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IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD ROBBEN,

Petitioner,

vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS TRUST; AND THOMAS J. HARRIS
TRUST,

Respondents,

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 2022-PB-00119

RECORD ON APPEAL
VOLUME 2

COPIES OF ORIGINAL PLEADINGS
PAGES 143-299

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PETITIONER IN PROPER PERSON

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CLERK

BY *[Signature]* DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT, STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

TODD ROBBEN,

Petitioner,

vs.

THE ESTATE OF THOMAS
JOSEPH HARRIS; THOMAS J.
HARRIS TRUST,

Respondents.

MOTION TO DISMISS

The Estate of Thomas J. Harris (the "Estate"), by and through its duly appointed Successor Executor, Tara M. Flanagan, respectfully moves this Court for dismissal of Petitioner Todd Robben's Verified Petition to Invalidate the Thomas J. Harris Will and Trust; Petitioner's Request for Appointment of Counsel Pursuant to NRS 136.200; Emergency Request for Stay of Final Distribution; Preemptory Challenge to Judge Nathan Todd Young (the "Petition"). Specifically, the Estate requests dismissal of the Petition against the Estate pursuant to NRCP 12(b)(1) & 12(b)(5).

INTRODUCTION / STATEMENT OF THE ISSUE

The Petition cannot be brought against the Estate of Thomas J. Harris because any allegations or claims related to the validity of the Last Will and Testament of Thomas J. Harris are:

1) subject to the exclusive jurisdiction of the separate probate proceeding before Department 1 of the Ninth Judicial District Court in Case No. 2021-PB00034, governing the administration of the Estate of Thomas J. Harris (the "Estate Case"),

2) long since time-barred by the applicable statutory time frame for post-probate will contests, and

3) barred by the doctrine of claim preclusion because they were previously litigated to their conclusion in the Estate Case.

Therefore, Mr. Robben's Petition is properly dismissed as to the Estate, with prejudice.

STATEMENT OF RELEVANT PROCEDURE CONCERNING

THE ESTATE OF THOMAS JOSEPH HARRIS

1. Thomas Joseph Harris (the "Decedent") died on December 30, 2019, as a resident of Douglas County, Nevada.

2. The Last Will and Testament of Thomas Joseph Harris was duly lodged with this Court on April 6, 2021.

3. The Decedent's Last Will and Testament (the "Decedent's Will" or the "Will") is a pour over will, identifying the Decedent's Trust as the beneficiary of his Will. The Decedent's Trust is The Declaration of Trust Known as the Thomas J. Harris Trust, dated June 12, 2019 (the "Decedent's Trust" or the "Trust"). See Exhibit 1.

4. The Decedent's Last Will and Testament nominated the following line of Executors: Jeff Robben, Scott Barton, and Tara Flanagan. *Id.*

5. On March 10, 2021, Scott Barton filed his Verified Petition for Letters of Special Administration and for Probate of Will and Issuance of Letters Testamentary before Department 1 of the Ninth Judicial District Court. Mr. Barton was the appropriate individual to seek appointment as the Personal Representative

1 of the Estate because the first nominated executor, Jeff Robben, had passed away
2 on November 11, 2020. Mr. Barton's initial petition seeking to administer the
3 Estate pursuant to the Decedent's Will was assigned case number 2021-PB00034
4 (the "Estate Case").

5 6. On April 6, 2021, the Court in the Estate Case entered its Order
6 Admitting Will to Probate and Issuing Letters Testamentary appointing Scott
7 Barton to serve as the Personal Representative of the Estate. *See Exhibit 2.*
8 Resultingly, Letters Testamentary were issued to Scott Barton on April 22, 2021,
9 after which Mr. Barton began administering the Estate.

10 7. Several months thereafter, Mr. Barton notified The Honorable Tara
11 Flanagan he was resigning as both the Personal Representative of the Decedent's
12 Estate and as Trustee of the Decedent's Trust. Consistent with her nomination as
13 the next named executor of the Estate by the Decedent's Will, Ms. Flanagan filed
14 her Petition for Appointment of Successor Executor and for Issuance of Letters
15 Testamentary on June 25, 2021, in the Estate Case.

16 8. On July 27, 2021, the Court entered its Order Appointing Successor
17 Executor and Issuing Successor Letters Testamentary, and on August 17, 2021
18 Letters Testamentary were issued to Tara M. Flanagan. *See Exhibit 3.*

19 9. Pursuant to her appointment as the Successor Executor of the Estate,
20 Ms. Flanagan (hereinafter the "Successor Executor" or the "Petitioner") continued
21 the Estate's administration and worked to diligently conclude the administration of
22 the Estate.

23 10. On, April 14, 2022, the Successor Executor filed her Petition to
24 Confirm First and Final Accounting, Request for Final Distribution, and Request
25 for Payment of Professional's Fees and Costs (the "First and Final Petition") in the
26 Estate Case. A hearing was scheduled on the Successor Executor's First and Final
27 Petition for May 24, 2022.
28

1 11. On May 23, 2022, Todd Robben appeared for the first time in the Estate
2 Case through the filing of his Notice of Motion for Continuance and Motion for
3 Continuance. Mr. Robben's request for a continuance was based on allegations
4 concerning the validity of the Decedent's Will. See **Exhibit 4**.

5 12. A hearing was conducted in the Estate Case regarding the First and
6 Final Petition on May 24, 2022. The Court heard the presentation of Mr. Robben,
7 as well as multiple arguments from Counsel for the Estate, including but not limited
8 to presentation of the fact Mr. Robben was not an "interested person" in the Estate
9 as defined by Nevada law, and had no standing upon which to appear, to contest
10 the validity to the Decedent's Will, or otherwise state any objection in the Estate
11 Case. At the conclusion of the hearing, the Court granted Mr. Robben a brief
12 continuance out of an "abundance of caution" to present any basis upon which he
13 could be identified as an interested person in the Estate Case, continuing the
14 hearing on the First and Final Petition to June 21, 2022.

15 13. Thereafter, on June 15, 2022 Mr. Robben filed a Request for
16 Appointment of Counsel in advance of the June 21, 2022 continued hearing. See
17 **Exhibit 5**.

18 14. A continued hearing was conducted on the First and Final Petition in
19 the Estate Case on June 21, 2022. At the conclusion of the hearing, having heard
20 arguments from Mr. Robben and Counsel for the Estate, the Court granted the
21 Successor Executor's First and Final Petition in full and without exception.
22 Moreover, the Court in the Estate Case ruled Mr. Robben was not an interested
23 person to the proceeding, had produced no evidence upon which he could be found
24 to be an interested person in the Estate Case, and as such had no basis to be
25 appointed Counsel. As a result of the Court's ruling in the Estate case, Mr. Robben
26 has no standing to appear in the Estate Case, and as such has no standing to contest
27 the validity of the Last Will and Testament of Thomas J. Harris.
28

20. The Court codified its ruling through entry of its written Order Granting the First and Final Petition in the Estate Case on June 22, 2022, wherein it specifically found as follows:

Finally, upon thorough review by the court, including review of Mr. Robben's written filings and hearing Mr. Robben's oral presentation at both the May 24, 2022 hearing as well as the June 21, 2022 continued hearing, the Court determines Mr. Robben is not an "interested person" in this Estate as defined by NRS 132.185, and as such has no standing to object to the [First and Final] Petition, be appointed Counsel, or otherwise appear in this proceeding. Specifically, the Court heard from Mr. Robben, and after giving him additional time, Mr. Robben was unable to present any legal basis or admissible evidence to potentially allow a determination he is an interested person in this Estate. Therefore, Mr. Todd Robben is not an interested person to this Estate, and as such has no standing to oppose or object to the Petition, or otherwise appear in these proceedings. *Id.* at p. 5-6, ¶ 32.

See Exhibit 6.

18. Thereafter, on June 22, 2022, Mr. Robben filed an Emergency Stay Request – Emergency Verified Motion to Reconsider seeking reconsideration of the Court's Order granting the Estate's First and Final Petition and concluding Mr. Robben was not an interested person and had no standing in the Estate Case. Mr. Robben also filed separate Supplemental Points and Authorities in Support of his Motion to Reconsider on June 23, 2022, and filed a Motion to Expedite Stay Request Pending Reconsideration on June 24, 2022 (these papers are collectively referred to hereafter as Mr. Robben's "Motion to Reconsider").

1 19. On July 1, 2022, the Estate filed its Opposition to Mr. Robben's Motion to
2 Reconsider, to which Mr. Robben filed a Reply brief on July 5, 2022.

3 20. Separately, Mr. Robben sought to appeal the Court's July 22, 2022
4 Order in the Estate Case, filing a Notice of Appeal with the Nevada Supreme Court
5 on June 27, 2022. *See Exhibit 7.*

6 21. Thereafter, on July 8, 2022, the Nevada Supreme Court filed its Order
7 Dismissing Appeal, dismissing in entirety Mr. Robben's appeal in the Estate Case.
8 *See Exhibit 8.*

9 22. Additionally, on July 13, 2022, the District Court entered its Order
10 denying Mr. Robben's Motion for Reconsideration and all filings associated with Mr.
11 Robben's Motion for Reconsideration. As a result, Mr. Robben's efforts to in any way
12 oppose or object to any part of the administration of the Decedent's Estate, including
13 any contest of the Decedent's Will, was forever foreclosed and concluded. *See*
14 *Exhibit 9.*

15 23. Now, by and through his initial Petition in this matter, filed in or
16 around July 20, 2022, Mr. Robben identifies the Estate of Thomas J. Harris as a
17 Respondent to again contest the validity of the Decedent's Will. As demonstrated by
18 the outline above, and as further addressed below, those allegations and claims have
19 already been litigated to their conclusion and are barred: 1) because exclusive
20 jurisdiction over the Estate and the Decedent's Will rests in the Estate Case, and 2)
21 because all allegations and claims brought in this matter regarding the Estate and
22 Decedent's Will are barred by the doctrine of claim preclusion.

23 ///

24 ///

25 ///

26 ///

27 ///

28 STATEMENT OF PROPERLY CONSIDERED FACTS

STATEMENT OF PROPERLY CONSIDERED FACTS

LAW & ARGUMENT

I. The Petition should be dismissed in its entirety against the Estate.

NRCP 12(b)(1) allows a party to bring a motion to dismiss if the presiding court lacks subject matter jurisdiction over all or portions of a case. Similarly, NRCP 12(b)(5) states a party may assert the defense of failure to state a claim upon which the court may grant relief in a motion. To survive a motion to dismiss, a [petitioner] must do more than recite the formulaic elements of a cause of action. *Allen v. United States*, 964 F. Supp. 2d 1239, 1251 (D. Nev. 2013). Additionally, although a court may accept factual allegations in a complaint as true, the court need not accept legal conclusions as true when determining a motion to dismiss for failure to state a claim upon which the court may grant relief. *Id.* Thus, the court should dismiss a petition whenever it appears beyond a doubt the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

Here, the Estate respectfully requests the Court dismiss Mr. Robben's Petition in its entirety against the Estate because: 1) this Court does not have subject matter jurisdiction over claims concerning the validity of the Decedent's Last Will and Testament, 2) any contest of the Decedent's Last Will and Testament is statutorily time barred, and 3) any contest the Decedent's Last Will and Testament is barred by the doctrine of claim preclusion.

A. THERE CAN BE NO SUBJECT MATTER JURISDICTION OVER CLAIMS INVOLVING THE VALIDITY OF THE DECEDENT'S WILL BEFORE THIS COURT

In this matter, the Petition names the Decedent's Estate as a Respondent for the sole purpose of challenging the validity of the Decedent's Will. *See generally* the Petition. As presented above, the Decedent's Estate – including the Decedent's Last

1 Will and Testament – has already been subject to probate administration before
2 Department 1 of the Ninth Judicial District Court of the State of Nevada, in case no.
3 2021-PB00034 (the “Estate Case”). Therein, the Decedent’s Will was admitted to
4 probate as a valid will, and the Decedent’s Estate was administered to the
5 completion of the probate process. *See Exhibits 2 & 6.*

6 NRCP 12(b)(1) states a matter is properly dismissed in the absence of subject
7 matter jurisdiction by the presiding court. Subject matter jurisdiction for a will
8 contest is governed by Nevada Revised Statute 137.080. Specifically, NRS 137.080
9 requires a contest of the validity of a will, initiated after the will has been admitted
10 to probate, to be filed in the probate proceeding with the Court in which the will was
11 admitted to probate. *See* NRS 137.080. Thus, any contest of the Decedent’s Will
12 could only occur in the Estate Case where the Decedent’s Will was admitted to
13 probate. *Id.*; *see also Exhibits 2 & 6.* As such, no action can be had before this
14 Court as it is not the court in which the Decedent’s Will was admitted to probate,
15 i.e., it is not the Court which took jurisdiction of and oversaw the probate of the
16 Decedent’s Estate. *Id.*

17 Therefore, NRS 137.080 mandates the Court presiding over the Estate Case
18 was the court of exclusive jurisdiction for any and all allegations and claims related
19 to the validity of the Decedent’s Will. *Id.* Stated otherwise, there is no subject-
20 matter jurisdiction held by this Court for any claims or allegations contained in the
21 Petition related to the validity Decedent’s Will, mandating dismissal of the Estate
22 from this matter pursuant to NRCP 12(b)(1).

23 **B. MR. ROBBEN’S ATTEMPT TO CONTEST THE VALIDITY OF THE**
24 **DECEDENT’S WILL IS TIME BARRED**

25 NRCP 12(b)(5) states a claim is properly dismissed if it fails to state a claim
26 upon which relief can be granted. Here, Mr. Robben’s attempt to contest the validity
27 of the Decedent’s will through this matter is time barred, and on that basis fails to
28 state a claim upon which relief can be granted.

1 NRS 137.080 goes beyond establishing which court holds jurisdiction over a
2 post-probate will contest, it also states the time frame in which any such contest
3 must be brought. Specifically, NRS 137.080 requires any post-probate will contest
4 to be brought by an interested person to the estate within 3 months after the order
5 entering a will to probate has been entered. *Id.* Here, the Decedent's Will was
6 admitted to probate on April 6, 2021. Mr. Robben filed his petition in this matter in
7 July of 2022, approximately 15 months after the Decedent's Will was admitted to
8 probate, and certainly after the three-month statute of limitation mandated by NRS
9 137.080 for post-probate will contests.

10 The Estate Court has already conclusively determined Mr. Robben was not an
11 "interested person" to the Decedent's Estate, preventing him from having standing
12 to ever assert any contest of the Decedent's Will. *See Exhibit 6; see also* NRS
13 137.080. Still, even if he was an "interested person," which he is not, any post-
14 probate contest of the Decedent's Will was long since time barred three months after
15 the Decedent's Will was admitted to probate, and *long* before Mr. Robben filed his
16 Petition in this matter. Thus, as Mr. Robben's attempt to contest the validity of the
17 Will is time barred, his Petition presents a claim against the Decedent's Estate for
18 which no relief can be granted, requiring dismissal. *See* NRCP 12(b)(5).

19 C. ALL CLAIMS AND ALLEGATIONS CONCERNING THE VALIDITY OF THE
20 DECEDENT'S WILL ARE BARRED BY CLAIM PRECLUSION

21 Mr. Robben's Petition in this matter seeks to invalidate the Thomas J. Harris
22 Trust, as well as the Last Will and Testament of Thomas J. Harris (the "Decedent's
23 Will"). As outlined in detail above, Mr. Robben previously attempted to contest the
24 validity of the Decedent's Will in the Estate Case, with those efforts being fully and
25 finally addressed by the Court overseeing the Estate Case who ruled Mr. Robben
26 had no standing to contest the validity of the Decedent's Will. *See Exhibit 6*, p. 5-
27 6, ¶ 23. As such, any claims regarding the validity of the Decedent's Will are
28

1 precluded from being brought in this matter by the doctrine of claim preclusion, and
2 again fail to state a claim upon which relief can be granted. *See* NRCP 12(b)(5).

3 In Nevada, claim preclusion applies when (1) the same parties or their privies
4 are involved in both cases, (2) a valid final judgment has been entered, and (3) “the
5 subsequent action is based on the same claims or any part of them that were or could
6 have been brought in the first case. *See Alcantara ex rel. Alcantara v. Wal-Mart*
7 *Stores, Inc.*, 130 Nev. 252, 257, 321 P.3d 912, 915 (2014); *quoting Five Star Capital*
8 *Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713. Applying this three-part
9 analysis established by the Nevada Supreme Court, it becomes readily apparent
10 claim preclusion bars Mr. Robben from asserting any claims against the Estate
11 regarding the validity of the Decedent’s Will in this matter.

12 First, the same parties at issue in this matter are identical to those who
13 participated in the Estate Case, that being the Decedent’s Estate and the Petitioner,
14 Mr. Robben. Specifically, the Estate Case oversaw the administration of the
15 Decedent’s Estate, in which Mr. Robben appeared for the purpose of attempting to
16 contest the Decedent’s Will. *See Exhibits 4 through 9.* Mr. Robben has now
17 initiated this separate case naming the Decedent’s Estate as a respondent for the
18 purpose of again attempting to contest the validity of the Decedent’s Will. Thus, Mr.
19 Robben’s Petition in this matter involves the same parties who previously appeared
20 and participated in the Estate Case. *Id.*

21 Second, a valid final judgement was entered in the Estate Case regarding Mr.
22 Robben’s attempt to contest the Decedent’s Will. In the Estate Case, the Court
23 issued its Order Granting the First and final Petition on June 22, 2022. *See Exhibit*
24 *6.* NRCP 41(b) states “any dismissal not under this rule – except one for lack of
25 jurisdiction, improper venue, or failure to join a party under Rule 19 – operates as
26 an *adjudication on the merits.*” (emphasis added). The Court’s June 22, 2022 Order
27 was entered after multiple hearings where the Court considered Mr. Robben’s
28 attempt to contest the validity of the Decedent’s Will, and is a final order regarding

1 Mr. Robben's ability to contest the Decedent's Will or otherwise object to the
2 administration of the Decedent's Estate. Specifically, the Court's June 22, 2022
3 Order in the Estate Case dismissing Mr. Robben from the Estate Case was not a
4 dismissal for lack of jurisdiction, improper venue, or failure to join a party under
5 rule 19 and as such is an "adjudication on the merits" under NRCP 41(b). See
6 **Exhibit 6**, p. 5-6, ¶ 32. Moreover, the Court's June 22, 2022 Order in the Estate
7 Case was upheld after Mr. Robben's subsequent Motion for Reconsideration was
8 denied, and Mr. Robben's appeal of the Court's June 22, 2022 Order was dismissed
9 by the Nevada Supreme Court. See NRCP 41(b); see also **Exhibits 8 & 9**.
10 Furthermore, the United States Supreme Court has interpreted the phrase
11 "adjudication on the merits" to preclude the refile of the same claim in the same
12 court. *Five Star Capital Corp. v. Rudy*, 124 Nev. 1048, 1058, 194 P.3d 709, 715 (2008)
13 citing to *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 506, 121 S.Ct 1020
14 (2001). As both the Estate Case and this matter were filed in the Ninth Judicial
15 District Court of the State of Nevada, it is "clearly proper to give preclusive effect"
16 to the Orders issued in the Estate Case. *Id.* Consequently, the final orders issued
17 in the Estate Case by Department I of this District Court and by the Nevada
18 Supreme Court enacted a preclusive effect on all issues regarding the validity of the
19 Decedent's Will. *Id.*; see also *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*,
20 130 Nev. at 257; see also NRCP 41(b).

21 Third and final, Mr. Robben's allegations in this matter related to the validity
22 of the Decedent's Will are the same claims he previously brought in the Estate Case.
23 Specifically, Mr. Robben filed multiple documents and appeared at two hearings in
24 the Estate Case for the sole purpose of contesting the validity of the Decedent's Will.
25 See generally **Exhibits 4 through 6**. Now Mr. Robben brings forth his Petition in
26 this matter again attempting to contest the validity of the Decedent's Will. Thus,
27 Mr. Robben has brought forth the "same claims" regarding the validity of the
28 Decedent's Will through his initial Petition in this matter he previously – and

1 unsuccessfully – brought forth in the Estate Case. See Exhibits 6, 8, & 9. “Claim
2 preclusion applies to prevent a second suit based on all grounds of recovery that were
3 or could have been brought in the first suit. *Five Star Capital Corp. v. Rudy*, 124
4 Nev. 1048, 1058, 194 P.3d 709, 715 (2008). Therefore, Mr. Robben’s attempt to
5 reassert allegations and claims regarding the validity of the Decedent’s Will in this
6 matter are barred as they were previously alleged and litigated to their conclusion
7 in the Estate Case.

8 Even assuming, *arguendo*, Mr. Robben had not brought forth such claims and
9 allegations in the Estate Case, which he did, the claims and allegations he sets forth
10 in his Petition regarding the Decedent’s Will would still be barred, as the third prong
11 of claim preclusion acts to bar any claims – or part of any claims – that were *or could*
12 *have been* brought in the Estate Case. See *Five Star Capital Corp. v. Rudy*, 124 Nev.
13 at 1058. As established above, the Estate Case held exclusive jurisdiction over any
14 and all claims involving the validity of the Decedent’s Will. See NRS 137.080. Thus,
15 any and all claims involving the Decedent’s Will not only were brought, but *could*
16 *[only]* *have been brought* in the Estate Case, and are precluded from ever being
17 brought again in this or any other matter. *Id.*

18 Claim preclusion protects parties from repetitively having to relitigate the
19 same claims, and in doing so preserves and protects judicial economy from litigants
20 who attempt to forum shop in hope of a new and different result. Stated plainly,
21 claim preclusion works to prevent precisely what Mr. Robben is attempting to do by
22 naming the Estate as a respondent to this matter – unlawfully seeking to subvert
23 and ignore the prior rulings made by this District Court in the Estate Case.
24 Consistent with the analysis above, Mr. Robben’s attempt to again contest the
25 validity of the Decedent’s Will fails to state any claim against the Decedent’s Estate
26 for which any relief can be granted because all such claims and allegations are
27 barred by the doctrine of claim preclusion, requiring the dismissal of the Estate from
28 this matter. See NRCP 12(b)(5).

CONCLUSION & REQUESTED RELIEF

Mr. Robben's Petition is properly dismissed with prejudice against the Estate of Thomas Joseph Harris. Specifically, 1) there is not subject matter jurisdiction over the Estate in this matter, 2) Mr. Robben's attempted contest of the Decedent's Will is time-barred, and 2) Mr. Robben's allegations concerning the Decedent's Will are barred by the doctrine of claim preclusion. Therefore, Mr. Robben's Petition fails to state any claim against the Estate which can be granted, and Mr. Robben's Petition is properly dismissed.

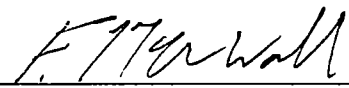
The Estate of Thomas Joseph Harris respectfully requests an order from this Court dismissing Mr. Robben's Petition against the Estate in its entirety, with prejudice.

AFFIRMATION

The undersigned affirms this document does not contain the social security number or legally private information of any person.

DATED this 6th day of October 2022.

By: _____


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*Attorneys for Tara M. Flanagan
in her capacity as the
Personal Representative of the
Estate of Thomas Harris*

CERTIFICATE OF SERVICE

The undersigned certifies the Motion for Summary Judgment was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Motion was placed in the mail for service on the date shown below.

DATED this 6th day of October, 2022.

By: 

Employee of Wallace & Millsap

LIST OF EXHIBITS

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- Exhibit 1 – The Thomas J. Harris Trust
- Exhibit 2 – Order Admitting Will to Probate and Issuing Letters Testamentary
- Exhibit 3 – Order Appointing Successor Executor
- Exhibit 4 – Notice of Motion for Continuance and Motion for Continuance
- Exhibit 5 - Request for Appointment of Counsel
- Exhibit 6 – Order Granting Petition to Confirm First and Final Accounting,
Request for Final Distribution, and Request for Payment of
Professional's Fees and Costs
- Exhibit 7 – Notice of Appeal
- Exhibit 8 – Nevada Supreme Court Order Dismissing Appeal
- Exhibit 9 - Order Denying Motion for Reconsideration

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CC

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Exhibit 1

Exhibit 1

DECLARATION OF TRUST
KNOWN AS THE
THOMAS J. HARRIS TRUST,
DATED JUNE 12, 2019

This DECLARATION OF TRUST is entered into this 12th day of June, 2019, by THOMAS JOSEPH HARRIS as Trustor, and delivered to and received by THOMAS JOSEPH HARRIS as Trustee.

TRUST ASSETS

THOMAS JOSEPH HARRIS ("Trustor") hereby declares he as Trustee ("Trustee") now holds in trust the property and assets described in Exhibit "A" attached hereto and all other property hereafter received. The interest now and hereafter received by the Trustee in such property, together with all property now or hereafter subject to this trust, shall constitute the trust estate of the THOMAS J. HARRIS TRUST, which is the trust established under this document, and shall be held, managed, and distributed as hereinafter provided.

All property and assets now or hereafter transferred into this trust shall be held by the Trustee in the following manner:

THOMAS JOSEPH HARRIS, AS TRUSTEE OF THE THOMAS J.
HARRIS TRUST, U/D/T (UNDER DECLARATION OF TRUST)
DATED JUNE 12, 2019, WHEREIN THOMAS JOSEPH HARRIS IS
TRUSTOR, OR ANY SUCCESSOR TRUSTEE THEREUNDER.

TRUST DISTRIBUTION

The Trustee shall apply and distribute the net income and principal of the trust established under this document as set forth in the attached Schedule A, which is incorporated herein by this reference.

TRUST ADMINISTRATION

The Trustor, the Trustee(s), and the beneficiaries of each trust established under this document shall have the powers, rights, duties, and obligations (and are subject to all the provisions) set forth in the attached Schedules B and C, which are incorporated herein by this reference.

SUCCESSOR TRUSTEES

If the original Trustee fails, ceases, or otherwise is unable to serve, the following individuals are nominated to serve as the successor Trustee of all trusts created hereunder, in the order of priority indicated: (1) JEFF DEWEY ROBBEN; (2) SCOTT BARTON; (3) TARA FLANAGAN; (4) LAURIE DUNN. Thereafter, whenever there is a vacancy in the trusteeship of any trust established under this document, a majority of the adult beneficiaries then entitled to

receive income of the Trust may nominate and appoint a successor trustee. If a majority of the adult beneficiaries then entitled to receive income of the Trust are unwilling or unable to appoint a successor trustee, or if for any other reason there is ever a complete vacancy in the trusteeship of any trust established under this document, the successor trustee shall be the person or institution (or both) appointed by a court of competent jurisdiction.

Any designation of a successor trustee may be, or may include, the person making the designation. Any designation of a successor trustee must be set forth in a document signed by the person making the designation and delivered to the trustee, if there is one, or otherwise delivered to the next successor trustee. If more than one such designation is made, the one made nearest to the creation of the vacancy to be filled shall control.

Despite the foregoing, while Trustor is living, the Trustor may appoint an additional person(s) or institution, or both, as a Co-Trustee or successor Trustee or Co-Trustee of any trust established under this document. Such appointment must be made by giving written notice of the appointment to each Trustee then serving. In addition, the Trustor may remove any additional Co-Trustee he so appointed. Such removal must be made by giving written notice of the removal to each Trustee serving at the time of such removal.

Whenever an individual or corporation is acting as sole Trustee, whether pending appointment of a Co-Trustee or otherwise, such Trustee shall have full powers with respect to the management, investment and distribution of the trust estate, including final distribution of the trust estate upon the trust's termination.

SIGNATURE

As the Trustor and initial Trustee, I have signed this Declaration of Trust on June 12, 2019, at Reno, Nevada.


THOMAS JOSEPH HARRIS

NOTARY ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On June 12, 2019, before me, Barbara A. Spagna, Notary Public, personally appeared **THOMAS JOSEPH HARRIS**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Barbara A. Spagna
Signature of Notary

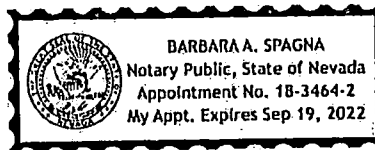


EXHIBIT "A"
TO
DECLARATION OF TRUST

I, THOMAS JOSEPH HARRIS, as Trustor and Trustee, declare the following property is my separate property, is hereby assigned to this trust, and shall constitute the property of the THOMAS J. HARRIS TRUST:

1. Safe Deposit Box:

All of Trustor's right, title and interest in and to all contents in the safe deposit box located at Wells Fargo Bank, in the Carson City, NV, branch office, including but not limited to cash, bonds, stock, securities, and tangible property therein.

2. Bank Accounts:

All cash, bonds, stock, securities, and other property held with Wells Fargo Bank, including but not limited to account 1992211233.

3. All Other Personal Property:

All of Trustor's right, title, and interest subject to all liabilities attached thereto in all automobiles, boats, airplanes, vehicles, trailers, silverware, chinaware, wine, books, pictures, paintings, works of art, household furniture and furnishings, clothing, jewelry, pets, assets in digital form for which Trustor is the owner or author, including without limitation, lists of passwords, user account information, social media sites, blogs, e-books, and other Web-hosted materials, all digital albums and videos, websites on which Trustor conducts business transactions, and all other personal property (together with any insurance on such property) now owned or acquired later during Trustor's lifetime.



THOMAS JOSEPH HARRIS, Trustor and Trustee

SCHEDULE A
DISTRIBUTION OF TRUST
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SCHEDULE A

DISTRIBUTION OF TRUST

The Trustee shall apply and distribute the net income and principal of the trusts created under this document as follows:

A-1. Income Distribution. To the extent income is distributable, net income shall be distributed in monthly or other convenient installments, but at least annually, to or for the benefit of the person or persons entitled to receive such net income.

A-2. Distributions During Life of Trustor. During the life of the Trustor, the Trustee shall pay the net income of the trust estate to Trustor or pursuant to Trustor's written directions which are delivered to Trustee, from time to time. In addition, Trustee shall pay to Trustor or pursuant to the directions of Trustor as much of the principal of the trust estate as Trustor may direct in a writing that is delivered to Trustee. Notwithstanding the foregoing, while the Trustor is living and serving as Trustee, oral instructions or requests are sufficient. For such periods as Trustee determines that Trustor is physically or mentally unable to direct Trustee, Trustee shall pay to or for the benefit of Trustor as much of the net income and principal of the trust estate as Trustee in Trustee's discretion deems reasonably necessary for the comfortable support, health, and welfare of Trustor. Such discretion shall be liberally applied with a view to maintain the lifestyle of the Trustor existing at the time he became physically or mentally unable to direct the Trustee. Any net income not distributed during such periods shall be accumulated and added to the principal of the trust estate.

A-3. Payments at Death of Trustor. Upon the death of the Trustor, the Trustee may pay out of income or principal (other than principal from any qualified plan or individual retirement account, unless such payments are made before September 30 of the year after the death of the Trustor, in which case, principal from any qualified plan or individual retirement account may be used) any part or all of the tax and other expenses as set forth in Paragraph C-1 of Schedule C of this Trust that are attributable to the trust estate of the THOMAS J. HARRIS TRUST, to the extent these obligations are not paid or responsibility for their payment assumed by some other person or estate.

A-4. Specific Gifts Following the Trustor's Death. After the Trustor's death, and after making any payments required by the preceding paragraphs, the Trustee shall divide, allocate and distribute the remaining trust estate as set forth below, outright and free of trust except where otherwise specified:

a. Seventeen and One-Half Percent (17.5%) to my son, THOMAS ANTHONY HARRIS, if he is then living. If THOMAS ANTHONY HARRIS predeceases all or any portion of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

b. Seventeen and One-Half Percent (17.5%) to my stepson, JEFF DEWEY ROBBEN, if he is then living. If JEFF DEWEY ROBBEN predeceases all or any portion of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

c. Eleven Percent (11%) to my former daughter-in-law, JOANNE RENEE MICHAEL, if she is then living. If JOANNE RENEE MICHAEL predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

d. Eleven Percent (11%) to my step-grandson, JACOB MICHAEL ROBBEN ("JACOB"), if he is then living. Such gift shall be transferred outright and free of trust to a custodial account for JACOB, to be held, administered and distributed pursuant to Nevada's Uniform Act on Transfers to Minors (NRS Section 167.030) for JACOB's benefit until he attains twenty-one (21) years of age ("Jacob's Gift"). The initial custodian for any such transfer shall be the same person as the successor Trustee of this Trust generally; and such successor Trustee shall have the power to designate a successor custodian if he or she is unwilling or unable to serve in that capacity (except as otherwise provided below concerning Jacob's father, TODD C. ROBBEN). It is the Trustor's desire, without imposing any legal obligation in this regard: (1) Jacob's Gift shall be used for JACOB's education expenses as defined in Paragraph A-7 of this Trust; (2) the custodian shall distribute to or for the benefit of JACOB an amount not-to-exceed two and one-half percent (2.5%) of Jacob's Gift upon JACOB's acceptance to an accredited 4-year undergraduate program; and (3) the custodian shall distribute the balance of Jacob's Gift to or for the benefit of JACOB upon his graduating with a 4-year degree (e.g., Bachelor's degree or equivalent). It is Trustor's further desire, with all legal force and effect, that TODD C. ROBBEN shall never serve as a custodian of this gift; and that no share of this gift shall ever pass, by inter vivos gift or by reason of JACOB's incapacity or demise, to or for the benefit of TODD C. ROBBEN. If JACOB predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below.

e. Eleven Percent (11%) to my sister-in-law, JEANETTE LEMA, currently residing at 4880 Rivendale Road, Placerville, CA 95667, if she is then living. If JOANNE RENEE MICHAEL predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

f. Eight and One-Half Percent (8.5%) to LINDA RUBULIAK, currently residing in Canada, if she is then living. It is the Trustor's desire, without imposing any legal obligation in this regard, that such gift shall be shared with Trustor's Canadian kin known to LINDA RUBULIAK in amounts in her sole and absolute discretion. If LINDA RUBULIAK predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

g. Five Percent (5%) to BECKY MONSOUR, currently residing at 1052 Pebble Beach Ct., Minden, NV 89423 (Tel. 775-267-3133), if she is then living. If BECKY MONSOUR predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

h. Two and One-Half Percent (2.5%) to GEORGE PERRY and MIDGE PERRY, or all to the survivor of them, currently residing at 11341 E Navarro Ave., Mesa, AZ 85209 (Tel. 480-272-8748. If both GEORGE PERRY and MIDGE PERRY predecease distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

i. Two and One-Half Percent (2.5%) to MARCELINE (aka "MARCI") FULBRIGHT (Tel. 775-350-8447), if she is then living. If MARCELINE FULBRIGHT predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

j. One and One-Half Percent (1.5%) to BARBARA LIVINGSTON, currently residing at 8144 Orchid Tree Way, Antelope, CA 95843 (Pbliv@aol.com), if she is then living. It is the Trustor's desire, without imposing any legal obligation in this regard, that such gift shall be shared with BARBARA LIVINGSTON'S children in amounts in her sole and absolute discretion. If BARBARA LIVINGSTON predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

k. One Percent (1%) to DENNIS SYLVIA, currently residing at 4007 Cortina Drive, Austin, TX 78749 (Tel. 512-289-8780), if he is then living. If DENNIS SYLVIA predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

l. One Percent (1%) to MARY THOMAS, currently residing at 3400 S. Centinela Avenue, Apt. 4, Los Angeles, CA 90066 (Tel. 310-397-4662), if she is then living. If MARY THOMAS predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

m. One Percent (1%) to ELAINE PELLETIER, currently residing at 1053 Pebble Beach Ct., Minden, NV 89423 (Tel. 775-392-0049), if she is then living. If ELAINE PELLETIER predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

n. One Percent (1%) to NINA ROUTON (Tel. 714-296-3336), if she is then living. If NINA ROUTON predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

o. One Percent (1%) to PHILIP FENSKE (pfenske@yahoo.com; Tel. 530-307-0123; or 530-541-5262), if he is then living. If PHILIP FENSKE predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

p. One-Half of One Percent (0.5%) to BARBARA GLASCOCK and BILL GLASCOCK, or all to the survivor of them, currently residing at 1053 Pebble Beach Ct., Minden, NV 89423 (Tel. 775-267-5041). If both BARBARA GLASCOCK and BILL GLASCOCK

predecease distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

q. One-Half of One Percent (0.5%) to AL PERONA and DAT PERONA, or all to the survivor of them, currently residing at 3441 Long Drive, Minden, NV 89423 (Tel. 775-267-2703). If both AL PERONA and DAT PERONA predecease distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

r. One-Half of One Percent (0.5%) to LYNN KEELY and LUKE KEELY, or all to the survivor of them, currently residing at 1056 Pebble Beach Ct., Minden, NV 89423 (Tel. 775-392-3202). If both LYNN KEELEY and LUKE KEELY predecease distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

s. One-Half of One Percent (0.5%) to GERALDINE COELHO, if she is then living. If GERALDINE COELHO predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

t. One-Half of One Percent (0.5%) to MARYANN SYLVIA, currently residing at 1558 Middle Lane, Hayward, CA 94554 (Tel. 510-783-2432), if she is then living. If MARYANN SYLVIA predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

u. One-Half of One Percent (0.5%) to JUDY GIALLONGO and MARIO GIALLONGO, or all to the survivor of them, currently residing at 921 Springfield Drive, Gardnerville, NV 89460 (Tel 775-265-0530). If both JUDY GIALLONGO and MARIO GIALLONGO predecease distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

v. One-Half of One Percent (0.5%) to ROBERTA REID, currently residing at 14911 Puerto Drive, Rancho Murieta, CA 95683 (grammiebreid@hotmail.com), if she is then living. If ROBERTA REID predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

w. One-Half of One Percent (0.5%) to JULIE ROSS, currently residing at 3933 Virginia Road, #207, Long Beach, CA 90807 (jross@csulb.edu), if she is then living. If JULIE ROSS predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

x. One-Half of One Percent (0.5%) to TARA FLANAGAN, currently residing at 2394 Mariner Square Drive #114, Alameda, CA 94501 (tarafan@aol.com), if she is then living. If TARA FLANAGAN predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

y. One-Half of One Percent (0.5%) to LAURIE DUNN and THOMAS DUNN, or all to the survivor of them, currently residing at 33 Daryl Drive, Orinda, CA 94563 (Tel. 925-254-2383). If both LAURIE DUNN and THOMAS DUNN predecease distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

z. One-Half of One Percent (0.5%) to TAMARA FLANAGAN, currently residing at 3737 North Country Club Road, #211, N. Tucson, AZ 85716 (Buffalogirl58@gmail.com), if she is then living. If TAMARA FLANAGAN predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

aa. One-Half of One Percent (0.5%) to MARK DEHAESUS, currently residing at 1829 Scott Road, Concord, CA 94519 (ukrainianfighter@yahoo.com), if he is then living. It is the Trustor's desire, without imposing any legal obligation in this regard, that such gift shall be shared with Trustor's MARK DEHAESUS's children in amounts in his sole and absolute discretion. If MARK DEHAESUS predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below;

bb. One-Half of One Percent (0.5%) to JOHN ROBBEN, whose current mailing address is P.O. Box 2386, Stateline, NV 89449 (johnnyaction@hotmail.com), if he is then living. If JOHN ROBBEN predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below; and

cc. One-Half of One Percent (0.5%) to ROSEMARY ROBBEN, currently residing at 1660 Quartz Drive, Auburn CA 95602 (Rosemaryrobben@yahoo.com), if she is then living. If ROSEMARY ROBBEN predeceases distribution of this gift, such gift shall lapse and fail in its entirety, and shall be added to and augment the trust estate, to be distributed pursuant to Paragraph A-4(dd) below.

dd. Any lapsed gift for a designated beneficiary in Paragraphs A-4(a) through (cc) above who predeceases distribution (a "Lapsed Gift") shall be added to and augment pro rata the gifts for the then living beneficiaries designated in Paragraphs A-4(a)-(cc) above. Any Lapsed Gift(s) which cannot be distributed under the foregoing terms shall be distributed under the contingent disposition provisions in Paragraph A-6 below.

A-5. Distribution of Personal Effects. Despite any contrary provision of this document, following the Trustor's death if the Trustee holds or receives any automobile, boat, household furniture, works of art, collections, furnishings, clothing, jewelry, coins, silver, books, or other effects of a personal nature, the Trustee shall distribute such property to (or hold it for the use of) JEFF D. ROBBEN and THOMAS ANTHONY HARRIS, in equal shares as they may agree or as the Trustee shall determine if they cannot agree (or all to the survivor of them, if only one is then living). If both JEFF D. ROBBEN and THOMAS ANTHONY HARRIS predecease or disclaim any one or more of items of Trustor's tangible personal property, this gift shall lapse and fail in its entirety, and the Trustee may liquidate the personal effects, insofar as practical, and the net proceeds shall be added to and augment the remaining trust estate for distribution pursuant to

Paragraph A-4 above. If any effect of a personal nature is not saleable or is of nominal value, in the Trustee's sole and absolute discretion, the Trustee may donate, give to any named beneficiary under Paragraph A-4 of this Trust, or abandon such item(s) of property, as the Trustee deems best.

A-6. Contingent Disposition. Any portion of the trust not disposed of pursuant to the foregoing provisions shall be distributed outright and free of trust among the then-living beneficiaries designated in Paragraphs A-4(a) through A-4(cc) of this Trust, in the proportions stated therein. Any portion of the trust not disposed of pursuant to the foregoing provisions shall be distributed outright and free of trust to the Trustor's legal heirs, excluding TODD C. ROBBEN, as a remainder interest and not by way of reversion. The identity and respective shares of those heirs shall be determined in all respects as though the death of the Trustor had occurred immediately following the happening of the event requiring that distribution, and according to Nevada's laws of intestate succession then in force relating to the succession of separate property not received from a previously deceased spouse, parent or grandparent. The identity and the respective shares of those heirs shall be determined by the Trustee, and those determinations shall be conclusive on all heirs and other persons interested in the trust. The Trustee shall not be liable for any errors or omissions in making those determinations.

A-7. Definition of Education. Whenever provision is made in this trust for payment for the education of a beneficiary, the term "education" shall be construed to include education at a private primary or secondary institution, and vocational, college and postgraduate study, so long as pursued to advantage by the beneficiary as a full-time student at an institution of the choice of the beneficiary. In determining payments to be made for such education, Trustee shall take into consideration the beneficiary's related living expenses, if any, to the extent that they are reasonable. The term "education" shall also be construed to include athletic, musical, artistic or other special activities so long as seriously pursued to advantage by the beneficiary in a recognized program of the choice of the beneficiary.

A-8. Spendthrift Provision. No interest in the principal or income of this Trust shall be anticipated, assigned, encumbered, or subjected to a creditor's claim or other legal process, including bankruptcy, before actual receipt by the beneficiaries. If the creditor or bankruptcy trustee of any beneficiary who is entitled to any distribution from this Trust attempts by any means to subject to the satisfaction of such creditor's or bankruptcy claim that beneficiary's interest in any distribution, then notwithstanding any other provisions in this instrument, until the release of the writ of attachment or garnishment or termination of such other legal process, the distribution set aside for such beneficiary shall be disposed of as follows:

(a) Distributions Limited to Health, Education, Maintenance, or Support: The Trustee shall pay to or apply for the benefit of such beneficiary all sums the Trustee determines to be necessary for the reasonable health, education, maintenance, or support of the beneficiary according to his or her accustomed mode of life; and

(b) Remainder Added to Principal: The portion of the distribution the Trustee determines to exceed the amount for the support, maintenance, health, or education shall instead in the Trustee's discretion either be added to and become principal in whole or in part or be paid to or applied for the benefit of the other beneficiary then entitled to receive payments from any trust established under this instrument, in proportion to their respective interests in the trust estate.

A-9. Release of Powers. Notwithstanding the spendthrift provision contained in the immediately preceding Paragraph or any other language in this Declaration of Trust, any power created by this Declaration of Trust may be disclaimed, released or restricted in scope, whether that power is expressly granted in this Declaration of Trust or is implied by law. Any such power may be released to the extent and in the manner prescribed by Nevada Revised Statutes 120.100–120.350 (the Uniform Disclaimer of Property Interests Act) as it exists at the time that this trust is executed. Any disclaimed or released power shall pass to and be exercised by the independent individual or corporate trustee next appointed herein.

A-10. The Trustee May Terminate Trust. If after the death of the Trustor, in the Trustee's discretion, the Trustee determines the total value of the property held in trust pursuant to this instrument is sufficiently small that the administration thereof is no longer economically desirable, the cost of administration is disproportionate to the value of the assets, or the continuation of the trust is no longer in the best interests of all of the current and future beneficiaries of the trust, the Trustee may terminate such trust. Upon termination as herein provided, the Trustee shall distribute the property of that trust to the person or persons who are then entitled to receive the income from that trust in the proportion that such persons are then entitled to receive the income, insofar as such distribution is specified in the trust, otherwise the Trustee shall distribute such trust equally to such persons.

A-11. Maximum Duration of Trust. The trusts created hereunder shall be perpetual to the fullest extent permitted by Nevada law. If any trust created hereunder is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust (other than a trust created by the exercise of a general power of appointment, as defined in §2041 of the Internal Revenue Code conferred hereunder which exercise commences a new rule against perpetuities period under the law of such jurisdiction) shall terminate in all events upon the expiration of the longest period that property may be held in trust under this Trust under the law of such jurisdiction (including any applicable period in gross, such as 21 years, 90 years or 365 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Paragraph shall apply only to such property. Upon such termination, the balance of any trust so terminated shall be distributed to the income beneficiaries of that trust who are then living in the proportions in which they are, at the time of termination, entitled to receive income. However, if the rights to income are not then fixed by the terms of that trust, distribution under this Paragraph shall be made, by right of representation, to such issue of the Trustor's who are then living and are entitled or authorized in Trustee's discretion to receive income payments, or, if there are no such issue of the Trustor, in equal shares to those beneficiaries who are then entitled or authorized in Trustee's discretion to receive trust payments.

A-12. Disinheritance Clause. Except as otherwise provided in this Trust, the Trustor has intentionally and with full knowledge failed to provide for the Trustor's heirs, specifically including but not limited to any former spouse (or estate of a deceased former spouse), Trustor's stepson, TODD CHRISTIAN ROBBEN, and all legal and alleged heirs, children, stepchildren, adopted children, parents, foster parents, and all persons of any degree of relationship whatsoever, including said individuals who are not in being at the date of execution of this Trust or who are adopted by the Trustor after this Trust is executed.

[END OF SCHEDULE A]

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SCHEDULE B
POWERS AND GENERAL PROVISIONS
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SCHEDULE B

POWERS AND GENERAL PROVISIONS

The Trustor, the Trustee and the beneficiaries of each trust established under this document shall have the following powers, rights and duties, in addition to any now or hereafter conferred by law, and are subject to the following provisions:

B-1. Investment Directions from Trustor.

(a) While the Trustor is living, the Trustor shall have the right at any time to direct the Trustee to retain, sell, exchange or lease any asset of the trust; to invest and/or deposit funds of the trust; or to purchase any asset the Trustor may designate and that is acceptable to the Trustee. Upon receiving such a direction, the Trustee must comply with it, and the Trustee shall have no liability to any beneficiary for the consequences of complying with that direction. In the absence of such directions, the Trustee shall have full power and authority to invest and reinvest the trust's assets.

(b) During the legally declared or medically certified disability of the Trustor, or during such time as the Trustee determines, in the Trustee's sole discretion, that the Trustor is unable to exercise such investment rights because of physical incapacity or for any other reason, the Trustee shall have and exercise full powers and duties of management. Upon such a disability of the Trustor, and whenever the Trustor is not a Trustee, the Trustee is requested, when it is practical, to consult with the Trustor concerning the retention, sale, exchange, lease or other investment of the trust's assets. The Trustee is requested to give consideration to the Trustor's recommendations relating to such matters, without, however, being required to follow such recommendations.

B-2. General Management Powers.

- (a) Regarding the trust or any of its assets, the Trustee shall have the power:
- (i) to hold undivided interests in the same property;
 - (ii) to sell, convey, exchange, partition, convert, improve, repair, manage, operate or control;
 - (iii) to lease for terms within or beyond the term of the trust for any purpose, including exploration for and removal of gas, oil or other minerals;
 - (iv) to enter into community oil leases;
 - (v) to carry insurance of such kind and in such amounts as the Trustee deems advisable, at the expense of the trust;
 - (vi) to pay, compromise or settle by arbitration, compromise or otherwise any claim against or in favor of the trust;

(vii) to release, in whole or in part, any claim belonging to the trust to the extent the Trustee, in the Trustee's discretion, deems it uncollectible;

(viii) to commence, compromise or defend litigation with respect to the trust or any of its assets as the Trustee, in the Trustee's discretion, deems advisable, at the expense of the trust;

(ix) to invest and/or deposit and reinvest in such assets as the Trustee, in the Trustee's discretion, deems advisable, whether or not permitted by law for the investment of trust funds, including, but not limited to, general or limited partnership interests, mineral interests, mutual funds, promissory notes (secured by deeds of trust or mortgages, or unsecured), encumbered or unencumbered real property, or interests in any common trust fund administered by the Trustee solely for the investment of trust assets;

(x) to grant an option involving the disposition of an asset or a lease or to take an option for the acquisition of an asset or a lease;

(xi) to make ordinary or extraordinary repairs or alterations in buildings or other trust assets; to demolish any improvement; and to raze existing or erect new party walls or buildings;

(xii) to purchase or otherwise acquire unproductive property; provided, however, that any current income beneficiary by written instrument delivered to the Trustees shall have the right to direct the Trustees to convert any non-income producing property, held in the individual beneficiary's share, to income-producing property, and the Trustees shall comply with such direction within a reasonable time after it is received;

(xiii) to subdivide or develop real estate; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; and to dedicate land, or interests in land (such as easements), to public use without consideration; and

(xiv) to effect incorporation, dissolution, or other change in the form of organization of a business or enterprise; to form partnerships and limited liability companies; and to establish trusts.

(b) The Trustee may exercise the foregoing powers upon such terms and in such manner as the Trustee, in the Trustee's discretion, deems advisable. The enumeration of the foregoing powers of the Trustee shall not limit the Trustee's general or implied powers. Subject always to the discharge of the Trustee's fiduciary obligations, the Trustee shall have all of the rights, powers and privileges that an owner of the trust's assets would have. The Trustee may also continue to exercise any power or discretion for a reasonable period after the termination of the trust, but only for so long as no law relating to perpetuities would be violated.

B-3. Access, Use and Control of Digital Assets and Media. The Trustee shall have the power to access, use, hold and control any asset held by any kind of computing or digital storage device or that is otherwise in digital form, in which the Trustor is the owner or the author,

including without limitation lists of passwords; user account information; social media sites; blogs, e-books, and other Web-hosted materials; all digital albums and videos; and websites on which the Trustor conducts business transactions. The Trustor hereby authorizes any person or entity that possesses or controls any electronically stored information, or that provides to the Trustor an electronic communication service, to divulge to the Trustee any electronically stored information or any record or other information pertaining to the Trustor. This authorization is to be construed as the lawful consent of each Trustor to all such access or disclosure under the Electronic Communications Privacy Act of 1986, the Computer Fraud and Abuse Act of 1986, and any other applicable state or federal data privacy law, as such laws may be amended. The Trustee is authorized to employ any consultants or agents to advise or assist the Trustee in decrypting any encrypted electronically stored information of the Trustor, or in bypassing, resetting, or recovering any password or other kind of authentication; and the Trustor hereby authorizes the Trustee to take any of the foregoing actions to access: (1) any kind of computing device of the Trustor; (2) any kind of data storage device or medium of the Trustor; (3) any electronically stored information of the Trustor; and (4) any user account of the Trustor. The terms used in this Paragraph are to be construed as broadly as possible, including as contemplated in the Uniform Fiduciaries Access to Digital Assets Act, and any other applicable state or federal data privacy law, as such laws may be amended. The term "user account" includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

B-4. Election of Directors. The Trustee may elect one or more of the individual Trustees to the Board of Directors or similar governing body of any corporation or organization in which the trust has an interest. Any Trustee may serve as a director, trustee, officer, employee, partner, manager, trustee or agent of such a corporation or organization, and, in addition to his or her compensation as the Trustee, may retain all compensation received for such services without accounting to the trust. The Trustee may obtain liability insurance for the Trustee's services as such an officer or director and may pay the premiums on such insurance from the trust. Such premium payments shall not reduce the compensation otherwise payable to the Trustee.

B-5. Trustee's Conflicts of Interest.

(a) The Trustee may exercise all of the rights and powers accorded the Trustee by law, or by the provisions of this document, with respect to shares of stock, corporate obligations, partnership interests and other assets that are a part of, or that may become a part of, the trust, regardless of any interest the Trustee (or the Trustees, if there is more than one), either individually or as a fiduciary of any estate or trust, may have in such assets. Without limiting the generality of the foregoing, the Trustee may exercise such powers even if the Trustee (or any Trustee) may, at the time of such exercise, be an officer, director, partner, manager, member, employee or shareholder of any corporation or other entity, the securities of which are a part of the trust, or an Executor, Administrator, Conservator, Guardian or Trustee of an estate or trust having an interest in any such corporation or other entity.

(b) No individual Trustee shall be liable because of the investment of his or her own assets, or the assets of others for which he or she may have investment responsibility, in common with the assets of the trust, nor shall any such investment made on behalf of the trust be void or voidable by any person.

(c) Each individual Trustee may act individually as a partner (limited or general), director, officer, manager, member or employee of any partnership, corporation or other business organization in which the trust has an interest. In addition to his or her compensation as the Trustee, an individual Trustee may receive from such business organization compensation for his or her services, without accounting to the trust.

(d) The selection of the Trustee (including the successor Trustees and the method of their selection) was made with full knowledge that the situations mentioned in the preceding subparagraphs of this Paragraph might arise and, accordingly, no Trustee shall be subject to surcharge or any other claim by or on behalf of anyone who may be interested in the trust arising out of, or claimed to arise out of, any possible conflict of interest based upon the interest of any Trustee (either individually or as a fiduciary of any estate or trust) in any asset that is, or may become, a part of the trust.

(e) The preceding subparagraphs of this Paragraph shall be liberally construed to the end that any Trustee (as an individual or as a fiduciary of any other estate or trust) may deal with himself (or herself or itself, as the case may be) as a Trustee of the trust in matters pertaining to any asset that is, or may become, a part of the trust as if such Trustee were a stranger to the trust.

B-6. Money Market Funds. The Trustee may invest in so-called "money market" funds. For the sole purpose of making such an investment, the Trustee may affect short sales and buy on margin and may pledge any security of the trust, whether held by the Trustee or in a margin account with a securities broker, as security for loans and advances made to the Trustee. The Trustee may execute such agreements and other documents, including margin and securities lending agreements, that may be required by securities brokerage firms in connection with any investment in a "money market" fund.

B-7. Retention of Assets. The Trustee may retain in the trust, for such time as the Trustee deems proper, any asset received by the Trustee. The Trustee may also operate at the risk of the trust any asset or business received by the Trustee, and the profits and losses from it shall inure to (or be chargeable against the trust as a whole and not to the Trustee. The foregoing applies to any asset or business, whether received during the lifetime of the Trustor or on or after the death of the Trustor, or purchased by the Trustee pursuant to the directions of the Trustor, and whether or not such asset or business is of the character permitted by law for the investment of trust funds. The foregoing provisions specifically apply to shares of any corporate Trustee's own stock.

B-8. Residence of the Trustor. If a residence, or any interest in a residence, is ever held as part of the trust, the Trustor may reside in such residence without being required to pay rent. The Trustee shall pay all of the taxes, insurance, mortgage, maintenance, repairs or other capital expenditures, and other expenses in connection with that residence, or any other residence subsequently obtained.

(a) Upon the request of the Trustor, or if the Trustee determines that (i) the retention of such residence results in a burden on the trust that is economically unfeasible, or (ii) that another residence would be more suitable, the Trustee may sell, lease, or otherwise dispose of such residence. Unless such a sale, lease or other disposition was at the request of the Trustor, the Trustee should obtain the consent of the Trustor before making the sale, lease, or other

disposition. However, if the Trustor cannot give such consent, the Trustee may act without first obtaining it. Upon any such sale, lease, or other disposition, the Trustee may buy, lease, or otherwise acquire a new residence.

(b) The Trustee may sell the interest of the trust in any residence to any beneficiary of the Trust at its then current market value, despite the fact such beneficiary may be a Trustee of the trust.

(c) For purposes of this Paragraph, "residence" includes both a primary residence and a secondary residence, such as a vacation residence.

B-9. Securities. Regarding securities, the Trustee shall have all of the rights, powers and privileges of any owner, including without limitation the power to give proxies, pay calls, assessments, and other sums deemed by the Trustee necessary for the protection of the trust. The Trustee may participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and, in connection with them, may deposit securities with and transfer title to any protective or other committee under such terms as the Trustee deems proper. The Trustee may exercise or sell stock subscription and conversion rights. Regardless of any limitation elsewhere in this document relative to investments by the Trustee (other than the Survivor's right to make non- or low-income producing assets productive), the Trustee may accept and retain as a trust investment securities received through the exercise of any of the foregoing powers.

B-10. Borrowing. The Trustee may borrow money for any trust purpose, upon such terms and conditions as the Trustee deems proper, and may obligate the trust for the repayment of such borrowing. The Trustee may encumber the trust's assets by mortgage, deed of trust, pledge or otherwise. The Trustee may transfer any trust asset for the purpose of effecting any encumbrance, including leases, and retransferring to the Trustee subject to such encumbrance. Any such transfer and retransfer shall in no way suspend or impair the trust. The Trustee may also replace, renew or extend any encumbrance upon the trust's assets.

B-11. Loans from the Trustee. The Trustee may lend or advance the Trustee's own funds to the trust for any trust purpose, at the then current rate of interest. Such a loan or advance, together with interest, shall be a first lien against the trust's assets and shall be repaid from them.

B-12. Loans to Other Trusts or Probate Estates. The Trustee may lend trust principal at the then current interest rate to, or may purchase assets at their fair market value from, any other trust established under this document or the probate estate of either Trustor.

B-13. Guaranties and Security Interests. The Trustee may give such guaranties, warranties or indemnifications as the Trustee, in the Trustee's discretion, deems proper. While Trustor is living, the Trustee may encumber any asset of the THOMAS J. HARRIS TRUST by mortgage, deed of trust, pledge or otherwise, for the purpose of securing any indebtedness of the Trustor.

B-14. Insurance on a Trustee's Life. Despite any contrary provision of this document, no Trustee shall have any power, as a Trustee, to exercise any incident of ownership in any life insurance policy owned by the trust that insures that Trustee, in his or her individual capacity. All incidents of ownership in any such policy shall be exercised by the Co-Trustee(s), if any, other

than the person insured by that policy. If there is no non-insured Trustee, a special Trustee shall be appointed for this purpose as though there were a vacancy in the trusteeship of the trust.

B-15. Provisions Relating to Policies of Life Insurance.

(a) Trustor to pay premiums. Until the Trustor otherwise directs in writing and furnishes funds therefore, the Trustee shall not be required to pay premiums, assessments or other charges upon any of life insurance policy on the life of the Trustor, if any, and shall hold them subject to the order of the Trustor during his life without obligation other than the safekeeping of such policies that may be delivered to the Trustee.

(b) Rights reserved. The Trustor has reserved all rights, options and privileges conferred upon the insured by the terms of the policies; to the extent that the Trustor is the owner of such policies, sickness, disability or other benefits and all dividends accruing on the policies during his life shall be paid by the insurer directly to the insured, or to the Trustor/owner thereof, as the case may be, until the owner of the policy directs otherwise in a writing filed with the insurer and the Trustee.

(c) Insurance proceeds to the Trustee. Upon receipt of proof of death of the Trustor whose life is insured and upon receiving possession of the policies insuring the Trustor, the Trustee shall use all reasonable efforts to collect all sums payable thereon, which sums upon receipt shall become principal of the trust estate, except interest paid by the insurer, which shall be income.

(d) Insurance powers of the Trustee. The Trustee may exercise any settlement option under any policy and may compromise, arbitrate or otherwise adjust claims upon any of the policies. The receipt of the Trustee to the insurer shall be a full discharge, and the insurer is not required to see to the application of the proceeds. The Trustor agrees that any quasi-community property or community property interest that he may have in any policy of insurance and any proceeds thereof shall be included in the trust estate.

(e) Protection of the Trustee. The Trustee shall not be responsible for any acts or omissions of the Trustor in connection with or relating to any life insurance policy and shall not be required to prosecute any action to collect any such insurance or to defend any action relating to any of such policies unless indemnified in manner and amount satisfactory to the Trustee.

(f) Beneficiary/Trustee – Life Insurance. The Trustee shall continue to hold as part of the trust estate any policies of insurance on the life of any beneficiary of this trust, which policies shall become part of the trust estate in any manner. If that beneficiary is acting as Trustee, while that beneficiary is so acting, an appointed special trustee, other than that beneficiary, also referred to as "consultant for insurance," shall exercise all powers conferred upon the owner of any such policy insuring that beneficiary. The Trustee shall take all steps necessary or appropriate to implement the actions of the consultant for insurance, who shall hold such powers in trust and shall designate this trust as beneficiary of all such policies. On the request of the insurer, the Trustee shall execute any documents required to implement the actions taken by the consultant for insurance relative to any such policy. The Trustee shall charge all premiums on such policies as are continued in force against the income, or if the income is insufficient, against the income and the principal of the trust estate.

B-16. Principal and Income Determination. Except as otherwise specifically provided in this trust, to determine all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of receipts and disbursements between these accounts pursuant to the provisions of Nevada Revised Statutes 164.780–164.925 (“Nevada Revised Uniform Principal and Income Act”) from time to time existing. Any such matters not provided for either in this trust or in the Nevada Revised Uniform Principal and Income Act shall be determined by the Trustee in a reasonable exercise of the Trustee’s discretion. Premiums paid upon the purchase of bonds or other obligations may be charged (in whole or in part) to principal, or may be amortized out of, or charged immediately to, income. In exercising this discretion, the Trustee must act in a manner that is reasonable and equitable in view of the interests of the income beneficiaries and remaindermen, and in the manner in which persons of ordinary prudence, diligence, discretion and judgment would act in the management of their own affairs.

B-17. Proration of Income. Income accrued or unpaid on trust property when received into the trust shall be treated as any other income. Income accrued or held undistributed by the Trustee at the termination of any interest or estate under this trust shall go to the beneficiaries entitled to the next eventual interest in the proportions in which they take such interest. Periodic payments out of principal, not due upon the termination of any interest or estate, shall not be apportioned to that date. The Trustee shall not be required to prorate taxes and other current expenses to the date of termination. This provision shall not apply to a trust which otherwise qualifies for the federal estate tax marital deduction.

B-18. Budgeting. The Trustee may budget the trust’s estimated annual income in order to equalize, so far as is practicable, periodic income payments to beneficiaries.

B-19. Reserves for Depreciation. Notwithstanding any other provision of this trust or of the Nevada Revised Uniform Principal and Income Act, any Trustee hereunder who is also a beneficiary of this trust (“beneficiary/Trustee”), shall, as the Trustee, be specifically subject to the Trustee’s duty to treat income beneficiaries and remainder beneficiaries equitably, and the following requirements shall be observed by such Trustee, provided, however, the aggregate return from time to time of all investments of a trust which otherwise qualifies for the marital deduction is reasonable in light of the then existing circumstances:

(a) A reasonable reserve for depreciation of all income-producing depreciable real and personal property and for capital improvements and extraordinary repairs on income-producing property shall be charged to income from time to time;

(b) A reasonable reserve for depletion of all depletable natural resources, including but not limited to oil, gas, mineral, and timber property, shall be charged to income from time to time;

(c) Distributions by mutual funds and similar entities or gains from the sale or other disposition of property shall be credited to principal;

(d) A reasonable reserve for amortization of all intangible property having a limited economic life, including but not limited to patents and copyrights, shall be charged to income from time to time;

(e) All premiums paid and all discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income; and

(f) All deferred compensation, including but not limited to benefits payable under a qualified pension, profit-sharing, or stock bonus plan described in Internal Revenue Code Section 401, and all other income in respect of a decedent as defined in Internal Revenue Code Section 691 and the applicable United States Treasury regulations thereunder, shall constitute principal. If any of these items are allocated to a trust which otherwise qualifies for the marital deduction, however, and do not yield a reasonable amount of income as required by United States Treasury Regulations Section 20.2056(b)-5(f), the Trustee shall allocate a reasonable portion of that item to income, the amount of the allocation to be determined by the Trustee in the Trustee's discretion, taking into account the Trustor's desire to comply with this regulation for all amounts allocated to a trust which otherwise qualifies for the marital deduction.

B-20. Prohibited Administrative Powers. As to any subsequently created trust established in this Declaration of Trust, while a beneficiary of any trust is acting as Trustee, the beneficiary/Trustee is expressly prohibited from exercising any power vested in the Trustee primarily for the benefit of the beneficiary/Trustee, rather than for the benefit of other income or remainder beneficiaries. The beneficiary/Trustee shall not have the power to purchase, exchange, or otherwise deal with or dispose of the principal or income of the trust estate for less than adequate and full consideration in money or money's worth, or the power to borrow the principal or income of the trust estate, directly or indirectly, without adequate interest or without adequate security, or the power to vote any securities, directly or indirectly, transferred by the Trustor to the trust that are securities of a controlled corporation as defined by Internal Revenue Code Section 2036(b)(2) or any successor statute.

B-21. Cross-Dealing. With respect to any trust created hereunder, the Trustee shall have the power to make loans to or borrow from, to purchase property or assets of any kind from, or sell to, or in any other manner deal with the personal representative of the Trustor's estate, or among all trusts created herein, upon such terms and conditions or in such manner as the Trustee shall deem reasonable in the Trustee's sole discretion and in the interests of all the trusts and the beneficiaries thereof. Anything herein to the contrary notwithstanding, the Trustee may make any sales or exchanges among the trusts hereof as the Trustee shall deem desirable to avoid the holding of fractional interests. All such sales or exchanges among trusts shall have the approval of the then living adult income beneficiaries of the trust.

B-22. Purchase of Treasury Bonds. With respect to any trust created hereunder, the Trustee shall have the power to purchase at less than par United States Treasury Bonds that are redeemable at par in payment of any federal estate tax liability of the Trustor in such amounts as the Trustee deems advisable, and for that purpose, the Trustee may partition a portion of the community property of the trust estate and make such purchases from either or both portions. The Trustee shall exercise the Trustee's discretion and purchase such bonds if the Trustee has reason to believe that a Trustor is in substantial danger of death, and may borrow funds and give security for that purpose. The Trustee shall resolve any doubt concerning the desirability of making the purchase and its amount in favor of making the purchase and in purchasing a larger amount of such bonds than might otherwise be necessary. The Trustee shall not be liable to the Trustor, any heir of the Trustor, or any beneficiary of this trust for losses resulting from purchases made in

good faith. The Trustee shall redeem any such bonds that are part of the trust corpus to the fullest extent possible in payment of the federal estate tax liability of the Trustor with reference to assets included in this trust or otherwise.

B-23. Employment of Advisors. The Trustee may employ (and compensate from the trust) such attorneys, auditors, accountants, investment counselors, brokers, depositaries and agents as the Trustee deems proper. The Trustee may act on the recommendations of such persons without independent investigation.

B-24. Use of a Nominee or Custodian.

(a) The Trustee may hold any trust asset in the Trustee's name as the Trustee, or in the Trustee's own name, or in the name of the Trustee's nominee. The Trustee may also hold any trust asset unregistered so that ownership will pass by delivery.

(b) The Trustee may also keep the trust's assets in a custodial account with a brokerage firm, "mutual fund," insurance company, bank, trust company, or similar entity. Such a custodian may hold the trust's assets in the name of its nominee, and shall not be liable for following the Trustee's written instructions.

B-25. Powers of a Single Co-Trustee. Whenever there is more than one Trustee, the Co-Trustees, if they all agree, may establish accounts requiring the signature of only one Co-Trustee. Those accounts may be of any type, including bank accounts, brokerage accounts, and custodial accounts.

B-26. Delegation of a Co-Trustee's Powers. Any Co-Trustee may delegate and surrender to any one or more of the other Co-Trustees (including any corporate Trustee), such delegating Co-Trustee's powers regarding the investment, retention, sale, exchange, lease or other management of the trust's assets. Such a delegation must be set forth in a document signed by the delegating Co-Trustee and delivered to the other Co-Trustee(s). Upon giving similar notice, the delegating Co-Trustee may resume the right to exercise any delegated power. By accepting trusteeship of this trust or any trust created hereunder, the Trustee acknowledges under certain circumstances he or she may be liable for the acts of or other Co-Trustees and are advised to seek advice of competent legal counsel prior to authorizing an agent or Co-Trustee to act on behalf of the trust.

B-27. Distribution of Assets. Upon any division or distribution of the trust, the Trustee may partition, allot or distribute the trust's assets in undivided interests or in kind, or partly in money and partly in kind. The Trustee may sell such assets as the Trustee deems proper to make any such division or distribution. The Trustee may also distribute a disproportionate share of any asset to a beneficiary or a trust. However, the fair market value of all assets distributed to a beneficiary or trust must equal the fair market value of the proportionate interest that beneficiary or trust is entitled to receive in all of the assets available for distribution at that time. Such a distribution may be made without regard to the income tax basis of specific assets allocated to any beneficiary (including any trust). The powers granted by this Paragraph shall be exercised by the Trustee, in the Trustee's discretion, and no consent to any distribution shall be required.

B-28. Prefer Income Beneficiaries Over Remaindermen. The primary purpose in creating the trust is to provide for those persons entitled, either directly or in the Trustee's discretion, to the

trust's income, and the rights and interests of the remaindermen are subordinate and incidental to that purpose. The provisions of the trust shall be liberally construed in the interest of, and for the benefit of, the income beneficiaries.

B-29. Trustee May Consider Outside Resources When Exercising Discretion. Whenever the Trustee exercises any power to make a discretionary distribution to provide for a beneficiary's support, maintenance, health or education, the Trustee may, but need not, consider assets outside of the trust that are available for those purposes, of which the Trustee has actual knowledge.

B-30. Distributions to Minors and Incompetents. The Trustee may distribute any asset distributable to (or applicable to the use of) any minor or incompetent beneficiary by making the distribution (a) to the guardian or conservator of the person or the estate of that minor or incompetent, (b) to the parent(s) of (or a custodian for) that minor or incompetent, or (c) directly to that minor, or by applying the payments for the benefit of that minor or incompetent.

B-31. Defray Guardian's Expenses – Consider Family Needs. In interpreting the trust and its separate shares, payments made following the Trustor's death for the health, education, maintenance, or support of any beneficiary may include, in the Trustee's discretion, contributions to the health, education, maintenance, or support of that beneficiary's immediate family and other persons with whom that beneficiary resides, including, but not limited to, the beneficiary's guardian of the person and the guardian's spouse and children.

B-32. Delaying Divisions or Distributions. To ensure the availability of the alternate valuation date for federal estate tax purposes, the Trustee may delay making an actual division or distribution of the trust as required by other provisions of this document. Whenever there is such a delay, the interest of the beneficiaries in the assets affected by such delay shall vest as of the date of death. The Trustee may, during such a delay and pending such division or distribution, distribute income to those persons entitled to it.

B-33. Character of Trust's Assets. All community property assets (if applicable) transferred to the trust and the proceeds of them shall retain their character as community property during the lifetime of the Trustor, and all separate property assets of the Trustor and the proceeds of them shall retain their separate property character during the lifetime of the Trustor. If the trust is revoked in whole or in part, each asset subject to the revocation shall be returned to the Trustor, retaining its character as separate or community property as if the trust had not been created.

B-34. Additions to the Trust. Any person may add assets to the trust that are acceptable to the Trustee.

B-35. Separate Nature of Each Trust.

(a) Whenever the trust, or a portion of it, is divided into shares or parts, each such share or part shall constitute a separate trust, and it shall be held, administered, and distributed as such. The Trustee may hold undivided interests as a portion of any such share or part.

(b) The Trustee shall not be required to segregate physically or divide the assets of the various trusts created under this document except as may be required by a distribution to a

beneficiary. However, the Trustee must keep separate accounts for the different undivided interests.

B-36. Amending or Revoking the Trust. While the Trustor is living, the Trustor may revoke or amend the trust in any respect, as the Trustor deems appropriate. Each such amendment must be written and signed by the Trustor, and any revocation must be set forth in a document signed by the Trustor and delivered to the Trustee. Upon the Trustor's death, the Trust shall become irrevocable and shall not be subject to further amendment.

B-37. Resignation of Trustee.

(a) A Trustee may resign at any time, and a successor Trustee shall be selected as provided for elsewhere in this document. If none of these successor Trustees qualifies or acts, a successor Trustee shall be appointed by a court of competent jurisdiction upon the petition of the last resigning Trustee or of any person interested in the trust.

(b) All authority and powers, including discretionary powers, conferred on the original Trustee shall pass to any successor. No successor Trustee shall have any responsibility for the acts or omissions of any prior Trustee and shall not have any duty to audit or investigate the accounts or administration of any prior Trustee. Unless a successor Trustee receives a written request to do so from a person having a present or future beneficial interest in the trust, that successor Trustee shall have no duty to take action to obtain redress for any breach of trust by a prior Trustee.

(c) To resign, a Trustee must give written notice at least thirty (30) days before such resignation will take place. Such notice must be given to each of the resigning Trustee's Co-Trustees, if any. If there is no such Co-Trustee, such notice shall, instead, be given to each adult beneficiary of the trust who is living then and to the guardian, conservator or other fiduciary of the estate of each minor or incompetent beneficiary who is entitled to receive income then (either absolutely or in the Trustee's discretion).

B-38. Incapacity of Trustee. The determination of an individual Trustee's incapacity to serve as Trustee shall be established by a written statement to that effect from two licensed physicians who have separately examined the individual Trustee, and the successor Trustee (or Co-Trustee) as provided for elsewhere in this document shall assume the trusteeship (or co-trusteeship) at that time.

B-39. Beneficiary-Trustee's Provisions. Despite any contrary provision of this document or of law, following the Trustor's death, each individual Trustee shall be disqualified from exercising any discretion given to the Trustee to benefit, directly or indirectly, someone he or she is obligated to support. Instead, all such discretion shall vest solely in the other Co-Trustee(s) and, if there is none, a special Co-Trustee shall be appointed for such purpose in the manner set forth in this document as though there were a vacancy in the trusteeship of the trust.

B-40. Removal of Corporate Trustee.

(a) Whenever there is at least one individual Co-Trustee, he, she or they, as the case may be, may replace the acting corporate Co-Trustee, if any, with a new Trustee, and that new Trustee may be a corporation or an individual. Whenever there is no individual Co-Trustee, a

majority in number of the adult beneficiaries of the trust then entitled to receive income, either absolutely or in the Trustee's discretion, may replace any corporate Trustee with a new corporate Trustee. If there is no individual Co-Trustee, and if there is no adult income beneficiary, the power to replace a corporate Trustee with a new corporate Trustee shall be held, jointly, by the guardians of the estates of the minor beneficiaries who are living when a substitution is to be made.

(b) A replacement of the corporate Trustee pursuant to the foregoing provisions shall not occur more often than once during any twelve (12) month period. A corporate Trustee may be replaced by giving a written notice to it that states it is being replaced and designates the successor Trustee.

B-41. Remainder Beneficiaries with a Disability. If a remainder beneficiary under this trust is eligible for (or receiving) needs-based public benefits, e.g., Supplemental Security Income (SSI), Medi-Cal, In-Home Supportive Services (IHSS), or Regional Center services (the "Disabled Beneficiary"), it is the intent of the Trustor that the Disabled Beneficiary be able to both preserve his or her inheritance and preserve eligibility for these public benefits. It is also the Trustor's intent that, if any property of the Trust remains after the death of the Disabled Beneficiary, it be distributed to the Disabled Beneficiary's family members and friends rather than to pay back Medi-Cal for services provided during the Disabled Beneficiary's lifetime. Implementation of Trustor's intention as provided above shall be as follows:

(a) The Trustee has sole and absolute discretion to decide whether or not to establish a stand-alone third-party special needs trust ("SNT") on behalf of the Disabled Beneficiary. In no event shall the Disabled Beneficiary of the third-party SNT control the amount or frequency of trust distributions, have the ability to revoke the trust, or have the right to direct the use of funds for the Disabled Beneficiary's personal benefit. Nor shall the Disabled Beneficiary have the right to select a trustee (or successor trustee) of the trust, nor shall he or she be allowed to be the trustee.

(b) The Trustee, in exercising its discretion to establish a third-party SNT, shall have the right to hire experienced counsel familiar with establishing third party SNTs to prepare the trust. The Trustee shall also have the right to establish himself or herself as Trustee of the trust or to appoint an entirely different fiduciary and/or management team for the SNT (e.g., professional trustee, trust advisory committee, or trust protector) as he or she decides in his or her own sole and absolute discretion. The Trustor recommends (but does not require) that the trust allow the Disabled Beneficiary to have a limited (or special) testamentary power of appointment over the assets of the trust to maintain some control over the ultimate distribution of the inheritance. Expenses for this purpose, including reasonable attorneys' fees, will be a proper charge to the trust estate held for the benefit of the Disabled Beneficiary.

In exercising its discretion under this provision, the Trustee shall not be liable to any beneficiary or other person with an interest in this Trust for the Trustee's acts or omissions in deciding whether or not to establish a third-party SNT, except in cases of willful misconduct, bad faith, or gross negligence.

B-42. Accounting. The Trustee shall account to the beneficiaries periodically and, if requested by a beneficiary, at least annually.

B-43. Compensation. Whenever SCOTT BARTON or TARA FLANAGAN is serving as Trustee (a "Designated Trustee"), compensation for such Designated Trustee shall be paid pursuant to Paragraph A-4 of this Trust. At any such time as neither Designated Trustee is available or able to serve, any other Trustee appointed to fill a vacancy in the trusteeship of any trust established under this document may receive reasonable compensation for his/her services as the Trustee. If any such Trustee is a professional person (such as a lawyer, accountant, or financial institution), each such Trustee shall be compensated for his or her services as such Trustee on the basis of his or her customary charges for providing professional services.

B-44. Liability of Trustee. No individual Trustee shall be liable to any beneficiary for any act or default of that Trustee, or of any other Trustee or of any other person, unless resulting from that individual Trustee's own bad faith or gross negligence.

B-45. Receipt of Notice. Until the Trustee receives written notice of any death, birth, marriage or other event upon which the right to income or principal of the trust depends, the Trustee shall not be liable for disbursements made in good faith to persons whose interests have been affected by that event.

B-46. Instructions to Trustee. Whenever any person is authorized by this document to give instructions or directions to the Trustee, those instructions or directions may be oral or written. Despite the foregoing, the Trustee may, in the Trustee's discretion, require that any such instruction or direction be written. In such an instance, the Trustee shall not be liable for not acting in accordance with the instruction or direction until it is delivered to the Trustee in writing. Notwithstanding the foregoing, while the Trustor is living and serving as Trustee, oral instructions or requests are sufficient.

B-47. No Contest Clause. If any beneficiary singly or in conjunction with any other person:

(a) contests in any court the validity of any trust established under this document or of the Will of the Trustor;

(b) seeks to obtain an adjudication in any court that any such trust or such Will or any of their provisions is void; or

(c) seeks otherwise to void, nullify, or set aside any such trust or Will or any of their provisions; or

(d) seeks to obtain an adjudication in any court challenging a transfer of property concerning any trust established under this document on the grounds it was not the transferor's property at the time of the transfer,

then the right of that beneficiary to take any interest given to him or her under the trust shall be determined as it would have been determined had he or she died before this document was signed. The Trustee may defend (at the expense of the trust) any contest or other attack of any nature on the trust or any of its provisions.

B-48. Trustee as Partner or Shareholder of Attorneys. Because the Trustor believes it would be in the best interests of the trusts created pursuant to this declaration of trust and because Abigail G. Stephenson, Esq. and the law firm Blanchard, Krasner & French, a Professional Corporation, have become very familiar with the Trustor's business and financial affairs, the Trustor deems it to be in the best interest of the Trust, that whether or not Kipp Williams, Esq. or any other member of the firm serves as Trustee, the law firm now known as Blanchard, Krasner & French, a Professional Corporation, or any successor to such firm, with which Abigail G. Stephenson, Esq. is associated, may nevertheless be retained to represent the trusts established by this declaration of trust, and such law firm shall be entitled to compensation both as Trustee, and as attorneys for the Trustee, or both, as the case may be. With full knowledge of such relationships, the Trustor waives all conflicts of interest which now or hereafter may exist.

B-49. Children of the Trustor. The Trustor has two Children of his first marriage to MARLENE HARRIS (deceased April 22, 1972); and two stepchildren of his second marriage to OLGA HARRIS (aka OLGA ROBBEN), whose names and dates of birth are:

THOMAS ANTHONY HARRIS, born August 20, 1958;
TODD EDWARD HARRIS, born May 15, 1960 (deceased with no issue);
JEFF DEWEY ROBBEN, born September 12, 1964; and
TODD CHRISTIAN ROBBEN, born April 16, 1969.

Neither JEFF DEWEY ROBBEN nor TODD CHRISTIAN ROBBEN was adopted by the Trustor. No other child has ever been born to or adopted by the Trustor.

B-50. Headings. The headings in this document are for convenience only and do not in any way limit or amplify the provisions of the trust.

B-51. Governing State Law. This trust has been accepted by the Trustee in the State of Nevada and, unless otherwise provided in this trust, its validity, construction and all rights under it shall be governed by the laws of that State. In the event the Trustee is or becomes domiciled outside the State of Nevada, and all movable assets of this trust become located within the state in which the Trustee is domiciled, then said Trustee shall be governed by the laws of that state with respect to this trust.

B-52. Definitions and Related Matters. As used in this document:

"Child" or "Children." References to Child or Children of the Trustor are to THOMAS ANTHONY HARRIS and JEFF DEWEY ROBBEN.

"Code." References to "Code" shall refer to the Internal Revenue Code of 1986, as amended, and its successors. References to a specific section of the Code include future amendments, and successors, to it.

"Corporate Trustee." The terms "corporate Trustee" and "corporate Co-Trustee" shall mean any Financial Institution as defined in Nevada Revised Statute Section 363A.050, or any Trust Company as defined in Nevada Revised Statute Section 669.070 that has either been appointed to serve as Trustee or Co-Trustee of the Trust, or may be appointed to serve as a Trustee or Co-Trustee of the Trust.

"Death Taxes." The term "death taxes" includes all federal or state estate, inheritance, or other succession taxes, but does not include (i) any federal or state generation-skipping transfer taxes, or (ii) any additional tax that may be assessed under Code section 2032A(c).

"Descendant," "Issue" and Related Terms. The terms "child," "descendant," "issue" and similar terms include persons who were adopted, but only if they were minors at the date of their adoption.

"Disclaimer." The terms "disclaimer" or "disclaim" shall refer to a qualified disclaimer, as defined in Code section 2518.

"Document." References to this document include any amendment to it.

"Gender and Number." The masculine, feminine and neuter gender, and the singular and plural number, each include the other(s), unless the context indicates otherwise.

"Support" and "Maintenance." References to a person's support or maintenance are to such person's support or maintenance in his or her accustomed manner of living.

"Trustee." The term "Trustee" in the singular includes the terms "Trustees" or "Co-Trustees" in the plural whenever there is more than one Trustee. Also, the term "Trustee" refers to the original Trustee and each successor, unless the context indicates otherwise.

"Will." The term "Will" includes any Codicil to it.

[END OF SCHEDULE B]

SCHEDULE C
ADDITIONAL POWERS AND PROVISIONS
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SCHEDULE C

ADDITIONAL POWERS AND PROVISIONS

In addition to the provisions of the accompanying Schedules A and B, the Trustor, the Trustee and the beneficiaries of each trust established under this document have the following powers, rights and duties, and are subject to the following provisions:

C-1. Payment of Trustor's Expenses or Taxes. Upon the Trustor's death, the Trustee may, in the Trustee's discretion, pay out of the THOMAS J. HARRIS TRUST:

- (a) the Trustor's last illness and funeral expenses;
- (b) the expenses of administering property includable in the Trustor's gross estate for federal estate tax purposes;
- (c) debts that would be enforceable against the Trustor if he were living; and
- (d) inheritance, estate or other taxes that arise by reason of the Trustor's death.

C-2. Proration of Taxes. Except as otherwise specifically provided in this trust or in Trustor's will, federal estate taxes imposed on or by reason of the inclusion of any portion of the trust estate in the gross taxable estate of the Trustor under the provisions of any federal tax law shall be paid by the Trustee and charged to, prorated among, or recovered from the trust estate or the persons entitled to the benefits under this trust as and to the extent provided by any applicable tax law or any proration statute. Except when otherwise specifically provided, state death taxes shall be paid and charged to the trust estate or deducted and collected as provided by applicable state law.

C-3. Generation-Skipping Transfer Tax Provisions.

- (a) As used in this document:
 - (i) "inclusion ratio," "GST exemption," "skip person," and "non-skip person" have the meanings given those terms in Chapter 13 of the Code and the regulations under it;
 - (ii) "GST tax" refers to the generation-skipping transfer tax imposed by Chapter 13 of the Code;
 - (iii) "GST-Exempt" refers to a trust or share that has an inclusion ratio of zero; and
 - (iv) "GST-Nonexempt" refers to a trust or share that has an inclusion ratio of more than zero.

(b) Regarding any trust created (or to be created) under this document (an "Original Trust"), the Trustee shall have the discretionary authority to create two or more separate trusts of equal or unequal value ("New Trusts"), and to allocate the assets otherwise distributable

to or held in the Original Trust to those New Trusts. Each asset allocated upon a person's death to the New Trusts must be valued at its final federal estate tax value, provided, however, that in making allocations to the New Trusts, the Trustee must select assets that are fairly representative of the net appreciation or depreciation in value since that person's death of all assets available for distribution to the New Trusts.

(i) To amplify the intent of the foregoing, it is suggested (but not required) that, before allocating a deceased person's available GST exemption, the Trustee create, instead of an Original Trust that cannot be completely exempted from the GST tax by the available GST exemption, (1) first, a New Trust that can thereafter be completely exempted from the GST tax by an allocation of the available GST exemption, which New Trust will be GST-Exempt, and (2) second, another New Trust to which no GST exemption is allocated, which New Trust will be GST-Nonexempt.

(ii) It is further suggested (but not required) that the Trustee, in exercising the Trustee's discretion, not create New Trusts if the burden or costs of administering multiple New Trusts would be impractical or uneconomical, in the Trustee's discretion.

(c) To the extent the Decedent's available GST exemption is insufficient to completely exempt the property allocated to a trust from the GST tax, it is suggested (but not required) that, before allocating the Decedent's GST exemption, the Trustee divide such trust into two New Trusts as set forth above, so that a so-called "reverse QTIP election" may be made under Code section 2652(a)(3) for the New Trust that is GST-Exempt.

For convenience, the New Trusts that are created in place of an Original Trust are referred to below as being derived from the Original Trust.

(d) Except as otherwise specifically provided for in this document, upon the creation of New Trusts, each New Trust shall have the same provisions, and shall be held, administered and distributed in the same manner, as the Original Trust from which it was derived, and all references to that Original Trust shall collectively refer to the New Trusts derived from it.

(e) Any death taxes attributable to the assets of New Trusts that are derived from the same Original Trust, but which have different inclusion ratios, shall be paid as follows:

(i) First, these death taxes shall be paid from or charged against (to the maximum extent practicable, in the Trustee's discretion) the New Trust with the largest inclusion ratio.

(ii) Second, to the extent the New Trust with the largest inclusion ratio is insufficient, these death taxes shall be paid from the other New Trusts, in the order of their descending inclusion ratios.

(f) If, upon a person's death, other provisions of this document require a division of an Original Trust into shares in a specified manner (e.g., equal shares), the Trustee shall consider the death taxes paid from the New Trusts that are derived from that Original Trust in making that division so that, on a net after-tax basis, the division of the Original Trust is accomplished in the specified manner.

(g) When, pursuant to the other terms of this document, different trusts are to be combined, or when additional trusts are to be created from one or more sources, the GST-Exempt or GST-Nonexempt character of the trusts shall be preserved. Accordingly, GST-Nonexempt trusts shall only be added to (or combined with) other GST-Nonexempt trusts, and GST-Exempt trusts shall only be added to (or combined with) other GST-Exempt trusts, even if this means establishing or maintaining separate trusts. Despite the foregoing, if such GST-Nonexempt trusts have different inclusion ratios, the Trustee may maintain them as separate trusts to preserve their different inclusion ratios. Except as otherwise specifically provided for in this document, each such GST-Exempt and GST-Nonexempt trust shall be applied and distributed according to the terms of the combined or new trust to which they otherwise would have been added. To illustrate the foregoing, if, following a person's death, one or more trusts (a "Terminating Trust") are to be added to or combined with another trust (the "Continuing Trust"):

(i) Each GST-Exempt New Trust that is derived from a Terminating Trust shall only be added to or combined with a GST-Exempt Continuing Trust.

(ii) Similarly, each GST-Nonexempt New Trust that is derived from a Terminating Trust shall only be added to or combined with a GST-Nonexempt Continuing Trust.

(iii) If there is no GST-Exempt or GST-Nonexempt Continuing Trust, such a trust may be created as is necessary to receive the GST-Exempt or GST-Nonexempt New Trust derived from a Terminating Trust.

(h) Subject to the other provisions of this Paragraph, in establishing shares following a person's death, the Trustee shall have the following discretionary authority. If, in the Trustee's judgment, certain shares are likely to be distributed to skip persons ("Skip Person Shares"), the Trustee may, to the maximum extent possible, allocate to such Skip Person Shares assets of those trusts having the lowest inclusion ratios. Similarly, if, in the Trustee's judgment, certain shares are likely to be distributed to non-skip persons ("Non-Skip Person Shares"), the Trustee may, to the maximum extent possible, allocate to such Non-Skip Person Shares the assets of those trusts having the highest inclusion ratios.

(i) Despite any other provision of this Paragraph, regarding each New Trust, the Trustee shall have the following discretionary authority:

(i) Any payment of principal to a non-skip person shall be made, first, from the New Trust of which such non-skip person is a beneficiary that has the greatest inclusion ratio and, thereafter, from the other New Trusts of which such non-skip person is a beneficiary in the order of their descending inclusion ratios.

(ii) Any payment of principal to a skip person shall be made, first, from the New Trust of which such skip person is a beneficiary that has the lowest inclusion ratio and, thereafter, from the other New Trusts of which such skip person is a beneficiary in the order of their ascending inclusion ratios.

(iii) If the terms of an Original Trust require or permit the distribution of a fraction or percentage of that trust, that distribution shall be computed by multiplying the fraction or percentage by the aggregate value as of the distribution date of all New Trusts derived

from that Original Trust, and the distribution shall be made in accordance with subparagraphs (i) and (ii) immediately above.

(j) The Trustee shall not be liable to any person for the Trustee's exercise (or nonexercise) of any discretionary authority or power granted by this Paragraph.

C-4. Provisions Relating to Retirement Accounts.

(a) Notwithstanding any provision in this Trust Agreement to the contrary, all trusts which receive or are funded with or by retirement assets such as IRA, 401(k), and other qualified retirement plans described in IRC Section 4974 (c) (herein collectively referred to as "Retirement Account"), shall be subject to the following additional express conditions:

(i) Retirement Account income and assets shall not be utilized to pay funeral costs, estate taxes, or other administrative expenses of the deceased Trustor's estate, except as may be permitted during the "window" period until September 30 of the year following the year of decedent's death, as provided in Treasury Reg. Section 1.401(a)(9).

(ii) Retirement Account income and assets shall not be payable to non-individual beneficiaries, such as corporations, charities, or the deceased Trustor's estate (except as provided in the "window" period cited immediately above), and any distribution to a non-individual beneficiary which is not distributed during the "window" period shall lapse, such lapsed share to augment the share of the remaining individual beneficiaries.

(iii) The Trustee shall deliver to the Retirement Account plan administrator a copy of this trust document no later than October 31 of the year after the year of the Retirement Account plan participant's death.

(iv) The Trustee, in its sole and absolute discretion, and without liability to any trust beneficiary affected by such disclaimer, is vested with authority to disclaim some or all of an interest in a Retirement Account which names the trust as beneficiary, or an interest in an Retirement Account resulting from a testamentary transfer by Will, or by designation under trust, or otherwise, and in the event of a timely, proper and lawful disclaimer, the Retirement Account shall be distributed to the next contingent beneficiary designated thereby in accordance with the terms of such Retirement Account.

(b) To the extent the Trustor has designated separate trusts for Trustor's descendants to receive any allocation comprised of Retirement Account assets, the following shall apply. The day the Trustor dies is hereinafter referred to as the "Allocation Date." The Trustee shall create one share for each Child of the Trustor who is either living on the Allocation Date or who is deceased on the Allocation Date but who has one or more descendants who are then living. The Trustee shall divide any share created for a deceased Child into separate shares for such deceased Child's descendants, per stirpes. As thus divided, the Trustee shall hold each share created hereunder as a separate trust ("Separate Trust") for the benefit of the person for whom the share was created and shall administer the Separate Trust as provided herein. The Trustee shall take all necessary steps to ensure each Separate Trust is treated as a "separate account", as that term is used in Treasury Regulation sections 1.401(a)(9)-8, A-2(a)(2) & A-3.

The Trustee shall interpret the terms of this trust so the minimum required distributions from each retirement plan payable to a Separate Trust may be calculated and paid annually to such trust over the life expectancy of the beneficiary of such Separate Trust. The Trustees shall have the power to amend the terms of this Trust Agreement to the minimum extent necessary to accomplish such purpose.

The Trustee of each Separate Trust shall take whatever steps are required to assure that any interest such Separate Trust has in a retirement plan, to the extent not previously distributed, is (and will at all times remain) immediately distributable on demand to such Separate Trust. Accordingly, the Trustees shall retain the unrestricted power to accelerate any installment distributions elected under the minimum distribution rules or otherwise. The Trustee of the beneficiary's Separate Trust shall withdraw only the required minimum distribution from each retirement plan payable to such Separate Trust, unless more than the required minimum distribution is necessary for the support and maintenance in reasonable comfort, health, and education of the beneficiary.

The Trustees shall immediately distribute to the beneficiary all amounts received by the Separate Trust from any Retirement Account, after reduction for any trust expenses properly allocable thereto, distributed at least once per year prior to the calendar year end; provided if the beneficiary is under any legal disability, then the Trustees may make such distribution to a legal guardian for the beneficiary. In addition, the Trustee may also distribute so much or all of the net income and principal of the Separate Trust, to or for the use of the beneficiary, in such proportions, amounts and at such times as the Trustee, in the Trustee's discretion, may deem advisable to provide for the health, education, support, and maintenance of the beneficiary.

(c) To the extent the Trustee or Executor of the Trustor's estate makes a QTIP election under Internal Revenue Code Section 2056(b)(7), the following shall apply. The beneficiaries of a trust with IRA assets shall have the power to compel investment of the IRA so it produces reasonable income. The beneficiary of a trust with IRA assets shall have the power, exercisable annually, to compel the Trustee to withdraw from the IRA an amount equal to the greater of all the income of the IRA for that year, or the required minimum distribution from the IRA as required under IRC Section 408(a)(6), and to distribute to the beneficiary at least once per year prior the calendar year end at least all of the income of the IRA, and so much of the required minimum distribution as the beneficiary shall direct Trustee to distribute. Any excess of the required minimum distribution amount over the income of the IRA which is not distributed is to be added to the principal of the trust. If the beneficiary does not compel a withdrawal from the IRA for a particular year, the Trustee must withdraw from the IRA only the required minimum distribution amount for that year. No person shall have a power to appoint any part of the trust property to any person other than a surviving spouse (if any).

[END OF SCHEDULE C]

Exhibit 2

Exhibit 2

Case No.: 2021-PB00034

Dept. No.: 1

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APR 02 2021

Douglas County
District Court Clerk

FILED

2021 APR -6 PM 4:23

BOBBIE R. WILLIAMS
CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

IN RE:

THE ESTATE OF THOMAS JOSEPH
HARRIS,

Deceased.

ORDER ADMITTING WILL TO
PROBATE AND ISSUING LETTERS
TESTAMENTARY

The Petitioner, Scott Barton, having proved to the satisfaction of the Court that the time for hearing the verified Petition for Probate of Will and Issuance of Letters Testamentary (the "Petition") was, by the Clerk, set for April 6, 2021, and that notice of said hearing has been duly given as required by law, and the Court having reviewed the evidence finds that the facts alleged in said Petition are true and correct, and that said Petition for the Probate of Will and Issuance of Letters Testamentary should be granted.

The Court finds as follows:

1. Thomas Joseph Harris died on December 30, 2019, in the County of Washoe, State of Nevada, and at the time of his death was a resident of the County of Douglas, State of Nevada.

2. Said Decedent left personal property located within the state of Nevada at a value in excess of Three Hundred Thousand Dollars (\$300,000).

3. Decedent left a Last Will and Testament dated June 12, 2019 and such Will has been filed with the Clerk of this Court, as provided by law.

4. Decedent's Will dated June 12, 2019, was duly executed in all particulars as required by law, and at the time of the execution of this Will, the Decedent was of sound mind,

1 over the age of eighteen (18) and was not acting under undue influence or duress.

2 5. Decedent's Will appoints Scott Barton as Executor thereof, and Scott Barton has
3 consented to act as Executor. The Will provides that no bond shall be required of Scott Barton.
4 Scott Barton is qualified for and entitled to Letters Testamentary pursuant to the laws of the State
5 of Nevada.

6 6. IT IS HEREBY ORDERED, the Will of the Decedent dated June 12, 2019, is
7 admitted to probate as the Last Will and Testament of said Decedent.

8 7. IT IS FURTHER ORDERED that Scott Barton be appointed Executor of said
9 estate, to serve without bond, and that Letters Testamentary shall issue to him upon his taking the
10 oath required by law.

11 DATED: April 6, 2021

12 
13 DISTRICT JUDGE

14 Submitted by:

15 Abigail G. Stephenson (NV Bar 13593)
16 BLANCHARD, KRASNER & FRENCH
17 5470 Kietzke Lane, Suite 200
18 Reno, Nevada 89511
19 (775) 384-0022
20 Attorneys for Petitioner
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22
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Exhibit 3

Exhibit 3

1 CASE NO.: 2021 PB00034

2 DEPT NO.: I

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JUN 25 2021

Douglas County
District Court Clerk

2021 JUL 27 PM 2:21

BOBBIE R. WILLIAMS
CLERK

BY ~~A. PONCE~~ DEPUTY

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6
7 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF DOUGLAS

9 IN RE:

10 THE ESTATE OF THOMAS JOSEPH
11 HARRIS,

12 Deceased
13 _____/

14 [PROPOSED]
15 ORDER APPOINTING SUCCESSOR EXECUTOR
16 AND ISSUING SUCCESSOR LETTERS TESTAMENTARY

17 Tara M. Flanagan, by and through her counsel of record, F. McClure Wallace
18 and Patrick R. Millsap of Wallace & Millsap, petitioned this Court for appointment
19 of Tara M. Flanagan as Successor Executor of the Estate of Thomas Joseph Harris
20 ("Decedent").

21 The Court finds as follows:

22 The Decedent's Last Will and Testament was admitted to probate and
23 Letters Testamentary were issue to Scott Barton on April 6, 2021.

24 Scott Barton, was appointed and qualified, but has resigned prior to
25 completing the administration of the Estate.

26 There is a need to appoint a Successor Executor to complete the
27 administration of the Estate.
28

1 Tara M. Flanagan was nominated by the Decedent in his Will to serve as
2 Successor Executor and has consented to serve.

3 Notice was served on all interested beneficiaries, and no objections to the
4 appointment of Tara M. Flanagan as Successor Executor have been filed with this
5 Court.
6

7 **THEREFORE, IT IS ORDERED** that TARA M. FLANAGAN, has leave to
8 qualify as Successor Executor by taking the required oath, and upon so doing,
9 Successor Letters Testamentary shall issue.

10 **IT IS FURTHERED ORDERED** that the Letters Testamentary previous
11 issued to Scott Barton are hereby rescinded.
12

13 **SO ORDERED** this 27 day of July 2021.

14
15 
16 District Court Judge

17 *Submitted by:*

18
19 **WALLACE & MILLSAP**

20
21 **F. MCCLURE WALLACE, ESQ.**

22 State Bar No. 10264

23 **PATRICK R. MILLSAP, ESQ.**

24 State Bar No. 12043

25 **WALLACE & MILLSAP LLC**

26 510 West Plumb Lane, Suite A

27 Reno, Nevada 89509

28 (775) 683-9599 Telephone

(775) 683-9597 Fax

Attorneys for Petitioner

Exhibit 4

Exhibit 4

1 Todd Robben
2 In Pro per
3 PO Box 4251
4 Sonora, CA 95370
5 Robben.ty@gmail.com
6 (209)540-7713

7 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9
10 IN RE: THE ESTATE OF THOMAS
11 JOSEPH HARRIS,

12
13 Deceased

14 } **CASE NO.: 2021 pb00034**

15 } **DEPARTMENT: 1**

16 } **NOTICE OF MOTION FOR**
17 **CONTINUANCE AND MOTION FOR**
18 **CONTINUANCE**

19
20 This notice and motion for continuance is made by Todd C. Robben, the
21 stepson of Thomas J. Harris. Todd C. Robben only recently learned of the death of
22 Thomas J. Harris and Jeff D. Robben. This motion will be filed and made orally at the
23 petition hearing on May 24th at 1:00pm in Department 1. This motion is made on the
24 following points and authority.

25 **MEMORANDUM OF POINTS AND AUTHORITY**

26
27 Todd C. Robben was not notified of the death of Thomas J. Harris or Jeff D.
28 Robben or any wills or trusts until the beginning on May 2022. Pursuant to local rule
DCR 9 and NRS 155.160, Todd C. Robben objects to any final distribution and

1 requests a continuance to obtain counsel and file legal arguments and affidavits
2 showing Jeff D. Robben had undue influence over Thomas J. Harris to which let to the
3 disinheritance of Todd C. Robben in the last will and testament of Thomas J. Harris
4 and Thomas J. Harris trust.

5 There appears to be no affidavit and reason as to why Todd C. Robben was
6 disinherited. Nevada also mandate mandatory mediation pursuant to NRS 164.930.

7 In addition to undue influence, there appears to be fraud, embezzlement,
8 misappropriation and theft of assets and they manner of how the trust was managed.
9 See NRS 155.007 and NRCP Rule 60.

10
11 **RELIEF REQUEST**
12

13 Todd C. Robben objects to the final distribution and requests a continuance of
14 up to six months to obtain legal counsel and evidence.
15

16
17 Respectfully signed under penalty of perjury,
18

19 /s/ Todd Robben
20

21 05/23/2022
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Exhibit 5

Exhibit 5

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN RE: THE ESTATE OF THOMAS
JOSEPH HARRIS,

Deceased

CASE NO.: 2021 PB00034

DEPARTMENT: 1

**PETITIONER'S REQUEST FOR
APPOINTMENT OF COUNSEL
PURSUANT TO NRS § 136.200**

Petitioner, Todd Robben, respectfully requests the Court to appoint counsel pursuant to NRS § 136.200 since the Petitioner is an interested person pursuant to NRS § 132.185 and a non resident of Douglas County, Nevada.

The Petitioner is indigent and this Court has granted indigent status to file this motion without any filing fee. This petition is based on the following points and authority.

MEMORANDUM OF POINTS & AUTHORITY

Petitioner, Todd Robben, requests the Court to appoint counsel in this civil/probate matter for good cause and pursuant to NRS § 136.200 since the

1 Petitioner is an interested person who resides outside the county. The Petitioner, a
2 "non-resident" of Douglas County, Nevada, Petitioner resides in Tuolumne County,
3 California. "being non-residents — Judge Waters appointed appellant Flangas as their
4 counsel pursuant to NRS 136.200." Matter of Estate of Herrmann, 677 P. 2d 594 -
5 Nev: Supreme Court 1984

6 **NRS136.200 Appointment of attorney to represent minors, unborn**
7 **members of interested class or nonresidents; retention of other**
8 **counsel.**

9 If a will is offered for probate and it appears there are minors or unborn
10 members of a class who are interested, or if it appears there are other
11 interested persons who reside out of the county and are unrepresented,
12 the court may, whether there is a contest or not, appoint an attorney for
13 them.

14 Petitioner, Todd Robben, the step-son of Thomas J. Harris and son of Olga
15 Harris is an "interested person" pursuant to NRS 132.185 "Interested person"
16 defined. "Interested person" means a person whose right or interest under an estate
17 or trust may be materially affected by a decision of a fiduciary or a decision of the
18 court. The fiduciary or court shall determine who is an interested person according to
19 the particular purposes of, and matter involved in, a proceeding.

20 The Petitioner is indigent, the Court has granted Petitioner indigent status. At
21 the hearing on May 24th, 2022 in this instant case, the Court granted the Petitioner's
22 request for a continuance, "in an abundance of caution", and gave the Petitioner to
23 June 21st, 2022 to obtain counsel.

24 The Petitioner being indigent and the short notice on top of holiday schedules
25 for lawyers and COVID-19 and a long list of various "conflicts" of interests the
26 Petitioner has been unable to secure legal counsel and counsel willing to work Pro
27 Bono or on contingency.

1 The Nevada Supreme Court has identified NRS 136.200 as a "statutory right" to
2 appointment of counsel in other types of civil cases. "there is no statutory right to
3 appointment of counsel for appellate review in this type of civil case as there is in
4 criminal cases and other types of civil cases. ...NRS 136.200" Casper v. Huber, 456
5 P. 2d 436 - Nev: Supreme Court 1969

6 This Petitioner requests the Court to grant the request and appoint a reputable
7 and conflict free attorney "in an abundance of caution"... The Petitioner has a *prima*
8 *facie* case of undue influence based on the undisputed facts that Jeff D. Robben, the
9 brother of the Petitioner, was 1: The caretaker of Thomas J. Harris; 2: The Financial
10 advisor for Thomas J. Harris; 3: Helped create the current Thomas J. Harris trust; 4.
11 Had "undue influence" and "presumed undue influence" of Thomas J. Harris; 5: Jeff
12 D. Robben influenced Thomas J. Harris to disinherit based on the animus and
13 vexation of Jeff D. Robben.

14 "A rebuttable presumption of undue influence is raised if the testator and the
15 beneficiary shared a fiduciary relationship, but undue influence may also be proved
16 without raising this presumption." In re Estate of Bethurem, 313 P. 3d 237, 241 (2013),
17 at 329. "The essence of a fiduciary or confidential relationship is that the parties do
18 not deal on equal terms, since the person in whom trust and confidence is reposed
19 and who accepts that trust and confidence is in a superior position to exert unique
20 influence over the dependent party." Hoopes v. Hammargren, 725 P. 2d 238, 242
21 (1986) quoting Barbara A. v. John G., 145 Cal.App.3d 369, 193 Cal.Rptr. 422, 432
22 (1983).

23 "Once raised, a beneficiary may rebut such a presumption by clear and
24 convincing evidence." Betherum, at 241. The highest standard of proof, "beyond a
25 reasonable doubt," exists only in criminal litigation. In civil litigation, "clear and
26 convincing evidence" is the highest evidentiary standard. "Clear and convincing
27 evidence" is "evidence establishing every factual element to be highly probable, or as
28

1 evidence [which] must be so clear as to leave no substantial doubt." In re Discipline of
2 Drakulich, 908 P. 2d 709, 715 (1995)(internal quotations and citations omitted).

3 Thus, the Defendants' must meet a difficult, nearly impossible burden, after the
4 burden shift. The burden shift occurs when the contesting party establishes the
5 existence of a fiduciary of confidential relationship.

6 Under NRS 155.097(2), estate planning documents and other beneficiary
7 designations are presumptively invalid as a result of undue influence, fraud or duress
8 under the following circumstances, where the beneficiary:

- 9 • is the person who drafted the document or instrument.
10 • is the caregiver of the person executing the document or instrument.
11 • "materially participated in formulating the dispositive provisions" of the
12 instrument or document.

13 In addition to the fact Jeff D. Robben was the caretaker, financial advisor and
14 helped draft the Thomas J. Harris trust, the Petitioner has at least three affidavits to
15 support facts proving Jeff D. Robben influenced Thomas J. Harris to disinherit based
16 on the animus and vexation of Jeff D. Robben. Petitioner intends to include all
17 beneficiaries, administrators and lawyers of the Thomas J. Harris Trust and Thomas J.
18 Harris and Olga Harris Trust. Additionally, the pleading/filings in a federal lawsuit
19 2:13-cv-00238-MCE-DAD UNITED STATES DISTRICT COURT EASTERN DISTRICT
20 OF CALIFORNIA describe the animus and vexation of Jeff D. Robben against his
21 brother, Todd Robben, the Petitioner. The complaint named Jeff D. Robben as one of
22 the defendants and the following facts:

23 On or about October 18, 2012 Plaintiff Todd Robben was out on bail,
24 which was bonded and insured by defendant Bail Bonds Inc (BBI) of
25 Fallon, Nevada, a Nevada Corporation dba Justin Brothers Bail Bonds,
26 herein "Justin Bros." Defendants Richard Justin is the President and
27 Treasurer, and employee of said Nevada Corporation, Dennis Justin is
the employee and agent of Justin Bros. and co-participant in the events
complained of herein.

1
2 On or about the same said date the brother of plaintiff Jeff Robben acting
3 as an officious intermeddler implored and insisted to his mother (also the
4 mother of plaintiff) who was assuring the bond to withdraw her assurance
5 out of a black heart and with the vile intent to vex, annoy, inflict emotional
6 distress, and injure plaintiff (his own brother) as much as possible;
7 Defendant Jeff Robben knowingly and falsely asserted that plaintiff was
8 both suicidal and homicidal to their mother and to defendants Justin Bros.
9 and Richard and Dennis Justin. This caused plaintiff to lose his bail bond
10 when his mother withdrew her assurance, at the insistence of officious
11 intermeddler Defendant Jeff Robben. The said withdrawal off assurance
12 started a chain reaction where tortfeasors Justin Bros. and their
13 owner/actors Richard Justin and Dennis Justin, employees and agents of
14 (BB1)/ Justin Bros. crossed the state line from Carson City, Nevada where
15 their office is located and entered the state of California, City of South
16 Lake Tahoe ,went to plaintiff's residence without any legal authority, or
17 warrant pursuant to California Penal Code Section 847.5, but under color
18 of state law(either California or Nevada or both) went to plaintiff's home,
19 broke down his home's front door with brute force, assaulted and battered
20 plaintiff with a taser gun, shooting him no less than three times with said
21 device, and beating him. Plaintiff was further brutalized under color of law.
22 He was handcuffed and brutally taken from his home into unlawful custody
23 under color of law. Plaintiff never consented to this touching which was
24 both painful and injurious both physically and mentally to plaintiff.

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Untimely, the federal civil case was dismissed with the Plaintiff settling with the various defendants including Jeff D. Robben with an understanding/contract that the Petitioner was not to be disinherited.

The Petitioner has the right to challenge the validity of the trust pursuant to NRS 30.040 Questions of construction or validity of instruments, contracts and statutes:

1. Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

1 The Petitioner also alleges fraud and the failure of the Thomas J. Harris
2 trust to notify the Petitioner of any disinheritance or even the death of Thomas J.
3 Harris and anything related to the will, trust, instruments and probate of the
4 Thomas J. Harris trust.
5

6 Since NRCP Rule 60 includes provisions for fraud and other things like
7 surprises, there is no limiting Petitioner's ability to challenge the validity of the
8 Thomas J. Harris trust. The Petitioner can successfully render the current
9 Thomas J. Harris trust null and void to which the original Thomas J. Harris and
10 Olga Harris Trust would be controlling and to which the Petitioner is a
11 beneficiary.
12

13 The Petitioner is interested in pursuing an amicable resolution to this
14 matter using the court/legal system. The Petitioner feels there is settlement
15 potential since the facts, and as a matter of law, create a presumption of undue
16 influence by Jeff D. Robben over Thomas J. Harris to disinherit the Petitioner and
17 also transfer asserts including the home of Thomas J. Harris in Minden, Nevada
18 into the name and/or trust/instrument of Jeff D. Robben. The entire contents of a
19 Wells Fargo safe deposit box in the name of Thomas J. Harris and may include
20 Olga Harris is missing. Said safe deposit box contained various assets including
21 stock certificates, property, and other legal documents.
22

23 This Petitioner demands a full accounting and paper trails of all assets of
24 Thomas J. Harris, Olga Harris and Jeff Robben and any and all trusts and sus-
25 trusts, shell trusts or corporations, etc.
26
27
28

1 This Petitioner's intent is not to have the current beneficiaries of the
2 Thomas J. Harris trust lose anything. The lawyer for the trust, F. McClure
3 Wallace, has the authority to encourage the trust manager/trustee to settle the
4 matter in an amicable fashion.
5

6 The lawyer, F. McClure Wallace has been unethical in his conduct before
7 this very court when he denied existence of the Thomas J. Harris and Olga
8 Harris trust.
9

10 Since there appears to be evidence and eyewitnesses to these facts, the
11 Petitioner is starting the process of working with the proper authorities in various
12 jurisdictions to pursue any and all criminal matters. This includes the Douglas Co.
13 Sheriff and D.A. Mark Jackson who remembers Todd Robben from a set of previous
14 false charges:
15

16 Source: <http://www.nevadaappeal.com/news/crime/10985994-113/robben-charges-jackson-carson>
17

18 and

19 [https://www.mtdemocrat.com/news/da-protester-charged-with-trying-to-solicit-](https://www.mtdemocrat.com/news/da-protester-charged-with-trying-to-solicit-murder/comment-page-2/)
20 [murder/comment-page-2/](https://www.mtdemocrat.com/news/da-protester-charged-with-trying-to-solicit-murder/comment-page-2/)
21

22 and here

23 [https://www.mtdemocrat.com/news/charges-dropped-da-protester-out-of-](https://www.mtdemocrat.com/news/charges-dropped-da-protester-out-of-prison/)
24 [prison/](https://www.mtdemocrat.com/news/charges-dropped-da-protester-out-of-prison/)
25

26 All charges against South Tahoe resident Ty Robben have now been
27 dropped in jailhouse HIT MAN to kill corrupt Carson City Judge Tatro and
28

1 Slander/Libel/Internet Stalking by Geoff Dornan
2 gdornan@nevadaappeal.com

3 Douglas County District Attorney Mark Jackson, the special prosecutor
4 named to handle the cases, previously dismissed libel and harassment
5 charges.

6 He served notice Thursday that he was dropping the charge **Ty Robben**
7 **AKA "Top Ramen"** (new 'jail name' obtained at the Carson City jailhouse
8 since it sounds like his name) **tried to hire a hit man to kill Justice of**
9 **the Peace John Tatro.**

10 Mark Jackson was brought in after the **Carson City DA's office was**
11 **disqualified** from handling the case.

12 "Based on a full and complete review of all the evidence and the
13 existing constitutional, statutory and case law, I filed a notice of
14 dismissal today in the Carson Township Justice Court," Jackson
15 said in a statement.

16 He said that means Robben's \$50,000 bail has been lifted, and all
17 pending charges against him have been dismissed.
18 "It is my understanding that Mr. Robben is in the process of being
19 released from the Carson City Jail," Jackson said. Robben stopped by the
20 Tahoe Daily Tribune Friday and said he was hoping to restore his life and
21 family. **He thanked his attorneys for their work to get him released.**

22 "Thank you to Mark Jackson for standing up and supporting the U.S.
23 Constitution," Robben said.

24 Two weeks ago, Jackson dismissed the other case against Robben, which
25 accused him of libel and stalking and two counts of attempting to
26 intimidate Tatro and his family. He did so stating that Nevada's libel law
27 was "unconstitutionally vague." The stalking charge, he said, simply didn't
28 have enough evidence to support it.

Robben has been battling the state and criminal justice system since he
was terminated by the Taxation Department.

He was angry with Tatro for his conviction on charges of disorderly
conduct centered on his attempt to — allegedly — serve papers on behalf
of a friend on then-NDOT Director Susan Martinovich. Robben said Judge
Tatro and Assistant DA Mark "Freddie" Krueger must resign and criminal
charges must be filed against Judge Tatro for filing a

1 false report against me. Thank you Douglas County DA Mark Jackson
2 for respecting the US Constitution and my 1st & 14th Amendment rights in
3 these matters and the honor to respect the law(s) and look at the facts
unbiased.

4 Robben also posted a story and photos of an alleged requirement for
5 Judge Tatro to take a breathalyzer test prior to taking the bench everyday.
6 Special thanks Attorney Jarrod Hickman and to the entire State of
7 Nevada Public Defenders office including the folks behind the scenes
answering my numerous phone calls from jail.

8 Are you aware of the ruling in Times v. Sullivan (1964) which states this, in
part:

9 As Americans we have a profound national commitment to the principle
10 that debate on Public Issues should be uninhibited, robust, and wide open.
11 And that it may well include vehement, caustic, and sometimes
unpleasantly sharp attacks on government and public officials.

12
13 The Petitioner has been subject to vexation by the Thomas J. Harris trust
14 administrator, Tara M. Flanagan who has abuse her position as a California
15 Superior Court Judge in volition the state judicial ethics & canons to have the
16 Alameda County authorities attempt to intimate this Petitioner from his legal
17 rights to pursue his claims and expose the corruption. According to Cal. Judicial
18 Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in
19 All of the Judge's Activities A. Promoting Public Confidence B. Use of the
20 Prestige of Judicial Office.

21
22 ccording to Cal. Judicial Canon 4: A Judge Shall So Conduct the Judge's
23 Quasi-Judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with
24 Judicial Obligations

- 25
26 A. Extrajudicial Activities in General
27 B. Quasi-judicial and Avocational Activities
28 C. Governmental, Civic, or Charitable Activities

1 **D. Financial Activities**
2 **E. Fiduciary Activities**
3 **F. Service as Arbitrator or Mediator**
4 **G. Practice of Law**
5 **H. Compensation and Reimbursement**

6 There has been a total break-down and failure to communicate by Tara M.
7 Flanagan, F. McClure Wallace and Scott Barton. Tara M. Flanagan knows of the
8 fraud and theft conducted by Scott William Barton Cal. State BAR # 160262, a
9 California lawyer. Pursuant to California Judicial Canon III, D II: (2) Whenever a
10 judge has personal knowledge that a lawyer has violated any provision of the
11 Rules of Professional Conduct, the judge shall take appropriate corrective action.

12 “Silence can only be equated with fraud where there is a legal or moral
13 duty to speak or where an inquiry left unanswered would be intentionally
14 misleading.” *United States v. Prudden*, 424 F.2d 1021 p. 1032.(5th Cir. 1970),
15 cert. denied, 400 U.S. 831, 91 S.Ct. 62, 27 L.Ed.2d 62 (1970).
16

17 In an effort to carry out any litigation in this case, a court appointed lawyer
18 is requested to act as an intermediary and legal counsel. The Petitioner cannot
19 be subjected to false claims of harassment or threats to harm anyone. An honest
20 lawyer will be able to work with the opposing counsel to obtain an amicable
21 solution and justice for any criminal wrongdoings.
22

23 In an abundance of caution, and in the interests and furtherance of justice,
24 the Petitioner has a “statutory right” to counsel in this matter and the Court has
25 an opportunity to remedy the situation simply by appointing counsel to which any
26
27
28

1 costs, fees, etc can be paid back by the Petitioner upon a successful resolution
2 and the inclusion of attorneys fees and costs.

3 In good faith, this Petition is holding back evidence, facts and the names
4 of certain individuals to preserve confidentiality upon the Courts decision on
5 appointing counsel. Once counsel is appointed, the evidence can be disclosed to
6 the Defendants' counsel and/or the court.
7

8 If the Court decides against appointing counsel, the Petitioner will pursue
9 this case in pre per. The Petitioner reserves all rights including using extra-
10 judicial remedies, common law liens, salvage liens and any and all other tolls and
11 resources to accomplish justice and a fair remedy
12
13

14 Respectfully signed under penalty of perjury,
15

16
17 /s/ Todd Robben

18 June 15, 2022
19
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CERTIFICATE OF MAILING

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on (month) June (day) 15th, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 15th day of June, 2022

Submitted By: /s/ Stephen James Robben

○

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Exhibit 6

Exhibit 6

Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

1 CASE NO.: 2021 PB00034

2 DEPT NO.: I

RECEIVED

JUN 22 2022

Douglas County
District Court Clerk

FILED
JUN 22 AM 11:04
PROBATE CLERK
M. CARNEY

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4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF DOUGLAS

7
8 IN RE:

9 THE ESTATE OF THOMAS JOSEPH
HARRIS,

10 Deceased
11 _____/

12 ORDER GRANTING PETITION TO CONFIRM FIRST AND FINAL
13 ACCOUNTING, REQUEST FOR FINAL DISTRIBUTION, AND REQUEST
14 FOR PAYMENT OF PROFESSIONAL'S FEES AND COSTS

15 Tara M. Flanagan, in her capacity as the Court appointed Personal
16 Representative (aka "Successor Executor") of the Estate of Thomas Joseph Harris
17 (the "Estate"), by and through her counsel of record, F. McClure Wallace and Patrick
18 R. Millsap of Wallace & Millsap, has presented her Petition to Confirm First and
19 Final Accounting, Request for Final Distribution and Request for Payment of
20 Professional Fees and Costs (the "Petition").

21 The Court conducted a properly noticed hearing on the Petition on May 24,
22 2022. The Court received no objections to the Petition. However, also on or about
23 May 24, 2022, Mr. Todd Robben filed a *Notice of Motion for Continuance and Motion*
24 *for Continuance* requesting up to a six-month continuance of the matter. Based on
25 the presentations of Mr. Robben and Counsel for the Estate at the hearing, the Court
26 granted Mr. Robben a short extension to demonstrate a basis upon which he could
27 assert any standing in this matter, continuing the hearing on the Petition to June 21,
28 2022. Thereafter, Mr. Robben filed a *Request for Appointment of Counsel* on June 15,

2022. The Court then conducted a continued hearing for approval of the Petition on June 21, 2022. Again, the Court received no objections to the Petition beyond the filings and presentation of Mr. Robben. Counsel for the Estate argued in favor of granting the Petition and presented legal arguments in opposition to Mr. Robben's filings and oral presentation, namely that Mr. Robben is not an interested person in this matter as defined by NRS 132.185, and as such lacks standing to object to the Petition or be appointed counsel by the Court pursuant to NRS 136.200.

Having considered the Personal Representative's Petition, Mr. Todd Robben's filings, and having heard the presentation of the Personal Representative by and through her Counsel, as well as the presentation of Mr. Todd Robben, appearing in *pro per*, the Court finds as follows:

FINDINGS AND ORDER

1. Thomas Joseph Harris (the "Decedent") died on December 30, 2019, as a resident of Douglas County, Nevada.

2. The Decedent's death was caused by a motor vehicle accident in Washoe County, Nevada on or about December 19, 2019. The Decedent was not at fault for the motor vehicle accident.

3. The Last Will and Testament of Thomas Joseph Harris was duly lodged with this Court on April 6, 2021.

4. The Decedent's Last Will and Testament is a pour over will, identifying the Decedent's Trust as the beneficiary of his Will. The Decedent's Trust is The Declaration of Trust Known as the Thomas J. Harris Trust, Dated June 12, 2019 (the "Decedent's Trust" or the "Trust").

5. The Decedent's Last Will and Testament identified the following line of Executors: Jeff Robben, Scott Barton, and Tara Flanagan.

6. On March 10, 2021, Scott Barton filed his *Verified Petition for Letters of Special Administration (NRS 140.010) and for Probate of Will and Issuance of Letters Testamentary (NRS 136.090)*. Mr. Barton was the appropriate individual to seek

1 appointment as the Personal Representative of the Estate because the first
2 nominated executor, Mr. Robben, had passed away on November 11, 2020.

3 7. On April 6, 2021, this Court entered its *Order Admitting Will to Probate*
4 *and Issuing Letters Testamentary* appointing Scott Barton to serve as the Personal
5 Representative of the Estate. Consistent with the Court's Order, Letters
6 Testamentary were issued to Scott Barton on April 22, 2021.

7 8. Upon information and belief, pursuant to his appointment as the
8 Estate's Personal Representative, Scott Barton began his efforts to administer the
9 Decedent's Estate. Namely for purposes of this Petition, Mr. Barton continued Mr.
10 Robben's previously initiated efforts to prosecute the wrongful death claims related
11 to the Decedent's death, including retaining Ms. Julie Throop, Esq. to represent the
12 Estate regarding the wrongful death of the Decedent.

13 9. By and through its retained litigation Counsel, the Estate was able to
14 reach a pre-litigation resolution of all claims regarding the wrongful death of the
15 Decedent, as discussed in greater detail below.

16 10. Thereafter, and before completing the negotiated settlement or gaining
17 Court approval of the settlement on behalf of the Estate, Scott Barton notified Tara
18 Flanagan he was resigning as the Personal Representative of the Estate.

19 11. Consistent with her nomination as the next named executor of the
20 Estate by the Decedent's Will, Ms. Flanagan filed her *Petition for Appointment of*
21 *Successor Executor and for Issuance of Letters Testamentary* on June 25, 2021.

22 12. On July 27, 2021, the Court entered its *Order Appointing Successor*
23 *Executor and Issuing Successor Letters Testamentary*, and on August 17, 2021, the
24 Court issued Letters Testamentary to Tara M. Flanagan.

25 13. Pursuant to her appointment as the Personal Representative of the
26 Estate, on August 30, 2021, Ms. Flanagan filed her Petition to Approve Settlement
27 (the "Petition"), seeking this Court's confirmation of the settlement negotiated by Mr.
28 Barton and Ms. Throop on behalf of the Estate regarding the Decedent's death, as

1 well as authorizing Ms. Flanagan, in her capacity as the Estate's Personal
2 Representative, to complete all remaining steps necessary to effectuate the
3 settlement for the benefit of the Estate.

4 14. Thereafter, the Court held a hearing on September 9, 2021 on the
5 Personal Representative's Petition. The hearing was attended by Thomas A. Harris,
6 Counsel for Mr. Thomas A. Harris, the Personal Representative, Counsel for the
7 Personal Representative, and the Estate's wrongful death Counsel, Julie Throop, Esq.
8 At the hearing the Judge heard from all Counsel regarding the issue of Ms. Throop's
9 attorney fees as raised by Mr. Thomas A. Harris by and through his Counsel. At the
10 conclusion of the hearing, Mr. Harris withdrew any objection he had previously
11 presented to Ms. Throop's fees incurred as wrongful death Counsel for the Estate. As
12 a result, there is no objection before the Court to the Petition to Approve the
13 Settlement filed by the Personal Representative, nor any objection to the settlement
14 placed before the Court for confirmation.

15 15. On September 9, 2021 the Court entered its *Order Granting Petition to*
16 *Approve Settlement.*

17 16. Pursuant to the Court's *Order Granting Petition to Approve Settlement*
18 Tara M. Flanagan, in her capacity as the Estate's Personal Representative, finalized
19 the settlement for the benefit of the Estate and deposited all settlement proceeds in
20 the Estate's bank account. The Court finds Ms. Flanagan's efforts in this regard to
21 have been dutifully and properly fulfilled.

22 17. On April 15, 2022, the Personal Representative filed the subject *Petition*
23 *to Confirm First and Final Accounting, Request for Final Distribution, and Request*
24 *for Payment of Professional's Fees and Costs.*

25 18. Shortly thereafter, the Estate's Inventory and Record of Value was
26 appropriately filed.

27 19. As reported in the Personal Representative's Petition, Notice to
28 Creditors was properly filed on April 22, 2021, and published in the Record Courier

1 on April 29, May 6, and May 13, 2021. Proof of Publication of the Notice to Creditors
2 was filed with the Court on May 20, 2021. No creditor's claims were filed against the
3 Estate.

4 20. All tax returns appropriately required of the Decedent have been filed.
5 A final estate tax return will be filed. There is no known liability due on this return.

6 21. The Administrator has received no other communication or inquiry from
7 any other taxing authority or any other claimant.

8 22. The acts of the Tara Flanagan, in her capacity as the Successor
9 Executor, are ordinary, necessary, and reasonable without exception.

10 23. After all administrative expenses, legal expenses, and claims have been
11 paid, all remaining assets, including any after discovered assets, will be distributed
12 to the Estate's sole beneficiary, the Thomas J. Harris Trust, dated June 12, 2019.

13 24. The time necessary for the Successor Executor to complete the tasks
14 required of her has been ordinary, necessary, and reasonable.

15 25. The gross value of the Estate for computing the Petitioner's Commission
16 is \$620,000.00.

17 26. Pursuant to NRS 150.020, the Petitioner is entitled to \$13,550.00 in
18 ordinary compensation.

19 27. Counsel has rendered valuable services to the Petitioner.

20 28. The rates charged by Wallace & Millsap LLC are ordinary, necessary,
21 and reasonable.

22 29. The services performed by Wallace & Millsap LLC are appropriate,
23 necessary, and reasonable without exception.

24 30. Wallace & Millsap LLC has requested the sum \$20,638.00 in attorney's
25 fees.

26 31. Wallace & Millsap LLC has requested the sum of \$994.78 for costs
27 advanced.

28 32. Finally, upon thorough review by this court, including review of Mr.

1 Robben's written filings and hearing Mr. Robben's oral presentation at both the May
2 24, 2022 hearing as well as the June 21, 2022 continued hearing, the Court
3 determines Mr. Robben is not an "interested person" in this Estate as defined by NRS
4 132.185, and as such has no standing to object to the Petition, be appointed Counsel,
5 or otherwise appear in this proceeding. Specifically, the Court heard from Mr.
6 Robben, and after giving him additional time, Mr. Robben was unable to present any
7 legal basis or admissible evidence to potentially allow a determination he is an
8 interested person in this Estate. Therefore, Mr. Todd Robben is not an interest^{nt}
9 person to this Estate, and as such has no standing to oppose or object to the Petition,
10 or to otherwise appear in these proceedings.
11

12 **WHEREFORE**, as a result of the foregoing, considering the *Petition to*
13 *Confirm First and Final Accounting, Request for Final Distribution, and Request for*
14 *Payment of Professional's Fees and Costs* filed by the Personal Representative,
15 considering Mr. Todd Robben's *Notice of Motion for Continuance and Motion for*
16 *Continuance*, and hearing the presentation of Counsel and Mr. Robben, the Court
17 having good cause ORDERS as follows:

- 18 A. The First and Final Accounting of the Estate is approved without
19 exception.
- 20 B. The acts of the Personal Representative with respect to the
21 administration of the Estate are confirmed without exception
- 22 C. It was proper to generally administer this Estate.
- 23 D. There were no known prior distributions.
- 24 E. The Personal Representative's requested ordinary fees and costs are
25 necessary and reasonable in all respects.
- 26 F. The Personal Representative is authorized and directed to pay herself
27 \$13,550.00 in ordinary fees.
28

- 1 G. All actions and services rendered by Counsel for the Personal
2 Representative were reasonable and appropriate.
- 3 H. Counsel for the Personal Representative's requested fees and costs were
4 necessary and reasonable in all respects.
- 5 I. The Personal Representative is authorized and directed to pay the law
6 firm of Wallace & Millsap LLC, the sum of \$20,638.00 as compensation
7 for legal services rendered, and to be rendered by said attorney and
8 paralegal for the benefit of the Estate.
- 9 J. The Personal Representative is authorized and directed to pay the law
10 firm of Wallace & Millsap LLC, the sum of \$994.78 for costs advanced
11 and to be advanced in this Estate, for a total payment of fees and costs
12 in the amount of \$21,632.78.
- 13 K. The Personal Representative is authorized and directed to holdback
14 \$5,000.00 for completion of all the Estate's tax needs, including paying
15 the final accounting fees of the Estate.
- 16 L. After all administrative expenses and professional fees are paid, the
17 Personal Representative is authorized and directed to distribute the
18 Estate's remaining assets, including any after discovered assets to The
19 Declaration of Trust Known as the Thomas J. Harris Trust, Dated June
20 12, 2019, by and through Tara Flanagan as Successor Trustee.
- 21
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1 M. The Personal Representative shall complete any and all remaining task
2 necessary to complete the administration of this Estate, at which time
3 the Executor shall request her discharge from this Court.

4 N. Mr. Todd Robben is not an interested person in this matter, has no
5 standing in the proceedings, and as such his Request for Appointment
6 of Counsel is denied.

7
8
9 IT IS SO ORDERED this 22 day of June 2022.

10
11
12 
District Court Judge

13 Submitted by:

14
15 WALLACE & MILLSAP

16 /s / F. McClure Wallace

17 F. MCCLURE WALLACE, ESQ.

18 State Bar No. 10264

19 PATRICK R. MILLSAP, ESQ.

20 State Bar No. 12043

21 WALLACE & MILLSAP LLC

22 510 West Plumb Lane, Suite A

23 Reno, Nevada 89509

24 (775) 683-9599 Telephone

25 (775) 683-9597 Fax

26 Attorneys for Petitioner
27
28

Exhibit 7

Exhibit 7

1 Todd Robben
2 In Pro per
3 PO Box 4251
4 Sonora, CA 95370
5 Robben.ty@gmail.com
6 (209)540-7713

7 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9
10 IN RE: THE ESTATE OF THOMAS
11 JOSEPH HARRIS,
12
13 Deceased

}
CASE NO.: 2021 PB00034

}
NOTICE OF APPEAL

}
DEPARTMENT: 1

}
JUDGE: Nathan Tod Young

14
15
16
17 Petitioner, Todd C. Robben appeals the decision, order and judgment pursuant
18 to NRS §§ 155.190 from Judge Nathan Tod Young on June 21, 2022¹ denying
19 Petitioner counsel and granting the final accounting and final distribution in the above
20 titled case.

21 Respectfully,

22 

23
24 /s/ Todd Robben

25 06/27/2022

26
27 ¹ The order appears to be dated June 22, 2022.

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CERTIFICATE OF MAILING

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on June 27, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 27 day of June, 2022

Submitted By: /s/ Stephen James Robben

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Exhibit 8

Exhibit 8

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
THOMAS JOSEPH HARRIS,
DECEASED.

No. 84948

TODD ROBBEN,

Appellant,

vs.

TARA FLANAGAN, IN HER CAPACITY
AS THE COURT APPOINTED
PERSONAL REPRESENTATIVE,
Respondent.

FILED

JUL 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order entered in a probate matter. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Review of the notice of appeal and documents before this court reveals a jurisdictional defect. NRAP 3A(a) allows only an aggrieved party to appeal. Generally, a party is a person who has been named as a party to the lawsuit and who has been served with process or appeared. *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 447, 874 P.2d 729, 734 (1994). It does not appear that appellant was named as a party in the proceedings below. And while any "interested person" may participate in probate actions, an "interested person" is defined as someone "whose right or interest under an estate or trust may be materially affected by a decision of a fiduciary or a decision of the court. The fiduciary or court shall determine who is an interested person according to the particular purposes of, and matter involved in, a proceeding." NRS 132.185; *see also* NRS 132.390.

Here, the district court determined that appellant was not an interested person in the underlying matter under NRS 132.185 and thus lacked standing to object to the probate petition or otherwise appear in the proceedings. Under these circumstances, it appears appellant lacks standing to appeal under NRAP 3A(a). Accordingly, this court lacks jurisdiction and

ORDERS this appeal DISMISSED.

Silver, J.
Silver

Cadish, J.
Cadish

Pickering, J.
Pickering

cc: Hon. Nathan Tod Young, District Judge
Todd Robben
Wallace & Millsap LLC
Douglas County Clerk

Exhibit 9

Exhibit 9

RECEIVED

JUL 13 2022

Douglas County
District Court Clerk

FILED

2022 JUL 13 AM 10:59

BOBBIE R. WILLIAMS
CLERK

C. WALKER
BY _____ DEPUTY

1 Case No. 2021-PB-00034

2 Dept. No. I

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4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF DOUGLAS
8

9 In Re:

10 The Estate of

11 THOMAS JOSEPH HARRIS,

12 Deceased.
13 _____/

ORDER

14 THIS MATTER comes before the court upon the following filings: "Emergency
15 Stay Request[;] Emergency Verified Motion to Reconsider; Request for Calcification;
16 Notice of Non Hearsay Proof of The Thomas Joseph and Olga Harris Living Trust" filed
17 on June 22, 2022; Supplemental Points and Authorities filed on June 23, 2022; "Motion to
18 Expedite Stay Request Pending Reconsideration[;] Request for Submission" filed on June
19 24, 2022; an opposition filed on July 1, 2022; and "Petitioner's Reply in Support of
20 Emergency Stay Request & Emergency Verified Motion to Reconsider; Request for
21 Clarification; Notice of Non Hearsay Proof of The Thomas Joseph and Olga Harris Living
22 Trust" filed on July 5, 2022.
23

24 Having examined all relevant pleadings and papers on file herein, the court now
25 enters the following order, good cause appearing:
26

27 THAT the requests set forth above are DENIED.

28 An "Order Granting Petition to Confirm First and Final Accounting, Request for

1 Final Distribution, and Request for Payment of Professional's Fees and Costs" was entered
2 in writing on June 22, 2022. A Notice of Appeal was filed on June 27, 2022, by Todd
3 Robben, with a Case Appeal Statement filed on June 28, 2022. An Order Dismissing
4 Appeal issued on July 8, 2022, by the Supreme Court of the State of Nevada.

5 Separate from the appeal, Todd Robben requests this court reconsider the ruling set
6 forth within the Order dated June 22, 2022. "A district court may reconsider a previously
7 decided issue if substantially different evidence is subsequently introduced or the decision
8 is clearly erroneous." *Masonry and Tile Contractors Ass'n of S. Nev. v. Jolley, Urga &*
9 *Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Reviewing the filings entered
10 after the written order issued on June 22, 2022, the court does not find substantially
11 different evidence subsequently introduced or that the court's decision is clearly erroneous.
12 Therefore, the motion to reconsider is denied.

13
14
15 Tod Robben also requests this court's order dated June 22nd be stayed. The
16 Supreme Court of the State of Nevada considers the following factors in deciding whether
17 to issue a stay:

- 18 (1) whether the object of the appeal will be defeated if the stay is denied;
- 19 (2) whether appellant will suffer irreparable or serious injury if the stay is denied;
- 20 (3) whether respondent will suffer irreparable or serious injury if the stay is granted; and
- 21 (4) whether appellant is likely to prevail on the merits in the appeal.

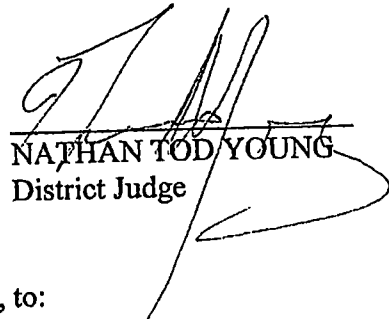
22 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *NRAP*
23 *8(c)*); see also *Fritz Hansen A/S, Petitioner v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657,
24 6 P.3d 982, 986 (2000). "We have not indicated that any one factor carries more weight
25 than the others, although *Fritz Hansen A/S v District Court* recognizes that if one or two
26 factors are especially strong, they may counterbalance other weak factors." *Mikohn*
27
28

1 *Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38.

2 Considering the appeal has now been dismissed, it does not appear likely that
3 appellant is to prevail on the merits given that the object of the appeal has already been
4 defeated. The court finds this to be an especially strong factor. Balancing the relevant
5 considerations, the court finds insufficient reason to grant the requested stay.
6

7 IT IS SO ORDERED.

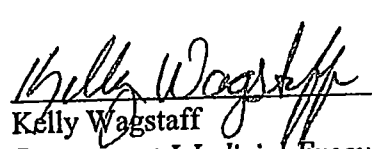
8 Dated this 13 day of July, 2022.


NATHAN TOD YOUNG
District Judge

11 Copies served by mail this 13 day of July, 2022, to:

13 Wallace & Millsap
14 510 W. Plumb Lane, Suite A
15 Reno, NV 89509

16 Todd Robben
17 P.O. Box 4251
18 Sonora, CA 95370


Kelly Wagstaff
Department I Judicial Executive Assistant

Wallace & Milloap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

FILED

1 Case No.: 22-PB-00119

2 Dept. No.: II

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Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

DEPUTY

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4
5
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8
9 TODD ROBBEN,

10 Petitioner;

11 vs.

12 THE ESTATE OF THOMAS J.
13 HARRIS and THE THOMAS J.
14 HARRIS TRUST,

15 Respondents.

THE THOMAS J. HARRIS TRUST'S
MOTION FOR
SUMMARY JUDGMENT

16
17 The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust,
18 respectfully moves this Court for an order granting summary judgment against
19 Petitioner Todd Robben's Petition to Invalidate the Thomas J. Harris Trust.

20 This Motion is based on the following Points & Authorities, any oral argument
21 this Court wishes to entertain on the Motion and the papers and pleadings on file
22 with the Court of utility in deciding the Motion.

23
24 ///

25
26 ///

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28 ///

1 **POINTS & AUTHORITIES SUPPORTING SUMMARY JUDGMENT**

2
3 **I. STATEMENT OF THE ISSUE**

4 NRCP 56 requires entry of summary judgment against the Petition to
5 Invalidate the Thomas J. Harris Trust (the "Petition"), because Petitioner cannot
6 meet his evidentiary burden of production to survive summary judgment by
7 producing admissible evidence establishing Petitioner is an interested person in the
8 Trust with standing to bring a contest action under NRS 164.015. Petitioner cannot
9 establish he is an interested person in the Trust through admissible evidence because
10 he has not produced, nor can he produce, any prior Trust instruments naming him as
11 a beneficiary or trustee of the Trust. In the absence of said evidence, invalidating the
12 Trust would not impact Petitioner because he is neither a former beneficiary of the
13 Trust, nor a beneficiary of the Estate. Since the Petition is a shell proceeding that
14 will not affect Petitioner regardless of the outcome because he has no beneficial
15 interest in the Trust or the Estate, summary judgment against the Petition is
16 mandatory under the evidentiary requirements of NRCP 56.

17
18 **II. STATEMENT OF THE CASE PROCEDURE**

19 Thomas Joseph Harris, the Settlor of The Declaration of Trust Known as the
20 Thomas J. Harris Trust, Dated June 12, 2019 (the "Trust"), died on December 30,
21 2019, as a resident of Douglas County, Nevada. In addition to the Trust, Mr. Harris
22 had a corresponding pour over Will that named the Trust as its beneficiary. The Will
23 was duly lodged with this Court on April 6, 2021. Also on April 6, 2021, the Court
24 entered its Order Admitting Will to Probate and Issuing Letters Testamentary in
25 Case No. 2021-PB-00034 before Department I (the "Estate Case"). Letters
26 Testamentary were issued to Scott Barton on April 22, 2021, after which Mr. Barton
27 began administering the Estate. Several months thereafter, Mr. Barton notified The
28 Honorable Tara Flanagan he was resigning as both the Personal Representative of

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the Decedent's Estate and as Trustee of the Decedent's Trust. Consistent with her nomination as the next named executor of the Estate by the Decedent's Will, Ms. Flanagan filed her Petition for Appointment of Successor Executor and for Issuance of Letters Testamentary on June 25, 2021 in the Estate Case. On July 27, 2021, the Court entered its Order Appointing Successor Executor and Issuing Successor Letters Testamentary, and on August 17, 2021, Letters Testamentary were issued to the Honorable Tara M. Flanagan.

Pursuant to her appointment as the Successor Executor of the Estate, Ms. Flanagan (hereinafter the "Successor Executor" or the "Petitioner") continued the Estate's administration and worked to diligently conclude the administration of the Estate. On, April 14, 2022, the Successor Executor filed her Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs (the "First and Final Petition") in the Estate Case. A hearing was scheduled on the Successor Executor's First and Final Petition for May 24, 2022.

On May 23, 2022, Todd Robben appeared for the first time in the Estate case through the filing of his Notice of Motion for Continuance and Motion for Continuance. Mr. Robben's request for a continuance was based on allegations concerning the invalidity of the Decedent's Will.

A hearing was conducted in the Estate Case regarding the First and Final Petition on May 24, 2022. The Court heard the presentation of Todd Robben, as well as multiple arguments from Counsel for the Estate, including but not limited to presentation of the fact Mr. Robben was not an "interested person" in the Estate as defined by Nevada law, and had no standing upon which to appear, to contest the validity to the Decedent's Will, or otherwise state any objection in the Estate Case. At the conclusion of the hearing, the Court granted Mr. Robben a brief continuance to present any basis upon which he could be identified as an interested person in the Estate Case.

1 A continued hearing was conducted on the First and Final Petition in the
2 Estate Case on June 21, 2022. At the conclusion of the hearing, having heard
3 arguments from Mr. Robben and Counsel for the Estate, the Court granted the
4 Successor Executor's First and Final Petition in full and without exception.
5 Moreover, the Court in the Estate Case ruled Mr. Robben was not an interested
6 person in the Estate.

7 Thereafter, Mr. Robben sought reconsideration of the Court's Order holding he
8 was not an interested person in the Estate. He also appealed that Order to the
9 Nevada Supreme Court. On July 8, 2022, the Nevada Supreme Court filed its Order
10 Dismissing Appeal, dismissing in entirety Mr. Robben's appeal in the Estate Case.
11 Similarly, on July 13, 2022, the District Court entered its Order denying Mr. Robben's
12 Motion for Reconsideration and all filings associated with Mr. Robben's Motion for
13 Reconsideration. As a result, Mr. Robben is definitively not an interested person in
14 the Estate because he could not present any evidence to establish he had an interest
15 in the Estate. Similar to the Estate Case, Mr. Robben cannot present any evidence
16 to show he is a beneficiary of the Trust, requiring summary judgment against his
17 Trust Contest.

18
19 **III. STATEMENT OF RELEVANT FACTS**

20 Petitioner is not a beneficiary of the current Trust. Petitioner has not produced
21 any prior Trust Instrument naming him as a beneficiary of the Trust. Petitioner has
22 not produced any prior wills or testamentary instruments naming him as a
23 beneficiary if the Court invalidated the Trust. Petitioner is not an intestate
24 beneficiary or interested person in the Estate. Thus, Petitioner has produced no
25 admissible evidence establishing he has a beneficial interest in the Trust or Estate if
26 the Court invalidated the currently operative Trust Instrument.

27 Instead, Petitioner only offers his own testimonial speculation about a
28 potential beneficial interest in a prior Trust Instrument in support of the Petition.

1 However, testimonial speculation is not sufficient to meet his evidentiary burden of
2 production to survive summary judgment, requiring summary judgment against the
3 Petition as discussed below.

4
5 **IV. LAW & ARGUMENT**

6 NRCP 56(a) states "[t]he court shall¹ grant summary judgment if the movant
7 shows...there is no genuine dispute as to any material fact and the movant is entitled
8 to judgment as a matter of law." When construing the summary judgment standard,
9 the Nevada Supreme Court adopted the United States Supreme Court's holdings in
10 *Liberty Lobby, Celotex, and Matsushita* dictating when summary judgment is
11 required. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

12 In *Celotex*, the United States Supreme Court held "summary judgment
13 procedure is properly regarded...as an integral part of the...Rules as a whole, which
14 are designed to secure the just, speedy and inexpensive determination of every
15 action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed.
16 2d 265 (1986). Therefore, Rule 56 must be construed with due regard for the rights
17 of persons opposing claims and defenses with no factual basis. *Id.*

18 In order to dispose of baseless claims, the *Celotex* Court held summary
19 judgment is mandatory against a claimant who cannot establish an essential element
20 of the claim he or she must prove at trial. *Id.* at 322, 2552. "[A] summary judgment
21 motion may properly be made in reliance solely on the pleadings, depositions,
22 answers to interrogatories, and admissions on file." *Id.* at 324, 2553. In response, if
23 the claimant fails to demonstrate an essential element of its claim, there is no genuine
24 issue of material fact regarding the claim, because a complete failure of proof
25 concerning an essential element of the claim renders all other facts immaterial. *Id.*
26 at 322-323, 2552. As such, the moving party is entitled to a judgment as a matter of

27
28 ¹ "The word 'shall' is generally regarded as mandatory." *Markowitz v. Saxon Special Servicing*, 129
Nev. 660, 665, 310 P.3d 569, 572 (2013).

1 law whenever the claimant fails to make a sufficient showing on an essential element
2 of a claim on which he or she has the burden of proof at trial. *Id.* at 323. Interpreting
3 Rule 56 in this fashion serves Rule 56's principal purpose to isolate and dispose of
4 factually unsupported claims. *Id.* at 323-324, 2553.

5 Of note, "the mere existence of some alleged factual dispute between the
6 parties will not defeat an otherwise properly supported motion for summary
7 judgment; the requirement is...there be no *genuine* issue of *material* fact." *Anderson*
8 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202
9 (1986). As to materiality, the substantive law will identify which facts are material.
10 *Id.* at 248. A fact is only material if it might affect the outcome of the suit under the
11 governing substantive law. *Id.* Irrelevant or unnecessary factual disputes do not
12 preclude summary judgment because they are immaterial. *Id.* The substantive law
13 governs which facts are material and which facts are irrelevant. *Id.*

14 In addition to the requirement of materiality, factual disputes must be
15 "genuine" or else summary judgment is mandatory. *Matsushita Elec. Indus. Co. v.*
16 *Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).
17 Consequently, when the moving party has carried its burden under Rule 56, the
18 nonmoving party must do more than show there is some metaphysical doubt as to the
19 material facts. *Id.* The language of Rule 56 requires the nonmoving party to come
20 forward with specific facts showing there is a "genuine" issue for trial or else have
21 summary judgment entered against it. *Id.* at 587. As such, "[w]here the record taken
22 as a whole could not lead a rational trier of fact to find for the non-moving party,
23 there is no genuine issue for trial." *Id.*

24 In consideration of the United States Supreme Court's holdings in *Liberty*
25 *Lobby*, *Celotex*, and *Matsushita*, the Nevada Supreme Court required entry of
26 summary judgment whenever "the pleadings, depositions, answers to interrogatories,
27 admissions, and affidavits, if any, that are properly before the court demonstrate that
28 no genuine issue of material fact exists, and the moving party is entitled to judgment

as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. at 731, 121 P.3d at 1031. Nevada substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Id.* A factual dispute is only genuine if a rational trier of fact could return a verdict for the nonmoving party when considering the evidence. *Id.* "The nonmoving party is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732.

Procedurally, the "party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). "If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact." *Id.* The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial." *Id.*

If the moving party will bear the burden of persuasion at trial, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. *Id.* However, if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy its burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) pointing out there is an absence of evidence to support the nonmoving party's case. *Id.* at 602-603. The nonmoving party must then transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact for trial or else summary judgment is mandatory. *Id.* at 603.

In this case, Petitioner will bear the burden of persuasion at trial to invalidate the Trust. Consequently, Ms. Flanagan may meet her burden of production to obtain summary judgment by pointing out there is an absence of evidence to support Petitioner's trust contest. Specifically, Petitioner cannot produce any prior trust instrument naming his as a beneficiary and, consequently, he is not an interested

1 person in the Trust with standing to proceed with a trust contest. Having pointed
2 out there is an absence of evidence to support Petitioner's case, the burden of
3 production shifts to Petitioner to produce admissible evidence demonstrating he is an
4 interested person in the Trust, or else summary judgment is mandatory. Petitioner
5 cannot demonstrate he is a current or former beneficiary of the Trust and, therefore,
6 summary judgment is mandatory as discussed below.

7 **a. This Court should grant summary judgment against the Petition**
8 **because Petitioner cannot meet his burden of production to**
9 **survive summary judgment by producing a prior Trust**
10 **Instrument naming him as a beneficiary of the Thomas J. Harris**
11 **Trust.**

12 Petitioner has endeavored to contest the validity of the Thomas J. Harris
13 Trust. However, only an "interested person" in the Trust may contest its validity. In
14 that regard, NRS 164.015(1) states an "interested person" may petition the Court
15 concerning the internal affairs of the Trust, including requesting the relief codified in
16 NRS 153.031. NRS 153.031(1)(d) allows an interested person to petition the Court to
17 determine whether a trust provision is valid. Similarly, NRS 164.015(3) only
18 contemplates the procedure for an "interested person" to contest the validity of a
19 nontestamentary trust. Thus, in order to contest the validity of a nontestamentary
20 trust under NRS Chapter 164, the petitioner must be an "interested person" in the
21 Trust.

22 NRS 132.185 generally defines an interested person as "a person whose right
23 or interest under an estate or trust may be materially affected by a decision of a
24 fiduciary or a decision of the court." Additionally, NRS 132.390(1)(d) specifically
25 identifies who are interested persons in a trust contest maintained under NRS
26 164.015. In that regard, NRS 132.390(1)(d) states "a person is an interested person
27 with respect to:...[a] revocable trust that is the subject of a petition under NRS
28 164.015 relating to the validity of the trust or any trust-related document, if the

1 person, after the death of the settlor, under the terms of any version of the trust
2 documents in dispute, would be:

- 3 • A current beneficiary or a remainder beneficiary of that trust; or
- 4 • A trustee or a successor trustee, including, without limitation, a cotrustee."

5 Therefore, only a current or remainder beneficiary of the trust documents in
6 dispute, or a trustee or successor trustee under the trust documents in dispute is an
7 interested person with standing to contest a trust under NRS 164.015.

8 In this case, summary judgment against the Petition is mandatory because
9 Petitioner cannot meet his evidentiary burden of production to survive summary
10 judgment by producing admissible evidence demonstrating he is an interested person
11 in the Trust as a former beneficiary or trustee as required by NRS 132.390(1)(d).
12 More specifically, the Court previously allotted Petitioner time in the Estate
13 Proceeding to produce a prior will or testamentary instrument establishing he has a
14 beneficial interest in the Estate if the current Will was invalidated. Petitioner
15 produced no such evidence, which combined with the fact Petitioner is not an
16 intestate beneficiary of the Estate, led the Court to hold Petitioner is not an interested
17 person in the Estate. The Court's Order concluding Petitioner is not an interested
18 person in the Estate was upheld on appeal. Thus, if Petitioner is not an interested
19 person in the Estate, he must establish he is a beneficiary of a prior Trust instrument
20 in order to be an interested person in the Trust with standing enact a trust contest.
21 However, Petitioner has not produced any prior Trust instruments naming him a
22 beneficiary or trustee of the Trust; analogous to the Estate proceeding where
23 Petitioner produced no prior wills or testamentary instruments naming him a
24 beneficiary after being directed by the Court to do so in the face of dismissal of his
25 Estate Case. Therefore, summary judgment against the Petition is mandatory
26 because the Petitioner cannot establish he is a beneficiary or trustee of a prior Trust
27 instrument as required to be an interested person in the Trust with standing to enact
28 a trust contest. See NRS 132.390(1)(d). In other words, Petitioner has no standing

1 to contest the Trust because regardless of the Trust's validity, no order of the Court
2 will effect Petitioner since he cannot demonstrate he is a former beneficiary of the
3 Trust, nor is he a beneficiary of the Estate.

4 **V. CONCLUSION AND REQUESTED RELIEF**

5 Based on the foregoing facts, law and argument, the Honorable Tara Flanagan,
6 as Trustee of the Thomas J. Harris Trust, respectfully requests this Court grant
7 summary judgment against Mr. Robben's Petition to Invalidate the Thomas J. Harris
8 Trust because he is not an interested person in the Trust with standing to proceed
9 any further at the expense of both judicial and trust resources.

10 **AFFIRMATION**

11 The undersigned affirms this document does not contain the social security
12 number or legally private information of any person.

13 DATED this 6th day of October 2022.

14
15 By: _____

F. McClure Wallace, Esq.
Nevada State Bar No. 10264
WALLACE & MILLSAP
510 W. Plumb Lane, Suite A
Reno, Nevada 89509
Ph: (775) 683-9599
mcclure@wallacemillsap.com

CERTIFICATE OF SERVICE

The undersigned certifies the Motion for Summary Judgment was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Motion was placed in the mail for service on the date shown below.

Dated this 6th day of October, 2022.

By: 

Caroline Carter, Paralegal

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

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OCT 21 2022
Douglas County
District Court Clerk

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CLERK

BY *[Signature]* DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

Vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,
Deceased,
Respondent.

CASE NO.: 2022-PB-00119

PETITIONER TODD ROBBEN'S
OBJECTION TO RESPONDENT'S
MOTION TO DISMISS

Related cases:

Ninth District Court Case No.:
2021-PB00034

Nevada Supreme Court Case No.:
84948

Petitioner, Todd Robben, timely objects to the Respondent's Motion to Dismiss
based on the following memorandum of points and authorities.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

The Petitioner re-asserts his statutory right to counsel pursuant to Nevada
Revised Statute ("NRS") 136.200 in order secure his property rights and have his
case determined on the merits pursuant to the U.S. and State of Nevada

1 Constitutional due-process and equal-protection of the law¹. The Respondent
2 concedes² to this argument by failing to address it.

3 The Petitioner makes multiple legal theories, in pro se, using this case to
4 collaterally attack the probate case number 2021-PB00034 and/or reopen case
5 number 2021-PB00034 pursuant to Nevada Rules of Civil Procedure ("NRCP") Rule
6 60(b) and Rule 60(d) which also "does not limit a court's power to entertain an
7 independent action to relieve a party from a judgment, order, or proceeding".

8 Additionally, the Petitioner can amend his previous petition/filings in case
9 number 2021-PB00034 pursuant to NRCP 60 and NRCP 15 which would relate back
10 to the timely filing and correct any problems, add or amend parties, claims or causes
11 of action. See Tehansky v. Wilson, 428 P. 2d 375 - Nev: Supreme Court 1967
12 "Appellant further contends that such motion should be given retroactive effect under
13 NRCP 15(c) to the date of the original pleading, thus avoiding the statute of limitation
14 violation under NRS 137.080. We agree."

15 This instant case, a collateral attack, is the only way the Petitioner has to
16 remedy the controversy since the Nevada Supreme Court order in case No. 84948
17 below claims the Petitioner Todd Robben was not named in the title of the case
18 number 2021-PB00034 and NRAP 3A(a) allows only an aggrieved party to appeal.
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23
24 ¹ Petitioner affirmatively asserts he is a "class of one" and "indigent" for the purpose of
25 class of person classification pursuant to U.S. Fourteenth Amendment equal-protection
clause. Village of Willowbrook v. Olech :: 528 U.S. 562 (2000).

26 ² "A point not urged in the trial court is deemed to have been waived and will not
27 be considered on appeal." See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:
28 Supreme Court 1981

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 IN THE MATTER OF THE ESTATE OF THOMAS JOSEPH HARRIS,
3 DECEASED. Case No. 84948

4 TODD ROBBEN,

5 Appellant,

6 VS.

7
8 TARA FLANAGAN, IN HER CAPACITY
9 AS THE COURT APPOINTED
PERSONAL REPRESENTATIVE,

10 Respondent

11 ORDER DISMISSING APPEAL

12
13 This is a pro se appeal from a district court order entered in a probate
14 matter. Ninth Judicial District Court, Douglas County; Nathan Tod Young,
Judge.

15 Review of the notice of appeal and documents before this court reveals a
16 jurisdictional defect. **NRAP 3A(a) allows only an aggrieved party to**
17 **appeal. Generally, a party is a person who has been named as a**
18 **party to the lawsuit and who has been served with process or**
19 **appeared. Valley Bank of Nev. v. Ginsburg, 110 Nev. 440, 447, 874 P.2d**
729, 734 (1994). It does not appear that appellant was named as a
party in the proceedings below.

20 And while any "interested person" may participate in probate actions, an
21 "interested person" is defined as someone "whose right or interest under
22 an estate or trust may be materially affected by a decision of a fiduciary or
23 a decision of the court. The fiduciary or court shall determine who is an
interested person according to the particular purposes of, and matter
involved in, a proceeding." NRS 132.185; see also NRS 132.390.

24 **Here, the district court determined that appellant was not an**
25 **interested person in the underlying matter under NRS 132.185 and thus**
26 **lacked standing to object to the probate petition or otherwise appear in**
27 **the proceedings. Under these circumstances, it appears appellant lacks**
28 **standing to appeal under NRAP 3A(a). Accordingly, this court lacks**
jurisdiction and ORDERS this appeal DISMISSED.

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II. ARGUMENT

A. THE COURT HAS JURISDICTION TO HEAR THIS CASE.

This indigent pro se³ Petitioner has been denied his statutory right to court appointed counsel discussed above and is denied his due-process and equal-protection going forward as a pre se litigant. That said, this Petitioner will clearly articulate this court has jurisdiction and the petition is not time barred or barred by issue or claim preclusion.

The Petitioner without counsel easily defeats the Respondents Motion to Dismiss since this court has jurisdiction of this instant case, and case 2021-PB00034 under NRCP Rule §§ 60, 60(b) and 60(d) and NRS §§ 30 and NRS 136.010 and NRS §§164 and NRS 137.010 (1). Also See NRS 11.500 (allowing a party to recommence an action in a court having jurisdiction where a different court dismissed the same action for lack of subject matter jurisdiction).

The Petitioner can amend his previous petition/filings in case number 2021-PB00034 pursuant to NRCP 60 and NRCP 15 which would relate back to the timely filing and correct any problems, add or amend parties, claims or causes of action. See Tehansky v. Wilson, 428 P. 2d 375 - Nev: Supreme Court 1967 "Appellant further contends that such motion should be given retroactive effect under NRCP 15(c) to the

³ "Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers." Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233; "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938).

1 date of the original pleading, thus avoiding the statute of limitation violation under NRS
2 137.080. We agree."

3 The Respondent confuses the word "court" with the word "case". See Ex Parte
4 Gardner, 22 Nev. 280, 284 (Nev. 1895) "The judge alone does not constitute a
5 "court." Burrill defines the term thus: "A 'court' may be more particularly
6 described as an organized body with defined powers, meeting at certain times
7 and places for the hearing and decision of causes and other matters brought
8 before it, and aided in this, its proper business, by its proper officers; viz.:
9 Attorneys and counsel to present and manage the business, clerks to record
10 and attest its acts and decisions, and ministerial officers to execute its
11 commands and secure due order in its proceedings." The Petitioner has filed in
12 the proper venue and the proper court jurisdiction, i.e. The Ninth District Court in and
13 for Douglas County, Nevada.

14 The Respondents conceded to this court's subject matter jurisdiction by
15 arguing in their Motion to Dismiss, page 10 line 3 to 11, and page 12 line 10 to 17
16 that this court is the same court is the same court as the probate court by stating
17 "furthermore, even under the Supreme Court's decision interpreting the "adjudication
18 upon the merits" phrase, preclusion would apply in this case, as the Supreme Court
19 ruled that the phrase is meant to preclude the refiling of the same claim in the *same*
20 *court in which the dismissal occurred.*" Five Star Capital Corp. v. Ruby, 194 P. 3d 709 -
21 *Nev: Supreme Court 2008* citing Semtek Int'l Inc. v. Lockheed Martin Corp., 531 US 497
22 - *Supreme Court 2001*.

23 Ninth DCR Rule 2. states (a) The Ninth Judicial District consists of two (2)
24 departments. (b) The Judges of this court may interchange with each other. In
25 the event of the absence or the incapacity of a Judge, or when agreed by the
26 Judges, either Judge may act in the department of the other without specific
27

1 assignment of the actions, unless the acting Judge has been disqualified from,
2 stricken from, or recused himself or herself from the matter.

3 The orders in case number 2021-PB00034 are void since the Respondent
4 and the Supreme Court in Case No. 84948 (see above) claim the district court
5 lacked jurisdiction and in case number 2021-PB00034 and since the Petitioner
6 was also not a party, and/or an interested person in and in case number 2021-
7 PB00034, this unique collateral attack complies with the Supreme Court decision in
8 State v. Sustacha, 826 P. 2d 959 - Nev: Supreme Court 1992 which states "In Smith
9 v. District Court, 63 Nev. 249, 256-57, 167 P.2d 648, 651 (1946), we explained that a
10 judgment is generally not subject to collateral attack "if the court which
11 rendered it had jurisdiction of the subject matter and of the parties." Thus, only a
12 void judgment is subject to collateral attack; a judgment is void only if the issuing
13 court lacked personal jurisdiction or subject matter jurisdiction."

14 Judge Nathan Tod Young has been disqualified in this instant case and in case
15 number 2021-PB00034 his orders are null and void in since he was bias against the
16 Petitioner and there was an appearance of bias in violation of the U.S. fourteenth
17 Amendment due-process in case number 2021-PB00034 as there is now in this
18 instant case.

19 "The Due Process Clause of the Fourteenth Amendment establishes a
20 constitutional floor, not a uniform standard," for a judicial bias claim. Bracy v. Gramley,
21 520 U.S. 899, 904, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). While most claims of judicial
22 bias are resolved "by common law, statute, or the professional standards of the bench
23 and bar," the "floor established by the Due Process Clause clearly requires a 'fair trial in
24 a fair tribunal' before a judge with no actual bias against the defendant or interest in the
25 outcome of his particular case." *Id.* at 904-05, 117 S.Ct. 1793 (quoting Withrow v.
26 Larkin, 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)). The Constitution
27 requires recusal where "the probability of actual bias on the part of the judge or decision
28

1 maker is too high to be constitutionally tolerable." Withrow, 421 U.S. at 47, 95 S.Ct.
2 1456. Our inquiry is objective. Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881,
3 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). We do not ask whether [the judge] actually
4 harbored subjective bias . Id. Rather, we ask whether the average judge in her position
5 was likely to be neutral or whether there existed an unconstitutional potential for bias .
6 Id. "Every procedure which would offer a possible temptation to the average . . . judge to
7 forget the burden of proof required to convict the defendant, or which might lead him not
8 to hold the balance nice, clear and true between the State and the accused, denies the
9 [accused] due process of law." Tumey v. Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 71
10 L.Ed. 749 (1927). In the criminal context, Edwards v. Balisok, 520 US 641 - Supreme
11 Court 1997, states **"A criminal defendant tried by a partial judge is entitled to have**
12 **his conviction set aside, no matter how strong the evidence against him.** Tumey v.
13 Ohio, 273 U. S. 510, 535 (1927); Arizona v. Fulminante, 499 U. S. 279, 308 (1991).

14 The Petitioner requires counsel to articulate this profound case that raises one
15 or more issues that involve substantial precedential, constitutional, and public policy
16 questions identical to the on point case Barefoot v. Jennings, 456 P. 3d 447 - 2020 -
17 Cal: Supreme Court , which was decided by the California Supreme Court in January
18 2020, the Court held, **"we conclude that claims that trust provisions or**
19 **amendments are the product of incompetence, undue influence, or fraud, as is**
20 **alleged here, should be decided by the probate court, if the invalidity of those**
21 **provisions or amendments would render the challenger a beneficiary of the**
22 **trust. [Citation omitted.] So when a plaintiff claims to be a rightful beneficiary of**
23 **a trust if challenged amendments are deemed invalid, she has standing to**
24 **petition the probate court under section 17200."** The California Supreme Court
25 recognized the inequity that could result if a beneficiary was prohibited from
26 challenging a trust based on an invalid trust amendment obtained through fraud,
27 undue influence or lack of capacity that disinherited an interested beneficiary.

1 Nevada routinely looks to California precedent for guidance as it should
2 with Barefoot v. Jennings, supra to determine the definition of an "interested
3 person" when the inequity that could result if a beneficiary was prohibited from
4 challenging a trust based on an invalid trust amendment obtained through
5 fraud, undue influence or lack of capacity that disinherited an interested
6 beneficiary.

7 See LOCAL GOVT. EMPLOYEE-MANAGEMENT v. ESEA, 429 P. 3d 658 -
8 Nev: Supreme Court 2018 "Because no Nevada precedent is instructive on this
9 issue, we look to California precedent for guidance." See Shapiro v. Welt, 133
10 Nev. 35, 39, 389 P.3d 262, 268 (2017) (observing that because "California's and
11 Nevada's anti-SLAPP statutes are similar in purpose and language, we look to
12 California law for guidance" (internal quotation marks and citations omitted)).

13 See Coker v. Sassone, 432 P. 3d 746 - Nev: Supreme Court 2019 "This court
14 has repeatedly recognized the similarities between California's and Nevada's anti-
15 SLAPP statutes, routinely looking to California courts for guidance in this area.[3] See,
16 e.g., Patin v. Lee, 134 Nev. ___, 429 P.3d 1248, 1250-51 (2018); Shapiro, 133 Nev. at
17 40, 389 P.3d at 268 (adopting California's "guiding principles" to define "an
18 issue of public interest" pursuant to NRS 41.637(4)); John, 125 Nev. at 752, 219
19 P.3d at 1281 (describing both states' anti-SLAPP statutes as "similar in purpose
20 and language"). As such, we turn to Park v. Board of Trustees of California
21 State University, wherein the California Supreme Court explained...

22 In Hamm v. Carson City Nugget, Inc., 450 P. 2d 358 - Nev: Supreme Court
23 1969 Since the problem has not been decided in Nevada we must look
24 elsewhere for guidance. The common law is the rule of decision in our courts
25 unless in conflict with constitutional or statutory commands. NRS 1.030;
26 Davenport v. State Farm Mutual, 81 Nev. 361, 404 P.2d 10 (1965).
27

1 After case number 2021 PB00034 was decided and an order issued denying
2 this Petitioner counsel on the grounds he is not an interested person pursuant to NRS
3 § 132.185 this Petitioner filed a motion to reconsider and notice of appeal and to
4 request the stay. Both were denied without reaching the merits of what an "interested
5 person" is and is not pursuant to NRS 132.185 which states "Interested person"
6 defined as **"Interested person means a person whose right or interest under an
7 estate or trust may be materially affected by a decision of a fiduciary or a
8 decision of the court.** The fiduciary or court shall determine who is an interested
9 person according to the particular purposes of, and matter involved in, a proceeding."
10 Based on this definition, **the Petitioner is indeed an Interested person pursuant to**
11 **NRS 132.185.**

12 Although not named in the trust or will as a beneficiary, as a matter of
13 law, this Petitioner is legally a "Beneficiary" based "contingent" on his
14 "present interest" and "*future interest*" which are both vested and contingent and
15 he would be the owner of an interest by assignment or other transfer from the Thomas
16 J. Harris Trust ...or from the Thomas J. and Olga Harris Living Trust. See Barefoot v.
17 Jennings, supra.

18 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.
19 **"A trust, includes a person who has a *present or future interest*, vested or**
20 ***contingent*, and the owner of an interest by assignment or other transfer".**

21 Compare NRS 132.050 with the California equivalent Section 17200,
22 subdivision (b)(3) contemplates the court's determination of "the validity of a trust
23 provision. "Plainly, the term "trust provision" incorporates any amendments to a trust.
24 Section 24, subdivision (c) defines a "beneficiary" for trust purposes, as "a
25 **person who has any present or *future interest*, vested or *contingent*.**" Assuming
26 plaintiff's allegations are true, ***she has a present or future interest***, making her a
27
28

1 beneficiary permitted to petition the probate court under section 17200." See Barefoot
2 v. Jennings, supra.

3 The Nevada Supreme Court summarily dismissed the appeal because they
4 claim this Petitioner lacks standing and is not a party to the action i.e. not named in
5 the lawsuit/petition as a respondent/defendant or petitioner/plaintiff. The Nevada
6 Supreme Court failed to even consider the facts before they were filed that shows the
7 Petitioner is, in fact, named in the will/trust as being disinherited.

8 The Petitioner styled is argument in case number 2021 PB00034 as the same
9 argument in Barefoot v. Jennings, infra.

10 If this ruling stands, nobody in Nevada can petition the court for probate
11 or presumed undue influence or fraud or lack of capacity if they are presumably
12 not already a beneficiary. This Petitioner was undisputedly "disinherited" albeit by
13 way of presumed undue influence and undue influence.

14 A similar situation occurred in California in Barefoot v. Jennings, 456 P. 3d 447
15 - Cal: Supreme Court 2020.⁴

16 In early November 2019, the California Supreme Court heard oral
17 arguments in the Barefoot case, and in late January 2020, the California
18 Supreme Court issued its opinion reversing the Court of Appeal decision.
19 The California Supreme Court held as follows: **"We disagree with the**
20 **Court of Appeal, and hold today that the Probate Code grants**
21 **standing in Probate Court to individuals who claim that trust**
22 **amendments eliminating their beneficiary status arose from**
23 **incompetence, undue influence or fraud."**

24 California probate Section 17200, subdivision (b)(3) contemplates the
25 court's determination of "the validity of a trust provision." Plainly, the term
26 "trust provision" incorporates any amendments to a trust. Section 24,
27 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who
28 has any present or future interest, vested or contingent." Assuming
plaintiff's allegations are true, she has a present or future interest, making

4 Source: <https://keystone-law.com/legal-standing-trust-contests/>

1 her a beneficiary permitted to petition the probate court under section
2 17200.[vii] (Emphasis added).

3 The California Supreme Court held that with this interpretation, when
4 a plaintiff claims to be a rightful beneficiary of a trust, if the
5 challenged amendments are deemed invalid, then the plaintiff has
6 standing to petition the Probate Court under Section 17200.

7 The Court added that this expansive reading of the standing
8 requirement afforded to trust contests under Section 17200 “not only
9 makes sense as a matter of judicial economy, but it also recognizes
10 the probate court’s inherent power to decide all incidental issues
11 necessary to carry out its express powers to supervise the
12 administration of the trust.”

13 Section 17200, subdivision (b)(3) contemplates the court’s determination
14 of “the validity of a trust provision.” Plainly, the term “trust provision”
15 incorporates any amendments to a trust. Section 24, subdivision (c)
16 defines a “beneficiary” for trust purposes, as “a person who has any
17 present or future interest, vested or contingent.” Assuming plaintiff’s
18 allegations are true, *she has a present or future interest*, making her a
19 beneficiary permitted to petition the probate court under section 17200.[vii]
20 (Emphasis added)..”

21 The Court cautioned, however, that its ruling in Barefoot did have certain
22 limitations in its applicability, stating: “Our holding does not allow
23 individuals with no interest in a trust to bring a claim against the trust.
24 Instead, we permit those whose well-pleaded allegations show that
25 they have an interest in a trust — because the amendments
26 purporting to disinherit them are invalid — to petition the probate
27 court.”

28 Thus, by so holding, the Supreme Court’s ruling could potentially exclude
a Decedent’s heirs (who were not named as beneficiaries in any prior
version of the Decedent’s estate plan, but who would otherwise have a
beneficial interest through intestate succession in the event the Decedent
did not have a valid estate plan) from filing a Section 17200 contest in
Probate Court. Thus, any such contests currently pending by such heirs in
Probate Court may be subject to attack based on the heirs’ lack of
standing.

Accordingly, the effect of the California Supreme Court’s decision
was not to limitlessly expand the universe of potential litigants who
can bring trust contest claims in the future, but rather, to confirm

1 **that Section 17200 can be used by disinherited beneficiaries as it had**
2 **been in the past,** while leaving open this unresolved issue concerning a
3 Decedent's heirs.

4 Cal. Prob. Code § 17200 Current through the 2022 Legislative Session is
5 the equivalent of NRS 164.015

6 Section 17200 - Petition concerning internal affairs or determine
7 existence; internal affairs of trust

8 **(a) Except as provided in Section 15800, a trustee or beneficiary of a**
9 **trust may petition the court under this chapter concerning the**
10 **internal affairs of the trust or to determine the existence of the trust.**

11 (b) Proceedings concerning the internal affairs of a trust include, but are
12 not limited to, proceedings for any of the following purposes:

13 (1) Determining questions of construction of a trust instrument.

14 (2) Determining the existence or nonexistence of any immunity, power,
15 privilege, duty, or right.

16 (3) Determining the validity of a trust provision.

17 (4) Ascertaining beneficiaries and determining to whom property shall
18 pass or be delivered upon final or partial termination of the trust, to the
19 extent the determination is not made by the trust instrument.

20 (5) Settling the accounts and passing upon the acts of the trustee,
21 including the exercise of discretionary powers.

22 (6) Instructing the trustee.

23 (7) Compelling the trustee to do any of the following:

24 (A) Provide a copy of the terms of the trust.

25 (B) Provide information about the trust under Section 16061 if the trustee
26 has failed to provide the requested information within 60 days after the
27 beneficiary's reasonable written request, and the beneficiary has not
28 received the requested information from the trustee within the six months
preceding the request.

(C) Account to the beneficiary, subject to the provisions of Section 16064,
if the trustee has failed to submit a requested account within 60 days after
written request of the beneficiary and no account has been made within
six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing
the reasonableness of the trustee's compensation.

- (10) Appointing or removing a trustee.
- (11) Accepting the resignation of a trustee.
- (12) Compelling redress of a breach of the trust by any available remedy.
- (13) Approving or directing the modification or termination of the trust.
- (14) Approving or directing the combination or division of trusts.
- (15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.
- (16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.
- (17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.
- (18) Approving removal of a testamentary trust from continuing court jurisdiction.
- (19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.
- (20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.
- (21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.
- (22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.
- (23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

(c) The court may, on its own motion, set and give notice of an order to show cause why a trustee who is a professional fiduciary, and who is required to be licensed under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, should not be removed for failing to hold a valid, unexpired, unsuspended license. Ca. Prob. Code § 17200

Amended by Stats 2010 ch 621 (SB 202), s 11, eff. 1/1/2011.

Amended by Stats 2003 ch 629 (SB 294), s 8, eff. 1/1/2004.

EFFECTIVE 1/1/2000. Amended July 26, 1999 (Bill Number: AB 239) (Chapter 175).

Compare Cal. Prob. Code § 17200 to Nevada NRS 164.015 Petition concerning internal affairs of nontestamentary trust; jurisdiction of court; procedure for contests of certain trusts; final order; appeal.

1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, including petitions with respect to a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust in NRS 153.031 and petitions for a ruling that property not formally titled in the name of a trust or its trustee constitutes trust property pursuant to NRS 163.002.

2. A petition under this section or subsection 2 of NRS 30.040 that relates to a trust may be filed in conjunction with a petition under NRS 164.010 or at any time after the court has assumed jurisdiction under that section.

3. If an interested person contests the validity of a revocable nontestamentary trust, the interested person is the plaintiff and the trustee is the defendant. The written grounds for contesting the validity of the trust constitutes a pleading and must conform with any rules applicable to pleadings in a civil action. This subsection applies whether the person

1 contesting the validity of the trust is the petitioner or the objector and
2 whether or not the opposition to the validity of the trust is asserted under
3 this section or subsection 2 of NRS 30.040.

4 4. In a proceeding pursuant to subsection 3, the competency of the
5 settlor to make the trust, the freedom of the settlor from duress, menace,
6 fraud or undue influence at the time of execution of the will, the execution
7 and attestation of the trust instrument, or any other question affecting the
8 validity of the trust is a question of fact and must be tried by the court,
9 subject to the provisions of subsection 5.

10 5. **A court may consolidate the cases if there is a contest of a**
11 **revocable nontestamentary trust and a contest relating to a will**
12 **executed on the same date.** If a jury is demanded pursuant to NRS
13 137.020 for the contest of the will, the court may instruct the jury to render
14 an advisory opinion with respect to an issue of fact pursuant to subsection
15 4 in the contest of the trust.

16 6. Upon the hearing, the court shall enter such order as it deems
17 appropriate. The order is final and conclusive as to all matters determined
18 and is binding in rem upon the trust estate and upon the interests of all
19 beneficiaries, vested or contingent, except that appeal to the appellate
20 court of competent jurisdiction pursuant to the rules fixed by the Supreme
21 Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be
22 taken from the order within 30 days after notice of its entry by filing notice
23 of appeal with the clerk of the district court. The appellant shall mail a copy
24 of the notice to each person who has appeared of record. If the
25 proceeding was brought pursuant to subsection 3, 4 or 5, the court must
26 also award costs pursuant to chapter 18 of NRS.

27 7. **Except as otherwise ordered by the court,** a proceeding under
28 this section does not result in continuing supervisory proceedings, and the
29 administration of the trust must proceed expeditiously in a manner
30 consistent with the terms of the trust, without judicial intervention or the
31 order, approval or other action of any court, **unless the jurisdiction of**
32 **the court is invoked by an interested person or exercised as**
33 **provided by other law.**

34 8. As used in this section, "nontestamentary trust" has the meaning
35 ascribed to it in NRS 163.0016.

36 See NRS 164.040 Power or jurisdiction of court not abridged; court may
37 take action necessary or proper to dispose of matter presented by petition.

1 1. NRS 164.010 and 164.015 do not limit or abridge the power or
2 jurisdiction of the district court over trusts and trustees.

3 2. The court may enter any order or take any other action
4 necessary or proper to dispose of the matters presented by a
5 petition, including the appointment of a temporary trustee to
administer the trust in whole or in part.

6 This Petitioner has asserted a "property right" in the Thomas J. Harris trust, will,
7 estate and related probate contests and the previous Thomas Joseph and Olga Harris
8 Living Trust. This Petitioner is denied procedural and substantive due-process and
9 equal protection of the law pursuant to the U.S. Fourteenth Amendment as well as
10 Nevada Constitution Article 1 Section 1 "Inalienable rights. All men are by Nature
11 free and equal and have certain inalienable rights among which are those of enjoying
12 and defending life and liberty; **Acquiring, Possessing and Protecting property** and
13 pursuing and obtaining safety and happiness" and Article 1 Section 8 (2) "**No person**
14 **shall be deprived of life, liberty, or property, without due process of law**".

15 "The Federal and Nevada Constitutions provide that no person shall be
16 deprived of life, liberty, or *property* without due process of law. Essentially, "the
17 State owes to each individual that process which, in light of the values of a free
18 society, can be characterized as due." *Substantive due process* ensures that
19 state action is not random and unpredictable; it restricts the government's
20 ability to interfere with a person's life, liberty, or *property*. Kirkpatrick v. Dist. Ct.,
21 43 P. 3d 998 – Nev: Supreme Court 2002. (Emphasis added by Petitioner).

22 For the purpose of the equal protection clause of U.S. Fourteenth Amendment,
23 the Petitioner is in a class of indigent litigant and also a class-of-one.

24 Additionally, the Revised Nevada Code Of Judicial Conduct Rule 2.6. Ensuring
25 the Right to Be Heard states "(A) A judge shall accord to every person who has a
26 legal interest in a proceeding, or that person's lawyer, the right to be heard
27 according to law."
28

1 NRS 136.200 is applicable in this current case involving the instant Thomas J.
2 Harris Trust and will and estate and any related probate including "special
3 qualifications" because there is fraud and theft of assets in the trust(s), will(s) and
4 estate(s) including a missing home from Pebble beach Court Minden, Nevada and an
5 entire safe deposit box of assets.

6 See In re Herrmann, 100 Nev. 1, 4-5 (Nev. 1984) 677 P.2d 594 "Judge Waters
7 appointed appellant Flangas as their counsel pursuant to NRS 136.200.

8 Subsequently, on March 20, 1973, Judge Waters appointed appellant Ross as co-
9 counsel to Mr. Flangas. It appears of record that Mr. Flangas and Mr. Ross had
10 ***special qualifications***, known to Judge Waters, which had application to a
11 ***matter of vital importance to the Estate of Herrmann***, to-wit: the subdivision and
12 development of the Lyon County ranch for residential housing purposes."

13 NRS 136.200 also applies to CHAPTER 164 - ADMINISTRATION OF
14 TRUSTS, NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of
15 NRS regulating matters of estates. When not otherwise inconsistent with the
16 provisions of chapters 162 to 167, inclusive, of NRS, all of the provisions of chapters
17 132, 153 and 155 of NRS regulating the matters of estates:

- 18 1. Apply to proceedings relating to trusts, as appropriate; or
- 19 2. May be applied to supplement the provisions of chapters 162 to 167,
20 inclusive, of NRS.

21 Since the will, trust and estate controversy may lead to probate, NRS 136.200
22 also applies to NRS 30.040 which states "Questions of construction or validity of
23 instruments, contracts and statutes. Any person interested under a deed, written
24 contract or other writings constituting a contract, or whose rights, status or other legal
25 relations are affected by a statute, municipal ordinance, contract or franchise,
26 may have determined any question of construction or validity arising under the
27 instrument, statute, ordinance, contract or franchise and obtain a declaration of

1 **rights, status or other legal relations thereunder.”** In a proceeding pursuant to
2 subsection 3, the competency of the settlor to make the trust, the freedom of the
3 settlor from duress, menace, fraud or undue influence at the time of execution
4 of the will, the execution and attestation of the trust instrument, or any other
5 question affecting the validity of the trust is a question of fact and must be tried
6 by the court, subject to the provisions of subsection 5.

7 Indeed, the Thomas J. Harris Trust and Will were executed on the same
8 date, June 12, 2019 See Exhibits A and B in the petition.

9 NRS 164.015 Subsection 5 states “A court may consolidate the cases if
10 there is a contest of a revocable nontestamentary trust and a contest relating to
11 a will executed on the same date.” If a jury is demanded pursuant to NRS 137.020
12 for the contest of the will, the court may instruct the jury to render an advisory opinion
13 with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.
14

15
16 **NRS 30.040 Questions of construction or validity of instruments,**
17 **contracts and statutes.**

18 1. Any person interested under a deed, written contract or other
19 writings constituting a contract, or whose rights, status or other legal
20 relations are affected by a statute, municipal ordinance, contract or
21 franchise, may have determined any question of construction or validity
arising under the instrument, statute, ordinance, contract or franchise and
obtain a declaration of rights, status or other legal relations thereunder.

22 2. A maker or legal representative of a maker of a will, trust or
23 other writings constituting a testamentary instrument may have
24 determined any question of construction or validity arising under the
25 instrument and obtain a declaration of rights, status or other legal
26 relations thereunder. Any action for declaratory relief under this
subsection may only be made in a proceeding commenced pursuant to
the provisions of title 12 or 13 of NRS, as appropriate.
27
28

1 3. A principal or a person granted authority to act for a principal
2 under power of attorney, whether denominated an agent, attorney-in-fact
3 or otherwise, may have determined any question of construction or validity
4 arising under the instrument and obtain a declaration of rights, status or
5 other legal relations thereunder. Any action for declaratory relief under this
6 subsection may only be made in a proceeding commenced pursuant to
7 the provisions of title 12 or 13 of NRS, as appropriate.

8 In this instant case, the Petitioner has a right and property interest to both the
9 estate and trust which is be materially affected by a decision of a fiduciary or a
10 decision of the court.

11 In case number: 2021 PB00034, the Respondent offers no points of authority,
12 nor any precedent or case law to support its argument and NRS 132.185 is inapposite
13 to the Respondent's argument. Nether does Judge Young offer any points of authority,
14 nor any precedent or case law to support his order ...and the Nevada supreme Court's
15 order in case 84948. The NRS 132.185 issue was never decided on the merits in any
16 court and does not preclude adjudication in this case on grounds of issue preclusion
17 i.e. *res judicata* or claim preclusion i.e. *collateral estoppel*.

18 Since this court has jurisdiction, and judge Nathan Tod Young has been
19 disqualified, and there is both intrinsic and extrinsic fraud, and the crux of the case is
20 based on fraud, the Petitioner requests and the court can reopen case 2021-PB00034
21 with the currently assigned senior judge pursuant to NRCP Rule §§ 60 where the
22 actual claim and merits of the petition are argued making an undisputed *prima facie*
23 case for presumed undue influence and undue influence that the Respondent
24 concedes to in this motion and the Respondent's Motion for Summary Judgment.

25 Indeed, "undue influence ... is a species of fraud. A rebuttable
26 presumption of undue influence is raised if the testator and the beneficiary
27 shared a fiduciary relationship, but undue influence may also be proved without
28

1 raising this presumption." In re Estate of Bethurem, 313 P. 3d 237, 241 (2013), at
2 329.

3 Fraud and theft has occurred with undisputed assets missing including a
4 \$450,000.00 home on Pebble Beach Court in Minden, NV transferred from the
5 Thomas J. Harris Trust into the position of Jeff D. Robben who was the fiduciary and
6 caretaker for Thomas J. Harris which creates "presumed undue influence." This is
7 undisputed and Respondents have conceded this issue. The entire contents of the
8 safe deposit box of Thomas J. Harris is not accounted for along with stocks, cash,
9 gold, annuities, 401K, IRAs, pension, insurance, etc. This is undisputed and
10 Respondents have conceded this issue.

11 There was fraud upon the court perpetuated by Respondent's counsel, Fred
12 McClure Wallace who misrepresented to the court a material fact that there was no
13 prior trust called the Thomas Joseph and Olga Harris Living Trust.

14 Judge Nathan Tod Young is disqualified in this instant case yet he presided in
15 2021-PB00034 despite being bias against the Petitioner in violation of the U.S.
16 Fourteenth Amendment due-process clause and NRS 1.230 which prohibits a judge
17 from presiding over any matter when actual or implied bias exists on the part of the
18 Judge. In Nevada, "a judge has a general duty to sit, unless a judicial canon, statute,
19 or rule requires the judge's disqualification." Millen v. Dist. Ct., 122 Nev. 1245, 1253,
20 148 P.3d 694, 700 (2006).

21 It appears there was and still is fraud and a conspiracy to defraud
22 Petitioner (and the other beneficiaries) out of vast sums of money as proven by
23 the missing items in the safe deposit box and the home in Minden, Nevada on
24 Pebble Beach Court was fraudulently transferred out of the Thomas J. Harris
25 Trust by way of undue influence of Jeff D. Robben. Interestingly, this is a multi-
26 state problem involving California, Nevada and Washington states. It's
27

1 understood Scott Barton is a resident of Washington state. Since this involves
2 interstate commerce and mail fraud, perhaps the feds will be interested too.

3 With the known conflicts-of-interests between Scott Barton and
4 Blanchard, Krasner & French working both Jeff Robben's trust/will/instruments
5 and Thomas J. Harris's trust/will/instruments it appears there is a conspiracy
6 along with Tara Flannagan and you to cover-up the money trail. Indeed, follow-
7 the-money... Where is it?

8 The Petitioner has been subject to vexation by the Thomas J. Harris trust
9 administrator, Tara M. Flanagan who has abuse her position as a California
10 Superior Court Judge in volition the state judicial ethics & canons to have the
11 Alameda County authorities attempt to intimate this Petitioner from his legal
12 rights to pursue his claims and expose the corruption. According to Cal. Judicial
13 Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in
14 All of the Judge's Activities A. Promoting Public Confidence B. Use of the
15 Prestige of Judicial Office.

16 According to Cal. Judicial Canon 4: A Judge Shall So Conduct the Judge's
17 Quasi-Judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with
18 Judicial Obligations

- 19 **A. Extrajudicial Activities in General**
20 B. Quasi-judicial and Avocational Activities
21 C. Governmental, Civic, or Charitable Activities
22 **D. Financial Activities**
23 **E. Fiduciary Activities**
24 F. Service as Arbitrator or Mediator
25 **G. Practice of Law**
26 **H. Compensation and Reimbursement**

27 There has been a total break-down and failure to communicate by Tara M.
28 Flanagan, F. McClure Wallace and Scott Barton. Tara M. Flanagan knows of the
fraud and theft conducted by Scott William Barton Cal. State BAR # 160262, a

1 California lawyer. Pursuant to California Judicial Canon III, D II: (2) Whenever a
2 judge has personal knowledge that a lawyer has violated any provision of the
3 Rules of Professional Conduct, the judge shall take appropriate corrective action.

4 **"Silence can only be equated with fraud where there is a legal or**
5 **moral duty to speak or where an inquiry left unanswered would be**
6 **intentionally misleading."** United States v. Prudden, 424 F.2d 1021 p.
7 1032.(5th Cir. 1970), cert. denied, 400 U.S. 831, 91 S.Ct. 62, 27 L.Ed.2d 62
8 (1970).

9 **"Fraud on the court is "a species of fraud which does, or attempts to,**
10 **subvert the integrity of the court itself, or is a fraud perpetrated by officers of**
11 **the court so that the judicial machinery cannot perform in the usual manner its**
12 **impartial task of adjudging cases."** NC-DSH, INC. v. Garner, 218 P. 3d 853 - Nev:
13 Supreme Court 2009.

14 The Petitioner continued to be subjected to fraud and the Petitioner's State and
15 Federal due-process was violated since he was NEVER timely notified by the
16 Respondent of any probate, trust or will or even the death of Thomas J. Harris and
17 the Petitioner has been both timely and diligent pursuing judicial relief as soon as
18 learning of said probate, trust or will and death of Thomas J. Harris discussed below
19 with controlling case law supporting the Petitioner.

20 Indeed, the Petitioner addressed this NRCP Rule 60 issue in his petition and
21 the Respondent has conceded to the merits. In NC-DSH, INC. v. Garner, 218 P. 3d
22 853 - Nev: Supreme Court 2009 the Nevada Supreme Court stated "As amended
23 effective January 1, 2005, NRCP 60(b) largely replicates Fed. R.Civ.P. 60(b), as
24 written before the Federal Rules' 2007 revisions.[1] Like its federal counterpart, NRCP
25 60(b) has two separate provisions that address fraud. The first is NRCP 60(b)(3),
26 which provides, **"On motion and upon such terms as are just, the court may**
27 **relieve a party ... from a final judgment, order, or proceeding for ... fraud**
28

1 (whether heretofore denominated intrinsic or extrinsic), misrepresentation or
2 other misconduct of an adverse party." The second provision addressing fraud
3 appears in NRCP 60(b)'s "savings clause." The savings clause says, "This rule does
4 not limit the power of a court to entertain an independent action to relieve a
5 party from a judgment, order, or proceeding, or to set aside a judgment for fraud
6 upon the court." [2] While a motion under NRCP 60(b)(3) must be made "not more
7 than 6 months after the proceeding was taken or the date that written notice of entry of
8 the judgment or order was served," NRCP 60(b) does not specify a time limit for
9 motions seeking relief for "fraud upon the court."

10 NRCP Rule 60. Relief From a Judgment or Order

11 (a) Corrections Based on Clerical Mistakes; Oversights and
12 Omissions. The court may correct a clerical mistake or a mistake arising
13 from oversight or omission whenever one is found in a judgment, order, or
14 other part of the record. The court may do so on motion or on its own, with
15 or without notice. But after an appeal has been docketed in the appellate
16 court and while it is pending, such a mistake may be corrected only with
17 the appellate court's leave.

18 (b) Grounds for Relief From a Final Judgment, Order, or
19 Proceeding. On motion and just terms, the court may relieve a
20 party or its legal representative from a final judgment, order, or
21 proceeding for the following reasons:

22 (1) mistake, inadvertence, surprise, or excusable neglect;

23 (2) newly discovered evidence that, with reasonable
24 diligence, could not have been discovered in time to move for a new
25 trial under Rule 59(b);

26 (3) fraud (whether previously called intrinsic or extrinsic),
27 misrepresentation, or misconduct by an opposing party;

28 (4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged;
it is based on an earlier judgment that has been reversed or vacated;
or applying it prospectively is no longer equitable; or

1
2 **(6) any other reason that justifies relief.**

3 (c) Timing and Effect of the Motion.

4 (1) Timing. A motion under Rule 60(b) must be made within a
5 reasonable time—and for reasons (1), (2), and (3) no more than 6 months
6 after the date of the proceeding or the date of service of written notice of
7 entry of the judgment or order, whichever date is later. The time for filing
8 the motion cannot be extended under Rule 6(b).

9 (2) Effect on Finality. The motion does not affect the judgment's
10 finality or suspend its operation.

11 (d) Other Powers to Grant Relief. This rule does not limit a
12 court's power to:

13 (1) entertain an independent action to relieve a party from a
14 judgment, order, or proceeding;

15 (2) upon motion filed within 6 months after written notice of
16 entry of a default judgment is served, set aside the default judgment
17 against a defendant who was not personally served with a summons
18 and complaint and who has not appeared in the action, admitted
19 service, signed a waiver of service, or otherwise waived service; or

20 (3) set aside a judgment for fraud upon the court.

21 (e) Bills and Writs Abolished. The following are abolished: bills of
22 review, bills in the nature of bills of review, and writs of coram nobis,
23 coram vobis, and audita querela.

24 This court has jurisdiction pursuant to Nevada Constitution Article 6 Section 1:
25 **"The judicial power of this State shall be vested in a court system, comprising a
26 Supreme Court, district courts, and justices of the peace. The Legislature may also
27 establish, as part of the system, courts for municipal purposes only in incorporated
28 cities and towns."**

The Supreme of the Land can be found in the decisions of the U.S. Supreme
Court. In Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907),

1 the Supreme Court ruled that: "Chief Justice Marshall had long before observed in
2 Ross v. Himely, 4 Cranch 241, 269, 2 L.ed. 608, 617, that, upon principle, the
3 operation of every judgment must depend on the power of the court to render that
4 judgment. In Williamson v. Berry, 8 How. 495, 540, 12 L.ed. 1170, 1189, it was said
5 to be well settled that ***the jurisdiction of ANY COURT exercising authority over a***
6 ***subject 'may be inquired into in EVERY OTHER COURT when the proceedings***
7 ***in the former are relied upon and brought before the latter by a party claiming***
8 ***the benefit of such proceedings,'*** and the rule prevails whether 'the decree or
9 judgment has been given, in a court of admiralty, chancery, ecclesiastical court,
10 or court of common law, or whether the point ruled has arisen under the laws of
11 nations, the practice in chancery, ***or the municipal laws of states.***" [Emphasis
12 added].

13 See Klabacka v. Nelson, 394 P. 3d 940 – Nev. Supreme Court 2017 "NRS
14 164.015(1), "[t]he court has exclusive jurisdiction of proceedings initiated by the petition
15 of an interested person concerning the internal affairs of a nontestamentary trust." As
16 used in both statutes, "court" is defined as "**a district court of this State sitting in**
17 **probate or otherwise adjudicating matters pursuant to this title.**" NRS 132.116;
18 see also NRS 164.005 (applying NRS 132.116 to trust proceedings under Title 13)."

19 In addition to NRCP Rule 60(b) and (d), The petition was also filed in part
20 pursuant to NRS 164.010 and NRS 164.015 which states:

21
22 NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of
23 NRS regulating matters of estates. When not otherwise inconsistent with
24 the provisions of chapters 162 to 167, inclusive, of NRS, all of the
25 provisions of chapters 132, 153 and 155 of NRS regulating the matters of
estates:

- 26 1. Apply to proceedings relating to trusts, as appropriate; or
27
28

1 2. May be applied to supplement the provisions of chapters 162 to
2 167, inclusive, of NRS.

3
4 NRS 164.010 Petition for assumption of jurisdiction; circumstances in
5 which trust is domiciled in this State; determination of venue; powers of
6 court; petition for removal of trust from jurisdiction of court.

7 1. Upon petition of any person appointed as trustee of an express
8 trust by any written instrument other than a will, or upon petition of a
9 settler or beneficiary of the trust, the district court of the county in which
10 any trustee resides or conducts business at the time of the filing of the
11 petition or in which the trust has been domiciled as of the time of the filing
12 of the petition shall assume jurisdiction of the trust as a proceeding in rem
unless another court has properly assumed continuing jurisdiction in rem
in accordance with the laws of that jurisdiction and the district court
determines that it is not appropriate for the district court to assume
jurisdiction under the circumstances.

13 2. For the purposes of this section, a trust is domiciled in this State
14 notwithstanding that the trustee neither resides nor conducts business in
15 this State if:

16 (a) The trust instrument expressly provides that the situs of the trust is
17 in this State or that a court in this State has jurisdiction over the trust;

18 (b) A person has designated for the trust that this State is the situs or
19 has jurisdiction, if such person made the designation at a time during
20 which he or she held the power to make such a designation under the
express terms of the trust instrument;

21 © The trust owns an interest in real property located in this State;

22 (d) The trust owns personal property, wherever situated, if the trustee
23 is:

24 (1) Incorporated or authorized to do business in this State;

25 (2) A trust company licensed under chapter 669 of NRS;

26 (3) A family trust company, as defined in NRS 669A.080; or

27 (4) A national association having an office in this State;

1
2 (e) One or more beneficiaries of the trust reside in this State; or

3 (f) At least part of the administration of the trust occurs in this State.

4 3. Notwithstanding the provisions of this section, if a court of a
5 jurisdiction other than this State has jurisdiction over a trust and grants an
6 order authorizing a transfer of jurisdiction over that trust to this State, the
7 district court has the power to assume jurisdiction over the trust and to
8 otherwise supervise the administration of that trust in accordance with the
9 procedures set forth in this title.

10 4. For the purposes of determining venue, preference is given
11 in the following order:

12 (a) To the county in which the situs or domicile was most
13 recently declared by a person granted the power to make such a
14 declaration under the terms of the trust instrument at the time of the
15 filing of the petition;

16 (b) To the county in which the situs or domicile is declared in the
17 trust instrument; and

18 (c) To the county in which the situs or domicile is declared by
19 the trustee at the time of the filing of the petition in a certification of
20 the trust which complies with subsection 2 of NRS 164.400 and
21 subsection 2 of NRS 164.410 and which contains a declaration of the
22 trust's situs or domicile as authorized in subsection 1 of NRS
23 164.410.

24 5. When the court assumes jurisdiction pursuant to this
25 section, the court:

26 (a) Has jurisdiction of the trust as a proceeding in rem as of the
27 date of the filing of the petition;

28 (b) Shall be deemed to have personal jurisdiction over any trustee
confirmed by the court and any person appearing in the matter, unless
such an appearance is made solely for the purpose of objecting to the
jurisdiction of the court;

© May confirm at the same time the appointment of the trustee and
specify the manner in which the trustee must qualify; and

1 (d) May consider at the same time granting orders on other matters
2 relating to the trust, including, without limitation, matters that might be
3 addressed in a declaratory judgment relating to the trust under
4 subsection 2 of NRS 30.040 or petitions filed pursuant to NRS
5 153.031 or 164.015 whether such matters are raised in the petition to
6 assume jurisdiction pursuant to this section or in one or more
7 separate petitions that are filed concurrently with the petition to
8 assume jurisdiction.

9 6. At any time, the trustee may petition the court for removal of the
10 trust from continuing jurisdiction of the court.

11 7. As used in this section, "written instrument" includes, without
12 limitation, an electronic trust as defined in NRS 163.0015.

13 [1:22:1953]—(NRS A 1961, 400; 1999, 2377; 2001, 2352; 2015, 3551;
14 2017, 1695)

15 **NRS 164.015 Petition concerning internal affairs of**
16 **nontestamentary trust; jurisdiction of court; procedure for contests**
17 **of certain trusts; final order; appeal.**

18 1. The court has exclusive jurisdiction of proceedings initiated
19 by the petition of an interested person concerning the internal affairs
20 of a nontestamentary trust, including a revocable living trust while the
21 settler is still living if the court determines that the settler cannot
22 adequately protect his or her own interests or if the interested person
23 shows that the settler is incompetent or susceptible to undue
24 influence. Proceedings which may be maintained under this section
25 are those concerning the administration and distribution of trusts,
26 the declaration of rights and the determination of other matters
27 involving trustees and beneficiaries of trusts, including petitions
28 with respect to a nontestamentary trust for any appropriate relief
provided with respect to a testamentary trust in NRS 153.031 and
petitions for a ruling that property not formally titled in the name of a
trust or its trustee constitutes trust property pursuant to NRS
163.002.

2. A petition under this section or subsection 2 of NRS 30.040
that relates to a trust may be filed in conjunction with a petition
under NRS 164.010 or at any time after the court has assumed
jurisdiction under that section.

1 3. If an interested person contests the validity of a revocable
2 nontestamentary trust, the interested person is the plaintiff and the
3 trustee is the defendant. The written grounds for contesting the
4 validity of the trust constitutes a pleading and must conform with
5 any rules applicable to pleadings in a civil action. This subsection
6 applies whether the person contesting the validity of the trust is the
petitioner or the objector and whether or not the opposition to the
validity of the trust is asserted under this section or subsection 2 of
NRS 30.040.

7 4. In a proceeding pursuant to subsection 3, the competency of
8 the settlor to make the trust, the freedom of the settlor from duress,
9 menace, fraud or undue influence at the time of execution of the will,
10 the execution and attestation of the trust instrument, or any other
question affecting the validity of the trust is a question of fact and
must be tried by the court, subject to the provisions of subsection 5.

11 5. A court may consolidate the cases if there is a contest of a
12 revocable nontestamentary trust and a contest relating to a will
13 executed on the same date. If a jury is demanded pursuant to NRS
14 137.020 for the contest of the will, the court may instruct the jury to
render an advisory opinion with respect to an issue of fact pursuant
to subsection 4 in the contest of the trust.

15 6. Upon the hearing, the court shall enter such order as it deems
16 appropriate. The order is final and conclusive as to all matters determined
17 and is binding in rem upon the trust estate and upon the interests of all
18 beneficiaries, vested or contingent, except that appeal to the appellate
19 court of competent jurisdiction pursuant to the rules fixed by the Supreme
20 Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be
21 taken from the order within 30 days after notice of its entry by filing notice
22 of appeal with the clerk of the district court. The appellant shall mail a copy
of the notice to each person who has appeared of record. If the
proceeding was brought pursuant to subsection 3, 4 or 5, the court must
also award costs pursuant to chapter 18 of NRS.

23 7. Except as otherwise ordered by the court, a proceeding
24 under this section does not result in continuing supervisory
25 proceedings, and the administration of the trust must proceed
26 expeditiously in a manner consistent with the terms of the trust,
27 without judicial intervention or the order, approval or other action of
any court, unless the jurisdiction of the court is invoked by an
interested person or exercised as provided by other law.

1 8. As used in this section, "nontestamentary trust" has the meaning
2 ascribed to it in NRS 163.0016.

3 In his petition, the Petitioner states "Judge Nathan Tod Young is bias and
4 prejudiced against this Petitioner in case number 2021 PB00034. Judge Young
5 violated this Petitioner's State and Federal Constitutional due-process and equal
6 protection rights violated as well as the State Statutory right to appointed counsel. All
7 Judge Young's orders are null and void since he is bias against this Petitioner and did
8 not even issue a verbal or written order with a reason as to his alleged claim that this
9 Petitioner is not an interested person."

10 Judge Nathan Tod Young is disqualified in this instant case and going forward,
11 in any further future presiding in case number 2021 PB00034.

12
13 **B. INSUFFICIENT NOTICE AND STATUTE OF LIMITATIONS**

14
15 In Continental Insurance Company v. Moseley, 683 P. 2d 20 - Nev: Supreme
16 Court 1984 the Nevada Supreme Court held that in this context due process
17 required more than service by publication.

18 **"the estate took no steps to notify appellant of the probate**
19 **proceedings other than publishing notice pursuant to NRS 145.050.**
20 The issue presented by this appeal, therefore, is whether the estate's
21 complete reliance on supplying notice by publication in these
circumstances complied with the requirements of due process.

22 The guiding principle to be applied was expressed in *Mullane v. Central*
23 *Hanover Tr. Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950):

24 **"An elementary and fundamental requirement of due process in any**
25 **proceeding which is to be accorded finality is notice reasonably calculated,**
26 **under all the circumstances, to apprise interested parties of the pendency**
27 **of the action and afford them an opportunity to present their objections..."**
28 339 U.S. at 314, 70 S.Ct. at 657.

1 In Mennonite, the Supreme Court applied this principle and found that
2 mere constructive notice afforded inadequate due process to a readily
3 ascertainable mortgage holder. Given the facts of this case and the
4 holdings in Mennonite and Mullane, we conclude that more than service
5 by publication was required in order to afford due process to appellant. We
6 therefore reverse the orders of the district courts and remand these
7 matters for further proceedings consistent with this opinion."

8 The Petitioner was never provided notice pursuant to NRS 164.021 or
9 NRS 164.025.

10 NRS 164.021 which states:

11 Notice by trustee to beneficiary concerning change of revocable trust to
12 irrevocable trust; contents of notice; limitation of action to contest validity
13 of trust.

14 1. When a revocable trust becomes irrevocable because of the
15 death of a settlor or by the express terms of the trust, the trustee may,
16 after the trust becomes irrevocable, **provide notice to any beneficiary of
17 the irrevocable trust, any heir of the settlor or to any other interested
18 person.**

19 2. The notice provided by the trustee must contain:

20 (a) The identity of the settlor of the trust and the date of execution of
21 the trust instrument;

22 (b) The name, mailing address and telephone number of any trustee
23 of the trust;

24 (c) Any provision of the trust instrument which pertains to the
25 beneficiary or notice that the heir or interested person is not a beneficiary
26 under the trust;

27 (d) Any information required to be included in the notice expressly
28 provided by the trust instrument; and

(e) A statement set forth in a separate paragraph, in 12-point boldface
type or an equivalent type which states: "You may not bring an action to
contest the trust more than 120 days from the date this notice is provided
to you."

1 3. The trustee shall cause notice pursuant to this section to be
2 provided in accordance with the provisions of NRS 155.010.

3 4. No person upon whom notice is provided pursuant to this section
4 may bring an action to contest the validity of the trust more than 120 days
5 from the date the notice pursuant to this section is provided, regardless of
6 whether a petition under NRS 164.010 is subsequently served upon the
7 person after the notice is provided, unless the person proves that he or
8 she was not provided notice in accordance with this section.

9 (Added to NRS by 2009, 794; A 2011, 1469; 2021, 988)

10 NRS 164.025 states the following:

11 "Notice of death of settlor; filing of claim against settlor, trust estate or
12 settlor and trust estate; effect of failure to file claim; notice to Department
13 of Health and Human Services; notice of rejected claim; effect of failure to
14 bring suit after notice of rejected claim.

15 1. Regardless of the filing of a petition under NRS 164.010, the
16 trustee of a nontestamentary trust may after the death of the settlor of the
17 trust cause to be published a notice in the manner specified in paragraph
18 (b) of subsection 1 of NRS 155.020 **and mail a copy of the notice to
19 known or readily ascertainable creditors.**

20 2. The notice must be in substantially the following form:

21 Claim and/or issue preclusion do not apply since there has been no prior
22 decision "on the merits" in a court with the proper personal jurisdiction and subject
23 matter jurisdiction since the Petitioner was not named a party in case 2021-PB00034
24 and as argued by the Respondent who argues Petitioner lacked standing and the court
25 lacked jurisdiction.

26 The Petitioner has been diligent upon learning of the existence of the issues
27 including the death of his brother Jeff Robben, his stepdads death of Thomas J.
28 Harris, the death of his mother Olga Harris and the issues of the Thomas J. Harris
Trust and the previous Thomas Joseph and Olga Harris Living Trust. The Petitioner is

1 also entitled to equitable tolling and NRCP Rule 60(b) and (d) "Extrinsic fraud can be
2 used to toll the proceedings brought by the nieces of the de-ceased to contest his will"

3 Melvin v. Farmer, 561 P. 2d 455 - Nev: Supreme Court 1977 Cited by Michie's
4 Nevada Revised Statutes, Annotated AD Kowalsky - 1986

5 In Oak Grove Investors v. Bell & Gossett Co., 668 P. 2d 1075 - Nev: Supreme
6 Court 1983:

7 "The court held that the statute of limitations did not begin to run
8 until the plaintiff learned or in the exercise of reasonable diligence
9 should have learned of the harm to his property caused by the
10 existence of the defect. Id. at 1263-64. Accord Regents of the Univ. of
11 Cal. v. Hartford Accident & Indemn. Co., 21 Cal.3d 624, 147 Cal. Rptr.
12 486, 581 P.2d 197, 200 (1978); Malesev v. Bd. of County Road Comm'rs,
13 51 Mich. App. 511, 215 N.W.2d 598 (1974). See Thompson v. Nebraska
14 Mobile Homes Corp., 647 P.2d 334, 338 (Mont. 1982).

15 When the plaintiff knew or in the exercise of proper diligence should
16 have known of the facts constituting the elements of his cause of
17 action is a question of fact for the trier of fact. See Havas v.
18 Engebregson, 97 Nev. 408, 411-12, 633 P.2d 682, 684 (1981); Millspaugh
19 v. Millspaugh, 96 Nev. 446, 449, 611 P.2d 201, 202 (1980); Golden
20 Nugget, Inc. v. Ham, 95 Nev. 45, 48-49, 589 P.2d 173, 175-76 (1979). A
21 litigant has the right to a trial where the slightest doubt as to the
22 facts exists. Nehls v. Leonard, 97 Nev. 325, 328, 630 P.2d 258, 260
23 (1981). In evaluating the propriety of a grant of summary judgment, we will
24 review the evidence in the light most favorable to the party against whom
25 summary judgment was rendered. Id.; McDermond v. Siemens, 96 Nev.
26 226, 607 P.2d 108 (1980).

27 Also See NRS 11.500 (allowing a party to recommence an action in a court
28 having jurisdiction where a different court dismissed the same action for lack of
subject matter jurisdiction).

See IN RE HOWELL, Nev: Court of Appeals 2020 citing Costello v. Casler, 254
P. 3d 631 - Nev: Supreme Court 2011 at 441, 254 P.3d at 635 ("Modern rules of
procedure are intended to allow the court to reach the merits, as opposed to
disposition on technical niceties."); see also Droge v. AAAA Two Star Towing, Inc.,

1 136 Nev., Adv. Op. 33, 468 P.3d 862, 878 (Ct. App. 2020) (acknowledging that
2 pleadings must be liberally construed and are not dependent upon the use of
3 precise legal terminology).

4
5 **C. CLAIM AND ISSUE PRECLUSION DOES NOT APPLY**

6
7 Claim preclusion and/or issue preclusion do not apply since there was fraud
8 upon the court, the judge was bias/prejudice against the Petitioner and there has been
9 no prior decision "on the merits" in a court with the proper personal jurisdiction and
10 subject matter jurisdiction since the **Petitioner was not named a party in case 2021-**
11 **PB00034** says the Nevada Supreme Court Case No. 84948 stating "Review of the
12 notice of appeal and documents before this court reveals a jurisdictional defect. NRAP
13 3A(a) allows only an aggrieved party to appeal. **Generally, a party is a person who**
14 **has been named as a party to the lawsuit and who has been served with**
15 **process or appeared.** Valley Bank of Nev. v. Ginsburg, 110 Nev. 440, 447, 874 P.2d
16 729, 734 (1994). **It does not appear that appellant was named as a party in the**
17 **proceedings below**".

18 "A court generally may not rule on the merits of a case without first
19 determining that it has jurisdiction over the category of claim in suit (subject-
20 matter jurisdiction) and the parties (personal jurisdiction)" Steel Co. v. Citizens
21 for Better Environment, 523 US 83 - Supreme Court 1998.

22 The Respondent's urge the court to consider NRCP 41(b) which states
23 "Involuntary Dismissal: Effect. If the plaintiff fails to comply with these rules or a court
24 order, a defendant may move to dismiss the action or any claim against the defendant.
25 Unless the dismissal order or an applicable statute provides otherwise, a dismissal
26 under Rule 41(b) and any dismissal not under this rule—**except one for lack of**
27

1 jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an
2 adjudication on the merits.”

3 NRCP 41(b) is inapposite since lacked personal jurisdiction of the Petitioner
4 was not named a party in case 2021-PB00034 says the Nevada Supreme Court Case
5 No. 84948.

6 The Respondent’s never moved to dismiss Case No. 2021-PB00034
7 pursuant to NRCP 41 and the case, action and/or claim was not “dismissed with
8 prejudice”. See Respondent’s EXHIBIT 6. “noting that the requirement for claim
9 preclusion of a valid judgment on the merits does not include cases dismissed
10 without prejudice” In BRANCH BANKING AND TRUST COMPANY v. CREDITOR
11 GROUP, Dist. Court, D. Nevada 2015 citing Five Star Capital Corp. v. Ruby, 194 P.3d
12 709, 713 n.27 (Nev. 2008) FN 1.

13 The order in Case No. 2021-PB00034 concerning the Petitioner is dictum. “A
14 statement in a case is dictum when it is unnecessary to a determination of the
15 questions involved.” City of Oakland v. Desert Outdoor Advertising, Inc., 267 P.3d 48,
16 52 (Nev. 2011) (internal quotations omitted). This definition of dictum as a statement
17 which is unnecessary to the determination of a case tracks with the fourth element for
18 applying issue preclusion that an issue must have been “actually and necessarily
19 litigated” to be precluded. Compare id. with Frei ex rel. Litem v. Goodsell, 305 P.3d
20 70, 72 (Nev. 2013) (“Whether the issue was actually litigated turns on whether
21 the common issue was necessary to the judgment in the earlier suit.”).

22 Accordingly, if the state court’s factual findings are dicta, then they cannot be used to
23 preclude BB&T from asserting its misrepresentation and conspiracy claims in Debtor’s
24 bankruptcy. See Goodsell, 305 P.3d at 72 (“Nevada law provides that only where
25 ‘the common issue was necessary to the judgment in the earlier suit,’ will its
26 relitigation be precluded.”) (quoting Univ. of Nevada v. Tarkanian, 879 P.2d 1180,
27 1191 (Nev. 1994)); see also Mullins v. State, 294 S.W.3d 529, 535 (Tenn. 2009)

1 ("Determinations of an issue or issues that are not necessary to a judgment
2 have the characteristics of dicta and will not be given preclusive effect.") (citing
3 Restatement (Second) of Judgments § 27 cmt. h (1982)).

4 The Respondent failed to meet the three elements of claim preclusion
5 discussed in Alcantara v. Wal-Mart Stores, Inc., 321 P. 3d 912 - Nev: Supreme Court
6 2014 which states For claim preclusion to apply,

- 7 (1) the same parties or their privies must be involved in both cases,
8 (2) a valid final judgment must be entered in the first case, and
9 (3) the subsequent action must be "based on the same claims or any part
10 of them that were or could have been brought in the first case."
11

12 Ironically, the Respondent's argue the Alcantara v. Wal-Mart Stores, Inc case
13 above and they assert (3) "the subsequent action must be "based on the same claims
14 or any part of them that were or could have been brought in the first case." By doing
15 so, the Respondents concede this Petitioner ... "could have been brought in the first
16 case".

17 Also see Executive Mgmt. v. Ticor Title Ins. Co., 963 P. 2d 465 - Nev: Supreme
18 Court 1998:

19 For *res judicata* to apply, three pertinent elements must be present:

- 20 (1) the issue decided in the prior litigation must be identical to the
21 issue presented in the current action;
22 (2) the initial ruling must have been on the merits and have become
23 final; and
24 (3) the party against whom the judgment is asserted must have been
25 a party or in privity with a party to the prior litigation.

26 "Generally, the doctrine of *res judicata* precludes parties ... from
27 relitigating a cause of action or an issue which has been finally determined
28 by a court...." University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879

1 *P.2d 1180, 1191 (1994)*. We have recognized that "there are two different
2 species of res judicata ... issue preclusion and claim preclusion." *Id.* at
3 598, 879 P.2d at 1191. Although often used to describe both "species," in
4 its strictest sense, the term "res judicata" refers only to claim preclusion.
5 *Pomeroy v. Waitkus*, 183 Colo. 344, 517 P.2d 396, 399 (1974).

6 Pursuant to the rule of claim preclusion, "[a] valid and final judgment on a
7 claim precludes a second action on that claim or any part of it." *Tarkanian*,
8 110 Nev. at 599, 879 P.2d at 1191. "Claim preclusion applies when a
9 second suit is brought against the same party on the same claim." *In re*
10 *Medomak Canning*, 111 B.R. 371, 373 n. 1 (Bankr. D.Me.1990). If, as in
11 the instant case, "the prior judgment is in favor of defendant, plaintiff is
12 'barred' from bringing another claim based on the same cause of action."
13 *Id.* We have further stated that "[t]he modern view is that claim preclusion
14 embraces all grounds of recovery that were asserted in a suit, as well as
15 those that could have been asserted, and thus has a broader reach than
16 [issue preclusion]." *Tarkanian*, 110 Nev. at 600, 879 P.2d at 1191.

17 "The general rule of issue preclusion is that if an issue of fact or law was
18 actually litigated and determined by a valid and final judgment, the
19 determination is conclusive in a subsequent action between the parties."
20 *Id.* at 599, 879 P.2d at 1191 (quoting Charles A. Wright, Law of Federal
21 Courts § 100A, at 682 (4th ed.1983)). "The doctrine provides that any
22 issue that was actually and necessarily litigated in [case I] will be estopped
23 from being relitigated in [case II]." *Id.* at 599, 879 P.2d at 1191. Unlike
24 claim preclusion, issue preclusion "does not apply to matters which could
25 have been litigated but were not." [5] *Pomeroy*, 517 P.2d at 399.

26 Adopting the language from Justice Traynor's opinion in *Bernhard v. Bank*
27 *of America National Trust & Savings Ass'n*, 19 Cal.2d 807, 122 P.2d 892
28 (1942), we have stated:

For issue res judicata to apply, three pertinent elements must be present:

(1) the issue decided in the prior litigation must be identical to the issue presented in the current action;

(2) the initial ruling must have been on the merits and have become final; and

(3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation.

1
2 **D. PETITIONER IS ENTITLED TO RELIEF**

3 The Petitioner doesn't even need to prove the existence or contents of the
4 former Thomas Joseph and Olga Harris Living Trust to render the current Thomas J.
5 Harris Trust null & void based on a *prima facie* case of presumed undue influence
6 based on the undisputed facts that Jeff D. Robben, the brother of the Petitioner, was
7 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for Thomas J. Harris; 3:
8 Helped create the current Thomas J. Harris trust; 4. Had "undue influence" and
9 "presumed undue influence" of Thomas J. Harris; 5: Jeff D. Robben influenced
10 Thomas J. Harris to disinherit based on the animus and vexation of Jeff D. Robben.

11 "A rebuttable presumption of undue influence is raised if the testator and the
12 beneficiary shared a fiduciary relationship, but undue influence may also be proved
13 without raising this presumption." *In re Estate of Bethurem*, 313 P. 3d 237, 241 (2013),
14 at 329. "The essence of a fiduciary or confidential relationship is that the parties do not
15 deal on equal terms, since the person in whom trust and confidence is reposed and
16 who accepts that trust and confidence is in a superior position to exert unique
17 influence over the dependent party." *Hoopes v. Hammargren*, 725 P. 2d 238, 242
18 (1986) quoting *Barbara A. v. John G.*, 145 Cal.App.3d 369, 193 Cal.Rptr. 422, 432
19 (1983). "Once raised, a beneficiary may rebut such a presumption by clear and
20 convincing evidence." *Betherum*, at 241.

21 If it turns out the Thomas Joseph and Olga Harris Living Trust is lost or
22 destroyed, the Petitioner can produce two witnesses, Todd C. Robben and Stephen J.
23 Robben to attest to the existence and contents of the Thomas Joseph and Olga Harris
24 Living Trust. A third witness may include Abigail G. Stephenson, Esq since the
25 Thomas Joseph and Olga Harris Living Trust was addressed by Abigail G.
26 Stephenson, Esq. dated March 6, 2020 from Blanchard, Krasner & French
27 acknowledging the existence of the August 26, 1998 trust known as the Thomas
28

1 Joseph and Olga Harris Living Trust. Please see EXHIBIT A in the initial petition filing
2 of this instant case.

3 Further research will determine if a copy of the Thomas Joseph and Olga
4 Harris Living Trust exists. If not, Petitioner can produce two witnesses, Todd C.
5 Robben and Stephen J. Robben to attest to the existence and contents of the Thomas
6 Joseph and Olga Harris Living Trust pursuant to [1] NRS 136.240(3) which provides:
7 No will shall be allowed to be proved as a lost or destroyed will unless the same shall
8 be proved to have been in existence at the death of the person whose will it is claimed
9 to be, or be shown to have been fraudulently destroyed in the lifetime of such person,
10 nor unless its provisions shall be clearly and distinctly proved by at least two credible
11 witnesses.

12 Todd C. Robben and Stephen J. Robben could have attested under oath that
13 Olga Harris, the mother of Petitioner Todd C. Robben spoke of the will/trust several
14 times, including Petitioner's wedding day. The beneficiaries included Thomas J.
15 Harris's son Todd Harris, note Thomas A. Harris was *not* a beneficiary and
16 disinherited; Olga Harris's sons Jeff D. Robben and Todd C. Robben. Each was to
17 receive one third.

18 If the court decides otherwise, the case goes to probate with only two
19 remaining blood hairs, Thomas. A. Harris and Petitioner, Todd C. Robben.

20 This Petitioner has stated and will state again in simple terms that he desires a
21 situation either by settlement, or court order, to remedy the matter to include the
22 Petitioner into to trust with a reasonable percentage and to include a full accounting of
23 any and all assets, money, expenses, etc. A complete transparent paper trail of the
24 money trail. Where are the contents of the missing safe deposit box addressed as
25 "Exhibit "A" to Declaration of Trust by Thomas J. Harris". See EXHIBIT B in the initial
26 petition filing of this instant case.
27

1 **1. Safe Deposit Box:** All of Trustor's right, title and interest in and to all
2 contents in the safe deposit box located at Wells Fargo Bank in Carson
3 City, NV, branch office, including but not limited to cash, bonds, stock,
4 securities, and tangible property therein.

5 **2. Bank Accounts:** All cash, bonds, stock, securities and other property
6 held with Wells Fargo Bank, including but not limited to account
7 #####1233.

8 **3. All Other Personal Property:** All of Trustor's right, title, and interest
9 subject to all liabilities attached thereto in all automobiles, boats, airplanes,
10 vehicles, trailers, silverware, chinaware, wine, books, pictures, paintings,
11 works of art, household furniture and furnishings, clothing, jewelry, pets,
12 assets in digital form for which Trustor is the owner or author, including
13 without limitation, lists of passwords, user account information, social
14 media sites, blogs, e-books, and other Web-hoster materials, all digital
15 albums and videos, websites on which Trustor conducts business
16 transactions, and all other personal property (together with any insurance
17 on such property) now owned or acquired later during Trustor's lifetime.

18 It is undisputed that the house in Minden, Nevada on Pebble Beach Court was
19 transferred into the name of Jeff D. Robben and/or Jeff D. Robben Trust or sub trust.
20 Said house of Thomas J. Harris was worth approximately \$450,000.00 dollars and the
21 money should be put back into the Thomas J. Harris Trust to be distributed to the
22 beneficiaries. There are questions as to another home on April Drive in South Lake
23 Tahoe worth approximately \$1, 500,000.00 dollars that should have been in the
24 Thomas J. Harris trust.

25 This Petitioner believes the estate and trust value of the Thomas J. Harris Trust
26 is grossly undervalued because of the fraud and theft that has occurred to transfer
27 assets into other accounts to defraud the Thomas J. Harris beneficiaries of millions of
28 dollars when just the two homes are added back in addition to the missing contents on
the safe deposit box. Furthermore, Petitioner must see all insurance (death and life

1 insurance payouts), Pension and 401K information in addition to at least the least
2 twenty years of IRS and state tax returns.

3
4 **E. THE PETITIONER IS ENTITLED TO COUNSEL.**

5
6 This Petitioner, a "non resident" of Douglas County Nevada, is entitled to
7 counsel as requested in his petition pursuant to NRS 136.200, this court has
8 jurisdiction, and the Respondent has conceded by not arguing this point. **"A point not
9 urged in the trial court is deemed to have been waived and will not be
10 considered on appeal."** See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:
11 Supreme Court 1981.

12 The Nevada Supreme Court has identified NRS 136.200 as a "statutory
13 right" to appointment of counsel in other types of civil cases. "there is no statutory
14 right to appointment of counsel for appellate review in this type of civil case as there is
15 in criminal cases and other types of civil cases. ...NRS 136.200" Casper v. Huber, 456
16 P. 2d 436 - Nev: Supreme Court 1969.

17 NRS 136.200 Appointment of attorney to represent minors, unborn
18 members of interested class or **nonresidents**; retention of other counsel.

19
20 1. If a will is offered for probate and it appears there are minors or
21 unborn members of a class who are interested, or if it appears there are
22 other interested persons who reside out of the county and are
23 unrepresented, the court may, whether there is a contest or not,
24 appoint an attorney for them.

25 The State Bar of Nevada has a pro bono program for indigent people⁵ and the
26 Nevada Supreme Court and State Legislature can provide this court with guidance as

27 ⁵ <https://nvbar.org/for-the-public/pro-bono-for-the-public/>

1 to funding any non pro bono appointed counsel. It was not the responsibility of this
2 Plaintiff to inform the court of payment options.

3 The Revised Nevada Code Of Judicial Conduct Rule 3.7. comments state:
4

5 **[5] In addition to appointing lawyers to serve as counsel for indigent**
6 **parties** in individual cases, a judge may promote broader access to justice
7 by encouraging lawyers to participate in pro bono public legal services, if
in doing so the judge does not employ coercion, or abuse the prestige of
judicial office.

8 **III. CONCLUSION**
9

10 Petitioner still requests counsel, yet even without a lawyer, this Petitioner has
11 provided the facts, evidence and law to support the Thomas J. Trust to be declared
12 null & void based on the showing of lack of jurisdiction, fraud, surprise, error and this
13 courts having jurisdiction to decide these matters.

14 Petitioner is not barred by any statute of limitations or issue/claim preclusion.
15 Petitioner was also timely despite not being provided proper notice by the Respondent
16 and Petitioner is entitled to any tolling as argued above.

17 The issues of presumed undue influence and undue influence has been
18 conceded by the Respondent who did not attack the merits of presumed undue
19 influence and undue influence in the instant Motion to Dismiss or the Respondent's
20 Motion for Summary Judgment.

21 The crux of the case is identical to Barefoot v. Jennings, *supra* and the Nevada
22 Courts must rectify this public concern just like California did or else future cases of
23 undue influence and disinheritance will suffer a miscarriage of justice.

24 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.
25 **"A trust, includes a person who has a present or future interest, vested or**
26 **contingent, and the owner of an interest by assignment or other transfer".**
27

1 Compare NRS 132.050 with the California equivalent Section 17200, subdivision
2 (b)(3) contemplates the court's determination of "the validity of a trust provision.
3 "Plainly, the term "trust provision" incorporates any amendments to a trust. Section 24,
4 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who has
5 any present or future interest, vested or contingent." Assuming plaintiff's
6 allegations are true, *she has a present or future interest*, making her a beneficiary
7 permitted to petition the probate court under section 17200." See Barefoot v.
8 Jennings, supra.

9
10
11
12 Respectfully signed under penalty of perjury,

13
14 

15 /s/ Todd Robben

16
17 October 20, 2022
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CERTIFICATE OF SERVICE

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on October 20, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 20th day of October, 2022

Submitted By: /s/ Stephen James Robben