

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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Elizabeth A. Brown
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CASE NO.: 81470

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

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

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

Appellants/Cross-Respondents,

vs.

WENDY JAKSICK,

Respondent/Cross-Appellant.

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

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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.

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CERTIFICATE OF SERVICE

I certify that on the 13th day of April, 2021, I served a copy of **APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S APPENDIX TO OPENING BRIEF- VOL. 18**, 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:

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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 SSJ's ISSUE TRUST.

DEPT. NO.: 15

19 In the Matter of the:

CASE NO.: PR17-00446

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

DEPT. NO.: 15

22 WENDY JAKSICK,

23 Respondent and Counter-Petitioner,

24 v.

TODD B. JAKSICK'S MOTION TO
AMEND JUDGMENT

25 TODD B. JAKSICK, Individually, as Co-
26 Trustee of the Samuel S. Jaksick Jr. Family
27 Trust, and as Trustee of the SSJ's Issue Trust;
28 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;

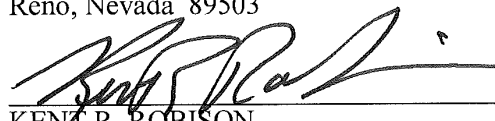
Petitioners and Counter-Respondents.

1 Todd Jaksick, in his individual capacity, moves this Honorable Court for its order
2 amending the judgment entered in this matter on April 1, 2020. This motion is based on Rule
3 59(e) of the Nevada Rules of Civil Procedure and is made because the judgment entered in this
4 action as to Todd Jaksick, individually, is the result of manifest errors of law and fact and
5 constitutes a manifest injustice.

6 This motion is based upon the attached points and authorities, the pleadings on file herein,
7 the evidence admitted in the proceedings and the fundamental notions of the fair and equitable
8 administration of justice.

9 DATED this 29th day of April, 2020.

10
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15 

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17 THERESE M. SHANKS

18 *Attorneys for Todd B. Jaksick, Individually,*
19 *Incline TSS, Ltd., and Duck Lake Ranch, LLC*

20
21 **POINTS AND AUTHORITIES**

22 Todd Jaksick, as an individual Counter-Respondent ("Todd"), submits the following points
23 and authorities in support of his motion to amend the judgment.

24 **I.**

25 **INTRODUCTION**

26 **A. The Dilemma of Two Lawsuits in One Lawsuit.**

27 The jury resolved a lawsuit with its March 4, 2019 verdict. The Court resolved a lawsuit
28 with its March 12, 2020 Order After Equitable Trial ("Court's Order"). The jury's resolution is
substantially inconsistent with the Court's resolution.

The jury completely exonerated Todd as an individual. The Court did not. The
inconsistent results cannot be reconciled as fair and appropriate. The jury decided that Todd, as an

1 individual, did nothing wrong. The Court decided to punish Todd with a substantial assessment of
2 attorneys' fees. It also contradicted the spirit and intent of the jury's verdict by ordering Todd to
3 disgorge Trustees' fees paid to him. According to the math involved in various filings in this
4 matter, Todd could be required to pay \$500,000 or more to the two trusts as an individual. Yet,
5 the jury found that Todd, as an individual, did nothing wrong and, as an individual, pays nothing.

6 These incongruent results are exacerbated by the Court's candid recognition that:

7 1. "The facts in support of the equitable claims inextricably overlap with the legal
8 claims presented to the jury." (Court's Order p. 3: 2-3).

9 2. "Wendy is attempting to retry her case to obtain a second review of similar facts
10 and an outcome different from the jury verdict." (*Id.*: 3-5).

11 3. The Court "will not re-visit the identical facts to arrive at a different outcome for
12 Wendy." (*Id.*: 28).

13 4. The Court "... has no authority to dilute or otherwise modify the jury's verdict."
14 (*Id.*: 6-7).

15 5. "Wendy's legal and equitable claims are grounded in the same common facts and
16 are exceedingly difficult to segregate." (*Id.*, p. 7: 2-3).

17 6. "No matter how Wendy frames or argues her equitable claims, she asks this Court
18 to remedy the identical facts and transactions she placed before the jury." (*Id.*, p. 7: 8-9).

19 7. "She [Wendy] now seeks a 'mulligan' by re-arguing to this Court what was over-
20 argued to the jury." (*Id.*: 21-22).

21 8. **"But the constitutional and decisional authorities prevent this Court from**
22 **entering a subsequent order diluting or altering the jury's verdict."** (Emphasis added; p. 8:1-
23 3).

24 However, the Court has entered a subsequent order substantially diluting and altering the
25 spirit and intent of the jury's verdict. Despite the two lawsuits within the same lawsuit being
26 based on the same common facts and argument, dramatically different results occurred as to Todd
27 individually. The Court's reliance on and application of NRS 165.148, NRS 165.200, NRS
28 153.031(3) and NRS 153.070 is understandable in a typical non-jury matter. But, here the Court

1 has applied these statutes to defeat, impugn and render meaningless the jury's verdict in favor of
2 Todd as an individual.

3 **B. Sam Jaksick's Testamentary Intent Cannot be Ignored.**

4 Wherever Sam's spirit resides, it was truly saddened by the Court's Order After Equitable
5 Trial. There is no way Sam would want to see Todd punished as the Court punished Todd in its
6 Order.

7 The Court recognizes the nature of Sam Jaksick's ("Sam's") estate and business endeavors.
8 The evidence reveals that Sam, albeit an aggressive developer and businessman, was unafraid to
9 borrow. He did not and certainly could not trust his daughter Wendy Jaksick ("Wendy") to be
10 involved in the family businesses. Her abuses of Sam need not be repeated. However, Sam
11 trusted his sons, one more than the other. Todd was the son Sam chose to lead the family
12 businesses out of the crises that Sam created by borrowing tens of millions of dollars.

13 While the Court expresses concern that Todd was "marginally sophisticated" as a trustee,
14 the same can be said of Sam. It was Sam, not Todd, that over-leveraged the assets of Sam's estate.
15 It was Sam who did so relying on the knowledge and expertise of professionals. Sam was
16 victimized by the recession. So were Todd and Stan. Sam's reliance on professionals and experts
17 was not dissimilar to Todd's. However, everything Todd did after Sam's passing was approved by
18 some of the best lawyers in Nevada. Nothing Todd did was without the input and approval of
19 Sam's certified public accountant. Sam selected Kevin Riley, not Todd. Sam selected Pierre
20 Hascheff as Sam's legal counsel, not Todd. That Sam mentored Todd to use and rely on the
21 knowledge and expertise of professionals cannot be seriously denied. Yet, Todd is being
22 challenged for his use of and reliance on Maupin Cox & LeGoy and Kevin Riley. Moreover,
23 Stan's duties were no different than Todd's. Yet, Stan get accolades, while Todd gets assessed
24 damages.

25 During the period from 2010 to 2013, Sam recognized Stan's divorce as a serious threat to
26 Sam's business and estate plans. Sam chose Todd. Sam trusted Todd. Sam worked with Todd.
27 And, before Sam's passing, Todd simply did what Sam told him to do. The 2010 plan to get the
28 Tahoe House out of the reach of Sam's creditors was Sam's idea, not Todd's. Todd had to pay for

1 and own a majority interest in certain family businesses because of the estate plan Sam devised,
2 not Todd. The indemnification agreements were Sam's idea, not Todd's.

3 Stan was also the beneficiary of Sam's efforts to protect assets from Sam's creditors. Stan
4 gifted Stan the golf course assets, including the very valuable 50% interest in Toiyabe Investment
5 Company. Stan has done well. Unlike Todd's interests, Stan's came without debt.

6 Naming Todd as the **only** Trustee of the Issue Trust signifies Sam's faith and reliance on
7 Todd as opposed to Stan or Wendy. Naming Todd as the only Co-Trustee of the Family Trust that
8 could appoint successor trustees also speaks volumes about Sam's unmitigated faith and trust in
9 Todd. Todd and Sam were not only father and son, they were friends, partners and companions.

10 Yet, the Court's dicta in its Order After Equitable Trial ("Court's Order") describes Todd
11 much differently than Sam would have. Sam did not see his beloved son as a "disconnected
12 participant" nor as an opportunistic scoundrel. (Court's Order, pp. 4-5). It was Todd who was at
13 his father's side during the heart surgery. It was Todd that helped carry out Sam's very
14 complicated estate plan. It was Todd that tried to assist Sam's attorney, Pierre Hascheff. It was
15 Todd that Sam, more than anyone else, trusted. Todd was anything but a "subtly strategic
16 participant who enriched himself." *Id.* Todd received interests and assets encumbered by huge
17 debt. Stan received debt-free assets. The hypothetical "subtle strategy" backfired as evidenced by
18 Wendy already receiving over \$600,000 in distributions and Stan getting the debt-free interest in
19 the golf course assets, while Todd paid debt. Bob LeGoy's and Kevin Riley's description of Todd
20 is "evidence". According to those expert professionals, Todd did a remarkable job administering
21 Sam's estate and performed as well as Sam could possibly have expected. Yet, the Court's April
22 1, 2020 Judgment punishes Todd in an amount that will likely exceed \$500,000. Sam would be
23 horrified by such a finding.

24 **C. Todd's Interaction With Experts and Professionals.**

25 Todd did not influence, create or promote the indemnification agreements. Sam did. Both
26 sons had an indemnification agreement. Todd did not create the Second Amendment to the
27 Family Trust. Sam and Sam's lawyer did. Indeed, not only was Wendy the one that gained the
28 most from the Second Amendment, she also took and accepted its benefits. She then challenged

1 it. Todd did not suggest, create, promote or cause the option for Incline TSS, Ltd. to purchase the
2 Tahoe house. Sam did. Sam is the one that borrowed millions of dollars using the Tahoe house as
3 collateral. As Trustee, Todd just received a calling and had to cope with the mess Sam left behind.
4 There was no evidence at trial that supports a factual finding to the contrary.

5 The Court correctly notes that the recession did no favors to Sam's prolific borrowing
6 tendencies. But it was Todd that bore the brunt of Sam's ambitious strategies. Sam may have
7 been "sophisticated" but leaving his sons to deal with an incredibly complex estate with over
8 \$30,000,000 of debt was not ingenious. While Stan struggled with his divorce and Wendy
9 engaged in acrimonious diatribe, Todd worked with his father to make it all work as Sam
10 intended. Todd is now being punished for having done so.

11 The Court acknowledges that Sam's estate was complex. Court's Order, p. 7. The
12 testimony of Messrs. Hascheff and LeGoy attest to the same. Kevin Riley, an accomplished
13 accountant, struggled with the complexities. Brian McQuaid assisted, unwinding the tangled mess
14 Sam left behind. Yet, the Court blames Todd for the "inadequate" and "untimely" accountings,
15 referring to him as "marginally sophisticated" (Court's Order, p.4: 8). The truth is, however, few
16 laymen, few lawyers and few accountants could have done any better. Stan certainly did not. Stan
17 turned a blind eye to the mess, but he too relied on professionals. Now, because of Todd, Sam's
18 massive debts are nearly paid.

19 But Todd, not Stan, is chastised and punished for relying on professionals, something Todd
20 is legally required to do. *See* NRS 164.770(1), (3). Not a single accounting was performed or
21 disclosed without the input, control and guidance of Kevin Riley and a member of the Maupin
22 Cox & LeGoy law firm, a law firm referred to by the Court as among the best estate and probate
23 law firms in the state. Kevin Riley, Brian McQuaid and Bob LeGoy, admittedly among the best,
24 were hands on within days of Sam's passing. Yet, what they did or did not do is blamed on Todd,
25 not Stan, and Todd is being financially punished for his reliance on experts and professionals
26 despite the Legislature's clear directive to the contrary.

27 ///
28

1 **D. There Is No Evidentiary Justification For Treating Todd Any Different Than Stan**
2 **and Doing So Is Manifestly Unfair and Unjust.**

3 The Court suggests that Todd had personal interests that obscured his neutrality. So did
4 Stan. Stan still has not accounted for the funds received by Toiyabe, a company in which Sam's
5 Family Trust owns 50%. Furthermore, any successor trustee who is also a beneficiary of the trust
6 that he/she is charged to administer has inherent, unavoidable conflicts of interests. Todd is a
7 beneficiary as much as Stan is.

8 While Sam wanted Todd to enjoy the benefits associated with the ranches, Sam wanted
9 Stan to enjoy the benefit of the golf course assets. The Family Trust has interests in both. Stan's
10 failure to account for the income derived from the golf course ownership and operation enraged
11 Wendy. (Attached as **Exhibit 1** is trial exhibit 23.41). It has been redacted as the Court ordered to
12 delete Wendy's despicable accusations about Stan. But trial exhibit 23.41 (**redacted**) shows how
13 outraged Wendy was with Stan, not Todd. Wendy states to Stan:

14 *"U spend one more dime at montreux, and I will bring your ass down. U r not going to*
15 *spend money like a king for absolutely no reason. U better not be getting executor fee for*
16 *all this, **Todd yes I agree gets one, but you only work for your benefit and***
17 *spend..."(emphasis added).*

18 Trial Exhibit 13-g does the same. It is attached hereto as **Exhibit 2**. Wendy's hostilities
19 directed at Stan (and Todd) are further evidenced by trial exhibit 30 (attached as **Exhibit 3**).
20 Wendy challenged Stan on Stan's refusal to distribute funds from Montreux to the family trust, a
21 crisis that still exists. The family trust owns 50% of Toiyabe Investment and Wendy was correct
22 that Stan was not being fair to the Family trust. Wendy's complaints were as venomous against
23 Stan as they were against Todd. But unlike Stan, Wendy was initially supportive and
24 complimentary of Todd before she lawyered up and entered into a cooperation contract with Stan
25 to go against Todd.

26 In trial exhibit 23-41(**Exhibit 1** hereto), **Wendy commends Todd and criticizes Stan.**
27 She admits that Todd, not Stan, is entitled to fees for administering the estate. So, what happened?
28 In trial exhibit 23-46 (**Exhibit 4** hereto) Wendy demands \$100,000 in exchange for agreeing to a
Bronco Billy deal. Wendy could be and was purchased.

Stan then made a deal with Wendy. It was an ugly, immoral deal. To get Wendy on "his

1 side”, Stan paid Wendy to go after Todd. The Court’s characterization of Stan as credible and
2 having financial fluency (Court’s Order p. 4: 4-5) is not unreasonable until the underlying deal is
3 exposed. The nefarious deal Stan made with Wendy effectively silenced Wendy as Stan’s critic.
4 It also silenced Stan as Wendy’s critic.

5 On December 11, 2017 Stan entered into a written contract with Wendy. He agreed to pay
6 Wendy \$6,250 per month for Wendy’s cooperation to go after Todd. Stan paid money for Wendy
7 to say, “Wendy believes Stan has always been honest in his dealings with Wendy.” Stan paid
8 Wendy so she would sue Todd. Worse, Stan paid money to Wendy for her to agree as follows:

9 “Wendy agrees it is not necessary to include any of Stan’s business interest
10 (Montreux and Toiyabe) in any court proceeding and Wendy will keep her
11 interest in Jaksick Family and Toiyabe Investments LLC. Wendy also will not
12 sue Stan regarding Lakeridge Gold or the Thelma Jaksick Estate business
13 activities in the past.”

14 The December 11, 2017 contract is attached as **Exhibit 5** and was attached to Todd’s
15 Petition filed in these matters on October 12, 2018.

16 The Court’s Judgment alludes to several matters as justification for ordering disgorgement
17 of trustee’s fees and assessing legal fees. They are:

- 18 1. The jury’s finding that Todd breached fiduciary duties as a Trustee and Co-Trustee
19 (Court’s Order, p. 16: 29);
- 20 2. Stan’s allegations and testimony (*Id.* p. 5: 24-25);
- 21 3. The timing and content of the accountings (*Id.* p. 14: 7-9);
- 22 4. The indemnification agreements and ACPAs (*Id.* p. 15: 7-8); and
- 23 5. Notarial misconduct (*Id.* p. 4: 21-22)

24 It is unclear which apply to the fees awarded to Wendy’s lawyers or to the 25% fee
25 assessed against Todd. Logically, it seems that the indemnification agreement, ACPAs, notarial
26 activities and accountings apply to the \$300,000 awarded to Wendy’s lawyers. But, if these
27 factors are a basis for assessing fees against Todd, each must be addressed.

28 The jury verdict fails to specify what act or omission resulted in the breach of fiduciary
duty finding. It could have been anything including the accusations that Todd refused Wendy’s

1 request to use the Tahoe house at Christmas.¹ But the amount the jury awarded is a significant
2 factor. An award of \$15,000 tells us all very clearly that the breach was insignificant. The
3 “breach” did not substantially harm Wendy, the Family Trust or the Issue Trust. The jury
4 implicitly slapped Todd on the wrist. The Court’s Order (i.e. judgment) takes the same facts and
5 gives Todd a knock-out punch. One cannot be reconciled with the other. However, they are two
6 substantially different awards against Todd for the same conduct based on the same facts. The
7 Court’s assessment of damages against Todd is 33 times more than the jury’s assessment of
8 damages for the same exact “breach of fiduciary duty.” The magnitude of this difference defies
9 equity. Notwithstanding the severity of the Court’s findings against Todd, **they are not in favor**
10 **of Wendy, rather they are in favor of the trusts.**

11 Stan’s deposition testimony was critical of Todd. The testimony was given at a time when
12 Stan was suing Todd. It was given at a time when Stan and Wendy were parties to a contract to
13 align themselves to go after Todd. (See Exh. 5). Todd and Stan tried to settle. Todd did what the
14 judicial system encourages all litigants to do; he tried to buy his peace with Stan. The Court
15 apparently disregards the give and take of a proposed settlement by using one-sided partial
16 testimony as a basis to assess fees against Todd. The manifest inequity is self evident. Todd had
17 the dignity and presence of mind not to sue Stan for his many failures to account for the Toiyabe
18 assets and funds received from sales of lots.

19 The timing and content of the accountings are as much the responsibility of Stan as they
20 are Todd’s. While lawyers and Sam’s accountant controlled the timing and content of
21 accountings, Stan bears as much responsibility for the accountings as does Todd. Since January
22 2017 Mike Kimmel is also responsible for timing and content of the accountings. Yet, if read
23 literally, the Court’s Order requires Todd to pay fees apparently because the “accounting influence
24 this Court’s decision regarding attorney’s fees and the no-contest provisions of the trust.” The
25 accountings may justify inquiry. They do not justify punishing Todd. Todd did not make the
26 accountings alone. They were made by all Co-Trustees with the assistance of professionals. To
27 single out Todd for punishment is manifestly unfair, unjust and inequitable. It seems then that the
28

¹ Post-verdict interviews with jurors are not relevant to impeach a jury verdict.

accountings issue should only pertain to the award for Wendy's attorneys.

The indemnification agreements were conceived and implemented by Pierre Hascheff and his client Sam Jaksick. Indeed, there were different versions. While this might be a useful consideration for the \$300,000 award to Wendy's lawyers, it is not for the 25% fee assessment against Todd. Todd retained Mr. Green, the handwriting expert who validated the signatures as those of Sam Jaksick. Todd is not to blame for any part of the confusion relating to the indemnification agreements. Likewise, one ACPA was back dated to the date the first person signed it since no one had dated it. The procedure was necessary. But it was done by Todd's counsel, not Todd. To punish Todd for the issues pertaining to the indemnification agreements and ACPAs is to punish Todd for the acts of others.

There is no equitable or legal justification for treating Todd differently than Stan or any other Co-Trustee. Todd had self interests. Stan had self interests. Stan had duties to provide timely, accurate and adequate accountings. So did Todd and Mike Kimmel. There is no reasonable justification to hold Todd to higher standards than Stan. The jury assessed a minute amount of damages, certainly less than one day of attorney's fees for the lawyers involved.

The Court suggests that the notaries' activities are included in the Court's attorney fee consideration. It is unclear whether this pertains to the \$300,000 award for Wendy's lawyers or the 25% assessment against Todd. To be safe, the evidence about the confusing jurats showed that Sam's notary (Jessica) and Mr. Hascheff's notary (Nanette Childers) were involved. Todd neither controlled nor influenced either during December 2012.

II.

APPLICABLE STANDARD OF REVIEW

Under Rule 59(e), a judgment should be amended or altered to “correct[] manifest errors of law or fact” or “to prevent manifest injustice[.]”. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). NRCp “echo[es] Fed.R.Civ.P.59 and [the Court] may consult federal law in interpreting [it].” *Id.* at 126 Nev. 578, 245 P.3d at 1192-93. A manifest error of law or fact occurs when there is “clear error” in the ruling. *See Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011). Manifest injustice incurs where there is “(1) a clear and certain

1 prejudice to the moving party that (2) is fundamentally unfair in light of governing law.” *Fraenkel*
2 *v. Republic of Iran*, 326 F.R.D. 341, 345 (D.D.C. 2018) (internal quotations omitted).

3 **III.**

4 **LEGAL ANALYSIS**

5 Todd submits the following legal analysis in support of his motion to amend the judgment.

6 **A. Todd’s Constitutional Rights Have Been Violated.**

7 The Court’s fee award against Todd is indistinguishable from an award of damages.

8 Indeed, the award against Todd is punitive and resembles an award of punitive damages. It cannot
9 be consequential damages. The jury did that. The jury assessed consequential damages at
10 \$15,000. Yet, the Court’s assessment of fees against Todd could easily exceed \$500,000.

11 Meanwhile, the Court has been careful to find as follows:

12 *“This Court cannot supplant or alter a jury’s verdict by relying on common*
13 *facts to reach a different outcome.”*

14 *“It would be a violation of the Seventh Amendment right to jury trial for the*
15 *Court to disregard jury’s findings of fact.”*

16 *“The Seventh Amendment requires the trial judge to follow the jury’s implicit*
17 *or explicit factual determinations.”*

18 *“But constitutional and decisional authorities prevent this Court from entering*
19 *a subsequent order diluting or altering the jury’s verdict.”*

20 (Court’s Order, p. 8: 1-20.)

21 Despite the absurd hyperbole inherent in Wendy’s \$80,000,000 demand, the jury found
22 that Todd should have to pay **no more than** \$15,000 for his breach of fiduciary duty. The Court,
23 relying on that same breach of fiduciary duty, essentially supplants that finding, essentially alters
24 that finding, essentially disregards that finding, and in assessing fees against Todd, essentially
25 rejects the implicit and explicit factual determinations of the jury. The jury decided a legal claim,
26 breach of fiduciary duty. Breach of fiduciary duty is not an equitable claim. Yet, in the Court’s
27 Order on Wendy’s equitable claims, it says it will use, in part, the jury’s finding on legal claims to
28 assess damages against Todd for 25% of trustee lawyers’ fees on equitable claims. The Court is
not empowered to change the jury finding when it decides equitable claims. Fiduciary duty claims
are legal, not equitable. The Court used a legal claim to assess damages against Todd on equitable

1 claims.

2 Under the Seventh Amendment of the United States Constitution, “no fact tried by a jury
3 shall be otherwise re-examined in any Court of the United States, than according to the rules of
4 common law.” U.S. Const. amend. VII. Nevada has recognized that its courts are bound by the
5 Seventh Amendment. *See Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev.
6 1102, 1111-12, 197 P.3d 1032, 1038 (2008). A party’s Seventh Amendment rights are violated
7 when a court “disregard[s] a jury’s finding of fact.” *Acosta v. City of Mesa*, 718 F.3d 800, 828-29
8 (9th Cir. 2013) (internal quotations omitted). “Thus, in a case where legal claims are tried by a
9 jury and equitable claims are tried by a judge, and the claims are based on the same facts, in
10 deciding the equitable claims, the Seventh Amendment requires the trial judge to follow the jury’s
11 implicit or explicit factual determinations.” *Id.* (Internal quotations omitted). Although the Court
12 expressly states that the jury’s finding influenced its decision to award fees against Todd, the
13 Court cannot change the verdict by adding more damages for the same breach.

14 To be binding, the jury’s findings must be on issues “common” to both legal and equitable
15 claims. *Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.*, 908 F.3d 313, 343 (8th
16 Cir. 2018). “If the jury’s findings were on a common issue, the Court, in fashioning equitable
17 relief, may take into account facts that were not determined by the jury, but it may **not** base its
18 decision on factual findings that conflict with the jury’s findings.” *Id.* at 344 (emphasis added).
19 Here, however, the Court’s harsh treatment of Todd is based on findings that conflict with and are
20 contrary to the jury’s findings.

21 This means that this Court cannot “apply [] equitable doctrines on the basis of factual
22 predicates rejected, explicitly or implicitly, by a jury verdict.” *Haynes Trane Serv. Agency, Inc. v.*
23 *Am. Standard, Inc.*, 573 F.3d 947, 959 (10th Cir. 2009); *see also Avitia v. Metro. Club of Chicago,*
24 *Inc.*, 49 F.3d 1219, 1231 (7th Cir. 1995) (holding that “a judge who makes equitable
25 determinations in a case in which the plaintiff’s legal claims have been tried to a jury is bound by
26 any factual findings made or inescapably implied by the jury’s verdict”). Here, the jury
27 inescapably found that Todd did nothing wrong and did not damage Wendy in any way as an
28 individual. Yet, based on the **same** facts the jury considered, this Court has severely punished

1 Todd as an individual for the same thing that the jury considered worthy of a \$15,000 award.

2 In this case, the jury considered the same evidence that was considered by the Court on
3 Wendy's claims in equity. The same evidence supports the verdict that is the basis for the Court's
4 Order on Wendy's equitable claims. However, this Court has ignored the jury's findings in its
5 effort to assess damage amounts against Todd. In this Court's Order, it relies on the same facts
6 the jury implicitly relied upon to *exonerate* Todd from liability when the jury implicitly found that
7 the accountings were acceptable, the ACPAs were acceptable, the indemnification agreements
8 were valid and the preparation, execution and use of the December 2012 documents were valid.
9 Indeed, the jury's award is also based on Stan's testimony. However, this Court's findings and
10 conclusions are dramatically different than and contrary to those of the jury. Contrary to the jury's
11 verdict, the Court's Order severely punishes Todd for the same conduct that the jury clearly and
12 unequivocally used to assess damages of \$15,000 against Todd.

13 The Court has re-evaluated the facts tried to the jury and has obviously re-examined those
14 same facts inconsistently with the jury's analysis. This is impermissible under the Seventh
15 Amendment of the United States Constitution. The Court's punishment of Todd regarding the
16 disgorgement of his Trustee's fees and assessment of 25% of attorneys' fees paid to Trustees'
17 counsel disregards and is contrary to the spirit and intent of the jury's verdict. The jury found in
18 favor of Todd as an individual in all respects. The Court did otherwise.

19 Clearly, the jury did not want Todd to be liable for anything in his individual capacity.
20 Yet, the Court found against Todd as an individual on the same facts considered by the jury. The
21 Court has, therefore, violated Todd's constitutional rights to a jury trial. The Court has essentially
22 entered a judgment reversing the jury's finding that Todd is not liable as an individual. Contrary
23 to the verdict, the Court's judgment does find Todd liable as an individual.

24 This Court has conceded that the jury's findings and verdict are on issues common to both
25 Wendy's legal claims and Wendy's equitable claims. *See* Order, p. 3. Where the jury's findings
26 are on a common issue, the Court may *not* "base its decision on factual findings that conflict with
27 the jury's findings." *Sturgis* 908 F.3d at 334. Unfortunately, the Court has attempted to apply
28 equitable doctrines (assessment of fees against Todd) based on factual predicates explicitly and

1 implicitly rejected by the jury verdict.

2 Respectfully, the Court has yielded to the jury's acceptance of the accountings. Yet, the
3 "timing and content of the accountings" are, in part, perhaps the basis for the Court's requirement
4 that Todd disgorge or disclaim all Trustees' fees he has received. On one hand, the Court
5 acknowledges that the jury accepted the accountings. On the other hand, the Court punishes Todd
6 (not the other Co-Trustees) based on the timing and content of the accountings. At the very least,
7 the Family Trust is punished. The Court acknowledges the following:

8 However, this Court also notes that Wendy's complaints about the content and
9 general timing of the accountings were presented to the jury in the legal phase of
10 the trial and are therefore facts common to the equitable claims. The jury
11 presumably considered all of the evidence when deliberating its verdict. The
12 verdict is an express or implicit rejection of Wendy's complaints about the
13 accountings. Accordingly, this Court will not provide equitable relief regarding the
14 accountings, which were constructively approved and confirmed by the jury's
15 verdict.

16 Order, pp. 13-14.

17 But, the Court did consider the accountings in awarding equitable relief. The Court states
18 that the jury constructively approved and confirmed the accountings. Yet, the Court found that the
19 nature of the accountings could be used toward attorneys' fees either against Todd, or at least for
20 Wendy's lawyers. *See* Order, p. 14. If the Court considered the timing and content of the
21 accountings against Todd, this dramatic contradiction is a constitutional violation of Todd's
22 fundamental right to a jury trial. The jury's verdict implicitly approved the accountings and the
23 Court so admitted. If the Court did use the accountings to either punish Todd regarding
24 disgorgement of trustees' fees or having to pay substantial attorneys' fees back to the trusts, the
25 Seventh Amendment has been violated. It requires the trial judge to follow "the jury's *implicit* or
26 explicit factual determinations." *Acosta*, 718 F.3d at 828-829. If the Court has used the timing and
27 content of the accountings as a basis for assessing fees against Todd, the jury's verdict has been
28 breached.

 Again, if the Court used the ACPAs and indemnification agreements as a basis to assess
fees against Todd, the verdict has been breached. Under that scenario, the Court would have
unfortunately entered an order and judgment inconsistent with and contradictory to the jury's

1 verdict regarding the ACPAs and indemnification agreement. Here again, the Court acknowledges
2 that the validity and enforceability of the ACPAs and indemnification agreements and all related
3 transactions were “*thoroughly presented and argued to the jury-including document*
4 *preparation, execution and other formation irregularities.*” (Emphasis added.) Order, p. 14: 20-
5 24 (emphasis added). If the jury approved them, the Court should not use them against any party.
6 Wendy, with unrestrained exuberance, challenged the ACPAs and indemnification agreements
7 based on the evidence and arguments presented to the jury. She lost. As noted by the Court, the
8 jury verdict is an implicit rejection of Wendy’s arguments. (Court’s Order, p. 13: 22-24.)

9 However, even though the ACPAs and indemnification agreements involve claims tried to
10 the jury upon the same facts utilized by the Court in entering its Order on Wendy’s equitable
11 claims, the results are seriously contradictory. **If the indemnification agreements and ACPAs**
12 **were a basis for awarding fees against Todd, the jury verdict has been breached.** According
13 to the Seventh Amendment of the United States Constitution, no fact tried by a jury shall be
14 otherwise re-examined by the Court. Yet, in this case, the Court has done so particularly if it used
15 those documents as a basis for the fee award against Todd.

16 The Court states that all claims “involving the disputed ACPAs and indemnification
17 agreements shall end with the jury’s verdict.” See Court’s Order, p. 15: 5-7. But that is not what
18 happened. The claims did not end with the jury’s verdict. The Court contradicted and impeached
19 the jury’s verdict by stating that the ACPAs and indemnification agreements would “influence”
20 the Court’s decision regarding legal fees. *Id.* By the clear language used by the Court, the
21 conclusion is inescapable that the Court did not accept the spirit and intent of the jury’s verdict,
22 which the Court admits was based on facts common to both the legal and equitable claims.

23 The award of attorney’s fees against Todd (*individually*) and the judgment requiring him
24 to disgorge Trustees’ fees contradict the jury’s verdict and are inconsistent with the spirit and
25 intent of the jury’s findings and verdict. The Judgment as entered herein deprives Todd of his
26 Seventh Amendment rights to a jury trial. The judgment must therefore be amended to eradicate
27 and eliminate the impermissible re-examination by the Court of facts tried to the jury.

28 The Court is required to abide by the jury’s findings of fact in making subsequent equitable

1 rulings. Here, the Court 's Order (incorporated in the judgment) does not abide by the verdict.
2 The Court has admitted in its Order on equitable claims that the jury considered the preparation,
3 execution and formation of the December 2012 documents, the notary activity related thereto, the
4 timing and content of the accountings, the ACPAs and the indemnification agreements. Having
5 carefully considered those facts, the jury exonerated Todd. Having considered those same facts,
6 the Court essentially vacated the jury's verdict and entered an order and judgment severely and
7 unjustly punishing Todd to what will probably be an award in excess of \$600,000. The jury
8 verdict controls and is an unamendable finding. Otherwise, Todd's Seventh Amendment rights
9 are violated. The same reasoning applies to any award of fees to Wendy's lawyer against the
10 Family Trust.

11 **B. All Co-Trustees Are Equally Responsible For the "Timing and**
12 **Content" of the Accountings.**

13 After Sam's death in April of 2013, there were three Co-Trustees of Sam's Family Trust.
14 Kevin Riley, Stan Jaksick and Todd Jaksick were the original Successor Co-Trustees of Sam's
15 Family Trust. Each was responsible for the timing and content of the accountings.

16 When the Co-Trustees were required to be licensed in Colorado because of the Bronco
17 Billy's gaming enterprise, Mr. Riley resigned. Thereafter, until Mike Kimmel was appointed Co-
18 Trustee in approximately January of 2017, Stan and Todd were the Co-Trustees of Sam's Family
19 Trust. Both had nondelegable duties to account for the family trust activities. The accountings
20 provided by Stan as much as they were provided by Todd.

21 From approximately August of 2013 until approximately January of 2017, Todd and Stan
22 were equally accountable to honor their duties as Co-Trustees of Sam's Family Trust. Among
23 those duties was the duty to provide sufficient accountings. After January of 2017, Mr. Kimmel,
24 Todd and Stan were equally responsible for providing accountings. Even though each of the
25 Successor Co-Trustees had the duty to properly account, (*timing and content*) only one of those
26 Co-Trustees has been criticized by the Court concerning the "timing and content" of the
27 accountings.

28 The Court refused in its Order After Equitable Trial to provide equitable relief regarding

1 the accountings. The Court admits that the accountings were constructively approved and
2 confirmed by the jury's verdict. Court's Order, p. 14: 1-3. The Court further found that Todd
3 should not be removed as Trustee.

4 However, the Court looked, in part, to the jury's verdict finding that Todd breached his
5 fiduciary duties as Trustee in finding that Todd, individually, should disgorge or disclaim all
6 Trustees' fees. See Court's Order, p.17: 1-7. The Court also apparently "secondarily" found that
7 the inadequate "timing and content" of the accountings justify Todd having to disgorge his
8 Trustees' fees and pay 25% of the Trustees' attorneys' fees. Why the inadequate timing and
9 content of the accountings falls on Todd alone and not the other co-trustees is an inexplicable
10 mystery that defies the jury's verdict.

11 If only Todd is being punished for the timing and content of the accountings, something
12 went wrong. The Court found that the jury approved the accountings. When the accountings are
13 used to award fees, but were approved by the jury, the jury's findings are binding on this Court.
14 These are contradictory findings. Moreover, to the extent and during the time they were Co-
15 Trustees, Stan, Mr. Kimmel and Mr. Riley were also responsible for the timing and content of the
16 accountings.

17 The disgorgement order and assessment of fees against Todd is manifestly unjust, unfair
18 and inappropriate under the circumstances. If the Court's finding "and secondarily, this Court's
19 findings about the timing and content of the accountings" constitutes any reason (secondarily or
20 otherwise) to grant Wendy's request that Todd disgorge Trustees' fees and pay 25% of Trustees'
21 attorneys' fees, the doors are open for Todd to pursue indemnification claims against Co-Trustees
22 who were and are equally responsible for the timing and content of the accountings. To single out
23 Todd for punishment based on accountings that the jury approved offends fundamental notions of
24 fairness, justice and equity. The judgment should be amended to eliminate those inappropriate
25 financial assessments against Todd.

26 **C. NRS Chapters 153 and 165 Do Not Permit Punitive Damages.**

27 In its Order on the claims in equity, the Court cites to and apparently relies on various
28 statutory provisions found in Chapter 153 and Chapter 165 of the Nevada Revised Statutes.

1 Admittedly, the statutes provide the Court with substantial authority and discretion. But that
2 authority and discretion, regardless of statutory content, cannot violate Todd's right to jury trial.
3 Before the Court implemented its authority and discretion under the statutes cited in the Court's
4 Order, the jury had already rendered a verdict that had substantial preclusive effect on the Court's
5 discretion and authority as stated in those particular statutes. Indeed, the Court has acknowledged
6 that the jury approved the accountings. The Court is bound by that verdict and has so stated in its
7 Order on equitable claims.

8 The jury exonerated Todd as an individual on all of Wendy's legal claims. The Court's
9 Order, however, does not exonerate Todd on all claims, even though the claims were considered
10 by the jury. The jury assessed consequential damages. Todd has been ordered to disgorge his
11 Trustees' fees. He has been assessed damages that amount to 25% that the trusts paid to the
12 Trustees' lawyers. The conflict is that the jury did not want Todd to have to pay any sums of
13 money as an individual. The Court's Order does. In effect, Todd has received what amounts to a
14 punitive damage award against him by virtue of the Court's consideration of Wendy's claims in
15 equity. Apparently, the Court has considered Stan's testimony (deposition and otherwise) as did
16 the jury. Stan's testimony creates the identical factual scenario considered by the jury that was
17 used by the Court for dramatically and drastically different results.

18 Nothing in NRS Chapters 153 and 165 allow a court to award punitive damages against a
19 trustee on a claim arising from the trust instrument. NRS 42.005(1) limits punitive damages to
20 "breach of an obligation *not* arising from contract." (Emphasis added). Express trusts, like the
21 trusts at issue in this litigation and under Chapters 153 and 165, are contracts. *See Matter of*
22 *Chaney*, 596 B.R. 385, 403 (Bankr. N.D. Ala. 2018) ("Express trusts are voluntary trusts created
23 by contract."); *Hartford Fire Ins. Co. v. Columbia State Bank*, 334 P.3d 87, 91 (Wash. Ct. App.
24 2014) ("Express trusts are those trusts created by contract of the parties and intentionally."
25 (Internal quotations omitted)); *see also Matter of W.N. Connell & Marjorie T. Connell Living Tr.*,
26 393 P.3d 1090, 1092 (Nev. 2017) (explaining that trusts are analyzed under the same
27 considerations as contracts).
28

Because Wendy's and Todd's relationships as beneficiary and Trustee, respectively, arose

1 from a contract (the Family Trust), Wendy's claim for breach of fiduciary duty against Todd arose
2 from a breach of an obligation arising from contract. Under the plain language of NRS 42.005(1),
3 punitive damages are not available.

4 Not only would any finding to the contrary be barred under NRS 42.005(1), but it is also
5 barred under the clear evidence of Sam's testamentary intent. Assessing fees **against** Todd is the
6 last thing Sam intended. The trust documents and the indemnification agreement show that Sam
7 intended that the trusts pay Todd's fees, not that Todd pay the trusts' fees.

8 **D. Requiring Todd to Disgorge Trustees' Fees is Unduly Punitive, Manifestly Unfair and**
9 **Contrary to the Evidence.**

10 This Court's Order requiring Todd to disgorge his Trustees' fees is contrary to the jury
11 verdict and evidence before this Court. When a general verdict form is used, the court cannot
12 speculate as to what the jurors intended in their award of damages. *Porterfield v. Burlington N.*
13 *Inc.*, 534 F.2d 142, 147 (9th Cir. 1976); *see also Carr v. Nance*, 370 S.W.3d 826, 838 (Ark. 2010)
14 ("When a jury's verdict is rendered on a general verdict form, it is a finding upon the whole case;
15 this court will not speculate on what the jury found where a general jury verdict is used."); *Mouton*
16 *v. Dominique*, 476 So. 2d 1095, 1097 (La. Ct. App. 1985) ("Further, where a general verdict
17 awards a lump sum, any speculative itemization of the award is improper."); *Castanos v. Lansing*,
18 152 N.Y.S.2d 946, 954 (Sup. Ct. 1956) ("[I]t is not the function of the court by speculation to
19 divine the thinking of the jury.").

20 As this Court notes, the jury affirmed the accountings, the ACPAs and the indemnification
21 agreement, as well as the transactions which occurred in 2012. All of these formed the basis of
22 Wendy's claims for fraud against Todd **individually**, and the jury rejected every single one of
23 those claims. The only claim on which the jury awarded damages against Todd was on the claim
24 against Todd as trustee for breach of fiduciary duty. To rely upon that award to order Todd to
25 disgorge results in impermissible speculation in violation of the Seventh Amendment. The Court
26 has ordered disgorgement based on the same facts on which the jury exonerated Todd as an
27 individual.

28 ///

1 **E. The Court's Restriction of Todd's Rights Under Rule 68 are Improperly Restricted**
2 **by the Reference to "Spendthrift Provisions" Within the Trust Instruments.**

3 Although this Court awarded Todd fees under Rule 68, and not under the language of the
4 Trust, this Court then linked the award of fees to Todd to the Trust. This portion of the Court's
5 Order was in error because it improperly conflates the basis on which Todd was awarded his fees.
6 In Nevada, a party may only recover fees if authorized by rule, statute or contract. *Henry Prods.,*
7 *Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998).

8 This Court awarded Todd fees under Rule 68. Todd never filed a request with this Court
9 seeking to recover fees under the language of the Trusts. Rule 68 does not limit an award of fees
10 to a trust instrument. *See* NRCP 68. Instead, it authorizes an award of fees against the person
11 who rejected the offer of judgment. NRCP 68(f).

12 Todd's request for fees against Wendy cannot and should not be improperly restricted by
13 reference to the "spendthrift provisions" contained within the Trusts. By doing so, this Court
14 implicitly limits Todd's ability to recover against Wendy to only those distributions she receives
15 from the Trusts. But, under Rule 68, Todd is entitled to recover against any assets Wendy may
16 receive or own, irrespective of whether those assets constitute distributions or property from the
17 Trusts or come from some other third-party source. As the trial testimony demonstrated, Stan has
18 been funneling Wendy funds through various entities or loans for years. Todd is allowed to
19 collect upon these monies as well as upon any other distributions she may receive from the Trust.

20 **F. Wendy's Claims Against Todd as an Individual Were Brought Without Reasonable**
21 **Ground or to Harass Todd Individually and Todd Should be Awarded All of His**
22 **Attorneys' Fees Incurred.**

23 The Court correctly describes Wendy's litigation tactics as "harassing, vexatious and
24 without factual basis." Court's Order, p. 8: 11. The Court is also correct in characterizing
25 Wendy's litigation position and trial demand as driven by "animus and avarice." *Id.* at p.8: 1-2.

26 These are the kind of findings and egregious behavior for which NRS 18.010(2)(b) is
27 intended to address when it authorizes an award for claims "maintained without reasonable ground
28 or to harass the prevailing party." This Court "shall liberally construe" NRS 18.010(2)(b) "in
favor of awarding attorney's fees in all appropriate situations." *Id.* "A claim is groundless if the

1 allegations in the complaint are not supported by any credible evidence at trial.” *Allianz Ins. Co. v.*
2 *Gagnon*, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993). And, the Nevada Supreme Court has
3 made it clear that “[t]he prosecution of one colorable claim does not excuse the prosecution of five
4 groundless claims.” *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993).

5 This Court found that:

- 6 1. Wendy’s claims were harassing;
- 7 2. Wendy’s claims were vexatious;
- 8 3. Wendy’s claims were made without basis;
- 9 4. Wendy’s claims were influenced by animus; and
- 10 5. Wendy’s claims were influenced by avarice.

11 See Court’s Order.

12 Todd, in his individual capacity, is the victim. That Wendy’s claims against Todd as an
13 individual were vexatious cannot be denied. An \$80,000,000 demand from the jury exacerbates
14 the egregiously inappropriate tactics employed by Wendy. Deterrence is more than warranted.
15 Not once in the jury trial did Wendy even try to differentiate her claims against Todd from those
16 filed against him as Trustee. The fishing net tactic to blur the lines warrants an award in favor of
17 Todd against Wendy for ALL fees and costs Todd incurred for having to defend himself
18 individually against what the Court has described as harassing, vexatious, bad faith, greedy and
19 acrimonious claims. The total fees incurred amount to \$539,706 and total costs amount to
20 \$73,683.74. The judgment should be amended to include an award in favor of Todd, individually,
21 against Wendy for the total amount of \$613,389.74.²

22 IV.

23 CONCLUSION

24 Based upon the evidence presented to the jury and to the Court concerning Wendy’s
25 equitable claims and the applicable law that pertains thereto, the judgment entered in this action
26 should be amended to correct and resolve the manifest injustice that has been imposed against
27

28

² See Todd’s Motion for Order Awarding Costs and Attorneys’ Fees for Todd Jaksick, Individually, for Trial on
Equitable Claims for detail and backup.

1 Todd Jaksick individually. The jury found in favor of Todd individually. The Court did not. The
2 contradictory results violate the United States Constitution.

3 While it is true that the jury found that Todd breached fiduciary duties owed to Wendy, the
4 verdict form prepared by the Court and given to the jury fails to give any indication or explanation
5 of the nature of the breach. Clearly, it was not a serious breach. A damage award of \$15,000 is
6 less than nominal. The jury knew that \$15,000 would not compensate Wendy for any of her
7 claimed damages. In essence, the jury's award of \$15,000 is a defense verdict.

8 The judgment recognizes that the jury's consideration of the indemnification agreement,
9 the ACPAs and all documents prepared and executed during the month of December 2012 were
10 not fraudulent, not based on a conspiracy, nor in any way probative of Todd aiding and abetting a
11 fraud, conspiracy or breach of another's fiduciary duty. The jury exonerated Todd from
12 wrongdoing, while the Court did the opposite in its Order After Equitable Trial. A manifest
13 injustice has occurred. The Court has recognized that the jury found no liability against Todd
14 based upon the December 12, 2012 documents, the activities of the notaries, the timing and
15 content of the accountings, the ACPAs or the indemnification agreement. The Court's Order After
16 Equitable Trial impeaches the jury's verdict in what amounts to an unconstitutional disregard for
17 Todd's constitutional rights to a jury trial.

18 Respectfully, Todd, as an individual, asks this Honorable Court to amend its April 1, 2020
19 judgment so as to delete any requirement that Todd be required to disgorge his Trustees' fees and
20 be required to pay any attorneys' fees whatsoever to the trusts or any other party.

21 **AFFIRMATION**
22 **Pursuant to NRS 239B.030**

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

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DATED this 29th day of April, 2020.

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



KENT R. ROBISON
THERESE M. SHANKS

*Attorneys for Todd B. Jaksick, Individually,
Incline TSS, Ltd., and Duck Lake Ranch, LLC*

AFFIDAVIT OF KENT R. ROBISON
IN SUPPORT OF TODD B. JAKSICK'S MOTION TO AMEND JUDGMENT

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

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

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

2. Attached as **Exhibit 1** is a true and accurate file-stamped copy of Trial Exhibit 23.41.

3. Attached hereto as **Exhibit 2** is a true and accurate copy of Trial Exhibit 13-g.

4. Attached hereto as **Exhibit 3** is a true and accurate copy of Trial Exhibit 30.

5. Attached hereto as **Exhibit 4** is a true and accurate copy of Trial Exhibit 23.46.

6. Attached hereto as **Exhibit 5** is a true and accurate copy of the December 11, 2017 written contract between Stanley Jaksick and Wendy Jaksick.

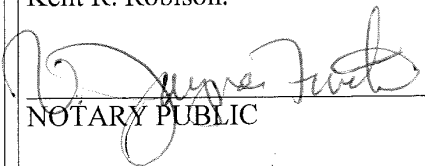
DATED this 2nd day of April, 2020.



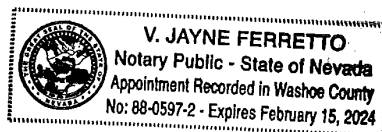
KENT R. ROBISON

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

Subscribed and Sworn to Before me this
2nd day of April, 2020, by
Kent R. Robison.



NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **TODD B. JAKSICK'S MOTION TO AMEND JUDGMENT** 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:

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.

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

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

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Dallas, Texas 75201

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

Attorneys for Respondent Wendy A. Jaksick

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

5 DATED: This 29th day of April, 2020.

6 
7 _____
8 V. Jayne Ferretto
9 Employee of Robison, Sharp, Sullivan & Brust
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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Trial Exhibit 23.41	1
2	Trial Exhibit 13-g	1
3	Trial Exhibit 30	5
4	Trial Exhibit 23.46	1
5	December 11, 2017 Contract	1

FILED
Electronically
PR17-00445
2020-04-29 02:50:32 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7855269 : yvilorla

EXHIBIT 1

EXHIBIT 1

Stan & Wendy

May 31, 2014, 10:37 AM

Wendy

Stan wtf really? U r ok w sawyer saying this 1 st grade drama. Wow dad wpuld be so burhmed to see this family broke up cuz sawyer was upset his X girlfriend who he went out a week , tototal liked Luke . U guys look ridiculous

10:37 AM

Wendy

Now sawyer is saying that I am a bad person and ruined the familles finances.. To kids at school So he's Lisa now Like I give a shit what sawyer says . Everyone thinks are familly is hurting w finances now.. I guess we are so I just agreed! U spend one more dmd at montreux and I will bring your ass down. U r not going to spend money like a king for absolutely no reason U better not be getting executor fee for all this. Todd yes I agree gets one but u only work for your benefit and spend and tell people Luke smoked pot! Now what ? We tested him. I am warning u ... stay the fuck off my 13 yr old boy. If I hear 1 more word it's fair game. Molestation accusations and shit will b heading your way., I have never said a bad word about sawyer That is embarrassing . He's a kid But I suggest u stop trying to Hurt Luke., I have all the coaches in my back pocket too. And we just might go to reno high for football Then u can really hate Luke

10:41 AM

Stan Jkjkjk

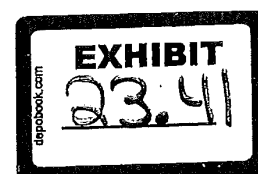
You really are a sociopath

2:22 PM

Wendy

Yea I am the the soclopath I am

2:26 PM



TJ 2295

TJA 003029

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2020-04-29 02:50:32 PM
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Transaction # 7855269 : yviloria

EXHIBIT 2

EXHIBIT 2

M Gmail

Jessica Clayton <jtclaytone@gmail.com>

Fwd:

1 message

Jessica Clayton <jtclaytone@gmail.com>
To: Jessica Clayton <jtclaytone@gmail.com>

Mon, May 7, 2018 at 11:11 AM

From: wendy jaksick <wendyjaksick@me.com>
Date: Thu, Jun 5, 2014 at 9:32 AM
Subject:
To: Todd Jaksick <tjaksick@gmail.com>

Yes, Luke and I are moving. I have talked to restore in the 2 areas w the best schools in Dallas and they are finding me a lease to own home. If we can't find one that we like then I will rent for 1 year.
We looked into bishop Gorman in Vegas too which is a great school, but these Texas school are way better than Gorman and Lexi n Brandon and Dina and my nfl friend mike Sinclair live there. I want to teach kids to ride.

Luke has football here starting Sunday. It doesn't get done til December 10/9 we will be leaving over Xmas break.

There is nothing for us here anymore. Dad was all we cared about and the boys going to high school together. Well that sure wont happen since Stan Hates Luke so much as u cab see through all stans threatening texts and how Luke will be in jail soon. Accusing him of doing drugs which we had to prove. Just because some popular 8 th grader is in love w Luke, Stan hates Luke and is jealous w footbAll. Luke is in shock and very hurt abt the dad comments and drug accusations from the person our dad Asked Stan to care for. Just because of jealousy. No one deserves that at 13. We are planning on coming back here 2-3 times a yearbook tahoe and ranch. Every June /July and January ish for as long as we can. So I would like to work buyouts in trust companies except for casino over the next 10 yrs. U guys will be getting rid of us for good and that shpkd be worth something. Then any money I get in for certain things I want to buy into tahoe. Then casino I want my 1/3 in cash to live. Yearly and put money down on a house there. My attorney is fixing my credit score before so I can start over.

I am in hell here. I got disability like I was suppose to and that barely helped it now I can't work and I can't work for any of our companies and I can't have my own cattle and I can't work at montreux as one of the way over paid employees, so it's fair to buy me out. Except the ones that will give me money.

That way we never have to meet I will keep acct's and attorneys to talk to me weekly down there.

As for the office.. Please! I have moved 3 times in a year. U wouldn't let another human live here until it was redone, so don't start showing it til November.

I need a whole new file of trust and new docs u were going to fill me in with after dad's death. Can u please get me that by tomorrow?

We can do all this as friends and owe me what is fairly mine or we can do it by paying attorneys and trying to save an extra 50k just to screw me.

Also, I will NOT be treated like a murderer at montreux this summer. I have asked for a sticker, Stan never does... I want it by tomorrow and I will not be treated any different than u are out there.

I want passes to the tournament yearly.

Last year u were going to get me several burning man tickets so I could sell. Did that change? I can start selling them soon. Let me know how many u are going to have.

Luke said he wants to put in for lags still in Nevada and could fly back alone to meet Todd over the years to hunt with you and Benny.

There are other things I have a list of but will go over whenever we meet again.

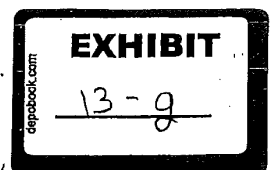
As for vacation Luke and I and Lexi back n forth will go to lake the 16- 21 like u said then go to ranch the 23 rd -1st. I want to do calendar for next 3 years.

Can u get me a copy of the binder. ? I think Janene took mine from the garage.

I will need someone to basically stay at the office while on vacation. Doc isn't going to make it much longer..

Also Luke and I need round trip tickets to Columbus Ohio in July. Leaving th 21-25.

The other expense I have is my eye surgery. It's going to be 6-7k n insurance only pays preventative but my



TJ 1901

TJA 003031

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EXHIBIT 3

EXHIBIT 3



Jessica Clayton <jtclaytone@gmail.com>

Fwd: Wendy's original text.

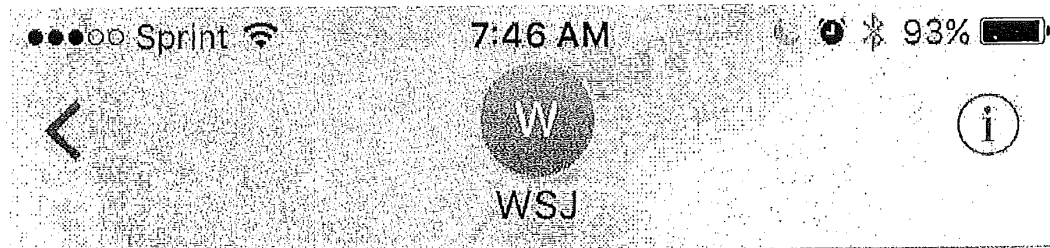
1 message

Jessica Clayton <jtclaytone@gmail.com>
To: Jessica Clayton <jtclaytone@gmail.com>

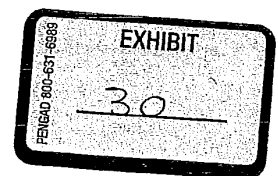
Wed, May 23, 2018 at 9:00 PM

From: Stan Jaksick <esj3232@aol.com>
Date: June 20, 2017 at 8:08:34 AM PDT
To: blegoy@mcllawfirm.com, bmcquaid@mcllawfirm.com, dlattin@mcllawfirm.com, tjaksick@gmail.com, mkimmel@nevadalaw.com
Subject: Wendy's original text

Hey Guys
Here is her original text, for some reason my phone camera wouldn't work yesterday so I just copied her entire text and sent it to you
Thanks



Stan are you fucking kidding me? You Mother Fuckers are going down!! Lmao. Who the fuck is this idiot Lattin? Obviously someone who doesn't have your best interest at hand. He must want a paycheck. Legoy seems reasonable and respected dad. Why the hell would he let this happen. How could you do this to me and Especially Luke! I



TJ 2237

TJA 003033

me and especially Luke: I know as well as I do that all of his Luke's schooling and football is to be paid as his maintenance by the trust.. read it!

I agreed to 1. Pay the monthly out of there since Nov. 1 2016. 2. Pay the only 1 note todd made me sign-in order to get my paycheck which was for 58k. And yes



iMessage



Sprint

7:47 AM

92%



WSJ



which was for 58k. And yes I can reimburse you for the the small amounts you gave me for Luke .. therefore the total being under 150k to go against the TAX FREE insurance trust

TJ 2238

TJA 003034

insurance trust.

I am so fucking tired of being treated like this..I got the landlord to agree to 3k a month just like Vegas , and he still hasn't been paid.

U guys are idiots!! They are filing suit against every company and every one .

They are litigators and will be more productive in the courtroom.

This is not what dad would have wanted.. but this is it!

If I have to hire 6 more attorneys to prove all the breach and the forgery that has gone on I will.



iMessage



●●●● Sprint

7:49 AM

92%



WSJ



TJ 2239

TJA 003035

be more productive in the courtroom.

This is not what dad would have wanted.. but this is it!

If I have to hire 6 more attorneys to prove all the breach and the forgery that has gone on I will.

Karma's a bitch and Todd going to get what's coming to him!!

I am so shocked that you people think I don't matter and did not send me any of my money and waited til the last day to do it.

Luke doesn't deserve this!!!

I am telling you.. u guys fucked up!! I am going rip apart every fucking company and Todd's ass until I am equalized. You will all be removed as Trustee!!! I hope your happy



iMessage



Sent from my iPhone

TJ 2241

TJA 003037

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2020-04-29 02:50:32 PM
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EXHIBIT 4

EXHIBIT 4

Stan, Wendy & Lexi

Jan 6, 2010, 8:38 AM

Stan Jaksick

Hey Wendy and Lexi

Just wanted to remind you that we had sent out documents and info regarding me buying into the Tahoe house back in November for you guys to review and sign

8:38 AM

Can you please let me know the status on that so we can finalize that situation
Thanks

Wendy Jaksick

We have the documents. We need several things answered on that issue and others in order to sign.

I will get an email out so we can answer everything tomorrow.

10:18 AM

I don't mind being in the phone with Lexi and you guys tomorrow but we need answers to questions that were suppose to be answered in October

Wendy Jaksick

I need to look into some things. I am requesting 100k distribution now to me and Lexi's loan against the unsold lot for 1600 a month. Big deal.. If those things were done to help us then no one would argue but it's not right to not pay when u say over and over again you are going to. So we can't do anything until those things are completed.

Stan u said I should have received a distribution before I left for Vegas.. Still none. We know my portion of Broncos is worth 1mill. Still zero money for that. It's not my problem regarding your and stand taxes to hold my money before u pay me. Bruno's isn't in dad's trust. It is outside of it! Have I seen a accounting.? No?

10:38 AM

I want 100k of the money brought in by Broncos now. No exceptions. Then everyone can get signatures etc..

When can I get that check along with 3000.00 reimbursed for paying Lexi November and December?? Please respond so I know if I need u to get me a ticket to Reno today

Wendy Jaksick

????

10:59 AM

Wendy Jaksick

The 4:15 meeting via phone is ok for Lexi but Todd when can u meet this week. I can come to your house if that's best

12:34 PM

Wendy Jaksick

Today is imperative for Lexi so have a way to give her what u said in October and reimburse me the \$k I gave out of my money that I don't have.

12:37 PM

Then what time Friday can u both meet me?

Wendy Jaksick

I want to be in on this call at 4:15. Tell me how to do that and. Can Jessica forward me the al means accounting so we can see what I paid for regarding this lot.. You guys withheld monies of mine to pay for servicing the lit. I would like a copy of that today before meeting to see what those expenses were. Thank u

2:05 PM

Lead Smart (new)

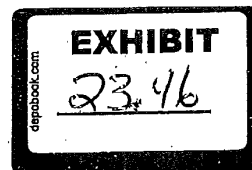
I'll call you at 415 to add u to the convo so just have your phone by you

3:21 PM

Wendy Jaksick

Ok. Thanks sissy

3:29 PM



TJ 1436

TJA 003039

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2020-04-29 02:50:32 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7855269 : yvilorla

EXHIBIT 5

EXHIBIT 5

December 11, 2017

Stan Jakacki
Wendy Jakacki

This document confirms the agreement between Stan S. Jakacki and Wendy A. Jakacki that has been having Wendy receive money since December 2016 that has not been accounted for in the previous distribution of her 1997 Inheritance. These funds, Stan can no longer continue to have Wendy receive personal funds.

Stan currently has funds held in trust in the sum of \$488,000. Due to the current pending estate (the money) has not been distributed and the exact dollar amount of funds that Stan Wendy has not been determined. However, Stan has agreed to pay Wendy \$2,500.00 starting on December 11, 2017 and every month thereafter until such funds have been determined to be distributable to the estate. At such time, Wendy and Stan will deliver the money. Stan has paid Wendy and pay her the remainder as agreed by the court.

Wendy, because Stan has always been honest in his business dealings and Wendy will not sue Stan personally for his will in the future. They both agree that Wendy is responsible for all the architectural, financial, legal, design and legal matters concerning Stan. Stan has since referred to Wendy's independent agreement regarding legal and financial matters and the same is bound in court.

Stan understands and agrees that any monies including Stan's will to be accounted as well as possible for both the best interest.

Wendy also agrees to not necessary to the recovery of Stan's business interest (Monetary or 1/3 share in any court proceedings and Wendy will keep her interest in Jakacki Family and Property Investments, LLC. Wendy also will not sue Stan regarding the other half of the Jakacki Family Estate for assets.

Stan agrees to include Wendy in any future Stan Jakacki Trust acts that Stan has decided to make his her first receiving.

This agreement is legal and binding and is subject to the provisions above. Any provisions not mentioned.

State of Florida
County of Dade

This document was signed and acknowledged before me this 11th day of December, 2017, by Stan S. Jakacki, a



Wendy A. Jakacki 12/11/17
Wendy A. Jakacki
Notary Public
State of FL
County of Dade

This document was signed and acknowledged before me this 11th day of December, 2017, by Stan S. Jakacki, a



Jayne Ferretto

From: eflex@washoecourts.us
Sent: Wednesday, April 29, 2020 2:58 PM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: CONS: TRUST: SSJ'S ISSUE TRUST: Mtn Alter or Amend Judgment: PR17-00445

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

PROOF OF SERVICE OF ELECTRONIC FILING

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

Judge: HONORABLE DAVID A. HARDY

Official File Stamp: 04-29-2020:14:50:32
Clerk Accepted: 04-29-2020:14:54:26
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: CONS: TRUST: SSJ'S ISSUE TRUST
Document(s) Submitted: Mtn Alter or Amend Judgment
- **Continuation
- **Continuation
- **Continuation
- **Continuation
- **Continuation
Filed By: Kent R Robison

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

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

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

The following people were served electronically:

ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
CAROLYN K. RENNER, ESQ. for KEVIN RILEY, MICHAEL S. KIMMEL, TODD B. JAKSICK
THERESE M. SHANKS, ESQ. for DUCK LAKE RANCH LLC, SAMMY SUPERCUB, LLC,
SERIES A, TODD B. JAKSICK, INCLINE TSS, LTD.
PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY
TRUST
DONALD ALBERT LATTIN, ESQ. for KEVIN RILEY, MICHAEL S. KIMMEL, TODD B.
JAKSICK
KENT RICHARD ROBISON, ESQ. for DUCK LAKE RANCH LLC, SAMMY SUPERCUB, LLC,
SERIES A, TODD B. JAKSICK, INCLINE TSS, LTD.

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

MARK J. CONNOT, ESQ, for WENDY A. JAKSICK

SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST, SSJ'S ISSUE TRUST

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

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 REGARDING COSTS

Stan Jaksick filed a verified memorandum of costs, to which there has been no motion to re-tax. Stan shall submit a proposed order granting his memorandum and awarding costs.

Todd Jaksick individually, Incline TSS, and Duck Lake Ranch filed a verified memorandum of costs, to which Wendy Jaksick filed a motion to re-tax. Wendy acknowledges Todd (individually), Incline TSS and Duck Lake Ranch are prevailing parties but argues they seek costs that should be borne by Todd as trustee of the SSJ Issue Trust and co-trustee of the family Trust. This Court denies Wendy's motion to re-tax costs. Todd, Incline TSS, and Duck Lake Ranch shall submit a proposed order granting their memorandum and awarding costs.

///

///

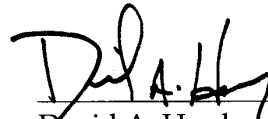
1
2 Provided, however, any proposed order shall include language consistent with this
3 Court's Order After Equitable Trial and Judgment.

4 **Order After Equitable Trial:** "Todd shall be Wendy's
5 judgment creditor and have no greater access to payment than
6 any other judgment creditor. Todd may attach or anticipate
7 Wendy's distributive share only if there are no spendthrift
8 provisions within the trust instruments that prohibit such
9 creditor collection efforts. If such spendthrift provisions exist,
10 distributions shall be made to Wendy and Todd may seek
11 collection efforts against Wendy personally, subsequent to the
12 distribution. The trustees (including Todd) shall carefully
13 measure Todd's rights as an individual judgment creditor with
14 their fiduciary duties owed to Wendy as a beneficiary."

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

25 **IT IS SO ORDERED.**

26 Dated: April 30, 2020.

27 
28 _____
David A. Hardy
District Court Judge

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/Counter-Petitioner
Wendy A. Jaksick

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

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

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

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

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

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

Petitioners and Counter-Respondents.

**MOTION TO ALTER OR AMEND
JUDGMENT OR, ALTERNATIVELY,
MOTION FOR NEW TRIAL**

1 Wendy A. Jaksick ("Wendy") files this *Motion to Alter or Amend Judgment or*
2 *Alternatively, Motion for New Trial* (the "Motion") and respectfully urges the Court to alter or
3 amend its *Judgment*, entered on April 1, 2020, pursuant to NRCp 59(e). In the alternative,
4 Wendy moves for a new trial on those issues. NRCp 59(a). The grounds of the motion, which
5 will be fully described in this *Motion*, are as follows:
6

- 7 1) Wendy asks the Court to amend its *Judgment* to declare Todd Jaksick's and
8 Stanley Jaksick's Indemnification Agreements invalid and rescind all
9 transactions or payments made based upon the Indemnification Agreements.
- 10 2) Wendy asks the Court to amend its *Judgment* to declare the Agreements and
11 Consents to Proposed Actions ("ACPAs") invalid.
- 12 3) Wendy asks the Court to amend its *Judgment* to declare that, due to the invalidity
13 of the Indemnification Agreements and the ACPAs and the fact that the
14 Accountings still include debt to be forgiven by the Trustees based upon these
15 documents, the SSJ's Issue Trust and Family Trust Accountings for 2014, 2015,
16 2016 and 2017 are insufficient on their face, cannot be approved because they do
17 not provide sufficient information for the Court or the beneficiaries to approve
18 them and do not exonerate anything in relation to all that is reported therein.
- 19 4) Wendy asks the Court to disapprove and disallow all transactions that Todd
20 claims fall under the Indemnification Agreement because no one, not a single
21 witness, could testify to how it was to be applied. The only witness anyone
22 deferred to about its application and the effect of it on the Trust administration
23 was Kevin Riley, and Todd never called him as a witness, which means it was
24 and is impossible for Todd to meet his burden of proof that his, apparent,
25 interpretation of its application is correct (Todd could not even support his
26 application as reported in the Accountings for the Trusts).
- 27
28

- 1 5) Wendy asks the Court to amend its *Judgment* to eliminate the attorney's fees and
2 costs award in favor of Todd, in his Individual capacity, in the amount of
3 \$505,165.07 against Wendy.
4
5 6) In the alternative, Wendy asks the Court to grant her a new trial on these issues.

6 **I. STATEMENT OF RELEVANT FACTS**

7 On August 2, 2017, Todd Jaksick ("Todd") and Michael Kimmel ("Kimmel"), in their
8 capacities as Co-Trustees of the Family Trust, (collectively, "Petitioners") filed *Petitions for*
9 *Confirmation of Trustees and Admission of Trust to the Jurisdiction of the Court, and for Approval*
10 *of Accountings and Other Trust Administration Matters* (the "Petition") instituting the current
11 litigation involving the Family Trust and Wendy.

12 The *Petition* sought Court approval of purported trust accountings for the period April
13 2013 through December 31, 2016 (the "Purported Trust Accounting"), as well as ratification and
14 Court approval of numerous actions taken by Co-Trustees relieving Trustees from liability from
15 such actions. *Petition* page 6. The *Petition* also sought approval of numerous agreements
16 intended to modify the Family Trust and a release of all liability for actions taken pursuant to
17 such agreements otherwise known as the Agreements and Consents for Proposed Actions
18 ("ACPAs"). *See Petition* page 12. Certain of the ACPAs sought confirmation of payments
19 made on behalf of Co-Trustees based upon purported Indemnification Agreements in favor of
20 Todd and Stan. *See Trial Ex. 16, pp.1-2, ¶ 2.*

21 Stanley Jaksick ("Stanley"), in his capacity as Co-Trustee of the Family Trust, refused to
22 join the Purported Trust Accountings and refused to join and pursue the *Petition*. Instead, on
23 October 10, 2017, Stanley filed an opposition to the *Petition* including objections to the approval
24 of the Purported Trust Accountings and other claims concerning the administration of the Family
25 Trust. *See Objection to Approval of Accountings and Other Trust Administration Matters*. Stan,
26 the third and only remaining Co-Trustee, did not just refuse to endorse the defective accountings
27 the third and only remaining Co-Trustee, did not just refuse to endorse the defective accountings
28 the third and only remaining Co-Trustee, did not just refuse to endorse the defective accountings

1 by remaining silent, but affirmatively contested the very accountings filed by his Co-Trustees for
2 Court approval; he knew they were insufficient. Stan's *Objection* specifically included Todd's
3 purported Indemnification Agreement. *See Id.*, page 2, lines 9-11.

4 As a result of the lawsuit, Wendy filed a Counter-Petition objecting to the efforts to
5 obtain confirmation of the Purported Accountings and other actions of the Co-Trustee and
6 included claims for breach of fiduciary duty and other actions of all of the Co-Trustees
7 administering the Family Trust during the time period covered the claims in the *Petition*.
8 Wendy also challenged and sought to invalidate the purported Indemnification Agreements
9 and ACPAs. Wendy also sued all the Co-Trustees in their individual capacities to ensure any
10 judgment payable or enforceable against the Co-Trustees in their Individual capacities would
11 be valid and enforceable.
12

13 Prior to jury and equitable trials, the Court entered the *Pre-Trial Order Regarding Trial*
14 *Schedule* ("Pre-Trial Order"), which established the procedure for the bifurcated trial of the
15 legal and equitable claims. *See Pre-Trial Order*. The *Pre-Trial Order* confirmed that the
16 "equitable issues" including the validity of the purported Indemnification Agreements and
17 ACPAs would be tried in a sperate trial to the bench. *Pre-Trial Order*, page 4, line 18 – page
18 5, line 16. During the jury trial evidence was presented concerning the purported
19 Indemnification Agreement and ACPAs,¹ but the jury was repeatedly told that the Court would
20 decide the validity of the purported Indemnification Agreement and ACPAs and that was not
21 for them to consider or decide. *See Order After Equitable Trial*, page 14, lines 20-21.
22 Consistent with this, the jury was not presented with a jury question concerning the validity of
23 these documents. *See Verdict; Pre-Trial Order*.
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28 ¹ The *Pre-Trial Order* directed the Parties "present evidence relevant to all legal issues. To the extent this
evidence is relevant to equitable issues, this Court shall simultaneously consider it for this purpose." *Pre-Trial*
Order, page 4, lines 13-15.

1 On March 4, 2019, the Jury returned a verdict after trial that included a finding for
2 Wendy against Todd Jaksick for breach of fiduciary duty as Trustee of the SSJ's Issue Trust
3 and as Co-Trustee of the Family Trust and awarded Wendy \$15,000.00 in damages from Todd.
4 *See Jury Verdict.*

5 On March 11, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
6 filed the *Memorandum of Costs and Disbursements Incurred in case No. PR17-00446* ("Memo
7 of Costs").

8 On March 13, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
9 filed the *Motion for Order Awarding Costs and Attorney's Fees for Todd Jaksick, Individually,*
10 *Duck Lake Ranch, LLC, and Incline TSS, Ltd.* ("Motion for Fees and Costs").

11 On March 21, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
12 filed the *Todd Jaksick, Individually, Incline TSS, Ltd., and Duck Lake Ranch, LLC's*
13 *Supplement o Memorandum of Costs and Disbursements Incurred in Case No. PR17-00445*
14 ("Supplement to Memo of Costs").

15 On March 25, 2019, Wendy filed Petitioner *Wendy A. Jaksick's Opposition to Motion*
16 *for Attorney's Fees* ("Opposition to Attorney's Fees and Costs").

17 On March 25, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
18 filed the *Notice of Withdrawal of Memorandums of Costs and Disbursement and Supplement*
19 ("Notice of Withdrawal"), withdrawing the *Memorandum of Costs* filed on March 11, 2019
20 and the *Supplement to Memorandum of Costs* filed on March 21, 2019.

21 On March 12, 2020, the Court entered the *Order After Equitable Trial*, which included
22 it finding and orders concerning the claims in the Equitable Trial.
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1 On April 1, 2020, the Court entered the *Judgment*² after the conclusion of the equitable
2 trial awarding Wendy equitable relief including the disgorgement of Todd Jaksick's fees as
3 Trustee of the SSJ's Issue Trust and as Co-Trustee of the Family Trust, requiring Todd Jaksick,
4 as Trustee of the SSJ's Issue Trust and as Co-Trustee of the Family Trust, to pay/reimburse
5 twenty-five (25%) of the attorney's fees paid by the SSJ's Issue Trust and Family Trust
6 associated with this litigation, and ordering the SSJ's Issue Trust and Family Trust to pay
7 Wendy's attorney's \$300,000 in attorney's fees. *See Judgment*.

9 As a part of the *Judgment*, the Court entered an award of attorney's fees and costs to
10 Todd, in his Individual capacity, against Wendy in the total amount of \$505,165.07 as follows:

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

20 *Judgment*, page 4, lines 11-19.

21 II. LAW AND ARGUMENT

22 A. This Motion is Timely.

23 NRCP 59(b) and 59(e) provide that motions for new trial and the amend or alter a
24 judgment must be filed "no later than twenty-eight (28) days after service of written notice of
25 entry of judgment." NRCP 59(b) and 59(e). The *Judgment* was entered on April 1, 2020.
26 Therefore, this *Motion* is timely.
27

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² The *Judgment* attached and incorporated the *Order After Equitable Trial*. *Judgment*, page 3, line 16.

1 **B. Error Point 1 - Wendy Prejudiced by Proceeding Concerning Purported**
2 **Indemnification Agreement and ACPAs.**

3 Prior to jury and equitable trials, the Court entered the *Pre-Trial Order Regarding Trial*
4 *Schedule* (“Pre-Trial Order”), which established the procedure for the trial of the legal and
5 equitable claims. *See Pre-Trial Order*. The *Pre-Trial Order* provided for a trial to the jury on
6 the Legal Claims and a trial to the bench on the Equitable Claims. *See Id.* The Court based
7 this procedure on authority confirming in Nevada, the constitutional right to a jury trial does
8 not extend to equitable matters. *See Id.*, page 3, lines 3-7 (citing *Harom v. Tanner Motor Tours*,
9 79 Nev. 4, 20, 377 P.2d 622, 630 (1963); *Musgrave v. Casey*, 68 Nev. 471, 474, 235 P.2d 729,
10 731 (1951) (“It is elemental that in a suit in equity the judgment or decree must be based upon
11 finding of the court rather than a jury verdict.”) (emphasis added).

12 The *Pre-Trial Order* specifically confirmed that the “equitable issues,” including the
13 validity of the purported Indemnification Agreements and ACPAs, would be tried to the bench
14 during the trial of the Equitable Claims. *Pre-Trial Order*, page 4, line 18 – page 5, line 16.
15 The *Pre-Trial Order* further required the Parties to “present evidence relevant to all legal
16 issues. To the extent this evidence is relevant to equitable issues, this Court shall
17 simultaneously consider it for this purpose.” *Pre-Trial Order*, page 4, lines 13-15.

18 During the Jury Trial, evidence was presented concerning the purported
19 Indemnification Agreements and ACPAs, but throughout the trial the jury was repeatedly told
20 that the Court would decide the validity of the purported Indemnification Agreement and
21 ACPs because these issues were not for the jury to consider and decide. For example, Todd’s
22 counsel Kent Robison specifically told the jurors they had nothing to do with the purported
23 Indemnification Agreements as following in his closing argument:

24 **But, ladies and gentlemen, the scope, bindingness [sic],**
25 **validity and effectiveness of that document is before Judge**
26 **Hardy to be determined, yet they want to keep coming back to**

1 **the Indemnification Agreement like the jury has something to**
2 **do with it. I'm sorry, but you don't.**

3 Trial Transcript – 03/04/2019 – Page 66, Line 1-6. The Court specifically confirmed and
4 acknowledge these representations made to the jury in its *Order After Equitable Trial* stating,
5 “the attorney’s argued to the jury that this Court would decide the validity of the ACPAs and
6 indemnification agreements...” *Order After Equitable Trial*, page 14, lines 20-21.

7 Consistent with the authority concerning the trial of equitable claims cited by this
8 Court, the *Pre-Trial Order* that was the “playbook” for the trial of the Parties’ claims and the
9 representations made during the Jury Trial, the jury was not presented with a jury question
10 concerning the validity of these documents. *See Verdict; Pre-Trial Order*. The determination
11 concerning the validity of these documents was to be made by the Court during the bench trial
12 on equitable claims.
13

14 Despite all of the above, the Court decided to neither confirm nor deny the ACPAs and
15 purported Indemnification Agreements on the basis that the “jury verdict is an implicit
16 rejection of Wendy’s arguments” and “[t]he jury constructively approved and affirmed the
17 ACPAs and indemnification agreements when it reached its verdict.” *Order After Equitable*
18 *Trial*, page 14, lines 24-25, & page 15, lines 3-4. This is directly contrary to the role required
19 of the Court in relation to the trial of equitable claims as confirmed in the authority cited in the
20 *Pre-Trial Order*.³ If the Court rules it cannot make any decision about a fact issue that would
21 fall within the jury verdict, then the Court has completely eliminated the equitable trial
22 responsibility and the Court's equitable jurisdiction; there is no precedent for a jury award to
23 eviscerate the Court's jurisdiction to make equitable rulings. Particularly, when the jury did
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28 ³ See *Pre-Trial Order*, page 3, lines 3-7. (“In Nevada, the constitutional right to a jury trial does not extend
to equitable matters. *Harom v. Tanner Motor Tours*, 79 Nev. 4, 20, 377 P.2d 622, 630 (1963); *Musgrave*
v. Casey, 68 Nev. 471, 474, 235 P.2d 729, 731 (1951) (“It is elemental that in a suit in equity the judgment
or decree must be based upon finding of the court rather than a jury verdict.”)” (emphasis added).

1 not even specifically consider and rule upon the equitable issues. Therefore, it was error for
2 the Court to defer its findings and rulings concerning the validity of the ACPAs and the
3 purported Indemnification Agreements to the jury.

4 This is especially the case considering the jury was repeatedly told that it was the
5 Court's role to decide the validity of the ACPAs and purported Indemnification Agreements,
6 not the jury's role.

7
8 **But, ladies and gentlemen, the scope, bindingness [sic],**
9 **validity and effectiveness of that document is before Judge**
10 **Hardy to be determined, yet they want to keep coming back to**
11 **the Indemnification Agreement like the jury has something to**
12 **do with it. I'm sorry, but you don't.**

13 Trial Transcript – 03/04/2019 – Page 66, Line 1-6. (Closing Argument by Mr. Kent Robison).

14 If the jury properly performed its role, which must be presumed, the jury verdict does
15 not contemplate or reflect the jury's findings or conclusions concerning the validity of the
16 ACPAs and purported Indemnification Agreements. It is entirely possible the jury heard the
17 evidence and concluded some or all these documents were not valid. Because of the instructions
18 of counsel throughout trial and the lack of jury questions concerning same, the *Verdict* could
19 not and would not reflect such a conclusion by the jury. As a result, Wendy was prejudiced by
20 the procedure⁴ established and implemented for trying these equitable claims and was prevented
21 from having a fair trial.

22 It was harmful error for the Trustees or Todd, in his Individual capacity, to continuously
23 argue the validity of the Indemnification Agreement and ACPAs are not for the jury to decide.
24 If the jury decided the Indemnification Agreement or any one of the ACPAs were invalid, they

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27 ⁴ (1) presenting all of the information to the jury concerning these disputed documents, (2) representing
28 to the jury that it is not the jurors' role to consider the "scope, bindingness, validity and effectiveness" of
these documents, (3) having the jury consider and return a jury verdict with no questions concerning the
validity of these documents and (4) the Court rely on the jury verdict to instruct its findings and decisions
on the validity of these documents.

1 were told not to consider them, which, more likely than not, lead them to them believing they
2 could not be considered for purposes of breach of fiduciary duty. The latter confused the jury
3 and was harmful; harm that could not be cured, if it was up to the jury to decide the validity of
4 such documents. This is the very reason the Court must decide their validity and application
5 and whether Todd or, ostensibly, his Co-Trustees - affirmatively or by acquiescence - has
6 properly applied them to personally acquire the property of the Family Trust. Without a specific
7 question about validity being presented to the jury, it is legally, impossible for the jury to have
8 ruled, expressly or constructively, one way or the other on these subjects. Todd, in all his
9 capacities, is estopped from arguing the jury cannot decide validity or application of the
10 purported Indemnity Agreements or ACPAs because that decision is up to the Court and, now,
11 argue those decisions were subsumed by the jury or, worse, accept the benefits of his incorrect
12 application of the law.
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14
15 Pursuant to NRCP 59(e), Wendy requests this Court reconsider and amend or alter the
16 *Judgment* to declare the ACPAs and the purported Indemnification Agreements Invalid and to
17 rescind all transactions and payments made based upon the purported Indemnification
18 Agreements.

19 Further, Wendy requests this Court further amend its *Judgment* to declare that, due to the
20 invalidity of the Indemnification Agreements and the ACPAs and the fact that the Accountings still
21 include debt to be forgiven by the Trustees based upon these documents, the SSJ's Issue Trust and
22 Family Trust Accountings for 2014, 2015, 2016 and 2017 are insufficient on their face, cannot be
23 approved because they do not provide sufficient information for the Court or the beneficiaries to
24 approve them and do not exonerate anything in relation to all that is reported therein.
25

26 Finally, Wendy requests the Court to disapprove and disallow all transactions that Todd
27 claims fall under the Indemnification Agreement because no one, not a single witness, could testify
28 to how it was to be applied. The only witness anyone deferred to about its application and the effect

1 of it on the Trust administration was Kevin Riley, and Todd never called him as a witness, which
2 means it was and is impossible for Todd to meet his burden of proof that his, apparent,
3 interpretation of its application is correct (Todd could not even support his application as reported
4 in the Accountings for the Trusts).

5
6 In the alternative, pursuant to NRCP 59(a), Wendy requests this Court grant a new trial
7 concerning the validity of the ACPAs and purported Indemnification Agreements and the
8 recession of transactions and payments made based upon the purported Indemnification
9 Agreements. Wendy is entitled to a new trial because of the irregularity of the proceedings that
10 determined Wendy's equitable claims concerning the validity of the ACPAs and purported
11 Indemnification Agreements. Such irregularities prevented Wendy from having a fair trial on
12 these issues. NRCP 59(a)(1)(A).

13
14 **C. Error Point 2 - Todd, Individually, Not Entitled to Recover Fees and Costs**
15 **from Wendy.**

16 On March 11, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
17 filed the *Memorandum of Costs and Disbursements Incurred in case No. PR17-00446* ("Memo
18 of Costs").

19 On March 13, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
20 filed the *Motion for Order Awarding Costs and Attorney's Fees for Todd Jaksick, Individually,*
21 *Duck Lake Ranch, LLC, and Incline TSS, Ltd.* ("Motion for Fees and Costs"). The *Motion for*
22 *Fees and Costs* sought an award from Wendy of the attorney's fees of Todd, Individually,
23 Duck Lake and Incline TSS (i) in the amount \$705,690.50 and costs in the amount of
24 \$68,834.07 based on **NRS 18.010** and **NRS 18.020** or, alternatively, (ii) attorney's fees in the
25 amount of \$436,331 and costs in the amount of \$68,834.07 based on **NRCP 68**.

26
27 On March 21, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
28 filed the *Todd Jaksick, Individually, Incline TSS, Ltd., and Duck Lake Ranch, LLC's*

1 *Supplement to Memorandum of Costs and Disbursements Incurred in Case No. PR17-00445*
2 (“Supplement to Memo of Costs”).

3 On March 25, 2019, Wendy filed Petitioner *Wendy A. Jaksick’s Opposition to Motion*
4 *for Attorney’s Fees* (“Opposition to Attorney’s Fees and Costs”).

5 On March 25, 2019, Todd, Individually, Incline TSS, Ltd. and Duke Lake Ranch, LLC
6 filed the *Notice of Withdrawal of Memorandums of Costs and Disbursement and Supplement*
7 (“Notice of Withdrawal”), withdrawing the *Memorandum of Costs* filed on March 11, 2019
8 and the *Supplement to Memorandum of Costs* filed on March 21, 2019.

9
10 **i. Todd Not Entitled to Costs Under NRS 18.020.**

11 In order to recover under NRS 18.020, a party must be determined to be a “prevailing
12 party.” NRS 18020. Additionally, under NRS 18.020, any award of costs to a prevailing party
13 is subject to the Court’s discretion in determining the reasonableness of the amounts to be
14 awarded. *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1050, 881 P.2d 638, 643 (1994)
15 (“The district court retains discretion, however, in determining the reasonableness of the
16 amounts and the items of cost to be awarded.”)

17 On March 23, 2023, Wendy filed a *Verified Memorandum of Costs* (“Wendy’s Memo
18 of Costs”) seeking the recovery of her costs from the Family Trust and SSJ’s Issue Trust as a
19 result of the *Judgment*. On April 21, 2020, this Court entered the *Order Denying Wendy*
20 *Jaksick’s Costs*. In the *Order*, the Court states: “Here, several competing parties could argue
21 for prevailing party status. ... Given the entirety of this case proceeding, this Court intends to
22 conclude that neither Wendy Jaksick nor Todd Jaksick is the prevailing party.” *Order*,
23 page 2, lines 5-8 (emphasis added).

24 Because the Court confirmed Todd is not a prevailing party in its *Order Denying*
25 *Wendy Jaksick’s Costs*, Todd is not entitled to an award of costs under NRS 18.020.

26
27 **ii. Todd Not Entitled to Fees Under NRS 18.010.**

1 Under NRS 18.010(2)(b), the Court may award attorney's fees only if the Court finds
2 Wendy's claims or defenses "were brought or maintained without reasonable ground or to
3 harass the prevailing party."

4 The Court confirmed Wendy's claims against Todd as trustee were brought in good
5 faith. *Order After Equitable Trial*, page 19, lines 6-7. Because Wendy's claims against Todd
6 in his capacities as Trustees were brought in good faith and Todd had exposure to satisfy some
7 or all of the liability for these claims in his Individual capacity (and in fact was a necessary
8 party in his Individual capacity to obtain a valid and enforceable judgment),⁵ the good faith
9 finding must also apply to Wendy's decision to bring and maintain her claims against Todd,
10 in his Individual capacity.
11

12 **iii. Todd Not Entitled to Fees and Costs Under NRCP 68.**

13 Todd, in his Individual capacity, was and is not entitled to an award of costs under
14 NRCP 68. NRCP 68 is a mechanism to encourage settlement however it is not to be used
15 "force plaintiffs to unfairly forego legitimate claims." *See Beattie v. Thomas*, 99 Nev. 579,
16 587 668 P.2d 268, 274 (Nev. 1983) (citing *Armstrong v. Riggi*, 549 P.2d 753 (Nev. 1976). An
17 offer of judgment must be an authentic attempt to settle a dispute. *Order After Equitable Trial*,
18 page 18, lines 13-14. The offer of judgment is not automatically conferred. *Id.* Based on the
19 relevant authority, the Court provided further guidance on the application of NRCP 68 in the
20 *Order After Equitable Trial*, as follows:
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⁵ This is discussed in further detail in Section II(C)(iii) herein below.
Page 13 of 26

1 On one side, offers that are appropriate in time and amount will cause the non-
2 offering party to become realistic and engage in genuine risk/benefit analyses. These
3 offers shift a calculated risk as trial approaches. To be an effective mechanism to resolve
4 disputes before trial, they should be in an amount the non-offering party cannot decline in
5 good faith. Defendants who perceive no liability exposure chafe against making time- and
6 amount-appropriate offers because they resent the payment of any money to a party they
7 perceive will not prevail at trial. On the other side, offering parties sometimes make time-
8 and amount-inappropriate offers *they expect to be rejected*. These offers do not facilitate
9 settlement—they are strategic devices to shift the risk of fees by offering illusory
10 consideration to end litigation.

11 *Order After Equitable Trial*, pages 18-19.

12 The offer of judgment from Todd, in his Individual Capacity, (“Offer of Judgment”) was
13 for the “total sum of TWENTY-FIVE THOUSAND DOLLARS and 00/100 (\$25,000.00) and
14 no more, which sum includes all interest, costs, attorneys’ fee or otherwise which have accrued
15 to date. **Exhibit 1.** Based on the circumstances, this cannot be considered a legitimate offer to
16 settle Wendy’s claims against him.

17 a) Fiduciary Has Individual Liability for Breaches of Fiduciary Duty and Failures
18 to Properly Administer Trust.

19 Wendy’s claims against Todd, in his various capacities, included claims arising from the
20 accounting deficiencies, breaches of fiduciary duty, conspiracy to commit breach of fiduciary
21 duty and aiding and abetting breach of fiduciary duty. One of the main reasons Todd was joined
22 as a party to this lawsuit was to ensure that any judgment resulting from these claims against
23 Todd, in his fiduciary capacities, but payable or enforceable against Todd, in his Individual
24 capacity, would be valid, enforceable and collectable against Todd.⁶

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27 ⁶ The Co-Trustees in their Individual capacities are separate and distinct legal persons from the Co-
28 Trustees in their fiduciary capacities. *Mona v. Eighth Judicial District Court of State in and for County*
of Clark, 380 P.3d 836, 842 (2016) (holding the Co-Trustee was, in her individual capacity, distinct legal
person and stranger to Co-Trustee in her representative capacity as Co-Trustee of the Trust). NRS

1 Your Honor considered this very issue when you ruled on the Kimmel's motion for
2 summary judgment. Kimmel filed a motion for summary judgment seeking the dismissal of
3 Wendy's claims against him in his Individual and Co-Trustee capacities. On January 14, 2019,
4 Your Honor entered the *Order Granting in Part and Denying in Part Motion for Summary*
5 *Judgment* (the "Order Denying Kimmel MSJ"), which denied Kimmel's summary judgment in
6 relation to Wendy's claims "arising from alleged accounting deficiencies and related breaches
7 of fiduciary duty, including conspiracy to commit such breaches, as to Mr. Kimmel in both his
8 capacities as trustee and individually." *Order Denying Kimmel MSJ*, page 13, lines 4-6. A true
9 and correct copy of the *Order* is attached hereto as **Exhibit 3**. Your *Order* confirmed Kimmel,
10 as a Co-Trustee, could have personal liability for his failures as a Co-Trustee and, therefore,
11 was a proper party in his Individual capacity based on Wendy's claims. The authority and
12 reasoning cited in the *Order* is, as follows:
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24 153.031 and other Nevada authority⁶ authorizes recovery of damages, attorneys' fees and costs from a
25 trustee personally under certain circumstances, such when a trustee is determined to be negligent in the
26 performance of or breached his or her fiduciary duties. Because a district court is empowered to render
27 a judgment either for or against a person or entity only if it has jurisdiction over the parties and the subject
28 matter, the failure to sue and make the Co-Trustees parties in their individual capacities would render any
judgment against the Co-Trustees personally void. *C.H.A. Venture v. G.C. Wallace Consulting Engineers, Inc.*, 106 Nev. 381, 383, 794 P.2d 707, 708 (1990) (confirming that district court was powerless to enter any form of valid judgment imposing liability against person or entity not properly served and made party to the lawsuit).

1 D. Inclusion of Mr. Kimmel as Counter-Respondent in an Individual Capacity

2 In addition to the issues raised in his capacity as co-trustee, Mr. Kimmel asserts
3 there is no factual or legal basis for him to remain in this case as an individual.

4 Historically, trustees were personally liable for all liabilities incurred in the course
5 of trust administration, with the trustee receiving indemnity from the trust if appropriate.
6 Restatement (Third) of Trusts § 105 (2012). The modern approach is to authorize suit
7 against the trustee in his or her representative capacity and excuse the trustee from
8 personal liability "to the extent the trustee acted properly." *Id.* Modern doctrine,
9 however, "does not insulate a trustee from also being sued in an individual capacity . . .
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1 [q]uestions of personal liability, fiduciary authority, and trustee fault are often best
2 resolved in the same litigation." *Id.*

3 Under Nevada law, a person's representative capacity as the co-trustee of a trust is
4 distinguished from his or her individual capacity and "the differing capacities are
5 generally treated as two different legal personages." *Mona v. Dist. Ct.*, 132 Nev. Adv. Op.
6 72, 380 P.3d 836, 842 (2016) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534,
7 543-44 (1986)). NRS 163.140(1) illustrates the consequences of these differing capacities.
8 Where a trustee is found to be liable in his or her representative capacity, "collection [may
9 be] had from the trust property." *Id.* By contrast, a trustee may be held personally liable
10 for any tort committed by the trustee if he or she is "personally at fault." NRS 163.140(4).
11 Similar logic can be found in NRS Chapter 165, which addresses trustee accounting. A
12 trustee who fails to provide an account pursuant to the terms of the trust instrument, or
13 when required to under statute, is personally liable to each person entitled to receive an
14 account who complied with proper procedure for demanding accounting. NRS 165.148(1).
15 The trustee shall not expend trust funds to satisfy the trustee's personal liability for such a
16 failure to provide accounting. *Id.* As discussed above, there are genuine issues of material
17 fact as to whether the co-trustees have provided adequate and accurate accountings to
18 Wendy as a beneficiary in the period of time following Mr. Kimmel's appointment. In
19 accordance with NRS 165.148(1), Mr. Kimmel may be held personally liable if such a
20 failure is found. Further, if Mr. Kimmel is found to have breached his fiduciary duty with
21 respect to any disclosures not made to Wendy, it is appropriate that trust funds not be
22 used to remedy any resulting damages. Whether Mr. Kimmel has personally conversed or
23 maintained a friendly relationship with Wendy is immaterial, as the central issue is
24 whether it is appropriate to hold the trust financially accountable for his alleged breach.
25 Accordingly, Mr. Kimmel's motion for summary judgment with respect to his inclusion in
26 this matter in an individual capacity is denied.

27 *Id.*, page 11, line 20 – page 12, line 26.

28 Because fiduciaries can and are held liable in their Individual capacities for certain
actions, including breaches of fiduciary duty, the individual liability resulting from or
associated with fiduciary claims must be considered in the NRCP 68 analysis. In other words,
when considering an award of fees under NRCP 68, the fiduciary's exposure to individual

1 liability for its fiduciary acts must be considered in all aspects of the analysis. A failure to
2 include this individual liability exposure when considering an Offer of Judgment made by a
3 fiduciary in their Individual capacity results in an incomplete assessment. This is prejudicial
4 to the offeree and would discourage beneficiaries or others suing fiduciaries from joining the
5 fiduciaries to lawsuits in their Individual capacities when doing so is necessary to obtain a
6 valid and enforceable judgment.

8 b) Wendy Obtained More Favorable Judgment than Todd's Offer of Judgment.

9 The penalties of NRCP 68 apply to an offeree "[i]f the offeree rejects an offeree and
10 fails to obtain a more favorable judgment." NRCP 68(f)(1) (emphasis added). Todd's Offer of
11 Judgment in his Individual capacity was \$25,000.00. The *Judgment* requires the following
12 payments by Todd, in his Individual capacity:

- 14 i. \$15,605.34 to Wendy;
- 15 ii. all fees paid to Todd by the SSJ's Issue Trust and the Family Trust to the
16 SSJ's Issue Trust and the Family Trust; and
- 17 iii. twenty-five percent (25%) of all attorney's fees paid by the SSJ's Issue
18 Trust and the Family Trust in this litigation to SSJ's Issue Trust and the
19 Family Trust.

20 Todd, in his Individual capacity, must pay \$58,250.00 to the SSJ's Issue Trust and
21 \$20,790.00 to the Family Trust for a total amount of \$79,040.00⁷ to repay the Trustee's fees he
22 received. Relevant pages from the SSJ Issue Trust and Family Trust Accountings confirming
23 these amounts are attached hereto as **Exhibit 2**. Todd, in his Individual capacity, must pay, at
24 a minimum, \$124,661.56,⁸ in attorney's fees to the Family Trust and an additional amount of
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26 ⁷ These number may not include all fees Todd received and are not intended to be an admission of the
27 maximum amount required to be repaid by Todd.

28 ⁸ This number is based on Exhibit 4 to the *Motion for Attorneys' Fees and Costs* filed by Michael S. Kimmel on September 4, 2020. In the *Motion*, Mr. Kimmel, as Co-Trustee of the Family Trust, alleges the attorney's fees incurred by the Family Trust from May 1, 2018 through the entry of the Judgment totaled \$498,646.25. See following chart from Mr. Kimmel's *Motion*:

1 attorney's fees to the Issue Trust. In fact, Todd in *Todd B. Jaksick's Motion to Amend Judgment*,
2 which was filed on April 29, 2020, admits that "[a]ccording to the math involved in various
3 filing in this matter, **Todd could be required to pay \$500,000 or more to the two trusts as**
4 **an individual.**" *Todd B. Jaksick's Motion to Amend Judgment*, dated April 20, 2020, page 3,
5 lines 3-4 (emphasis added).
6

7 As a result of Wendy's claims, Todd, in his Individual capacity, must pay, at a minimum,
8 \$219,306.90, but likely \$500,000 or more (according to Todd's own calculations) that directly
9 benefits Wendy and/or her beneficial interests in the SSJ's Issue Trust and Family Trust. This
10 is far in excess of Todd's \$25,000.00 Offer of Judgment.

11 c) Alternatively, Todd's Offer of Judgment Not Authentic Attempt to Settle
12 Wendy's Claims.
13

14 When Todd's Individual liability exposure arising and resulting from his breaches of
15 fiduciary duty and other fiduciary wrongdoing are included in the NRCP 68 analysis under the
16 *Beattie* factors, Todd's Offer of Judgment in his Individual capacity was not an authentic
17 attempt to settle Wendy's claims and cannot be the basis for an award of fees and costs.

18 a. Wendy's Claims Against Todd Were Brought in Good Faith.
19
20

21 **Family**
22 **Trust**
23 17454.008

Attorney	Hours Post 4/30/18	Fees Post 4/30/18
DAL	723.25	\$ 325,462.50
LRL	53.50	\$ 22,768.75
BCM	24.25	\$ 8,487.50
CKR	293.25	\$ 95,943.75
KDM	219.45	\$ 45,983.75
Total	1,313.70	\$ 498,646.25

1 Todd argued in his *Motion for Fees and Costs* the Court apparently relied on in making
2 its award that Wendy's refusal to accept his Offer of Judgment for \$25,000.00 was in bad faith
3 because Wendy had no reason to sue Todd individually. *Motion*, page 5, line 25 – page 6, line
4 1.

5 The Court concluded in the *Order After Equitable Trial* that Wendy's claims against
6 Todd in his capacities as trustees were brought in good faith. See *Order After Equitable Trial*,
7 page 19, lines 6-7. The Court supported its conclusion stating, "Wendy's concerns are
8 countenanced, in large part, by the questions raised by the accountings, Stan's separate
9 allegations against Todd, document anomalies, and the optics of Todd's disproportionate benefit
10 from Sam's business and trust affairs." *Id.*, page 19, lines 8-10.

11 Because Wendy's claims against Todd in his capacities as Trustees were brought in good
12 faith and Todd had exposure to satisfy some or all of the liability for these claims in his Individual
13 capacity (and in fact was a necessary party in his Individual capacity to obtain a valid and
14 enforceable judgment), the good faith finding must also apply to Wendy's decision to bring and
15 maintain her claims against Todd, in his Individual capacity.

16 b. Todd's Offer Was Not Reasonable and in Good Faith in Timing and Amount.

17 The Court also concluded that Todd's Offers of Judgments were not reasonable and in
18 good faith. *Order After Equitable Trial*, page 19, lines 20-21. The Offers of Judgement were
19 made six months after Wendy filed her *Amended Counter-Petition*, when discovery was in its
20 infancy. *Id.*, page 19, lines 18-19. The Court supported its conclusion stating, "given the
21 financial and documentary complexity, discovery delays and disputes (including Todd's
22 continued depositions long after the offer of judgment were made), the untimely accountings,
23 incomplete discovery, and the amounts in controversy, the offer does not appear to be made with
24 good-faith intention of settling Wendy's claims." *Id.*, page 23-26, lines 18-19.

1 Because the Court determined the Todd's Offer of Judgment was not made with the
2 good-faith intention to settle Wendy's claims against him and Todd knew Wendy would not
3 accept \$25,000 to resolve her claims against him in his capacity as trustee, it is logically
4 inconsistent to conclude same does not apply to Wendy's claims against Todd, in his Individual
5 capacity, because the liability for same could ultimately be applied and required to be satisfied
6 by Todd, in his Individual capacity. If Wendy had accepted the Offer of Judgment and settled
7 all her claims against Todd, in his Individual capacity, may have foreclosed some of all of her
8 right to recover additional damages awarded against him Individually for his acts as Trustees.

10 c. Wendy's Decision to Reject Offer was Reasonable.

11 The Court further concluded that Wendy's decision to reject Todd's offer in his capacity
12 as trustee was not grossly unreasonable or in bad faith. *Order After Equitable Trial*, page 21,
13 lines 3-6. In fact, the Court states that, "Todd knew, or should have known, the fees incurred
14 through continuing litigation alone would substantially overshadow the offered amounts. Todd
15 knew, or should have known, that Wendy would never accept \$25,000 to resolve her claims
16 against him as trustee." *Id.*, page 19, lines 22-25. Because of Todd's Individual liability
17 exposure for his breaches of fiduciary duties and other wrongdoing as Trustees, it was equally
18 reasonable for Wendy to reject Todd's Offer of Judgment made in his Individual capacity.
19 Again, accepting Todd's Offer may have foreclosed some of all of her right to recover additional
20 damages awarded against him Individually for his acts as Trustees.

23 d. Fees Sought By Todd are Not Reasonable and Justified in Amount.

24 Todd's fees and costs awarded were not reasonable and justified in amount.

25 As an initial issued, on March 25, 2019, Todd filed his *Notice of Withdrawal*,
26 withdrawing the *Memorandum of Costs* filed on March 11, 2019 and the *Supplement to*
27 *Memorandum of Costs* filed on March 21, 2019. This *Memo* and *Supplemental Memo* were the
28 supporting documents for the fees and expenses sought in Todd's *Motion for Fees and Costs*.

1 These Memos were never resubmitted or refiled by Todd. As a result, the fees and costs sought
2 in Todd's *Motion for Fees and Costs* are not supported by documents and other support
3 sufficient to for the Court to determine the fees were reasonable and actually incurred or
4 reasonable and necessarily incurred. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114,
5 345 P.3d 1049 (2015).
6

7 Beyond failing to include information necessary to support the fees and costs sought,
8 Todd failed to establish the fees incurred by his Individual counsel did not overlap the fees his
9 fiduciary counsel incurred for the defense of claims for which he was determined to have
10 breached his fiduciary duty. Todd was paying separate law firms to represent him in his
11 Individual capacity and capacities as Trustee throughout the litigation. Most of the efforts of
12 counsel and most expenses paid overlap. The law firm representing Todd in his Individual
13 capacity paid for some expenses while the law firm representing Todd in his fiduciary capacities
14 paid for other expenses. Todd Jaksick, in his capacity as Trustee of the SSJ Issue Trust and as
15 Co-Trustee of the Family Trust, should not be allowed to shift costs of the Trusts that he is not
16 entitled to recover in certain capacities to other capacities he may be entitled to recover. Todd's
17 *Motion for Fees and Costs* did not confirm these costs were separate and not payable by Todd
18 in his fiduciary capacities.
19

20
21 **iv. Award of Fees and Costs to Todd, in his Individual Capacity, was Error.**

22 Based on the above, Todd, in his Individual capacity, was not and is not entitled to an
23 award of fees or costs under NRS 18.010, NRS 18.020 or NRCP 68. The Court's *Order*
24 *Denying Wendy Jaksick's Costs* confirms Todd was not a "prevailing party" entitled to an award
25 under NRS 18.020. There are no findings or orders that Wendy brought or maintained her
26 claims against Todd without reasonable ground or to harass Todd, so Todd is not entitled to an
27 award of fees under NRS 18.010.
28

1 Based on Todd's own admission in his recent filing seeking to amend the *Judgment*, he
2 could be required to pay \$500,000 or more in his Individual capacity. See *Todd B. Jaksick's*
3 *Motion to Amend Judgment*, dated April 20, 2020, page 3, lines 3-4 (emphasis added). This
4 \$500,000 or more in Individual liability is the result of claims brought against Todd in his
5 fiduciary capacities by Wendy. Because this Individual liability exposure is a legitimate and
6 valid reason to pursue claims against a fiduciary in the fiduciary's Individual capacity, it must
7 be part of the NRCP 68 evaluation of whether a party obtains a more favorable judgment than
8 a rejected offer of judgment.
9

10 Ignoring this Individual liability exposure results in an incomplete NRCP 68 analysis
11 and is unfair and prejudicial to the party suing the fiduciary. This is the only way to find that
12 Wendy did not obtain a "more favorable judgment" than Todd's \$25,000 Offer of Judgment,
13 when Todd, Individually, is required to pay \$500,000 or more to Wendy or to Trusts Wendy
14 has a beneficial interest. Accordingly, it was error not to consider this Individual liability
15 exposure associated with Wendy's fiduciary claims when the Court conducted its NRCP 68
16 analysis and when the Court awarded fees and costs to Todd based upon such error.
17

18 Pursuant to NRCP 59(e), Wendy requests this Court reconsider and amend or alter the
19 *Judgment* to eliminate the attorney's fees and costs award in favor of Todd, in his Individual
20 capacity, in the amount of \$505,165.07 against Wendy. In the alternative, pursuant to NRCP
21 59(a), Wendy requests this Court grant a new trial concerning the award of fees and costs in the
22 *Judgment* to Todd, in his Individual capacity.
23

24 III. CONCLUSION

25 For the reasons set forth above, Wendy respectfully requests the court consider this
26 *Motion* and alter and amend the *Judgment* to (i) determine and declare the ACPAs invalid, (ii)
27 determine and declare the purported Indemnity Agreements invalid and order the recession of
28 the transactions and payments associated with the purported Indemnity Agreements, (iii)

1 determine and declare that because the Accountings still include debt to be forgiven by the
2 Trustees based upon the Indemnification Agreements, the SSJ's Issue Trust and Family Trust
3 Accountings for 2014, 2015, 2016 and 2017 are insufficient on their face, cannot be approved,
4 (iv) disapprove and disallow all transactions that Todd claims fall under the Indemnification
5 Agreement and (v) eliminate the award of Todd's attorney's fees against Wendy or, in the
6 alternative, grant Wendy a new trial on these issues.

7 **AFFIRMATION STATEMENT**

8 Pursuant to NRS 239B.030

9 The undersigned does hereby affirm that this **MOTION TO ALTER OR AMEND**
10 **JUDGMENT OR, ALTERNATIVELY, MOTION FOR NEW TRIAL** filed by Wendy A.
11 Jaksick in the above-captioned matter does not contain the social security number of any person.

12 DATED this 29th day of April, 2020.

13 **FOX ROTHSCHILD LLP**

14 /s/ Mark J. Connot

15 Mark J. Connot (10010)
16 1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135

17 **SPENCER & JOHNSON, PLLC**

18 /s/ R. Kevin Spencer

19 R. Kevin Spencer (*Admitted PHV*)
20 Zachary E. Johnson (*Admitted PHV*)
21 500 N. Akard Street, Suite 2150
22 Dallas, Texas 75201
23 *Attorneys for Respondent/Counter-Petitioner*
24 *Wendy A. Jaksick d*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCCHILD LLP and
3 that on this 29th day of April, 2020, I served a true and correct copy of **MOTION TO ALTER**
4 **OR AMEND JUDGMENT OR, ALTERNATIVELY, MOTION FOR NEW TRIAL** by the
5 Court's electronic file and serve system addressed to the following:

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

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Todd B. Jaksick and Michael S. Kimmel of
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16 1575 Delucchi Lane, Ste. 101
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19 *Samuel S. Jaksick, Jr. Family Trust*

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

20 DATED this 29th day of April, 2020.

21 /s/ Doreen Loffredo
22 An Employee of Fox Rothschild LLP
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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
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2	Excerpts of Financial Statements	18
3	Order Granting in Part and Denying in Part Motion for Summary Judgment	13

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2020-04-29 05:59:34 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7855894 : sacordag

EXHIBIT 1

EXHIBIT 1

1 2635

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12 *Attorneys for Todd B. Jaksick, Individually, and as Beneficiary,*

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

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 SSI'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,

TODD B. JAKSICK, AS AN INDIVIDUAL,
OFFER OF JUDGMENT TO
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 SSI'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,

Petitioners and Counter-Respondents

1 STANLEY JAKSICK,
2 Respondent and Counter-Petitioner,
3 v.
4 TODD B. JAKSICK, Individually and as Co-
Trustee of the Samuel S. Jaksick Jr. Family
5 Trust.
6 Petitioner and Counter-Respondent.

7 **TO: WENDY JAKSICK AND HER COUNSEL OF RECORD:**

8 Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Defendant, Todd B. Jaksick,
9 individually, and only in his capacity as individual, hereby offers to allow judgment to be taken
10 against him, only in his individual capacity, in this action in the total sum of TWENTY-FIVE
11 THOUSAND DOLLARS and 00/100 (\$25,000.00) and no more, which sum includes all interest,
12 costs, attorneys' fees or otherwise which have accrued to date.

13 If you accept this offer and give written notice thereof within ten (10) days after service of
14 same, you may file the Offer and the Notice of Acceptance, together with the Proof of Service
15 thereof, and thereupon the Clerk is authorized to enter Judgment in accordance with the provisions
16 of Rule 68 of the Nevada Rules of Civil Procedure.

17 In accordance with the provisions of Rule 68 of the Nevada Rules of Civil Procedure, if
18 this offer is not accepted within ten (10) days from the date of service of same, it shall be deemed
19 withdrawn.

20 ///

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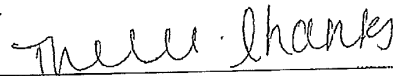
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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 29th day of August 2018.

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



KENT R. ROBISON
THERESE M. SHANKS
*Attorneys for Todd B. Jaksick, Individually, and as
Beneficiary, SSJ's Issue Trust and
Samuel S. Jaksick, Jr., Family Trust*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **TODD B. JAKSICK, AS AN INDIVIDUAL, OFFER OF JUDGMENT TO WENDY JAKSICK** on all parties to this action by the method(s) indicated below:

X 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:

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Brian C. McQuaid, Esq.
Carolyn K. Renner, Esq.
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Attorney for Respondent Wendy A. Jaksick

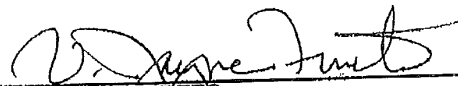
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Attorneys for Respondent Wendy A. Jaksick

- _____ by using the Court's CM/ECF electronic service system courtesy copy addressed to:
- _____ by electronic email addressed to:
- _____ by personal delivery/hand delivery addressed to:
- _____ by facsimile (fax) addressed to:
- _____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 29th day of August, 2018.


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

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Jacqueline Bryant
Clerk of the Court
Transaction # 7855894 : sacordag

EXHIBIT 2

EXHIBIT 2

SSJ'S ISSUE TRUST
FINANCIAL STATEMENTS
April 21, 2013 to December 31, 2013

JSK000930

TJA 003080

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SSJ'S ISSUE TRUST
SCHEDULE E1 - EXPENSES, RBC WEALTH MANAGEMENT
For the period beginning April 21, 2013 and ending December 31, 2013

<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Amount</u>	<u>Totals</u>
11/30/13	EFT	Todd Jaksick	\$ 2,500.00	
12/31/13	EFT	Todd Jaksick	<u>2,500.00</u>	
		Total trustee fees		\$ 5,000.00
7/26/13	EFT	Nevada Prongorn LLC	<u>172.60</u>	
		Total Interest expense		172.60
7/31/13	EFT	RBC Wealth Management	20.00	
7/31/13	EFT	RBC Wealth Management	<u>20.00</u>	
		Total bank charges		40.00
TOTAL EXPENSES, RBC WEALTH MANAGEMENT				<u><u>\$ 5,212.60</u></u>

See accountant's compilation report

- 7 -

JSK000938

TJA 003082

SSJ'S ISSUE TRUST
FINANCIAL STATEMENTS
January 1, 2014 to December 31, 2014

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SSJ'S ISSUE TRUST
SCHEDULE D1 - EXPENSES, RBC WEALTH MANAGEMENT
For the period beginning January 1, 2014 and ending December 31, 2014

<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Amount</u>	<u>Totals</u>
8/22/14	EFT	RBC Wealth Management	\$ 20.00	
9/30/14	EFT	RBC Wealth Management	20.00	
9/30/14	EFT	RBC Wealth Management	<u>20.00</u>	
		Total bank charges		\$ 60.00
1/30/14	EFT	Todd Jaksick	2,500.00	
2/28/14	EFT	Todd Jaksick	2,500.00	
3/31/14	EFT	Todd Jaksick	2,500.00	
4/30/14	EFT	Todd Jaksick	2,500.00	
5/31/14	EFT	Todd Jaksick	2,500.00	
6/30/14	EFT	Todd Jaksick	2,500.00	
9/30/14	EFT	Todd Jaksick	2,500.00	
10/31/14	EFT	Todd Jaksick	2,500.00	
11/30/14	EFT	Todd Jaksick	2,500.00	
12/31/14	EFT	Todd Jaksick	<u>2,500.00</u>	
		Total trustee fees		25,000.00
9/24/14	counter ck	Rossmann MacDonald & Benetti CPA's	<u>3,125.00</u>	
		Total accounting		3,125.00
5/13/14	counter ck	US Treasury	10,015.00	
9/8/14	counter ck	US Treasury	<u>130.08</u>	
		Total Internal Revenue Service		10,145.08
TOTAL EXPENSES, RBC WEALTH MANAGEMENT				<u><u>\$ 38,330.08</u></u>

See accountant's compilation report

SSJ'S ISSUE TRUST
FINANCIAL STATEMENTS
January 1, 2015 to December 31, 2015

JSK000956

TJA 003086

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SSJ'S ISSUE TRUST
SCHEDULE D - EXPENSES
For the period beginning January 1, 2015 and ending December 31, 2015

<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Amount</u>	<u>Totals</u>
1/15/15	EFT	Todd Jaksick	\$ 2,500.00	
2/15/15	EFT	Todd Jaksick	2,500.00	
3/15/15	EFT	Todd Jaksick	2,500.00	
4/15/15	EFT	Todd Jaksick	2,500.00	
5/15/15	EFT	Todd Jaksick	2,500.00	
6/15/15	EFT	Todd Jaksick	2,500.00	
7/15/15	EFT	Todd Jaksick	2,500.00	
8/15/15	EFT	Todd Jaksick	2,500.00	
9/15/15	EFT	Todd Jaksick	750.00	
10/15/15	EFT	Todd Jaksick	750.00	
11/15/15	EFT	Todd Jaksick	750.00	
12/15/15	EFT	Todd Jaksick	750.00	
		Total trustee fees		\$ 23,000.00
10/20/15	counter ck	Rossmann MacDonald & Benetti CPA's	2,530.00	
		Total accounting		2,530.00
9/10/15	counter ck	Franchise tax board	239.00	
		Total Internal Revenue Service		239.00
9/10/15	counter ck	US Treasury	5,829.00	
10/15/15	counter ck	US Treasury	213.01	
		Total Internal Revenue Service		6,042.01
TOTAL EXPENSES				<u>\$ 31,811.01</u>

See accountant's compilation report

SSJ'S ISSUE TRUST
FINANCIAL STATEMENTS
January 1, 2016 to December 31, 2016

JSK000968

TJA 003089

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SSJ'S ISSUE TRUST
SCHEDULE E - EXPENSES
For the period beginning January 1, 2016 and ending December 31, 2016

<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Amount</u>	<u>Totals</u>
1/16/16	EFT	Todd Jaksick	\$ 750.00	
2/16/16	EFT	Todd Jaksick	750.00	
3/16/16	EFT	Todd Jaksick	750.00	
4/16/16	EFT	Todd Jaksick	750.00	
5/16/16	EFT	Todd Jaksick	750.00	
6/16/16	EFT	Todd Jaksick	750.00	
7/16/16	EFT	Todd Jaksick	750.00	
		Total trustee fees		\$ 5,250.00
8/30/16	counter ck	Home Camp Land & Livestock	9.00	
		Total Interest expense		9.00
3/16/16	counter ck	Maupin Cox & LeGoy	2,737.50	
10/27/16	counter ck	Maupin Cox & LeGoy	3,094.00	
12/6/16	counter ck	Maupin Cox & LeGoy	1,206.25	
		Total legal fees		7,037.75
9/13/16	counter ck	Franchise tax board	11.00	
		Total Franchise Tax Board		11.00
9/13/16	counter ck	US Treasury	4.00	
		Total Internal Revenue Service		4.00
TOTAL EXPENSES				\$ 12,311.75

See accountant's compilation report

SAMUEL S JAKSICK JR FAMILY TRUST

FINANCIAL STATEMENTS

April 21, 2013 to March 31, 2014

JSK001116.

TJA 003092

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JSK001117

TJA 003093

SAMUEL S JAKSICK JR FAMILY TRUST
SCHEDULE 1H - EXPENSES
FIRST INDEPENDENT BANK #772
For the period beginning April 21, 2013 and ending March 31, 2014

<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Principal</u>	<u>Income</u>	<u>Totals</u>
EXPENSES (continued):					
1/15/14	9202	ARLO R. STOCKHAM		1,388.45	1,388.45
1/15/14	9200	JAMES CORICA		244.32	244.32
1/15/14	9201	NANETTE J. CHILDERS		461.75	461.75
1/31/14	9215	ARLO R. STOCKHAM		1,388.45	1,388.45
1/31/14	9214	NANETTE J. CHILDERS		369.40	369.40
2/14/14	9221	ARLO R. STOCKHAM		1,388.45	1,388.45
2/14/14	9220	JAMES CORICA		520.85	520.85
2/14/14	9219	NANETTE J. CHILDERS		369.40	369.40
2/28/14	9242	ARLO R. STOCKHAM		1,388.45	1,388.45
2/28/14	9241	NANETTE J. CHILDERS		424.81	424.81
3/14/14	9256	ARLO R. STOCKHAM		1,388.45	1,388.45
3/14/14	9257	JAMES CORICA		520.85	520.85
3/14/14	9251	NANETTE J. CHILDERS		498.69	498.69
3/31/14	9264	ARLO R. STOCKHAM		1,388.45	1,388.45
3/31/14	9263	NANETTE J. CHILDERS		406.34	406.34
		Total salaries	<u>-</u>	<u>32,279.97</u>	<u>32,279.97</u>
11/26/13	9158	ARKADIN, INC.		100.00	100.00
		Total telephone	<u>-</u>	<u>100.00</u>	<u>100.00</u>
10/11/13	9120	TODD JAKSICK	1,000.00	1,000.00	2,000.00
11/29/13	9178	TODD JAKSICK	1,000.00	1,000.00	2,000.00
12/13/13	9187	TODD JAKSICK	1,000.00	1,000.00	2,000.00
2/13/14	9223	TODD JAKSICK	750.00	750.00	1,500.00
2/13/14	9224	TODD JAKSICK	1,250.00	1,250.00	2,500.00
		Total trustee fees	<u>5,000.00</u>	<u>5,000.00</u>	<u>10,000.00</u>
7/11/13	EFT	UNKNOWN UTILITY PAYMENT		250.85	250.85
8/6/13	EFT	AT&T		592.20	592.20
8/8/13	9049	WASHOE COUNTY TREASURER		321.40	321.40
8/8/13	9048	WASTE MANAGEMENT OF NEVADA		65.82	65.82
8/20/13	9059	NV ENERGY		338.95	338.95
9/4/13	9075	WASHOE COUNTY		125.00	125.00
9/17/13	EFT	AT&T		242.92	242.92
9/17/13	EFT	AT&T		43.84	43.84
9/30/13	EFT	WATER BILL PAID FOR QUAIL ROCK		336.66	336.66
10/16/13	EFT	AT&T		85.09	85.09
10/16/13	EFT	AT&T		51.37	51.37
10/24/13	EFT	NV ENERGY		366.16	366.16
10/24/13	EFT	NV ENERGY		3.50	3.50
11/14/13	EFT	AT&T		265.80	265.80
11/14/13	EFT	AT&T		79.05	79.05
11/26/13	9165	WASHOE COUNTY TREASURER		162.39	162.39

See accountant's compilation report

SAMUEL S JAKSICK JR FAMILY TRUST

FINANCIAL STATEMENTS

April 1, 2014 to March 31, 2015

JSK001167

TJA 003095

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SAMUEL S JAKSICK JR FAMILY TRUST
SCHEDULE 11 - EXPENSES
FIRST INDEPENDENT BANK #772
For the period beginning April 1, 2014 and ending March 31, 2015

<u>Date</u>	<u>Check #</u>	<u>Payee</u>	<u>Principal</u>	<u>Income</u>	<u>Totals</u>
EXPENSES (continued):					
2/20/15	9498	Bank of America - reimbursements		1,750.52	1,750.52
2/20/15	9495	Dawn Jaksick		395.54	395.54
		Total travel	<u>-</u>	<u>2,146.06</u>	<u>2,146.06</u>
7/23/14	9365	Todd Jaksick	1,000.00	1,000.00	2,000.00
8/28/14	9393	Stan Jaksick	500.00	500.00	1,000.00
8/28/14	9394	Todd Jaksick	1,000.00	1,000.00	2,000.00
9/2/14	9401	Stan Jaksick	900.00	900.00	1,800.00
9/2/14	9404	Todd Jaksick	1,750.00	1,750.00	3,500.00
10/3/14	9437	Stan Jaksick	795.00	795.00	1,590.00
10/3/14	9438	Todd Jaksick	1,645.00	1,645.00	3,290.00
		Total trustee fees	<u>7,590.00</u>	<u>7,590.00</u>	<u>15,180.00</u>
4/30/14	9281	Washoe County Treasurer		124.32	124.32
5/2/14	9291	Waste Management of Nevada		65.82	65.82
5/15/14	9300	Washoe County Treasurer		66.88	66.88
5/22/14	9306	Nevada Energy		244.95	244.95
6/27/14	9329	Nevada Energy		295.90	295.90
6/27/14	9331	Washoe County Treasurer		191.84	191.84
7/24/14	9352	Washoe County Treasurer		434.24	434.24
7/24/14	9366	Nevada Energy		292.82	292.82
8/21/14	9381	Nevada Energy		360.03	360.03
8/21/14	9382	Waste Management of Nevada		65.82	65.82
8/28/14	9395	Washoe County Treasurer		209.62	209.62
9/2/14	9413	Nevada Energy		450.00	450.00
9/2/14	9414	Washoe County Treasurer		200.00	200.00
10/1/14	9431	Washoe County Treasurer		217.05	217.05
11/13/14	9460	Nevada Energy		350.52	350.52
2/19/15	9491	Washoe County Treasurer		40.95	40.95
2/19/15	9493	Truckee Meadows water authorit		27.28	27.28
2/19/15	9494	Nevada Energy		427.07	427.07
		Total utilities - rental	<u>-</u>	<u>4,065.11</u>	<u>4,065.11</u>
TOTAL EXPENSES			<u>\$ 111,456.53</u>	<u>\$ 168,627.50</u>	<u>\$ 280,084.03</u>

See accountant's compilation report

FILED
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PR17-00445
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Jacqueline Bryant
Clerk of the Court
Transaction # 7855894 : sacordag

EXHIBIT 3

EXHIBIT 3

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

Case No. PR17-00446

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

Dept. No. 15

**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR
SUMMARY JUDGMENT**

Before this Court is petitioner/counter-respondent Michael S. Kimmel's opposed Motion for Summary Judgment, dated October 23, 2018. This Court has reviewed all moving papers; it now finds and orders as follows:

I. Background and Procedural History¹

This consolidated action involves two trusts. However, only the Samuel S. Jaksick, Jr. Family Trust ("Family Trust") is relevant to the present motion. The Family Trust was established by Samuel Jaksick, Jr. on or about December 4, 2003, with Samuel² as initial trustee. On June 29, 2006, Samuel executed the Family Trust Agreement (As Restated).

¹ These are not findings of fact; this section simply summarizes the relevant facts found in the pleadings and exhibits attached to the parties' filings.

² This Court typically adheres to formalities but elects to use first names to simplify these facts.

1 On December 10, 2012, Samuel executed a Second Amendment to the Family Trust, the
2 validity of which is presently disputed. The trust became irrevocable in its entirety upon
3 Samuel's death in 2013. At that time, Samuel's two sons, Todd and Stanley Jaksick, and
4 accountant Kevin Riley, became the successor co-trustees. However, Mr. Riley
5 subsequently resigned. On December 13, 2016, Todd appointed Mr. Kimmel to replace
6 Mr. Riley as co-trustee. The beneficiaries of the Family Trust are Samuel's three children:
7 Todd, Stanley, and Wendy Jaksick.

8 On August 2, 2017, Todd and Mr. Kimmel, in their capacities as co-trustees of the
9 Family Trust, filed a Petition for Confirmation of Trustees and Admission of Trust to the
10 Jurisdiction of the Court, and for Approval of Accountings and Other Trust
11 Administration Matters. On January 19, 2018, Wendy filed a Counterpetition to Surcharge
12 Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of
13 Individual Trustees, and for Declaratory Judgment and Other Relief ("counterpetition").
14 The counterpetition names Mr. Kimmel as a counter-respondent both in his individual
15 capacity and as co-trustee of the Family Trust, and asserts causes of action for (1) breach of
16 fiduciary duties; (2) failure to disclose and adequately account; (3) civil conspiracy and
17 aiding and abetting; (4) aiding and abetting breaches of fiduciary duty; (5) fraud; and
18 (6) unjust enrichment. The counterpetition also requests removal of the trustees with
19 appointment of new, independent trustees and declaratory relief regarding the validity of
20 a number of challenged agreements relating to trust matters.

21 On February 6, 2018, Todd and Mr. Kimmel filed a motion to dismiss the
22 counterpetition on the basis that Wendy violated the no-contest provisions of the trust
23 documents and thus had no standing in this matter. On February 23, 2018, Wendy filed
24 her First Amended Counterpetition. This Court denied the motion to dismiss on
25 March 30, 2018. On April 13, 2018, Mr. Kimmel filed his answer to the First Amended
26 Counterpetition.

27 In the amended counterpetition, Wendy raises a number of concerns regarding
28 administration of the Family Trust and alleges breaches of fiduciary duties by its

1 co-trustees. First, she questions the veracity of the Second Amendment to the Family
2 Trust, executed on December 10, 2012, stating she did not sign the agreement and does not
3 believe Samuel would have done so either. However, she indicates she does not, at this
4 time, contest the Second Amendment. Second, Wendy alleges the Family Trust co-trustees
5 have failed to keep her informed and to fully disclose information concerning the assets
6 and property of the trust. Third, she alleges the co-trustees used trust property for their
7 personal benefits at the expense of her interest in the trust. Wendy points to three
8 instances where she believes disposition of trust property to be improper: (1) use of
9 insurance proceeds to pay debt associated with the Lake Tahoe Property; (2) sale of real
10 property owned by Bright Holland, Co.; and (3) distribution of proceeds from the sale of
11 Bronco Billy's Casino. Each transaction is discussed in further detail below. Finally,
12 Wendy contests the validity of an indemnification agreement, purportedly executed by
13 Samuel on January 1, 2008, indemnifying Todd for certain actions taken as trustee of the
14 Family Trust as well as pursuant to other family business.

15 In his motion, Mr. Kimmel asserts multiple bases for his argument that summary
16 judgment is appropriate with respect to Wendy's claims against him. First, he argues
17 Wendy's counterpetition was not properly verified and is therefore invalid. Second, he
18 asserts he should not have been named individually in this case. Third, he argues
19 summary judgment is also appropriate regarding the claims against him as co-trustee
20 because the majority of the alleged breaches occurred prior to his appointment as
21 co-trustee.

22 II. Law and Analysis

23 A. Summary Judgment

24 Summary judgment is appropriate where "the pleadings, depositions, answers to
25 interrogatories and admissions on file, together with affidavits . . . show there is no
26 genuine issue as to any material fact and that the moving party is entitled to a judgment as
27 a matter of law." NRCP 56(c). The pleadings and the record are construed in the light
28 most favorable to the non-moving party. Wood v. Safeway, Inc., 121 Nev. 724, 732, 121

1 P.3d 1026, 1031 (2005). The moving party has the burden of showing an absence of a
2 genuine issue of material fact. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598,
3 602, 172 P.3d 131, 134 (2007). A factual dispute will be considered genuine if the evidence
4 is such that a rational trier of fact could return a verdict in favor of the non-moving party.
5 Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 216-17, 180 P.3d 1172, 1174-78
6 (2008). Once the moving party has satisfied his or her burden, the burden shifts and the
7 non-moving party "must set forth specific facts showing that there is a genuine issue for
8 trial. If the [non-moving party] does not so respond, summary judgment, if appropriate,
9 shall be entered against the [non-moving] party." NRCP 56(e). Motions for summary
10 judgment are often filed but rarely granted because the standard is so rigorous.

11 B. Verification of Counterpetition

12 As an initial matter, Mr. Kimmel argues Wendy's counterpetition is invalid because
13 it is not properly verified. NRS 132.270 defines a petition in a probate matter as a "verified
14 written request to the court for an order." Pursuant to NRS 15.010(1), a pleading shall be
15 verified "by affidavit of the party filing the pleading, unless the party is absent from the
16 county where the attorneys resides, or from some cause unable to verify it, or the facts are
17 within the knowledge of the party's attorney or other person verifying the same." Further,
18 when the pleading is verified by a person other than the party, including the party's
19 attorney, the person verifying shall set forth in the affidavit the reasons why the
20 verification is not made by the party. NRS 15.010(2).

21 In Heintzelman v. L'Amoureux, 3 Nev. 377, 1867 WL 2006 (1867), the Supreme Court
22 of Nevada addressed verification of an answer signed by an attorney on behalf of a foreign
23 corporation with officers located in Nevada. Although the case was reversed on other
24 grounds, the court found the verification to be inadequate. However, it further observed
25 the proper practice to object to the verification would have been "to return the answer,
26 with a notification that it would not be accepted for want of proper verification." Id. at 379,
27 1867 WL 2006 at *2. By contrast, acceptance of the answer, without objection, should be
28 treated as a waiver. Id. at 380, 1867 WL 2006 at *2. The court also noted that even if the

1 answer had been stricken, the defendant should have been allowed to correct the
2 imperfection in the verification. Id. at 380, 1867 WL 2006 at *3. The Nevada Supreme
3 Court has since cited Heintzelman in support of its holding that failure to properly verify a
4 complaint in an unlawful detainer action may be waived when the opposing party files an
5 answer thereto. See Musso v. Triplett, 78 Nev. 355, 357, 372 P.2d 687, 689 (1962).

6 Wendy's initial and amended counterpetitions were verified by Zachary Johnson,
7 an attorney authorized to practice law in Texas. Both petitions were filed prior to this
8 Court's order admitting Mr. Johnson to practice in this matter pursuant to SCR 42.
9 However, regardless of whether Mr. Johnson was, at the time of filing, Wendy's attorney
10 or some "other person" with knowledge under NRS 15.010(1), the verification did not state
11 the reasons why verification was not made by Wendy. Thus, it failed to comply with the
12 procedural requirements of NRS 15.010(2). However, in the intervening period between
13 the counterpetition and his motion for summary judgment, Mr. Kimmel filed a motion to
14 dismiss the counterpetition as well as an answer and errata to that answer without ever
15 raising the issue of proper verification. Accordingly, this Court finds any objection to
16 Wendy's failure to adequately verify her counterpetition is waived.³

17 C. Claims Arising from Facts Predating Mr. Kimmel's Appointment

18 Mr. Kimmel also argues that summary judgment is appropriate because most of the
19 allegations asserted in Wendy's counterpetition occurred prior to his appointment as
20 trustee.

21
22
23 ³ While objection to Wendy's procedural noncompliance with verification requirements has been waived,
24 this Court also notes it is not concerned that the underlying purpose of verification under NRS 132.270 has
25 been contravened. Mr. Johnson is Wendy's attorney and was located in a different county than her at the
26 time the counterpetition was filed. It is reasonable to infer that this is the reason the counterpetition was
27 verified by counsel rather than Wendy herself. Mr. Johnson is an attorney in good standing in the state of
28 Texas who has since been admitted by this Court to practice in the present matter and who has consented to
the jurisdiction of the courts and disciplinary boards of the State of Nevada. Nevada Counsel of Record had,
at the time of the verification of the counterpetition, agreed to associate with Mr. Johnson and to ensure this
proceeding is tried and managed in accordance with all applicable Nevada procedural and ethical rules.
Mr. Johnson's verification states he has conducted diligent inquiry of the facts contained within the
counterpetition and has reviewed pertinent documents and that the counterpetition is true as to the best of
his knowledge. Mr. Johnson and Mr. Connot's interactions with this Court have not given it any reason to
question the veracity of these assertions.

1 A trustee is not liable to the beneficiary for a breach of trust committed by a
2 predecessor trustee. Restatement (Second) of Trusts § 223 (1959); see also Albertazzi v.
3 Albertazzi, 2018 WL 4053319, at *4 (D. Nev. Aug. 24, 2018) (dismissing counterclaim
4 against successor co-trustee for loss of trust assets by initial trustees prior to their
5 resignation and her appointment). However, he or she may be liable to the beneficiary for
6 a breach of trust if he or she knows or should know of a situation constituting a breach
7 committed by a predecessor and improperly permits it to continue or neglects to take
8 proper steps to redress the breach. Id.

9 The 2006 Family Trust Agreement (as Restated) further limits liability of a trustee
10 for conduct prior to his or her appointment. Under Trustee Provisions, para. C, the
11 agreement states:

12 No successor Trustee is to be liable for any act, omission, or
13 default of a predecessor Trustee. Unless requested in writing
14 within 180 days of appointment by an adult beneficiary of this
15 trust, no successor Trustee is to have any duty to investigate or
16 review any action of a predecessor Trustee and may accept the
17 accounting records of the predecessor Trustee showing assets
18 on hand without further investigation and without incurring
19 any liability to any person claiming or having an interest in the
20 trust.

21 It is necessary for this Court to examine the specific allegations of fact underlying
22 each of Wendy's claims to determine if each arises solely from actions pre-dating
23 Mr. Kimmel's appointment or involves allegations about Mr. Kimmel's actions as a trustee
24 or those he was otherwise aware of and failed to rectify. However, compelling a redress of
25 a breach of trust is but one of many reasons a beneficiary may seek to petition the court
26 regarding the affairs of a trust. See NRS 153.031(m). A beneficiary may also seek relief
27 from the court in the form of settling accounts, instructing the trustee, compelling the
28 trustee to report information about the trust, or appointing or removing a trustee.
NRS 153.031(f)-(k). Thus, in addition, it is necessary for this Court to determine whether
Mr. Kimmel, as a current trustee, is the appropriate party to address some other aspect of
trust affairs as enumerated in NRS 153.031.

1
2 General Allegations. In her general allegations, Wendy points to four specific
3 events or transactions that underlie most of her overlapping claims for breach of fiduciary
4 duties, civil conspiracy and aiding and abetting of the same, fraud, and unjust enrichment.
5 Specifically she raises concerns regarding sale and payment of debt associated with the
6 Lake Tahoe Property; sale of property owned by Bright Holland, Co; and distribution of
7 proceeds from the sale of Bronco Billy's Casino. She also challenges the validity of the
8 2008 indemnification agreement between Samuel and Todd. Each transaction is discussed
9 in further detail below.

10 *Lake Tahoe Property.* At the time of his death, Samuel lived in a home located in
11 Incline Village, Nevada ("Lake Tahoe Property"). The 2006 Restated Family Trust
12 Agreement lists the Lake Tahoe Property as property owned by the trust. However, on
13 December 5, 2011, Samuel transferred interest in the property from the Family Trust to
14 SSJ, LLC, a company he wholly owned. Subsequently, on December 28, 2012, the Lake
15 Tahoe Property was transferred to Incline TSS, Ltd., allegedly controlled by Todd. Wendy
16 alleges that shortly following Samuel's death in early 2013, Todd convinced her and
17 Stanley to consent to use proceeds from Samuel's insurance policy to pay debt on the Lake
18 Tahoe Property, without informing them the property was no longer wholly owned by the
19 Family Trust. Wendy thus contests this consent agreement and alleges Todd withheld
20 information regarding his ownership interest in the property. According to Wendy's
21 allegations, all transfers of the Lake Tahoe Property occurred prior to Samuel's death,
22 when he was sole trustee. Further, Todd's alleged failure to disclose the entities with
23 ownership interests in the Lake Tahoe home occurred in the days following Samuel's
24 death in early 2013, when the alleged agreement to pay debts on the property occurred.
25 Mr. Kimmel was appointed as co-trustee in December 2016. Thus, there is no genuine
26 issue as to any material fact creating duties for Mr. Kimmel as trustee with regard to this
27 property.
28

1 *Indemnification Agreement.* On January 1, 2008, Samuel and Todd purportedly
2 signed a document titled Indemnification and Contribution Agreement. The agreement
3 recognized that both Samuel and Todd had entered into several transactions with respect
4 to family business which required them to make payments or subject themselves to
5 potential liability. It further stated Samuel's wishes to indemnify Todd "with respect to
6 any claims, liability, obligations for demand, threatened, pending or completed action, [or]
7 suit" arising from this family business. The agreement also provided a non-exclusive list
8 of specific obligations and the particulars of Samuel's intent to indemnify Todd for them.
9 Wendy alleges she only became aware of this agreement two years after Samuel's death,
10 in approximately early 2015, and contends Todd forged, altered, or manufactured the
11 document. She thus asks that all obligations avoided as a result of the indemnification
12 agreement be enforced against Todd. Mr. Kimmel was appointed as co-trustee at least a
13 year after Wendy alleges Todd forged the agreement. Further, she does not allege
14 Mr. Kimmel has personally sought indemnification under the agreement or otherwise
15 used or benefited from it. Thus, there is no genuine issue as to any breach by Mr. Kimmel
16 with regard to the indemnification agreement.

17 *Bright Holland, Co. Property.* Bright Holland, Co. is a Nevada corporation in which
18 the Family Trust holds an ownership interest. On June 10, 2016, Bright Holland sold a
19 parcel of real property known as "Fly Ranch" to the Burning Man Project. Wendy asserts
20 it was Todd who negotiated and executed this sale, but did not inform her the sale had
21 occurred. Further, she alleges she has a 13% interest in Bright Holland, Co. as part of the
22 BHC Family Trust, but the trustee of the BHC Family Trust has denied her requests for
23 distributions from the proceeds of the sale. Mr. Kimmel was appointed as co-trustee of
24 the Family Trust in December 2016, six months after the sale of Fly Ranch. Wendy has
25 failed to show Mr. Kimmel has any duty to make distributions to her under the BHC
26 Family Trust. Thus, there is no genuine issue as to any breach by Mr. Kimmel with regard
27 to the sale of Fly Ranch by Bright Holland.
28

1 *Bronco Billy's Casino*. At the time of its execution, the Family Trust owned stock in
2 Pioneer Group, Inc., which owned a casino in Colorado known as "Bronco Billy's Casino."
3 In April 2013, Samuel gifted 6% of the issued and outstanding stock in Pioneer Group each
4 to Todd and Stanley. Samuel did not gift any Pioneer Group stock to Wendy. The Second
5 Amendment to the Family Trust provided that the remaining stock in Pioneer Group be
6 distributed equally between Todd, Stanley, and Wendy. However, on July 16, 2013, Todd,
7 Stanley, Wendy, and Mr. Riley signed an Agreement and Consent to Proposed Action,
8 agreeing to alter the Family Trust's distributions. As a result, the remaining Pioneer
9 Group stock was distributed to two equal trusts for the benefit of Todd and Stanley only,
10 with the expectation that that the two trusts would sell equalizing amounts of stock to a
11 trust for Wendy's benefit when and if she obtained a Colorado gaming license. In May
12 2016, Pioneer Group sold Bronco Billy's Casino. The proceeds of the sale were distributed
13 into Todd and Stanley's subtrusts. However, Wendy's petition to redress indicates the
14 funds were ultimately redeposited from the two subtrusts back into the Family Trust,
15 where Wendy alleges they were used for "general purposes" rather than to fund Samuel's
16 estate plan. Wendy alleges that both the distribution of the Pioneer Group stock to Todd
17 and Stanley was improper and the co-trustees breached their fiduciary duties by failing to
18 provide full disclosure to her regarding the Bronco Billy's Casino sale. Mr. Kimmel was
19 appointed as co-trustee in December 2016, more than three years after the consent
20 agreement between the beneficiaries and seven months after the sale of Bronco Billy's.
21 Thus, there is no genuine issue of fact as to any breach by Mr. Kimmel with regard to the
22 Pioneer Group Stock or the sale of Bronco Billy's.

23 While this Court finds there are no genuine issues of material fact supporting
24 claims against Mr. Kimmel in any capacity with respect to the specific dispositions of
25 property and documents described above, this alone is not determinative as to whether
26 summary judgment is appropriate. Accordingly, this Court turns to Wendy's additional
27 requests for relief.
28

1 Failure to Adequately Account. In addition to the specific transactions described
2 above, Wendy also alleges the co-trustees failed to provide her with clear and accurate
3 accountings regarding the administration of the trust, resulting in a breach of their
4 fiduciary duties, and asks that they now be compelled to account. Pursuant to the 2006
5 Family Trust Agreement (as Restated), following the death of the grantor, the trustee must
6 render accountings "at least annually to each beneficiary who is entitled to receive current
7 discretionary or mandatory distributions." In addition to the accounting requirements
8 enumerated in the trust itself, in order to satisfy the duty to account under Nevada law, a
9 trustee shall deliver an account to each current beneficiary within 90 days after the end of
10 the period of account and within 60 days of a request made under NRS 165.141.
11 NRS 165.1207-1214. Except as otherwise provided by the trust instrument, a trustee is not
12 required to provide an account more than once in any calendar year unless ordered by a
13 court upon good cause shown. NRS 165.1214(3).

14 As attachments to the Petition for Confirmation, Todd and Mr. Kimmel provided
15 four trust financial statements covering periods from April 21, 2013, to December 31, 2016.
16 On September 24, 2018, Todd and Mr. Kimmel filed a supplement to the Petition for
17 Confirmation, which contained an additional financial statement for the period from
18 April 1, 2016 to December 31, 2017. Wendy acknowledges these accountings were
19 provided to her, but asserts they do not meet the form and content requirements of
20 NRS 165.135. No accountings for the Family Trust addressing periods after December 31,
21 2017, have been provided to this Court as part of the pleadings.⁴ Upon initial review, the
22 provided financial statements appear to be prepared by a certified public accountant
23 (CPA) and generally include summaries of the information listed in NRS 165.135(1).
24 However, whether these summaries are correct and complete representations of the state
25 of the trust is a question of fact which must be addressed at trial. This is especially the
26 case where the accompanying CPA cover letter indicates they did not "verify the accuracy

27 _____
28 ⁴ This Court acknowledges that NRS 165.1214 provides 90 days from the end of the period of account for the Trustee to deliver an accounting. Thus, an accounting for the period from January 1, 2018 to December 31, 2018, is not yet due to the beneficiaries.

1 or completeness of the information provided by the trustees" and "[t]he trustees have
2 elected to omit substantially all of the disclosures required by accounting principles
3 generally accepted in the United State of America." Further, given the dates of the
4 accompanying CPA cover letters for each financial accounting, there is a genuine issue as
5 to whether they were delivered to the beneficiaries within the time requirements of
6 NRS 165.1214. Thus, summary judgment is not appropriate with respect to this claim.

7 Removal of Trustees. A beneficiary may petition the court to remove a trustee.
8 NRS 153.031(k). The court may, for cause shown and upon notice to the beneficiaries,
9 relieve a trustee from any or all duties. NRS 163.180. Mutual hostility between
10 beneficiaries and the trustee may create grounds for such removal where it interferes with
11 proper administration of the trust. Restatement (Third) of Trusts § 37 (2003); see also In re
12 Gilmaker's Estate, 57 Cal.2d 627, 371 P.2d 321 (1962); Matter of Malone's Estate, 42 Colo.
13 App. 353, 597 P.2d 1049 (1979). The numerous pleadings in this case evidence a significant
14 breakdown in communication and mutual respect between Wendy and the co-trustees of
15 the Family Trust. Separate from a determination of breach of duties, there is a genuine
16 issue of material fact as to whether the relationship between Wendy and Mr. Kimmel has
17 so degraded that it may impede any further administration of the trust such that
18 appointment of a new successor trustee is warranted. Thus summary judgment is not
19 appropriate with respect to this portion of Wendy's counter-petition.

20 D. Inclusion of Mr. Kimmel as Counter-Respondent in an Individual Capacity

21 In addition to the issues raised in his capacity as co-trustee, Mr. Kimmel asserts
22 there is no factual or legal basis for him to remain in this case as an individual.

23 Historically, trustees were personally liable for all liabilities incurred in the course
24 of trust administration, with the trustee receiving indemnity from the trust if appropriate.
25 Restatement (Third) of Trusts § 105 (2012). The modern approach is to authorize suit
26 against the trustee in his or her representative capacity and excuse the trustee from
27 personal liability "to the extent the trustee acted properly." Id. Modern doctrine,
28 however, "does not insulate a trustee from also being sued in an individual capacity . . .

1 [q]uestions of personal liability, fiduciary authority, and trustee fault are often best
2 resolved in the same litigation." Id.

3 Under Nevada law, a person's representative capacity as the co-trustee of a trust is
4 distinguished from his or her individual capacity and "the differing capacities are
5 generally treated as two different legal personages." Mona v. Dist. Ct., 132 Nev. Adv. Op.
6 72, 380 P.3d 836, 842 (2016) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534,
7 543-44 (1986)). NRS 163.140(1) illustrates the consequences of these differing capacities.
8 Where a trustee is found to be liable in his or her representative capacity, "collection [may
9 be] had from the trust property." Id. By contrast, a trustee may be held personally liable
10 for any tort committed by the trustee if he or she is "personally at fault." NRS 163.140(4).
11 Similar logic can be found in NRS Chapter 165, which addresses trustee accounting. A
12 trustee who fails to provide an account pursuant to the terms of the trust instrument, or
13 when required to under statute, is personally liable to each person entitled to receive an
14 account who complied with proper procedure for demanding accounting. NRS 165.148(1).
15 The trustee shall not expend trust funds to satisfy the trustee's personal liability for such a
16 failure to provide accounting. Id. As discussed above, there are genuine issues of material
17 fact as to whether the co-trustees have provided adequate and accurate accountings to
18 Wendy as a beneficiary in the period of time following Mr. Kimmel's appointment. In
19 accordance with NRS 165.148(1), Mr. Kimmel may be held personally liable if such a
20 failure is found. Further, if Mr. Kimmel is found to have breached his fiduciary duty with
21 respect to any disclosures not made to Wendy, it is appropriate that trust funds not be
22 used to remedy any resulting damages. Whether Mr. Kimmel has personally conversed or
23 maintained a friendly relationship with Wendy is immaterial, as the central issue is
24 whether it is appropriate to hold the trust financially accountable for his alleged breach.
25 Accordingly, Mr. Kimmel's motion for summary judgment with respect to his inclusion in
26 this matter in an individual capacity is denied.

27 ///

28 ///

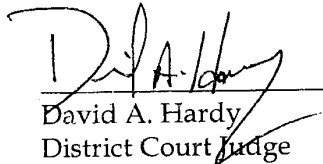
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III. Conclusion

Summary judgment is granted as to all claims arising solely out of the four specific events or transaction detailed previously as brought against Mr. Kimmel. However, summary judgment is denied as to claims arising from alleged accounting deficiencies and related breaches of fiduciary duty, including conspiracy to commit such breaches, as to Mr. Kimmel in both his capacities as trustee and individually. Further, summary judgment is denied as to Wendy's requests for removal of trustees, disgorgement, declaratory relief, and all contests of trust related agreements.

IT IS SO ORDERED.

Dated: January 14, 2019.



David A. Hardy
District Court Judge

Jayne Ferretto

From: eflex@washoecourts.us
Sent: Thursday, April 30, 2020 8:26 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: CONS: TRUST: SSJ'S ISSUE TRUST: Mtn Alter or Amend Judgment: PR17-00445

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

PROOF OF SERVICE OF ELECTRONIC FILING

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

Judge: HONORABLE DAVID A. HARDY

Official File Stamp: 04-29-2020:17:59:34
Clerk Accepted: 04-30-2020:08:25:05
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: CONS: TRUST: SSJ'S ISSUE TRUST
Document(s) Submitted: Mtn Alter or Amend Judgment
- **Continuation
- **Continuation
- **Continuation
Filed By: Mark Connot

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

The following people were served electronically:

ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
CAROLYN K. RENNER, ESQ. for KEVIN RILEY, MICHAEL S. KIMMEL, TODD B. JAKSICK
THERESE M. SHANKS, ESQ. for DUCK LAKE RANCH LLC, SAMMY SUPERCUB, LLC,
SERIES A, TODD B. JAKSICK, INCLINE TSS, LTD.
PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY
TRUST
DONALD ALBERT LATTIN, ESQ. for KEVIN RILEY, MICHAEL S. KIMMEL, TODD B.
JAKSICK
KENT RICHARD ROBISON, ESQ. for DUCK LAKE RANCH LLC, SAMMY SUPERCUB, LLC,
SERIES A, TODD B. JAKSICK, INCLINE TSS, LTD.
STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY
TRUST

MARK J. CONNOT, ESQ, for WENDY A. JAKSICK

SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST, SSJ'S ISSUE TRUST

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

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11 *Attorneys for Petitioners/Co-Trustees*

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

13 IN AND FOR THE COUNTY OF WASHOE

14 In the Matter of the:

Case No.: PR17-0445

Dept. No.: 15

15 SSJ's ISSUE TRUST.

Consolidated

16 In the Matter of the Administration of

Case No.: PR17-0446

Dept. No.: 15

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

18 **REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS**

19 MICHAEL S. KIMMEL, individually and as Co-Trustee of The Samuel S. Jaksick, Jr.
20 Family Trust ("Kimmel"), by and through his undersigned counsel of record, hereby files his
21 Motion for Attorneys' Fees pursuant to NRCP 68, NRS 18.010, NRS 18.020, NRS 18.005, and
22 NRS 7.085.

23 ///


24 ///

25 ///

26 ///

1 Dated this 1st day of May, 2020.

2 MAUPIN, COX & LEGOY

3
4 By: 
5 Donald A. Lattin, NSB #693
6 Carolyn K. Renner, Esq. NSB #9164
7 Kristen D. Matteoni, Esq. NSB #14581
8 4785 Caughlin Parkway
9 Reno, NV 89519
10 *Attorneys for Petitioners/Co-Trustees*

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**
13 **REBUTTAL TO WENDY'S STATEMENT OF FACTS**

14 Wendy claims that the Petition for Confirmation of Trustees and Admission of Trust to
15 the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration
16 Matters (the "Petition") filed by Co-Trustees Kimmel and Todd Jaksick was the equivalent of
17 initiating a lawsuit. This makes no sense. The Petition simply submitted the Trust to the
18 jurisdiction of the Court and asked the Court for approval of trust administration matters. There
19 are no damages that can inure to any person as a result of filing the Petition, there are no
20 allegations, no accusations, nothing to make it an adversarial process. Indeed, Wendy had
21 previously attempted to claim that Todd Jaksick violated the no-contest provision of the Trust by
22 filing the Petition, alleging it was akin to initiating a lawsuit and the Court disposed of that issue
23 simply stating that "Wendy's request is retaliatory and made with little legal basis or support
24 from the trust instruments." *See* Order after Equitable Trial at p. 15, ¶3. The filing of the Petition
25 was not an initiation of a lawsuit against Wendy. There were no allegations against Wendy, there
26 were no damages alleged to be caused by Wendy, it was not a lawsuit.

1 The litigation was initiated by Wendy when she filed her Counter-Petition and made
2 claims and allegations against the defendants and claimed damages. That is a lawsuit, and Wendy
3 filed it.

4 Further, Kimmel did not “ratif[y] all actions taken by the trustees of the Family Trust
5 since 2013” by the filing of the Petition. Kimmel filed the Petition to seek direction and approval
6 from the Court. His verification is not a ratification stating that every document referenced in
7 the Petition is accurate, true, or otherwise. Wendy’s reasoning on this issue is not supported by
8 any cited authority and quite frankly is mind-boggling.
9

10 II.

11 ARGUMENT

12 A. This Court has the authority to provide relief from its Order After Equitable 13 Trial and Judgment.

14 Under NRCP 60, this Court is able to provide relief from any order or judgment for any
15 reason that justifies relief. *See* NRCP 60(b)(6). Relief under NRCP 60 is timely if “made within
16 a reasonable time” and in some circumstances no more than six (6) months after notice of entry
17 of the judgment. NRCP 60(c)(1). Rule 60 is remedial in nature and is meant to be construed
18 liberally. *See La-Tex Partnership v. Deters*, 111 Nev. 471, 893 P.2d 361 (1995). The district
19 court is given wide discretion to consider matters brought under NRCP 60. *See Union*
20 *Petrochemical Corp. v. Scott*, 96 Nev. 337, 609 P.2d 323 (1980).
21

22 In this situation, the Court ruled on matters concerning Kimmel’s attorney’s fees without
23 knowing that Kimmel had served an offer of judgment, or otherwise had a basis to request fees,
24 as he had not yet filed his Motion for Fees at the time the Court issued its Order. A motion for
25 fees is a post-trial motion, generally made after entry of the judgment. In this case, many parties
26

1 had filed motions for fees and as such, the Court had no way of determining who intended to file
2 a motion for fees who had not already done so. Kimmel's Motion for Fees was timely, and he is
3 entitled to have it considered by the Court. Should the Court be inclined to provide relief from
4 the judgment on this issue, it has authority to do so under Rule 60. Thus, the Court's Order is
5 not necessarily dispositive of this issue.

6 **B. Kimmel is entitled to an award of costs under NRS 18.020.**
7

8 As set forth in the original Motion for Fees, Nevada law is clear, the prevailing party
9 **must** be awarded costs. *See* NRCPP 18.020 (stating that "[c]osts **must** be allowed of course to
10 the prevailing party") There is no dispute that Kimmel is the prevailing party as concerning
11 all of Wendy's claims against Kimmel in both his individual capacity and in his capacity as Co-
12 Trustee of the Family Trust. Accordingly, Kimmel is entitled to costs.

13 Wendy argues Kimmel is not entitled to an award of costs because he is unable to separate
14 his costs from the other defendants in this case. Kimmel was sued in this case, and remained a
15 defendant in this case until the bitter end. All of the defense work conducted was conducted
16 equally for all four individuals who served or previously served as Co-Trustees. If a deposition
17 was taken, it was taken in defense of all of the defendants, not one specific defendant. Wendy's
18 allegations targeted all of the defendants. Indeed, she confirms that with her opening argument
19 in her Opposition wherein she states that Kimmel, by signing the verification, ratified "**all**
20 **actions taken by the trustees of the Family Trust since 2013.**" *See* Opp'n at 3:5-8. While
21 this position is nonsensical, it illustrates Wendy's position throughout the case with respect to
22 all defendants. This statement alone obviates the need to segregate any defense costs or fees
23 one from the other. All defendants were involved in the case from the very beginning to the
24 very end. The defense was necessary for all defendants. It is fair and reasonable to then split
25
26

1 the defense costs and fees among the named Co-Trustee defendants as a way to allocate both.
2 Wendy cites to no authority which precludes such an allocation as reasonable. She presents no
3 authority that requires costs or fees to be “distinguished and segregated” in a matter in which all
4 defendants were defending against the same claims for the entirety of the litigation. Kimmel is
5 entitled to his share of the costs.

6 **C. Kimmel is entitled to recover fees under NRS 18.010(2)(b).**
7

8 As set forth in the original Motion for Fees, Nevada Revised Statute NRS 18.010(2)(b)
9 provides that the “court **shall** liberally construe the provisions of this paragraph in favor of
10 awarding attorney’s fees in all appropriate situations.” (Emphasis added).

11 Amazingly, and quite unbelievably, Wendy’s Opposition does exactly what Wendy did
12 throughout this **entire** case - simply lumps all of the actions of all Co-Trustees together as if
13 Todd, Stan, Kimmel and Kevin Riley were involved in every bad act that Wendy complained of
14 regardless of when each respective Co-Trustees’ term began and/or ended. This manner in which
15 Wendy litigated this case supports Kimmel’s argument that the claims against him were brought
16 without reasonable ground or to harass him.

17
18 In her Opposition, Wendy **completely** ignores, and in doing so fails to oppose, the several
19 specific and distinct facts which show that Wendy’s claims were brought against Kimmel without
20 reasonable grounds or to harass. Not one of the specific examples was addressed by Wendy.
21 One can only assume that her failure to oppose them was due to the compelling nature and
22 because she had no facts in opposition. To reiterate, Wendy did not oppose the following:
23

- 24 1. When asked why Wendy had sued Kimmel as an individual, she claimed that he
25 “caused her harm by listening to Todd . . . and voting against [her] because he
26 thought that [she] was not a good person.”

- 1 2. Wendy admitted that Kimmel should not have been named individually in these
2 lawsuits.
- 3 3. Wendy's claims of breach of fiduciary duty involve actions which occurred prior
4 to Kimmel becoming Co-Trustee of the Family Trust. Kimmel became the third
5 Co-Trustee, along with Stanley Jaksick ("Stan") and Todd Jaksick ("Todd") on
6 December 23, 2016 and did not become involved with Trust matters until in or
7 around January 2017.
- 8 a. The Second Amendment to the Family Trust, which Wendy claimed was
9 forged was executed in December of 2012, four years before Kimmel
10 became Co-Trustee.
- 11 b. The Tahoe Property was transferred from the Family Trust to SSJ, LLC in
12 December 2011 (five years before Kimmel became a Co-Trustee) and
13 transferred to Incline TSS, Ltd. in December 2012 (four years before
14 Kimmel became a Co-Trustee).
- 15 c. The insurance proceeds were used to pay down the mortgage on the Tahoe
16 House in June 2013, more than three years before Kimmel became a Co-
17 Trustee.
- 18 d. The indemnification agreements were executed in 2008, more than eight
19 years before Kimmel became a Co-Trustee.
- 20 e. The sale of Fly Ranch occurred in May 2016, several months before
21 Kimmel became Co-Trustee.
- 22 f. The sale of Bronco Billy's occurred in 2015, more than a year before
23 Kimmel became a Co-Trustee.
- 24 Kimmel became a Co-Trustee.
- 25 Kimmel became a Co-Trustee.
- 26 Kimmel became a Co-Trustee.

1 4. In spite of the clear evidence of Kimmel's lack of involvement in the actions of
2 which Wendy complained, she proceeded against him in this litigation through to
3 the end of the trial, never dismissing him despite requests from Kimmel's counsel
4 to do so.

5 5. At trial, Wendy's lawyers simply lumped all of the actions of all Co-Trustees
6 together as if Todd, Stan, Kimmel and Kevin Riley were involved in every bad
7 act that Wendy complained of regardless of when each respective Co-Trustees'
8 term began and/or ended.

9
10 6. Wendy never made specific allegations that would implicate Kimmel
11 individually, yet she proceeded to trial against him individually despite requests
12 from his counsel to dismiss him individually.

13 7. Wendy never identified damages specifically resulting from any breach of
14 Kimmel's fiduciary duty as a Co-Trustee, or from any action by him individually.

15 8. When Wendy filed her Counter-Petition it was not verified by Wendy, but by her
16 counsel.

17
18 Wendy's bad faith litigation against Kimmel is clearly exposed in these unopposed
19 actions. NRS 18.010(2)(b) applies and should be liberally construed against Wendy and in favor
20 of awarding attorney's fees.

21 **D. Kimmel is entitled to fees and costs pursuant to NRCP 68.**

22 Nevada Rule of Civil Procedure 68 governs offers of judgment and provides that the
23 district court may award attorney's fees and costs to a party who makes an offer of judgment
24 when the offeree rejects the offer and the judgment ultimately obtained is less favorable than the
25 offer. *See Chavez v. Sievers*, 118 Nev. 288, 296, 43 P.3d 1022 (2002). It is not disputed that
26

1 Kimmel obtained judgment more favorable than the offer. Wendy argues that Kimmel's offer
2 was not reasonable in timing and amount.

3 First, the capacity in which the offer was made by Kimmel is inapposite to the analysis
4 of the reasonableness of the offer. In her Opposition, Wendy sets forth how the two capacities
5 in which Kimmel was sued are inextricably linked. According to Wendy, Kimmel was sued in
6 his individual capacity *because of* his potential liability as a co-trustee. If he was liable as a co-
7 trustee, he would be liable individually for payment of damages. If he was not liable as a co-
8 trustee, he would not be liable individually for damages. *See* Opp'n at 3:17-4:28. The fact that
9 the offer identifies Kimmel as "Petitioner" is of no consequence.
10

11 Wendy's position that the offer was not reasonable is not well-founded. Her argument
12 that a \$500 offer is not reasonable "considering the property in the Family Trust and Wendy's
13 Interest in it." *See* Opp'n at 12:15-17. The value of Wendy's interest in the Family Trust is not
14 a basis to evaluate an offer made by a co-trustee of the Family Trust who only became involved
15 in the administration of the Trust seven (7) months prior to the Petition being filed. Recall the
16 following:
17

18 1. Wendy's claims of breach of fiduciary duty involve actions which occurred prior to
19 Kimmel becoming Co-Trustee of the Family Trust. Kimmel became the third Co-
20 Trustee on December 23, 2016 and did not become involved with Trust matters until
21 in or around January 2017.
22

23 a. The Second Amendment to the Family Trust, which Wendy claimed was
24 forged was executed in December of 2012, four years before Kimmel
25 became Co-Trustee.
26

- 1 b. The Tahoe Property was transferred from the Family Trust to SSJ, LLC in
2 December 2011 (five years before Kimmel became a Co-Trustee) and
3 transferred to Incline TSS, Ltd. in December 2012 (four years before
4 Kimmel became a Co-Trustee).
5 c. The insurance proceeds were used to pay down the mortgage on the Tahoe
6 House in June 2013, more than three years before Kimmel became a Co-
7 Trustee.
8 d. The indemnification agreements were executed in 2008, more than eight
9 years before Kimmel became a Co-Trustee.
10 e. The sale of Fly Ranch occurred in May 2016, several months before
11 Kimmel became Co-Trustee.
12 f. The sale of Bronco Billy's occurred in 2015, more than a year before
13 Kimmel became a Co-Trustee.
14
15

16 Wendy cannot ignore these facts which were clearly known at the time she initiated the
17 litigation in January 2018 with the filing of her Counter-Petition. A reasonable assessment of
18 the case should have resulted in the omission of Kimmel as a defendant in this litigation. Her
19 failure to omit Kimmel is just one of many examples of her "scorched earth" litigation tactic as
20 noted by this Court in its Order After Equitable Trial. *See* Order at 6:27-28. Wendy failed to
21 make a reasonable assessment of the case based on facts known at the **instant** she initiated the
22 litigation. Thus, while the offer from Kimmel was made early on in the litigation, it was made
23 justifiably and reasonably given the short duration he had been a co-trustee prior to the first court
24 filings. Given Kimmel's total lack of involvement in the issues outlined above, the \$500 was a
25 reasonable offer.
26

1 As set forth in section II.C. above and in his original Motion for Fees, the claims against
2 Kimmel were NOT made in good faith. Again, given the extremely short duration of time during
3 which Kimmel acted as Trustee prior to the Petition being filed, it was unreasonable for Wendy
4 to pursue this litigation against him.

5 As set forth in section II.B. above, and the original Motion for Fees, Kimmel's fees are
6 reasonable and appropriate.

7 **E. Kimmel is entitled to recover fees and costs from Wendy's attorneys.**
8

9 As set forth in the various sections above in this brief as well as the original Motion for
10 Fees, it is clear that Wendy's attorneys "filed maintained or defended a civil action" which was
11 "not well-grounded in fact. " As such, Wendy's attorneys should be held liable for Kimmel's
12 fees under NRS 7.085. As set forth above, the information regarding Kimmel's involvement,
13 based merely on the timing of his commencement as Co-Trustee, was readily known by counsel
14 at the initiation of the litigation. There was no evidence of any wrongdoing on Kimmel's part
15 from the very start, and as the litigation progressed, no evidence was discovered to warrant
16 maintaining the litigation against Kimmel. In spite of this, Wendy's counsel failed and refused
17 to dismiss Kimmel as a defendant.
18

19 Further, as noted in the original Motion for Fees, Wendy's attorney personally signed the
20 verified counter-petition initiating this lawsuit. It is inapposite that one year later Wendy signed
21 the verification. At the time the lawsuit was filed, all of the information regarding Kimmel's
22 tenure as co-trustee was known to Wendy and her attorneys. There is a responsibility on the part
23 of Wendy's attorneys to research the facts of their case prior to initiating the lawsuit. Wendy's
24 attorney cannot claim that these facts were not known. In spite of this, the attorney signed the
25
26

1 counter-petition. There is no justification. There is a basis under NRS 7.085 to hold Wendy's
2 attorneys liable for Kimmel's fees.

3 **IV.**

4 **CONCLUSION**

5 For reasons set forth above and in the original motion, Kimmel respectfully requests
6 that the Court grant an award of costs and attorney's fees to him in the amount of \$124,616.56
7 in fees, \$26,069.98 in costs for a total amount of \$150,686.54 pursuant to NRCP 68, NRS
8 18.010, NRS18.020, and in the alternative, NRS 7.085.
9

10 **NRS 239B.030 Affirmation**

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

13 Dated this st day of May, 2020.

14 MAUPIN, COX & LEGOY

15
16
17 By: 

18 Donald A. Lattin, NSB # 693
19 Carolyn K. Renner, Esq., NSB #9164
20 Kristen D. Matteoni, Esq. NSB #14581
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26 crenner@mcllawfirm.com
kmatteoni@mcllawfirm.com
Attorneys for Petitioners/Co-Trustees

CERTIFICATE OF SERVICE

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

Via E-Flex Electronic filing System:

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And

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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:


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Alexi Smrt 3713 Wrexham St. Frisco, TX 75034	Luke Jaksick Northern Arizona University 324 E. Pine Knoll Drive #12319 Flagstaff, AZ 86011
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

Dated this 18 day of May, 2020.


EMPLOYEE

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4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 KRISTEN D. MATEONI, ESQ.
7 Nevada Bar No. 14581
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12 Facsimile: (775) 827-2185
13 *Attorneys for Petitioners/Co-Trustees*

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

12 In the Matter of the: Case No.: PR17-0445
13 Ssj's ISSUE TRUST. Dept. No.: 15
14 _____/ Consolidated

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

18 **REQUEST FOR SUBMISSION OF MOTION FOR ATTORNEYS' FEES AND COSTS**

19
20 It is hereby requested that MICHAEL S. KIMMEL's Motion for Attorney's Fees and Costs
21 filed on April 9, 2020, be submitted to the Court for decision.

22 ///

23 ///

24 ///

25 ///

26 ///

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 1st day of May, 2020.

MAUPIN, COX & LEGOY

By: 

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Attorneys for Petitioners/Co-Trustees

CERTIFICATE OF SERVICE

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

Via E-Flex Electronic filing System:

Via E-Flex Electronic filing System: Philip L.
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Kreitlein Leeder Moss, Ltd.
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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:


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Dated this 1st day of May, 2020.


EMPLOYEE

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THERESE M. SHANKS, ESQ. – NSB #12890
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Facsimile: 775-329-7169
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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,

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;

REPLY TO OPPOSITION TO MOTION
FOR ORDER AWARDING COSTS AND
ATTORNEYS' FEES FOR TODD
JAKSICK, INDIVIDUALLY, FOR TRIAL
ON EQUITABLE CLAIMS

Petitioners and Counter-Respondents.

1 3795
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13 *Incline TSS, Ltd., and Duck Lake Ranch, LLC*
14

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

19 In the Matter of the:

CASE NO.: PR17-00445

20 SSJ's ISSUE TRUST.
21 _____/

DEPT. NO.: 15

22 In the Matter of the:

CASE NO.: PR17-00446

23 SAMUEL S. JAKSICK, JR., FAMILY
24 TRUST.
25 _____/

DEPT. NO.: 15

26 WENDY JAKSICK,
27 Respondent and Counter-Petitioner,
28 v.
29 TODD B. JAKSICK, Individually, as Co-
30 Trustee of the Samuel S. Jaksick Jr. Family
31 Trust, and as Trustee of the SSJ's Issue Trust;
32 MICHAEL S. KIMMEL, Individually and as
33 Co-Trustee of the Samuel S. Jaksick Jr. Family
34 Trust; STANLEY S. JAKSICK, Individually
35 and as Co-Trustee of the Samuel S. Jaksick Jr.
36 Family Trust; KEVIN RILEY, Individually, as
37 Former Trustee of the Samuel S. Jaksick Jr.
38 Family Trust, and as Trustee of the Wendy A.
39 Jaksick 2012 BHC Family Trust, INCLINE
40 TSS, LTD.; and DUCK LAKE RANCH, LLC;
41
42 Petitioners and Counter-Respondents.

REPLY TO OPPOSITION TO MOTION
FOR ORDER AWARDING COSTS AND
ATTORNEYS' FEES FOR TODD
JAKSICK, INDIVIDUALLY, FOR TRIAL
ON EQUITABLE CLAIMS

1 Todd Jaksick (“Todd”), as an individual, submits the following reply to Wendy Jaksick’s
2 (“Wendy’s”) Opposition to Motion for Order Awarding Costs and Attorneys’ Fees for Todd
3 Jaksick, Individually, on Equitable Claims.

4 Todd respectfully seeks an order allowing him to recover the costs he incurred as an
5 individual and the attorneys’ fees he is obligated to pay as an individual for defending Wendy’s
6 equitable claims. Procedural clarification is warranted.

7 1. The jury returned its Verdict on March 4, 2019.

8 2. Thereafter, Todd, as an individual, filed a Motion for Fees and Costs. It remained
9 undecided until the Court’s *Order After Equitable Trial* was entered. The Order granted Todd’s
10 Motion for Fees and Costs, without numerical specificity.

11 3. The Court then entered its Judgment on Jury Verdict and Order on Equitable
12 Claims on April 1, 2020. The Judgment awarded Todd, as an individual, the costs incurred by
13 Todd individually up to and through the jury trial. Those costs amounted to \$68,834.07.

14 4. On April 2, 2020, Todd filed a Memorandum of Costs in both cases. The costs set
15 forth in Todd’s Memoranda of Costs included the \$68,834.07 already awarded by the Court in its
16 April 1, 2020 Judgment.

17 5. On April 10, 2020, Todd then made a motion to recover attorneys’ fees and costs
18 incurred as an individual for defending against Wendy’s claims in equity. The costs attributable to
19 Todd’s defense of Wendy’s equitable claims from March 13, 2019, to and including April 1, 2020
20 are \$4,730.44. Those costs are included in the Memoranda of Costs filed in this matter on April 2,
21 2020 that Wendy challenged with a Motion to Retax Costs.

22 6. The Court’s recent Order of April 30, 2020 has already denied Wendy’s challenge
23 to Todd’s Memoranda of Costs, which include the costs incurred for defending Wendy’s equitable
24 claims.

25 Accordingly, Wendy’s opposition to Todd’s motion for costs incurred for defending
26 Wendy’s equitable claims is therefore moot.

27 In the Court’s Order After Equitable Trial (“Court’s Order”), the Court appropriately found
28 that the timing and content of the accountings provided to Wendy were adjudicated and approved

1 by the jury's verdict. The Court similarly found that the jury implicitly approved the
2 indemnification agreements and ACPAs. Wendy's equitable claims included at least these:

- 3 1. Demands for accountings;
- 4 2. Removal of Todd as Trustee;
- 5 3. Disgorgement by Todd as a Trustee of his Trustees' fees;
- 6 4. Unjust enrichment;
- 7 5. Challenge to the ownership of the Lake Tahoe house; and
- 8 6. Challenge to the indemnification agreements.

9 The Court's Order found against Wendy on all but the disgorgement claim. A fair reading
10 of the Court's Order inescapably reveals that the finding requiring Todd to disgorge Trustees' fees
11 is a finding against Todd as a Trustee of the Issue Trust and a Co-Trustee of the Family Trust. It is
12 neither sensible nor appropriate to interpret the disgorgement finding as a finding against Todd,
13 individually, because he did not get Trustees' fees as an individual. He received Trustees' fees as
14 a Trustee and Co-Trustee. Wendy failed to prevail on all other counts.

15 The finding that Todd must reimburse the Issue Trust and the Family Trust for 25% of the
16 attorneys' fees paid by these trusts for defending Todd and the other Co-Trustees is not a finding
17 in favor of Wendy. Indeed, the fact that Wendy has been found liable for Todd's attorneys' fees
18 incurred as an individual confirms the obvious. Wendy neither prevailed before the jury nor
19 before this Honorable Court on her equitable claims. The 25% fee reimbursed finding is one in
20 favor of the Trusts, not Wendy.

21 Wendy opposes Todd's motion for the attorneys' fees he incurred as an individual
22 defending against Wendy's equitable claims. The Offers of Judgment served by Todd on Wendy
23 allowed for Wendy to recover \$25,000 from Todd as a Trustee and \$25,000 from Todd as an
24 individual. If she had accepted, Todd would not have faced trial on Wendy's equitable claims.
25 The Offer of Judgment from Todd individually was separate and distinct from the offer made in
26 his capacity as Trustee. Wendy did not recover \$25,000 based on prosecuting her equitable claims
27 against Todd individually. She recovered nothing of monetary value against Todd individually by
28 prosecuting her equitable claims against Todd as an individual.

1 Todd is the prevailing party with respect to his NRCP 68 Offer of Judgment. Wendy had
2 no legitimate basis to sue Todd individually for unjust enrichment. Even if she did, she lost that
3 claim. Wendy's equitable claims are devoid of any request for a money judgment against Todd
4 individually based on her equitable claims, except for the unjust enrichment claim.

5 Wendy failed before the jury to articulate with any degree of specificity why Todd had
6 liability as an individual. Likewise, Wendy's briefing on her equitable claims failed to argue for a
7 money damage award against Todd as an individual, except for the unjust enrichment claim.

8 Although, the Court has indicated that Todd's personal funds must be used to reimburse
9 the Issue Trust and Family Trust, that finding was pursuant to statutory provisions. Those statutes
10 govern the conduct of trustees. But, it is not a finding against Todd as an individual. It is a
11 finding against Todd as a Trustee and/or Co-Trustee. There is no order or judgment in this case
12 that awards relief against Todd in his individual capacity specifically for the alleged wrongdoing
13 described in Wendy's Counter-Petition.

14 The Court has thoroughly analyzed and applied the factors relevant to NRCP 68
15 considerations and the guidelines addressed in *Beatty v. Thomas*, 99 Nev. 579, 668 P.2d 268
16 (1983). The same analysis applies to the costs and fees incurred by Todd individually for
17 defending against Wendy's unsuccessful claims in equity against Todd as an individual.

18 Wendy also claims that the fees incurred by Todd were not reasonable and justified in
19 "amount". Todd respectfully disagrees. The costs that Wendy challenges as unreasonable in
20 amount have already been approved in the Court's April 30, 2020 *Order Regarding Costs*.

21 The fees are also reasonable in amount. Todd was charged \$64,977.50 for legal services
22 performed from March 13, 2019 to and including April 1, 2020. Having 48 years of litigation
23 experience, Todd's lead counsel, Kent R. Robison, charged an hourly rate of \$400. Robison's
24 statement of qualifications is attached as **Exhibit 1**. He has appeared in over 100 jury trials and
25 has received verdicts totalling over \$600,000,000.

26 Therese Shanks, an excellent researcher and an accomplished appellate lawyer having
27 appeared before the Nevada Supreme Court on more than 40 occasions and with eight years
28 experience as a lawyer. She charged an hourly rate of \$250. Cody Oldham, an associate, was also

1 charged at a very low hourly rate of \$250. Hannah Winston, an associate with Robison, Sharp,
2 Sullivan & Brust, was also charged at an hourly rate of \$250. Jim Stewart, a paralegal who has
3 worked for Todd's lead trial counsel for 32 years and has participated in over 50 trials as Kent
4 Robison's paralegal, was charged at \$110 per hour. Todd respectfully contends that in light of the
5 experience, education, reputation and success his lawyers brought to these proceedings, the rates
6 charged are exceedingly reasonable. Further, the Court has already determined that the rates
7 charged are reasonable in its *Order After Equitable Trial*.

8 Based on Todd's Motion for Order Awarding Costs and Attorneys' Fees for Todd Jaksick,
9 Individually, for Trial on Equitable Claims and the foregoing, Todd respectfully requests that his
10 motion for attorneys' fees for the equitable trial be granted in the amount of \$64,977.50. Todd's
11 request for costs for the equitable trial have already been granted.

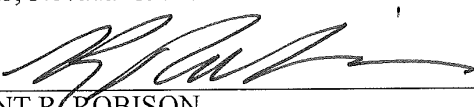
12 **AFFIRMATION**

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

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

16
17 Respectfully submitted this 1st day of May, 2020.

18 ROBISON, SHARP, SULLIVAN & BRUST
19 A Professional Corporation
20 71 Washington Street
21 Reno, Nevada 89503

22 
23 KENT R. ROBISON
24 THERESE M. SHANKS
25 Attorneys for Todd B. Jaksick, Individually,
26 Incline TSS, Ltd., and Duck Lake Ranch, LLC
27
28

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 **REPLY TO OPPOSITION TO MOTION FOR ORDER AWARDING COSTS AND ATTORNEYS' FEES FOR TODD JAKSICK, INDIVIDUALLY, FOR TRIAL ON EQUITABLE CLAIMS** 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:

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

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Carolyn K. Renner, Esq.

Kristen D. Matteoni, Esq.

Maupin, Cox & LeGoy

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

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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

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

5 DATED: This 1st day of May, 2020.

6 
7 _____
8 V. Jayne Ferretto
9 Employee of Robison, Sharp, Sullivan & Brust

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Kent R. Robison's Statement of Qualifications	5

FILED
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PR17-00445
2020-05-01 03:38:45 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7859473 : csulezic

EXHIBIT 1

EXHIBIT 1

KENT R. ROBISON

EDUCATION

University of Nevada, Reno - 1969 (B.A.)

University of San Francisco, School of Law - 1972 (J.D.)

OCCUPATIONAL BACKGROUND

1971 - Carson City District Attorney's Office

1972-1975 - Washoe County Public Defender's Office

1975-1979 - Johnson, Belaustegui & Robison

1979-1981 - Johnson, Belaustegui, Robison and Adams

1981-1988 - Robison, Lyle, Belaustegui & Robb

1988 to 1999 - Robison, Belaustegui, Robb & Sharp

1999 to present - Robison, Belaustegui, Sharp & Low

COURTS ADMITTED TO PRACTICE

Nevada Supreme Court - 1972

Nevada Federal District Court - 1973

Ninth Circuit Court of Appeals - 1976

Court of Claims - 1973

United States Tax Court - 1982

United States Supreme Court - 1977

Northern District of California Federal Court

Eastern District of California Federal Court

Southern District of California Federal Court

District of Arizona Federal Court

District of Kansas Federal Court

District of Hawaii Federal Court

District of Western Washington Federal Court

District of New Mexico Federal Court

PROFESSIONAL AFFILIATIONS & ACTIVITIES

Nevada Supreme Court Trial Judge Seminar - Judge's Relationship With Lawyers -
2009 & 2012

Nevada Supreme Court - Bench Bar Committee - 2009-2011

Member - Nevada Supreme Court's Committee on Court Costs and Speedy Trials

Member - State Commission on Sentencing Felony Offenders

Member - Executive Committee to Establish Appellate Court

Member - Commission to Implement Cameras in the Courtroom

Member - Committee on Rules of Civil Procedure

Member - Ad Hoc Committee for Improved Technology in Nevada Federal Court Rooms

American Trial Lawyer's Association - ATLA Sustaining Member - ATLA Stalwart

Member - Professional Liability Section of ATLA

Roscoe Pound Foundation

National Association of Criminal Defense Lawyers

Nevada Trial Lawyer's Association - Past President - 1979

Member of NTLA Board of Governors 1973-1983

NTLA Pillar of Justice

American Board of Trial Advocates - President, Reno Chapter, 1991-1993

Nevada State Board of Bar Governors - 1980 to 1990

Northern Nevada Legal - Medical Screening Panel (1981-1985)

Washoe County Juvenile Master Pro Tem (1975-1977)

Diplomat - National Board of Trial Advocacy - Civil
Diplomat - National Board of Trial Advocacy - Criminal
American Bar Association (1972-present)
Member - ABA Litigation Section
Nevada State Bar Association (1972-present)
Washoe County Bar Association
American Board of Criminal Lawyers
Nevada State Bar Ethics Committee - Ex-officio
Nevada State Bar Jury Instruction Committee - Ex-officio
American Inns of Court (Charter Member and as Master)
Honorable Bruce R. Thompson Chapter
American College of Barristers
Member - Board of Trustees - Justice League of Nevada (2012-2013)
(Formerly Nevada Law Foundation)

RECOGNITION

The Best Lawyers in America - 1993-2013 (21 years) (Personal Injury/Commercial Litigation)
Named Top Attorneys - "Super Lawyers" of the Mountain States - 2007-2017 - Top 5%
Named by the American Law Journal to the Nation's Top 100 Commercial Litigation Lawyers
Chambers USA Leading Litigation and Business Lawyers - Tier I Nevada Trial Lawyers
Outstanding Lawyers of America = 2003
American College of Barristers - Senior Counsel
College of Master Advocates
Martindale's "Bar Registry of Preeminent Lawyers" in five categories
(Business Litigation, Personal Injury (Plaintiff and Defense), Domestic and Criminal)
Who's Who in the Law
Who's Who in the West
Who's Who in America
Certified Criminal Trial Advocate - National Board of Trial Advocacy - 1980
Certified Civil Trial Advocate - National Board of Trial Advocacy -1980
National College of Trial Advocacy - Faculty Advanced Course
Category I (Highest Rating) National Directory of Criminal Lawyers
"AV" Martindale-Hubbell "Preeminent" Rating - Highest Rating in Ability and Ethics
Master (Emeritus) and Charter Member of The American Inns of Court - Reno Chapter
Litigation Counsel of America - Trial Lawyer Honorary Society
Fellow - Litigation Counsel of America
Corporate Counsel Top Lawyers -2010
Top Commercial Litigation Lawyers - 2006 - 2011
National Trial Lawyers - Top 100 Trial Lawyers - 2011 - 2013
Robison, Belaustegui, Sharp & Low - U.S. News - Best Law Firms - Reno Tier 1 - 2011
Commercial Litigation, Corporate Law and Personal Injury
America's Top 100 Attorneys - Lifetime Achievement - 2016
Fellow - American College of Trial Attorneys - Top 1% Trial Lawyers

AUTHORSHIP

Cameras in the Courtroom (Advocate - Vol. IV., No. 2, February 1980)
Nevada's Comparative Negligence (Advocate - Vol. I., No. 9, January 1977)

Psychology and Eye Witness Identification (Advocate - Vol. II., No. 2, November, 1977)
 Juries & Verdicts - Nevada Handbook on Civil Procedure
 The Gaming Industry's Other Gamble - Tort Litigation
 The Law of Jury Selection (NBI 1996)
 Special Tools for Selecting the Right Jury (NBI 1996)
 Inadequate Security Issues in the Intentional Tort Arena
 (Professional Educational Systems 1996)
 Inadequate Security Cases Involving Violent Crimes - From a Defense View
 (ATLA January 1997)
 Direct Examination and Demonstrative Evidence "Tools For Proving" (Consumer Attorneys of
 San Diego 1998)
 "Initial Considerations Regarding Use of Expert Witnesses" (NBI 1998)
 Comparative Cross-Examination and Strategies For Impeachment (NBI 1998)
 The Defense Attorney's "Dirty Dozen" (Defense Considerations in Negligent Security Cases)
 (ATLA January 1999)
 Damages: The Art of Asking for Money (NTLA Annual Seminar)
 Jury Trials - Nevada Civil Practice Manual (2000-2013)
 Trial Lawyers' Relationship with the Trial Judge in Civil Actions
 (2008 & 2012 Nev. S. Ct. Trial College)
 Complex Themes and Opening Statements (NBI 12/14/16)

DEFENSE EXPERIENCE

Since 1991 extensive defense work has been provided for the Mandalay Resort Group, General
 Star Management Company, ALAS, Allianz Insurance Company and individuals in the areas of
 negligent security, toxic mold, unnecessary force, professional liability, defective construction,
 intentional torts and negligence.

LECTURES

Western Nevada Community College - Annual "Criminal Defense Trial Tactics"
 Reno Police Academy - 1976 - "Motions to Suppress Evidence"
 California Legal Secretaries Association - 1979 - "Capital Punishment"
 Nevada Trial Lawyers Annual Convention - 1977 - "Closing Arguments in Criminal Trials"
 University of Nevada, Reno, Department of Criminal Science - 1978 - "Defense Strategy"
 Reno Business College - "Organization of Criminal Files" - 1980
 Nevada Society of Safety Engineers
 ATLA's 1984 Annual Convention, Seattle, Washington, Belli Seminar - "Lay
 Use of the Psychological Stress Evaluator as a Civil Cause of Action"
 Washoe County Bar Association - May 14, 1985 - "Preparation of Personal Injury Cases"
 Legal Aspects of Mandatory Drug Testing of Collegiate Athletes - 1986
 Psychology and Jury Selection - 1987
 New Rules of Civil Procedure - 1987
 Psychology of Jury Selection - Nevada Trial Lawyers Annual Convention - 1988
 Nevada Law on Bad Faith Insurance Practices - Nevada Trial Lawyers - 1993
 Gaming Industry and Tort Litigation - 1994
 Premises Liability: Inadequate or Negligent Security - 1996
 Strategies for Selecting Juries - 1996
 Premises Liability - Defense View - ATLA Mega Seminar - 1997
 Expert Witness - Selection, Preparation and Presentation - NBI 1998
 Direct Examination and Demonstrative Evidence - 1998

Premises Liability Cases - From a Defense View - ATLA - Phoenix - Feb. 1999
 Damages - "How to Ask for Money" - NTLA Annual Convention - Oct. 1999
 Masters in Trial - Closing Argument (ABOTA-Masters in Trial) - Dec. 1999
 Damages: How to Minimize; How to Maximize - Inns of Court - Jan. 2000
 Masters in Trial - 2002 - 2005 - 2006
 Inns of Court Presentations: Jury Selection; Opening Statements; Child Witnesses;
 Eye Witness Testimony; Expert Witness Examinations
 Presenter for Difficult Voir Dire Issues (2009 Nev. S. Ct. Trial College)
 UNR Medical School Presenter - "Interaction Between Legal and Medical Professions" - 2/2011
 "Role of the Judge" (new judge orientation) (2012 Nev. S. Ct. Trial College)
 Presenter - Nevada State Bar Convention - "Direct Examination" - July 2013
 Advanced Civil Litigation Skills of Nevada Introducing Complex Themes and Technology During
 Opening Statements (NBI 2016)

NEVADA SUPREME COURT / APPELLATE CASES

City of Reno v. David Evans (Case No. 63266)
Renown v. Arger et als (Case No. 64455)
Matthew Boga v. TMC Group, Inc. / Matthew J. Fuller (Case No. 62738/63531)
Patraw v. Nevada System of Higher Education, Milton Glick, Cary Groth
 (Case No. 53918/54573)
Patraw v. Nevada System of Higher Education, Milton Glick, Cary Groth (Injunction)
 (Case No. 55433)
Furer v. Furer (Case No. 51198)
EES v. Gunnerman, Sulphco, Inc. (Case No. 50324)
Darren Mack v. Michael E. Fondi (Case No. 51536)
Landmark Homes v. Sierra Gateway, 121 Nev. 1143, 152 P.3d 783 (2005)
Ferguson v. Sierra Gateway / Landmark - 2007 (appeal from U.S. Bankruptcy Court)
Lexey Parker v. St. Mary's, 121 Nev. 1174, 152 P.3d 809 (2005)
Farhadi v. CB Commercial, 118 Nev. 1089, 106 P.3d 1209 (2002)
Farhadi v. CB Commercial, 131 P.3d 589 (2004)
Hazelwood v. Harrah's, 109 Nev. 1005, 862 P.2d 189 (1993)
Oak Grove Investors v. Bell & Gossett, 108 Nev. 958, 843 P.2d 351 (1992)
Williams v. State Farm/Sierra Foods v. Williams, 107 Nev. 574, 816 P.2d 466
State v. Batt, 111 Nev. 1127, 901 P.2d 664 (1995)
Amoroso v. L & L Roofing, 107 Nev. 294, 810 P.2d 775
Swain v. Meyer, 104 Nev. 595, 763 P.2d 337 (1988)
State v. Kaplan, 96 Nev. 798, 618 P.2d 354 (1980)
State v. Kaplan, 99 Nev. 449, 663 P.2d 1190 (1983)
Bell v. ATO
Eikelberger v. Tolotti, 96 Nev. 525, 611 P.2d 1086 (1980)
Friedas v. Quinn River, 101 Nev. 471, 705 P.2d 673 (1985)
Fondi v. Fondi, 106 Nev. 856, 802 P.2d 1264 (1990)
State v. Fogarty, 108 Nev. 1234, 872 P.2d 817 (1992)
State v. Bishop (Death Penalty)
State v. Biederstadt / Hurt, 92 Nev. 80, 545 P.2d 202 (1976)
State v. Lendon, 92 Nev. 112, 546 P.2d 234 (1976)
Grand Sierra Resort v. Peppermill Casinos, Inc. (pending)

NINTH CIRCUIT COURT OF APPEALS:

Talisman Capital Talon Fund, Ltd. v. Gunnerman, Sulphco, Inc. (Case No. 09-16256)

Wild Game Ng v. Wong's International (USA) Corp. (Case No. 08-15616)

Hussein v. Dugan (Case No. 08-17443)

Montreux v. Pitts, 130 Fed. Appx. 80 WL 663810CA9 (Nev. 2005)

Shipman v. Allstate

GENERAL

Born in Reno, Nevada 1947. Raised and educated in Reno, Nevada. Jury trials in state in and federal courts of six states. Received verdicts in over 100 jury trials. Ten Judgments over \$1,000,000 with total value in excess of \$600,000,000. Tried over 500 non-jury (court) trials.

Practice has included litigation experience in medical malpractice cases, both for plaintiffs and for defendants, and legal malpractice cases for both plaintiffs and defendants. Practice has included substantial experience in litigating premises liability cases for both plaintiffs and defendants. Practice has included substantial and extensive litigation for both plaintiffs and defendants with a focus on business torts. Practice has included substantial employment litigation. Practice has included substantial experience in litigating financial transactions, lender liability and collection efforts in commercial transactions for both plaintiffs and defendants. Practice has included substantial experience in litigating complex real estate transactions. Practice has included trust and estate planning litigation and trials, jury and non-jury. Practice has included the representation of lawyers, judges and elected officials. Practice also includes substantial experience in handling trade secret litigation for Nevada gaming properties and other commercial entities. More than four matters have been tried to verdict or judgment involving trust and estate matters.

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Jayne Ferretto

From: eflex@washocourts.us
Sent: Friday, May 01, 2020 3:45 PM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: CONS: TRUST: SSJ'S ISSUE TRUST: Reply to/in Opposition: PR17-00445

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

PROOF OF SERVICE OF ELECTRONIC FILING

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

Judge: HONORABLE DAVID A. HARDY

Official File Stamp: 05-01-2020:15:38:45
Clerk Accepted: 05-01-2020:15:44:26
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: CONS: TRUST: SSJ'S ISSUE TRUST
Document(s) Submitted: Reply to/in Opposition
- **Continuation
Filed By: Kent R Robison

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

The following people were served electronically:

SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST, SSJ'S ISSUE TRUST
DONALD ALBERT LATTIN, ESQ. for TODD B. JAKSICK, KEVIN RILEY, MICHAEL S. KIMMEL
STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST
ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST
THERESE M. SHANKS, ESQ. for SAMMY SUPERCUB, LLC, SERIES A, DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
KENT RICHARD ROBISON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A, DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
CAROLYN K. RENNER, ESQ. for TODD B. JAKSICK, KEVIN RILEY, MICHAEL S. KIMMEL

MARK J. CONNOT, ESQ, for WENDY A. JAKSICK

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

ZACHARY JOHNSON, ESQ. for WENDY A. JAKSICK

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

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

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

14 In the Matter of the:

CASE NO.: PR17-00445

15 SSJ's ISSUE TRUST.

DEPT. NO.: 15

16 In the Matter of the:

CASE NO.: PR17-00446

17 SAMUEL S. JAKSICK, JR., FAMILY
18 TRUST.

DEPT. NO.: 15

19 WENDY JAKSICK,
20 Respondent and Counter-Petitioner,
21 v.

REQUEST FOR SUBMISSION OF
MOTION FOR ORDER AWARDING
COSTS AND ATTORNEYS' FEES FOR
TODD JAKSICK, INDIVIDUALLY, FOR
TRIAL ON EQUITABLE CLAIMS

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

1 It is requested that Todd Jaksick's, individually, Motion for Order Awarding Costs and
2 Attorneys' Fees for Todd Jaksick, Individually, for Trial on Equitable Claims, which was filed in
3 the above-entitled matter on April 10, 2020, be submitted for decision. The undersigned attorney
4 certifies that a copy of this Request has been served on all counsel of record.

5 **AFFIRMATION**
6 **Pursuant to NRS 239B.030**

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

9 DATED this 1st day of May, 2020.

10 ROBISON, SHARP, SULLIVAN & BRUST
11 A Professional Corporation
12 71 Washington Street
13 Reno, Nevada 89503

14 

15 KENT R. ROBISON
16 THERESE M. SHANKS

17 *Attorneys for Todd B. Jaksick, Individually,*
18 *Incline TSS, Ltd., and Duck Lake Ranch, LLC*
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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 **REQUEST FOR SUBMISSION OF MOTION FOR ORDER AWARDING COSTS AND ATTORNEYS' FEES FOR TODD JAKSICK, INDIVIDUALLY, FOR TRIAL ON EQUITABLE CLAIMS** on all parties to this action by the method(s) indicated below:

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

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

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Carolyn K. Renner, Esq.

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

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

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Attorneys for Respondent Wendy A. Jaksick

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

5 DATED: This 1st day of May, 2020.

6 
7 _____
8 V. Jayne Ferretto
9 Employee of Robison, Sharp, Sullivan & Brust
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14
15
16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

18 In the Matter of the:

19 SSJ's ISSUE TRUST.

20 In the Matter of the:

21 SAMUEL S. JAKSICK, JR., FAMILY
22 TRUST.

23 WENDY JAKSICK,
24 Respondent and Counter-Petitioner,
25 v.
26 TODD B. JAKSICK, Individually, as Co-
27 Trustee of the Samuel S. Jaksick Jr. Family
28 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 B. JAKSICK'S OPPOSITION TO
WENDY JAKSICK'S MOTION TO
ALTER OR AMEND JUDGMENT, OR,
ALTERNATIVELY, MOTION FOR A
NEW TRIAL**

1 Todd B. Jaksick (“Todd”), in his individual capacity, opposes Wendy Jaksick’s
2 (“Wendy’s”) Motion to Alter or Amend Judgment, or, Alternatively, Motion for New Trial, as
3 follows:

4 **I. INTRODUCTION**

5 In her motion to amend, Wendy asks this Court to do what it specifically stated it would
6 not do: reconsider the issues before the jury. As this Court astutely noted, “[n]o matter how
7 Wendy frames or argues her equitable claims, she asks this Court to remedy the identical facts and
8 transactions she placed before the jury.” Order After Equitable Trial (“Order”), ¶ 13. In the jury
9 trial, Wendy repeatedly argued to the jury that the basis for her claims against Todd for fraud,
10 conspiracy and breach of fiduciary duty arose from the Indemnification Agreements, the ACPAs
11 and the accountings. *The jury rejected Wendy’s arguments that these documents were*
12 *fraudulent, deceitful or otherwise invalid.* The jury was the permitted adjudicatory body that
13 decided, and rejected, the underlying factual and legal arguments that Wendy made in her attempt
14 to render these documents and transactions invalid. She failed.

15 Wendy’s argument that Todd is not entitled to fees and costs is also meritless. She uses
16 this Court’s finding that Todd, as Trustee, is not a prevailing party to argue that Todd is not a
17 prevailing party in *any* capacity. But this is simply not true. *Wendy did not win a single claim*
18 *for relief against Todd as an individual.* Wendy misinterprets the basis upon which this Court
19 awarded fees against Todd by relying upon a statute which allows a Court to hold a *Trustee* liable,
20 but require that payment be from personal funds. That statute does not convert a claim against
21 Todd in his capacity as Trustee into one against Todd in his capacity as an individual. Todd, in his
22 individual capacity, prevailed on all of Wendy’s claims.

23 **II. RELEVANT FACTUAL BACKGROUND**

24 This Court does not need to look any further than Wendy’s closing statement to the jury in
25 order to see that her current motion requests that this Court reverse a jury’s finding of fact merely
26 because Wendy recast the same factual allegations as an “equitable” claim.

27 Wendy argued, and the jury rejected, that the ACPAs were fraudulent:
28

- 1 • "... Todd and Jessica creating fraudulent documents for the benefit of Todd, forging
2 signatures, misrepresenting that ACPAs or other documents . . . That's fraud. Those are
misrepresentations and that's fraud." **Exhibit 1**, p. 27:2-8 (Closing Statement).
- 3 • "So all of the ACPAs, the evidence that you've heard, are all suspect, they're all
4 inadequate to fully disclose but they're also fraud. Fraud is a misrepresentation." *Id.* at p.
50:16-19.
- 5 • "Respondents cannot rely upon the ACPA if Wendy proves by clear and convincing
6 evidence that her ascent to them was fraudulently induced, the record has all kinds of
7 evidence that shows that that's the case and certainly a firm belief – get you to a firm
8 belief." *Id.* at p. 53:11-15

9 Wendy also argued that the Indemnification Agreement was both fraud, and a breach of
10 fiduciary duty:

- 11 • "So countless breaches of fiduciary duty, self-dealing, making one-and-a-half percent loans
12 to Todd, never resolving the full scope of indemnification agreement, that's a huge issue in
13 this case." *Id.* at p. 21:4-7
- 14 • "Todd individually took an interest in the Lake Tahoe property in relation to his trusts,
15 took advantage of the Indemnification Agreement, took advantage – or used the Option
16 Agreement to acquire the benefit for himself, so on both sides of the transaction he was
17 involved individually and benefitted individually." *Id.* at p. 50:20-24-51:1

18 Finally, Wendy argued that the accountings were both fraudulent, and a breach of fiduciary
19 duty:

- 20 • "But those accountings misrepresent the administration because they don't contain all the
21 information that an accounting should contain or you would expect an accounting to
22 contain, particularly if it's disclosing to the beneficiaries the information they're supposed
23 to have for full disclosure." *Id.* at p. 11:13-18
- 24 • "In short, the accountings are a joke and they don't represent full disclosure. They are
25 direct evidence of a breach of fiduciary duty." *Id.* at 18:9-11.
- 26 • "Looking at page 41, this is the accounting ending December 31st, 2007 . . . It's got less
27 than a million as of the last accounting that the beneficiaries have, so that's just pure, 100
28 percent misrepresentation and deception." *Id.* at 48:16-49:2

At the bench trial, this Court itself noted:

As to the ACPAs and indemnification agreements, they were an integral part of the trial. Counsel was careful to say, The Honorable Judge Hardy will make that decision in the future, and regularly identified that it was not a decision point for the jury, but those documents were broadcast ad nauseam and must in some way have landed in the jury's minds.

Exhibit 2, p. 41:5-12 (Bench trial transcript).

1 Regarding Kevin Riley, Wendy argues that Todd had the burden to produce him for
2 testimony in order for this Court to find the ACPAS were valid. However, this argument
3 overlooks two key facts. First, Wendy admitted in her closing statement that Kevin Riley's
4 testimony on the ACPAs *was not necessary*:

5 We didn't need to call Kevin Riley for anything. We've got the accountings, we've got his
6 statement that they're just compilations, we didn't need to call him.
7 Exh. 1, at p. 49:10-12. Second, Wendy stipulated to having the equitable claims submitted on the
8 briefs without additional testimony. Exh. 2, p. 34:14-24. Thus, she knew that additional
9 testimony would not be heard from Mr. Riley.

10 The jury returned a verdict which exonerated Todd on all of the claims Wendy asserted
11 against him as an individual. **Exhibit 3** (Verdict Form).

12 In its order on equitable claims after trial, this Court made the following findings:

- 13 • "However, this Court also notes that Wendy's complaints about the content and
14 general timing of the accountings were presented to the jury in the legal phase of
15 the trial and are therefore facts common to the equitable claims. The jury
16 presumably considered all evidence when deliberating its verdict. The verdict is
17 an express or implicit rejection of Wendy's complaints about the accountings." Order, pp. 13-14.
- 18 • "While the attorneys argued to the jury that this Court would decide the validity of
19 the ACPAs and indemnification agreements, each of the challenged documents and
20 related transactions were thoroughly presented and argued to the jury – including
21 document preparation, execution, and other formation irregularities. Thus, at least,
22 the jury verdict is an implicit rejection of Wendy's arguments . . . They cannot be
segregated from the legal claims presented to the jury and now subsequently
argued in support of equitable relief. The jury constructively approved and
affirmed the ACPAs and indemnification agreements when it reached its verdict.
The verdict prevents additional litigation and precludes liability exposure for
actions taken in reliance on these documents. All claims involving the disputed
ACPs and indemnification agreements shall end with the jury's verdict." *Id.* at
pp. 14-15.

23 **III. WENDY'S MOTION FOR LEAVE TO AMEND THE JUDGMENT SHOULD BE**
24 **DENIED.**

25 **A. WENDY IMPROPERLY ATTEMPTS TO RELITIGATE THE SAME**
26 **ISSUES.**

27 Motions to amend a judgment are appropriate to (1) correct manifest errors of law or fact,
28 (2) present "newly discovered or previously unavailable evidence," (3) prevent "manifest
injustice," or (4) to address "a change in the controlling law." *AA Primo Builders, LLC v.*

1 *Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1192-93 (2010). Because NRC 59(e) closely
2 mirrors its federal counterpart FRCP 59(e), this Court “may consult federal law in interpreting”
3 NRC 59(e). *Id.* The federal courts are clear that Rule 59(e) motions “may not be sued to
4 relitigate old matters, or to raise arguments or present evidence that could have been raised prior to
5 the entry of judgment.” *Stevo Design, Inc. v. SBR Mktg., Ltd.*, 919 F. Supp. 2d 1112, 1117 (D.
6 Nev. 2013); *see also FMD Restoration, Inc. v. Baistar Mech., Inc.*, 320 F.R.D. 320, 323 (D.D.C.
7 2017) (“Post-trial motions under . . . Rule 69 are not to be used when a party is merely seeking to
8 re-litigate a finding that was made during the course of trial.”).

9 Here, Wendy does not present any new evidence, nor does she argue that this Court
10 overlooked any evidence. Instead, she attempts to once again re-argue her complaints regarding
11 the accountings, indemnification agreements and ACPAs. Not only were these arguments rejected
12 by the jury, they were also rejected by this Court. Wendy’s motion to amend does not present any
13 basis to this Court for relief under Rule 59(e) and must, on this ground alone be denied.

14 **B. WENDY ONCE AGAIN ASKS THIS COURT TO VIOLATE THE**
15 **SEVENTH AMENDMENT.**

16 Wendy appears to argue that this Court, when it sits in a case which has both legal issues to
17 be tried to a jury and equitable issues to be tried to the court, has the constitutional authority to
18 reject a jury’s factual finding in a claim on equity. This is not true.

19 First, Wendy relies upon *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 377 P.2d
20 622 (1963), which does not apply to the facts of this case because, in that case, the “complaint
21 [sought] only equitable relief.” *Id.* at 20, 377 P.2d at 630.

22 Second, Wendy relies upon *Musgrave v. Casey*, 68 Nev. 471, 235 P.2d 729 (1951), in
23 which an advisory verdict was given by a jury in a case in which “it was the clear understanding of
24 the court and of counsel that the nature of the case was equitable and that the verdict of the jury
25 was purely advisory in character.” *Id.* at 476, 235 P.2d at 732. Thus, the Nevada Supreme Court
26 held that the court, sitting in equity, was free to reject the jury’s verdict “to the same extent that
27 special findings might have been rejected.” *Id.* at 478, 235 P.2d at 733. The Nevada Supreme
28 Court did not hold that a court which must decide equitable claims based upon the same facts

1 considered by a jury on legal claims is free to disregard the jury's verdict on the *legal* claims. *See*
2 *id.* That is the factual situation presented to this Court.

3 Long after both *Harmon* and *Musgraves* were decided, the Nevada Supreme Court
4 affirmed that its trial courts are bound by the Seventh Amendment to the United States
5 Constitution. *See Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1111-
6 12, 197 P.3d 1032, 1038 (2008). Under the federal constitution, a party's Seventh Amendment
7 rights are violated when a court "disregard[s] a jury's finding of fact." *Acosta v. City of Mesa*, 718
8 F.3d 800, 828-29 (9th Cir. 2013) (internal quotations omitted). "Thus, in a case where legal
9 claims are tried by a jury and equitable claims are tried by a judge, and the claims are based on the
10 same facts, in deciding the equitable claims, the Seventh Amendment requires the trial judge to
11 follow the jury's implicit or explicit factual determinations." *Id.* (Internal quotations omitted).

12 Wendy does not address or argue this body of authority in her motion, nor does she explain
13 why she believes it does not apply. Wendy chose to bring both legal and equitable claims based
14 upon the same factual transactions. She chose to argue those facts to the jury. She cannot seek to
15 circumvent Todd's constitutional rights because she regrets her earlier litigation decisions.

16 **C. TODD, AS AN INDIVIDUAL, IS ENTITLED TO FEES.**

17 **1. Todd is a Prevailing Party.**

18 Wendy did not prevail on a single claim she brought against Todd, as an individual, yet she
19 now argues that Todd, as an individual, is not a "prevailing party." Aside from her repeated
20 disregard for reality, Wendy argues that her belief is based upon a finding from this Court in its
21 order dated April 21, 2020. This is, once again, an obfuscation of the record.

22 In this Court's order dated April 21, 2020 (the "April Order"), this Court stated that
23 "Trustees Todd Jaksick, Michael Kimmel, and former trustee Kevin Riley move to strike Wendy
24 Jaksick's verified memorandum of costs." April Order, p.1. This Court further went on to state
25 that it had concern that Wendy did not "segregate her costs connected to her *successful claim*
26 *against Todd as trustee* from the costs she incurred in her *unsuccessful claims against Todd as*
27 *individual* and all other parties." *Id.* (Emphasis added). Nowhere in this Court's April Order does
28 it state that it is ruling upon a request made by Todd, as an individual. Instead, the request was

1 brought in Todd's capacity as a Trustee, and this Court stated that it was prepared to find that
2 Todd, as a Trustee, was not a prevailing party. *See id.* at p.2. Wendy cannot contort this Court's
3 words to now argue that she somehow prevailed against Todd as an individual. She did not.

4 **2. Wendy's Claims Against Todd as an Individual Were Not**
5 **Brought in Good Faith.**

6 This Court found that "[t]he good-faith nature of Wendy's claims against Todd
7 individually are more difficult to discern" because "as discovery progressed, Wendy's cause to
8 pursue Todd individually diminished." Order, p. 19. Yet, Wendy persisted in asserting her claims
9 against Todd as an individual, and the jury exonerated Todd. Exh. 3. This Court, too, found
10 against Wendy on all of her equitable claims against Todd as an individual. *See* Order.
11 Interestingly, Wendy does not dispute this fact. Instead, she argues that because this Court found
12 that Wendy's claims against Todd *as Trustee* were brought in good faith, and "Todd had exposure
13 to satisfy some or all of the liability for these claims in his Individual capacity," that "the good
14 faith finding must also apply to Wendy's decision to bring and maintain her claims against Todd"
15 as an individual. Motion to Amend, p. 13.

16 Wendy is wrong. First of all, Wendy's claims against Todd as an individual are different
17 from her claims against Todd as a Trustee. For example, Wendy was never able to identify how or
18 why Todd as an individual owed her a fiduciary duty, yet she persisted in asserting this claim until
19 jury trial. Wendy was never able to identify what misrepresentations Todd made to her as an
20 individual, as opposed to in his capacity as a trustee.

21 Second, Wendy overlooks the distinction between requiring a trustee to pay for their
22 liability *as trustee* with personal assets, and *personal, individual liability*. A finding that a trustee
23 has harmed a beneficiary and must repay for that harm from the trustee's personal assets is not the
24 same as a finding of individual liability. The trustee has still been sued in their capacity as a
25 trustee and held liable in that capacity.

26 In Nevada, a person who has been sued in their representative capacity is viewed as a legally
27 distinct and separate party from that same person in their individual capacity. *Mona v. Eighth Judicial*
28 *Dist. Ct.*, 132 Nev. 719, 727, 72, 380 P.3d 836, 842 (Nev. 2016). In *Mona*, the Nevada Supreme

1 Court reversed a district court order allowing discovery into a trustee's personal assets under Rule 34,
2 because the trustee was never named as a party in her individual capacity. 132 Nev. at 727, 380 P.3d
3 at 842. The Nevada Supreme Court held that a person's representative capacity, *i.e.*, as trustee, is
4 treated as a separate and distinct legal person than their individual capacity. *Id.*

5 To reach its holding, this Nevada Supreme Court quoted the United States Supreme Court's
6 decision in *Bender v. Williamsport Area School District*, 475 U.S. 534 (1986). *See Mona*, 132 Nev. at
7 728, 380 P.3d at 842. The *Bender* court found that the appellant did not have standing to appeal as an
8 individual because he was only named in his official capacity as a member of a school board. *Bender*,
9 475 U.S. at 544-45. In a footnote, the United States Supreme Court explained "[a]cts performed by
10 the same person in two different capacities are generally treated as the transactions of two different
11 legal personages." *Id.* at 544, n.6 (internal quotations omitted). The United States Supreme Court
12 further noted that "liability on the merits and responsibility for fees goes in hand in hand" and
13 ***attorney fees may not be awarded against a defendant in a capacity in which they are not sued.*** *Id.*
14 (Internal quotations omitted).

15 Similarly, here, this Court cannot conflate the claims Wendy asserted against Todd in his
16 individual capacity with those she asserted against Todd in his capacity as Trustee. While
17 Trustees may sometimes be ordered to pay judgments against them from their personal assets, the
18 liability still devolves to the Trustee in their representative capacity, and not in their individual
19 capacity. Accordingly, Wendy's arguments fail.

20 **3. Todd is Entitled to Fees and Costs Under Rule 68.**

21 Wendy does not raise any new arguments in her request that this Court amend its order
22 awarding Todd fees pursuant to his offer of judgment. *See* Motion to Amend, pp. 13-14. Instead,
23 she again argues that the sum offered is not a legitimate offer, an argument which this Court
24 already analyzed and rejected in its Order.

25 Wendy also argues, again, that the amounts which are awarded against Todd as Trustee
26 "but payable or enforceable against Todd, in his individual capacity" now outweigh the amount
27 offered. But again, under the *Mona* line of authority, this Court cannot conflate claims asserted,
28 and lost, against Todd in his individual capacity with those asserted against Todd in a

1 representative capacity, even if Todd as a representative capacity must fulfill that liability with
2 personal funds. There is a difference between finding Todd liable as an individual, and ordering
3 Todd as a representative to pay for liability as a representative with personal funds. They are not
4 the same, and Wendy misapplies the *Mona* line of authority in her motion to amend. This Court
5 never ordered Todd “in his Individual Capacity” to repay funds. This Court ordered Todd, in his
6 representative capacity as Trustee to reimburse sums from his personal funds. *See* Order.

7 Furthermore, as Todd points out in his motion to alter or amend this Court’s judgment, that
8 order was in error. NRS 153.031(3)(b) only allows this Court to order a trustee to use personal
9 funds “to pay to the petitioner or any other party all reasonable costs incurred by the party to
10 adjudicate the affairs of the trust . . . including, without limitation, reasonable attorney fees.” This
11 Court’s finding that Todd must pay 25% of the fees from his personal funds was based upon the
12 jury’s finding that Todd breached his fiduciary duties. Yet, this Court ordered that Todd pay these
13 amounts to the *trust*. Neither trust was the petitioner, nor was either trust an actual party. In
14 Nevada, trustees are the proper parties and not trusts. Thus, this Court cannot order Todd to
15 reimburse the trusts under NRS 153.031(3)(b). In addition, this Court’s order was not limited to
16 those fees incurred defending against the claim for breach of fiduciary duty, as required by the
17 statute. Similarly, NRS 18.090 does not authorize this finding because Todd did not act in bad
18 faith, and NRS 18.090 is limited to costs, and not attorney fees. *See* NRS 18.090.

19 **IV. A NEW TRIAL IS NOT WARRANTED.**

20 A motion for a new trial may only be granted if there is (a) “irregularity in the proceedings
21 of the court . . . or any abuse of discretion by which either party was prevented from having a fair
22 trial;” (b) “misconduct of the jury or prevailing party;” (c) “accident or surprise that ordinary
23 prudence could not have guarded against;” (d) “newly discovered evidence” which could not have
24 been discovered and produced prior to trial; (e) “manifest disregard by the jury of the instructions
25 of the court;” (f) “excessive damages;” or (g) “error in law occurring at trial and objected to by the
26 party making the motion.” NRCP 59(a)(1). None of these grounds are available to Wendy.

27 Wendy does not argue that there was any irregularity in the proceedings. She simply
28 disagrees with the jury verdict and disagrees with this Court’s findings. Apparently, she also

1 disagrees with the Seventh Amendment. But Wendy cannot plausibly argue that she was not
2 given a fair trial before this Court.

3 Wendy does not argue that there was juror misconduct.

4 Wendy does not argue accident or surprise.

5 Wendy does not argue any new evidence, let alone that any evidence was newly
6 discovered.

7 Wendy does not argue that the jury manifestly disregarded the instructions.

8 Wendy does not argue that the verdict was excessive.

9 Wendy's arguments concerning errors in law are not arguments concerning any true legal
10 error, but simply arguments concerning her disagreement with this Court's findings.

11 Wendy has not provided any basis for this Court to go to the time and expense of ordering
12 another five-week trial based upon the same evidence, facts and arguments already rejected by
13 both the jury and this Court. Wendy's request for a new trial must be denied.

14 **V. CONCLUSION**


15 For the foregoing reasons, Todd respectfully requests that this Court deny Wendy's motion
16 to alter or amend the judgment in its entirety. Todd also requests that this Court deny Wendy's
17 motion for a new trial.

18 **AFFIRMATION**
19 **Pursuant to NRS 239B.030**

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

22 DATED this 8 day of May, 2020.

23 ROBISON, SHARP, SULLIVAN & BRUST
24 A Professional Corporation
25 71 Washington Street
26 Reno, Nevada 89503

27 
28 KENT R. ROBISON
THERESE M. SHANKS
*Attorneys for Todd B. Jaksick, Individually,
Incline TSS, Ltd., and Duck Lake Ranch, LLC*

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1. I am counsel of record for Todd B. Jaksick, individually, Incline TSS, Ltd., and Duck Lake Ranch, LLC.

3. **Exhibit 2** attached hereto are true and accurate copies of excerpts from the bench trial transcript on May 13, 2019.

DATED this 8th day of May, 2020.

KENT R. ROBISON

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, SHARP, SULLIVAN & BRUST, and that on this date I caused to be served a true copy of the **TODD B. JAKSICK'S OPPOSITION TO WENDY JAKSICK'S MOTION TO ALTER OR AMEND JUDGMENT, OR, ALTERNATIVELY, MOTION FOR A NEW TRIAL** on all parties to this action by the method(s) indicated below:

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

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

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Carolyn K. Renner, Esq.

Kristen D. Matteoni, Esq.

Maupin, Cox & LeGoy

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Attorneys for Respondent Wendy A. Jaksick

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

5 DATED: This 8th day of May, 2020.

6 

7 V. Jayne Farretto
8 Employee of Robison, Sharp, Sullivan & Brust

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Excerpts of Wendy Jaksick's Closing Statement (3/4/19)	11
2	Excerpts of Bench Trial Transcript (5/13/19)	4
3	Verdict Form	4

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Jacqueline Bryant
Clerk of the Court
Transaction # 7869338 : bblough

EXHIBIT 1

EXHIBIT 1

1 4185
SUNSHINE LITIGATION
2 151 Country Estates Circle
Reno, Nevada 89512
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4

5 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE
7

-oOo-

8
9 WENDY JAKSICK, :
Petitioner, :

10 vs : Case No. PR17-00445
11 : Dept. No. 15

12 TODD B. JAKSICK, :
individually, as :
Co-Trustee of the Samuel Case No. PR17-00446
13 S. Jaksick Jr. Family : Dept. No. 15
Trust, and as Trustee of
14 the SSJ's Issue Trust; :
et al., :

15 Respondents. :

16 =====

17 PARTIAL TRANSCRIPT OF PROCEEDINGS
18

19 JURY TRIAL - AFTERNOON SESSION

20 CLOSING ARGUMENTS BY MR. SPENCER

21 MONDAY, MARCH 4TH, 2019

22 Reno, Nevada
23

24 Reported By: ERIN T. FERRETTO, RPR, CCR #281

25 Job No.: 532584

1 a quandary. And what does he do? He sides with Todd and
2 he doesn't tell the beneficiaries. So he's involved with
3 making sure that the beneficiaries are not fully informed
4 just as Todd is.

5 Speaking of Mr. Riley, we turn to the
6 accountings -- and Slide 36, Keith -- just for reference,
7 the accountings are -- of the family trust are 72, 73,
8 74, those exhibits, and then 126 is the most recent one.

9 The issue trust, the accountings are Exhibits 129,
10 130, 131, 132 and 133.

11 Then I was going to say, we just recently got
12 Wendy's subtrust accountings, Exhibits 95 and 540.

13 But those accountings misrepresent the
14 administration because they don't contain all the
15 information that an accounting should contain or you
16 would expect an accounting to contain, particularly if
17 it's disclosing to the beneficiaries the information
18 they're supposed to have for full disclosure. It doesn't
19 contain any specific reference to water rights, it
20 doesn't contain any specific reference to conservation
21 easements, it doesn't mention all the debt that is
22 outstanding.

23 We've heard there's \$30 million worth of debt.
24 Well, if there's for that much debt outstanding, you

1 these accountings. Todd didn't even understand
2 everything that went on with the administration based on
3 the accountings. He had a pretty good memory about
4 certain things, particularly the things that benefitted,
5 him, but as far as some minor detail within an
6 accounting, no idea about it. He would have to refer to
7 the accounting itself but it doesn't fully tell you so he
8 couldn't fully tell you.

9 In short, the accountings are a joke and they
10 don't represent full disclosure. They are direct
11 evidence of breach of fiduciary duty.

12 Mention the debts, those are not in the
13 accountings. Not a single document anywhere showing that
14 there was that much debt in evidence, not a single
15 reference in any of the accountings that there was that
16 much debt, that \$30 million in debt in evidence.

17 Todd testified that the estate was not insolvent
18 and whatever debt there was, the property of the trusts
19 were used to pay it down. It's not extraordinary work to
20 sell an asset and discharge debt when you do, that's
21 pretty standard business practice. They want to say they
22 went over and above, went beyond what's required of them.
23 We don't know how much debt there was because they never
24 told us. But even if there was some debt, more than what

1 prepared by the co-trustees and we know at least one they
2 represented that Maupin, Cox, LeGoy prepared when they
3 didn't.

4 So countless breaches of fiduciary duty,
5 self-dealing, making one-and-a-half percent loans to
6 Todd, never resolving the full scope of indemnification
7 agreement, that's a huge issue in this case. No one has
8 ever said fully what it covers. Massive gift, whatever
9 Todd decides he wants to apply it to, it apparently
10 controls since he's the trustee, the beneficiaries don't
11 even know because the trustees don't even know what it
12 covers, no one has testified what it covers and the scope
13 of that has never been resolved even to this very minute.

14 Todd's failure to pay his outstanding loans and
15 gifting them to himself so that they would be washed or
16 forgiven in documents, use of trust funds to pay personal
17 obligations, we saw where the trust paid 100 percent of
18 the loans and these entities that are owned 51/49 in
19 Todd's favor and he just writes an IOU and he'll deal
20 with it later one way or another.

21 Why is the trust, which is two thirds Wendy and
22 Stan, paying 100 percent of the obligation on an entity
23 that he apparently, through work with Hascheff, owns
24 51 percent of? Because that was the design.

1 signature, and all along I assumed they came from LeGoy's
2 office. That's the other co-trustee saying that about
3 Todd and Jessica creating fraudulent documents for the
4 benefit of Todd, forging signatures, misrepresenting that
5 ACPAs or other documents were coming from the Maupin,
6 Cox, LeGoy firm when it was coming from them, that's the
7 kind of behavior that went on. That's fraud. Those are
8 misrepresentations and that's fraud.

9 Because Stan felt that way, you heard that he
10 ended up suing Todd and then Todd ended up suing him
11 back, and we heard that that litigation was resolved.
12 One of the things we heard was, well, the benefit to
13 Wendy was that Todd's personal mortgage was removed from
14 the indemnity agreement. Look at all this great benefit
15 he received. It shouldn't have been on the indemnity
16 list in the first place. You just put it up there so you
17 can just turn around and knock it down and say there's a
18 benefit?

19 That created issues of bias with the trustees in
20 this trial, and so -- slide 53, Keith -- where does the
21 buck stop? You heard me ask that question of Todd, and
22 if he had ever taken responsibility for his actions,
23 wouldn't answer the question. We heard all these long
24 diatribes of things he wanted to say but never an answer

1 Exhibit 215. But the point there is that no one
2 refuted it. They blame us for not bringing the water
3 right expert, the trustee should be the one telling us
4 what water rights are there, how many there are, what
5 status they're in, what the value is. The beneficiary is
6 having to go out and do it herself.

7 Then we get this printout, Exhibit 215, and we
8 showed you this during the trial. Water rights -- just
9 that top part, Keith -- all the way across, January 28,
10 2009. This was a document that the trustee gave to the
11 beneficiary, two weeks before the trial started, didn't
12 comment on it, didn't refute what Wendy said, which lends
13 credibility to what Wendy said. And that is the evidence
14 in the case of what the value of the water rights are.

15 Going back to Exhibit 126 real quick, Keith.

16 Looking at page 41, this is the accounting ending
17 December 31st, 2017, which is the most current accounting
18 that we have --

19 Looking at the very bottom of the page, Keith.

20 Assets on hand December 31 of '17, \$959,074.69.
21 Based upon the testimony that, oh, well, Wendy is going
22 to get \$4 million, the trust would have to have 412
23 million in it for her to get that. It's got less than a
24 million as of the last accounting that the beneficiaries

1 have, so that's just pure, 100 percent misrepresentation
2 and deception.

3 Why didn't we call Campagna? Why didn't we call
4 Stolbach? You heard that. They want to imply, well, we
5 wouldn't have liked what they had to say. It has nothing
6 to do with anything. We didn't call them because we
7 didn't need them. Do you know why we didn't need them?
8 Because they didn't bother to call their own client,
9 which is Kevin Riley.

10 We didn't need to call Kevin Riley for anything.
11 We've got the accountings, we've got his statement that
12 they're just compilations, we didn't needed to call him.
13 They blame that on us. Maybe we'd call the accounting
14 expert or the estate tax expert if Mr. Riley had come in
15 and testified. But it was just an issue of time, money,
16 and no need because they didn't bring that evidence
17 forward.

18 Why didn't they call Mr. Green to testify? Well,
19 they cited to his report for the proposition that there
20 wasn't a forgery, but the thing to remember is if you get
21 someone's signature, you can forge by signing their name
22 to a document without them knowing, or taking their
23 signature and putting it on something else.

24 Mr. Green was not called because of the evidence

1 that I showed you earlier, where he opined regarding the
2 documents and how they looked and how irregular they
3 were, margins being off and staple holes being wrong or
4 different, page numbers being off, orphan pages. That's
5 why he wasn't called, because they didn't want that
6 evidence to be up here because we would have shown more.
7 It's in evidence, you can look at it. The originals are
8 there. They didn't call him because the signature
9 testimony wouldn't have helped, and the documentary
10 evidence you've seen clearly is against their position.
11 And they instructed Green not to put that in his report.

12 The ACPAs, Stan testified that -- regarding Todd's
13 misrepresentation and fraud regarding those. Stan said
14 these documents were fraudulent and he said, "I didn't
15 sign that Exhibit 14. That's my signature on the orphan
16 signature page but I didn't see that document." So all
17 of the ACPAs, the evidence that you've heard, are all
18 suspect, they're all inadequate to fully disclose but
19 they're also fraud. Fraud is a misrepresentation.

20 Todd individually took an interest in the Lake
21 Tahoe property in relation to his trusts, took advantage
22 of the Indemnification Agreement, took advantage -- or
23 used the Option Agreement to acquire the benefit for
24 himself, so on both sides of the transaction he was

1 involved individually and benefitted individually.

2 Where did the information that Todd may have
3 killed his dad come from? It came from Mr. Dave Jameson,
4 who was Sam's best friend, not from Wendy. Wendy said
5 she had no evidence of that, so -- and Todd also, in his
6 individual capacity, aided and abetted himself as
7 trustee. He's the one that organized these matters and
8 benefitted from them.

9 The Duck Lake issue, I've told you the exhibits,
10 they're 123, 124, 125, you can look at those yourself.
11 They said, well -- Duck Lake and White Pine, look at them
12 yourself. It's Todd Jaksick's trust. Duck Lake is Todd
13 anyway. Either way, the water rights went to Todd.

14 Sam's -- we heard Sam's desires went up in flames
15 if Wendy had gotten involved with Tahoe because of all
16 these creditor issues. Well, the creditor issue has been
17 taken care of. We also heard that when the property
18 landed in SSJ LLC, the creditor issues were taken care
19 of. And it was moved into Incline TSS we heard because
20 of creditor protection. It already had creditor
21 protection, Wendy being involved wouldn't have made a big
22 difference whatsoever.

23 Looking at the instructions, there are a few other
24 instructions to focus on. Without reading them, I just

1 last sentence said:

2 However, this does not excuse a
3 co-trustee from liability for inactivity
4 in the administration of the trust, nor
5 for failure to attempt to prevent a
6 breach of trust.

7 So you heard earlier when I was saying, well, they
8 sat around -- they sat idly by and let these things
9 happen without stopping them, that isn't an excuse. It
10 doesn't exonerate them.

11 Respondents cannot rely upon the ACPA if Wendy
12 proves by clear and convincing evidence that her ascent
13 to them was fraudulently induced, the record has all
14 kinds of evidence that shows that that's the case and
15 certainly a firm belief -- get you to a firm belief.

16 You heard about the statute of limitations issue.
17 Really it becomes a non-issue because, again, we're in a
18 fiduciary context. That umbrella that hangs over this
19 entire matter, which is the fiduciary relationship,
20 fiduciary duties umbrella, it addresses this. And
21 remember the evidence, you have to tell on yourself -- as
22 a fiduciary you have to tell on yourself. Until they go
23 to the beneficiaries and say, hey, this happened, I made
24 this mistake or I did this transaction, I self-dealt,

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

3

4 I, ERIN T. FERRETTO, an Official Reporter
5 of the Second Judicial District Court of the State of
6 Nevada, in and for the County of Washoe, DO HEREBY
7 CERTIFY:

8 That I was present in Department No. 15 of
9 the above-entitled Court on MONDAY, MARCH 4TH, 2019, and
10 took verbatim stenotype notes of the proceedings had upon
11 the matter captioned within, and thereafter transcribed
12 them into typewriting as herein appears;

13 That the foregoing transcript is a full,
14 true and correct transcription of my stenotype notes of
15 said proceedings.

16 DATED: This 8th day of May, 2019.

17

18

19 /s/ Erin T. Ferretto

20 _____
ERIN T. FERRETTO, CCR #281

21

22

23

24

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Clerk of the Court
Transaction # 7869338 : bblough

EXHIBIT 2

EXHIBIT 2

1 4185

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6 IN THE SECOND JUDICIAL DISTRICT COURT

7 STATE OF NEVADA, COUNTY OF WASHOE

8 THE HONORABLE DAVID HARDY, DISTRICT JUDGE

9 In the Matter of the
10 Administration of the Dept. No. 15

11 SSJ'S ISSUE TRUST. Case No. PR17-00445

12 _____/ CONSOLIDATED

13 In the Matter of the Case No. PR17-00446
14 Administration of the

15 SAMUEL K. JAKSICK, JR.
16 FAMILY TRUST.

16 _____/

17 Pages 1 to 49, inclusive.

18

19

20 TRANSCRIPT OF PROCEEDINGS
BENCH TRIAL - DAY 1
Monday, May 13, 2019

21

22 JOB NO: 547452

23 REPORTED BY: Christina Amundson, CCR #641

24 JOB NUMBER.: 547452

1 submitted.

2 THE COURT: Thank you. Why is that
3 stipulation preferable to the clients? First,
4 expenses of litigation. What else?

5 MR. ROBISON: That is basically a
6 consideration that the tremendous amount of money
7 that's been spent on this case by the trust and
8 costs and fees incurred by all parties, one.

9 Two, it effectively replaces what we would
10 have otherwise done for these couple days because we
11 are all satisfied now that we have enough evidence
12 before this court to argue our respective positions
13 in an economical and fiscally responsible way.

14 MR. SPENCER: Your Honor, if I could add to
15 that that I think, as I mentioned earlier, I see a
16 real advantage to us setting up a roadmap for you to
17 have with you -- not that you wouldn't get what we
18 would say orally, but you could take everybody's
19 briefs and identifying exhibits, identifying
20 evidence, identifying highlights of arguments as to
21 certain issues and you would have that right at your
22 hand as a reference. And I think the third reason
23 would be just clarity and simplicity of presentation
24 to your Honor.

1 they look different and sound different but they're
2 really at the same core grievance with requests for
3 substantial money damages, I am concerned about
4 that.

5 As to ACPAs and indemnification agreements,
6 they were an integral part of the trial. Counsel
7 was careful to say, The Honorable Judge Hardy will
8 make that decision in the future, and regularly
9 identified that it was not a decision point for the
10 jury, but those documents were broadcast ad nauseam
11 and must in some way have landed in the jury's
12 minds. And so, I'm not -- I do not begin the
13 equitable claims with freshness and neutrality about
14 unjust enrichment, constructive trust, and the
15 violative impermissible nature of the ACPAs and
16 indemnification agreements.

17 The trust has some problems, I believe,
18 with accountings and notices. I think that I -- I
19 perceive now and look forward to counsel's
20 assistance, but I perceive a distinction between
21 statutory notice and fair notice. This is not a
22 standard trust and standard statutory components of
23 accounting may not provide the answers to questions
24 that exist.

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

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

7 That as such reporter, I was present in
8 Department No. 15 of the above court on May 13,
9 2019, at the hour of 9:57 a.m. of said day, and I
10 then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein in the
12 case of the Administration of the SSJ's Issue Trust
13 and Samuel Jaksick Family Trust, Consolidated, Case
14 No. PR17-00445.

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

21 DATED: At Reno, Nevada, on 16th day of May 2019.
22

23 /S/ Christina Marie Amundson, CCR #641
24 _____

Christina Marie Amundson, CCR #641

FILED
Electronically
PR17-00445
2020-05-08 05:53:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7869338 : bblough

EXHIBIT 3

EXHIBIT 3

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WENDY JAKSICK,

Petitioner,

CASE NO.: PR17-00445

v.

DEPT. NO.: 15

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

CASE NO.: PR17-00446

DEPT. NO.: 15

VERDICT

Respondents.

/ / /

/ / /

/ / /

/ / /

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

4 (Please circle only one for each line item)

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

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

15 (Please circle only one for each line item)

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

25 / / /

26 / / /

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

5 (Please circle only one for each line item)

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

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

18 (Please circle only one for each line item)

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

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

27 / / /

28 / / /

/ / /

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

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

(Please circle only one for each line item)

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

15 DATED this 4 day of March, 2019.

16
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18 FOREPERSON
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Jayne Ferretto

From: eflex@washoecourts.us
Sent: Monday, May 11, 2020 8:17 AM
To: Kent Robison
Cc: Jayne Ferretto
Subject: NEF: CONS: TRUST: SSJ'S ISSUE TRUST: Opposition to Mtn: PR17-00445

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

PROOF OF SERVICE OF ELECTRONIC FILING

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

Judge: HONORABLE DAVID A. HARDY

Official File Stamp: 05-08-2020:17:53:48
Clerk Accepted: 05-11-2020:08:15:58
Court: Second Judicial District Court - State of Nevada
Civil
Case Title: CONS: TRUST: SSJ'S ISSUE TRUST
Document(s) Submitted: Opposition to Mtn
- **Continuation
- **Continuation
- **Continuation
Filed By: Kent R Robison

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

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

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

The following people were served electronically:

SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST, SSJ'S ISSUE TRUST
DONALD ALBERT LATTIN, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY, TODD B. JAKSICK
STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST
MARK J. CONNOT, ESQ. for WENDY A. JAKSICK
ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
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, TODD B. JAKSICK, DUCK LAKE RANCH LLC

PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK, JR. FAMILY TRUST
CAROLYN K. RENNER, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY, TODD B. JAKSICK

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

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

1 CODE: 2645
2 DONALD A. LATTIN, ESQ.
3 Nevada Bar No. 693
4 CAROLYN K. RENNER, ESQ.
5 Nevada Bar No. 9164
6 KRISTEN D. MATEONI, 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*

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

10 IN AND FOR THE COUNTY OF WASHOE

12 In the Matter of the:

Case No.: PR17-0445

Dept. No.: 15

13 SSJ's ISSUE TRUST.

14 _____ / Consolidated

15 In the Matter of the Administration of

Case No.: PR17-0446

Dept. No.: 15

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

17 _____ /

18
19 **LIMITED JOINDER TO "TODD B. JAKSICK'S OPPOSITION TO WENDY**
20 **JAKSICK'S MOTION TO ALTER OR AMEND JUDGMENT, OR, ALTERNATIVELY,**
21 **MOTION FOR A NEW TRIAL" AND ADDITIONAL ARGUMENT**

22 TODD JAKSICK, as sole Trustee of the SSJ's Issue Trust and as Co-Trustee of the
23 Samuel S. Jaksick, Jr. Family Trust (the "Family Trust"), MICHAEL S. KIMMEL, individually
24 and as Co-Trustee of the Family Trust and KEVIN RILEY, individually, as former Trustee of the
25 Family Trust, and Trustee of the Wendy A. Jaksick 2012 BHC Family Trust (hereafter
26 "Petitioners", "Trustees", or "Co-Trustees"), hereby file their Limited Joinder to Todd B.

1 Jaksick's Opposition to Wendy Jaksick's Motion to Alter or Amend Judgment or, Alternatively,
2 Motion for New Trial ("Limited Joinder").

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION**

6 Co-Trustees join those sections of "Todd's Opposition to Wendy's Motion to Alter or
7 Amend the Judgment, or, Alternatively Motion for New Trial" which address the Agreements
8 and Consents to Proposed Actions ("ACPAs") and the accountings. Wendy's Motion to Alter or
9 Amend Judgment or, Alternatively Motion for New Trial (hereafter "Wendy's Motion") also
10 addressed the indemnification agreements, Todd's attorney fees, and his costs as an individual.
11 Those issues are best left to counsel for Todd Jaksick in his individual capacity for response.
12

13 Furthermore, the Co-Trustees provide the following as additional argument in support of
14 the argument in opposition to Wendy's Motion.
15

16 **II.**

17 **LAW AND ARGUMENT**

18 **A. Wendy has not been prejudiced by any proceeding.**

19 **a. This Court is bound by the Seventh Amendment.**

20 The Seventh Amendment of the United States Constitution provides that the court cannot
21 re-examine a fact tried by a jury. This includes the courts of the State of Nevada. *See Lehrer*
22 *McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1111-12, 197 P.3d 1032, 1038
23 (2008). In a case, such as this one, where legal claims are tried by a jury and the judge hears
24 equitable claims, and the claims are based on the same facts, when deciding the equitable claims,
25
26

1 the trial judge must follow the jury's implicit or explicit factual determinations. *See Acosta v.*
2 *City of Mesa*, 718 F.3d 800, 828-29 (9th Cir. 2013).

3 Here, the Court was careful in its Pretrial Order Regarding Trial Schedule ("Pretrial
4 Order") to establish which claims were to be tried as legal claims to the jury and which claims
5 were to be tried to the Court in the subsequent equitable trial. While the Pretrial Order was a
6 necessary instruction in order to manage a complex and lengthy proceeding, it does not trump the
7 Seventh Amendment to the U.S. Constitution. There is no dispute that the same facts were
8 involved in the legal and equitable claims. The law is clear that the trial judge must follow the
9 jury's implicit or explicit factual determinations.
10

11 During trial, the testimony of Pierre Hascheff and Todd before the jury involved
12 considerable exploration of the issue of the ACPAs. Further, Wendy's counsel presented
13 substantial information and spent a substantial amount of time in closing arguments on the issue
14 of the ACPAs. *See* Transcript of Proceedings March 4, 2019 at 20:12-22:3. Additionally, in this
15 case, Jury Instruction No. 25 directly addressed the issue of the ACPAs and their
16 validity/enforceability. The jury considered the ACPAs as part of Wendy's claim for Fraud, and
17 rejected her argument that the ACPAs were not valid or enforceable. This was an explicit factual
18 determination made by the jury and cannot now be contravened by the Court. Wendy's argument
19 that the jury was confused because there was no jury question regarding the validity of these
20 documents is unpersuasive. There was a jury instruction on point. If the jury believed there was
21 an issue with the ACPAs, they would have found in favor of Wendy on her claim for fraud. They
22 did not. The Court cannot ignore this factual determination and it correctly found that the jury
23
24
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26

1 had “constructively approved and affirmed the ACPAs . . . when it reached its verdict.” There is
2 no basis to amend the judgment on this issue.

3 Further, because the validity of the ACPAs has been determined, there is no basis for a
4 finding that the accountings are insufficient. Wendy requests that the Court find the accountings
5 “insufficient on their face” based on her position that the ACPAs are invalid. The ACPAs are
6 valid, and as such, there is no basis to find that the accountings are insufficient and Wendy’s
7 request must be denied.
8

9 Finally, Wendy provides no legal authority or analysis in support of her request for a new
10 trial. Based on the argument above, there is no basis for a new trial on these issues and as such,
11 Wendy’s request must be denied.
12

13 III.

14 CONCLUSION

15 Based on the foregoing Limited Joinder and additional argument in opposition to Wendy’s
16 Motion, the Co-Trustees respectfully request that this Court deny Wendy’s Motion to Alter or
17 Amend Judgment or, Alternatively, Motion for New Trial.

18 ///

19 ///

20 ///

21 ///

22 ///

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26

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 12th day of May, 2020.

MAUPIN, COX & LEGOY

By: 

Donald A. Lattin, NSB # 693

Carolyn K. Renner, Esq., NSB #9164

Kristen D. Matteoni, Esq. NSB #14581

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Attorneys for the Co-Trustees

CERTIFICATE OF SERVICE

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

Via E-Flex Electronic filing System:

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

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

<p>Alexi Smrt 3713 Wrexham St Frisco, TX 75034</p>	<p>Luke Jaksick c/o Jim Smrt 6543 Galena Canyon Trail Reno, NV 89511</p>
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Benjamin Jaksick Amanda Jaksick c/o Dawn E. Jaksick 6220 Rouge Drive Reno, Nevada 89511	Regan Jaksick Sydney Jaksick Sawyer Jaksick c/o Lisa Jaksick 5235 Bellazza Ct. Reno, Nevada 89519
---	--

Dated this 12 day of May, 2020.

Katie Allen
EMPLOYEE

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Attorneys for Respondent/Counter-Petitioner
Wendy A. Jaksick

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

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

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

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

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

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

Petitioners and Counter-Respondents.

**OPPOSITION TO MOTION TO
ALTER OR AMEND THE
JUDGMENT – AWARD OF
ATTORNEY'S FEES TO WENDY
JAKSICK**

1
2 Wendy A. Jaksick (“Wendy”) files this *Opposition* (the “Opposition”), opposing the
3 *Motion to Alter or Amend the Judgment* (“Motion to Alter Judgment”), which was filed by
4 Todd Jaksick, as Trustee of the SSJ’s Issue Trust and Co-Trustee of the Samuel S. Jaksick, Jr.
5 Family Trust (“Family Trust”), Michael S. Kimmel, Individually and as Co-Trustee of the
6 Family Trust and Kevin Riley, Individually, as former Trustee of the Family Trust, and Trustee
7 of the Wendy A. Jaksick 2012 BHC Family Trust (collectively, “Movants” or “Trustees”).
8 Wendy’s *Opposition* is based upon the papers and pleadings on file and the following
9 memorandum of points and authorities. As set forth below, the Court should deny the
10 Trustees’ *Motion to Alter Judgment*.
11

12 I. ARGUMENT AND AUTHORITIES

13 A. Court Conducted Brunzell Factors Analysis in Award of Wendy’s
14 Attorney’s Fees. Trustees argue the *Judgment on Jury Verdict and Court Order on Equitable*
15 *Claims* (the “Judgment”) should be altered or amended to eliminate the \$300,000 award of
16 attorney’s fees to Wendy’s attorneys, because Wendy did not conduct analysis of the *Brunzell*
17 factors and there is no part of the record which indicates that the Court conducted this analysis
18 *sua sponte*. *Motion to Alter Judgment*, page 3, lines 17-18.
19

20 “In Nevada, ‘the method upon which a reasonable fee is determined is subject to the
21 discretion of the court,’ which ‘is tempered only by reason and fairness.’” *Shuette v. Beazer*
22 *Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548–49 (2005). In determining a
23 reasonable fee, “the court is not limited to one specific approach...” *Id.* “[W]hichever method
24 is chosen as a starting point, however, the court must continue its analysis by considering the
25 requested amount in light of the factors enumerated by this court in *Brunzell v. Golden Gate*
26 *National Bank*, namely, the advocate’s professional qualities, the nature of the litigation, the
27 work performed, and the result.” *Id.*
28

1 The factors enumerated in *Brunzell* are as follows:

2 (1) the qualities of the advocate: his ability, his training,
3 education, experience, professional standing and skill;

4 (2) the character of the work to be done: its difficulty, its
5 intricacy, its importance, time and skill required, the
6 responsibility imposed and the prominence and character of
7 the parties where they affect the importance of the litigation;

(3) the work actually performed by the lawyer: the skill, time
and attention given to the work;

(4) the result: whether the attorney was successful and what
benefits were derived.

8 *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

9 The Court's twenty-five (25) page *Order After Equitable Trial* details the history of
10 the nearly two (2) year litigation that concluded in a two (2) week jury trial, presided over by
11 Judge Hardy, and substantial briefing for the trial of the equitable claims, which Judge Harty
12 read and re-read. *Order After Equitable Trial*, pages 2-3.

13 The Court's *Order After Equitable Trial* details the substantial amount of materials,
14 pleadings, briefing and trial record created by the attorneys prior to and during the trials in this
15 matter, as follows:

16
17 3. The file materials compose more than 17,000 pages. There were more than
18 300 separate pleadings, motions, oppositions, replies, joinders, and other substantive
19 papers filed in this proceeding. The parties produced tens of thousands of documents
20 before trial and marked 677 exhibits for the two trials, of which 227 were admitted. The
21 substantive papers (with exhibits and transcripts) filed since the jury's verdict compose
22 more than 4,000 pages. This Court has read and re-read the pending moving papers, to
23 *Order After Equitable Trial*, page 3, lines 8-13.

24 The *Order After Equitable Trial* confirms that Sam Jaksick's Estate, the subject of the
25 litigation, "is exceedingly complex because he used tens of different corporate entities as
26 holding companies for his wealth," and "partnered with non-family business entities." *Order*
27 *After Equitable Trial*, page 3, lines 22-24. The *Order After Equitable Trial* further confirms
28

1 the “complexity of Sam’s Estate warranted extraordinary disclosures, explanations, and
2 compliance with discovery rules,” and that “The trusts before this Court are complex because
3 of the multiple layers of entity and fractional ownership...[t]hey are further complicated by
4 fluid and often unknown values. *Order After Equitable Trial*, page 7, lines 12-13, page 13,
5 lines 9-11

6 The *Order After Equitable Trial* acknowledges and details the financial and
7 documentary complexity involved in the litigation and the substantial amount of work all the
8 attorneys, including Wendy’s attorneys, expended fighting to obtain discovery necessary to
9 prepare and try their case, as follows:

11 trial, but given the financial and documentary complexity, discovery delays and disputes
12 (including Todd’s continued depositions long after the offers of judgment were made), the
13 untimely accountings, incomplete discovery, and the amounts in controversy, the offer

14 *Order After Equitable Trial*, page 20, lines 23-25.

15 explanations, and compliance with discovery rules. There were significant discovery
16 disputes, such that this Court created a schedule for recurring access to the Discovery
17 Commissioner. This Court also ordered the production of disputed discovery. Discovery
18 continued to the very eve of trial and Wendy was still attempting to discern her beneficial
19 interests when trial began.

20 *Order After Equitable Trial*, page 7, lines 13-17.

21 Wendy detailed grounds supporting her attorney’s fees and various reasons her
22 attorney’s fees were so substantial in *Wendy Jaksick’s Brief of Opening Arguments in the*
23 *Equitable Claims Trial*, dated July 1, 2019 (“Wendy’s Opening Brief”). *Wendy’s Opening*
24 *Brief*, page 101, line 6 – page 102, line 5.

25 The *Order After Equitable Trial* confirms the litigation involved “tens of millions in
26 controversy,” “at least seven lawyers zealously advocating for their clients,” and “several
27 million dollars of fees.” *Order After Equitable Trial*, page 5, line 12; page 7, lines 13-17.

1 Finally, the *Order After Equitable Trial* acknowledges and confirms Todd breached his
2 fiduciary duties to Wendy. *Order After Equitable Trial*, page 8, line 6.

3 Based on the details and Court's analysis above, the Court addressed the award of
4 attorney's fees beginning on page 16 of the *Order After Equitable Trial*. The Court states
5 "[t]here are several requests regarding attorney's fees as a trust expense," and "[t]his Court's
6 discretionary resolution of the fees requests is bound by all facts of record and influenced by
7 the entirety of the pre-trial, legal and equitable proceedings (including the settlement
8 agreement between Todd and Stan) and uncertainties created by notarial malfeasance." *Order*
9 *After Equitable Trial*, page 17, lines 7-10.

11 The Court acknowledges the "Court's decision regarding Wendy and Todd's fees (both
12 as trustee and individually) are more complicated," and states that "[t]here are competing facts
13 and legal principals, which this Court analyzes in the aggregate and not in isolation." *Order*
14 *After Equitable Trial*, page 17, lines 12-15. Following six (6) pages of analysis, the Court
15 confirmed its consideration of the *Brunzell* factors finding the fees sought by Todd individually
16 were reasonable in light of his "experienced and effective attorneys, duration and scope of
17 litigation, and the result obtained." *Order After Equitable Trial*, page 21, lines 15-16
18 (emphasis added). "For these reasons" the Court then makes several additional orders on fees
19 including the \$300,000 combined award of attorney's fees to Wendy's attorneys, as follows:
20

21 d. The Trusts shall pay a combined attorneys' fee of \$300,000 to Wendy's:
22 attorneys for prevailing in the claim against Todd for breach of
23 fiduciary duties. This payment shall be made directly to Wendy's
24 attorneys without Wendy's signatory participation as a client or trust
25 beneficiary.

26 *Order After Equitable Trial*, page 21, line 23; page 22, lines 16-20.
27
28

1 District courts may take “almost any sensible approach or apply any logical method to
2 calculate ‘a reasonable fee’ to award as long as the Court weighs the *Brunzell* factors.”
3 *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 560, 429 P.3d 664, 672 (Nev. App. 2018)
4 (citing *Shuette*, 121 Nev. at 548-549). “In this manner, whichever method the court ultimately
5 uses, the result will prove reasonable as long as the court provides sufficient reasoning and
6 findings in support of its ultimate determination.” *Id.* at 571 (citing *Shuette*, 121 Nev. at 549).

7
8 A court may determine and award a “reasonable fee” without considering or reviewing
9 the contract for services or billing records. *O’Connell*, 134 Nev. at 670 (“Nevada law does not
10 require billing records with every attorney fees request.”); *Cooke v. Gove*, 61 Nev. 55, 61, 114
11 P.2d 87, 88 (1941) (upholding fees award based on “reasonable value” of attorney’s services
12 even though the case was taken on a contingency basis with no formal agreement). In the
13 *Cooke v. Gove*, the Court noted that record from the case showed that the reasonable fee was
14 based on the trial court’s evaluation of “the reasonable value of plaintiff’s services from all
15 the facts and circumstances” after the court considered how the plaintiff’s “work, thought and
16 skill contributed” to the successful outcome. *Id.* Consistent with this, in determining a
17 reasonable fee, the “district courts can look at the facts before them, such as what occurred at
18 trial and the record a party produced in litigation the matter.” *O’Connell*, 134 Nev. at 672.

19
20 A review of the *Order After Equitable Trial* and the *Judgment* confirms the Court
21 considered and applied the *Brunzell* factors in making its award of \$300,000 in attorney’s fees
22 to Wendy’s attorneys.

23
24 The Court’s *Order After Equitable Trial* states the “Court elects to make general
25 findings, which are substantially supported by the evidence of record,” because “[i]t cannot
26 resolve the arguments in minutia.” *Order After Equitable Trial*, page 3, lines 15-18. In relation
27 to its award of attorney’s fees, the Court confirmed the “Court’s discretionary resolution of the
28

1 fees requests is bound by all facts of record and influenced by the entirety of the pre-trial, legal
2 and equitable proceedings (including the settlement agreement between Todd and Stan) and
3 uncertainties created by notarial malfeasance.” *Order After Equitable Trial*, page 17, lines 7-
4 10 (emphasis added). Finally, the Court states, “[t]he attorneys’ fees provisions in this order
5 reflect the entirety of this Court’s intentions regarding fees.” *Order After Equitable Trial*, page
6 25, lines 12-13.

7
8 The Court’s analysis and support detailed in the *Order After Equitable Trial*, which
9 resulted in the Court’s conclusion the fees sought by Todd individually were reasonable in
10 light of his “experienced and effective attorneys, duration and scope of litigation, and the result
11 obtained,” is the same detail and analysis the Court relied on for its \$300,000 award to Wendy’s
12 attorneys. The Court has extensive first-hand knowledge of the qualities, abilities and skill of
13 Wendy’s attorneys having reviewed the many pleadings and extensive briefing and presided
14 over numerous hearings and a two-week jury trial. The Court’s *Order After Equitable Trial*
15 confirms the complexity of the subject of the litigation and voluminous documentation
16 associated with same, the difficulty and intricacy of the work and time and skill required of
17 Wendy’s attorneys, and the skill, time and attention Wendy’s attorneys gave the work in
18 preparing for and trying Wendy’s claims. Finally, the Court’s *Order After Equitable Trial*
19 confirms that Wendy’s attorneys were successful in prevailing in their claim against Todd for
20 breach of fiduciary duties.
21

22
23 The award of attorney’s fees to Wendy’s counsel is amply supported by the Court and
24 is based on the Court’s consideration and analysis of the *Brunzell* factors. Accordingly,
25 Movants’ request that the \$300,000 award be removed from the *Judgment* should be denied.

26 **B. Wendy’s Supplemental Motion in Support of Award of Attorney’s Fees.**

27 Together with the filing of this *Opposition*, Wendy filed a *Supplemental Motion in Support of*
28

1 *Award of Attorney's Fees to Wendy Jaksick's Attorneys* ("Motion in Support of Award"),
2 including additional information in support of the Court's analysis of the *Brunzell* factors made
3 in the *Order After Equitable Trial*. Wendy hereby incorporates the *Motion in Support of*
4 *Award* as if fully set forth herein. The information included in the *Motion in Support of Award*
5 confirms the Court's award of attorney's fees to Wendy's attorneys in the amount \$300,000
6 was and is more than reasonable based on a *Brunzell* factor analysis and the outcome of the
7 litigation.
8

9 **CONCLUSION**

10 For the reasons set forth above, Wendy respectfully requests the court deny the Trustees'
11 *Motion to Alter or Amend the Judgment*.
12

13 **AFFIRMATION STATEMENT**

Pursuant to NRS 239B.030

14 The undersigned does hereby affirm that this **OPPOSITION TO MOTION TO**
15 **ALTER OR AMEND THE JUDGMENT – AWARD OF ATTORNEY'S FEES TO**
16 **WENDY JAKSICK** filed by Wendy A. Jaksick in the above-captioned matter does not contain
17 the social security number of any person.

18 DATED this 12th day of May, 2020.

19 **FOX ROTHSCHILD LLP**

20 /s/ Mark J. Connot

21 Mark J. Connot (10010)
22 1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135

23 **SPENCER & JOHNSON, PLLC**

24 /s/ R. Kevin Spencer

25 R. Kevin Spencer (*Admitted PHV*)
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28 *Attorneys for Respondent/Counter-Petitioner*
Wendy A. Jaksick

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 12th day of May, 2020, I served a true and correct copy of **OPPOSITION TO MOTION TO ALTER OR AMEND THE JUDGMENT – AWARD OF ATTORNEY’S FEES TO WENDY JAKSICK** by the Court’s electronic file and serve system addressed to the following:

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DATED this 12th day of May, 2020.

/s/ Doreen Loffredo
An Employee of Fox Rothschild LLP