

**IN THE SUPREME COURT OF NEVADA**

In the MATTER OF THE TRUST  
AGREEMENT, 23 PARTNERS TRUST I.

---

Electronically Filed  
Mar 04 2022 05:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

MICHAEL T. NEDDER, Independent Trustee,  
and DOUGLAS DELUCA, Family Trustee,

Appellant / Cross-Respondents,

v.

JOANNE S. BRIGGS, as Parent and Legal  
Guardian of ALEXANDER IAN DELUCA,  
Primary Beneficiary; JULIA ANN DELUCA,  
Primary Beneficiary,

Respondents / Cross-Appellants.

---

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable Gloria J. Sturman, District Judge  
District Court Case No. P-20-104279-T

---

**RESPONDENTS / CROSS-APPELLANTS' OPENING BRIEF**

---

Alexander G. LeVeque (SBN 11183)  
Roberto M. Campos (SBN 15189)  
SOLOMON DWIGGINS FREER & STEADMAN, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: (702) 853-5483  
Facsimile: (702) 853-5485  
[aleveque@sdfnvlaw.com](mailto:aleveque@sdfnvlaw.com)  
[rcampos@sdfnvlaw.com](mailto:rcampos@sdfnvlaw.com)

*Attorneys for Respondents / Cross-Appellants*

## **NRAP 26.1 DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

1. Respondents / Cross-Appellants, Joanne S. Briggs and Julia Ann DeLuca (collectively, “Respondents”), are individuals.

2. Alexander G. LeVeque and Roberto M. Campos of Solomon Dwiggin Freer & Steadman, Ltd. represented Respondents in the District Court and have appeared before this Court.

3. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Dated this 4th day of March, 2022.

SOLOMON DWIGGIN FREER & STEADMAN, LTD.

*/s/ Alexander G. LeVeque*

---

Alexander G. LeVeque, Esq. (SBN 11183)

Roberto M. Campos, Esq. (SBN 15189)

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone 702-853-5483

Facsimile 702-853-5485

[aleveque@sdivnlaw.com](mailto:aleveque@sdivnlaw.com)

[rcampos@sdfnlaw.com](mailto:rcampos@sdfnlaw.com)

## **TABLE OF CONTENTS**

NRAP 26.1 DISCLOSURE STATEMENT .....	ii
TABLE OF AUTHORITIES CITED .....	v
STATUTES AND RULES .....	v
CASE LAW .....	vi
OTHER AUTHORITIES .....	vii
JURISDICTIONAL STATEMENT .....	viii
ROUTING STATEMENT .....	ix
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW .....	x
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	3
<b>A. TRUST’S FORMATION AND RELEVANT TERMS</b> .....	3
<b>B. TRUSTEE’S ADMINISTRATION OF THE TRUST</b> .....	7
<b>C. CLARIFICATION ON TRUSTEE’S PROCEDURAL FACTS</b> .....	8
SUMMARY OF ARGUMENT .....	9
ARGUMENT .....	13
I. STANDARD OF APPELLATE REVIEW .....	13
II. RESPONSE TO TRUSTEE’S APPEAL .....	14
<b><i>A. THE PRIMARY BENEFICIARIES ARE ENTITLED TO THE FINANCIAL INFORMATION THAT THE DISTRICT COURT ORDERED THE TRUSTEES TO PRODUCE</i></b> .....	14
<b><i>i. The Trust and its terms permit disclosing the financial information.</i></b>	
15	

ii.	<i>NRS 165.180 grants the District Court the authority to order the Trustee to provide the specified, financial information.....</i>	<i>17</i>
B.	<b>THE PRIMARY BENEFICIARIES ARE ENTITLED TO THE TRUST SECTIONS THAT THE DISTRICT COURT ORDERED THE TRUSTEE TO PROVIDE.....</b>	<b>20</b>
III.	CROSS-APPEAL .....	24
A.	<i>THE DISTRICT COURT ERRED IN DECLINING TO ORDER THE TRUSTEES PROVIDE A FULL ACCOUNTING ON THE TRUST TO WHICH ITS PRIMARY BENEFICIARIES ARE ENTITLED UNDER THE TRUST TERMS AND NRS 165.</i>	<i>24</i>
i.	<i>The Primary Beneficiaries’ interests are vested, entitling them to rights under the Trust’s § 5.2(A). ....</i>	<i>24</i>
ii.	<i>Because the Primary Beneficiaries have vested interests/rights under the Trust, they are also entitled to an accounting under NRS 165..</i>	<i>29</i>
B.	<i>THE DISTRICT COURT ERRED DECLINING TO COMPEL PRODUCTION OF A COMPLETE COPY OF THE TRUST TO ITS PRIMARY BENEFICIARIES.</i>	<i>33</i>
	CONCLUSION .....	37
	ATTORNEY’S CERTIFICATE .....	39
	CERTIFICATE OF SERVICE .....	41

## **TABLE OF AUTHORITIES CITED**

### **STATUTES AND RULES**

NRS 132.145(1) .....	27
NRS 132.180 .....	12, 29
NRS 155.190(1) .....	viii
NRS 155.190(1)(h) and (m) .....	viii
NRS 162.020(1)(b) .....	27
NRS 163.004(1)(a) .....	27
NRS 163.4185 .....	29, 30, 31
NRS 163.4185(1)(a-c) .....	30
NRS 164.021(2)(c) .....	20, 33
NRS 165 .....	x, 10, 11, 12, 17, 19, 23, 29, 36, 37
NRS 165.1207(1) .....	24
NRS 165.1207(1)(a) .....	12, 14, 29, 32
NRS 165.1207(1)(b)(5) .....	9, 12, 18, 24, 29, 30, 31, 36
NRS 165.135 .....	14, 24, 32, 37
NRS 165.147 .....	12, 36, 37
NRS 165.180 .....	x, 11, 13, 15, 17, 18, 19, 20, 23, 32
NRAP 3A(b)(1) .....	viii
NRAP 4(a)(1) .....	viii
NRAP 17(b)(14) .....	x

## CASE LAW

<i>In re Bush’s Trust</i> , 81 N.W.2d 615 (Minn. 1957) .....	18
<i>Matter of Brinley Amicon Property Trust</i> , 2018 WL 1448494 (Nev. March 21, 2018) (unpublished disposition).....	25
<i>Matter of W. N. Connell and Marjorie T. Connell Living Trust</i> , 133 Nev. 137, 393 P.3d 1090 (Nev. 2017) .....	13, 26, 34
<i>Matter of W. N. Connell and Marjorie T. Connell Living Trust, dated May 18, 1972</i> , 134 Nev. 613, 426 P.3d 599 (Nev. 2018).....	15, 26, 34
<i>Matter of Estate of Ella E. Horst Revocable Trust, U/A/D 05/21/1991</i> , 136 Nev. Adv. Op. 90, 478 P.3d 861 (Nev. 2020).....	20, 21, 33
<i>Klabacka v. Nelson</i> , 133 Nev. 164, 394 P.3d 940 (Nev. 2017) .....	13
<i>Sharp v. First Nat’l Bank of Nev.</i> , 75 Nev. 355, 343 P.2d 572 (Nev. 1959) .....	15, 25, 26, 35

## **OTHER AUTHORITIES**

GEORGE G. BOGERT, ET AL., THE LAW OF TRUSTS AND TRUSTEES § 962. (June 2020).....	18
BOGERT’S, § 965. (June 2020) .....	9, 18, 27
BOGERT’S, § 966. (June 2020) .....	17
BOGERT’S, § 973 (revised June 2021).....	26, 32
BOGERT’S, § 1061 (rev. June 2021) .....	28
RESTATEMENT (SECOND) OF TRUSTS § 173, Comment <i>c</i> .....	18
Uniform Trust Code (“UTC”), § 103(3).....	26, 32

## **JURISDICTIONAL STATEMENT**

The appeal and this cross-appeal arise from 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 Accounting, and (4) Obtain a Copy of Trust entered on April 23, 2021 (the “Order”), issued by Eighth Judicial District Court, Department XXVI, the Honorable Gloria J. Sturman, District Judge. APP 498-502. Notice of Entry of the Order was also filed on April 23, 2021. APP 509-10.

The Order is a final order as it finds and orders that the Primary Beneficiaries are not entitled to a full accounting nor to a copy of the entire Trust agreement. As such, the Order is appealable under NRAP 3A(b)(1) as it constitutes a “final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” The Order is also appealable under NRS 155.190(1), including subsections (h) and (m) thereunder. A timely notice of the cross-appeal was filed on May 24, 2021. NRAP 4(a)(1). RESP 01-16.



## **ROUTING STATEMENT**

The appeal and this cross-appeal arise from the administration of a trust where Respondents / Cross-Appellants are informed and believe the corpus has a value that exceeds \$20,000,000, thus substantially greater than \$5,430,000. The matter therefore is not presumptively assigned to the Court of Appeals. *See* NRAP 17(b)(14). Respondents / Cross-Appellants request that the Supreme Court hear the matter because it involves statutory construction on important and novel questions of law and policy as to a trust where any and all [REDACTED] distributions are to be made at the trustee's discretion, *i.e.*, a so-called '*discretionary trust*.'

Though such trusts are widely accepted in Nevada, a beneficiary's rights to a trustee's accounting of the same and to obtain a copy of the trust instrument, particularly after the settlor has died and while the beneficiary holds other interests not subject to trustee discretion, *e.g.*, [REDACTED] [REDACTED] have not yet been addressed by the Supreme Court.

## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

### **On Trustee's Appeal:**

1. Whether the District Court erred under an irrevocable trust's terms, or (if applicable) abused its discretion under NRS 165.180, in ordering the trustee, where any and all [REDACTED] distributions are to be made at his discretion, to provide the primary beneficiaries after the settlor's death with the trust's financial information when they [REDACTED]

[REDACTED]

[REDACTED]

2. Whether the District Court erred under the terms of the irrevocable trust and facts noted above in Issue No. 1, or (if applicable) abused its discretion under NRS 165.180, in ordering the trustee, to provide the primary beneficiaries with copies of trust sections that affect them?

### **On Primary Beneficiaries' Cross-Appeal:**

3. Whether the District Court erred under the terms of the irrevocable trust and facts noted above in Issue No. 1, and NRS 165, in ruling that the trustee need not account to the primary beneficiaries because their interests are not vested?
4. Whether the District Court erred under the terms of irrevocable trust and facts noted above in Issue No. 1, and NRS 165, in ruling that the trustee need not provide a copy of the trust to its primary beneficiaries because no provision

therein expressly grants them such right, even though no provision therein prohibits the Trustee from providing such copy upon their request?

## **STATEMENT OF THE CASE**

This action arose from a Petition filed by Joanne S. Briggs (“Joanne”), in her capacity as Parent and Legal Guardian of Julia Ann DeLuca (“Julia”) and Alexander Ian DeLuca (“Alex”), Primary Beneficiaries of 23 Partners Trust I, dated February 1, 2017 (“Trust”), requesting that the District Court: (1) assume jurisdiction over the Trust, (2) confirm Douglas Scott DeLuca (“Douglas”) as Trustee, (3) compel an accounting, and (4) compel the Trustee provide a copy of the trust (collectively, “Petition”). APP 1-8.

The Petition came on for hearing before the Honorable Judge Gloria J. Sturman on December 9, 2020. An Order was entered on December 30, 2020, which, *inter alia*: (i) assumed *in rem* jurisdiction over the Trust; (ii) confirmed Douglas and Michael T. Nedder as the Trustees; (iii) continued the hearing on the remainder of the Petition; (iv) ordered that Mr. Nedder produce a complete copy of the Trust on an attorneys’-eyes-only basis to Petitioner’s counsel; and (v) set a briefing schedule for Petitioner to file a supplement to her Petition. APP 105-110.

The remaining items in the Petition (the requests for an accounting and a copy of the Trust) came at the continued hearing before Judge Sturman on January 28, 2021. At the hearing, Judge Sturman made findings and rulings from the bench. On April 23, 2021, Judge Sturman held a telephonic conference with the parties over

their competing orders, ruled thereon, and issued the Order (“Order”) from which this Appeal is taken. APP 498-502.

The Order granted in part and denied in part the Petition as to the requests for an accounting and a copy of the Trust. The Order requires the Trustees to provide Joanne and Julia (who by then had turned 18 years of age) with some information relating to the Trust, consisting of tax returns, beginning and ending inventories of assets, and summary of all financial transactions (including Trustees’ fees). APP 501, ¶¶ A-C. But, the Order also concluded as a matter of law that the “Trustees have no obligation to provide an annual accounting to the Beneficiaries pursuant to NRS 165.1207(1)(b)(5) or a full accounting every year pursuant to the Trust or permit the Beneficiaries to audit the books and records of the Trust every year.” APP 500, ¶ 12. The District Court concluded that “[b]ecause the Trust is discretionary, the Beneficiaries here, although clearly primary Beneficiaries under the Trust’s terms, are not vested Beneficiaries and so they are not entitled to an accounting, nor are they entitled to rights under the Trust’s Section 5.2A.” APP 501, ¶ 16.

The Order also requires the Trustees to provide Beneficiaries with “[i]nformation in the Trust related to what sections affect them, the Beneficiaries’ rights under the Trust agreement with respect to their beneficial interest or the Trustees and the administration of the Trust.” APP 501, ¶ D. But the Order requires the Trustees to do so “without delivering a copy of the entire Trust agreement,” and

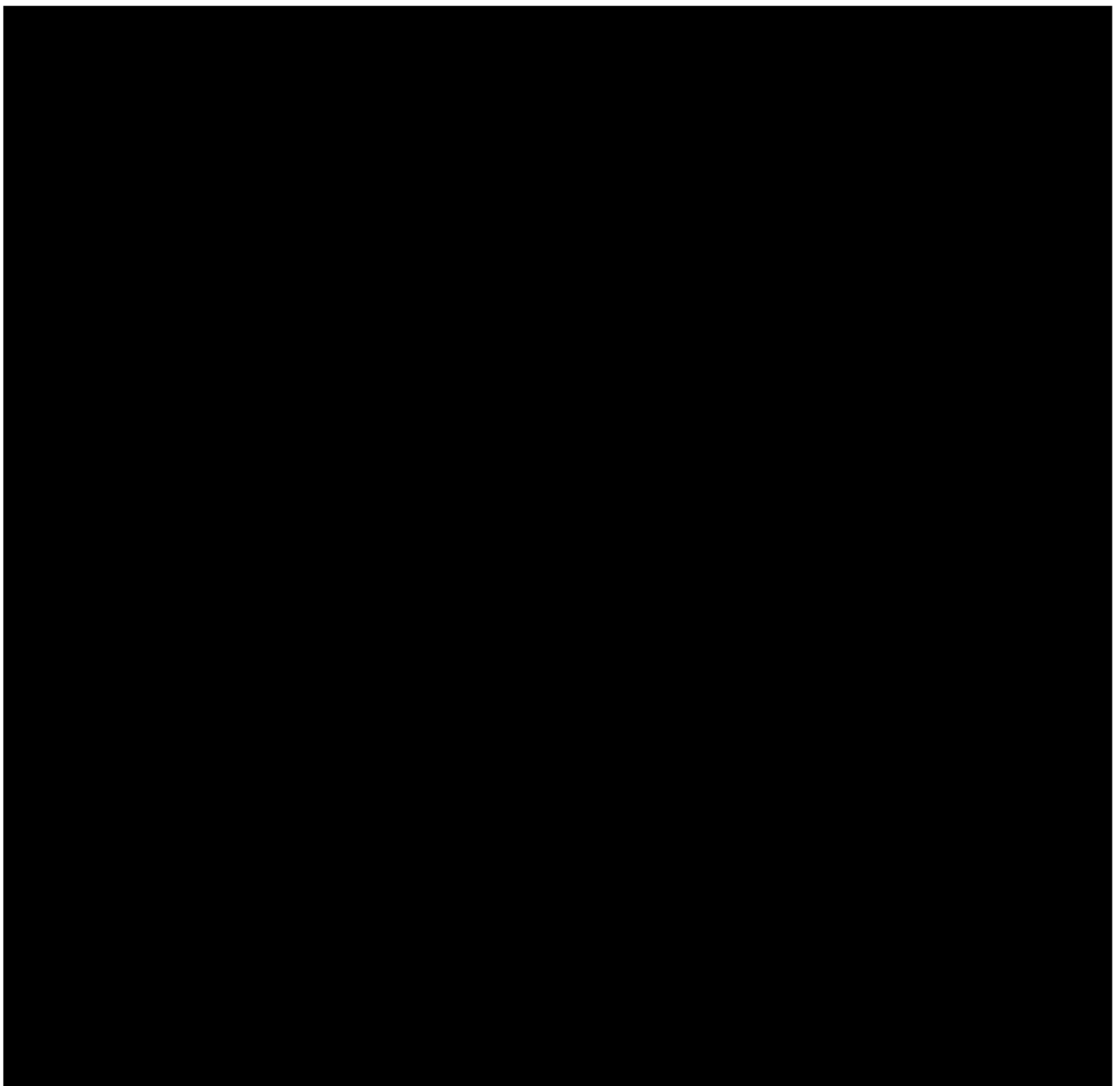
thus provide the Beneficiaries with “copies of the pertinent sections or subsections of the Trust” instead. *Id.* Indeed, the District Court concluded as a matter of law that the “Trustees have no obligation to provide a copy of the Trust agreement to the Beneficiaries.” APP 500, ¶ 14. The District Court concluded that “[b]ecause the language in the Trust is so specific and there is no provision in the Trust requiring the Trustees to provide a copy of the Trust to the Beneficiaries, the Beneficiaries are not entitled to a copy of the entire Trust agreement.” *Id.*, ¶ 15.

The Trustee, and Joanne and Julia, filed their respective timely notices of appeal of the Order on May 24, 2021. *See* APP 522-523 and RESP 1-16.

### **STATEMENT OF FACTS**

The Respondents / Cross-Appellants add the following facts relevant to the issues on appeal.

#### **A. TRUST’S FORMATION AND RELEVANT TERMS**



<sup>3</sup> See Trustee’s Supp. to Obj. to Pet., APP 243, p. 3:10-12 (“under Section 7.2(D) ... while the Beneficiaries may remove the Independent Trustee”).

<sup>4</sup> See Appellant’s Br., 9 (“Trust does specifically require the Trustees to deliver copies of ‘instruments of amendment, revocation ...’ to the beneficiaries upon request”).

[REDACTED]

Finally, the Trustee does not dispute that Julia and Alex, as the current Primary Beneficiaries and Grantor's only living descendants, have the exclusive right, if and when the Trustee decides to make distributions in his discretion (as he has done regularly since the Grantor's death four years ago, and is reasonably expected to do in the future), to receive any and all such distributions, § 3.2.1, FUS 22-23. If and when Julia or Alex has children of their own, the Trustee will only be able to make distributions to Julia, Alex, and the Grantor's grandchildren (and so on with any future descendants) and no one else. *Id.* [REDACTED]

[REDACTED]

[REDACTED] the Trust assets, on information and belief valued at over \$20 million, [REDACTED]

[REDACTED]



[REDACTED]

The Trust however *is* silent on whether the Primary Beneficiaries may request and obtain a copy of the original Trust. Still, it does not prohibit the Trustee from providing such copy upon request. The Trust does provide that, until the beneficiaries learn of the Trust's existence, as they inevitably will and eventually must, the Trustee is not to tip off them off as to its existence: "Notwithstanding anything herein to the contrary and to the extent permitted by applicable law, the Trustee shall not provide notice of the existence of the trust to any beneficiary hereunder." § 5.1(E) (emphasis added), FUS 29.

Further, the Trust provides rights to inspect its books and records, and a Trustee's accounting on the same, to "each then presently vested income, principal and remainder beneficiary of such trust." § 5.2(A), FUS 29-30. Again, the Trust does not prohibit the Trustee from providing the same to anyone else.

Also, Premier Trust, Inc. was the initial Independent Trustee of the Trust, executed on February 1, 2017. FUS 19. But, on April 30, 2018, shortly before the Grantor's death by cancer on July 14, 2018, his estate planning attorney, Michael Nedder, replaced Premier as the Independent Trustee. APP 263-266 and Appellant's Br., 8. [REDACTED]

[REDACTED]

[REDACTED]

Finally, days after his appointment as Trustee, Mr. Nedder met with the Grantor regarding the latter's estate plan and the Trust. APP 32. The meeting was audio-recorded with their consent and designated orally as attorney-client privileged. APP 34, APP 49-77 (Tr.) (link to recording was made available to Trustee's counsel on December 4, 2020). Nonetheless, weeks later, about a month before his passing, the Grantor voluntarily transmitted a copy of the recording to Julia and Alex's mother and legal guardian (and Grantor's ex-wife), Joanne Briggs, via Dropbox. APP 34-35. He included the recording in a folder, along with photographs and other items he wanted Joanne to have. *Id.* He also showed Joanne the Estate Plan Flowchart and List of assets, APP 79-81, which he kept at his bedside but wanted to Joanne to know about and understand, particularly for the time after his imminent passing. APP 35.

#### **B. TRUSTEE'S ADMINISTRATION OF THE TRUST**

Since the Grantor's death, the Trustee has regularly made Trust "distributions to pay for [the Primary Beneficiaries'] comfort, care, an[d] enjoyment, including the costs of a private education, medical expenses, extracurricular activities, vacations, and other expenses." Appellant's Br., 10. But, over the years, when Julia and/or Alex's legal guardian requested information on the Trust, the Trustee's agent informed them that any information on the Trust terms or its assets was private:

As I have explained to her [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. [APP 359.]

Instead, the Trustee's agent proposed that "Julia, Alex and I [Trustee's agent] meet to further clarify their questions about the trust," and that as to a "one-page summary," Appellant's Br., 14, the agent was "working with counsel to prepare something that is appropriate." APP 359. In the same email, the Primary Beneficiaries were informed that *their* retention of counsel "will not be paid for by either the trust or the [Grantor's] estate." *Id.*

### C. CLARIFICATION ON TRUSTEE'S PROCEDURAL FACTS

The assertion in Appellant's Br., 14, that the "Trustees objected to the Petition" is not true as the only Objection was filed by the Independent Trustee (Mr. Nedder), not the Family Trustee (Douglas DeLuca, the Grantor's brother). APP 13.

Also inaccurate in Appellant's Br., 15, is the statement that the "Beneficiaries' interests are based on the sole, absolute, and unreviewable discretion of the Trustees." [REDACTED]

[REDACTED] see also Order, APP 499, ¶ 3, APP 501, ¶ 16 ("The Beneficiaries' interest in the Trust *includes* distributions of income and principal in the discretion of the Trustees;" the "Beneficiaries are entitled to a baseline of information in the Trust *because they have rights under other sections* of the

Trust.”) (Emphases added.)

The District Court further specifically determined that 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,” *i.e.*, “*under the Trust’s Section 5.2A.*” APP 500, ¶ 12, APP 501, ¶ 16 (emphases added). Contrary to the Trustee’s contention, the Court did not make that determination broadly “based on *the language of the Trust and Nevada law.*” Appellant’s Br., 6 (emphases added).<sup>5</sup>

Finally, although a minor represented by her legal guardian (and mother) when the Petition was filed in September 2020, the Appellee / Cross-Appellant Julia, turned 18 years of age in March 2021.<sup>6</sup>

### **SUMMARY OF ARGUMENT**

*At the heart of every trust is a fiduciary relationship between the trustee and the beneficiary. Accountability of the trustee to the beneficiary is, in turn, at the heart of their fiduciary relationship.*<sup>7</sup>

---

<sup>5</sup> Further contrary to assertions in Appellant’s Br., [REDACTED]

<sup>6</sup> The Primary Beneficiaries reserve the right to contest the asperions on their mother (and Alex’s legal guardian) Joanne Briggs, Appellant’s Br., 10-14, noting now that the contentions, whether true or not, are not relevant to the issues on appeal.

<sup>7</sup> GEORGE G. BOGERT, ET AL., THE LAW OF TRUSTS AND TRUSTEES § 965. (June 2020).

Nevada's statutes provide wide latitude to a settlor and the discretion he grants under an irrevocable trust to its trustees. But such breadth has its limits. Thus, no matter how much discretion settlor Jon DeLuca provided his estate planning attorney Michael Nedder, serving as the Trust's sole Independent Trustee, *on distributions*, no such discretion is permitted, under the Trust's terms or Nevada's statute on trust accounting (NRS 165), *on the Trustee's fundamental duty to account to the Trust's beneficiaries*. Indeed, without such duty, there could be no fiduciary relationship, and, hence, no trust.

Further, the beneficiaries entitled to such accounting here *must be* the deceased settlor's surviving children, Julia Ann DeLuca, a young woman, and Alexander Ian DeLuca, her teenage brother, because they are the Trust's sole Primary Beneficiaries. As such, if and when any distributions are to be made by Mr. Nedder in his discretion as Trustee, the Trust's terms *require that they be made to Julia and/or Alex and no one else*. If and when either Julia or Alex has a child, such child(ren) will also be added to this limited list of permissible distributees.

Specifically, in response to the Trustee's issues on appeal, first, the Primary Beneficiaries are entitled to the baseline of financial information that the District Court ordered the Trustee to provide to them. [REDACTED]

[REDACTED]

[REDACTED]

the Primary Beneficiaries are entitled to the financial information the Court ordered to be disclosed. Also, NRS 165.180 grants the District Court the plenary authority to order the Trustee to provide the specified, financial information, particularly where, [REDACTED], the Primary Beneficiaries have been repeatedly denied information on *their* Trust. The denials all come from the Grantor's estate planning attorney who replaced a Nevada trust company as Independent Trustee weeks before the Grantor's death.

Second, the Primary Beneficiaries, although not entitled to a copy of the entire Trust pursuant to the appealed Order, are entitled to all the Trust sections that affect them. Indeed, the Trustee apparently does not challenge such right *per se*, but contends that the District Court *de facto* ordered production of the entire Trust because all the Trust sections affect Julia and Alex "as they are the primary beneficiaries." Appellant's Br., 25. This contention is improper and inaccurate because the Order called only for production of the sections that affect the Primary Beneficiaries.

On cross-appeal, the District Court clearly erred in not ordering the Trustee to provide a full accounting on the Trust to its Primary Beneficiaries as entitled under the Trust's § 5.2(A), FUS 29-30, and, independently, under NRS 165. They are entitled to all the rights under § 5.2(A) because logic and reason compel the conclusion that they must be the Trust's vested beneficiaries referred to therein who

hold such rights. Indeed, the Trust's terms indicate that [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], the exception relieving the Trustee from accounting under NRS 165.1207(1)(b)(5) does not apply. Hence, NRS 165.1207(1)(a) requires the Trustee to account to the Primary Beneficiaries. In sum, under either § 5.2(A) or NRS 165, Julia and Alex are entitled to the Trustee's account of *their* property.

Finally, the District Court clearly erred in not ordering the Trustees provide a complete copy of the Trust to its Primary Beneficiaries. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED].  
Under these facts, no express provision, as apparently required by the Order, is necessary to entitle them merely to a copy of the instrument affording them rights. As they are entitled to accounting rights under NRS 165, the primary Beneficiaries are also then entitled to a copy of the entire Trust under NRS 165.147.

//

//

## **ARGUMENT**

### **I. STANDARD OF APPELLATE REVIEW**

The Primary Beneficiaries agree with the Trustee that the facts relevant to the issues on appeal are not in dispute. They further agree with the Trustee that all the issues before the Court involve interpretation of statutes and a trust agreement. The Primary Beneficiaries note however that they repeatedly raised NRS 165.180 in their pleadings below, at APP 37-41, APP 129-31, and APP 371-72, but the Trustee ignored it in his pleading and now in his Brief. Notwithstanding, NRS 165.180 provides a District Court “the power ... to require ... trustees” to provide certain information to beneficiaries. As such, the Primary Beneficiaries raise it in part in response to the issues brought on appeal by the Trustee. Accordingly, as to those arguments referencing NRS 165.180, the proper standard of review is a combination initially of *de novo* to determine whether NRS 165.180 applies, and if so, then ‘abuse of discretion’ to determine whether the Court abused its discretion in applying NRS 165.180 to the facts here. To all other issues raised by the Trustee or the Primary Beneficiaries, the standard of review is *de novo*. See *Matter of W. N. Connell and Marjorie T. Connell Living Trust*, 133 Nev. 137, 139, 393 P.3d 1090, 1092 (Nev. 2017) (reviewing trust interpretation *de novo*); and *Klabacka v. Nelson*, 133 Nev. 164, 175, 394 P.3d 940, 949 (Nev. 2017) (questions of law, including statutory interpretation, are reviewed *de novo*).



## **II. RESPONSE TO TRUSTEE’S APPEAL**

### **A. THE PRIMARY BENEFICIARIES ARE ENTITLED TO THE FINANCIAL INFORMATION THAT THE DISTRICT COURT ORDERED THE TRUSTEES TO PRODUCE.**

The Trustee contends the District Court erred in entering an internally inconsistent order. Thus, (i) while a trustee is not obligated, under either the Trust’s § 5.2(A) or NRS 165.1207(1)(a), to provide a full annual accounting to the beneficiaries (because the trustees have sole discretion on distributions), (ii) the Trustee here was improperly ordered to provide the Primary Beneficiaries with certain financial information on the Trust including tax returns, inventories, and annual summaries of all financial transactions, including trustee fees, *i.e.*, an accounting nonetheless. APP 501, ¶¶ A-C.

But both rulings, (i) and (ii) above, are reconciled by a comparison confirming that the information ordered to be disclosed and that ordered to be withheld are simply not the same. Indeed, the “baseline” of financial information which the Court ordered the Trustees to provide, APP 501, ¶ 16, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] “because they have rights under other sections of the Trust.” APP 501, ¶ 16. Thus, the District Court had the authority to order the Trustee to provide such information [REDACTED]

[REDACTED] and (ii) NRS 165.180.

*i. The Trust and its terms permit disclosing the financial information.*

The cardinal rule of interpretation of trusts is to ascertain the intention of the trustor. *See Sharp v. First Nat'l Bank of Nev.*, 75 Nev. 355, 361, 343 P.2d 572, 575 (Nev. 1959); *see also Matter of W. N. Connell and Marjorie T. Connell Living Trust*, dated May 18, 1972, 134 Nev. 613, 616, 426 P.3d 599, 602 (Nev. 2018) (“[w]e construe trusts in a manner effecting the apparent intent of the settlor”). In ascertaining such intent when construing an express provision of a trust, the Court must simply ask ‘what is the meaning of the trustor’s words.’ *See Sharp*, 75 Nev. at 360, 343 P.2d at 574. Conversely, where there is no express provision but, rather, a failure to make any provision at all, such intent “‘may be derived from the entire instrument as a whole, from its general scheme, or from informal language used, by necessary implication, i.e., implication not based on conjecture, but so strong that a contrary intention cannot be supposed to have existed in his mind.’” *Id.* (quoting *Brock v. Hall*, Cal. App. 198 P.2d 69, 72 (Ct. of App. Cal. 1948)) (emphases added); *see, also, Connell*, 134 Nev. at 616, 426 P.3d at 602 (to “determine the settlor’s intent, we employ contract principles, including ... considering [the trust] as a whole ... and favoring the most fair and reasonable interpretation of the trust’s language”) (internal quotations and citation omitted).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the Primary Beneficiaries, by necessary implication, must further be provided a baseline of financial information to assess his trusteeship. Without the Trust's tax returns, beginning and ending inventories and annual summaries of all financial transactions, including trustee fees, the Primary Beneficiaries would have to rely solely on Mr. Nedder's own word that he is 'doing a good job' and not worth replacing. This result is at odds with any *trust*, let alone this Trust instrument as a whole, and thus cannot be what the Grantor intended. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], provide the District Court with the authority to order the Trustees to furnish the Primary Beneficiaries with the

financial information specified in the Order.

- ii. NRS 165.180 grants the District Court the authority to order the Trustee to provide the specified, financial information.*

As raised below by the Primary Beneficiaries, APP 129, but ignored by the Trustee, and independent of the Trust's terms, NRS 165.180 provides District Courts with plenary authority, apart from the requirements elsewhere under NRS 165, to require trustees to account to beneficiaries, as reason and fairness dictate:

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

The common law of trusts provides similarly on a beneficiary's *fundamental* right to the trustee's accountability:

The beneficiary's fundamental right to have the trustee account ... is not dependent on statute or on there being a provision in the terms of the trust obligating the trustee to account. ... [T]he trustee is under a duty to provide detailed accountings from which the beneficiary can learn whether the trustee has performed its trust and what the current status of the trust is. Accordingly, the trustee can be compelled by the court at any time to present an account in court, where it can be subject to scrutiny by the court, as well as to review by the beneficiary and other interested parties.<sup>8</sup>

---

<sup>8</sup> BOGERT'S, § 966. (June 2020) (emphasis added).

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.”<sup>9</sup>

In fact, “because there can be no fiduciary relationship without accountability, and no trust without a fiduciary relationship, [even] the settlor of a trust cannot relieve the trustee of the fundamental duty to account.”<sup>10</sup> And, “[f]or the beneficiary to be able to hold the trustee accountable for its administration of the trust, the beneficiary must know of the trust, the beneficiary’s interest in it, its property, and how that property is being managed.”<sup>11</sup>

Indeed, NRS 165.180 was likely enacted to address precisely this scenario type: where the Trustee refuses to account on a Trust even to its sole Primary Beneficiaries simply because [REDACTED]

[REDACTED]. See NRS 165.1207(1)(b)(5) (trustees need not account to beneficiaries whose only interest in trust estate is a discretionary interest). As such, Julia and Alex are purportedly not *vested* beneficiaries under the

---

<sup>9</sup> *In re Bush’s Trust*, 81 N.W.2d 615, 624 (Minn. 1957) (cited in BOGERT’S § 966).

<sup>10</sup> BOGERT’S, § 965; *see also* RESTATEMENT (SECOND) OF TRUSTS § 173, Comment *c* (200) (“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).

<sup>11</sup> BOGERT’S, § 962.

Trust's § 5.2(A) (trustees need not account to beneficiaries who are not presently "vested"), FUS 29. According to the Trustee, because all distributions ever to be made to Julia and/or Alex<sup>12</sup> will be made at the discretion of the Trustee, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Even if a beneficiary is not entitled to an accounting under NRS 165, the Trustee is still expressly permitted to provide the same should he choose so:

This chapter [165] does not preclude the trustee from accounting voluntarily even if he or she is not required to do so by this chapter or by court order. [NRS 165.180.]

In sum, the Trustee's discharge of his fiduciary duty must be subject to *some* review (other than by the Trustee himself). And, the persons in the best (and perhaps only) position to conduct such review here are the two Primary Beneficiaries, *i.e.*, whose interests are most affected by the Trustee's decisions, including on the

---

<sup>12</sup> And/or any future Primary Beneficiaries / descendants (whose interests under the Trust will never exceed those of Julia and Alex).

distribution discretion. As such, the reason and fairness at the heart of NRS 165.180, supported by the common law on trusts, provide the District Court another authority (apart from § 5.2(A)), and there was no abuse in its discretion, to order the Trustee to provide Julia and Alex with the *baseline* of financial information specified in the Order.

**B. THE PRIMARY BENEFICIARIES ARE ENTITLED TO THE TRUST SECTIONS THAT THE DISTRICT COURT ORDERED THE TRUSTEE TO PROVIDE.**

The District Court ruled that the Primary Beneficiaries “are not entitled to a copy of the entire Trust agreement,” but they “are entitled to information in the Trust related to what sections affect them and their rights under the Trust ... and the administration of the Trust.” APP 500, ¶¶ 14-15. For the reasons detailed above, to have the Trustee produce to the Primary Beneficiaries the Trust sections and subsections that affect them, was, unremarkably, proper.<sup>13</sup>

Indeed, Nevada law generally ensures a beneficiary of an irrevocable trust a right to a copy of all sections that affect her. *See, e.g.*, NRS 164.021(2) (requiring trustee of a revocable trust who sends out notice of it becoming irrevocable to provide “[a]ny provision of the trust instrument which pertains to the beneficiary;” *see also, Matter of Estate of Ella E. Horst Revocable Trust, U/A/D 05/21/1991*, 136

---

<sup>13</sup> The Order was erroneous to the extent it did not compel the Trustee to provide a copy of the entire Trust to the Primary Beneficiaries, *infra* at III(B).

Nev. Adv. Op. 90, 478 P.3d 861, 867 (Nev. 2020) (interpreting “any” in NRS 164.021(2)(c) to mean “all” and requiring strict compliance with said statute). Notably, once the Primary Beneficiaries learn of the Trust’s existence, as they inevitably must, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Without copies of those Trust sections, the Primary Beneficiaries would not be fully informed of [REDACTED]

[REDACTED]

Moreover, anything but actual copies of such sections, from Mr. Nedder’s office no less, would fall far short of the complete, unbiased information to which the Primary Beneficiaries are entitled. *See Horst*, at 867 (substantial compliance rejected because “only a complete disclosure of all provisions of a trust instrument pertaining to a beneficiary will ... give a beneficiary all the information he or she needs to decide whether to contest a trust”). The Primary Beneficiaries, again, need not—and should not—have to take the Trustee’s word, but should have the right to review the sections (and their words) themselves.

Further, the Trustee apparently does not challenge the Primary Beneficiaries’



right *per se* to the information in the Trust sections, or the sections themselves, ordered to be produced. Instead, the Trustee takes issue with the Order providing “no guidance” on identifying those affected sections. Appellant’s Br., 25. Yet, the Trustee admits that there *are* Trust sections that affect the Primary Beneficiaries, and in fact, there are so many that it “is difficult to imagine that any of the sections of the Trust agreement will not affect the Beneficiaries and their rights in some way as they are the primary beneficiaries.” *Id.* Thus, the Trustee admits he needs no such guidance as he is able to identify the sections. That there happen to be many is a different issue.

Further, the Trustee contends that, while not having to produce a copy of the entire Trust, in effect he has to do just that because he must provide “copies of the pertinent sections or subsections of the Trust,” *i.e.*, the “sections [that] affect them,” that convey “the Beneficiaries’ rights under the Trust ... and the administration of the Trust.” APP 501, ¶ D. But this allegation of the District Court having “contrived a way” to compel the Trustee to nonetheless produce an entire copy of the Trust is as improper as it is speculative and unfounded. Appellant’s Br., 26.

The District Court ruled that the Primary Beneficiaries “are not entitled to a copy of the entire Trust,” APP 500, ¶ 15, and thus nowhere in the Order is the Trustee to provide the same. APP 498-502. Meanwhile, the pertinent sections or subsections in the Trust are just that—subsets of the entire Trust. The Order further

does not, nor can it logically, equate a subset to a whole. That the Trustee reads the subsets as constituting the entire Trust is his reading, not the Court's.

If it were as the Trustee portrays—

. That's not the case here. As such, the Trustee's reading, that *all* the sections in the Trust affect Julia and Alex "as they are the primary beneficiaries," Appellant's Br., 25, is an admission and an indictment on his refusal to account to them or to even provide them a scrap of *any* section of the Trust.

For these reasons, added to those elaborated earlier (*e.g.*, , and NRS 165.180), the Order, to have the Trustee produce to the Primary Beneficiaries the Trust sections and subsections that affect them, was proper, and thus the District Court did not abuse its discretion.

//

//

//

//

//

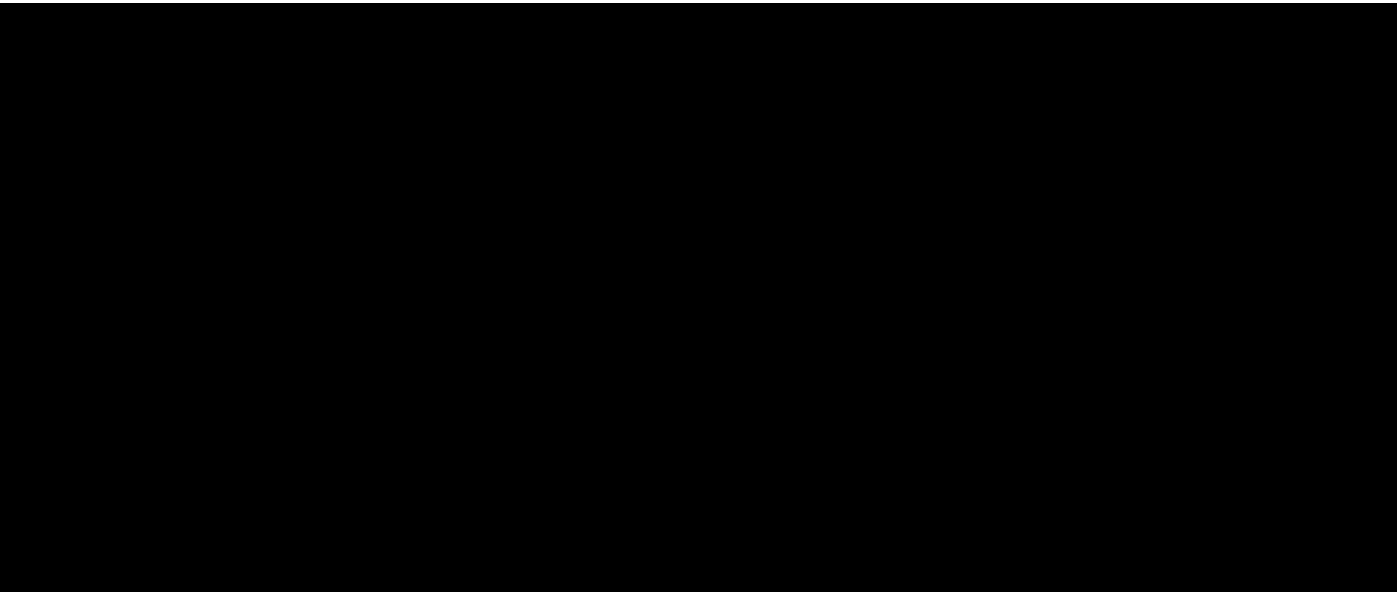
### III. CROSS-APPEAL

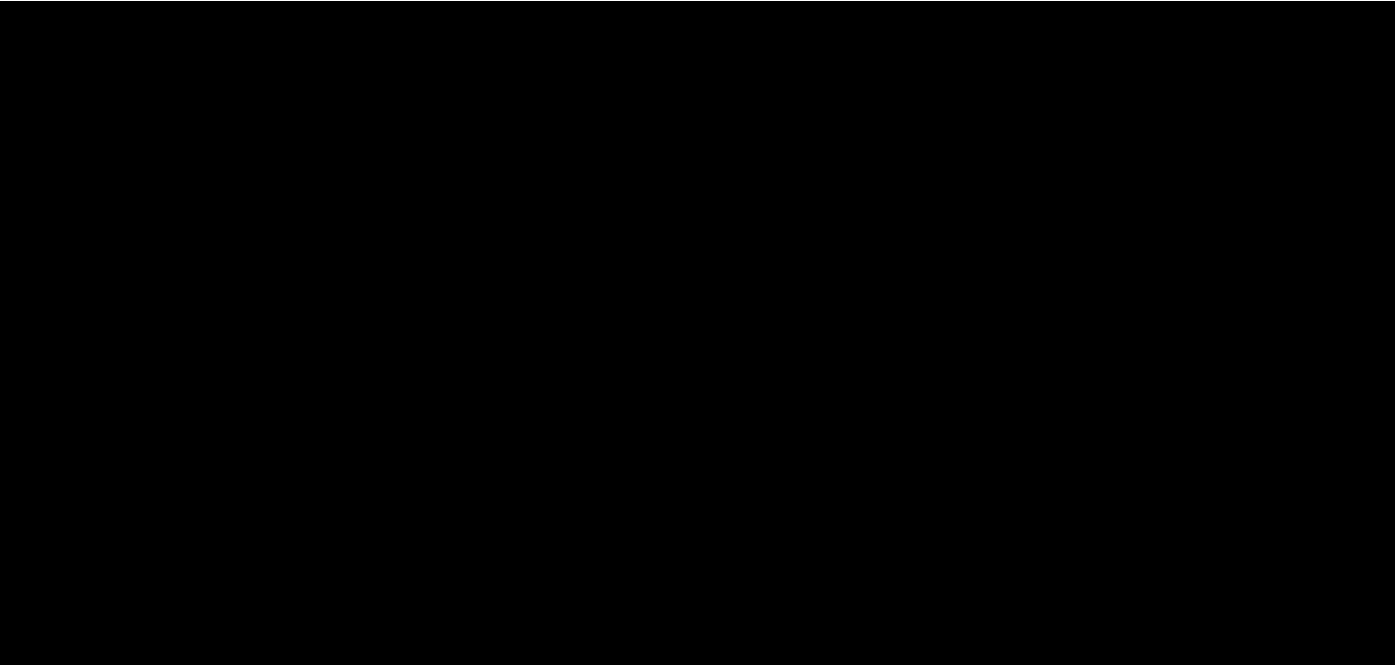
#### A. THE DISTRICT COURT ERRED IN DECLINING TO ORDER THE TRUSTEES PROVIDE A FULL ACCOUNTING ON THE TRUST TO WHICH ITS PRIMARY BENEFICIARIES ARE ENTITLED UNDER THE TRUST TERMS AND NRS 165.

The District Court ruled that “[b]ecause the trust is discretionary,” “although clearly Primary Beneficiaries under the Trust’s terms,” Julia and Alex are “not vested beneficiaries” and so they are not entitled to the full accounting rights “under the Trust’s Section 5.2A,” nor those rights “pursuant to NRS 165.1207(1)(b)(5).” APP 501, ¶ 16, APP 500, ¶ 12. This ruling was clearly erroneous.

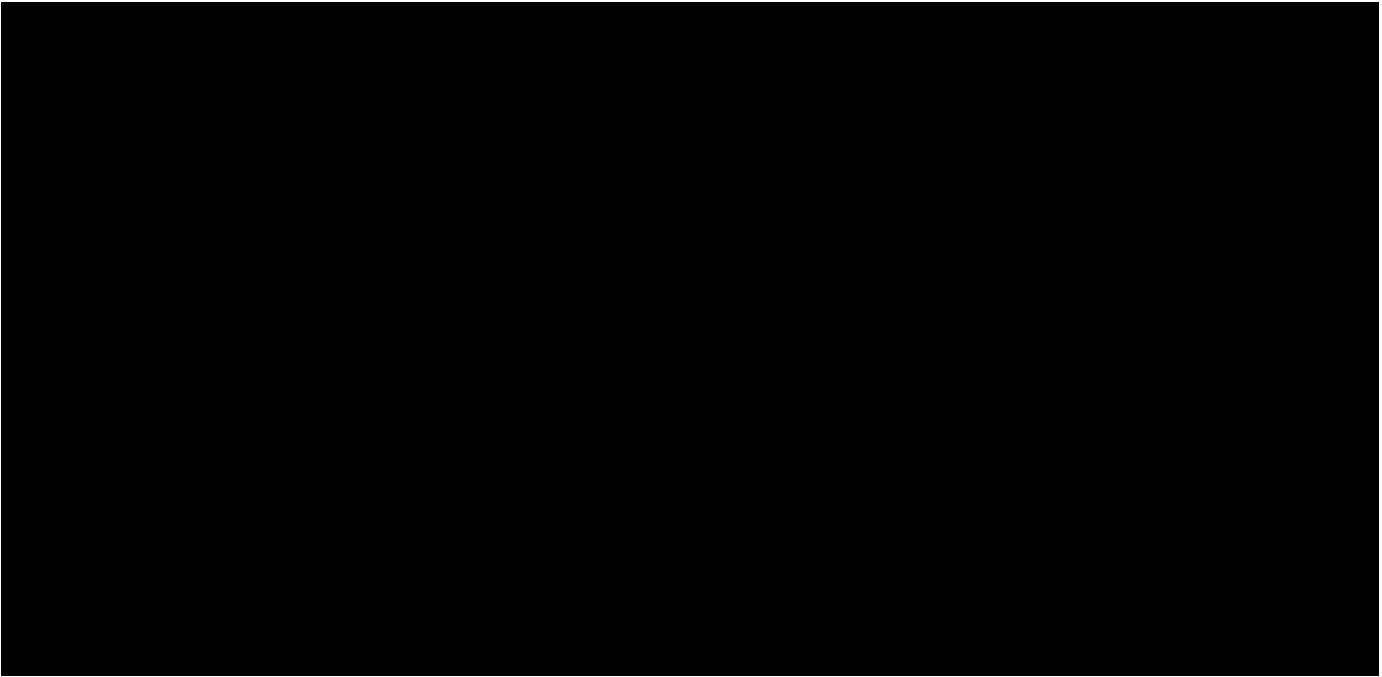
##### *i. The Primary Beneficiaries’ interests are vested, entitling them to rights under the Trust’s § 5.2(A).*

Unless the Trust specifically provides *otherwise*, a trustee must account in the form required under NRS 165.135. *See* NRS 165.1207(1) (“To the extent that the trust instrument does not provide otherwise,” “the trustee ... shall satisfy the duty to account” to a beneficiary in a form that satisfies NRS 165.135).





In turn, Julia and Alex, as the two Primary Beneficiaries (and/or any other Grantor descendants then living) have the exclusive right, if and when the Trustee decides to make distributions in his discretion (as he is reasonably expected to continue doing), to receive any and all such distributions, § 3.2.1, FUS 22-23. The



75 Nev. at 360, 343 P.2d at 574. Even if their rights to distributions are subject to the Trustee's discretion, as the only current Primary Beneficiaries (and Grantor's living descendants), Julia and Alex are vested beneficiaries under § 5.2(A). *See e.g., Matter of Brinley Amicon Property Trust*, 2018 WL 1448494, \*1 (Nev. March 21, 2018) (unpublished disposition) (recognizing that where trust's sole beneficiary's "only interest in the trust estate is a discretionary interest," nonetheless, "the trust vested the beneficiary with a present interest") (emphasis added).<sup>14</sup> Any contrary intention cannot be supposed to have existed in the Grantor's mind, *see Sharp*, [REDACTED]

[REDACTED] be superfluous. *See Connell*, 133 Nev. at 140, 393 P.3d at 1092 (rejecting interpretation rendering trust article "superfluous"). Further, imposing a "vested" requirement on said beneficiaries that is impossible to achieve under the Trust's terms, given the Trustee's reading of § 5.2(A), makes no sense. *See Connell*, 134 Nev. at 616, 426 P.3d at 602 ("favoring the most fair and reasonable interpretation of the trust's language" to determine settlor's intent) (internal quotations omitted).

---

<sup>14</sup> *Accord*, BOGERT'S, § 973 (revised June 2021) (under the Uniform Trust Code ("UTC"), § 103(3), for purposes of being entitled to an accounting, distinguishing unqualified from *qualified beneficiaries*, the latter who are beneficiaries "currently entitled to receive, or who are currently eligible in the exercise of the trustee's discretion to receive, a distribution of income or principal, and persons who would be such a distributee or permissible distributee if on the date the beneficiary's status is being determined the current beneficiaries' interests terminated or the trust itself terminated") (emphasis added).

[REDACTED]

[REDACTED]

[REDACTED]. At that point, there would no longer be a trust as the ‘trustee’ would cease to function as a fiduciary for the beneficiaries:

At the heart of every trust is a fiduciary relationship between the trustee and the beneficiary. Accountability of the trustee to the beneficiary is, in turn, at the heart of their fiduciary relationship.

BOGERT’S, § 965 (revised June 2021); *see also* NRS 162.020(1)(b) (“‘Fiduciary’ includes a trustee under any trust, express, implied, resulting or constructive ...”); NRS 132.145(1) (same). Although the Grantor did not attempt to do so here,<sup>15</sup> even “the settlor of a trust cannot relieve the trustee of the fundamental duty to account.” *Id.*<sup>16</sup>

---

<sup>15</sup> The Trustee never alleges that the Trust is a so-called *quiet* trust under which the beneficiary’s right to know of such trust’s existence may be restricted, but only “for a period of time.” NRS 163.004(1)(a). In contrast, an indefinitely silent trust would result in forever unaccountable trustees—whose potential mismanagement could go unaddressed over years and thus be magnified irreparably. That is simply no trust.

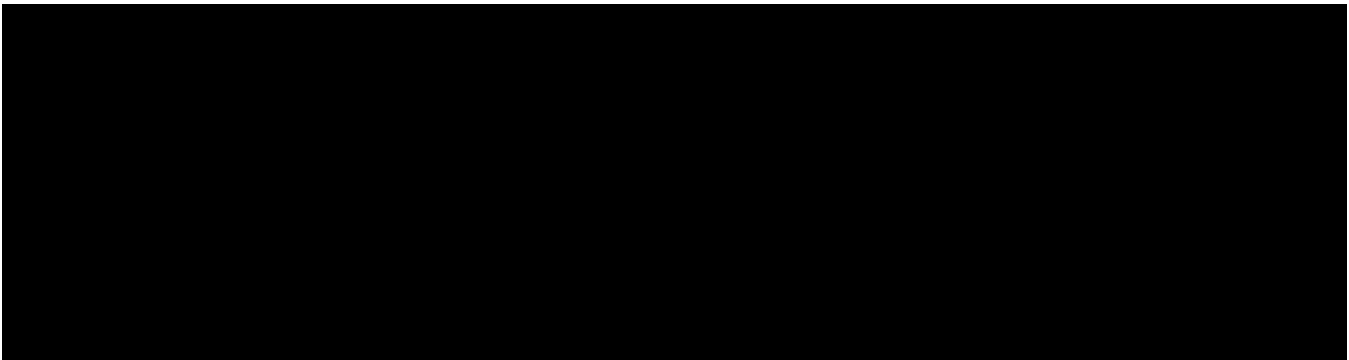
<sup>16</sup> BOGERT’S, § 965; *see id.* (“A provision in a trust instrument purporting to eliminate any duty of a trustee to account, which essentially constitutes an attempt to oust the court of its inherent equitable, constitutional, or statutory jurisdiction, is violative of public policy and void. As stated by Judge Learned Hand: ‘no language, however strong, will entirely remove any power held in trust from the reach of a court of equity.’”).

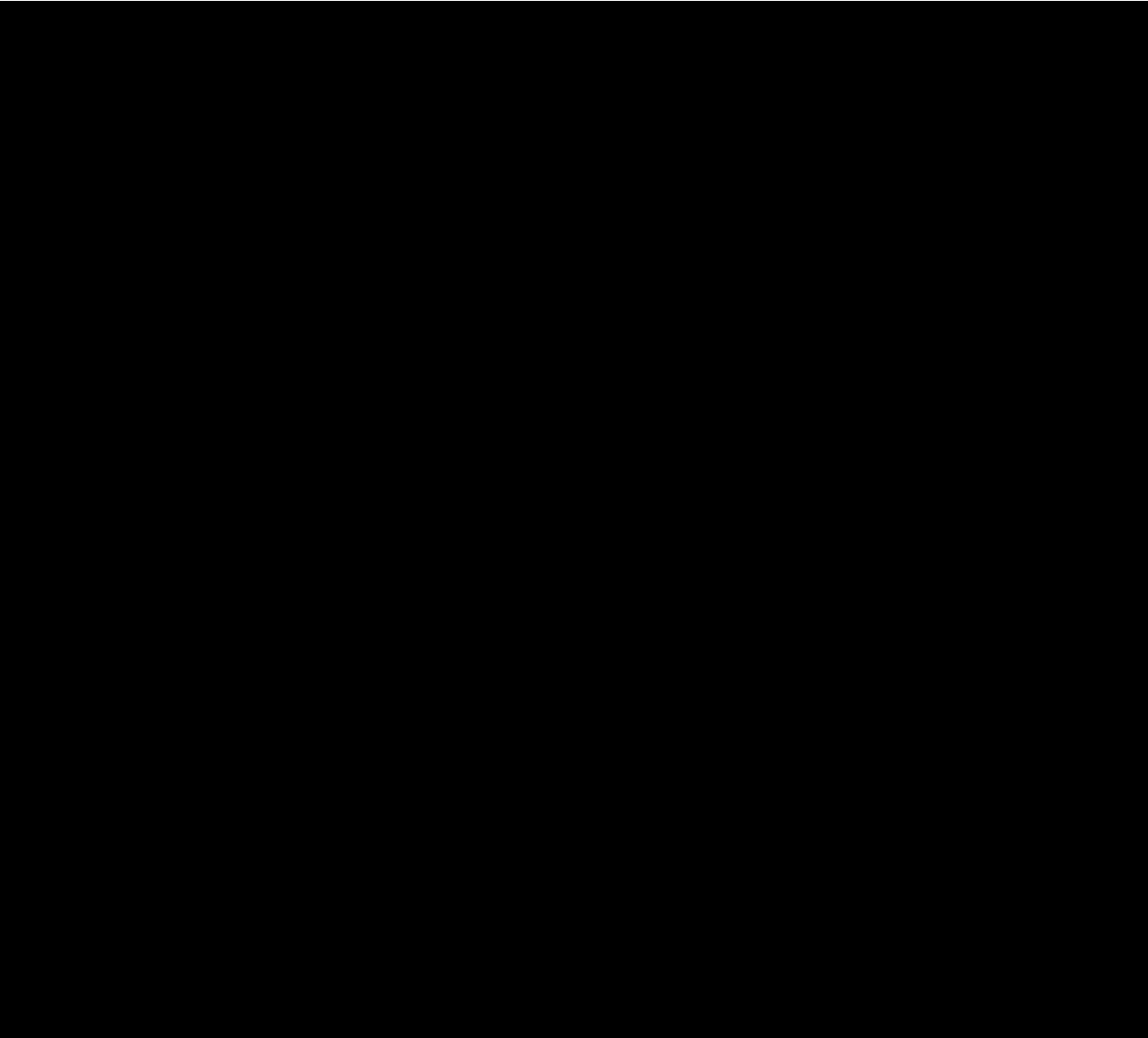
The Primary Beneficiaries' interests must be vested also because "[h]aving a beneficiary with vested rights in trust property is one of the five essential elements of settling a trust," and so without at least one vested interest, there can be no trust:

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

BOGERT'S, § 1061 (rev. June 2021). Here, the Trustee's agent admits the Trust's property belongs to the children. *See* APP 352, Dec. 13, 2019 email from Martie McBride, Nedder & Associates, LLC to Joanne ("We are trying to help the kids understand that this is their money and that they are the ones who should be making decisions on how it is spent").

For this additional reason, the Primary Beneficiaries have interests that are vested, and are thus entitled to the full rights under § 5.2(A). These rights, FUS 29-30, include the following, which the District Court erred in not *also* ordering the Trustee to provide the Primary Beneficiaries:



- 
- ii. Because the Primary Beneficiaries have vested interests/rights under the Trust, they are also entitled to an accounting under NRS 165.*

Unless the Trust specifically provides otherwise, NRS 165.1207(1)(a) requires a trustee to account “to each current beneficiary, and to each remainder beneficiary.” But, the trustee need not account “to a beneficiary of an irrevocable trust while that beneficiary’s *only interest* in the trust estate is a discretionary interest, as described in NRS 163.4185.” NRS 165.1207(1)(b)(5) (emphasis added).



Under Title 12, governing “wills and estates of deceased persons,”<sup>17</sup> NRS 132.180 defines *interest* as [REDACTED]

‘Interest’ means:

1. The whole of any property, real or personal, legal or equitable, present or future, or any part thereof, or any other estate therein;
2. A power to appoint, consume, apply or expend property; or
3. Any other right, power, privilege or immunity relating to property.

[REDACTED]

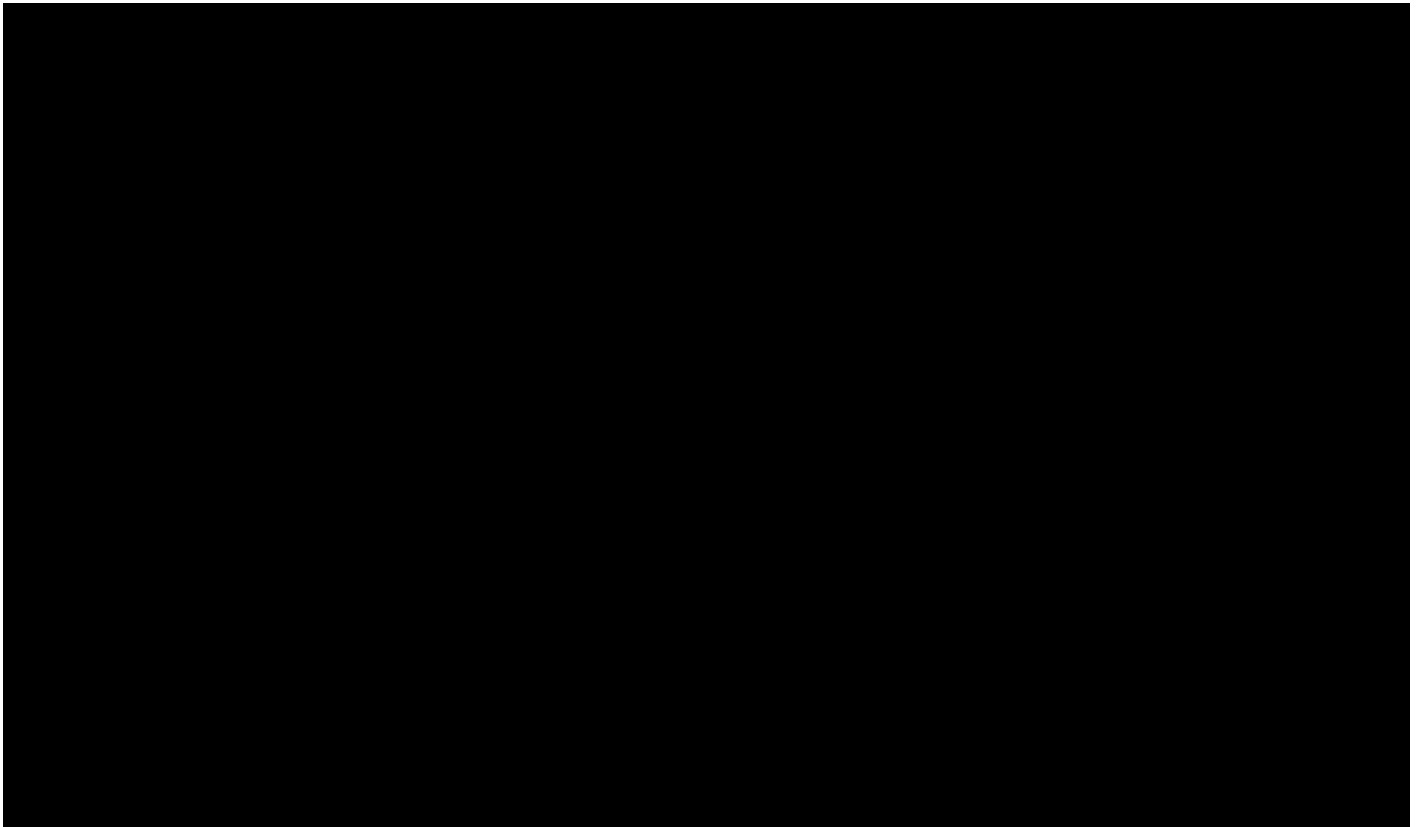
NRS 165.1207(1)(b)(5), on which the Trustee heavily relies, deals only with *discretionary* interests. Further, because this statute ties only to those such interests that are “as described in NRS 163.4185,” it applies only to discretionary interests in distributions. Indeed, NRS 163.4185, titled “Classifications of distribution interests,” states that “[a] distribution interest may be classified as [a] mandatory ... support ... [and/or] [a] discretionary interest.” NRS 163.4185(1)(a-c). As such, the exception relieving a trustee from accounting under NRS 165.1207(1)(b)(5) is

---

<sup>17</sup> Original in ALL CAPS.

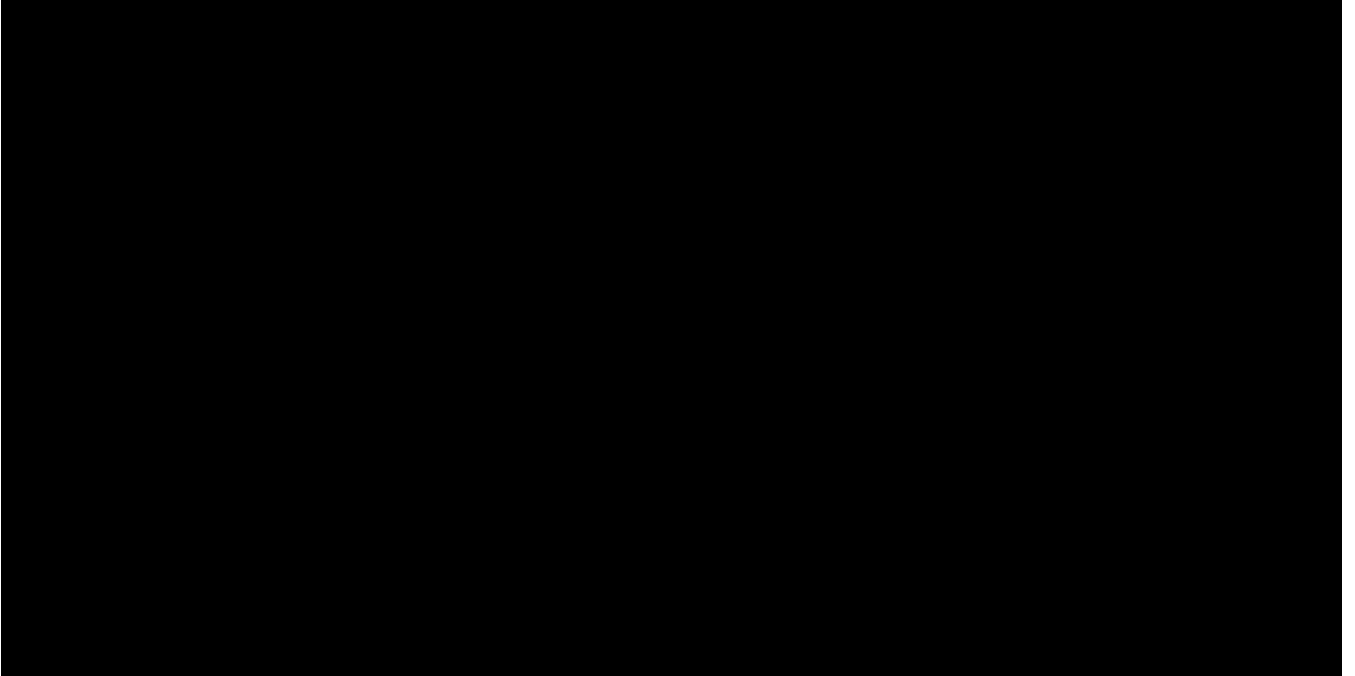
available *if* the beneficiary requesting the accounting has only (i) a distribution interest in the trust and (i) that interest is discretionary.

The District Court found here that the Primary “Beneficiaries’ interest in the Trust *includes* distributions of income and principal in the discretion of the Trustees.” APP 499, ¶ 3 (emphasis added). Indeed, the Court found that the Primary 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.” *Id.*, ¶ 4. “[T]hey [also] have rights under other sections of the Trust.” APP 501, ¶ 16.



---

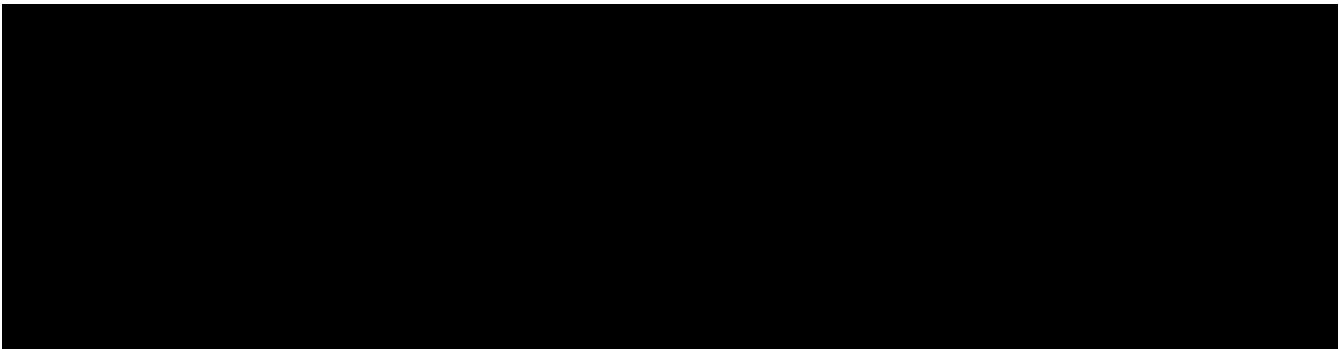
<sup>18</sup> See Trustee’s Supp. to Obj. to Pet., APP 243, p. 3:10-12 (“under Section 7.2(D) ... while the Beneficiaries may remove the Independent Trustee”).



Primary Beneficiaries. As such, NRS 165.1207(1)(a) mandates that the Trustee provide the Primary Beneficiaries, as current beneficiaries, an accounting that complies with the form under NRS 165.135.<sup>19</sup>

As stated earlier, without an accounting duty owed to the Primary Beneficiaries under the Trust's terms and/or NRS 165.1207(1)(a), there would be no fiduciary relationship, no genuine trustee and no valid Trust.<sup>20</sup> Thus, the District

---



<sup>20</sup> Even under an irrevocable trust with its grantor deceased and no trust protector and where, under its terms, the only beneficiary had only one interest that was a

Court erred in not ordering the Trustee to provide the Primary Beneficiaries all the information and documentation to which they are entitled under the Trust's § 5.2(A) and, to the extent it is more, an accounting in the form required under NRS 165.135.

**B. THE DISTRICT COURT ERRED DECLINING TO COMPEL PRODUCTION OF A COMPLETE COPY OF THE TRUST TO ITS PRIMARY BENEFICIARIES.**

The District Court further clearly erred in not providing the Primary Beneficiaries a complete copy of the Trust, regardless of whether or not certain sections within affect them.

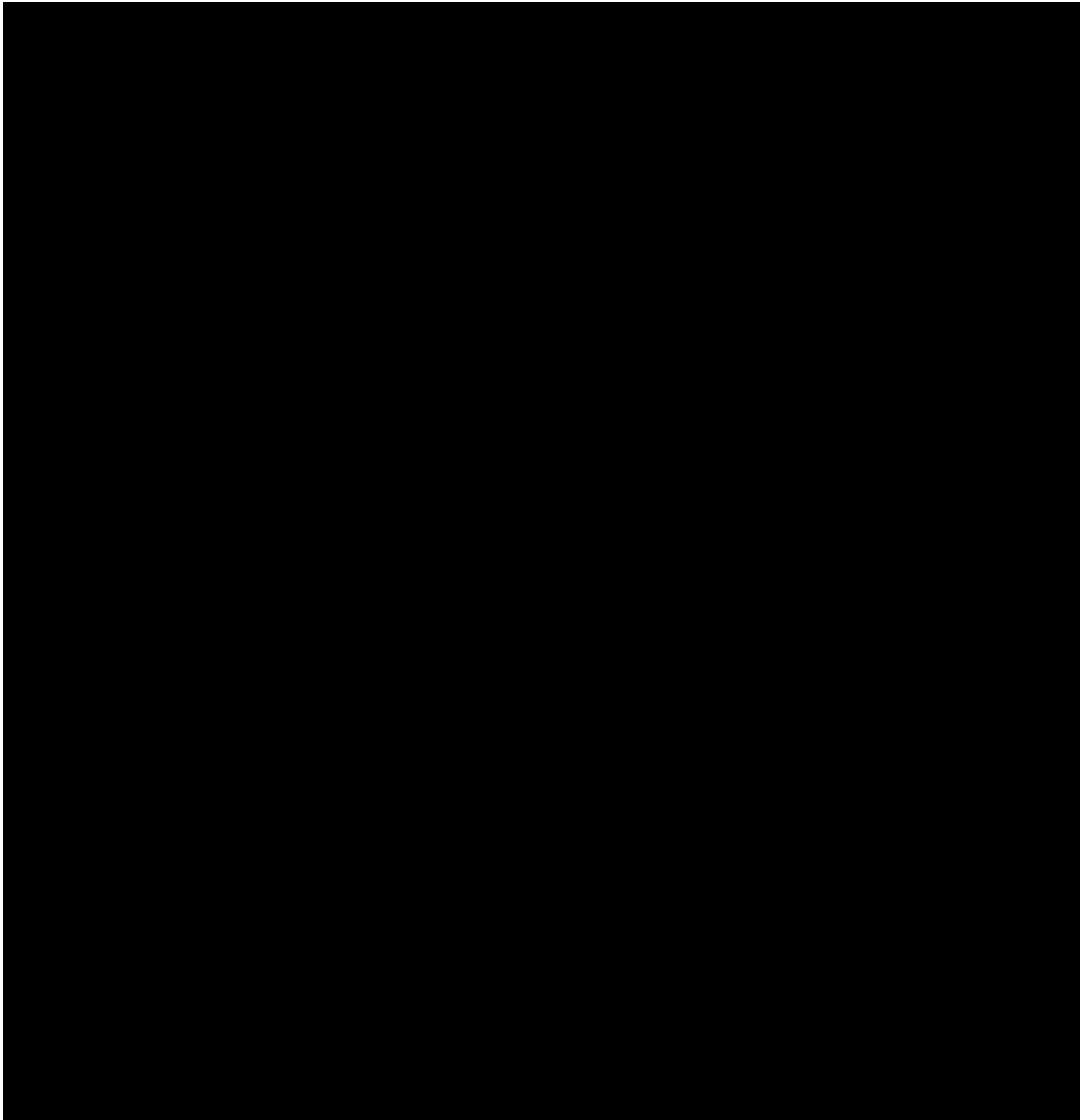
- i. The Trust as a whole and specific terms therein provide the Primary Beneficiaries a right to a copy of the Trust.*

The Court ruled for a partial disclosure, reasoning that “the language in the Trust is so specific and there is no is no provision in the Trust requiring the Trustees to provide a copy of the Trust to the Beneficiaries.” APP 500, ¶ 15. But, a provision expressly granting beneficiaries a copy of the entire trust is not a prerequisite for a beneficiary merely obtaining a copy of the legal instrument under which she has interests and/or rights. *Accord*, NRS 164.021(2)(c) (requiring trustee of a revocable trust who sends out notice of it becoming irrevocable to provide “[a]ny provision of the trust instrument which pertains to the beneficiary”); *see also*, *Horst*, at 867 (“only a complete disclosure of all provisions of a trust instrument pertaining to a

---

distribution interest which was discretionary, and the trust terms were unavailing on a right to an accounting, reason and fairness dictate the beneficiary must still be able to obtain an accounting from the trustee. *See* NRS 165.180.

beneficiary will ... give a beneficiary all the information he or she needs to decide whether to contest a trust”).



cannot expand the Primary Beneficiaries’ rights nor diminish the Trustee’s discretion on distributions. It will merely enable giving effect to what were most

reasonably the Grantor's intentions. *See Connell*, 134 Nev. at 616, 426 P.3d at 602. Without such disclosure, various of the Trust sections would be rendered meaningless or superfluous, including [REDACTED]. Indeed, the Trustee admits it "is difficult to imagine that any of the sections of the Trust agreement will not affect the Beneficiaries and their rights in some way as they are the primary beneficiaries." Appellant's Br., 25. And yet, nothing in the Trust or in Nevada law has ever prohibited the Trustee from providing to Julia and Alex a copy of the Trust, as they have requested for years.

The Trustee entirely rests his obstinance to merely disclose a copy of the Trust on a single provision in the Trust which only prohibits the Trustee from "not provid[ing] notice of the existence of the trust to any beneficiary hereunder." § 5.1(E), FUS 29. The meaning of these words is plain and ordinary. *See Sharp*, 75 Nev. at 360, 343 P.2d at 574 (when construing an express provision of a trust, the Court must simply ask 'what is the meaning of the trustor's words').

Thus, this provision applies only while the beneficiaries are unaware of the existence of the trust created for their benefit, *e.g.*, the beneficiary is a young child. Indeed, enforcement of this prohibition has been impossible for years because Julia and Alex, respectively an adult and a teenager soon to reach adulthood, learned of the Trust years ago, as reflected by their requests for information on the Trust. In

fact, before he passed, the Grantor himself informed their mother (and legal guardian) about the Trust by sharing with her (i) a copy of the recording of the meeting between him and his estate planning attorney (the Trustee) discussing the Trust, and (ii) documents showing assets funding the Trust. APP 49-77, 79-81. Moreover, the Trustee's agent too has gone so far as to propose providing *some* information on the Trust and/or its assets, albeit orally to Julia and Alex in the Trustee's office with no one else present. APP 359.

That the Trustee has exploited such null provision, § 5.1(E), FUS 29, to repeatedly deny the Primary Beneficiaries' request for merely a copy of the Trust is, at minimum, improper. That the Trustee's agent has inaccurately informed Julia and Alex that the terms of the trust are "explicitly private," Appellant's Br., 14, is dishonest. The District Court's clearly erroneous ruling in not ordering the Trustee to provide a copy of the entire Trust agreement to its Primary Beneficiaries enables the individual Trustee's continued abuse.

*ii. The Primary Beneficiaries are entitled to a copy of the entire Trust under NRS 165.147.*

NRS 165.147 generally provides beneficiaries who are entitled to an accounting under NRS 165 with a copy of the trust. Here, because the Primary Beneficiaries are entitled to an accounting under NRS 165, *supra* at III(A)(ii), upon making a demand to the Trustee, they are also entitled to a copy of the Trust.

//

## CONCLUSION

For the reasons herein, the Primary Beneficiaries request that this Court hold the following (and reverse anything to the contrary in the District Court's Order):

- (i) The Primary Beneficiaries are the vested beneficiaries pursuant to the Trust's § 5.2(A), and thus entitled to all the rights thereunder.
- (ii) [REDACTED],  
[REDACTED],  
NRS 165.1207(1)(b)(5) does not apply here, and so the Primary Beneficiaries are entitled to have the Trustee provide them with an accounting that complies with NRS 165.135.
- (iii) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] the Primary Beneficiaries are entitled to a complete copy of the Trust.
- (iv) The Primary Beneficiaries are further entitled to a complete copy of the Trust because the Trustee admits that all sections of the Trust affect the Primary Beneficiaries.
- (v) Because the Primary Beneficiaries are entitled to an accounting under NRS 165, they are also entitled pursuant to NRS 165.147 to a complete



copy of the Trust.

Given the above requested holdings, the Primary Beneficiaries further request this Court affirm the parts of the District Court's Order compelling the Trustee to provide the Primary Beneficiaries with the financial information specified in the Order and the Trust sections that affect them.

DATED this 4<sup>th</sup> day of March, 2022.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

By: /s/ Roberto M. Campos  
Alexander G. LeVeque, Esq. (SBN 11183)  
aleveque@sdfnlaw.com  
Roberto M. Campos, Esq. (SBN 15189)  
rcampos@sdfnlaw.com

*Attorneys for Respondents / Cross-Appellants*

### **ATTORNEY'S CERTIFICATE**

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word in 14-point Times New Roman font.
2. I further certify that this brief complies with the type-volume limitations of NRAP 28.1(e)(1) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 9,317 words.
3. Finally, I certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is

//

not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 4<sup>th</sup> day of March, 2022.

SOLOMON DWIGGINS FREER & STEADMAN, LTD.

By: /s/ Roberto M. Campos  
Alexander G. LeVeque, Esq. (SBN 11183)  
aleveque@sdfnvlaw.com  
Roberto M. Campos, Esq. (SBN 15189)  
rcampos@sdfnvlaw.com

*Attorneys for Respondents / Cross-Appellants*

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of SOLOMON DWIGGINS FREER & STEADMAN, LTD. and that on the 4<sup>th</sup> day of March, 2022, a redacted version of the **RESPONDENTS / CROSS-APPELLANTS' OPENING BRIEF** ("Brief"), and **RESPONDENTS / CROSS-APPELLANTS' APPENDIX (VOLUME 1)**, were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

HUTCHISON & STEFFEN, PLLC  
Russell J. Geist, Esq. (SBN 9030)  
Todd W. Prall, Esq. (SBN 9154)  
Peccole Professional Park  
10080 Alta Drive, Suite 200  
Las Vegas, Nevada 89145

*Attorneys for Appellant*

The Honorable Gloria Sturman  
Eighth Judicial District Court, Dept. 26  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89155

I further certify that on the 4<sup>th</sup> day of March, 2022, I caused an unredacted copy of the above Brief, along with **RESPONDENTS / CROSS-APPELLANTS' APPENDIX (VOLUME 2 – FILED UNDER SEAL)** to be deposited into the USPS First Class mail addressed to Nevada Supreme Court and to the recipients and addresses noted above.

/s/ Alexandra Carnival  
An Employee of Solomon Dwiggin Freer &  
Steadman, Ltd.