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.	Case No.: 81470 District Court Case Nos.: PR17-00445 PR17-00446

APPELLANT/CROSS-RESPONDENT STANLEY JAKSICK'S COMBINED REPLY BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL

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NRAP 26.1 DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

There are no parent corporations for Stanley Jaksick or publicly held companies owning 10% or more stock.

Stanley Jaksick has been represented throughout this action by Adam Hosmer-Henner, Esq. of McDonald Carano and Philip Kreitlein, Esq. of Kreitlein Law Group. Stanley Jaksick has also been represented by the law firm of Maupin, Cox & LeGoy in his capacity as co-Trustee of the Samuel S. Jaksick, Jr. Family Trust.

DATED: October 6, 2021.

McDONALD CARANO LLP

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ARGUMENT

Wendy's Answering and Opening Brief ("Wendy's Brief" or "Wendy's Br.") addresses three issues in the appeal but only the issue relating to the attorney's fees to be paid by the Family Trust directly relates to Stanley Jaksick ("Stan") or his interests. Stan served as co-Trustee of the Samuel S. Jaksick, Jr. Family Trust ("Family Trust") and is a beneficiary of the Family Trust. He succeeded in completely defeating each and every legal and equitable claim brought against him by Wendy Jaksick ("Wendy"). Despite this total victory by Stan, the district court still provided Wendy's attorneys with an award of $300,000 payable from the Family Trust. XXII JA TJA003791-003811. This result, compounded by the already significant attorney's fees paid out by the Family Trust, depletes the Family Trust without just cause. Stan's interest in the Family Trust is reduced by the award to Wendy's attorneys even though he was the prevailing party in the litigation and Wendy was not. Moreover, Wendy continues to fail to identify any legal foundation for the attorney's fee award and merely states that the award was reasonable in amount, not that it had any underlying procedural or legal support. The award to Wendy's attorneys should be reversed.

I. Wendy Was Not a Prevailing Party.

Wendy did not rebut or respond to Stan's argument that she cannot receive an attorney's fee award as a non-prevailing party.[1] Instead, in another section of her brief, she specifically relies upon this fact to argue against an award of costs to Todd Jaksick ("Todd"). Wendy's Br. 70 ("the Court states: 'Here, several competing parties could argue for prevailing party status . . . Given the entirety of this case proceeding, this Court intends to conclude that neither Wendy Jaksick nor Todd Jaksick is the prevailing party.'") (citing XVII JA TJA002847) (emphasis omitted). As Wendy was not considered the prevailing party by the district court and specifically did not prevail against Stan or against the Family Trust, she was not entitled to an award of attorney's fees against the Family Trust.

Wendy's arguments on the outcome of the trials are limited to the claim that the Order After Equitable Trial "confirm[ed] Todd

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[1] Wendy seems to try to incorporate by reference her briefing in the district court. Wendy's Br. 13-14 (referencing Wendy's Brief of Opening Arguments in the Equitable Claims Trial). But this approach is explicitly prohibited by NRAP 28(e)(2): "Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal."

breached his fiduciary duties to Wendy." Wendy's Br. 14. Wendy then argued that the Court "also awarded $300,000 to Wendy's attorneys for prevailing against Todd." Wendy's Br. 14-15. Even if Wendy could be deemed the prevailing party against Todd, and the district court specifically found that she was not a prevailing party, this does not mean that Wendy would be entitled to an award from the Family Trust. There must be a symmetry between the parties, the result, and the award and no such connection exists here.

II. There Was No Basis for An Attorney's Fee Award, Regardless of Amount.

Wendy's response is limited to defending the reasonableness of the amount of the award. Wendy's Br. 12-17. Stan does not dispute that the litigation was complex or that it involved significant discovery. Wendy, however, jumps to the last step of the inquiry – whether the attorney's fee award is reasonable – without identifying or justifying the underlying basis for the fee award.

Wendy was not the prevailing party, she did not obtain an award under NRS 18.010, and she did not obtain an award under an offer of judgment. Further, as demonstrated in Stan's Opening Brief, which was again unrebutted by Wendy, the award is unsupportable under NRS

153.031(3). It therefore does not matter whether Wendy was awarded an amount that was a "reasonable fee" as she has failed to identify the basis for any fee. Wendy's Br. 15.

CONCLUSION

For all of the above reasons, the Court should reverse the award of attorney's fees to counsel for Wendy Jaksick.

CROSS-RESPONDENT'S ANSWERING BRIEF ON CROSS-APPEAL

SUMMARY OF THE ARGUMENT

After an extended trial, the jury found that Stan did not commit a breach of fiduciary duty, did not commit civil conspiracy and aiding and abetting, and did not aid and abet a breach of fiduciary duty. V JA TJA000954-000957. The district court then found that Stan was not liable for any of the remaining equitable claims. XII JA TJA002094-002118. Wendy's equitable claims were largely based on the same conduct that she complained about during the jury trial. She sought, through doctrines such as surcharge and unjust enrichment, to obtain an equivalent monetary remedy based on the same alleged but rejected breaches of fiduciary duty. None of these claims had merit.

Wendy's own testimony showed that Stan faithfully performed his duties as co-Trustee of the Family Trust, even going above and beyond to assist Wendy. XI JA TJA001758-001977, Exhibit 1, Wendy Dep. Tr. 1114:4-17 ("I think Stan told me what he knew as much as knew . . . I don't believe that he knew the other things that were going on or he would have told me."); *Id.* 1125:6-9 (stating that Stan has not used his "purported indemnification agreement"); *Id.* 1141:2-8 (Q: "are you alleging that Stan in his capacity as co-trustee of the family trust participated in an ongoing scheme to minimize distributions to you?" A: "I think Stan did the opposite"); *Id.* 1146:25-1147:15 (Q: "do you believe that Stan in his capacity as co-trustee of the family trust breached his fiduciary duty owed to you by failing to fully disclose and account to you the administration of the family trust?: A: "I don't believe that Stan had been given full disclosure himself to know what information to pass on to me, if that was the case . . . I don't believe he – he didn't know much more than I know or knew." Q: "Do you believe Stan disclosed to you what information he had?" A: "Yes, I do").

NRS 163.110(1) specifically provides that a "trustee who has not joined in exercising a power is not liable to the beneficiaries or to

others for the consequences of the exercise of power and a dissenting trustee is not liable for the consequences of an act in which that trustee joined at the direction of the majority trustees, if the trustee expressed his or her dissent in writing to any of his or her cotrustees at or before the time of the joinder." Furthermore, Art. IV(D) of the Family Trust states that "No Co-Trustee is to be liable for any act, omission, or default of any Co-Trustee provided that the Co-Trustee has not had knowledge of any facts that may reasonably be expected to have put the Co-Trustee on notice in sufficient time to have prevented the act, omission, or default." I JA TJA000022. Stan either did not join or objected in writing to effectively every claim brought by Wendy with respect to the Family Trust. Wendy proffered *no* evidence that Stan had knowledge of the facts giving rise to her claims or that he should have been on notice of them.

Faced with these facts and dispositive legal arguments, Wendy's position on appeal is largely focused on delay. She contends that if the district court had delayed trial, all of her discovery concerns would have been addressed, she would have been able to investigate a settlement between Todd and Stan, and the result of trial would have been different. After an enormous amount of discovery and a lengthy and

repeatedly lengthened discovery period, Wendy cannot delay the outcome indefinitely. She cannot demonstrate that the district court's decision to adhere to a trial schedule was an abuse of discretion and thus she cannot avoid the judgment of the jury and of the court.

ARGUMENT

I. The District Court Correctly Handled the Bifurcation of the Trials.

Wendy's first argument on appeal is that it was an error for the district court to refrain from deciding the sufficiency of the accountings and the validity of the ACPAs and indemnification agreements in deference to the jury's decisions. While the Pre-Trial Order did disaggregate the claims into legal and equitable categories, V JA TJA0952-0953, even Wendy notes that the presentation of evidence in the jury trial was to be "simultaneously" considered by the district court if "relevant to equitable issues." Wendy's Br. 40. There was no requirement that the legal and equitable claims had to be kept completely isolated such that the result in one half of the trial could never affect the other. It would have been error for the district court to have overridden the jury's factual determinations on these overlapping evidentiary issues, not the other way around as Wendy contends.

A. Legal Standard.

"Nevada district courts have discretion to bifurcate equitable and legal issues raised in a single action, conduct a bench trial on the equitable issues, and dispose of the remaining legal and equitable issues in the action." *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 624, 173 P.3d 707, 714 (2007). *Awada* considered the situation where an equitable trial preceded the legal trial and disposed of the latter claims, which was a more unusual situation than the reverse pattern. The "normal practice is to try both claims to a jury; in this way, the jury's verdict will conclusively settle these common issues, and only issues peculiar to the equitable claim will be left to be decided by the judge." *Effect of joinder of legal and equitable claims on right to jury trial*, 33 Fed. Proc., L. Ed. § 77:97 ("when legal and equitable issues are tried together and overlap factually, all findings necessarily made by the jury in awarding a verdict to a party on legal claims are binding on the trial court when it sits in equity."). The district court therefore followed the correct procedure by adhering to the findings that were necessarily made by the jury with respect to the legal claims.

B. Wendy's Purported Prejudice is Contrary to the Record

Wendy poses the following rhetorical question: "Should Wendy have argued to the Jury the purported Indemnification Agreement and ACPAs are invalid and presented the Jury a question on the subject or not? According to the Court's Pre-Trial Order, she should not and did not . . ." Wendy's Br. 42. The reality is that Wendy made these exact arguments to the jury.

In closing arguments, Wendy's counsel argued that "all the ACPAs suffered from [a lack of disclosure]" and demonstrated "countless breaches of fiduciary duty, self-dealing" and so on. XVII RA WJ003895-96. Similarly, Wendy's counsel argued: "In short, the accountings are a joke and they don't represent full disclosure. They are direct evidence of breach of fiduciary duty." XVII RA WJ003893; *see also* XVII RA WJ003897 (complaining about the "[f]ailure to deliver accountings timely"). Contrary to Wendy's claim that she "should not and did not" argue these factual issues to the jury, the record overwhelmingly reflects that the jury was directly asked by Wendy's counsel to rule upon factual issues related to the accountings, ACPAs, and indemnification agreements.

C. The District Court Did Not Commit Error.

The Order After Equitable Trial demonstrates acute awareness of the issues Wendy is raising now, but makes no error regarding the same. The district court noted that "Wendy's complaints about the content and general timing of the accountings were presented to the jury in the legal phase of trial and are therefore facts common to the equitable claims." XII JA TJA002094-002118 ("The verdict is an express or implicit rejection of Wendy's complaints about the accountings."). Similarly, "each of the challenged documents and related transactions were thoroughly presented and argued to the jury." *Id.* ("the jury verdict is an implicit rejection of Wendy's arguments").

This approach is entirely consistent with *Awada,* 123 Nev. at 624. The district court did not abrogate its duty to resolve the equitable claims, but held that the jury's factual determinations meant that it could not provide equitable relief to Wendy given these factual determinations. Wendy fails to appreciate the distinction between the claims and the underlying facts. The legal interpretation of the language of the ACPAs or the statutory compliance of an accounting may not have been before the jury. But the underlying facts that must be used by the district court to decide the issues were before the jury.

The district court's approach did not "eliminate[] the equitable trial completely." Wendy's Br. 41. Just as in *Awada*, 23 Nev. at 624 though, if certain facts were determined in one phase of trial that disposed of the other phase, then it is entirely proper to maintain a consistent resolution rather than continue in a fashion that would generate inconsistent holdings.

II. The District Court Did Not Abuse its Discretion in Presenting the Settlement Agreement to the Jury.

The district court held that Stan and Todd made the "strategic and well-advised decision to compromise their claims before trial." Order Equitable 5. Wendy specifically benefited from the Settlement Agreement as it eliminated several million dollars in debt for the Family Trust by limiting Todd's indemnification agreement and by paying Wendy's capital calls for an entity known as Jackrabbit. XV RA WJ003476-80. How does Wendy know this to be true? Because Todd and Stan were specifically asked about the terms of the Settlement Agreement at trial by Wendy's counsel. *Id.* (extensively covering the terms of the Settlement Agreement including the indemnification agreements, capital call obligations, AgCredit loan payments, IRS refunds, and Incline TSS). Wendy's position on appeal seems to forget

that during trial, nearly all restrictions on her use of the Settlement Agreement (except for the publication of the actual confidential and privileged document to the jury) were removed. Todd's counsel specifically stated that "there's so much prejudice surrounding [the Settlement Agreement] 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." XV RA WJ003478. This approach was taken after the Settlement Agreement, which should have been a privileged and confidential document full stop, was required to be provided to Wendy who was allowed to inquire into its general effect in front of the jury. Wendy is simply incorrect that the Court ultimately maintained "severe restrictions on the mention, use and admission of the Settlement Agreement." Wendy's Br. 54. While Stan argued that the Settlement Agreement should have been kept confidential under NRS 48.105, this argument was ultimately unsuccessful and it was Wendy, not Stan, who prevailed on this evidentiary question.

Wendy's feigned surprise at this settlement is preposterous given the multiple, lengthy settlement conferences held among the parties. While a global settlement would have benefitted all parties and

avoided this appeal, such a settlement is difficult to achieve when Wendy's damages claim stood at an unsupportable $80,000,000 and the Family Trust's assets were a fraction of this amount. In any event, the district court's Pre-Trial Order specifically reserved "Monday, February 4, 2019, through Wednesday, February 6, 2019" *e.g.* the days immediately before trial "for settlement discussions and other pretrial matters." V JA TJA0952-0953. Settlement on the eve of trial was not only a possibility, it was specifically contemplated by the district court and entered in a pre-trial order.

A. Settlement on the Eve of Trial is Common and Proper.

Wendy's objection is not truly procedural but optical. She complains that the "last-minute settlement so completely and dramatically changed the landscape of the jury trial, it as an abuse of discretion to not grant a continuance of the jury trial." Wendy's Br. 55. She complains that she was "cast as the lone crazed beneficiary that was greedy, totally unreasonable and without basis suing her brothers." *Id.* at 54. There is no question that the trial played out differently due to the Settlement Agreement, but there is also no question that this is a common and lawful occurrence.

The Tenth Circuit considered a similar case where a party claimed to be "surprised when his co-defendants left him to stand trial and that the court was insufficiently sympathetic to his desire to revamp his trial strategy in light of the last-minute settlement." *Monfore v. Phillips*, 778 F.3d 849, 852–53 (10th Cir. 2015). The court rejected this argument and asked whether a "partial settlement" can really "come as a surprise in an age when virtually all cases settle in part or in whole, many on the eve of trial?" *Id.* (answering that what happened was "hardly unforeseeable"). The court went on to say that if a "remaining defendant's attorney counted on a colleague working for a settling party to do the heavy lifting at trial he may feel flat-footed when it comes to examining witnesses and arguing motions." *Id.* This may have been what happened here. But these "strategic pitfalls . . . are well known, not the stuff of surprise." *Id.* (citing *Manual for Complex Litigation (Fourth)* § 13.21 (2004), 2004 WL 258728, at *12004 WL 258728, at *1 (settling with one of many adverse parties on the eve of trial to weaken another party's position is "a common and legitimate litigation strategy")).

Despite all of the negative prejudice that accrued to the non-settling defendant, the court still found that a delay of trial was not

"mandatory" and a "district court does not abuse its discretion in holding a party to a long-scheduled trial and to the strategy he articulated though pleading and discovery and in the face of such obvious risks, especially when indulging an eleventh-hour strategic shift would mean either imposing prejudice on the other side or inviting more delay." *Id.*

B. There Was No Prejudice at the Jury Trial.

Wendy has the Settlement Agreement. She had it when she was questioning Stan and Todd during the jury trial. XV RA WJ003454-3490. The only evidentiary ruling that went against Wendy was the actual admission of the entire Settlement Agreement itself. XV RA WJ003490 (offering Exhibit 457). When Wendy was able to examine Stan and Todd about each and every term of the Settlement Agreement, there can be no prejudice from the lack of the actual document. XV RA WJ003482 (discussing "one of the other potential adverse terms to Wendy is that Ag Credit loan payments, that would cover your 51 percent interest and then continue to be paid . . .").

The Settlement Agreement was specifically discussed by Wendy's counsel during closing argument:

> *"[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 biased? It's contingent upon the outcome of this trial. What could cause more bias by either of them?"*

XVII RA WJ003983. Once again, Wendy has failed to actually demonstrate why it was an abuse of discretion to not admit the Settlement Agreement or to show actual prejudice.

C. The Settlement Agreement was admitted in the Equitable Trial.

Wendy recognizes that the Settlement Agreement was admitted "as an exhibit in the equitable trial." *Wendy's Br.* 54. She also claims that it was "as material to Wendy's case before the jury as it was in the equitable trial." *Id.* As it did not move the needle in the equitable trial, Wendy's argument is self-defeating as it would not have affected the jury trial either.

III. No Continuance of Trial Was Warranted.

Wendy's unmistakable tactic throughout the litigation was to burden the trustees with unreasonable discovery requests in order to force settlement. The numbers are staggering. In addition to the hundreds of document requests and multiple days of depositions for each

party, the district court noted that: "[t]he 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 market 677 exhibits for the two trials, of which 227 were admitted." XII JA TJA002094-002118. On appeal, Wendy argues that this volume of material was insufficient, but does not and cannot point to actual error by the district court or prejudice to her. *Cf.* Wendy's Br. 55 (**"**Wendy sent discovery requests, took depositions, and prepared for the trial for more than two years.")

Discovery in this action was so expansive and contentious, that the district court ordered the parties to participate in weekly discovery conferences with the discovery commissioner. I RA WJ000108-110. As the culmination of this supervised, managed discovery process, the parties were required to submit a pre-trial statement on outstanding discovery. Wendy filed her statement on January 30, 2019 and listed seven areas in which she believed discovery disputes remained. 1 SA SSA000001-6. Only one of these seven areas, the production of subtrust accountings, involved Stan and only then indirectly. The district court

ultimately ordered the *creation* not the *production* of these accountings as they did not exist. Wendy should not be permitted to expand on the discovery disputes that she presented to the district court in order to strengthen her case on appeal.

Wendy's arguments on discovery are further undermined by the length of time between the jury trial and the equitable trial. The jury trial concluded on March 4, 2019. Wendy's briefing in the equitable trial was filed between July 31, 2019 and February 25, 2020. VIII JA TJA001363-001470. Even if Wendy had insufficient time to review the documents produced prior to the jury trial, she had more than enough time to include these documents in her briefing in the equitable trial or even in a motion for a new jury trial. This did not happen because Wendy's objections are about show over substance.[2]

A. Legal Standard

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[2] Wendy again tries to incorporate "pleadings and the evidence, arguments and authorities included therein as if fully set forth herein." Wendy's Br. 58. NRAP 28(e)(2) bars this approach: "Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal."

A motion for continuance is squarely committed to the district court's discretion and is reviewed under an abuse of discretion standard. *Southern Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 243, 577 P.2d 1234, 1235 (1978). The district court has "wide discretion in controlling pretrial discovery." *MGM Grand, Inc. v. District Court*, 107 Nev. 65, 70, 807 P.2d 201, 204 (1991). Wendy cites to inapposite California and Texas authorities on this topic, but fails to cite to the actual rule that is applicable. WDCR 13(1) states that "[n]o continuance of a trial in a civil or criminal case shall be granted except for good cause." Furthermore, a motion for continuance "shall state the reason therefor and whether or not any previous request for continuance had been either sought or granted. The motion or stipulation must certify that the party or parties have been advised that a motion or stipulation for continuance is to be submitted in their behalf and must state any objection the parties may have thereto." *Id.* Wendy's motion for continuance failed to comply with these procedural requirements and so could have been denied outright for this reason alone.

B. Wendy Conflates a Trustee's Duty of Disclosure with Discovery Practice.

Throughout her brief, Wendy switches back and forth between a litigant's discovery obligations and a trustee's disclosure obligations. *See, e.g.,* Wendy's Br. 58 ("The Trustees owed fiduciary duties, apart from the litigation, that required the full disclosure of all information concerning his administration of the Trusts.") But there is a clear distinction between documents that may be disclosed during trust administration and those that may or must be disclosed in litigation. Put another way, a party does not violate its discovery obligations if it failed to disclose documents to a beneficiary prior to litigation. The former is a procedural issue addressed by the Nevada Rules of Civil Procedure and the latter is a fiduciary issue addressed through substantive legal claims. *See, e.g, Canarelli v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 136 Nev. 247, 255, 464 P.3d 114, 122 (2020) ("While a beneficiary is ordinarily able to inspect a trust's books and records, allowing a beneficiary to view communications between a trustee and his or her attorney when the trustee is adverse to the beneficiary would discourage trustees from seeking legal advice.")

C. Wendy is Limited to Her District Court Disclosure.

Wendy's Statement of Outstanding Discovery filed right before trial commenced should be the outer limit of her discovery complaints. I SA SSA00001-6. None of these seven issues warranted a continuance of discovery; to the contrary, they demonstrated her lack of diligence. Not one issue required Stan to produce existing and outstanding documents to Wendy.

First, Wendy identified her Motion to Compel Production from Todd that was only "fully briefed and submitted for ruling on November 18, 2018." I SA SSA000002. On January 23, 2019, the discovery commissioner recommended that Todd be required to produce documents within "approximately 80 of the 522 requests." *Id.* Putting aside the absurdity of 522 document requests, the timing of this motion and its resolution meant that it was on Wendy, not any other party, to have resolved this earlier in the legal process. Stan was not a party to this motion practice and was not ordered to produce any documents.

Second, Wendy identified a Motion to Compel related to the production of subtrust accountings. As previously discussed, these subtrust accountings did not exist and the district court ordered them created. Stan and Todd instructed their professional accountant to create

these documents, which were provided to Wendy. Stan even voluntarily provided information and documentation concerning the Stanley Subtrust to Wendy, despite the district court's denial of Wendy's motion to compel production of the same.

Third, Wendy identified the "production of any additional documents from Todd related to the indispensable parties." I SA SSA000003. It was not clear if these documents were sought from Todd or from the third-party entities, but in any event Wendy's position on appeal is not based on these documents.

Fourth, Wendy identifies a subpoena she served on August 6, 2018 on Maupin Cox LeGoy. I SA SSA000003. This discovery dispute with a third-party was up to Wendy to resolve on a timely basis.

Fifth, Wendy indicates that she may want to take the further deposition of Kevin Riley. I SA SSA000003. There is no indication in the record that Wendy ever served another deposition notice.

Sixth, Wendy complains about the production and deposition schedule of a third-party witness, Mr. Palmer, but again this discovery dispute with a third-party was up to Wendy to resolve on a timely basis. I SA SSA000004.

Seventh, Wendy states that she "has been and is continuing to work with Bank of America to obtain a full production of its records" because Bank of America provided an "incomplete response . . . to her subpoena for records." I SA SSA00005. This discovery dispute with a third-party was up to Wendy to resolve on a timely basis.

Perhaps most tellingly, Wendy does not point to any documents provided by any of the parties in the case that she would have used at trial nor does she even point to any documents that she used in the equitable briefing that she would have used during the jury trial. Parties in complex litigation can always chase shadows and seek to turn over every last stone in discovery, but the district court does not abuse its discretion when the parties have not acted diligently or when they cannot show that the restrictions on discovery caused actual and unfair prejudice.

CONCLUSION

For all of the above reasons, the Court should affirm and deny all of Wendy Jaksick's grounds for appeal.

Affirmation: *Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.*

DATED: October 6, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 27(d), I hereby certify that this Combined 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 motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font, Century Schoolbook type. I further certify that this motion complies with the page limits of NRAP 28.1 as it does not exceed 7,000 words, calculated in accordance with the exclusions of NRAP 32(a)(7)(C).

Pursuant to NRAP 28.2, I hereby certify that I have read this motion, 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 motion complies with all applicable Nevada Rules of Appellate Procedure.

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I understand that I may be subject to sanctions in the event that this motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: October 6, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on October 6, 2021, I served the foregoing document on the parties in said case by electronically filing via the Court's e-filing system, as follows:

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