

**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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**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**

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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 13<sup>th</sup> day of April, 2021.

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**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. 9**, 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:

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14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

15 IN AND FOR THE COUNTY OF WASHOE

16 In the Matter of the:

CASE NO.: PR17-00445

17 SSJ's ISSUE TRUST.

DEPT. NO.: 15

18 In the Matter of the:

CASE NO.: PR17-00446

19 SAMUEL S. JAKSICK, JR., FAMILY TRUST.

DEPT. NO.: 15

20 WENDY JAKSICK,

21 Respondent and Counter-Petitioner,

22 v.

23 TODD B. JAKSICK, Individually, as Co-  
24 Trustee of the Samuel S. Jaksick Jr. Family  
25 Trust, and as Trustee of the SSJ's Issue Trust;  
26 MICHAEL S. KIMMEL, Individually and as  
27 Co-Trustee of the Samuel S. Jaksick Jr. Family  
28 Trust; STANLEY S. JAKSICK, Individually  
and as Co-Trustee of the Samuel S. Jaksick Jr.  
Family Trust; KEVIN RILEY, Individually, as  
Former Trustee of the Samuel S. Jaksick Jr.  
Family Trust, and as Trustee of the Wendy A.  
Jaksick 2012 BHC Family Trust,

Petitioners and Counter-Respondents.

**TODD B. JAKSICK'S**  
**CLOSING ARGUMENT BRIEF**

Todd B. Jaksick (“Todd”) has been sued by his sister, Wendy Jaksick (“Wendy”), in his individual capacity. In that capacity, Todd submits the following as and for his reply/final Closing Argument Brief on Wendy’s equitable claims.

## I.

## INTRODUCTION

Wendy's 107 page brief is a misguided effort to obfuscate, confuse and confabulate the issues and facts already considered by the jury. Since her first attack on Todd in his *individual capacity*, Wendy has purposefully failed to delineate with any respectable degree of particularity what claims she has against Todd as an *individual*. Her pleadings are vague. Her presentation of evidence to the jury never specified any *individual* wrongdoing and never requested individual liability for any specific acts or omissions. In Wendy's closing argument in which she asked for an \$80,000,000 verdict, not one word was accusatory of Todd's *individual* conduct.

However, despite Wendy's inflammatory rhetoric and hyperbole, the jury was clear minded, thoughtful and acutely responsive. The jury unanimously agreed. Todd did nothing wrong in his *individual* capacity. Certainly within the jury's thoughtful consideration was Wendy's accusations about Todd's *individual* involvement in each and every ACPA. The jury found no individual wrongdoing by Todd with respect to any provision or subject of any one of the ten ACPAs.

Likewise, Wendy was bombastic with self-serving indignation about Todd's Indemnification Agreement. Her attempt to corrode Samuel Jaksick's ("Sam's") intent by refuting the "creation" of the Indemnification Agreement is disingenuous. Obviously, the jury found in Todd's favor. Wendy also argued to the jury that the "use" of the Indemnification Agreement drafted by Pierre Hascheff ("Hascheff") for Sam gave her the right to "damages." The jury said "no." It found that **none** of Todd's individual conduct concerning the Indemnification Agreement was fraudulent, conspiratorial, improper or wrong.

Wendy and her expert accused Todd, as an *individual*, of improper conduct concerning the Tahoe house. Responding to Wendy’s fraud accusations against Todd, *individually*, the jury said “no.” The jury found neither wrongdoing nor damages. Responding to Wendy’s conspiracy claim

1 regarding the Tahoe House, the jury said “no.” The jury found no wrongful conduct and no  
2 damages. Wendy claimed that Todd, as an individual, aided and abetted others in an effort to  
3 deprive Wendy of an interest in the Tahoe House. Responding to that claim, the jury said “no;” no  
4 wrongdoing, no damages.

5 The jury was neither confused nor obtuse about the falsity of Wendy’s accusations. Todd,  
6 as an individual, owes no duty to Wendy. The jury unanimously concluded that Todd, as an  
7 individual, told the truth to Wendy, did not commit fraud, did not conspire with others to harm  
8 Wendy and did not aid and abet anyone to commit any wrong. The jury verdict addressed  
9 accusations against Todd, individually, including his conduct relative to the Indemnification  
10 Agreement, the ACPAs and the Tahoe House. The jury resoundingly refused to accept Wendy’s  
11 vituperation. Wendy’s effort to morph her legal claims rejected by the jury into “equitable claims”  
12 is an illegitimate attack on Todd’s Seventh Amendment right to jury trial.

13 ***The duck is still a duck even if Wendy calls it a horse.***

14 Contrary to everything the jury concluded concerning Todd’s conduct as an individual,  
15 Wendy now tries to disguise her legal claims as claims in equity. Her 107 page brief is a rehash of  
16 the same unsuccessful arguments Wendy made to the jury. In doing so, Wendy challenges Sam’s  
17 intelligence, attacks Sam’s decisions, and offends Sam’s true testamentary intent. Sam’s business  
18 practices, financial concepts, intelligence and development acumen are the victims of Wendy’s  
19 fulminations and her brief epitomizes desperation.

20 Wendy now claims, as she did before the jury, that the Indemnification Agreement never  
21 existed, that it was forged and that it destroyed Sam’s estate. According to the **ONLY** witness who  
22 would know, Hascheff, the Indemnification Agreement does exist. According to the **ONLY** expert  
23 to opine (Mr. Green), the document was not forged. It was Sam’s effort to protect Todd, a son he  
24 convinced to personally guarantee a massive amount of debt. Sam even tried to protect Stan with  
25 an Indemnification Agreement. Hascheff’s testimony confirms existence and validity. Wendy has  
26 no witness who testified otherwise.

27 The jury accepted the testimony of Hascheff as to Todd’s **individual** conduct regarding the  
28 Indemnification Agreement. Furthermore, Wendy failed to prove forgery. Indeed, Todd’s expert

1 confirmed, without dispute or rational evidence otherwise, that the Indemnification Agreement  
2 was not forged. *See* Tr. Exh. 220, p. 27. Mr. Green , a very qualified expert, opined that the  
3 Indemnification Agreement (Tr. Exh. 11) was signed by Sam in two places. This Court has no  
4 evidence to conclude otherwise. All the Court needs to do is to consider that Wendy's expert (or  
5 evidence) did not refute the testimony and conclusions of Todd's handwriting expert, James  
6 Green. Indeed, one wonders whether Wendy even has an expert to justify the ramblings and  
7 unsubstantiated accusations about forgery set forth in her brief.

8 Wendy probably did have a handwriting expert. The manner in which Wendy tried her  
9 case suggests that experts were certainly contacted. The likely inference is that Wendy's  
10 handwriting expert opined against her. The fact that her expert accountant testified in favor of  
11 Todd confirms the inference that Wendy's handwriting expert agreed with Mr. Green. Otherwise,  
12 the jury would have heard testimony from Wendy's handwriting expert. The expert report and  
13 opinions of James Green are uncontroverted in this case. There was no forgery of the  
14 Indemnification Agreement and there was no forgery of the Second Amendment to Sam's Family  
15 Trust.

16 Finally, the accusation that the Indemnification Agreement destroyed Sam's estate is  
17 devoid of merit, logic and common sense. Sam persuaded Todd to personally guarantee over  
18 \$20,000,000 of debt. That debt furthered the interests of the Jaksick family, Wendy and her  
19 children. Yet, Todd was the only person that jeopardized his own family's financial well-being by  
20 being a personal guarantor of the debt left due and owing when Sam passed away.

21 Of course Sam intended to protect Todd from Sam's ambitious desire to finance substantial  
22 transactions with borrowed money. The borrowed money put the Family Trust in a position to  
23 enjoy substantial assets in no small way due to Todd's willingness to personally guarantee Sam's  
24 debt. Indeed, the jury found that the use of the Indemnification Agreement was not a wrong. The  
25 real primary depletion of Sam's estate can be attributed to only one thing: Wendy's vexatious  
26 lawsuit.

27 Wendy's attack on the Tahoe House transactions ignores reality and the testimony. Todd,  
28 Hascheff, and Stanley Jaksick ("Stan") testified to this glaring truth. Sam did **NOT** want Wendy

1 to have any ownership interest in the Tahoe House. The reasons are obvious. Wendy was  
2 unreliable, dishonest and irresponsible.

3 Bob LeGoy testified. LeGoy is as respected in estate planning and trust administration as  
4 any lawyer in the state. LeGoy's credentials are impeccable and impressive. LeGoy  
5 recommended, approved and advocated the use of the insurance proceeds to allow the Issue Trust  
6 to own 54% of Incline TSS. Why? Because it would save Sam's estate about \$3,000,000 in taxes.  
7 When LeGoy saw that the Issue Trust's interest in the Tahoe House had appreciated over  
8 \$4,000,000 since June of 2013, LeGoy correctly characterized the decision to use the insurance  
9 proceeds to purchase the Tahoe House as "a beautiful thing".

10 LeGoy and the Maupin Cox LeGoy law firm have helped Todd administer the Issue Trust  
11 and the Family Trust. LeGoy has been involved since April of 2013. LeGoy described Todd's  
12 performance (together with Stan and Kevin Riley) as "astounding." LeGoy's credibility has never  
13 been attacked or questioned. Further, Todd instructed LeGoy to answer all of Wendy's questions  
14 and to always take Wendy's calls.<sup>1</sup>

15 LeGoy drafted the Issue Trust and the 2006 Family Trust. As Sam's lawyer, LeGoy  
16 memorialized Sam's intent. LeGoy worked closely with Sam and LeGoy describes Sam as "the  
17 most successful developer of residential real estate developer in the history of Reno". But, what  
18 surfaces in this case is Sam's respect and admiration for Todd. As the only Trustee of the Issue  
19 Trust, Todd was given immense *power* to administer the affairs of the Issue Trust. *See* Tr. Exh.10,  
20 pp. 14-19.

21 The broad range of powers Sam gave to Todd as Trustee is a testament to Todd's character  
22 and business acumen. As sole Trustee of the Issue Trust, Todd has administered the two ranches  
23 Sam desired to stay in the family for 365 years. Likewise, Todd has administered the Issue Trust,  
24 its holdings and has allowed the Issue Trust to become a 54% owner of the crown jewel of Sam's  
25 estate, the Tahoe House. LeGoy has confirmed that as the Issue Trust's sole Trustee, Todd has  
26 done a remarkable job and has in every way effectuated Sam's testamentary intent. Todd has done  
27 so consistent with Sam's overriding directive that Wendy not own (in a legal sense) any part of the  
28

1 Tahoe House.

2           However, the decision to allow the Issue Trust to purchase 54% of Incline TSS has  
3 benefitted Wendy and her decedents while simultaneously protecting and honoring Sam's intent  
4 that Wendy not "own" any part of the Tahoe House. According to LeGoy, Sam trusted Todd and  
5 worked closely with Todd. Sam believed Todd would do the best job of any person and not just  
6 family members in managing the assets of the Issue Trust. The fact that the Tahoe House has  
7 appreciated in value from \$11,500,000 in 2013 to \$18,000,000 in 2019 is a testament and credit to  
8 Todd's devoted services to the ultimate beneficiaries of the Issue Trust.

9           Wendy has clearly violated both of the "no contest" clauses in the Trusts. Sam was  
10 adamant. He did not want any of his three children to challenge the Trusts. Yet, Wendy has  
11 challenged the Trusts. Nearly every aspect of her 107 page brief is an unequivocal challenge to the  
12 validity of the Issue Trust and Sam's Family Trust. According to Sam's intent, Wendy should  
13 receive nothing as a beneficiary of either trust.

14           The Court expressed concern at the May 13, 2019, hearing concerning Wendy's contest  
15 and challenge to the two trusts. The Court was troubled about the "2012 processes, documents and  
16 amendments." Despite the manner in which the Second Amendment was prepared and executed,  
17 Wendy did not have reasonable grounds to challenge the Trusts when she filed her Counter-  
18 Petition in January of 2018 and her First Amended Counter-Petition in February of 2018. In those  
19 documents, Wendy claimed that the Second Amendment was invalid because Sam's signature was  
20 forged. She reiterates that position in her closing brief.

21           She had no reasonable grounds to challenge. She had no probable cause that the signature  
22 on the Second Amendment was forged. She made allegations and accusations of forgery  
23 concerning the Issue Trust and Family Trust, even though she had no evidence to support her  
24 accusations. ***Her accusations of forgery had nothing to do with the format, content and***  
25 ***processes that occurred in December 2012.***

26           Wendy assumed the risk of being disinherited by her false accusations. None of the  
27 documents she claimed were forged were in fact forged. Todd produced the only handwriting

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28 <sup>1</sup> See **Exhibit 1** attached hereto (trial testimony of Bob LeGoy).

1 expert. Mr. Green soundly, convincingly and irrefutably established that Wendy's accusations of  
2 forgery were false. Mr. Green opined that the signature on the Second Amendment (which is not  
3 an orphan page) was signed by Sam Jaksick. Mr. Green confirmed without dispute or contest that  
4 Sam signed the Indemnification Agreement. In fact, Mr. Green confirmed that every document  
5 that Wendy accused Todd or Jessica of forging Sam's signature on, was false, groundless and  
6 unreasonable.

7 Wendy testified at her deposition in June of 2018 that the Second Amendment was forged.  
8 Not once did she claim that the configuration, appearance or content of the December documents  
9 were the basis for her challenge and contest of the two trusts. Wendy challenged the trusts without  
10 reasonable grounds to do so. The Court is, once again, reminded that Wendy never produced a  
11 hand writing expert to substantiate or give credence to her otherwise false accusations of forgery.  
12 Wendy's false accusation that Todd murdered his father is typical. She resorted to the same  
13 baseless and malicious tactics when she made the accusations that the operative documents were  
14 forged. Wendy's claims should be barred because her clear violation of the no contest clauses that  
15 confirmed Sam's intent to disinherit Wendy if she challenged his testamentary intent as evidenced  
16 by the Trust documents Wendy challenged.

## 17 II.

### 18 WENDY IS PRECLUDED FROM RECOVERING DAMAGES.

19 As this Court recalls, Todd filed a motion for a directed verdict at the close of trial arguing  
20 that Wendy could not recover damages as a matter of law due to her failure to disclose *any* damage  
21 computation prior to trial. That motion was rendered moot when the jury did not award any  
22 damages in favor of Wendy and against Todd as an individual. However, the issue has once again  
23 presented itself in Wendy's closing brief, where she again requests that this Court award her  
24 damages against Todd as an individual.

25 Under NRCP 16.1(a)(1)(C), Wendy is required to disclose a computation of damages prior  
26 to trial, and her failure to do so warrants sanctions. NRCP 16.1(e)(3); NRCP 37(c)(1). In her  
27 opposition to Todd's motion in limine, Wendy argued that she was unable to provide this  
28 computation because Todd had all of the information. However, under NRCP 16.1, a party "is not

1 excused from making its disclosures because it has not fully completed its investigation of the  
2 case, or because it challenges the sufficiency of another party's disclosures, or because another  
3 party has not made its disclosures." NRCP 16.1(a). "While a party may not have all of the  
4 information necessary to provide a computation of damages early in the case, it has duty to  
5 diligently obtain the necessary information and prepare and provide its damages computation  
6 within the relevant discovery period." *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D.  
7 586, 593 (D. Nev. 2011). Wendy "cannot shift to [Todd] the burden of attempting to determine  
8 the amount of [Wendy's] alleged damages." *Id.*

9       The first time Wendy mentioned the monetary amount of damages she was seeking was *in*  
10 *her closing argument at jury trial*. For the first time during Wendy's closing argument, Todd  
11 learned that she was seeking \$80 million or more in damages. This is the precise sort of conduct  
12 that NRCP 16.1 was designed to prevent.

13       Furthermore, Wendy has not presented evidence sufficient to prove her damages. Wendy  
14 bears the burden to prove her damages. *Clark Cnty. Sch. Dist. v. Richardson Constr., Inc.*, 123  
15 Nev. 382, 397, 168 P.3d 87, 97 (2007). This includes proof of both "the fact that [s]he was  
16 damaged and the amount thereof." *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540, 543  
17 (1994). "[T]o justify a money judgment the *amount*, as well as the fact of damage, *must be*  
18 *proved*." *Alper v. Stillings*, 80 Nev. 84, 86-87, 389 P.2d 239, 240 (1964) (emphasis added).

19       Evidence of damages "cannot be based solely upon possibilities and speculative  
20 testimony." *Franchise Tax Bd. of State of Cal. v. Hyatt*, 130 Nev., Adv. Op. 71, 407 P.3d 717, 749  
21 (2017) (internal quotations omitted). While proof does not have to be proven with mathematical  
22 certainty, "testimony on the amount may not be speculative." *Clark Cnty.*, 123 Nev. at 397, 168  
23 P.3d at 97. Wendy "cannot use one inference to support another inference" as to what her  
24 damages may be. *Franchise Tax Bd.*, 407 P.3d at 749. Wendy has either failed to provide *any*  
25 evidence of damages on some of her claims, or she has provided wholly speculative and  
26 unsupported evidence of damages on others.

27       Not only did Wendy completely fail to provide a computation of damages, but she failed to  
28 prove the amount of her damages through Todd's testimony, as she argued that she would do.



1 During the three days that Todd was on the stand, he testified multiple times to the *benefits* Wendy  
2 got, but never identified a single dollar amount of any harm that Wendy might have suffered.

3 Although Wendy appears to seek damages from the sale of the Fly Ranch property, Wendy  
4 did not present evidence which clearly established (1) what the total profit was, and (2) what her  
5 interest in that would be. Moreover, Todd testified that the funds Wendy is entitled to from that  
6 sale are being held in her subtrust.

7 Wendy also appears to seek damages relating to the sale of Pioneer Group, Inc. Wendy  
8 again, however, failed to establish with any certainty, what the *value* of her interest would be.  
9 The evidence at trial also demonstrated that the proceeds were used to pay down debt of the  
10 Family Trust, as required by the Family Trust's language. Wendy has not established that her  
11 beneficial interest has a priority over and above that of Family Trust debt, and that she would  
12 otherwise be entitled to these damages.

13 Wendy did not present evidence at trial of the value of any other property she claims was  
14 wrongfully transferred from the Trusts and/or held from her (i.e., cattle, Supercub airplane,  
15 miscellaneous transfers to Todd and/or Stan). She did not present evidence of the amount of  
16 Trustee fees that any Trustee has been paid. She did not present evidence of any loans or monetary  
17 transfers to any Trustee from any Trust. She did not present evidence concerning the amount of  
18 attorney fees that the Trusts may have paid on behalf of the Trustees.

19 Wendy attempted to produce evidence of water rights values, but admitted she is not an  
20 expert on water rights. Wendy testified that she "investigated" water rights prices in the months  
21 before trial. Although her testimony on this point was wholly speculative, it does indicate that  
22 Wendy could have provided an updated damage calculation prior to trial but failed to do so.  
23 Wendy testified that the water rights can range in value from \$7,000 to \$51,000 an acre foot, and  
24 that the value depends on the particular circumstances. She introduced no evidence and elicited no  
25 testimony stating whether the water rights owned by the Jaksick Family entities would fall within  
26 the high or low part of this range. She did not introduce any evidence or testimony that these  
27 water rights are currently marketable and that the values of the water rights have not been  
28 adversely affected by being tied up in a conservation easement. Wendy also attempted to

1 introduce evidence of the value of these rights through the Eco 2 transaction, but both Hascheff  
2 and Todd testified that the water values in that transaction were speculative, were not supported by  
3 evidence, and that Eco 2 was subsequently investigated for securities fraud. Any award of  
4 damages based on the value of these water rights would be based on pure speculation.

5 Wendy did not present any evidence or elicit any testimony at trial that any of the Trusts, or  
6 Sam, own or ever did own mineral rights, gas and oil royalties, or royalties from wind or solar  
7 production. There was no evidence of any value associated with these items.

8 Wendy did not provide evidence or testimony regarding damages that could be associated  
9 with loss of use of any of the properties owned by the Trusts. She is required to provide evidence  
10 as to what the rental value of this property would so as to provide a measure of damages. *See, e.g.,*  
11 *Dugan v. Gotsopoulos*, 117 Nev. 285, 289, 22 P.3d 205, 208 (2001) (requiring a plaintiff to  
12 establish with reasonable certainty the “value of rental” rates for loss of use damages).

13 Wendy did not have a damages expert.

14 Wendy did not call Kevin Riley in her case-in-chief, despite the fact that he is the party  
15 with the knowledge of the values associated with the Jaksick family assets. Although Wendy  
16 deposed him for four days prior to trial, she never provided an updated damage calculation prior to  
17 trial.

18 As a result, Todd was subjected to a trial by ambush. Wendy took the stand and testified to  
19 water values Todd had not heard of prior to trial. Wendy attempted to introduce estimates on the  
20 value of the Tahoe House that Todd had not heard prior to trial. Because these damages should  
21 have been disclosed prior to trial under NRCP 16.1, Todd requests that this Court preclude Wendy  
22 from recovering damages on any of her equitable claims.

### 23 **III.**

#### 24 **WENDY’S CLOSING BRIEF VIOLATES THE SEVENTH AMENDMENT.**

25 Wendy’s closing brief makes one fact abundantly clear: She wants this Court to disregard  
26 the jury’s findings and rule in her favor on all claims – equitable and legal. But, again, under the  
27 Seventh Amendment of the United States Constitution, “no fact tried by a jury shall be otherwise  
28 re-examined in any Court of the United States, than according to the rules of common law.” U.S.

1 Const. Amend. VII. To be binding, the jury's findings must be on issues "common" to both legal  
2 and equitable claims. *Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.*, 908 F.3d  
3 313, 343 (8th Cir. 2018). "If the jury's findings were on a common issue, the court, in fashioning  
4 equitable relief, may take into account facts that were not determined by the jury, but it may *not*  
5 base its decision on factual findings that conflict with the jury's findings." (Emphasis added.) *Id.*  
6 at 344. This means that this Court cannot "apply[] equitable doctrines on the basis of factual  
7 predicates rejected, explicitly or implicitly, by a jury verdict." *Haynes Trane Serv. Agency, Inc. v.*  
8 *Am. Standard, Inc.*, 573 F.3d 947, 959 (10th Cir. 2009); *see also Avitia v. Metro. Club of Chicago,*  
9 *Inc.*, 49 F.3d 1219, 1231 (7th Cir. 1995) (holding that "a judge who makes equitable  
10 determinations in a case in which the plaintiff's legal claims have been tried to a jury is bound by  
11 any factual findings made or inescapably implied by the jury's verdict"). Here, the jury  
12 inescapably found that Todd did nothing wrong and did not damage Wendy in any way as an  
13 individual.

14 Wendy admits that the underlying basis for her claims for unjust enrichment and  
15 constructive trust are all of the factual issues she has previously asserted in the jury trial. She has  
16 not identified any *new* or *different* basis on which she seeks relief. After weeks of evidence and  
17 testimony, the jury found that Todd, as an individual, did not engage in any wrongful conduct.  
18 The jury's Verdict in favor of Todd as an individual implicitly and expressly rejected Wendy's  
19 claims that Todd, individually, has caused her harm. To find that Todd was somehow unjustly  
20 enriched on the same facts and evidence already rejected by the jury will contravene Todd's  
21 Seventh Amendment rights.

#### 22 IV.

#### 23 THERE IS NO EVIDENCE OF UNDUE INFLUENCE OR INCAPACITY.

24 For the first time in her closing brief, Wendy argues that Todd unduly influenced Sam, but  
25 she has not presented evidence that Sam was incapacitated and/or susceptible to undue influence.  
26 As the party contesting the transactions at issue, Wendy has the burden to prove undue influence  
27 by a preponderance of the evidence. *In re Estate of Bethurem*, 129 Nev. 869, 874, 313 P.3d 237,  
28 241 (2013). This requires Wendy to prove "that the disposition of property . . . was more likely

1 than not the result of undue influence.” *Id.* at 875, 313 P.3d at 242. “In order to establish undue  
2 influence under Nevada law, it must appear, either directly or by justifiable inference from the  
3 facts proved, that the influence destroyed the free agency of the [person].” *Id.* at 874, 313 P.3d at  
4 241 (internal quotations and alterations omitted).

5 Wendy’s argument that Todd was motivated to unduly influence Sam because the  
6 transactions benefit Todd does not prove undue influence. “[T]he fact that a beneficiary merely  
7 possesses or is motivated to exercise influence is insufficient to establish undue influence.” *Id.*;  
8 *see also In re Hegarty’s Estate*, 46 Nev. 321, 212 P. 1040, 1042 (1923) (holding that “it is well  
9 settled that mere possession of influence and the opportunity and motive to exercise it are not  
10 sufficient” to establish undue influence). Indeed, as the *Hegarty* court explained, “it is equally  
11 well settled that, unless the influence of the beneficiary be unduly exercised, it is not material that  
12 the beneficiary was interested in the will, or had better opportunity for solicitation or persuasion  
13 than the contestants.” 212 P. at 1042.

14 In *Bethurem*, the Nevada Supreme Court rejected a challenge to a will that disinherited the  
15 testator’s stepchildren in favor of one child because, while the sole heir “may have influenced [the  
16 testator] through frequent telephone conversations, influence resulting merely from [hers] and [the  
17 testator’s] family relationship is not by itself unlawful,” particularly in light of the fact that “there  
18 is no indication in the record that any influence [the heir] may have exercised prevented [the  
19 testator] from exercising his own free will.” 129 Nev. at 877, 313 P.3d at 243. Wendy cannot cite  
20 to any evidence establishing that Sam was not acting of his own free will regarding the  
21 Indemnification Agreement (or any challenged transaction) up until the date of his death.

22 Similarly, Wendy’s arguments that certain of the challenged transactions (i.e., the  
23 Indemnification Agreement and Tahoe House) effectively disinherit her (which is not supported  
24 by the evidence) and are improper or poor business decisions do not establish undue influence. As  
25 the Nevada Supreme Court pointed out in *Bethurem*, a decedent’s decisions “cannot be invalidated  
26 simply because it does not conform to ideas of propriety.” *Id.* at 874, 313 P.3d at 241 (Internal  
27 quotations omitted). Thus, while the testator’s “decision to disinherit his stepchildren” in  
28 *Bethurem* “may not [have] conform[ed] to ideas of propriety,” the Nevada Supreme Court

1 nevertheless refused to set aside his devise to one child. *Id.* at 877, 313 P.3d at 243.

2 Wendy's argument is the same as in *Bethurem*. She disagrees with her father's  
3 testamentary scheme. She blames Todd's close relationship with Sam for the testamentary  
4 scheme. ***But the evidence established that Sam intended to do exactly what he did.*** His will was  
5 not overcome. Wendy has not proven undue influence.

6 **V.**

7 **ACPAs**

8 As an individual, Todd joins in the arguments set forth in his rebuttal brief as a Trustee of  
9 the Issue Trust and Co-Trustee of the Family Trust and incorporates those arguments as if fully set  
10 forth here in this brief. In addition, Todd notes the following:

11 **A. SETTING ASIDE THE ACPAs WILL VIOLATE THE SEVENTH**  
12 **AMENDMENT.**

13 In his closing brief, Todd briefed the fact that Wendy sought damages based on several  
14 types of fraud, including concealment (i.e., nondisclosure) and intentional misrepresentation,  
15 which were based in large part upon the ACPAs. Because the jury unanimously rejected Wendy's  
16 fraud claim and found in favor of Todd, both as a Trustee and as an individual, any finding that the  
17 ACPAs are unenforceable will overturn the jury's implicit finding that Todd did not conceal  
18 information from Wendy and/or that Todd did not lie to Wendy.

19 **B. THERE IS NO EVIDENCE THAT WENDY DID NOT SIGN THE ACPAs**  
20 **AND/OR THAT WENDY DID NOT KNOW WHAT THEY CONTAINED.**

21 Wendy admitted, at trial, that she signed the ACPAs. Todd's expert also stated that  
22 Wendy's signature appeared on the ACPAs. To the extent that Wendy claims she never  
23 understood what was contained in the ACPAs, her argument fails under Nevada law. *See*  
24 *Campanelli v. Conservas Altamira, S.A.*, 86 Nev. 838, 841, 477 P.2d 870, 872 (1970) ("He who  
25 signs or accepts a written contract, in the absence of fraud or other wrongful act on the part of the  
26 other contracting party, is conclusively presumed to know its contents and to assent to them, and  
27 there can be no evidence for the jury as to his understanding of its terms." (Internal quotations  
28 omitted)). As other courts have found, "mere failure to read an agreement is not a defense in an  
action to enforce the terms of a written agreement." *Watts v. Polaczyk*, 619 N.W.2d 714, 717

1 (Mich. Ct. App. 2000).

2 The jury rejected Wendy's fraud claims arguing that Todd engaged in wrongful conduct  
3 regarding the ACPAs. The evidence at trial established that Wendy signed the ACPAs. The  
4 ACPAs should be enforced against Wendy.

5 Because the ACPAs should be enforced, this Court should find that Wendy unequivocally  
6 released Todd from individual liability. As set forth in Todd's closing brief, Wendy's argument  
7 that *she* did not understand what she was signing is not sufficient to rescind a contractual release  
8 of liability. *Oh v. Wilson*, 112 Nev. 38, 39-40, 910 P.2d 276, 277-78 (1996). Accordingly, the  
9 ACPAs should be enforced against Wendy and her claims against Todd must be denied given her  
10 contractual release of liability.

11 **C. ACPAs vs. NOTICE OF PROPOSED ACTION.**

12 An "agreement and consent to proposed action" is *not* the same thing as a "notice of  
13 proposed action" under Nevada law. Under NRS 164.725, a trustee may notify a beneficiary of an  
14 action that the trustee intends to take. If the beneficiary objects to the action, the trustee must file  
15 a petition with the court "for an order to take the action as proposed." NRS 164.725(7). An  
16 agreement and consent to proposed action, on the other hand, is not governed by statute. It is a  
17 request that the beneficiary consent to a contemplated action before the trustee undertakes it. The  
18 critical difference between the two is that a Notice of Proposed Action is the trustee's statement  
19 that it intends to take a specific action *regardless of beneficiary consent*. Any argument by  
20 Wendy regarding NRS 164.725 is inapplicable to the facts of this case because the ACPAs are not  
21 governed by that statute.

22 Furthermore, Todd has extensive powers under both Trusts. Every item covered by the  
23 ACPAs are included within Todd's powers as Trustee for which he did not need beneficiary  
24 consent. Wendy's arguments regarding Todd's motives with the ACPAs falls flat in the face of  
25 this basic fact. Todd never needed Wendy's consent to do any of the things of which she  
26 complains. If his intentions were what Wendy argues, why would Todd go through the hassle of  
27 an ACPA?

28 ///

1 VI.

2 **INDEMNIFICATION AGREEMENT**

3 **A. THE INDEMNIFICATION AGREEMENT WAS SAM'S CHOICE.**

4 Wendy's brief challenges, at length, *Sam's* decision to enter into an Indemnification  
5 Agreement with Todd. Although Wendy repeatedly argues that the Indemnification Agreement is  
6 "inconsistent" with Sam's estate plan, she has no evidence to demonstrate that Sam did not intend  
7 for the Indemnification Agreement to be a valid, binding document. As Todd briefed in his  
8 closing brief, he cannot be held liable for the decisions that *Sam* made.

9 **B. THE INDEMNIFICATION AGREEMENT IS A VALID DOCUMENT.**

10 **1. The Indemnification Agreement Complies with Nevada Law.**

11 Wendy does not cite to any legal authority to argue that the Indemnification Agreement  
12 should be set aside. As Todd previously brief, the evidence before this Court established that the  
13 Indemnification Agreement meets all the requirements of Nevada law to be constitute a binding  
14 and valid contract. *See Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d  
15 250, 255 (2012) (setting forth the elements of a valid contract).

16 **2. Wendy's Arguments Regarding Forgery, Fraud and Conspiracy**  
17 **Have Already Been Rejected By The Jury.**

18 Wendy's arguments that the Indemnification Agreement is the product of forgery and  
19 conspiracy were soundly rejected by the jury. The fact that she argues fraud and conspiracy at all  
20 to this Court after having lost on those issues during the jury trial demonstrates that Wendy is  
21 merely trying to get a second bite at the apple. But, under the Seventh Amendment, this Court  
22 cannot find for Wendy on facts which the jury has implicitly rejected. *Sturgis Motorcycle Rally,*  
23 *Inc. v. Rushmore Photo & Gifts, Inc.*, 908 F.3d 313, 343 (8th Cir. 2018). "If the jury's findings  
24 were on a common issue, the court, in fashioning equitable relief, may take into account facts that  
25 were not determined by the jury, but it may **not** base its decision on factual findings that conflict  
26 with the jury's findings." *Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.*, 908  
27 F.3d 313, 344 (8th Cir. 2018). This means that this Court cannot "apply[] equitable doctrines on  
28 the basis of factual predicates rejected, explicitly or implicitly, by a jury verdict." *Haynes Trane*

1 *Serv. Agency, Inc. v. Am. Standard, Inc.*, 573 F.3d 947, 959 (10th Cir. 2009); *see also Avitia v.*  
2 *Metro. Club of Chicago, Inc.*, 49 F.3d 1219, 1231 (7th Cir. 1995) (holding that “a judge who  
3 makes equitable determinations in a case in which the plaintiff’s legal claims have been tried to a  
4 jury is bound by any factual findings made or inescapably implied by the jury’s verdict”).

5 In her closing argument, Wendy specifically argued to the jury that the Indemnification  
6 Agreement was a forgery and a fraud. *See Exhibit 2*, pp. 56-57 (Day 12). She specifically argued:

7 Instead of doing the easy the part and being honest about it and keeping notary books, they  
8 chose to be the misrepresentation side of things because they knew couldn’t get it done  
9 with Sam or Mr. LeGoy working with Sam. They knew they couldn’t get what they  
10 wanted to accomplish without the help of Mr. Hascheff and without the signature page,  
11 orphan signature page and replacement of other pages and so on. So what do we get? We  
12 have documents with mistakes, changes and omissions . . .

13 Documents – multiple different documents with the same signature page and then having  
14 to manipulate pages in order to make all the margins of the page fit.

15 *Id.* But, despite this evidence and argument, the jury rejected Wendy’s claims of fraud and  
16 conspiracy.

17 Similarly, the jury rejected Wendy’s arguments regarding forgery. Furthermore, despite the  
18 fuss that Wendy has made about Sam’s signature, she did not present any evidence establishing  
19 that Sam *did not* sign the Indemnification Agreement. Mr. Green, however, opined that this was  
20 Sam’s signature and Wendy has not rebutted that expert evidence. Tr. Exh. 220. Hascheff  
21 testified that Sam intended to, and did, sign the Indemnification Agreement, and Wendy has not  
22 rebutted that evidence. *Exhibit 3*, p. 31:22-25; p. 32:1-6.

23 **3. It is Irrelevant When The Indemnification Agreement Was Physically Signed.**

24 Wendy’s argument regarding the date of the Indemnification Agreement is not a legally  
25 valid reason to set aside that contract. The parties to a contract may assign it any effective date  
26 which they chose, regardless of whether that date is the same date as the date of execution.  
27 *Versata Software, Inc. v. Internet Brands, Inc.*, 902 F. Supp. 2d 841, 854 (E.D. Tex. 2012) (“First,  
28 it is well established that the effective date of an agreement is not dictated by the date on which it  
is signed if the parties intend otherwise.”); *see also Miller v. Lomax*, 596 S.E.2d 232, 237 (Ga. Ct.  
App. 2004) (“It is well settled that, as between the parties to a contract, the effective date of their  
agreement may precede the date of physical execution.”); *State Troopers Fraternal Ass’n of N.J.*,



1 *Inc. v. State*, 692 A.2d 519, 524 (N.J. 1997) (“The determination of which date controls the  
2 application of the contract must be derived from the intent of parties . . .”). Thus, it is irrelevant  
3 *when* the Indemnification Agreement was actually signed.

4 **4. The Indemnification Agreement Falls Within Nevada’s Definition of**  
5 **Contractual Indemnity.**

6 Wendy also argues that the Indemnification Agreement should not be enforced because it  
7 does not qualify as a true “indemnification” document, but again, cites to no legal authority in  
8 support of this argument. Contrary to Wendy’s argument, the Indemnification Agreement falls  
9 within the exact definition of contractual indemnity under Nevada law. “[C]ontractual indemnity is  
10 where, pursuant to a contractual provision, two parties agree that one party will reimburse the  
11 other party for liability . . .” *United Rentals Hwy. Techs. V. Wells Cargo*, 128 Nev. 666, 673, 289  
12 P.3d 221, 226 (2012) (internal quotations and alterations omitted). That is precisely what this  
13 Indemnification Agreement is, a contractual indemnification agreement.

14 **5. The Indemnification Agreement is Supported by Consideration.**

15 Wendy also argues, without citation to authority, that the Indemnification Agreement is  
16 invalid for failure of consideration. But, the Nevada Supreme Court has specifically cautioned  
17 courts against “inquir[ing] into the adequacy of consideration.” *Oh v. Wilson*, 112 Nev. 38, 41,  
18 910 P.2d 276, 279 (1996). As explained by the *Oh* court, “the values exchanged are often difficult  
19 to measure and the parties are thought to be better at evaluating the circumstances of particular  
20 transactions.” *Id.* Therefore, “inadequacy of consideration standing alone does not justify  
21 rescission of a contract[.]” *Id.* at 42, 910 P.2d at 279.

22 Furthermore, the only instances in which this Court may inquire into adequacy of  
23 consideration will run afoul of the Seventh Amendment. Although this Court “may inquire into  
24 the adequacy of consideration when it is relevant to ascertaining whether fraud, lack of capacity,  
25 mistake, duress or undue influence exist,” *id.*, Wendy already tried these facts to the jury and the  
26 jury rejected her claims.

27 Finally, it has long been the law in this country that nominal consideration is sufficient to  
28 form a contract. *See, e.g., Edgar v. Hunt*, 706 P.2d 120, 122 (Mont. 1985) (holding “that even

1 nominal consideration is adequate to support an option contract”); *Ireland v. Jacobs*, 163 P.2d  
2 203, 206 (Colo. 1945) (“We think it is the law now everywhere that nominal consideration for  
3 almost any contract is sufficient.”). Wendy does not and cannot dispute that Todd personally  
4 guaranteed a substantial amount of debt. Her argument regarding consideration is contrary to  
5 Nevada law and should be rejected.

6 **C. THE SCOPE OF THE INDEMNIFICATION AGREEMENT IS EASILY**  
7 **DETERMINED.**

8 **1. Wendy’s Arguments Regarding Exhibits 11, 11A and 11B are Red Herrings.**

9 Wendy argues that this Court cannot determine the scope of the Indemnification  
10 Agreement because there are too many different versions, but none of the “versions” Wendy cites  
11 to change any material terms. The material terms remain the same throughout Exhibits 11, 11A  
12 and 11B. And, as Hascheff testified, Exhibit 11 was the version that was intended to be binding.  
13 **Exhibit 3**, p. 36:13-17 (“Q: Is Exhibit 11 the one that is intended to be valid, binding and  
14 effective in this case? A: Yes, because that was the one that ultimately had retyped in the date of  
15 the trust. . .”). Wendy has not presented any evidence to refute this testimony.

16 Regardless, however, all three versions of the Indemnification Agreement provide for the  
17 same scope. The Indemnification Agreement defines the word “Obligations” as the “obligations  
18 arising described on Exhibit A.” Tr. Exh. 11, ¶ D; Tr. Exh. 11A ¶ C. The only difference between  
19 the definition of “Obligations” is that Paragraph C in Exhibit 11 was added, resulting in the  
20 definition of Obligations being renumbered **but not changed**.

21 Exhibit A is the same, minus a handwritten note. ***There are no new or deleted obligations***  
22 ***in any of the iterations of Exhibit A.*** See Tr. Exh. 11; Tr. Exh. 11A.

23 The material terms of Indemnity are set forth in Section 2 of the Indemnification  
24 Agreement. A comparison between Exhibit 11, Exhibit 11A and Exhibit 11B reveals that these  
25 terms remain identical, but are re-numbered in Exhibit 11. ***The terms themselves never change.***

26 Instead, the differences between Exhibit 11, Exhibit 11A and Exhibit 11B are as follows:  
27 (1) the name of the Family Trust is changed from the incorrect name in Exhibit 11A and Exhibit  
28 11B to the correct name in Exhibit 11 in the first paragraph and the signature page; (2) the name of

1 the Trust is typewritten in Exhibit 11 instead of handwritten in Exhibits 11A and Exhibit 11B; (4)  
2 Paragraph 14, governing venue and jurisdiction, is present in Exhibit 11A but removed from  
3 Exhibit 11; (5) the numbering of Section 2 is slightly different in Exhibit 11 from Exhibit 11A.  
4 *See* Tr. Exhs. 11; 11A; 11B. None of these differences affect the material terms of the agreement.

5 Wendy's argument that this Court cannot determine the scope of the Indemnification  
6 Agreement is nothing more than a red herring because the material terms of the agreement are *the*  
7 *same* throughout every version presented to this Court.

8 **2. The Terms of the Indemnification Agreement Call For Payment of the**  
9 **Obligations on Exhibit A.**

10 Section 2 of the Indemnification Agreement (any version) requires that the Family Trust  
11 reimburse Todd for any Obligations which are called due. *See* Tr. Exh. 11. "Where language in a  
12 document is clear and unambiguous on its face, the court must construe it based on this plain  
13 language." *Love v. Love*, 114 Nev. 572, 580, 959 P.2d 523, 529 (1998). The Indemnification  
14 Agreement defines "Obligations" as those appearing on Exhibit A. *See* Exhibit 11.

15 *There is only one version of Exhibit A to the Indemnification Agreement in evidence.* It  
16 is unclear why Wendy keeps arguing that the scope of the Indemnification Agreement is unclear.

17 Although Wendy argues that there is no evidence Sam ever actually saw Exhibit 11, there  
18 is similarly no evidence that Sam *did not* see and agree to Exhibit 11. The jury has already  
19 rejected Wendy's insinuation that Todd somehow committed fraud and conspiracy by "slipping"  
20 Exhibit A past his father. The jury's rejection is an implicit finding that Sam knew and approved  
21 of Exhibit A. Exhibit A sets forth a very specific list of obligations. Accordingly, the scope of the  
22 Indemnification Agreement clearly encompasses those obligations, to the extent they are still  
23 outstanding.

24 **3. Outstanding Obligations.**

25 Confusingly, Wendy asks this Court to find that there are no outstanding obligations set  
26 forth in Exhibit A. While Todd testified that some of the obligations may have been paid, there  
27 are still obligations which are outstanding. Wendy does not cite to any evidence in support of her  
28 request, and there is nothing in the record before this Court which demonstrates that the

1 obligations listed in Exhibit A have been paid in full. Accordingly, Wendy's request should be  
2 rejected.

3 **D. THERE IS NO EVIDENCE OF UNDUE INFLUENCE OR INCAPACITY.**

4 Wendy's argument that the Indemnification Agreement is an improper estate plan is  
5 irrelevant. How Sam wanted his estate to be distributed was Sam's choice, and Wendy's opinion  
6 (or the opinion of her expert) as to how the estate should have been distributed are not evidence of  
7 undue influence. Wendy was required to prove that Sam more likely than not did not have free  
8 agency (free will) in making his decisions regarding the Indemnification Agreement and she was  
9 not able to do this. Hascheff testified that Sam wanted to enter into the Indemnification  
10 Agreement and was aware of its impact. **Exhibit 3** at pp. 32:5-8; 37:4-15. Hascheff, LeGoy and  
11 Stan Jaksick testified that Sam was mentally intact and a sharp businessman up until the date of his  
12 death. **Exhibit 3** (Hascheff) at p. 13:10-21; **Exhibit 1** (LeGoy) at p. 82:5-11; and **Exhibit 4** (Stan  
13 Jaksick) at p. 127:4-10). There is simply no evidence that Todd unduly influenced Sam into  
14 entering into any of the challenged transactions.<sup>2</sup>

15 Instead, Hascheff unequivocally testified that Sam wanted Todd and Stan "to be held  
16 harmless . . . [b]ecause otherwise those two could get completely wiped out, and then the estate,  
17 there would be a gross inequity if they were wiped out . . . and then the estate went one-third, one-  
18 third, one-third." **Exhibit 3**, p. 30:17-23. Mr. Hascheff testified that Sam was aware of the effect  
19 that the Indemnification Agreement might have on the Family Trust, but that he wanted to enter  
20 into it anyway. *Id.* at pp. 32:5-8; 37:4-15. The evidence at trial established that the  
21 Indemnification Agreement was something that Sam wanted, and Wendy has not provided any  
22 evidence that would allow this Court to invalidate that agreement.

23 **VII.**

24 **THE TAHOE HOUSE**

25 For this Court's ease of reference, Todd's arguments will track Wendy's requested rulings  
26 set forth in Paragraph 111 of her closing brief as closely as he can.

27  
28 <sup>2</sup> Nor is there any evidence that Todd materially participated in the formulating the dispositive provisions of the  
transfer instruments, or paid for the drafting of the transfer instruments.

1     **A.     THE OPTION AGREEMENT IS VALID (Paragraph 111(1), (2), (8), (9), (12)).**

2             Wendy’s first and second requested rulings ask this Court for the same relief: Rescind each  
3     and every transaction that transferred title of the Tahoe House from the Family Trust to Incline  
4     TSS.

5             **1.     The Actual Evidence Before this Court Regarding the Option Agreement.**

6             As this Court is aware, the Family Trust originally owned the Tahoe House. In 2011, Sam  
7     was concerned that his creditors at that time, “Dilts and Durham” might call their loan due, which  
8     would adversely affect Sam’s ability to pay the \$6 million loan on the Tahoe House to Bank of  
9     America. **Exhibit 3**, pp. 41:21-25; 42:1-25; 43:1-8. Hascheff testified that Sam intended “to do  
10    an Option Agreement, in part because the Option Agreement meant that we could have a family  
11    llc, basically put it would be an option between the family llc and the owner of the house, which  
12    was Sam.” *Id.* at pp. 43:18-25; 44:1. Thus, Incline TSS was formed. *Id.* at 44:2-4.

13            Hascheff also testified that Sam was aware that Todd’s two family trusts were the sole  
14    owners of Incline TSS, because those were the only two entities with money to make option  
15    payments, and Stan was currently going through a divorce. *Id.* at pp. 44:20-25; 45:1-5. Mr.  
16    Hascheff testified that Sam “knew exactly what we were doing” when Incline TSS was formed. *Id.*  
17    at 47:20-25. Incline TSS provided the creditor protection that Sam sought because (1) neither  
18    Sam nor the Family Trust would have an ownership interest in the entity to which creditors could  
19    attach, and (2) Incline TSS had “zero exposure” to creditors at the time of the Option Agreement.  
20    *Id.* at pp.49:4-7.

21            Wendy relies upon a letter from Hascheff in which he stated that granting an option would  
22    trigger “the due on sale clause” of Sam’s loan to Bank of America. Tr. Exh. 23.4. ***Nowhere in***  
23    ***that letter, however, does Hascheff advise Sam to not go through with the Option Agreement.***  
24    Hascheff’s letter is dated May 10, 2010. *See id.* Instead, Hascheff ultimately got the bank’s  
25    consent to the Option Agreement to avoid being held in potential breach. Tr. Exh. 23.19.

26            Hascheff Hascheff also testified that Sam intended for Incline TSS to have the option to  
27    purchase the Tahoe House, and that the option price of \$7,250,000 “was based on an appraisal.”  
28    *Id.* at p. 49:20-24. Initially, in earlier drafts of the Option Agreement, Sam and Incline TSS had

1 discussed exercising the option by executing a promissory note at a 6% interest for a five year  
2 term, but that was changed after Incline TSS's projected cash flows demonstrated that Incline TSS  
3 may not be able to pay the note at that rate. *Id.* at pp. 53:15-25; 54:1-4. Sam ultimately agreed to  
4 have the promissory note payable in 10 years at 2.5% interest. *Id.* at p. 53:9-11.

5 **2. Wendy's Request that this Court Set Aside the Option Agreement "Because It**  
6 **Was a Fraud" Runs Afoul of the Seventh Amendment.**

7 Despite never pleading quiet title or rescission, Wendy now asks the Court for this relief on  
8 the basis of fraud. However, as Todd has repeatedly briefed, Wendy already tried her claim for  
9 fraud to the jury, and the Option Agreement was certainly included in her request that the jury find  
10 fraud. The jury rejected Wendy's argument, and this Court cannot reach a contrary finding  
11 without upsetting the protections afforded to Todd by the Seventh Amendment.

12 **3. The Option Agreement is Not Void For Failure of Consideration.**

13 Wendy also appears to argue that the Option Agreement is void for failure of consideration.  
14 However, Wendy clearly does not understand the law of consideration. She claims that assuming  
15 debt is "getting something for nothing." Again, this is not true. "Assumption of a debt is valid  
16 consideration for the transfer of property." *Thornton v. Wolf*, 958 So. 2d 131, 133 (La. App. Ct.  
17 2007). Incline TSS assumed the loan on the Tahoe House, and Todd personally guaranteed the  
18 loan. Wendy did not assume any obligation to pay on that loan. Stan was supposed to, but  
19 subsequently refused to assume any debt. As a result, Todd took on an obligation to pay \$7.2  
20 million dollars. That is not "getting something for nothing."

21 **4. Wendy Does Not Provide Any Other Basis for Rescission Of the Option**  
22 **Agreement.**

23 Aside from arguments already rejected by the jury, Wendy does not provide this Court with  
24 any other basis to rescind the Option Agreement.

25 There is no evidence that Sam was mentally incompetent. There is no evidence that the  
26 Option Agreement was the product of undue influence.

27 There is no evidence of mutual mistake. There is no dispute over the terms of the Option  
28 Agreement. Hascheff admitted that he sent the wrong terms to Ticor Title when Incline TSS later  
exercised the option. *Id.* at pp. 54:13-25; 55:1-6. He affirmed that the valid note was the one with

1 the 10 years payment due, at 2.5% interest. *Id.* at p. 55:7-9.

2 Wendy's arguments regarding fraud have been soundly rejected by the jury.

3 Wendy also appears to argue that the Option Agreement is a forgery because it contains "an  
4 orphan signature page," but again, the expert evidence at trial established that Sam's signature  
5 does appear on the Option Agreement. Tr. Exh. 220. And, as set forth above, Hascheff testified  
6 that Sam knew what he was doing and intended to enter into the Option Agreement. There is no  
7 evidence that this was a forgery.

8 Wendy cannot argue that Sam did not have authority to enter into the Option Agreement.  
9 Under the Family Trust, Sam, as Trustee, had authority to "grant options on, sell (for cash or for  
10 deferred payments), convey, exchange . . . trust property." Exhibit 9, ¶ IV(K)(6). There is no  
11 prohibition in the Family Trust preventing Sam from granting an option agreement and/or selling  
12 the Tahoe House. *See* Exhibit 9.

13 There is simply no basis to rescind the Option Agreement.

14 **5. The Transfer to SSJ, LLC is Valid.**

15 Wendy does not offer any argument as to why she believes this transfer was invalid.  
16 Again, Sam, as Trustee, had authority to transfer the Tahoe House out of the Family Trust. Exhibit  
17 9, ¶ IV(K)(6). Hascheff testified that the transfer to SSJ, LLC was made for creditor protection  
18 reasons because he "wanted to put another LLC in the middle." **Exhibit 3**, pp. 55:25; 56:1-6.  
19 There is no evidence that Sam was not aware of this transfer, or that this transfer was somehow the  
20 product of undue influence.

21 Following the transfer of the Tahoe House to SSJ, LLC, the Family Trust's Option  
22 Agreement with Incline TSS was assigned to SSJ, LLC. Exhibit 51. Wendy does not provide this  
23 Court with any evidence or argument sufficient to rescind this assignment, either.

24 **6. The Exercise of the Option Should Be Upheld.**

25 Wendy's only argument for rescinding the exercise of the option is that it "was a horrible  
26 business decision by Sam." Even if that is true, that is not a basis to set aside this transaction. As  
27 briefed above, Wendy does not cite to any evidence establishing that Sam was mentally  
28 incompetent or that he was unduly influenced such that his will was overcome. She cannot,

1 because there is no evidence in the record before this Court of either incompetency or undue  
2 influence.

3 The Exercise of Option complied with the terms of the Option Agreement. Incline TSS  
4 delivered the agreed-upon promissory note. Tr. Exh. 23.20. Incline TSS assumed paying the  
5 loan. Wendy does not provide this Court with any basis to rescind this transaction.

6 **7. The Deed Transferring Title to Incline TSS Should Be Upheld.**

7 As set forth above, Incline TSS's exercise of its option complied with the terms of the  
8 Option Agreement. There is no evidence at trial that this deed was the product of forgery, undue  
9 influence or incompetence. Wendy does not provide this Court with a basis to set aside this  
10 transfer.

11 **8. This Court Cannot Set Aside Transfers of Property to Entities that Are Not**  
12 **Parties.**

13 SSJ, LLC is not a party to this litigation. In order for this Court to grant Wendy her  
14 requested relief, this Court will be required to rescind property title that SSJ, LLC once held.  
15 Absent SSJ, LLC's presence as a party, however, this Court does not have jurisdiction to enter this  
16 relief.

17 **B. BREACH OF FIDUCIARY DUTIES, REMOVAL AS TRUSTEE AND**  
18 **SURCHARGE (Paragraph 111(3), (10), (11), (15), (16)).**

19 These areas of Wendy's requested relief does not concern Todd as an individual, and Todd  
20 incorporates the arguments made in his brief filed on his behalf as Trustee of the Issue Trust and  
21 Co-Trustee of the Family Trust.

22 **C. TODD, PERSONALLY, DID NOT RECEIVE ANY ASSETS (Paragraph 111(13)).**

23 Wendy asks this Court to enter an order against Todd "personally" for unjust enrichment  
24 based upon assets that Todd has received. However, there is no evidence before this Court that  
25 Todd, personally, received any asset or interest related to the Tahoe House.

26 Incline TSS, *not Todd*, owns the Tahoe House. Todd is not a member of Incline TSS. The  
27 members of Incline TSS are the two of Todd's family trusts, and the Issue Trust. Todd, personally,  
28 never received any interest in the Tahoe House. In Nevada, "entities are presumed separate" from  
those who may hold an interest in them. *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 376,



1 328 P.3d 1152, 1157 (2014). The Nevada Supreme Court has repeatedly cautioned courts that  
2 “[t]he corporate cloak is not lightly thrown aside.” *Baer v. Amos J. Walker, Inc.*, 85 Nev. 219,  
3 220, 452 P.2d 916, 916 (1969). Entering an order against Todd, personally, on the basis of unjust  
4 enrichment for assets that he never received is contrary to Nevada law.

5 **D. SSJ, LLC IS NOT A PARTY TO THIS LITIGATION (Paragraph 111(14)).**

6 Wendy’s request that Todd be removed as a manager from SSJ, LLC asks this Court to  
7 exercise jurisdiction which it does not have. SSJ, LLC is not a party to this litigation, and this  
8 Court does not jurisdiction to enter orders concerning the affairs of non-parties. *C.H.A. Venture v.*  
9 *G.C. Wallace Consulting Engineers, Inc.*, 106 Nev. 381, 385, 794 P.2d 707, 710 (1990).

10 Furthermore, Wendy is not a member of SSJ, LLC with standing to seek removal of Todd  
11 as its manager. *See* NRS 86.483 (only authorizing members to bring derivative actions on behalf  
12 of the entity). And, even if she were, her pleadings do not comply with Nevada’s Rules of Civil  
13 Procedure for seeking derivative relief. *See* NRCP 23.1. Finally, Wendy does not cite for any  
14 basis to remove Todd as manager under SSJ, LLC’s Operating Agreement. *See* Tr. Exh. 96.

15 **E. THE USE OF THE INSURANCE PROCEEDS BENEFITTED WENDY.**

16 According to Wendy’s own expert, the value of the Tahoe House has exponentially  
17 increased since the date the Issue Trust used Sam’s life insurance proceeds to purchase a 54%  
18 interest in the home. Yet, despite having this *benefit* Wendy, she continues to argue that she was  
19 somehow harmed.

20 First, according to Wendy’s expert, the Issue Trust has gained a \$4 million increase in  
21 value *over and above the amount of the life insurance proceeds that were invested*. But, if Todd  
22 had only used the \$6 million for operating expenses like Wendy appears to argue in her closing  
23 brief, Wendy and all of the other beneficiaries would have lost the \$6 million in life insurance  
24 proceeds.

25 Second, the way that the Issue Trust is structured results in Wendy having the lion’s share  
26 of the \$4 million increase. Under the Issue Trust, the more lineal descendants a child has, the  
27 larger that child’s family share. Todd has the smallest share because he only has two lineal  
28 descendants (so, three people). Wendy has the largest share because she has four lineal

1 descendants. Of the twelve beneficiaries of the Issue Trust, five of them are Wendy and her  
2 family. This means that Wendy's block of the Issue Trust is entitled 5/12 of the increased value.  
3 Yet, Wendy claims that Todd has somehow received more than her. Wendy's claim is simply bad  
4 math.

5 Wendy's claim also overlooks the fact that, had Todd never used the life insurance  
6 proceeds to reinvest in the Tahoe House, *Wendy would never have an interest or right to use that*  
7 *home*. The testimony at trial from Stan and Hascheff clearly established that Sam never wanted  
8 Wendy to have anything to do with the Tahoe House because he was worried about her creditors.  
9 **Exhibit 3** (Pierre Hascheff) p. 61:3-18; **Exhibit 4** (Stan Jaksick) p. 131:5-19. Yet, Todd found a  
10 way to fulfill Sam's intent of keeping the Tahoe House for his three children while keeping the  
11 house away from creditors: By placing the home in a third party entity in which Wendy had no  
12 interest, but of which the majority owner is a trust that grants Wendy the right to use its assets.  
13 And, yet, somehow, Wendy claims this has harmed her. Wendy has not suffered any damage from  
14 Todd's actions.

### 15 VIII.

#### 16 THE SETTLEMENT AGREEMENT

17 In her closing brief, Wendy devotes pages to arguing why the Settlement Agreement  
18 between Todd and Stan constitutes a breach of fiduciary duty which requires removal of Todd as  
19 Trustee of all Trusts. Although this argument does not technically concern Todd as an individual,  
20 it does merit some discussion in this brief given the fact that Todd negotiated that agreement in  
21 both capacities, and the fact that Wendy is blatantly disregarding the rules of evidence and this  
22 Court's own determination from the bench.

23 First, breach of fiduciary duty is a legal claim which must be determined by the jury and  
24 not this Court.

25 Second, the jury could not have found that this was the basis on which Todd breached any  
26 fiduciary duty owed to Wendy *because the settlement agreement was not admitted to prove*  
27 *liability*. This Court specifically admonished the jury that it was not to consider the Settlement  
28 Agreement as proof of liability. Jury Instruction No. 37. This Court only admitted that agreement

1 to explore whether Stan had bias when testifying. *See* NRS 48.105(2). In Nevada, “[a] jury is  
2 presumed to follow its instructions.” *Leonard v. State*, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001)  
3 (internal quotations omitted). There is no evidence that the jury disregarded this Court’s  
4 instruction. Therefore, the settlement agreement was not the basis for the jury’s finding of a  
5 breach of fiduciary duty.

6 Third, this Court may not rely upon the settlement agreement as a basis for finding breach  
7 of fiduciary duty because the settlement agreement has never been entered into evidence for that  
8 purpose. Nor can it be, because Nevada law prohibits settlement agreements being used to  
9 establish liability. NRS 48.105(1).

10 Finally, the settlement between Todd and Stan only occurred because this Court ordered all  
11 parties to participate in a settlement conference prior to trial. Wendy could have resolved her  
12 claims at that point as well. She chose not to do so. Stan and Todd should not be punished for  
13 following this Court’s order.

## 14 IX.

### 15 NO CONTEST CLAUSE

16 Wendy also appears to argue that Todd somehow violated the no-contest clause when he  
17 filed his petition in this matter. A petition seeking to interpret the terms of a trust and *enforce* it,  
18 however, is not a challenge to a trust under Nevada law which could trigger a no-contest clause.  
19 *See* NRS 163.00195(3)(a),(c). A request to a court to “[o]btain court instruction with respect to  
20 the proper administration of a trust,” is not a violation of the no-contest clause. NRS  
21 163.00195(3)(c).

22 In contrast, Wendy has directly challenged the validity of the Second Amendment. Todd is  
23 aware that this Court has questions regarding the December 2012 document preparation but, again,  
24 it is important to note that Wendy accused the Second Amendment of being a forgery before she  
25 ever obtained those drafts.

26 Wendy claims that the Second Amendment to the Trust is a forgery, yet she never had a  
27 handwriting expert evaluate Sam’s signature. She never spoke to Hascheff prior to this litigation  
28 to question him about the validity of the Second Amendment. She never spoke to anyone involved

1 to determine whether the Second Amendment was a valid statement of Sam's intent. Instead, she  
2 blindly accused Todd of forging her father's signature.

3 "Forgery" is one of Wendy's favorite accusations, as the trial testimony established. If she  
4 did not like what something said, it was a forgery. She even accused others of altering her *own*  
5 statements that she later became embarrassed by, and she admitted this fact on the stand. Thinking  
6 that a signature looks suspicious is not probable cause. And while Wendy knew that her father  
7 underwent heart surgery around the time that the Second Amendment was signed, the probable  
8 cause standard is not based merely on what Wendy knew. It is also based on what she should have  
9 known had she conducted the most minimal inquiry, i.e. what a "reasonable person, properly  
10 informed and advised" would have known.

11 The one question that this Court must ask regarding probable cause is why Wendy  
12 previously demanded that the Second Amendment be complied with, if she had probable cause to  
13 challenge it? If Wendy truly believed that her father's signature was invalid, why did Wendy  
14 earlier demand that Lexi be given her \$100,000 gift under the Second Amendment?

15 Furthermore, Wendy focused heavily on the various signature pages and drafts of the  
16 Second Amendment at trial. This Court reviewed those various pages and drafts to note that the  
17 drafting of this document resulted in some sloppiness. But *Wendy did not have those versions or*  
18 *drafts on the date she challenged the Second Amendment.* All that Wendy had was the Second  
19 Amendment and an email containing the Second Amendment's signature page. Those two  
20 documents are not probable cause to challenge an entire testamentary scheme

## 21 X.

### 22 OFFER OF JUDGMENT

23 Confusingly, Wendy argues again regarding Todd's Offer of Judgment. The Offer of  
24 Judgment is addressed in a separate briefing, and is not appropriate for inclusion in these briefs.

25 Todd, as an individual, offered Wendy \$25,000 to settle her claims against him  
26 individually regarding the Issue Trust. That was a completely fair evaluation of the value of a  
27 settlement confirmed by the jury's Verdict. Todd also made a \$25,000 Offer of Judgment as an  
28 individual regarding the Family Trust case (446). That, too, was a fair settlement offer because

1 Wendy never specified with any particularity what wrongs Todd committed as an individual as  
2 opposed to a Trustee.

3 Todd intends to file a supplemental motion for attorneys' fees. The Court has indicated  
4 that it will entertain oral argument on Todd's motion for attorneys' fees and Todd respectfully  
5 requests that he be given a full and complete opportunity to argue his motion separate and apart  
6 from the briefs on Wendy's claim in equity.

7 **XI.**

8 **CONCLUSION**

9 Without exception, applicable authority in Nevada statutory law requires the Court to first  
10 and foremost honor the testamentary intent and desires of the grantor, Sam Jaksick. *See In re*  
11 *Connell Living Tr.*, 134 Nev., Adv. Op. 73, 426 P.3d 599, 602 (2018). Wendy asks this Court to  
12 disregard Sam's testamentary intent because she simply does not agree with it. But this Court  
13 cannot disregard Sam's intent.

14 Wendy also asks this Court to disregard the jury's verdict, because she also does not agree  
15 with it. But this Court cannot disregard Todd's Seventh Amendment rights. Wendy may try to  
16 recast her legal claims as equitable theories of recovery, but the fact remains that the jury has  
17 unanimously rejected the majority of her factual bases for relief.

18 Wendy's true harm is not caused by Todd, but by her own life choices that resulted in Sam  
19 structuring his testamentary scheme in the manner in which he did. There is simply no evidence  
20 that Todd has acted inconsistently with Sam's testamentary desires. Wendy's belief that she is  
21 somehow entitled to more is not a basis to undo an entire testamentary scheme. The jury has  
22 already weighed Wendy's arguments in the balance and found them wanting. Judgment in favor  
23 of Todd as an individual on all of Wendy's equitable claims is warranted.

24 **AFFIRMATION**

25 **Pursuant to NRS 239B.030**

26 The undersigned does hereby affirm that this document does not contain the social security


27 ///

28 ///

1 number of any person.

2 DATED this 31st day of July, 2019.

3 ROBISON, SHARP, SULLIVAN & BRUST  
4 A Professional Corporation  
5 71 Washington Street  
6 Reno, Nevada 89503

7   
8 KENT R. ROBISON  
9 THERESE M. SHANKS  
10 *Attorneys for Todd B. Jaksick, Individually,*  
11 *Incline TSS, Ltd., and Duck Lake Ranch, LLC*

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**AFFIDAVIT OF KENT R. ROBISON**  
**IN SUPPORT OF TODD B. JAKSICK'S CLOSING ARGUMENT BRIEF**

STATE OF NEVADA        )  
                                  ) SS.  
COUNTY OF WASHOE    )

Kent R. Robison, being first duly sworn on oath, deposes and says under penalty of perjury that the following assertions are true and correct.

1. I am counsel in these matters for Respondents Todd Jaksick, Duck Lake Ranch, LLC and Incline TSS, Ltd.

2. Attached as **Exhibit 1** are true and accurate copies of excerpts from the transcript of the March 1, 2019 trial testimony of Bob LeGoy.

3. Attached hereto as **Exhibit 2** is a true and accurate copy of an excerpt of attorney Kevin Spencer's closing argument on March 4, 2019, in the trial of this matter.

4. Attached hereto as **Exhibit 3** are true and accurate copies of excerpts from the transcript of the February 22, 2019 trial testimony of Pierre Hascheff.

5. Attached hereto as **Exhibit 4** are true and accurate copies of excerpts from the transcript of the February 27, 2019 trial testimony of Stan Jaksick.

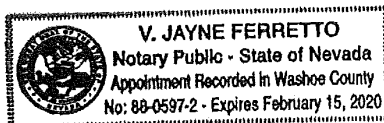
DATED this 31st day of July, 2019.

  
\_\_\_\_\_  
KENT R. ROBISON

STATE OF NEVADA        )  
                                  ) ss  
COUNTY OF WASHOE    )

Subscribed and Sworn to Before me this  
31st day of July, 2019, by  
Kent R. Robison.

  
\_\_\_\_\_  
NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **TODD B. JAKSICK'S CLOSING ARGUMENT BRIEF** on all parties to this action by the method(s) indicated below:

by 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:

X  
by using the Court's CM/ECF electronic service system courtesy copy addressed to:

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**Carolyn K. Renner, Esq.**

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2 \_\_\_\_\_ by personal delivery/hand delivery addressed to:  
3 \_\_\_\_\_ by facsimile (fax) addressed to:  
4 \_\_\_\_\_ by Federal Express/UPS or other overnight delivery addressed to:

5 DATED: This 31st day of July, 2019.

6   
7 V. JAYNE FERRETTO  
8 Employee of Robison, Sharp, Sullivan & Brust  
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**EXHIBIT LIST**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>	<b><u>Pages</u></b>
1	Trial Testimony of Bob Legoy	19
2	Attorney Kevin Spencer's Closing Argument	4
3	Excerpts of Trial Testimony of Pierre Hascheff	21
4	Trial Testimony of Stan Jaksick	4

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2019-07-31 01:49:08 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7404281 : yvitoria

**EXHIBIT 1**

**EXHIBIT 1**

1 Code No. 4185  
SUNSHINE LITIGATION SERVICES  
2 151 Country Estates Circle  
Reno, Nevada 89511  
3  
4

5 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 WENDY JAKSICK, Case No. PR17-00445

9 Petitioner, Department No. 15

10 vs.

11 TODD B. JAKSICK, Individually, Case No. PR17-00446

12 as Co-Trustee of the Samuel S.  
Jaksick, Jr. Family Trust, and Department No. 15  
13 as Trustee of the SSJ's

Issue Trust, et al.,

14 Respondents.

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15 PARTIAL TRANSCRIPT OF PROCEEDINGS

16 TESTIMONY OF TODD JAKSICK AND ROBERT LEGOY

17 CIVIL JURY TRIAL

18 DAY 11

19 8:44 A.M. TO 11:39 A.M.

20 March 1, 2019

21 Reno, Nevada

22

23 REPORTED BY: DEBORA L. CECERE, NV CCR #324, RPR

24 JOB NUMBER.: 530649

1 REDIRECT EXAMINATION

2

3 BY MR. ROBISON:

4 Q I have one question for you so we can get this  
5 case to the jury.

6 Do you mind if I don't ask you any questions?

7 THE WITNESS: Yes, that's fine by me, sir.

8 MR. ROBISON: No questions.

9 MR. SPENCER: No further questions, your Honor.

10 THE COURT: You may step down.

11 MR. ROBISON: But you still have to be here.

12 I call Bob LeGoy as our next witness.

13 (Whereupon the witness was sworn.)

14 BOB LEGOY,

15 called as a witness in said case,

16 having been first duly sworn, was

17 examined and testified as follows:

18

19 DIRECT EXAMINATION

20

21 BY MR. ROBISON:

22 Q Good morning.

23 A Good morning.

24 Q Please state your full name.

1 A Bob LeGoy, L-E-G-O-Y.

2 Q What's your business or occupation, sir?

3 A I'm an attorney.

4 Q How long have you been an attorney?

5 A 42 and a half years.

6 Q Would you please give the jury a description of  
7 your educational background?

8 A Yeah, I graduated from the University of Nevada  
9 in accounting in 1973. And that was such a long time ago  
10 that Nevada didn't have a law school. So I went to the  
11 University of Notre Dame Law School in northwestern  
12 Indiana.

13 Q And when did you graduate from law school?

14 A 1976.

15 Q With your accounting degree have you pursued CPA  
16 credentials?

17 A I have not.

18 Q And so the accounting degree and the law degree,  
19 what field of law have you found your practice in?

20 A I call myself a tax lawyer.

21 Q With what firm are you affiliated?

22 A I'm with the law firm of Maupin, Cox & LeGoy law  
23 firm, and I've been with that same firm ever since I  
24 started practicing in 1976.

1 Q Is one of the major areas of practice  
2 concentration at your firm estate planning?

3 A It is.

4 Q How many lawyers in your firm engage in that  
5 kind of practice?

6 A We have 10.

7 Q That do estate planning?

8 A Estate planning and help trustees administer  
9 trust and help executors administer estates.

10 Q Does that include drafting trust documents, sir?

11 A Yes.

12 Q And does it include drafting wills and other  
13 estate testamentary-type documents?

14 A Yes.

15 Q While you've been at the firm, can you give us a  
16 rough estimate of how many trusts your firm may have  
17 prepared for local residents?

18 A I have no idea. But I'm, I've done hundreds  
19 myself.

20 Q All right. Are you also licensed in California?

21 A I am licensed in California.

22 Q How long have you been licensed to practice law  
23 in the State of California?

24 A Since 1977.

1 Q And do you hold any special, what are those  
2 called, special --

3 A Yeah, I'm certified as a tax law specialist in  
4 the State of California. I had to practice more than 50  
5 percent of the time for five years, and I had to pass a  
6 special bar exam to get that certification.

7 Q That's above and beyond the bar exam that the  
8 rest of us take to be a lawyer?

9 A That's correct.

10 Q You've been nominated for how many years in the  
11 Super Lawyers in the Western United States?

12 A I don't know when I was first nominated.

13 Q Been several years that you've received that  
14 designation?

15 A Yes.

16 Q And you also then have been designated by your  
17 peers to be among the best lawyers in America with respect  
18 to your practice, correct?

19 A Yes.

20 Q Did you know Sam Jaksick?

21 A Sam?

22 Q Yes, sir.

23 A Yes, sir. I was hired to represent him for a  
24 period of time.



1 Q Do you know the period of time that you  
2 represented Mr. Jaksick?

3 A Yeah, I represented him from 2006 to probably,  
4 sometime in 2010.

5 Q Would you describe for the jury what kind of  
6 individual he was from a business standpoint?

7 A He, I call him the Great Sam Jaksick because he  
8 was an extraordinary businessman. He is the most  
9 successful residential real estate developer in the history  
10 of Reno. He developed Lakeridge, Caughlin Ranch, Montreux.  
11 An extraordinary businessman and an extraordinary person.

12 Q Did you get to know his propensities with  
13 respect to how he did things and documenting his estate?

14 A Yes.

15 Q Are you the author of the 2006 Restated Trust  
16 Agreement, sir?

17 A Yes.

18 Q Are also the author of the SSJ Issue Trust?

19 A Yes.

20 Q Tell us about the complexity from your  
21 perspective of the SSJ Issue Trust?

22 A The SSJ Issue Trust is unique in the sense that  
23 nothing is ever to be distributed from that trust to its  
24 beneficiaries. A trustee manages it, and it's to hold

1 properties that can then be used by family members.

2 Mr. Sam Jaksick wanted some particular special  
3 ranch properties that he had up in northwestern Nevada. He  
4 wanted to preserve them, he hoped forever, for his family,  
5 and so that's why that trust is designed that way.

6 Q Now that trust enumerates 28 separate paragraphs  
7 that describe the powers given to the trustee.

8 Describe what the powers clauses are generally  
9 for us, please.

10 A The, Nevada is unique in that Nevada is one of  
11 the, is either the first or the best state in the United  
12 States for a person to set up their trust because Nevada  
13 has statutes that our legislature has enacted, statutes,  
14 actually black-and-white laws, and the Governor has signed  
15 them, to allow people to design their trusts about any way  
16 that they want and have a great deal of freedom.

17 So those 28 powers, when we draft them, they're  
18 very broad.

19 They give the trustee in charge very broad  
20 powers as to how to manage and dispose of the properties  
21 that are in the trust.

22 Q Now that instance Sam designated whom to be the  
23 sole and exclusive trustee?

24 A He did.

1 Q He designated who?

2 A I'm sorry. I don't hear that well, and I didn't  
3 bring my hearing aids. I apologize. He designated his son  
4 Todd Jaksick to be the sole trustee of the SSJ Issue Trust.

5 Q Do you know why?

6 A Well, I think Sam had worked closely with all  
7 three of his kids -- Wendy, Stan and Todd.

8 And I think on the ranching properties and on a  
9 lot of other business and investments he worked very  
10 closely with Todd. And he, he felt like Todd would do the  
11 best job of any person, not just among his family members,  
12 but of any person or any entity to manage the assets that  
13 were in that trust.

14 And, and we even talked to him about the fact  
15 that hey, Todd is going to have a conflict of interest  
16 because he's going to be a trustee, and he's going to be a  
17 beneficiary. And, and Sam said that's fine. He'll do a  
18 great job.

19 Q In most trusts that you're familiar with,  
20 Mr. LeGoy, is it common that the successor trustee is also  
21 a beneficiary?

22 A In our practice in the State of Nevada it's very  
23 common that a family member serve as a trustee and that  
24 that family member is also a beneficiary of the trust.

1 It's very common.

2 Q All right. And so in that instance, if one  
3 becomes a successor trustee like Todd did in the family  
4 trust, he has to look out for the interests of his  
5 beneficiaries of that trust, and he himself might be a  
6 beneficiary, yet he's a trustee for other beneficiaries.

7 How does that work out in terms of conflict of  
8 interest?

9 A Well, it's a conflict of interest, but his first  
10 priority has to be to the beneficiaries. And, and so he,  
11 he's, he operates the trust with the beneficiaries in mind.  
12 And, and, and but of course he's a beneficiary, so he can  
13 conduct business with the trust on his own, but it has to  
14 be fair to the beneficiaries.

15 Q We have in evidence, and the jury will be able  
16 to see Exhibit 10, which is the SSJ Issue Trust, why does  
17 Sam give Todd all of the powers enumerated in those 28  
18 paragraphs?

19 A Because as the term trust means, you turn it  
20 over to somebody that you trust. Trustee is somebody you  
21 trust. So obviously he had complete trust in Todd to  
22 operate that trust.

23 Q Now as we fast forward in time, are you aware  
24 that Sam's death was approximately April 21st, 2013?

1 A Yes.

2 Q All right. And then did your firm become  
3 involved in providing legal assistance and consultation for  
4 the co-trustees of the family trust?

5 A Yes.

6 Q And did you also provide legal services and  
7 advice with respect to Todd's administration of the SSJ  
8 Issue Trust?

9 A Yes.

10 Q Are you aware of a decision that was made to  
11 take life insurance proceeds of which the Issue Trust was  
12 beneficiary and put those into the entity that owned the  
13 Lake Tahoe house?

14 A Yes.

15 Q Tell us about that, please.

16 A Yeah, so when people -- when wealthy people buy  
17 life insurance, if they just own the life insurance, then  
18 when they die, it's taxed in their estate, at an estate tax  
19 rate of 40 percent. The Federal government takes 40  
20 percent of that life insurance.

21 So what we tax lawyers do is we'll set up an  
22 irrevocable trust, very carefully designed and drafted  
23 trust to own that life insurance. And we name an  
24 independent person as the trustee. We don't want the

1 insured to be the trustee.

2 So Sam set up the SSJ Issue Trust, naming Todd  
3 as the trustee. And then Todd as the trustee went and  
4 applied for a \$6 million life insurance policy on Sam's  
5 life.

6 Then when Sam passed away, that \$6 million came  
7 into the SSJ Issue Trust free of estate taxes. We saved  
8 \$2.4 million in taxes for the family by very carefully  
9 structuring the SSJ Issue Trust.

10 So in a life insurance trust, when you do one of  
11 these life insurance trusts, most of these wealthy people  
12 have purchased the life insurance so that it will pay their  
13 estate taxes, or it will pay other creditors of the estate.

14 And you have to get the money out of the trust  
15 back to the family trust or back to the will, so that it  
16 can pay those, those expenses. You don't pay the creditors  
17 or the tax directly out of the SSJ Issue Trust.

18 So what a lot of these trusts will do, they'll  
19 buy assets from the family trust or from the estate so that  
20 the cash ends up where it's needed, to pay the creditors.

21 So what Todd did was with the consent, the  
22 written consent of Stan and Wendy, he bought what had been  
23 his father's house at Lake Tahoe. He bought 54 percent of  
24 it.

1 Now that house at Lake Tahoe had a huge --

2 Q The Issue Trust bought the 54 percent?

3 A Yes. The SSJ Issue Trust.

4 Q With the insurance proceeds?

5 A With the insurance proceeds. Bought the house  
6 from -- bought the house, and paid down the debt on that  
7 house.

8 Mr. Sam Jaksick had over 6 million in debt on  
9 that house. And so the, the life insurance proceeds, 5  
10 million of the life insurance proceeds were used to pay  
11 down that debt.

12 And that brought that Lake Tahoe house back into  
13 the family, brought it into the SSJ Issue Trust where it  
14 could be retained for 365 years for the use and benefit of  
15 Sam's family.

16 And, and they understand that, how it was owned.  
17 I mean --

18 Q How it was zoned?

19 A How it was owned. You can't hear any better  
20 than I can.

21 Q Okay. We're not going to do that again.

22 A I'm sorry. I'm sorry.

23 Q Were you particularly supportive of the Issue  
24 Trust using the insurance proceeds to buy into the entity

1 that owned the Lake Tahoe house?

2 A Absolutely. For the type of work I do SSJ Issue  
3 Trust has been a home run. Saved the family about \$3  
4 million in taxes, and it's preserved -- Sam's favorite  
5 ranching properties and 54 percent of his Lake Tahoe house  
6 forever -- for 365 years.

7 Q So the Issue Trust has an asset, \$6 million in  
8 life insurance proceeds.

9 So it got 54 percent of an asset with that \$5  
10 million, correct?

11 A Yes.

12 Q And now there's been testimony the house is  
13 worth anywhere from \$16 to 18 million, which means that 54  
14 percent interest appreciated by some \$4 million.

15 Does that make sense?

16 A That's a beautiful thing.

17 Q That's good thing for the Issue Trust, right?

18 A No, that, that trust will never again, what's in  
19 that trust will not, for 365 years, be subject to death  
20 taxes again as it rolls through the generations.

21 So that appreciation is going to stay in that  
22 family without ever being subjected to death taxes.

23 Q Now with respect to the family trust, you  
24 mentioned that you were involved in drafting the 2006



1 restated trust for Sam Jaksick?

2 A Yes.

3 Q And did that necessitate several meetings  
4 between you and he and an analysis of his estate?

5 A Yes.

6 Q And what's the purpose of that family trust,  
7 sir?

8 A Well, the family trust, it's a revocable and  
9 amendable trust while the person is alive. And it's, it's  
10 your basic estate planning document.

11 It directs how all of your assets that you will  
12 own, that you don't put in a trust like this SSJ Issue  
13 Trust or give to your kids, all the assets you own, how  
14 they're going to be distributed upon your death.

15 Who are the beneficiaries going to be? How long  
16 are they going to stay in trust? How long are the assets  
17 going to stay in trust? Or are they going to be  
18 distributed right away? And who is the trustee going to be  
19 to manage the, the assets that are in that trust?

20 Q So once you draft and get the signatures on the  
21 2006 restated trust agreement, fast forward.

22 Were you involved in any efforts to amend it by  
23 and through the Second Amendment?

24 A No.

1           Q     Do you recall that Sam asked you there at the  
2     end of 2012 for assistance with respect to amending his  
3     estate plan?

4           A     And, I'm sorry, I didn't hear the question.

5           Q     I'm sorry. Do you recall Sam attempted to  
6     utilize your services to amend the 2006 restated trust  
7     agreement?

8           A     Yeah. I vaguely remember that.

9                     You're asking me if I was asked --

10          Q     Yes, sir.

11          A     -- about -- I vaguely remember that I was. And  
12     I was not able to do that is my vague recollection.

13          Q     Do you recall that he had a sense of urgency  
14     about the need to amend that trust?

15          A     The Great Sam Jaksick always had a sense of  
16     urgency about everything.

17                     And I understand that he was going in for an  
18     operation, some sort of medical procedure. And I found  
19     that out at a later time. And I don't think I knew that at  
20     the time. Because if I had known that he had a medical  
21     issue, then I think I probably would have dropped  
22     everything to try to help him out.

23          Q     All right. Now after Sam's passing in April of  
24     2013, did your firm help Todd administer the SSJ Issue

1 Trust?

2 A Yes, we did.

3 Q And did your firm help Todd and his brother  
4 Stan, together with Kevin Riley as co-trustees, administer  
5 the family trust?

6 A We did.

7 Q And looking back during your involvement, sir,  
8 would you describe for the jury how Todd performed as the  
9 co-trustee of the family trust?

10 MR. SPENCER: That's vague and broad.

11 THE COURT: Overruled.

12 THE WITNESS: I think that, that Todd Jaksick  
13 and with, you know, help from his brother Stan and also  
14 from their accountant Kevin Riley, have done an astounding  
15 job on administering Sam Jaksick's family trust. And the  
16 reason I say that is because I think, unbeknownst to  
17 everybody, and unbeknownst to us, Sam died with about 30  
18 million or more in liabilities.

19 When we first looked at his estate, we thought  
20 it was probably insolvent. We didn't, we couldn't see  
21 really how they would be able to pay off all the  
22 liabilities and have anything left at the end. As a matter  
23 of fact, somebody in our firm said look, I think they  
24 should just sell everything and pay as many creditors as

1 they can and be done with it.

2 And so Todd and Stan and Kevin have worked  
3 extraordinarily hard to, to pay down these liabilities, to  
4 manage and pay down these liabilities. And they've done an  
5 astounding job.

6 There's going to be an estate left at the end of  
7 the day. And I think they satisfied a large number of  
8 creditors who are, are -- probably feel good that they have  
9 got their money.

10 Q Throughout the administration of family trusts,  
11 sir, has your firm always been ready, willing, and able to  
12 discuss all aspects of that trust and its administration  
13 with Wendy Jaksick?

14 A Stan and Todd instructed us early on that if she  
15 had any questions of us to take her phone calls and talk to  
16 her.

17 Q And how has Kevin Riley done as the accounting  
18 person for that family trust?

19 A I think Kevin Riley is a genius. He has done an  
20 incredible job, and I don't think that Stan and Todd could  
21 have accomplished what they accomplished in managing and  
22 paying down these liabilities without his help.

23 He seemed like he, he knew every answer about  
24 every asset and every debt any time you wanted to ask him a

1 question.

2 Q Are you aware of any prohibition, restriction or  
3 limitation on Wendy Jaksick's ability to call Kevin Riley  
4 and ask questions?

5 A None. I think he had the same green light that  
6 we had to take her phone calls and speak with her any time  
7 that she wanted.

8 Q Thank you, sir.

9 MR. ROBISON: No further questions.

10 THE COURT: Hold on a moment.

11 Any questions, Mr. Lattin?

12 MR. LATTIN: No questions.

13 THE COURT: Mr. Hosmer-Henner?

14 MR. HOSMER-HENNER: No questions, your Honor.

15 THE COURT: Thank you very much.

16 Mr. Spencer, you may cross.

17

18 CROSS-EXAMINATION

19

20 BY MR. SPENCER:

21 Q Mr. LeGoy, how are you this morning?

22 A I'm fine. Thanks. How are you?

23 Q Good. Do you have any idea why -- you mentioned  
24 that you represented Sam from '06 to 2010, right?

1 STATE OF NEVADA )  
2 WASHOE COUNTY ) ss.  
3

4 I, DEBORA L. CECERE, an Official Reporter of  
5 the State of Nevada, in and for Washoe County, DO HEREBY  
6 CERTIFY:

7 That I was present at the times, dates, and  
8 places herein set forth, and that I reported in shorthand  
9 notes the proceedings had upon the matter captioned within,  
10 and thereafter transcribed them into typewriting as herein  
11 appears;

12 That the foregoing transcript, consisting of  
13 pages 1 through 128, is a full, true and correct  
14 transcription of my stenotype notes of said proceedings.

15 DATED: At Reno, Nevada, this 5th day of May,  
16 2019.

17

18

19 /s/ Debora Cecere

20 DEBORA L. CECERE, CCR #324

21

22

23

24

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Electronically  
PR17-00445  
2019-07-31 01:49:08 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7404281 : yvitoria

**EXHIBIT 2**

**EXHIBIT 2**

1 4185

2

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IN THE SECOND JUDICIAL DISTRICT COURT

7

STATE OF NEVADA, COUNTY OF WASHOE

8

THE HONORABLE DAVID HARDY, DISTRICT JUDGE

9

10

11 CONS.: TRUST:,

Department No. 15

12 SSSJ'S ISSUE TRUST

Case No. PR17-00445

13 \_\_\_\_\_/

14 Pages 1 to 58, inclusive.

15

16

17

TRANSCRIPT OF PROCEEDINGS

18

JURY TRIAL -- DAY 12

19

Monday, March 4, 2019

20

21

JOB NO: 532388

22 REPORTED BY:

Christina Amundson, CCR #641  
Litigation Services 323.3411

23

24



1 32. In this day and age it's not that difficult to  
2 be honest about it. You put footers on documents,  
3 you put page numbers on documents, you put  
4 identifiers on every page so the pages can't be  
5 switched out. You might even have your client  
6 initial them. If you want to make a change to a  
7 document, we all know that all you gotta do is just  
8 hit print again. Make the change, hit print again  
9 and have your client come in or go to see them and  
10 have them sign the document. It's not hard.

11 It's not like the old days where you had to  
12 sit down at a Selectric typewriter, and if you  
13 wanted to change the thing, you have to do it from  
14 scratch. If you're making a change, why switch out  
15 pages? Why expand margins? Why attach signature  
16 pages without page numbers from a different  
17 document? Just reprint the page so documents are  
18 prepared and processed properly. That would be  
19 honest. A notary that has proper signatures and  
20 dates and keeps records in her notary book, changes  
21 and amendments made to documents, which is reviewed  
22 and signed by the client. No confusion, question  
23 about the validity of the controlling documents.

24 Instead of doing the easy part and being

1 honest about it and keeping notary books, they chose  
2 to be the misrepresentation side of things because  
3 they knew they couldn't get it done with Sam or Mr.  
4 LeGoy working with Sam. They knew they couldn't get  
5 what they wanted to accomplish done without the help  
6 of Mr. Hascheff and without the signature page,  
7 orphan signature pages and replacement of other  
8 pages and so on. So what do we get? We have  
9 documents with mistakes, changes and omissions, a  
10 notary that will fill in and complete anything she's  
11 been told, a notary that fails to record her  
12 transactions spellspell or reporter lost notary book  
13 to the state as she's supposed to do.

14 Documents -- multiple different documents  
15 with the same signature page and then having to  
16 manipulate pages in order to make all the margins of  
17 the pages fit.

18 Your Honor, it's a good stopping point.

19 THE COURT: Great stopping point. Thank  
20 you, counsel.

21 (Whereupon, jury was admonished  
22 and excused.)

23 (End of proceedings at 12:44 p.m.)

24

1 STATE OF NEVADA            )  
                                  )     SS.  
2 COUNTY OF WASHOE         )

3         I, CHRISTINA MARIE AMUNDSON, official reporter  
4 of the Second Judicial District Court of the State  
5 of Nevada, in and for the County of Washoe, do  
6 hereby certify:

7         That as such reporter, I was present in  
8 Department No. 15 of the above court on March 4,  
9 2019, at the hour of 8:15 a.m. of said day, and I  
10 then and there took verbatim stenotype notes of the  
11 proceedings had and testimony given therein in the  
12 case of Cons: Trust, SSJ's Issue Trust, Case No.  
13 PR17-00445.

14         That the foregoing transcript is a true and  
15 correct transcript of my said stenotype notes so  
16 taken as aforesaid, and is a true and correct  
17 statement of the proceedings had and testimony given  
18 in the above-entitled action to the best of my  
19 knowledge, skill and ability.

20         DATED: At Reno, Nevada, on 12th day of June 2019.  
21

22                 /S/ Christina Marie Amundson, CCR #641

23                 \_\_\_\_\_  
24                 Christina Marie Amundson, CCR #641

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PR17-00445  
2019-07-31 01:49:08 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7404281 : yvilorla

**EXHIBIT 3**

**EXHIBIT 3**

1 Code #4185  
SUNSHINE LITIGATION SERVICES  
2 151 County Estates Circle  
Reno, Nevada 89511  
3

4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 -o0o-

9

In the Matter of the Case No. PR17-00445  
10 Administration of the PR17-00446

11 SSJ's ISSUE TRUST Dept No. 15

12 \_\_\_\_\_/

13 In the Matter of the  
administration of the

14 SAMUEL S. JAKSICK, JR.,  
FAMILY TRUST

15 \_\_\_\_\_/

16

17

18 PARTIAL TRANSCRIPT OF PROCEEDINGS

19 TESTIMONY OF PIERRE HASCHEFF

20 FEBRUARY 22, 2019

21 RENO, NEVADA

22

23

24 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

25 JOB NO. 530283

1 required permits for the property and there is also some  
2 water rights that are involved as well.

3 Q Did Sam become an important client to you?

4 A Yeah. He was one of my better clients, yes.

5 Q And tell us about the evolution of your  
6 relationship with Sam from the day he first walked into your  
7 office until late 2012?

8 A First of all, very kind, very kind guy, gentleman.  
9 Good man. Loved to hunt.

10 Q Did you develop an understanding or a belief about  
11 his business acumen, his business expertise, so to speak?

12 A Yes.

13 Q Tell us about that.

14 A He was a sharp guy. I mean, he was a very sharp  
15 guy. He had, he had kind of a rough history, if I remember  
16 correctly. He was a boxer.

17 And he, basically, went to the bank, as he  
18 explained to me, and actually convinced the bank to give him  
19 a loan, I think it was like \$5,000, and I think that was his  
20 first, took that \$5,000 and I think, if I remember  
21 correctly, he started to develop Lakeridge.

22 Q Now, Lakeridge, just so we all know, is what?

23 A Lakeridge is that community that's in Reno.

24 Q A 900-acre PUD south of town at Lakeridge and  
25 McCarran?

1 liabilities, basically any exposure that would result from  
2 the personal guarantees and other liability.

3 Q Let's use Ag Credit for an example. Ag Credit was  
4 a creditor, true?

5 A Correct.

6 Q Sizable loan?

7 A If I remember right, yes.

8 Q All right. So if Ag Credit came after Todd who  
9 guaranteed the debt and Todd had to pay \$6 million, what  
10 would be the effect of this agreement under that scenario?

11 A If there was a claim against him?

12 Q Yes.

13 A Then the estate would step up and pay that bill.

14 Q Even though part of that loan was taken on  
15 property owned 51 percent by Todd's trusts?

16 A Correct.

17 Q Is that what Sam wanted?

18 A What he wanted was the boys to be held harmless.  
19 All right. Because otherwise those two could get completely  
20 wiped out, and then the estate, there would be a gross  
21 inequity if they were wiped out, had no personal assets  
22 anymore, and then the estate went one-third, one-third,  
23 one-third.

24 Q All right. Let's turn to the signature page,  
25 please. Why is Todd required or why does Todd's signature

1 appear on Exhibit 11, the Indemnification Agreement in his  
2 favor?

3 A Okay. Could you ask that question again?

4 Q Why is Todd signing on the document?

5 A Because I want him to sign it.

6 Q Why is that, sir?

7 A To acknowledge that there is an Indemnity  
8 Agreement and that he is bound by it. The estate is bound  
9 by it and, of course, he is bound by it. He understands.

10 Q All right. And the entities that are signed by  
11 Todd is the TBJ SC Trust and the TBJ Investment Trust. Did  
12 they have exposure on these loans, sir?

13 A They had some exposure. I can't remember if it  
14 was on, it was on specific loans.

15 Q And then, of course, Todd has to sign it as an  
16 individual above that. Do you see that, sir?

17 A Correct.

18 Q Is that something that you required?

19 A Yes.

20 Q Todd had to understand it and agree to it?

21 A Yes.

22 Q Now, why is the document signed by Sam Jaksick,  
23 Jr. and by Sam as Trustee of the Samuel S. Jaksick, Jr.  
24 Family Trust?

25 A Well, typically, that's the way you do it, because



1 ultimately if there was an asset that was not in the trust  
2 that was in his name, both he individually and in his  
3 capacity as trustee were basically going to be the  
4 indemnitors.

5 Q Is there any question in your mind, Mr. Hascheff,  
6 that Sam Jaksick wanted this document to be fully  
7 enforceable to protect Todd and to protect Stan under his?

8 A Yes, because we went through this document a lot.

9 Q All right. Do you recall that there were  
10 different drafts?

11 A Yes.

12 Q All right. Let's see 11A, please. And if you go  
13 to the third page, Mark, please, paragraph 14.

14 A I'm sorry, paragraph 14.

15 Q Okay. Why?

16 A Why did I put 14 in?

17 Q Why did you take it out?

18 A Well, it's a typical provision that I have in  
19 agreements, but when I first drafted the document -- let me  
20 just see. This was an older one. Yeah, this was an older  
21 one.

22 Q Correct.

23 A And so typically you do that if you think that you  
24 are going to have one party in one jurisdiction and another  
25 party in a different jurisdiction, so you are basically

1           Q     And then there is yet another draft, Mr. Hascheff,  
2     and that's Exhibit 11B, and can we please see that? And  
3     let's go to the signature page on that, please. All right.  
4     If you look at the right hand signature of Mr. Jaksick, you  
5     will see that it's handwritten, but there is not a date  
6     there. Can you explain that for us, please?

7           A     That's because I didn't know the, remember, I  
8     didn't know the date. I wanted to honestly do the best I  
9     could to make sure that I wanted him individually and him,  
10    and Sam in his capacity as trustee to be responsible under  
11    the Indemnity Agreement, and I don't believe I had a date at  
12    that point, so I said I would just fill that date later.

13          Q     Mr. Hascheff, do each and every one of these  
14    drafts, 11A and 11B, provide for the same protection for  
15    Todd regardless of the changes on these handwritten dates?

16          A     Yeah. The intent was basically to hold him  
17    harmless in the event of a catastrophe.

18          Q     Do you have any question in your mind that Sam  
19    signed these documents?

20          A     No, he signed them.

21          Q     You know that?

22          A     Well, he either signed them in my office or he  
23    signed them in his office, but he signed a lot of documents  
24    in my office, so presumably this one was also signed.

25          Q     After these drafts were prepared and Exhibit 11

1 was signed, did you and Sam continue to discuss the need to  
2 protect the kids?

3 A Well, I think that the exposure even continued  
4 after I stopped representing them, because it was a daily  
5 grind basically doing the cash flow statements, getting  
6 extensions from lenders, you know, just trying to hold off  
7 what could otherwise be a catastrophe.

8 Q Now, if we put 11 back on the screen, please, you  
9 have looked at these documents throughout these proceedings  
10 particularly in light of the deposition that you have given,  
11 true, sir?

12 A Yes.

13 Q Is Exhibit 11 the one that is intended to be  
14 valid, binding, and effective in this case?

15 A Yes, because that was the one that ultimately had  
16 retyped in the date of the trust. Again, it should be 2006,  
17 not 1996.

18 Q And in your mind, based on your discussions with  
19 Sam, is it your position that Sam intended Exhibit 11 to be  
20 valid, binding, and effective and applicable in this case?

21 A Yes.

22 Q Have you so advised Todd over the years that this  
23 is the effective, binding, valid one, Exhibit 11?

24 A Ultimately, there were three drafts, right?

25 Q Right.

1           A     Signed agreements, but ultimately this, if I  
2     remember correctly, this was the last one. This was the one  
3     that was going to be operative.

4           Q     All right. When you did this, again, were you,  
5     were you concerned at all that if Sam passed and Todd and/or  
6     Stan tried to protect themselves with this document it might  
7     adversely affect the Family Trust, was that in your mind at  
8     all?

9           A     My mind?

10          Q     Yes, sir.

11          A     Yeah. It was a potential that the trust could be  
12     depleted.

13          Q     But, nonetheless, is this something your client  
14     Sam Jaksick wanted to achieve?

15          A     Yes, because we had discussions about it.

16          Q     And did you fulfill your client's intent in having  
17     this document signed by Sam and Todd?

18          A     Yes.

19          Q     And likewise with Stan?

20          A     Yes.

21          Q     Where did Exhibit A come from on Exhibit 11?  
22     Please show the first page. There you go.

23          A     Well, if I remember, one of my recitals said the  
24     obligations was a nonexclusive list, so I typically like to  
25     put a list of obligations and attach it as an Exhibit A so

1 company, is that a creature of statute here in Nevada?

2 A Yes.

3 Q And it's intended to do what for its owners?

4 A Shelter them from liability.

5 Q So who operates a limited liability company? Who  
6 is the boss?

7 A It's the member or manager.

8 Q And the manager operates the company as though --

9 A It's like the president of a corporation.

10 Q All right. There we go. And then who owns a  
11 limited liability company? What are the owners referred to  
12 as?

13 A Members.

14 Q So members are owners and the manager manages?

15 A Correct.

16 Q Sometimes they are the same?

17 A Correct.

18 Q All right. So SSJ, LLC was formed to take title  
19 to the Lake Tahoe house?

20 A Yes.

21 Q All right. What did you know about the Lake Tahoe  
22 house in 2011 when SSJ, LLC was formed?

23 A Well, there was a concern that the, obviously, the  
24 lenders, there was still some issues. There were some other  
25 third party lenders that were making a lot of noise about

1 suing Sam.

2 Q Do you recall their names?

3 A It was Dilts & Durham.

4 Q Dilts & Durham?

5 A Correct.

6 Q And when you say they were making noises, what do  
7 you mean?

8 A Well, they had, Sam had borrowed money from them.

9 Q Right.

10 A And they wanted to get paid back, and if I  
11 remember right it was the loan came due. He didn't have the  
12 money to pay it back, so.

13 Q Did that put the Lake Tahoe house at risk?

14 A It did.

15 Q How so?

16 A He was worried about, I mean, obviously, it's a  
17 beautiful home on the lake.

18 Q Right.

19 A And he didn't, he did not want to lose it, and the  
20 concern was, and then, of course, he had a loan on that  
21 property, too, of over \$6 million. He was worried about not  
22 being able to service that debt. If I remember right, it  
23 was an interest only debt.

24 Q With Bank of America?

25 A Yes, and it was going to mature and then,

1       therefore, the payments would be kicked up, and he did not  
2       have the cash flow to make those payments, and the concern  
3       was that he didn't have a heck of a lot of equity in the  
4       house, because of the decline of the property values during  
5       the recession, so he could very well lose the house to a  
6       variety of different creditors. So what we wanted to do is  
7       shelter that house, so one way to do that would be to get it  
8       into an LLC.

9           Q       Is there anything wrong with that legally?

10          A       To do creditor protection?

11          Q       Yes, sir.

12          A       No.

13          Q       Exactly.

14          A       No.

15          Q       Many lawyers in this community specialize in that  
16       area, do they not?

17          A       Correct.

18          Q       All right. So with regard to this creditor  
19       protection plan, what was involved?

20          A       So we sat down and had several meetings on this  
21       about whether we could sell the house to a separate LLC.  
22       That became too problematic. The other alternative was to  
23       do an Option Agreement, in part because the Option Agreement  
24       meant that we could have a family LLC. Basically put, it  
25       would be an option between the family LLC and the owner of

1 the house, which was Sam.

2 Q And in that particular case did that, was that why  
3 Incline TSS, Ltd was formed?

4 A Yes.

5 Q And did you do the work to effectuate an option  
6 for Incline TSS to acquire the Lake Tahoe house?

7 A Yes.

8 Q Did you do so pursuant to your client's  
9 insistence?

10 A Yes, because obviously what clients do, they go to  
11 their lawyer and say here is my problem. Here is my issue.  
12 Here is my concerns. Help me figure out how to solve this  
13 problem. So we kicked around alternatives and this turned  
14 out to be the alternative to best fit this particular  
15 transaction.

16 Q Did you recommend them the creation of this  
17 limited liability company that we referred to in this trial  
18 as Incline TSS, Ltd?

19 A Yes.

20 Q And that was to be owned at the time by Todd's two  
21 trusts?

22 A If I remember correctly, that was the only two  
23 entities that had any money to make the option payments.

24 Q All right. But was Stan supposed to be involved  
25 at that point in time back in 2010?



1           A     He could have, but the problem was he was in the  
2     middle of a divorce.

3           Q     What effect did that have on Sam's estate plans?

4           A     He didn't want to give him any property or have  
5     any of the ventures until he got that finalized.

6           Q     Why? What's the reason behind that?

7           A     And I didn't handle his divorce, but as I  
8     understand typically this is what occurs, is if there is a  
9     divorce, then it's a community property state, so even  
10    though the husband may own 100 percent of that LLC or that  
11    interest in a corporation, or any other property for that  
12    matter, then the wife is entitled to half of it. I mean,  
13    there are exceptions, but simply put that's the rule.

14                So if you put him on a venture or put him in a  
15    deal and then the divorce is ongoing, and then they finally  
16    get to and they try to equalize the estate, that those  
17    potentially would be up for division between the husband and  
18    wife.

19           Q     So Sam could wake up one morning and find that his  
20    ex daughter-in-law was his partner?

21           A     Could be. You could draft around that, but for  
22    the most part that was his concern, and the way it was  
23    explained to me is we will worry about Stan, we will worry  
24    about Stan, but once he gets his divorce final, then we are  
25    going to work towards --

1 plan was, the concept of what we were trying to accomplish,  
2 yes.

3 Q Okay. So let's break this thing down. Incline  
4 TSS, TSS is Todd, Stan, and Sam acronym, correct?

5 A It could be. I can't remember that, but --

6 Q All right. So Incline TSS, Ltd is a limited  
7 liability company. It's managed by whom?

8 A Ultimately, it's managed by Todd.

9 Q Okay. Do you recall that when it was created and  
10 filed with the Secretary of State, it showed that Stan was  
11 also a manager?

12 A That is correct.

13 Q But that later went away because of the divorce?

14 A Correct.

15 Q All right. So now we know who manages. Who are  
16 the owners of Incline TSS when it's created in 2010?

17 A I believe it was Todd's trusts.

18 Q All right. And Sam was aware of that?

19 A Yes.

20 Q Is it your testimony, sir, that Sam was aware that  
21 only Todd's trusts were the owners of Incline TSS, Ltd?

22 A He is, was, yes.

23 Q That was his intent?

24 A Well, we structured it, yeah, and at the end of  
25 the day he knew exactly what we were doing.

1 Q But Incline TSS had just been formed. It did not  
2 have creditors, did it?

3 A No.

4 Q So the house if transferred to Incline TSS would  
5 not necessarily be subjected to creditor claims?

6 A No. They were not a personal guarantor. They  
7 were not on any loans. They basically had zero exposure.

8 Q So could Sam's creditors then reach across and  
9 grab an asset owned by Incline TSS?

10 A Well, that's why it wasn't involved.

11 Q That's why Sam wasn't involved?

12 A Correct, because as long as there is some kind of  
13 tangential connection, even if it's remote, it just causes  
14 problems, so and if I remember right, Todd's two trusts had  
15 enough cash to do the funding and also were not, I don't  
16 believe they had very much exposure either.

17 Q All right. So was it Sam's intent that Incline  
18 TSS have an option to purchase the Incline house?

19 A Yes.

20 Q And was the price arrived at, the option price,  
21 purchase price \$7,250,000?

22 A If I recall, yes.

23 Q All right.

24 A It was based on an appraisal.

25 Q All right. But that option was not exercised for

1           A     Well, there was supposed to be a \$50,000 it looks  
2     like initial payment. Purchase price was 72, excuse me,  
3     \$7,250,000. If I remember right, the debt was \$6.3 million,  
4     so it outlines the terms of these option payments. It would  
5     have to occur on the 15th, January 15 of each month until  
6     the option was exercised, and then once the option was  
7     exercised there was going to be a promissory note that was  
8     going to be given from TSS to Sam.

9           Q     And the terms of that note, 10 years, 2.5 percent  
10    interest?

11          A     Correct.

12          Q     Now, did you and Sam negotiate different terms  
13    that might apply before you finalized this memorandum?

14          A     When you say different terms --

15          Q     Do you recall any discussions about a 6 percent  
16    interest rate for a five year term?

17          A     Right. So I believe in the initial draft, because  
18    obviously when you do creditor protection work you are  
19    always concerned that a creditor might come in and try to  
20    set aside the transaction, so to make it bulletproof, so to  
21    speak, you should have, try to make it as arm's length as  
22    possible. But once we put those in, that was like an  
23    initial draft, that was kind of my recommendation, if I  
24    remember correctly.

25          Q     The 6 percent at five years?

1           A     Yeah, because I thought that they could cash flow  
2     that.

3           Q     Right.

4           A     But they couldn't.

5           Q     Okay.

6           A     So that's why we went to these relaxed terms,  
7     because that would be something that they could afford,  
8     because the last thing you want to do is set up terms that  
9     they can't keep --

10          Q     Sure.

11          A     -- and then arguably they are in default and then  
12     the whole transaction gets unraveled.

13          Q     Do you recall that you might have sent the wrong  
14     memorandum to Ticor Title?

15          A     Yeah, that's what I have been -- yes, that's what  
16     happened.

17          Q     Let's see Exhibit 542, please. Can you tell the  
18     jury, please, how it came about that you sent the wrong  
19     memorandum to Ticor?

20          A     Well, first of all, it shouldn't have happened,  
21     because that was not the operative agreement. It looks like  
22     that was a prior agreement that was ultimately changed to  
23     the terms. And what I think may have happened is I could  
24     have been out of the office and they needed a copy of the  
25     Option Agreement and my secretary sent it.

1 Q They, Tigor?

2 A Tigor, yeah, because they would need a copy of it  
3 in order to close the transaction, and it's happened before  
4 and I have sent what I thought might be the correct document  
5 and it really isn't. It should have been, but I think my  
6 secretary just sent the old document.

7 Q But the valid, binding, effective one is the one  
8 that refers to the 10 year note at 2 1/4 interest?

9 A That's correct.

10 Q All right. Why was the note to be unsecured,  
11 Mr. Hascheff?

12 A Well, again, a lot of moving parts when you are  
13 trying to do something like this, but --

14 Q Unsecured, just so we are clear, means what?

15 A Unsecured means that typically taking a house,  
16 you buy a home, for example, you get title to the home when  
17 you buy it. You had to finance it, right, with the lender,  
18 so the lender secures your promise to pay the lender with  
19 the home.

20 Q A deed of trust?

21 A Correct. And so if you don't pay up your note  
22 payment like you are supposed to, your lender will foreclose  
23 on your house. So that note, that promise to pay is secured  
24 by the home.

25 Q Okay. But in this instance the lender, which

1 would be SSJ?

2 A Right. So just to back up a little bit,  
3 initially, if I remember correctly, the transaction was  
4 structured between the trust and TSS, and then what I wanted  
5 to do is put another limited liability company in the  
6 middle.

7 Q Is that another layer of protection?

8 A Correct.

9 Q How so?

10 A Because it's SSJ now, so the trust owned SSJ,  
11 which was a single member LLC owned by the family, Sam's  
12 Family Trust.

13 Q Let me mine into that a bit. 2010, the trust owns  
14 the Lake Tahoe house?

15 A Correct.

16 Q If Sam dies, the Lake Tahoe house is disposed of  
17 in accordance with the terms of the Family Trust document --

18 A Correct.

19 Q -- then in effect, right?

20 A Correct.

21 Q But then you with your client Sam transfer the  
22 house from the trust to the new limited liability company  
23 called SSJ, LLC?

24 A Correct, yes.

25 Q Now, who owned the member SSJ, LLC?

1           A     Yeah. He told me where he wanted his property to  
2 go, yes.

3           Q     All right. Now, by this time was it clear to you,  
4 based on what Sam had represented to you, whether or not  
5 Wendy was to have any ownership in the Lake Tahoe house?

6           A     She was not.

7           Q     Sam made that absolutely clear to you?

8           A     That it was structured that way, yes.

9           Q     And did Sam give you an explanation as to why he  
10 did not want Wendy to have an ownership in the Lake Tahoe  
11 house?

12          A     It was the same reason she wasn't, had an  
13 ownership in the other entities, because --

14          Q     Creditor claims, things like that?

15          A     Yeah, potential issues with problems.

16          Q     Did you honor Sam's intent to make sure that she  
17 had no interest in the Lake Tahoe house?

18          A     Correct, I did.

19          Q     All right. So when you did the Second Amendment,  
20 can you tell us generally what the substantive changes were  
21 in Sam's estate plan accomplished by the December 10th, 2012  
22 Second Amendment to trust?

23          A     I don't remember all of the provisions, but the  
24 Lake Tahoe house was no longer in his estate, so he said  
25 that it's no longer, that's not an asset that's going to be



1  
2  
3 STATE OF NEVADA )  
4 ) ss.  
5 WASHOE COUNTY )

6 I, CORRIE L. WOLDEN, an Official Reporter of the  
7 Second Judicial District Court of the State of Nevada, in  
8 and for Washoe County, DO HEREBY CERTIFY;

9 That I am not a relative, employee or independent  
10 contractor of counsel to any of the parties; or a relative,  
11 employee or independent contractor of the parties involved  
12 in the proceeding, or a person financially interested in the  
13 proceeding;

14 That I was present in Department No. 15 of the  
15 above-entitled Court on February 22, 2019, and took verbatim  
16 stenotype notes of the proceedings had upon the matter  
17 captioned within, and thereafter transcribed them into  
18 typewriting as herein appears;

19 That the foregoing transcript, consisting of pages 1  
20 through 178, is a full, true and correct transcription of my  
21 stenotype notes of said proceedings.

22 DATED: At Reno, Nevada, this 23rd day of July, 2019.

23 /s/Corrie L. Wolden

24 CORRIE L. WOLDEN  
25 CSR #194, RPR, CP

FILED  
Electronically  
PR17-00445  
2019-07-31 01:49:08 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7404281 : yvilorla

**EXHIBIT 4**

**EXHIBIT 4**

1 Code #4185

2

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

HONORABLE DAVID A. HARDY, DISTRICT JUDGE

9

-o0o-

10

WENDY JAKSICK,

Case No. PR17-00445

11

Petitioner,

Dept. 15

12

vs.

13

Case No. PR17-00446

14

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

Dept. 15

15

16

Respondents.

17

18

19

TRANSCRIPT OF PROCEEDINGS

20

JURY TRIAL - DAY 9

21

February 27, 2019

22

Reno, Nevada

23

24

REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR

25

Job No. 530646

1 A Yes.

2 Q Was that unrelated to the surgery in December 2012?

3 A Yes.

4 Q After your dad's passing -- well, excuse me, prior to

01:29PM 5 his death, was your dad in charge of most of the family

6 businesses?

7 A Yes.

8 Q Was he calling the shots for most of the entities and

9 companies?

01:29PM 10 A He was.

11 Q And after his death, did that responsibility shift on to

12 Todd and yourself?

13 A It did.

14 Q And could you describe a little bit about the breakdown

01:29PM 15 or the division between you and -- between you and Todd with

16 respect to the family business.

17 A Well, I mean, Todd was obviously involved with all the

18 ranch entities, and there were a lot of those. I was involved

19 with Montreux Development Group, as well as Montreux Golf Club.

01:30PM 20 But in terms of kind of the day-to-day cotrustee stuff,

21 I would say that Todd was more in the lead on that. He was really

22 the one kind of having communications with the attorneys, you

23 know. Not that I wasn't, but he was more the point guy.

24 Q Would it be fair to say that of all the family business,

01:30PM 25 you were more on the golf side and Todd was more on the ranching

1 interest in the Tahoe house?

2 A Yes.

3 Q Was she ever going to be involved in Incline TSS?

4 A No.

01:34PM 5 Q Do you have an understanding of why your dad did not  
6 want Wendy to be a member or involved in any of these entities  
7 that had an ownership of the Lake Tahoe house?

8 A Yeah, we really didn't talk about it. I mean, I would  
9 assume it was because of some of her past business dealings and  
01:34PM 10 creditor issues.

11 You know, he just didn't want to expose Tahoe to that  
12 kind of --

13 Q Was it your understanding that there was a risk of the  
14 Tahoe house being attached by creditors if Wendy was involved?

01:34PM 15 A Possibly.

16 Q Did you know that to be a concern of your father's?

17 A Yes, he didn't mention that. But, yeah, you know, Wendy  
18 was not going to be involved in the business or have an interest  
19 in that home.

01:35PM 20 Q And there were life insurance proceeds that went to the  
21 issue trust; is that right?

22 A Yes.

23 Q And then as the trustee of the issue trust, Todd entered  
24 into a deal where there was -- life insurance proceeds would be  
01:35PM 25 used to invest in Incline TSS, which then owned the Tahoe house.

1 STATE OF NEVADA       )  
                                  ) ss.  
2 WASHOE COUNTY       )

3

4

5               I, CONSTANCE S. EISENBERG, an Official Reporter of the  
6 Second Judicial District Court of the State of Nevada, in and for  
7 the County of Washoe, DO HEREBY CERTIFY:

8               That I was present in Department 15 of the  
9 above-entitled Court on February 27, 2019, and took verbatim  
10 stenotype notes of the proceedings had upon the matter captioned  
11 within, and thereafter transcribed them into typewriting as herein  
12 appears;

13              That I am not a relative nor an employee of any of the  
14 parties, nor am I financially or otherwise interested in this  
15 action;

16              That the foregoing transcript, consisting of pages 1  
17 through 251, is a full, true and correct transcription of my  
18 stenotype notes of said proceedings.

19              DATED: At Reno, Nevada, this 13th day of May, 2019.

20

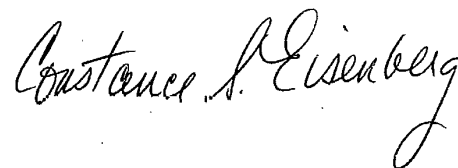
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23

24

25



CONSTANCE S. EISENBERG  
CCR #142, RMR, CRR

**Jayne Ferretto**

---

**From:** eflex@washoecourts.us  
**Sent:** Wednesday, July 31, 2019 2:19 PM  
**To:** Kent Robison  
**Cc:** Jayne Ferretto  
**Subject:** NEF: CONS: TRUST: SSJ'S ISSUE TRUST: Statement: PR17-00445

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

**PROOF OF SERVICE OF ELECTRONIC FILING**

---

**A filing has been submitted to the court RE: PR17-00445**

**Judge:** HONORABLE DAVID A. HARDY

**Official File Stamp:** 07-31-2019:13:49:08  
**Clerk Accepted:** 07-31-2019:14:18:30  
**Court:** Second Judicial District Court - State of Nevada  
Civil  
**Case Title:** CONS: TRUST: SSJ'S ISSUE TRUST  
**Document(s) Submitted:** Statement  
- \*\*Continuation  
- \*\*Continuation  
- \*\*Continuation  
- \*\*Continuation  
**Filed By:** Kent R. Robison

You may review this filing by clicking on the following link to take you to your [cases](#).

This notice was automatically generated by the courts auto-notification system.

---

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

THERESE M. SHANKS, ESQ. for INCLINE TSS, LTD. et al  
SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST, SSJ'S ISSUE TRUST  
DONALD ALBERT LATTIN, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY, TODD B. JAKSICK  
PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST  
KENT RICHARD ROBISON, ESQ. for INCLINE TSS, LTD. et al  
CAROLYN K. RENNER, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY, TODD B. JAKSICK  
MARK J. CONNOT, ESQ. for WENDY A. JAKSICK

STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST

ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK

**The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):**

R. KEVIN SPENCER, ESQ. for WENDY A. JAKSICK

ZACHARY JOHNSON, ESQ. for WENDY A. JAKSICK



1 CODE: 4205  
2 DONALD A. LATTIN, ESQ.  
3 Nevada Bar No. 693  
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13 *Attorneys for Petitioners/Co-Trustees*

14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

15 IN AND FOR THE COUNTY OF WASHOE

16 In the Matter of the: Case No.: PR17-0445  
17 SSI's ISSUE TRUST. Dept. No.: 15  
18 \_\_\_\_\_ / Consolidated

19 In the Matter of the Administration of Case No.: PR17-0446  
20 THE SAMUEL S. JAKSICK, JR., FAMILY TRUST. Dept. No.: 15  
21 \_\_\_\_\_ /

22 **PETITIONERS' REPLY TO WENDY JAKSICK'S**  
23 **TRIAL BRIEF ON EQUITABLE CLAIMS**

24 TODD JAKSICK, as sole Trustee of the SSI's Issue Trust ("Issue Trust") and as Co-  
25 Trustee of the Samuel S. Jaksick, Jr. Family Trust ("Family Trust"), MICHAEL S. KIMMEL,  
26 individually and as Co-Trustee of the Family Trust, and KEVIN RILEY, individually, as former  
Trustee of the Family Trust, and Trustee of the Wendy A. Jaksick 2012 BHC Family Trust  
(hereafter "Petitioners", "Trustees", or "Co-Trustees"), pursuant to the Order entered by the Court

1 on June 28, 2019, setting a new deadline, respectfully submit the following as their Reply to  
2 Wendy Jaksick's Trial Brief on Equitable Claims ("Reply").

3  
4 **I.**  
**INTRODUCTION**

5 After the jury awarded only \$15,000 in response to their arguments for an \$80 million  
6 damages award, Wendy's tactic has now changed to disparaging everyone involved in this case,  
7 including six highly respected attorneys and an accountant. Trial Transcript 05/13/19 at 35:15-  
8 36:1; *see* Verdict. This is a desperate and blatant attempt to inflame the Court to rule in Wendy's  
9 favor, despite the jury verdict and overwhelming evidence. As an overarching response to  
10 Wendy's allegations, Petitioners ask the Court to consider that Todd, Mr. Riley, Mr. Kimmel,  
11 Pierre Hascheff, Bob LeGoy, and Brian McQuaid have provided consistent testimony and  
12 document evidence as to the facts and circumstances of this case. Petitioners similarly ask the  
13 Court to reject the unsupported and defamatory assertions that these highly respected individuals  
14 would risk their licenses and careers to deceive Wendy Jaksick.  
15  
16

17 Further, in their Opening Brief, Wendy and counsel directly disregard the Court's  
18 instructions as to the formatting of these briefs. Following the stipulation to try the equitable  
19 claims by brief on May 13, 2019, Mr. Robinson asked the Court if the parties should, in the interest  
20 of economy, reference exhibit numbers, rather than attach exhibits to the briefs. Trial Transcript  
21 05/13/2019 at 35: 10-13. The Court specifically said to please submit briefs in such a manner. *Id.*  
22 at 35:14. Despite this instruction, Wendy not only attached exhibits, but she cut and pasted portions  
23 of select exhibits and stuck them into the middle of her brief. *See gen.* Wendy's Brief. Such  
24 conduct resulted in extensive and time-consuming verification by counsel as to exhibit authenticity  
25 and is directly in conflict with this Court's instruction.  
26

1           The purpose of utilizing such methods became clear to Petitioners when they realized that  
2 Wendy attempted to cite exhibits that were *not* admitted into evidence. Specifically, Wendy cut  
3 and pasted an excerpt from an email in exhibit 324 into her brief as support for "Lake Tahoe"  
4 argument. Wendy's Brief at 66. Such exhibit was not stipulated to by counsel or otherwise  
5 admitted by this Court. Thus, Wendy's use of such exhibit is in direct violation of the rules of  
6 evidence. Petitioners specifically refrained from citing highly supporting exhibits that were not  
7 admitted at trial and the fact that Wendy ignored such rules in an attempt to sway the Court  
8 demonstrates a serious lack of professional ethics. Petitioners request that this Court disregard  
9 such exhibits, and any arguments made related to the same. They further request this Court find  
10 as follows: (1) settle and approve the Issue Trust accountings; (2) settle and approve the Family  
11 Trust accountings; (3) ratify and approve the validity of the Agreement and Consent to Proposed  
12 Actions ("ACPAs"); (4) find that Wendy violated the no-contest provision of both the Issue Trust  
13 and Family Trust Agreements; (5) find that Petitioners have not violated the no contest clause; (6)  
14 find that Wendy's claims for unjust enrichment and constructive trust cannot be substantiated; (7)  
15 confirm the appointment of Todd as Trustee of the Issue Trust; (8) confirm the appointment of  
16 Todd and Mr. Kimmel as Trustees of the Family Trust; (9) deny Wendy's claim for disgorgement  
17 of Trustees' fees; (10) ratify the use of Trust assets in the defense of this matter; and (11) determine  
18 that an award of attorneys' fees for either side is premature.  
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II.

LEGAL ANALYSIS

**A. The Accountings Comply with All Statutory and Common Law Requirements and Must be Approved.**

Wendy has alleged that the Trustees' accountings were inadequate. *See* Wendy's Brief at 1-2. Specifically, Wendy has alleged that the accountings were (1) untimely; (2) did not comply with the statutorily required form under NRS 153.041, NRS 165.1214, and NRS 165.135; and (3) were inadequate in their disclosures. *Id.* at 2-33. First, Wendy never pleaded the issue of timeliness of the accountings and even assuming she had, the right to challenge the accountings was waived through her failure to timely object. Second, the accountings undeniably complied with the statutory requirements of NRS 165.135, as testified to by Wendy's own accounting expert. Third and finally, the accountings met all known standards of disclosure and the Trustees went above and beyond their duties to disclose to Wendy by allowing her unlimited access to the attorneys and accountants involved in the Trust administration. Accordingly, Petitioners request this Court approve the accountings in their entirety.

**i. The timeliness of the accountings was not plead and has been waived.**

Both NRS 165.1214 and the terms of the Family Trust and Issue Trust require that an accounting be issued annually to the beneficiaries. Wendy now alleges, essentially for the first time, that the timing of when the accountings were delivered "is a *per se* breach of the terms of the Trusts, Nevada law and the Trustees' fiduciary duties." Wendy's Brief at 7. However, a thorough review of Wendy's Amended Counter-Petition reveals that she not once plead the timeliness of the accountings as a breach. *See* Exhibit 5. Moreover, not once in the exceedingly excessive supplements, petitions, and motions filed by Wendy in over two years of litigation did Wendy ever

1 allege that the timeliness of the accountings was somehow the basis for the deficiency of the  
2 accountings.

3 Only after Wendy was soundly defeated during the jury trial did she file a Second  
4 Supplement to her Amended Counter Petitioner ("Second Supplement") whereby she alleged, for  
5 the first time, that the accountings were untimely. See Second Supplement, filed May 9, 2019 at  
6 2-3. This attempt to raise new issues *after* the jury trial is procedurally improper and failed to  
7 fairly notice Petitioners of Wendy's claim. NRCP 8(a). Further, not once did Wendy or her  
8 counsel question any of the Co-Trustees, particularly the preparer, Mr. Riley, as to the timeliness  
9 of the accountings. To raise this issue now deprives the Co-Trustees of their ability to defend such  
10 allegations and amounts to a denial of due process. In sum, Wendy has not properly pleaded  
11 timeliness as to the delivery of the accounting as an issue in this litigation and thus it is not properly  
12 before the Court at this time.  
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15 Even assuming Wendy had properly alleged timeliness of the accountings as a breach of  
16 fiduciary duty, such argument has been waived by her failure to timely object. Article I, Paragraph  
17 J of the Issue Trust and Article IV, Paragraph J of the Family Trust provide as follows:

18 ACCOUNTINGS. During the lifetime of the Grantor, the Trustee is required to  
19 render accountings only to the Grantor; and the accountings must be rendered at  
20 least annually. Following the death of the Grantor, the Trustee of each trust must  
21 render accountings at least annually to each beneficiary of the trust who is entitled  
22 to receive current discretionary or mandatory distributions from income or  
23 principal, and to each living remainderman who would then be entitled to a  
24 distribution of income or principal if the event requiring final distribution of the  
25 trust (such as the attainment by the income beneficiary of a specified age or the  
26 death of the last living income beneficiary) had then occurred.

1 Exhibit 13, p. 26; Exhibit 10, p. 13. While the Trust itself is silent as to when an accounting need  
2 be rendered, NRS 165.1214(1) provides that “the trustee shall deliver the required account within  
3 90 days after the end of the period of account.”

4 However, the Trust Agreements also provide that “unless any person to whom an  
5 accounting is required to be rendered delivers a written objection to the Trustee within 180 days  
6 after receipt of the accounting, the accounting is to be final and conclusive with respect to all  
7 transactions disclosed in the accounting . . .” After expiration of the 180-day period, the “Trustee  
8 is no longer [to] be liable to any beneficiary of the trust . . . with respect to all transactions disclosed  
9 in the accounting, except for the Trustee’s intentional wrongdoing or fraud.”). See Exhibit 13,  
10 Article IV, Section J, p. 26; Exhibit 10, Article IV, Section J, p. 13. Wendy did not object within  
11 180 days and the jury found that none of the Trustees engaged in intentional wrongdoing or fraud.  
12 See Verdict. As such, Wendy has consented to the accountings and has waived any right to  
13 challenge their timeliness.<sup>1</sup>

14 Lastly, Petitioners highlight, yet again, that the timeliness of the accountings is nothing  
15 more than a claim for breach of fiduciary duty. See Petitioners Opening Brief at 6-7 (citing *Landau*  
16 *v. Landau*, 230 So. 3d 127, 129 (Fla. Dist. Ct. App. 2017) (“failure to file timely and accurate  
17 annual accountings with the beneficiaries was a breach of his duty to the beneficiaries”); *In re*  
18 *Riddle*, 946 N.E.2d 61 (Ind. Ct. App. 2011) (“Trustee of testamentary trust breached her fiduciary  
19 duty to beneficiary and beneficiary’s guardian by failing to deliver written accounting statement  
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25 <sup>1</sup> Wendy has made allegations related to the 2018 and 2019 accountings. As this Court is aware, those accountings  
26 are not a part of this litigation. However, even assuming they were, the same arguments contained herein would apply  
to those accountings. Moreover, despite Wendy’s claims otherwise, the Trustees have complied with their duties and  
sent the 2018 accountings to Wendy, as evidenced by the certified mail receipt attached as Exhibit 1.

1 and to keep complete and accurate records. . ."); *see also O'Riley v. U.S. Bank, N.A.*, 412 S.W.3d  
2 400, 407-418 (Mo. Ct. App. 2013)). In fact, Wendy concedes as much. *See* Wendy's Brief at 4  
3 (failure "to timely prepare and deliver their required accountings was an unequivocal *breach* of  
4 the terms of the Trusts"); *id.* at 7 ("failures is a *per se breach of the terms of the Trusts . . .*")  
5 (emphasis added). Wendy's claims for breach of fiduciary duty have been tried before the jury  
6 and an inconsistent finding with the jury verdict would violate the Seventh Amendment. After  
7 receiving a *di minimums* award of \$15,000 from the jury in early March, Wendy is attempting to  
8 take a second bite at the "breach of fiduciary duty apple" by inappropriately presenting this issue  
9 to the Court. Accordingly, the issue of timeliness has not been plead, and even assuming it had  
10 been, has been waived and is prohibited by the Seventh Amendment.<sup>2</sup>

11  
12 **ii. It is undisputed that the accountings comply with NRS 165.135.**

13  
14 In arguing that the accountings fail to comply with NRS 165.135, Wendy conveniently  
15 forgets that NRS 165.135 contains a secondary provision that allows an accounting to consist of a  
16 "statement indicating the accounting period and a financial report, which must consist of a  
17 compilation or financial statement of the trust *prepared by a certified public accountant* and  
18 include *summaries* of the information required by subsection 1." NRS 165.135(4)(a) (emphasis  
19 added). The Trustees undeniably complied with this requirement, as testified to by their own  
20 expert, rendering Wendy's arguments moot.  
21

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25 <sup>2</sup> Wendy has also alleged a breach of fiduciary duty because she did not receive an accounting for her Subtrust until  
26 this Court entered an Order requiring the Trustees to provide such accounting. Once requested by this Court, the  
Trustees timely prepared and delivered an accounting of said Subtrust to Wendy. Additionally, a separate Subtrust  
accounting (for any of Todd, Stan or Wendy) is not required under the Family Trust – only a Family Trust accounting  
is required to be provided to the beneficiaries.

1           As laid out in Petitioner's Opening Brief, all accountings complied with Nevada law and  
2           should therefore be approved. However, to alleviate any concerns the Court may have, Petitioners  
3           address each of Wendy's allegations related to the Family Trust accountings. As an initial matter,  
4           Wendy makes none of these arguments as related to the Issue Trust accountings and thus,  
5           Petitioners assume she concedes their validity.  
6

7           First, Wendy argues the Family Trust accountings are insufficient because the hyphens  
8           prevent a reflection of the market value of the trust principal on hand at the beginning and ending  
9           of the accounting periods under NRS 165.135(1)(b)(1) and 165.135(1)(b)(6). As explained  
10          extensively in Petitioners' Opening Brief, the hyphens represented negative, non-income  
11          producing assets, as testified to by Todd and Mr. Riley. *See* Trial Transcript, Feb. 15, 2019 at  
12          44:2-3; Trial Transcript, Mar. 4, 2019 at 104:24-1052; Trial Transcript, Feb. 21, 2019 at 88:1-10;  
13          Depo. of Kevin Riley, Vol. III 508:1-513:19; 543:10-13, attached as Exhibit 4 to Petitioner's  
14          Opening Brief. Additionally, NRS 165.135(4)(a) requires only a summary of the information  
15          required, which Mr. Riley and the Trustees' accountings complied with by including a laundry list  
16          of "CLOSELY HELD BUSINESSES", along with estimated values and fiduciary acquisition  
17          values in each and every accounting. *See* Exhibits 72, 73, 74, 126, 180, Family Trust Financial  
18          Statements; Exhibits 129, 130, 131, 132, 133, Issue Trust Financial Statements. Wendy's  
19          unsupported argument that the hyphens are insufficient belies the testimony of Mr. Riley and Mr.  
20          Campagna, the only accounting experts involved in this case. *See* Depo. of Frank Campagna,  
21          CPA, 37:14-38:1, attached as Exhibit 1 to Petitioner's Opening Brief. Wendy failed to call either  
22          Mr. Riley or Mr. Campagna to the stand during trial and now she attempts to fabricate a theory as  
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1 to the accountings without evidence to support her theory. This theory is unsubstantiated and  
2 unsupported.

3 Second, the Family Trust accountings contain a brief summary of the account including  
4 the total value of the trust estate at the beginning and ending of the accounting period. *See* Exhibits  
5 72, 73, 74, 126, 180. While Wendy argues the Family Trust accountings do not contain this  
6 information, again based on hyphens, the accountings undeniably contain a complete summary of  
7 this information. *Id.* Wendy simply disagrees with the summary which does nothing to dispute  
8 their form, validity, or credibility. Third, the Family Trust accountings provide a summary of  
9 unpaid claims and the reasons for failure to pay them as stated under NRS 165.135(1)(d) and NRS  
10 165.135(4). Wendy argues that the Family Trust accountings lack such information based on  
11 Todd's Indemnification Agreement. She further argues that the Trustees had "more than enough  
12 time [ ] to have determined the nature and extent" of Todd claims under the Indemnification  
13 Agreement. Wendy's Brief at 14. Wendy's argument is circular. It is well known that the Trustees  
14 were unable to determine the extent of Todd's and Stan's Indemnification Agreements – hence  
15 one of the very purposes for filing the initial Petition for Confirmation. In reality, the Family Trust  
16 accountings contain a summary of unpaid claims and the reasons for failure to pay them as required  
17 by NRS 165.135(4).<sup>3</sup>

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21 Finally, Petitioners address Wendy's conspiracy theories related to Mr. Riley. Wendy has  
22 repeatedly alleged that Mr. Riley intentionally suppressed information from Wendy in an attempt  
23 to "mislead" her. *See* Wendy's Brief at 11. The evidence clearly disputes this assertion as Mr.  
24 Riley sent dozens of emails and spent countless hours explaining the trust assets to Wendy. *See*  
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<sup>3</sup> Wendy's arguments related to Samuel S. Jaksick, Jr. I LLC are addressed below.

1 Exhibit 19A, Wendy, McQuaid email string; Exhibit 57, Email string Riley, Wendy, Stan, Todd,  
2 Lexi; Exhibits 85, 86, Riley/Wendy emails; Exhibits 167-69, Riley/Wendy email string; Exhibits  
3 185, 188, Ltrs. from LeGoy; Trial Transcript Feb. 19, 2019 at 213:3-15. Furthermore, the idea  
4 that a highly respected licensed professional, who has no personal stake in these Trusts, would risk  
5 his license and career solely to deceive Wendy is not only outrageous and insulting, but  
6 defamatory.  
7

8 **iii. The Trustees met their duty of disclosure to Wendy through the accountings,**  
9 **emails, texts, and meetings.**

10 Before addressing Wendy's claim related to disclosure, Petitioners highlight, as they did  
11 in their Opening Brief, that a "failure to disclose" is not a separate cause of action but is simply  
12 another theory for a claim of breach of fiduciary duty. See Petitioner's Opening Brief at 6-7.  
13 Wendy's counsel argued extensively at trial and in closing arguments that the accountings were a  
14 breach of fiduciary duty based on failure to fully disclose. Trial Transcript Mar. 4, 2019 at 19:9-  
15 11; Jury Instruction Nos. 4, 9, 14, 27. This issue was ruled on by the jury and it was determined  
16 that no breach could be attributed to Mr. Kimmel or Mr. Riley and that any breach against Todd,  
17 for this issue or others, was compensated in the amount of \$15,000. Thus, a "nondisclosure" claim  
18 is not properly before this Court and any ruling inconsistent with the jury verdict violates the  
19 Seventh Amendment.  
20

21 Turning to disclosure, in Nevada, the standard for Trust accountings is NRS 165.135.  
22 Despite this, Wendy continues to argue that because the Issue and Family Trusts are "complex,"  
23 that the NRS cannot be the standard. See Wendy's Brief at 15 ("While in some circumstances,  
24 preparing and delivering accountings in the format provided by NRS 165.135 may fully satisfy a  
25 fiduciary's requirement to account and fully disclose, that is not and cannot be the case for these  
26

1 very complex Trusts.”). Rather, Wendy vaguely appears to argue that the Trustees were required  
2 to disclose each and every asset that each entity of the Family Trust held to meet their duty of  
3 disclosure. Taking a step back, the sheer magnitude of the burden Wendy attempts to impose  
4 through that standard is staggering. Moreover, Petitioners have extensively looked into this issue  
5 and confidently submit that this is not the standard for Trust accountings or disclosure, in this state  
6 or any other. Wendy’s failure to cite any legal authority for her position supports this assertion.  
7

8 Yet now, without evidence or testimony to support her, and without having called Mr.  
9 Riley or Mr. Campagna to the stand, Wendy attempts to dissect the accountings and provide the  
10 Court with “examples” of fabricated misdeeds, such as those related to the Samuel S. Jaksick, Jr.  
11 I, LLC. While Petitioners believe they have no obligation to correct Wendy and counsel for their  
12 fabrications, in the event the Court is concerned about the Samuel S. Jaksick, Jr. I, LLC, Petitioners  
13 will explain the history of this entity to the Court.  
14

15 Prior to his passing, Sam requested that Mr. Riley prepare a *personal* financial statement  
16 on his behalf. As part of this financial statement, Sam valued his assets himself, without the aid  
17 of appraisers or professionals. Samuel S. Jaksick, Jr. I LLC was one of the assets listed on Sam’s  
18 personal financial statement, which was a holding company for Jackrabbit properties. Exhibit 214.  
19 Sam himself valued Samuel S. Jaksick, Jr. I LLC (i.e. Jackrabbit) at \$3,743,000, which is where  
20 Wendy pulled this number (not from any accounting submitted for approval to this Court). *Id.*  
21 However, following Sam’s passing, the Trustees obtained appraisals for purposes of the estate tax  
22 return and learned the Jackrabbit property was actually more than \$2.8 million underwater and that  
23 the Samuel S. Jaksick, Jr. I LLC had a net value of zero. *See* Redacted Estate Tax Return, attached  
24 as **Exhibit 2**.  
25  
26

1 As a key mechanism to save the Family Trust, the Trustees sought conservation easement  
2 on multiple properties, including Jackrabbit. To implement one such conservation easements, the  
3 Trustees distributed the Samuel S. Jaksick Jr. I LLC interests to Todd and Stan's Subtrusts on  
4 November 12, 2015. Wendy was also to receive a distribution to her own Subtrust, but she refused  
5 to sign the required documentation absent a payment of \$50,000. The Trustees did not have the  
6 funds available to pay this demand, and even if they had, would have breached their duties to the  
7 other beneficiaries by succumbing to Wendy's blackmail. Thus, Stan held Wendy's share in his  
8 Subtrust, as noted in the accountings as follows:  
9

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

22 Exhibit 74 at 11 (emphasis added). This distribution was specifically executed in this manner  
23 because Wendy refused to sign the necessary income certification to allow the conservation  
24 easement and related improvements to proceed. Stan subsequently transferred Wendy's interest  
25 to her Subtrust. On the date of distribution, November 12, 2015, the Samuel S Jaksick I LLC  
26 became an empty holding company.

To say a white knight appeared in 2016 would not be an understatement. In late 2016, a  
gentleman by the name of Phil Satre became interested in buying into Jackrabbit, primarily for  
hunting purposes. On December 28, 2016, Phil Satre executed a \$2 million buy-in to Jackrabbit

1 in exchange for a 20% interest. Those funds were then used to paydown the Metlife loan on the  
2 Jackrabbit property. On October 11, 2017, Wendy and Luke's share of this Jackrabbit interest was  
3 transferred to their trusts. Maupin Cox and LeGoy completed all partnership and assignment work  
4 for this transaction and the Samuel S Jaksick Jr. I, LLC was dissolved June 10, 2019. Wendy's  
5 claim that more than \$3 million vanished is false as Jackrabbit was never actually valued at \$3  
6 million. Further, each of the transactions described above are evidenced in the accountings and/or  
7 directly involved Wendy.  
8

9 Lastly, it is undisputed that the Trustees, namely Mr. Kimmel and Todd, signed  
10 verifications that accompanied the filing of the initial Petitions. These verifications verified that  
11 the exhibits (primarily the accountings) are what they purport to be. Thus, as relevant here, the  
12 verifications confirmed that the accountings attached to the Petitions are those provided to the  
13 beneficiaries. What Todd and Mr. Kimmel did not verify is that they are accountants, nor that they  
14 were the preparers of the actual accountings. That responsibility fell to their hired professional -  
15 Mr. Riley. Despite the common sense of this position, Wendy stooped to a new level by going so  
16 far as to claim that Todd and Mr. Kimmel "committed perjury when they filed the Accountings  
17 with this Court for confirmation and approval." Wendy's Brief at 28. In fact, Wendy dedicates  
18 over six pages of her brief to arguing the invalidity of the accountings based on Todd and Mr.  
19 Kimmel's verifications. The Nevada Revised Statutes allows for Trustees to hire CPAs to prepare  
20 the Trust accountings. NRS 165.135(4)(a). The Trustees are undeniably the ones providing  
21 financial information to the accountant in order for him or her to prepare said accountings and are  
22 responsible for the accuracy of that information. The Trustees are not required to be accountants,  
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1 the preparers of the accountings, or verify the accuracy of said accountings. The folly of Wendy's  
2 argument is apparent.

3 In filing their initial Petition, the Trustees sought only from this Court a confirmation or  
4 denial as to the accountings. Wendy has attempted to attack the accountings from every possible  
5 angle yet what remains constant is that each and every accounting complied with NRS 165.135 –  
6 the *only* accounting standard to which the Trustees are to be judged. While Wendy and her counsel  
7 remain unable to separate the standards required by the Trustees in NRS 165.135 from the law of  
8 Texas and other jurisdictions, the Trustees have met their burden and request this Court approve  
9 both the Family Trust and Issue Trust accountings in their entirety.<sup>4</sup>  
10

11 **B. Because the ACPAs are Valid and Enforceable, they Relieved the Trustees of**  
12 **Liability.**

13 **i. Refusal to enforce the ACPAs violates the Seventh Amendment.**

14 As noted extensively in the Trustees' Opening Brief, the validity and enforceability of the  
15 ACPAs fell within the province of the jury and thus is subject to the Seventh Amendment. *See*  
16 Petitioners' Opening Brief at 16-19. Wendy argued extensively about the validity of the ACPAs  
17 as part of her conspiracy and fraud claims tried before the jury – specifically that Todd had  
18 somehow forged her signature on said agreements or attached her signature page onto other  
19 documents. The jury unanimously rejected Wendy's claims and found each and every Trustee not  
20 guilty of fraud or conspiracy. Further, as part of her conspiracy and fraud claims, Wendy sought  
21 damages based on fraudulent concealment and intentional misrepresentation. To find that the  
22 ACPAs unenforceable at this stage overturns the jury's implicit finding that the Trustees did not  
23  
24

25  
26 <sup>4</sup> Wendy's brief also makes allegations that the accountings are insufficient based on the \$4 million valuation noted at trial. Petitioners request the Court refer to their arguments addressing said issue in their Opening Brief at 13-14 and Todd's Opening Brief at 33-38.

1 conceal information from Wendy and/or that the Trustees intentionally concealed information  
2 from her. Accordingly, the ACPAs must be enforced consistent with the Seventh Amendment.

3 **ii. The ACPAs release the Trustees from liability.**

4 NRS 164.725(3) provides that notice of proposed actions “need not be provided to a person  
5 *who consents in writing* to the proposed action” as notice and the opportunity to object have been  
6 properly provided. *See* NRS 164.725(3) (emphasis added). Wendy recognizes the validity of  
7 written consent to proposed Trustee action under the Nevada Revised Statutes, and that such  
8 consent excuses liability for such action. Wendy’s Brief at 33-34. Despite this, Wendy argues she  
9 was not provided “full disclosure” related to what the ACPAs were attempting to accomplish to  
10 fully consent. *Id.* at 34. However, the disclosure standard to which the Trustees are held related  
11 to the content of the ACPAs is outlined in NRS 165.795(4) as follows:  
12  
13

14 4. The notice of proposed action must state:

- 15 (a) That the notice is provided pursuant to this section;  
16 (b) The name and mailing address of the trustee;  
17 (c) The name and telephone number of a person with whom to communicate  
for additional information regarding the proposed action;  
18 (d) A description of the proposed action and an explanation of the reason for  
taking the action;  
19 (e) The time within which objection to the proposed action may be made, which  
must be not less than 30 days after the notice of proposed action is mailed; and  
20 (f) The date on or after which the proposed action is to be taken or is to be  
effective.

21 5. A beneficiary may object to the proposed action by mailing a written objection  
to the person providing notice of the proposed action at the address and within the  
time stated in the notice.  
22

23 NRS 165.795(4), (5). It is undisputed that the ACPAs comply with the format outlined  
24 directly above and that Wendy did not provide a written objection to said actions.  
25 Additionally, despite Wendy’s claims otherwise, there has been no shred of credible  
26 evidence demonstrating that Wendy did not sign the ACPAs. The ACPAs are therefore

1 valid and enforceable, and the release language contained in each ACPA excuses the  
2 Trustees from liability for actions taken consistent with said ACPAs.

3 Wendy appears to concede this point by stating that the actions taken consistent  
4 with the ACPAs are valid, yet somehow the Trustees should be held liable for such actions  
5 because Wendy did not understand what she was signing. As noted by Todd in his Opening  
6 Brief, unilateral mistake is insufficient to rescind a contract absent fraud or intentional  
7 misrepresentation – which was unanimously rejected by the jury. *Oh v. Wilson*, 112 Nev.  
8 38, 39-40, 910 P.2d 276, 277-78 (1996); Todd’s Opening Brief at pp. 45-46. Further, this  
9 Court must presume that Wendy knows and has read the content of the contracts she signs.  
10 *Campanelli v. Conservas Altamira, S.A.*, 86 Nev 838, 841, 477 P.2d 870, 872 (1970). It  
11 also bears repeating that despite Mr. LeGoy informing Todd that he was well within his  
12 powers as Trustee of the Issue Trust to take action without Stan or Wendy’s consent, the  
13 Trustees sought a way to document the beneficiaries’ agreement through the ACPAs. *See*  
14 Trial Transcript, Feb. 19, 2019 at 194:14-195:18; Exhibit 255, Email dated 5/30/13 from  
15 Bob LeGoy. Because the Trustees’ disclosures in the ACPAs complied with Nevada law,  
16 Wendy signed such ACPAs consenting to the actions taken by the Trustees, and, as a result,  
17 the Trustees are not liable for any actions taken consistent with said ACPAs.  
18  
19  
20

21 **C. The “Contest” of the Lake Tahoe Transactions is Not a Pending Claim.**

22 Wendy dedicates thirteen pages of her brief to the “Contest of the Lake Tahoe  
23 Transaction.” *See* Wendy’s Brief 60-73. However, there are only 8 claims pending before this  
24 Court, as clearly outlined in the Pre-Trial Order: (1) approval of the accountings; (2) validity of  
25 the ACPAs and Indemnification Agreements; (3) violation of the no-contest clause; (4) unjust  
26



1 enrichment and constructive trust; (5) removal of Trustee(s); (6) disgorgement of Trustee fees; (7)  
2 use of Trust funds to defend this matter; and (8) attorney's fees. *See* Pretrial Order dated January  
3 22, 2019. None of these pending claims presents a basis to challenge the Lake Tahoe transactions.  
4 Wendy is improperly attempting to re-try her claims for fraud, conspiracy, and breach of fiduciary  
5 duty. This is blatantly evident in her requests for relief whereby she asks for the Lake Tahoe  
6 transactions that occurred during Sam's life to be set aside on the basis of *fraud*, and transactions  
7 that occurred after Sam's death to be set aside on the basis of *conspiracy and/or breach*. Wendy's  
8 Brief at 71-72. The entirety of this section is a legally incorrect attempt to wheedle out results  
9 Wendy desires without a proper procedural or substantive basis. Accordingly, Petitioners request  
10 that this Court ignore, in its entirety, Wendy's arguments contained therein.  
11

12  
13 **i. The validity of the Tahoe transactions has been repeatedly established.**

14 Without conceding the above, in an abundance of caution the Trustees feel they must  
15 address some of Wendy's most egregious fabrications contained in this section of Wendy's brief.  
16 In particular, this section is especially inflammatory and ripe with accusations not supported by  
17 evidence. For example, in paragraph 95 Wendy blatantly fabricates information by stating that  
18 "Todd had contacted the life insurance company before Sam was even buried." There is no  
19 testimony, physical evidence, or factual basis for this mistruth. Similarly, in paragraph 106,  
20 Wendy states that when "Todd and his attorney, Mr. Hascheff, were done deceiving, manipulating  
21 and controlling Sam the only family member with true security is Todd." Sam was the client of  
22 Mr. Hascheff's, not Todd, and the unrefuted evidence, from the mouth of even Wendy,  
23 demonstrates that *no one* controlled or manipulated Sam Jaksick. As explained below,  
24 disagreement with Sam's decisions does not invalidate them. In paragraph 99 Wendy yet again  
25  
26

1 accuses the Co-Trustees of conspiracy and fraud. The jury unanimously found that none of Todd,  
2 Mr. Riley, or Mr. Kimmel had engaged in fraud or conspiracy. Yet Wendy ignores the Verdict  
3 and attempts to convince the Court that a different determination was reached. Both the verdict  
4 and the Seventh Amendment tell us otherwise.

5  
6 In attempting to address the allegations contained in this section, it became evident to  
7 Petitioners that despite years of litigation, excessive depositions, countless documents, and ten  
8 days of jury trial, Wendy and her counsel continue to either have no understanding of the Lake  
9 Tahoe transactions, or they intentionally misrepresent the facts to fit their narrative. In attacking  
10 these transactions, Wendy attempts to paint a picture of a "con" by Todd whereby he somehow  
11 duped his father, brother, three attorneys, and a CPA into transferring to him *personally* the Lake  
12 Tahoe house. Todd does not own the Lake Tahoe house, as explained *ad nauseum* to this Court  
13 in both the Trustees' and Todd's opening briefs.

14  
15 Further, Wendy concedes that *Sam* was the one who made the decisions related to the Lake  
16 Tahoe house, she simply disagrees with such actions, which does nothing to invalidate these  
17 decisions. For example, Wendy states "[the Option] was a horrible business decision *by Sam* and  
18 that "*Sam was put* into this position by Todd and Pierre Hascheff." Wendy's Brief at 64-65  
19 (emphasis added). Sam was undeniably competent and thus, the actions he took related to the  
20 Lake Tahoe home are valid and far outside the scope of this litigation. Despite the overwhelming  
21 evidence, Wendy rests her argument on the concept that five highly respected professionals would  
22 risk their licenses and professional careers to deceive her and assist Todd in some elaborate plan  
23 to "steal" the Lake Tahoe house. Wendy's version of the events is unsupported and contrary to  
24 the testimony of every other disinterested person involved in this case.  
25  
26

1 Finally, Wendy's requested rulings violate the Seventh Amendment, exceed the  
2 jurisdiction of this Court, and ignore extensive tax implications. Wendy's Brief at 71-72. Rather  
3 than waste both counsel and Court resources in explaining the impropriety of all fourteen (not  
4 including subpart) requests, Petitioners highlight just three. First, the issue of breach of fiduciary  
5 duty has been decided by the jury. That issue is not pending, there is no legal or procedural basis  
6 for this Court to rule that Todd or Mr. Kimmel breached their fiduciary duties, and any ruling  
7 finding as much would be inconsistent with the jury verdict and violate the Seventh Amendment.<sup>5</sup>  
8 Second, the SSJ, LLC is not subject to the jurisdiction of this Court. While the entity is an asset  
9 of the Family and Issue Trust, this Court is not vested with the authority to remove Todd as  
10 manager of said entity. Third, Wendy's requests to move the Lake Tahoe property out of the Issue  
11 Trust and into the Family Trust ignore the massive tax penalties that such a move would generate.  
12 This brief is not the appropriate venue for a deep dive of such tax implications, but in summary,  
13 the results would be financially catastrophic. In sum, there is no basis to contest the validity of the  
14 Lake Tahoe transactions within the confines of the currently pending claims and, even if there was,  
15 the validity of these transactions was tried before the jury and found acceptable.  
16  
17

#### 18 **D. Removal of the Trustees is Not Warranted.**

19 Under the headings of her Opening Brief, Wendy supposedly devotes 32 pages to  
20 "removal." Wendy's Brief at 72-105. However, in reality, Wendy spends more than twenty pages  
21 on different theories of breach of fiduciary duty and the remaining twelve pages on "remedies" for  
22 removal. *Id.* This resulted in a confusing mash up of the issues and thus Petitioners elect to address  
23  
24

25  
26 <sup>5</sup> This reasoning similarly applies to Wendy's claims to rescind the Option Agreements and transfers by Sam. There was no finding of fraud or conspiracy on the part of any Trustee, meaning that there is no basis to rescind valid contracts.

1 Wendy's arguments within the claims outlined by the Court in its Pretrial Order. *See* Pretrial Order  
2 dated January 22, 2019. They therefore address removal, disgorgement of trustee fees,  
3 constructive trust and unjust enrichment, the no-contest clause, and attorneys' fees as separate  
4 issues.

5  
6 Turning to removal, the issue of breach of fiduciary duty was tried before the jury. *See*  
7 Verdict; Jury Instructions. Despite this, as stated immediately above, Wendy devotes nearly  
8 *twenty pages* of her brief to different theories of breach of fiduciary duty and attempts to re-try this  
9 claim to the Court. *See* Wendy's Brief at 74-91. In particular Wendy argues the Trustees breached  
10 their fiduciary duties based on: (1) the jury verdict; (2) the accountings/disclosure; (3) Todd's  
11 indemnification agreement; (4) disclosure of the ACPAs; (5) transfer of trust assets; (6) self-  
12 dealing; (7) document manipulation; (8) "Refusal to Distribute"; and (9) Todd and Stan's  
13 Settlement Agreement. *Id.* As this claim, and all theories related to breach, was *explicitly* tried  
14 before the jury, said claim is not pending before this Court. *Acosta v. City of Costa Mesa*, 718  
15 F.3d 800, 828-29 (9th Cir. 2013) ("It would be a violation of the Seventh Amendment right to jury  
16 trial for the court to disregard a jury's finding of fact."). Thus, Wendy's arguments related to  
17 breach of fiduciary duty are not only an utter waste of Court and counsel resources, but are  
18 precluded by the Seventh Amendment.  
19  
20

21 Addressing Wendy's exceptionally limited argument actually related to removal, *see*  
22 Wendy's Brief at 74 & 91, Wendy cites no law or evidence. This Court is emboldened with the  
23 discretionary authority to remove a Trustee. NRS 156.070; NRS 163.115. However, here, the  
24 jury unanimously found that Mr. Kimmel and Mr. Riley *did not* breach their fiduciary duties, and  
25 that while Todd did commit a breach, the damages applicable for such breach amounted to a mere  
26

1 \$15,000. *See* Verdict. Based on this verdict, there is no basis to remove Mr. Kimmel or Mr. Riley  
2 as Trustees and, as explained extensively in Petitioner's Opening Brief, the more appropriate  
3 remedy related to the jury's finding of Todd's breach is payment of \$15,000. Petitioner's Opening  
4 Brief at 27-29. Wendy has been fully and fairly compensated for any breach the jury may have  
5 found and removal of Todd as a Trustee violates the intent of Sam Jaksick and rewards a tantrum  
6 thrown by a spoiled child – to the detriment of the remaining beneficiaries.  
7

8 Wendy and counsel must have recognized that there is no compensation to be generated  
9 from removal of a Trustee. They therefore devote the remainder of their brief—some 12 pages—to  
10 “remedies” for breach of fiduciary duty. However, Wendy remains willfully ignorant of the jury's  
11 finding that there was *no breach of fiduciary duty* related to Mr. Kimmel or Mr. Riley and that  
12 *the jury was responsible for awarding damages related to Todd's breach* – which they did in the  
13 amount of \$15,000. Wendy does not get a “second shot” at damages or other remedies through  
14 this equitable trial/briefing. To allow additional remedies would result in impermissible double  
15 recovery.  
16

17 Undeniably there are claims remaining related to removal, payment of Trustee fees,  
18 constructive trust and unjust enrichment, utilization of Trust assets to defend this matter, and  
19 attorney fees. However, these are not “remedies” to be awarded Wendy or any beneficiary in the  
20 event of removal of a Trustee(s). Wendy refuses to remain within the constructs of the law and  
21 instead makes a desperate attempt to skew her claim for removal into one for damages. Along  
22 with the Trustees' arguments in their Opening Brief, the Trustees respectfully request that the  
23 Court consider that Wendy made essentially no argument for removal, but only for damages, in  
24 her briefing. As such, her claim for removal is not supported or warranted.  
25  
26

1           **E. Disgorgement and Surcharge of Trustee Fees is Improper.**

2           NRS 153.070, along with the express terms of the Family Trust and Issue Trust, allow for  
3 reasonable Trustee fees. *See* Exh. 9, Article VI, Section I, p. 26; Exh. 10 Article VI, Section I, p.  
4 13. As noted in Petitioners' Opening Brief, Sam specifically mandated in the Family Trust  
5 Agreement that Todd and Stan had the authority to increase their respective Trustee fees which  
6 despite the complexity of the Trust administration, the Trustees never did. *See* Exh. 9 at Article  
7 IV, Section K.17, p. 30. Wendy now claims that disgorgement of Trustee fees is proper based on  
8 breach of trust under NRS 153.031. Wendy's Brief at 94-95. Again, there has been no breach of  
9 trust finding against Mr. Kimmel or Mr. Riley rendering Wendy's arguments related to the  
10 "Trustees" improper.  
11

12           In relation to Todd as Trustee, the ability to reduce Trustee fees and mandate repayment  
13 for a breach of Trust is discretionary with the Court. NRS 153.031(3). Although Nevada has not  
14 adopted the Restatement (Third) of Trusts, Wendy argues her position is supported by such  
15 authority which provides as follows:  
16

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

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

24           Comment b.) Where the trustee commits a breach of trust which causes a loss to  
25 the trust estate, even though the trustee may be entitled to compensation, his claim  
26 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.

          Comment c.) It is within the discretion of the court whether the trustee who has  
committed a breach of trust shall receive full compensation or whether his

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

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

11 Restatement (Third) of Trusts §243; Wendy's Brief at fn. 36.

12 In evaluating the Restatement within the context of this case, disgorgement of Trustee fees  
13 is not proper. Addressing comment a., Wendy clearly seeks to penalize Todd in addition to the  
14 \$15,000 previously awarded by the jury. She has presented no evidence of work improperly or  
15 not rendered for which Todd accepted Trustee fees and thus comment a. presents no basis for  
16 disgorgement of fees. Under comment b., Todd and the Co-Trustees have pulled the Trust out of  
17 a \$33 million deficit. Not a single piece of evidence demonstrates that Todd cost either Trust estate  
18 a dime. Looking to comment c., there was no finding of bad faith, fraud or conspiracy by Todd,  
19 nor any evidence of intentional or negligent conduct. It is unknown what the jury decided was a  
20 breach of trust, but based on the *di minimus* value of the \$15,000 damages award, it can be  
21 presumed such breach related to a single entity controlled by the Trust(s), and not the entire Estate.  
22 As previously stated, there has been only value added to the Trusts, not loss, and despite her  
23 numerous claims, even Wendy must concede that all of Todd's tireless work added millions of  
24 dollars in value to Sam's estate. Finally, as to comment d., there has been no credible evidence  
25 related to intentional or negligent conduct by Todd, let alone evidence that he engaged in  
26

1 mismanagement of the Trusts. Therefore, the Restatement does not support the disgorgement of  
2 Trustee fees.

3 Wendy also argues, again for the *first time*, that surcharge of Trustee fees is appropriate  
4 based on breach. As stated numerous times throughout this brief, *Wendy has already been*  
5 *compensated for Todd's purported breach of fiduciary duty*. Merely because Wendy is unhappy  
6 with the result, she cannot now try to achieve more damages from a different source – this Court.  
7 Wendy's "requests" for relief outlined as letters a-i on pages 96-97 of her brief do not fall within  
8 the equitable claims pending before this Court, are in direct conflict with the Seventh Amendment,  
9 and to be frank, are utterly preposterous. There is no basis for disgorgement or surcharge of fees  
10 and Petitioners request this Court dismiss Wendy's arguments as improper.

11  
12 **F. The Trustees Properly Utilized Trust Assets to Defend this Matter.**

13  
14 It is a general principle of Trust law that the terms of Trust govern above all else. Here,  
15 Article VIII, Section O, p. 52 of the Family Trust and Article VIII, Section O, p. 37 of the Issue  
16 Trust allow the Trustees to utilize Trust assets to defend against litigation ("The Trustee is hereby  
17 authorized to defend, *at the expense of the trust estate*, any contests of or other attack of any nature  
18 on the trusts estate or of any of the provisions of this Trust Agreement."). The Trusts further  
19 provide that "The Trustee is entitled to indemnification against any claims, liabilities, and  
20 expenses, including attorneys' fees and amounts paid in settlement, resulting from the acts or  
21 omissions of the Trustee . . . . The Grantor intends to provide the Trustee with indemnification to  
22 the maximum extent allowed by law. The expenses of the Trustee incurred in the defense of any  
23 action, suit, or proceeding must be paid from the trust estate as they are incurred and in advance  
24 of the final disposition of the action, suit, or proceeding . . . .". Exh. 9 at Article IV, Section L, p.  
25  
26



1 33; Exh. 10 at Article IV, Section L, p. 19. In fact, the Trusts grant broad indemnification to the  
2 Trustees “to the maximum extent allowed by law” save for acts or omissions in bad faith. Exh 9.  
3 at Article IV, Section L, p. 33; Exh. 10 at Article IV, Section L, p. 19. As the jury has already  
4 determined no willful misconduct or bad faith has occurred by any Trustee, Wendy’s claims as to  
5 repayment of defense costs are without merit. *See* Verdict.  
6

7 **G. There is No Basis for Wendy’s Claims of Unjust Enrichment and Constructive Trust,**  
8 **Warranting their Denial.**

9 Unjust enrichment requires that the plaintiff confer upon the defendant a benefit which in  
10 equity and good conscience belongs to another. *Certified Fire Prot. Inc. v. Precision Constr.*, 128  
11 Nev. 371, 381, 283 P.3d 250 (2012); *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov.*  
12 *12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997). In addition, “[a] constructive trust is a  
13 remedial device by which the holder of legal title to property is held to be a trustee of that property  
14 for the benefit of another who in good conscience is entitled to it.”  
15 *Locken v. Locken*, 98 Nev. 369, 372, 650 P.2d 803, 804-05 (1982). A constructive trust exists  
16 where: “(1) a confidential relationship exists between the parties; (2) the retention of legal title by  
17 the holder thereof against another would be inequitable; and (3) the existence of such a trust is  
18 essential to the effectuation of justice.” *Id.* at 372.  
19

20 Wendy has requested that this Court find unjust enrichment and/or impose a constructive  
21 trust in relation to: (1) the Lake Tahoe home back to the Family Trust; (2) the life insurance  
22 proceeds to the Issue Trust; and (3) the 100 cattle acquired by Duck Lake Ranch LLC. Wendy’s  
23 Brief at 98-99. As explained extensively above and in both Petitioners’ and Todd’s Opening  
24 Briefs, the Lake Tahoe house has not been an asset of the Family Trust since December 28, 2012,  
25 when *Sam* purposely and intentionally transferred the Lake Tahoe house to Incline TSS, Ltd. as a  
26

1 means of asset protection. See Exhibit 23.21, 12/28/12 Grant, Bargain, Sale Deed; Trial  
2 Transcript, Feb. 25, 2019 at 77:8-22, 94: 4-13 (“[Tahoe] had to be out of Sam’s ownership which  
3 was in his trust . . . [Sam] owned TSS.”). This Court is not inundated with the authority to transfer  
4 this property back to the Family Trust in direct conflict with the actions of Sam, the grantor. There  
5 has been no finding of fraud, nor any evidence that Sam did not sign the transfer documents  
6 himself, establishing the validity of the transfer and highlighting the impropriety of a constructive  
7 trust.  
8

9 Additionally, as explained extensively in prior briefing, Wendy, Stan, and Todd each  
10 signed an ACPA agreeing that the life insurance proceeds payable to the Issue Trust would be used  
11 to pay down debt and preserve the Lake Tahoe house and the Issue Trust would purchase 54% of  
12 Incline TSS. Exhibit 14. There can be no claim for unjust enrichment or constructive trust for  
13 conduct that was consented to by all parties. Further, as to the 100 cattle acquired by Duck Lake  
14 Ranch LLC, Todd paid the Family Trust nearly \$700,000 for the purchase of these cattle. Exhibit  
15 420. He similarly reduced a note owed to him by the Family Trust as part of this transaction.  
16 Wendy, Stan, and Todd also signed an ACPA agreeing to this transaction. Exhibit 18. As such,  
17 Wendy’s claim for unjust enrichment and constructive trust is unsupported and must be denied.  
18  
19

20 **H. The Co-Trustees are Entitled to Declaratory Judgment Based on the No Contest**  
21 **Provision in the Family Trust and Issue Trust but Wendy is Not.**

22 No-contest clauses exist to “protect estates from costly and time-consuming litigation and  
23 minimize the bickering over the competence and capacity of testators, and the various amounts  
24 bequeathed.” *Matter of W.N. Connell & Marjorie T. Connell Living Tr.*, dated May 18, 1972, 134  
25 Nev. Adv. Op. 73, 426 P.3d 599, 602 (2018) (quoting *Russell v. Wachovia Bank, N.A.*, 370 S.C.  
26 5, 633 S.E.2d 722, 725-26 (2006)). If triggered, a no-contest clause generally “must be enforced

1 by the court.” NRS 163.00195(1). As noted in their Opening Brief, both the Family Trust and  
2 Issue Trust contain no contest provisions that prohibit contests as to the validity of the Trust  
3 Agreements. *See* Exhibit 9, Article VIII, Section O, p. 52 of the Family Trust; Exhibit 10, Article  
4 VIII, Section O, p. 36 of the Issue Trust. Wendy has violated the intent of Samuel Jaksick by  
5 commencing the underlying litigation, depriving her of any beneficial interest in both the Family  
6 Trust and Issue Trust. NRS 163.00195(1) and (2); *Hannam v. Brown*, 114 Nev. 350, 356, 956  
7 P.2d 794, 798 (1998) (“This court has historically construed trusts in a manner effecting the  
8 apparent intent of the settlor.”). As such, the Trustees are entitled to declaratory judgment.  
9

10       Regardless of this Court’s finding as to Wendy’s violation of the no-contest clause, what  
11 is undeniable is that Petitioners did not violate the no-contest clause. Wendy makes a backward  
12 argument that the Trustees, by filing their Petitions for Approval of Accountings and ACPAs as to  
13 each respective trust, violated the no-contest provisions of the Family Trust and the Issue Trust  
14 and “initiated” litigation. Wendy’s Brief at 103-04. The Trustees did not “initiate” litigation by  
15 filing said Petitions but were seeking guidance as required by Trustees under Nevada law. *See*  
16 NRS 164.030. In seeking to dismiss Wendy’s Counter-Petition, the Trustees did not instigate legal  
17 action against Wendy – rather Wendy instigated legal action against herself. By filing the initial  
18 Petitions for approval and instructions, the Trustees properly complied with Nevada law and their  
19 duties as Trustees. *See* NRS 164.030. Accordingly, Wendy’s request for declaratory judgement  
20 must be denied.  
21

22  
23       **I. Wendy’s Argument for Attorney Fees is Premature.**

24       Without going into the blatant mistruths spouted by Wendy in her brief and ignoring the  
25 utterly absurd request that counsel has made for more than \$1.5 million in fees and costs, a request  
26

1 for attorneys' fees is premature. There has been no relief granted to Wendy by this Court and thus  
2 an award of attorneys' fees is untimely. *See* NRS 153.031(3); *see also* Exh. 9 at Article VIII,  
3 Section O, p. 52; Exh. 10 at Article VIII, Section O, p. 36. Until such time as this Court decides  
4 the equitable claims, attorneys' fees cannot be decided. The manner in which Wendy utilizes the  
5 claim of attorneys' fees is designed to inflame the Court into making an unreasoned decision. For  
6 example, Wendy utilizes fictitious "beaches by implication" as to the remaining Co-Trustees to  
7 justify an award of attorneys' fees even though no breach was found for Mr. Riley or Mr. Kimmel.  
8

9 Further, Wendy's arguments on the outstanding offers of judgment, which will be the  
10 subject of numerous motions for attorneys' fees upon a final judgment in this case, are improper  
11 at this time. *See* NRS 68(f). Wendy attempts to argue around the offers of judgment but does not  
12 provide these offers to the Court, nor does she separately address the offers made by Todd as an  
13 individual, Todd as a Trustee, Mr. Kimmel as an individual and Trustee, or Mr. Riley individually  
14 and as a Trustee. For example, despite Wendy plainly admitting in her deposition that Mr. Kimmel  
15 should not be in this lawsuit as an individual, Wendy refused to dismiss him from the suit or accept  
16 his offer of judgment. Such offer must be evaluated differently than that of Todd's or Mr. Riley's.  
17 Petitioners will fully brief the Court of their position on attorneys' fees when the matter is ripe.  
18 For now, they request this issue be sidelined until a final ruling as to the equitable claims is reached  
19 by this Court.  
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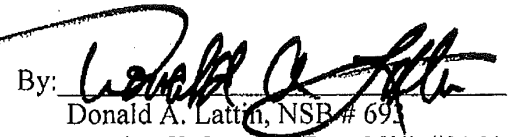
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NRS 239B.030 Affirmation

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

Dated this 31<sup>st</sup> day of December, 2018.

MAUPIN, COX & LEGOY

By:   
Donald A. Lattin, NSB # 691  
Carolyn K. Renner, Esq., NSB #9164  
Kristen D. Matteoni, Esq. NSB #14581  
4785 Caughlin Parkway  
Reno, NV 89519  
*Attorneys for the Co-Trustees*

**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>Phil Kreitlein, Esq. Steve Moss, Esq. Kreitlein Law Group 470 E. Plumb Lane, #310 Reno, Nevada 89502 <a href="mailto:philip@klmlawfirm.com">philip@klmlawfirm.com</a> <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 <a href="mailto:Mconnot@foxrothschild.com">Mconnot@foxrothschild.com</a></p> <p><i>And</i></p> <p>R. Kevin Spencer, Esq. Zachary E. Johnson, Esq. Brendan P. Harvell, Esq. Spencer Law, P.C. 500 N. Akard Street Suite 2150 Dallas, TX 75201 <a href="mailto:kevin@dallasprobate.com">kevin@dallasprobate.com</a> <a href="mailto:zach@dallasprobate.com">zach@dallasprobate.com</a> <i>Attorneys for Wendy A. Jaksick</i></p>	<p>Kent R. Robison, Esq. Therese M. Shanks, Esq. Robison, Sharpe, Sullivan &amp; Brust 71 Washington Street Reno, Nevada 89503 <a href="mailto:krobinson@rssblaw.com">krobinson@rssblaw.com</a> <a href="mailto:tshanks@rssblaw.com">tshanks@rssblaw.com</a> <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. McDonald Carano Wilson LLP 100 W. Liberty Street, 10th Floor Reno, NV 89501 <a href="mailto:ahosmerhenner@mcdonalddcarano.com">ahosmerhenner@mcdonalddcarano.com</a> <a href="mailto:asferguson@mcdonalddcarano.com">asferguson@mcdonalddcarano.com</a> <i>Attorneys for Stan Jaksick</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 11 Bahama Court Mansfield, Texas 76063</p>	<p>Luke Jaksick c/o Wendy A. Jaksick P.O. Box 2345 Allen, Texas 75013</p>
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Regan Jaksick Sydney Jaksick Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Ct. Reno, Nevada 89519	Benjamin Jaksick Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511
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Dated this 31<sup>st</sup> day of July, 2019.

  
EMPLOYEE

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Exhibit Index

No.	Description	Pages
1.	Certified Mail Receipt	1
2.	Redacted Estate Tax Return	1



FILED  
Electronically  
PR17-00445  
2019-07-31 03:09:53 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7404686

# Exhibit 1

# Exhibit 1

7018 1830 0000 2098 2827

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT <i>Domestic Mail Only</i>	
For delivery information, visit our website	
OFFICIAL	
Certified Mail Fee	\$ 3.50
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 2.80
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ 8.20
Total Postage and Fees	\$ 14.50
Sent To	Wendy A. Jaksick
Street and Apt. No., or P.O.	6501 Meyer Way
City, State, ZIP+4®	Apt. # 0705 McKinney Texas 75070
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

\$0.00  
US POSTAGE  
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2019-07-31 03:09:53 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7404686

## **Exhibit 2**

## **Exhibit 2**



**Jayne Ferretto**

---

**From:** eflex@washoecourts.us  
**Sent:** Wednesday, July 31, 2019 3:12 PM  
**To:** Kent Robison  
**Cc:** Jayne Ferretto  
**Subject:** NEF: CONS: TRUST: SSJ'S ISSUE TRUST: Trial Statement: PR17-00445

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

**PROOF OF SERVICE OF ELECTRONIC FILING**

---

**A filing has been submitted to the court RE:** PR17-00445

**Judge:** HONORABLE DAVID A. HARDY

**Official File Stamp:** 07-31-2019:15:09:53  
**Clerk Accepted:** 07-31-2019:15:10:32  
**Court:** Second Judicial District Court - State of Nevada  
Civil  
**Case Title:** CONS: TRUST: SSJ'S ISSUE TRUST  
**Document(s) Submitted:** Trial Statement  
- \*\*Continuation  
- \*\*Continuation  
**Filed By:** Donald A Lattin

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**The following people were served electronically:**

THERESE M. SHANKS, ESQ. for INCLINE TSS, LTD. et al  
SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST, SSJ'S ISSUE TRUST  
DONALD ALBERT LATTIN, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY, TODD B. JAKSICK  
PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST  
KENT RICHARD ROBISON, ESQ. for INCLINE TSS, LTD. et al  
CAROLYN K. RENNER, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY, TODD B. JAKSICK  
MARK J. CONNOT, ESQ. for WENDY A. JAKSICK  
STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST  
ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK

**The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):**

R. KEVIN SPENCER, ESQ. for WENDY A. JAKSICK  
ZACHARY JOHNSON, ESQ. for WENDY A. JAKSICK