

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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**APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME III**

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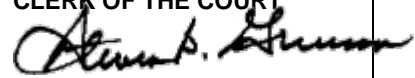
DATED this 2nd day of February, 2022.

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14 *Primary Beneficiaries of 23 Partners Trust I*

15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 In the Matter of
18
19 23 PARTNERS TRUST I, dated February 1,
20 2017.

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

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

21 **REPLY TO SUPPLEMENT TO OBJECTION TO PETITION TO (1) ASSUME**
22 **JURISDICTION OVER TRUST, (2) CONFIRM DOUGLAS SCOTT DELUCA AS**
23 **TRUSTEE, (3) OBTAIN AN ACCOUNTING, AND (4) OBTAIN A COPY OF TRUST¹**

24 I.

25 **INTRODUCTION**

26 **Key Points**

27 ➤ **The Trust's Express Terms Require Nedder to Account to Julia and Alex.**

- 28 ○ The Trust provides that the trustee(s) "shall make the books of account and records of all financial transactions ... available at all reasonable times for inspection by ... each then presently vested income, principal and remainder beneficiary ... and their respective representatives." § 5.2(A) (emphases added).
- The Trust further provides that the trustee(s) "upon request shall furnish to [said beneficiaries], with respect to each federal income tax accounting year of such trust,

¹ Pursuant to the Order, entered Dec. 30, 2020, the Court granted the Petitions to assume *in rem* jurisdiction over the Trust and confirmed Family Trustee Douglas Scott DeLuca ("Douglas") and Michael T. Nedder as its Trustees. Remaining to be resolved are the Petitions to obtain an accounting and a copy of the Trust.

a complete beginning and ending inventory, fully reflecting all principal and income activity including all distributions of any kind.” *Id.* (emphases added).

- The Trust further provides that the trustees(s) “upon request **shall** furnish [to said beneficiaries] **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.” *Id.* (emphases added).

➤ **The Trust Does Not Prohibit Alex and Julia from Receiving a Copy of the Trust.**

➤ **Nedder Has Knowingly Misrepresented His Accounting Duties to Petitioner and this Court.**

- “Section 5.2 of the Trust ... just says, books and records shall be available for inspection.” – R. Geist, December 9, 2020, Hearing Transcript (Pet.’s Supp., Ex. 2), at 15:15-23).
- “[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.
- “[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.
- “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.

➤ **Nedder Is Acting Upon a Conflict of Interest.**

- The express terms of the Trust provide that Alex and Julia can remove Nedder at any time; a fact that Petitioner, Julia, and Alex would never know had the Court not instructed Nedder to release a copy of the Trust to Petitioner’s counsel.

➤ **In His Supplement, Nedder Attempts to Divert the Court’s Attention Away from His Absence of Candor by Making Inferences that Petitioner’s Requests for Distributions from the Trust for the Benefit of Her Children are Not Genuine.**

- Petitioner categorically denies such inferential accusations and finds the same unfounded and distasteful. More importantly, however, is that they are wholly irrelevant to the relief requested in the Petition.

The 23 Partners Trust I (“Trust”)’s terms plainly require Independent Trustee Michael T. Nedder (“Nedder”) to provide a copy of the trust instrument and an accounting *promptly* to a beneficiary, and none of Nedder’s misrepresentations, omissions or strawman deflections in his Supplement change that. Therefore, however much discretion the Trust grants the Trustee to make

1 or not make distributions (not at issue now),² **the Trust provides him no discretion on his duty**
2 **to account as a Trustee**. Thus, the Trust requires Nedder to provide a copy of the Trust, an
3 accounting, and a meaningful opportunity to inspect the Trust's books and records on "all financial
4 transactions" upon Petitioner Joanne Briggs's request, as mother and legal guardian of the Trust's
5 only *Primary* Beneficiaries, Julia Ann DeLuca and Alex Ian DeLuca. These Trust mandates also
6 find support in Nevada law, trust law authority, common sense and fairness.

7 Indeed, Nedder should not be allowed to continue his obfuscation over money that is not
8 his, but was intended by his deceased client to primarily benefit the client's children. In fact, had
9 Petitioner not brought this suit, her counsel would never have learned about the children's right
10 under the Trust, as Nedder admits, to remove him as Trustee. Nedder however continues trying to
11 block the children and their mother from ever learning this and other important information about
12 the Trust and the beneficiaries' rights thereunder, *e.g.*, their power of appointment.

13 Tellingly, Nedder's Supplement relies on misrepresentations and more matters that are
14 irrelevant at this juncture, *e.g.*, the propriety of Petitioner's requests, which were in fact proper as
15 to the Trust. As were her separate requests to the Trust Settlor's estate, which Nedder tries to falsely
16 paint as excessive and as made to the Trust. He also deceitfully attempts to show his reimbursements
17 of such expenses as generous when in fact they are mandated pursuant to the Petitioner's and Trust
18 Settlor's divorce Separation Agreement.³ These efforts however merely underscore the lack of
19
20

21 ² At this time, Petitioner seeks only a copy of the trust and an accounting. Any ruling now on
22 the Trustee's discretion on distributions would thus be improper. Petitioner reserves her right to
23 address particular distributions and discretionary decisions at a later stage if and when that is
24 necessary.

25 ³ For example, the Supplement states that "pursuant to a probate court order, the trust has paid
26 \$7,200 per month to petitioner as apportioned housing expenses attributable to the Beneficiaries
27 [citing Nedder's Affidavit]. The Trust has also provided ... credit card[s]... for a combined total of
28 approximately \$20,000 per month in living expenses ..." Nedder Supp., at p. 3:18-23. Nedder's
Affidavit also suggests the housing is paid from the Trust under the Trustees' direction. *See* Nedder
Supp., Ex. 1, ¶ 9 ("as the direction and discretion of the Trustees, the [Trust] paid the expenses [of
the children] including *housing*, food, clothing ...") (emphasis added). Further, at least Nedder's
affidavit (though not his Supplement) shows Petitioner "makes [such] requests for reimbursement
by the Estate of [the Trust's Settlor] for other monthly expenses she says are for the benefit of" the
children. *See* Nedder Supp., Ex. 1, ¶ 11.

1 support in law, sense and fairness on what now *is* at issue in this case: the petitions for a copy of
2 the trust and an accounting.

3 Therefore, Petitioner respectfully requests the Court put an end to this self-serving
4 concealment,⁴ and compel the Trustees provide her *merely* a copy of the trust and an accounting.
5 Also, the Trustees here in bad faith: (i) violated the Trust's terms by not providing this repeatedly-
6 requested information; (ii) *misrepresented to Petitioner (and the children) that the Trust prohibited*
7 *the Trustee from providing them with Trust information when it in fact requires the opposite upon*
8 *a beneficiary's request*; and (iii) omitted, in the objection to the petition, Trust provisions that
9 govern the facts here. As such, the Court should also surcharge Nedder to pay Petitioner her
10 attorneys' fees and costs for having to bring the petition and respond to the baseless objection and
11 supplement, and order that Nedder shall not pay from the Trust the attorneys' fees and costs incurred
12 for objecting to the Petition.⁵

13
14
15 In sum, Nedder attempts to conflate these expenses by painting them all as distributions that
16 the Trustees made generously in their discretion when the Separation Agreement says otherwise.
17 See Separation Agreement, Sep. 4., 2014, a true and correct copy of which is attached hereto as
18 **Exhibit 1**, ¶ 9(A) ("In the event of the Husband's death his estate and related Trust shall pay 100%
19 of the **housing expenses** for the children ... and otherwise necessary for the **children's health,**
20 **welfare, and physical and psychological well-being** at the time of his death; and 100% of the
21 **children's extracurricular expenses** ... Upon his death the Wife shall have no obligation for the
22 children's housing or extracurricular expenses ...") (emphases added). Moreover, Nedder too admits
23 that the Trust Settlor's Estate is under a contractual obligation to cover, *inter alia*, the children's
24 Health, Education, Maintenance and Support (HEMS) expenses. See Letter from Nedder to
25 Petitioner's Connecticut counsel, Aug. 16, 2019, a true and correct copy of which is attached hereto
26 as **Exhibit 2** ("[W]e **do acknowledge** that pursuant to the Separation Agreement, dated September
27 4, 2014 ... that some **obligation does exist** ... While the decedent **had a contractual obligation**
28 **to pay for the housing** expenses of the children until they graduate or turn twenty-three years of
age, the Estate ... In regards **to the childrens' living expenses and overall well-being, the Estate**
has been and will continue to pay for all educational and medical expenses and all
extracurricular activity and travel expenses for the children without hesitation. The Estate is
paying those expenses directly and your client has had no obligation to pay them.") (emphases
added).

⁴ On information and belief, the Trust holds over \$20 million in assets; the trustee and related
fees for which likely are commensurately considerable.

⁵ The request for attorney's fees is directed solely to Nedder as only he filed an objection to
the petition. Although Nedder's Supplement to his objection, filed January 19, 2021, claims to also
be brought on behalf of Family Trustee Douglas DeLuca, Mr. DeLuca did not file an opposition to
the petition before the Court first heard the petition on December 9, 2020, and therefore waived any
objection thereto. See EDCR 2.20(e) ("Failure of the opposing party to serve and file written

II.

ARGUMENT

A. THE TRUST'S § 5.1(C) REQUIRES TRUSTEES TO PROVIDE PETITIONER WITH A COPY OF THE TRUST AND TO DO SO PROMPTLY.

As much as Nedder wishes to find in its 63 pages, the Trust simply does not prohibit the Trustees from providing a copy of it to a beneficiary upon request. This absence alone, along with established trust law authority, requires Nedder as trustee to provide a copy of the Trust to Petitioner upon request.⁶ In other words, if a trust was silent on whether or not the trustee could provide a copy of the trust to a beneficiary, trust law authority and common sense dictate that the beneficiary has a right to obtain such a copy. After all, it's the beneficiary's money.

Yet, here there is more. The Trust's § 5.1 (C) mandates that the Trustees provide copies of Trust instruments to beneficiaries upon request, and to do so promptly:

Copies of **all trust related instruments** of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of a Trustee's resignation, removal, appointment and/or acceptance ... **shall upon request be delivered promptly** ... **by the Trustees ... to each interested party (i.e., the Grantor, the other then Trustee or Trustees, if any, of the affected trust or trusts, and each present beneficiary of the affected trust or trusts).**⁷

Nedder does not dispute that the Trust is itself a "trust related instrument." His contention is only that because the trust is not an "instrument[]" of amendment, revocation, exercise of power, designation, release, disclaimer, etc." or "of a Trustee's resignation, removal, appointment and/or acceptance ...," that a copy of the trust itself does not fall under § 5.1 (C) and the beneficiary has no right to it upon request. So, supposedly the trustee must provide all these documents to a beneficiary upon request, and promptly, but not a copy of the Trust itself. This is patently absurd.

opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same.").

⁶ See RESTATEMENT (SECOND) OF TRUSTS § 173, Comment *c* (updated 2020) ("Although the terms of the trust may regulate the amount of information which the trustee must give and the frequency with which it must be given, the **beneficiary is always entitled to such information as is reasonably necessary to enable him to enforce his rights** under the trust or to prevent or redress a breach of trust.") (emphasis added); *see also, supra*, Section II(C).

⁷ See Pet.'s Supp., at p. 5:1-8. Emphases added.

1 If the settlor genuinely wanted to keep the Trust and all its terms from the beneficiary, he would
2 not have included such a provision. There is no use in obtaining all these documents if one cannot
3 also have the underlying instrument to which all the documents refer.

4 Thus, the inclusion of § 5.1(C), *along with* the conspicuous absence of a prohibition against
5 providing the beneficiary with a copy of the trust upon request, weigh heavily in favor that the
6 settlor intended that the beneficiary be able to obtain a copy of the Trust upon request. Indeed, such
7 conclusion results also from other Trust provisions predicated upon the beneficiary being able to
8 obtain a copy of the trust upon request and knowing its terms. *See, e.g.*, power of appointment (§
9 3.2.2), right to inspect books and records (§ 5.2), right to request accounting (§ 5.2) and right to
10 request trustee's medical records (for capacity) (§ 7.15)(A)).⁸

11 Given the Trust's terms, Nedder's claim, suggesting that NRS 165.147(2) is the only basis
12 the petition employs for a copy of the Trust, is false. *See* Nedder's Supp., at p. 11:15 ("[t]he Petition
13 to obtain a copy of the Trust is based on NRS 165.147(2) ..."). Unavailing also is his reliance on
14 the Trust's § 5.1(E) merely prohibiting the trustee from providing "notice of the existence of the
15 trust." Again, that shipped sailed, because Petitioner knows of the Trust's existence and so § 5.1(E)
16 no longer applies. In turn, § 5.1 (C) does apply and the beneficiaries can make requests thereunder.

17 **B. THE TRUST'S § 5.2(A-B) REQUIRES THAT, UPON PETITIONER'S REQUEST, THE TRUSTEES**
18 **MUST FURNISH AN ACCOUNTING AND OPPORTUNITY TO INSPECT THE BOOKS AND**
19 **RECORDS ON "ALL FINANCIAL TRANSACTIONS" OF THE TRUST.**

20 *i. The Trust's § 5.2(B) Requires Nedder to Discharge § 5.2(A) Duties.*

21 Under the Trust's § 5.2(A), a beneficiary may also request, and the corporate trustee must
22 provide: (i) an accounting, including a complete inventory; and (ii) the opportunity to inspect the
23 books and records on "all financial transactions" of the Trust:⁹

24
25 ⁸ Nedder's counsel admits as much. *See* Pet's Supp., Jan. 11, 2021, Ex. 2, at p. 18:24-19:2
26 ("When we start cutting down the terms of the Trust, we're cutting down the grantor's intent. He
27 created this document for the benefit of his kids..."). Moreover, Nedder has yet to articulate a time
28 or occurrence of condition, *e.g.*, a certain age, noted in the Trust when its beneficiaries can obtain
a copy of it as they must inevitably learn of it. This further suggests they can get such a copy at
least upon learning of the Trust's existence and making a request under § 5.1 (C).

⁹ Pet.'s Supp., at p. 5:13-6:2 (emphases added).

Such corporate trustee shall make the books of account and records of all financial transactions relative to such trust available ... for inspection by ... **each then presently vested income, principal and remainder beneficiary** of such trust, and their respective representatives. Furthermore, such corporate fiduciary **upon request** shall furnish to each such person [for each accounting year] a complete beginning and ending inventory (showing both tax cost basis and such Trustee's reasonable estimate of fair market value) 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.

Id. (emphases added). Further, when no corporate trustee is *acting*, § 5.2(B) places all these duties, pursuant to § 5.2(A) on the other trustees: ¹⁰

During such period of time as there is no corporate fiduciary acting with respect to any trust hereunder, all of the aforesaid record keeping and reporting functions shall be performed by its Trustee or Trustees jointly ...

Nedder does not dispute the corporate trustee's accounting duties to a beneficiary under § 5.2(A). He also does not dispute that when no corporate trustee is acting, that such duties fall on the non-corporate trustees. Tellingly, he entirely omits § 5.2(B) in his Opposition and ignores it, again, in his Supplement. Desperate to draw the Court's attention away from it, he even falsely, again, suggests the petition for an accounting is based *solely* on NRS 153.031 ("The Petition to obtain an accounting is based on NRS 153.031(1)(h)"). *See* Nedder Supp., at p. 9:7-8. Such evasion efforts however merely underscore the applicability and effect of § 5.2(B) here.

So Premier Trust, Inc. ("Premier") maintains its status, we now learn, as the Co-Independent Trustee, along with Nedder. But, Nedder makes clear from the outset on the cover page of his Supplement that Premier's "duties" are "limited to Nevada-specific responsibilities." *See Id.*, at p. 1:20-21. Yet there is no such limitation in the Trust. Even if taken as true, if because its duties are limited as such, Premier is not an *acting* corporate trustee with respect to § 5.2(A-B). Thus, pursuant to § 5.2(B), the accounting duties under § 5.2(A) must be carried out by the other trustees. § 5.2(A) and (B) unequivocally and sensibly require that *some* trustee (the corporate trustee if then acting, otherwise any trustee) must carry the responsibility to account and provide for inspection of the

¹⁰ *Id.*

Trust's books and records upon request by the vested beneficiary. Here, if Premier is not so obligated, then Nedder and Douglas "jointly" must carry out the accounting duties under § 5.2(A).¹¹

ii. **As Primary Beneficiaries, Petitioner's Children are Vested Beneficiaries.**

Similarly, Nedder in his Supplement does not outright deny that Petitioner's children are *vested* beneficiaries of the Trust (for the purpose of making accounting and inspection requests under § 5.2(A) and (B)). Still, the Supplement appears to suggest that the children possess interests that are only contingent and not vested because of the Trust's discretionary distribution standard. The hesitancy, however, confirms Nedder's confusion over what vested interests are, how interests though discretionary can still be vested, and thus the baselessness of this argument.

As Nedder admits, Petitioner's children are the primary beneficiaries of the Trust, *i.e.*, they have presently *vested* interests. *See* Nedder Supp., at p. 2:15-19 (emphasis added) ("each child is referred to [in the Trust] as *the* 'primary beneficiary' of his or her trust share....," that was created "upon the death of the Grantor," in 2018). In contrast, the Trust does not say the Julia and Alex *might become* someday the primary beneficiaries. Nedder's own admitted regular and substantial distributions to the children over the last couple of years could not have been made to mere *contingent* beneficiaries, who might (or might not) one day become eligible to and receive a distribution upon the occurrence of a condition. Indeed, Nedder further admits that the children have the present right to immediately remove him as 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 ...").¹²

Basic trust law too confirms that Petitioner's children are vested beneficiaries. *See* GEORGE G. BOGERT, ET AL., THE LAW OF TRUSTS AND TRUSTEES § 1061. (June 2020) ("Having a beneficiary

¹¹ Petitioner also maintains that Nedder, carried out his duties akin to a corporate trustee and is also directly responsible for accounting duties under § 5.2(A). *See* Pet.'s Reply, at p. 11:20-12:3.

¹² In yet another instance of his misrepresentations, Nedder claims Petitioner is "only partially correct," Nedder Supp., at p. 3:6-7, because while, as Nedder admits, the beneficiaries can remove Nedder under the Trust's terms, it is Douglas who can appoint any replacement trustee. The fact is Petitioner is 100% correct on her claim, as she never claimed that the beneficiaries have the additional right to appoint a replacement trustee as Nedder insinuates. *See* Pet.'s Supp. at p. 7:4-15 (only speaking of removal and not appointment).

1 with vested rights in trust property is one of the five essential elements of settling a trust.”). Thus,
2 without at least one vested interest, there can be no trust:

3 It is a fundamental concept to the law of property that all interests in
4 property, present and future, must, at all times, have an owner. With regard
5 to future interests in property, **if a trust does not have a person**
6 **with vested (or, ownership) rights** to the future interests inherent in trust
7 property, **the trust does not have a beneficiary and, for that reason, the**
8 **trust is not legally viable.**

9 Here, the Trust names the children, as Nedder admits, as the *Primary* Beneficiaries. Indeed, as to
10 “vested (or, ownership) rights,” Nedder’s office also admits the Trust’s property belongs to the
11 children. *See* Dec. 13, 2019 email from Martie McBride, Nedder & Associates, LLC to Petitioner
12 (“We are trying to help the kids understand that this is their money and that they are the ones who
13 should be making decisions on how it is spent”). Therefore, Petitioner’s children, as the only
14 current “primary beneficiar[ies]” of the Trust, *must be* its vested beneficiaries; otherwise, there
15 would be no Trust.¹³

16 Nedder offers no authority contradicting this conclusion. At most, he cites to a quote that is
17 from a Georgia court, cited in the Case Citations section of the RESTATEMENT (SECOND) OF TRUSTS
18 § 155 (1959), and not from the Restatement itself nor its comments, as Nedder misleadingly
19 suggests. *See* Nedder Supp., at p. 8:4-5. In any event, the complete quote in no way limits what a
20 vested interest *is* but rather describes the particular interest in certain trust property in that case, and
21 which a creditor could reach: “Therefore the appellant held a vested interest in a portion of the trust
22 which was within the reach of creditors.” *See Henderson v. Collins*, 267 S.E.2d 202, 206 (Ga. 1980).
23 And even in that case, where during the trust’s existence, “no beneficiary should have any right
24 with respect to the property other than to receive ... such distribution ... as might be awarded by
25 the trustee in the trustee’s discretion,” the trust was found to be an “executory trust, one in which

25 ¹³ A comparison of the Petitioner’s children’s vested interests, as the Trust’s current Primary
26 Beneficiaries, with the interests of their own potential children someday, *i.e.*, holding contingent
27 interests in the Trust (as they must first be born), helps draw out the distinction between the
28 interests.

Also, if a trust’s beneficiaries only possess discretionary interests, that does not absolve the
trustees of wrongdoing or accountability. *See, e.g.*, NRS 163.419(1) (court may review trustee’s
exercise of discretion for bad faith even if beneficiary’s interest is entirely discretionary).

1 something remains to be done by the trustee,” and thus the beneficiaries’ interests were “vested.”
2 *Id.*, 204-06; *see also*, BOGERT’S, § 1061 (“An executory interest is a *vested* interest in a grantee’s
3 vested interests in property ...”) (emphasis in original).

4 **iii. Nedder’s Offer to Review Records, if Even Genuine, Falls Far Short of His**
5 **Accounting Duties Under § 5.2(A-B).**

6 The Trust’s § 5.2(A-B) requires Nedder (and Douglas) to provide Petitioner with: (i) a
7 written (summary) accounting reflecting all financial transactions per tax year, including a complete
8 inventory per period; and (ii) the opportunity to inspect the books and records on “all financial
9 transactions” of the Trust. *See supra*, Sec. II(B)(i) (§ 5.2(A)). In contrast, Nedder’s offer to sit down
10 in his office and go over “the trust’s finances” orally with a couple of teenagers falls so far short of
11 his § 5.2(A-B) duties that it casts doubt on its genuineness and on Nedder’s seriousness in
12 complying with his duties. *See* Nedder Supp., at p. 6:12-13. Indeed, though Nedder claims to be
13 merely an individual and not a corporate trustee, all of Petitioner’s correspondence which Nedder
14 attached to his Supplement (and his Objection) was with someone from Nedder & Associates, LLC
15 other than Nedder. Presumably, he would have also delegated the oral financial summary to the
16 teens to someone else. Moreover, his office has been slow in responding to Petitioner generally,
17 *see, e.g.*, Nedder Supp., Ex 2., email from Ms. McBride to Pet., Dec. 13, 2019 (“Sorry for the delay
18 in responding ...”, after Petitioner emailed McBride and Nedder on Dec. 4, 10 and 12), and prone
19 to making significant mistakes like purportedly erroneously issuing out a substantial check to
20 Petitioner but never informing her of the error (she only learned of it when trying to cash/deposit
21 the check), *see* Nedder Supp. at p. 5:24-25 (“a check in the amount of \$18,208 made out to petitioner
22 was processed to be sent out by administrative staff ... in error.”).

23 In sum, Julia and Alex are entitled to the accounting and inspection rights under § 5.2(A-
24 B), NRS 165.1204, and NRS 165.1207(1). To date, Nedder has neither made the Trust’s books of
25 account and records available for inspection nor provided any accounting to Petitioner. Therefore,
26 the Court should compel Nedder and Douglas to abide by their duties under § 5.2(A-B).

27 //

28 //

1 **C. PURSUANT TO NRS 165.180 AND TRUST LAW AUTHORITY, THIS COURT SHOULD**
2 **COMPEL THE TRUSTEES TO PROVIDE AN ACCOUNTING AND A COPY OF THE TRUST TO**
3 **PETITIONER**

4 Independent of the Trust's terms, the Nevada Legislature provides Nevada District Courts
5 with plenary authority to require trustees to account and otherwise provide information to
6 beneficiaries, apart from NRS 165's specific provisions, and instead, as reason and fairness dictate:

7 Accountability of trustees **at other times**. This chapter [NRS 165] does
8 **not abridge the power of any court of competent jurisdiction** to require
9 testamentary or nontestamentary trustees to file an inventory, **to account**,
10 to exhibit the trust property, or **to give beneficiaries information** or the
11 privilege of **inspection of trust records and papers, at times other than**
12 **those prescribed in this chapter** ...

13 NRS 165.180 (emphases added). Thus, Nedder's claim that "[n]otwithstanding any contrary
14 provision in the trust instrument the Court can only compel a trustee to provide a copy of the Trust
15 to 'a beneficiary who is entitled to receive an account pursuant to ... NRS 165.1201 to 165.148,
16 inclusive,'" is, again, false. And, again, Nedder tellingly ignores NRS 165.180, which Petitioner
17 raised in her Reply and in her Supplement. At least Nedder does not specifically deny that NRS
18 165.180 provides the Court with this inherent power.

19 Further, trust law authority provides similarly on the beneficiary's fundamental right of
20 accountability:

21 The beneficiary's fundamental right to have the trustee account ... is not
22 dependent on statute or on there being a provision in the terms of the trust
23 obligating the trustee to account. ... [T]he trustee is under a duty to provide
24 detailed accountings from which the beneficiary can learn whether the
25 trustee has performed its trust and what the current status of the trust is.
26 Accordingly, the trustee can be compelled by the court at any time to
27 present an account in court, where it can be subject to scrutiny by the court,
28 as well as to review by the beneficiary and other interested parties.¹⁴

Indeed, "[a]ny other rule would defeat the basic purpose of the principle that a trustee is always
accountable for his administration of the trust property."¹⁵

¹⁴ BOGERT'S, § 966.

¹⁵ *In re Bush's Trust*, 81 N.W.2d 615, 624 (Minn. 1957) (cited in BOGERT'S § 966).

1 “In short, because there can be no fiduciary relationship without accountability, and no trust
2 without a fiduciary relationship, the settlor of a trust cannot relieve the trustee of the fundamental
3 duty to account.”¹⁶ And, “[f]or the beneficiary to be able to hold the trustee accountable for its
4 administration of the trust, the beneficiary must know of the trust, the beneficiary's interest in it, its
5 property, and how that property is being managed.”¹⁷

6 Thus, as elaborated in Petitioner's Reply and Supplement, the Court has bases, separate
7 from NRS 165.1201 to 165.148, for compelling the trustees not only to provide the beneficiary with
8 a copy of the Trust but also an accounting, under the language of NRS 165.180 and established
9 authority on trusts, as well as the Trust's §§ 5.1(C) and 5.2(A-B). Because the Trustees have not
10 yet provided Petitioner any accounting or even a copy of the Trust, and because the Court has the
11 authority to do so, it should compel both here. Otherwise, the Trustees' acts or omissions would go
12 unaccountable, belying any so-called trust.

13 **D. THE COURT SHOULD COMPEL PAYMENT OF PETITIONER'S ATTORNEYS' FEES AND COSTS**
14 **AGAINST (I) NEDDER AND DOUGLAS FOR PETITIONER HAVING TO BRING THE PETITION,**
15 **AND (II) NEDDER TO PAY FOR PETITIONER HAVING TO RESPOND TO NEDDER'S BASELESS**
16 **OBJECTION AND SUPPLEMENT.**

17 Now that the Trust has come to light (at least to Petitioner's counsel), the Trust's purpose
18 and its terms leave no doubt as to Petitioner's rights thereunder to obtain from the Trustees upon
19 her request a copy of the Trust and an accounting. Nedder's violation of the Trust's terms
20 unnecessarily caused Petitioner significant legal costs in having to file the Petition and respond to
21 Nedder's baseless Objection and Supplement. Fairness dictates that Nedder should be required to
22 personally pay for such trustee-induced expenses.¹⁸ This award is particularly warranted given that

23 ¹⁶ BOGERT'S, § 965; *see also* RESTATEMENT (SECOND) OF TRUSTS § 173, Comment c
24 (“Although the terms of the trust may regulate the amount of information which the trustee must
25 give and the frequency with which it must be given, the **beneficiary is always entitled to such**
information as is reasonably necessary to enable him to enforce his rights under the trust or to
prevent or redress a breach of trust.”) (emphasis added).

26 ¹⁷ BOGERT'S, § 962.

27 ¹⁸ *See* NRS 153.031(3)(b)(“If the court grants any relief to the petition, the court, may, in its
28 discretion, order any or all of the following additional relief is appropriate to redress or avoid an
injustice: ... (b) Order the trustee to pay the petition or any other party all reasonable costs incurred

1 the Trustees here in bad faith: (i) violated the Trust's terms by not providing this repeatedly-
2 requested information; (ii) *misrepresented to Petitioner (and the children) that the Trust prohibited*
3 *the Trustee from providing them with Trust information when it in fact requires the opposite upon*
4 *a beneficiary's request*; and (iii) omitted, in the objection to the petition, Trust provisions that
5 govern the facts here.

6 For these reasons, Petitioner respectfully requests that the Court compel the Trustees to
7 personally pay for Petitioner's associated attorneys' fees and costs, and to reimburse the Trust any
8 attorneys' fees and costs paid by Nedder to the law firm Hutchison & Steffen that were used to
9 advance Nedder's meritless Objection and Supplement.

10 **III.**

11 **CONCLUSION**

12 **WHEREFORE**, Petitioner requests that after hearing the matters of this Petition, this Court
13 find that notice of the time and place of such hearing has been given in the manner required by law,
14 and that this Court make and enter its Orders and Decrees, pursuant to NRS 153.031(1), 153.041,
15 163.4185(2), 164.005, 164.010, 164.015, 164.038(5), 165.1207(1)(a), 165.135, 165.147, 165.180
16 and §§ 5.1(C), 5.2 (A-B) and any other applicable provision of the Trust, as follows:

17 1. Compel the Trustees to provide an Accounting of the Trust to Petitioner in
18 accordance with Chapter 165 of the Nevada Revised Statutes and §5.2 of the Trust, and further
19 make the books of account and records of all the Trust's financial transactions available for
20 inspection by Petitioner pursuant to §5.2;

21 2. Compel the Trustees to provide a complete copy of the Trust, including all
22 amendments, if any, to Petitioner;

23
24
25 by the party to adjudicate the affairs of the trust pursuant to this section, including, without
26 limitation, reasonable attorney's fees. The trustee may not be held personally liable for the payment
27 of such costs unless the court determines that the trustee was negligent in the performance of or
28 breached his or her fiduciary duties."); and EDCR 7.60(b)(1)("The court may, after notice and an
opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under
the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when
an attorney or a party without just cause: (1) Presents to the court a motion or an opposition which
is obviously frivolous, unnecessary, or unwarranted.").

1 3. Compel Nedder to personally pay Petitioner her attorneys' fees and costs for having
2 to file this Motion and respond to the Objection;

3 4. Compel Nedder to reimburse the Trust for any attorneys' fees and costs paid by the
4 Trust to the law firm Hutchison & Steffen, PLLC which were used to draft, file, and argue Nedder's
5 meritless Objection; and

6 5. For such other and further relief as the Court deems proper.

7 DATED this 25th day of January, 2021.

8 SOLOMON DWIGGINS & FREER, LTD.

9
10 By: /s/ Roberto M. Campos
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14 *Attorneys for Joanne S. Briggs*
15 *as Parent and Guardian of*
16 *Julia Ann DeLuca and Alexander Ian DeLuca*
17 *as Primary Beneficiaries of 23 Partners Trust I*
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CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on January 25, 2021, I served a true and correct copy of the **REPLY TO THE SUPPLEMENT TO OBJECTION TO 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** 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/ Terrie Maxfield
An Employee of Solomon Dwiggins & Freer, Ltd.

EXHIBIT 1

DOCKET NO. FST-FA-14-4026924-S

-----X
JOANNE DELUCA,

PLAINTIFF,

v.

JON ADAM DELUCA,

DEFENDANT.
-----X

SUPERIOR COURT

JUDICIAL DISTRICT OF
STAMFORD/NORWALK
AT STAMFORD

SEPARATION AGREEMENT

AGREEMENT made as of this 4th day of September, 2014, by and between Joanne Deluca of the Town of Darien, County of Fairfield and State of Connecticut, hereinafter referred to as the "Wife", and Jon DeLuca of the Town of Darien, County of Fairfield and State of Connecticut, hereinafter referred to as the "Husband."

WITNESSETH

WHEREAS, the parties married on March 7, 2002 in Franschhoek, South Africa;
and

WHEREAS, two (2) minor children were born to the Wife since the date of her marriage to the Husband: Julia DeLuca born March 23, 2003; and Alexander DeLuca born August 23, 2005; and

WHEREAS, because of irreconcilable differences which arose between them the parties will live separate and apart and have no expectation of resuming marital relations; and

WHEREAS, it has now been determined that their marriage has broken down irretrievably and the Wife has instituted an action against the Husband for dissolution of

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marriage, which action is presently pending in the Superior Court in the Judicial District of Stamford, being Docket No. FST-FA-14-4026924-S; and

WHEREAS, the parties desire to effect an agreement adjusting their marital affairs, including such matters as the division of joint and separate property and such claims and demands as each might have against the other by reason of their marriage; and

WHEREAS, each party has fully disclosed the extent of their estate, income and financial prospects and has been fully informed concerning the extent of the estate, income and financial prospects of the other, as appears in the sworn financial statements filed with the Court; and

WHEREAS, each of the parties has consulted with independent counsel regarding his/her rights and obligations under this Agreement to the extent s/he believes necessary;

NOW THEREFORE, in consideration of the premises and the mutual undertakings and promises and covenants contained herein, and for other good and valuable consideration, the parties agree as follows:

1. **SEPARATION**

From and after the date hereof the parties will continue to live separate and apart from each other for the rest of their lives. Each of the parties shall be free from interference, authority or control, direct or indirect, of the other party in the same manner as if unmarried, and may reside from time to time at such places where he or she may desire and may engage in any occupation, employment or business which he

or she may choose, without restraint or interference, direct or indirect, by the other party.

2. **PARENTING PLAN**

A. The parties shall have joint legal and shared physical custody of the minor children. "Joint legal custody" as used herein shall mean that the parties shall confer in depth and in advance with each other on all important matters regarding the children's health, welfare, religion, growth, development and education, with a view toward arriving at a harmonious policy calculated to promote the best interests of the child. If there is a dispute, the parties shall submit the matter to a mutually agreeable professional, skilled in co-parenting counseling, a mental health professional, or to a third party mediator in order to assist the parties in reaching a developmentally appropriate resolution before submitting the issue to the court. Day to day decisions of a routine nature concerning the guidance and care of the child shall be made by the parent with whom the child is residing at a particular time.

B. The parties shall have a "bird-nest" arrangement in the former marital residence located at 23 Oak Park Avenue, Darien, CT (hereinafter "the children's residence") for five (5) years from the date Judgment for dissolution of the marriage is entered or the sale of Wilcon when the Husband no longer commutes to Los Angeles, whichever first occurs. The Husband shall reside at the children's residence when he is not traveling. He will return to the children's residence from Los Angeles on Friday and depart Sunday. When the Husband resides at the children's residence the Wife shall primarily reside at her alternative residence. However, the parties agree that

for any special occasion or request of the children she may stay overnight at the children's residence when the Husband is in residence. Both parents may remain in the children's residence overnight on the children's birthdays, Christmas, Easter, and any other mutually agreed upon occasions or special events.

By the 15th of the month prior the parties will agree to a 24 hour period once per month for the subsequent month, from 6pm Friday to 6pm Saturday, when each party shall have "exclusive parenting time" with the children once per month. The non-scheduled parent shall vacate the Darien home during the other parent's exclusive parenting time. The parties shall consider the children's schedules when selecting the two (2) 24 hour periods each month. If the Husband is away with Julia for three weekends in any month the fourth weekend shall not include the Wife's 24 hour parenting time as it would be the Husband's only weekend with Alex.

C. The Wife shall have unrestricted access to the children's residence at all times during the day during the Husband's residence at the children's residence so she may maintain her role as the children's primary caretaker. The Wife may terminate the bird-nest arrangement at any time. A party that wants to terminate the bird-nest arrangement shall provide reasonable notice to the other party. If the Husband terminates the bird-nest arrangement the Wife shall receive her 50% interest in the equity of 23 Oak Park Avenue, Darien, CT as detailed herein at Paragraph 6. The parties shall discuss termination of the bird-nest arrangement or related issues as necessary in the children's best interests. When the bird-nest arrangement terminates it is the parties' intention to have equal (50/50) parenting time in the children's best

interests. The Husband shall revise his Will to provide for the Wife's remaining in the children's residence should he die before the youngest child reaches age 21. A member(s) of either party's family may stay at the children's residence during a visit as the parties agree.

D. The parties shall pay the following expenses for the children's residence during the bird-nest arrangement 70% by the Husband and 30% by the Wife: electricity, water, oil, gas, and pool maintenance. The Husband shall contribute \$150 per week towards the children's nanny/housekeeper to include her responsibilities to clean the house and do the laundry. The balance of the nanny/housekeeper's costs shall be paid by the Wife. All other costs related to the children's residence including but not limited to the mortgage, repairs and maintenance, homeowner's insurance, property tax, and lawn and garden care shall be paid by the Husband. The Wife shall pay 50% of the regular pool maintenance per calendar year. Both parties shall have input into the childcare provider, sitters, and any and all arrangements for childcare.

E. If one parent travels out of town with only one child the non-traveling parent will remain in the children's residence with the other child even if it is not that parent's time to reside in the children's residence.

F. If a parent is away on business or vacation the non-traveling parent may stay in the children's residence with or without the children as appropriate to take care of the dogs and maintain the home.

G. The Mother will continue to meet the children at the children's residence after school when the Father is residing in the children's residence. The

Mother will take the children to all their activities and facilitate homework until 8:00 p.m., subject to a change in this time based on a child's need or a party's schedule. The Mother will transport the children back to the children's residence if she is somewhere else with the children when the Father is in residence.

H. During the summer and the children's vacations that occur during the Father's residence the Mother will come to the house as agreed to by the parties to be at the children's residence with them and/or to facilitate their activities and special events.

I. The parties shall maintain entirely separate bedrooms and offices in the children's residence.

J. The parties will maintain the housekeeper/babysitter as per her current hours unless they mutually agree otherwise.

K. Each party shall have a right of first call regarding childcare. If a party is unavailable for his/her scheduled parenting time for more than two (2) hours the non-scheduled party shall first be notified. If the non-scheduled parent is not available the scheduled parent is responsible for making necessary childcare arrangements.

L. Neither party shall bring a romantic interest to the children's residence. A party that wishes to introduce the children to a romantic interest shall first inform the other party of her/his intention to do so.

M. The parties shall use Google calendar or ourfamilywizard.com to coordinate and communicate regarding the parenting plan and all logistics and appointments regarding the children.

N. The following holiday and vacation plan shall apply:

Christmas and Winter Recess: divided into two parts the first half with Father in even years and Mother in odd years subject to the parties' agreement to spend Christmas Eve and/or Christmas Day together with the children.

Thanksgiving Weekend (4 days): alternate yearly with Mother in even and Father in odd years.

February Recess: alternate yearly with Father in even and Mother in odd years.

April Recess: alternate yearly with Father in odd and Mother in even years.

Summer: two (2) weeks for each parent. The Mother shall have first choice in even years and the Father in odd years.

Father's and Mother's Days: access if either party desires.

Parent's Birthdays: both parties have summer birthdays and it is possible that the children may be on vacation with the non-birthday parent during a parent's birthday. In that event a parent's birthday shall supersede a vacation unless the parties otherwise agree.

Children's Birthdays: both parties shall attend the child's birthday celebration. Alex's birthday is on August 23. The parents shall coordinate his birthday celebration with respect to his summer activities/vacations and the other family members.

Easter Sunday: Celebrate together at the children's residence.

Memorial Day Weekend: Father in odd and Mother in even years.

July 4th Weekend: Father in even and Mother in odd years.

Labor Day Weekend: Father in odd and Mother in even years.

Teacher's conferences: attend together if the Father is in Darien.

Monday and Friday holidays attach to the weekend unless allocated herein.

O. When traveling overnight away with a child the travelling parent shall, upon confirmation of his/her travel plans, provide the non-travelling party with all information concerning the travel including flight schedule, itinerary, land phone numbers, street addresses, and email addresses. This information shall be given to the non-traveling party no less than three (3) days before the departure date for the travel.

P. The parties shall coordinate their vacation weeks and the children's camp and activity schedule in advance and prior to finalizing any plans or making any deposits.

Q. The holiday and vacation schedule shall take priority over the regular bird-nest schedule. It is understood and agreed that when the child has parenting time with one parent during summer, school vacation, holiday and special days, the other parent's regular access is suspended except as set forth herein.

R. Each party must keep his/her cell phone on during parenting time if s/he intends on taking the minor children away from their primary residence.

S. The children shall be free to call either party by telephone at any time. Each party will have liberal and flexible telephone, text messaging, and email

contact with the children, and the parties shall facilitate such contact and assist and encourage the children to participate therein.

T. Neither party shall enroll the children in activities, camps or lessons without the prior consent of the other party whose consent shall not be unreasonably withheld. The parties shall ensure that the children participate in all agreed upon activities during their parenting time to include all necessary equipment and uniforms.

U. The parties shall negotiate in good faith to make necessary changes in scheduling by joint agreement and shall extend courtesy, flexibility, reciprocity to each other when changes to the schedule are requested.

V. The parties anticipate that the parenting schedule shall be adjusted to accommodate the needs and schedules of the children and the schedules of the parties, and the parties shall be flexible in adjusting the parenting time when appropriate. However, if the parents cannot agree, the Parenting Plan set forth herein shall govern. Any significant, nonpermanent change in the Parenting Plan shall be confirmed between the parties, in writing, if both parents agree. Any permanent change in the Parenting Plan shall be in writing and executed with the same formality as this Agreement.

W. Each party shall exert every effort to maintain free access and unhampered contact between the children and the other party and to foster a feeling of love and respect between the children and the other party. Accordingly, the Father and Mother shall not directly or indirectly influence the children so as to estrange a child from the other party. Each party shall not do or say anything that might prejudice a child

against the other party or impair a child's regard for the other party. Neither party shall use a child as an intermediary for communication in any form.

X. Each party shall provide each child's school with his or her contact information and request that the school issue duplicate mailings and notices of any kind, including without limitation all parent/teacher conferences, counseling sessions, or meetings concerning the child.

Y. Each of the parties shall have the right to attend school, extra-curricular, sporting and public, events in which a child participates or relates to a child, including but not limited to games, practices, athletic events, school programs, parent/teacher conferences, and recitals, regardless of whether the event takes place during the parent's scheduled time with the children.

Z. Each party shall keep the other party informed of the general whereabouts of the children when they are with him or her and, if either party has any knowledge of any illness or accident or other circumstance affecting the health or welfare of a child, he or she shall promptly notify the other party by any reasonable and available means necessary to provide the other party with this information as expeditiously as possible.

AA. Each party shall be listed as the person to be contacted in the event of an emergency. Passports shall be made readily available for any necessary travel.

BB. Neither party shall take a child outside the United States of America without the written consent of the other party. Said consent shall not be unreasonably

withheld, to include the Wife's travel to South Africa, and shall be given within forty-eight (48) hours of being informed by the other party of the travel.

CC. If either party intends to relocate his or her primary residence from Fairfield County he or she shall give advance written notice to the other party by certified mail, return receipt requested, at least ninety (90) days prior to the date of relocation, to include the place of relocation and the reasons therefore. Neither party shall relocate the children from Fairfield County until s/he has obtained written permission from the other parent or a Court Order.

DD. If either parent shall undertake inpatient medical treatment for any reason notice of such inpatient treatment shall be given to the other parent as soon as practicable so as to afford the other parent an opportunity to provide care for the children during the hospital stay.

3. ALIMONY AND CHILD SUPPORT

A. The Wife shall pay the Husband \$1 per year in periodic alimony for so long as the Husband is obligated to pay the Wife alimony. Alimony shall also terminate upon the death of either party. The \$1 per year may only be modified upward if the Husband is unemployed for six (6) or more consecutive months and the Wife is earning more than \$150,000 per year from employment. The amount and term of the Husband's receipt of alimony is otherwise non-modifiable except as specifically set forth herein.

B. Beginning September 1, 2014, the Husband shall pay unallocated alimony and child support to the Wife in an amount equal to 40% of his "total

compensation from employment" (hereinafter "TC" as defined herein) until either party's death, the Wife's remarriage or August 31, 2021 (7 years), whichever shall first occur. The alimony term shall be non-modifiable. Alimony and child support shall be subject to the cohabitation statute and related case law.

C. The Husband currently represents on his financial affidavit submitted with this Agreement that he receives a monthly salary of \$19,230. He shall therefore pay the Wife 40% thereof or \$7,692 each month commencing September 1, 2014. If and when his salary is adjusted then the Husband shall adjust the alimony payment accordingly.

D. If alimony terminates during the minority of a child due to the aforementioned contingencies the parties shall determine the amount of child support, if any. If they are unable to agree the amount of child support shall be determined by a court of competent jurisdiction. Said amount shall be paid retroactive to the date of the termination of alimony.

E. (1) "TC" shall include any and all pre-tax gross cash and non-cash compensation for personal services rendered by the Husband that he receives, or is entitled to receive, including but not limited to wages, salary, base salary, bonuses, any form of non-cash compensation, stock awards, stock options, dividends, any other options, restricted stock, commissions, consulting, directors and other fees, sign-on bonuses, performance awards, retention payments or similar account maintained for the Husband's benefit and any passive earnings distributed from such account, carried interest distributions, self-employment earnings, voluntary payments by

the Husband to any defined contribution or other qualified or non-qualified retirement, or benefit plan, any other monies voluntarily deferred by the Husband, any payments from disability insurance, royalties, distributions from partnerships, or other business entities by which the Husband is employed, or otherwise serves and renders services, severance package payments and termination packages, provided said payments are applicable to a period of time when alimony and/or child support are, or were payable. The Wife shall receive her percentage of any voluntarily deferred compensation in the year the compensation was deferred and any involuntarily deferred compensation that occurred during a year when the Wife was entitled to receive alimony and/or child support, in the year said deferred compensation is first available to the Husband (e.g. if the Husband voluntarily defers income in 2014 until 2018, the Wife shall receive her percentage of the compensation in 2014 not in 2018. However, if compensation was involuntarily deferred in 2014 by the Husband's employer until 2018 then the Wife shall be entitled to receive in 2018 the percentage of such compensation she would have been entitled to in 2014 regardless of whether she would otherwise be entitled to alimony and/or child support in 2018).

(2) If there are any involuntary restrictions on the Husband's non-cash compensation, the non-cash compensation shall be included as part of his TC in the year in which any restrictions on the Husband's right to convert the non-cash components into cash, or a cash equivalent shall first lapse. Alimony paid based on the non-cash component of the Husband's TC shall be paid to the Wife if, as, and when the restrictions on non-cash compensation shall first lapse and a liquidity event occurs.

(3) Except as otherwise provided hereinafter, the Husband shall be obligated to exercise any option or stock option, or liquidate any stock or restricted stock upon the Wife's election in order for her to receive her applicable percentage of said compensation unless such exercise compromises the Husband's employment. Upon making her election the Wife shall have no claim to the balance of the Husband's interest in those options, stock options, stock, or restricted stock from which the Wife has received her appropriate percentage. If an option or stock option is due to expire by lapse of time during any period when the Husband is obligated to pay the wife alimony, the Husband shall exercise such option or stock option provided that said option is "in the money." If the exercise of said options on the Wife's behalf requires the advancing of funds, the Wife shall provide said funds to the Husband prior to his exercising the options. If the Husband's non-cash compensation ever takes the form of publically traded securities, then the Wife shall have the option to receive her applicable percentage of such shares in lieu of cash based on the gross value of said shares on the date of transfer. Upon making her election the Wife shall have no claim to the balance of the Husband's interest in such publically traded securities. For so long as the Husband has an obligation to pay the Wife alimony and/or child support he shall provide the Wife with the terms and conditions of all non-cash compensation elections and alternatives so that she may timely evaluate and exercise her rights under this paragraph.

(4) The Wife shall retain her right to receive any non-cash compensation, which at the time alimony terminates as set forth herein has not been

paid because of any restriction, vesting schedule or inability to value, and shall be payable to the Wife at the first available opportunity notwithstanding that said payment shall be made after the termination of alimony as set forth herein.

(5) For purposes of determining the value of the non-cash compensation, it shall be the amount actually realized by the Husband. Non-cash compensation shall be paid to the Wife in accordance with paragraph (8) hereafter.

(6) The Husband will take no action, the effect of which is to reduce or divert income for the purpose of reducing, deferring or delaying the payment of his alimony obligation to the Wife.

(7) The term "TC" shall exclude all other income received by the Husband, unrelated to his employment or self-employment, including (as an exclusion and without limitation) interest on assets divided pursuant to this Agreement, income on personal investments, interest income, rental income from real estate investments, appreciation of real estate and any income associated with any sale of assets including any gain.

(8) The Court shall retain jurisdiction over the definition of the TC in the event the Husband becomes self-employed so that both parties are treated fairly. If the Husband's conversion of his non-cash compensation to cash pursuant to this paragraph as well as paragraph (3) causes taxes or other expenses to be incurred by the Husband then he shall be entitled to deduct from the payment to the Wife an amount equal to the actual taxes and other expenses incurred as a result of the conversion and the payment to the Wife shall in such event be non-taxable to her and

not deductible by the Husband as alimony. The Wife shall be entitled to all documents necessary to confirm the value of the non-cash and/or deferred compensation and the Husband's determination of his actual tax liability and/or other expenses associated with the Husband's conversion of his non-cash compensation for the year in which such determination must be made. The Husband shall provide to the Wife, contemporaneous with his receipt, any and all documents generated by his company in the regular course of business that reflect his cash and non-cash compensation. If the value of such non-cash compensation is not readily ascertainable from the documents provided, the Court shall retain jurisdiction to resolve such dispute so both parties are treated fairly in accordance with this provision.

(9) Payments to the Wife from that portion of the Husband's TC that represent all other components of his TC other than salary shall be made within five (5) business days of his receipt; together with copies of any and all documents provided to him.

(10) Payments pursuant to this Section shall be based upon a calendar year calculation, except for the final year if less than a full calendar year, but any TC accrued during the prior calendar year shall be included.

(11) The Wife's receipt of \$75,000 per calendar year as income from employment shall not be considered a substantial change of circumstances pursuant to the modification statute and related case law.

F. The provisions for alimony and the bird-nest arrangement are predicated on the parties' expectation that the Wife will maintain her role as the full-time

and primary homemaker/caretaker for the children and that her paid employment shall remain limited to part-time during the alimony term.

G. The Husband co-signed the Wife's lease for 13 Grove Street, Apartment C, Darien CT. The Wife shall indemnify and hold the Husband harmless regarding any and all costs, expenses, and liabilities related to this lease without limitation as of the date Judgment for dissolution of the marriage is entered. The Wife shall be solely responsible to pay any and all costs related to her separate residence when she is not in residence at 23 Oak Park Avenue, Darien CT beginning the date she receives unallocated alimony and child support pursuant to Paragraph 3-B herein. Any funds advanced to the Wife for her separate residence shall be a credit against her interest in the marital estate as detailed herein.

4. **CHILDREN'S EXTRACURRICULAR EXPENSES**

The parties shall pay for the children's extracurricular expenses 60% by the Husband and 40% by the Wife until alimony terminates. Thereafter, the Husband shall pay for 100% of the children's extracurricular expenses, uninsured healthcare costs, and clothes until a child reaches age 23 or graduates from college, whichever first occurs. Any such extracurricular expense shall be mutually agreed to in writing between the parties before such expense is incurred. Extracurricular expenses shall include, but not be limited to, the following: after-school events, school trips, sports equipment, fees, lessons, and travel (including food and overnight), driver's ed, car insurance, tutoring, summer camp, activities, and independent travel. The Wife shall use the separate credit card provided for her by the Husband to pay these costs except

when a check is required. This credit card shall also be used to pay for the groceries and household supplies for the children's residence. The Husband shall pay 70% and the Wife 30% for the groceries and household expenses for the term of the parties' bird-nest arrangement. The Husband shall prepare a "monthly true-up" for the children's extracurricular expenses and shall invoice the Wife accordingly. She shall remit her payment to the Husband within fourteen (14) days from her receipt of the monthly true-up.

5. EDUCATIONAL SUPPORT ORDER

A. The children presently have sufficient funds in their bank accounts to pay all costs related to their college education expenses. Nevertheless, any shortfall shall be paid 100% by the Husband without limitation to Conn. Gen. Stat. §46b-56(c). "College education expenses" are defined as follows: SAT/ACT prep, SAT/ACT test fees, costs to visit schools, application fees, tuition, room, board, books, lab fees, computer, room set-up costs, allowance, and reasonable transportation. The Husband's obligation for the children's college education expenses shall terminate when each child completes a four-year college education or attains age twenty-three (23), whichever shall first occur.

B. The Husband and Wife shall consult with each other and with the child regarding the selection of schools or colleges a child may attend. The selection of said schools and/or colleges shall be by mutual agreement.

C. The Court shall retain jurisdiction of this provision only for purposes of enforcement.

6. REAL PROPERTY

The Husband holds sole title to the former marital residence located at 23 Oak Park Avenue, Darien, Connecticut. The Husband shall pay the Wife \$692,842 based on her 50% interest in the equity defined as \$2,300,000 less the first mortgage of \$578,896 and HELOC of \$335,420 as of the date of the divorce. The Wife shall receive this payment in five (5) years from the date of Judgment, the sale of Wilcon Holdings, LLC, or within thirty (30) days from the Husband's termination of the bird-nest arrangement as detailed herein at Paragraph 2-B, whichever first occurs. On or about the date Judgment is entered the Wife shall quit claim her interest in the former marital residence to the Husband. The quit claim deed shall be held in escrow and shall not be placed on the land records until the Wife receives her payment as set forth herein. The Wife shall remain listed as a beneficiary on the homeowner's insurance to reflect her interest in the former marital residence until the quit claim deed is placed on the land records. The Husband shall indemnify and hold the Wife harmless for his obligations regarding the former marital residence as detailed herein at Paragraph 2-C.

7. PROPERTY DIVISION

A. Non-retirement Assets

The following non-retirement assets shall be equally allocated as of the date Judgment is entered after any outstanding checks have cleared and the parties' mediation fees have been paid as detailed in Paragraph 17-A:

(a) People's Bank checking x8354

(b) People's Bank savings x6186

(c) Bank of America x1520

(d) Bank of America x1539

(e) Goldman Sachs x156-6

(f) Goldman Sachs x710-5

B. Securities (publicly traded)

(a) Glow Point, Inc. stock. These options have been exercised and placed in the parties' joint Goldman Sachs account and shall be equally allocated as part of that account.

C. Securities (not publicly traded)

The Husband's interests in Wilcon Holdings, LLC and Data Gryd Data Centers, LLC are reflected in the document attached hereto and incorporated herein: "Wilcon and DataGryd Equity Holdings 8/27/2014." All of these assets will be equally allocated except that any unvested options and options granted after the date Judgment is entered regarding Wilcon or Data Gryd shall be allocated 70% to the Husband and 30% to the Wife during the alimony term. The terms of this provision shall survive the Husband's death and the Wife shall have a preferred debt claim against the estate of the Husband regarding her interests in Wilcon and Data Gryd as detailed herein.

D. Retirement Assets

1. The Husband has a Wilcon Holdings, LLC 401k. The Wife shall receive a 50% interest in this 401k valued as of the date of dissolution of the parties' marriage together with investment gains or losses to the date of distribution to

the Wife. This transfer shall be a tax-free transfer; provided, however, that payments made to the Wife pursuant to said Qualified Domestic Relations Order shall be taxable to her as provided in the Retirement Equity Act of 1984. The Court shall retain jurisdiction to effectuate the entry of this Order. If the Plan Administrator does not honor the Qualified Domestic Relations Order the Court shall have the power to enter alternative orders to effectuate the intention herein. Attorney Betsy McMahon shall draft the necessary QDRO and the parties shall equally share the cost of same.

2. Each party has a Goldman Sachs IRA. The two (2) IRAs shall be equally allocated by IRA Rollover in an amount necessary to equalize the IRAs from the Husband's IRA to the Wife's IRA valued from the date of dissolution of the parties' marriage together with investment gains or losses to the date of distribution to the Wife.

E. The parties will continue to share the 2009 Chevrolet Suburban and the leased 2103 BMW. The costs for the BMW lease and the Suburban, maintenance, repairs, and insurance shall be equally shared between the parties. Each party shall pay his/her gas charges. Upon termination of the BMW lease or the bird-nest arrangement, whichever first occurs, the parties will confer and allocate ownership of the Suburban.

F. The Wife shall retain the following personal property located at 23 Oak Park Avenue:

(1) Painting of Table Mountain by Belinda Steyn and the orange painting in the cabana room.

- (2) Painting in formal living room by Nico Prins that was a wedding gift from her parents.
- (3) Framed seashell photographs taken by the Wife.
- (4) All sterling pieces and other heirlooms (crystal decanters, footstools in the formal living room, figures on the shelves in the Wife's office) given to her by her family.
- (5) Seashell light fixture in the master bedroom (to be replaced with an appropriate alternative at the Wife's expense).
- (6) All photo albums created by the Wife. Duplicates of the digital albums shall be made and the cost shall be equally shared by the parties.
- (7) All "memorabilia boxes" created and archived by the Wife including the ones created by the Wife that she retains for the children.
- (8) The Wife's books, including cookbooks, in her office that belong to her.
- (9) The Wife's office computer (which is currently being replaced) and all external hard drives and accessories for the computer.
- (10) Several bowls/serving pieces (crystal and china) that were gifts and have sentimental value.
- (11) Any furniture that is being stored in the basement/attic that can be taken to the wife's apartment (for example the second chair like the one in the bedroom, mirror, picture frames, and lamps).
- (12) Sewing machine.

The Husband shall retain all other personal property at 23 Oak Park Avenue. The Husband shall pay the Wife \$100,000 for this allocation of the personal property within fourteen (14) days from the date Judgment for dissolution of the marriage is entered. The Wife shall also retain all jewelry and camera equipment given to her as gifts except for her engagement ring and the diamond ring given to her by the Husband on 12/26/14. The engagement ring and the diamond ring shall be sold and the net proceeds equally allocated between the parties. The Husband shall arrange the sale.

G. Country Club of Darien. This country club membership has no value. The Husband shall retain the membership and he shall be solely responsible to pay all costs related thereto. The Wife may use the Club with the children at her sole discretion. Any food or drink charges by the Wife when she is with the children at the Club shall be paid by the Husband.

H. The parties have divided the balance of their personal property to their mutual satisfaction, and hereafter, each shall own and enjoy, independently without any claim or right of the other, all items of personal property of every kind which are now owned or held or which may hereafter be owned or come to him or her, with full power of disposition as if he or she were unmarried.

I. The Husband shall retain the Bank of America and People's Bank bank accounts. He shall also retain all credit cards except for the Wife's American Express x15009. The Wife shall be solely responsible to pay all of her credit card charges on this credit card as of the date Judgment is entered. All charges on the

Wife's American Express x15009 incurred before the date Judgment is entered shall be paid from the parties' joint checking account before allocation of that account as detailed herein. The Wife's name shall be removed from the bank accounts and credit cards as detailed herein. The parties shall retain their individual bank and charge accounts that are held in their sole names.

J. Each of the parties shall indemnify and save the other harmless in connection with all loans and expenses associated with each party's assets and liabilities as set forth on their Financial Affidavits filed with the Court regarding the dissolution of marriage except as set forth in Paragraph 11-A.

K. Reserving to the parties the rights set forth in this Agreement, neither party has any claim upon the other for equitable distribution of property, or otherwise, and each party hereby irrevocably waives and relinquishes any right or claim against the other for equitable distribution of property or otherwise. Without limiting the generality of the foregoing, neither party shall seek in any action for the dissolution of their marriage or in any other action, or in proceedings ancillary or subsequent thereto, any equitable distribution of property, or otherwise, as a part of, supplemental to, or as an amendment to the relief requested therein.

L. Reserving to the parties the rights set forth in this Agreement, the Husband represents and warrants to the Wife that he has not incurred any debts or made any contracts for which the Wife or her estate may be liable, and he covenants and represents that he will not, at any time in the future, incur or contract any debt, charge or liability whatsoever for which the Wife, her legal representative or her property

or estate may become liable, except as otherwise provided in this Agreement, and the Husband further covenants at all times to keep the Wife free, harmless and indemnified for and from any and all debts, charges and liabilities heretofore and hereafter contracted by him.

M. Reserving to the parties the rights set forth in this Agreement, the Wife represents and warrants to the Husband that she has not incurred any other debts or made any contracts for which the Husband or his estate may be liable, and she covenants and represents that she will not, at any time in the future, incur or contract any debt, charge or liability whatsoever for which the Husband, his legal representative or his property or estate may become liable, except as otherwise provided in this Agreement, and the Wife further covenants at all times to keep the Husband free, harmless and indemnified of and from any and all debts, charges and liabilities heretofore and hereafter contracted by her.

8. MEDICAL INSURANCE

A. The Husband shall keep and maintain his current major medical and hospitalization insurance, or their respective equivalents, for the benefit of the children until a child graduates from college or reaches age 26, whichever first occurs, for so long as it is available to him through employment. The Husband agrees to furnish the Wife with copies of all such policies upon her request and to provide her with proof that such policies are in force and that the beneficiaries are those agreed upon pursuant to this Article.

B. In addition to the foregoing obligation of the Husband, the parties shall pay 60% by the Husband and 40% by the Wife during the alimony term, for the benefit of the children, the cost of reasonable and necessary uninsured medical, optical, surgical, hospital, psychiatric, psychological and nursing expenses, and the cost of prescription drugs ("medical expenses") and dental and orthodontia until each child complete his or her college education or attains age twenty-three (23), whichever event shall first occur; provided, however, that no psychiatric or psychological or orthodontia expenses or elective surgery or treatment shall be incurred without the prior consent of the parties, which consent shall not be unreasonably withheld. When alimony terminates the Husband shall be solely responsible to pay the children's uninsured healthcare expenses as detailed herein. The Husband shall use any health savings account available to him through his employment for payment/reimbursement of the children's insured and uninsured healthcare expenses and co-pays.

C. The Wife agrees that she will promptly fill out, execute and deliver to the Husband all forms and provide all information in connection with any application he makes for reimbursement of medical, dental, and drug expenses under any insurance policies which he may have. If either party advances money for any expense which is covered by insurance and for which a recovery is made for an insurance claim filed for that expense, the payment by the insurance carrier shall belong to the party so advancing those funds, and any checks or drafts or proceeds thereof from the insurance carrier shall be promptly turned over to that party.

D. The Wife shall be entitled to her COBRA rights at her cost.

E. Each party shall pay his/her medical insurance premiums and unreimbursed healthcare costs.

9. LIFE INSURANCE

A. In the event of the Husband's death his estate and related Trust shall pay 100% of the housing expenses for the children as detailed herein at Paragraph 2-C and otherwise necessary for the children's health, welfare, and physical and psychological well-being at the time of his death; and 100% of the children's extracurricular expenses as defined and detailed herein at Paragraph 4, Children's Extracurricular Expenses. Upon his death the Wife shall have no obligation for the children's housing or extracurricular expenses as detailed herein.

B. The Husband shall designate the Wife the primary beneficiary of \$1,750,000 payable to her in a lump sum upon the Husband's death for so long as he is obligated to pay her alimony. In addition to the foregoing, the Husband shall designate each of the children the primary beneficiary of the balance of the life insurance on his life in the amount of \$500,000 until each child completes a four-year college program, becomes emancipated or attains age twenty-three (23), whichever event shall first occur. The provisions of the Husband's and the Wife's life insurance Trusts shall apply.

C. The Husband agrees to furnish the Wife upon her request proof that he is insured in the amounts specified herein and that the beneficiaries of said insurance are as required by this Agreement.

D. The parties agree that the life insurance which the Husband is obligated to provide herein is an element of support and maintenance and may be modified by a court accordingly.

E. In the event that the life insurance specified herein is not in effect at the time of the Husband's death the difference between the amounts specified herein and the amount of insurance death benefits received by the Wife and/or children shall constitute a charge upon the estate and indebtedness of the estate of the Husband in favor of the Wife and/or children to the extent of the provisions of this Article.

F. The Husband shall notify the Wife of the name of the insurer, the name of the plan and each policy number, and supply copies of such policies to the Wife upon her request.

G. The Wife shall maintain life insurance on her life in the amount of \$500,000 per child until a child graduates from college or reaches age 23, whichever first occurs. The terms of her life insurance Trust shall apply. If the life insurance specified herein is not in effect at the time of the Wife's death the difference between the amounts specified herein and the amount of insurance death benefits received by the children shall constitute a charge upon the estate and indebtedness of the Wife in favor of the children to the extent of the provisions of this Article. The Wife shall furnish the Husband upon his request proof that she is insured in the amounts specified herein and that the beneficiaries of said insurance are as required by this Agreement.

10. DISABILITY INSURANCE

The Husband shall maintain the disability insurance policies presently in effect for so long as he has an obligation under this Agreement and the Judgment of the Court, and the insurance is available to him at a reasonable cost.

11. LIABILITIES

A. The Husband is a named defendant in a New York action, Zayo Group, LLC v. Adam Brodsky, et al, Index No. 156177/2012, State of New York, Supreme Court, County of New York. The parties shall equally share any and all costs related to the Zayo litigation including, but not limited to, legal fees, liabilities, or judgments.

B. The parties agree that each will be responsible for any and all other liabilities that are not set forth in this Agreement and listed on their respective financial affidavits filed with the Court on the date Judgment is entered. Each party shall indemnify and hold the other harmless with respect to all liabilities in the Agreement and in their financial affidavits. The parties further agree that there is no debt made by any party in the name of or on the credit of the other party which has not been specifically referred to in the financial affidavits filed with the Court.

12. WAIVER OF RETIREMENT RIGHTS

Each party waives and releases any claim of right, title or interest in any pension plan, deferred income fund or tax-deferred annuity plan or other type of retirement plan of the other party except as set forth herein.

13. TAXES

A. The parties shall equally share any and all costs related to the audit of a joint tax return including, but not limited to, arrearage(s), penalties, interest, accountant and/or attorney's fees and any and all tax related issues regarding a joint return without limitation. If the parties divorce in 2014 taxes owed for that calendar year shall be pro-rated. For example, if the parties divorce September 1, 2014 and owe taxes of \$20,000 on their separate tax returns for 2014 the parties shall equally allocate \$13,333 (8/12ths) of the \$20,000 for 2014. If either party receives notice of an audit or other tax proceeding involving any such joint return, each shall immediately notify the other or his or her representatives of such proceeding and each party shall have the right to defend said return.

B. The parties agree that this Agreement has been negotiated and entered into on the understanding that the tax treatment to be accorded the terms of the Agreement is as follows: all unallocated alimony and child support payments are intended to be alimony deductible by the Husband and includable by the Wife in their entirety for federal income tax purposes. The parties acknowledge that no part of said payments is a fixed sum which is payable for the support of any child of the parties and any reduction(s) which may occur in said payments the parties expressly intend and agree are not subject to any contingency relating to any child of the parties such as attaining a specific age, dying, marrying, leaving school or similar contingency, nor is any reduction intended to occur at a time which can be clearly associated with any such

contingency. The Wife shall include all of the unallocated alimony and child support payments as income in her federal and, if appropriate, state and/or municipal tax returns and that she shall pay the taxes due on such returns.

C. In the event of any court decision, Internal Revenue regulation, ruling or determination or in the event that at any time after the date hereof the laws applicable to the unallocated alimony and child support by the Husband to the Wife are changed, and such decision, regulation, ruling, determination or statutory amendment results in a determination of a tax treatment different from that specified herein, the payments required to be made by the Husband to the Wife for her support shall be renegotiated by the parties. In this event the parties shall attempt to achieve an equitable adjustment in the payments provided for herein, taking into consideration the new tax treatment of the payments so that the tax saving to the Wife, if any, and additional taxes paid by the Husband shall be shared as equitably as possible, so as to achieve as nearly as possible the same net positions to the parties as would have resulted had the intended tax treatment been afforded to the payments provided for in this Agreement.

D. If a different tax treatment results from the failure of the Wife to report any and all of the payments made to her by the Husband consistent with the terms herein and such failure results in the disallowance or recapture in any part of the Husband's alimony deduction, the Wife shall pay to the Husband the amount of any additional tax liability incurred by him, together with incidental costs, including interest, penalties, accounting and legal fees.

E. The parties shall provide each other with complete copies of their respective tax returns and all related documents for so long as either party has an obligation under this Agreement.

F. The Wife shall take the older child and the Husband the younger child as dependent exemptions on their separate tax returns. If a party is unable to utilize a dependent exemption the other party shall be entitled to do so. When there is one dependent exemption it shall alternate yearly beginning with the Wife.

14. APPEAL WAIVER

The parties waive any and all rights of appeal, statutory or otherwise.

15. DISPUTE RESOLUTION

This Separation Agreement is the result of the parties' work in divorce mediation. In the event of a dispute regarding the terms of this Separation Agreement the parties shall make a good faith effort to first resolve same through mediation or non-binding arbitration before resorting to a Court for resolution. The parties agree that if they are unsuccessful in resolving any dispute a Court of competent jurisdiction shall have the authority to interpret any of the terms of this Separation Agreement.

16. MEDIATION

A. This agreement has been arrived at with the assistance of an impartial mediator, Alan Rubenstein, whose services have been limited to helping the parties conclude an agreement and reduce that agreement to this Separation Agreement. He did not provide legal representation to either party or both of them. Each party was advised by the mediator at the outset of the mediation of his/her right to

obtain, and has had sufficient opportunity to obtain, his/her own attorney to provide him or her with independent legal advice and representation with respect to the negotiation and preparation of this Agreement. Each party understands that an individual attorney is able to provide him/her with legal advice concerning his/her individual interests, rights and obligations in a way in which the impartial mediator could not. The Husband and Wife confirm that s/he had sufficient opportunity to obtain his or her own individual attorney, and that s/he knows that s/he had the right to consult with an individual attorney throughout the negotiation and preparation of this Agreement. Each party acknowledges to the other that she/he believes this Agreement to be a fair and reasonable resolution to the outstanding issues between them and each is satisfied with its terms.

B. The parties confirm that this Agreement was prepared for them by Alan S. Rubenstein; that he has not represented either of them individually, or both jointly, in the negotiation, preparation or signing of this Agreement, and that his services as impartial mediator have been limited to assisting the two of them to conclude an agreement and then reduce that agreement to writing. The parties confirm that the mediator did not provide individual legal representation or advice to him or her, or both of them jointly, although the mediator may have provided information or opinions concerning the state of the law generally or how the law might apply in their situation.

17. LEGAL COUNSEL

A. Each party has consulted with independent counsel to the extent he or she believes necessary regarding his or her rights, obligations, and the terms of this

Agreement. The parties' separate counsel fees and the fees related to the mediation shall be paid from the non-retirement assets as set forth herein at Paragraph 7-A before allocation between the parties.

B. Each party acknowledges that:

- (i) He or she has read this Agreement;
- (ii) He or she has had full opportunity to review this Agreement;
- (iii) Each has been informed of his or her legal rights and obligations with respect to: (1) the subject matter of this Agreement; (2) the dissolution of marriage of the parties and items ancillary thereto; and (3) the estate of the other party;
- (iv) He or she understands the terms of this Agreement; and
- (v) He or she is entering into this Agreement voluntarily and without coercion from any person, including but not limited to the other party, any third party or any attorney.

18. AUTOMATIC MODIFICATION

Notwithstanding provisions to the contrary, in the event of modification of the decree or judgment dissolving the marriage of the parties, this Agreement shall be automatically modified to the same extent.

19. DEFAULT

In the event of default in the performance of any one or more of the covenants and agreements to be performed by the Husband or Wife under the terms of this Agreement, he or she shall be entitled to recover from the defaulting party any

expenses, losses and damages he or she sustains by reason thereof, including reasonable attorneys' fees and Court costs.

20. DISCLOSURE TO COURT

It is understood and agreed that either party pursuing legal action regarding this marriage shall fully disclose this Agreement to the Court before which such action is taken. The parties agree that this Agreement may be incorporated in full by reference or otherwise in divorce or dissolution of marriage proceedings and/or a decree of absolute divorce or dissolution of marriage by a court of competent jurisdiction in the discretion of the Court. This Agreement shall not merge with any decree of any court affecting the parties, but shall survive any such decree and be forever binding and conclusive upon the parties. The parties agree, however, that in any such action, neither will ask for any different or greater right of relief than that specified herein, and that they will be bound by the provisions of this Agreement, whether or not incorporated in any such decree.

21. CHANGE IN AGREEMENT

No modification, amendment or waiver of any of the terms of this Agreement shall be valid unless the same shall be in writing and executed with the same formality as this Agreement. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature. In the event a court of competent jurisdiction enters orders contrary to the provisions of this Agreement, this Agreement shall be modified accordingly.

22. ENTIRE AGREEMENT

The Husband and Wife have incorporated in this Agreement their entire understanding, and no oral statement or prior written matter extrinsic to this Agreement shall have any force or effect. The parties agree that each is not relying upon any representations other than those expressly set forth herein.

23. BINDING NATURE

All of the covenants, promises, stipulations, agreements and provisions herein contained shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives and assigns of each party, whether so expressed or not.

24. MUTUAL RELEASES

A. Subject to the provisions of this Agreement, each party has remised, released and forever discharged, and by these presents does for himself, or herself, and his or her heirs, legal representatives, executors, administrators and assigns, remise, release and forever voids, releases and discharges the other of and from all cause or causes of action, suits, debts, claims, rights, contracts, agreements, grievances, sums of money, controversies, accounts, reckonings, bonds, bills specialties, promises, liabilities, attorney's fees and/or remedies whatsoever, in law or in equity, which either of the parties hereto ever had or now has, actual or potential, against the other, for, upon or by reason of any matter, cause or thing whatsoever occurring on or before the effective date of this Agreement, including without limiting the breadth of the foregoing:

1. Claims arising under any state or local statute, law, ordinance, rule or regulation;

2. Claims arising under the common or statutory law of any nation, state or political subdivision whether sounding in: express or implied contract, quasi-contract, unjust enrichment, quantum meruit, any fiduciary relationship; covenant of good faith or fair dealing; promissory estoppel; intentional or negligent infliction of emotional distress; defamation; invasion of privacy; fraud; misrepresentation; assault; battery; negligence and/or any other tort, contract or other civil wrong allegedly arising out of acts or omissions by one party against the other; except that each party hereto does not release the other from the claim that the parties' marriage has broken down irretrievably in order to facilitate the parties' pending action for dissolution of marriage.

B. Subject to the provisions of this Agreement, each of the parties may in any way dispose of his or her property of whatsoever nature, real or personal, and the parties hereto, each for himself and herself, respectively, and for their respective heirs, legal representatives, executors, administrators, and assigns hereby waives any right of election which he or she may have or hereafter acquire regarding the estate of the other, or to take against any Last Will and Testament of the other, whether heretofore or hereafter executed, as may now or hereafter be provided for in any law of the State of Connecticut or any other state or territory of the United States, or any foreign country and renounces and releases all interest, right or claims of right of dower, or otherwise, that he or she now has or might otherwise have against the other, on the property of whatsoever nature, real or personal, of the other, under or by virtue of the laws of any

state or country, and each will at the request of the other, or his or her legal representatives, executors, administrators and assigns, execute, acknowledge and deliver any and all deeds, releases or any other instruments necessary to bar, release or extinguish such interests, rights and claims, or which may be needed for the proper carrying into effect of any of the provisions of this Agreement. Each of the parties renounces and relinquishes any and all claims and rights that he or she may have or may hereafter acquire to act as administrator of the other party's estate, although either party may name the other as executor or executrix if he or she so desires.

25. FURTHER DOCUMENTS

Each party shall at all times and at any time execute and deliver all further instruments and documents, in writing, reasonably necessary to carry into effect the provisions of the Agreement.

26. ADDRESSES OF PARTIES

Each party shall keep the other informed of his or her place of residence and employment and current telephone numbers and shall promptly notify the other of any change, giving the address of the new place of residence and employment and new telephone number, so long as any obligation to each other remains under the terms of this Agreement.

27. COUNTERPARTS

This Agreement shall be executed in one or more counterparts, each of which so executed shall be deemed an original and shall constitute one and the same agreement.

28. SEPARABILITY

If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

29. HEADINGS

The paragraph headings herein are for convenience only and shall not be construed to limit or in any way affect any provisions of this Agreement.

30. LAW APPLICATIONS

It is understood and agreed that this Agreement is entered into under the laws of the State of Connecticut which shall be applied to any construction of this Agreement, and in the resolution of any dispute arising hereunder.

31. FULL DISCLOSURE

A. The Wife represents to the Husband that a true and accurate statement, under oath, of her income, assets and liabilities is set forth in the Wife's financial affidavit filed with the Court at the time of the final hearing for dissolution of marriage. The Wife represents that she has no other assets, income or liabilities except those set forth in said affidavit. The Wife makes this representation knowing that the Husband has relied upon said representation in negotiating and entering into this Agreement.

B. The Husband represents to the Wife that a true and accurate statement, under oath, of his income, assets and liabilities is set forth in the Husband's financial affidavit filed with the Court at the time of the final hearing for dissolution of marriage. The Husband represents that he has no other assets, income or liabilities

except those set forth in said affidavit. The Husband makes this representation knowing that the Wife has relied upon said representation in negotiating and entering into this Agreement.

C. The parties understand their right to compel discovery and inspection of the business and personal financial books and records of the other party and of their right to have accountants, appraisers, and others investigate, appraise, and evaluate any or all of the personal and business assets of the other. Each party has specifically waived the further exercise of these rights and has elected not to take any further measures, by themselves or through others, with respect to the discovery, inspection, investigation, appraisal, or evaluation of the person and/or property, income, and assets of the other. The decisions on the part of the parties not to exercise further rights or disclosure are based upon the acknowledgment by each party that he or she is satisfied with the disclosure as presently made of the financial circumstances of the other party, including but not limited to, income, income potential, property of the other, and all other aspects of the present and prospective financial circumstances of the other party.

D. Each party has made independent inquiry into the complete financial circumstances of the other and is fully informed of the income, assets, property and financial prospects of the other. Each has had a full opportunity and has consulted at length with his or her attorney regarding all of the circumstances hereof and acknowledges that this Agreement has not been the result of any fraud, duress, or undue influence exercised by either party upon the other or by any other person or

persons upon the other. Both parties acknowledge that this Agreement has been achieved after full disclosure, competent legal representation, and honest negotiations.

IN WITNESS WHEREOF, the parties have set their hands and seals.

Alan Rubenstein

Alan Rubenstein

Joanne DeLuca
JOANNE DELUCA
Jon Adam DeLuca
JON ADAM DELUCA

STATE OF CONNECTICUT)
) ss: Stamford
COUNTY OF FAIRFIELD)

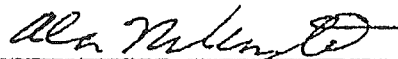
On this 4th day of September, 2014 before me personally appeared **Joanne DeLuca**, to me known to be the individual described in and who executed the foregoing Instrument, and acknowledged that she executed the same of her own free act and deed.

Alan S. Rubenstein
Alan S. Rubenstein
Commissioner of the Superior Court

STATE OF CONNECTICUT)
) ss: Stamford
COUNTY OF FAIRFIELD)

On this 4th day of September, 2014 before me personally appeared **Jon Adam DeLuca**, to me known to be the individual described in and who executed the

foregoing instrument, and acknowledged that he executed the same of his own free act and deed.



Alan S. Rubenstein
Commissioner of the Superior Court

Exhibit B

MODIFICATION AGREEMENT made as of the 8th day of May 2015, by and between **JON ADAM DELUCA** (hereinafter sometimes referred to as the "Husband") and **JOANNE DELUCA** (hereinafter sometimes referred to as the "Wife"):

W I T N E S S E T H:

WHEREAS, the parties hereto were formerly husband and wife, and their marriage was dissolved on September 4, 2014 by order of the Superior Court for the Judicial District of Stamford-Norwalk at Stamford (Novack, J.); and

WHEREAS, the parties entered into a Separation Agreement dated September 4, 2014, which Agreement was incorporated by reference into the Judgment of dissolution of marriage; and

WHEREAS, the Separation Agreement between the parties provided, inter alia, for custody and parenting of the parties two (2) minor children, Julia DeLuca born March 23, 2003 and Alexander DeLuca born August 23, 2005; and

WHEREAS, since September 4, 2014, there has been a substantial change in circumstances and the parties are desirous of modifying the Separation Agreement between them with respect to the custody and parenting of their minor children; and

WHEREAS, the Wife is desirous of terminating the "bird-nest" parenting arrangement set forth in paragraph 2.

B. of the Separation Agreement between the parties dated September 4, 2014.

NOW, THEREFORE, in consideration of the premises and the mutual promises and undertakings herein contained and set forth and for other good and valuable consideration made over by each party to the other, the receipt and sufficiency of which is hereby acknowledged, it is covenanted and agreed as follows:

1. Paragraph 2 B. of the Separation Agreement between the parties is deleted in its entirety and the following is substituted therefor:

B. (i) The parties intend to have equal (50/50) parenting time with their children. The parties shall share parenting time on the following alternating week schedule, commencing with the week of July 1, 2015:

Week 1: The children shall be with the Husband from after school on Friday or at 9:00 a.m. on Friday if there is no school, until the following Friday morning drop off at school or at the Wife's residence at 9:00 a.m. if there is no school.

Week 2: The children shall be with the Wife from after school on Friday or at 9:00 a.m. on Friday if there is no school, until the following Friday morning drop off at school or at the Husband's residence at 9:00 a.m. if there is no school.

(ii) In the event one of the parties is out-of-town during his or her parenting time because of business travel and/or one of the children's activities, the parties shall adjust

the parenting schedule to ensure that the parenting time remains equal (50/50).

(iii) Until July 1, 2015, the parties shall follow the alternating week parenting schedule at the former marital residence 23 Oak Park Avenue, Darien, Connecticut.

2. Paragraph 2 C. of the Separation Agreement is deleted in its entirety and the following is substituted therefor:

C. (i) During the Husband's weekday parenting time (Monday through Friday), the Wife shall be the primary caretaker of the children while the Husband is working. The children shall be with the Wife from after school until the Husband returns from work between 5:00 p.m. and 7:00 p.m. During that time the Wife shall be with the children at the Husband's residence at 23 Oak Park Avenue, Darien, Connecticut, subject to the children's after-school activities. In the event the Husband will be home later than 7:30 p.m., he shall either hire a babysitter to stay with the children at the Husband's residence (subject to the right of first refusal in paragraph 5 K. below) or he shall give the Wife twenty-four (24) hours' notice of such event, and the children shall go to the Wife's residence after school and sleep at the Wife's residence.

(ii) (a) The Wife shall also be the primary caretaker of the children during the Husband's weekday parenting time during the summer school vacation period while the Husband is working. The parties shall alternate drop-off and pick-up of the children. Subject to the children's activities, the parties shall drop-off or pick-up the children between 8:00 a.m. and 8:30 a.m. in the morning and between 5:00 p.m. and 7:00 p.m. in the evening. In the event the

Husband will be home later than 7:00 p.m., the Husband shall either hire a babysitter to pick-up the children or be available to drop-off the children at the Husband's residence (subject to the right of first refusal in paragraph 5.K. below) or Husband shall give the Wife twenty four (24) hours' notice of such event, and the children shall remain at the Wife's residence overnight.

(b) When the Wife is caring for the children in accordance with 2.C.(ii)(a) above, the Wife shall make reasonable efforts to facilitate any request by the children to spend time at the Husband's residence.

(iii) The Wife shall maintain her current home office in the Husband's residence. The Wife shall install a lock on the drawer of her filing cabinet, and her computer password shall no longer be accessible to the children.

(iv) The children shall only be driven by a babysitter who is age eighteen (18) or older, and who holds a valid driver's license. The babysitter shall only drive the children within a radius of fifteen (15) miles from Darien, Connecticut. In the event the babysitter is to drive the children for a distance in excess of fifteen (15) miles, the parents must mutually agree in writing before the trip is undertaken, consent to which shall not be unreasonably withheld.

3. Paragraphs 2 E., F., G., H., I., J., and L., of the Agreement between the parties are deleted in their entirety and shall be without further force or effect.

4. Paragraph 2 D. of the Separation Agreement between the parties is deleted in its entirety and the following is substituted therefor:

D. Commencing July 1, 2015, the Husband shall be solely responsible for any and all expenses related to the former marital residence located at 23 Oak Park Avenue, Darien, Connecticut.

5. Paragraph 2 K. of the Separation Agreement between the parties is deleted in its entirety and the following is substituted therefor:

K. Each party shall have the right of first refusal to care for the children in the event the other party is unavailable to care for the children during his or her parenting time for a period of three (3) or more hours. The parent who has scheduled parenting time with the children shall be responsible for making appropriate childcare arrangements in the event the other parent is not available to care for the children.

6. Paragraph 2 N. of the Separation Agreement is revised as follows:

Christmas and Winter Recess: The Christmas and Winter Recess shall be divided into the following blocks of time:

Block 1 - Christmas Eve from 9:00 a.m. until 5:00 p.m.;

Block 2 - Christmas Eve at 5:00 p.m.
until Christmas Day at 1:00 p.m.;

Block 3 - Christmas Day at 1:00 p.m.
until December 26th at 9:00 a.m. and

Block 4 - December 26th at 9:00 a.m.
until 7:00 p.m. on the day before school
commences.

(a) The children shall be with the
Wife for Block 2 in 2015 and in subsequent odd-
numbered years and with the Husband in 2016 and
in subsequent even-numbered years;

(b) The children shall be with the
Husband for Blocks 1 and 3 in 2015 and in
subsequent odd-numbered years and with the Wife
in 2016 and in subsequent even-numbered years;

(b) Block 4 shall be equally divided
between the parties each year. The Wife shall
have the first half in 2015 and in subsequent
odd-numbered years and the second half in 2016
and in subsequent even-numbered years. The
Husband shall have the first half in 2016 and in
subsequent even-numbered years and the second
half in 2015 and in subsequent odd-numbered
years.

Thanksgiving: From after school on the last
day of school until Monday morning return to
school. The children shall be with the Wife in
2015 and in subsequent odd-numbered years and
with the Husband in 2016 and in subsequent even-
numbered years.

Easter Sunday: From 9:00 a.m. until 7:00
p.m. The children shall be with the Wife in 2016
and in subsequent even-numbered years and shall
be with the Wife in 2017 and in subsequent odd-
numbered years. In the event that the Easter
Holiday occurs during the April Recess, and the
party who has parenting time with the children is

travelling outside the State of Connecticut, then the Easter Holiday shall be with the parent who is travelling with the children for the April Recess.

Children's Birthdays: Both parents shall have the right to spend time with each child on that child's birthday. The parties shall mutually agree on a time for the non-custodial parent to be with the child on his or her birthday, which consent shall not be unreasonably withheld.

Mother's Day: The children shall be with the Wife on Mother's Day from 9:00 a.m. until 7:00 p.m.

Father's Day: The children shall be with the Husband on Father's Day from 9:00 a.m. until 7:00 p.m.

Parents' Birthdays: The children shall be with each parent on his or her birthday from 9:00 a.m. until 7:00 p.m.

The children's birthdays, Mother's Day, Father's Day and the parent's birthdays parenting time shall supersede the regular parenting/vacation schedule.

7. Paragraph 2 W. of the Separation Agreement between the parties is deleted in its entirety and the following is substituted therefor:

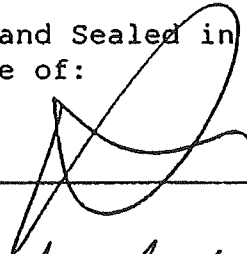
W. Each party shall exert every effort to promote free access and unhampered contact between the children and each of the parties and to foster a feeling of affection between the children and the parties hereto. Each party shall exert his and her best efforts to refrain from doing anything to estrange the children from the other party, or to disparage the opinion of the children as to their mother or

father, or to act in such a way as to hamper the free and natural development of love and respect between parent and child. Neither party shall disparage the other parent in front of the children and/or to any third party or parties.

8. Except as specifically provided in this Modification Agreement, the parties hereby ratify and confirm the provisions of the Separation Agreement between them dated September 4, 2015.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hands and seals the day and year first above written.

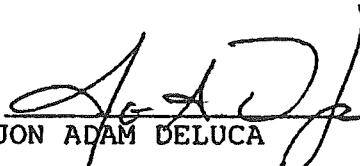
Signed and Sealed in the Presence of:




Sandra L. Yates

Del H. Bronty

Sandra L. Yates



JON ADAM DELUCA



JOANNE DELUCA

STATE OF CONNECTICUT)
) ss: OLD GREENWICH
COUNTY OF FAIRFIELD)

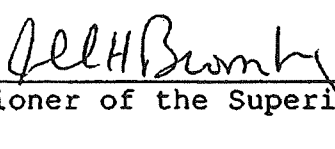
On this 6th day of May, 2015, before me came JON
ADAM DELUCA to me known to be the individual described in
and who executed the foregoing instrument and acknowledged
that he executed the same.



Commissioner of the Superior Court
~~Notary Public~~

STATE OF CONNECTICUT)
) ss: Old Greenwich
COUNTY OF FAIRFIELD)

On this 7th day of May, 2015, before me came
JOANNE DELUCA to me known to be the individual described in
and who executed the foregoing instrument and acknowledged
that she executed the same.



Commissioner of the Superior Court

DOCKET NO.: FST-FA-14-4026924-S : SUPERIOR COURT
JOANNE DELUCA : J.D. OF STAMFORD/NORWALK
v. : AT STAMFORD
JON ADAM DELUCA : NOVEMBER 17, 2015

STIPULATION, POST JUDGMENT

The parties stipulate and agree as follows:

1. Judgment for dissolution of the marriage was entered by this Court (Novack, J.) on September 4, 2014 (no. 116.00). The Judgment incorporates the parties' September 4, 2014 Separation Agreement (hereinafter "the Separation Agreement") by reference.
2. The Judgment was open and modified pursuant to the parties' Modification Agreement dated May 11, 2015 (no. 128.00) (hereinafter "the Modification Agreement").
3. The parties stipulate and agree to modify the Separation Agreement and Judgment of the Court as follows:
 - a. Article 4 of the Separation Agreement. Children's Extracurricular Expenses. The following is a new paragraph: Beginning November 1, 2015 the Wife's contribution towards the children's extracurricular expenses shall not exceed \$2,000 per month. Her monthly contribution shall be paid to the Husband, less his portion of any extracurricular expenses incurred by the Wife, by electronic transfer on or before the 7th of each month beginning December 7, 2015. If the Wife's monthly contribution is less than \$2,000 any unused balance shall cumulatively carry forward to the next month.
 - b. Article 3-B of the Separation Agreement. The last sentence of this paragraph shall be rendered null and void, to wit: "Alimony and child

#131.02

support shall be subject to the cohabitation statute and related case law." The Wife's cohabitation shall not be grounds for modification of the alimony and child support.

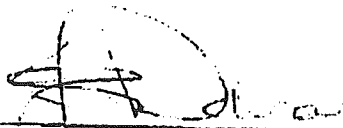
4. The following paragraph shall constitute a new provision of the parties' Separation Agreement and Judgment of the Court:

The Husband shall be solely responsible to pay any and all costs related to Alex's application and attendance at private secondary school to include but not be limited to the following: standardized test preparation and fees, application fees, tuition, room, and board, books, lab fees, computer, room set-up costs, transportation, and allowance. However, these costs shall be shared retroactively and going forward between the parties pro-rata in proportion to their net after-tax proceeds from their respective interests in Wilcon Holdings, LLC and Data Gryd Data Centers, LLC if the Wife's net proceeds before such a pro-rata allocation exceed \$1,000,000 net after tax pursuant to Paragraph 7-C of the Separation Agreement. The Wife shall be primarily responsible to facilitate any and all efforts regarding Alex's application to private school including but not limited to school visits, interviews, applications, and the preparation and filing of any and all documents related to his private school application(s). If Alex is not accepted into private school for 5th or 6th grade the Wife shall nevertheless facilitate this effort at the Husband's sole election for any subsequent year.

4. The Parenting Plan as detailed in the Modification Agreement shall be modified accordingly based on Alex's private school calendar.

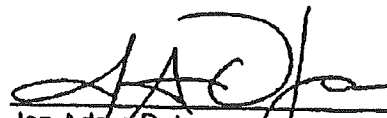
5. Except as specifically provided in this Stipulation, Post Judgment the parties ratify and confirm the provisions of the Separation Agreement and the Modification Agreement.

THE PLAINTIFF



Joanne DeLuca, pro se
44 Kenselt Lane
Darien, CT 06820

THE DEFENDANT



Jon Adam DeLuca, pro se
23 Oak Park Avenue
Darien, CT 06820

3998786v1

- 2 -

215 Ford Road West
Middletown, CT 06457

HALLORAN
& SAGE LLP

Phone (203) 227-2855
Fax (203) 227-6992
Mobile (203) 227-6992

APP 000430

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

) ss: Daniel

On this 1st day of November, 2015 before me personally appeared Jon Adam DeLuca, to me known to be the individual described in and who executed the foregoing Instrument, and acknowledged that she executed the same of her own free act and deed.

[Signature]
Notary Public
Commissioner of the Superior Court

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

) ss: Joanne DeLuca

On this 21st day of November, 2015 before me personally appeared Joanne DeLuca to me known to be the individual described in and who executed the foregoing Instrument, and acknowledged that she executed the same of her own free act and deed.

ALESSANDRO SPADAFORA
Notary Public - State of Connecticut
My Comm. Expires April 30, 2017

[Signature]
Notary Public
Commissioner of the Superior Court

3998786v1

- 3 -

315 Post Road West
Middletown, CT 06457

HALLORAN
& SAGE LLP

Phone (203) 227 2855
Fax (203) 227 6992
Cell (203) 227 6992

APP 000431

DOCKET NO.: FST-FA-14-4026924-S : SUPERIOR COURT
JOANNE DELUCA : J.D. OF STAMFORD/NORWALK
v. : AT STAMFORD
JON ADAM DELUCA : JUNE 13, 2016

STIPULATION, POST JUDGMENT

The parties stipulate and agree as follows:

1. Judgment for dissolution of the marriage was entered by this Court (Novack, J.) on September 4, 2014 (no. 116.00). The Judgment incorporates the parties' September 4, 2014 Separation Agreement (hereinafter "the Separation Agreement") by reference.

2. The Judgment was open and modified pursuant to the parties' Modification Agreement dated May 11, 2015 (no. 128.00) (hereinafter "the Modification Agreement"); and Stipulation, Post Judgment dated 11/17/15 (no. 131.02) (hereinafter "the Stipulation, Post Judgment").

3. The parties stipulate and agree to further modify the Separation Agreement and Judgment of the Court as follows:

Paragraph 3B of the parties' Separation Agreement is null and void and is replaced with the following:

Beginning September 1, 2014, the Husband shall pay unallocated alimony and child support to the Wife in an amount equal to 40% of his "total compensation from employment" (hereinafter "TC" as defined herein) until either party's death, August 31, 2021 or the "Exit Event" (as defined herein), whichever shall first occur. The alimony term shall be non-modifiable except as set forth herein. An "Exit Event" is defined as the following for the purposes of this

#133.01

paragraph: a date prior to August 31, 2021 at which time the following has occurred: (a) the Wife has remarried (regardless of whether she is still married at the time of the Exit Event); and (b) the Wife has received a total of \$2.6 million in cash or other liquid securities, including any funds held in escrow for a period of time in pre-tax gross dollars, either at one time or on separate occasions, pursuant to Paragraph 7-C of the Separation Agreement regarding her interest in (i) the proceeds from the sale of Wilcon Holdings, LLC (including the sale of the Wife's allocated or unallocated equity holding or options in Wilcon Holdings, LLC); and/or (ii) proceeds from the sale of Data Gryd Data Centers, LLC (including the sale of the Wife's allocated or unallocated equity holdings or options in Data Gryd Data Centers, LLC). The Wife's receipt of funds related to the Exit Event as defined herein shall not include any other funds related to the distribution or allocation of the marital assets including the Wife's receipt of alimony and/or child support from the Husband.

4. Paragraphs four (there are two paragraphs four) in the Stipulation, Post Judgment are rendered null and void and replaced with the following:

The Husband shall be solely responsible to pay any and all costs related to Alex and Julia's application and attendance at private secondary school to include but not be limited to the following costs (hereafter "private school costs"): standardized test preparation and fees, application fees, tuition, room, board, books, lab fees, computer, room set-up costs, transportation, and allowance. However, in the event of a sale of the parties' interests in Wilcon Holdings, LLC and Data Gryd Centers, LLC pursuant to Paragraph 7-C of the Separation Agreement the tuition cost(s) shall be shared between the Husband and Wife pro-rata in proportion to their respective net after-tax proceeds as follows: (i) retroactively and going

- 2 -

forward if the Wife receives in excess of \$1,000,000 net after-tax proceeds; or (ii) retroactively if such sale constitutes an Exit Event (as defined herein) to the date of the Exit Event. As of the date of the Exit Event the Husband shall be solely responsible to pay 100% of all other private school costs except for tuition. The Wife shall be primarily responsible to facilitate any and all efforts regarding Alex and Julia's application to private school including but not limited to school visits, interviews, applications, and the preparation and filing of any and all documents related to his/her private school application(s). If either child is not accepted into private school the Wife shall nevertheless facilitate this effort at the Husband's sole election for any subsequent year. The Parenting Plan as detailed in the Modification Agreement shall be modified accordingly based on Alex and Julia's private school calendar.

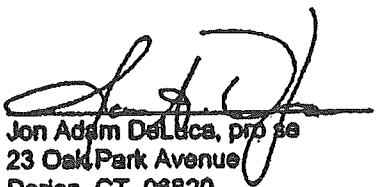
4. Except as specifically provided in this Stipulation, Post Judgment, the Modification Agreement, and the Stipulation, Post Judgment the parties ratify and affirm the balance of the Separation Agreement and the Judgment of the Court.

THE PLAINTIFF



Joanne DeLuca, pro se
44 Kensett Lane
Darien, CT 06820

THE DEFENDANT



Jon Adam DeLuca, pro se
23 Oak Park Avenue
Darien, CT 06820

- 3 -

315 Post Road West
Westport, CT 06880


HALLORAN
& SAGE LLP

Phone (203) 227-2855
Fax (203) 227-6992
Juris No. 412195

APP 000434

STATE OF CONNECTICUT)
) ss: Westport
COUNTY OF FAIRFIELD)


On this 13th day of June, 2016, before me personally appeared Joanne DeLuca, to me known to be the individual described in and who executed the foregoing Instrument, and acknowledged that she executed the same of her own free act and deed.



Alan Rubenstein
Commissioner of the Superior Court

STATE OF CONNECTICUT)
) ss: Westport
COUNTY OF FAIRFIELD)

On this 13th day of June, 2016, before me personally appeared Jon DeLuca, to me known to be the individual described in and who executed the foregoing Instrument, and acknowledged that he executed the same of his own free act and deed.



Alan Rubenstein
Commissioner of the Superior Court

EXHIBIT 2



Nedder & Associates, LLC
3 Parklands Drive, Suite 201
Darien, Connecticut 06820
Tel (203) 621-0577 Fax (203) 621-0626

August 16, 2019

VIA EMAIL AND REGULAR MAIL

David T. Martin, Esq.
Cummings & Lockwood, LLC
Six Landmark Square
Stamford, CT 06901

Re: Estate of Jon A. DeLuca (18-00192)

Dear Mr. Martin,

The Estate of Jon A. DeLuca (hereinafter, "Estate") has been reviewing the claims of Joanne Briggs and the list of itemized expenses that were outlined in the letter received July 24, 2019. As I have expressed in the past to your colleague, Dan Johnson, the Estate is for the benefit of the minor beneficiaries, not the guardian of the minor beneficiaries. With that in mind, it seems that the costs that have been outlined would be incurred by the guardian whether the minor beneficiaries lived with her or not. We have tried to focus the Estate funds on the children and their education and activities and not on the guardian of the children. However, we do acknowledge that pursuant to the Separation Agreement, dated September 4, 2014, (hereinafter, "Agreement") that some obligation does exist, we have found it difficult to quantify those obligations.

It is worth noting that every expense that was submitted thusfar has been paid and reimbursed within a reasonable time frame. Attorney Florin responded to the claim on July 19, 2019 and asked for a more detailed explanation of the amount that was calculated. The response we received was not adequate. Specifically, we would like to understand the calculation that was used, e.g, a breakdown of how the mortgage is being paid. Are you expecting the Estate to pay principal and interest? We believe that the Estate should only be contributing to the interest portion of the mortgage and not the principal.

Additionally, there is no basis that we can determine wherein your client is entitled to a lump sum distribution. Some of these expenses will not be incurred for more than 7 years. If a lump sum payment were made, what protections or controls would be in place on the funds to ensure they were used for the children? While a lump sum amount was requested, there has been an inadequate justification for how this number was calculated.

For example, pursuant to the Agreement, dated September 4, 2014, Section 2, Paragraph D: "The Husband shall contribute \$150 per week toward the children's nanny/housekeeper to include her responsibilities to clean the house and do laundry. The balance of the nanny/housekeeper's costs shall be paid by the Wife." The itemized list provided cites housecleaning at \$560. The Husband would only be responsible for \$150 and the Wife would

need to pay the balance. We would like to adhere to the obligation under the Agreement and would like to understand your rationale for the additional funds.

The exact same section and paragraph of the Agreement also outlines which household items that the Husband was responsible for during his lifetime, those are the following: "All other costs related to the children's residence including but not limited to the mortgage, repairs and maintenance, homeowner's insurance, property tax, and lawn and garden shall be paid by the Husband." In addition to that paragraph, were the decedent still alive, the "bird-nest" arrangement as provided for in the Agreement at Section 2, Paragraph D, states "the Parties shall pay the following expenses for the children's residence during the bird-nest arrangement 70% by the Husband and 30% by the Wife: electricity, water, oil, gas, and pool maintenance." Aquarion, Standard Oil, Optimum, and Eversource were not meant to be a continual expense and or to be the responsibility of the Husband. These are ordinary expenses to be paid by homeowners. It is not generally the responsibility of the children or the Estate to pay all of the expenses for their parents. As previously stated, the Estate is trying to make the best decisions as related to the children and their well-being. Would it not be more appropriate for the Estate to pay the additional incremental cost of their living expenses?

While the decedent had a contractual obligation to pay for the housing expenses of the children until they graduate college or turn twenty-three years of age, the Estate is not responsible for every single housing expense for everyone residing in the household. In addition to the listed housing expenses in the Agreement, the Estate is not responsible for the entirety of the housing expenses for the whole household, as there are other additional people in the household that are not to be addressed by the Estate or the Agreement obligations. Therefore, we are having trouble deciphering what the children need for their individual housing expenses. In regards to the children's living expenses and overall well-being, the Estate has been and will continue to pay for all educational and medical expenses and all extracurricular activity and travel expenses for the children without hesitation. The Estate is paying those expenses directly and your client has had no obligation to pay them.

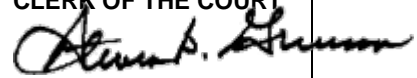
While the Estate is not dismissing all of the itemized expenses, Counsel has requested a more logical breakdown in order to approve any such requests in order to move forward with meeting these obligations. The Estate cannot approve such requests without further documentation and explanation. The Estate and Counsel have worked very diligently and promptly in the past to support the children in any way they may need. We believe this matter can be resolved amicably, notwithstanding your recent threats of litigation.

Sincerely,

Michael T. Nedder (MKNM)

Michael T. Nedder, Esq.

cc: Honorable William P. Osterndorf
Ellen Hain, Esq.
Daniel G. Johnson, Esq.
David T. Martin, Esq.



1 RTRAN

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5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

8 IN THE MATTER OF THE TRUST
9 OF:

CASE#: P-20-104279-T

9

DEPT. XXVI

10

23 PARTNERS TRUST 1

11

12

BEFORE THE HONORABLE GLORIA STURMAN
DISTRICT COURT JUDGE

13

THURSDAY, JANUARY 28, 2021

14

RECORDER'S TRANSCRIPT OF PENDING MOTION

15

16

APPEARANCES VIA BLUEJEANS:

17

18

For the Petitioner:

ALEX G. LEVEQUE, ESQ.
ROBERTO MARIO CAMPOS, ESQ.

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For the Trustee Michael T.
Nedder:

RUSSEL J. GEIST, ESQ.

21

22

23

24

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RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Thursday, January 28, 2021

2

3 [Case called at 10:57 a.m.]

4 THE COURT: -- 10:30 matter. We'll get the appearances for
5 that.

6 MR. LEVEQUE: Good morning, Your Honor. This is Alex
7 LeVeque on behalf of the Petitioner Joanne Briggs, guardian for Julia
8 and Alexander De Luca.

9 THE COURT: Okay.

10 MR. GEIST: Good morning, Your Honor.

11 MR. CAMPOS: Good morning, Your Honor. Go ahead, Rob.

12 MR. GEIST: Oh, thank you. Good morning, Your Honor.

13 Russ Geist, bar number 9030, appearing on behalf of Michael Nedder
14 and also Doug De Luca. Both of them, I believe, are appearing by video
15 conference as well.

16 THE COURT: Okay.

17 MR. CAMPOS: Good morning, Your Honor. Roberto
18 Campos on behalf of Petitioner as well. Bar number 15189.

19 MR. LEVEQUE: And I should note, Your Honor, that my client
20 Joanne Briggs and beneficiary Julia De Luca are also appearing today.

21 MS. BRIGGS: Good morning, Your Honor.

22 THE COURT: All right. So this is a petition to assume
23 jurisdiction over a trust, and to confirm Douglas Scott De Luca as a
24 trustee, to obtain an accounting, and to obtain a copy of the Trust.

25 All right. So we've had a couple of hearings so far in this

1 matter, and the matter was continued to this date for argument. So are
2 the parties satisfied that at this point it's fully briefed and can be argued?
3 Everybody --

4 MR. LEVEQUE: Yes, Your Honor. This is Alex LeVeque. Just
5 to bring the Court up to speed. At the last hearing, the Court did assume
6 jurisdiction of the Trust and did confirm Mr. Nedder and Mr. De Luca as
7 the Trustees. What remains open for decision were the remaining
8 portions of the relief in the petition, which are very simple and narrow.

9 One is to compel the Trustee to provide a copy of the Trust to
10 my client. The Court did order that the Trust be provided to counsel for
11 attorney's eyes only. That has been accomplished. And then we did
12 subsequent briefing on those remaining issues regarding providing a
13 copy of the Trust to the actual party and also additional briefing on
14 whether there is an obligation for Mr. Nedder to account. So those are
15 the issues that are ripe before the Court today.

16 THE COURT: And we -- I believe we've talked in the past
17 about *Amicon*?

18 MR. LEVEQUE: We have.

19 THE COURT: Okay.

20 MR. LEVEQUE: And *Amicon*, based on the language of this
21 Trust is fully inapplicable for various reasons, but the primary reason,
22 Your Honor, is that notwithstanding the misrepresentations by Mr.
23 Nedder in his objection, this Trust expressly provides a duty to account.
24 And I'm not -- I guess I have to be careful, Your Honor. I want to be able
25 to fully argue this --

1 THE COURT: Okay.

2 MR. LEVEQUE: -- but it's going to require me referencing the
3 Trust. It's -- both sides have quoted the Trust, have provided block
4 quotes to the Trust. I believe that it is appropriate at this juncture to
5 actually get to the merits of whether there is an obligation to provide an
6 accounting under this Trust instrument and there clearly does. So with
7 the Court's permission I'll get into the merits of that argument.

8 THE COURT: Thanks. Okay. Mr. Geist, before we get
9 started, anything else preliminarily?

10 MR. GEIST: No, Your Honor. I'll reserve my response after
11 Mr. LeVeque has presented his argument.

12 THE COURT: Okay. All right. Great. Then we're ready to go.

13 MR. LEVEQUE: Okay. Thank you, Your Honor. What I'm
14 going to do is I'm going share screen here, so we can actually pull up a
15 copy of the Trust.

16 THE COURT: No.

17 MR. LEVEQUE: Oh, we're not going to do that?

18 THE COURT: No.

19 MR. LEVEQUE: Okay. Okay. Well then what I'll do is I'll just
20 get into the points that have been briefed.

21 First of all, Your Honor, the Trust expressed terms do require
22 the independent Trustee, who is Mr. Nedder, to account to Julie and
23 Alex. And that's set forth -- the Trust, by the way, was submitted in
24 camera to the Court --

25 THE COURT: Yes.

1 MR. LEVEQUE: -- by both the Petitioner and the Objector.

2 THE COURT: That's why I don't want you to bring it up.

3 Yeah.

4 MR. LEVEQUE: Okay. Great. Section 5.2A and B are what
5 discuss the duty to account. And 5.2A says, "the Trustee shall make the
6 books of account and records of all financial transactions available at all
7 reasonable times for inspection by each then presently vested income
8 principal and remainder beneficiary, and their respective
9 representatives."

10 The Trust goes on to say in that section, "upon request, the
11 Trustee shall furnish to said beneficiaries with respect to each federal
12 income tax accounting year of such trust," so that's on an annual basis, "
13 a complete beginning and ending inventory fully reflecting all principal
14 and income activity, including all distributions of any kind."

15 The Trust goes on to say, "that the Trustees, upon request,
16 shall furnish to said beneficiaries, an accounting summarizing all
17 financial transactions for such period thereby reconciling such ending
18 inventory with the beginning inventory fully reflecting all principal and
19 income activity, including all distributions of every kind."

20 THE COURT: Is there --

21 MR. LEVEQUE: I don't know --

22 THE COURT: Is there any significance to this distinction
23 between independent trustee and corporate trustee, and that language
24 that's in there because --

25 MR. LEVEQUE: Yeah, I'm glad you brought that up, Your

1 Honor, because this was a misrepresentation by the Trustee back on
2 December 9th and in his briefing. He made the representation that, well,
3 that only applies to a corporate trustee. That's not true, Your Honor,
4 because what was conveniently omitted from their objection -- and at
5 that time we didn't have a copy of the Trust -- was subsection B of 5.2,
6 which says, "during such period of time as there is no corporate fiduciary
7 acting with respect to any trust hereunder, all of the aforesaid
8 recordkeeping and reporting functions shall be performed by its trustee
9 or trustees jointly," and then it goes on, "unless one shall delegate such
10 functions to the other."

11 So in the event that there's an absence of an appropriate
12 trustee, then that duty falls upon the Independent Trustee, Mr. Nedder.
13 So there is an affirmative duty to account. There is an affirmative duty to
14 provide access to the books and records. And there's an affirmative duty
15 to prepare a complete beginning and ending inventory on an annual
16 basis.

17 I want to direct the Court's attention to some representations
18 that were made during the course of these proceedings that gets to the
19 point of where we're going to be seeking to surcharge Mr. Nedder for the
20 misrepresentations.

21 Before litigation was filed, there was some communications
22 and correspondence between my client and Mr. Nedder's office. And I'll
23 direct the Court's attention to an email correspondence that was
24 attached as Exhibit 3 to Mr. Nedder's supplement where Mr. Nedder's
25 office said to my client, "as I have explained to Julia in the past, the Trust

1 is clear in what information can be shared with beneficiaries and what
2 cannot. The beneficiaries are not entitled to any information about the
3 underlying document or the assets contained therein." That is a blatant
4 misrepresentation, Your Honor. It is expressly permitted under this Trust
5 that they're entitled to a complete beginning and ending inventory of all
6 assets and an accounting summarizing all financial transactions.

7 After that, Your Honor, we filed a petition. And in the
8 objection, we got -- again, we didn't have the benefit of the Trust -- Mr.
9 Nedder represents in his pleading, under Rule 11, quote, "The Trustee
10 has no obligation to provide an accounting to the beneficiaries pursuant
11 to NRS 165.1207, or pursuant to the Trust." Again a blatant
12 misrepresentation.

13 I'll again direct the Court to the actual hearing on December
14 9th. We attached a copy of the transcript from that hearing, which was
15 Exhibit 2 to our supplement on January 11th.

16 In that hearing, Mr. Geist stated, quote, "Our objection is
17 limited in that their request for relief is to compel an accounting and a
18 delivery of a copy of the Trust, both of which are not permitted under the
19 statute and not permitted under the terms of the Trust." Again, Your
20 Honor, a blatant misrepresentation.

21 Mr. Geist goes on, on page 15 of the transcript where he
22 makes a representation that Section 5.2 of the Trust just says books and
23 records shall be available for inspection. Again, a complete
24 misrepresentation. Not only are they entitled to an inspection of the
25 financial transactions, they're also entitled to a beginning and ending

1 inventory, and an accounting.

2 So, Your Honor, that is basically the summary of the
3 Petitioner's position with respect to the accounting. We believe under
4 EDCR 7.60, Section 7.11 of the Trust, NRS 165.200, and NRS
5 153.031(3)(b), that Mr. Nedder should be surcharged the attorney's fees
6 and costs that were incurred by filing what is clearly a meritless and
7 frivolous objection to the petition.

8 With respect to the additional claim for relief, a copy of the
9 Trust, a representation was made, Your Honor, that my -- that the Trust
10 does not allow a copy of the Trust to be provided. Again that's also a
11 blatant misrepresentation. If you go to --

12 THE COURT: Well, the primary -- to present beneficiaries.
13 So your position being that the -- your clients are present beneficiaries?

14 MR. LEVEQUE: Absolutely. The Trust says they're present
15 beneficiaries. I mean, I can actually quote you that language.

16 THE COURT: Uh-huh.

17 MR. LEVEQUE: If you go to Section 3.5 -- I mean, not only
18 are they the primary beneficiaries, which Mr. Nedder concedes, Section
19 3.5 says, "in exercising the discretionary powers with respect to
20 providing benefits under this Trust agreement, the Trustee shall be
21 mindful of the fact that the grantor's primary concern in establishing this
22 Trust is the present and future welfare of the grantor's children."

23 "And by way of guidance, the grantor desires, but does not
24 direct the older generation of descendants to have priority of lower
25 generation descendants." It goes on. "Finally, the grantor requests the

1 Trustees be liberal in conferring benefits hereunder, particularly for the
2 health, education, and reasonably comfortable support of the
3 permissible distributes." So, yeah, they're absolutely the present
4 beneficiaries, Your Honor.

5 And what is inferred, I think, although not expressly stated to
6 try finding some sort of argument, I guess, to avoid Rule 11 sanctions, to
7 say that there's no obligation is this argument that they're not vested
8 beneficiaries, that's absurd. You can't have a trust without vested
9 beneficiaries. And when you're looking at a beneficiary's right, you're
10 looking at whether they're vested or contingent, okay. We obviously
11 don't have contingent beneficiaries. They're the present beneficiaries.
12 It's not like some event in the future makes them beneficiaries, they
13 already are.

14 What is at issue here, not really at this point, but what Mr.
15 Geist is trying to conflate is the distribution standard, which is a
16 discretionary standard, that although there is no shell language that
17 compels the Trustee to make distributions, that does not equate to my
18 clients not the invested beneficiaries. That's absurd. So we believe that
19 there is no wiggle room there for that, Your Honor. And they don't cite
20 any authority for the proposition because they can't. It's absurd.

21 Finally, Your Honor, with respect to providing a copy of the
22 Trust, there is no prohibition that mandates the Trustee not providing a
23 copy of the Trust, the only language in this Trust, somewhat relevant to
24 that, has already been discussed before this Court, and it just says that --
25 this is Section 5.1E, which says that notwithstanding anything herein to

1 the contrary -- so, by the say, notwithstanding anything to the contrary,
2 and to the extent permitted by applicable law, the Trustee shall not
3 provide notice to the existence of a trust to any beneficiaries hereunder.
4 Well, that's been waived a long time ago by Mr. Nedder himself.

5 I mean, everyone knows that the Trust exists. There's no
6 additional language in the Trust that says that a copy of the Trust can't
7 be provided. In fact, the contrary is the case. If you go up just two
8 sections in the Trust, Section 5.1C says, "copies of all trust related
9 instruments of amendment, revocation, exercise of power, designation,
10 release, disclaimer, as well as a trustee's resignation, removal,
11 appointment and/or acceptance, the original, which shall be attached
12 hereto, upon request, shall be delivered promptly or sent by mail by the
13 trustee receiving or initiating the same to each interested party, i.e., the
14 grantor, the other than trustee or trustees, if any, of the affected trust,
15 and each present beneficiary of the affected trustee or trust."

16 So there is an expressed mandate in this Trust to provide
17 copies of Trust related instruments of amendment to the beneficiaries.

18 I also want to note, Your Honor, that -- we didn't get a chance
19 to brief this, but as the Court knows, on December 31st, the Supreme
20 Court came down with its decision in the *Horst Revocable Trust*. And if
21 the Court remembers -- and for the record that's Advanced Opinion --

22 THE COURT: I know [indiscernible].

23 MR. LEVEQUE: Okay. That had to do with the 120 day
24 notice --

25 THE COURT: Yeah.

1 MR. LEVEQUE: -- and what beneficiaries are entitled to with
2 respect to reviewing a copy of the trust and whether, you know, they get
3 the whole trust or certain portions of the trust.

4 THE COURT: Uh-huh.

5 MR. LEVEQUE: And in that case, Your Honor, the Supreme
6 Court made it fairly clear that the intent of the statute was to provide
7 beneficiaries all information from the trust that somehow affects their
8 interests. And it also went on to say that that's not subject to the
9 trustee's discretion. That's what the beneficiary is entitled to, is all.

10 We would have never known, Your Honor, had this Trust not
11 been produced that A) Mr. Nedder could be removed by my clients at
12 any point in time just by giving him notice, because he's not a corporate
13 trustee. I can show the Court that provision. B) That they have a special
14 power of appointment in this Trust, that they can appoint their assets at
15 their discretion; C) that they do have becoming rights under this Trust; D)
16 that there is a discretionary standard that does contemplate health
17 education, and reasonably comfortable support --

18 THE COURT: But they're minors, right?

19 MR. LEVEQUE: They're minors, but that doesn't say that --
20 there's no prohibition in this Trust that says the minors can't have this
21 information. Even if it did, Your Honor, under our statutes, my client is
22 the legal guardian and custodian of these minors, so she would have the
23 authority to get that information. And that's actually also contemplated
24 in the Trust itself. If you go back -- one second here. I can't remember
25 where I saw it, Your Honor, but there is somewhere that says that the

1 representative of the beneficiaries can also obtain that information.

2 And that's never been in dispute, Your Honor. That was
3 actually one of the first things that was requested in our initial petition is
4 that the Court permit my client to represent her children and there was
5 no objection to that. So she clearly has standing to make that argument.

6 So I think that really summarizes everything. Unless the
7 Court has any questions, I'll reserve any time I have to reply to Mr. Geist.

8 THE COURT: Okay. Mr. Geist.

9 MR. GEIST: Thank you, Your Honor. First of all, I would like
10 to address the newly raised issues of surcharge. I believe the Trust --

11 THE COURT: Yeah, they won't need it. Yeah, so.

12 MR. GEIST: Okay. If that's not necessary, then I won't
13 address those then. The threshold issue, Your Honor, is are these two
14 beneficiaries, number one, entitled to an accounting under the terms of
15 the Trust. And again, Mr. LeVeque refers very succinctly to Section 5.2A,
16 referring to the corporate trustee's requirement to make the books of
17 accounts and records of all financial transactions available to the grantor,
18 if living. It's not applicable here.

19 THE COURT: Uh-huh.

20 MR. GEIST: Each then presently vested income principal and
21 remainder beneficiary of such Trust, and their respective representatives.
22 He agrees, they're present beneficiaries. He defers on whether or not
23 they're vested, and here's why that is relevant.

24 Restatement Section -- Restatement 2d of Trusts, Section
25 155, says a beneficiary, quote, "has a vested interest in that portion of

1 the trust, which was within the reach of creditors," unquote. Similarly,
2 Nevada law supports that and says in NRS 163.419, subsection 1 that, "a
3 beneficiary who has a discretionary interest in a trust does not have an
4 enforceable right to a distribution from the trust," and I'll leave off the
5 rest of that.

6 Now he makes a point in reference to the precatory language
7 earlier in the Trust that does not mandate that the Trustee make
8 distributions for health, education, support, or any of those ascertainable
9 standards, but merely asks the Trustee to consider those. And the law is
10 clear that when that language consider is there, it's precatory, it is not a
11 requirement. The actual standard that is given for distribution is
12 completely solely within the discretion of the Trustee under a non-
13 ascertainable standard.

14 And Nevada law says that an ascertainable standard must be
15 health, education, maintenance, or support, those types of provisions. If
16 it's not those four things, it's not an ascertainable standard. And if it's
17 within the discretion of the Trustee, then they're not required.

18 Nevada law even says further that if there is a combination of
19 discretion and support, that it is -- that interest is considered a fully
20 discretionary interest. So Nevada law gives great deference to the fact
21 that a discretionary interest is what controls. And that is exactly what
22 these two beneficiaries have, is a beneficial interest that is completely
23 discretionary.

24 Now I think it's important to understand the framework of
25 this Trust. It's created to be a dynasty trust, multi-generational, not just

1 for the benefit of these two, but for succeeding generations, and it even
2 says that in the precatory description for the mega trust language, mega
3 trust dispositive provisions, that it is for multiple generations.

4 So for the Trustees to hear what's happening from Ms.
5 Briggs is that we've got these beneficiaries who are currently receiving
6 distributions in the discretion of the Trustees, but given the behavior
7 towards her on some of these distributions, it appears to them that she is
8 trying to assert her own discretion in place of their discretion, which is
9 their main concern. Their concern is not giving information.

10 We've provided in Exhibit 3 as recently as August of 2020, an
11 email between Ms. Briggs and the Independent Trustee where he again
12 asserted that he is willing to meet with all of them. Not just the
13 beneficiaries as they try and intimate in their reply, but they say that he
14 is willing to sit down with all of them. "I would like to have a meeting
15 either in person or electronically to hopefully answer some of their
16 questions and also review projections for Trust expenditures into the
17 future. If you find this agreeable, this would help to address many of the
18 concerns Julie has expressed by email to me."

19 Now let's go back to Ms. Briggs' assertion of her rights. We
20 have no question that she is their guardian inasmuch as they're minors.
21 But up until this point, and even as of August 18th in this email that we
22 included as Exhibit 3, Ms. Briggs indicates that she's deferring to Julia on
23 her request. She says, with regard to Julia's emails, you need to
24 respond to her directly. She's almost 18 and is acting on her own behalf.
25 I think it's disingenuous for counsel then to play the minor card with

1 respect to Julia's interest when his client was taking the exact opposite
2 position with the Trustees prior to filing the petition. And, again, they
3 offered to sit down and go over these finances with all of them and
4 including the guardian ad litem in the separate estate case.

5 So it's not a matter of they're trying to hide anything.

6 THE COURT: And that's what why --

7 MR. GEIST: They trying to --

8 THE COURT: That's why I was asking Mr. LeVeque, is
9 technically she is still a minor for one more month, right. She turns 18
10 next month, Julia, and Alexander is 15 now. So technically both still
11 minors. And then the -- upon -- and so that was, I guess, my question
12 here, do you agree that *Amicon* does not apply because there we had a
13 living grantor, here our grantor is deceased?

14 MR. GEIST: Is that question directed at me, Your Honor?

15 THE COURT: Yes, Mr. Geist. Yeah.

16 MR. GEIST: No, I don't agree that that does not apply. I
17 don't think that is the distinction with *Amicon*. I think it is the beneficial
18 interest within which the Court is analyzing whether or not an accounting
19 is required under the terms of the Trust. It's not whether the grantor is
20 living or not. In both cases, I believe it is a completed gift trust. It is a
21 trust where it became irrevocable upon the funding of the Trust. So the
22 grantor's existence, I don't think is the distinction nor did I think the
23 opinion hang on that.

24 THE COURT: Right. And so Article 2, irrevocability and
25 renunciation of interests. So Article 2 of the Trust, it is --

1 MR. GEIST: Correct.

2 THE COURT: And then we have our trademark mega trust.

3 MR. GEIST: Yes.

4 THE COURT: Yeah. Okay.

5 MR. GEIST: And then I think this also highlights the
6 distinction with the case -- the *Horst Trust* case regarding the 120 day
7 notice. That statute is entirely inapplicable to this Trust. It was
8 irrevocable from its creation. It did not become irrevocable upon the
9 grantor's passing. So the 120 day notice, and who's entitled to that, and
10 what information is required under the 120 day notice, does not apply to
11 this. The terms of the Trust, about what is -- what notice is required is
12 what would apply in this case.

13 And with respect to Section 5.1, subsection C, that was
14 referred to, counsel was very good at highlighting the portion of that
15 sentence that applies, but dropping off the actual modification of what
16 he's saying that takes it out of what he's trying to get this Court to do.
17 That section says, "copies of all trust related instruments of amendment
18 revocation, exercise of power, designation release disclaimer, et cetera,
19 as well as of a trustee's resignation or removal, appointment or
20 acceptance shall, upon request, be delivered promptly."

21 It doesn't say the Trust, Your Honor. And I wish, at some
22 point, you know, diagramming sentences would become a vogue thing
23 again. It was something I was required to do in grade school. But by
24 doing that, we say the Trust related instruments is not a phrase that's
25 hanging out there by itself. It is directly modified by, of amendment,

1 revocation, exercise of power, meaning all of those documents that
2 come after the Trust itself, notices of those are required to be given to
3 the beneficiaries upon request. But that section does not certainly say
4 that the Trustee is required to provide a copy of the Trust instrument. If
5 it would have said that, it would be explicit, and it doesn't.

6 So our point of view, Your Honor, is number one, 5.2A is a
7 valid provision, but it doesn't apply to these beneficiaries. They are not
8 vested income principle or remainder beneficiaries. They do not have
9 the right, under Nevada law, to demand distribution of their share.
10 They're entirely discretionary. And under the Restatement 2d of Trusts,
11 because their creditors can't reach it, because they don't have that ability
12 to demand it, and their creditors can't reach it, they're not vested
13 beneficiaries.

14 Counsel's argument that if you don't have vested
15 beneficiaries, then you don't have a trust. I think that is directly contrary
16 to Nevada law, because Nevada law allows these types of trusts where a
17 beneficiary has simply a discretionary -- an entirely solely discretionary
18 beneficiary interest in Nevada law, because it allows that -- requires us to
19 follow those terms inasmuch as it doesn't conflict with Nevada statute.
20 So far, they have not, they have not demonstrated that, Your Honor.

21 THE COURT: Okay. And so with respect to the accounting
22 provisions, it's your position that until such time as someone is a vested
23 beneficiary, and so your view would be that Julia is -- it's not just that
24 Julia is a minor, but that there were all these other requirements under
25 this, quote, "mega trust and generation skipping trust," that it doesn't

1 vest in them until all the conditions are met?

2 MR. GEIST: Correct, Your Honor.

3 THE COURT: And just -- the unfortunate fact -- I want to
4 make that very clear. The unfortunate fact that their father has passed
5 away is not, in and of itself, sufficient. It's distribution upon death of the
6 grantor without physical -- 3.12. Without physical segregation, it divides
7 into as many equal shares that there are children of the grantor then
8 living. We don't have the other issue. So they allocate one share each
9 and that's their share, and it constitutes their separate exempt family
10 trust. I mean, because then it goes into like the next stage. So you
11 divide it into their share, not physically segregate, but it's an accounting
12 transaction. And then from that you get their discretionary distribution.
13 It's not -- I mean, if it were signed over to him, it would have been signed
14 over to him. Here it is. Here's your distribution.

15 But it's very clear under 3.2.1, that the -- yes, they are
16 primary beneficiaries and, however, they are not this concept of vested
17 in that it's not here's your trust, go and be happy. It's not signed over to
18 them. It remains discretionary really for a really long time, generations.

19 MR. LEVEQUE: May I respond, Your Honor?

20 MR. GEIST: And, Your Honor --

21 THE COURT: Yeah.

22 MR. GEIST: And I think it's common in these types of trusts
23 when a grantor is still living but creates this trust, he will often or she will
24 often name themselves as a permissible beneficiary, which is allowed
25 under NRS 166, name their descendants, and often name other

1 permissible beneficiaries, but that does not vest in any of those
2 beneficiaries a demand right under that trust. It just gives the
3 independent trustee the ability to make distributions to them under the
4 terms. I think that is the case here under that 3.2.1. They are present
5 beneficiaries, we agree, but we disagree that they are vested
6 beneficiaries.

7 THE COURT: Okay. So then bottom line, your client's view is
8 they're not entitled to, as Mr. LeVeque argues, opening inventory and
9 annual accounting at all? They're not entitled to any information? Is that
10 your position?

11 MR. GEIST: That is our position under the terms of the Trust.
12 They're not entitled to that. Nevertheless, the Trustees have offered to
13 sit down and provide financial -- a summary of financial information that,
14 in essence, would approximate that kind of information. I think that
15 highlights -- and I don't want to ascribe bad motives to the Petitioner in
16 this case, but I think highlights that the Trustees offered this. The August
17 2020 email indicates, again, they're willing to sit down, they just want to
18 find the time where everybody can come to the table and do this.

19 So we don't think that they can compel this Court to require
20 the Trustees to provide that under that section, but they're willing to
21 provide it. Like they said in the email, there's a one page summary or
22 two page summary that the drafting attorney prepared about the Trust
23 terms. That would give them that information about their beneficial
24 interests, and the Trustees, and all of that.

25 THE COURT: Well like, for example, one thing I was going to

1 ask was, there's this whole section in here about trust owned property.
2 So, for example, say the Trust owned a vacation home in Aspen. They
3 were to be allowed liberal use of the property. So they're entitled to
4 know what is in the Trust to that extent, correct?

5 MR. GEIST: To the extent of the properties that they can
6 make use of? Within the Trustee's discretion. If the Trustee believes it's
7 not in their best interest to do that, I don't think that that is required, nor
8 can the beneficiaries compel that.

9 THE COURT: All right. Because the way it reads is the
10 various trustees are to be given liberal use and enjoyment of the Trust
11 property for that purpose except to the extent deemed to be not
12 practicable or advisable in the sole and absolute discretion of the
13 Trustees. May use, possess, and enjoy all of the tangible personal
14 property, blah, blah, blah.

15 So, I mean, to me I guess what I'm trying to understand here
16 is if the intention was that this was for their use and enjoyment, don't
17 they have to know what they're entitled to use and enjoy? I mean, it just
18 seems to me that there is some information that they are entitled to
19 because how do you know -- and this is the challenge that we've got
20 here -- what you are entitled to if you don't know what there is.

21 MR. GEIST: Uh-huh.

22 THE COURT: Because it makes it very clear that they're
23 entitled to certain things.

24 MR. GEIST: I don't think it says they're entitled to that.
25 Again, it's precatory language to the Trustee saying I would like you to

1 consider that, you know, they have -- that they be allowed to do this, but
2 it does not require it. Everything is within the sole and absolute
3 discretion of the Trustees. And in this case, again, it was the grantor's
4 intent to not just take care of his two children, but their children, and
5 generations after that. He was literally creating a multi-generational
6 dynasty trust with his biggest concern that any one beneficiary or
7 generation of beneficiaries would have the ability to deplete this Trust so
8 that it would not last for generations. That's why all of that discretion is
9 given to the Trustees.

10 If at some point the Trustees felt it was important for them to
11 be able to use Trust property, that's within the Trustees discretion. If it
12 were drafted another way, then I think the Trustees would have that
13 requirement to say you're entitled to use this vacation home, here are
14 the dates it's available. But it's not. It's entirely discretionary.

15 THE COURT: Okay. Thanks. Anything else before we go
16 back to Mr. LeVeque?

17 MR. GEIST: I believe that covers it, Your Honor. And again, I
18 think I'm not raising these exculpatory provisions with respect to the
19 claim for surcharge, but I think the exculpatory --

20 THE COURT: I didn't see that that --

21 MR. GEIST: -- provisions --

22 THE COURT: I didn't see that that was briefed.

23 MR. GEIST: Yeah.

24 THE COURT: I mean, I appreciate it's an argument, but --

25 MR. GEIST: But I would like -- yeah.

1 THE COURT: Okay.

2 MR. GEIST: I would like to raise those just with respect to the
3 Trustee's discretion in carrying out the intent of the grantor. And this is
4 all in Section 7.12. 7.12.2 explicitly says, exercise of discretion. "Unless
5 otherwise expressly set forth in this trust agreement where the trustees
6 and/or trust protector are granted discretion, their discretion shall be sole
7 and absolute, and any action taken or refrained from by them in good
8 faith shall be binding and conclusive upon all persons and corporations
9 interested therein."

10 Determination of fact is the next section. "All trustee
11 determinations of fact made in the course of carrying out the terms of
12 this instrument if reasonably made based on the basis of the available
13 information, insofar as could reasonably be ascertained by the trustees
14 and/or trust protector shall be binding on all concerned." And then
15 finally -- and then it goes on with "the exculpatory shall protect them."

16 THE COURT: Right.

17 MR. GEIST: And 7.12.4 --

18 THE COURT: And so this argument that Mr. LeVeque made
19 that they could remove the Trustee, you know, not until they're 33. I
20 mean, he made it pretty clear, they have to be like not just -- not just of
21 legal majority, but adults.

22 MR. GEIST: Right. Right. The terms apply. And with
23 respect to whether or not they're vested in the Trustee's reliance in his
24 and her interpretation on that, the next section, I think, is actually the
25 crux of all of this, 7.12.4, trustee construction of instrument. "The

1 trustees may construe this instrument and any action taken relying upon
2 such construction shall be binding on all concerned and shall fully
3 protect the trustees even though it may be subsequently determined that
4 such construction is erroneous."

5 They've determined this by reviewing this, by speaking with
6 the drafting attorney here in Nevada, and with their own experience with
7 the grantors -- grantor in this case what the intent of this was. And
8 they're trying to carry that out to the greatest extent possible.

9 The Petitioner in the reply, the supplemental reply, really,
10 really made some just astounding accusations against Mr. Nedder,
11 claims about the reason he put the distributions from the Trust in his
12 affidavit saying, you know, he's trying to convince the Court of his
13 generosity. That's not the case, Your Honor. He's simply saying the
14 distributions are being made. These beneficiaries' needs are being met.
15 There are some disagreements and that was indicated in the affidavit
16 about what these needs may be.

17 There are some beneficiary charges on their credit cards that
18 are triggering freezes from the credit card company, not the Trustee, but
19 from the credit card company about the adult nature or other types of
20 nature of these charges. The Trustees are simply trying to carrying out
21 the grantor's intent in this, Your Honor, to the greatest extent possible.
22 And part of the concern is that he specifically named individuals to make,
23 number one, discretionary distributions; and, number two, name
24 subsequent trustees. If the discretion is allowed to be shifted from those
25 individuals that the grantor intended to other individuals, that's a

1 concern, and that's what we're trying to protect, Your Honor.

2 THE COURT: Okay. Great. Mr. LeVeque.

3 MR. LEVEQUE: Your Honor, let me start with a rhetorical
4 question, and the rhetorical question is this. If a trust is a discretionary
5 trust, does that mean that you never have a vested beneficiary? If you
6 look at this actual Trust, under Mr. Geist's analysis, which he
7 conveniently omitted some material facts, is that under this analysis,
8 under this Trust, there would never be a vested beneficiary, because this
9 is a complete discretionary trust forever. And it makes absolutely zero
10 sense for the grantor and the Oshins firm to include a section about
11 accounting duties, when there would never be a vested beneficiary, or a
12 beneficiary entitled to this information. It makes zero sense. And it
13 makes zero sense because that's just not the law.

14 I'm quoting *Bogarts* here, and this is Section 1061 from the
15 June 2020 update. Quote. "Having a beneficiary with vested rights and
16 trust property is one of the five essential elements of settling a trust. It is
17 fundamental concept to the law of property that all interests and
18 property, present and future, must at all times have an owner. With
19 regard to future interest in the property, if a trust does not have a person
20 who invested for ownership rights to the future interest inherent trust
21 property, the trust does have a beneficiary and, for that reason, the trust
22 is not legally viable."

23 So under the analysis that's presented by Mr. Geist, we
24 wouldn't have a trust at all. That's ridiculous. And if you look, Your
25 Honor, at the arguments that are being made, again they're -- I mean,

1 he's citing 163, talking about what the different distribution standards
2 are. Distribution standards have nothing to do with whether you're a
3 vested beneficiary.

4 Let me say it a little differently. A vested beneficiary is a
5 right to receive, okay. If the Trustees exercise their discretion to make a
6 distribution, the ones with the right to receive are the primary
7 beneficiaries, and no one else. It makes absolutely no sense, Your
8 Honor, under the law and under the terms of this Trust that there is not
9 an affirmative obligation to provide an accounting and information to the
10 primary beneficiaries. Your Honor made a decent point, which is that if
11 they're entitled to use physical, tangible real property of the Trust, well,
12 how are they supposed to know what that is unless they have
13 information.

14 And this offer, Your Honor, to provide information, my
15 clients aren't obligated or had to be gracious to take up on the offer
16 presented by the Trustee to give him information that he deems is
17 appropriate. And I have to point out, Your Honor, that this argument that
18 is being raised by Mr. Geist is a pivot. It's a substantial pivot, and it's a
19 pivot that was made after the copy of the Trust was actually provided.

20 If we go back to the initial objection that was filed by Mr.
21 Nedder, he talks about -- on page 2, he's talking about how 5.2A provides
22 that the corporate trustee shall make books of accounting records
23 available and that the section concludes, the corporate trustee shall
24 provide a summary of financial transactions. Then he goes on and talks
25 about this offer that was made where I don't really see that it was -- it

1 included an offer to have my clients sit down. But, in any case, it should
2 never be a situation where they have to sit in Mr. Nedder's office.

3 But he goes on and says, after Petitioner relayed Julia's
4 question about why the beneficiaries cannot receive an accounting or
5 information, the Trustee replied -- and he goes on and explains that he
6 thinks there's an obligation. But then it says, instead of accepting an
7 offer to provide a summary, which would have satisfied a demand by a
8 beneficiary under 5.2A, Petitioner filed the petition.

9 So Mr. Geist was very careful in how he worded his initial
10 petition, but the inferences that he was making in this is that, well,
11 there's an obligation -- there is some accounting obligations, but it's for a
12 corporate trustee and that we offered to satisfy that obligation by the sit
13 down. Now we have a position that, well, no, they're not entitled to it at
14 all, and they omitted the fact that it's not just limited to a corporate
15 trustee, it's any trustee who's got access to the information.

16 THE COURT: Okay. So here's my issue here, because this is
17 -- it is an oddly written document. It's very -- in that it's really specific.
18 For example, as was pointed out, 5.1, delivery of notices and other
19 instruments. Nowhere in there, now that I read this whole thing, do I see
20 that it says we have to give you a copy of the Trust. That was probably a
21 mistake on my part. So -- because it says copies, as was pointed out by
22 Mr. Geist. You're really parsing every sentence. Copies of all trust
23 related instruments of amendment, revocation, exercise of a power,
24 blah, blah, blah.

25 So that doesn't say Trust. Was it an error to turn this over?

1 So then -- but my problem here then if you -- so you have to read each of
2 these really carefully, and read it with the rest of the whole, which is --
3 first of all, I do believe that *Amicon* is relevant. I do believe that this is
4 discretionary, and that because it's discretionary it does limit the rights
5 of the beneficiaries.

6 You point out that these Trustees can be removed. Right.
7 When these children are 33, if they want to appoint somebody else
8 trustee, they can appoint a different trustee, but not until then. Their
9 mother has no right to do that now.

10 MR. LEVEQUE: I don't understand, Your Honor, why it's 33 --

11 THE COURT: So here's my problem with this whole thing. It
12 seems like the whole thing has to be read, not just sections of it. And
13 that's why I was asking Mr. Geist, it seems to me that there is some
14 intention to provide some amount of information, but because it's also
15 -- it's spread out over this whole huge document. It's difficult to tell
16 exactly what it is that's intended.

17 With all due respect, I don't see anywhere in here where it
18 says we have to give you a copy of the Trust. I don't see it. What they
19 do have to give is if it's amended. Well, it hasn't been amended. It's
20 bizarre. So it's such a strangely written document in that it's so specific.
21 Not that it's vague. It's not vague at all. It's very specific.

22 So then we get into this next thing about what are the
23 records and reports that they're entitled to. I think they're entitled to
24 something. I think they're entitled to some amount of information
25 because otherwise I don't understand how they are supposed to know

1 what they have the right to, because they do have certain rights.

2 A lot of it's discretionary, but I don't know that it's
3 discretionary that there -- that they know -- that they have the right to --
4 for example, does this -- the Trust may not own any real property. I'm
5 making this up. It's totally made up. A house in Aspen. I just read some
6 news article that talked about Aspen is booming because everybody
7 wants to go live there since you can commute or something. So, fine.
8 So I'm picking Aspen. So that he owned a house in Aspen. Well, they
9 have the right to know that the Trust owns a house in Aspen, and they're
10 entitled to reasonable use of it. I think it even said that they're entitled to
11 have the Trust buy them out, the way I read it.

12 So that's my question. It seems -- if you read this whole
13 thing and not pick and choose pieces that help you and your client,
14 which, respectfully, you're both doing, there is some amount of
15 information that it doesn't -- this thing doesn't work unless the
16 information is provided. But are they entitled to a copy of the Trust, you
17 know, having read this whole thing now, I'm like, I don't think they are
18 because the language is so specific. It doesn't say give them a copy of
19 the Trust when they turn 18 or whatever. It doesn't tell them that. It says
20 nothing about a copy of the Trust. That's why I said, don't put it up.

21 So here's my problem. I don't understand how you could
22 make this work if you're arguing that they have no right to any
23 information, because it's all purely discretionary. Yes, it's discretionary.
24 And I understand that these Trustees have a great deal of discretion.
25 And until these kids are 33, live with it. But my problem is this -- the way

1 he talks about what they're entitled to, only works if they know they're
2 entitled to it. And if they don't know they're entitled to it, then, you
3 know, that seems like that just leaves these Trustees to exercise their
4 discretion in a way that says, we're entitled to let you know you're
5 entitled to something. That makes no sense under this document.

6 If that's the argument that they're not entitled to know
7 anything because it's all discretionary, then it makes no sense when he
8 goes on later and says, and they're entitled to the use of this, and that,
9 and whatever. Well, they have to know it's there.

10 So that's what's so odd about this in that how -- it's
11 discretionary, and I do think *Amicon* applies, and I do think there are
12 limitations of what they're entitle to, but they -- but I believe that the
13 Trustees are being a little restrictive in what they think they're entitled to,
14 and I think the beneficiaries are being a little expansive in what they
15 believe they're entitled to because very clearly, until they're 33. He
16 intended that they were -- this was going to be handled under the
17 discretion of these Trustees.

18 And it was for their use and benefit, and all that nice
19 language, but there is -- there has to be some baseline of information
20 and that's what I'm just not seeing -- it's so odd that it's -- it's so specific
21 about what they can do, but it doesn't seem to provide a mechanism for
22 it. And so it makes it impossible to do. So it's just really strange,
23 because it's such a specific document. You know, I think Mr. Geist wants
24 to be heard.

25 MR. GEIST: Just very briefly, Your Honor. And that's part of

1 the reason why we brought to the Court's attention, initially, Section
2 5.1E, which is a very brief section, and it just simply says,
3 "notwithstanding anything herein to the contrary and to the extent
4 permitted by applicable law, the trustee shall not provide notice of the
5 existence of the trust to any beneficiary hereunder."

6 I know counsel will argue that that horse is already out of the
7 gate, and it very well may be, but I think that helps -- in my opinion, that
8 helps inform all of us what the grantor's intention was --

9 THE COURT: Right.

10 MR. GEIST: -- to limit, as much as possible, information
11 going to the beneficiaries.

12 THE COURT: Right. And --

13 MR. GEIST: That's my interpretation.

14 THE COURT: -- as I said -- and that's why I said, having now
15 read this whole thing, and as I said having now conceded that this was
16 probably a mistake but, you know, I didn't have this. So to me it seems
17 that the intention was that while these children are minors, this is being
18 run with great discretion on the part of these Trustees. They're expected
19 to provide a certain amount of information, but it's very -- it's limited.
20 But there are some things that it seems that they have to provide
21 because otherwise -- like, for example, is there any real estate owned.
22 They're entitled to beneficially use the real estate. Well, if they don't
23 know there's any real estate, how are they going to ask for beneficial use
24 of it. It doesn't make any sense.

25 So that's why I said I think you have to read the whole thing.

1 I mean, you can't just say, well, we don't have to provide you with
2 anything. Well, you do. You have to, because they have rights even
3 before -- like I said, until they're 33, they've got to live with it. But I just --
4 you know, I just believe that you have to figure out a way to make this
5 work, and I don't see how it works by simply saying we don't have to
6 give you anything, because it's all discretionary. Well and to be fair, they
7 didn't say they weren't going to give them anything.

8 And I appreciate the view that the beneficiaries don't see that
9 they should have to put themselves out to go to the Trustee. Okay, fine,
10 but there is a certain amount of information that is a baseline. What are
11 -- they're entitled to know what they're entitled to, and that's the thing
12 that it didn't seem to me that there's a really good mechanism to tell
13 them that. It's just such a -- like I said, it is -- I'm not saying it's vague, it
14 is really not vague. It is super specific. But I'm just trying to figure out
15 how you make these parts work.

16 If you read this to the logical extent, it's impossible. If you
17 read this as strictly as the Trustees are reading it, the it's impossible for
18 them to exercise the rights that they are given, if you see what I'm
19 saying. Like you're entitled to beneficial use of real property, but we
20 don't have to tell you, we have any. That doesn't make any sense.

21 MR. GEIST: But I think, Your Honor, I think the key is in the
22 discretionary nature of their interests. They aren't entitled. They cannot
23 demand use real property. They can request. And I think that's where,
24 you know, perhaps you're going with this, but they can request if there's,
25 you know, use of real property, we would like to use that. But they don't

1 have an entitlement to any of that. To demand any of, you know, either
2 use, or distribution of cash, or any of those things. And I get where
3 that's the balancing act that has -- that you're saying, and I don't know
4 where that lies, because I think the Trust, you know, is clear that --

5 THE COURT: And see I'm not talking about -- I'm not talking
6 about that. Because it says tangible personal property and real estate. I
7 mean to me that very clearly is talking about, like if he owned a house, I
8 don't know, in the -- somewhere -- the Caribbean, somewhere -- that he
9 wanted his kids to be able to go have their vacations there. I mean,
10 that's -- and so that's why I'm like how do you make that work if there's
11 no obligation to tell them what there is?

12 And so that's why I'm trying to say you've got to read the
13 whole thing and not just we don't have to give you anything because --

14 MR. GEIST: Yeah.

15 THE COURT: -- it says we don't have to.

16 MR. GEIST: Yeah.

17 THE COURT: Well, that's nonsense.

18 MR. GEIST: Well, could -- yeah. Could we stipulate to an
19 inventory then? An inventory of Trust assets to let the --

20 THE COURT: To me [indiscernible - the Court and Mr. Geist
21 speaking at the same time] --

22 MR. GEIST: -- you know, to say this is --

23 THE COURT: They're entitled to know what real property
24 there is, what tangible personal property there is --

25 MR. GEIST: Yeah.

1 THE COURT: -- I think at a minimum, because they're
2 entitled to use, and it's discretionary. I understand there's discretions
3 with the Trustees. Like that's an income property, we're not going to let
4 you go use it, because it's an income producing company. Fine. That's
5 fine. I get it. But that's why I just found this such -- it clearly has a plan
6 in place, and the plan in place is, as you pointed out, this isn't just on my
7 death my kids get this money. It does not say that, at all, and I've seen
8 those. So that's what this says.

9 This very much is -- we've got this mega trust, it's going to
10 be -- we're going to take advantage of every possible tax advantage that
11 we can, generation skipping, all these things. We're going to take
12 advantage of all of it. Got it. It's great. It's a great estate plan. And it
13 provides, hopefully, for his family into the future. And it's great, because
14 he's not here to do it. And that's wonderful that he thought about this
15 for his family, and planned for this, and intends for them to benefit in
16 this way. It's great. It's wonderful. He's done a great job here. I'm sorry
17 that he's not here to do these things for them himself.

18 He created this irrevocable trust, put everything in this
19 irrevocable trust, but there has to be, as I say, some baseline that they
20 know, because there are certain things that they are entitled to -- they're
21 entitled to, like you say. Is there a vacation home in Aspen? And, again,
22 like I said, I've made that up out of my head. I don't know where it came
23 from. It just popped into my head. They're entitled to know. Is there,
24 like a Picasso? Can I have that on my wall in my room? Well, probably
25 not a good idea, but, you know, they're entitled to know that it's there. I

1 mean it just doesn't make any sense to me that you can say that they are
2 entitled to none of this information, when he very clearly said they're
3 entitled to the use of these things.

4 Do they get an annual accounting? You know, that's the
5 harder thing, because it's very much intended if there's a corporate
6 trustee, yes. But how much? And that's my problem here is that, yes,
7 the non-corporate trustees have the same obligations as the corporate
8 trustee, but it seems to me that what this is saying is you don't have to
9 let them audit your books and records every year, but that they have to --
10 if I'm reading this the way I think it should be read, is that since you have
11 federal income tax -- because they're entitled -- they're K-1s, right.
12 They're going to get their K-1? The answer is what it's based on, right?
13 It just --

14 MR. GEIST: I believe -- yeah, inasmuch as income is earned
15 and distributed to them, correct. Yeah, they get a K-1.

16 THE COURT: I mean, I just don't see how you can -- you
17 have to figure out how you're going to make this work because, as I
18 said, it is an incredibly specific instrument that leaves a bunch -- that
19 doesn't tell you how you make it work. And so it doesn't make any
20 sense. You can't make this work if you don't give them a certain
21 baseline amount of information. So you can't say, we don't have to give
22 you any information. Do they have absolute discretion? Yes. The way I
23 read this, until they're 33, they do.

24 So that's my problem here is, with all due respect, I think
25 both sides were kind of on the opposite ends and there is a middle. And

1 that's what I think it is, is that they are entitled to a certain amount of
2 information. With all due respect, I do think that we have to claw back
3 the Trust, having now read it. They are entitled, I think, to information
4 about what affects them, the way I read this. What are the sections that
5 affect them?

6 And if you read it with the *Horst* case, which I do think it still
7 does apply, because they very clearly say you have to give people a
8 certain amount of information, but they -- you have to read *Amicon* and
9 *Horst*, and I just think that they aren't entitled to a full accounting every
10 year, but I think they're entitled to know what -- because it talks about,
11 very specifically about income tax. Federal income tax accounting years,
12 a complete beginning and ending inventory, which shows the -- and
13 that's why I think you have to start that. Now, I don't know --

14 MR. GEIST: [Indiscernible - Mr. Geist and the Court speaking
15 at the same time].

16 THE COURT: -- if it's a complete inventory, but I mean, you
17 have to know what the basis is of this thing and how -- if they're getting
18 K-1s and, you know, they're having income tax withheld. I'm hoping
19 somebody is taking care of these kids and paying their income taxes for
20 them. I remember I had a friend who's kid was a child actor who had,
21 like a total meltdown when she discovered -- even though she was 13,
22 she still had to pay income taxes. So, you know, I hope somebody is
23 taking a look at that, and I'm assuming they are.

24 So it's bizarre to me that -- he planned to live longer, I think,
25 is the thing, tragically.

1 MR. GEIST: It is unfortunate, Your Honor, in --

2 MR. LEVEQUE: Can I ask the Court a couple of questions?

3 Mr. Geist has had a lot of time, and I just -- I need to get some things
4 clear on the record here --

5 THE COURT: Thank you, Mr. LeVeque.

6 MR. LEVEQUE: -- so that I understand where the Court's
7 going and what our rights are moving forward.

8 I'm not understanding the -- and maybe I missed it in the
9 Trust -- where rights change at age 33?

10 THE COURT: Well --

11 MR. LEVEQUE: I saw in the Trust that they can remove
12 Trustees at 33.

13 THE COURT: Exactly. At 33, exactly.

14 MR. LEVEQUE: Okay. But that doesn't --

15 THE COURT: So that's --

16 MR. LEVEQUE: Okay. But that's --

17 THE COURT: That's what I said.

18 MR. LEVEQUE: -- removing Trustees. There's --

19 THE COURT: Right.

20 MR. LEVEQUE: -- there's a separate provision in there that
21 doesn't talk about their age when they can ask -- basically, tell an
22 independent trustee, if they're not a corporate trustee, to leave, and then
23 have a corporate trustee appointed. And that is actually -- it's
24 interesting, because Mr. De Luca, before he passed away, created a
25 succession plan for independent trustees and that was attached as an

1 exhibit to the supplement by Mr. Geist that if Mr. Nedder gets removed
2 or is out, then it goes to another friend, and if that guy's out, then it goes
3 to --

4 THE COURT: That's in there. I saw that.

5 MR. LEVEQUE: -- the Trust. Yeah, so --

6 THE COURT: Yeah, it's in here.

7 THE COURT: -- so I just want to make sure that for the record
8 that I need to know --

9 THE COURT: What I said --

10 MR. LEVEQUE: -- what that --

11 THE COURT: When I said when you're 33, I -- that's why I
12 said they can remove trustees themselves at the age of 33.

13 MR. LEVEQUE: Okay. But they don't get any sort of -- my
14 understanding is their beneficial interests stay the same --

15 THE COURT: They do.

16 MR. LEVEQUE: -- and that the distribution standard stays the
17 same. So there's nothing that would --

18 THE COURT: Right.

19 MR. LEVEQUE: -- be relevant, I think, for that other than
20 removal. The other --

21 THE COURT: Yeah, but that's just -- I just -- it just struck me
22 that he has like these very specific things. Like, he -- yes, when a person
23 reaches their age of majority, they have certain rights, but he didn't -- he
24 made it very -- he picked an age, a very unusual age. Thirty-three is an
25 unusual age. How often do you see 33? I see 25, I see 30.

1 MR. LEVEQUE: I don't disagree. That's seems sort of
2 random, but, again, that's the grantor.

3 THE COURT: I mean, it's a very specific --

4 MR. LEVEQUE: We can't ask him why he did it.

5 THE COURT: -- age.

6 MR. LEVEQUE: Yeah.

7 THE COURT: I don't know why he picked 33. But 33 is the -- I
8 just found that interesting. But, I mean, he very clearly had a vision.
9 And, as I said, I think, you know, it's unfortunate. I think he really -- you
10 know, he hoped to live a lot longer.

11 MR. LEVEQUE: Agreed.

12 THE COURT: He didn't --

13 MR. LEVEQUE: The second question I had, Your Honor --

14 THE COURT: Now what?

15 MR. LEVEQUE: -- with regard to the Court's --

16 THE COURT: How do we make this work?

17 MR. LEVEQUE: Sure. The second question I had regarding
18 *Amicon*, my recollection in *Amicon* is that the Court reversed the district
19 court because the district court made a finding under 165 for an
20 accounting, and the Court said, well, because the trust at issue was
21 purely discretionary under 165, it's further clear there is no duty to
22 account.

23 THE COURT: Uh-huh.

24 MR. LEVEQUE: Is the Court extending *Amicon* in this case to
25 -- at least with respect to this Trust, that *Amicon* applies because this

1 Trust doesn't provide a right to an accounting?

2 THE COURT: No, I'm just saying that -- let me find it again. I
3 had that *Horst* case printed, but I didn't have *Amicon* printed. I've got it
4 here somewhere. Unfortunately, I didn't print it. Now I can't find it.

5 Well, it's just again -- so now I'm going off of my memories
6 of having read it the last time. Is that *Amicon* is -- the way I viewed it,
7 what they were saying is where you have these discretionary trusts and,
8 again, it was irrevocable, but the dad was still living, but it was
9 irrevocable, that -- and you give a lot of discretion to your trustees, then
10 that limits what the beneficiary is entitled to know because of this
11 discretion placed in the hands of the trustee. And the challenge in that
12 case was nobody believed it was really an independent trustee, because
13 he was the best friend of the dad. The Court didn't care. So it was an
14 independent trustee as far as they were concerned.

15 So that's the challenge as I said. Now here, we unfortunately
16 have the tragic death of their dad, so now we're into the next part of this
17 Trust that we've got here where we get into this whole mega trust,
18 generation skipping. Are they beneficiaries? Yeah, I think they're
19 beneficiaries. Can the creditors get to it? I don't think that makes a
20 difference.

21 It's this question of discretion that I think is the controlling
22 thing. That's what I thought -- what I took from *Amicon*. I'm not saying
23 it's exactly the same, and it would be decided exactly the same. I'm
24 saying that there it seemed that what the Court was really concerned
25 about was when you give discretion to a trustee -- because they are very

1 different trusts. They are very different. That's what -- this one is so
2 unusual. I mean it's trademark for crying out loud. I've never seen a
3 trademark trust. It's got a tradename.

4 So it's -- as I said, I believe the intention was to plan long
5 term for him and his family. He didn't live as long as he had hoped to
6 live. And so certain things, I think -- I mean, the way I read it, certain
7 things made more sense if he had lived longer. So now we have to just
8 make this work with what we've got. And as I said, there are things
9 about this Trust that don't make any sense to me if you don't provide a
10 baseline of information, and information on a regular basis.

11 And I think there are -- so I think they're entitled to more
12 information because this Trust provides for that, but are they entitled to
13 the Trust, to like a complete annual accounting, I don't see that. But they
14 clearly are entitled to know what the tax situation is and the income
15 situation, but the only way you can make that work is if you give them a
16 baseline of information, which isn't that basically an inventory? That's
17 why it's just so odd. I mean how do you make it work? It's just so odd.

18 MR. LEVEQUE: And how would you make it work, Your
19 Honor, with the special power of appointment? I mean, if they're not
20 entitled to a copy of the Trust, they never would know that they have a
21 special power of appointment. And how are they going to appoint
22 assets when they don't know what they are? It just -- that's why I hope
23 the Court doesn't --

24 THE COURT: That's why I said I think that you need to know
25 what their rights are and that seems like that's what *Horst* says is that --

1 again, totally different situation, totally different trust, but it seems like
2 they're entitled to know -- and that's what -- now I've called up *Amicon*
3 and now I've lost the Trust. Where it talks about, they're -- you're
4 entitled to -- well, just the laundry list of the things that they are entitled
5 to get information of.

6 Copies of all Trust related instruments of amendment,
7 revocation, exercise of power, designation, release, disclaimer, as well
8 as the trustee's resignation, removal, appointment, or other acceptance.
9 I mean, that's why it's so bizarre. How do you make that work? It's a
10 really --

11 MR. LEVEQUE: Right. And you can have a copy of the Trust
12 itself, and how do you know what your rights are when you don't have a
13 copy of the Trust itself. And that's --

14 THE COURT: It's an unusual document in that it's real
15 specific, and yet it doesn't really tell you how to make any of it work. So
16 that's why there has to be some common ground where there is some
17 certain baseline of information. Like I said, I don't see anywhere in here
18 where it says give them a Trust -- a copy of the Trust when they're 18,
19 when they're 21, when they're 33. It doesn't say that. It's so strange.

20 So if there's no specific -- nothing specific saying you get a
21 copy of the Trust, what do you get? You have to get enough information
22 to know what your rights are. And so what are your rights? That's what
23 you have to identify, what are the rights. And then they get the
24 information so they can make use of their right. So that's what I'm trying
25 to figure out is how do we get to a -- so I don't know what was being

1 offered. I appreciate why they've said we shouldn't have to like accept
2 that because they're entitled to it. So --

3 MR. LEVEQUE: Yes, Your Honor. It's like I can't think of what
4 provisions they wouldn't be entitled to because they're the primary
5 beneficiaries. I mean another example is that they have the right to --
6 you know, to demand medical records of a trustee to see if he's
7 competent. How are they going to do that, I mean, if they don't know of
8 that right?

9 And you have to -- and remember, Your Honor, in *Amicon*
10 they had a copy of the trust, right. I mean, that's a huge difference
11 between that case and this case.

12 THE COURT: Right.

13 MR. LEVEQUE: And I think that it's just -- it's not workable --

14 THE COURT: It's very strange.

15 MR. LEVEQUE: -- to not produce a copy of the Trust to -- I
16 mean, you know --

17 THE COURT: Isn't it bizarre? It's so bizarre. And that's why,
18 like I said, I'm sure that he -- it was planned that this would be very
19 different, and that he would live a lot longer, and at a certain age the kids
20 would get all this, and it would make perfect -- it would make sense, but
21 it didn't happen. And so now we're stuck with what we've got, that is so
22 specific. It's so specific.

23 And so we're stuck with this language. We have to follow
24 the language. But it's just like -- it makes no sense. How do you make it
25 work? And that's where -- I just thought that it was -- it's not enough to

1 say you don't get anything. It's all discretionary, you don't get to know.
2 You don't get to see a copy of it. You know, sadly I have to -- unless
3 somebody can find it somewhere in there, I couldn't see it. Where it says
4 give them a copy of the Trust, I don't see it. It's so bizarre.

5 So here's my problem -- but it nevertheless says here's all
6 the things they are entitled to ask for. Well, how do they know they're
7 entitled to ask for it if they aren't told they're entitled to ask for it? The
8 easiest way is to give them a copy of the Trust. If you don't want to give
9 them a copy of the Trust, then tell them what they're entitled to ask for.
10 It seems to me that's like our only option.

11 So we need probably -- and before we claw back the Trust
12 from Mr. LeVeque, we probably need to work on this, Mr. Geist, and to
13 come up with some reasonable --

14 MR. GEIST: Absolutely, Your Honor.

15 THE COURT: -- definition of here's everything you're entitled
16 to know. It's not a one or two page summary. I'm sorry, it's not. This is
17 what's so -- it's just so bizarre. And as I said, I just -- the only thing I can
18 think is just sadly he just didn't live long enough to really [indiscernible -
19 Mr. LeVeque speaking over the Court] --

20 MR. LEVEQUE: Your Honor --

21 THE COURT: -- what he intended to do.

22 MR. LEVEQUE: -- before Mr. Geist suggests something, I just
23 want to preserve for the record that if and to the extent my clients want
24 to seek appellate review, I would ask that the Court not see claw back,
25 but to keep it as attorney's eyes only, so that we can exercise those

1 rights if we need to.

2 THE COURT: Sure. Okay. So, Mr. Geist, here's what you're
3 going to do. I don't know -- or maybe Mr. LeVeque wants to write it,
4 because it's his petition.

5 So I'm granting this in part. And I believe that in order to
6 make the Trust work, the beneficiaries are entitled to a certain amount of
7 information, and it -- I think it's more than what was described. Maybe
8 they were intended to provide more, Mr. Geist, and the letter -- I mean,
9 the initial emails just didn't make that clear. But I don't see this as a
10 simple one or two page summary of this Trust. It's just not because -- I
11 mean, something that I found -- like I said, I got hung up on this whole
12 real estate and personal property, like I said, making it my crazy ideas
13 about condos in Aspen and Picassos. How do you know you're entitled
14 to it, if you don't know you're entitled to it? And how do you know that
15 it's there unless you've got some sort of a list of what's there?

16 So it just doesn't make any sense that you can say, no,
17 you're not entitled to an inventory, no you're not entitled to -- they're
18 entitled to something. They're entitled to some sort of an explanation.
19 And then like I said, they're entitled to a certain amount of tax
20 information every year. That's pretty clear. Books and records, you
21 know, I don't read that as saying you have to give them -- like turn over
22 the ledgers. I don't read it that expansively, but I do think that they're
23 entitled to know what the tax situation is of this Trust. So --

24 MR. LEVEQUE: What about the expenses, Your Honor? I
25 mean, that's -- you know, it's their money.

1 THE COURT: [Indiscernible - Mr. LeVeque and Court
2 speaking at same time].

3 MR. LEVEQUE: Shouldn't they know where --

4 THE COURT: Exactly.

5 MR. LEVEQUE: Yeah.

6 THE COURT: Yeah, with respect to each federal tax -- shall
7 furnish such person with respect to each federal income tax year, a
8 complete beginning and ending inventory, tax cost basis, and the
9 accounting summarizing all financial transactions. I mean, like I said, I
10 don't think they're entitled to [indiscernible - paper shuffling], but it
11 seems to me that's basically saying you get the tax return. Isn't that
12 what -- isn't that -- I mean, you guys do this. I don't do this.

13 MR. LEVEQUE: That would certainly be --

14 THE COURT: [Indiscernible - Mr. LeVeque and Court
15 speaking at the same time].

16 MR. LEVEQUE: Yeah, would certainly be helpful.

17 THE COURT: I did [indiscernible - Court and Mr. LeVeque
18 speaking at the same time] --

19 MR. LEVEQUE: But, you know, how do we week these --

20 THE COURT: -- trust accountant. I mean some trust
21 accountant, or your tax guys could tell us, but I don't see how you make
22 that work if you don't give them the tax return.

23 MR. LEVEQUE: Well, and how do we keep the Trustees in
24 check too with what they're charging? I mean, that's the other thing is
25 we would have no mechanism for --

1 THE COURT: Yeah, but wouldn't that be part of it?

2 MR. LEVEQUE: -- seeing what is being charged.

3 THE COURT: Wouldn't that be part of it? It seems to me that
4 that's going to be part of it. Financial transaction -- summaries and
5 financial transactions. Reconciling for the ending inventory and the
6 beginning inventory. I mean, isn't that --

7 MR. LEVEQUE: Yeah, I agree, that's what should be provided
8 in this --

9 THE COURT: It's not an actual --

10 MR. LEVEQUE: -- what's the salient part of [indiscernible].

11 THE COURT: -- accounting. The way I read that, that doesn't
12 say an accounting. An accounting is a little bit more information. So I'm
13 trying to think --

14 MR. LEVEQUE: Yeah, it says accounting summarizing, so it
15 is contemplating a summary, but --

16 THE COURT: It seems to me more like --

17 MR. LEVEQUE: -- this information is -- that would be the bare
18 bones information for [indiscernible - audio interference] tax liability is,
19 what expenses are --

20 THE COURT: Yeah.

21 MR. LEVEQUE: -- being borne by the Trust.

22 THE COURT: So --

23 MR. LEVEQUE: I mean, all that information.

24 THE COURT: Can we -- yeah, so could we -- I mean, this
25 might just be maybe -- is this a status conference in the future to see if

1 we can come up with some sort of an agreed upon -- because Mr.
2 LeVeque wants to keep his appeal rights. So, Mr. Geist, then -- I don't
3 know that maybe does it make more sense for you to write it, because
4 Mr. LeVeque wants to preserve his right to appeal? You know, like I said,
5 it's his motion, so you would think he would write it, but it makes more
6 sense to me maybe, Mr. Geist, if you write it.

7 MR. GEIST: Yeah, I understand. And I apologize. I had
8 about three minutes or so, or four minutes where I was completely
9 blacked out, technically. So a lot of that discussion I kind of missed. So
10 I'll just take a look at the transcript. But I'm happy to do that.

11 THE COURT: Yeah.

12 MR. GEIST: I just -- if I could point the Court out to Exhibit 3
13 in their reply in support of their initial petition. They have the list, Your
14 Honor, of the grantor's assets.

15 THE COURT: Uh-huh.

16 MR. GEIST: And it's mostly financial. There was his house.
17 That was the only real property. And from my understanding, all of his
18 personal effects, his personal property was distributed to the
19 beneficiaries.

20 THE COURT: Uh-huh.

21 MR. GEIST: So, I mean, we can provide an updated
22 inventory, and then I think the determination is what is the extent of that
23 financial reporting afterwards under the terms of that section that we
24 keep talking about.

25 THE COURT: Yeah.

1 MR. GEIST: Summarizing financial transactions, reconciling
2 the ending inventory with the beginning inventory. You know, it's not
3 reflecting on principal and income activity, including all distributions.

4 THE COURT: Doesn't that sound --

5 MR. GEIST: If that's what -- yeah.

6 THE COURT: It sounds like -- kind of like a balance sheet,
7 almost.

8 MR. GEIST: That's what I was thinking. Less of an
9 accounting and more like almost a profit and loss statement. Just a very
10 simple balance sheet.

11 THE COURT: Yes. It does not say an accounting. Nowhere
12 in there does it say accounting.

13 MR. LEVEQUE: Yeah. Actually, under the last sentence --

14 THE COURT: [Indiscernible - Mr. LeVeque and Court
15 speaking at the same time].

16 MR. LEVEQUE: I mean, the last sentence is very telling. It
17 says the distribution of the corporate trustee's usual periodic transaction
18 statements for the Trust shall satisfy this requirement. So if they were
19 doing periodic transaction statements, that would satisfy the
20 requirement. All the precatory language beforehand.

21 THE COURT: Uh-huh. Yeah. So that's why there has to be a
22 way to make it work. And there -- it's so specific that there must be a
23 way to make it work. You know, I'm not sophisticated enough to know
24 how to do this. So somebody has to tell me how do you meet his intent?
25 That was his intent. And, like I said, I think he thought he was going to

1 be a lot older, his kids were going to be grown, before any of this
2 became relevant. And I'm just sorry that it didn't happen. I'm really
3 sorry that we're dealing with this when his kids are still so young. But
4 we need to make it work for them because that's what he wanted. He
5 planned for his family's future. So we need to help them make that
6 happen. Okay.

7 MR. LEVEQUE: It is --

8 MR. GEIST: So I think an updated inventory to what they
9 provided in their Exhibit 3 --

10 THE COURT: Right.

11 MR. GEIST: -- that's a start.

12 THE COURT: And so, like I said, if you can -- because Mr.
13 LeVeque wants to reserve -- and so I will not ask him to write this order,
14 because he's kind of indicated he wants to preserve his rights to appeal,
15 and that's reasonable. So if -- do we need all this in the order or -- you
16 probably do.

17 MR. GEIST: I think so.

18 THE COURT: I mean, I hate to get this specific in an order,
19 but I don't know how else to -- I mean, unless you want to be just
20 generally --

21 MR. LEVEQUE: I think that in order for this order to make
22 sense, there first has to be a determination as to whether the
23 beneficiaries have a right to the information that is contemplated and set
24 forth in 5.2.

25 THE COURT: I think they are.

1 MR. LEVEQUE: That's got to be a -- that's got to be a yes or
2 no. And then if it's a no, then we get into what the Court is nevertheless
3 willing to allow, based on its equitable powers. I think that's one way it
4 would work, I think, because -- we first need a yes or no on that predicate
5 question.

6 THE COURT: Uh-huh. Right. Okay. Well, you know, I think
7 they are entitled to a baseline of information, because they have other
8 rights in the Trust. And so the only way to make the other rights
9 workable and make sense is if you give them the baseline information. I
10 do not believe it calls for an accounting. I think they're entitled to basic --
11 like basically tax information, profit and loss, opening and ending
12 balances, that kind of stuff. I think that's the way it reads, that they're
13 entitled to know what happened in a year, based on -- generally.

14 But are they entitled to review the books and records, and
15 check every single payment that's made? No, unless there's -- you know,
16 if there's something that triggers something in the tax return, and you're
17 like, wait a minute, what do you mean we lost every, you know, \$100
18 million on something. I mean, I don't know.

19 What do you mean you sold the Aspen condo? How come
20 the Picasso was only worth \$1,000? You know, something like that. That
21 makes sense. Then you would know, and you could -- then you could
22 object, but I just don't see this as providing for an actual annual
23 accounting. It's really unusual. Really unusual.

24 MR. LEVEQUE: There has to be enough information
25 provided, Your Honor, because if you look at -- I mean, this Trust does

1 provide, you know, for fiduciary liability.

2 THE COURT: Uh-huh.

3 MR. LEVEQUE: So even though there's, you know, language
4 in here about sole absolute discretion, there's also a provision here that
5 talks about fiduciary liability, which is Section 7.11. And it says that,
6 except for any matter involving a fiduciary's willful misconduct or clear
7 negligence, no fiduciary hereunder shall incur liability. So this Trust --

8 THE COURT: Right.

9 MR. LEVEQUE: -- contemplates allowing to challenge
10 decisions that are made by the Trustee, if they're being negligent or
11 there's willful misconduct. So they -- the beneficiaries have to have that
12 information in order to make that determination, otherwise --

13 THE COURT: Okay. All right.

14 MR. LEVEQUE: -- they would never know if there was a claim
15 for liability.

16 THE COURT: So starting --

17 MR. GEIST: Your Honor --

18 THE COURT: -- so we're going to start from, you know, what
19 Mr. Geist is putting in the order. It's granted in part. And I'm going to
20 deny the request for an accounting, because I don't think that,
21 technically, it provides for an annual accounting. It provides for basic
22 information, which I read is basically -- it's probably more than just a tax
23 return. It's some sort of beginning and ending statement and, generally,
24 how much the expenses were. I mean, that kind of -- it's a very basic --
25 it's more than a balance sheet. It's kind of like a profit and loss almost, if

1 this were a business instead of a trust. I mean, it's -- talk to an
2 accountant. They'll -- I'm using the terms wrong. I know I'm using the
3 terms wrong, and I don't want to get you guys hung up on some term I
4 used, when it's not the right term of art. So they're entitled to that.

5 They're entitled to know what their rights are under this
6 Trust. And with all due respect, I believe that's more than a one or two
7 page summary of the Trust. I just don't see how you could summarize
8 what their rights are under this Trust in one or two pages. It doesn't
9 make any sense. So they have to generally know what their rights are at
10 the present time. Like I said, we have to keep in mind that they
11 technically are minors still. Julia turns 18 in a month.

12 So -- but weirdly, I just -- it's so bizarre. I don't see how you
13 make this work without a copy of the Trust, but it doesn't say they get a
14 copy of the Trust. It's so strange. And like I said, I have to believe that
15 he assumed this was going to all happen sometime in the future, and
16 they would have a copy.

17 MR. LEVEQUE: And there's no real law, Your Honor, that
18 prohibits this Court from ordering them to produce it. I mean, that's --

19 THE COURT: Right. And that why I'm just asking if they --

20 MR. LEVEQUE: -- the thing.

21 THE COURT: Yeah.

22 MR. LEVEQUE: There's no expressed prohibition in the
23 Trust. So the Court has the authority to order production of a copy of the
24 Trust.

25 THE COURT: Let's not do that now, because I think there's a

1 way to do this without it. So we'll see.

2 MR. LEVEQUE: Okay.

3 THE COURT: I may be wrong, but I would like to see if we
4 can make this work. So, Mr. Geist, are you going to -- how much -- do
5 you need like 30 days to do an order?

6 MR. GEIST: Oh, please, yes. That would be very
7 appreciated. I'll take a stab at it. I will prepare it, run it by Mr. LeVeque
8 based on this discussion. I think --

9 THE COURT: Yeah, because I don't want Mr. LeVeque to feel
10 that he's waiving any rights. You don't want -- I'm assuming that I
11 probably should not have a -- because I was going to say, do you want a
12 status check to see if you've come to an agreement, but I don't --
13 reviewing for form and content is different from agreeing to the result.
14 So --

15 MR. LEVEQUE: Yeah.

16 THE COURT: -- I'm not going to ask Mr. LeVeque to agree --
17 to come to an agreement on terms. I mean, you might.

18 MR. LEVEQUE: Yeah, Your Honor, I would say that it's --

19 THE COURT: You might.

20 MR. LEVEQUE: -- you know, the position that we've taken is
21 that our client would be entitled to all information under 5.2 and a copy
22 of the Trust. And that would be the issue preserved for appeal. So even
23 if this Court allows relief, that -- I don't think that waives my client's right
24 to seek appellate review of that.

25 THE COURT: Okay. All right. Okay.

1 MR. GEIST: Not to make this all about me, but I want to
2 make sure I'm getting this correct. I understand, you know, that we're
3 looking at 5.2A information as kind of the guideline --

4 THE COURT: Right.

5 MR. GEIST: -- of what we're wanting to give them.

6 THE COURT: Instead of an accounting, Mr. Geist, because
7 the request was for an accounting. I do not believe under 5.2A, that they
8 would get an accounting --

9 MR. GEIST: Yeah.

10 THE COURT: -- but they get information. So that's the
11 alternative relief that's granted.

12 MR. GEIST: Okay.

13 THE COURT: Do they get a copy of the Trust? Bizarrely, I
14 don't see that they do. So strange. But they have to have some
15 information, because otherwise the rest of the Trust makes no sense.

16 MR. GEIST: Understood. Yeah. As far as the information for
17 5.2A, an updated inventory, tax return, and that information, and then
18 summary of transactions is what I understand that, you know, explain
19 the difference between the ending and the beginning balances --

20 THE COURT: Right.

21 MR. GEIST: -- correct?

22 THE COURT: Right. Right. So that they can see that it
23 reconciles, yeah.

24 MR. GEIST: Okay. Okay.

25 THE COURT: Good luck.

1 MR. GEIST: Thank you, Your Honor. I appreciate your time
2 on this. I know this hearing was extended. And thank you, Mr. LeVeque,
3 for your time as well.

4 THE COURT: And thank you to Kerry and Kristen. I
5 appreciate your time, ladies. Thank you.

6 MR. LEVEQUE: Thank you.

7 THE COURT: And so rather than set up a status check, we'll
8 just put this on chamber's calendar in 30 days to make sure we've seen
9 the order. And as I said, I'm not going to ask Mr. LeVeque to draft
10 anything jointly. Reviewing for form and content does not mean you can
11 see anything. So -- but he should -- so he should review it is all I'm
12 saying, Mr. Geist.

13 MR. GEIST: Yeah.

14 THE COURT: Okay.

15 MR. GEIST: Absolutely.

16 MR. LEVEQUE: What would be, Your Honor, just -- because
17 if we're going out 30 days for the order, what's the appropriate amount
18 of time for the Trustee to actually respond to what's being ordered?

19 THE COURT: That's a good point. Thirty days from notice of
20 entry.

21 MR. LEVEQUE: Okay.

22 THE COURT: Is that reasonable, Mr. Geist, 30 days from
23 notice of entry, because that's the appeal time?

24 MR. GEIST: I think so.

25 THE COURT: Or do you want 45 because 30 days is the

1 appeal time?

2 MR. GEIST: Let's make it 45. I think just to -- I don't think it
3 will be too much of a burden to gather this information and compile it in
4 a form that would meet the order, but I think 45 days would make more
5 sense, from notice of entry.

6 THE COURT: Right. Because 30 days --

7 MR. LEVEQUE: Can we do that order in two weeks then?
8 Two weeks should be a sufficient time to draft an order. I mean, the
9 rules contemplate less than that. Oh, actually, 14 days. Yeah.

10 THE COURT: Yeah, 14 days. Yeah. But --

11 MR. LEVEQUE: I'm just trying to get some information to my
12 client as soon as I can, and --

13 THE COURT: We're just going to do 30 days from notice of
14 entry.

15 MR. LEVEQUE: Okay.

16 MR. GEIST: Okay.

17 THE COURT: Good point. Thank you for raising it. Have a
18 good day.

19 MR. LEVEQUE: Thank you for your patience, Your Honor.

20 THE COURT: Thanks, everybody.

21 MR. LEVEQUE: Appreciate it.

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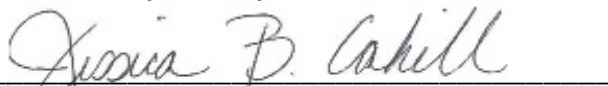
THE COURT: Nice seeing you all, remotely.

MR. GEIST: Thank you, Your Honor.

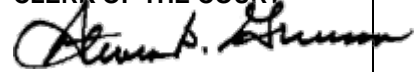
THE COURT: Bye-bye.

[Proceedings concluded at 12:23 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of

23 PARTNERS TRUST I, dated February 1,
2017

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

NOTICE OF CHANGE OF FIRM NAME

PLEASE TAKE NOTICE that on April 1, 2021, the firm name of SOLOMON DWIGGINS & FREER, LTD., has changed to SOLOMON DWIGGINS FREER & STEADMAN, LTD. The address and all email addresses remain unchanged and the address is:

Solomon Dwiggins Freer & Steadman, LTD.
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129

Please update your records to reflect this change.

Dated this 7th day of April, 2021.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

/s/ Alexander G. LeVeque

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Solomon Dwiggin Freer and Steadman, LTD, and that on the 7th day of April, 2021 I caused the foregoing document entitled **NOTICE OF CHANGE OF FIRM NAME** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System.

/s/ Terrie Maxfield
An Employee of Solomon Dwiggin Freer and Steadman

Heather S. Smith
CLERK OF THE COURT

ORDR

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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*

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@sdfnvlaw.com>; Alexander LeVeque <aleveque@sdfnvlaw.com>

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

APP 000505

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.

APP 000506

Sincerely,

From: Russel J. Geist

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

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

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

Subject: RE: 23 Partners Trust I

Word Perfect attached.

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

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

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

Email: aleveque@sdfnvlaw.com | Website: www.sdfnvlaw.com

 www.facebook.com/sdfnvlaw

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

SOLOMON | DWIGGINS | FREER LTD
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@sdfnvlaw.com>; Alexander LeVeque <aleveque@sdfnvlaw.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.

APP 000507

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

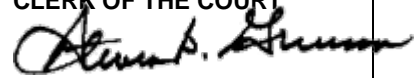
19 Russel Geist

rgeist@hutchlegal.com

20 Roberto Campos

rcampos@sdfnvlaw.com

21
22
23
24
25
26
27
28
APP 000508



ALEXANDER G. LEVEQUE (#11183)
aleveque@sdfnlaw.com
ROBERTO M. CAMPOS (#15189)
rcampos@sdfnlaw.com
SOLOMON DWIGGINS FREER & STEADMAN, 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,
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. Hume
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*

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...”

APP 000516

- “[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@sdfnvlaw.com>; Alexander LeVeque <aleveque@sdfnvlaw.com>

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

APP 000518

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.

APP 000519

Sincerely,

From: Russel J. Geist
Sent: Thursday, February 25, 2021 12:49 PM
To: Alexander LeVeque <aleveque@sdfnvlaw.com>; Roberto M. Campos <RCampos@sdfnvlaw.com>
Cc: Amber Anderson-Reynolds <aanderson@hutchlegal.com>
Subject: RE: 23 Partners Trust I

Word Perfect attached.

From: Alexander LeVeque [<mailto:aleveque@sdfnvlaw.com>]
Sent: Thursday, February 25, 2021 11:30 AM
To: Russel J. Geist <RGeist@hutchlegal.com>; Roberto M. Campos <RCampos@sdfnvlaw.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.facebook.com/sdfnvlaw
 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@sdfnvlaw.com>; Alexander LeVeque <aleveque@sdfnvlaw.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.

APP 000520

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

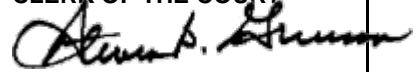
ehansen@sdfnvlaw.com

19 Russel Geist

rgeist@hutchlegal.com

20 Roberto Campos

rcampos@sdfnvlaw.com



1 **NOAS**
Russel J. Geist (9030)
2 **HUTCHISON & STEFFEN, PLLC**
10080 West Alta Drive, Suite 200
3 Las Vegas, NV 89145
(702) 385-2500
4 (702) 385-2086 Fax
rgeist@hutchlegal.com

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

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 In the matter of the trust agreement,
10 23 PARTNERS TRUST I,

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

11
12 An Irrevocable Trust.

13 **NOTICE OF APPEAL**

14 Notice is given that Michael Nedder and Douglas DeLuca (the “Trustees”), Respondent
15 Trustees of the 23 Partners Trust I (the “Trust”) and interested persons in the above-captioned
16 matter, appeals to the Supreme Court of Nevada from the *Order Granting in Part and Denying in*
17 *Part Petition to (1) Assume Jurisdiction Over Trust, (2) Confirm Douglas Scott DeLuca as Trustee,*
18 *(3) Compel an Accounting, and (4) Obtain a Copy of Trust,* entered by the district court on April
19 23, 2021, and from any other order of the district court rendered final and appealable pursuant to
20 NRS 155.190 by the District Court's Order dated April 23, 2021.

21 DATED May 24, 2021.

22 HUTCHISON & STEFFEN, PLLC

23
24 /s/ Russel J. Geist
Russel J. Geist (9030)
25 Peccole Professional Park
10080 West Alta Drive, Suite 200
26 Las Vegas, Nevada 89145
27 *Attorneys for Michael T. Nedder and*
Douglas DeLuca, Trustees
28

APP 000522

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 24th day of May, 2021, I caused the above and foregoing documents entitled **NOTICE OF 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