

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, 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.

Electronically Filed
Oct 06 2021 11:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**SUPREME COURT
CASE NO.: 81470**

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

**APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S REPLY
BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL**

Kent R. Robison, Esq.-NSB #1167 and Hannah E. Winston-NSB #14520

Robison, Sharp, Sullivan & Brust

71 Washington Street

Reno, Nevada 89503

krobison@rssblaw.com / hwinston@rssblaw.com

Telephone: 775-329-3151

Attorneys for Appellant/Cross-Respondent Todd B. Jaksick

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	iv

APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S REPLY BRIEF ON APPEAL

SUMMARY OF THE ARGUMENT.....	1
ARGUMENT	
I. THIS COURT SHOULD REJECT WENDY'S UNSUPPORTED ALLEGATIONS.....	2
II. THE RECORD DOES NOT SUPPORT THE DISTRICT COURT'S AWARD OF \$300,000 IN ATTORNEY FEES TO WENDY.....	3
III. THE DISTRICT COURT'S DISGORGEMENT OF ALL OF TODD'S TRUSTEE'S FEES IS PUNITIVE AND GROSSLY DISPROPORTIONATE.....	5
IV. THE DISTRICT COURT ABUSED ITS DISCRETION IN ORDERING TODD TO REPAY 25% OF THE FEES INCURRED BY TODD, MICHAEL KIMMEL, AND KEVIN RILEY.....	6
CONCLUSION.....	8

APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S ANSWERING BRIEF ON CROSS-APPEAL

INTRODUCTION.....	9
STATEMENT OF THE ISSUES.....	11
STATEMENT OF THE CASE.....	11
STATEMENT OF THE FACTS.....	11

SUMMARY OF THE ARGUMENT.....	12
------------------------------	----

ARGUMENT

I. THE JURY REJECTED WENDY’S CLAIMS REGARDING THE INDEMNIFICATION AGREEMENT.....	12
A. Standard of Review.....	12
B. The District Court’s Finding That the Jury Implicitly Rejected Wendy’s Arguments Regarding the Indemnification Agreements is Supported by Substantial Evidence.....	13
II. WENDY WAS PERMITTED TO USE THE SETTLEMENT AGREEMENT AT TRIAL TO TRY AND ESTABLISH BIAS..	15
A. Standard of Review.....	15
B. The District Court Limited Evidence Related to the Settlement Agreement to Avoid Unfair Prejudice to Todd and Stan....	16
C. Even if the District Court Erred, Any Error Was Harmless Because Wendy Elicited Substantial Testimony About the Settlement Agreement From Stan and Todd and Made the Same Arguments to the Jury That She Makes on Appeal.....	18
III. THIS COURT SHOULD DECLINE TO CONSIDER WENDY’S ARGUMENTS REGARDING THE DISTRICT COURT’S REFUSAL TO GRANT WENDY A TRIAL CONTINUANCE OR NEW TRIAL AS SHE DOES NOT COGENTLY ARGUE THE ISSUES.....	20
A. Standard of Review.....	20
B. Wendy Does Not Provide Any Argument Regarding the District Court’s Refusal to Continue the Trial Based on the Settlement Agreement nor the District Court’s Denial of Wendy’s Request for a New Trial.....	20

C.	To the Extent This Court Considers These Arguments, the District Court Did Not Abuse Its Discretion.....	21
IV.	THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING TODD HIS ATTORNEY FEES AND COSTS IN HIS INDIVIDUAL CAPACITY.....	22
A.	Standard of Review.....	22
B.	The District Court Awarded Todd Fees Pursuant to NRCP 68, Not NRS 18.020.....	23
C.	The District Court Did Not Award Todd Fees Under NRS 18.010.....	23
D.	The District Court Acted Within Its Discretion in Awarding Todd His Attorney Fees and Costs.....	24
1.	Wendy’s “Overreaching” \$80 Million Demand Does Not Accurately Determine the Amount in Controversy	24
2.	Todd, as an Individual, Prevailed on Every Claim Against Wendy.....	25
3.	The District Court’s Equitable Remedies Do Not Change the Fact That the Jury Determined Todd as an Individual Was Not Liable for Any of Wendy’s Claims.....	25
4.	The District Court’s Analysis of the <i>Ozawa</i> Factors is Supported by Substantial Evidence.....	27
	CONCLUSION.....	29
	CERTIFICATE OF COMPLIANCE.....	31
	CERTIFICATE OF SERVICE.....	33

TABLE OF AUTHORITIES

<u>CASE LAW</u>	<u>PAGE</u>
<i>Acosta v. City of Costa Mesa</i> , 718 F.3d 800, 828 (9th Cir. 2013).....	13
<i>Allianz Ins. Co. v. Gagnon</i> , 109 Nev. 990, 994, 860 P.2d 720, 723 (1993)..	26
<i>Avitia v. Metro. Club of Chicago, Inc.</i> , 49 F.3d 1219, 1231 (7th Cir. 1995).	14,15
<i>Bongiovi v. Sullivan</i> , 122 Nev. 556, 570, 138 P.3d 433, 444 (2006).....	20
<i>Edwards v. Emperor’s Garden Rest.</i> , 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).....	20,21,25
<i>Emerson v. Eighth Jud. Dist. Ct.</i> , 127 Nev. 672, 681, 263 P.3d 224, 230 (2011).....	5, 6
<i>Gunderson v. D.R. Horton, Inc.</i> , 130 Nev. 67, 74, 319 P.3d 606, 611 (2014)	20
<i>Haynes Trane Serv. Agency, Inc. v. Am. Standard, Inc.</i> , 573 F.3d 947, 959 (10th Cir. 2009).....	8
<i>Heinle v. Heinle</i> , 777 N.W.2d 590, 602 (N.D.2010).....	5
<i>In re J.D.N.</i> , 128 Nev. 462, 468, 283 P.3d 842, 846 (2012).....	15
<i>K-Mart Corp. v. Washington</i> , 109 Nev. 1180, 1186, 866 P.2d 274, 278 (1993).....	15,16
<i>Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.</i> , 124 Nev. 1102, 1111-12, 197 P.3d 1032, 1038 (2008).....	12,13,14
<i>Mack v. Est. of Mack</i> , 125 Nev. 80, 91, 206 P.3d 98, 106 (2009).....	3
<i>MB Am., Inc. v. Alaska Pac. Leasing</i> , 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).....	12
<i>Moore by Moore v. Bannen</i> , 106 Nev. 679, 681, 799 P.2d 564, 566 (1990)	18
<i>Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.</i> , 129 Nev. 799, 805, 312 P.3d 491, 496 (2013).....	1, 8

<i>Ozawa v. Vision Airlines, Inc.</i> , 125 Nev. 556, 562, 216 P.3d 788, 792 (2009).....	22,27
<i>Pope v. Motel 6</i> , 121 Nev. 307, 316, 114 P.3d 277, 283 (2005).....	16
<i>Schwartz v. Estate of Greenspun</i> , 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994).....	4, 5
<i>Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.</i> , 908 F.3d 313, 343 (8th Cir. 2018).....	7, 8
<i>Thomas v. City of N. Las Vegas</i> , 122 Nev. 82, 95-96, 127 P.3d 1057, 1066–67 (2006).....	3
<i>Wyeth v. Rowatt</i> , 126 Nev. 446, 465, 244 P.3d 765, 778 (2010).....	19,20,22
<u>STATUTES</u>	
NRS 18.010.....	23
NRS 18.020.....	23
NRS 153.031.....	5
NRS 153.031(3).....	4, 6
NRAP 28.1(e).....	3
NRAP 28.1(e)(1).....	2
NRAP 28(e)(2).....	3
NRAP 32(a)(5)(A).....	3
NRCP 42(b).....	26
NRCP 68.....	11,12,22, 23,24,25,26,27,29
U.S. Const. Amend. VII.....	12,14

APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S
REPLY BRIEF ON APPEAL

SUMMARY OF THE ARGUMENT

The District Court's Order After Equitable Trial begins with an accurate discussion of the Seventh Amendment and the restriction on courts to contravene or disregard the jury's findings of fact. The District Court specifically and correctly concluded that it would not disrupt the jury's implicit rejection of Wendy's claims concerning the Indemnification Agreement. Within the same Order, the District Court did exactly the opposite and disregarded the jury's rejection of Wendy's claims to punish Todd personally. The record does not and cannot support the District Court's internally inconsistent order. *Otak Nevada, L.L.C. v. Eight Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013) ("An abuse of discretion occurs when the district court's decision is not supported by substantial evidence."). Reversal is warranted.

Moreover, Wendy's "scorched earth" litigation tactics continue on appeal. Throughout Respondent/Cross-Appellant's Answering and Opening Brief ("RAB"), Wendy mischaracterizes the record below to put forth a hyperbolic narrative that does not appropriately describe the proceedings and findings below. Todd respectfully requests that this Court reject Wendy's unsupported accusations and characterizations.

ARGUMENT

I. THIS COURT SHOULD REJECT WENDY'S UNSUPPORTED ALLEGATIONS.

Throughout Wendy's Answering Brief, she accuses Todd of wrongdoing and mischaracterizes the findings and proceedings that occurred in the District Court. *See, e.g.*, RAB 21 (arguing that Todd initiated the lower court proceedings "to attempt to squirm out of liability for his bad acts and self-serving administration of the Trusts"); *id.* at 46 ("Todd stole a 46% interest in the Lake Tahoe property"). *id.* at 48 ("**Todd Bought Off Stan.**"); *id.* ("If the Lake Tahoe Property were sold soon, Stan would receive \$2,882,225 in profit for nothing."); *id.* at 55 ("Nothing could be more of a betrayal than a brother and worse, a Trustee and fiduciary, than to – in the most cowardly way possible – be a traitor and likely a mole for the other side.").

Moreover, Wendy makes inflammatory allegations against Todd in her Statement of the Facts without any record citation. *See, e.g., id.* at 3 (stating that "Todd and Stan hid the administration of the Trusts from Wendy providing her information only when it benefited them in violation of their fiduciary duty of full disclosure."); *id.* at 4 ("Todd, Stan, and their families benefited greatly with Wendy out of the picture."). Wendy's failure to cite to the record, or her choice to provide record citations that do not actually support her bold statements, violates Nevada Rule of Appellate Procedure ("NRAP") 28.1(e)(1).

Equally troubling, after having her first brief stricken for violating NRAP 28.1(e) and NRAP 32(a)(5)(A), Wendy’s refiled brief violates NRAP 28(e)(2) because she incorporates by reference briefs and arguments submitted to the District Court. *See* RAB 58 (incorporating three entire “pleadings and the evidence, arguments and authorities included therein as if fully set forth herein”).

Accordingly, Todd respectfully requests that this Court disregard Wendy’s mischaracterization of the record below.¹ *See Mack v. Est. of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (“On appeal, a court can only consider those matters that are contained in the record made by the court below and the necessary inferences that can be drawn therefrom. . . . We will generally not consider on appeal statements made by counsel portraying what purportedly occurred below.”) (Citation omitted).²

II. THE RECORD DOES NOT SUPPORT THE DISTRICT COURT’S AWARD OF \$300,000 IN ATTORNEY FEES TO WENDY.

Wendy’s argument defending the award of \$300,000 in her attorney fees is highly misleading. Wendy contends that the District Court’s order is supported by a *Brunzell* analysis. RAB 10, 14, 16, 17. But the District Court only addressed the *Brunzell* factors when awarding *Todd* fees—not Wendy. *See* 12 Trustees’ Joint

¹ Todd identifies the additional mischaracterizations where relevant herein.

² In fact, this Court has imposed sanctions for this type of conduct. *See Thomas v. City of N. Las Vegas*, 122 Nev. 82, 95-96, 127 P.3d 1057, 1066–67 (2006) (“We have held that sanctions are appropriate when counsel merely cites to memoranda of law filed in the district court in support of claims and when briefs prepared by an attorney make assertions that are not supported by citations to the record.”).

Appendix (“TJA”) 2094, 2114. The District Court’s analysis of Todd’s attorney fees, including the quality of his advocates and the result that Todd obtained, cannot and does not supplant the analysis for Wendy’s fee award. *See Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994) (explaining that the record must reflect that the District Court properly considered the factors in awarding attorney fees). Wendy argues that the District Court “has extensive first-hand knowledge of the qualities, abilities and skill of Wendy’s attorneys”, yet provides no citation to the record that would demonstrate as much. *See* RAB 17.

The record actually reflects that Wendy engaged in “scorched earth” litigation tactics that were fueled “more by animus and avarice than by a desire for balanced justice”, that Wendy’s choice to sue Todd personally was unreasonable, and that Wendy’s requested damages of \$80,000,000 at trial was an “overreach”. 11 TJA 2094-2118. Not only do these facts demonstrate that the *Beattie* factors do not support an award of attorney fees to Wendy, but these facts show that there was no injustice permitting an award of fees under NRS 153.031(3).

Neither Nevada law nor the facts of this case support an award of attorney fees to a litigant like Wendy. At a minimum, the District Court should have explained why such a large amount of fees was awarded to Wendy when she litigated the case so vexatiously. *See Schwartz v. Est. of Greenspun*, 110 Nev. 1042, 1050, 881 P.2d 638, 643 (1994) (“It is difficult at best for this court to

review claims of error in the award of such fees where the courts have failed to memorialize, in succinct terms, the justification or rationale for the awards. Such findings are of special importance where, as here, large sums are awarded as fees.”).

III. THE DISTRICT COURT’S DISGORGEMENT OF ALL OF TODD’S TRUSTEE’S FEES IS PUNITIVE AND GROSSLY DISPROPORTIONATE.

Wendy argues that the District Court appropriately required Todd to disgorge his trustee fees “to avoid compensating him for failing to do his job properly.” RAB 22. But the record does not support the District Court’s harsh remedy. In the context of sanctions, this Court has held that a district court’s discretion to impose sanctions is limited to those proportionate with the misconduct. *Emerson v. Eighth Jud. Dist. Ct.*, 127 Nev. 672, 681, 263 P.3d 224, 230 (2011) (“Despite the district court’s broad discretion to impose sanctions, ‘[a] district court may only impose sanctions that are reasonably proportionate to the litigant’s misconduct.’”) (quoting *Heinle v. Heinle*, 777 N.W.2d 590, 602 (N.D.2010)). The same principle should apply to the District Court’s discretion to apply equitable remedies under NRS 153.031 as the plain language of the statute only allows disgorgement where it is “appropriate to redress or avoid an injustice.” NRS 153.031 is not a punitive statute and does not allow for disproportionate remedies.

The jury found that Todd breached his fiduciary duty and that the remedy for such breach was \$15,000. *See* 6 TJA 979-982. The District Court's order for Todd to disgorge all fees since the beginning of his trusteeship is not commensurate with a \$15,000 breach of fiduciary duty. *Emerson*, 127 Nev. at 681, 263 P.3d at 230 ("Proportionate sanctions are those which are roughly proportionate to sanctions imposed in similar situations or for analogous levels of culpability.") (Internal quotation marks omitted).

Certainly, then, the record does not support that such remedy is necessary nor appropriate to "redress or avoid an injustice", *see* NRS 153.031(3), but is only intended to punish Todd personally. Accordingly, the District Court abused its discretion in requiring Todd to disgorge all of his trustee fees.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION IN ORDERING TODD TO REPAY 25% OF THE FEES INCURRED BY TODD, MICHAEL KIMMEL, AND KEVIN RILEY.

Wendy's arguments regarding the District Court's requirement for Todd to repay 25% of the Trustees' fees demonstrates the vexatious litigation style that Wendy has maintained throughout the litigation and through this appeal. Wendy contends that the Trustees' documents, including the Indemnification Agreements, were "bogus". RAB 23-24. Moreover, Wendy argues that documents that "were supposed to exonerate the Trustees and justify Todd stealing the Family Trust assets via a bogus Indemnity Agreement were also not approvable and indicate

further breaches of trust.” *Id.* at 24. Of course, Wendy again mischaracterizes the circumstances of this case as there was never a finding that Todd *stole* anything. But regardless, Wendy’s position highlights the internal inconsistencies in the District Court’s Order After Equitable Trial.

To be sure, Wendy repeatedly relies on the supposed “ill-conceived accountings” and “bogus Indemnity Agreement”, but the District Court expressly determined that it was not within his discretion to invalidate those documents which the jury implicitly approved. 12 TJA 2106-17 (“[T]his Court will not provide equitable relief regarding the accountings, which were constructively approved and confirmed by the jury’s verdict. . . . each of the challenged documents [including the ACPAs and indemnification agreements] and related transactions were thoroughly presented and argued to the jury – including document preparation, execution, and other formation irregularities. Thus, at least, the jury verdict is an implicit rejection of Wendy’s arguments.”). Therefore, there is no basis for the District Court to rely upon these documents to require Todd to repay 25% of the Trustees’ fees and doing so violates Todd’s Seventh Amendment rights. *See Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc.*, 908 F.3d 313, 343 (8th Cir. 2018) (“If the jury’s findings were on a common issue, the court, in fashioning equitable relief, may take into account facts that were not determined by the jury, but it may not base its decision on factual findings that

conflict with the jury’s findings.”); *see also Haynes Trane Serv. Agency, Inc. v. Am. Standard, Inc.*, 573 F.3d 947, 959 (10th Cir. 2009) (explaining that “the Seventh Amendment prevents district courts from applying equitable doctrines on the basis of factual predicates rejected, explicitly or implicitly, by a jury verdict”). The District Court’s imposition of such punitive remedies upon Todd, personally, who was not found guilty for any of Wendy’s claims is entirely unreasonable and an abuse of discretion. *Cf. Otak Nevada, L.L.C.*, 129 Nev. at 805, 312 P.3d at 496 (“Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion.”) (internal quotation marks omitted).

CONCLUSION

For the foregoing reasons, Todd respectfully requests that this Court reverse the District Court’s order (1) disgorging Todd’s trustee fees, (2) awarding Wendy \$300,000 in attorney fees, and (3) requiring Todd to reimburse the trusts for 25% of the attorney fees paid to Maupin, Cox & LeGoy for representation of Kimmel and Riley.

Dated this 6th day of October, 2021.

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

/s/ Kent R. Robison

KENT R. ROBISON (SBN #1167)

HANNAH E. WINSTON (SBN #14520)

Attorneys for Appellant/Cross-Respondent

Todd B. Jaksick, in his individual capacity

APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S
ANSWERING BRIEF ON CROSS-APPEAL

INTRODUCTION

Wendy lost on every single claim that she asserted against Todd in his individual capacity, despite requesting \$80,000,000 in damages. The District Court found it “difficult to discern” Wendy’s good faith in suing Todd, individually, but noted that to the extent such good faith existed initially, “as discovery progressed, Wendy’s cause to pursue Todd individually diminished.” 12 TJA 2112. Notwithstanding, Wendy rejected Todd’s reasonable Offer of Judgment, subsequent attempts to settle, and fiercely litigated her claims against Todd, being “particularly personal in her allegations, the worst of which were harassing, vexatious, and without factual basis.” *Id.* at 2098. As a result, the District Court appropriately awarded Todd his attorney fees and costs pursuant to NRCP 68, which is unequivocally supported by substantial evidence in the record.

Wendy’s Opening Brief is reminiscent of her litigation conduct in the District Court as it is filled with unsupported, offensive attacks on Todd. Moreover, Wendy’s brief tells a very different narrative on appeal than what occurred below. For example, Wendy argues that the District Court “severely restricted the mention and use of the Settlement Agreement” at trial. RAB 37. However, the District Court allowed such a great deal of testimony concerning the terms and circumstances of the Settlement Agreement that Todd’s own counsel

told the District Court that the full Settlement Agreement should be admitted to avoid the jury making poor inferences against Todd.

The truth is that Wendy is upset that Todd and Stan entered the Settlement Agreement because she feels it altered the jury's perception of the strength of her claims, but all parties were free to settle the disputes between them. Wendy specifically chose not to do so, which is her fault alone. Wendy engages in a hyperbolic attack on Todd and Stan in her Opening Brief, even characterizing the Settlement Agreement as a "conspiracy" and arguing that the jury was "deceived" by the Settlement Agreement. RAB 49. The record does not support Wendy's characterizations. To the contrary, the record supports the District Court's exclusion of the full terms of the Settlement Agreement at trial.

Finally, the record and applicable authority demonstrate that the District Court appropriately refused to contravene the jury's implicit approval of the Indemnification Agreements. Indeed, the District Court's treatment of the Indemnification Agreements demonstrates why it was an abuse of discretion to apply such harsh equitable remedies as set forth in Todd's Opening Brief. The District Court did not abuse its discretion regarding any issue raised in Wendy's Opening Brief. Accordingly, this Court should affirm the District Court's decisions that are challenged in the Cross-Appeal.

///

STATEMENT OF THE ISSUES

1. Whether the District Court abused its discretion in refusing to disregard the jury's implicit rejection of Wendy's arguments concerning the Indemnification Agreements.
2. Whether the District Court abused its discretion in limiting the admission of the terms and circumstances of the Settlement Agreement.
3. Whether this Court should consider Wendy's arguments that the District Court erred by declining to continue the trial date based on Todd and Stan entering the Settlement Agreement or to grant Wendy a new trial given that she fails to cogently argue the issues on appeal.
4. Whether the District Court abused its discretion in awarding Todd his attorney fees pursuant to Nevada Rule of Civil Procedure 68.

STATEMENT OF THE CASE

Todd incorporates herein his Statement of the Case set forth in his Opening Brief.

STATEMENT OF THE FACTS

Todd incorporates herein his Statement of the Facts set forth in his Opening Brief.

///

///

SUMMARY OF THE ARGUMENT

The District Court did not abuse its discretion by (1) initially refusing to disregard the jury's implicit approval of the Indemnification Agreements, (2) excluding admission of the full terms of the Settlement Agreement because of the risk of unfair prejudice, or by 3) granting Todd his attorney fees and costs pursuant to NRCP 68. Moreover, this Court should decline to consider Wendy's arguments regarding the District Court's refusal to continue the trial or grant her a new trial as she does not cogently argue those issues on appeal.

The record fully supports the District Court's decision on the issues that are raised by Wendy's Cross-Appeal. Accordingly, this Court should affirm the District Court's decisions addressed herein.

ARGUMENT

I. THE JURY REJECTED WENDY'S CLAIMS REGARDING THE INDEMNIFICATION AGREEMENT.

A. Standard of Review

"An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law." *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016).

Under the Seventh Amendment of the United States Constitution, "no fact tried by a jury shall be otherwise re-examined in any Court of the United States" U.S. Const. Amend. VII. Nevada courts are bound by the Seventh Amendment. *Lehrer*

McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102, 1111-12, 197 P.3d 1032, 1038 (2008). A party's Seventh Amendment rights are violated when a court "disregard[s] a jury's finding of fact." *Acosta v. City of Costa Mesa*, 718 F.3d 800, 828 (9th Cir. 2013) (internal quotations omitted).

B. The District Court's Finding that the Jury Implicitly Rejected Wendy's Arguments Regarding the Indemnification Agreements³ is Supported by Substantial Evidence.

At trial, Wendy argued that the Indemnification Agreements were acts of fraud. *See, e.g.*, 17 WJA 3816, 3823-25, 3834-35. The parties presented substantial argument and evidence to the jury regarding the Indemnification Agreements. *See, e.g., id.* (Wendy's counsel arguing in closing arguments that the Indemnification Agreements had notarial defects and were intended to give Todd everything while Wendy got nothing)⁴; 10 WJA 2259, 2290, 2344-54, 2357-78 (Todd testifying in detail about the terms and circumstances of the Indemnification Agreements); 11 WJA 2476, 2482, 2496-2508, 2590-2606 (Pierre Hascheff testifying at lengths about the Indemnity Agreements, confirming Sam's intent to protect Sam and Todd when entering them, and testifying that Sam knew about the Indemnification Agreements).

³ While Wendy also challenges the District Court's order concerning the accountings and validity of the ACPAs. *See* RAB 39. Because Wendy's arguments do not implicate Todd, personally, Maupin Cox and LeGoy will address those arguments to the extent they concern Todd as Trustee.

⁴ Again, the record belies Wendy's representations to this Court that she decided not to present argument to the jury that the Indemnification Agreements were invalid because of the District Court's Pre-Trial Order. *See* RAB 42. Wendy clearly made these arguments to the jury. *See, e.g.*, 10 WJA 2259, 2290, 2344-54, 2357-78.

The jury rejected Wendy's contentions that the Indemnification Agreements were fraudulent by determining that none of the Defendants, including Todd individually, were guilty of fraud. 5 TJA 954-957. When Wendy asked the District Court to find the opposite and award her equitable relief, the District Court appropriately determined that the Indemnification Agreements

were thoroughly presented and argued to the jury – including document preparation, execution, and other formation irregularities. Thus, at least, the jury verdict is an implicit rejection of Wendy's arguments . . . The jury constructively approved and affirmed the ACPAs and indemnification agreements when it reached its verdict. The verdict prevents additional litigation and precludes liability exposure for actions taken in reliance upon these documents.

11 TJA 2094, 2108-2109.

The District Court's findings are clearly supported by substantial evidence in the record. *See, e.g.*, 17 WJA 3816, 3823-25, 3834-35; 10 WJA 2259, 2290, 2344-54, 2357-78; 11 WJA 2476, 2482, 2496-2508, 2590-2606. Moreover, the District Court correctly declined to contravene the jury's implicit rejection of Wendy's arguments that the Indemnification Agreements were somehow fraudulent, which demonstrates that the District Court did not disregard the Seventh Amendment in relation to this issue. *See* 11 TJA 2094, 2108-2109; U.S. Const. Amend. VII.; *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1111-12, 197 P.3d 1032, 1038 (2008); *see also* *Avitia v. Metro. Club of Chicago, Inc.*, 49 F.3d 1219, 1231 (7th Cir. 1995) (holding that "a judge who makes equitable

determinations in a case in which the plaintiff's legal claims have been tried to a jury is bound by any factual findings made *or inescapably implied by the jury's verdict*") (emphasis added).

Wendy argues that the District Court's Order After Equitable Trial is "fundamentally unfair" for the District Court to "tell the Parties and the Jury one thing and then do another". RAB p. 41. But Wendy provides no citation to support her contention that the District Court admonished the jury not to consider the validity of the Indemnification Agreements. *See id.* Notably, though, even if the District Court did, that does not change the fact that the Indemnification Agreements were presented to the jury and argued by Wendy herself to be fraudulent and invalid. The jury rejected Wendy's arguments, and the District Court properly refused to disregard the jury's implicit findings. Accordingly, the District Court did not abuse its discretion with regard to this issue.

II. WENDY WAS PERMITTED TO USE THE SETTLEMENT AGREEMENT AT TRIAL TO TRY AND ESTABLISH BIAS.

A. Standard of Review

This Court "review[s] a district court's determination regarding the admissibility of evidence for an abuse of discretion." *In re J.D.N.*, 128 Nev. 462, 468, 283 P.3d 842, 846 (2012). The decision to admit or exclude relevant evidence, after balancing the prejudicial effect against the probative value, is within the sound discretion of the trial judge. *K-Mart Corp. v. Washington*, 109

Nev. 1180, 1186, 866 P.2d 274, 278 (1993), *distinguished on other grounds by Pope v. Motel 6*, 121 Nev. 307, 316, 114 P.3d 277, 283 (2005).

B. The District Court Limited Evidence Related to the Settlement Agreement to Avoid Unfair Prejudice to Todd and Stan.

The issue of whether the Settlement Agreement should be admitted at trial was presented in motions in limine and was argued before the trial commenced. *See* 10 WJA 2129, 2148-49. The District Court acknowledged the competing interests and arguments between the parties, explaining that “[t]he mere fact of the settlement will in some way bolster Wendy’s claims. The change of position on the eve of trial will weaken Wendy’s claims”. *Id.* at 2176. The District Court orally ruled that “[s]ome questions about why a settlement was reached are appropriate and some questions about the benefit of the settlement agreement are permitted, but no specific details of the settlement agreement without further order of the Court, if at all.” *Id.* at 2235-36.

Thereafter, during trial, the District Court allowed Wendy to elicit testimony regarding whether the Settlement Agreement was conditional on the outcome of trial, the fact that Todd’s mortgage would be removed from the Indemnification Agreement, and other details of the specific terms of the Settlement Agreement. *See, e.g.*, 14 WJA 3327-28 (the District Court ordering that “[t]he jury will just hear anything that counsel want about the indemnification agreement and Todd’s personal house.”); 15 WJA 3454-55 (Wendy’s counsel questioning Stan about

Todd's house being removed from the Indemnification Agreements and about Stan suing Todd for breach of fiduciary duty); *id.* at 3476-79 (Wendy's counsel specifically questioning Todd about whether the Settlement Agreement's terms adversely impact Wendy), *id.* at 3485-90 (Wendy's counsel questioning Todd about the attorney fees payment provision and other specific terms in the Settlement Agreement); *id.* at 3362-65 (Wendy's counsel questioning Stan about whether he still believes that Todd acted improperly).

Thus, Wendy's arguments on appeal that the jury "was deceived by the entire thing, and should have been told of the details of this sweetheart deal to understand the situation and Trustees' true motivation for settling their claims and appearing aligned at trial", *see* RAB 49, is highly misleading because the District Court allowed substantial testimony regarding the Settlement Agreement.⁵ The District Court allowed Wendy to try and establish Todd's and Stan's bias. However, the District Court also limited such testimony regarding the Settlement Agreement's full terms because of the risk of unfair prejudice to Todd and Stan given that the jury may infer guilt from the fact of settlement. *See* 15 WJA 3464.

Ironically, there was so much discussion about the Settlement Agreement that Todd's counsel eventually asked the District Court to allow Todd to testify to the full terms. 15 WJA 3478. Todd's counsel argued, "But there's so much

⁵ Wendy again misrepresents the record, arguing that Todd and Stan "successfully ke[pt] their settlement hidden from the jury, except to the extent it benefited them." RAB 6. The record does not at all support that representation.

prejudice surrounding this that we think that [Todd] should be able to testify about the terms of the resolution with Stan because, otherwise, there's just bad inferences. And we don't have a choice now." *Id.* The negative inferences and speculation that the jury likely drew only posed a risk of prejudice to *Todd*, not Wendy. *Moore by Moore v. Bannen*, 106 Nev. 679, 681, 799 P.2d 564, 566 (1990) (explaining that "allowing the jury to be informed about the existence of settling codefendants can lead to improper speculation."). It must be acknowledged that Wendy did not join in Todd's counsel's plea but simply continued with questioning Todd.

C. Even if the District Court Erred, Any Error Was Harmless Because Wendy Elicited Substantial Testimony About the Settlement Agreement from Stan and Todd and Made the Same Arguments to the Jury that She Makes on Appeal.

Wendy argues that she was prejudiced by the District Court's exclusion of the complete terms of the Settlement Agreement because the jury did not understand the full context and background that led to Todd and Stan appearing aligned against Wendy at trial. RAB 54-56. In fact, Wendy argues that "[f]rom the jury's perspective the entire lawsuit and trial appeared as Wendy against everyone. The appearance of that alone was prejudicial to Wendy and that prejudice was irreconcilably harmful and she was unable to overcome it." *Id.* at 55.

“To establish that an error is prejudicial, the movant must show that the error affects the party’s substantial rights so that, but for the alleged error, a different result might reasonably have been reached.” *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010). Wendy cannot establish that any error was prejudicial because she was given the opportunity to elicit testimony regarding certain terms of the Settlement Agreement, to try to demonstrate that the Settlement Agreement harmed Wendy, and to show that Stan originally disagreed with Todd and accused him of wrongdoing. 15 WJA 3362-65, 3454-55, 3476-79, 3485-90.

Notably, Wendy presented the same argument to the jury in closing arguments that she makes on appeal:

[Stan] would have been sitting on this side of the courtroom except for the settlement that was reached right before we got here, then he switched sides and then wants to say, gosh, I didn’t do anything wrong here. Well the only reason he’s saying that is because now he’s on the side of Todd. Not biassed? [sic] It’s contingent upon the outcome of this trial. What could cause more bias by either of them?

17 WJA 3982. Wendy even argued to the jury that pursuant to the Settlement Agreement, “Todd’s personal mortgage was removed from the indemnity agreement. Look at all this great benefit he received.” *Id.* at 3902.

The jury heard Wendy’s hyperbolic narrative about the Settlement Agreement and rejected it. Therefore, any error regarding admission of the full terms of the Settlement Agreement was harmless and reversal is not warranted.

See Wyeth, 126 Nev. at 465, 244 P.3d at 778 (“When an error is harmless, reversal is not warranted.”).

III. THIS COURT SHOULD DECLINE TO CONSIDER WENDY’S ARGUMENTS REGARDING THE DISTRICT COURT’S REFUSAL TO GRANT WENDY A TRIAL CONTINUANCE OR NEW TRIAL AS SHE DOES NOT COGENTLY ARGUE THE ISSUES.⁶

A. Standard of Review

This Court generally declines to address issues when a party fails to cogently argue it and present relevant authority in support thereof. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). This Court “review[s] the district court’s decision on a motion for continuance for an abuse of discretion.” *Bongiovi v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006). “This court reviews a district court’s decision to grant or deny a motion for a new trial for an abuse of discretion.” *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014).

B. Wendy Does Not Provide Any Argument Regarding the District Court’s Refusal to Continue the Trial Based on the Settlement Agreement nor the District Court’s Denial of Wendy’s Request for a New Trial.

Wendy identifies as an issue whether the District Court abused its discretion by refusing to grant a continuance of the jury trial to allow Wendy to conduct discovery into the Settlement Agreement. RAB 36, 56. However, Wendy does not

⁶ While Wendy also challenges the District Court’s orders denying a continuance and new trial for a supposed untimely production of documents, Wendy’s arguments do not implicate Todd, personally, so Maupin Cox and LeGoy will address those arguments to the extent they concern Todd as Trustee.

actually argue this issue. *See id.* at 56-68. Moreover, Wendy does not provide any legal authority or record citations to support her contention. *See id.*

Similarly, Wendy consistently argues that she should have been granted a new trial and even asks this Court to provide her that relief. *See* RAB 42, 68, 81. However, Wendy does not support that contention with cogent argument and applicable legal authority. *See generally* RAB.

As such, this Court should decline to consider these issues on appeal for Wendy's failure to cogently argue and present legal authority. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

C. To the Extent this Court Considers These Arguments, the District Court Did Not Abuse Its Discretion.

Wendy does not argue what discovery she believes would have been necessary to support a continuance of trial. However, the record demonstrates that the District Court acted within its discretion in denying Wendy's request for a continuance based on the Settlement Agreement because Wendy was still able to depose Todd about the Settlement Agreement and she received it before trial, so she could ascertain any alleged negative impact to her arising therefrom. *See* 2 WJA 000316-318, 000341-42. Further, as discussed above, Wendy was able to cross examine both Todd and Stan extensively about the Settlement Agreement. Wendy cannot establish any prejudice from the trial date. Therefore, even if the

District Court erred, such error was harmless. *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

Moreover, Wendy's only basis for requesting a new trial that pertains to Todd, individually, is that it was "unfair" for the District Court's Pre-Trial Order to state that the jury would not decide the Indemnification Agreements. RAB 42. However, as discussed above, Wendy clearly did not avoid the topic of the Indemnification Agreements at trial as she elicited substantial testimony about them and set forth arguments to the jury about their supposed invalidity. Wendy's claims of prejudice are disingenuous at best. Accordingly, there was (and remains) no basis for Wendy to request a new trial.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING TODD HIS ATTORNEY FEES AND COSTS IN HIS INDIVIDUAL CAPACITY.

A. Standard of Review

"A district court's award of attorney fees and costs pursuant to NRCP 68 is reviewed for an abuse of discretion." *Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 562, 216 P.3d 788, 792 (2009). In awarding attorney fees under NRCP 68,

the district court must carefully review the following factors: (1) whether the plaintiff brought the claim in good faith, (2) whether the defendants' offer of judgment was reasonable and brought in good faith in both its amount and timing, (3) whether it was grossly unreasonable or an act in bad faith for the plaintiff to reject the offer and proceed to trial, and (4) whether the fees sought are reasonable and justifiable in amount.

Id.

B. The District Court Awarded Todd Fees Pursuant to NRCP 68, Not NRS 18.020.

Wendy argues that Todd should not have been awarded attorney fees pursuant to NRS 18.020. *See* RAB 70. But Todd was not awarded fees under NRS 18.020. Rather, the District Court awarded Todd his fees under NRCP 68 given Todd's Offer of Judgment. *See* 12 TJA 2094, 2110-15. Therefore, Wendy's arguments under NRS 18.020 are misplaced and should be disregarded.

C. The District Court Did Not Award Todd Fees Under NRS 18.010.

Again, Wendy mistakenly argues that Todd should not have been awarded attorney fees pursuant to NRS 18.010. *See* RAB 70. But Todd was not awarded fees under NRS 18.010. Rather, the District Court awarded Todd his fees under NRCP 68 given Todd's Offer of Judgment. *See* 12 TJA 2094, 2110-15. Wendy's arguments under NRS 18.010 are therefore, mistaken. Notwithstanding, it should be noted that the District Court could have awarded Todd fees under NRS 18.010 because the District Court did conclude that "Wendy's litigation position and trial demand were influenced more by animus and avarice than by a desire for balanced justice" and that she "initiated scorched-earth litigation grounded in entitlement and limited self-awareness." *Id.* at 2099. Therefore, the District Court's award of fees should be affirmed.

///

D. The District Court Acted Within Its Discretion in Awarding Todd His Attorney Fees and Costs.

Wendy contends that the District Court abused its discretion in awarding Todd fees under NRCP 68 because of (1) the amount in controversy, (2) the jury found that Todd breached his fiduciary duty as a Trustee, (3) she obtained a more favorable judgment than the Offer of Judgment, and (4) the relevant factors do not support an award of fees under NRCP 68. Each of Wendy's arguments is misplaced and does not demonstrate an abuse of discretion.

1. Wendy's "Overreaching" \$80 Million Demand Does Not Accurately Determine the Amount in Controversy.

Wendy argues that the Offer of Judgment "cannot be considered a legitimate offer to settle Wendy's claims" given the "circumstances, including the amount in controversy". RAB 72. But Wendy took the untenable position during trial that the amount in controversy was \$80 million. Wendy not only provided this damages calculation for the first time during closing arguments, but this amount was also substantially more than the value of the entire trust and assets combined. *See* 17 WJA 3909, 3912; 11 TJA 2094-2118. The District Court aptly described Wendy's damages demand as an "overreach". 12 TJA 2098.

Wendy's unreasonable, unsupported, and overreaching damages calculation does not determine the amount in controversy to support an argument that Todd's offer of \$25,000 was not legitimate. To the contrary, the jury determined that

Todd as an individual owed Wendy *nothing*, which makes Todd's offer of \$25,000 reasonable and legitimate.

2. Todd, as an Individual, Prevailed on Every Claim Against Wendy.

Wendy contends that because a trustee can face individual liability for acts done as a trustee, that the District Court erred by not considering the jury's verdict regarding Todd as a Trustee. RAB 74. Ironically, Wendy argues that this consideration is mandatory under NRCP 68, but she provides no authority supporting her position. *See id.* Therefore, this Court need not address this argument as it is not cogently argued nor supported by authority. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Moreover, Todd as an individual prevailed on every claim against Wendy. That is the relevant consideration under NRCP 68.⁷ Indeed, Wendy admits that Todd as Trustee served a separate Offer of Judgment. RAB 74. Regardless, as discussed below, the District Court's award is supported by substantial evidence.

3. The District Court's Equitable Remedies Do Not Change the Fact That the Jury Determined Todd as an Individual Was Not Liable for Any of Wendy's Claims.

Wendy contends that she obtained a more favorable judgment than Todd's Offer of Judgment because the District Court imposed equitable remedies against Todd in his individual capacity for acts he allegedly took as Trustee. RAB 75-76.

⁷ Nevertheless, the District Court did include this fact in its discussion of fees. *See* 12 TJA 2111.

Wendy, yet again, fails to provide any authority to support her contentions, *see id.*, nor can she because her argument rests on a flawed interpretation and understanding of NRCP 68.

NRCP 68(a) provides,

At any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees.

This Court has expressly determined that the term “trial” in NRCP 42(b), which “indicates that each phrase of a bifurcated trial is a separate ‘trial’”, applies to NRCP 68. *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 994, 860 P.2d 720, 723 (1993). Therefore, Todd’s Offer of Judgment applied to the first trial wherein he was adjudicated not guilty of all claims asserted against him.

Regardless, even if Todd had served Wendy with a second Offer of Judgment regarding the bifurcated equitable bench trial under NRCP 68(h), then Wendy’s argument would still fail because there was never a judgment entered against Todd on any of Wendy’s claims against him individually for any wrongdoing in his individual capacity. Accordingly, this Court should affirm the award of fees and costs to Todd.

///

///

4. The District Court's Analysis of the *Ozawa* Factors is Supported by Substantial Evidence.

Todd served Wendy with his Offer of Judgment for \$25,000 on August 29, 2018. *See* 6 TJA 1013-17. The District Court fully analyzed the requisite factors pursuant to NRCP 68 and *Ozawa*, 125 Nev. at 562, 216 P.3d at 792. *See* 12 TJA 2094, 2110-15. The District Court's analysis is fully supported by the record.

First, the District Court concluded that while Wendy's claims may have been commenced in good faith against Todd as Trustee, there was less support for the claims against Todd as an individual. *Id.* at 2111. Moreover, the District Court found that "Wendy initiated scorched-earth litigation grounded in entitlement and limited self-awareness", *id.* at 2099, and that "Wendy was particularly personal in her allegations, the worst of which were harassing, vexatious, and without factual basis." *Id.* at 2098. Similarly, the District Court concluded that "Wendy's litigation position and trial demand were influenced more by animus and avarice than by a desire for balanced justice." *Id.* at 2099.

The District Court's findings are supported by substantial evidence in the record as Wendy's litigation tactics were vicious and she made egregious accusations against Todd and professionals that were not supported. *See, e.g.*, 4 TJA 647 (accusing Todd of manufacturing the Indemnification Agreements to "fund his lifestyle"); 2 WJA 203, 222 (accusing Todd and the Trustees of "intentional obstructionism" and arguing that "the name of the game has been to

purposefully keep Wendy in the dark about her inheritance”); 10 TJA 1662-1757 (accusing Pierre Hascheff of malfeasance, including knowing that documents were forged, when there was no evidence to support those statements). Notably, Wendy maintains several of these unsupported accusations on appeal, all of which were rejected by the jury.

Second, the District Court concluded that Todd’s Offer of Judgment was “reflective of the circumstances and was made with a good-faith intention to settle the claims.” 12 TJA 2113-14. The District Court arrived at this conclusion because “At the time Todd made his individual offer, Wendy had been unable to present coherent facts underlying her claim against him personally. He therefore had reason to believe Wendy’s claims against him individually were weak or lacked merit.” *Id.* at 2113. Given that Wendy sought \$80 million and the jury awarded her nothing from Todd demonstrates that the record clearly supports the District Court’s findings.

Third, the District Court concluded that Wendy’s decision to reject Todd’s Offer of Judgment was “less reasonable” than her decision to reject Todd’s offer as Trustee, but the District Court did not find that it was grossly unreasonable. *Id.* at 2114. As such, the District Court concluded that this factor was neutral. *Id.*

Fourth, the District Court found that Todd’s fees were reasonable and justified. 12 TJA 2114. The District Court determined that Todd’s personal

counsel “are experienced in law and trial. They have exemplary records of service in our legal community, and they obtained a positive outcome for their clients.” *Id.* The District Court further found that “The fees sought by Todd individually from the date of the offer are reasonable in light of his experienced and effective attorneys, duration and scope of litigation, and the result obtained.” *Id.*

The record certainly supports the District Court’s conclusions. Todd’s trial attorney has been practicing law for forty-nine years, served on numerous professional boards, including the Nevada State Board of Bar Governors for ten years, and has tried over 100 jury trials. *See* 6 TJA 1153-54 (Kent R. Robison’s Statement of Qualifications). Moreover, in the face of an \$80 million damages demand, Todd’s counsel received a non-guilty verdict on all counts. The litigation spanned nearly two years and involved contentious and extensive motion practice on both procedural and substantive issues. *See id.* at 995-1000, 1003-04. As such, Todd’s attorney fees and costs were reasonable and appropriately awarded under NRCP 68.

CONCLUSION

Based on the foregoing, Todd respectfully requests that this Court enter an order of affirmance regarding the District Court’s (1) refusal to contravene the jury’s implicit approval of the Indemnification Agreements, (2) exclusion of the full terms of the Settlement Agreement, and (3) award of attorney fees and costs to

Todd. Todd further requests that this Court decline to consider the arguments that Wendy did not cogently argue on appeal.

Dated this 6th day of October, 2021.

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

/s/ Kent R. Robison

KENT R. ROBISON (SBN #1167)
HANNAH E. WINSTON (SBN #14520)
Attorneys for Appellant/Cross-Respondent
Todd B. Jaksick, in his individual capacity

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Appellant/Cross-Respondent Todd B. Jaksick's Reply Brief on Appeal and Answering Brief on Cross-Appeal complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 16 in 14 font and Times New Roman type.

2. I further certify that this Reply Brief on Appeal/Answering Brief on Cross-Appeal complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,792 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not

in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 6th day of October, 2021.

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

/s/ Kent R. Robison

KENT R. ROBISON (SBN #1167)
HANNAH E. WINSTON (SBN #14520)
Attorneys for Appellant/Cross-Respondent
Todd B. Jaksick, in his individual capacity

CERTIFICATE OF SERVICE

I certify that on the 6th day of October, 2021, I served a copy of **APPELLANT/CROSS-RESPONDENT TODD B. JAKSICK'S REPLY BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL** 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:

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

Phil Kreitlein, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Suite 105
Reno, Nevada 89502
Email: philip@klmlaw.com
Attorneys for Appellant/Cross Respondent Stanley S. Jaksick

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

Chad F. Clement, Esq.
Kathleen A. Wilde, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
Email: cclement@maclaw.com; kwilde@maclaw.com
Attorney for Respondent/Cross Appellant Wendy A. Jaksick

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

DATED this 6th day of October, 2021.

/s/ V. Jayne Ferretto
Employee of Robison, Sharp, Sullivan
& Brust