

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

TODD B. JAKSICK, INDIVIDUALLY AND 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 AND AS A 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.

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Case No.: Ju82072021 05:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Second
Judicial District Court, the
Honorable David Hardy
Presiding

**RESPONSE TO MOTION
TO STRIKE AND
REQUEST TO VACATE
CURRENT BRIEFING
SCHEDULE;
ALTERNATIVELY,
REQUEST FOR
EXTENSION OR FOR
LEAVE**

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Respondent/Cross-Appellant, Wendy Jaksick (“Wendy” or “Cross-Appellant”), by and through her undersigned counsel, files this *Response to Motion to Strike and Request to Vacate Current Briefing Schedule; Alternatively, Request for Extension or Leave* (“Response”) and shows the Honorable Court as follows:

A. Complex Underlying Case

The case underlying this appeal involved at least thirteen (13) parties, two (2) very complex trusts, several subtrusts, and accountings and transactions related to these trusts and subtrusts spanning over three (3) years. The jury trial of these matters took over two (2) weeks, and the bench trial of the equitable claims involved more than 400 pages of briefing and took over a year to conclude. In the *Order After Equitable Trial*, the District Court described the substantial record considered during the bench trial alone as follows:

3. The file materials compose more than 17,000 pages. There were more than 300 separate pleadings, motions, oppositions, replies, joinders, and other substantive papers filed in this proceeding. The parties produced tens of thousands of documents before trial and marked 677 exhibits for the two trials, of which 227 were admitted. The substantive papers (with exhibits and transcripts) filed since the jury’s verdict compose more than 4,000 pages. This Court has read and re-read the pending moving papers, to

TJA2095-2096.

B. Appeal Involves Multiple Parties, Multiple Issues, Substantial Briefing and a Substantial Record

Following the conclusion of the jury and equitable trials, nine (9) of the Parties (“Appellants”) filed appeals, and Wendy filed a cross-appeal. Appellants filed three (3) separate opening briefs including and addressing seven (7) issues. Appellants’ opening briefs total 105 pages. Additionally, Appellants’ opening briefs total 21,558 words.

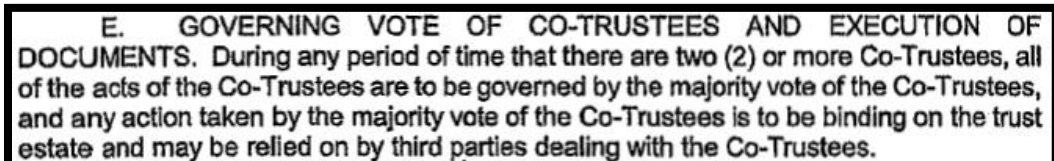
In response to Appellants’ opening briefs, Wendy filed her *Answering and Opening Brief* (“Wendy’s Brief”) responding to Appellants’ issues and addressing five (5) additional appellate issues pursued by Wendy as a cross-appellant. *Wendy’s Brief* totals 93 pages. Throughout her *Brief*, Wendy diligently and meticulously cited to the substantial trial court record in support of each of her arguments. Wendy also included some images of certain trial court records in her *Brief*. The images included are merely images of information specifically cited for the convenience and ease of reference for this Court.

C. Wendy’s Brief Complies with Rules

In the *Motion to Strike and Request to Vacate Current Briefing Schedule* (“Motion to Strike”), Movants request the Court strike *Wendy’s Brief* on the grounds that the inclusion of the images results in *Wendy’s Brief* exceeding the allowed word count limitations under NRAP 28.1. In the *Motion to Strike*, Movants confirm that

Wendy's Brief is within the required word count limits under NRAP 28.1 if the images are ignored. *See Motion to Strike*, p. 1.

The inclusion of these images in *Wendy's Brief* was not an attempt to skirt any limitations, but instead was intended to make the information cited easily accessible for reference. For example, in her *Brief*, Wendy argues the Family Trust requires all acts of the Co-Trustees to be governed by majority vote, and she includes a record cite to the provision in the Family Trust requiring same. Wendy also includes an image of that specific section of the Family Trust cited to in the record, as follows:



E. GOVERNING VOTE OF CO-TRUSTEES AND EXECUTION OF DOCUMENTS. During any period of time that there are two (2) or more Co-Trustees, all of the acts of the Co-Trustees are to be governed by the majority vote of the Co-Trustees, and any action taken by the majority vote of the Co-Trustees is to be binding on the trust estate and may be relied on by third parties dealing with the Co-Trustees.

As another example, Wendy argues the 2016 Family Trust accounting confirms the Family Trust's obligation to pay Todd Jaksick's personal debt, and she includes a record cite to the section of the Family Trust in support of her argument. Wendy also includes an image of that specific section of the accounting cited, as follows:

CONTINGENT TRUST OBLIGATIONS (continued):	
Note Payable, George J Brown 1986 Revocable Trust	134,000.00
Original note dated March 19, 2012 in the amount of \$184,603 to ALSB Ltd. The Samuel S Jaksick Jr Family Trust is a guarantor. The note bears interest at 8% annually and is payable in principal and interest installments of \$55,526 on May 20, 2015, \$48,933 on March 20, 2016, \$43,760 on September 20, 2016, and \$55,440 on January 20, 2017.	
Indemnification and Contribution Agreement which substantively indicates that Todd and Dawn Jaksick, TBJ SC Trust, and TBJ Investment Trust are indemnified against the Samuel S Jaksick Jr Family Trust from having to perform on obligations and debts. There are many amounts listed in the agreement and have been claimed against the trust. The total amount of the claim has yet to be determined. The following unpaid balances are as follows:	
Note Payable - in the amount of \$7,825,000 by Jackrabbit Properties, LLC in favor of Metropolitan Life Insurance Company.	4,305,000.00
Note Payable - in the amount of \$4,020,000 by Winnemucca Ranch LLC (now known as Buckhorn Land & Livestock, LLC) in favor of Metropolitan Life Insurance Company.	598,000.00
Mortgage - by Todd Jaksick in favor of Bank of America.	2,350,000.00
Note Payable - American AgCredit FLCA (51% of joint obligation) also listed above in the amount of \$716,092.50	-
Notes Payable - Todd Stan and Wendy notes payable in the amounts of \$231,432.07 each totaling \$694,296.21. These are direct obligations of the trust and listed separately under debts.	-
Note Payable - by Todd Jaksick in favor of Samuel S Jaksick Jr. Family Trust originally in the amount of \$349,129. This note was assigned to the TBJ SC Trust and later bequested back to the TBJ SC Trust in the second amendment to the Samuel S Jaksick Family Trust dated December 12, 2012. The balance of the note is \$103,659.16.	-
TOTAL CONTINGENT TRUST OBLIGATIONS	\$ 9,034,277.61

Similarly, Wendy includes limited images of certain other sections of the record for convenience and ease of reference for the Court.

D. Alternative Request to Exceed Page Limit/Type-Volume Limitation

If the Court determines Wendy's inclusion of the images in connection with certain of her record cites has caused her brief to exceed the page limit/type-volume limitation, Wendy requests the Court grant her permission to exceed the 18,500 type-volume limitation. Based on the complexity of the underlying case and this appeal, the size of the record, and the number of issues on appeal, Wendy has exercised diligence in responding as concisely as possible to Appellants' three (3) opening briefs, while also presenting her appellate issues in her single combined responding and opening brief. The inclusion of images corresponding to a limited number of her record cites is nothing more than a reproduction of the cited record for the ease

and convenience of the Court. The images simply provide an efficient reference to the cited record.

Even with the inclusion of the images, the page count of *Wendy's Brief* at 93 pages is far less than the page count of the three (3) opening briefs filed by Appellants at 105 pages. Accordingly, the inclusion of these images in Wendy's brief, and the page count of Wendy's brief, do not provide any unfair advantage to Wendy or prejudice to Appellants. If anything, Wendy has shown great diligence in responding to Appellants' three (3) briefs and presenting her appellate issues within the limitations required by the Rules for filing a response and cross-appeal to a single appellate brief contemplated by NRAP 28, 28.1 and 32.

Nevertheless, if the Court determines the images should be included for purposes of the type-volume limitation, there is good cause to allow the extension of the limitations under the circumstances detailed above. Allowing Appellants to file multiple briefs totaling 105 pages and 21,558 words, and then striking or requiring Wendy to revise her brief because the inclusion of record cite images causes it to exceed the 18,500 type-volume limitation by 2,045 words (if the images are converted to Word format), allows Appellants to gang up on Wendy, provides them an unjust advantage and unfairly prejudices Wendy. Accordingly, if the Court determines the limited record cite images must be included in the word count,

Wendy requests the Court grant Wendy an extension of the type-volume limitation from 18,500 to 20,545, which is an allowance of 2,045 additional words.

E. Alternative Request for Leave

If the Court finds the limited record cite images must be included in the word count and the denies Wendy's request for a 2,045-word extension of the type-volume limitation, Wendy requests the Court grant her leave to revise and refile her *Brief*. The Court previously entered an *Order* suspending and vacating the briefing schedule pending the resolution of the *Motion to Strike*, so Appellants will not be prejudiced by granting Wendy's request for leave.

Dated this 20th day of July, 2021.

MARQUIS AURBACH COFFING

By /s/ Kathleen A. Wilde
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DECLARATION OF ZACHARY E. JOHNSON

I, Zachary E. Johnson, declare the assertions set forth below are true:

1. My name is Zachary E. Johnson. I am an attorney licensed to practice in the State of Texas, and I am admitted in Nevada *pro hac vice* for the purposes of this cause. I and my firm SPENCER, JOHNSON & HARVELL, PLLC, together with MARQUIS AURBACH COFFING, represent Wendy Jaksick, who is the Respondent and Cross-Appellant in this appeal.

2. The following Parties are the Appellants appealing issues in this matter: Todd Jaksick (“Todd”), Individually, as former Co-Trustee of the Samuel S. Jaksick Jr. Family Trust (“Family Trust”) and Trustee of the Issue Trust SSJ Issue Trust (“Issue Trust”); Stanley Jaksick (“Stan”), Individually and as former Co-Trustee of the Family Trust; Michael S. Kimmel (“Michael”), Individually and as former Co-Trustee of the Family Trust; Kevin Riley (“Kevin”), Individually, as former Co-Trustee of the Family Trust and as Trustee of the Wendy A. Jaksick 2012 BHC Family Trust. Wendy Jaksick (“Wendy”) is also appealing issues in this appeal and is the Respondent/Cross-Appellant.

3. Appellants filed three (3) opening briefs.

a. Todd’s *Opening Brief* is 49 pages and includes 11,121 words based on the included Certificate of Compliance.

b. Trustees' *Opening Brief* is 41 pages and includes 8,436 words based on the included Certificate of Compliance.

c. Stan's *Opening Brief* is 15 pages and includes approximately 2,001 words based on a word count provided by Microsoft Word after a conversion of the PDF version.

4. Based on the above page and word counts, Appellants' three (3) opening briefs include a total of 105 pages and 21,558 words.

5. Wendy's *Answering and Opening Brief* includes a total of 93 pages and 18,267 words as confirmed in the Certificate of Compliance. If the record cite images are to be included in the word count for purposes of calculating the type-volume limit, a conversion of the images from PDF to Microsoft Word indicates a word count of 2,278, for a total of 20,545 words.

6. Because of the complexity of the issues involved, the length of the trial court record, and the nature of the record cite images, I respectfully submit that there is good cause for allowing a 2,045-word extension of the type-volume limitation should the Court agree with Appellants' arguments regarding the length of Wendy's brief.

Dated this 20th day of July, 2021.

By /s/ Zachary E. Johnson
Zachary E. Johnson

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSE TO MOTION TO STRIKE
AND REQUEST TO VACATE CURRENT BRIEFING SCHEDULE;
ALTERNATIVELY, REQUEST FOR EXTENSION OR FOR LEAVE** was
filed electronically with the Supreme Court of Nevada on the 20th day of July, 2021.
Electronic Service of the foregoing document shall be made in accordance with the
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