

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE TRUST
AGREEMENT, 23 PARTNERS TRUST, AN
IRREVOCABLE TRUST.

MICHAEL T. NEDDER; AND DOUGLAS
DELUCA,
Appellants/Cross-Respondents,

vs.

JOANNE S. BRIGGS, AS PARENT AND
GUARDIAN OF JULIA ANN DELUCA AND
ALEXANDER IAN DELUCA, PRIMARY
BENEFICIARIES OF 23
PARTNERS TRUST 1,
Respondent/Cross-Appellant

No. 82991

District Court Case No. P104279

Electronically Filed
Jun 28 2021 04:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT CIVIL
APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 26
County Clark Judge Gloria Sturman
District Ct. Case No. P-20-104279-T

2. Attorney filing this docketing statement:

Attorney: Alexander G. LeVeque Telephone: 702-853-5483

Firm: Solomon Dwiggin Freer & Steadman, Ltd.

Address: 9060 West Cheyenne Avenue, Las Vegas, Nevada 89129

Client(s): (i) Julia Ann DeLuca ("Julia") and (ii) Joanne S. Briggs as parent and legal guardian of minor Alexander Ian DeLuca ("Alex"), Julia and Alex being the Trust's Primary Beneficiaries

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney: Russel J. Geist Telephone: 702-385-2500

Firm: Hutchison & Steffen, PLLC

Address: 10080 West Alta Drive, Suite 200, Las Vegas, Nevada 89145

Client(s): Michael T. Nedder and Douglas DeLuca as, respectively, Independent Trustee and Family Trustee of the Trust

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | | |
|---|-------------------------------------|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> | Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict Summary judgment | <input type="checkbox"/> | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> | <input type="checkbox"/> Failure to state a claim Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> | Other disposition (specify): <u>trust/estates</u> |

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None, other than proceeding, P-20-104279-T, from which this appeal arises.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action arose from a Petition filed by Appellant, Joanne S. Briggs, in her capacity as Parent and Legal Guardian of Julia Ann DeLuca and Alexander Ian DeLuca, Primary Beneficiaries of 23 Partners Trust I, dated February 1, 2017 (“Trust”), requesting that the District Court: (1) assume jurisdiction over the Trust, (2) confirm Douglas Scott DeLuca (“Douglas”) as the Trust’s Trustee, (3) compel an accounting, and (4) compel the trustee provide a copy of the trust (collectively, “Petition”).

The Petition came on for hearing before the Honorable Judge Gloria J. Sturman on December 9, 2020. An Order was entered on December 30, 2020, which, *inter alia*: (i) assumed *in rem* jurisdiction over the Trust; (ii) confirmed Douglas and Michael T. Nedder as the Trust’s Trustees; (iii) continued the hearing on the remainder of the requested parts of the Petition; (iv) ordered that Mr. Nedder produce a complete copy of the Trust on an attorneys’-eyes-only basis to Petitioner’s counsel; and (v) set a briefing schedule for Petitioner to file a supplement to her Petition.

The remaining unresolved items in the Petition (the requests for an accounting and a copy of the Trust) came at the continued hearing before Judge Sturman on January 28, 2021. At the hearing, Judge Sturman ordered the parties to collaborate on a submitted order based on her findings and rulings from the bench. The parties submitted competing draft orders to the District Court. On April 23, 2021, Judge Sturman held a telephonic conference with the parties over the orders, ruled thereon, and issued the Court’s Order (“Order”) from which this Appeal is taken.

The Order granted in part and denied in part the Petition as to the requests for an accounting and a copy of the Trust. The Order requires the Trust’s Trustees to provide Petitioner with some information relating to the Trust, consisting of tax returns, beginning and ending inventories of assets, and summary of all financial transactions (including Trustees’ fees). Ord., at 4:13-19. But, the Order also concluded as a matter of law that the “Trustees have no obligation to provide an annual accounting to the Beneficiaries pursuant to NRS 164.1207(1)(b)(5) or a full accounting every year pursuant to the Trust or permit the Beneficiaries to audit the books and records of the Trust every year.” *Id.*, at 3:4-6. The District Court reasoned and legally concluded that “[b]ecause the Trust is discretionary, the Beneficiaries here, although clearly primary Beneficiaries under the Trust’s terms, are not vested Beneficiaries and so they are not entitled to an accounting, nor are they entitled to rights under the Trust’s Section 5.2A.” *Id.*, at 4:1-3.

The Order also requires the Trustees to provide Beneficiaries with “[i]nformation in the Trust related to what sections affect them, the Beneficiaries’ rights under the trust agreement with respect to their beneficial interest or the trustees and the administration of the Trust.” *Id.*, at 4:13-24. But, the Order requires the Trustees to do so “without delivering a copy of the entire Trust agreement,” and thus provide the Beneficiaries with “copies of the pertinent sections or subsections of the Trust” instead. *Id.* Indeed, the Court concluded as a matter of law that the “Trustees have no obligation to provide a copy of the Trust agreement to the Beneficiaries.” *Id.*, at 3:17-18. The District Court reasoned and legally concluded that “[b]ecause the language in the Trust is so specific and there is no provision in the Trust requiring the Trustees to provide a copy of the Trust to the Beneficiaries, the Beneficiaries are not entitled to a copy of the entire

Trust agreement.” *Id.*, at 3:24-26.

The Order is a final order as it finds and orders that the Beneficiaries are not entitled to an accounting nor to a copy of the entire Trust agreement. As such, the Order is appealable under Nevada Rule of Appellate Procedure 3A(b)(1) as it constitutes a “final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” Also, the Order is appealable under NRS 155.190(1), including subsections (h) and (m) thereunder.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- Under a trust where the trustees have complete discretion to make or withhold all distributions, are the interests of the beneficiaries who have sole rights to such distributions if and when they are made, considered *vested* as defined and contemplated under the terms of the Trust and Nevada law?
- Under a trust where the trustees have complete discretion to make or withhold all distributions, and where no beneficiary holds a *vested* interest, which is necessary under the trust’s terms to request an accounting, are the trustees excused from ever having to account for their administration of the trust?
- Under a trust where the trustees have complete discretion to make or withhold all distributions, can the trustees withhold a copy of the trust from its primary beneficiaries based on the trust’s otherwise specific language that neither expressly prohibits nor grants the beneficiaries a copy of the trust?
- Did the District Court abuse its exercise of plenary discretion when it refused to order the trustees to fully account to the primary beneficiaries and to produce a copy of the Trust instrument?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No, If not, explain:

12. **Other issues.** Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question If so, explain:

Nevada's statutes generally provide wide latitude to trust settlors and the discretion they grant under the trust to the trustees as well as the accountability thereof. However, such breadth has its limits. Even under a trust where all distributions, if any, are made at the trustee's discretion, there must be an avenue for *some* accountability of the trustee's use of such discretion. The person in the best position to request such accountability, and who is most affected by it, is the trust's primary beneficiary(ies). This is particularly so when the settlor is deceased and the trustee alleges the trust contains confidentiality provisions prohibiting him from divulging information therein to those for whose benefit the trust was primarily created. In sum, there can be no trust without, at some point, accountability.

Relatedly, an issue of first impression for the Supreme Court to consider is how to define a vested beneficiary. For instance, is a vested beneficiary one who does not have to meet conditions for his interest to take effect? Can a vested beneficiary request from the trustee an accounting of the trust under Nevada law? How the Supreme Court answers these questions would have sweeping effect particularly as to all current discretionary income beneficiaries and might the answers render any discretionary beneficiaries without a remedy to request an accounting.

Moreover, this case involves a question of statewide public importance. Nevada has positioned itself as an attractive state for estate and succession planning, and trust formation and administration. A ruling from the Supreme Court on the issues appealed will provide important and beneficial guidance to both trust drafting attorneys and trustees in regards to Nevada's basic checks and balances over trustees, regardless of the distribution standard set forth in the trust instrument.

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case involves trust and estate matters in which the corpus is upon information and belief approximated at or around \$20,000,000; thus, substantially greater than the \$5,430,000 threshold dividing cases between presumptively retained by the Supreme Court and those assigned to the Court of Appeals.

An issue of first impression for the Supreme Court to consider is how to define a vested beneficiary. For instance, is a vested beneficiary one who does not have to meet conditions for his interest to take effect? Can a vested beneficiary request from the trustee an accounting of the trust under Nevada law? How the Supreme Court answers these questions would have sweeping effect particularly as to all current discretionary income beneficiaries and might the answers render any discretionary beneficiaries without a remedy to request an accounting.

Moreover, this case involves a question of statewide public importance. Nevada has positioned itself as an attractive state for estate and succession planning, and trust formation and administration. A ruling from the Supreme Court on the issues appealed will provide important and beneficial guidance to both trust drafting attorneys and trustees in regards to Nevada's basic checks and balances over trustees, regardless of the distribution standard set forth in the trust instrument.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? n/a
Was it a bench or jury trial? _____

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from** April 23, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order was served** April 23, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. _____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 24, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

A Notice of Appeal was filed on May 24, 2021 by Julia Ann DeLuca and Joanne S. Briggs, as parent and guardian of Alexander Ian DeLuca.

A Notice of Appeal was filed on May 24, 2021 by Michael T. Nedder and Douglas DeLuca

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify): NRS 155.190 | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Order is a final order as it finds and orders that the Beneficiaries are not entitled to an accounting nor to a copy of the entire Trust agreement. As such, the Order is appealable under NRS 155.190(h), (m), and Nevada Rule of Appellate Procedure 3A(b)(1) as it constitutes a “final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.”

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

(i) Julia Ann DeLuca, as Primary Beneficiary of the Trust

(ii) Joanne S. Briggs, as Parent and Legal Guardian of Alexander Ian DeLuca, a minor and Primary Beneficiary of the Trust

(iii) Michael T. Nedder, as Independent Trustee of the Trust

(iv) Douglas DeLuca, as Family Trustee of the Trust

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

n/a

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Petition to assume jurisdiction – December 30, 2020 (not appealed here)

Petition to confirm trustees – December 30, 2020 (not appealed here)

Petition for copy of trust – April 23, 2021

Petition for accounting – April 23, 2021

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

n/a

(b) Specify the parties remaining below:

n/a

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

n/a

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims (**See Exhibit 1**)
- Any tolling motion(s) and order(s) resolving tolling motion(s) (**See Exhibit 4**)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal (**See Exhibit 2**)
- Notices of entry for each attached order (**See Exhibit 3**)

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Julia Ann De Luca and Joanne S. Briggs
as parent and guardian of Alexander Ian
DeLuca

Name of appellant

June 28, 2021

Date

Nevada, Clark County

State and county where signed

Alexander G. LeVeque

Name of counsel of record

/s/ Alexander LeVeque

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that I am an employee of SOLOMON DWIGGINS FREER & STEADMAN, LTD. and that on this date the **DOCKETING STATEMENT CIVIL APPEALS** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the mast service list as follows:

Russel J. Geist
Hutchison & Steffen, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Eleissa C. Lavelle
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, Nevada 89169

Settlement Judge

Attorney for Appellants/Cross-Respondents

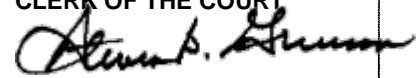
Dated this 28th day of June, 2021

/s/ Alexandra Carnival

Signature

EXHIBIT 1

EXHIBIT 1



CASE NO: P-20-104279-T
Department 26

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*Attorneys for Joanne S. Briggs
as Parent and Guardian of
Julia Ann DeLuca and Alexander Ian DeLuca,
Beneficiaries of 23 Partners Trust I*

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of
23 PARTNERS TRUST I, dated August 31,
2017

Case No.:
Dept.:

Hearing Date:
Hearing Time:

**PETITION TO (1) ASSUME JURISDICTION OVER TRUST, (2) CONFIRM DOUGLAS
SCOTT DELUCA AS TRUSTEE, (3) OBTAIN AN ACCOUNTING, AND (4) OBTAIN A
COPY OF TRUST**

Petitioner, Joanne S. Briggs, as Parent and Guardian of Julia Ann DeLuca and Alexander Ian DeLuca as Beneficiaries of 23 Partners Trust I ("Petitioner"), by and through her counsel of record, the law firm Solomon Dwiggins & Freer, Ltd., hereby petitions this Court to: (1) assume jurisdiction over the 23 Partners Trust I (the "Trust"); (2) confirm Douglas Scott DeLuca as Trustee of the Trust; (3) compel the Trustee of the Trust to provide an accounting of the Trust to Petitioner; and (4) compel the Trustee of the Trust to provide a copy of the Trust to Petitioner (collectively, the "Petition"). The foregoing Petition is brought pursuant to NRS 153.031(1)(a), (b), (e), (h), and (k), NRS 164.005, NRS 164.010, NRS 164.015, NRS 164.038(5), NRS 165.135, NRS 165.147 and, upon information and belief, the terms of the Trust. In support of the Petition, Petitioner alleges as follows:

I.

STATEMENT OF FACTS

A. INTERESTED PERSONS

Pursuant to NRS 153.031(2), Petitioner provides that, upon information and belief, the following individuals are interested persons under the Trust:

Name	Relation	Address
Douglas Scott DeLuca	Trustee, Brother of Settlor	2002 Mohican Court Cheswick, PA 15024 <i>and</i> c/o Nedder & Associates, LLC 3 Parklands Drive, Suite 201 Darien, CT 06820
Julia Ann DeLuca	Beneficiary, daughter of Settlor	c/o Solomon Dwiggins & Freer, Ltd. 9060 W. Cheyenne Ave. Las Vegas, NV 89129
Alexander Ian DeLuca	Beneficiary, son of Settlor	c/o Solomon Dwiggins & Freer, Ltd. 9060 W. Cheyenne Ave. Las Vegas, NV 89129
Joanne S. Briggs	Custodial mother of Beneficiaries Julia Ann DeLuca and Alexander DeLuca	c/o Solomon Dwiggins & Freer, Ltd. 9060 W. Cheyenne Ave. Las Vegas, NV 89129

B. BACKGROUND

1. Jon Adam DeLuca ("Jon") and Joanne S. Briggs ("Joanne") married on March 7, 2002. Together they had two children: Julia Ann DeLuca ("Julia") and Alexander Ian DeLuca ("Alexander"). Jon and Joanne divorced thereafter.

2. Later, Jon executed the Last Will and Testament of Jon Adam DeLuca (the "Will") on August 31, 2017.

3. The Will lists as its equal beneficiaries, of tangible personal property, Jon's children who survive him. The Will also expressly devises and bequeaths the residuary estate to the Trustees of the 23 Partners Trust I (the "Trust") and provides that the Trust is executed simultaneously with the Will, on August 31, 2017. The Will also provides that if Jon's residuary estate or the principal of any trust established under the Will is not effectively disposed of by the provisions therein, such

property shall be distributed equally per stripes among Jon's nieces Caroline DeLuca and Meghan DeLuca and Jon's nephew Jon Paul DeLuca, or if deceased, their respective descendants.

4. The Will also provides that Jon is both the settlor and original Trustee of the *inter vivos* Trust.

5. The Will identifies Jon's brother Douglas Scott DeLuca ("Douglas") as its Executor, with Lloyd Nemerever, Jon's friend, as alternate Executor.

6. Jon died on July 14, 2018.

7. On information and belief, the Trust names Douglas as its Successor Trustee, and Julia and Alexander as beneficiaries thereunder.

8. Julia and Alexander are minors, ages 17 and 15, respectively, and Joanne is their custodial parent. There is no conflict of interest between either children, Julia or Alexander, and their mother Joanne.

9. Julia and Alexander have been receiving distributions from the Trust in various amounts since their father Jon's death to pay for Julia's and Alexander's private school education, medical expenses, vacations and extracurricular activities. The Trust has also provided a credit card to the children and their mother Joanne to purchase the children's clothing and incidentals. Also, the Trust reimburses Joanne for expenses she paid in cash for the children's activities or needs. On information and belief all these payments are made in accordance with the provisions of the divorce decree, and because it was Jon's intent to have the Trust pay for his children's expenses.

10. Julia, Alexander, and, or, their mother as their guardian, have requested from the Trustee or his law firm Nedder & Associates, LLC, information relating to the Trust but have been denied adequate information.

11. Neither Julia nor Alexander, nor Joanne, have ever been provided a copy of the Trust. Therefore, they: (i) do not know the terms of the Trust; (ii) do not know their rights as beneficiaries thereunder; (iii) are unable to assess the administration of the Trust and any accounting thereof; and (iv) are unable to enforce their rights as beneficiaries thereunder.

12. Also, under information and belief, the Trust's terms provide that Nevada law shall govern the Trust's administration.

II.

ARGUMENT

A. THIS COURT SHOULD ASSUME *IN REM* JURISDICTION OVER THE TRUST.

NRS 164.010(1) provides in pertinent part:

[U]pon petition of a settlor or beneficiary of the trust, the district court of the county ... in which the trust has been domiciled as of the time of the filing of the petition shall assume jurisdiction of the trust as a proceeding in rem *unless* another court has properly assumed continuing jurisdiction in rem in accordance with the laws of that jurisdiction and the district court determines that it is not appropriate for the district court to assume jurisdiction under the circumstances.

NRS 164.010(2)(a) states that a trust is “domiciled” pursuant to NRS 164.010(1) where “[t]he trust instrument expressly provides that the situs of the trust is in this State or that a court in this State has jurisdiction over the trust.”

Here, Julia and Alexander are beneficiaries of the Trust. They have been receiving distributions from the Trust regularly since their father Jon’s death, for various of their personal expenses including private school education, medical expenses, vacations and extracurricular activities. As Jon’s surviving children, they were his beneficiaries, along with the Trust, under Jon’s Will. As beneficiaries under the Trust, they may file this Petition with the Court concerning any aspect of the affairs of the Trust. *See* NRS 153.031(1). This includes petitioning the Court to assume jurisdiction over the Trust. *See* NRS 164.010(1).

Further, as minor beneficiaries of the Trust, Julia and Alexander may be represented by Joanne as their custodial parent, in this proceeding pertaining to the Trust. *See* NRS 164.038(5). There is also no conflict of interest between Julia or Alexander, and Joanne.

This Court has jurisdiction over the Trust pursuant to NRS 164.010, because Nevada is the Trust’s situs, as upon information and belief, the Trust’s terms provide that Nevada law shall govern the Trust’s administration.

Accordingly, this Court should grant the foregoing Petition to assume jurisdiction over the Trust.

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1 **B. THIS COURT SHOULD CONFIRM DOUGLAS SCOTT DELUCA AS TRUSTEE OF THE TRUST.**

2 As beneficiaries under the Trust, Julia and Alexander, through their mother Joanne, may
3 petition this Court to confirm the Trustee of the Trust. Accordingly, Petitioner requests that this
4 Court confirm the decedent's brother Douglas, upon information and belief the Trustee of the Trust,
5 as Trustee of the Trust. *See* NRS 153.031(1)(k).

6 **C. THIS COURT SHOULD COMPEL THE TRUSTEE TO PROVIDE PETITIONER AN ACCOUNTING.**

7 NRS 153.031(1)(h) provides that this Court can compel Douglas as Trustee of the Trust to
8 prepare and produce to Petitioner, representative of Julia and Alexander as beneficiaries of the
9 Trust, an accounting of the Trust that includes all of the information enumerated in NRS 165.135.
10 Julia, Alexander, and, or, their mother as their guardian, have requested from the Trustee or his law
11 firm Nedder & Associates, LLC, information relating to the Trust but have been denied adequate
12 information. Indeed, no accounting has yet been made available to Petitioner. Therefore, Petitioner
13 requests that this Court compel Douglas as Trustee of the Trust to provide an accounting of the
14 Trust to Petitioner.

15 **D. THIS COURT SHOULD COMPEL TRUSTEE TO PROVIDE PETITIONER A COPY OF THE**
16 **TRUST.**

17 Finally, the Court "may direct the trustee to provide a beneficiary who is entitled to receive
18 an account ... a copy of the trust instrument, or such portions as the [C]ourt deems to be pertinent
19 to the determination of the adequacy of the trustee's account and to the enforcement of the
20 beneficiary's rights under the trust." NRS 165.147(2).

21 Here, though information on the Trust has been requested, no copy of the Trust has ever
22 been provided to Julia or Alexander even though they are beneficiaries of the Trust. Consequently,
23 Neither Julia, Alexander nor their mother Joanne, know the terms of the trust, Julia's and
24 Alexander's rights thereunder as beneficiaries, whether the Trust has been administered adequately,
25 or whether their beneficiary rights have been fully respected. Thus, Petitioner requests that the
26 Court also compel Douglas as Trustee of the Trust to provide Petitioner with a complete copy of
27 the Trust to determine (i) the terms of the Trust, (ii) Julia's and Alexander's rights as beneficiaries
28

under the Trust, (iii) the adequacy of Douglas's account as Trustee of the Trust, and (iv) enforcement of Julia's and Alexander's rights as beneficiaries under the Trust.

III.

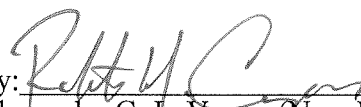
CONCLUSION

WHEREFORE, Petitioner requests that this Petition be set for hearing, and that after hearing the matters of this Petition, this Court find that notice of the time and place of such hearing has been given in the manner required by law, and that this Court make and enter its Orders and Decrees pursuant to NRS 153.031(1), NRS 153.041, NRS 164.005, NRS 164.010, NRS 164.015, NRS 164.038(5), NRS 165.135, and NRS 165.147, as follows:

1. Assume jurisdiction over the Trust;
 2. Confirm Douglas Scott DeLuca as Trustee of the Trust;
 3. Compel Trustee Douglas Scott DeLuca to provide an Accounting of the Trust to Petitioner in accordance with Chapter 165 of the Nevada Revised Statutes;
 4. Compel Trustee Douglas Scott DeLuca to provide a Copy of the Trust to Petitioner;
- and
5. For such other and further relief as the Court deems proper.

DATED this 21st day of September, 2020.

SOLOMON DWIGGINS & FREER, LTD.

By: 
Alexander G. LeVeque (Nev. Bar # 11183)
aleveque@sdfnlaw.com
Roberto M. Campos, (Nev. Bar # 15189)
rcampos@sdfnlaw.com
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
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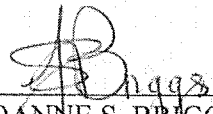
*Attorneys for Joanne S. Briggs
as Parent and Guardian of
Julia Ann DeLuca and Alexander Ian DeLuca
as Beneficiaries of 23 Partners Trust I*

VERIFICATION

I, JOANNE S. BRIGGS, hereby declare under penalty of perjury in the State of Nevada:

I am the Petitioner named in the above and foregoing PETITION TO (1) ASSUME JURISDICTION OVER TRUST, (2) CONFIRM DOUGLAS SCOTT DELUCA AS TRUSTEE, (3) OBTAIN AN ACCOUNTING, AND (4) OBTAIN A COPY OF TRUST on file with this Court; I have read the same and know the contents thereof; and the same are true to the best of my own personal knowledge, except for those statements made upon information and belief; and, as to those statements, I believe them to be true.

Dated this 21 day of September, 2020.



JOANNE S. BRIGGS

CERTIFICATE OF MAILING

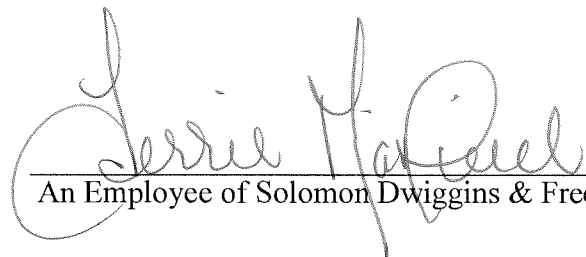
I hereby certify that on the 21st day of September, 2020, I mailed a true and correct copy of the **PETITION TO (1) ASSUME JURISDICTION OVER TRUST, (2) CONFIRM DOUGLAS SCOTT DELUCA AS TRUSTEE, (3) OBTAIN AN ACCOUNTING, AND (4) OBTAIN A COPY OF TRUST** by depositing the same in the United States Postal Service, by first class mail or certified mail, and email, as indicated below, postage prepaid thereon, to the following at their last known address:

Douglas Scott DeLuca

2002 Mohican Court
Cheswick, PA 15024
doug.deluca@gmail.com

and

c/o Nedder & Associates, LLC
3 Parklands Drive, Suite 201
Darien, CT 06820
mtnedder@nedderlaw.com
msalvin@nedderlaw.com



An Employee of Solomon Dwiggins & Freer, Ltd.

EXHIBIT 2

EXHIBIT 2

Heather S. Smith
CLERK OF THE COURT

ORDR

ALEXANDER G. LEVEQUE (#11183)
aleveque@sdfnlaw.com
ROBERTO M. CAMPOS (#15189)
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Facsimile: (702) 853-5485

*Attorneys for Joanne S. Briggs
as Parent and Guardian of
Julia Ann DeLuca and Alexander Ian DeLuca,
Primary Beneficiaries of 23 Partners Trust I*

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Trust Agreement,

23 PARTNERS TRUST I,

An Irrevocable Trust.

Case No.: P-20-104279-T
Dept. No.: 26

Hearing Date: January 28, 2021
Hearing Time: 10:30 a.m.

**ORDER GRANTING IN PART AND DENYING IN PART PETITION TO (1) ASSUME
JURISDICTION OVER TRUST, (2) CONFIRM DOUGLAS SCOTT DeLUCA AS
TRUSTEE, (3) COMPEL AN ACCOUNTING, AND (4) OBTAIN A COPY OF TRUST**

The Parties appeared before the Court for return hearing and oral argument on Joanne S. Briggs' Petition to (1) Assume Jurisdiction Over Trust, (2) Confirm Douglas Scott DeLuca as Trustee, (3) Compel an Accounting, and (4) Obtain a Copy of Trust ("Petition") filed on behalf of beneficiaries Julia Ann DeLuca and Alexander Ian DeLuca (the "Beneficiaries"). Russel J. Geist of the law firm Hutchison & Steffen, PLLC appeared on behalf of Michael Nedder and Douglas DeLuca (the "Trustees"), Respondent Trustees of the 23 Partners Trust I (the "Trust"), and Alex LeVeque and Roberto Campos of the law firm of Solomon Dwiggins & Freer, LTD appeared on behalf of Joanne S. Briggs. After having read the papers and pleadings associated with the Petition and the opposition thereto, entertained oral arguments by counsel, the Court makes the following findings of fact, conclusions of law and order:

///



FINDINGS OF FACT

1. The Trust is specific and not vague. In particular, the Trust specifically does not contain any requirement that the Trustees must provide a copy of the Trust agreement to the Beneficiaries. The Trust requires the Trustees to deliver copies of “instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc. as well as of a trustee’s resignation, removal, appointment and/or acceptance” to the Beneficiaries upon request.

2. The Trust agreement was not amended and so there was no instrument of amendment to deliver to the Beneficiaries.

3. The Beneficiaries’ interest in the Trust includes distributions of income and principal in the discretion of the Trustees.

4. The Trustees’ have the right and ability to distribute to or permit, and the Beneficiaries have the right to know of and request, the use and enjoyment of personal property and real property owned by the Trust by the Beneficiaries.

5. The Beneficiaries, although not entitled to a copy of the Trust agreement are entitled to know the information in the Trust regarding what sections affect them, their rights under the Trust agreement with respect to their beneficial interest or the Trustees and the administration of the Trust, to be conveyed without delivering a copy of the entire Trust agreement.

6. The Beneficiaries are not entitled to an annual accounting under the terms of the Trust.

7. The Beneficiaries are not entitled to audit the books and records every year under the terms of the Trust. The Beneficiaries, however, are entitled to review the Trust’s books and records if for instance an item on the tax returns warrants further inquiry.

8. The Beneficiaries are entitled to the annual Federal Income Tax Return for the Trust, as well as any Form K-1, which they would receive.

9. The Beneficiaries are entitled to a complete beginning and ending inventory of Trust assets, to be delivered annually.

10. The Beneficiaries are entitled to a summary of all financial transactions, including Trustees’ fees, reconciling the ending inventory to the beginning inventory for the period provided, to be delivered annually.

///

11. As applied here, the non-corporate Trustees have the same obligations as the corporate trustees.

CONCLUSIONS OF LAW

12. The Trustees have no obligation to provide an annual accounting to the Beneficiaries pursuant to NRS 165.1207(1)(b)(5) or a full accounting every year pursuant to the Trust or to permit the Beneficiaries to audit the books and records of the Trust every year. The Beneficiaries, however, are entitled to review the Trust's books and records if for instance an item on the tax returns warrants further inquiry.

13. The Trustees are required to provide the Beneficiaries financial information about the Trust, specifically:

A. The annual Federal Income Tax Return for the Trust, as well as any Form K-1, which the Beneficiaries would receive.

B. A complete beginning and ending inventory of Trust assets, to be delivered no more frequently than annually.

C. A summary of all financial transactions, including Trustees' fees, reconciling the ending inventory to the beginning inventory for the period provided, to be delivered annually.

14. The Trustees have no obligation to provide a copy of the Trust agreement to the Beneficiaries. However, the Beneficiaries are entitled to information in the Trust related to what sections affect them and their rights under the Trust agreement with respect to their beneficial interest, the Trustees and the administration of the Trust. This information must be conveyed to the Beneficiaries without delivering a copy of the entire Trust agreement. Instead, this information must be conveyed by providing the Beneficiaries with copies of the pertinent sections or subsections of the Trust.

15. Because the language in the Trust is so specific and there is no provision in the Trust requiring the Trustees to provide a copy of the Trust to the Beneficiaries, the Beneficiaries are not entitled to a copy of the entire Trust agreement.

1 16. Because the Trust is discretionary, the Beneficiaries here, although clearly Primary
2 Beneficiaries under the Trust's terms, are not vested beneficiaries and so they are not entitled to
3 an accounting, nor are they entitled to rights under the Trust's Section 5.2A. However, the
4 Beneficiaries are entitled to a baseline of information in the Trust because they have rights under
5 other sections of the Trust.

6 17. As applied here, the non-corporate Trustees have the same obligations as the
7 corporate trustees.

8 18. Whether or not the creditors can get to the assets under the Trust does not matter
9 to the resolution of issues here.

10 **ORDER**

11 IT IS THEREFORE ORDERED that the Petition, as to an accounting and a copy of the
12 Trust, is DENIED in part and GRANTED in part as set forth herein.¹

13 IT IS FURTHER ORDERED that within 30 days of the notice of entry of this Order, the
14 Trustees must provide the following to the Beneficiaries:

15 A. The annual Federal Income Tax Return for the Trust, as well as any Form
16 K-1, which the Beneficiaries would receive.

17 B. A complete beginning and ending inventory of Trust assets.

18 C. A summary of all financial transactions, including Trustees' fees,
19 reconciling the ending inventory to the beginning inventory for the period provided.


20 D. Information in the Trust related to what sections affect them, the
21 Beneficiaries' rights under the Trust agreement with respect to their beneficial interest or the
22 Trustees and the administration of the Trust, to be conveyed to the Beneficiaries without
23 delivering a copy of the entire Trust agreement. Instead, this information must be conveyed by
24 providing the Beneficiaries with copies of the pertinent sections or subsections of the Trust.

25
26 ¹ On December 30, 2020, the Court entered an Order on other parts of the Petition.

1 IT IS FURTHER ORDERED that the foregoing financial information to be delivered to
2 the Beneficiaries shall be delivered on an on ongoing basis annually, not more frequently than
3 annually by the Trustees.

4 IT IS SO ORDERED.

5 Dated this 23rd day of April, 2021

6 

7 239 776 424A 954C
8 Gloria Sturman
9 District Court Judge

10 Respectfully Submitted By:
11 SOLOMON DWIGGS & FREER, LTD.

12 /s/ Roberto M. Campos

13 Alexander G. LeVeque (11183)
14 Roberto M. Campos (15189)
15 9060 West Cheyenne Avenue
16 Las Vegas, Nevada 89129

17 *Attorneys for Joanne S. Briggs*
18 *as Parent and Guardian of*
19 *Julia Ann DeLuca and Alexander Ian DeLuca,*
20 *Primary Beneficiaries of 23 Partners Trust I*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 In the Matter of the Trust of:

CASE NO: P-20-104279-T

7 23 Partners Trust I

DEPT. NO. Department 26

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 4/23/2021

14 Alexander LeVeque

aleveque@sdfnvlaw.com

15 Terrie Maxfield

tmaxfield@sdfnvlaw.com

16 Amber Anderson-Reynolds

aanderson@hutchlegal.com

17 Allie Carnival

acarnival@sdfnvlaw.com

18 Erin Hansen

ehansen@sdfnvlaw.com

19 Russel Geist

rgeist@hutchlegal.com

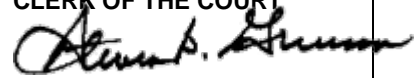
20 Roberto Campos

rcampos@sdfnvlaw.com

21
22
23
24
25
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27
28

EXHIBIT 3

EXHIBIT 3



ALEXANDER G. LEVEQUE (#11183)
aleveque@sdfnlaw.com
ROBERTO M. CAMPOS (#15189)
rcampos@sdfnlaw.com
SOLOMON DWIGGINS FREER & STEADMAN, LTD.
9060 West Cheyenne Avenue
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Telephone: (702) 853-5483
Facsimile: (702) 853-5485

*Attorneys for Joanne S. Briggs
as Parent and Guardian of
Julia Ann DeLuca and Alexander Ian DeLuca,
Beneficiaries of 23 Partners Trust I*

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

23 PARTNERS TRUST I,

An Irrevocable Trust.

Case No.: P-20-104279-T
Dept.: 26

Hearing Date: January 28, 2021
Hearing Time: 10:30 a.m.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order Granting in Part and Denying in Part* Petition to
(1) Assume Jurisdiction Over Trust, (2) Confirm Douglas Scott DeLuca as Trustee, (3) Compel an
Account, and (4) Obtain a Copy of Trust was entered on the 23rd day of April, 2021, a true and
correct copy of which is attached hereto.

DATED this 23rd day of April, 2021.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

By: /s/ Roberto M. Campos
Alexander G. LeVeque (#11183)
aleveque@sdfnlaw.com
Roberto M. Campos, (#15189)
rcampos@sdfnlaw.com
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

*Attorneys for Joanne S. Briggs as Parent and
Guardian of Julia Ann DeLuca and Alexander Ian
DeLuca as Beneficiaries of 23 Partners Trust I*

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on April 23, 2020, I served a true and correct copy of the **ORDER GRANTING IN PART AND DENYING IN PART PETITION TO (1) ASSUME JURISDICTION OVER TRUST, (2) CONFIRM DOUGLAS SCOTT DELUCA AS TRUSTEE, (3) COMPEL AN ACCOUNT, AND (4) OBTAIN A COPY OF TRUST** to the following in the manner set forth below:

Via:

- ☐ Hand Delivery
- ☐ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Receipt No.: _____
- ☐ Return Receipt Request
- ☒ E-Service through the Odyssey eFileNV/Nevada E-File and Serve System, as follows:

Russel J. Geist
Hutchison & Steffen, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
rgeist@hutchlegal.com

*Attorneys for Michael T. Nedder, Independent Trustee, and
Douglas DeLuca, Family Trustee*

/s/ Alexandra Carnival
An employee of SOLOMON DWIGGINS FREER & STEADMAN, LTD.

Heather S. Smith
CLERK OF THE COURT

ORDR

ALEXANDER G. LEVEQUE (#11183)
aleveque@sdfnlaw.com
ROBERTO M. CAMPOS (#15189)
rcampos@sdfnlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

*Attorneys for Joanne S. Briggs
as Parent and Guardian of
Julia Ann DeLuca and Alexander Ian DeLuca,
Primary Beneficiaries of 23 Partners Trust I*

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Trust Agreement,

23 PARTNERS TRUST I,

An Irrevocable Trust.

Case No.: P-20-104279-T
Dept. No.: 26

Hearing Date: January 28, 2021
Hearing Time: 10:30 a.m.

**ORDER GRANTING IN PART AND DENYING IN PART PETITION TO (1) ASSUME
JURISDICTION OVER TRUST, (2) CONFIRM DOUGLAS SCOTT DeLUCA AS
TRUSTEE, (3) COMPEL AN ACCOUNTING, AND (4) OBTAIN A COPY OF TRUST**

The Parties appeared before the Court for return hearing and oral argument on Joanne S. Briggs' Petition to (1) Assume Jurisdiction Over Trust, (2) Confirm Douglas Scott DeLuca as Trustee, (3) Compel an Accounting, and (4) Obtain a Copy of Trust ("Petition") filed on behalf of beneficiaries Julia Ann DeLuca and Alexander Ian DeLuca (the "Beneficiaries"). Russel J. Geist of the law firm Hutchison & Steffen, PLLC appeared on behalf of Michael Nedder and Douglas DeLuca (the "Trustees"), Respondent Trustees of the 23 Partners Trust I (the "Trust"), and Alex LeVeque and Roberto Campos of the law firm of Solomon Dwiggins & Freer, LTD appeared on behalf of Joanne S. Briggs. After having read the papers and pleadings associated with the Petition and the opposition thereto, entertained oral arguments by counsel, the Court makes the following findings of fact, conclusions of law and order:

///



FINDINGS OF FACT

1. The Trust is specific and not vague. In particular, the Trust specifically does not contain any requirement that the Trustees must provide a copy of the Trust agreement to the Beneficiaries. The Trust requires the Trustees to deliver copies of “instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc. as well as of a trustee’s resignation, removal, appointment and/or acceptance” to the Beneficiaries upon request.

2. The Trust agreement was not amended and so there was no instrument of amendment to deliver to the Beneficiaries.

3. The Beneficiaries’ interest in the Trust includes distributions of income and principal in the discretion of the Trustees.

4. The Trustees’ have the right and ability to distribute to or permit, and the Beneficiaries have the right to know of and request, the use and enjoyment of personal property and real property owned by the Trust by the Beneficiaries.

5. The Beneficiaries, although not entitled to a copy of the Trust agreement are entitled to know the information in the Trust regarding what sections affect them, their rights under the Trust agreement with respect to their beneficial interest or the Trustees and the administration of the Trust, to be conveyed without delivering a copy of the entire Trust agreement.

6. The Beneficiaries are not entitled to an annual accounting under the terms of the Trust.

7. The Beneficiaries are not entitled to audit the books and records every year under the terms of the Trust. The Beneficiaries, however, are entitled to review the Trust’s books and records if for instance an item on the tax returns warrants further inquiry.

8. The Beneficiaries are entitled to the annual Federal Income Tax Return for the Trust, as well as any Form K-1, which they would receive.

9. The Beneficiaries are entitled to a complete beginning and ending inventory of Trust assets, to be delivered annually.

10. The Beneficiaries are entitled to a summary of all financial transactions, including Trustees’ fees, reconciling the ending inventory to the beginning inventory for the period provided, to be delivered annually.

///

11. As applied here, the non-corporate Trustees have the same obligations as the corporate trustees.

CONCLUSIONS OF LAW

12. The Trustees have no obligation to provide an annual accounting to the Beneficiaries pursuant to NRS 165.1207(1)(b)(5) or a full accounting every year pursuant to the Trust or to permit the Beneficiaries to audit the books and records of the Trust every year. The Beneficiaries, however, are entitled to review the Trust's books and records if for instance an item on the tax returns warrants further inquiry.

13. The Trustees are required to provide the Beneficiaries financial information about the Trust, specifically:

A. The annual Federal Income Tax Return for the Trust, as well as any Form K-1, which the Beneficiaries would receive.

B. A complete beginning and ending inventory of Trust assets, to be delivered no more frequently than annually.

C. A summary of all financial transactions, including Trustees' fees, reconciling the ending inventory to the beginning inventory for the period provided, to be delivered annually.

14. The Trustees have no obligation to provide a copy of the Trust agreement to the Beneficiaries. However, the Beneficiaries are entitled to information in the Trust related to what sections affect them and their rights under the Trust agreement with respect to their beneficial interest, the Trustees and the administration of the Trust. This information must be conveyed to the Beneficiaries without delivering a copy of the entire Trust agreement. Instead, this information must be conveyed by providing the Beneficiaries with copies of the pertinent sections or subsections of the Trust.

15. Because the language in the Trust is so specific and there is no provision in the Trust requiring the Trustees to provide a copy of the Trust to the Beneficiaries, the Beneficiaries are not entitled to a copy of the entire Trust agreement.

1 16. Because the Trust is discretionary, the Beneficiaries here, although clearly Primary
2 Beneficiaries under the Trust's terms, are not vested beneficiaries and so they are not entitled to
3 an accounting, nor are they entitled to rights under the Trust's Section 5.2A. However, the
4 Beneficiaries are entitled to a baseline of information in the Trust because they have rights under
5 other sections of the Trust.

6 17. As applied here, the non-corporate Trustees have the same obligations as the
7 corporate trustees.

8 18. Whether or not the creditors can get to the assets under the Trust does not matter
9 to the resolution of issues here.

10 ORDER

11 IT IS THEREFORE ORDERED that the Petition, as to an accounting and a copy of the
12 Trust, is DENIED in part and GRANTED in part as set forth herein.¹

13 IT IS FURTHER ORDERED that within 30 days of the notice of entry of this Order, the
14 Trustees must provide the following to the Beneficiaries:

15 A. The annual Federal Income Tax Return for the Trust, as well as any Form
16 K-1, which the Beneficiaries would receive.

17 B. A complete beginning and ending inventory of Trust assets.

18 C. A summary of all financial transactions, including Trustees' fees,
19 reconciling the ending inventory to the beginning inventory for the period provided.


20 D. Information in the Trust related to what sections affect them, the
21 Beneficiaries' rights under the Trust agreement with respect to their beneficial interest or the
22 Trustees and the administration of the Trust, to be conveyed to the Beneficiaries without
23 delivering a copy of the entire Trust agreement. Instead, this information must be conveyed by
24 providing the Beneficiaries with copies of the pertinent sections or subsections of the Trust.

25
26 ¹ On December 30, 2020, the Court entered an Order on other parts of the Petition.

1 IT IS FURTHER ORDERED that the foregoing financial information to be delivered to
2 the Beneficiaries shall be delivered on an on ongoing basis annually, not more frequently than
3 annually by the Trustees.

4 IT IS SO ORDERED.

5 Dated this 23rd day of April, 2021

6 

7 239 776 424A 954C
8 Gloria Sturman
9 District Court Judge

10 Respectfully Submitted By:
11 SOLOMON DWIGGINS & FREER, LTD.

12 /s/ Roberto M. Campos

13 Alexander G. LeVeque (11183)
14 Roberto M. Campos (15189)
15 9060 West Cheyenne Avenue
16 Las Vegas, Nevada 89129

17 *Attorneys for Joanne S. Briggs*
18 *as Parent and Guardian of*
19 *Julia Ann DeLuca and Alexander Ian DeLuca,*
20 *Primary Beneficiaries of 23 Partners Trust I*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 In the Matter of the Trust of:

CASE NO: P-20-104279-T

7 23 Partners Trust I

DEPT. NO. Department 26

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 4/23/2021

14 Alexander LeVeque

aleveque@sdfnvlaw.com

15 Terrie Maxfield

tmaxfield@sdfnvlaw.com

16 Amber Anderson-Reynolds

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17 Allie Carnival

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18 Erin Hansen

ehansen@sdfnvlaw.com

19 Russel Geist

rgeist@hutchlegal.com

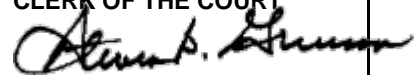
20 Roberto Campos

rcampos@sdfnvlaw.com

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EXHIBIT 4

EXHIBIT 4



MOT
Russel J. Geist (9030)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
(702) 385-2500
(702) 385-2086 Fax
rgeist@hutchlegal.com

*Attorneys for Michael T. Nedder and
Douglas DeLuca, Trustees*

DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of the trust agreement,
23 PARTNERS TRUST I,

Case No.: P-20-104279-T
Dept. No.: 26

An Irrevocable Trust.

MOTION FOR STAY PENDING APPEAL

Hearing Requested

Michael Nedder and Douglas DeLuca (the “Trustees”), Respondent Trustees of the 23 Partners Trust I (the “Trust”) hereby moves this Court for a stay of enforcement of the judgment rendered on April 23, 2021 (“Order”), granting, in part, Petitioner Joanne S. Briggs' (“Petitioner”) *Petition to (1) Assume Jurisdiction Over Trust, (2) Confirm Douglas Scott DeLuca as Trustee, (3) Compel an Accounting, and (4) Obtain a Copy of Trust* (“Petition”) filed on September 21, 2020, on behalf of beneficiaries Julia Ann DeLuca and Alexander Ian DeLuca (the “Beneficiaries”).

///

///

///

1 This Motion is made and based on the pleadings and papers on file herein, the following
2 points and authorities, and any oral argument this Court may allow.

3 DATED this May 25, 2021

4 HUTCHISON & STEFFEN, PLLC

5
6 /s/ Russel J. Geist
7 Russel J. Geist (9030)
8 Peccole Professional Park
9 10080 West Alta Drive, Suite 200
10 Las Vegas, Nevada 89145
11 *Attorneys for Michael T. Nedder and*
12 *Douglas DeLuca, Trustees*
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1 **POINTS AND AUTHORITIES**

2 **1. Background Facts and Procedural History**

3 The facts of this case are set forth in the initial pleadings, specifically, the Petition filed on
4 September 21, 2020; the Trustees' Objection thereto filed on November 4, 2020; and Petitioner's
5 Reply in Support of Petition filed on December 2, 2020. The facts are strongly contested by the
6 parties. However, the Court's inquiry centered on whether the Trustees are required by the terms
7 of the Trust under Nevada law to provide an accounting to the Beneficiaries.

8 Jon A. DeLuca, the trustor of the 23 Partners Trust I ("Trust"), dated February 1, 2017,
9 created the Trust as an irrevocable trust for the benefit of his children, Julia Ann DeLuca and
10 Alexander Ian DeLuca and subsequent generations to be administered under the terms of the Trust.
11 Trustee Michael Nedder is the currently serving Independent Trustee under the Trust and Trustee
12 Douglas Scott DeLuca, the trustor's brother, is the currently serving Family Trustee of the Trust.

13 The Trust provides, "[u]pon the death of the Grantor, without the necessity of physical
14 segregation, the trust estate shall be divided into as many equal shares as there are children of the
15 Grantor then living," Jon A. DeLuca died on July 14, 2018, leaving two (2) children living and
16 no deceased children. Each child is referred to as the "primary beneficiary" of his or her trust share
17 to be administered according to the Trust terms.

18 Section 3.2.1 of the Trust provides completely discretionary distributions to the
19 Beneficiaries as follows:

20 The Independent Trustee, in its sole, absolute and unreviewable discretion ..., shall
21 have the power, the exercise of which shall be absolutely binding on all persons
22 interested now or in the future in this trust, to distribute to or apply for the benefit,
23 enjoyment or use of ... any one or more of the following permissible distributees:

- 24 A. The primary beneficiary, and/or
25 B. The descendants of the primary beneficiary who are then living
26 (even though not now living), including a descendant whose parent
27 or parents are then living,

28 so much of the income or principal, or both, of the trust estate, in equal or unequal
proportions, and at such times as such Independent Trustee deems appropriate for
such beneficiaries' benefit, care, comfort, enjoyment, or for any other purposes.

1 The Trust also provides a confidentiality clause at Section 5.1 E., specifically stating,
2 “Notwithstanding anything herein to the contrary and to the extent permitted by applicable law, the
3 Trustee shall not provide notice of the existence of the trust to any beneficiary hereunder.” the
4 Trust specifically does not contain any requirement that the Trustees must provide a copy of the
5 Trust agreement to the Beneficiaries. The Trust requires the Trustees to deliver copies of
6 “instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc. as
7 well as of a trustee’s resignation, removal, appointment and/or acceptance” to the Beneficiaries
8 upon request.

9 Section 5.2 A. of the Trust provides that a corporate trustee, if serving, shall make the books
10 of account and records of the Trust available for inspection by “the Grantor, if then living, each then
11 presently vested income, principal and remainder beneficiary of such trust, and their respective
12 representatives.” (emphasis added). A “corporate trustee” is defined by the Trust as a “bank or a
13 trust company.” The section concludes, “such corporate fiduciary upon request shall furnish to each
14 such person, with respect to each federal income tax accounting year of such trust, a complete
15 beginning and ending inventory ... and an accounting summarizing all financial Transactions for
16 such period thereby reconciling such ending inventory with the beginning inventory, fully reflecting
17 all principal and income activity including all distributions of every kind.”

18 This Court, after reviewing the pleadings, a copy of the Trust, and upon oral argument of
19 the parties, found that “The Beneficiaries, although not entitled to a copy of the Trust agreement
20 are entitled to know the information in the Trust regarding what sections affect them, their rights
21 under the Trust agreement with respect to their beneficial interest or the Trustees and the
22 administration of the Trust, to be conveyed without delivering a copy of the entire Trust
23 agreement.” This Court additionally found that “the Beneficiaries are not entitled to an annual
24 accounting under the terms of the Trust,” “the Beneficiaries here, although clearly Primary
25 Beneficiaries under the Trust’s terms, are not vested beneficiaries and so they are not entitled to an
26 accounting, nor are they entitled to rights under the Trust’s Section 5.2A.,” and “are not entitled to
27 audit the books and records every year under the terms of the Trust. The Beneficiaries, however,
28

1 are entitled to review the Trust's books and records if for instance an item on the tax returns
2 warrants further inquiry."

3 Nevertheless, the Court concluded:

4 13. The Trustees are required to provide the Beneficiaries financial information
5 about the Trust, specifically:

6 A. The annual Federal Income Tax Return for the Trust, as well as any Form K-1,
7 which the Beneficiaries would receive.

8 B. A complete beginning and ending inventory of Trust assets, to be delivered no
9 more frequently than annually.

10 C. A summary of all financial transactions, including Trustees' fees, reconciling the
11 ending inventory to the beginning inventory for the period provided, to be delivered
12 annually.

13 This Court further concluded:

14 14. The Trustees have no obligation to provide a copy of the Trust agreement to the
15 Beneficiaries. However, the Beneficiaries are entitled to information in the Trust
16 related to what sections affect them and their rights under the Trust agreement with
17 respect to their beneficial interest, the Trustees and the administration of the Trust.
18 This information must be conveyed to the Beneficiaries without delivering a copy
19 of the entire Trust agreement. Instead, this information must be conveyed by
20 providing the Beneficiaries with copies of the pertinent sections or subsections of
21 the Trust.

22 15. Because the language in the Trust is so specific and there is no provision in the
23 Trust requiring the Trustees to provide a copy of the Trust to the Beneficiaries, the
24 Beneficiaries are not entitled to a copy of the entire Trust agreement.

25 Finally, this Court found that "Because the Trust is discretionary, the Beneficiaries here,
26 although clearly Primary Beneficiaries under the Trust's terms, are not vested beneficiaries and so
27 they are not entitled to an accounting, nor are they entitled to rights under the Trust's Section 5.2A."
28 Despite this, this Court found that, notwithstanding the specific language of the Trust, "the
Beneficiaries are entitled to a baseline of information in the Trust because they have rights under
other sections of the Trust" and Ordered the Trustees to provide to the Beneficiaries acting through
their mother the exact information allowing for a reconciliation of starting and ending inventories
and essentially verbatim what is provided for in Sec. 5.2A even while concluding as a matter of Law
that they are not entitled to an accounting or the rights under 5.2A.

1 Based on these findings, this Court ordered the following:

2 ... within 30 days of the notice of entry of this Order, the Trustees must provide the
3 following to the Beneficiaries:

4 A. The annual Federal Income Tax Return for the Trust, as well as any Form
K-1, which the Beneficiaries would receive.

5 B. A complete beginning and ending inventory of Trust assets.

6 C. A summary of all financial transactions, including Trustees' fees,
7 reconciling the ending inventory to the beginning inventory for the period
provided.

8 D. Information in the Trust related to what sections affect them, the
9 Beneficiaries' rights under the Trust agreement with respect to their
beneficial interest or the Trustees and the administration of the Trust, to be
10 conveyed to the Beneficiaries without delivering a copy of the entire Trust
agreement. Instead, this information must be conveyed by providing the
11 Beneficiaries with copies of the pertinent sections or subsections of the Trust.

12 IT IS FURTHER ORDERED that the foregoing financial information to be
delivered to the Beneficiaries shall be delivered on an on ongoing basis annually, not
13 more frequently than annually by the Trustees.

14 The Order was entered on April 23, 2021, and Notice of Entry filed the same day.

15 2. Discussion

16 A. Legal standard for obtaining a stay.

17 A stay pending appeal may be requested in the District Court under NRCP 62, or under
18 NRAP 8 by analogy in certain instances. For purposes of this stay request, the analysis under either
19 rule leads to the same result – a stay of the Order should issue to allow the Trustees to continue to
20 administer the Trust as they were pending the outcome of the appeal from the order. To deny a stay
21 would cause irreparable harm to the Trust by releasing information which would not be required
22 to be disclosed if the Trustees prevail on appeal.

23 1. The Stay Requirements Under NRCP 62.

24 NRCP 62 governs the issuance of stays pending appeal. While some older Nevada case law
25 contemplates the entitlement to a stay upon the posting of a sufficient bond, there is no real
26 clarification among cases addressing NRCP 62 to explain what constitutes the “entitlement to a
27 stay.” See e.g. *State ex rel. Pub. Serv. Comm. v. Dist. Ct.*, 94 Nev. 42, 44, 574 P.2d 272, 274 (1978)
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(holding court has discretion whether party is entitled to a stay). Notwithstanding, the Nevada Supreme Court has favorably cited federal cases as “persuasive” in permitting stays as a matter of right when a supersedeas bond is posted, or with no bond (or perhaps a reduced bond) if adequate security exists to maintain the status quo and protect the judgment creditor. *See e.g. Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (citing and relying upon federal cases for guidance on the issue of stays pending appeal brought under NRCPP 62). In this case, the discussion of a bond requirement is not pertinent to the analysis because there is no monetary judgment at issue, only the disclosure of Trust financial information which is not required under the Trust, and copies of “copies of the pertinent sections or subsections of the Trust” where “the Trust is so specific and there is no provision in the Trust requiring the Trustees to provide a copy of the Trust to the Beneficiaries.” As such, and independent of the bond requirement, this Court should grant the Trustees a stay as a matter of right to maintain the status quo on the administration of the Trust and to prevent disclosure of the Trust accounting information and copies of the Trust provisions pending appeal.

The amount of the supersedeas bond to be contemplated should be *de minimis*, since the Petitioner will suffer no quantifiable harm if the stay is granted and the Order is ultimately upheld. The Trust, however, will suffer irreparable harm without the stay if the Trustees ultimately prevail on appeal. There is no remedy to recall information already disclosed to Petitioner if the Order is reversed or modified. The damage will already have been done.

2. The Discretionary Stay Applying the Factors of NRCPP 8.

If this Court is not inclined to grant an automatic stay, and with *de minimis* bond under NRCPP 62, then this Court should look to the factors used in NRCPP 8(c) as persuasive and enter a limited stay pending appeal to preserve the status quo. Those factors are: (i) whether the object of the appeal will be defeated if the stay is denied; (ii) whether movant will suffer irreparable or serious injury if the stay is denied; (iii) whether non-movant or other real party in interest will suffer irreparable or serious injury if the stay is granted; and (iv) whether movant is likely to prevail on

1 the merits in the appeal. *Hansen v. Dist. Ct. ex rel. Cty. Of Clark*, 116 Nev. 650, 657, 6 P.3d 982,
2 986 (2000); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004)
3 (holding that while no one factor under NRAP 8 is more important than the others, “if one or two
4 factors are especially strong, they may counterbalance other weak factors”). In other words, the
5 absence of one factor is not dispositive to the stay analysis; rather, to the contrary, the presence of
6 even one factor could be so significant to the point that a stay should be ordered. In reviewing the
7 four factors from Hansen, the Supreme Court recognized the purpose of a stay is to preserve the
8 status quo. *See e.g., Nelson*, 121 Nev. At 835; 122 P.3d at 1254 (citations omitted).

9
10 After consideration of the Hansen factors and those set forth under NRAP 8(c), this Court
11 should enter a stay pending the appeal to maintain the status quo on the administration of the Trust
12 and to prevent disclosure of the Trust accounting information and copies of the Trust provisions
13 pending appeal.

14 The object of the appeal, which is the determination of whether the Order to provide the
15 financial information and copies of Trust sections to the Beneficiaries are required under the Trust
16 and Nevada law, will be defeated if the stay is denied and the Trustees are required to provide the
17 information as ordered, but the results of the appeal favor the Trustees. The Trust will have suffered
18 irreparable harm. It would be like trying to put the toothpaste back in the tube: impossible.

19 On the other hand, the Petitioner will suffer no harm by this Court granting a stay. There
20 is no monetary judgment that would be at risk if a stay is granted. The Beneficiaries’ interest under
21 the Trust is completely discretionary, and as this Court indicated, the Beneficiaries “are not vested
22 beneficiaries and so they are not entitled to an accounting, nor are they entitled to rights under the
23 Trust’s Section 5.2A.” To delay the disclosure of the information required by the Order will not
24 harm the Beneficiaries; such information can be provided after the appeal if the Beneficiaries
25 prevail.

26 Comparing the result of a delay if the stay is granted to that suffered by the Trust if the stay
27 is denied, the Beneficiaries have no quantifiable claim that they will be harmed. However, even if
28

1 this Court considers the delay of providing the information to the Beneficiaries a harm in itself, this
2 is not “irreparable harm” because the release of such information to the Beneficiaries if they
3 ultimately prevail will make them whole. The Trust has no such remedy if a stay is denied, but the
4 Trustees ultimately prevail on appeal.

5 **B. A stay should issue pending appeal.**

6 The effect of this Order will defeat the purposes of the appeal if a stay is granted and the
7 Trustees prevail. The damage will have been done by releasing information not intended by the
8 Trustor to be disclosed to the Beneficiaries, or more importantly to their mother, Joanne Briggs. The
9 potential harm to the Trust will be irreparable if a stay is not granted. There will be no way to “claw
10 back” the information once given to the Petitioner.

11 Since the Order and the Trustees’ required disclosure of information is directly impacted
12 by the Supreme Court’s ultimate determination on the appeal, this final factor weights in favor of
13 the Trust, and this Court should enter a stay pending appeal.

14 **3. Conclusion**

15 For the foregoing reasons, the Trustees request that the issue a stay pending appeal under
16 either NRCP 62 or NRAP 8(c).

17 The Trustees further request that this motion be set for hearing at the Court’s earliest
18 convenience.

19 DATED May 25, 2021.

20 HUTCHISON & STEFFEN, PLLC

21 /s/ Russel J. Geist

22 Russel J. Geist (9030)

23 10080 West Alta Drive, Suite 200

24 Las Vegas, Nevada 89145

25 *Attorneys for Michael T. Nedder and*
26 *Douglas DeLuca, Trustees*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 25th day of May, 2021, I caused the above and foregoing documents entitled **MOTION FOR STAY PENDING APPEAL** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☒ sent electronically via the Court's electronic service system; the date and time of this electronic service is in place of the date and in place of deposit in the mail; and/or
- ☐ to be hand-delivered.

to the attorney(s) listed below at the address and/or facsimile number indicated below:

Via Electronic Service

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Julia Ann DeLuca and Alexander Ian
DeLuca, Beneficiaries of 23 Partners Trust I*

/s/ Amber Anderson-Reynolds
An employee of Hutchison & Steffen, PLLC