

JERIMY L. KIRSCHNER, ESQ.
Nevada Bar No. 12012
JERIMY KIRSCHNER & ASSOCIATES, PLLC
5550 Painted Mirage Rd., Suite 320
Las Vegas, NV 89149
Telephone: (702) 563-4444
Fax: (702) 563-4445
jerimy@jkirschnerlaw.com

Attorney for Kyla Duckworth

Electronically Filed
Jun 17 2021 04:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT OF NEVADA

In the Matter of the

THE DUCKWORTH FAMILY TRUST

Dated March 12, 2015

Nevada Supreme Court Case # 82314
Case No.: P-20-103183-T
Dept: 26

**OPPOSITION TO RESPONDENT TRUSTEE CARY DUCKWORTH'S MOTION TO
DISMISS APPEAL**

COMES NOW, Appellant Kyla Duckworth ("Appellant"), by and through her attorneys of record, Jeremy Kirschner & Associates, PLLC., and hereby submits this Opposition To Respondent Trustee Cary Duckworth's Motion To Dismiss Appeal ("Motion").

This Opposition is based on the Memorandum of Points and Authorities attached hereto, any exhibits attached hereto, the papers and pleadings filed in this action and any oral argument that will be heard in this matter.

I. INTRODUCTION

Respondent Cary Duckworth ("Respondent") argues the underlying order was interlocutory and the appeal should be dismissed as a result. If the Court agrees that the order was interlocutory, and that Appellant would be free to challenge the factual finding at the upcoming trial, then Appellant would agree that dismissal is appropriate. However, the statutes and caselaw on point

does not make it entirely clear whether the dispositive factual finding found in the order would be final and therefore given conclusive effect. Respondent also asserts the Appellant “admitted” to a fact, which is not only incorrect, but also does not serve as a basis for dismissal.

Therefore, Appellant would request that this Court determine whether the underlying order from which appeal was taken is interlocutory in nature, and if it is determined to be interlocutory, would join in the dismissal request.

II. STATEMENT OF FACTS

1. On September 1, 2020, Respondent sought a determination that Appellant’s conduct violated the No-Contest Clause under the First Amendment to the Trust and a determination that Respondent could ensure that Appellant received no distribution. *See, Exhibit 1 – Reply of Cary Duckworth*¹. There is no mistaking the relief sought by the Respondent:

[Appellant’s] Conduct Violates the No Contest Clauses. *Id.* at Pg. 11

This Response presents a pure question of law for the Court. There is no need for discovery or an evidentiary hearing. The legal analysis is a simple two-step process. . . the Court must determine whether Kyla asserts claims or seeks relief that violate the no-contest provisions and are not otherwise excluded under NRS 163.00195. *Id.* at Pg. 16.

Kyla’s legal actions violates the no-contest provisions in at least four different and independent ways....Kyla is claiming 75 % of George’s interest in the English Probate that would go to George’s Nevada Estate and then transfer to the Trust. *Id.* at Pg 21.

2. The “English Probate” referred the estate opened for Appellant’s mother, Maureen Duckworth (“Maureen”), in England to administer overseas assets (the “English Probate”).

3. The First Amendment to the Duckworth Family Trust² states that any attempt to lay claim to Maureen’s English assets would be deemed a “contest” of the Trust and would result in invocation of the Trust’s no contest clause, specifically:

¹ Exhibits to the Reply are excluded.

² Appellant disputes the validity of the underlying First Amendment to the Duckworth Family Trust and the dispute is the subject of an upcoming trial.

For purposes of the Incontestability provisions of Section 7.02 above, any action commenced in the United Kingdom by a beneficiary of this Trust with respect to property owned there by the deceased Trustor, *MAUREEN D. DUCKWORTH*, *that seeks to have such property (or the proceeds of sale of such property) to be distributed in any manner other than provided for by the intestacy laws of the United Kingdom shall be considered a contest of the provisions of this Trust. Any such action will result in the proponent of such action to no longer be considered a beneficiary of this Trust and shall receive no distribution from this Trust including any distribution of specific assets provided for herein.*

See, Exhibit 2 - First Amendment to the Duckworth Family Trust ¶1, Section 7.05 Addition (emphasis added).

4. On October 6, 2020 the Probate Commissioner's Report and Recommendation set several matters for trial, but also made a crucial factual finding that "[Appellant] hired an English attorney who filed a "Caveat" in the English proceeding³ *and alleged and claimed that [Appellant] was entitled to the English assets.*"⁴ See, Motion, Exhibit A, Finding No. 4 (emphasis added).

5. In making its factual determination, the Probate Court equated the filing of a "Caveat" with making a claim on assets, without ever having seen the caveat or knowing the English law on point.

6. While Appellant did file a caveat in the English Probate, the caveat was not a claim upon assets, instead it acts as a pause on proceedings. The caveat also predated the First Amendment.

7. In the English Probate, Appellant's father George Duckworth ("George") was identified as the personal representative for the English Probate, but as noted in the October 11, 2018 letter:

"[Appellant's] father is aged 94, and due to health issues, he has not handled his own affairs for some time. *There appears to be a serious question as to whether the Deceased's husband has capacity to administer the affairs of the Deceased's estate.*"

³ The English Proceeding refers to the English administration of Maureen Duckworth's estate.

⁴ The English Assets refer to Maureen Duckworth's assets held in England. Maureen Duckworth pre-deceased her husband.

See, Motion, Exhibit B, Page 1 (emphasis added). In reality, Respondent was directing matters at that time and was acting as George's agent under a power of attorney.

8. The English Probate was also opened as an intestacy matter, claiming Maureen did not have a will. *See*, Motion, Exhibit B ("You state that [Appellant's] father is the Personal Representative of [Appellant's] mother's estate under the intestacy rules").

9. Yet, Appellant knew her mother had a Will⁵ and Appellant was proven correct when eighteen months later⁶ Maureen's Will materialized in the Clark County District Court, Cause No: W-20-017475. *See*, **Exhibit 3 – Filed Copy of Maureen Duckworth's Last Will and Testament**.

10. Maureen's Will identified Appellant as one of three personal representatives who were to serve co-currently. *Id.*

11. Although the October 12, 2018 letter cited by Respondent announced an intention to make a potential claim upon Maureen's English assets, no claim upon those assets was ever made in the English Probate. The October 12, 2018 letter also predated the First Amendment to the Trust by several months.

12. No "caveat" of any kind was produced in the underlying litigation, and it goes without saying that there was no "caveat" which made a claim upon assets. Thus, there has been no admission.

III. LEGAL ARGUMENT

An appeal may be taken within 30 days of entry of an order determining heirship or the persons to whom distribution must be made or trust property must pass or distributing property. *See*, NRS 155.190(1)(k), (l); *See also*, Matter of Estate of Miller, 111 Nev. 1, 6, 888 P.2d 433, 436 (1995). "[U]nless appeal is taken within 30 days, an order of the kinds mentioned in NRS 155.190 is not thereafter subject to attack." *See*, Matter of Estate of Miller, 111 Nev. 1, 6, 888 P.2d 433, 436 (1995) (citing, Luria v. Zucker, 87 Nev. 471, 488 P.2d 1159 (1971)). In addition, a trustee or beneficiary may petition the Court regarding: determining the construction of the trust instrument;

⁵ Appellant was not aware of an "English Will" only the will executed under the laws of Nevada.

⁶ After both Maureen and George had passed away.

1 and compelling redress of a breach of the trust; and compelling compliance with the terms of the
2 trust or other applicable law. *See*, NRS 153.031 (1)(b), (m) and (q). “An order entered under the
3 provisions of this chapter, when it becomes final, is conclusive upon all interested persons, whether
4 or not they are competent or in being.” *See*, NRS 153.080.

5 The appealed order sourced to the October 6, 2020 Report and Recommendation broke up a
6 determination of the “no contest clause” into two parts: the first part being a dispositive and
7 controlling factual finding in Finding No. 4; and the second part being a formal announcement of its
8 ruling on the “no contest clause.” The Factual Finding No. 4 effectively adjudicates the second
9 point, making its determination mere window dressing. Unfortunately, the Court’s factual
10 determination sits comfortably under NRS 155.190 and NRS 153.031, which requires Appellant to
11 file an appeal to avoid the order being final, conclusive, and immune from attack thereafter.

12 Respondent’s Motion asserts the underlying Order by the Probate Court is interlocutory in
13 nature and therefore not subject to appeal. Appellant would like and genuinely prefer that the
14 appealed order to be deemed interlocutory in nature so that she could challenge the Court’s earlier
15 factual finding at trial. However, there is not a clear delineation under current law and Appellant
16 cannot risk loss of her right to challenge the erroneous determination if she failed to file this appeal.

17 ///

18 ///

19 ///

1 **IV. CONCLUSION**

2 If it is the determination of this Court that the order was interlocutory, then Appellant would
3 agree that dismissal is appropriate. Given the ambiguity caused by inserting a dispositive factual
4 finding about an unseen foreign document into the order, and preclusive effective given to such an
5 order when it is not appealed, Appellant filed this appeal.

6
7 DATED this 17th day of June 2021

8 JERIMY KIRSCHNER & ASSOCIATES, PLLC

9 /s/Jerimy L. Kirschner, Esq.

10 JERIMY L. KIRSCHNER, ESQ.

11 Nevada Bar No. 12012

12 5550 Painted Mirage Rd., Suite 320

13 Las Vegas, NV 89149

14 Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jerimy Kirschner & Associates, PLLC, and on June 17, 2021, I caused a copy of the foregoing **OPPOSITION TO RESPONDENT TRUSTEE CARY DUCKWORTH'S MOTION TO DISMISS APPEAL** to be served through the electronic court filing system, email, or USPS upon the following persons/entities:

DAWSON AND LORDHAL PLLC

Attn: Elizabeth Brickfield

8925 West Post Road, Suite 210

Las Vegas, Nevada 89148

Email: EBrickfield@dlnevadalaw.com, Mdouglas@dlnevadalaw.com,
KFriedrich@dlnevadalaw.com

Attorney for Trustee Cary Duckworth

JOLLEY URGAL WOODBURY & HOLTHUS

Attn: R. Gardner Jolley

330 S Rampart Blvd #380

Las Vegas, NV 89145

Email: rgj@acjolleyurga.onmicrosoft.com, nt@juwlaw.com

Attorney for Trustee Cary Duckworth

HAYES WAKAYAMA

Attn: Liane Wakayama

4735 S Durango Dr #105

Las Vegas, NV 89147

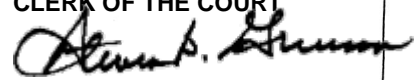
Email: lkw@hwlawnv.com, julia@hwlawnv.com

Attorney for Counter-Petitioner Tara Duckworth

/s/Lindsay Clay

An Employee of JERIMY KIRSCHNER & ASSOCIATES, PLLC

EXHIBIT 1



1 **RPLY**

2 R. Gardner Jolley
3 Nevada Bar No. 266

4 Email: nt@juwlaw.com

5 JOLLEY URG & WOODBURY & HOLTHUS

6 330 S. Rampart Boulevard, Suite 380

7 Las Vegas, Nevada 89145

8 (702) 699-7500 Telephone

9 (702) 699-7555 Facsimile

10 *Attorneys for Trustee*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In the Matter of

) Case No. P-20-103183-T

) Dept No. 26

14 THE DUCKWORTH FAMILY TRUST

)

)

15 Dated March 12, 2015

)

) **Hearing Date: September 11, 2020**

) **Hearing Time: 9:30 a.m.**

16)

17 **REPLY OF CARY DUCKWORTH AS TRUSTEE OF THE DUCKWORTH FAMILY**
18 **TRUST DATED MARCH 12, 2015 TO THE SUPPLEMENT OF KYLA DUCKWORTH**

19 **I. Preface**

20 Ken Burns was the attorney for the Duckworth Trust and the Trustee. Ken died on
21 May 24, 2020 shortly after he had finished preparing the accounting demanded by Kyla.
22 The Trustee was not notified of the death until the early part of June. The Trustee, Cary
23 Duckworth contacted Gardner Jolley to represent he and the Trust. On June 10th Gardner
24 Jolley was advised that Mr. Kirschner was the attorney for Kyla and on January 11th, Mr.
25 Jolley wrote Mr. Kirschner to advise him that the Trustee contacted Mr. Jolley.
26 Unfortunately, Mr. Jolley was unaware that Mr. Kirschner had filed the Petition the day
27 before claiming the accounting was defective. After Mr. Jolley was retained and a
28 Substitution of Attorney was signed and filed, Mr. Jolley learned of the Petition and the

1 hearing scheduled for July 17, 2020. Mr. Jolley mailed Mr. Kirschner a letter advising
2 him that he had received the Petition and asked Mr. Kirschner take off the hearing so they
3 could try to resolve the matter or at least give Mr. Jolley more time by continuing the
4 hearing. Mr. Kirschner did not reply to that letter. Mr. Jolley then contacted the Court to
5 get a continuance which was granted resetting the hearing for August 7, 2020. Mr. Jolley
6 then received an email directed to the Court that was acceptable to Mr. Kirschner. In
7 preparing for the hearing in August and the present hearing, Mr. Jolley discovered that
8 there were other letters to Mr. Kirschner that went unanswered. And despite Mr.
9 Kirschner's statements, counsel hasn't found any document or letter from Mr. Kirschner
10 offering trying to resolve this even though he was aware of the letter sent by Ken Burns to
11 the English attorney on August 14, 2019 asserting that Kyla had violated the contest
12 clauses in the Trust and the Amendments. Mr. Kirschner's response to the letter was to
13 advise Mr. Burns that all further letters directed to Kyla should be sent to him. However
14 there was no response regarding the exercise of the Contest Clauses.
15
16
17
18

19 Counsel only brings up the lack of any negotiation or responses to show that
20 apparently Mr. Kirschner would prefer to litigate this matter then avoid possible violation
21 of the Contest Clauses which could prevent his client from being a beneficiary.

22 II. Introduction

23 Set forth below is a chronology of events that occurred in this matter:

- 24
25 1. George and Maureen executed the Family Trust dated March 12, 2015
26 ("Trust"). Both Maureen and George were named as the original Trustees of
27

1 the revocable Trust and upon Maureen's death on June 6, 2018 George became
2 the sole Trustee. On the death of the Surviving Grantor the Successor Trustee
3 would distribute \$300,000.00 to Cary to equalize the \$300,000.00 Kyla and
4 Tara received from the grandmother before the birth of Cary. The remainder
5 of the Estate would be distributed in equal shares to the three children, Kyla,
6 Tara and Cary.
7

- 8
9 2. In 2017, George and Maureen were living at the Residence and all of the bills
10 were paid from their joint account. The attorney for the parents, their
11 accountant and the other children were aware that the parents were running out
12 of money to support them for the rest of their lives. Maureen had kept her
13 English assets separate from the Trust consisting of a house and several Bank
14 Accounts. On or about May 17, 2017 Diane Short, the accountant for George
15 and Maureen, met with the parents and the two daughters Kyla and Tara. Ms.
16 Short recommended that they not sell any real property nor should they cash in
17 the tax-free bonds which they were using for support which amounted to
18 approximately \$500 a month. Instead Ms. Short recommended that they use
19 the bank accounts that were the separate property of Maureen that were located
20 in England. It was believed that those bank accounts contained approximately
21 \$400,000.00. At that meeting Maureen agreed to use those bank accounts for
22 the support of she and her husband George, **Exhibit H – Affidavit of Diane**
23 **Short**. The accountant and the attorney advised the family that because of the
24
25
26
27
28

1 financial condition of the parents the monies in the English Bank from
2 Accounts should be used to support the parents. After the meeting Kyla who
3 controlled the English Bank Accounts, refused to transfer any of the monies
4 from the Bank Accounts.
5

- 6
7 3. Carrie Hurtik, the attorney who represented the parents and prepared the Trust,
8 sent a letter to the three children dated August 31, 2017 (See **Letter attached**
9 **as Exhibit I**), who had been informed of the refusal to use the English Bank
10 Accounts for the support of the parents. She advised the siblings that it was
11 unwise to use the \$600,000.00 tax-free bonds which would have to be sold at a
12 loss to support the parents. The children were also advised that they would
13 breaching their fiduciary duty by cashing in the bonds since any such decision
14 should be made jointly by all the three children according to the Maureen's
15 Power of Attorney. **Exhibit J – page 2 of the Power of Attorney.** Despite
16 this letter Kyla continued to refuse the use the monies from the English Bank
17 Accounts.
18
19

20
21 Unfortunately, Kyla continued to refuse to transfer the monies to the Trust or
22 the parent's bank accounts. Obviously, Cary and Tara were opposed to Kyla's
23 position and wanted the monies to be transferred from England to care for the
24 parents. Although the Power of Attorney required a joint decision Kyla
25 refused to transfer that money in which apparently, she had been appointed as
26
27

1 a co-signer on those English accounts. The attorney Carrie Hurtik on page 2 of
2 the letter **Exhibit I** stated in Paragraph 4:

3
4 "It has been advised that the funds in England be immediately
5 brought over to stop the bleeding that is currently occurring
6 in overdrafts and improper budgeting of your PARENT'S
7 fund."

8 It was also pointed out that the checking account was over-drawn and the
9 credit card had not been paid (on page 2). The concluding Paragraph on that
10 page stated the following:

11 "This correspondence is to advise you all that anyone who is
12 grossly negligent and is putting their best interest in front of
13 the care of your parents can be held legally responsible for
14 depletion of the funds meant to care for your parents during
15 their lifetime. Since all of you were appointed jointly to
16 make decisions that were for the good of your parents and
17 further tasked with the responsibility to appoint professionals
18 if you could not manage things responsibly. . . ."

19 Kyla continued to demand the bonds be sold at a loss to raise the monies
20 necessary for the parent's support. Kyla in fact called the stockbroker in the
21 firm that held the tax-free bonds and demanded that those bonds be sold,
22 however, George had previously advised the advisor not to make any decisions
23 regarding the sale of the bonds until he had first talked to George or the other
24 two children. Cary got on the phone with a three-way conversation and
25 advised the advisor that George did not want to sell the bonds. Despite this
26 fact several months later it was necessary to sell the bonds simply because they
27 could not get Kyla to agree to transfer monies from the English Bank
28

1 Accounts. George was forced to pay those bills by selling the tax free bonds in
2 the joint stock brokerage account in the Trust which created a loss at the time
3 because it was necessary to sell those bonds. This obviously created a problem
4 in the relationship between Kyla and the family members by her refusal to
5 provide those monies.
6

7
8 4. Kyla, one of the three children of Maureen and George, was caring for her
9 mother while living at the parents' house at, 1829 Corta Bella Drive, Las Vegas,
10 Nevada 89134 ("Corta Bella" or "Residence"), for approximately four and a
11 half years. In January of 2018 Kyla took Maureen to the hospital, but when
12 Maureen was released, instead of contacting the family members, Kyla decided
13 to place Maureen in an assisted facility, Las Ventanas. George, Tara, and Cary
14 wanted her to return home. In June 2018 Maureen died without ever returning
15 home.
16

17
18 5. After Maureen's death, George retained a Probate attorney in England to
19 Probate Maureen's Estate. Maureen had a house and Bank Accounts in
20 England ("Bank Accounts" or "Barclays Account") containing approximately
21 \$350,000.00 which she considered as part of her separate property. Maureen
22 had always told George, the Accountant, the Attorney, and the children that all
23 of the English assets were to be distributed equally among the three children.
24 Kyla had apparently been made a joint signator on the largest account at
25
26

1 Barclays Bank while living at the Residence. (See Declaration of Tara
2 Kassity – Exhibit K).

3
4 6. Kyla hired her own attorney in England who sent a letter dated October 12,
5 2018 (Exhibit L), to George's attorney advising him that Kyla was claiming
6 all of the English assets and there was no Will. George's English attorney
7 advised him that under the intestacy law of England George would receive
8 75% of the Estate and the children would divide 25%.

9
10
11 7. George knew this wasn't what Maureen would want and he was quite upset
12 that Kyla was taking this position. In the Amendments by George (Exhibit
13 M) any interference with the separate property of his wife that would be
14 governed by English Law would create a forfeit of Kyla's interest in the Trust.
15 Unfortunately, the majority of Maureen's funds had been put into a Barclays
16 Account by Kyla whereby she was a sole signature on the account. As a result,
17 George retained Ken Burns to prepare a First Amendment whereby not only
18 was there a No Contest Clause in the Trust (Section 7.02) but also the First
19 Amendment added Section 7.05.

20
21
22
23 The Trust stated that on the death of the Surviving Grantor, the children would
24 each receive 1/3 of the Trust Estate. Because of the problems with Kyla,
25 George hired Ken Burns to prepare the First Amendment on January 23, 2019
26

1 to the Trust pointing out the fact that Kyla had refused to provide that money
2 in the English Bank Account for Maureen's care and for that reason the
3 \$350,000.00 was to be a setoff against her one-third interest in any property
4 that was to be distributed to her from the Trust (**Exhibit M**). Based upon the
5 First Amendment, if the Bank Accounts were not distributed to the Estate in
6 England, this would be considered a forfeit of her interest in the Trust. See
7 also Directive of George as part of **Exhibit M**. Kyla has refused to provide
8 any information to the Estate's English attorneys or to the American attorneys,
9 along with her siblings as to what amount of money was in the Barclays
10 Account, and also refuses to provide a list of personal property that belonged
11 to Maureen that Kyla has in her possession of which would be considered part
12 of the Trust based on Maureen's Will. The Second Amendment, Maureen's
13 Will, and the Trust stated that all personal property was to be delivered to her
14 husband, George as Trustee. See Section 3.01 of the Trust/and Section 3.2 in
15 the Will and Amendments. Kyla's claim to the English assets is a violation of
16 Sections 7.02 and 7.05. Furthermore, in Article Fourth in the Special
17 Directives which is attached to the First Amendment, any refusal to provide
18 information relating to the balance in that account was a result in an
19 "advancement to Kyla of \$350,000.00" from the account in the United
20 Kingdom. Based upon Article Fourth of the Directive that was attached to the
21 First Amendment, Kyla was to receive a fifty percent (50%) interest in the
22
23
24
25
26
27
28

1 Hinson Street property which was to be valued \$144,000.00 and would be
2 considered as part of her one-third (1/3) distribution of the Trust Estate. This
3 is also reflected in Second Amendment which is part of **Exhibit M**.
4
5 These actions on the part of Kyla therefore bring into play the no contest
6 clauses, Secondly, her attorney renewed the "Caveat" challenging the Probate
7 in England (see **Exhibit L, the August 14, 2019 letter from Ken Burns**).
8
9 As reflected in the Inventory filed in George's Estate the only asset was the
10 assets in the United Kingdom, **Exhibit P**. It should be noted the First
11 Amendment and the Second Amendment were attached to the letter. The letter
12 informed Kyla's attorney that the Caveat would be construed as a "contest" of
13 the Trust and would result in her being eliminated as a beneficiary of the Trust.
14 George's English attorney can't close the Estate and distribute 75% of the
15 Estate that would go to George's Probate and then to the Trust. Furthermore,
16 there could be no distribution of the 25% to the three children pursuant to the
17 intestacy law in England. The letter went into the background of Mr. Burns'
18 position concluding that any further actions by Kyla would result her no longer
19 being a beneficiary of the Trust. A copy of that letter was sent to Kyla.
20 Neither the British attorney nor Kyla responded to that letter. Mr. Kirschner
21 who was the Nevada attorney then wrote Mr. Burns that he had received the
22 letter and that any further correspondence to Kyla should go to him (**Exhibit**
23
24
25
26
27
28

1 P). Mr. Kirschner did not respond to that letter as to the allegations made by
2 Mr. Burns that Kyla had violated the No Contest Clause.

3
4 It should be noted in the Supplement filed on August 21, 2020 that Kyla
5 alleged she did not claim the assets in England, yet she provided no
6 information regarding the Bank Accounts or the personal property of which
7 she had in her possession.
8

9 The First Amendment (Exhibit L dated January 23, 2019) also contained
10 language indicating in the Special Directives of George that Kyla would
11 receive subject to the \$350,000.00 advancement, a 1/3 share interest in the
12 Trust, along with the 50% interest in the Hinson Street, Las Vegas, Nevada
13 residence with the property be valued at \$144,000.00 and was to be an
14 advancement on her 1/3 distribution of the residuary Estate.
15
16

17 Because Kyla made a claim in the English Probate and refused to provide
18 information to George's Probate attorney in England, any distribution in
19 England has been prevented or the closing of the Estate as a result of Kyla's
20 conduct. By Kyla making a claim to all of the assets, George was prevented
21 from receiving his 75% interest in the English assets which would go into
22 George's Estate and then be distributed to the Trust. Based upon the above,
23 Kyla based upon the Amendments has forfeited her interest and is no longer a
24 beneficiary of the Trust.
25
26
27
28

1 8. George also executed a Codicil to his Will on January 23, 2019 whereby he
2 removed Kyla as an Executor appointing Cary as the Executor and Tara as the
3 Successor Executor. Ken Burns signed the codicil as a witness and pointed out
4 in the codicil that the witnesses believed George was competent and had the
5 capacity to execute the codicil (**Exhibit N**).
6

7
8 9. Kyla had her attorney file a "Caveat" which also prevented the administration
9 and the closing of the English Estate and continued to renew the Caveat. Until
10 the English Estate was closed, the 75% in the English assets could not be
11 transferred to George who was then living but on his death his Will transferred
12 all assets to the Trust (**Exhibit L**).
13

14
15 10. In March 2019, George requested Ken Burns prepare a Second Amendment to
16 the Trust, reaffirming what was in the First Amendment and referring to the
17 "United Kingdom" as the location of the Bank Accounts (**Exhibit M**).
18

19 **III. Kyla's Conduct Violates the No Contest Clauses**

20 NRS 163.00195 sets forth the Enforcement of the No Contest Clause. Paragraph
21 2. states "a No-contest clause must be construed to carry out the settlor's intent to the
22 extent such intent is clear and unambiguous . . . a beneficiary's share may be reduced or
23 eliminated under a no-contest clause based upon conduct that is set forth by the settlor in
24 the trust."
25
26

1 Such conduct such as Kyla's by refusing to provide information regarding the
2 Barclays Account, what personal property of Maureen was still in Kyla's possession and
3 her English attorney claiming Kyla was entitled to all of the English property, clearly
4 violated the Trust and the Amendments. Ken Burns advised Kyla's attorney in England
5 that she was violating the No Contest Clause with Kyla receiving a copy of that letter
6 (Exhibit L). Kyla's attorney, Mr. Kirschner, also received a copy of the letter from Kyla
7 and then wrote Mr. Burns to advise him to send all letters directly to him (Exhibit Q).
8 None of the three ever responded to Mr. Burns' letter which would lead one to believe
9 that Kyla was not giving up her claim to the English assets.
10

11 Cary as the Successor Trustee has the right to declare that Kyla was no longer a
12 beneficiary of the Trust or have an interest in the English Estate based upon Section 7.02
13 of the Trust and 7.05 of the First Amendment.
14

15 Section 7.02 Incontestability on page 15 of the Trust (Exhibit K) specifically
16 states that where a beneficiary asserts any claim or other right or interest against the
17 Trustor's Estate or properties of this Trust, other than pursuant to the express terms
18 hereof, or directly/indirectly contests, disputes or calls into question, before any of the
19 validity of this Trust Agreement then such beneficiary shall thereby absolutely forfeit any
20 and all beneficiary interest whatsoever (Emphasis added).
21

22 § 7.05 states:
23

24 For purposes of the Incontestability provisions of Section
25 7.02 above, any action commenced in the United Kingdom by
26 a beneficiary of this Trust with respect to property owned
27 there by the deceased Trustor, Maureen D. Duckworth, that
28

1 seeks to have such property (or the proceeds of sale of such
2 property) to be distributed in any manner other than provided
3 for the intestacy laws of the United Kingdom shall be
4 considered a contest of the provisions of this Trust. Any such
5 action will result in the proponent of such action to no longer
6 be considered a beneficiary of this Trust and shall receive no
7 distribution from this Trust including any distribution of
8 specific assets provided for herein (Emphasis added).

9 Second Amendment – The Second Amendment was executed on March 20, 2019.

10 The only reason for the Second Amendment was to point out that the Bank Account
11 question was now in the United Kingdom and reasserting that the \$350,000.00 would be
12 a set off against any inheritance that Kyla may receive as a result of the Trust and also
13 restating that she was to get the Hinson house.

14 In a later portion of this Brief, the capacity of George will be discussed.

15 **IV. Many of the Allegations Made by the Petitioner are not Correct**

16 **A. Kyla's Relationship with George and his Competency**

17 This was also discussed in the letters between the English attorneys which are also
18 discussed later.

19 First of all, numerous witnesses, including the other children will testify that Kyla
20 did not have a good relationship with her father, especially going against the wishes of
21 her father and mother and the other siblings regarding the care of their mother. See
22 Exhibits H, I and K.
23

24 ///

25 ///

1 **B. Kyla Alleges that the \$300,000.00 Gift to Cary is Not Appropriate**

2 Kyla has denied in her Response that she never claimed that Cary got a bigger
3 share of the Estate by the execution of the First Amendment. This simply is not true.
4 Paragraph 12 in the Statement of Facts of the Petition filed by Kyla on June 11, 2020
5 alleged that Cary received a larger part of the Estate. It should be noted that in the Special
6 Directives of Maureen in Paragraph 3.1 of the Trust on page 23, she specifically provided
7 that \$300,000 would immediately be conveyed to Cary since the sisters, Kyla and Tara
8 had received money from their grandmother in that amount before the birth of Cary
9 **(Exhibit 1 Trust pages 21 and 23)**. George put in the same provision in his Special
10 Directives on page 21 of the Trust and the one attached to the First Amendment **(Exhibit**
11 **M)**. To date Cary has no taken the distribution of \$300,000.00 nor has he received any
12 Trustee fees.
13

14 Both Maureen and George stated that this would not be a setoff of Cary's one-
15 third interest but merely an effort to make it equal to what the daughters had received
16 from their grandmother. Kyla has complained about that advancement in the Petition.
17

18 The interest in the residence was an advancement against Cary's share; therefore,
19 Cary was not receiving a larger share of the Trust. Kyla conveniently leaves out the fact
20 that she received the 50% interest in the Hinson residence.
21

22 It was also during this time that Cary was appointed as the Executor of the Estate
23 and also appointed as the Trustee. And the fact is Ken Burns suggested he be appointed
24 Trustee along rather than name Tara because she resided in California and there were
25
26
27
28

1 concerns from the point of view of Mr. Burns about taxes. The Court should keep in mind
2 that Ken Burns worked for the IRS before he started practicing law in Las Vegas.

3
4 **C. Home Appraisals**

5 Kyla also complains that the house appraisal is incorrect. In fact, appraisals were
6 ordered and portions are attached hereto as **Exhibit R**, as to the values to be placed on the
7 properties as of the date of death of Maureen. The appraisals of the Corta Bella and the
8 Hinson house are both attached as **Exhibit R** and consists of 20 pages with the last page
9 reflecting that the appraiser was certified. If the Court wishes to receive the entire
10 appraisals, they will be provided. Counsel recalls that in a recent Probate hearing, the
11 Probate Commissioner refused to use a Zillow appraisal for value of the sale of real
12 property. It was Ken Burns who recommended there be a 20% discount regarding the
13 house values because of the cost of selling those houses. Tara hired the appraisers and
14 Cary had no involvement in the preparation those appraisals (**Exhibit K**).
15
16

17 **D. Competency of George**

18 The Codicil was signed on March 20, 2019 which appointed Cary as the
19 Trustee. If one reviews the English attorney's letters **Exhibit L**, it will be shown that the
20 attorney for George on January 14, 2019 believed George to be competent near to the time
21 that George executed his new Will and Codicil. Obviously, the English attorneys did not
22 feel he was unfit nor did the United States attorney who apparently had discussed the
23 matter with George. Furthermore, Ken Burns, who was a witness to the Codicil stated
24
25
26
27
28

1 that the witnesses believed that George was competent at the time he signed the
2 document.

3
4 **V. Points and Authorities**

5 A. **Introduction** - This Response presents a pure question of law for the
6 Court. There is no need for discovery or an evidentiary hearing. The legal analysis
7 is a simple two-step process. . . the Court must determine whether Kyla asserts claims or
8 seeks relief that violate the no-contest provisions and are not otherwise excluded under
9 NRS 163.00195.
10

11 The Court at the hearing on August 7, 2020, stated that the attorney for Kyla was
12 merely to respond to the claim that Kyla had violated the no-contest clauses. Instead the
13 Supplement contains many other claims that aren't relevant to whether in fact she violated
14 the no-contest clauses. What Kyla is trying to do is to move the issue from herself and
15 attack Cary without having facts in her favor to support her position.
16

17 For instance in the Supplement it is alleged that the Special Directives were a
18 departure from Maureen and George's prior Estate Planning and was an attempt to an end
19 run around Maureen unmistakable intention that concluding that "Maureen did not want
20 her English assets subject to the Trust." The fact is, because of Kyla's conduct, they are
21 now subject to the Trust. At the time of Maureen's death, George was still alive and it
22 was his intention to provide the children each a 1/3 share of the English assets. However,
23 when George's English attorney received the letter from Kyla's attorney dated October
24 12, 2018, it was clear that she was claiming all of the asset in England, obviously, to the
25
26
27
28

1 detriment of the other children. George was still alive and pursuant to English intestacy
2 law would receive 75% of the Estate, which would not have occurred had Kyla cooperated
3 with George in establishing the English Trust and then closing it.
4

5 Kyla then complains on page 11 of her Supplement that Cary took advantage of
6 George while living in the Residence by spending money which benefited him while he
7 was living in the house. The fact is George was still alive and there was no one who had
8 stated other than Kyla that he lacked capacity and it was George who had the right as the
9 Trustor to allow Cary to pay bills that included Cary since Cary was living at the house.
10 Interesting enough, the Supplement states that the monies were used from the Trust to pay
11 the utilities, the pest control and two homeowner associations, yet the majority of these
12 were expenses relating to the Corta Bella house where George resided with Cary. Tara
13 has stated in her Declaration that George wanted Cary to have the house so it would
14 benefit George's grandchildren and had intended in doing that for a long time (**Exhibit**
15 **K**). Any additional expenses that Cary had were considered as a loan which would be an
16 advancement from his share of the Estate.
17
18
19

20 On page 11, line 17, Kyla then attacks Carrie Hurtik, the attorney who drew up the
21 Trust that was executed on March 15, 2015. It is clear from her letters that she was siding
22 with Cary and Tara regarding Kyla's conduct and in fact was doing so since Carrie Hurtik
23 believed was for the benefit of George and would carry out the terms of the Trust whereby
24 the assets would be divided among the three children upon the death of George.
25
26
27
28

1 Kyla also claims that Ms. Hurtik was not the attorney for George and Maureen but
2 instead was the attorney for Cary and Tara. Kyla refers to the August 27th letter from Ms.
3 Hurtik supporting that position but that instead was the attorney's position that the English
4 Bank Account should be used to support George and Maureen knowing full well that if
5 those bonds were sold at a loss, George and Maureen would lose the \$500.00 a month
6 payment they were receiving from those bonds.
7

8
9 **VI. Legal Analysis**

10 George and Maureen intended to give the Trustee broad discretion with little
11 room for second-guessing by the beneficiaries or a court. He did this by lowering the
12 Trustees' applicable standard of care to one of bad faith.
13

14 **A. Nevada Law Requires Enforcement of No-Contest Provisions to Carry**
15 **Out the Settlor's Intent** - In Nevada, a no-contest clause "must be enforced by the
16 court." NRS 163.00195(1). With a few narrow exceptions, addressed below, "a
17 beneficiary's share may be reduced or eliminated under a no-contest clause based upon
18 conduct that is set forth by the settlor in the trust." *Id.* at (2). Nevada law is not unique.
19 The majority of states hold that "no-contest clauses are not only valid but also favored as
20 a matter of public policy - because they discourage litigation and give effect to the
21 purposes expressed by the testator or trustor." *Colburn v. N. Trust Co.*, 151 Cal. App. 4th
22 439,447, 59 Cal. Rptr. 3d 828, 834 (2007); see also *Burch v. George*, 7 Cal. 4th 246, 255,
23 866 P.2d 92, 97 (1994), superseded by statute on other grounds as stated in *Meyer v.*
24 *Meyer*, 162 Cal. App. 4th 983, 990, 76 Cal. Rptr. 3d 546, 552 (Cal. Ct. App. 2008), ("[I]t
25
26
27
28

1 is the testator's intentions that control, and a court must not rewrite the testator's will in
2 such a way as to immunize legal proceedings plainly intended to frustrate the testator's
3 unequivocally expressed intent from the reach of the no-contest clause.") (internal
4 quotations omitted).

6 **B. The Attempt to Impose Liability on the Trustees Based on a Lesser**
7 **Standard Violates the No-Contest Provisions as set forth in Section 6.03 of the**
8 **Trust.** George and Maureen intended to give the Trustee broad discretion with little
9 room for second-guessing by the beneficiaries or a court. They did this by lowering the
10 Trustees' applicable standard of care to one of bad faith misconduct. *Id.* at 4 and 6.

12 In every pleading, Kyla asserts claims that the Trustee has breached his legal
13 duties. In each such pleading, they seek to hold the Trustees responsible for ordinary
14 breaches of fiduciary duty. Their pleadings, however, make no mention of the applicable
15 standard of care, bad faith. Instead, they seek to hold the Trustees to a higher standard.
16 For example, Kyla alleges that the Trustee has acted improperly for his own benefit. The
17 First and Second Amendments which the Trustee has relied upon were discussed with
18 George and prepared and executed by Ken Burns. Therefore, Kyla has not shown that
19 Cary is guilty of a breach of any duty of due care in the administration of trust assets.

22 **C. Statement of Relevant Factual Background**

24 1. **Section 6.03 Judgment and Discretion.** Similarly, the Trust
25 provides the Trustees with broad liability protection, limiting such claims to bad faith:

1 In the absence of proof of bad faith . . . all questions of construction or
2 interpretation of any trusts created by this Trust Agreement will be finally and
3 conclusively determined solely by the Trustee, according to the Trustee's best judgment
4 and without recourse to any court, and each determination by its Trustee is binding on the
5 beneficiaries and prospective beneficiaries hereunder. . . Each determination may be
6 relied upon to the same extent as if it were a final and binding judicial determination. *See*
7 *Humane Soc'y v. First Nat'l Bank of Nevada*, 92 Nev. 474, 553 P.2d 963 (1976) (citing
8 Restatement (Third) of Trusts § 87 (2007)). It was the Trustee's duty to carry out the
9 intentions of George as the surviving Grantor, *Dahlgren v. First Nat'l Bank of Nevada*,
10 94 Nev. 387 (1978) and treat the beneficiaries equally. Restatement (Third) of Trusts, §
11 79 (2007). Furthermore, the Trustee has an obligation to preserve and protect trust
12 assets. *In the Matter of the Estate of Bowlds*, 120 Nev. 990, 999, 102 P. 3d 593 (2004);
13 *Bank of Nevada v. Speirs*, 95 Nev. 870, 603 P.2d 1074 (1979); *Anselmo v. Guasto*, 13
14 S.W.2d 650, 653-4 (Mo. App. 1999); Scott, *The Law of Trusts*, § 18.1.24 (5th ed. 2007).
15 See also, *In re Gross' Estate*, 216 Cal.App.2D 563.

16 Nevada courts follow the general rule with respect to review of actions taken in a
17 Trustee's discretion: "Where discretion is conferred upon the Trustee with respect to the
18 exercise of a power, its exercise is not subject to control by the court, except to prevent
19 an abuse by the Trustee of his discretion." *See Humane Society v. First National Bank of*
20 *Nevada*, 92, Nev. 474, 553 P.2d 963 (1976) (citing California cases and the Restatement
21 (Third) of Trusts § 87) (2007).

1 The Supplement first alleges that Cary violated his fiduciary duty as Trustee,
2 however they cite *In re Tiffany Living Trust* 2001124 Nev. 74 (2008) 177 P.3d 1060
3 where it was alleged the attorney violated his duty to his client by conveying a house to
4 his partner in the law firm. The second case *Executive Mgmt. v. Ticor Title Ins. Co.* 114
5 Nev. 823, 962 P2d 465 (1998) involved a question whether the title company owed a
6 fiduciary duty to the seller. So both cases are not applicable to a Trustee.
7

8 Then the claim is that George was under the undue influence of Cary. The burden
9 of proof is on the claimant and they failed to present evidence that Cary influenced
10 George in the execution of the two Amendments. As stated earlier numerous attorneys
11 have all stated that George had the capacity and was competent at the time when he
12 executed the documents. The contestant must show affirmatively and by the
13 preponderance of evidence that the testator was of unsound mind at time he executed the
14 document. *In re Lingenfelter's Estate*, 38 Cal.2d 571 (1952) 241 P.2d 990 (1952). The
15 burden of proof regarding undue influence is on the contesting party. *In re Estate of*
16 *Bethurem*, 129 Nev. 869 (2013) 313 P.3d 237, 129 Nev. Adv. Op. 92.
17
18
19

20 D. Kyla's legal actions violates the no-contest provisions in at least four
21 different and independent ways:

- 22 a. Kyla is claiming 75 % of George's interest in the English Probate
23 that would go to George's Nevada Estate and then transfer to the Trust.
24
25
26
27
28

1 b. Kyla has refused to provide information regarding the English Bank
2 Accounts and refuses to provide any information regarding any personal
3 proper such as jewelry that she has in her possession.
4

5 c. Her conduct has prevented the filing of an Inventory for the English
6 Estate and prevented the Estate from determining what the English taxes
7 will be on the assets.
8

9 d. She has challenged Cary's conduct in acting as Trustee and
10 demanding his removal even though his administration has always been in
11 accordance of the provisions of the Trust.
12

13 e. She has challenged the validity of the First and Second Amendments
14 alleging that George did not have the mental capacity to execute those
15 documents and that Cary unduly influenced George into executing those
16 documents. This is despite the fact that Ken Burns prepared the documents
17 and met with George regarding the execution of those documents and stated
18 that George was competent and that he intended to set out the terms set
19 forth in the Amendments.
20

21 Any one of these violations would support a finding to remove her as a
22 beneficiary. Moreover, once triggered, there is no opportunity to cure the breach. In
23 other words, they cannot "un-ring" the bell by dismissing the lawsuit or amending their
24 petitions to remove the offending claims/allegations. Allowing such corrective action
25 would defeat the purpose of the no-contest clause by permitting the challenger to thwart
26

consequences of the no-contest clause after exposing the trust or estate to litigation costs. *Schwartz v. Schwartz*, 167 Cal. App. 4th 733, 745, 84 Cal. Rptr. 3d 387, 397 (2008); *see also In re Fuller's Estate*, 143 Cal. App. 2d 820, 824 (1956) (holding that the commencement of the contest violated the no-contest clause, (i.e., the English claims) regardless of its subsequent withdrawal, and stating that "[n]o artificial distinctions are to be taken advantage of or quibbling indulged in to the end that a person plainly and palpably coming within the scope of the forfeiture clause may by 'some hook or crook' escape the penalty of forfeiture"); *Restatement (Third) of Property (Wills & Don. Trans.)* § 8.5 (2003) ("In the absence of specific language to the contrary, the [no-contest] clause should be construed to be violated regardless of whether the action is subsequently withdrawn immediately after its institution, prior to a hearing, at the trial, or at any time thereafter.").

E. The Attempt to Remove the Trustees Violates the No-Contest Provisions.

Under similar factual circumstances, a California Appellate Court affirmed the lower court's judgment- holding that the beneficiaries' petition to remove the trustees for malfeasance would violate, and thus trigger, the trust's no-contest clause. *Hermanson v. Hermanson*, 108 Cal. App. 4th 441, 446 (2003).

F. The Attempt to Interfere with the Trustees' Authority to Manage the Trust Assets Violates the No-Contest Provisions - As outlined above, George and Maureen intended to provide broad authority to the Trustee to act without any court

1 oversight or interference in connection with the administration of the Trust. They did this
2 by giving the Trustee broad powers. Maureen in Section 3.2 of her Will gave all her
3 assets to the Trust save and except the English assets stating together with any additions
4 or amendments. . . I direct that such Trust Agreement shall not be administered under
5 Court supervision, control or accounting. . . George had the same provision in his Will.
6

7 **G. REMOVAL OF TRUSTEE**

8 Cary Duckworth was chosen by the Trustor, George Duckworth to replace him
9 after George decided to resign. Courts are reluctant to remove a Trustee who was
10 appointed by a Trustor. The discussions within this Reply make it clear that Cary did not
11 violate any fiduciary duty, didn't fraudulently advise George about the administration of
12 the Trust or Kyla's conduct. Based on the Trust provisions, there is no basis to support
13 his removal as the Trustee. The Court should keep in mind that the sister, Tara is the
14 Successor Trustee who supports Cary's position in this matter and that Cary acted
15 appropriately. (See Exhibit K – the Declaration of Tara Kassity). In addition she
16 joined in the Opposition to Kyla's Petition and other than Cary and Kyla only other
17 beneficiary of the Trust and an heir of the English Estate.
18
19
20

21 **H. NRS 163.00195(3)(a), (b), (c) and (4) provide four exceptions to enforcing**
22 **a no-contest clause. The four exceptions are as follows: (3) Notwithstanding any**
23 **provision to the contrary in the trust, a beneficiary's share must not be reduced or**
24 **eliminated if the beneficiary *seeks only to:***
25
26
27
28

- a) *Enforce the terms of the trust*, any document referenced in or affected by the trust, or any other trust-related instrument;
- b) *Enforce the beneficiary's legal rights* related to the trust, any document referenced in or affected by the trust, or any trust-related instrument; or
- c) *Obtain a court ruling with respect to the construction or legal effect of the trust*, any document referenced in or affected by the trust, or any other trust-related instrument.

(4) Notwithstanding any provision to the contrary in the Trust, a beneficiary's share must not be reduced or eliminated under a no-contest clause in a trust because the beneficiary institutes legal action *seeking to invalidate a trust, any document referenced in or affected by the trust, or any other trust-related instrument if the legal action is instituted in good faith and based on probable cause* that would have led a reasonable person, properly informed and advised, to conclude that the trust, any document referenced in or affected by the trust, or other trust-related instrument *is invalid*. Ken Burns in signing the Codicil to the Will stated that George was competent (Exhibit N). Ken Burns at the time he prepared additional documents prepared a memorandum dated January 24, 2019 stating that he discussed in detail George's intent in executing the First Amendment. Mr. Burns stated that he was competent to do so and the only limitation he had was his eyesight. The attorney for the Trustee is concerned if the document is produced it could possibly be determined that it waives the attorney client privilege. The fact is if Ken Burns were alive the Court would allow him to testify

1 as to George's competency and medical condition but unfortunately Ken Burns is
2 deceased. Trustee's counsel believes that since a video tape would be admissible and
3 evidence without violating the attorney client privilege the same would hold true for a
4 memorandum from the attorney. If the Court request copies it will be provided to the
5 Court for review solely by the Judge who could then determine whether it should be
6 produced without the violation of the privilege.
7

8
9 **I. Cary as Trustee Has A Duty To Carry Out The Intent Of The Trustors**
10 **George.** A beneficiary of a trust is entitled to nothing more than having the Grantor's
11 intentions followed and the express terms of the trust given effect. Continental Bank and
12 Trust Co. v. Country Club Mobile Estates, Ltd., 632 P.2d 869, 872 (Utah 1981). The
13 intent of a testator or a trustor must be carried out according to the terms and provisions of
14 the governing document. It was the Trustee's duty to carry out the intentions of George as
15 the Surviving Grantor. (Dahlgren v. First Nat'l Bank of Nevada, 94 Nev. 387, (1978).
16 Restatement (Third) of Trusts, §79 (2007)). Furthermore, The Trustee has an obligation
17 to preserve and protect trust assets. In the Matter of the Estate of Bowlds, 120 Nev. 990,
18 999, 102 P.3d 593 (2004); Bank of Nevada v. Speirs, 95 Nev. 870, 603 P.2d 1074 (1979);
19 Anselmo v. Guasto, 13 S.W.3d 650, 653-4 (Mo. Ct. App. 1999); Scott, The Law of Trusts,
20 § 79 (5th ed. 2007).
21
22

23
24 **J. The Trust Is Entitled To Be Awarded Attorney's Fees In Opposing**
25 **This Case.** It is well-established that a trustee is entitled to payment from the trust of
26 all of its proper expenses, including reasonable attorney's fees and costs incurred in
27

1 administering, preserving, and protecting trust property. See, Klinkerfuss v. Cronin, 199
2 S.W.3d 831, 844 (Mo. Ct. App. 2006); Ingalls v. Hare, 96 So. 2d 266, 273 (Ala. 1957).

3
4 Moreover, given a trustee's duty to protect and preserve trust assets, Cary
5 appropriately seeks to have the Trust reimbursed for the attorney's fees incurred in
6 defending against the Petition of Kyla. Indeed, courts have charged a beneficiary's share
7 of trust assets with the trustee's attorney's fees under the appropriate circumstances: As
8 stated in Conley v. Waite, 25 P.2d 496, 496-97 (Cal. Ct. App. 1933):
9

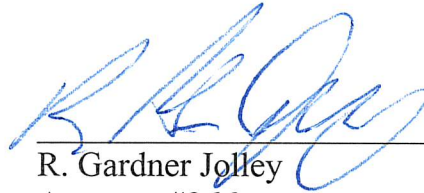
10 The rule of law applicable to the question is that
11 a trustee is entitled to reimbursement of all
12 expenses actually and properly incurred by him
13 in the performance of his trust . . . but when an
14 unfounded suit is brought against him by the
15 cestui que trust, attorney's fees may be allowed
16 him in defending the action and may be made a
17 charge against the interest in the estate of the
18 party causing the litigation.

19
20 See also NRS 18.010(2)(b); EDCR 7.60; Estate of Ivey, 28 Cal. Rptr. 2d 16, 21
21 (Cal. Ct. App. 1994) (reasoning that "a probate court has equitable power to charge one
22 beneficiary's share of a trust for frivolous litigation against the trust"); In re Bishop's
23 Will, 98 N.Y.S.2d 69, 76 (N.Y. App. Div. 1950) (holding that legal fees incurred by
24 trustee are properly charged against the beneficiaries who brought the unsuccessful
25 action); Klinkerfuss v. Cronin, 199 S.W.3d 831, 841 (Mo. Ct. App. 2006) ("When one of
26 several beneficiaries brings essentially groundless and unsuccessful litigation against a
27 trustee the purpose of which was to benefit only himself, no reason suggests itself why the
28

1 other beneficiaries, who did not join with him, sought no relief and had no voice in the
2 conduct of the case, should share the expense with the initiating beneficiary.”).

3
4 DATED this 1st day of September, 2020.

5 JOLLEY URGAL WOODBURY & HOLTHUS


6
7
8
9 

R. Gardner Jolley
Attorney #266
330 S. Rampart Boulevard, Suite 380
Las Vegas, Nevada 89145

VERIFICATION

I, Cary Duckworth, declare under penalty of perjury of the State of Nevada that he is the Trustee of the Duckworth Family Trust, dated March 12, 2015 in the above matter; he has read the foregoing Reply of Cary Duckworth as Trustee of The Duckworth Family Trust Dated March 12, 2015 to the Supplement of Kyla Duckworth, knows the contents therein, and the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

DATED this 1st of September, 2020.


Cary Duckworth

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am employed in the County of Clark, State of Nevada, am
3 over the age of 18 years and not a party to this action. My business address is Jolley Urga
4 Woodbury & Holthus, 330 S. Rampart Boulevard, Suite 380, Las Vegas, Nevada, 89145.
5

6 On this day I served the Reply of Cary Duckworth as Trustee of the Duckworth
7 Family Trust Dated March 12, 2015 to the Supplement of Kyla Duckworth in this action
8 or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve
9 system, which will cause this document to be served upon the following counsel of
10 record:
11

12 Jerimy L. Kirschner, Esq.
13 JERIMY KIRSCHNER & ASSOCIATES, PLLC
14 5550 Painted Mirage Road, Suite 320
15 Las Vegas, Nevada 89149
16 *Attorney for Kyla Duckworth*

17 I certify under penalty of perjury that the foregoing is true and correct, and that I
18 executed this Certificate of Service on September 1, 2020, at Las Vegas, Nevada.
19

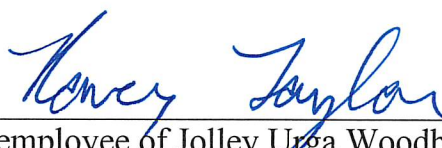
20 
21 An employee of Jolley Urga Woodbury & Holthus
22
23
24
25
26
27
28

EXHIBIT 2

**FIRST AMENDMENT
TO THE “DUCKWORTH FAMILY TRUST”
(DATED MARCH 12, 2015)
BETWEEN
GEORGE M. DUCKWORTH
(SURVIVING TRUSTOR)
AND
GEORGE M. DUCKWORTH
(SURVIVING TRUSTEE)**

* * *

In exercise of the rights reserved to the Surviving Grantor under ARTICLE ONE, Section 1.08 of the “DUCKWORTH FAMILY TRUST” dated March 12, 2015, I hereby amend said Trust Agreement, effective for all purposes from and after the time of execution of this instrument, in the following respects:

1. I hereby add Section 7.05 to ARTICLE SEVEN as follows:

Section 7.05 United Kingdom Contest

For purposes of the Incontestability provisions of Section 7.02 above, any action commenced in the United Kingdom by a beneficiary of this Trust with respect to property owned there by the deceased Trustor, MAUREEN D. DUCKWORTH, that seeks to have such property (or the proceeds of sale of such property) to be distributed in any manner other than provided for by the intestacy laws of the United Kingdom shall be considered a contest of the provisions of this Trust. Any such action will result in the proponent of such action to no longer be considered a beneficiary of this Trust and shall receive no distribution from this Trust including any distribution of specific assets provided for herein.

2. I hereby revise Section 9.01 of ARTICLE NINE to read as follows:



Section 9.01 Trustees.

All Trustees are to serve without bond. The following will act as Trustees of any Trusts created by this Trust Agreement, in the following order of succession:

- First: The undersigned, GEORGE M. DUCKWORTH, the surviving Trustee;
- Second: At the death, incapacity or resignation of GEORGE M. DUCKWORTH, CARY J. DUCKWORTH as my Successor Trustee;
- Third: If Cary J. Duckworth should be unable or unwilling to act or to continue to act as Successor Trustee, then TARA E. KASSITY shall act as Second Successor Trustee;
- Fourth: If Tara E. Kassity should be unable or unwilling to act or to continue to act as Successor Trustee, then KYLA M. DUCKWORTH shall act as Third Successor Trustee;

3. I hereby revise Section 9.03 of ARTICLE NINE to read as follows:

Section 9.03 Personal Property Distribution

Notwithstanding any provision of this Trust Agreement to the contrary, the Trustee must abide by any memorandum by the Trustor, particularly that contained in the section entitled "Special Directives" incorporated into this Trust Instrument, directing the disposition of Trust Assets of every kind, including, but not limited to, furniture, appliances, furnishings, pictures, artwork, china, silverware, glass, books, jewelry, wearing apparel, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property.

Any other personal and household effects of Trustor shall be distributed as my Successor Trustee shall determine in his or her absolute discretion, the exercise of which shall not be subject to review or, in the alternative, if there is any attempt to challenge the exercise of such discretion, all items of personal property not disposed of by a memorandum shall be distributed to CARY J. DUCKWORTH, if living or, if not living, to TARA E. KASSITY.

4. I hereby revise the Special Directives of George M. Duckworth to read as follows:

**SPECIAL DIRECTIVES
OF
GEORGE M. DUCKWORTH**

I, GEORGE M. DUCKWORTH, a resident of Clark County, State of Nevada, being of lawful age, sound and disposing mind and memory, and not acting under duress, fraud or undue influence, hereby make, publish and declare this to be my Special Directive, and I incorporate this into THE DUCKWORTH FAMILY TRUST.

FIRST

I declare that the natural objects of my affection are:

- 1) My daughter - TARA ELYZE KASSITY;
- 2) My daughter - KYLA MICHELE DUCKWORTH; and
- 3) My son - CARY JAY DUCKWORTH.

All references in this agreement to “my children” are references to these children. References to “my descendants” are to my children and their descendants. I specifically omit Diane Varney and any of her “issue,” including but not limited to Shane P. Varney and Beau J. Varney, from receiving any assets from my estate.

SECOND

I direct that all estate and inheritance taxes payable as a result of my death, not limited to taxes assessed on property, shall be paid out of the residue of my Estate, and shall not be deducted or collected from any Legatee, Devisee or Beneficiary hereunder.

THIRD

My late wife MAUREEN and I both desired to treat our children equally and provided for our son to receive the sum of Three Hundred Thousand Dollars (\$300,000) to compensate for inheritance received by our two (2) daughters from their grandmother, EVELYN RICH, since our son was not born at the time her provisions were made and he did not share in the inheritance from his grandmother. I intend to transfer my residence at 1829 Corta Bella Drive, Las Vegas, Nevada 89134 to CARY J. DUCKWORTH contemporaneous with the execution of this amendment. The residence was appraised at a fair market value of \$598,000 as of June 16, 2018. For purposes of this distribution to CARY, he shall be considered to have received a distribution of 80% of the fair market value to account for selling costs, etc., for a total distribution of \$478,400 to CARY with \$300,000 to be treated as the equalizing distribution for our daughters receiving the inheritance from their grandmother and \$178,400 shall be treated as an advancement of his one-third distribution of the residuary estate. Further, it is my intent to give all

household furnishings to CARY contemporaneous with the transfer of the residence, but the transfer of such furnishings shall not be considered an advancement and his share shall not be reduced by the value of such items.

FOURTH

My daughter KYLA is to receive the one-half interest in the residence located at 1627 Hinson Street, Las Vegas, NV 89102, (in which this Trust has a 50% interest) which was appraised of a total value of \$360,000 on June 16, 2018, with the trust's one-half interest being \$180,000. For purposes of the distribution to KYLA will be valued at 80% of the fair market value with a resulting value for distribution purposes of \$144,000 and to be part of her one-third distribution of the residuary estate.

Further, KYLA was made a co-signatory on certain bank or financial accounts in the United Kingdom belonging as separate property of my late wife, MAUREEN. To the extent these accounts were transferred to KYLA following MAUREEN's death, such amounts shall be treated as an advancement toward her one-third share of the residuary. KYLA will need to provide the Trustee with account balance received by her and the failure of KYLA to provide evidence through account statements or other documentation, KYLA will be treated as having received an advancement of \$350,000 from the account in the United Kingdom.

Further, the accounts that KYLA receives in the United Kingdom may be subject to estate, death or inheritance taxes in the United Kingdom and any such tax required to be paid by MAUREEN's estate in the United Kingdom with respect to those accounts shall be considered an advancement toward her one-third share of the residuary.

FIFTH

5.1 Upon my death (my wife having predeceased me) and subject to accounting for the advancements set forth above and the distribution of the two properties to CARY and KYLA, the remainder of my estate shall be split equally between my three children:

TARA ELYZE KASSITY
KYLA MICHELE DUCKWORTH
CARY JAY DUCKWORTH

Subject, however, to the Incontestability provisions of Sections 7.02 and 7.05, the violation of which shall eliminate such beneficiary from sharing in this Trust.

- a) If a child or grandchild is not named they shall receive nothing from my estate. My grandchildren are as follows:

OLIVIA DUCKWORTH
ASHLEY DUCKWORTH
LAUREN KASSITY
CHASE KASSITY

- b) Should TARA ELYZE KASSITY predecease me then TARA ELYZE KASSITY's share of my estate shall pass equally to my grandchildren as listed below. If a child or grandchild is not named they shall receive nothing from TARA ELYZE KASSITY's share of my estate.

LAUREN KASSITY
CHASE KASSITY

- c) Should KYLA MICHELE DUCKWORTH predecease me then KYLA MICHELE DUCKWORTH's portion of my estate shall pass to my grandchildren as listed below. If a child or grandchild is not named they shall receive nothing from KYLA MICHELE DUCKWORTH's portion of my estate.

OLIVIA DUCKWORTH
ASHLEY DUCKWORTH
LAUREN KASSITY
CHASE KASSITY

- d) Should CARY JAY DUCKWORTH predecease me then CARY JAY DUCKWORTH's portion of my estate shall pass equally to my grandchildren as listed below. If a child or grandchild is not named they shall receive nothing from CARY JAY DUCKWORTH's portion of my estate.

OLIVIA DUCKWORTH
ASHLEY DUCKWORTH

- e) The inheritance that these grandchildren receive will be managed by RACHEL L. SHELSTAD, who shall be appointed as Trustee of the "grandchildren's trust" should their parents predecease me. The grandchildren shall not receive any inheritance until they attain the age of twenty-five years (25) old.

...

...

IN WITNESS WHEREOF, the Surviving Trustor and the Surviving Trustees has executed this First Amendment to the Trust Agreement on this 23rd day of January, 2019.

G. Duckworth
GEORGE M. DUCKWORTH, Surviving
Trustor & Surviving Trustee

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On January 23, 2019, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GEORGE M. DUCKWORTH, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Lynn H. Warren
Notary Public in and for said County and
State

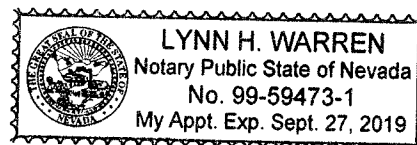


EXHIBIT 3

W-20-017475

FILED

JAN 2 2020

Sharon A. Glin
CLERK OF COURT

LAST WILL AND TESTAMENT
OF
MAUREEN DAPHNE DUCKWORTH

I, MAUREEN DAPHNE DUCKWORTH, a resident of Clark County, Nevada, make, publish and declare this to be my Last Will and Testament. I hereby revoke all of my prior wills and codicils.

ARTICLE ONE

Declarations

1.1 **Marital Status and Family.** I am married to GEORGE M. DUCKWORTH, and we are now residing together. I have three (3) children whose names are:

- 1) TARA ELYZE KASSITY, date of birth September 29, 1967;
- 2) KYLA MICHELLE DUCKWORTH, date of birth November 8, 1968;
- 3) CARY JAY DUCKWORTH, date of birth April 29, 1974.

I have no other children living or deceased. I do not intend to provide in this Will for anyone except as may be specifically set forth in this Will.

1.2 **Trust Agreement.** The term "TRUST AGREEMENT" as used in this Will shall refer to that certain unrecorded trust instrument known as THE DUCKWORTH FAMILY TRUST, previously created by me. Any of my sole and separate property will be specifically excluded from the above-referenced trust.

ARTICLE TWO

Fiduciaries

I nominate TARA E. KASSITY, KYLA M. DUCKWORTH and CARY J. DUCKWORTH, as Co-Executors of my Will. If any of these individuals shall fail to qualify or shall cease to act, the remaining individuals will continue to act as my co-executors.

The term "my Executor" as used in this Will shall include any personal representative of my estate and all named Executors shall serve without bond being required.

ARTICLE THREE

Distribution of Estate

Payment of Estate Expenses. My Co-Executors shall pay from my estate, after consulting with the then-acting Trustee or Trustees of THE DUCKWORTH

dlp
Initials

RECEIVED
JAN 23 2020
CLERK OF THE COURT

FAMILY TRUST, all debts which are due and enforceable against my estate, the expenses of my last illness and funeral, the expenses of administering my estate, and all death taxes and governmental charges imposed and made payable under the laws of the United States or of any state or country by reason of my death. Such taxes shall include taxes imposed upon all other property, whether passing under my Will or otherwise; provided that the assets, if any, over which I hold any taxable power of appointment at my death shall bear the entire increment and the burden of death taxes and other governmental charges to the extent that the total of such taxes and charges is greater than would have been imposed and made payable if I did not hold such a power of appointment, to the extent required by law, I exercise such power of appointment in favor of the appropriate taxing authorities to discharge such taxes. Other than the above direction for the taxation of a power of appointment, the pro-ration of taxes imposed upon my estate shall be in the manner directed in said Trust.

If my residuary estate is insufficient for such payments, in whole or in part, or if, in the discretion of my Executor, all or a part of such payments from my estate would prejudice the best interests of my estate, then my Executor shall direct the then-acting Trustee or Trustees of said Trust to pay the appropriate amounts, either directly or to my Executor for such purposes.

- 3.2 **Gift to Trust.** I give, devise, and bequeath the remainder of my estate, with the exception of my sole and separate property, to the then-acting Trustee or Trustees of THE DUCKWORTH FAMILY TRUST, together with any additions or amendments thereto, to be added to the principal of that trust and to be held, administered and distributed under the Trust Agreement and any amendments to such Trust Agreement. I direct that such Trust Agreement shall not be administered under court supervision, control or accounting, and the Trustee shall not be required to give bond in such capacity.

ARTICLE FOUR

Estate Administration

- 4.1 **General Powers of Executor.** Subject to any limitations stated elsewhere in this Will, my Executor shall have, in addition to all of the powers now or hereafter conferred on Executors by law, and any powers enumerated elsewhere in this Will, the power to perform any of the acts specified in this section without the necessity of court approval:
- A. To take possession or control of all of my Estate subject to disposition by this Will, and to collect all debts due to me or to my Estate;
 - B. To receive the rents, issues and profits from all real and personal property in my Estate until the Estate is settled or delivered over by order of court to my heirs or beneficiaries;

- C. To pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, all property in my Estate;
- D. To insure the property of my Estate against damage or loss, and insure the Personal Representative against liability to third persons;
- E. To deposit money belonging to my Estate in an insured account in a financial institution in Nevada;
- F. If any asset of my Estate consists of an option right, to exercise the option and to use any funds or property in my Estate to acquire the property covered by the option;
- G. To hold any securities or other property, both real and personal, in the name of the Executor, in the name of such nominee as my Executor shall select, or in the form of "street certificates," without in any of such cases disclosing the fact that such property is held in a fiduciary capacity, and to indemnify any such nominee against any loss resulting from holding such property as nominee;
- H. To vote in person, and give proxies to exercise, any voting rights with respect to any stock, any membership in a nonprofit corporation, or any other property in my Estate, and waive notice of a meeting, give consent to the holding of a meeting, and authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners;
- I. To make any elections permitted under any pension, profit sharing, employee stock ownership or other benefit plan;
- J. To sell and to grant options to purchase all or any part of my estate, both real and personal, at any time, at public or private sale, for such consideration, whether or not the highest possible consideration, and upon such terms, including credit, as the Executor shall deem advisable, and to execute, acknowledge and deliver deeds or other instruments in connection therewith. No purchaser shall be held to see the application of the purchase money;
- K. To lease any real estate for such term or terms and upon such provisions and conditions as the Executor shall deem advisable, including the granting of options to renew, options to extend the term or terms, and options to purchase;
- L. To borrow and to pledge or mortgage any property as collateral, and to make secured or unsecured loans. The Executor is specifically authorized to make loans without interest to any beneficiary hereunder. No

individual or entity loaning property to the Executor shall be held to see to the application of such property;

- M. To pay any and all charges reasonably incurred in connection with or incidental to the distribution of any property of my Estate, including but not limited to expenses of storage, freight, shipping, delivery, packing, and insurance; and on any accounting, treat any such expenditures as expenses of the administration of my Estate;
- N. To dispose of or abandon tangible personal property (including donation to any charitable organization or organizations of the Executor's choice), except tangible personal property that is a specific gift, when the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value;
- O. To commence and prosecute, either individually or jointly with my heirs or beneficiaries, any action necessary or proper to quiet title to or recover possession of any real or personal property in my Estate;
- P. To pay, compromise or settle any claim, action, or proceeding by or for the benefit of, or against, me, my Estate, or the Executor, subject only to any confirmation of court that may be required by law; and
- Q. To employ others in connection with the administration of my Estate, including legal counsel, investment advisors, brokers, accountants and agents, notwithstanding the fact that the Executor may receive a direct or indirect financial benefit as a result of such employment or may otherwise be affiliated with any of them, and to pay reasonable compensation thereto in addition to that to be paid to the Executor.

4.2 **Power to Invest.** To retain for whatever period the Executor shall deem advisable any property, including property owned by me at my death, and to invest and reinvest any money of my Estate not reasonably required for the immediate administration of my Estate in any kind of property, real, personal, or mixed and in any kind of investment, including but not limited to improved and unimproved real property, interest-bearing accounts, certificates of deposit, corporate and governmental obligations of any kind, preferred or common stocks, mutual funds (including mutual funds of the "load" and "no load" variety), investment trusts, money-market funds, taxable and tax-exempt commercial paper, repurchase and reverse repurchase agreements, and stocks, obligations, and shares or units of common trust funds of any corporate fiduciary; regardless of whether any particular investment would be proper for an Executor and regardless of the extent of diversification of the assets held hereunder.

4.3 **Power to Make Tax Elections.** To the extent permitted by law, and without regard to the resulting effect on any other provision of this Will, on any person

interested in my Estate, or on the amount of taxes that may be payable, the Executor shall have the power to choose a valuation date for tax purposes; choose the methods to pay any death taxes; elect to treat or use any item for state or federal estate or income tax purposes as an income tax deduction or an estate tax deduction; disclaim all or any portion of any interest in property passing to my Estate at or after my death; and determine when an item is to be treated as taken into income or used as a tax deduction.

- 4.4 **Division or Distribution in Cash or in Kind.** In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the Executor may distribute or divide those assets in kind, or divide undivided interests in those assets or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind, with or without regard to tax basis. Property distributed to satisfy a pecuniary gift under this Will shall be valued at its fair market value at the time of distribution.
- 4.5 **Payments to Legally Incapacitated Persons.** If at any time any beneficiary under this Will is a minor or it appears to the Executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the Executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons, as the Executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions, and the receipt of the person to whom such money or property is paid shall be a full and complete discharge to the Executor;
- 4.6 **Liability.** Unless due to such Executor's own willful default or gross negligence, no Executor shall be liable for such Executor's acts or omissions or those of any co-Executor or prior Executor.

ARTICLE FIVE

Miscellaneous Provisions

- 5.1 **No Contest.** To the extent permitted under the laws of the State of Nevada, if any person who is, or claims under or through a devisee, legatee or beneficiary under this Will, or any person who, if I died intestate, would be entitled to share in my estate, shall in any manner whatsoever, directly or indirectly contest this Will or attack, oppose or seek to impair or invalidate any provision hereof or of the Trust hereinabove mentioned, or seek to succeed to any part of my Estate otherwise than in the manner specified in this Will, or conspire or cooperate with anyone attempting to do any of the acts or things aforesaid, then the right of that person to

take any interest given him or her by this Will or as an heir-at-law shall be determined as it would have been determined had the person predeceased me without being survived by issue.

5.2 **Miscellaneous.**

A. As used in this Will, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others whenever the extent so indicates.

B. Article headings in this Will are inserted for convenience only, and are not to be considered in the construction of the provisions thereof.

5.3 **Period of Survivorship.** For the purposes of this Will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within three (3) months after my death.

5.4 **Guardian Ad Litem.** I direct that the representation by a guardian ad litem of the interests of persons unborn, unascertained, or legally incompetent to act in proceedings for the allowance of accounts hereunder be dispensed with to the extent permitted by law.

5.5 **Beneficial Interests.** The interests of any beneficiary in any share or part of this Will, both as to principal and income, shall not be alienable, assignable, attachable, transferable, nor paid by way of anticipation, nor in compliance with any order, assignment or covenant, and shall not be applied to, or held liable for, any of their debts or obligations either in law or equity and shall not in any event pass to his, her or their assignee under any instrument or under any insolvency or bankruptcy law, and shall not be subject to the interference or control of creditors, spouses or others.

5.6 **Severability Clause.** If any provision of this Will is invalid, that provision shall be disregarded, and the remainder of this Will shall be construed as if the invalid provision had not been included.

5.7 **Governing Law.** All questions concerning the validity and interpretation of this Will shall be governed by the laws of the State of Nevada in effect at the time this Will is executed.

///

///

///

///

IN WITNESS WHEREOF, I, MAUREEN DAPHNE DUCKWORTH, the Testator, sign my name to this instrument this 6 day of March, 2015, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly, in the presence of each and all of the subscribing witnesses, each of whom I have requested, in the presence of each of the others, to subscribe his or her name as an attesting witness, in my presence and in the presence of the others. That I execute it my Last Will and Testament in my capacity as a free and voluntary act for the purposes expressed in it, and that I am of legal age, of sound mind, and under no constraint or undue influence.

Maureen D. Duckworth
MAUREEN DAPHNE DUCKWORTH, Testator

On the date last above written, MAUREEN DAPHNE DUCKWORTH declared to us, the undersigned, that the foregoing instrument was his Last Will and Testament and requested to us to act as witnesses to it. That to the best of our knowledge, MAUREEN DAPHNE DUCKWORTH was of legal age, of sound mind and under no constraint or undue influence. MAUREEN DAPHNE DUCKWORTH thereupon signed this Will in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

Executed on the 6 day of March, 2015, in Clark County, Nevada.

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

Matthew Walker
WITNESS (printed)

[Signature]
WITNESS (signature)

1844 W. Sahara Ave., Las Vegas NV 89117
WITNESS (address)

///

///

///

///

Nancy Ramirez
WITNESS (printed)

Nancy Ramirez
WITNESS (signature)

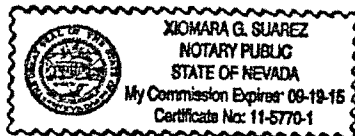
7846 W. Sahara Ave. Las Vegas, NV 89117
WITNESS (address)

ACKNOWLEDGEMENT

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

On this 6th day of March, 2015, before me, a Notary Public for the State of Nevada, personally appeared MAUREEN DAPHNE DUCKWORTH personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the same.

NOTARY SEAL



Xiomara G. Suarez
NOTARY PUBLIC in and for said
County and State.