

IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF THE ADMINISTRATION OF THE SSJ'S ISSUE TRUST,	Case No.: 85927 District Court Clerk of Supreme Court PR17-00445 PR17-00446	Electronically Filed May 22 2023 06:43 PM Elizabeth A. Brown Clerk of Supreme Court
IN THE MATTER OF THE ADMINISTRATION OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST.		
SAMUEL JAKSICK, INDIVIDUALLY AND AS CO- TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST, AND AS TRUSTEE OF THE SSJ'S ISSUE TRUST, Appellant, vs. JAMES S. PROCTOR, CPA, CFE, CVA, CFF IN HIS CAPACITY AS THE APPOINTED TRUSTEE OF THE JAKSICK FAMILY TRUST; KEVIN RILEY, INDIVIDUALLY AND AS FORMER TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST, AND AS TRUSTEE OF THE WENDY A. JAKSICK 2012 BHC FAMILY TRUST; MICHAEL S. KIMMEL, INDIVIDUALLY AND AS CO- TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST; TODD B. JAKSICK, INDIVIDUALLY AND AS CO-		

TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST, AND AS TRUSTEE OF THE SSJ'S ISSUE TRUST; AND WENDY JAKSICK, INDIVIDUALLY, Respondents.	
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**APPENDIX TO OPENING BRIEF
VOLUME I**

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **APPENDIX TO OPENING BRIEF VOLUME I** does not contain the social security number of any person.

DATED: May 22, 2023.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 22nd day of May, 2023, a copy of the foregoing **APPENDIX TO OPENING BRIEF VOLUME I** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex) and served via electronic mail:

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By: /s/ Pamela Miller
An Employee of McDonald Carano LLP

**THE
SAMUEL S. JAKSICK, JR.
FAMILY TRUST AGREEMENT
(AS RESTATED)**

Samuel S. Jaksick, Jr., an married man, a citizen of the United States of America and a resident of Reno, Washoe County, Nevada, as Grantor and Trustee under the Samuel S. Jaksick, Jr. Family Trust Agreement dated December 4, 2003, as subsequently amended and restated, hereby amends and restates the Trust Agreement in its entirety to read as hereafter provided.

I

DESCRIPTION OF TRUST PROPERTY

The Grantor has transferred or will transfer to the trust various property. All property transferred to the trust constitutes the separate property of the Grantor. The Trustee is to administer the property and any other property subsequently transferred to or acquired by the trust upon the terms and conditions contained in this Trust Agreement.

II

DISPOSITION OF INCOME AND PRINCIPAL

A. **LIFETIME OF GRANTOR.** During the lifetime of the Grantor, the trust estate is to be held, administered, and distributed as hereafter provided.

1- During the lifetime of the Grantor, the Trustee must pay to or apply for the benefit of the Grantor, in quarter-annual or more frequent installments, as much of the net income and principal of the trust estate as may be requested by the Grantor from time to time. The requests may be verbal or written. However, the Trustee may, in the Trustee's discretion, require that all requests be in writing. Any net income not distributed is to be accumulated and added to principal. If the Trustee considers the distributions requested by the Grantor to be insufficient, the Trustee may also pay to or apply for the benefit of the Grantor as much of the principal of the trust estate as is necessary, in the Trustee's discretion, for the proper health, education, support, and maintenance of the Grantor, in accordance with the accustomed manner of living of the Grantor on the date of execution of this Trust Agreement.

2. If the Trustee determines, in the Trustee's discretion, that the Grantor is under any legal disability, regardless of whether or not a court of competent jurisdiction has declared the Grantor to be incompetent, mentally ill, or in need of a conservator or guardian of the estate (but subject to the right of the Grantor to petition a court for a determination that no disability exists), the Trustee may withhold any income distributions that are otherwise required to be made to the disabled Grantor pursuant to subparagraph A.1. above. The Trustee may instead pay to or apply for the benefit of the Grantor as much of the net income and principal of the trust estate as the Trustee, in the Trustee's discretion, considers necessary for the proper health, education, support, and maintenance of the Grantor, in accordance with the Grantor's accustomed manner of living on the date of execution of this Trust Agreement. Any net income not distributed is to be accumulated and added to principal.

3. During the lifetime of the Grantor, the Trustee must, in addition, distribute such amounts from the principal of the trust estate to such one or more persons and entities, including the Grantor, and on such terms and conditions, either outright or in trust, as the Grantor may appoint by a written and acknowledged instrument specifically referring to and exercising this general power of appointment.

B. DEATH OF THE GRANTOR, IF THE GRANTOR IS SURVIVED BY HIS SPOUSE. On the death of the Grantor, if the Grantor is survived by his spouse, Janene Barger, hereafter referred to as the "Surviving Spouse," the trust estate, including any additions made to the trust estate as a result of the death of the Grantor, such as from the Will of the Grantor or from life insurance policies on the life of the Grantor, shall be held, administered, and distributed as hereafter provided.

1. On the death of the Grantor, the Trustee must distribute the trust estate as then constituted, including any additions made to the trust estate as a result of the death of the Grantor, such as from the Will of the Grantor or from life insurance policies on the life of the Grantor, to such one or more persons and entities, including the estate of the Grantor, and on such terms and conditions, either outright or in trust, as the Grantor may appoint by a Will or a written and acknowledged instrument specifically referring to and exercising this general power of appointment. Any of the trust estate not effectively appointed by the Grantor in this manner is to be distributed, or retained in trust, pursuant to subparagraphs B.2. through B.4. below.

2. The Trustee shall divide the remaining trust estate into two (2) trusts, designated as the Marital Trust and the Decedent's Trust. There need be no physical segregation or division of the Marital Trust and the Decedent's Trust except as segregation

or division may be required by the termination of either of the trusts, but the Trustee shall maintain separate accounts for the different undivided interests. The Decedent's Trust and the Marital Trust shall consist of the amounts set forth in subparagraphs B.3. and B.4., respectively, below.

3. The Decedent's Trust shall consist of all the Grantor's property of the trust estate including the Grantor's residence located at Lake Tahoe, Nevada (hereafter referred to as the "Lake Tahoe Residence"). However, if none of the Grantor's issue survive him, the entire trust estate will be added to the Marital Trust under subparagraph B.4. below.

The Trustee is specifically authorized at any time within nine (9) months following the date of death of the Grantor to disclaim all or any part of the property to be allocated to the Decedent's Trust pursuant to this subparagraph B.3., in the Trustee's sole discretion. Any such disclaimer by the Trustee shall be made by a written and acknowledged instrument delivered to the Trustee. Any property or portion thereof that is disclaimed by the Trustee in this manner shall be allocated to the Marital Trust. In addition, to further facilitate any such disclaimer by the Trustee at the level of each of the individual beneficiaries under this Trust Agreement, by accepting their status as beneficiaries under this Trust Agreement each beneficiary irrevocably appoints Todd Bruce Jaksick as his or her "general attorney-in-fact" specifically authorized to execute any valid disclaimers on his or her behalf pursuant to Chapter 120 of the Nevada Revised Statutes. Should Todd Bruce Jaksick for any reason fail to qualify or cease to act as "general attorney-in-fact," each beneficiary irrevocably appoints Stanley S. Jaksick as his or her "general attorney-in-fact" specifically authorized to execute any valid disclaimers on his or her behalf pursuant to Chapter 120 of the Nevada Revised Statutes.

4. The Marital Trust shall consist of any of the Grantor's property that is disclaimed by the Trustee pursuant to subparagraph B.3. above. This amount shall vest immediately on the death of the Grantor, and the Trustee shall satisfy this amount in cash or in kind, or partly in each, with assets of the Grantor contributed to or added to the trust estate and eligible for the marital deduction. Assets allocated to the Marital Trust in kind shall be considered to satisfy this amount on the basis of their values on the date or dates of allocation. No assets shall be allocated to the Marital Trust for which a foreign death tax credit is allowable, unless other property of the Grantor is insufficient to satisfy the amount to be allocated to the Marital Trust pursuant to this subparagraph B.4.

The Surviving Spouse is authorized at any time within nine (9) months following the date of death of the Grantor to disclaim all or any part of the property to be allocated to the Marital Trust pursuant to this subparagraph B.4. Any such disclaimer by the Surviving Spouse shall be made by a written and acknowledged instrument delivered to the Trustee. Any property or portion thereof that is disclaimed by the Surviving Spouse in this manner, or in which the Surviving Spouse disclaims all of her interest, shall be allocated to the Decedent's Trust.

The Surviving Spouse shall have the power, during the remaining lifetime of the Surviving Spouse, to require the Trustee to make all or part of the principal of the Marital Trust productive, or to convert promptly any unproductive property into productive property. This power shall be exercised by the Surviving Spouse in a written instrument delivered to the Trustee.

If the Executor of the Grantor's estate elects to have all or any portion of the Marital Trust qualify for the marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations and cases thereunder, or any corresponding or substitute provisions applicable to the trust estate, then in no event shall the Trustee take any action or have any power that will impair the marital deduction, and all provisions of this Trust Agreement regarding the Marital Trust shall be interpreted to conform to the primary objective of having the Marital Trust qualify for the marital deduction.

If the Executor of the Grantor's estate elects to qualify only a portion of the Marital Trust for the federal estate tax marital deduction, then the trust estate of the Marital Trust shall be divided into separate Qualified and Non-Qualified portions, and each portion shall be administered as a separate Qualified or Non-Qualified Marital Trust during the remaining lifetime of the Surviving Spouse. If the Marital Trust is so divided into separate Qualified and Non-Qualified Marital Trusts, then all references in paragraph C. below to the Marital Trust shall be to both the Qualified and the Non-Qualified Marital Trusts. Discretionary distributions of principal from the Marital Trust shall first be made from the Qualified Marital Trust until it is exhausted, and thereafter from the Non-Qualified Marital Trust, except that all or any part of the distributions may be made from the Non-Qualified Marital Trust without first exhausting the Qualified Marital Trust if for any reason the Trustee considers it advisable.

C. DISPOSITION OF MARITAL TRUST. Following the death of the Grantor, the Marital Trust is to be held, administered, and distributed as hereafter provided.

1. Following the death of the Grantor, and during the remaining lifetime of the Surviving Spouse, the Trustee must pay to or apply for the benefit of the Surviving Spouse, in quarter-annual or more frequent installments, the entire net income of the Marital Trust. If the Trustee considers the net income of the Marital Trust to be insufficient, the Trustee may also pay to or apply for the benefit of the Surviving Spouse as much of the principal of the Marital Trust as the Trustee, in the Trustee's discretion, considers necessary for the proper health, support, and maintenance of the Surviving Spouse, after taking into consideration, to the extent the Trustee considers advisable, any other income or resources of the Surviving Spouse known to the Trustee. However, any discretionary distributions of principal pursuant to the preceding sentence shall not exceed \$100,000 per calendar year.

2. On the death of the Surviving Spouse, the Trustee must pay out of the principal of the Marital Trust any estate, inheritance, death, or other transfer taxes, including interest and penalties, resulting from the death of the Surviving Spouse that are attributable to any assets that, upon the death of the Surviving Spouse, are part of or are added to the Marital Trust. The amount of such taxes, interest, and penalties is to be determined and apportioned pursuant to article VII below.

3. On the death of the Surviving Spouse, the remaining balance of the Marital Trust shall be held, administered, and distributed as hereafter provided.

a. If the generation-skipping transfer tax imposed by Chapter 13 of the Internal Revenue Code of 1986, as amended (the "Code"), or any corresponding or substitute provision is in effect on the date of the Surviving Spouse's death, then there is to be distributed to the then living issue of the Grantor, by right of representation, but treating the Grantor's children as if they had predeceased the Grantor – thus skipping the Grantor's children, an amount equal to the balance of the Surviving Spouse's generation-skipping tax exemption that remains available to the Surviving Spouse's estate after the allocation of the exemption to all other generation-skipping transfers made by the Surviving Spouse at or prior to her death. However, the amount that would otherwise be distributed, free of trust, to each lineal descendant of the Grantor pursuant to the preceding sentence is instead to be retained in trust for the primary benefit of that lineal descendant pursuant to paragraph F. below. For the purposes of this subparagraph, the Surviving Spouse's generation-skipping tax exemption is the Surviving Spouse's exemption under Section 2631 of the Code, or any corresponding or substitute provision in effect on the date of the Surviving Spouse's death. The amount to be distributed pursuant to this subparagraph C.3.a. is to be satisfied in cash or in kind, or partly in each. Assets allocated to the

generation-skipping trusts in kind are to be considered to satisfy this amount on the basis of their values on the date or dates of allocation.

If the balance of Surviving Spouse's generation-skipping tax exemption that remains available to her estate should equal or exceed the total value of the Marital Trust on the date of her death, then the entire balance of the Marital Trust is to be distributed pursuant to this subparagraph C.3.a., and no assets are to be distributed pursuant to subparagraph C.3.b. below. If neither the federal generation-skipping transfer tax imposed by Chapter 13 of the Code nor any corresponding or substitute transfer tax is in effect on the date of the Surviving Spouse's death, then the entire balance of the Marital Trust is to be distributed pursuant to subparagraph C.3.b. below, and no assets are to be distributed pursuant to this subparagraph C.3.a.

The Grantor understands and acknowledges that, as a result of amendments to Chapter 13 of the Code that were enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, the Surviving Spouse's generation-skipping tax exemption is scheduled to increase substantially between 2002 and 2009, and the generation-skipping transfer tax is to be repealed effective January 1, 2010. If the scheduled increases in the generation-skipping tax exemption become effective, then the Grantor understands that the amount of the Surviving Spouse's exemption may exceed the total value of the Marital Trust, in which case the entire balance of the Marital Trust is to be distributed pursuant to this subparagraph C.3.a. Similarly, the Grantor understands that if the complete repeal of the generation-skipping transfer tax becomes effective, then the entire balance of the Marital Trust will be distributed pursuant to subparagraph C.3.b. below.

b. The remaining balance of the Marital Trust shall be divided into three (3) equal shares, subject to the adjustment provided in subparagraph C.3.b.(iv) below. Each such share shall be held, administered, and distributed as hereafter provided.

(i) One (1) such share shall be distributed to the Grantor's son, Todd Bruce Jaksick, if he is then living, and if he is not then living to the then living issue of Todd Bruce Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Todd Bruce Jaksick is not then living, and none of his issue is living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph C.3.b.

(ii) One (1) such share shall be distributed to the Grantor's son, Stanley S. Jaksick, if he is then living, and if he is not then living to the then living issue of Stanley S. Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Stanley S. Jaksick is not then living, and none of his issue is living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph C.3.b.

(iii) One (1) such share shall be distributed to the Grantor's daughter, Wendy Ann Jaksick Smrt, if she is then living, and if she is not then living to the then living issue of Wendy Ann Jaksick Smrt, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Wendy Ann Jaksick Smrt is not then living, and none of her issue is living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph C.3.b.

D. DISPOSITION OF THE DECEDENT'S TRUST. Following the death of the Grantor, the Decedent's Trust shall be held, administered, and distributed as hereafter provided.

1. On the death of the Grantor, and subject to any contrary directions contained in the Will of the Grantor, the Trustee must pay out of the principal of the Decedent's Trust any estate, inheritance, death, or other transfer taxes, including interest and penalties, resulting from the death of the Grantor that are attributable to any assets that, upon the death of the Grantor, are part of or are added to the Decedent's Trust. The amount of such taxes, interest, and penalties is to be determined and apportioned pursuant to article VII. The Trustee must, in addition, pay out of the principal of the Decedent's Trust any of the Grantor's last illness and funeral expenses, creditors' claims, bequests (including the bequest by the Grantor's Will of any of the Grantor's tangible personal property that is held in the trust estate), and any attorneys' fees and other costs incurred in administering the probate estate of the Grantor that are not paid from the probate estate of the Grantor.

2. On the death of the Grantor, and subject to the power of appointment provided in subparagraph B.1. above, the following property shall be held, administered, and distributed pursuant to paragraph G. below.

a. The Lake Tahoe Residence.

b. An amount equal to the estimated future payments of principal and interest on any deed of trust or mortgage, property taxes, assessments, insurance premiums, repair and maintenance expenses, utility expenses, and other expenses attributable to the Lake Tahoe Residence for a period of ten (10) years after the death of the Grantor (hereafter referred to as the "Residential Fund"). This amount shall be determined by the Trustee, in the Trustee's sole discretion, and shall be based upon all relevant historical expenses attributable to the Lake Tahoe Residence, as well as any relevant actuarial principles and/or other factors that the Trustee may determine necessary, in the Trustee's sole discretion. Notwithstanding Article VII, the amount in this subparagraph 2. will not be apportioned or charged any death taxes or administration expenses.

3. If the generation-skipping transfer tax imposed by Chapter 13 of the Internal Revenue Code of 1986, as amended (the "Code"), or any corresponding or substitute provision is in effect on the date of the Grantor's death, then there is to be distributed to the then living issue of the Grantor, by right of representation, but treating the Grantor's children as if they had predeceased the Grantor – thus skipping the Grantor's children, an amount equal to the balance of the Grantor's generation-skipping tax exemption that remains available to the Grantor's estate after the allocation of the exemption to all other generation-skipping transfers made by the Grantor at or prior to his death. However, the amount that would otherwise be distributed, free of trust, to each lineal descendant of the Grantor pursuant to the preceding sentence is instead to be retained in trust for the primary benefit of that lineal descendant pursuant to paragraph F. below. For the purposes of this subparagraph, the Grantor's generation-skipping tax exemption is the Grantor's exemption under Section 2631 of the Code, or any corresponding or substitute provision in effect on the date of the Grantor's death. The amount to be distributed pursuant to this subparagraph D.3. is to be satisfied in cash or in kind, or partly in each. Assets allocated to the generation-skipping trusts in kind are to be considered to satisfy this amount on the basis of their values on the date or dates of allocation.

If the balance of Grantor's generation-skipping tax exemption that remains available to his estate should equal or exceed the total value of the Decedent's Trust on the date of his death, then the entire balance of the Decedent's Trust, with the exception of the property described in subparagraph D.2. above, is to be distributed pursuant to this subparagraph D.3., and no assets are to be distributed pursuant to subparagraph D.4. below. If neither the federal generation-skipping transfer tax imposed

by Chapter 13 of the Code nor any corresponding or substitute transfer tax is in effect on the date of the Grantor's death, then the entire balance of the Decedent's Trust, with the exception of the property described in subparagraph D.2. above, is to be distributed pursuant to subparagraph D.4. below, and no assets are to be distributed pursuant to this subparagraph D.3.

The Grantor understands and acknowledges that, as a result of amendments to Chapter 13 of the Code that were enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, the Grantor's generation-skipping tax exemption is scheduled to increase substantially between 2002 and 2009, and the generation-skipping transfer tax is to be repealed effective January 1, 2010. If the scheduled increases in the generation-skipping tax exemption become effective, then the Grantor understands that the amount of the Grantor's exemption may exceed the total value of the Decedent's Trust, in which case the entire balance of the Decedent's Trust, with the exception of the property described in subparagraph D.2. above, is to be distributed pursuant to this subparagraph D.3. Similarly, the Grantor understands that if the complete repeal of the generation-skipping transfer tax becomes effective, then the entire balance of the Decedent's Trust, with the exception of the property described in subparagraph D.2. above, will be distributed pursuant to subparagraph D.4. below.

4. The remaining balance of the Decedent's Trust shall be divided into three (3) equal shares, subject to the adjustment provided in subparagraph D.4.d. below. Each such share shall be held, administered, and distributed as hereafter provided.

a. One (1) such share shall be distributed to the Grantor's son, Todd Bruce Jaksick, if he is then living, and if he is not then living to the then living issue of Todd Bruce Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Todd Bruce Jaksick is not then living, and none of his issue is living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph D.4.

b. One (1) such share shall be distributed to the Grantor's son, Stanley S. Jaksick, if he is then living, and if he is not then living to the then living issue of Stanley S. Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Stanley S. Jaksick is not then living, and none of his issue is

living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph D.4.

c. One (1) such share shall be distributed to the Grantor's daughter, Wendy Ann Jaksick Smrt, if she is then living, and if she is not then living to the then living issue of Wendy Ann Jaksick Smrt, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Wendy Ann Jaksick Smrt is not then living, and none of her issue is living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph D.4.

d. Grantor acknowledges that Wendy Ann Jaksick Smrt has received substantial sums of money and/or property from the Grantor and/or other members of, or entities related to, the Grantor's family, by virtue of which Grantor desires to adjust the share of the Decedent's Trust the Grantor desires Wendy Ann Jaksick Smrt, or the then living issue of Wendy Ann Jaksick Smrt, to receive pursuant to subparagraph D.4.c. above. Accordingly, the Trustee is hereby instructed to adjust the share of the Decedent's Trust to be distributed to Wendy Ann Jaksick Smrt, or the then living issue of Wendy Ann Jaksick Smrt, pursuant to subparagraph D.4.c. above as follows:

(i) The Trustee shall calculate the dollar value of the equal share of the Decedent's Trust each of the beneficiaries would otherwise be entitled to receive pursuant to this subparagraph D.4.

(ii) The Trustee shall then reduce the share Wendy Ann Jaksick Smrt, or the then living issue of Wendy Ann Jaksick Smrt, would otherwise be entitled to receive pursuant to subparagraph D.4.c. above by the sum of \$1,500,000.

(iii) The Trustee shall then reallocate the \$1,500,000 to and for the benefit of the other beneficiaries named in subparagraphs D.4.a. and D.4.b. above, in proportion to each beneficiary's interest as described therein.

(iv) The Trustee shall then recalculate the total share to be allocated to each of the beneficiaries named in this subparagraph D.4., and shall thereafter hold, administer, and distribute the shares pursuant to the terms of this Trust Agreement.

It is the sole intent and desire of the Grantor that the reductions and reallocations described in this subparagraph D.4.d. are the only actions and/or remedies to be pursued against Wendy Ann Jaksick Smrt. Accordingly, the Trustees and beneficiaries are instructed not to pursue any additional form of legal actions or otherwise against Wendy Ann Jaksick Smrt, either in their capacity as Trustee or beneficiary, and any such action(s) shall be construed as a contest of the provisions of this Trust Agreement for subject to paragraph O. of Article VIII below.

E. DEATH OF THE GRANTOR, IF THE GRANTOR IS NOT SURVIVED BY HIS SPOUSE. On the death of the Grantor, if the Grantor is not survived by the Surviving Spouse, the trust estate, including any additions made to the trust estate as a result of the death of the Grantor, such as from the Will of the Grantor or from life insurance policies on the life of the Grantor, shall be held, administered, and distributed as hereafter provided.

1. On the death of the Grantor, the Trustee must distribute the trust estate as then constituted, including any additions made to the trust estate as a result of the death of the Grantor, such as from the Will of the Grantor or from life insurance policies on the life of the Grantor, to such one or more persons and entities, including the estate of the Grantor, and on such terms and conditions, either outright or in trust, as the Grantor may appoint by a Will or a written and acknowledged instrument specifically referring to and exercising this general power of appointment. Any of the trust estate not effectively appointed by the Grantor in this manner is to be distributed, or retained in trust, pursuant to subparagraphs E.2. through E.5. below.

2. On the death of the Grantor, and subject to any contrary directions contained in the Will of the Grantor, the Trustee must pay out of the principal of the trust estate any estate, inheritance, death, or other transfer taxes, including interest and penalties, resulting from the death of the Grantor that are attributable to any assets that, upon the death of the Grantor, are part of or are added to the trust estate. The amount of such taxes, interest, and penalties is to be determined and apportioned pursuant to article VII. The Trustee must, in addition, pay out of the principal of the trust estate any of the Grantor's last illness and funeral expenses, creditors' claims, bequests (including the bequest by the Grantor's Will of any of the Grantor's tangible personal property that is held in the trust estate), and any attorneys' fees and other costs incurred in administering the probate estate of the Grantor that are not paid from the probate estate of the Grantor.

3. On the death of the Grantor, and subject to the power of appointment provided in subparagraph E.1. above, the following property shall be held, administered, and distributed pursuant to paragraph G. below.

a. The Lake Tahoe Residence.

b. An amount equal to the estimated future payments of principal and interest on any deed of trust or mortgage, property taxes, assessments, insurance premiums, repair and maintenance expenses, utility expenses, and other expenses attributable to the Lake Tahoe Residence for a period of ten (10) years after the death of the Grantor (hereafter referred to as the "Residential Fund"). This amount shall be determined by the Trustee, in the Trustee's sole discretion, and shall be based upon all relevant historical expenses attributable to the Lake Tahoe Residence, as well as any relevant actuarial principles and/or other factors that the Trustee may determine necessary, in the Trustee's sole discretion. Notwithstanding Article VII, the amount in this subparagraph 2. will not be apportioned or charged any death taxes or administration expenses.

4. If the generation-skipping transfer tax imposed by Chapter 13 of the Internal Revenue Code of 1986, as amended (the "Code"), or any corresponding or substitute provision is in effect on the date of the Grantor's death, then there is to be distributed to the then living issue of the Grantor, by right of representation, but treating the Grantor's children as if they had predeceased the Grantor – thus skipping the Grantor's children, an amount equal to the balance of the Grantor's generation-skipping tax exemption that remains available to the Grantor's estate after the allocation of the exemption to all other generation-skipping transfers made by the Grantor at or prior to his death. However, the amount that would otherwise be distributed, free of trust, to each lineal descendant of the Grantor pursuant to the preceding sentence is instead to be retained in trust for the primary benefit of that lineal descendant pursuant to paragraph F. below. For the purposes of this subparagraph, the Grantor's generation-skipping tax exemption is the Grantor's exemption under Section 2631 of the Code, or any corresponding or substitute provision in effect on the date of the Grantor's death. The amount to be distributed pursuant to this subparagraph E.4. is to be satisfied in cash or in kind, or partly in each. Assets allocated to the generation-skipping trusts in kind are to be considered to satisfy this amount on the basis of their values on the date or dates of allocation.

If the balance of Grantor's generation-skipping tax exemption that remains available to his estate should equal or exceed the total value of the trust estate on the date of his death, then the entire balance of the trust estate, with the exception of the property described in subparagraph E.3. above, is to be distributed pursuant to this subparagraph E.4., and no assets are to be distributed pursuant to subparagraph E.5. below. If neither the federal generation-skipping transfer tax imposed by Chapter 13 of the

Code nor any corresponding or substitute transfer tax is in effect on the date of the Grantor's death, then the entire balance of the trust estate, with the exception of the property described in subparagraph E.3. above, is to be distributed pursuant to subparagraph E.5. below, and no assets are to be distributed pursuant to this subparagraph E.4.

The Grantor understands and acknowledges that, as a result of amendments to Chapter 13 of the Code that were enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, the Grantor's generation-skipping tax exemption is scheduled to increase substantially between 2002 and 2009, and the generation-skipping transfer tax is to be repealed effective January 1, 2010. If the scheduled increases in the generation-skipping tax exemption become effective, then the Grantor understands that the amount of the Grantor's exemption may exceed the total value of the trust estate, in which case the entire balance of the trust estate, with the exception of the property described in subparagraph E.3. above, is to be distributed pursuant to this subparagraph E.4. Similarly, the Grantor understands that if the complete repeal of the generation-skipping transfer tax becomes effective, then the entire balance of the trust estate, with the exception of the property described in subparagraph E.3. above, will be distributed pursuant to subparagraph E.5. below.

5. The remaining balance of the trust estate shall be divided into three (3) equal shares, subject to the adjustment provided in subparagraph E.5.d. below. Each such share shall be held, administered, and distributed as hereafter provided.

a. One (1) such share shall be distributed to the Grantor's son, Todd Bruce Jaksick, if he is then living, and if he is not then living to the then living issue of Todd Bruce Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Todd Bruce Jaksick is not then living, and none of his issue is living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph E.5.

b. One (1) such share shall be distributed to the Grantor's son, Stanley S. Jaksick, if he is then living, and if he is not then living to the then living issue of Stanley S. Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Stanley S. Jaksick is not then living, and none of his issue is

living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph E.5.

c. One (1) such share shall be distributed to the Grantor's daughter, Wendy Ann Jaksick Smrt, if she is then living, and if she is not then living to the then living issue of Wendy Ann Jaksick Smrt, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to the preceding sentence shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. below. If Wendy Ann Jaksick Smrt is not then living, and none of her issue is living, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph E.5.

d. Grantor acknowledges that Wendy Ann Jaksick Smrt has received substantial sums of money and/or property from the Grantor and/or other members of, or entities related to, the Grantor's family, by virtue of which Grantor desires to adjust the share of the trust estate the Grantor desires Wendy Ann Jaksick Smrt, or the then living issue of Wendy Ann Jaksick Smrt, to receive pursuant to subparagraph E.5.c. above. Accordingly, the Trustee is hereby instructed to adjust the share of the trust estate to be distributed to Wendy Ann Jaksick Smrt, or the then living issue of Wendy Ann Jaksick Smrt, pursuant to subparagraph E.5.c. above as follows:

(i) The Trustee shall calculate the dollar value of the equal share of the trust estate each of the beneficiaries would otherwise be entitled to receive pursuant to this subparagraph E.5.

(ii) The Trustee shall then reduce the share Wendy Ann Jaksick Smrt, or the then living issue of Wendy Ann Jaksick Smrt, would otherwise be entitled to receive pursuant to subparagraph E.5.c. above by the sum of \$1,500,000.

(iii) The Trustee shall then reallocate the \$1,500,000 to and for the benefit of the other beneficiaries named in subparagraphs E.5.a. and E.5.b. above, in proportion to each beneficiary's interest as described therein.

(iv) The Trustee shall then recalculate the total share to be allocated to each of the beneficiaries named in this subparagraph E.5., and shall thereafter hold, administer, and distribute the shares pursuant to the terms of this Trust Agreement.

It is the sole intent and desire of the Grantor that the reductions and reallocations described in this subparagraph E.5.d. are the only actions and/or remedies to be pursued against Wendy Ann Jaksick Smrt. Accordingly, the Trustees and beneficiaries are instructed not to pursue any additional form of legal actions or otherwise against Wendy Ann Jaksick Smrt, either in their capacity as Trustee or beneficiary, and any such action(s) shall be construed as a contest of the provisions of this Trust Agreement for subject to paragraph O. of Article VIII below.

F. DISTRIBUTIONS TO THE ISSUE OF THE GRANTOR. Any amount distributable in trust for the primary benefit of each lineal descendant of the Grantor pursuant to the provisions of this Trust Agreement is to be retained and administered as a separate trust for the primary benefit of that lineal descendant pursuant to subparagraphs F.1. through F.4. below. In each of the following subparagraphs, all references to the "Beneficiary" are to the lineal descendant of the Grantor for whose primary benefit a separate trust is established pursuant to the provisions of this Trust Agreement.

1. During the lifetime of the Beneficiary, the Trustee shall pay to or apply for the benefit of the Beneficiary as much of the net income and principal of the Beneficiary's trust as the Trustee, in the Trustee's discretion, considers necessary for the proper health, education, support, and maintenance of the Beneficiary, after taking into consideration, to the extent the Trustee considers advisable, any other income or resources of the Beneficiary known to the Trustee. Any net income not distributed shall be accumulated and added to principal.

2. During the lifetime of the Beneficiary, the Trustee may also pay to or apply for the benefit of any one (1) or more of the issue of the Beneficiary, including those aged 18 or older, and the surviving spouses of any deceased issue of the Beneficiary as much of the principal of the "Exempt Portion" (as defined in article VI below) of the Beneficiary's trust as the Trustee, in the Trustee's discretion, considers necessary for the health, education, support, and maintenance of such beneficiaries, after taking into consideration, to the extent the Trustee considers advisable, any of their other income or resources known to the Trustee. In exercising the discretion granted by this subparagraph, the Trustee may pay more to or apply more for some beneficiaries than others, and may make payments to or applications of benefits for one or more beneficiaries to the exclusion of others. However, in exercising these discretionary powers to distribute principal, the Trustee is to be mindful of the fact that the primary concern of the Grantor is the proper health, education, support, and maintenance of the Beneficiary, and that the interests of the other beneficiaries in the trust are to be subordinate to those of the Beneficiary. Any payment or application of benefits to or for the benefit of any of the issue of the Beneficiary

or the surviving spouses of any deceased issue of the Beneficiary pursuant to this subparagraph F.2. is to be charged against the trust as a whole, rather than against the ultimate distributive share of the beneficiary to whom or for whose benefit the payment is made.

3. During the lifetime of the Beneficiary, the Trustee must, in addition, distribute such amounts from the principal of the Beneficiary's trust to such one or more persons and entities, excluding only the Beneficiary, the Beneficiary's estate, the Beneficiary's creditors, and the creditors of the Beneficiary's estate, and on such terms and conditions, either outright or in trust, as the Beneficiary may appoint by a written and acknowledged instrument specifically referring to and exercising this special power of appointment.

4. If the Beneficiary dies before becoming entitled to receive distribution of the Beneficiary's entire trust, then the remaining balance of the Beneficiary's trust shall be distributed pursuant to subparagraphs F.4.a. through F.4.c. below.

a. The "Exempt Portion" (as defined in article VI below) of the Beneficiary's trust shall be distributed to such one or more members of the group composed of and limited to the Grantor's issue (excluding the Beneficiary) who are living on or born or adopted after the date of death of the Beneficiary and the surviving spouses of any of the Grantor's deceased issue (including the Beneficiary's surviving spouse), and on such terms and conditions, either outright or in trust, as the Beneficiary may appoint by a Will or a written and acknowledged instrument specifically referring to and exercising this special power of appointment. Any of the Exempt Portion of the Beneficiary's trust not effectively appointed by the Beneficiary in this manner shall be distributed pursuant to subparagraph F.4.c. below.

b. The "Nonexempt Portion" (as defined in article VI below) of the Beneficiary's trust shall be distributed to such one or more persons and entities, including the Beneficiary's estate, and on such terms and conditions, either outright or in trust, as the Beneficiary may appoint by a Will or a written and acknowledged instrument specifically referring to and exercising this general power of appointment. Any of the Nonexempt Portion of the Beneficiary's trust not effectively appointed by the Beneficiary in this manner shall be distributed pursuant to subparagraph F.4.c. below.

c. Any of the Beneficiary's trust not effectively appointed by the Beneficiary pursuant to subparagraphs F.4.a. and F.4.b. above shall be distributed to the then living issue of the Beneficiary, by right of representation, or, if there are none, by right

of representation to the then living issue of the nearest ancestor of the Beneficiary who is a descendant of the Grantor and who has issue then living, or, if there is no such ancestor of the Beneficiary who has issue then living, to the then living issue of the Grantor, by right of representation. However, (a) if any part of the Beneficiary's trust would otherwise be distributed, free of trust, to any lineal descendant of the Grantor for whose primary benefit a trust is then being administered pursuant to this paragraph F., then that part is instead to be added to that trust and is to thereafter be administered according to its terms; and (b), subject to the provisions of paragraph L. of article VIII below (the "Perpetuities Savings Clause"), if any part of the Beneficiary's trust would otherwise be distributed, free of trust, to any other lineal descendant of the Grantor, then that part is instead to be retained in trust for the primary benefit of that lineal descendant during his or her entire lifetime pursuant to this paragraph F. That lineal descendant is to thereafter be considered the "Beneficiary" for the purposes of this paragraph F.

G. LAKE TAHOE RESIDENCE AND RESIDENTIAL FUND. The Lake Tahoe Residence and Residential Fund shall be retained and administered as a separate trust for the benefit of the Surviving Spouse and the Grantor's children who are living on the date of death of the Grantor and shall be held, administered, and distributed as hereafter provided.

1. On the death of the Grantor, if the Grantor is survived by the Surviving Spouse, the Surviving Spouse shall have the exclusive right to use and occupy the Lake Tahoe Residence, rent free, for a period of six (6) months following the death of the Grantor. At the expiration of the six (6) month period set forth in the preceding sentence, the Surviving Spouse and each of the Grantor's living children shall have the right to use and occupy the Lake Tahoe Residence, rent free, for such equal periods throughout each calendar year as the Trustee shall determine, in the Trustee's sole discretion, until such time as the Lake Tahoe Residence is sold pursuant to subparagraph G.3. or G.4. below. The Trustee shall pay all of the property taxes, assessments, insurance premiums, repair and maintenance expenses, utility expenses, and other expenses attributable to the Lake Tahoe Residence out of the Residential Fund. The Trustee may require each beneficiary to agree in writing to indemnify and hold the Trustee and the trust estate harmless from any liability resulting from the occupancy of the Lake Tahoe Residence by the beneficiary and his or her guests and invitees, including, but not limited to, any liability for personal injury or property damage sustained during the use and occupancy of the property. The Trustee is not to be liable to the other beneficiaries of the trust estate for any loss of or damage to the Lake Tahoe Residence that results from the use and occupancy of the property by a beneficiary pursuant to this provision.

2. On the death of the Grantor, if the Grantor is not survived by the Surviving Spouse, each of the Grantor's living children shall have the right to use and occupy the Lake Tahoe Residence, rent free, for such equal periods throughout each calendar year as the Trustee shall determine, in the Trustee's sole discretion, until such time as the Lake Tahoe Residence is sold pursuant to subparagraph G.3. or G.4. below. The Trustee shall pay all of the property taxes, assessments, insurance premiums, repair and maintenance expenses, utility expenses, and other expenses attributable to the Lake Tahoe Residence out of the Residential Fund. The Trustee may require each beneficiary to agree in writing to indemnify and hold the Trustee and the trust estate harmless from any liability resulting from the occupancy of the Lake Tahoe Residence by the beneficiary and his or her guests and invitees, including, but not limited to, any liability for personal injury or property damage sustained during the use and occupancy of the property. The Trustee is not to be liable to the other beneficiaries of the trust estate for any loss of or damage to the Lake Tahoe Residence that results from the use and occupancy of the property by a beneficiary pursuant to this provision.

3. On the death of the first child of the Grantor who was living on the date of death of the Grantor, the Trustee shall submit a written offer to sell the Lake Tahoe Residence to the remaining children of the Grantor for such price, and upon such terms, as the Trustee determines in the Trustee's sole discretion. Within 30 days after receipt of the offer, any one or more of the remaining children of the Grantor may, at their option, exercisable in writing, purchase the Lake Tahoe Residence for the purchase price and on the terms set forth in the offer by the Trustee. If none of the remaining children of the Grantor exercise the right of first refusal, then the Trustee shall sell the Lake Tahoe Residence to a third party for such price, and upon such terms, as the Trustee determines in the Trustee's sole discretion. Upon the sale of the Lake Tahoe Residence pursuant to this subparagraph G.3., the sales proceeds from the Lake Tahoe Residence and the remaining balance of the Residential Fund, if any, shall be distributed pursuant to subparagraph G.5. below.

4. Notwithstanding any other provision of this paragraph G., at any time after the expiration of the six (6) month period set forth in subparagraph G.1. above, and only upon the unanimous vote of the Co-Trustees then acting as Trustee pursuant to paragraph A. of article IV below, the Trustee may, in the Trustee's sole discretion, sell the Lake Tahoe Residence to such buyer, for such price, and upon such terms, as the Trustee determines in the Trustee's sole discretion. Upon the sale of the Lake Tahoe Residence pursuant to this subparagraph G.4., the sales proceeds from the Lake Tahoe Residence and the remaining balance of the Residential Fund, if any, shall be distributed pursuant to subparagraph G.5. below.

5. Upon the sale of the Lake Tahoe Residence pursuant to subparagraph G.3. or G.4. above, the sales proceeds from the Lake Tahoe Residence and the remaining balance of the Residential Fund, if any, shall be divided into three (3) equal shares. Each such equal share shall be held, administered, and distributed as hereafter provided.

a. One (1) such equal share shall be distributed to the Grantor's son, Todd Bruce Jaksick, if he is then living, and if he is not then living to such one or more persons and entities, excluding only the Beneficiary, the Beneficiary's estate, the Beneficiary's creditors, and the creditors of the Beneficiary's estate, and on such terms and conditions, either outright or in trust, as Todd Bruce Jaksick may appoint by a Will or a written and acknowledged instrument specifically referring to and exercising this limited power of appointment. Any of such equal share not effectively appointed by Todd Bruce Jaksick in this manner shall be distributed to the then living issue of Todd Bruce Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to this subparagraph G.5.a. shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. above. If Todd Bruce Jaksick is not then living, and none of his issue is living, and no other distribution is to be made pursuant to this subparagraph, and power is not exercised this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph G.5.

b. One (1) such equal share shall be distributed to the Grantor's son, Stanley S. Jaksick, if he is then living, and if he is not then living to such one or more persons and entities, excluding only the Beneficiary, the Beneficiary's estate, the Beneficiary's creditors, and the creditors of the Beneficiary's estate, and on such terms and conditions, either outright or in trust, as Stanley S. Jaksick may appoint by a Will or a written and acknowledged instrument specifically referring to and exercising this limited power of appointment. Any of such equal share not effectively appointed by Stanley S. Jaksick in this manner shall be distributed to the then living issue of Stanley S. Jaksick, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to this subparagraph G.5.b. shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. above. If Stanley S. Jaksick is not then living, none of his issue is living, and no other distribution is to be made pursuant to this subparagraph, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph G.5.

c. One (1) such equal share shall be distributed to the Grantor's daughter, Wendy Ann Jaksick Smrt, if she is then living, and if she is not then living to such one or more persons and entities, excluding only the Beneficiary, the Beneficiary's estate, the Beneficiary's creditors, and the creditors of the Beneficiary's estate, and on such terms and conditions, either outright or in trust, as Wendy Ann Jaksick Smrt may appoint by a Will or a written and acknowledged instrument specifically referring to and exercising this limited power of appointment. Any of such equal share not effectively appointed by Wendy Ann Jaksick Smrt in this manner shall be distributed to the then living issue of Wendy Ann Jaksick Smrt, by right of representation. However, the amount that would otherwise be distributed, free of trust, to each issue of the Grantor pursuant to this subparagraph G.5.c. shall instead be retained in trust for the primary benefit of that person pursuant to paragraph F. above. If Wendy Ann Jaksick Smrt is not then living, none of her issue is living, and no other distribution is to be made pursuant to this subparagraph, this distribution will lapse and be divided equally between the other two shares or one share, as the case may be, pursuant to this subparagraph G.5.

H. REMOTE HEIRS. If at any time before final distribution of the trust estate Samuel S. Jaksick, Jr., Janene Barger, and all of the issue of Samuel S. Jaksick, Jr. are deceased, and no other disposition of the property is directed by this Trust Agreement, then the remaining portion of the trust estate is to then be distributed to the Nevada State Children's Home in Carson City, Nevada, or to a similar successor organization of the State of Nevada, to be used as follows:

1. Three-fourths ($\frac{3}{4}$) of the remaining portion of the trust estate shall be used by the Nevada State Children's Home, in a manner determined in its sole discretion, to assist in college or university education for children who are residents of the Nevada State Children's Home when they graduate from high school.

2. One-fourth ($\frac{1}{4}$) of the remaining portion of the trust estate shall be used by the Nevada State Children's Home, in a manner determined in its sole discretion, for athletic and recreational equipment for the growth, development, and entertainment of children residing in the Nevada State Children's Home.

I. DISTRIBUTIONS TO BENEFICIARIES UNDER LEGAL DISABILITY. If any beneficiary to whom the Trustee is directed to or permitted to make distributions of income or principal is under any legal disability, or, in the opinion of the Trustee, is unable to properly apply such distributions for the benefit of the beneficiary, then the Trustee may make such distributions directly for the benefit of the beneficiary or in any one or more of the following methods:

1. to the beneficiary;
2. to the conservator or guardian of the estate of the beneficiary;
3. to a custodian of the beneficiary under the Uniform Act on Transfers to Minors, or any corresponding or substitute provisions then in effect (the "Act"), and if custodial property has not previously been created for the benefit of the beneficiary under the Act, then the Trustee may, in the Trustee's discretion, declare the property being distributed to be custodial property, transfer the custodial property to a qualified custodian under the Act, and specify any age permitted under the Act as the age for distribution to the beneficiary; or
4. to any relative of the beneficiary, to be expended by the relative for the benefit of the beneficiary.

J. **EARLY TERMINATION OF SMALL TRUSTS.** If at any time before final distribution, any trust being administered under this Trust Agreement contains assets with an aggregate fair market value of less than \$50,000, and if the Trustee determines, in the Trustee's discretion, that continued administration of the trust would be impractical or that the costs of administration would outweigh the anticipated benefits of continued administration, then the Trustee may terminate the trust and distribute the remaining trust assets to the trust beneficiaries, both income beneficiaries and then living remaindermen. The identities of the remaindermen are to be determined as if the event that would otherwise cause the final distribution of the trust, such as the attainment by the income beneficiary of a specified age or the death of the last living income beneficiary, had then occurred. Except as otherwise specifically provided in this Trust Agreement, distribution among the income beneficiaries and remaindermen is to be in accordance with sound actuarial principles.

K. **INTEREST ON PECUNIARY BEQUESTS.** Unless otherwise specifically provided in this Trust Agreement, any distribution or allocation of a monetary or pecuniary amount of property may be satisfied in cash or in kind, or partly in each, with the assets so distributed or allocated being valued for this purpose on the date or dates of distribution or allocation. Interest is not to accrue with respect to any pecuniary or monetary distribution or allocation that is satisfied or irrevocably set aside within 15 months after the date of the event that results in the distribution or allocation, such as the death of the Grantor. However, each such monetary or pecuniary distribution or allocation that is not so satisfied or irrevocably set aside within 15 months is to bear interest from the date specified under applicable state law, and if state law does not specify a date for the accrual

of interest, interest is to accrue from the date of the event that results in the distribution or allocation, and interest is to accrue to the date of distribution or allocation. Interest is to accrue at the statutory rate applicable to pecuniary bequests under state law, and if state law does not specify a statutory rate, interest is to accrue at 80% of the rate applicable under Section 7520 of the Internal Revenue Code of 1986, as amended (the "Code"), in effect on the date of the event that results in the distribution or allocation, or such other rate as may from time to time be required by the Code or federal estate, gift, or generation-skipping tax regulations.

III

POWER TO REVOKE AND AMEND

A. POWER TO REVOKE DURING LIFETIME OF GRANTOR. Samuel S. Jaksick, Jr., during his lifetime, may revoke this Trust Agreement in whole or in part by a written instrument delivered to the Trustee. On revocation, the Trustee must deliver to the Grantor all or the designated portion of the trust assets. If the Trust Agreement is revoked with respect to all or a major portion of the trust assets subject to the Trust Agreement, the Trustee may retain sufficient assets to reasonably secure payment of liabilities incurred by the Trustee in the administration of the trust estate, including Trustee's fees that have been earned, unless the Grantor indemnifies the Trustee against loss or expense. However, the Trustee is not entitled to indemnification against any loss or expense resulting from any breach of trust.

B. POWER TO AMEND DURING LIFETIME OF GRANTOR. Samuel S. Jaksick, Jr., during his lifetime, reserves the power to amend any of the terms of this Trust Agreement by a written instrument delivered to the Trustee. No amendment may substantially increase the duties or liabilities of the Trustee or change the Trustee's compensation without the Trustee's consent, nor is the Trustee obligated to act under such an amendment unless the Trustee accepts it. If a Trustee is removed, the Grantor must pay to the Trustee any sums due and must indemnify the Trustee against liabilities incurred by the Trustee in the administration of the trust estate. However, the Trustee is not entitled to indemnification against any liabilities resulting from any breach of trust.

C. POWER TO REVOKE AND AMEND FOLLOWING THE DEATH OF THE GRANTOR. Following the death of the Grantor, the trust estate may not be revoked, amended, or terminated except through distributions permitted or required pursuant to the terms of this Trust Agreement or through the exercise of powers of appointment that are granted by the terms of this Trust Agreement.

D. EFFECT OF DISABILITY OF GRANTOR ON POWER TO REVOKE OR AMEND. All of the Grantor's powers to revoke and amend that are described in paragraphs A. and B. above are personal to the Grantor and, in the event of disability, may be exercised on behalf of the Grantor by (1) a conservator or guardian of the estate of the Grantor with court approval or (2) the holder of a durable power of attorney for the purpose of making gifts or taking other actions that are authorized by express provisions of the durable power.

IV

TRUSTEE PROVISIONS

A. APPOINTMENT OF TRUSTEE AND SUCCESSOR TRUSTEES. Except as otherwise specifically provided in this Trust Agreement or in an instrument exercising a power of appointment that is granted by this Trust Agreement, the persons or entities named or appointed as Trustee or Co-Trustees pursuant to this paragraph A. are to act as Trustee or Co-Trustees, as the case may be, of each trust established pursuant to this Trust Agreement. Samuel S. Jaksick, Jr. is to initially serve as the sole Trustee. However, he may, in his sole discretion, appoint one (1) or more other persons or entities to serve as a Co-Trustee or as Co-Trustees with him and to serve as the successor Trustee or as successor Co-Trustees if he should for any reason fail to qualify or cease to act as Trustee, and he may remove (and, if desired, replace) any Co-Trustee, successor Trustee, or successor Co-Trustee appointed by him.

If Samuel S. Jaksick, Jr. should for any reason fail to qualify or cease to act as Trustee, and if he fails to otherwise appoint a different successor Trustee or two (2) or more different successor Co-Trustees pursuant to the preceding subparagraph, then Stanley S. Jaksick, Todd Bruce Jaksick, and Ray Benetti shall act as Co-Trustees. If any one of Stanley S. Jaksick, Todd Bruce Jaksick, or Ray Benetti should for any reason fail to qualify or cease to act as a Co-Trustee, then the remaining two Co-Trustees and Ken Huff shall act as Co-Trustees. If any two of Stanley S. Jaksick, Todd Bruce Jaksick, Ray Benetti, and Ken Huff should for any reason fail to qualify or cease to act as a Co-Trustee, then Todd Bruce Jaksick shall appoint one (1) other person or entity to serve as a Co-Trustee with the remaining two Co-Trustees. If Todd Bruce Jaksick should for any reason be unable or unwilling to appoint a Co-Trustee pursuant to the preceding sentence, then Stanley S. Jaksick shall appoint one (1) other person or entity to serve as a Co-Trustee with the remaining two Co-Trustees pursuant to the preceding sentence. If any three of Stanley S. Jaksick, Todd Bruce Jaksick, Ray Benetti, and Ken Huff should for any reason fail to qualify or cease to act as a Co-Trustee, then Todd Bruce Jaksick shall appoint one

(1) or more other persons or entities to serve as a Co-Trustee or as Co-Trustees with the remaining Co-Trustee. If Todd Bruce Jaksick should for any reason be unable or unwilling to appoint a Co-Trustee or Co-Trustees pursuant to the preceding sentence, then Stanley S. Jaksick shall appoint one (1) or more other persons or entities to serve as a Co-Trustee or as Co-Trustees with the remaining Co-Trustee pursuant to the preceding sentence.

Notwithstanding any other provision of this paragraph A., Todd Bruce Jaksick may, in his sole discretion, remove any Co-Trustee, successor Trustee (including Nevada State Bank below), or successor Co-Trustee named or otherwise appointed pursuant to this paragraph A., and he may appoint one (1) or more other persons or entities to serve as the replacement Co-Trustee, successor Trustee, or successor Co-Trustee, as the case may be. If Todd Bruce Jaksick should for any reason be unable or unwilling to remove and replace a Co-Trustee, successor Trustee, or successor Co-Trustee pursuant to the preceding sentence, then Stanley S. Jaksick may, in his sole discretion, remove any Co-Trustee, successor Trustee (including Nevada State Bank below), or successor Co-Trustee named or otherwise appointed pursuant to this paragraph A., and he may appoint one (1) or more other persons or entities to serve as the replacement Co-Trustee, successor Trustee, or successor Co-Trustee, as the case may be. However, the power granted to Todd Bruce Jaksick and Stanley S. Jaksick to remove and replace any Co-Trustee, successor Trustee, or successor Co-Trustee as set forth in this subparagraph may not be used to remove either Samuel S. Jaksick, Jr., Todd Bruce Jaksick, or Stanley S. Jaksick as Trustee, Co-Trustee, successor Trustee, or successor Co-Trustee, as the case may be.

If all of the individuals named in this paragraph A. should for any reason fail to qualify or cease to act as Trustees, and if another successor Trustee or two (2) or more other successor Co-Trustees are not otherwise appointed pursuant to the preceding subparagraphs, then Nevada State Bank shall act as sole Trustee.

The power to appoint, remove, and replace Co-Trustees, successor Trustees, and successor Co-Trustees is to be exercised by a written instrument signed by the person or persons possessing the power. Any person or entity qualified to serve as Trustee may be appointed a Co-Trustee, successor Trustee, or successor Co-Trustee pursuant to this paragraph A.

B. INCAPACITY OF TRUSTEE. Any person named or appointed as the Trustee or as a Co-Trustee pursuant to the provisions of this Trust Agreement is to be considered to have failed to qualify as Trustee or as a Co-Trustee if the person at any time becomes incapacitated (determined in the manner specified in paragraph D. of article VIII). The

person is to be restored to the office of Trustee or Co-Trustee as soon as the person regains capacity.

C. EXCULPATION OF SUCCESSOR TRUSTEE. No successor Trustee is to be liable for any act, omission, or default of a predecessor Trustee. Unless requested in writing within 180 days of appointment by an adult beneficiary of this trust, no successor Trustee is to have any duty to investigate or review any action of a predecessor Trustee and may accept the accounting records of the predecessor Trustee showing assets on hand without further investigation and without incurring any liability to any person claiming or having an interest in the trust.

D. EXCULPATION OF CO-TRUSTEES. No Co-Trustee is to be liable for any act, omission, or default of any other Co-Trustee provided that the Co-Trustee has not had knowledge of any facts that may reasonably be expected to have put the Co-Trustee on notice in sufficient time to have prevented the act, omission, or default.

E. GOVERNING VOTE OF CO-TRUSTEES AND EXECUTION OF DOCUMENTS. During any period of time that there are two (2) or more Co-Trustees, all of the acts of the Co-Trustees are to be governed by the majority vote of the Co-Trustees, and any action taken by the majority vote of the Co-Trustees is to be binding on the trust estate and may be relied on by third parties dealing with the Co-Trustees.

Following the approval by the Trustee or the Co-Trustees of any transaction pursuant to this Trust Agreement, any deeds, promissory notes, deeds of trust, mortgages, leases, contracts, checks, withdrawal orders for the disbursement or withdrawal of funds, or other instruments binding the assets of the trust or committing the trust to obligations may be executed on behalf of the trust (1) by the Trustee, if there is only one (1) Trustee, (2) by any one (1) of the Co-Trustees, if there are two (2) or more Co-Trustees, or (3) by any other person designated in writing by the Trustee, if there is only one (1) Trustee, or by all of the Co-Trustees, if there are two (2) or more Co-Trustees. Any person or entity transacting business with the trust may rely upon any instrument executed by an authorized signatory without inquiring into the approval of the transaction pursuant to this Trust Agreement.

F. RESIGNATION OF TRUSTEE. The Trustee may resign at any time. Such resignation is to be effective after delivery of 30 days written notice to those persons to whom accountings are then required to be rendered pursuant to paragraph J. below. Upon the resignation of the Trustee, a successor Trustee is to be appointed pursuant to paragraph A. above.

G. REMOVAL OF CORPORATE TRUSTEES. Any corporate or institutional Trustee named or appointed as Trustee of a trust pursuant to paragraph A. above may be removed at any time, with or without cause, by a written instrument signed by a majority of those persons to whom accountings for the trust are then required to be rendered pursuant to paragraph J. below. Upon the removal of the corporate or institutional Trustee, a successor Trustee is to be appointed pursuant to paragraph A. above.

H. WAIVER OF BOND. No bond is to be required of any person named or appointed as Trustee for the faithful performance of the person's duties as Trustee.

I. COMPENSATION OF TRUSTEE. The Grantor is not to receive any compensation for services rendered in connection with the administration of the trust estate. Each successor Trustee is entitled to reasonable compensation for services rendered in connection with the administration of the trust estate. Any bank or trust company acting as a corporate Trustee, whether acting as the sole Trustee or as a Co-Trustee, is entitled to compensation for its services in the amount and at the times specified in its schedule of fees and charges established by it from time to time for the administration of trusts similar in character and size to the trust established by this Trust Agreement and in effect when the compensation is payable. The compensation of the corporate Trustee is not to be affected by the fact that the corporate Trustee or an affiliate of the corporate Trustee receives an investment management, administrative, or other fee from an entity or fund in which the trust is an investor.

J. ACCOUNTINGS. During the lifetime of the Grantor, the Trustee is required to render accountings only to the Grantor; and the accountings must be rendered at least annually. Following the death of the Grantor, the Trustee of each trust must render accountings at least annually to each beneficiary of the trust who is entitled to receive current discretionary or mandatory distributions from income or principal, and to each living remainderman who would then be entitled to a distribution of income or principal if the event requiring final distribution of the trust (such as the attainment by the income beneficiary of a specified age or the death of the last living income beneficiary) had then occurred. If a person would be a current beneficiary or remainderman only if a power of appointment were exercised in his or her favor, and if the Trustee does not have actual knowledge of the exercise of the power in that person's favor, then that person is not to be considered a current beneficiary or remainderman for the purposes of this paragraph J. If any beneficiary entitled to receive an accounting is a minor or under any other legal disability, then the accounting is to be delivered to the beneficiary's parents or guardian of the beneficiary's estate. Unless any person to whom an accounting is required to be rendered delivers a written objection to the Trustee within 180 days after receipt of the

accounting, the accounting is to be final and conclusive with respect to all transactions disclosed in the accounting as to all beneficiaries of the trust, including unborn and unascertained beneficiaries. After settlement of the accounting by the agreement of the parties objecting to it, or by expiration of the 180 day period, the Trustee is to no longer be liable to any beneficiary of the trust, including unborn and unascertained beneficiaries, with respect to all transactions disclosed in the accounting, except for the Trustee's intentional wrongdoing or fraud.

K. TRUSTEE ADMINISTRATIVE POWERS. Except as otherwise provided in this Trust Agreement or by the laws of the State of Nevada, the Trustee is vested with the following powers with respect to the trust estate and any part of it, in addition to those powers now or hereafter conferred by law:

1. The Trustee is to invest and manage the trust estate as a prudent investor would, after taking into consideration the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the Trustee must exercise reasonable care, skill, and caution. The Trustee's investment and management decisions respecting individual assets and courses of action are to be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust, with no types of investments or courses of actions being impermissible or imprudent *per se*. The intent of this provision is to confer upon the Trustee the investment authority defined in the Restatement 3d of the Law of Trusts ("The Prudent Investor Rule"). Within the limitations of this standard, and subject to any express provision or limitation contained in this Trust Agreement, the Trustee is authorized to invest and reinvest the trust estate in every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not limited to, corporate obligations of every kind, stocks, preferred or common, shares of investment trusts and investment companies (including any common trust fund or other collective investment vehicle administered by the Trustee or an affiliate of the Trustee), mutual funds, and interests in partnerships (both general and limited), limited liability companies, and other forms of legal entities. The Trustee's investment power is not to be affected by the fact that the Trustee or an affiliate of the Trustee may receive an investment management, administrative, or other fee from any entity in which trust assets are invested. In making and implementing investment decisions, the Trustee has a duty to diversify the investments of the trust unless, under the circumstances, it is prudent not to do so. However, the requirement for diversification is not to apply with respect to (a) any property contributed to the trust estate by the Grantor, (b) any residential real property described in paragraph C. of article V below, and (c) any tangible personal property described in paragraph D. of article V below.

2. The Trustee may organize, participate in, invest in, and contribute trust assets to all forms of legal entities, specifically including, but not limited to, corporations, partnerships (both general and limited), and limited liability companies. The Trustee may acquire any form of equity interest in or evidence of indebtedness from any entity in which trust assets are invested, specifically including, but not limited to, stocks (preferred, common, voting, and non-voting), partnership interests (both limited and general), membership interests (both voting and non-voting), bonds, and promissory notes (both secured and unsecured), on terms and conditions approved by the Trustee, in the Trustee's discretion. This power specifically includes, but is not limited to, the power to invest in and contribute property to limited partnerships, limited liability companies, and other forms of legal entities administered or managed by the Trustee or an affiliate of the Trustee.

3. The Trustee may continue to hold any property, including any shares of the Trustee's own stock, and may operate at the risk of the trust estate any business that the Trustee receives or acquires as long as the Trustee considers advisable.

4. The Trustee is to have all the rights, powers, and privileges of an owner with respect to the securities held in trust, including, but not limited to, the power to vote, give proxies, and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations; and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may consider advisable; and to exercise or sell stock subscription or conversion rights.

5. The Trustee may hold securities or other property in the Trustee's name as Trustee under this Trust Agreement, in the Trustee's own name, or in the name of a nominee, or the Trustee may hold securities unregistered in such condition that ownership will pass by delivery.

6. The Trustee may manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve, and repair trust property.

7. The Trustee may write or sell covered call options on any securities held in the trust through any recognized options exchange.

8. The Trustee may lease trust property for terms within or beyond the term of the Trust Agreement for any purpose, including exploration for the removal of gas, oil, and other minerals; and may enter into community oil leases, pooling, and unitization agreements.

9. The Trustee may loan money to any person or entity, including the probate estate of the Grantor. However, any such loan must bear a reasonable rate of interest.

10. The Trustee may purchase property at its fair market value as determined by the Trustee, in the Trustee's discretion, from the probate estate of the Grantor.

11. The Trustee may loan or advance the Trustee's own funds to the trust estate, with interest at current rates; may receive security for such loans in the form of a mortgage, pledge, deed of trust, or other encumbrance of any assets of the trust estate; may purchase assets of the trust estate at their fair market value as determined by an independent appraisal of those assets; and may sell property to the trust at a price not in excess of the fair market value of the property as determined by an independent appraisal.

12. The Trustee may release or restrict the scope of any power that the Trustee may hold in connection with the trust estate, whether such power is expressly granted in the Trust Agreement or implied by law. The Trustee is to exercise this power in a written instrument executed by the Trustee specifying the power to be released or restricted and the nature of the release or restriction. The release or restriction is to be binding on all successor Trustees unless otherwise stated in the written instrument.

13. The Trustee may take any action and make any election, in the Trustee's discretion, to minimize the tax liabilities of the trust estate and the beneficiaries. The Trustee may allocate the tax benefits among the various beneficiaries, and the Trustee may make adjustments in the rights of any beneficiaries, or between the income and principal accounts, to compensate for the consequences of any tax election or any investment or administrative decision that the Trustee believes has had the effect of directly or indirectly preferring one beneficiary or group of beneficiaries over others.

14. The Trustee may borrow money and encumber trust property by mortgage, deed of trust, pledge, or otherwise. The Trustee is authorized to purchase, sell, and trade securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers and may pledge any securities

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held or purchased by the Trustee with such brokers as security for loans and advances made to the Trustee. The Trustee of each trust is also authorized to guarantee any loans made to any entity in which the trust owns an equity interest. In addition, during the lifetime of the Grantor, the Trustee is authorized to guarantee any loans made to the Grantor.

15. The Trustee may commence or defend, at the expense of the trust estate, such litigation with respect to the trust estate or any property of the trust estate as the Trustee may consider advisable and may compromise or otherwise adjust any claims or litigation against or in favor of the trust estate.

16. The Trustee may carry insurance of such kinds and in such amounts as the Trustee considers advisable, at the expense of the trust estate, to protect the trust estate and the Trustee personally against any hazard.

17. The Trustee may employ attorneys, accountants, investment advisors, managerial, clerical, and other assistants and agents, including management companies and resident managers of any real property operated by the trust. The expense of employment of such personnel is to be a proper expense of the trust and not of the Trustee personally. The Grantor acknowledges that Stanley S. Jaksick and Todd Bruce Jaksick currently provide services to and/or are involved in helping to administer and develop many of the Grantor's business activities and opportunities, and that their roles and responsibilities in these capacities will likely be greatly increased in the event of Grantor's death. Accordingly, the Trustee is specifically authorized and instructed to review, adjust, and increase, from time to time, the respective levels of compensation for Stanley S. Jaksick and Todd Bruce Jaksick based upon the increase in their then current responsibilities.

18. The Trustee may withhold from distribution, in the Trustee's discretion, at the time for distribution of any property of the trust estate, without the payment of interest, all or any part of the property, as long as the Trustee determines, in the Trustee's discretion, that the property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the trust estate or in the administration of the probate estate of the Grantor.

19. The Trustee may partition, allot, and distribute the trust estate, on any division or periodic, partial, or final distribution of the trust estate, in undivided interests or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and may sell such property as the Trustee considers necessary to make any division or distribution. In making any division or periodic, partial, or final distribution of the trust

estate, the Trustee is to be under no obligation to make a pro-rata division, or to distribute the same assets to beneficiaries similarly situated, but rather the Trustee may, in the Trustee's discretion, make a nonpro-rata division between trusts or shares and nonpro-rata distributions to beneficiaries, so long as the assets allocated to the separate trusts or shares, or distributed to the beneficiaries, have equivalent or proportionate fair market values.

20. Except as otherwise specifically provided in this Trust Agreement, the determination of all matters with respect to what is principal or income of the trust estate and the apportionment and allocation of receipts and expenses between these accounts are to be governed by the provisions of the Nevada Revised Uniform Principal and Income Act from time to time existing. Any such matter not provided for either in this Trust Agreement or in the Nevada Revised Uniform Principal and Income Act is to be determined by the Trustee, in the Trustee's discretion.

21. For trust accounting purposes, all items of prepaid, accrued, or undistributed income and all taxes and other current expenses are to be prorated on a daily basis over the period to which they relate. The prorations are to be calculated on the basis of a 360 day year and a 30 day month.

22. There need be no physical segregation or division of the various trusts or shares except as segregation or division may be required by the termination of any of the trusts or shares, but the Trustee must maintain separate accounts for the different undivided interests.

23. Other property acceptable to the Trustee may be added to the trust estate by any person, by the Will or codicil of the Grantor, by the proceeds of any life insurance policy, or otherwise.

24. The Trustee may perform any environmental inspections of trust assets that the Trustee deems advisable before or after the assets are accepted by the Trustee, and the Trustee may refuse to accept any asset based upon the results of the inspection. The Trustee may undertake any remedial measures with respect to any trust asset that the Trustee deems necessary or advisable in order to comply with environmental laws and may compromise any environmental liability claims on terms deemed advisable by the Trustee. The Trustee may regularly inspect and monitor trust property for compliance with applicable environmental laws, rules, and regulations. All inspections, remedial measures, settlements of environmental claims, and other actions taken by the Trustee pursuant to this subparagraph are to be at the expense of the trust estate and not

at the expense of the Trustee personally. The Trustee may renounce or disclaim any power that might otherwise subject the Trustee to personal liability for environmental violations.

25. For investment purposes, the Trustee may, in the discretion of the Trustee, combine the assets of any of the trusts created under this Trust Agreement with the assets of any other trust established by the Grantor or by any other person. In such event, the Trustee must maintain separate records of the amounts allocable to each such trust. In addition, the Trustee may, in the Trustee's discretion, merge any trust created under the terms of this Trust Agreement with any other trust established by the Grantor or by any other person, so long as the beneficial interests under such merged trusts are substantially identical. In the event of any such merger, the Trustee need not maintain separate records of the amounts allocable to each merged trust.

26. Whenever, pursuant to article II, the Trustee is directed to make a distribution or an allocation to a separate trust upon the death of the Grantor, the Trustee may, in the Trustee's discretion, defer the distribution or the allocation for a period of six (6) or more months following the death if the Trustee reasonably considers such deferral necessary to preserve the alternate valuation date for federal estate tax purposes in the estate of the Grantor or for any other legal, tax, or accounting reason. No interest is to accrue on the amount deferred. However, the rights to the amount deferred are to vest upon the death of the Grantor.

27. Notwithstanding the preceding provisions, any individual who is appointed the Trustee or a Co-Trustee pursuant to paragraph A. above may not exercise or decide to not exercise any tax election or option under any federal, state, or local law if doing so (a) could increase, decrease, or shift to another beneficiary his or her beneficial interest in the trust estate, and (b) the increase, decrease, or shift would or could constitute income to or a transfer by the Trustee for federal, state, or local income or transfer tax purposes. If all the appointed Trustees are prohibited from exercising or from deciding to not exercise the tax election or option by the preceding sentence, then another individual, bank, or trust company (but not an individual who or bank or trust company which is related or subordinate to any acting Trustee under this Trust Agreement within the meaning of Code Section 672(c)) must be appointed by the Trustee or Co-Trustees then acting under this Trust Agreement, and the Trustee so appointed must alone exercise or decide to not exercise the tax election or option.

L. TRUSTEE STANDARD OF REVIEW. The Trustee is to be personally liable or subject to surcharge only if the Trustee should act without reason, in bad faith, or in violation of specific provisions of this Trust Agreement. Precatory language is merely suggestive and does not create an enforceable standard under which an act can be criticized or compelled. However, this standard of review is not intended to expand the standards of "health, education, support, and maintenance" for distributions into broader standards that are not "ascertainable standards" for transfer tax purposes.

The Trustee is entitled to indemnification against any claims, liabilities, and expenses, including attorneys' fees and amounts paid in settlement, resulting from the acts or omissions of the Trustee, so long as the Trustee's acts or omissions are not without reason, are not in bad faith, and are not in violation of specific provisions of this Trust Agreement. The Grantor intends to provide the Trustee with indemnification to the maximum extent allowed by law. The expenses of the Trustee incurred in the defense any action, suit, or proceeding must be paid from the trust estate as they are incurred and in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the Trustee to repay the amount if it is ultimately determined that the Trustee is not entitled to be indemnified.

M. PRESERVATION OF ATTORNEY-CLIENT PRIVILEGE. The Trustee (and if there is more than one (1) Trustee, each Trustee) may consult legal counsel chosen by the Trustee on any matter relating to the administration of the trust, including, but not limited to, the Trustee's fiduciary duties and responsibilities with respect to the trust. All of the fees and expenses incurred as a result of such consultations are to be charged as an expense of the trust and are not to reduce the Trustee's compensation. All consultations and communications between the Trustee and the Trustee's attorney in connection with trust matters are to be confidential and are not subject to disclosure to any beneficiary or to any successor Trustee. Any fees or expenses incurred by the Trustee to defend any challenge to such confidentiality are to also be charged as an expense of the trust and are not to reduce the Trustee's compensation.

N. TRUSTEE NOT RESPONSIBLE FOR DETERMINATION OF BIRTHS, DEATHS, AND OTHER EVENTS THAT AFFECT TRUSTS. Until the Trustee receives written notice of any birth, death, attainment of a specified age, or any other event that affects the administration of or rights to distributions from any trust being administered under this Trust Agreement, the Trustee is not to be liable for any distributions or other disbursements that are made from the trust in good faith prior to receipt of the notice.

V

RULES GOVERNING CERTAIN PROPERTY

A. LIFE INSURANCE PROVISIONS. If any trust or share created under the terms of this Trust Agreement is designated as the owner or beneficiary of any policy of life insurance, then the provisions of this paragraph A. are to apply with respect to such life insurance policy.

1. The owner of each life insurance policy made payable to any trust or share created in this Trust Agreement reserves all rights, options, and privileges conferred on the owner by the terms of the policy, including, but not limited to, the right to change the beneficiary designation, to hypothecate the policy, and to borrow funds from the insurer. Sickness, disability, or other benefits may be paid by the insurer to the owner. The Trustee is not to be responsible for acts or omissions of the Grantor relating to any insurance policy.

2. The Trustee is not required to pay premiums, assessments, or other charges on any life insurance policy of which the Trustee is owner or beneficiary that are required to keep it a binding insurance contract, nor is the Trustee responsible for determining whether such payments have been made.

3. The Trustee is not responsible for determining whether the death of the insured has occurred. However, upon receipt of proof of death of the insured and upon receipt of the insurance policy, the Trustee must use reasonable efforts to collect all sums payable under the policy terms. The Trustee may require reasonable indemnification for all costs, expenses, and damages that may be incurred in the collection of the proceeds. All sums received are to become principal of the trust estate, except for interest paid by the insurer, which is to be income. Subject to any contrary provision in the beneficiary designation of any policy, all sums payable under any policy are to be held, administered, and distributed pursuant to the applicable provisions of paragraph B. of article II.

The Trustee may compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any policy, and may to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's opinion to collect the proceeds of any policy.

The Trustee's receipt to any insurer is to be considered in full discharge, and the insurer is not to have any duty to inquire into the application by the Trustee of the policy proceeds.

B. PAYMENTS RECEIVED UNDER QUALIFIED PLANS. On the death of the Grantor, and subject to any power of appointment exercised by the Grantor, any benefits payable to the trust estate under any qualified retirement plan are to be held, administered, and distributed pursuant to the applicable provisions of paragraph B. of article II. The Trustee is to have full power to compromise, arbitrate, or otherwise adjust any claim, dispute, or controversy arising under any qualified retirement plan, and is to have authority to initiate, defend, settle, and compromise any legal proceeding necessary in the Trustee's opinion to collect the proceeds of any such plan. To the extent permitted by the qualified retirement plan, the Trustee is to have the authority to select the method of payment of the proceeds of the plan.

The Trustee's receipt to the payor of the benefits under any qualified retirement plan is to be considered in full discharge, and the payor is not to be under any duty to inquire into the application by the Trustee of payments received.

Notwithstanding any other provision of this paragraph B., and except as otherwise provided in this subparagraph, the Trustee of any irrevocable trust under this Trust Agreement may not distribute to or for the benefit of the Grantor's estate, any charity, or any other non-individual beneficiary any benefits payable to the trust estate under any qualified retirement plan that is subject to the "minimum distribution rules" of either Section 401(a)(9) or Section 408(a)(6) of the Code, or any corresponding or substitute provision in effect from time to time. The Grantor intends that all benefits payable from any such qualified retirement plan to any irrevocable trust under this Trust Agreement be distributed to or for the benefit of only individual beneficiaries, within the meaning of either Section 401(a)(9) or Section 408(a)(6) of the Code, whichever is applicable, and the regulations thereunder, or any corresponding or substitute provisions in effect from time to time. Accordingly, such benefits may not be used for the payment of debts, taxes, expenses of administration, or other claims against the Grantor's estate, except to the minimum extent that would otherwise be required under applicable federal or state tax apportionment laws in the absence of specific tax apportionment provisions in the Grantor's Will or in this Trust Agreement. This subparagraph is not to apply to any charitable bequest that is specifically directed to be satisfied with qualified retirement plan benefits by other provisions of this Trust Agreement or to any charitable bequest that is contingent upon the deaths of all individual beneficiaries of the qualified retirement plan benefits prior to the final distribution of such benefits. Notwithstanding any other provisions of this Trust Agreement, if a trust

under this Trust Agreement receives distributions from a qualified retirement plan, the Trustee is authorized and directed to distribute to the beneficiaries of the trust that portion of each distribution necessary to qualify the beneficiaries as individual designated beneficiaries entitled to required minimum distributions under the life expectancy rule in Section 401(a)(9)(B)(iii) and (iv).

As used in this Trust Agreement, the term "qualified retirement plan" includes any qualified trust, retirement annuity contract, or individual retirement account described in Subchapter D of the Code, and the regulations and cases thereunder, or any corresponding or substitute provisions in effect from time to time.

C. USE OF RESIDENTIAL PROPERTY. During his lifetime, the Grantor may continue to occupy, rent free, any property of the trust estate that, at the time of the transfer to or acquisition by the trust estate, was used or intended for use by the Grantor as his principal, secondary, or vacation residence. During the lifetime of the Grantor, the Trustee may, in the Trustee's discretion, pay the property taxes, assessments, insurance premiums, and repair and maintenance expenses attributable to such residential property out of the principal or income of the trust estate as the Trustee, in the Trustee's discretion, may determine. During the lifetime of the Grantor, the Trustee may also, with the prior written consent of the Grantor, sell any such residential property and replace it or rent or lease a comparable parcel of residential property. On the death of the Grantor, and subject to any power of appointment exercised by the Grantor, the residential real property is to be held, administered, and distributed pursuant to the applicable provisions of paragraphs B. and G. of article II.

Following the death of the Grantor, and subject to paragraph G. of article II above, the Trustee, in the Trustee's discretion, may permit any beneficiary of the trust estate to occupy, rent free, any residential real property (including any primary, secondary, or vacation residence) held in or acquired by the trust estate. The Trustee may, however, require the beneficiary to pay all or any portion of the property taxes, assessments, insurance premiums, repair and maintenance expenses, utility expenses, and other expenses attributable to the residential property as a condition for the beneficiary's rent-free use of the property. The Trustee may also require the beneficiary to agree in writing to indemnify and hold the Trustee and the trust estate harmless from any liability resulting from the occupancy of the residential property by the beneficiary and his or her guests and invitees, including, but not limited to, any liability for personal injury or property damage sustained during the use and occupancy of the property. The Trustee is not to be liable to the other beneficiaries of the trust estate for any loss of or damage to the residential real

property that results from the use and occupancy of the property by a beneficiary pursuant to this provision.

D. USE OF TANGIBLE PERSONAL PROPERTY. During his lifetime, the Grantor reserves the right to use, possess, and enjoy, rent free, any household furniture and furnishings, jewelry, clothing, paintings, artwork, automobiles, boats, and other items of tangible personal property transferred to or acquired by the trust estate. Subject to any contrary provisions contained in the Grantor's Will or in other provisions of this Trust Agreement, following the death of the Grantor, the Trustee, in the Trustee's discretion, may permit any beneficiary of the trust estate to use, possess, and enjoy, rent free, any household furniture and furnishings, jewelry, clothing, paintings, artwork, automobiles, boats, and other items of tangible personal property that are to remain in or are acquired by the trust estate. The Trustee may, however, require the beneficiary to pay all or any portion of the personal property taxes, license fees, insurance premiums, repair and maintenance expenses, and other expenses attributable to the tangible personal property and to take reasonable measures to safeguard, insure, and account for the property as a condition for the beneficiary's rent-free use, possession, and enjoyment of the property. The Trustee may also require the beneficiary to agree in writing to indemnify and hold the Trustee and the trust estate harmless from any liability resulting from the beneficiary's use, possession, and enjoyment of the property, including, but not limited to, any liability to any third persons or entities for personal injury or property damage resulting from the beneficiary's use of the property. The Trustee is not to be liable to the other beneficiaries of the trust estate for any loss of or damage to the tangible personal property that results from the use, possession, and enjoyment of the property by a beneficiary pursuant to this provision.

E. ALLOCATION, ADMINISTRATION, AND DISTRIBUTION OF "S CORPORATION" STOCK. If the trust estate consists of shares of stock of any corporation that is an "S corporation," as defined in Section 1361(a) of the Code, or any corresponding or substitute provision in effect from time to time, then the Trustee may, in the Trustee's discretion, take any action necessary or appropriate to preserve the S corporation election under Section 1362(a) of the Code, or any corresponding or substitute provision in effect from time to time. The Trustee is specifically empowered to distribute, free of trust, to any of the beneficiaries of the trust estate any of the shares of stock of the S corporation that are held in the trust estate. In addition, the Trustee may amend the terms of any trust under this Trust Agreement to qualify the trust as a "qualified subchapter S trust" within the meaning of Section 1361(d) of the Code, or as an "electing small business trust" within the meaning of Section 1361(e) of the Code, or any corresponding or substitute provisions in effect from time to time. In exercising these powers, the Trustee may divide any trust into

more than one trust, with one such trust containing the stock of the S corporation, with amended terms for administration and distribution that qualify the trust as a "qualified subchapter S trust" or as an "electing small business trust," and with the other trust or trusts containing all other trust assets, which are to be administered pursuant to the terms and conditions contained in this Trust Agreement. However, the Trustee may not exercise this power in a manner that would increase the Trustee's individual benefits under this Trust Agreement or in any manner that would result in an outright distribution to any beneficiary whom the Trustee is legally obligated to support, educate, and maintain. The Trustee is not to be liable for any good faith exercise of the powers conferred by this paragraph.

VI

GENERATION-SKIPPING TRANSFER TAX PROVISIONS

A. **DEFINITION OF GENERATION-SKIPPING.** The term (or any reference to) "generation-skipping" in this Trust Agreement refers to the federal generation-skipping transfer tax under Chapter 13 of the Code.

B. **TRUST TO INCLUDE SEPARATE SHARES.** References to a "trust" or to "trusts" refer also to arrangements that are treated as trusts for generation-skipping purposes and to separate shares of a trust if the context so indicates, if consistent with the Grantor's apparent objectives, and if the shares will be "substantially separate and independent shares of different beneficiaries" entitled to be treated as separate trusts for generation-skipping purposes under Code Section 2654(b).

C. **DEFINITION OF EXECUTOR FOR GENERATION-SKIPPING PURPOSES.** In this article, and in the generation-skipping context generally, the term "Executor" refers to the person or persons authorized by Code provisions or Treasury regulations to make the transferor election for qualified terminable interest property under Code Section 2652(a)(3) and to allocate the generation-skipping exemption under Code Section 2631(a).

D. **DEFINITIONS OF EXEMPT, NONEXEMPT, INCLUSION RATIO, AND APPLICABLE FRACTION.** In this article, and in the generation-skipping context generally, the term "Exempt" refers to property or a trust that has a generation-skipping "inclusion ratio" of zero (that is, an "applicable fraction" for generation-skipping purposes of one). Any reference made to an "Exempt Trust" or to the "Exempt Portion" of certain property or of a trust is a reference to or a special titling for property or a trust that has been or is to be established having an "inclusion ratio" of zero. The term "Nonexempt Portion" or the

adjective "Nonexempt" indicates property or a trust that has a generation-skipping "inclusion ratio" of one (that is, an "applicable fraction" of zero). The terms "inclusion ratio" and "applicable fraction" have the meanings prescribed in Code Section 2642.

E. EXECUTOR'S AND TRUSTEE'S GENERATION-SKIPPING AUTHORITY.

1. In exercising the power to allocate the generation-skipping exemption of the Grantor or of any beneficiary of the trust estate under Code Section 2631(a), or a counterpart exemption under any applicable state law, the Executor of the Grantor or the beneficiary may include in or exclude from that allocation any property of which the Grantor or the beneficiary is the transferor for generation-skipping purposes, including property transferred prior to the death of the Grantor or beneficiary. These decisions may be based on transfers, gift tax returns, and other information known to the Executor, with a requirement of good faith but no requirement that allocations benefit the various transferees or beneficiaries of such property equally, proportionately, or in any other particular manner. However, no person acting as Executor is to make or participate in any generation-skipping election or allocation decision if the power to do so would result in the person being deemed to possess a general power of appointment for federal estate and gift tax purposes over property with respect to which he or she would (or might) not otherwise have such a general power. Should this prohibition leave no Executor able to make such an election or allocation, then the office of Executor is to be filled for this limited purpose by the Trustee under this Trust Agreement, and if the Trustee is also the Executor, then the office of Executor is to be filled for this limited purpose in the manner specified in this Trust Agreement for the appointment of successor Trustees.

2. The Grantor's Executor may, in the Executor's discretion, elect under Code Section 2652(a)(3) to have the Grantor rather than the Surviving Spouse treated as the generation-skipping transferor of all or any portion of the property of the Marital Trust.

3. No trust that is otherwise to be established under this Trust Agreement is to include both Exempt property and Nonexempt property. To accomplish this result, the Trustee must divide each trust that is otherwise to be established under this Trust Agreement and that would otherwise include both Exempt property and Nonexempt property into two (2) separate trusts, an Exempt Trust and a Nonexempt Trust. The Nonexempt Trust is to be established by allocating to it the minimum fractional share of the trust property that is necessary to establish it with an "inclusion ratio" of one, while leaving the Exempt Trust with an "inclusion ratio" of zero.

4. In addition, if a valid election is or has been made to qualify all or a portion of the Marital Trust for the marital deduction under Code Section 2056(b)(7), the Trustee must establish separate trusts from what would otherwise be the qualified portion of the Marital Trust under Code Section 2056(b)(7) to reflect any generation-skipping transferor election under Code Section 2652(a)(3) and any allocation of the Grantor's generation-skipping exemption under Code Section 2631(a). If the property or portion of the Marital Trust covered by the transferor election exceeds the amount of the Grantor's generation-skipping exemption allocated thereto, then this separation is to be accomplished in a manner that will result in (a) a separate Exempt Portion of the Qualified Marital Trust of which the Grantor is the generation-skipping transferor, (b) a separate Nonexempt Portion of the Qualified Marital Trust of which the Grantor is the generation-skipping transferor, and, if appropriate, (c) a separate portion of the Qualified Marital Trust of which the Surviving Spouse is the generation-skipping transferor. Any estate tax or other transfer tax that would otherwise later be recoverable from the Exempt Portion of the Qualified Marital Trust by reason of the death of or an assignment by the Surviving Spouse is instead to be charged entirely (or to the maximum extent possible) to the Nonexempt Portion of the Qualified Marital Trust of which the Grantor is the generation-skipping transferor, and then, if necessary, to the portion of the Qualified Marital Trust of which the Surviving Spouse is the generation-skipping transferor.

5. Except as otherwise specifically provided in this Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into Exempt and Nonexempt Trusts or otherwise into multiple trusts, (a) each trust is to have the same provisions as the original trust from which it is established, and (b) all references in this Trust Agreement to the original trust are to collectively refer to the separate trusts derived from it.

6. Upon termination, partial termination, subdivision, distribution, or partial distribution of any of the separate trusts created under this Trust Agreement, or upon the combination or merger of separate trusts, the Exempt and Nonexempt character of the property of each trust are to be preserved. Accordingly, Nonexempt property from any trust may not be added to or merged with Exempt property from any other trust, even if this results in the establishment of additional separate trusts with the same terms and provisions.

7. The Trustee of any trust is to have authority, in the Trustee's sole discretion, to combine any trust with any other trust or trusts having the same inclusion ratio, including trusts established by the Grantor pursuant to this Trust Agreement, pursuant to the Will of the Grantor, or otherwise, or by any of the issue of the Grantor; and

the Trustee may establish separate shares in each combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries when the trusts being combined do not have identical terms or when separate shares are otherwise deemed desirable by the Trustee. Trusts with different inclusion ratios that are established pursuant to other trust instruments may also be combined with each other or with trusts established under this Trust Agreement, provided their inclusion ratios are maintained unchanged through substantially separate and independent shares of different beneficiaries under Code Section 2654(b). Similarly, the Trustee is to have sole discretionary authority to subdivide separate or separable shares of a single trust into separate trusts. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority, the Trustee may consider efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and their beneficiaries, present and future financial and other objectives of the trusts and their beneficiaries, the need or desirability of having the same or different Trustees for the various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions.

8. The Grantor intends to encourage the Trustee to administer separate trusts under this Trust Agreement in ways that, in the long run, are likely to reduce income and transfer taxes on the trusts and their beneficiaries and that are likely to make efficient utilization of available tax privileges, such as generation-skipping exemptions. Consistent with these objectives, the Trustee of any trust may consult with other trustees and may in reasonable ways coordinate decisions and actions of the trust with those of other trusts under this Trust Agreement, under other dispositions made by the Grantor, and under wills and trusts of others when those other trusts have, in whole or in part, similar beneficiaries. Without limiting the foregoing, the Grantor specifically authorizes (but does not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on their generation-skipping ratios and to prefer making distributions from Nonexempt Trusts to beneficiaries who are "non-skip persons" for generation-skipping purposes and from Exempt Trusts to those who are "skip persons," as those terms are defined in Code Section 2613.

F. DISTRIBUTIONS TO ISSUE OF DECEASED CHILDREN OF GRANTOR. If (1) any of the children of the Grantor should predecease the Surviving Spouse leaving issue who survive the Surviving Spouse, (2) distributions or allocations would otherwise be made after the death of the Surviving Spouse to or for the benefit of the living issue of such deceased children from the Marital Trust or the Decedent's Trust pursuant to article II

above that would result in the imposition of the generation-skipping tax, and (3) the generation-skipping tax would not be imposed if the Surviving Spouse were the generation-skipping transferor with respect to all such distributions or allocations, then the distributions or allocations are instead to be made pursuant to this paragraph F. As used in this paragraph F., the term "predeceased children" refers, collectively, to all of the children of the Grantor who predecease the Surviving Spouse leaving issue who survive the Surviving Spouse. The Trustee is to first determine the aggregate amount of the assets of the Marital Trust and the Decedent's Trust (determined before the imposition of generation-skipping taxes) that would otherwise be distributed or allocated to or for the benefit of the living issue of the predeceased children following the death of the Surviving Spouse, and the amount so determined is instead to be distributed or allocated from the following sources:

1. That portion, if any, of the Marital Trust of which the Surviving Spouse is the generation-skipping transferor.
2. The Exempt Portion of the Marital Trust of which the Grantor is the generation-skipping transferor.
3. The Exempt Portion of the Decedent's Trust.

The Trustee, in the Trustee's discretion, is to determine the amounts to be distributed or allocated from each of these sources after taking into consideration all relevant factors, including, but not necessarily limited to, the income and transfer tax implications of the distributions or allocations, the present and future financial and other objectives of the trusts and their beneficiaries, the intentions of the Grantor (if known), and any other considerations the Trustee may deem appropriate. The Trustees of the various trusts are specifically authorized to sell assets from one trust to another, to exchange assets between or among trusts, and to loan money from one trust to another to facilitate the distributions or allocations pursuant to this paragraph. However, all such sales and exchanges must be at fair market value, as determined by independent appraisals, and all such loans must be with interest at current rates and with adequate security.

If the total value of the assets available in the sources described above is less than the aggregate amount to be distributed or allocated to or for the benefit of the issue of the predeceased children, then the deficit is to be satisfied from the remaining assets of the Marital Trust and the Decedent's Trust. The amounts to be distributed or allocated to or for the benefit of the other beneficiaries of the trusts are to be satisfied from the remaining assets of the Marital Trust and the Decedent's Trust. The aggregate amount (determined

before the imposition of generation-skipping taxes) to be distributed or allocated to or for the benefit of each beneficiary under this Trust Agreement is not to be increased or decreased by the application of this paragraph, and the method of distribution or allocation (whether outright or in trust) is not to be affected. Only the source of the distributions or allocations is to be affected.

The purpose of this paragraph F. is to authorize and direct the Trustee to make distributions and allocations to or for the benefit of the issue of the predeceased children in such a manner as to qualify the distributions or allocations, to the extent possible, for the special rule under Code Section 2651(e) that avoids the characterization of certain distributions and allocations as "generation-skipping transfers" if a descendant of a parent of the generation-skipping transferor (or a descendant of a parent of the transferor's spouse or former spouse) predeceases the generation-skipping transferor leaving issue then living.

G. GRANT OF GENERAL POWER OF APPOINTMENT. If all or any portion of the assets held in a Nonexempt Trust under this Trust Agreement would otherwise be subject to the generation-skipping tax on the death of any beneficiary, and if the possession of a general power of appointment by that beneficiary would prevent the imposition of the generation-skipping tax on the assets subject to the power, then that beneficiary is to have a general power of appointment exercisable on his or her death. The general power of appointment is to be exercisable with respect to the lesser of (a) that portion of the assets of the Nonexempt Trust under this Trust Agreement that would otherwise be subject to the generation-skipping tax on the death of the beneficiary, or (b) the amount, if any, needed to increase the beneficiary's taxable estate for federal estate tax purposes to the smallest amount subject to federal estate taxation at the "maximum federal estate tax rate" (as defined in Code Section 2641), after taking into consideration the beneficiary's adjusted taxable gifts (as defined in Code Section 2001(b)). If this or a similar limitation is imposed on the amount subject to a general power of appointment under one or more other Nonexempt Trusts, regardless of the source of the trust or the identity of the grantor, then the limitation described in clause (b) above is to be reduced to that fraction of the amount described therein, the numerator of which is the amount described in clause (a) above, and the denominator of which is the total value of the assets of all of the Nonexempt Trusts (including the Nonexempt Trust under this Trust Agreement) that would otherwise be subject to the generation-skipping tax on the death of the beneficiary and that grant such general powers of appointment to the beneficiary with similar limitations. The general power of appointment is to be exercisable in favor of any one or more persons and entities, including the estate of the beneficiary, and on such terms and conditions, either outright or in trust, as the beneficiary may appoint by a Will or

a written and acknowledged instrument specifically referring to and exercising this general power of appointment. Any of the assets of the Nonexempt Trust that are not effectively appointed by the beneficiary in this manner are to be distributed, or retained in trust, pursuant to the dispositive provisions of this Trust Agreement that would apply if the general power of appointment were not granted to the beneficiary.

H. OVERALL OBJECTIVE OF SPECIAL GENERATION-SKIPPING PROVISIONS. All provisions of this Trust Agreement, except to the extent inconsistent with the marital deduction objectives, are to be construed to provide for or at least to permit divisions, distributions, and administration of trusts and other dispositions in a timely manner consistent with the Grantor's objective of efficiently using available generation-skipping exemptions and (to the extent possible) of establishing and maintaining only trusts (or substantially separate and independent shares) that have inclusion ratios either of zero or of one and are thus either entirely Exempt or entirely Nonexempt.

I. EFFECT OF REPEAL OF GENERATION-SKIPPING TRANSFER TAX. If the federal generation-skipping transfer tax under Chapter 13 of the Code has been repealed as of the date of establishment of any trust under this Trust Agreement, and if there is no corresponding or substitute transfer tax then in effect, then for the purposes of this Trust Agreement the entire trust is to be considered "Exempt." Similarly, if any trust under this Trust Agreement is divided into Exempt and Nonexempt Trusts pursuant to the preceding paragraphs, and if the federal generation-skipping transfer tax under Chapter 13 of the Code is thereafter repealed without the enactment of a corresponding or substitute transfer tax that is applicable to such trusts, then, unless otherwise provided in this Trust Agreement, the Nonexempt Trust is to be merged into the Exempt Trust, and both trusts are to thereafter be considered a single Exempt Trust for purposes of this Trust Agreement.

VII

TAX APPORTIONMENT

A. APPORTIONMENT ON DEATH OF GRANTOR. Except as otherwise specifically provided in this Trust Agreement or in the Grantor's Will, upon the death of the Grantor, all federal, state, and foreign estate, inheritance, death, or other transfer taxes (hereafter referred to collectively as "death taxes") resulting from the death of the Grantor that are attributable to any property that passes or has passed under this Trust Agreement or otherwise are to be apportioned as follows:

1. The death taxes attributable to any property that passes or has passed under this Trust Agreement or otherwise and that qualifies for the federal estate tax marital deduction are to be paid from and charged against the principal of the Decedent's Trust.

2. If the Executor of the Grantor's estate elects to qualify only a portion of the Marital Trust for the federal estate tax marital deduction, then the death taxes attributable to the Non-Qualified Marital Trust are to be paid from and charged against the "Nonexempt Portion" (as defined in article VI above) of the Non-Qualified Marital Trust, and if the death taxes exceed the Nonexempt Portion of the Non-Qualified Marital Trust, then the excess amount is to be paid from and charged against the "Exempt Portion" (as defined in article VI above) of the Non-Qualified Marital Trust.

3. The death taxes resulting from the death of the Grantor that are attributable to any other property that passes or has passed under this Trust Agreement are, in the case of an inheritance tax, to be paid by the person upon whom or from the property upon which the inheritance tax is specifically imposed, and, in the case of an estate, death, or other transfer tax (including generation-skipping transfer taxes), are to be apportioned in accordance with applicable state law.

B. APPORTIONMENT ON DEATH OF SURVIVING SPOUSE. Except as otherwise specifically provided in this Trust Agreement or in the Will of the Surviving Spouse, upon the death of the Surviving Spouse, all death taxes resulting from the death of the Surviving Spouse that are attributable to any property that passes or has passed under this Trust Agreement are to be apportioned as follows:

1. The death taxes attributable to the Marital Trust are to be paid from and charged against the Nonexempt Portion of the Marital Trust, and if the death taxes exceed the Nonexempt Portion of the Marital Trust, then the excess amount is to be paid from and charged against the Exempt Portion of the Marital Trust.

2. The death taxes resulting from the death of the Surviving Spouse that are attributable to any other property that passes or has passed under this Trust Agreement are, in the case of an inheritance tax, to be paid by the person upon whom or from the property upon which the inheritance tax is specifically imposed, and, in the case of an estate, death, or other transfer tax (including generation-skipping transfer taxes), are to be apportioned in accordance with applicable state law.

C. APPORTIONMENT ON DEATHS OF OTHER BENEFICIARIES. Except as otherwise specifically provided in this Trust Agreement or in the Will of any beneficiary (other than the Grantor) whose death taxes are affected by the assets of the trust estate, all death taxes resulting from the death of any beneficiary of the trust estate (other than the Grantor) that are attributable to any property that passes or has passed under this Trust Agreement are, in the case of an inheritance tax, to be paid by the person upon whom or from the property upon which the inheritance tax is specifically imposed, and, in the case of an estate, death, or other transfer tax (including generation-skipping transfer taxes), are to be apportioned in accordance with applicable state law.

D. APPORTIONMENT OF TAX BENEFITS. The death tax benefits of any credits, deductions, exclusions, exemptions, elections, and similar items are to be apportioned as follows:

1. The credit granted by Code Section 2001(b)(2) for gift taxes that were paid by an individual recipient of a taxable gift is to inure to the benefit of that recipient.

2. The credit granted by Code Section 2001(b)(2) for gift taxes that were not paid by an individual recipient, the applicable credit amount granted by Code Section 2010, the credit for gift taxes granted by Code Section 2012, the credit for property previously taxed granted by Code Section 2013 (but only to the extent attributable to property that cannot be identified specifically as includible in the estate), and any other credit the benefit of which is not allocated by subparagraph D.3. below because it is not possible to identify the property passing to a recipient that produces the credit are to inure to the benefit of all recipients of property includible in the estate for death tax purposes.

3. The benefit of any other credit is to inure to the recipient of the property that produces the credit. For example, (a) the recipient of property that generates a state death tax is to receive the benefit of the credit granted by Code Section 2011 with respect to payment of that tax, (b) the recipient of property subject to foreign death tax is to receive the benefit of the credit granted by Code Section 2014 with respect to the taxation of that property, and (c) the recipient of specifically identifiable property that is includible in the estate and that previously was taxed is to receive the benefit of any credit granted by Code Section 2013 with respect to that property.

4. Any reduction in tax attributable to an election under Code Section 2032A or any similar provision enacted in the future is to inure to the benefit of the qualified heir who receives the property that is the subject of the election. Any recapture tax, including interest and penalties thereon, resulting from the disposition or cessation of

qualified use of the property or any other event that causes a recapture tax is to be charged against and collected from the qualified heir who owns the property at the time of the event that results in the recapture tax.

5. Any reduction in tax attributable to property qualifying for the marital or charitable deduction is to inure to the benefit of the recipient of the property.

6. The benefit of any tax rate differential in computing a state death tax that is attributable to the relationship of the recipient to the transferor is to inure to the recipient.

7. The benefit of any deferral of death tax under Code Sections 6161, 6163, 6166, any corresponding provisions of state law, and any similar provisions enacted in the future is to inure to the recipient of the property that qualifies for the deferral and who assumes the deferred tax liability. The recipient is to be liable for the interest that accrues with respect to the deferred tax liability and for payment of the entire amount of the tax, together with accrued interest thereon, upon the occurrence of any event that accelerates the payment of the tax.

8. Any other tax benefit that is directly attributable to identifiable property is to inure to the recipient of the property that produces the tax benefit.

9. Any tax benefit attributable to a deductible expense that is charged directly to a beneficiary is to inure to that beneficiary. For example, any tax benefit attributable to interest expense deductible under Code Section 2053 that is paid by and charged to a beneficiary is to inure to that beneficiary.

E. GOVERNING APPORTIONMENT LAW. Except as otherwise provided in the preceding paragraphs, the amounts of death taxes attributable to the various portions of the trust estate that are described in the preceding paragraphs are to be determined in accordance with the principles of the Federal Estate Tax Apportionment Law as in effect in the State of Nevada on the date of execution of this Trust Agreement, and the amounts so determined are to be apportioned in the manner specified in those paragraphs. In addition, if there is no applicable state law governing the apportionment of any death taxes that are to be apportioned in accordance with applicable state law, then the death taxes are to be apportioned in accordance with the principles of the Federal Estate Tax Apportionment Law as in effect in the State of Nevada on the date of execution of this Trust Agreement. However, all references in the Federal Estate Tax Apportionment Law to "exemptions" and "deductions" are to be deemed to also include "exclusions."

F. INAPPLICABILITY OF CODE SECTIONS 2207A and 2207B. Code Section 2207A is not to govern the apportionment of federal estate taxes attributable to the Marital Trust. Code Section 2207B is to apply only to the extent that it is consistent with the express provisions of this article.

VIII

DEFINITIONS AND OPERATIVE RULES

A. DEFINITION OF TRUSTEE. As used in this Trust Agreement, the term "Trustee" refers to Samuel S. Jaksick, Jr., as Trustee, and to any successor Trustee or successor Co-Trustees who are named or appointed pursuant to paragraph A. of article IV or in an instrument exercising a power of appointment granted by this Trust Agreement. The successor in interest to a corporate Trustee is to replace its predecessor.

B. DEFINITION OF EDUCATION. Whenever any provision is made in this Trust Agreement for payments for the "education" of a beneficiary, the term "education" is to be construed to include public or private elementary and secondary education, including formal or informal instruction or training in music, drama, art, athletics, and other subjects conducted either before or after the regular school day, vocational training, special training for the mentally or physically handicapped, and undergraduate, graduate, and post-graduate study, so long as pursued to advantage by the beneficiary, at an institution of the beneficiary's choice; and the payments to be made for such education are to include tuition and fees, books, supplies, tutors, and reasonable living and travel expenses.

C. POWERS OF APPOINTMENT. Except as otherwise specifically provided in the Trust Agreement, the holder of any power of appointment (general or special) that is granted pursuant to the terms of the Trust Agreement may appoint outright or in trust, in present or future interests, or in any combination of these, and may impose any terms, conditions, and restrictions with respect to the appointed property. Each power of appointment (both general and special) also includes the power of the holder to grant new powers of appointment (general or special) to or in favor of any of the objects of the power. Except as otherwise specifically provided in the instrument exercising the power of appointment, any distributions from the trust pursuant to the exercise of the power are to be charged against the trust as a whole, rather than against the ultimate distributive share of the beneficiary to whom or for whose benefit the distribution is made. In the case of special powers of appointment, if the holder of the power is legally obligated to support, educate, and maintain any of the objects of the power, then the holder of the power may not exercise the power in such a manner as to discharge that legal obligation, from time

to time existing. If two (2) or more instruments purport to exercise the same power of appointment in an inconsistent or conflicting manner, then the last validly executed instrument is to control.

If all of the holders of any power of appointment granted by this Trust Agreement should die or become incapacitated, then the power of appointment is to lapse unless, in the case of incapacity, one or more of the holders of the power regain capacity, or if the Trust Agreement authorizes the appointment of successor holders of the power, a successor holder of the power is appointed.

D. DETERMINATION OF INCAPACITY. For the purposes of this Trust Agreement, a person is to be considered to be incapacitated or incompetent if either (1) the person at any time, as certified in writing by two (2) licensed physicians, becomes physically or mentally incapacitated such that the person is unable to manage the person's financial affairs, whether or not a court of competent jurisdiction has declared the person to be incompetent, mentally ill, or in need of a conservator or guardian of the estate, or (2) a court of competent jurisdiction has declared the person to be incompetent, mentally ill, or in need of a conservator or guardian of the estate. However, in the event of a certification under clause (1) above, the person is to have the right to petition a court for a determination that no incapacity exists. The person is to be considered to have regained capacity or competence as soon as either (1) the condition causing the physical or mental incapacity no longer exists, as certified in writing by two (2) licensed physicians, who need not be the same two physicians who previously certified that the person had become physically or mentally incapacitated, or (2) a court of competent jurisdiction has declared that the person is no longer incompetent, mentally ill, or in need of a conservator or guardian of the estate. By accepting his or her appointment as the Trustee or as a Co-Trustee under this Trust Agreement, the person (specifically including, but not limited to, the Grantor) agrees that the person's physicians may release to the Grantor, any beneficiary of the trust estate (or to the beneficiary's attorney, guardian or conservator of the beneficiary's estate, or the beneficiary's attorney-in-fact under a valid and enforceable power of attorney), or to any person or entity named as a successor Trustee any medical information reasonably necessary to determine the person's competency pursuant to this paragraph D., and the physicians are authorized to issue the written certifications described above if they conclude that the Trustee or Co-Trustee has become incapacitated. The person's appointment as the Trustee or as a Co-Trustee may be made contingent upon his or her execution of any written releases reasonably required to ensure the enforceability of the authorization described in the preceding sentence under applicable federal or state law, and the authorization is to remain in effect for as long as the person serves as Trustee or as a Co-Trustee.

E. NINETY (90) DAY SURVIVORSHIP REQUIREMENT. If any beneficiary under this Trust Agreement to whom or for whose benefit a distribution or allocation from the trust estate (either outright or in trust) is to be made upon the death of another person fails to survive that other person for 90 days, then the beneficiary is to be conclusively deemed to have predeceased the other person.

F. LIMITATION ON TRUSTEE'S DISCRETIONARY POWERS. If the Trustee is legally obligated, in the Trustee's individual capacity, to support, educate, and maintain any of the beneficiaries of any trust being administered under this Trust Agreement, then the Trustee may not exercise any of the Trustee's discretionary powers, as Trustee, in such a manner as to discharge that legal obligation, from time to time existing.

G. DEFINITION OF ISSUE AND CHILDREN. As used in this Trust Agreement, the term "issue" refers to lineal descendants of all degrees. The terms "child," "children," "issue," "descendants," and other class terminology in this Trust Agreement include claimants whose membership in the class is based on birth out of wedlock or adoption, provided the person so born or adopted lived for a significant time during minority (before or after adoption, in the case of adoption) as a member of the household of the relevant natural or adoptive parent or the household of that parent's parent, brother, sister, or surviving spouse. The rights of a person who would be included in a class gift on this basis, or on the basis of birth in wedlock, are not affected by subsequent adoption of that person (or of one through whom he or she claims) by another, whether within or outside the family.

H. DISTRIBUTION BY RIGHT OF REPRESENTATION. Unless otherwise specified in this Trust Agreement, distribution or allocation to or among "issue by right of representation" is to be made by dividing the property into as many equal shares as there are (1) living descendants of the designated ancestor in the generation nearest to the ancestor in which there are one (1) or more descendants living at that time and (2) descendants of the designated ancestor in that same generation who are then deceased who leave one (1) or more descendants then living. One (1) such equal share is to then be distributed or allocated to each living descendant in that generation, and one (1) such equal share is to be distributed or allocated in the same manner among the then living descendants of each deceased descendant in that generation.

I. DEFINITION OF SURVIVING SPOUSE. As used in this Trust Agreement, the term "surviving spouse" means the person who was the legally married spouse of the other designated individual at the time of the death of the other individual, if (1) the spouse was then living and (2) the spouse and the other individual had not been living separate

and apart from each other as a result of marital disharmony for more than 30 days immediately preceding the death of the other individual. An individual who qualifies as a "surviving spouse" under this definition is to retain that status even if he or she subsequently remarries.

J. NAMES OF TRUSTS. The trust created during the lifetime of the Grantor pursuant to the terms of this Trust Agreement is to be referred to as the Samuel S. Jaksick, Jr. Family Trust. Each separate trust created under the terms of this Trust Agreement following the death of the Grantor, if the Grantor is survived by the Surviving Spouse, is to be referred to by the designation specified in paragraph B. of article II, e.g., "The Marital Trust under the Samuel S. Jaksick, Jr. Family Trust Agreement (As Restated)." Each other separate trust created under the terms of this Trust Agreement following the death of either the Grantor or the Surviving Spouse may be referred to by the name of the primary beneficiary of the trust, if there is a primary beneficiary, or by the name of any ancestor of the beneficiaries of the trust, as determined by the Trustee, in the Trustee's discretion, if there is no primary beneficiary of the trust.

K. SPENDTHRIFT PROVISION. No interest in the principal or income of any trust or share created under this Trust Agreement may be anticipated, assigned, or encumbered by any beneficiary, or subjected to any creditor's claim or to legal process, prior to its actual receipt by the beneficiary.

L. PERPETUITIES SAVINGS CLAUSE. Unless sooner terminated in accordance with other provisions of this Trust Agreement, all trusts or shares created under this Trust Agreement (or by the exercise of a power of appointment granted by this Trust Agreement, other than an appointed trust in which some or all of the appointed interests are allowed a new perpetuities period because of a new power of appointment or power of withdrawal conferred by the exercise of the original power) must terminate at the expiration of the longest period allowed for the vesting or termination of all interests in the trusts or shares under the "Rule Against Perpetuities" (if any) in effect from time to time in the state specified in paragraph M. below. If the longest period allowed for the vesting or termination of all interests is measured with reference to the last survivor of a group of individuals who are living on the date the trust or share is created or the date on which it becomes irrevocable, then the group is to consist of all of the issue of the Grantor who are living on the measuring date. Upon termination, the principal and undistributed income of a terminated trust or share are to be distributed to the then trust beneficiaries, both income beneficiaries and then living remaindermen. The identities of the remaindermen are to be determined as if the event that would otherwise cause the final distribution of the trust, such as the attainment by the income beneficiary of a specified age or the death of the last

living income beneficiary, had then occurred. Except as otherwise specifically provided in this Trust Agreement, distribution among the income beneficiaries and remaindermen is to be in accordance with sound actuarial principles.

M. CHOICE OF LAW. The validity of this Trust Agreement and the construction of its beneficial provisions are to be governed by the laws of the State of Nevada as in effect from time to time. This paragraph is to apply regardless of any change of residence of the Trustee or of any beneficiary, the appointment or substitution of a Trustee residing or doing business in another state, or any change in the situs of a trust pursuant to paragraph N. below.

N. SITUS OF TRUSTS. The Trustee may remove trust assets from the State of Nevada and change the place of administration and situs of any trust being administered under this Trust Agreement to other locations if the Trustee considers the change to be advisable and in the best interests of the trust estate and its beneficiaries.

O. INCONTESTABILITY. If any beneficiary under this Trust Agreement, singularly or in conjunction with any other person, contests in any court the validity of this Trust Agreement or of the Will of the Grantor, or seeks to obtain an adjudication in any proceeding in any court that this Trust Agreement or any of its provisions or that such Will or any of its provisions are void, or seeks otherwise to void, nullify, or set aside this Trust Agreement or any of its provisions, then the right of the beneficiary to take any interest given to the beneficiary under this Trust Agreement is to be determined as it would have been determined had the beneficiary died prior to the date of execution of this Trust Agreement.

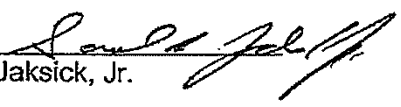
The Trustee is hereby authorized to defend, at the expense of the trust estate, any contest of or other attack of any nature on the trust estate or any of the provisions of this Trust Agreement.

P. SEVERABILITY. Every provision of this Trust Agreement is intended to be severable. Accordingly, if any provision hereof is declared to be illegal or invalid for any reason whatsoever, then such illegality or invalidity is not to affect the other provisions, all of which are to remain binding and enforceable.

Q. GENDER AND NUMBER CLAUSE. As used in this Trust Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, are to each be considered to include the others whenever the context so indicates.

R. SIMULTANEOUS DEATH PRESUMPTION. If Samuel S. Jaksick, Jr. and Janene Barger should die simultaneously, or under such circumstances as to render it difficult or impossible to determine who predeceased the other, then Janene Barger is to be conclusively presumed to have survived Samuel S. Jaksick, Jr. for purposes of this Trust Agreement.

EXECUTED at Reno, Nevada, on 6/29, 2006.

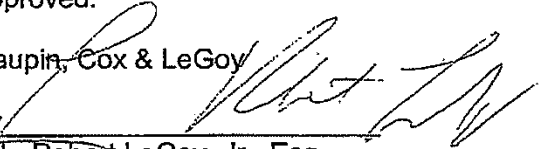

Samuel S. Jaksick, Jr.

4005 Quail Rock Lane
Reno, Nevada 89511

GRANTOR AND TRUSTEE

Approved:

Maupin, Cox & LeGoy

By 
L. Robert LeGoy, Jr., Esq.

4785 Caughlin Parkway
P. O. Box 30000
Reno, Nevada 89520
(775) 827-2000

ATTORNEYS FOR THE GRANTOR

STATE OF NEVADA)
)
COUNTY OF WASHOE)

The Samuel S. Jaksick, Jr. Family Trust Agreement (As Restated) was
acknowledged before me on June 30, 2006, by Samuel S. Jaksick, Jr.


Notary Public

SCHEDULE A

**PROPERTY INITIALLY CONVEYED TO
SAMUEL S. JAKSICK, JR., TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY TRUST**

I. Real Property

A. All that real property located at:

1011 Lakeshore Blvd.
Incline Village, NV 89451
APN: 130-230-34

II. Personal Property

A. All of the bank accounts, savings accounts, investment accounts, brokerage accounts, time certificates, and all other cash, securities and/or investments of Settlor.

B. All right, title and ownership interest of the Settlor in any corporation, general or limited partnership, limited liability company, or any other entity, whether closely held or publicly traded, including, but not limited to, the following:

1. Juniper Trails Development Co.;
2. Pioneer Group, Inc.;
3. Pioneer Associates Limited Liability Company;
4. Montreux Unit 3 Association;
5. Saddlehorn Development Co.;
6. Lakecrest Realty, Inc.;
7. Lake-Ridge;
8. White Pine Lumber Co.;
9. Toiyabe Investment Co.;
10. Basecamp LLC, a Nevada limited-liability company;
11. Montreux South 51 L.L.C.;
12. Montreux Development Group, Inc.;
13. Montreux Golf & Country Club, Inc.;
14. Duck Lake Ranch, L.L.C.;
15. SJ Ranch, LLC;
16. Bright-Holland Co.;
17. Lakeridge Golf Course Ltd.;
18. Montreux Golf Club Ltd.;
19. Great Western Helicopters, Inc.;
20. Jaksick Family Partnership, Limited Partnership;
21. Montreux West 40 L.L.C.;
22. SJ Ranch Property Owners Association;
23. Southeast SJ Ranch Property Owners Association;
24. Montreux-South 80, a Nevada joint venture;
25. Jackrabbit Properties, LLC;
26. BBB Investments, LLC, a Nevada limited-liability company;
27. Home Camp Land and Livestock Co., Inc.;
28. Pronghorn, LLC;
29. Buckhorn Land and Livestock, LLC
30. Washoe Winds, LLC, a Nevada limited-liability company;
31. Locnavar, LLC;
32. SST Westridge, LLC;
33. California Bighorn, LLC;

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the Case No. PR17-00445
SSJ'S ISSUE TRUST.

_____/

CONSOLIDATED

In the Matter of the Administration of the Case No. PR17-00446
SAMUEL S. JAKSICK, JR. FAMILY TRUST. Dept. No. 15

_____/

ORDER AFTER EQUITABLE TRIAL

On August 2, 2017, the trustees of the SSJ's Issue Trust ("Issue Trust") and the Samuel S. Jaksick, Jr. Family Trust ("Family Trust") filed Petitions for Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters.¹ October 10, 2017, Wendy Jaksick filed an Opposition and Objection to the Petition. On January 19, 2018, Wendy filed a Counterpetition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief, which was subsequently amended on February 23, 2018. Family Trust co-trustee Stan Jaksick filed an Objection to Approval of Accountings and Other Trust Administration Matters on October 10, 2017. Todd Jaksick, as trustee of the Issue Trust

¹ Family Trust co-trustee Stan Jaksick did not join in the petitions.

1 and co-trustee of the Family Trust, and Michael Kimmel as co-trustee of the Family Trust,
2 are represented by Donald Lattin and Carolyn Renner. Todd is represented in his
3 individual capacity by Kent Robison. Mr. Robison also represents Duck Lake Ranch, LLC,
4 Incline TSS, Ltd., and Sammy Supercub, LLC. Stanley Jaksick, as co-trustee of the Family
5 Trust, is represented by Adam Hosmer-Henner and Philip Kreitlein. Wendy is
6 represented by Mark Connot and Kevin Spencer.

7 1. This Court presided over a jury trial on legal claims between February 14,
8 2019, and March 4, 2019. The jury concluded Todd breached his fiduciary duty as trustee
9 and awarded damages of \$15,000. The jury found no other trustee breached any fiduciary
10 duty. In addition, the jury found Wendy had not proven her claims for 1) civil conspiracy
11 and aiding and abetting, 2) aiding and abetting breach of fiduciary duty, or 3) fraud
12 against any counter-respondent whether individually or as trustee. The jury did not find
13 any counter-respondent acted with fraud, oppression, or malice.

14 2. On May 13, 2019, this Court began a bench trial to resolve the remaining
15 equitable claims. By stipulation, the parties submitted written closing trial statements and
16 replies. This Court authorized supplemental briefing on a narrow issue related to Exhibit
17 561. This Court has considered all briefs and evidence admitted during the equitable trial
18 (including many exhibits previously admitted at jury trial).² This Court is aware that
19 disagreements continue and Wendy alleges ongoing breaches of fiduciary duties, as
20 illustrated by the moving papers relating to post-trial costs, the 2018 annual accountings,
21 and distribution guidance. It now finds and orders as follows:

22 General Findings

23 1. As a factfinder, this Court is authorized to consider its everyday common
24 sense and judgment, and determine what inferences may be properly drawn from direct
25 and circumstantial evidence. See Lewis v. Sea Ray Boats, Inc., 119 Nev. 100, 105, 65 P.3d

26
27 ² On May 13, 2019, the parties stipulated into evidence many exhibits previously admitted during the jury
28 trial. Wendy also offered new evidence during the equitable phase of trial. A list of all documentary
evidence admitted on equitable issues is contained in this Court's Order Addressing Evidence at Equitable
Trial, dated May 20, 2019. This Court has not considered unadmitted documentary evidence. However, this
Court has considered deposition testimony properly part of the trial record pursuant to NRCP 32.

1 245, 248 (2003); Nev. 1GI.5 (2011); Nev. 2EV.3 (2011); Nev. J.I. 1.05 (1986).

2 2. The facts presented in support of the equitable claims inextricably overlap
3 with the legal claims presented to the jury. Despite how the claims are pled, Wendy is
4 attempting to retry her case to obtain a second review of similar facts and an outcome
5 different from the jury verdict.³ This Court may or may not have reached the same
6 decision as the jury. Regardless, it has no authority to dilute or otherwise modify the
7 jury's verdict.

8 3. The file materials compose more than 17,000 pages. There were more than
9 300 separate pleadings, motions, oppositions, replies, joinders, and other substantive
10 papers filed in this proceeding. The parties produced tens of thousands of documents
11 before trial and marked 677 exhibits for the two trials, of which 227 were admitted. The
12 substantive papers (with exhibits and transcripts) filed since the jury's verdict compose
13 more than 4,000 pages. This Court has read and re-read the pending moving papers, to
14 include exhibits and transcripts. It has analyzed every argument presented and carefully
15 studied the cited authorities. It cannot synthesize the competing moving papers, exhibits,
16 and arguments into a single coherent order. It cannot resolve the arguments in minutia.
17 Therefore, this Court elects to make general findings, which are substantially supported by
18 the evidence of record.

19 4. This Court regrets some of its more direct findings, which it must disclose to
20 support its discretionary resolution of equitable claims.

21 5. Sam Jaksick created substantial wealth during his life but his leveraged
22 estate was compromised by the "great recession" during the last season of his life. Sam's
23 estate is exceedingly complex because he used tens of different corporate entities as
24 holding companies for his wealth. Sam also partnered with non-family business entities.

25 6. Sam had three children: Stan, Wendy, and Todd. Sam loved each of his
26

27 ³ On January 3, 2018, Wendy demanded a jury trial on all legal claims. Wendy demanded a jury – at least in
28 part – because she likely suspected a judge's comprehensive, studious examination of all evidence would not
result in the \$80 million compensatory damages and additional punitive damages she asked the jury to
award. This Court honors Wendy's unfettered constitutional right to a jury trial but it will not re-visit the
identical facts to arrive at a different outcome for Wendy.

1 children, despite their different strengths, weaknesses, and personalities. Wendy did not
2 transition well into adulthood and Sam was aware of her inability to provide for herself.
3 Wendy does not understand financial complexities. Sam was more confident in Stan and
4 Todd as he worked with them during his life and designated them to continue
5 participating in his estate and business affairs after his death. Stan's trial participation was
6 not lengthy but he appears to enjoy some financial fluency and business sophistication.
7 Stan also presented as a credible witness and thoughtful sibling. While Todd is most
8 familiar with Sam's business and trust affairs, he is only marginally sophisticated as a
9 trustee. He regularly deferred to the knowledge and expertise of others.⁴ Todd also
10 presented as conflicted by his own interests, influenced by his animus towards Wendy,
11 and confused about his duties as a neutral trustee.

12 7. Sam's estate plan evolved over the years, and its last iteration was influenced
13 by debt, tax avoidance, asset protection, and planning around Stan's divorce. Both Sam
14 and Todd were exposed to personal liabilities on substantial debts Sam had incurred.
15 Some of the estate documents were created in haste because of Sam's heart illness and
16 surgery in December, 2012. (Sam survived his heart illness and tragically died in a water
17 accident in 2013). Some of the 2012-13 estate planning documents are disorganized,
18 internally inconsistent, and complicated by notarial mischief or neglect. This Court was
19 particularly troubled by the notary's abdication of statutory responsibilities, which was an
20 influencing fact in the litigation Wendy pursued. Notaries are given great authority and
21 their actions induce reliance. The notary at issue fell below the statutory standards. This
22 finding alone warrants a substantial financial consequence upon the trust, which this
23 Court includes in its analysis of the no-contest penalty and attorneys' fees requests.

24 8. Todd's participation in Sam's estate beginning in 2012 can be viewed
25 through two opposing lenses: he was either a disconnected participant who yielded to his
26

27 ⁴ This Court understands jury instruction no. 11, which does not alter the fact that Todd struggled under the
28 shadow of his father's business acumen. The dynamic of Todd relying on professionals regarding the
accountings, while the professionals provided accountings with disclaimers and hyphens, created
uncertainty (or at least the appearance of uncertainty) about transactions, values, and who was ultimately
responsible for acts and accountings of trust administration.

1 father's wishes, or he was a subtly strategic participant who enriched himself to the
2 detriment of his siblings. These opposing possibilities are relevant only to understand
3 how this dispute became so bitter. This Court is inclined to find Todd was the former
4 rather than the latter, but regardless, Stan and Wendy had cause to seek answers to
5 questions created by document anomalies, inadequate disclosures, and transactions
6 inuring to Todd's benefit.

7 9. This action began when Stan, Wendy, and Todd were opposed to each other.
8 The dispute was exacerbated by inadequate information and self-interested perspectives.
9 Some of the more personal allegations among siblings reveal a family influenced by
10 misperceptions and individual interests. Wendy was particularly personal in her
11 allegations, the worst of which were harassing, vexatious, and without factual basis. There
12 were at least seven lawyers zealously advocating for their clients, which further
13 entrenched the siblings against each other. The children chose litigation over compromise
14 to work through the complexities of Sam's estate and their disparate financial
15 circumstances. With more effortful disclosures, neutral access to information, and a little
16 sibling patience, they *might* have worked through the messiness of Sam's estate to reach a
17 non-litigation resolution. Instead, the children sued each other, with Todd and Stan
18 settling their dispute just days before the jury trial began. Despite the settlement, this
19 Court is aware of the allegations Stan made against Todd in his deposition and trial
20 testimony. The settlement does not extinguish Stan's pleading allegations and
21 testimony – it merely reflects Todd and Stan's strategic and well-advised decision to
22 compromise their claims before trial. The settlement worked to Wendy's trial detriment,
23 yet she chose trial over settlement and must now accept the consequences of her choice.
24 Stan's allegations and testimony are relevant to contextualize the legal and equitable
25 claims, particularly the request to impose a no-contest penalty and for attorneys' fees
26 under NRS Chapter 18 and NRCP 68.

27 10. Todd and Stan contend they made every effort to avoid litigation but could
28 not persuade Wendy or her attorneys to choose compromise over conflict. This is mostly

1 accurate, as Wendy's litigation position and trial demand were influenced more by animus
2 and avarice than by a desire for balanced justice. In particular, Wendy's \$80 million jury
3 demand revealed her overreach. However, Wendy's litigation zeal does not extinguish
4 her probable cause to seek answers and formulate claims based upon the information she
5 had at the time — the same information that led to Stan's allegations against Todd.

6 11. Throughout trial this Court reflected upon how Sam would respond if he
7 observed his children spending millions of dollars litigating his estate. The parties
8 repeatedly invited this Court to consider Sam's testamentary intentions. Responding to
9 that invitation, this Court has wondered how Sam would react to see his estate
10 disproportionately allocated among his children. There is no way to know how or if Sam
11 would have enlarged Wendy's beneficial interests if he survived the economic recovery.
12 Sam loved Wendy despite her issues, and this Court suspects Sam would have continued
13 his pattern of lifetime largesse in favor of his troubled daughter. But suspicion and
14 speculation are beyond this Court's authority. Death arrives at its own inconvenient time
15 and none can alter its consequences. Wendy is simply without her paternal benefactor and
16 is susceptible to the trustees' actions as governed by documents and transactions Sam
17 approved during his life.

18 12. The trustees' initial petitions were predicated upon accountings that
19 provided inadequate information. The accountings were untimely, and even if technically
20 compliant with the statutes, they failed to provide full and fair notice to Wendy as a
21 beneficiary. This Court acknowledges the trustees attempted to answer Wendy's
22 questions by making their CPA and lawyers available to Wendy, but there is only
23 marginal evidence in the record the trustees invested their own personal efforts to satisfy
24 Wendy's concerns. At some point the trustees' responses became form over function.
25 Todd particularly grew weary of Wendy, which affected his neutral trusteeship, as
26 illustrated by his hope to satisfy Wendy's beneficial interests at a discount that inured to
27 his benefit. In response, Wendy initiated scorched-earth litigation grounded in
28 entitlement and limited self-awareness. This Court cannot now alter the consequences of

1 the trust administration and litigation choices that precede this order.

2 13. Wendy's legal and equitable claims are grounded in the same common facts
3 and are exceedingly difficult to segregate. As this Court reviewed the hundreds of pages
4 of written arguments relating to the equitable claims, it was taken back to the evidence
5 and arguments presented to the jury. Through the misty fog of painfully voluminous
6 allegations and varied claims, the core of Wendy's complaint is that Todd breached his
7 fiduciary duties by self-dealing and failing to disclose information relevant to Wendy as a
8 beneficiary. No matter how Wendy frames or argues her equitable claims, she asks this
9 Court to remedy the identical facts and transactions she placed before the jury. This Court
10 must look to the substance of the claims, not just the labels used in the pleading document.
11 Nev. Power Co. v. District Court, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004).

12 14. The complexity of Sam's estate warranted extraordinary disclosures,
13 explanations, and compliance with discovery rules. There were significant discovery
14 disputes, such that this Court created a schedule for recurring access to the Discovery
15 Commissioner. This Court also ordered the production of disputed discovery. Discovery
16 continued to the very eve of trial and Wendy was still attempting to discern her beneficial
17 interests when trial began.

18 15. There were several sports references and metaphors argued to the jury.
19 Consistent with that theme, Wendy "swung for the fences" when she asked the jury to
20 award \$80 million to her (plus punitive damages), an amount that exceeds the evidentiary
21 value of this estate and would deprive Todd and Stan of any beneficial interests. She now
22 seeks a "mulligan" by re-arguing to this Court what was over-argued to the jury.⁵ The
23 jury found that Todd breached his fiduciary duties but only awarded \$15,000 to Wendy. It
24 found against Wendy on all other claims and against all other counter-respondents. This
25 Court may have been authorized to award additional equitable relief upon the same facts
26

27 ⁵ To illustrate, Wendy argued in her omnibus opposition to the cost memoranda filed before the equitable
28 claims trial that "damages may still be awarded, transactions may be set-aside, further breaches of fiduciary
duty may be found, and the ACPAs and other documents may be found fraudulent or invalid, ab initio."
These were all claims and requests rejected by the jury.

1 if the jury found for Wendy on more claims and against more counter-respondents. But
2 constitutional and decisional authorities prevent this Court from entering a subsequent
3 order diluting or altering the jury's verdict.

4 16. Todd asks this Court to contextualize the \$15,000 as a *de minimis* award. This
5 Court will not infuse qualitative meaning into the jury's verdict. To do so would be
6 impermissible speculation. Todd breached his fiduciary duties to Wendy. And Wendy
7 was not awarded the damages she sought. These two facts are integral to this Court's
8 resolution of equitable claims and fees requests.

9 General Legal References

10 1. This Court cannot supplant or alter a jury's verdict by relying upon common
11 facts to reach a different outcome. See generally Lehrer McGovern Bovis, Inc. v. Bullock
12 Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032, 1038 (2008) (discussing special interrogatory
13 verdicts). In Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir. 2013), the plaintiff
14 submitted his equitable claim for declaratory relief to the bench after the jury rejected his
15 legal claims. The court held "it would be a violation of the Seventh Amendment right to
16 jury trial for the court to disregard a jury's findings of fact. Thus, in a case where legal
17 claims are tried by a jury and equitable claims are tried by a judge, and the claims are
18 based on the same facts, in deciding the equitable claims, the Seventh Amendment
19 requires the trial judge to follow the jury's implicit or explicit factual determinations." Id.
20 at 828-29 (citations omitted).

21 2. In Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc., 908 F.3d
22 313, 343 (8th Cir. 2018), the jury found for the plaintiff on legal intellectual property claims,
23 but the bench subsequently applied the equitable defenses of laches and acquiescence.
24 The appellate court reversed, holding "[t]o bind the district court's equitable powers, a
25 jury's findings must be on an issue 'common' to the action's legal and equitable claims;
26 otherwise, the court is free to treat the jury's findings as 'merely advisory'" Id.
27 Further, "[i]f the jury's findings were on a common issue, the court, in fashioning equitable
28 relief, may take into account facts that were not determined by the jury, but it may not

1 base its decision on factual findings that conflict with the jury's findings." Id. at 344
2 (citations omitted); see also Haynes Trane Serv. Agency, Inc. v. Am. Standard, Inc., 573
3 F.3d 947, 959 (10th Cir. 2009) (noting a court cannot grant equitable relief on facts rejected
4 explicitly or implicitly by a jury verdict); Avitia v. Metro Club of Chicago, Inc., 49 F.3d
5 1219, 1231 (7th Cir. 1995) ("[A] judge who makes equitable determinations in a case in
6 which the plaintiff's legal claims have been tried to a jury is bound by any factual findings
7 made or inescapably implied by the jury's verdict.").

8 3. Among prescribed form and content, an accounting must provide a
9 beneficiary with the ability to evaluate his or her interests. NRS 165.135(3). See also NRS
10 153.041. The cost of preparing an accounting is presumptively borne by the trust. NRS
11 165.1214(5). Unless acting in good faith, a trustee can be personally liable for failing to
12 provide an accounting. NRS 165.148. A beneficiary may petition the court to order a
13 trustee to perform his or her accounting duties. NRS 165.190. This Court may order a
14 trustee's compensation be reduced or forfeited, or enter other civil penalty, when a trustee
15 fails to perform his duties. NRS 165.200.

16 4. The trustees' just and reasonable expenses are presumptively governed by
17 the trust instruments and borne by the trust. However, this Court has authority to review
18 and settle the trustees' expenses and compensation. NRS 153.070. This Court may also
19 reduce a trustee's compensation or order a trustee to pay a beneficiary's reasonable
20 attorneys' fees and costs when the beneficiary compels redress for a breach of trust or
21 compliance with trust terms. NRS 153.031(3). See also In re Estate of Anderson, No.
22 58227, 2012 WL4846488 (Oct. 9, 2012). This Court may order the trust expenses defending
23 against a beneficiary's successful claims be borne by a trustee individually. NRS 18.090.
24 See also Estate of Bowlds, 120 Nev. 990, 1,000, 102 P.3d 593, 600 (2004) (concluding
25 payment of attorney's fees from trust assets only when litigation generally benefits the
26 trust); NRS 153.031(3)(b) (stating if court grants relief to petitioner, it may order trustee to
27 pay fees and costs); RESTATEMENT (THIRD) OF TRUSTS § 100 (2012) (examining denial of
28 compensation to breaching trustee).

1 5. NRS 163.00195 governs no-contest provisions. It begins by emphasizing this
2 Court's duty to enforce no-contest clauses to effectuate a settlor's intent. NRS 163.00195(1).
3 However, the statute then creates a wide exception when it provides a no-contest clause
4 must not be enforced when a beneficiary acts to enforce her legal rights, obtain court
5 instruction regarding proper administration, seeks to enforce the trustee's fiduciary duties,
6 or institutes and maintains a legal action in good faith and based on probable cause. NRS
7 163.00195(4). See also Matter of ATS 1998 Tr., No. 68748, 2017 WL3222533, at *4 ("[T]he
8 purpose of a no-contest clause is to enforce the settlor(s)' wishes, not to discourage a
9 beneficiary from seeking his or her rights."). A legal action is based on probable cause
10 when the facts and circumstances *available to the beneficiary*, or a properly informed and
11 advised reasonable person, "would conclude that the trust, the transfer of property into
12 the trust, any document referenced in or affected by the trust or any other trust-related
13 instrument is invalid." NRS 163.00195(4)(e) (emphasis added).

14 6. A trustee has a duty to act impartially, based on what is fair and reasonable
15 to all beneficiaries. Specifically, "the trustee shall act impartially in investing and
16 managing the trust property, taking into account any differing interests of the
17 beneficiaries." NRS 164.720(1). "[I]t is the trustee's duty, reasonably and without personal
18 bias, to seek to ascertain and to give effect to the rights and priorities of the various
19 beneficiaries or purposes as expressed or implied by the terms of the trust." RESTATEMENT
20 (THIRD) OF TRUSTS § 79 (2007).

21 7. "In all matters connected with [the] trust, a trustee is bound to act in the
22 highest good faith toward all beneficiaries and may not obtain any advantage over the
23 latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any
24 kind." Charleson v. Hardesty, 108 Nev, 878, 882, 839 P.2d 1303, 1306 (1992) (quoting
25 Morales v. Field, 160 Cal.Rptr. 239, 244 (1980)).

26 8. This Court may remove a trustee for good cause, including breach of
27 fiduciary duties. NRS 156.070; NRS 163.115; NRS 163.190; NRS 163.180; NRS 164.040(2);
28 see also Diotallevi v. Sierra Dev. Co., 95 Nev. 164, 591 P.2d 270 (1979) (explaining court has

1 “full equitable powers” to redress breach of trust). Removal may be appropriate when
2 there is significant animosity between the trustee and a beneficiary, such that it has the
3 potential to materially interfere with the proper administration of the trust. Acorn v.
4 Monecchi, 386 P.3d 739, 760 (Wyo. 2016) (explaining the relevant question is whether
5 “hostility, in combination with existing circumstances, materially interferes with the
6 administration of the trust or is likely to cause that result”); In re Estate of Stuchlik, 857
7 N.W.2d 57, 70 (Neb. 2014) (stating a trustee cannot act impartially when “influenced by . . .
8 animosity toward individual beneficiaries”); BOGERT, LAW OF TRUSTS AND TRUSTEES § 129
9 (3d rev. ed. 2019) (explaining where there is potential for a conflict of interest to arise from
10 the dual status of a trustee who is also a beneficiary, removal of the trustee may be
11 appropriate); see also Dennis v. R.I. Hosp. Trust Nat. Bank, 571 F. Supp. 623, 639 (D.R.I.
12 1983) (discussing removal may be appropriate when the court could expect “that future
13 Trust transactions will be scrutinized by the beneficiaries” as a result of lengthy and
14 antagonistic litigation). Additionally, conflict between the trustee and beneficiary may
15 form a basis for removal when personal contact or collaboration is required for the
16 administration of the trust. Blumenstiel v. Morris, 180 S.W.2d 107, 109 (Ark. 1944). “The
17 purpose of removing a trustee is not to inflict a penalty for past action, but to preserve
18 trust assets.” Getty v. Getty, 205 Cal.App.3d 134, 140 (1988).

19 9. Attorney’s fees are not allowed to a prevailing party absent a contract,
20 statute, or rule to the contrary. See Smith v. Crown Fin. Servs., 111 Nev. 277, 890 P.2d 769
21 (1995) (analyzing the American and English rules regarding attorney’s fees and their
22 intersection with Nevada Law). NRS 18.010(2)(b) provides that this Court may award
23 attorney’s fees when it finds a claim was brought or maintained without reasonable
24 ground, or to harass the prevailing party. Pursuant to NRCP 68(a), “[a]t any time more
25 than 21 days before trial, any party may serve an offer in writing to allow judgment to be
26 taken in accordance with its terms and conditions.” If an offer is not accepted within the
27 prescribed time period, it will be considered rejected by the offeree. NRCP 68(e). If an
28 offeree rejects an offer and fails to obtain a more favorable judgment, “the offeree must

1 pay the offeror's post-offer costs and expenses, including . . . reasonable attorney fees, *if*
2 *any be allowed*, actually incurred by the offeror from the time of the offer." NRCP
3 68(f)(1)(B) (emphasis added).

4 10. "[T]he purpose of NRCP 68 is to encourage settlement . . . not to force
5 plaintiffs unfairly to forego legitimate claims." Beattie v. Thomas, 99 Nev. 579, 588, 668
6 P.2d 268, 274 (1983). To determine whether an award of fees is appropriate, a court must
7 consider and weigh the following factors: (1) whether the claim was brought in good faith;
8 (2) whether the offer of judgment was reasonable and in good faith in both its timing and
9 amount; (3) whether the decision to reject the offer and proceed to trial was grossly
10 unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable
11 and justified in amount.⁶ Beattie, 99 Nev. at 588-89, 668 P.2d at 274. No one Beattie factor
12 is outcome determinative, and each should be given appropriate consideration. Yamaha
13 Motor Co., USA v. Arnoult, 114 Nev. 233, 252 n.16, 955 P.2d 661, 673 n.16 (1998).

14 11. A proceeding concerning a trust "does not result in continuing supervisory
15 proceedings, and the administration of the trust must proceed expeditiously in a manner
16 consistent with the terms of the trust, without judicial intervention or the order, approval
17 or other action of any court, unless the jurisdiction of the court is [properly] invoked . . . as
18 provided by other law." NRS 164.015(7).

19 Equitable Issues

20 The following equitable issues and arguments are before this Court:

21 1. *Approval of accountings*

22 The trustees ask this Court to settle, allow, and approve the Issue and Family Trust
23 accountings without further examination, to include approval of trustees' fees, attorneys'

24
25 ⁶ When considering the fourth Beattie factor, the court must consider the Brunzell factors. See Shuette v.
26 Beazer Homes Holdings Corp., 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005). These factors include the
27 following: "(1) the qualities of the advocate: his or her ability, training, education, experience, professional
28 standing, and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, time and
skill required, the responsibility imposed and the prominence and character of the parties where they affect
the importance of litigation; (3) the work actually performed by the lawyer: the skill, time, and attention
given to the work; and (4) the result: whether the attorney was successful and what benefits were derived."
Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 fees, and payment of other professional fees and administrative expenses.⁷ Wendy
2 opposes and asks this Court to order the trustees to prepare statutory compliant
3 accountings that disclose assets, values, transactions, and other acts of trust
4 administration. Wendy further argues that if the amended accountings are untimely or
5 noncompliant, this Court should find and remedy the trustees' breach of fiduciary duties.

6 The timing and form of accountings are prescribed by statute. But an accounting is
7 more than a formulaic compilation of data. An accounting is given to provide notice. Just
8 as facts in controversy vary from case to case, an accounting must be adjusted as the trust
9 estate requires. The trusts before this Court are complex because of the multiple layers of
10 entity and fractional ownership. They are further complicated by fluid and often
11 unknown values. This Court generally agrees with Wendy that the accountings fail to
12 provide adequate notice because they reveal only a portion of Sam's complex affairs — they
13 are mere pieces in a much larger puzzle and are ineffective when only reviewed in
14 isolation.⁸ Instead, the accountings created confusion and engendered suspicion. The
15 trustees attempted to answer Wendy's questions informally and made their professionals
16 available to answer Wendy's questions. But the accountings should have included more
17 explanatory details. The best example of how the accountings failed to provide actual and
18 adequate notice occurred when Todd testified Wendy could expect to receive \$4 million
19 from a variety of sources. While the trustees may have provided explanations through
20 accountants and settlement offers, Wendy's beneficial expectancy is not apparent from the
21 accountings or evidence of the trustees' pre-trial explanations.

22 However, this Court also notes that Wendy's complaints about the content and
23 general timing of the accountings were presented to the jury in the legal phase of trial and
24 are therefore facts common to the equitable claims. The jury presumably considered all
25 evidence when deliberating its verdict. The verdict is an express or implicit rejection of

26
27 ⁷ The relevant accountings are for the Issue and Family Trusts (April, 2013 through December, 2017) and
Wendy's subtrust (2013 – 2016).

28 ⁸ Wendy argues: "While in some circumstances, preparing and delivering accountings in the format
provided by NRS 165.135 may fully satisfy a fiduciary's requirement to account and fully disclose, that is not
and cannot be the case for these very complex trusts."

1 Wendy's complaints about the accountings. Accordingly, this Court will not provide
2 equitable relief regarding the accountings, which were constructively approved and
3 confirmed by the jury's verdict. In so doing, this Court does not countenance the trustees'
4 arguments that all accountings and disclosures complied with Nevada law, to include
5 NRS 165.135(4)(a), which allows for a statement prepared by a CPA containing summaries
6 of the information required by NRS 165.135(1). This Court simply orders that all litigation
7 regarding the accountings in existence at the time of the jury trial must end.⁹ The nature of
8 the accountings influence this Court's decision regarding attorneys' fees and the no-
9 contest provisions of the trust.

10 2. *Validity of the Agreements and Consents to Proposed Actions (ACPAs) and*
11 *Indemnification Agreements*

12 Todd as trustee of the Issue Trust, and Todd and Michael Kimmel as co-trustees of
13 the Family Trust, ask this Court to ratify and approve the ACPAs, thus relieving them of
14 liability for actions reasonably taken in reliance upon them. They (and Todd individually)
15 also ask this Court to affirm the indemnification agreements. Wendy opposes and asks
16 this Court to invalidate the ACPAs and rescind any transactions accomplished through
17 them. She also contests Stan and Todd's indemnification agreements and asks that any
18 transactions accomplished through them be invalidated and set aside. Each party presents
19 substantial arguments supporting their respective positions. This Court again returns to
20 the scope and content of the jury trial and the facts common to legal and equitable claims.
21 While the attorneys argued to the jury that this Court would decide the validity of the
22 ACPAs and indemnification agreements, each of the challenged documents and related
23 transactions were thoroughly presented and argued to the jury – including document
24 preparation, execution, and other formation irregularities. Thus, at least, the jury verdict is
25 an implicit rejection of Wendy's arguments.

26 Having considered all arguments, this Court concludes it will neither affirm nor

27
28 ⁹ The trustees may wish to modify the form of future accountings to provide better notice and explanations
to the beneficiaries. Otherwise, they risk objections this Court may be inclined to grant, including an award
of attorney's fees.

1 reject the ACPAs and indemnification agreements. They cannot be segregated from the
2 legal claims presented to the jury and now subsequently argued in support of equitable
3 relief. The jury constructively approved and affirmed the ACPAs and indemnification
4 agreements when it reached its verdict. The verdict prevents additional litigation and
5 precludes liability exposure for actions taken in reliance upon these documents. All claims
6 involving the disputed ACPAs and indemnification agreements shall end with the jury's
7 verdict. Nonetheless, the ACPAs and indemnification agreements also influence this
8 Court's decision regarding attorneys' fees and the no-contest provisions.

9 3. *Violation of the no-contest provisions of the trusts*

10 All trustees except Stan ask this Court to declare that Wendy violated the no-contest
11 provisions of the trusts when she initiated and maintained this litigation. Wendy opposes
12 and asks this Court to declare that Todd violated the no-contest provisions when he filed
13 the initial petition and later moved to dismiss her litigation. The trustees' request deserves
14 analysis, whereas Wendy's request is retaliatory and made with little legal basis or
15 support from the trust instruments.

16 Wendy sought to enforce her rights, obtain instructions, and remedy a breach of
17 fiduciary duties. The jury agreed that Todd breached his fiduciary duties. Further, based
18 upon the information she possessed, she had probable cause to seek invalidation of
19 transfers and other acts of trust administration. This Court must distinguish between the
20 *existence* of probable cause for initiating and maintaining this action with the manner in
21 which the probable cause was *litigated*. As noted elsewhere, Wendy and Stan had
22 probable cause to seek answers to questions raised by the accountings and other events of
23 trust administration. Thus, while Wendy's litigation zeal and overreaching jury demand
24 may implicate Sam's intention to disincentivize litigation, Wendy's legal actions were
25 authorized and do not create a bar to her beneficial rights.

26 4. *Unjust enrichment and constructive trust*

27 Wendy asks this Court to impress a constructive trust to cure unjust enrichment
28 caused by fraud, breach of fiduciary duty, and self-dealing. Todd, Stan, and the trustees

1 make several arguments in opposition to Wendy's request. This Court disagrees with
2 Wendy's position. Wendy's allegations of misconduct, document impropriety, and self-
3 dealing underlying her request for equitable relief are inseparable from the legal claims
4 she presented to the jury. Wendy has been awarded damages for Todd's breach of
5 fiduciary duties. Any other equitable relief would constitute double recovery and alter the
6 jury's verdict in violation of the Seventh Amendment and its interpretative decisions.

- 7 5. *Removal of trustees*
8 *Disgorgement of trustee fees*
9 *Use of trust funds to initiate petition and defend against Wendy's counterpetition*
 Award of attorneys' fees

10 Wendy relies upon her same arguments when asking this Court to remove the
11 trustees, order the trustees to disgorge trustee fees, and deny the use of trust funds to
12 present their petitions and defend against her counterpetition. The parties present
13 substantial authorities and arguments (and other moving papers) relating to attorneys'
14 fees.

15 There is no basis to consider the removal of any trustee except Todd. The two bases
16 to remove Todd are 1) the jury's verdict that Todd breached his fiduciary duties, and 2)
17 this Court's observation that Todd's neutrality is conflicted by his own interests and
18 animus towards Wendy. This Court concludes removal would be unjust and
19 incommensurate for several reasons: 1) Todd is Sam's designated and preferred trustee, 2)
20 other trustees will diffuse Todd's conflicts and reduce the personal contact between Todd
21 and Wendy, 3) the remedy against Todd's breaches and conflicts are made through other
22 orders regarding attorneys' fees, disgorgement of trustee's fees, and inapplicability of the
23 no-contest provisions, 4) Todd's own affairs are inseparable from trust administration and
24 his removal as trustee will not sever him from trust business; he will remain involved in
25 Jaksick family affairs through his ongoing management and ownership of several other
26 related entities, 5) the expenses of removing Todd and educating a successor trustee
27 would be expensive and inefficient, and 6) Wendy's suggestion that a commercial trustee
28 serve as successor trustee for all trustees is neither warranted nor workable.

 However, based upon the jury's verdict that Todd breached his fiduciary duties

1 (and secondarily, this Court's findings about the timing and content of the accountings),
2 this Court grants Wendy's request that Todd disgorge or disclaim all trustee's fees from
3 the inception of his trusteeship through the date when final judgment is entered. The
4 amount disgorged or otherwise forfeited may serve as an offset against the 25% of
5 trustees' attorneys' fees Todd is ordered to pay, as set forth below. This Court confirms
6 trustee fees to all other trustees.

7 There are several requests regarding attorney's fees as a trust expense. This Court's
8 discretionary resolution of the fees requests is bound by all facts of record and influenced
9 by the entirety of the pre-trial, legal, and equitable proceedings (including the settlement
10 agreement between Todd and Stan) and uncertainties created by notarial malfeasance.

11 This Court first orders that Stan Jaksick and Michael Kimmel's attorneys' fees be
12 chargeable to the trust and paid from trust corpus. This Court's decision regarding
13 Wendy and Todd's fees (both as trustee and individually) are more complicated. There
14 are competing facts and legal principles, which this Court analyzes in the aggregate and
15 not in isolation. In particular, the NRCP 68 request cannot be considered narrowly, but
16 instead, must be viewed by a totality of the case proceedings and statutory authorities
17 governing trustees. There are several options before this Court:

- 18 - Order the trust to pay all, some, or none of Wendy's fees
19 because she successfully obtained a verdict that Todd breached
20 his fiduciary duties as trustee.
- 21 - Order the trust to pay all, some, or none of the fees Todd
22 incurred as trustee because, even though he breached his
23 fiduciary duties, he qualitatively and quantitatively prevailed
24 against other claims asserted by Wendy.
- 25 - Order Wendy to pay fees Todd incurred because she brought
26 or maintained her action without reasonable grounds or to
27 harass.
- 28 - Order Wendy to pay fees Todd incurred as trustee of the Issue
 Trust because she rejected his \$25,000 offer of judgment.
- Order Wendy to pay fees Todd incurred individually because

1 she rejected his \$25,000 offer of judgment.

- 2 - Discretionarily decline to order Wendy to pay fees pursuant to
3 the offers of judgment.

4 On August 29, 2018, Todd offered Wendy to have judgment entered against him
5 individually in the amount of \$25,000. He also offered Wendy to have judgment entered
6 against him as trustee of the Issue Trust in the amount of \$25,000. The jury did not make
7 any adverse findings against Todd individually, but it concluded Todd breached his
8 fiduciary duties as trustee and awarded \$15,000 to Wendy. With adjustments for interest,
9 the amount Wendy will receive is almost indistinguishable from the \$25,000 Todd offered
10 as trustee. To the extent there is a *de minimis* distinction, the difference is not enough in a
11 dispute that incurred several million dollars of fees and involved tens of millions in
12 controversy.

13 An offer of judgment must be an authentic attempt to settle a dispute. The offer of
14 judgment benefit is not automatically conferred. Instead, this Court must carefully
15 analyze the offer and discretionarily apply it to the unique facts of each case. This Court
16 and counsel are familiar with the American Rule of attorneys' fees and discretionary
17 application of NRCP 68. This Court's discretion exists to encourage parties to convey
18 legitimate offers to resolve their disputes. Of course, judicial discretion is controversial to
19 those who are aggrieved, and it is unpredictable to all.

20 On one side, offers that are appropriate in time and amount will cause the non-
21 offering party to become realistic and engage in genuine risk/benefit analyses. These
22 offers shift a calculated risk as trial approaches. To be an effective mechanism to resolve
23 disputes before trial, they should be in an amount the non-offering party cannot decline in
24 good faith. Defendants who perceive no liability exposure chafe against making time- and
25 amount-appropriate offers because they resent the payment of any money to a party they
26 perceive will not prevail at trial. On the other side, offering parties sometimes make time-
27 and amount-inappropriate offers *they expect to be rejected*. These offers do not facilitate
28 settlement--they are strategic devices to shift the risk of fees by offering illusory

1 consideration to end litigation.

2 This Court's discretion is guided by the unique facts and procedural history of this
3 case. This Court analyzes the Beattie factors as follows:

4 *Whether Wendy's claims were brought in good faith?* Wendy believed in good faith that
5 she suffered damages from Todd's individual and fiduciary misconduct. She trusted the
6 court system and exercised her constitutional right to jury trial. This Court concludes that
7 Wendy's claims against Todd as trustee of the Issue Trust were brought in good faith.
8 Wendy's concerns are countenanced, in large part, by the questions raised by the
9 accountings, Stan's separate allegations against Todd, document anomalies, and the optics
10 of Todd's disproportionate benefit from Sam's business and trust affairs. The good-faith
11 nature of Wendy's claims against Todd individually are more difficult to discern. In the
12 final analysis, Wendy had some cause to initiate the claims against Todd individually, but
13 as discovery progressed, Wendy's cause to pursue Todd individually diminished. This
14 factor weighs slightly in Wendy's favor regarding the Issue Trust offer of judgment and is
15 neutral regarding Todd's individual offer of judgment.¹⁰

16 *Whether Todd's offers were reasonable and in good faith in both timing and amount?* This
17 Court has wrestled with the question of whether the offers of judgment were brought in
18 good faith in both timing and amount. These offers of judgment were made six months
19 after Wendy filed her amended counter-petition, when discovery was still in its infancy.
20 This Court concludes the amounts offered were neither good faith/reasonable nor
21 strategic bad faith/unreasonable. They fall within the continuum between those two
22 categories. Todd knew, or should have known, the fees incurred through continuing
23 litigation alone would substantially overshadow the offered amounts. Todd knew, or
24 should have known, that Wendy would never accept \$25,000 to resolve her claims against
25 him as trustee of the Issue Trust.

26 However, Todd also had cause to believe he would prevail at trial, a fact now
27

28 ¹⁰ Because this Court finds Wendy brought her claims in good faith, this Court concludes fees under NRS
18.010(2)(b) are not warranted.

1 proven with respect to the claims against him individually. Todd's subjective belief about
2 the strength of his position is legally relevant. "[W]here the offeror has a reasonable basis
3 to believe that exposure to liability is minimal, a nominal offer is appropriate." Arrowood
4 Indem. Co. v. Acosta, Inc., 58 So. 3d 286, 289 (Fla. Dist. Ct. App. 2011) (discussing the good
5 faith prong of an offer of judgment from a Florida statute analogous to NRCP 68). At the
6 time Todd made his individual offer, Wendy had been unable to present coherent facts
7 underlying her claims against him personally. He therefore had reason to believe
8 Wendy's claims against him individually were weak or lacked merit. See Beach, 958 F.
9 Supp. at 1171 (holding defendant's offer was reasonable even though plaintiff's alleged
10 damages exceeded the offer's amount "given the weaknesses defendant perceived in
11 plaintiff's case."); see also Scott-Hop v. Bassek, Nos. 60501, 61943, 2014 WL 859181 at *6
12 (Feb. 28, 2014) (holding reasonable an offer of \$25,000 even though plaintiff's alleged
13 medical expenses were over \$150,000 because of the uncertainty of plaintiff's case and
14 defendant's summary judgment motion); Max Bear Productions, Ltd. v. Riverwood
15 Partners, LLC, No. 3:09-CV-00512-RCJ-RAM, 2012 WL 5944767 (D. Nev. Nov. 26, 2012)
16 ("The token \$1,000 offer may appear to have been made simply for the procedural purpose
17 of preserving rights to fees . . . should Defendant win a judgment. However, the
18 weaknesses of Plaintiff's case made this token offer reasonable."); Arrowood, 58 So. 3d at
19 289-90 (holding a court is required to consider an offeror's subjective belief that an offer is
20 reasonable and not just objective factors).

21 This Court concludes the second factor to consider is neutral regarding the Issue
22 Trust and does not inure to any party's favor or disfavor. Todd hoped he would prevail at
23 trial, but given the financial and documentary complexity, discovery delays and disputes
24 (including Todd's continued depositions long after the offers of judgment were made), the
25 untimely accountings, incomplete discovery, and the amounts in controversy, the offer
26 does not appear to be made with the good-faith intention of settling Wendy's claims. In
27 contrast, Todd's offer to settle Wendy's claims against him individually for the payment of
28 \$25,000 appears more reflective of the circumstances and was made with a good-faith

1 intention to settle the claims. Thus, this factor favors Todd individually.

2 *Whether Wendy's decision to reject the offer and proceed to trial was grossly unreasonable*
3 *or in bad faith?* Wendy's decision to reject Todd's offer as trustee of the Issue Trust was not
4 grossly unreasonable or in bad faith. The offer arrived early in discovery. Wendy had
5 incurred substantially more in fees than the offered amount and she was entitled to
6 examine her legal position after discovery was received. In contrast, her decision to reject
7 Todd's individual offer is less reasonable, yet this Court cannot conclude her rejection was
8 grossly unreasonable or made in bad faith. Her decision was simply unwise in retrospect
9 and she cannot now be relieved of its consequences. This third factor weighs in favor of
10 Wendy regarding the Issue Trust and is neutral regarding Todd's personal liability.

11 *Whether the fees sought are reasonable and justified in amount?* Todd's individual and
12 trustee attorneys are experienced in law and trial. They have exemplary records of service
13 in our legal community and they obtained a positive outcome for their clients. After
14 considering each of the Brunzell factors, this Court finds the fees sought by Todd
15 individually from the date of the offer are reasonable in light of his experienced and
16 effective attorneys, duration and scope of litigation, and the result obtained. However,
17 the aggregate fees this Court expects Todd to seek as trustee of the Issue Trust are not
18 justified when the offered \$25,000 is compared to the jury verdict. Shifting substantial
19 attorneys' fees to Wendy is unjustified in this instance. Regarding Todd's individual fees,
20 the amounts are reasonable and justified when charged against Wendy. This factor is
21 neutral with respect to the Issue Trustee offer and favors Todd with respect to his
22 individual offer of judgment.

23 For these reasons, this Court orders as follows:

- 24 a. The trusts shall pay 100% of the fees incurred by their attorneys in
25 representation of the trustees. However, Todd shall reimburse the
26 trusts from his personal resources for 25% of the amount paid because
27 the jury determined he breached his fiduciary duties. Provided,
28 however, Todd is entitled to reduce this 25% personal obligation by

1 the amount of trustee's fees he is ordered to disgorge.

- 2 b. Wendy is *not* required to pay fees Todd incurred as trustee because
3 she rejected the \$25,000 offer of judgment.
- 4 c. Wendy *shall* pay 100% of fees Todd incurred individually from the
5 date the offer of judgment was made. Provided, however, Todd shall
6 be Wendy's judgment creditor and have no greater access to payment
7 than any other judgment creditor. Todd may attach or anticipate
8 Wendy's distributive share only if there are no spendthrift provisions
9 within the trust instruments that prohibit such creditor collection
10 efforts. If such spendthrift provisions exist, distributions shall be
11 made to Wendy and Todd may seek collection efforts against Wendy
12 personally, subsequent to the distribution. The trustees (including
13 Todd) shall carefully measure Todd's rights as an individual
14 judgment creditor with their fiduciary duties owed to Wendy as a
15 beneficiary.
- 16 d. The Trusts shall pay a combined attorneys' fee of \$300,000 to Wendy's
17 attorneys for prevailing in the claim against Todd for breach of
18 fiduciary duties. This payment shall be made directly to Wendy's
19 attorneys without Wendy's signatory participation as a client or trust
20 beneficiary.
- 21 e. All fees ordered shall be treated as general trust administration
22 expenses and not allocated to any beneficiary's distributive share.
- 23 f. Todd is not required to indemnify the trust for the \$300,000 payable to
24 Wendy's attorneys because he is already ordered to pay 25% of the
25 aggregate fees incurred in representation of the trustees.
- 26 g. The request for oral arguments is denied.

27 **Other Issues**

- 28 1. *Second supplement to first amended counterpetition*

1 On May 9, 2019 (after the legal phase of trial but before the equitable trial), Wendy
2 filed a Second Supplement to her First Amended Counterpetition in which she continued
3 her theme about untimely accountings. Wendy asks this Court to consider the new fact
4 allegation the Family Trust co-trustees failed to prepare and deliver accountings for the
5 Family Trust and Wendy Subtrust for the period from January 1, 2018, to December 31,
6 2018. She requests the production and delivery of these accountings and asks that the
7 trustees be sanctioned. The trustees (including Todd and Stan individually) moved to
8 strike Wendy's supplement because it was filed after the August 2, 2018, deadline to file
9 motions to amend pleadings and violated NRCP 15(d).¹¹ The 2018 accountings were
10 provided to Wendy in early July, 2019, thus rendering Wendy's request to compel moot.

11 It appears the accountings were untimely and this Court agrees Wendy could not
12 have filed the supplement until after the deadline for providing the 2018 accountings had
13 passed. However, the 2018 accountings are not part of the underlying litigation. This
14 Court declines Wendy's invitation to enlarge this litigation to satisfy judicial economy.
15 This litigation is bounded by the pleadings and cannot remain an open receptacle to
16 receive real-time allegations of inappropriate trust administration. The supplement is
17 stricken as beyond the scope of claims before this Court. Wendy may file a separate action
18 challenging the timing and content of the 2018 accountings if she is so inclined. This Court
19 neither encourages nor discourages such litigation.

20 2. *The Lake Tahoe property*

21 Though not placed within a certain claim for relief within her pleadings, Wendy
22 asks this Court to rescind all transactions involving the Lake Tahoe home and restore title
23 to the SSJ LLC, which was 100% owned by the Family Trust. Wendy continues to
24 overwhelm this Court with repetitive and lengthy arguments about the option
25 agreements, forgery, fraud, fiduciary duties, unjust enrichment, trustor intentions,
26 consideration, etc. All of Wendy's arguments were presented to the jury and rejected in
27

28 ¹¹ Stan filed an additional Motion to Dismiss or Motion to Strike, arguing Wendy's supplement alleged a new claim for breach of fiduciary duty that has not been discovered. Todd joined in Stan's motion.

1 the jury's verdict. This Court will not enter any order granting relief to Wendy regarding
2 the Lake Tahoe home.

3 3. *Future distributions*

4 On July 23, 2019, Wendy filed an Emergency Motion to Compel Distribution from
5 the Family Trust. She alleged she was being evicted from her home in Texas and needed
6 money to relocate to either Arizona or Reno. Wendy asked this Court to order the trustees
7 of the Family Trust to distribute \$6,000 for a deposit on a new apartment and \$5,000 per
8 month for living expenses. Wendy further asks this Court to advise the trustees regarding
9 the schedule of other distributions for living expenses. Wendy's motion is denied. This
10 Court will not supervise trust administration on an ongoing basis. It will not provide
11 advisory guidance or otherwise order the trustees regarding administration and
12 distributions. Instead, it will adjudicate disputes through normal judicial processes.
13 Wendy may initiate separate litigation if she is so inclined.

14 4. *Costs.*

15 Todd Jaksick as an individual, Duck Lake Ranch, LLC, and Incline TSS, are the
16 prevailing parties entitled to statutory and reasonable costs. All other parties may file cost
17 memoranda as authorized by law.

18 **Conclusions**

19 1. This Court does not confirm the accountings. However, the substance of the
20 accountings were presented to the jury and fall within the jury's verdict. Thus, this Court
21 will not allow additional litigation as to any accounting that formed the basis for Wendy's
22 legal claims. All future accountings shall be timely and formulated to provide the
23 beneficiaries with adequate notice of values, transactions, and other acts of trust
24 administration. The trustees are authorized to pay, at Wendy's request, a portion of
25 Wendy's distributive shares to Wendy's designated financial professional who will assist
26 her to understand the accountings and interact with the trustees.

27 2. This Court does not confirm the ACPAs or indemnification agreements.
28 However, the substance of the ACPAs and indemnification agreements were presented to

1 the jury and fall within the jury's verdict. This Court will not allow additional litigation as
2 to any of the ACPAs and indemnification agreements that formed the basis for Wendy's
3 legal claims.

4 3. The trustees' request to impose no-contest penalties against Wendy is
5 denied.

6 4. Wendy's claims for unjust enrichment and constructive trust are denied.

7 5. Todd is confirmed as trustee of Issue Trust and co-trustee of Family Trust.
8 All other trustees are also confirmed.

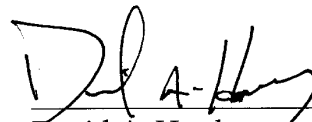
9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject
10 to the fees award provisions.

11 7. This Court anticipates the parties will seek clarification and other relief
12 through additional motion work. The attorneys' fees provisions in this order reflect the
13 entirety of this Court's intentions regarding fees. This order also reflects the entirety of
14 this Court's intentions regarding all other pending matters.

15 8. Todd and the trustees may submit a proposed judgment consistent with the
16 jury's verdict and this order on equitable claims.

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

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20 
21 David A. Hardy
22 District Court Judge
23
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1845

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

CASE NO.: PR17-00445

DEPT. NO.: 15

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY
TRUST.

CASE NO.: PR17-00446

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr. Family
Trust, and as Trustee of the SSJ's Issue Trust;
MICHAEL S. KIMMEL, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr. Family
Trust; STANLEY S. JAKSICK, Individually
and as Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY, Individually, as
Former Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the Wendy A.
Jaksick 2012 BHC Family Trust, INCLINE
TSS, LTD.; and DUCK LAKE RANCH, LLC;

Petitioners and Counter-Respondents.

**JUDGMENT ON JURY VERDICT AND
COURT ORDER ON EQUITABLE
CLAIMS**

A. JUDGMENT ON JURY VERDICT

This matter was tried to a jury from February 14, 2019 to and including March 4, 2019.
The jury found in favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-

1 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
2 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
3 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust and against
4 Counter-Petitioner Wendy Jaksick on all claims and defenses. The jury found in favor of Counter-
5 Petitioner Wendy Jaksick against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr.,
6 Family Trust and as Trustee of the SSJ's Issue Trust on her breach of fiduciary duty claim and
7 assessed damages in the total amount of \$15,000. The jury found in favor of Todd Jaksick, as Co-
8 Trustee of the Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, on all
9 of Wendy Jaksick's other claims tried to the jury. The Jury Verdict is attached hereto and made a
10 part hereof.

11 Accordingly, judgment is entered as follows:

12 1. In favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-
13 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
14 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
15 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust against Counter-
16 Petitioner Wendy Jaksick on all of the claims and defenses tried to the jury. As required by NRS
17 18.110, these prevailing parties shall file their Memoranda of Costs within five days from notice
18 of entry of this Judgment on Jury Verdict.

19 2. In favor of Wendy Jaksick against Todd Jaksick as Co-Trustee of the Samuel S.
20 Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust on Wendy Jaksick's breach of
21 fiduciary duty claims. The Jury's Verdict in favor of Counter-Petitioner Wendy Jaksick in the
22 amount of \$15,000 is *de minimis* in light of her request for damages of \$80,000,000 and in light of
23 her failure to prevail on fraud, conspiracy and aiding and abetting. She is, therefore, not a
24 prevailing party and not entitled to recover costs under NRS 18.050 and NRS 18.110. Counter-
25 Petitioner Wendy Jaksick failed to obtain a judgment in excess of the Offers of Judgment served
26 by Todd Jaksick, as an individual, and is therefore not entitled to recover costs pursuant to NRCP
27 68. Counter-Petitioner Wendy Jaksick's judgment against Todd Jaksick, as Co-Trustee of the
28 Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, is for the total amount

1 of \$15,000, together with prejudgment interest from the date of her Counter-Petition (January 19,
2 2018) to the date of the Offer of Judgment (August 29, 2018) served by Todd Jaksick, in his
3 individual capacity, in the amount of \$605.34, for a total judgment of \$15,605.34. This judgment
4 shall accrue interest at judgment rate until paid in full.

5 3. All claims asserted by Counter-Petitioner Wendy Jaksick in her Counter-Petition
6 and Amended Counter-Petition and tried to the jury are dismissed with prejudice.

7 4. In favor of Duck Lake Ranch, LLC, and Incline TSS, Ltd. against Counter-
8 Petitioner Wendy Jaksick. The Court dismissed Counter-Petitioner's claims against these entities
9 and pursuant to NRS 18.110, these entities shall file their Memoranda of Costs within five days of
10 notice of entry of this judgment.

11 **B. JUDGMENT ON EQUITABLE CLAIMS**

12 On May 13, 2019, the Court began a bench trial to resolve Wendy Jaksick's equitable
13 claims. The parties stipulated to submit written closing trial briefs and replies. Having considered
14 all briefs, evidence admitted during the jury trial and evidence submitted in support of the parties'
15 positions on the equitable claims, the Court entered its *Order After Equitable Trial* on March 12,
16 2020. The Order is attached hereto, made a part hereof, and is incorporated herein. The terms,
17 provisions, findings and conclusions set forth in its *Order After Equitable Trial* are incorporated
18 herein as the Court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the
19 Nevada Rules of Civil Procedure.

20 Judgment is hereby entered as follows:

21 1. Against Counter-Petitioner Wendy Jaksick on all of her equitable claims and is
22 entered in favor of Todd Jaksick, as an individual, Stanley Jaksick, as an individual and Co-
23 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, as an individual and Co-
24 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, individually, Kevin Riley, as Co-
25 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, as Trustee of the BHC Trust,
26 Duck Lake Ranch, LLC, and Incline TSS, Ltd. These prevailing parties shall file their
27 Memoranda of Costs pursuant to NRS 18.110 within five days of the notice of entry of this
28 judgment.

1 2. In favor of Counter-Petitioner Wendy Jaksick's counsel of record in the amount of
2 \$300,000 to be paid by the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust.

3 3. In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust against
4 Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust in an amount equal to
5 25% of the attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust
6 for legal services rendered on behalf of the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust
7 and Trustee for the SSJ's Issue Trust. Todd Jaksick's obligation to satisfy this judgment requires
8 payment of the amount determined from his personal funds. Counsel for the Trustees and Trustee
9 shall submit verified Memoranda of Fees paid within twenty-one days of notice of entry of this
10 judgment.

11 4. On March 13, 2019, Todd Jaksick, in his individual capacity, filed a Motion for
12 Order Awarding Costs and Attorneys' Fees for Todd Jaksick, individually, Duck Lake Ranch,
13 LLC and Incline TSS, Ltd. For the reasons stated in the Court's March 12, 2020 *Order After*
14 *Equitable Trial*, Todd Jaksick's Motion for Order Awarding Costs and Attorneys' Fees was
15 granted, subject to section (c) on page 22 of the Court's *Order After Equitable Trial*. Accordingly,
16 judgment is hereby entered in favor of Todd Jaksick, individually, against Counter-Petitioner
17 Wendy Jaksick in the amount of \$436,331 for attorneys' fees and \$68,834.07 in costs, for a total
18 judgment in favor of Todd Jaksick against Counter-Petitioner Wendy Jaksick of \$505,165.07,
19 which amount shall accrue interest from the date hereof at the legal rate.

20 5. In favor of the SSJ's Issue Trust and Incline TSS, Ltd., confirming title to the Lake
21 Tahoe house is to remain in the name of Incline TSS, Ltd., and against Wendy Jaksick regarding
22 claims to disrupt or change the title to the Lake Tahoe home.

23 6. In favor of the Samuel S. Jaksick, Jr., Family Trust against Counter-Petitioner
24 Wendy Jaksick denying her July 23, 2019 Emergency Motion to Compel Distribution from the
25 Samuel S. Jaksick, Jr., Family Trust.

26 7. In favor of Counter-Respondents, consistent with the Jury's Verdict on the ACPAs
27 and Indemnification Agreements.
28

1 8. Against Counter-Petitioner Wendy Jaksick and in favor of Todd Jaksick,
2 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Stanley Jaksick,
3 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel,
4 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley,
5 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC
6 Trust, Duck Lake Ranch, LLC, and Incline TSS, Ltd., on Counter-Petitioner Wendy Jaksick's
7 claims on unjust enrichment and constructive trust.

8 9. In favor of Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust
9 and as Trustee of the SSJ's Issue Trust, and against Counter-Petitioner Wendy Jaksick confirming
10 Todd Jaksick, as Trustee of the SSJ's Issue Trust and Co-Trustee of the Samuel S. Jaksick, Jr.,
11 Family Trust. Michael Kimmel and Stanley Jaksick are also confirmed as Co-Trustees of the
12 Samuel S. Jaksick, Jr., Family Trust.

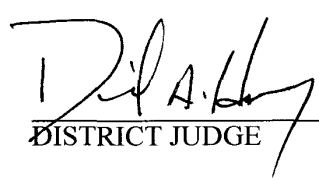
13 10. In favor of the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust
14 against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the
15 SSJ's Issue Trust, for all Trustee's fees paid to Todd Jaksick. Todd Jaksick is hereby required to
16 disgorge all Trustee's fees paid to him, and payment thereof will constitute a setoff against any
17 amounts he must pay as and for 25% of the attorneys' fees paid to the Trustees' counsel of record.

18 11. Declaring and decreeing that all fees ordered against Wendy Jaksick shall be
19 treated as a general trust administration expense and are not allocated to any beneficiaries'
20 distributive share. Todd Jaksick may attach or anticipate Wendy's distributive share only if there
21 are no spendthrift provisions within the trust instruments that prohibit such creditor collection
22 efforts. If such spendthrift provisions exist, distributions shall be made to Wendy, and Todd may
23 seek collection efforts against Wendy personally, subsequent to the distribution.

24 IT IS HEREBY ORDERED, DECREED AND ADJUDGED that the foregoing, upon entry
25 and filing in this matter, is an enforceable final judgment and all findings and conclusions of the
26 Court's March 12, 2020 *Order After Equitable Trial* are expressly incorporated herein. This
27 judgment resolves all claims against all parties, and pursuant to Rule 54(b) of the Nevada Rules of
28 Civil Procedure is a final judgment.

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DATED this 1st day of April, 2020.



DISTRICT JUDGE

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the Case No. PR17-00445
SSJ'S ISSUE TRUST.

_____/

CONSOLIDATED

In the Matter of the Administration of the Case No. PR17-00446
SAMUEL S. JAKSICK, JR. FAMILY TRUST. Dept. No. 15

ORDER AFTER EQUITABLE TRIAL

On August 2, 2017, the trustees of the SSJ's Issue Trust ("Issue Trust") and the Samuel S. Jaksick, Jr. Family Trust ("Family Trust") filed Petitions for Confirmation of Trustee and Admission of Trust to the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration Matters.¹ October 10, 2017, Wendy Jaksick filed an Opposition and Objection to the Petition. On January 19, 2018, Wendy filed a Counterpetition to Surcharge Trustees for Breach of Fiduciary Duties, for Removal of Trustees and Appointment of Independent Trustee(s), and for Declaratory Judgment and Other Relief, which was subsequently amended on February 23, 2018. Family Trust co-trustee Stan Jaksick filed an Objection to Approval of Accountings and Other Trust Administration Matters on October 10, 2017. Todd Jaksick, as trustee of the Issue Trust

¹ Family Trust co-trustee Stan Jaksick did not join in the petitions.

1 and co-trustee of the Family Trust, and Michael Kimmel as co-trustee of the Family Trust,
2 are represented by Donald Lattin and Carolyn Renner. Todd is represented in his
3 individual capacity by Kent Robison. Mr. Robison also represents Duck Lake Ranch, LLC,
4 Incline TSS, Ltd., and Sammy Supercub, LLC. Stanley Jaksick, as co-trustee of the Family
5 Trust, is represented by Adam Hosmer-Henner and Philip Kreitlein. Wendy is
6 represented by Mark Connot and Kevin Spencer.

7 1. This Court presided over a jury trial on legal claims between February 14,
8 2019, and March 4, 2019. The jury concluded Todd breached his fiduciary duty as trustee
9 and awarded damages of \$15,000. The jury found no other trustee breached any fiduciary
10 duty. In addition, the jury found Wendy had not proven her claims for 1) civil conspiracy
11 and aiding and abetting, 2) aiding and abetting breach of fiduciary duty, or 3) fraud
12 against any counter-respondent whether individually or as trustee. The jury did not find
13 any counter-respondent acted with fraud, oppression, or malice.

14 2. On May 13, 2019, this Court began a bench trial to resolve the remaining
15 equitable claims. By stipulation, the parties submitted written closing trial statements and
16 replies. This Court authorized supplemental briefing on a narrow issue related to Exhibit
17 561. This Court has considered all briefs and evidence admitted during the equitable trial
18 (including many exhibits previously admitted at jury trial).² This Court is aware that
19 disagreements continue and Wendy alleges ongoing breaches of fiduciary duties, as
20 illustrated by the moving papers relating to post-trial costs, the 2018 annual accountings,
21 and distribution guidance. It now finds and orders as follows:

22 **General Findings**

23 1. As a factfinder, this Court is authorized to consider its everyday common
24 sense and judgment, and determine what inferences may be properly drawn from direct
25 and circumstantial evidence. See Lewis v. Sea Ray Boats, Inc., 119 Nev. 100, 105, 65 P.3d

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27 ² On May 13, 2019, the parties stipulated into evidence many exhibits previously admitted during the jury
28 trial. Wendy also offered new evidence during the equitable phase of trial. A list of all documentary
evidence admitted on equitable issues is contained in this Court's Order Addressing Evidence at Equitable
Trial, dated May 20, 2019. This Court has not considered unadmitted documentary evidence. However, this
Court has considered deposition testimony properly part of the trial record pursuant to NRCP 32.

1 245, 248 (2003); Nev. 1GI.5 (2011); Nev. 2EV.3 (2011); Nev. J.I. 1.05 (1986).

2 2. The facts presented in support of the equitable claims inextricably overlap
3 with the legal claims presented to the jury. Despite how the claims are pled, Wendy is
4 attempting to retry her case to obtain a second review of similar facts and an outcome
5 different from the jury verdict.³ This Court may or may not have reached the same
6 decision as the jury. Regardless, it has no authority to dilute or otherwise modify the
7 jury's verdict.

8 3. The file materials compose more than 17,000 pages. There were more than
9 300 separate pleadings, motions, oppositions, replies, joinders, and other substantive
10 papers filed in this proceeding. The parties produced tens of thousands of documents
11 before trial and marked 677 exhibits for the two trials, of which 227 were admitted. The
12 substantive papers (with exhibits and transcripts) filed since the jury's verdict compose
13 more than 4,000 pages. This Court has read and re-read the pending moving papers, to
14 include exhibits and transcripts. It has analyzed every argument presented and carefully
15 studied the cited authorities. It cannot synthesize the competing moving papers, exhibits,
16 and arguments into a single coherent order. It cannot resolve the arguments in minutia.
17 Therefore, this Court elects to make general findings, which are substantially supported by
18 the evidence of record.

19 4. This Court regrets some of its more direct findings, which it must disclose to
20 support its discretionary resolution of equitable claims.

21 5. Sam Jaksick created substantial wealth during his life but his leveraged
22 estate was compromised by the "great recession" during the last season of his life. Sam's
23 estate is exceedingly complex because he used tens of different corporate entities as
24 holding companies for his wealth. Sam also partnered with non-family business entities.

25 6. Sam had three children: Stan, Wendy, and Todd. Sam loved each of his
26

27 ³ On January 3, 2018, Wendy demanded a jury trial on all legal claims. Wendy demanded a jury – at least in
28 part – because she likely suspected a judge's comprehensive, studious examination of all evidence would not
result in the \$80 million compensatory damages and additional punitive damages she asked the jury to
award. This Court honors Wendy's unfettered constitutional right to a jury trial but it will not re-visit the
identical facts to arrive at a different outcome for Wendy.

1 children, despite their different strengths, weaknesses, and personalities. Wendy did not
2 transition well into adulthood and Sam was aware of her inability to provide for herself.
3 Wendy does not understand financial complexities. Sam was more confident in Stan and
4 Todd as he worked with them during his life and designated them to continue
5 participating in his estate and business affairs after his death. Stan's trial participation was
6 not lengthy but he appears to enjoy some financial fluency and business sophistication.
7 Stan also presented as a credible witness and thoughtful sibling. While Todd is most
8 familiar with Sam's business and trust affairs, he is only marginally sophisticated as a
9 trustee. He regularly deferred to the knowledge and expertise of others.⁴ Todd also
10 presented as conflicted by his own interests, influenced by his animus towards Wendy,
11 and confused about his duties as a neutral trustee.

12 7. Sam's estate plan evolved over the years, and its last iteration was influenced
13 by debt, tax avoidance, asset protection, and planning around Stan's divorce. Both Sam
14 and Todd were exposed to personal liabilities on substantial debts Sam had incurred.
15 Some of the estate documents were created in haste because of Sam's heart illness and
16 surgery in December, 2012. (Sam survived his heart illness and tragically died in a water
17 accident in 2013). Some of the 2012-13 estate planning documents are disorganized,
18 internally inconsistent, and complicated by notarial mischief or neglect. This Court was
19 particularly troubled by the notary's abdication of statutory responsibilities, which was an
20 influencing fact in the litigation Wendy pursued. Notaries are given great authority and
21 their actions induce reliance. The notary at issue fell below the statutory standards. This
22 finding alone warrants a substantial financial consequence upon the trust, which this
23 Court includes in its analysis of the no-contest penalty and attorneys' fees requests.

24 8. Todd's participation in Sam's estate beginning in 2012 can be viewed
25 through two opposing lenses: he was either a disconnected participant who yielded to his
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27 ⁴ This Court understands jury instruction no. 11, which does not alter the fact that Todd struggled under the
28 shadow of his father's business acumen. The dynamic of Todd relying on professionals regarding the
accountings, while the professionals provided accountings with disclaimers and hyphens, created
uncertainty (or at least the appearance of uncertainty) about transactions, values, and who was ultimately
responsible for acts and accountings of trust administration.

1 father's wishes, or he was a subtly strategic participant who enriched himself to the
2 detriment of his siblings. These opposing possibilities are relevant only to understand
3 how this dispute became so bitter. This Court is inclined to find Todd was the former
4 rather than the latter, but regardless, Stan and Wendy had cause to seek answers to
5 questions created by document anomalies, inadequate disclosures, and transactions
6 inuring to Todd's benefit.

7 9. This action began when Stan, Wendy, and Todd were opposed to each other.
8 The dispute was exacerbated by inadequate information and self-interested perspectives.
9 Some of the more personal allegations among siblings reveal a family influenced by
10 misperceptions and individual interests. Wendy was particularly personal in her
11 allegations, the worst of which were harassing, vexatious, and without factual basis. There
12 were at least seven lawyers zealously advocating for their clients, which further
13 entrenched the siblings against each other. The children chose litigation over compromise
14 to work through the complexities of Sam's estate and their disparate financial
15 circumstances. With more effortful disclosures, neutral access to information, and a little
16 sibling patience, they *might* have worked through the messiness of Sam's estate to reach a
17 non-litigation resolution. Instead, the children sued each other, with Todd and Stan
18 settling their dispute just days before the jury trial began. Despite the settlement, this
19 Court is aware of the allegations Stan made against Todd in his deposition and trial
20 testimony. The settlement does not extinguish Stan's pleading allegations and
21 testimony—it merely reflects Todd and Stan's strategic and well-advised decision to
22 compromise their claims before trial. The settlement worked to Wendy's trial detriment,
23 yet she chose trial over settlement and must now accept the consequences of her choice.
24 Stan's allegations and testimony are relevant to contextualize the legal and equitable
25 claims, particularly the request to impose a no-contest penalty and for attorneys' fees
26 under NRS Chapter 18 and NRCP 68.

27 10. Todd and Stan contend they made every effort to avoid litigation but could
28 not persuade Wendy or her attorneys to choose compromise over conflict. This is mostly

1 accurate, as Wendy's litigation position and trial demand were influenced more by animus
2 and avarice than by a desire for balanced justice. In particular, Wendy's \$80 million jury
3 demand revealed her overreach. However, Wendy's litigation zeal does not extinguish
4 her probable cause to seek answers and formulate claims based upon the information she
5 had at the time — the same information that led to Stan's allegations against Todd.

6 11. Throughout trial this Court reflected upon how Sam would respond if he
7 observed his children spending millions of dollars litigating his estate. The parties
8 repeatedly invited this Court to consider Sam's testamentary intentions. Responding to
9 that invitation, this Court has wondered how Sam would react to see his estate
10 disproportionately allocated among his children. There is no way to know how or if Sam
11 would have enlarged Wendy's beneficial interests if he survived the economic recovery.
12 Sam loved Wendy despite her issues, and this Court suspects Sam would have continued
13 his pattern of lifetime largesse in favor of his troubled daughter. But suspicion and
14 speculation are beyond this Court's authority. Death arrives at its own inconvenient time
15 and none can alter its consequences. Wendy is simply without her paternal benefactor and
16 is susceptible to the trustees' actions as governed by documents and transactions Sam
17 approved during his life.

18 12. The trustees' initial petitions were predicated upon accountings that
19 provided inadequate information. The accountings were untimely, and even if technically
20 compliant with the statutes, they failed to provide full and fair notice to Wendy as a
21 beneficiary. This Court acknowledges the trustees attempted to answer Wendy's
22 questions by making their CPA and lawyers available to Wendy, but there is only
23 marginal evidence in the record the trustees invested their own personal efforts to satisfy
24 Wendy's concerns. At some point the trustees' responses became form over function.
25 Todd particularly grew weary of Wendy, which affected his neutral trusteeship, as
26 illustrated by his hope to satisfy Wendy's beneficial interests at a discount that inured to
27 his benefit. In response, Wendy initiated scorched-earth litigation grounded in
28 entitlement and limited self-awareness. This Court cannot now alter the consequences of

1 the trust administration and litigation choices that precede this order.

2 13. Wendy's legal and equitable claims are grounded in the same common facts
3 and are exceedingly difficult to segregate. As this Court reviewed the hundreds of pages
4 of written arguments relating to the equitable claims, it was taken back to the evidence
5 and arguments presented to the jury. Through the misty fog of painfully voluminous
6 allegations and varied claims, the core of Wendy's complaint is that Todd breached his
7 fiduciary duties by self-dealing and failing to disclose information relevant to Wendy as a
8 beneficiary. No matter how Wendy frames or argues her equitable claims, she asks this
9 Court to remedy the identical facts and transactions she placed before the jury. This Court
10 must look to the substance of the claims, not just the labels used in the pleading document.
11 Nev. Power Co. v. District Court, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004).

12 14. The complexity of Sam's estate warranted extraordinary disclosures,
13 explanations, and compliance with discovery rules. There were significant discovery
14 disputes, such that this Court created a schedule for recurring access to the Discovery
15 Commissioner. This Court also ordered the production of disputed discovery. Discovery
16 continued to the very eve of trial and Wendy was still attempting to discern her beneficial
17 interests when trial began.

18 15. There were several sports references and metaphors argued to the jury.
19 Consistent with that theme, Wendy "swung for the fences" when she asked the jury to
20 award \$80 million to her (plus punitive damages), an amount that exceeds the evidentiary
21 value of this estate and would deprive Todd and Stan of any beneficial interests. She now
22 seeks a "mulligan" by re-arguing to this Court what was over-argued to the jury.⁵ The
23 jury found that Todd breached his fiduciary duties but only awarded \$15,000 to Wendy. It
24 found against Wendy on all other claims and against all other counter-respondents. This
25 Court may have been authorized to award additional equitable relief upon the same facts

26
27 ⁵ To illustrate, Wendy argued in her omnibus opposition to the cost memoranda filed before the equitable
28 claims trial that "damages may still be awarded, transactions may be set-aside, further breaches of fiduciary
duty may be found, and the ACPAs and other documents may be found fraudulent or invalid, ab initio."
These were all claims and requests rejected by the jury.

1 if the jury found for Wendy on more claims and against more counter-respondents. But
2 constitutional and decisional authorities prevent this Court from entering a subsequent
3 order diluting or altering the jury's verdict.

4 16. Todd asks this Court to contextualize the \$15,000 as a *de minimis* award. This
5 Court will not infuse qualitative meaning into the jury's verdict. To do so would be
6 impermissible speculation. Todd breached his fiduciary duties to Wendy. And Wendy
7 was not awarded the damages she sought. These two facts are integral to this Court's
8 resolution of equitable claims and fees requests.

9 General Legal References

10 1. This Court cannot supplant or alter a jury's verdict by relying upon common
11 facts to reach a different outcome. See generally Lehrer McGovern Bovis, Inc. v. Bullock
12 Insulation, Inc., 124 Nev. 1102, 197 P.3d 1032, 1038 (2008) (discussing special interrogatory
13 verdicts). In Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir. 2013), the plaintiff
14 submitted his equitable claim for declaratory relief to the bench after the jury rejected his
15 legal claims. The court held "it would be a violation of the Seventh Amendment right to
16 jury trial for the court to disregard a jury's findings of fact. Thus, in a case where legal
17 claims are tried by a jury and equitable claims are tried by a judge, and the claims are
18 based on the same facts, in deciding the equitable claims, the Seventh Amendment
19 requires the trial judge to follow the jury's implicit or explicit factual determinations." Id.
20 at 828-29 (citations omitted).

21 2. In Sturgis Motorcycle Rally, Inc. v. Rushmore Photo & Gifts, Inc., 908 F.3d
22 313, 343 (8th Cir. 2018), the jury found for the plaintiff on legal intellectual property claims,
23 but the bench subsequently applied the equitable defenses of laches and acquiescence.
24 The appellate court reversed, holding "[t]o bind the district court's equitable powers, a
25 jury's findings must be on an issue 'common' to the action's legal and equitable claims;
26 otherwise, the court is free to treat the jury's findings as 'merely advisory'" Id.
27 Further, "[i]f the jury's findings were on a common issue, the court, in fashioning equitable
28 relief, may take into account facts that were not determined by the jury, but it may not

1 base its decision on factual findings that conflict with the jury's findings." Id. at 344
2 (citations omitted); see also Haynes Trane Serv. Agency, Inc. v. Am. Standard, Inc., 573
3 F.3d 947, 959 (10th Cir. 2009) (noting a court cannot grant equitable relief on facts rejected
4 explicitly or implicitly by a jury verdict); Avitia v. Metro Club of Chicago, Inc., 49 F.3d
5 1219, 1231 (7th Cir. 1995) ("[A] judge who makes equitable determinations in a case in
6 which the plaintiff's legal claims have been tried to a jury is bound by any factual findings
7 made or inescapably implied by the jury's verdict.").

8 3. Among prescribed form and content, an accounting must provide a
9 beneficiary with the ability to evaluate his or her interests. NRS 165.135(3). See also NRS
10 153.041. The cost of preparing an accounting is presumptively borne by the trust. NRS
11 165.1214(5). Unless acting in good faith, a trustee can be personally liable for failing to
12 provide an accounting. NRS 165.148. A beneficiary may petition the court to order a
13 trustee to perform his or her accounting duties. NRS 165.190. This Court may order a
14 trustee's compensation be reduced or forfeited, or enter other civil penalty, when a trustee
15 fails to perform his duties. NRS 165.200.

16 4. The trustees' just and reasonable expenses are presumptively governed by
17 the trust instruments and borne by the trust. However, this Court has authority to review
18 and settle the trustees' expenses and compensation. NRS 153.070. This Court may also
19 reduce a trustee's compensation or order a trustee to pay a beneficiary's reasonable
20 attorneys' fees and costs when the beneficiary compels redress for a breach of trust or
21 compliance with trust terms. NRS 153.031(3). See also In re Estate of Anderson, No.
22 58227, 2012 WL4846488 (Oct. 9, 2012). This Court may order the trust expenses defending
23 against a beneficiary's successful claims be borne by a trustee individually. NRS 18.090.
24 See also Estate of Bowlds, 120 Nev. 990, 1,000, 102 P.3d 593, 600 (2004) (concluding
25 payment of attorney's fees from trust assets only when litigation generally benefits the
26 trust); NRS 153.031(3)(b) (stating if court grants relief to petitioner, it may order trustee to
27 pay fees and costs); RESTATEMENT (THIRD) OF TRUSTS § 100 (2012) (examining denial of
28 compensation to breaching trustee).

1 5. NRS 163.00195 governs no-contest provisions. It begins by emphasizing this
2 Court's duty to enforce no-contest clauses to effectuate a settlor's intent. NRS 163.00195(1).
3 However, the statute then creates a wide exception when it provides a no-contest clause
4 must not be enforced when a beneficiary acts to enforce her legal rights, obtain court
5 instruction regarding proper administration, seeks to enforce the trustee's fiduciary duties,
6 or institutes and maintains a legal action in good faith and based on probable cause. NRS
7 163.00195(4). See also Matter of ATS 1998 Tr., No. 68748, 2017 WL3222533, at *4 ("[T]he
8 purpose of a no-contest clause is to enforce the settlor(s)' wishes, not to discourage a
9 beneficiary from seeking his or her rights."). A legal action is based on probable cause
10 when the facts and circumstances *available to the beneficiary*, or a properly informed and
11 advised reasonable person, "would conclude that the trust, the transfer of property into
12 the trust, any document referenced in or affected by the trust or any other trust-related
13 instrument is invalid." NRS 163.00195(4)(e) (emphasis added).

14 6. A trustee has a duty to act impartially, based on what is fair and reasonable
15 to all beneficiaries. Specifically, "the trustee shall act impartially in investing and
16 managing the trust property, taking into account any differing interests of the
17 beneficiaries." NRS 164.720(1). "[I]t is the trustee's duty, reasonably and without personal
18 bias, to seek to ascertain and to give effect to the rights and priorities of the various
19 beneficiaries or purposes as expressed or implied by the terms of the trust." RESTATEMENT
20 (THIRD) OF TRUSTS § 79 (2007).

21 7. "In all matters connected with [the] trust, a trustee is bound to act in the
22 highest good faith toward all beneficiaries and may not obtain any advantage over the
23 latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any
24 kind." Charleson v. Hardesty, 108 Nev, 878, 882, 839 P.2d 1303, 1306 (1992) (quoting
25 Morales v. Field, 160 Cal.Rptr. 239, 244 (1980)).

26 8. This Court may remove a trustee for good cause, including breach of
27 fiduciary duties. NRS 156.070; NRS 163.115; NRS 163.190; NRS 163.180; NRS 164.040(2);
28 see also Diotallevi v. Sierra Dev. Co., 95 Nev. 164, 591 P.2d 270 (1979) (explaining court has

1 “full equitable powers” to redress breach of trust). Removal may be appropriate when
2 there is significant animosity between the trustee and a beneficiary, such that it has the
3 potential to materially interfere with the proper administration of the trust. Acorn v.
4 Monecchi, 386 P.3d 739, 760 (Wyo. 2016) (explaining the relevant question is whether
5 “hostility, in combination with existing circumstances, materially interferes with the
6 administration of the trust or is likely to cause that result”); In re Estate of Stuchlik, 857
7 N.W.2d 57, 70 (Neb. 2014) (stating a trustee cannot act impartially when “influenced by . . .
8 animosity toward individual beneficiaries”); BOGERT, LAW OF TRUSTS AND TRUSTEES § 129
9 (3d rev. ed. 2019) (explaining where there is potential for a conflict of interest to arise from
10 the dual status of a trustee who is also a beneficiary, removal of the trustee may be
11 appropriate); see also Dennis v. R.I. Hosp. Trust Nat. Bank, 571 F. Supp. 623, 639 (D.R.I.
12 1983) (discussing removal may be appropriate when the court could expect “that future
13 Trust transactions will be scrutinized by the beneficiaries” as a result of lengthy and
14 antagonistic litigation). Additionally, conflict between the trustee and beneficiary may
15 form a basis for removal when personal contact or collaboration is required for the
16 administration of the trust. Blumenstiel v. Morris, 180 S.W.2d 107, 109 (Ark. 1944). “The
17 purpose of removing a trustee is not to inflict a penalty for past action, but to preserve
18 trust assets.” Getty v. Getty, 205 Cal.App.3d 134, 140 (1988).

19 9. Attorney’s fees are not allowed to a prevailing party absent a contract,
20 statute, or rule to the contrary. See Smith v. Crown Fin. Servs., 111 Nev. 277, 890 P.2d 769
21 (1995) (analyzing the American and English rules regarding attorney’s fees and their
22 intersection with Nevada Law). NRS 18.010(2)(b) provides that this Court may award
23 attorney’s fees when it finds a claim was brought or maintained without reasonable
24 ground, or to harass the prevailing party. Pursuant to NRCP 68(a), “[a]t any time more
25 than 21 days before trial, any party may serve an offer in writing to allow judgment to be
26 taken in accordance with its terms and conditions.” If an offer is not accepted within the
27 prescribed time period, it will be considered rejected by the offeree. NRCP 68(e). If an
28 offeree rejects an offer and fails to obtain a more favorable judgment, “the offeree must

1 pay the offeror's post-offer costs and expenses, including . . . reasonable attorney fees, if
2 *any be allowed*, actually incurred by the offeror from the time of the offer." NRC
3 68(f)(1)(B) (emphasis added).

4 10. "[T]he purpose of NRC 68 is to encourage settlement . . . not to force
5 plaintiffs unfairly to forego legitimate claims." Beattie v. Thomas, 99 Nev. 579, 588, 668
6 P.2d 268, 274 (1983). To determine whether an award of fees is appropriate, a court must
7 consider and weigh the following factors: (1) whether the claim was brought in good faith;
8 (2) whether the offer of judgment was reasonable and in good faith in both its timing and
9 amount; (3) whether the decision to reject the offer and proceed to trial was grossly
10 unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable
11 and justified in amount.⁶ Beattie, 99 Nev. at 588–89, 668 P.2d at 274. No one Beattie factor
12 is outcome determinative, and each should be given appropriate consideration. Yamaha
13 Motor Co., USA v. Arnoult, 114 Nev. 233, 252 n.16, 955 P.2d 661, 673 n.16 (1998).

14 11. A proceeding concerning a trust "does not result in continuing supervisory
15 proceedings, and the administration of the trust must proceed expeditiously in a manner
16 consistent with the terms of the trust, without judicial intervention or the order, approval
17 or other action of any court, unless the jurisdiction of the court is [properly] invoked . . . as
18 provided by other law." NRS 164.015(7).

19 Equitable Issues

20 The following equitable issues and arguments are before this Court:

21 1. *Approval of accountings*

22 The trustees ask this Court to settle, allow, and approve the Issue and Family Trust
23 accountings without further examination, to include approval of trustees' fees, attorneys'

24
25 ⁶ When considering the fourth Beattie factor, the court must consider the Brunzell factors. See Shuette v.
26 Beazer Homes Holdings Corp., 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005). These factors include the
27 following: "(1) the qualities of the advocate: his or her ability, training, education, experience, professional
28 standing, and skill; (2) the character of the work to be done: its difficulty, intricacy, importance, time and
skill required, the responsibility imposed and the prominence and character of the parties where they affect
the importance of litigation; (3) the work actually performed by the lawyer: the skill, time, and attention
given to the work; and (4) the result: whether the attorney was successful and what benefits were derived."
Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 fees, and payment of other professional fees and administrative expenses.⁷ Wendy
2 opposes and asks this Court to order the trustees to prepare statutory compliant
3 accountings that disclose assets, values, transactions, and other acts of trust
4 administration. Wendy further argues that if the amended accountings are untimely or
5 noncompliant, this Court should find and remedy the trustees' breach of fiduciary duties.

6 The timing and form of accountings are prescribed by statute. But an accounting is
7 more than a formulaic compilation of data. An accounting is given to provide notice. Just
8 as facts in controversy vary from case to case, an accounting must be adjusted as the trust
9 estate requires. The trusts before this Court are complex because of the multiple layers of
10 entity and fractional ownership. They are further complicated by fluid and often
11 unknown values. This Court generally agrees with Wendy that the accountings fail to
12 provide adequate notice because they reveal only a portion of Sam's complex affairs – they
13 are mere pieces in a much larger puzzle and are ineffective when only reviewed in
14 isolation.⁸ Instead, the accountings created confusion and engendered suspicion. The
15 trustees attempted to answer Wendy's questions informally and made their professionals
16 available to answer Wendy's questions. But the accountings should have included more
17 explanatory details. The best example of how the accountings failed to provide actual and
18 adequate notice occurred when Todd testified Wendy could expect to receive \$4 million
19 from a variety of sources. While the trustees may have provided explanations through
20 accountants and settlement offers, Wendy's beneficial expectancy is not apparent from the
21 accountings or evidence of the trustees' pre-trial explanations.

22 However, this Court also notes that Wendy's complaints about the content and
23 general timing of the accountings were presented to the jury in the legal phase of trial and
24 are therefore facts common to the equitable claims. The jury presumably considered all
25 evidence when deliberating its verdict. The verdict is an express or implicit rejection of

26
27 ⁷ The relevant accountings are for the Issue and Family Trusts (April, 2013 through December, 2017) and
Wendy's subtrust (2013 – 2016).

28 ⁸ Wendy argues: "While in some circumstances, preparing and delivering accountings in the format
provided by NRS 165.135 may fully satisfy a fiduciary's requirement to account and fully disclose, that is not
and cannot be the case for these very complex trusts."

1 Wendy's complaints about the accountings. Accordingly, this Court will not provide
2 equitable relief regarding the accountings, which were constructively approved and
3 confirmed by the jury's verdict. In so doing, this Court does not countenance the trustees'
4 arguments that all accountings and disclosures complied with Nevada law, to include
5 NRS 165.135(4)(a), which allows for a statement prepared by a CPA containing summaries
6 of the information required by NRS 165.135(1). This Court simply orders that all litigation
7 regarding the accountings in existence at the time of the jury trial must end.⁹ The nature of
8 the accountings influence this Court's decision regarding attorneys' fees and the no-
9 contest provisions of the trust.

10 2. *Validity of the Agreements and Consents to Proposed Actions (ACPAs) and*
11 *Indemnification Agreements*

12 Todd as trustee of the Issue Trust, and Todd and Michael Kimmel as co-trustees of
13 the Family Trust, ask this Court to ratify and approve the ACPAs, thus relieving them of
14 liability for actions reasonably taken in reliance upon them. They (and Todd individually)
15 also ask this Court to affirm the indemnification agreements. Wendy opposes and asks
16 this Court to invalidate the ACPAs and rescind any transactions accomplished through
17 them. She also contests Stan and Todd's indemnification agreements and asks that any
18 transactions accomplished through them be invalidated and set aside. Each party presents
19 substantial arguments supporting their respective positions. This Court again returns to
20 the scope and content of the jury trial and the facts common to legal and equitable claims.
21 While the attorneys argued to the jury that this Court would decide the validity of the
22 ACPAs and indemnification agreements, each of the challenged documents and related
23 transactions were thoroughly presented and argued to the jury – including document
24 preparation, execution, and other formation irregularities. Thus, at least, the jury verdict is
25 an implicit rejection of Wendy's arguments.

26 Having considered all arguments, this Court concludes it will neither affirm nor

27
28 ⁹ The trustees may wish to modify the form of future accountings to provide better notice and explanations
to the beneficiaries. Otherwise, they risk objections this Court may be inclined to grant, including an award
of attorney's fees.

1 reject the ACPAs and indemnification agreements. They cannot be segregated from the
2 legal claims presented to the jury and now subsequently argued in support of equitable
3 relief. The jury constructively approved and affirmed the ACPAs and indemnification
4 agreements when it reached its verdict. The verdict prevents additional litigation and
5 precludes liability exposure for actions taken in reliance upon these documents. All claims
6 involving the disputed ACPAs and indemnification agreements shall end with the jury's
7 verdict. Nonetheless, the ACPAs and indemnification agreements also influence this
8 Court's decision regarding attorneys' fees and the no-contest provisions.

9 3. *Violation of the no-contest provisions of the trusts*

10 All trustees except Stan ask this Court to declare that Wendy violated the no-contest
11 provisions of the trusts when she initiated and maintained this litigation. Wendy opposes
12 and asks this Court to declare that Todd violated the no-contest provisions when he filed
13 the initial petition and later moved to dismiss her litigation. The trustees' request deserves
14 analysis, whereas Wendy's request is retaliatory and made with little legal basis or
15 support from the trust instruments.

16 Wendy sought to enforce her rights, obtain instructions, and remedy a breach of
17 fiduciary duties. The jury agreed that Todd breached his fiduciary duties. Further, based
18 upon the information she possessed, she had probable cause to seek invalidation of
19 transfers and other acts of trust administration. This Court must distinguish between the
20 *existence* of probable cause for initiating and maintaining this action with the manner in
21 which the probable cause was *litigated*. As noted elsewhere, Wendy and Stan had
22 probable cause to seek answers to questions raised by the accountings and other events of
23 trust administration. Thus, while Wendy's litigation zeal and overreaching jury demand
24 may implicate Sam's intention to disincentivize litigation, Wendy's legal actions were
25 authorized and do not create a bar to her beneficial rights.

26 4. *Unjust enrichment and constructive trust*

27 Wendy asks this Court to impress a constructive trust to cure unjust enrichment
28 caused by fraud, breach of fiduciary duty, and self-dealing. Todd, Stan, and the trustees

1 make several arguments in opposition to Wendy's request. This Court disagrees with
2 Wendy's position. Wendy's allegations of misconduct, document impropriety, and self-
3 dealing underlying her request for equitable relief are inseparable from the legal claims
4 she presented to the jury. Wendy has been awarded damages for Todd's breach of
5 fiduciary duties. Any other equitable relief would constitute double recovery and alter the
6 jury's verdict in violation of the Seventh Amendment and its interpretative decisions.

- 7 5. *Removal of trustees*
8 *Disgorgement of trustee fees*
9 *Use of trust funds to initiate petition and defend against Wendy's counterpetition*
 Award of attorneys' fees

10 Wendy relies upon her same arguments when asking this Court to remove the
11 trustees, order the trustees to disgorge trustee fees, and deny the use of trust funds to
12 present their petitions and defend against her counterpetition. The parties present
13 substantial authorities and arguments (and other moving papers) relating to attorneys'
14 fees.

15 There is no basis to consider the removal of any trustee except Todd. The two bases
16 to remove Todd are 1) the jury's verdict that Todd breached his fiduciary duties, and 2)
17 this Court's observation that Todd's neutrality is conflicted by his own interests and
18 animus towards Wendy. This Court concludes removal would be unjust and
19 incommensurate for several reasons: 1) Todd is Sam's designated and preferred trustee, 2)
20 other trustees will diffuse Todd's conflicts and reduce the personal contact between Todd
21 and Wendy, 3) the remedy against Todd's breaches and conflicts are made through other
22 orders regarding attorneys' fees, disgorgement of trustee's fees, and inapplicability of the
23 no-contest provisions, 4) Todd's own affairs are inseparable from trust administration and
24 his removal as trustee will not sever him from trust business; he will remain involved in
25 Jaksick family affairs through his ongoing management and ownership of several other
26 related entities, 5) the expenses of removing Todd and educating a successor trustee
27 would be expensive and inefficient, and 6) Wendy's suggestion that a commercial trustee
28 serve as successor trustee for all trustees is neither warranted nor workable.

 However, based upon the jury's verdict that Todd breached his fiduciary duties

1 (and secondarily, this Court's findings about the timing and content of the accountings),
2 this Court grants Wendy's request that Todd disgorge or disclaim all trustee's fees from
3 the inception of his trusteeship through the date when final judgment is entered. The
4 amount disgorged or otherwise forfeited may serve as an offset against the 25% of
5 trustees' attorneys' fees Todd is ordered to pay, as set forth below. This Court confirms
6 trustee fees to all other trustees.

7 There are several requests regarding attorney's fees as a trust expense. This Court's
8 discretionary resolution of the fees requests is bound by all facts of record and influenced
9 by the entirety of the pre-trial, legal, and equitable proceedings (including the settlement
10 agreement between Todd and Stan) and uncertainties created by notarial malfeasance.

11 This Court first orders that Stan Jaksick and Michael Kimmel's attorneys' fees be
12 chargeable to the trust and paid from trust corpus. This Court's decision regarding
13 Wendy and Todd's fees (both as trustee and individually) are more complicated. There
14 are competing facts and legal principles, which this Court analyzes in the aggregate and
15 not in isolation. In particular, the NRCP 68 request cannot be considered narrowly, but
16 instead, must be viewed by a totality of the case proceedings and statutory authorities
17 governing trustees. There are several options before this Court:

- 18 - Order the trust to pay all, some, or none of Wendy's fees
19 because she successfully obtained a verdict that Todd breached
20 his fiduciary duties as trustee.
- 21 - Order the trust to pay all, some, or none of the fees Todd
22 incurred as trustee because, even though he breached his
23 fiduciary duties, he qualitatively and quantitatively prevailed
24 against other claims asserted by Wendy.
- 25 - Order Wendy to pay fees Todd incurred because she brought
26 or maintained her action without reasonable grounds or to
27 harass.
- 28 - Order Wendy to pay fees Todd incurred as trustee of the Issue
 Trust because she rejected his \$25,000 offer of judgment.
- Order Wendy to pay fees Todd incurred individually because

1 she rejected his \$25,000 offer of judgment.

- 2 - Discretionarily decline to order Wendy to pay fees pursuant to
3 the offers of judgment.

4 On August 29, 2018, Todd offered Wendy to have judgment entered against him
5 individually in the amount of \$25,000. He also offered Wendy to have judgment entered
6 against him as trustee of the Issue Trust in the amount of \$25,000. The jury did not make
7 any adverse findings against Todd individually, but it concluded Todd breached his
8 fiduciary duties as trustee and awarded \$15,000 to Wendy. With adjustments for interest,
9 the amount Wendy will receive is almost indistinguishable from the \$25,000 Todd offered
10 as trustee. To the extent there is a *de minimis* distinction, the difference is not enough in a
11 dispute that incurred several million dollars of fees and involved tens of millions in
12 controversy.

13 An offer of judgment must be an authentic attempt to settle a dispute. The offer of
14 judgment benefit is not automatically conferred. Instead, this Court must carefully
15 analyze the offer and discretionarily apply it to the unique facts of each case. This Court
16 and counsel are familiar with the American Rule of attorneys' fees and discretionary
17 application of NRCF 68. This Court's discretion exists to encourage parties to convey
18 legitimate offers to resolve their disputes. Of course, judicial discretion is controversial to
19 those who are aggrieved, and it is unpredictable to all.

20 On one side, offers that are appropriate in time and amount will cause the non-
21 offering party to become realistic and engage in genuine risk/benefit analyses. These
22 offers shift a calculated risk as trial approaches. To be an effective mechanism to resolve
23 disputes before trial, they should be in an amount the non-offering party cannot decline in
24 good faith. Defendants who perceive no liability exposure chafe against making time- and
25 amount-appropriate offers because they resent the payment of any money to a party they
26 perceive will not prevail at trial. On the other side, offering parties sometimes make time-
27 and amount-inappropriate offers *they expect to be rejected*. These offers do not facilitate
28 settlement--they are strategic devices to shift the risk of fees by offering illusory

1 consideration to end litigation.

2 This Court's discretion is guided by the unique facts and procedural history of this
3 case. This Court analyzes the Beattie factors as follows:

4 *Whether Wendy's claims were brought in good faith?* Wendy believed in good faith that
5 she suffered damages from Todd's individual and fiduciary misconduct. She trusted the
6 court system and exercised her constitutional right to jury trial. This Court concludes that
7 Wendy's claims against Todd as trustee of the Issue Trust were brought in good faith.
8 Wendy's concerns are countenanced, in large part, by the questions raised by the
9 accountings, Stan's separate allegations against Todd, document anomalies, and the optics
10 of Todd's disproportionate benefit from Sam's business and trust affairs. The good-faith
11 nature of Wendy's claims against Todd individually are more difficult to discern. In the
12 final analysis, Wendy had some cause to initiate the claims against Todd individually, but
13 as discovery progressed, Wendy's cause to pursue Todd individually diminished. This
14 factor weighs slightly in Wendy's favor regarding the Issue Trust offer of judgment and is
15 neutral regarding Todd's individual offer of judgment.¹⁰

16 *Whether Todd's offers were reasonable and in good faith in both timing and amount?* This
17 Court has wrestled with the question of whether the offers of judgment were brought in
18 good faith in both timing and amount. These offers of judgment were made six months
19 after Wendy filed her amended counter-petition, when discovery was still in its infancy.
20 This Court concludes the amounts offered were neither good faith/reasonable nor
21 strategic bad faith/unreasonable. They fall within the continuum between those two
22 categories. Todd knew, or should have known, the fees incurred through continuing
23 litigation alone would substantially overshadow the offered amounts. Todd knew, or
24 should have known, that Wendy would never accept \$25,000 to resolve her claims against
25 him as trustee of the Issue Trust.

26 However, Todd also had cause to believe he would prevail at trial, a fact now
27

28 ¹⁰ Because this Court finds Wendy brought her claims in good faith, this Court concludes fees under NRS
18.010(2)(b) are not warranted.

1 proven with respect to the claims against him individually. Todd's subjective belief about
2 the strength of his position is legally relevant. "[W]here the offeror has a reasonable basis
3 to believe that exposure to liability is minimal, a nominal offer is appropriate." Arrowood
4 Indem. Co. v. Acosta, Inc., 58 So. 3d 286, 289 (Fla. Dist. Ct. App. 2011) (discussing the good
5 faith prong of an offer of judgment from a Florida statute analogous to NRCP 68). At the
6 time Todd made his individual offer, Wendy had been unable to present coherent facts
7 underlying her claims against him personally. He therefore had reason to believe
8 Wendy's claims against him individually were weak or lacked merit. See Beach, 958 F.
9 Supp. at 1171 (holding defendant's offer was reasonable even though plaintiff's alleged
10 damages exceeded the offer's amount "given the weaknesses defendant perceived in
11 plaintiff's case."); see also Scott-Hop v. Bassek, Nos. 60501, 61943, 2014 WL 859181 at *6
12 (Feb. 28, 2014) (holding reasonable an offer of \$25,000 even though plaintiff's alleged
13 medical expenses were over \$150,000 because of the uncertainty of plaintiff's case and
14 defendant's summary judgment motion); Max Bear Productions, Ltd. v. Riverwood
15 Partners, LLC, No. 3:09-CV-00512-RCJ-RAM, 2012 WL 5944767 (D. Nev. Nov. 26, 2012)
16 ("The token \$1,000 offer may appear to have been made simply for the procedural purpose
17 of preserving rights to fees . . . should Defendant win a judgment. However, the
18 weaknesses of Plaintiff's case made this token offer reasonable."); Arrowood, 58 So. 3d at
19 289-90 (holding a court is required to consider an offeror's subjective belief that an offer is
20 reasonable and not just objective factors).

21 This Court concludes the second factor to consider is neutral regarding the Issue
22 Trust and does not inure to any party's favor or disfavor. Todd hoped he would prevail at
23 trial, but given the financial and documentary complexity, discovery delays and disputes
24 (including Todd's continued depositions long after the offers of judgment were made), the
25 untimely accountings, incomplete discovery, and the amounts in controversy, the offer
26 does not appear to be made with the good-faith intention of settling Wendy's claims. In
27 contrast, Todd's offer to settle Wendy's claims against him individually for the payment of
28 \$25,000 appears more reflective of the circumstances and was made with a good-faith

1 intention to settle the claims. Thus, this factor favors Todd individually.

2 *Whether Wendy's decision to reject the offer and proceed to trial was grossly unreasonable*
3 *or in bad faith?* Wendy's decision to reject Todd's offer as trustee of the Issue Trust was not
4 grossly unreasonable or in bad faith. The offer arrived early in discovery. Wendy had
5 incurred substantially more in fees than the offered amount and she was entitled to
6 examine her legal position after discovery was received. In contrast, her decision to reject
7 Todd's individual offer is less reasonable, yet this Court cannot conclude her rejection was
8 grossly unreasonable or made in bad faith. Her decision was simply unwise in retrospect
9 and she cannot now be relieved of its consequences. This third factor weighs in favor of
10 Wendy regarding the Issue Trust and is neutral regarding Todd's personal liability.

11 *Whether the fees sought are reasonable and justified in amount?* Todd's individual and
12 trustee attorneys are experienced in law and trial. They have exemplary records of service
13 in our legal community and they obtained a positive outcome for their clients. After
14 considering each of the Brunzell factors, this Court finds the fees sought by Todd
15 individually from the date of the offer are reasonable in light of his experienced and
16 effective attorneys, duration and scope of litigation, and the result obtained. However,
17 the aggregate fees this Court expects Todd to seek as trustee of the Issue Trust are not
18 justified when the offered \$25,000 is compared to the jury verdict. Shifting substantial
19 attorneys' fees to Wendy is unjustified in this instance. Regarding Todd's individual fees,
20 the amounts are reasonable and justified when charged against Wendy. This factor is
21 neutral with respect to the Issue Trustee offer and favors Todd with respect to his
22 individual offer of judgment.

23 For these reasons, this Court orders as follows:

- 24 a. The trusts shall pay 100% of the fees incurred by their attorneys in
25 representation of the trustees. However, Todd shall reimburse the
26 trusts from his personal resources for 25% of the amount paid because
27 the jury determined he breached his fiduciary duties. Provided,
28 however, Todd is entitled to reduce this 25% personal obligation by

1 the amount of trustee's fees he is ordered to disgorge.

- 2 b. Wendy is *not* required to pay fees Todd incurred as trustee because
3 she rejected the \$25,000 offer of judgment.
- 4 c. Wendy *shall* pay 100% of fees Todd incurred individually from the
5 date the offer of judgment was made. Provided, however, Todd shall
6 be Wendy's judgment creditor and have no greater access to payment
7 than any other judgment creditor. Todd may attach or anticipate
8 Wendy's distributive share only if there are no spendthrift provisions
9 within the trust instruments that prohibit such creditor collection
10 efforts. If such spendthrift provisions exist, distributions shall be
11 made to Wendy and Todd may seek collection efforts against Wendy
12 personally, subsequent to the distribution. The trustees (including
13 Todd) shall carefully measure Todd's rights as an individual
14 judgment creditor with their fiduciary duties owed to Wendy as a
15 beneficiary.
- 16 d. The Trusts shall pay a combined attorneys' fee of \$300,000 to Wendy's
17 attorneys for prevailing in the claim against Todd for breach of
18 fiduciary duties. This payment shall be made directly to Wendy's
19 attorneys without Wendy's signatory participation as a client or trust
20 beneficiary.
- 21 e. All fees ordered shall be treated as general trust administration
22 expenses and not allocated to any beneficiary's distributive share.
- 23 f. Todd is not required to indemnify the trust for the \$300,000 payable to
24 Wendy's attorneys because he is already ordered to pay 25% of the
25 aggregate fees incurred in representation of the trustees.
- 26 g. The request for oral arguments is denied.

27 **Other Issues**

- 28 1. *Second supplement to first amended counterpetition*

1 On May 9, 2019 (after the legal phase of trial but before the equitable trial), Wendy
2 filed a Second Supplement to her First Amended Counterpetition in which she continued
3 her theme about untimely accountings. Wendy asks this Court to consider the new fact
4 allegation the Family Trust co-trustees failed to prepare and deliver accountings for the
5 Family Trust and Wendy Subtrust for the period from January 1, 2018, to December 31,
6 2018. She requests the production and delivery of these accountings and asks that the
7 trustees be sanctioned. The trustees (including Todd and Stan individually) moved to
8 strike Wendy's supplement because it was filed after the August 2, 2018, deadline to file
9 motions to amend pleadings and violated NRCP 15(d).¹¹ The 2018 accountings were
10 provided to Wendy in early July, 2019, thus rendering Wendy's request to compel moot.

11 It appears the accountings were untimely and this Court agrees Wendy could not
12 have filed the supplement until after the deadline for providing the 2018 accountings had
13 passed. However, the 2018 accountings are not part of the underlying litigation. This
14 Court declines Wendy's invitation to enlarge this litigation to satisfy judicial economy.
15 This litigation is bounded by the pleadings and cannot remain an open receptacle to
16 receive real-time allegations of inappropriate trust administration. The supplement is
17 stricken as beyond the scope of claims before this Court. Wendy may file a separate action
18 challenging the timing and content of the 2018 accountings if she is so inclined. This Court
19 neither encourages nor discourages such litigation.

20 2. *The Lake Tahoe property*

21 Though not placed within a certain claim for relief within her pleadings, Wendy
22 asks this Court to rescind all transactions involving the Lake Tahoe home and restore title
23 to the SSJ LLC, which was 100% owned by the Family Trust. Wendy continues to
24 overwhelm this Court with repetitive and lengthy arguments about the option
25 agreements, forgery, fraud, fiduciary duties, unjust enrichment, trustor intentions,
26 consideration, etc. All of Wendy's arguments were presented to the jury and rejected in
27

28 ¹¹ Stan filed an additional Motion to Dismiss or Motion to Strike, arguing Wendy's supplement alleged a new claim for breach of fiduciary duty that has not been discovered. Todd joined in Stan's motion.

1 the jury's verdict. This Court will not enter any order granting relief to Wendy regarding
2 the Lake Tahoe home.

3 3. *Future distributions*

4 On July 23, 2019, Wendy filed an Emergency Motion to Compel Distribution from
5 the Family Trust. She alleged she was being evicted from her home in Texas and needed
6 money to relocate to either Arizona or Reno. Wendy asked this Court to order the trustees
7 of the Family Trust to distribute \$6,000 for a deposit on a new apartment and \$5,000 per
8 month for living expenses. Wendy further asks this Court to advise the trustees regarding
9 the schedule of other distributions for living expenses. Wendy's motion is denied. This
10 Court will not supervise trust administration on an ongoing basis. It will not provide
11 advisory guidance or otherwise order the trustees regarding administration and
12 distributions. Instead, it will adjudicate disputes through normal judicial processes.
13 Wendy may initiate separate litigation if she is so inclined.

14 4. *Costs.*

15 Todd Jaksick as an individual, Duck Lake Ranch, LLC, and Incline TSS, are the
16 prevailing parties entitled to statutory and reasonable costs. All other parties may file cost
17 memoranda as authorized by law.

18 **Conclusions**

19 1. This Court does not confirm the accountings. However, the substance of the
20 accountings were presented to the jury and fall within the jury's verdict. Thus, this Court
21 will not allow additional litigation as to any accounting that formed the basis for Wendy's
22 legal claims. All future accountings shall be timely and formulated to provide the
23 beneficiaries with adequate notice of values, transactions, and other acts of trust
24 administration. The trustees are authorized to pay, at Wendy's request, a portion of
25 Wendy's distributive shares to Wendy's designated financial professional who will assist
26 her to understand the accountings and interact with the trustees.

27 2. This Court does not confirm the ACPAs or indemnification agreements.
28 However, the substance of the ACPAs and indemnification agreements were presented to

1 the jury and fall within the jury's verdict. This Court will not allow additional litigation as
2 to any of the ACPAs and indemnification agreements that formed the basis for Wendy's
3 legal claims.

4 3. The trustees' request to impose no-contest penalties against Wendy is
5 denied.

6 4. Wendy's claims for unjust enrichment and constructive trust are denied.

7 5. Todd is confirmed as trustee of Issue Trust and co-trustee of Family Trust.
8 All other trustees are also confirmed.

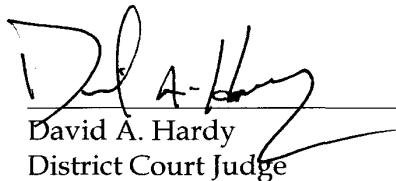
9 6. Todd shall disgorge all trustee fees he received or otherwise earned, subject
10 to the fees award provisions.

11 7. This Court anticipates the parties will seek clarification and other relief
12 through additional motion work. The attorneys' fees provisions in this order reflect the
13 entirety of this Court's intentions regarding fees. This order also reflects the entirety of
14 this Court's intentions regarding all other pending matters.

15 8. Todd and the trustees may submit a proposed judgment consistent with the
16 jury's verdict and this order on equitable claims.

17 **IT IS SO ORDERED.**

18 Dated: March 12, 2020.

19
20 
21 David A. Hardy
22 District Court Judge
23
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27
28

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WENDY JAKSICK,

Petitioner,

CASE NO.: PR17-00445

v.

DEPT. NO.: 15

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the
SSJ's Issue Trust; MICHAEL S. KIMMEL,
Individually and as Co-Trustee of the
Samuel S. Jaksick Jr. Family Trust;
STANLEY S. JAKSICK, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY,
Individually, as Former Trustee of the
Samuel S. Jaksick Jr. Family Trust, and
as Trustee of the Wendy A. Jaksick 2012
BHC Family Trust, INCLINE TSS, LTD.;
DUCK LAKE RANCH, LLC; SAMMY SUPERCUB
LLC, SERIES A,

CASE NO.: PR17-00446

DEPT. NO.: 15

VERDICT

Respondents.

/ / /

/ / /

/ / /

/ / /

1 We, the jury, duly impaneled in the above-entitled action,
2 find that Petitioner, Wendy Jaksick, has proven her **breach of**
3 **fiduciary duty claim**, by a preponderance of evidence, against:

4 (Please circle only one for each line item)

5 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
6 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
7 TODD JAKSICK (as Co-Trustee of Family Trust)	<input checked="" type="radio"/> YES	NO
8 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
9 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input checked="" type="radio"/> NO
10 TODD JAKSICK (as Trustee of Issue Trust)	<input checked="" type="radio"/> YES	NO

11 We, the jury, duly impaneled in the above-entitled action,
12 find that Petitioner, Wendy Jaksick, has proven her **civil**
13 **conspiracy and aiding and abetting claim**, by preponderance of
14 evidence, against:

15 (Please circle only one for each line item)

16 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
17 KEVIN RILEY (individually)	YES	<input checked="" type="radio"/> NO
18 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input checked="" type="radio"/> NO
19 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
20 TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
21 TODD JAKSICK (individually)	YES	<input checked="" type="radio"/> NO
22 TODD JAKSICK (as Trustee of Issue Trust)	YES	<input checked="" type="radio"/> NO
23 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
24 MICHAEL KIMMEL (individually)	YES	<input checked="" type="radio"/> NO

25 / / /

26 / / /

1 We, the jury, duly impaneled in the above-entitled action,
2 find that Petitioner, Wendy Jaksick, has proven her **aiding and**
3 **abetting breach of fiduciary duty claim**, by a preponderance of
4 evidence, against:

5 (Please circle only one for each line item)

6 KEVIN RILEY (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
7 KEVIN RILEY (individually)	YES	<input checked="" type="radio"/> NO
8 KEVIN RILEY (as Trustee of BHC Trust)	YES	<input checked="" type="radio"/> NO
9 STAN JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
10 TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
11 TODD JAKSICK (individually)	YES	<input checked="" type="radio"/> NO
12 TODD JAKSICK (as Trustee of Issue Trust)	YES	<input checked="" type="radio"/> NO
13 MICHAEL KIMMEL (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
14 MICHAEL KIMMEL (individually)	YES	<input checked="" type="radio"/> NO

15 We, the jury, duly impaneled in the above-entitled action,
16 find that Petitioner, Wendy Jaksick, has proven her **fraud claim**
17 by clear and convincing evidence, against:

18 (Please circle only one for each line item)

19 TODD JAKSICK (as Co-Trustee of Family Trust)	YES	<input checked="" type="radio"/> NO
20 TODD JAKSICK (individually)	YES	<input checked="" type="radio"/> NO
21 TODD JAKSICK (as Trustee of Issue Trust)	YES	<input checked="" type="radio"/> NO

22
23 (If you circled "yes" to **ANY** of the above claim(s) correlating
24 to **ANY** respondent then proceed to and answer Questions 1 AND 2.
25 If you answered "no" to **ALL** of the above then skip Questions 1
26 AND 2 and sign and date verdict form.)

27 / / /

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/ / /

1 1. We, the jury, duly impaneled in the above-entitled
2 action, having found in favor of Petitioner, Wendy Jaksick, on
3 one or more of her claims against one or more of the
4 Respondents, find that she has proven by a preponderance of
5 evidence the amount of her damages, assess her damages to be
6 \$ 15,000.⁰⁰
7

8 2. Has Wendy Jaksick established by clear and convincing
9 evidence that any of the Respondents acted with fraud,
10 oppression, or malice?

11 (Please circle only one for each line item)

12 KEVIN RILEY	YES	<input checked="" type="radio"/> NO
13 STAN JAKSICK	YES	<input checked="" type="radio"/> NO
14 TODD JAKSICK	YES	<input checked="" type="radio"/> NO
15 MICHAEL KIMMEL	YES	<input checked="" type="radio"/> NO

16 DATED this 4 day of March, 2019.

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1105

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

CASE NO.: PR17-00445

SSJ's ISSUE TRUST.

DEPT. NO.: 15

In the Matter of the:

CASE NO.: PR17-00446

SAMUEL S. JAKSICK, JR., FAMILY
TRUST.

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

~~PROPOSED~~
AMENDED JUDGMENT

v.

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr. Family
Trust, and as Trustee of the SSJ's Issue Trust;
MICHAEL S. KIMMEL, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr. Family
Trust; STANLEY S. JAKSICK, Individually
and as Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY, Individually, as
Former Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the Wendy A.
Jaksick 2012 BHC Family Trust, INCLINE
TSS, LTD.; and DUCK LAKE RANCH, LLC;

Petitioners and Counter-Respondents.

The procedural history of this matter, in pertinent part, is as follows:

1. This matter was tried to a jury from February 14, 2019, to and including March 4, 2019.
2. On May 13, 2019, the Court began a bench trial to resolve Wendy Jaksick's

1 equitable claims. After consideration of the evidence and briefs filed by the parties, the Court
2 entered its Order After Equitable Trial on March 12, 2020.

3 3. On April 1, 2020, Judgment on Jury Verdict and Court Order on Equitable Claims
4 (“Judgment”) was entered in these matters. A true copy of the Judgment is attached as **Exhibit 1**
5 and is made a part hereof. The jury’s March 4, 2019 Verdict and the Court’s Order After
6 Equitable Trial are attached to and made part of the Judgment.

7 4. After the Judgment was filed, the parties filed various post-judgment motions. The
8 Court resolved the post-trial motions in its June 10, 2020 Order Resolving Submitted Matters
9 (Post Judgment Order”). A true copy of the Post Judgment Order is attached as **Exhibit 2** and is
10 made a part hereof. The Post Judgment Order resolves various contested issues that require the
11 Judgment be amended in certain limited areas.

12 GOOD CAUSE APPEARING, the Judgment is amended as follows:

13 1. **Todd Jaksick’s Individual Claim For Attorneys’ Fees and Costs on the Equity**
14 **Claims.** This motion is granted and in addition to the \$505,165.07 awarded to Todd Jaksick
15 (“Todd”) individually in the Judgment, the Judgment is hereby amended to include an additional
16 \$108,124.67, for a total judgment against Wendy Jaksick (“Wendy”) in favor of Todd individually
17 in the amount of \$613,289.74.

18 2. **Todd’s Position as Wendy’s Judgment Creditor.** Todd’s rights to enforce the
19 Judgment and this Amended Judgment is not limited or restricted, except as follows:

20 **Order After Equitable Trial:** “Todd shall be Wendy’s judgment creditor and
21 have no greater access to payment than any other judgment creditor. Todd may
22 attach or anticipate Wendy’s distributive share only if there are no spendthrift
23 provisions within the trust instruments that prohibit such creditor collection efforts.
24 If such spendthrift provisions exist, distributions shall be made to Wendy and Todd
25 may seek collection efforts against Wendy personally, subsequent to the
distribution. The trustees (including Todd) shall carefully measure Todd’s rights as
an individual judgment creditor with their fiduciary duties owed to Wendy as a
beneficiary.”

26 **Judgment:** “Declaring and decreeing that all fees ordered against Wendy Jaksick
27 shall be treated as a general trust administration expense and are not allocated to
28 any beneficiaries’ distributive share. Todd Jaksick may attach or anticipate
Wendy’s distributive share only if there are no spendthrift provisions within the
trust instruments that prohibit such creditor collection efforts. If such spendthrift
provisions exist, distributions shall be made to Wendy, and Todd may seek
collection efforts against Wendy personally, subsequent to the distribution.”

1 3. **Co-Trustee Stanley Jaksick's Memorandum of Attorney's Fees.** The fees
2 Stanley Jaksick incurred as Co-Trustee of the Family Trust are payable from the Trust and Court
3 intervention was neither requested nor is given.

4 4. **Todd's Motion to Amend.** The judgment is amended so as to exclude from
5 Todd's personal responsibility 25% of the fees the Trusts paid for the benefit of Co-Trustee
6 Stanley Jaksick.

7 5. **Maupin, Cox & LeGoy's Errata to Verified Memorandum of Attorney's Fees.**

8 The Judgment is not amended regarding Todd being personally responsible to pay 25% of
9 the fees paid to the law firm of Maupin, Cox & LeGoy ("MCL") for representing Todd, Michael
10 Kimmel, and Kevin Riley in their Trustee capacities for MCL defending them against Wendy's
11 legal and equitable claims.

12 On May 21, 2020, MCL filed the Petitioners' Verified Memorandum of Attorney's Fees.
13 On June 18, 2020, MCL filed an Errata to its Verified Memorandum of Attorney's Fees. On June
14 21, 2020, MCL filed its Second Errata to Petitioners' Verified Memorandum of Attorney's Fees.
15 According to the Second Errata, MCL charged \$855,450.50 for representing Todd as Co-Trustee
16 of the Family Trust and as Trustee of the Issue Trust, Mike Kimmel as Co-Trustee of the Family
17 Trust, Kevin Riley as Co-Trustee of the Family Trust and Kevin Riley as Trustee of Wendy
18 Jaksick's BHC Trust.

19 6. **Todd's Challenge to Petitioners' Verified Memorandum of Attorney's Fees**
20 **and Second Errata Thereto.** On June 29, 2020, Todd filed his Response to Petitioners' Verified
21 Memorandum of Attorney's Fees and the first and second Errata filed in connection thereto. Todd
22 attempted to show that the Petitioners' Verified Memorandum of Attorney's Fees included
23 substantial charges for MCL's administration of the Family Trust and the Issue Trust and argued
24 that the \$855,450.50 should be reduced by the amount of \$88,428.75. After consideration of
25 Todd's response, it is ordered that Todd reimburse the trusts 25% of the amount charged by MCL
26 for defending against Wendy Jaksick's litigation. Todd is ordered to reimburse the trusts 25% of
27 the balance (\$797,021.75) in the amount of \$199,255.44.
28

1 IT IS HEREBY ORDERED, DECREED AND ADJUDICATED that the Judgment is
2 amended as set forth above. In all other respects, the Judgment on Jury Verdict and Court Order
3 on Equitable Claims, Order After Equitable Trial, and Order Resolving Submitted Matters, to the
4 extent not inconsistent or amended hereby, together with this Amended Judgment, resolve all
5 claims against all parties. This Amended Judgment, together with the attached exhibits
6 incorporated herein is, pursuant to Rule 54(b) of the Nevada Rules of Civil Procedure, a final
7 judgment.

8 DATED this 2nd day of July, 2020.

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12 DAVID A. HARDY
13 DISTRICT COURT JUDGE
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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Pages</u>
1	Judgment on Jury Verdict and Court Order on Equitable Claims	35
2	Order Resolving Submitted Matters	8

FILED
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2020-07-02 02:10:47 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7953974

EXHIBIT 1

1845

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the:

SSJ's ISSUE TRUST.

CASE NO.: PR17-00445

DEPT. NO.: 15

In the Matter of the:

SAMUEL S. JAKSICK, JR., FAMILY
TRUST.

CASE NO.: PR17-00446

DEPT. NO.: 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,
v.

TODD B. JAKSICK, Individually, as Co-
Trustee of the Samuel S. Jaksick Jr. Family
Trust, and as Trustee of the SSJ's Issue Trust;
MICHAEL S. KIMMEL, Individually and as
Co-Trustee of the Samuel S. Jaksick Jr. Family
Trust; STANLEY S. JAKSICK, Individually
and as Co-Trustee of the Samuel S. Jaksick Jr.
Family Trust; KEVIN RILEY, Individually, as
Former Trustee of the Samuel S. Jaksick Jr.
Family Trust, and as Trustee of the Wendy A.
Jaksick 2012 BHC Family Trust, INCLINE
TSS, LTD.; and DUCK LAKE RANCH, LLC;

**JUDGMENT ON JURY VERDICT AND
COURT ORDER ON EQUITABLE
CLAIMS**

Petitioners and Counter-Respondents.

A. JUDGMENT ON JURY VERDICT

This matter was tried to a jury from February 14, 2019 to and including March 4, 2019.

The jury found in favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-

1 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
2 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
3 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust and against
4 Counter-Petitioner Wendy Jaksick on all claims and defenses. The jury found in favor of Counter-
5 Petitioner Wendy Jaksick against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr.,
6 Family Trust and as Trustee of the SSJ's Issue Trust on her breach of fiduciary duty claim and
7 assessed damages in the total amount of \$15,000. The jury found in favor of Todd Jaksick, as Co-
8 Trustee of the Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, on all
9 of Wendy Jaksick's other claims tried to the jury. The Jury Verdict is attached hereto and made a
10 part hereof.

11 Accordingly, judgment is entered as follows:

12 1. In favor of Todd Jaksick, individually, Stanley Jaksick, individually and as Co-
13 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, individually and as Co-
14 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley, individually and as Co-
15 Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC Trust against Counter-
16 Petitioner Wendy Jaksick on all of the claims and defenses tried to the jury. As required by NRS
17 18.110, these prevailing parties shall file their Memoranda of Costs within five days from notice
18 of entry of this Judgment on Jury Verdict.

19 2. In favor of Wendy Jaksick against Todd Jaksick as Co-Trustee of the Samuel S.
20 Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust on Wendy Jaksick's breach of
21 fiduciary duty claims. The Jury's Verdict in favor of Counter-Petitioner Wendy Jaksick in the
22 amount of \$15,000 is *de minimis* in light of her request for damages of \$80,000,000 and in light of
23 her failure to prevail on fraud, conspiracy and aiding and abetting. She is, therefore, not a
24 prevailing party and not entitled to recover costs under NRS 18.050 and NRS 18.110. Counter-
25 Petitioner Wendy Jaksick failed to obtain a judgment in excess of the Offers of Judgment served
26 by Todd Jaksick, as an individual, and is therefore not entitled to recover costs pursuant to NRCP
27 68. Counter-Petitioner Wendy Jaksick's judgment against Todd Jaksick, as Co-Trustee of the
28 Samuel S. Jaksick, Jr., Family Trust and as Trustee of the SSJ's Issue Trust, is for the total amount

1 of \$15,000, together with prejudgment interest from the date of her Counter-Petition (January 19,
2 2018) to the date of the Offer of Judgment (August 29, 2018) served by Todd Jaksick, in his
3 individual capacity, in the amount of \$605.34, for a total judgment of \$15,605.34. This judgment
4 shall accrue interest at judgment rate until paid in full.

5 3. All claims asserted by Counter-Petitioner Wendy Jaksick in her Counter-Petition
6 and Amended Counter-Petition and tried to the jury are dismissed with prejudice.

7 4. In favor of Duck Lake Ranch, LLC, and Incline TSS, Ltd. against Counter-
8 Petitioner Wendy Jaksick. The Court dismissed Counter-Petitioner's claims against these entities
9 and pursuant to NRS 18.110, these entities shall file their Memoranda of Costs within five days of
10 notice of entry of this judgment.

11 **B. JUDGMENT ON EQUITABLE CLAIMS**

12 On May 13, 2019, the Court began a bench trial to resolve Wendy Jaksick's equitable
13 claims. The parties stipulated to submit written closing trial briefs and replies. Having considered
14 all briefs, evidence admitted during the jury trial and evidence submitted in support of the parties'
15 positions on the equitable claims, the Court entered its *Order After Equitable Trial* on March 12,
16 2020. The Order is attached hereto, made a part hereof, and is incorporated herein. The terms,
17 provisions, findings and conclusions set forth in its *Order After Equitable Trial* are incorporated
18 herein as the Court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the
19 Nevada Rules of Civil Procedure.

20 Judgment is hereby entered as follows:

21 1. Against Counter-Petitioner Wendy Jaksick on all of her equitable claims and is
22 entered in favor of Todd Jaksick, as an individual, Stanley Jaksick, as an individual and Co-
23 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel, as an individual and Co-
24 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, individually, Kevin Riley, as Co-
25 Trustee of the Samuel S. Jaksick, Jr., Family Trust, Kevin Riley, as Trustee of the BHC Trust,
26 Duck Lake Ranch, LLC, and Incline TSS, Ltd. These prevailing parties shall file their
27 Memoranda of Costs pursuant to NRS 18.110 within five days of the notice of entry of this
28 judgment.

1 2. In favor of Counter-Petitioner Wendy Jaksick's counsel of record in the amount of
2 \$300,000 to be paid by the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust.

3 3. In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust against
4 Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust in an amount equal to
5 25% of the attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust and SSJ's Issue Trust
6 for legal services rendered on behalf of the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust
7 and Trustee for the SSJ's Issue Trust. Todd Jaksick's obligation to satisfy this judgment requires
8 payment of the amount determined from his personal funds. Counsel for the Trustees and Trustee
9 shall submit verified Memoranda of Fees paid within twenty-one days of notice of entry of this
10 judgment.

11 4. On March 13, 2019, Todd Jaksick, in his individual capacity, filed a Motion for
12 Order Awarding Costs and Attorneys' Fees for Todd Jaksick, individually, Duck Lake Ranch,
13 LLC and Incline TSS, Ltd. For the reasons stated in the Court's March 12, 2020 *Order After*
14 *Equitable Trial*, Todd Jaksick's Motion for Order Awarding Costs and Attorneys' Fees was
15 granted, subject to section (c) on page 22 of the Court's *Order After Equitable Trial*. Accordingly,
16 judgment is hereby entered in favor of Todd Jaksick, individually, against Counter-Petitioner
17 Wendy Jaksick in the amount of \$436,331 for attorneys' fees and \$68,834.07 in costs, for a total
18 judgment in favor of Todd Jaksick against Counter-Petitioner Wendy Jaksick of \$505,165.07,
19 which amount shall accrue interest from the date hereof at the legal rate.

20 5. In favor of the SSJ's Issue Trust and Incline TSS, Ltd., confirming title to the Lake
21 Tahoe house is to remain in the name of Incline TSS, Ltd., and against Wendy Jaksick regarding
22 claims to disrupt or change the title to the Lake Tahoe home.

23 6. In favor of the Samuel S. Jaksick, Jr., Family Trust against Counter-Petitioner
24 Wendy Jaksick denying her July 23, 2019 Emergency Motion to Compel Distribution from the
25 Samuel S. Jaksick, Jr., Family Trust.

26 7. In favor of Counter-Respondents, consistent with the Jury's Verdict on the ACPAs
27 and Indemnification Agreements.
28

1 8. Against Counter-Petitioner Wendy Jaksick and in favor of Todd Jaksick,
2 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Stanley Jaksick,
3 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust, Michael Kimmel,
4 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Kevin Riley,
5 individually and as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the BHC
6 Trust, Duck Lake Ranch, LLC, and Incline TSS, Ltd., on Counter-Petitioner Wendy Jaksick's
7 claims on unjust enrichment and constructive trust.

8 9. In favor of Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust
9 and as Trustee of the SSJ's Issue Trust, and against Counter-Petitioner Wendy Jaksick confirming
10 Todd Jaksick, as Trustee of the SSJ's Issue Trust and Co-Trustee of the Samuel S. Jaksick, Jr.,
11 Family Trust. Michael Kimmel and Stanley Jaksick are also confirmed as Co-Trustees of the
12 Samuel S. Jaksick, Jr., Family Trust.

13 10. In favor of the Samuel S. Jaksick, Jr., Family Trust and the SSJ's Issue Trust
14 against Todd Jaksick, as Co-Trustee of the Samuel S. Jaksick, Jr., Family Trust and Trustee of the
15 SSJ's Issue Trust, for all Trustee's fees paid to Todd Jaksick. Todd Jaksick is hereby required to
16 disgorge all Trustee's fees paid to him, and payment thereof will constitute a setoff against any
17 amounts he must pay as and for 25% of the attorneys' fees paid to the Trustees' counsel of record.

18 11. Declaring and decreeing that all fees ordered against Wendy Jaksick shall be
19 treated as a general trust administration expense and are not allocated to any beneficiaries'
20 distributive share. Todd Jaksick may attach or anticipate Wendy's distributive share only if there
21 are no spendthrift provisions within the trust instruments that prohibit such creditor collection
22 efforts. If such spendthrift provisions exist, distributions shall be made to Wendy, and Todd may
23 seek collection efforts against Wendy personally, subsequent to the distribution.

24 IT IS HEREBY ORDERED, DECREED AND ADJUDGED that the foregoing, upon entry
25 and filing in this matter, is an enforceable final judgment and all findings and conclusions of the
26 Court's March 12, 2020 *Order After Equitable Trial* are expressly incorporated herein. This
27 judgment resolves all claims against all parties, and pursuant to Rule 54(b) of the Nevada Rules of
28 Civil Procedure is a final judgment.

DATED this 1st day of April, 2020.


DISTRICT JUDGE

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Jacqueline Bryant
Clerk of the Court
Transaction # 7953974

EXHIBIT 2

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the
SSJ'S ISSUE TRUST.

Case No. PR17-00445

CONSOLIDATED

In the Matter of the Administration of the Case
SAMUEL S. JAKSICK, JR. FAMILY TRUST.

No. PR17-00446

Dept. No. 15

ORDER RESOLVING SUBMITTED MATTERS

This lengthy dispute has been difficult for the litigants and all are aggrieved by the process and outcome. This Court anticipated additional litigation (especially regarding fees and costs) when it entered its Order After Equitable Trial on March 13, 2020. It therefore signaled to the parties that it had considered all issues, evidence, arguments, and authorities. Regarding fees and costs, this Court wrote: 1) its "discretionary resolution of the fees requests is bound by all facts of record and influenced by the entirety of the pre-trial, legal, and equitable proceedings (including the settlement agreement between Todd and Stanley) and uncertainties created by notarial malfeasance," 2) "[t]here are competing facts and legal principles, which this Court analyzes in the aggregate and not in isolation," 3) the "NRCP 68 request cannot be considered narrowly, but instead, must be viewed by a totality of the case proceedings and statutory authorities governing trustees," 4) "[t]his Court's discretion is guided by the unique facts and procedural history of this case," and

1 5) "[t]his Court anticipates the parties will seek clarification and other relief through
2 additional motion work. The attorneys' fees provisions in this order reflect the entirety of
3 this Court's intentions regarding fees. This order also reflects the entirety of this Court's
4 intentions regarding all other pending matters."

5 By order dated April 21, 2020, this Court denied Wendy Jaksick's costs. It again
6 attempted to signal to the parties that it had considered all issues, evidence, arguments,
7 and authorities. After expressing concern about how costs could be segregated between
8 parties and claims, it wrote: "This Court anticipated costs litigation when it awarded fees
9 to Wendy's counsel. Like all other issues, the issue of awardable costs cannot be viewed in
10 isolation; instead, it must be viewed as a small part of a larger whole. This Court's cost
11 analysis is embedded in the fee award." After identifying Michael Kimmel and Kevin
12 Riley as prevailing parties, this Court wrote: "The problem this Court anticipates is that
13 Messrs. Kimmel and Riley will be unable to clearly distinguish and articulate costs
14 associated with their defense that do not overlap into the costs associated with Todd's
15 defense. Thus, it is unlikely this Court will order Wendy to pay their costs."

16 The parties have now filed moving papers after the Order After Equitable Trial that
17 aggregate to more than 1,300 additional pages in the court record. The tone of some
18 arguments has subtly changed, becoming negative. This Court identified the law
19 governing fees and costs in previous orders and will not repeat itself in this order. NRCP
20 59(e) relief may be granted to correct manifest errors of law or fact, address newly
21 discovered or previously unavailable evidence, respond to a change in controlling law, or
22 to prevent manifest injustice. AA Primo Builders, LLC v. Wash., 126 Nev. 578, 582, 245
23 P.3d 1190, 1193 (2010) (internal citations omitted). Manifest injustice exists where the
24 decision is obviously contrary to the evidence. Kroeger Props. & Dev., Inc. v. Silver State
25 Title Co., 102 Nev. 112, 114, 715 P.2d 1328, 1330 (1986) (quoting Price v. Sinnott, 85 Nev.
26 600, 608, 460 P.2d 837, 842 (1969)). An NRCP 59(e) motion "may not be used to relitigate
27 old matters, or to raise arguments or present evidence that could have been raised prior to
28 the entry of judgment." 11 Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE §

1 2810.1 (3d ed.) (footnotes omitted).

2 The following submitted matters are resolved as follows:

3 1. **Todd Jaksick's individual claim for attorneys' fees and costs for equitable**
4 **trial.** Consistent with this Court's prior analysis and decision, the motion is granted.

5 Todd is awarded against Wendy the amount of \$4,749.67 in costs and attorneys' fees of
6 \$103,375.00. Interest shall accrue at the legal rate. Todd may attach or anticipate Wendy's
7 distributive share only if there are no spendthrift provisions within the trust instruments
8 that prohibit such creditor collection efforts. If such spendthrift provisions exist,
9 distributions shall be made directly to Wendy and Todd may seek collection efforts
10 against Wendy personally, subsequent to the distribution.

11 The motion is granted; Todd Jaksick may submit a proposed judgment consistent
12 with this provision.

13 2. **Kevin Riley and Michael Kimmel's motions for attorneys' fees and costs.**
14 Messrs. Riley and Kimmel seek attorneys' fees and costs against Wendy individually
15 pursuant to NRS 7.085, NRS 18.005, 18.010(2)(b), NRS 18.020(3), and NRCP 68. They
16 tacitly concede they cannot segregate their fees and costs from the fees and costs incurred
17 in representation of all aligned trustees. They therefore propose the simplistic but
18 understandable allocation of 25% each of all fees and costs incurred by the trustees
19 represented by Mr. Lattin and the attorneys at Maupin Cox & LeGoy. Their proposed
20 allocation does not accommodate the consistent and overwhelming observation this Court
21 made throughout this proceeding: Mr. Lattin (and other attorneys associated with Mr.
22 Lattin through the Law Firm of Maupin Cox & LeGoy) provided a single, common
23 representation for similarly situated trustees. But Todd is at the core of the representation
24 and Todd's fees and costs would be the same or only imperceptibly different if Messrs.
25 Riley and Kimmel were not parties.¹ Although prevailing parties, Messrs. Riley and

26
27
28 ¹ The distinction between trustees is largely illusory. This dispute is about three siblings, two of whom were given management responsibility and fiduciary duties. Having presided over all phases of this dispute, and reading all file materials at various times during the pendency of this action, it is virtually impossible to comprehend how the litigation would have been different if Messrs. Kimmel and Riley were not parties.

1 Kimmel failed to make a reasonable showing of individuated costs. They have failed to
2 "clearly distinguish and articulate costs associated with their defense that do not overlap
3 into the costs associated with Todd's defense."

4 This Court anticipated these motions when it developed its Order After Equitable
5 Trial. It was this anticipation that led to the express reference that trustees' fees would be
6 paid as a general trust administration expense. The relief Messrs. Kimmel and Riley seek
7 would alter the purpose and effect of other fee provisions. Accordingly, this Court would
8 be required to re-visit and modify other provisions of its order. This Court incorporates by
9 reference its previous order analyzing offers of judgment and summarily concludes the
10 \$500 offers of judgment are not a basis to shift fees to Wendy. Among other reasons, the
11 offers of judgment were presumably made in Messrs. Riley and Kimmel's individual
12 capacities. Messrs. Riley and Kimmel have made no reasonable showing that they
13 incurred fees in their individual capacities, but instead, all fees and costs were incurred in
14 the common defense of all trustees. Finally, the distinction between costs and fees
15 incurred by Todd as trustee and the costs and fees Todd incurred individually (that were
16 awarded against Wendy) is difficult to discern because Todd's trust attorneys and
17 individual attorneys worked collaboratively in joint defense of Todd.

18 The motions are denied.

19 **2. Trustees Todd Jaksick and Michael Kimmel, and former trustee Kevin**
20 **Riley's motion to alter or amend the judgment.** The trustees ask this Court to alter or
21 amend the judgment to remove the provision directing payment of \$300,000 to Wendy's
22 attorneys. The trustees contend this Court sua sponte analyzed the fees to Wendy's
23 counsel and neglected to make findings under Brunzell v. Golden Gate National Bank, 85
24 Nev. 345, 455 P.2d 31 (1969) and Shuette v. Beazer Homes Holding Corp., 121 Nev. 837,
25 124 P.3d 530 (2005).

26 The trustees' motion is an example of the type of motion this Court expected when
27 it entered its Order After Equitable Trial. This Court directly noted the fee award to
28 Wendy's counsel cannot be viewed in isolation. As this Court signaled, the fee award is

1 inseparable from this Court's entire analysis. The trustees essentially ask this Court to
2 parse out the portion of the order they dislike while preserving the provisions granting the
3 outcome they sought. To do so would render this Court's aggregate analysis incomplete.
4 Thus, if this Court were to re-visit the fee award to Wendy's counsel it would be
5 compelled to re-visit other provisions of the order.

6 This Court did not recite the talismanic words typically associated with Brunzell
7 because it was not awarding fees based upon a valuation of actual attorney time
8 presented. Instead, it considered the dominant Brunzell factors (advocates' quality,
9 character and complexity of work, actual work performed, and result) as part of this
10 unique litigation. This Court is confident it could recite the factors and will do so if
11 required upon remand.

12 The motion is denied.

13 4. **Co-trustee Stanley Jaksick's memorandum of attorneys' fees.** Consistent
14 with this Court's Order After Equitable Trial and subsequent judgment, Stanley Jaksick
15 filed a verified memorandum of attorneys' fees on April 22, 2020. Stanley Jaksick made no
16 request in his memorandum. Wendy filed an opposition, motion to strike and amended
17 opposition and motion to strike. Wendy contends that Stanley is not entitled to fees he
18 incurred individually as the fees he incurred as co-trustee were addressed in this Court's
19 Order After Equitable Trial. Todd filed an opposition, which primarily reads as a renewed
20 challenge to the propriety and constitutionality of this Court's Order After Equitable Trial.

21 Contrary to counsel's suggestion, this Court understands the role of different
22 attorneys at different times. The fees Stanley incurred as co-trustee of the family trust are
23 payable from the trust.² The fees Stanley incurred individually are not before this Court
24 and are not included within any order. Stanley's attempt to allocate fees he incurred early

26 ² The language this Court used in its Order After Equitable Trial could be clarified. When this Court wrote
27 "Stanley Jaksick and Michael Kimmel's attorneys' fees are chargeable to the trust and paid from trust
28 corpus" it contemplated only the fees Stanley incurred as co-trustee of the Family Trust would be charged
against trust corpus. After all, Wendy dismissed her claims against Stanley individually on August 25, 2018,
long before trial. This Court did not intend that fees Stanley incurred individually would be charged against
the trust.

1 and individually from fees he incurred as co-trustee may be problematic. But at some
2 point Wendy dismissed her claims against Stanley individually. It appears the trustees
3 will either reach an agreement about the allocation of Stanley's individual and trustee fees
4 or they will participate in additional litigation.

5 Stanley's memorandum is acknowledged but no court intervention is requested and
6 none is given at this time.

7 **5. Wendy's motion for leave and first supplement to verified memorandum**
8 **of costs; the trustees' motion to strike; and Stanley's motion to strike or redact.** The
9 motions are denied as moot. The issues contained within the motions may be renewed
10 upon appellate remand, if any.

11 **6. Todd's motion to amend judgment.** Todd filed a lengthy motion in which
12 he re-argues evidence previously considered and responds to this Court's findings and
13 conclusions by arguing "clear error" and "manifest injustice." Todd's primary concern is
14 the award of fees. But as this Court noted when explaining its discretion, the attorneys'
15 fees issue is inseparable from all other issues. If this Court were to re-visit the fees award
16 it would be compelled to re-visit the totality of its order. Each constituent part of this
17 dispute is influenced by and dependent upon all other constituent parts. So, for example,
18 if this Court amended the fees provision it would be compelled to fashion broadened relief
19 elsewhere, such as its response to the accountings, continuing trusteeship, the trustees'
20 access to trust corpus to satisfy the expenses of litigation, and the fees awarded to Wendy's
21 counsel.

22 With two exceptions, this Court does not respond to the arguments Todd presents.
23 The first exception illustrates the problem of severing and modifying a part of the entire
24 order. Todd argues this Court improperly restricted his ability to collect his judgment
25 against Wendy personally by including language about spendthrift provisions. To the
26 contrary, this Court included the language about spendthrift trusts because it believed,
27 based upon the entirety of Todd's course of conduct and the jury's finding, that Todd may
28 use information he acquires as Wendy's fiduciary to advance his own personal interests

1 against Wendy as his judgment debtor. As trustee and co-trustee, Todd will know the
2 details of distributions to Wendy. This places him at an unfair advantage over Wendy and
3 other general creditors she may have. As an example of how this Court's decision should
4 be reviewed in its entirety instead of as separate parts of a whole, this Court considered
5 removing Todd as trustee. This Court recited its broad authority to do so and even
6 indicated through an earlier oral pronouncement that it was inclined to remove Todd as
7 trustee. One justification for removing Todd is the jury's verdict that he breached his
8 fiduciary duties and the probability of continued hostility between fiduciary and
9 beneficiary. In the final analysis, based upon the whole, this Court declined to remove
10 Todd as trustee, but included a provision that prevented him from taking advantage of
11 Wendy for his personal purposes through information he gains as trustee. Todd asserts a
12 distinction between his individual interests and trustee interests that is not supported by
13 the evidence of record.

14 This Court did not implicitly limit Todd's ability to recover against Wendy only
15 through distributions she receives from the trusts; Todd may exercise any lawful collection
16 efforts he wishes. What Todd cannot do is anticipate, re-direct, or attach any trust
17 distribution if a similarly situated general creditor is prohibited from doing so by
18 spendthrift provisions of the trust.

19 The second exception relates to Todd's obligation to pay 25% of trustee fees from
20 his own personal resources. The purpose of this fees provision was not to punish Todd for
21 his individual acts. The fees provision was a recognition that Todd's acts as trustee should
22 not be defended entirely at trust expense. The jury concluded that Todd alone breached
23 his fiduciary duties. The jury absolved other trustees of alleged misconduct. The jury's
24 verdict is consistent with this Court's observations in equity. Todd cannot assert the
25 benefits of the jury's verdict when it suits him and ignore the portion of the verdict that
26 repudiates his trustee conduct.

27 This Court agrees it should amend its judgment in one respect. The judgment
28 provides:

1 In favor of the Samuel S. Jaksick, Jr., Family Trust and SSJ's
2 Issue Trust against Todd Jaksick, as Co-Trustee of the Samuel
3 S. Jaksick, Jr., Family Trust in an amount equal to 25% of the
4 attorneys' fees paid by the Samuel S. Jaksick, Jr., Family Trust
5 and SSJ's Issue Trust for legal services rendered on behalf of
6 the Co-Trustees of the Samuel S. Jaksick, Jr., Family Trust and
7 Trustee for the SSJ's Issue Trust.

8 The above provision appears to make Todd personally responsible for 25% of the
9 fees the trusts paid for the benefit of co-trustee Stanley Jaksick. This was not this Court's
10 intention. This Court intended that Todd would pay 25% of the fees paid to the Law Firm
11 of Maupin Cox & LeGoy for representing Todd, Michael Kimmel, and Kevin Riley in their
12 trustee capacities. To the extent this Court's intention is not reflected in the judgment, this
13 Court authorizes and will sign an amended judgment correcting this possible
14 misunderstanding.

15 Motion granted only to clarify that Todd shall pay 25% of fees incurred by Maupin
16 Cox & LeGoy and not by co-trustee Stanley Jaksick.

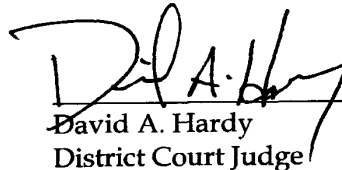
17 7. **Wendy's motion to alter or amend judgment or, alternatively, motion for**
18 **new trial.** Wendy's motion has been fully briefed but is not submitted for this Court's
19 decision. Nonetheless, this Court analyzed all moving papers and concludes it is
20 appropriate to resolve Wendy's motion in this order.

21 The motion is denied.

22 The recent moving papers reveal the combined attorneys' fees now exceed \$3
23 million and may be approaching \$4 million. The parties are strongly encouraged to bring
24 this dispute to an end or commence their appellate litigation.

25 **IT IS SO ORDERED.**

26 Dated: June 10, 2020.

27 
David A. Hardy
District Court Judge

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the
SSJ'S ISSUE TRUST.

Case No. PR17-00445

Dept. No. 15

CONSOLIDATED

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST.

Case No. PR17-00446

Dept. No. 15

ORDER APPOINTING TEMPORARY TRUSTEE

In the *Order Finding Violation of NRS 163.115 and Ordering Additional Briefing to Determine Timing of the Removal of Trustees*, dated February 10, 2021, this Court found the "existence of a lack of cooperation between the Co-Trustees has and continues to substantially impair the administration" of the Family Trust. This Court made no finding that Todd or Stanley Jaksick committed or threatened to commit a breach of trust or a breach of fiduciary duties. The prior order and this order shall not be a favorable imprimatur or a negative implication upon Todd and Stanley Jaksick's post-judgment performance of duties. This order shall not have any preclusive effect on any interested party from bringing any such claims in the future.

This Court now determines the "appointment of a temporary trustee to administer the trust in whole or in part" is warranted. NRS 164.040(2). Accordingly, this Court appoints James S. Proctor as Temporary Trustee of the Jaksick Family Trust. This Court

1 does not remove Todd or Stanley Jaksick as Co-Trustees of the Family Trust, but it
2 suspends their powers as Co-Trustees and ability to act for the Family Trust. Michael
3 Kimmel, Esq. has resigned as Co-Trustee of the Family Trust and is not addressed in this
4 Order. The suspension of Todd and Stanley Jaksick as Co-Trustees of the Family Trust is
5 effective as of February 18, 2021 for the prospective benefit of the Family Trust. There may
6 be some immediate actions required of the Co-Trustees, such as completion of pending
7 escrows. Todd and Stanley are authorized to complete such actions if they act *jointly* and
8 with notice to the Temporary Trustee. This exception, however, is created for *time-sensitive*
9 actions that cannot be delayed until the Temporary Trustee has familiarized himself with
10 trust administration matters.

11 From February 18, 2021, until further order of this Court, Todd and Stanley Jaksick
12 are not entitled to trustee fees or reimbursement or payment from the Family Trust for
13 professional fees, including attorney's fees related to this litigation or the Family Trust,
14 with the exception of attorney's fees related to the appeal in this matter (Case No. 81470)
15 currently pending at the Nevada Supreme Court. This Order is not intended disrupt the
16 appellate proceedings, the relationships between the trustees and their attorneys, the
17 payment of attorney's fees from the Family Trust for the appellate proceedings, or the
18 payment of legal fees or other professional expenses for Todd and Stanley Jaksick that
19 were incurred prior to February 18, 2021. The Temporary Trustee may recommend the
20 payment of attorney's fees to the trustees' trust attorneys if the fees were incurred to effect
21 the orderly and efficient transition of trust administration from the Co-Trustees to the
22 Temporary Trustee. This Court further anticipates the Temporary Trustee will obtain
23 information and advice from Messrs. Kimmel and Riley.


24 The scope of work for the Temporary Trustee is to take all actions necessary to
25 administer the Family Trust. In administering the Family Trust, the Temporary Trustee
26 shall review the 2018-2020 Family Trust Financials (that were not the subject of the prior
27 jury or equitable trial) in light of NRS 165.135 (Form and Contents of Account), the Order
28 After Equitable Trial, the transcript and minutes from the January 26, 2021 hearing and

1 prepare and deliver enhanced accountings so that all beneficiaries (through counsel) can
2 understand the assets, debts and transactions of the Family Trust. In preparing the
3 enhanced Trust Financials, the Temporary Trustee shall determine the nature and extent of
4 (i) the Family Trust assets and debt obligations and (ii) any claims the Family Trust may
5 have to collect and recover funds or assets owed the Family Trust--including the
6 application of indemnification agreements--so the information can be reflected in the
7 enhanced Trust Financials.

8 Once the Temporary Trustee has determined the extent of the Family Trust's assets,
9 debt obligations and claims, he shall recommend a plan to this Court regarding payment
10 of Family Trust obligations, and distribution to beneficiaries of the Family Trust. The
11 Temporary Trustee is specifically authorized to request and obtain any additional
12 authority from this Court he believes is necessary to administer the Family Trust and to
13 determine and recommend a plan to pay the debts, distribute the assets and wind down
14 the Family Trust as soon as possible, including but not limited to: (i) expanding the scope
15 of his appointment; (ii) obtaining any information necessary to understand the assets and
16 debts of the Family Trust, and (iii) compelling the turnover of financial information from
17 any source, including but not limited to the current and former Family Trust Co-Trustees
18 and any Jaksick Family entity in which the Family Trust owns any interest. The
19 Temporary Trustee shall circulate his reports, requests, and all other information to all
20 parties so they are informed of the Temporary Trustee's administration of the Family
21 Trust. Upon email request, copied on all parties, the Temporary Trustee may seek judicial
22 intervention or instructions through a reported hearing.

23 **IT IS SO ORDERED.**

24 Dated: February 24, 2021.

25 
26 David A. Hardy
27 District Court Judge
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11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12 IN AND FOR THE COUNTY OF WASHOE
13

14 In the Matter of the Administration of the
15 SSJ'S ISSUE TRUST.

Case No. PR17-00445

Dept. No. 15

16 In the Matter of the Administration of the
17 SAMUEL S. JAKSICK, JR. FAMILY
18 TRUST.

CONSOLIDATED

Case No. PR17-00446

Dept No. 15
19

20 **ORDER GRANTING**
21 **FIRST APPLICATION FOR APPROVAL AND PAYMENT OF**
22 **COMPENSATION TO FLETCHER & LEE**

23 This matter came before the Court on the duly noticed First Application
24 for Approval and Payment of Compensation to FLETCHER & LEE (the
25 "Application"), filed by James S. Proctor, CPA, CFE, CVA, CFF, in his capacity as
26 the appointed Trustee of the Jaksick Family Trust (the "Trustee"). Appearances
27 at the hearing were noted on the record.
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1 The Court considered the Application, any oppositions thereto, and the
2 arguments and representations of counsel made at the hearing. The Court
3 placed its findings on the record in lieu of written findings of fact and conclusions
4 of law, which are incorporated hereby in their entirety by this reference. These
5 include, but are not limited to, the following: The Court finds that it has
6 jurisdiction to enter an order granting the Application. The Court finds that
7 notice of the Application was properly served on all parties. The Court finds that
8 the fees incurred on behalf of the Trustee by Fletcher & Lee for the period June
9 8, 2021, through October 31, 2021 in the amount of \$61,753.50 are reasonable,
10 necessary and beneficial to the Family Trust. The Court finds that cause exists
11 to approve the payment of these fees in full, subject to the Temporary Trustee's
12 discretion, and prior to payment of fees incurred on behalf of the co-trustees
13 prior to the appointment of the Temporary Trustee and in connection with the
14 appeal. The Court finds that the proposal of Fletcher & Lee to receive payment
15 at this time *in pari passu* with the fees paid to counsel for the co-trustees through
16 the appointment of the Temporary Trustee is a reasonable approach at this time.
17 The Court finds that in approving this proposal, the Court's overall approval of
18 Fletcher & Lee's fees in amount and as to first priority of payment along with the
19 Temporary Trustee's fees, is not affected.

20 The Court finds that it directed the Temporary Trustee to make a partially
21 informed estimate based on information available to him of the attorneys' fees
22 the Family Trust has incurred and has paid to date to represent co-trustees Stan
23 Jaksick, Todd Jaksick, Michael Kimmel and Kevin Riley (the "co-trustees") for
24 professional services rendered to the co-trustees in their capacity as trustees of
25 the Family Trust through the appointment of the Temporary Trustee. Based on
26 the Declaration of Cecilia Lee in Support of Entry of Order, which the Court
27 adopts, the Temporary Trustee has made that informed estimate from the
28 financial statements for the Family Trust for April 1, 2016-2017, 2018, 2019 and

2020-February 26, 2021. The Court finds that based on the Temporary Trustee's informed estimate, the estimated proportionate amount of fees paid by the Family Trust to those law firms in representing the co-trustees ranged from 47 percent to 97 percent, with the overall proportionality of payment (total amount paid to all counsel for co-trustees/total amount of fees incurred representing co-trustees) is 76 percent. The Court finds that the Temporary Trustee may apply the proportionality of 76 percent in remitting payment to Fletcher & Lee, so that the Temporary Trustee, in his discretion, may remit payment to Fletcher & Lee of up to 76 percent of \$61,753.50.

WHEREFORE, good cause appearing,

IT IS HEREBY ORDERED that the Application is GRANTED and that Fletcher & Lee is awarded compensation in the amount of \$61,753.50 and, subject to the terms of this Order, to be paid by the Family Trust as a first priority obligation along with the Trustee's fees.

IT IS HEREBY FURTHER ORDERED that, subject to the Trustee's discretion, the Temporary Trustee is authorized to remit payment to Fletcher & Lee in an amount that is *in pari passu* with the overall attorneys' fees billed by and paid to counsel representing the co-trustees through the appointment of the Temporary Trustee in an amount up to 76 percent of Fletcher & Lee's fees.

IT IS HEREBY FURTHER ORDERED that, subject to receipt of information from Maupin Cox & Legoy, the Trustee will remit to Maupin Cox & Legoy as a Family Trust expense the cost of the production of transcripts of court proceedings for which this Court directed the Family Trust to pay after the jury trial and equitable trial.

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1 IT IS HEREBY FINALLY ORDERED that the Court holds in abeyance any
2 disputes regarding priority of payment of fees to represent the trustees in their
3 capacity as trustees.

4 DATED this 5TH day of January, 2022.

5 **IT IS SO ORDERED.**

6 
7 _____
DISTRICT JUDGE

8 Submitted by:

9 FLETCHER & LEE

10 /s/ Cecilia Lee, Esq.
11 CECILIA LEE, ESQ.
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10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF WASHOE
12

13 In the Matter of the Administration of the
14 SSJ'S ISSUE TRUST.

Case No. PR17-00445

Dept. No. 15

15 In the Matter of the Administration of the
16 SAMUEL S. JAKSICK, JR. FAMILY
17 TRUST.

CONSOLIDATED

Case No. PR17-00446

Dept No. 15
18

19 **ORDER GRANTING**
20 **SECOND APPLICATION FOR APPROVAL AND PAYMENT OF**
21 **COMPENSATION TO FLETCHER & LEE**

22 This matter came before the Court on the Second Application for Approval
23 and Payment of Compensation to FLETCHER & LEE (the "Application"), filed by
24 James S. Proctor, CPA, CFE, CVA, CFF, in his capacity as the appointed Trustee
25 of the Jaksick Family Trust (the "Trustee").

26 The Court considered the Application, any oppositions thereto, and any
27 replies. The Court finds that it has jurisdiction to enter an order granting the
28

1 Application. The Court finds that notice of the Application was properly served
2 on all parties. The Court finds that the fees incurred on behalf of the Trustee by
3 Fletcher & Lee for the period November 1, 2021, through April 30, 2022 in the
4 amount of \$166,300.50 and the expenses in the amount of \$120.35 are
5 reasonable, necessary and beneficial to the Family Trust. The Court finds that
6 cause exists to approve the payment of these fees and costs in full, subject to
7 the Temporary Trustee's discretion, and prior to payment of fees incurred on
8 behalf of the co-trustees prior to the appointment of the Temporary Trustee and
9 in connection with the appeal.

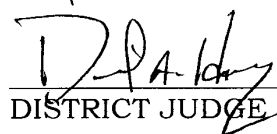
10 WHEREFORE, good cause appearing,

11 IT IS HEREBY ORDERED that the Application is GRANTED and that
12 Fletcher & Lee is awarded compensation in the amount of \$166,420.85, of which
13 \$166,300.50 represents professional services rendered and \$120.35 represents
14 expenses incurred, and the Trustee is authorized to pay the same on behalf of
15 the Family Trust as a first priority obligation along with the Trustee's fees.

16 IT IS HEREBY FURTHER ORDERED that the Trustee is authorized to
17 immediately pay Fletcher & Lee the unpaid balance from the First Fee Order in
18 the amount of \$14,820.84.

19 DATED this 25th day of May, 2022.

20 **IT IS SO ORDERED.**

21 
22 DISTRICT JUDGE

23 Submitted by:

24 FLETCHER & LEE

25 /s/ Cecilia Lee, Esq.
26 CECILIA LEE, ESQ.
27
28

1 CODE: 3980
2 FLETCHER & LEE
3 Elizabeth Fletcher, Esq.
4 Nevada Bar No. 10082
5 Cecilia Lee, Esq.
6 Nevada Bar No. 3344
7 448 Ridge Street
8 Reno, Nevada 89501
9 Telephone: 775.324.1011
10 Email: efletcher@fletcherlawgroup.com
11 Email: clee@fletcherlawgroup.com

12 Attorneys for Temporary Trustee James S. Proctor, CPA, CFE, CVA, CFF

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the
SSJ'S ISSUE TRUST.

Case No. PR17-00445

Dept. No. 15

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST.

CONSOLIDATED

Case No. PR17-00446

Dept No. 15

STIPULATION BETWEEN TRUSTEE AND
MAUPIN COX LEGOY
REGARDING
JOINT MOTION FOR FEES TO ROBISON, SHARP, SULLIVAN & BRUST; MAUPIN
COX LEGOY; AND McDONALD CARANO

James S. Proctor, CPA, CFE, CVA, CFF, in his capacity as the duly appointed Temporary Trustee (the "Trustee") of the Samuel S. Jaksick, Jr. Family Trust (the "Family Trust"), by and through his counsel, Cecilia Lee, Esq., Fletcher & Lee, and Donald A. Lattin, Esq., Maupin Cox & Legoy, hereby stipulate as follows:

1. On July 26, 2022, Maupin Cox & Legoy and others filed a Joint Motion for Fees to Robison, Sharp, Sullivan & Brust; Maupin Cox Legoy; and McDonald Carano (the "Motion").

1 2. On August 12, 2022, the Trustee filed his Partial Opposition to Joint Motion for
2 Fees to Robison, Sharp, Sullivan & Brust; Maupin Cox Legoy; and McDonald Carano; and Report
3 on Outstanding Issues Regarding Trust Liability (the “Trustee’s Opposition”).

4 3. In the Trustee’s Opposition, the Trustee proposed a stipulated order with Maupin
5 Cox & Legoy to resolve the portion of the Motion relating to that firm.

6 4. The Trustee and Maupin Cox & Legoy hereby stipulate to the terms proposed in
7 the Trustee’s Opposition as set forth below:

8 a. Trustee is authorized to pay Maupin Cox & Legoy the sum of \$241,463.99 in full
9 and final satisfaction of all amounts owed by the Family Trust to Maupin Cox & Legoy, consisting
10 of:

11 i. \$184,632.74 in final payment of fees and costs incurred to date in
12 Family Trust Matter 17454.008, in full satisfaction of all fees and costs
13 the Family Trust owes to Maupin Cox & Legoy for its representation of
14 the former trustees;

15 ii. \$51,425.00 for fees incurred in the Appeal Matter 17454.012, in full
16 satisfaction of all fees and costs the Family Trust owes to Maupin Cox
17 & Legoy for its representation of the former trustees of the Family Trust,
18 and subject to the Family Trust’s claim against and payment from the
19 Issue Trust for its appropriate share of those fees;

20 iii. \$5,406.25 for fees incurred in Trust Administration Matter 17454.000
21 in full satisfaction of all fees and costs the Family Trust owes to Maupin
22 Cox & Legoy for its representation of the former trustees of the Family
23 Trust.

24 b. Payment to Maupin Cox & Legoy as stipulated herein is conditioned on and subject
25 to the right of the Trustee to seek disgorgement from Maupin Cox & Legoy in the event the Family
26 Trust lacks sufficient funds after the payment of taxes to pay all administrative expenses of the
27 Family Trust in full.

28 c. Maupin Cox Legoy is discharged as counsel for former trustees Todd Jaksick, Stan

1 Jaksick, Michael Kimmel and Kevin Riley.

2 d. This stipulation resolves all relief requested by Maupin Cox & Legoy in the Motion.

3 5. The Trustee and Maupin Cox & Legoy agree to ask the Court to enter an Order
4 approving the same pursuant to the Court's Order to File dated August 19, 2022.

5 DATED this 23^d day of August, 2022.

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FLETCHER & LEE



CECILIA LEE, ESQ.

MAUPIN COX LEGOY



DONALD A. LATTIN, ESQ.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify under penalty of perjury that I am an employee of Fletcher
3 & Lee, 448 Ridge Street, Reno, Nevada 89501, and that on this 23rd day of August, 2022, I served
4 the STIPULATION BETWEEN TRUSTEE AND MAUPIN COX LEGOY REGARDING JOINT
5 MOTION FOR FEES TO ROBISON, SHARP, SULLIVAN & BRUST; MAUPIN COX LEGOY;
6 AND McDONALD CARANO on the parties set forth below by:

7 X Service by eFlex:

8 DONALD ALBERT LATTIN, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
TODD B. JAKSICK
9 KENT RICHARD ROBISON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
10 HANNAH E. WINSTON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
11 MARK J. CONNOT, ESQ. for WENDY A. JAKSICK
12 JAMES PROCTOR
ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
13 PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
JR. FAMILY TRUST
14 JOHN A. COLLIER, ESQ. for LUKE JAKSICK
15 CAROLYN K. RENNER, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
TODD B. JAKSICK
16 STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
JR. FAMILY TRUST
17 SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SSJ'S ISSUE TRUST,
18 SAMUEL S. JAKSICK, JR. FAMILY TRUST

19 X Service by electronic mail:

20 ZACHARY JOHNSON, ESQ. for WENDY A. JAKSICK –
zach@dallasprobate.com
21 R. KEVIN SPENCER, ESQ. for WENDY A. JAKSICK –
kevin@dallasprobate.com
22 ALEXI JAKSICK FIELDS – alexijaksickfields@yahoo.com

23 A copy of this Certificate of Service has been electronically served to all parties or their
24 respective lawyers. This document does not contain the personal information of any person as
25 defined by NRS 603A.040.

26 /s/ Elizabeth Dendary, CP
27 ELIZABETH DENDARY, CP
28 Certified Paralegal

Adam Hosmer-Henner, Esq. (NSBN 12779)
McDONALD CARANO LLP
100 West Liberty Street, Tenth Floor
Reno, Nevada 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com

Attorney for Stanley Jaksick

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the SSJ'S ISSUE TRUST,	Case No.: PR17-00445 Dept. No.: 15
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CONSOLIDATED

In the Matter of the Administration of the SAMUEL S. JAKSICK, JR. FAMILY TRUST.	Case No.: PR17-00446 Dept No.: 15
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**OBJECTION TO STIPULATION BETWEEN TRUSTEE AND MAUPIN COX LEGOY
REGARDING JOINT MOTION FOR FEES TO ROBISON, SHARP, SULLIVAN &
BRUST; MAUPIN COX LEGOY; AND McDONALD CARANO**

Stanley Jaksick, by and through his counsel, Adam Hosmer-Henner of McDonald Carano, hereby objects to the Stipulation Between Trustee and Maupin Cox LeGoy Regarding Joint Motion for Fees to Robison Sharp Sullivan & Brust; Maupin Cox LeGoy; and McDonald Carano, filed with this Court on August 23, 2022.

The Stipulation seeks to approve payment to the firm of Maupin Cox LeGoy to partially resolve the Joint Motion for Fees. While Stanley Jaksick agrees with and supports full payment to Maupin Cox LeGoy, in accordance with the Joint Motion for Fees, the partial resolution and side-deal proposed by counsel for the Temporary Trustee is unjustified as it does not fairly and equitably treat the firms involved on a neutral basis with respect to the timing of payment. Further, counsel for the Temporary Trustee is attempting to impose unwarranted conditions on payment for attorney's fees that are neither logical nor equitable as counsel for the Temporary

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1 Trustee has sought and received payments without imposing these same conditions on her own
2 firm.

3 Absent a global agreement, Stanley Jaksick intends on filing a Reply to the Partial
4 Opposition filed by counsel for the Temporary Trustee and hereby requests a hearing on the Joint
5 Motion for Fees.

6 ***AFFIRMATION PURSUANT TO NRS 239B.030***

7 The undersigned does hereby affirm that the preceding document does not contain the
8 social security number of any person.

9 Dated: August 24, 2022.

10 McDONALD CARANO LLP

11 By: /s/ Adam Hosmer-Henner
12 Adam Hosmer-Henner, Esq. (NSBN 12779)
13 100 West. Liberty Street, Tenth Floor
14 Reno, Nevada 89501
15 (775) 788-2000

16 *Attorney for Stanley Jaksick*
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD
3 CARANO LLP and that on August 24, 2022, I certify that I electronically filed the foregoing
4 with the Clerk of the Court by using the ECF system which served the following parties
5 electronically:

6 Donald Lattin, Esq.
7 Robert LeGoy, Esq.
8 Brian C. McQuaid, Esq.
9 Carolyn Renner, Esq.
10 Maupin Cox & LeGoy
11 4785 Caughlin Parkway
12 Reno, NV 89519

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503

10 Mark J. Connot, Esq.
11 Fox Rothschild, LLP
12 1980 Festival Plaza Drive, #700
13 Las Vegas, NV 89135

Philip L. Kreitlein, Esq.
Kreitlein Law Group, Ltd.
1575 Delucchi Lane, Suite 101
Reno, NV 89502

13 R. Kevin Spencer, Esq.
14 Zachary E. Johnson, Esq.
15 Brendan P. Harvell, Esq.
16 Spencer, Johnson & Harvell, PLLC
500 N. Akard St., Suite 2150
Dallas, TX 75201

17 The following parties have been served by electronic mail:

18 Zachary Johnson, Esq. for Wendy A. Jaksick
19 zach@dallasprobate.com

20 R. Kevin Spencer, Esq. for Wendy A. Jaksick
21 kevin@dallasprobate.com

22 Alexi Jaksick Fields
23 alexijaksickfields@yahoo.com

24 /s/ Caitlin Pagni
25 An Employee of McDonald Carano LLP

26 4886-2153-3999, v. 3

1 CODE: 1230
2 FLETCHER & LEE
3 Elizabeth Fletcher, Esq.
4 Nevada Bar No. 10082
5 Cecilia Lee, Esq.
6 Nevada Bar No. 3344
7 448 Ridge Street
8 Reno, Nevada 89501
9 Telephone: 775.324.1011
10 Email: efletcher@fletcherlawgroup.com
11 Email: clee@fletcherlawgroup.com

12 Attorneys for Trustee James S. Proctor, CPA, CFE, CVA, CFF

13
14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
15
16 IN AND FOR THE COUNTY OF WASHOE

17 In the Matter of the Administration of the
18
19 SSJ'S ISSUE TRUST.

Case No. PR17-00445
Dept. No. 15

20 In the Matter of the Administration of the
21
22 SAMUEL S. JAKSICK, JR. FAMILY TRUST.

CONSOLIDATED
Case No. PR17-00446
Dept No. 15

23
24 **THIRD INTERIM APPLICATION FOR APPROVAL AND PAYMENT OF**
25 **COMPENSATION TO FLETCHER & LEE**

26 James S. Proctor, CPA, CFE, CVA, CFF, in his capacity as the duly appointed Temporary
27 Trustee of the Samuel S. Jaksick, Jr. Family Trust (the "Trustee"), by and through his attorneys of
28 record, Cecilia Lee, Esq. and Elizabeth Fletcher, Esq., FLETCHER & LEE, hereby applies to the
Court for an order approving and authorizing payment of compensation of attorney's fees to
Fletcher & Lee in the amount of \$90,630.00 and \$477.00 in costs, for a total of \$91,107.00.

In support of this Application, the Trustee respectfully submits the attached Declaration of
Cecilia Lee (the "Lee Declaration"), Exhibit 1, the Fletcher & Lee Statements, Exhibit 2, a
Summary Sheet, Exhibit 3, a breakdown of fees and costs, Exhibit 4, and a proposed order, Exhibit
5. The Trustee further requests that the Court take judicial notice of the papers and pleadings on

1 file in these jointly consolidated cases. The Trustee respectfully represents as follows:

2 1. According to The Samuel S. Jaksick, Jr. Family Trust Agreement (as Restated)
3 executed by Samuel S. Jaksick, Jr. on June 29, 2006 (the “Family Trust” or the “Trust”), the
4 Trustee is authorized to employ attorneys and the “expense of employment of such personnel is to
5 be a proper expense of the trust and not of the Trustee personally.” Id. Article IV, ¶(K)(17). The
6 Trustee “may consult legal counsel chosen by the Trustee on any matter relating to the
7 administration of the trust, including, but not limited to, the Trustee’s fiduciary duties and
8 responsibilities with respect to the Trust. All of the fees and expenses incurred as a result of such
9 consultations are to be charged as an expense of the trust and are not to reduce the Trustee’s
10 compensation.” Id., p. 33, Article IV, ¶(M).

11 2. In previous Orders, the Court has ordered the Family Trust to pay for 100% of the
12 fees incurred by its attorneys in representing the trustees and that the fees shall be treated as general
13 trust administration expenses. See Order After Equitable Trial entered March 12, 2020, pp. 17, 21
14 ¶(a), 22 ¶(e); see also Order Resolving Submitted Matters entered June 10, 2020, pp. 4-5. The
15 Trustee understands that former co-trustees did not formally seek approval of attorneys’ fees and
16 costs for their trustee defense before paying counsel, suggesting that prior court approval may not
17 be required for the current Trustee to pay his own lawyers. However, the Trustee submits this
18 Application for approval by the Court in the interests of transparency and in fulfillment of his role
19 as an independent and objective Court-appointed Trustee.

20 3. The Trustee was appointed by the Order Appointing Temporary Trustee
21 (“Appointment Order”) entered by the Court on February 25, 2021. In that order, the Court held

22 From February 18, 2021, until further order of this Court, Todd and Stanley
23 Jaksick are not entitled to trustee fees or reimbursement or payment from
24 the Family Trust for professional fees, including attorney’s fees related to
25 this litigation or the Family Trust, with the exception of attorney’s fees
26 related to the appeal in this matter (case No. 81470) currently pending in
27 the Nevada Supreme Court. This Order is not intended [sic] disrupt the
28 appellate proceedings, the relationships between the trustee and their
attorneys, the payment of attorney’s fees from the Family Trust for the
appellate proceedings, or the payment of legal fees or other professional
expenses for Todd and Stanley that were incurred prior to February 18,
2021. The Temporary Trustee may recommend the payment of attorney’s

fees to the trustees' trust attorneys if the fees were incurred to effect the orderly and efficient transition of trust administration from the Co-Trustees to the Temporary Trustee.

Appointment Order, p. 2, ll. 11-22.

4. On July 8, 2021, the Court entered the Order Granting Application to Appoint Counsel, approving Fletcher & Lee as counsel for the Temporary Trustee, *nunc pro tunc*, effective as of June 8, 2021.

5. All professional services for which allowance of compensation is requested in this Third Application for Approval and Payment of Compensation to Fletcher & Lee (the "Application") were performed by Fletcher & Lee on behalf of, and at the request of, the Trustee. The terms of employment to which the Trustee has agreed, subject to the approval of this Court, are that the Trustee will compensate Fletcher & Lee on an hourly basis as follows:

Cecilia Lee, Esq.	\$500.00/hour, reduced to \$450.00/hour for this case
Elizabeth Fletcher, Esq.	\$400.00/hour, reduced to \$350.00/hour for this case
Law Clerks	\$250.00/hour
Paralegals	\$195.00/hour

6. The source of compensation will be the Family Trust. No retainers were paid in this case. The only entity seeking compensation in this Application is Fletcher & Lee. A description of services performed by Fletcher & Lee is included in the Statements attached hereto as Exhibit 2 and incorporated herein by reference. A Summary Sheet is attached hereto as Exhibit 3.

7. The period covered in this Application is May 1, 2022, through September 30, 2022. During this four-month time period, 161.60 hours were expended by Ms. Lee at an hourly rate of \$450.00 per hour; .70 hours were expended by Ms. Fletcher at an hourly rate of \$350.00 per hour; 30.10 hours were expended by law clerks at an hourly rate of \$250.00 per hour; .10 hours were expended by paralegals at an hourly rate of \$0.00; and 52 hours were expended by the firm's paralegals, Elizabeth Dendary and Jackie Mead, at an hourly rate of \$195.00 per hour for professional services rendered on behalf of the Trustee. The total amount of fees sought is \$90,630.00.

8. The effective rate of billing for attorneys is \$449.57 per hour. The overall effective

1 hourly rate is \$370.67 per hour.

2 9. The costs incurred on behalf of the Trustee total \$477.00. A breakdown of the fees
3 and costs is attached hereto as Exhibit 4.

4 10. A copy of the proposed Order granting this Application is attached as Exhibit 5.

5 11. In summary, the services performed during the period covered by this Application
6 are as follows: Counsel for the Trustee corresponded with Nik Palmer, Esq., counsel for Duck
7 Flat LLC, regarding the Duck Flat sale and additional funds to be collected on behalf of Duck Flat
8 arising from that sale. Counsel drafted a letter to the purchaser to demand documents relating to
9 the additional funds that the purchaser had refused to provide to Mr. Palmer. As a result of these
10 efforts, the purchaser paid the balance that was owed and the Trustee collected approximately
11 \$125,000 as the Trust's share of the proceeds.

12 Counsel for the Trustee conferred with the Trustee and counsel for the former trustees and
13 for the former trustees in their individual capacity regarding documentation of attorneys' fees that
14 may be owed by the Trust. Counsel further reviewed and analyzed documents produced by the
15 parties' counsel and corresponded with counsel regarding the same. Counsel spoke to Correen B.
16 Drake at Maupin Cox & Legoy, to address the Trustee's attempts to obtain the necessary
17 information, namely, fees and costs incurred, amounts paid and resulting balance for each billing
18 period and for each billing matter for which the firm would seek payment from the Family Trust,
19 including Trust Administration Matter 17454.000 that the Trustee became aware of based on
20 information provided by Kevin Riley. Ms. Drake explained that to provide the underlying invoices
21 would require a significant amount of work to redact for privilege, as a result of which she and
22 undersigned counsel explored alternative reports that could be provided that would convey the
23 necessary information. Ms. Drake then transmitted an Account Receivable Journal along with the
24 three invoices from January 1, 2021 to June 1, 2022. As a result of this information, counsel and
25 the Trustee were able to confirm the amounts the Trust owes to Maupin Cox & Legoy.

26 The Trustee requested information on the amounts the Trust owes or is claimed to owe on
27 behalf of Stan Jaksick in a letter to Attorney Hosmer-Henner dated October 19, 2021. The
28 responses arrived over a seven month time period beginning at the end of December 2021 through

1 July 2022. In early July, with incomplete responses still outstanding, counsel prepared a detailed
2 letter outlining all of the documents that had been received in response to the Trustee's request
3 and when. In response to that letter, counsel received further information that, although not
4 complete copies of all invoices, satisfied at least the inquiry of what had been billed, what had
5 been paid and by whom. The Trustee also received report of all time entries. Even though some
6 were redacted, this information finally allowed the Trustee to confirm the amounts McDonald
7 Carano had billed for representing Stan as a trustee and in his individual capacity.

8 A similar October 19, 2021 request was also made of the Robison Sharp firm, who
9 represented Todd in his individual capacity in the litigation and the appeal. The Robison firm
10 promptly and completely responded to all inquiries with copies of their invoices on all their billing
11 matters.

12 Finally, counsel for the Trustee obtained updated billing records from Phil Kreitlein, Esq.,
13 who represented Stan in his capacity as a former trustee in the litigation. As a result, the Trustee
14 has what appears to be a complete understanding of the liabilities asserted against the Family Trust
15 in connection with the litigation and the appeal.

16 In the aftermath of the consummation of the TIC transaction, the Trustee's intention was
17 to seek Court-approval to satisfy the fees incurred by the Family Trust to defend the former trustees
18 in the litigation and appeal and to pay, in part, the fees incurred by Stan and Todd for their
19 individual representation pursuant to the January 31, 2019 Settlement Agreement. This intention
20 was memorialized in the Application to Authorize Payment to Robison, Sharp, Sullivan & Brust;
21 Maupin Cox Legoy; McDonald Carano; and Spencer & Johnson to request authority to pay (1)
22 attorney's fees in the amount of \$50,000.00 to each of the law firms of Robison, Sharp, Sullivan
23 & Brust ("Robison"); Maupin Cox Legoy ("Maupin Cox"); McDonald Carano ("McDonald"); and
24 to Wendy Jaksick's counsel of record, Fox Rothschild and Spencer & Johnson, in care of Spencer
25 & Johnson; and for other relief. Counsel subsequently conferred with counsel for Todd Jaksick,
26 Stan Jaksick and former trustees Mike Kimmel, Kevin Riley and Todd Jaksick, who objected to
27 the Application on the ground that the Supreme Court had not decided the appeal from the
28 Amended Judgment, the disposition of which could alter the Trust's liability to pay Spencer &

1 Johnson. The Trustee withdrew the Application as a result of these objections.

2 Despite this withdrawal, the Trustee remained committed to beginning to satisfy the fees
3 and intended to bring a second motion as soon as he had received advice on the taxes consequences
4 of the TIC transaction. The Trustee has been in consistent communication with Kevin Riley, the
5 CPA for the Trust, but the analysis of the taxes is not complete. Of particular issue is whether the
6 fees for representing the former trustees and for representing Stan and Todd individually are
7 subject to being deducted as capitalized expenses. It bears emphasis that the Trustee has
8 consistently taken the position that he will follow this Court's orders, including the Amended
9 Judgment that is has been affirmed on appeal. Those orders confirm that the fees incurred for
10 representing the former trustees in that capacity are administrative expenses of the estate, as is the
11 Family Trust's proportionate liability to pay \$300,000 to Wendy's lawyers as an administrative
12 expense. The tax analysis affects payment in three primary ways: first, the Family Trust must pay
13 the taxes as a first priority expense and the Trustee must plan for that eventuality. Second, if
14 analysis concludes that even the fees incurred in representing Stan and Todd individually are
15 capitalized expenses that may reduce the tax burden of the Trust, that conclusion may affect both
16 the timing and the priority of payment of those fees; and third, it is unclear whether the Family
17 Trust has sufficient resources (or will obtain sufficient resources) to pay all other creditor claims.

18 Accordingly, the Joint Motion for Fees to Robison, Sharp, Sullivan & Brust; Maupin Cox
19 Legoy; and McDonald Carano; and Report on Outstanding Issues Regarding Trust Liability in
20 response to the Joint Motion for Fees to Robison, Sharp, Sullivan & Brust; Maupin Cox Legoy;
21 and McDonald Carano (the "Joint Motion") was premature because the tax analysis remains
22 incomplete. As a result, the Trustee wanted the Court to have a thorough and objective review of
23 the issues relating to the fees that were sought in the Joint Motion. This included summarizing the
24 amounts the Trustee has been able to confirm are supported by invoices or other documentation
25 from each firm, summarizing the various orders this Court has entered relating to the fees, and the
26 effect of the Settlement Agreement on the issues of timing of payment for personal representation
27 and the priority of such payment. Counsel for the Trustee prepared, filed and served a Partial
28 Opposition to Joint Motion for Fees to Robison, Sharp, Sullivan & Brust; Maupin Cox Legoy; and

1 McDonald Carano; and Report on Outstanding Issues Regarding Trust Liability in response to the
2 Joint Motion for Fees to Robison, Sharp, Sullivan & Brust; Maupin Cox Legoy; and McDonald
3 Carano to address these issues.

4 Thereafter, counsel for the Trustee prepared, filed and served a Stipulation Between
5 Trustee and Maupin Cox Legoy Regarding Joint Motion for Fees to Robison, Sharp, Sullivan &
6 Brust; Maupin Cox Legoy; and McDonald Carano, which was amended and submitted to the Court
7 for decision.

8 Counsel for the Trustee also worked with the Trustee on his Trustee's Fourth Interim Status
9 Report, and made suggested revisions and comments to that document. Counsel filed and served
10 the Trustee's Fourth Interim Status Report on September 1, 2022. Counsel prepared and filed the
11 pleadings to ask the Court to set the Status Report for hearing along with the Joint Motion and the
12 Trustee's Partial Opposition thereto. The Court set that hearing for September 26, 2022. Counsel
13 for the Trustee prepared for and attended the hearing on the Trustee's Fourth Interim Status Report
14 and Joint Motion.

15 Counsel for the Trustee conferred with the Trustee regarding Todd Jaksick's proposal to
16 purchase assets from the Family Trust and analyzed assertions of potential offsets to the purchase
17 price based on the Settlement Agreement or Indemnity Agreement. Counsel for the Trustee set,
18 prepared for and attended a meeting with Todd Jaksick and Kent Robison to discuss Todd's
19 proposal, the Trustee's questions about certain transactions and to request limited documents to
20 address those questions.

21 12. On the basis of the time expended, the nature, extent and value of the service, and
22 the costs of comparable services in matters other than a probate case, the Trustee believes the
23 compensation sought by Fletcher & Lee is reasonable, the services were necessary, and the services
24 were beneficial to the Trustee's performance of his Court-appointed duties. Lee Declaration. The
25 rates charged by Fletcher & Lee are within the prevailing rates for such services in the Reno
26 community and are reasonable. Id.

27 13. No agreement or understanding exists between Fletcher & Lee and any other person
28 or entity for the sharing of the compensation sought in this Application.

1 14. There have been two prior awards of compensation to Fletcher & Lee as counsel
2 for the Trustee in this case. On January 5, 2022, the Court entered the Order Granting First
3 Application for Approval and Payment of Compensation to Fletcher & Lee (the “First Fee Order”)
4 whereby Fletcher & Lee was awarded compensation in the amount of \$61,753.50 to be paid by the
5 Family Trust as a first priority obligation along with the Trustee’s fees. The Trustee was
6 authorized to pay Fletcher & Lee an amount that is *in pari passu* with the overall attorneys’ fees
7 billed by and paid to counsel representing the co-trustees through the appointment of the
8 Temporary Trustee in an amount up to 76 percent of Fletcher & Lee’s fees. Id. Pursuant to the
9 First Fee Order, the Trustee paid \$46,932.66 to Fletcher & Lee.

10 On May 25, 2022, the Court entered the Order Granting Second Application for Approval
11 and Payment of Compensation to Fletcher & Lee (the “Second Fee Order”) whereby Fletcher &
12 Lee was awarded compensation in the amount of \$166,420.85 to be paid by the Family Trust as a
13 first priority obligation along with the Trustee’s fees. The Trustee was further authorized to pay
14 Fletcher & Lee the unpaid balance from the First Fee Order in the amount of \$14,820.84.

15 15. The Trustee has reviewed and approved this Application.

16 Based on the foregoing, the Trustee requests that the Court enter an order (1) approving an
17 award to Fletcher & Lee of \$91,107.00 for compensation, of which \$90,630.00 represents
18 professional services rendered and \$477.00 represents expenses incurred; (2) finding the award of
19 compensation in the amount of \$91,107.00 to Fletcher & Lee as reasonable, necessary and
20 beneficial; and (3) consistent with the Appointment Order, authorizing the Trustee to immediately
21 pay the approved compensation.

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

DATED this 18th day of November, 2022.

FLETCHER & LEE

/s/ Cecilia Lee, Esq.
CECILIA LEE, ESQ.

REVIEWED AND APPROVED

/s/ James S. Proctor
JAMES S. PROCTOR, CPA, CFE, CVA, CFF

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify under penalty of perjury that I am an employee of Fletcher
3 & Lee, 448 Ridge Street, Reno, Nevada 89501, and that on the 18th day of November, 2022, I
4 served a true and correct copy of the **THIRD APPLICATION FOR APPROVAL AND**
5 **PAYMENT OF COMPENSATION TO FLETCHER & LEE** on the parties set forth below by:

6 X Service by eFlex:

7 DONALD ALBERT LATTIN, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
8 TODD B. JAKSICK
9 KENT RICHARD ROBISON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
10 DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
11 HANNAH E. WINSTON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
12 DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
13 MARK J. CONNOT, ESQ. for WENDY A. JAKSICK
14 JAMES PROCTOR
15 ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
16 PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
17 JR. FAMILY TRUST
18 JOHN A. COLLIER, ESQ. for LUKE JAKSICK
19 CAROLYN K. RENNER, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
20 TODD B. JAKSICK
21 STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
22 JR. FAMILY TRUST
23 SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SSJ'S ISSUE TRUST,
24 SAMUEL S. JAKSICK, JR. FAMILY TRUST

25 X Service by electronic mail:

26 ZACHARY JOHNSON, ESQ. for WENDY A. JAKSICK –
27 zach@dallasprobate.com
28 R. KEVIN SPENCER, ESQ. for WENDY A. JAKSICK –
kevin@dallasprobate.com
ALEXI JAKSICK FIELDS – alexijaksickfields@yahoo.com
JULIA GOLD, ESQ., counsel for the estate of Wendy A. Jaksick –
julia@juliagoldlaw.com

29 A copy of this Certificate of Service has been electronically served to all parties or their
30 lawyer. This document does not contain the personal information of any person as defined by
31 NRS 603A.040.

32 /s/ Elizabeth Dendary, CP
33 ELIZABETH DENDARY, CP
34 Certified Paralegal

INDEX OF EXHIBITS

Exhibit	Description	Number of Pages
1	Declaration of Cecilia Lee	2 pages
2	Fletcher & Lee Billing Statements	35 pages
3	Summary Sheet	2 pages
4	Breakdown of Fees	1 page
5	Proposed Order Granting Application	2 pages

EXHIBIT 1

EXHIBIT 1

1 CODE: 1520
FLETCHER & LEE
2 Elizabeth Fletcher, Esq.
Nevada Bar No. 10082
3 Cecilia Lee, Esq.
4 Nevada Bar No. 3344
448 Ridge Street
5 Reno, Nevada 89501
Telephone: 775.324.1011
6 Email: efletcher@fletcherlawgroup.com
7 Email: clee@fletcherlawgroup.com

8 Attorneys for Temporary Trustee James S. Proctor, CPA, CFE, CVA, CFF

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF WASHOE

12 In the Matter of the Administration of the
13 SSJ'S ISSUE TRUST.

Case No. PR17-00445

Dept. No. 15

14 In the Matter of the Administration of the
15 SAMUEL S. JAKSICK, JR. FAMILY TRUST.
16

CONSOLIDATED

Case No. PR17-00446

Dept No. 15

17
18 **DECLARATION OF CECILIA LEE, ESQ.**

19
20 I, Cecilia Lee, Esq., do hereby depose and say under the applicable penalties of perjury:

21 1. I am over the age of 18 years, am mentally competent and have personal knowledge
22 of the matters set forth in this declaration. If called upon as a witness, I could and would
23 competently testify to these matters. I make this declaration in support of the Third Application
24 for Approval and Payment of Compensation to Fletcher & Lee ("Third Fee Application"). All
25 capitalized terms in this declaration shall have the same meaning as set forth in the Third Fee
26 Application.

27 2. I am admitted to the practice of law in the states of Oregon and Nevada, and have
28 been so admitted since 1986 and 1987, respectively. I practice law with Fletcher & Lee.

EXHIBIT 2

EXHIBIT 2



Invoice submitted to:

Invoice #: 12128

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Meridian Advantage
200 Ridge St., Suite 240
Reno, NV 89501

May 31, 2022

In Reference To: SSJ's Issue Trust
Samuel S. Jaksick, Jr. Family Trust
Consolidated Case No. PR17-00445
Second Judicial District Court, Washoe County, Nevada

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
5/1/2022	CL Services Review email from Kent Robison regarding the Duck Flat sale. Draft email to client regarding the same.	0.15 450.00/hr	67.50
5/2/2022	ED Services Finish first draft of application to pay law firms. Prepare exhibits thereto. Send email to Attorney Lee regarding same.	1.60 195.00/hr	312.00
	CL Services Telephone call with Trustee regarding pending matters, including check on Duck Flat sale, status of water consultant's work,	0.20 450.00/hr	90.00
	CL Services Review and respond to email from Kent Robison regarding status of application to pay attorneys' fees. Draft email to parties involved in Duck Flat regarding status of the check, request instructions and an estimate of amount to be paid to the Trust. Review email from Mr. Robison with status of Todd's proposal.	0.40 450.00/hr	180.00
	CL Services Review Supreme Court order setting oral argument. Calendar the oral argument for informational purposes.	0.30 450.00/hr	135.00
	ED Services Meet with Attorney Lee; discuss strategy for application to authorize payment of attorney's fees law firms.	0.50 195.00/hr	97.50
	CL Services Attend conference call with Trustee, Wendy Jaksick and Zach Spencer regarding assets of the trust and water rights. Follow up call with the Trustee regarding the same. Confer with Ms. Dendary regarding setting up a drop box for documents.	0.90 450.00/hr	405.00

			<u>Hrs/Rate</u>	<u>Amount</u>
5/2/2022	CL	Services Review and revise first draft of application to approve payment of fees to law firms. Confer with Ms. Dendary throughout the day regarding the same.	2.25 450.00/hr	1,012.50
	CL	Services Review and respond to email from Trustee regarding conservation easements and transfers of the water rights.	0.20 450.00/hr	90.00
5/3/2022	ED	Services Revise second interim application for approval and payment of compensation to Fletcher & Lee and related documents to include April 2022 invoice. Send email to Attorney Lee regarding same.	0.30 195.00/hr	58.50
	CL	Services Review and respond to email from Nik Palmer regarding the Duck Flat payment. Review and revise as necessary letter to Mr. Palmer regarding the same; transmit.	0.40 450.00/hr	180.00
	ED	Services Work with Attorney Lee to finalize draft of application to pay law firms for Trustee's review.	0.50 195.00/hr	97.50
	CL	Services Complete revisions to the first draft of the application to pay the attorneys' fees to four firms. Revise F&L Second Fee application to account for the April invoice. Draft email to Trustee regarding the same; request review and approval.	2.50 450.00/hr	1,125.00
	ED	Services Draft cover letter to Nik Palmer, Esq. regarding Duck Flat Ranch check received from Silver Star Ranch and Dan Douglass. Send draft letter to Attorney Lee; receive approval from Attorney Lee. Print letter and scan same with check; save to client file; forward same to Trustee. Arrange for hand delivery to Nik Palmer, Esq.	0.40 195.00/hr	78.00
5/4/2022	ED	Services Receive approval from Attorney Lee. Finalize second fee application and all exhibits thereto.	0.30 195.00/hr	58.50
	ED	Services Receive approval from Attorney Lee. Draft my declaration in support of application to pay law firms. Draft Attorney Lee's declaration in support of application to pay law firms. Draft proposed order. Send email to Attorney Lee regarding same.	1.60 195.00/hr	312.00
	CL	Services Review and make final revisions to the Application to pay the four law firms, the two supporting declarations, and the proposed order. Review the exhibits to be filed with the Application. Arrange for filing and service, and instructions on calendaring the notice period and LDTF opposition.	1.25 450.00/hr	562.50

Invoice #: 12128

		<u>Hrs/Rate</u>	<u>Amount</u>
5/4/2022	CL Services Review and make final revisions to the Second Fee Application of F&L, supporting declaration, proposed order and other exhibits. Arrange for filing and service. Instructions on calendaring the notice period and LDTF oppositions.	1.25 450.00/hr	562.50
5/5/2022	ED Services Phone call with Attorney Lee; discuss strategy for filing applications and receive filing approval to file same. Submit application to authorize payment to 4 law firms with exhibits to Court for filing; save submission confirmation to client file. Receive filing notice from Court; download and save the application and exhibits to client file. Submit the second fee application for Fletcher & Lee with exhibits to Court for filing; save submission confirmation to client file. Receive filing notice from Court; download and save the application and exhibits to client file. Serve both applications via email to Zach Johnson, Kevin Spencer, and Alexi Jaksick Fields. Review NRCP 5 and 6 and WDCR 12 with Attorney Lee regarding opposition deadline.	0.80 195.00/hr	156.00
	ED Services Phone call with Attorney Lee to discuss letters to counsel requesting additional information on fees and costs; receive assignments.	0.20 195.00/hr	39.00
	ED Services Review application to authorize payment to 4 law firms. Review spreadsheet reflecting analysis of documents received to-date regarding McDonald Carano's fees and costs for various billing matters. Draft letter to Adam Hosmer-Henner requesting additional information and documents as outlined therein.	0.20 195.00/hr	39.00
	ED Services Review application to authorize payment to 4 law firms. Draft letter to Don Lattin requesting additional information and documents as outlined therein.	0.30 195.00/hr	58.50
	CL Services Review and revise letter to Don Lattin requesting additional documents regarding his firm's fees. Finalize and transmit.	0.25 450.00/hr	112.50
	CL Services Review and revise letter to Adam Hosmer-Henner requesting additional documents regarding his firm's fees. Finalize and transmit.	0.25 450.00/hr	112.50
	ED Services Receive revised letters from Attorney Lee with approval to send same. Serve letter on Adam Hosmer-Henner via email. Serve letter on Don Lattin via email. Forward letters to Trustee.	0.10 195.00/hr	19.50
	CL Services Review and respond to email from Kent Robison regarding Todd's proposal on purchase of Trust property.	0.10 450.00/hr	45.00

AA000170

			<u>Hrs/Rate</u>	<u>Amount</u>
5/5/2022	CL	Services Review emails from Adam Hosmer-Henner and from counsel for Todd Jaksick. Draft email to Trustee regarding the same; recommendations. Correspond further by email with the Trustee. Forward email from Mr. Hosmer-Henner.	0.50 450.00/hr	225.00
5/6/2022	CL	Services Telephone call with client regarding strategy in connection with the emails from counsel about the fee applications. Prepare draft email in response for Trustee's review and comment.	0.75 450.00/hr	337.50
	CL	Services Review email from Trustee to Todd Jaksick regarding getting SJ Ranch off the AgCredit loan. Draft email to Kent Robison regarding the same; request that he ask his client to sign and return the paperwork to AgCredit to save the Trust money. Forward email to the Trustee.	0.20 450.00/hr	90.00
	CL	Services Review and respond to email from Trustee regarding additional strategy for a hearing on the fee applications. Review Trustee's suggested revisions to the draft email to counsel; incorporate those revisions and transmit to counsel and the Trustee.	0.35 450.00/hr	157.50
5/10/2022	CL	Services Conference call with Kent Robison and Don Lattin regarding the Application to pay the four law firms. Review orders and prior analyses in response to their position. Lengthy telephone call with trustee regarding the same; recommendations; discuss other outstanding issues and strategy.	3.10 450.00/hr	1,395.00
	CL	Services Review and respond to email from Dan Douglass regarding his request for a release from Duck Flat for the payment on the subsequent sale of the ranch. Review his response; forward to Trustee.	0.25 450.00/hr	112.50
	CL	Services Telephone call with Kent Robison regarding trustee's decision to withdraw the application to pay the law firms; he is unhappy with that because he wants to get paid; discuss the appeal.	0.20 450.00/hr	90.00
	ED	Services Meet with Attorney Lee; discuss status of current matters; receive approval to submit notice of withdrawal of application to authorize payment to law firms to Court. Review court filing codes and apply correct code to notice of withdrawal. Submit same to Court for filing; save submission confirmation to client file. Receive filing notice from Court; download and save filed notice of withdrawal to client file. Serve same via email to Zach Johnson, Kevin Spencer, and Alexi Jaksick Fields.	0.30 195.00/hr	58.50
	ED	Services Meet with Attorney Lee; review fees and costs analysis.	0.40 195.00/hr	78.00

Invoice #: 12128

			<u>Hrs/Rate</u>	<u>Amount</u>
5/10/2022	CL	Services Prepare Notice of Withdrawal of application to pay the four law firms. Arrange for filing and service.	0.50 450.00/hr	225.00
	CL	Services Work on draft letter for Trustee to Mr. Hosmer-Henner. Confer with Ms. Dendary regarding the information we have received on the billing matter for Stan individually.	0.75 450.00/hr	337.50
	CL	Services Review and respond to email from Trustee regarding the AgCredit loan and strategy to get it paid off.	0.10 450.00/hr	45.00
5/11/2022	ED	Services Review and revise letter as drafted by Attorney Lee for the Trustee.	0.10 195.00/hr	19.50
	CL	Services Review revisions by Ms. Dendary to draft letter to counsel; make further revisions. Draft email to Trustee regarding the same; request review and comment; recommendations.	0.80 450.00/hr	360.00
	CL	Services Continue analysis of attorneys' fees claimed by McDonald Carano; prepare lengthy memo to the Trustee regarding the same; documents required and why they are needed; recommendations and strategy.	3.50 450.00/hr	1,575.00
5/16/2022	ED	Services Meet with Attorney Lee and Paralegal Mead; discuss outstanding issues and strategy for same.	1.50 195.00/hr	292.50
	JM	Services Meet with Attorney Lee and Paralegal Dendary; discuss outstanding issues and strategy for same.	1.50 195.00/hr	292.50
	CL	Services Meet with paralegals to discuss pending issues to be resolved; strategy.	1.50 450.00/hr	675.00
	CL	Services Review email from Phil Kreitlein. Instruction to paralegal regarding follow up on the documents he provided. Review our spreadsheets regarding Mr. Kreitlein's firm. Draft email to him in response; forward to the Trustee.	0.40 450.00/hr	180.00
5/17/2022	ED	Services Meet with Attorney Lee; discuss legal fees of Maupin, Cox & Legoy.	0.30 195.00/hr	58.50
	CL	Services Sign on to Supreme Court's video live streaming; telephone call with the Clerk's office regarding status of the live streaming; receive instructions on listening to audio of the oral argument because live streaming is not available.	0.50 450.00/hr	225.00

AA000172

			<u>Hrs/Rate</u>	<u>Amount</u>
5/17/2022	CL	Services Review reports and analyze known liability of the Family Trust to Maupin firm, variables and unknowns, effect of Court's orders and information not provided; draft report to Trustee regarding the same.	3.40 450.00/hr	1,530.00
	ED	Services Review lengthy email from Attorney Lee to Trustee regarding attorney fees of Maupin, Cox & Legoy. Briefly discuss same with Attorney Lee. Reply to all recipients accordingly.	0.10 195.00/hr	19.50
	CL	Services Review reports on RSSB fees and costs, correspondence regarding indemnification amounts; verify these against the billing records; prepare calculations.	1.25 450.00/hr	562.50
	CL	Services Listen to audio recording of oral argument in Supreme Court.	0.75 450.00/hr	337.50
5/18/2022	CL	Services Prepare draft email to the Trustee analyzing the RSSB fees and the Trust's potential liability for the same.	0.90 450.00/hr	405.00
	ED	Services Receive and review email from Attorney Lee as drafted to Trustee analyzing Robison law firm invoices; compare information to spreadsheet of my analysis of same; respond accordingly.	0.20 195.00/hr	39.00
	CL	Services Review email from Wendy Jaksick regarding status of documents. Draft email to Trustee regarding the same; review his emails with Zach Johnson.	0.20 450.00/hr	90.00
	ED	Services Meet with Attorney Lee; review fees and costs billed by Robison law firm and analyses of same.	0.50 195.00/hr	97.50
	CL	Services Confer with Ms. Dendary regarding details of my email to the Trustee on the RSSB fees; revise draft email to the Trustee and transmit.	1.25 450.00/hr	562.50
	CL	Services Draft email to Trustee regarding the Supreme Court oral argument.	0.30 450.00/hr	135.00
5/23/2022	CL	Services Lengthy call Trustee regarding trust liability on attorneys' fees, outstanding issues, effect of the appeal, strategy.	1.25 450.00/hr	562.50
5/24/2022	CL	Services Confirm that no oppositions were filed to F&L Second Fee Application. Review and revise draft of Request for Submission of Order. Review and revise as necessary the proposed Order; finalize for submission to Judge Hardy's chambers. Instructions for filing and service of the	0.50 450.00/hr	225.00

		<u>Hrs/Rate</u>	<u>Amount</u>
	request for submission and lodging the order with Ms. Mansfield.		
5/24/2022	CL Services Prepare substantially revised letter to Adam Hosmer-Henner with requests for documents related to fees claimed by Stan as a liability of the Family trust. Draft email to the Trustee regarding the same; request review and comment.	1.25 450.00/hr	562.50
	CL Services Review May 5 letter to Don Lattin and confirm contents against what I discussed with the Trustee on May 23 and my analysis. Draft email to Trustee regarding the same; prepare draft email response to Mr. Lattin for Trustee's review and comment.	0.75 450.00/hr	337.50
	CL Services Review trustee's suggestions regarding correspondence to counsel for the trustees. Revise letter to Mr. Hosmer-Henner; finalize and transmit. Revise draft email to Mr. Lattin; finalize and transmit. Forward emails to the Trustee. Correspond further with the Trustee regarding follow up; calendar the follow up date.	1.35 450.00/hr	607.50
	CL Services Review correspondence from Bill Peterson with another demand to pay the Jackrabbit capital call and his letter regarding the same. Draft email to Trustee regarding the same; recommendations.	0.25 450.00/hr	112.50
	JM Services Draft Request for Submission of Second Application for Approval of Payment of Compensation to Fletcher & Lee; confer with C. Lee regarding review of same; efile same with Court; save file-stamped copy to client file.	0.30 195.00/hr	58.50
	JM Services Review draft letter to Adam Hosmer-Henner; confer with C. Lee regarding changes thereto; finalize for C. Lee to send to Mr. Hosmer-Henner.	0.20 195.00/hr	39.00
	JM Services Draft and send email to Court and all parties regarding Order Approving Application for Approval and Payment of Compensation to Fletcher & Lee with Word version, pursuant to Court's requirements.	0.10 195.00/hr	19.50
5/25/2022	JM Services Review Order Approving Second Application for Compensation to Fletcher & Lee signed by Court; draft Notice of Entry of same.	0.20 195.00/hr	39.00
	JM Services Efile Notice of Entry of Order Granting Second Application for Approval and Payment of Compensation to Fletcher & Lee; serve specific parties via email.	0.20 195.00/hr	39.00
	CL Services Review and revise as necessary notice of entry of order granting Second Application of F&L for fees; arrange for filing and service; draft	0.50 450.00/hr	225.00

		<u>Hrs/Rate</u>	<u>Amount</u>
	email to Trustee regarding the same.		
5/31/2022	CL Services Review email from Kent Robison regarding Todd's proposal. Review Trustee's response. Draft email in response to Mr. Robison regarding the same.	0.20 450.00/hr	90.00
	CL Services Confer with paralegal regarding documents she is beginning to receive from Wendy Jaksick; instructions on file storage, transmission to Trustee and Andy Robinson; initial summary review.	0.30 450.00/hr	135.00
	CL Services Correspond further by email with Kent Robison regarding Todd's proposal. Draft email to the Trustee regarding the same.	0.20 450.00/hr	90.00
	CL Services Review email from Trustee with the spreadsheet of entities and values he received from Todd Jaksick at the beginning of his appointment. Correspond by email with the Trustee regarding status of proposal promised from Todd Jaksick but not received. Review email from Kent Robison regarding the same; forward the proposal to the Trustee. Review the proposal and compare to Todd's original spreadsheet.	1.00 450.00/hr	450.00
	JM Services Confer with C. Lee regarding review of documents from Wendy Jaksick and providing same to Trustee Proctor.	0.10 195.00/hr	19.50
	CL Services Draft follow up email to Don Lattin regarding response to my correspondence of May 24; correspond with him further by email; forward to the Trustee.	0.20 450.00/hr	90.00
	CL Services Draft email to Adam Hosmer-Henner regarding follow up on my correspondence dated May 24, 2022.	0.10 450.00/hr	45.00
	JM Services Download all documents received from Wendy Jaksick, save to client file, confer with C. Lee regarding notes from Wendy Jaksick; email copies of same to Trustee Proctor.	0.30 195.00/hr	58.50
	CL Services Review documents from Wendy Jaksick regarding water rights. Lengthy meeting with the Trustee regarding the same; Todd's proposal; strategy.	2.50 450.00/hr	1,125.00
For professional services rendered		55.30	\$21,544.50

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Invoice #: 12128

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Additional Charges :

		<u>Qty/Price</u>	<u>Amount</u>
5/3/2022	ED		
	Delivery Fee	1	3.00
	Deliver Silver Star Ranch check payable to Duck Flat Ranch to Nik Palmer, Esq.	3.00	
	EF		
	Copies	1	0.20
	Copies	0.20	
Total additional charges			\$3.20

Total amount of this bill **\$21,547.70**

Previous balance **\$181,241.69**

Accounts receivable transactions

6/1/2022	Payment - Thank You. Check No. 7146	(\$14,828.84)
6/1/2022	Payment - Thank You. Check No. 7147	(\$166,420.85)
Total payments and adjustments		(\$181,249.69)

Balance due **\$21,539.70**

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Cecilia Lee, Esq.	42.20	450.00	\$18,990.00
Elizabeth Dendary, CP	10.20	195.00	\$1,989.00
Jackie Mead	2.90	195.00	\$565.50

AA000176

**Fletcher & Lee**

448 Ridge Street Reno, NV 89501

775 324-1011

Invoice submitted to:

Invoice #: 12155

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Meridian Advantage
PO Box 1469
Reno, NV 89505

June 30, 2022

In Reference To: SSJ's Issue Trust
Samuel S. Jaksick, Jr. Family Trust
Consolidated Case No. PR17-00445
Second Judicial District Court, Washoe County, Nevada

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
6/6/2022	CL Services Review emails from Adam Hosmer-Henner regarding status of response to requests for documents regarding the McDonald Carano attorneys' fees that may be owed by the Trust. Draft email in response. Forward to the Trustee.	0.20 450.00/hr	90.00
	CL Services Review emails from Correen Drake at Maupin Cox; draft email in response.	0.20 450.00/hr	90.00
	CL Services Review attachments to email from Correen Drake; compare to the documents we have already received.	0.25 450.00/hr	112.50
	JM Services Download numerous files received from Wendy Jaksick and save notes sent by Ms. Jaksick with corresponding documents.	0.60 195.00/hr	117.00
6/9/2022	CL Services Telephone call with Correen Drake at Maupin Cox regarding the documents and information we need to determine the amount of fees owed to the firm; develop a list of items she is going to provide to me and questions she needs to resolve with Mr. Lattin.	0.50 450.00/hr	225.00
	CL Services Review and respond to email from Mr. Hosmer-Henner regarding response to my correspondence requesting documents on his firm's attorneys' fees. Review the documents he provided. Outline the effect of these documents on our analysis.	0.40 450.00/hr	180.00
	JM Services Review documents received from Wendy Jaksick on June 6, 2022; combine deeds and convert to PDF; save native files into folder; convert and save Wendy Jaksick's notes on each deed; draft and send email to	0.60 195.00/hr	117.00

AA000177

			<u>Hrs/Rate</u>	<u>Amount</u>
		Attorney Lee regarding review of documents.		
6/10/2022	CL	Services Review and respond to email from Correen Drake regarding additional documents delivered by her office.	0.10 450.00/hr	45.00
	CL	Services Review and respond to email from Trustee regarding status of communications with Todd; my work on solving the attorneys fees liability of the Trust.	0.20 450.00/hr	90.00
6/13/2022	CL	Services Review and revise draft of the notice of change of mailing address for the Trustee. Arrange for filing and service.	0.30 450.00/hr	135.00
	JM	Services Draft Notice of Change of Mailing Address of Temporary Trustee.	0.20 195.00/hr	39.00
	JM	Services Efile Notice of Change of Mailing Address of Temporary Trustee; save to client file; email copy of same to client; email service list.	0.20 195.00/hr	39.00
	JM	Services Scan all billing documents and notes from Don Lattin and save to client file.	0.20 195.00/hr	39.00
6/20/2022	CL	Services Review emails from the Trustee on Last Chance payment, correspondence with Zach Johnson requesting copy of the Todd Jaksick deposition; correspondence with Kevin Riley regarding tax planning. Respond as necessary.	0.30 450.00/hr	135.00
6/21/2022	CL	Services Review email from Trustee and amended claim form to County for refund of back taxes. Review records and prior emails on this issue. Draft email to Trustee regarding the same; recommendations.	0.50 450.00/hr	225.00
	CL	Services Telephone call with the Trustee regarding current status of issues; instructions regarding further follow up from me.	0.40 450.00/hr	180.00
	CL	Services Review files for what we requested and what we received from Adam Hosmer-Henner. Draft email to him to follow up, as requested by the Trustee. Draft email to the Trustee regarding the same.	0.25 450.00/hr	112.50
6/22/2022	CL	Services Review email from Kent Robison and attached Order of Affirmance and spreadsheet of what Todd claims is owed to him. Draft email to the Trustee regarding the same.	0.50 450.00/hr	225.00

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
 Invoice #: 12155

Page 3

			<u>Hrs/Rate</u>	<u>Amount</u>
6/24/2022	CL	Services Correspond by email with the Trustee regarding issues arising from the Supreme Court decision.	0.20 450.00/hr	90.00
6/27/2022	CL	Services Review email from Mr. Hosmer-Henner; review the attached second engagement letter; draft email to counsel in response; draft email to Trustee regarding the same.	0.40 450.00/hr	180.00
	CL	Services Draft email to the Trustee regarding analysis of the claims of Todd against the Trust and what may have been released in the Settlement Agreement. Review comparison of the two engagement letters from McDonald Carano.	0.25 450.00/hr	112.50
	CL	Services Review documents produced by Don Lattin's office that were sent after my call with Correen Drake. Draft follow up email to Ms. Drake.	1.00 450.00/hr	450.00
	CL	Services Review and respond to email from Trustee regarding documents we have received from Adam Hosmer-Henner.	0.20 450.00/hr	90.00
	CL	Services Correspond by email with the Trustee regarding questions from Correen Drake. Draft email to Ms. Drake.	0.25 450.00/hr	112.50
	JM	Services Review two separate engagement letters from Stan Jaksick; OCR PDF'd engagement letters; prepare comparison of two engagement letters; confer with C. Lee regarding differences in two engagement letters.	0.30 195.00/hr	58.50
6/28/2022	CL	Services Prepare email to Trustee regarding outstanding issues.	0.20 450.00/hr	90.00
6/29/2022	CL	Services Telephone call with Trustee regarding multiple issues; strategy.	1.40 450.00/hr	630.00
6/30/2022	CL	Services Review and respond to email from trustee regarding treatment of the capital calls in the priority of payment.	0.20 450.00/hr	90.00
	CL	Services Review and respond to email from Trustee regarding copies of the Trust documents for the USDA.	0.20 450.00/hr	90.00
	CL	Services Review email from the Trustee regarding tax rebate form on Incline Village property. Review the instructions on co-ownership and history of the property transfers. Draft email to Trustee regarding the same; recommendations.	0.25 450.00/hr	112.50

AA000179

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Invoice #: 12155

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	<u>Hours</u>	<u>Amount</u>
For professional services rendered	10.75	\$4,302.00
Previous balance		\$21,539.70
Balance due		<u><u>\$25,841.70</u></u>

Timekeeper Summary			
Name	Hours	Rate	Amount
Cecilia Lee, Esq.	8.65	450.00	\$3,892.50
Jackie Mead	2.10	195.00	\$409.50

AA000180

**Fletcher & Lee**

448 Ridge Street Reno, NV 89501

775 324-1011

Invoice submitted to:

Invoice #: 12181

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Meridian Advantage
PO Box 1469
Reno, NV 89505

July 31, 2022

In Reference To: SSJ's Issue Trust
Samuel S. Jaksick, Jr. Family Trust
Consolidated Case No. PR17-00445
Second Judicial District Court, Washoe County, Nevada

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
7/5/2022	CL Services Confer with paralegal regarding follow up on documents the Trustee has requested us to locate.	0.30 450.00/hr	135.00
	JM Services Confer with C. Lee regarding subtrusts research in trial exhibits.	0.20 195.00/hr	39.00
7/7/2022	CL Services Review emails between the Trustee and Zach Johnson; review Trustee's report on status of his investigation of water rights.	0.30 450.00/hr	135.00
7/8/2022	CL Services Prepare comprehensive letter to Adam Hosmer-Henner regarding information his office has provided and what is still needed to analyze the attorneys' fees the Trust may owe on behalf of Stan Jaksick. Work on the exhibits to the letter; finalize and transmit, forward to the Trustee.	1.75 450.00/hr	787.50
7/12/2022	EF Services Receive and respond to email from James Proctor regarding Incline Village property refund request	0.20 350.00/hr	70.00
7/13/2022	JM Services Save Grandchildren Trust documents to client folder; draft and send email to C. Lee regarding same.	0.10 195.00/hr	19.50
7/18/2022	CL Services Review multiple emails between the Trustee and parties, from counsel to me and from the Trustee during the week I was out of the office. Respond as necessary.	1.25 450.00/hr	562.50
	CL Services Review email from Mr. Hosmer-Henner with his additional responses to Trustee's requests for documents to substantiate the attorneys' fees Stan seeks to have paid from the Trust. Analyze the attached documents; outline list of issues and discrepancies to resolve. Review	2.00 450.00/hr	900.00

AA000181

			<u>Hrs/Rate</u>	<u>Amount</u>
		documents from the Trustee regarding the same; confirm that we have all of these documents. Prepare for call with the Trustee tomorrow by going over the issues we need to cover; review notes from last call and the to-do list we developed.		
7/19/2022	CL	Services Lengthy call with Trustee regarding outstanding issues, water rights investigation, priorities, status report and other matters.	0.90 450.00/hr	405.00
	CL	Services Lengthy second telephone call with Trustee regarding plan of action on outstanding issues.	0.50 450.00/hr	225.00
	CL	Services Draft email to Kent Robison in response to is request to discuss the Supreme Court decision and Todd's list of indemnification expenses.	0.20 450.00/hr	90.00
7/22/2022	CL	Services Review the pleadings from the Supreme Court filed in the State Court.	0.30 450.00/hr	135.00
7/25/2022	CL	Services Confer with Ms. Dendary regarding overview of what has transpired while she was on maternity leave.	0.40 450.00/hr	180.00
7/26/2022	ED	Services Meet with Attorney Lee; discuss status of documents received from law firms and review of each needed; receive assignments.	0.60 195.00/hr	117.00
	CL	Services Analyze Todd Jaksick's spreadsheet of claims against the Trust against the cited portions of the Settlement Agreement and the cited portions of the Trust Financial Statements. Meet with paralegal Dendary regarding the analysis of information we received from the various law firms; strategy in response to motion for fees filed today; priority research. Draft email to the Trustee on the fee application filed by counsel. Review and analyze the application; calendar the opposition due date. Confer with Ms. Dendary on strategy in response to the application.	3.50 450.00/hr	1,575.00
	CL	Services Review file for analysis of priority scheme, analysis of Settlement Agreement. Draft email to Trustee regarding the same. Research Nevada statutes on priority.	2.00 450.00/hr	900.00
7/27/2022	CL	Services Lengthy call with Trustee regarding issues raised in the joint application for fees. Review and respond as necessary to further emails from the Trustee regarding the opposition to the application; news that Wendy Jaksick has died.	0.75 450.00/hr	337.50
For professional services rendered			15.25	\$6,613.00
Previous balance				\$25,841.70

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Invoice #: 12181

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	<u>Amount</u>
Balance due	<u><u>\$32,454.70</u></u>

Timekeeper Summary			
Name	Hours	Rate	Amount
Cecilia Lee, Esq.	14.15	450.00	\$6,367.50
Elizabeth Dendary, CP	0.60	195.00	\$117.00
Elizabeth Fletcher, Esq.	0.20	350.00	\$70.00
Jackie Mead	0.30	195.00	\$58.50

**Fletcher & Lee**

448 Ridge Street Reno, NV 89501

775 324-1011

Invoice submitted to:

Invoice #: 12209

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Meridian Advantage
PO Box 1469
Reno, NV 89505

August 31, 2022

In Reference To: SSJ's Issue Trust
Samuel S. Jaksick, Jr. Family Trust
Consolidated Case No. PR17-00445
Second Judicial District Court, Washoe County, Nevada

Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
8/1/2022	ED	Services Meet with Attorney Lee to discuss strategy regarding response to motion for attorney's fees.	0.20 195.00/hr	39.00
	CL	Services Continue research and analysis for opposition to the joint application for fees.	3.50 450.00/hr	1,575.00
8/2/2022	CL	Services Continue work on objection to joint application for payment of attorneys' fees.	6.00 450.00/hr	2,700.00
	CL	Services Correspond by email with the Trustee throughout the day regarding various issues, visit to White Pine Lumber, potential leads on interested parties to purchase assets, extension of time to respond to the joint fee application. Draft email to counsel for the law firms to request the extension; forward to Trustee. Draft email to Spencer & Johnson regarding the same; request information on who to serve for Wendy's estate. Review and respond to email from Kent Robison. Review emails between counsel for Lake-Ridge Shores HOA and the Trustee regarding deed corrections.	1.00 450.00/hr	450.00
8/3/2022	ED	Services Meet with Attorney Lee to discuss status of opposition to motion for attorney's fees and additional information and research needed.	0.50 195.00/hr	97.50
	CL	Services Continue work on drafting opposition to joint motion for payment of fees and costs.	5.90 450.00/hr	2,655.00
8/4/2022	ED	Services Work throughout the day on reviewing and analyzing the documentation received from Adam Hosmer-Henner. Meet with Attorney Lee to discuss	3.40 195.00/hr	663.00

AA000184

		<u>Hrs/Rate</u>	<u>Amount</u>
	same and strategy for further analysis.		
8/4/2022	CL Services Telephone call with client regarding status of opposition; his visit to White Pine; strategy. Confer several times with Ms. Dendary regarding compilation of information received from counsel while she was on maternity leave; strategy for the opposition. Correspond further by email with Trustee regarding his call with Stan Jaksick; instructions to locate certain documents; strategy.	1.70 450.00/hr	765.00
8/5/2022	CL Services Review and respond to email from Zach Johnson regarding the Joint Motion filed by the law firms; at his request, provide a copy because the Motion was never served on him; forward to Trustee with recommendations. Review email from Trustee to Sheila Van Duyne regarding corrective deeds for Lake-Ridge entity; draft email to Trustee in response in answer to the Trustee's questions. Correspond further with the Trustee regarding these issues.	0.70 450.00/hr	315.00
	ED Services Continue reviewing and analyzing information received from Adam Hosmer-Henner relating to attorney fees and costs charged by McDonald Carano to Stan Jaksick on multiple matters. Compare information to information previously received and analyzed.	3.70 195.00/hr	721.50
	CL Services Continue work on draft of opposition to Joint Motion for Fees.	3.50 450.00/hr	1,575.00
	ED Services Review joint motion for fees and supporting declarations. Compare motion with information provided by law firms. Create lengthy notes of analysis of same for further discussion with Attorney Lee.	2.20 195.00/hr	429.00
	ED Services Phone conference with Attorney Lee to discuss in general terms my review of the joint motion for fees and strategy for response thereto.	0.50 195.00/hr	97.50
	CL Services Confer with Ms. Dendary regarding her analysis of the documents we have received from the law firms; discuss strategy.	0.50 450.00/hr	225.00
8/8/2022	ED Services Meet with Attorney Lee. Outline analysis of documents received from McDonald Carano relating to attorney fees and costs billed for representation of Stan Jaksick individually and as co-trustee of the Family Trust. Discuss strategy for response to joint motion for payment of fees.	1.00 195.00/hr	195.00
	CL Services Confer with Ms. Dendary regarding details of analysis of McDonald Carano documents and the Joint Fee Application, RSSB and MCL; go over draft of summary for McDonald Carano to include in the Trustee's response. Draft email to Kent Robison to request missing invoices; clarification of his consent to extension of time. Draft email to the	2.75 450.00/hr	1,237.50

			<u>Hrs/Rate</u>	<u>Amount</u>
		Trustee regarding summaries of the fees, other issues we will need to discuss. Correspond further by Kent Robison. Telephone call with Trustee regarding strategy.		
8/8/2022	ED	Services Create chart summarizing attorney fees and costs billed by McDonald Carano in its two billing matters.	0.40 195.00/hr	78.00
	ED	Services Meet with Attorney Lee. Review chart created for McDonald Carano attorney fees and costs; finalize same. Outline analysis of documents received from Maupin Cox Legoy relating to attorney fees and costs billed for representation of co-trustees of the Family Trust. Discuss strategy for response to joint motion for payment of fees.	1.10 195.00/hr	214.50
	ED	Services Create chart of outlining the attorneys fees and costs billed by Maupin Cox Legoy for various matters, payments thereof, and outstanding balances. Discuss same with Attorney Lee.	0.40 195.00/hr	78.00
8/9/2022	CL	Services Review 4 orders for return of appeal bond to various appellants. Instructions to paralegal to follow up on this and enter credit if the appeal costs for MCL and McDonald Carano included the cost bonds for those two firms.	0.25 450.00/hr	112.50
	ED	Services Review additional billing statements received from Kent Robison's firm to corroborate the amounts listed in the joint motion for fees and declaration in support thereof. Update spreadsheet of fees billed to Todd Jaksick in the Family Trust matter. Briefly discuss same with Attorney Lee. Review email from Attorney Lee to Heidi Cohen; send follow up email with clarification of request.	0.50 195.00/hr	97.50
	CL	Services Review email from Trustee regarding the corrective deeds being requested by Lake-Ridge HOA; review the underlying deeds that were signed by Sam Jaksick. Draft email to Trustee regarding the same; recommendations.	0.25 450.00/hr	112.50
	CL	Services Meet with Ms. Dendary regarding questions about the invoices received on 8/8 from RSSB. Draft email to Heidi Cohen regarding the same.	0.30 450.00/hr	135.00
	CL	Services Continue work on draft opposition to Joint Motion for Fees. Work with Ms. Dendary throughout the day on the charts and her declaration.	2.75 450.00/hr	1,237.50
	ED	Services Draft lengthy declaration in support of opposition to joint motion for fees outlining analysis conducted. Various discussions with Attorney Lee regarding charts and strategy for opposition.	4.50 195.00/hr	877.50

			<u>Hrs/Rate</u>	<u>Amount</u>
8/10/2022	ED	Services Receive additional invoices from Heidi Cohen; save same to client file. Review invoices and analyze same; add to spreadsheet. Update declaration and include charts from spreadsheet. Discuss same with Attorney Lee.	1.60 195.00/hr	312.00
	ED	Services Meet with Attorney Lee; discuss strategy for responding to joint motion for fees and various alternatives to a formal opposition.	0.70 195.00/hr	136.50
	CL	Services Review and respond to numerous emails from Kent Robison regarding the analysis of attorneys' fees. Lengthy telephone call with Mr. Robison regarding the same; confer with Ms. Dendary regarding strategy, means to get to resolution of issues.	2.25 450.00/hr	1,012.50
	CL	Services Revise draft opposition/position paper to Joint Motion to incorporate instructions from trustee. Draft email to Trustee regarding the same; request review, comment and strategy.	2.75 450.00/hr	1,237.50
	CL	Services Review additional emails from Adam Hosmer-Henner and from Don Lattin regarding trustee's fees and F&L fees. Telephone call from Zach Johnson regarding Mr. Lattin's email. Telephone call with the Trustee regarding my call with Kent Robison; discuss strategy and plan of approach.	0.60 450.00/hr	270.00
	ED	Services Assist Attorney Lee in finalizing draft of opposition for submission to Trustee.	0.50 195.00/hr	97.50
8/11/2022	CL	Services Review Trustee's comments to the draft pleading. Lengthy telephone call with the Trustee to go over the proposals, his suggested revisions, strategy; response to Mr. Lattin's email from yesterday.	1.25 450.00/hr	562.50
	CL	Services Incorporate Trustee's recommended revisions to the Opposition; revise the charts to include return of appellate cost bonds; review and revise draft Dendary Declaration; prepare Proctor Declaration and my declaration. Prepare list of exhibits. Correspond by email with the Trustee regarding the same; confer with Ms. Dendary regarding the same.	4.00 450.00/hr	1,800.00
	CL	Services Review and respond to email from Don Lattin regarding Jim's latest billing invoice and his questions and comments about various entries.	0.30 450.00/hr	135.00
	CL	Services Review and respond to email from Adam Hosmer-Henner regarding his assertions that my requests for his billing records were made after the May 5 application to pay his firm \$50,000 in interim compensation; and his assertion that his fees have been presented multiple times and	0.30 450.00/hr	135.00

		<u>Hrs/Rate</u>	<u>Amount</u>
	already approved by the Court, both of which are not supported by the record.		
8/11/2022	ED Services Review Attorney Lee's revisions to my declaration in support of partial opposition to joint motion for fees. Review Trustee's revisions to same. Review numerous emails between Trustee and Attorney Lee regarding revisions to opposition and supporting declarations. Send email to Attorney Lee regarding revisions and strategy for finalizing same.	1.50 195.00/hr	292.50
	ED Services Receive list of exhibits to partial opposition to joint motion for fees from Attorney Lee. Prepare exhibits and save same to client file. Send email to Attorney Lee regarding same.	0.20 195.00/hr	39.00
8/12/2022	CL Services Review and respond to numerous emails from the Trustee regarding his questions, comments and suggestions for the brief and declarations. Revise the Opposition and declarations to incorporate the revisions; double check the figures; finalize all pleadings. Review the exhibits. Instructions to paralegal Dendary for filing and service.	3.40 450.00/hr	1,530.00
	ED Services Work with Attorney Lee to finalize partial opposition to joint motion for fees. Proofread same and make minor typographical changes. Confirm numbers therein match spreadsheets of analysis of attorney's fees and my supporting declaration. Phone call with Attorney Lee to discuss two modifications to brief. Receive filing approval from Attorney Lee. Finalize exhibits thereto. Submit the partial opposition and exhibits to Court for filing. Receive filing notice from Court (one hour wait time - not billed); download and save partial opposition with exhibits to client file. Reduce file size and serve same via email to Zach Johnson, Kevin Spencer, and Alexi Jaksick Fields. Forward filed partial opposition to Trustee.	3.00 195.00/hr	585.00
8/15/2022	CL Services Review email from the Trustee and supporting portions of the 2021 financial statements on Lake-Ridge. Draft email to Trustee in response; recommendations.	0.20 450.00/hr	90.00
	CL Services Review email from trustee and planning list of next steps; draft email in response.	0.20 450.00/hr	90.00
	CL Services Confer with Ms. Dendary on report to prepare in response to Mr. Hosmer-Henner's demand; review the report; draft email to the Trustee regarding the same.	0.20 450.00/hr	90.00
	CL Services Review Nevada statutes on revoked corporations and dissolved corporations; review NV SOS information on Lake-Ridge; draft email to Trustee regarding Nevada law and recommendations on how to	1.25 450.00/hr	562.50

			<u>Hrs/Rate</u>	<u>Amount</u>
		proceed.		
8/15/2022	CL	Services Lengthy telephone call with the Trustee regarding pending issues, strategy, plan of action. Follow up with Ms. Dendary on certain items.	1.10 450.00/hr	495.00
8/16/2022	CL	Services Telephone call from Don Lattin regarding resolution of the Joint Motion with respect to his firm. Review and respond to email from him regarding the same. Review and respond to email from the Trustee regarding his fees; draft email in response; report on my call with Mr. Lattin.	0.50 450.00/hr	225.00
	CL	Services Prepare email to Adam Hosmer-Henner in response to his demand for a report of fees and costs incurred by F&L and by the trustee; provide a copy of the Fletcher & Lee report.	0.10 450.00/hr	45.00
	CL	Services Draft email to counsel regarding a proposed resolution of the Trustee's partial opposition. Forward to the Trustee.	0.20 450.00/hr	90.00
	CL	Services Confer with Ms. Dendary regarding documents we have received from the Trustee on Kreitlin fees and Kimmel invoices. Review and respond to emails from Kent Robison and from Adam Hosmer-Henner regarding resolution of the Joint Motion. Forward to the Trustee.	0.50 450.00/hr	225.00
	ED	Services Review information received from Phil Kreitlein in May 2022. Review information from Trustee regarding the Kreitlein firm. Compare information to that received from Kevin Riley and reviewed previously. Confirmed information is all the same and consists of the exact same invoices and as such, the analysis does not change. Meet with Attorney Lee and discuss same.	0.60 195.00/hr	117.00
	CL	Services Prepare draft proposed stipulation and order with Maupin Cox Legoy. Draft email to Mr. Lattin regarding the same. Forward to Trustee.	1.00 450.00/hr	450.00
	CL	Services Telephone calls with Kent Robison and conference call with him and Adam Hosmer-Henner. Review and respond to emails from the Trustee regarding the same; strategy. Lengthy call with the Trustee regarding the issues raised by counsel; discuss his assessment of water rights and information provided by Don Lattin. Review follow up email from Mr. Hosmer-Henner; draft email to Trustee regarding the same; recommendations.	1.90 450.00/hr	855.00
	CL	Services Confer with Ms. Dendary on her analysis of the Kreitlein attorneys' fees owed by the Trust.	0.20 450.00/hr	90.00

			<u>Hrs/Rate</u>	<u>Amount</u>
8/17/2022	CL	Services Review and respond to email from Don Lattin approving the stipulated order. Prepare Notice of submission of proposed Stipulation and Order. Draft email to Mr. Lattin regarding the same. Draft email to paralegal regarding instructions on filing and submission.	0.50 450.00/hr	225.00
	CL	Services Review and respond to email from the Trustee regarding his next status report and detailed information about fees and costs.	0.20 450.00/hr	90.00
	CL	Services Review email from Sheila Van Duyne regarding the corrected deeds for Lake-Ridge; review further correspondence between the Trustee and Ms. Van Duyne regarding the same.	0.15 450.00/hr	67.50
	CL	Services Review email from Trustee regarding request for extension of time for filing a reply brief. Draft email to Adam Hosmer-Henner and other counsel regarding the same; set forth the Trustee's position regarding stipulations he enters into; request the basis for MC and RSSB position.	0.30 450.00/hr	135.00
	CL	Services Review emails between Todd Jaksick and NRCS/USDA regarding effect of Wendy's death, and Trustee's response. Review further correspondence from NRCS.	0.30 450.00/hr	135.00
	CL	Services Review and respond to email from Adam Hosmer-Henner requesting a stipulated order to pay the uncontested fees to his firm. Forward to the Trustee.	0.20 450.00/hr	90.00
	CL	Services Calendar extended deadline for MC and RSSB to file reply briefs to Joint Motion.	0.20 450.00/hr	90.00
	CL	Services Draft email to Spencer & Johnson regarding a stipulated order to get them paid. Forward to Trustee. Correspond further with Kevin Spencer to answer his questions. Forward to the Trustee.	0.40 450.00/hr	180.00
8/18/2022	ED	Services Phone call with Attorney Lee; receive filing approval. Submit notice of proposed stipulated order with Maupin Cox Legoy etc. to Court for filing; save submission confirmation to client file. Receive filing notification from Court; download and save filed notice and exhibit to client file. Serve notice with exhibit to Zach Johnson, Kevin Spencer, and Alexi Jaksick Fields via email. Forward same to Trustee.	0.20 195.00/hr	39.00
8/19/2022	ED	Services Review email from Sheila Mansfield. Send email to Ms. Mansfield and all parties with Word version of proposed stipulated order. Exchange emails with Attorney Lee regarding same.	0.20 195.00/hr	39.00

		<u>Hrs/Rate</u>	<u>Amount</u>
8/23/2022	CL Services Review numerous emails regarding the stipulated order with MCL; review the Court's Order; calendar the deadlines. Correspond by email with Don Lattin regarding the same. Telephone call with Mr. Lattin regarding the same; procedure and timing. Prepare separate stipulation between the Trustee and MCL; draft email to Mr. Lattin regarding the same; request his review and signature.	1.60 450.00/hr	720.00
	CL Services Review numerous emails between the Trustee and Kevin Riley regarding corporate documents; instructions to paralegal regarding the same.	0.30 450.00/hr	135.00
	ED Services Review emails between Trustee and Attorney Lee. Save documents forwarded by Trustee as received from Kevin Riley to client file.	0.10 195.00/hr	19.50
	CL Services Receive executed stipulation from Don Lattin. Prepare fully executed copy; arrange for filing with the Court and service. Calendar the ten days for opposition based on today's filing date.	0.30 450.00/hr	135.00
	ED Services Receive filing approval from Attorney Lee. Submit stipulation between Trustee and Maupin Cox Legoy regarding joint motion for fees to Court for filing. Receive filing notification from Court; download and save filed stipulation to client file. Serve filed stipulation via email to Zach Johnson, Kevin Spencer, and Alexi Jaksick Fields.	0.20 195.00/hr	39.00
	CL Services Lengthy call with the Trustee regarding legal proceedings currently pending; his status report; conversation with Kevin Riley and tax issues, relationship of taxes to the payment of fees for trustees' personal representation; position with respect to Todd's offer and information from Stan on value of Buckhorn; response to Dallas lawyers to get agreement from them on Trustee's proposal; approach to resolve allocation of liability between Issue Trust and Family Trust; information that Jack Rabbit may redeem Wendy's interest, she owes debt to the Trust.	2.00 450.00/hr	900.00
	CL Services Review research on priority of payment, proportionate payment and Trust terms regarding priority. Review and respond to email from Adam Hosmer-Henner regarding his demand to be relieved of disgorgement and being discharged.	0.50 450.00/hr	225.00
8/24/2022	CL Services Order transcript of the August 5, 2021 hearing pursuant to Trustee's instruction.	0.30 450.00/hr	135.00
	CL Services Review multiple drafts of correspondence from the Trustee to Todd Jaksick regarding questions about his proposal to purchase assets. Review the draft proposal from Todd on particular terms. Draft email in	0.50 450.00/hr	225.00

			<u>Hrs/Rate</u>	<u>Amount</u>
		response with suggested revisions to the Trustee. Review Trustee's email in response.		
8/24/2022	CL	Services Review multiple drafts of proposed email to Stan Jaksick regarding property sale of Buckhorn; review Stan's August 24 email to the Trustee regarding potential sale of the ranch as a whole; draft email to the Trustee with suggested revisions to his correspondence to Stan.	0.30 450.00/hr	135.00
	CL	Services Review follow up email from the Trustee to Kevin Riley regarding the documents Mr. Riley requested and other aspects of tax analysis.	0.10 450.00/hr	45.00
	CL	Services Draft follow up email to Dallas lawyers regarding resolution of payment of their fees.	0.10 450.00/hr	45.00
	ED	Services Receive direction from Attorney Lee to order transcript of August 5, 2021 status hearing. Contact Mikki Merkouris to obtain clarification on court reporter for August 5 hearing. Exchange emails with Litigation Services; order transcript.	0.20 195.00/hr	39.00
	CL	Services Review Stan Jaksick's objection to the Trustee's stipulation with Maupin Cox. Draft email to Trustee regarding the same; recommendations. Telephone call with Trustee regarding the same; strategy.	0.50 450.00/hr	225.00
	CL	Services Draft email in response to Mr. Hosmer-Henner's regarding payment of McDonald Carano fees. Forward to the Trustee with recommendations.	0.20 450.00/hr	90.00
	CL	Services Draft email to Don Lattin regarding allocation with the Issue Trust. Forward to the Trustee.	0.20 450.00/hr	90.00
	CL	Services Confer with paralegal Dendary regarding chart for Trustee's status report.	0.20 450.00/hr	90.00
8/25/2022	ED	Services Meet with Attorney Lee; receive assignment to create chart of our firm's fees and costs and payments received. (8/24/2022) Review invoices and payments; create chart. Send same via email to Trustee.	0.40 195.00/hr	78.00
	ED	Services Review and response to email from Trustee regarding firm fees and costs. Compute additional calculations for Trustee.	0.20 195.00/hr	39.00
8/29/2022	CL	Services Review and respond to email from the Trustee regarding his revised correspondence to Todd. Review Stan's response to Trustee's email and information about change of ownership of Buckhorn; review and	0.30 450.00/hr	135.00

			<u>Hrs/Rate</u>	<u>Amount</u>
		respond to Trustee's email regarding the same.		
8/29/2022	CL	Services Telephone call with the Trustee regarding his status report and the follow up on issues raised by Stan regarding sale of the other assets.	0.30 450.00/hr	135.00
	CL	Services Review and make revisions to Fourth Status Report; review F&L invoices for calculation of amount devoted to the Mana deal and amount devoted to addressing Stan's responses to requests for information. Draft email to Trustee regarding the same.	3.00 450.00/hr	1,350.00
	ED	Services Assist Attorney Lee in calculating selected time frames of fees for Trustee's status report.	0.20 195.00/hr	39.00
	CL	Services Telephone call with Don Lattin regarding the allocation between the Family Trust and Issue Trust of the liabilities created by the Amended Judgment.	0.20 450.00/hr	90.00
	CL	Services Correspond by email regarding my revisions to the status report and clarification of Mana fees.	0.10 450.00/hr	45.00
8/30/2022	ED	Services Receive transcript of August 5, 2021 status hearing from Litigation Services; save same to client file. Discuss transcript with Attorney Lee. Send condensed transcript via email to Trustee. Process invoice for payment.	0.10 195.00/hr	19.50
	CL	Services Review and respond to numerous emails from the Trustee regarding specific portions of the Fourth Status Report; make revisions and recommendations. Review the latest version of the report and make further revisions; draft email to the Trustee in response to his questions; make recommendations.	1.50 450.00/hr	675.00
	CL	Services Review and respond to email from Trustee regarding his communication with Ross di Lipkau; update on my communications with Don Lattin, Kent Robison and David Rigdon.	0.20 450.00/hr	90.00
	CL	Services Brief call with David Rigdon regarding his work on water rights for Buckhorn Land; he will get permission from his client to discuss further with me and call me back. Follow up call from Mr. Ridgon to discuss the water rights at Buckhorn. Draft email to Trustee regarding the same.	0.50 450.00/hr	225.00
For professional services rendered			95.05	\$35,556.00
Previous balance				\$32,454.70

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Invoice #: 12209

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	<u>Amount</u>
Balance due	<u>\$68,010.70</u>

Timekeeper Summary			
Name	Hours	Rate	Amount
Cecilia Lee, Esq.	66.75	450.00	\$30,037.50
Elizabeth Dendary, CP	28.30	195.00	\$5,518.50



Invoice submitted to:

Invoice #: 12240

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
Meridian Advantage
PO Box 1469
Reno, NV 89505

September 30, 2022

In Reference To: SSJ's Issue Trust
Samuel S. Jaksick, Jr. Family Trust
Consolidated Case No. PR17-00445
Second Judicial District Court, Washoe County, Nevada

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
9/1/2022	CL Services Review and respond as necessary to emails from the Trustee regarding property still owned by Duck Flat Ranch; his status report; objections to the stipulation with Don Lattin.	0.20 450.00/hr	90.00
	CL Services Review and make final editing revisions to the Trustee's fourth status report. Correspond by email with the Trustee regarding the same. Prepare pleading to file with the report; arrange for filing and service.	1.00 450.00/hr	450.00
	ED Services Receive filing approval from Attorney Lee. Submit Trustee's fourth interim status report to Court for filing; save submission confirmation to client file. Receive filing notification from Court; download and save filed status report to client file. Serve status report via email to Zach Johnson, Kevin Spencer, and Alexi Jaksick Fields. Forward same to Trustee.	0.20 195.00/hr	39.00
9/2/2022	CL Services Review emails from Kent Robison and Heidi Cohen regarding the billings from RSSB. Draft emails in response. Review email from Mr. Robison clarifying the terms of our understanding about the Joint Motion for Fees; draft email in response.	0.40 450.00/hr	180.00
	CL Services Lengthy call with the Trustee regarding my call with David Rigdon and other pending issues; discuss strategy. Draft email summarizing the information I received from Mr. Rigdon to the Trustee.	1.20 450.00/hr	540.00
9/4/2022	CL Services Review reply to the Trustee's Partial Opposition to the Joint Motion for Fees filed on behalf of Stan Jaksick.	0.30 450.00/hr	135.00

		<u>Hrs/Rate</u>	<u>Amount</u>
9/6/2022	ED Services Meet with Attorney Lee and discuss Stan Jaksick's reply brief. Review co-trustee settlement agreement of August 2019.	0.20 195.00/hr	39.00
	CL Services Confer with Ms. Dendary regarding the reference to payment of fees by the Family Trust in Stan's Reply brief; review the two trustees' agreements to understand and explain the context. Review email from Kent Robison regarding Stan's reply brief; draft email to the Trustee regarding the same.	0.30 450.00/hr	135.00
	CL Services Telephone call with the Trustee regarding strategy in response to the Reply brief filed on behalf of Stan on September 2. Prepare reply to objection to the MCL stipulation; Lee Declaration and exhibit; and proposed order. Draft email to Don Lattin regarding the same; request review and comment.	1.75 450.00/hr	787.50
	ED Services Skim invoices provided by Heidi Cohem; save same to client file; compare to statements previously received and analyzed. Send email to Attorney Lee regarding same.	0.10 195.00/hr	19.50
	CL Services Upon receipt of email from Don Lattin approving the Reply and the proposed order, review and make final editing of the reply; instructions and arrange for filing and service. Review draft of request for submission; and notice of the proposed order; instructions and arrange for filing and service.	1.00 450.00/hr	450.00
	CL Services Review and revise motion to set Trustee's Fourth Status Report for hearing. Review and revise as necessary the proposed order. Arrange for filing and service.	0.40 450.00/hr	180.00
	ED Services Meet with Attorney Lee; discuss filings to be submitted today. Finalize reply brief and exhibits thereto. Finalize notice of submission of proposed order and exhibit thereto. Finalize request for submission. Receive filing approval from Attorney Lee. Submit reply brief with exhibits to Court for filing. Submit notice of submission of proposed order to Court for filing. Receive filing notification from Court; download and save filed notice to client file. Submit request for submission to Court for filing. Receive filing notification from Court; download and save filed request to client file.	0.50 195.00/hr	97.50
	ED Services Draft motion for hearing on Trustee's fourth interim status report. Draft proposed order. Discuss same with Attorney Lee. Receive filing approval. Submit the motion for hearing on Trustee's fourth interim status report with exhibit to Court for filing. Receive filing notification from Court; download and save to client file the filed motion. Serve via email the reply brief, notice of submission of proposed order, request for submission, and motion for hearing to Zach Johnson,	0.60 195.00/hr	117.00

			<u>Hrs/Rate</u>	<u>Amount</u>
		Kevin Spencer, and Alexi Jaksick Fields. Send email to Sheila Mansfield with Word versions of proposed orders.		
9/7/2022	CL	Services Review and respond to email from Phil Kreitlein regarding procedure for getting his balance paid. Forward to the Trustee.	0.20 450.00/hr	90.00
	CL	Services Review and respond to email from Kent Robison regarding payment of fees to his firm. Forward to the Trustee.	0.20 450.00/hr	90.00
	TC	Services Meet with Cecilia Lee regarding status of case.	0.50 250.00/hr	125.00
	CL	Services Confer with Ms. Ciardella regarding pending issues and strategy.	0.90 450.00/hr	405.00
	TC	Services Review Partial Objection to Motion for fees, Motion to Sell TIC Interest, and Status Report.	3.60 250.00/hr	900.00
9/8/2022	CL	Services Review numerous emails between Ms. Mansfield and counsel for the parties regarding the setting of a hearing date. Review email from Trustee regarding the same; confirm the date from the list he had given me in August. Draft email in response to the Trustee. Correspond further by email with the Trustee. Correspond by email with Ms. Mansfield regarding the same; respond to her request for the names of parties who have not responded.	0.50 450.00/hr	225.00
9/9/2022	TC	Services Review agreements dated August 29, 2019 and January 31, 2019.	0.50 250.00/hr	125.00
	CL	Services Review email from Ms. Mansfield regarding hearing date and time. Review the Court's order setting the hearing. Calendar the hearing date and time. Review "notice" filed by Mr. Robison. Draft email to the Trustee regarding the hearing and Mr. Robison's pleading; recommendations.	1.00 450.00/hr	450.00
	TC	Services Review settlement agreement and analyze pending issues.	3.20 250.00/hr	800.00
9/12/2022	TC	Services Review status reports in aid of preparation for September 26, 2022 hearing.	4.00 250.00/hr	1,000.00
	TC	Services Receive and review email from Jim Proctor; forward to Elizabeth Fletcher for guidance.	0.20 250.00/hr	50.00
	EF	Services Receive and review emails from Cecilia Lee and Jim Proctor; email to Jim Proctor regarding strategy related to Reply filed by Kent Robison;	0.30 350.00/hr	105.00

		<u>Hrs/Rate</u>	<u>Amount</u>
	draft and send email to Kent Robison regarding Reply Brief; forward to James Proctor		
9/13/2022 TC	Services Review charts and pleadings related to attorneys' fees in preparation of September 26, 2022 hearing.	2.60 250.00/hr	650.00
9/14/2022 TC	Services Complete review of filings related to attorneys' fees in preparation of September 26, 2022 hearing.	0.60 250.00/hr	150.00
9/15/2022 ED	Services Phone call with Attorney Lee regarding Kent Robison's deadline outlined in his notice as filed with the Court. Draft and send email to Attorney Fletcher, Taryn Ciardella, and Trustee regarding same.	0.10 195.00/hr	19.50
TC	Services Continue to review filings related to attorneys' fees in preparation of September 26, 2022 hearing.	1.20 250.00/hr	300.00
EF	Services Receive and respond to emails from Elizabeth Dendary and James Proctor regarding status of briefing	0.20 350.00/hr	70.00
9/19/2022 CL	Services Review emails between the Trustee and our office from week of September 12; confer with Ms. Dendary regarding the threatened "reply" brief from Mr. Robison (9-15); respond to the Trustee's emails as necessary.	0.90 450.00/hr	405.00
CL	Services Lengthy call with Trustee regarding tax issues and resolution; disposition of remaining property and his visit to Buckhorn Ranch; strategy.	1.00 450.00/hr	450.00
ED	Services Meet with Attorney Lee; discuss strategy for meeting with Trustee.	0.10 195.00/hr	19.50
9/20/2022 ED	Services Review email from Trustee. Respond with copies of spreadsheets as requested, in advance of meeting.	0.10 195.00/hr	19.50
ED	Services Prepare printed copies of documents for meeting with Trustee.	0.20 195.00/hr	39.00
ED	Services Meet with Trustee, Attorney Lee and Taryn Ciardella. Review each spreadsheet analyzing the fees and costs and payments received for (1) Kreitlein Leeder Moss; (2) Maupin Cox Legoy; (3) McDonald Carano; and (4) Robison Sharp Sullivan & Brust. Discuss these fees and costs regarding the Family Trust agreement, amended judgment, and trustees's January 2019 and August 2019 agreements. Discuss strategy for September 26 hearing. Receive additional assignments	2.30 195.00/hr	448.50

		<u>Hrs/Rate</u>	<u>Amount</u>
	regarding same.		
9/20/2022	TC Services Meeting with Jim Proctor, Cecilia Lee, and Liz Dendary to discuss strategy for September 26, 2022 Hearing.	2.10 250.00/hr	525.00
	ED Services Exchange emails with Trustee as follow-up to meeting.	0.10 195.00/hr	NO CHARGE
	CL Services Begin preparation for upcoming hearing. Lengthy meeting with Trustee, Ms. Dendary, Ms. Ciardella regarding the multiple issues surrounding the attorneys' fees; preparation for hearing; strategy.	3.50 450.00/hr	1,575.00
9/21/2022	CL Services Correspond by email with Don Lattin regarding arranging for payment on the stipulation that is pending court approval.	0.25 450.00/hr	112.50
	TC Services Meeting with Jim Proctor and Cecilia Lee.	1.30 250.00/hr	325.00
	TC Services Telephone call to Sheila Mansfield in Judge Hardy's chambers regarding logistics of September 26, 2022 hearing.	0.20 250.00/hr	50.00
	CL Services Meeting with Trustee and Taryn Ciardella regarding information from water rights expert, due diligence on Todd's offer, options for disposition of remaining trust assets; he approves request from Don Lattin for delivery of checks in satisfaction of the stipulation.	1.50 450.00/hr	675.00
	CL Services Follow up with Mr. Lattin regarding my meeting with the Trustee. Draft email to the Trustee with the figures for the checks to Maupin Cox. Draft email to Mr. Lattin regarding the same.	0.30 450.00/hr	135.00
	CL Services Draft email to Kent Robison regarding proposed meeting to discuss Todd's offer to purchase assets.	0.10 450.00/hr	45.00
	CL Services Correspond by email with the Trustee regarding strategy; confer with Ms. Ciardella regarding the same.	0.20 450.00/hr	90.00
9/22/2022	CL Services Review and respond to email from Don Lattin regarding effectuating the parties' stipulation; forward to Trustee.	0.20 450.00/hr	90.00
	CL Services Review email from Kent Robison. Review and respond to emails from the Trustee regarding the meeting with Todd and emails from Jessica Clayton regarding the same. Draft email to Mr. Robison to	0.30 450.00/hr	135.00

			<u>Hrs/Rate</u>	<u>Amount</u>
		confirm the date, time and location of the meeting.		
9/22/2022	CL	Services Review email from Trustee and attached Chase brochure on the Winnemucca Ranch area. Draft email to Trustee in response; recommendations.	0.20 450.00/hr	90.00
	TC	Services Review appraisal comparison spreadsheet in preparation of September 26, 2022 hearing.	0.20 250.00/hr	50.00
	TC	Services Review Trustee's status reports in preparation of September 26, 2022 hearing.	2.00 250.00/hr	500.00
	TC	Services Follow-up telephone call to Sheila Mansfield in Judge Hardy's chambers regarding logistics of September 26, 2022 hearing.	0.10 250.00/hr	25.00
	TC	Services Draft Third Interim Fee Application.	1.30 250.00/hr	325.00
9/23/2022	TC	Services Continue drafting Third Interim Fee Application; email to Cecilia Lee regarding same.	2.30 250.00/hr	575.00
9/26/2022	CL	Services Draft email to Ms. Mansfield with a second copy of the proposed Order granting the stipulation between the Trustee and MCL, with the referenced Exhibit 1 to the order. Review relevant pleadings in preparation for the hearings. Outline arguments. Attend hearings. Confer briefly with the Trustee after the hearings.	6.10 450.00/hr	2,745.00
	CL	Services Confer with Ms. Dendary regarding lack of access to monthly accountings and client's responses to inquiries about the same; instructions on how to proceed.	0.20 450.00/hr	90.00
	ED	Services Attend status hearing and hearing on joint motion for fees. Take detailed notes.	2.10 195.00/hr	409.50
	TC	Services Attend hearing on Joint Motion for Payment of Attorneys' Fees and Trustee's Fourth Status Report.	2.00 250.00/hr	500.00
9/27/2022	ED	Services Meet with Trustee, Attorney Lee, and Taryn Ciardella. Discuss yesterday's hearing and strategy generally.	0.20 195.00/hr	39.00
	CL	Services Review email from the Trustee regarding Todd's proposal; review the documents and spreadsheets attached to email. Meet with the Trustee in preparation for discussion with Todd and Kent Robison.	3.00 450.00/hr	1,350.00

Invoice #: 12240

		<u>Hrs/Rate</u>	<u>Amount</u>
	Attend meeting. Confer with the Trustee afterward to discuss strategy; terms of counteroffer.		
9/27/2022	ED Services Meet with Attorney Lee; discuss meeting with Todd Jaksick and his counsel and strategy for next steps in matter.	0.60 195.00/hr	117.00
	CL Services Review email from Adam Hosmer-Henner regarding his requests for payment of fees. Draft email to Trustee regarding the same; recommendations. Draft email to counsel in response to Mr. Hosmer-Henner's email.	0.25 450.00/hr	112.50
	CL Services Confer with Ms. Dendary regarding outcome of meeting with Todd and Kent Robison; discuss tax issues. Draft email to Trustee regarding taxes for Todd's proposal. Correspond further by email with the Trustee regarding the same; additional questions.	0.50 450.00/hr	225.00
	CL Services Review Todd's reply brief filed yesterday and request for submission. Review court's minutes from the September 26 hearings. Confer with paralegal and law clerk regarding one aspect of the minutes.	0.25 450.00/hr	112.50
	TC Services Attend hearing on Joint Motion to Award Attorneys' Fees and Trustee's Fourth Interim Status Report.	2.20 250.00/hr	550.00
	CL Services Review and revise first draft of Third Interim Fee Application.	0.80 450.00/hr	360.00
9/28/2022	CL Services Review email from Trustee regarding his most recent call with Stan Jaksick.	0.10 450.00/hr	45.00
	CL Services Review email from Don Lattin and copy of order of indemnification. Draft email in response. Draft email to Trustee regarding follow up on issues from earlier this week.	0.25 450.00/hr	112.50
	CL Services Telephone call with Don Lattin to discuss further the resolution of payment of attorneys' fees. Draft email to Trustee regarding the same; recommendations and strategy.	0.50 450.00/hr	225.00
9/29/2022	ED Services Review Attorney Lee's email to Trustee. Review Court's minutes from September 26 hearing. Respond to Attorney Lee's email with copy of my notes from hearing.	0.20 195.00/hr	39.00

VIA MAIL AND EMAIL: James S. Proctor, CPA, CFE, CVA, CFF
 Invoice #: 12240

Page 8

		<u>Hrs/Rate</u>	<u>Amount</u>
9/29/2022	CL Services Confer with paralegal and law clerk regarding a transcript from September 26 hearing; instructions to order the transcript.	0.10 450.00/hr	45.00
	ED Services Receive approval and instructions from Attorney Lee. Send email to Litigation Services ordering a copy of the transcript of the September 26 hearing.	0.10 195.00/hr	19.50
For professional services rendered		68.15	\$22,614.50
Additional Charges :			
		<u>Qty/Price</u>	
9/6/2022	ED Advanced Client Costs Sunshine Litigation - Transcript of Status Hearing held August 5, 2021	1 473.80	473.80
Total additional charges			\$473.80
Total amount of this bill			\$23,088.30
Previous balance			\$68,010.70
Balance due			\$91,099.00

Timekeeper Summary			
Name	Hours	Rate	Amount
Cecilia Lee, Esq.	29.85	450.00	\$13,432.50
Elizabeth Dendary, CP	7.60	195.00	\$1,482.00
Elizabeth Dendary, CP	0.10	0.00	\$0.00
Elizabeth Fletcher, Esq.	0.50	350.00	\$175.00
Taryn Ciardella	30.10	250.00	\$7,525.00

AA000202

EXHIBIT 3

EXHIBIT 3

CODE: 1230
FLETCHER & LEE
Elizabeth Fletcher, Esq.
Nevada Bar No. 10082
Cecilia Lee, Esq.
Nevada Bar No. 3344
448 Ridge Street
Reno, Nevada 89501
Telephone: 775.324.1011
Email: efletcher@fletcherlawgroup.com
Email: clee@fletcherlawgroup.com

Attorneys for Trustee James S. Proctor, CPA, CFE, CVA, CFF

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the
SSJ'S ISSUE TRUST.

Case No. PR17-00445
Dept. No. 15

In the Matter of the Administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUST.

CONSOLIDATED
Case No. PR17-00446
Dept No. 15

SUMMARY SHEET IN SUPPORT OF
THIRD APPLICATION FOR APPROVAL AND PAYMENT OF
COMPENSATION TO FLETCHER & LEE

ROLE IN THIS CASE: COUNSEL FOR TRUSTEE
JAMES S. PROCTOR, CPA, CFE, CVA, CFF

CURRENT APPLICATION:

Fees requested: \$90,630.00

Hours billed: 161.60 Cecilia Lee, Esq. - \$450.00/hour
.70 Elizabeth Fletcher, Esq. - \$350.00/hour
30.10 Law Clerks - \$250.00/hour
52.00 Paralegals - \$195.00/hour
.10 Paralegals - \$ 0.00/hour

Overall attorney rate: \$449.57/hour
Overall effective rate: \$370.67/hour
Expenses requested: \$477.00

Photocopies	\$.20
Delivery Charges	\$ 3.00
Transcripts	\$ 473.80

PREVIOUS AWARDS OF FEES AND EXPENSES:

There have been two prior awards of compensation to Fletcher & Lee as counsel for the Trustee in this case. On January 5, 2022, the Court entered the Order Granting First Application for Approval and Payment of Compensation to Fletcher & Lee (the “First Fee Order”) whereby Fletcher & Lee was awarded compensation in the amount of \$61,753.50 to be paid by the Family Trust as a first priority obligation along with the Trustee’s fees. The Trustee was authorized to pay Fletcher & Lee an amount that is *in pari passu* with the overall attorneys’ fees billed by and paid to counsel representing the co-trustees through the appointment of the Temporary Trustee in an amount up to 76 percent of Fletcher & Lee’s fees. *Id.* Pursuant to the First Fee Order, the Trustee paid \$46,932.66 to Fletcher & Lee. The unpaid balance of the professional fees awarded in the First Fee Order is \$14,820.84.

On May 25, 2022, the Court entered the Order Granting Second Application for Approval and Payment of Compensation to Fletcher & Lee (the “Second Fee Order”) whereby Fletcher & Lee was awarded compensation in the amount of \$166,420.85 to be paid by the Family Trust as a first priority obligation along with the Trustee’s fees. The Trustee was further authorized to pay Fletcher & Lee the unpaid balance from the First Fee Order in the amount of \$14,820.84.

EXHIBIT 4

EXHIBIT 4

Fee/Cost Breakdown for FLETCHER LEE
Application for Approval and Payment of Fees and Costs to FLETCHER
Consolidated Case Nos. PR17-00445 and PR17-00446

Fees:

Invoice Date	Fees	Costs	CL/\$450	EF/\$350	TC/\$250	ED/\$0	ED/\$195
5/31/2022	\$ 21,544.50	\$ 3.20	42.20	0.00	0.00	0.00	10.20
6/30/2022	\$ 4,302.00	\$ -	8.65	0.00	0.00	0.00	0.00
7/31/2022	\$ 6,613.00	\$ -	14.15	0.20	0.00	0.00	0.60
8/31/2022	\$ 35,556.00	\$ -	66.75	0.00	0.00	0.00	28.30
9/30/2022	\$ 22,614.50	\$ 473.80	29.85	0.50	30.10	0.10	7.60
TOTAL:	\$ 90,630.00	\$ 477.00	161.60	0.70	30.10	0.10	46.70

Timekeeper	Hours	Hourly Rate	Fees
CL	161.60	\$ 450.00	\$ 72,720.00
EF	0.70	\$ 350.00	\$ 245.00
TC	30.10	\$ 250.00	\$ 7,525.00
ED	46.70	\$ 195.00	\$ 9,106.50
ED	0.10	\$ -	\$ -
JM	5.30	\$ 195.00	\$ 1,033.50
	244.50	TOTAL:	\$ 90,630.00

Overall Attorney Rate:	\$ 449.57
Overall Effective Rate:	\$ 370.67

Costs:

Invoice Date	Copies	Delivery Charges	Transcripts
5/31/2022	\$ 0.20	\$ 3.00	\$ -
6/30/2022	\$ -	\$ -	\$ -
7/31/2022	\$ -	\$ -	\$ -
8/31/2022	\$ -	\$ -	\$ -

EXHIBIT 5

EXHIBIT 5

1 CODE: 3060

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10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

12

13 In the Matter of the Administration of the

14 SSJ'S ISSUE TRUST.

15 In the Matter of the Administration of the

16 SAMUEL S. JAKSICK, JR. FAMILY TRUST.

17

Case No. PR17-00445

Dept. No. 15

CONSOLIDATED

Case No. PR17-00446

Dept No. 15

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ORDER GRANTING
THIRD APPLICATION FOR APPROVAL AND PAYMENT OF
COMPENSATION TO FLETCHER & LEE

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This matter came before the Court on the Third Application for Approval and Payment of Compensation to FLETCHER & LEE (the "Application"), filed by James S. Proctor, CPA, CFE, CVA, CFF, in his capacity as the appointed Trustee of the Jaksick Family Trust (the "Trustee").

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The Court considered the Application, any oppositions thereto, and any replies. The Court finds that it has jurisdiction to enter an order granting the Application. The Court finds that notice of the Application was properly served on all parties. The Court finds that the fees incurred on behalf of the Trustee by Fletcher & Lee for the period May 1, 2022, through September 30, 2022

F|L

1 in the amount of \$90,630.00 and the expenses in the amount of \$477.00 are reasonable, necessary
2 and beneficial to the Family Trust. The Court finds that cause exists to approve the payment of
3 these fees and costs in full, subject to the Temporary Trustee's discretion, and prior to payment of
4 fees incurred on behalf of the co-trustees prior to the appointment of the Temporary Trustee and
5 in connection with the appeal.

6 WHEREFORE, good cause appearing,

7 IT IS HEREBY ORDERED that the Application is GRANTED and that Fletcher & Lee is
8 awarded compensation in the amount of \$91,107.00, of which \$90,630.00 represents professional
9 services rendered and \$477.00 represents expenses incurred, and the Trustee is authorized to pay
10 the same on behalf of the Family Trust as a first priority obligation along with the Trustee's fees.

11 DATED this _____ day of _____, 2022.

12 **IT IS SO ORDERED.**

13 _____
14 DISTRICT JUDGE

15
16 Submitted by:

17 FLETCHER & LEE

18 /s/ Cecilia Lee, Esq.
19 CECILIA LEE, ESQ.

Adam Hosmer-Henner, Esq. (NSBN 12779)
McDONALD CARANO LLP
100 West Liberty Street, Tenth Floor
Reno, Nevada 89501
(775) 788-2000
ahosmerhenner@mcdonaldcarano.com

Attorney for Stanley Jaksick

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the SSJ'S ISSUE TRUST,	Case No.: PR17-00445 Dept. No.: 15
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CONSOLIDATED

In the Matter of the Administration of the SAMUEL S. JAKSICK, JR. FAMILY TRUST.	Case No.: PR17-00446 Dept No.: 15
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**RESPONSE TO THIRD INTERIM APPLICATION FOR APPROVAL AND PAYMENT
OF COMPENSATION TO FLETCHER & LEE**

Stanley Jaksick, by and through his counsel, Adam Hosmer-Henner of McDonald Carano, hereby responds to the Third Interim Application for Approval and Payment of Compensation to Fletcher & Lee ("Application").

First, counsel for the Temporary Trustee presented and persuaded the Court to pay fees to their firm on an *in pari passu* basis with each firm owed funds receiving a proportional share of the unpaid balance. The application abandons this principle and now only seeks to obtain payment for the law firm of Fletcher & Lee. There is no basis whatsoever, in statute or in the Trust document, to pay this firm on a higher priority the other firms who have provided services to the Trust. On this basis, Stanley Jaksick objects to any disproportionate and preferential basis to Fletcher & Lee.

Second, the Application seeks \$7,525.00 in fees for Taryn Ciardella. Ms. Ciardella is not identified as an attorney or a paralegal. A review of the State Bar of Nevada website did not identify Ms. Ciardella as a licensed attorney in Nevada. The Trust should not be responsible for

1 the overhead or staffing costs of this law firm as it does not appear that these fees were incurred
2 by a licensed professional.

3 Third, this Court appointed the Temporary Trustee based on his represented skill and
4 expertise in administering trusts. The counsel for the Temporary Trustee was appointed on the
5 same day that an application was made, without briefing or input from any party and without
6 consideration of alternatives or of the relevant skill and experience of counsel. To the extent that
7 the fees for the counsel for the Temporary Trustee are now greatly outstripping the fees for the
8 Temporary Trustee, it is respectfully requested that the Court exercise appropriate supervision of
9 these fees to ensure that the Temporary Trustee and his counsel are performing their appropriate
10 roles in relation to the purposes of their appointments.

11 ***AFFIRMATION PURSUANT TO NRS 239B.030***

12 The undersigned does hereby affirm that the preceding document does not contain the
13 social security number of any person.

14 Dated: December 6, 2022.

15 McDONALD CARANO LLP

16 By: /s/ Adam Hosmer-Henner
17 Adam Hosmer-Henner, Esq. (NSBN 12779)
18 100 West. Liberty Street, Tenth Floor
19 Reno, Nevada 89501
20 (775) 788-2000

21 *Attorney for Stanley Jaksick*
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD
3 CARANO LLP and that on December 6, 2022, I certify that I electronically filed the foregoing
4 with the Clerk of the Court by using the ECF system which served the following parties
5 electronically:

6 Donald Lattin, Esq.
7 Robert LeGoy, Esq.
8 Brian C. McQuaid, Esq.
9 Carolyn Renner, Esq.
Maupin Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503

10 Mark J. Connot, Esq.
11 Fox Rothschild, LLP
12 1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

Philip L. Kreitlein, Esq.
Kreitlein Law Group, Ltd.
1575 Delucchi Lane, Suite 101
Reno, NV 89502

13 R. Kevin Spencer, Esq.
14 Zachary E. Johnson, Esq.
15 Brendan P. Harvell, Esq.
16 Spencer, Johnson & Harvell, PLLC
500 N. Akard St., Suite 2150
Dallas, TX 75201

17 The following parties have been served by electronic mail:

18 Zachary Johnson, Esq. for Wendy A. Jaksick
19 zach@dallasprobate.com

20 R. Kevin Spencer, Esq. for Wendy A. Jaksick
21 kevin@dallasprobate.com

22 Alexi Jaksick Fields
alexijaksickfields@yahoo.com

23
24 /s/ Caitlin Pagni
25 An Employee of McDonald Carano LLP

26 4886-2153-3999, v. 3
27
28

1 CODE: 3795
2 FLETCHER & LEE
3 Elizabeth Fletcher, Esq.
4 Nevada Bar No. 10082
5 Cecilia Lee, Esq.
6 Nevada Bar No. 3344
7 448 Ridge Street
8 Reno, Nevada 89501
9 Telephone: 775.324.1011
10 Email: efletcher@fletcherlawgroup.com
11 Email: clee@fletcherlawgroup.com

12 Attorneys for Trustee James S. Proctor, CPA, CFE, CVA, CFF

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14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
15
16 IN AND FOR THE COUNTY OF WASHOE

17 In the Matter of the Administration of the
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Dept. No. 15

20 In the Matter of the Administration of the
21
22 SAMUEL S. JAKSICK, JR. FAMILY TRUST.

CONSOLIDATED
Case No. PR17-00446
Dept No. 15

23 **REPLY TO STANLEY JAKSICK'S RESPONSE TO THIRD INTERIM APPLICATION**
24 **FOR APPROVAL AND PAYMENT OF COMPENSATION TO FLETCHER & LEE**

25 James S. Proctor, CPA, CFE, CVA, CFF, in his capacity as the duly appointed Temporary
26 Trustee of the Samuel S. Jaksick, Jr. Family Trust (the "Trustee"), by and through his attorneys of
27 record, Cecilia Lee, Esq. and Elizabeth Fletcher, Esq., FLETCHER & LEE, hereby files this Reply
28 to the Response to Third Interim Application for Approval and Payment of Compensation to
Fletcher & Lee filed on December 6, 2022 (the "Response") on behalf of Stanley Jaksick ("Stan").

In the Response, Stan first takes issue with "any disproportionate and preferential basis to
Fletcher & Lee." Response, p. 1, ll. 24-25. The Court has previously held that payment of fees to
Fletcher & Lee shall be paid in first priority with the Trustee's fees. See Order Granting First
Application for Approval and Payment of Compensation to Fletcher & Lee entered on January 5,

2022 at p. 3, ll. 13-14. During the September 26, 2022 hearing, the Court specifically charged the Trustee with determining the amount to be distributed in pro rata to the law firms of Maupin, Cox, Legoy; McDonald Carano; Robison, Sharp, Sullivan & Brust; and Spencer & Johnson. Transcript, p. 53, ll. 24-25. The Court did not include Fletcher & Lee during this discussion. The Court further indicated that appointing the Trustee and his counsel would be expensive and could be the cause of “discontent with the additional expenses incurred by the Trust.” Id., p. 52, ll. 7-11. The Court acknowledged the expense and stated that “it is through Mr. Proctor’s work that this Trust will be administered and terminated.” Id., p. 52, ll. 17-19. The filing of the Application complies with the Court’s directive.

Stan next objects that Taryn Ciardella has incurred time on this matter. Ms. Ciardella is a law clerk with the office of Fletcher & Lee. In fact, in a conversation with Adam Hosmer-Henner, Esq. and Bob Armstrong, Esq. on October 12, 2022, the undersigned introduced Stan’s lawyers to Ms. Ciardella as a law clerk. Ms. Ciardella has appropriately billed as a law clerk for services performed in legal research, investigation, and analysis. The time entries billed by Ms. Ciardella outline her work in these areas and are not overhead or staffing costs as characterized by Stan in the Response. Further, the work Ms. Ciardella completed under the supervision of the undersigned counsel has assisted Trustee’s counsel in performing the legal work on behalf of the Trustee, reducing the blended hourly rate and thereby benefitting the Family Trust. See Application at 3-4 (“The overall effective hourly rate is \$370.67 per hour.”).

Finally, the Court is obligated to review and approve Trustee’s counsel’s fees. See Order Granting Application to Appoint Counsel entered on July 8, 2021 (“the Application is approved...on the terms and conditions set forth in the Application, subject, however, to approval by this Court...of all compensation and reimbursement requested.”). Even if the Court had not so ordered, Trustee’s counsel would continue to operate with transparency in each application for compensation filed with the Court by providing all parties with copies of Fletcher & Lee’s billing statements, a detailed narrative description of the legal services performed, the amounts previously approved by this Court and the amounts paid. The Application continues that practice: it states with specificity the legal work that was completed on behalf of the Trustee and the basis for the

1 Court to find such fees as reasonable, necessary and beneficial to the Trustee's performance of his
2 Court-appointed duties. See Application at 4-7.

3 It merits the Court's consideration that the Response does not make any argument that the
4 services performed were not reasonable, necessary and beneficial to the Trustee's performance of
5 his duties. The Response is not supported by any evidence.

6 Based on the foregoing, the Trustee requests that the Court enter an order approving an
7 award to Fletcher & Lee for compensation as requested in the Application and authorizing the
8 Trustee to immediately pay the approved compensation.

9 **AFFIRMATION**

10 **Pursuant to NRS 239B.030**

11 The undersigned does hereby affirm that the preceding document does not contain the
12 personal information of any person.

13 DATED this 7th day of December, 2022.

14 FLETCHER & LEE

15 /s/ Cecilia Lee, Esq.
16 CECILIA LEE, ESQ.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify under penalty of perjury that I am an employee of Fletcher & Lee, 448 Ridge Street, Reno, Nevada 89501, and that on the 7th day of December, 2022, I served a true and correct copy of the **REPLY TO STANLEY JAKSICK'S RESPONSE TO THIRD APPLICATION FOR APPROVAL AND PAYMENT OF COMPENSATION TO FLETCHER & LEE** on the parties set forth below by:

 X Service by eFlex:

DONALD ALBERT LATTIN, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
TODD B. JAKSICK
KENT RICHARD ROBISON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
HANNAH E. WINSTON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
MARK J. CONNOT, ESQ. for WENDY A. JAKSICK
JAMES PROCTOR
ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
JR. FAMILY TRUST
JOHN A. COLLIER, ESQ. for LUKE JAKSICK
CAROLYN K. RENNER, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
TODD B. JAKSICK
STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
JR. FAMILY TRUST
SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SSJ'S ISSUE TRUST,
SAMUEL S. JAKSICK, JR. FAMILY TRUST

 X Service by electronic mail:

ZACHARY JOHNSON, ESQ. for WENDY A. JAKSICK –
zach@dallasprobate.com
R. KEVIN SPENCER, ESQ. for WENDY A. JAKSICK –
kevin@dallasprobate.com
ALEXI JAKSICK FIELDS – alexifields@yahoo.com
RANDALL VENTURACCI – rlv52@hotmail.com

A copy of this Certificate of Service has been electronically served to all parties or their lawyer. This document does not contain the personal information of any person as defined by NRS 603A.040.

/s/ Elizabeth Dendary, CP
ELIZABETH DENDARY, CP
Certified Paralegal