

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Electronically Filed
Apr 13 2021 04:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.: 81470

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

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

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

Appellants/Cross-Respondents,

vs.

WENDY JAKSICK,

Respondent/Cross-Appellant.

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

Volume 12 of 22

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Request for Submission of Motion for Order Awarding Costs and Attorneys' Fees	4.1.19	7	TJA001186-001189
Request for Submission of Wendy A. Jaksick's Motion for Leave to Join Indispensable Parties	12.18.18	5	TJA000934-000936

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

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

Relief			
Todd B. Jaksick's Answer and Objections to First Amended Counter-Petition to Surcharge Trustees for Breach of Fiduciary Duties, For Removal of Trustees and Appointment of Independent Trustee(s) and For Declaratory Judgment and Other Relief	4.9.18	4	TJA000767-000779
Todd B. Jaksick's Closing Argument Brief	7.1.19	7	TJA001282-001362
Todd B. Jaksick's Closing Argument Brief	7.31.19	9	TJA001536-001623
Todd B. Jaksick's Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment, or, Alternatively, Motion for a New Trial	5.8.20	18	TJA003152-003189
Todd B. Jaksick's Opposition to Wendy Jaksick's Supplemental Motion in Support of Award of Attorney's Fees	5.21.20	21	TJA003609-003617
Todd B. Jaksick's, Individually, Opposition to Wendy Jaksick's Motion for Leave to Join Indispensable Parties	12.6.18	5	TJA000856-000872

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

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

Dated this 13th day of April, 2021.

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

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

CERTIFICATE OF SERVICE

I certify that on the 13th day of April, 2021, I served a copy of **APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S APPENDIX TO OPENING BRIEF- VOL. 12**, upon all counsel of record:

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

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

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

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

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

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

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

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

DATED this 13th day of April, 2021.

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

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

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

Case No. PR17-00445

_____ /

Dept. No. 15

CONSOLIDATED

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

Case No. PR17-00446

_____ /

Dept. No. 15

ORDER FOR SUPPLEMENTAL BRIEFING

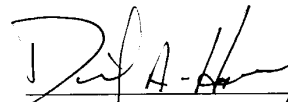
This Court is nearing completion of its order on equitable claims. It concludes brief supplemental arguments are needed. Within 10 calendar days from the date of this order, the trustees shall file arguments, with references to accountings, transcripts, and other evidence of record, that Wendy was or could have been specifically aware she would soon receive a \$4 million distribution from the Family Trust.

The question this Court hopes to answer is whether Wendy was aware before trial of that specific beneficial interest or whether she was genuinely surprised and prejudiced by seeing illustrative Exhibit 561 (and hearing attendant arguments/testimony) for the first time during trial. See Wendy's letter to Trustees, dated March 20, 2019, attached as Exhibit A to Wendy's Emergency Motion to Compel, dated July 23, 2019 ("Wendy hereby demands the Co-Trustees provide a detailed explanation and full disclosure confirming trusts and entities benefitting Wendy were funded or are about to be funded with

1 \$4 million in assets available to provide for Wendy. Such information must include full
2 disclosure concerning the assets and the ownership of the assets." Wendy may file a
3 response within 7 calendar days after the Trustees file their supplemental arguments. No
4 other paper is authorized and the parties shall limit their respective filings to five pages.

5 **IT IS SO ORDERED.**

6 Dated: February 6, 2020.

7 
8 David A. Hardy
9 District Court Judge
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KENT ROBISON, ESQ. – NSB #1167

krobison@rssblaw.com

THERESE M. SHANKS, ESQ. – NSB #12890

tshanks@rssblaw.com

Robison, Sharp, Sullivan & Brust

A Professional Corporation

71 Washington Street

Reno, Nevada 89503

Telephone: 775-329-3151

Facsimile: 775-329-7169

Attorneys for Todd B. Jaksick, Individually,

Incline TSS, Ltd., and Duck Lake Ranch, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY
TRUST.

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

Petitioners and Counter-Respondents.

CASE NO.: PR17-00445

DEPT. NO.: 15

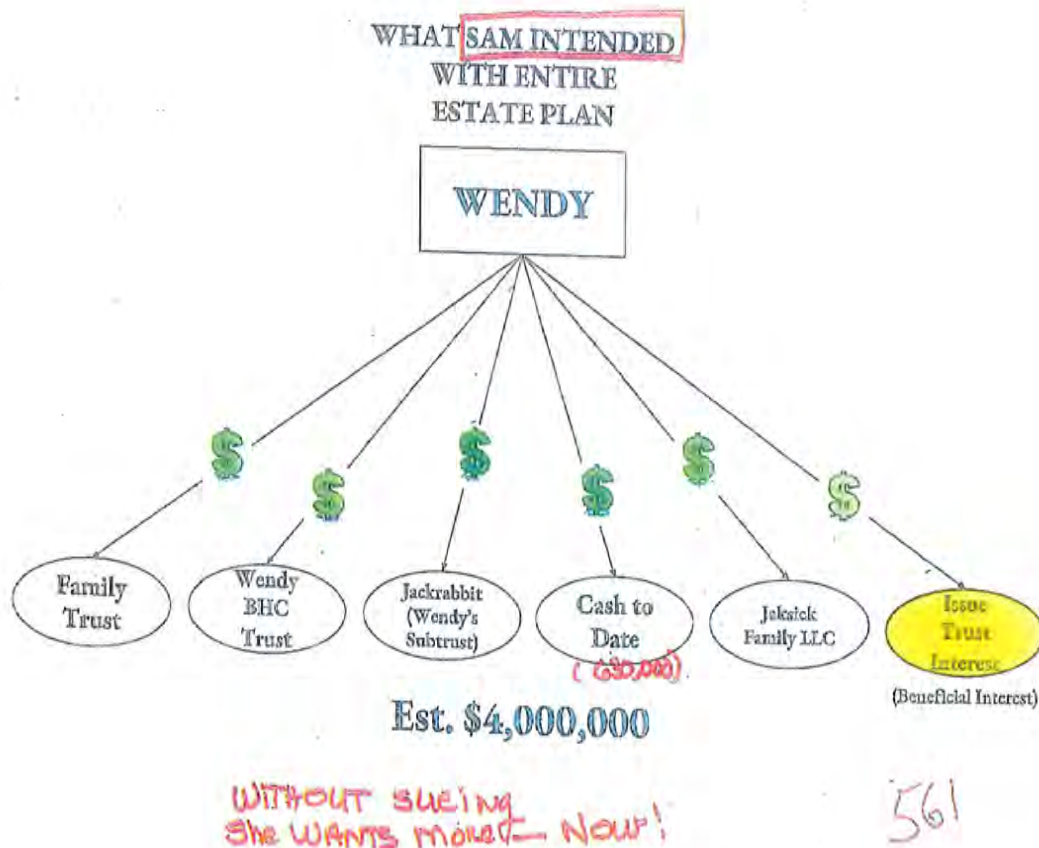
CASE NO.: PR17-00446

DEPT. NO.: 15

**TODD JAKSICK'S SUPPLEMENTAL
BRIEF IN RESPONSE TO THE COURT'S
FEBRUARY 6, 2020 ORDER FOR
SUPPLEMENTAL BRIEFING**

1 **I. INTRODUCTION**

2 Wendy's counsel either misunderstood Todd's testimony or have mischaracterized the testimony
3 and arguments that relate to Trial Exhibit 561 shown here:¹



21 On February 22, 2019, Todd testified that the Family Trust might have been able to make
22 distributions had it not been for the ongoing litigation. Then, in response to a completely different
23 question, Todd testified that "Sam's entire estate plan" regarding Wendy's interests, which included the
24 Family Trust, the BHC Trust, Jackrabbit, cash distributed, Jaksick Family LLC and Wendy's value in the
25 Issue Trust "could approach \$4 million". The word "soon" was never used or associated with the \$4
26 million estimate. Indeed, when asked to estimate when disbursements might occur, Todd stated that the
27 Trustees would like to "wrap up the estate" quickly. . . depending on the outcome of the litigation. Todd

28

¹ When Todd testified, the chart was displayed but did not have the red emphasis. The red highlights were put on the demonstrative chart for closing argument. Trial Exhibit 561 For Demonstrative Purpose is attached as **Exhibit 1**.

1 then volunteered that the Trustees were “shooting” to “distribute all of the assets in the trust” by the
2 end of the year.² Wendy knew all of the information to which Todd testified.

3 Wendy has self-servingly distorted the testimony and the contents of Trial Exhibit 561. She argues
4 that Trial Exhibit 561 and Todd’s testimony were that “Wendy would soon receive \$4 million from the
5 Family Trust”. Not true. Neither the testimony, nor Trial Exhibit 561, nor arguments related thereto have
6 ever suggested that Wendy would “soon” receive \$4 million from the Family Trust. The chart itself (Trial
7 Exhibit 561) refutes, contradicts and rebuts Wendy’s arguments. Counsel’s argument to the jury is telling
8 and consistent with Trial Exhibit 561. Todd’s counsel argued that “Wendy, at the end of the day” is likely
9 to get up to \$4 million from all six sources identified on Trial Exhibit 561. “End of the day” does not mean
10 and cannot be interpreted as “soon”. (See Exhibit 3.)

11 II. OVERVIEW

12 The Court has been respectfully attentive to Wendy’s false assertion that the six possible sources
13 from which she might receive distributions from Sam’s “entire estate plan” were revealed to her for the first
14 time during trial by Trial Exhibit 561.³ Indeed, Todd’s counsel prepared Trial Exhibit 561 during trial as a
15 demonstrative exhibit to help the jury understand Todd’s testimony and his counsel’s argument. No doubt
16 exists that Wendy first saw the actual demonstrative exhibit during trial. But, for Wendy to suggest that
17 these topics (sources of value) were exposed to her for the first time at trial is not only feeble, it is also an
18 unfortunate effort to confuse and mislead this Honorable Court.

19 The truth is important. To find the truth about what Wendy knew or should have known, the Court
20 could, and perhaps should, look at what happened before trial. The truth of what Wendy knew or should
21 have known was profoundly shown in discovery, including her deposition, Stan’s deposition, Todd’s
22 deposition, Kevin Riley’s deposition, Mike Kimmel’s deposition and Pierre Hascheff’s deposition. These
23 witnesses were deposed about BHC, Jackrabbit and the Jaksick Family LLC. Wendy’s knowledge is also
24 shown in correspondence not actually admitted into evidence at the trial.

25 In addition, each of the six categories shown on Trial Exhibit 561 was discussed, addressed,
26
27

28 ² Exhibit 2 includes the pertinent excerpts of actual testimony from the transcript of the trial.

³ Exhibits used at trial are referred to as “Trial Exhibits.” Exhibits attached hereto will be referred to as “Exhibits.” If
exhibits attached hereto are also Trial Exhibits, both Trial Exhibit numbers and Exhibit numbers will be used.

1 explained and negotiated in two different settlement conferences that occurred before trial.

2 Should there be any doubt about what Wendy “knew or should have known” about the six sources
3 of potential value for Wendy from Sam’s “entire estate plan”, a full and complete evidentiary hearing could
4 be ordered and scheduled. In such a hearing, this Court would see the extensive discovery and settlement
5 discussions about the BHC Trust, Jackrabbit, the Jaksick Family LLC, the \$630,000 paid to Wendy and
6 discussion about her entitlements and values in the Family and Issue Trusts. Wendy knew all about the six
7 components of Trial Exhibit 561 long before trial. For example, Trial Exhibit 90 was produced in
8 discovery. It is attached hereto as **Exhibit 4**. It shows Wendy’s interests in BHC, Jackrabbit and the
9 Jaksick Family LLC. Todd was examined about Trial Exhibit 90.⁴ Wendy obviously knew about each
10 entity, her rights therein and her entitlements thereto.

11 Accordingly, discovery, settlement discussions, trial testimony, and the trial exhibits show
12 conclusive proof that Wendy knew or should have known about the nature, value and extent of the assets
13 set forth in Trial Exhibit 561.

14 **III. THE FALSE PREMISE**

15 Initially, the Court seeks argument on whether “Wendy was or could have been specifically aware
16 she would soon receive a \$4 million distribution from the Family Trust.” (Emphasis added).
17 Unfortunately, this inquiry is based on a false premise. This is a fallacy because **NO** witness, trustee,
18 exhibit or argument ever suggested, contended or asserted that Wendy would soon get a \$4 million
19 distribution from the Family Trust.

20 Trial Exhibit 561 was used for demonstrative purposes. It shows what Sam intended with his
21 Entire Estate Plan for Wendy (not just the Family Trust). It shows the Family Trust, Wendy’s BHC
22 Trust, her interest in Jackrabbit, cash disbursements made before trial, her interest in Jaksick Family LLC
23 and her interest in the Issue Trust.

24 According to Todd’s testimony, the total value of Wendy’s interest in those six sources shown on
25 Trial Exhibit 561 (Family Trust being only one of those interests) “could approach \$4 million.” (See
26 **Exhibit 2**, emphasis added.) Todd testified that depending on the outcome of this litigation, the Trustees
27

28 ⁴ Trial Exhibit 90 was prepared before the Family Trust transferred Wendy’s interest in Jackrabbit to her subtrust.
Mr. Riley’s accountings not only show Wendy’s interest, they also show the value thereof. See **Exhibit 5** attached
hereto.

1 were "shooting" to distribute from just the Family Trust by approximately year end, 2019. *Id.* That
2 specific testimony pertained ONLY to the Family Trust, not the other interests shown on Trial Exhibit 561.
3 Obviously, the litigation is ongoing. The assets of the Family Trust cannot yet be fully distributed.

4 Accordingly, the answers to the Court's inquiries about the entries on Trial Exhibit 561 are these:

5 1. **Family Trust:** Yes, Wendy knew or should have known of her entitlements in the Family
6 Trust. She was in constant contact with Stan, she had Brian Kelly and then Ms. Dwiggs as counsel. She
7 signed the ACPAs. She hired three experts, including her own accountant. She had unfettered access to
8 Kevin Riley and had no less than five trial lawyers doing discovery. Through discovery, she had access to
9 complete and necessary detail about the Family Trust. Kevin Riley and the Trustees were deposed for over
10 15 days.

11 2. **BHC:** Yes, Wendy was fully aware of her interests in BHC. This, too, was addressed in
12 discovery. She sued the Trustee, Kevin Riley. How could she not know? Trial Exhibit 90, produced in
13 discovery, shows her interest in BHC and the Jaksick Family LLC.

14 3. **Jackrabbit:** Yes, this entity was disclosed and discussed in trial and in discovery. Trial
15 Exhibit 90 shows Jackrabbit, BHC and the Jaksick Family LLC. The Family Trust distributed Wendy's
16 interest in Jackrabbit to her subtrust. Wendy conceded that she was informed about the transfer.
17 Furthermore, the accounting (2017) for Wendy's subtrust clearly shows Wendy's interest in Jackrabbit.⁵

18 4. **Cash Received:** Yes, Wendy was fully aware of the \$630,000 in disbursements that she,
19 but no others, received. She never contested this part of the \$4 million estimate, but was fully aware of it.

20 5. **Jaksick Family LLC:** Yes, she knew she was a one-third owner of the Jaksick Family
21 LLC and it was to be funded by Stan from the sales of Montreux Golf Memberships. She admits that Stan
22 was cooperative and gave her the disclosures she requested. Stan, and only Stan, had control of the
23 accountings for the sale of the Montreux golf memberships, the proceeds of which were to go to the Jaksick
24 Family LLC. Stan discussed this in his deposition and at trial (p. 156, day 9 transcript).

25 6. **Issue Trust:** Yes, she was aware of her place as a descendant of Sam regarding her
26 interests in the Issue Trust, and she was aware of the value of her use of the Lake Tahoe house. Everyone
27 knows that this value cannot be "distributed soon".
28

⁵ See attached Exhibit 5, page 4 (highlighted by counsel).

1 All of this was disclosed in Todd's and Stan's depositions and trial testimony. However, no one
2 ever said or contended that Wendy would soon be receiving \$4 million from the Family Trust. Not even
3 Wendy makes that assertion.

4 **IV. WHAT WAS REVEALED IN DISCOVERY AND SETTLEMENT CONFERENCES?**

5 Attached as **Exhibit 6**, authenticated by **Exhibit 7**, is a summary of the extensive and exhaustive
6 deposition testimony about the BHC Trust, Jackrabbit and the Jaksick Family LLC. It cannot be said with
7 any credibility that Wendy was surprised at trial. She obviously knew.

8 **V. ATTORNEYS' FEES**

9 Neither Wendy nor Sam's Trusts were served by the massive legal expenses incurred. The
10 excesses are self-evident. The absurd \$80 million verdict request is proof of the abuse. Moreover, only
11 two months before trial, Wendy sought to add 48 new parties. The Court allowed three new parties to be
12 named. Yet, even that proved to be unnecessarily wasteful. The jury was not even instructed or allowed to
13 consider claims against the three new parties, Incline TSS, Ltd., Duck Lake Ranch LLC and Sammy
14 SuperCub LLC Series A. The Rambo-like litigation tactics have been catastrophic to the wealth and
15 welfare of the trusts. Awarding attorneys' fees for Wendy's lawyers would egregiously exacerbate the
16 injuries already caused.

17 **VI. CONCLUSION**

18 These issues have been previously briefed.⁶ Trial Exhibit 561 never suggested in any way that
19 Wendy would "soon" receive anything from any source. Nor did any testimony. Nor did any argument.
20 Rather, Todd's counsel told the jury about the trusts and entities that, "at the end of the day," could benefit
21 Wendy, maybe up to \$4 million. Each of those trusts and entities was thoroughly discussed before Wendy
22 filed her lawsuits, during discovery, by experts, with the mediator, and in the trial. The estimated \$4
23 million value is simply a result of basic math addressing trusts and entities what were analyzed by Wendy
24 from 2013 to and through the jury trial.


25 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm that this

26
27 ⁶ The Court first expressed concern about Trial Exhibit 561 at the May 13, 2019 hearing. Accordingly, Todd
28 addressed the Court's concern in his Closing Brief. **Exhibit 8** attached hereto is that portion of Todd's brief that
refutes any suggestion that Todd, Stan or Mr. Kimmel ever said that Wendy would soon receive \$4 million. Trustees'
counsel also refuted Wendy's argument in their opposition to Wendy's Emergency Motion to Compel. The pertinent
part of that opposition is attached as **Exhibit 9**.

1 document does not contain the social security number of any person.

2 DATED this 18th day of February, 2020.

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*

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 JAKSICK'S SUPPLEMENTAL BRIEF IN RESPONSE TO THE COURT'S FEBRUARY 6, 2020 ORDER FOR SUPPLEMENTAL BRIEFING** 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:

Donald A. Lattin, Esq.

Carolyn K. Renner, Esq.

Kristen D. Matteoni, Esq.

Maupin, Cox & LeGoy

4785 Caughlin Parkway

P. O. Box 30000

Reno, Nevada 89519

Email: dlattin@mcllawfirm.com

crenner@mcllawfirm.com

kmatteoni@mcllawfirm.com

Attorneys for Petitioners/Co-Trustees

Todd B. Jaksick and Michael S. Kimmel of the

SSJ's Issue Trust and Samuel S. Jaksick, Jr., Family Trust and Kevin Riley

Phil Kreitlein, Esq. / Stephen C. Moss, Esq.

Kreitlein Law Group

1575 Delucchi Lane, Suite 101

Reno, Nevada 89502

Email: philip@kreitleinlaw.com / smoss@kreitleinlaw.com

Attorneys for Stanley S. Jaksick, Co-Trustee Samuel S. Jaksick Jr., Family Trust

Adam Hosmer-Henner, Esq.

Sarah A. Ferguson, Esq.

McDonald Carano

100 West Liberty Street, 10th Floor

P.O. Box 2670

Reno, NV 89505

Email: ahosmerhenner@mcdonaldcarano.com / sferguson@mcdonaldcarano.com

Attorneys for Stanley S. Jaksick, Individually and as Beneficiary of the

Samuel S. Jaksick, Jr. Family Trust and SSJ Issue Trust and

Stanley Jaksick, Co-Trustee Samuel S. Jaksick, Jr. Family Trust

Mark J. Connot, Esq.

Fox Rothschild LLP

1980 Festival Plaza Drive, Suite 700

Las Vegas, Nevada 89135

Email: mconnot@foxrothschild.com

Attorney for Respondent Wendy A. Jaksick

R. Kevin Spencer, Esq. / Zachary E. Johnson, Esq.

Spencer & Johnson PLLC

500 N. Akard Street, Suite 2150

Dallas, Texas 75201

Email: kevin@dallasprobate.com / zach@dallasprobate.com

Attorneys for Respondent Wendy A. Jaksick

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- _____ by electronic email addressed to the above and to the following:
- _____ by personal delivery/hand delivery addressed to:
- _____ by facsimile (fax) addressed to:
- _____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 18th day of February, 2020.



V. JAYNE FERRETTO
Employee of Robison, Sharp, Sullivan & Brust

EXHIBIT LIST

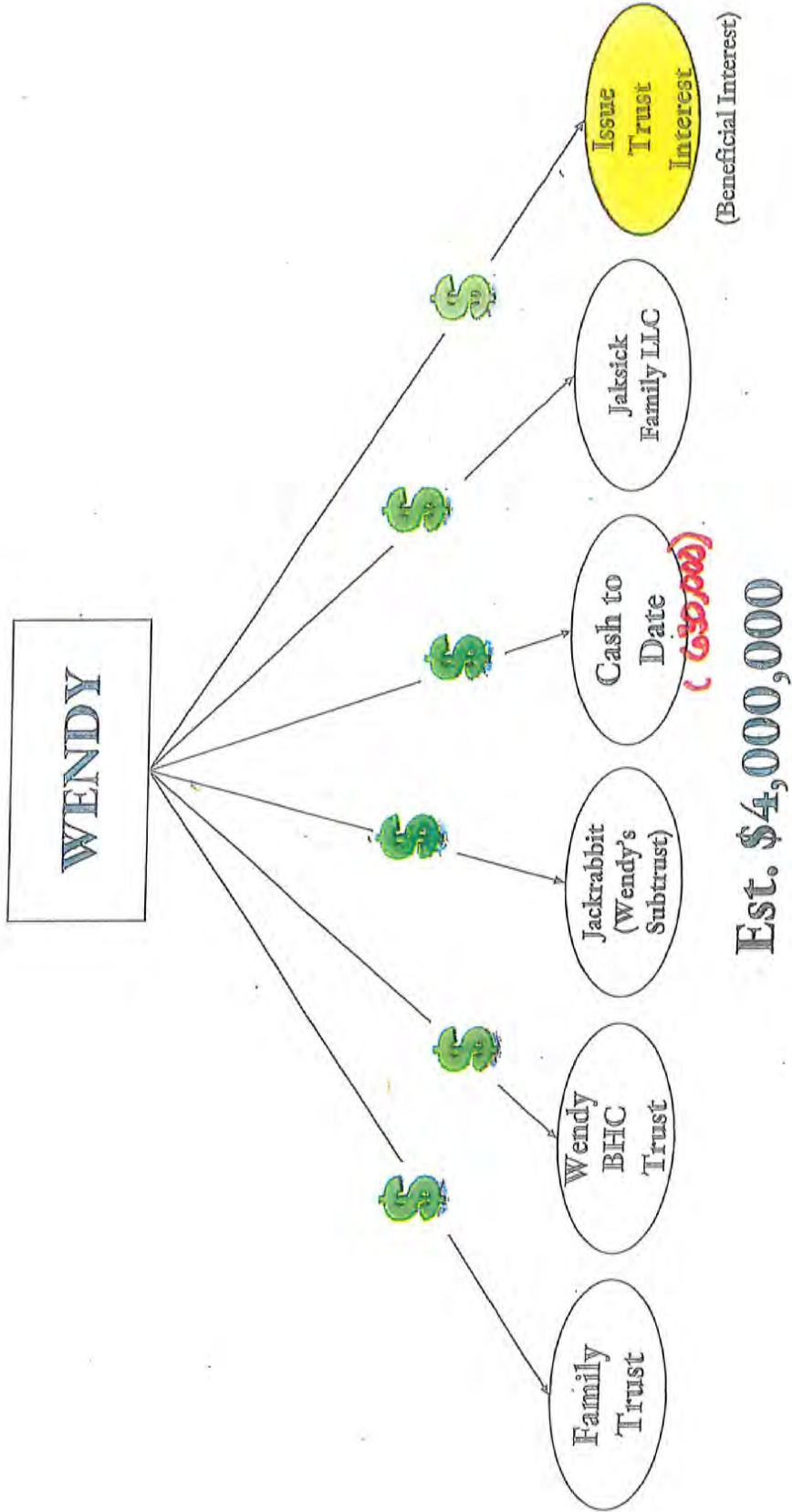
<u>Exhibit List</u>	<u>Description</u>	<u>Pages</u>
1	Trial Exhibit 561	1
2	Excerpts of 2/22/19 Trial Testimony of Todd Jaksick	3
3	Excerpts of 3/4/19 Trial Closing Argument by Kent Robison	3
4	Trial Exhibit 90	7
5	Subtrust (Wendy Jaksick Trust) Summary of Account	13
6	Summary of Deposition Testimony	4
7	Declaration of Cody Oldham	1
8	Portions of Todd Jaksick's Closing Brief by Kent Robison	7
9	Portions of Co-Trustees' Opposition to Wendy's Emergency Motion to Compel by Don Lattin	3
10	Declaration of Kent Robison	2

FILED
Electronically
PR17-00445
2020-02-18 03:21:09 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7745394

EXHIBIT 1

EXHIBIT 1

**WHAT SAM INTENDED
WITH ENTIRE
ESTATE PLAN**



**WITHOUT SUEING
SHE WANTS MORE! NOW!**

561

FILED
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PR17-00445
2020-02-18 03:21:09 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7745394

EXHIBIT 2

EXHIBIT 2

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
10 In the Matter of the Case No. PR17-00445
Administration of the PR17-00446
11 SSJ's ISSUE TRUST Dept No. 15
12 _____/
In the Matter of the
13 administration of the
14 SAMUEL S. JAKSICK, JR.,
FAMILY TRUST
15 _____/
16
17
18 PARTIAL TRANSCRIPT OF PROCEEDINGS
19 TESTIMONY OF TODD JAKSICK
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 A No.

2 Q What is the approximate amount of debt that that
3 Family Trust now owns -- owes, excuse me?

4 A Okay. Yeah, we were at \$33 million in debt and
5 then we are now, I think you had a reference of like 3.5 was
6 remaining. I think it's less than that. It's probably in
7 that \$2 million range, but the asset values are quite
8 significant on the other side as well.

9 Q All right. Well, given the scope of everything
10 that you've done with your brother and the other co-trustees
11 since April of 2013, do you think that the Family Trust is
12 getting near to making its disbursements to the
13 beneficiaries?

14 A Absolutely, yes. I think we already would have
15 been there. Had we not gone through this, we would have
16 been there.

17 Q The question is whether or not you are getting
18 close to being able to make disbursements under the Family
19 Trust?

20 A Yes.

21 Q And with regard to Sam's entire estate plan, the
22 interest in Jackrabbit and these other entities, what is
23 your estimate that Wendy will receive as a result of Stan --
24 Sam's, your father's testamentary devices?

25 A I would say it could approach \$4 million.

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

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

7 Q By the way, did that \$4 million include Luke's
8 share?

9 A Yeah, that includes Luke's share.

10 Q And then how is it that Luke is a direct
11 beneficiary?

12 A In some of the disbursements, the way dad set
13 things up was in the Second Amendment Wendy's one-third
14 share was split up 80 percent for, 80 percent for Wendy and
15 20 percent for Luke, so that's how Luke gets a portion,
16 because Luke gets 20 percent of Wendy's share.

17 Q Was your share split up?

18 A No.

19 Q Was Stan's?

20 A No.

21 Q Just Wendy's?

22 A Correct.

23 Q All right. So through these last six years almost
24 that you and the co-trustees have been administering this
25 trust, could you have done it without the help of attorneys?

FILED
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PR17-00445
2020-02-18 03:21:09 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7745394

EXHIBIT 3

EXHIBIT 3

4185
SUNSHINE LITIGATION
151 Country Estates Circle
Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

-oOo-

WENDY JAKSICK,
Petitioner,

:

:

vs

Case No. PR17-00445

:

Dept. No. 15

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

:

Case No. PR17-00446

:

Dept. No. 15

:

Respondents.

:

=====

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - AFTERNOON SESSION

MONDAY, MARCH 4TH, 2019

Reno, Nevada

Reported By:
Job Number.: 532584

ERIN T. FERRETTO, RPR, CCR #281

1 quite a while well by Wendy. He took that million five
2 deduction out, but he did something else instead. He
3 gave 20 percent of Wendy's share to Luke, who Sam cared
4 great deal about and for.

5 So this is not a third and a third and a third
6 under any theory of this case, because Sam wanted Wendy
7 to get 80 percent of a third. Eighty percent of a third
8 of what? Of what's left after we paid taxes and debt.
9 So let's take a look at what Sam intended Wendy to
10 receive.

11 Please show slide 561, please.

12 Undisputed testimony in this case came from Todd,
13 who said, if you look at the entire estate plan that Sam
14 put together, Wendy, at the end of the day, is likely to
15 get \$4 million. That's what Sam intended. Pay debt, pay
16 taxes, distribute it, and it's right there. It's the
17 family trust, which Todd estimated to be about 3 million;
18 it's the Bright Holland interest that was set up for
19 Wendy to get part of; it's Jackrabbit Properties that
20 Wendy has a part of; it's the cash to date; and it's the
21 Jaksick Family, LLC. Remember, that company is going to
22 get the benefit of the selling of the memberships of the
23 Montreux Golf Course that Stan engineered? That is a
24 lot.

1 And turn the hands of the clock back to
2 April 21st, 2013. They could have just thrown their
3 hands up, liquidated the assets, and Wendy would have
4 gotten nothing. But, instead, there's five years of
5 concentrated effort by Stan and Todd to get this thing
6 turned around and make it so that Wendy can get
7 \$4 million. And for that they get sued for \$80 million
8 and fraud, turning that bankrupt estate into one where
9 Wendy is going to actually receive a lot of money.

10 But I keep misspeaking, as everybody does in this
11 case because, ladies and gentlemen, Wendy doesn't get
12 anything. Listen to me. Sam did not want Wendy to get
13 anything. Sam wanted a subtrust for her as a beneficiary
14 to receive so that the trustees of her subtrust could
15 carefully manage the money that she, her subtrust gets,
16 and she wouldn't spend it like she has in the past. She
17 gets nothing. That's not the way Sam set this up.

18 So who benefitted by Todd's orchestration and
19 manipulation of the Second Amendment? Who benefitted?

20 Let's show the jury slide 577, please.

21 Now, they say that Todd manipulated documents in
22 order to orchestrate the Second Amendment so that he got
23 a lot and Wendy got nothing. Well, here's really how it
24 breaks out.

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2020-02-18 03:21:09 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7745394

EXHIBIT 4

EXHIBIT 4

JAKSICK ENTITIES

Revised 02/13/13

Tab	Entity	Tax ID No.	Ownership	Officers/Mgrs
	ALSB LTD (corp.)	26-4528546	Sam Jaksick 100%	Sam Jaksick, Pres./Sec./Treas.
	Aspen Streams, LLC 48651.029 Managed by: Managers	20-3012504	49% Todd J. Fam. Trust 51% TBJ Investment Trust	Manager Todd Jaksick, Tstee
	B & A Aqua, LLC 48651.016 Managed by: Managers	Need EIN	100% T. Jaksick Fam. Trust	Todd Tstee - Manager
	BBB Investments, LLC 48651.014 Managed by: Managers	74-3077713	51% Todd J. Fam. Trust 49% Sam J. Fam. Trust	Sam Tstee - Manager Todd Tstee - Manager
	Basecamp, LLC Managed by: Managers	88-0467643	18.75% Sam J. Fam. Trust 18.75% Todd Fam. Trust 37.5% Randy (indiv) 25% Rick Haygood (indiv)	Managers Rick Haygood Sam Jaksick R. Venturacci
	Beaver Springs LLC	27-5503467	Todd Jaksick 50% Tim Humes Trust 50%	Managers: Todd and Tim
	Bent Arrow LLC	45-0981662	Sam Jaksick Trust 100%	Manager - Sam Jaksick
	Benny's Outdoor Adventures	47-4715263	Todd Family Trust 100%	Manager - Todd Jaksick
	Benny Runs Wild LLC	45-5453975	Todd B. Jaksick Adventures I LLC 80% Chad Belding 20%	Executive Committee Todd Jaksick Chad Belding
	Bright-Holland Co., Inc. 48651.026	81-0295757	13% Wendy J. QSST 13% Stan J. QSST 49% Todd Family Trust 25% TBJ SC Trust	Sam -President/Treasurer Todd - Secretary
	Buckhorn Land and Livestock, LLC (formerly Winn. Ranch LLC) Managed by: Managers	72-1593241	40% Sam II LLC 7.5% Todd II LLC 7.5% TBJ Invest. Trst 20% Stan III LLC 25% Randy Venturacci	Managers: Sam - Manager Todd - Manager Stan - Manager Randy - Manager
	California Bighorn, LLC 48651.033 Managed by: Managers	26-3328810	100% Sam J. Fam. Trust	Sam Jaksick - Manager
	Duck Flat Ranch LLC 48651.034 Managed by: Managers	20-2909488	49% Sam J. Fam. Trust 51% Aspen Streams	Sam Jaksick, Manager Todd Jaksick, Manager of Aspen Streams

48651.000/Index Jaksick Entities

Ex 90

1

SJ001060

TJA 002001

Tab	Entity	Tax ID No.	Ownership	Officers/Mgrs
	Duck Lake Ranch, LLC 48651.060 Managed by: Managers	88-0412803	95% Todd J. Fam. Trust 5% TBJ Invest. Trust	Managers: Sam Jaksick Todd Jaksick
	Fly Ranch LLC 48651.025 Managed by: Managers	20-8019411	44.5% Sam Trust 40% Todd Trust 11% TBJ Inves. Trst 4.5% Stan Jaksick (indiv)	Manager: Todd Jaksick
	Gerlach Green Energy LLC 48651.032 Managed by: Managers	20-2137944	45% Sam J. 45% Aspen Streams 10% Stan J.	Managers: Stan Jaksick Todd Jaksick Sam Jaksick
	Great Western Helicopters, Inc. Missing Bylaws	88-0217030	100% Sam Family Trust	President: Sam Secretary: B. Marshall Treasurer: Sam
	Home Camp Land and Livestock Co., Inc. 48651.027	88-0094937	49% TBJ Issue Trust 2% TBJ SC Trust 49% SSJ Issue Trust	Sam - President Todd - Secretary/Treasurer
	Incline TSS Ltd	27-3505890	Todd 51% Stan 49%	Exec. Committee Mgrs: Todd and Stan
	Jackrabbit Properties, LLC 48651.013 Managed by: Managers	72-1549198	29.242% Sam Jaksick I LLC 31.35% Todd J. I LLC 9.515% TBJ Inves. Trst 3.893% Stan Jaksick II LLC 13.5% SC Ranch 6.5% G. Brown Trust	Executive Committee Sam Jaksick Todd Jaksick William Douglass
	Jaksick Family LLC - managed by managers	20-5582624	34.33% Stan Jaksick Todd and Thelma Jaksick Trust fbo Todd 34.33% Thelma Jaksick Trust fbo Wendy Jaksick 31.33%	Sam S. Jaksick, Manager

Tab	Entity	Tax ID No.	Ownership	Officers/Mgrs
	LSC Development, Inc. 48651.043	20-8775748	34.5% Sam III LLC 41.0% Todd III LLC 4.5% Stan IV LLC 6.5% JohnJulia LLC 4.5% Silver Star LLC 3.0% Palmetto Moon Water LLC 3.0% Staci & Amy LLC 3.0% Bill D LLC	Todd - President Dan Douglass VP Sam - Secretary/Treasurer
	Lakecrest Realty, Inc.	88-0176565	100% Sam Trust 25,000 shares 1,000 shares issued	Sam Jaksick President/Treas. Todd Jaksick Secretary Sam Jaksick sole Director
	Lake-Ridge (corporation) Missing Articles & Bylaws signature page	88-0097892	100% Sam Family Trust	President: Sam Secretary: Sam Treasurer: Sam
	Lakeridge Golf Course Ltd managed by its managers Missing Operating Agr	88-0316355	Jaksick Family LLC 25% Sam Jaksick Family Trust 75%	Manager: Sam
	Locnavar, LLC 48651.038 Managed by: Managers	20-2833015	40% Sam II LLC 20% Stan 15% Todd II LLC 25% Randy V (indiv)	Managers Todd Jaksick Sam Jaksick R. Venturacci Stan Jaksick
	Markhor Investment Co. LLC	46-2026752	Stan Jaksick / Sam Jaksick Shakey & Jacmar stock	Managers: Sam and Stan
	Montreux Development Group LLC 48651.020 Managed by: Managers	88-0474136	81.75% Toiyabe Invest. 14% Nichols Dev. Co. 4.25% Stan Jaksick I LLC	Managers: Sam Jaksick Stan Jaksick
	Montreux Golf Club Ltd managed by its managers	88-0317892	3% Sam Jaksick Family Trust 96% Lakeridge Golf Course Ltd. 1% Jaksick Family LLC	Managers: Sam Stan
	Montreux Golf & Country Club, Inc., non profit corp.	88-0390138	Owned by Equity Club/Golf members	President: Sam Secretary: Stan Treasurer: Sam
	Montreux South 51 TIC	No EIN required	70 %Toiyabe Invest. Co. 10% Ken Huff LLC 5% Stan Jaksick LLC 15% Nichols Develop. Co.	Managing TIC: Sam Jaksick

Tab	Entity	Tax ID No.	Ownership	Officers/Mgrs
	Montreux South 80 TIC	No EIN required	81.75% Toiyabe Invest Co 4.25% Stan Jaksick LLC 14% Nichols Develop. Co.	Managing TIC: Sam Jaksick
	Nevada Pronghorn LLC (Series)	45-4715358	Home Camp L & L	Manager - Todd
	Nevada Pronghorn II LLC	45-5079135	Home Camp L & L	Manager - Todd
	Northern Washoe Ranching Management LLC Managed by: Managers	20-3173034	100% Todd J.	Todd Jaksick, Manager
	Northern Washoe Ranching Management Corp.	46-2028916	Todd Jaksick 100%	Todd Jaksick, Manager
	Pioneer Group, Inc. 48651.035	88-0269667 Missing Bylaws	35.5870% Sam 18.0864% Brown 12.1759% Oliver 8.0350% Murphy 4.7399% Kinney 3.5776% Chaput 2.8684% Passink 3.0264% Douglass, Dan 2.9553% Flint 2.9553% Ryczkowski 2.1513% Prezant 1.4776% Kinney 1.1821% Douglass, Ben <u>1.1821% Douglass, Jack</u> 100.0003%	Dan Douglass, Pres. Mike Chaput Treas. Marc Murphy Sec. Sam Jaksick Dir. Dan Douglass, Dir. George Brown, Dir.
	SJ Ranch LLC 48651.028 Managed by: Managers	88-0505084	100% Sam J. Fam. Trust owns 160 acres = \$140K	Managers: Sam Jaksick Todd Jaksick
	SST Westridge LLC 48651.031 Managed by: Managers	20-2832970	50% Stan (indiv) 25% Sam J. Fam. Trust 25% Aspen Streams LLC	Managing Members: Stan Jaksick Sam Jaksick Todd Jaksick
	S & T Investments LLC managed by its managers	20-1902810	50% Todd Fam. Trust 50% Stan Jaksick (owns Shakey stock)	Managers: Stan Todd
	Saddlehorn Development Co. Missing Bylaws	88-0242927	100% Sam Family Trust	Director: Rob Nichols President: Rob Nichols Secretary: James Smrt Treasurer: Sam Jaksick

Tab	Entity	Tax ID No.	Ownership	Officers/Mgrs
	Sammy Supercub LLC Series A Sammy Supercub LLC Series B	27-4832839	100% Sam Family Trust Todd Family Trust 100%	Managers: Sam Jaksick Todd Jaksick
	Samuel S. Jaksick Jr I LLC May 2, 2008 (managed by managers)	26-3368413	100% Sam owns 35.242 units Jackrabbit	Sam Jaksick sole manager/member
	Samuel S. Jaksick Jr II LLC May 29, 2008 (managed by managers)	26-3368654	100% Sam owns 40% Buckhorn	Sam Jaksick sole manager/member
	Samuel S. Jaksick Jr III LLC May 19, 2008 (managed by managers)	26-3368837	100% Sam owns <u>34.5% LSC</u>	Sam Jaksick sole manager/member
	Sam S. Jaksick IV LLC (managed by managers)	26-3857459	owns 1.25% RBIZNET	Sam Jaksick manager
	Samuel S. Jaksick, Jr. V LLC	45-2790181	Sam Jaksick Trust	Sam Jaksick, Manager
	SSJ LLC (Lakeshore rental)	80-0768900	Sam Jaksick Trust	Managers Sam Todd
	Spring Mountain Development Company, Inc.	26-3980479	Sam Family Trust Todd Family Trust TBJ SC Trust Stan Jaksick Randy Venturacci	Sam - President Randy - VP Todd - Secretary/Treas.
	Stan Jaksick LLC December 24, 2007 (managed by managers)	26-2229879	100% Stan LLC owns: 5% Montreux So 51 TIC & 4.25% Montreux So. 80 TIC	Stan Jaksick sole manager
	Stanley S. Jaksick II LLC May 2, 2008 (managed by managers)	26-3376282	100% Stan owns 3.893% Jackrabbit	Stan Jaksick sole manager
	Stanley S. Jaksick III LLC June 2, 2008 (managed by managers)	26-3376359	100% Stan owns 20% Buckhorn	Stan Jaksick sole manager
	Stanley S. Jaksick IV LLC May 21, 2008 (managed by managers)	26-3376757	100% Stan owns 4.5% LSC	Stan Jaksick sole manager

Tab	Entity	Tax ID No.	Ownership	Officers/Mgrs
	Todd B. Jaksick LLC April 8, 2008 (managed by managers)	26-2438613	100% Todd owns 31.35 units Jackrabbit	Todd Jaksick sole manager/member
	Todd B. Jaksick II LLC May 2, 2008 (managed by managers)	26-3376419	100% Todd owns 7.5% Buckhorn	Todd Jaksick sole manager/member
	Todd B. Jaksick III LLC May 19, 2008 (managed by managers)	26-3376481	100% Todd owns 41% LSC	Todd Jaksick sole manager
	Todd B. Jaksick IV LLC (managed by managers)	26-3857474	owns 1.25% RBIZNET	Todd Jaksick sole manager
	Todd B. Jaksick V LLC (Outdoor Syndicate)	45-3969889	Todd Family Trust	Manager: Todd
	Todd B. Jaksick Adventures I LLC	45-5493460	Todd Family Trust	Manager - Todd
	Toiyabe Investment Co.	88-0264983	100% Sam Family Trust	President: Sam Secretary: Sam Treasurer: Sam
	WSR Land LLC	27-4683720	TBJ SC Trust Homecamp L & L	Managers: Todd Jaksick
	White Pine Lumber Co.	88-0121360	100% Sam J. Fam. Trust 195,000 o/s shares per merger agreement Thelma Jaksick was a 50% owner of White Pine owning 97,500 shares per merger in 1982 Sam inherited the first 97,500 shares from his father in 1966 and the remaining shares from his mother in 1991	Sam - President/Secretary Todd Jaksick - Treas. Sam - Director
	Youth Outdoor Adventures	45-4747929	100% Todd Family Trust	Todd - President/Secretary/Treas urer
	Castle Peak Cruises, LLC 48651.037 Managed by: Managers	20-2548389	Dissolved	Managers: Stanley Jaksick Todd Jaksick

Tab	Entity	Tax ID No.	Ownership	Officers/Mgrs
	Washoe Winds, LLC	sold to Chris/Bob		
	Pronghorn, LLC		Dissolved	
	Montreux West 40 LLC Managed by: Managers	Dissolved	73% Sam 21% Rob 6% Stan	Sam Jaksick, Manager Nichols Dev. Co. Stan Jaksick
	Montreaux South 51 LLC Managed by: Managers	88-0376767 Dissolved	10% Ken Huff 70% Sam Trust 15% Rob 5% Stan Jaksick	Ken Huff LLC Mgr Mem Toiyabe Invest. Co. Manager Nichols Dev. Co. Mgr Mem Stan Jaksick LLC Mgr Mem
	Montreux South 80JV Montreux Joint Venture (dissolved and merged into MDG LLC 8/31/00)	Dissolved	82% Sam 14% Rob 4% Stan	Toiyabe Inves. Co. Nichols Dev. Co. Stan Jaksick LLC
	Pioneer Associates LLC		Dissolved April 1999	
	Montreux Unit 3 Association		Dissolved September 2001	
	Jaksick Family Partnership, Limited Partnership		Permanently Revoked 5/31/1993	
	SJ Ranch Property Owners Association		Revoked 2/28/2007	
	Liquid Waste Management LLC		Dissolved 10/31/2007	
	RDJ, LLC	27-1993601	Dissolved	Managers - Dan Douglass Randy Venturacci Todd and Sam Jaksick
	Southeast SJ Ranch Property Owners Association		Revoked 4/30/2005	
	Blue Spruce LLC managed by its members		Revoked 5/31/2004	Managing Member: James Sanford
	Juniper Trails Development Co.		Dissolved	Samuel S. Jaksick as trustee of the Samuel S. Jaksick, Jr. Family Trust

FILED
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2020-02-18 03:21:09 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7745394

EXHIBIT 5

EXHIBIT 5

**WENDY JAKSICK TRUST UNDER THE
SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT
FINANCIAL STATEMENTS
January 1, 2017 to December 31, 2017**

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ROSSMANN
MACDONALD
& BENETTI

AN ACCOUNTANCY CORPORATION

To the trustees of the
Wendy Jaksick Trust under the Samuel S Jaksick Jr. Family Trust Agreement
Reno, Nevada

The Trustees are responsible for the accompanying financial statements of the Wendy Jaksick Trust under the Samuel S Jaksick Jr. Family Trust Agreement, which comprise the summary of account of the Wendy Jaksick Trust under the Samuel S Jaksick Jr. Family Trust Agreement, and the related schedules as of December 31, 2017, and for the period from January 1, 2017 to December 31, 2017 in accordance with the accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by the Trustee. Accordingly, we do not express an opinion, a conclusion, nor provide any form of assurance on the financial statements.

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

We are not independent with respect to the Wendy Jaksick Trust under the Samuel S Jaksick Jr. Family Trust Agreement.

Rossmann, MacDonald & Benetti
Rossmann, MacDonald & Benetti
An Accountancy Corporation

February 11, 2019

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT

SUMMARY OF ACCOUNT

For the period beginning January 1, 2017 and ending December 31, 2017

	<u>Schedule</u>	<u>Amounts</u>	<u>Totals</u>
ASSETS ON HAND, JANUARY 1, 2017	A		<u>\$ 136,982.24</u>
PRINCIPAL BALANCE ON HAND:			
Principal balance on hand, January 1, 2017	-	\$ 136,976.85	
Receipts of principal	B	779,898.21	
Total principal balance before distributions from principal		<u>916,875.06</u>	
Less deductions from principal:			
Distributions	1	<u>(18,610.39)</u>	
Total principal balance		<u>\$ 898,264.67</u>	
TOTAL PRINCIPAL BALANCE ON HAND			898,264.67
INCOME BALANCE ON HAND:			
Income balance on hand, January 1, 2017	-	\$ 5.39	
Receipts of income	1	<u>6.76</u>	
Total income balance		<u>\$ 12.15</u>	
TOTAL INCOME BALANCE ON HAND			<u>12.15</u>
TOTAL ASSETS ON HAND, DECEMBER 31, 2017	C		<u>\$ 898,276.82</u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT

SCHEDULE A - ASSETS ON HAND

As of January 1, 2017

	<u>Schedule</u>	<u>Fiduciary Acquisition Value</u>	<u>Estimated Value</u>
CASH:			
RBC Wealth Management	1	1,527.22	1,527.22
NOTES AND OTHER RECEIVABLES:			
Fractional interest in note receivable from Bright Holland Company received June 4, 2014 consisting of \$115,299.08 of principal and \$17,244.33 of accrued and unpaid interest. Twenty percent of the accrued value of the note is held by the trustees for the benefit of the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2.		132,543.41	132,543.41
Fractional interest in note receivable from Jaksick Family LLC received June 4, 2014 consisting of \$2,903.02 of principal and \$8.59 of accrued and unpaid interest. Twenty percent of the accrued value of the note is held by the trustees for the benefit of the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2.		2,911.61	2,911.61
TOTAL ASSETS ON HAND, JANUARY 1, 2017		<u><u>\$ 136,982.24</u></u>	<u><u>\$ 136,982.24</u></u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT

SCHEDULE B - RECEIPTS OF PRINCIPAL

For the period beginning January 1, 2017 and ending December 31, 2017

	<u>Schedule</u>	<u>Totals</u>
RECEIPTS OF PRINCIPAL:		
Loan proceeds received	1A	\$ 1,500.00
Distribution received from Samuel S Jaksick Jr Family Trust	1A	16,000.00
Additional assets received:		
Jackrabbit Properties LLC capital contribution credited to the account of the Wendy Jaksick Tr under the Samuel S Jaksick Family Trust Agreement. This represents amounts paid by the Samuel S Jaksick Family Trust to satisfy a capital call to the members of Jackrabbit Properties LLC on June 1, 2017.		7,518.72
Jackrabbit Properties LLC capital contribution credited to the account of the Wendy Jaksick Tr under the Samuel S Jaksick Family Trust Agreement. This represents amounts paid by the Samuel S Jaksick Family Trust to satisfy a capital call to the members of Jackrabbit Properties LLC on September 22, 2017.		3,007.49
Received by assignment from Stanley Jaksick II LLC on October 11, 2017, 9.3984 Class A units of Jackrabbit Properties LLC representing a 7.5187% of the total Class A units of Jackrabbit Properties LLC. The units received represent eighty percent of one third of the 35.242 class A units held by the Samuel S Jaksick Family Trust prior to the distribution of those units on November 12, 2015 to Stanley Jaksick, trustee. The units were held by Stanley Jaksick by agreement until the units were assigned to the Wendy Jaksick Trust under the Samuel S Jaksick Family Trust.		<u>751,872.00</u>
TOTAL RECEIPTS OF PRINCIPAL		<u>\$ 779,898.21</u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT
SCHEDULE C - ASSETS ON HAND
As of December 31, 2017

	<u>Schedule</u>	<u>Fiduciary Acquisition Value</u>	<u>Estimated Value</u>
CASH:			
RBC Wealth Management	1	423.59	423.59
NOTES AND OTHER RECEIVABLES:			
Fractional interest in note receivable from Bright Holland Company received June 4, 2014 consisting of \$115,299.08 of principal and \$17,244.33 of accrued and unpaid interest. Twenty percent of the accrued value of the note is held by the trustees for the benefit of the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2.		132,543.41	132,543.41
Fractional interest in note receivable from Jaksick Family LLC received June 4, 2014 consisting of \$2,903.02 of principal and \$8.59 of accrued and unpaid interest. Twenty percent of the accrued value of the note is held by the trustees for the benefit of the Samuel S Jaksick Jr Irrevocable Grandchild Trust No 2.		2,911.61	2,911.61
CLOSELY HELD BUSINESSES:			
Jackrabbit Properties LLC: 9.3984 Class A units representing a 7.5187% of the total Class A units of Jackrabbit Properties LLC		762,398.21	760,000.00
TOTAL ASSETS ON HAND, DECEMBER 31, 2017		<u>\$ 898,276.82</u>	<u>\$ 895,878.61</u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT

SCHEDULE D - INVESTMENT ACTIVITY

For the period beginning January 1, 2017 and ending December 31, 2017

<u>Date</u>	<u>Descriptions</u>	<u>Amounts</u>	<u>Totals</u>
INVESTMENT ACTIVITY:			
	<u>Jackrabbit Properties LLC</u>		\$ -
6/1/2017	Jackrabbit Properties LLC capital contribution credited to the account of the Wendy Jaksick Tr under the Samuel S Jaksick Family Trust Agreement. This represents amounts paid by the Samuel S Jaksick Family Trust to satisfy a capital call to the members of Jackrabbit Properties LLC on June 1, 2017.	\$ 7,518.72	
9/22/2017	Jackrabbit Properties LLC capital contribution credited to the account of the Wendy Jaksick Tr under the Samuel S Jaksick Family Trust Agreement. This represents amounts paid by the Samuel S Jaksick Family Trust to satisfy a capital call to the members of Jackrabbit Properties LLC on September 22, 2017.	3,007.49	
10/11/2017	Received by assignment from Stanley Jaksick II LLC on October 11, 2017, 9.3984 Class A units of Jackrabbit Properties LLC representing a 7.5187% of the total Class A units of Jackrabbit Properties LLC. The units received represent eighty percent of one third of the 35.242 class A units held by the Samuel S Jaksick Family Trust prior to the distribution of those units on November 12, 2015 to Stanley Jaksick, trustee. The units were held by Stanley Jaksick by agreement until the units were assigned to the Wendy Jaksick Trust under the Samuel S Jaksick Family Trust.	<u>751,872.00</u>	
	Balance, Jackrabbit Properties LLC		<u>\$ 762,398.21</u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT

SCHEDULE E - TRUST DEBTS

As of December 31, 2017

	<u>Amounts</u>
TRUST DEBTS:	
Note Payable - Stanley Jaksick Trust under the Samuel S Jaksick Jr Family Trust	\$ 16,000.00
Original note dated September 10, 2015 in the amount of \$16,000 due and payable September 11, 2016. Interest payments are payable annually on September 11. Interest on the note is fixed at 1.5% per annum. The note may be automatically extended annually depending on Trust cash flow.	
Note Payable - Todd B Jaksick Trust under the Samuel S Jaksick Jr Family Trust	16,000.00
Original note dated September 10, 2015 in the amount of \$16,000 due and payable September 11, 2016. Interest payments are payable annually on September 11. Interest on the note is fixed at 1.5% per annum. The note may be automatically extended annually depending on Trust cash flow.	
Note Payable - Stanley Jaksick Trust under the Samuel S Jaksick Jr Family Trust	3,000.00
Original note dated April 18, 2016 in the amount of \$3,000 including interest is due and payable April 19, 2017. Interest on the note is fixed at 1.5% per annum. The note may be automatically extended annually depending on Trust cash flow.	
Note Payable - Todd B Jaksick Trust under the Samuel S Jaksick Jr Family Trust	3,000.00
Original note dated April 18, 2016 in the amount of \$3,000 including interest is due and payable April 19, 2017. Interest on the note is fixed at 1.5% per annum. The note may be automatically extended annually depending on Trust cash flow.	
Advance from the Samuel S Jaksick Jr Family Trust	1,500.00
TOTAL TRUST DEBTS	<u>\$ 39,500.00</u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT
SCHEDULE 1 - SUMMARY OF ACCOUNT

RBC - #974

For the period beginning January 1, 2017 and ending December 31, 2017

<u>Date</u>	<u>Ck#</u>	<u>Payor</u>	<u>Description</u>	<u>Amount</u>	<u>Totals</u>
ASSETS ON HAND, JANUARY 1, 2017					\$ 1,527.22
			Total receipts of principal (from schedule 1A)	\$ 17,500.00	
			Total receipts of income (from schedule 1B)	6.76	
			TOTAL ADDITIONS:		17,506.76
			TOTAL CHARGEABLE ASSETS		<u>\$ 19,033.98</u>
DEDUCTIONS:					
			Distributions (from Schedule 1C)	<u>\$ 18,610.39</u>	
			TOTAL DEDUCTIONS:		<u>18,610.39</u>
ASSETS ON HAND, DECEMBER 31, 2017					<u><u>\$ 423.59</u></u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT

SCHEDULE 1A - RECEIPTS OF PRINCIPAL

RBC - #974

For the period beginning January 1, 2017 and ending December 31, 2017

<u>Date</u>	<u>Payor</u>	<u>Schedule</u>	<u>Amount</u>	<u>Totals</u>
RECEIPTS OF PRINCIPAL:				
DISTRIBUTIONS RECEIVED:				
5/24/17	Distribution received from Samuel S Jaksick Jr. Family Trust	1	\$ 16,000.00	
	Total distributions received		<u>16,000.00</u>	
LOAN ADVANCES:				
8/7/17	Loan advance from Samuel S Jaksick Jr. Family Trust	1	<u>1,500.00</u>	
	Total loan advances		<u>1,500.00</u>	
	TOTAL RECEIPTS OF PRINCIPAL			<u>\$ 17,500.00</u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT
SCHEDULE 1B - RECEIPTS OF INCOME

RBC - #974

For the period beginning January 1, 2017 and ending December 31, 2017

<u>Date</u>	<u>Payor</u>	<u>Income</u>	<u>Totals</u>
RECEIPTS OF INCOME:			
1/26/17	Interest income	\$ 0.31	
2/27/17	Interest income	0.34	
3/27/17	Interest income	0.29	
4/26/17	Interest income	0.31	
5/26/17	Interest income	0.50	
6/26/17	Interest income	2.66	
7/26/17	Interest income	1.65	
8/4/17	Interest income	0.30	
8/28/17	Interest income	0.06	
9/26/17	Interest income	0.08	
10/26/17	Interest income	0.09	
11/27/17	Interest income	0.09	
12/26/17	Interest income	0.08	
	Total interest income	<u>6.76</u>	<u>6.76</u>
	TOTAL RECEIPTS OF INCOME		<u><u>\$ 6.76</u></u>

See accountant's compilation report

THE WENDY JAKSICK TRUST UNDER THE SAMUEL S JAKSICK JR FAMILY TRUST AGREEMENT
SCHEDULE 1C - DISTRIBUTIONS

RBC - #974

For the period beginning January 1, 2017 and ending December 31, 2017

<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Amount</u>
DISTRIBUTIONS:			
		<u>Distributions to Wendy Jaksick</u>	
5/25/2017	counter	Wendy Jaksick	\$ 5,000.00
6/22/2017	7002	Audi Financial Services on behalf of Wendy Jaksick	2,345.01
6/26/2017	7003	Wendy Jaksick	5,000.00
6/28/2017	7004	North Texas Tollway authority on behalf of Wendy Jaksick	131.77
7/10/2017	7005	Wendy Jaksick	5,000.00
7/11/2017	7006	Audi Financial Services on behalf of Wendy Jaksick	1,133.61
TOTAL DISTRIBUTIONS			<u>\$ 18,610.39</u>

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Transaction # 7745394

EXHIBIT 6

EXHIBIT 6

BHC / BRIGHT HOLLAND TRUST

Wendy Jaksick:

Volume I: 8:14; 77:21

Volume II: 0

Volume III: 732:20; 744:13; 758:1

Volume IV: 868:12; 961:1; 1068:24; 1068:19; 1068:21

Volume V: 1129:3; 1144:17; 1144:18; 1125:13; 1126:16; 1194:5; 1220:11; 1223:23; 1125:12; 1225:24; 1226:8; 1226:25; 1227:4; 1228:7; 1231:13; 1236:3; 1236:14; 1237:11; 1237:19; 1237:20; 1237:23; 1238:5; 1239:2; 1239:7; 1240:2; 1241:6; 1241:15; 1241:19; 1241:23; 1242:5; 1242:10; 1242:20; 1243:12; 1244:6; 1246:5; 1246:7; 1246:11; 1246:12; 1247:3.

Kevin Riley:

Volume I: 6:20; 26:2; 28:15; 28:19; 28:21; 28:23; 28:25; 29:2; 30:4; 42:21; 115:16; 117:7; 117:10; 117:11; 119:20; 120:8; 120:10; 120:13; 120:14; 123:15; 162:16; 162:17; 162:20; 162:23; 162:24; 163:13; 163:23; 164:1; 164:15; 165:23; 165:24; 166:2; 166:5; 166:18; 166:20; 169:9; 170:12; 170:15; 172:9; 172:17; 173:2; 173:5; 173:6; 173:13; 173:20; 174:18; 174:19; 175:1; 175:5; 175:10; 175:13; 175:17; 176:22; 177:1; 177:7; 178:1; 178:16.

Volume II: 275:15; 316:1; 316:15; 315:24; 317:6; 318:2; 318:7; 318:18; 319:3; 319:13; 365:3; 365:9; 366:15; 366:17; 367:1; 367:3; 367:13; 367:17; 367:19; 368:8; 368:10; 368:11; 368:22; 369:8; 423:11; 423:16.

Volume III: 454:2; 454:6; 454:9; 456:18; 456:24; 456:25; 457:3; 457:13; 457:15; 457:16; 457:18; 458:1; 458:5; 458:11; 458:14; 458:18; 458:21; 458:25; 459:3; 459:8; 459:17; 459:24; 459:25; 460:1; 460:7; 460:8; 460:15; 460:17; 460:25; 461:2; 461:18; 461:25; 462:2; 462:3; 462:4; 462:7; 462:12; 463:1; 463:2; 463:10; 463:15; 463:20; 463:23; 464:2; 464:24; 464:25; 465:5; 465:6; 465:14; 465:19; 465:23; 465:24; 466:5; 465:11; 465:18; 466:6; 467:1; 467:9; 467:11; 468:1; 468:4; 468:7; 468:22; 469:1; 469:10; 469:18; 469:19; 469:25; 470:2; 470:14; 470:15; 470:19; 470:22; 470:24; 471:3; 471:7; 471:10; 471:12; 471:20; 471:22; 472:3; 473:21; 474:18; 475:15; 475:17; 475:24; 476:4; 483:8; 483:11; 501:3; 557:21; 558:10; 558:12; 558:13; 558:23; 559:2; 559:13; 595:22; 596:4; 603:23; 604:2; 604:23; 604:25; 605:17; 606:4; 751:10; 751:12; 751:13; 783:6; 785:9.

Volume IV: 783:6; 783:8; 783:11; 785:9.

Pierre Hascheff:

Volume I: 91:16; 92:19; 109:1; 124:4; 124:7.

Volume II: 1:17; 20:6; 123:14; 130:7; 130:9; 130:11; 130:12; 130:17; 134:19; 135:22; 136:2; 173:23; 180:1; 186:2; 220:23; 221:1; 258:6.

Todd Jaksick:

Volume I: 1:15; 25:24; 46:4; 46:10; 46:20; 46:23; 47:4; 47:7; 47:8; 47:15; 140:22; 164:20.

Volume II: 243:15; 269:18; 269:21; 321:16; 392:7; 392:23; 393:4; 393:7; 393:8; 393:9; 394:11; 394:16; 395:3; 395:9; 395:12; 396:4; 396:11; 396:16; 396:23; 397:1; 397:10;

397:14; 397:19; 400:17; 400:25; 401:2; 406:17; 407:17; 424:10; 424:21; 425:1; 425:8;
425:10; 449:1.
Volume III: 465:13.
Volume IV: 696:13.
Volume V: 873:12.
Volume VI: 1001:3; 1057:3; 1059:10; 1152:20.
Volume VII: 1192:17; 1213:2; 1214:10; 1214:11; 1214:21; 1245:9; 1275:13; 1324:19;
1325:7; 1326:7; 1334:19; 1335:19; 1336:4; 1336:11; 1336:14; 1336:20; 1336:22; 1337:7;
1337:11; 1337:12; 1338:19; 1339:16; 1343:7; 1343:24; 1349:1; 1349:10; 1349:16;
1349:19; 1350:4; 1350:9; 1350:14; 1350:20; 1250:21; 1351:1; 1354:22; 1357:5; 1357:13;
1362:15; 1363:5; 1363:8; 1365:9; 1365:11.

Stan Jaksick:

Volume I: 0

Volume II: 0

Volume III: 667:4; 669:13; 749:13; 833:9; 855:24; 855:25; 856:5; 856:11; 857:2.

JACKRABBIT

Wendy Jaksick:

Volume I: 18:13

Volume II: 0.

Volume III: 0.

Volume IV: 914:4; 914:22; 914:23; 917:16; 923:17; 925:4; 925:13; 925:20; 925:21; 926:1; 926:3; 926:5; 926:12; 926:15; 928:2; 989:16; 1069:1.

Volume V: 1176:19; 1177:6; 1178:9; 1178:10; 1178:14; 1178:18; 1186:2; 1219:15; 1219:17; 1220:18; 1223:13; 1246:3.

Kevin Riley:

Volume I: 26:15; 53:19; 53:22; 155:13; 155:17; 155:21; 155:23; 157:7; 157:9; 157:13.

Volume II: 297:19; 297:21; 298:4; 298:8; 298:13; 298:15; 333:10; 336:20; 428:23.

Volume III: 477:21; 477:25; 478:6; 478:18; 617:22; 628:18; 628:20; 628:21; 629:2; 630:14; 631:13; 631:15; 631:20; 631:25; 632:5; 632:9; 632:12; 632:25; 633:4.

Volume IV: 653:9; 662:23; 663:3; 663:6; 663:12; 663:14; 708:13.

Pierre Hascheff:

Volume I: 13:21.

Volume II: 39:16; 39:19; 40:17; 43:24; 44:5; 63:18; 64:4; 64:9; 64:16; 65:3; 82:4; 86:1; 258:6.

Todd Jaksick:

Volume I: 0

Volume II: 0

Volume III: 0

Volume IV: 0

Volume V: 0

Volume VI: 1128:4; 1128:12; 1130:11; 1153:5.

Volume VII: 1217:4; 1217:18; 1217:19; 1234:13; 1245:11; 1251:22; 1252:2; 1252:4; 1252:14; 1258:8; 1264:7; 1264:14; 1275:11; 1275:13; 1283:8; 1290:12; 1297:13; 1300:21; 1301:7; 1305:19; 1312:15; 1313:23; 1314:6; 1314:9; 1318:15; 1343:17; 1368:12; 1368:17.

Stan Jaksick:

Volume I: 29:8; 30:6; 30:10; 30:20; 32:6; 120:10; 147:12; 148:19; 222:11.

Volume II: 0

Volume III: 667:9; 669:20; 670:7; 670:17; 672:2; 844:21; 845:10; 847:24; 848:24; 854:8;

JAKSICK FAMILY, LLC / TRUST

Wendy Jaksick:

Volume I: 8:17; 57:23; 59:11; 59:23; 60:5; 60:8; 63:16; 63:21; 158:11.

Volume II: 250:18; 330:20.

Volume III: 501:1; 501:15; 511:24; 723:21; 723:25; 724:12; 743:24.

Volume IV: 1061:16; 1061:20; 1089:2.

Volume V: 1247:1.

Kevin Riley:

Volume I: 117:14; 148:18.

Volume II: 316:17; 319:6; 401:12.

Volume III: 446:8; 446:15; 446:20; 454:21; 455:3; 455:7; 455:24; 480:4; 501:11; 502:7; 502:12; 502:13; 502:20; 502:23; 503:2; 503:9; 503:14; 503:17; 503:23; 504:3; 504:12; 519:8; 544:13; 557:24; 560:11; 561:3; 601:21; 606:10; 626:16; 724:3; 724:14; 733:7; 738:14; 739:1; 739:13; 740:5; 740:16; 741:2; 743:9; 745:4; 777:14; 777:17; 777:20.

Volume IV: 724:3; 724:14; 738:14; 739:2; 739:13; 740:5; 740:16; 741:2; 743:9; 745:3; 777:14; 777:17; 777:20.

Pierre Hascheff:

Volume I: 118:18; 143:15; 143:18; 145:13; 145:14; 147:2; 148:7; 148:12; 149:12; 150:3; 150:20; 152:8; 152:9; 152:15; 153:4; 153:19.

Volume II: 251:3.

Todd Jaksick:

Volume I: 57:19; 134:18; 169:23; 170:1; 170:9; 171:20; 172:10.

Volume II: 0.

Volume III: 492:21; 493:14; 493:16; 493:25; 494:6; 494:9; 495:7; 495:20; 495:23; 496:4; 503:4; 508:3; 526:7; 526:9; 526:13; 526:17; 526:22; 528:10; 528:17; 648:14; 649:3; 665:1.

Volume IV: 748:15; 778:24; 818:17; 820:16; 821:16; 822:4.

Volume V: 960:19; 960:23.

Volume VI: 1001:9; 1002:16; 1056:21; 1056:23; 1057:15; 1058:15; 1134:11.

Volume VII: 1199:22; 1213:4; 1214:11; 1214:12; 1214:22; 1214:23; 1373:20.

Stan Jaksick:

Volume I: 5:11; 9:24; 179:1; 179:5; 225:7; 225:8; 225:10; 274:24.

Volume II: 340:6; 416:21.

Volume III: 643:7.

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EXHIBIT 7

EXHIBIT 7

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Transaction # 7745394

EXHIBIT 8

EXHIBIT 8

3975
KENT ROBISON, ESQ. – NSB #1167
krobison@rssblaw.com
THERESE M. SHANKS, ESQ. – NSB #12890
tshanks@rssblaw.com
Robison, Sharp, Sullivan & Brust
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: 775-329-3151
Facsimile: 775-329-7169
*Attorneys for Todd B. Jaksick, Individually,
Incline TSS, Ltd., and Duck Lake Ranch, LLC*

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

In the Matter of the:

CASE NO.: PR17-00445

SSJ's ISSUE TRUST.

DEPT. NO.: 15

In the Matter of the:

CASE NO.: PR17-00446

SAMUEL S. JAKSICK, JR., FAMILY TRUST.

DEPT. NO.: 15

WENDY JAKSICK,
Respondent and Counter-Petitioner,

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

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

Petitioners and Counter-Respondents.

1 Stan and Wendy to have the Issue Trust purchase 54% of Incline TSS. The evidence is
2 uncontradicted. The testimony that Mr. Wallace relied on is that the Lake Tahoe house has an
3 approximate fair market value of \$18 million dollars. If sold, the Issue Trust's share of that \$18
4 million dollars would be \$9,720,000. That is, the Issue Trust's investment of \$5 million dollars
5 has a resulted in the Trust's interest now having a value of nearly twice that amount, i.e.
6 \$9,720,000.

7 Any suggestion that the Issue Trust's investment in the Lake Tahoe house was imprudent,
8 improper or wrong, defies logic, common sense, and illogical inferences from the evidence
9 presented in this trial. The Issue Trust has profited immensely by Todd's decisions which were
10 supported by Stan and Wendy.

11 Wendy has failed to challenge the credibility of the testimony given with respect to the
12 Issue Trust buy in. It was a decision supported and proposed by Kevin Riley, Bob LeGoy, Stan,
13 and Pierre Hascheff. Todd's testimony also supports this decision and Todd's management has
14 resulted in the Issue Trust having an asset worth more than \$9 million dollars which is primarily a
15 result of Todd's management.

16 **9. SAM'S ESTATE PLAN/WENDY'S \$4 MILLION DOLLAR**
17 **BENEFIT/TRIAL EXHIBIT 561.**

18 Attached hereto as **Exhibit No. 6** is a demonstrative drawing shown to the jury during
19 Todd's testimony. (**Trial Exhibit 561**). Wendy has indicated that this drawing revealed the
20 amounts to which she might be entitled and was seen by her for the first time during the trial. On
21 May 13, 2019, the Court characterized **Trial Exhibit 561** as one of the more "striking features of
22 evidence" that was testified to at trial revealing to Wendy for the very first time "there was four
23 million dollars coming to her". See Exh. 6.

24 Contrary to Wendy's representations and the Court's comments, **Trial Exhibit 561** shows
25 that Wendy knew for years what Sam intended with his entire estate plan. Sam's "entire estate
26 plan" is not limited or restricted to the Issue Trust or Family Trust. Wendy received other benefits
27 of which she full and complete knowledge separate and apart from her entitlements under the
28 Family Trust and Issue Trust. What Sam intended with his entire estate plan included the BHC

1 Trust, Wendy's Subtrust in Jack Rabbit, Wendy's involvement in the Jaksick Family LLC and the
2 cash she received to date. Each must be analyzed in terms of timing and content.

3 **a. Sam's Family Trust.**

4 Wendy's argument that she learned at trial for the first time to what she might be entitled to
5 under the Family Trust is simply wrong. Wendy has been involved in multiple conversations
6 about her entitlement under the Family Trust. She began meeting with Todd and Stan as early as
7 April 2013 concerning the composition of debt and assets in the Family Trust. The accountings
8 were provided to Wendy. She had access to Kevin Riley and Bob LeGoy at any time she desired.
9 She knew that debt had to be paid before the primary beneficiaries could receive distributions. She
10 participated in business decisions involving ten ACPAs which provided her with substantial
11 information concerning her entitlements in the Family Trust. She was represented by counsel as
12 early as 2013. She hired Brian Kelly. Kelly was given the three-ring binder. Thereafter, attorneys
13 at MCL were providing information to Dana Dwiggins, Wendy's prior counsel.

14 Discovery commenced in this case in March 2018. Wendy's counsel asked Kevin Riley,
15 Pierre Hascheff, Stan, and Todd a multitude of questions concerning the composition and nature
16 and scope of the Family Trust. Wendy's suggestion that Wendy first learned about her potential
17 inheritance from the Family Trust was when Trial Exhibit 561 was revealed to the jury is simply
18 wrong. Wendy has been fully advised and received complete information concerning the assets of
19 the Trusts for the past three years. Wendy was not surprised at trial by Trial Exhibit 561
20 concerning her entitlements of the Family Trust. Todd testified that Wendy will likely receive
21 somewhere around \$4 million dollars from the entire estate left to her, assuming litigation costs
22 don't entirely exhaust what few assets are left for distribution from the Family Trust. Wendy had
23 access to all Co-Trustees of the Family Trust. Wendy had access to her attorneys, Bob LeGoy and
24 Kevin Riley. Mr. Riley was a Co-Trustee until the end of July 2013. Wendy had and took
25 advantage of her access to Co-Trustee Stan. According to Stan's testimony, **nothing** was
26 concealed from Wendy. Stan testified that he gave Wendy **all** of the information she desired and
27 that he, as a Co-Trustee, made full and complete disclosures to Wendy concerning the
28 composition, structure, and scope of the Family Trust.

1 Trial Exhibit 561 was not a surprise to Wendy insofar as the Family Trust is concerned.

2 **b. Wendy BHC Trust.**

3 Wendy's 13% interest in the BHC Trust is not an asset of the Family Trust. It is a
4 completely different and distinct holding. As of December 17, 2012, the Family Trust owned 39%
5 of the Bright Holland Company (BHC). As mentioned herein, Sam gifted 13% of Bright Holland
6 to each of his three children. Wendy, Stan and Todd each received 13% of the Bright Holland
7 Company. Wendy still owns 13% of the Bright Holland Company, by and through her BHC Trust.
8 Todd estimated Wendy's 13% interest in BHC to be worth approximately \$350,000. This comes
9 as no surprise to Wendy. She has been in discussions with Stan, who has disclosed all of the
10 pertinent information concerning the BHC Trust. Kevin Riley has reported to her concerning the
11 business and financial activities of BHC. Wendy's suggestion that she first learned of the value of
12 her 13% interest in BHC at trial is completely contrary to, and inconsistent with, the testimony
13 given by Todd and Stan. Moreover, the Trustee to Wendy's BHC Trust is Mr. Riley, not Todd.

14 **c. Jack Rabbit – Wendy's Subtrust.**

15 Also depicted on Trial Exhibit 561 is a circle reflecting Wendy's separate and distinct
16 Subtrust in which she owns a portion of Jack Rabbit. She has been advised throughout discovery
17 and before during meetings with her brothers of the business activities of Jack Rabbit. Wendy's
18 Subtrust is an entity that owns Wendy's shares. The Trustees of Wendy's Subtrust are Todd and
19 Stan. Stan has testified that he has kept Wendy completely and thoroughly advised of all the
20 activities, business values, and interests Wendy has in Jack Rabbit. Stan's testimony completely
21 refutes any suggestion that Wendy learned of the approximate \$850,000 value for the first time at
22 trial. Wendy knows better.

23 **d. Cash to Date.**

24 Wendy cannot convincingly state that she learned for the first time that she has received
25 over \$630,000 from Stan and Todd since her father's death in April of 2013. This was not
26 evidence disclosed for the first time at trial. Wendy has known of each and every distribution she
27 asked for and received. Wendy's counsel were fully and completely aware of the disbursements
28 made to Wendy. Neither the Court nor Wendy have any legitimate evidentiary reason to believe

1 that Wendy learned of her \$630,000 of cash received "for the first time" at trial when Trial
2 Exhibit 561 was discussed.

3 **e. Jaksick Family LLC.**

4 This family limited liability company is the residue of the Thelma Jaksick estate. It also
5 received gifts from Sam in 2013. The Jaksick Family LLC is managed by Stan Jaksick. As
6 manager, Stan has testified that he has kept the members of the Jaksick Family LLC (Todd, Stan
7 and Wendy) fully and completely advised of its activities. It was a temporary holder of certain
8 water rights. It is now the beneficiary of any sales that might occur of Montreux Golf Club
9 memberships now held and owned by Montreux Golf Club Holdings.⁹

10 The Jaksick Family LLC is a company that owns the residue of Thelma Jaksick's estate. It
11 also includes Sam's shares gifted to the Family LLC. Stan, not Todd, operates that LLC. To the
12 extent Wendy has not received disbursements from the Family LLC, Stan is the one that owes the
13 credible explanation, not Todd.

14 If Wendy learned for the first time in the trial that her interest in the Jaksick Family LLC is
15 approximately \$800,000 Wendy should be more critical of Stan because of his control of the
16 Jaksick Family LLC assets. Todd has no control over the Montreux Golf Club memberships. He
17 cannot provide accountings to Wendy for memberships that are sold by Stan and not disclosed to
18 Todd. Wendy knew of her 1/3 ownership interest in Jaksick Family LLC for the past six years.
19 She is aware of the activities in which that company has been involved and is aware of the fact that
20 it exists only as a residue of the Thelma Jaksick estate. She did not learn of this interest or its
21 value "for the first time" during the jury trial.

22 **f. The Issue Trust.**

23 Wendy knew of her beneficiary status with respect to the SSJ Issue Trust. She always has.
24 She knew of her beneficiary status in the SSJ Issue Trust within days after Sam died.

25 Wendy knew that the Issue Trust owned the Eagleville Ranch and the 49er Mountain
26 Ranch. She took advantage of those assets by visiting the ranches on multiple occasions in
27

28 ⁹ Sam gifted his ownership in Montreux Golf Club to the Jaksick Family LLC.

1 accordance with Todd's cooperation.

2 The evidence shows that Wendy wanted to buy into the Lake Tahoe house with the funds
3 that she might receive from the Bronco Billy's stock. She knew that the Issue Trust had utilized
4 the insurance proceeds to purchase a 54% interest in Incline TSS which owned the Lake Tahoe
5 house since December 28, 2012. She wanted to buy in. She obviously knew that the Lake Tahoe
6 house had substantial value when she expressed her desire to buy into the Lake Tahoe house.

7 Moreover, Wendy approved Stan's buy-in to Incline TSS when she signed, freely and
8 voluntarily, Trial Exhibit 23, the ACPA approving Stan's buy-in. Trial Exhibit 23 shows the value
9 attributed to Stan's desired purchase of 17.02% at \$1,500,00 (which included a minority discount).
10 Wendy knew of the value of the Issue Trust's ownership of the Lake Tahoe house.

11 Stan's buy-in failed. He refused to guarantee the B of A loan. Since March of 2014, Todd,
12 and only Todd, has personally guaranteed the B of A loan. Wendy has used the Lake Tahoe house
13 more than any other. She has not guaranteed any debt. Only Todd is personally at risk.

14 It is disingenuous and utterly false for Wendy to contend that for the first time she learned
15 of the potential value of the Lake Tahoe house during the trial. That is simply not true. She has
16 been involved with the Lake Tahoe house since June of 2013. She approved the use of the
17 insurance proceeds for the Issue Trust's purchase of a majority ownership of the entity that owns
18 the Lake Tahoe house. She wanted to buy into the Lake Tahoe house even though it was clear that
19 Sam never wanted her to have an ownership position in the Lake Tahoe house because of her
20 reckless financial behavior. Wendy's counsel exhaustively went into appraisals during discovery
21 concerning the value of the Lake Tahoe house. The appraisals reach back to the year 2010.
22 Wendy knew of those values. It is completely and utterly false for Wendy to argue that for the first
23 time she knew of the potential value in the Lake Tahoe house during the jury trial.

24 In the argument that Wendy first learned of a potential \$4 million dollar inheritance from
25 all aspects of Sam's entire estate plan was first learned during trial is simply false. Trial Exhibit
26 561 did not come as surprise to anyone. Todd's responsibility was honored in all respects with
27 each of the six components of Sam's entire estate plan that provides Wendy with potential benefit.

28 Todd cannot be blamed for Stan's failure to disclose. Todd should not be blamed for

1 Kevin Riley's "alleged" failure to disclose. Todd disclosed. Stan disclosed. Perhaps for the first
2 time Wendy saw the clarity of how Sam dealt with his **entire estate plan**. As reflected on Trial
3 Exhibit 561, Todd's testimony, and the accountings, the estimated values for each component are:

- 4 (a) Family Trust – Approximately \$1,000,000;
- 5 (b) BHC Trust – Approximately \$350,000;
- 6 (c) Jackrabbit – Approximately \$850,000;
- 7 (d) Cash – Approximately \$631,000;
- 8 (e) Jaksick Family LLC – Approximately 800,000; and
- 9 (f) Issue Trust – No less than \$300,000 value of her use and occupancy.

10 Todd's estimates are not news to Wendy. If Wendy saw this quantification for the first
11 time in trial, she should have serious concerns about Stan and her own lawyers.

12 **10. TODD'S RELIANCE ON PROFESSIONALS.**

13 Todd testified repeatedly that many of his decisions were predicated on discussion with
14 Co-Trustees, lawyers, Kevin Riley and appraisers. Todd often referred to this combination of
15 professionals as "the team." At the May 13, 2019 hearing, the Court expressed concern. The
16 Court is unsettled about Todd's "dependence upon a [and] deflection to others."

17 Despite the Court's concern, the Court properly instructed the jury on Todd's duty to rely
18 on professionals with respect to his administration of the Trusts. Todd, as well as Stan, Mike
19 Kimmel or Kevin Riley, relied on the advice of professionals in their capacities as Co-Trustees
20 charged with administering the Family Trust. The law is clear. A trustee is allowed to delegate
21 functions concerning investment and management of trust assets. A trustee is allowed to trust the
22 advice of professionals. The law is clear that Todd, as a Trustee, **cannot** be held liable to
23 beneficiaries for a professional's decisions or actions provided that Todd, Stan, Mike and Kevin
24 exercise reasonable care in selecting the professional. The Court has commended MCL and
25 rightfully so. MCL is the one that provided Todd, Stan, Mike and Kevin, with legal advice on how
26 to administer the Family Trust. MCL has helped administer the Issue Trust. A better estate
27 planning law firm cannot be found in this community.

28 Todd's "deflection" is evidence of Todd's compliance with his duties to obtain sound,

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Transaction # 7745394

EXHIBIT 9

EXHIBIT 9

1 CODE: 2645
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 KRISTEN D. MATTEONI, ESQ.
7 Nevada Bar No. 14581
8 MAUPIN, COX & LeGOY
9 4785 Caughlin Parkway
10 Reno, Nevada 89519
11 Telephone: (775) 827-2000
12 Facsimile: (775) 827-2185
13 *Attorneys for Petitioners/Co-Trustees*

14 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

Dept. No.: 15

17 SSJ's ISSUE TRUST.

Consolidated

18 In the Matter of the Administration of

Case No.: PR17-0446

Dept. No.: 15

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

20 **OPPOSITION TO EMERGENCY MOTION TO COMPEL DISTRIBUTION FROM**
21 **FAMILY TRUST**

22 TODD JAKSICK, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (the "Family
23 Trust"), and MICHAEL S. KIMMEL, as Co-Trustee of the Family Trust (hereafter "Petitioners",
24 "Trustees", or "Co-Trustees"), respectfully submit the following Opposition to the Emergency
25 Motion to Compel Distribution from Family Trust filed by WENDY JAKSICK ("Wendy").
26

1 several months of discovery, thousands of pages of documents, numerous depositions, and the
2 trial of legal claims in this matter, Wendy cannot understand that the majority of the value of the
3 Family Trust is not held in liquid assets, but rather are real estate holdings. There is very little
4 cash in the Family Trust, yet, there is value because the Family Trust does hold real property.
5

6 To be clear, as explained by Todd's individual counsel in his opening brief of the trial of
7 the equitable issues in this matter (as well as during trial and before trial), the \$4 million
8 representation is based on the following:

- 9 1. Sam's Family Trust: Wendy's beneficial interest in this Trust is approximately
10 \$1million. This interest, however, is largely held in real property assets, not cash.
11 The cash situation of the Family Trust is explained in more detail below.
12
- 13 2. Wendy BHC Trust: Wendy's beneficial interest is 13% of the Bright Holland
14 Company, and is worth approximately \$350,000. Todd Jaksick is not the trustee of
15 this trust. This trust is separate and distinct from the Family Trust. The Family Trust
16 does not control this entity nor does this Court have jurisdiction over this entity.
17
- 18 3. Wendy Jack Rabbit Subtrust: Wendy's beneficial interest is \$850,000. While
19 Wendy's interest in Jack Rabbit is held in her subtrust of the Family Trust, the Family
20 Trust does not control the Jack Rabbit entity. The Jack Rabbit controlling members
21 determine if and when distributions will be made.
- 22 4. Wendy's Payments To Date: To date, Wendy has received roughly \$631,000 in
23 distributions directly to her. This is despite that no other beneficiary has received
24 distributions from the Family Trust. There are grandchildren's trusts that should be
25 funded under the terms of the Trust, but have not been because there is no cash to do
26

1 so. There is also still debt which needs to be paid and not enough cash to pay all the
2 debt. More information on the financial status of the Family Trust is provided below.

3 5. Jacksick Family LLC: Wendy's interest in this entity is approximately \$800,000.

4 This is a separate and distinct entity from the Family Trust. The Family Trust does
5 not control this entity nor have any interest in the entity
6

7 6. Issue Trust: This trust is of course separate from the Family Trust. By virtue of the
8 trust terms there is no dispute that no distributions are made from the Issue Trust.

9 The value of Wendy's use and occupancy of the properties held in the Issue Trust is
10 approximately \$300,000.
11

12 The total value of Wendy's interest in these various trusts and entities is approximately
13 \$3,931,000, which is "approaching \$4 million" as testified by Todd. This is an estimated value
14 and it is clear that Wendy's interest in the Family Trust is NOT \$4million. The Family Trust is
15 but one of several trusts, subtrusts and entities all of which have values that add up to
16 approximately \$4 million, but that amount includes approximately \$631,000 in cash, which
17 Wendy has already received. Wendy's share of the Family Trust is \$1 million, and the majority
18 of that interest is real estate interests, not liquid assets. As explained in more detail below, the
19 Family Trust has insufficient cash to pay its current bills.
20

21 **B. The Trustees have a duty to pay Trust bills.**

22 Currently, the cash assets in the Family Trust bank account total \$403,000. However, the
23 Family Trust has unpaid bills which total \$764,393.76. The Trustees have many duties, not only
24 their duties to the beneficiaries of the trust. One of those duties is to creditors of the trust. Indeed,
25 under Nevada Revised Statute 143, the court cannot enter an order of distribution if such a
26

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Clerk of the Court
Transaction # 7745394

EXHIBIT 10

EXHIBIT 10

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1 concerning the various components set forth in Exhibit 561.

2 DATED this 18 day of February, 2020.

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5 KENT R. ROBISON
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1 CODE: 4105
2 Donald A. Lattin, Esq., Bar No. 693
3 Carolyn K. Renner, Esq., Bar No. 9164
4 Kristen D. Matteoni, Esq., Bar No. 14581
5 Maupin, Cox & LeGoy
6 4785 Caughlin Parkway
7 Reno, Nevada 89519
8 Telephone: (775) 827-2000
9 Facsimile: (775) 827-2185
10 *Attorneys for Petitioners/Co-Trustees*

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the: Case No.: PR17-00445
Dept. No.: 15
SSJ's ISSUE TRUST.
_____/ Consolidated

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

TRUSTEES' SUPPLEMENTAL BRIEF

TODD B. JAKSICK, as sole Trustee of the SSJ Issue Trust ("the Issue Trust) and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (the Family Trust"), MICHAEL S. KIMMEL, 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 Jaksick 2012 BHC Family Trust ("the BHC Trust") (hereafter "Petitioners" or "Trustees", submit this Supplemental Brief ("Brief") as ordered by the Court on February 6, 2020.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The premise of the Court's February 6, 2020 Order ("the Order") is inaccurate. The Order is based on the claim that counsel, the Trustees, and/or the evidence presented at trial maintained that Wendy was to "soon" receive a \$4 million "distribution" from the "Family Trust." As outlined extensively in Todd's individual counsel's closing brief, attached as "**Exhibit 1**", and in the Trustees' Opposition to Wendy's Emergency Motion to Compel Distribution from Family Trust, attached as "**Exhibit 2**", this is inconsistent with the facts of this case. Rather, Wendy has confused this matter so much that despite the Trustees' detailed explanation otherwise, confusion remains. Stating it once more for clarification, Exhibit 561 does not depict a \$4 million distribution from the Family Trust. Rather, Wendy has a beneficial interest in six (6) "buckets" that when combined totalled roughly \$4 million at trial. These buckets include a: (1) \$1 million interest in the Family Trust, (2) \$350,000 interest in Wendy's BHC Trust, (3) \$850,000 in Wendy's Jackrabbit subtrust, (4) \$631,000 in cash payments as of the time of trial, (5) \$800,000 interest in Jaksick Family LLC, and (6) \$300,000 interest in the Issue Trust. Moreover, Todd testified at trial that the timing of a distribution to Wendy rested on the outcome of this litigation, but that he hoped it could occur by the end of 2019. 2/22, 29:9-30:6. For the Trustees to make a distribution to beneficiaries during ongoing litigation would be highly inadvisable in light of known creditors and because improper or excessive distribution opens the Trustees to personal liability under NRS 143.037. Not once did counsel or witnesses testify that Wendy was to receive funds by a specified time.

With those clarifications in mind, the Trustees address the Court's remaining concern: Wendy was not or should not have been surprised or prejudiced by Exhibit 561 because she "was or could have been specifically aware" that her beneficial interest totalled \$4 million prior to trial.

1 The Trustees were able to roughly quantify Wendy's beneficial interest, in the same manner that
2 Wendy, counsel, retained accountants and experts could have calculated – particularly in light of
3 the extensive settlement negotiations that occurred whereby this very matter was discussed.

4 II. Argument

5 A. Wendy knew or should have known the total of her beneficial interest in Sam 6 Jaksick's estate prior to trial.

7 While the Trustees highlight specific evidence immediately below, the unrefuted evidence
8 demonstrates that Wendy had full accountings dating back to April of 2013, unlimited access to
9 accountant Kevin Riley and attorney Bob LeGoy, admitted Stan, as Trustee made "full disclosure",
10 and had her own team of lawyers, accountants, and experts throughout the course of this multi-
11 year litigation. Wendy therefore knew or should have known that her beneficial interest totalled
12 close to \$4 million and she was not surprised or prejudiced by this information. Moreover, to the
13 extent this matter requires a "knew or should have known" analysis, as well as a determination of
14 "prejudice" the Trustees request the Court conduct an evidentiary hearing related to this matter so
15 that additional evidence may be submitted to support this position.
16

17 a. The Family Trust

- 18
- 19 • Exh. 126: The most recent Family Trust accounting available at trial (2016-2017), pg. 2-3, 7,
20 19, 24, 31, 48 (as relevant to all below). Total assets on hand as of December 31, 2017 totalled
21 \$4,578,996.71. Wendy has a 1/3 or 33.33% interest in the Family Trust, bringing her beneficial
22 interest in the Family Trust to \$1,526,332.24 or roughly \$1.5 million. However, due to the
23 debts and obligations of the estate, not least of which is the expense of this ongoing litigation,
24 it is appropriate and fair to evaluate Wendy's beneficial interest in the Family Trust at
25 approximately \$1 million.
 - Exh. 72-74: Family Trust accountings depicting overall total values
 - Exh. 135: 706 for family trust estate containing values as of date of death.

26 b. The BHC Trust

- Exh. 541: Declaration of Wendy's BHC Trust, Schedule A details ownership of 13 shares.
- Exh. 168: email from Kevin Riley related to the sale of Fly Geyser and proceeds thereof.

- 1 • Transcript 2/21: 115:14-124:17--Todd as to each child's 13% ownership of BHC and the transaction/sale overall.
- 2 • Transcript 2/25: 243:8-13--Todd as to the \$4.5 million net proceeds of the Fly Geyser sale.

3 c. Wendy's Jack Rabbit Subtrust

- 4 • Exh. 31: Email from Kevin Riley starting accounting given to Wendy's counsel of her subtrust as related to funds held in Stan's subtrust.
- 5 • Exh. 95: 2016 Financial Statements of the Wendy Jaksick Subtrust under the Family Trust. This Subtrust is the entity that owns Wendy's 7.5187% interest in Jackrabbit Properties LLC and valuing interest therein.
- 6 • Notice of Compliance and attached exhibit 1 mailed and electronically served to all parties Feb 11, 2019--Wendy's 2017 Subtrust accounting specifying Jackrabbit interest (JSK005062-JSK005074, attached hereto as "**Exhibit 3**").
- 7 • Exh. 5 to Petitioners' Reply filed 6/4/19: 2018 Financial Statements of the Wendy Jaksick Subtrust under the Family Trust. Wendy also had a lengthy email communication with Kevin Riley as to her knowledge of her BHC Trust that is Exhibit 455 that was not admitted into evidence. Mr. Riley sent Wendy her BCH subtrust accountings annually.
- 8 • Transcript 2/21: 84:17-22--Todd as to ownership and value of Jackrabbit Properties LLC.
- 9 • Transcript 2/21: 97:8-102:5--Todd as to conversations with Wendy related to Jackrabbit.
- 10 • Transcript 2/25: 115:21-117:2--Todd as to Jackrabbit ownership and Wendy's percentage.
- 11 • Transcript 2/27: 138:6-117:140:17--Stan as to the value of Wendy's interest in Jackrabbit valued at around \$900,000; 206:20-207:13; 210:3-211:1--Stan as to why he held Wendy's share in his subtrust.

12 d. Cash Payments to Date

- 13 • Exh. 495: discussing payments made to Wendy for her support.
- 14 • Exh. 135: Pg. 18--explanation as to note that was used to pay Wendy
- 15 • Transcript 2/22: 14:1-15:22; 19:1-23:3--Todd as to payments to Wendy and acknowledging demonstrative Exhibit 315.
- 16 • Transcript 2/26: 163:12-164:20--Wendy agreeing that she received over \$600,000 in distributions over 5 years.
- 17 • Transcript 2/25: 219:24-220:22--Todd as to payments Wendy received.

18 e. Jaksick Family LLC

- 19 • Exh. 126: The Family Trust has a 1% interest in Montreux Golf Club Ltd., which is essentially the sole asset of Jaksick Family LLC. Pursuant to the Family Trust 2016-2017 accounting, page 7, this 1% interest is valued at \$23,000. Wendy owns approximately 1/3 or 33.33% of Jaksick Family LLC. Accordingly, her interest would total roughly \$759,000.
 - 20 ○ Looking to page 19 of this same exhibit, the Family Trust had a 1.98% interest in Montreux Golf Holding Company LLC which took over from Montreux Golf Club Ltd. valued at \$36,000 for 1.98%.

- 1 • Exh. 135: Appraisal of Montreux Golf Club Ltd. and related valuation of 1% interest. This
2 was completed as of Sam Jaksick's date of death valuing a subentity of Montreux.
3 • Transcript 2/27: 156:13-159:1; 200:7-201:1—Stan as to Wendy's 1/3 interest in Jaksick Family
4 LLC. He also testified that Jaksick Family LLC/Montreux Golf Club Ltd. owns approximately
5 50 memberships valued at \$50,000 each, which totals \$2.5 million. If divided by 3 is
6 \$833,333.33. This information was discovered long before trial during discovery.

7 **f. Issue Trust**

- 8 • Throughout discovery and during trial, it became known that Wendy Jaksick has spent
9 approximately 200-215 days at the Lake Tahoe house, non-inclusive of the ranching and other
10 properties maintained by Sam Jaksick's estate. The daily rate of the Lake Tahoe house varied
11 from \$700 to \$3,200 depending on the season. The Trustees' calculate Wendy's current usage,
12 along with her approximate lifetime usage of these properties to total \$300,000.
13 • Exh. 23.10: pg. 1, approval must be given if home rents for less than \$2,000 per day.
14 • Exh. 146: confirming forecasted rental income of Incline TSS for 2018.
15 • Transcript 2/19: 241:6-12—Todd as to the number of days Wendy had utilized Tahoe house.
16 • Transcript 2/25: 224:11-20—Todd as to number of days each beneficiary utilized the Tahoe
17 house; 133:17-24 and 228:18-229:15—Todd in relation to rental income from Tahoe house.
18 • Transcript 2/26: 19-24; 47:18-21—Wendy stating she lived at the Tahoe house for 5 months.

19 **III. Conclusion**

20 It cannot be overemphasized that Sam never intended for Wendy to receive an outright
21 distribution. Rather, her inheritance was put into trust for her benefit and even if funds were
22 available to distribute, she would never receive a large distribution. It is also unrefuted that Wendy
23 had complete access to Kevin Riley and Bob LeGoy from the time of Sam's passing. 2/25, 191:8-
24 18; Exh. 15G. Despite new claims otherwise, Wendy had complete access to the exact same
25 information that Trustees had, along with numerous "experts" available to assist her in interpreting
26 the provided financial documents. Although not stated in each calculation, the bulk of the
approximate value of Wendy's **beneficial share**, stems from the Family Trust accountings.
Moreover, counsel engaged in extensive discussions related to the value of Wendy's beneficial
during the no less than five settlement negotiations. Accordingly, there was no prejudice or
surprise.

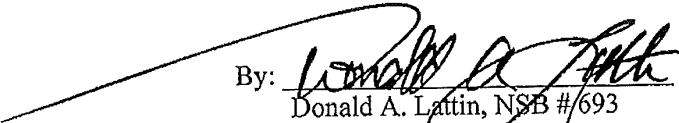
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NRS 239B.030 Affirmation

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

Dated this 13th day of February, 2020.

MAUPIN, COX & LEGOY

By: 
Donald A. Lattin, NSB #693
Carolyn K. Renner, Esq., NSB #9164
Kristen Matteoni, Esq. NSB 14581
4785 Caughlin Parkway
Reno, NV 89519
Attorneys for the 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:

Philip L. Kreitlein, Esq.
Stephen C. Moss, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Suite 101
Reno, Nevada 89502
philip@klmlawfirm.com
*Attorneys for Stan Jaksick as Co-Trustee of
the Samuel S. Jaksick, Jr. Family Trust*

Mark Connot, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135
MConnot@foxrothschild.com

And

R. Kevin Spencer, Esq. (Pro Hac Vice)
Zachary E. Johnson, Esq. (Pro Hac Vice)
Spencer & Johnson PLLC
500 N. Akard Street, Suite 2150
Dallas, TX 75201
kevin@dallasprobate.com
zach@dallasprobate.com
Attorneys for Wendy A. Jaksick

Kent R. Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharpe, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
krobison@rssblaw.com
tshanks@rssblaw.com
*Attorneys for Todd B. Jaksick, Individually,
and as beneficiary, SSJ's Issue Trust and
Samuel S. Jaksick, Jr., Family Trust*

Adam Hosmer-Henner, Esq.
Sarah A. Ferguson, Esq.
McDonald Carano Wilson LLP
100 W. Liberty Street, 10th Floor
Reno, NV 89501
ahosmerhenner@mcdonaldcarano.com
sferguson@mcdonaldcarano.com
*Attorneys for Stan Jaksick, individually, and
as beneficiary of the Samuel S. Jaksick, Jr.
Family Trust and SSJ's Issue Trust*

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:

Alexi Smrt
3713 Wrexham
St. Frisco, TX 75034

Luke Jaksick
Northern Arizona University
324 E. Pine Knoll Drive #12319
Flagstaff, Arizona 86011.

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Benjamin Jaksick Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Regan Jaksick Sydney Jaksick Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Ct. Reno, Nevada 89519
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Dated this 8th day of February, 2020.

Katie Allen
EMPLOYEE

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INDEX OF EXHIBITS

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2.	Trustees Opposition to Wendy's Emergency Motion to Compel Distribution From Family Trust	9
3.	Notice of Compliance	4

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EXHIBIT 1

EXHIBIT 1

1 3975

2 KENT ROBISON, ESQ. – NSB #1167

3 krobison@rssblaw.com

4 THERESE M. SHANKS, ESQ. – NSB #12890

5 tshanks@rssblaw.com

6 Robison, Sharp, Sullivan & Brust

7 A Professional Corporation

8 71 Washington Street

9 Reno, Nevada 89503

10 Telephone: 775-329-3151

11 Facsimile: 775-329-7169

12 Attorneys for Todd B. Jaksick, Individually,

13 Incline TSS, Ltd., and Duck Lake Ranch, LLC

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

16 IN AND FOR THE COUNTY OF WASHOE

17 In the Matter of the:

CASE NO.: PR17-00445

18 SSSJ's ISSUE TRUST.

DEPT. NO.: 15

19 In the Matter of the:

CASE NO.: PR17-00446

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

DEPT. NO.: 15

21 WENDY JAKSICK,

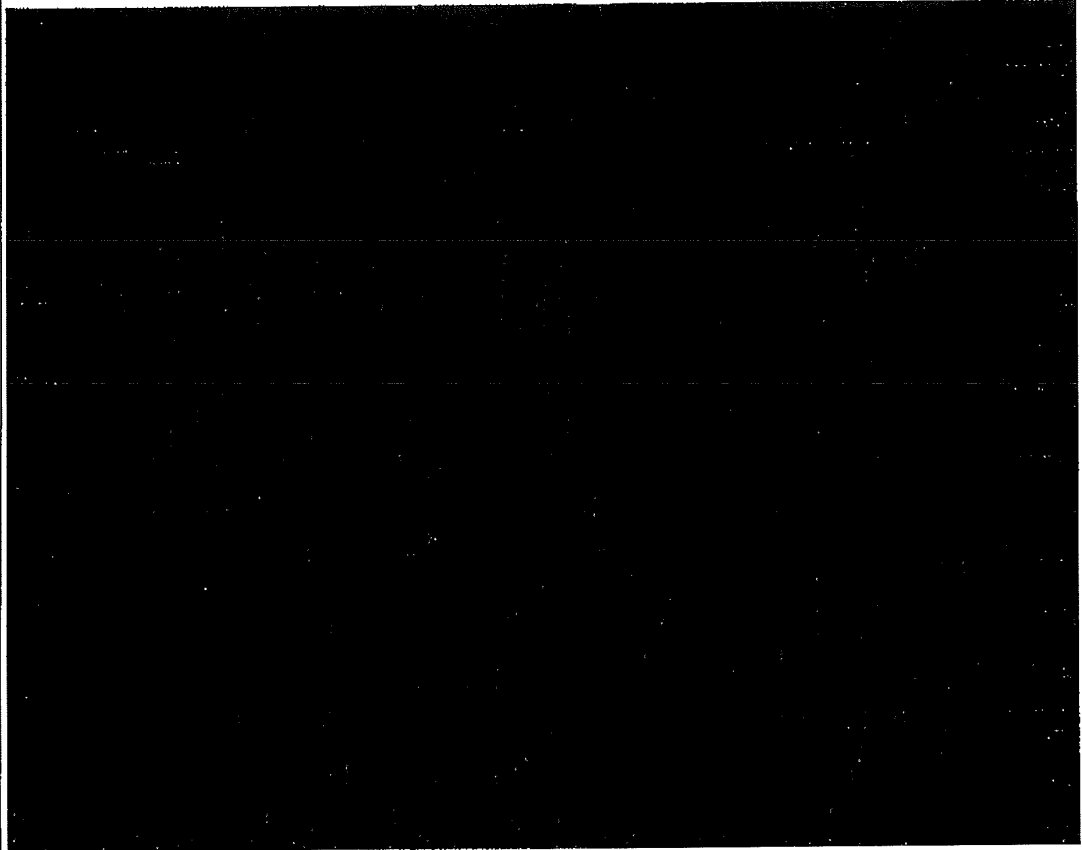
22 Respondent and Counter-Petitioner,

23 v.

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

TODD B. JAKSICK'S
CLOSING ARGUMENT BRIEF

Petitioners and Counter-Respondents.



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16 **9. SAM'S ESTATE PLAN/WENDY'S \$4 MILLION DOLLAR**
17 **BENEFIT/TRIAL EXHIBIT 561.**

18 Attached hereto as **Exhibit No. 6** is a demonstrative drawing shown to the jury during
19 Todd's testimony. (Trial Exhibit 561). Wendy has indicated that this drawing revealed the
20 amounts to which she might be entitled and was seen by her for the first time during the trial. On
21 May 13, 2019, the Court characterized Trial Exhibit 561 as one of the more "striking features of
22 evidence" that was testified to at trial revealing to Wendy for the very first time "there was four
23 million dollars coming to her". *See* Exh. 6.

24 Contrary to Wendy's representations and the Court's comments, Trial Exhibit 561 shows
25 that Wendy knew for years what Sam intended with his entire estate plan. Sam's "entire estate
26 plan" is not limited or restricted to the Issue Trust or Family Trust. Wendy received other benefits
27 of which she full and complete knowledge separate and apart from her entitlements under the
28 Family Trust and Issue Trust. What Sam intended with his entire estate plan included the BHC

1 Trust, Wendy's Subtrust in Jack Rabbit, Wendy's involvement in the Jaksick Family LLC and the
2 cash she received to date. Each must be analyzed in terms of timing and content.

3 **a. Sam's Family Trust.**

4 Wendy's argument that she learned at trial for the first time to what she might be entitled to
5 under the Family Trust is simply wrong. Wendy has been involved in multiple conversations
6 about her entitlement under the Family Trust. She began meeting with Todd and Stan as early as
7 April 2013 concerning the composition of debt and assets in the Family Trust. The accountings
8 were provided to Wendy. She had access to Kevin Riley and Bob LeGoy at any time she desired.
9 She knew that debt had to be paid before the primary beneficiaries could receive distributions. She
10 participated in business decisions involving ten ACPAs which provided her with substantial
11 information concerning her entitlements in the Family Trust. She was represented by counsel as
12 early as 2013. She hired Brian Kelly. Kelly was given the three-ring binder. Thereafter, attorneys
13 at MCL were providing information to Dana Dwiggins, Wendy's prior counsel.

14 Discovery commenced in this case in March 2018. Wendy's counsel asked Kevin Riley,
15 Pierre Hascheff, Stan, and Todd a multitude of questions concerning the composition and nature
16 and scope of the Family Trust. Wendy's suggestion that Wendy first learned about her potential
17 inheritance from the Family Trust was when Trial Exhibit 561 was revealed to the jury is simply
18 wrong. Wendy has been fully advised and received complete information concerning the assets of
19 the Trusts for the past three years. Wendy was not surprised at trial by Trial Exhibit 561
20 concerning her entitlements of the Family Trust. Todd testified that Wendy will likely receive
21 somewhere around \$4 million dollars from the entire estate left to her, assuming litigation costs
22 don't entirely exhaust what few assets are left for distribution from the Family Trust. Wendy had
23 access to all Co-Trustees of the Family Trust. Wendy had access to her attorneys, Bob LeGoy and
24 Kevin Riley. Mr. Riley was a Co-Trustee until the end of July 2013. Wendy had and took
25 advantage of her access to Co-Trustee Stan. According to Stan's testimony, **nothing** was
26 concealed from Wendy. Stan testified that he gave Wendy **all** of the information she desired and
27 that he, as a Co-Trustee, made full and complete disclosures to Wendy concerning the
28 composition, structure, and scope of the Family Trust.

1 Trial Exhibit 561 was **not** a surprise to Wendy insofar as the Family Trust is concerned.

2 **b. Wendy BHC Trust.**

3 Wendy's 13% interest in the BHC Trust is not an asset of the Family Trust. It is a
4 completely different and distinct holding. As of December 17, 2012, the Family Trust owned 39%
5 of the Bright Holland Company (BHC). As mentioned herein, Sam gifted 13% of Bright Holland
6 to each of his three children. Wendy, Stan and Todd each received 13% of the Bright Holland
7 Company. Wendy still owns 13% of the Bright Holland Company, by and through her BHC Trust.
8 Todd estimated Wendy's 13% interest in BHC to be worth approximately \$350,000. This comes
9 as no surprise to Wendy. She has been in discussions with Stan, who has disclosed all of the
10 pertinent information concerning the BHC Trust. Kevin Riley has reported to her concerning the
11 business and financial activities of BHC. Wendy's suggestion that she first learned of the value of
12 her 13% interest in BHC at trial is completely contrary to, and inconsistent with, the testimony
13 given by Todd and Stan. Moreover, the Trustee to Wendy's BHC Trust is Mr. Riley, **not Todd**.

14 **c. Jack Rabbit – Wendy's Subtrust.**

15 Also depicted on Trial Exhibit 561 is a circle reflecting Wendy's separate and distinct
16 Subtrust in which she owns a portion of Jack Rabbit. She has been advised throughout discovery
17 and before during meetings with her brothers of the business activities of Jack Rabbit. Wendy's
18 Subtrust is an entity that owns Wendy's shares. The Trustees of Wendy's Subtrust are Todd and
19 Stan. Stan has testified that he has kept Wendy completely and thoroughly advised of all the
20 activities, business values, and interests Wendy has in Jack Rabbit. Stan's testimony completely
21 refutes any suggestion that Wendy learned of the approximate \$850,000 value for the first time at
22 trial. Wendy knows better.

23 **d. Cash to Date.**

24 Wendy cannot convincingly state that she learned for the first time that she has received
25 over \$630,000 from Stan and Todd since her father's death in April of 2013. This was not
26 evidence disclosed for the first time at trial. Wendy has known of each and every distribution she
27 asked for and received. Wendy's counsel were fully and completely aware of the disbursements
28 made to Wendy. Neither the Court nor Wendy have any legitimate evidentiary reason to believe

1 that Wendy learned of her \$630,000 of cash received "for the first time" at trial when Trial
2 Exhibit 561 was discussed.

3 **e. Jaksick Family LLC.**

4 This family limited liability company is the residue of the Thelma Jaksick estate. It also
5 received gifts from Sam in 2013. The Jaksick Family LLC is managed by Stan Jaksick. As
6 manager, Stan has testified that he has kept the members of the Jaksick Family LLC (Todd, Stan
7 and Wendy) fully and completely advised of its activities. It was a temporary holder of certain
8 water rights. It is now the beneficiary of any sales that might occur of Montreux Golf Club
9 memberships now held and owned by Montreux Golf Club Holdings.⁹

10 The Jaksick Family LLC is a company that owns the residue of Thelma Jaksick's estate. It
11 also includes Sam's shares gifted to the Family LLC. Stan, not Todd, operates that LLC. To the
12 extent Wendy has not received disbursements from the Family LLC, Stan is the one that owes the
13 credible explanation, not Todd.

14 If Wendy learned for the first time in the trial that her interest in the Jaksick Family LLC is
15 approximately \$800,000 Wendy should be more critical of Stan because of his control of the
16 Jaksick Family LLC assets. Todd has no control over the Montreux Golf Club memberships. He
17 cannot provide accountings to Wendy for memberships that are sold by Stan and not disclosed to
18 Todd. Wendy knew of her 1/3 ownership interest in Jaksick Family LLC for the past six years.
19 She is aware of the activities in which that company has been involved and is aware of the fact that
20 it exists only as a residue of the Thelma Jaksick estate. She did not learn of this interest or its
21 value "for the first time" during the jury trial.

22 **f. The Issue Trust.**

23 Wendy knew of her beneficiary status with respect to the SSJ Issue Trust. She always has.
24 She knew of her beneficiary status in the SSJ Issue Trust within days after Sam died.

25 Wendy knew that the Issue Trust owned the Eagleville Ranch and the 49er Mountain
26 Ranch. She took advantage of those assets by visiting the ranches on multiple occasions in
27

28 ⁹ Sam gifted his ownership in Montreux Golf Club to the Jaksick Family LLC.

1 accordance with Todd's cooperation.

2 The evidence shows that Wendy wanted to buy into the Lake Tahoe house with the funds
3 that she might receive from the Bronco Billy's stock. She knew that the Issue Trust had utilized
4 the insurance proceeds to purchase a 54% interest in Incline TSS which owned the Lake Tahoe
5 house since December 28, 2012. She wanted to buy in. She obviously knew that the Lake Tahoe
6 house had substantial value when she expressed her desire to buy into the Lake Tahoe house.

7 Moreover, Wendy approved Stan's buy-in to Incline TSS when she signed, freely and
8 voluntarily, Trial Exhibit 23, the ACPA approving Stan's buy-in. Trial Exhibit 23 shows the value
9 attributed to Stan's desired purchase of 17.02% at \$1,500,00 (which included a minority discount).
10 Wendy knew of the value of the Issue Trust's ownership of the Lake Tahoe house.

11 Stan's buy-in failed. He refused to guarantee the B of A loan. Since March of 2014, Todd,
12 and only Todd, has personally guaranteed the B of A loan. Wendy has used the Lake Tahoe house
13 more than any other. She has not guaranteed any debt. Only Todd is personally at risk.

14 It is disingenuous and utterly false for Wendy to contend that for the first time she learned
15 of the potential value of the Lake Tahoe house during the trial. That is simply not true. She has
16 been involved with the Lake Tahoe house since June of 2013. She approved the use of the
17 insurance proceeds for the Issue Trust's purchase of a majority ownership of the entity that owns
18 the Lake Tahoe house. She wanted to buy into the Lake Tahoe house even though it was clear that
19 Sam never wanted her to have an ownership position in the Lake Tahoe house because of her
20 reckless financial behavior. Wendy's counsel exhaustively went into appraisals during discovery
21 concerning the value of the Lake Tahoe house. The appraisals reach back to the year 2010.
22 Wendy knew of those values. It is completely and utterly false for Wendy to argue that for the first
23 time she knew of the potential value in the Lake Tahoe house during the jury trial.

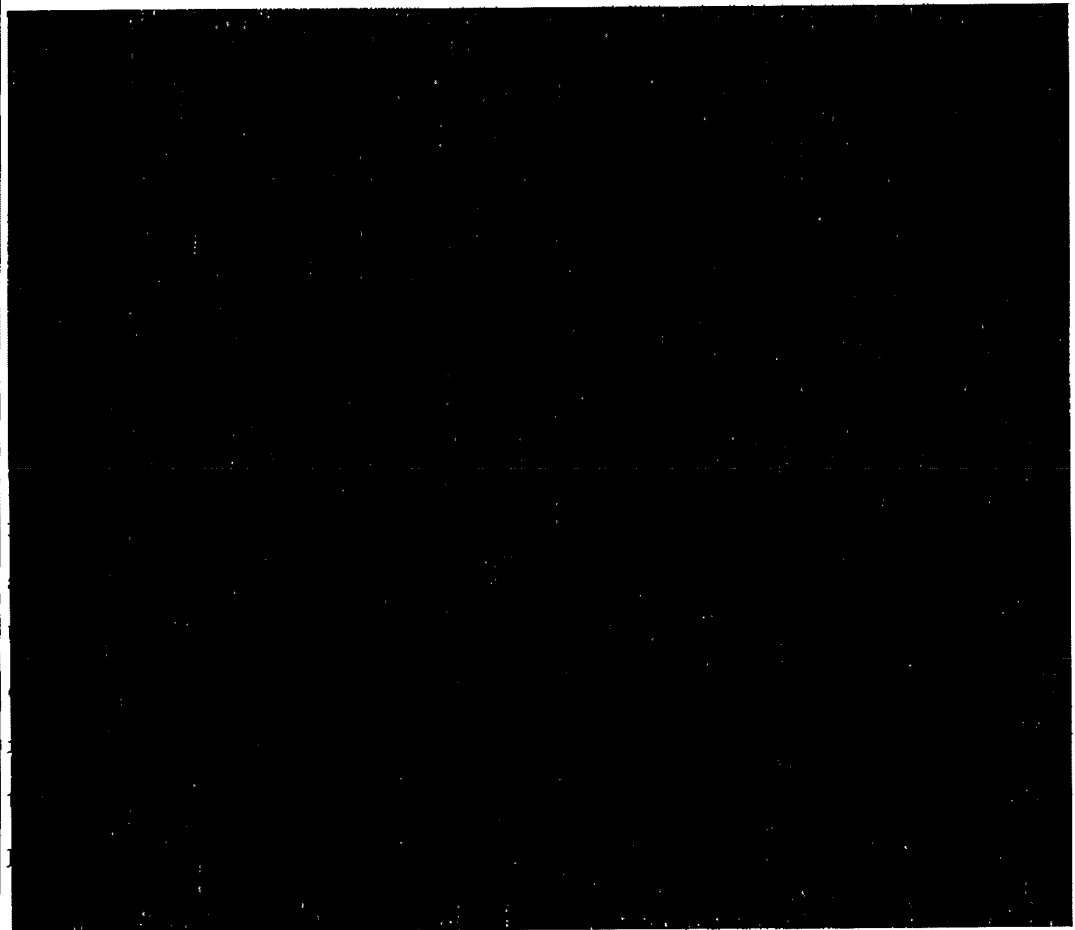
24 In the argument that Wendy first learned of a potential \$4 million dollar inheritance from
25 all aspects of Sam's entire estate plan was first learned during trial is simply false. Trial Exhibit
26 561 did not come as surprise to anyone. Todd's responsibility was honored in all respects with
27 each of the six components of Sam's entire estate plan that provides Wendy with potential benefit.

28 Todd cannot be blamed for Stan's failure to disclose. Todd should not be blamed for

1 Kevin Riley's "alleged" failure to disclose. Todd disclosed. Stan disclosed. Perhaps for the first
2 time Wendy saw the clarity of how Sam dealt with his **entire estate plan**. As reflected on Trial
3 Exhibit 561, Todd's testimony, and the accountings, the estimated values for each component are:

- 4 (a) Family Trust – Approximately \$1,000,000;
- 5 (b) BHC Trust – Approximately \$350,000;
- 6 (c) Jackrabbit – Approximately \$850,000;
- 7 (d) Cash – Approximately \$631,000;
- 8 (e) Jaksick Family LLC – Approximately 800,000; and
- 9 (f) Issue Trust – No less than \$300,000 value of her use and occupancy.

10 Todd's estimates are not news to Wendy. If Wendy saw this quantification for the first
11 time in trial, she should have serious concerns about Stan and her own lawyers.



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EXHIBIT 2

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EXHIBIT 2

1 CODE: 2645
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 KRISTEN D. MATTEONI, ESQ.
7 Nevada Bar No. 14581
8 MAUPIN, COX & LeGOY
9 4785 Caughlin Parkway
10 Reno, Nevada 89519
11 Telephone: (775) 827-2000
12 Facsimile: (775) 827-2185
13 *Attorneys for Petitioners/Co-Trustees*

14 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

Dept. No.: 15

17 SSJ's ISSUE TRUST.

Consolidated

18 In the Matter of the Administration of

Case No.: PR17-0446

Dept. No.: 15

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

20 **OPPOSITION TO EMERGENCY MOTION TO COMPEL DISTRIBUTION FROM**
21 **FAMILY TRUST**

22 TODD JAKSICK, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (the "Family
23 Trust"), and MICHAEL S. KIMMEL, as Co-Trustee of the Family Trust (hereafter "Petitioners",
24 "Trustees", or "Co-Trustees"), respectfully submit the following Opposition to the Emergency
25 Motion to Compel Distribution from Family Trust filed by WENDY JAKSICK ("Wendy").
26

1 This Opposition is based upon the following Memorandum of Points and Authorities, the
2 pleadings and papers on file herein, and any argument of counsel.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Introduction**

5 Wendy's Emergency Motion to Compel Distribution from Family Trust ("Wendy's
6 Motion") is yet another example of her blatant disregard for the facts and her feigning
7 ignorance of information which has been provided to her over and over. Wendy appears to be
8 proceeding through this litigation under the belief that if she continues to claim false assertions
9 of fact and create make-believe theories from the financial statements that somehow the Court
10 will believe her outlandish claims to be true. Wendy's Motion outright ignores the facts as
11 presented before, during and after trial with regard to the "\$4 million representation," and
12 makes assumptions based on failed settlement negotiations. Wendy's outlandish demands for
13 distribution are misplaced, improper and her Motion should be denied.

14 **II. Argument**

15 **A. Wendy's share of the Family Trust is not \$4 million.**

16 In spite of receiving an explanation of the \$4 million figure over and over before, during
17 and after trial, Wendy continues to conflate her interest in Sam Jaksick's estate with her interest
18 in the Family Trust. There is a difference. Neither Wendy nor her counsel appear willing to
19 accept that difference.

20 Wendy's Motion demands distribution from the Family Trust, yet she goes on and on
21 about the \$4 million representation as if that is the amount of her beneficial interest in the Family
22 Trust. As explained over and over, it is not. Further, it is beyond comprehension that after
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1 several months of discovery, thousands of pages of documents, numerous depositions, and the
2 trial of legal claims in this matter, Wendy cannot understand that the majority of the value of the
3 Family Trust is not held in liquid assets, but rather are real estate holdings. There is very little
4 cash in the Family Trust, yet, there is value because the Family Trust does hold real property.
5

6 To be clear, as explained by Todd's individual counsel in his opening brief of the trial of
7 the equitable issues in this matter (as well as during trial and before trial), the \$4 million
8 representation is based on the following:

- 9 1. Sam's Family Trust: Wendy's beneficial interest in this Trust is approximately
10 \$1million. This interest, however, is largely held in real property assets, not cash.
11 The cash situation of the Family Trust is explained in more detail below.
12
- 13 2. Wendy BHC Trust: Wendy's beneficial interest is 13% of the Bright Holland
14 Company, and is worth approximately \$350,000. Todd Jaksick is not the trustee of
15 this trust. This trust is separate and distinct from the Family Trust. The Family Trust
16 does not control this entity nor does this Court have jurisdiction over this entity.
17
- 18 3. Wendy Jack Rabbit Subtrust: Wendy's beneficial interest is \$850,000. While
19 Wendy's interest in Jack Rabbit is held in her subtrust of the Family Trust, the Family
20 Trust does not control the Jack Rabbit entity. The Jack Rabbit controlling members
21 determine if and when distributions will be made.
- 22 4. Wendy's Payments To Date: To date, Wendy has received roughly \$631,000 in
23 distributions directly to her. This is despite that no other beneficiary has received
24 distributions from the Family Trust. There are grandchildren's trusts that should be
25 funded under the terms of the Trust, but have not been because there is no cash to do
26

1 so. There is also still debt which needs to be paid and not enough cash to pay all the
2 debt. More information on the financial status of the Family Trust is provided below.

3 5. Jacksick Family LLC: Wendy's interest in this entity is approximately \$800,000.

4 This is a separate and distinct entity from the Family Trust. The Family Trust does
5 not control this entity nor have any interest in the entity
6

7 6. Issue Trust: This trust is of course separate from the Family Trust. By virtue of the
8 trust terms there is no dispute that no distributions are made from the Issue Trust.

9 The value of Wendy's use and occupancy of the properties held in the Issue Trust is
10 approximately \$300,000.
11

12 The total value of Wendy's interest in these various trusts and entities is approximately
13 \$3,931,000, which is "approaching \$4 million" as testified by Todd. This is an estimated value
14 and it is clear that Wendy's interest in the Family Trust is NOT \$4million. The Family Trust is
15 but one of several trusts, subtrusts and entities all of which have values that add up to
16 approximately \$4 million, but that amount includes approximately \$631,000 in cash, which
17 Wendy has already received. Wendy's share of the Family Trust is \$1 million, and the majority
18 of that interest is real estate interests, not liquid assets, As explained in more detail below, the
19 Family Trust has insufficient cash to pay its current bills.
20

21 **B. The Trustees have a duty to pay Trust bills.**

22 Currently, the cash assets in the Family Trust bank account total \$403,000. However, the
23 Family Trust has unpaid bills which total \$764,393.76. The Trustees have many duties, not only
24 their duties to the beneficiaries of the trust. One of those duties is to creditors of the trust. Indeed,
25 under Nevada Revised Statute 143, the court cannot enter an order of distribution if such a
26

1 distribution "will result in there being insufficient assets to enable the personal representative to
2 discharge any tax liability, claims of creditors, administrative expenses or any other just obligation
3 of the estate." *See* NRS 143.037(3). If distributions are made to beneficiaries while there are
4 unpaid bills or other obligations of the trust, the Trustees could be liable to creditors for
5 mismanagement of trust assets, which is a breach of their fiduciary duty and could lead to personal
6 liability of the trustees. No reasonable trust attorney would recommend that a trustee make a
7 distribution to beneficiaries in a situation such as here where cash assets are insufficient to pay the
8 Trust bills.
9

10 **C. The \$10,000 Offer/Stand Down.**

11 Wendy attempts to link her June 7, 2019 email with the email sent by Trustees' counsel on the
12 same date as some sort of nefarious attempt by the Trustees to pressure Wendy to "give up certain
13 rights." *See* Opp'n at 7:27-8:1. The sole purpose of the "stand down" was to allow the parties
14 additional time to attempt to reach an agreement without incurring additional and substantial
15 attorneys' fees for the drafting of the opening trial briefs for the equitable claims which were fast
16 becoming due. It was an attempt to be able to negotiate a settlement without the pressure of
17 litigation deadlines and incurring additional attorneys' fees. Wendy is entirely vague and unclear
18 about what "certain rights" she was pressured to give up with this attempted "stand down" by all
19 parties. That's because she would not have given up any rights. The only reason the "stand down"
20 and continued negotiations did not take place is because counsel for Wendy took the unreasonable
21 position that any amount paid to Wendy not be assessed against her share of the trusts or otherwise
22 impact her. The position taken by Wendy's counsel was that Todd and/or Stan personally pay
23 \$10,000 to Wendy for a "stand down" which would benefit all parties by preventing the trust from
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1 incurring additional attorneys' fees. As a beneficiary of the Trust, there was a benefit to Wendy if
2 briefing could be delayed and settlement talks continued. The demand was nonsensical,
3 exorbitant, and was not accepted. As a result, no stand down occurred. Any amounts paid to
4 Wendy would necessarily have come out of the Family Trust, and as demonstrated above, while
5 there are funds in the Family Trust, the funds are insufficient to pay the Trust's current bills.
6

7 Further, under the express terms of the Family Trust, the Trustee may withhold distribution of
8 trust property if in the Trustee's discretion the trust property may be subject to "conflicting claims,
9 to tax deficiencies, or to liabilities, contingent or otherwise, property incurred in the administration
10 of the trust estate" *See* Family Trust at IV(K)(18). Accordingly, if the Trust does not have
11 sufficient funds in the trust cash accounts to pay its bills (which is the case here), the Trustees are
12 under no obligation to make distributions.
13

14 III. Conclusion

15 For the reasons set forth above, Wendy's Motion should be denied in its entirety. No
16 distributions have been made from the Family Trust, except those distributions already received
17 by Wendy. A prudent Trustee, faced with a trust in the current financial situation as the Family
18 Trust, would not make distributions to beneficiaries, and the Trust allows for this discretion on the
19 part of the Trustees. Wendy is not entitled to any additional distributions until the Trust has taken
20 care of its fiscal responsibilities to creditors.
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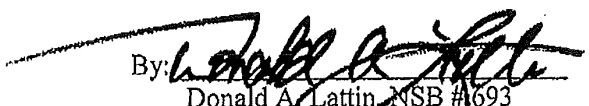
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NRS 239B.030 Affirmation

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

Dated this 27th day of August, 2019.

MAUPIN, COX & LEGOY

By: 
Donald A. Lattin, NSB #693
Carolyn K. Renner, Esq., NSB #9164
Kristen Matteoni, Esq. NSB 14581
4785 Caughlin Parkway
Reno, NV 89519
Attorneys for Trustees

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CERTIFICATE OF SERVICE

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

Via E-Flex Electronic filing System:

Phil Kreitlein, Esq. Steve Moss, Esq. Kreitlein Law Group 470 E. Plumb Lane, #310 Reno, Nevada 89502 philip@klmlawfirm.com <i>Attorneys for Stan Jaksick as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust</i>	Kent R. Robison, Esq. Therese M. Shanks, Esq. Robison, Sharpe, Sullivan & Brust 71 Washington Street Reno, Nevada 89503 krobinson@rsslblaw.com tshanks@rsslblaw.com <i>Attorneys for Todd B. Jaksick, Individually, and as beneficiary, SSJ's Issue Trust and Samuel S. Jaksick, Jr., Family Trust</i>
Mark Connot, Esq. Fox Rothschild LLP 1980 Festival Plaza Drive, #700 Las Vegas, NV 89135 Mconnot@foxrothschild.com	Adam Hosmer-Henner, Esq. McDonald Carano Wilson LLP 100 W. Liberty Street, 10th Floor Reno, NV 89501 ahosmerhenner@mcdonalddcarano.com asferguson@mcdonalddcarano.com <i>Attorneys for Stan Jaksick</i>
<i>And</i> 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 kevin@dallasprobate.com zach@dallasprobate.com <i>Attorneys for Wendy A. Jaksick</i>	

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:

Alexi Smrt 11 Bahama Court Mansfield, Texas 76063	Luke Jaksick c/o Wendy A. Jaksick P.O. Box 2345 Allen, Texas 75013
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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

Dated this 2nd day of August, 2019.


EMPLOYEE

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Clerk of the Court
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EXHIBIT 3

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EXHIBIT 3

1 DISC
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 MAUPIN, COX & LeGOY
7 4785 Caughlin Parkway
8 Reno, Nevada 89519
9 Telephone: (775) 827-2000
10 Facsimile: (775) 827-2185
11 *Attorneys for Todd Jaksick and Stanley Jaksick,*
12 *as Co-Trustees of the Samuel S. Jaksick Jr. Family Trust*

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

14 IN AND FOR THE COUNTY OF WASHOE

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

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

23 NOTICE OF COMPLIANCE

24 Pursuant to the Court Order Granting in Part and Denying in Part Motion to Compel
25 Production of Subtrust Accounting filed on February 7, 2019, Todd Jaksick and Stanley Jaksick,
26 as Co-Trustees of the Samuel S. Jaksick, Jr. Family Trust, submit the 2017 annual accounting for
the Wendy Jaksick Trust under the Samuel S. Jaksick, Jr. Family Trust, identified and labeled as
follows:

<u>Description</u>	<u>Bates No</u>
Wendy Jaksick Trust Under the Samuel S. Jaksick Jr. Family Trust Agreement Financial Statements January 1, 2017 to December 31, 2017	JSK005062 -JSK005074

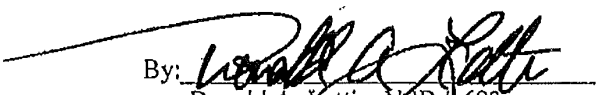
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NRS 239B.030 Affirmation

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

Dated this 17th day of February, 2019.

MAUPIN, COX & LEGOY

By: 
Donald A. Lattin, NSB # 693
Brian C. McQuaid, Esq., NSB # 7090
Carolyn K. Renner, Esq., NSB #9164
4785 Caughlin Parkway
Reno, NV 89519

Attorneys for Todd Jaksick and Stanley Jaksick

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Maupin, Cox & LeGoy, Attorneys at Law, and in that capacity and on the date indicated below, I deposited for mailing from a point within the State of Nevada a sealed envelope which had enclosed within a true and correct copy of the foregoing document, which envelope had postage fully prepaid thereon, and via electronic transmission, addressed as follows:

Philip L. Kreitlein, Esq.
Stephen C. Moss, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Suite 101
Reno, Nevada 89502
philip@klmlawfirm.com
*Attorneys for Stan Jaksick as Co-Trustee of
the Samuel S. Jaksick, Jr. Family Trust*

Mark Connot, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135
MConnot@foxrothschild.com

And

R. Kevin Spencer, Esq. (Pro Hac Vice)
Zachary E. Johnson, Esq. (Pro Hac Vice)
Spencer & Johnson PLLC
500 N. Akard Street, Suite 2150
Dallas, TX 75201
kevin@dallasprobate.com
zach@dallasprobate.com
Attorneys for Wendy A. Jaksick

Kent R. Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharpe, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
krobison@rssblaw.com
tshanks@rssblaw.com
*Attorneys for Todd B. Jaksick, Individually,
and as beneficiary, SSJ's Issue Trust and
Samuel S. Jaksick, Jr., Family Trust*

Adam Hosmer-Henner, Esq.
Sarah A. Ferguson, Esq.
McDonald Carano Wilson LLP
100 W. Liberty Street, 10th Floor
Reno, NV 89501
ahosmerhenner@mcdonaldcarano.com
sferguson@mcdonaldcarano.com
*Attorneys for Stan Jaksick, individually, and
as beneficiary of the Samuel S. Jaksick, Jr.
Family Trust and SSJ's Issue Trust*

///

///

1 Via placing an original or true copy thereof in a sealed envelope with sufficient postage
2 affixed thereto, in the United States mail at Reno Nevada, addressed to:

3 4 Alexi Smrt 3713 Wrexham 5 St Frisco, TX 75034	Luke Jaksick c/o Wendy A. Jaksick 6501 Meyer Way Apt. # 0705 McKinney Texas 75070
6 7 Regan Jaksick Sydney Jaksick 8 Sawyer Jaksick c/o Lisa Jaksick 9 5235 Bellazza Ct. Reno, Nevada 89519	Benjamin Jaksick Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511

10
11 DATED this 11th day of February, 2019.

12 Katie Allam
13 Employee

Jayne Ferretto

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Sent: Tuesday, February 18, 2020 4:03 PM
To: Kent Robison
Cc: Jayne Ferretto
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Judge: HONORABLE DAVID A. HARDY

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Court: Second Judicial District Court - State of Nevada
Civil
Case Title: CONS: TRUST: SSJ'S ISSUE TRUST
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STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST
THERESE M. SHANKS, ESQ. for INCLINE TSS, LTD., SAMMY SUPERCUB, LLC, SERIES A, DUCK LAKE RANCH LLC, TODD B. JAKSICK
KENT RICHARD ROBISON, ESQ. for INCLINE TSS, LTD., SAMMY SUPERCUB, LLC, SERIES A, DUCK LAKE RANCH LLC, TODD B. JAKSICK
MARK J. CONNOT, ESQ. for WENDY A. JAKSICK
DONALD ALBERT LATTIN, ESQ. for KEVIN RILEY, TODD B. JAKSICK, MICHAEL S. KIMMEL

PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST

CAROLYN K. RENNER, ESQ. for KEVIN RILEY, TODD B. JAKSICK, MICHAEL S. KIMMEL

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

CODE: 3675

Adam Hosmer-Henner, Esq. (NSBN 12779)
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
Telephone: (775) 788-2000
ahosmerhenner@mcdonaldcarano.com
*Attorneys for Stanley Jaksick,
Co-Trustee of the Family Trust*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

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

CASE NO.: PR17-00445

DEPT. NO.: 15

CASE NO.: PR17-00446

DEPT. NO.: 15

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

Respondent and Counter Petitioner,

v.

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

Petitioners and Counter-Respondents.

STANLEY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

1 **SUPPLEMENTAL BRIEF BY STANLEY JAKSICK, CO-TRUSTEE OF THE**
2 **SAMUEL S. JAKSICK, JR. FAMILY TRUST**

3 Stanley Jaksick (“Stan”), as co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, hereby
4 submits this Supplemental Brief pursuant to the Court’s February 6, 2020 Order for
5 Supplemental Briefing. This Supplemental Brief is based upon the following Memorandum of
6 Points and Authorities, the evidence admitted at trial, the pleadings and papers on file in this
7 action, and any argument of counsel at a hearing on these matters.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 Wendy Jaksick (“Wendy”) asked the jury for \$80,166,000 in damages and so it is
11 somewhat farfetched for her to act surprised about the value of her beneficial interest in the
12 estate of Samuel S. Jaksick, Jr. Mar. 4, 2019 Trial Tr. 35:24. While there is a difference between
13 the damages sought in litigation and the actual value of assets that Wendy could expect to
14 receive without litigation, Wendy’s feigned surprise is simply not credible as demonstrated by an
15 awareness of the value of her various interests throughout this case. *See, e.g.*, Wendy’s First Am.
16 Counter-Petition, Feb. 23, 2018 ¶ 31 (stating that the “terms of the Issue Trust . . . prohibit the
17 distribution of the income or principal from the Issue Trust” for essentially “365 years” and
18 recognizing that the value of the Issue Trust was approximately \$15,000,000 of which she and
19 her children had an interest of roughly \$2,700,000 based on her allegations); *Id.* ¶ 47 (averring
20 that Wendy had a 13% interest in Bright Holland [BHC], which was allegedly worth \$845,000,
21 and challenging the timing of the distribution of these funds rather than the amounts). Wendy’s
22 knowledge has been further augmented by direct access to Kevin Riley, who serves as the
23 accountant for most of the trusts and entities at issue. The evidence shows that she repeatedly
24 contacted Mr. Riley, but not that she was denied information about the value of her interests.
25 Rather, Wendy’s continuous complaint is that she is not being provided with money right away,
26 even though she, more than any other party, received preferential treatment and advances.

27 The Order for Supplemental Briefing appears to stem from Wendy’s Emergency Motion
28 to Compel, wherein Wendy argues that the “Trustees and their counsel represented to the jury

1 and the Court there was approximately \$4 million in value coming to Wendy.” Wendy’s
2 Emergency Motion to Compel July 23, 2019, p. 3. Wendy’s Emergency Motion to Compel is rife
3 with error that infects the Court’s Order for Supplemental Briefing. As will be shown below,
4 Wendy’s interpretation of Exhibit 561 and the attendant arguments and testimony is facially
5 incorrect and unreasonable. Furthermore, Exhibit 561 was prepared and introduced by Todd
6 Jaksick’s (“Todd”) separate counsel who was representing Todd individually. Stan was not
7 involved, in any capacity let alone in his role as co-Trustee, in the preparation of the exhibit or
8 the presentation of the exhibit to the jury. Finally, Exhibit 561 and the testimony by Todd did not
9 relate solely to the Family Trust, which Wendy seems to willfully ignore, but to “Sam’s entire
10 estate plan.” Feb. 22, 2019, Trial Tr. 27:15-28:4. The Court should reject Wendy’s attempt to
11 confuse and mislead by describing this Exhibit and evidence as a representation that she will be
12 receiving \$4 million from the Family Trust. Rather, the Exhibit and evidence include interests
13 outside of the Family Trust, her interest in the Issue Trust, as well as monies she already
14 received.

15 **II. EXHIBIT 561 AND RELATED BACKGROUND**

16 The Court’s Order for Supplemental Briefing contains errors that were occasioned by
17 Wendy’s misleading and ambiguous arguments. Namely, the Order states that the “Trustees shall
18 file arguments . . . that Wendy was or could have been specifically aware she would soon receive
19 a \$4 million distribution from the Family Trust.” Ord. 1. The Court wishes to answer “whether
20 Wendy was aware before trial of that specific beneficial interest or whether she was genuinely
21 surprised and prejudiced by seeing illustrative Exhibit 561 (and hearing attendant
22 arguments/testimony) for the first time during trial.” *Id.* These errors can be traced to Wendy’s
23 statements, including: 1) “the Co-Trustees represented to the jury and the Court that trusts and
24 entities benefiting Wendy were funded or about to be funded with \$4 million in assets that would
25 be available to provide for Wendy” and 2) “the Trustees and their counsel represented to the jury
26 and the Court there was approximately \$4 million in value coming to Wendy” and that the jury
27 trial was the first time “this purported distribution to Wendy” had been “made to Wendy or her
28 counsel.” Wendy’s Emergency Motion to Compel July 23, 2019, Ex. A and pp. 3-4.

1 First, it is grossly misleading for Wendy to say that the “Co-Trustees” represented
2 anything to the jury. Exhibit 561 was prepared and presented solely by Todd’s separate counsel,
3 Mr. Robison. Stan and his counsel did not assist in the preparation of the Exhibit, review it
4 beforehand, introduce it, admit it, rely upon it, discuss it, or ratify it. Exhibit 561 was presented
5 by Mr. Robison who has only represented Todd Jaksick as an individual. Mar. 4, 2019 Trial Tr.
6 40:22-23; 53:11. Stan never represented to the jury or the Court that trusts and entities benefiting
7 Wendy were funded or about to be funded with \$4 million in value, let alone that there would be
8 a \$4 million distribution from the Family Trust. Wendy invites error by conflating the
9 Defendants and their distinct roles and capacities.

10 Second, the “Co-Trustees” can only speak with respect to the Family Trust as they are
11 charged with no other responsibilities toward Wendy in that role as a co-Trustee. Exhibit 561
12 facially includes more than the Family Trust as Wendy’s interest in the Family Trust is depicted
13 as only one of the six spokes. Wendy’s position that the jury was misled into believing that she
14 would soon be receiving \$4 million is preposterous given that one of the spokes in Exhibit 561 is
15 listed as “Cash to Date,” which clearly contemplates past distributions. Wendy argued that the
16 “Trustees’ representation at trial was false and was intended to prejudice Wendy’s claims before
17 the jury by persuading the jury that Wendy would be taken care of by the Trustees.” Wendy’s
18 Emergency Motion to Compel July 23, 2019, 4. Wendy’s fallacy is that the “representation”
19 (which again was not made by the “Trustees” but by Todd’s individual attorney) related to the
20 assets and obligations of the Family Trust. She states that “[b]ased on Trustees \$4 million
21 representation at trial, there should be more than sufficient funds to immediately make
22 distributions to Wendy pursuant to the terms of the Family Trust.” *Id.* 7. Exhibit 561 does not
23 show that the Family Trust had \$4 million in assets nor does it show that the Family Trust had or
24 has liquidity to distribute to Wendy.

25 **III. ARGUMENT**

26 **A. Wendy Has Had Access to Accountings and Accountants.**

27 In May 2014, Kevin Riley and Wendy corresponded in an email thread with the subject
28 “accounting response.” Trial Ex. 57. Mr. Riley wrote to Wendy and informed her that the “first

1 annual accounting through March 31, 2014 has not yet been completed. This process is very
2 involved as it documents every single transaction of the estate and the family trust . . . Hopefully,
3 this answers your questions and since both Todd and Stan were also inquiring about the process,
4 I am hoping that this email will be informative for everyone.” *Id.* (TJ 1323). Thereafter, Wendy
5 routinely sought and was provided with information about her various interests. The issue is not
6 that she is at an information deficit to her siblings in terms of valuations, the issue has been that
7 she complains when any trustee or corporate officer refuses to distribute cash to her immediately.

8 **B. Exhibit 561 Was Not a Surprise to Wendy.**

9 Exhibit 561 contains six sources of assets or interests for Wendy that Todd estimated at a
10 combined total of \$4,000,000. Stan cannot disaggregate this estimate by Todd and Stan is not a
11 trustee of four of the six sources, but there is nothing surprising in Exhibit 561.

12 **1. Family Trust**

13 Wendy’s interest in the Family Trust was continuously and repeatedly disclosed to her by
14 Stan and the other co-Trustees as well as by Mr. Riley. She specifically testified at her deposition
15 that her father “wanted my one-third equal share to be put into trust for me and distributed . . .
16 over my lifetime.” Dep. Tr. Wendy Jaksick, Aug. 9, 2018, 837:6-24. Wendy received the
17 accountings and engaged her own trust attorneys and advisors, trial did not reveal anything new.

18 **2. Wendy BHC Trust**

19 Kevin Riley is the trustee of the Wendy Jaksick 2012 BHC trust. Trial Ex. 441 (not
20 admitted). Mr. Riley wrote to Wendy on July 21, 2017 to state that “thus far, there has been no
21 net income to distribute and no cash to make any payments, even if I had wanted to make such a
22 distribution.” *Id.* (RILEY3165). Wendy was informed that this trust held 13 shares of common
23 stock in Bright-Holland Co and that Mr. Riley declined Wendy’s “request to distribute the only
24 asset in the trust which would be a distribution of principal.” *Id.* (RILEY3169). Wendy was fully
25 aware that she may not receive a cash distribution from this entity anytime “soon.”

26 **3. Jackrabbit (Wendy’s Subtrust)**

27 Wendy’s interest in Jackrabbit Properties, LLC is held in her subtrust and was estimated
28 by Stan at a value of approximately \$900,000. Feb. 27, 2019 Trial Tr. 137:3-8. Stan is a co-

1 trustee for Wendy's subtrust under the Family Trust. Jackrabbit Properties, LLC holds real estate
2 and does not generate cash but instead has annual expenses and requires capital calls. *Id.* 137:9-
3 25. Wendy was aware of the value of her interest in Jackrabbit Properties, LLC and specifically
4 wanted to stay in that entity, rather than be cashed out. *Id.* at 139:6-10 (testimony of S. Jaksick).

5 **4. Cash to Date**

6 The unrefuted testimony at trial established that Wendy had been advanced cash from
7 "by Todd and Stan and the trust" in the approximate amount of \$500,000 or \$600,000. Feb. 27,
8 2019 Trial Tr. 25:2-23 (testimony of J. Clayton); *Id.* 146:25-147:2 (testimony of S. Jaksick);
9 Trial Ex. 331. This does not include additional funds that were advanced to Wendy at the behest
10 of Stan, totaling at least \$75,000. *Id.* 134:17-20. Wendy, as the recipient of these funds, was
11 aware of them and their total and therefore cannot have been surprised by this source.

12 **5. Jaksick Family LLC**

13 The Family Trust only has at most a 1% interest in Jaksick Family, LLC, through a
14 separate entity, while Wendy, Todd, and Stan each have a 33% interest individually. Feb. 27,
15 2019 Trial Tr. 155:18-25. Stan is the manager of Jaksick Family, LLC and testified that Wendy
16 would "derive revenue" if certain memberships at Montreux were sold in the future. *Id.* at
17 156:11-157:7. Wendy's interest in Jaksick Family, LLC does have a speculative, future value,
18 but Wendy has always been aware of the semi-illiquid nature of the assets of Jaksick Family,
19 LLC and in fact a Montreux membership was used to pay for Wendy's legal fees in order to
20 resolve a lawsuit against Wendy. Dep. Tr. Stanley Jaksick Aug. 8, 2018 (579:4-581:5).

21 **6. Issue Trust Interest**

22 Stan is not a trustee of the Issue Trust and is not charged with any responsibility for
23 informing Wendy about the value of her interest therein. Throughout this litigation though,
24 Wendy was aware that the assets in the Issue Trust could not be distributed to her. Wendy's First
25 Am. Counter-Petition, Feb. 23, 2018 ¶ 31 (stating that the "terms of the Issue Trust . . . prohibit
26 the distribution of the income or principal from the Issue Trust" for essentially "365 years"). She
27 also knew that the value of her interest in the Issue Trust varied depending on the value of the
28 Lake Tahoe property, but could be as high as \$2.7 million. *Id.*

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Affirmation

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

DATED: February 18, 2020.

McDONALD CARANO

By /s/ Adam Hosmer-Henner
Adam Hosmer-Henner, Esq.
100 West. Liberty Street, 10th Floor
Reno, Nevada 89501
Attorneys for Stanley Jaksick,
Co-Trustee of the Family Trust

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD
3 CARANO and that on February 18, 2020, I served the foregoing on the parties in said case by
4 electronically filing via the Court's e-filing system. The participants in this case are registered e-
5 filing users and notice of filing will be served on all parties by operation of the Court's CM/ECF
6 system, and parties may access this filing through the Court's CM/ECF system.

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

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

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

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

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

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

21 DATED: February 18, 2020.

22 By /s/ Adam Hosmer-Henner
23 An Employee of McDonald Carano
24
25
26
27
28

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

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

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

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

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

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

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

WENDY JAKSICK,
Respondent and Counter-Petitioner,
v.

**WENDY JAKSICK'S
SUPPLEMENTAL BRIEF IN THE
EQUITABLE CLAIMS TRIAL**

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

Petitioners and Counter-Respondents.

1 Wendy A. Jaksick (“Wendy” or “Respondent”) submits the following *Supplemental Brief in*
2 *the Equitable Claims Trial*, pursuant to the Court’s February 6, 2020 Order (the “Order”).

3 1. Initially, the Trustees make a “big-deal” out of use of the word “soon” in the Order
4 arguing it is a false premise and Wendy’s position is a fallacy. Wendy relied on Todd’s representations
5 to the jury that distributions were imminent; whether imminent means “soon” or “soon” can be inferred
6 from imminent is irrelevant. Todd’s message was, “if we can get this lawsuit over with, she will get
7 her property,” he hoped “by the end of the year,” considering Sam’s death was in 2013, that would be
8 “soon” by every measure. Trustees have no intention of making a distribution anytime “soon” and do
9 not, even now, commit to a date certain for distributions perpetuating their shell game of self-dealing,¹
10 while promising Wendy she will get hers someday. As the Court noted in its *Order Regarding*
11 *Submission*, dated September 13, 2019,² once the Court no longer can hold the Trustees accountable,
12 they will have no reason to do anything with any deliberate speed or ever, without future new lawsuits.

13 2. “The fiduciary obligations of a trustee are great. A trustee should do everything in his
14 power to avoid a conflict of interest. *Bank of Nevada v. Speirs*, 95 Nev. 870, 603 P.2d 1074 (1979).”
15 *Riley v. Rockwell*, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987). In *Charleston v. Hardy*, 108 Nev.
16 878, 882, 839 P.2d 1303, 1306 (1992), the Nevada Supreme Court wrote:

17 **In all matters connected with [the] trust, a trustee is bound to act in**
18 **the highest good faith toward all beneficiaries and may not obtain**
19 **any advantage over the latter by the slightest misrepresentation,**
20 **concealment, threat, or adverse pressure of any kind. *Id.*, at 1306.**

21 3. The Trustees duty to disclose is vital to their position as Trustees and fiduciaries³ and
22 it is their burden to prove what they disclosed. Trustees knew their fiduciary duties to act in the best
23 interest of the beneficiaries, to follow the trust terms, to provide accountings and to fully disclose all
24 information materially affecting a beneficiary’s interest. Trial Transcript, 02/19/2019, Page 96:14 –
25 97:13. Yet, the essence of Todd’s and Stan’s and Trustees’ Supplemental Briefs is: “It’s in there
26 somewhere.” Trustees should be able to point to a small number of accountings or correspondence
27 showing Wendy received the values in Exhibit 561 and that they were accurate, but they cannot. As a
28 result, they are forced to generate trails through a maze of unreliable evidence to try and show Wendy’s
knowledge of Exhibit 561. Affirmatively, the Trustees resort to blaming Wendy’s lack of knowledge

¹ Trial Transcript, 02/19/2019, 99:19-23.

² “Further, a proceeding concerning a trust ‘does not result in continuing supervisory proceedings, and the administration of the trust must proceed expeditiously in a manner consistent with the terms of the trust, without judicial intervention or the order, approval, or other action of any court,’ unless the jurisdiction of the court is properly invoked as provided by law. NRS 164.015(7).”

³ “A fiduciary relationship, for instance, gives rise to a duty of disclosure. See, e.g., *Foley v. Morse & Mowbray*, 109 Nev. 116, 125–26, 848 P.2d 519, 525 (1993).” *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998).

on her, asserting, “she should have asked,” then, try to taint the Court’s review with adjectives of incredulity to minimize their own breaches of fiduciary duty. First, the onus is on them to tell Wendy. A beneficiary is not required to guess what she needs to ask her fiduciaries or risk waiving some right. Second, Wendy did not have “free access” to Kevin Riley (“Riley”). He was restricted from providing Wendy with information without prior approval from Todd. When Wendy asked Riley for a copy of Todd’s *Indemnification Agreement* on August 12, 2016, Riley responded he would need Todd’s permission to give it to her. EX 75.

4. **Family Trust.** Trustees cite to five trial exhibits to show Wendy’s beneficial interest in the Family Trust was \$1,000,000.00, and that she was aware of it: the four annual accountings (EXs 72, 73, 74 & 126) and the Estate Tax Return (EX 135). Trustees’ Brief, p. 3, lines 19-23. The Estate Tax Return contains date of death (04/21/2013) values of Sam’s assets, not time of trial values.

5. Notably, Exhibit 126 is the Family Trust Accounting for the period ending March 31, 2017 (“2017 FT Accounting”), delivered to Wendy on August 6, 2018, was the last accounting Wendy received until a few days before trial began on February 14, 2019. Trustees argue that Exhibit 126 shows the Family Trust assets at the end of the accounting period were \$4,578,996.71, valuing Wendy’s 1/3rd beneficial interest at \$1,500,000. *Id.* Then, they arbitrarily reduce it by \$500,000.00 for “unspecified debts and obligation of the estate,” lowering Wendy’s interest to \$1,000,000. *Id.* But, the Trustees’ argument blatantly ignores: (i) the \$2,127,795.16 in Unpaid Claims and Trust Debts and (ii) the \$5,487,357.24 in Contingent Trust Obligations reported by the Trustees in their 2017 FT Accounting. EX 126, pp. 30-33. Trustees’ calculation intentionally omitted these debts, which reduce Wendy’s interest to **\$518,785.74 in the negative**. This is a difference of over \$1,500,000 from the \$1,000,000 the Trustees assert Wendy owned and knew about at the time of trial. Similarly, all the Family Trust accountings confirm Wendy’s interest was worthless, as follows:

Exhibit	Accounting Period	Assets on Hand - Debts
EX 72 – FT Accounting	April 21, 2013 – March 31, 2014	(((\$7,670,919.92 + <\$3,489,926.18> + <\$3,973,223.29> ⁴) / 3 = \$69,256.81)
EX 73 – FT Accounting	April 1, 2014 – March 31, 2015	(((\$3,680,854.28 + <\$4,552,660.23> + <\$2,005,463.15> ⁵) / 3 = <\$959,089.70>)
EX 74 – FT Accounting	April 1, 2015 – March 31, 2016	(((\$3,334,510.15 + <\$3,991,161.06> + <\$9,034,277.61> ⁶) / 3 = <\$3,230,309.51>)
EX 126 – FT Accounting	April 1, 2016 – March 31, 2017	(((\$4,578,996.71 + <\$2,127,795.16> + <\$5,487,357.24> ⁷) / 3 = <\$518,785.74>)

⁴ This is undervalued because it includes “unknown” for the Todd’s indemnification agreement debt. EX 72, p. 23.

⁵ This is undervalued because it includes “unknown” for the Todd’s indemnification agreement debt. EX 73, p. 33.

⁶ Contingent Trust Obligations value is qualified: “The total amount of the claim has yet to be determined.” EX 74, p. 31.

⁷ Contingent Trust Obligations value is qualified: “The total amount of the claim has yet to be determined.” EX 126, p. 33.

1 6. Notwithstanding the “accountings” are almost indecipherable, they are wholly
2 unreliable. The Trustees could not verify the “accountings” and, when asked about them, they deferred
3 to Riley. Trial Transcript, 02/21/2019, 186:22-197:23. Riley could not even vouch for his own
4 compilations, disclaiming that the accountings were not audited or reviewed and that he could not
5 express an opinion or provide assurances about them; the Trustees knew it. EXs 72, 73, 74 and 126
6 and Trial Transcript, 02/21/2019, 197:24-201:7. The disclaimer also confirms the trustees of the
7 [Trust] are “responsible for the preparation and fair presentation of the financial statements...” *Id.* The
8 failure of the Trustees to cite evidence, inside or outside the trial record, that Wendy knew or should
9 have known her beneficial interest in the Family Trust was \$1,000,000.00 at the time of trial confirms
10 it does not exist because they would have cited it if they had it .

11 7. **Wendy BHC Trust.** Trustees cite to a total of two trial exhibits to show Wendy’s
12 beneficial interest in the BHC Trust was \$350,000.00, and that she was aware of it: (i) Wendy’s BHC
13 Trust Agreement (EX 541) and (ii) a July 25, 2016 email from Riley (EX 168). Trustees’ Brief, p. 3-
14 4, line 26-2. The Trust Agreement (EX 541), signed on December 17, 2012, confirms its terms and
15 that it was initially funded with 12 shares of Bright Holland Company stock. Exhibit 168
16 communicated to Wendy that Bright Holland sold property for \$4,650,000 some time prior to July 25,
17 2016, that some or all of the funds would be used to pay down debt, and that “Todd has indicated there
18 would not be any funds distributed from this sale;” that is it. *Id.* Wendy was never provided additional
19 information about the assets or debts of Bright Holland or her BHC Trust. The record is void of
20 evidence showing Wendy knew the value of her beneficial interest in BHC.

21 8. **Jackrabbit.** Trustees cite to a total of two trial exhibits to show the value of “Wendy’s
22 Jackrabbit Subtrust” was \$850,000.00, and that she was aware of it: (i) an email from Riley (EX 31)
23 enclosing (ii) Wendy’s Subtrust Accounting for the period April 21, 2013 – December 31, 2016 (“2016
24 Subtrust Accounting”) (EX 95). Brief, p. 4, lines 4-15. The 2016 Subtrust Accounting confirmed, the
25 only assets Wendy’s Subtrust received were fractional interests in notes receivable with a value of
26 \$135,455.02 (as of December 31, 2016) that would likely never be repaid. EX 95, p. 3 and EX 95, p.
27 4-5 (\$173,455.02 + <\$38,000.00> = \$135,455.02). Also, during this litigation, Wendy learned the
28 Family Trust owned Samuel Jaksick LLC I (“SJLLC I”), which owned an interest in Jackrabbit
29 Properties, LLC (“Jackrabbit”). All the accountings Wendy received for the Family Trust and Wendy’s
30 Subtrust prior to February 10, 2019 either: (i) included a hyphen for the value of SJLLC I or (ii)
31 excluded SJLLC I entirely. This is confirmed, in detail, in Wendy’s Opening Brief at: p. 10, lines 1-

28; p. 11, lines 13-18; p. 12, lines 3-28; p. 16, lines 21-25; pp. 17-19; p. 20, lines 5.⁸ Trustees never disclosed the value or the value of Wendy's beneficial interest in these entities.

9. Despite numerous demands, Trustees refused to deliver Wendy's Subtrust Accounting for the period ending December 31, 2017 ("2017 Subtrust Accounting"). It was due on **March 31, 2018**, and, only after this Court ordered Trustees to deliver it, over their objections, did Wendy receive it on **February 11, 2019**, just **three days before the start of trial**. For the very first time, Wendy learned an interest in Jackrabbit with some value had been transferred into Wendy's SubTrust, but no back-up information was provided. Unbelievably, Wendy has never received an accounting of that interest when it was transferred and held outside the Family Trust and Wendy's Subtrust for nearly two years – a *per se* breach of fiduciary duty. Since mediation was raised in the Supplemental Briefs, Wendy must respond. Most disturbingly, at the mediation on January 2 and 3, 2019,⁹ just a month before original start of the trial, Trustees attempted to "buy-out" Wendy's interest in Jackrabbit for 1/3rd of the value they withheld from her until they provided the 2017 SubTrust Accounting three days – a month later. Trustees: (i) actively refused to deliver the 2017 Subtrust Accounting to Wendy, (ii) intentionally hid value information from Wendy, and (iii) only disclosed it because the Court compelled them to do so. Stan's trial testimony affirmatively shows Todd's effort to force Wendy to "settle cheap" because Todd did not want Wendy to get anything. Transcript, 02/27/2019, 118:2-17. It is difficult to imagine more blatant and intentional acts of self-dealing by fiduciaries than to hide information required to be disclosed by statute (NRS 165) while negotiating a settlement with their beneficiary, all to gain a personal advantage at her expense.

10. **Cash to Date.** The Trustees continually cite \$631,000 that Wendy received over time, and, feebly, act like neither of them received any benefit over the same period.¹⁰ The distributions to Wendy helped fund her son's education – paying tuition and other expenses – is exactly the benefit Wendy's Trust is designed to provide. And, while the Co-Trustees are personally living out of the Trusts, are living in multi-million-dollar houses, enjoying income and the use of thousands of acres of property, Wendy and her son were sleeping in her car because she could not pay rent. Regardless, past received distributions is, by definition, not a benefit Wendy was "about to receive."

⁸ Wendy hereby incorporates such discussion and the evidence cited as if fully set forth herein.

⁹ Kent Robison's Declaration attached to Todd's Supplemental Brief concerning his "best recollection" of what was discussed at mediation is not based upon his personal knowledge because he has no idea what was conveyed by the mediator in Wendy's room.

¹⁰ This was discussed in detail in Wendy's Opening Brief at: p. 52-53, lines 28-9 (capital call and loan payments); p. 88-90, lines 14-10 (capital call payments); and Wendy's Closing Brief at: p. 30-31, lines 15-2 (capital call payments); pp. 65-66, lines 11-13; p. 69, lines 21-22 (Paydown of Tahoe Loan).

11. **Jaksick Family LLC.** Trustees' argue that Wendy's beneficial interest in Jaksick Family LLC ("JFLLC") was \$800,000. Trustees' Brief, p. 4, lines 4-15. Wendy, Individually, owns a 33% interest in JFLLC. Stan's Supplemental Brief, p. 5, lines 13-20. Wendy inherited her interest in this entity from her grandmother, who died in 1996, not Sam. Wendy is still waiting to receive her inheritance at the hands of her fiduciary brothers, who will not deliver it to her as evidenced by the two decades that have passed; yet they claim she is about to receive it. Stan, the manager of JFLLC, states Wendy has always been aware of the semi-illiquid nature of the assets of JFLLC, and that "Wendy would 'derive revenue' if certain memberships at Montreux were sold in the future." *Id.* Stan confirmed that JFLLC has "a speculative, future value" but does not state the value or evidence that Wendy knew or could have known its value at the time of trial. *Id.*, at lines 17-18. In May 2014, Riley told Wendy there was "no cash and there never has been any cash" in JFLLC. X57. Without disclosure of the debts, potential timing of sale, market for sale and other financial information, Wendy had and has no way of knowing the value of her beneficial interest in Jaksick Family, LLC.

12. **Issue Trust Interest (Beneficial Interest).** Despite claiming the Issue Trust was a "dynasty" trust and that Sam's intent was to keep the acreage together for the benefit of generations, Todd and Stan used life insurance proceeds belonging to the Issue Trust to feather Todd's and Stan's nests, instead of building houses on the property and perpetuating the Trust. In a bind to pay millions in mortgage interest on the Tahoe Property, after he improperly and illegally got it transferred into his own entity, Todd used Issue Trust life insurance funds to pay off the mortgage, leaving the Issue Trust with an interest in his entity, which he later attempted to sell part of to Stan converting it to a non-controlling interest. Instead of the Tahoe Property being in the Family Trust, where it started, or the SSJ, LLC entity available for all beneficiaries, it is now in Todd's entity where he has total control over its use. Todd testified he had total discretion to dictate use. Trial Transcript, 02/19/2019, 241:14-20. Notwithstanding the Trustees attempt to assign a value to Wendy's beneficial interest in the Issue Trust, the truth is it is worth zero! Todd promises to allow the beneficiaries to use the properties, but nothing could be more esoteric and intangible. No one would buy what purports to be Wendy's beneficial interest in the Issue Trust because it is subject to Todd's whim. Trustees could never cite the Court to evidence of a value on that kind of interest, because it is impossible to value – meaning, Wendy could not have known its value because the Trustees do not even know its value.

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

AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 25th day of February, 2020.

FOX ROTHSCHILD LLP

/s/ Mark J. Connot

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

SPENCER & JOHNSON, PLLC

/s/ R. Kevin Spencer

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

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of FOX ROTHSCCHILD LLP and that on this 25th day of February, 2020, I served a true and correct copy of **WENDY JAKSICK'S SUPPLEMENTAL BRIEF IN THE EQUITABLE CLAIMS TRIAL** by the Court's electronic file and serve system addressed to the following:

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503
*Attorneys for Todd B. Jaksick, Beneficiary
SSJ's Issue Trust and Samuel S. Jaksick, Jr.,
Family Trust*

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

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

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

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

DATED this 25th day of February, 2020.

/s/ Doreen Loffredo
An Employee of Fox Rothschild LLP

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

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

_____/

CONSOLIDATED

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

ORDER AFTER EQUITABLE TRIAL

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

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

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

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

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

22 **General Findings**

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

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

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

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

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

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

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

25 6. Sam had three children: Stan, Wendy, and Todd. Sam loved each of his
26

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 General Legal References

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Equitable Issues

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

21 1. *Approval of accountings*

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

24
25 ⁶ When considering the fourth Beattie factor, the court must consider the Brunzell factors. See Shuette v.
26 Beazer Homes Holdings Corp., 121 Nev. 837, 864–65, 124 P.3d 530, 548–49 (2005). These factors include the
27 following: "(1) the qualities of the advocate: his or her ability, training, education, experience, professional
28 standing, and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, time and
skill required, the responsibility imposed and the prominence and character of the parties where they affect
the importance of litigation; (3) the work actually performed by the lawyer: the skill, time, and attention
given to the work; and (4) the result: whether the attorney was successful and what benefits were derived."
Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 4. *Unjust enrichment and constructive trust*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 consideration to end litigation.

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

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

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

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

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

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

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

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

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

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

23 For these reasons, this Court orders as follows:

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

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

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

27 **Other Issues**

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

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

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

20 2. *The Lake Tahoe property*

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

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

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

3 3. *Future distributions*

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

14 4. *Costs.*

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

18 **Conclusions**

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

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

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

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

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

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

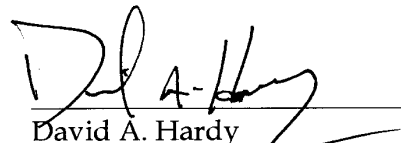
9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject
10 to the fees award provisions.

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

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

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

19
20 
21 David A. Hardy
22 District Court Judge
23
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27
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CODE: 2540

Adam Hosmer-Henner, Esq. (NSBN 12779)
McDONALD CARANO
100 West Liberty Street, 10th Floor
Reno, Nevada 89501
Telephone: (775) 788-2000
ahosmerhenner@mcdonaldcarano.com
*Attorneys for Stanley Jaksick,
Co-Trustee of the Family Trust*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

In the Matter of the Administration of the

CASE NO.: PR17-00445

SSJ ISSUE TRUST,

DEPT. NO.: 15

In the Matter of the Administration of the

CASE NO.: PR17-00446

SAMUEL S. JAKSICK, JR. FAMILY TRUST,

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter Petitioner,

v.

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

Petitioners and Counter-Respondents.

STANLEY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

NOTICE OF ENTRY OF ORDER

1 PLEASE TAKE NOTICE that an Order After Equitable Trial was entered in the above-
2 entitled matter on March 12, 2020. A copy of the Order is attached hereto.

3 **Affirmation**

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

6
7 DATED: March 17, 2020

8 McDONALD CARANO

9 By /s/ Adam Hosmer-Henner
10 Adam Hosmer-Henner, Esq.
11 100 West. Liberty Street, 10th Floor
12 Reno, Nevada 89501

13 *Attorneys for Stanley Jaksick,*
14 *Co-Trustee of the Family Trust*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO and that on March 17, 2020, I served the within NOTICE OF ENTRY OF ORDER on the parties in said case by electronically filing via the Court's e-filing system. The participants in this case are registered e-filing users and notice of filing will be served on all parties by operation of the Court's CM/ECF system, and parties may access this filing through the Court's CM/ECF system.

Donald Lattin, Esq.
Robert LeGoy, Esq.
Brian C. McQuaid, Esq.
Carolyn Renner, Esq.
Maupin Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89520

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

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

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

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

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

DATED: March 17, 2020.

By /s/ Jill Nelson
Jill Nelson

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

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

_____/

CONSOLIDATED

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

_____/

ORDER AFTER EQUITABLE TRIAL

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

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

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

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

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

22 **General Findings**

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

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

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

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

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

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

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

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

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

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

24 8. Todd's participation in Sam's estate beginning in 2012 can be viewed
25 through two opposing lenses: he was either a disconnected participant who yielded to his
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27 ⁴ This Court understands jury instruction no. 11, which does not alter the fact that Todd struggled under the
28 shadow of his father's business acumen. The dynamic of Todd relying on professionals regarding the
accountings, while the professionals provided accountings with disclaimers and hyphens, created
uncertainty (or at least the appearance of uncertainty) about transactions, values, and who was ultimately
responsible for acts and accountings of trust administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 General Legal References

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Equitable Issues

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

21 1. *Approval of accountings*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 4. *Unjust enrichment and constructive trust*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 consideration to end litigation.

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

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

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

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

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

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

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

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

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

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

23 For these reasons, this Court orders as follows:

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

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

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

27 **Other Issues**

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

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

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

20 2. *The Lake Tahoe property*

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

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

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

3 3. *Future distributions*

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

14 4. *Costs.*

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

18 **Conclusions**

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

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

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

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

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

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

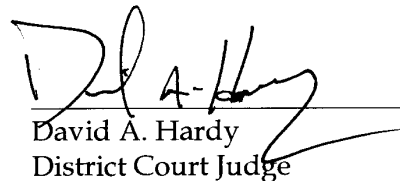
9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject
10 to the fees award provisions.

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

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

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

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21 David A. Hardy
22 District Court Judge
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