

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

MICHAEL T. NEDDER; AND
DOUGLAS DELUCA,

Appellants/Cross-Respondents,

v.

JOANNE S. BRIGGS, AS PARENT
AND GUARDIAN OF JULIA ANN
DELUCA AND ALEXANDER IAN
DELUCA, PRIMARY BENEFICIARIES
OF THE 23 PARTNERS TRUST I,

Respondents/Cross-Appellants.

Supreme Court No: 82991

District Court Case No: P-20-104279-T

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**APPELLANTS' MOTION FOR A STAY
PENDING APPEAL**

Elizabeth A. Brown
Clerk of Supreme Court

Appellants Michael Nedder and Douglas DeLuca (the “Trustees”), Appellant Trustees of the 23 Partners Trust I (the “Trust”), Respondents below, move this Court for a stay of enforcement of the order rendered on April 23, 2021 (the “Appeal 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”) pending appeal pursuant to NRAP 8(a). A copy of the Appeal Order is attached as Exhibit 1.

In compliance with NRAP 8(a)(1), a motion for stay was first brought in the district court where the district court granted a sixty-day stay from the date the order was filed on July 28, 2021. *See* Order Regarding (1) Motion for Stay Pending Appeal; (2) Motion for Order to Show Cause why Trustee Should not be Held in Contempt of Court; (3) Motion for Sanctions; and (3) Motion for Substitution of Real Party In Interest, filed on July 28, 2021 (the “Stay Order”), attached as Exhibit 2. The district court’s intent was to deny the stay and require Appellants to seek relief from this Court. *Id.* That stay expired on or about September 26, 2021 while this case was in the mandatory settlement program.

POINTS AND AUTHORITIES

1. Introduction

Trustees have appealed a district court order instructing them to make certain disclosures to the Beneficiaries that Trustees assert force them to violate the terms and purpose of a spendthrift trust. If the Trustees are required to make the disclosures now while an appeal is pending, the object of the appeal will have been frustrated as the information the Trustees are seeking to protect will have been disclosed. The Trust will have been irreparably harmed. Unlike the Trustees, the Beneficiaries will not experience any harm from the delay in the disclosures. The Beneficiaries’ interest in the Trust is not vested because the Trustees have unfettered discretion as to whether to make any distributions on behalf or to the Beneficiaries. If the

Beneficiaries are entitled to the information, they will receive it once the appeal is complete and not experience any irreparable harm.

2. Factual Background

The Beneficiaries commenced this case with the Petition filed on September 21, 2020. The Trustees filed an Objection on November 4, 2020 and Petitioner filed a Reply in Support of Petition filed on December 2, 2020. Although there are many of the facts are hotly disputed by the parties, the district court's inquiry at issue here centers on whether the Trustees are required by the terms of the Trust and Nevada law to provide an accounting to the Beneficiaries.

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

The Trust provides, "[u]pon the death of the Grantor, without the necessity of physical segregation, the trust estate shall be divided into as many equal shares as

there are children of the Grantor then living,”¹ Jon A. DeLuca died on July 14, 2018, leaving two (2) children living and no deceased children.

Section 3.2.1 of the Trust grants the Trustees “absolute and unreviewable discretion...which shall be absolutely binding on all persons interested now or in the future in this trust, to distribute to or apply for the benefit, enjoyment or use of [the beneficiaries].”

The Trust also provides a confidentiality clause at Section 5.1 E., specifically stating, “Notwithstanding anything herein to the contrary and to the extent permitted by applicable law, the Trustee shall not provide notice of the existence of the trust to any beneficiary hereunder.” The Trust specifically do not require the Trustees to provide a copy of the Trust agreement to the Beneficiaries. The Trust only 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.

Section 5.2 A. of the Trust provides that a corporate trustee, if serving, shall make the books of account and records of the Trust available for inspection by “the

¹ A complete copy of the Trust documents was provided to the Court for *in camera* review and was provided to Petitioners’/Appellee’s counsel for review. Because issue in the case is whether the Trust documents and other information must be disclosed, the complete copy was not filed with the Court. The provisions of the Trust set forth herein were also included in Appellants’ motion for stay filed with the district court. A copy of the Motion for Stay is attached as Exhibit 3.

Grantor, if then living, each then presently vested income, principal and remainder beneficiary of such trust, and their respective representatives.” The section concludes, “such corporate fiduciary upon request shall furnish to each such person, with respect to each federal income tax accounting year of such trust, a complete beginning and ending inventory ... and an accounting summarizing all financial Transactions for such period thereby reconciling such ending inventory with the beginning inventory, fully reflecting all principal and income activity including all distributions of every kind.”

After reviewing the pleadings, a copy of the Trust, and upon oral argument of the parties, the district court found that “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.” *See* Appeal Order, ¶ 5, at p. 2, Exhibit 1. This Court additionally found that “the Beneficiaries are not entitled to an annual accounting under the terms of the Trust,” and “are not entitled to audit the books and records every year under the terms of the Trust.” *Id.* ¶¶ 6-7. “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.” *Id.* ¶ 7

Nevertheless, the district court concluded:

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.

Id. ¶ 13. The district court further concluded that although the Benif are entitled to certain information from the trust they are not entitled to a copy of the entire trust agreement. *Id.* ¶ 14.

Finally, the district court found that “Because 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.* ¶ 16. Despite this concluding that the Beneficiaries were not entitled to rights under Trust’s Section 5.2A and the specific language in the Trust, the district court held that “the Beneficiaries are entitled to certain 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. Specifically, the district court ordered the following:

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

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.

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

D. Information 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, to 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.

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 more frequently than annually by the Trustees.

Id. at p. 4-5.

The Order was entered on April 23, 2021. On May 24, 2021, Trustees filed a Notice of Appeal pursuant to NRS 155.190(h), which makes any order that instructs a trustee concerning its duties immediately appealable.

3. Legal Argument

Trustees request a stay of the Appeal Order to allow the Trustees to continue to administer the Trust as they were pending the outcome of this appeal. To deny a stay would cause irreparable harm to the Trust by requiring the immediate release and disclosure of information which will not be disclosed if the Trustees prevail on appeal.

NRAP 8(c) governs the stays in civil cases other than those involving child custody. When considering whether to grant a stay, this Court should consider the following factors: (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 the merits in the appeal. *Hansen v. Dist. Ct. ex rel. Cty. Of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *see also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (holding that while no one factor under NRAP 8 is more important than the others, “if one or two factors are especially strong, they may counterbalance other weak factors”). In other words, the absence of one factor is not dispositive to the stay analysis; rather, to the contrary, the presence of even one factor could be so significant to the point that a stay should be ordered. In reviewing the four factors from *Hansen*, the Supreme Court recognized the primary purpose of a

stay is to preserve the status quo during an appeal. *See e.g., Nelson*, 121 Nev. At 835; 122 P.3d at 1254 (citations omitted).

Based on the *Hansen* factors and those set forth under NRAP 8(c), this Court should enter a stay pending the appeal 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 object of the appeal, which is to challenge determination of whether the Order to disclose certain financial information and copies of certain section of the Trust to the Beneficiaries are required under the Trust and Nevada law, will be defeated if the stay is denied and the Trustees are required to provide the information anyway. If the results of the appeal favor the Trustees, the Trust will have suffered irreparable harm because the disclosures will already have been made. It would be like trying to put the toothpaste back in the tube: impossible. There will be no way to “claw back” the information once given to the Petitioner.

On the other hand, the Petitioner will suffer no harm by this Court granting a stay. There is no monetary judgment that would be at risk if a stay is granted. The Beneficiaries’ interest under the Trust is completely discretionary, and as the district court found, the Beneficiaries “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.” To delay the disclosure of the information required by the Order will not harm

the Beneficiaries; such information can be provided after the appeal if the Beneficiaries prevail.

Comparing the result of a delay if the stay is granted to that suffered by the Trust if the stay is denied, the Beneficiaries have no quantifiable claim that they will be harmed. However, even if this Court considers the delay of providing the information to the Beneficiaries a harm in itself, this is not “irreparable harm” because the release of such information to the Beneficiaries if they ultimately prevail will make them entirely whole. The Trust has no such remedy if a stay is denied and the Trustees ultimately prevail on appeal.

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

3. Conclusion

For the foregoing reasons, the Trustees request that the Court issue a stay of the enforcement of the Appeal Order pending appeal under NRAP 8(c).

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DATED this 1st day of October, 2021.

HUTCHISON & STEFFEN, PLLC

/s/ Russel J. Geist

Russel J. Geist (9030)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

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

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **APPELLANTS' MOTION FOR STAY PENDING APPEAL** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Alexander G. LeVeque, Esq.
Roberto M. Campos, Esq.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Attorney for Respondent/Cross-Appellant

A copy was served via U.S. Mail to the below:

Eleissa C. Lavelle
3800 Howard Hughes Pkwy.
11th Floor
Las Vegas, NV 89169

Settlement Judge

DATED this 1st day of October, 2021.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Heather S. Smith
CLERK OF THE COURT

ORDR

ALEXANDER G. LEVEQUE (#11183)
aleveque@sdfnlaw.com
ROBERTO M. CAMPOS (#15189)
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*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:

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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*

Allie Carnival

From: Roberto M. Campos
Sent: Wednesday, March 17, 2021 8:37 AM
To: Russel J. Geist; Alexander LeVeque
Cc: Amber Anderson-Reynolds; Terrie Maxfield
Subject: RE: 23 Partners Trust I

Follow Up Flag: Follow up
Flag Status: Completed

Good morning, Russel,

Because I have not heard a response to my email below, I assume your client disagrees with our position on the draft order. Accordingly, we will be submitting to the court the draft order as emailed to you on March 4.

Thanks,

Roberto

From: Roberto M. Campos
Sent: Thursday, March 11, 2021 8:48 AM
To: 'Russel J. Geist' <RGeist@hutchlegal.com>; Alexander LeVeque <aleveque@sdfnlaw.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>
Subject: RE: 23 Partners Trust I

Good morning, Russel,

Thanks for your email and agreement to changes on the first draft.

I agree that the Court ruled the Petitioner is not entitled to a copy of the entire Trust.

However, the Court referenced "the sections that affect them." Tr., at p. 35:3-5 ("They are entitled, I think, to information about what affects them, the way I read this. What are the sections that affect them?")

Initially, the transmission of this information on the beneficiaries' *rights* and what Trust sections affect them must be in written form for the sake of increasing clarity and minimizing ambiguity and potential misunderstandings.

Thus, practically speaking, obtaining copies of the relevant Trust sections (or subsections) is the best way for trustees ensuring they are properly discharging their duty to convey the information that the Court ordered them to convey and for the beneficiaries to obtain accurately the information to which they are entitled, pursuant to the Court's ruling.

The Court did not prohibit the trustees from transmitting this information by providing copies of the relevant sections in the Trust. Moreover, without actually seeing the relevant sections for themselves, the beneficiaries have no way of ensuring that they are receiving (1) all of the information, (2) accurately, to which they are entitled according to the Court. Indeed, Petitioner listed in her Reply various examples of trustees' already misrepresenting what the Trust says:

- "Section 5.2 of the Trust ... just says, books and records shall be available for an inspection." – R. Geist, December 9, 2020, Hearing Transcript (Pet.'s Supp., Ex. 2), at 15:15-23). Yet, Section 5.2 also speak of "an accounting summarizing all financial transactions..."

- “[O]ur objection is limited in that their request for relief is to **compel an accounting and the delivery of a copy of a Trust**, both of which are not permitted under the statute and **not permitted under the terms of the Trust.**” – *Id.*, at 13:2-6 (emphases added). Actually, as the Court stated the Trust “says nothing about a copy of the Trust.” Tr., at p. 28:19-20. And, again, Section 5.2 does mandate “an accounting” summarizing all financial transactions. See Sec. 5.2 (trustees “upon request shall furnish [to said beneficiaries] an accounting summarizing all financial transactions for such period...”
- “[T]he Trustee has **no obligation to provide an accounting** to the Beneficiaries pursuant to NRS 165.1207(1)(b)(5) **or pursuant to the Trust.**” Objection, at 6:4-8 (emphases added).
- “As I have explained to [Julia] in the past, the trust is clear in what information can be shared with beneficiaries and what cannot. The beneficiaries are **not entitled to any information** about the underlying document or the assets contained therein.” – M. Salvin, Head of Client Relations, Nedder & Associates, LLC., Exhibit 3 to Nedder’s Supplement (emphasis added).

Further, at no point have trustees informed the beneficiaries that they have the present right under 7.2(D) to remove any individual Independent Trustee. See Nedder Supp., at p.3;10-12 (“... even if the beneficiaries exercised their right under Section 7.2(D) to remove any individual Independent Trustee. Thus while the Beneficiaries may remove the Independent Trustee ...”).

Nor did the Trustees inform Petitioner of Section 5.2(b) requiring that *some* trustee must carry out 5.2(A) duties when no corporate trustee is then acting to carry them out.

These are a but a few examples of misrepresentations and omissions on what the Trust actually says. Thus, to minimize the chances of any additional misrepresentations, omissions or ambiguities (regardless if benign), copies of the relevant trust sections (or subsections) should be provided.

Accordingly, we cannot accept Mr. Nedder’s suggested language excluding copies of the relevant trust sections (or subsections).

Thank you

Roberto

From: Russel J. Geist <RGeist@hutchlegal.com>

Sent: Wednesday, March 10, 2021 9:57 AM

To: Roberto M. Campos <RCampos@sdfnlaw.com>; Alexander LeVeque <aleveque@sdfnlaw.com>

Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>

Subject: RE: 23 Partners Trust I

Roberto,

I’m fine with all of the suggestions revisions with the exception of the language about providing information about the rights of the beneficiaries regarding the trust, the trustees, etc. I think we agree the court specified they are not entitled to a copy of the full trust.

It seems that we do not agree that the court also contemplated that they are not entitled to copies of sections of the trust since allowing or requiring copies of sections of the trust relevant to their rights but not a copy of the full trust is that creates a back door to the full copy – an inconsistent result. Judge Sturman specifically said that she didn’t believe their rights could be summarized in one or two pages. “So they have to generally know what their rights are at the present time.” Transcript, page 52, 9-10.

Accordingly, I have changed paragraph 5 to read:

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 or copies of sections of the Trust agreement, but conveyed to the Beneficiaries so that they generally know what their rights are at the present time.

Paragraph 14 to read:

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, but conveyed to the Beneficiaries so that they generally know what their rights are at the present time.

And paragraph D in the Order to read:

D. Information 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, to be conveyed to the Beneficiaries so that they generally know what their rights are at the present time.

Please let me know if you are in agreement with these revisions.

Sincerely,

From: Roberto M. Campos [<mailto:RCampos@sdfnlaw.com>]
Sent: Thursday, March 04, 2021 12:23 PM
To: Russel J. Geist <RGeist@hutchlegal.com>; Alexander LeVeque <aleveque@sdfnlaw.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>
Subject: RE: 23 Partners Trust I

Hello, Russel,

Attached is your initial draft with our revisions in redline. I included parentheses only for assistance in referencing the relevant Transcript portions.

Thanks,

Roberto

From: Russel J. Geist <RGeist@hutchlegal.com>
Sent: Tuesday, March 2, 2021 12:46 PM
To: Roberto M. Campos <RCampos@sdfnlaw.com>; Alexander LeVeque <aleveque@sdfnlaw.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>
Subject: RE: 23 Partners Trust I

That will work. Thanks.

From: Roberto M. Campos [<mailto:RCampos@sdfnlaw.com>]
Sent: Tuesday, March 02, 2021 12:13 PM
To: Russel J. Geist <RGeist@hutchlegal.com>; Alexander LeVeque <aleveque@sdfnlaw.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>
Subject: RE: 23 Partners Trust I

Your initial draft of the order is appreciated, especially since the draft order is not a simple order.

We can have our revisions to you no later than this Thursday. Does that work for you?

Thanks,

Roberto

From: Russel J. Geist <RGeist@hutchlegal.com>
Sent: Tuesday, March 2, 2021 11:31 AM
To: Roberto M. Campos <RCampos@sdfnlaw.com>; Alexander LeVeque <aleveque@sdfnlaw.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>
Subject: RE: 23 Partners Trust I

While I understand that the draft was delayed, the transcript is available and the order uses the language directly from the transcript. After I took the laboring oar to draft the order, it seems that your review would not be as laborious. Am I wrong?

How much time are you requesting to review and provide your comments?

From: Roberto M. Campos [<mailto:RCampos@sdfnlaw.com>]
Sent: Tuesday, March 02, 2021 11:15 AM
To: Russel J. Geist <RGeist@hutchlegal.com>; Alexander LeVeque <aleveque@sdfnlaw.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>
Subject: RE: 23 Partners Trust I

Russel,

We waited exactly 4 weeks to receive the draft order from you, which you sent over last Thursday afternoon. Yes, we have proposed revisions but need a bit of time to consider and review with the client before sending over to you. We would appreciate the extension of courtesy of a reasonable time to respond with our revisions.

Thank you,

Roberto

From: Russel J. Geist <RGeist@hutchlegal.com>
Sent: Tuesday, March 2, 2021 11:07 AM
To: Alexander LeVeque <aleveque@sdfnlaw.com>; Roberto M. Campos <RCampos@sdfnlaw.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>
Subject: RE: 23 Partners Trust I

Alex and Roberto,

I am planning on submitting the proposed order today. Please let me know if you have any revisions for my consideration.

Sincerely,

From: Russel J. Geist

Sent: Thursday, February 25, 2021 12:49 PM

To: Alexander LeVeque <aleveque@sdfnlaw.com>; Roberto M. Campos <RCampos@sdfnlaw.com>

Cc: Amber Anderson-Reynolds <aanderson@hutchlegal.com>

Subject: RE: 23 Partners Trust I

Word Perfect attached.

From: Alexander LeVeque [<mailto:aleveque@sdfnlaw.com>]

Sent: Thursday, February 25, 2021 11:30 AM

To: Russel J. Geist <RGeist@hutchlegal.com>; Roberto M. Campos <RCampos@sdfnlaw.com>

Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>

Subject: RE: 23 Partners Trust I

Russ, can you please send Word or WordPerfect version?

Alexander G. LeVeque

SOLOMON DWIGGINS & FREER, LTD.

Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129

Direct: 702.589.3508 | Office: 702.853.5483 | Facsimile: 702.853.5485

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 www.linkedin.com/company/solomon-dwiggins-&-freer-ltd-

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TRUST AND ESTATE ATTORNEYS



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From: Russel J. Geist <RGeist@hutchlegal.com>

Sent: Thursday, February 25, 2021 11:27 AM

To: Roberto M. Campos <RCampos@sdfnlaw.com>; Alexander LeVeque <aleveque@sdfnlaw.com>

Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>

Subject: 23 Partners Trust I

Roberto and Alex,

I apologize for the delay. Please find the attached draft order for your review.

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

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17 Allie Carnival

acarnival@sdfnvlaw.com

18 Erin Hansen

ehansen@sdfnvlaw.com

19 Russel Geist

rgeist@hutchlegal.com

20 Roberto Campos

rcampos@sdfnvlaw.com

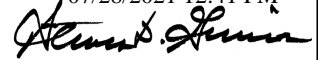
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EXHIBIT PAGE ONLY

EXHIBIT 2

HUTCHISON & STEFFEN

A PROFESSIONAL LLC


CLERK OF THE COURT

ORDR

Russel J. Geist (9030)
HUTCHISON & STEFFEN, PLLC
10080 W. Alta Dr., Suite 200
Las Vegas, NV 89145
(702) 385-2500/Fax: (702) 385-2086
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,

An Irrevocable Trust.

CASE NO.: P-20-104279-T
DEPT. NO.: 26

**ORDER REGARDING (1) MOTION FOR STAY PENDING APPEAL; (2) MOTION FOR
ORDER TO SHOW CAUSE WHY TRUSTEES SHOULD NOT BE HELD IN CONTEMPT
OF COURT; (3) MOTION FOR SANCTIONS; AND (4) MOTION FOR SUBSTITUTION OF
REAL PARTY IN INTEREST**

The matters of the Trustees' Motion for Stay Pending Appeal (the "Motion for Stay"), and Joanne Briggs' Motion for Order to Show Cause Why Trustees Should Not Be Held in Contempt of Court; Motion for Sanctions; and Motion for Substitution of Real Party in Interest (the "Beneficiaries' Motions") on behalf of the Beneficiaries of the Trust, came before the Court for a hearing and oral argument on June 23, 2021. After having read the papers and pleadings associated with the Motion for Stay and the Beneficiaries' Motions, the oppositions thereto, and the replies in support, and having entertained oral arguments by counsel, the Court makes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Trustees filed a timely appeal of this Court's Order Granting in Part and Denying in Part Petition to (1) Assume Jurisdiction Over Trust, (2) Confirm Douglas Scott DeLuca as

1 Trustee, (3) Compel an Accounting, and (4) Obtain a Copy of Trust (the “Order”). Joanne Briggs
2 and Julia Ann DeLuca also filed a timely appeal of the Order.

3
4 2. An appeal of an order of the district court in a probate or trust matter does not fit
5 neatly in the circumstances of an appeal of a final order and are instead more like an interlocutory
6 appeal. Indeed, the ability to independently appeal a probate or trust order derives from NRS
7 155.190.

8
9 3. The nature of the Order is more like an interlocutory order, however a stay is
10 appropriate, whether such appeal is considered an appeal from an instruction to a trustee as was the
11 issue decided in *The Estate of Duncan Miller*, 111 Nev. 1 (1995), or an interlocutory appeal from a
12 discovery order compelling the production of documents such as that addressed by the Nevada
13 Supreme Court in *Canarelli v. Eighth Judicial Dist. Court in & for County of Clark*, 136 Nev. 247,
14 464 P.3d 114 (2020). The issue of which type of order the appeal is from is not an issue for this
15 Court to determine, by for the Appellate Court to determine to address the grounds on which this
16 issue is appealable. .

17
18 4. Therefore, it is appropriate to grant a temporary stay of 60 days from the notice of
19 entry of this order to permit the Trustees to file a motion for stay with the Nevada Supreme Court or
20 the Nevada Court of Appeal as appropriate.

21
22 5. The Trustees’ filed a timely appeal of the Order and thereafter filed the Motion for
23 Stay, although, the Trustees did not perform under the Order within the 30-day deadline. Therefore,
24 because the Trustees filed a timely appeal, the Court declines to issue an order to show cause or
25 impose sanctions on the Trustees for failure to comply with the Order. If the Nevada Supreme Court
26 orders production of the documents and information outlined in the Order, and the Trustees fail to
27 comply, the Beneficiaries may renew their motion.
28

6. The Motion for Substitution of Real Party in Interest is in the best interests of Julia Ann DeLuca as the beneficiary and real party in interest, and is unopposed. It is appropriate to grant this Motion to Substitute accordingly.

ORDER

IT IS THEREFORE ORDERED that the Motion for Stay is GRANTED in part and DENIED in part, such that a stay for the duration of the appeal of this Court's Order of April 23, 2021 is denied, but a temporary stay of 60 days from the date of entry of this order is granted so that the Trustees may file an appropriate motion for stay pending appeal with the Nevada Supreme Court.

IT IS FURTHER ORDERED that the Motion for an Order to Show Cause and for Sanctions is DENIED without prejudice.

IT IS FURTHER ORDERED that the Motion for Substitution of Real Party in Interest is GRANTED.

IT IS SO ORDERED.

Dated this 28th day of July, 2021



9C8 696 F1DE C307
Gloria Sturman
District Court Judge

Respectfully Submitted By:

HUTCHISON & STEFFEN, PLLC

/s/ Russel J. Geist
Russel J. Geist (9030)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
*Attorneys for Michael T. Nedder and
Douglas DeLuca, Trustees*

Approved as to Form and Content By:

SOLOMON DWIGGINS & FREER, LTD.

/s/ Roberto M. Campos
Alexander G. LeVeque (11183)
Roberto M. Campos (15189)
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
*Attorneys for Joanne Briggs and
Julia DeLuca*

Amber Anderson-Reynolds

From: Roberto M. Campos <RCampos@sdfnlaw.com>
Sent: Friday, July 16, 2021 7:59 AM
To: Russel J. Geist
Cc: Alexander LeVeque; Allie Carnival; Terrie Maxfield; Amber Anderson-Reynolds
Subject: RE: 23 Partners 1 Trust - Order on June 23 Hearing

Good morning, Russel,

If you are waiting on confirmation from us on the attached draft order, we are fine with the minor grammatical change noted in the email directly below. You may affix my e-signature to the order to be submitted to the Court.

Thanks,

RC

From: Russel J. Geist <RGeist@hutchlegal.com>
Sent: Wednesday, July 14, 2021 12:27 PM
To: Roberto M. Campos <RCampos@sdfnlaw.com>
Cc: Alexander LeVeque <aleveque@sdfnlaw.com>; Allie Carnival <acarnival@sdfnlaw.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>; Amber Anderson-Reynolds <AAnderson@hutchlegal.com>
Subject: RE: 23 Partners 1 Trust - Order on June 23 Hearing

I made one small grammatical change to the first sentence in paragraph 5.

This version will be submitted to the Department today.

Russel

From: Russel J. Geist
Sent: Wednesday, July 14, 2021 12:22 PM
To: Roberto M. Campos <RCampos@sdfnlaw.com>
Cc: Alexander LeVeque <aleveque@sdfnlaw.com>; Allie Carnival <acarnival@sdfnlaw.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>
Subject: RE: 23 Partners 1 Trust - Order on June 23 Hearing

Thanks.

From: Roberto M. Campos [<mailto:RCampos@sdfnlaw.com>]
Sent: Tuesday, July 13, 2021 9:55 AM
To: Russel J. Geist <RGeist@hutchlegal.com>
Cc: Alexander LeVeque <aleveque@sdfnlaw.com>; Allie Carnival <acarnival@sdfnlaw.com>; Terrie Maxfield <TMaxfield@sdfnlaw.com>
Subject: RE: 23 Partners 1 Trust - Order on June 23 Hearing

Good morning, Russel,

We are fine with the version of draft order as you revised and attached to the email immediately below (deleting, of course, the comments).

Thanks,

RC

From: Russel J. Geist <RGeist@hutchlegal.com>
Sent: Thursday, July 8, 2021 1:54 PM
To: Roberto M. Campos <RCampos@sdfnvlaw.com>
Subject: RE: 23 Partners 1 Trust - Order on June 23 Hearing

Roberto,

My responses are attached.

Russel

From: Russel J. Geist
Sent: Thursday, July 08, 2021 11:53 AM
To: Roberto M. Campos <RCampos@sdfnvlaw.com>
Subject: RE: 23 Partners 1 Trust - Order on June 23 Hearing

Thanks, Roberto. I'll take a look and get back to you this afternoon.

From: Roberto M. Campos [<mailto:RCampos@sdfnvlaw.com>]
Sent: Thursday, July 08, 2021 10:17 AM
To: Russel J. Geist <RGeist@hutchlegal.com>
Cc: Amber Anderson-Reynolds <AAnderson@hutchlegal.com>; Allie Carnival <acarnival@sdfnvlaw.com>; Alexander LeVeque <aleveque@sdfnvlaw.com>; Terrie Maxfield <TMaxfield@sdfnvlaw.com>
Subject: RE: 23 Partners 1 Trust - Order on June 23 Hearing

Good morning, Russel,

Attached for your review is the draft order with our redlined, suggested edits and comments.

Thanks,

RC

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: 7/28/2021

14 Alexander LeVeque

aleveque@sdfnvlaw.com

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17 Erin Hansen

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18 Russel Geist

rgeist@hutchlegal.com

19 Roberto Campos

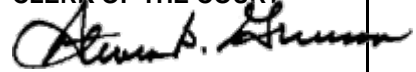
rcampos@sdfnvlaw.com

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EXHIBIT 3

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



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HUTCHISON & STEFFEN, PLLC
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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”).

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

DATED this May 25, 2021

HUTCHISON & STEFFEN, PLLC

/s/ Russel J. Geist
Russel J. Geist (9030)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
*Attorneys for Michael T. Nedder and
Douglas DeLuca, Trustees*

POINTS AND AUTHORITIES

1. Background Facts and Procedural History

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

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

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

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

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

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

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 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)
28

(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 NRCP 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 NRAP 8.

If this Court is not inclined to grant an automatic stay, and with *de minimis* bond under NRCP 62, then this Court should look to the factors used in NRAP 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*

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
Alexander G. LeVeque, Esq.
Roberto M. Campos, Esq.
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, NV 89129

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

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