

**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	5.18.20	19	TJA003358-003365
Request for Submission	5.19.20	19	TJA003373-003376
Request for Submission	5.19.20	20	TJA003453-003456
Request for Submission	6.8.20	21	TJA003635-003638
Request for Submission of Motion for Order Awarding Costs and Attorneys' Fees	4.1.19	7	TJA001186-001189
Request for Submission of Wendy A. Jaksick's Motion for Leave to Join Indispensable Parties	12.18.18	5	TJA000934-000936

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

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

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

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

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

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

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Todd B. Jaksick, in his individual capacity

**CERTIFICATE OF SERVICE**

I certify that on the 13th day of April, 2021, I served a copy of **APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S APPENDIX TO OPENING BRIEF- VOL. 22**, 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:

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

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DATED this 13th day of April, 2021.

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



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

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

\_\_\_\_\_ /

CONSOLIDATED

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

\_\_\_\_\_ /

**ORDER RESOLVING SUBMITTED MATTERS**

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

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

5 By order dated April 21, 2020, this Court denied Wendy Jaksick's costs. It again  
6 attempted to signal to the parties that it had considered all issues, evidence, arguments,  
7 and authorities. After expressing concern about how costs could be segregated between  
8 parties and claims, it wrote: "This Court anticipated costs litigation when it awarded fees  
9 to Wendy's counsel. Like all other issues, the issue of awardable costs cannot be viewed in  
10 isolation; instead, it must be viewed as a small part of a larger whole. This Court's cost  
11 analysis is embedded in the fee award." After identifying Michael Kimmel and Kevin  
12 Riley as prevailing parties, this Court wrote: "The problem this Court anticipates is that  
13 Messrs. Kimmel and Riley will be unable to clearly distinguish and articulate costs  
14 associated with their defense that do not overlap into the costs associated with Todd's  
15 defense. Thus, it is unlikely this Court will order Wendy to pay their costs."

16 The parties have now filed moving papers after the Order After Equitable Trial that  
17 aggregate to more than 1,300 additional pages in the court record. The tone of some  
18 arguments has subtly changed, becoming negative. This Court identified the law  
19 governing fees and costs in previous orders and will not repeat itself in this order. NRCP  
20 59(e) relief may be granted to correct manifest errors of law or fact, address newly  
21 discovered or previously unavailable evidence, respond to a change in controlling law, or  
22 to prevent manifest injustice. AA Primo Builders, LLC v. Wash., 126 Nev. 578, 582, 245  
23 P.3d 1190, 1193 (2010) (internal citations omitted). Manifest injustice exists where the  
24 decision is obviously contrary to the evidence. Kroeger Props. & Dev., Inc. v. Silver State  
25 Title Co., 102 Nev. 112, 114, 715 P.2d 1328, 1330 (1986) (quoting Price v. Sinnott, 85 Nev.  
26 600, 608, 460 P.2d 837, 842 (1969)). An NRCP 59(e) motion "may not be used to relitigate  
27 old matters, or to raise arguments or present evidence that could have been raised prior to  
28 the entry of judgment." 11 Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE §

1 2810.1 (3d ed.) (footnotes omitted).

2 The following submitted matters are resolved as follows:

3 1. **Todd Jaksick's individual claim for attorneys' fees and costs for equitable**  
4 **trial.** Consistent with this Court's prior analysis and decision, the motion is granted.  
5 Todd is awarded against Wendy the amount of \$4,749.67 in costs and attorneys' fees of  
6 \$103,375.00. Interest shall accrue at the legal rate. Todd may attach or anticipate Wendy's  
7 distributive share only if there are no spendthrift provisions within the trust instruments  
8 that prohibit such creditor collection efforts. If such spendthrift provisions exist,  
9 distributions shall be made directly to Wendy and Todd may seek collection efforts  
10 against Wendy personally, subsequent to the distribution.

11 The motion is granted; Todd Jaksick may submit a proposed judgment consistent  
12 with this provision.

13 2. **Kevin Riley and Michael Kimmel's motions for attorneys' fees and costs.**  
14 Messrs. Riley and Kimmel seek attorneys' fees and costs against Wendy individually  
15 pursuant to NRS 7.085, NRS 18.005, 18.010(2)(b), NRS 18.020(3), and NRCP 68. They  
16 tacitly concede they cannot segregate their fees and costs from the fees and costs incurred  
17 in representation of all aligned trustees. They therefore propose the simplistic but  
18 understandable allocation of 25% each of all fees and costs incurred by the trustees  
19 represented by Mr. Lattin and the attorneys at Maupin Cox & LeGoy. Their proposed  
20 allocation does not accommodate the consistent and overwhelming observation this Court  
21 made throughout this proceeding: Mr. Lattin (and other attorneys associated with Mr.  
22 Lattin through the Law Firm of Maupin Cox & LeGoy) provided a single, common  
23 representation for similarly situated trustees. But Todd is at the core of the representation  
24 and Todd's fees and costs would be the same or only imperceptibly different if Messrs.  
25 Riley and Kimmel were not parties.<sup>1</sup> Although prevailing parties, Messrs. Riley and

26  
27  
28 <sup>1</sup> The distinction between trustees is largely illusory. This dispute is about three siblings, two of whom were given management responsibility and fiduciary duties. Having presided over all phases of this dispute, and reading all file materials at various times during the pendency of this action, it is virtually impossible to comprehend how the litigation would have been different if Messrs. Kimmel and Riley were not parties.

1 Kimmel failed to make a reasonable showing of individuated costs. They have failed to  
2 “clearly distinguish and articulate costs associated with their defense that do not overlap  
3 into the costs associated with Todd’s defense.”

4 This Court anticipated these motions when it developed its Order After Equitable  
5 Trial. It was this anticipation that led to the express reference that trustees’ fees would be  
6 paid as a general trust administration expense. The relief Messrs. Kimmel and Riley seek  
7 would alter the purpose and effect of other fee provisions. Accordingly, this Court would  
8 be required to re-visit and modify other provisions of its order. This Court incorporates by  
9 reference its previous order analyzing offers of judgment and summarily concludes the  
10 \$500 offers of judgment are not a basis to shift fees to Wendy. Among other reasons, the  
11 offers of judgment were presumably made in Messrs. Riley and Kimmel’s individual  
12 capacities. Messrs. Riley and Kimmel have made no reasonable showing that they  
13 incurred fees in their individual capacities, but instead, all fees and costs were incurred in  
14 the common defense of all trustees. Finally, the distinction between costs and fees  
15 incurred by Todd as trustee and the costs and fees Todd incurred individually (that were  
16 awarded against Wendy) is difficult to discern because Todd’s trust attorneys and  
17 individual attorneys worked collaboratively in joint defense of Todd.

18 The motions are denied.

19 2. **Trustees Todd Jaksick and Michael Kimmel, and former trustee Kevin**  
20 **Riley’s motion to alter or amend the judgment.** The trustees ask this Court to alter or  
21 amend the judgment to remove the provision directing payment of \$300,000 to Wendy’s  
22 attorneys. The trustees contend this Court sua sponte analyzed the fees to Wendy’s  
23 counsel and neglected to make findings under Brunzell v. Golden Gate National Bank, 85  
24 Nev. 345, 455 P.2d 31 (1969) and Shuette v. Beazer Homes Holding Corp., 121 Nev. 837,  
25 124 P.3d 530 (2005).

26 The trustees’ motion is an example of the type of motion this Court expected when  
27 it entered its Order After Equitable Trial. This Court directly noted the fee award to  
28 Wendy’s counsel cannot be viewed in isolation. As this Court signaled, the fee award is

1 inseparable from this Court's entire analysis. The trustees essentially ask this Court to  
2 parse out the portion of the order they dislike while preserving the provisions granting the  
3 outcome they sought. To do so would render this Court's aggregate analysis incomplete.  
4 Thus, if this Court were to re-visit the fee award to Wendy's counsel it would be  
5 compelled to re-visit other provisions of the order.

6 This Court did not recite the talismanic words typically associated with Brunzell  
7 because it was not awarding fees based upon a valuation of actual attorney time  
8 presented. Instead, it considered the dominant Brunzell factors (advocates' quality,  
9 character and complexity of work, actual work performed, and result) as part of this  
10 unique litigation. This Court is confident it could recite the factors and will do so if  
11 required upon remand.

12 The motion is denied.

13 4. **Co-trustee Stanley Jaksick's memorandum of attorneys' fees.** Consistent  
14 with this Court's Order After Equitable Trial and subsequent judgment, Stanley Jaksick  
15 filed a verified memorandum of attorneys' fees on April 22, 2020. Stanley Jaksick made no  
16 request in his memorandum. Wendy filed an opposition, motion to strike and amended  
17 opposition and motion to strike. Wendy contends that Stanley is not entitled to fees he  
18 incurred individually as the fees he incurred as co-trustee were addressed in this Court's  
19 Order After Equitable Trial. Todd filed an opposition, which primarily reads as a renewed  
20 challenge to the propriety and constitutionality of this Court's Order After Equitable Trial.

21 Contrary to counsel's suggestion, this Court understands the role of different  
22 attorneys at different times. The fees Stanley incurred as co-trustee of the family trust are  
23 payable from the trust.<sup>2</sup> The fees Stanley incurred individually are not before this Court  
24 and are not included within any order. Stanley's attempt to allocate fees he incurred early  
25

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26 <sup>2</sup> The language this Court used in its Order After Equitable Trial could be clarified. When this Court wrote  
27 "Stanley Jaksick and Michael Kimmel's attorneys' fees are chargeable to the trust and paid from trust  
28 corpus" it contemplated only the fees Stanley incurred as co-trustee of the Family Trust would be charged  
against trust corpus. After all, Wendy dismissed her claims against Stanley individually on August 25, 2018,  
long before trial. This Court did not intend that fees Stanley incurred individually would be charged against  
the trust.

1 and individually from fees he incurred as co-trustee may be problematic. But at some  
2 point Wendy dismissed her claims against Stanley individually. It appears the trustees  
3 will either reach an agreement about the allocation of Stanley's individual and trustee fees  
4 or they will participate in additional litigation.

5 Stanley's memorandum is acknowledged but no court intervention is requested and  
6 none is given at this time.

7 5. **Wendy's motion for leave and first supplement to verified memorandum**  
8 **of costs; the trustees' motion to strike; and Stanley's motion to strike or redact.** The  
9 motions are denied as moot. The issues contained within the motions may be renewed  
10 upon appellate remand, if any.

11 6. **Todd's motion to amend judgment.** Todd filed a lengthy motion in which  
12 he re-argues evidence previously considered and responds to this Court's findings and  
13 conclusions by arguing "clear error" and "manifest injustice." Todd's primary concern is  
14 the award of fees. But as this Court noted when explaining its discretion, the attorneys'  
15 fees issue is inseparable from all other issues. If this Court were to re-visit the fees award  
16 it would be compelled to re-visit the totality of its order. Each constituent part of this  
17 dispute is influenced by and dependent upon all other constituent parts. So, for example,  
18 if this Court amended the fees provision it would be compelled to fashion broadened relief  
19 elsewhere, such as its response to the accountings, continuing trusteeship, the trustees'  
20 access to trust corpus to satisfy the expenses of litigation, and the fees awarded to Wendy's  
21 counsel.

22 With two exceptions, this Court does not respond to the arguments Todd presents.  
23 The first exception illustrates the problem of severing and modifying a part of the entire  
24 order. Todd argues this Court improperly restricted his ability to collect his judgment  
25 against Wendy personally by including language about spendthrift provisions. To the  
26 contrary, this Court included the language about spendthrift trusts because it believed,  
27 based upon the entirety of Todd's course of conduct and the jury's finding, that Todd may  
28 use information he acquires as Wendy's fiduciary to advance his own personal interests

1 against Wendy as his judgment debtor. As trustee and co-trustee, Todd will know the  
2 details of distributions to Wendy. This places him at an unfair advantage over Wendy and  
3 other general creditors she may have. As an example of how this Court's decision should  
4 be reviewed in its entirety instead of as separate parts of a whole, this Court considered  
5 removing Todd as trustee. This Court recited its broad authority to do so and even  
6 indicated through an earlier oral pronouncement that it was inclined to remove Todd as  
7 trustee. One justification for removing Todd is the jury's verdict that he breached his  
8 fiduciary duties and the probability of continued hostility between fiduciary and  
9 beneficiary. In the final analysis, based upon the whole, this Court declined to remove  
10 Todd as trustee, but included a provision that prevented him from taking advantage of  
11 Wendy for his personal purposes through information he gains as trustee. Todd asserts a  
12 distinction between his individual interests and trustee interests that is not supported by  
13 the evidence of record.

14 This Court did not implicitly limit Todd's ability to recover against Wendy only  
15 through distributions she receives from the trusts; Todd may exercise any lawful collection  
16 efforts he wishes. What Todd cannot do is anticipate, re-direct, or attach any trust  
17 distribution if a similarly situated general creditor is prohibited from doing so by  
18 spendthrift provisions of the trust.

19 The second exception relates to Todd's obligation to pay 25% of trustee fees from  
20 his own personal resources. The purpose of this fees provision was not to punish Todd for  
21 his individual acts. The fees provision was a recognition that Todd's acts as trustee should  
22 not be defended entirely at trust expense. The jury concluded that Todd alone breached  
23 his fiduciary duties. The jury absolved other trustees of alleged misconduct. The jury's  
24 verdict is consistent with this Court's observations in equity. Todd cannot assert the  
25 benefits of the jury's verdict when it suits him and ignore the portion of the verdict that  
26 repudiates his trustee conduct.

27 This Court agrees it should amend its judgment in one respect. The judgment  
28 provides:

1 In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's  
2 Issue Trust against Todd Jaksick, as Co-Trustee of the Samuel  
3 S. Jaksick, Jr., Family Trust in an amount equal to 25% of the  
4 attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust  
5 and SSJ's Issue Trust for legal services rendered on behalf of  
6 the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust and  
7 Trustee for the SSJ's Issue Trust.

8 The above provision appears to make Todd personally responsible for 25% of the  
9 fees the trusts paid for the benefit of co-trustee Stanley Jaksick. This was not this Court's  
10 intention. This Court intended that Todd would pay 25% of the fees paid to the Law Firm  
11 of Maupin Cox & LeGoy for representing Todd, Michael Kimmel, and Kevin Riley in their  
12 trustee capacities. To the extent this Court's intention is not reflected in the judgment, this  
13 Court authorizes and will sign an amended judgment correcting this possible  
14 misunderstanding.

15 Motion granted only to clarify that Todd shall pay 25% of fees incurred by Maupin  
16 Cox & LeGoy and not by co-trustee Stanley Jaksick.

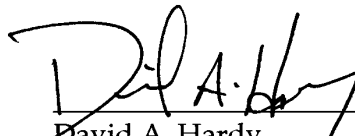
17 7. **Wendy's motion to alter or amend judgment or, alternatively, motion for**  
18 **new trial.** Wendy's motion has been fully briefed but is not submitted for this Court's  
19 decision. Nonetheless, this Court analyzed all moving papers and concludes it is  
20 appropriate to resolve Wendy's motion in this order.

21 The motion is denied.

22 The recent moving papers reveal the combined attorneys' fees now exceed \$3  
23 million and may be approaching \$4 million. The parties are strongly encouraged to bring  
24 this dispute to an end or commence their appellate litigation.

25 **IT IS SO ORDERED.**

26 Dated: June 10, 2020.

27   
28 David A. Hardy  
District Court Judge



1 \$2515  
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10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
11 **IN AND FOR THE COUNTY OF WASHOE**

12 In the Matter of the:	Case No.: PR17-00445
13 SSI's ISSUE TRUST.	Dept. No.: 15
14 _____/	Consolidated
15 In the Matter of the Administration of	Case No.: PR17-00446
16 THE SAMUEL S. JAKSICK, JR., FAMILY TRUST.	Dept. No.: 15
17 _____/	

18 **NOTICE OF APPEAL**

19 NOTICE IS HEREBY GIVEN that TODD B. JAKSICK, as Co-Trustee of the Samuel S.  
20 Jaksick Jr. Family Trust and Trustee of the SSI's Issue Trust, MICHAEL S. KIMMEL,  
21 Individually and as Co-Trustee of the Samuel S. Jaksick Jr. Family Trust, and KEVIN RILEY,  
22 Individually, as Former Trustee of the Samuel S. Jaksick Jr. Family Trust, and and as Trustee of  
23 the Wendy A. Jaksick 2012 BHC Family Trust jointly appeal to the Nevada Supreme Court from:  
24 (1) Order After Equitable Trial, dated March 12, 2020; (2) Judgment, dated April 1, 2020; (3)  
25 Order Resolving Submitted Matters, June 10, 2020; and (4) Amended Judgment, entered July 8,  
26 2020.

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

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

DATED this 15<sup>th</sup> day of July, 2020.

MAUPIN, COX & LEGOY

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law,  
3 and in such capacity and on the date indicated below I served a true and correct copy of the  
4 foregoing document as follows:

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

16 -and-

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24 *Attorneys for Wendy A. Jaksick*

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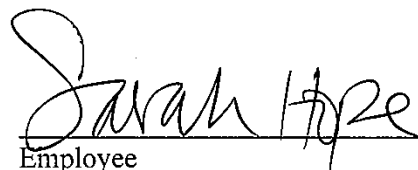
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Sydney Jaksick  
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c/o Lisa Jaksick  
5235 Bellazza Ct.  
Reno, Nevada 89519

DATED this 10<sup>th</sup> day of July, 2020.

  
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12 *Attorneys for Todd B. Jaksick, Individually,*

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

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

15 In the Matter of the:

**CASE NO.: PR17-00445**

16 SSJ's ISSUE TRUST.

**DEPT. NO.: 15**

17 In the Matter of the:

**CASE NO.: PR17-00446**

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

**DEPT. NO.: 15**

20 WENDY JAKSICK,

21 Respondent and Counter-Petitioner,

**CASE APPEAL STATEMENT**

22 v.

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

Petitioners and Counter-Respondents.

CASE APPEAL STATEMENT

1. Name of Appellant filing this Case Appeal Statement: TODD B. JAKSICK,  
individually;
2. Judge issuing the decision, judgment or order appeal from: The Honorable David  
A. Hardy.
3. Each Appellant and address of counsel for each:  
Appellant: TODD B. JAKSICK, Individual  
Counsel: Kent R. Robison, Esq.  
Therese M. Shanks, Esq.  
71 Washington Street  
Reno, Nevada 89503
4. Each Respondent and address of counsel for each:  
Respondent: WENDY JAKSICK  
Counsel: Mark J. Connot, Esq.  
1980 Festival Plaza Drive, Ste. 700  
Las Vegas, Nevada 89135  
  
R. Kevin Spencer  
Zachary E. Johnson  
500 N. Akard Street, Ste. 2150  
Dallas, Texas 75201
5. All counsel identified in paragraph 3 are licensed to practice law in the State of  
Nevada. Mark J. Connot, Esq., identified in paragraph 4 is licensed to practice law in the State of  
Nevada. R. Kevin Spencer, Esq. and Zachary E. Johnson, Esq. have been admitted to practice law  
*pro hac vice*.
6. Appellants were represented by the above-named retained counsel in the district  
court.
7. Appellants are not aware of any related appeals.
8. Appellants have not been granted leave to proceed *in forma pauperis*.
9. Dated proceedings began in District Court: August 2, 2017.
10. Brief description of the nature of the action and result in the District Court,

1 including the type of judgment or order being appealed and the relief granted by the District Court:

2 This lawsuit concerns the estate and testamentary intent of decedent Samuel S. Jaksick, Jr.  
3 (“Sam”), as it pertains to his surviving children, Stanley S. Jaksick (“Stan”), Todd B. Jaksick  
4 (“Todd”) and Wendy Jaksick (“Wendy”). Stan and Todd, along with appellant Michael Kimmel,  
5 Esq. (“Kimmel”), are Co-Trustees of the Samuel S. Jaksick Jr. Family Trust (the “Family Trust”).  
6 Todd is also the Trustee of the SSJ Issue Trust (the “Issue Trust”). Wendy, due to her financially  
7 and personally troubled history, was never named as a trustee of any trust created by Sam for her  
8 benefit.  
9

10 On August 2, 2017, Trustees filed a petition seeking court-approval of certain accountings  
11 and administrative trust action that had been objected to by Wendy. Wendy responded by filing a  
12 counter-petition against all trustees, including Kevin Riley (“Riley”) a former trustee of the Family  
13 Trust, and a current trustee of another trust (the “BHC Trust”) created by Sam for Wendy’s  
14 benefit, and Stan. Wendy also filed claims against all of the named trustees in their individual  
15 capacity as well.<sup>1</sup>  
16

17 The case proceeded to a jury trial in February 2019, on Wendy’s legal claims against all  
18 parties for: (1) breach of fiduciary duties; (2) civil conspiracy; (3) aiding and abetting breach of  
19 fiduciary duty; and (4) fraud. Following a three week jury trial, the jury found *against* Wendy on  
20 all of her legal claims except for one. The jury found that Todd, in his capacity as trustee,  
21 breached his fiduciary duty to Wendy. Despite Wendy’s request for \$80,000,000 in damages, the  
22 jury only awarded her \$15,000.  
23

24 The case then proceeded to an equitable bench trial on the following equitable claims  
25 submitted by the Trustees: (1) settlement and approval of trust accountings; (2) ratification and  
26

27  
28 <sup>1</sup> Stan and Todd disagreed on certain issues, which also resulted in claims being filed  
against each other. However, these claims eventually dismissed and/or settled prior to trial.

1 approval of the Agreements and Consents to Proposed Action ("ACPA's"); (3) confirmation of  
2 Todd as Trustee of the Issue Trust; and (4) confirmation of Todd, Kimmel and Stan as Co-  
3 Trustees of the Family Trust. In addition, Wendy asserted the following equitable claims: (1)  
4 failure to disclose and adequately account; (2) contest of the ACPAs; (3) contest of indemnity  
5 agreements issued to Todd and Stan by Sam; (4) declaratory judgment on the no contest  
6 provisions of the trusts; (5) unjust enrichment and constructive trust; (6) removal of trustees and  
7 appointment of an independent successor trustee; (7) disgorgement of trustee fees; (8) injunction  
8 preventing the trustees from using trust assets to defend this matter; and (9) attorney fees and costs.  
9  
10 The parties ultimately agreed to submit these equitable claims on briefs.  
11

12 Following briefing, the District Court entered an order finding in favor of the trustees and  
13 Todd, and against Wendy on almost every claim. Because the accountings, agreements and  
14 consents to proposed action, and indemnification agreements had formed the basis of Wendy's  
15 legal claims at the jury trial, the District Court found that the jury, in deciding against Wendy on  
16 all of her claims, implicitly rejected the factual bases for her equitable claims. Therefore, it (1)  
17 confirmed the accountings, (2) confirmed the ACPA's, (3) confirmed the indemnification  
18 agreements, (4) confirmed appellants as trustee and/or co-trustees of the various trusts, (5) denied  
19 Wendy's claim for unjust enrichment, (6) denied Wendy's claim for a constructive trust, and (7)  
20 declined to remove the trustees. Due to discrepancies in the execution of some of the testamentary  
21 documents, the District Court found that Wendy's challenges to the validity of the trusts were  
22 brought with a reasonable basis and that Wendy, therefore, did not violate the no-contest  
23 provisions of the trusts. Confusingly, however, the District Court simultaneously found that  
24 Wendy was not a prevailing party and yet awarded her attorneys \$300,000 in fees without any  
25 legal or contractual basis by which to do so. The District Court further required Todd to repay  
26 25% of *all* fees by any trustee in defending this action without, again, legal or contractual basis to  
27  
28



1 do so (and in direct violation of Todd's Seventh Amendment rights).

2 Significant post-trial motion work ensued, both seeking to amend the judgment and to seek  
3 fees. The District Court denied Wendy's requests for fees, granted Todd's requests for fees as an  
4 individual, denied the other trustees' requests for fees, but refused to amend its erroneous findings  
5 that Wendy was somehow entitled to \$300,000 in legal fees and Todd is required to compensate  
6 the trust for 25% of the fees incurred by Appellant Trustees. It did, however, amend the judgment  
7 to clarify that Todd is not required to reimburse the trusts for fees incurred by Stan. This appeal  
8 follows.  
9

10 11. This case has not been the subject of any prior appeals.

11 12. This appeal does not raise any question related to child custody.

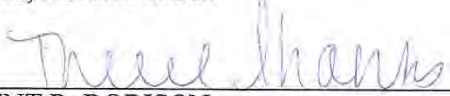
12 13. Whether this appeal involves the possibility of settlement: Settlement is always  
13 encouraged, however, due to Wendy's antagonistic and vexatious conduct, it does not appear that  
14 she would be willing to engage in meaningful settlement discussions.  
15

16 **AFFIRMATION**  
17 **Pursuant to NRS 239B.030**

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

20 Respectfully submitted this 10<sup>th</sup> day of July, 2020.

21 ROBISON, SHARP, SULLIVAN & BRUST  
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23 71 Washington Street  
24 Reno, Nevada 89503

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26 KENT R. ROBISON  
27 THERESE M. SHANKS  
28 *Attorneys for Todd B. Jaksick, Individually*

**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 **CASE APPEAL STATEMENT** on all parties to this action by the method(s) indicated below:

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

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

**Donald A. Lattin, Esq.**

**Carolyn K. Renner, Esq.**

**Kristen D. Matteoni, Esq.**

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

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

DATED: This 10th day of July 2020.

  
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12 *Attorneys for Todd B. Jaksick, Individually,*

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

12 In the Matter of the:

**CASE NO.: PR17-00445**

13 SSJ's ISSUE TRUST.

**DEPT. NO.: 15**

14 In the Matter of the:

**CASE NO.: PR17-00446**

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

**DEPT. NO.: 15**

17 WENDY JAKSICK,  
18 Respondent and Counter-Petitioner,  
19 v.

**NOTICE OF APPEAL**

20 TODD B. JAKSICK, Individually, as Co-  
21 Trustee of the Samuel S. Jaksick Jr. Family  
22 Trust, and as Trustee of the SSJ's Issue Trust;  
23 MICHAEL S. KIMMEL, Individually and as  
24 Co-Trustee of the Samuel S. Jaksick Jr. Family  
25 Trust; STANLEY S. JAKSICK, Individually  
26 and as Co-Trustee of the Samuel S. Jaksick Jr.  
27 Family Trust; KEVIN RILEY, Individually, as  
28 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 NOTICE IS HEREBY GIVEN that Todd B. Jaksick, in his individual capacity, appeals to  
2 the Nevada Supreme Court from all pre-trial orders, jury verdict forms, the verdict, and all post-  
3 trial orders, including, but not limited to: (1) Order After Equitable Trial, dated March 12, 2020;  
4 (2) Judgment, dated April 1, 2020; (3) Order Resolving Submitted Matters, June 10, 2020; (4)  
5 Amended Judgment, entered July 8, 2020.

6 **AFFIRMATION**  
**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 Respectfully submitted this 10<sup>th</sup> day of July, 2020.

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

15 Three Thanks  
16 KENT R. ROBISON  
17 THERESE M. SHANKS  
18 *Attorneys for Todd B. Jaksick, Individually*  
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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 **NOTICE OF APPEAL** 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.**

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*Todd B. Jaksick and Michael S. Kimmel of the*

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

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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*

**Mark J. Connot, Esq.**

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*Attorney for Respondent Wendy A. Jaksick*

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

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*Attorneys for Respondent Wendy A. Jaksick*

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

DATED: This 10th day of July 2020.

  
\_\_\_\_\_  
Leslie M. Lucero  
Employee of Robison, Sharp, Sullivan & Brust

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*Attorneys for Petitioners/Co-Trustees*

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

In the Matter of the:

SSJ's ISSUE TRUST.

Case No.: PR17-00445

Dept. No.: 15

Consolidated

In the Matter of the Administration of

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

Case No.: PR17-00446

Dept. No.: 15

**CASE APPEAL STATEMENT**

1. Name of Appellant filing this Case Appeal Statement: TODD B. JAKSICK, Co-Trustee of the Samuel S. Jaksick Jr. Family Trust; TODD B. JAKSICK, 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.

2. Judge issuing the decision, judgment or order appeal from: The Honorable David A. Hardy.

3. Each Appellant and address of counsel for each:



1 Appellant: TODD B. JAKSICK, as Co-Trustee of the Samuel S. Jaksick Jr.  
2 Family Trust and Trustee of the SSJ's Issue Trust  
3 MICHAEL S. KIMMEL, Individually and as Co-Trustee of the  
4 Samuel S. Jaksick Jr. Family Trust  
5 KEVIN RILEY, Individually, as Former Trustee of the Samuel S.  
6 Jaksick Jr. Family Trust, and as Trustee of the Wendy A. Jaksick 2012 BHC Family  
7 Trust  
8 Counsel: MAUPIN, COX & LeGOY  
9 Donald A. Lattin, Esq.  
10 Carolyn K. Renner, Esq.  
11 Kristen Matteoni, Esq.  
12 4785 Caughlin Parkway  
13 Reno, Nevada 89519

14 4. Each Respondent and address of counsel for each:

15 Respondent: WENDY JAKSICK  
16 Counsel: FOX ROTHSCHILD LLP  
17 Mark J. Connot, Esq.  
18 1980 Festival Plaza Drive, Ste. 700  
19 Las Vegas, Nevada 89135  
20  
21 SPENCER & JOHNSON PLLC  
22 R. Kevin Spencer, Esq.  
23 Zachary E. Johnson, Esq.  
24 500 N. Akard Street, Ste. 2150  
25 Dallas, Texas 75201

26 5. Licensed to practice in Nevada: All counsel identified in paragraph 3 are licensed  
to practice law in the State of Nevada. Mark J. Connot, Esq., identified in paragraph 4 is licensed  
to practice law in the State of Nevada. R. Kevin Spencer, Esq. and Zachary E. Johnson, Esq. have  
been admitted to practice law *pro hac vice*.

6. District court counsel: Appellants were represented by the above-named retained  
counsel in the district court.

7. Related appeals: Appellants are not aware of any related appeals.

8. Forma pauperis: Appellants have not been granted leave to proceed *in forma*  
*pauperis*.

9. Date proceedings began in District Court: August 2, 2017.

10. Brief description of the nature of the action and result in the District Court,  
including the type of judgment or order being appealed and the relief granted by the District Court:

This lawsuit concerns the estate and testamentary intent of decedent Samuel S. Jaksick, Jr. (“Sam”), as it pertains to his surviving children, Stanley S. Jaksick (“Stan”), Todd B. Jaksick (“Todd”) and Wendy Jaksick (“Wendy”). Stan and Todd, along with appellant Michael Kimmel, Esq. (“Kimmel”), are the current Co-Trustees of the Samuel S. Jaksick Jr. Family Trust (the “Family Trust”). Todd is also the sole Trustee of the SSJ Issue Trust (the “Issue Trust”). Kevin Riley (“Riley”), long-time family accountant, is a former trustee of the Family Trust, and a current trustee of the Wendy A. Jaksick 2012 BHC Family Trust (the “BHC Trust”) which is a trust created by Sam for Wendy’s benefit. Wendy, due to her troubled personal and financial history, was never named a Trustee of any trust created by Sam for her or her issue’s benefit.

On August 2, 2017, Todd, Kimmel, and Riley (hereafter “Appellant Trustees”) filed a petition seeking court-approval of certain accountings and administrative trust actions that had been objected to by Wendy. Wendy responded by filing a counter-petition against all Trustees including the Appellant Trustees and Stan. Wendy also filed claims against all of the named trustees in their individual capacities.<sup>1</sup>

The case proceeded to a jury trial in February of 2019 on Wendy's legal claims against all parties for: (1) breach of fiduciary duties; (2) civil conspiracy; (3) aiding and abetting breach of fiduciary duty; and (4) fraud. Following a three-week jury trial, the jury found **against** Wendy on all of her legal claims except for one. The jury found that Todd, in his capacity as trustee, breached his fiduciary duty to Wendy as Trustee of the Family Trust and the Issue Trust. Despite Wendy's request for Eighty Million Dollars (\$80,000,000) in damages, the jury only awarded her Fifteen

<sup>1</sup> Initially, Stan and Todd disagreed on certain trust administration issues, which resulted in them filing claims against each other. However, these claims were dismissed and/or settled prior to trial.

1 Thousand Dollars (\$15,000).

2 The case then proceeded to an equitable bench trial on the following equitable claims  
3 submitted by the Trustee Appellants: (1) settlement and approval of trust accountings; (2)  
4 ratification and approval of the Agreements and Consents to Proposed Action (“ACPAs”); (3)  
5 confirmation of Todd as Trustee of the Issue Trust; and (4) confirmation of Todd, Kimmel, and  
6 Stan as Co-Trustees of the Family Trust. Wendy also asserted the following equitable claims: (1)  
7 failure to disclose and adequately account; (2) contest of the ACPAs; (3) contest of Indemnity  
8 Agreements issued to Todd and Stan by Sam; (4) declaratory judgment on the no contest provisions  
9 of the trusts; (5) unjust enrichment and constructive trust; (6) removal of trustees and appointment  
10 of an independent successor trustee; (7) disgorgement of trustee fees; (8) injunction preventing the  
11 trustees from using trust assets to defend this matter; and (9) attorney fees and costs. The parties  
12 ultimately agreed to submit all equitable claims on briefs.

13 Following briefing, the District Court entered an order finding in favor of Todd, Stan,  
14 Kimmel, and Riley, in all capacities, and against Wendy on almost every claim. Because the  
15 accountings, agreements and ACPAs, and Indemnification Agreements had formed the basis of  
16 Wendy’s legal claims at the jury trial, the District Court found that the jury, in deciding against  
17 Wendy on all of her claims, implicitly rejected the factual basis for her equitable claims.  
18 Therefore, it (1) confirmed the accountings, (2) confirmed the ACPAs, (3) confirmed the  
19 Indemnification Agreements, (4) confirmed appellants as trustee and/or co-trustees of the various  
20 trusts, (5) denied Wendy’s claim for unjust enrichment, (6) denied Wendy’s claim for a  
21 constructive trust, and (7) declined to remove the Trustees. Due to discrepancies in the execution  
22 of some of the testamentary documents, the District Court found that Wendy’s challenges to the  
23 validity of the trusts were brought with a reasonable basis and that Wendy, therefore, did not  
24 violate the no-contest provisions of the trusts. Confusingly, the District Court simultaneously  
25 found that Wendy was not a prevailing party and yet awarded her attorneys’ fees in the amount of  
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1 Three Hundred Thousand Dollars (\$300,000) without any legal or contractual basis by which to  
2 do so. The District Court further required Todd to repay twenty-five percent (25%) of *all* fees paid  
3 by any Trustee in defending this action without, again, legal or contractual basis to do so (and in  
4 direct violation of Todd's Seventh Amendment rights).

5 Significant post-trial motion work ensued, both seeking to amend the judgment and seeking  
6 fees. The District Court denied Wendy's requests for additional fees, granted Todd's requests for  
7 fees as an individual, denied all of the Trustees' requests for fees, and refused to amend its  
8 erroneous findings that Wendy was somehow entitled to Three Hundred Thousand Dollars  
9 (\$300,000) in legal fees and maintained that Todd is required to compensate the trust for twenty-  
10 five percent (25%) of the fees incurred by all Trustees. The District Court did, however, amend  
11 the judgment to clarify that Todd is not required to reimburse the trusts for fees incurred by Stan,  
12 individually. This appeal follows. Appellant Trustees believe separate appeals are necessary as  
13 they are appealing much more narrow issues than Todd individually.

14 11. Prior appeal: This case has not been the subject of any prior appeals.

15 12. Child custody: This appeal does not raise any question related to child custody.

16 13. Whether this appeal involves the possibility of settlement: Settlement is always  
17 encouraged; however, significant resources have already been expended in attempting to settle.  
18 Despite this, Appellant Trustees would consider further meaningful settlement discussions.  
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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 10th day of July, 2020.

MAUPIN, COX & LeGOY

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law,  
3 and in such capacity and on the date indicated below I served a true and correct copy of the  
4 foregoing document as follows:

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[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:

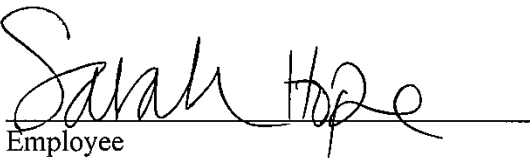
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**SECOND JUDICIAL DISTRICT COURT**

**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.

**CASE APPEAL STATEMENT**



**CASE APPEAL STATEMENT**

1) Name of appellant filing this case appeal statement. Wendy Jaksick.

2) Identify the judge issuing the decision, judgment, or order appealed from. The Honorable David A. Hardy.

3) Identify each appellant and the name and address of counsel for appellant.

a. Appellant: Wendy Jaksick.

b. Counsel: Mark J. Connot  
FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, Suite 700  
Las Vegas, Nevada 89135  
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Zachary E. Johnson (*Admitted PHV*)  
SPENCER & JOHNSON, PLLC  
500 N. Akard Street, Suite 2150  
Dallas, Texas 75201

4) Identify each respondent and the name and address of counsel for appellant.

a. Respondent: Todd Jaksick, Individually

b. Counsel: Kent R. Robison  
Therese M. Shanks  
ROBISON, SHARP, SULLIVAN & BRUST  
71 Washington Street  
Reno, NV 89503

c. Respondents:  
i. Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust and Trustee of the SSJ's Issue Trust  
ii. Michael S. Kimmel, Individually and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust  
iii. 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

d. Counsel: Donald A. Lattin, Esq.  
L. Robert LeGoy, Jr., Esq.  
Carolyn K. Renner, Esq.  
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4785 Caughlin Parkway  
Reno, NV 89519

e. Respondent: Stanly Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust

f. Counsel: Adam Hosmer-Henner, Esq.  
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P.O. Box 2670

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2 and  
3 Phil Kreitlein, Esq.  
4 KREITLEIN LAW GROUP  
5 1575 Delucchi Lane, Ste. 101  
6 Reno, NV 89502

7 5) Whether any attorney identified above in response to question 3 or 4 is not licensed to  
8 practice law in Nevada and, if so, whether the district court granted that attorney permission to appear  
9 under SCR 42. R. Kevin Spencer and Zachary E. Johnson were admitted to practice law in this  
10 matter *pro hac vice*. All other counsel are licensed to practice law in Nevada.

11 6) Whether appellant was represented by appointed or retained counsel in the district  
12 court. Appellant is represented by retained counsel.

13 7) Whether appellant is represented by appointed or retained counsel on appeal.  
14 Appellant is represented by retained counsel.

15 8) Whether appellant was granted leave to proceed in forma pauperis, and the date of  
16 entry of the district court order granting such leave. Appellant was not granted leave to proceed  
17 forma pauperis.

18 9) The date the proceedings commenced in the district court. August 2, 2017.

19 10) A brief description of the nature of the action and result in the district court,  
20 including the type of judgment or order being appealed and the relief granted by the district court.

21 Todd Jaksick, Stanley Jaksick and Wendy Jaksick are siblings. Their father Samuel S.  
22 Jaksick, Jr. ("Sam") amassed a substantial amount of wealth, real estate and other property rights  
23 during his lifetime.

24 Sam died on April 21, 2013, leaving the bulk of his Estate in two (2) trusts the Samuel S.  
25 Jaksick, Jr. Family Trust (the "Family Trust") and the SSJ's Issue Trust ("Issue Trust").

26 Following Sam's death, Todd and Stan generally only provided Wendy information about  
27 the Trust when it benefited them to do so. Accordingly, Wendy was kept in the dark about the assets  
28 of the Trust and the administration of the Trusts.

On August 2, 2017, Todd and Michael Kimmel ("Kimmel"), in their capacities as Co-  
Trustees of the Family Trust, and Todd, in his capacity as Trustee of the Issue Trust, filed *Petitions*

1 instituting this litigation and seeking: (i) confirmation of accountings for the Trusts for the period  
2 April 2013 through December 31, 2016, (ii) release of all liability for actions taken pursuant to  
3 numerous agreements otherwise known as the Agreements and Consents for Proposed Actions  
4 (“ACPAs”), (iii) confirmation of payments made by the Trusts on behalf of Todd, Individually,  
5 based upon a purported Indemnification Agreements, and (iv) and confirmation of all of the  
6 Trustees’ actions in administering the Trusts.

7 Stanley Jaksick (“Stan”), in his capacity as Co-Trustee of the Family Trust, refused to join  
8 the other Co-Trustees in the Purported Accountings and refused to join and pursue the *Petition*.  
9 Instead, he filed an opposition to the *Petition* including objections to the approval of the Purported  
10 Accountings and other claims concerning the administration of the Family Trust. Stan was a Co-  
11 Trustee with insider knowledge and knew the Purported Accountings were deficient, objected to  
12 Todd’s use of his purported Indemnification Agreement to pay his personal expenses from the  
13 Family Trust, and knew other actions of the Co-Trustees were improper.

14 Because Wendy was broke and desperate for money for her and her son, the Co-Trustees’  
15 goal in filing the lawsuit, as confirmed by her brother and Co-Trustee Stan, was to force Wendy to  
16 sell out her interest in the trust at a significant discount. Todd, Stan and their families benefited  
17 greatly if Wendy and her family were out of the picture.

18 As a result of the lawsuit, Wendy had no choice but to respond and assert all her claims  
19 concerning the Trusts, the administration of the Trusts, the ACPAs, the purported  
20 Indemnification Agreements and all other related matters or risk forfeiting her rights and losing  
21 her claims. Wendy also sued all the Trustees in their individual capacities to ensure any  
22 judgment payable or enforceable against the Trustees in their Individual capacities would be  
23 valid and enforceable. Stan was in Wendy’s ear the entire time telling her how Todd and his  
24 family were benefiting from the Trust at Wendy and her family’s expense and encouraging her  
25 to pursue her claims.

26 Wendy was kept in the dark and prevented from obtaining the discovery she needed to  
27 develop her case and prepare for trial. The Trustees objected to virtually all her requests and  
28

1 only produced documents that helped them. They also made every effort to prevent non-parties  
2 from producing documents sought through subpoenas. Additionally, they excluded Wendy from  
3 the exchange of documents that were subpoenaed from Trustees' personal entities until Wendy  
4 accidentally discovered what they had done. After repeated motions to compel and discovery  
5 hearings, the Court was forced to delay trial approximately two weeks while the Trustees and  
6 related non-parties produced 20,000 pages of records. Wendy and her counsel forced to receive  
7 and try to review thousands of pages of documents just days before trial and long after most  
8 witnesses had been deposed. Wendy sought but was denied a continuance of trial to review and  
9 process the massive last-minute discovery dump.

10 Additionally, just days before trial, Todd and Stan settled their disputes and joined teams  
11 for the trial against Wendy. It turns out Stan was encouraging Wendy to pursue claims and  
12 providing her information as a way to create leverage to obtain a better resolution of his disputes  
13 with Todd. Then at trial, Todd and Stan, Wendy's fiduciaries, sat together in a united front  
14 against Wendy and were successful in keeping their settlement hidden from the jury except to  
15 the extent it benefited them. The jury was presented with the picture that Todd and Stan had  
16 some minor disagreements that they were able to reasonably resolve, while Wendy is a  
17 completely unreasonable vexatious litigant. So, while the jury heard Todd and Stan settled, they  
18 were unreasonably denied the ability to review and fully understand the settlement and its terms.

19 Prior to the jury and equitable trials, the Court entered the *Pre-Trial Order Regarding*  
20 *Trial Schedule*, confirming that the "equitable issues" including the validity of the purported  
21 Indemnification Agreements and ACPAs would be tried in a sperate trial to the bench. During  
22 the jury trial evidence was presented concerning the purported Indemnification Agreement and  
23 ACPAs,<sup>1</sup> but the jury was repeatedly told that the Court would decide the validity of the  
24 purported Indemnification Agreement and ACPAs and that was not for them to consider or  
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26 \_\_\_\_\_  
27 <sup>1</sup> The *Pre-Trial Order* directed the Parties "present evidence relevant to all legal issues. To the  
28 extent this evidence is relevant to equitable issues, this Court shall simultaneously consider it for  
this purpose."

1 decide. Consistent with this, the jury was not presented with a jury question concerning the  
2 validity of these documents.

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

6 Following extensive briefing, on March 12, 2020, the Court entered the *Order After*  
7 *Equitable Trial*, which included its finding and orders concerning the claims in the Equitable  
8 Trial.

9 On April 1, 2020, the Court entered the *Judgment* after the conclusion of the equitable  
10 trial, which adopted and incorporated the findings of fact and conclusions of law in the *Order*  
11 *After Equitable Trial*, awarding Wendy equitable relief including the disgorgement of Todd  
12 Jaksick's fees as Trustee of the SSJ's Issue Trust and as Co-Trustee of the Family Trust,  
13 requiring Todd Jaksick, as Trustee of the SSJ's Issue Trust and as Co-Trustee of the Family  
14 Trust, to pay/reimburse twenty-five (25%) of the attorney's fees paid by the SSJ's Issue Trust  
15 and Family Trust associated with this litigation, and ordering the SSJ's Issue Trust and Family  
16 Trust to pay Wendy's attorney's \$300,000 in attorney's fees.

17 The *Judgment* ruled against Wendy on her other claims. However, in the *Judgment*, the  
18 Court confirmed it decided to neither confirm nor deny the ACPAs and purported  
19 Indemnification Agreements on the basis that the Jury decided these issues. This is directly  
20 contrary to role the jury was instructed it had and contrary to the role required of the Court in  
21 relation to the trial of equitable claims. Additionally, the Court awarded fees and costs to Todd,  
22 Individually, against Wendy because Wendy did not obtain a more favorable judgment against  
23 Todd than his \$25,000 settlement offer, pursuant to NRCP 68. However, as a result of Wendy's  
24 lawsuit, Todd, Individually, is required to pay approximately \$200,000 to the Trusts to reimburse  
25 attorney's fees and approximately \$79,000 to disgorge Trustees' fees he received. This appeal  
26 follows.

11) Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding. There has been no prior appeal of this case.

12) Whether this appeal involves child custody or visitation. This appeal does not involve child custody.

13) Whether this appeal involves the possibility of settlement. Appellant believes there is a possibility of settlement and that exhausting all efforts to try to reach a settlement is in the best interests of all the Parties. Consistent with this, Appellant communicated a settlement offer to Respondents on July 10, 2020, and is awaiting a response. Appellant does not believe all settlement possibilities have been exhausted, and she is willing to mediate this matter in an attempt to reach final resolution.

## AFFIRMATION STATEMENT

Pursuant to NRS 239B.030

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

DATED this 13<sup>th</sup> day of July, 2020.

**FOX ROTHSCCHILD LLP**

/s/ *Mark J. Connot*

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Wendy A. Jaksick

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCCHILD LLP and that on this 13<sup>th</sup> of July, 2020, I served a true and correct copy of the foregoing **CASE APPEAL STATEMENT** by the Court's electronic file and serve system as follows:

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**SECOND JUDICIAL DISTRICT COURT**

**WASHOE COUNTY, NEVADA**

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

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

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

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

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

Petitioners and Counter-Respondents.

**NOTICE OF APPEAL**



**NOTICE IS HEREBY GIVEN** that Wendy A. Jaksick (“Respondent/Counter-Petitioner”) appeals to the Nevada Supreme Court from the following: (i) *Order After Equitable Trial*, dated March 12, 2020; (ii) *Judgment on Jury Verdict and Court Order on Equitable Claims*, dated April 1, 2020; (iii) *Order Resolving Submitted Matters*, dated June 10, 2020; and (iv) *Amended Judgment*, dated July 2, 2020.

## AFFIRMATION STATEMENT

Pursuant to NRS 239B.030

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

DATED this 13<sup>th</sup> day of July, 2020.

**FOX ROTHSCILD LLP**

/s/ Mark J. Connot

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*Attorneys for Respondent/Counter-Petitioner*  
Wendy A. Jaksick

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 13<sup>th</sup> of July, 2020, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** by the Court's electronic file and serve system as follows:

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/s/ Doreen Loffredo  
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**CODE: \$2527**

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Elizabeth A. Brown  
Clerk of Supreme Court

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

**IN AND FOR THE COUNTY OF WASHOE**

\* \* \* \* \*

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

**CASE NO.: PR17-00445**

**DEPT. NO.: 15**

**CASE NO.: PR17-00446**

**DEPT. NO.: 15**

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

**NOTICE OF CROSS-APPEAL**

On July 13, 2020, Respondent/Counter-Petitioner Wendy A. Jaksick filed a Notice of Appeal from the following Second Judicial District Court Orders:

1. Order After Equitable Trial, dated March 12, 2020;
2. Judgment on Jury Verdict and Court Order on Equitable Claims, dated April 1, 2020;
3. Order Resolving Submitted Matters, dated June 10, 2020; and
4. Amended Judgment, dated July 6, 2020.

Stanley Jaksick, Co-Trustee of the Family Trust, by and through his attorney Adam Hosmer-Henner, Esq. of McDONALD CARANO LLP, hereby provides notice that he cross-appeals to the Nevada Supreme Court from the District Court regarding the same orders:

1. Order After Equitable Trial, dated March 12, 2020, attached as Exhibit 1;
2. Judgment on Jury Verdict and Court Order on Equitable Claims, dated April 1, 2020, attached as Exhibit 2;
3. Order Resolving Submitted Matters, dated June 10, 2020 attached as Exhibit 3; and

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4. Amended Judgment, dated July 6, 2020, attached as Exhibit 4.

DATED: July 21, 2020.

McDONALD CARANO

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

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD  
3 CARANO and that on July 21, 2020, I served the foregoing on the parties in said case by  
4 electronically filing via the Court's e-filing system. The participants in this case are registered e-  
5 filing users and notice of filing will be served on all parties by operation of the Court's CM/ECF  
6 system, and parties may access this filing through the Court's CM/ECF system.

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

21 DATED: July 21, 2020.

22 By /s/ Jill Nelson  
23 An Employee of McDonald Carano  
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# Exhibit 1

# Exhibit 1

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

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

\_\_\_\_\_/

CONSOLIDATED

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

\_\_\_\_\_/

**ORDER AFTER EQUITABLE TRIAL**

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

<sup>1</sup> Family Trust co-trustee Stan Jaksick did not join in the petitions.



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

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

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

#### 22 **General Findings**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 15. There were several sports references and metaphors argued to the jury.  
19 Consistent with that theme, Wendy "swung for the fences" when she asked the jury to  
20 award \$80 million to her (plus punitive damages), an amount that exceeds the evidentiary  
21 value of this estate and would deprive Todd and Stan of any beneficial interests. She now  
22 seeks a "mulligan" by re-arguing to this Court what was over-argued to the jury.<sup>5</sup> The  
23 jury found that Todd breached his fiduciary duties but only awarded \$15,000 to Wendy. It  
24 found against Wendy on all other claims and against all other counter-respondents. This  
25 Court may have been authorized to award additional equitable relief upon the same facts  
26

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

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

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

### 9 General Legal References

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

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

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

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

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



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

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

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

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

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

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

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

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

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

#### 19 Equitable Issues

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

##### 21 1. *Approval of accountings*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26       4.     *Unjust enrichment and constructive trust*

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

1 consideration to end litigation.

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

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

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

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

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

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

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

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

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

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

23       For these reasons, this Court orders as follows:

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

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

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

27 **Other Issues**

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

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

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

20 2. *The Lake Tahoe property*

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

28 

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

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

3       3.     *Future distributions*

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

14       4.     *Costs.*

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

18                               **Conclusions**

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

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

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

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

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

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

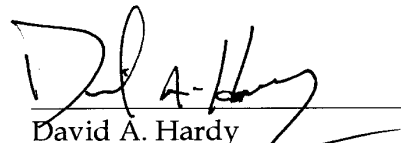
9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject  
10 to the fees award provisions.

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

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

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

19  
20   
21 David A. Hardy  
22 District Court Judge  
23  
24  
25  
26  
27  
28



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# Exhibit 2

# Exhibit 2

1845

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

**IN AND FOR THE COUNTY OF WASHOE**

In the Matter of the:

SSJ's ISSUE TRUST.

**CASE NO.: PR17-00445**

**DEPT. NO.: 15**

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY  
TRUST.

**CASE NO.: PR17-00446**

**DEPT. NO.: 15**

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

Petitioners and Counter-Respondents.

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

**A. JUDGMENT ON JURY VERDICT**

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

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

11 Accordingly, judgment is entered as follows:

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

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

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

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

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

11 **B. JUDGMENT ON EQUITABLE CLAIMS**

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

20 Judgment is hereby entered as follows:

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 1<sup>st</sup> day of April, 2020.

  
DISTRICT JUDGE

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

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

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CONSOLIDATED

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

**ORDER AFTER EQUITABLE TRIAL**

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

<sup>1</sup> Family Trust co-trustee Stan Jaksick did not join in the petitions.



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

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

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

#### 22 **General Findings**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 15. There were several sports references and metaphors argued to the jury.  
19 Consistent with that theme, Wendy "swung for the fences" when she asked the jury to  
20 award \$80 million to her (plus punitive damages), an amount that exceeds the evidentiary  
21 value of this estate and would deprive Todd and Stan of any beneficial interests. She now  
22 seeks a "mulligan" by re-arguing to this Court what was over-argued to the jury.<sup>5</sup> The  
23 jury found that Todd breached his fiduciary duties but only awarded \$15,000 to Wendy. It  
24 found against Wendy on all other claims and against all other counter-respondents. This  
25 Court may have been authorized to award additional equitable relief upon the same facts  
26

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

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

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

### 9 General Legal References

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

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

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

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

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



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

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

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

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

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

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

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

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

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

#### 19 Equitable Issues

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

##### 21 1. *Approval of accountings*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26       4.       *Unjust enrichment and constructive trust*

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

1 consideration to end litigation.

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

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

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

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

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

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

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

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

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

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

23       For these reasons, this Court orders as follows:

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

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

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

27 **Other Issues**

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

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

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

20 2. *The Lake Tahoe property*

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

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

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

3       3.     *Future distributions*

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

14       4.     *Costs.*

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

18                               **Conclusions**

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

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

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

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

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

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

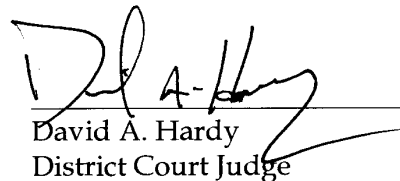
9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject  
10 to the fees award provisions.

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

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

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

19  
20   
21 David A. Hardy  
22 District Court Judge  
23  
24  
25  
26  
27  
28



ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WENDY JAKSICK,

Petitioner,

CASE NO.: PR17-00445

v.

DEPT. NO.: 15

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

CASE NO.: PR17-00446

DEPT. NO.: 15

**VERDICT**

Respondents.

/ / /

/ / /

/ / /

/ / /

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

4 (Please circle only one for each line item)

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

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

15 (Please circle only one for each line item)

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

25 / / /

26 / / /

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

5 (Please circle only one for each line item)

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

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

18 (Please circle only one for each line item)

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

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

27 / / /

28 / / /

/ / /

1           1. We, the jury, duly impaneled in the above-entitled  
2 action, having found in favor of Petitioner, Wendy Jaksick, on  
3 one or more of her claims against one or more of the  
4 Respondents, find that she has proven by a preponderance of  
5 evidence the amount of her damages, assess her damages to be  
6 \$ 15,000.<sup>00</sup>  
7

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

11           (Please circle only one for each line item)

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

16 DATED this 4 day of March, 2019.

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PR17-00445  
2020-07-21 05:36:22 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction #: 7001981 : viloni

# Exhibit 3

# Exhibit 3

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

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

\_\_\_\_\_ /

CONSOLIDATED

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

\_\_\_\_\_ /

**ORDER RESOLVING SUBMITTED MATTERS**

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

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

5 By order dated April 21, 2020, this Court denied Wendy Jaksick's costs. It again  
6 attempted to signal to the parties that it had considered all issues, evidence, arguments,  
7 and authorities. After expressing concern about how costs could be segregated between  
8 parties and claims, it wrote: "This Court anticipated costs litigation when it awarded fees  
9 to Wendy's counsel. Like all other issues, the issue of awardable costs cannot be viewed in  
10 isolation; instead, it must be viewed as a small part of a larger whole. This Court's cost  
11 analysis is embedded in the fee award." After identifying Michael Kimmel and Kevin  
12 Riley as prevailing parties, this Court wrote: "The problem this Court anticipates is that  
13 Messrs. Kimmel and Riley will be unable to clearly distinguish and articulate costs  
14 associated with their defense that do not overlap into the costs associated with Todd's  
15 defense. Thus, it is unlikely this Court will order Wendy to pay their costs."

16 The parties have now filed moving papers after the Order After Equitable Trial that  
17 aggregate to more than 1,300 additional pages in the court record. The tone of some  
18 arguments has subtly changed, becoming negative. This Court identified the law  
19 governing fees and costs in previous orders and will not repeat itself in this order. NRCP  
20 59(e) relief may be granted to correct manifest errors of law or fact, address newly  
21 discovered or previously unavailable evidence, respond to a change in controlling law, or  
22 to prevent manifest injustice. AA Primo Builders, LLC v. Wash., 126 Nev. 578, 582, 245  
23 P.3d 1190, 1193 (2010) (internal citations omitted). Manifest injustice exists where the  
24 decision is obviously contrary to the evidence. Kroeger Props. & Dev., Inc. v. Silver State  
25 Title Co., 102 Nev. 112, 114, 715 P.2d 1328, 1330 (1986) (quoting Price v. Sinnott, 85 Nev.  
26 600, 608, 460 P.2d 837, 842 (1969)). An NRCP 59(e) motion "may not be used to relitigate  
27 old matters, or to raise arguments or present evidence that could have been raised prior to  
28 the entry of judgment." 11 Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE §

1 2810.1 (3d ed.) (footnotes omitted).

2 The following submitted matters are resolved as follows:

3 1. **Todd Jaksick's individual claim for attorneys' fees and costs for equitable**  
4 **trial.** Consistent with this Court's prior analysis and decision, the motion is granted.  
5 Todd is awarded against Wendy the amount of \$4,749.67 in costs and attorneys' fees of  
6 \$103,375.00. Interest shall accrue at the legal rate. Todd may attach or anticipate Wendy's  
7 distributive share only if there are no spendthrift provisions within the trust instruments  
8 that prohibit such creditor collection efforts. If such spendthrift provisions exist,  
9 distributions shall be made directly to Wendy and Todd may seek collection efforts  
10 against Wendy personally, subsequent to the distribution.

11 The motion is granted; Todd Jaksick may submit a proposed judgment consistent  
12 with this provision.

13 2. **Kevin Riley and Michael Kimmel's motions for attorneys' fees and costs.**  
14 Messrs. Riley and Kimmel seek attorneys' fees and costs against Wendy individually  
15 pursuant to NRS 7.085, NRS 18.005, 18.010(2)(b), NRS 18.020(3), and NRCP 68. They  
16 tacitly concede they cannot segregate their fees and costs from the fees and costs incurred  
17 in representation of all aligned trustees. They therefore propose the simplistic but  
18 understandable allocation of 25% each of all fees and costs incurred by the trustees  
19 represented by Mr. Lattin and the attorneys at Maupin Cox & LeGoy. Their proposed  
20 allocation does not accommodate the consistent and overwhelming observation this Court  
21 made throughout this proceeding: Mr. Lattin (and other attorneys associated with Mr.  
22 Lattin through the Law Firm of Maupin Cox & LeGoy) provided a single, common  
23 representation for similarly situated trustees. But Todd is at the core of the representation  
24 and Todd's fees and costs would be the same or only imperceptibly different if Messrs.  
25 Riley and Kimmel were not parties.<sup>1</sup> Although prevailing parties, Messrs. Riley and

26  
27  
28 <sup>1</sup> The distinction between trustees is largely illusory. This dispute is about three siblings, two of whom were given management responsibility and fiduciary duties. Having presided over all phases of this dispute, and reading all file materials at various times during the pendency of this action, it is virtually impossible to comprehend how the litigation would have been different if Messrs. Kimmel and Riley were not parties.



1 Kimmel failed to make a reasonable showing of individuated costs. They have failed to  
2 “clearly distinguish and articulate costs associated with their defense that do not overlap  
3 into the costs associated with Todd’s defense.”

4 This Court anticipated these motions when it developed its Order After Equitable  
5 Trial. It was this anticipation that led to the express reference that trustees’ fees would be  
6 paid as a general trust administration expense. The relief Messrs. Kimmel and Riley seek  
7 would alter the purpose and effect of other fee provisions. Accordingly, this Court would  
8 be required to re-visit and modify other provisions of its order. This Court incorporates by  
9 reference its previous order analyzing offers of judgment and summarily concludes the  
10 \$500 offers of judgment are not a basis to shift fees to Wendy. Among other reasons, the  
11 offers of judgment were presumably made in Messrs. Riley and Kimmel’s individual  
12 capacities. Messrs. Riley and Kimmel have made no reasonable showing that they  
13 incurred fees in their individual capacities, but instead, all fees and costs were incurred in  
14 the common defense of all trustees. Finally, the distinction between costs and fees  
15 incurred by Todd as trustee and the costs and fees Todd incurred individually (that were  
16 awarded against Wendy) is difficult to discern because Todd’s trust attorneys and  
17 individual attorneys worked collaboratively in joint defense of Todd.

18 The motions are denied.

19 2. **Trustees Todd Jaksick and Michael Kimmel, and former trustee Kevin**  
20 **Riley’s motion to alter or amend the judgment.** The trustees ask this Court to alter or  
21 amend the judgment to remove the provision directing payment of \$300,000 to Wendy’s  
22 attorneys. The trustees contend this Court sua sponte analyzed the fees to Wendy’s  
23 counsel and neglected to make findings under Brunzell v. Golden Gate National Bank, 85  
24 Nev. 345, 455 P.2d 31 (1969) and Shuette v. Beazer Homes Holding Corp., 121 Nev. 837,  
25 124 P.3d 530 (2005).

26 The trustees’ motion is an example of the type of motion this Court expected when  
27 it entered its Order After Equitable Trial. This Court directly noted the fee award to  
28 Wendy’s counsel cannot be viewed in isolation. As this Court signaled, the fee award is

1 inseparable from this Court's entire analysis. The trustees essentially ask this Court to  
2 parse out the portion of the order they dislike while preserving the provisions granting the  
3 outcome they sought. To do so would render this Court's aggregate analysis incomplete.  
4 Thus, if this Court were to re-visit the fee award to Wendy's counsel it would be  
5 compelled to re-visit other provisions of the order.

6 This Court did not recite the talismanic words typically associated with Brunzell  
7 because it was not awarding fees based upon a valuation of actual attorney time  
8 presented. Instead, it considered the dominant Brunzell factors (advocates' quality,  
9 character and complexity of work, actual work performed, and result) as part of this  
10 unique litigation. This Court is confident it could recite the factors and will do so if  
11 required upon remand.

12 The motion is denied.

13 4. **Co-trustee Stanley Jaksick's memorandum of attorneys' fees.** Consistent  
14 with this Court's Order After Equitable Trial and subsequent judgment, Stanley Jaksick  
15 filed a verified memorandum of attorneys' fees on April 22, 2020. Stanley Jaksick made no  
16 request in his memorandum. Wendy filed an opposition, motion to strike and amended  
17 opposition and motion to strike. Wendy contends that Stanley is not entitled to fees he  
18 incurred individually as the fees he incurred as co-trustee were addressed in this Court's  
19 Order After Equitable Trial. Todd filed an opposition, which primarily reads as a renewed  
20 challenge to the propriety and constitutionality of this Court's Order After Equitable Trial.

21 Contrary to counsel's suggestion, this Court understands the role of different  
22 attorneys at different times. The fees Stanley incurred as co-trustee of the family trust are  
23 payable from the trust.<sup>2</sup> The fees Stanley incurred individually are not before this Court  
24 and are not included within any order. Stanley's attempt to allocate fees he incurred early  
25

---

26 <sup>2</sup> The language this Court used in its Order After Equitable Trial could be clarified. When this Court wrote  
27 "Stanley Jaksick and Michael Kimmel's attorneys' fees are chargeable to the trust and paid from trust  
28 corpus" it contemplated only the fees Stanley incurred as co-trustee of the Family Trust would be charged  
against trust corpus. After all, Wendy dismissed her claims against Stanley individually on August 25, 2018,  
long before trial. This Court did not intend that fees Stanley incurred individually would be charged against  
the trust.

1 and individually from fees he incurred as co-trustee may be problematic. But at some  
2 point Wendy dismissed her claims against Stanley individually. It appears the trustees  
3 will either reach an agreement about the allocation of Stanley's individual and trustee fees  
4 or they will participate in additional litigation.

5 Stanley's memorandum is acknowledged but no court intervention is requested and  
6 none is given at this time.

7 5. **Wendy's motion for leave and first supplement to verified memorandum**  
8 **of costs; the trustees' motion to strike; and Stanley's motion to strike or redact.** The  
9 motions are denied as moot. The issues contained within the motions may be renewed  
10 upon appellate remand, if any.

11 6. **Todd's motion to amend judgment.** Todd filed a lengthy motion in which  
12 he re-argues evidence previously considered and responds to this Court's findings and  
13 conclusions by arguing "clear error" and "manifest injustice." Todd's primary concern is  
14 the award of fees. But as this Court noted when explaining its discretion, the attorneys'  
15 fees issue is inseparable from all other issues. If this Court were to re-visit the fees award  
16 it would be compelled to re-visit the totality of its order. Each constituent part of this  
17 dispute is influenced by and dependent upon all other constituent parts. So, for example,  
18 if this Court amended the fees provision it would be compelled to fashion broadened relief  
19 elsewhere, such as its response to the accountings, continuing trusteeship, the trustees'  
20 access to trust corpus to satisfy the expenses of litigation, and the fees awarded to Wendy's  
21 counsel.

22 With two exceptions, this Court does not respond to the arguments Todd presents.  
23 The first exception illustrates the problem of severing and modifying a part of the entire  
24 order. Todd argues this Court improperly restricted his ability to collect his judgment  
25 against Wendy personally by including language about spendthrift provisions. To the  
26 contrary, this Court included the language about spendthrift trusts because it believed,  
27 based upon the entirety of Todd's course of conduct and the jury's finding, that Todd may  
28 use information he acquires as Wendy's fiduciary to advance his own personal interests

1 against Wendy as his judgment debtor. As trustee and co-trustee, Todd will know the  
2 details of distributions to Wendy. This places him at an unfair advantage over Wendy and  
3 other general creditors she may have. As an example of how this Court's decision should  
4 be reviewed in its entirety instead of as separate parts of a whole, this Court considered  
5 removing Todd as trustee. This Court recited its broad authority to do so and even  
6 indicated through an earlier oral pronouncement that it was inclined to remove Todd as  
7 trustee. One justification for removing Todd is the jury's verdict that he breached his  
8 fiduciary duties and the probability of continued hostility between fiduciary and  
9 beneficiary. In the final analysis, based upon the whole, this Court declined to remove  
10 Todd as trustee, but included a provision that prevented him from taking advantage of  
11 Wendy for his personal purposes through information he gains as trustee. Todd asserts a  
12 distinction between his individual interests and trustee interests that is not supported by  
13 the evidence of record.

14 This Court did not implicitly limit Todd's ability to recover against Wendy only  
15 through distributions she receives from the trusts; Todd may exercise any lawful collection  
16 efforts he wishes. What Todd cannot do is anticipate, re-direct, or attach any trust  
17 distribution if a similarly situated general creditor is prohibited from doing so by  
18 spendthrift provisions of the trust.

19 The second exception relates to Todd's obligation to pay 25% of trustee fees from  
20 his own personal resources. The purpose of this fees provision was not to punish Todd for  
21 his individual acts. The fees provision was a recognition that Todd's acts as trustee should  
22 not be defended entirely at trust expense. The jury concluded that Todd alone breached  
23 his fiduciary duties. The jury absolved other trustees of alleged misconduct. The jury's  
24 verdict is consistent with this Court's observations in equity. Todd cannot assert the  
25 benefits of the jury's verdict when it suits him and ignore the portion of the verdict that  
26 repudiates his trustee conduct.

27 This Court agrees it should amend its judgment in one respect. The judgment  
28 provides:

1 In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's  
2 Issue Trust against Todd Jaksick, as Co-Trustee of the Samuel  
3 S. Jaksick, Jr., Family Trust in an amount equal to 25% of the  
4 attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust  
5 and SSJ's Issue Trust for legal services rendered on behalf of  
6 the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust and  
7 Trustee for the SSJ's Issue Trust.

8 The above provision appears to make Todd personally responsible for 25% of the  
9 fees the trusts paid for the benefit of co-trustee Stanley Jaksick. This was not this Court's  
10 intention. This Court intended that Todd would pay 25% of the fees paid to the Law Firm  
11 of Maupin Cox & LeGoy for representing Todd, Michael Kimmel, and Kevin Riley in their  
12 trustee capacities. To the extent this Court's intention is not reflected in the judgment, this  
13 Court authorizes and will sign an amended judgment correcting this possible  
14 misunderstanding.

15 Motion granted only to clarify that Todd shall pay 25% of fees incurred by Maupin  
16 Cox & LeGoy and not by co-trustee Stanley Jaksick.


17 7. **Wendy's motion to alter or amend judgment or, alternatively, motion for**  
18 **new trial.** Wendy's motion has been fully briefed but is not submitted for this Court's  
19 decision. Nonetheless, this Court analyzed all moving papers and concludes it is  
20 appropriate to resolve Wendy's motion in this order.

21 The motion is denied.

22 The recent moving papers reveal the combined attorneys' fees now exceed \$3  
23 million and may be approaching \$4 million. The parties are strongly encouraged to bring  
24 this dispute to an end or commence their appellate litigation.

25 **IT IS SO ORDERED.**

26 Dated: June 10, 2020.

27   
28 David A. Hardy  
District Court Judge

FILED  
Electronically  
PR17-00445  
2020-07-21 05:36:22 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7001981 : viloni

# Exhibit 4

# Exhibit 4

1105

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

CASE NO.: PR17-00445

DEPT. NO.: 15

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY  
TRUST.

CASE NO.: PR17-00446

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

Petitioners and Counter-Respondents.

~~PROPOSED~~  
AMENDED JUDGMENT

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

8 DATED this 2nd day of July, 2020.

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12 DAVID A. HARDY  
13 DISTRICT COURT JUDGE  
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**EXHIBIT LIST**

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

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# EXHIBIT 1

1845

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

**IN AND FOR THE COUNTY OF WASHOE**

In the Matter of the:

SSJ's ISSUE TRUST.

**CASE NO.: PR17-00445**

**DEPT. NO.: 15**

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY  
TRUST.

**CASE NO.: PR17-00446**

**DEPT. NO.: 15**

WENDY JAKSICK,

Respondent and Counter-Petitioner,  
v.

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

Petitioners and Counter-Respondents.

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

**A. JUDGMENT ON JURY VERDICT**

This matter was tried to a jury from February 14, 2019 to and including March 4, 2019.

The jury found in favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-

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

11 Accordingly, judgment is entered as follows:

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

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

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

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

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

11 **B. JUDGMENT ON EQUITABLE CLAIMS**

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

20 Judgment is hereby entered as follows:

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

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

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

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

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

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

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



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

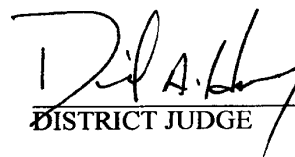
8           9.     In favor of Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust  
9 and as Trustee of the SSJ's Issue Trust, and against Counter-Petitioner Wendy Jaksick confirming  
10 Todd Jaksick, as Trustee of the SSJ's Issue Trust and Co-Trustee of the Samuel S. Jaksick, Jr.,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

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

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

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

DATED this 1<sup>st</sup> day of April, 2020.

  
DISTRICT JUDGE

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# EXHIBIT 2

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

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

Case No. PR17-00445

CONSOLIDATED

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

No. PR17-00446

Dept. No. 15

**ORDER RESOLVING SUBMITTED MATTERS**

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

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

5 By order dated April 21, 2020, this Court denied Wendy Jaksick's costs. It again  
6 attempted to signal to the parties that it had considered all issues, evidence, arguments,  
7 and authorities. After expressing concern about how costs could be segregated between  
8 parties and claims, it wrote: "This Court anticipated costs litigation when it awarded fees  
9 to Wendy's counsel. Like all other issues, the issue of awardable costs cannot be viewed in  
10 isolation; instead, it must be viewed as a small part of a larger whole. This Court's cost  
11 analysis is embedded in the fee award." After identifying Michael Kimmel and Kevin  
12 Riley as prevailing parties, this Court wrote: "The problem this Court anticipates is that  
13 Messrs. Kimmel and Riley will be unable to clearly distinguish and articulate costs  
14 associated with their defense that do not overlap into the costs associated with Todd's  
15 defense. Thus, it is unlikely this Court will order Wendy to pay their costs."

16 The parties have now filed moving papers after the Order After Equitable Trial that  
17 aggregate to more than 1,300 additional pages in the court record. The tone of some  
18 arguments has subtly changed, becoming negative. This Court identified the law  
19 governing fees and costs in previous orders and will not repeat itself in this order. NRCP  
20 59(e) relief may be granted to correct manifest errors of law or fact, address newly  
21 discovered or previously unavailable evidence, respond to a change in controlling law, or  
22 to prevent manifest injustice. AA Primo Builders, LLC v. Wash., 126 Nev. 578, 582, 245  
23 P.3d 1190, 1193 (2010) (internal citations omitted). Manifest injustice exists where the  
24 decision is obviously contrary to the evidence. Kroeger Props. & Dev., Inc. v. Silver State  
25 Title Co., 102 Nev. 112, 114, 715 P.2d 1328, 1330 (1986) (quoting Price v. Sinnott, 85 Nev.  
26 600, 608, 460 P.2d 837, 842 (1969)). An NRCP 59(e) motion "may not be used to relitigate  
27 old matters, or to raise arguments or present evidence that could have been raised prior to  
28 the entry of judgment." 11 Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE §

1 2810.1 (3d ed.) (footnotes omitted).

2 The following submitted matters are resolved as follows:

3 1. **Todd Jaksick's individual claim for attorneys' fees and costs for equitable**  
4 **trial.** Consistent with this Court's prior analysis and decision, the motion is granted.

5 Todd is awarded against Wendy the amount of \$4,749.67 in costs and attorneys' fees of  
6 \$103,375.00. Interest shall accrue at the legal rate. Todd may attach or anticipate Wendy's  
7 distributive share only if there are no spendthrift provisions within the trust instruments  
8 that prohibit such creditor collection efforts. If such spendthrift provisions exist,  
9 distributions shall be made directly to Wendy and Todd may seek collection efforts  
10 against Wendy personally, subsequent to the distribution.

11 The motion is granted; Todd Jaksick may submit a proposed judgment consistent  
12 with this provision.

13 2. **Kevin Riley and Michael Kimmel's motions for attorneys' fees and costs.**  
14 Messrs. Riley and Kimmel seek attorneys' fees and costs against Wendy individually  
15 pursuant to NRS 7.085, NRS 18.005, 18.010(2)(b), NRS 18.020(3), and NRCP 68. They  
16 tacitly concede they cannot segregate their fees and costs from the fees and costs incurred  
17 in representation of all aligned trustees. They therefore propose the simplistic but  
18 understandable allocation of 25% each of all fees and costs incurred by the trustees  
19 represented by Mr. Lattin and the attorneys at Maupin Cox & LeGoy. Their proposed  
20 allocation does not accommodate the consistent and overwhelming observation this Court  
21 made throughout this proceeding: Mr. Lattin (and other attorneys associated with Mr.  
22 Lattin through the Law Firm of Maupin Cox & LeGoy) provided a single, common  
23 representation for similarly situated trustees. But Todd is at the core of the representation  
24 and Todd's fees and costs would be the same or only imperceptibly different if Messrs.  
25 Riley and Kimmel were not parties.<sup>1</sup> Although prevailing parties, Messrs. Riley and

26  
27  
28 <sup>1</sup> The distinction between trustees is largely illusory. This dispute is about three siblings, two of whom were given management responsibility and fiduciary duties. Having presided over all phases of this dispute, and reading all file materials at various times during the pendency of this action, it is virtually impossible to comprehend how the litigation would have been different if Messrs. Kimmel and Riley were not parties.

1 Kimmel failed to make a reasonable showing of individuated costs. They have failed to  
2 "clearly distinguish and articulate costs associated with their defense that do not overlap  
3 into the costs associated with Todd's defense."

4 This Court anticipated these motions when it developed its Order After Equitable  
5 Trial. It was this anticipation that led to the express reference that trustees' fees would be  
6 paid as a general trust administration expense. The relief Messrs. Kimmel and Riley seek  
7 would alter the purpose and effect of other fee provisions. Accordingly, this Court would  
8 be required to re-visit and modify other provisions of its order. This Court incorporates by  
9 reference its previous order analyzing offers of judgment and summarily concludes the  
10 \$500 offers of judgment are not a basis to shift fees to Wendy. Among other reasons, the  
11 offers of judgment were presumably made in Messrs. Riley and Kimmel's individual  
12 capacities. Messrs. Riley and Kimmel have made no reasonable showing that they  
13 incurred fees in their individual capacities, but instead, all fees and costs were incurred in  
14 the common defense of all trustees. Finally, the distinction between costs and fees  
15 incurred by Todd as trustee and the costs and fees Todd incurred individually (that were  
16 awarded against Wendy) is difficult to discern because Todd's trust attorneys and  
17 individual attorneys worked collaboratively in joint defense of Todd.

18 The motions are denied.

19 **2. Trustees Todd Jaksick and Michael Kimmel, and former trustee Kevin**  
20 **Riley's motion to alter or amend the judgment.** The trustees ask this Court to alter or  
21 amend the judgment to remove the provision directing payment of \$300,000 to Wendy's  
22 attorneys. The trustees contend this Court sua sponte analyzed the fees to Wendy's  
23 counsel and neglected to make findings under Brunzell v. Golden Gate National Bank, 85  
24 Nev. 345, 455 P.2d 31 (1969) and Shuette v. Beazer Homes Holding Corp., 121 Nev. 837,  
25 124 P.3d 530 (2005).

26 The trustees' motion is an example of the type of motion this Court expected when  
27 it entered its Order After Equitable Trial. This Court directly noted the fee award to  
28 Wendy's counsel cannot be viewed in isolation. As this Court signaled, the fee award is

1 inseparable from this Court's entire analysis. The trustees essentially ask this Court to  
2 parse out the portion of the order they dislike while preserving the provisions granting the  
3 outcome they sought. To do so would render this Court's aggregate analysis incomplete.  
4 Thus, if this Court were to re-visit the fee award to Wendy's counsel it would be  
5 compelled to re-visit other provisions of the order.

6 This Court did not recite the talismanic words typically associated with Brunzell  
7 because it was not awarding fees based upon a valuation of actual attorney time  
8 presented. Instead, it considered the dominant Brunzell factors (advocates' quality,  
9 character and complexity of work, actual work performed, and result) as part of this  
10 unique litigation. This Court is confident it could recite the factors and will do so if  
11 required upon remand.

12 The motion is denied.

13 4. **Co-trustee Stanley Jaksick's memorandum of attorneys' fees.** Consistent  
14 with this Court's Order After Equitable Trial and subsequent judgment, Stanley Jaksick  
15 filed a verified memorandum of attorneys' fees on April 22, 2020. Stanley Jaksick made no  
16 request in his memorandum. Wendy filed an opposition, motion to strike and amended  
17 opposition and motion to strike. Wendy contends that Stanley is not entitled to fees he  
18 incurred individually as the fees he incurred as co-trustee were addressed in this Court's  
19 Order After Equitable Trial. Todd filed an opposition, which primarily reads as a renewed  
20 challenge to the propriety and constitutionality of this Court's Order After Equitable Trial.

21 Contrary to counsel's suggestion, this Court understands the role of different  
22 attorneys at different times. The fees Stanley incurred as co-trustee of the family trust are  
23 payable from the trust.<sup>2</sup> The fees Stanley incurred individually are not before this Court  
24 and are not included within any order. Stanley's attempt to allocate fees he incurred early

---

25  
26 <sup>2</sup> The language this Court used in its Order After Equitable Trial could be clarified. When this Court wrote  
27 "Stanley Jaksick and Michael Kimmel's attorneys' fees are chargeable to the trust and paid from trust  
28 corpus" it contemplated only the fees Stanley incurred as co-trustee of the Family Trust would be charged  
against trust corpus. After all, Wendy dismissed her claims against Stanley individually on August 25, 2018,  
long before trial. This Court did not intend that fees Stanley incurred individually would be charged against  
the trust.



1 and individually from fees he incurred as co-trustee may be problematic. But at some  
2 point Wendy dismissed her claims against Stanley individually. It appears the trustees  
3 will either reach an agreement about the allocation of Stanley's individual and trustee fees  
4 or they will participate in additional litigation.

5 Stanley's memorandum is acknowledged but no court intervention is requested and  
6 none is given at this time.

7 5. **Wendy's motion for leave and first supplement to verified memorandum**  
8 **of costs; the trustees' motion to strike; and Stanley's motion to strike or redact.** The  
9 motions are denied as moot. The issues contained within the motions may be renewed  
10 upon appellate remand, if any.

11 6. **Todd's motion to amend judgment.** Todd filed a lengthy motion in which  
12 he re-argues evidence previously considered and responds to this Court's findings and  
13 conclusions by arguing "clear error" and "manifest injustice." Todd's primary concern is  
14 the award of fees. But as this Court noted when explaining its discretion, the attorneys'  
15 fees issue is inseparable from all other issues. If this Court were to re-visit the fees award  
16 it would be compelled to re-visit the totality of its order. Each constituent part of this  
17 dispute is influenced by and dependent upon all other constituent parts. So, for example,  
18 if this Court amended the fees provision it would be compelled to fashion broadened relief  
19 elsewhere, such as its response to the accountings, continuing trusteeship, the trustees'  
20 access to trust corpus to satisfy the expenses of litigation, and the fees awarded to Wendy's  
21 counsel.

22 With two exceptions, this Court does not respond to the arguments Todd presents.  
23 The first exception illustrates the problem of severing and modifying a part of the entire  
24 order. Todd argues this Court improperly restricted his ability to collect his judgment  
25 against Wendy personally by including language about spendthrift provisions. To the  
26 contrary, this Court included the language about spendthrift trusts because it believed,  
27 based upon the entirety of Todd's course of conduct and the jury's finding, that Todd may  
28 use information he acquires as Wendy's fiduciary to advance his own personal interests

1 against Wendy as his judgment debtor. As trustee and co-trustee, Todd will know the  
2 details of distributions to Wendy. This places him at an unfair advantage over Wendy and  
3 other general creditors she may have. As an example of how this Court's decision should  
4 be reviewed in its entirety instead of as separate parts of a whole, this Court considered  
5 removing Todd as trustee. This Court recited its broad authority to do so and even  
6 indicated through an earlier oral pronouncement that it was inclined to remove Todd as  
7 trustee. One justification for removing Todd is the jury's verdict that he breached his  
8 fiduciary duties and the probability of continued hostility between fiduciary and  
9 beneficiary. In the final analysis, based upon the whole, this Court declined to remove  
10 Todd as trustee, but included a provision that prevented him from taking advantage of  
11 Wendy for his personal purposes through information he gains as trustee. Todd asserts a  
12 distinction between his individual interests and trustee interests that is not supported by  
13 the evidence of record.

14 This Court did not implicitly limit Todd's ability to recover against Wendy only  
15 through distributions she receives from the trusts; Todd may exercise any lawful collection  
16 efforts he wishes. What Todd cannot do is anticipate, re-direct, or attach any trust  
17 distribution if a similarly situated general creditor is prohibited from doing so by  
18 spendthrift provisions of the trust.

19 The second exception relates to Todd's obligation to pay 25% of trustee fees from  
20 his own personal resources. The purpose of this fees provision was not to punish Todd for  
21 his individual acts. The fees provision was a recognition that Todd's acts as trustee should  
22 not be defended entirely at trust expense. The jury concluded that Todd alone breached  
23 his fiduciary duties. The jury absolved other trustees of alleged misconduct. The jury's  
24 verdict is consistent with this Court's observations in equity. Todd cannot assert the  
25 benefits of the jury's verdict when it suits him and ignore the portion of the verdict that  
26 repudiates his trustee conduct.

27 This Court agrees it should amend its judgment in one respect. The judgment  
28 provides:

1 In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's  
2 Issue Trust against Todd Jaksick, as Co-Trustee of the Samuel  
3 S. Jaksick, Jr., Family Trust in an amount equal to 25% of the  
4 attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust  
5 and SSJ's Issue Trust for legal services rendered on behalf of  
6 the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust and  
7 Trustee for the SSJ's Issue Trust.

8 The above provision appears to make Todd personally responsible for 25% of the  
9 fees the trusts paid for the benefit of co-trustee Stanley Jaksick. This was not this Court's  
10 intention. This Court intended that Todd would pay 25% of the fees paid to the Law Firm  
11 of Maupin Cox & LeGoy for representing Todd, Michael Kimmel, and Kevin Riley in their  
12 trustee capacities. To the extent this Court's intention is not reflected in the judgment, this  
13 Court authorizes and will sign an amended judgment correcting this possible  
14 misunderstanding.

15 Motion granted only to clarify that Todd shall pay 25% of fees incurred by Maupin  
16 Cox & LeGoy and not by co-trustee Stanley Jaksick.

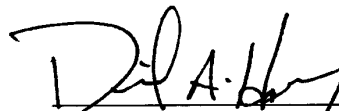
17 7. **Wendy's motion to alter or amend judgment or, alternatively, motion for**  
18 **new trial.** Wendy's motion has been fully briefed but is not submitted for this Court's  
19 decision. Nonetheless, this Court analyzed all moving papers and concludes it is  
20 appropriate to resolve Wendy's motion in this order.

21 The motion is denied.

22 The recent moving papers reveal the combined attorneys' fees now exceed \$3  
23 million and may be approaching \$4 million. The parties are strongly encouraged to bring  
24 this dispute to an end or commence their appellate litigation.

25 **IT IS SO ORDERED.**

26 Dated: June 10, 2020.

27   
28 David A. Hardy  
District Court Judge

**CODE: 1311**

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

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

\* \* \* \* \*

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

**CASE NO.: PR17-00445**

**DEPT. NO.: 15**

**CASE NO.: PR17-00446**

**DEPT. NO.: 15**

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

**CASE APPEAL STATEMENT**

Stanley Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust, hereby submits  
the following Case Appeal Statement pursuant to Nevada Rule of Appellate Procedure 3(f):

**1. Name of appellants filing this case appeal statement:**

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

**2. Identify the judges issuing the decision, judgment, or order appealed from:**

The Honorable David A. Hardy of the Second Judicial District Court in and for Washoe  
County.

**3. Identify each appellant and the name and address of counsel for each appellant:**

Cross-Appellant: Stanley Jaksick

Counsel for Cross-Appellant:  
Adam Hosmer-Henner, Esq. (NSBN 12779)  
McDONALD CARANO  
100 West Liberty Street, 10th Floor  
Reno, NV 89501  
(775) 788-2000  
[ahosmerhenner@mcdonaldcarano.com](mailto:ahosmerhenner@mcdonaldcarano.com)

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4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

Cross-Respondent: Wendy A. Jaksick

Counsel for Cross-Respondent:  
Mark Connot  
FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, Suite 700  
Las Vegas, Nevada 89135  
(702) 262-6899  
[mconnot@foxrothschild.com](mailto:mconnot@foxrothschild.com)

R. Kevin Spencer (*admitted PHV*)  
Zachary E. Johnson (*admitted PHV*)  
SPENCER & JOHNSON, PLLC  
500 N. Akard Street, Suite 2150  
Dallas, TX 75201  
[kevin@dallasprobate.com](mailto:kevin@dallasprobate.com)  
[zach@dallasprobate.com](mailto:zach@dallasprobate.com)

Additionally, separate appeals were filed by:

Individual Appellant: Todd Jaksick, Individually

Counsel for Appellant:  
Kent R. Robison  
Therese M. Shanks  
ROBISON, SHARP, SULLIVAN & BRUST  
71 Washington Street  
Reno, NV 89503

Trustee Appellants: Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust and Trustee of the SSJ's Issue Trust; Michael S. Kimmel, individually and as Co-Trustee of the Samuel S. Jaksick Jr. Family Trust; and 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.

Counsel for Trustee Appellants:  
Donald A. Lattin, Esq.  
L. Robert LeGoy, Jr., Esq.  
Carolyn K. Renner, Esq.  
MAUPIN, COX & LEGOY  
4785 Caughlin Parkway  
Reno, NV 89519

1 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**  
2 **licensed to practice law in Nevada and, if so, whether the district court granted that**  
3 **attorney permission to appear under SCR 42 (attach a copy of any district court**  
4 **order granting such permission):**

5 Yes, R. Kevin Spencer and Zachary E. Johnson of SPENCER & JOHNSON, PLLC were  
6 granted permission to appear under SCR 42.

7 **6. Indicate whether appellant was represented by appointed or retained counsel in the**  
8 **district court:**

9 Cross-Appellant was represented by retained counsel.

10 **7. Indicate whether appellant is represented by appointed or retained counsel on**  
11 **appeal:**

12 Cross-Appellant is represented by retained counsel.

13 **8. Indicate whether appellant was granted leave to proceed in forma pauperis and the**  
14 **date of entry of the district court order granting such leave:**

15 Not applicable.

16 **9. Indicate the date the proceedings commenced in the district court:**

17 Petitioners Todd B. Jaksick and Michael S. Kimmel, as Co-Trustees of the Samuel S.  
18 Jaksick, Jr. Family Trust, filed a Petition on August 2, 2017 in Case No. PR17-00446. Petitioner  
19 Todd B. Jaksick, as Trustee of the SSJ's Issue Trust, filed a Petition on August 2, 2017 in Case  
20 No. PR 17-00445.

21 **10. Provide a brief description of the nature of the action and result in the district court,**  
22 **including the type of judgment or order being appealed and the relief granted by the**  
23 **district court:**

24 This action involves two trusts, the Samuel S. Jaksick, Jr. Family Trust and the SSJ's  
25 Issue Trust, and various internal administration matters as well as claims by a beneficiary,  
26 Wendy Jaksick, against the trustees of these trusts. After a three-week trial, the jury found in  
27 favor of Stanley Jaksick on all legal claims – he had been sued only in his capacity as co-Trustee  
28 of the Family Trust – and found that he did not commit a breach of fiduciary duty, did not

1 commit civil conspiracy and aiding and abetting, and did not aid and abet a breach of fiduciary  
2 duty. Verdict, Mar. 4, 2019. Thereafter, the Court resolved the remaining equitable claims via the  
3 Order After Equitable Trial on March 12, 2020, in which Stanley Jaksick was not found liable  
4 for any cause of action asserted by Wendy Jaksick. However, the Order After Equitable Trial  
5 made certain determinations, including the award of \$300,000 in attorney's fees directly to  
6 Wendy Jaksick's counsel from trust assets. These determinations affect the interest of Stanley  
7 Jaksick in the Samuel S. Jaksick, Jr. Family Trust as well as the SSJ's Issue Trust, and  
8 additionally affect Stanley Jaksick's rights and obligations as Co-Trustee of the Samuel S.  
9 Jaksick, Jr. Family Trust.

10 **11. Indicate whether the case has previously been the subject of an appeal to or original**  
11 **writ proceedings in the Supreme Court and, if so, the caption and Supreme Court docket**  
12 **number of the prior proceeding:**

13 Appellant Todd B. Jaksick, individually, filed a Notice of Appeal that was docketed on  
14 July 16, 2020; Appellants Todd B. Jaksick, Kevin Riley, and Michael S. Kimmel (in their  
15 capacities as current or former trustees) filed a Notice of Appeal that was docketed in this Court  
16 on July 16, 2020; and Wendy Jaksick, individually, filed a Notice of Cross-Appeal that was  
17 docketed in this Court on July 16, 2020. These appeals have been consolidated into *In re:*  
18 *Administration of the SSJ's Issue Trust*, Case No. 81470. This cross-appeal by Stanley Jaksick  
19 belongs within that consolidated case as well.

20 **12. Indicate whether this appeal involves child custody or visitation:**

21 Not applicable.

22 **13. If this is a civil case, indicate whether this appeal involves the possibility of**  
23 **settlement:**

24 The parties have already engaged in multiple days of unsuccessful mediation, but  
25 resolution through settlement remains a possibility.

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**Affirmation**

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

DATED: July 21, 2020

McDONALD CARANO

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

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



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD  
3 CARANO and that on July 21, 2020, I served the foregoing on the parties in said case by  
4 electronically filing via the Court's e-filing system. The participants in this case are registered e-  
5 filing users and notice of filing will be served on all parties by operation of the Court's CM/ECF  
6 system, and parties may access this filing through the Court's CM/ECF system.

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

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

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

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

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

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

21 DATED: July 21, 2020.

22 By /s/ Jill Nelson  
23 An Employee of McDonald Carano  
24  
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**INDEX OF EXHIBITS**

<b>EXHIBIT #</b>	<b>DESCRIPTION</b>	<b>NUMBER OF PAGES</b>
1	Order Admitting to Practice Richard Kevin Spencer	2
2	Order Admitting to Practice Zachary E. Johnson	2

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PR17-00445  
2020-07-21 05:40:38 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7681982 : vlori

# Exhibit 1

# Exhibit 1

FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, #700  
Las Vegas, Nevada 89135

MARK J. CONNOT (10010)  
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R. KEVIN SPENCER (*PHV Pending*)  
Texas Bar Card No. 00786254  
ZACHARY E. JOHNSON (*PHV Pending*)  
Texas Bar Card No. 24063978  
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Dallas, Texas 75201  
kevin@spencerlawpc.com  
zach@spencerlawpc.com  
*Attorneys for Respondent Wendy A. Jaksick*

**SECOND JUDICIAL DISTRICT COURT**

**WASHOE COUNTY, NEVADA**

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

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

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

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

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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.

**ORDER ADMITTING TO PRACTICE**

FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, #700  
Las Vegas, Nevada 89135

**ORDER ADMITTING TO PRACTICE**

RICHARD KEVIN SPENCER, ESQ., having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the State of Texas, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED, that said application is hereby granted, and RICHARD KEVIN SPENCER, ESQ. is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

DATED this 13<sup>th</sup> day of March, 2018.

  
DISTRICT JUDGE

Submitted by:

FOX ROTHSCHILD LLP

/s/ Mark J. Connot

MARK J. CONNOT (10010)  
1980 Festival Plaza Drive, #700  
Las Vegas, Nevada 89135

*Attorneys for Respondent Wendy A. Jaksick*

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Jacqueline Bryant  
Clerk of the Court  
Transaction # 7001982 : viloni

# Exhibit 2

# Exhibit 2

FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, #700  
Las Vegas, Nevada 89135

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R. KEVIN SPENCER (*PHV Pending*)  
Texas Bar Card No. 00786254  
ZACHARY E. JOHNSON (*PHV Pending*)  
Texas Bar Card No. 24063978  
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Dallas, Texas 75201  
kevin@spencerlawpc.com  
zach@spencerlawpc.com  
*Attorneys for Respondent Wendy A. Jaksick*

**SECOND JUDICIAL DISTRICT COURT**

**WASHOE COUNTY, NEVADA**

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

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

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

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

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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.

**ORDER ADMITTING TO PRACTICE**

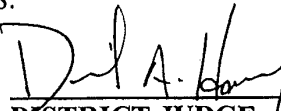
FOX ROTHSCHILD LLP  
1980 Festival Plaza Drive, #700  
Las Vegas, Nevada 89135

**ORDER ADMITTING TO PRACTICE**

ZACHARY EVERETT JOHNSON, ESQ., having filed his Motion to Associate Counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, a Certificate of Good Standing for the State of Texas, and the State Bar of Nevada Statement; said application having been noticed, no objections having been made, and the Court being fully apprised in the premises, and good cause appearing, it is hereby

ORDERED, that said application is hereby granted, and ZACHARY EVERETT JOHNSON, ESQ. is hereby admitted to practice in the above entitled Court for the purposes of the above entitled matter only.

DATED this 13 day of March, 2018.

  
DISTRICT JUDGE

Submitted by:

FOX ROTHSCHILD LLP

/s/ Mark J. Connot

MARK J. CONNOT (10010)  
1980 Festival Plaza Drive, #700  
Las Vegas, Nevada 89135  
*Attorneys for Respondent Wendy A. Jaksick*



1105

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

CASE NO.: PR17-00445

DEPT. NO.: 15

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY  
TRUST.

CASE NO.: PR17-00446

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

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

Petitioners and Counter-Respondents.

~~PROPOSED~~  
AMENDED JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

8 DATED this 2<sup>nd</sup> day of July, 2020.

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12 DAVID A. HARDY  
13 DISTRICT COURT JUDGE  
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**EXHIBIT LIST**

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

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# EXHIBIT 1

1845

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

In the Matter of the:  
SSJ's ISSUE TRUST.

**CASE NO.: PR17-00445**

**DEPT. NO.: 15**

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

**CASE NO.: PR17-00446**

**DEPT. NO.: 15**

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

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

**A. JUDGMENT ON JURY VERDICT**

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

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

11 Accordingly, judgment is entered as follows:

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

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



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

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

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

11 **B. JUDGMENT ON EQUITABLE CLAIMS**

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

20 Judgment is hereby entered as follows:

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

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

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

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

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

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

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

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

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

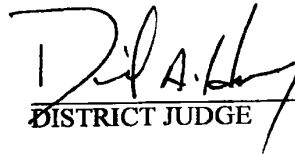
13           10.    In favor of the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust  
14 against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the  
15 SSJ's Issue Trust, for all Trustee's fees paid to Todd Jaksick. Todd Jaksick is hereby required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

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

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

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DATED this 1<sup>st</sup> day of April, 2020.

  
DISTRICT JUDGE

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# EXHIBIT 2

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

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

Case No. PR17-00445

CONSOLIDATED

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

No. PR17-00446

Dept. No. 15

**ORDER RESOLVING SUBMITTED MATTERS**

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

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

5 By order dated April 21, 2020, this Court denied Wendy Jaksick's costs. It again  
6 attempted to signal to the parties that it had considered all issues, evidence, arguments,  
7 and authorities. After expressing concern about how costs could be segregated between  
8 parties and claims, it wrote: "This Court anticipated costs litigation when it awarded fees  
9 to Wendy's counsel. Like all other issues, the issue of awardable costs cannot be viewed in  
10 isolation; instead, it must be viewed as a small part of a larger whole. This Court's cost  
11 analysis is embedded in the fee award." After identifying Michael Kimmel and Kevin  
12 Riley as prevailing parties, this Court wrote: "The problem this Court anticipates is that  
13 Messrs. Kimmel and Riley will be unable to clearly distinguish and articulate costs  
14 associated with their defense that do not overlap into the costs associated with Todd's  
15 defense. Thus, it is unlikely this Court will order Wendy to pay their costs."

16 The parties have now filed moving papers after the Order After Equitable Trial that  
17 aggregate to more than 1,300 additional pages in the court record. The tone of some  
18 arguments has subtly changed, becoming negative. This Court identified the law  
19 governing fees and costs in previous orders and will not repeat itself in this order. NRCP  
20 59(e) relief may be granted to correct manifest errors of law or fact, address newly  
21 discovered or previously unavailable evidence, respond to a change in controlling law, or  
22 to prevent manifest injustice. AA Primo Builders, LLC v. Wash., 126 Nev. 578, 582, 245  
23 P.3d 1190, 1193 (2010) (internal citations omitted). Manifest injustice exists where the  
24 decision is obviously contrary to the evidence. Kroeger Props. & Dev., Inc. v. Silver State  
25 Title Co., 102 Nev. 112, 114, 715 P.2d 1328, 1330 (1986) (quoting Price v. Sinnott, 85 Nev.  
26 600, 608, 460 P.2d 837, 842 (1969)). An NRCP 59(e) motion "may not be used to relitigate  
27 old matters, or to raise arguments or present evidence that could have been raised prior to  
28 the entry of judgment." 11 Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE §

1 2810.1 (3d ed.) (footnotes omitted).

2 The following submitted matters are resolved as follows:

3 1. **Todd Jaksick's individual claim for attorneys' fees and costs for equitable**  
4 **trial.** Consistent with this Court's prior analysis and decision, the motion is granted.

5 Todd is awarded against Wendy the amount of \$4,749.67 in costs and attorneys' fees of  
6 \$103,375.00. Interest shall accrue at the legal rate. Todd may attach or anticipate Wendy's  
7 distributive share only if there are no spendthrift provisions within the trust instruments  
8 that prohibit such creditor collection efforts. If such spendthrift provisions exist,  
9 distributions shall be made directly to Wendy and Todd may seek collection efforts  
10 against Wendy personally, subsequent to the distribution.

11 The motion is granted; Todd Jaksick may submit a proposed judgment consistent  
12 with this provision.

13 2. **Kevin Riley and Michael Kimmel's motions for attorneys' fees and costs.**  
14 Messrs. Riley and Kimmel seek attorneys' fees and costs against Wendy individually  
15 pursuant to NRS 7.085, NRS 18.005, 18.010(2)(b), NRS 18.020(3), and NRCP 68. They  
16 tacitly concede they cannot segregate their fees and costs from the fees and costs incurred  
17 in representation of all aligned trustees. They therefore propose the simplistic but  
18 understandable allocation of 25% each of all fees and costs incurred by the trustees  
19 represented by Mr. Lattin and the attorneys at Maupin Cox & LeGoy. Their proposed  
20 allocation does not accommodate the consistent and overwhelming observation this Court  
21 made throughout this proceeding: Mr. Lattin (and other attorneys associated with Mr.  
22 Lattin through the Law Firm of Maupin Cox & LeGoy) provided a single, common  
23 representation for similarly situated trustees. But Todd is at the core of the representation  
24 and Todd's fees and costs would be the same or only imperceptibly different if Messrs.  
25 Riley and Kimmel were not parties.<sup>1</sup> Although prevailing parties, Messrs. Riley and

26  
27 <sup>1</sup> The distinction between trustees is largely illusory. This dispute is about three siblings, two of whom were  
28 given management responsibility and fiduciary duties. Having presided over all phases of this dispute, and  
reading all file materials at various times during the pendency of this action, it is virtually impossible to  
comprehend how the litigation would have been different if Messrs. Kimmel and Riley were not parties.



1 Kimmel failed to make a reasonable showing of individuated costs. They have failed to  
2 "clearly distinguish and articulate costs associated with their defense that do not overlap  
3 into the costs associated with Todd's defense."

4 This Court anticipated these motions when it developed its Order After Equitable  
5 Trial. It was this anticipation that led to the express reference that trustees' fees would be  
6 paid as a general trust administration expense. The relief Messrs. Kimmel and Riley seek  
7 would alter the purpose and effect of other fee provisions. Accordingly, this Court would  
8 be required to re-visit and modify other provisions of its order. This Court incorporates by  
9 reference its previous order analyzing offers of judgment and summarily concludes the  
10 \$500 offers of judgment are not a basis to shift fees to Wendy. Among other reasons, the  
11 offers of judgment were presumably made in Messrs. Riley and Kimmel's individual  
12 capacities. Messrs. Riley and Kimmel have made no reasonable showing that they  
13 incurred fees in their individual capacities, but instead, all fees and costs were incurred in  
14 the common defense of all trustees. Finally, the distinction between costs and fees  
15 incurred by Todd as trustee and the costs and fees Todd incurred individually (that were  
16 awarded against Wendy) is difficult to discern because Todd's trust attorneys and  
17 individual attorneys worked collaboratively in joint defense of Todd.

18 The motions are denied.

19 **2. Trustees Todd Jaksick and Michael Kimmel, and former trustee Kevin**  
20 **Riley's motion to alter or amend the judgment.** The trustees ask this Court to alter or  
21 amend the judgment to remove the provision directing payment of \$300,000 to Wendy's  
22 attorneys. The trustees contend this Court sua sponte analyzed the fees to Wendy's  
23 counsel and neglected to make findings under Brunzell v. Golden Gate National Bank, 85  
24 Nev. 345, 455 P.2d 31 (1969) and Shuette v. Beazer Homes Holding Corp., 121 Nev. 837,  
25 124 P.3d 530 (2005).

26 The trustees' motion is an example of the type of motion this Court expected when  
27 it entered its Order After Equitable Trial. This Court directly noted the fee award to  
28 Wendy's counsel cannot be viewed in isolation. As this Court signaled, the fee award is

1 inseparable from this Court's entire analysis. The trustees essentially ask this Court to  
2 parse out the portion of the order they dislike while preserving the provisions granting the  
3 outcome they sought. To do so would render this Court's aggregate analysis incomplete.  
4 Thus, if this Court were to re-visit the fee award to Wendy's counsel it would be  
5 compelled to re-visit other provisions of the order.

6 This Court did not recite the talismanic words typically associated with Brunzell  
7 because it was not awarding fees based upon a valuation of actual attorney time  
8 presented. Instead, it considered the dominant Brunzell factors (advocates' quality,  
9 character and complexity of work, actual work performed, and result) as part of this  
10 unique litigation. This Court is confident it could recite the factors and will do so if  
11 required upon remand.

12 The motion is denied.

13 4. **Co-trustee Stanley Jaksick's memorandum of attorneys' fees.** Consistent  
14 with this Court's Order After Equitable Trial and subsequent judgment, Stanley Jaksick  
15 filed a verified memorandum of attorneys' fees on April 22, 2020. Stanley Jaksick made no  
16 request in his memorandum. Wendy filed an opposition, motion to strike and amended  
17 opposition and motion to strike. Wendy contends that Stanley is not entitled to fees he  
18 incurred individually as the fees he incurred as co-trustee were addressed in this Court's  
19 Order After Equitable Trial. Todd filed an opposition, which primarily reads as a renewed  
20 challenge to the propriety and constitutionality of this Court's Order After Equitable Trial.

21 Contrary to counsel's suggestion, this Court understands the role of different  
22 attorneys at different times. The fees Stanley incurred as co-trustee of the family trust are  
23 payable from the trust.<sup>2</sup> The fees Stanley incurred individually are not before this Court  
24 and are not included within any order. Stanley's attempt to allocate fees he incurred early

25  
26 <sup>2</sup> The language this Court used in its Order After Equitable Trial could be clarified. When this Court wrote  
27 "Stanley Jaksick and Michael Kimmel's attorneys' fees are chargeable to the trust and paid from trust  
28 corpus" it contemplated only the fees Stanley incurred as co-trustee of the Family Trust would be charged  
against trust corpus. After all, Wendy dismissed her claims against Stanley individually on August 25, 2018,  
long before trial. This Court did not intend that fees Stanley incurred individually would be charged against  
the trust.

1 and individually from fees he incurred as co-trustee may be problematic. But at some  
2 point Wendy dismissed her claims against Stanley individually. It appears the trustees  
3 will either reach an agreement about the allocation of Stanley's individual and trustee fees  
4 or they will participate in additional litigation.

5 Stanley's memorandum is acknowledged but no court intervention is requested and  
6 none is given at this time.

7 **5. Wendy's motion for leave and first supplement to verified memorandum**  
8 **of costs; the trustees' motion to strike; and Stanley's motion to strike or redact.** The  
9 motions are denied as moot. The issues contained within the motions may be renewed  
10 upon appellate remand, if any.

11 **6. Todd's motion to amend judgment.** Todd filed a lengthy motion in which  
12 he re-argues evidence previously considered and responds to this Court's findings and  
13 conclusions by arguing "clear error" and "manifest injustice." Todd's primary concern is  
14 the award of fees. But as this Court noted when explaining its discretion, the attorneys'  
15 fees issue is inseparable from all other issues. If this Court were to re-visit the fees award  
16 it would be compelled to re-visit the totality of its order. Each constituent part of this  
17 dispute is influenced by and dependent upon all other constituent parts. So, for example,  
18 if this Court amended the fees provision it would be compelled to fashion broadened relief  
19 elsewhere, such as its response to the accountings, continuing trusteeship, the trustees'  
20 access to trust corpus to satisfy the expenses of litigation, and the fees awarded to Wendy's  
21 counsel.

22 With two exceptions, this Court does not respond to the arguments Todd presents.  
23 The first exception illustrates the problem of severing and modifying a part of the entire  
24 order. Todd argues this Court improperly restricted his ability to collect his judgment  
25 against Wendy personally by including language about spendthrift provisions. To the  
26 contrary, this Court included the language about spendthrift trusts because it believed,  
27 based upon the entirety of Todd's course of conduct and the jury's finding, that Todd may  
28 use information he acquires as Wendy's fiduciary to advance his own personal interests

1 against Wendy as his judgment debtor. As trustee and co-trustee, Todd will know the  
2 details of distributions to Wendy. This places him at an unfair advantage over Wendy and  
3 other general creditors she may have. As an example of how this Court's decision should  
4 be reviewed in its entirety instead of as separate parts of a whole, this Court considered  
5 removing Todd as trustee. This Court recited its broad authority to do so and even  
6 indicated through an earlier oral pronouncement that it was inclined to remove Todd as  
7 trustee. One justification for removing Todd is the jury's verdict that he breached his  
8 fiduciary duties and the probability of continued hostility between fiduciary and  
9 beneficiary. In the final analysis, based upon the whole, this Court declined to remove  
10 Todd as trustee, but included a provision that prevented him from taking advantage of  
11 Wendy for his personal purposes through information he gains as trustee. Todd asserts a  
12 distinction between his individual interests and trustee interests that is not supported by  
13 the evidence of record.

14 This Court did not implicitly limit Todd's ability to recover against Wendy only  
15 through distributions she receives from the trusts; Todd may exercise any lawful collection  
16 efforts he wishes. What Todd cannot do is anticipate, re-direct, or attach any trust  
17 distribution if a similarly situated general creditor is prohibited from doing so by  
18 spendthrift provisions of the trust.

19 The second exception relates to Todd's obligation to pay 25% of trustee fees from  
20 his own personal resources. The purpose of this fees provision was not to punish Todd for  
21 his individual acts. The fees provision was a recognition that Todd's acts as trustee should  
22 not be defended entirely at trust expense. The jury concluded that Todd alone breached  
23 his fiduciary duties. The jury absolved other trustees of alleged misconduct. The jury's  
24 verdict is consistent with this Court's observations in equity. Todd cannot assert the  
25 benefits of the jury's verdict when it suits him and ignore the portion of the verdict that  
26 repudiates his trustee conduct.

27 This Court agrees it should amend its judgment in one respect. The judgment  
28 provides:

1 In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's  
2 Issue Trust against Todd Jaksick, as Co-Trustee of the Samuel  
3 S. Jaksick, Jr., Family Trust in an amount equal to 25% of the  
4 attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust  
5 and SSJ's Issue Trust for legal services rendered on behalf of  
6 the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust and  
7 Trustee for the SSJ's Issue Trust.

8 The above provision appears to make Todd personally responsible for 25% of the  
9 fees the trusts paid for the benefit of co-trustee Stanley Jaksick. This was not this Court's  
10 intention. This Court intended that Todd would pay 25% of the fees paid to the Law Firm  
11 of Maupin Cox & LeGoy for representing Todd, Michael Kimmel, and Kevin Riley in their  
12 trustee capacities. To the extent this Court's intention is not reflected in the judgment, this  
13 Court authorizes and will sign an amended judgment correcting this possible  
14 misunderstanding.

15 Motion granted only to clarify that Todd shall pay 25% of fees incurred by Maupin  
16 Cox & LeGoy and not by co-trustee Stanley Jaksick.


17 7. **Wendy's motion to alter or amend judgment or, alternatively, motion for**  
18 **new trial.** Wendy's motion has been fully briefed but is not submitted for this Court's  
19 decision. Nonetheless, this Court analyzed all moving papers and concludes it is  
20 appropriate to resolve Wendy's motion in this order.

21 The motion is denied.

22 The recent moving papers reveal the combined attorneys' fees now exceed \$3  
23 million and may be approaching \$4 million. The parties are strongly encouraged to bring  
24 this dispute to an end or commence their appellate litigation.

25 **IT IS SO ORDERED.**

26 Dated: June 10, 2020.

27   
28 David A. Hardy  
District Court Judge