustees in this regard. I indicated to them that it
3 was not necessary or required to produce the footnotes
4 required under generally accepted accounting principles,
5 and accordingly this is the result of that decision
6 making.

7 Q So you were the one that advised that they omit
8 the explanation footnotes?

9 A In summary, since it was not required, I
10 advised that they didn't have to present the footnotes.
11 Therefore, we didn't have to do that and incur the
12 additional cost of doing so.

13 Keep in mind in the early months of these
14 financial statements, there was simply no cash flow and
15 they were trying to contain costs at every which way
16 they could possibly do, so to incur the additional costs
17 of presenting pages and pages of footnotes, if that were
18 to be required, I would have to go in and look and
19 decide what footnotes to present, would have been an
20 additional burden and since it wasn't required, then we
21 did not -- I did not recommend that.

22 Q Why wasn't it required? What are you basing
23 that on?

24 A Because professional standards allow a report
25 such as this to be -- for the footnotes and disclosures

Page 509

1 to be excluded, and if the professional standards allow
2 that, then I can provide that as advice to them.

3 Q And what you're talking about are the GAAP
4 standards?

5 A Yes.

6 Q Which is the Generally Accepted Accounting
7 Principle standards regarding footnotes?

8 A Yes.

9 Q And the reason that that's not required is
10 because GAAP is not required by the NRS statute you
11 relied on, correct?

12 A So the NRS statute, the disclosure standards
13 are different. The disclosure to the beneficiaries is
14 transactional based, they're cash flow based, and every
15 transaction that I'm aware of is presented in these
16 financial statements, and therefore I believe that these
17 financial statements fully disclose the transactions of
18 the trust.

19 Q Objection, nonresponsive.

20 My question is, you gave the advice to exclude
21 or omit the GAAP required footnotes based upon the NRS
22 statute for accountings that you relied on; is that
23 right?

24 A Ask the question again.

25 Q So because the NRS trust accounting statutes do

Page 510

1 not require the detail that maybe a GAAP compilation
2 would require, that's the reason that you advised not to
3 include the footnotes?

4 A Certainly GAAP does not require the disclosures
5 in the financial statements and the disclosures in the
6 financial statements satisfy, in my opinion, the Nevada
7 Revised Statutes. That was my advice to them, and they
8 certainly relied on my advice in that regard.

9 Q And so to the best of your knowledge, the
10 trustees decided not to include the detail information
11 that would be in a footnote based upon your advice?

12 A The trustees accepted my advice to exclude the
13 disclosures required under generally accepted accounting
14 principles because it was acceptable to do so.

15 Q Under the NRS statute?

16 A Under generally accepted accounting principles.

17 Q But it was acceptable to exclude those
18 footnotes under the trust accounting statute that you
19 relied on?

20 A Under the trust accounting statutes, the
21 financial statements disclose every transaction and it
22 was appropriate under the Nevada Revised Statutes in my
23 opinion.

24 Q All right. And you're not an expert on that,
25 are you?

Page 511

1 A I am an accountant who has prepared accountings
2 before and it has been accepted by courts.

3 Q Does that make you an expert?

4 MR. LATTIN: I'm going to object, that calls
5 for a legal conclusion.

6 BY MR. SPENCER:

7 Q Do you know if that makes you an expert?

8 MR. LATTIN: Same objection.

9 THE WITNESS: I don't know how you define
10 legally the expert category, classification.

11 BY MR. SPENCER:

12 Q Do you consider yourself to be an expert on
13 what would be required under the NRS trust accounting
14 statutes?

15 A I believe I can have an opinion based on my
16 accounting expertise as to what would be required, and I
17 based these financial statements on information provided
18 by counsel of the trust.

19 Q Which counsel?

20 A LeGoy's firm.

21 Q As opposed to what Miss Clayton provided, or
22 was that the same thing?

23 A The information in these financial statements
24 is based on information provided by Miss Clayton, so I
25 don't understand your question.

Page 512

1 Q You mentioned that you provided -- what was it
2 that the LeGoy firm provided that you relied on in
3 relation to the preparation of this accounting?

4 A The trustees requested that LeGoy's firm review
5 draft financial statements. We submitted the draft
6 financial statements and we believe the trustees -- or I
7 believe the trustees wanted LeGoy's firm to review the
8 financial statements in advance of issuance and that is
9 what they did.

10 Q Do you know which attorney at that firm did
11 that?

12 A Brian McQuaid.

13 Q And what about the requirements of full
14 disclosure that are owed by trustee to their
15 beneficiaries, do you believe this accounting
16 sufficiently does that?

17 A I believe the accountings disclose every
18 transaction that I'm aware of as it relates to this time
19 period.

20 Q Okay.

21 A And in addition to that, the trustees on
22 numerous occasions disclosed information to the
23 beneficiaries on significant events. I'm aware of that.

24 Q What are you talking about?

25 A There were notifications, I think you referred

1 seven lots in the Montreux Development Company.

2 Montreux Development, not in the company. That's an
3 area, not specific to the company.

4 The ranch land had an appraised value of 737,
5 the debts are 1.8 million.

6 Q So on the 706, you list the value of the assets
7 and then you take a deduction for the value of the
8 debts; is that right?

9 A Yes.

10 Q All right. But on the accounting, Exhibit 72,
11 if the entities under water, so to speak, assets versus
12 liabilities, then you just mark it as zero?

13 A Yes.

14 Q Do you know of anything in the NRS statute
15 regarding trust accountings that requires disclosure to
16 be made the same way the 706 is required to do it, here
17 are the assets and here are the liabilities and offset
18 them?

19 A I believe the NRS requires presentation as I've
20 done in the financial statements.

21 Q All right. So that means that because you did
22 not list them the way you did in the 706, that your
23 understanding of the NRS statutes do not require you to
24 do so?

25 A No, I think you have that incorrectly. I think

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EXHIBIT 5

EXHIBIT 5

1 Case No. PR17-00445

2 Dept. No. 15

3

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

6

-oOo-

7

In the Matter of the:
SSJ's ISSUE TRUST.

8

AND RELATED ACTIONS.

9

10

VIDEOTAPED DEPOSITION OF WENDY JAKSICK, VOLUME II

11

12

called for examination by counsel for Todd B. Jaksick,

13

Beneficiary, SSJ's Issue Trust and Samuel S. Jaksick, Jr.

14

Family Trust pursuant to Notice, at the offices of Robison,

15

Sharp, Sullivan & Brust, 71 Washington Street, Reno, Nevada,

16

at 9:00 a.m., Tuesday, June 5, 2018, before Becky Van Auken,

17

a Certified Court Reporter.

18

19

APPEARANCES: (See separate page)

20

21

22

23

Reported by:

24

BECKY VAN AUKEN, CCR No. 418, RMR, CRR, CRC

25

CAPTIONS UNLIMITED OF NEVADA, INC. (775) 746-3534

1 **A Let me review it.**

2 **I don't believe this is a real document.**

3 **Q It's a fake too?**

4 **A Half of it is.**

10:37:07 5 **Q So the email that is sent to Todd Jaksick**
6 **on November 11th, half of it's fake and half of it's**
7 **not?**

8 **A No. That's not right. The portion that I**
9 **wrote to Todd, I -- that -- that portion of it --**

10:37:28 10 **Q Oh, you're talking about the top -- the top**
11 **message on Exhibit 13], correct?**

12 **A Yes.**

13 **Q All right. What you're saying is a fake is**
14 **the bottom half in single spaced, indented?**

10:37:38 15 **A Yes. Either that or I never received it,**
16 **but it doesn't appear to me to be real, I think.**

17 **Q Are you saying that it's a fake, it's a**
18 **forgery, or it's contrived, or what?**

19 **A It appears to be.**

10:37:48 20 **Q All right. So anything you don't like**
21 **appears to be contrived?**

22 **A That's not true, no.**

23 **Q Who's the new attorney that's a good**
24 **attorney in the portion of this document that you do**
0:37:59 25 **admit is true and accurate?**

1 **A My signature?**

2 **Q Yes.**

3 **A No.**

4 **Q That's your signature?**

11:04:51 5 **A It appears to be my signature for sure.**

6 **Q But when you signed that, you're claiming**
7 **the documents weren't attached to it, other pages?**

8 **A No. I'm claiming that the date was wrong**
9 **up top there, what date that I signed this agreement.**

11:05:06 10 **I don't know what I signed. It was the day after my**
11 **dad died. I don't remember what I signed. I know**
12 **that I signed something that Todd told me was about**
13 **the \$6 million in -- in the issue trust going to pay**
14 **off Tahoe.**

11:05:18 15 **Q So you have no recollection of signing this**
16 **document?**

17 **A What's in front of it?**

18 **Q Yes.**

19 **A I don't know what I signed.**

11:05:29 20 **Q Okay. The next one is the Bronco Billy's**
21 **indemnification, Exhibit 15. Is your signature forged**
22 **on that document?**

23 **A Oh, let me get -- sorry.**

24 **Q What have you done to my exhibit?**

11:06:07 25 **A I'm sorry. This was -- this is on the**

CAPTIONS UNLIMITED OF NEVADA INC (775) 746-3534

1 **bottom of it, right?**

2 **Q** I hope so.

3 **A** **Do you want to check?**

4 **Q** Yes.

11:06:17 5 **A** **Okay.**

6 **Q** We'll have to affix that. All right.

7 So your signature on the fourth page of
8 that document, Bates 81, that's your signature?

9 **A** **This appears to be my signature, yes.**

11:06:36 10 **Q** But when you signed this document, it
11 wasn't attached to the other pages of this exhibit?

12 **A** **Well, there's a stamp here.**

13 **Q** I know. There's a footer.

14 **A** **Okay.**

11:06:51 15 **Q** There's a footer.

16 **A** **What is -- I'm just -- shouldn't it be on**
17 **all of the pages?**

18 **Q** Is that your signature, ma'am?

19 **A** **It appears to be.**

11:06:59 20 **Q** And when you signed that, do you recall it
21 being part of the entire package of Exhibit No. 15?

22 **A** **I definitely did not see -- my signature**
23 **was -- this signature? I don't know what it went to.**

24 **Q** Okay. So when you signed that piece of

1:07:18 25 paper, what were you signing?

1 **A** **I have no idea. It was probably a -- who**
2 **knows. I don't know. Maybe if we look at this stamp**
3 **down here we can figure it out.**

4 **Q** **You know what those footers are, don't you?**

5 **A** **What are they?**

6 **Q** **Do you know what those footers are?**

7 **A** **I just know that they're usually connected**
8 **to -- they have them on all the pages.**

9 **Q** **Do you know what the footers are --**

11:07:36 10 **A** **They relate to the document.**

11 **Q** **Okay. Let's go to the next document. This**
12 **is an Agreement and Consent for Proposed Action. It's**
13 **Exhibit 16. This pertains to the indemnification.**

14 **A** **I have to get mine back in order.**

11:08:05 15 **Number 16?**

16 **Q** **Yes, ma'am.**

17 **A** **Okay.**

18 **Q** **You've seen this document before, correct?**

19 **A** **Yes, I have.**

11:08:23 20 **Q** **All right. The signature appears on**
21 **page -- Bates 84 and 85 because they're copies of the**
22 **same page but with only the addition of Alexi's**
23 **signature.**

24 **Is that your signature?**

11:08:39 25 **A** **It appears to be, yes.**

1 **Q** Can you explain how your signature appears
2 to be on this document yet you claim you didn't sign
3 it?

4 **A** **I can't explain that.**

11:53:23 5 **Q** You didn't sign this document, did you?

6 **A** **No.**

7 **Q** Okay. You have never seen this document
8 before?

9 Let me make that time specific.

11:53:32 10 You didn't see this agreement in August of
11 2013?

12 **A** **I would have never signed an agreement that**
13 **sold the cattle.**

14 **Q** Would you answer my question, please.

11:53:43 15 **A** **No. I never saw it.**

16 **Q** Did Stanley ever discuss this document with
17 you?

18 **A** **No.**

19 **Q** Do you see his signature on this document?

11:53:56 20 **A** **Yes.**

21 **Q** And on page 3 do you see what appears to be
22 the signature of Stanley Jaksick?

23 **A** **Is that what you just asked me?**

24 **Q** No, I mentioned page 3 this time.

11:54:10 25 **A** **Oh, I'm sorry.**

CARTONS UNLIMITED OF NEVADA, INC. (STP) 210 0001

1 Before I move to this next document, let's
2 take an hour for a nutrition break. And resume at
3 1:15? 1:30? What's your pleasure? 1:30.

4 MR. CONNOT: 1:30.

5 MR. ROBISON: 1:30 it is.

6 THE VIDEOGRAPHER: We are going off record.
7 The monitor time is approximately 12:10 p.m.

8 (The lunch recess was taken from
9 12:10 p.m. to 1:34 p.m.)

13:33:36 10 THE VIDEOGRAPHER: We are going back on
11 record. The monitor time is approximately 1:34 p.m.

12 Counsel may proceed.

13 MR. ROBISON: Thank you.

14 BY MR. ROBISON:

13:35:59 15 Q Please take a look at Exhibit 15. Okay.
16 We talked about this exhibit a little bit earlier
17 today. This is the Agreement and Consent to Proposed
18 Action that pertains to the Bronco Billy's situation.

19 Do you see that, ma'am?

13:36:41 20 A Yes, I do.

21 Q All right. And this is one that you claim
22 you've never seen before. I don't mean "never," but
23 before you started consulting counsel. Correct?

24 A Correct.

13:36:53 25 Q And this is one in which you claim that

1 your signature which appears on the document was
2 actually a signature you gave to a different document,
3 and this signature page was slipped into this consent
4 agreement basically.

13:37:13 5 **A I'm not sure. I just know that I never saw**
6 **this document, and that does appear to be my**
7 **signature.**

8 **Q Okay. Is your position today, though, that**
9 **you, in this period of time, which is July of 2013 --**
13:37:29 10 **you didn't see this document at that time?**

11 **A I didn't see this document --**

12 **Q Yes.**

13 **A -- in July?**

14 **Q Is that your testimony?**

13:37:41 15 **A No, is that what you're asking me?**

16 **Q Yes.**

17 **A I -- I don't remember ever seeing this**
18 **document.**

19 **Q Okay.**

13:37:49 20 **A Until, I mean, you know, recent --**

21 **Q When we use the word "ever," you and I,**
22 **we'll talk about that as being pre counsel --**

23 **A Okay.**

24 **Q -- pre Ms. Dwiggins.**

13:37:59 25 **A Okay.**

Jayne Ferretto

From: eflex@washocourts.us
Sent: Monday, July 01, 2019 4:47 PM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: CONS: TRUST: SSJ'S ISSUE TRUST: Trial Statement: PR17-00445

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A filing has been submitted to the court RE: PR17-00445

Judge: HONORABLE DAVID A. HARDY

Official File Stamp: 07-01-2019:16:43:06
Clerk Accepted: 07-01-2019:16:44:20
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: CONS: TRUST: SSJ'S ISSUE TRUST
Document(s) Submitted: Trial Statement
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Filed By: Donald A Lattin

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